

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	Supreme Court No. 20210142
)	
Plaintiff and Appellee,)	Case No. 09-2020-CR-2642
)	
vs.)	
)	
Jaime Urrabazo,)	
)	
Defendant and Appellant.)	

BRIEF OF PETITIONER APPELLANT JAIME URRABAZO

Appeal from the Judgment dated April 30, 2021

In District Court, Cass County, State of North Dakota

The Honorable Frank Racek

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STATEMENT OF THE ISSUES

¶1 Whether the evidence presented against Mr. Jaime Urrabazo was legally sufficient to sustain the jury's guilty verdict.

STATEMENT OF THE CASE

¶2 This is an appeal of the East Central Judicial District Judgment dated April 30, 2021. App. 27. Jaime Urrabazo ("Urrabazo") was charged with two counts of Delivery of a Controlled Substance, class b felonies. App. 6. A jury trial was held April 29, 2021, through April 30, 2021. App. 3. Urrabazo was acquitted of one count of delivery of a controlled substance, and was found guilty of one count of delivery of a controlled substance. App. 25, 26. Judgment was entered on April 30, 2021. App. 27. A notice of appeal was filed May 10, 2021. App. 30.

STATEMENT OF FACTS

¶3 On June 23, 2020, the State of North Dakota filed Information charging Urrabazo with two counts of delivery of a controlled substance, in violation of Section 19-03.1-23(1)(a), 19-03.1-07(5), 12.1-32-01(3). App. 6. The Affidavit of Probable Cause refers to the Incident Report, which indicates that a Confidential Informant reached out to the Cass County Drug Task Force and indicated she could purchase methamphetamine from Urrabazo. App. 7, 8, 9, 12. The confidential informant set up a purchase on October 22, 2019, wherein the confidential informant was provided money from the pre-recorded Cass County Drug Task Force buy fund. App. 7, 9. The confidential informant had on audio recording equipment and indicated that once she met up inside a residence with Urrabazo, they wrote on a whiteboard and did not speak. App. 7, 9. Once the confidential informant left, she turned over a bag of clear/white crystalline substance to the Cass County Drug

Task Force. App. 7, 9.

¶4 On October 30, 2019, the confidential informant set up another second purchase with Urrabazo for methamphetamine. App. 8, 12. The confidential informant was provided money from the pre-recorded Cass County Drug Task Force buy fund. App. 8, 12. Urrabazo met the confidential informant in the alley of a residence. App. 8, 12. After the confidential informant left, she turned over a bag of clear/white crystalline substance to the Cass County Drug Task Force. App. 8, 12. Trial took place April 29, 2021-April 30, 2021. App. 3.

¶5 At trial, Ms. Candice Arechigo, informed the jury that she has known Mr. Urrabazo for quite a few years, and that she was the confidential informant in this case with Mr. Urrabazo in October of 2019. Tr. p. 61-62, lns. 7-2; Apr. 29, 2021. Ms. Arechigo has been using drugs for about 18 years, including marijuana and methamphetamine and has never sought any treatment. Tr. p. 80, lns. 6-24; Apr. 29, 2021. Ms. Arechigo had several pending drug charges, including eight felonies, and admitted that by working with the Cass County Drug Task Force, she would have an easier time through her own court cases. Tr. p. 62, lns. 3-18; p. 84, lns. 5-8; Apr. 29, 2021. Ms. Arechigo had the following charges pending: 1. Unlawful possession of drug paraphernalia, a felony; 2. Unlawfull possession of drug paraphernalia, a felony; 3. Unlawful possession of methamphetamine, a felony; 4. Unlawful possession of hydrocodone, a misdemeanor; 5. Burglary, a felony; 6. Theft of property, a misdemeanor; 7. Reckless endangerment, a felony; 8. Refusal to halt, a misdemeanor; 9. Theft of property, a felony; 10. Theft of property, a felony; Preventing arrest, a felony; 11. Refusal to halt, a misdemeanor; 12. Unlawful possession of marijuana paraphernalia, an infraction; and 13. Unlawful possession of marijuana, an infraction. Tr.

p. 87, lns. 1-4; p. 89-90, lns. 10-4; Tr. p. 93, lns. 6-14; p. 96, lns. 2-11; p. 97-98, lns. 16-13; Apr. 29, 2021. Ms. Arechigo completed controlled buys for the Cass County Drug Task Force and in return, she received consideration for working with the Cass County Drug Task Force within her own cases. Tr. p. 62-63, lns. 22-11; Apr. 29, 2021. Ultimately, Ms. Arechigo had several dismissals, pled guilty to a few misdemeanors and received time served sentences after she cooperated with law enforcement. Tr. p. 63, lns. 3-11; Apr. 29, 2021. Ms. Arechigo set up two controlled buys with Mr. Urrabazo. Tr. p. 64, lns. 5-8; Apr. 29, 2021.

¶6 The first buy with Mr. Urrabazo was on October 22, 2019, where Ms. Arechigo testified that she was contacted by law enforcement to arrange a purchase. Tr. p. 64, lns. 12-17; Apr. 29, 2021. Once Ms. Arechigo was contacted, she reached out to Mr. Urrabazo and arranged a purchase for a half an ounce of methamphetamine. Tr. p. 64, lns. 18-24; Apr. 29, 2021. Ms. Arechigo met with the task force, who gave her a cell phone and a wire, \$500 to purchase methamphetamine, test the equipment, checked her car and her person and then would follow her to the location. Tr. p. 65, lns. 13-19; p. 66, lns. 4-9; p. 71, lns. 6-10; Apr. 29, 2021. The location of the purchase was at Urrabazo's residence on 5th Street South, in Fargo. Tr. p. 66-67, lns. 21-5; Apr. 29, 2021. Upon arrival at Urrabazo's residence, Ms. Arechigo went into the residence to the downstairs living room and Urrabazo and Ms. Arechigo communicated by writing on a whiteboard. Tr. p. 68-69, lns. 3-11; Apr. 29, 2021. There was no conversation about the sale, the quantity, or the price of drugs. Tr. p. 109-110, lns. 18-7; Apr. 29, 2021. Ms. Arechigo gave Urrabazo \$500 for one half ounce of methamphetamine and drove off a few blocks until the task force told her to stop, exchanged money, debriefed, and checked her car and herself to ensure she

didn't have anything on her, which she did not. Tr. p. 70, lns. 5-14; p. 71, lns. 6-18; Apr. 29, 2021.

¶7 On October 30, 2019, Ms. Arechigo set up another controlled buy with Urrabazo, after the task force reached out to her asking if she could buy anything. Tr. p. 72-73, lns. 23-7; Apr. 29, 2021. Ms. Arechigo met up with the task force, they searched her and her vehicle, and she went to Urrabazos to purchase half ounce of methamphetamine for \$525, with the task force following her. Tr. p. 73-74, lns. 8-12; Apr. 29, 2021. Ms. Arechigo met Urrabazo in the driveway behind the house because Urrabazo was walking a dog. Tr. p. 74, lns. 16-25; Apr. 29, 2021. Ms. Arechigo and Urrabazo made small talk, she took the methamphetamine, and he took the cash through her vehicle window. Tr. p. 75, lns. 1-18; Apr. 29, 2021. There was no conversation about the quantity or the price of drugs. Tr. p. 112, lns. 20-25; Apr. 29, 2021. Urrabazo continued to walk the dog and Ms. Arechigo left and met with the task force officers very quickly because Ms. Arechigo ripped the bag of methamphetamine and got it all over herself and her grandmother's vehicles so she started calling for help from the task force as her wire was still on and they had her pull over immediately. Tr. p. 77, lns. 1-9; Apr. 29, 2021. One officer cleaned Ms. Arechigo's vehicle, and did not find any other meth in her vehicle or on her person, while she debriefed with another officer. Tr. p. 78, lns. 10-16; p. 79, lns. 3-9; Apr. 29, 2021.

¶8 Ms. Arechigo admits that she is the only one, with the exception of Urrabazo, that absolutely has personal knowledge of both alleged buys with Urrabazo, and admits she could lie about the controlled buys and admitted that she was convicted of false reports to law enforcement in 2016. Tr. p. 114, lns. 4-20; Apr. 2021. Ms. Arechigo has served time in prison, for several past charges, and states she would do almost anything to avoid going

back to prison. Tr. p. 100, lns. 14-22; Apr. 29, 2021.

¶9 Christopher Fix, who was employed with Cass County Sheriff's office as a detective with the Cass County Drug Task Force during October of 2019. Tr. p.123, lns. 2-7;p. 124, lns. 13-16; Apr. 29, 2021. Mr. Fix was involved with the controlled buys with Mr. Urrabazo. Tr. p. 126, lns. 5-7; Apr. 29, 2021. Generally, the Cass County Drug Task Force does more than one controlled buy to establish a pattern as opposed to just a one time event. Tr. p. 126, lns. 9-18; Apr. 29, 2021. Mr. Fix met with Ms. Arechigo to talk to her about becoming a confidential informant, and that she would possibly receive some consideration on her pending charges, and that is how she became a confidential informant. Tr. p. 128, lns. 1-17; Apr. 29, 2021. Urrabazo's name was introduced to the Cass County Drug Task Force by Ms. Arechigo. Tr. p 131, lns. 13-22; Apr. 29, 2021.

¶10 Mr. Fix echoed Mr. Arechigo's testimony on the process of a controlled buy. During the controlled buys, Mr. Fix was the officer following Ms. Arechigo. Tr. p. 128, lns. 10-14; Apr. 29, 2021. Mr. Fix confirmed that the methamphetamine from the controlled buys was sent to the State Lab, and came back positive for methamphetamine. App. 15, 20; Tr. p. 144, lns. 5-8; p. 159, lns. 7-9; Apr. 29, 2021. Mr. Fix admitted that during the controlled buy on October 22, 2019 and October 30, 2019, there was no conversation that took place during the recording that had anything to do with a drug purchase in his reports. Tr. p. 168, lns. 16-21; p. 169, lns. 12-22; Apr. 29, 2021. Mr. Fix doesn't have any photographs or video recordings proving a sale of methamphetamine from October 22, 2019 or October 30, 2019. Tr. p. 170, lns. 5-20; Apr. 29, 2019. Mr. Fix doesn't know what tyle of vehicle or the color of vehicle Ms. Arechigo was driving during the controlled buys. Tr. p. 173, lns. 14-19; Apr. 29, 2021. Mr. Fix did not even see Ms.

Arechigo go into the house on October 22, 2019, nor was Urrabazo ever seen outside of the house, knowing other individuals lived in the house, and Mr. Fix had no personal knowledge that Urrabazo was even in the house that day. Tr. p. 177, lns. 8-11; Tr. p. 178-179, lns. 4-7; Apr. 29, 2021. Further, none of the Cass County pre-recorded Cass County Drug Task Force buy fund money was ever found on Urrabazo. Tr. p. 181-182, lns. 25-6; Apr. 29, 2021. Mr. Fix admitted that he could not identify based on personal knowledge, that Urrabazo was the individual that met with Ms. Arechigo. Tr. p. 185, lns. 7-20; Apr. 29, 2021.

¶11 After the State rested, Urrabazo moved for a Rule 29 motion. Tr. p. 198, lns. 1-5; Apr. 29, 2021. The Court denied the motion. Tr. p. 199, lns. 9-10; Apr. 29, 2021. The jury returned a verdict of not guilty to the crime of delivery of a controlled substance on October 22, 2019, and guilty to the crime of delivery of a controlled substance on October 30, 2019, and Judgment was entered. App. 25, 26, 27. Urrabazo timely filed a notice of appeal on May 10, 2021. App. 30.

LAW AND ARGUMENT

I. The Standard of Review.

¶12 This Court's standard of review for challenges to sufficiency of the evidence is as follows:

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. 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. When considering insufficiency of the evidence, we will not reweigh conflicting evidence or judge the credibility of witnesses A jury may find a

defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty.

State v. Kinsella, 2011 ND 88, ¶ 7, 796 N.W.2d 678 (citing State v. Wanner, 2010 ND 121, ¶ 9, 784 N.W.2d 154) (quotations omitted). “A reversal is warranted only if, after viewing the evidence and all reasonable evidentiary inferences in the light most favorable to the verdict, no rational factfinder could have found the defendant guilty beyond a reasonable doubt.” State v. Vantreece, 2007 ND 126, ¶ 14, 736 N.W.2d 428 (citing State v. Keller, 2005 ND 86, ¶ 50, 695 N.W.2d 703). Standard of review on appeal is the same whether sufficiency of evidence is questioned on motion for judgment of acquittal at close of state’s case, at close of evidence, or after return of guilty verdict. State v. Lambert, 539 N.W.2d 288, 289 (N.D. 1995).

II. The Evidence Presented at Trial was Insufficient to Sustain the Guilty Verdict.

¶13 “After the prosecution closes its evidence or after the close of all the evidence, the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” N.D.R.Crim.P. 29(a). “The court may reserve decision on the motion, proceed with the trial If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.” N.D.R.Crim.P. 29(b).

¶14 In the present case, after the State rested, Crites moved for a Rule 29 motion. Tr. P. 198, lns. 1-5; Apr. 29, 2019. Mr. Fix admitted that during the controlled buy on October 22, 2019 and October 30, 2019, there was no conversation that took place during the recording that had anything to do with a drug purchase in his reports. Tr. p. 168, lns. 16-21; p. 169, lns. 12-22; Apr. 29, 2021. Mr. Fix doesn’t have any photographs or video

recordings proving a sale of methamphetamine from October 22, 2019 or October 30, 2019. Tr. p. 170, lns. 5-20; Apr. 29, 2019. Mr. Fix doesn't know what type of vehicle or the color of vehicle Ms. Arechigo was driving during the controlled buys. Tr. p. 173, lns. 14-19; Apr. 29, 2021. Mr. Fix did not even see Ms. Arechigo go into the house on October 22, 2019, nor was Urrabazo ever seen outside of the house, knowing other individuals lived in the house, and Mr. Fix had no personal knowledge that Urrabazo was even in the house that day. Tr. p. 177, lns. 8-11; Tr. p. 178-179, lns. 4-7; Apr. 29, 2021. Further, none of the Cass County pre-recorded Cass County Drug Task Force buy fund money was ever found on Urrabazo. Tr. p. 181-182, lns. 25-6; Apr. 29, 2021. Mr. Fix admitted that he could not identify based on personal knowledge, that Urrabazo was the individual that met with Ms. Arechigo. Tr. p. 185, lns. 7-20; Apr. 29, 2021. Urrabazo argues that the evidence presented at trial was insufficient to sustain any guilty verdict.

CONCLUSION

¶15 The Appellant respectfully requests this Court reverse the District Court's Judgment.

Dated the 5th day of July, 2021.

/s/ Laura Ringsak

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Appellant brief contains 11 pages consisting of the cover page through the conclusion and signature block and complies with the page limits outlined in North Dakota Rules of Appellate Procedure Rule 32(a)(8)(A).

Dated the 5th day of July, 2021.

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CERTIFICATE OF SERVICE

True and correct copies of **BRIEF OF APPELLANT** and **APPENDIX OF APPELLANT** was e-mailed to the following this 5th day of July, 2021:

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