

**IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA**

<b>State of North Dakota,</b>	)	
<b>Plaintiff and Appellee,</b>	)	<b>Supreme Court No. 20210040</b>
	)	
	)	
<b>vs.</b>	)	
	)	<b>Ward Co No. 51-2018-CR-02303</b>
	)	
<b>Eddie Lee Coleman,</b>	)	
<b>Defendant and Appellant.</b>	)	

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**APPELLEE’S BRIEF**

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**Appeal from the Verdicts entered on February 2, 2021  
And the Order Deferring Imposition of Sentence Entered on February 2, 2021 in  
Ward County District Court, North Central Judicial District, Minot, North Dakota  
The Honorable Todd L. Cresap Presiding**

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**ORAL ARGUMENT REQUESTED**

John M. Gonzalez (09128)  
Assistant State’s Attorney  
Ward County State’s Attorney’s Office  
315 3<sup>rd</sup> St SE  
Minot, ND 58701  
(701) 857-6480  
[51wardsa@wardnd.com](mailto:51wardsa@wardnd.com)

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	3
STATEMENT OF THE ISSUE..... ¶1	¶1
STATEMENT OF THE CASE..... ¶2	¶2
LAW AND ARGUMENT .....	¶3
CONCLUSION..... ¶5	¶5

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Paragraph</u></b>
<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 .....	¶3
<u>In re Estate of Elmer</u> , 210 N.W.2d 815 (N.D. 1973) .....	¶3
<u>Kresel v. Giese</u> , 231 N.W.2d 780 (N.D. 1975) .....	¶3
<u>State v. Champagne</u> , 198 N.W.2d 218 (N.D. 1972) .....	¶3
<u>State v. Fasching</u> , 461 N.W.2d 102 (N.D.1990) .....	¶3
<u>State v. Hatch</u> , 346 N.W.2d 268 (N.D.1984) .....	¶3
<u>State v. Kaloustian</u> , 212 N.W.2d 843 (N.D. 1973) .....	¶3
<u>State v. Klose</u> , 2003 ND 39, 657 N.W.2d 276 .....	¶3
<u>State v. Knowels</u> , 2003 ND 180, 671 N.W.2d 816 .....	¶3
<u>State v. Lund</u> , 424 N.W.2d 645 (N.D. 1988) .....	¶3
<u>State v. Mathre</u> , 2004 ND 149, 683 N.W.2d 918 .....	¶3
<u>State v. Neset</u> , 216 N.W.2d 285 (N.D. 1974) .....	¶3
<u>State v. Olmstead</u> , 246 N.W.2d 888 .....	¶3
<u>State v. Pollack</u> , 462 N.W.2d 119 (N.D.1990) .....	¶3
<u>State v. Steen</u> , 2000 ND 152, 615 N.W.2d 555 .....	¶3
<b><u>Statutory Materials and Rules</u></b>	<b><u>Paragraph</u></b>
N.D.R. Crim. P. Rule 29 .....	¶3

## STATEMENT OF THE ISSUE

[1] Was there sufficient evidence to sustain the jury verdicts?

## STATEMENT OF THE CASE

[2] Coleman'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.

## LAW AND ARGUMENT

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

[3] 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, 683 N.W.2d 918, citing, City of Bismarck v. Towne, 1999 ND 49, ¶ 8, 590 N.W.2d 893. 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 resolved 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). On the question of credibility of witnesses,

reading a cold transcript is no substitute for hearing and observing witnesses as they testify. State v. Olmstead, 246 N.W.2d 888, 890. Tones of voice, hesitations, confusion, surprise, and other telltale indications of mental state convey to trial judges and jurors much that is lost to appellate judges. Id. If we were to judge from the cold print, we might decide many cases differently than trial judges do, and this case might be one of them. Id. But, if we decided differently, we would have no assurance that ours was the better decision. We are reluctant to reverse factual findings of juries or trial judges. Id. Appellate courts have stated in many ways, in both civil and criminal cases, their determination to give respect to the findings of trial judges and juries. Id. Sometimes they say they will not reverse if there is substantial evidence to support the verdict [Kresel v. Giese, 231 N.W.2d 780, 791 (N.D. 1975)]; sometimes they say they will not substitute their judgment for that of the trial court or jury [State v. Champagne, 198 N.W.2d 218, 226 (N.D. 1972)]; sometimes they speak of viewing the evidence in the light most favorable to the judgment [State v. Neset, 216 N.W.2d 285, 290 (N.D. 1974)]; and sometimes they speak of their great reliance on the findings of the lower court [In re Estate of Elmer, 210 N.W.2d 815, 819 (N.D. 1973)]. Id. In criminal cases we have repeatedly held that "at the appellate level we do not substitute our judgment for that of the jury or trial court where the evidence is conflicting, if one of the conflicting inferences reasonably tends to prove guilt and fairly warrants a conviction." Id. citing, State v. Kaloustian, 212 N.W.2d 843, 845 (N.D. 1973), and cases cited therein; State v. Neset, 216 N.W.2d 285, 287 (N.D. 1974). However stated, these rules indicate a recognition that the truth can better be determined in the confrontation of the testimony of witnesses appearing in person than from a transcript of the testimony of those witnesses. Id. 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).

[4] Here, Appellant refuses to heed the Court's prior decisions in stating unequivocally this Court should not substitute its judgment for that of the jury. The evidence presented to the jury came in by way of testimony from the arresting officer and the body cam and dash cam videos showing the incident in question. The jury was offered this evidence in the State's case-in-chief and weighed out any conflicting inferences to come to the conclusion of the verdict it presented to the Court. Appellant's argument boils down to an attempt for this Court to circumvent the process of the trial court's decision making ability and of the jury by asking this Court to review Exhibit #1 in place of the jury. There is no mechanism by which this Court should entertain Appellant's request for this Court to review what was properly examined by the jury in the first place. Appellant cites to no law in his brief that would allow this Court to break with long established precedent.

## CONCLUSION

[5] Based upon the foregoing, the evidence presented to the trier of fact was sufficient to sustain the verdict. The Defendant has failed to meet his burden to show that no reasonable fact finder could have found the Defendant guilty beyond a reasonable doubt. There is substantial evidence to the contrary, wherein the jury weighed, assessed, and found the testimony of the State's witness and the video recording from Exhibit #1 more than sufficient to bring forth its decisions for both counts presented to it. Therefore, the State requests the appeal be dismissed and the Defendant's conviction be affirmed.

Dated this 23<sup>rd</sup> day of April, 2021.

/s/John M. Gonzalez  
John M. Gonzalez (09128)  
Assistant State's Attorney  
Ward County State's Attorney's Office  
315 3<sup>rd</sup> St SE  
Minot, ND 58701  
(701) 857-6480  
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**REQUEST FOR ORAL ARGUMENT**

**[1] The State requests oral argument to clarify arguments and address questions regarding facts that may not be apparent from the record.**

**Dated this 23<sup>rd</sup> day of April, 2021.**

**/s/ John M. Gonzalez**  
**John M. Gonzalez (09128)**



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**CERTIFICATE OF COMPLIANCE**

[1] The undersigned hereby certifies that the Brief of Plaintiff and Appellee, is in compliance with Rule 32 of North Dakota Rules of Appellate Procedure and the brief contains 7 pages.

Dated this 23<sup>rd</sup> day of April, 2021.

/s/ John M. Gonzalez  
John M. Gonzalez (09128)

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**AFFIDAVIT OF SERVICE**

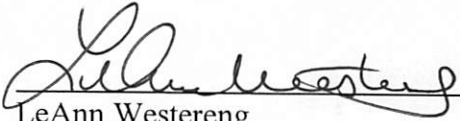
LeAnn Westereng, being first duly sworn, deposes and says:

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 26<sup>th</sup> day of April, 2021, this Affiant provided a true and correct copy of the following documents in the above entitled action:

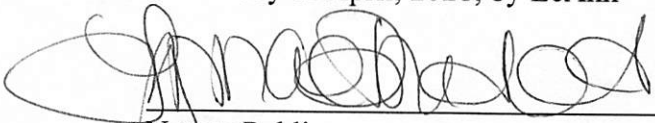
**APPELLEE'S BRIEF**

By electronic service to the following:

**BENJAMIN C. PULKRABEK**  
**ATTORNEY FOR APPELLANT**  
**pulkrabek@lawyer.com**

  
\_\_\_\_\_  
LeAnn Westereng

Subscribed and sworn to before me this 26<sup>th</sup> day of April, 2021, by LeAnn Westereng

  
\_\_\_\_\_  
Notary Public

