

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 31514

STATE OF SOUTH DAKOTA

APPELLEE,

VS.

ANTHONY MONNENS,

APPELLANT

PETITION FROM THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT
CODINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE DAWN ELSHERE
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal filed on May 28, 2026

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PRELIMINARY STATEMENT

Citations to pleadings and other documents in the Settled Record are designated as “*SR*” followed by the page number of the document as recorded in the clerk’s Index. Citations to the transcript of the court trial (*SR* 132 *et seq.*) are designated as “*TR*” followed by the page number of the transcript and line number when appropriate. Citations to State’s Exhibit 2, footage from the arresting officer’s body camera received at trial, are designated as “*Ex. 2*” followed by the time stamp on the footage when appropriate.

JURISDICTIONAL STATEMENT

Appellant Anthony Monnens appeals the Judgment of Conviction filed on May 21, 2026, by the Honorable Dawn Elshere, Circuit Court Judge, Third Judicial Circuit, adjudicating Mr. Monnens guilty of one count of resisting arrest. *SR* 122. Mr. Monnens timely filed his Notice of Appeal on May 28, 2026. *SR* 124.

This Court has appellate jurisdiction pursuant to SDCL § 23A-32-2.

STATEMENT OF LEGAL ISSUES

- I. Whether the Evidence was Sufficient to Prove that Monnens Used Means Creating a Substantial Risk of Physical Injury to Resist Arrest.

Relevant authorities:

SDCL § 22-11-4

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

State v. Rocky Mountain, 449 N.W.2d 257 (S.D. 1989)

State v. Suhn, 2008 S.D. 128, 759 N.W.2d 546

State v. Sullivan, 2003 S.D. 147, 673 N.W.2d 288

II. Whether the Evidence was Sufficient to Prove that Monnens Had the Necessary Intent to Resist Arrest.

Relevant authorities:

SDCL § 22-11-4

Hall v. City of Watertown ex rel. City of Watertown Police Dep't, 2001 S.D. 137, 636 N.W.2d 686

STATEMENT OF THE CASE

Anthony Monnens appeals from a judgment entered by the Circuit Court for Codington County, Third Judicial Circuit, the Honorable Dawn Elshere presiding, convicting him of resisting arrest under SDCL § 22-11-4 following a bench trial. The circuit court also acquitted Monnens of stalking in violation of a protection order and dismissed a violation of protection order charge. *SR* 116, 122.

STATEMENT OF FACTS

On October 30, 2024, Codington County Sheriff's Deputy Steve Lowry was on patrol in Watertown. He had received an "attempt to locate" (ATL) notice for Monnens, issued by Monnens parole officer. *TR* at 18. Lowry was also aware of allegations that Monnens had been in the vicinity of his ex-wife's home and the existence of a protection order prohibiting such conduct, but Lowry did not inform Monnens of this during their interaction, so Monnens was unaware that he was suspected by Lowry of violating a protection order. *Id.* at 20-21. The charges related to that alleged conduct were the basis of counts 1 and 2 of the indictment, which resulted in an acquittal and dismissal, respectively. *See generally TR; SR* 116, 122.

Lowry saw a pickup registered to Monnens and initiated a traffic stop. *Id.* Lowry's body camera footage from the interaction was admitted into evidence as exhibit 2. The footage shows Lowry following the pickup and activating his lights at 10:20:10 p.m. *Ex. 2.* According to Lowry's radio call to dispatch, he and the pickup were traveling fifteen miles per hour. *Id.* at 10:20:46. Almost exactly fifty seconds after activating his lights, Lowry radioed in that the pickup had pulled into the parking lot of an auto parts store and was parking. *Ex. 2* at 10:21:57. Monnens was the driver of the pickup. Monnens backed into a parking spot, and Lowry pulled up some distance away. *Id.*

At this point, there had been no communication between Monnens and Lowry. Monnens would have had no reason to know why Lowry was stopping him, much less that he was going to be arrested. *Id.*

Monnens, who was alone, began shouting at Lowry from the driver's seat through the pickup's open window. *Id.* at 10:21:41. Monnens asked Lowry to turn off the bright lights shining on Monnens, and Lowry turned off some of his patrol car's lights. *Id.* at 10:22:00.

Lowry exited his parked vehicle and began approaching Monnens's pickup on foot. *Id.* Lowry told Monnens to turn off his vehicle, and then, a few seconds later, asked if the vehicle was off. *Id.* at 10:22:10. Monnens shut the vehicle off as directed, and confirmed that it was. *Id.* Monnens asked Lowry "what the hell is this about," and Lowry told Monnens that Monnens's parole

officer wanted him “held.” *Id.* at 10:22:22. Monnens replied that he was in compliance with his parole officer’s directives. *Id.* Lowry shouted at Monnens that there was an “ATL,” eventually explaining that this meant an “attempt to locate” issued by Monnens’s parole officer, and that the parole officer wanted Monnens “held at the jail.” *Id.* at 10:22:38. Lowry never used the word “arrest.” *Id.* Monnens at first did not understand what Lowry meant, and continued to dispute that he had done anything wrong. *Id.*

After approximately four minutes of Monnens questioning and objecting to the parole officer’s request as relayed by Lowry, another officer reached through the pickup’s open window and unlocked the door. *Id.* at 10:26:34. Lowry opened the door. *Id.* Monnens did not physically resist these actions. *Id.* For another minute and a half, an apparently distressed Monnens loudly argued that he was afraid of the officers’ “abuse” and that he did not want his pickup towed or incur the expense of impound. *Id.* at 10:26:34-10:28:00.

Monnens was “coaxed” out of his pickup by the officers’ promise that he was not going to be handcuffed and that Lowry would call the parole officer to confirm that Monnens was to be “held.” Monnens exited the vehicle on his own. *Id.* at 10:28:00. *TR* at 24-25, 30.

The entire interaction, from the time Lowry activated his stop lights to when Monnens sat down in the backseat “cage” of Lowry’s patrol car, lasted less than ten minutes. *Id.* at 10:20:10-10:29:45; *TR* at 28. During that entire

time, Monnens did not utter a single threat or engage in any violent conduct. *Id.*; *TR* at 23:21-24:1; 24:21-25; 26:24-27:2; 27:15-18.

On February 14, 2025, the Codington County State's Attorney procured an indictment charging Mr. Monnens with three counts: 1) Stalking in Violation of a Protection Order; 2) Violation of a Protection Order; and 3) Resisting Arrest. *SR* 25. The State also filed a Part II Habitual Offender Information. *SR* 27. The allegations in counts 1 and 2 were only tangentially and not factually related to count 3 and are not at issue in this appeal. *See generally TR*; *SR* 116.

Mr. Monnens waived his right to a jury trial on the indictment. On February 26, 2026, the circuit court presided over a court trial. *SR* 132. Following the presentation of evidence, the court took the matter under advisement so that the parties could submit written arguments. *TR* at 38. The parties each submitted post-trial briefs. *SR* 93 *et seq.* Mr. Monnens moved for a judgment of acquittal on each count. *SR* 101.

On April 23, 2026, in an email to the parties, the circuit court denied Mr. Monnens's motion for judgment of acquittal and issued its verdict. The email was filed as the court's "Memorandum Decision." *SR* 116. The court found Mr. Monnens not guilty as to count 1 of the indictment, dismissed count 2, and found Mr. Monnens guilty as to count 3, resisting arrest. *Id.* With regard to the resisting arrest count, the court wrote as follows:

Resisting Arrest- The Court finds the defendant **GUILTY**. Defendant's behavior at the time of his detainment by Deputy Lowery prevented

Deputy Lowery from effectuating his arrest by engaging in behavior that created a substantial risk to Deputy Lowery. Deputy Lowery used several tactics to try to get defendant to comply with his request to get out of the vehicle. However, defendant was yelling, screaming and extremely agitated. Defendant had also positioned his vehicle in such a manner that it could have easily been used as weapon. Defendant refused to show his hands or even turn off the vehicle. The Court finds all this behavior presented a substantial risk of injury to Deputy Lowry and finds the Defendant **GUILTY** of Resisting Arrest.

SR 116. Because the circuit court acquitted Monnens on the felony count, the habitual offender information was dismissed. SR 116;

On May 20, 2026, the circuit court imposed a sentence of thirty days in jail on count 3, which sentence was suspended for one year. The court imposed a fine and court costs. SR 122. On May 21, 2026, the circuit court's Judgment of Conviction and Order Suspended Sentence was signed, attested, and filed. *Id.* On May 28, 2026, Mr. Monnens timely filed his Notice of Appeal. SR 124.

STANDARD OF REVIEW

A challenge to the sufficiency of the evidence is reviewed *de novo*. *State v. Yuel*, 2013 S.D. 84, ¶ 17, 840 N.W.2d 680, 686. This Court must determine whether the evidence and the reasonable inferences drawn therefrom, viewed in the light most favorable to the verdict, are sufficient to permit a rational fact finder to find each element of the offense beyond a reasonable doubt. *Id.* The sufficiency of the evidence determination “may depend upon the difference between pure speculation and legitimate inference from proven facts.” *State v. Halverson*, 394 N.W.2d 886, 888 (S.D. 1986) (quoting *Curley v. United States*, 160 F.2d 229, 233 (D.C.Cir. 1947)).

The Court reviews questions of statutory interpretation *de novo*, and the Court does not defer to a circuit court's interpretation of a statute. *State v. Hawley*, 2026 S.D. 37, ¶ 6.

ARGUMENT

I. The Evidence Was Insufficient to Prove that Monnens Used Means Creating a Substantial Risk of Physical Injury to Resist Arrest.

South Dakota's resisting arrest statute does not criminalize most types of interference, obstruction, passive resistance, refusal to cooperate, or delay by a suspect being apprehended by law enforcement. There are other statutes that criminalize those types of behavior. *See e.g.* SDCL § 22-11-6 (Obstructing Law Enforcement Officer); § 32-33-18 (Failure to Stop at the Signal of Law Enforcement Officer). Instead, a conviction for resisting arrest requires proof that a defendant intentionally prevents or attempts to prevent an arrest by:

(1) using or threatening physical force or violence; or

(2) using means that create a substantial risk of causing physical injury.

SDCL § 22-11-4.

The circuit court's verdict relied upon a finding that Monnens's actions met subpart 2 of SDCL § 22-1-6. *SR* 116. Therefore, the issue before this Court is whether a rational finder of fact could find that Monnens used "means that create[d] a substantial risk of causing physical injury" beyond a reasonable doubt. The circuit court's ruling was based on three factual findings: that Lowry "used several tactics to try to get" Monnens to exit his

vehicle, that Monnens was “yelling, screaming and extremely agitated,” and that Monnens parked his vehicle “in such a manner that it could have easily been used as a weapon.” *SR 116*.¹

The State’s proof fails at both points required by the statute: it did not show that Monnens used dangerous means, and it did not show that any such means created a substantial, non-speculative risk of injury. The circuit court’s three factual findings should therefore be measured against those statutory requirements, not against a generalized sense that the encounter was tense or difficult.

The confluence of these three findings, even when considered in a light most favorable to the verdict, still does not rise to a conclusion that Monnens “used” these means to resist arrest or that they posed a “substantial risk of causing physical injury.”

The legislature has not provided a specific definition of “substantial risk of causing physical injury,” or defined “substantial risk” as a standalone term. SDCL § 22-1-2. Because the legislature has not defined the phrase, this Court, if it finds the statute unclear or ambiguous, may apply the ordinary meaning in light of the statutory context. SDCL § 2-14-1; *Esling v. Krambeck*, 2003 S.D. 59, ¶ 8; 663 N.W.2d 671, 676. Monnens respectfully suggests that,

¹ The circuit court’s inclusion of the fact that Monnens backed into a parking spot is problematic since this action occurred before Monnens knew he was going to be arrested, as discussed in § II *infra*.

within the context of SDCL § 22-11-4(2), the term “substantial” denotes a risk that is real, considerable in degree, and not imaginary or speculative.²

Of the circuit court’s three factual findings, only one—that Monnens was “yelling, screaming and extremely agitated”—describes conduct in which Monnens actually engaged after finding out why Lowry stopped him. The evidence certainly establishes that Monnens was argumentative, agitated, and slow to comply. In other contexts, this Court has distinguished between obnoxious, offensive, or repellant behavior and conduct that actually rises to the level of criminal culpability. Even using curse words to describe the officers is protected speech. *See e.g. State v. Suhm*, 2008 S.D. 128, 759 N.W.2d 546 (for speech described as “fighting words” to lose its First Amendment protection, it must tend to incite an immediate breach of peace). In order for otherwise constitutionally protected verbal behavior to create criminal liability, some physical conduct must also occur. For example, in *State v. Rocky Mountain*, this Court upheld a disorderly conduct conviction in which Rocky Mountain was behaving outrageously, including using “vile, abusive names,” but was guilty because he also spit and raised his crutches in a threatening manner. *See generally* 449 N.W.2d 257 (S.D. 1989). *Rocky*

² “Substantial,” American Heritage College Dictionary, 4th ed. (2004) (“1. Of, relating to, or having substance; material. 2. True or real; not imaginary.... 5. Considerable in importance, value, degree, amount, or extent.”). *Jackson v. Canyon Place Homeowner’s Ass’n, Inc.*, 2007 S.D. 37, ¶ 11, 731 N.W.2d 210, 213 (“We may use statutes and dictionary definitions to determine the plain and ordinary meaning of undefined words.”).

Mountain's repugnant conduct, as described in the Court's opinion, far outstrips Monnens's in the present case. Lowry acknowledged during his testimony that Monnens never used, or verbally threatened to use, physical force or violence against law enforcement during the interaction. *TR* at 23:21-24:1; 24:21-25; 26:24-27:2; 27:15-18. Nor did any of Monnens's statements tend to incite violence or produce "a clear and present danger of substantive evil," rising above frustrating the officers, and so Monnens's speech itself is constitutionally protected. *Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 895 (1949).

It is axiomatic that Monnens was permitted to question and even object to the actions of Lowry and the other officers. "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462-63, 107 S. Ct. 2502, 2510 (1987). Monnens's loud objections, absent any threats or physical resistance, cannot be the basis of a resisting arrest conviction.

The remaining question, then, is whether Monnens's physical conduct apart from his speech created the kind of substantial risk contemplated by SDCL § 22-11-4(2). It did not.

Monnens's physical conduct consisted primarily of remaining in his driver's seat—with the window rolled down and, eventually, with the door

open—after being told to exit, until the officers promised not to handcuff him and to call his parole officer. His stubborn insistence on remaining seated contrasts sharply with parallel conduct that this Court has stated could rise to the level of “risk of substantial physical injury,” even if it did not constitute actual threats, force or violence under SDCL § 22-11-4(1). In *State v. Sullivan*, the defendant, Sullivan, “struggled” to remain in her vehicle while being physically pulled out of it by an arresting officer, “kicking” her leg against the floor of the vehicle to push herself back in and wrapping her arms around the steering wheel. 2003 S.D. 147, ¶¶ 4, 13, 673 N.W.2d 288, 289-90, 291-292. This Court found that this conduct did not satisfy the first subsection of § 22-11-4, but could have been considered as evidence that Sullivan created a substantial risk for purposes of § 22-11-4(2); but that subsection was not charged. *Id.* at ¶ 17. Clearly, Monnens’s conduct in the present case fell far short of the Sullivan’s as described in this Court’s decision.³

The entire interaction from the time Lowry first asked Monnens to get out of the vehicle until Monnens exited under his own power lasted only five minutes. *Ex. 2* at 10:23:36. During that time, he rooted around searching for his dropped car keys—an action that naturally alarmed the officers but was

³ Monnens does not assert that *Sullivan* established a minimum level of resistance necessary to satisfy SDCL § 22-11-4(2), but respectfully suggests that the comparison is instructive as to what character of physical resistance is referred to by the statute.

clearly not intended by Monnens to threaten them. *Id.* at 10:25:37. After he got out of the vehicle, Monnens did nothing that would require Lowry to get “hands on” with Monnens, and so Monnens was allowed to walk to Lowry’s vehicle without handcuffs. *TR* at 25:15-27:18.

Monnens’s conduct after parking his pickup was obnoxious, but Monnens was not “using” his demeanor as a means to resist arrest within the meaning of the statute. Nor did this pose a real or considerable risk of injury to Lowry or anyone else. It did not establish the type of dangerous conduct criminalized by SDCL § 22-11-4(2).

Those facts also undercut the circuit court’s separate reliance on the pickup’s position, which was described as “positioned . . . in such a manner that it could have easily been used as a weapon.” *SR* 116. A vehicle’s potential dangerousness matters only if the defendant intentionally used it in a way that created a real risk; Monnens’s actual course of conduct points the other way. Monnens did not use his pickup as a means to put the officers or anyone at risk of injury. Monnens never attempted to flee, accelerate toward officers, shift the truck toward officers, or otherwise use the vehicle offensively. The danger described by Lowry in his testimony was merely speculative. Every traffic stop, including more traditional ones on the shoulder of a highway, poses danger to a law enforcement officer.

Pennsylvania v. Mimms, 434 U.S. 106, 110-11, 98 S.Ct. 330, 333 (1977). The

mere fact that a vehicle *can* become dangerous does not establish that it *is* being used in a manner that creates a substantial risk of injury.

In contrast to Monnens's argumentative and obnoxious demeanor, his actual physical conduct was more compliant than not. He pulled over less than a minute after Deputy Lowry activated his stop lights. *Ex. 2* at 10:20:11. He parked his vehicle and ultimately turned it off when asked to do so. *Id.* at 10:21:39. He spoke to the officers through an open window. *Id.* He permitted the officers to unlock and open his door. *Id.* at 10:26:36. During his delay in getting out of the vehicle, he articulated a fear of physical abuse and having his vehicle towed. *Id.* at 10:25:56. Although the officers opened the door for him, Monnens got out of the vehicle on his own, after officers told him that he would not be handcuffed and that Lowry would call his parole officer to confirm that Monnens was to be held. *Id.* at 10:28:03. He turned around and leaned against his vehicle when asked so that he could be patted down. *Id.* at 10:28:10. He told the officers that there was a knife in his pocket and attempted to turn it over. *Id.* at 10:28:12. Lowry found the knife where Monnens said it would be. *Id.* None of Monnens's actual conduct was a means employed to resist arrest.

II. The State Failed to Prove that Monnens Had the Necessary Intent to Resist Arrest.

Even if the Court were to conclude that some aspect of the encounter created a substantial risk of injury, the conviction still cannot stand unless

the State also proved that Monnens acted with the specific intent to resist arrest. The evidence did not prove such intent.

A. Intent is a required element of SDCL § 22-11-4.

In order to commit the offense of resisting arrest, regardless of whether their conduct risks physical injury to any person, the State must prove beyond a reasonable doubt that a person had the specific intent to resist arrest. SDCL § 22-11-4 ("Any person who *intentionally* prevents or attempts to prevent . . ."). Thus, the person must have known that he was under arrest before, or while, engaging in the conduct alleged to constitute resisting. *Hall v. City of Watertown ex rel. City of Watertown Police Dep't*, 2001 S.D. 137, ¶ 5, 636 N.W.2d 686, 688 ("To resist arrest, one must be informed that police intend to arrest, for without that knowledge a person cannot, in turn, intentionally resist arrest.").

That timing requirement is dispositive for the parking theory. Conduct that occurred before Monnens knew he was being arrested cannot supply the mens rea for resisting arrest, even if the same conduct later subjectively appeared risky in hindsight.

B. The parking conduct relied upon by the circuit court occurred before Monnens could have formed the necessary intent to resist arrest.

Even if Monnens's act of backing into the parking space did, in fact, "create a substantial risk of physical injury," no rational factfinder could conclude beyond a reasonable doubt that he did so with the intent necessary

to resist arrest. First, nothing in the record suggests that he parked in that manner with the intent to use his vehicle as a weapon. Second, when he backed into the parking space, Monnens did not know why he was being stopped or that he might be subject to arrest. He therefore could not have parked as he did with the intent to resist arrest.

This case is analogous to *Hall*. There, a police officer attempted to initiate a traffic stop on a car being driven erratically. 2001 S.D. 137, ¶ 2. The juvenile driving the car, which was stolen, fled. *Id.* The car stalled after colliding with a tree, but then the juvenile fled again, colliding with the police car, and ultimately crashed into a home, injuring the occupants. *Id.* In a footnote, this Court concluded that, although the juvenile did create a substantial risk of physical injury, he was not guilty of resisting arrest because he could not "have had the *intent* to resist arrest, not having been informed that Officer Smith intended to arrest him." *Id.* ¶ 5 n.2. The Court further noted that the juvenile could have been charged with obstructing law enforcement under SDCL § 22-11-6. That may also have been the more appropriate charge here.

Hall resolves the theory that Monnens's parking was evidence of specific intent to resist arrest—it was not. The remaining question is whether Monnens's subsequent yelling and agitation demonstrates the required intent.

C. Monnens's "yelling, screaming and extremely agitated" conduct does not, in context, evince an intent to resist arrest.

As the interaction proceeded, the officers failed to make it clear to Monnens that his arrest was inevitable. Lowry only told Monnens that there was an “ATL” or “attempt to locate” out, that Monnens’s parole officer wanted him “held,” and that Lowry would take Monnens to the jail. *Ex. 2* at 10:22:23. While coaxing Monnens out of the pickup, Lowry promised to call Monnens’s parole officer in order to confirm the attempt to locate. *TR* at 29:23-30:25. Although Lowry indicated during his testimony that this promise was to deescalate in order to get Monnens’s compliance (*TR* at 30:22-25), from Monnens’s perspective, it made the threat of custody conditional (which was clearly Lowry’s intent—otherwise he would not have engaged in this tactic to coax Monnens out). The conditional nature of the threat of arrest is emphasized by the fact that Lowry did in fact attempt to call the parole officer. *TR* at 30:7-14. Monnens went from confusion or disbelief about being arrested to thinking that an arrest may not actually occur. At no point does the evidence prove beyond a reasonable doubt that Monnens knew he was being arrested until the arrest actually occurred—by which time his obstreperous conduct had terminated as he was already confined in Lowry’s vehicle.

CONCLUSION

The evidence admitted at trial established only that Monnens argued with officers, delayed compliance, and questioned why he was being detained. It did not prove beyond a reasonable doubt that he used means creating a

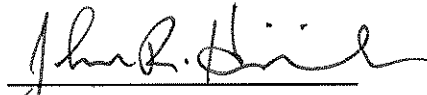
substantial risk of physical injury or that he intentionally employed any such means to resist arrest. Because the evidence was insufficient to establish either the actus reus or the mens rea required by SDCL § 22-11-4, Mr. Monnens respectfully urges the Court to reverse the judgment and order entry of a judgment of acquittal.

REQUEST FOR ORAL ARGUMENT

Undersigned counsel for Appellant Anthony Monnens respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted this 29th day of July 2026.

BY


John R. Hinrichs

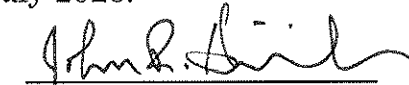
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CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). The undersigned certifies that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief is 21 pages long, including the cover sheet, Table of Contents, and Table of Authorities, and contains 3,898 words and 19,713 characters, no spaces, exclusive of the Table of Contents, Table of Authorities, Preliminary Statement, Jurisdictional Statement, Statement of Legal Issues, Appendix, and Certificates of Counsel. Counsel relied on the word and character count of Microsoft Word word processing software used to prepare this brief at font size 12, Century Schoolbook, and left justified.

Dated this 29th day of July 2026.



John R. Hinrichs

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a true and correct copy of this document and the attached appendix was served via the Unified Judicial System's Odyssey e-filing system, email, and first-class mail upon:

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The undersigned further certifies that this document and the attached appendix were filed with the South Dakota Supreme Court via the Unified Judicial System's Odyssey e-filing system, emailed to SCCLerkBriefs@ujs.state.sd.us, and by mailing the original via first class mail to:

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Dated this 29th day of July 2026.



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IN THE SUPREME COURT
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APPEAL FROM THE CIRCUIT COURT
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THE HONORABLE DAWN ELSHERE
Circuit Court Judge

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Notice of Appeal filed May 28, 2026

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31514

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

ANTHONY JOSEPH MONNENS,

Defendant and Appellant.

PRELIMINARY STATEMENT

The conviction in this case is supported by evidence showing that Monnens' actions hindered Deputy Lowry from effectuating his arrest by engaging in behavior that created a substantial risk to Deputy Lowry. Deputy Lowry used several tactics in an attempt to obtain Monnens' compliance with his commands to exit the vehicle. Monnens continued to refuse to show his hands or turn off the vehicle. The circuit court held Monnens intentionally prevented Deputy Lowry from effecting his arrest and his behavior presented a substantial risk of physical injury to Deputy Lowry and, therefore, found Monnens guilty of resisting arrest.

The exhibit used is designated as "EX," followed by its exhibit identification. References to documents are denoted as follows with corresponding page number(s) indicated thereafter:

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Appellant's Brief AB

JURISDICTIONAL STATEMENT

This is an appeal of a judgment entered on May 21, 2026. SR:122-23. Monnens timely filed Notice of Appeal on May 28, 2026. SR:124-25. This Court has jurisdiction to hear this appeal. SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER SUFFICIENT EVIDENCE EXISTED TO SUPPORT MONNENS' CONVICTION?

The circuit court denied Monnens' motion for judgment of acquittal finding Monnens intentionally prevented Deputy Lowry from effecting his arrest and his behavior presented a substantial risk of physical injury to Deputy Lowry.

State v. Braveheart, 2026 S.D. 36, 37 N.W.3d 277

State v. Sullivan, 2003 S.D. 147, 673 N.W.2d 288

SDCL 22-11-4

STATEMENT OF THE CASE

Monnens was charged with stalking in violation of a protection order, violating a protection order, and resisting arrest. SR:25. Monnens was charged as a habitual offender. SR:27.

Monnens chose to have a court trial, which took place on February 26, 2026. SR:95, 132. Following the court trial, Monnens made a motion for judgment of acquittal. SR:101-11. Subsequently, the circuit court convicted Monnens of resisting arrest and acquitted him of stalking in violation of a protection order and violation of a protection

order.¹ SR:116. Monnens was sentenced to thirty days in jail, which was suspended for one year. SR:122-23.

STATEMENT OF THE FACTS

On October 30, 2024, Steve Lowry, a Deputy with the Codington County Sheriff's Office, received information that due to Monnens' noncompliance with parole, an attempt-to-locate was issued for Monnens and his parole officer wanted him to be held at the jail. SR:4, 149. Deputy Lowry was on patrol and located a vehicle that matched Monnens' vehicle description. SR:149. After confirming the vehicle belonged to Monnens, Deputy Lowry attempted to conduct a traffic stop. SR:149. When Deputy Lowry activated his lights, Monnens did not immediately stop. SR:150. Instead, Monnens drove several blocks and backed his vehicle into a parking spot. SR:150.

Monnens rolled down his driver's side window and began yelling at Deputy Lowry, questioning why he was being harassed. EX:2.² Deputy Lowry instructed Monnens to turn his vehicle off and keep his hands visible. EX:2. Deputy Lowry told Monnens that he is on parole and his parole officer "wants him held at the jail." EX:2.

After learning he would be taken to jail, Monnens continued making furtive movements inside the vehicle. EX:2. Despite the several

¹ The State requested that the circuit court acquit Monnens of violation of a protection order due to a clerical error creating duplicity. SR:99.

² Exhibit two is footage from Deputy Lowry's body worn camera of his interaction with Monnens.

attempts at compliance and demands for Monnens to show his hands and exit the vehicle, he continued to refuse. EX:2. Cody Trumm, a Sergeant with the Watertown Police Department, arrived on scene to assist Deputy Lowry in arresting Monnens. SR:4.

Deputy Lowry requested that Monnens give him the keys to Monnens' vehicle. EX:2. Monnens vocally protested and started violently hitting the steering wheel. EX:2. Then, Monnens started rummaging through items in his vehicle. EX:2. Monnens was told to stop searching for items in his vehicle and get out of the vehicle; Monnens refused. EX:2. Monnens eventually exited the vehicle after Sergeant Trumm reached inside the window, unlocked the door, and opened his driver's side door. EX:2. Deputy Lowry testified that this situation was dangerous for all individuals involved. SR:153.

ARGUMENT

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT MONNENS' CONVICTION.

Monnens argues there was insufficient evidence for the circuit court to convict him of resisting arrest. AB:7-17. But he fails to look at the evidence in light most favorable to the State. When doing so, the State presented sufficient evidence to support the conviction.

A. *Standard of review.*

“A motion for judgment of acquittal attacks the sufficiency of the evidence, which is a question of law’ regardless of when the motion is considered.” *State v. Braveheart*, 2026 S.D. 36, ¶ 28, 37 N.W.3d 277,

283 (quoting *State v. Ahmed*, 2022 S.D. 20, ¶ 14, 973 N.W.2d 217, 221).

Thus, this Court reviews a denial of a motion for judgment of acquittal de novo. *Braveheart*, 2026 S.D. 36, ¶ 28, 37 N.W.3d at 283 (quoting *State v. Hillyer*, 2025 S.D. 30, ¶ 21, 23 N.W.3d 782, 789).

In measuring the sufficiency of the evidence, this Court considers “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Braveheart*, 2026 S.D. 36, ¶ 28, 37 N.W.3d at 283 (quoting *Hillyer*, 2025 S.D. 30, ¶ 21, 23 N.W.3d at 789). This Court “will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.” *Id.* Instead, this Court “accept[s] the evidence and the most favorable inferences fairly drawn therefrom, which will support the verdict.” *Id.* “[T]he evidence is insufficient only ‘when no rational trier of fact could find guilt beyond a reasonable doubt.’” *State v. Martin*, 2015 S.D. 2, ¶ 13, 859 N.W.2d 600, 606 (quoting *State v. Brende*, 2013 S.D. 56, ¶ 21, 835 N.W.2d 131, 140).

B. *Monnens’ conviction was supported by sufficient evidence.*

Monnens was convicted of resisting arrest under SDCL 22-11-4, which is defined as

Any person who intentionally prevents or attempts to prevent a law enforcement officer, acting under color of authority, from effecting an arrest of the actor or another, by:

(1) Using or threatening to use physical force or violence against the law enforcement officer or any other person; or

(2) Using any other means which creates a substantial risk of causing physical injury to the law enforcement officer or any other person[.]

Here, the circuit court found Monnens' actions met subsection 2 of SDCL 22-11-4. SR:116. The circuit court's ruling was based on the following factual findings:

Deputy [Lowry] used several tactics to try to get defendant to comply with his request to get out of the vehicle. However, defendant was yelling, screaming and extremely agitated. Defendant had also positioned his vehicle in such a manner that it could have easily been used as [a] weapon. Defendant refused to show his hands or even turn off the vehicle. The Court finds all this behavior presented a substantial risk of injury to Deputy [Lowry].

SR:116.

1. Monnens Had the Necessary Intent to Resist Arrest.

In order to commit the offense of resisting arrest, the State must prove beyond a reasonable doubt that Monnens had the specific intent to resist arrest. "To resist arrest, one must be informed that police intend to arrest, for without that knowledge a person cannot, in turn, intentionally resist arrest." *Hall v. City of Watertown ex rel. City of Watertown Police Dept.*, 2001 S.D. 137, ¶ 5, 636 N.W.2d 686, 688 (2001).

Here, Deputy Lowry's body camera footage illustrates Monnens' intent to prevent Deputy Lowry from effecting his arrest. After Deputy Lowry initiated the traffic stop and Monnens backed into a parking spot, Monnens was informed that his parole officer wanted him held at the jail and that there was an attempt-to-locate issued for him. EX:2. Deputy Lowry requested that Monnens get out of the vehicle, and Monnens

denied the request. EX:2. Again, Deputy Lowry requested that Monnens get out of the vehicle, and Monnens refused. EX:2.

Deputy Lowry requested that Monnens give him the keys to Monnens' vehicle. EX:2. Monnens vocally protested and started violently hitting the steering wheel. EX:2. Monnens was again told that he was going to jail and they would "figure it out there." EX:2. Monnens stated he refused to wear handcuffs. EX:2. In an effort to deescalate the situation, Deputy Lowry offered to contact Monnens' parole officer. EX:2. Deputy Lowry instructed Monnens to exit his vehicle and Monnens still refused. EX:2.

After his third refusal to exit the vehicle, Monnens started rummaging through items in his vehicle and Deputy Lowry asked him to stop reaching in his vehicle. EX:2. Monnens was told to get out of the vehicle; Monnens refused and continued searching for items inside his vehicle. EX:2. While Monnens was searching through items in his vehicle, Sergeant Trumm reached in, unlocked the vehicle, and opened the driver's side door. EX:2. The officers requested Monnens to get out of the vehicle's open door, which Monnens refused. EX:2. Sergeant Trumm told Monnens if he continued to refuse to get out of the vehicle, they would forcibly remove him and place him in handcuffs. EX:2. Sergeant Trumm stated if he got out of the vehicle, he would not be placed in handcuffs. EX:2. Then Monnens got out of the vehicle. EX:2.

Monnens declined law enforcement's instruction to exit his vehicle a total of eleven times. EX:2.

Based on the evidence presented, Monnens understood he was under arrest and intentionally prevented Deputy Lowry from effecting his arrest. Monnens' request not to be put in handcuffs while being taken to the jail indicates that he understood that he was under arrest. Monnens actions of refusing the officers' commands that he get out of his vehicle and stop reaching for things illustrates his intent to prevent Deputy Lowry from effecting his arrest. Monnens does not dispute that Deputy Lowry was acting under color of authority. AB:13-17.

Monnens argues "[a]s the interaction proceeded, the officers failed to make it clear to Monnens that his arrest was inevitable." AB:16. But in reviewing the video footage of the encounter, the officers never faltered from their statement that Monnens would be taken to jail. The officers' offer to contact Monnens' parole officer did not convert their statement that he would be taken to jail into a conditional statement. Monnens' request not to be put in handcuffs indicates that he understood that he would be taken into custody. Further, before the officers' offered to call Monnens' parole officer, Monnens intended to prevent Deputy Lowry from effecting his arrest by refusing the officers' request to exit his vehicle and give officers his keys.

Monnens argues his case is analogous to *Hall*, 2001 S.D. 137, 636 N.W.2d 686, where this Court held Hall was not guilty of resisting arrest

because he could not “have had the intent to resist arrest, not having been informed that Officer Smith intended to arrest him.” AB:16 (citing *Id.* ¶ 5 n.2). As stated above, Monnens was told multiple times that his parole officer wanted him held at the jail. Further, Monnens’ request not to be put in handcuffs indicates that he understood that he would be taken into custody. Monnens therefore knew that he would be arrested.

In sum, the evidence presented demonstrates that Monnens was fully aware he was under arrest and nonetheless chose to prevent the officers from effecting his arrest. The officers repeatedly told Monnens that he would be taken to jail, and his own statements, including his request not to be put in handcuffs, show that he understood he was being taken into custody. Despite this clear knowledge, Monnens refused eleven separate commands to exit the vehicle and continued reaching for items inside the vehicle. Unlike the defendant in *Hall*, Monnens was unequivocally informed of the officers’ intent to arrest him. His continued refusals and obstructive behavior illustrate a deliberate and knowing attempt to prevent Deputy Lowry from effecting his arrest, satisfying the State’s burden of proving specific intent to resist arrest.

2. *The Evidence Was Sufficient to Prove that Monnens Used Means Creating a Substantial Risk of Physical Injury to Resist Arrest.*

To be convicted of resisting arrest pursuant to SDCL 22-11-4, the defendant must “intentionally prevent[] or attempt[] to prevent” law enforcement from effecting the arrest by “using any means which created

a substantial risk³ of causing physical injury to the law enforcement officer[.]” SDCL 22-11-4; *see* South Dakota Criminal Pattern Jury Instruction 3-9-10 (2020). The word “intentionally” modifies “prevented or attempted to prevent.” Therefore, to be convicted of resisting arrest, Monnens needed to have intentionally prevented or attempted to prevent officers from effecting his arrest. The statute does not require Monnens to have intentionally used a means which created a substantial risk of causing physical injury to the law enforcement officer.

After Deputy Lowry asked Monnens to get out of his vehicle, Monnens shouted his denial and began striking the steering wheel with significant force. Monnens’ action of violently hitting the steering wheel demonstrated his anger towards the police officers. Deputy Lowry testified that because Monnens refused to cooperate and had a history of such, this situation was a “high risk traffic stop” and created a dangerous situation for a police officer. SR:153.

Thereafter, Monnens started rummaging through his vehicle and officers repeatedly told him to stop. EX:2. This action worried the officers because they had no way of knowing what he was looking for. After displaying his anger by hitting the steering wheel, it was reasonable to assume he was reaching for a gun, knife, or other weapon to assert his anger on the officers. The officers showed their concern about his

³ The State does not dispute Monnens’ definition of substantial risk. AB:8-9.

rummaging by unlocking and opening his vehicle door so they could see what he was doing. EX:2.

The position of Monnens' vehicle created additional safety concerns for the officers. As the circuit court held, Monnens "positioned his vehicle in such a manner that it could have easily been used as [a] weapon." SR:116. The circuit court found that Monnens refused to turn off the vehicle. SR:116. It was reasonable for the circuit court to infer that the vehicle was on because the body camera footage illustrates that Monnens' headlights and taillights were on during the entire interaction. EX:2. If the vehicle was running, it raises serious questions about what he was searching for inside the vehicle. He claimed he was looking for his keys, but that explanation is inconsistent with a vehicle that was already running.⁴ Monnens' vehicle was not only capable of movement but remained fully operable throughout the encounter. His refusal to remove the keys or disengage the engine, combined with the positioning of the vehicle and his continued agitation, created a substantial risk of causing physical injury to the officers.

⁴ The State understands some vehicles utilize a keyless ignition system activated by a push-button start. Monnens' vehicle was a 2004 Dodge Pickup, which does not come factory-equipped with a keyless ignition system. SR:1, 3, 144; Has Anyone Installed a "Push Start Button?", DodgeTalk Forum (May 27, 2011), <https://www.dodgetalk.com/threads/has-anyone-installed-a-push-start-button.334209/>. Viewing the evidence in the light most favorable to the State, and with no testimony indicating that Monnens had installed an aftermarket keyless ignition, it is reasonable to conclude that the keys were in the ignition.

In *State v. Sullivan*, 2003 S.D. 147, 673 N.W.2d 288, once Sullivan was informed she was under arrest, she got back into her vehicle, wrapped her arms through the steering wheel, and refused repeated commands to exit the car. *Id.* ¶ 4, 673 N.W.2d at 289. Law enforcement was concerned that Sullivan might put the vehicle in gear and injure someone, noting both the vehicle's running state and her physical position behind the wheel. *Id.* Officers ultimately had to use physical control techniques to extract her from the vehicle, demonstrating the substantial safety risks her actions created. *Id.*

This Court remarked that the evidence reflected that Sullivan tried to get away from the law enforcement officer and “was struggling with [law enforcement] in actual resistance to his attempts to take her into custody.” *Id.* ¶ 12, 673 N.W.2d at 291. This Court remarked that actual resistance “is not the actionable element of resisting arrest as defined by SDCL 22-11-4(1). Rather, it requires the threat of force or violence[.]” *Id.* Therefore, this Court found Sullivan's actions were not sufficient for a conviction under SDCL 22-11-4(1). *Id.* ¶ 16, 673 N.W.2d at 293. This Court commented that

[i]t appears that a charge under subdivision (2) of SDCL 22-11-4 would have been appropriate. Under that subdivision, a showing of a threat of force was not necessary. Instead, the jury could have considered whether Sullivan's struggle with Robertson behind the wheel of a running motor vehicle created “a substantial risk of causing physical injury” to Robertson or other persons under SDCL 22-11-4(2).

Id. ¶ 17, 673 N.W.2d 288, 293. This Court held the State's failure to charge Sullivan under SDCL 22-11-4(2) was fatal to Sullivan's conviction for resisting arrest. *Id.*

As in this case, the position in which Monnens parked his vehicle and failure to turn off the vehicle put law enforcement at substantial risk of physical injury because he could have easily used his vehicle in a violent manner. Monnens remained inside his operable vehicle, refused eleven commands to exit, and continued rummaging around in the vehicle despite being told to stop. His refusal to disengage the engine and surrender the keys, combined with the vehicle's positioning, created safety concerns similar to those in *Sullivan*.

Just as officers feared *Sullivan* might suddenly put her vehicle in gear and injure someone, officers here confronted the possibility that Monnens' continued refusal and agitation inside a running vehicle posed a substantial risk of harm. Thus, while *Sullivan* involved the defendant physically bracing herself behind the wheel and resisting officers through overt physical obstruction, and Monnens involved repeated refusals to comply and escalating agitation inside a running vehicle, both cases involved defendants who, despite knowing they were under arrest, created significant risks to officer safety by refusing to comply while positioned in vehicles capable of immediate movement.

Monnens argues that his speech in yelling at the officers was protected by the constitution. SR:9-10. However, failing to comply with

the officers' commands is not constitutionally protected speech. If Monnens had complied with the officers' commands while still expressing his frustration, his conduct would not have constituted resisting arrest. It is Monnens' actions of refusing the officers' commands that constituted resisting arrest, not the words he stated.

In conclusion, Monnens intentionally refused eleven lawful commands to exit his vehicle and continued rummaging through the vehicle after displaying significant agitation by striking the steering wheel. His conduct created a substantial risk of physical injury to the officers, especially while seated in a running, operable vehicle positioned such that it could be used as a weapon. His actions mirror the dangers identified in *Sullivan*, where a defendant's refusal to comply while remaining behind the wheel of a running vehicle created serious risks to officer safety. Just as Sullivan's vehicle posed an immediate threat, Monnens' refusal to disengage the engine, surrender the keys, or stop searching inside the vehicle presented an equally substantial and imminent risk. The circuit court correctly found these actions created a substantial risk of physical injury under SDCL 22-11-4.

CONCLUSION

The record establishes that Monnens intentionally prevented the officers' efforts to arrest him and he used means that created a substantial risk of physical injury. Monnens' repeated refusals to exit a running, operable vehicle, combined with his continued rummaging and

agitation, fully support the circuit court's findings under SDCL 22-11-4(2). Viewing the evidence in the light most favorable to the State, a rational fact-finder could conclude that Monnens' conduct met each essential element of the offense. The conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. 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 3,207 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 3rd day of September 2026.

/s/ Renee Stellagher

Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 3, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Anthony Joseph Monnens* was served via Odyssey File and Serve upon John R. Hinrichs at john@hpslawfirm.com.

/s/ Renee Stellagher

Renee Stellagher
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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 31514

STATE OF SOUTH DAKOTA

APPELLEE,

VS.

ANTHONY MONNENS,

APPELLANT

PETITION FROM THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT
CODINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE DAWN ELSHERE
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

As in the Appellant's Brief filed on July 29, 2026, citations to pleadings and other documents in the Settled Record are designated as "*SR*" followed by the page number of the document as recorded in the clerk's Index. Citations to the transcript of the court trial (*SR* 132 *et seq.*) are designated as "*TR*" followed by the page number of the transcript and line number when appropriate. Citations to State's Exhibit 2, footage from the arresting officer's body camera received at trial, are designated as "*Ex. 2*" followed by the time stamp on the footage when appropriate. Citations to the Appellee's Brief filed on May 28, 2026, are designated as "*Appellee's Br.*" followed by the page number. Mr. Monnens also renews and incorporates by reference the citations and arguments made in his Appellant's Brief.

ARGUMENT

- 1. The risk from Monnens's conduct cited by the State is not substantial, in that it was not real and considerable in degree, but was imaginary or speculative.**

In his Appellant's Brief, Monnens proposed that the term "substantial risk" be defined as "a risk that is real, considerable in degree, and not imaginary or speculative." *Appellant's Br.* at 9. The State does not dispute the use of this definition. *Appellee's Br.* at 10 fn. 3. Under that standard, the conduct cited by the State did not create a substantial risk because the asserted danger rested on Deputy Lowry's subjective beliefs and the State's post-hoc view of the incident, not on an objectively real risk. Although Lowry may have perceived the situation as perilous based upon his training and

experience, that subjective belief alone is not adequate to support a conviction.

Although this Court's recent decision in *State v. Hawley* overturned a conviction on the grounds that an officer had made an unreasonable mistake of law, it is instructive on a point pertinent to this case. 2026 S.D. 37, 37 N.W.3d 308. As part of this ruling, the Court rejected the proposition that a hypothetical possibility, "unsupported by any facts in [the] record," could be the basis of criminal liability when the statute requires that a fact actually exist. *Id.* at ¶ 15, 37 N.W.2d at 315. Because Lowry's and the State's assertions of substantial risk rely on hypothetical scenarios, Monnens asks this Court to evaluate the facts in this case in the same manner.

The critical word in subsection SDCL § 22-11-4(2) is "creates." In other words, the means "used" by Monnens must have actually resulted in the existence of a substantial risk—it is not enough that means "could have" created a risk if no such risk actually came into being.¹ The statute does not ask whether an officer could subjectively believe that a risk exists, or whether a risk might exist in a hypothetical scenario imagined by the officer during the encounter or a prosecutor after-the-fact. It asks whether the defendant's means **actually** created a substantial risk of bodily injury at the time the encounter is occurring.

¹ Mr. Monnens does not assert that actual harm has to occur in order to prove he resisted arrest—only that a real risk actually existed; not just a subjective fear.

The State's own language in its brief demonstrates that it relies on subjective belief rather than objective circumstances. For example, the State cites Lowry's "assumption" and "concern" that Monnens was rummaging in his vehicle for a weapon. *Appellee's Br.* at 10. The State also cites the circuit court's finding that Monnens's vehicle "**could have** easily been used as [a] weapon" despite the fact that the vehicle was positioned that way before Monnens could form any criminal intent. These arguments ignore the fact that there was no evidence of intent, effort, or likelihood that this would occur. *Id.* at 11 (quoting SR 116). This language betrays the hypothetical, rather than substantial, nature of the asserted risk.

The State argues that it was reasonable for the officers to "assume" that Monnens was reaching for a weapon when he was rummaging in his vehicle. *Appellee's Br.* at 10. Of course, the officers are free to responsibly assume this, but the reasonableness of the assumption does not make their conjecture objectively true. If there were any evidence that Monnens had been searching for a weapon—or that a weapon actually existed—then he would have created a substantial risk.

However, there is no evidence that Monnens was in fact rummaging for a weapon; the circuit court found only that he "refused to show his hands."² SR 116. Lowry never testified that he assumed or feared that

² The circuit court's finding that Monnens refused to show his hands is not supported by the evidence. When Lowry asked Monnens to show his hands, Monnens responded by raising them in the air, outside the window of the

Monnens was looking for a weapon. *See generally TR* at 17-31. Even before Lowry asked Monnens, “can you stop reaching for stuff,” Monnens stated that there was nothing in the truck that could hurt anyone, and then declared that he was looking for his keys, gesticulating with open hands. *Appellee’s Br.* at 10:25:40.

Any perception that Monnens was threatening the officers with a weapon was dispelled by his own conduct. When asked if he had anything on him, Monnens readily admitted that he had a pocketknife on his person and allowed the officers to take it. *Ex. 2* at 10:28:12; *TR* at 26:18-27:2. This demonstrates that Monnens did not intend to use a weapon against an officer.

Likewise, the risk posed by Monnens’s truck being backed into a parking spot before he knew the reason for the stop, or not being turned off immediately upon request, was never more than hypothetical. Under other circumstances, such conduct might actually pose a risk, if the perpetrator otherwise demonstrates an intent to use those means to resist or flee. But there was no such evidence here.

truck, declaring “they’re right here” before putting his left hand back on the steering wheel and his right forearm on the open window frame in view of Lowry, where they remained until he started looking for his keys, at which point the officers follow up on the request. *Ex. 2* at 10:24:41.

2. There is no evidence that Monnens “used” the means cited by the State to resist arrest.

Regardless of what the officers’ opinion was regarding the risk posed by Monnens’s actions, Monnens never “used” any of these actions to resist arrest. Accepting for purposes of argument that the State is correct that the term “intentionally” in SDCL § 22-11-4 modifies “prevents or attempts to prevent,” and not “[u]sing any other means . . .”, the statute still requires intentional prevention by the alleged means.³ SDCL § 22-11-4(2). As the text of the statute makes clear, Monnens has to **use** the alleged means to resist arrest.

Monnens backed his vehicle into a parking space before he knew that Lowry wanted to take him into custody. The State acknowledges that Lowry only told Monnens that he was subject to an ATL “[a]fter Lowry initiated the traffic stop and Monnens backed into a parking spot.” *Appellee’s Br.* at 6. Clearly, Monnens was not “using” this parking method as a means to resist an arrest that he did not anticipate at the time he parked. Even after he found out that he might be arrested, he did not take advantage of his vehicle’s position to resist arrest.

³ Monnens incorporates by reference the argument in § II of Appellant’s Brief that the evidence was insufficient to establish specific intent to resist arrest under SDCL § 22-11-4, based on the fact that he backed his vehicle into the parking spot before being informed that he was subject to an ATL as well as the conditional nature of Lowry’s stated intent to arrest Monnens.

Likewise, regardless of how long Monnens's vehicle ran after Lowry made contact, Monnens ultimately shut it off before he got out. He did not attempt to drive away or even put the vehicle in gear—behavior that would have posed a genuine risk.⁴ Monnens never “used” his running vehicle to resist or threaten to resist arrest.

The State points out multiple times in its Appellee's Brief that Tony refused or declined “eleven lawful commands” to exit his vehicle before he did so. *Appellee's Br.* at 8, 9, 13, 14. This framing is hyperbolic. Not all of these references were phrased as “commands.” In fact, a number were phrased as requests. *Ex. 2* at 10:23:35, 10:23:40, 10:24:01, 10:25:20, 10:26:09, etc. Some of the repetition, particularly the first two requests, apparently occurred because Monnens could not hear the officer's instructions. *Id.* at 10:23:35. In addition, Monnens did not refuse all of these requests outright. Starting at 10:25:24 of exhibit 2, Monnens negotiated his exit, urging the officers not to handcuff him. Finally, these eleven-or-so requests occurred over a period of less than five minutes. The first request occurred at approximately 10:23:35, and Monnens got out of the truck at 10:28:01. This was not a long, drawn-out standoff with Monnens barricaded inside. Undoubtedly, Lowry's phrasing was calculated to coax Monnens's

⁴ Mr. Monnens respectfully objects to the State's reference to, reliance on, and speculation about facts concerning Mr. Monnens's vehicle ignition that are not part of the settled record. *Appellee's Br.* at p. 11 and fn. 4. *Spenner v. City of Sioux Falls*, 1998 S.D. 56, ¶ 9, 580 N.W.2d 606, 609-10.

compliance—another example of how Lowry’s deescalation tactics successfully prevented Monnens from actually resisting arrest. Monnens’s failure to comply with the “commands” may amount to obstructing law enforcement as defined by SDCL § 22-11-6, but it is not resisting arrest.

Monnens’s refusal to show his hands because he was rooting around in the vehicle for his keys was not a means that he used to resist arrest. The officers may have assumed that he was looking for a weapon, but the evidence does not support an objective conclusion that he actually was. In fact, as described *supra*, the evidence shows that he alerted the officers to the presence of a knife in his pocket and cooperated in Lowry’s seizure of the knife.

The only means that Monnens “used” to delay arrest—his argumentative demeanor and stubbornly sitting in his vehicle for five minutes after the first time that he was asked to exit—did not objectively pose a substantial risk of physical injury to anyone.

CONCLUSION

Lowry utilized deescalation techniques in order to coax Monnens from his vehicle and take him into custody. *Tr.* at 24, 31. Whether Monnens would have acted in an actually dangerous manner if Lowry had not used those techniques can never be known. However, Monnens cannot be criminally liable for what might have happened if Lowry had not used such techniques or if Monnens had not complied with them. Nor can he be criminally liable for

the State's post-hoc framing of his conduct in a manner that he never intended.

For these reasons, the State failed to present evidence that could establish to a reasonable finder of fact beyond a reasonable doubt that Monnens intentionally resisted arrest by using means that created a substantial risk of bodily injury. The conduct referenced by the circuit court and argued by the Appellee did not create a real and considerable risk. Monnens did not use his vehicle, his movements inside it, or his delayed compliance as a means to resist arrest. Monnens's actions did not pose a substantial risk of injury to anyone. Monnens did not intentionally use those means to resist arrest. The officers' assumptions or concerns, regardless of their reasonableness, were subjective and insufficient to convict Monnens. Lowry's deescalation techniques were successful. Monnens respectfully requests that this Court reverse his conviction under SDCL § 22-11-4(2) and remand with directions to enter a judgment of acquittal.

Respectfully submitted this 2nd day of October 2026.

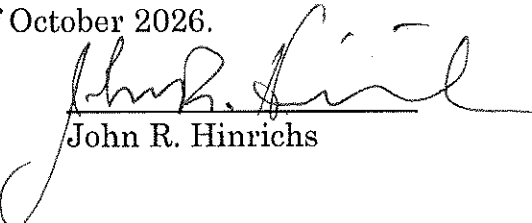
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CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). The undersigned certifies that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief is 12 pages long, including the cover sheet, Table of Contents, and Table of Authorities, and contains 2475 words and 10,052, characters, no spaces, excluding the cover sheet, Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service and Filing. Counsel relied on the word and character count of Microsoft Word word processing software used to prepare this brief at font size 12, Century Schoolbook, and left justified.

Dated this 2nd day of October 2026.



John R. Hinrichs

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a true and correct copy of this document and the attached appendix was served via the Unified Judicial System's Odyssey e-filing system, email, and first-class mail upon:

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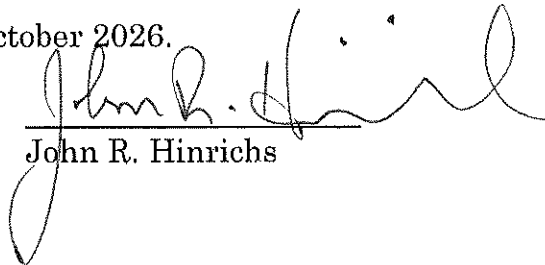
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