

IN THE SUPREME COURT OF NORTH DAKOTA

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

PETITION FOR REHEARING OF APPELLANT

Appeal from the 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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Table of Contents

	<u>Page</u>
Table of Authorities	3
	Paragraphs
Statement of the Issues.....	1
Statement of the Case.....	3
Law and Argument	16
A. Jurisdiction	16
1. Due to circumstances revealing a lack of uncoerced choice and lack of comprehension, Mr. Peltier did not validly waive Miranda and voluntarily make statement to law enforcement	17
2. There Was Insufficient Evidence to Support Mr. Peltier’s Convictions	19
Conclusion and Relief Sought	21

Table of Authorities

Paragraph

Cases

<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	17
<u>State v. Hunter</u> , 2018 ND 173, 914 N.W.2d 527	18
<u>State v. Kukert</u> , 2021 ND 192, 965 N.W.2d 849	18

Statement of the Issues

[¶1] 1. The District Court erred by finding that Peltier gave a valid waiver of Miranda rights and that he was not coerced.

[¶2] 2. There was Insufficient Evidence to Support Defendant's Convictions for Attempted Murder, Aggravated Assault, Criminal Mischief, and Terrorizing.

Statement of the Case

A. Nature of the Case, Course of the Proceedings, and Disposition in the Trial Court.

[¶3] This is an appeal from combined criminal cases. In Case No. 08-2020-CR-02100, Defendant/Appellant Dalton Peltier ("Peltier") was found guilty of Attempted Murder, Aggravated Assault, Criminal Mischief, and Terrorizing (J.E.) by a jury on December 10, 2021. (08-2020-CR-02100, R288-291). A Criminal Judgment was entered in Case No. 08-2020-CR-02100 on March 21, 2022 and Final Criminal Judgment was entered on May 11, 2022 (08-2020-CR-02100, R 310,333).

[¶4] In Case No. 08-2020-CR-02317, which was tried with Case No. 08-2020-CR-02100, Peltier was found guilty of Terrorizing (C.H.) and Terrorizing (S.H.) by a jury on December 10, 2021. (08-2020-CR-02317, R234-235). A Criminal Judgment was entered in Case No. 08-2020-CR-02317 on March 21, 2022 (R250).

[¶5] A notice of appeal was filed in each case on March 28, 2022. (08-2020-CR-02100, R311; 08-2020-CR-02317, R251).

Statement of Facts

[¶6] On August 3, 2020, at approximately 9:30 a.m., law enforcement responded to a report of an individual cut with a knife by another person. J.B. was the person who had been cut.

[¶7] Peltier was arrested shortly after and transported to the Burleigh County Sheriff's Department for an interview. Peltier had been drinking late into the night prior to being placed into custody by law enforcement on the morning of August 3, 2020. (Unless otherwise noted, references to Register will relate to Case No. 08-2020-CR-02317) (R262:121:18-20; R262:212:21-25; R262:213:1 – R262:215:5; R262:242:5-9, 6-19; R262:271:15-19; R262:276:2-9). Deputy Mehrer, who interviewed Peltier, indicated in his testimony that he thought Peltier believed J.B. had raped his fiancé. (R262:19:12-17).

[¶8] Peltier testified that, after the incident on J.B.'s driveway where J.B. was cut, Peltier did not immediately follow J.B. (R262:231:23-25; R262:232:1-25; R262:233:1-6. He dropped the knives in the grass as he went back toward his fiancé in J.B.'s house. (R262: 231:24-25).

[¶9] J.B. walked from his driveway to the driveway of a neighbor's residence about a football field away. (R262:232:5-12). A crowd gathered on the neighbor's driveway to where J.B. had walked. (R262:234:9-15).

[¶10] Peltier left J.B.'s house and went toward the crowd on J.E.'s driveway to try to explain that he believed J.B. had raped his fiancé. (R262:234:24-25; R262:235).

[¶11] Peltier walked slowly and he never got across the road. (R262:235:5-17). He stopped without getting close to anyone. His hands were up and showing. (R262: 234:16-17; R262:235:1-3). He was unarmed. (R262:234:18-19; R262:235:1-3).

[¶12] Members of the crowd brandished firearms. (R262:236:10-14). Both Peltier, and his fiancé, as well as the holder of the shotgun, J.E., testified that the shotgun was pointed at both Peltier and his fiancé. R262:236:19; R262:237:20-24; R262:238:15-20; R261:89:3-9). Due to the shotgun being trained on him and his fiancé, Peltier was afraid

for himself and his fiancé. (R262:238:15-20). Peltier testified that he saw and heard that the shotgun was racked. (R262:237:1).

[¶13] Peltier testified that he saw another gun, a pistol, pointed at him. (R262:241:7-11). C.H. testified that he pointed his pistol at Peltier and his neighbor J.E, pointed a shotgun at Peltier. (R261:50:17-19). It quickly became apparent to Peltier when he stopped some distance from the crowd that he could expect trouble from the crowd for him and his fiancé. (R262:238:15-20).

[¶14] Prior to the interview with Deputy Mehrer, Peltier was read Miranda rights and signed a waiver of rights form. (R66-67). Peltier and his fiancé had been consuming alcohol the night before. (R262:6:12-17). Peltier believed he was intoxicated at the time of the taped interview. (R242:10-11). During his testimony, Deputy Mehrer acknowledged that he understood that it is stressful for somebody to have a shotgun pointed at them. (R262:18:2). During the interview, Peltier explained circumstances surrounding the incident and his belief that his fiancé had been sexually assaulted by J.B, the previous night. (R262:19:12-17).

[¶15] During a hearing on February 9, 2021 on Defendant's motion to suppress the district court received the recording of the interview and the alleged waiver of Miranda rights form. (R66-67). The defense argued that the statements made by Peltier in the interview were not voluntary and Peltier was not properly given Miranda warnings prior to questioning. The district court denied the motion.

(R87). Prior to trial, defense counsel renewed the objection relating to the admission of the taped interview. (R279:9:10-13). During the trial, Defense counsel renewed the objection to the admission of the taped interview. (R261:242-243).

The taped interview was received over the objection of defense counsel. (R261:243).

LAW AND ARGUMENT

A. Jurisdiction.

[¶16] Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted Sections 29-28-03 and 29-28-06, N.D.C.C., which provides as follows: 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:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party.

N.D.C.C. § 29-28-06.

1. **Due to circumstances revealing a lack of uncoerced choice and lack of comprehension, Mr. Peltier did not validly waive Miranda and voluntarily make statement to law enforcement.**

[¶17] An important question presented to this court was whether the district court erred in finding Peltier voluntarily waived his Miranda rights and voluntarily made statements to law enforcement. As discussed in Appellant's main brief at ¶46, a vital purpose of Miranda warnings is to warn a defendant that the law enforcement is not present to protect his interest. See, Miranda v. Arizona, 384 U.S. 436, 469 (1966). Here Peltier was not made aware early in the interview that he was a suspect in an attempted murder and that Deputy Mehrer was there to act against his interest. Instead, without being told early

on that he was a suspect in potential serious charge such as attempted murder, Peltier was allowed to discuss and answer questions relating to his belief that his fiancé had been sexually assaulted. Peltier was in this way encouraged to believe that Deputy Mehrer was there to act in his interest as he discussed this belief.

[¶18] The State's brief at ¶38 acknowledges that in determining voluntariness this Court should consider the totality of the circumstances. These circumstance include

1) the characteristics and conditions of the accused at the time of the confession, including age, sex, race, education level, physical and mental condition, and prior experience with police; and (2) the details of the setting in which the confession was obtained, including the duration and conditions of detention, police attitude toward the defendant, and the diverse pressures that sap the accused's powers of resistance or self-control.

State v. Kukert, 2021 ND 192, ¶ 15, 965 N.W.2d 849 (quoting Hunter, 2018 ND 173, ¶ 22, 914 N.W.2d 527). Peltier made statements in the interview indicating that he had consumed a substantial amount of alcohol during the night and early morning before the interview. This consumption of alcohol relates to a condition of the defendant Peltier that weighs against a finding of comprehension and voluntariness. Additionally, Peltier believed his fiancé was recently sexually assaulted. The Deputy understood Peltier believed his fiancé was sexually assaulted. The interview focused largely, especially in the beginning, on his reasons for this belief. These are facts that weigh against a finding of voluntariness since Peltier's belief that his fiancé was recently sexually assaulted would reasonably be expected to sap the accused's powers of resistance and self-control during the interview.

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

[¶19] The convictions here should be reversed because there was insufficient evidence in the record to sustain the convictions. In State v. Myers, this Court addressed the standard for review for challenges of sufficiency of the evidence as follows:

In an appeal challenging the sufficiency of the evidence, we look only to the evidence and reasonable inferences most favorable to the verdict to ascertain if there is substantial evidence to warrant the conviction. A conviction rests upon insufficient evidence only when, after reviewing the evidence in the light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor, no rational factfinder could find the defendant guilty beyond a reasonable doubt. In considering a sufficiency of the evidence claim, we do not weigh conflicting evidence, or judge the credibility of witnesses. A verdict based on circumstantial evidence carries the same presumption of correctness as other verdicts. A conviction may be justified on circumstantial evidence alone if the circumstantial evidence has such probative force as to enable trier of fact to find the defendant guilty beyond a reasonable doubt. Moreover, a jury may find a defendant guilty even though evidence exists which, if believed, could lead to a not guilty verdict.

2006 ND 242, ¶ 19, 724 N.W.2d 168 (citations omitted).

[¶20] The defense position that the evidence derived from the interview of Mr. Peltier should have properly been excluded from the jury's consideration further supports the conclusion that the convictions were obtained with insufficient evidence. Mr. Peltier did not admit to law enforcement during the interview that he intended to kill J.B. Nevertheless, in denying the motion to suppress, the district court erroneously allowed the jury to hear and view the interview, including portions of the interview such as those referenced in the State's brief at ¶59. As indicated there in the State's brief in the State's brief at ¶59, Defendant Peltier made a statement that someone "shouldn't do something like that." This statement was most likely related to his belief that J.B. had sexually assaulted his fiancé. Nevertheless, this statement, along with other statements referenced in his response to the Deputy's question "why did you grab the knife?," had a

substantial likelihood of creating unreasonable inferences and tainting the jury's view of the facts relating to the attempted murder charge and the other charges, especially in relation to elements relating to any alleged culpable mental state. This taint is substantial considering the lack of evidence from the state to contradict the following facts (1) that Peltier dropped any knife and returned to house after cutting J.B. once on the arm, (2) that Peltier then walked from the house unarmed and stopped without crossing the street to the neighbor's driveway where J..B had moved, and (3) that after leaving and walking from the house Peltier at some distance had two firearms, including a cocked shotgun, trained on him by two of the three neighbors he was alleged to have terrorized.

CONCLUSION AND RELIEF SOUGHT

[¶21] For the foregoing reasons, the Defendant-Appellant, Dalton Peltier, asks that this Court grant his petition for rehearing. reverse the decision of the district court or place the matter on this Court's calendar for oral argument and resubmission, pursuant to Rule 40 of the North Dakota Rule of Appellate Procedure.

Dated this 7th day of December 2022.

Respectfully Submitted,
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[¶22] Pursuant to Rule 32(d) of the North Dakota Rules of Appellate Procedure, the principal brief complies with the page limitation and consists of 10 pages.

December 7, 2022

BY: /s/ James R. Loraas

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Plaintiff/Appellee,)	Supreme Court Case No. 20220096
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)	District Court Case No. 08-2020-CR-02317
)	Supreme Court Case No. 20220097
)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
Dalton Gene Peltier,)	
Defendant/Appellant.)	

[¶1] A true and correct copy of **Request for Extension of Filing Deadline for Petition for Rehearing** was emailed to the following this 7th day of December, 2022:

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)	CERTIFICATE OF SERVICE
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Dalton Gene Peltier,)	
Defendant/Appellant.)	

[¶1] A true and correct copy of **Petition for Rehearing of Appellant** was emailed to the following this 12th day of December, 2022:

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