

No. 96-562

IN THE SUPREME COURT OF THE STATE OF MONTANA

1998 MT 297A

STATE OF MONTANA,)

)

Plaintiff and Respondent,)

)

v.) O R D E R

)

ROBERT ROBBINS,)

)

Defendant and Appellant.)

On December 8, 1998, the Opinion of this Court in the above-entitled cause was filed. State v. Robbins, 1998 MT 297. On December 18, 1998, appellant filed his Petition for Rehearing. On December 31, 1998, respondent filed a Response to the Petition for

Rehearing.

After review of this Court's Opinion issued December 8, 1998, and having considered the Petition for Rehearing as and the Response,

IT IS ORDERED:

1. The last sentence in ¶ 43 of this Court's December 8, 1998 Opinion, State v. Robbins, 1998 MT 297 (Slip Op. at p. 20) is hereby deleted. Paragraph 43 will now read as follows:

¶43 The severity of Weaver's injuries belie any finding of negligent homicide. We agree with the District Court's comment at sentencing that the evidence in this case clearly supported the deliberate homicide conviction. While the District Court should have issued a corrective, "failure to agree" jury instruction in this case, we conclude that its failure to do so was harmless beyond a reasonable doubt and did not impermissibly taint the jury's verdict. State v. Wereman (1995), 273 Mont. 245, 251-52, 902 P.2d 1009, 1013; *see also* State v. Rothacher (1995), 272 Mont. 303, 310-12, 901 P.2d 82, 87-88.

2. In all other respects the petition for rehearing is DENIED. Let remittitur issue forthwith.

3. The Clerk is directed to mail true copies of this order to counsel of record for the respective parties.

DATED this 21st day of January, 1999.

/S/ TERRY N. TRIEWELER

/S/ W. WILLIAM LEAPHART

/S/ WILLIAM E. HUNT, SR.

/S/ JAMES C. NELSON

/S/ KARLA M. GRAY

