IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	
	*	Case #29337
v.	*	
	*	
ARIANNA CHERELLE REECY,	*	
	*	
Defendant and Appellant.	*	
	*	

APPEAL FROM THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

The Honorable
Circuit Court Judge
Robin Houwman

APPELLANT'S BRIEF

Jason Ravnsborg
Office of the Attorney General
1302 E Highway 14 STE 1
Pierre, SD 57501

Daniel Haggar
States Attorney
415 N Dakota Ave
Sioux Falls, SD 57104

Mark Kadi
Appellant's Counsel
415 N. Dakota Ave.
Sioux Falls, SD 57104

Notice of Appeal filed on May 28, 2020

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STATE OF SOUTH DAKOTA,	*	
Plaintiff and Appellee,	*	Case: 29337
v.	*	APPELLANT'S BRIEF
ARRIANA CHERELLE REECY,	*	
Defendant and Appellant.	*	

PRELIMINARY STATEMENT

The Arraignment hearing transcript will be referred to as "A" followed by the page number. The trial transcripts will be referred to as "T" followed by the transcript volume number and page number. The sentencing hearing transcript will be referred to as "S" followed by the page number. The settled record will be referred to as "SR" followed by the page number. Any exhibits will be referred to as "E" followed by an exhibit letter or number. The Appellant will be referred to as the "Appellant" or "Defendant" or "Reecy". The Co-Defendant Kevin Dickerson will be referred to as "Co-Defendant" or "Dickerson". The complaining witness will be referred to as "complaining witness", "alleged victim" or "Rojas". Appellant's counsel at the underlying proceedings in circuit court will be referred to as "trial counsel". Dickerson's attorney will

be referred to as "Co-Defendant's counsel" or "Dickerson's counsel".

JURISDICTIONAL STATEMENT

The trial court entered the Appellant's judgment and sentence in Minnehaha County CR. 19-8819 on May 6, 2020. SR251. A Notice of Appeal was filed on May 28, 2020. SR253. This Court has jurisdiction of this appeal pursuant to SDCL 15-26A-3, SDCL 23A-32-2, and SDCL 23A-32-9.

LEGAL ISSUES ON APPEAL

I.WHETHER THE TRIAL COURT VIOLATED THE DEFENDANT'S DUE PROCESS RIGHT TO PRESENT A COMPLETE DEFENSE BY TOTALLY PRECLUDING EVIDENCE OF THE COMPLAINING WITNESS'IMMIGRATION STATUS AND ITS INCENTIVE TO PRESENT A MOTIVE TO LIE.

The trial court excluded the evidence.

State v. Huber, 2010 S.D. 63, 789 N.W.2d 283.
Crane v. Kentucky, 476 U.S. 683 (1986).

II. WHETHER THE TRIAL COURT DENIED THE DEFENDANT'S SIXTH AMENDMENT CONFRONTATION CLAUSE RIGHT TO CROSS EXAMINE THE COMPLAINING WITNESS REGARDING HIS MOTIVE TO LIE.

The trial court precluded cross examination.

Delaware v. Van Arsdall, 475 U.S. 673 (1986).
Carrero-Vasquez v. State, 63 A.3d 647 (Md.App. 2013).

III. WHETHER THE TRIAL COURT ERRED EXCLUDING IMMIGRATION STATUS EVIDENCE ON RULE 403 PREJUDICE GROUNDS

The trial court excluded the evidence.

SDCL 19-19-403.
State v. Bunger, 2001 S.D. 116, 633 N.W.2d 606.

IV. WHETHER THE TRIAL COURT ERRED ADMITTING EVIDENCE OF THE COMPLAINING WITNESS' BANK RECORDS THROUGH THE COMPLAINING WITNESS WHICH LACKED FOUNDATION AND WERE OTHERWISE HEARSAY

The trial court admitted the evidence.

SDCL 19-19-803(6)
State v. Stokes, 2017 S.D. 21, 395 N.W.2d 351.

STATEMENT OF THE CASE

On December 4, 2019, the Minnehaha County grand jury indicted the Defendant on charges of Robbery 1st, Burglary 1st (Dangerous Weapon); Burglary 1st (Nighttime). SR13. The Co-Defendant Kevin Dickerson was joined in each count, plus three counts of Aggravated Assault pertaining solely to Dickerson.

The complaining witness, Julio Rojas, was undocumented alien. T3:140-45. Prosecutor indicated to the Defendant's that the complaining witness "mentioned the visa program and working with an attorney so that is why I alerted defense counsel,". T3:151. The State then filed a motion on limine to prohibit the Defendants from mentioning his immigration status. SR31. The Defendants objected arguing that Rojas' credibility and motive to lie were a central part of the case. T1:10, 12; T3:140-151. He had an interest deflecting a rape allegation from Defendant Reecy that would lead to deportation. Id.

The motion was brought before the court at a pretrial hearing. Rojas testified that he contacted a lawyer after the incident to see whether this case would "hurt" him. T3:143-45. He had not yet filed for a visa. T3:143-45. He indicated that he was going to file for a visa. T3:143-45. Visa applications from undocumented aliens can be assisted by local law enforcement officials. T3:147. The trial court granted the motion in limine. T3:150-51.

The matter proceeded to jury trial on March 4-5, 2020 28, 2019. SR251. The jury found the Defendant guilty of Robbery 1st and Burglary 1st (Nighttime). SR114. It entered verdicts of not guilty regarding the Burglary 1st (Dangerous Weapon) count. SR114.

The Defendant appeared for sentencing on April 14, 2020. SR251. The trial court imposed concurrent sentences for each remaining Robbery and Burglary count, wherein the Reecy was sentenced to 12 years of which 8 years were suspended. This appeal followed.

STATEMENT OF FACTS

The Defendant, Arianna Reecy, is resident of Sioux Falls where she resided for 7 years. T3:380. She progressed academically through the 11th grade until she

dropped out as she became a teen mom. T3:380. She has four children. T3:380.

As of November 19, 2019, Reecy worked as an exotic dancer at Lonnie's in Lesterville, South Dakota. T3:381-82. She had been dancing for over a year. T3:381. She worked as a dancer due to financial issues. Her children's child support payments were not coming in as ordered so she needed more cash to make up the difference regarding expenses. T3:381.

The complaining witness, Julio Rojas, first met the Defendant Arianna Reecy at a Lonnie's in July, 2019. T3:382-84. He saw the Defendant perform a pole dance and asked to meet with her privately. T3:382-83. She did do a private dance for him. T3:382-83. Reecy testified regarding this first encounter, "he seemed like a nice guy". T3:383.

He asked for her number. T3:383. Due to club policies, she could not provide it. T3:383. She had to take his number to keep her job. T3:383.

Rojas knew her only as "Kisses" at the inception of this case. T3:193. Rojas was interested in Kisses. T3:154. The two had texted each other numerous times following their first meeting. T3:195, 205. Rojas kept in

communication with Kisses because she was a "pretty girl". T3:196.

Reecy's financial troubles persisted as child support deficits continued. She contacted Rojas and inquired whether she could borrow some money. He agreed. Rojas testified that he did not remember if he told her he wanted to have sex during this conversation, as the word "sex" is not extravagant as he was "Spanish". T3:196. She informed him that she was not interested in sex, but might hang out later. T3:384.

She came to Rojas's apartment. T3:385. She initially thought to obtain $300 to $400, but obtained $20 from him as that was all the cash possessed. T3:385. He did give her a debit card to be used on a cash app on Reecy's phone, however, the cash app did not work. T3:388. Soon thereafter, she left as she had her children and babysitter with her and they needed to be dropped off. T3:387. Rojas did not want her to leave and told her he wanted to have sex. T3:387-88. Reecy left but not after first having to surrender a good-bye hug and kiss due to Rojas' persistence. T3:388. Reecy did not like kissing. T3:388.

Later that day, Rojas texted her. He indicated that "ha-ha" he did in fact have cash for her, and he wanted his debit card back. T3:389. They agreed to meet. However,

Reecy was concerned that Rojas would want to have sex. T3:389. In the event Rojas's desire for her would create trouble, Reecy brought along Co-Defendant Dickerson along for protection. T3:389.

Reecy proceeded through a security door after being allowed in by Rojas. T3:390. Dickerson entered the building behind Reecy. Reecy proceeded into Rojas's apartment. T3:390. Dickerson did not enter yet.

Following entry in the Rojas' apartment, Rojas locked the door. T3:390-91. Feeling uncomfortable, Reecy unlocked the door. T3:390-91. Rojas them grabbed Kisses by the arm and threw her onto the couch. T3:390-91. He forced her to perform oral sex, but Reecy managed to get away. T3:391. After being slammed on the floor, Reecy struck back at Rojas with a cell phone to Rojas's head. T3:391. Rojas screamed. T3:391-92. Dickerson entered and assisted Reecy out of Rojas's apartment. T3:391-92. Reecy later discarded the debit card but did not use it. T3:395.

Reecy and Dickerson were observed Rojas' neighbors who were alerted by Rojas' cry. T3:231=21. They did not notice either Reecy or Dickerson carrying a weapon or gun. T3:232. They contacted the police.

Law enforcement officials arrived and interviewed Rojas. Rojas claimed Dickerson entered his apartment and

assaulted him with a gun. T3:155. The couple then allegedly left with his wallet and debit card. T3:155. Rojas mentioned his history with Kisses, but initially withheld information concerning their numerous cell phone texting contacts. T3:206. He claimed he was not asked about other texts with Reecy. T3:206. Rojas denied the rape allegation at trial. No gun was ever found.

Rojas presented with his bank records at trial by the State. T3:188-91. He testified concerning transactions attempted with his debit card following the incident. Both Defendants objected to such testimony on hearsay and foundation grounds. The trial court overruled the objections. T3:188-91. Following her convictions, and resulting judgment and sentenced, Reecy filed her appeal to this Court.

ARGUMENT

I.THE TRIAL COURT VIOLATED THE DEFENDANT'S DUE PROCESS RIGHT TO PRESENT A COMPLETE DEFENSE BY TOTALLY PRECLUDING EVIDENCE OF THE COMPLAINING WITNESS' IMMIGRATION STATUS AND ITS INCENTIVE TO PRESENT A MOTIVE TO LIE.

The Defendants attempted to present their theory of defense that the alleged victim possessed a motive to lie and falsely accuse the Defendants. Reecy indicated that the Rojas attempted to rape her. The Defendants argued

that he was concerned that a rape allegation would cause his immigration status to be compromised. T1:10,12; T3:146-47. As such, he fabricated a lie in the form of the burglary and robbery allegations against the Defendants to deflect the rape allegation to preserve immigration opportunities.

The State filed a motion in limine to preclude the Defendants from presenting this defense. SR31. The prosecutor argued that it would be, inter alia, not relevant and/or precluded by SDCL 19-19-403 [Rule 403]. T1:9. The Defendants argued that such preclusion would compromise the "fundamental" "central" part of their defense to challenge the complaining witness' credibility. T3:148. It violated their Confrontation Clause rights to confront the witness(es) against him regarding Rojas's motive to lie. T1:10,12; T3:146-47. The trial court precluded the theory of defense, and all evidence in support of it, from being advanced *in its entirety* on Rule 403 grounds.[1] T3:150-51. It errored in precluding this area

[1] See Argument III regarding Rule 403. This Court may reach decisions affirming or reversing trial court decisions based on applications of state rules (of evidence) such as Rule 403. However, when Constitutional issues are also present, this Court cannot base its decision on state rules alone and then avoid the federal Constitutional issues. See Staub v. City of Baxley, 355 U.S. 313, 318 (1958). Regardless of Rule 403 implications, the Confrontation

of inquiry concerning this event as a matter of Constitutional law. See U.S. v. Abel, 469 U.S. 45, 50-51 (1984)(motive to lie inquiries protected by the Confrontation Clause).

A defendant's right to present a defense is "fundamental". State v. Huber, 2010 S.D. 63, ¶37, 789 N.W.2d 283, 294; U.S.Const.Amend. V, VI, and XIV. Impairing the defendant's ability to respond to the prosecution's case deprives him of "his fundamental constitutional right to a fair opportunity to present a defense." Crane v. Kentucky, 476 U.S. 683, 687 (1986).

Clause and Due Process issues still requires review. See State v. Richmond, 2019 S.D. 62, ¶25, 935 N.W.2d 792, 800. The Appellant urges this Court to address the Constitutional issues presented without restating them as state law only claims. See State v. Podzimek, 2019 S.D. 43, ¶37, 932 N.W.2d 141, 150 ("The majority opinion reframes the issue and avoids answering the key question whether admitting the testimony violated Podzimek's Sixth Amendment right to confrontation. In my view, the constitutional question should be addressed"). The Defendant's right to appeal would be compromised by foreclosing de novo review on Constitutional claims. Historically, de novo review provides greater opportunities for a defendant to obtain a reversal since it grants no deference to the lower court. st Regina College v. Russell, 499 U.S. 225, 238 (1991); Fry v. Pliler, 551 U.S. 112, 116 (2007). In addition, future efforts in federal court to show constitutional claims were exhausted would be similarly compromised, if they are restated as state law claims. See generally, McDonald v. Bowersox, 101 F.3d 588, 593 (8th Cir. 1996).

The right is "'generally satisfied when the defense is given a full and fair opportunity to probe and expose a witness' infirmities through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to witness' testimony.'" State v. Carter, 2009 S.D. 65, ¶32, 771 N.W.2d 329, 339. Since Constitutional issues are presented here, de novo review is required. State v. Spaniol, 2017 S.D. 20, at ¶23-24, 895 N.W.2d 329, 338; State v. Ball, 2004 S.D. 9, ¶20, 675 N.W.2d 192, 199 citing Stallings v. Delo, 117 F.3d 378, 380 (8th Cir.1997) ("fact" issues relevant to Due Process claim reviewed de novo).[2]

This Court discussed the effect of preventing a defendant from presenting a complete defense in Huber. In Huber, the defendant was charged with causing the death of his wife by shooting her. The defendant argued the gun's

[2] When issues of state evidence law and constitutional law are both present for appellate review, the U.S. Court of Appeals for the Eighth Circuit uses the following approach: "We review a district court's interpretation and application of the rules of evidence de novo and its evidentiary rulings for abuse of discretion." United States v. Street, 531 F.3d 703, 708 (8th Cir.2008). "However, we review evidentiary rulings de novo when they implicate constitutional rights." United States v. White, 557 F.3d 855, 857 (8th Cir.2009); U.S. v. Pumpkin Seed, 572 F.3d 552, 558 (8th Cir. 2009).

discharge was accidental. Huber, 2010 S.D. at ¶35, 789 N.W.2d at 294. The State offered the testimony of a firearm expert to advance its theory of defense. Id. However, the trial court excluded evidence of the defendant's expert as being not relevant. Id. The defendant was convicted and he appealed.

This Court reversed the trial court's decision. It noted the defense expert's opinion, while not fact specific to the case, was relevant to rebut the state's theory. Id. This court reasoned "when a defendant's theory 'is supported by law and ... has some foundation in the evidence, *however tenuous*, the defendant has a right to present it." Id. (emphasis *original*). It regarded the "criminally accused's right to put on a defense as fundamental". Id. The evidence was relevant, and should not have been excluded. Huber demonstrated that constitutional "notions of fundamental fairness opportunity to present a '*complete* defense.' It is only fair that a defendant in a criminal trial be allowed to present his theory of the case". Huber, 2010 S.D. at ¶37, 789 N.W.2d at 294 (emphasis *added)*.

Reecy was prejudiced by the trial court's preclusion the Defendants' central theory of defense in total. It forced her to present an incomplete theory of defense. A

fear of arrest for rape and a resulting deportation presents more impetus to lie than a mere fear of arrest. One follows the other and are inextricably linked. T1:10. The severed theory the trial court permitted the Defendants to advance was weaker than the whole, demonstrating prejudice by the disparity of each theories' respective strengths. See Carrero-Vasquez v. State, 63 A.3d 647, 658 (Md.App. 2013)("simply because appellant's counsel was permitted to inquire into *some* reasons but not all material reasons why she may have been motivated to lie under oath left appellant with, at best, an unconstitutionally restricted right of confrontation.") (emphasis *original*) citing Olden v Kentucky, 488 U.S. 227 (1988). As such, the Defendant suffered additional prejudice from failure to present "all material reasons". Id. The trial court's preclusion of evidence, and corresponding argument, violated Reecy's constitutional right to advance her theory of defense, requiring reversal of this case for a new trial with instructions to permit inquiry into Rojas' immigration status.

II.THE TRIAL COURT DENIED THE DEFENDANT'S SIXTH AMENDMENT CONFRONTATION CLAUSE RIGHT TO CROSS EXAMINE THE COMPLAINING WITNESS REGARDING HIS MOTIVE TO LIE.

The Defendant is entitled to confront the "witnesses against [her]". U.S.Const.Amend VI & XIV; See also S.D. Const. art. VI, § 7. The Defendants sought to cross examine State's complaining witness regarding his motive to lie per her Confrontation Clause rights. T1:10,12; T3:146-47. The Defendants argued that the complaining witness fabricated the allegations against them to preemptively counter rape allegations made against him as such allegations would affect his immigration status via his chances to obtain citizenship legally and avoid deportation. T1:10-11. The visa application process for an illegal alien could be greatly assisted by local law enforcement officials. T1:10-11.

The State opposed such cross examination regarding this topic. T1:9. The trial court accepted the State's position on Rule 403 grounds and limited the Defendants' questioning of the complaining witness regarding this defense theory *totally*[3] concerning issues of motive to lie. T3:150-51. This prejudiced the Defendant by precluding a jury's informed evaluation of such evidence in relation to the complaining witness. The trial court errored excluding the evidence.

[3] See State v. Bausch, 2017 S.D. 1, ¶22, 889 N.W.2d 404, 411 (distinguishing total versus partial limitations on cross).

This Court acknowledged "that in all criminal cases, the defendant has the right "to be confronted with the witnesses against him." State v. Spaniol, 2017 S.D. 20, ¶24, 895 N.W.2d 329, 338 citing Crawford v. Washington, 541 U.S. 36 (2004). Where Confrontation Clause rights are asserted, "whether [a defendant's] Sixth Amendment right to confrontation was violated is a constitutional question, which we review de novo." Spaniol, 2017 S.D. at ¶23, 895 N.W.2d at 338.

In contrast to cases where evidence was erroneously *admitted*, this matter involves evidence *excluded* from the jury's consideration of the defense theory *totally*. In cases of exclusion of evidence regarding an event *totally*, appellate review does not focus on the effect of such exclusion on the jury's verdict. Delaware v. Van Arsdall, 475 U.S. 673, 679-80 (1986). Instead, review focuses on the effect of exclusion on the witness's testimony and the jury's perception of the witness. Id.

In Van Arsdall, the United States Supreme Court explained the reasoning for the distinction: "It would be a contradiction in terms to conclude that a defendant denied *any* opportunity to cross-examine the witnesses against him nonetheless had been afforded his right to 'confront[ation]' because use of that right would not have

affected the jury's verdict." Id. (emphasis *added*). It becomes problematic to speculate how a jury might have considered evidence it never knew, rather than to judge the effect of known inadmissible evidence on a jury's verdict.

The type of evidence excluded here demonstrates its Constitutional importance. Many methods and areas of inquiry on cross examination are subject to the broad discretion of the trial judge. Davis v. Alaska, 415 U.S. 308, 316 (1974); See State v. Rodriguez, 2020 S.D. 68, ¶50, 952 N.W.2d 244, 258 ("not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish"). A trial judge has discretion to preclude "repetitive and unduly harassing interrogation," regarding "general" attacks on a witness's credibility. Id. General attacks include challenges to a witness' perceptions, memory or prior criminal record. Id.

However, in contrast to *general* attacks on credibility, motive to lie inquiries constitute a more "*particular attack* . . . as they may related directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial and *is always relevant* as discrediting the witness and affecting the weight of his testimony." Id. (emphasis *added*). The trial court's ruling below failed to

appreciate the distinctions between general attacks on credibility versus particular attacks regarding motives to lie. It erred in concluding that discretion accorded to trial court regarding limitations on questioning were the same for both manners of attack. They are not.

Credibility determinations arise following *general attacks* which are typically subject to a trial court's discretion over the extent of questioning. Van Arsdall, 475 U.S. at 679-80; Davis, 415 U.S. at 316. However, determinations regarding a witness's motive to lie have been characterized by this Court as particular attacks of cross examination. See State v. Sprik, 520 N.W.2d 595, 600 (S.D. 1994)(distinction noted between impeachment to challenge credibility versus particular attacks regarding bias and motive to lie). Limitations on *particular attacks in total* regarding a witness' motive to lie about an event, in turn limits a trial court's discretion to exclude confrontation, versus when a general attack is pursued. Van Arsdall, 475 U.S. at 679-80

The trial court below excluded bias and motive to lie to preserve his immigration status testimony thus precluding the "particular attack" protected by the Confrontation Clause per Davis. When a trial court precludes *particular attacks* as to bias and motive to lie,

a violation of Confrontation clause rights *is stated* by a defendant "by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors ... could appropriately draw inferences relating to the reliability of the witness'". Van Arsdall, 475 U.S. at 680, citing Davis, 415 U.S. at 318. Per Van Arsdall, denial (in total) of this particular attack on the complaining witness' bias or motive to lie constitute a per se Confrontation Clause violation. State v. Jolley, 2003 S.D. 5, ¶39, 656 N.W.2d 305, 313–14, citing Van Arsdall, 475 U.S. at 680. As in Van Arsdall, "the trial court prohibited *all* inquiry into the possibility that the State's witness was prejudiced as a result of" his motive to deflect rape allegations off himself to preserve his immigration status. See State v. Honomichl, 410 N.W.2d 544, 548 (S.D. 1987)(citing Van Arsdall). A Constitutional violation has been shown here through complete preclusion of *all* testimony regarding the immigration issue.

The issue of immigration status as precursor to a witness' motive to lie was examined in Carrero-Vasquez v. State, 63 A.3d 647 (Md.App. 2013). In Carrero-Vasquez, the

defendant was charged with various narcotics felonies. Carrero-Vasquez, 63 A.3d at 651. In addition, possession of a stolen gun was an issue in the case along with the car the defendant was driving. Id. at 654. The defendant was appealing his second conviction at trial following a successful first appeal on other grounds.

At the first trial, the State called "Ms. Luna" as a witness against the defendant. Id. At that first trial, she testified that she was the owner of the car the defendant was driving. Id. She also testified over the State's objection that she was in the United States illegally. Id. She also admitted that she would be deported if convicted of possession of a stolen gun. Id.

On the retrial, the State filed a motion in limine to preclude testimony regarding Luna's immigration status which was granted by the trial court. Id. Luna was advised of her right to remain silent. Id. Luna testified that she owned the car but knew nothing about the stolen gun. Id. at 655. The defendant was allowed to ask Luna whether she knew she could "face serious consequences" for having a stolen gun. Id. The defendant appealed again following his conviction.

On appeal, the appellate court reversed the trial court's decision. It rejected the State's argument that

"Luna's immigration status was merely 'a collateral issue, likely to confuse and mislead the jury'." Id. at 658. It cited Davis and Van Arsdall noting the "partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony,". Id. The appellate court noted "simply because appellant's counsel was permitted to inquire into *some* reasons but not all material reasons why she may have been motivated to lie under oath left appellant with, at best, an unconstitutionally restricted right of confrontation." Id. (emphasis *original*). Theoretical public policy reasons about discouraging witnesses from reporting crimes by calling attention to immigration status had to yield to the individual's right to confront witnesses. Id. at 659.

"Since this issue involves a federal constitutional question [this Court applies] the *Chapman* harmless error analysis rather than the harmless error analysis developed in the South Dakota cases." State v. Swallow, 405 N.W.2d 29, 37 (S.D. 1987)(citing Van Arsdall); See Chapman v. California, 386 U.S. 18 (1967). Applying Chapman, the circumstances show that importance of the complaining witness' testimony to the State's case was immense. He was the sole witness to the alleged burglary and robbery inside

his apartment. His credibility is a central issue. T3:148.

The severity of the Appellant's accusation and the level of the Rojas' interest, the subject of the particular attack, is accordingly high. Criminal charges can effect immigration status. T1:10. As in Carrero-Vasquez, he was undocumented and subject to deportation at any time. T3:147. Cooperation with the State could further that process. T3:147. He indicated that he planned to apply for a visa. T3:144. He consulted with an attorney after the assault because his immigration status might "hurt" him. T3:143-45. Courts have recognized the goal of attaining immigration benefits provides a motive to lie. See Garcia-Garcia v. Holder, No. 08CV1129-LAB (AJB), 2010 WL 1292155, at *6 (S.D. Cal. Mar. 30, 2010)("he would have had strong motives to deny both the smuggling and the false testimony when applying for naturalization."); Cazorla v. Koch Foods of Mississippi, LLC, No. 3:10 CV135-DPJ-FKB, 2014 WL 11456088, at *2 (S.D. Miss. Sept. 22, 2014)("the Court has now concluded that Koch Foods should be allowed discovery related to the claimants' efforts to obtain immigration benefits like U Visas. U Visas are potentially available to alleged victims of certain crimes and offer nonimmigrant status with a potential path to

citizenship. Koch Foods claims that the hope of obtaining such a visa motivated false claims against it. Many of the disputed opinions—especially those from Morrison—relate to this factual issue and would be relevant to motive and bias); Jawad v. Holder, 686 F.3d 400, 403 (7th Cir. 2012) ("Jawad had a strong motive to lie because he wanted to remain in the country."); State v. Bautista, 351 P.3d 79, 83 (2015) ("Consequently, A's motive to lie, at least for immigration purposes, had not *yet* terminated)(emphasis *added*).

The immigration status testimony was known by the prosecutor to have been excluded. Despite knowing that, the prosecutor argued at trial that Rojas did not have anything at stake in this case. T3:436. The total exclusion of the Defendant's central defense, to counter the prosecutor's argument, prejudiced the Appellant beyond any reasonable doubt per Chapman.

The trial court placed its Rule 403 analysis above Constitutional Due Process and Confrontation Clause consideration. See infra Argument III. The trial court is not permitted to do so. The State and this Court are precluded by the Constitution from mechanistically raising a state rule above a Defendant's Constitutional right to defend oneself in court. See State v. Packed, 2007 S.D.

75, ¶23, 736 N.W.2d 851, 859 citing Chambers v. Mississippi, 410 U.S. 284 (1973).

The distinction between heightened review for Constitutional issues rather than state evidence law issues was illustrated by this Court in State v. Packed, 2007 S.D. 75, 736 N.W.2d 851. In Packed, the defendant, accused of Rape, presented a theory of defense that the alleged juvenile victim lied about being raped by the defendant to avoid getting in trouble with having a relationship with a boyfriend living next door. Packed, 2007 S.D. at ¶¶10-11, 736 N.W.2d at 855. The State sought to exclude evidence regarding this on third party perpetrator grounds via a motion in limine, which was granted by the trial court. Id. In an offer of proof, the defendant inquired of adult witnesses who admitted the alleged victim had been confronted about their concerns regarding her relationship with the boyfriend. Id.

On appeal, this Court reversed the trial court's decision excluding the evidence. It noted that, "More to the point here, however, it must be recognized that there is a distinction between evidence offered to prove the guilt of another uncharged individual and evidence offered to show that a witness has a motivation to accuse the wrong person. To deny without rational basis evidence of the

latter contravenes a defendant's due process rights". Packed, 2007 S.D. at ¶23, 736 N.W.2d at 859. This Court cited Davis v Alaska in Packed for its justification to place third party perpetrator evidence issues via application of Rule 401 (Relevancy) in secondary priority to Confrontation Clause issues regarding evidence of motives to lie. In the present case, this Court may cite those same cases to reverse and this matter for a new trial, by raising Constitutional claims above Rule 403 state law issues.

III. THE TRIAL COURT ERRED EXCLUDING IMMIGRATION STATUS EVIDENCE ON RULE 403 PREJUDICE GROUNDS.

The trial court granted the prosecutor's motion in limine to preclude mention of the complaining witness's immigration status. T3;150-51. It conceded that the topic had some probative value. T3:150. Relying on Rule 403, the trial court found that any probative value was substantially outweighed by "more" prejudice. T3:150. The trial court erred arriving at this conclusion.[4]

Trial court decisions to admit or deny the introduction of evidence are reviewed by this Court using

[4] The Appellant incorporates all arguments and authorities regarding motive to lie addressed in Arguments I and II.

the abuse of discretion standard. State v. Bunger, 2001 S.D. 116, ¶7, 633 N.W.2d 606, 608. SDCL 19-19-403 provides the "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Admission of "testimony involves two inquiries: first, whether the evidence is relevant and, second, if relevant, whether the prejudicial effect of the evidence outweighs its probative value." State v. Woodfork, 454 N.W.2d 332, 335 (S.D. 1990). "Only when prejudice must be balanced against probative value will a court weigh the evidence. Even then, the law favors admissibility." Bunger, 2001 S.D. at ¶11, 633 N.W.2d at 609.

The record demonstrates the trial court abused its discretion excluding immigration status evidence. It misapplied the law, for which it has no discretion. See Packed, 2007 S.D. at ¶24, 736 N.W.2d at 859. Rule 403 requires the probative value to be compared to the prejudicial effect of its admission. Instead, the trial court substituted public policy decisions for the probative value element of the test. It noted "public policy considerations from the Court not giving any regard or

testimony relating to somebody's immigration status. They say that it's generally irrelevant because it *may* deter people from reporting crimes." T3:151 (emphasis *added*).

The trial court's stated concerns denote their speculative nature as its analysis drifted from text of Rule 403. Instead of focusing on known facts of *this* case, regarding *this* Defendant, it chose to speculate what effects its decision might have on other yet unknown complaining witnesses in the future. With regards to this specific case, such concerns are not shown to actually exist as the police were notified by Rojas' neighbors. Nevertheless, caselaw demonstrates that public policy considerations addressing witness intimidation of a theoretical group of citizens must yield to the Constitutional rights of an individual defendant to confront witnesses against her in their own case. Carrero-Vasquez, 63 A.3d at 658.

The trial court drifted further away from Rule 403 by being distracted by character evidence considerations. T3:150. It stated it cannot permit admission "to show that there is some basis in his character for being dishonest simply because of the fact they're here not documented." T3:150. Character evidence is not a part of the Rule 403 test. See SDCL 19-19-404(a). Possible inferences of

character references, if a true concern, may be addressed by jury instructions. See State v. Red Star, 2001 S.D. 54, ¶12, 625 N.W.2d 573, 577.

The immigration status evidence was not offered to stablish character evidence solely or at all. Compare State v. Wright, 1999 S.D. 50, ¶16, 593 N.W.2d 792, 800. The probative nature of the actual topic dealt not with character but with the complaining witness' bias and motive to lie – what issues are present that might influence his own interests that can encourage him to fabricate his testimony? Motive to lie testimony is not characterized as minimal or collateral. See People v Gaskin, 565 N.Y.S.2d 547, 548 (N.Y. 1991); U.S. v. Moore, 529 F.2d 355, 357 (DC.Cir. 1976); U.S. v. Harvey, 547 F.2d 720, 722, (2nd Cir. 1976). The trial court's reference to character evidence demonstrated further misapplication of the rule demonstrating reversible error.

The probative value of the evidence was high. The complaining witness's motive to lie constituted a central part of the defense theory of both Reecy and Dickerson. As conceded by the prosecutor, Rojas stated to him that "he had been working with an immigration attorney". T3:151. The prosecutor further stated the complaining witness

"mentioned the visa program and working with an attorney so that is why I alerted defense counsel,". T3:151.

The prosecutors initial account of the witness' concerns demonstrated differing issues of fact existed between accounts of the complaining witness' interests stated in the past (current visa interest), from those accounts stated in at a pre-trial hearing (future visa interest). As such, it does not necessarily follow that accounts stated to the trial court must be correct and accepted as gospel. Questions of fact to his actual interests should have been resolved by the jury. State v. Janklow, 2005 S.D. 25, ¶22, 693 N.W.2d 685, 694.

The trial court further erred by focusing her conclusion on the complaining witness' hearing testimony that "no one promised him anything." T3:151. However, an actual promise is not required to demonstrate a motive to lie. An expectation of a potential future benefit or future detriment while in a "vulnerable status" is sufficient to show a "possible" motive to lie. See Davis, 415 U.S. at 316-18; See also State v. Bachelor, 291 N.W. 738, 743 (1940)("If the witness said what the question *implies* that he did say it *might* be regarded by the jury as showing interest, bias or prejudice in the result of the trial that might influence the witness and affect his

credibility.")(emphasis *added*); See also Martinez v. State, 7 A.3d 56, 63 (2010)(" it matters only what [the witness] *might* have thought")(emphasis *added*); State v. Lopez, 852 S.E.2d 658, 666 (N.C.App. 2020)('generally when there is proper evidence at trial of the applicability of U-Visas to a witness, or of a witness's belief that she would be eligible for a U-Visa as a result of being the victim of a crime, such evidence would be relevant evidence under Rule 401 that a defendant could cross-examine a witness about to attempt to show a motive to lie"). The trial court actually recognized the vulnerability of the complaining witness through its efforts to advise him of his right to remain silent. T3:139.

The trial court expressed concerns about mini-trials arising. T3:150. However, it already had received testimony on the subject prior to reaching that conclusion. This concern is overstated as shown by the few transcript pages devoted to this testimony. T3:140-45. In addition, the trial court compared the probative value of the inquiry to "more" prejudice rather than "unfair prejudice" as required by SDCL 19-19-403. T3:150. Qualifiers preceding and describing prejudice are not surplusage to be ignored. See State v. Bruce, 2011 S.D. 14, ¶8, 796 N.W.2d 397, 401 (distinguishing prejudice from unfair prejudice). The

trial court misapplied the statute by lowering the threshold for the State to establish prejudice, but without a corresponding increase in favoring admissibility per Bunger.

The trial court misapplied Rule 403. The probative value of his immigration status was high – not low. The Constitutional implications of precluding motive to lie evidence further demonstrate its height. See supra Argument II. Judicial instructions were available to mitigate any prejudice from it being possibly misused as character evidence. Its exclusion prejudiced the Defendant by precluding the jury's ability to fully evaluate the complaining witness, demonstrating that reversal for a new trial is the appropriate remedy.

IV. THE TRIAL COURT ERRED ADMITTING EVIDENCE OF THE COMPLAINING WITNESS' BANK RECORDS THROUGH THE COMPLAINING WITNESS WHICH LACKED FOUNDATION AND WERE OTHERWISE HEARSAY

The complaining witness testified as to his bank records and transactions described on such records. T3:188-91. Rojas was merely handed documents by the prosecutor allegedly coming from his bank while on the witness stand. T3:188-91. No bank employee was called to testify prior to entry of these documents in evidence. The Defendants objected on foundation and hearsay grounds.

T3:188-91. The trial court overruled the objections in error. T3:188-91.

Out of court statements offered to prove the truth of the matter asserted are hearsay. SDCL 19-19-801(c). Hearsay is inadmissible. SDCL 19-19-802. An exception to the hearsay rule concerns business records. SDCL 19-19-803(6). This exception provides: " A record of an act, event, condition, opinion, or diagnosis if:(A) The record was made at or near the time by--or from information transmitted by--someone with knowledge; (B) The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;(C) Making the record was a regular practice of that activity;(D) All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with a rule or a statute permitting certification; and (E) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. " SDCL 19-19-803(6). Under the evidence presented at trial, the State did not meet the elements of this exception.

This Court encountered the identical issue in State v. Stokes, 2017 S.D. 21, 395 N.W.2d 351. In Stokes, the

defendant took the stand in his own defense. The State attempted to introduce his Verizon phone records though the defendant. The defendant objected on foundation grounds regarding the business record exception. He argued that the State failed to introduce a witness who could testify that the log was "kept in the normal course of business records or anything along those lines." State v. Stokes, 2017 S.D. at ¶10, 895 N.W.2d at 354. The trial court overruled the objection. Id.

On appeal, this Court reversed the trial court's decision and remanded the case for a new trial. It noted that as "Stokes correctly observes, there was no testimony or certificate explaining how and when the data was generated. Thus, there was no foundation for the hearsay exception,". Stokes, 2017 S.D. at ¶15, 895 N.W.2d at 355. The defendant "offered no testimony regarding the business activity that created what was purported to be a Verizon log of all messages sent and received." Stokes, 2017 S.D. at ¶16, 895 N.W.2d at 355.

The States' presentation below was similarly deficient.[5] The complaining witness merely read off the

[5] In addition to Stokes, case law demonstrates the State a.k.a. the Minneheha County States Attorney's office has

records presented to him[6]. He did not show he possessed "enough familiarity with the record-keeping system of the entity in question to explain how the record came into existence." Stokes, 2017 S.D. at ¶16, 895 N.W.2d at 356. As in Stokes, the trial court below erred as a matter of law admitting such testimony and evidence.

Admission of the bank documents and related testimony prejudiced the Defendants. The State alleged that Dickerson took a debit card from the alleged victim. The bank documents and the complaining witness's evidence served to present evidence confirming that a loss of property occurred associated with the alleged forced taking. If the objection were sustained, evidence of any attempted use of the card, and any resulting financial loss from the taking would be absent. It would assist raising the level of doubt whether a robbery ever occurred. The result of the trial below would be different. Reversal is required with instructions for a new trial.

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employed abbreviated measures regarding business record exception foundation requirements in past cases with success. See also State v. Dunkelberger, 2018 S.D. 22, ¶11, 909 N.W.2d 398, 400.

[6]The information was presented for the truth of the matter asserted as shown, inter alia, via "It's a list of transactions from my account.". T3:190.

CONCLUSION

The trial court erred excluding evidence of the immigration status of the complaining witness. It deprived the Defendant of Due Process by precluding her from presenting a complete defense creating Constitutional error. It further violated the Defendant's right to confront witnesses against him depriving him of a fair trial, thus creating, additional constitutional error. These errors, jointly and severally, prejudiced the Defendant beyond any reasonable doubt per Chapman warranting reversal for a new trial.[7]

The trial court misapplied laws of evidence. Rule 403 analysis, properly applied, would result in admission of the immigration status evidence. The jury would then be able to consider the witness' motive to lie. Similarly, the business records exception was not met by the State's offering. If precluded, the jury would not have heard evidence concerning an allegedly confirming monetary loss. The result at trial would be different. This Court should reverse this matter for a new trial, with instructions

[7] In the alternative, two (or more) errors allegedly insufficient of themselves to warrant reversal may combine to present sufficient prejudice to justify relief. See State v. Nelson, 1998 S.D. 124, ¶20, 587 N.W.2d 439, 447.

allowing the Defendant to inquire into the witness's immigration status.

CERTIFICATE OF COMPLIANCE

This brief meets applicable page and word limitations (6,992) required by this Court.

Dated this 1st day of March, 2021.

MARK KADI
c/o Public Advocate Office
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392
mkadi@minnehahacounty.org
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of March, 2021, a true and correct copy of the foregoing Appellant's Brief was served electronically on:

Jason Ravsnborg
Attorney General
1302 E. Hwy, Suite 1
Pierre, SD 57501
ATGservice@state.sd.us

Daniel Haggar
M.C. States Attorney
415 N. Dakota Ave
Sioux Falls, SD 57104
ujsservice@minnehahacounty.org

Attorney for Appellant

Appendix #29337

Exhibit A

MAY 18 2020

STATE OF SOUTH DAKOTA) : SS		IN CIRCUIT COURT
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT
		PD 19-023678
STATE OF SOUTH DAKOTA, Plaintiff,	+	49CRI19008819
vs.	+	JUDGMENT & SENTENCE
ARIANNA CHERELLE REECY, Defendant.	+	

An Indictment was returned by the Minnehaha County Grand Jury on December 4, 2019, charging the defendant with the crimes of Count 1 Robbery 1st Degree-Dangerous Weapon (Inj/Fear Vic) on or about November 19, 2019; Count 2 Burglary 1st Degree-Dangerous Weapon on or about November 19, 2019 and Count 3 Burglary 1st Degree-in Nighttime on or about November 19, 2019. The defendant was arraigned upon the Indictment on December 9, 2019, Michelle Thomas appeared as counsel for Defendant; and, at the arraignment the defendant entered her plea of not guilty of the charges in the Indictment. The case was regularly brought on for trial, Mark Hodges, Deputy State's Attorney appeared for the prosecution and, Michelle Thomas, appeared as counsel for the defendant. A Jury was impaneled and sworn on March 4, 2020 to try the case. The Jury, after having heard the evidence produced on behalf of the State of South Dakota and on behalf of the defendant on March 5, 2020 returned into open court in the presence of the defendant, returned its verdict: "We the Jury, find the defendant, ARIANNA CHERELLE REECY, guilty as charged as to Count 1 Robbery 1st Degree-Dangerous Weapon (Inj/Fear Vic) (SDCL 22-30-1, 22-30-3(1), 22-30-6 and 22-30-7); not guilty as to Count 2 Burglary 1st Degree-Dangerous Weapon and guilty as charged as to Count 3 Burglary 1st Degree-in Nighttime (SDCL 22-32-1(3))." The Sentence was continued to April 14, 2020.

Thereupon on April 14, 2020, the defendant was asked by the Court whether she had any legal cause why Judgment should not be pronounced against her. There being no cause, the Court pronounced the following Judgment and

SENTENCE

AS TO COUNT 1 ROBBERY 1ST DEGREE-DANGEROUS WEAPON (INJ/FEAR VIC) : ARIANNA CHERELLE REECY shall be imprisoned in the South Dakota State Women's Prison, located in Pierre, County of Hughes, State of South Dakota for twelve (12) years with credit for one hundred forty five (145) days served and with eight (8) years of the sentence suspended on the following conditions:

1. That the defendant comply with all terms of parole.
2. That the defendant commit no Class I misdemeanors or greater for eight (8) years.
3. That the defendant pay $106.50 court costs (as to each count=$213.00 total) through the Minnehaha County Clerk of Courts; which shall be collected by the Board of Pardons and Paroles.

4. That the defendant is adjudicated liable to pay restitution in the amount of $3,164.36 (payable to Julio Gomez Rojas) through the Minnehaha County Clerk of Courts; which shall be collected by the Board of Pardons and Paroles. It is ordered that this restitution is joint and several with co-defendant: Kevin Dickerson.

AS TO COUNT 3 BURGLARY 1ST DEGREE-IN NIGHTTIME : ARIANNA CHERELLE REECY shall be imprisoned in the South Dakota State Women's Prison, located in Pierre, County of Hughes, State of South Dakota for twelve (12) years with credit for one hundred forty five (145) days served and with eight (8) years of the sentence suspended (concurrent to Count 1) on the same conditions as imposed on Count 1.

It is ordered that the defendant shall provide a DNA sample upon intake into the South Dakota State women's Prison or the Minnehaha County Jail, pursuant to SDCL 23 – 5A – 5, provided the defendant has not previously done so at the time of arrest and booking for this matter.

The defendant shall be returned to the Minnehaha County Jail following court on the date hereof, to then be transported to the Prison; there to be kept, fed and clothed according to the rules and discipline governing the South Dakota State Women's Prison.

Dated at Sioux Falls, Minnehaha County, South Dakota, this 6 day of May, 2020.

BY THE COURT:

JUDGE ROBIN J. HOUWMAN
Circuit Court Judge

ATTEST:
ANGELIA M. GRIES, Clerk
By: _____ Deputy

FILED
MAY 06 2020
Minnehaha County, S.D.
Clerk Circuit Court

STATE OF SOUTH DAKOTA } ss.
MINNEHAHA COUNTY }
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office.

MAY 11 2020
Clerk of Courts, Minnehaha County
By _____ Deputy

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 29337

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

ARIANNA CHERELLE REECY,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE ROBIN HOUWMAN
Circuit Court Judge

APPELLEE'S BRIEF

JASON R. RAVNSBORG
ATTORNEY GENERAL

Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Mark Kadi
415 N. Dakota Ave
Sioux Falls, SD 57104
Telephone: (605) 367-7392
Email: mkadi@minnehahacounty.org

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed May 28, 2020

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 29337

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

ARIANNA CHERELLE REECY,

Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Plaintiff/Appellee, State of South Dakota, is referred to as "State." Defendant/Appellant, Arianna Cherelle Reecy is referred to as "Defendant." The settled record in the underlying case is denoted as "SR," followed by the e-record pagination. The Jury Trial transcripts are cited as "JT." The sentencing hearing transcript is cited as "ST." The exhibits are cited as "EX" followed by the exhibit number. Defendant's brief is cited as "DB."

JURISDICTIONAL STATEMENT

On May 6, 2020, the Honorable Robin Houwman, Circuit Court Judge, Second Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Arianna Cherelle Reecy*, Minnehaha County Criminal File Number 19-8819. SR 251-52. Defendant filed her Notice of Appeal on May 28, 2020. SR 253. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I

WHETHER THE CIRCUIT COURT PROPERLY GRANTED THE STATE'S MOTION TO EXCLUDE MENTION OF VICTIM'S IMMIGRATION STATUS?

The circuit court granted the State's motion to exclude mention of the victim's immigration status.

State v. Buccheri-Bianca, 312 P.3d 123 (Ariz. Ct. App. 2013)

State v. Honomichl, 410 N.W.2d 544 (S.D. 1987)

State v. Kryger, 2018 S.D. 13, 907 N.W.2d 800

II

WHETHER DEFENDANT FAILS TO SHOW PREJUDICIAL ERROR WHEN THE CIRCUIT COURT ADMITTED A LIST OF THE VICTIM'S BANK TRANSACTIONS?

The circuit court allowed an exhibit of Gomez-Rojas's bank records at trial.

State v. Martin, 2015 S.D. 2, 859 N.W.2d 600

State v. Stokes, 2017 S.D. 21, 895 N.W.2d 351

STATEMENT OF THE CASE

The Minnehaha County grand jury indicted Defendant on the following:

- Count 1: Robbery in the First Degree (Dangerous Weapon), contrary to SDCL 22-30-1(1), 22-30-6, and 22-30-7, a Class 2 felony;
- Count 2: Burglary in the First Degree (Dangerous Weapon), contrary to SDCL 22-32-1(2), a Class 2 felony; and

- Count 3: Burglary in the First Degree (In the Nighttime), contrary to SDCL 22-32-1(3).

SR 13-14.

In preparation for trial, the State moved to exclude mention of the victim's, Julio Gomez-Rojas, immigration and citizenship status. SR 31. The State argued such evidence was irrelevant and immaterial to the issues at trial. SR 31. Before trial the circuit court heard argument on the motion. JT 9. Both Defendant and her co-defendant, Kevin Xavier Dickerson, objected to the State's motion.[1] JT 9-12. The State notified Defendant that Gomez-Rojas was an undocumented immigrant and believed he applied for a U-Visa.[2] JT 11. If Gomez-Rojas's U-Visa was granted, he could potentially obtain legal residency. JT 11. Part of obtaining the U-Visa includes cooperating in the investigation of the crime. JT 11. The co-defendants argued that this provided Gomez-Rojas a motive to lie in order to obtain such benefits. JT 10-12. The circuit court did not make a ruling at that time. JT 12-13.

After voir dire, the circuit court held a hearing outside the presence of the jury with Gomez-Rojas. JT 140. The court advised Gomez-Rojas

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[1] Defendant and Dickerson were tried jointly and represented by separate counsel. SR 354; 840.

[2] A U-Visa may provide noncitizens temporary authorization to remain in the United States if that person is a victim of a certain crime and assists in the prosecution of that crime. *See* 8 U.S.C. § 1101(a)(15)(U); 8 U.S.C. § 1184(p).

of his constitutional right to remain silent before he testified. JT 141. Gomez-Rojas told the court he was in the United States illegally. JT 140-45. He was made aware of the U-Visa after he spoke with an immigration attorney regarding any implications he may face by cooperating with law enforcement. JT 143. The attorney informed Gomez-Rojas he could apply for a U-Visa; however, at the time of the trial he had yet to do so. JT 143-44. He told the court he might apply for the U-Visa sometime in the future. JT 145. The court asked Gomez-Rojas if he had been made any promises if he helped with the investigation, which he responded he had not. JT 145.

The court determined Gomez-Rojas's citizenship had limited relevancy and would distract the jury from the issues at trial. JT 150-51. It granted the State's motion to preclude evidence regarding Gomez-Rojas's immigration status. JT 151.

During the jury trial, the State sought to introduce a list of transactions from Gomez-Rojas's bank account. JT 190; EX 1. Gomez-Rojas notified law enforcement there had been attempted transactions on his bank account. JT 189. Gomez-Rojas, along with law enforcement obtained the list of the transactions from his bank. JT 190. Defendant objected to the admission of the records claiming the State failed to lay proper foundation. JT 192. The court overruled the objection, finding the exhibit fit under the business record exception to hearsay. JT 190.

At the conclusion of the trial, the jury found Defendant guilty of one count of first-degree robbery and one count of first-degree burglary. JT 467. The circuit court sentenced Defendant on April 14, 2020. ST 1. For Count 1: the court sentenced Defendant to twelve years in the state penitentiary with eight years suspended. ST 23. She was given credit for 145 days she previously served. ST 23. The court also imposed $3,164.36 in restitution for which she was joint and severally liable with Dickerson. As for Count 3: the court imposed the same sentence of twelve years in the state penitentiary with eight years suspended and credit for 145 days. ST 23. The two sentences were ordered to run concurrently. ST 23.

STATEMENT OF FACTS

In the summer of 2019, Gomez-Rojas visited a gentleman's club in Lesterville where he met Defendant, a dancer who went by the name Kisses.[3] JT 172. Gomez-Rojas gave Defendant his phone number and they exchanged text messages and phone calls over the next three months. JT 172-73. During their communication, Defendant asked Gomez-Rojas what he did for a living and if he made good money. JT 173-74. She eventually asked if he could lend her money to help with

[3] Gomez-Rojas only knew her by the name Kisses. Law enforcement identified Kisses as Defendant after Gomez-Rojas provided them her phone number. JT 321.

expenses relating to her children. JT 173-74. Defendant asked Gomez-Rojas for money on multiple occasions. JT 173-74.

On November 19, 2019, Gomez-Rojas finally agreed to give Defendant money. JT 175. He invited her over to his apartment to give her the money. JT 175. Defendant arrived around 7:00 p.m. in a black SUV with Iowa license plates. JT 176-77. She got out of the passenger side of the vehicle. JT 177. Gomez-Rojas met Defendant and let her inside his apartment.[4] JT 177. The two visited for a few minutes before Gomez-Rojas loaned Defendant $200.00. JT 177. While Gomez-Rojas talked with Defendant, the driver of the SUV, Dickerson, approached the front door of the apartment building and peered inside. JT 336; EX 20-A 2:21-3:31. After talking for a couple of minutes Defendant left, claiming she left her children in the vehicle. JT 177-79.

A few hours later, Defendant came back to Gomez-Rojas's apartment. JT 179. Gomez-Rojas met her outside to let her in the apartment. JT 179. He led Defendant to his apartment. JT 179. But, before the building door shut, Dickerson grabbed the door and entered behind them. JT 335-36; EX 20-B 1:15-1:17. Once he and Defendant were inside his apartment, Gomez-Rojas locked the apartment door. JT 179. Gomez-Rojas sat down on the couch and Defendant asked if anyone else was home. JT 180. When he told her no one else was there,

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[4] Gomez-Rojas's apartment has a security door that was locked. JT 177.

Defendant unlocked the door. JT 180. Dickerson burst into the apartment wearing a mask and brandishing a gun. JT 180. He demanded Gomez-Rojas give him money. JT 180. But Gomez-Rojas did not have any money. JT 180. Dickerson grabbed Gomez-Rojas by the back of his neck, pointed the gun at his head, and told Defendant to search the apartment. JT 180-81. Gomez-Rojas tried to escape, and Dickerson hit him in the head with the gun. JT 181. Gomez-Rojas fell to the floor and Dickerson took Gomez-Rojas's wallet from the table. JT 181.

Gomez-Rojas was able to stand up and run towards the bathroom for safety. JT 181. He called out for his neighbors to help him. JT 181. Sylvia, his neighbor across the hall heard Gomez-Rojas's cry for help and she rushed over with her sister, Sofia. JT 230. They were unable to enter the apartment until Defendant and Dickerson rushed out. JT 230-31, 339-40; EX 20-B 01:58-2:05; EX 20-B 03:08-03:14.

Sylvia and Sofia found Gomez-Rojas in the bathroom, beaten and bloody. JT 233. He told them his wallet was stolen and asked them to call 911. JT 244. Gomez-Rojas was taken to the hospital. JT 186. He told law enforcement what happened and provided descriptions of Defendant and Dickerson and the black SUV. JT 259-61. He also gave law enforcement Defendant's phone number. JT 259-61.

During law enforcement's investigation, officers learned transactions were attempted using Gomez-Rojas's bank account after he

put a block on his account. JT 781-82. An officer accompanied Gomez-Rojas to the bank to obtain a copy of the attempted transactions.[5] JT 328-29; EX 1.

Law enforcement was able to connect the phone number provided by Gomez-Rojas to Defendant. JT 321. Officers also learned Dickerson spoke to law enforcement earlier that year and informed officers that he and Defendant were dating. JT 321. Law enforcement discovered Dickerson lived in Luverne, Minnesota, and contacted Investigator Jeff Wieneke with the Rock County Sheriff's Office. JT 296, 322.

Investigator Wieneke went to Dickerson's known address. JT 296-97. When he arrived, he saw a black Chevrolet Tahoe with an Iowa license plate parked outside Dickerson's residence. JT 297. Another car, registered to Defendant, was parked behind the Tahoe. JT 297. Investigator Wieneke followed the Tahoe as it left the residence. JT 298. He saw Defendant exit the passenger side of the SUV when it made a stop. JT 299. Sioux Falls law enforcement later stopped the vehicle, identified Dickerson and Defendant, and arrested them both. JT 307. Law enforcement searched the Tahoe and found eight .40-caliber bullets in the center console. *Id.*

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[5] There were nineteen attempted transactions on Gomez-Rojas's bank account on November 19, 2019. JT 328-29.

STANDARD OF REVIEW

The circuit court's evidentiary rulings are reviewed "under the abuse of discretion standard with the presumption that the rulings are correct." *State v. Kryger*, 2018 S.D. 13, ¶ 13, 907 N.W.2d 800, 807 (quoting *State v. Birdshead,* 2015 S.D. 77, ¶ 36, 871 N.W.2d 62, 75-76). The decision to limit cross-examination will only be reversed if there is an abuse of discretion *and* a showing the defendant was prejudiced by the limitation. *Kryger*, 2018 S.D. 13, ¶ 13, 907 N.W.2d at 807 (citing *State v. Carter*, 2009 S.D. 65, ¶ 31, 771 N.W.2d 329, 338). "Prejudice results when 'a reasonable jury probably would have a significantly different impression if otherwise appropriate cross-examination would have been permitted.'" *Carter*, 2009 S.D. 65, ¶ 31, 771 N.W.2d at 339 (quoting *State v. Johnson,* 2007 S.D. 86, ¶ 35, 739 N.W.2d 1, 13).

"The question of whether a defendant's Sixth Amendment right to confrontation was violated is a constitutional question which [this Court] review[s] de novo." *State v. Podzimek*, 2019 S.D. 43, ¶ 13, 932 N.W.2d 141, 146 (quoting *State v. Spaniol*, 2017 S.D. 20, ¶ 23, 895 N.W.2d 329, 338). "The Confrontation Clause of the Sixth Amendment to the United States Constitution, as applied to South Dakota through the Fourteenth Amendment, requires that in all criminal cases, the defendant has the right 'to be confronted with the witnesses against him.'" *Podzimek*, 2019 S.D. 43, ¶ 13, 932 N.W.2d at 146 (quoting *Spaniol*, 2017 S.D. 20, ¶ 24,

895 N.W.2d at 338). "The Confrontation Clause applies to witnesses testifying at trial, and is 'generally satisfied when the defense is given a full and fair opportunity to probe and expose a witness' infirmities through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony.'" *Kryger,* 2018 S.D. 13, ¶ 14, 907 N.W.2d at 808 (quoting *Spaniol*, 2017 S.D. 20 ¶ 24, 895 N.W.2d at 338).

ARGUMENTS

I

THE CIRCUIT COURT PROPERLY GRANTED THE STATE'S MOTION TO EXCLUDE MENTION OF VICTIM'S IMMIGRATION STATUS.

Defendant argues the circuit court erred when it prohibited the introduction of evidence related to Gomez-Rojas's immigration and citizenship status.[6] DB 8-30. She argues she was deprived of her Due Process rights under the Confrontation Clause and her Sixth Amendment right to cross-examination by not allowing her to ask Gomez-Rojas about his immigration status. DB 8-30. But the circuit court did not error in prohibiting such evidence and even if it did, the error was harmless.

While Defendant has a right to effective cross-examination, she does not have the right to "cross-examination that is effective in whatever way,

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[6] Defendant's first three issues all related to the circuit court precluding evidence of Gomez-Rojas's immigration status. For the sake of judicial economy, the State combined these issues in its brief.

and to whatever extent" she wishes. *Carter,* 2009 S.D. 65, ¶ 39, 771 N.W.2d at 341 (quoting *U.S. v. Owens*, 484 U.S. 554, 559, 108 S.Ct. 838, 842). In fact, a trial court has broad discretion to impose reasonable limits on cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogations that is repetitive or only marginally relevant." *State v. Honomichl*, 410 N.W.2d 544, 548 (S.D. 1987) (quoting *Delaware v. Van Arsdall,* 475 U.S. 673, 679, 106 S.Ct. 143, 145 (1986)).

This case is similar to *State v. Buccheri-Bianca*, 312 P.3d 123 (Ariz. Ct. App. 2013). There, the victim filed an application for a U-Visa almost a year after she reported that the defendant molested her. *Id*. at 127. The defendant claimed that the possibility of the U-Visa would give the victim and her family a "substantial motive to fabricate or exaggerate any allegations." *Id.* However, the trial court disagreed and precluded the defendant from questioning the victim regarding her immigration status. *Id.*

The appellate court upheld the trial court's preclusion because the victim nor her family were aware of the U-Visa when the allegations against the defendant were made. *Id.* Additionally, the victim did not even apply for the U-Visa for almost a year after she reported the molestation. *Id.* The court concluded the mere possibility of the victim obtaining a U-Visa was not relevant to the accusation. *Id.* It determined trial court did not violate the defendant's constitutional right to

confrontation when it properly limited irrelevant and prejudicial evidence. *Id.*

Here, Gomez-Rojas did not know about the U-Visa until after he reported the crime. In fact, he did not even apply for the U-Visa after he was informed that he could by an immigration attorney. At the time of trial, Gomez-Rojas still had not made the application. JT 143-44. Additionally, Gomez-Rojas told the court he was never promised anything in exchange for his cooperation. JT 145. *See People v. Chavez Limon*, 2019 WL 2635550, at *3 (Cal. Ct. App. 2019) (stating "traditional sources of bias were weak because [the victim] had not been offered any inducements and did not have a substantial basis to expect benefits to be gained by giving testimony favorable to the prosecution.").

Therefore, any possibility of obtaining a U-Visa is not relevant to the underlying crimes and would only prejudice Gomez-Rojas. *Buccheri-Bianca,* 312 P.3d at 128 (defendant's confrontation rights are limited "to evidence which is relevant and not unduly prejudicial"). The court properly exercised its "wide latitude" when it imposed a reasonable limit on Defendant's cross-examination for concerns because of prejudice and little relevance to the crimes charged. *Van Arsdall*, 475 U.S. at 679; JT 150.

The circuit court's limits were not only reasonable but also preventative in that the ruling avoided a distracting and confusing issue from being presented to the jury. Gomez-Rojas's immigration status and

his intentions to apply for a U-Visa were a collateral matter to the robbery, burglary, and assault here. *Cf. Chavez Limon*, 2019 WL 2635550, at *3. Delving into that issue would have caused a trial within a trial on Gomez-Rojas's immigration status, the requirements of obtaining a U-Visa, and whether Gomez-Rojas qualified for that visa. *People v. Villa*, 270 Cal. Rptr. 3d 46, 54 (Cal. Ct. App. 2020). It would also require an expert witness. *Id.* All these collateral matters would only serve to cause confusion. *Id.*; *Cf. State v. Huber*, 2010 S.D. 63, ¶ 41, 789 N.W.2d 283, 296. Thus, the circuit court properly limited Defendant's cross-examination to prevent a "mini-trial" on Gomez-Rojas's immigration status that would have only served to confuse the jury. JT 150.

II

DEFENDANT FAILS TO SHOW PREJUDICIAL ERROR WHEN THE CIRCUIT COURT ADMITTED A LIST OF THE VICTIM'S BANK TRANSACTIONS.

Defendant argues Gomez-Rojas's bank records were erroneously admitted into evidence. DB 30. She claims Gomez-Rojas's testimony was insufficient to meet the requirements for the business records exception to hearsay. DB 30-33. She claims that the bank records shows the loss of property occurred and without the bank records the outcome of the trial would have been different. DB 33.

While the circuit court's evidentiary rulings are presumed correct, even if this Court determines the circuit court abused its discretion in

admitting the Gomez-Rojas's bank records, Defendant has not shown how she suffered prejudice from such evidence. "An error in admitting evidence under SDCL 19-19-803(6) 'does not warrant reversal absent a showing that substantial rights of the party were affected.'" *State v. Stokes*, 2017 S.D. 21, ¶ 20, 895 N.W.2d 351, 357 (quoting *State v. Brown*, 480 N.W.2d 761, 764 (S.D. 1992). This occurs when the evidence "in all probability affected the jury's conclusion." *State v. Martin*, 2015 S.D. 2, ¶ 7, 859 N.W.2d 600, 603 (quoting *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 59, 764 N.W.2d 474, 491).

Yet Defendant has failed to show how she was prejudiced by the admission of the bank records. The bank records were cumulative to Gomez-Rojas's testimony. And even if this Court were to determine otherwise, the State presented significant evidence at trial to support Defendant's robbery conviction. *See State v. Dunkelberer*, 2018 S.D. 22, ¶ 17, 909 N.W.2d 398, 401 (admission of a surveillance video was harmless where the evidence independent of that video established the defendant's guilt).

The admission of Gomez-Rojas's bank records did not add significant value to Gomez-Rojas's testimony. He testified that he blocked transactions from his bank card. JT 187. The following day the bank contacted Gomez-Rojas about some attempted transactions on his blocked account. JT 188. Additionally, Gomez-Rojas testified that his wallet was stolen by Defendant and Dickerson after Dickerson not only

pointed a gun at him and demanded money but also hit him in the head. JT 181. Therefore, the bank records admitted into evidence are cumulative to Gomez-Rojas's testimony and Defendant cannot show how she was prejudiced by these records.

In addition, not only did the jury hear about the stolen wallet and attempted transactions, they also heard from Gomez-Rojas's neighbors. Sylvia heard Gomez-Rojas crying out for help. JT 229-30. She and her sister Sofia saw a man and a woman run out of Gomez-Rojas's apartment. JT 231, 243. They then discovered Gomez-Rojas injured and called law enforcement upon his request. JT 233. Gomez-Rojas explained to his neighbors and law enforcement that he was attacked and robbed. JT 233. Upon law enforcements investigation, they identified Defendant and Dickerson as suspects. JT 306-07, 321-24.

In sum, the jury was presented with ample evidence to convict Defendant of burglary and robbery. JT 467. The bank records are merely cumulative evidence and did not "in all probability" affect the jury's decision to convict Defendant. *Martin*, 2015 S.D. 2, ¶ 7, 859 N.W.2d at 603.

CONCLUSION

Based upon the foregoing arguments and authorities, the State respectfully requests that Defendant's convictions and sentences be affirmed.

Respectfully submitted,

JASON R. RAVNSBORG
ATTORNEY GENERAL

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: 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 3,126 words.

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

Dated this 14 day of April 2021.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 14, 2021, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Arianna Cherelle Reecy* was served via electronic mail upon Mark Kadi at mkadi@minnehahacounty.org.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	
	*	Case #29337
v.	*	
	*	
ARIANNA CHERELLE REECY,	*	
	*	
Defendant and Appellant.	*	

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APPEAL FROM THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

****

The Honorable Robin Houwman
Circuit Court Judge

****

APPELLANT'S REPLY BRIEF

****

Jason Ravnsborg
Office of the Attorney General
1302 E Highway 14 STE 1
Pierre, SD 57501

Daniel Haggar
M.C. States Attorney
415 N Dakota Ave
Sioux Falls, SD 57104

Mark Kadi
Appellant's Counsel
415 N. Dakota Ave.
Sioux Falls, SD 57104

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Notice of Appeal filed on May 28, 2020

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
Plaintiff and Appellee,	*	Case #29337
v.	*	REPLY BRIEF
ARIANNA CHERELLE REECY,	*	
Defendant and Appellant.	*	

PRELIMINARY STATEMENT

The Appellant renews factual statements and legal arguments originally presented in the Appellant's brief. Reference to the trial court's record remains the same.

ARGUMENT

The Appellee concedes that with regards to Constitutional claims[1] presented in this case that this Court must apply de novo review. Appellee Brief at 9. The Appellant urges this Court's members to aim their independent review at the effect of the jury's view of the witness, and not the final verdict. In that this case

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[1]The State seeks to merge all facets of the immigration status issues into one. Appellee Brief at n.6. The Appellant urges this Court to consider all claims separately raised based on Constitutional (Due Process Complete Defense; Confrontation Clause – Motive to Lie) and Statutory (Rule 403) violations. See Appellant's Brief at n.1.

involves exclusion of evidence, this Court must view the effect of the exclusion on how the jury's perception of the witness might change. Appellant's Brief at 15; Delaware v. Van Arsdall, 475 U.S. 673, 679-80 (1986).

The Appellee notes that the "Confrontation Clause applies to witnesses testifying at trial, and is 'generally satisfied when the defense is given a full and fair opportunity to probe and expose a witness' infirmities through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony.'" Appellee Brief at 9 citing State v Kryger, 2018 S.D. 13, ¶14, 907 N.W.2d 807, 808. The opportunity permitted here by the trial court was hardly "full". Instead, the Appellant experienced a complete exclusion of evidence demonstrating Rojas' bias and motive to lie. See State v. Bausch, 2017 S.D. 1, ¶22, 889 N.W.2d 404, 411 (distinguishing total versus partial limitations on cross). No questions regarding the complaining witness's immigration status were permitted at all.

Complete exclusion of particular attacks regarding a witness' bias and motive to lie states a violation of a defendant's Confrontation Clause rights. Van Arsdall, 475 U.S. at 680; State v. Jolley, 2003 S.D. 5, ¶39, 656 N.W.2d 305, 313-14; Appellant's Brief at 17-18. While trial

courts possess broad discretion to limit cross-examination of "marginal relevant" topics, evidence regarding bias or motive to lie is "always relevant". See Appellee Brief at 11; Compare Davis v. Alaska, 415 U.S. 308, 316 (1974). As such, the vast limiting discretion typically available towards general attacks on credibility is simply not available regarding particular attacks on witness bias and motive to lie. Van Arsdall, 475 U.S. at 679-80.

The Appellee does not concede Constitutional errors were committed here. Appellee Brief at 10-13. Accordingly, the State forfeits the argument that the Constitutional errors were harmless "beyond a reasonable doubt". Van Arsdall, 475 U.S. at 680 citing Chapman v. California, 386 U.S. 18, 24 (1967). Regardless, the error was not harmless. It deprived the Defendants of the ability to present evidence of why the alleged victim might fabricate his testimony – to avoid arrest for a rape causing deportation. This prejudice was compounded when the prosecutor, knowing immigration status evidence was excluded, claimed that Rojas had nothing at stake in this case. T3:436. The total exclusion of the Defendants' central defense, to counter the prosecutor's argument, prejudiced the Appellant beyond any reasonable doubt per Chapman.

The Appellees cites two primary cases regarding the immigration status issue. Appellee's Brief at 11-12; State v. Buccheri-Bianca, 312 P.3d 123 (Az.Ct.App. 2013); People v. Chavez Limon, No. G056401, 2019 WL 2635550 (Cal.Ct.App. 2019). Both cases are clearly distinguishable from the Appellants' case(s). In Buccheri-Bianca, the appeals court utilized abuse of discretion review as the issue was treated as matter of state evidence law. The defendant did not specifically raise Constitutional Issues regarding Due Process Rights to present a complete defense or Confrontation Clause Rights to cross-examine with a particular attack regarding the victim's motive to lie. State v. Buccheri-Bianca, 312 P.3d at 127. That defendant was deprived of the more favorable de novo standard of review on direct appeal.

The timing of interests for U VISA relief differ as well. In Buccheri-Bianca, the victims reported child sexual assault allegations in November, 2010. Id. One witness obtained U-Visa relief from the State one year later on November, 2011. Id. While noting that an alien must first report a crime to receive U-Visa benefits pursuant to the code[2] of federal regulations, "the great

[2] Buccheri-Bianca demonstrated no apparent use of expert witnesses regarding U-Visa qualification regulations. See

length of time between when [the witness] first reported the molestation and the time she filed her application supports the court's conclusion that the possibility of obtaining a U-Visa was not relevant to her accusation." Buccheri-Bianca, 312 P.3d at 127 (Ct. App. 2013).

In contrast to Buccheri-Bianca, Rojas contacted a lawyer one week after the events were reported to the police, but still in advance of the trial. T3:143. Rojas testified that he contacted an immigration attorney after the incident to see whether this case would "hurt" him. T3:143-45. The prosecutor in the present case was also concerned whether Rojas might incriminate himself. T1:9. The trial court accommodated this concern by advising Rojas of his right to remain silent. T3:140-41.

In further contrast, the Buccheri-Bianca court based its decision in part that there was no evidence the witness was actually an illegal alien. Buccheri-Bianca, 312 P.3d

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Appellee Brief at 13 citing People v. Villa, 270 Cal.Rptr.3d 46, 54 (Cal.Ct.App. 2020). Individuals in South Dakota, however, are presumed to know the law. Johnson v. Graff, 5 N.W.2d 33, 35 (S.D. 1942); State v. Dorhout, 513 N.W.2d 390, 394 (S.D. 1994)(litigant is presumed to know tax statutes and regulations). As such, no expert testimony regarding U-Visas would have been required here. See Appellee Brief at 13. The discussion on the issue among the attorneys for the respective parties and the trial court demonstrates the topic was easily understandable in this case. T1:11-12.

at 127 (Ct. App. 2013). Proof of immigration status was absent. Id. Rojas, however, testified under oath that he was an illegal alien. T3:141. The State filed a motion in limine in light of his known immigration status. SR31. His status was not an unknown or contested issue as in Buccheri-Bianca.

People v. Chavez-Limon, No. G056401, 2019 WL 2635550 (Cal.Ct.App. 2019), review denied (Sept. 11, 2019) is also similarly distinguishable to Reecy's case. The witness made a U-Visa request that was rejected by the prosecutor. Chavez-Limon, 2019 WL 2635550, at *4. The hearing occurred 2.5 years after the rejection. Id. There was no motive to lie at trial as the request for U-Visa was already rejected. Id. Chavez-Limon further noted caselaw indicating that an *expectation* of benefits implicates bias. Id. at 2 citing People v Brown, 31 Cal.4th 518, 544 (2003)("As a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias.")

In the present case, the prosecutor was aware of Rojas's interest and had not rejected any requests: the prosecutor stated Rojas "mentioned the visa program and working with an attorney and so that's when I alerted the

defense counsel to it." T3:151. The prosecutor told Rojas he could "eventually" apply for a U VISA. T3:143. Rojas had not yet filed for a visa. T3:143-45. Rojas indicated, however, that *he was going to file for a visa*: "if it comes to that, yes, of course." T3:143. Visa applications from undocumented aliens can be assisted by local law enforcement officials. T3:147. As such, an actual expectation was present that was more than theoretical.

The Appellee argues that the trial court appropriately prevented "mini-trials". Appellee at 13. This is incorrect as a "mini-trial" had already occurred at a pre-trial hearing. The testimony consumed transcript pages within single digits. T3:140-45. No confusion of facts, but for the lower court's conclusions that were drawn from them, can be found in those pages.

The Appellee appears to tacitly concede that adequate foundation for bank records testimony admitted through Rojas was lacking. Appellee Brief at 13-14. It concentrates its efforts to show no prejudice occurred by its admission. The record, however, demonstrates the opposite is true. Although the Appellee now claims the bank record evidence had no impact, the prosecutor

presented admissions to the contrary during the proceedings below.

During closing argument, the prosecutor described the bank record evidence as: "The big thing – that card is *a big piece of the evidence* and the transactions that occurred on it are *a big piece of the evidence* in this case." T3:434 (emphasis *added*). The prosecutor then described how this "big piece of evidence" was so big it was worth repeating that phrase twice. The prosecutor stated the reason "is that those transactions don't correspond with someone who's been some kind of victim." T3:434. The prosecutor further notes the transaction evidence showed that 19 transaction attempts occurred within an hour of the robbery. T3:435.

The Appellant presented the allegation that she had been raped and had defended herself. The prosecutor's use of the bank records and testimony about the transaction attempts went directly to the defense argument that Reecy was the victim. The State used the evidence to counter that argument arguing that these 19 transactions proved she was not acting like a victim. If the Defendants' objections were sustained, that evidence would not have been admitted for the jury's consideration. As such, the argument that Reecy was not acting like a victim would not

have been presented in that fashion. Prejudice has been shown.

CONCLUSION

The trial court committed Constitutional error excluding evidence concerning the immigration status of the complaining witness. It violated Reecy's Due Process Rights to present a complete defense and her Confrontation Clause rights to confront the witnesses against her. The State failed to show the error was not harmless beyond a reasonable doubt. In addition, the trial court further abused its discretion excluding cross-examination regarding the immigration status of the complaining witness on state law Rule 403 grounds. Bias and motive to lie evidence was highly probative and was not substantially outweighed by unfair prejudice. These errors whether viewed individually or cumulatively[3] denied Reecy of her Constitutional right to a fair trial. This Court should reverse and remand the matter for a new trial with appropriate instructions.

CERTIFICATE OF COMPLIANCE

This Reply Brief meets applicable page and word limitations 2,435 required by this Court.

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[3] See State v. Nelson, 1998 S.D. 124, ¶20, 587 N.W.2d 439, 447; State v. Perovich, 2001 S.D. 96, ¶¶29-30, 632 N.W.2d 12, 18.

Dated this 15th day of April, 2021.

MARK KADI
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392
mkadi@minnehahacounty.org
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of April, 2021, a true and correct copy of the foregoing Appellant's Reply Brief was served by email on:

Jason Ravsnborg
Attorney General
1302 E. Hwy, Suite 1
Pierre, SD 57501
ATGservice@state.sd.us

Daniel Haggar
M.C. States Attorney
415 N. Dakota Ave
Sioux Falls, SD 57104
ujsservice@minnehahacounty.org

Attorney for Appellant c/o
Minnehaha County Public Advocate