

**Filed 6/8/01 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2001 ND 105

State of North Dakota,

Plaintiff and Appellee

v.

Jeffrey Schwartz,

Defendant and Appellant

No. 20000339

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Burt L. Riskedahl, Judge.

AFFIRMED.

Per Curiam.

Cynthia M. Feland, Assistant State's Attorney, Courthouse, 514 E. Thayer, Bismarck, ND 58501-4413, for plaintiff and appellee.

Steven Balaban, 418 E. Rosser Ave., Ste. 102, Bismarck, ND 58501-4046, for defendant and appellant.

State v. Schwartz

No. 20000339

Per Curiam.

[¶1] Jeffrey Schwartz appeals from a judgment based on a jury verdict convicting him of two counts of misdemeanor sexual assault. Schwartz argues the trial court improperly admitted irrelevant and unfairly prejudicial testimony by the victim's mother and without such testimony the evidence is insufficient to sustain his conviction. We conclude the trial court did not abuse its discretion in admitting into evidence the testimony of the victim's mother, as her statements were relevant and the probative value substantially outweighs any unfair prejudice. We further conclude substantial evidence supports the jury's verdict of guilty. Therefore, we summarily affirm under N.D.R.App.P. 35.1(a)(3), (4).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
William A. Neumann
Dale V. Sandstrom