

STATE OF NORTH DAKOTA

IN THE SUPREME COURT

State of North Dakota,)
)
 Plaintiff-Appellee,) **Sup. Ct. Nos.:** 20220074
) 20220075
 vs.)
) **Dist. Ct. Nos.:** 53-2019-CR-02025
 Cole Lee Peters,) 53-2020-CR-00010
)
 Defendant-Appellant.)

APPEAL FROM THE OCTOBER 14, 2021 CONVICTION
 FOLLOWING JURY TRIAL, THE HONORABLE JOSHUA RUSTAD,
 NORTHWEST JUDICIAL DISTRICT COURT PRESIDING

Brief of the State of North Dakota,
 Plaintiff-Appellee

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Oral argument requested

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Statement of the Issues

¶1 I. Peters' speedy trial right was not violated.

¶2 II. The District Court correctly admitted photographs into evidence

Statement of the Case

¶3 The January 3, 2020 scheduling order for these cases set trial for the week of May 4, 2020. (53-2020-CR-00010 Doc. No. 15).

¶4 The preliminary hearing in these matters was had on January 29, 2020. No speedy trial demand was filed within fourteen (14) days of this date as required by N.D.C.C. §29-19-02.

¶5 The April 6, 2020 scheduling order for these cases set trial for the week of June 29, 2020 due to this Court's Administrative Rule 25 mandate regarding jury trials during the SARS-CoV2 pandemic. (53-2020-CR-00010 Doc. No. 44).

¶6 The May 4, 2020 scheduling order for these cases set trial for the week of August 24, 2020 due to this Court's Administrative Rule 25 mandate regarding jury trials during the SARS-CoV2 pandemic. (53-2020-CR-00010 Doc. No. 45).

¶7 On June 15, 2020, Peters filed an objection to N.D.R.Evid. 707 evidence being introduced without the analyst testifying. (53-2020-CR-00010 Doc. No. 46).

¶8 On August 19, 2020, the State moved to reset the trial date due to counsel for both parties being involved in a jury trial the week immediately preceding trial, and because discovery was not complete due to the defense not having returned the HIPAA non-disclosure letter to obtain medical records. (53-2020-CR-00010 Doc. No. 60). Trial was then reset to the week of October 19, 2020.

¶9 On October 6, 2020, Peters filed an expedited motion for evaluation related to criminal responsibility and fitness to proceed. (53-2020-CR-00010 Doc. Nos. 67 & 68). The seeking of an evaluation was also noted at the October 6, 2020 final pre-trial conference. A status conference was held on October 15, 2020 in an attempt to learn of a timeline for the evaluation process. As a result of these filings, trial was reset to the week of February 8, 2021. (53-2020-CR-00010 Doc. No. 74).

¶10 On January 13, 2021, the Parties stipulated to resetting the trial date due to discovery matters from reassignment of counsel. (53-2020-CR-00010 Doc. No. 81).

¶11 On March 22, 2021, the State moved to reset the trial date due to the unavailability of Kyle Splichal. Apparently, an error had occurred in the filing system, as at the March 23, 2021 pretrial conference, it had not appeared in the record or made its way to defense counsel. The timing of the motion was due to wanting to ensure that the State had accurate data regarding the Department of Defense's SARS-CoV2 (COVID-19) policies. At the pretrial conference, Peters did not object or raise any speedy trial claims. Trial was reset to the week of June 28, 2021. (53-2020-CR-00010 Doc. No. 96).

¶12 On June 10, 2021, the Parties filed a stipulation to reset the trial date as the biological material screener from the North Dakota State Crime Laboratory was out on maternity leave. Previously, on June 15, 2020, Peters had filed an objection under N.D.R.Evid. 707, and demanded that the State produce the analysts who created reports in this case. Trial was reset to the week of August 23, 2021. (53-2020-CR-00010 Doc. No. 147).

¶13 Trial commenced on Monday, August 23, 2021. Jury selection moved from general *voir dire* to individual *voir dire* in a separate courtroom. At the time individual

voir dire began, the undersigned and co-counsel were unaware that court staff were treating the courtroom as closed. As noted, there was discussion about the potential issue by other members of the office, and after that discussion, it was determined that there was a courtroom closure issue. When there was a break in individual *voir dire*, at the conclusion of the process, the undersigned was made aware of the situation and alerted the District Court.

[¶14] The District Court recognized that the individual *voir dire* courtroom had been closed without addressing the Waller factors, and granted the State’s motion for mistrial due to the inherent structural error. Peters sought to move forward despite the inherent structural error.

[¶15] Prior to the next trial start date, Peters filed a motion to dismiss on September 3, 2021. The Brief alleged “double jeopardy” violations, unspecified due process violations, and speedy trial right violations. At the time of the declaration of a mistrial in the August of 2021 trial, a jury had not been empaneled.

[¶16] The next trial commenced on September 20, 2021. Trial began and moved forward until the District Court received notice that one of the members of the jury panel was positive for SARS-CoV2. The District Court, recognizing the SARS-CoV2 quarantine policy at the time and recognizing concerns for the obvious close-contact amongst jurors paused the trial to allow time for the quarantining to run its course.

[¶17] Before trial restarted, Peters again filed a motion to dismiss. This motion copied much of the previous filing’s material, but also included another claim for violation of speedy trial rights because the September of 2021 trial had been paused to allow for quarantining to run its course.

¶18 Trial was resumed on October 13, 2021, and Peters was found guilty on all counts.

Statement of the Facts

¶19 On the evening of December 27, 2019, Peters and his then wife, B.C., went to the Williston Walmart liquor store to purchase alcohol. B.C. went to pick up a Monster energy beverage while they were in the store. Peters claimed during the taxi ride back to their motel room, that B.C. had engaged in oral sex with an African American who was working at the store while they were present in the store. Peters then became verbally abusive to B.C., and when the driver dropped them off at the motel, she noticed a change in B.C.'s demeanor.

¶20 Peters began consuming beer, and then struck her in the face with his closed fist causing her pain and injury to her face that required stitches to close as shown by Exhibit #23.

¶21 After that stage, Peters began other types of attacks on B.C.. He stomped on her body, to include her face, head, and neck. (Appeal Transcript September 20, 2021 939). He punched all parts of her body. The strikes to her body resulted in visible bruising to her face and head and the remainder of her body as shown by the photographic exhibits depicting B.C.'s injuries. Peters bit her left ear in what was described as an attempt to bite it off, resulting in the need for stitches as shown by Exhibit #24. Peters' strikes with hands and feet left bruising to other parts of her body.

¶22 He bit her. He slammed the bed in the room down on top of her as she tried to hide, causing impressions from the bedframe to be left on her body.

[¶23] Due to the level of injuries, law enforcement took follow up photographs at roughly three days after the incident. At the time B.C. was admitted to the hospital, her eyes were swollen shut to the point that they could not be opened. When the swelling went down, the bruising became apparent, and the eyes themselves did not have distinct petechiae, they were blood red. (53-2019-CR-02025 Doc. No. 224).

[¶24] Once the swelling to B.C.'s neck, face, and head decreased, the level of bruising was made more visible. B.C. had noted that Peters had stomped on and struck her neck, as well as strangling her similar to how it is depicted in the Simpsons. Significant bruising effectively from the junction of the shoulder/neck to the chin and lower jaw line was visible. (53-2020-CR-00010 Doc. Nos. 239 – 241).

[¶25] During trial, B.C. noted that she had attempted to flee the motel room during the attack, but that Peters got between the door and herself, closed the door, fastened the door chain, and told her in no uncertain times that she was going to die that night. (Appeal Transcript September 20, 2021 938-939). Blood was found on and around the door. E.g. (53-2020-CR-00010 Doc. Nos. 257 & 258). The blood would have come from either the initial attempt to exit, the successful attempt to exit, or possibly both.

[¶26] B.C. testified that Peters would beat and/or strangle her into unconsciousness and she would come to with him raping her anally and vaginally. She noted that Peters even told her what he was doing as he was raping her. (Appeal Transcript September 20, 2021 937).

[¶27] B.C. testified that she was finally able to escape when Peters fell between the bed and wall and had a hard time getting up from the position. (Appeal Transcript

September 20, 2021 944). Marks similar to the parallel lines of the bedframe's grid were found on Peters' body. (53-2020-CR-00010 Doc. Nos. 278 & 279).

[¶28] B.C. also noted that she had scratched Peters during the attack. This was in an apparent attempt to get him to stop, and the scratch marks to his torso were visible in the above-referenced photographs. These scratches appear to have been what formed the original basis for the self-defense assertion.

[¶29] Once Peters fell, B.C. was able to flee from the motel room in Peters' truck while completely naked in late December temperatures. (Appeal Transcript September 20, 2021 944). She later located a hoodie inside of Peters truck to try to keep warm, as she was trying to get into town to find the hospital. B.C. ran a red light on the western edge of town, and then Officer Roggenkamp initiated a traffic stop. Once he realized the situation, he called for medical and effectively passed the initial investigation to then Officer Roberts due to B.C.'s generally nude state.

[¶30] In interviews with law enforcement, Peters repeatedly claimed that what happened was "petty s***," that B.C. was lying about what happened to get out of a DUI and/or DUS, and that it was just one bad night. Peters did make some "slips" such as noting that the incident was about perceived infidelity. These interviews were played at trial. (53-2020-CR-00010 Doc. No. 289).

[¶31] Peters sought duress, excuse, and self-defense instructions for the two charges of Gross Sexual Imposition as well as the Terrorizing and Felonious Restraint charges in addition to the Attempted Murder charge. The District Court declined to give the duress and excuse instructions overall, and declined to give those plus the self-

defense instructions as related to the Gross Sexual Imposition, Terrorizing, and Felonious Restraint charges.

Law and Argument

[¶32] The State notes that Peters has not briefed numerous issues from the Notice of Appeal. These include purported judicial “error” in not giving self-defense, duress, and excuse instructions for all charges including the forcible Gross Sexual Imposition, Felonious Restraint, and Terrorizing charges. Based on this failure to brief, it is assumed that Peters has abandoned those claims. See. State v. Beltran, 2018 ND 166, 914 N.W.2d 488.

I. Peters’ speedy trial right was not violated

[¶33] Claims of speedy trial violations must pass a four-part test. These parts are: 1) the length of the delay; 2) the reason(s) for the delay; 3) the accused’s assertion of the right to a speedy trial; and 4) the prejudice to the accused. State v. Borland, 2021 ND 52, ¶10, 956 N.W.2d 412.

[¶34] The delay between Peters’ arrest date of December 28, 2019 and initiation of the trial which resulted in his conviction was roughly twenty-one (21) months. The delay between Peters’ arrest date of December 28, 2019 and his ultimate conviction date was roughly twenty-two (22) months.

[¶35] Contrary to Peters’ contentions, the record is not “silent” as to the reasons behind the delays in this case. As his unsupported claims are at odds with this record, this Court is compelled to accept the record. E.g. State v. Parisien, 469 N.W.2d 563 (N.D. 1991).

[¶36] As noted above, Peters’ matter was originally set to go to trial the week of May 4, 2021. This Court issued Administrative Rule 25 addressing the SARS-CoV2 pandemic and jury trials, which, through subsequent modifications, effectively ended jury trials for a significant part of that year. The original May 4, 2021 trial date fell within the original iteration of Rule 25. Therefore, the District Court reset the trial date to the June of 2021 trial date. Subsequent modifications made to Rule 25 by this Court extended the moratorium on jury trials, with the District Court resetting the trial date to August 24, 2021.

[¶37] The State had absolutely no control over the spread of the SARS-CoV2(COVID-19) pandemic. As such, the delays caused by the global pandemic cannot be attributed to the State, nor can it accurately be attributed to the defense. See. Borland, 2021 ND 52, ¶19, 914 N.W.2d 488.

[¶38] In June of 2021, Peters objected to the introduction of any North Dakota State Crime Laboratory reports without the analyst who created the report testifying in court.

[¶39] In August of 2021, the State moved to reset the trial date due to counsel for both parties having a jury trial the week immediately preceding Peters’ matter, and due to the fact that because defense counsel had been five (5) months late in returning the HIPAA non-disclosure form, discovery had been delayed. The State submits that this roughly two-month delay in trial dates would be attributable to the defense.

[¶40] On October 6, 2020, or less than two weeks before the scheduled trial, Peters sought competency and responsibility evaluations. These “expedited motions” caused the matter to be removed from the October 19, 2020 trial date. The trial date was

moved to the week of February 8, 2021 to allow for time to obtain the evaluations and make decisions therefrom. These “expedited motions” resulted in a nearly four-month delay that is wholly attributable to the defense.

¶41 On January 13, 2021, the Parties stipulated to resetting the trial date due to discovery production and review following reassignment of the case to another attorney.

¶42 At the March 23, 2021 pretrial conference, the State noted its motion to reset the trial date due to the United States Department of Defense’s COVID-19 protocols, and that it had effectively prevented Kyle Splichal, the DNA analyst for Peters’ case from coming to North Dakota to testify for that particular trial slot. Pursuant to N.D.R.Evid. 707, a continuance is mandated when there is an objection to the introduction of the material without the analyst and the analyst is unavailable. The State obviously has no control over the United States Department of Defense COVID-19 travel protocols, and as such the delay should not be attributable to the State. Peters did not object to the resetting of the trial date.

¶43 On June 10, 2021, the Parties stipulated to resetting the trial date due to the fact that the North Dakota State Crime Laboratory’s biological materials screener for this case was out on maternity leave and would be out through the June of 2021 trial date. Instead of filing a motion for the mandatory continuance under N.D.R.Evid. 707, the Parties entered into the stipulation. As the State has no control over such matters, the delay should not be attributable to the State.

¶44 Trial began on August 23, 2021 with *voir dire* commencing. As noted above, the undersigned was not aware of the courtroom closure issue until there was a break in the proceedings, the persons in the office had notice something potentially

questionable about the individual *voir dire* process and attempted to determine the issue. After the discussion, it was recognized that there was a courtroom closure issue per Martinez. Even under ideal circumstances, the situation was not recognized until the process had started.

[¶45] As courtroom closure without addressing the Waller factors in *voir dire* is effectively an automatic reversal in the absence of such circumstances as a valid waiver, the structural error occurred at the beginning of the individual *voir dire* when the courtroom was so closed and questioning began with the first member of the jury pool. See. State v. Martinez, 2021 ND 42, 956 N.W.2d 772.

[¶46] Given that scenario, and that the issue was not even initially noticed until the process had started, the State did not act in “bad faith” as alleged by Peters, and therefore the matter would not fall into the category of cases that address intentional delays by the State for purposes of hurting a defendant’s ability to present a defense.

[¶47] To the extent that this one-month delay is the result of judicial error, the State submits that it falls into the category of essentially neutral reasons for delay such as court docket congestion. This is especially true since, as with Borland, the State was ready to proceed to bring this matter to trial on August 23, 2021 and had actually flown people into North Dakota for the trial. (Appeal Transcript August 23, 2021 272)

[¶48] Additionally, the delay caused by the mistrial was roughly one month, or approximately one-third of the delay caused by Peters’ October 6, 2020 “expedited motions” for evaluations which resulted in a four-month delay.

[¶49] Trial again began on September 20, 2021 and continued until one of the jurors tested positive for SARS-CoV2. The District Court paused the trial to allow for

quarantining/testing to occur, as every member of the jury was in close contact with the positive individual. Trial resumed approximately three weeks later with guilty verdicts being returned on all counts.

[¶50] As shown above, the reasons for the delay vary from a pandemic that no side had control over to a four-month delay to get competency evaluations completed at the request of the defense. There is no “bad faith” action on the part of the State.

[¶51] Moving to the assertion of the speedy trial right, the State notes that Peters never filed a demand. Peters either did not object to, or stipulated to, multiple delays to address matters ranging from discovery to unavailable witnesses. Peters even filed “expedited motions” seeking competency evaluations which injected significant delay. The failure to timely assert the speedy trial right weighs against Peters. See, e.g. State v. Fischer, 2008 ND 32, ¶32, 744 N.W.2d 760; Borland, 2021 ND 52, ¶20, 956 N.W.2d 412.

[¶52] Turning to the question of prejudice, Peters provides no briefing support for his claims as to how the defense was supposedly impaired. The failure to brief an issue typically results in the refusal of this Court to consider the claim. E.g. Molbert v. J.K., 2009 ND 46, ¶27, 763 N.W.2d 507.

[¶53] Instead of showing any impairment, Peters merely reverts to the more-than-one-year claim. This Court has noted that the presumptive prejudicial effect of a more than one year delay between arrest and trial does not carry a speedy trial claim on its own. State v. Moran, 2006 ND 62, 711 N.W.2d 925.

[¶54] As noted above, the reasons for the delay were multiple, including significant blocks of time that would be attributable to the defense, significant blocks of

time that were the product of the SARS-CoV2(COVID-19) pandemic that neither side could control, and one block was due to maternity leave that the State could not control. Further, Peters failed to assert his speedy trial rights within the timeframe provided by statute. Without any showing of prejudice, the State submits that Peters cannot show a speedy trial right violation, and therefore the State respectfully requests that this Court affirm the convictions.

[¶55] In an attempt to support the speedy trial claim, Peters’ claims that the State “sat” on the courtroom closure issue in order to induce a one-month delay in an act of “bad faith.” (Appellant’s Brief at ¶50). This unsupported claim is Peters’ attempt at claiming prejudice is presumed because the State acted in “bad faith” in some attempt to harm the defense’s case. As noted above, the courtroom closure situation resulted in resetting the date from August to September of 2021. Peters’ own “expedited motions” for evaluations resulted in a four-month delay, and defense counsel’s failure to return the non-disclosure letter resulted in a two-month delay.

[¶56] There is absolutely nothing the Peters’ brief that shows this “bad faith” claim is anything other than a fabrication by Peters. At the final pre-trial hearing, Peters claimed that “It was a setup. You guys do this all the time.” (Appeal Transcript August 23, 2021 trial 272: 17-18). Peters has presented nothing showing that the State would go to the time and expense of arranging for out-of-state travel for one or more witnesses and being prepared for trial on August 23, 2021 if the State was simply going to act in “bad faith” to prevent him from raising a defense.

II. The District Court correctly admitted photographs into evidence

¶57] This Court has noted that the power to exclude evidence under N.D.R.Evid. 403 should be sparingly exercised. State v. Wiest, 2001 ND 150, 632 N.W.2d 812. The use of photographs to demonstrate externally visible injuries is a part of jury trials in which such injuries have been sustained by the victim(s). E.g. State v. Vetter, 2019 ND 262, 934 N.W.2d 543.

¶58] B.C.'s head, face, and neck had substantial swelling when she first came to the hospital in Williston. Her eyes were completely swollen shut. The swelling of her head was severe enough that it appeared as if her whole head was swollen. The later photographs show her injuries after the swelling had a chance to go down and the bruises had a chance to develop. The later photographs also provide an opportunity to demonstrate injuries to the eyes themselves, which were completely inaccessible in the original set.

¶59] B.C. had testified that Peters' blows to her face had caused her upper lip to have been punctured. The closeup photograph showed the extent of her injuries. Similarly, the closeup photograph of the bite mark on her body shows that it is indeed a bite mark, and one can see the marks left by Peters' teeth where they broke B.C.'s skin (Exhibit #14).

¶60] The second set of photographs showed B.C.'s condition after the swelling had gone down. The series of three neck and facial photographs taken at Trinity Hospital in Minot show the bruising that was not initially visible, including the bands of bruising effectively running from her neckline to her jaw line. Those three images corroborated B.C.'s testimony regarding how Peters strangled her to include the style shown in "The Simpsons." This level of detail was simply not available in the early-stage photographs

because of the extreme swelling. The bruising of B.C.'s neck area is consistent with having been strangled. See, State v. Polk, 2020 ND 248, 950 N.W.2d 764. The use of photographs to show strangulation type injuries is part of trials in which visible strangulation related injuries are present. Id. at ¶9.

¶61 Further, the series of three photographs of her face and neck taken at Trinity Hospital include images which show her eyes. In earlier photographs they were swollen completely shut. Seeing the eyes themselves revealed more than just petechiae consistent with strangulation, State v. Evans, 2013 ND 195, 838 N.W.2d 605, they showed that the eyes themselves were blood red.

¶62 Conversely, the earlier photographs of B.C.'s face corroborated her testimony regarding her condition at the time she fled from Peters. For example, the photographs showing her completely swollen shut eyes corroborated her testimony regarding the difficulties she was experiencing in driving due to her eyes being swollen shut. In other words, they corroborated her testimony that she was so afraid of Peters and so anxious to get away from him that she drove his pickup toward town at speed without being able to properly see what she was doing.

¶63 Both the initial and follow up photographs of B.C.'s face/head/neck served different purposes. Additionally, because each set of face/head/neck photographs showed different aspects of B.C.'s injuries they are not cumulative.

¶64 The initial photographs of B.C.'s head/face/neck also showed the presence of bruising to the temple areas of her head, the top of her head (e.g. Exhibit #8), and to the areas behind at least one ear (e.g. Exhibit #24). This corroborated B.C.'s testimony regarding Peters striking her head with his hands and feet.

[¶65] The initial photographs of B.C.'s body showed the redness, bruising, and swelling found on various parts of her body from her head to her feet (e.g. Exhibit ##1, 10, and 12). These photographs, such as the one that included the linear marks on her body (Exhibit #25), corroborated her testimony about Peters repeatedly striking her with his hands and feet (e.g. Appeal Transcript September 20, 2021 939-940) as well as objects such as shampoo bottles in the shower (e.g. Appeal Transcript September 20, 2021 940) as shown by Exhibit #74.

[¶66] The initial photograph set showed markings on B.C.'s body that corroborate her testimony regarding how Peters kept slamming the bed down in her while she was under it. The bedframe had a heavy steel grid to support the mattress as shown in Exhibit ##54 and 55. The photograph showing matching grid marks on her body compromising Exhibit #4 corroborated her testimony regarding this issue.

[¶67] Some of the closeup photographs in the initial set show details that distance images would not as effectively show, such as the bruising by the scratches to B.C.'s leg shown in Exhibit ##11 (distance) and 27 (closeup). Other closeup photographs in the initial set, such as Exhibit ##15 and 18, show defensive injuries to B.C.'s hands. Other closeup photographs, such as Exhibit #21, show the size/shape of bruising and other injuries to B.C.'s person.

[¶68] In summation, the photographs show different aspects of the injuries, different stages of the injuries, and even injuries which were not initially visible due to the significant amount of swelling that was initially present.

[¶69] The presentation of evidence that would be cumulative to other evidence is not, by itself, error. State v. Randall, 2002 ND 16, 639 N.W.2d 439. The question is

whether or not the presentation is needless. Id. at ¶19. This Court has noted that material that is cumulative to properly admitted evidence does not affect the substantial rights of the parties, and is therefore harmless error. State v. Foster, 2019 ND 28, ¶9, 921 N.W.2d 454. Assuming, for the sake of argument, that some of the images were “cumulative” as Peters claims, they would have been “cumulative” to other properly admitted evidence, which would make such harmless error. State v. Azure, 2017 ND 195, 899 N.W.2d 294; State v. Burgard, 458 N.W.2d 274 (N.D. 1990).

[¶70] The mere repetition of something, such as a child’s out-of-court statements about sexual abuse, does not translate into prejudice for purposes of a cumulative evidence claim. Wiest, 2001 ND 150, ¶10, 632 N.W.2d 812.

[¶71] Here, the District Court noted the reasons for its decision on the admissibility of the images. The District Court conducted the balancing test, and found that the probative value of the images outweighed the prejudicial effects as the images showed the extent of B.C.’s injuries. While the images may be difficult to look at, they demonstrate the condition in which Peters left B.C.. State v. Iverson, 187 N.W.2d 1 (N.D. 1971).

[¶72] As is obvious from the initial photograph set, B.C. was not in any position whatsoever to describe the appearance of her injuries because her eyes were completely swollen shut, and therefore she could not actually see anything. While law enforcement could, and did, testify regarding their observations of bruising across B.C.’s body, the photographs aided their testimony by providing an easy-to-understand reference to those injuries. See State v. Cain, 2011 ND 213, 806 N.W.2d 597.

[¶73] The earlier photographs served to corroborate the treating physician's testimony regarding B.C.'s injuries.

[¶74] As noted above, the photographs taken at Trinity Hospital roughly three days later allowed time for the swelling to go down, and for the underlying bruising to become visible. These photographs, including the rather graphic images of her neck and face served to aid and/or support the testimony of witnesses regarding B.C.'s condition at the time. See, State v. Stopplesworth, 2003 ND 137, 667 N.W.2d 586. Even graphic/gruesome photographs are admissible to aid in a witness' testimony. Again, the photographs demonstrated the extent of the injuries caused by Peters and provided the jury with an easy to understand and visualize reference to those injuries.

Conclusion

[¶75] For the above-referenced reasons, the State respectfully requests that this Court affirm the underlying convictions in this matter.

Statement regarding oral argument

[¶76] Peters alleges acts of "bad faith" on the part of the State, but has presented nothing other than his own subjective belief within the confines of his Brief. Peters has requested oral argument, and it is unknown if he intends to expand such claims or elaborate more fully on the purported "bad faith" of the State. Similarly, Peters has presented nothing besides his subjective belief with regard to the claim of judicial error concerning the photographs. Peters has requested oral argument, and it is unknown if he intends to expand those claims or elaborate more fully on the claim of judicial error.

Dated this 5th day of August, 2022.

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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

State of North Dakota,) **CERTIFICATE OF PAGE COUNT COMPLIANCE**
)
Plaintiff-Appellee,) **Sup. Ct. Nos.:** 20220074
) 20220075
vs.)
) **Dist. Ct. Nos.:** 53-2019-CR-02025
Cole Lee Peters,) 53-2020-CR-00010
)
Defendant-Appellant.)

[¶1] I, Nathan Kirke Madden, hereby certify that the State’s Brief complies with this Court’s page count requirements, as the document consists of twenty-one pages.

Dated this 5th day of August, 2022.

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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

State of North Dakota,) **CERTIFICATE OF SERVICE**
)
Plaintiff-Appellee,) **Sup. Ct. Nos.:** 20220074
) 20220075
vs.)
) **Dist. Ct. Nos.:** 53-2019-CR-02025
Cole Lee Peters,) 53-2020-CR-00010
)
Defendant-Appellant.)

¶ I, Nathan Kirke madden, hereby certify that on August 5, 2022, a true and accurate copy of the State’s Brief was served on Atty. Pulkrabek via the Supreme Court’s E-file and Serve portal using the email address on file with the North Dakota Supreme Court of: pulkrabek@lawyer.com.

Dated this 5th day of August, 2022.

/s/ Nathan Kirke Madden
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