

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court Nos. 20210159
Plaintiff and Appellee,)	
)	
)	
vs.)	
)	District Court No. 51-2019-CR-02391
)	
Barry Mervyn Lindeman,)	
Defendant and Appellant.)	

APPELLEE’S BRIEF

Appeal from Criminal Judgment Entered on May 28, 2021, by
Ward County District Court, North Central Judicial District,
State of North Dakota, The Honorable Douglas L. Mattson, presiding

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES

[¶1] Issue I: The district court properly denied Appellant’s Motion for a Judgment of Acquittal.

STATEMENT OF THE CASE

[¶2] Appellee agrees with Appellant’s Statement of the Case.

STATEMENT OF FACTS

[¶3] On December 7, 2019, the Appellant walked into the Minot Police Department and admitted to perpetrating sex acts with his daughter on multiple occasions, acts that took place in Ward County, North Dakota when the victim was under the age of 15 and he was over the age of 22. Appellee App. 3. Jane Doe testified at trial as to the types of sex acts, the frequency of the sex acts, where the sex acts took place, the time frame of when the sex acts took place, and the ages of herself and Appellant. Tr. 34-37. Canadian Pacific Railway Police Officer Benjamin Dahl testified the Appellant confessed to Dahl he molested his daughter and wanted to turn himself in. Tr. 73. Through the testimony of Minot Police Officer Jarred Shaw, a recording of the Appellant’s first recorded confession of the sex acts was played for the jury. Tr. 141. Through the testimony of Louis Coca III, who was the Surrey Chief of Police at the time of the confession, a recording of the Appellant’s second recorded confession of the sex acts was played for the jury. Tr. 153. The jury received testimony from the juvenile victim and three law enforcement officers the Appellant confessed his crime to along with two separate audio recordings of the Appellant confessing the crime.

LAW AND ARGUMENT

[¶4] I. The district court properly denied Appellant’s Motion for a Judgment of Acquittal

A. Time

[¶5] Appellant was convicted by jury verdict of Gross Sexual Imposition in violation of N.D.C.C. § 12.1-20-03(1)(d) which states “A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if the victim is less than fifteen years old.” N.D.C.C. § 12.1-20-03(a) made Appellant’s offense a class AA felony as “the actor’s conduct violate[d] subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense.” The only references to time in the elements of the offense is the relative ages of the victim and the defendant. Jane Doe testified she was 14 when the crime was reported and the Appellant was 41 at the time of trial, making him above the age of 22 at the time of the offense. Tr. 35. Gross Sexual Imposition as an offense does not have time as an essential element.

[U]nless time is an essential element of an offense, it is not required in a criminal prosecution that the crime be proved to have been committed on the precise date or time period alleged in the complaint or information. It is sufficient that the State prove the commission of the crime charged at any time prior to the filing of the complaint and within the period fixed by the applicable limitations statute.

State v. Hatch, 346 N.W.2d 268, 276 (N.D. 1984). The applicable limitations statute is N.D.C.C. § 29-04-03.1, which requires prosecution within twenty-one years of the offense. The State’s charging document in the matter, the Amended Information, listed the offense date as “on or about January 1, 2016 through December 7, 2019,” well within the twenty-one years under the applicable limitations statute. Appellee App. 5. The State was not required to prove the offense took place during 2016 as argued by Appellant, just that the crime occurred between the dates on the Amended Information. Appellant Br. ¶ 20.

B. Sufficiency of the Evidence

[¶6] “It is well established in North Dakota that the uncorroborated testimony of a rape

victim is sufficient to establish all the elements of the crime.” State v. Kringstad, 353 N.W.2d 302, 306 (N.D. 1984). Here Jane Doe testified to every element of the offense, that Appellant engaged in a sex act with her while she was under the age of 14, that he was above the age of 22 at the time, and the offense took place in Minot and Surrey which are cities in Ward County. Tr. 35-37. The jury received sufficient evidence to convict the Appellant of Gross Sexual Imposition through Jane Doe’s testimony alone. Additionally, the jury heard testimony from three other witnesses as to Appellant’s multiple confessions to the crime. The evidence was more than sufficient.

CONCLUSION

[¶7] Based upon the foregoing, the State respectfully requests that the district court’s denial of Appellant’s motion for acquittal and the jury’s verdict be upheld.

Dated this 22nd day of September, 2021.

/s/Christopher W. Nelson

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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 22nd day of September, 2021.

/s/Christopher W. Nelson
Christopher W. Nelson #08708

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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 6 pages.

Dated this 22nd day of September, 2021.

/s/Christopher W. Nelson
Christopher W. Nelson #08708

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AFFIDAVIT OF SERVICE

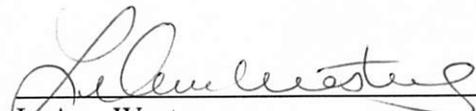
LeAnn Westereng, being first duly sworn, deposes and says:

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 22nd day of September, 2021, this Affiant provided a true and correct copy of the following documents in the above entitled action:

APPELLEE'S BRIEF and APPENDIX OF APPELLEE

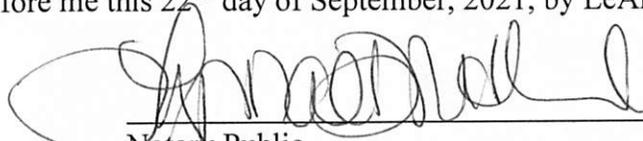
By electronic service to the following:

SAMUEL A. GERESZEK
ATTORNEY FOR APPELLEE
eserve@gereszek.law



LeAnn Westereng

Subscribed and sworn to before me this 22nd day of September, 2021, by LeAnn Westereng



Notary Public

LYNNAE RUDLAND
Notary Public
State of North Dakota
My Commission Expires April 26, 2022