

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,)	Supreme Court File No.
)	20190149
)	
Plaintiff and Appellee,)	Ward County No.
)	51-2016-CR-1499
)	
v.)	
)	
William Joseph Wallace,)	APPELLANT'S BRIEF
)	
Defendant and Appellant.)	

**Appeal from the criminal judgment in Ward County district
court, north central judicial district, Minot, North Dakota, April
24, 2019, the Honorable Richard L. Hager, presiding.**

ORAL ARGUMENT REQUESTED

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Oral Argument:

Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

Transcript References:

The Jury Trial for this matter was conducted on April 23, 2019 and April 24 2019. The transcript of the jury trial is referred to as [Tr.] in this brief.

JURISDICTION

[¶ 1] The Defendant, William Joseph Wallace, timely appealed the criminal judgment arising out of the district court. This Court has appellate jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06 which states:

“An appeal to the Supreme Court provided for in this chapter may be taken as a matter of right. N.D.C.C. § 29-28-03. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party.”

STATEMENT OF THE ISSUES

- I. Whether the district court erred by denying Mr. Wallace’s motion for acquittal.

STATEMENT OF CASE

[¶ 2] This is a criminal matter on direct appeal from the north central judicial district, Ward County criminal judgment. This case was before the district court in *State v. Wallace*, 51-2016-CR-1499. The complaint was filed with the court on July 14, 2016 and Mr. Wallace ultimately proceeded to trial.

[¶ 3] Mr. Wallace was found guilty of luring a minor by computer or other electronic means, in violation of N.D.C.C. § 12.1-20-05.1(1), a class C Felony. The criminal judgment was entered in this case on April 24, 2019. He was sentenced to five (5) years first to serve twenty (20) months with the Department of Corrections and Rehabilitation (DOCR) and five (5) years of supervised probation. Mr. Wallace has timely appealed the district court's final judgment in this case.

STATEMENT OF FACTS

[¶ 4] On July 6, 2016 Detective Cousins placed an ad on backpage, an internet site, for a sting operation. Tr. Day 1 p. 161. The header of the ad read, "Young, Fresh, Tight, Girl Next Door, Come Play, 18." *Id.* The "18" referred to the age of the poster. *Id.* The ad stayed active from July 6, 2016 to July 13, 2016. *Id.* at p. 164.

[¶ 5] Four pictures were also posted on the ad. They were pictures that looked like younger females, and they were also similar to another officer working the sting operation during that weekend. *Id.* A phone number associated with William Wallace responded to the ad. *Id.* at pp. 167-168. Detective Cousins testified that she gave the person she was communicating with three options for ages of females in the ad, 26, 16, and 14. *Id.* at p. 171. The individual responded that they wanted whichever one was fun. *Id.* at p. 172.

[¶ 6] On July 13, 2016 Detective Cousins was communicating with someone she believed to be Mr. Wallace. *Id.* at p. 174. She testified that he wanted to “meet up.” *Id.* Detective Cousins testified that she explained she could not rent a hotel room because she was 16 years old and the individual responded, “that’s fine.” *Id.* Detective Cousins indicated to the individual that they should meet just outside of the Sleep Inn, attached to the mall. The individual responded with the

[¶ 7] Mr. Wallace’s truck arrived at the mall and he was approached by Detective Hiatt and Captain Klug. Detective Cousins arrived later and questioned Mr. Wallace. *Id.* at p. 176. He denied being the individual she was communicating with. Mr. Wallace was charged with luring.

LAW AND ARGUMENT

I. Whether the district court erred by denying Mr. Wallace’s motion for acquittal?

[¶ 8] The appellate standard of review regarding a claim of insufficiency of evidence is well-established. In *State v. Schmeets*, 2007 ND 197, ¶8, 742 N.W.2d 513, the court stated: “When the sufficiency of evidence to support a criminal conviction is challenged, this Court merely reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction.” *State v. Igou*, 2005 ND 16, ¶5, 691 N.W.2d 213. The defendant bears the burden of showing the evidence reveals no reasonable inference of

guilt when viewed in the light most favorable to the verdict. *Id.* “A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor.” *State v. Knowels*, 2003 ND 180, ¶6, 671 N.W.2d 816.

[¶ 9] Mr. Wallace, through his attorney motioned the court for an acquittal. *Id.* at p. 226. The court, after listening to arguments denied the motion for acquittal and allowed the case to proceed to the jury. Mr. Wallace was found guilty of luring a minor by computer or other electronic means.

[¶ 10] For luring a minor by computer or other electronic means, the State’s burden of proof is satisfied if the evidence shows beyond a reasonable doubt the following essential elements:

- 1.) On or about July 13, 2018, in Ward County, North Dakota, the defendant, William Joseph Wallace;
- 2.) Knowing the character and content of a communication that implicitly or explicitly discussed or depicted actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances;
- 3.) Willfully used any communication system or other electronic means that allowed the input, output, examination or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person William Joseph Wallace believed to be a minor; and
- 4.) By means of that communication, William Joseph Wallace willfully importuned, invited, or induced the person he believed to be a minor to engage in sexual acts or to have sexual contact with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit, satisfaction, lust, passions, or sexual desires; and
- 5.) William Joseph Wallace was twenty-two years of age or older.

[¶ 11] The State failed to prove that Mr. Wallace was who Detective Cousins was communicating with, additionally they failed to prove beyond a reasonable doubt that the individual knew that Detective Cousins was underage. Obviously, the Backpage ad is for someone who is eighteen. Additionally, Detective Cousins only indicated being a minor when she was attempting to set up a meeting with the individual she was communicating with. After that information was given the individual did not “importune, invite, or induce” Detective Cousins to engage in any sexual act or contact. At that point Detective Cousins was soliciting the person she was communicating with. Therefore, the State failed to prove the essential elements necessary to obtain a verdict of guilty and the trial court abused its discretion by denying the motion for acquittal.

CONCLUSION

[¶ 12] There was insufficient evidence at trial to support a conviction for luring a minor by computer or other electronic means. The evidence provided by the State failed to prove essential elements one, three, and four.

[¶ 13] WHEREFORE the Defendant respectfully requests the Court to reverse the verdict and judgment of the trial court.

Dated this 3rd day of September, 2019

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IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,)	
)	#51-2016-CR-1499
Appellee,)	#20190149
)	
VS.)	
)	CERTIFICATE OF COMPLIANCE
William Wallace,)	
)	
)	
Appellant.)	

[¶ 1] This Appellant’s Brief and Appendix complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it only has 9 pages.

Dated: September 3, 2019.

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IN THE SUPREME COURT
OF NORTH DAKOTA

State of North Dakota,)	
)	#51-2016-CR-1499
Appellee,)	#20190149
)	
VS.)	
)	CERTIFICATE OF SERVICE
William Wallace,)	
)	
)	
Appellant.)	

[1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant's Brief with Certificate of Compliance
Appellant's Appendix

And that said copies were served by email at the below address upon:

Rozanna Larson, State's Attorney, 51wardsa@wardnd.com

And by placing a true and correct copy of said items in a sealed envelope with USPS, certified mail, to:

William Wallace, c/o ND DOCR, PO Box 5521, Bismarck, ND 58506.

Dated: September 3, 2019.

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