

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20180109

Sean Michael Kovalevich,

Petitioner and Appellant

-vs-

State of North Dakota,

Respondent and Appellee.

APPEAL FROM THE CIVIL JUDGMENT
NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY CIVIL NO. 18-2017-CV-00957
THE HONORABLE JOHN THELEN PRESIDING

PETITION FOR REHEARING

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STATEMENT OF THE ISSUE

[¶1] ISSUE:

- I. **Did the District Court and the North Dakota Supreme Court err when they both decided that Petitioner/Appellant, Sean Michael Kovalevich's newly discovered evidence would at the very least end with a finding of guilt to a lesser charge?**

NATURE OF THE CASE

¶2] This is a petition to rehear the North Dakota Supreme Courts opinion in this matter that was filed on July 18, 2018.

ARGUMENT

¶3] According to Kovalevich v. State ¶5] 2018 ND 184:

We review post-conviction relief applications based on newly discovered evidence as a motion for a new trial based on newly discovered evidence under N.D.R.Crim.P. 33, Greywind [v. State], [2004 ND 213,] ¶18 [689 N.Wd 390]. The standard for granting a new trial is well-established:

“Under N.D.R.Crim.P. 33(a), the trial court may grant a new trial to the defendant if required in the interests of justice. To prevail on a motion for a new trial on the ground of newly discovered evidence, the defendant must show (1) the evidence was discovered after trial, (2) the failure to learn about the evidence at the time of trial was not the result of the defendant’s lack of diligence, (3) the newly discovered evidence is material to the issues at trial, and (4) the weight and quality of the newly discovered evidence would likely result in an acquittal. A motion for new trial based upon newly discovered evidence rests within the discretion of the trial court, and we will not reverse the court’s denial of the motion unless the court has abused its discretion. If the newly discovered evidence is of such a nature that it is not likely to be believed by the jury or to change the results of the original trial, the court’s denial of the new trial motion is not an abuse of discretion.’

¶4] Kovalevich then goes on in [6] to say that of the above four prongs Mr. Kovalevich can’t meet prong four because the newly discovered evidence wouldn’t result in an acquittal. Even if this is true the North Dakota Supreme Court should have considered the fact that the newly discovered evidence would have resulted in the jury finding him not guilty of the crime charged and then finding him guilty of a less serious offense.

