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STATE OF NORTH DAKOTA

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State of North Dakota,

Plaintiff-Appellee,

-vs-

Michael Tresenriter,

Defendant-Appellant.

) Supreme Ct. No. 20120026 - 20120049
) & 20120057

) District Ct. No. 09-K-104, 09-K-123 to
) 09-K-128, 09-K-165 to
) 09-K-167, 09-K-178 to
) 09-K-183, 09-K-186,
) 09-K-198 to 09-K-201,
) 09-K-361, 09-K-363,
) 09-K-365, 09-K-367

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM JURY VERDICT AND JUDGMENT OF CONVICTION

Wells County District Court
Southeast Judicial District
The Honorable James Hovey, Presiding

Kathleen K. Trosen
State's Attorney
Wells County
PO Box 325
Fessenden, ND 58438
Phone: (701) 547-3885
BAR ID No: 05365
Attorney for Plaintiff-Appellee

Julie Lawyer
Assistant Attorney General
US Attorney's Office
PO Box 699
Bismarck, ND 58502-0699
Phone: (701) 530-2420
BAR ID No: 05693
Attorney for Plaintiff-Appellee

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STATEMENT OF THE ISSUES

- I. Whether the District Court Properly Denied the Defendant's Motion to Suppress the Buccal Swab.
- II. Whether the District Court Properly Denied the Defendant's Motion to Consolidate the Charges.
- III. Whether There Was Sufficient Evidence to Support the Convictions.
- IV. Whether the District Court Properly Denied the Defendant's Motion to Dismiss Case 09-K-178 (Conspiracy (Dennis Duda) to Manufacture Methamphetamine).

STATEMENT OF THE CASE

Defendant Michael Tresenriter was charged with one (1) count of simple assault, twenty-two (22) counts of conspiracy to manufacture methamphetamine, two (2) counts of unlawful possession of drug paraphernalia, two (2) counts of possession of a controlled substance, one (1) count of manufacture of a controlled substance, one (1) count of terrorizing – domestic violent dangerous special offender (use of firearm), and one (1) count of child endangerment. All cases were tried together and the Defendant was convicted on each of the charges and now timely appeals.

STATEMENT OF THE FACTS

Defendant's recitation of the facts is, for the most part, correct and other facts as they relate to the issues will be brought out in the brief.

ARGUMENT

I. Whether the District Court Properly Denied the Defendant's Motion to Suppress the Buccal Swab.

The Defendant argues that the evidence related to a buccal swab obtained from the Defendant by Special Agent Craig Zachmeier of the Bureau of Criminal Investigation should have been suppressed. Defendant claims that SA Zachmeier was not qualified to take the sample, that he did not follow the proper collection procedures to obtain the sample, and that the testing was flawed as it resulted in a partial profile. In the Defendant's motion to suppress, the Defendant argued due process violations and illegal search, and did not argue the failure to follow proper collection procedures, or a flawed profile. Defendant's Appendix (hereinafter "Def. App.") p. 279-280. This Court has previously held that DNA samples by oral buccal swabs do not violate the Fifth Amendment privilege against self-incrimination. State v. Norman, 2003 ND 66, ¶ 27, 660 N.W.2d 549.

Pursuant to section 31-13-04 of the North Dakota Century Code, samples of blood or other bodily fluids for DNA testing must be obtained by "qualified personnel approved by the laboratory, and packaged and submitted in kits approved or provided by the laboratory and in accordance with the rules adopted by the laboratory." Procedures have been enacted for the collection of a sample. See N.D.A.C. § 10-17-01-04. The procedure includes the use of a kit, which includes an instruction sheet, receipt form, and containers for sample collection, provided by the State Crime Lab. N.D.A.C.

§ 10-17-01-04(1). The sample must be taken by a “qualified individual approved by the [State Crime Lab].” N.D.A.C. § 10-17-01-04(4). “Qualified personnel” includes any person trained in sampling techniques and approved by the division to collect DNA samples. N.D.A.C. § 10-17-01-02(10).

At trial, SA Zachmeier testified that he had received training in the collection of DNA samples from Hope Olson with the State Crime Laboratory. Trial Transcript (hereinafter “Tr.”) p.1064. Hope Olson was identified as the Director of the State Crime Lab. Tr. p. 1064, 1271. SA Zachmeier first received training in 2001 but has been trained “multiple times” in collection procedures. Tr. p. 1064. SA Zachmeier testified that, to collect the sample, he used a “packet” provided by the State Crime Laboratory which contained sterilized cotton swabs, rubber gloves, plastic seals, instructions, and an envelope. Tr. p. 1066.

Hope Olson, the Director of the State Crime Laboratory also testified at trial. She testified that she had trained SA Zachmeier, along with other officers, to qualify him to collect DNA samples using the buccal swab kit. Tr. p. 1273-74. Director Olson also described the buccal swab kit in more detail and, by her description, the kit was the same “packet” that SA Zachmeier indicated he used to obtain the Defendant’s DNA sample. Tr. p.1066, 1273. As SA Zachmeier was trained and approved by the Director of the State Crime Lab to obtain DNA samples, he was qualified to take the Defendant’s sample.

The Defendant argues that the State did not provide that the training met the processes set by the State lab as they currently exist. However, Hope Olson testified that DNA buccal swab collection process has not changed since 2001. Tr. p. 1299. Hope Olson explained DNA buccal swab is collection training is required before law enforcement is qualified to collect samples, and Hope Olson testified it is relatively easy to do. Tr. p. 1273. The ND State Crime Lab does not require any continuing education, or refresher course on DNA buccal swab training. Tr. p. 1292. The initial training and qualification is the current qualifications by the State Lab, and thus, SA Zachmeier was qualified to take the Defendant's sample.

SA Zachmeier testified that along with items needed to be used in the collection of a DNA sample, the packet contains instructions on how to properly obtain a sample. Tr. p.1066. SA Zachmeier testified that he has the instructions "memorized because we do it so much." Tr. p. 1067. He was also asked if he "follow[ed] the procedure that is required by the lab with the kit" and he stated he did. Tr. p. 1070. Even though SA Zachmeier didn't specifically testify as to each step he took to collect the sample as noted on the instructions, he did indicate that he had experience in the collection of DNA samples and that he followed the proper collection procedure when he obtained the sample from the Defendant, and that generally he swabbed the mouth of the Defendant, and put the swab in the packing and sent it to the lab. Tr. 1064-1070. Hope Olson testified that she analyzed the known sample of Mike Tresenriter from a sealed DNA buccal swab sample. Tr. p. 1283. Since

it is a relatively easy process, as explained by Hope Olson, this general description of the steps and the packet by SA Zachmeier and Hope Olson is sufficient to establish that SA Zachmeier properly obtained the sample and followed procedure. See State v. Jordheim, 508 N.W.2d 878, 881 (N.D.1993) (finding that documents introduced and officer's testimony established fair administration and compliance).

The Defendant further argues because the DNA testing resulted in a "partial profile" that is evidence that SA Zachmeier did not obtain a proper sample. The Defendant points to State's Exhibit 124, a certified copy of the Supplemental Laboratory Report regarding the DNA testing and comparison of the Defendant's known sample obtained by SA Zachmeier using the buccal swab and cigarette butts. Def. App. pp. 537-539. However, the laboratory analysis indicates that the "partial profile" was obtained from the cigarette butts "and matches the profile developed from the known sample." Def. App. p.538. Furthermore, Hope Olson testified as to the differences between a "profile" and a "partial profile." Tr. p. 1276. She then went on to say that a "profile" was obtained from the buccal swab sample. Tr. p. 1283. She also testified that a "profile" was obtained from the cigarette butts, but further explained that the "profile" was a "partial profile." Tr. pp. 1287, 1289-90. The testimony and the lab report are clear that the buccal swab sample resulted in a full profile, not a partial, or degraded, profile. Therefore, there was nothing wrong with the sample taken by SA Zachmeier.

“In any court proceeding, DNA testing is deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison must be admitted as prima facie evidence to prove or disprove identity of any person.” N.D.C.C. § 31-13-02. The State, through testimony and the evidence, was able to show that SA Zachmeier was properly trained and approved by the State Crime Lab to obtain DNA samples using a buccal swab, that the sample was properly obtained, and that the testing was not flawed. The District Court ruled correctly when it allowed the evidence to be admitted at trial.

If the Court were to consider that the DNA sample was not properly obtained, there is substantial evidence to support the convictions without the DNA evidence. The DNA evidence relates primarily to the Defendant’s presence at the Haedt farm near Cathay, rural Wells County, ND. The other evidence includes Troy Lura testified that on July 14, 2009, that he saw some one that Wade Williams identified as the Defendant at the Haedt farmstead in the Defendant’s pickup, as Troy Lura further saw the Defendant’s pickup at 228 Second Street, Cathay, Wells County, North Dakota a couple of days later. Tr. pp. 1595-1608.

Wade Williams testified that he was a blade man in Cathay area for 21 years, and he only saw the Defendant drive the red Ford pickup in the Cathay area, and he believed that the Defendant resided at 228 Second Street, Cathay, Wells County. Tr. p. 1614-20. Wade Williams further testified that he knew Troy Lura and from Troy Lura’s description, it was the Defendant and the Defendant’s truck. Tr. p. 1615.

Wells County Deputy Mike Renton testified that he saw the Defendant and the Defendant's red Ford pickup parked in front of 228 Second Street, Cathay, on July 15, 2009. Tr. P. 1334-36.

Other earlier identifications of the Defendant and the red Ford Truck include on May 19, 2009, the Defendant was stopped by Eddy County Deputy Sheriff Andrew Noreen and he was driving his red Ford Pickup by himself. Tr. p. 1172. On July 2, 2008 and on July 6, 2009, North Dakota Highway Patrol Jeff Bauske observed the Defendant as a passenger in his red Ford Pickup. Tr. pp. 294-95, 304. Almost every person that testified including law enforcement, co-conspirators, and witnesses, Troy Lura and Wade Williams, all identified the Red Ford Pickup as belonging to the Defendant and having seen the Defendant either driving or in the pickup. This other evidence of the Defendant in his red Ford Pickup with the testimony of co-conspirators Kirk Savage and Larissa Hoaglund that the Defendant had previously been to the Haedt farm and in Cathay would establish the identification of the Defendant at the area where the meth lab was located.

II. Whether the District Court Properly Denied the Defendant's Motion to Consolidate the Charges.

The Defendant argues that the District Court should have consolidated all the conspiracy charges into one count, claiming that the multiple conspiracies were all part of one larger conspiracy. However, the Defendant does not show where he requested such action from the District Court. There

is no record of a motion for consolidation of the offenses on the docket sheets for any of the conspiracy cases. See Def. App. pp. 11-27, 106-220, 230-313.

The Defendant failed to properly preserve this issue for appeal. This Court has said to properly appeal an issue, that issue must first be raised at to the trial court, so the trial court can take appropriate action. State v. Haakenson, 213 N.W.2d 394, 399 (N.D.1973). Issues not raised in the trial court are generally not reviewable on appeal unless the issue constitutes “obvious error.” State v. Kopp, 419 N.W.2d 169, 172 (N.D.1988). This Court will consider obvious error “cautiously and only in exceptional situations where the defendant has suffered serious injustice.” Id. at 173. “To establish obvious error, a defendant must show: ‘(1) error, (2) that is plain, and (3) affects substantial rights’.” State v. Thompson, 2010 ND 10 ¶ 20, 777 N.W.2d 617. Based on the following, the District Court did not err in allowing the cases to proceed to trial as charged.

The Defendant failed to cite any law or relevant authority that requires the State to charge one single conspiracy count, and without relevant statutes and/or case law, the Defendant’s argument has no merit. See McMorrow v. State, 2003 ND 134, ¶ 12, 667 N.W.2d 577. Rather the Defendant cites cases that the Defendant is able to be charged with multiple offenses, and this does not provide that the Defendant shall be charged with only one (1) single conspiracy. See State v. Baumgartner, 2001 ND 202, 637 N.W.2d 14 (providing two (2) conspiracy charges for two (2) different hunts that exceeded the daily limit); see also, United States v. Irvine, 98 U.S. 450, 25

L.Ed. 193 (providing charges for the hub and spokes of the conspiracy). This Court has specifically stated that a defendant may be convicted of both the underlying offense of delivery of a controlled substance and the conspiracy to deliver a controlled substance based upon the same transaction. State v. Burgard, 458 N.W.2d 274 (N.D.1990) (citing State v. Mayer, 356 N.W.2d 149, 151-152 (N.D.1984)). The Defendant's argument that there should be a single charge regarding both the conspiracy and the manufacturing charge is not supported by Federal and/or North Dakota law. Appellant Brief p. 12.

The issue of the single versus multiple conspiracy charges was discussed at the final pretrial conference when the State had new information from Brandon Grager and the State made a motion to amend the charges for Bonnie (Mann) Tresenriter and Kellie Mann to include that Brandon Grager was a co-conspirator in the agreement with both Bonnie (Mann) Tresenriter, and Kellie Mann. Tr. p. 17-25. The Defendant objected to the State's motion. Tr. p. 23. The Court specifically explained that these matters were charged out as individual conspiracies, and the Court denied the motion to amend the Bonnie (Mann) Tresenriter and Kellie Mann charges. Tr. p. 19-20, 25-26. Based upon the Court's statements regarding a single versus multiple conspiracies, the Defendant certainly had an opportunity to make a motion to consolidate the separate conspiracy charges into one single conspiracy charge, but rather objected to the amendment to the Informations, and this ended up with those charges being dismissed against the Defendant relating to conspiring with Bonnie (Mann) Tresenriter and Kellie Mann.

The Agreement in this case was not delivery of a controlled substance to others, but rather that most of the individual co-conspirator agreed with the Defendant that they would purchase pills in the agreement that the Defendant would use them to manufacture methamphetamine, and then, for the purchase of pills, the Defendant would provide the co-conspirator with methamphetamine. The purchase of the pills by most of the co-conspirators is the “something more” than just the buyer and seller relationship that would be sufficient to prove a conspiracy to deliver a controlled substance. See State v. Freed, 1999 ND 185, ¶ 5, 599 N.W.2d 858 (citing State v. Serr, 1998 ND 66, ¶ 13, 575 N.W.2d 866 and providing that the resale of the controlled substance must be contemplated by the original parties to the agreement for there to be something more than a buyer and seller relationship or it is insufficient to prove a conspiracy to deliver a controlled substance). The overt act does not have to be a crime. State v. Lind, 322 N.W.2d 826 (N.D.1982). The overt act must be in furtherance of that agreement. State v. Keller, 2005 ND 86, ¶ 35, 695 N.W.2d 703. The “something more” is that the co-conspirator contemplated that the Defendant would not only give them methamphetamine for the pills, but also, that the Defendant would commit the offense of manufacturing methamphetamine, and thus, the manufacturing of methamphetamine with the pills was part of the contemplated agreement.

In a Seventh Circuit case regarding federal conspiracy and an underlying charge of harboring or concealing a fugitive from justice, the court explained that there is a difference between the crime of conspiracy and the

substantive offense. Piquett v. U.S., 81 F.2d 75, 78, 1936 U.S. App. LEXIS 3399 (7th Cir. Ill. 1936). In Piquett, the Seventh Circuit further allowed for two (2) separate conspiracy charges even though the conspiracies were very similar in that they were between the same persons, the same house, similar surgical operations, performed by the same doctors for similar compensation, and both subjects were fugitives of federal warrants because there were different fugitives and the operations were on different dates. Id. at 79. The Seventh Circuit explained that the question of punishing the offender for two (2) distinct offenses growing out of the same act was a matter for consideration of the grand jury and the attorney for the Commonwealth in the presentment and the prosecution, and it was not for the appeals court to make that decision. Id. The case involved two (2) separate violations of the same statute. Id. The Seventh Circuit explained that even though a transaction may be in a sense continuous, the offenses may be separate and complete in itself. Id. at 80.

The Seventh Circuit gave an example of a decision in Ebeling v. Morgan, 237 U.S. 625, 35 S.Ct. 710, 711, 59 L.Ed. 1151, in which a defendant was charged with having robbed the contents of six (6) mail bags on the same day and in the identical transaction. Piquett v. US, 81 F.2d at 79 (discussing and citing Ebeling v. Morgan, 237 U.S. 625, 35 S.Ct. 710, 711, 59 L.Ed. 1151). There were six separate counts for each of the separate numbered mail bags, and the Supreme Court affirmed the six (6) separate convictions even though the transaction was in a sense continuous, there was

intent in each time the mail bag was cut, and the intentional cutting completed the statutory offense. *Id.* Similarly, the Eight Circuit allowed five (5) separate conspiracy counts for forgery on five (5) different documents. Beddow v. U.S., 70 F.2d 74, 1934 U.S. App. LEXIS 4257 (8th Cir. App. 1934) (finding the evidence to establish one of the offenses does not establish the other).

This case is similar to the Seventh Circuit case in that there are many similarities to the separate conspiracy charges, and also like the Seventh Circuit case with different fugitives and different dates of operations, there are different co-conspirators and different dates that each co-conspirator committed overt acts of purchasing and exchanging pills with the Defendant. See State's Exhibit 121. Each time the Defendant made a separate and discrete agreement with a co-conspirator, this was charged as a separate count because most all of the co-conspirators specifically stated that they were buying pills for the Defendant to manufacture so that they would individually receive methamphetamine from the Defendant. For example, Bonnie Goldade, Michele Schindler, and Phyllis Devine all testified that they provided pills to the Defendant to manufacture methamphetamine and then, they would receive their own individual share of methamphetamine. Tr. pp. 498-499, 659, 699. Phyllis Devine also testified that she never assisted in the manufacturing of methamphetamine. Tr. p. 662.

The defendant committed criminal conspiracy because criminal conspiracy only requires an agreement, but no actual assistance by the charged

individual, and so even if some persons didn't assist in the manufacturing, as long as there was an agreement, there is a conspiracy. State v. Keller, 2005 ND at ¶ 37. The counts are not excessive because the Defendant is not charged for each and every pill purchase and exchange, but rather just for each separate co-conspirator that made an individual agreement to exchange pills and receive methamphetamine after the Defendant used the pills to manufacture the methamphetamine. There are various different dates. For example, Bonnie Goldade began purchasing pills in December of 2006, and was still purchasing pills up October of 2008, for approximately fifteen (15) different purchases. See State's Exhibit 10 and 121. Phyllis Devine was purchasing pills from February of 2007 to February of 2008, with approximately ten (10) pills purchases. See State's Exhibit 15 and 121. Michele Schindler was purchasing pills from July of 2007 to November of 2008, with approximately eighteen (18) pill purchases. See State's Exhibit 26 and 121.

The evidence shows that the Defendant would have been able to manufacture methamphetamine without the co-conspirators because the Defendant himself purchased numerous pseudoephedrine pills from Nilles Drug in Fessenden, ND, with purchases from March of 2006 to July of 2009, with approximately thirty-four (34) pill purchases. See State's Exhibits 121 and 140. Further, co-conspirator Shannon Laber did not provide pills in exchange for his methamphetamine, but rather one of his overt acts was to act as a lookout when the Defendant manufactured methamphetamine, and then,

Shannon Laber would receive methamphetamine for his actions of being a lookout. Tr. p. 404. Acting as a lookout is an objective of the conspiracy, as it is a measure for concealing the crime of manufacturing. N.D.C.C. § 12.1-06-04(3).

A person may be involved in a conspiracy whether or not the person knows the other's identity. NDCC § 12.1-06-04(2). Just as when Linda Burgard made an agreement with the Defendant to exchange pills for the Defendant to manufacture meth, and then provide her with meth, when Linda Burgard then, made an agreement with Amanda Ripplinger to take her pills to the Defendant, and then, give Amanda Ripplinger meth manufactured by the Defendant, the Defendant is still guilty of the conspiracy with Amanda Ripplinger. Tr. p. 542, 1347-48. However, the conspiracy still requires that the overt act is committed in furtherance of the agreement. State v. Keller, 2005 ND at ¶ 35. It is hard to contemplate that the agreement was for resale when most of the co-conspirators were simply trying to find ways to manufacture meth so that they would be able to obtain meth. While Linda Burgard may have resold her meth, she did not state that this was part of the agreement with the Defendant, and the Defendant was not charged with delivery of methamphetamine every time Linda Burgard delivered and/or sold meth to someone. Tr. p. 541. Most of the co-conspirators made statements, like Shannon Laber and Bonnie Goldade, that they did not see the Defendant provide methamphetamine to anyone. Tr. pp. 427, 503. Linda Burgard and

Cindy Baughman testified that they while they saw numerous persons using meth, they did not see others manufacturing meth. Tr. pp. 535-539, 596-613.

Based on the numerous different co-conspirators that made agreements with the Defendant, and the numerous different dates of pills purchases, and the numerous different locations in which the Defendant manufactured methamphetamine, as well as, the Defendant's ability to manufacture methamphetamine without the pills and/or equipment from others and without the assistance of others, there is more than substantial evidence of the various separate charges. Further the offenses are not necessarily included in each offense because most of the co-conspirators only made an agreement to manufacture methamphetamine so that they would be able to obtain methamphetamine, and thus, there are different factual agreements for the various charges, as well as different elements relating to other charges such as the manufacturing charge, the paraphernalia and possession charges. Thus, the prosecuting attorney had substantial legal basis for the multiple charges, and the district court had no reason to consolidate all of the charges into one single conspiracy charge.

III. Whether There Was Sufficient Evidence to Support the Convictions.

A defendant challenging the sufficiency of the evidence bears the burden of showing the evidence reveals no reasonable inference of guilt when the evidence is viewed in the light most favorable to the verdict. State v. Christian, 2011 ND 56 ¶ 8, 795 N.W.2d 702. This Court does not reweigh the

evidence or consider the truthfulness of the witnesses, but only reviews the record to determine if there was competent evidence upon which the jury could draw an inference reasonably tending to prove guilt. Id.

The Defendant states that there was insufficient evidence to support the convictions on all charges, however, only argues there was insufficient evidence to support the convictions for the twenty-two (22) counts of conspiracy to manufacture methamphetamine, one (1) count of simple assault, and one (1) count of child endangerment. He does not argue there were insufficient facts to support the convictions on the two (2) counts of unlawful possession of drug paraphernalia, two (2) counts of possession of a controlled substance, one (1) count of manufacture of a controlled substance, and one (1) count of terrorizing – domestic violent dangerous special offender (use of firearm). The State is limiting its argument to only the counts argued by the Defendant.

A. Simple Assault Charge

Sheriff Curt Pellett testified he took an assault report from David Speldrich on June 20, 2009. Tr. p. 206. Speldrich came in the day after the assault had taken place and Speldrich had “scuff marks” on both sides of his face, his side, stomach, and hip, and bruising on his face. Tr. p. 208. Cindy Carter testified while she wasn’t present during the assault, afterwards, she observed injuries to David Speldrich including bruising of his face, wearing a neck brace, and walking with a cane. Tr. p. 482. Michael Speldrich testified he observed no injuries on his father, David Speldrich prior to the time David

said he was assaulted by the Defendant. Tr. p. 1729. Later that evening, Michael observed a knot on David's head. Id.

Jerome Loewen testified the Defendant told Loewen that Loewen was to tell David Speldrich to stop following the Defendant or the Defendant would beat up David Speldrich. Tr. p. 1367. David Speldrich testified that he got into a fight with the Defendant and the Defendant struck him in the head and knocked his teeth out. Tr. p. 786-87. The side of Speldrich's face turned black and blue. Tr. p. 787. Deputy Mike Renton testified that he had contact with David Speldrich approximately a week after Speldrich reported he was assaulted by the Defendant. Tr. pp. 1331-32. Renton observed multiple bruising and marks to the face and the side of his abdomen. Tr. p. 1332.

B. Child Endangerment Charge

Michele Schindler told Speldrich that the Defendant was supplying Speldrich's son Michael Speldrich with methamphetamine. Tr. p. 809. Michael Speldrich was 16 or 17 years old at the time. Tr. p. 775.

Brandon Grager testified that he was present in a car with the Defendant near Sykeston when the Defendant picked up Michael Speldrich. Tr. pp. 1515-16, 1518-19. Michael Speldrich was under 18 years of age. Tr. p. 1517. Michael Speldrich did not have methamphetamine when he got in the car. Tr. p. 1519. Brandon, Michael Speldrich, and the Defendant later smoked meth together. Tr. p. 1516.

Jason Wilde testified that he smoked meth with Michael Speldrich and the Defendant. Tr. p. 1701. The Defendant told Wilde that Michael

Speldrich's father was upset with the Defendant for giving Michael Speldrich drugs. Tr. p. 1701.

Michael Speldrich testified he started using methamphetamine when he was 17 years old. Tr. p. 1730. Michael smoked meth with the Defendant. Tr. p. 1733. Michael smoked meth the Defendant had in the Defendant's pipe. Tr. pp. 1733-34. The Defendant gave Michael meth on another occasion. Tr. p. 1734. Michael smoked the meth the Defendant gave him. Tr. p. 1735. The Defendant also gave Michael marijuana. Tr. pp. 1735-36. Michael was younger than 17 years old when the Defendant gave him marijuana and was 17 years old when the Defendant gave him methamphetamine. Tr. p. 1738.

C. Conspiracy Charges

Sheriff Curt Pellett testified that he has encountered the remnants of meth labs during the course of his 43 years in law enforcement. Tr. p. 143-45. Remnants include lithium battery packs, chopped up lithium batteries, pill packets of Sudafed, blister packs, Trilene white gas, anhydrous containers, hoses, beakers, and plastic bottles. Tr. p. 145. Pellett responded to a call that Phyllis Devine was having a medical emergency. Tr. p. 154. -55. Devine told Pellett she had received the meth from the Defendant. Tr. p. 156.

Shannon Laber testified that he received his methamphetamine from the Defendant. Tr. pp. 397, 401. Shannon stated that he was with the Defendant about four (4) times when the Defendant was manufacturing methamphetamine. Tr. p. 401. Shannon testified that he assisted the

Defendant in the manufacturing process by pouring muriatic acid in a bottle with tin foil and acted as a lookout. Tr. pp. 403-04. Shannon stated he did that at the direction of the Defendant. Tr. p. 411. Shannon testified that he received methamphetamine from the Defendant in return for assisting in the manufacturing process. Tr. p. 405. Shannon stated there was an implicit agreement with the Defendant to manufacture methamphetamine in that when the Defendant needed Shannon's assistance, the Defendant would pick up Shannon and take him to the farm to help out. Tr. p. 428-29.

Pat Pollert testified that she worked at the Carrington hardware store. Tr. p. 463. Store employees were told by law enforcement to watch out for people buying items under the meth watch program such as NiCd batteries, xylene, rubber tubing, Drain-o and "items like that." Tr. pp. 463-64. Employees were asked to make a note of the purchase and the license plate number, make and model of the vehicle and anyone else with the purchaser. Tr. p. 464. She noticed a few people who came in to the store repeatedly, buying these items, including David Speldrich and Larissa Hoaglund. Tr. p. 465-67.

Bonnie Goldade testified that she would buy pseudoephedrine pills and trade them with the Defendant for methamphetamine. Tr. p. 497. The Defendant wanted the pills to make methamphetamine. *Id.* She personally observed the Defendant manufacturing the methamphetamine at his farm near Cathay. Tr. p. 499. She testified that she would assist by opening the pseudoephedrine packages. Tr. p. 508. She indicated she purchased the pills

at Carrington and Fessenden. Tr. p. 500. She confirmed that State's Exhibit 10, meth watch logs she had signed when she purchased the pills, were indeed hers and she did purchase the pills listed on the logs. Tr. p. 502. She indicated she had an implicit agreement that she would provide pills to the Defendant in exchange for methamphetamine. Tr. p. 512. She purchased pills for the Defendant four (4) to five (5) times and also purchased pills for Darin Laber. Tr. p. 507.

Linda Burgard testified that she purchased Sudafed pills from Nilles Drug in Fessenden and identified State's Exhibit 12 as the meth watch logs she filled out when she purchased the pills. Tr. p. 528-29. She stated she provided the Defendant some of those pills in exchange for methamphetamine. Tr. p. 528, 531. She testified that Amanda Ripplinger gave her pills to give to the Defendant or others to manufacture methamphetamine. Tr. p. 542-43.

Cindy Baughman testified that she helped the Defendant in his manufacture of methamphetamine by taking pills out of the packaging, crushing pills, "everything but the anhydrous part of it." Tr. pp. 593-95. She indicated others, including Darin Laber, Dennis Duda, Bonnie Goldade, Michele Schindler, and Larissa Hoaglund, were at the farm when the Defendant was manufacturing methamphetamine. Tr. pp. 596-97. She stated that she purchased pills which she gave to the Defendant so he could manufacture methamphetamine. Tr. p. 598. She purchased pseudoephedrine pills at Nilles Pharmacy in Fessenden. Tr. pp. 600-01. She filled out

paperwork and identified the meth watch logs in State's Exhibit 13 as the logs she filled out when she made those purchases. Tr. pp. 601-02. She sometimes received methamphetamine or money in exchange for the pills. Tr. p. 602-03.

At times, the Defendant would tell Baughman to purchase pills and when she purchased the pills, it was with the intent to provide them to the Defendant so he could manufacture methamphetamine. Tr. p. 603. She also purchased other supplies for use in the manufacture of methamphetamine, to include fuel oil, coffee filters, and plastic hoses, which she provided to the Defendant. Tr. p. 607.

Baughman observed Phyllis Devine providing pills to the Defendant. Tr. p. 609. Phyllis Devine told Baughman that Devine had given pills to the Defendant for him to manufacture methamphetamine and Devine had received methamphetamine in return. Tr. p. 651.

Phyllis Devine testified that she received methamphetamine from the Defendant in exchange for Sudafed pills. Tr. p. 659. She had to fill out paperwork when she bought pseudoephedrine pills from Nilles Pharmacy and identified the meth watch logs in State's Exhibit 15 as the paperwork she filled out. Tr. p. 661. She also assisted in the manufacturing process by removing the pills from the blister packs. Tr. p. 663-64. The Defendant told her where to buy the pills. Tr. p. 670. Both she and Cindy Baughman purchased pills together for the Defendant on one occasion. Tr. p. 670. After purchasing the pills, Devine gave the pills to Cindy who put them together in one bag and gave them to the Defendant. Tr. p. 673.

Michelle Schindler testified she assisted in the manufacturing of methamphetamine with the Defendant by purchasing pseudoephedrine pills. Tr. pp. 698-99. She purchased the pills at Nilles Pharmacy and identified the meth watch logs in State's Exhibit 26 as the paperwork she filled out when she purchased the pills. Tr. p. 700, 702. She never paid for methamphetamine but would get it in exchange for pills. Tr. p. 706.

Deputy Doug Muske testified that he assisted with a search at a farmstead in rural Wells County near Cathay. Tr. p. 714. Found during that search were empty bottles of pseudoephedrine from the Nilles Pharmacy. Tr. p. 726. Remnants of the methamphetamine manufacturing process were found at the farm. Tr. p. 734.

David Speldrich testified he purchased pseudoephedrine pills at Nilles Pharmacy for the Defendant for the purpose of manufacturing methamphetamine. Tr. p. 795-96. Speldrich identified the meth watch logs in State's Exhibit 68 as the forms he filled out when he purchased the pills. Tr. p. 797. He also purchased "fluid" and batteries for making methamphetamine. Tr. p. 802. He purchased them at the Carrington hardware store. Tr. p. 803. Speldrich would get meth in return for supplying pills or other items used to manufacture meth. Tr. p. 807-08. Speldrich would receive half a gram or less of methamphetamine in exchange for the pills. Tr. p. 815. Speldrich had a verbal agreement with the Defendant that Speldrich would get meth in exchange for the pills. Tr. pp. 836-37.

Deputy Troy Kelly testified that the anhydrous ammonia method of manufacturing methamphetamine includes the use of pseudoephedrine or ephedrine, anhydrous ammonia, and either lithium or sodium metal. Tr. p. 851. Deputy Kelly assisted in a search of the Defendant's farmstead near Cathay. Tr. p. 854. Remnants of a meth lab were found during a search of the farmstead, including empty blister packs, a box of Suphedrine, lithium battery parts, and empty package of lithium batteries. Tr. p. 872. There was also the presence of ammonia at the farmstead. Tr. p. 859. The Suphedrine contained pseudoephedrine. Tr. p. 873.

Malissa Lundemo testified that she purchased pseudoephedrine pills on one occasion for her brother, the Defendant, to use to manufacture methamphetamine. Tr. p. 914. The pills were purchased from Nilles Pharmacy. Tr. p. 915. She also purchased lithium batteries for the Defendant to use to manufacture methamphetamine. Tr. p. 917-18. Cindy Baughman told Lundemo that the Defendant was manufacturing meth. Tr. p. 918. Lundemo identified the meth watch logs in State's Exhibit 94 as the paperwork she filled out when she purchased the pseudoephedrine. Tr. p. 921.

Kelly Stafford testified he purchased pseudoephedrine pills to give to the Defendant in exchange for meth. Tr. p. 943. Stafford heard about the arrangement through Dennis Duda. Tr. p. 944. Stafford purchased the pills in Fessenden at the Nilles Pharmacy. Tr. p. 945. Stafford identified State's Exhibit 95, meth watch logs from Nilles Pharmacy, as the paperwork he filled out when he purchased the pseudoephedrine. Tr. p. 945-46. Kyle Dockter

accompanied Stafford on one (1) or two (2) occasions to the Nilles Pharmacy and both men purchased pseudoephedrine. Tr. p. 946-47. Stafford did not know why Dockter purchased the pseudoephedrine. Tr. p. 947. Stafford understood that if he provided the Defendant with pills, the Defendant would give him meth. Tr. p. 949. Stafford had a verbal agreement with the Defendant to exchange the pills for meth. Tr. p. 952.

Kyle Dockter testified he received meth from the Defendant in exchange for pseudoephedrine pills. Tr. p. 990-91. Dockter purchased the pills for the making of meth. Tr. p. 991. Dockter purchased the pseudoephedrine at the pharmacy in Fessenden. Tr. p. 992. Dockter went to the pharmacy with Kelly Stafford and both men bought pills. Tr. p. 995. Dockter would receive half a gram of meth in exchange for a couple boxes of pills. Tr. p. 995-96. Dockter identified the meth watch logs in State's Exhibit 96 as the paperwork he filled out when purchasing the pseudoephedrine. Tr. p. 996.

Special Agent Craig Zachmeier testified how methamphetamine can be made from pseudoephedrine, solvents, lithium, anhydrous ammonia, and an acid. Tr. pp. 1032-35.

Gary Schuldheisz testified that he provided pseudoephedrine pills to the Defendant "a couple times" because the Defendant asked for them. Tr. pp. 1158-59. Schuldheisz received meth in exchange for the pills. Tr. p. 1160. Schuldheisz identified the meth watch logs in State's Exhibit 132 as the paperwork he filled out when he purchased Sudafed from the Nilles

Pharmacy. Tr. p. 1161. Schuldheisz understood the pills he was giving to the Defendant were being used to make meth. Tr. p. 1162. Schuldheisz was present at the farm near Cathay when the Defendant manufactured meth. Tr. p. 1163. Schuldheisz could smell anhydrous. Tr. p. 1164.

Ralph Grager testified he had assisted the Defendant in the manufacture of methamphetamine by cutting the lithium batteries to remove the lithium strip. Tr. p. 1182-83. He stated lithium strips helps in changing the pills into meth. Tr. p. 1183. He identified the meth watch logs in State's Exhibit 11 as the paperwork he filled out when he purchased pseudoephedrine at Nilles Pharmacy. Tr. pp. 1204-06. He would provide the pills to the Defendant who, in turn, would give Ralph methamphetamine. Tr. p. 1206.

Charlene Schweitzer, forensic scientist with the State Crime Lab, testified. Tr. p. 1216. Schweitzer tested several items of evidence belonging to the Defendant. Tr. p. 1226-27. Those items included State's Exhibits 16, a plastic tube; 18, another plastic tube; 56, a broken glass pipe; 60, a coffee filter; and 50, an off-white powder with a coffee filter. Tr. pp. 1227-28. The results of the testing were admitted as the certified copy of a lab report, State's Exhibit 125. Tr. p. 1229. State's Exhibits 56, the broken glass pipe, and 60, a coffee filter, contained methamphetamine, CMP, and ephedrine. Tr. p. 1230. State's Exhibit 50, an off-white powder with a coffee filter, tested positive for methamphetamine and ephedrine. Id. The test results indicated that the methamphetamine was made using the lithium ammonia reduction method. Tr. p. 1226.

Dennis Duda testified that he would manufacture methamphetamine alongside the Defendant at the Defendant's farm in Cathay and at Duda's parents' farm near Barlow. Tr. pp. 1305-06. Duda stated that they would manufacture methamphetamine separately but share the finished product with each other. Tr. pp. 1309-10, 1312. The Defendant would allow Duda to manufacture methamphetamine at the Defendant's farm in Cathay and would get methamphetamine in return.

Amanda Ripplinger testified that she bought pills at Nilles Drug in Fessenden and gave them to Linda Burgard or Jerome Loewen and would receive meth in return. Tr. p. 1348-49. She identified the meth watch logs in State's Exhibit 120, indicating she purchased pseudoephedrine from Nilles Pharmacy as the paperwork she filled out when she bought the pills. Tr. pp. 1352-54. She testified she never gave pills directly to the Defendant and did not know who he was. Tr. p. 1356.

Jerome Loewen testified he purchased pills from Nilles Drug in Fessenden and would give the pills to Kirk Savage to manufacture meth. Tr. pp. 1362-63. Loewen explained that he purchased pills from Nilles Drug in Fessenden with the intent that they would be used to manufacture meth. Tr. p. 1363. He provided the Defendant with pills and xylene for manufacturing meth and he would receive meth back from the Defendant. Tr. p. 1364, 1369. Loewen identified the meth watch logs in State's Exhibit 137, indicating he purchased pseudoephedrine, as the paperwork he filled out when purchasing the pills. Tr. p. 1367. Loewen received pills from Amanda Ripplinger and

told her he was going to give the pills to another person to make meth. Tr. pp. 1368-69. Loewen observed Jay Grager and Darin Laber at the Defendant's farm when the Defendant was making meth. Tr. p. 1369.

Kenneth Unger testified he dropped Sudafed pills off at Larissa Hoaglund's apartment and received meth that he smoked at her apartment. Tr. p. 1377-78. On at least one (1) occasion, Unger met the Defendant when Unger dropped off the pills with Larissa Hoaglund and they all smoked meth together. Tr. p. 1378. Larissa asked him to get pills in exchange for money or meth. Tr. p. 1379. Larissa would drive Unger to Fessenden to purchase the pills. Tr. pp. 1379-1380. Unger identified the meth watch logs in State's Exhibit 138 as the paperwork he filled out when purchasing the pills. Tr. pp. 1381-82. Unger gave five (5) bottles of the six (6) he had purchased to Larissa. Tr. p. 1382. Unger received meth in return for purchasing the pills. Tr. p. 1384.

Jay Grager testified the Defendant asked him to purchase pseudoephedrine pills for him, but Jay never did purchase any for the Defendant. Tr. p. 1390. The Defendant wanted "everybody" to buy pseudoephedrine for him so he could make meth. Tr. pp. 1390-91. Jay observed the Defendant "gassing" the meth. Tr. p. 1391.

Darin Laber testified the Defendant told Darin the Defendant was making meth and Darin had seen the Defendant make meth. Tr. p. 1401. Darin assisted the Defendant in making meth at the Defendant's farm near Cathay by taking pseudoephedrine pills out of the packing and grinding them

up in a coffee grinder. Tr. p. 1402. Laber observed the Defendant mix the ground pills with Coleman camp fuel and then mix that with anhydrous. Tr. p. 1403. On one (1) occasion, Laber received pills from Bonnie Goldade and gave them to the Defendant. Tr. pp. 1406-07. Laber's purpose in buying the pills was to get meth in return. Tr. p. 1407.

Carl Nilles testified he is the owner of Nilles Drug in Fessenden. Tr. p. 1410. Nilles identified the meth watch logs as the paperwork a customer would have to fill out to purchase pseudoephedrine from his store. Tr. pp. 1415-16.

Brandon Grager testified he had seen the Defendant manufacture meth at the Defendant's farm near Cathay. Tr. pp. 1489-90. Brandon bought pills from Nilles pharmacy in Fessenden and gave the pills to the Defendant. Tr. p. 1491. Brandon received meth in return for the pills. Tr. p. 1492. Brandon identified the meth watch logs in State's Exhibit 139 as the paperwork he filled out when he purchased pills at Nilles Drug. Tr. p. 1493. Brandon observed Larissa Hoaglund, Gary Schuldheisz and Dennis Duda at the Defendant's farm while the Defendant was making meth. Tr. p. 1494. Brandon had a verbal agreement with the Defendant to buy pills, provide the pills to the Defendant to manufacture methamphetamine and then receive meth in return. Tr. p. 1511. Brandon observed the Defendant giving meth to Larissa Hoaglund, Gary Schuldheisz, and Shannon Laber. Tr. p. 1515.

Kirk Savage testified he manufactured meth. Tr. pp. 1632-33. He also purchased pills in Fessenden and gave some of them to the Defendant. Tr. p.

1637. Savage admitted to at least one time he provided forty-eight (48) pills directly to the Defendant. Tr. P. 1636. Savage said he purchased pills at least eighteen (18) times. Tr. p. 1637. He identified the meth watch logs in State's Exhibit 136, indicating he purchased pseudoephedrine, as the paperwork he filled out when buying the pills. Tr. pp. 1638-40. Savage was out at an abandoned farmstead with the Defendant and Savage assumed that the Defendant was manufacturing meth there as well. Tr. 1633-35.

Jason Wilde testified the Defendant asked Wilde to get pseudoephedrine pills at the pharmacy in Fessenden. Tr. p. 1702. The Defendant gave Wilde the money to buy the pills. Tr. p. 1704. Wilde purchased pseudoephedrine pills for the Defendant about twenty (20) times. Tr. p. 1705. Kenneth Unger accompanied Wilde to Nilles Drug "a couple of times." Tr. p. 1707. Wilde identified the meth watch logs in State's Exhibit 156 as the paperwork he filled out when he purchased pills at Nilles Drug. Tr. pp. 1705-06. Wilde found out later that the pills were being used to make meth. Tr. p. 1707-08. Wilde went with the Defendant to an abandoned farmstead near Cathay to assist in making meth by acting as a lookout. Tr. p. 1708. Wilde also assisted by cleaning up and mixing acid with tin foil. Tr. p. 1709-10. Wilde was provided with meth in exchange for his assistance in making the meth. Tr. p. 1710. Wilde also brought other supplies, including coffee filters, anhydrous ammonia, and xylene to the abandoned farmstead to be used to make meth. Tr. pp. 1711-12.

Larissa Hoaglund testified that she had observed Duda manufacturing methamphetamine at the Defendant's farm near Cathay. Tr. p. 1770. She observed Duda doing "things with the pills, and the gassing and the stuff like that." Tr. pp. 1770-71.

The Defendant tries to argue that David Speldrich is an accomplice because he is a co-conspirator. Appellant Brief p. 15. This Court has explained that the term accomplice is not synonymous with co-conspirator, and there is no rule requiring corroboration of a co-conspirator's testimony. State v. Baumgartner, 2001 ND at ¶ 8 (citing State v. Lind, 322 N.W.2d 826, 842 n. 6 (ND 1982)). Further, David Speldrich was not an accomplice in the simple assault, but rather a victim of the simple assault. David Speldrich was not an accomplice to the Defendant in the child endangerment charge.

The Defendant also argues that the State did not have lab tests to prove the substance involved in the conspiracy was meth. A conspiracy does not require a completed crime, just the agreement and an overt act. N.D.C.C. § 12.1-06-04(1) and State v. Rambousek, 479 N.W.2d 832 (N.D.1992) (affirming a conviction for conspiracy to commit murder where no murder occurred and the co-conspirators were actually attempting to prevent the murder). In order to support a conviction for conspiracy to manufacture methamphetamine, the State was not required to prove that the Defendant actually made meth. The State was required to prove that the Defendant entered into an agreement with the co-conspirators to manufacture meth and that one or more of them performed some overt act to effect an objective of

that conspiracy. In this case, the agreement was proven and the overt act was the acquiring of the ingredients and/or supplies needed to make meth or the assistance provided by a co-conspirator in the manufacturing process. Even if the Defendant had not actually produced methamphetamine, the agreement and the overt acts were present. Therefore, the verdicts were proper.

For each of the charges, there are several witnesses who confirm the testimony of other witnesses. See State v. Birk, 484 N.W.2d 834, 837 (N.D.1982) (providing that when apparently unassociated persons of unknown reliability all report the same fact, there is an increased probability that the fact is true). Various co-conspirators admitted to using meth, and witnessed various other co-conspirators using meth, and various of the co-conspirators gave very detailed descriptions of the lithium ammonia reduction method of manufacturing meth. See State v. Holzer, 2003 ND 19 ¶ 14, 656 N.W.2d 686 (observing that an informant's level of specificity in describing the drug activity that was taking place at the residence made it more likely that the information provided was accurate). See also State v. Schmeets, 278 N.W.2d 401, 407 (N.D.1979) (providing that information from questionably credible witnesses may be considered reliable when supported by sufficient detail or verification of part of the information). Lab reports on items found at the scene of the Defendant's meth lab confirmed the presence of methamphetamine, ephedrine, and CMP, indicating a lithium ammonia reduction method was used. See State v. Birk, 484 N.W.2d at 837 (providing that if law enforcement verify part of the information given, it lends

credibility to the other information given by the informant). Various law enforcement officers testified that pseudoephedrine, lithium, and anhydrous are all ingredients used in the lithium ammonia reduction method. The co-conspirators who were present when the Defendant made meth testified consistently as to the method the Defendant used to make meth, which was by the lithium ammonia reduction method as described by law enforcement officers. The ingredients and supplies the co-conspirators testified to providing the Defendant to make meth is consistent with the ingredients and supplies needed for the lithium ammonia reduction method.

Although the Defendant did not specifically argue that there was insufficient evidence relating to the possession of meth, possession of meth drug paraphernalia, and the manufacturing of methamphetamine, generally, there was substantial evidence of the possession of meth, meth paraphernalia and at least the remnants of a lithium ammonia reduction method methamphetamine lab at the Haedt farm near Cathay, Wells County, where Troy Lura saw the Defendant on July 14, 2009, and Kirk Savage and Larissa Hoaglund confirmed was a place the Defendant manufactured meth.

The other possession of meth charges relate to the Defendant being in possession of meth and meth paraphernalia at 228 Second Street, Cathay, Wells County, ND, and the meth pipe, State's Exhibit 56, and photo in State's Exhibit 57, provide substantial evidence of the Defendant being in possession of meth, and meth paraphernalia. The meth pipe was in the Defendant's red Ford Pickup truck that Deputy Mike Renton saw the Defendant next to on

July 15, 2009, prior to the search on July 15, 2009. Further, Michael Speldrich identified the meth pipe as consistent with the pipe that he used to smoke meth with the Defendant. Thus, there was substantial evidence on all of those charges also.

The other additional charge relates to the terrorizing of Cindy Baughman. The Defendant did not specifically argue that there was insufficient evidence on this charge, but generally, Cindy Baughman testified that the Defendant put a gun in her mouth, and said to her “Bitch I’m going to blow your fucking head off.” Tr. pp. 629-30. Cindy Baughman testified that it was a loaded gun that he put in her mouth. Tr. p. 616. Bonnie Goldade testified that she saw the Defendant point a gun at Cindy Baughman while they were arguing, and that the Defendant threatened to shoot Cindy Baughman if she didn’t leave, and then, the Defendant was pointing a gun at Cindy Baughman if she didn’t leave. Tr. pp. 503-05. Thus, there is also substantial evidence of the terrorizing with a firearm charge against the Defendant.

Viewing all of the evidence in a light most favorable to the verdicts, there was sufficient evidence presented for a jury to find the Defendant guilty on all charges.

IV. Whether the District Court Properly Denied the Defendant's Motion to Dismiss Case 09-K-178 (Conspiracy (Dennis Duda) to Manufacture Methamphetamine).

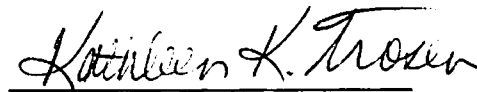
Defendant states that the case against him involving a conspiracy with Dennis Duda should have been dismissed by the District Court, arguing that the State did not prove that an agreement existed between the two. A conspiracy involves an agreement and an overt act and “[t]he agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.” N.D.C.C. § 12.1-06-04(1). The act of joining in the manufacturing with the Defendant at the Defendant’s farm, and sharing methamphetamine would be sufficient to allow the jury to find an implicit agreement and collaboration between Duda and the Defendant. See State v. Cain, 2011 ND 213, ¶11, 806 N.W.2d 597 (finding that when the Defendant Cain provided a co-conspirator, Falcon, with a weapon that was used to beat a victim, and then, joined in the beating, that either act would have been sufficient for the defendant and coconspirator to have agreed to assault the victim). Other evidence relating to Duda includes that fact that Kelly Stafford testified he purchased pseudoephedrine pills to give to the Defendant in exchange for meth and he heard about the arrangement through Dennis Duda. Tr. pp. 943-44. Further, the State is not required to prove that both Dennis Duda and the Defendant believed that there was an agreement, a bilateral agreement, but rather just a unilateral agreement in which the defendant believed he was participating in an agreement, manifested in some overt act for the defendant to be guilty of conspiracy. State v. Rambousek, 479 N.W.2d

832 (ND 1992). As discussed above, there was sufficient evidence presented to send the case to the jury for deliberation. It is a matter for the jury to determine if the overt acts of the Defendant and the coconspirator constitute an agreement. Id. As such, the District Court properly denied the Defendant's motion to dismiss that case.

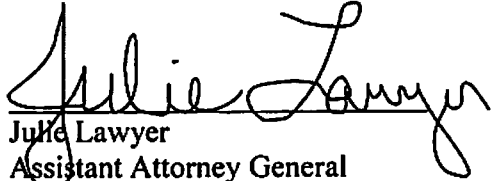
CONCLUSION

Based upon the foregoing, the State requests that the jury verdict and judgment of conviction be affirmed.

Dated this 24 day of September, 2012.



Kathleen K. Trosen
State's Attorney
Wells County
PO Box 325
Fessenden, ND 58438
Phone: (701) 547-3885
BAR ID No: 05365
Attorney for Plaintiff-Appellee



Julie Lawyer
Assistant Attorney General
US Attorney's Office
PO Box 699
Bismarck, ND 58502-0699
Phone: (701) 530-2420
BAR ID No: 05693
Attorney for Plaintiff-Appellee

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,	)	Supreme Ct. No. 20120026 - 20120049
	)	& 20120057
Plaintiff-Appellee,)	
	)	District Ct. No. 09-K-104, 09-K-123 to
-vs-	)	09-K-128, 09-K-165 to
	)	09-K-167, 09-K-178 to
Michael Tresenriter,	)	09-K-183, 09-K-186,
	)	09-K-198 to 09-K-201,
Defendant-Appellant,	)	09-K-361, 09-K-363,
.....	)	09-K-365, 09-K-367
STATE OF NORTH DAKOTA)	
	) ss	
COUNTY OF WELLS)	

I, Carla Widiger, being first duly sworn, depose and say that I am a
United States citizen over 21 years old, and on the 24 day of September,
2012, I deposited in a sealed envelope a true copy of the attached:

1. Brief of Plaintiff-Appellee; and
2. Appendix of Appellee
3. Affidavit of Mailing.

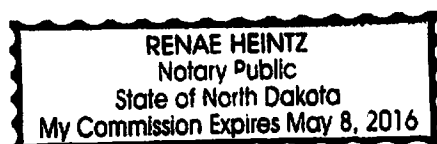
in the United States mail at Fessenden, North Dakota, postage prepaid,

addressed to: Thomas M. Jackson
Attorney at Law
418 E Rosser Ave, Ste 320
Bismarck, ND 58501

which address is the last known address of the addressee.

Carla Widiger
Carla Widiger

Subscribed and sworn to before me this 24 day of September, 2012.



Renae Heintz
NAME, Notary Public
Wells County, North Dakota