

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Sean Michael Kovalevich,)
Petitioner and Appellant.)

- vs -)

State of North Dakota,)
Respondent and Appellee)

) Supreme Court Case No. 20160194
) District Court Case No. 18-2015-CV-02064
)

State of North Dakota,)
Plaintiff/Appellee,)

- vs -)

Sean Michael Kovalevich,)
Respondent/Appellant)

) Supreme Court Case No. 20160325
) District Court Case No.: 18-2012-CR-03069
)

APPEAL FROM THE CIVIL JUDGMENTS
NORTHEAST JUDICIAL DISTRICT
GRAND FORKS COUNTY CIVIL. NO.
18-2015-CV-02064 AND 18-2012-CV-03069
THE HONORABLE JON J. JENSEN PRESIDING

PETITION FOR REHEARING

BENJAMIN C. PULKRABEK

ATTORNEY AT LAW
402 - 1ST NW
MANDAN, ND 58554
701/663-1929
N.D. State Bar ID No. 02908
PULKRABEK@LAWYER.COM

TABLE OF CONTENTS

Table of Contents	i
Table of Cases	ii
Statement of the Issue	¶1
Nature of the Case	¶2
Issue Presented:	
I. On an appeal to the North Dakota Supreme Court when the issue is an error of federal constitutional magnitude that occurred during the trial before that error can be declared harmless must the North Dakota Supreme Court first declare a belief that the error was harmless beyond a reasonable doubt?	
Argument	¶3
Conclusion	¶6
Certificate of Service	¶7

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES
TABLE OF CASES

State v. Hilling 219 NW2d 164 (N.D. 1974)¶4, 5
Knoepfle v. Suko 108 N.W.2d 456 (N.D.1961)¶4
Chambers v. Mississippi 410 U.S., at 295¶4
Douglas v. Alabama 380 U.S. 415, 418, 85 S.Ct. 1074, 1076, 13 L.Ed2d 934 (1965)	.¶4
Davis v. Alaska 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed2d 347(1974)¶4
Chapman v. California 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed2d 705 (1967)¶5

STATEMENT OF THE ISSUE

[¶1] ISSUE:

I. On an appeal to the North Dakota Supreme Court when the issue is an error of federal constitutional magnitude that occurred during the trial before that error can be declared harmless must the North Dakota Supreme Court first declare a belief that the error was harmless beyond a reasonable doubt?

NATURE OF THE CASE

[¶2] This is a petition to rehear the North Dakota Supreme Courts opinion in the above matter that was filed on March 1st, 2017.

ARGUMENT

[¶3] In this case the Petitioner/Appellant Sean Michael Kovalevich after his trial discovered new evidence that if he had it at trial he would have been able to effectively cross exam and impeach the States lead investigator Craig Zachmeier. Mr. Kovalevich brought this issue before the North Dakota Supreme Court and the North Dakota Supreme Court dismissed his appeal without ruling whether or not the federal constitutional error that occurred in his case was harmless beyond a reasonable doubt.

[¶4] According to State vs Helling 219 NW2d 164.

The right is absolute and the denial of the right as to material evidence is prejudicial error requiring a new trial. Knoepfle v. Suko, 108 N.W.2d 456 (N.D.1961).

“The right of cross-examination is more than a desirable rule of trial procedure. It is implicit in the constitutional right of confrontation, and helps assure the ‘accuracy of the truth-determining process.’ [Citations omitted.] It is, indeed, ‘an essential and fundamental requirement for the kind of fair trial which is this country’s constitutional goal.’”

Chambers v. Mississippi, *supra*, 410 U.S., at 295.

The right of confrontation guaranteed by the Sixth Amendment to the United States Constitution means more than being allowed to confront the witness physically. “Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination.” Douglas v. Alabama, 380 U.S. 415, 418, 85 S.Ct. 1074, 1076, 13 L.Ed2d 934 (1965), quoted in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed2d 347(1974). Denial of the right of effective cross-examination is “constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.” David v. Alaska, *supra*.

[¶5] Hilling goes on to set out the following standard that is to be used to determine if a constitutional error is harmless:

In Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed2d 705 (1967), the United States Supreme Court ruled “that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.” We adopt that standard, and since we are unable to declare that the multiple errors in this case were harmless beyond a reasonable doubt, we reverse the conviction and remand for a new trial.

CONCLUSION

[¶6] The North Dakota Supreme Court has adopted the standard that before a federal constitutional error can be held harmless, the Court must be able to declare that it was harmless beyond a reasonable doubt. Therefore because of this standard Mr. Kovalevich case must be reheard by the North Dakota Supreme Court to decide if the federal constitutional error can be held harmless beyond a reasonable doubt.

DATED this 14th day of March, 2017.

/s/Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID #02908

CERTIFICATE OF SERVICE BY MAIL

[¶7] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

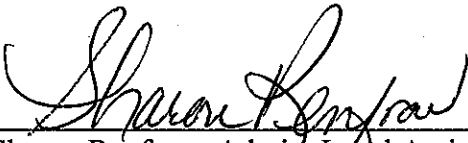
That on March 14th, 2017, she served, by e-mail and mailed a copy of the following:

APPELLANTS PETITION FOR REHEARING

to: Gary E. Euren
Cass County States Attorneys Office
Eureng@casscountynd.gov

Mailed to: Sean Kovalevich
NDSP - #39835
P.O. Box 5521
Bismarck, ND 58506

The undersigned further certifies that on March 14th, 2017, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS PETITION FOR REHEARING



Sharon Renfrow, Admin. Legal Assistant
Pulkrabek Law Office

CERTIFICATE OF SERVICE BY MAIL

[17] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

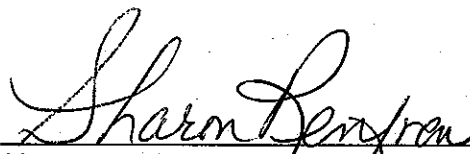
That on March 15th, 2017, she served, by e-mail and mailed a copy of the following:

APPELLANTS PETITION FOR REHEARING

to: Meredith Larson
Grand Forks County States Attorneys Office
Meredith.larson@gfcounty.org

Mailed to: Sean Kovalevich
NDSP - #39835
P.O. Box 5521
Bismarck, ND 58506

The undersigned further certifies that on March 15th, 2017, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS PETITION FOR REHEARING


Sharon Renfrow, Admin. Legal Assistant
Pulkrabek Law Office