

IN THE SUPREME COURT OF NORTH DAKOTA

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State of North Dakota,	)	
	)	Supreme Court No. 20220096
Plaintiff/Appellee,	)	
	)	Criminal No. 08-2020-CR-02100
vs.	)	
	)	Supreme Court No. 20220097
Dalton Gene Peltier,	)	
	)	Criminal No. 08-2020-CR-02317
Defendant/Appellant.	)	

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**REPLY BRIEF OF THE DEFENDANT-APPELLANT  
DALTON GENE PELTIER**

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Appeal from Criminal Judgments Entered on March 21, 2022 and Final Criminal  
Judgment entered on May 11, 2022

The Honorable James S. Hill, District Judge

In the District Court, Burleigh County, State of North Dakota

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**1. Due to Circumstances Revealing a Lack of Uncoerced Choice and a Lack of Comprehension, Mr. Peltier Did Not Validly Waive Miranda.**

[¶1] As discussed in Appellant’s main brief at ¶48, Mr. Peltier was led to believe that Deputy Mehrer was investigating what Mr. Peltier perceived to be the sexual assault of his fiancé, J.J. This belief made him susceptible to police tactics, such as leading questions, and playing on his emotions. In addition, due to his drinking, he did not make a knowing and intelligent waiver of Miranda rights as required by Miranda. See Miranda v. Arizona, 384 U.S. 436, 479 (1966).

[¶2] The State’s brief at ¶16 acknowledges that Deputy Mehrer began by asking “why are we here?” Deputy Mehrer went on to obtain statements relating to Mr. Peltier seeing his fiancé, J.J., in the morning. Suppression should be granted when a defendant “lacked the capacity to consent . . . or did not give the consent freely, voluntarily, or in an intelligent manner.” See State v. Albaugh, 2007 ND 86, ¶21, 732 N.W.2d 712.

[¶3] The State’s brief at ¶37 cites to State v. Skarsgard, 2007 ND 160, ¶6, 739 N.W.2d 786. In Skarsgard, this Court found “the record on appeal, including the exhibits and trial transcript, allow for a meaningful and intelligent review of the district court's decision.” Id. Similarly, in the instant case, this Court should find the trial transcript and exhibits, including the recorded interview of Mr. Peltier, allow for a meaningful and intelligent review of the district court's decision relating to suppression of his statements made during the interview with Deputy Mehrer. Therefore, this Court should find that, notwithstanding any claim to the contrary by the State in the State’s brief, Mr. Peltier’s statements made during the interview should have been suppressed.

## 2. There Was Insufficient Evidence to Support Mr. Peltier's Convictions.

[¶4] Even if the Court were to affirm the district court's allowance of the statements by Mr. Peltier during the interview by Deputy Mehrer, it should be recognized that Mr. Peltier did not admit to the police that he intended to kill J.B. This is not a case where a defendant made a statement to law enforcement that he intended to kill the victim. See State v. Frohlich, 2007 ND 45, 729 N.W.2d 148 (evidence sufficient to support conviction for attempted murder where defendant drove through a red light with his girlfriend as a passenger and collided with a van and officer testified that defendant stated that he was "trying to kill himself and that f\* \* \* \*g bitch").

[¶5] The circumstances in the instant case are inconsistent with the conclusion that Mr. Peltier acted intentionally to attempt the murder of J.B. Mr. Peltier's actions in cutting J.B. once on the arm, and then immediately dropping the knives and walking away and back to his fiancé at the house of J.B., are actions inconsistent with a person's intention to commit attempted murder. It is reasonable to conclude that there was insufficient evidence to support Mr. Peltier's conviction for this crime. Mr. Peltier acts in immediately walking away and dropping the knives show that he was not attempting to commit murder.

[¶6] This is not a case where an action toward J.B. by Mr. Peltier was sustained for a long enough period to reasonably infer from Mr. Peltier's actions an intention to kill. To illustrate, this case is distinguishable from State v. Chacano, 2013 ND 8, 826 N.W.2d 294. In Chacano, the defendant brought a loaded gun and three clips with 38 rounds of ammunition into the courtroom, stood in a "shooter's stance"

with two hands holding the gun pointed at prosecutor's chest, pulled the trigger multiple times, and tried to manipulate the clip and action when the gun did not fire. The Supreme Court in Chacano found there was sufficient to support convictions for attempted murder of the prosecutor. 2013 ND 8, ¶18.

[¶7] In the instant case, the actions of the Mr. Peltier in immediately walking away from J.B. are distinguishable from the actions of the defendant in Chacano. Mr. Peltier's actions reasonably lead to the conclusion that there was not the necessary intent to support the conviction of Mr. Peltier for the attempted murder of J.B.

[¶8] The circumstances of the instant case are also inconsistent with the conclusion that Mr. Peltier terrorized anyone. Therefore, there is insufficient evidence to support Mr. Peltier's convictions for the crime of terrorizing J.E., C.H. and S.H.

[¶9] In State v. Delaney 1999 ND 189, 601 N.W.2d 573, this Court held that there was evidence sufficient for the jury to conclude defendant committed the act of terrorizing by threatening to commit a crime of violence or act dangerous to human life. In Delaney, there was evidence that defendant brandished an open pocket knife, told victim he was going to kill him, and gestured and approached victim's 11-year-old daughter in a similar threatening manner. The facts of the instant case are distinguishable from Delaney. In the instant case there was no testimony that Peltier was armed and that he continued to approach the alleged victims to a point where he could pose a threat when he returned from J.B.'s house and walked toward the road with his fiancé, who was found not guilty of terrorizing.

[¶10] These circumstances, in addition to the fact that Mr. Peltier and his fiancé had firearms trained on them when Mr. Peltier returned, support the conclusion that there is insufficient evidence to support Mr. Peltier's convictions for the terrorizing of J.E., C.H. and S.H. This is not a case where a defendant displayed a weapon to an alleged terrorizing victim. See State v. Foster, 2020 ND 829, ¶27, 942 N.W.2d 829 (evidence found sufficient where defendant displayed weapon in dispute arising out of soccer match). Rather, in the instant case, members in a group, including two of the alleged victims, displayed weapons against the defendant Mr. Peltier, who believed his fiancé had been sexually assaulted.

### **Conclusion**

[¶11] For the reasons discussed in Appellant's Brief and this Reply Brief, the Defendant-Appellant, Dalton Peltier, asks that this Court vacate his conviction or in the alternative reverse and remand to the district court for a new trial.

Dated this 13th day of October, 2022.

Respectfully Submitted,

/s/ James R. Loraas

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	)	Criminal No. 08-2020-CR-02317
Defendant/Appellant.	)	

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**Certificate of Service**

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[¶1] A true and correct copy of **Reply Brief of Appellant** was emailed to the following  
this 13th day of October 2022:

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[¶1] A true and correct copy of **Reply Brief of Appellant** was sent by mail to the following this 13th day of October 2022:

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