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IN THE SUPREME COURT

2

STATE OF NORTH DAKOTA

NOV 21 2003

STATE OF NORTH DAKOTA

3	State of North Dakota,)	
4		)	Supreme Court Nos. 20030185
5	Plaintiff/Appellee,	)	20030186, 20030187, 20030188
6)	
7	-vs-)	
8		)	Wells County Nos. 02-K-100
9	Robin Lura,	)	02-K-131, 02-K-134, 02-K-162
10)	
11	Defendant/Appellant,)	_____

12	State of North Dakota,)	
13		)	Supreme Court Nos. 20030189
14	Plaintiff/Appellee,	)	20030190, 20030191
15)	
16	-vs-)	
17		)	Wells County Nos. 02-K-103
18	Darin Laber,	)	02-K-122, 02-K-123
19)	
20	Defendant/Appellant,)	_____

21	State of North Dakota,)	
22		)	Supreme Court Nos. 20030192
23	Plaintiff/Appellee,	)	20030193, 20030194
24)	
25	-vs-)	
26)	Wells County Nos. 02-K-098
27	Veronica Gascoine,)	02-K-126, 02-K-127
28)	
29	Defendant/Appellant.)	_____

30

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BRIEF OF APPELLANTS

32

1 APPEAL FROM CRIMINAL JUDGMENTS AND
2 ORDERS DEFERRING IMPOSITION OF SENTENCE
3 WELLS COUNTY DISTRICT COURT
4 FESSENDEN, NORTH DAKOTA
5 HONORABLE JAMES M. BEKKEN, PRESIDING
6 DATED JUNE 18, 2003

7 William A. Mackenzie
8 Attorney ID #03324
9 MACKENZIE & REISNOUR
10 Attorneys for Appellants
11 404 Second Avenue Southeast
12 Post Office Box 1836
13 Jamestown, ND 58402-1836

14 Kathleen Trosen
15 Attorney ID #05365
16 State's Attorney
17 Wells County
18 Attorney for Appellee
19 P O Box 325
20 Fessenden, ND 58438

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STATEMENT OF THE ISSUES

- 1. The trial court's denial of the requested "accomplice" and "testimony of accomplice must be corroborated" jury instructions was clearly erroneous and denied Gascoine, Laber and Lura a fair trial.
- 2. A review of the entire record reveals that insubstantial evidence exists to sustain the verdicts of guilty.

STATEMENT OF THE CASE

(Nature of the Case)

This is an appeal from the Wells County District Court Criminal Judgments (App P51-52, 55-57, 58-60) and Orders Deferring Imposition of Sentence (App P53-54, 61-62), all dated June 18, 2003.

On June 6, 2002, in Wells County, Veronica Gascoine, Darin Laber and Robin Lura were arrested for and charged with the following offenses being appealed:

Gascoine: File No. 02-K-098 - possession of a controlled substance in violation of N.D.C.C. § 19-03.1-23, a Class C felony. (App P29)

File No. 02-K-126 - unlawful possession of drug paraphernalia in violation of N.D.C.C. § 19-03.4-03, a Class C felony. (App P31)

File No. 02-K-127 - manufacture of a controlled substance in violation of N.D.C.C. § 19-03.1-23(1), a Class A felony. (App P33)

Laber: File No. 02-K-122 - manufacture of a controlled substance in violation of N.D.C.C. § 19-03.1-23(1), a Class A felony. (App P35)

1 File No. 02-K-123 - unlawful possession of drug paraphernalia in
2 violation of N.D.C.C. § 19-03.4-03, a Class C felony. (App P37)

3 File No. 02-K-103 - possession of a controlled substance in violation
4 of N.D.C.C. § 19-03.1-23, a Class C felony. (App P39)

5 Lura: File No. 02-K-100 - possession of a controlled substance in violation
6 of N.D.C.C. § 19-03.1-23, a Class C felony. (App P41)

7 File No. 02-K-131 - unlawful possession of drug paraphernalia in
8 violation of N.D.C.C. § 19-03.4-03, a Class C felony. (App P43)

9 File No. 02-K-134 - manufacture of a controlled substance in
10 violation of N.D.C.C. § 19-03.1-23(1), a Class A felony. (App P45)

11 File No. 02-K-162 - possession of a controlled substance in violation
12 of N.D.C.C. § 19-03.1-23, a Class C felony. (App P47)

13 One attorney was appointed to represent Gascoine, Laber and Lura because
14 it was predetermined that there was not a conflict of interest. A preliminary
15 hearing was scheduled and held on August 21, 2002. The District Court found
16 probable cause, and an arraignment was held on the same day. Not guilty pleas
17 were entered on all charges.

18 An Order for Consolidation of Defendants and Offenses for Jury Trial was
19 signed on August 28, 2002. (App P49-50)

20 A twelve-person jury trial commenced on the morning of Tuesday, January
21 28, 2003, and concluded on Friday, January 31, 2003 with verdicts of guilty on all
22 charges.

1 Pre-sentence investigative reports and evaluations were ordered and
2 subsequently completed. Gascoine, Laber and Lura re-appeared on June 12, 2003
3 for sentencing and subsequently filed a consolidated Notice of Appeal dated June
4 18, 2003. (App P63)

5 (Relevant Facts)

6 On June 6, 2002, a probationary search was conducted at the residence of
7 Amy Moser. Living with Amy Moser was Denver Evans. An up and running
8 methamphetamine lab was discovered in the Moser/Evans residence. During the
9 investigation Evans told investigating officer Edinger that he wanted to do
10 whatever it took to get himself out of the trouble he was in. (App P68) As a
11 state's witness at trial, Evans confirmed making that statement to Edinger under
12 cross examination. (Transcript, Vol. I, P73, L22-25)

13 Evans talked about an individual by the name of John Gibson. Gibson is
14 well known in at least three counties for his involvement with methamphetamine.
15 Evans told law enforcement officers that Gibson taught him how to cook meth and
16 further informed him that Gibson had a traveling lab in the trunk of his car.
17 Officers started searching for Gibson. When they could not located Gibson, Evans
18 informed law enforcement officers of a meth lab at the Wade Lura residence, a
19 farmstead in rural Wells County. Actually, the farmstead is owned by Ronald and
20 Mary Schaefer but was leased to Wade Lura and his girlfriend, Monica Thommes,
21 for approximately ten years. Evans further informed law enforcement officers that
22 Gibson, Laber and Lura were cooking meth at the farmstead. (App P69)

1 Law enforcement officers secured permission to search from the Schaefers
2 and proceeded to the farmstead on June 6, 2002. When they arrived, they found
3 John Gibson, Gascoine, Laber, Lura and his juvenile son at the farmstead. They
4 were actively loading up pickups and trailers with personal property from the
5 residence.

6 Law enforcement officers were informed by Gascoine, Laber and Lura that
7 they were out there only for the purpose of loading up the personal property
8 belonging to Wade Lura and Monica Thommes because they received an eviction
9 notice from the Schaefers and could not do it themselves because they were both
10 incarcerated. Wade Lura left to serve time for his indiscretions in April, 2002.
11 Monica Thommes left to do her time on June 3, 2002. There was no one left but
12 family members and friends to complete the move.

13 Gascoine, Laber and Lura denied having any knowledge or involvement in
14 any meth lab that existed on the farmstead. Evidence of a meth lab was
15 discovered. Two one-gallon Mason jars each containing a yellow liquid substance
16 were located in the basement. They were analyzed and later determined to contain
17 trace amounts of methamphetamine. (App P66) Also discovered in the hayloft of
18 the barn was a propane tank that appeared to have previously contained anhydrous
19 ammonia. There was also a solvent that is used to process ephedrine to
20 methamphetamine discovered in the hayloft of the barn. Further, also discovered
21 on the farmstead were coffee filters containing residue of ephedrine, lithium

1 batteries, and a number of other items that could or could not be directly related
2 to the manufacture of methamphetamine.

3 Apparently, Gibson was charged for the traveling lab that was discovered
4 in the trunk of his vehicle. (App P70) Gibson was never charged for any criminal
5 activity involving that which was discovered on the farmstead. Gibson was not
6 called nor did he appear as a witness on behalf of the State.

7 Evans was brought in as the State's ace witness and his testimony surprised
8 everyone. Evans testified he was an active participant in the manufacturing process
9 with Gascoine, Laber and Lura on the farmstead. This was information that was
10 never given to law enforcement prior to trial, and it was as if it was pulled out of
11 thin air.

12 Evans placed Gascoine, Laber and Lura at the farmstead in mid-May, and
13 that is apparently when he says the manufacturing occurred. The State produced
14 no other witnesses at trial to confirm the testimony of Evans. Gascoine, Laber and
15 Lura each testified that they never manufactured methamphetamine at the farmstead
16 and also called two additional witnesses in support of their denials.

17 Gascoine, Laber and Lura requested that the Court give the "accomplice"
18 instruction and also the "testimony of accomplice must be corroborated" instruction
19 set forth in the North Dakota Pattern Jury Instructions. (App P64-65) The Court
20 refused to give the requested instructions.

1 The jury believed the uncorroborated testimony of Evans, disbelieved the
2 testimony of Gascoine, Laber, Lura and their two witnesses and rendered verdicts
3 of guilty on all charges.

4 **ARGUMENTS AND AUTHORITIES**

5 1. The trial court's denial of the requested "accomplice" and
6 "testimony of accomplice must be corroborated" jury instructions was clearly
7 erroneous and denied Gascoine, Laber and Lura a fair trial.

8 Two requested instructions are set forth in the Appendix. (App P64, 65)
9 The statutory definition of accomplices is set forth in N.D.C.C. § 12.1-03-01. That
10 statute reads as follows:

11 **"12.1-03-01. Accomplices.**

- 12 1. A person may be convicted of an offense based upon the conduct of
13 another person when:
14 a. Acting with the kind of culpability required for the offense, he
15 causes the other to engage in such conduct;
16 b. With intent that an offense be committed, he commands,
17 induces, procures, or aids the other to commit it, or, having a
18 statutory duty to prevent its commission, he fails to make
19 proper effort to do so; or
20 c. He is a coconspirator and his association with the offense
21 meets the requirements of either of the other subdivisions of
22 this subsection.

23 A person is not liable under this subsection for the conduct of
24 another person when he is either expressly or by implication made
25 not accountable for such conduct by the statute defining the offense
26 or related provisions because he is a victim of the offense or
27 otherwise.

- 28 2. Unless otherwise provided, in a prosecution in which the liability of
29 the defendant is based upon the conduct of another person, it is no
30 defense that:

- 1 a. The defendant does not belong to the class of persons who,
2 because of their official status or other capacity or
3 characteristic, are by definition of the offense the only persons
4 capable of directly committing it; or
5 b. The person for whose conduct the defendant is being held
6 liable has been acquitted, has not been prosecuted or
7 convicted, has been convicted of a different offense, is
8 immune from prosecution, or is otherwise not subject to
9 justice."

10 N.D.C.C. § 29-21-14 discusses the necessity of corroboration. That statute
11 reads as follows:

12 **"29-21-14. Testimony of accomplice -- Corroboration required.**
13 A conviction cannot be had upon the testimony of an accomplice
14 unless he is corroborated by such other evidence as tends to connect
15 the defendant with the commission of the offense, and the
16 corroboration is not sufficient if it merely shows the commission of
17 the offense, or the circumstances thereof."

18 Evans was never charged as a defendant despite the fact that he testified
19 under oath that he was an active participant in manufacturing methamphetamine.
20 Despite not being charged, his testimony put him right in the middle of this case
21 as either an uncharged co-defendant or as an accomplice. At a minimum, if his
22 testimony is to be believed, Evans aided others in the commission of the offense
23 of manufacturing methamphetamine. According to the case of State v. Pacheco,
24 506 NW2d 408, 409 (ND 1993), § 29-21-14 of the N.D.C.C. requires corroboration
25 of testimony when a witness could be criminally responsible as an accomplice
26 under section 1 of 12.1-03-01. (Emphasis added.)

1 Evans' testimony requires corroboration. There is nothing in the record to
2 corroborate his testimony other than the fact that Gascoine, Laber and Lura were
3 found at the farmstead on June 6, 2002. Merely being present at the scene of a
4 possible crime should not, standing alone, be sufficient evidence to convict. Nor
5 should merely being present at the scene of a possible crime be corroboration for
6 the testimony of an accomplice. The fact that Gascoine, Laber and Lura were on
7 the farmstead on June 6th does not corroborate Evan's testimony that the four of
8 them were together at the farmstead in mid May, 2002 cooking meth.

9 The trial court's decision not to give the requested instructions was clearly
10 erroneous. In not requiring corroboration of Evans' testimony, the trial court
11 denied Gascoine, Laber and Lura a fair trial. If the instructions were given, they
12 could have at least argued that the jury cannot convict on the testimony of Evans
13 alone. There had to be some other evidence to give Evans' testimony credibility.
14 If the jury was instructed as to the need for corroboration over and above merely
15 being present on June 6, 2002, there would not have been verdicts of guilty.

16 Defendants charged with methamphetamine in rural North Dakota are facing
17 an uphill battle when it comes to receiving a fair trial. The presumption of
18 innocence just seems to disappear when it comes to rural North Dakota and
19 methamphetamine. The collective thinking is that where there is smoke there is
20 fire. There is guilt until innocence is proved. Because of that uphill battle,
21 Gascoine, Laber and Lura were at least entitled to an instruction informing the jury
22 that uncorroborated testimony of an accomplice is not enough to convict.

1 2. **A review of the entire record reveals that insubstantial evidence**
2 **exists to sustain the verdicts of guilty.**

3 The State called Ronald Schaefer and Mary Schaefer as their first two
4 witnesses. The Schaefers merely verified that they owned a farmstead in Wells
5 County, that they leased the farmstead to Wade Lura for approximately ten years,
6 and that Wade Lura got into some difficulty with the law and the Schaefers
7 decided to serve him with a notice of eviction. That was done a little over a month
8 before June 6, 2002. The Schaefers verified that they were aware that Monica
9 Thommes lived there with Wade Lura. They were also aware that Monica
10 Thommes got into difficulty with the law and would not be living at the farmstead
11 after the end of May, 2002. They had no knowledge of any other individuals
12 actually living at the farmstead.

13 The State called Denver Evans as their third and ace witness. Evans
14 testified that approximately one and a half to two weeks before June 6, 2002, he
15 was with Gascoine, Laber and Lura and actively manufactured methamphetamine.
16 He further testified that he was out at the farmstead on June 5, 2002 and offered
17 his assistance in moving personal property out of the residence. He specifically
18 talked to Robin Lura regarding his offer. Apparently, no additional moving was
19 going to be done that day, and Mr. Evans went on his way. Evans was aware that
20 the move was going on and that Gascoine, Laber and Lura were helping out with
21 the move.

1 Evans confirmed what he told law enforcement officer Edinger. He would
2 do whatever it would take to get himself out of the trouble he was in. Evans was
3 never charged with manufacturing meth at the farmstead. He was charged with the
4 meth lab found in his girlfriend's residence. At the time he testified, he had not
5 entered a plea of guilty to that charge. He was shown favoritism by the State of
6 North Dakota because he was providing testimony against Gascoine, Laber and
7 Lura.

8 Special Agent Mark McNamee was the State's fourth witness. He merely
9 testified that he took video and photos of the farmstead, including the hayloft.

10 Special Agent Craig Zachmeier was the State's next witness. He verified
11 that he had knowledge concerning methamphetamine and methamphetamine labs.
12 He testified as to his involvement with the arrests and search of the farmstead on
13 June 6, 2002. He testified that Gascoine and Laber each told him that they spent
14 the nights of June 4th and June 5th at the farmstead. He testified that he asked
15 Gascoine for consent to search her car. The consent was given and nothing was
16 found. He testified that prints were taken off the Mason jars located in the
17 basement containing the yellow solution with trace methamphetamine. He testified
18 that no comparison of the prints could be made to Gascoine, Laber or Lura. He
19 also compared the prints to Wade Lura, Monica Thommes and John Gibson. No
20 comparisons were made. He did not attempt to compare the prints to Denver
21 Evans.

1 Zachmeier testified that prior to trial he was never told by Evans that Evans
2 was actually manufacturing methamphetamine. He testified that Veronica Gascoine
3 gave consent to search her mother's residence in a small town outside of Wells
4 County. No search was ever done. Zachmeier testified that Laber gave him
5 consent to search his residence in New Rockford. No search was ever done.
6 Zachmeier testified that photos taken of items to support his theory that Gascoine
7 stayed overnight on June 4th and June 5th were lost. Zachmeier testified that in
8 searching the farmstead, he found no rubber gloves that were normally worn to
9 manufacture meth. He found no powder, no money, no recipe for the manufacture
10 of meth, no baggies, no list of purchasers, nothing to indicate there was a
11 commercial meth lab in existence.

12 Deputy Troy Kelly was the State's next witness. He provided nothing of
13 any significance other than a clean cut law enforcement officer to impress the jury.

14 Special Agent Steve Gilpin was the State's next witness. Gilpin testified
15 that the lab was there, and it seemed to be recent. He could not pinpoint when it
16 had been up and running. Gilpin further testified that no fingerprints were
17 attempted on the propane tank seized nor was there any attempt to fingerprint the
18 can of Coleman fluid that was seized. Gilpin testified that taped batteries that were
19 located in a black nylon bag seized from the house was very similar to the taping
20 on batteries found in Gibson's vehicle. Gibson had a traveling lab in the trunk of
21 his vehicle.

1 Law enforcement officer Edinger became ill and could not appear as a live
2 witness. The State and Defendant stipulated to his report going in as substantive
3 evidence. (App P68-70) What is not in his report is the name of Veronica
4 Gascoine as being a participant in the meth lab. He mentioned Gibson, Laber and
5 Lura, but not Gascoine. Gascoine came into play when Evans testified at trial.

6 The State's next witness was Troy Goetz, a chemist for the North Dakota
7 State Lab. He analyzed the pen tube that was seized from Lura. (App P67) He
8 testified that there was no measurable weight of meth in the pen tube. Concerning
9 the pen tube, Lura was charged with possession of the pen tube, paraphernalia, a
10 felony, and possession of the meth within the pen tube, a felony. Lura concedes
11 that he was in possession of the pen tube. He conceded that it is paraphernalia and
12 that conviction is not being brought up on this appeal. Lura does believe that this
13 court should review the statutes concerning possession and then make a ruling that
14 the State must show a measurable weight of a substance before there can be a
15 conviction for possession. Goetz testified that he has never testified in any case
16 wherein a defendant is charged with possession of a non-measurable weight of a
17 controlled substance. The State should be required to show (1) that it is a
18 controlled substance by laboratory analysis, and (2) that it has a measurable weight.
19 Lura concedes that case law is pretty uniform in holding that it does not have to
20 be usable amount of controlled substance in possession to obtain and sustain a
21 conviction.

1 State's next witness was chemist Jennifer Penner of the North Dakota State
2 Lab. Penner tested two vials of a yellow liquid substance taken from two one-
3 gallon Mason jars discovered in the basement of the farmstead. (App P66) Penner
4 basically said these were trace amounts. The trace amounts are immeasurable.
5 They can't be quantified. It doesn't take a lot to determine the existence of a
6 controlled substance within a liquid. Penner testified that even if she analyzed the
7 entire volume of liquid in both Mason jars, there still would not be sufficient
8 amounts to go beyond a trace level of methamphetamine. The Mason jars
9 contained the tail end or discharge of the manufacturing process. All of the usable
10 meth was long gone. An individual could not get high on that which was in the
11 yellow liquid. If anything, it would be harmful to one's health.

12 Again, Gascoine, Laber and Lura are each charged with manufacturing and
13 also possession of methamphetamine. The methamphetamine they are charged with
14 is the trace meth that was located within the Mason jars. Gascoine, Laber and Lura
15 argued that they should not be convicted of possession of a controlled substance
16 that cannot be measured. It cannot be quantified. It probably doesn't take more
17 than a molecule to let a chemist say that it is a controlled substance. However, a
18 defendant should not be required to defend a possession charge when there is really
19 nothing there that can be measured. Again, case law seems pretty clear that you
20 can be in possession of a controlled substance even though the amount is not
21 usable. However, it should be at least measurable.

1 The last witness called by the State was Deputy Sheriff Damien Hoyt, who
2 really had nothing to offer. The State recalled Zachmeier, and he again confirmed
3 that Evans never told him that he was actually manufacturing methamphetamine
4 prior to Zachmeier hearing his testimony at trial. The State then rested.

5 At the close of the State's case Gascoine, Laber and Lura made an oral
6 motion for judgment of acquittal pursuant to Rule 29 of the North Dakota Rules
7 of Criminal Procedure. (Transcript, Vol. III, P-134) The trial court denied the
8 Rule 29 motion as to all defendants and all charges. (Transcript, Vol. III, P135)

9 Laber took the stand and testified on his own behalf. He conceded that he
10 has used in the past, but denied any involvement with any meth lab on the
11 farmstead. He denied that he stayed overnight at the farmstead on either June 4
12 or June 5, 2002. He was merely there helping out with the move. Laber testified
13 that he has used methamphetamine on a limited basis with his girlfriend, Gascoine,
14 but has never manufactured. Laber specifically denied ever being with Evans and
15 manufacturing meth in the basement of that farmstead during the month of May,
16 2002.

17 Lura took the stand and testified on his own behalf. Lura also denied any
18 involvement or knowledge of the meth lab. Wade Lura, his brother, lived at the
19 farmstead for ten years and was then sentenced to a term of imprisonment. He felt
20 an obligation to his brother, Wade, and Wade's girlfriend, Monica Thommes, to
21 help them out in moving their personal effects. It was a long process because there
22 was an accumulation of personal property over ten years. Lura denied any

1 knowledge of the meth lab. Lura denied ever manufacturing methamphetamine.
2 Lura denied being with Evans in the basement of the farmstead in mid May
3 actually manufacturing meth.

4 Gascoine took the stand and testified on her own behalf. Gascoine denied
5 ever staying overnight at the farmstead. Gascoine testified that Zachmeier was
6 mistaken when he says that she told him she did. Gascoine denied ever cooking
7 methamphetamine. Gascoine conceded using meth with her boyfriend Laber on a
8 limited basis in the past. Gascoine testified she had no knowledge of any meth lab
9 on the premises of the farmstead. She was merely out there helping with the
10 move.

11 The defense's fourth witness was Veronica Gascoine, mother of Defendant
12 Gascoine. She testified that her daughter was living with her in Glenfield, North
13 Dakota. She further testified that she had recently returned from Rochester,
14 Minnesota, where she was undergoing treatments for an illness. She specifically
15 said that she knows her daughter was at her residence in Glenfield on June 4 and
16 June 5, 2002. She could not have been overnight at two places at the same time.

17 Ashley Burtness was called as a defendant's witness. She is the niece of
18 Monica Thommes. She has lived with Monica Thommes and Wade Lura from
19 June, 1996 to June 4, 2002. During those six years she lived on the farmstead.
20 She was aware that her uncle Wade got into difficulty and was going to serve time
21 in prison. She was at the farmstead when her uncle left for prison. She was also

1 aware that her aunt, Monica Thommes, got into difficulty with the law and was
2 going to be required to serve some time in prison. She was with her up until June
3 3, 2002, the date that she left for incarceration. Burtness specifically testified that
4 she was close to her aunt and wanted to spend as much time with her as possible
5 before her aunt left on June 3rd. She does not recall any time where she spent an
6 overnight elsewhere and further testified at no time was Evans ever at their
7 farmstead cooking meth in May, 2002, nor was Gascoine, Laber or Lura.

8 Defense rested, and the State called two additional rebuttal witnesses. The
9 State then re-rested, and the Rule 29 motion for judgment of acquittal was renewed
10 and denied. (Trial transcript, Vol. IV, P50)

11 According to State v. Allen, 237 NW2d 154 (ND 1975), overruled on other
12 grounds, State v. Himmerick, 499 NW2d 568 (ND 1993) by presenting evidence
13 after a motion for judgment of acquittal was denied at the close of the
14 prosecution's case in chief, a defendant permitted the Court to review the entire
15 record to determine whether sufficient evidence existed to sustain the verdict. See,
16 also, State v. Schaeffer, 450 NW2d 754 (ND 1990), overruled on other grounds,
17 State v. Himmerick, 499 NW2d 568 (ND 1993).

18 In the case of State v. Ebach, 1999 ND 5, ¶ 24, 589 NW2d 566, this court
19 held that it will only reverse a criminal conviction if, after reviewing the evidence
20 and all reasonable inferences in a light most favorable to the verdict, no rational
21 fact finder could have found the defendant guilty beyond a reasonable doubt.

1 Further, in the case of State v. Gagnon, 1999 ND 13, ¶ 23, 589 NW2d 560, this
2 Court held that in deciding whether sufficient evidence exists to support the verdict,
3 we do not resolve conflicts in evidence nor do we weigh the credibility of the
4 witnesses.

5 Gascoine, Laber and Lura argue that there was insufficient evidence to
6 sustain verdicts on all charges on appeal.

7 The trial court should have granted the Rule 29 motion renewed at the
8 conclusion of all evidence.

9 Rule 29 of the North Dakota Rules of Criminal Procedure reads in part,

10 "a. **Motion before submission to jury.** The court on motion of a
11 defendant or of its own motion shall order the entry of judgment of
12 acquittal of one or more offenses charged in the indictment,
13 information, or complaint after the evidence on either side is closed
14 if the evidence is insufficient to sustain a conviction of such offense
15 or offenses. If a defendant's motion for judgment of acquittal at the
16 close of the evidence offered by the prosecution is not granted, the
17 defendant may offer evidence without having reserved the right."

18 In State v. Kingsley, 383 NW2d 828 (ND 1986), this court held that in
19 deciding a motion for judgment of acquittal the trial court, upon reviewing the
20 evidence most favorable to the prosecution, must deny the motion if there is
21 substantial evidence upon which a reasonable mind could find guilt beyond a
22 reasonable doubt. (Emphasis added.) A review of the entire record on this appeal
23 can only lead to one conclusion. That conclusion is that there is not in existence
24 substantial evidence upon which a reasonable mind can find guilt beyond a
25 reasonable doubt. The jury was acting unreasonably in relying upon the

1 uncorroborated testimony of one State's witness who cut a deal for himself. The
2 State relied upon the fact that Gascoine, Laber and Lura were present on June 6,
3 2002 and that Evans said they manufactured at some unspecified time weeks before
4 June 6, 2002. There is nothing in the evidence to substantiate that testimony.
5 There is substantial evidence contradicting his testimony. The trial court should
6 have taken these cases away from the jury and granted the Rule 29 motion for
7 judgments of acquittal. In failing to do so the trial court committed reversible
8 error. The trial court abused its discretion in denying the motion.

9 **CONCLUSION**

10 Gascoine, Laber and Lura respectfully request that this Court reverse all
11 convictions and orders deferring imposition of sentence on either issue no. 1, issue
12 no. 2, or both. Further, Gascoine, Laber and Lura respectfully request that this
13 court define what the State has to show by way of evidence to charge out and
14 subsequently sustain a conviction for possession.

15 RESPECTFULLY SUBMITTED This 21st day of November, 2003.

16 **MACKENZIE & REISNOUR**
17 Attorneys for: Appellants

18 BY: William A Mackenzie
19 William A. Mackenzie 03324
20 A member of the firm
21 404 Second Avenue SE
22 Post Office Box 1836
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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)
)
Plaintiff/Appellee,) Supreme Court Nos. 20030185
) 20030186, 20030187, 20030188
)
-vs-)
)
Robin Lura,) Wells County Nos. 02-K-100
) 02-K-131, 02-K-134, 02-K-162
)
Defendant/Appellant,)

State of North Dakota,)
)
Plaintiff/Appellee,) Supreme Court Nos. 20030189
) 20030190, 20030191
)
-vs-)
)
Darin Laber,) Wells County Nos. 02-K-103
) 02-K-122, 02-K-123
)
Defendant/Appellant,)

State of North Dakota,)
)
Plaintiff/Appellee,) Supreme Court Nos. 20030192
) 20030193, 20030194
)
-vs-)
)
Veronica Gascoine,) Wells County Nos. 02-K-098
) 02-K-126, 02-K-127
)
Defendant/Appellant.)

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA
COUNTY OF STUTSMAN

Lela Dluzen, being first duly sworn, deposes and says that she is a citizen of the United States, over the age of twenty-one years, and not a party to the above entitled action:

That on the 21st day of November, 2003, this affiant deposited in the mailing department of the United States Post Office at Jamestown, North Dakota, an original and seven copies of the following document in the above captioned action:

BRIEF OF APPELLANT

That the above documents were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Penny Miller
Supreme Court Clerk
Judicial Wing, First Floor
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0530

That a copy of the above document was securely enclosed in an envelope with postage prepaid and addressed as follows:

Ms. Kathleen Trosen
State's Attorney
Wells County
Attorney for Appellee
P O Box 325
Fessenden, North Dakota 58438

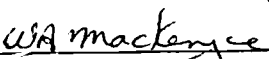
1 To the best of the affiant's knowledge, information, and belief, such
2 addresses as given above were the actual post office addresses of the parties
3 intended to be served.

4 That the above documents were duly mailed in accordance with the
5 provisions of the North Dakota Rules of Appellate Procedure.

6 DATED this 21st day of November, 2003.

7 
8 _____
Lela Dluzen

9 Subscribed and sworn to before
10 me on date above written.

11 
12 _____
13 W. A. Mackenzie, Notary Public
14 Stutsman County, North Dakota
My commission expires: 10-14-2006

15 (SEAL)