

IN THE SUPREME COURT OF NORTH DAKOTA

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State of North Dakota,	)	<b>Supreme Court File No.</b>
	)	<b>20190183</b>
	)	
Plaintiff and Appellee,	)	<b>Stutsman County No.</b>
	)	<b>47-2018-CR-747</b>
	)	
v.	)	
	)	
Joshua Lee Buchanan,	)	<b>APPELLANT’S BRIEF</b>
	)	
Defendant and Appellant.	)	

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**Appeal from the criminal judgment entered June 7, 2019**  
**in Stutsman County district court, southeast judicial**  
**district, North Dakota, the Honorable Troy LeFevre,**  
**presiding.**

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**APPELLANT’S BRIEF**  
**ORAL ARGUMENT REQUESTED**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... p. 3

JURISDICTION..... ¶ 1

STATEMENT OF ISSUES ..... ¶ 2

STATEMENT OF CASE..... ¶ 2

STATEMENT OF FACTS..... ¶ 4

LAW AND ARGUMENT..... ¶ 8

    I.    Whether the district court erred by denying Mr. Buchanan’s  
          motion for acquittal..... ¶ 8

CONCLUSION..... ¶ 14

TABLE OF AUTHORITIES

**Cases**

*State v. Igou*, 2005 ND 16, 691 N.W.2d 213 (N.D. 2005)..... ¶ 8

*State v. Knowels*, 2003 ND 180, 671 N.W.2d 816 (N.D. 2003) ..... ¶ 8

*State v. Schmeets*, 2007 ND 197, 742 N.W.2d 513 (N.D. 2007)..... ¶ 8

**Statutes, Rules, Codes**

N.D. Const. art. VI, § 6 ..... ¶ 1

N.D.C.C. § 12.1-17-04..... ¶ 3, 9

N.D.C.C. § 29-28-03 ..... ¶ 1

N.D.C.C. § 29-28-06 ..... ¶ 1

Transcript References:

The Jury Trial for this matter was conducted on June 7, 2019. The transcript of the jury trial is referred to as [Tr.] in this brief.

## **JURISDICTION**

[¶ 1] The Defendant, Joshua Lee Buchanan, timely appealed the criminal judgment arising out of the district court. This Court has appellate jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06 which states:

“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.”

## **STATEMENT OF THE ISSUES**

- I. Whether the district court erred by denying Mr. Buchanan’s motion for acquittal.

## **STATEMENT OF CASE**

[¶ 2] This is a criminal matter on direct appeal from the southeast judicial district, Stutsman County criminal judgment. This case was before the district court in *State v. Buchanan*, 47-2018-CR-747. The complaint was filed with the court on November 6, 2018 and Mr. Buchanan proceeded to trial.

[¶ 3] Mr. Buchanan was found guilty of aggravated assault, domestic violence, in violation of N.D.C.C. § 12.1-17-02, a class C Felony. He was

acquitted of terrorizing, N.D.C.C. § 12.1-17-04, a class C Felony. The criminal judgment was entered in this case on June 7, 2019. Mr. Buchanan now timely appeals the criminal judgment. He was sentenced to 18 months to serve with the Department of Corrections and Rehabilitation (DOCR) and 18 months of supervised probation. Mr. Buchanan timely appealed the district court's final judgment in this case.

### **STATEMENT OF FACTS**

[¶ 4] Mr. Buchanan and Ms. Oretta were in a dating relationship for roughly eight years. Tr. p. 147. Mr. Buchanan received a text message from his boss and Ms. Oretta confronted about the message. Mr. Buchanan testified that he asked Ms. Oretta to leave, but she refused. Tr. p. 182. Mr. Buchanan testified that Ms. Oretta struck him. Tr. p. 183. Officer Noreen testified that there was blood coming from Mr. Buchanan's nose and on his face. Tr. p. 103.

[¶ 5] On November 5, 2018 Officer Noreen and Officer Stoen were called to Mr. Buchanan's home for a possible domestic assault. Tr. pp. 95, 113. When Officer Noreen arrived, Mr. Oretta, Ms. Oretta's father, was on the front lawn yelling at Mr. Buchanan, who was inside his home. Tr. pp. 97-98, 103. Officer Noreen went to speak to Mr. Buchanan. Officer Stoen arrived shortly after Officer Noreen. Tr. p. 114. Officer Stoen spoke with Mr. Oretta when Officer Noreen was speaking with Mr. Buchanan. *Id.*

[¶ 6] Mr. Oretta stated that he received a text message on November 5, 2018, from a friend of his with a picture of his injured daughter. Tr. p. 130. Mr. Oretta came to Mr. Buchanan's home to confront him. Mr. Buchanan testified that Mr. Oretta ran his vehicle into the back of Mr. Buchanan's car, causing significant damage. Tr. p. 109. Mr. Oretta testified that Officer Noreen was going to go to his house and arrest Ms. Oretta for assaulting Mr. Buchanan. Tr. p. 139. Mr. Oretta testified that he got to his house before officers arrived and refused to let them interact with his daughter. *Id.*

[¶ 7] Attorney Douglas submitted an email from Ms. Oretta's email address to Mr. Buchanan's email address at trial. The email stated, "I can't wait for your trial date so I can sit there and watch you get charged for aggravated assault and terrorizing charges even though you didn't do any of it. I broke my nose myself and lied to the cops because I want your ass locked up for something you didn't do." Tr. p. 186-187. Mr. Buchanan testified that Ms. Oretta must have injured herself, because he did not strike her. Tr. p. 194. At no time was any medical report or diagnosis submitted to the court, nor was any testimony taken from a treating physician at the hospital Ms. Oretta went to in November.

## **LAW AND ARGUMENT**

### **I. Whether the district court erred by denying Mr. Buchanan's motion for acquittal?**

[¶ 8] 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.

[¶ 9] Mr. Buchanan was found guilty of aggravated assault, domestic violence, in violation of N.D.C.C. § 12.1-17-04. State has not shown, through sufficient production of evidence, beyond a reasonable doubt each element of the crime of aggravated assault.

[¶ 10] In order to prove beyond a reasonable doubt that Mr. Buchanan was guilty of domestic aggravated assault, the State’s burden of proof is satisfied only upon producing sufficient evidence for each of the following essential elements:

- 1.) on or about November 5, 2018, in Stutsman County, North Dakota;
- 2.) The defendant, Joshua Lee Buchanan;
- 3.) Willfully engaged in conduct;
- 4.) Which caused serious bodily injury to another human being, Nichole Marie Oretta, a family or household, member of the Defendant; and
- 5.) Nichole Marie Oretta suffered serious bodily injury.

[¶ 11] Mr. Buchanan was clearly injured upon the arrival of police officers to his home. Ms. Oretta's father testified that he wanted to beat down Mr. Buchanan. Furthermore, an email from Ms. Oretta's account to Mr. Buchanan stated that Mr. Buchanan did not do anything to Ms. Oretta. There was not sufficient evidence that Mr. Buchanan willfully struck Ms. Oretta.

[¶ 12] The State did not submit any medical reports or a diagnosis showing that Ms. Oretta's nose was broken. Furthermore, the State called Ms. Oretta's treating psychologist, but not a doctor that could testify to her physical injuries on November 5, 2018. There was absolutely no medical evidence presented to the court that Ms. Oretta's nose was broken. Therefore the State did not meet its burden on element five, a serious bodily injury was sustained.

[¶ 13] Because the state failed to provide sufficient evidence to prove beyond a reasonable doubt that Mr. Buchanan willfully caused serious bodily injury to Ms. Oretta the court should have granted Mr. Buchanan's motion for acquittal.



**CONCLUSION**

[¶ 14] There was insufficient evidence at trial to support a conviction for aggravated assault. There was no indication that WHEREFORE the Defendant respectfully requests the Court to reverse the verdict and judgment of the trial court.

Dated this 1<sup>st</sup> day of October, 2019

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	)	
v.	)	
	)	
Joshua Lee Buchanan,	)	<b>CERTIFICATE OF</b>
	)	<b>COMPLIANCE</b>
	)	
Defendant and Appellant.	)	

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[¶ 1] This Appellant’s Brief complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it only has 9 pages.

Dated: October 1, 2019.

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Joshua Lee Buchanan,	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
Defendant and Appellant.	)	

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[1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant’s Brief with Certificate of Compliance  
Appellant’s Appendix

And that said copies were served upon:

Joseph Nwoga, State’s Attorney, [attorney@stutsmancounty.gov](mailto:attorney@stutsmancounty.gov)

by electronically filing said documents via email. Also served upon:

Joshua Buchanan #56246  
c/o ND DOCR  
PO Box 5521  
Bismarck, ND 58506

by placing a true and correct copy of said items in a sealed envelope with USPS.

Dated: October 1, 2019.

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v.	)	
	)	
Joshua Lee Buchanan,	)	<b>STATEMENT REGARDING</b>
	)	<b>ORAL ARGUMENT</b>
	)	
Defendant and Appellant.	)	

---

[¶ 1] Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

Dated: October 7, 2019.

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[1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Statement Regarding Oral Argument

And that said copies were served upon:

Joseph Nwoga, State's Attorney, [attorney@stutsmancounty.gov](mailto:attorney@stutsmancounty.gov)

via the Supreme Court's filing portal.

Dated: October 1, 2019.

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