

20040093

**ORIGINAL**

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

JUL 29 2004

State of North Dakota, )  
 )  
 Plaintiff-Appellee, )  
 )  
 -vs- )  
 )  
 Orvin McKinley Igou, III, )  
 )  
 Defendant-Appellant. )  
 )  
 . . . . . )

STATE OF NORTH DAKOTA  
Supreme Court No.  
20040093  
District Court No.  
08-03-K-02242

---

**BRIEF OF PLAINTIFF-APPELLEE**

---

Appeal from the District Court Jury Trial and  
Verdict of December 19, 2003, and Criminal  
Judgment and Sentencing Dated March 30, 2004  
Burleigh County District Court  
Case No. 08-03-K-02242  
South Central Judicial District  
The Honorable Benny A. Graff, Presiding

---

Cynthia M. Feland  
Assistant, Burleigh County State's Attorney  
Courthouse, 514 East Thayer Avenue  
Bismarck, North Dakota 58501  
Phone No: (701)222-6672  
BAR ID. No: 04804  
Attorney for Plaintiff-Appellee

TABLE OF CONTENTS

	<u>Page No.</u>
Table of Cases . . . . .	i
Table of Statutes and Authorities . . .	ii
Statement of the Issues . . . . .	1
Statement of the Case . . . . .	2
Argument . . . . .	3
Conclusion . . . . .	6

AMENDED TABLE OF CASES

	<u>Page No.</u>
<u>City of Bismarck v. Towne</u> 1999 ND 49, 590 N.W.2d 893 . . . . .	3
<u>City of Jamestown v. Neumiller</u> 2000 ND 11, 604 N.W.2d 441 . . . . .	4
<u>State v. Burgard</u> 458 N.W.2d 274, 277 (N.D. 1990) . . . . .	4
<u>State v. Fasching</u> 461 N.W.2d 102, 102-103 (N.D. 1990). . . . .	4
<u>State v. Garcia</u> 1997 ND 60, 561 N.W.2d 599 . . . . .	4
<u>State v. Hatch</u> 346 N.W.2d 268, 277 (N.D. 1984) . . . . .	4
<u>State v. Haugen</u> 448 N.W.2d 191, 195 (N.D. 1989) . . . . .	4
<u>State v. Klose</u> 2003 ND 39, 657 N.W.2d 276 . . . . .	3,4
<u>State v. Knowels</u> 2003 ND 180, 671 N.W.2d 816 . . . . .	3
<u>State v. Kringstad</u> 353 N.W.2d 302, 306 (N.D. 1984) . . . . .	5
<u>State v. Lund</u> 424 N.W.2d 645 (N.D. 1988) . . . . .	4
<u>State v. Mathre</u> 2004 ND 149, 2004 WL 1632667 (N.D.) . . . . .	3
<u>State v. Pollack</u> 462 N.W.2d 119, 121 (N.D. 1990) . . . . .	4
<u>State v. Steen</u> 2000 ND 152, 615 N.W.2d 555, 561 . . . . .	3,4
<u>State v. Torres</u> 529 N.W.2d 853, 855 (N.D. 1995) . . . . .	4

TABLE OF STATUTES AND AUTHORITIES

	<u>Page No.</u>
<u>North Dakota Rules of Criminal Procedure</u>	
Rule 29 (a) . . . . .	3
Rule 29, N.D.R. Crim.P. . . . .	3

**STATEMENT OF THE ISSUES**

---

- I. Was there sufficient evidence to sustain the jury verdicts?

**STATEMENT OF THE CASE**

In June of 2003, the defendant, Orvin McKinley Igou III. (hereinafter Igou) was charged with Gross Sexual Imposition, (Class A Felony), Solicitation of a Minor, (Class C Felony), and Failure to Register as Sexual Offender, (Class A Misdemeanor) by complaint and pled not guilty to the offenses. On December 18-19, 2003, a jury trial was conducted with Igou being found guilty of the offenses.

Igou's version of the facts of the case is for the most part correct and additional facts as they relate to the issue shall be brought out in the brief.

## ARGUMENT

I. Was there sufficient evidence to sustain the jury verdicts?

Rule 29(a), North Dakota Rules of Criminal Procedure, provides that the court, on its own motion, or the defendant's motion, following the close of evidence on either side, shall enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. "To preserve an issue of sufficiency of the evidence in a jury trial, the defendant must move the trial court for a judgment of acquittal under Rule 29, N.D.R.Crim.P." State v. Mathre, 2004 ND 149, 2004 WL 1632667 (N.D.), citing, City of Bismarck v. Towne, 1999 ND 49, ¶ 8, 590 N.W.2d 893. According to the record in this case, Igou did not move for judgment of acquittal at the close of the State's case or after the presentation of all the evidence. Therefore, issues regarding sufficiency of the evidence have not been preserved for appeal.

In a properly preserved appeal challenging the sufficiency of the evidence, the defendant must show that the evidence, when viewed in the light most favorable to the verdict, reveals no reasonable inference of guilt. State v. Knowels, 2003 ND 180, 671 N.W.2d 816, State v. Klose, 2003 ND 39, 657 N.W.2d 276, State v. Steen, 2000

ND 152, 615 N.W.2d 555, 561, citing, City of Jamestown v. Neumiller, 2000 ND 11 ¶ 5, 604 N.W.2d 441; State v. Pollack, 462 N.W.2d 119, 121 (N.D.1990); State v. Hatch, 346 N.W.2d 268, 277 (N.D.1984), and State v. Fasching, 461 N.W.2d 102, 102-103 (N.D.1990). In reviewing the sufficiency of the evidence, this court has previously declined to resolve conflicts in the evidence or weigh the credibility of witnesses. State v. Klose, 2003 ND 39, 657 N.W.2d 276; State v. Pollack, 462 N.W.2d 119, 121 (N.D.1990); and State v. Fasching, 461 N.W.2d 102, 103 (N.D.1990). Only if the record presents no substantial evidence to support the verdict will a jury's determination be reversed. State v. Lund, 424 N.W.2d 645 (N.D.1988).

Corroborating evidence need not be incriminating in and of itself. State v. Garcia, 1997 ND 60, ¶ 38, 561 N.W.2d 599; State v. Torres, 529 N.W.2d 853, 855 (N.D.1995). Nor must the corroborating evidence directly link the accused to the crime. State v. Burgard, 458 N.W.2d 274, 277 (N.D.1990); State v. Haugen, 448 N.W.2d 191, 195 (N.D.1989). Applying these standards, there is sufficient corroborating evidence to prove the elements of each of the offenses and to warrant the convictions. Igou has failed to show, based on the evidence, that "no rational fact finder could

have found the defendant guilty beyond a reasonable doubt." State v. Kringstad, 353 N.W.2d 302, 306 (N.D.1984). Therefore, even if properly preserved, Igou's appeal as to the sufficiency of the evidence would fail. This Court should deny his appeal and affirm the conviction.

**CONCLUSION**

Igou failed to properly preserve for appeal the issue of sufficiency of the evidence. Even if properly preserved, the evidence presented to the trier of fact was sufficient to sustain the verdict. The jury obviously believed the testimony of State's witnesses over Igou's testimony.

The State requests that the appeal be dismissed and the convictions, in all matters, be affirmed.

Dated this \_\_\_\_ day of July, 2004.

---

Cynthia M. Feland  
Assistant, Burleigh County  
State's Attorney  
Courthouse, 514 East Thayer Avenue  
Bismarck, North Dakota 58501  
Phone No: (701)222-6672  
BAR ID. No: 04804  
Attorney for Respondent-Appellee

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota, )  
 )  
 Plaintiff-Appellee, )  
 )  
 -vs- ) AFFIDAVIT OF MAILING  
 )  
 Orvin McKinley Igou, III, )  
 ) Supreme Court No.  
 Defendant-Appellant. ) 20040093  
 ) District Court No.  
 . . . . . ) 08-03-K-02242

STATE OF NORTH DAKOTA )  
 ) ss  
 COUNTY OF BURLEIGH )

Jeanie Nolz, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the date of August \_\_\_\_, 2004, I deposited in a sealed envelope a true copy of the attached:

- 1. Amended Table of Cases and corrected page 4 of the Brief of Plaintiff-Appellee
- 2. Affidavit of Mailing

in the United States mail at Bismarck, North Dakota, postage prepaid, addressed to:

KENT M MORROW  
ATTORNEY AT LAW  
411 N 4TH ST  
BISMARCK ND 58501

which address is the last known address of the addressee.

\_\_\_\_\_  
Jeanie Nolz

Subscribed and sworn to before me this \_\_\_\_ day of August, 2004.

\_\_\_\_\_  
Gwen Tardiff, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: 5-23-09.