

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

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State of North Dakota,  Plaintiff-Appellee,  vs.  Steven Ronald Dahl,  Defendant-Appellant	Supreme Court No. 20210276  Case No. 02-2019-CR-00260
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On appeal from the Criminal Judgment entered September 29, 2021  
Barnes County District Court  
Southeast Judicial District  
State of North Dakota  
The Honorable Jay A. Schmitz, Presiding

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**APPELLANT'S BRIEF**

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[¶1]

**Statement of the Issues**

- I. Whether Steven Dahl's conviction should be reversed because the evidence was insufficient to sustain the jury's verdict.
- II. Whether the jury instructions correctly informed the jury of the applicable law.

### **Statement of the Case**

[¶2] This is an appeal of a Criminal Judgment entered against Steven Ronald Dahl, (hereinafter referred to as “Mr. Dahl”) after a jury trial. On July 26, 2019, Mr. Dahl was charged with Theft of Property and four counts of Possession of Drug Paraphernalia. (Appellant’s App. at 8). On August 19, 2020, the State filed an Amended Information, changing the offense level for one of the charges. (Appellant’s App. at 10). On August 20, 2020, the district court commenced a two-day, jury trial on all five charges. (Appellant’s App. at 1). At the conclusion of the State’s case, the trial court granted a defense Rule 29 motion for acquittal and dismissed the charge of Theft of Property. (Tr. at 291, ln. 9 - 14). After the trial, the jury returned verdicts of Guilty on two of the drug paraphernalia charges and Not Guilty on the two remaining charges. (Tr. at 319, ln. 22 - 320, ln. 25). Mr. Dahl was sentenced on the two drug paraphernalia charges. (Appellant’s App. at 27). Mr. Dahl now appeals the jury’s verdicts on the two drug paraphernalia charges and the criminal judgment which was entered against him. (Appellant’s App. at 31).

### **Statement of the Facts**

[¶3] The criminal charges in this case arose from a law enforcement search of the property located at 628 East Main Street, in Valley City. The house located at 628 East Main Street is owned by Tim Newman’s grandmother. (Tr. at 51, ln. 16 - 24). Although owned by his grandmother, Tim Newman resides at the residence and seems to have custody and control over the property. See id. In July of 2019, Tim Newman was allowing Mr. Dahl to stay in

the house, along with other friends who “would stay over once in a while.” (Tr. at 52, ln. 3 - 10). The house is a two level house. Tim Newman occupied the top floor and Mr. Dahl stayed on a couch in the living room. (Tr. at 52, ln. 11 - 53, ln. 4). During this time, the house was kept unlocked, because the lock had been broken for the previous 6 to 12 month period. (Tr. at 50, ln. 5 - 11). The house had daily visitors and, on a typical day, could have between 2 and 20 visitors in a day. (Tr. at 63, ln. 11 - 64, ln. 10). Anyone who entered the house would have access to the living room where Mr. Dahl stayed. (Tr. at 60, ln. 12 - 16).

[¶4] Tim Newman kept his “stuff throughout the whole house,” including the living room area in which Mr. Dahl stayed. (Tr. at 53, ln. 19 - 21).

[¶5] On July 7, 2019, law enforcement stopped Kyle Ronnigen for driving while his license to do so was suspended. (Tr. at 75, ln. 10 - 24). Kyle Ronnigen stopped in the driveway of 628 East Main Street, in Valley City, North Dakota. See id. Kyle Ronnigen stated that he was driving to 628 East Main Street, to trade his unicycle for a bicycle. (Tr. at 76, ln. 5 - 10).

[¶6] Valley City Police Department Officer Jason Runge obtained a warrant to search Tim Newman’s house, for “bicycles and bike parts or tools for dismantling bicycles.” (Tr. at 103, ln. 7 - 21). While Officer Runge was obtaining the warrant, Barnes County Sheriff’s Deputy Josh Magnuson sat and observed the house from a couple of blocks away. (Tr. at 78, ln. 3 - 6). Within the one hour period of his observation, “three or four people” came and went from the property. (Tr. at 78, ln. 9 - 12).

[¶7] Law enforcement knocked on the door of the house and came into contact with Mr. Dahl. (Tr. at 105, ln. 1 - 10). Mr. Dahl was detained, placed in handcuffs and escorted out

to a police car. See id. At the time, Mr. Dahl was not physically possessing any illegal items. (Tr. at 82, ln. 15 - 21). After Mr. Dahl was secured in a police car, law enforcement went back, knocked on the door and waited for some period of time. After that period, they entered the house and found two other people: Tim Newman and Lilly Brant. (Tr. at 105, ln. 11 - 25; at 189, ln. 12). Tim Newman and Lilly Brant had access to the entire house after Mr. Dahl was removed by law enforcement but before the search began.

[¶8] Law enforcement searched the house. During the course of the search, law enforcement searched the coffee table which was in the main floor living room. The coffee table was described as four feet long and two to three feet wide and covered in “clutter”. (Tr. at 151, ln. 1 - 10). The “clutter” consisted of various bicycle parts, an ashtray, cigarettes, tools, batteries, garbage and other items, approximately two inches deep and this clutter was “over most of the table.” (Tr. at 83, ln. 1 - 4; at 94, ln. 2 - 4; at 154, ln. 2 - 11; Trial Exhibits 17, 18, 19, 20, 21 and 22). In and amongst this clutter on the coffee table, law enforcement officers found small baggies, with suspected drug residue inside the bags. (Tr. at 92, ln. 1 - 12). The baggies were approximately two inches wide and two inches long. (Tr. at 94, ln. 25 - 95, ln. 11). Amongst the clutter on the coffee table, law enforcement officers also found a smoking device with suspected drug residue on it. (Tr. at 78, ln. 20 - 80, ln. 16). The smoking device was found inside a red Eagle 20s cigarette pack. See id. The alleged possession of these items would form the basis for Counts 3 and 4 of the Information, of which Mr. Dahl was ultimately convicted.

[¶9] During the course of the search, law enforcement also found a scale with suspected drug residue on it and a marijuana smoking device with suspected drug residue. (Tr. at 127,



ln. 6 - 24: at 156, ln. 4 - 157, ln, 19). The scale and the smoking device were located on a side end table, between the main floor living room and dining room, approximately five to seven feet from the coffee table. See id. Law enforcement also located and seized bicycles and various bicycle parts from the house. (Tr. at 142, ln. 14 - 19). These alleged possession of these items would form the basis for Counts 1, 2 and 5 of the Information, of which Mr. Dahl was ultimately acquitted.

[¶10] During the search, Mr. Dahl was kept in a police car. (Tr. at 84, ln. 3 - 22). During the search, Lilly Brant was permitted to lie down and rest on the couch, in the living room, within feet of the coffee table, where the drug paraphernalia was found. (Tr. at 130, ln. 14 - 131, ln. 3). Amazingly, law enforcement permitted Lilly Brant to lie down and rest on the couch, while conducting the search and photographing the scene, so that she could be identified in one of the crime scene photographs that were taken and shown to the jury. See id.

[¶11] After the search, law enforcement officers spoke to Mr. Dahl. (Tr. at 134, ln. 11 - 13). Mr. Dahl stated that none of the drug paraphernalia was his. (Tr. at 135, ln. 12 - 14). Mr. Dahl stated that he smoked red Eagle 20s cigarettes. (Tr. at 135, ln. 15 - 19). Red Eagle 20s cigarettes are a very popular brand and are the cheapest brand of cigarette in Valley City. (Tr. at 237, ln. 14 - 19).

[¶12] Based on the results of the search, Mr. Dahl was charged with a total of five charges: One count of Theft of Property related to the bicycles and four counts of Possession of Drug Paraphernalia. (Appellant's App. at 8).

[¶13] On August 20, 2020, the district court commenced a jury trial on all five charges.

(Tr. at 21, ln. 15 - 19). During the course of the trial, the jury heard from eight witnesses. (Tr. at 21, ln. 15 - 260, ln. 6). During the trial, no witness testified that Mr. Dahl actually possessed any of the items of drug paraphernalia. (Tr. passim). No witness ever testified that Mr. Dahl held, touched, used or exercised any control over any of the drug paraphernalia. (Tr. passim). During the course of the trial, the jury heard that baggies could be used to store a controlled substance. (Tr. at 95, ln. 23 - 96, ln 16). There was no evidence presented to the jury that baggies were used to manufacture, compound, convert, produce, process, prepare, test or analyze a controlled substance. (Tr. passim).

[¶14] At the conclusion of the State's case, the district court granted a defense motion for judgment of acquittal under N.D.R.Crim.P. 29, with respect to the Theft of Property charge, which was Count One in the Information. (Tr. at 218, ln. 2 - 5). Specifically, the trial court ruled that there was insufficient evidence to believe that any of the bikes or bike parts were stolen. See id. The remaining charges went to the jury for deliberations.

[¶15] The jury was presented with certain instructions. (Appellant's App. at 12). The jury was also incorrectly advised of the elements related to Count 3, which was the felony level charge of possession of drug paraphernalia for the baggies. See id.

[¶16] The jury returned verdicts of Not Guilty with regards to Counts 2 and 5, which related to the scale and one of the smoking devices. (Tr. at 319, ln. 22 - 320, ln. 25). The jury returned verdicts of Guilty with regards to the Counts 3 and 4, which related to one of the smoking devices and the baggies, both of which were found on the coffee table in the living room. See id.

[¶17] Mr. Dahl was subsequently sentenced on the two drug paraphernalia charges.

(Appellant's App. at 27). Mr. Dahl now appeals the jury's verdicts on the two drug paraphernalia charges and the criminal judgment which was entered against him. (Appellant's App. at 31).

### **Law and Argument**

[¶18] This is an appeal of a criminal judgment entered after a jury trial. (Appellant's App. at 31). This Court has jurisdiction over this appeal under N.D. Const. art. VI § 6, N.D.C.C. § 29-28-03 and N.D.C.C. § 29-28-06.

### **Standard of Review**

[¶19] Mr. Dahl challenges the sufficiency of the evidence against him. The standard of review for a claim of insufficiency of the evidence is well established. State v. Nakvinda, 2011 ND 217, ¶ 12, 807 N.W.2d 204. "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 fact finder 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 verdicts." Id. In an appeal challenging the sufficiency of the evidence, this Court will review the evidence and reasonable inferences most favorable to the verdict, to ascertain if there is substantial evidence to warrant the conviction. State v. Noorlun, 2005 ND 189, ¶ 20, 705 N.W.2d 819. "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.” Id.

[¶20] Mr. Dahl also challenges the jury instructions which were used in his case. Jury instructions must correctly and adequately inform the jury of the applicable law and must not mislead or confuse the jury. State v. Erickstad, 2000 ND 202, ¶ 16, 620 N.W.2d 136. When reviewing an instruction, this Court reviews the instructions as a whole to determine whether they adequately and correctly inform the jury of the applicable law. State v. Schumaier, 1999 ND 239, ¶ 9, 603 N.W.2d 882. The district court is responsible for correctly instructing the jury on the law, but the prosecution and defense also have a responsibility to request and object to specific instructions. State v. Martinez, 2015 ND 173, ¶ 9, 865 N.W.2d 391. In this case, Mr. Dahl’s attorney did not object to the instructions. As such, this Court will review these instructions under the obvious or plain error standard. Under Rule 52(b), an obvious error or defect that affects substantial rights may be considered even though it was not brought to the court’s attention. N.D.R.Crim.P. 52(b). This Court has held, in order to establish obvious error, the appellant has the burden to show (1) error, (2) that is plain, and (3) that affects substantial rights. State v. Miller, 2001 ND 132, ¶ 25, 631 N.W.2d 587.

**I. Steven Dahl’s convictions should be reversed because the evidence was insufficient to sustain the jury’s verdict.**

[¶21] Mr. Dahl was convicted of two counts of Possession of Drug Paraphernalia, related to the baggies and the smoking device which were found during the search. While those items may be drug paraphernalia, there was no evidence that Mr. Dahl possessed those items. There was no evidence presented during trial that Mr. Dahl used or actually possessed either

of the items. There was no evidence that provided any sort of link between Mr. Dahl and the paraphernalia. In addition, the only evidence submitted to the jury was that baggies could be used for storage and not for one of the eight specifically enumerated ways that make their possession a felony. Under the circumstances, the convictions must be reversed.

**A. The evidence was insufficient to prove that Mr. Dahl possessed either of the items of drug paraphernalia.**

[¶22] For purposes of the criminal drug laws, possession can be actual or constructive. State v. Demarais, 2009 ND 143, ¶ 8, 770 N.W.2d 246. Constructive possession is proven when the evidence establishes that the defendant had the power and capability to exercise dominion and control over the controlled substance or paraphernalia. See id. This Court has held, “Mere presence in the same location as the contraband is not enough, there must be some link between the individual and the contraband.” State v. Woinarowicz, 2006 ND 179, ¶ 29, 720 N.W.2d 635. See also City of Wahpeton v. Wilkie, 477 N.W.2d 215 (ND 1991) (holding when joint occupancy is involved, there must be a necessary additional link between the Defendant and the contraband.)

[¶23] There was no evidence presented that Mr. Dahl actually possessed either of the items of drug paraphernalia. Law enforcement first came into contact with Mr. Dahl when they knocked on the door to serve the warrant. (Tr. at 105, ln. 1 - 10). Mr. Dahl was immediately detained in a police car. See id. At the time, Mr. Dahl was not physically possessing any illegal items. (Tr. at 82, ln. 15 - 21). The paraphernalia was found inside the home, while Mr. Dahl was locked inside the police car. Mr. Dahl was not drug tested. (Tr. at 94, ln. 8 - 9). The items were not fingerprinted. (Tr. at 82, ln. 10 - 14). During the course of the trial,

no witness ever testified to seeing Mr. Dahl possessing, holding, touching or exercising any control over either of these items. (Tr. passim). When questioned by law enforcement after the search, Mr. Dahl stated that neither of the items of the drug paraphernalia were his. (Tr. at 135, ln. 12 - 14). Under these facts, there was no evidence that Mr. Dahl used or actually possessed the items.

[¶24] The State's theory at trial was that Mr. Dahl constructively possessed the paraphernalia. With regard to constructive possession, the State must show some sort of link between Mr. Dahl and the items. The evidence does not support any sort of such a finding. The house could not have provided the necessary link between Mr. Dahl and the contraband. The paraphernalia was located on the coffee table in the living room of the house located at 628 East Main Street in Valley City. At the time, that house was owned by Tim Newman's grandmother. (Tr. at 51, ln. 16 - 24). Although the house was owned by his grandmother, the evidence presented throughout the trial was that Tim Newman had control and custody of the property. (Tr. passim). At the time of the search, Tim Newman was allowing Mr. Dahl to stay at the house along with other friends who "would stay over once in a while." (Tr. at 52, ln. 3 - 10). Mr. Dahl stayed on a couch in the living room. (Tr. at 52, ln. 11 - 53, ln. 4). The living room where Mr. Dahl stayed was not private to him and was accessible to anyone who entered the house. (Tr. at 60, ln. 12 - 16). During the trial, Tim Newman testified that he kept his "stuff throughout the whole house," including the area in which Mr. Dahl slept. (Tr. at 53, ln. 19 - 21).

[¶25] The baggies and the smoking device were found on the coffee table, which was located in the living room. This was a common area of the house and was accessible to

anyone who entered the house. (Tr. at 60, ln. 12 - 16). There were many opportunities for others to access this area. Anyone could access the house, because the house had been kept unlocked for the previous a 6 to 12 month period. (Tr. at 50, ln. 5 - 11). The house had daily visitors and, on a typical day, could have between 2 and 20 visitors in a day. (Tr. at 63, ln. 11 - 64, ln. 10). One law enforcement officer counted “three of four people” who came and went from the house, in the hour immediately prior to the search. (Tr. at 78, ln. 9 - 12). Given the fact that the living room area was a common area, was not exclusive to Mr. Dahl and was regularly accessed by many other people, the location in which the paraphernalia was found could not have provided enough of a link to find constructive possession.

[¶26] Just as the house and the living room could not provide a locational link between Mr. Dahl and the paraphernalia, there was also no evidence that could provide a temporal link. There was no evidence presented at trial as to when the baggies and the smoking device were placed on the coffee table. (Tr. passim). The items were found on the coffee table, in an amongst various “clutter.” (Tr. at 151 , ln. 1 - 10). As described by witnesses, the coffee table was covered in approximately two inches of clutter, consisting of various bicycle parts, an ashtray, cigarettes, tools, batteries, garbage and other items. (Tr. at 83, ln. 1 - 4: at 94, ln. 2 - 4: at 154, ln. 2 - 11: Trial Exhibits 17, 18, 19, 20, 21 and 22). The paraphernalia was small and would not have been immediately noticeable in and amongst this clutter on the coffee table. (Tr. at 94, ln. 25 - 95, ln. 11). Under the circumstances, it is impossible to know when the items were placed on the coffee table and how long they had been there before law enforcement arrived.

[¶27] A review of the time line is important. Prior to obtaining the search warrant, one

officer watched three or four people coming and going from the house. (Tr. at 78, ln. 9 - 12). After the first knock on the door, law enforcement took Mr. Dahl into custody and placed him in a squad car. (Tr. at 105, ln. 1 - 10). At this point, two individuals remained alone in the house. After securing Mr. Dahl in the squad car, officers came back to the house and knocked a second time. When they did not receive a response, they entered the house and found Tim Newman and Lilly Brant in the house. (Tr. at 105, ln. 11 - 25; at 189, ln. 12). Either of these individuals could have accessed the coffee table in the living room during this time, but Mr. Dahl could not have. (Tr. at 143, ln. 6 - 8). In fact, not only could either of these individuals accessed the coffee table in the living room prior to law enforcement entering the house, Lilly Brant could have accessed this area during the search. As incomprehensible as it seems, Lilly Brant was permitted to lie down on the couch, within feet of the coffee table where the paraphernalia was found, while law enforcement conducted the search around her. (Tr. at 130, ln. 14 - 131, ln. 3). While Mr. Dahl was locked in a police car, law enforcement permitted Lilly Brant to lie down and rest on the couch, while they conducted the search around her, so that she could be seen in one of the crime scene photographs that were taken and shown to the jury. See id. Under these facts, there was no integrity of the search area and there cannot be any sort of temporal or locational link between Mr. Dahl and the drug paraphernalia. There was no evidence beyond possible presence at the location that linked Mr. Dahl to these items. Possible presence at a location where paraphernalia is found is not enough to establish possession.

[¶28] The State may argue that the Eagle Red cigarette pack provides a link between Mr. Dahl and the smoking device. It is undisputed that the smoking device was found inside a



package of red Eagle 20s cigarettes, which is the same brand that Mr. Dahl admitted to smoking. (Tr. at 78, ln. 20 - 80, ln. 16: at 135, ln. 15 - 19). This is not enough of a link to establish constructive possession. The testimony during the trial was that Red Eagle 20s cigarettes are a very popular brand and are the cheapest brand of cigarettes in Valley City. (Tr. at 237, ln. 14 - 19). Other than being the same brand, there was no evidence that this empty cigarette pack belonged to Mr. Dahl. In addition, even if that particular pack belonged to Mr. Dahl, there was no evidence that he possessed the smoking device or was the person who placed the smoking device in that empty cigarette pack. As explained above, there was no evidence that provided any sort of locational or temporal link between Mr. Dahl and that empty cigarette pack. Anyone who had access to that living room area could have placed that item inside that empty cigarette pack, whether it belonged to Mr. Dahl or belonged to anyone else who smoked this popular brand. Given the fact that the living room was regularly accessed by many different people, the fact that the smoking device was found in the red Eagle 20s pack was not enough of a link to conclude that it was possessed by Mr. Dahl.

**B. There was no evidence that the baggies were used for one of the eight enumerated ways that would make their possession a felony.**

[¶29] One additional issue exists with relation to the baggies, which were charged as Count 3 of the Amended Information. For the alleged possession of the baggies, the State charged Mr. Dahl with a class C felony violation of N.D.C.C. § 19-03.4-03(1). (Appellant's App. at 10). With regards to the class C felony violations, the 2017 version of the statute states, in pertinent part:

**19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of chapter 19-03.1. Any person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.

N.D.C.C. § 19-03.4-03(1) (2017 Edition. Emphasis added). The second sentence is the key to understanding what makes the charge a felony. In order to be guilty of the class C felony level charge, the actor must use, or possess with the intent to use the paraphernalia “to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance.” Id.

[¶30] This Court recently considered the felony level charge of possession of drug paraphernalia in State v. Nupdal, 2021 ND 200. In Nupdal, the defendant was charged with possession of a scale and the only evidence presented to the district court was that the scale would be used to weigh a controlled substance before repackaging. See id. at ¶9. The Court found that, “Under the plain language of the statute, a person is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, in eight enumerated ways.” Id. at ¶ 11. Because using drug paraphernalia to weigh a controlled substance is not one of these eight enumerated ways, this Court affirmed the dismissal of the felony charge. See id. at ¶ 11 - 14. Although Nupdal is interpreting the current version of the statute and Mr. Dahl was charged under a prior version of the statute, the operative language of both

statutes is the same.

[¶31] In this case, the State charged Mr. Dahl with felony level possession of drug paraphernalia for possession of baggies. There was no evidence presented to the jury that these baggies were used to “manufacture, compound, convert, produce, process, prepare, test or analyze” a controlled substance. (Tr. passim). Instead, the only evidence the jury heard was that baggies were used to store a controlled substance. (Tr. at 95, ln. 23 - 96, ln 16). Storing a controlled substance is not one of the eight enumerated uses that make the possession of drug paraphernalia a felony. In Nupdal, this Court held that weighing for repackaging is not the same as producing or preparing. 2021 ND 200, ¶ 11. By the same logic, storing is not the same as producing or preparing. Nor is storing any one of the other enumerated uses that makes the charge a felony. As such, there was no evidence to support the jury’s verdict and the felony conviction for the possession of the baggies must be vacated.

**II. The instruction related to the felony level possession of drug paraphernalia charge incorrectly included additional ways in which the crime could be committed.**

[¶32] Mr. Dahl raises one final issue regarding the jury instruction that was used for Count 3. As discussed supra, the State charged the possession of the baggies as a class C felony violation of N.D.C.C. § 19-03.4-03(1). (Appellant’s App. at 10). With regards to the class C felony violations, the statute states, in pertinent part:

**19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a

controlled substance in violation of chapter 19-03.1. Any person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.

N.D.C.C. § 19-03.4-03(1) (2017 Edition. Emphasis added). As discussed supra, under the plain language of the statute, in order to guilty of the class C felony charge, the actor must use or possess the paraphernalia with the intent to use it in one or more of the eight enumerated ways: “to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance.” *Id.* See State v. Nupdal, 2021 ND 200, ¶ 11.

[¶33] Despite the plain language of the statute, the district court erred when it advised the jury as follows:

ESSENTIAL ELEMENTS OF THE OFFENSE (Count 3)

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

1) On or about July 7, 2019, in Barnes County, North Dakota, the Defendant, Steven Dahl;

2) Willfully possessed with the intent to use drug paraphernalia, namely baggies with white residue, for the purpose of manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, or concealing a controlled substance, namely methamphetamine.

(Appellant’s App. at 18) (emphasis added). Interestingly, the district court included the eight enumerated ways from the statute, but also included five extra ways. The eight enumerated ways are transcribed verbatim from the statute, but the district court also included five additional ways of “packing, repacking, storing, containing or concealing.” The five extra

ways that are included in the jury instruction are most concerning, because they happen to be exactly the actions one would take with baggies. It is common sense that baggies are used for storing and containing things. The only evidence the jury heard was that baggies were used to store a controlled substance. (Tr. at 95, ln. 23 - 96, ln 16). N.D.C.C. § 19-03.4-03(1) and State v. Nupdal make it clear that the felony charge requires proof of an intent to use the paraphernalia in one or more of the eight enumerated ways, all of which deal with the creation or processing of the drug. The jury should have been informed that it could only find Mr. Dahl guilty if it found that he possessed the baggies with the intent “to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance.” However, the essential elements of the charge were augmented to include other activities that were not prohibited under the felony statute. As such, the jury instruction incorrectly advised the jury of the essential elements of the crime. This is reversible error.

### **Conclusion**

[¶34] For the foregoing reasons, Mr. Dahl’s conviction should be reversed and remanded for a judgment of acquittal because the evidence presented at trial was insufficient to support the verdict. In the alternative, Mr. Dahl should be granted a new trial with instructions to the district court on the applicable jury instructions.

Dated this 11<sup>th</sup> day of January, 2022.

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**Certificate of Compliance**

[¶35] Pursuant to N.D.R.App.P. 32(e), the undersigned attorney certifies that this Brief consists of 22 pages and complies with 38 page limitation.

Dated this 11<sup>th</sup> day of January, 2022.

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

State of North Dakota,  Plaintiff-Appellee,  vs.  Steven Ronald Dahl,  Defendant-Appellant,	Supreme Court No. 20210276  Case No. 02-2019-CR-00260  <b>Certificate of Service</b>
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¶1 I hereby certify that on the 11<sup>th</sup> day of January, 2022, the following documents:

1. Appellant’s Brief;
2. Appellant’s Appendix; and
3. Certificate of Service.

were served, via email, upon the following individual:

Email: states\_attorney@barnescounty.us  
Tonya Duffy  
Barnes County State's Attorney

and were served, via email, upon the Defendant-Appellant, as follows:

Email: firstlast58072@gmail.com  
Steven Ronald Dahl

Dated this 11<sup>th</sup> day of January, 2022.

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