

## IN THE SUPREME COURT

## STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff and Appellee,	)	
	)	Supreme Court No. 20150004
vs.	)	
	)	District Court No. 27-2013-CR-00502
Benjamin Dean Suelzle,	)	
	)	
Defendant and Appellant.	)	

**BRIEF OF PLAINTIFF-APPELLEE**

## APPEAL FROM VERDICTS OF GUILTY

McKENZIE COUNTY DISTRICT COURT  
 NORTHWEST JUDICIAL DISTRICT  
 HONORABLE ROBIN A. SCHMIDT, PRESIDING

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## **JURISDICTIONAL STATEMENT**

[¶1] The State is satisfied with Suelzle's Jurisdictional Statement.

## **STATEMENT OF THE ISSUE**

[¶2] Whether the evidence presented at trial was insufficient to prove the nonexistence of the defense of self-defense.

## **STATEMENT OF THE CASE**

[¶3] The State is satisfied with Suelzle's Statement of the Case.

## **STATEMENT OF THE FACTS**

[¶4] The State is satisfied with Suelzle's Statement of the Facts.

## **STATEMENT OF THE STANDARD OF REVIEW**

[¶5] The State is satisfied with Suelzle's Statement of the Standard of Review.

## ARGUMENT

[¶6] A jury found Suelzle guilty on all six counts charged. As the factfinder the jury had the opportunity to view and weigh all of the evidence presented at trial. This Court should not review or reweigh the evidence but view the evidence in a light most favorable to the prosecution and give the prosecution the benefit of all reasonable inferences to be drawn in its favor. State v. Zottnick, 2011 ND 84, ¶ 14, 796 N.W.2d 666. Suelzle has the burden on appeal to show the evidence does not support the verdicts even when the benefit of all reasonable inferences is given to the prosecution. Id. Proceeding in that manner in this case means this Court should find the evidence sufficient to sustain the verdicts and affirm.

[¶7] Suelzle contends that simply because he himself testified he acted in self-defense his conduct is thus excused, and therefore the jury could not have found him guilty. He does not argue the evidence at trial was lacking against him in any other regard. His contention amounts to saying that any time a defendant testifies to have acted in self-defense where the non-existence of a defense is an element of the offense, a jury cannot as a matter of law find a defendant guilty. If this misguided contention were true self-defense would be the trump card.

[¶8] Instead, the testimony of a defendant even about self-defense is subject to the same weight and credibility determinations by the factfinder as any witness. The jury had the opportunity during trial to view a video recording of the incident in question (Transcript on Appeal, September 30, 2014, 158:19 to 162:20),

listen to an audio recording of an interview with the victim, Shannon Miles (Transcript, 9/30/14, 148:4 to 150:25), and listen to an audio recording of an interview with Suelzle (Transcript, 9/30/14, 157:23 to 158:18). See also, Register of Actions, 27-2013-CR-00502, Doc ID## 113, 117-119. The jury also had the opportunity at trial to hear from Suelzle that he was already a convicted felon (Transcript on Appeal, October 1, 2014, 221:3 to 221:5) and that he did not want to return to prison (Transcript, 10/01/14, 222:20 to 222:24), and the jury could observe Suelzle's manner and demeanor on the witness stand. A jury may find a defendant guilty even if evidence exists that could lead to a verdict of not guilty. Zottnick, at ¶ 14. This Court must "assume the jury believed the evidence supporting the verdict and disbelieved any contrary evidence." State v. Sabo, 2007 ND 193, ¶ 18, 742 N.W.2d 812. The verdicts should stand as rendered.

[¶9] Even without the weight and credibility determinations apparent from the evidence, at least two inferences favorable to the prosecution must be drawn. The first inference favorable to the prosecution that must be drawn from the evidence is that Suelzle did not in fact, that is, in the eyes of the jury, believe his use of force was necessary. The second is that even if Suelzle did believe his use of force was necessary the jury did not find that belief reasonable. Drawing either of those inferences, even without other evidence to contradict Suelzle's testimony, the jury well might have found the State met its burden on lack of self-defense. Considering these inferences, the Court should not overturn the verdicts.

[¶10] Suelzle does not argue the district court improperly instructed the jury about the State's burden to prove he was not acting in self-defense. And there is no error in this regard, because the lower court properly instructed the jury regarding self-defense. See Register of Actions, 27-2013-CR-00502, Doc ID# 102, Closing Instructions to the Jury; See also, e.g., Transcript, 10/01/14, 267:19 to 267:21. Just as it did in State v. Greybull, 1998 ND 102, ¶ 26, 579 N.W.2d 161, where the sufficiency of evidence regarding self-defense was at issue, this Court should view the evidence in the light most favorable to the verdicts and conclude the jury reasonably found Suelzle had not acted in self-defense.

### CONCLUSION

[¶11] When determining the sufficiency of the evidence to support a guilty verdict this Court does not resolve conflicts in the evidence or reweigh the credibility of witnesses. Evidence in this record supports the six jury verdicts finding Suelzle guilty of various offenses. Suelzle has failed to carry his burden to demonstrate the evidence was insufficient. This Court should conclude there was sufficient evidence to support the convictions and affirm.

Dated this 17th day of November, 2015. Respectfully submitted,

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Defendant and Appellant.	)	

I hereby certify I made service of the foregoing **Brief of Plaintiff-Appellee**; and **Certificate of Service** upon Lee M. Grossman, Attorney for Defendant-Appellant, by emailing a true and correct copy of the same to [efile@myhrelaw.com](mailto:efile@myhrelaw.com), this 17th day of November, 2015.

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