

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

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State of North Dakota,	)	
	)	Supreme Court No. 20220156
Plaintiff and Appellee,	)	
	)	
v.	)	
	)	
Mohammed Yousif,	)	
	)	District Court No. 18-2020-CR-01544
Defendant and Appellant.	)	

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**BRIEF OF APPELLEE**

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ON APPEAL FROM CRIMINAL JUDGMENT  
ENTERED ON MAY 4, 2022  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL  
DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE JOHN THELEN

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**ORAL ARGUMENT REQUESTED**

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## **TABLE OF CONTENTS**

Table of Contents.....	Page 2
Table of Authorities.....	Page 3
Oral Argument Request .....	¶1
Statement of the Issue .....	¶2
Statement of the Case.....	¶3
Facts of the Case.....	¶4
Law and Argument .....	¶5
I. The district court did not err in excluding the recorded statement of Juvenile K. ....	¶5
Conclusion .....	¶11

## **TABLE OF AUTHORITIES**

### **NORTH DAKOTA STATE CASES**

State v. Demery, 331 N.W.2d 7, 11 (N.D. 1983)..... ¶7

### **STATUTES/CONSTITUTIONS**

N.D.R.Ev. 613..... ¶9

N.D.R.Ev. 613(b) ..... ¶5

### **ORAL ARGUMENT REQUESTED**

[¶1] This Court should conclude that oral argument would be helpful in deciding the issues on appeal given the procedural posture and facts of this case. Additionally, since the Appellant requested oral argument, the Appellee would request the opportunity to respond to any new claims raised and clarify its written argument on their merits.

### **STATEMENT OF THE ISSUE**

- [¶2] I. Whether the trial Judgment erred when he refused to admit into evidence and allow defense to play the victim K's second video interview with Grand Forks Police Officer Jennifer Freeman?

## **STATEMENT OF THE CASE**

[¶3] On September 2, 2020, the Defendant, Mohammed Yousif made an initial appearance on a charge of Aggravated Assault. The Defendant plead not guilty and the matter proceeded to trial on May 3, 2022.

## **FACTS OF THE CASE**

[¶4] On July 19, 2022, K.A. was playing basketball with 3 other juveniles and the defendant, Mohammed Yousif, at a basketball court in East Grand Forks, MN. R215:49. K.A. called another juvenile, E.P. to come pick him and his friends up at the basketball court around sundown. R215:50. They all drove to Grand Forks, ND and went to the Valley Dairy for snacks. R125:51. After Valley Dairy, several of the passengers were dropped off, leaving K.A., E.P., and the Defendant in the vehicle. R.215:52. The Defendant was then dropped off at his girlfriend's home temporarily, while K.A. and E.P. waited in the vehicle. R.215:53. K.A. sent a text message to the Defendant, telling him to come out, which the Defendant did after a couple of minutes. R.215:53-54. R.215:54. The Defendant handed K.A. 2 play station games. Id. They drove around for a period of time when K.A. and E.P. heard a loud bang and K.A. sustained a gunshot wound. R.215:54-55. K.A. couldn't move his arm and stated you shot me. Id. K.A. heard E.P. yelling and the Defendant stating I didn't mean to shoot you, I'm sorry. Id. K.A. drove the defendant towards the defendant's home in East Grand Forks and crossed the river into Minnesota. Id. While driving to the home, they drove past law enforcement, who turned around. Id. The defendant left the vehicle and shortly thereafter the vehicle was pulled over by

law enforcement. R.125:55-56. As the Defendant was exiting the vehicle, he told K.A. to not tell officers that it was him, he didn't want to go to jail. R.125:56. Contact was made with K.A. and E.P. by East Grand Forks Police. Id. K.A. testified at trial that he was scared for his life, so he told the responding officers that he had been shot by someone outside of the vehicle. R.125:56-57. K.A. was transported to Altru Hospital. R.125:58. Detective Freeman arrived at Altru as K.A. was being treated and did a short interview of K.A. Id. K.A. told Freeman that he had been shot by an unknown male. R.215:59. Detective Freeman went to the scene of the shooting after speaking with K.A. R.221:141. The investigation showed that that gunshot damage to the windshield indicated that the gun had been fired from inside of the vehicle, as there was no actual hole in the windshield. R.221:146. As the investigation continued, officers were able to collect additional evidence that showed the gun had been discharged from the rear driver's seat, went through the driver's seat, through K.A.'s shoulder and then struck the windshield, where the bullet ricocheted and ended up in the front seat cupholder. R.221:151-159. Law enforcement also used cell phone data to create a timeline of the evening of the shooting. R.221:159-160. After K.A. was discharged, approximately 4 days after the shooting. R.215:59. K.A. then contacted Freeman and asked to speak to her again. R.221:164. K.A. stated that his statement in the first interview was not accurate, as he did know who had shot him. Id. K.A. stated that Mohammed Yousif was the person who shot him. R.215:59

## **LAW AND ARGUMENT**

1. The district court did not err in excluding the recorded Statement of Juvenile K.

[¶5] On May 3, 2022, trial began in the State of North Dakota v. Mohammed Yousif, on a charge of Aggravated Assault. The trial began with the victim, A.K.

testifying. After his testimony, a juvenile witness, E.P., testified. Trial concluded with testimony from patrol officers and a detective. North Dakota Rules of Evidence 613 governs a witness' prior statement. Specifically, N.D.R.Ev. 613(b) states,

“Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).”

[¶6] Prior to trial, A.K. had given 2 statements to Detective Freeman regarding the shooting, as well as an initial statement to the responding patrol officers. Each interview conducted by Detective Freeman was recorded and a transcript of the interview was made. The Transcripts and recording of the interviews were provided in discovery. Any inconsistencies between the testimony of A.K. at trial and the interviews given to Detective Freeman could be used to impeach A.K. during trial by the defense while he testified. Furthermore, written transcripts of the interviews were in the possession of the Defendant and could be used by the Defendant to impeach A.K. during trial.

[¶7] The North Dakota Supreme Court stated in State v. Demery that “It is the established rule in this State that a prior inconsistent statement may be used to impeach a witness but may not be used substantively in a criminal case as direct evidence of the facts contained in the statement . . .” State v. Demery, 331 N.W.2d 7,11 (N.D. 1983). “There is no requirement in the rule that the prior statement be in evidence at the time the impeaching questions are asked” Id., at



[¶8] In this case, A.K. testified and was subjected to cross-examination. During the State's questioning of A.K., the differences in his interviews was pointed out and questioned. A.K. admitted to making two different statements and admitting to not being truthful in the first interview he gave Detective Freeman at the hospital. A.K. then gave his reasoning for not being truthful in the first interview and why he contacted Detective Freeman and was honest in his second interview. The Defendant was given the ability to impeach A.K. during cross-examination regarding his statements. Additionally, the district court allowed Defense counsel to introduce evidence of A.K.'s prior inconsistent statements through Detective Freeman's testimony. The District Court sustained the State's objection when defense counsel offered the taped interview during trial.

[¶9] The extrinsic evidence, the audio recordings of K.A.'s prior inconsistent statements, are only available if the witness has been given the opportunity to explain or deny the statement. Detective Freeman was not the proper witness to use the interview to impeach K.A., as he would not have been given the opportunity to admit or deny the inconsistent statements he made. Defense elected to do a limited cross-examination of K.A., and instead attempted to impeach him through Detective Freeman. N.D.R.Ev. 613 is clear that extrinsic evidence is only admissible if the witness is given the opportunity to explain or deny an inconsistent statement. The District Court did not err in excluding the recording of K.A.'s interview into evidence through Detective Freeman, as K.A. had not been given the opportunity to explain or deny any inconsistencies. Furthermore, K.A. admitted while he testified that he had provided two different accounts as to what took place that night to law enforcement. He admitted to multiple inconsistencies and then

provided an explanation as to why he had provided those inconsistent statements. At that point, he had been impeached and the jury had been presented with testimony from K.A. regarding his inconsistent statements and why they had occurred. It was then up to the jury to determine the weight and credibility to give his testimony.

[¶10] To admit additional evidence, especially through another witness, would have been cumulative, and improper under the rules of evidence. K.A. had already admitted that he provided inconsistent statements. No extrinsic evidence was needed to show that he did in fact provide inconsistent statements. Furthermore, the District Court gave the Defendant great leeway during their cross examination of Detective Freeman, allowing cross-examination to include K.A.'s inconsistent statements made to her.

### **CONCLUSION**

[¶11] The District Court did not err in excluding the recorded interviews of K.A. into evidence during the trial. The State respectfully requests that the ruling of the District Court be affirmed.

*/s/ Ashlei Neufeld*  
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	)	
<b>Defendant and Appellant.</b>	)	<b>Case No. 18-2020-CR-01544</b>

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**CERTIFICATE OF COMPLIANCE**  
SA#156004

[¶1] The State of North Dakota, by and through Assistant State's Attorney Ashlei A. Neufeld hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 10 number of pages.

Dated this 7th day of October, 2022.

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<b>Defendant and Appellant.</b>	)	

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**DECLARATION OF SERVICE BY  
ELECTRONIC FILING  
SA#156004**

STATE OF NORTH DAKOTA    )  
  ) SS  
COUNTY OF GRAND FORKS    )

The undersigned, being of legal age, declares under penalty of perjury under the law of North Dakota, that the foregoing is true and correct, that on the 7<sup>th</sup> day of October, 2022, she served true copies of the following documents:

**BRIEF OF APPELLEE  
CERTIFICATE OF COMPLIANCE**

electronically through the Court Electronic Filing System to:

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At the office of the Grand Forks County States Attorney's Office.

Signed on the 7<sup>th</sup> day of October, 2022, at Grand Forks, North Dakota, United States.

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