

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

<p>STATE OF NORTH DAKOTA,</p> <p style="padding-left: 100px;">Plaintiff and Appellee,</p> <p style="padding-left: 100px;">vs.</p> <p>BARRY RYDER REDDOG,</p> <p style="padding-left: 100px;">Defendant and Appellant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Supreme Court No. 20210055</p> <p>District Court No. 08-2020-CR-01843</p>
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APPELLANT’S BRIEF

**Appeal from Criminal Judgment Entered on February 22, 2021,
by Burleigh County District Court, South Central Judicial
District, State of North Dakota, The Honorable Bruce A.
Romanick Presiding.**

ORAL ARGUMENTS REQUESTED

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Transcript References:

A jury trial was held on February 18 and 19, 2021. The transcript of that trial is divided into “Day 1” and “Day 2” and therefore shall be referred to herein as [Tr. 1] and [Tr. 2] in this brief.

[¶ 3] JURISDICTION

[¶ 4] The Defendant/Appellant, Barry Reddog, timely appealed the district court’s final criminal judgment. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provision article VI, § 6, the North Dakota legislature enacted Sections 29-28-03 and 29-28-06, N.D.C.C., which provides, “[a]n 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. Moreover:

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

N.D.C.C. § 29-28-06

[¶ 5] STATEMENT OF THE ISSUES

[¶ 6] Whether sufficient evidence existed to warrant a guilty verdict?

[¶ 7] ORAL ARGUMENT JUSTIFICATION

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

[¶ 9] STATEMENT OF THE CASE

[¶ 10] Mr. Reddog (hereinafter “Appellant”) appeals from a criminal judgment dated February 22, 2021. A.A. at 16. Following a 2-day jury trial, the Appellant was convicted of Robbery-with a firearm, dangerous weapon, or destructive device in violation of N.D.C.C. § 12.1-22-01(1); and Conspiracy to commit felonious restraint-Restrains-adult victim in violation of N.D.C.C. § 12.1-23-02(3); but had dismissed under a N.D.R.Crim.P 29 motion. A.A. at 16.

[¶ 11] At trial following the close of the State's case, defense counsel made a N.D.R.Crim.P. 29 motion for acquittal. Tr. 1, pp. 238-239. Following argument by the parties, the district court dismissed the third count on the Information, Unlawful possession of firearm by prohibited person in violation of N.D.C.C. § 62.1-02-01(1)(b), due to the lack of evidence of the Appellant's prior conviction. Id. p. 241.

[¶ 12] Following the rest of trial, the jury convicted the Appellant of the remaining two counts in the information outlined above in ¶10. The district court then sentenced the Appellant on February 22, 2021, to 10 years with the North Dakota Department of Corrections, with 4 years suspended, and 5 years of supervised probation on count 1 and a concurrent 5 years incarceration on count 2. A.A. at 16. The appellant then filed a timely Notice of Appeal on February 23, 2021 pursuant to N.D.R.App.P. 4. A.A. at 22.

[¶ 13] **STATEMENT OF THE FACTS**

[¶ 14] In the early morning hours of July 5, 2021, law enforcement officers were dispatched to the scene of potential robbery at gun point. Tr. 1 p. 139. Upon arrival on the scene law enforcement made contact with the victim, Rory Kreiling. Id. Mr. Kreiling reported that two individuals, one Native American male and one Native American female had robbed him at gun point. Id. p. 140.

[¶ 15] According to Mr. Kreiling, he had stepped outside to smoke a cigarette and was faced with the male holding a gun at him along with the female beside him. Id. p. 186. He was instructed to return inside his apartment by the man with the gun. Id. p. 187. Inside the apartment, the Mr. Kreiling reported that the man with the gun ripped a phone cord out of the wall and instructed the female to tie him up with it. Id. p. 189. The man with the gun instructed Mr. Kreiling to go to his own bedroom with his hands tied in front of him

and lie face down on his bed. Id. p. 190. Following being instructed to lie face down, Mr. Kreiling heard the two individuals rifling around his closet, removing his TV from his wall, and overall his residence being ransacked. Id. pp. 191-193.

[¶ 16] Additionally, Mr. Kreiling reported hearing two male voices while face down in his bedroom, while the female was watching him in the bedroom. Id. After approximately 10-12 minutes Mr. Kreiling heard his door shut and vehicle start but continued to lie face down out of fear for a couple more minutes. Id. p. 194. After that couple of minutes, Mr. Kreiling got up, looked out his window, upon noticing no one was waiting for him outside, ran outside and flagged down a passing motorist to call 911. Id. pp. 194-195.

[¶ 17] Upon law enforcement's arrival Mr. Kreiling gave his statement to Detective Mark Gaddis. Id. p. 140. The statement provided to law enforcement that evening by Mr. Kreiling did not identify either individual by name, but rather by description. Id. Detective Gaddis conducted a photo lineup with Mr. Kreiling in an attempt to identify the Appellant's co-defendant, Ms. Cheyenne Risingsun. Id. p. 170. Mr. Kreiling was unable to identify Ms. Risingsun in Detective Gaddis's photo lineup. Id.

[¶ 18] Detective Gaddis's investigation somehow led to a report of a stolen car wherein the suspect was Barry Reddog. Id. p. 146. The connection between the stolen car report and the robbery investigation was not made clear at trial, other than the report of the stolen car "occurred over the same timeframe" of the robbery. Id. p. 146.

[¶ 19] Following the unknown connection between the stolen car and the robbery and Barry Reddog, Detective Gaddis conducted a photo lineup with Mr. Kreiling, wherein he positively identified the Appellant. Id. pp. 147-148. This positive identification came

following Mr. Kreiling's own personal research into Appellant through Facebook at the direction of his niece the day after the incident. Id. p.144.

[¶ 20] On July 9, 2020, Detective Gaddis conducted in interview with Cheyenne Risingsun. Id. p. 142, 147, & 177. During the interview, a stolen Mossy Oak knife from Mr. Kreiling's residence was discovered in her backpack. Id. p. 177. Additionally, a magazine of ammo was discovered in a suitcase that presumably belonged to Ms. Risingsun. Id. It was presumed to be Ms. Risingsun's because, "I [Detective Gassis] believed it was her suitcase based on the kind of clothes that were in it and then also it said Route 66 on it...[a]and in one of my contacts with Rory Kreiling was that he had given her a Route 66 suitcase." Id.

[¶ 21] Based on the positive photo lineup of the Appellant and the discovery of stolen and circumstantial evidence in Ms. Risingsun's possessions, both were arrested and charged with the armed robbery of Mr. Kreiling the early morning hours of July 5, 2021.

[¶ 22] **STANDARD OF REVIEW**

[¶ 23] This Court's standard of Review for claims of insufficiency of the evidence is well established. The appellant has the burden to "show that the evidence, when viewed in the light most favorable to the verdict, reveals no reasonable inference of guilt." State v. Jacobson, 419 N.W.2d 899, 901 (N.D. 1988). This Court will "merely review the record to determine if there is competent evidence that allow the jury to draw an inference 'reasonably tending to prove guilt and fairly warranting a conviction.'" Id. (quoting State v. Matuska, 379 N.W.2d 273, 275 (N.D. 1985)). This Court will not "weigh conflicting evidence or judge the credibility of witnesses. State v. Mohammed, 2020 ND 54, ¶ 5, 939 N.W.2d 498 (citing State v. Brandner, 551 N.W.2d 284, 286 (N.D. 1996))

[¶ 24] LAW AND ARGUMENT

[¶ 25] The victim, Rory Kreiling, here provided the following identifying characteristics of his robbers on July 5th:

- A Native American male, approximately 35-year-old, five-foot-ten and about 170 pounds, with tattoos on his face, arms and legs; and
- A Native American female approximately 25 years of age, about five-foot-three.

Tr. 1 p. 140.

[¶ 26] However, during the course of the investigation, it was discovered that Mr. Kreiling actually knew Cheyenne Risingsun fairly well. In fact, knew her well enough to allow her to store her backpack and clothes in his apartment and to gift her a Route 66 suitcase. Id. pp. 136, 170, 177. Yet, Mr. Kreiling claimed only to have met her approximately two days prior to the robbery, where outside of his residence, where she was walking with a Native American male, not the Appellant, and introduced herself to Mr. Kreiling. Id. pp. 205-206.

[¶ 27] Then, according to Mr. Kreiling, his next encounter with Ms. Risingsun was the following day, which was the day before the robbery, when Ms. Risingsun, walked straight up to him and asked him to store her backpack with clothes in his residence. Id. Yet, according to Detective Gaddis's investigation, there must have been more encounters or familiarity, because Mr. Kreiling told Det. Gaddis that he had given Ms. Risingsun a suitcase that stated Route 66. Id. p. 177.

[¶ 28] Yet more problematic, is the stark dichotomy between Mr. Kreiling's identification on July 5, within hours of the robbery, and on the stand at trial. As noted above, Mr. Kreiling's identification on July 5th was Native American female, approximately 25 years of age, and about five-foot-three. Ibid. ¶ 25.

[¶ 29] Then at trial, Mr. Kreiling testifies that he recognized Ms. Risingsun right away outside of his apartment even in the dim light. Tr. 1 p. 208. Then upon further question, Mr. Kreiling doubled down, “I recognized Cheyenne’s face, and looked at the defendant’s face.” *Id.* p. 210. When pressed further, Mr. Kreiling now tripled down:

Q – When you looked at the individual you knew as Cheyenne, did she respond to - - to see your face? Did she recognize your face?

A – Cheyenne?

Q – Yeah.

A – Yes sir. I recognized her as she was tying me up. She was right there (indicating).

Q – Okay. Was there any expression on her face that indicated to her that she knew who you were?

A – Cheyenne, the most thing - - noticeable thing about her is she was missing three or four front teeth.

Tr. 1 pp. 210-211 (Cross examination testimony of Rory Kreiling).

[¶ 30] Mr. Kreiling’s recollection of the events surrounding his robbery were so dramatically impacted by law enforcement influence, through photo lineups, name references, and disclosures of suspected parties, his testimony cannot be taken as ‘competent.’ Mr. Kreiling goes from a generic Native American female to specifically identifying her by name, with unique characteristic such as missing teeth and the recognizing expression on her face.

[¶ 31] The standard of review in insufficient evidence appeals does not permit this Court to “weigh conflicting evidence or judge the credibility of witnesses.” *State v. Mohammed*, 2020 ND 54, ¶ 5, 939 N.W.2d 498. However, the Appellant argues this is not about the “credibility” of Mr. Kreiling, or “conflicting evidence.” Conflicting evidence

would be the introduction of evidence from multiple sources that stand in conflict to one another, which in turn leads into the question of “credibility” of one witness over the other. Rather, in this case, the “conflicting evidence” comes from a singular source, the testimony of Rory Kreiling. Therefore, this Court need not concern itself with multiple source conflicting evidence and the credibility of one witness over another, which is not permitted under the Standard of Review. Instead, this Court need only recognize the singular source of conflicting evidence in and of itself is fundamentally uncredible. So much so, that his testimony as a whole, cannot be granted any “weight” whatsoever.

[¶ 32] Therefore, taking Mr. Kreiling’s testimony out of the equation, the Appellant’s conviction rests solely on the shoulders of his alleged co-conspirator, Cheyenne Risingsun. Law enforcement’s testimony was unequivocal, the knife, the Route 66 suitcase, magazine with rounds was all found in the possession of Ms. Risingsun. Tr. 1 p. 170.

[¶ 33] The appellant’s conviction cannot stand on the testimony of his alleged accomplice Ms. Risingsun, alone. North Dakota Century Code states:

A conviction cannot be had upon the testimony of an accomplice unless the accomplice is corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.

§ 29-21-14

[¶ 34] As outlined above, the other evidence that “corroborates” Ms. Risingsun, is the discovery of stolen goods in “her” possession. No firearm was found to corroborate any claim that the Appellant ever even had or possessed a firearm, yet firearm accessories were discovered in the possession of Ms. Risingsun.

[¶ 35] Therefore, any connection between the Appellant and the items discovered on or with Ms. Risingsun rests solely on her testimony, which, by statutory law, cannot sustain a conviction of her accomplice.

[¶ 36] **CONCLUSION**

[¶ 37] For the foregoing reasons, Mr. Barry Reddog, humbly requests this Court vacate his criminal judgment and conviction, due to the insufficient nature of the evidence presented to the jury, and as violative of the North Dakota Century Code's bar against uncorroborated testimony of an accomplice.

Respectfully submitted this Monday, June 7, 2021.



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

STATE OF NORTH DAKOTA,)	
)	
Appellee,)	Supreme Court No.: 20210055
vs.)	
BARRY RYDER REDDOG,)	District Court No.:
)	08-2020-CR-01843
Appellant.)	

**N.D.R.App.P. 32(e)
CERTIFICATE OF COMPLIANCE**

[¶1] **COMES NOW** Samuel A. Gereszek, attorney for the Appellant, **Barry Ryder Reddog**, and preparer of documents filed in association with the above captioned case on this day.

[¶2] Pursuant to N.D.R.App.P. 32(e) the documents filed on this day comply with the North Dakota Rules of Appellate Procedure as follows:

- a. Appellant’s Brief – Word count = 2472; Page Count = 11 (N.D.R.App.P 32(a)(8))
- b. Appellant’s Appendix – (N.D.R.App.P.25(a))

[¶3] This Certificate of Compliance is drafted to ensure the filings on this day are in compliance with the rules and specifically pursuant to N.D.R.App.P. 32(e).

Dated this Monday, June 7, 2021.



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IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,)	
)	
)	Supreme Court No.: 20210055
Plaintiff,)	
vs.)	District Court No.: 08-2020-CR-01843
)	
BARRY RYDER REDDOG,)	
)	
Defendant.)	CERTIFICATE OF SERVICE
)	
)	

I, Samuel A. Gereszek, attorney for the Defendant, and officer of the court, hereby certify that a true and correct copy of the following:

- 1. *Appellant's Brief (.pdf and Word)*
- 2. *Appellant's Appendix*
- 3. *Certificate of Compliance*

was filed via **electronically through the Court Electronic Filing System** on Monday, June 7, 2021, and served upon:

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Dated this Monday, June 7, 2021



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