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Nebraska Supreme Court
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State of Nebraska, appellee, v. Zachary A. Mueller, appellant.

921 N.W.2d 584

Filed January 18, 2019. No. S-17-387.

SUPPLEMENTAL OPINION

Appeal from the District Court for Morrill County: Leo P. Dobrovolny, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

Sarah P. Newell, of Nebraska Commission on Public Advocacy, for appellant.

Douglas J. Peterson, Attorney General, and Stacy M. Foust for appellee.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, and Papik, JJ.

Per Curiam.

This case is before us on a motion for rehearing filed by the appellant, Zachary A. Mueller, concerning our opinion in *State v. Mueller*.[1] We overrule the motion, but we modify the opinion as follows:

In the statement of facts section, we withdraw the word "no" in the second sentence in the 16th paragraph and substitute the word "another" in the quotation.[2]

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[1] *State v. Mueller*, 301 Neb. 778, 920 N.W.2d 424 (2018).

[2] *Id.* at 786, 920 N.W.2d at 432.

In the analysis section, we withdraw the fifth paragraph[3] under the subheading "*Venue Instruction*" and substitute the following:

> We note that although Mueller argued that the court should have given a venue instruction based on § 29-1306, he did not actually tender such an instruction, and that therefore, to the extent Mueller asserts on appeal that the court erred when it refused a requested instruction, under the applicable standards set forth above, we do not ordinarily review whether the "tendered instruction" was a correct statement of the law or whether it was warranted by the evidence. See *State v. Swindle*, 300 Neb. 734, 915 N.W.2d 795 (2018). Here, we can review whether the venue instruction the court actually gave was proper under the circumstances; a consideration of whether the instruction should have included the content of § 29-1306 is an incidental part of that analysis.

The remainder of the opinion shall remain unmodified.

Former opinion modified.
Motion for rehearing overruled.

Freudenberg, J., not participating.

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[3] *Id.* at 791, 920 N.W.2d at 435.