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IN THE SUPREME COURT OF NORTH DAKOTA

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State of North Dakota,	)	<b>Supreme Court File No.</b>
	)	<b>20160272</b>
	)	
Plaintiff and Appellee,	)	<b>Cass County Criminal No.</b>
	)	<b>09-2016-CR-01168</b>
	)	
v.	)	
	)	
Ansu Kamara,	)	<b>APPELLANT’S BRIEF</b>
	)	
Defendant and Appellant.	)	

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**APPEAL FROM THE CRIMINAL JUDGMENT IN CASS COUNTY**

**DISTRICT COURT, EAST CENTRAL JUDICIAL DISTRICT,**

**NORTH DAKOTA THE HONORABLE SUSAN L. BAILEY,**

**PRESIDING.**

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### Transcript References:

The Jury Trial for this matter was conducted on July 14, 2016. The transcript of the Trial is referred to as [Tr.] in this brief.

## **JURISDICTION**

[¶ 1] The Defendant, Ansu Kamara, timely appealed the final criminal judgment arising out of the district court and the North Dakota Supreme Court has jurisdiction over the appeal of this matter pursuant to N.D.C.C. § 29-32.1-14 which provides that, “[a] final judgment entered under this chapter may be reviewed by the supreme court of this state upon appeal as provided by rule of the supreme court.” The district court had jurisdiction under N.D.C.C. § 29-32.1-01. This Court has appellate jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. §§ 29-28-03; 06(1)(2)(4) and (5). Mr. Kamara was found guilty of the crime of simple assault on a corrections officer following a jury trial. The final criminal judgment was entered in this case on July 14, 2016.

## **STATEMENT OF THE ISSUES**

[¶ 2] I. The evidence was insufficient to convict Ansu Kamara for the crime of simple assault.

## **STATEMENT OF CASE**

[¶ 3] This is a criminal matter on direct appeal from East Central Judicial District, Cass County Criminal Judgment. This case was before the district court in State v. Kamara, 9-2016-CR-01168. The complaint was filed with the court on March 31, 2016. The Defendant was charged with simple assault on a corrections officer in violation of section 12.1-17-01(2)(a), a class C Felony. Mr. Kamara proceeded pro se.

[¶ 4] A trial was held on July 14, 2016. Mr. Kamara testified in his own defense, but did not call any other witnesses. The jury returned verdict of guilty. Kamara was sentenced, in part, to be committed to the Department of Corrections and Rehabilitation for a period of five (5) years, first to serve three (3) years, supervised probation of one (1)

year, with credit for one hundred and six (106) days previously served. The Criminal Judgment was filed on July 15, 2016.

### **STATEMENT OF FACTS**

[¶ 5] Prior to March 26, Ansu Kamara was reprimanded by Corrections Officer Sean Brekke (Brekke) for arguing with another inmate. Tr. p.51. Brekke threatened to lock Mr. Kamara down for the day. Id. Mr. Kamara was told by another inmate that Brekke got the best of this interaction and would like it if Mr. Kamara assaulted him, so he would have the opportunity to hit Mr. Kamara. Tr. pp.98, 110.

[¶ 6] On March 26, 2016 Brekke was inspecting cell 217 in Sigma 3 unit of the Cass County jail. Tr. p.44. Mr. Kamara into the room and hit Brekke three times, in the back and side of his head. Tr. pp.44-45, 52, 111, 119-120. Brekke claimed this caused him injuries on his elbows, knees, a cut on his bottom lip, and an abrasion on his forehead.

[¶ 7] The State called several witnesses besides Brekke, none of these witnesses saw the crime take place. Correction Officer Brandon Lien was called as a witness and stated, “I did not see Mr. Kamara hit Mr. Brekke.” Tr. p.64.

[¶ 8] The State called Correction Officer Steve Hirschert as a witness. He was not present at the time of the assault and stated, “Once I got to cell 217, I saw Inmate Kamara on the ground, on the – face first on the ground with cuffs. He was handcuffed behind his back. I believe Deputy Lien was on top of him holding him down and Deputy Brekke was standing further in the cell.” Tr. p.72.

[¶ 9] The State called Nurse Stephany Kittleson as a witness. Tr. p.87. She stated, “I was asked to come into the Sergeant’s office to assess the deputy that had been involved

in the incident in Sigma. Before I got into the office, I had no idea what the incident was.”  
Tr. p.88.

[¶ 10] The State called Detective Joseph Gress. Mr. Gress was not present at the time of the crime and was simply used to introduce admissions of Mr. Kamara. Tr. pp.92-101. The State then rested their case.

[¶ 11] Mr. Kamara testified in his own defense. He stated that he hit Brekke but that he did not injury him. Tr. p.120. Specifically, he did not see “any blood” as a result of hitting Brekke. Id. After his testimony Mr. Kamara rested his case. The jury returned a verdict of guilty to Simple Assault on a Corrections Officer. Mr. Kamara filed his appeal.

### **LAW AND ARGUMENT**

#### **I. The evidence was insufficient to convict Ansu Kamara for the crime of Simple Assault.**

##### **Standard of Review**

[¶ 12] Jurisdiction. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted Sections 29-28-03 and 29-28-06, N.D.C.C., which provides as follows:

“An 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. 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.

[¶ 13] The appellate standard of review regarding a claim of insufficiency of evidence is well-established. In State v. Schmeets, 2007 ND 197, ¶8, 742 N.W.2d 513, the court stated: "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." State v. Igou, 2005 ND 16, ¶5, 691 N.W.2d 213. 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. Id. "A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor." State v. Knowels, 2003 ND 180, ¶6, 671 N.W.2d 816.

[¶ 14] Kamara was found guilty of Simple Assault on a Corrections Officer. In order to obtain a conviction, the jury must find that the State has proven beyond a reasonable doubt each element of the crimes charged.

[¶ 15] That statute in relevant part, N.D.C.C. § 12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:

a. Willfully causes bodily injury to another human being

Additionally, simple assault becomes a class C felony offense when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact. NDCC § 12.1-17-01(2)(a).

[¶ 16] It is not disputed that Mr. Kamara struck Brekke. However, there is insufficient evidence that Mr. Kamara's actions caused injury to Brekke. Brekke said he was struck in the back of the head and to the side of the head. There are no reports or photos of injury to this area of Brekke's body. Brekke stated he was hit three times, in the back and side of his head. Tr. pp.44-45, 52, 111, 119-120. Brekke claimed this caused him injuries on his elbows, knees, a cut on his bottom lip, and an abrasion on his forehead. However, Brekke never claimed to have fallen down from being struck. It is therefore impossible to receive an injury on one's elbows and knees from a hit to the head. Similarly, it is not possible to receive an injury to one's lip unless they were struck on the lip. There was no witness testimony that Mr. Kamara struck Brekke in the mouth or near his lip. Brekke claimed that Mr. Kamara caused an abrasion on his forehead. First looking at Exhibit 5 it is impossible to determine if the mark on Brekke's forehead is an abrasion or simply poor lighting, dirt, or any other random mark. If it is an abrasion, as Brekke claims, it is on the front of his head and not an injury that could possibly be sustained by a strike to the back or side of his head.

[¶ 17] Mr. Kamara admits to striking Brekke, but he specifically denied causing injury to Brekke. Tr. p.120. Given the placement of the injuries and the testimony of the only other witness at the scene, Brekke, it would have been impossible for Mr. Kamara to cause the injuries Brekke is alleging.

[¶ 18] Brekke may have been injured at another time in the day. Or he may have been injured while placing a compliant Mr. Kamara into a chokehold. Or perhaps when he and Officer Lien were tackling, handcuffing, and conducting a leg lock on a compliant Mr. Kamara, but these would not be injuries that were willfully caused by Mr. Kamara. If they

had been injuries that Mr. Kamara caused then to meet the State's burden of proof someone would had to of testified how Mr. Kamara willfully caused those injuries, not simply that Brekke had them.

### **CONCLUSION**

[¶ 19] There was insufficient evidence at trial to support a conviction for simple assault. WHEREFORE the Defendant respectfully requests the Court to reverse the verdict and judgment of the trial court.

Dated this 25<sup>th</sup> day of January, 2017

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**IN THE SUPREME COURT OF NORTH DAKOTA**

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<b>State of North Dakota,</b>	)	
	)	
<b>PLAINTIFF/APPELLEE,</b>	)	<b>Case No. 09-2016-CR-1168</b>
	)	<b>Supreme Court No. 20160272</b>
<b>VS.</b>	)	
	)	<b>CERTIFICATE OF SERVICE</b>
<b>Ansu Kamara,</b>	)	
	)	
<b>DEFENDANT/APPELLANT.</b>	)	

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The undersigned, being of legal age, being first duly sworn deposes and says that on January 25, 2017, she served true copies of the following documents:

Appellant's Brief  
Appellant's Appendix

And that said copies were served upon:

Cherie Clark, Assistant State's Attorney, sa-defense-notices@casscountynd.gov  
by electronically filing said documents.

And that said copies were served upon:

Ansu Kamara #45209, c/o JRCC, 2521 Circle Dr, Jamestown, ND 58401  
by placing said documents in a sealed envelope with USPS.

Dated: January 25, 2017      KRAUS-PARR LAW

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State of North Dakota,	)	
	)	Case No. 09-2016-CR-1168
PLAINTIFF/APPELLEE,	)	Supreme Court No. 20160272
	)	
VS.	)	CERTIFICATE OF SERVICE
	)	
Ansu Kamara,	)	
	)	
DEFENDANT/APPELLANT.	)	

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The undersigned, being of legal age, being first duly sworn deposes and says that on January 27, 2017, she served true copies of the following documents:

Appellant's Appendix

And that said copies were served upon:

Cherie Clark, Assistant State's Attorney, sa-defense-notices@casscountynd.gov

by electronically filing said documents.

And that said copies were served upon:

Ansu Kamara #45209, c/o JRCC, 2521 Circle Dr, Jamestown, ND 58401

by placing said documents in a sealed envelope with USPS.

Dated: February 3, 2017      KRAUS-PARR LAW

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