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JULY 25, 2022
STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,	)	Supreme Court # 20210362
Plaintiff and Appellee,	)	Walsh County 50-2020-CR-00107
v.	)	
Jonathan Garrett Linner,	)	
Defendant and Appellant.	)	

Appeal from the Criminal Judgment entered December 15, 2021, in Walsh County District Court, Northeast Judicial District, North Dakota, the Honorable Barbara L. Whelan, presiding

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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JURISDICTION

[¶ 3] Defendant Jonathan Linner was convicted of Continuous sexual abuse of a child – Defendant is at least 22 years of age after a jury trial, with final disposition of the matter on December 15, 2021, and timely appealed the final criminal judgment arising out of the district court. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to the North Dakota Constitution, Article VI, § 6, the North Dakota legislature enacted Section 29-28-03 which provides "An appeal to the Supreme Court provided for in this chapter may be taken as a matter of right." N.D.C.C. § 29-28-03. An appeal may be taken by the defendant from . . . [A] final judgment of conviction. . . ." N.D.C.C. § 29-28-06.

STATEMENT OF THE ISSUES

[¶ 4] Whether there was structural error in closing the court for limited *voir dire*.

[¶ 5] Whether the State's *voir dire* was prejudicial or denied defendant due process of law.

[¶ 6] Whether the court improperly ordered no contact with the defendant's minor children as a condition of the sentence.

STATEMENT OF THE CASE

[¶ 7] This a criminal matter on direct appeal from the Northeast Judicial District, Walsh County Criminal Judgment. A Criminal Information was filed with the Walsh County clerk of court on May 20, 2020 alleging one count of Continuous Sexual Abuse of a Child in violation of N.D.C.C. § 12.1-20-03.1(1). (R:1).

[¶ 8] A jury trial was held on August 2 – 6, 2021. Following a guilty verdict, Mr. Linner was sentenced to life in prison without the possibility of parole. As part of his sentence, he was ordered to have no contact with his minor children. (R126.)

STATEMENT OF FACTS

[¶ 9] In 2018, Special Agent Scott Kraft became involved in a terrorizing investigation over concern of child sexual abuse by the defendant. (R39:8; R39:10:2-7). The victim in this case, BL, was interviewed at that time by Officer Kayla Voigt and denied any sexual abuse. (R39:16:2-12). Nearly two years later, BL disclosed sexual abuse occurring over several years beginning at age seven years, involving penile-vaginal penetration among other alleged acts, perpetrated by the defendant while residing in Grafton. (R39:12:4-10). A forensic interview was done by Officer Kayla Voigt of the Grafton Police Department, who had subsequently been certified to conduct forensic interviews. (R39:10:23-R39:11:3).

[¶ 10] A pretrial motions hearing was held on July 26, 2021, wherein the court addressed the stipulated motion for closure of *voir dire*, defense motion to exclude evidence of prior bad acts, and to report on the court's in camera review of the victim's therapy records pursuant to an Order for the Release of Therapy Records for *In Camera*

Review. (R154:*passim*). As to the denial of release of the victim's therapy records, the court indicated it had received confidential documentation of the records, and had fully reviewed the records. (R154:3:9-22). The court indicated that the review was to ascertain whether the documents contained "any exculpatory evidence and therefore needed to be released to the defendant." (R154:3:16–R154:4:1). The court went on to say that the records state "there was no disclosure of traumatic events or activities, and therefore nothing exculpatory." (R154:4:2-7). The court ordered the records would remain part of the record but would remain sealed. (R154:4:8-10). Defense counsel further inquired, prompting the court to note that, "there are individual progress reports for the days of therapy . . . everyone of them says, "no disclosure of traumatic event."" (R154:5:1-5). The court indicated that it could not tell what the traumatic event was from looking at reports. (R154:5:1-5). The court also noted that no inculpatory statements were made in the reports but failed to ascertain whether the statements merely could have been helpful to the defense, and made no analysis or completed no balancing of interests. (R154:6:1-6).

[¶ 11] As to the closure of *voir dire*, the parties had put forth a proposed jury questionnaire and a signed stipulation addressing reasons in support of closing the courtroom. (R154:46:7 –R154:53). The court made findings that there is an overriding interest in closing the court to obtain a fair trial. (R154:48:1-R154:49:3). Due to the small community, potential jurors may be uncomfortable or untruthful in offering information about personal histories, reporting sexual abuse or assault that may otherwise evidence bias. *Id.* Specifically, the questions approved by the court were;

1. Have you been the victim of sexual abuse or sexual assault?
2. Do you have a close friend or family member who has been the victim of sexual abuse or sexual assault?
3. Do you personally know anybody who has been accused officially or informally of perpetrating sexual abuse or sexual assault?
4. Do you personally know anybody who has ever accused another person of perpetrating sexual abuse or sexual assault?
5. If the answer to number 4 is yes, was that sexual abuse or sexual assault accusation ever substantiated to your knowledge?
6. Have you ever reported a case of possible child abuse, sexual abuse or sexual assault?
7. Have you ever been accused of child abuse?
8. Have you ever been the victim of child abuse?
9. Have you ever been a juror or witness in any case involving child abuse, sexual abuse or sexual assault?
10. Have you made up your mind on whether a person is guilty or not by just hearing that this case involves child abuse, sexual abuse or sexual assault?
11. Is there anything else the parties should be aware of that would impact your ability to serve on a case involving sexual abuse or sexual assault?

(R96).

[¶ 12] The court then announced it would ensure that the closure must be no broader than necessary to protect that interest and engaged in a colloquy, primarily with the media presence, explaining that *voir dire* in closed court would only involve affirmative answers on the proposed questionnaire. (R154:49:4- R154:50:4). The court asserted that no other issues would be discussed in chambers because of the right to a public trial. (R154:49:19-23). At no point, however, did the court ensure that the scope of the proposed questionnaire was no broader than necessary to protect the stated overriding interest of an unbiased jury. In fact, the court glossed that the questions were "of a personal and sexual nature . . . which if involves essentially asking people if they, or anybody in their close family or friends, have ever been involved in any kind of activity that involves sexual behavior, sexual assault – not sexual behavior – but sexual assault or sexual assault involving children." (R154:48:7-11). The court next addressed reasonable alternatives to closure, and neither the court, nor the parties, offered a single reasonable alternative. (R154:50:5-17). Finally the court having addressed the *Waller* factors[1] addressed the waiver with Mr. Linner and made the appropriate findings that he had made an express waiver of the right to public trial as to the proposed questionnaire. (R154:50:20 – R154:53:15).

[1] *Waller v. Georgia*, 104 S.Ct. 2210 (1984).

[¶ 13] During the closed sessions of *voir dire*, a number of variances occurred, including immediately excusing a juror T.W, in closed session due to a medical issue as he had a note from his medical provider. (R152:3:23 – R152:5:20). This was not a matter that was subject to the closure order, nor was it evaluated as the stipulated proposed questionnaire had been previously approved. There are numerous other examples, including during the closed *voir dire* of B.L., the court took responses regarding the potential juror's physical mobility and predilection to anxiety. (R152:31:19-24). The State inquired as to the presumption of innocence. (R152:32:9-22). The State then stated, " . . . you know what this case involves, continuous sexual abuse of a child, and I think that it'd be hard for anybody to -- listen to evidence like that. (R152:33:15-24).

[¶ 14] Another example occurred with juror A.M. (R152:39:9 – R152:47:7). There were no answers to questions that involved disclosure of personal history of sexual abuse or trauma, merely that he was predisposed to find the defendant guilty because of the nature of the charges. *Id.*

[¶ 15] Juror D.D. answered question number 11 indicating he has family in law enforcement. (R152:74:1-25). The court acknowledged that this response was outside the scope of the closure order, stating, " . . . we are very limited in here to just taking about the issues that are involved on this." (R152:75:2-6). Nonetheless, the court had inquired at length about whether he would feel differently if this case was a DUI or murder. (R152:74:12-16).

[¶ 16] In the case of juror N.K., the State inquired whether he would "have a hard time listening to State's witnesses if they included law enforcement officers and those sorts of things?" (R152:115:10-12). The State followed with a second question, and a third question involving law enforcement: "Based on your experience with them?" and "Based on your experience, would you be less likely to believe –" until the court put a stop to it. (R152:115:14-25).

[¶ 17] Juror L.V. answered all questions negatively, and should have been returned to the courtroom, but he offered that he had heard rumors and would likely be biased. (R152:145:12-24). The court went on to question him, as did counsel. (R152:146:1 – R 152:148:24).

[¶ 18] After telling a number of jurors that their medical issues could not be addressed in chambers, juror M.C. was released from closed voir dire after answering all his questions in the negative, but informing the court that he had a trip planned to Washington, D.C. (R152:205:20 – R152:207:22).

[¶ 19] Following the closed session of *voir dire*, the open session of voir dire commenced. During that session, the State made a number of assertions regarding the case during inquiry. Specifically, the attorney discussed the case, law, and facts at length without asking a question. (R153:366:13 – 367:18). The attorney explained the charges, and stated, " And those acts occurred three or more times over a period of three or more months." (R153:366:18-19). The State identified the alleged victim by first name and alleged the age of first sexual impropriety. *Id.* The State, in the middle of the lecture also

misrepresented the burden of proof stating, "And if you, as a jury, believe beyond a reasonable doubt that it did happen, then you would be obligated to convict him." The burden, of course, is proof beyond a reasonable doubt. N.D.J.I. (2022) K- 1.10.

[¶ 20] The State essentially testified as to scientific fact during the inquiry stating, " . . . do most of you on the jury understand that child – in cases of sexual abuse of a child that there's usually no lasting physical effects? Are you aware of that? Does everybody understand that? Our bodies just kind of tend to heal. Does everybody understand that? That you have no lasting physical effects, like injuries, of that nature." (R153:368:17-22). Later, in response to challenge from a juror, the State said, "Well, in general, child sexual victims don't suffer long-term physical injuries as a result of child sexual abuse. That's been established." (R153:369:9-11). Continuing, the State said, "So, I was just wondering if anybody didn't know that was true. And you didn't know that was true, and that's okay. Having said that, [juror] would you expect that there would be medical evidence of child sexual abuse?" (R153:369:13-17).

[¶ 21] The State also said while discussing the State's burden of proof, "I do not have to prove or explain why Mr. Linner sexually abused his daughter." (R153:373:24-25).

[¶ 22] These statements were compounded in that there were two "batches" of jurors questioned, and the entire venire sat through the first round of questioning, only to be confronted by the State's soliloquy a second time. The State said, "If and when BL testifies and she's unable to remember specific details of, like, the dates of the sexual acts

by her father; what clothes they were wearing and those sorts of thinks; what the weather was like outside – would that bother you?" (R153:423:18-22). The State reiterates its modified burden of proof, " . . . but if you, the jury, believe that it happened beyond a reasonable doubt, that you would be obligated to convict him." *Id.*

[¶ 23] In both cases, the State asked the panel if anyone thought the defendant should have a "leg up" on the State. (R153: 352:21-24). "[D]o you think that the defendant should have a leg up in these proceedings in being able to pick a jury at all during the jury selection process and because the State has brought these charges against him?" (R153:409:19-24).

[¶ 24] Subsequently, a jury was seated, trial was held, and Linner was convicted. He was sentenced to a term of Life without Parole, and ordered to have no contact with his wife, children, brother or his wife. (R126: Commitment).

STANDARD OF REVIEW

[¶ 25] On appeal from a claim of violation of right to a public trial, the Supreme court reviews the trial court's findings under the clearly erroneous standard and its application of the law to those findings de novo. *State v. Martinez*, 2021 ND 42, ¶ 3, 956 N.W.2d. Issues not raised at trial will not be addressed on appeal unless the alleged error rises to the level of obvious error under N.D.R.Crim.P.52(b). *State v. Pemberton*, 2019 ND 157, ¶8, 930 N.W.2d 125 . Appellate review of a criminal sentence is generally limited to determining whether the court acted within the statutory sentencing limits. *State v.*

Wilder, 2018 ND 93, ¶17, 909 N.W.2d 684. Statutory interpretation is a question of law, fully reviewable on appeal. *Id.*

LAW AND ARGUMENT

A. Structural Error Occurred in Closing the Courtroom Because the Questionnaire Exceeded the Scope of the Court's Findings and the Order was not Followed.

[¶ 26] This Court has recently reviewed the structural error doctrine and stated that it applies to a narrow class of rights, including the Sixth Amendment rights to counsel, to self-represent, and to a public trial. *State v. Martinez*, 2021 ND 42, ¶4, 956 N.W.2d 772; U.S. Const. amend. VI. This Court stated:

> Because a structural error affects the framework within which a trial proceeds, it renders the trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence. The structural error doctrine serves the purpose of ensuring insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Errors that affect the entire adjudicatory framework defy analysis by 'harmless-error' standards. An impact on the trial's outcome is not necessary in the case of structural errors. A difficulty in assess the effect of the error is inherent in the very nature of a structural error.

Id. (internal citations omitted).

[¶ 27] Ultimately, the *Martinez* Court analyzed that the waiver of the right to a public trial must be done as other Sixth Amendment rights, by conducting a two-part analysis, first to determine if the waiver is voluntary, and then to determine if the waiver is done knowingly and intelligently. *Id.* at ¶ 15. The Court must also engage in the four factor pre-closure analysis, addressing the following:

> Any closure must be no broader than necessary to protect the asserted interest, and be tailored to the circumstance of the perceived risk to a fair trial. *Id*. at ¶ 25. A trial court must consider alternatives to closure, even if the party opposing closure does not offer any alternatives. *Id*. at ¶ 26. The trial court, on its own, must consider alternatives and consider the widest possible array of alternatives. *Id*. Finally, the trial court must articulate sufficient findings to justify the closure, based on evidence, and not merely conclusory assertions. *Id*. at ¶ 26. Bare assertions are not sufficient.
> *Id.*

[¶ 28] In this case, the trial court did obtain a voluntary, knowing and intelligent waiver. However, the *Waller* analysis was defective. Specifically, the findings and stipulation indicated that the need for closure was to protect the overriding interest of obtaining a fair jury panel. It was necessary for the parties to ask prospective jurors if they had any personal experience with child sexual abuse or sexual assault. Given the small population of the jury pool, it would be difficult for prospective jurors to disclose such a history.

[¶ 29] However, the questions exceeded the scope of that finding resulting in the closure being broader than what was required to protect the interest. . In particular, Question 9 inquired "Have you ever been a juror or witness in any case involving child abuse, sexual abuse, or sexual assault?" Having served as a juror on such a case is not personal, nor is it potentially embarrassing to disclose in a small community of peers. Similarly, question 10 asks, "Have you made up your mind on whether a person is guilty or not by just hearing that this case involves child abuse, sexual abuse, or sexual assault?" This is a yes or no question and involves no personal disclosure of abuse that hadn't been previously inquired about. Had the disclosures been made in closed session, this question

can, and should have, been asked in open session. Finally, question 11, asks if there is anything else the parties should be aware of that would impact your ability to serve on a jury involving sexual abuse or sexual assault. There is no personal disclosure requirement to this question that wasn't addressed in the first questions 1-8. This is a question that should have been asked in open court, in order to draw out responses and ascertain how other jurors responded, as well as to let the public know whether there is a fair trial being conducted. The questionnaire was broader than what was required to protect the asserted interest.

[¶ 30] Arguendo, the questionnaire itself did not constitute structural error, the order provided that only those questions would be addressed in closed session. Nonetheless, the court entertained medical requests for some jurors, while explicitly denying them for others as beyond the scope of the order for closed *voir dire*. This is another error.

[¶ 31] Finally, the court failed to find any reasonable alternatives, despite the strong demand that the court explore every possible alternative. This is another error and this Court has said such a failure to consider reasonable alternatives to closure negatively affects the fairness, integrity, and public reputation of the criminal justice system. *Id.* at ¶51. The remedy for such violation is a new trial. *Id*.

[¶ 32] Absent a timely objection, the court reviews for obvious error, requiring a showing of error, that is plain, and the error affects the defendant's substantial rights. *Id.* at ¶ 36. Without arguing the first two prongs, and acknowledging there was not a timely

objection, defense asserts that the third prong is obviously implicated. In this case, the improper questioning occurred in closed court, and exceeded the scope of Linner's voluntary, knowing and intelligent waiver. Further, because the public trial violation began during jury selection and, thus, continued during trial, the remedy is a new trial. *Id.* at ¶42.

B. The State's Voir Dire Inquiry was Prejudicial and Denied Linner Due Process.

[¶ 33] The court must permit the defendant or the defendant's attorney and the prosecuting attorney to participate in the examination of prospective jurors. N.D.R,Crim.P. 24(a)(2). Voir dire may be conducted on all matters relevant to determining whether to remove a juror for cause and exercising peremptory challenges. N.D.Sup.Ct.Admin.R.9 App. Stand. 7. The judge must ensure the questioning by counsel is consistent with the purposes of the voir dire process. *Id.* This Court has said that right to *voir dire* is not without limitations, including reasonable time limits, and preventing vexatious or repetitious questions. *State v. Purdy*, 491 N.W.2d 402, 407 (N.D. 1992). Other sources have said it is the purpose of *voir dire* to search for the good juror, and eliminate the bad juror. *City of Mandan v. Fern*, 501 N.W.2d 739, 746 (N.D. 1993). However, bias and prejudice are not legitimate tools in juror selection. *Id.* The Supreme Court has evaluated the standards for inquiry and said:

> An examination of a prospective juror on his voir dire is proper so long as it is conducted strictly within the right to discover the state of mind of the juror with respect to the matter in hand or any collateral matter reasonably liable to unduly influence him, and questions which go primarily to the ascertainment of any probable bias or ground of incompetency, as a basis of a challenge for cause, or possibly, of a peremptory challenge, are

> permissible. However, while the scope of the inquiry will not be confined strictly to the subjects which constitute grounds for the sustaining of a challenge for cause, if it extends beyond such subjects it must be conducted in good faith with the object of obtaining a fair and impartial jury, and must not go so far beyond the parties and the issue directly involved that it is likely to create a *bias, a prejudice, or an unfair attitude toward any litigant*. Nevertheless, the adverse litigants should be given the right to inquire freely about the interest, direct or indirect, of the proposed juror, that may affect his final decision. The scope of inquiry is best governed by a wise and liberal discretion of the court, but the court should not at any time ask, or permit counsel to ask, a prospective juror any question the answer to which would tend to incriminate or disgrace him.'
>
> In most jurisdictions jurors may be questioned on their voir dire examination within reasonable limits to elicit facts enabling the parties intelligently to exercise their right of peremptory challenge; the nature and extent of this examination is largely within the discretion of the trial court.
>
> *Loveland v. Nieters*, 54 N.W.2d 533, 536-537 (N.D. 1952) (citations omitted)(emphasis added).

[¶ 34] In this case, the State engaged in an education and sales pitch to the potential jurors, first undermining the presumption of innocence by asking if the defendant should have a "leg up." The parties in a criminal trial never start on equal footing, "In a criminal case, the State has the total burden of proof beyond a reasonable doubt, and "edge" belongs to the defendant, not the State." *State v. Thompson*, 504 N.W.2d 838, 843 (N.D. 1993) (concurrence). The State has the burden of proof, and the defense carries none in most cases. Arguing to the jury that the defendant should not have a leg up, undermines certain protections of a criminal defendant, namely the presumption of innocence.

[¶ 35] The State in its inquiry proselytized informing the jury of facts in the case, facts that were in the province of the jury, namely that Mr. Linner had begun sexually abusing his daughter, disclosing her first name, priming the jury to know her and care about

her on a first name basis. The State also made arguments that there would be no medical evidence of years of sexual abuse, representing that it was accepted fact and going so far as to say it was "established" fact. While the undersigned is aware of no caselaw where this Court has evaluated these concerns in *voir dire*, it has done so in the context of closing argument. A prosecutor may not incorporate personal beliefs into closing argument as it risks: 1. The State's attorney acting as an unsworn witness for the prosecution, not subject to cross-examination, and potentially perceived as an expert witness; 2. That the attorney may convey to the jury that there is more evidence, known only to the prosecutor that supports the charge; or 3. A prosecutor's opinion carries with it the "imprimatur of the Government." *State v. Foster*, 2020 ND 85, ¶ 12, 942 N.W.2d 829, 834. In *Foster*, the court said that prosecutorial misconduct may so infect a trial as to make the conviction a violation of due process. *Id.* at 835. If the conduct is sufficiently prejudicial, this Court must consider whether the improper comments would have on the jury's ability to fairly judge the evidence. *Id.*

[¶ 36] The State misrepresented the burden of proof stating if the jurors "believed" defendant committed the act, then they must convict, abrogating the State's duty to prove it. Belief may be an element of proof, but it is not the equivalent of proving a case to the constitutional and statutory requirements.

[¶ 37] The combined statements asserting abuse, asserting the State did not have to produce many numbers of witnesses, asserting that there would be no physical injury as an "established" fact, has resulted in an unfair trial, and a deprivation of due process.

C. The Trial Court's Order Prohibiting Contact with Linner's Minor Children is Without Authority.

[¶ 38] This Court has previously reviewed the contours of N.D.C.C. § 12.1-31.2-07(2) in *State v. Wilder*, 2018 ND 93; 909 N.W.2d 684. In *Wilder*, the defendant was ordered to have no contact with his minor children for life, and the defendant moved to correct his sentence under N.D.R.Crim.P. 35(a)(1). There, the trial court amended the judgment to deny the defendant contact until the children reached the age of majority, and Wilder appealed. On appeal, this Court observed that there is no statutory provision that permits a court to order no contact as part of a prison sentence. This Court noted that "Section 12.1-31.2-02, N.D.C.C., authorizes the court to order no contact when a defendant is released from custody before arraignment or trial." Wilder at ¶ 19. In dicta, this Court noted that sentencing statutes are to be "strictly construed against the government or parties seeking to impose them and in favor of persons on whom they are sought to be imposed." Id. at ¶ 19.

[¶ 39] Following *Wilder,* this Court rendered an opinion in *State v. Mohamud*, 2019 ND 101; 925 N.W.2d 396, clarifying that a no-contact order, even if not specifically issued as a condition of probation, under the facts and circumstances of that case, was permissibly read as a condition of probation. This Court specifically noted the no-contact order appears on the criminal judgment. Unlike

Mohamud, the no-contact order here is separately rendered under N.D.C.C. § 12.1-31.2-02 as indicated on the face of the order, and does not appear in the criminal judgment, which includes the standard Appendix A conditions of probation.

[¶ 40] Here, the district court lacks jurisdiction to issue the post-disposition order as it did, especially given the fact this Court has twice recently provided guidance on this particular statute. As stated in the plain language of § 12.1-31.2-02, the jurisdictional grant is for the pretrial phase, as evidenced by the language "an individual who is charged with or arrested for . . ." and is limited to that pretrial phase where the defendant is "released from custody before arraignment or trial…" N.D.C.C. § 12.1-31.2-02(1). No part of this section references post-conviction authority, as analyzed in *Wilder*. In fact, the legislature removed language from subsection 3 in the statute in 2017 striking "for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants." This makes the legislative intent even more clear that the jurisdictional grant was intended to be pretrial only. The change had an effective date of August 1, 2017.

ORAL ARGUMENT

[¶ 41] Oral argument is requested to emphasize and clarify the Appellant's written arguments on their merits.

CONCLUSION

[¶ 42] The district court created structural error by denying Mr. Linner's constitutional right to a public trial. The State violated defendant's due process rights resulting in an unfair trial. The district court abused its discretion in declining to disclose the victim's treatment records, denying Mr. Linner a full defense. The portion of the sentence which prohibits post-disposition contact is without jurisdiction, and must be vacated. WHEREFORE Defendant Linner respectfully requests the Court to reverse the judgment of the trial court, and his conviction and remand for trial anew.

Submitted this 25th day of July, 2022.

/s/ Elizabeth Brainard
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CERTIFICATE OF COMPLIANCE

[¶ 43] This Appellant's Brief complies with the page limit as set forth in the North Dakota Rules of Appellate Procedure 32(a)(8)(A) and contains 22 pages.

Submitted this 25th day of July, 2022.

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IN THE SUPREME COURT OF NORTH DAKOTA

	)	Supreme Court #20210356
State of North Dakota,	)	
	)	
Plaintiff and Appellee,	)	Walsh County #50-2020-CR-00107
	)	
	)	
v.	)	
	)	
	)	
Jonathan Garrett Linner,	)	**CERTIFICATE OF SERVICE**
	)	
Defendant and Appellant.	)	

[¶ 1] I, Elizabeth Brainard, hereby certify that on **July 25, 2022**, this certificate along with the **Appellant's Brief** was filed with the Supreme Court Clerk of Court. A copy of these documents was served electronically on all separately represented parties at the e-mail addresses pursuant to N.D.R.Ct. 3.5 to the party below:

Kelly Marie Riley Cole
Walsh County State's Attorney Office
Walshsa@nd.gov

[¶ 2] A copy of this document(s) was deposited into the U.S. Mail in an envelope, with postage pre-paid, addressed to the following party at his last known address:

Jonathan Linner OID #54855
C/O ND State Penitentiary; PO Box 5521
Bismarck, ND 58506

[¶ 3] This service was made under N.D.R.Ct. 3.5; N.D.R.Crim.P. 49; and N.D.R.Civ.P. 5(b).

Dated: July 25, 2022.

/s/Elizabeth Brainard
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