

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

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State of North Dakota,  Plaintiff/Appellee,  v.  Carrie Lee Lusby,  Defendant/Appellant.	Supreme Court No.: 20210266  Stark County District Court Nos.: 45-2020-CV-00421
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**BRIEF OF THE APPELLEE, THE STATE OF NORTH DAKOTA**

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Appeal from the Criminal Judgment, Entered September 20, 2021.  
In the County of Stark, State of North Dakota, Southwest Judicial District  
Honorable Dann Greenwood, Presiding

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## STATEMENT OF FACTS

[¶1] The Appellee, State of North Dakota, has no dispute with the Statement of Facts presented in the Appellant's brief. However, the Appellee believes it important to refer to testimony of Deputy Colten Trout. (See Tr. pgs. 63-67, 79-82). Deputy Trout spoke with the Appellant in front of her house. During their conversation, the Appellant admitted to being in that house and leaving the relevant note. (pgs. 64-65). In addition, Deputy Trout asked the Defendant why she went into the house.

Q: You may read as directed.

A: Okay. So the reason that she stated she was out there looking for things that were there and present in that home, and if I hear things that I listen to that take me back out there, I'm going out there.

[¶2] Further, at no time during this conversation with Deputy Trout did she mention anything about a boyfriend. (Tr. p. 80).

## ARGUMENT

[¶3] The appellant was tried before a jury and found guilty by the said jury. In *State v. Kirkpatrick*, 2012 ND 229, ¶15, this Court summarized its standard for review of jury verdicts:

The issue in a sufficiency of the evidence appeal is whether evidence exists allowing the jury to draw an inference reasonably tending to prove guilt.

To successfully challenge the sufficiency of the evidence on appeal, a defendant must show there is no reasonable inference of guilt when viewing the evidence in the light most favorable to the verdict. . . . In deciding whether there is sufficient evidence, we do not resolve conflicts in the evidence nor do we weigh the credibility of the witnesses. We determine only whether there is competent evidence which could have allowed the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction.

[¶4] The Appellant argues that it was reversible error for the trial court to not give N.D.J.I. Crim.No. K-3.80 – Excuse to the jury and that the failure to do so constituted reversible error. The Appellee begs to differ.

[¶5] The Appellant notes that neither the Defendant nor her counsel requested it. There is good reason why trial counsel did not request it, i.e., it would have been redundant.

[¶6] Appellant argues in paragraph 23 of her brief that “Ms. Lusby entered the residence of Mr. Fugere and Ms. Godowski because she believed her boyfriend, Ian Travis, lived there. Therefore, N.D.C.C. § 12.1-05-08 applies to this case.”

[¶7] The Appellant claims here, as she did at trial, that she thought it was her boyfriend’s place, i.e., she made an innocent mistake which should be covered under 12.1-05-08. But the “mistake” was covered and addressed by the essential elements instruction given by the trial court, which read as follows:

#### Criminal Trespass

An individual who, knowing that he or she is not licensed or privileged to do so, enters or remains in a dwelling or in highly secured premises of another is guilty of Criminal Trespass.

#### ESSENTIAL ELEMENTS OF OFFENSE

The State’s burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

- 1) On or about April 27, 2019, in Stark County, North Dakota, the Defendant, Carrie Lusby, knowing that she was not licensed or privileged to do so;
- 2) Entered or remained in a dwelling or highly secured premise of Jane Doe and John Doe.

[¶8] If, therefore, the Appellant believed she was entering the residence of her boyfriend, she did not enter “knowing she was not licensed or privileged to do so.” The excuse instruction would have added nothing to the jury’s understanding of the case. No substantial rights of the Appellant were denied and there is no significant impact on the verdict.

[¶9] The Appellant also argues the trial court erred when it denied the Defendants’ Rule 29 motion. Legal rules in North Dakota relating to Rule 29 motions for a judgment of acquittal was set forth by this Court in *State v. Herzig*, 2012 ND 247, 825 N.W.2d 235 (2012) in paragraph 12:

“Under N.D.R.Crim.P. 29(a), the district court is authorized, upon the defendant’s motion, to ‘enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.’” *State v. Blunt*, 2010 ND 144, ¶ 12, 785 N.W.2d 909 (quoting N.D.R.Crim.P. 29(a)). To grant a motion for Judgment of acquittal under N.D.R.Crim.P. 29, “a trial court must find the evidence is insufficient to sustain a conviction of the offenses charged.” *Id.* (quoting *State v. Maki*, 2009 ND 123, ¶ 7, 767 N.W.2d 852). “When considering a motion for judgment of acquittal, ‘the trial court, upon reviewing the evidence most favorable to the prosecution, must deny the motion if there is substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt.’” *Id.* (quoting *State v. Hammeren*, 2003 ND 6, ¶6, 655 N.W.2d 707). To successfully challenge the sufficiency of the evidence on appeal, “the defendant must show the evidence, when viewed in the light most favorable to the verdict, permits no reasonable inference of guilt.” *State v. Gonzalez*, 2000 ND 32, ¶14, 606 N.W.2d 87.

[¶10] There was more than enough evidence to deny the Defendant’s Rule 29(a) motion. Both Mr. Fugere and Ms. Godwoski testified that they did not know the Defendant and that she did not have their permission to enter. Appellant admitted she went into the house and gave a rather unusual reason for doing so, but that reason had nothing to do with thinking it was someone else’s residence.

**CONCLUSION**

[¶11] For the reasons stated herein, the Defendant's conviction should be affirmed.

Dated this 28<sup>th</sup> day of December, 2021.

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**CERTIFICATE OF COMPLIANCE FOR BRIEF OF THE APPELLEE**

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[¶1] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that the Brief of the Appellee is 7 pages in length, including the Cover Page, the Table of Contents, and The Table of Authorities.

Dated this 28<sup>th</sup> day of December, 2021.

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**CERTIFICATE OF SERVICE FOR BRIEF OF THE APPELLEE AND  
CERTIFICATE OF COMPLIANCE**

[¶1] I certify that on the 28<sup>th</sup> day of December, 2021, I caused copies of the Brief of the Appellee, The State of North Dakota, and Certificate of Compliance for Brief of the Appellee, to be served electronically, via Supreme Court’s efilng portal upon the following:

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Dated this 28<sup>th</sup> day of December, 2021.

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**CERTIFICATE OF SERVICE FOR TITLE PAGE OF BRIEF OF THE  
APPELLEE**

¶1 I certify that on the 29<sup>th</sup> day of December, 2021, I caused copies of the Title Page of the Brief of the Appellee, The State of North Dakota, to be served electronically, via Supreme Court's e filing portal upon the following:

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Dated this 29<sup>th</sup> day of December, 2021.

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