

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Supreme Court Nos. 20220280

District Court No. 30-2022-CR-00246

State of North Dakota,	)
	)
Plaintiff and Appellee,	)
	)
v.	)
	)
Travis Lee Jacobs,	)
	)
Defendant and Appellant.	)

---

**BRIEF OF THE APPELLEE**

---

APPEAL FROM THE JURY VERDICTS OF GUILTY AND CRIMINAL JUDGMENT  
IN THE MORTON COUNTY DISTRICT COURT [AUGUST 24, 2022]

MORTON COUNTY, NORTH DAKOTA  
SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE DOUGLAS BAHR, PRESIDING

ORAL ARGUMENT IS REQUESTED

Kendra M Richard, ID #08817  
Assistant Morton County State’s Attorney  
Morton County Courthouse  
210 2<sup>nd</sup> Ave. NW  
Mandan, ND 58554  
Phone: 701.667.3350  
Fax: 701.667.3323  
E-serve: mortonsa@mortonnd.org  
*Attorney for Appellee*

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** .....Pg. 3

**CASES**.....Pg. 3

**OTHER AUTHORITIES** .....Pg. 3-4

**STATUTES**.....Pg. 3-4

**RULES**.....Pg. 4

**REASON FOR REQUESTING ORAL ARGUMENT** .....Pg. 4, [¶1.]

**STATEMENT OF THE ISSUES**.....Pg. 4, [¶2.]

**STATEMENT OF THE CASE AND FACTS**.....Pg. 4, [¶5.]

**STANDARD OF REVIEW** .....Pg. 9, [¶15.]

**I. Standard Of Review For Sufficiency Of The Evidence** .....[¶15]

**II. Standard Of Review For Excusal Of Juror For Cause** .....[¶18]

**ARGUMENT** .....Pg. 10, [¶19.]

**I. The District Court did not err in finding sufficient evidence existed to convict Travis Lee Jacobs of Endangering by Fire or Explosion under N.D.C.C. Section 12.1-21-02 and Violation of Order Prohibiting Contact under N.D.C.C. Section 12.1-31.2-02.**.....Pg. 10, [¶19.]

**II. The District Court Did Not Err In Finding Sufficient Evidence Existed That The Fire Was Intentionally Started.** .....Pg. 14, [¶31.]

**III. The District Court Did Not Err In Denying The Defendant’s, Travis Lee Jacobs, Challenge To A Prospective Juror For Cause.** .....Pg. 18, [¶41.]

**CONCLUSION** .....Pg. 21, [¶48.]

**TABLE OF AUTHORITIES**

**CASES:**

**UNITED STATES SUPREME COURT**

Irvin v. Dowd, 366 U.S. 717, 722-23, 81 S.Ct. 1639, 1642-1643, 6 L.Ed.2d 751, 756 (1961).....¶45

**NORTH DAKOTA SUPREME COURT**

State v. Barth, 2001 ND 201, ¶8, 637 N.W.2d 369.....¶18

State v. Bertram, 2006 ND 10, ¶ 5, 708 N.W.2d 913.....¶34

State v. Christian, 2011 ND 56 ¶8, 795 N.W.2d 702.....¶15

State v. Fredericks, 507 N.W.2d 61, 64-65 (N.D. 1993) .....¶41

State v. Freed, 1999 ND 185 ¶14, 599 N.W.2d 858 .....¶17

State v. Garnder, 2016 ND 161, ¶7, 883 N.W.2d 471.....¶18

State v. Gross, 351 N.W.2d 428, 432 (N.D. 1984) .....¶42, 45, 46

State v. Kinsella, 2011 ND 88 ¶7, 796 N.W.2d 678 .....¶16, 34

State v. Kunkel, 548 N.W.2d 773 (N.D. 1996) .....¶20

State v. McLain, 301 N.W.2d 616 (N.D. 1981) .....¶42

State v. Olson, 552 N.W.2d 362, 364 (N.D. 1996) .....¶34

State v. Olson, 290 N.W.2d 664, 667 (N.D. 1980) .....¶45

State v. Olson, 274 N.W.2d 190, 193 (N.D. 1978).....¶42

State v. Sabo, 2007 ND 193, ¶ 20, 742 N.W.2d 812 .....¶34

State v. Schwab, 665 N.W.2d 52, 56 (N.D. 2003) .....¶18

State v. Smaage, 547 N.W.2d 916, 919 N.D. 1996 .....¶18, 41

State v. Ternes, 259 N.W.2d 296 (N.D. 1977) .....¶45

State v. Thompson, 552 N.W.2d 386, 388 (N.D. 1996) .....¶18

State v. Wanner, 2010 ND 121, ¶ 9, 784 N.W.2d 143 .....¶15

**OTHER AUTHORITIES:**

**STATUTES:**

N.D.C.C. Section 12.1-21-02 .....¶2, 5, 31  
N.D.C.C. Section 12.1-31.2-02 .....¶2, 5  
N.D.C.C. § 29-17-35 .....¶44, 46

**RULES:**

N.D.R.App.P. 28(h) .....¶1  
N.D.R.Crim.P. 29 .....¶12  
N.D.R.Crim.P. 24(b)(1)(A) .....¶44

## **REASON FOR REQUESTING ORAL ARGUMENT**

¶1.] The Appellee is requesting oral argument pursuant to N.D.R.App.P.28(h) to explain the intricacies of not only the underlying facts but also the argument presented in this brief.

## **STATEMENT OF THE ISSUES**

¶2.] The District Court did not err in finding sufficient evidence existed to convict Travis Lee Jacobs of Endangering by Fire or Explosion under N.D.C.C. Section 12.1-21-02 and Violation of Order Prohibiting Contact under N.D.C.C. Section 12.1-31.2-02.

¶3.] The District Court Did Not Err In Finding Sufficient Evidence Existed That The Fire Was Intentionally Started.

¶4.] The District Court did not err in denying the Defendant's, Travis Lee Jacobs, challenge to a prospective juror for cause.

## **STATEMENT OF THE CASE AND FACTS**

¶5.] The State brought criminal charges against Travis Lee Jacobs (Jacobs) on March 14, 2022, by filing a complaint alleging two counts in the Morton County District Court. (R1:1:¶1-2). The Complaint alleged count I for Jacobs to have committed Endangering by Fire or Explosion in violation of N.D.C.C. § 12.1-21-02, occurred on March 8, 2022, in Morton County—alleging that Jacobs started and/or maintained a fire at an occupied residence, in disregard of the safety and lives of the occupant. (R1:1:¶1). Count II of the Complaint alleged Jacobs committed the offense of Violation of An Order Prohibiting Contact, in violation of N.D.C.C. §12.1-31.2-02—more specifically alleging that Jacobs disobeyed an order prohibiting contact issued on January 4, 2022, by Morton County District Court, Judge Bobbi Weiler, Case 30-2022-CR-00009, wherein the defendant was

to have no contact directly or indirectly with D.B. (y/o/b 1995), but that he willfully did so by sending numerous text messages. (R1:1:¶2). The State further alleged that Jacobs was served an Order in a separate criminal matter on January 7, 2022. (R2:2:¶k). An Information was filed by the State on May 2, 2022, which set forth the same allegations as the complaint. (R18:1:¶¶1-2). A preliminary hearing was held on May 3, 2022, where the District Court found probable cause existed on both counts, bound the matter over for trial and Jacobs pled not guilty on both counts.

[¶6.] During the jury selection, Jacobs requested to excuse Juror No. 22 for cause. (R88:46:5-20). Juror No. 22 disclosed that he had worked as a 911 Operator from 1993 to 2001 in Hollywood, Florida. (R88:34:-22-24). The Court asked Juror No. 22 “[w]ould that impact your ability to be fair and impartial?”, and the prospective juror answered “probably not”. (R88:34-25; R88:35:1-2). Further, the Court followed up with the following line of questioning: “[E]xplain to me why you’re answering “probably not”. I mean, does that mean you feel law enforcement or at—are more likely to be honest than someone else?” (R88:35-3-6). Prospective Juror No. 22 responded initially “[p]erhaps”, and went on to state “[y]es, I could” when the Court inquired if Juror No. 22 would be able to look at all evidence and decide the case on all testimony—not just the law enforcement point of view. (R88:35-7-15). Juror No. 22 answered affirmatively when asked if he “could weigh the credibility of the testimony of a law enforcement officer like you would anyone else”. (R88:35-16-19). Finally, Juror No. 22 again answered affirmatively when the Court requested a firm commitment to whether he would be able to be fair and impartial (irrespective to who is providing testimony). (R88:35-20-24). Although the Court asked if either the State or Jacobs had any follow-up questions for the

prosecutive jurors, neither party inquired further as to above-comments made by prospective Juror No. 22. (R88:40-2-24).

[¶7.] In the Court’s ruling explaining why Juror No. 22 was not excluded for cause, the Court set forth as follows:

“I noted two things. First, he [Jacob’s counsel] had not done any follow-up questioning; that his subsequent responses were in the affirmative that he could be fair and impartial. There were no follow-up questions to cause additional concern. And I also noted the reality that we didn’t have very many jurors to spare if we’re going to have a jury of 12 in light of two more preemptory challenges and if I dismissed one for cause. And so I declined to dismiss your Juror No. 2 [sic] for cause.”

(Second alteration in original district court transcript) (R88: 46:9-17). Ultimately, Jacobs used a preemptory challenge on Juror No. 22. (R75:1). Both the State and Jacobs stated they believed the jury was properly constituted and were satisfied with the jury selection process. (R88:42-10-19).

[¶8.] Jury trial was held in the above-referenced matter on August 23, 2022. (R87:3:1-11). The State called two witnesses during its case in chief. The first witness called by the State was Craig Calkins, an officer with the Mandan Police Department. (R87:22:14-17; R87:23:6-8). The second witness called by the State was the Victim, D.B. (R87:45:1-25; R87:45:1-2).

[¶9.] On March 11, 2022, the Victim (D.B.) contacted law enforcement regarding a violation of an Order Prohibiting Contact. (R2:1:¶c; R87:23:9-25; R87:24:1-2). The Victim gave law enforcement the person’s [person suspected to be violating the order prohibiting contact] and a description of the vehicle the person was in. (R87:24:1-2). The Victim provided information that she believed Jacobs had started an enclosed entryway to

her house, within Morton County, on March 8, 2022. (R2:1:¶f). Ashes and scorch marks were observed by law enforcement in the entryway of the Victim's home on March 11, 2022. (R2:1:¶g; R87:30:21-25; 87:31:1-25; 87:32:1-25; 87:33:1-2).

[¶10.] The Victim presented law enforcement with text messages she had received and believed to be from Travis Jacobs. (R:2:2:¶i). Such text messages were offered at trial and accepted into evidence as exhibits 8-14. *See*: (R:62:1; 63:1; 64:1; 65:1; 66:1; 67:1; 68:1). The text messages, which Officer Calkins testified he took pictures of on March 11, 2022, indicated that the fire had been started by dropping a cigarette. (R2:2:¶j). Officer Calkins, whom had reviewed the text messages, testified that the Victim had claimed that the text messages were from Travis Jacobs. (R87:26:5-9).

[¶11.] At the time of the fire on March 8, 2022, the Victim did not observe who actually started the fire. (R87:70:7-9). The Victim further testified that one of the text messages stated "I'm sorry my cigarette fell an I couldn't find it. I never thought it would start a fire I thought it fell on the concrete." (R87:50:20-22). The Victim testified that she believed the text messages were sent by Jacobs to her, as the messages were "[j]ust the way he (Jacobs) talks." (Alteration added.) (R87:51:18-21). As to the assertion that the messages were from Jacobs, the Victim stated "I just knew". (R87:67:13-16). The Victim testified that she believed it was Travis Jacobs based on the conversation. (R:87:60:7-10). On cross-examination, the Victim testified that she had known Jacobs for the last three (3) years and had talked for the last year, including every day "for a little while there"—and that she just knew it was him [Jacobs]. (R87:67:13-25; 87:68:1-3).



[¶12.] At the conclusion of the State’s case in chief, Jacobs made a motion pursuant to N.D.R.Crim.P. 29, alleging insufficient evidence to sustain a conviction. (R87:79:6-10). The District Court denied the motion and found that sufficient evidence existed to submit both Counts I and II to the jury. (R87:79:11-17). At trial, Jacobs did not call any witnesses or testify on his own behalf. (R87:82:8-9).

[¶13.] During closing arguments, Jacobs conceded that the State had established the first two elements of each offense. (R87:98:2-3). After the jury’s deliberation, Jacobs was found guilty on both counts I and II. Jacobs appealed from the judgment on September 22, 2022.

[¶14.] Jacobs timely filed an appeal from the Judgment on September 22, 2022. (R82:1).

## STANDARD OF REVIEW

### **III. Standard Of Review For Sufficiency Of The Evidence**

[¶15.] The Standard of review of the sufficiency of evidence for a Motion for Acquittal and the sufficiency of evidence to sustain a jury verdict of guilty are similar. As to a Motion for Acquittal, the Court has held:

[T]his Court merely reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction. The defendant bears the burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. When considering insufficiency of the evidence, we will not reweigh conflicting evidence or judge the credibility of witnesses.... A jury may find a defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty. State v. Christian, 2011 ND 56 ¶8, 795 N.W.2d 702 (quoting State v. Wanner, 2010 ND 121, ¶ 9, 784 N.W.2d 143).

[¶16.] The Standard of review of the sufficiency of evidence is well established:

When the sufficiency of evidence to support a criminal conviction is challenged, this Court merely reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction. [Jacobs] bears the burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. When considering insufficiency of the evidence, we will not reweigh conflicting evidence or judge the credibility of witnesses. . . . A jury may find a defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty. State v. Kinsella, 2011 ND 88 ¶7, 796 N.W.2d 678.

[¶17.] In State v. Freed, 1999 ND 185, ¶ 14, 599 N.W.2d 858, the Court held that there is an assumption that the jury believed the evidence that it used to support its verdict and did not give credence to the evidence to the contrary.

#### **IV. Standard Of Review For Excusal Of Juror For Cause**

[¶18.] This Court reviews a trial court’s decision on “whether to excuse a juror for cause under an abuse of discretion standard.” State v. Garnder, 2016 ND 161, ¶7, 883 N.W.2d 471 (citing State v. Smaage, 547 N.W.2d 916, 919 N.D. 1996)). See: State v. Schwab, 665 N.W.2d 52, 56 (N.D. 2003); State v. Barth, 2001 ND 201, ¶8, 637 N.W.2d 369. A court abuses its discretion if it acts “in an arbitrary, unconscionable, or unreasonable manner.” State v. Thompson, 552 N.W.2d 386, 388 (N.D. 1996).

### **ARGUMENT**

#### **I. The District Court Did Not Err In Finding Sufficient Evidence Existed To Convict Travis Lee Jacobs As The Prepetrator Of The Crimes In Count I And Count II.**

[¶19.] The State provided sufficient evidence that Travis Jacobs was the individual responsible for the fire incident that occurred at the victim’s residence on March 8, 2022. Further, the State provided sufficient evidence that Travis Jacobs was the individual who violated the Order Prohibiting Contact on March 8, 2022.

[¶20.] In State v. Kunkel, 548 N.W.2d 773,773 (N.D. 1996), this Court held that “[a] conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor.”

[¶21.] Officer Calkins testified as to not only taking the pictures, but explained his observations and investigation of the fire occurring at the residence (and as depicted in Exhibits 1-7). (R87:28:20-25; 87:29:10-18); see (R55: 1; R56: 1; R57:1; R58:1; R59:1; R60:1; R61:1). Officer Calkins identified and testified to burnt ashes in the Victim’s

entryway (R:87:32:1-19). The Victim presented law enforcement with text messages she had received and believed to be from Travis Jacobs. (R:2:2:¶i). Such text messages were offered at trial and accepted into evidence as exhibits 8-14. *See*: (R:62:1; 63:1; 64:1; 65:1; 66:1; 67:1; 68:1). The text messages, which Officer Calkins testified he took pictures of on March 11, 2022, indicated that the fire had been started by dropping a cigarette. (R2:2:¶i). Officer Calkins testified that he did not confirm that the number contacting the Victim was Jacobs or not, but that the Victim identified and said that the messages were coming from Jacobs. (R87:38:8-15). Further testimony by Officer Calkins identified State's Exhibit 16, the Order Prohibiting Contact, served on Jacobs on January 7, 2022, which stated it was a violation of the Order for Jacobs to contact the victim by any means. (R87:42:7-20).

[¶22.] The Victim stated that she waited to call the police until March 11, 2022 as she “was scared and I felt like I needed to do something about it.” (R87:45:18-25; 87:46:1-2). When asked what the Victim was scared of, she stated “Him—or Travis, I guess...Travis Jacobs.” (R87:46:3-7). Further, the Victim stated that Jacobs had been contacting her on March 11, 2022. (R87:50:20-22). Additionally, the Victim, when asked who had been sending the text messages to her (including those in Exhibit 8), the Victim testified as follows:

“Q. [State] Who is sending those text messages?

A. [Victim] Travis.

Q. How do you know that it's Travis?

A. Just the way he talks.”

(R87:51:18-21). *See also*: (R87:51:8-9).

[¶23.] Further, the Victim testified that there was a phone conversation between herself and Jacobs that evening, despite Jacobs not supposed to be contacting her due to the

active Order Prohibiting Contact. (R:87:52:12-25; 87:53:1-13). Victim additionally testified that despite having her kids at her home that evening, Jacobs thought the Victim had someone else over. (R87:54:9-15). The Victim testified that Jacobs was a jealous person and was “possessive or he doesn’t really want me with anyone—at all.” (R:87:54:19-25; 87:55:1-4).

[¶24.] Testimony elicited from the Victim explained the further text message conversation was in regard to an incident where “we [Victim and Jacobs] had gone to the bar and somebody had sat next to me and he [Jacobs] took a beer bottle and smacked him on the side of the head.” (R87:55:5-9). The Victim further divulged that:

“he [Jacobs] would just—like monitoring my activity around my house...Sometimes I would have people over because I felt scared. ... He threatened the whole vehicle thing but we went outside. There is not vehicle damage. And then I just said that that’s not love what he was doing. And I just wish he would stop.”

(R87:56:1-11).

[¶25.] The Victim read the messages contained in Exhibit 11, which included requesting that Jacobs not bring her gifts, but just wanted a friend—as the Victim was scared to leave her house. (R87:56:22-25; R87:57:1-5). Exhibit 11, which was read into the record by the Victim, states “I’m sorry my cigarette fell an I couldn’t find it. I never thought it would start a fire I thought it fell on concrete.” (R87:57:8-9). The Victim testified “[i]t is a reference to the fire he lit in my entryway.” (R87:57:12-13). The Victim then received additional text messages that stated “[w]hat is wrong with you your a cheating wh\*\*\*” and “I can’t believe you f\*\*\* you I hate you” (R87:57:20; R87:57:10-11).

[¶26.] Additional messages received stated “I’m going to f\*\*\* all your guys sh\*\*. Then I’m going to kill myself. Thanks des now my kid not gonna have a dad. Do you know how long I was by your door. What would you do in my situation. Tell f\*\* boy to come

outside.” (R87:58:22-25). The Victim then testified that Jacobs has a child and des was short hand for the Victim. (R87:59:1-9). In State’s Exhibit 14, the Victim read the following messages and testified as follows:

“I will be in the alley waiting. I suppose he ran off already.”

...

And by the way, I had nobody over. But anyway.

...

“I don’t think you realize what I am capable of doing. I straight up got you red handed. And I even warned you on what would happen if I caught you. Sucks to be you guys.””

(R87:59:12-17).

[¶27.] The State inquired why the phone number in the messages was not saved into the Victim’s phone. The Victim responded by stating that the number was not saved into her phone “[b]ecause he [Jacobs] switches numbers a lot. ... Because I block his other ones.”

(R87:59:20-25; 87:60:1-3). The Victim testified that she believed it was Travis Jacobs based on the conversation. (R:87:60:7-10). On cross-examination, the witness testified that she had known Jacobs for the last three (3) years and had talked for the last year, including every day “for a little while there”—and that she just knew it was him [Jacobs]. (R87:67:13-25; 87:68:1-3). The witness testified that she could not think of anyone else (besides Jacobs) in her life that would start a fire in her entryway. (R87:76:23-25.)

[¶28.] The Victim then testified she believed that Jacobs started the fire—as she noticed the fire then “looked at my text and he told me about the fire, and I was like ...it was you.” (R87:66:2-6). Following that testimony, the Victim stated that she had a pretty good idea it was him [Jacobs] but was “confirmed when he said, “I think there’s a fire in your entryway.”” (R87:66:8-10). Again, there was an assertion by the Victim that she was concerned about her safety when she saw the fire. (R87:67:22-24).

[¶29.] On cross-examination, the Victim further testified that she called law enforcement due to Jacobs making threats—as she was “feeling uncomfortable because he was sitting outside my house.” (R87:72:22-25; 87:73:1). More specifically, the Victim explicitly stated that “Travis was my friend. Like, I wouldn’t purposefully do something like that to get him in trouble.” (R87:74:3-5).

[¶30.] Here, sufficient evidence exists to establish that Jacobs committed the offenses in Count I and Count II. The Victim testified that she had known Jacobs for three (3) years and talked sometimes every day, as well as identifying that Jacobs had given her gifts and that Jacobs had a child. Further, the Victim testified as to Jacobs frequently using different numbers—as she had to block Jacobs numbers due to past behaviors. As evident from the testimony of both witnesses in this matter, a rational factfinder could and did find the defendant, Jacobs, guilty beyond a reasonable doubt as the individual who committed the acts in both Counts I and II. Therefore, this Court should uphold the district court’s judgment on both counts.

**II. The District Court Did Not Err In Finding Sufficient Evidence Existed That The Fire Was Intentionally Started.**

[¶31.] Sufficient evidence existed and was presented at trial that the fire, as charged out in Count I of the Criminal Complaint and Information, was intentionally started and/or maintained. Count I charged Jacobs with a violation of N.D.C.C. § 12.1-21-02, which provides:

- “1. A person is guilty of an offense if he intentionally starts or maintains a fire or causes an explosion and thereby recklessly:
  - a. Places another person in danger of death or bodily injury;
  - b. Places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
  - c. Causes damage to property of another constituting pecuniary loss in excess of two thousand dollars.

2. The offense is a class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life. Otherwise it is a class C felony.”

N.D.C.C. § 12.1-21-02.

[¶32.] The jury instructions for Count I provided that the essential elements of the above-referenced offense were as follows:

- “1. On or about March 11, 2022;
2. In Morton County, North Dakota;
3. The Defendant, Travis Jacobs;
4. Intentionally started or maintained a fire or caused an explosion; and
5. The Defendant recklessly placed an entire or any part of a building or inhabited structure of another in danger or destruction.”

(R77:7:5-12).

[¶33.] Further, in its instruction to the jury on determining the proof of Jacobs’s intent in starting the fire, the District Court gave the following jury instruction:

“Proof of Intent

Intent may be proved by circumstantial evidence. Indeed, it can rarely be established by any other means. We simply cannot look into the head or mind of another person. But you may infer the Defendant’s intent from all of the surrounding circumstances.

You may consider any statement made or act done or omitted by the Defendant and all the facts and circumstances in evidence which indicate the Defendant’s state of mind.”

(R77:16:13-21).

[¶34.] This Court has held that “often, the only method of proving criminal intent is through circumstantial evidence.” Kinsella, 796 N.W.2d at 683. See: State v. Olson, 552 N.W.2d 362, 364 (N.D. 1996). Further, in State v. Sabo, 2007 ND 193, ¶ 20, 742 N.W.2d 812, this Court set forth “[a] defendant’s conduct may be considered as circumstantial evidence of the required criminal intent.” More specifically, “[a] verdict based on



circumstantial evidence carries the same presumption of correctness as other verdicts.”  
State v. Bertram, 2006 ND 10, ¶ 5, 708 N.W.2d 913.

[¶35.] Here, Jacobs argues that insufficient evidence exists to prove that Jacobs intentionally started or maintained a fire. The State introduced seven (7) exhibits depicting photographic evidence of the fire that occurred at the Victim’s residence on March 8, 2022. Officer Calkins testified as to not only taking the pictures, but explained his observations and investigation of the fire occurring at the residence (and as depicted in Exhibits 1-7). (R87:28:20-25; 87:29:10-18); *see* (R55: 1; R56: 1; R57:1; R58:1; R59:1; R60:1; R61:1). Officer Calkins identified and testified to burnt ashes in the Victim’s entryway (R:87:32:1-19). More specifically, Officer Calkins testified that there was a concentration of burnt ashy material on a small metal table in the entry way. (R:87:32:21-25; 87:33:1-2). On direct examination, Officer Calkins stated it appeared that and was very possible that the ashy material came from the fire based on his observations. (R87:35:2-12).

[¶36.] The Victim testified that leaves and dog feces, which were piled up in the entry way, had been ignited. (R:87:60:19-24). The Victim testified that she “guess it’s because I didn’t answer the door quick enough so he [Jacobs] took the leaves and dog sh\*\* and lit it on fire my entryway.” (R:87:60:22-25). Further, the Victim provided testimony that she smelled smoke while in her bathroom, causing her to exit and find the fire in the entryway. (R:87:65-10-14). Further, while looking at and discussing State’s Exhibit 6, the Victim stated that “he [Jacobs] intentionally took something and put it – I believe it was leaves and dog sh\*\* and lit it on fire in my entryway.” (R87:62:9-13).

[¶37.] Testimony from the Victim established that they Victim never placed leaves or dog feces on the table in the entryway, but rather that someone would have had to bring the items in, place them on the table and light them on fire. (R:87:62:17-22; 87:65:20-22). There was additional testimony that there was no previous smoke damage to the entryway or items in the entryway and that no clean-up had occurred after the fire. (R:87:62:23-25; 87:63:1-25; 87:64:1-16; 87:65:20-22; R87:73:9-25).

[¶38.] Further, the Victim testified that “it’s concerning because it could light our whole place on fire. Like, it was our place. It was supposed to be our haven. ... But “our place” as in me and my children.” (R87:65:10-19). The Victim then testified she believed that Jacobs started the fire—as she noticed the fire then “looked at my text and he told me about the fire, and I was like ...it was you.” (R87:66:2-6). Following that testimony, the Victim stated that she had a pretty good idea it was him [Jacobs] but was “confirmed when he said, “I think there’s a fire in your entryway.”” (R87:66:8-10).

[¶39.] Further, as to the fire itself, the Victim testified:

“And then I went to the entryway and I noticed a pile of sh\*\*, and I thought it was leaves...And there was just a fire on the table. ... And then I looked at my text messages because I was about to chew his a\*\* out. And then he had texted me, and then I, like, all that could come to my head was what the – what’s wrong with you. Like, why would you do that? Just, like, I thought we were – more mutual respect and like everything between each other. Like, I don’t know. Like, I just – I don’t understand, like, why somebody would do that to somebody.”

(R87:71:7-18).

[¶40.] Jacobs argues again that insufficient evidence exists to establish that the fire was intentionally started or maintained. Once again, from the testimony of both witnesses, along with the State’s Exhibits, in this matter, a rational factfinder could and did find that the fire was intentionally started and maintained. The Victim specifically testified that the leaves and dog feces were not on the small table before the fire and that the Victim

cleaned that every week. Therefore, the items had to have been placed onto the table and lit on fire. Here, circumstantial evidence exists that allows a rational factfinder to find that the fire was intentionally started and maintained. Here, just as this Court has held in Kinsella, Sabo, and Bertram, the circumstantial evidence presented proves Jacobs intentionally started/maintained the fire and the guilty verdict resulting should be upheld.

**III. The District Court Did Not Err In Denying The Defendant's, Travis Lee Jacobs, Challenge To A Prospective Juror For Cause.**

[¶41.] The District Court did not err in denying Travis Jacob's challenge to a prospective juror for cause. "Persons of crime have a right...to a trial by an impartial jury." Smaage, 547 N.W.2d 916, 919 (N.D. 1996). This Court set forth in State v. Fredericks, 507 N.W.2d 61, 64-65 (N.D. 1993), as follows:

"A criminal defendant's right to an impartial jury trial under the Sixth Amendment requires the selection of the jury from a representative cross section of the community." Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). The Fourteenth Amendment makes the provisions of the Sixth Amendment binding upon the states. Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). Although the North Dakota Constitution's guarantee of the right to a jury trial does not explicitly require an impartial jury, *see* N.D. Const. art. I, § 13, we would read the Sixth Amendment's impartiality and fair-cross-section requirements into our state constitution."

[¶42.] Further, this Court, in State v. Gross, 351 N.W.2d 428, 432 (N.D. 1984), held that "[t]he Sixth Amendment does not prescribe a specific test for determining the impartiality of jurors, but voir dire is the traditional method for ascertaining impartiality." *See: State v. McLain*, 301 N.W.2d 616 (N.D. 1981). In State v. Olson, 274 N.W.2d 190, 193 (N.D. 1978), this Court further held "[i]n determining whether a defendant was deprived of a fair and impartial jury, the court will not readily discount the assurances of a juror as to his impartiality." More specifically, "[i]t remains open to the defendant to demonstrate

the actual existence of such an opinion in the mind of the juror to overcome a presumption of impartiality and raise a presumption of partiality.” Id.

[¶43.] Jacobs states that despite prospective Juror No. 22 ultimately indicating that he would be fair and impartial, the district Court erred and should have struck the juror for actual bias. Here, Jacobs (and the State) were given the opportunity to engage in voir dire, to ascertain impartiality of potential jurors. Prospective Juror No. 22 gave assurances, on multiple occasions, that he would be impartial and weigh the credibility of all witnesses. Jacobs does not contest that Juror No. 22 indicated that he would be fair and impartial. (Appellant’s Brief:14:[¶23]). Further, neither the State or Jacobs follow-up, during voir dire, of any additional questions to Prospective Juror No. 22.

[¶44.] Pursuant to N.D.R.Crim.P. 24(b)(1)(A), a trial judge must excuse a juror when the judge “finds grounds for challenge for cause.” A juror can be disqualified in a particular case based on challenge for cause in two situations. For the first situation, “[a] bias which, when the existence of facts is ascertained, in judgment of law disqualified the juror, and which is known in this title as implied bias.” N.D.C.C. § 29-17-35(1) (2021). The second situation is as follows: “[t]he existence of a state of mind on the part of the juror, with reference to the case or to either party, which satisfied the court, in exercise of a sound discretion, that the juror cannot try the issue impartially without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.” N.D.C.C. § 29-17-35(2) (2021).

[¶45.] The Gross Court held that “the existence of actual bias must be determined from voir dire examinations of prospective jurors.” Gross, 351 N.W.2d at 432. See: State v. Ternes, 259 N.W.2d 296 (N.D. 1977), cert. denied 435 U.S. 944, 98 S.Ct. 1524, 55

L.Ed.2 540 (1978). In State v. Olson, 290 N.W.2d 664, 667 (N.D. 1980), this Court set forth:

“To hold that the mere existence of any preconceived notion as to the guilty or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror’s impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.”

*quoting* Irvin v. Dowd, 366 U.S. 717, 722-23, 81 S.Ct. 1639, 1642-1643, 6 L.Ed.2d 751, 756 (1961). As held by this Court in both Gross and McLain, voir dire provides the opportunity for the defendant to determine whether a jury member can be impartial and to determine whether the jury member can render a verdict based solely on the evidence presented at trial. Gross, 351 N.W.2d at 433. Without any evidence to the contrary—there is a presumption that the jury has not been influenced by other events or evidence. Id. [¶46.] The district court here made a finding that Juror No. 22’s “responses were in the affirmative that he could be fair and impartial.” (R:88:46:9-17). Further, that no follow-up questions were done by Jacobs’s counsel and no follow-up questions (asked by the district court) caused any additional concern as to Juror No. 22’s ability to be fair and impartial. (R:88:46:9-17). Here, the voir dire examination of Juror No. 22 did not meet the requirements of N.D.C.C. § 29-17-35(2) for excusal due to cause. Further, the district court clearly expressed that the decision to deny the challenge for cause on Juror No. 22 was in relation to Juror No. 22’s answers. The district court’s decision was clearly separately noted to the number of potential jurors remaining, which was separate from the determination as to Juror No. 22’s impartiality and ability to be fair. (R88:46:9-17). As the Gross Court held—there has not been any evidence presented to the contrary that Juror No. 22 could not be fair and impartial. Gross, 351 N.W.2d at 433.

[¶47.] Here, both the State and Jacobs were provided with the opportunity to engage in voir dire to determine whether a jury member can be impartial and render a verdict based on evidence presented at trial. Juror No. 22 provided multiple answers in the affirmative to his ability to be fair and impartial. Jacobs's did not ask any additional follow-up questions as to Juror No. 22, which the district court specifically noted in denying Jacobs's request to dismiss Juror No. 22 due to cause. Therefore, the district court did not abuse its discretion in not striking Juror No. 22 for cause, as voir dire did not provide an indication that Juror No. 22 should be struck for cause.

### **CONCLUSION**

[¶48.] For all the foregoing facts and argument, the State of North Dakota respectfully requests this Court find that the District Court did not err in finding there was sufficient evidence to establish that Travis Lee Jacobs committed the alleged offenses and that Travis Lee Jacobs intentionally started/maintained the fire on March 11, 2022. Further, the State respectfully requests this Court that the District Court did not abuse its discretion in not striking Juror No. 22 for cause. Therefore, the State respectfully requests this Court uphold the decision of the district court on all Counts in this matter.

Respectfully submitted this 26<sup>th</sup> day of January, 2023.

/s/ Kendra M. Richard  
Kendra M. Richard, Id No. 08817  
Morton County Assistant State's Attorney  
Morton County Courthouse  
210 2<sup>nd</sup> Ave NW  
Mandan, ND 58554  
701.667.3350  
701.667.3323 (fax)  
E-serve: mortonsa@mortonnd.org

**IN THE SUPREME COURT OF NORTH DAKOTA**

---

	)	Supreme Court No. 20220280
	)	District Court No. 30-2022-CR-00246
State of North Dakota,	)	
	)	
Plaintiff/Appellee,	)	
	)	
-vs.-	)	<b>CERTIFICATE OF COMPLIANCE</b>
	)	
Travis Lee Jacobs,	)	
	)	
Defendant/Appellant.	)	

---

**[¶ 1]** This Appellee’s Brief complies with the page limit of 30 pages as set forth in Rule 32(a) (8) (A) of the North Dakota Rules of Appellate Procedure, as it only has 22 pages.

Dated this 26th day of January, 2023.

/s/ Kendra M. Richard  
Kendra M. Richard, Id No. 08817  
Morton County Assistant State’s Attorney  
Morton County Courthouse  
210 2<sup>nd</sup> Ave NW  
Mandan, ND 58554  
701.667.3350  
701.667.3323 (fax)  
Attorney for Plaintiff/Appellee  
E-serve: mortonsa@mortonnd.org

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA  
Supreme Court Nos. 20220280  
District Court No. 30-2022-CR-00246

State of North Dakota, )  
 )  
 Plaintiff and Appellee, )  
 )  
 v. )  
 Travis Lee Jacobs, )  
 )  
 Defendant and Appellant. )

---

**CERTIFICATE OF SERVICE**

---

¶1 The undersigned hereby certifies that on the 26th day of January, 2023, a true and correct copy of the **BRIEF OF THE APPELLEE, CERTIFICATE OF SERVICE, CERTIFICATE OF COMPLIANCE**, in PDF form was filed with the Clerk of the North Dakota Supreme Court with a copy served upon the Defendant/Appellant by Electronic Service through the Court electronic file and serve system to her attorney on appeal at the following address;

William Woodworth  
E Service: william@woodworthlawoffice.com

Dated this 26<sup>th</sup> day of January, 2023.

/s/ Kendra M. Richard

Kendra M. Richard, Id No. 08817  
Morton County Assistant State's Attorney  
Morton County Courthouse  
210 2<sup>nd</sup> Ave NW  
Mandan, ND 58554  
701.667.3350  
701.667.3323 (fax)  
E-serve: mortonsa@mortonnd.org



IN THE SUPREME COURT  
STATE OF NORTH DAKOTA  
Supreme Court Nos. 20220280  
District Court No. 30-2022-CR-00246

State of North Dakota, )  
 )  
 Plaintiff and Appellee, )  
 )  
 v. )  
 Travis Lee Jacobs, )  
 )  
 Defendant and Appellant. )

---

**CERTIFICATE OF SERVICE**

---

¶1 The undersigned hereby certifies that on the 27th day of January, 2023, a true and correct copy of the **BRIEF OF THE APPELLEE (CORRECTED), CERTIFICATE OF SERVICE**, in PDF form was filed with the Clerk of the North Dakota Supreme Court with a copy served upon the Defendant/Appellant by Electronic Service through the Court electronic file and serve system to her attorney on appeal at the following address;

William Woodworth  
E Service: william@woodworthlawoffice.com

Dated this 27<sup>th</sup> day of January, 2023.

/s/ Kendra M. Richard

Kendra M. Richard, Id No. 08817  
Morton County Assistant State’s Attorney  
Morton County Courthouse  
210 2<sup>nd</sup> Ave NW  
Mandan, ND 58554  
701.667.3350  
701.667.3323 (fax)  
E-serve: mortonsa@mortonnd.org