

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31506

SOPHIA CLAIRE GASTINEAU
Petitioner/Appellee

v.

LANCE ALAN O'FARRELL
Respondent/Appellant

APPEAL FROM THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
GRANT COUNTY, SOUTH DAKOTA

THE HONORABLE DAWN M. ELSHERE
Circuit Court Judge

BRIEF OF THE APPELLANT

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NOTICE OF APPEAL FILED MAY 22, 2026

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PRELIMINARY STATEMENT

Citations to the settled record as reflected by the Clerk's Index are designated with "SR" followed by the page number.

References to Respondent/Appellant in this matter, shall be referred to as "O'Farrell". The Petitioner/Appellee in this matter shall be referred to as "Gastineau". Any transcript referred to herein will be designated with the settled record "SR" page number followed by the line number.

JURISDICTIONAL STATEMENT

The date and form of the judgment or order sought to be reviewed is the circuit court's Order for Protection dated May 5, 2026, and filed with the Clerk of Courts on May 5, 2026. (SR 10; App. 5). Notice of Entry of said Order for Protection was dated May 5, 2026, and filed with the Clerk of Courts on May 5, 2026. (SR 13; App. 1). Notice of Appeal was given on May 22, 2026, and filed with the Clerk of Courts on May 22, 2026. (SR 27).

This Court has appellate jurisdiction in this case under SDCL 15-26A-3(1), (2), and (4), as well as SDCL 15-26A-7 and 15-26A-10.

STATEMENT OF THE ISSUES

I. Whether the circuit court improperly denied O'Farrell the opportunity to cross-examine Gastineau.

The circuit court ruled that O'Farrell could not cross-examine Gastineau about her broad allegation that O'Farrell raped her. In so ruling, the circuit court violated O'Farrell's due process rights and abused its discretion.

Most relevant authority:

Castano v. Ishol, 2012 SD 85.

II. Whether the circuit court erred in failing to make adequate findings of fact.

The circuit court's findings of fact simply conclude that O'Farrell committed an act of violence, and the order is filled out from a pre-printed form. The circuit court's findings of fact are inadequate to provide meaningful review.

Most relevant authorities:

Castano v. Ishol, 2012 SD 85.

Batchelder v. Batchelder, 2021 SD 60.

STATEMENT OF THE CASE

Gastineau filed a petition for a protection order against O'Farrell on April 23, 2026. (SR 1). Pursuant to the petition, the circuit court entered a temporary protection order and set the matter for a hearing on May 5, 2026. (SR 5; SR 6). On May 5, 2026, the parties appeared for the hearing, Gastineau appeared pro se and O'Farrell was represented by counsel. (SR 16). At the May 5, 2026 hearing, the circuit court granted Gastineau's petition and entered a Permanent Order for Protection. (SR 10; SR 24:8-24). O'Farrell filed and served his Notice of Appeal of the circuit court's Permanent Order for Protection on May 22, 2026. (SR 27).

STATE OF THE FACTS

Gastineau filed a petition for a protection order against O'Farrell alleging that O'Farrell raped her. (SR 1). Additionally, Gastineau alleged that O'Farrell came to her work and had his daughter contact Gastineau as the basis for her need for a temporary protection order. (SR 1). At the hearing, Gastineau gave a very short and vague statement as to the allegations:

THE COURT: So go ahead and tell me why you want this protection order.

MS. GASTINEAU: I want this protection order because on the early morning of Easter this year, Lance raped me and he's showed up to my work. He's had his family contact me, and quite frankly, I don't know what he is capable of and I am scared of him.

THE COURT: Thank you. You don't need to say anything further....

(SR 18:3-11).

After Gastineau gave her direct testimony, Lance's attorney began to question Gastineau about her allegations; however, the circuit court prevented Lance's attorney from questioning Gastineau about the allegations of rape. (SR 19:4-21:10). At the end of

the hearing, the circuit court granted the protection order, made a conclusory statement that an act of violence occurred and filled out a pre-printed form. (SR 10; SR 24:8-24).

STANDARD OF REVIEW

This Court “review[s] a circuit court’s grant or denial of a protection order under a two-step process: first, by reviewing the circuit court’s findings of fact for clear error; and second, by reviewing the circuit court’s ‘ultimate decision for an abuse of discretion.’”

Thompson v. Runner, 2018 SD 57, ¶12. “The circuit court’s findings of fact will not be set aside unless we are left with a definite and firm conviction that a mistake has been made.” Id. “An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary and unreasonable.” Id.

Constitutional challenges are reviewed under the de novo standard of review. Id. “[T]he circuit court’s findings must also correspond to the statutory standards that serve as the bases for issuing a permanent protection order.” Batchelder v. Batchelder, 2021 SD 60, ¶19. “This determination is a legal question that [this Court] review[s] de novo.” Id.

ARGUMENT

I. Whether the circuit court improperly denied O’Farrell the opportunity to cross-examine Gastineau.

The issue is whether the circuit improperly denied O’Farrell the opportunity to cross-examine Gastineau on her rape allegations. The circuit court improperly denied O’Farrell the opportunity to cross-examine Gastineau on her rape allegations. “In a civil case, while the suppression of all cross-examination may amount to a denial of due

process, restriction of cross-examination would rarely rise to constitutional dimensions, although it might amount to an abuse of discretion where the probative value of the excluded evidence was sufficiently high.” Castano v. Ishol, 2012 SD 85, ¶10 (quoting Adam v. Adam, 436 N.W.2d 266, 269 (S.D. 1989)).

“A defendant has a general right to cross-examine witnesses against him. There may be circumstances in which the judge properly may deny that right in a protection order hearing, and certainly a judge may limit cross-examination for good cause in an exercise of discretion.... Whether a defendant’s constitutional rights have been violated in a protection order proceeding will depend on the fairness of a particular proceeding.” Id. at ¶11 (quoting Silvia v. Duarte, 421 Mass. 1007, 1263 (Mass. 1995)). “[E]very accused, innocent or guilty, is entitled to a fair trial.” State v. Krouse, 2022 SD 54, ¶47. “Due process is in essence the right of a fair opportunity to defend against the accusations.” Id.

In this case, O’Farrell was denied a fair trial and denied a fair opportunity to defend against Gastineau’s accusations; because the circuit court denied O’Farrell the opportunity to cross-examine Gastineau on her broad assertion that she was raped:

MR. GEYER: So am I allowed to question her on the rape that she alleges?

THE COURT: No.”

(SR 21:8-10). O’Farrell alleged that he had a due process right to cross-examine Gastineau on her broad assertion, yet the circuit court would not let O’Farrell challenge these assertions with cross-examination:

MR. GEYER: -- I believe my client has a due process right to cross-examine the petitioner based upon the veracity of her claims. And so I’m trying to establish what the basis for -- I mean, it’s a pretty broad claim that he raped me.

I guess I'm trying to get to the bottom of what does she have as evidence today to support her claim to support her petition for a protection order. THE COURT: I'm denying your request because I find her testimony and her statement credible....

(SR 19:13-22).

The denial of O'Farrell to cross-examine Gastineau as to the basis for her protection order was a violation of his due process rights and an abuse of discretion. There is nothing in the record that would allow the circuit court to grant the protection order without O'Farrell having the opportunity to cross-examine Gastineau on her claims.

This case is analogous to Ishol, in Ishol, the respondent was denied the opportunity to cross-examine the petitioner on her allegations of domestic abuse. Id. at ¶7-10. This Court found in Ishol that the trial court abused its discretion when it denied the respondent the ability to cross-examine the petitioner on the claims of domestic abuse. Id. at ¶13. Like the trial court in Ishol, the circuit court in this case abused its discretion when it denied O'Farrell the opportunity to cross-examine Gastineau on her allegations of rape.

The denial of O'Farrell to cross-examine Gastineau as to the basis for her protection order was a violation of his due process rights and an abuse of discretion and the Order for Protection should be reversed.

II. Whether the circuit court erred in failing to make adequate findings of fact.

The issue is whether the circuit court erred in failing to make adequate findings of fact. The circuit court erred in failing to make adequate findings of fact. The rules of "civil procedure require that 'in all actions tried upon the facts without a jury the court shall, . . . find the facts specially and state separately its conclusions of law.'" Batchelder,

at ¶21. “A circuit court’s failure to make sufficient findings is, itself, a basis for reversal.” Id. at ¶22. “Ultimately, the question is whether the circuit court’s findings sufficiently address the facts of the case under the specific elements of the claim at issue such that we may determine whether the evidence met the statutory elements justifying relief.” Id. A generic determination, reciting the elements, fails to establish sufficient findings of fact that permit meaningful review. Ishol, at ¶15-17.

In this case, the circuit court simply concluded that O’Farrell committed an act of violence:

THE COURT: I am going to find that a protection order would be warranted in this matter. That the defendant has committed an act of violence against the victim in here and that a protection order would be found and I find that by the preponderance of the evidence.

(SR 24:8-13). The circuit court then filled out the Order for Protection on a pre-printed form containing boxes checked for factual findings. (SR 10). The circuit court did not check the box for crime of violence. (SR 10). It should also be noted that no oral finding was made that Gastineau suffered physical injury from an assault or crime of violence. The circuit court’s findings of fact are inadequate to provide meaningful review. Because the circuit court’s findings are inadequate, the Order of Protection should be reversed.

CONCLUSION

The circuit court denying O’Farrell the opportunity to cross-examine Gastineau constituted a violation of his due process rights and was an abuse of discretion. Additionally, the circuit court’s finding of facts are inadequate to provide meaningful review. As a result, the Order for Protection should be reversed.

DATED this 15 day of July 2026.

DELANEY, NIELSEN & SANNES, P.C.

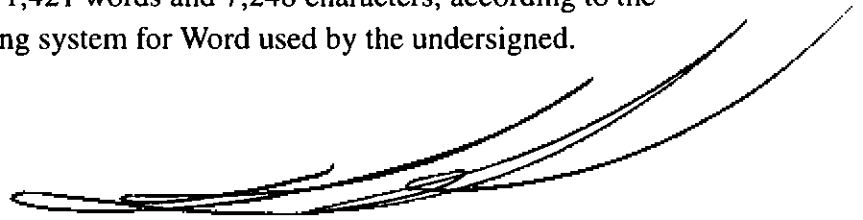
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CERTIFICATE OF COMPLIANCE

David A. Geyer, one of the attorneys for Appellant, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellant's brief does not exceed 32 pages;
- b. The body of Appellant's brief was typed in Times new Roman 12-point typeface;
and
- c. Appellant's brief contains 1,421 words and 7,248 characters, according to the word and character counting system for Word used by the undersigned.

A handwritten signature in black ink, appearing to read 'DAVID A. GEYER', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on the 13 day of July 2026, the undersigned served a true and correct cop of the Appellant's Brief and Appendix via electric transmission by the Clerk's Office via eFileSD to the following parties:

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Appeal No. 31506

SOPHIA CLAIRE GASTINEAU,
Petitioner – Appellee,

v.

LANCE ALAN O'FARRELL,
Respondent – Appellant.

Appeal from the Circuit Court, Third Judicial Circuit
Grant County, South Dakota
The Honorable Dawn M. Elshere, Presiding

APPELLEE'S BRIEF

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JURISDICTIONAL STATEMENT

Appellee adopts the Jurisdictional Statement set forth in Appellant's Brief.

QUESTIONS PRESENTED

- I. Whether the circuit court's verbal findings of fact and conclusions of law, combined with those set forth in the written Order, were sufficient for meaningful review.**

The circuit court recited, on the record, "I find [Gastineau's] testimony and her statement credible." TT at 4:22. "I am going to find that a protection order would be warranted in this matter. That the defendant has committed an act of violence against the victim in here and that a protection order would be found and I find that by the preponderance of the evidence." TT at 9:8-13. Additionally, the circuit court completed the standard pre-printed protection order form indicating its findings and legal conclusions that Appellee was a victim of a physical injury resulting from a crime of violence (rape). SR at 11, 55. The combination of these findings and conclusions are sufficient to allow this Court meaningful review.

Authority On Point: *Batchelder v. Batchelder*, 2021 SD 60, 965 NW2d 880; *Shroyer v. Fanning*, 2010 SD 22, 780 NW2d 467; *Judstra v. Donelan*, 2006 SD 32, 712 NW2d 866.

- II. Whether the trial court's limitation of cross-examination of the victim was proper under the circumstances.**

O'Farrell's counsel admitted he was "trying to get to the bottom of what does she have as evidence today to support that claim [of rape]" TT at 4:18-19. The circuit court responded, "I'm denying your request because I find her testimony and her statement credible. So I'm not going to allow you to go in and question her about the facts of that incident in this protection order file as a discovery tool for your criminal case." TT at 4:21-25. In so ruling, the trial court exercised its discretion to restrict cross-examination for good cause.

Authority On Point: *State v. McCahren*, 2016 SD 34, 878 NW2d 586; *Castano v. Ishol*, 2012 SD 85, 824 NW2d 116; *Thompson v. Bear Runner*, 2018 SD 57, 916 NW2d 127; *State v. Jolley*, 2003 SD 5, 656 NW2d 305.

STATEMENT OF THE CASE¹

On April 23, 2026, Sophia Gastineau filed a Petition for Protection Order against Lance O'Farrell. SR at 1. The circuit court granted a Temporary Protection Order and set the matter for hearing on May 5, 2026. *Id.* at 5-6. At the hearing, O'Farrell was represented by counsel while Gastineau appeared *pro se*. *Id.* at 16. Upon completion of Gastineau's testimony, the court inquired of O'Farrell's counsel, "I'm assuming your client is not going to testify." TT at 6:4. O'Farrell's counsel responded, "That's correct. He's going to plead the Fifth if he's called." TT at 6:5-6. Thus, Gastineau's allegation was unrefuted and the circuit court granted her a Permanent Order for Protection (Stalking) for two years. TT at 9:21-23; SR at 10-13. O'Farrell filed his Notice of Appeal on May 22, 2026. SR at 27.

On June 18, 2026, Gastineau's counsel filed Notice of Appearance and contacted the circuit court regarding the "Additional Findings" section of the Permanent Order for Protection, and specifically paragraph 2 providing, "Having considered the evidence presented and any affidavits and pleadings on file, this Court FINDS: 1. That jurisdiction and venue are properly before this Court; and 2. By a preponderance of the evidence that . . .," but neither subparagraph (a) or (b) was marked. SR at 11. Counsel inquired whether, in light of the court's oral findings, this was a typographical error. SR at 56. The court confirmed, "Yes this

¹ References to the trial transcript from May 22, 2026, will be "TT at ____." References to the Settled Record will be "SR at ____."

was clearly an oversight, as I stated on the record that I found that respondent committed an act of violence against the petitioner. I will attempt to get this corrected before the Supreme Court.” SR at 55. *See Reaser v. Reaser*, 2004 SD 116, ¶ 29, 688 NW2d 429, 438 (citing SDCL 15-6-60(a)) (allowing for correction “of clerical mistakes arising from oversight or omission” during a pending appeal). Thereafter, the clerk re-certified the record to include the court’s email responses confirming its intended correction of the clerical error. SR at 55.

STATEMENT OF FACTS

On the early morning of Easter, Sunday April 5, 2026, at approximately 3:00AM, Gastineau was celebrating with her friends, Gabby O’Farrell and Jaden Blum. SR at 1-2; TT at 3. The three were drinking alcohol in the Milbank home of Gabby’s father, Lance O’Farrell. *Id.* Gastineau alleged that when her friends left the home, O’Farrell raped her by holding her down by her throat and anally penetrating her. SR at 1; TT at 8:22-23, 9:1-2. Gastineau reported the crime to law enforcement and criminal charges were filed. TT at 7:24-25, 4:25.

Sometime between April 5 and April 23, 2026, both O’Farrell and his daughter separately came to Gastineau’s place of employment.² SR at 4; TT at 3:7-8, 6:17-25. Gastineau testified that while she had no conversation with O’Farrell when he came to her work, his presence made her fearful. TT at 8:20-24, 9:2. Gastineau also reported that after O’Farrell was put in jail, O’Farrell’s

² Gastineau works at Subway in Milbank, SD. TT at 8:13-14.

daughter visited her at work, ostensibly attempting to convince Gastineau that O'Farrell had "suddenly changed and reformed" and to "drop the charges." SR at 4; TT at 7:18-24. Gastineau claimed this had taken a large mental and emotional toll on her and had even impacted her performance at work. SR at 4.

On April 23, 2026, Gastineau filed her Petition and Affidavit for A Protection Order (Stalking, Or Physical Injury As a Result of An Assault, Or a Crime of Violence). SR at 1-4. On May 5, 2026, Gastineau and O'Farrell appeared in Grant County Circuit Court for hearing on the protection order. TT at 1:1-7. Pursuant to the petition, the court held a hearing and called Gastineau to testify as a witness. TT at 2:19-22. On the stand, Gastineau testified that she wanted the protection order because O'Farrell "raped me and he's shown up to my work. He's had his family contact me[.]" TT at 3:5-8. Following these statements, the court allowed O'Farrell's counsel to cross-examine Gastineau. TT at 3:11-13.

During the cross-examination, O'Farrell's counsel began to inquire about the details of that night, who was there, when they arrived, whether O'Farrell was awake, and other details of the night of the rape. TT at 3:23-25. When O'Farrell's counsel asked Gastineau "when you arrived, Mr. O'Farrell's house was locked and he was sleeping, correct[.]" the judge stopped him. TT at 4:1-5. The judge reasoned, "I'm not going to allow you to go into the facts of what happened that evening, so this is not a discovery request on your part to determine whether or not

– the testimony that would be given at trial.” TT at 4:4-8. In response, O’Farrell’s counsel asserted his client’s “due process right to cross-examine the petitioner[.]” TT at 4:13-14. The judge responded, “I’m denying your request because I find her testimony and her statement credible.” TT at 4:21-22. Additionally, the judge noted, “I think we can all understand what the term rape means here[.]” TT at 5:6-7.

The judge further questioned whether O’Farrell intended to testify. TT at 6:4. Counsel responded that O’Farrell did not intend to testify and present his version of the facts, but was instead going to assert his Fifth Amendment right against self-incrimination. *Id.* at 6:5-6. Given Gastineau’s testimony and the plain meaning of the word rape, combined with no other evidence offered from O’Farrell to refute the same, the court concluded that Gastineau’s testimony was credible. TT at 6:2-6. It should be noted that O’Farrell’s counsel did not pursue any other attempts to cross-examine Gastineau regarding her credibility (e.g. any criminal history relating to veracity, etc.).

O’Farrell’s counsel then cross-examined Gastineau regarding her allegations as to the visits to her workplace and attempts to tamper with a witness. TT at 6:10-15. During that line of questioning, Gastineau testified that O’Farrell showed up at her workplace following the rape, TT at 6:21-23, and that he had his daughter contact Gastineau while he was in jail. TT at 7:18-24. When asked why these contacts made her fearful of O’Farrell, Gastineau responded:

A: If someone wrapped their hand around [your] throat and pin[ed] you down and put their penis in your ass, would you be afraid?

Q: Is that your testimony that's why you were afraid? You're saying those things happened?

A: Yes. I'm afraid.

TT at 8:20-9:2

Upon completion of Gastineau's testimony, O'Farrell's counsel stated, "I have no further questions at this time, Your Honor." TT at 9:3-4. The court then asked again if O'Farrell wished to testify and counsel responded, "No, Your Honor." TT at 9:5-7. Thereafter, the permanent protection order was granted. The court issued oral findings as follows: "I am going to find that a protection order would be warranted in this matter. That the defendant has committed an act of violence against the victim in here and that a protection order would be found and I find that by the preponderance of the evidence." TT at 9:8-13. Additionally, the circuit court completed the standard pre-printed protection order form indicating its findings and legal conclusions that Appellee was a victim of a physical injury resulting from a crime of violence (rape). SR at 11, 55.

STANDARD OF REVIEW

The trial court's grant of a protection order is reviewed in two steps. First, this Court determines whether "the trial court's findings of fact were clearly erroneous." *Shroyer v. Fanning*, 2010 SD 22, 780NW2d 467, 469.

A trial court's findings of fact will not be set aside unless, after reviewing all of the evidence, this Court is "left with a 'definite and firm conviction that a mistake has been made.'" Furthermore, "[t]he credibility of the witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the

trial court, and we give due regard to the trial court's opportunity to observe the witnesses and examine the evidence.”

Id. at ¶ 6 (quoting *White v. Bain*, 2008 SD 52, ¶ 8, 752 NW2d 203, 206 (additional citations omitted)). Next, if the trial court's findings of fact are not clearly erroneous, this Court determines “whether the trial court abused its discretion in granting or denying the protection order.” *Id.*

But before meaningful review under either standard, this Court must determine whether the trial court has made “findings specific to the evidentiary record before it” and that such findings and conclusions “correspond to the statutory standards that serve as the bases for issuing a permanent protection order.” *Batchelder v. Batchelder*, 2021 SD 60, ¶¶ 18-19, 965 NW2d 880, 885.

ARGUMENT AND AUTHORITIES

I. The trial court’s verbal findings of fact and conclusions of law, together with those set forth in the written Order, were sufficient to allow for meaningful review.

“In all actions tried upon the facts without a jury . . . , the court shall, unless waived . . . find the facts specially and state separately its conclusions of law thereon[.]” SDCL 15-6-52(a). “It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence, or appear in an opinion or memorandum of decision filed by the court.” *Id.*

But even if a circuit court fails to make sufficient findings and conclusions, a reversal is not necessarily mandated. “[T]hough erroneous in the sense that

failing to make specific findings does not comply with SDCL 15-6-52(a), the error is not jurisdictional and may not *require* reversal in certain cases.” *Id.* (citing *Toft v. Toft*, 2006 SD 91, ¶ 11, 723 NW2d 546, 550) (emphasis in original).

“Ultimately, the question is whether the circuit court's findings sufficiently address the facts of the case under the specific elements of [the claim] at issue such that we may determine whether the evidence met the statutory elements [justifying relief].” *Id.* (quoting *Doremus v. Morrow*, 2017 SD 26, ¶ 10, 897 NW2d 341, 345).

Appellant has raised the cases of *Batchelder* and *Shroyer* in support of his claim that the court did not make “specific findings of fact and conclusions of law in support of the order.” SR at 36. In *Batchelder*, the ex-wife filed a second petition³ for protection order on the same day the trial court dismissed her first TPO, alleging the bases of ex-husband’s previous TPO violations, his criticism of her parenting methods and surreptitious telephone monitoring. 2021 SD 60 at ¶ 8, 965 NW2d at 883. The circuit court took evidence and heard testimony of both parties, but it never ruled on an uncontested request to take judicial notice of the previous TPO action. *Id.* at ¶¶ 10-11, 965 NW2d at 883-84. At conclusion of the hearing, despite the petitioner’s narrow scope of requested relief, the circuit court granted a one-year permanent protection order. *Id.* at ¶ 14. The court made no

³ Temporary protection order was granted on the first petition, based upon an allegation of domestic abuse, hearing was continued twice, and ultimately dismissed when ex-wife failed to appear for hearing. *Batchelder*, 2021 SD 60 at ¶ 1, 965 NW2d at 881.

verbal findings on the record identifying what had occurred that constituted “domestic abuse.” Instead, it stated, “But, as I say, I’m frankly doing this ‘cause I don’t know any other good solution for this, but I really, in general, don’t think this is the purpose or function of Protection Orders.” *Id.* at ¶ 15. The court then checked the appropriate boxes on the preprinted form: “Having considered the evidence presented and any affidavits and pleadings on file, this Court FINDS ... [b]y a preponderance of the evidence that ‘domestic abuse’ as defined by SDCL § 25-10-1(1) has occurred[.]” *Id.* at ¶ 16. This Court concluded that not only had the court failed to enter sufficient findings, oral or written, “the circuit court seemed to understand that a protection order was not authorized and that the acrimony between the parties was better addressed in the divorce action.” *Id.* at ¶ 26, 956 NW2d at 887.

Similarly, in *Shroyer v. Fanning*, 2010 SD 22, 780 NW2d 467, a mother filed a protection order against her former boyfriend on behalf of their daughter, alleging sexual abuse of the daughter. *Id.* at ¶ 3. Both parties were represented by counsel and both parties testified, along with a police officer. *Id.* The trial court granted the protection order, made oral findings and conclusions on the record, and completed the preprinted protection order form. *Id.* at ¶ 4. But in *Shroyer*, the trial court failed to make any specific findings about what had occurred that constituted “domestic abuse.” *Id.* at ¶ 8. In other words, the court “did not indicate which version of the evidence [it] believed.” *Id.* at ¶ 8, 780

NW2d at 470 (quoting *Goeden v. Daum*, 2003 SD 91, ¶ 7, 688 NW2d 108, 110-11); *see also*, *Judstra v. Donelan*, 2006 SD 32, 712 NW2d 866 (holding reversible error where trial court failed to recite which version of the evidence it believed).

Neither *Batchelder* nor *Shroyer* are analogous to the case at bar. The circuit court in *Batchelder* issued a protection order despite knowing it was the incorrect remedy. Additionally, the courts in both *Batchelder* and *Shroyer* were faced with contested versions of events and contrary testimony, both supporting and refuting the petitions at issue. This is vastly different from the circumstances in the case at bar. Gastineau bravely shared her testimony and responded to cross-examination regarding the initial rape and the harassment that followed. Gastineau explicitly stated that O'Farrell held her down, with his hand around her throat, and raped her. He then came to Gastineau's workplace while she was working, and even encouraged his daughter (Gastineau's friend) to approach Gastineau at work and convince her to drop the impending criminal charges. O'Farrell not only refused to testify, he failed to present any other testimony or evidence to contradict Gastineau's description of events. This left the circuit court with an *uncontested* set of facts and a credible witness to the same. Moreover, the court clearly "indicate[ed] which version of the evidence [it] believed." *Shroyer*, 2010 SD 22 at ¶ 8.

Impeaching Gastineau's credibility could not have been the goal of defense counsel's cross examination, as he failed to ask any questions about her criminal

history related to veracity, her relationship with O'Farrell's family, or any basis that she might have had some kind of vendetta or incentive to lie. Indeed, O'Farrell's counsel admitted, "I mean, it's a pretty broad claim that he raped me. I guess I'm trying to get to the bottom of what does she have as evidence today to support that claim" TT at 4:16-20.

Additionally, the trial court has confirmed that it meant to check the box on the Order indicating it found Gastineau suffered physical injury from an assault or crime of violence. SDCL 22-1-2(9) includes rape in its definition of crime of violence. Since the trial court did declare oral findings, they must "not be set aside unless clearly erroneous." *Id.* The facts cannot, as a practical matter, be clearly erroneous as they were uncontested.

Overall, Gastineau testified that O'Farrell raped and harassed her. O'Farrell refused to testify and left Gastineau's testimony uncontested. O'Farrell did not attempt to discredit Gastineau's credibility through cross-examination. Thus, the trial court verbally indicated that it found Gastineau's uncontested testimony credible, verbally indicated that O'Farrell committed an act of violence against Gastineau, and filled out the protection order form, indicating the court found physical injury from a crime of violence beyond a reasonable doubt. The findings of fact are that Gastineau was raped and harassed, which is made "specific to the evidentiary record before it" based on Gastineau's uncontested testimony and these facts "correspond to the statutory standards that serve as the

bases for issuing a permanent protection order” because rape is statutorily defined as a crime of violence. SDCL 22-1-2(9).

This Court is faced with a unique case where clear, though slightly unconventional, findings of fact exist. These findings reflect the *only* version of facts provided throughout the entire case. This is entirely distinguishable from cases where the facts were contested. The oral and written findings explain the trial court’s evidence-backed reasoning and legal basis and are thus sufficient to allow for meaningful review.

II. The trial court’s limitation of cross-examination of the victim was proper under the circumstances.

This is a civil case, not a criminal one. This distinction is important because the Confrontation Clause of the Sixth Amendment of the United States Constitution ensuring that defendants have a right to an opportunity for effective cross-examination does not strictly apply here. *State v. McCahren*, 2016 SD 34, ¶ 25, 878 NW2d 586, 597 (citing *State v. McKinney*, 2005 SD 73, ¶ 21, 699 NW2d 471, 479).

“In a civil case, while the suppression of all cross-examination may amount to a denial of due process, restriction of cross-examination would rarely rise to constitutional dimensions, although it might amount to an abuse of discretion where the probative value of the excluded evidence was sufficiently high.” *Castano v. Ishol*, 2012 SD 85, ¶ 10, 824 NW2d 116, 119 (quoting *Adam v. Adam*, 436 NW2d 266, 269 (SD 1989) (additional citation omitted)). But once the

right of cross-examination has been substantially and fairly exercised, the allowance of further cross-examination is discretionary. *Adam*, 436 NW2d at 269 (citing 81 AmJur2d *Witnesses* § 464 (1976)).

A. There was no due process violation.

It is important to note, contrary to Appellant's assertions, the trial court did not "deny" or suppress *all* cross-examination. Instead, it restricted specific cross-examination for a specific purpose. While a defendant has a general right to cross-examination, "[t]here may be circumstances in which the judge properly may deny that right in a [protection order] hearing, and certainly a judge may limit cross examination for good cause in an exercise of discretion." *Id.* (quoting *Silvia v. Duarte*, 421 Mass 1007, 657 NE2d 1262 (1995)). Whether this limitation amounts to a due process violation depends on the overall fairness of the proceeding. *Id.*

The restriction imposed by the trial court was not so unreasonably narrow as to deprive O'Farrell of a fair hearing. O'Farrell did have the ability to cross-examine the victim to ascertain her credibility. In addition, during cross-examination, O'Farrell's counsel did elicit details about the rape and the events of that evening, including the details of how the rape occurred. O'Farrell's counsel made no offer of proof that the probative value of allegedly excluded evidence was great enough to justify continued examination. Indeed, he seemed to believe

that Gastineau had to offer additional evidence, despite her uncontested testimony, that the rape actually occurred.

I believe my client has a due process right to cross-examine the petitioner based upon the veracity of her claims. And so I'm trying to establish what the basis for -- I mean, it's a pretty broad claim that he raped me. I guess I'm trying to get to the bottom of what does she have as evidence today to support that claim to support her petition for a protection order.

TT at 4:13-20.

Instead, the trial court considered the unrefuted allegations in the Petition, considered the unrefuted testimony of the victim, and considered his counsel's affirmation that O'Farrell would neither testify nor offer any other evidence. In light of all of this, the trial court concluded that Gastineau's testimony was credible, and it would not allow O'Farrell's counsel to re-traumatize the victim as an improper means of discovery for his criminal trial. TT at 4:4-6. Just as the trial court did in *Adam*, "[t]he court determined that [defense] counsel was not accomplishing anything further by continuing," except an improper purpose. 436 NW2d at 269. And just as in *Adam*, O'Farrell's "[c]ounsel failed to make an offer of proof to show otherwise and the record does not reveal that the trial court abused its discretion in restricting the cross-examination." *Id.* The hearing was fair and the limitation of cross-examination did not amount to a due process violation.

B. The circuit court did not abuse its discretion.

Abuse of discretion occurs when there “is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable.” *Thompson v. Bear Runner*, 2018 SD 57, ¶ 12, 916 NW2d 127, 130 (quoting *Erickson v. Earley*, 2016 SD 37, ¶ 8, 878 NW2d 631, 633-634). But as noted above, there are circumstances when a circuit court may, in the proper exercise of its discretion, *limit* cross examination for good cause.

In *Castano*, ex-wife petitioned for a protection order against ex-husband, alleging ex-husband had: (a) made her fearful that he was about to cause her physical harm; (b) that he had willfully, maliciously and repeatedly followed her; (c) that he had harassed her in various forms including emails; and (d) that he had both access to guns and stopped taking his prescribed medications, making him both aggressive and dangerous. 2012 SD 85 at ¶ 6. The temporary protection order was granted and set for hearing, at which time *both* parties testified and presented other evidence. *Id.* at ¶ 7. The ex-wife appeared with an interpreter, but without counsel. *Id.* The ex-husband appeared with counsel. *Id.* When the pro-se ex-wife attempted cross-examination, it devolved into her own testimony, rather than actual cross-examination, so the trial court struck the statements as irrelevant, except as it related to the allegedly harassing emails. *Id.* When ex-husband’s counsel cross-examined ex-wife, the trial court limited cross-examination as to

only the emails. *Id.* This Court concluded that given all of the other direct testimony by *both* parties, and the absence of any formal record of domestic violence, denying ex-husband’s counsel’s cross-examination as to the *other* allegations (outside the emails) was an abuse of discretion. *Id.* at ¶ 13.

O’Farrell claims that *Castano* is “analogous” to this case. It is not. *Castano* is distinguishable in two significant respects: (a) the victim’s allegations in this case were *wholly unrefuted*; and (b) there was no showing that any excluded evidence was of sufficient probative value as to have made a difference in the outcome. O’Farrell offered no witness testimony of any kind, nor any other evidence, to refute Gastineau’s allegations. Defense counsel could certainly have questioned her as to her credibility – e.g. any criminal history as to veracity, any vendettas or other relationships with the defendant and his family, or any other reason Gastineau may not have been truthful. She provided the basic relevant facts and there was nothing to be gained by allowing O’Farrell’s counsel to retraumatize her by parsing details. Instead, the court properly exercised its discretion in ruling that O’Farrell’s counsel was *not* allowed to use the protection order hearing as a means to conduct discovery for the pending criminal matter.

The difference in standards notwithstanding (*supra*), this case is better compared to *State v. Jolley*. In *Jolley*, the defendant was facing a life sentence for second degree child abuse. *State v. Jolley*, 2003 SD 5, ¶ 4, 656 NW2d 305, 307. During the trial, the circuit court limited the defendant’s ability to question a

witness who had entered into a plea agreement for the same crime, pleading guilty to two counts of child abuse in exchange for two concurrent sentences of ten years, as opposed to a potential life sentence for second-degree felony murder. *Id.* The trial court restricted the defendant's ability to cross-examine the witness about that potential life sentence she avoided. *Id.* This Court determined the limitation was constitutional because the defendant still had the opportunity to effectively cross-examine the witness for credibility purposes. *Id.*

As in *Jolley*, O'Farrell's counsel did have the unrestricted opportunity to question Gastineau about her credibility. He chose not to do so and then raised concerns about the constitutionality of the limitation. In addition, O'Farrell's counsel was able to cross-examine the victim about some facts of the rape, why she was afraid of O'Farrell, and the events following the rape. If the Court in *Jolley* did not believe such a restriction violated the constitutional due process rights of a criminal defendant, the same should not amount to an abuse of discretion in a civil matter.

This is *especially* true considering the scope of the limitation in this matter. The circuit court merely restricted cross-examination of the witness by O'Farrell as a means of improper discovery for his criminal trial. This restriction was only imposed after confirmation that no other evidence would be offered to refute the victim's version of events. The restriction did not inhibit O'Farrell's ability to question Gastineau's credibility; nor did it exclude any critical evidence that could

have changed the outcome. The restriction merely prevented the improper use of court time and resources and the retraumatizing of a victim. This decision was not unreasonable, arbitrary, or beyond the scope of permissible behavior. It was a restriction well-within the bounds of the court's discretion.

CONCLUSION

For the foregoing reasons, Gastineau respectfully requests that this Court affirm the trial court's ruling in all respects.

REQUEST FOR ORAL ARGUMENT

Appellee hereby requests oral argument.

Dated at Aberdeen, South Dakota this 24th day of August, 2026.

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CERTIFICATE OF COMPLIANCE

Melissa E. Neville, attorney for Appellee, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellee's brief does not exceed 32 pages;
- b. The body of Appellee's brief was typed in Times New Roman 13 point typeface, with foot notes being in 12 point typeface; and
- c. Appellee's brief contains 4238 words, 26397 characters (with spaces), according to the word and character counting system in Microsoft Word for Microsoft 365 used by the undersigned.

Dated at Aberdeen, South Dakota this 24th day of August, 2026.

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CERTIFICATE OF SERVICE

The undersigned, attorney for Appellee, Sophia C. Gastineau, hereby certifies that on the 24th day of August, 2026, a true and correct copy of **Appellee's Brief** was filed electronically with the Clerk of the South Dakota Supreme Court through the Odyssey File & Serve with electronic service and notification sent to:

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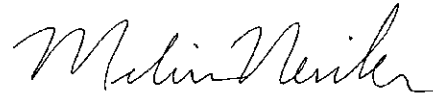
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and the original and 2 copies of the same were mailed by first class mail, postage prepaid to:

South Dakota Supreme Court
500 East Capitol
Pierre, SD 57501

Dated at Aberdeen, South Dakota this 24th day of August, 2026.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31506

SOPHIA CLAIRE GASTINEAU
Petitioner/Appellee

v.

LANCE ALAN O'FARRELL
Respondent/Appellant

APPEAL FROM THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
GRANT COUNTY, SOUTH DAKOTA

THE HONORABLE DAWN M. ELSHERE
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

Appellant reasserts the preliminary statement set forth in the Brief of the Appellant. Appellant relies on and incorporates the previous jurisdictional statement, statement of the legal issues, statement of the case, and statement of the facts as set forth in the Brief of the Appellant.

ARGUMENT

I. The circuit court violated O'Farrell's due process rights and abused its discretion in denying cross-examination of Gastineau.

The circuit court violated O'Farrell's due process rights and abused its discretion in denying cross-examination of Gastineau on her allegations that formed the basis for her petition for a permanent protection order. In this case, the circuit court put Gastineau under oath and asked her to testify as to why she wanted a protection order, then after a couple sentences of testimony, stopped Gastineau, and told her she did not need to speak further:

THE COURT: So go ahead and tell me why you want this protection order.

MS GASTINEAU: I want this protection order because on the early morning of Easter this year, Lance raped me and he's showed up to my work. He's had his family contact me, and quite frankly, I don't know what he is capable of and I am scared of him.

THE COURT: Thank you. You don't need to say anything further. Mr. Geyer, do you have any questions.

(SR 11:3-12).

O'Farrell attempted to cross-examine Gastineau and test the reliability of her testimony with cross-examination. However, before O'Farrell was allowed to cross-examine Gastineau, the circuit court stopped the cross-examination and not only denied O'Farrell the opportunity to cross-examine Gastineau on her assertions but also informed

O'Farrell that it already determined the testimony to be credible: "THE COURT: I'm denying your [cross-examination] because I find her testimony and her statement credible." (SR 12:21-22). The circuit court's determination of credibility prior to cross-examination goes against one of the main tenants of our legal system: that the finder of fact should not make a determination on the case until all the evidence is in.

One of the main reasons for this tenant, is because the reliability of testimony cannot truly be determined until it is tested "in the crucible of cross-examination." Crawford v. Washington, 541 U.S. 36, 61 (2004). A protection order hearing carries with it significant consequences for the accused. A protection order puts a significant restraint on the respondent's liberty, it carries with it a stigma, and it subjects the respondent to criminal prosecution for an alleged violation. None of these consequences should be taken lightly by a court.

It's absurd for Gastineau to argue that this process was acceptable because O'Farrell could have attacked the veracity of her allegation with collateral issues relating to dishonesty. First, the main issue is the broad allegation of rape, collateral issues are not going to adequately address the veracity of that accusation. Second, the circuit court was clear that it was not going to allow questions about the alleged rape, or even collateral issues surrounding the alleged rape. (SR 4:4-6:10).

If this argument were to succeed, it would essentially require a wrongfully accused individual to find some collateral proof of dishonesty to refute a false accusation. This would result in a manifest injustice on the wrongfully accused and does not comport with due process.

Its also absurd for Gastineau to argue that since O'Farrell did not testify, then he cannot have the right to cross-examine Gastineau on her assertions. Gastineau has the burden as the petitioner, a respondent must be able to cross-examine their accussor so the court can assess whether a prima facie case even exists to proceed to the respondent's defense. Denying O'Farrell the opportunity to cross-examine Gastineau "deprived this Court of a record from which there may be meaningful review." Castano v. Ishol, 2012 SD 85, ¶13.

The denial of O'Farrell to cross-examine Gastineau as to the basis for her protection order was a violation of his due process rights and an abuse of discretion and the Order for Protection should be reversed.

II. The circuit court's findings merely parrot the statutory text and fail to clearly identify how the evidence met the statutory elements.

The circuit court's findings merely parrot the statutory text and fail to clearly identify how the evidence met the statutory elements. In this case, the circuit court made oral findings that are just a conclusory statement of the element:

THE COURT: I am going to find that a protection order would be warranted in this matter. That the defendant has committed an act of violence against the victim in here and that a protection order would be found and I find that by the preponderance of the evidence.

(SR 17:8-13).

A circuit court's findings must do more than parrot the statutory text, the findings must "clearly identify 'how the evidence met the statutory elements'". Thompson v. Runner, 2018 SD 57, ¶16. The circuit court failed to clearly identify how the evidence established a crime of violence. Simply stating that a crime of violence existed without

clearly identifying how the evidence established a crime fails to provide this Court with sufficient findings for a meaningful review.

Gastineau wants this Court to assume what evidence and facts the circuit court thought established a crime; this is not proper. If the circuit court fails to establish sufficient findings, as is the case here, then this Court is not in a position to conduct a meaningful review.

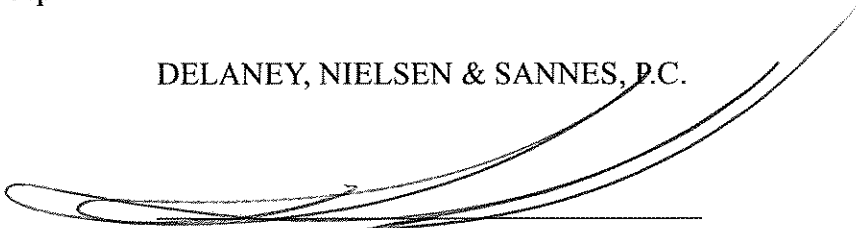
Additionally, the written order is a pre-printed form and the circuit court failed to indicate on the form a finding of a crime of violence. (SR 11). The circuit court later filed an email exchange indicating a clerical error; however, the email is no more clear than the oral findings and still fails to provide this Court with sufficient findings for a meaningful review.

CONCLUSION

The circuit court denying O'Farrell the opportunity to cross-examine Gastineau constituted a violation of his due process rights and was an abuse of discretion. Additionally, the circuit court's finding of facts are inadequate to provide meaningful review. As a result, the Order for Protection should be reversed.

DATED this 25 day of September 2026.

DELANEY, NIELSEN & SANNES, P.C.

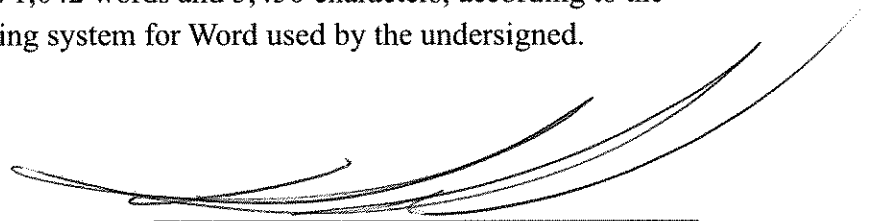


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CERTIFICATE OF COMPLIANCE

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- a. Appellant's brief does not exceed 16 pages;
- b. The body of Appellant's brief was typed in Times new Roman 12-point typeface;
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- c. Appellant's brief contains 1,042 words and 5,450 characters, according to the word and character counting system for Word used by the undersigned.

A handwritten signature in black ink, consisting of several sweeping, fluid strokes that form the name 'DAVID A. GEYER'.

DAVID A. GEYER

CERTIFICATE OF SERVICE

I certify that on the 23 day of September 2026, the undersigned served a true and correct copy of the Appellant's Reply Brief via electric transmission by the Clerk's Office via eFileSD to the following parties:

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