

**No. 23-60040**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA  
Plaintiff-Appellee

v.

MIKE AUSTIN ANDERSON  
Defendant-Appellant

Appeal from the United States District Court  
For the Southern District of Mississippi  
Cause No. 3:21cr62-DPJ-LGI

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**REPLY BRIEF FOR APPELLANT**

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## I. ARGUMENTS

### A. **The district court erred by finding that the prosecution produced sufficient evidence at trial for a reasonable jury to return a guilty verdict against Mike.**

For the most part, Appellant Mike Anderson relies on the arguments presented to the Court in his initial Brief. However, one aspects of the prosecution's sufficiency of the evidence argument warrants a reply.

The prosecution relies heavily on evidence provided by Catiea Anderson. It pinpoint cites to her trial testimony no fewer than 13 times. *See* Appellee's Brief, p.p. 4 (two pinpoint cites), 4 n.1 (one pinpoint cite), 5 (four pinpoint cites), 12 (2 pinpoint cites), 13 (one pinpoint cite), 14 (two pinpoint cites), 15 (one pinpoint cite). Also, the prosecution pinpoint cites Catiea's recorded statement to law enforcement six times.<sup>1</sup> *See* Appellee's Brief, p.p. 4 n.1 (one pinpoint cite), 5 (two pinpoint cites), 12 (one pinpoint cite), 15 (one pinpoint cite).

Curiously, in these pinpoint cites the prosecution does not refer to Catiea Anderson by name. Instead, it refers to her as an "eyewitness." *See* Appellee's Brief, p.p. 4 n.1, 5, 12, 13, 14, 15. We can infer from the prosecution's reference to Catiea as an "eyewitness" that it does not want to emphasize the true source of the evidence. This is probably true because, as presented on pages 25 through 27 of Appellant's Brief, her testimony was both conflicting and confusing. Also, Catiea

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<sup>1</sup> Catiea's recorded interviewed was entered into evidence at trial as Exhibit GX 17.

admitted on the witness stand that she did not have a clear recollection of events. Trial Tr., ROA.692.

This Court must “consider the countervailing evidence as well as the evidence that supports the verdict in assessing sufficiency of the evidence.” *United States v. Moreland*, 665 F.3d 137, 149 (5th Cir. 2011) (citation omitted). “[A] verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference.” *Id.* (citations omitted); *United States v. Davis*, 735 F.3d 194, 198 (5th Cir. 2013) (holding that on appellate review, the Court is required “consider trial evidence that countervails the jury’s verdict, and allows us to ‘draw upon only reasonable inferences from the evidence to support the verdict) (emphasis added; citation omitted). “We also have held that no reasonable jury could find a defendant guilty of an offense where the ‘evidence gives equal or nearly equal circumstantial support to a theory of guilt, as well as to a theory of innocence.’ Convictions based on such evidence must be reversed.” *Moreland*, 665 F.3d at 149 (internal and end citations omitted); *United States v. Clemons*, 700 Fed. App’x 341, 344 (5th Cir. 2017) (citation omitted).

Considering the total of all evidence, including evidence of guilt and evidence of innocence leaves much in doubt. At best, the prosecution presented “equal or nearly equal circumstantial support to a theory of guilt[.]” this Court

should vacate the jury's verdict. *See Moreland*, 665 F.3d at 149. Accordingly, the Judgment of Conviction should be vacated.

**B. The district court erred by denying Mike's Motion to Revoke or Amend Magistrate Judge's Denial of Defendant's Motion to Order Recusal.**

This argument is fully developed in Appellant's Brief. No further briefing on the issue is necessary.

## II. CONCLUSION

For all of the reasons stated above and in Appellant's Brief, this Court should vacate the Judgment entered against Mike Anderson.

Respectfully submitted, June 23, 2023.

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*/s/ Michael Scott Davis*

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**CERTIFICATE OF SERVICE**

I, Michael Scott Davis, certify that today, June 23, 2023, a copy of the Reply Brief for Appellant was filed via this Court’s electronic case filing system, which in turn forwarded electronic copies of both documents to all counsel of record in this case. Also, a copy of the Reply Brief for Appellant only was delivered via United States Mail, postage prepaid to appellant Mike Austin Anderson.

*/s/ Michael Scott Davis*  
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Assistant Federal Public Defender

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*/s/ Michael Scott Davis*  
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