

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA

Appellee,

vs.

MATTHEW CHRISTOPHER HADE,

Appellant.

No. 31304

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLANT'S BRIEF

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No. 31304

MATTHEW CHRISTOPHER HADE,

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PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR” and will be followed by the appropriate page number. Exhibits are referred to as “Ex.” followed by the exhibit number or letter. All references are followed by the appropriate page number. The transcripts are referred to as follows:

Initial Appearance (October 18, 2024)..... IA
Arraignment (November 25, 2024)..... ARR
Motions Hearing (December 9, 2024) MH1
Pretrial Conference (February 3, 2025) PTC1
Status Hearing (February 24, 2025) SH1
Pretrial Conference (May 12, 2025)..... PTC2

Motions Hearing (May 19, 2025).....	MH2
Jury Trial (May 27, 2025 – May 28, 2025)	JT1-JT2
Status Hearing (June 9, 2025)	SH2
Pretrial Conference (July 7, 2025)	PTC3
Change of Plea Hearing (July 28, 2025).....	COP
Sentencing Hearing (October 27, 2025)	SENT

Defendant and Appellant will be referred to as “Hade.” Madyson Reed, the victim, will be referred to as “Reed.” The State’s expert witness, Dr. Kirsten Busse, will be referred to as “Dr. Busse.”

JURISDICTIONAL STATEMENT

Hade appeals the Judgment entered October 28, 2025, by the Honorable Joshua Hendrickson, Circuit Court Judge of the Seventh Judicial Circuit. SR 497-98. Hade’s Notice of Appeal was filed, and served on the Appellee, on November 24, 2025. SR 505-508. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUES

1. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING DR. BUSSE’S EXPERT TESTIMONY UNDER SDCL 19-19-702.

The circuit court overruled Hade’s objection to Dr. Busse’s qualification as an expert under SDCL 19-19-702 and received expert testimony regarding strangulation generally.

State v. Huante, 2026 S.D. 6

State v. Buchholtz, 2013 S.D. 96, 841 N.W.2d 449

II. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING RES GESTAE EVIDENCE.

The circuit court denied Hade's motion in limine requesting exclusion of evidence related to a refrigerator handle and a weight, admitting the evidence as *res gestae*.

State v. Rouse, 2025 S.D. 29, 23 N.W.3d 467

State v. Otobhiale, 2022 S.D. 35, 976 N.W.2d 759

III. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING REED'S OUT-OF-COURT STATEMENTS.

The circuit court denied Hade's motions in limine requesting exclusion of the 911 call and body-worn camera footage as hearsay and admitted Reed's out-of-court statements.

State v. Midgett, 2004 S.D. 57, 680 N.W.2d 288

State v. Orelup, 492 N.W.2d 101 (S.D. 1992)

State v. Bult, 351 N.W.2d 731 (S.D. 1984)

STATEMENT OF CASE

On October 30, 2024, a Pennington County Grand Jury returned a one-count Indictment charging Hade with Aggravated Assault (Domestic Abuse) in violation of SDCL 22-18-1.1(8). SR 17-18. The State also filed a Part II Information alleging Hade was a habitual offender under SDCL 22-7-7. SR 19. Hade pleaded

not guilty at his arraignment on November 24, 2024. ARR 7. The circuit court¹ held a two-day jury trial beginning on May 27, 2025. On May 28, 2025, the jury returned a guilty verdict. JT2 351-52; SR 256. Hade entered an admission on the Part II Information on July 28, 2025. *See generally* COP. The circuit court sentenced Hade to ten years in the South Dakota State Penitentiary. SR 497-98; SENT 10.²

STATEMENT OF FACTS

Hade and Reed began dating in 2024, and Reed moved in with Hade shortly after they began dating. JT1 20-21. According to Reed, on October 16, 2024, she returned home from work for the evening and the couple began arguing. JT1 22-24. When Hade left for the store later that night, Reed discovered text messages between Hade and another woman. JT1 25-26. Reed knew the other woman as one of Hade's ex-girlfriends. JT1 8; Ex. 1. She confronted Hade about the text messages. JT1 26.

The argument escalated and Reed alleged Hade "choked" her with both hands while she was on the couch. JT1 26-30. Next, in the bedroom, the argument continued and Hade began punching Reed, "slamming" her head into the headboard, and squeezing his arm around her neck "really tight." JT1 32-36.

¹ The Honorable Joshua Hendrickson, Circuit Court Judge, Seventh Judicial Circuit.

² The circuit court ordered Hade's sentence consecutive to a Meade County sentence (file number 46CRI18-161).

Reed explained that her “vision started to get blurry” during the incident. JT1 36. Hade then “ripped the fridge apart,” extracting a shelf handle. JT1 39. The argument continued into the following morning, and Reed described Hade flipping a coffee table then throwing a bottle and a weight³ at her while she sat on the couch. JT1 40-47. Hade then “choked” Reed again before he left for work. JT1 51-52.

When Hade left, Reed called her mother, Michelle Walz, and then called 911. JT1 52-53.⁴ Reed’s mother arrived first. JT2 165-66. Deputy Kyle Worden of the Pennington County Sheriff’s Office arrived later and spoke with Reed. JT2 191-92.⁵ In coordination with Deputy Worden, Deputy Andrew Nyblom located Hade and placed him under arrest. JT2 213-16. Reed denied medical attention on scene. JT2 202. Throughout trial, testimony and argument focused on whether Reed’s allegations were corroborated by evidence of injuries, markings, or

³ The weight was described as a “dumbbell,” 1A 18, or a “small rod with several small weights attached to it.” JT2. 195. *See* Ex. 23.

⁴ The State offered a recording of the 911 call. Ex. 1. Hade objected to the admission of the 911 call in a motion in limine, arguing it was not admissible as an excited utterance and additionally citing late disclosure. SR 147. The State responded the audio was admissible as an excited utterance under SDCL 19-19-803(2). SR 163-64. The circuit court denied Hade’s motion in limine to exclude the 911 audio. MH2 2.

⁵ Deputy Worden’s body-worn camera footage was also admitted into evidence. Ex. 31.

bruising. *See, e.g.*, JT2 324 (State closing argument); JT2 332-36 (Defense closing argument).

Prior to trial, the State filed notice of intent to offer Dr. Busse “as an expert regarding strangulation and treatment of the victim in this case.” SR 74.⁶ At trial, Dr. Busse testified she examined Reed for injuries at Monument Health in Rapid City where she worked as an Emergency Room Physician. JT1 110. Dr. Busse testified to her credentials as a medical professional and stated she interacts with “between six and eight” victims of strangulation per year and has reviewed literature about strangulation. JT1 91-96. The State asked the circuit court to recognize Dr. Busse “as an expert in the field of Emergency Medicine as well as the field of strangulation specifically under 19-19-702.” JT1 98. Hade objected to Dr. Busse’s recognition as an expert for “[l]ack of foundation as to strangulation.” *Id.* Hade also objected to the admission of Dr. Busse’s curriculum vitae for hearsay. JT1 97-98. The circuit court stated it would “recognize the witness as an expert in Emergency Medicine and the subcategory of strangulation.” JT1 98.

Dr. Busse testified to a definition of “strangulation,” methods of strangulation, and the anatomy of the neck. JT1 98-101. Dr. Busse described the

⁶ The State also noticed its intent to offer other-acts evidence based on Hade’s prior Meade County conviction (46CR118-161). SR 82-93. The State similarly noticed intent to offer expert testimony from Krista K. Heeren-Graber “as an expert regarding the dynamics of domestic violence cases.” SR 62. Hade objected to the other-acts evidence and Heeren-Graber’s testimony. SR 119-127; SR 137-140. The circuit court excluded the other-acts evidence and the State withdrew its intent to offer Heeren-Graber’s testimony. SH1 2; PTC2 2.

amount of pressure needed to collapse the jugular vein or, separately, the carotid artery, comparing it with the force needed to open a soda can or “a male handshake.” JT1 101. The State also elicited testimony regarding long-term consequences of strangulation such as “traumatic brain injury,” and “psychological issues that go with that. PTSD, insomnia, you know, fear. I mean...” JT1 105-108. Dr. Busse stated that “in 50 percent of patients who report strangulation, I won’t see anything externally.” JT1 106.

Dr. Busse testified that in this case, she “found no injuries,” and a CT scan was also negative for injury. JT1 126; JT1 119-120. However, Dr. Busse’s testimony explained that “sometimes the bruising can take time to show up,” and referenced statistical data supporting the proposition that visible injury is rare in cases involving strangulation:

Yeah. So I think it’s 50 percent that they’ll say you don’t see anything. Maybe 30 percent -- that takes us up to, what, 80. 30 percent, it’s so light that you can’t document it or you can’t take a picture of it because it’s so -- it’s such a light -- you know, something you can barely see. And then maybe 15 or so after that is where you’re gonna see injuries, visible injuries.

JT1 110.

In re-direct examination, Dr. Busse continued, stating “[m]ost of the studies have shown domestic violence, sexual assaults, things that arise from that nature are vastly under-reported.” JT1 134. The State’s questioning also elicited Dr. Busse’s impression that “in cases where someone had been strangled for four or five, however many minutes,

seeing visible injuries is actually the minority.” JT1 135-36. Further, the State emphasized that in fatal cases of strangulation, only 30 percent of deceased victims exhibit visible injuries. JT1 135. Dr. Busse stated, “[t]hough I will admit, I am not a forensic pathologist. I do not do autopsies,” though she reviewed literature to support this claim. JT1 135. In the following exchange Defense counsel sought clarification for the data:

Defense Counsel:	If strangulation causes death and 70 percent of the time there’s zero evidence that it’s strangulation, how do they come to the conclusion that the death was caused by strangulation?
------------------	--

Dr. Busse:	So that’s probably better for forensic pathologists, which I am not because I don’t do autopsies. I guess I can’t answer that other than I don’t do autopsies.
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Defense Counsel:	But you believe that in 70 percent of the cases of strangulation causing death, there are – there’s zero evidence that a strangulation occurred.
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Dr. Busse:	I’m not saying there’s zero evidence.
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JT1 137-38.

The State also offered into evidence a “Refrigerator Piece,” photographs of the refrigerator door, and the weight. Ex. 33; Ex. 24; Ex. 17; Ex. 23. Hade had filed a motion in limine to exclude evidence of the refrigerator or weight. SR 151; SR 149. The State argued that these items

were admissible as *res gestae* evidence, because “without this evidence, the victim’s story would likely make little sense. These actions by the Defendant are blended with the charged crime that proof of the thrown weights and damaged refrigerator tends to logically prove the strangulation.” SR 165-66. At the Motions Hearing preceding trial, the circuit court pronounced “I find them to be *res gestae* as argued by the State in their response.” MH2 3. When Deputy Worden testified, he asserted that the weight and refrigerator piece were “evidence to corroborate that she was telling the truth.” JT2 208-09. In closing arguments, the State cited Deputy Worden’s statement and reiterated that the refrigerator handle was “corroborative that she was telling the truth” about strangulation. JT2 343.

The jury returned a guilty verdict and the circuit court sentenced Hade to ten years prison. JT2 351-52; SENT 10.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING DR. BUSSE’S EXPERT TESTIMONY UNDER SDCL 19-19-702.

A. *Standard of Review*

A circuit court has “broad discretion in ruling on the admissibility of expert opinions.” *State v. Huante*, 2026 S.D. 6, ¶ 30 (quoting *State v. Carter*, 2023 S.D. 67, ¶ 45, 1 N.W.3d 674, 690). A decision to admit expert testimony “will not be reversed absent a clear abuse of discretion.” *Id.* (citation modified). “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 or unreasonable.’” *Id.* (quoting *State v. Pretty Weasel*, 2023 S.D. 41, ¶ 28, 994 N.W.2d 435, 441).

“When a trial court misapplies a rule of evidence, as opposed to merely allowing or refusing questionable evidence, it abuses its discretion.” *State v. Guthrie*, 2001 S.D. 61, ¶ 30, 627 N.W.2d 401, 415. (citing *Koon v. United States*, 518 U.S. 81, 100 (1996)). “Under the abuse of discretion standard, ‘not only must error be demonstrated, but it must also be shown to be prejudicial.’” *State v. Harruff*, 2020 S.D. 4, ¶ 14, 939 N.W.2d 20, 25 (quoting *State v. Stone*, 2019 S.D. 18, ¶ 22, 925 N.W.2d 488, 497).

B. The Circuit Court Improperly Qualified Dr. Busse as an Expert in Strangulation.

When the State proffered Dr. Busse as an expert witness in “the field of strangulation specifically under 19-19-702,” Hade objected, arguing Dr. Busse’s testimony related to strangulation was not supported by adequate foundation. JT1 98. The circuit court did not analyze whether Dr. Busse’s testimony would be admissible expert opinion under SDCL 19-19-702, but simply recognized Dr. Busse as an expert in “Emergency Medicine *and the subcategory of strangulation.*” JT1 98 (emphasis added).

The admissibility of expert testimony is governed by SDCL 19-19-702, which provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

Thus, as this Court recently stated:

The text of Rule 702 imposes three preliminary questions that a court must answer before admitting a purported expert's testimony at trial: (1) whether the witness is qualified to testify as an expert about the subject matter at issue; (2) whether the witness's testimony will help the trier of fact understand the evidence or determine a fact in issue; and (3) whether the testimony is sufficiently trustworthy, meaning it is the result of reliable principles and methods that have been reliably applied to the facts of this case.

Huante, 2026 S.D. 6, ¶ 34. Prior to the State asking the circuit court to qualify Dr.

Busse as an expert, she had testified that she was an Emergency Room Physician, licensed and board certified, she had interacted with “around 120 to 160” victims of strangulation, and she had reviewed literature about strangulation. JT1 91-98.

However, the circuit court did not consider the factors provided in SDCL 19-19-702 before recognizing Dr. Busse as an expert within the field of strangulation. In failing to apply SDCL 19-19-702 to determine the admissibility of Dr. Busse’s testimony related to strangulation, the circuit court misapplied the requirements of SDCL 19-19-702 and abused its discretion in admitting her testimony related to strangulation.

In *Huante*, this Court examined Dr. Stephen Manlove’s qualification as an expert in the field of false confessions. *See Huante*, 2026 S.D. 6, ¶ 37 (stating “[w]hether Dr. Manlove qualifies as an expert in this case is a very close call”). This Court noted “[t]here is no question that Dr. Manlove is qualified as an expert in the field of forensic psychiatry and has testified in many cases previously.” *Id.* The Court observed “Dr. Manlove’s desultory description of his professional experience” related to false confessions, but found no abuse of discretion. *Id.* ¶ at 38.

Here, Dr. Busse does not have a history of expert qualification comparable to that which this Court recognized in Dr. Manlove’s history of testifying in South Dakota.⁷ In *Huante*, this Court noted Dr. Manlove’s history and the deferential standard of review when finding the circuit court did not improperly qualify Dr. Manlove as an expert in false confessions. *Huante*, 2026 S.D. 6, ¶¶ 37-38. However, though the standard is deferential, the “abuse of discretion standard is meaningful; it does not immunize a trial court’s decision from appellate review.” *Id.* at ¶ 31. While Dr. Manlove’s qualification may have been a close call in *Huante*, Dr. Busse’s was not.

⁷ Dr. Manlove’s testimony is present in several cases considered by this Court. *See, e.g., Petition of Draeger*, 463 N.W.2d 346, 347 (S.D. 1990); *In re Est. of Dokken*, 2000 S.D. 9, ¶ 44, 604 N.W.2d 487, 499; *State v. Schmidt*, 2012 S.D. 77, ¶ 7, 825 N.W.2d 889, 893; *State v. Henry*, 2024 S.D. 30, ¶ 14, 7 N.W.3d 907, 910.

Dr. Busse may be an expert in the generalized field of emergency medicine, but not in the field of strangulation, domestic violence, or forensic pathology. An Emergency Room Physician may competently describe acute clinical findings she personally observed. But the State tendered Dr. Busse to speak broadly about the mechanisms of strangulation, general statistics regarding injury, pathological findings unrelated to the case, long-term psychological consequences, and even domestic violence reporting.⁸ Dr. Busse was not qualified to testify about these subjects. Moreover, the State did not provide any authority to support the assertion that “strangulation,” generally, is a subcategory of the emergency medicine field. The circuit court abused its discretion in qualifying Dr. Busse as an expert in the subcategory of strangulation.

C. Dr. Busse’s Testimony Did Not Satisfy the Helpfulness Standard Under SDCL 19-19-702.

Even if Dr. Busse was appropriately qualified as an expert, the testimony still must “help the trier of fact.” *Huante*, 2026 S.D. 6, ¶ 39. Dr. Busse testified that neither she nor the radiologist observed any injuries to Reed. JT1 120. Nevertheless, Dr. Busse was permitted to testify to a definition of

⁸ In cross-examination, Dr. Busse even admitted that her testimony may have exceeded her expertise. *See* JT1 135; JT1 137-38 (comparing Dr. Busse’s own experience to that of a pathologist performing autopsies). *See also State v. Percy*, 80 S.D. 1, 4, 117 N.W.2d 99, 100 (1962) (“if a witness offered as an expert disclaims qualification to testify on the matter under inquiry manifestly [her] testimony is inadmissible”).

“strangulation,” the potential long-term effects of strangulation, the associated psychological effects, and statistics regarding autopsies of deceased strangulation victims. JT1 98; JT1 105-110.⁹ Here, most of Dr. Busse’s testimony was irrelevant to the facts of this case. Although Dr. Busse testified that she examined Reed in the emergency room, the record demonstrates she was relying on her reports and notes to provide factual testimony. JT1 110-112. Ultimately, Dr. Busse did not purport to apply her general claims related to strangulation to the facts of this case to render any expert opinion. Although Dr. Busse’s testimony fell short of expressly stating the purpose of her assertions, the inference was clear: the absence of injury corroborates Reed’s testimony.¹⁰ Dr. Busse’s testimony did not

⁹ Notably, “strangulation” does not appear in the statute under which Hade was charged. See SDCL 22-18-1.1. Likewise, the circuit court did not instruct the jury as to “strangulation.” SR 224-253. Dr. Busse’s definition of strangulation was “*anything* that impedes blood flow or air to our brain or lungs.” JT1 98 (emphasis added). At the outset, Dr. Busse’s testimony was not relevant. See *State v. Richter*, 2025 S.D. 58, ¶ 25, 27 N.W.3d 777, 787 (stating “the inquiry ‘is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute’”) (quoting *State v. Huber*, 2010 S.D. 63, ¶ 33, 789 N.W.2d 283, 293). Here, the jury was not tasked with deciding whether Reed was subjected to “strangulation,” as may be the case in other jurisdictions. See *State v. Perry*, 2017 ME 74, ¶ 20, 159 A.3d 840, 846 (finding no abuse of discretion in admitting strangulation expert testimony, because statute specifies “strangulation” in definition and expert testimony assisted jury with determining “whether Perry’s alleged conduct constituted ‘strangulation’ as defined in the statute.”).

¹⁰ The State emphasized this inference in closing arguments. JT2 324-25 (arguing “my personal favorite piece of corroborative evidence, is essentially the entirety of Dr. Busse’s testimony,” highlighting that “[s]trangulations are woefully under-

serve to provide the jury with an expert opinion, instead, it vouched for Reed's veracity. *See State v. Buchholtz*, 2013 S.D. 96, ¶ 28, 841 N.W.2d 449, 459 (warning trial courts they "must be careful to distinguish between expert opinion that helps the jury and expert opinion that merely endorses a witness's testimony" and stating "experts cannot pass judgment on a witness's truthfulness in the form of a medical opinion") (citing *United States v. Whitted*, 11 F.3d 782, 785-86 (8th Cir.1993)). *See also State v. Guthrie*, 2001 S.D. 61, ¶ 42, 627 N.W.2d 401, 419 (stating courts "generally permit these experts to describe the symptoms or behaviors of known victims, report the symptoms or behaviors observed in the victim in the present case, and give an opinion that the victim's symptoms or behaviors are 'consistent with' those of known victims").¹¹

The possibility that Reed's claims, if true, may have resulted in no evidence of injury is a simple fact that does not require expert analysis. *See Huante*, 2026 S.D. 6, ¶ 48 (stating "[t]he existence of false confessions is simply a

reported," and reiterating "PTSD and the long-term mental effects of strangulation").

¹¹ This is not a case where Dr. Busse's testimony was offered to prove that existing injuries in Reed were consistent with actual injuries observed in strangulation victims. *See Oliver v. State*, 2022 OK CR 15, ¶ 6, 516 P.3d 699, 705 (referencing "petechial injuries" in addition to red marks and bruising, which witness opined was consistent with strangulation). Rather, Dr. Busse's testimony was offered as a form of an inverse inference from lack of injury (i.e. most strangulation victims show no injury, Reed showed no injury, therefore she must have been strangled).

fact, not an opinion, much less an expert one"). Additionally, data regarding suspected strangulation victims and results of their autopsies do not "'fit' to the circumstances of this case." *Id.* ¶ 52. First, this case does not involve death, autopsy findings, or injury. *Id.* (stating "this case does not, of course, involve either exoneration or the retrospective discovery of a false confession"). Second, Dr. Busse's proffered opinions about the existence and incidence of non-injurious strangulation were "unsupported by any type of reliable methodology." *Id.* at ¶ 53. For example, Dr. Busse was unable to explain how the data she cited might be affected by error rates, such as false reports of strangulation. JT1 115. *See also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993) (stating "in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error").¹² Further mirroring *Huante*, Dr. Busse did not identify any peculiarity in Reed herself that would result in a lesser likelihood to exhibit injuries from alleged strangulation. *Huante*, 2026 S.D. 6, ¶ 67. Similarly, long-term psychological effects had no bearing on the jury's consideration of Reed's factual allegations.

¹² Furthermore, there is a genuine question as to whether Dr. Busse's education and literature review supplied her with the requisite "knowledge, skill, experience, training, or education" to qualify as an expert. *Huante*, 2026 S.D. 6, ¶ 58 (quoting SDCL 19-19-702). She explained the statistics that she cited were derived from the website of the Institute of Strangulation Prevention, "1 think.org," but "[s]ome of that's through law enforcement." JT1 114.

In sum, the purpose of Dr. Busse’s expert testimony was a credibility endorsement of Reed’s account and an appeal to sympathy. And, similar to *Huante*, Dr. Busse’s proffered testimony fell short of offering an actual expert opinion tailored to the facts of the case. 2026 S.D. 6, at ¶ 60 (observing Dr. Manlove’s case-specific opinion was excluded and “neither reliable nor helpful to the jury”). *See also People v. Bauereiss*, No. 22CA1724, 2025 WL 2992575, at *3 (Colo. App. Oct. 23, 2025) (finding error where trial court admitted expert testimony related to “issues that could *potentially* arise” from strangulation “[b]ecause this evidence did not fit the facts of the case”) (emphasis in original);¹³ *Commonwealth v. Walters*, 323 A.3d 151, 163-167 (Pa. 2024) (vacating conviction and remanding where expert testimony of doctor “repeatedly conceded that there was *no* physical evidence to support his conclusion that [victim] was strangled,” which “constituted inadmissible testimony that vouched for the credibility” of the prosecution witness). Dr. Busse’s testimony was not helpful to the jury’s determinations of fact. Therefore, the circuit court abused its discretion in admitting Dr. Busse’s expert testimony.

D. Dr. Busse’s Testimony Was Not Sufficiently Trustworthy.

¹³ The court in *Bauereiss* reasoned that the victim had not suffered from any of the potential injuries the expert testified about and, therefore, “[b]ecause this evidence did not fit the facts of the case, it did not make any fact of consequence more or less likely.” No. 22CA1724, 2025 WL 2992575, at *3 (Colo. App. Oct. 23, 2025).

The State made no showing about how Dr. Busse's general claims were reliably derived or supported by identified studies with known rates or controls. Critically, also, Dr. Busse did not purport to apply reliable principles to the facts of this case. SDCL 19-19-702. Dr. Busse's credentials as to "strangulation" are certainly questionable – she admitted that the literature she cited was derived from "emergency medicine, of course law enforcement, [and] radiology." JT1 115. When asked how the data was confirmed, since it is inherently reliant on self-reporting, Dr. Busse stated, "I think that's more of a question for police," and "not me as a medical provider." JT1 115. Dr. Busse went as far as to say that "strangulation is going to be under-reported just as domestic violence is," but admitted she did not know whether the data she relied on was affected by false reports. JT1 114-115. Dr. Busse's testimony demonstrates her inability to defend or support the accuracy of her data or cite specific sources. Like the testimony considered in *Huante*, here the State offered generalized background information without showing a reliable method for applying it to the facts of this case.¹⁴ The

¹⁴ Regarding methodology, Dr. Busse stated the principles and methods she relies on are limited to her acute examination of victims. See JT1 96 (identifying "history, physical exam, then I'm gonna kinda determine what tests I need next" as "principles or methods"). Notably, general statistics, long-term psychological effects, and domestic violence reporting are simply reasons to support *why* an Emergency Room Physician would administer certain tests when examining a person complaining of strangulation. The fact that Dr. Busse examined Reed does not support admission of her other assertions. See *Walters*, 323 A.3d at 153-55 (finding appellant entitled to new trial because expert pathologist opined the victim's cause of death was "strangulation by history," where the expert witness

circuit court abused its discretion because Dr. Busse’s expert testimony was not sufficiently trustworthy as applied to this case.

E. Admission of Dr. Busse’s Expert Testimony was Not Harmless

Dr. Busse’s testimony invited speculative sympathy from the jury. Her testimony described long-term concerns and the psychological impact of strangulation assaults generally. JT1 105. *See People v. Bauereiss*, No. 22CA1724, 2025 WL 2992575, at *3 (Colo. App. Oct. 23, 2025) (finding “we cannot conclude the error was harmless” when expert testimony regarding future implications of strangulation “could only serve to create sympathy for [the victim] and a speculative concern in the jury’s collective mind about future risks [the victim] might face”). In addition to garnering sympathy, expert evidence about a *potential* harm which had not occurred in this case was prejudicial and served only to improperly bolster Reed’s testimony. *See Walters*, 323 A.3d at 166-67, (finding error not harmless where strangulation expert inadmissibly “vouched for the credibility” of a prosecution witness). Dr. Busse’s expert testimony significantly prejudiced the verdict.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING RES GESTAE EVIDENCE.

A. Standard of Review

had clarified that “somebody else’s statements are the history. And that’s what I refer to. And that’s what I based my findings largely upon”).

“This Court reviews evidentiary rulings for abuse of discretion.” *State v. Rouse*, 2025 S.D. 29, ¶ 24, 23 N.W.3d 467, 475 (citing *State v. Belt*, 2024 S.D. 82, ¶ 20, 15 N.W.3d 732, 737). “‘*Res gestae*’ is a theory of relevance which recognizes that certain evidence is relevant because of its unique relationship to the charged crime.” *State v. Otobhiale*, 2022 S.D. 35, ¶ 16, 976 N.W.2d 759, 767 (citation modified). *Res gestae* evidence may be admissible under the following bases:

When the evidence provides the jury with a complete story of the charged crime; its absence would leave a chronological or conceptual void in the story of the crime; it arose out of the same transaction or series of transactions as the charged offense; it is so blended or connected with the crime charged that it incidentally involves it, explains the circumstances surrounding it, or tends logically to prove an element of the charged crime.

Rouse, 2025 S.D. 29, ¶ 33, 23 N.W.3d at 475 (citation modified). “Furthermore, this Court has concluded that Rule 404(b) is inapplicable to *res gestae* evidence.” *Otobhiale*, 2022 S.D. 35, ¶ 17, 976 N.W.2d at 767 (citing *State v. Floody*, 481 N.W.2d 242, 252 (S.D. 1992)). When a circuit court admits evidence as *res gestae*, this Court reviews the decision for abuse of discretion. *Id.* at ¶ 28, 770.

B. The Circuit Court Abused its Discretion In Admitting Irrelevant and Highly Prejudicial Evidence Under the Theory of Res Gestae.

The circuit court denied Hade’s motion in limine to exclude evidence of the refrigerator piece and the weight. SR 149-152; MH2 3. In its response to Hade’s motions, the State had revealed the purpose of submitting evidence of the refrigerator piece and the weight:

Giving the jury a clear timeline of events before and after the strangulation would be exceedingly beneficial to its understanding of the State's case, and without this evidence, the victim's story would likely make little sense. These actions by the Defendant are blended with the charged crime that proof of the thrown weights and damaged refrigerator tends to logically prove the strangulation.

SR 165-66. Even before trial, this evidence was offered to vouch for the credibility of Reed's strangulation allegations. At trial, Deputy Worden's testimony explicitly referenced this effort. *See* JT2 208-09 (citing weight and refrigerator piece as corroboration that Reed was telling "truth"). The State emphasized this theory of the *res gestae* evidence in closing arguments. *See* JT2 343 (citing Deputy Worden's testimony that refrigerator piece as "corroborative that she was telling the truth"). But the evidence does not "tend to prove any element of the crimes charged." *Rouse*, 2025 S.D. 29, ¶ 35, 23 N.W.3d at 478. This is not a case where the evidence "helped the jury understand" Reed's allegations. *Otobhiale*, 2022 S.D. 35, ¶ 20, 976 N.W.2d at 768. The weight and refrigerator handle were not "intrinsic to the crimes alleged." *Id.* at ¶ 21, 768. Contrary to the State's contention, evidence of the weight and refrigerator handle does not "logically prove the strangulation." SR 166. Nor is Reed's fear relevant to the elements of the offense but, rather, the jury was tasked with deciding what Hade "was *attempting* to do." *Rouse*, 2025 S.D. 29, ¶ 22, 23 N.W.3d at 475 (emphasis in original).¹⁵ The circuit

¹⁵ The appellant in *Rouse* was convicted of aggravated assault under SDCL 22-18-1.1(5). *Rouse*, 2025 S.D. 29, ¶ 20, 23 N.W.3d at 475. Here, SDCL 22-18-1.1(8) also

court's abuse of discretion here was substantially prejudicial. Admission of this invited the jury to give undue weight to the physical evidence and law enforcement's expressed belief in Reed. Like the expert testimony, the sole purpose of the State seeking to admit this evidence was to vouch for the credibility of Reed. Admission of the *res gestae* evidence resulted in significant prejudice.

III. THE CIRCUIT COURT ABUSED ITS DISCRETION BECAUSE REED'S OUT-OF-COURT STATEMENTS WERE INADMISSIBLE HEARSAY.

A. *Standard of Review*

"Hearsay is an out-of-court assertion, either oral or written, which is 'offered in evidence to prove the truth of the matter asserted.'" *State v. Williams*, 2006 S.D. 11, ¶ 8, 710 N.W.2d 427, 430. "Hearsay is generally not admissible." *State v. Martin*, 2015 S.D. 2, ¶ 8, 859 N.W.2d 600, 603. The Court "appl[ies] the abuse of discretion standard to the trial court's determination of whether to admit hearsay evidence." *State v. Condon*, 2007 S.D. 124, ¶ 15, 742 N.W.2d 861, 866. The Court will reverse on the basis of an erroneous evidentiary ruling if it was prejudicial. *Williams*, 2006 S.D. 11, ¶ 8, 710 N.W.2d at 430.

B. *Reed's Out-of-Court Statements were Inadmissible Hearsay and Should Have Been Excluded Because They Were Offered for the Truth of the Matter Asserted to Bolster Reed's Testimony.*

requires a factual determination of the perpetrator's attempt to induce fear through impeding breathing or circulation, not the alleged victim's actual fear.

Both the 911 call and the body-worn camera footage contain Reed's highly prejudicial out-of-court statements. Ex. 1; Ex. 31. First, among other things in the 911 call, Reed stated:

- "last night me and my boyfriend got into a fight and he choked me."
- Hade had threatened her, her family, and her dog.
- Hade "broke the fridge" and "tried to throw weights at me."
- Hade had been drinking

Ex. 1. The State asserted the 911 call was admissible as an excited utterance under SDCL 19-19-803(2). SR 164. However, on the call, Reed also stated that Hade had left "five minutes ago," and Reed had his location tracked to a gas station. Ex. 1. During the call, Reed's mother arrived. JT2 165-66.¹⁶ After Reed's mother arrived, Reed repeated on the 911 call that Hade threw a weight at her, choked her, and slammed her against the headboard. Ex. 1.

The State argued the body-worn camera video was also admissible as an excited utterance. SR 144.¹⁷ The circuit court denied Hade's motion to exclude the body-worn camera video and admitted the evidence. MH2 6; Ex. 31. In the video, Reed states Hade threatened to kill her and her family, choked her, pulled her

¹⁶ Reed's mother also testified to Reed's statement "she kept saying, *He choked me.*" JT2 149. Hade's hearsay objection to this testimony was overruled. *Id.* Hade asserts this was also inadmissible hearsay.

¹⁷ The State filed a notice of intent to use hearsay evidence. SR 144-45. Hade objected to the admission of the entirety of the body-worn camera footage in his motion in limine. SR 159.

hair, and showed Deputy Worden the house while reiterating her allegations. Ex. 31.

The statements in the 911 call and body-worn camera video were inadmissible hearsay. The State offered Reed's out-of-court statements through these exhibits to prove the truth of the matter asserted. "To be admissible pursuant to the excited utterance exception to the hearsay rule, a hearsay statement must relate to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." *State v. Roach*, 2012 S.D. 91, ¶ 38, 825 N.W.2d 258, 268 (citation modified).

The circuit court did not enter findings that Reed's statements were related to a startling event and made under that excitement. *See State v. Midgett*, 2004 S.D. 57, ¶ 32, 680 N.W.2d 288, 295 (holding "the trial court did not make the requisite 'contemporaneous' finding. Therefore, we cannot make the admissibility determination from this record"); *State v. Orelup*, 492 N.W.2d 101, 106 (S.D. 1992) (finding error in admitting hearsay under excited utterance exception without proper findings). The circuit court overlooked, or did not consider, the factors of Hade's absence, Reed's knowledge of Hade's location, and Reed's mother's arrival on scene. *See generally* MH2. Reed's statements, especially in the body-worn camera video, reflect deliberate narrative, not stress-induced exclamation. And although Reed stated Hade had left five minutes prior, her statements were not spontaneous or lacking capacity for fabrication. *State v. Bult*, 351 N.W.2d 731, 736 (S.D. 1984) (stating "[l]ack of capacity for

fabrication rather than lack of time to fabricate is the justification for this rule, and there is no pat answer as to the length of time that elapsed between the event and the utterance”).

The circuit court abused its discretion in admitting these recordings, and its error was not harmless. The recordings offered cumulative versions of Reed’s allegations, delivered in an audiovisual format to inherently bolster her credibility. The effect of accumulating and presenting all of Reed’s out-of-court narratives had a significant influence on the jury’s perception. Because the State’s case relied heavily on Reed’s credibility, and because the recordings were a central component of the State’s narrative, this error was prejudicial.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Appellant respectfully requests this Court vacate the Judgment and remand the case to the circuit court with an Order directing the court to reverse the Judgment and schedule a new trial.

REQUEST FOR ORAL ARGUMENT

The attorney for the Appellant, Matthew Hade, respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted this 16th day of March, 2026.

/s/ Derek D. Friese

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type.
Appellant's Brief contains 6,997 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 16th day of March, 2026.

/s/ Derek D. Frieze
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Brief were electronically served upon:

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31304

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

MATTHEW CHRISTOPHER HADE,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JOSHUA HENDRICKSON
Presiding Circuit Court Judge

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Notice of Appeal filed November 24, 2025

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PRELIMINARY STATEMENT

Domestic violence prosecutions are particularly challenging cases. “Domestic violence is a crime that usually occurs in the home[,]” and there are rarely eyewitnesses. Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 Yale J.L. & Feminism 359, 370 (1996). Injuries do not appear until after law enforcement has left the scene “or there simply may be no visible or physical injury to be photographed.” *Id.* at 371. And “[d]efendant’s accused of domestic violence often claim that the victim is lying[.]” *Id.* at 377. So “domestic violence prosecutions are often reduced to a swearing match between the victim and the defendant.” *Id.* at 397. Because of that, “prosecutors must look for ways to prepare and present a case creatively so that . . . a victim’s testimony is not the only means to a conviction. . . .” *Id.* at 374.

This case is no different. The State of South Dakota built its case against Matthew Christopher Hade using different evidentiary angles to give the jury the full picture of what happened to Madyson reed. It started with Reed’s testimony. Then it supported her testimony with expert testimony, *res gestae* evidence, and Reed’s own words to explain how Hade’s assault occurred over a span of hours, why Reed waited to seek help from law enforcement, why Reed had no observable injuries

when she went to the Emergency Room, and how Reed’s allegations remained consistent across multiple statements and as time passed.

Hade now challenges that expert testimony as violating SDCL 19-19-702, claiming the witness was not qualified to be an expert on “strangulation” and her testimony did not help the jury. He claims the State’s *res gestae* evidence was irrelevant and unfairly prejudicial. And he challenges the hearsay statements as not qualifying under the excited utterance exception in SDCL 19-19-803(2).

In this brief, the State of South Dakota is called “the State.” All other individuals are referenced by name. Relevant documents are referenced as follows:

Settled Record (Criminal File 51CRI24-4074)	SR
Arraignment Hearing Transcript (November 25, 2024)	ARR
Jury Trial Voir Dire Transcript (May 27, 2025).....	VT
Jury Trial Transcript Volumes 1 and 2 (May 27, and May 28, 2025)	JT
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Sentencing Hearing Transcript (October 27, 2025).....	ST
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The appropriate page numbers follow all document references.

And the exhibits from Hade’s jury trial are referred to as “Ex.”

followed by the appropriate identifier.

JURISDICTIONAL STATEMENT

On October 28, 2025, the Honorable Joshua Hendrickson filed a Judgment that sentenced Matthew Christopher Hade to ten years in prison. SR:497-98. Under SDCL 23A-32-15, Hade timely filed and served his Notice of Appeal on November 24, 2025.¹ SR:500, 505. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF THE LEGAL ISSUES AND AUTHORITIES

I

WHETHER HADE WAIVED HIS EXPERT
WITNESS AND HEARSAY ISSUES BY NOT
RAISING THE ARGUMENTS HE MAKES ON
APPEAL WITH THE CIRCUIT COURT?

This issue is being raised for the first time
on appeal.

State v. Ledbetter, 2018 S.D. 79, 920 N.W.2d 760

State v. Nelson, 1998 S.D. 124, 587 N.W.2d 439

State v. Roach, 2012 S.D. 91, 825 N.W.2d 258

State v. Weaver, 2002 S.D. 76, 648 N.W.2d 355

II

WHETHER THE CIRCUIT COURT
PROPERLY DETERMINED THAT DR.
KRISTEN BUSSE WAS AN EXPERT
WITNESS IN EMERGENCY MEDICINE AND

¹ Hade's certificate of service is dated as having been signed on October 24, 2025, but it is electronically file stamped as being filed on November 24, 2025. SR:500. The October 24, 2025, date seems to be a typographical error because it predates the judgment of conviction by four days and the sentencing hearing by three days.

“STRANGULATION” AND ADMITTED HER
TESTIMONY ON THOSE TOPICS?

Four months before trial, the State noticed Dr. Busse as an expert in emergency medicine and strangulation. Hade did not bring a pretrial challenge to her proposed testimony. Instead, he waited until trial to claim her testimony lacked foundation. The circuit court overruled that objection, and recognized Dr. Busse “as an expert in Emergency Medicine and the subcategory of strangulation.”

State v. Buchholtz, 2013 S.D. 96, 841 N.W.2d 449

State v. Huante, 2026 S.D. 6, 31 N.W.3d 715

State v. Orelup, 492 N.W.2d 101 (S.D. 1992)

State v. Shepard, 2009 S.D. 50, 768 N.W.2d 162

SDCL 19-19-702

SDCL 22-18-1.1(8)

III

WHETHER THE CIRCUIT COURT
PROPERLY ADMITTED EVIDENCE
INTERCONNECTED TO HADE’S ASSAULT
BY STRANGULATION UNDER THE RES
GESTAE DOCTRINE?

The State offered evidence that Hade damaged a refrigerator and threw a weight set at Reed during his hours-long assault. The circuit court, denying Hade’s motions in limine, admitted this evidence under the *res gestae* doctrine.

State v. Liable, 1999 S.D. 58, 594 N.W.2d 328

State v. Otohiale, 2022 S.D. 35, 976 N.W.2d 759

IV

WHETHER THE CIRCUIT COURT PROPERLY ADMITTED STATEMENTS MADE DURING A 911 CALL AND ON A SHERIFF'S DEPUTY'S BODY CAMERA VIDEO UNDER THE EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE?

The State offered Reed's statements in a 911 call and to a deputy that responded to that call as permissible hearsay. The circuit court, denying Hade's motions in limine, admitted those statements as excited utterances.

State v. Blem, 2000 S.D. 69, 610 N.W.2d 803

State v. Roach, 2012 S.D. 91, 825 N.W.2d 258

State v. Shepard, 2009 S.D. 50, 768 N.W.2d 162

State v. Swallow, 405 N.W.2d 29 (S.D. 1987)

SDCL 19-19-803(2)

STATEMENT OF THE CASE AND FACTS²

The Pennington County Grand Jury charged Matthew Hade with a single count of Aggravated Assault (Domestic Violence) in violation of SDCL 22-18-1.1(8). SR:17. The State filed a Part II Information, alleging Hade had been convicted of Second-Degree Rape in Meade County, in 2019. SR:19. After a two-day trial, a jury found Hade guilty, and he later admitted the Part II's allegation. SR:256, 497. The circuit court sentenced Hade to ten years in prison and gave him credit for 375 days

² The State combined these sections for brevity, clarity, and readability.

served in jail. SR:497. The court ordered Hade to serve this sentence consecutive to his Meade County sentence. SR:497.

A. Matthew Hade repeatedly assaulted Madyson Reed, strangling her, hitting her, and throwing objects at her.

This case follows a heated argument between twenty-nine-year-old Hade and his nineteen-year-old girlfriend, Madyson Reed, that turned violent the evening of October 16, 2024, and carried on the next morning. SR:464; JT:22. After getting home from work, around 6:00 P.M., Reed learned that Hade had been texting another woman and speaking badly about Reed. JT:25-27. Being confronted with the texts enraged Hade and he strangled Reed with both hands around her throat, while she sat on the armrest of the living room couch. JT:27, 29. Hade squeezed Reed's throat to the point that she couldn't breathe. JT:27. He also took her phone, and she felt like she was "trapped" because if she tried to leave, Hade would "hurt [her] more." JT:53

The fight then spilled over to the bedroom, where Hade grabbed Reed by the hair and punched her in the side of the head. JT:32. Hade also used both hands to bash the back of Reed's head into the headboard. JT:34. When Reed tried to leave the bedroom, Hade wrapped his arm around her neck and strangled her again. JT:35. He only stopped because Reed dropped her body to the floor, thinking she was going to pass out. JT:35-36. Hade picked her up and threw her on the bed, pinning her down, face-first, with a hand on her neck and his legs on top of her legs. JT:36-37.

Hade's anger subsided briefly and the couple went to bed. JT:38. But in the middle of the night, Reed awoke to a noise from the kitchen. JT:38-39. She snuck out of the bedroom and saw that Hade had "ripped the fridge apart." JT:39. Not wanting him to know she was awake, Reed snuck back into bed and pretended to be asleep. JT:39.

The arguing started all over again in the morning, when Hade woke up because Reed was watching a video on her phone. JT:40. It continued when Hade said he planned to keep texting the other woman and Reed threatened to end their relationship. JT:42. After Reed went outside with her dog, Hade coaxed her back inside and the argument continued, becoming violent again. JT:41-43.

In the living room, Hade flipped a coffee table, threw a soda bottle at Reed's head, and threw some weights at her legs. JT:43-45. They continued arguing until Hade's boss called him and Hade started to get ready for work. JT:51. Before he left, Hade strangled Reed again, this time using one hand to squeeze her throat; Reed couldn't breathe, and her vision got blurry. JT:51. Hade finally stopped when his boss called a second time, telling Hade to get to work right away. JT:52.

Reed watched Hade drive away at around 1:00 P.M. and immediately called her mom, Michelle Walz. JT:52. She called her mom first because "I just wanted my mom." JT:52. She was terrified Hade would see her calling for help on the security cameras and return. JT:54. Reed also didn't want Hade to return and hurt her mom, too, so

she “told her [mom] to wait until the police showed up and then she could come when it was safe.” JT:52. Then Reed told Walz she had to go because she had to call 911. JT:52. Using a tracking feature on Hade’s phone, Reed gave Pennington County Sheriff’s Deputies his location, who then arrested Hade for assaulting Reed. JT:202-03, 216-17.

Even though Reed denied treatment from paramedics on scene, Walz, on the advice of those paramedics, took Reed to the Emergency Room to be examined. JT:150-51. Reed was examined by Dr. Kristen Busse. JT:110. Dr. Busse noted no visible injuries to Reed’s throat and neck, but that wasn’t surprising. JT:112. It takes four pounds of pressure to collapse the jugular vein, eleven pounds of pressure to collapse the carotid artery, and thirty-three pounds collapse the trachea. JT:101-04. Given those low pressures, there are no visible injuries in about half of strangulation cases. JT:106.

B. Hade’s trial strategy was to attack Reed’s credibility from multiple angles and attack the adequacy of law enforcement’s investigation.

Hade’s defense was to paint Reed as a love-sick teenager who was scorned by Hade wanting to leave her for another woman. JT:13-14. Armed with that, Hade painted with a finer brush, planting the idea that Reed fabricated her allegations out of spite. JT:16-17, 329-30. And he tried to support that theory by attacking Reed’s credibility. He leaned on Reed’s allegedly inconsistent statements, her actions during a lull in the fight, the suggestion she delayed reporting, and her lack of visible injuries. JT:15-16, 330-37. He also tried to explain away any talk of

strangulation by painting it as part of their consensual sexual relationship. JT:16.

Hade and his counsel didn't ambush the jury with these theories and angles of attack. They planted ideas in jury selection, bringing up the topics of false accusations, witness credibility, and sexual relationships that involve strange behavior, like strangulation and choking. VT:43-45, 59-60, 73-76.

Hade also attacked the adequacy of the Sheriff's Office's investigation. His counsel pointed out that investigators did not talk to neighbors to see if they heard anything, and they did not review security camera footage. JT:282-83.

C. The State's case hinged on Reed's testimony and corroborating evidence to establish her credibility for the jury, which Hade tried to limit pretrial.

Knowing Reed was its star witness, and that her credibility was the key to the case, the State started setting up its case to provide the jury with corroborating evidence.

First, the State provided notice that it intended to offer hearsay statements at trial. SR:144-45. It intended to introduce Reed's statements to Deputy Kyle Worden, which were recorded on his body-worn camera, under SDCL 19-19-803(2)'s excited utterance exception. SR:144. It also argued that Reed's statements during her 911 call were admissible under that exception as well. SR:163-64. And it intended to

introduce Reed's statements to Dr. Busse under SDCL 19-19-803(4)'s medical diagnosis or treatment exception. SR:145.

Hade moved, pretrial, to prevent the State from using Reed's statements to Deputy Worden and 911 dispatch. SR:147, 159. He argued that the 911 call could not fit the excited utterance exception because "the call was made after a significant amount of time from the alleged assault[.]" SR:147. As for the statements to Deputy Worden, Hade generally claimed that Reed's statements were "inadmissible hearsay." SR:159. He also objected Reed's statement to her mother that Hade had choked her. JT:149. Ultimately, the circuit court denied Hade's motions and objection, concluding the 911 call and statements to Deputy Worden were excited utterances. MH:2, 6.

Second, because Hade was indicted only for strangling Reed, the State sought to introduce evidence that Hade damaged the refrigerator and threw weights at Reed under the *res gestae* doctrine and as corroborating evidence to support Reed's credibility. SR:164-66. Hade challenged this evidence pretrial, claiming the evidence about the weights was irrelevant and was not proffered in the State's Rule 404(b) notice. SR:149. He challenged the fridge evidence using the same arguments, and because Rule 404(b) evidence about Hade damaging a fridge in his prior conviction was already excluded.³ SR:151. The circuit court let the

³ The State sought to introduce, under SDCL 19-19-404(b), domestic violence evidence from Hade's prior relationship, which included evidence
Continued. . .

State introduce the fridge and weights evidence, agreeing it was proper *res gestae* evidence. MH:3.

Finally, the State pointed out, at Hade's arraignment, that "there's oftentimes no signs of physical abuse on strangulation victims which is why the State often has experts testify." ARR:8. Following that logic, the State notified Hade it intended to call Dr. Busse as an expert witness "regarding strangulation and treatment of the victim in this case[,] as well as "to describe the clinical findings and possible health consequences and symptoms of strangulation." SR:74.

Hade did not challenge Dr. Busse's qualifications or her proposed testimony pretrial. *See generally* SR:1-1235. Instead, he waited until trial to object to her testimony, alleging a "[l]ack of foundation as to strangulation." JT:98. The circuit court overruled the objection, recognizing Dr. Busse "as an expert in Emergency Medicine and the subcategory of strangulation." JT:98.

STANDARDS OF REVIEW

A circuit court's evidentiary rulings are reviewed for abuse of discretion. *State v. Winckler*, 2026 S.D. 19, ¶54, ---N.W.3d---. "An abuse

that Hade strangled his former girlfriend and damaged a fridge. SR:82-94. But the circuit court excluded that evidence, agreeing with Hade that its probative value was substantially outweighed by unfair prejudice. SH:2; SR:119-27. Given that ruling, the State decided to not offer Krista Heeren-Graber as an expert witness on the "general reasons why a woman returns to her abuser, the cycle of violence, power and control tactics of abuse, as well as other aspects of the dynamics of domestic violence cases." SR:62; PTC:2.

of discretion is ‘a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.’” *Winckler*, 2026 S.D. 19, ¶54 (quoting *State v. Hankins*, 2022 S.D. 67, ¶21, 982 N.W.2d 21, 30). This standard applies to evidentiary rulings on admitting expert testimony, admitting evidence under the *res gestae* doctrine, and admitting statements under an exception to the rule against hearsay. *State v. Huante*, 2026 S.D. 6, ¶30, 31 N.W.3d 715, 725 (applying standard to admissibility of expert testimony); *State v. Otobhiale*, 2022 S.D. 35, ¶¶15-28, 976 N.W.2d 759, 766-70 (applying standard to admissibility of Rule 404(b) and *res gestae* evidence); *State v. Osman*, 2024 S.D. 15, ¶35, 4 N.W.3d 558, 569 (applying standard to admissibility of hearsay statements).

Under this abuse of discretion review, Hade must prove two things to receive relief: 1) the circuit court “‘abused its discretion in making an evidentiary ruling; and” 2) that error “‘was a prejudicial error.”⁴

Winckler, 2026 S.D. 19, ¶54 (quoting *Hankins*, 2022 S.D. 67, ¶20)(cleaned up).

⁴ Hade misconstrues his burden of proof under this two-step analysis for Dr. Busse’s testimony. He claims the admission of her testimony was not “harmless” error. AB:19. Harmless error analysis is a separate doctrine that applies to constitutional violations and requires the State to prove “‘on the whole record, that the constitutional error was harmless beyond a reasonable doubt.” *State v. Podzimek*, 2019 S.D. 43, ¶15, 932 N.W.2d 141, 146 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986)). This doctrine has no application here.

But there are a couple of caveats for this case. As explained in Argument Section I, Hade waived his ability to challenge Dr. Busse’s qualifications as an expert on strangulation and the helpfulness of her testimony to the jury. He did not bring a pretrial challenge to her qualifications and his mid-trial challenge was a simplistic “foundation” objection. Similarly, Hade waived his ability to claim the circuit court ignored certain factors before finding Reed’s statements during her 911 call and to Deputy Worden were excited utterances because Hade did not argue those factors to the circuit court.

Because he waived these issues, this Court has discretion in reviewing them, and if it does, they are subject to plain error review. *State v. McMillen*, 2019 S.D. 40, ¶13, 931 N.W.2d 725, 729 (applying plain error review “[b]ecause McMillen failed to preserve error on either of the issues he raises on appeal[.]”). Under plain error review, Hade “must establish that there was: (1) error, (2) that is plain, (3) affecting substantial rights; and only then may [this Court] exercise [its] discretion to notice the error if (4) it seriously affects the fairness, integrity, or public reputation of the judicial proceedings.” *State v. Janes*, 2026 S.D. 9, ¶14, ---N.W.3d--- (quoting *State v. Guziak*, 2021 S.D. 68, ¶10, 968 N.W.2d 196, 200)(cleaned up).

ARGUMENTS

On appeal for the first time, Hade challenges Dr. Busse’s testimony as violating SDCL 19-19-702, claiming she was not qualified to be an

expert on “strangulation” and her testimony did not help the jury. He claims the State’s *res gestae* evidence was irrelevant and unfairly prejudicial. And he challenges the hearsay statements as not qualifying as excited utterances under SDCL 19-19-803(2). But his claims fail at every level.

The circuit court properly admitted Dr. Busse’s testimony because she was well-qualified to be an expert witness, having over twenty years of experience treating strangulation patients, and her testimony was relevant and helpful to the jury in evaluating the victim’s credibility, a key issue in the case.

As for the hearsay evidence, Reed’s statements to 911 dispatch and Deputy Worden fall well-within the excited utterance exception. Her statements were about Hade’s assault, no doubt a startling condition, and they were made while she was still under the stress or excitement of that startling condition.

As for the *res gestae* evidence, it is classic evidence admitted under that theory of relevance because it is blended with the strangulation charge that Hade faced. That evidence also gave the jury a full picture of Hade and Reed’s relationship, which is highly relevant to the truth-finding process that is a jury trial.

But before reaching the merits of Hade’s claims, the State explains why Hade waived his challenges to Dr. Busse’s testimony and the excited

utterance evidence because his appellate arguments were not raised with the circuit court first.

I

HADE WAIVED HIS EXPERT WITNESS AND HEARSAY APPELLATE ISSUES BY NOT MAKING THE ARGUMENTS HE MAKES ON APPEAL WITH THE CIRCUIT COURT FIRST.

Close to thirty years ago this Court said “[t]o preserve issues for appellate review litigants must make known to trial courts the actions they seek to achieve or object to the actions of the court, *giving their reasons.*” *State v. Nelson*, 1998 S.D. 124, ¶7, 587 N.W.2d 439, 443 (citing SDCL 23A-44-13)(emphasis added). And “[i]ssues not advanced at trial cannot ordinarily be raised for the first time on appeal.” *Nelson*, 1998 S.D. 124, ¶7 (citing *State v. Henjum*, 1996 S.D. 7, ¶13, 542 N.W.2d 760, 763). These principles apply to Hade’s expert witness and hearsay issues.

Less than a month after he was indicted, Hade moved “for an order requiring the State to provide notice of its intent to call any expert witness at the trial of this case.” SR:34. Hade argued notice was required so “he may object to the admissibility of any such expert testimony. . . , if appropriate, and so that the Court may rule on any such objection *prior to trial.*” SR:34 (emphasis added). Yet he made no such pretrial motion. Instead, Hade waited until trial, after the State went through Dr. Busse’s education, training, and experience with strangulation patients, and offered her as an expert on strangulation.

JT:91-98. Hade then objected for a “[l]ack of foundation as to strangulation.” JT:98. But his counsel never clarified what she meant by that. Was it a lack of educational foundation? A lack of specialized training or knowledge? A lack of experience? A lack of relevant specialization? A lack of reliable data to back up her opinions? A lack of underlying facts that had not yet been established?

Despite providing the circuit court with no more specifics, Hade now claims the circuit court did not specifically address the Rule 702 analysis, Dr. Busse’s qualifications made her an expert in emergency medicine but not strangulation, her testimony did not help the jury, rather it just vouched for Reed’s credibility, and her opinions are not trustworthy. AB:10-19. Because Hade never made these arguments to the circuit court, he cannot argue them on appeal to show that the circuit court abused its discretion. *Nelson*, 1998 S.D. 124, ¶7. Hade had from February 3, 2025, when the State noticed its intent to use Dr. Busse “as an expert regarding strangulation” and “clinical findings and possible health consequences and symptoms of strangulation,” until trial began in May of 2025 to challenge Dr. Busse’s qualifications as an expert. SR:74. But he did not request a *Daubert* hearing nor challenge her as an expert in any way until the brief and generic objection at trial.

Hade cannot now fault the circuit court for not making a detailed record of why it determined Dr. Busse was qualified as an expert in emergency medicine and strangulation. AB:10. That argument ignores

that “an express rendering of the trial court’s decisionmaking process [when applying the nonexhaustive *Daubert*⁵ factors] is not required.”

State v. Weaver, 2002 S.D. 76, ¶25, 648 N.W.2d 355, 365 (citing *Argus Leader v. Miller*, 2000 S.D. 63, ¶29 n.16, 610 N.W.2d 76, 88 n.16).

Similarly, Hade faults the circuit court for admitting Reed’s permissible hearsay statements because it “overlooked, or did not consider, the factors of Hade’s absence, Reed’s knowledge of Hade’s location, and Reed’s mother’s arrival on scene.” AB:24. But the record reveals Hade never asked the court to consider those things. His motion in limine for the 911 call argued only that it was inadmissible because it “was made after a significant amount of time from the alleged assault. . . .” SR:147. His motion in limine on the body-worn camera made a blanket claim that the statements in that video were “inadmissible hearsay evidence. . . .” SR:159. And his objection to Michelle Walz’s testimony simply said: “Objection. Hearsay.” JT:149. But because Hade never argued that the circuit court should consider “the factors” he identifies on appeal, he cannot argue that those factors show the circuit court abused its discretion in admitting Reed’s permissible hearsay statements. *Nelson*, 1998 S.D. 124, ¶7.

Hade also cannot now claim the circuit court “did not enter findings that Reed’s statements were related to a startling event and made under that excitement.” AB: 24. According to Hade, this alleged

⁵ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

lack of findings prevents this Court from properly reviewing the admissibility of Reed's statements. AB:24 (citing *State v. Midgett*, 2004 S.D. 57, ¶32, 680 N.W.2d 288, 295; *State v. Orelup*, 492 N.W.2d 101, 106 (S.D. 1992)). But his reliance on those cases is misplaced.

In *Midgett* the excited utterance rationale was an alternative offered by the State on appeal when the trial court was asked only to admit the statements under Rule 801(d)(1)(B) as "prior consistent statements." *Midgett*, 2004 S.D. 57, ¶¶23-24 and 31. It was in that procedural posture that this Court said it could not "make the admissibility determination from this record." *Id.* ¶32.

As for *Orelup*, this Court determined the trial court erred in admitting hearsay under the excited utterance exception because "[t]he record does not indicate that the trial court found [the victim's] statements were related to a startling event and made under the stress of excitement. Without such findings . . . [his statements do] not fit within this hearsay exception." *Orelup*, 492 N.W.2d at 106. But neither of those problems exist on this record.

It is undisputed that when the court ruled on Reed's excited utterances it simply said it was denying Hade's motions in limine and overruling his hearsay objection. MH:2, 6; JT:149. But those rulings came after considering Hade's scant motions and the State's more extensive brief explaining that during the 911 call, Reed was "still under the stress of the incident, and is audibility stressed, crying and

panicked.” SR:164. The court’s rulings also followed the State’s notice of its intent to offer the body-worn camera statements as excited utterances, SR:144, and Walz’s testimony that “Madyson came out frantically crying. She was very upset and she kept say, ‘He choked me.’” JT:149.

Because the court’s rulings followed the State’s arguments about the statements’ admissibility, the court implicitly adopted the State’s position on those hearsay statements. *See Kirwan v. City of Deadwood*, 2023 S.D. 20, ¶36, 990 N.W.2d 108, 118 (stating the absence of factual findings “is not necessarily fatal where the record will otherwise support review.” (citing *Batchelder v. Batchelder*, 2021 S.D. 60, ¶22, 965 N.W.2d 880, 886)). Hade must own the allegedly lacking record because “the party claiming error carries the responsibility of ensuring an adequate record of review.” *State v. Ledbetter*, 2018 S.D. 79, ¶24, 920 N.W.2d 760, 766 (quoting *State v. Andrews*, 2007 S.D. 29, ¶9, 730 N.W.2d 416, 420). Had Hade wanted a more detailed explanation regarding Dr. Busse, he could have asked for it at any time during a break in trial testimony, or he could have asked the court to reconsider its decision and strike Dr. Busse’s testimony. But he took neither path. *See generally* JT:1-355.

If the appellate record is lacking, “this Court presumes the trial court acted properly’ and ‘any claim of alleged error fails.” *Ledbetter*, 2018 S.D. 79, ¶24 (quoting *Andrews*, 2007 S.D. 29, ¶9). Even though

Hade's expert witness and hearsay claims fail at these fundamental levels, Argument Section II explains why Dr. Busse was properly qualified and recognized as an expert witness on strangulation, and how her testimony helped the jury—explaining Reed's lack of visible injuries and the consequences of strangulation, corroborating Reed's testimony, and why Hade was not prejudiced by her expert testimony. And Argument Section IV explains why Reed's statements qualified as excited utterances, and even if they did not qualify as such, Hade was not prejudiced by their admission.

II

THE CIRCUIT COURT PROPERLY ADMITTED DR. BUSSE'S TESTIMONY AS AN EXPERT WITNESS IN EMERGENCY MEDICINE AND STRANGULATION.

SDCL 19-19-702 controls the admission of expert testimony. The circuit court must perform a “gatekeeping” preliminary evaluation to determine whether the proffered testimony is allowable.” *State v. Moeller*, 2000 S.D. 122, ¶82, 616 N.W.2d 424, 447-48 (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993)). Hade claims the circuit court erroneously admitted Dr. Busse's testimony, as an expert in “Emergency Medicine and the subcategory of strangulation[,]” because she wasn't qualified to provide that testimony, her testimony wasn't relevant or helpful to the jury, and admitting her testimony prejudiced him. AB:10-19.

But his arguments fail across the board. First, the circuit court rightly recognized Dr. Busse qualified under Rule 702. Second, the thrust of Dr. Busse's testimony focused on explaining, from a medical perspective, why Reed lacked visible injuries after being strangled by Hade, going directly to Reed's credibility, which Hade challenged. Third, that testimony could not have prejudiced Hade because it was cumulative of Deputy Worden's testimony that it is common to not see injuries in strangulation cases.

A. The circuit court properly determined that Dr. Busse was qualified to testify as an expert witness in "Emergency Medicine and the subcategory of strangulation."

A court must answer three questions before admitting expert testimony:

(1) whether the witness is qualified to testify as an expert about the subject matter at issue; (2) whether the witness's testimony will help the trier of fact understand the evidence or determine a fact in issue; and (3) whether the testimony is sufficiently trustworthy, meaning it is the result of reliable principles and methods that have been reliably applied to the facts of this case.

Huante, 2026 S.D. 6, ¶34. According to Hade the circuit court was wrong under each question when it allowed Dr. Busse's testimony. But the following sections show why the circuit court was right to admit Dr. Busse as an expert on strangulation.

1. *Dr. Busse, a board-certified doctor with over twenty years of experience treating strangulation victims was qualified through education, training, and experience to testify as an expert in strangulation.*

Dr. Busse testified that she is a board-certified emergency medicine doctor with over twenty years of experience. JT:92. Over that twenty-some-year career, Dr. Busse treated 120 to 160 strangulation patients—about six to eight patients a year over her career.⁶ JT:96. And she stays up to date on medical literature about strangulations through her own personal review and the continuing education requirements for her medical license. JT:94-96.

Hade claims that this background makes her unqualified to testify as an expert, partly because she hadn't testified as an expert witness before. AB:12. Yet SDCL 19-19-702 has no requirement that a witness have prior testifying experience before being qualified as an expert. All that is required is that the witness be "qualified as an expert by knowledge, skill, experience, training, or education. . . ." SDCL 19-19-702.

Hade also claims Dr. Busse was not qualified "to speak broadly about the mechanisms of strangulation, general statistics regarding injury, pathological findings. . . , long-term psychological consequences, and even domestic violence reporting." AB:13. But he ignores that she testified about the mechanisms of strangulation based on her experience

⁶ Dr. Busse said these numbers are higher if you count treating patients of hangings, which is another form of strangulation. JT:96.

as an emergency medicine doctor that had treated strangulation patients. JT:96. As for the other topics, her knowledge and testimony about them came from her continued education and her reading of peer reviewed medical literature. JT:94-96. Dr. Busse cannot be excluded as an expert because her knowledge and training on those subjects came from reading medical literature and coupling it with her clinical experience. “Reading, study, and practice can be a source of education and knowledge sufficient to qualify a person as an expert.” *Huante*, 2026 S.D. 6, ¶35 (quoting *State .v Lemler*, 2009 S.D. 86, ¶21, 774 N.W.2d 272, 279).

That tracks the threshold decision in *Huante*. There, Dr. Stephen Manlove, a psychiatrist, testified that he had been involved in “three or four” cases about false confessions. *Huante*, 2026 S.D. 6, ¶37. But “the majority of Dr. Manlove’s prior professional experience dealt with a defendant’s competency or claims of insanity, not false confessions.” *Id.* This Court concluded that

the record illustrates that [Dr. Manlove] engaged in a literature review of research within the subset of false confessions. Given this reading and study, combined with medical training and board certification, we cannot say the circuit court’s decision to qualify Dr. Manlove as an expert was [an abuse of discretion].

Id. ¶38. If that was enough to qualify Dr. Manlove as an expert in false confessions, then Dr. Busse is even more qualified to testify about strangulation when she has treated between 120 and 160 strangulation

patients. *See Orelup*, 492 N.W.2d at 105 (concluding a social worker was an expert “as to the traumatic effect testifying at trial would have on” child victim because she had “over 18 years['] experience as a social worker, has participated in hundreds of cases involving child abuse, regularly attends training seminars[,] and is a certified child protection social worker.”). Because Dr. Busse was qualified to testify as an expert on strangulation, the circuit court properly concluded as much.

2. *Dr. Busse’s testimony was helpful because it let the jury evaluate the State’s evidence to determine whether Hade committed aggravated assault by strangulation and allowed the jury to evaluate Reed’s credibility.*

Even if a witness is qualified to testify as an expert, their testimony in their area of expertise is admissible only if it “will help the trier of fact understand the evidence or determine a fact in issue[.]” *Huante*, 2026 S.D. 6, ¶34. Hade uses multiple angles to claim Dr Busse’s testimony did not help the jury, making it inadmissible. But each of his claims are wrong.

The State had to prove Hade “[a]ttempt[ed] to induce fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth[.]” SDCL 22-18-1.1.(8); SR: 225, 230-31 (Jury Instruction Nos. 11, 16, 17). Because that crime requires impeding breathing or circulation, it is colloquially referred to as aggravated assault by strangulation. This takes care of Hade’s claim that it was inappropriate to allow Dr. Busse to testify about

“strangulation” when that word does not appear in the statute and the jury was not given a definition of strangulation.⁷ AB:14, n.9.

Hade also claims Dr. Busse’s testimony was “irrelevant to the facts of this case[,]” because “Dr. Busse did not purport to apply her general claims related to strangulation to the facts of this case to render any expert opinion.” AB:14. That claim is a not-so-thinly-veiled argument Dr. Busse’s testimony was not helpful because she did not conclude that Reed was strangled by Hade. Had she testified to that point, she would have likely given impermissible testimony by invading the province of the jury and telling the jurors what decision to reach. *State v. Buchholtz*, 2013 S.D. 96, ¶24, 841 N.W.2d 449, 457.

What’s more, Hade ignores that his entire defense was to discredit Reed, partly because she had no visible injuries when deputies responded to her 911 call and when she went to the Emergency Room. JT:331-33. He also tried to discredit her by saying the symptoms she reported were “convenient” because there were no medical tests that could confirm them. JT:333-34. That angle of defense is why Dr. Busse’s testimony helped the jury. She explained common symptoms experienced by strangulation patients. JT:107-09. She explained the slight forces needed to block blood flow through the veins and arteries to the brain. JT:101-02. She then explained that, because of those slight

⁷ Dr. Busse’s definition of “strangulation” also tracked the elements of SDCL 22-18-1.1(8). She defined it as “anything that impedes blood flow or air to our brain or lungs.” JT:98.

forces, it is common for strangulation victims to have no observable injuries. JT:109-10. And she described the short-term and long-term effects that strangulation can have on a patient. JT:107-08. That a lack of visible injuries is common, expert testimony was necessary to dispel the myth that if a person is assaulted, especially if they are strangled, they will have observable injuries.⁸ VT:68-69.

Connected to that testimony, Hade claims Dr. Busse’s whole purpose was to “vouch[] for Reed’s veracity.” AB:15. But Dr. Busse did nothing of the sort. She permissibly provided the jury with information to consider when it evaluated Reed’s testimony about the abuse she suffered at Hade’s hands and her credibility. *See Huante*, 2026 S.D. 6, ¶42 (noting expert testimony is helpful if “it will aid the jury in resolving a factual dispute.” (quoting *State v. Huber*, 2010 S.D. 63, ¶33, 789 N.W.2d 283, 293)); *State v. Snodgrass*, 2020 S.D. 66, ¶50, 951 N.W.2d 792, 807 (holding expert testimony about signs of coaching child witnesses was not improper vouching); *State v. Johnson*, 2015 S.D. 7, ¶34, 860 N.W.2d 235, 248 (affirming expert testimony on delayed reporting, “grooming,” and mental effects of sexual abuse); *Buchholtz*, 2013 S.D. 96, ¶31 (“Experts can fairly testify to what types of behaviors might indicate child sexual abuse, give insights through expert

⁸ This situation is the exact opposite of *Huante*, where this Court said Dr. Manlove’s opinion on false confessions was not helpful to the jury, partly because the existence of false confessions “is a self-evidence inference that lay jurors can easily understand by applying basic logic.” *Huante*, 2026 S.D. 6, ¶51.

evaluation of a witness, and *educate jurors on matters that will help them to assess credibility. . . .*”(emphasis added).

Because Dr. Busse’s testimony was helpful and relevant for the jury to consider Reed’s credibility, and decide whether, beyond a reasonable doubt, Hade committed aggravated assault by strangulation, the circuit court properly allowed her expert testimony in this case.

3. *Dr. Busse’s testimony was sufficiently trustworthy because it was based primarily on her continuing education and her reading of peer reviewed medical literature.*

To be admissible, an expert’s testimony and opinions must not only be relevant, they must also be “sufficiently trustworthy, meaning it is the result of reliable principles and methods that have been reliably applied to the facts of this case.” *Huante*, 2026 S.D. 6, ¶34. Relying on this point, and repeatedly citing to the analysis in *Huante*, Hade claims Dr. Busse’s testimony wasn’t trustworthy because “she was unable to explain how the data she cited might be affected by error rates, such as false reports of strangulation.” AB:16. He also claims “Dr. Busse did not identify any peculiarity in Reed herself that would result in a lesser likelihood to exhibit injuries from alleged strangulation.” AB:16. And he faults her for an alleged “inability to defend or support the accuracy of her data or cite specific sources.” AB:18. But Hade is wrong to rely on *Huante* in this way.

This case and *Huante* are miles apart. In *Huante* the State challenged Dr. Manlove’s opinions and basis for those opinions in a

pretrial *Daubert* hearing. *Huante*, 2026 S.D. 6, ¶21. It also attacked the specifics of his knowledge on false confessions and the literature he reviewed to reach his opinions. *Huante*, 2026 S.D. 6, ¶¶ 23-25. But here, Hade never made any of those challenges to Dr. Busse’s testimony. *See generally* SR:1-1235. Instead, he tried to use Dr. Busse’s testimony to his advantage, by getting her to admit that the studies she relied on could have skewed numbers because some of the reported strangulations could be fabricated allegations. JT:114-16. Dr. Busse agreed as much, saying that would be “more of a question for the police[.]” JT:115. Hade cannot change course now and claim that Dr. Busse’s testimony shouldn’t have been admitted in the first place.

Dr. Busse was also careful not to overstep her expertise. She limited her testimony to noting that she is an emergency medicine doctor who has treated strangulation patients and stayed current on the topic by reading peer reviewed studies that were written by others, who were experts in their fields, like radiologists and pathologists. JT:119. She also acknowledged the inherent uncertainties associated with those studies, but she did not try to oversell them or underplay those uncertainties. JT:114-18. But without a specific challenge by Hade in circuit court, it cannot be said, on this record, that the information underlying Dr. Busse’s testimony was impermissibly untrustworthy.⁹

⁹ Because Hade tried to use the inherent uncertainties in the data to his advantage by using them to bolster his fabrication theory of defense, any **Continued. . .**

Thus, this Court should affirm the circuit court's ruling that Dr. Busse was qualified as an expert witness on strangulation.

B. Hade was not prejudiced by Dr. Busse's testimony because it was cumulative of Deputy Worden's testimony that it is common for strangulation victims to lack visible injuries.

The main thrust of Dr. Busse's testimony was to explain why Reed had no visible injuries from Hade's strangulation. JT:101-02, 109-10. That testimony allowed the jury to evaluate Reed's credibility. Deputy Worden added that in his experience as a law enforcement officer, not every assault victim has visible injuries, and it is common to not see "immediate evidence of physical trauma as a result of strangulation."¹⁰ JT:207-08.

Because Dr. Busse's testimony on that score is cumulative of Deputy Worden's testimony, it cannot have caused Hade prejudice, warranting a new trial. *See State v. Rodriguez*, 2020 S.D. 68, ¶36, 952 N.W.2d 244, 254 (applying harmless error rule to suppression analysis,

challenge to this information goes to its weight, not its admissibility. *State v. Swallow*, 350 N.W.2d 606, 609 (S.D. 1984) ("Once the expert's qualifications have been established, any objections go not to the admissibility of his testimony, but to its weight; the jury is then at liberty to evaluate and weigh the expert's testimony in arriving at its verdict."); *Stormo v. Strong*, 469 N.W.2d 816 (S.D. 1991) (stating challenges to the factual basis of an expert's testimony "go to the weight of the evidence, not the admissibility of the evidence."); *Huber*, 2010 S.D. 63, ¶28 (reiterating that "alleged deficiencies [in the basis for an expert's testimony] went to the weight rather than the admissibility of [the expert's] testimony." (citing *Burley v. Kytac Innovative Sports Equip., Inc.*, 2007 S.D. 82, ¶24, 737 N.W.2d 397, 406)).

¹⁰ While Hade objected to Deputy Worden's testimony on this point, which was denied, he does not challenge that testimony on appeal.

concluding “the error was harmless if ‘the evidence was cumulative of other evidence presented independently at trial.’” (quoting *State v. Davi*, 504 N.W.2d 844, 855 (S.D. 1993)); *State v. Shepard*, 2009 S.D. 50, ¶16, 768 N.W.2d 162, 167 (“Where inadmissible evidence admitted at trial is cumulative only and other admissible evidence supports the result, the cumulative evidence, though inadmissible, is nonprejudicial.” (quoting *State v. Tribitt*, 327 N.W.2d 132, 135 (S.D. 1982))).

Thus, even if the circuit court erred in allowing Dr. Busse to testify, Hade was not prejudiced under either the abuse of discretion or plain error review.

III

THE CIRCUIT COURT PROPERLY ADMITTED EVIDENCE CONNECTED TO HADE’S ASSAULT BY STRANGULATION UNDER THE RES GESTAE DOCTRINE.

Because Hade was indicted only for strangling and not otherwise assaulting Reed, the State offered evidence that he angrily damaged the refrigerator and threw weights at Reed as *res gestae* evidence. SR:164-66. Hade now argues the circuit court abused its discretion by allowing that evidence because it is irrelevant and prejudicial. AB:20-22. But his arguments fail. That evidence is textbook *res gestae* evidence that allowed the jury to evaluate Reed and Hade’s violent relationship, and to view her prior statements and testimony in the proper context.

The *res gestae* doctrine “is a theory of relevance which recognizes that certain evidence is relevant because of its unique relationship to the

charged crime.” *Otobhiale*, 2022 S.D. 35, ¶16 (quoting 29 A Am. Jur. 2d Evidence § 858). That unique relationship exists because the evidence is “intrinsic evidence” that details “wrongful conduct other than the charged criminal conduct offered for the purpose of providing the context in which the charged crime occurred.” *Id.*

That is what the refrigerator and weights evidence did in Hade’s case. When Hade damaged the fridge, it came during a lull in his attack on Reed but still established his seething anger toward her that night. JT:38-39. And when he threw the weights at her, that was another violent act in his string of violent acts against Reed over the evening and into the next day. JT:44-47. That evidence was proper *res gestae* evidence because it was “blended or connected” with the strangulation charge Hade was on trial for. *Otobhiale*, 2022 S.D. 35, ¶17 (quoting *State v. Hoadley*, 2002 S.D. 109, ¶37, 651 N.W.2d 249, 258). It helped explain the fear that Reed felt after Hade threatened her life. JT:53. It also explained why she waited until the next day, after Hade left the house, before calling for help. JT:53-54. Excluding that evidence would have fed into the false narrative that victims are supposed to immediately leave their abuser and report the abuse, and if they don’t, they are lying about what happened. See Daniel W. Shuman, *Psychiatric and Psychological Evidence*, §17:2. *Testimonial credibility—The role of the expert*, n.10 (collecting cases discussing the use of expert testimony, for

credibility purposes, to explain the counterintuitive behaviors of domestic violence victims).

What's more, "[d]omestic abuse often has a history highly relevant to the truth-finding process." *State v. Liable*, 1999 S.D. 58, ¶21, 594 N.W.2d 328, 335. That is especially true because "domestic violence prosecutions are often reduced to a swearing match between the victim and defendant." Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 Yale J.L. & Feminism at 397.¹¹

This case holds true to that "swearing match" maxim because Hade's whole defense was to attack Reed's credibility and paint her as a liar. JT:16-17, 329-37. So the fridge and weights *res gestae* evidence was key. It allowed the jury to assess Reed's credibility and decide if her testimony was reliable. *Otozhiale*, 2022 S.D. 35, ¶17 (approving of *res gestae* evidence that "explains the circumstances [of the case] or tends logically to prove any element of the crime charged." (quoting *Hoadley*, 2002 S.D. 109, ¶37))(emphasis added).

¹¹ Courts are also starting to recognize this "swearing match" maxim for domestic violence cases, seeing the need for prosecutors to rely on other acts or uncharged conduct evidence to support a victim's credibility and prove their case beyond a reasonable doubt. *People v. Currie*, 208 N.E.3d 1205, 1220 (Ill. Ct. App. 2022); *People v. Dabbs*, 919 N.E.2d 501, 505 (Ill. Ct. App. 2009); *see also State v. Rumpff*, 308 A.3d 169, 196 (Del Super. Ct. 2023) (noting, in protection order context, that the "swearing match" that is a domestic violence case cuts against requiring a standard of proof beyond preponderance of the evidence).

Simply put, by allowing that *res gestae* evidence into the record, the circuit court properly allowed the State to present its case that proved Hade's guilt beyond a reasonable doubt. The court's decision also followed this Court's guidance that Hade has no right "to have the jury decide his case on a pretense that his behavior and feelings toward his [girlfriend] were nothing but routinely warm and affectionate." *Liabe*, 1999 S.D. 58, ¶23. Therefore, this Court should affirm the circuit court's *res gestae* decision.

IV

THE CIRCUIT COURT PROPERLY ADMITTED THE VICTIM'S STATEMENTS MADE IN A 911 CALL AND ON LAW ENFORCEMENT'S BODY-WORN CAMERAS UNDER THE EXCITED UTTERANCE EXCEPTION TO THE RULE AGAINST HEARSAY.

SDCL 19-19-802 prohibits the introduction of hearsay unless a recognized exception applies. One of the exceptions is the excited utterance rule, allowing hearsay when it is "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. SDCL 19-19-803(2). Here, the circuit court admitted Reed's statements in her 911 call and on Deputy Worden's body-worn camera as excited utterances. MH:2,6. The court also admitted Reed's statement to her mother that Hade "choked me" under that exception. JT:149.

Now Hade claims the court was wrong. He claims that Reed's statements were "not stress-induced exclamation[s]" because there was a

delay between Hade's assault and when Reed made her statements. AB:24-25. He also claims that testimony was prejudicial because it "offered cumulative versions of Reed's allegations . . . to inherently bolster her credibility." AB:25.

But Hade's arguments fail on both levels. First, a review of Reed's statements, as well as the testimony of Deputy Worden and Michelle Walz about Reed's demeanor at the time, show she was under the stress required by the excited utterance exception. And there is not a hard cut-off or timeline for when that stress has subsided to make the excited utterance exception inapplicable.

Second, Hade was not prejudiced by Reed's out-of-court statements. The introduction of cumulative evidence cannot create prejudice. Nor can Hade claim he was prejudiced because those statements supported Reed's credibility. Hade attacked her credibility, putting it at issue and the State was allowed to support her credibility through other evidence.

A. Reed's statements to 911 dispatch, Deputy Worden, and her mother, minutes after Hade's prolonged assault ended, were excited utterances under SDCL 19-19-803(2).

Hade makes a blanket claim that Reed's challenges statements are not excited utterances because they "were not spontaneous or lacking capacity for fabrication." AB:24. Yet he does not explain why. Nor does he explain why those statements were not "relating to a startling event or condition, made while . . . under the stress of excitement that it

caused[,]" as required by SDCL 19-19-803(2). Yet a review of the record shows that Reed's challenge statements fit within the excited utterance exception.

All of Reed's statements are related to a startling event because they all focused on Hade's assaultive conduct. *See generally* Ex. 1; Ex. 31. There is also no doubt that acts of violence are startling events. So the first half of SDCL 19-19-803(2)'s exception is satisfied.

The second half of the exception is also satisfied. While "[t]he lapse of time between the startling event and the out-of-court statement [is] relevant[, it] is not dispositive in the application of Rule 803(2)."
State v. Roach, 2012 S.D. 91, ¶38, 825 N.W.2d 258, 268 (quoting *United States v. Iron Shell*, 633 F.2d 77, 85 (8th Cir. 1980)). Instead, "the critical inquiry is whether the statements were made while the declarant was still under the influence of the experience." *State v. Floody*, 481 N.W.2d 242, 250 (S.D. 1992) (quoting *State v. Logue*, 372 N.W.2d, 151, 159 (S.D. 1985)). But even when considering the time that elapsed before a statement is made, there can be no bright line rule of how long is too long because "[e]ach case must be determined from the circumstances surrounding the utterance." *State v. Bawdon*, 386 N.W.2d 484, 486 (S.D. 1986).¹²

¹² *See May v. Wright*, 381 P.2d 601, 603 (Wash. 1963) ("fluctuation as to the time element with regard to excited utterances . . . is both proper and necessary, since the related requirements for establishing the admissibility of an excited utterance are quite flexible in nature.").

Here, minutes after Hade left the house, Reed called her mother to report what Hade had done to her, before hanging up to call 911. JT:52. Her 911 call lasted about fourteen minutes. Ex. 1. And she made her statements to Deputy Worden over the course of about an hour. JT:192; Ex. 31. The short time lag between when Hade left and Reed made her statements to her mother, 911 dispatch, and Deputy Worden tracks this Court's cases concluding statements were excited utterances. *E.g.*, *State v. Swallow*, 405 N.W.2d 29, 34 (S.D. 1987) (noting "just minutes" after robbery victims described the robbers to a neighbor); *Roach*, 2012 S.D. 91, ¶40 (remarking victim's statements to investigating officer were made within forty minutes of being forcibly raped by Roach); *State v. Devall*, 498 N.W.2d 371, 374-75 (S.D. 1992) (discerning victim's statement that Devall raped her made "within an hour after leaving Devall"); *State v. Bult*, 351 N.W.2d 731, 733 and 735-36 (S.D. 1984) (noting a three-hour delay between kidnapping and sexual assault and child victim pointing out Bult's vehicle as the one she was abducted in); *Bawdon*, 386 N.W.2d at 487 (same); *State v. Anderson*, 2000 S.D. 45, ¶47, 608 N.W.2d 644, 659 (stating a child's statements were "a few hours after" her mother was kidnapped).¹³

¹³ Other courts also agree that some time lag is acceptable for excited utterances. *E.g.*, *United States v. Graves*, 756 F.3d 602, 605 (8th Cir. 2014) (accepting a thirty-minute delay between 911 call and victim's statements to responding officer); *United States v. Pursley*, 577 F.3d 1204, 1221-22 (10th Cir. 2009) (involving a one-hour delay between time inmate was assaulted by cellmate and his statement to a U.S. marshal); **Continued. . .**

The characterization of Reed’s statements as excited utterances does not change because they describe Hade’s assaults over a nineteen-hour timespan and were not made until he finally left the house. Again, “[t]he lapse of time . . . is not dispositive in the application of Rule 803(2).” *Roach*, 2012 S.D. 91, ¶38, 825 N.W.2d at 268 (quoting *United States v. Iron Shell*, 633 F.2d at 85). The Wyoming Supreme Court has offered helpful guidance for analyzing statements made after prolonged crimes. In those circumstances, the analysis focuses on the experiences the declarant had, not the span of time itself:

Even much longer lapses on the order of several hours do not necessarily dissipate the stress or excitement caused by an act or event, particularly in cases that result in injury or trauma to the speaker. Here the condition of the speaker between the event and the statement is important, and continuing emotional or physical shock, loss of consciousness, persistent pain, unabated fright, isolation, and other factors may prolong the impact of a stressful event, *particularly one that is long lasting and arduous*. Sensible decisions apply the exception despite time lapses of this sort when it comes to statements by victims of brutal or terrifying crimes, including assault and kidnap....

Bruce v. State, 346 P.3d 909, 925 (Wyo. 2015) (quoting Christopher B. Mueller and Laird C. Kirkpatrick, *Federal Evidence* § 8:68 (4th ed. 2013)) (emphasis added). Reed’s statements fit this guidance. She endured

People v. DeSomer, 43 N.E.3d 527, 531-32 (Ill.Ct.App. 2013) (upholding that a victim’s statement admissible when “she appeared to have been in a physical confrontation ‘in the past couple of minutes.’”); *May*, 381 P.2d at 604 (analyzing a twenty-minute delay between child being hit by a car and the witness’s statement); *Bruce v. State*, 346 P.3d 909, 925 (Wyo. 2015) (“the lapse of time between the startling event and [the victim’s] 911 call was twenty to twenty-five minutes.”).

brutal assaults on-and-off for over nineteen hours. JT:21-65; *see State v. Stafford*, 23 N.W.2d 832, 835-36 (Iowa 1946) (holding a victim's statement "that her husband had tried to kill her" made fourteen hours after the alleged crime was admissible). And she was isolated by Hade for those nineteen hours. He had taken her phone for a time, and he threatened Reed's life. JT:53-54.

Nor does it matter that Reed called her mother before calling 911. The courts in *Evans v. State*, 248 So.3d 155 (Fla. Dist. Ct. App. 2018), and *Akien v. State*, 44 So.3d 152 (Fla. Dist. Ct. App. 2010), faced similar situations and concluded the victims' 911 calls were excited utterances. This Court should follow suit. In *Evans*, the victim was sexual assaulted after Evans broke into her apartment. 248 So.3d at 157. After Evans left, the victim called her son and waited for him to arrive before calling 911, which "was made only twenty minutes after [Evans] left her apartment." *Id.* at 159. In *Akien* the victim called her mother who "convinced the victim to call 911" and she made that call "soon after being raped for thirty to forty-five minutes." 44 So.3d at 155.

Reed's demeanor and actions during her statements also show she was under the stress or excitement caused by Hade's prolonged assault. During Reed's phone call with her mother "[s]he was frantically very – she was crying, very upset." JT:148. The same goes for when she called 911: Reed was "audibly stressed, crying and panicked." SR:164; Ex. 1. And, during his interaction with Reed, Deputy Worden described her as

“clearly upset.” JT:192. “She was crying and she was short of breath[,]” causing her to “struggl[e] to complete her sentences at times. . . .”

JT:192; Ex. 31.

Simply put, Reed’s demeanor showed she was still under the stress of Hade’s assault, bring her hearsay statements squarely within the excited utterance exception. *E.g.*, *Bult*, 351 N.W.2d at 736 (analyzing child victim’s statements were made when “the child was still nervous and crying.”); *State v. Blem*, 2000 S.D. 69, ¶57, 610 N.W.2d 803, 813 (noting Blem’s statements were made when he was “panicky,’ ‘scared’ and ‘breathing heavy.’”); *State v. Aesoph*, 2002 S.D. 71, ¶39, 647 N.W.2d 743, 756 (affirming the victim’s statements to manager at car dealership when she was “frantic, bawling, screaming, and hollering”)(cleaned up); *Roach*, 2012 S.D. 91, ¶40 (noting the investigating officer observed the victim “‘appeared to have been recently crying’ and was ‘visibly upset[,]’” and she “‘appeared to be visibly shaken, alternate—alternately crying, sobbing, and appeared quite upset’”).

Because Reed’s statements to her mother, 911 dispatch, and Deputy Worden “were the product of the startling event she was continuing to experience at the time . . . rather than the product of reflection[,]” *Roach*, 2012 S.D. 91, ¶41, the circuit court properly admitted them as excited utterances under SDCL 19-19-803(2).

B. Hade was not prejudiced by the admission of Reed's hearsay statements because it rebutted Hade's attacks on her credibility and they were cumulative of other evidence.

Hade's argument that he was prejudiced by Reed's permissible hearsay statements because they "offered cumulative versions of Reed's allegations . . . to inherently bolster her credibility[,]" AB:25, fail twice-over.

First, even if Reed's hearsay statements were inadmissible, they were cumulative of her own testimony describing the hours of abuse she suffered at Hade's hands and how terrified she was when Hade finally left and she called 911. JT:21-65. Again, the admission of cumulative evidence cannot create prejudice when analyzing a circuit court's evidentiary decisions. *Janes*, 2026 S.D. 9, ¶23 (holding no prejudice because "much of the [challenged] evidence is cumulative to the testimony at trial."); *Shepard*, 2009 S.D. 50, ¶16 ("Where inadmissible [hearsay] evidence admitted at trial is cumulative only and other admissible evidence supports the result, the cumulative evidence, though inadmissible, is nonprejudicial." (quoting *Tribitt*, 327 N.W.2d at 135)).

Second, Hade's entire defense was an attack of Reed's credibility. It started in jury selection with a discussion of false accusations. VT:43-44. It continued in opening statements, where counsel insinuated Reed was a "scorned," and "lovestruck girl" that fabricated her allegations. JT:13, 17. Counsel attacked Reed on cross-examination by focusing on inconsistencies between her prior statements and her testimony. JT:66-

89. And in closing argument, counsel compared Reed’s testimony and statements to the “Emperor’s New Clothes” to paint her as a liar.

JT:327-29.

When faced with this strategy, the prosecutors didn’t have to throw up their hands, accept the attacks on Reed’s credibility, and hope the jury ignored them. They had the right to build that credibility back up through evidence, including circumstantial evidence and permissible hearsay. *See State v. Richter*, 2025 S.D. 58, ¶¶23-30, 27 N.W.3d 777, 786-87 (rejecting claim that expert witness’s testimony “that developmentally disabled adults are more vulnerable to sexual abuse. . . invaded the province of the jury by improperly bolstering the credibility of [the victim’s] testimony.”); *Olesen v. Lee*, 524 N.W.2d 616, 619-20 (S.D. 1994) (finding no prejudice for failure to object to one question asked of a witness called to “rehabilitate [the victim’s] bruised credibility”).

Because Hade cannot establish that he was prejudiced by Reed’s excited utterances, he cannot satisfy either the abuse of discretion or plain error analyses.

CONCLUSION

At bottom, this case turned on Madyson Reed’s credibility because, like most domestic violence prosecutions, Hade’s crimes were committed behind closed doors and without eyewitnesses. Because Reed’s credibility was the key to both the State’s case and Hade’s theory of defense, the challenged expert testimony, *res gestae* evidence, and

permissible hearsay allowed the jury to properly evaluate Reed's credibility and decide whether Hade was guilty or not of aggravated assault by strangulation. Thus, the circuit court did not error, let alone commit reversible error, when it allowed the State to supplement Reed's testimony with the challenged evidence. And the State respectfully requests that this Court affirm Hade's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 9,518 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated this 24th day of April, 2026.

/s/ Matthew W. Templar
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of April, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Matthew Christopher Hade* was served via the Odyssey electronic filing system upon Derek D. Friese, Derek.Friese@state.sd.us.

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA

Appellee,

vs.

MATTHEW CHRISTOPHER HADE,

Appellant.

No. 31304

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

No. 31304

MATTHEW CHRISTOPHER HADE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Matthew Hade (“Hade”), will limit discussion to the issues that need further development or argument. Any matter raised in Hade’s initial brief, but not specifically mentioned herein, is not intended to be waived. Hade will attempt to avoid revisiting matters adequately addressed in the initial brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as “SB.” All citations will be followed by the appropriate page number. Hade relies upon the Jurisdictional Statement, Statement of Case, Statement of Facts, and Statement of Legal Issues presented in his initial brief, filed with the Court on March 16, 2026.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING DR. BUSSE'S EXPERT TESTIMONY UNDER SDCL 19-19-702.

A. Hade Preserved his Argument by Objecting to Dr. Busse's Testimony.

Hade's objection at trial was sufficient to preserve his challenge under SDCL 19-19-702. Hade specifically identified the subject matter, strangulation, as the basis for the foundational deficiency. JT1 98. And in the context of the objection at trial, with the State's prior notice of Dr. Busse's testimony, Hade's objection was clear. SDCL 19-19-103(a)(1)(B). The State's notice described Dr. Busse's proposed testimony "as an expert regarding strangulation and treatment of the victim in this case." SR 74. Hade directly challenged Dr. Busse's qualification as a strangulation expert. JT1 98.

The State implies that Hade was required to clarify whether the objection was directed at Dr. Busse's lack of specialized training or knowledge, experience, reliance on data, or a lack of facts not established. SB 16. But under SDCL 19-19-103(a)(1)(B), a party need only state the specific ground of objection "unless it was apparent from the context." Here, the context makes the grounds clear when the State had noticed Dr. Busse's testimony related to strangulation, the objection was made contemporaneously when the State sought to qualify her as an expert, she was being offered specifically in the field of strangulation, and Hade objected to her qualification "as to strangulation." JT1 98.

B. The Circuit Court Improperly Qualified Dr. Busse as an Expert in Strangulation.

Dr. Busse's qualifications, while substantial in emergency medicine generally, do not establish that she possessed the specialized expertise necessary to testify broadly about strangulation, population-level injury statistics, pathological findings, long-term psychological consequences, and domestic violence reporting patterns. And Hade's objection at trial disputed as much. Although treating strangulation patients over twenty years as an emergency medicine clinician qualifies Dr. Busse to testify about what she observes in the emergency room, it does not make her an expert in the forensic, pathological, or psychological dimensions of strangulation that go beyond acute clinical observations.

C. Dr. Busse's Testimony Did Not Satisfy the Helpfulness Standard Under SDCL 19-19-702.

Dr. Busse did not apply her general knowledge to any objective findings in Reed's case. Her testimony functioned not as an application of expertise to assist the jury but as a general endorsement of the proposition that any claimed strangulation victim who lacks visible injuries should be believed. Dr. Busse's testimony was structured to directly address the central credibility dispute. Without any case-specific analysis, Dr. Busse effectively told the jury that the absence of injuries was consistent with Reed's account and therefore Reed should be credited. And the State admits in its brief that Dr. Busse "did not conclude that Reed was strangled by Hade[, but] Had she testified to that point, she would

have likely given impermissible testimony invading the province of the jury and telling the jurors what decision to reach.” SB 25 (citing *State v. Buchholtz*, 2013 S.D. 96, ¶ 24, 841 N.W.2d 449, 457). Here, the State misses the point: Dr. Busse’s testimony fails the SDCL 19-19-702 helpfulness standard because it served solely as a credibility endorsement. It was not an opinion tethered to the facts.

Furthermore, the State emphasized this point in closing argument as its “personal favorite piece of corroborative evidence,” which was “essentially the entirety of Dr. Busse’s testimony.” JT2 324-25. This is the State’s self-narration of avoiding the helpfulness standard while securing a credibility opinion. Once the jury understands the dispute (i.e. whether strangulation occurred), a professional opinion that lack of injury is consistent with the victim’s account adds no specialized knowledge the jury cannot evaluate on its own.

Similarly, the absence of physical evidence makes Dr. Busse’s opinion simply an evaluation of Reed’s statements, rather than an evaluation of objective evidence and an opinion based on evidence. Dr. Busse acknowledged Reed’s statements primarily informed her treatment of Reed. JT 111-12. She then explained that of reported strangulation victims, “50 percent just don’t show signs of external injury.” JT 113. Since Reed displayed no visible injuries, the objectivity of Dr. Busse’s findings is limited to non-existent evidence. Her testimony did not assist the jury by stating that 50 percent of victims do not display injuries. Instead, this was the classic impermissible vouching scenario described in *Commonwealth v. Walters*, 323 A.3d 151, 163-167 (Pa. 2024).

D. Dr. Busse's Testimony Was Not Sufficiently Trustworthy.

The State argues because Hade confronted Dr. Busse in cross-examination about the inherent uncertainties of her relied-upon data, “any challenge to this information goes to its weight, not its admissibility.” SB 28-29, n. 9. But Hade’s attempt to highlight the data’s uncertainties was a trial tactic and response necessitated by the circuit court’s admission of the testimony over objection, not an acquiescence to its admissibility. The fact that Hade attempted to mitigate the improperly admitted evidence does not constitute a waiver of the underlying admissibility challenge or transform unreliable evidence into reliable evidence.

E. Admission of Dr. Busse's Expert Testimony was Not Harmless.

The State claims Dr. Busse’s testimony was cumulative to Deputy Worden’s testimony. SB 29-30. But Deputy Worden’s testimony as a law enforcement officer about his general field observations served a different function. Dr. Busse’s testimony as an emergency medicine physician with over twenty years of experience and a purported scientific basis for her opinions certainly carried substantially greater weight than Deputy Worden’s testimony as a responding officer. The jury would reasonably afford Dr. Busse’s expert medical opinion substantially greater weight than Deputy Worden’s lay observations, particularly on a medical question.¹ And her testimony went even

¹ When this Court reviews a defendant-appellant’s claim of error related to cumulative evidence, it has stated “[e]vidence is cumulative when it is ‘of the same character as evidence previously produced and which supports the same point.’” *State v. Guzman*, 2022 S.D. 70, ¶ 55, 982 N.W.2d 875, 893 (quoting *State v.*

further, offering the jurors speculative sympathy for the potential long-term injuries Reed could have sustained if strangled. *See People v. Bauereiss*, No. 22CA1724, 2025 WL 2992575, at *3 (Colo. App. Oct. 23, 2025) (finding error not harmless where trial court admitted expert testimony related to “issues that could *potentially* arise” from strangulation “[b]ecause this evidence did not fit the facts of the case”). Hade was prejudiced by Dr. Busse’s testimony.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING RES GESTAE EVIDENCE.

A. *The Circuit Court Abused its Discretion in Admitting Irrelevant and Highly Prejudicial Evidence Under the Theory of Res Gestae.*

The circuit court’s admission of the *res gestae* evidence went beyond providing context and instead served only to portray Hade as generally violent and dangerous. The State’s justification for this evidence is that it explained why Reed delayed reporting, described her fear, and prevented “the false narrative that victims are supposed to immediately leave their abuser and report the

Knecht, 1997 S.D. 53, ¶ 7, 563 N.W.2d 413, 417). *See also State v. De Marias*, 27 S.D. 303, 130 N.W. 782, 784 (1911) (stating if evidence “is of a different kind, though upon the same issue, or of the same kind on a different issue, it is not cumulative”) (citing *Cooper v. Ellis*, 3 Ind. App. 142, 29 N. E. 444). This reasoning demonstrates Hade’s point. Dr. Busse’s testimony was not cumulative because it was not of the same character as Deputy Worden’s. While Deputy Worden offered a lay-witness statement of his historical observations (to which Hade objected), Dr. Busse’s testimony related to Reed’s potential prognosis, general forensic pathology findings of deceased victims, and general-population statistics she stated were derived from studies. Although the testimony of each arguably related to a similar issue, Dr. Busse’s testimony was not evidence of the same kind and therefore was not cumulative as the State claims. Additionally, her testimony came before Deputy Worden’s.

abuse.” SB 31 (citing Daniel W. Shuman, *Psychiatric and Psychological Evidence*, §17:2. *Testimonial credibility – The role of the expert*, n.10). The State’s argument is a retroactive attempt invoke the domestic-violence power-and-control dynamics evidence that it withdrew after the circuit court properly considered and excluded it in conjunction with other-acts evidence. SR 62; SH1 2; PTC2 2. And the State even concedes that the *res gestae* evidence was a credibility endorsement of Reed, inviting the jury “to assess Reed’s credibility and decide if her testimony was reliable.” SB 32. Here, the State’s own characterization of the evidence demonstrates how the circuit court abused its discretion in allowing its admission for these purposes.

III. THE CIRCUIT COURT ABUSED ITS DISCRETION BECAUSE REED’S OUT-OF-COURT STATEMENTS WERE INADMISSIBLE HEARSAY.

A. Hade Preserved his Challenges to the Excited Utterance Rulings.

Hade’s motions in limine and trial objections were sufficient to preserve his excited utterance challenges because they directly presented the hearsay admissibility question to the circuit court under SDCL 19-19-803(2). His motion in limine on the 911 call explicitly raised the time delay between the assault and the statements. SR 147. Furthermore, the State’s own briefing below addressed the excited utterance exception, and Hade’s motion in limine objecting to it fully informed the circuit court of the relevant legal framework. SR 164. The specific factors Hade now raises on appeal are not new. These are factual circumstances

that were squarely before the circuit court. The time-delay and whether the statements were stress-induced was exactly the issue the circuit court considered.

B. Reed's Out-of-Court Statements were Inadmissible Hearsay and Should Have Been Excluded Because They Were Offered for the Truth of the Matter Asserted to Bolster Reed's Testimony.

Reed's statements do not qualify as excited utterances because the circumstances surrounding them indicate a capacity for reflection and deliberation that is inconsistent with the spontaneity required by SDCL 19-19-803(2). After Hade left, Reed did not immediately call 911 in a reflexive, uncontrolled response to the ongoing stress of an assault. Instead, she first called her mother, engaged in conversation with her, and only then called 911. This sequential and deliberate decision-making process demonstrates that Reed had regained sufficient cognitive control to make calculated choices about how to report the incident. Furthermore, Reed was aware of Hade's location through a tracking feature on his phone, meaning she knew he was not present and could not return imminently. Ex. 1. The fact that Reed was emotionally upset does not establish that she lacked the capacity for fabrication. The excited utterance exception is premised on the absence of reflective capacity. The circumstances of Reed's statements do not reflect excited utterances. The circuit court abused its discretion in concluding otherwise.

C. Hade Suffered Prejudice from the Admission of Reed's Hearsay Statements.

Reed's hearsay statements were not merely cumulative of her testimony but rather were offered as powerful corroboration of her testimony. This is

precisely what makes their improper admission prejudicial rather than harmless. The repetition of Reed's account reinforced her narrative and gave the jury the false sense that multiple independent sources confirmed her version of events. But Reed was the source of each statement. In a case that the State itself characterizes as a credibility contest, the repetition of Reed's account through hearsay was not harmless but served as a vehicle for the State to credit Reed's testimony.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Appellant respectfully requests this Court vacate the Judgment and remand the case to the circuit court with an Order directing the court to reverse the Judgment and schedule a new trial.

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Reply Brief contains 2,249 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 26th day of May 2026.

/s/ Derek D. Fries

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Reply Brief were electronically served upon:

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