

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court No. 20190149
Plaintiff/Appellee,)	
)	District Court No. 51-2016-CR-01499
)	
vs.)	
)	
)	
William Joseph Wallace,)	
)	
Defendant/Appellant.)	

APPEAL FROM THE DISTRICT COURT OF WARD COUNTY
NORTH CENTRAL JUDICIAL DISTRICT
DISTRICT COURT NO. 51-2016-CR-1499
THE HONORABLE RICHARD L. HAGAR

APPELLEE’S BRIEF

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[¶1] TABLE OF AUTHORITIES

Cases

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Transcript Reference:

The Jury Trial was conducted on April 23 and 24, 2019. All references in Appellee’s brief to the transcript [Tr.] will only concern day one of the jury trial.

STATEMENT OF ISSUES

[¶2] When viewing the evidence most favorable to the verdict and all reasonable inferences drawn from the evidence, is Appellant able to show no rational fact finder could find him guilty beyond a reasonable doubt?

STATEMENT OF THE CASE

[¶3] On July 13, 2016, Appellant William Joseph Wallace was arrested and charged with 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 Information, dated and filed September 15, 2016, by the State with the District Court, was filed into Odyssey September 19, 2016. Appellant proceeded to trial.

[¶4] On April 23 and 24, 2019, a jury trial was held. At the close of the State's case, Appellant, through his attorney, made a motion for acquittal pursuant to Rule 29 of the North Dakota Rules of Criminal Procedure; the District Court denied Appellant's motion. On April 24, 2019, a jury found Appellant guilty of the offense of Luring a Minor by Computer or Other Electronic Means as charged in the Information. On the same day, a criminal judgment was entered, and Appellant 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.

STATEMENT OF FACTS

[¶5] On July 6, 2016 Detective Cousins placed an ad on the internet site Backpage. Tr. 161. The ad was titled, “Young, Fresh, Tight, Girl Next Door, Come Play, 18.” Id. The “18” referred to the age of the poster. Id. 18 is the youngest age Backpage will allow to post. Id. 162. Words such as young, fresh, tight, girl next door are very common in the internet crimes against children, and using such language shows that the ad will likely involve a minor female. Id. The ad was active from July 6, 2016 to July 13, 2016. Id. 164.

[¶6] Four pictures were also posted on the ad. These pictures looked like younger females. Id. Approximately an hour after Detective Cousins posted the ad, she received an email from an email account belonging to Appellant, Billsrefridgeration@gmail.com. Id. 173. Bill’s Refrigeration was Appellant’s business. Id. 174. A phone number belonging to Appellant also responded to the ad. Id. 167-168. Detective Matthew Hiatt testified he listened to voicemails left on Detective Cousins’s cellphone in response to the ad; Detective Hiatt recognized the voice as being Appellant from past communications. Id. 120.

[¶7] The State offered, and the District Court received State’s Exhibit 14. State’s Exhibit 14 provides the text messages exchanged between the phone number belonging to Appellant and Detective Cousins. See Appellee’s App. 1 – 6. Detective Cousins also testified to the contents of the text messages contained in State’s Exhibit 14. See generally Test. of Krista Cousins, Tr. 152-224. On July 6, 2016, Appellant sent text messages to Detective Cousins, including the following: “[w]anna play” and “wanna see you”. See Appellee’s App. 3 – 4. Detective Cousins asked if Appellant was “good with younger?”

Appellant replied, "I am babe". Id. Detective Cousins provided Appellant with three options for girls: 26, 16 and 14. Id. Appellant stated he "love[d] all three" and he will "take the fun one". Id. On July 9, 2016, Appellant sent Detective Cousins text messages, including the following: "[w]anna hookup" and "ready for some fun". Id. Appellant sent the text, "[g]ood morning babe. would love to eat a young pussy u in". Id. Appellant then sent the text, "[w]anna have some fun babe" and "[u]p by mall if u still wanna hookup babe". Id. Appellant sent the text "Qv" and "got time for qv". Detective Cousins testified that "qv" stands for "quick visit" for a sexual encounter. Tr. 224. Appellant then sent the text "[s]weet 16" followed by "[o]h baby would love to eat some young pussy". See Appellee's App. 3. When Detective Cousins responded saying she was "booked," Appellant made multiple requests for a "quickie" or "qv". Id. Text message communication continued July 10, 11 and 12, 2016. Id. On July 13, 2016, Appellant asks "witch one do I get" and Detective Cousins responds by asking "which 1 do u want". Id. Appellant says he wants "[t]he middle one" in the pictures. Id. Detective Cousins tells Appellant that she can do "outcall only...they wont let me rent a room bc im 16...my sis always does for me". Id. When asked how long Appellant needs, he responds with "Qv", and he is told "80 straight sex". Id. Appellant later sends a text to Detective Cousins asking where she is, and Appellant is told "I'll be by mall in 20". Id. Appellant states he will be in a "black truck" and later confirms he will "be there in 5 min". Id. Detective Cousins follows up with Appellant, asking for his location, and Appellant states he's at the mall and in front of the motel. Id.

[¶8] Detective Cousins testified that she observed a Bill's Refrigeration black Chevy truck drive past and go towards the direction of the meet location. Id. 175. Detective

Cousins testified that Captain Klug and Detective Hiatt made contact with Appellant at the meet location, just outside of the Sleep Inn attached to the mall. Id. 175-176. Appellant was approached by Detective Hiatt and Captain Klug. Id. 176. Detective Cousins arrived later and questioned Mr. Wallace. Id. Appellant told Detective Cousins he was at the mall for a job at Grizzly's, a restaurant. Id. Detective Cousins stated his claim did not make sense to her as Grizzly's was on the opposite side of the mall. Id. 177. He denied being the individual she was communicating with. Id. Appellant asserted it must have been a friend using his phone, however he was unable to identify which friend. Id. Appellant asserted he had just dropped off a friend, but couldn't recall the friend's name. Id. Appellant could not recall where he dropped his friend off. Id.

[¶9] Detective Cousins testified that the agreed upon amount for sexual services was "\$80.00 for straight sex." Id. 200. A search of Appellant's wallet revealed four 20s adding up to \$80.00. Id. Appellant also had some fives and ones, however Detective Cousins noted the 20s looked fresher. Id.

[¶10] Detective Cousins testified that an extraction report was completed on Appellant's cell phone. Id. 186. Detective Cousins testified the report provided Appellant's internet/web history from the cell phone. Id. 187. The report identified that the user accessed the Backpage ad in question 39 times, first viewed on July 6, 2016 at 4:49 p.m. Id. Detective Cousins testified she posted the ad at 4:29 p.m. Id.

[¶11] The following exhibits were introduced into evidence from the State:

- State's Exhibit 1: Photo of Pickup
- State's Exhibit 2: Photo of Pickup
- State's Exhibit 3: Photo of Pickup

- State's Exhibit 4: Curriculum Vitae for Cassidy Halseth
- State's Exhibit 5: CD of Ads Posted on Backpage
- State's Exhibit 6: Photo of Wallet
- State's Exhibit 7: Photo of Wallet
- State's Exhibit 8: Photo of Wallet
- State's Exhibit 9: Photo of Wallet
- State's Exhibit 10: Email Response to Ad
- State's Exhibit 11: Extraction Reports from Phone
- State's Exhibit 12: Extraction Reports from Phone
- State's Exhibit 13: Extraction Reports from Phone
- State's Exhibit 14: Cell Phone Extractions Detective Cousins
- State's Exhibit 15: DVD of Voicemails

LAW AND ARGUMENT

I. When viewing the evidence most favorable to the verdict and all reasonable inferences drawn from the evidence, Appellant fails to meet his burden to show no rational fact finder could find him guilty beyond a reasonable doubt.

[¶12] “Under N.D.R. Crim.P. 29, a court must order entry of judgment of acquittal after the prosecution closes its evidence or after the close of all evidence if the evidence is insufficient to sustain a conviction. [The] standard of review for challenges to sufficiency of the evidence is well established:”

In an appeal challenging the sufficiency of the evidence, an appellate court looks only to the evidence and reasonable inferences most favorable to the verdict to ascertain if there is substantial evidence to warrant the conviction. A conviction rests upon insufficient evidence only when, after reviewing the evidence in the light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor, no rational fact finder could find the defendant guilty beyond a reasonable doubt. In considering a sufficiency of the evidence claim, an appellate court does not weigh conflicting evidence, or judge the credibility of witnesses. A verdict based on circumstantial evidence carries the same presumption of correctness as other verdicts. A conviction may be justified on circumstantial evidence alone if the circumstantial evidence has such probative force as to enable the trier of fact to find the defendant guilty beyond a reasonable doubt. Moreover, a jury may find a defendant guilty even though evidence exists which, if believed, could lead to a not guilty verdict.

State v. Sabo, 2007 ND 193, ¶ 15, 742 N.W.2d 812. On appeal, this Court “does not weigh conflicting evidence or judge the credibility of the witness.” State v. Bertram, 2006 ND 10, ¶ 5, 708 N.W.2d 913. “We assume the jury believed the evidence supporting the verdict and disbelieved any contrary evidence.” Id. at ¶ 18 (citing State v. Goebel, 2007 ND 4, ¶ 32, 725 N.W.2d 578.)

[¶13] The State satisfied its burden of proof by providing evidence that proved beyond a reasonable doubt the essential elements of luring a minor by computer or other electronic

means. The essential elements are as follows:

- 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.

[¶14] Appellant claims the State failed to prove essential elements one, three and four. The State proved beyond a reasonable doubt essential element one. Testimony was provided that on July 13, 2016, outside of the Sleep Inn, Appellant was present in his black truck. Tr. 176. Evidence in the form of State's Exhibit 14, as well as testimony from Detective Cousins, provided that Appellant was there to meet with a minor female he believed to be 16 years of age.

[¶15] The State proved beyond a reasonable doubt all the essential elements. Detective Cousins testified that she received an email in response to the ad from the email address Billsrefridgeration@gmail.com; Appellant's business is Bill's Refrigeration. Tr. 173-174. Detective Cousins also testified to the fact that she received text messages and phone calls from the cell phone number belonging to Appellant, 701-833-0424. Tr. 193. Evidence was also submitted showing that Detective Cousins told Appellant that sexual performances would be with a minor, specifically a 16 year old female, and Appellant stated "that's fine". Tr. 174. Evidence was presented that when given the option between three females: a 26

year old, a 16 year old or a 14 year old (none of which were 18 as used in the title of the ad), Appellant did not specifically request the adult female, but requested whichever one was fun. Tr. 171-172; Appellee's App. 1. On July 9, 2016, Appellant sent the text, "sweet 16". Tr. 201; Appellee's App. 3. He communicates, "oh baby, would love to eat some young pussy". Tr. 223-224; Appellee's App. 3. To further prove Appellant's knowledge that he was requesting sexual activities with a minor, on July 13, 2016, the day of the agreed upon sexual meet up, Detective Cousins tells Appellant, "I can only do out calls. I can't do hotels because they won't let me rent a room because I'm 16 years old". Tr. 207; Appellee's App. 5. Detective Cousins states the price for the sexual meet up is \$80.00, and Appellant responds with, "K". Tr. 208, Appellee's App. 5. Detective Cousins testified that a search of Appellant's wallet provided, in part, four 20s, totaling \$80.00; the 20s appeared to be fresher than the other fives and ones. Tr. 200.

[¶16] Detective Cousins testified that Appellant attempted to deny being the individual that she was communicating with. However, Appellant's denial was nonsensical – he stated he was at that location for a job at Grizzly's restaurant, however the restaurant was on the opposite side of the mall. Id. 176-177. Appellant tried to claim it was a friend that was using his phone to communicate with Detective Cousins, however he was unable to provide the name of his friend. Id. 177. Appellant also claimed he had just dropped his friend off moments prior to being arrested, however, still could not provide the friend's name and also could not recall where he dropped his friend off. Id. 178. Furthermore, Detective Hiatt testified that he had listened to the voicemails left on Detective Cousins's phone and based on his familiarity with Appellant, he recognized the voice as being Appellant. Id. 120.

[¶17] The State proved its case beyond a reasonable doubt. Appellant bears a heavy burden now trying to take away the guilty verdict to claim there was “no reasonable inference of guilt when viewed in the light most favorable to the verdict.” State v. Wanner, 2010 ND 121, ¶ 9, 784 N.W.2d 143. The Court’s order denying Defendant’s Rule 29 motion was appropriate, and the State respectfully requests that the jury’s guilty verdict not be disturbed.

CONCLUSION

[¶18] When viewing the evidence most favorable to the verdict and all reasonable inferences drawn from the evidence, Appellant has failed to show there is no reasonable inference of guilt. Substantial evidence exists to warrant the conviction. Based upon the foregoing, the State respectfully requests this Court affirm the District Court’s denial of Appellant’s motion for judgment of acquittal and uphold the jury’s guilty verdict.

Dated this 2nd day of October, 2019.

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vs.)	
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William Joseph Wallace,)	
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Defendant/Appellant.)	

CERTIFICATE OF COMPLIANCE

[1] The undersigned hereby certifies that the Appellee’s Brief is in compliance with Rule 32 of North Dakota Rules of Appellate Procedure and the brief contains 13 pages.

Dated this 2nd day of October, 2019.

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AFFIDAVIT OF SERVICE

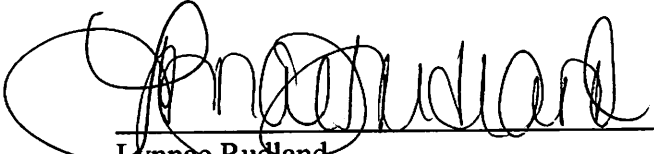
Lynnae Rudland, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 2 day of October, 2019, this Affiant provided a true and correct copy of the following documents in the above entitled action:

APPELLEE’S BRIEF, APPELLEE’S APPENDIX
and CERTIFICATE OF COMPLIANCE

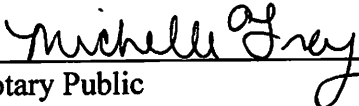
By ELECTRONIC SERVICE to the following:

KIARA C. KRAUS-PARR
ATTORNEY AT LAW
service@kpmwlaw.com



Lynnae Rudland

Subscribed and sworn to before me this 2 day of October, 2019, by
Lynnae Rudland



Notary Public

