

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Carrie Lee Lusby, Petitioner/Appellant, v. State of North Dakota, Respondent/Appellee.	Case No.: 45-2020-CR-00421 Supreme Court Case No: 20210266 PETITION FOR REHEARING
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PETITION FOR REHEARING

Petition for Re-hearing on the Judgment entered on the 20th day of May, 2021 by the
North Dakota Supreme Court

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PETITION FOR REHEARING

[¶1] COMES NOW the Petitioner/Appellant Carrie Lee Lusby (Ms. Lusby) and petitions the court for a rehearing.

JURISDICTION

[¶2] Petitioner/Appellant Lusby timely petitions for rehearing in accordance with N.D. R. App. P. 40.

STATEMENT OF THE ISSUES

[¶3] **ISSUE I.** Does State v. Kraft, 413 N.W. 2d 303 (N.D. 1987) require the trial judges to instruct on all questions of law whether requested or not?

[¶4] **ISSUE II.** Should the trial judge have granted judges Rule 29 Motion?

LAW AND ARGUMENT

[¶5] As to Issue I according to Kraft:

“In Tatum v. United States, 190 F.2d 612, 615 (D.C.Cir.1951), cert. denied, 356 U.S. 943, 78 S.Ct. 788, 2 L.Ed.2d 818 (1958), quoting Kreiner v. United States, 11 F.2d 722, 731 (2d Cir.1926), the District of Columbia Court of Appeals stated that the “[f]ailure on the part of a trial court in a criminal case to ‘instruct on all essential questions of law involved in the case, whether requested or not’ ” would clearly affect substantial rights within the meaning of Rule 52(b) of the Federal Rules of Criminal Procedure. 6 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.Jur.2d, Trial Secs. 575, 652 (1974).

[¶6] As to Issue II there is no direct testimony or even an inference in this case that Ms. Lusby knowingly trespassed into the residence of Mr. Fugere and Ms. Godowski. So, viewing there is no evidence to to review that would support a guilty verdict. Therefore rule 29 Motion should have been granted.

CONCLUSION

[¶7] As to issue I Ms. Lusby because of the language in Kraft is entitled to jury instructions K-3.180. Therefore Ms. Lusby is entitled be awarded a rehearing as to Issue I

As to Issue II there is neither any evidence or even inference that Ms. Lusby knowingly trespassed. Therefore she should be awarded a rehearing on Issue II.

Dated this 17th day of March 2022

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State of North Dakota,

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Defendant and Appellant.

Supreme Court File No.
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45-2020-CR-00421

**CERTIFICATE OF
COMPLIANCE**

[¶1] I certify that this appellant's brief and complies with the page limit of 38 for the brief set forth in N.D. R. App. P. 32(a)(8)(A). The brief in this matter consists of 10 pages.

Dated this 22th day of March, 2022.

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v.

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Supreme Court File No.

20210266

Stark County District Court No.

45-2020-CR-00421

CERTIFICATE OF SERVICE

[¶1] I certify that a true and correct copy of the following, specifically:

1. Petition for Rehearing
2. Certificate of Compliance
3. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that e-filing will provide service to the following:

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

James Hope
Stark County States Attorney
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and by U.S. postal service with proper postage affixed to:

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Dated this 22th day of March, 2021.

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