

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31296

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

DAVID POORBEAR,

Defendant and Appellant.

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

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLANT'S BRIEF

MATTHEW R. MIRABELLA
South Dakota Office of Indigent
Legal Services
PO Box 88237
Sioux Falls, SD 57109

Attorney for Defendant/ Appellant

MARTY JACKLEY
Attorney General
1302 Hwy 1889, Suite 1
Pierre, SD 57501

LARA ROETZEL
Pennington County State's Attorney
130 Kansas City Street, Suite 300
Rapid City, SD 57701

Attorneys for State/ Appellee

Notice of Appeal Filed on November 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	i
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT	3
STATEMENT OF LEGAL ISSUES.....	4
STATEMENT OF CASE	4
STATEMENT OF FACTS.....	10
ARGUMENT.....	21
CONCLUSION.....	34
CERTIFICATE OF COMPLIANCE	35
CERTIFICATE OF SERVICE	36
APPENDIX.....	37

TABLE OF AUTHORITIES

Cases:

<i>State v. Abraham-Medved</i> , 2014 S.D. 14, 4 N.W.3d 436	26-27
<i>State v. Anderson</i> , 2025 S.D. 45, 25 N.W.3d 269	27
<i>State v. Bauer</i> , 2014 S.D. 48, 851 N.W.2d 711.....	25
<i>State v. Bordeaux</i> , 2025 S.D. 55, 27 N.W.3d 45.....	31-33
<i>State v. Carter</i> , 2023 S.D. 67, 1 N.W.3d 674.....	22
<i>State v. Chapin</i> , 460 N.W.2d 420 (S.D. 1990).....	30
<i>State v. Evans</i> , 2021 S.D. 12, 956 N.W.2d 68	29-30
<i>State v. Golliher-Weyer</i> , 2016 S.D. 10, 875 N.W.2d 28	22
<i>State v. Hankins</i> , 2022 S.D. 67, 982 N.W.2d 21	29
<i>State v. . Janes</i> , 2026 S.D. 9, 32 N.W.3d 377.....	21-22
<i>State v. Lassiter</i> , 2005 S.D. 8, 692 N.W.2d 171	29
<i>State v. Phillips</i> , 2018 S.D. 2, 906 N.W.2d 411.....	22, 31
<i>State v. Roach</i> , 2012 S.D. 91, 825 N.W.2d 258	27
<i>State v. Steele</i> , 510 N.W.2d 661 (S.D. 1994)	30-31
<i>State v. Van Der Weide</i> , 2024 S.D. 18, 5 N.W.3d 577	24
<i>State v. Washington</i> , 2024 S.D. 64, 13 N.W.3d 492	21, 25

Statutes:

SDCL 19-19-404(b).....	29-30
SDCL 19-19-412	23-24, 28-29
SDCL 19-19-806.1	8
SDCL 22-22-1.3	9
SDCL 23A-11-2	6

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 31296

vs.

DAVID POORBEAR,

Defendant and Appellant.

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR.” The transcripts will be referred to as follows:

Initial Appearance (January 6, 2023) IA
Arraignment (February 6, 2023)..... ARR1
Arraignment (March 20, 2023) ARR2
Motion Hearing (April 17, 2023) MH1
Status Hearing (May 22, 2023) SH1
Status Hearing (June 26, 2023)..... SH2
Status Hearing (July 10, 2023) SH3
Pretrial Conference (November 20, 2023).....PTC1
Motion Hearing (January 8, 2024)..... MH2
Pretrial Conference (March 11, 2024) PTC2

Status Hearing (March 12, 2024)	SH4
Pretrial Conference (June 10, 2024).....	PTC3
Pretrial Conference (August 26, 2024)	PTC4
Status Hearing (September 16, 2024).....	SH5
Pretrial Conference (March 24, 2025)	PTC5
Motion Hearing (April 15, 2025)	MH3
Jury Trial (June 10, 2025)	JT1
Jury Trial (June 11, 2025)	JT12
Jury Trial (June 12, 2025)	JT3
Jury Trial (June 13, 2025)	JT4
Status Hearing (June 23, 2025).....	SH6
Status Hearing (July 7, 2025)	SH7
Sentencing Hearing (September 8, 2025)	SENT1
Sentencing Hearing (October 20, 2025).....	SENT2

All transcript references will be followed by the appropriate page number. All Exhibits are referred to as “Ex.” and will be followed by the appropriate number or letter.

Defendant and Appellant, Mr. David Poorbear, will be referred to as “Poorbear.” Ms. Deanna Bear Runner will be referred to as “Bear Runner.” Bear Runner’s minor child, K.J., will be referred to as “K.J.” Bear Runner’s mother, Ms. Maria Provost, will be referred to as “Provost.” The State’s Expert Forensic

Interviewer, Ms. Monica Eaton-Harris, will be referred to as “Eaton-Harris.” The State’s Attorney’s Office’s Investigator, Mr. Steven Neavill, will be referred to as “Neavill.” Officer Michael Chasing Horse of the Box Elder Police Department will be referred to as “Chasing Horse.” Senior Officer Eric Holmquist of the Rapid City Police Department will be referred to as “Holmquist.” Monument Health Rapid City Hospital Emergency Department Nurse, Ms. Andrea Bortko, will be referred to as “Bortko.” Investigator Michael Cristol of the Box Elder Police Department will be referred to as “Cristol.” South Dakota Forensic Laboratory Forensic DNA analyst, Ms. Molly Raber, will be referred to as “Raber.” Ms. Morning Star Hill will be referred to as “Hill.” Senior Officer Zach Walsh of the Rapid City Police Department will be referred to as “Walsh.” Detective Morgan Smith of the Rapid City Police Department will be referred to as “Smith.” Ms. Jasmine Kendall will be referred to as “Kendall.” Investigative Assistant, Ms. Josie Frank, of the Pennington County Sherriff’s Office will be referred to as “Frank.” Ms. Karen Greene will be referred to as “Greene.” Mr. Gerald Baker will be referred to as “Baker.” Domestic Violence Expert, Ms. Krista Heeren-Graber, will be referred to as “Heeren-Graber.” Ms. Lakota Nollett will be referred to as “Nollett.”

JURISDICTIONAL STATEMENT

Poorbear appeals from the Judgment entered on October 22, 2025, by the Honorable Joshua Hendrickson, Circuit Court Judge of the Seventh Judicial

Circuit. SR 799-801. Poorbear timely filed Notice of Appeal on November 17, 2025. SR 803. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUES

I. WHETHER TRIAL COUNSEL’S FAILURE TO ADHERE TO SDCL 19-19-412 CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

The circuit court did not rule on this issue.

State v. Anderson, 2025 S.D. 45, 25 N.W.3d 269

State v. Gollither-Weyer, 2016 S.D. 10, 875 N.W.2d 28

State v. Janes, 2026 S.D. 9, 32 N.W.3d 377

SDCL 19-19-412

II. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING OTHER-ACTS EVIDENCE.

The circuit court admitted other-acts evidence over Poorbear’s objection finding the other-acts admissible under SDCL 19-19-404(b).

State v. Evans, 2021 S.D. 12, 956 N.W.2d 68

State v. Steele, 510 N.W.2d 661 (S.D. 1994)

SDCL 19-19-404

STATEMENT OF THE CASE

On January 6, 2023, the State filed a Complaint charging Poorbear with five criminal offenses. SR 1. That same day, Poorbear appeared in magistrate court for an initial appearance. *See generally* 1A. On January 19, 2023, a Pennington County Grand Jury returned an Indictment charging Poorbear with

nine criminal offenses. SR 28-31. On January 25, 2023, the State filed a Part II Information, alleging Poorbear had two prior felony convictions. SR 33.

On February 6, 2023, the circuit court held an arraignment and advised Poorbear of the charges, the Part II Information, the maximum penalties of each charge, and his constitutional and statutory rights. ARR1 3-9. On March 1, 2023, a Pennington County Grand Jury returned a twelve-count Superseding Indictment charging Poorbear with the following criminal charges:

- Counts 1-2: 2nd Degree Rape, a Class 1 Felony, in violation of SDCL 22-22-1(2)
- Count 3: 2nd Degree Kidnapping, a Class 3 Felony, in violation of SDCL 22-19-1.1(3)
- Counts 4-5: Aggravated Assault, a Class 3 Felony, in violation of either SDCL 22-18-1.1(2) or SDCL 22-18-1.1(8)
- Count 6: Child Abuse, a Class 4 Felony, in violation of SDCL 26-10-1
- Counts 7-8: Criminal Solicitation, a Class 5 Felony, in violation of SDCL 22-4A-1(6)
- Counts 9-10: Simple Assault, a Class 1 Misdemeanor, in the alternative, in violation of either SDCL 22-18-1(1) or SDCL 22-18-1(5)
- Count 11¹: Violation of No Contact Order, a Class 1 Misdemeanor, in violation of SDCL 25-10-13
- Count 12: Intentional Property Damage, a Class 2 Misdemeanor, in violation of SDCL 22-34-1(2)

SR 63-66. That same day, the State filed an amended Part II Information. SR 68.

On March 20, 2023, the circuit court held an arraignment and advised Poorbear of the Superseding Indictment and the amended Part II Information. ARR2 3-10.

¹ On June 10, 2025, the State filed a dismissal of Count 11. SR 369; JT1 8.

On April 17, 2023, the circuit court held a motions hearing and granted standard pre-trial non-evidentiary motions from both parties. MH1 2.

On May 12, 2023, Poorbear wrote a letter to the circuit court requesting different defense counsel. SR 109-110. On May 15, 2023, defense counsel filed a motion to withdraw as counsel. SR 111. On May 22, 2023, the circuit court held a status hearing where the court granted defense counsel's motion to withdraw and appointed substitute counsel. SH1 2-4; SR 115-117. On June 26, 2023, the circuit court held a status hearing and continued the matter. SH2 5. On July 10, 2023, the circuit court held a status hearing and scheduled a jury trial. SH3 5-6.

On September 1, 2023, pursuant to SDCL 23A-11-2, the defense filed a motion for relief from prejudicial joinder of charges, specifically requesting severance of the Criminal Solicitation and Violation of No Contact Order charges. SR 126-133. On November 20, 2023, the circuit court held a pre-trial conference where the court imposed a briefing deadline for the State to respond to defense's severance motion. PTC1 4-5. On December 4, 2023, the State filed its objection to defense's severance motion. SR 138-144. On December 6, 2023, the defense filed its reply to the State's objection to severance. SR 168-172. On January 8, 2024, the circuit court held a motions hearing where the court denied the defense's motion for severance. MH2 2-4; SR 284.

On March 11, 2024, the State filed its Notice of Trial Witnesses and Tangible Evidence², Notice of Domestic Violence Expert Witness, Notice of Sexual Assault Nurse Examiner Expert Witness, and Notice of Forensic Interviewer Expert Witness. SR 178-199. That same day, the circuit court held a pre-trial conference and continued the matter to the next day. PTC2 5-6. On March 12, 2024, the circuit court held a status hearing and rescheduled the jury trial. SH4 6-7. On April 2, 2024, defense counsel filed a motion to withdraw as counsel due to closure of his law practice. SR 201. The circuit court granted the motion to withdraw and appointed substitute counsel. SR 202-205.

On June 10, 2024, the circuit court held a pre-trial conference and rescheduled the jury trial due to the change in defense counsel. PTC3 3-4. On August 26, 2024, the circuit court held a pre-trial conference and rescheduled the jury trial to accommodate plea negotiations between the parties. PTC4 2-4. On September 16, 2024, the circuit court held a status hearing where Poorbear withdrew his request for a different defense attorney. SH5 2-4.

On March 24, 2025, the circuit court held a pre-trial conference and scheduled an evidentiary motions hearing regarding the defense's objection to the State's Notice of Forensic Interviewer Expert Witness and Notice of Intent to

² On June 7, 2024, the State filed an amended Notice of Trial Witnesses and Tangible Evidence. SR 254-255. On June 3, 2025, the State filed a second amended Notice of Trial Witnesses and Tangible Evidence. SR 353-354.

Offer Child Hearsay Evidence³. PTC5 5-6. In addition, the circuit court denied the defense's objection to the State's Notice of Intent to Offer Other-Acts Evidence⁴. PTC5 6-7. Finally, the circuit court denied the defense's objection to the State's Notice of Domestic Violence Expert⁵. PTC5 7.

On April 15, 2025, the circuit court held an evidentiary motions hearing and Eaton-Harris testified generally to the procedures of forensic interviews of child witnesses. MH3 5-16. On February 3, 2023, Eaton-Harris conducted a forensic interview of K.J. MH3 16-17; JT2 202-203, 207. The State introduced into evidence K.J.'s recorded forensic interview, Eaton-Harris's forensic interview report, and a picture of a hammer drawn by K.J. MH3 26-30. After Eaton-Harris testified, the circuit court reviewed the recorded forensic interview in chambers. MH3 38. After reviewing the recording, the circuit court denied the defense's objection to the Child Hearsay Notice. MH3 41-48.

³ On August 12, 2024, the State filed its Notice of Intent to Offer Child Hearsay Evidence pursuant to SDCL 19-19-806.1. SR 261-275. On March 17, 2025, the defense filed its objection to the notice. SR 314-315. On June 10, 2026, during the jury trial, the defense renewed its objection. JT1 16-17.

⁴ On June 7, 2024, the State filed its Notice of Intent to Offer Other-Acts Evidence pursuant to SDCL 19-19-404(b). SR 209-220. On March 17, 2025, the defense filed its objection to the notice. SR 315-317. On June 10, 2026, during the jury trial, the defense renewed the objection. JT1 7-8.

⁵ On March 11, 2024, the State filed its Notice of Intent to Offer Domestic Violence Expert. SR 181-187. On March 17, 2025, the defense filed its objection to the notice. SR 317-318. On June 10, 2026, during the jury trial, the defense renewed the objection. JT1 8.

The circuit court held a four-day jury trial beginning on June 10, 2025, and concluding on June 13, 2025. *See generally* JT1; JT2; JT3; JT4. In the afternoon of June 13, 2025, jury deliberations began. JT4 686. After seven hours of jury deliberations, the jury returned guilty verdicts on Counts 1 and 2 (2nd Degree Rape), Count 3 (2nd Degree Kidnapping), Count 6 (Child Abuse), Counts 7 and 8 (Criminal Solicitation), Count 10 (Simple Assault), and Count 12 (Property Damage). JT4 686, 690-694; SR 561-562. The jury returned not guilty verdicts on Counts 4 and 5 (Aggravated Assault) and Count 9 (Simple Assault). JT4 690-694; SR 561-562. Pursuant to SDCL 22-22-1.3, the circuit court ordered the requisite psychosexual evaluation. JT4 695; SR 579-581.

On June 23, 2025, the circuit court held a status hearing and continued the matter pending resolution to the Part II Information. SH6 2-3; SH7 2. On July 7, 2025, the circuit court held a change of plea hearing where Poorbear admitted to the Part II Information and the court scheduled a sentencing hearing. SH7 3-8. On September 8, 2025, the circuit court continued the sentencing hearing at the request of defense counsel. SENT1 4-6.

On October 20, 2025, the circuit court held a sentencing hearing. *See generally* SENT2. Defense counsel filed a written sentencing memorandum, orally advocated mitigating factors at the sentencing hearing, and requested a fifteen-year penitentiary sentence. SENT2 2-3, 9, 13-14; SR 591-592. Regarding Counts 1 and 2, the State requested a one-hundred-year penitentiary sentence with twenty

of those years suspended. SENT2 6-11. Regarding Counts 3 and 6-8, the State requested indeterminant, concurrent penitentiary sentences. SENT2 11.

On Counts 1-2, the circuit court imposed a forty-year penitentiary sentence to be served concurrently. SENT2 15. On Count 3, the circuit court imposed a fifteen-year penitentiary sentence to be served concurrently to Counts 1-2. SENT2 16. On Count 6, the circuit court imposed a ten-year penitentiary sentence to be served consecutively to Counts 1-3. SENT2 16. On Counts 7-8, the circuit court imposed a five-year penitentiary sentence to be served concurrently with each other and consecutive to Counts 1-3 and Count 6. SENT2 16.

STATEMENT OF FACTS

At trial, Bear Runner testified that she met Poorbear when they were children in the seventh grade and they reconnected through social media in December of 2022. JT1 28-29. On January 3, 2023, Bear Runner and Poorbear had been dating for approximately a week and exchanged social media text messages. JT1 31; JT2 257. Subsequently, Poorbear arrived at Bear Runner's Box Elder, South Dakota, residence, and she let him into the home. JT1 31, 82. Bear Runner testified that Poorbear followed her into her bedroom, closed and locked the door, and began questioning her about her social media activity while he stood in front of the bedroom door. JT1 32. Poorbear broke her cell phone during the argument. JT1 46.

Bear Runner contended that Poorbear hit her multiple times "really hard" with a silver chain on her legs and back while he screamed at her about social

media. JT1 33-34. K.J. also testified that Poorbear hit Bear Runner with a chain. JT2 183. Bear Runner testified that Poorbear hit her multiple times with a sock believed to be filled with screws. JT1 36; JT1 81 (“I was hit with the chain. I was hit with the sock and the screws.”).

On direct examination, Bear Runner testified that Poorbear threatened her with a hammer. JT1 36; JT2 105. However, on cross-examination, Bear Runner denied that threats with a hammer occurred. JT2 121. Moreover, during an interview with Neavill on February 7, 2023, Bear Runner told him “that she did not have a hammer in the room at the time of the assault and that [Poorbear] did not use it on her.” JT4 553.

K.J. testified that Poorbear stated “I’m gonna hammer your mom’s head until she dies” and K.J. observed him grab the hammer. JT2 185-186. However, later at trial, Eaton-Harris testified that law enforcement interviewed K.J. before the forensic interview took place and K.J. never asserted any threats related to the use of a hammer during that first interview conducted by law enforcement. JT2 217-218.

Bear Runner sat on the bed with K.J. because Poorbear “told me he was gonna kill both of us if I didn’t sit down.” JT1 35. After Bear Runner sat down, he “zip-tied” her wrists and stated she “was gonna get raped by him and his friends.” JT1 37. K.J. left the room and the zip-ties were removed. JT1 38-39. Poorbear made her “lay down and took [her] undergarments off and had sex with [her] in a rough way.” JT1 40. Bear Runner contended that Poorbear choked

her with his hands and she was unable to breathe during sexual intercourse. JT1 41; JT2 119. However, law enforcement body-camera footage introduced into evidence on cross-examination recorded Bear Runner stating to law enforcement “I’m not saying I was raped.” JT2 119-120; Ex. A. Bear Runner and Poorbear had sexual intercourse a second time before Poorbear left for work. JT1 43-45.

Bear Runner testified that Poorbear kept her from leaving the bedroom for over twenty-four hours. JT1 42, 45, 79; JT2 131, 144. On January 4, 2023, Bear Runner and K.J. went to a neighbor’s residence and called law enforcement. JT1 48-49. Approximately a week later, Provost testified that she visited her daughter and photographed bruises she observed. JT2 231-237; Ex. 39-41. Provost sent the photographs to Neavill. JT2 238.

At trial, the primary law enforcement officer for this case, Chasing Horse, testified that on January 4, 2023, dispatch sent him to Bear Runner’s residence to respond to a domestic assault 911 call. JT2 248-250. Chasing Horse spoke with Bear Runner and observed some injuries, such as a red mark under her ear and on her legs. JT2 254-256. Chasing Horse took photographs of the residence and items located within the residence. JT2 261-264, 271; Ex. 42-47. He photographed a chain wrapped in shoestring found in the bedroom, a string law enforcement cut to open the backdoor to the residence, zip-ties found in the bedroom, and a sock “full of nails.” JT2 264-266. Chasing Horse collected the sock and the chain. JT2 267-268. Chasing Horse contacted the Rapid City Police Department for assistance with locating and arresting Poorbear. JT2 257-258.

Holmquist testified that the Box Elder Police Department contacted the Rapid City Police Department requesting an attempt to locate Poorbear at his place of employment, specifically a Burger King restaurant in Rapid City, South Dakota. JT3 306. Holmquist arrested Poorbear at Burger King on January 4, 2023. JT3 306.

At trial, the circuit court recognized Bortko as an expert witness in the field of forensic nursing, specifically sexual assault medical examinations. JT3 318-319. On January 4, 2023, Bortko medically examined Bear Runner at the Rapid City Monument Health Hospital's Emergency Department. JT3 314, 325-326, 329. Bortko took photographs of bruises observed on Bear Runner's left leg, both sides of her neck, lower left torso, and right lateral wrist. JT3 331-336, 347-349, 354; Ex. 50-65. Bortko completed a Sexual Assault Response Toolkit ("SART") examination for purposes of collecting possible DNA evidence. JT3 336-338; Ex. 66. As part of the SART kit, Bortko collected oral⁶, buccal⁷, fingertip⁸,

⁶ "The oral is mostly the patient or the victim wetting the cotton swab with their own saliva and holding it in their mouth for a while." JT3 336.

⁷ "A buccal swab is you take the two cotton swabs and you almost, like, make pretend you're brushing your teeth and you rub it on your gums and your cheek (indicating)." JT3 336.

⁸ "And the fingertip swabs, I wet the cotton - the cotton swabs and I roll them in one direction over every fingertip, two for each hand (indicating)." JT3 336.

mons pubis⁹, anal¹⁰, and pelvic swabs¹¹. Bortko testified that her medical examination of Bear Runner did not reveal any vaginal injuries. JT3 347.

Cristol testified that he interviewed Poorbear at the Pennington County Jail, searched Poorbear's cell phone and sent it to the South Dakota Forensic Laboratory, and wrote a warrant for Poorbear's DNA sample collection and sent the sample to the lab. JT3 374-375, 382. During the interview, Poorbear stated that on January 3, 2023, "[h]e had had an argument with his girlfriend. They had been together two to three weeks. He was living in her trailer with her[.]" JT3 377.

Poorbear stated in the interview that on January 4, 2023, he had sexual intercourse with Bear Runner in the shower before he left for work. JT3 377.

Cristol collected a buccal swab from Poorbear for potential DNA purposes and sent the sample to the lab for testing. JT3 382. Additionally, Cristol sent the SART kit, chains and zip-ties collected at Bear Runner's residence, and Bear Runner's buccal swab to the lab for testing. JT3 382.

At trial, the circuit court recognized Raber as an expert witness in the field of forensic DNA¹² testing. JT3 416. Raber worked at the South Dakota Forensic

⁹ "And the mons pubis, I also we that with distilled water and roll that over, which is just like the skin area above your pubic bone." JT3 336.

¹⁰ "And then the anal swab, it's more - there's two. There's the perineum, which is the space below the vagina, above the anus. I roll that. And then I actually take a swab and roll it in the anus a tiny bit." JT3 337.

¹¹ "And then the pelvic, I do two swabs around the cervix, two swabs on the vaginal wall." JT3 337.

¹² "DNA is the primary genetic carrier of information from parents to their children. In forensic science, we can use DNA to uniquely identify one person from another." JT3 417.

Laboratory in Pierre, South Dakota. JT3 413. Raber received the following evidentiary items from law enforcement for purposes of DNA analysis: (1) metal chain, (2) three zip-ties, (3) SART kit, (4) Bear Runner's DNA sample, and (5) Poorbear's DNA sample. JT3 421.

Regarding the zip-ties, Raber testified that the testing revealed a mixture of DNA from three individuals. JT3 436. Raber took the DNA profile from the zip-ties "[a]nd then I compared it to David Poorbear and Deanna Bear Runner's known DNA samples and they did not match. So there were DNA types present in their DNA profiles that weren't consistent with the evidence profile." JT3 436-437. In other words, Raber testified "I can't say if it is or is not Deanna or David Poorbear on that item." JT3 437-438, 450. Regarding the metal chain, Raber performed forensic DNA testing and Poorbear's DNA was not present. JT3 449-450. Raber performed Y-STR forensic DNA testing¹³ on Bear Runner's vaginal swabs which produced a result of "a single male DNA profile, so only one

¹³ "STR testing is a total DNA test. So it tests both male and female DNA from several different locations on several different chromosomes. The Y-STR testing only looks at the Y chromosome, so – and only males have Y chromosomes. So even though you might have a sample that has a mix of female and male DNA, the STR testing would show both male and female profiles. The Y-STR testing is going to kind of ignore that female DNA and only look at the male DNA present." JT3 426.

"So, for example, if you have like a vaginal/cervical swab, that is a very high quantity DNA source for female DNA and it might mask any male DNA present. So we use the Y-STR testing to kind of ignore that female DNA so we can kind of hone in on the male DNA that's there." JT3 427.

individual, one male contributing DNA to this sample. I compared it to David Poorbear's DNA profile and it was consistent with his DNA profile." JT3 441.

At the conclusion of Raber's DNA testimony, the State called four witnesses that were not connected to the events of January 3-4, 2023. JT3 456. First, Hill testified that she dated Poorbear "[a] couple years ago. I'm not too sure" for "[l]ike a couple months maybe." JT3 459. Hill testified that on February 13, 2022, she argued with Poorbear over telephone text messages, he went to her apartment, and "he had broken my phone, locked me in, and [Hill] was held in my apartment for a couple days, I think." JT3 460-461. Hill testified that Poorbear threatened her and her children, and "wouldn't let [her] go to the door" to leave. JT3 461-462.

Hill contended that Poorbear punched and kicked her, "threw [her] around," "used knives to [her] throat," "hog-tied" her, and choked her. JT3 462. Furthermore, Hill testified that Poorbear hit her with "a makeshift weapon" (Ex. 72) and "gave [her] a choice. He was gonna hit [her] or he was gonna rape [her]." JT3 464, 466. Hill testified that Poorbear anally raped her. JT3 466. Hill's neighbor "heard the commotion" and contacted law enforcement who went to Hill's residence. JT3 467. Hill gave a statement to law enforcement but did not report an allegation of rape at the time. JT3 468.

Walsh testified after Hill regarding the alleged events of February 13, 2022. JT3 472-485. In response to Hill's neighbor's call to law enforcement, Walsh went to Hill's residence. JT3 475. Walsh asked Poorbear "what had been going

on.” JT3 478. Poorbear stated an argument took place over property and denied an assault occurred. JT3 478. Additionally, Walsh testified that Poorbear lied about his name and attempted to run away from law enforcement. JT3 479-481. After Walsh arrested Poorbear for simple assault, Walsh contended Poorbear stated “I would have killed Morning Star” and he “got away from doing something very, very bad.” JT3 483. Smith testified after Walsh regarding the alleged events of February 13, 2022. JT3 485-. Smith assisted Walsh with the investigation. JT3 488. Smith spoke with Hill who reported Poorbear physically assaulted her. JT3 488-489.

Next, Kendall testified that she met Poorbear through social media and they dated for a few months in 2021. JT3 496-497. In April of 2021, Kendall, her son, and Poorbear visited her grandmother. JT3 499-500. Kendall alleged that Poorbear woke her up in the middle of the night, kicked her in the ribs, used a blow torch to break her phone, stated “he’d bash [her] son’s fucking head in if [she] didn’t calm down,” and threatened to slit her grandmother’s throat. JT3 500-503. Kendall did not report this incident to law enforcement at the time. JT3 509.

Additionally, Kendall testified to a separate incident alleged a week or two later in April 2021. JT3 504. While at the Howard Johnson Hotel in Rapid City, South Dakota, Kendall contended that Poorbear “punched [her] in front of [her] kids” and “beat the shit out of me in front of [her] kids.” JT3 505. Kendall did not report this incident to law enforcement at the time. JT3 509. Moreover,

Kendall testified that Poorbear dropped her three-year-old child in the hotel pool and laughed about it. JT3 507. Kendall went into the pool to assist her son who did not have the ability to swim. JT3 507. Finally, Kendall testified to a third incident where Poorbear allegedly threatened to “beat” her with a bat. JT3 507-508. Kendall reported this alleged incident to law enforcement at the time. JT3 509.

Next, the State called Frank to testify at trial. JT3 510. Frank worked as an investigative assistant for the Pennington County Sherriff’s Office. JT3 511. Frank monitored telephone calls made by inmates at the Pennington County Jail. JT3 511. Neavill asked Frank to collect information regarding telephone calls made from the jail by Poorbear between January 4-20, 2023. JT3 513-514. Frank compiled the jail telephone calls within that date range and provided them to Neavill. JT3 514. Frank neither listened nor reviewed the content of the jail calls nor knew any information about this case. JT3 514.

After Frank, Greene testified. JT3 516. In January of 2023, Poorbear and Greene were in a romantic relationship. JT3 517. During Poorbear’s incarceration at the Pennington County Jail, Greene visited with him through video chats and messaging. JT3 517. The State asked Greene whether Poorbear instructed her “to do anything” regarding Bear Runner and Greene answered “No.” JT3 518. On cross-examination, Greene testified that Poorbear requested that she log into his Facebook social media account to obtain “evidence of transactional messages between him and” Bear Runner. JT3 520-521. In January of 2023, Greene logged

into Poorbear's social media account and reviewed messages between Poorbear and Bear Runner. JT3 521-522. Greene testified that the messages indicated Bear Runner invited Poorbear to her residence. JT3 521. Subsequently, Greene logged into Poorbear's social media account again and discovered all of Bear Runner's messages to Poorbear, that she viewed in January of 2023, were deleted. JT3 523. However, Poorbear's messages remained available on the account. JT3 523.

Next, Neavill testified that he investigated this case on behalf of the Pennington County State's Attorney's Office. JT3 523-528. Neavill obtained and reviewed Poorbear's jail telephone communications from January 5 and January 7 of 2023. JT3 529-531; Ex. 73-74. Regarding the first jail call, Neavill testified that Poorbear "was attempting to solicit someone named Troy to go out and bust out some of [Bear Runner's] windows." JT3 532; Ex. 73. Regarding the second jail call, Neavill testified that Poorbear "was attempting to have Ms. Greene have law enforcement go over to...Ms. Bear Runner's residence in an attempt to intimidate her to drop the charges." JT4 541; Ex. 74.

Additionally, Neavill formally interviewed Bear Runner "at least twice" and spoke with her throughout the case "to varying degrees" approximately six times. JT3 528. On February 7, 2023, Bear Runner told Neavill that Poorbear kept her at her residence against her will from the early morning of January 3 until the afternoon of January 4 when he left for work at Burger King. JT4 545-547. However, Neavill spoke with Poorbear's manager who provided Poorbear's timesheet of hours worked, reviewed the restaurant's fingerprint-based

timesheet system, and confirmed that Poorbear worked a shift at Burger King during the evening of January 3, 2023. JT4 547-549. Subsequently, Neavill again interviewed Bear Runner and confronted her with this information. JT4 549. In response, Bear Runner told Neavill it was possible Poorbear “could have slipped away and gone to work on the 3rd and came back” to her residence after work. JT4 549.

Moreover, during the February 7, 2023, interview Neavill questioned Bear Runner regarding Poorbear’s assertion, during his aforementioned interview with law enforcement witness Cristol, that a former boyfriend of Bear Runner’s, Baker, assaulted her to the point she went to a hospital for medical care. JT4 550; JT3 390. Bear Runner told Neavill “that she had never been assaulted by Gerald Baker.” JT4 550-551. On May 10, 2023, Neavill confronted Bear Runner with a law enforcement report, dated May 22, 2022, that established Bear Runner previously accused Baker of assaulting her. JT4 551-552. In response, Bear Runner admitted that Baker previously assaulted her. JT4 551.

At trial, the circuit court recognized Heeren-Graber as an expert witness in the fields of social work and domestic abuse. JT4 564. Heeren-Graber testified generally regarding the dynamics of domestic violence between intimate romantic partners. JT4 556-586. Heeren-Graber testified that the only knowledge or information she had of this case was Poorbear’s last name “because [she] received a subpoena.” JT4 562. After Heeren-Graber testified, the State rested. JT4 588.

After the State rested, the defense called one witness, Nollett. JT4 593. Nollett testified that Poorbear, her older brother, and Bear Runner had a “toxic” romantic relationship. JT4 594-595. On January 4, 2023, Poorbear texted Nollett and requested a ride to work at Burger King. JT4 598-599. Nollett went to pick up Poorbear to take him to work. JT4 598-599. Nollett observed Bear Runner “behind him and she’s doesn’t want him to leave” her residence. JT4 599. Nollett observed Bear Runner “[h]anging on to his shirt, his arms. She didn’t want him to leave.” JT4 600. Poorbear entered Nollett’s vehicle and they drove away. JT4 600. After Nollett testified, the defense rested. JT4 612.

ARGUMENT

I. TRIAL COUNSEL’S FAILURE TO ADHERE TO SDCL 19-19-412 CONSTITUTED PREJUDICIAL INEFFECTIVE ASSISTANCE OF COUNSEL.

A. Standard of Review

Generally, this Court does “not review a claim for ineffective assistance of counsel on direct appeal.” *State v. Janes*, 2026 S.D. 9, ¶ 45, 32 N.W.3d 377, 389. “The rule is a practical one, necessitated by the fact that the record on direct appeal typically does not afford a basis to review the performance of trial counsel.” *State v. Washington*, 2024 S.D. 64, ¶ 39, 13 N.W.3d 492, 503 (citation modified). The “preferred arena for an ineffective assistance of counsel claim is a habeas corpus proceeding where attorneys charged with ineffectiveness can explain or defend their actions and strategies, and thus a more complete picture

of what occurred is available for review.” *Id.* (quoting *State v. Dillon*, 2001 S.D. 97, ¶ 28, 632 N.W.2d 37, 48).

This Court will “depart from this principle only when trial counsel was so ineffective and counsel’s representation so casual as to represent a manifest usurpation of the defendant’s constitutional rights.” *State v. Carter*, 2023 S.D. 67, ¶ 73, 1 N.W.3d 674, 696-97 (citation modified). “In other words, it must be ‘obvious on the record that the defendant has been deprived of his constitutional rights to counsel and a fair trial.’” *State v. Phillips*, 2018 S.D. 2, ¶ 22, 906 N.W.2d 411, 417 (quoting *State v. Chipps*, 2016 S.D. 8, ¶ 17, 874 N.W.2d 475, 482).

To “be entitled to relief on a claim of ineffective assistance of counsel, a defendant must show both that his counsel provided ineffective assistance and that he was prejudiced as a result.” *Janes*, 2026 S.D. 9, ¶ 46, 32 N.W.3d at 389-90.

B. Trial counsel’s failure to observe SDCL 19-19-412 fell significantly below an objective standard of reasonable representation and constituted ineffective assistance of counsel.

“Counsel is ineffective when a defendant shows that counsel’s representation fell below an objective standard of reasonableness.” *State v. Golliher-Weyer*, 2016 S.D. 10, ¶ 8, 875 N.W.2d 28, 31 (quoting *State v. Thomas*, 2011 S.D. 15, ¶ 21, 796 N.W.2d 706, 713).

Here, the circuit court appointed defense counsel to this case on April 16, 2024. SR 203. The next day, defense counsel filed a formal Notice of Appearance as counsel for Poorbear. SR 204. The jury trial began on June 10, 2025. SR 1240.

Therefore, defense counsel had well over a year to review discovery, perform legal research, and prepare to defend the case at trial.

The most significant charges Poorbear faced at trial were Counts 1-2, both second-degree rape allegations. SR 63-66. The State called Bear Runner as its first witness on the first day of the jury trial. JT1 26. Early on in defense counsel's cross-examination of Bear Runner, counsel asked "How many times before this incident is alleged to have occurred did you and Mr. Poorbear have consensual sex?" JT1 62. The State objected and the circuit court sustained the objection. JT1 62. Thereafter, defense counsel continued cross-examination. JT1 62-70. The circuit court ordered a recess in the middle of cross-examination in order to make a record with the parties outside the presence of the jury due to a discovery violation issue raised by the State. JT1 70-73.

After the circuit court resolved the State's discovery objection, the court additionally used this recess outside the presence of the jury to make a record regarding the cross-examination question on prior consensual sexual contact between Poorbear and Bear Runner. JT1 73-75. The circuit court explained "Defense had asked essentially about prior consensual sexual acts. We had a bench conference where the Court indicated essentially that there was concern of this being evidence that would be protected under the Rape Shield, 19-19-412." JT1 73. The circuit court sustained the State's objection due to failure of defense counsel to file a pre-trial notice pursuant to SDCL 19-19-412. JT1 75.

“SDCL 19-19-412 establishes a presumption that evidence of the victim’s other sexual acts or sexual predisposition is inadmissible in civil or criminal proceedings involving alleged sexual misconduct.” *State v. Van Der Weide*, 2024 S.D. 18, ¶ 38, 5 N.W.3d 577, 588. Pursuant to “SDCL 19-19-412(b)(1), specific instances of the victim’s sexual conduct with the accused are admissible to prove consent[.]” *Id.*

However, SDCL 19-19-412(c) outlines the requisite statutory procedure an attorney must follow in order to seek admissibility of this evidence. First, the statute requires the party seeking to introduce this evidence to file a pre-trial motion “that specifically describes the evidence and states the purpose for which it is to be offered.” SDCL 19-19-412(c)(1)(A). Second, the statute requires that the motion is filed with the trial court at least fourteen-days before trial unless good cause exists for a different deadline. SDCL 19-19-412(c)(1)(B). Third, the statute requires that the party seeking to introduce this evidence “notify the victim, or when appropriate, the victim’s guardian or representative.” SDCL 19-19-412(c)(1)(D). Fourth, the statute requires the circuit “court must conduct an in camera hearing and give the victim and parties a right to attend and be heard.” SDCL 19-19-412(c)(2).

Here, defense counsel followed none of the procedures specifically outlined in SDCL 19-19-412. Defense counsel failed to file a 412 pre-trial motion of any sort, let alone a detailed motion that specified the proffered evidence’s admissibility. Defense counsel failed to adhere to the two-week pre-trial notice

requirement. Defense counsel failed to observe the requirement for advance notice to the victim regarding the victim's opportunity to be heard. Defense counsel raised the issue in the middle of the jury trial preventing the circuit court from conducting the requisite in camera pre-trial hearing. Therefore, defense counsel's representation fell significantly below an objective standard of reasonableness and constituted ineffective assistance of counsel.

C. Poorbear's appellate record is sufficiently developed for review on direct appeal.

Generally, a habeas corpus proceeding is "the preferred arena" for this Court to evaluate ineffective assistance of counsel claims. *Washington*, 2024 S.D. 64, ¶ 39, 13 N.W.3d at 503. A habeas corpus proceeding provides defense counsel an opportunity to defend his or her actions. *Id.* It is a rare case that contains a sufficient appellate record to justify review of an ineffective claim on direct appeal. *See e.g. State v. Bauer*, 2014 S.D. 48, ¶ 24, 851 N.W.2d 711, 718.

Here, Poorbear's appellate record constitutes that rare case where a habeas corpus evidentiary hearing is not needed and the matter is ripe for this Court's review on direct appeal. Defense counsel had the opportunity to explain counsel's actions or strategies before the circuit court during the jury trial. Poorbear respectfully submits that defense counsel's record before the circuit court established that counsel agreed the representation on the issue of SDCL 19-19-412 constituted ineffective assistance.

At the beginning of the second day of the jury trial, defense counsel requested access to the record outside the presence of the jury in order to supplement the record made on the first day of trial. JT2 91. Defense counsel advised the circuit court that counsel understood it did not comply with the fourteen-day notice requirement of SDCL 19-19-412(c)(B). JT2 92; JT2 98 (“I understand not all the procedures were followed.”). Defense counsel acknowledged the importance of this issue to Poorbear’s ability to assert a defense of consent to Counts 1-2. JT2 98-99. Defense counsel requested an offer of proof to establish the evidence of consent because “there could potentially be a habeas” for counsel’s failure to adhere to the statutory requirements. JT2 99. Defense counsel advised the circuit court of counsel’s intention to cross-examine Bear Runner regarding “that there was sex with the Defendant prior which could potentially lead to a defense of consent.” JT2 95.

Therefore, Poorbear respectfully submits this matter represents the rare case where a separate habeas petition is not needed. The appellate record on direct appeal sufficiently contains defense counsel’s record acknowledging this critical trial preparation error.

D. Trial counsel’s ineffective assistance significantly prejudiced the trial by precluding Poorbear’s ability to argue the defense of consent to the second-degree rape charges.

“When examining the prejudicial impact of counsel’s deficient performance, we have said that a reasonable probability means a probability sufficient to undermine confidence in the outcome.” *State v. Abraham-Medved*,

2024 S.D. 14, ¶ 29, 4 N.W.3d 436, 445 (citation modified). Here, defense counsel's ineffective assistance regarding SDCL 19-19-412 significantly prejudiced Poorbear's ability to receive a fair trial and established a reasonable probability it impacted the jury's verdict. Defense counsel's critical error barred Poorbear from the ability to assert a complete defense – consensual sexual intercourse – that the record contains extensive evidence to support.

An “accused must be afforded a meaningful opportunity to present a complete defense.” *State v. Anderson*, 2025 S.D. 45, ¶ 32, 25 N.W.3d 269, 278 (quoting *State v. Birdshead*, 2015 S.D. 77, ¶ 27, 871 N.W.2d 62, 73). “When the defendant’s theory is supported by the law” and “has some foundation in the evidence, however tenuous, the defendant has a right to present it.” *Id.* In other words, “[d]ue process is in essence the right of a fair opportunity to defend against the accusations.” *Id.* “[I]f the victim freely and voluntarily consents without force, coercion, or threat, then consent is a defense to forcible rape.” *State v. Roach*, 2012 S.D. 91, ¶ 16, 825 N.W.2d 258, 263.

Here, the record reveals evidence of consensual sexual relations between Bear Runner and Poorbear. However, due to defense counsel's error regarding SDCL 19-19-412, the jury never heard this critical evidence, and Poorbear was denied an opportunity to defend against the rape allegations. Specifically, he was denied the ability to assert a consent defense to the most significant charges contained in the Superseding Indictment.

First, Cristol interviewed Poorbear at the Pennington County Jail regarding this case. JT3 374. During that interview with law enforcement, Poorbear stated to law enforcement that “[t]hey went about their day until it was time for him to get ready to go to work, at which point in time they had sex in the shower” on January 4, 2023. JT3 377. Second, this critical error significantly impacted Poorbear’s ability to respond to significant trial evidence, such as the forensic DNA evidence. Specifically, Raber’s Y-STR forensic DNA testing, conducted at the South Dakota State Forensic Laboratory, revealed the presence of Poorbear’s DNA profile on Bear Runner’s vaginal swab samples. JT3 441. Due to defense counsel’s error, Poorbear could not present argument to the jury that the DNA evidence was a result of the consensual sexual relations he reported to law enforcement.

Finally, the record contained evidence from Bear Runner supporting Poorbear’s assertion of consensual sexual relations. Specifically, law enforcement body-camera footage recorded Bear Runner’s statement that “I’m not saying I was raped.” JT2 119-120; Ex. A. Furthermore, in a conference outside the presence of the jury, the State made a record that this same body-camera footage “recounts as this report indicates that they had sexual intercourse. He had spent the night with her a couple of times and they had had sexual intercourse. I have serious concerns that this body-worn camera is going to go back with the jury and there’s testimony in there from her that they had sex before[.]” JT2 136-138; Ex. A. Due to the failure to observe the procedural requirements of SDCL 19-19-

412(c), the circuit court understandably ordered this portion of the footage be redacted. JT2 139.

Therefore, the jury did not receive this evidence supporting Poorbear's assertion of consensual sexual contact. Had the jury received the evidence of consent, a reasonable probability exists the jury's verdict on the rape charges – the two most significant charges – would be different, thus undermining confidence in the outcome.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING OTHER-ACTS EVIDENCE.

A. Standard of Review

A circuit court's decision to admit evidence under SDCL 19-19-404(b) is reviewed for an abuse of discretion. *State v. Evans*, 2021 S.D. 12, ¶ 25, 956 N.W.2d 68, 79. "An abuse of discretion is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *State v. Hankins*, 2022 S.D. 67, ¶ 21, 982 N.W.2d 21, 30 (citation modified).

"To obtain a new trial, a defendant must prove not only that the trial court abused its discretion in admitting the evidence, but also that the admission resulted in prejudice." *State v. Lassiter*, 2005 S.D. 8, ¶ 13, 692 N.W.2d 171, 175 (citing *State v. Red Star*, 2001 S.D. 54, ¶ 10, 625 N.W.2d 573, 577).

B. The circuit court abused its discretion in conducting a cursory balancing-test prior to admitting significant other-acts testimony.

“Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” SDCL 19-19-404(b). However, other-acts evidence “may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.* “[T]rial courts must be ever vigilant so that the exclusionary sentence of [SDCL 19-19-404(b)] is not entirely swallowed up by the exceptions.” *State v. Chapin*, 460 N.W.2d 420, 421 (S.D. 1990).

Before admitting other-acts evidence, “the circuit court must determine whether the evidence is relevant to a material issue other than character and whether its probative value is substantially outweighed by the danger of unfair prejudice.” *Evans*, 2021 S.D. 12, ¶ 25, 956 N.W.2d at 79. “Only by performing a meaningful analysis of each case can the courts assure that the exceptions do not, in fact, entirely swallow the rule of admissibility.” *State v. Steele*, 510 N.W.2d 661, 668 (S.D. 1994) (citing *Chapin*, 460 N.W.2d at 422).

Here, the circuit court’s decision to admit other-acts evidence, specifically Kendall and Hill, constituted an abuse of discretion. First, the circuit court did not meaningfully conduct either part of the requisite two-step analysis. At the March 24, 2025, pre-trial conference, the circuit court overruled defense counsel’s objection to the State’s 404(b) notice, because the court “believe[d] that the noticed acts are – show common motive, intent, common scheme and plan with similar acts and similar type victims.” PTC5 6. Moreover, the circuit court found

the State's 404(b) notice "to be relevant and the probative value outweigh[ed] the prejudicial effect." PTC5 6-7. In *Steele*, the trial court's findings simply stated that the evidence of prior bad acts was admissible for a purpose other than character evidence. 510 N.W.2d at 667-68. Here, as in *Steele*, the circuit court merely offered a conclusory statement in admitting the other-acts evidence. See PTC5 6-7. The circuit court's conclusory findings were "generic in nature" and "because the trial court failed to perform the proper analysis, the conviction is reversible on this ground." See *Steele*, 510 N.W.2d at 667-68 (quoting *Chapin*, 460 N.W.2d at 422).

Second, this case represents far different circumstances than *State v. Phillips*, 2018 S.D. 2, ¶ 20, 906 N.W.2d 411, 417. In *Phillips*, the victim of the charged offense and the other-acts evidence were the same person. *Id.* at ¶ 18, 906 N.W.2d at 416. Here, unlike *Phillips*, this case involved two witnesses, Hill and Kendall, who were not the victim, Bear Runner, in the charged case.

C. The circuit court's admission of the other-acts evidence created a reasonable probability that the result of the trial would have been different, therefore, prejudice ensued.

In order to reverse and remand this matter for a new jury trial, Poorbear must also prove that the erroneous admission of the other-acts evidence resulted in prejudice. *State v. Bordeaux*, 2025 S.D. 55, 27 N.W.3d 45, ¶ 59, 27 N.W.3d 45, 59 (citing *Lassiter*, 2005 S.D. 8, ¶ 13, 692 N.W.2d at 175). "Prejudice exists when there is 'a reasonable probability that, but for [the error], the result of the proceeding

would have been different.” *Id.* (quoting *Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d at 686).

This Court must weigh a number of factors to determine whether an error was prejudicial, such as the importance of the witness’s testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony, the extent of cross-examination permitted, and the overall strength of the prosecution’s case. *Id.* at ¶ 60, 27 N.W.3d at 59 (citation modified).

First, here, as in *Bordeaux*, the other-acts evidence from Hill and Kendall “was neither an insignificant part of the State’s case, nor cumulative.” *See Id.* at ¶ 61, 27 N.W.3d at 60. In particular, Kendall’s testimony was neither insignificant, nor cumulative to Bear Runner’s testimony. Kendall testified that Poorbear dropped her three-year-old child in a hotel pool, and Kendall had to rescue the child. JT3 507. Even more significant, Kendall testified that Poorbear threatened to slit her grandmother’s throat. JT3 500-503. Similarly, Hill testified that Poorbear “used knives to [her] throat.” JT3 462. As in *Bordeaux*, the other-acts evidence admitted against Poorbear “served no purpose other than to convince the jury that” he generally “had a propensity for violence” against women and children. *See Id.* at ¶ 62, 27 N.W.3d at 60.

Second, this Court must weigh the presence or absence of corroborating or contradicting evidence. *See Id.* at ¶ 60, 27 N.W.3d at 59. Hill’s testimony regarding the alleged events of February 13, 2022, lacked corroboration. Hill

testified that when law enforcement (Walsh and Smith) responded to her residence she gave them a statement regarding the incident. JT3 468. However, Hill testified at trial that she never reported an allegation of rape to the officers. JT3 468. Instead, Hill presented those uncorroborated, significant allegations for the first time at this trial, three years later. Similarly, Kendall's testimony regarding three separate other-acts incidents lacked corroboration. Both of Kendall's other-acts testimony from alleged events in April of 2021 were not reported at the time to law enforcement. JT3 509. Rather, as with Hill, both incidents alleged by Kendall were presented for the first time at this trial, four years later.

Third, this Court must weigh the overall strength of the State's case in assessing the prejudicial effect of the other-acts evidence admitted. *Bordeaux*, 2025 S.D. 55, ¶ 60, 27 N.W.3d at 59. Bear Runner's testimony was not exclusively relied upon by the jury as evidenced by the verdict rendered. Poorbear was acquitted of both aggravated assault charges (Counts 4-5) which were based upon Bear Runner's allegation that Poorbear choked her. JT4 690-694; SR 561-562; JT1 40. The jury's verdict reveals that the jurors were not persuaded by Bear Runner's testimony. Bear Runner's credibility was deeply at issue throughout her testimony. Bear Runner testified on direct examination that Poorbear threatened her with a hammer. JT1 36; JT2 105. However, on cross-examination she denied that Poorbear threatened her with a hammer. JT2 121. Moreover, Neavill testified that Bear Runner indicated a hammer was neither used nor even

present in the residence. JT4 553. Additionally, Neavill obtained law enforcement reports that contradicted Bear Runner's initial interview regarding allegations she made against Baker. JT4 550-552. Finally, Neavill obtained documentation from Poorbear's place of employment which negated Bear Runner's testimony that he kept her from leaving her residence throughout January 3-4, 2023. JT4 545-549.

Therefore, based on the totality of the prejudicial effect presented by the erroneous admission of the other-acts evidence, a reasonable probability exists that the outcome would have been different. Thus, the requisite prejudice prong in this Court's analysis is established throughout the record and trial evidence.

CONCLUSION

For the foregoing reasons, authorities cited, and upon the settled record, Poorbear respectfully asks this Court to vacate the Judgement and Sentence, and remand this matter to the circuit court for a new jury trial.

Respectfully submitted this 17th day of June, 2026.

/s/ Matthew R. Mirabella

Matthew R. Mirabella

Attorney for Appellant

South Dakota Office of Indigent Legal Services

PO Box 88237, Sioux Falls, SD 57109

CERTIFICATE OF COMPLIANCE

- I. 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 8,780 words.
- II. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 17th day of June, 2026.

/s/ Matthew R. Mirabella

Matthew R. Mirabella

Attorney for Appellant

South Dakota Office of Indigent Legal Services

PO Box 88237, Sioux Falls, SD 57109

CERTIFICATE OF SERVICE

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

MARTY JACKLEY
Attorney General
atgservice@state.sd.us
Attorney for Appellee, State of South Dakota

LARA ROETZEL
Pennington County State's Attorney
larar@pennco.org
Attorney for Appellee, State of South Dakota

RACHEL LINDSAY
Pennington County Deputy State's Attorney
rachel.lindsay@pennco.org
Trial Attorney for Appellee, State of South Dakota

JASON THOMAS
Minnehaha County Deputy State's Attorney
jthomas@minnehahacounty.gov
Trial Attorney for Appellee, State of South Dakota

NATHANIEL NELSON
Nelson Law Office
nate@nelsonlawsturgis.com
Trial Attorney for Appellant

Dated this 17th day of June, 2026.

/s/ Matthew R. Mirabella
Matthew R. Mirabella
Attorney for Appellant
South Dakota Office of Indigent Legal Services
PO Box 88237, Sioux Falls, SD 57109

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31296

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAVID WADE POORBEAR,

Defendant and Appellant.

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

THE HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Matthew R. Mirabella
SD Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
Telephone: (605) 220-4132
Email: ILSService@state.sd.us

ATTORNEY FOR DEFENDANT
AND APPELLANT

Renee Stellagher
Assistant Attorney General
1302 East SD Highway 1889, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Email: ATGService@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed November 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT	2
STATEMENT OF LEGAL ISSUES AND AUTHORITIES.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	7
ARGUMENTS	
I. POORBEAR’S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM SHOULD NOT BE REVIEWED ON DIRECT APPEAL	9
II. THE CIRCUIT COURT PROPERLY ADMITTED THE OTHER-ACTS EVIDENCE	15
CONCLUSION.....	29
CERTIFICATE OF COMPLIANCE.....	30
CERTIFICATE OF SERVICE	30

TABLE OF AUTHORITIES

CASES CITED:	PAGE(S)
<i>Huddleston v. United States</i> , 485 U.S. 681 (1988).....	17
<i>Neels v. Dooley</i> , 2022 S.D. 4, 969 N.W.2d 729.....	12
<i>Novak v. McEldowney</i> , 2002 S.D. 162, 655 N.W.2d 909	18
<i>Schocker v. Fluke</i> , 2024 S.D. 65, 13 N.W.3d 477	12
<i>State v. Alvarez</i> , 2022 S.D. 66, 982 N.W.2d 12.....	10
<i>State v. Boe</i> , 2014 S.D. 29, 847 N.W.2d 315.....	16, 18, 20
<i>State v. Bordeaux</i> , 2025 S.D. 55, 27 N.W.3d 45.....	Passim
<i>State v. Carter</i> , 2023 S.D. 67, 1 N.W.3d 674.....	23
<i>State v. Champagne</i> , 422 N.W.2d 840 (S.D. 1988)	18
<i>State v. Dubois</i> , 2008 S.D. 15, 746 N.W.2d 197.....	16
<i>State v. Evans</i> , 2021 S.D. 12, 956 N.W.2d 68.....	Passim
<i>State v. Fool Bull</i> , 2008 S.D. 11, 745 N.W.2d 380	15
<i>State v. Golliher-Weyer</i> , 2016 S.D. 10, 875 N.W.2d 28	11
<i>State v. Guzman</i> , 2022 S.D. 70, 982 N.W.2d 875.....	21
<i>State v. Janes</i> , 2026 S.D. 9, 32 N.W.3d 377	2, 12
<i>State v. Klein</i> , 444 N.W.2d 16 (S.D. 1989)	18
<i>State v. Malcolm</i> , 2023 S.D. 6, 985 N.W.2d 732.....	2, 10, 11, 12
<i>State v. Means</i> , 363 N.W.2d 565 (S.D.1985)	18
<i>State v. Medicine Eagle</i> , 2013 S.D. 60, 835 N.W.2d 886.....	3, 21
<i>State v. Lassiter</i> , 2005 S.D. 8, 692 N.W.2d 171	17, 20, 22, 23
<i>State v. Ondricek</i> , 535 N.W.2d 872 (S.D. 1995).....	18

<i>State v. Otobhiale</i> , 2022 S.D. 35, 976 N.W.2d 759	18
<i>State v. Stevens</i> , 2024 S.D. 3, 2 N.W.3d 372	12
<i>State v. Taylor</i> , 2020 S.D. 48, 948 N.W.2d 342.....	15, 17, 22
<i>State v. Thoman</i> , 2021 S.D. 10, 955 N.W.2d 759	23
<i>State v. Thomas</i> , 2011 S.D. 15, 796 N.W.2d 706	10
<i>State v. Vorthems</i> , 2020 S.D. 67, 952 N.W.2d 113.....	10
<i>State v. White</i> , 538 N.W.2d 237 (S.D. 1995).....	17, 18
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	12
<i>United States v. Geddes</i> , 844 F.3d 983 (8th Cir. 2017)	22

STATUTES CITED:

SDCL 19-19-401(a)	16
SDCL 19-19-403.....	16
SDCL 19-19-404(b)	3, 29
SDCL 19-19-404(b)(2)	15
SDCL 19-19-412.....	2, 9, 11
SDCL 19-19-412(b)	9
SDCL 22-4A-1(6)	3, 28
SDCL 22-18-1(1).....	3
SDCL 22-18-1.1(2)	3
SDCL 22-18-1.1(8).....	3
SDCL 22-18-1(5).....	3, 26
SDCL 22-19-1.1(3).....	3, 27
SDCL 22-22-1(2).....	3, 26

SDCL 22-34-1(2).....	3, 27
SDCL 23A-32-2	2
SDCL 23A-32-15	2
SDCL 25-10-13.....	3
SDCL 26-10-1	3, 27

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31296

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAVID WADE POORBEAR,

Defendant and Appellant.

PRELIMINARY STATEMENT

The convictions in this case rest on overwhelming, corroborated evidence of brutal violence, sexual assault, coercion, and intimidation committed by Poorbear over the course of more than twenty-four hours. After a four-day jury trial, the jury convicted Poorbear of second-degree rape, kidnapping, child abuse, criminal solicitation, assault, and property damage—verdicts supported not only by the victim’s detailed and consistent testimony but by physical evidence, an eyewitness account, law-enforcement observations, and video recordings of Poorbear directing associates to intimidate the victim and destroy her property.

Yet on appeal, Poorbear attempts to overturn these convictions by claiming ineffective assistance of counsel and challenging the admission of other-acts evidence—arguments that misstate the law, ignore the record, and fail under any standard of review. His ineffective-assistance claim is not cognizable on direct appeal, and the circuit court’s

admission of other-acts evidence was both legally correct and firmly grounded in precedent. Further, the strength of the State’s case renders any alleged error harmless beyond question.

Exhibits used are referred to as “EX” followed by their exhibit identification. References to documents are denoted as follows with corresponding page number(s) indicated thereafter:

Settled Record (51CRI23-000081)..... SR
Appellant’s Brief.....AB

JURISDICTIONAL STATEMENT

This is an appeal of a Judgment entered on October 22, 2025. SR:799-801. Poorbear timely filed Notice of Appeal on November 17, 2025. SR:803. This Court has jurisdiction to hear this appeal. SDCL 23A-32-2, 23A-32-15.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER DEFENSE COUNSEL’S CONDUCT CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL REQUIRING REVIEW ON DIRECT APPEAL?

The circuit court did not rule on this issue.

State v. Malcolm, 2023 S.D. 6, 985 N.W.2d 732

State v. Janes, 2026 S.D. 9, 32 N.W.3d 377

SDCL 19-19-412

II.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING OTHER-ACTS EVIDENCE?

The circuit court admitted the other-acts evidence over Poorbear's objection, finding the other-acts admissible under SDCL 19-19-404(b).

State v. Medicine Eagle, 2013 S.D. 60, 835 N.W.2d 886

State v. Evans, 2021 S.D. 12, 956 N.W.2d 68

SDCL 19-19-404(b)

STATEMENT OF THE CASE

On March 1, 2023, a Pennington County Grand Jury returned a Superseding Indictment charging Poorbear with these offenses:

- Counts 1 and 2: 2nd Degree Rape, a Class 1 Felony, in violation of SDCL 22-22-1(2)
- Count 3: 2nd Degree Kidnapping, a Class 3 Felony, in violation of SDCL 22-19-1.1(3)
- Counts 4 and 5: Aggravated Assault, a Class 3 Felony, in violation of SDCL 22-18-1.1(2) or (8)
- Count 6: Child Abuse, a Class 4 Felony, in violation of SDCL 26-10-1
- Counts 7 and 8: Criminal Solicitation, a Class 5 Felony, in violation of SDCL 22-4A-1(6)
- Counts 9 and 10: Simple Assault, a Class 1 Misdemeanor, in the alternative, in violation of either SDCL 22-18-1(1) or (5)
- Count 11: Violation of No-Contact Order, a Class 1 Misdemeanor, in violation of SDCL 25-10-13
- Count 12: Intentional Property Damage, a Class 2 Misdemeanor, in violation of SDCL 22-34-1(2)

SR:63-66. The State filed an amended Part II Information. SR:68. The circuit court held an arraignment and advised Poorbear of the Superseding Indictment and amended Part II Information. SR:2102-15.

On March 5, 2025, the State filed an Amended Notice of Intent to Offer Other-Acts Evidence regarding testimony from M.S.H. and J.K. SR:291-313 (sealed).

The Notice set forth the allegations of misconduct that M.S.H. asserted were perpetrated by Poorbear. SR:294-95. M.S.H. and Poorbear were dating approximately two weeks when Poorbear locked M.S.H. inside her apartment, repeatedly threatened her, broke her phone, grabbed her by the neck and threw her on the floor, struck her with his arms and legs, and threatened her with a makeshift object, uttering, “I should just kill you bitch.” SR:294. Poorbear also restrained and gagged M.S.H. SR:294-95. Poorbear untied her, told her to lie down on the bed, and proceeded to rape her while holding a screwdriver in his hand. SR:295. While raping M.S.H., Poorbear strangled her until she struggled to breathe. SR:295.

The Notice also outlined the allegations of misconduct that J.K. claimed Poorbear had committed. SR:295-96. Poorbear and J.K. met over a dating application in January 2021, he moved in with her in March 2021, and his physical abuse against J.K. started in April 2021. SR:295. During one incident Poorbear called J.K. a “whore,” punched and kicked her in the ribs, and damaged her phone. SR:295. J.K.’s three-year-old child witnessed the assault, Poorbear threatened to strike the child in the head, and Poorbear threatened to rape and cut her grandmother’s throat. SR:296.

Approximately two weeks later, the couple and J.K.'s children went swimming. SR:296. While swimming, J.K.'s child accidentally struck Poorbear on the lip; Poorbear responded by throwing the toddler into the pool. SR:296. Then, Poorbear beat J.K. in front of her children. SR:296.

The following month, J.K. attempted to end her relationship with Poorbear. SR:296. Poorbear left several voicemails where he threatened to break her windows, warned he would harm J.K. in front of her children, and told her to "be prepared for the fight of [her] life." SR:296. Poorbear arrived at J.K.'s residence, grabbed an aluminum baseball bat, held it against her head, and threatened to beat her head in. SR:296.

In the State's Amended Notice, the State argued,

Evidence of prior assaults, intimidation, controlling behavior, verbal abuse, and threats committed by Defendant against both [Bear Runner], [M.S.H.], and [J.K.] are admissible to prove Defendant's motive, intent, and common scheme or plan of domestic violence. Domestic violence is about power and control over an intimate partner exercised through psychological, verbal, and physical abuse. Here, Defendant's *motive* is power. His *intent* is to control. His *plan* is to exercise control through threats, intimidation, manipulation, and physical violence by physical force, weapons, strangulation, restraint, and rape.

SR:298 (emphasis added). The State argued "[e]ach act contains a common theme: controlling his significant other through verbal and physical abuse" in "an effort to control Defendant's partner, whom he fears is either being unfaithful or may be leaving him." SR:300 (sealed). Defense Counsel objected, arguing the State had not met the burden of proof and the evidence showed propensity alone. SR:314-18.

The circuit court considered the Notice and objection and found the evidence to be admissible. SR:921. The circuit court held the prior acts demonstrated a “common motive, intent, common scheme and plan” and contained “similar acts and similar type victims[.]” SR:921. The circuit court further found that the probative value of the evidence outweighed any potential for unfair prejudice and, therefore, allowed the evidence to be presented. SR:921.

A four-day jury trial began on June 10, 2025. *See generally* SR:1048-2086. After seven hours of deliberation, the jury returned guilty verdicts on Counts 1, 2, 3, 6, 7, 8, 10, and 12 and not-guilty verdicts on Counts 4, 5, and 9. SR:561-562, 2035, 2039-42. Poorbear admitted guilt to the Part II Information. SR:1000-02.

On October 20, 2025, the circuit court sentenced Poorbear. SR:1022-38. On Counts 1 and 2, the circuit court imposed forty-year penitentiary sentences to be served concurrently with each other. SR:1035. On Count 3, the circuit court imposed a fifteen-year penitentiary sentence to be served concurrently to Counts 1 and 2. SR:1036. On Count 6, the circuit court imposed a ten-year penitentiary sentence to be served consecutively to Counts 1, 2, and 3. SR:1036. On Counts 7 and 8, the circuit court imposed a five-year penitentiary sentence to be served concurrently with each other and consecutively to the other Counts. SR:1036.

STATEMENT OF THE FACTS

On January 3, 2023, Deanna Bear Runner and Poorbear had been dating for approximately a week. SR:1514. In the early morning, the couple was messaging via social media. SR:1303. Poorbear persistently apologized for breaking Bear Runner's phone¹ and stated he would come over to Bear Runner's residence. SR:1303, 1308, 1321.

Poorbear arrived at Bear Runner's residence where she was at home with K.J., her nine-year-old daughter. SR:1266, 1269. Bear Runner answered the door to hear Poorbear's apology. SR:1270. Instead, Poorbear followed Bear Runner into her bedroom where K.J. was sleeping. SR:1321. Poorbear closed and locked the door, and began questioning Bear Runner about her social-media activity. SR:1271. Bear Runner requested that he unlock the door, but he refused and stood in front of it. SR:1271. Poorbear continued to yell at her about people liking her photos on social media. SR:1272.

Bear Runner saw a chain drop from Poorbear's sleeve. SR:1272. Poorbear used the chain to hit Bear Runner on her back and legs over five times. SR:1272. Bear Runner tried to get K.J. to safety but Poorbear told her that he "was gonna kill both of [them] if [she] didn't sit down." SR:1273. Then, he crushed and stomped Bear Runner's phone causing it to break. SR:1285.

¹ Poorbear previously broke Bear Runner's cellphone and her mother replaced it with an Android. SR:1269, 1285, 1487.

Poorbear used zip ties to bind Bear Runner's hands and struck her in the back twice with a sock filled with nails. SR:1275. He told K.J. that her mother was going to die so her father would need to raise her. SR:1276. Poorbear then described to K.J. how Bear Runner was going to be raped by Poorbear and his friends. SR:1276.

K.J. requested to go to the bathroom and Poorbear allowed K.J. to leave the room to do so. SR:1278. While K.J. was outside of the bedroom, Poorbear removed the zip ties from Bear Runner, demanded that she lie down, took her undergarments off, and had sex with her "in a rough way." SR:1279. During the sexual intercourse, Poorbear choked Bear Runner, causing her to be unable to breathe. SR:1280, 1763.

A while later, Bear Runner and Poorbear had sexual intercourse for a second time. SR:1282-84. Thereafter, Poorbear told Bear Runner how she was going to die and where he intended to place her dead body. SR:1282. He told her he was going to go to work, but he would be back. SR:1282. When Poorbear was at work, Bear Runner and K.J. escaped to their neighbor's residence and called law enforcement. SR:1287-88. Bear Runner testified that Poorbear kept her from leaving her apartment for more than twenty-four hours. SR:1281, 1318, 1388, 1401.

Law enforcement arrived, located Bear Runner, and observed her injuries, including a red mark under her ear and on her legs. SR:1511-12. Law enforcement photographed a chain wrapped in shoestring, zip-ties, and a sock "full of nails." SR:1521-23; EX: 42-47. Bear Runner

informed law enforcement that Poorbear was at work and he was subsequently arrested . SR:1515, 1606.

On January 5, 2023, while in custody, Poorbear asked Karen Greene, his new girlfriend, to summon law enforcement to Bear Runner's residence in an effort to intimidate her into dismissing the charges. SR:1817, 1890; EX:74. A few days later, while still in custody, Poorbear asked Greene to solicit his associates to break Bear Runner's windows. SR:1832; EX:73.

ARGUMENTS

I.

POORBEAR'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM SHOULD NOT BE REVIEWED ON DIRECT APPEAL.

At trial, Defense Counsel sought to introduce evidence of past sexual encounters between Poorbear and Bear Runner "for the sole purpose of impeachment and consent," asserting that the evidence was "not for what the extent of the Rape Shield Law is." SR:1350, 1352. The circuit court informed Poorbear that "impeachment is not one of the listed exceptions to 19-19-412(b)." SR:1351. Defense Counsel then requested admission despite the notice requirement. SR:1357.

On appeal, Poorbear asserts his court-appointed counsel erred by not filing a pretrial motion under SDCL 19-19-412, resulting in ineffective assistance of counsel. AB:24-25. He asserts this is "the rare case" where direct-appeal review is appropriate because the record is sufficiently developed. AB:26. But Poorbear has not established a

manifest usurpation of a constitutional right, nor has he shown a reasonable probability that, but for counsel’s alleged errors, the result of his trial would have been different.

A. Poorbear’s ineffective-assistance claim should not be reviewed on direct appeal.

This Court has repeatedly held that “absent exceptional circumstances, [this Court] will not address an ineffective assistance claim on direct appeal.” *State v. Alvarez*, 2022 S.D. 66, ¶ 34, 982 N.W.2d 12, 20 (quoting *State v. Vortherms*, 2020 S.D. 67, ¶ 30, 952 N.W.2d 113, 120–21). This rule exists because “the record on direct appeal typically does not afford a basis to review the performance of trial counsel.” *Alvarez*, 2022 S.D. 66, ¶ 34, 982 N.W.2d at 20 (quoting *Vortherms*, 2020 S.D. 67, ¶ 30, 952 N.W.2d at 120). Only when trial counsel is “so ineffective and counsel’s representation so casual as to represent a manifest usurpation of the defendant’s constitutional rights” will this Court attempt to resolve his claim on direct appeal. *State v. Malcolm*, 2023 S.D. 6, ¶ 41, 985 N.W.2d 732, 742 (quoting *State v. Thomas*, 2011 S.D. 15, ¶ 23, 796 N.W.2d 706, 714). When that high standard is not met, the proper course is to bring a habeas corpus action where the factual record can be developed. *Id.* (quoting *Vortherms*, 2020 S.D. 67, ¶ 30, 952 N.W.2d at 121).

In *State v. Malcolm*, 2023 S.D. 6, 985 N.W.2d 732, the defendant argued that trial counsel’s failure to file a Notice of Intent to Offer Other-Acts Evidence—among other alleged omissions—

constituted ineffective assistance reviewable on direct appeal. *Id.* ¶ 43, 985 N.W.2d at 742. This Court held it could not “determine under the current record that defense counsel’s performance was so patently ineffective” to justify review and therefore declined to address the claim. *Id.*

Likewise, in *State v. Golliher-Weyer*, 2016 S.D. 10, 875 N.W.2d 28, the defendant argued that counsel’s misunderstanding of SDCL 19-19-412 “manifestly usurped his constitutional rights.” *Id.* ¶ 9, 875 N.W.2d 28, 31. Relying on precedent that ineffective-assistance claims are better addressed through habeas corpus, this Court declined review on direct appeal. *Id.* ¶ 9, 875 N.W.2d at 32.

Here, as in *Malcolm* and *Golliher-Weyer*, the record does not show that counsel’s performance constituted a manifest usurpation of constitutional rights. Under the current record, it is unclear why counsel sought to introduce the statements, though counsel suggested they were relevant to Bear Runner’s credibility and “had nothing to do with the Rape Shield Laws.” SR:1313.

Poorbear argues he was prejudiced by counsel’s alleged deficiencies, and this Court should address his claim on direct appeal because the record is sufficiently developed. AB:25-26. But this Court has held that “only when trial counsel was ‘so ineffective and counsel’s representation so casual as to represent a manifest usurpation of the defendant’s constitutional rights’” will this Court attempt to resolve this

claim on direct appeal. *Malcolm*, 2023 S.D. 6, ¶ 41, 985 N.W.2d at 742. Therefore, Poorbear must establish a manifest usurpation of a constitutional right, not merely that the record is sufficiently developed. Because Poorbear has not met that standard, the proper avenue for review is a habeas corpus action, and this Court should decline to address Poorbear’s ineffective-assistance claim on direct review.

B. Even if this Court reviews Poorbear’s ineffective-assistance claim on direct appeal, the alleged error was not prejudicial.

“[T]o be entitled to relief on a claim of ineffective assistance of counsel, a defendant must show both that his counsel provided ineffective assistance and that he was prejudiced as a result.” *State v. Janes*, 2026 S.D. 9, ¶ 46, 32 N.W.3d 377, 389-90 (quoting *State v. Stevens*, 2024 S.D. 3, ¶ 31, 2 N.W.3d 372, 382). This Court has explained that *Strickland* prejudice mirrors the prejudice standard under plain-error review. *Id.* (quoting *Neels v. Dooley*, 2022 S.D. 4, ¶ 15, 969 N.W.2d 729, 735). Therefore, to establish prejudice, the petitioner “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Schocker v. Fluke*, 2024 S.D. 65, 33, 13 N.W.3d 477, 487 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

Here, evidence presented at trial established that Poorbear and Bear Runner were in a romantic relationship and Poorbear stayed at Bear Runner’s house multiple times in the past. SR:1375-77.

Poorbear's theory of the case was that Bear Runner fabricated the allegations out of spite because "she knew she was going to be cut off from the drugs[]" and "sexual intercourse." SR:1262. In the Defense's opening statement, he stated, Poorbear "admitted right out of the gates to law enforcement that he'd had sexual intercourse with her many times; that it was consensual." SR:1262.

The additional testimony that the couple previously had consensual sex is inconsequential and would not have impacted the jury's decision. It is absurd to assert the contrary. And, as discussed later, the evidence presented to the jury was overwhelming, the fact that they had a prior consensual relationship does not discredit the evidence.

Poorbear argues his counsel's error prevented him from presenting "to the jury that the DNA evidence was a result of the consensual sexual relations he reported to law enforcement." AB:28. At trial, Poorbear's theory was that the couple had consensual sex; therefore, he could and did explain his DNA evidence.

Additionally, Defense Counsel's stated the sole purpose in introducing the evidence of their prior sexual relations was to impeach Bear Runner's credibility. Poorbear was not prejudiced by the exclusion of that evidence because his counsel impeached Bear Runner through other means. First, Bear Runner was impeached concerning her statements about whether she had conducted a walkthrough of her residence with law enforcement. SR:1363-69. Second, Bear Runner was

impeached because, although she testified on direct examination that Poorbear had raped her, a video recorded during officers' visit to her residence reflected a different account. SR:1376; EX:48. Third, she was impeached regarding her statements about whether Gerald Baker had ever assaulted her, as she denied any prior incidents despite police reports reflecting otherwise. SR:1380-82. Fourth, she was impeached by her grand jury testimony concerning the timeframe of the sexual assaults committed by Poorbear. SR:1398-1401. Finally, Bear Runner testified that she believed the nails in the sock were brought by Poorbear, yet she informed a nurse that the nails originated from her own toolbox. SR:1410. Additionally, Bear Runner's credibility was challenged as her recollection had to be refreshed multiple times. SR:1302-04, 1367-68, 1374, 1385, 1391-93.

Poorbear cannot establish the requisite prejudice. The Defense theory centered around a prior consensual sexual relationship, and testimony that the couple previously engaged in sexual activity would not have altered the jury's assessment of the overwhelming evidence supporting the conviction. Additionally, Bear Runner was impeached and her recollection required frequent refreshing, further diminishing her reliability. Given the extensive impeachment, the exclusion of their prior sexual-history did not prejudice Poorbear. Consequently, his claim of ineffective assistance must be rejected.

II.

THE CIRCUIT COURT PROPERLY ADMITTED THE OTHER-ACTS EVIDENCE.

Poorbear argues the circuit court abused its discretion in overruling defense counsel's objection to the State's 404(b) notice because the court did not "meaningfully conduct either part of the requisite two-step analysis." AB:30. But the court not only found the other acts "to be relevant and the probative value outweigh[ed] the prejudicial effect," it also found the noticed acts "show[ed] common motive, intent, common scheme and plan with similar acts and similar type victims." SR:921. Poorbear's attempt to poke holes in the court's ruling falls flat. The circuit court made the necessary findings on the record, and its ruling aligns with this Court's authority.

A. The circuit court did not abuse its discretion in admitting the other-acts evidence.

This Court "presume[s] evidentiary rulings made by a trial court are correct[.]" *State v. Taylor*, 2020 S.D. 48, ¶ 23, 948 N.W.2d 342, 350 (quoting *State v. Fool Bull*, 2008 S.D. 11, ¶ 10, 745 N.W.2d 380, 385). SDCL 19-19-404(b)(2) permits admission of other-acts evidence to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Before admitting other-acts evidence, a court "must determine whether the evidence is relevant to a material issue other than character and whether its probative value is substantially outweighed by the danger of unfair prejudice." *State v.*

Bordeaux, 2025 S.D. 55, ¶ 46, 27 N.W.3d 45, 57 (quoting *State v. Evans*, 2021 S.D. 12, ¶ 25, 956 N.W.2d 68, 79); SDCL 19-19-403.

In considering the admissibility of other-acts evidence, this Court has held that such evidence “is admissible when similar in nature and relevant to a material issue[.]” *Bordeaux*, 2025 S.D. 55, ¶ 51, 27 N.W.3d at 58 (quoting *State v. Boe*, 2014 S.D. 29, ¶ 20, 847 N.W.2d 315, 320). The degree of similarity required for other-acts evidence varies depending on the purpose for which the evidence is offered. *Id.*

Poorbear bears the burden of proving that the court abused its discretion when it admitted this evidence, and the admission was unfairly prejudicial. *Boe*, 2014 S.D. 29, ¶ 23, 847 N.W.2d at 321 (citing *State v. Dubois*, 2008 S.D. 15, ¶ 19, 746 N.W.2d 197, 204).

i. The other-acts evidence was relevant to an issue other than character.

Poorbear briefly complains that the circuit court abused its discretion by not offering enough support for its relevancy determination. AB:30. But he does not develop his argument further or challenge the actual relevancy determination. The circuit court found this evidence to be relevant as it contained “similar acts and similar type victims.” SR:921.

“Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence.” SDCL 19-19-401(a). “Relevancy is demonstrated where evidence is necessary to prove an element of the crime, not simply to demonstrate [the] defendant's

character.” *State v. Lassiter*, 2005 S.D. 8, ¶ 14, 692 N.W.2d 171, 175 n.2.

Because Poorbear’s defense was that he had consensual sex with Bear Runner, his intent was central to the case. It is appropriate for circuit courts to find prior sexual assault allegations relevant to the issue of consent, intent, and common plan or scheme. *State v. Taylor*, 2020 S.D. 48, ¶ 31, 948 N.W.2d 342, 352; *State v. White*, 538 N.W.2d 237, 244 (S.D. 1995) (“If a rapist’s method of operation is calculated to create the appearance of consent by the victim, similar acts evidence may be admitted to negate the defense of consent.”).

The prior acts of assaults against Poorbear’s prior romantic partners showed a controlling and hostile relationship that was fueled by Poorbear’s suspicion of his partners being unfaithful. That evidence was relevant because it revealed a common motive, intent, and common scheme and plan for Poorbear’s conduct. “In determining whether other act evidence is relevant, ‘the threshold inquiry . . . is whether that evidence is probative of a material issue other than character.’” *Taylor*, 2020 S.D. 48, ¶ 29, 948 N.W.2d at 351 (quoting *Huddleston v. United States*, 485 U.S. 681, 686 (1988)). Each basis permitted by the court is discussed below, in turn.

ii. The other-acts evidence probative value substantially outweighed the danger of unfair prejudice.

The circuit court properly found that the probative value of the evidence outweighed any potential for unfair prejudice and therefore allowed the evidence to be presented. SR:921.

a. Poorbear's other acts were probative of his intent.

“If specific intent is an element of an offense, proof of similar acts may be admitted to carry the burden even if the defense to the charge is a complete denial.” *White*, 538 N.W.2d at 244; *State v. Ondricek*, 535 N.W.2d 872, 874 (S.D. 1995); *State v. Klein*, 444 N.W.2d 16, 19 (S.D. 1989); *State v. Champagne*, 422 N.W.2d 840, 843 (S.D. 1988); *State v. Means*, 363 N.W.2d 565, 568 (S.D.1985). “Extrinsic evidence to establish intent is admissible for the prosecution to meet its burden of proof under a specific intent crime.” *Champagne*, 422 N.W.2d at 844. Intent is still in issue even in general intent crimes. This Court has found that other-acts evidence could be admitted to prove general intent, as well. *Boe*, 2014 S.D. 29, ¶ 28, 847 N.W.2d at 322.

When considering whether admission of other-acts evidence is probative of intent, “trial courts should compare, among other factors, the similarity between the . . . [other] acts and the crimes with which the defendant is charged.” *Bordeaux*, 2025 S.D. 55, ¶ 51, 27 N.W.3d at 58 (quoting *State v. Otobhiale*, 2022 S.D. 35, ¶ 26, 976 N.W.2d 759, 769); see *Novak v. McEldowney*, 2002 S.D. 162, ¶ 15, 655 N.W.2d 909, 914

(“in allowing other acts evidence to prove intent, there are two important factors that this Court must consider: (1) similar victims and (2) similar crimes”).

Here, Bear Runner, M.S.H., and J.K. are similar victims because they are all relatively new intimate partners of Poorbear whom he feared were being unfaithful. And Poorbear’s threats and actions against Bear Runner, M.S.H., and J.K. were similar crimes. As to all three, Poorbear used physical abuse, threatened violence, and broke the victims’ cell phones. Poorbear emotionally restrained the victims by threatening their safety. Poorbear placed Bear Runner and J.K. in fear of harm to their loved ones, as evidenced by his threats of harm to and in front of their children. Poorbear restrained M.S.H. and Bear Runner by binding their hands, then he untied them and demanded they engage in sexual intercourse with him. During the sexual assault, both victims were strangled until they struggled to breathe. Poorbear also used makeshift weapons against both M.S.H. and Bear Runner. When considering whether the other-acts evidence was probative of intent, it was proper for the circuit court to find the other acts similar to those perpetrated against Bear Runner.

b. Poorbear’s other acts were probative of his motive.

As to the admission of other-acts evidence to prove motive, this Court explained that evidence of a prior act can “demonstrate the existence of a motive when there is a relationship between the

victims.” *Evans*, 2021 S.D. 12, ¶ 31, 956 N.W.2d at 81 (quoting *Boe*, 2014 S.D. 29, ¶ 21, 847 N.W.2d at 321). Where such a relationship exists, “the motive is [typically] in the nature of hostility, antipathy, hatred, or jealousy.” *Id.* (quoting *Lassiter*, 2005 S.D. 8, ¶ 22, 692 N.W.2d at 178).

In *State v. Boe*, 2014 S.D. 29, 847 N.W.2d 315, this Court affirmed the circuit court’s admission of evidence regarding a defendant’s prior conviction for aggravated assault where both the past and current incidents involved a female victim in a relationship with the defendant who was not complying with his wishes, and the defendant used a firearm in both incidents. *Boe*, 2014 S.D. 29, ¶ 24, 847 N.W.2d at 321.

Here, again, the victims were new intimate partners of Poorbear, against whom he used force, threats, and restraints in an effort to control them due to his suspicions of infidelity. Therefore, similar to *Boe*, the other acts showed Poorbear’s motive was in the nature of jealousy.

c. Poorbear’s other acts were probative of his common plan or scheme.

This Court has held that other-acts evidence offered to show a common plan or scheme must “support the inference that the defendant employed that plan in committing the charged offense.” *Bordeaux*, 2025 S.D. 55, ¶ 52, 27 N.W.3d 45, 58 (quoting *Evans*, 2021 S.D. 12, ¶ 30, 956 N.W.2d at 80). “The other act evidence must demonstrate not merely a similarity in results, but such a concurrence of common features that the various acts are naturally to be explained as caused by a general

plan of which they are the individual manifestations.” *Id.* (quoting *Evans*, 2021 S.D. 12, ¶ 30, 956 N.W.2d at 80).

This Court has acknowledged that “where the defendant denies doing the charged act, evidence of a common plan or scheme to achieve the act is directly relevant to refute this general denial.” *State v. Guzman*, 2022 S.D. 70, ¶ 49, 982 N.W.2d 875, 892 (quoting *State v. Medicine Eagle*, 2013 S.D. 60, ¶ 18, 835 N.W.2d 886, 893). The existence of a plan “can be shown circumstantially[,] with evidence that the defendant committed a series of similar but ‘unconnected’ acts.” *Id.* (quoting *Medicine Eagle*, 2013 S.D. 60, ¶ 19, 835 N.W.2d at 892). “[A]ll that is required to show a common plan is that the charged and uncharged events ‘have sufficient points in common.’” *Id.* (quoting *Medicine Eagle*, 2013 S.D. 60, ¶ 19, 835 N.W.2d at 892).

In *State v. Medicine Eagle*, 2013 S.D. 60, 835 N.W.2d 886, the trial court concluded that two incidents involving separate victims were “strikingly similar,” and that the incident was relevant to prove the defendant “had a common plan or scheme to kidnap, rape, and assault young girl victims he could take advantage of after isolating them by use of his deception, physical threats, and intimidation.” *Id.* ¶ 20, 835 N.W.2d at 893. This Court affirmed the circuit court’s admission finding the defendant had “a common plan or scheme to kidnap, rape, and assault young girl victims . . . after isolating them by use of his deception, physical threats, and intimidation.” *Medicine Eagle*, 2013

S.D. 60, ¶ 20, 835 N.W.2d at 893; *see State v. Taylor*, 2020 S.D. 48, 948 N.W.2d 342 (affirming the circuit court’s admission of defendant’s alleged prior rapes of two other young female acquaintances to intent and common plan or scheme in a prosecution for rape of a victim who was also a young female acquaintance); *United States v. Geddes*, 844 F.3d 983 (8th Cir. 2017) (determining that other-acts evidence of defendant strangling ex-girlfriend was admissible in sex trafficking case because the acts and victims were “sufficiently similar in substance”).

It is true that the other acts perpetrated on others and the charged offense perpetrated on the victim “need not be identical.” *Lassiter*, 2005 S.D. 8, ¶ 16, 692 N.W.2d 176. Yet here, the prior acts involving J.K. and M.S.H. were “strikingly similar,” and display Poorbear’s common plan to control his romantic partners whom he believes are being unfaithful: he exercises his control via threats, intimidation, manipulation, and physical violence by force, weapons, strangulation, and restraints. The other-acts evidence illustrated Poorbear’s natural reaction when he believed his partners were unfaithful.

Though Poorbear does not challenge the prior acts remoteness in time, remoteness is also considered together with similarity between the prior act and the charged crime. This Court has “steadfastly refused to adopt an inflexible rule on remoteness.” *Evans*, 2021 S.D. 12, ¶ 34, 956 N.W.2d 68 at 81. A “prior bad act, despite its remoteness, may still be relevant if it is strikingly similar to the charged offense. Conversely, less

similarity may be required where the prior act is closer in time to the charged incident.” *Evans*, 2021 SD 12 at ¶ 34. Here, Poorbear’s assault on Bear Runner occurred less than two years after his assaults on J.K. and M.S.H. Therefore, the prior acts suffer from neither temporal remoteness nor dissimilarity.

iii. Poorbear was not prejudiced by the introduction of the other-acts evidence.

Poorbear cannot reverse his conviction unless he proves the erroneous admission of other-acts evidence resulted in prejudice. *Bordeaux*, 2025 S.D. 55, ¶ 59, 27 N.W.3d at 59 (citing *Lassiter*, 2005 S.D. 8, ¶ 13, 692 N.W.2d at 175). To establish prejudice, there must be a reasonable probability that the jury verdict “would have been different” absent the admitted evidence. *Id.* (quoting *State v. Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d 674, 686). The Court must weigh several factors to determine whether an error was prejudicial: “the importance of the witness’[s] testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony . . . [,] the extent of cross-examination otherwise permitted, and . . . the overall strength of the prosecution’s case.” *Id.* ¶ 60, 27 N.W.3d at 59 (quoting *State v. Thoman*, 2021 S.D. 10, ¶ 47, 955 N.W.2d 759, 773). Here, in considering the factors outlined by this Court, the alleged error was not prejudicial.

First, M.S.H. and J.K.’s testimony was not an essential part of the prosecution’s case. M.S.H. and J.K.’s testimony consists of twenty-six

pages, which is trivial in comparison to the 658-page jury trial record. SR:459-471; 495-508.

The second and third factors for determining prejudice consider the cumulative nature and whether there was evidence corroborating or contradicting the testimony. M.S.H.'s and J.K.'s testimony was not cumulative of Bear Runner's, nor of one another's. Each could only testify to their own experiences, and the testimony was properly admitted to show Poorbear's intent, motive, and common plan or scheme.

Fourth, Poorbear's counsel was permitted to cross-examine M.S.H., J.K., and the witnesses who corroborated M.S.H.'s testimony. SR:1770-71; 1783-85; 1791-93; 1809. Poorbear's counsel was not restricted in the extent of its cross-examination and was able to challenge their credibility.

Fifth, the State had a strong case. The evidence supported the jury's verdicts of two counts of 2nd Degree Rape, 2nd Degree Kidnapping, Child Abuse, Criminal Solicitation, Simple Assault, and Property Damage. SR:561-562, 2035, 2039-42.

The State's evidence was substantial. Bear Runner testified that Poorbear came to her apartment in the early morning and inflicted torture upon her. SR:1279-80, 1283, 1317. Bear Runner testified Poorbear restrained her with zip-ties and beat her with makeshift weapons, including a sock full of nails and a chain. SR:1272-74, 1320,

1362, 1423. She testified she feared what would happen if she resisted. SR:1274-76.

During this confinement, she was subjected to repeated beatings and sexual abuse. Bear Runner testified Poorbear made her lie down and took her undergarments off. SR:1279. Bear Runner testified Poorbear choked her while they had sex, which caused her body to experience “fuzziness” as she “couldn’t think” as she “just wanted to breathe.” SR:1280. Bear Runner testified that, a while later, Poorbear again threatened her and forced her to have sex with him. SR:1283.

K.J. testified that Poorbear “walked over and he grabbed the chain . . . then he hit my mom hard on the leg and she had a bruise . . . and then he hit her again.” SR:1440. K.J. also testified that Poorbear “got the chain again and hit her on the side” and “he hit my mom so hard she almost cried. He kept hitting her, like really hitting her hard, and she had bruises everywhere. But I was hiding in the corner and I was scared.” SR:1441. K.J. described the chain as “a long chain and it was kind -- silver and it was big, but it looked like a dog chain[.]” SR:1443.

Monica Eaton-Harris, a forensic interviewer and outpatient therapist at Children’s Home Society Child Advocacy Center, testified that K.J. disclosed she witnessed Poorbear hit her mom with a chain. SR:1448, 1465. K.J. also disclosed she and her mom were threatened by Poorbear. SR:1448, 1465.

Maria Provost, Bear Runner's mother, testified that approximately a week after the "horrible, horrible beating" she went to visit Bear Runner. SR:1488. Provost testified that she saw a "chain mark" across Bear Runner's back and "[i]n the middle of her thigh, upper towards her like vaginal area on her thigh[.]" SR:1494. Provost took pictures of Bear Runner's body, which displayed extensive bruising including a chain mark across her back and bruises in her vaginal area, thigh, and arms. SR:1493; EX:39, 40, 41.

Officer Chasing Horse testified that he saw "a chain which was also connected to like a shoestring type that was wrapped around the chain." SR:1521. Officer Chasing Horse believed the chain "was used against the victim." SR:1525. The State introduced photographic evidence of the injuries on Bear Runner's body consistent with such a weapon, and the weapon itself was introduced as an exhibit. SR:1293; EX:21, 24, 28, 29, 30, 34. This testimony established that Poorbear perpetrated simple assault and two acts of second-degree rape against Bear Runner, in violation of SDCL 22-18-1(5) and 22-22-1(2).

Bear Runner testified Poorbear held her captive within her own home by breaking her phone to prevent her from contacting help, installing locks on the doors to confine her, and physically preventing her from leaving her room by binding her hands with zip ties. SR:1274, 1281-1285, 1519-20. Corroborating her story, Officer Chasing Horse testified that he observed a mark on Poorbear's wrist that was

approximately an inch long and looked like a marking from zip ties.

SR:1526-27, 1532. This testimony established that Poorbear restrained Bear Runner for the purpose of inflicting bodily harm or terrorizing her in violation of SDCL 22-19-1.1(3).

Bear Runner and K.J. testified that K.J. witnessed Poorbear's abuse of Bear Runner. SR:1440-42. K.J. testified that Poorbear whispered to her "I'm gonna hammer your mom's head until she dies[]" and then he started hitting Bear Runner. SR:1442. Bear Runner testified that Poorbear told K.J. he would kill both of them if she did not sit down. SR:1274. Bear Runner also testified that Poorbear told K.J. that her mom would be raped by him and his friends. SR:1276.

Corroborating her story, Monica Eaton-Harris testified that she interviewed K.J., who disclosed witnessing her mom being hit with a chain and being threatened that if they did not stop screaming and calling for help they would be killed. SR:1465-66; EX:37, 38. K.J. also disclosed Poorbear held a hammer as if he was going to use it to hit Bear Runner. SR:1467; EX:37, 38. This testimony established that Poorbear perpetrated child abuse against K.J. by exposing her to an extraordinarily traumatic event in violation of SDCL 26-10-1.

Poorbear's conviction of intentional damage to property, in violation of SDCL 22-34-1(2), was established via Bear Runner and Provost's testimony. Bear Runner and Provost testified that after Poorbear broke Bear Runner's phone, Provost purchased an Android

phone from Walmart. SR:1269, 1285, 1487. Provost testified that the value of this phone was over \$100 but less than \$400. SR:1487. Bear Runner testified that Poorbear broke the Android. SR:1285.

Evidence concerning Poorbear's convictions for solicitation to commit a crime, in violation of SDCL 22-4A-1(6), was presented to the jury through a video recording. SR:1832, 1890; EX:73, 74. The jury heard Poorbear solicit his associates to go to Bear Runner's home to break her windows and intimidate her. SR:1832, 1890; EX:73, 74.

Prejudice sufficient to undermine confidence in a jury's verdict can only be established by showing a *reasonable probability*, given all the evidence, that a jury would have reached a different verdict absent the other-acts evidence. The mere *possibility* that Bear Runner and K.J. could have fabricated the assault—one that is largely unsupported and refuted by the totality of the record—is insufficient to undermine confidence in the outcome of the case. The evidence properly before the jury points to Poorbear raping, kidnapping, and assaulting Bear Runner. Additionally, Poorbear's criminal solicitation was captured via video and sufficient evidence supported Poorbear breaking Bear Runner's cellphone. On this record, there is no reasonable probability that the jury would have reached a different outcome.

CONCLUSION

The record overwhelmingly supports the jury's verdicts and the circuit court's rulings. Poorbear's ineffective-assistance claim is not cognizable on direct appeal, and even if this Court were to review it, the claim fails because the record does not demonstrate resulting prejudice. Likewise, the circuit court acted well within its discretion in admitting other-acts evidence under SDCL 19-19-404(b), having correctly determined that the evidence was relevant to showing Poorbear's motive, intent, and common plan, and that its probative value outweighed any danger of unfair prejudice. The State presented a strong case supported by witness testimony, corroborating evidence, and Poorbear's own recorded statements. For these reasons, the State respectfully requests that this Court affirm the Judgment.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Renee Stellagher

Renee Stellagher
Assistant Attorney General
1302 East SD Highway 1889, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

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 6,384 words.

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

Dated this 28th day of July 2026.

/s/ Renee Stellagher

Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 28, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v.*

David Poor Bear was served via Odyssey File and Serve upon Matthew R. Mirabella at ILSService@state.sd.us.

/s/ Renee Stellagher

Renee Stellagher
Assistant Attorney General

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff/Appellee,

vs.

DAVID POORBEAR,

Defendant/Appellant.

No. 31296

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

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLANT'S REPLY BRIEF

MATTHEW R. MIRABELLA
South Dakota Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
Attorney for Defendant/ Appellant

MARTY JACKLEY
Attorney General
1302 Hwy 1889, Suite 1
Pierre, SD 57501

LARA ROETZEL
Pennington County State's Atty
130 Kansas City Street, Suite 300
Rapid City, SD 57701

Attorneys for State/ Appellee

Notice of Appeal Filed on November 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	i
PRELIMINARY STATEMENT.....	1
ARGUMENT.....	2
CONCLUSION.....	5
CERTIFICATE OF COMPLIANCE	6
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

Cases

<i>State v. Anderson</i> , 2025 S.D. 45, 25 N.W.3d 269.....	2
<i>State v. Bordeaux</i> , 2025 S.D. 55, 27 N.W.3d 45.....	5
<i>State v. Washington</i> , 2024 S.D. 64, 13 N.W.3d 492.....	2

Statutes

SDCL 19-19-412	2-3
----------------------	-----

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

DAVID POORBEAR,

Defendant and Appellant.

No. 31296

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Mr. David Poorbear (“Poorbear”), will limit discussion to the issues that need further development or argument. Any matter raised in Poorbear’s initial brief, but not specifically mentioned herein, is not intended to be waived. Poorbear 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. Poorbear relies upon the Jurisdictional Statement, Statement of the Case and Facts, and Statement of Legal Issues presented in his initial brief, filed with the Court on June 17, 2026.

ARGUMENT

I. TRIAL COUNSEL’S FAILURE TO ADHERE TO SDCL 19-19-412 CONSTITUTED PREJUDICIAL INEFFECTIVE ASSISTANCE OF COUNSEL.

A. Poorbear’s denial of his right to present the defense of consent to his most significant charges constitutes ineffective assistance that rises to manifest usurpation of his constitutional rights to a fair trial.

This Court generally will not review a claim of ineffective assistance of counsel on direct appeal because “the record on direct appeal typically does not afford a basis to review the performance of trial counsel” and a habeas corpus proceeding allows an attorney to “explain or defend their actions and strategies, and thus a more complete picture of what occurred is available for review.” *State v. Washington*, 2024 S.D. 64, ¶ 39, 13 N.W.3d 492, 503 (citation modified). Here, the State does not contend that Poorbear’s record is insufficiently developed for direct appeal review. *See* SB 9-12.

Rather, the State claims that Poorbear has not established a manifest usurpation of his trial rights. SB 9-11. An “accused must be afforded a meaningful opportunity to present a complete defense.” *State v. Anderson*, 2025 S.D. 45, ¶ 32, 25 N.W.3d 269, 278. When the defendant’s theory is foundationally based in the evidence, “however, tenuous, the defendant has a right to present it” due to the “right of a fair opportunity to defend against the accusations.” *Id.*

Poorbear’s claim of consensual intimate relations is foundationally based in the evidence, and he could not present the defense due to trial counsel’s errors regarding SDCL 19-19-412. Moreover, the evidence of consent was not

merely tenuous, it was substantial – both Bear Runner and Poorbear presented evidence of consensual relations. *See* JT2 119-120; JT3 377. Poorbear had a constitutional right to present the defense of consent, and trial counsel’s error deprived him of the opportunity to present a defense against the two most significant allegations contained in the Superseding Indictment.

B. Poorbear’s inability to argue the defense of consent establishes the prejudice requirement.

The State additionally claims that even if this Court reviews Poorbear’s ineffective assistance on direct appeal, the error did not prejudice his trial. SB 12. Specifically, the State claims that evidence “that the couple previously had consensual sex is inconsequential and would not have impacted the jury’s decision. It is absurd to assert the contrary.” SB 13.

However, despite initially claiming consent “is inconsequential” to this case, the State acknowledges that “[a]t trial, Poorbear’s theory was that the couple had consensual sex” and “[t]he Defense theory centered around a prior consensual sexual relationship[.]” SB 13-14. Poorbear’s deprivation of the opportunity to present the defense of consent was far from inconsequential to this trial. Due to trial counsel’s procedural errors regarding SDCL 19-19-412, Poorbear was denied an opportunity to respond to the rape charges and present a complete defense.

The State further contends that Poorbear cannot establish prejudice because he extensively impeached Bear Runner “through other means.” SB 13-14

("Given the extensive impeachment, the exclusion of their prior sexual-history did not prejudice Poorbear."). The extensive impeachment and credibility concerns only heightened the need for the jury to hear, and weigh, the evidence that Poorbear and Bear Runner engaged in consensual romantic relations. As explained in Poorbear's initial brief, there were many instances of significant credibility concerns regarding Bear Runner's allegations. *See* JT1 36; JT2 105, 119-121; JT4 545-549, 550-553. Bear Runner's credibility needed to be weighed against the evidence of consensual intimate relations for the jury to adequately evaluate and determine the validity of both Poorbear and Bear Runner's claims. Despite the credibility concerns acknowledged by the State, the jury did not have the opportunity to weigh the testimony of the complaining witness against the evidence of consent. This deprivation was due to trial counsel's procedural errors. Had Poorbear been able to present a complete defense, there is a reasonable probability that the jury would have reached a different verdict.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING OTHER-ACTS EVIDENCE.

A. The other-acts evidence cannot be utilized to combat a legal defense that a defendant was denied entirely from presenting.

The State claims that the circuit court properly admitted the other acts evidence "[b]ecause Poorbear's defense was that he had consensual sex with Bear Runner, his intent was central to the case." SB 17. However, as previously discussed, the circuit court denied Poorbear's ability to assert a defense of consent due to trial counsel's procedural errors. Therefore, the admission of

other acts cannot be validated based upon the concept of combatting a legal defense that the defendant was denied from presenting.

B. The other-acts evidence was not an insignificant portion of the State's trial evidence and established prejudice.

The State contends that the testimony of Kendall and Hill “was not an essential part of the prosecution’s case.” SB 24. Poorbear disagrees. The State called four other-acts evidence witnesses that testified extensively to heinous, uncorroborated, and disconnected allegations. Due to the credibility concerns that the State acknowledged existed with Bear Runner, the other-acts witnesses became critical to the prosecution. The jury’s verdict reveals Bear Runner’s testimony could not be exclusively relied upon because Poorbear was acquitted of both aggravated assault allegations made by Bear Runner. Instead of the jury solely evaluating Bear Runner’s credibility, the State utilized a significant amount of unconnected other-acts witnesses to claim Poorbear has a propensity to act violently towards women, which “violated the well-established rule precluding character or propensity evidence.” *State v. Bordeaux*, 2025 S.D. 55, ¶ 56, 27 N.W.3d 45, 59 (quoting *State v. Rouse*, 2025 S.D. 29, ¶ 39, 23 N.W.3d 467, 479.

CONCLUSION

For the reasons described in Poorbear’s initial brief, the aforementioned reasons, the authorities cited, and upon the settled record, Poorbear respectfully

requests this Court vacate the Judgement and Sentence, and remand this case to the circuit court for a new jury 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 1,109 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 27th day of August, 2026.

/s/ Matthew Mirabella
Matthew R. Mirabella
Attorney for Appellant

CERTIFICATE OF SERVICE

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

MARTY JACKLEY
Attorney General
atgservice@state.sd.us
Attorney for Appellee, State of South Dakota

LARA ROETZEL
Pennington County State's Attorney
Lara.roetzel@pcsao.com
Attorney for Appellee, State of South Dakota

RACHEL LINDSAY
Pennington County Deputy State's Attorney
rachel.lindsay@pennco.org
Trial Attorney for Appellee, State of South Dakota

JASON THOMAS
Minnehaha County Deputy State's Attorney
jthomas@minnehahacounty.gov
Trial Attorney for Appellee, State of South Dakota

NATHANIEL NELSON
Nelson Law Office
nate@nelsonlawsturgis.com
Trial Attorney for Appellant

Dated this 27th day of August, 2026.

/s/ Matthew Mirabella
Matthew R. Mirabella
Attorney for the South Dakota Office
of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109