

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

State of North Dakota, Plaintiff-Appellee, vs. David Mbulu, Defendant-Appellant	Supreme Court No. 20170341 Case No. 53-2015-CR-02302
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On appeal from the Criminal Judgment entered September 12, 2017
Williams County District Court
Northwest Judicial District
State of North Dakota
The Honorable Joshua B. Rustad, Presiding

APPELLANT'S REPLY BRIEF

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[¶1]

Statement of the Issues

- I. Whether the district court erred by granting the State's motion to continue the trial and in the procedure the district court used after the week long adjournment of the trial.
- II. Whether David Mbulu's convictions should be reversed because the evidence was insufficient to sustain the jury's verdicts

Statement of the Facts

[¶2] The facts are sufficiently laid out in the Appellant's Brief. As it relates to this Reply Brief: On November 20, 2015, Mr. Kisi drove himself, Mr. Mbulu and C.B. from Minot to Williston. (Tr. at 779, ln. 16 - 780, ln. 13: at 871, ln. 14: at 879, ln. 7). In response to an argument which occurred, Mr. Mbulu recorded a portion of the argument on his cell phone. (Tr. at 782, ln. 12 - 21: at 872, ln. 4 - 13). Mr. Mbulu now wishes to respond to the State's Brief, to clarify what he believes is a misstatement regarding the statements contained on the cell phone videos.

Law and Argument

[¶3] Mr. Mbulu believes that it is necessary to respond to the State's Appellee Brief, specifically to paragraph 54. See Appellee Brief at ¶ 54 . The State's Brief discusses the two cell phone videos and argues that the videos indicate an anger towards C.B. See id. Although Mr. Mbulu disagrees with many of the arguments offered in the State's Appellee Brief, Mr. Mbulu takes particular exception to ¶ 54 and the purported statements of the video. Mr. Mbulu wants to clarify that although Mr. Kisi made certain statements on those cell phone videos, those statements should not be attributed to him. Mr. Mbulu denies that there was a conspiracy and, as argued in the Appellant's Brief, asserts that the evidence did not support the existence of such a conspiracy. As such, Mr. Kisi's statements are his own and should not be considered evidence of Mr. Mbulu's guilt. In addition and what is most important, Mr. Mbulu asserts that he did not make any "statement about not letting [C.B.]

get away with it.” See Appellee Brief at ¶ 54 . To the extent that the video did not contain such a statement by Mr. Mbulu, it should not be considered as evidence of Mr. Mbulu’s guilt.

Conclusion

[¶4] For the foregoing reasons and the reasons set out in the Appellant’s Brief, Mr. Mbulu’s convictions should be reversed and remanded for a judgment of acquittal because the evidence presented at trial was insufficient to support the verdicts. In the alternative, if the Court finds that Mr. Mbulu was unfairly prejudiced as a result of the week long adjournment of the case, the conviction should be vacated and the case should be remanded for a new trial.

Dated this 13th day of March, 2018.

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SUPREME COURT NO. 20170341

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CERTIFICATE OF SERVICE

[¶1] I hereby certify that on the 13th day of March, 2018, the following documents:

1. Appellant's Reply Brief; and
2. Certificate of Service

were served, via email, upon the following individual:

Email: 53sa@co.williams.nd.us
Nathan Kirke Madden
Williams County State's Attorney Office

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

David Mbulu
c/o North Dakota State Penitentiary
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Bismarck, ND 58506

Dated this 13th day of March, 2018.

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