

## IN THE SUPREME COURT OF NORTH DAKOTA

---

State of North Dakota,

Plaintiff and Appellee,

v.

Richard Earl Scott,

Defendant and Appellant.

Supreme Court File No.

20190317

Burleigh County File No.

08-2018-CR-01476

**APPELLANT BRIEF**

---

Appeal from the Criminal Judgement in Burleigh County

District Court, South Central Judicial District, Bismarck, North Dakota

October 4, 2019, the Honorable John Grinsteiner presiding

ORAL ARGUMENT REQUESTED

Benjamin C. Pulkrabek  
ND Bar No. 02908  
Pulkrabek Law Office  
402 First Street NW  
Mandan, ND 58554  
Office: 701-663-1929  
[Pulkrabek@lawyer.com](mailto:Pulkrabek@lawyer.com)  
*Attorney for the Appellant*

TABLE OF CONTENTS

Table of Authorities.....P. 3

Jurisdictional Statement.....¶1

Statement of the Issues Presented.....¶2-¶3

Nature of the Case.....¶4 -¶8

Statement of Facts.....¶9 - ¶15

Law and Argument.....¶16 - ¶40

    I.    Did the judge err in this case either prior to trial when he failed to advise Defendant/Appellant Richard Earl Scott of his right to plead not guilty to the charge of Count 3 because of former jeopardy, and/or when during the trial he failed to instruct the jury on jeopardy in this case regarding Count 3 and allow the jury to decide that factual issue?

    II.   Since this case involved a sexual issue involving a child should the prosecutor, before the trial, have requested and been granted a hearing to determine that the time, content, and circumstances of the statements provided by witnesses about the child’s testimony have sufficient guarantees of trustworthiness?

Conclusion.....¶41

TABLE OF AUTHORITIES

CASES

**SUPREME COURT CASES**

Tatum, supra, at 617 (citing 53 Am. Jur., Trial Sec. 580)..... ¶28

**NORTH DAKOTA STATE CASES:**

State v. Kraft, 413 N.W.2d 303, 308 (N.D. 1987)..... ¶18, ¶28

State v. Taylor 70 N.D. 293 N.W. 219 (N.D. 1940)..... ¶26

State v. Panchuk, 53 N.D. 669, 674, 207 N.W. 991, 993.....¶26

State v. Barnes 29 N.D. 164, 150 N.W. 557 (N.D. 1915)..... ¶22

State v. Shahane, 56 N.D. 642, 219 N.W. 132, 56 N.D. 642 (N.D. 1928)..... ¶27

State vs. Hirsch Korn 2002 N.D. 36, 640 N.W. 2d 439.....¶37

State v. Thiel, 411 N.W.2d 66 (N.D. 1987); see also 75 Am.Jur2d, Trial Secs. 575, 652 (1974)..... ¶28

**OTHER CASES**

State v. Loughton, 747 P.2d 426 (/opinion/1220428/state-v-loughton/), 432 (Utah 1987)..... ¶37

**STATUTES, RULES, AND CODES**

**NORTH DAKOTA RULES OF CRIMINAL PROCEDURE**

Rule 29 Motion for Judgment of Acquittal .....¶14

Rule 52 (b)..... ¶17, ¶18

Rule 11 (a)(1)..... ¶19

**NORTH DAKOTA RULES OF EVIDENCE**

North Dakota Rules of Evidence 803 (24)..... ¶12, ¶16, ¶31, ¶32, ¶35, ¶36, ¶38, ¶39, ¶40

**NORTH DAKOTA CENTURY CODE**

N.D.C.C. 29-16-01.....¶21

ORAL ARGUMENT:

Oral argument has been requested to emphasize and clarify the Appellant's written arguments on their merits.

Transcript References:

The jury trial for this matter was conducted on May 28, 2019 – May 29, 2019. The transcripts of the jury trial are referred to as [Tr.] Volume 1 and Volume 2 in this Brief.

## JURISDICTIONAL STATEMENT

[¶1] Pursuant to N.D.C.C. § 29-28-03, a defendant may appeal any or all verdicts, judgments, or orders listed in N.D.C.C. § 29-28-06.

## STATEMENT OF THE ISSUES

- [¶2] I. Did the judge err in this case either prior to trial when he failed to advise Defendant/Appellant Richard Earl Scott of his right to plead not guilty to the charge of Count 3 because of former jeopardy, and/or when during the trial he failed to instruct the jury on jeopardy in this case regarding Count 3 and allow the jury to decide that factual issue?
- [¶3] II. Since this case involved a sexual issue involving a child should the prosecutor, before the trial, have requested and been granted a hearing to determine that the time, content, and circumstances of the statements provided by witnesses about the child's testimony have sufficient guarantees of trustworthiness?

## NATURE OF THE CASE

[¶4] This is a Burleigh County case. The Defendant Richard Earl Scott (Mr. Scott) was charged in Burleigh County with the offenses of:

Count 1. Solicitation of a Minor

Count 2. Indecent Exposure

Count 3. Child Neglect, Parental Care

[¶5] A jury found him guilty of solicitation of a minor and guilty of child neglect – parental care, and not guilty of indecent exposure.

1. This case began with a complaint and affidavit of probable cause which were filed

- on 05/11/2018.
2. The defense made a Rule 16 Discovery Request and it was filed on 05/16/2018.
  3. A preliminary hearing and arraignment were held on 6/18/2018.
  4. The information was filed on 06/19/2018.
  5. A second response to and request for discovery and notice of intent to use evidence as filed on 07/20/2018.
  6. An order setting a change of plea on Count 1 & 2 was filed on 09/04/2018.
  7. A change of plea hearing was held on 09/17/2018.
  8. An amended information was filed on 07/25/2018.
  9. Another Rule 16 discovery request was filed on 09/05/2018.
  10. A fourth response to and request for discovery and notice of intent to use evidence was filed on 09/26/2018.
  11. A motion to withdraw guilty pleas was filed on 11/02/2018.
  12. An order allowing withdraw of guilty plea was entered on 11/21/2018.
  13. A motion in limine to exclude prior bad acts was filed on 01/07/2019.
  14. A fifth response to request for discovery and intent to use evidence was filed on 01/23/2019.
  15. The state's response to Defendant's motion in limine to exclude prior bad acts was filed on 01/24/2019.
  16. A motion in limine to exclude evidence was filed on 01/25/2019.
  17. A sixth response to and request for discovery and notice of intent to use evidence was filed on 02/06/2019.
  18. An order denying motion to exclude evidence was entered on 02/20/2019.

19. An amended Information was filed on 05/06/2019.
20. Defendant's disclosures were filed on 05/17/2019.
21. A motion to exclude evidence was filed on 05/20/2019.
22. An order denying motion in limine was filed on 05/29/2019.
23. The jury trial began on 05/28/2019.
24. A third amended motion was filed on 05/30/2019.
25. Defendant Scott was sentenced on 10/04/2019.
26. The Criminal Judgment was filed on 10/04/2019.
27. The notice of appeal and order for transcript were filed on 10/17/2019.
28. The notice of filing the notice of appeal was filed on 10/17/2019.

[¶6] This case is now before the North Dakota Supreme Court.

[¶7] Mr. Scott was sentenced on 10/04/2019 on Counts 1 & 3. On Count 1 he was sentenced to five (5) years incarceration with the Department of Corrections and Rehabilitation, first serve thirty (30) months, balance suspended for five (5) years' supervised probation with credit for 424 days time served. On Count 3 he was sentenced to five (5) years incarceration with the Department of Corrections and Rehabilitation, first serve thirty (30) months, balance suspended for three (3) years supervised probation to be served consecutive to Count 1.

[¶8] Mr. Scott appealed the judgment and sentence on 10/17/2019.

## STATEMENT OF THE FACTS

[¶9] This is a Burleigh County District Court Case. It began on 05/11/2018 when the Burleigh County States Attorney filed a criminal complaint and affidavit of probable cause alleging Richard Earl Scott (Mr. Scott) committed the following crimes of:

1. Solicitation of a Minor
2. Indecent Exposure and
3. Child Neglect

[¶10] The Information in this case was amended a number of times. The following are the Counts in the last amended information and are the Counts Mr. Scott was tried on:

1. Solicitation of a Minor, a Class C Felony
2. Indecent Exposure, a Class A Misdemeanor
3. Child Neglect, a Class C Felony

[¶11] In all 3 Counts the alleged victim was an eight-year-old child.

[¶12] Prior to trial and during the trial, Mr. Scott's attorneys raised two issues:

1. That Count 3 of the Information was double jeopardy for that crime because Mr. Scott, prior to that trial, had plead guilty to a crime that had the same criminal elements as Count 3 (see trial Exhibit #4 in the appendix at pages 70 – 78). Therefore, Mr. Scott was at this trial being tried again for the same crime he had already plead guilty to.
2. That the trial court, prior to trial, had not followed the procedure required according to Rule 803 (24) and held a hearing on the sexual issue to determine that the time, content, and circumstances of the statement provide sufficient guarantees of trustworthiness.



[¶13] That during the trial the Court allowed into evidence opinion testimony from a witness who had talked to the child and had decided that the child's statements were consistent with the facts in this case and that the child was not coached on the testimony she gave.

[¶14] At the end of the States case and at the end of the Mr. Scott's case his defense attorneys made a Rule 29 motion for judgement of acquittal. Both motions for acquittal were denied by the trial judge.

[¶15] The jury found Mr. Scott guilty of Counts 1 & 3 and not guilty of Count 2.

- I. Did the judge err in this case either prior to trial when he failed to advise Defendant/Appellant Richard Earl Scott of his right to plead not guilty to the charge of Count 3 because of former jeopardy, and/or when during the trial he failed to instruct the jury on jeopardy in this case regarding Count 3 and allow the jury to decide that factual issue?

#### ARGUMENT

[¶16] In the case now before the Court the trial judge never ruled on:

1. Whether or not the Defendant/Appellant Richard Earl Scott (Mr. Scott) was ever advised of the plea of not guilty because of former jeopardy.
2. Whether or not the states witnesses who talked to the alleged victim could get around the hearing requirement in North Dakota Rules of Evidence 803 (24) by simply testifying that the information provided to them by the child was consistent with the facts in this case and that the witnesses believed the child had not been coached on how to testify.

[¶17] Because of the facts in this case the standard of review on both issues in this case begins with Rule 52(b) of the North Dakota Rules of Criminal Procedure which states: Obvious error or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.

Rule 52(b) of North Dakota Criminal Procedure states:

**“(b) Obvious Error.** An obvious error or defect that affects substantial rights may be considered even though it was not brought to the court's attention.”

[¶18] The standard of review in this case is set out in State v. Kraft, 413 N.W.2d 303, 308 (N.D. 1987). “In answering the possibility of error concerning substantial right under Rule 52 (b), it is necessary to examine the entire record and the probable effect on the actions alleged to be error in light of all the evidence.”

[¶19] In North Dakota the advice criminal Defendants are given by judges as to the pleas that are possible are found in Rule 11 North Dakota Rules of Criminal Procedure. The only possible pleas in North Dakota according to Rule 11 (a)(1) are:

1. Not guilty
2. Guilty

[¶20] The transcripts of Mr. Scott’s initial appearance, preliminary hearing, and trial have all been transcribed and filed with this appeal. In each of these transcripts Mr. Scott was only advised of two pleas in North Dakota, not guilty and guilty.

[¶21] The advice given by the judges in this case regarding pleas is not totally correct. There are two other pleas and they are set out in North Dakota Century Code 29-16-01:

“Issue of fact.

An issue of fact arises:

1. Upon a plea of not guilty
2. Upon a plea of former conviction or acquittal of the same offense; or
3. Upon a plea of once in jeopardy.”

[¶22] According to *State v. Barnes*, 29 N.D. 164, 150 N.W. 557, (N.D. 1915):

“The question of fact of former jeopardy should be presented to jury upon a separate plea of not guilty because of former jeopardy arising from former acquittal or conviction, and the failure to enter such a plea is a waiver of the defense of former jeopardy arising from a former conviction.”

[¶23] In this case Mr. Scott was only advised of two possible pleas in North Dakota, not guilty and guilty. After he was given these two choices, he plead not guilty.

[¶24] Mr. Scott during the trial raised the issue of double jeopardy as to the criminal charge in Count 3 and asked Count 3 be dismissed. The trial judge denied that request.

[¶25] Had the trial judge advised Mr. Scott of all the possible pleas in North Dakota because of the defense he raised there is no doubt he would have, as to Count 3, plead not guilty because of former jeopardy.

[¶26] *State vs. Taylor* 70 N.D. 201, 293 N.W. 219 (N.D. 1940) states that:

“The plea of once in jeopardy must be substantially as follows: "The defendant pleads that he has been once in jeopardy for the offense charged in this information . . . (specifying the time, place, and court)." Comp. Laws, § 10,747, subd. 4. The defendant must comply with the requirements of this statute. *State v. Panchuk*, 53 N.D. 669, 674, 207 N.W. 991, 993.”

[¶27] According to *State vs. Shahane*, 219 N.W. 132, 56 N.D. 642 (N.D. 1928):

“Under § 10,746 Comp. Laws 1913, there are four pleas, viz.: guilty, not guilty, a former judgment of conviction or acquittal, and once in jeopardy. In this case the defendant pleaded not guilty, and that plea, under § 10,750 Comp. Laws 1913, puts in issue every material allegation in the information or indictment, and under § 10,751, all matters of fact tending to establish a defense other than those specified in the third and fourth subdivisions of § 10,746, may be given in evidence under the plea of not guilty. The subdivisions referred to embrace former conviction, acquittal, and previous jeopardy which must be specially pleaded. It follows, that evidence of accidental death, insanity, self-defense, defense of another person, and any and every other defense may be offered under a plea of not guilty, save and except, the defense of former conviction or acquittal, or previous jeopardy, and if there was any evidence of defendant's insanity the instruction asked by the defendant, or some instructions, should have been given on that subject.”

[¶28] The jury instructions a Defendant is entitled to are set out in State vs. Kraft 413 N.W.2d 303, 308 (N.D. 1987):

“It was further stated that “in criminal cases the defendant is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility.” Tatum, supra, at 617 (citing 53 Am. Jur., Trial Sec. 580); State v. Thiel, 411 N.W.2d 66 (N.D. 1987); see also 75 Am.Jur2d, Trial Secs. 575, 652 (1974).”

[¶29] Mr. Scott in this case had a right to:

1. Enter a plea of not guilty to Count 3 because of former jeopardy
2. To have a jury instructed about jeopardy and decide whether or not he was not guilty of Count 3 because of jeopardy.

[¶30] Mr. Scott believes the above rights are substantial. Therefore, his case must be remanded to the District Court as to Count 3 and Mr. Scott will be given a new trial after he pleads not guilty to Count 3 because of former jeopardy.

Issue II. Since this case involved a sexual issue involving a child should the prosecutor, before the trial, have requested and been granted a hearing to determine that the time, content, and circumstances of the statements provided by witnesses about the child’s testimony have sufficient guarantees of trustworthiness?

[¶31] In this case the North Dakota Rules of Evidence that applies is 803 (24):

“(24) **Child's statement about sexual abuse.** A statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child if:  
(A) the trial court finds, after hearing on notice in advance of the trial of the sexual abuse issue, that the time, content, and circumstances of the statement provide sufficient guarantees of trustworthiness; and  
(B) the child either:  
(i) testifies at the trial; or

(ii) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.”

[¶32] During the trial Mr. Scott’s defense attorneys raised issues about the applicability of North Dakota Rule of Evidence 803 (24) to witnesses who testified about talking to the child. The first citation below is found in the transcript and sets out what the trial judge and the parties discussed about North Dakota Rules of Evidence 803 (24) and it is followed by transcript citations of answers given by the state’s witnesses to the prosecutors questions about how they interpreted the child’s testimony:

Jury Trial Volume 1 T. Page 34 L. 5 to Page 35 Line 16:

“MR. ROSE: Well, Your Honor, in all these cases I've had before, I've always received notice and we've had a hearing on it, and that's where I'm confused today, that even if the child witness testifies, if other parties are going to testify about anything as to what this child said, I've always had a hearing and at these hearings this is what we discuss, we determine if everything is corroborative and if it has sufficient guarantees of trustworthiness and everything and that's where I'm concerned here, is I never received notice like I have in other cases. I never had a hearing on this matter.

MS. LAWYER: And just to be clear, I'm not --

THE COURT: My assumption is the State isn't going to attempt to introduce any hearsay.

MS. LAWYER: No.

THE COURT: That the child is going to testify and that any other -- if we put Mom on or the CAC interviewer on to testify to the statements, that's going to be objectionable as hearsay.

MR. ROSE: That's what I wanted to know, Your Honor.

THE COURT: We'll have to cross those bridges as we get there, but 803(24), that exception only comes in if the child wouldn't be able to testify or is too young to testify. That's when we'd have to have the prior hearing before to determine whether there's going to be

truthfulness. But my understanding from the State, a couple times now, have indicated that you intend to call the alleged victim.

MS. LAWYER: I do, and I don't intend to introduce any hearsay statements made by her or any other party.

THE COURT: Does that at least answer your question or clear the confusion?

MR. ROSE: We just wanted to make a record of that, Your Honor.

THE COURT: Okay. And so, if we -- you know, if we get up there and somebody makes statements about what the child has said, certainly it's going to be objectionable and likely upheld at that time.

[¶33] The following is the testimony of witnesses who testified about conversations with the child. The name of the witness testifying appear after the transcript citation.

Jury Trial Volume 1 T. Page 129 L. 6-25 (Janette Yoder):

“Q. When you ask the questions, are they direct questions about what's reported or do you try to make them a little more open-ended to see what the child is going to say?

A. No, they're open-ended. It's a conversation.

Q. And in this case did you -- you know, without getting into exactly what she said, did you introduce any concepts to her, or did you just ask basically how things were going and let her tell you how things were?

A. We started by talking about her family, who she lived with, that she had a mom and dad, she lived with her mom. She said Mom has a boyfriend, Rich, and we talked about I think she wanted a cat or has a cat and then we started talking about her mom's home and then we talked about the cops coming to her house and that took our conversation on.

Q. Did you receive additional information, again, without saying what she said, but did you receive additional information from N. than was in the 960 that you received?

A. Yes.

Q. What happened when you got that additional information?”

Jury Trial Volume 1 T. volume 1 Page 132 L. 1-14 (Janette Yoder):

- “Q. Was May 3rd the only time in between the two CAC interviews that were set up that you had talked with N.?”
- A. No, Detective Betz and I saw N. again on May 10th at the school. That was a brief contact.
- Q. Same questions again, was there anything in that conversation, from either you or Detective Betz, that you thought you were introducing ideas to her?
- A. No.
- Q. So you had spoke with her three times before the CAC interview took place; correct?
- A. Correct.
- Q. And in those three conversations was she inconsistent about anything that she told you?
- A. No.”

Jury Trial Volume 1 T. Page 133 L. 3-6 (Janette Yoder):

- “Q. And from what you heard at the CAC interview, was N.'s statement consistent with other interviews you had done with her?”
- A. Yes.”

Jury Trial Volume 1 T. page 146 L. 2 to Page 148 L. 7 (Shannon Hilfer):

- “Q. (MS. LAWYER CONTINUING:) When was that interview conducted?”
- A. June 6th of 2018.
- Q. And where did it take place?
- A. At the Children's Advocacy Center, in Bismarck.
- Q. And who was present during the interview? Was it just you and her or was there anybody else involved?
- A. In the interview room it was just me and the child. There are people observing the interview through closed-circuit

television so they can see and hear what's happening, so there were some people observing the interview, but they weren't in the room with us.

Q. And did you begin your interview with N. the same way you talked about how you begin all your interviews?

A. I did.

Q. And were you able to establish the rules with her?

A. Yes.

Q. Did you have any difficulty interviewing her?

A. No.

Q. Was she able to

MR. HOFFMAN: Judge, I'm going to object to the relevance of this. If the substance of the interview can't be put into evidence, this is not relevant.

THE COURT: Any response from the State"

MS. LAWYER: Yes, Your Honor. We're not getting into any statements that were made. We're going into whether or not the interview conducted was appropriate, whether or not there were any ideas given to her in advance of her testimony today.

THE COURT: Overruled. I'll allow it. Go ahead.

Q. (MS. LAWYER CONTINUING:) So was she able to respond to the questions that you asked of her?

A. Yes.

Q. And during the interview were you watching for those things that you talked about before, like age-appropriate terminology and body language?

A. Yes.

Q. Did you, during the course of your interview, introduce any ideas to her during your interview?



A. No.

Q. During your interview did you observe appropriate body language, age-appropriate language?

A. Yes.

Q. Was there any evidence of coaching in this case that you observed or the red flags you had talked about earlier?

A. No.

MR. HOFFMAN: Objection. That's not a clear question. Coaching when? Coaching in this interview or coaching some other time?

THE COURT: I understand the question to mean during this interview, but if you want to reask the question again.

MS. LAWYER: I would.

Q. (MS. LAWYER CONTINUING:) During your interview with N., did you observe any of those red flags you talked about or any evidence of coaching?

A. Not that I observed.”

Jury Trial Volume 2 T. page 209 L. 11 to Page 210 L. 3 (Scott Betz):

“Q. How would you ask questions of N.?

A. When I was -- I had asked N. if there has ever been a time when someone has asked to touch her body or touched a part of her body that someone is not allowed to touch.

Q. Were there any other specific questions you asked her?

A. Yes.

Q. And what were they?

A. I had asked N. if anyone has ever shown their private parts to her or asked to see her private parts.

Q. And you weren't concerned that those may be leading questions?

A. No.

Q. And why not?

A. With those questions the child can then elaborate. I'm not leading them to a particular person. They can elaborate as to if that's ever happened to them and then go into detail about what had occurred.”

Jury Trial Volume 2 T. page 213 L. 10 - 13: (Scott Betz)

“Q. Was the information that she provided, that N. provided in the CAC interview, consistent with the information you had been provided in the past?

A. Yes.”

[¶34] The above prosecutor’s questions to prosecution witnesses inquire about whether or not the child victim had a conversation with the witness and, if she did, if the answer was consistent with the facts in this case or could it have been a coached answer. The witness’s answers imply the child victim’s answers were true because they were consistent and went along with the facts of this case and it was their opinion there was nothing to indicate the child had ever been coached.

[¶35] Therefore, the question becomes “were these witnesses’ answers the type of responses that require a North Dakota Rules of Evidence 803 (24) hearing prior to trial to determine if there were sufficient guarantees of trustworthiness?”

[¶36] Sexual abuse cases involving children are difficult cases regarding admissible testimony from witnesses. Rule 803 (24) is a rule of evidence that defines admissible hearsay testimony that is allowed and still protects a Defendant’s right of confrontation.

[¶37] According to State vs. Hirschorn 2002 N.D. 36, 640 N.W. 2d 439:

“Because of the importance of the accused’s confrontation rights, the safeguards built \*444 into the child-hearsay rule must be strictly observed. State v. Loughton,

747 P.2d 426 (/opinion/1220428/state-v-loughton/), 432 (Utah 1987).”

[¶38] In the case now before the Court the prosecutor should have only been allowed to ask a witness one question, “whether or not they had talked to the child victim about this case?” To that question the witnesses would have said “yes”. Any question and answer after about how to interpret the child’s answers should not have been allowed because there had been no pre-trial hearing according to North Dakota Rules of Evidence 803 (24).

[¶39] Prior to the trial in this case there should have been a pre-trial hearing under North Dakota Rules of Evidence 803 (24) to determine the trustworthiness of the witness’s testimony about the child’s statements being consistent with the facts and her not being coached.

[¶40] The judge’s allowing the witnesses to testify as they did about conversations with the child is not permitted by Rule 803 (24). This trial judges allowing such testimony affected Mr. Scott’s substantial rights and requires this case to be remanded to the District Court with an order requiring the trial Court to give Mr. Scott a new trial after having a North Dakota Rules of Evidence 803 (24) hearing on the admissibility of witness testimony about their opinions regarding the child victim’s statements made to them.

#### CONCLUSION

[¶41] For the above and foregoing reasons this case needs to be remanded to the District Court.

Dated this 13<sup>th</sup> day of February, 2020.

/S/ Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek  
Pulkrabek Law Office  
402 – 1<sup>st</sup> Street NW  
Mandan, ND 58554  
(701) 663-1929  
[pulkrabek@lawyer.com](mailto:pulkrabek@lawyer.com)  
Attorney for the Defendant/Appellant

IN THE SUPREME COURT OF NORTH DAKOTA

---

State of North Dakota,	)	Supreme Court File No.
	)	20190317
Respondent and Appellee,	)	
	)	Burleigh County No.
v.	)	08-2018-CR-01476
	)	
Richard Earl Scott,	)	CERTIFICATE OF COMPLIANCE
	)	
Petitioner and Appellant.	)	

---

[¶1] This Appellant’s Brief and Appendix complies with the pages limit of 38 for the Brief and 100 pages for the Appendix set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, as the Brief consists of 20 pages and Appendix consists of 93 pages.

Dated this 13<sup>th</sup> day of February, 2020

/S/ Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek  
ND Bar No. 02908  
Pulkrabek Law Office  
402 First Street NW  
Mandan, ND 58554  
(701) 663-1929  
pulkrabek@lawyer.com

IN THE SUPREME COURT OF NORTH DAKOTA

---

State of North Dakota,	)	Supreme Court File No.
	)	20190317
Plaintiff and Appellee,	)	
	)	Burleigh County No.
v.	)	08-2018-CR-01476
	)	
Richard Earl Scott,	)	CERTIFICATE OF SERVICE
	)	
Defendant and Appellant.	)	

---

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant's Appendix  
Appellant's Brief

By efilng at the below address upon:

Julie Lawyer  
Burleigh County States Attorney  
[Bc08@nd.gov](mailto:Bc08@nd.gov)

Bradley Scott Rose  
Jury Trial Counsel  
[roselaw@sroselaw.com](mailto:roselaw@sroselaw.com)

North Dakota Supreme Court  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

Michael Ray Hoffman  
Jury Trial Co-Counsel  
[hoffmanmike@yahoo.com](mailto:hoffmanmike@yahoo.com)

And by placing a true and correct copy of said items in a sealed envelope with USPS mail to:

Richard Earl Scott  
C/O James River Correctional Center  
2521 Circle Drive  
Jamestown ND, 58401

Dated this 13<sup>th</sup> day of February, 2020

/S/ Cassy Larson  
Cassy Larson  
Legal Assistant to Benjamin C. Pulkrabek  
Pulkrabek Law Office  
402 First Street NW  
Mandan, ND 58554  
(701) 663-1929  
[pulkrabek@lawyer.com](mailto:pulkrabek@lawyer.com)