IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs. NO. 31107

DERREK RYAN BRAVEHEART,
Defendant and Appellant.

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

HONORABLE JOSHUA K. HENDRICKSON, Circuit Court Judge

APPELLANT'S BRIEF

Bryan T. Andersen
Office of the Public Defender
for Pennington County
14 Saint Joseph Street Suite 110
Rapid City, South Dakota 57701
Attorney for Appellant

LARA R. ROETZEL
Pennington County State's Attorney
130 Kansas City Street Suite 300
Rapid City, South Dakota 57701-2818

and

Marty J. Jackley
Office of the Attorney General
1302 E. Highway 14 Suite 1
Pierre, South Dakota 57501-8501

Attorneys for Appellee

Amended Notice of Appeal was filed on June 3, 2025.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED:

STATUTES CITED:

OTHER AUTHORITIES:

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs. NO. 31107

DERREK RYAN BRAVEHEART,
Defendant and Appellant.

APPELLANT'S BRIEF

PRELIMINARY STATEMENT

Throughout this brief, Defendant and Appellant, Derrek Ryan Braveheart, will be referred to as "Braveheart." Plaintiff and Appellee, the State of South Dakota, will be referred to as "State." References to documents in the record herein will be designated as "SR" followed by the appropriate page number. References to the arraignment hearing transcript of April 8, 2024 will be designated as "AR" followed by the appropriate page number. References to the motion hearing transcript of April 29, 2024 will be designated as "MH" followed by the appropriate page number. References to the evidentiary hearing transcript of May 9, 2024 will be designated as "EH" followed by the appropriate

page number. References to any of the various status hearing transcripts will be designated as "SH" followed by the date of that hearing and the appropriate page number. References to the jury trial hearing transcript of March 25, 26, 27, 2025, will be designated as "JT" followed by the appropriate page number. References to the sentencing hearing transcript of May 5, 2025 will be designated as "SE" followed by the appropriate page number.

JURISDICTIONAL STATEMENT

Braveheart appeals from a final amended judgment of conviction for first degree manslaughter (class C felony), the amended judgment entered on May 22, 2025 and filed the same day before the Honorable Joshua K. Hendrickson Seventh Judicial Circuit Court Judge, Rapid City, Pennington County, South Dakota. SR 640. Appeal is by right pursuant to SDCL § 23A-32-2. Notice of appeal was filed on June 3, 2025. SR 643. Amended Notice of appeal was filed on June 3, 2025. SR 642.

STATEMENT OF LEGAL ISSUE

I. WHETHER THE TRIAL COURT ERRED IN DENYING BRAVEHEART'S MOTION TO DISMISS BASED ON STATUTORY IMMUNITY UNDER SDCL 22-18-4.8

The trial court denied Braveheart's motion for a dismissal based on statutory immunity.

State v. Jaukkuri, 41 S.D. 4, 168 N.W. 1047 (1918)

Cromwell v. Hosbrook, 81 S.D. 324, 134 N.W.2d 777 (1965)

State v. Smith, 2023 S.D. 32, 993 N.W.2d 576

South Dakota Codified Law §§ 22-18-4 to 22-18-4.9.

II. WHETHER THE TRIAL COURT ERRED IN DENYING BRAVEHEART'S MOTION FOR A JUDGMENT OF ACQUITTAL

The trial court denied Braveheart's motion for a judgment of acquittal.

State v. Pellegrino, 1998 S.D. 39, 577 N.W.2d 590

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

State v. Smith, 2023 S.D. 32, 993 N.W.2d 576

South Dakota Codified Law § 23A-23-1 and § 23A-23-3

STATEMENT OF CASE AND FACTS

Case History

On March 18, 2024 Braveheart made his initial appearance in Pennington County, South Dakota and was charged in a four count indictment with the public offenses of second degree murder in violation of SDCL § 22-16-7 and in the alternative with the public offenses of manslaughter in the first degree in violation of SDCL § 22-16-15 (2) and in the alternative in violation of SDCL § 22-16-15(3) and in the alternative in violation of SDCL § 22-16-15(4). SR 1. Braveheart submitted an application for court-appointed counsel and the Office of the Public Defender for Pennington County was appointed to represent him. SR 48-49.

On April 8, 2024 Braveheart was arraigned in front of the Honorable Joshua K. Hendrickson on the indictment. AR 3-8, SR 1. Braveheart plead not guilty to the indictment. AR 9.

On April 28, 2024 Braveheart moved the court for a pre-trial hearing regarding self-defense immunity. SR 66. The court granted that request on April 29, 2024. MH 2. On May 9, 2024 an evidentiary hearing was held on the issue of self-defense immunity. EH 1. The trial court denied the request and found that the State had rebutted Braveheart's self-defense theory. SR 156-160.

On December 17, 2024 the State dismissed count two of the indictment. SR 335.

On March 25-27, 2025 a jury trial was held before the Honorable Joshua K. Hendrickson. JT 1. At the close of the State's case, Braveheart moved the trial court for a judgment of acquittal of all counts of the indictment under SDCL § 23A-23-1. JT 276-277. The court denied the motion and found that there was a proper jury question. JT 277. On March 27, 2025 the jury found Braveheart guilty of count two (originally count three of the indictment), manslaughter in the first degree in violation of SDCL § 22-16-15(3) JT 430.

After the jury returned their verdict Braveheart moved the trial court for a judgment of acquittal under SDCL §

23A-23-3. SR 511-515. The court denied the motion on May 5, 2025 and found that enough evidence was presented for the jury's verdict. SE 15.

Judge Hendrickson proceeded with sentencing on May 5, 2025 and imposed a thirty-year penitentiary sentence. SE 27. An amended judgment was filed on May 22, 2025. SR 640. Notice of appeal was filed on June 3, 2025. SR 643. Amended Notice of appeal was filed on June 3, 2025. SR 642.

Statement of Facts

At the evidentiary hearing and at the jury trial Braveheart's then girlfriend, Ayiannah Carroll, testified that Braveheart and her had gone to the Family Dollar store in Rapid City at nine or ten in the morning on February 2, 2024 to attempt to get money to put on her cash app. EH 37; JT 161. They both first noticed the decedent, Jonathan Odom, filling his vehicle engine with some fluid. EH 38; JT 164, 337. It then appeared to them that Odom became upset when there was no trash can and threw his empty jug against the front of the store. Id. After briefly entering the store to complain Odom then approached Braveheart at his driver's window and confronted him. EH 39; JT 165-166, 338.

Andrew and Krista (Lee) Schurger were also in the parking lot that morning and testified at the evidentiary hearing and the jury trial. EH 9-22; JT 100-155. Andrew testified that he observed, Odom, become angry about there

being no trash can in front of the store. EH 12-13; JT 105. He observed Odom enter the store and exit the store shortly thereafter still upset. EH 13; 105-106. Schurger next saw Odom at Braveheart's vehicle "throwing his hands up" and yelling at Braveheart. Id. He witnessed Odom reaching towards Braveheart in his vehicle and open handedly smacking him. EH 14-15, 20; JT 107-110. Schurger stated that at this point he called 9-1-1 to report the fight. EH 15; JT 107. Next Schurger explained that Braveheart had gotten out of his vehicle and was struck again by Odom. EH 16, 21; JT 110. Schurger observed that Odom was "egging him on to come out of the vehicle and wanted to fight with [Braveheart]." EH 16; JT 108. Schurger testified that at this point Braveheart turned to him and asked "if he was in the wrong." EH 16, 21; JT 110. Schurger testified that he responded "no" but also qualified that he did not see Braveheart's gun. Id. Schurger stated that Braveheart turned back to Odom and Odom struck him again. EH 16, 22; JT 110, 113. It was very loud and "it seemed like the hardest one, …," Schurger testified. Id. When asked by the State what did Odom do with his hands at that point Schurger responded, "I mean at the most he had them just kind of out." EH 18; JT 113.

Krista Schurger who was also present in the parking lot testified next. EH 23; JT 162. She also observed Odom strike Braveheart while he was in his vehicle. EH 30, 33;

JT 133. "Yes, twice before he got out," she observed. Id. She did see Braveheart's gun when he exited his vehicle. EH 30-31; JT 136. She stated, "[Braveheart] was just warning Mr. Odom that he had a gun and if he didn't stop he would shoot him." EH 31, 34-35; JT 145. Krista also saw the two times Odom struck Braveheart after he had exited his vehicle. EH 31, 34; JT 134-136. "[Odom] slapped him the last time really hard, …," she observed. EH 31; JT 136. When asked by the State about Odom's hands at that point Lee testified, "They were up. Like he was wanting [Braveheart] to - - like threatening him to shoot him." EH 32; JT 138, 149.

Ayiannah Carroll testified that she was also able to record the shooting on her phone which she later provided to law enforcement. EH 42; JT 169; State's EH Exhibit 1; JT Exhibit 22A. She testified that she did not see Braveheart hit while he was in the vehicle as she was concentrating on her phone, "but she thought that's what happened." EH 42, 44. The video shows Braveheart being struck at least twice by Odom after he exited his vehicle with his firearm. State's EH Exhibit 1; JT Exhibit 22A; EH 54; JT 177. Carroll testified it was "Three, four times." EH 45. Braveheart can be heard in the video telling Odom, "You are about to get your ass blown, nigga". State's EH Exhibit 1; JT Exhibit 22A. Odom can be heard telling Braveheart to

shoot him indicating that he was aware Braveheart had a gun. State's EH Exhibit 1; JT Exhibit 22A.

All testimony and the phone video indicate that three seconds after the last hard hit from Odom, Braveheart shot Odom. EH 18, 32, 42; JT 110, 136, 170; State's EH Exhibit 1; JT Exhibit 22A. Dr. Habbe testified that Odom died at a result of the gunshot wound later that evening on February 2, 2024. JT 260.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING BRAVEHEART'S MOTION TO DISMISS BASED ON STATUTORY IMMUNITY UNDER SDCL 22-18-4.8

The South Dakota Supreme Court has previously set the standard of review for conducting statutory interpretation:

> "Issues of statutory ... interpretation are questions of law. We review the interpretation and application of each de novo. In conducting statutory interpretation, 'we give words their plain meaning and effect, and read statutes as a whole.' " State v. Bowers, 2018 S.D. 50, ¶ 16, 915 N.W.2d 161, 166 (internal citations and quotation marks omitted) (quoting Expungement of Oliver, 2012 S.D. 9, ¶¶ 5-6, 810 N.W.2d 350, 351-52).

State v. Smith, 2023 S.D. 32 ¶22; 993 N.W.2d 576, 584.

Braveheart argued that the decedent, Jonathan Odom, had unlawfully entered Braveheart's occupied vehicle striking him and that Odom was in the process of continually attempting to unlawfully enter his occupied vehicle and strike him; his girlfriend and or her unborn child causing him to stand his

ground in self-defense. Furthermore, Braveheart was attempting to prevent the imminent commission of a forcible felony by Odom causing him to stand his ground in self-defense. Braveheart argued the State did not meet its burden of clear and convincing evidence that he did not act in self-defense to overcome his immunity provided by statute.

The South Dakota Supreme Court has held, "The quality of proof to be clear and convincing is 'somewhere between the rule in ordinary civil cases and the requirements of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt.'" Cromwell v. Hosbrook, 81 S.D. 324, 329, 134 N.W.2d 777, 780 (1965). "Evidence or testimony meets this standard if it is 'so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" Id.

SD Pattern Jury Instruction 2-5-4:

> Clear and convincing evidence is produced when the witnesses are found to be credible and their testimony is so clear, direct and weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. It is not required that the proof be voluminous or undisputed before it may be characterized as "clear and convincing", but the facts must be strong and such that produce in the minds of the jurors a firm belief or conviction. It takes less proof to establish a position by clear and convincing evidence than it takes to establish the same position beyond a reasonable doubt.

SDCL § 22-18-4.8 establishes "self-defense immunity":

> A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:
> (1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
> (b) The officer identified himself or herself; or
> (2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.
> The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in the defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution in accordance with this section.
> In a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution provided for in this section.
> As used in this section, the term, criminal prosecution, includes arresting, detaining in custody, and charging or prosecuting the defendant.

SDCL § 22-18-4.1 establishes a right to self-defense referenced by the foregoing self-defense immunity statute:

> A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

> A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:
> (1) Not engaged in a criminal activity; and
> (2) In a place where the person has a right to be.

SDCL § 22-18-4.3 establishes the presumption of reasonable fear:

> For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm, to himself, herself, or another, when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm if:
> (1) The person against whom the defensive force was used or threatened:
> (a) Was in the process of unlawfully entering a dwelling, residence, or occupied vehicle;
> (b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or
> (c) Had removed or was attempting to remove another against the other's will from a dwelling, residence, or occupied vehicle; and
> (2) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful entry or an unlawful and forcible act was occurring or had occurred.

The multiple exceptions to the presumption of fear set out in SDCL § 22-18-4.4 did not apply to the facts of the present case.

In a case of first impression the South Dakota Supreme Court held, "SDCL § 22-18-4.8 is more than just an affirmative defense to a crime; the immunity afforded by the statute is a legislative determination that justifiable

homicide is not a crime subject to prosecution." Smith, 2023 S.D. at ¶30; 993 N.W.2d. at 587. "The 2022 amendment further reflects the legislative intent to create a substantive right to be free from criminal culpability, including 'arresting, detaining in custody, and charging or prosecuting the defendant[ ]' when a homicide is justifiable." Id. (citing SDCL § 22-18-4.8).

The trial court in the present case found that Braveheart was not permitted the use of deadly force because when he fired the weapon, he did not reasonably believe that deadly force was necessary to prevent imminent death or great bodily harm to himself or another person. Appx. 6.5. The trial court failed to make any finding as to whether or not Braveheart reasonably believed deadly force was necessary to prevent the imminent commission of a forcible felony pursuant to SDCL § 22-18-4.1. A definition of forcible felony is provided in SDCL § 22-18-3.1:

> "Forcible felony," arson, assault, burglary, kidnapping, manslaughter, murder, rape, and robbery, and any other felony that involves the use of or the threat of physical force or violence against a person;

SDCL § 22-18-3.1(3).

In the present case Odom committed an assault using force; aggravated criminal entry of a motor vehicle using force; and arguably attempted robbery of the firearm using force. EH 18, 32, 42; JT 110, 136, 170; State's EH Exhibit

1; JT Exhibit 22A (see also SDCL § 22-18-1-1.1; § 22-32-19; § 22-30-1). No evidence was offered that Braveheart was engaged in a criminal activity. Evidence presented was that Braveheart was sitting in the driver's seat of his vehicle in front of a store that was open for business to the public. EH 37-39. No evidence was presented that Braveheart was not in a place where he had a right to be. SDCL § 22-18-4.1. Evidence was offered that Braveheart did nothing more than look at Odom causing Odom to attack Braveheart while he was seated in the driver's seat of his vehicle. EH 39. Accordingly, Braveheart both threatened and used deadly force in accordance with SDCL § 22-18-4.1 and had the right to stand his ground and had no duty to retreat.

SD Pattern Jury Instruction 2-9-1:

> A person who has been attacked and who is exercising the right of lawful self-defense is not required to retreat, and may not only defend against the attack but also may pursue the assailant until secure from danger if that course appears to the defendant, and would appear to a reasonable person in the same situation, to be reasonably and apparently necessary; and this is the defendant's right even if safety may have been more easily gained by withdrawing from the scene.

SDCL § 22-18-4; State v. Fields, 488 N.W.2d 919 (S.D. 1992); State v. Luckie, 459 N.W.2d 557 (S.D. 1990); State v. Jacques, 428 N.W.2d 260 (S.D. 1988).

In the present case evidence was offered by multiple witnesses that the alleged victim, Odom, had unlawfully entered Braveheart's occupied vehicle. EH 14-15, 20, 30, 33.

The entry of any part of Odom's body was sufficient according to the definition of "entry." State v. Peck, 82 S.D. 561, 565, 150 N.W.2d 725, 727 (1967) (citing 12 C.J.S. Burglary s 10b; 2 Wharton, Criminal Law, 12th Ed., s 969, p. 1273. The trial court also specifically found that Odom had entered Braveheart's occupied vehicle and was smacking him. Appx. p.6-6. Further the court found that while seated in the vehicle Braveheart had no duty to retreat pursuant to SDCL § 22-18-4.1 but that presumption ended once Braveheart exited the vehicle armed with the handgun. Id. This finding again fails to consider the immunity statutes as a whole and comes to an arguably absurd interpretation of the statute's provisions. State v. Smith, 2023 S.D. 32 ¶22; 993 N.W.2d 576, 584. The South Carolina Supreme court upheld a lower court's determination that the defendant was justified in using deadly force under South Carolina's similar immunity provision when the defendant exited his home and fired his weapon from the stoop. South Carolina v. Scott, 424 S.C. 463, 467-467, 819 S.E.2d 116, 117-118 (2018). The Court held "presumption of reasonable fear of imminent death or great bodily harm based on unlawful, forceful entry into dwelling did not apply; but statute permitting one to stand his ground and use deadly force if attacked somewhere he had the right to be did apply." Id. at 473-476;121-123

In the present case Braveheart stood between the driver's seat and open door of his pickup and Odom never backed up past the rear of the pickup. EH 32; JT 138, 149; State's EH Exhibit 1; JT Exhibit 22A. Arguably Braveheart remained in his occupied vehicle as he stood between driver's seat and open door of his pickup. Nonetheless he remained in a place he had a right to be and had no requirement to attempt to escape or retreat. State v. Jaukkuri, 41 S.D. 4, 168 N.W. 1047, 1050 (1918), see also SDCL § 22-18-4.1. Evidence was offered that after Braveheart exited his vehicle he attempted to stop Odom's attack and repeated entry into his occupied vehicle by warning him with his firearm raised to Odom's head to stop or "You are about to get your ass blown, nigga." EH 16, 21-22, 31, 34, 54; State's Exhibit 1; JT Exhibit 22A. Odom continued to strike Braveheart again and again. Id. The trial court erroneously found that Odom had taken "two or three steps back from Defendant after seeing that he was holding a handgun." Appx. p.6-7. Odom can be clearly seen in the video striking Braveheart at least twice after Braveheart raised his weapon and held it a few inches from Odom's head. State's EH Exhibit 1; JT Exhibit 22A. Odom also struck Braveheart as he exited his vehicle and chambered a round. Id. The trial court then found that "When Odom told Defendant to shoot him, Odom was holding his arms out to the side at chest height. At this time, it is

apparent Odom is no longer hitting Defendant." Appx. p. 6-7. Evidence was offered that Odom continued to have his hands up as if to threaten Braveheart or potentially strike Braveheart again. EH 18, 32; State's EH Exhibit 1; JT Exhibit 22A. No evidence was presented that it was obvious Odom was no longer hitting Braveheart.

Next, the trial court found, "Defendant waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms at his side. Accordingly, any threat of harm had dissipated at this time." Appx. p.6-7. First, that finding is not supported by the facts as shown in the video that indicate Odom backed up with his arms at his side only to return twice and hit Braveheart twice before being shot on the third or fourth time he backed up. EH 18, 32; State's EH Exhibit 1; JT Exhibit 22A. Second, SDCL § 22-18-4.2 does not provide for when, or if, the threat of harm dissipates. The threat of harm from Odom did not dissipate as he in good faith did not decline further combat, he did not honestly endeavor to desist, and he did not fairly and clearly inform Braveheart of the desire for peace and that he had abandoned the combat. Fields, 488 N.W.2d at 926, State v. Woods, 374 N.W.2d 92, 97 (1985), SDCL § 22-18-4.9; SD Pattern Jury Instruction 2-9-3.

The South Dakota Supreme Court previously reversed a manslaughter in the second degree conviction holding that

"the defendant was justified, at the time he fired the fatal shot, in the belief that Conheeney was threatening either to kill him or to inflict great bodily injury upon him." Jaukkuri, 168 N.W. at 1050. Similar to the present case the decedent, Conheeney, had attacked the defendant with his hands; fists; and had thrown a rock. Id. As to Jaukkuri's belief that he was in fear of great bodily injury the Court found:

> But, after Conheeney had passed Hart and thrown the rock at defendant, defendant was not called upon to wait to see whether Conheeney had other missiles to throw or other weapons with which he could inflict injury upon the defendant. After Conheeney had thrown the rock and continued to advance, he had made sufficient demonstration to convince a reasonably prudent person that he intended to continue the assault upon defendant and inflict all the injury upon him that he could.

Id.

In the present case despite having a gun first brandished at him and then pointed at his head Odom continued to advance and strike Braveheart again and again. EH 18, 32; State's EH Exhibit 1; JT Exhibit 22A. Odom made a sufficient demonstration to convince a reasonably prudent person that he intended to continue the assault upon Braveheart. No clear and convincing evidence was presented to refute Braveheart's statutorily provided presumption of reasonable fear of imminent peril of death or great bodily harm. Therefore, the trial court's denial of Braveheart's motion to dismiss based

on statutory immunity should be reversed with instructions to find that he is immune from any further proceedings.

II. THE COURT ERRED IN DENYING BRAVEHEART'S MOTION FOR A JUDGMENT OF ACQUITTAL

At the close of the State's case, Braveheart moved the trial court for a judgment of acquittal of all counts of the indictment under SDCL § 23A-23-1. JT 276. The court denied the motion and found that there was a proper jury question. JT 277. After the jury returned their verdicts Braveheart moved the trial court for a judgment of acquittal under SDCL § 23A-23-3. SR 511-515; Appx 8.1-8.5. The court denied the motion and found that the facts were contested and they were for the jury to decide what the State's met. SE 15. The trial court found, "I incorporate my rulings in the immunity hearing which are essentially the same made as well as the oral motion at trial for a judgment of acquittal at the conclusion of the State's case and the conclusion of trial." Id.

SDCL § 23A-23-1 reads, in part, as follows:

> A court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in an indictment or information after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of the offense or offenses.

SDCL § 23A-23-1.

Regarding this statute, the South Dakota Supreme Court recently wrote:

> "Denial of a motion for acquittal is reviewed de novo." State v. Stone, 2019 S.D. 18, ¶ 38, 925 N.W.2d 488, 500; see also State v. Podzimek, 2019 S.D. 43, ¶¶ 28-30, 932 N.W.2d 141, 149 (applying same de novo review to denial of motion to set aside verdict). "When conducting our review, we 'determine whether the evidence was sufficient to sustain the conviction.' " Stone, 2019 S.D. 18, ¶ 38, 925 N.W.2d at 500 (quoting State v. Quist, 2018 S.D. 30, ¶ 13, 910 N.W.2d 900, 904). "To do so, we ask 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " Id. (quoting Quist, 2018 S.D. 30, ¶ 13, 910 N.W.2d at 904). "If the evidence, including circumstantial evidence and reasonable inferences drawn therefrom sustains a reasonable theory of guilt, a guilty verdict will not be set aside." Id. (quoting State v. Martin, 2017 S.D. 65, ¶ 6, 903 N.W.2d 749, 751). "[W]e 'will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.' " State v. Manning, 2023 S.D. 7, ¶ 27, 985 N.W.2d 743, 752 (quoting State v. Seidel, 2020 S.D. 73, ¶ 32, 953 N.W.2d 301, 313). "[T]he jury is ... the exclusive judge of the credibility of the witnesses and the weight of the evidence." Id. ¶ 27, 985 N.W.2d at 753 (quoting Seidel, 2020 S.D. 73, ¶ 32, 953 N.W.2d at 313).

Smith, 2023 S.D. 32 at ¶ 45, 993 N.W.2d at 591.

"When a homicide defendant raises self-defense or justification, the State must prove beyond a reasonable doubt that the killing was without authority of law." State v. Pellegrino, 1998 S.D. 39, ¶ 19, 577 N.W.2d 590, 598. The jury in the present case was instructed of the State's burden to prove that Braveheart did not act in self-defense beyond a reasonable doubt. SR 479; JT Inst 33. The court

further instructed the jury as set out in SDCL § 22-18-4.1 that, "A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself or another, or to prevent the imminent commission of a forcible felony." SR 476; JT Inst 30. Further, the court instructed the jury that, "A person who unlawfully enters or attempts to enter another's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence." SR 477; JT Inst 31.

When the record contains no evidence of an element of the crime charged the South Dakota Supreme Court has found the trial court erred in overruling the defendant's motion for acquittal. State v. Sullivan, 2003 S.D. 147 ¶ 15, 673 N.W.2d 288, 293; State v. Galati, 365 N.W.2d 575 (S.D. 1985). In Galati the Court found the record was "utterly devoid of any evidence" that the defendant in that case had committed the act alleged. Id. at 579.

In the present case the record is utterly devoid of any evidence that Odom did not enter or continually attempt to enter Braveheart's vehicle. The jury was instructed that Odom was to be presumed to be entering the occupied vehicle with the intent to commit and unlawful act involving force or violence. SR 477; JT Inst 31. The record is utterly

devoid of any evidence that Odom was not committing or had not committed a forcible felony. The trial court arguably instructed the jury that Odom had done so. SR 477; JT Inst 31. The record is utterly devoid of any evidence that Braveheart was engaged in a criminal activity nor not in a place where he had a right to be. The jury was instructed that Braveheart is justified in using deadly force to prevent the imminent commission of a forcible felony as long as Braveheart was not engaged in a criminal activity and in a place he had a right to be. SR 476; JT Inst 30. Braveheart did not shoot Odom until after Odom had forcibly entered his occupied vehicle and had stuck Braveheart multiple times in the head. Braveheart did not shoot Odom until after he displayed and threated the use of deadly to Odom who was engaged in ongoing felonious conduct. No reasonable juror following the instructions of the court should have been able to fine that the State proved beyond a reasonable doubt that Braveheart did not act in self-defense. Therefore, Braveheart's conviction for manslaughter in the first degree should be reversed and remanded with instructions to enter a judgment of acquittal.

CONCLUSION

Based upon the above facts, arguments, and authorities, Derrek Ryan Braveheart respectfully prays that this Court

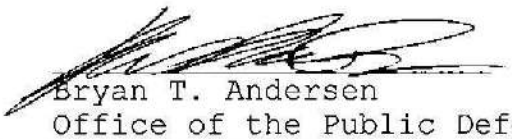
enter its order reversing the trial court's ruling on his motion for dismissal based on statutory immunity and find that he is immune from further proceedings. Derrek Ryan Braveheart respectfully prays that this Court enter its order reversing the trial court's ruling on his motion for judgment of acquittal due to the lack of sufficiency in the evidence.

REQUEST FOR ORAL ARGUMENT

Braveheart requests to present oral arguments on this issue.

Dated this 18th day of August 2025.

Respectfully submitted,



Bryan T. Andersen
Office of the Public Defender
for Pennington County
14 Saint Joseph Street STE 110
Rapid City, South Dakota 57701

(605) 394-2181

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX

APPENDIX TABLE OF CONTENTS

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA	)	File No: CRI 24-1087
	)	
Plaintiff,	)	**COUNT 1: C-B-FEL = MAND. LIFE/50**
	)	**COUNTS 2-4: C-C-FEL = LIFE/50**
vs.	)	
	)	**INDICTMENT FOR**
DERREK RYAN BRAVEHEART,	)	
	) **COUNT 1:**	**SECOND DEGREE MURDER**
Defendant.	) **COUNTS 2-4:**	**MANSLAUGHTER IN THE FIRST DEGREE**

THE PENNINGTON COUNTY GRAND JURY CHARGES:

COUNT 1: That on or about the **2nd** day of **February, 2024**, in the County of Pennington, State of South Dakota, **DERREK RYAN BRAVEHEART** did commit the public offense of **SECOND DEGREE MURDER** in that (s)he did, by an act imminently dangerous to others and evincing a depraved mind, without regard for human life, and without any premeditated design to effect the death of any particular person, kill Johnathan Odom, in violation of **SDCL 22-16-7**, or

IN THE ALTERNATIVE:

COUNT 2: That on or about the **2nd** day of **February**, 2024, in the County of Pennington, State of South Dakota, **DERREK RYAN BRAVEHEART** did commit the public offense of **MANSLAUGHTER IN THE FIRST DEGREE**, in that (s)he did then and there cause the death of **Johnathan Odom**, without any design to effect the death of **Johnthan Odom**, while in a heat of passion, but in a cruel and unusual manner, in violation of **SDCL 22-16-15(2)**; or

IN THE ALTERNATIVE:

COUNT 3: That on or about the **2nd** day of **February**, 2024, in the County of Pennington, State of South Dakota, **DERREK RYAN BRAVEHEART** did commit the public offense of **MANSLAUGHTER IN THE FIRST DEGREE**, in that (s)he did then and there cause the death of **Johnathan Odom**, without any design to effect the death of **Johnathan Odom**, by means of a dangerous weapon, in violation of **SDCL 22-16-15(3)**; or

IN THE ALTERNATIVE:

COUNT 4: That on or about the **2nd** day of **February**, 2024, in the County of Pennington, State of South Dakota, **DERREK RYAN BRAVEHEART** did commit the public offense of **MANSLAUGHTER IN THE FIRST DEGREE**, in that (s)he did then and there cause the death of **Johnathan Odom**, unnecessarily, either while resisting an attempt by **Johnathan Odom** to commit a crime or after such attempt has failed, in violation of **SDCL 22-16-15(4)**; and

contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 13th day of March, 2024, at Rapid City, Pennington County, South Dakota.

A True Bill

"A TRUE BILL"

THIS INDICTMENT IS MADE WITH THE CONCURRENCE OF AT LEAST SIX GRAND JURORS.

Amber Hendricks
GRAND JURY FOREMAN

WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY IN REGARD TO THIS INDICTMENT.

Andrew Schurger AK
Krista Lee AK
Ofc. Karen Bicskei via Zoom AK
Det. Justin Gizzi AK
Dep. Joe Lupher AK

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

NOTICE OF DEMAND FOR ALIBI DEFENSE

I, Gina Nelson, Prosecuting Attorney in the above matter, hereby state that the alleged offenses were committed on or about February 2, 2024, in Pennington County, South Dakota. I hereby request that the Defendant or his/her attorney serve upon me a written notice of his intention to offer a defense of alibi within ten (10) days as provided in SDCL 23A-9-1. Failure to provide such notice of alibi defense may result in exclusion of any testimony pertaining to an alibi defense.

Prosecuting Attorney

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

REQUEST FOR ARREST WARRANT

I, Gina Nelson, Prosecuting Attorney in the above matter do hereby request an Arrest Warrant to be issued against the above Defendant, **DERREK RYAN BRAVEHEART.**

Dated this 13th day of March, 2024.

Gina Nelson
Prosecuting Attorney

THIS FILE HAS BEEN ASSIGNED TO THE HONORABLE:

Joshua Hendrickson

FILED
Pennington County, SD
IN CIRCUIT COURT
MAR 13 2024
Amber Watkins, Clerk of Courts
By _____ Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA Plaintiff,	)	FILE NO. CRI 24-1087
vs.	)	DEFENDANT'S MOTION FOR PRE-TRIAL HEARING REGARDING SELF-DEFENSE IMMUNITY
DERREK RYAN BRAVEHEART, Defendant.	)	

Defendant, Derrek Ryan Braveheart, by and through his attorney Bryan T. Andersen, respectfully moves this Court for a pre-trial hearing to assert self-defense immunity (a/k/a stand-your-ground immunity) pursuant to SDCL § 22-18-4.8.

In support of this motion, Braveheart sets forth the following facts and argument.

1. That on or about the 13th day of March 2024 the defendant, Derrek Ryan Braveheart, was Indicted in the County of Pennington, State of South Dakota, for allegedly violating the provisions of SDCL § 22-16-7, Second Degree Murder by killing Jonathan Odam; and in the alternative three counts also all in the alternative of allegedly violating three provisions of SDCL § 22-16-15, Manslaughter in the First Degree by causing the death of Jonathan Odamyoume;

2. Counsel for Braveheart requests a pre-trial hearing to confront witnesses and confirm facts reported by witnesses to law enforcement that give rise to self-defense immunity pursuant to SDCL§ 22-18-4.8:

Grand Jury testimony by witness, Andrew Schurger:

[...]
Question: Okay. So the windows are still up, but you're --you're -- are you hearing anything or are you just seeing his -- you're kind of describing his arms out flailing, as in Johnathan's arms?

Answer: As the window was still up at that point when I saw his arms, I couldn't hear anything -

Question Okay.

Answer: -- until the window went down, and then that's when I discovered what -- I could hear him, that he – there was -- there was obviously a fight getting going. I could hear John basically trying to call him out of the vehicle, swearing at him. At one point he had stepped back, pulled his jacket that he had kinda down past his shoulders a little bit, and was trying to call him out. He –
Question: He's -- he's still in -- Derrek is still inside the vehicle at that point.

Answer: Correct.

Question: His own vehicle.

Answer: He is still in the vehicle at that point. And John had reached in and gave him a smack across -- open-handed smack across the face. At that point I still really hadn't seen Derrek showing any aggression towards him or really -- I didn't see any words even out of his mouth at that point. So as I saw the -- this was obviously going to be -- was not gonna -- this fight wasn't gonna stop. John seemed to -- he wanted to have this fight. So I did pick up my phone and I dialed 911 and told them, *I think we probably need an officer down here to diffuse the situation. There's gonna be a fight.*
[...]

3. Based on the foregoing testimony of an eyewitness who observed the alleged victim, Jonathan Odom, in the process of unlawfully entering Braveheart's occupied vehicle and striking Braveheart causing him to stand his ground in self-defense, Braveheart hereby asserts a *prima facie* claim of self-defense.

4. SDCL § 22-18-4.8 establishes "self-defense immunity":

> A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:
> (1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
> (b) The officer identified himself or herself; or

(2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in the defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution in accordance with this section.

In a criminal prosecution, once a *prima facie* claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution provided for in this section.

As used in this section, the term, criminal prosecution, includes arresting, detaining in custody, and charging or prosecuting the defendant.

5. SDCL § 22-18-4.1 establishes a right to self-defense referenced by the foregoing self-defense immunity statute:

A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:

(1) Not engaged in a criminal activity, and

(2) In a place where the person has a right to be.

6. SDCL § 22-18-4.2 establishes the presumption of reasonable fear:

For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm, to himself, herself, or another, when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm if:

(1) The person against whom the defensive force was used or threatened:

(a) Was in the process of unlawfully entering a dwelling, residence, or occupied vehicle;

(b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or

(c) Had removed or was attempting to remove another against the other's will from a dwelling, residence, or occupied vehicle; and

(2) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful entry or an unlawful and forcible act was occurring or had occurred.

7. The multiple exceptions to the presumption of fear set out in SDCL § 22-18-4.4 do not apply to the facts of the present case.

8. Based upon the foregoing, Braveheart respectfully asserts a *prima facie* claim of self-defense, requests a pre-trial hearing regarding self-defense immunity, and moves for an Order granting self-defense immunity subject to such hearing.

Respectfully submitted on this 28th day of April 2024.

OFFICE OF THE PUBLIC DEFENDER
FOR PENNINGTON COUNTY
BY:

/s/ Bryan T. Andersen
Bryan T. Andersen
Office of the Public Defender
for Pennington County
130 Kansas City Street Suite 310
Rapid City, South Dakota 57701
Attorney for Defendant
Phone (605) 394-2181

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA Plaintiff,	)	FILE NO. CRI 24-1087
vs.	)	DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF SELF-DEFENSE IMMUNITY
DERREK RYAN BRAVEHEART, Defendant.	)	

Comes now the Defendant, Derrek Ryan Braveheart, through his attorney, Bryan T. Andersen, and files this Supplemental Brief in Support of Self-Defense Immunity for the evidentiary hearing in this matter.

FACTS

On or about the 13th day of March 2024 the defendant, Derrek Ryan Braveheart, was indicted in the County of Pennington, State of South Dakota, for allegedly violating the provisions of SDCL § 22-16-7, Second Degree Murder by killing Jonathan Odam; and in the alternative three counts also all in the alternative of allegedly violating three provisions of SDCL § 22-16-15, Manslaughter in the First Degree by causing the death of Jonathan Odam. These offenses allegedly occurred on February 2, 2024. On April 28, 2024 Braveheart filed a motion for an evidentiary hearing regarding self-defense immunity pursuant to SDCL 22-18-4.8. On May 9, 2024 an evidentiary hearing was held where a number of witnesses testified before the Court. EH 5-58.

At the evidentiary hearing an eye-witness, Andrew Schurger, testified as he had previously testified at the grand jury proceedings. EH 9-22. He testified that he observed the alleged victim, Odom, become angry about there being no trash can in front of the Family Dollar. EH 12-13. He observed Odom enter the store and exit the store shortly thereafter still

upset. EH 13. Schurger next saw Odam at Braveheart's vehicle "throwing his hands up" and yelling at Braveheart. EH 13-14. He witnessed Odam reaching towards Braveheart in his vehicle and open handedly smacking him. EH 14-15, 20. Schurger stated that at this point he called 9-1-1 to report the fight. EH 15. Next Schurger explained that Braveheart had gotten out of his vehicle and was struck again by Odam. EH 16, 21. Schurger observe that Odam was "egging him on to come out of the vehicle and wanted to fight with [Braveheart]." EH 16. Schurger testified that at this point Braveheart turned to him and asked "if he was in the wrong." EH 16, 21. Schurger testified that he responded "no" but also qualified that he did not see Braveheart's gun. EH 16, 21. Schurger stated that Braveheart turned back to Odam and Odam struck him again. EH 16, 22. It was very loud and "it seemed like the hardest one, . . ." Schurger testified. EH 17-18, 22. When asked by the State what did Odam do with his hands at that point Schurger responded, "I mean at the most he had them just kind of out." EH 18.

Schurger's fiancé, Krista Lee, who was also present in the parking lot testified next. EH 23. She also observed Odam strike Braveheart while he was in his vehicle. EH 30, 33. "Yes, twice before he got out," she observed. EH 30. She did see Braveheart's gun when he exited his vehicle. EH 30-31. She stated, "[Braveheart] was just warning Mr. Odam that he had a gun and if he didn't stop he would shoot him." EH 31, 34-35. Lee also saw the two times Odam struck Braveheart after he had exited his vehicle. EH 31, 34. "[Odam] slapped him the last time really hard, . . .," she observed. EH 31. When asked by the State about Odam's hands at that point Lee testified, "They were up. Like he was wanting [Braveheart] to - - like threatening him to shoot him." EH 32.

Braveheart's girlfriend at the time, Ayiannah Carroll, testified next at the hearing. EH 36. She was also able to record the shooting on her phone which she later provided to law

enforcement. EH 42; State's Exhibit 1. She testified that she did not see Braveheart hit while he was in the vehicle as she was concentrating on her phone, "but she thought that's what happened." EH 42, 44. The video shows Braveheart being struck at least twice by Odam after he exited his vehicle with his firearm. State's Exhibit 1; EH 54. Carroll testified it was "Three, four times." EH 45. Braveheart can be heard in the video telling Odam, "Back off, bro." State's Exhibit 1. Odam can be heard tell Braveheart to shoot him indicating that he was aware Braveheart had a gun. State's Exhibit 1.

ARGUMENT

Braveheart argues that the alleged victim, Jonathan Odom, had unlawfully entered Braveheart's occupied vehicle striking him and Odam was in the process of continually attempting to unlawfully enter Braveheart's occupied vehicle and strike him; his girlfriend and or her unborn child causing him to stand his ground in self-defense. Braveheart argues the State has not met his burden of clear and convincing evidence that he did not act in self-defense to overcome Braveheart's immunity provided by statute. The South Dakota Supreme Court has held, "The quality of proof to be clear and convincing is 'somewhere between the rule in ordinary civil cases and the requirements of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt.'" Cromwell v. Hosbrook, 81 S.D. 324, 329, 134 N.W.2d 777, 780 (1965). "Evidence or testimony meets this standard if it is 'so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" Id.

SD Pattern Jury Instruction 2-5-4:

> Clear and convincing evidence is produced when the witnesses are found to be credible and their testimony is so clear, direct and weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. It is not required that the proof be voluminous or

undisputed before it may be characterized as "clear and convincing", but the facts must be strong and such that produce in the minds of the jurors a firm belief or conviction.

It takes less proof to establish a position by clear and convincing evidence than it takes to establish the same position beyond a reasonable doubt.

SDCL § 22-18-4.8 establishes "self-defense immunity":

A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:

(1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and

(b) The officer identified himself or herself; or

(2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in the defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution in accordance with this section.

In a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution provided for in this section.

As used in this section, the term, criminal prosecution, includes arresting, detaining in custody, and charging or prosecuting the defendant.

SDCL § 22-18-4.1 establishes a right to self-defense referenced by the foregoing self-defense immunity statute:

A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:

(1) Not engaged in a criminal activity; and

(2) In a place where the person has a right to be.

SDCL § 22-18-4.2 establishes the presumption of reasonable fear:

> For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm, to himself, herself, or another, when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm if:
> (1) The person against whom the defensive force was used or threatened:
> (a) Was in the process of unlawfully entering a dwelling, residence, or occupied vehicle;
> (b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or
> (c) Had removed or was attempting to remove another against the other's will from a dwelling, residence, or occupied vehicle; and
> (2) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful entry or an unlawful and forcible act was occurring or had occurred.

The multiple exceptions to the presumption of fear set out in SDCL § 22-18-4.4 do not apply to the facts of the present case.

In a case of first impression the South Dakota Supreme Court held, "SDCL § 22-18-4.8 is more than just an affirmative defense to a crime; the immunity afforded by the statute is a legislative determination that justifiable homicide is not a crime subject to prosecution." State v. Smith, 2023 S.D. 32 ¶30; 993 N.W.2d 576, 587. "The 2022 amendment further reflects the legislative intent to create a substantive right to be free from criminal culpability, including 'arresting, detaining in custody, and charging or prosecuting the defendant[ ]' when a homicide is justifiable." Id. (citing SDCL § 22-18-4.8).

In the present case no evidence was offered that Braveheart was engaged in a criminal activity. Evidence presented was that Braveheart was sitting in the driver's seat of his vehicle in front of a store that was open for business to the public. EH 37-39. No evidence was presented that Braveheart was not in a place where he had a right to be. Evidence presented was that Braveheart was sitting in the driver's seat of his vehicle in front of a store that was open for business to the public. EH 37-39. Evidence was offered that Braveheart did nothing more than

look at Odam causing Odam to attack Braveheart while he was seated in the driver's seat of his vehicle. EH 39. Accordingly, Braveheart both threatened and used deadly force in accordance with SDCL § 22-18-4.1 and had the right to stand his ground and had no duty to retreat.

SD Pattern Jury Instruction 2-9-1:

> A person who has been attacked and who is exercising the right of lawful self-defense is not required to retreat, and may not only defend against the attack but also may pursue the assailant until secure from danger if that course appears to the defendant, and would appear to a reasonable person in the same situation, to be reasonably and apparently necessary; and this is the defendant's right even if safety may have been more easily gained by withdrawing from the scene.

SDCL § 22-18-4; State v. Fields. 488 NW2d 919 (SD 1992); State v. Luckie. 459 NW2d 557 (SD 1990); State v. Jacques. 428 NW2d 260 (SD 1988).

In the present case evidence was offered by multiple witnesses that the alleged victim, Odam, had unlawfully entered Braveheart's occupied vehicle. EH 14-15, 20, 30, 33. The entry of any part of Odam's body was sufficient according to the definition of "entry." State v. Peck. 82 S.D. 561, 565, 150 N.W.2d 725, 727 (1967) (citing 12 C.J.S. Burglary s 10b; 2 Wharton. Criminal Law. 12th Ed., s 969, p. 1273. Evidence was offered that after Odam was warned or threatened by Braveheart with his firearm to stop or "back off" Odam continued to strike Braveheart again and again. EH 16, 21-22, 31, 34, 54; State's Exhibit 1. Evidence was offered that Odam continued to have his hands up as if to threaten Braveheart or potentially strike Braveheart again. EH 18, 32; State's Exhibit 1.

CONCLUSION

Braveheart asserts the State has not met his burden of clear and convincing evidence to overcome Braveheart's assertion of immunity provided by SDCL § 22-18-4.1. There was sufficient evidence to support of finding that Braveheart acted in self-defense in accordance with

the immunity provision of SDCL § 22-18-4.1. Therefore, Braveheart moves this Court for an Order granting self-defense immunity in accordance with SDCL § 22-18-4.1.

Respectfully submitted on this 24th day of May 2024.

OFFICE OF THE PUBLIC DEFENDER
FOR PENNINGTON COUNTY
BY:

/s/ Bryan T. Andersen
Bryan T. Andersen
Office of the Public Defender
for Pennington County
130 Kansas City Street Suite 310
Rapid City, South Dakota 57701
Attorney for Defendant
Phone (605) 394-2181

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH DAKOTA, Plaintiff,	)	51CRI 24-1087
	)	**STATE'S BRIEF IN OPPOSITION OF DEFENDANT'S MOTION FOR SELF-DEFENSE IMMUNITY**
vs.	)	
DERREK RYAN BRAVEHEART, Defendant.	)	
	)	

COMES NOW the State of South Dakota by and through Deputy State's Attorney Braedon Houdek, and files its Brief in Opposition to Defendant's Motion for Self-Defense Immunity. For the reasons stated below, the State respectfully moves this Court for an Order Denying Defendant's Motion.

PRELIMINARY STATEMENT

For purposes of uniformity, citations to the transcript of the Evidentiary Hearing will be denoted by "EHT," followed by the page and line number. The video of the incident, introduced as State's Exhibit 1, with be referred to as "Video," followed by the relevant time in the footage annotated by minutes and seconds separated by a colon (:) punctuation mark. Johnathan Odom hereinafter will be referred to as "Victim." Derrek Braveheart hereinafter will be referred to as "Defendant."

FACTS

On February 2, 2024, the Victim and the Defendant were both in the parking lot of a Family Dollar store located in Rapid City. EHT 10-15 (3-3). By all accounts, it does not appear the Victim and the Defendant knew each other. The Victim was standing outside in front of the building, Id. 12-13 (20-11), and the Defendant was sitting in the driver's seat of a vehicle parked

in the parking lot. Id. 14-15 (10-6). At some point, the Victim walked over to the Defendant's vehicle and began yelling at the Defendant through the window. Id. 39 (10-11). The Defendant then rolled down his window, and the Victim and Defendant began arguing. Id. 39-40 (22-40). The Victim then reached in the vehicle and "smacked" the Defendant. Id. 15 (15-16). The Defendant then got out of his vehicle. Id. 16 (14-15). At this point, the Defendant's passenger, his girlfriend Ayiannah Carroll, began recording a video of the rest of the incident on her cell phone. Id. 42 (10-13); see Video.

The video shows the following:

- The Victim says, "get the fuck away from me," as the Defendant is pointing his firearm sideways at the Victim. Video at 00:06;
- The Victim pushes the Defendant's face while he continues to say, "get the fuck away from me." Id. at 00:09;
- The Defendant says, "you are about to get your ass blown, nigga." Id. at 00:13;
- The Victim says, "shoot me then," and raises his arm out chest level to the side (the other arm is cut off by the video but by witness accounts, it is presumably also raised chest level. The Victim's hands and body are in a sort of "T" position with his arms extended out.) Id. at 00:15;
- The Victim then open-hand slaps the Defendant on the side of the face. Id. at 00:17;
- The Victim takes multiple steps back while telling the Defendant to shoot him. Id. at 00:18;
- The Victim backs up so far that he exits the videos frame. see Id. at 00:20 (A third-party witness described that the Victim backed away "two or three steps," EHT 32 (6), "with his hands up," Id. 31 (20), and never took out a weapon. Id. at 32 (13-14)); Roughly three seconds pass prior to the Defendant raising his gun and firing a shot at the Victim. Id. at 00:17-00:20;
- The Defendant then proceeds to make multiple statements towards the Victim. Id. at 00:22;
- Defendant says "told your ass, nigga," Id. at 00:25;
- As well as "it's all on camera, bitch. It's all on camera, bitch. You think I'm playing with you, [inaudible]. The fuck? You think you can come up and slap me like I'm some bitch, nigga? Sit your fucking ass down, nigga. Play with me, nigga. What's up?" Id. at 00:35-01:09.

Following this incident, the Defendant did not go to the hospital. EHT 53.

The Defendant was charged with Second Degree Murder as well as three alternative counts of Manslaughter in the First Degree. The Defendant asserts his actions were in self-

defense and that he therefore immune from prosecution. This argument fails for a number of reasons.

AUTHORITY/ARGUMENT

"A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution . . . . SDCL 22-18-4.8. "In a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution provided for in this section. SDCL 22-18-4.8.

"Clear and convincing evidence is produced when the witnesses are found to be credible and their testimony is so clear, direct and weighty, and convincing as to enable the [Court] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. It is not required that the proof be voluminous or undisputed before it may be characterized as "clear and convincing," but the facts must be strong and such that produce in the mind[] of the [Court] a firm belief or conviction." Pattern Jury Instructions (hereinafter, PJI) 2-5-4.

A. The Defendant forfeited the presumption of his right to self-defense and the reasonable fear of great bodily injury entirely when he chose to seek out a quarrel with the Victim by rolling down his window, engaging in an argument with the Victim, and then exiting his vehicle with his gun in hand.

"[A] person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm . . . if: (1) The person against whom the defensive force was used or threatened: . . . (b) had unlawfully entered a[n] . . . occupied vehicle." SDCL 22-18-4.3. "A person who unlawfully enters or attempts to enter a person's . . . occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence." SDCL 22-18-4.5.

However, "[w]hen a person seeks or induces a quarrel which leads to the necessity of using force against an adversary, the right of self-defense is not immediately available . . . . PJI 2-9-10 (emphasis added); see PJI 2-9-4 (emphasis added) ("[t]he law does not permit or justify one who intends to commit an assault to design in advance a personal defense by instigating a quarrel or a combat to create a situation wherein the infliction of the intended injury will appear to have been done in self-defense). Assuming, arguendo, the Defendant may have been entitled to the presumption initially, he forfeited that presumption when he chose to seek out a quarrel with the Victim by rolling down his window, engaging in an argument with the Victim, and then exiting his vehicle with his gun in hand.

Although SDCL 22-18-4.1 makes clear that the Defendant did not have the duty to retreat as he sat in the driver's seat of his vehicle, the law similarly makes clear that he took on that duty when he exited. PJI 2-9-10. Specifically, PJI 2-9-10 says if one seeks a quarrel and wishes to be afforded the right of self-defense, they then "first must decline to carry on the affray, must honestly endeavor to escape from it, and must fairly and clearly inform the adversary of the desire for peace and abandonment of the contest. Only when the person has done so will the law justify the person in using force upon the antagonist." PJI 2-9-10 (emphasis added). The Defendant attempted none of these. In fact, it was he himself who precipitated the need for self-defense.

The Defendant will surely cite PJI 2-9-2 in an attempt to justify the Defendant getting out of his vehicle. The instruction states that a person who has been attacked "may not only defend against the attack but also may pursue the assailant until secure from danger . . . ." Id. However, that is only "if that course appears to the defendant, and would appear to a reasonable person in the same situation, to be reasonable and apparently necessary . . . ." Id. (emphasis added).

Though the Defendant does not need to choose the easiest avenue to secure his safety (i.e., driving away), he is still only entitled to choose from those avenues that are reasonable and apparently necessary, not any avenue the Defendant feels he is entitled to. Here, he only had two reasonable and apparently necessary options: (1) roll up his window[1]; and/or (2) drive away. To continue to sit in his vehicle with the window down would not make much sense, but neither would leaving the safety of his vehicle to engage with an individual who was arguing with him. No reasonable person would find this course of action reasonable and apparently necessary to secure one's safety.

The reality is the Defendant exited that vehicle because he wanted to fan the flame. This is not protected by the law. see PJI 2-9-10; see PJI 2-9-4; see State v. Rich. 417 N.W.2d 868 (S.D. 1988.) In Rich, the "[Defendant] chose to go to the area of conflict. He chose to respond in an aggressive, rather than conciliatory, manner . . . [the Defendant] voluntarily entered into the conflict which resulted in the assault and was precluded from any instruction on justification, self-defense or defense of others." Id. at 872. The Court, in Rich, reminded us that, "conditions brought about by one's own conduct may not be relied upon to invoke the excuse of self-defense." Id. (citing State v. Means. 276 N.W.2d 699 (SD 1979.) Inviting a confrontation, which the Defendant did by getting out of his vehicle, precludes a person from "claiming that he had a legal excuse, i.e., self-defense[.]" Id. (citing State v. Means, 276 N.W.2d 699 (SD 1979.) Therefore, given that his actions were not protected by the law, the Defendant forfeited his right to self-defense, and with it the presumption of reasonable fear.

[1] It cannot be overstated that the defendant rolled down his window *after* the argument started, already further inducing the argument. That was the first moment his immunity failed.

B. Even if the Court finds that the Defendant was acting in self-defense and/or is entitled to the presumption, the level of force used by the Victim was not enough to give rise to a reasonable fear of death or great bodily injury, and, therefore, the Defendant's use of deadly force is not protected under the law.

"A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony." SDCL 22-18-4.1 (emphasis added). "Deadly force" is defined as "force that is likely to cause death or great bodily harm." SDCL 22-18-3.1(1).

The South Dakota Supreme Court has ruled the standard of "great bodily injury" is synonymous with that of "serious bodily injury." State v. Janisch, 290 N.W.2d 473, 476 (S.D. 1980) (overruled on other grounds) ("We see no obstacle to equating 'great bodily injury' with 'serious bodily injury'")[2]. Serious bodily injury is defined as such injury as is grave and not trivial, and gives rise to apprehension of danger to life, health, or limb. SDCL 22-1-2(44).

The right to self-defense and use of deadly force is not unlimited. "The force or violence used may never be more than sufficient to prevent such offense," PJI 2-9-1, and the level of force that was reasonable given the circumstances is determined by using a reasonable person standard. PJI 2-9-8; see State v. Jaques, 428 N.W.2d 260, 265-66 (S.D. 1988); State v. Bolden, 6 N.W.3d 238 (SD 2024); State v. Cottier, 2008 S.D. 79.

The Court, in Stone, further explained that "the question of whether [the defendant] was justified in using deadly force against an unarmed man, under all the circumstances, was a question for the jury." State v. Stone, 2019 S.D. 18, ¶45. The Court found there to be sufficient

[2] Though the South Dakota Supreme Court ruled that Janisch is of no current precedential value in State v. Ware, 2020 S.D. 20, ¶ 16, 942 N.W.2d 269, 273, it appears they were only referring to using the facts of Janisch to determine what constituted "serious bodily injury." South Dakota has not defined "great bodily injury" in either statute or caselaw, so I do believe it's fair to argue that Janisch still stands for the proposition cited by the State here, and that Janisch was simply overruled on other grounds.

evidence in affirming the trial court's denial of judgment of acquittal: "[Victim] hit [defendant] in the face. [Defendant] retaliated by punching [victim]. [Defendant] then began moving away from [victim], but [victim] continued to follow [defendant]. [Defendant] drew a handgun and told [victim] to stay away or he would be shot. [Victim] continued to move toward [defendant] and [defendant] fired two shots at [victim]. The first shot hit [victim] in the head knocking him to the ground. The second shot was fired after [victim] fell and missed [victim]". Id. at ¶ 3. The South Dakota Supreme Court in discussing the new immunity statute in State v. Smith, 993 N.W.3d 576 (SD 2023), reminded us that, "[w]hen a defendant claims justifiable homicide because he was threatened with serious bodily injury, the responding 'force becomes limited to that which is reasonable in the circumstances, and, as the threat of harm dissipates, so does the reasonableness of the force used.'" Smith at 592-593, citing Cottier, at 127 (quoting Jaques, at 265–66.) It is for the jury to decide if homicide was justified. Id. also noting State v. Frias, 959 N.W.2d 62, 72 (SD 2021.)

Here, the victim was never seen with a weapon, nor does it appear that any party believed he had one, which heavily weighs against reasonable fear of death. Even when Defendant pulled out his firearm, the Victim never produced a weapon nor was any ever found on him. The Defendant never went to the hospital, did not show fear in the moments after he shot the Victim (in fact, quite the opposite, the defendant appeared flippant in his comments to the Victim after he shot the Victim), he appeared calm when confronted by law enforcement, and the record is void of any injuries sustained by the Defendant which, in totality, all heavily weigh against any reasonable fear of "grave" injury. Thus, the Court is left to analyze whether the force used by the Victim was enough to give rise to a reasonable fear of future serious bodily injury. And, just to reiterate, it cannot just be any fear, but must be a reasonable one. see State v. Pellegrino, 1998

S.D. 39, ¶16 (quoting Harris v. State. 104 So.2d 739, 743 (Fla.Dist.Ct.App.1958)) ("[P]eople 'do not hold their lives at the mercy of unreasonable fears or excessive caution of others, and if from such motives human life is taken, there is no justification.'").

"If an assault with the fists or hands or by means not likely to produce great bodily injury is being used, and if the person attacked is not deceived as to the character of the assault, that person is not justified in using a deadly weapon in self-defense." PJI 2-9-6. Here, a slap is a far-cry from what should be required to give rise to a reasonable fear of serious bodily injury. There was no blood, there were no broken bones, there was no weapon. A couple of slaps to the face, without more, can hardly be called serious bodily injury, nor can it give rise to fear of serious bodily injury. There was simply no threat that existed which would give rise to a reasonable fear of serious bodily injury. Therefore, the Defendant's use of deadly force was far "more than sufficient" to prevent such offense and is not protected under the law.

Though the question of whether the fear was reasonable is viewed from the perspective of a reasonable person, the Defendant's statements during and after the incident tell us everything we need to know about whether he specifically was in fear. When the two are standing face to face prior to the slap, the Defendant doesn't appear to be in fear. He stands confidently in front of the Victim. His confidence is evidence by his next statement – "you are about to get your ass blown, nigga." This is not a statement of fear, this is a statement meant to tell the Victim that the Defendant is in control. Then, after the shot, the Defendant says "told your ass, nigga." Again, saying it so matter-of-factly as if he knew that was exactly what was going to happen (which the State believes he did). And finally, as the victim is begging for someone to call 911, the Defendant does not appear to be in fear – nor does he act like he ever feared the victim. Instead, he berates and taunts the Victim -- "You think I'm playing with you, [inaudible]. The fuck? You

think you can come up and slap me like I'm some bitch, nigga? Sit your fucking ass down, nigga. Play with me, nigga. What's up?" Again, not statements consistent with someone who was in fear.

C. Even if the Defendant held a reasonable fear of death or great bodily injury, which the State does not concede in any way, the moment the Defendant decided to use deadly force was a moment where the fear of injury was dissipating.

The great pause…three full seconds…the defendant is thinking, deciding, taking time to make the decision to shoot the Victim dead. The pause should provide the Court with ample evidence to show the Defendant lacks immunity in this case. The Victim backs up, tells the Defendant to shoot him, the Defendant pauses a full three seconds, and then pulls up his firearm and shoots the Victim in the chest. An action entirely uncalled for in this case.

"'When a defendant claims justifiable homicide because he was threatened with serious bodily injury, . . . "as the threat of harm dissipates, so does the reasonableness of the force used."'" State v. Smith, 2023 S.D. 32, ¶27. Here, even if the Defendant held a reasonable fear while being slapped, that reasonable fear dissipated as the Victim disengaged.

The Defendant did not choose to shoot the Victim while he sat in his vehicle. The Defendant did not choose to shoot the Victim while the Victim slapped him in the face. Instead, he chooses to shoot an unarmed man as he walked backwards, arms in the air, all because the Victim was egging him on saying "shoot me."

CONCLUSION

South Dakota's immunity laws do not extend to those who instigate a quarrel, who use deadly force where no actual threat of imminent death or great bodily harm are present, and who choose to execute an unarmed individual after the threat was dissipating. The evidence presented at the immunity hearing established that the Defendant did all of these.

The Defendant's actions were both reckless and unreasonable, and the State has produced clear and convincing evidence that the Defendant's actions are not protected under SDCL 22-18-4.8. And any further questions as to the reasonableness of the Defendant's actions are questions for the jury, not the Court.

The video provides us great insight into the Defendant and his recklessness. His defense, if there ever was any, was negated when he rolled down his window, got out of his vehicle, took the grand pause and showed his true colors with his words throughout and after he killed the Victim, amongst all of the other facts showing his behavior was not justified. The motion should be denied.

Dated this 11th day of June, 2024.

/s/ Braedon Houdek
Braedon Houdek
Deputy State's Attorney
Pennington County State's Attorney Office
130 Kansas City St. Suite 300
Rapid City, SD 57701

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the **State's Brief in Opposition of Defendant's Motion for Self-Defense Immunity** upon the person herein next designated, all on the date shown, by electronic service through Odyssey File and Serve, to:

Bryan Andersen
Attorney for Defendant
Rapid City, SD 57701

Dated this 11th day of June, 2024.

/s/ Braedon Houdek
Braedon Houdek
Deputy State's Attorney
Pennington County State's Attorney Office
130 Kansas City St. Suite 300
Rapid City, SD 57701

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA Plaintiff,	)	FILE NO. CRI 24-1087
vs.	)	DEFENDANTS REPLY TO STATE'S BRIEF IN OPPOSITION
DERREK RYAN BRAVEHEART, Defendant.	)	

Comes now the above-captioned Defendant, Derrek Ryan Braveheart, by and through his attorney, Bryan T. Andersen, and files the following reply to the state's brief in opposition.

The State argues that Braveheart "forfeited" the presumption of his right to self-defense by "rolling down his window, engaging in an argument with the Victim, and then exiting his vehicle with his gun in hand." States Brief 3. First, it is a stretch to argue that rolling down a window is an aggressive or criminal act. State cites no authority for that assertion. The witnesses, Schurger and Lee, rolled down their windows to better hear Odom yelling and screaming and were not attacked. EH 14, 27. Second, there is no evidence that Braveheart engaged in an "argument" with Odom. Testimony from witness Lee was, "I think Mr. Odom is talking more than Mr. Braveheart." EH 30:

> Q. Okay. What interaction did you see between Mr. Odom and Derrek Braveheart while Derrek Braveheart was in the vehicle?
>
> A. All we saw was Mr. Odom yelling at him through his window.

EH 29-30.

Braveheart's passenger and girlfriend, Carroll, testified:

> A. Jon [Odom] comes up to the window and just starts talking or yelling or something through the window.
>
> Q. By *window*, you mean Derrek's window?
>
> A. Derrek's window, yes.

Q. Is that window up or down?

A. The window was up when he approached.

Q. So Jonathan is standing at the window talking to Derrek. **Is Derrek doing anything?**

A. No.

EH 39 (Emphasis added).

Third, "exiting this vehicle with his gun in hand" was not an aggressive act or criminal act by Braveheart but rather an act of self-defense. Arguably standing outside of the vehicle was more of a defensible position that seated in his vehicle's driver seat and having to point his firearm across his chest or extend it out the window. SDCL § 22-18-4.1 establishes no duty to retreat unless the person is engaged in a criminal activity and not in a place where the person has a right to be:

. . .

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:

(1) Not engaged in a criminal activity; and
(2) In a place where the person has a right to be.

SDCL § 22-18-4.1

Rolling his window down; arguing or asking Odom not to hit him or enter his occupied vehicle; or exiting his vehicle with gun in hand is not a criminal activity.

SDCL § 22-18-9 provides:

Any justification for the use or the threatened use of either force or deadly force is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of a forcible felony; or
(2) Initially provokes the use or threatened use of force against himself or herself, unless:
    (a) Such force or threat of force is so great that the person reasonably believes he or she is in imminent danger of death or

great bodily harm and that every reasonable means to escape such danger has been exhausted, other than the use or threatened use of force that is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.

SDCL § 22-18-9.

No clear and convincing evidence was presented that Braveheart was attempting to commit a felony; had committed a felony; or was escaping after the commission of a forcible felony. No clear and convincing evidence was presented that Braveheart "Initially provoke[d]" Odom's attack by rolling down his window and quarreling with Odom. Testimony was that Odom had been upset with his antifreeze jug or the lack of a trash can and had previously entered the store and yelled at the employees for a lack of a trash can. EH 12-13; 25-27. Evidence was offered that Braveheart did nothing more than look at Odom causing Odon to attack Braveheart by entering his occupied vehicle and striking him repeatedly. EH 39.

Next, the State argues that the level of force used by the Victim was not enough to give rise to a reasonable fear of death or great bodily injury. State's Brief 6. This argument fails because SDCL § 22-18-4.2 does not establish or require a level of force by an assailant for there to be a reasonable presumption of fear. SDCL § 22-18-4.2 provides that a person is presumed to have held a reasonable fear of death or great bodily injury if the person against whom force was used unlawfully entered an occupied vehicle or had unlawfully entered an occupied vehicle. SDCL § 22-18-4.2(1)(a-b). Evidence was presented that Odom had unlawfully entered Braveheart's vehicle. EH 14-15, 20, 30, 33. The entry of any part of Odom's body was sufficient according to the South Dakota Supreme Court's definition of "entry." State v. Peck, 82 S.D. 561, 565, 150 N.W.2d 725, 727 (1967) (citing

12 C.J.S. Burglary s 10b; 2 Wharton. Criminal Law. 12th Ed., s 969, p. 1273. No clear and convincing evidence was presented to refute Braveheart's statutorily provided presumption of reasonable fear of imminent peril of death or great bodily harm.

Lastly the State argues that when Braveheart used deadly force as the fear of injury was dissipating. State's Brief 9. In support of this argument the State claims that Odom was unarmed; walking backwards; arms in the air. State's Brief 9. This is not entirely accurate. The testimony from witnesses and the phone recording was that Odom had hit Braveheart once he exited his vehicle and then backed up and raised his arms chest high. EH 30-31; State's Exhibit 1. Odom then stepped back towards Bravcheart and hit him again really hard. EH 31; State's Exhibit 1. Odom then similarly backed up with his hands at his side and the witness noted, "Like he was wanting him to -- like threatening him to shoot him." EH 32. Braveheart then shot Odom at this point after regaining his composure after being hit hard on side of his head near or on his ear. EH 31-32; State's Exhibit 1. There was arguably no evidence to believe that Odom would not step back towards Braveheart and hit him again a third or fourth time. Odam was clearly aware Braveheart had a firearm when he struck him repeatedly outside of his vehicle. State's Exhibit 1. Regardless, Braveheart had no duty to retreat and was allowed to pursue Odom until he felt safe. SD Pattern Jury Instruction 2-9-1; SDCL § 22-18-4; 9 (citing State v. Fields, 488 NW2d 919 (SD 1992); State v. Luckie, 459 NW2d 557 (SD 1990); State v. Jacques, 428 NW2d 260 (SD 1988)(Emphasis added). No clear and convincing evidence was presented to refute Braveheart's statutory provided presumption of reasonable fear of imminent peril of death or great bodily harm.

CONCLUSION

Braveheart asserts the State has not met his burden of clear and convincing evidence to overcome Braveheart's assertion of immunity provided by SDCL § 22-18-4.1. There was sufficient

evidence to support of finding that Braveheart acted in self-defense in accordance with the immunity provision of SDCL § 22-18-4.1. Therefore, Braveheart moves this Court for an Order granting him self-defense immunity in accordance with SDCL § 22-18-4.1.

Respectfully submitted on this 15th day of June 2024.

OFFICE OF THE PUBLIC DEFENDER
FOR PENNINGTON COUNTY
BY:

/s/ Bryan T. Andersen
Bryan T. Andersen
Office of the Public Defender
for Pennington County
130 Kansas City Street Suite 310
Rapid City, South Dakota 57701
Attorney for Defendant

Phone (605) 394-2181

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH DAKOTA,	)	FILE NO. 51 CRI 24-1087
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OPINION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS BASED ON STATUTORY IMMUNITY**
	)	
DERREK RYAN BRAVEHEART,	)	
	)	
Defendant.	)	

On March 28, 2024, Defendant filed a Motion for a Pre-Trial Hearing Regarding Self-Defense Immunity. A hearing was held on the matter on May 9, 2024. Defendant filed a Supplemental Brief in Support of Self-Defense Immunity on May 24, 2024. The State then filed its Brief in Opposition to the Defendant's Motion for Self-Defense Immunity on June 12, 2024. Defendant filed his Reply to State's Brief in Opposition on June 15, 2024.

Having reviewed the motions, notices, and other submissions by parties, having heard arguments by parties, and being otherwise familiar with the record, Defendant's Motion to Dismiss Based on Statutory Immunity is hereby **DENIED.**

FACTS

During an altercation at the Family Dollar on Haines Avenue, Rapid City, SD 57001, Johnathon Odom hit Defendant in the face with an open hand multiple times through the driver's side window while Defendant was sitting in his vehicle. Defendant eventually got out of his vehicle, and Odom hit him in the face again with an open hand. Defendant then shot Odom before getting back into his vehicle. Treating this as sufficient for a prima facie case, the State was then required to rebut the Defendant's self-defense theory with clear and convincing evidence. SDCL 22-18-4.8. As

set forth below, the Court concludes that the State has overcome Defendant's self-defense claim by clear and convincing evidence.

Findings of Fact

1. The Court finds that the following facts were either undisputed or established by at least clear and convincing evidence. Any findings that should be characterized as conclusions of law are hereby adopted as a conclusion and incorporated by reference into the conclusions of law below.
2. On February 2, 2024, Andrew Schurger and his fiancé, Krista Lee, were parked outside the Family Dollar convenience store at 1445 Haines Ave, Rapid City, SD.
3. When Krista was inside the store, Andrew observed Johnathon Odom pouring washer fluid into his vehicle. Once Odom was done pouring the fluid, he threw the empty bottle at the side of the Family Dollar building.
4. Odom then entered the store, complaining about the lack of a trash can outside.
5. After exiting the store, Odom approached the vehicle that was parked next to his own and began yelling at Defendant, the driver of the vehicle, through the driver's side window.
6. At this time, Andrew called 911 to report a possible fight. Andrew and Krista got out of their vehicle to better observe the situation.
7. While Defendant and Odom were yelling at one another, Defendant's girlfriend, Ayiannah Carroll, who was in the vehicle's passenger seat, told Defendant that they should leave.
8. At some point, Defendant unrolled the driver's side window.
9. Odom and Defendant's conversation escalated when Odom reached through the open driver's side window, and open-hand slapped Defendant in the face.

10. It is uncontested that Odom entered the vehicle when he smacked Defendant through the driver's side window.
11. Defendant then got out of the vehicle, and when doing so, he retrieved a handgun from the vehicle.
12. Once Defendant exited the vehicle, Ms. Carroll began recording a video of the rest of the interaction. *See* State's Exhibit 1.
13. After getting out of the vehicle, Odom open-hand slapped Defendant again in the face. After this second slap, Defendant turned towards Andrew and Krista and asked them, "Am I in the wrong?" Andrew then informed Defendant that he was not in the wrong.
14. Odom then repeated his action of slapping Defendant in the face for a third and final time.
15. Odom then observed that Defendant was carrying a handgun, and Defendant told Odom, "You are about to get your ass blown[.]"
16. Odom then told Defendant to "shoot him" while taking two or three steps back with his arms raised to his side at roughly chest height.
17. After waiting roughly three seconds, Defendant raised the handgun and fired a shot into Odom's chest before getting back into his vehicle. Upon reentering his vehicle, Defendant made several comments about how Odom hit him like a "bitch."[1]
18. Odom staggered away before collapsing in front of the Dollar General's doors. It is uncontested that Odom was unarmed during the interaction.
19. RCPD Officer Karen Bicskei arrived at the scene shortly after Odom was shot. Several individuals pointed to Defendant and informed her that he had a gun.
20. Officer Bicskei searched Defendant and found the handgun in his pants.

[1] Defendant stated, "It's all on camera, bitch. You think I'm playing with you, [inaudible]. The fuck? You think you can come up and slap me like I'm some bitch[?] ... Sit your fucking ass down[.]" *See* State's Exhibit 1.

CONCLUSIONS OF LAW

1. Any statements below that are findings of fact are hereby adopted as a finding of fact and incorporated by reference into the findings above.

2. SDCL 22-18-4.1 outlines the parameters for defending oneself using deadly force:

> A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.
>
> A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:
> (1) Not engaged in a criminal activity; and
> (2) In a place where the person has a right to be.

3. SDCL 22-18-4.8 grants a person immunity from prosecution for the use or threatened use of force in relation to self-defense or standing your ground. It provides, in pertinent parts, that:

> A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:
> (1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
> (b) The officer identified himself or herself; or
> (2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

Id.

4. The Court finds that Defendant met his burden of showing a prima facie case because Odom struck Defendant once while he was in his vehicle and then two more times after Defendant had gotten out of the vehicle.

5. Once the defendant raises a prima facie case of self-defense immunity, the State must prove, by "clear and convincing evidence," that the defendant did not act in self-defense to overcome this immunity. *State v. Smith*, 2023 S.D. 32, ¶ 34, 993 N.W.2d 576, 588.
6. "Clear and convincing evidence is evidence so clear, direct, weighty, and convincing as to allow the trier of fact to reach a clear conviction of the precise facts at issue, without hesitancy as to their truth." *State v. Dreps*, 1996 S.D. 142, ¶ 8, 558 N.W.2d 339, 341 (quoting *State v. Fountain*, 534 N.W.2d 859, 864 (S.D.1995)).
7. Based on the findings stated above and the reasonable inferences drawn therefrom, the Court concludes that the State has met its burden by proving by clear and convincing evidence that Defendant did not act in self-defense.
8. SDCL 22-18-3.1(1) defines deadly force as "force that is likely to cause death or great bodily harm."
9. The Court finds and concludes that the State has proven by clear and convincing evidence that firing a weapon at an unarmed person was likely to cause death or great bodily harm to the Victim.
10. The Court recognizes that SDCL 22-18-4.0 permits the use of deadly force in certain circumstances but finds and concludes that this section does not apply to Defendant because, when he fired the weapon, he did not reasonably believe that deadly force was necessary to prevent imminent death or great bodily harm to himself or another person.
11. SDCL 22-18-4.3 provides that "[A] person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm ... if: (1) The person against whom the defensive force was used or threatened: ... (b) had unlawfully entered a[n] ... occupied vehicle."

12. "The entry of any part of [a] body [is] sufficient" to constitute entry into Defendant's vehicle. *State v. Peck*, 82 S.D. 561, 565, 150 N.W.2d 725, 727 (1967) (citations omitted). When reaching through the driver's side window and smacking Defendant, Odom entered the vehicle.

13. Because Odom entered into the vehicle while Defendant and Ms. Carroll occupied the vehicle, Defendant is presumed to have had "a reasonable fear of imminent peril of death or great bodily harm." SDCL 22-18-4.3.

14. Certainly, while seated in the vehicle, Defendant had no duty to retreat pursuant to SDCL 22-18-4.1. However, when Defendant exited the vehicle with a handgun, he escalated the conflict.

15. While Defendant is presumed to have a reasonable fear when seated in the vehicle, the Court finds that the presumption ended once Defendant exited the vehicle armed with the handgun.

16. Defendant points to South Dakota Criminal Pattern Jury Instruction 2-9-2, which provides that:

> A person who has been attacked and who is exercising the right of lawful self-defense is not required to retreat, and may not only defend against the attack but also may pursue the assailant until secure from danger if that course appears to the defendant, and would appear to a reasonable person in the same situation, to be reasonably and apparently necessary; and this is the defendant's right even if safety may have been more easily gained by withdrawing from the scene.

17. Thus, Defendant asserts that he was statutorily permitted to pursue Odom until he felt safe.

18. However, the pursuit is permitted only "if that course appears to the defendant, and would appear to a reasonable person in the same situation, to be reasonably and apparently necessary[.]" *Id.*

19. After Odom slappedd Defendant twice outside of the vehicle, he took two or three steps back from Defendant after seeing that he was holding a handgun.
20. When Odom told Defendant to shoot him, Odom was holding his arms out at the side at chest height. At this time, it is apparent that Odom was no longer hitting Defendant.
21. "[W]hen a defendant claims justifiable homicide because he was threatened with serious bodily injury, the responding force becomes limited to that which is reasonable in the circumstances, and, as the threat of harm dissipates, so does the reasonableness of the force used." *State v. Smith*, 2023 S.D. 32, ¶ 50, 993 N.W.2d 576, 592.
22. "Whether, under the particular facts of each case, homicide was justified is for the jury to decide." *State v. Frias*, 2021 S.D. 26, ¶ 29, 959 N.W.2d 62, 70 (quoting *State v. Pellegrino*, 1998 S.D. 39, ¶ 18, 577 N.W.2d 590, 598).
23. Of note, Defendant waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms out at his side. Accordingly, any threat of harm had dissipated at this time.
24. Defendant's actions and comments after reentering the vehicle do not indicate that he was in any fear of harm from Odom.
25. The evidence is clear and convincing that while Odom open-handed hit Defendant in the face twice outside of the vehicle, his actions did not indicate imminent death or great bodily harm to justify Defendant's use of deadly force. Thus, Defendant's act of shooting Odom was not justifiable under the circumstances.
26. The Court recognizes that the State's burden to rebut self-defense at trial is beyond a reasonable doubt, and that is a higher burden than the State had to meet to prevail on this motion for a finding of immunity.

ORDER

The Court, therefore, finds and concludes that the State has rebutted the Defendant's self-defense theory and has done so by clear and convincing evidence.

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Based on Statutory Immunity is DENIED.

Dated this 1 day of July 2024.

BY THE COURT

The Honorable Joshua Hendrickson
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:

AMBER WATKINS
CLERK OF COURTS

Deputy

FILED
Pennington County, SD
IN CIRCUIT COURT

JUL - 1 2024

Amber Watkins, Clerk of Courts
By _____ Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	FILE NO: CRI24-1087
Plaintiff,	)	
vs.	)	**DISMISSAL**
DERREK RYAN BRAVEHEART,	)	
DOB: 10-01-94	)	
CR #: 24-201494	)	
Defendant.	)	

Pursuant to SDCL 23A-44-2, Gina S. Nelson, Prosecuting Attorney, dismisses Count 2 of the Indictment dated March 13, 2024, alleging the offense(s) of Manslaughter in the First Degree in violation of SDCL 22-16-15(2), committed on or about February 2, 2024, for the reason that it is the best interest of justice.

Dated this 17th day of December, 2024, at Rapid City, Pennington County, South Dakota.

/S/ Gina S. Nelson
Prosecuting Attorney
Pennington County State's Attorney's Office
130 Kansas City Street, Suite 300
PO Box 6160
Rapid City SD 57701-6160
(605)394-2191

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff,	)	FILE NO. CRI24-1087
vs.	)	MOTION FOR JUDGMENT OF ACQUITTAL
DERREK BRAVE HEART, Defendant.	)	

Comes now the Defendant, Mr. Derrek Brave Heart, by and through his attorneys and moves the Court to Acquit Mr. Brave Heart of the charge of Manslaughter in the First degree because no rational trier of fact could find guilt beyond a reasonable doubt.

A. STATEMENT OF THE FACTS

The trial in this matter produced the following undisputed facts. Mr. Brave Heart had a right to be in his vehicle on the date and time of this allegation. Mr. Brave Heart was engaging in no unlawful conduct when Mr. Odom, intoxicated, went to Mr. Brave Heart's vehicle window and proceeded to punch Mr. Brave Heart in the head, through the open window of Mr. Brave Heart's vehicle. The strikes delivered to Mr. Brave Heart's head while in the vehicle were testified to by multiple witnesses, specifically, third party witness Krista (Lee) Schurger, Ayiannah Carroll, and Mr. Brave Heart himself.

Mr. Brave Heart, after being hit in the head while in his vehicle, exited his vehicle with a lawfully possessed handgun. The same handgun he purchased over three years earlier and owned without incident. Knowing that the gun was in Mr. Brave Heart's hand, Mr. Odom continued to physically assault Mr. Brave Heart by hitting him in the head multiple times after Mr. Brave Heart exited the vehicle. Before the shot, Mr. Brave Heart pointed the gun to Mr.

Odom's head and demanded he back away. Mr. Odom again disregarded the presence of Mr. Brave Heart's gun and again struck Mr. Brave Heart in the head. Third-party witness Krista (Lee) Schurger's uncontested testimony established that Mr. Odom's strikes were escalating in force. After, what witnesses described as Mr. Odom's hardest hit delivered to Mr. Brave Heart's head was received, Mr. Brave Heart shot Mr. Odom one time in the torso.

B. STATEMENT OF THE LAW

A motion for a judgment of acquittal may be made after a jury verdict, when the motion is based on the sufficiency of the evidence. United States v. Brown, (2020) 459 F. Supp. 3d 1171, 1175. (While successful challenges are relatively rare, "a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt.")

Self-defense by use of lethal means is justified when an individual reasonably believes it is necessary to defend against the commission of a forceable felony. Jury Inst. 30. Aggravated entry into a motor vehicle is a Class 6 Felony, and states, "Any person who forcibly enters a motor vehicle with intent to commit any crime in that motor vehicle is guilty of aggravated criminal entry of a motor vehicle." SDCL 22-32-19.

The trier of fact, under the law, *must* presume that Mr. Odom, when entering Mr. Brave Heart's vehicle, was intending to commit a crime of force or violence. Jury Inst. 31.

An individual is justified in using deadly force when they *reasonably believe it is necessary to defend against a forcible felony.* Jury Inst. 30. Once an individual has the lawful right to defend himself, he has no duty to retreat, and can defend against the attack, even pursuing his assailant until security from danger has been reached. Id., Jury Inst. 34. This is true

even if safety may be more easily gained by retreat. Id.

The instigator of the quarrel is not provided a defense under the law. Jury Inst. 35. Anyone who instigates a quarrel does not have a right to self defense unless, at a minimum, the aggressor informs his adversary of his desire for peace. Jury Inst. 40.

C. THE MANDATORY PRESUMPTION IN THE LAW MANDATES AN ACQUITTAL

Jury Instruction 30 provides a mandatory presumption under the law. The facts are uncontroverted that Mr. Odom entered Mr. Brave Heart's vehicle to strike him in the head. It must therefore be presumed that Mr. Odom entered Mr. Brave Heart's vehicle to commit a crime of force or violence, which also happenes to fit the description of the Class 6 felony of aggravated entry into a motor vehicle. Why? Due to the mandatory presumption, the unlawful entry by Mr. Odom requires the trier of fact to assume Mr. Odom intended to commit a crime of force or violence. Aggravated Criminal Entry of Motor Vehicle, SDCL 22-32-19, makes felonious the forcible entry into a motor vehicle with intent to commit any crime in that motor vehicle.

While the single shot was not taken while Mr. Brave Heart was in his vehicle, the right to self-defense is established at the moment Mr. Brave Heart *must actually defend himself from the forcible felonious conduct* of Mr. Odom. After Mr. Brave Heart's reasonable need to defend against an actual forceable felony is established, Mr. Brave Heart is entitled to stand his ground and even pursue his attacker, until the danger is abated. The danger posed by Mr. Odom was never abated. And Mr. Odom, as the only aggressor in this case, had no right to defend himself from Mr. Brave Heart. Mr. Odom, rather than suggesting he wanted peace with Mr. Brave Heart, after the hardest hit delivered, demanded that Mr. Brave Heart shoot him. Mr. Brave

Heart's right to defend against the ongoing forcible felonious conduct of Mr. Odom did not end when he exited the vehicle, but continued until the danger was abated. Mr. Brave Heart has the right to stand his ground and step out of his vehicle to defend himself from the random attack by an intoxicated stranger, Mr. Odom. Mr. Brave Heart has the right to defend himself with his lawfully owned, possessed and registered firearm. Mr. Brave Heart did not shoot Mr. Odom until he was hit multiple times, in the head, and after he displayed and threatened the use of his handgun directly to the individual who was engaged in the ongoing, violent, felonious conduct. Under the law in the State of South Dakota, Mr. Brave Heart acted in lawful self-defense, and no reasonable juror, following the law, could find differently.

D. CONCLUSION

In South Dakota, we value our right to bear arms, to defend ourselves from the most frightening of possibilities: being attacked by an intoxicated, violent, large stranger who will not stop attacking. Under the Second Amendment of the United States Constitution, and the laws of self-defense in the State of South Dakota, Mr. Brave Heart was acting in lawful self-defense and this Court is now in the position to correct the unjust verdict and ACQUIT Mr. Brave Heart on all counts.

Respectfully Submitted this 1st day of April, 2025

OFFICE OF THE PUBLIC DEFENDER
FOR PENNINGTON COUNTY
BY:

/s/ Martha Rossiter
Attorney for Defendant
14 Saint Joseph St. Suite 110
Rapid City, SD 57701
(605) 394 - 2181

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the date shown below, she submitted the foregoing document for e-filing and e-service upon Gina Nelson of the Pennington County State's Attorney's Office.

Dated this 1st day of April, 2025.

/s/ Martha Rossiter
Attorney for Defendant

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff,	)	File No. CRI24-1087
vs.	)	JUDGMENT
DERREK RYAN BRAVEHEART, DOB: 10/01/1994 Defendant.	)	

Appearance at sentencing:
Prosecutor: Gina S. Nelson Defense attorney: Martha Rossiter & Bryan Andersen

Date of sentence: May 5, 2025
Date of offense: February 2, 2024
Charge: First Degree Manslaughter
Class: C Felony SDCL: 22-16-15(3)
Convicted at trial on March 27, 2025 of First Degree Manslaughter

☒ The Defendant was found guilty at jury trial and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:
30 years in the South Dakota State Penitentiary with 0 years suspended and 310 days credit plus each day served in the Pennington County jail.

Check if applicable:

☒ That Defendant pay court costs of $116.50.
☒ That Defendant's attorney's fees of $10,009.00 will be a civil lien pursuant to SDCL 23A-40-11.
☒ That Defendant pay prosecution costs: Deposition $569.00, Drug Test $___, Blood $___, SART Bill $___; Transcript $205.80.
☒ That Defendant pay prosecution costs: Drug Test $___, Blood $___, SART Bill $___; Transcript $205.80.
☐ That Defendant pay prosecution costs from dismissed file ___; UA $___, Drug Test $___, SART Bill $___; Blood $___, Transcript $___.
☐ That Defendant pay the statutory fee of $___ DUI, $___ DV.
☐ That Defendant pay fines imposed in the amount of $___.
☒ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of $7,487.23 to Margaret Holby.

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

BY THE COURT:

Attest: 5/6/2025 12:20:33 PM
Greenamyre, Kylie
Clerk/Deputy

HON. JOSHUA K. HENDRICKSON CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31107

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DERREK RYAN BRAVEHEART,

Defendant and Appellant.

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

THE HONORABLE JOSHUA K. HENDRICKSON
Circuit Court Judge

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

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

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Bryan T. Andersen
Public Defender's Office
14 Saint Joseph Street, Suite 110
Rapid City, S.D. 57356
Telephone: (605) 394-2181
Email: bryana@pennco.org

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed May 30, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED: **PAGE**

STATUTES CITED:

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31107

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DERREK RYAN BRAVEHEART,

Defendant and Appellant.

PRELIMINARY STATEMENT

Braveheart appeals arguing the circuit court erred in denying his motion to dismiss and motion for a judgment of acquittal.

References to the Settled Record, 51CR24-1087, are denoted "SR." References to the Appellant's Brief are denoted "AB." References to exhibits from the trial will be cited to as "EX." References to jury instructions will be cited to as "JT Inst." The proper page number(s) follows these references.

JURISDICTIONAL STATEMENT

This is an appeal of an amended judgment and sentence entered on May 22, 2025. SR:640. Braveheart timely filed an amended notice of appeal on May 30, 2025. SR:642; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT PROPERLY DENIED BRAVEHEART'S MOTION TO DISMISS?

Braveheart filed a motion to dismiss claiming statutory self-defense immunity. After an evidentiary hearing, the circuit court denied the motion.

- *State v. Tuopeh*, 2025 S.D. 16, 19 N.W.3d 37
- SDCL 22-18-4.8

II.

WHETHER SUFFICIENT EVIDENCE EXISTED TO SUPPORT BRAVEHEART'S CONVICTION?

At the close of the State's case, Braveheart moved for a judgment of acquittal. The circuit court denied the motion finding the State presented sufficient evidence to support a conviction. After Braveheart rested his case, he renewed the motion, which the circuit court denied.

- *State v. Bolden*, 2024 S.D. 22, 6 N.W.3d 238
- *State v. Smith*, 2023 S.D. 32, 993 N.W.2d 576
- SDCL 22-16-15(3)

STATEMENT OF THE CASE

The Pennington County grand jury indicted Braveheart on one count of second-degree murder, and, in the alternative, three counts of first-degree manslaughter. SR:1-2.

Braveheart moved to dismiss based on statutory self-defense immunity. SR:66-69. After an evidentiary hearing and considering the briefs, the circuit court denied Braveheart's motion to dismiss finding the State rebutted Braveheart's self-defense theory by clear and convincing evidence. SR:81-135, 138-54, 156-68.

Braveheart had a three-day jury trial. *See* SR:996-1521. At the close of the State's case, Braveheart moved for judgment of acquittal. SR:1291. The circuit court denied Braveheart's motion. SR:1292.

The jury found Braveheart guilty of first-degree manslaughter. SR:494. Braveheart renewed his motion for judgment of acquittal; the circuit court denied the motion. SR:511-14, 1430. Braveheart was sentenced to thirty years imprisonment. SR:539.

STATEMENT OF THE FACTS

On February 2, 2024, at approximately 10:00 a.m., Braveheart and Ayiannah Carroll, Braveheart's girlfriend, went to the Family Dollar so Carroll could put money onto her Cash App. SR:1174, 1176. The couple watched Jonathan Odom fill his car's windshield wiper fluid and throw the canister against the store. SR:1130, 1179-81.

Odom approached Braveheart's vehicle's driver's side with his arms in the air and began yelling at Braveheart through Braveheart's closed window.[1] SR:1120-21, 1392. Braveheart rolled down his window and the two started arguing. SR:1121. Odom reached inside Braveheart's vehicle and slapped him in the face. SR:1121, 1180, 1392.

Carroll told Braveheart they should leave; but instead, Braveheart got out of his vehicle with a gun in his hand.[2] SR:1151-52, 1182-84. As the two stood facing each other, Odom slapped Braveheart in the face

---

[1] Odom and Braveheart did not previously know each other. SR:1413.
[2] Carroll started video recording the interaction on her cellphone camera. SR:1184-86; EX. 22.

again. SR:1133, 1151. Braveheart asked a bystander, "Am I in the wrong?"; the witness, not knowing he had a gun, responded "no." SR:1125, 1151. Braveheart told Odom, "You know I am in the right, right now, right?" EX. 22.

At that point, Braveheart loaded a bullet into the chamber of his gun and pointed it at Odom. EX. 22; SR:1395. Odom pushed Braveheart away and said, "Get the fuck away from me[.]" EX. 22. Braveheart told Odom, "You are about to get your ass blown[.]" *Id.* Odom asked, "What you gonna do?", walked toward Braveheart, and smacked him in the face. *Id.*

Odom backed up a few steps, put his arms straight out in a t-position, and said, "shoot me then." SR:1152-53, 1200; EX. 22. After three seconds, Braveheart raised his gun and shot Odom in the chest. EX. 22. Odom died as a result of the gunshot wound. SR:1125, 1270-75, 1185, 1399. Odom was unarmed during the interaction. SR:1153.

Braveheart then made several statements to Odom including: "told your ass" and "[y]ou think you can come up and slap me like I'm some bitch, nigga? Sit your fucking ass down, nigga." SR:1412; EX. 22.

ARGUMENTS

I.

THE CIRCUIT COURT PROPERLY DENIED BRAVEHEART'S MOTION TO DISMISS BASED ON IMMUNITY.

A. *Background.*

"Braveheart argue[s] the State did not meet its burden of clear and convincing evidence that he did not act in self-defense[.]" AB:9. After an evidentiary hearing, the circuit court found Braveheart forfeited his right to self-defense because he escalated the conflict and held the State rebutted Braveheart's self-defense theory by clear and convincing evidence.

B. *Standard of review.*

"Factual findings of the lower court are reviewed under the clearly erroneous standard, but once those facts have been determined, 'the application of a legal standard to those facts is a question of law reviewed de novo.'" *State v. Tuopeh*, 2025 S.D. 16, ¶ 49, 19 N.W.3d 37, 55 (quoting *State v. Heney*, 2013 S.D. 77, ¶ 8, 839 N.W.2d 558, 561-62).

C. *The circuit court properly denied Braveheart's motion to dismiss based on immunity.*

Before trial, Braveheart moved for immunity from prosecution under SDCL 22-18-4.8. SR:66-72. SDCL 22-18-4.8 provides "[i]n a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution[.]" SR:66-72.

The circuit court found Braveheart made a prima facia claim of self-defense immunity; therefore, the burden shifted to the State. SR:82. The circuit court held an evidentiary hearing where the State called six witnesses, including four eyewitnesses, and entered two exhibits into

evidence. SR:79-137. The circuit court issued an opinion concluding the State met its burden that Braveheart did not act in self-defense because when he fired the weapon, he did not reasonably believe that deadly force was necessary to prevent imminent death or great bodily harm to himself or another person. SR:165.

The circuit court reasoned that although Braveheart was initially presumed to have had a reasonable fear of imminent peril of death or great bodily harm while seated in the vehicle, that presumption ended once Braveheart exited the vehicle armed with a handgun because he "escalated the conflict." SR:166; *see* SDCL 22-18-4.1, 22-18-4.3. The circuit court held because Braveheart "waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms out at his side[,]" "any threat of harm had dissipated[.]" SR:167. The circuit court found Braveheart's comments when he "reenter[ed] the vehicle d[id] not indicate he was in any fear of harm from Odom." *Id.* The circuit court concluded, "[t]he evidence is clear and convincing that while Odom open-handed hit [Braveheart] in the face twice outside of the vehicle, his actions did not indicate imminent death or great bodily harm to justify [Braveheart]'s use of deadly force." *Id.*

D. *Braveheart's arguments lack merit.*

Braveheart criticizes the circuit court for "fail[ing] to make any finding as to whether or not Braveheart reasonably believed deadly force

was necessary to prevent the imminent commission of a forcible felony pursuant to SDCL 22-18-4.1[,]" and erroneously making factual findings. AB:12-16. The circuit court's refusal to credit Braveheart's account does not equate to error in its fact-finding.

1. Braveheart's use of force was not justified.

"A person is justified in using . . . deadly force if the person reasonably believes that using . . . is necessary to . . . prevent the imminent commission of a forcible felony."[3] SDCL 22-18-4.1. Braveheart alleged Odom was committing aggravated assault and aggravated criminal entry of a motor vehicle using force, which are forcible felonies. AB:12.

As stated, because Braveheart "waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms out at his side[,]" the circuit court held "any threat of harm had dissipated[.]" SR:167. At that time, "it was apparent that Odom was no longer hitting" Braveheart. *Id.* Additionally, after Braveheart exited his vehicle, Odom never tried to enter Braveheart's vehicle. EX. 22.

Because no forcible felony was occurring or imminent, Braveheart's use of deadly force was not justified. Therefore, his argument fails.

---

[3] A "forcible felony" is defined as assault, burglary, murder, and robbery, "and any other felony that involves the use of or the threat of physical force or violence against a person." SDCL 22-18-3.1.

2. The circuit court made proper factual determinations.

Braveheart argues the circuit court erred in finding: (1) "Odom had taken 'two or three steps back from Defendant after seeing that he was holding a handgun[;]' " (2) "When Odom told Defendant to shoot him . . . it is apparent Odom is no longer hitting Defendant[;]" and (3) "Defendant waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms at his side." AB:15-16.

The circuit court's factual determinations are supported by the cellphone video and testimony at the evidentiary hearing. SR:81-135; EX. 22. The evidence supports the court's findings, namely: (1) Odom slapped Braveheart and took three steps backwards with his arms out at his side; (2) when Odom told Braveheart to shoot him, Odom was no longer hitting Braveheart; (3) Braveheart waited approximately three seconds to shoot Odom. EX. 22; SR:87-132, 161-67. Because of these facts, the circuit court found any threat of harm had dissipated. *Id.*

Braveheart argues "[t]he threat of harm from Odom did not dissipate as he in good faith did not decline further combat, he did not honestly endeavor to desist, and he did not fairly and clearly inform Braveheart of the desire for peace and that he had abandoned the combat." AB:16 (citing *State v. Fields*, 488 N.W.2d 919, 926 (S.D. 1992), *State v. Woods*, 374 N.W.2d 92, 97 (S.D. 1985), and SDCL 22-18-4.9). Braveheart's argument and the authorities he uses concern an aggressor's right to self-defense. Determining whether a threat of harm

has dissipated is not the same as the standard for an aggressor's right to self-defense. Whether a threat of harm has dissipated is a question of fact. Here, the circuit court carefully analyzed the evidence presented and determined any threat of harm had dissipated. SR:167.

Braveheart also asserts there is no evidence that he "was engaged in criminal activity[,]" "not in a place where he had a right to be[,]" and "did nothing more than look at Odom[;]" therefore, Braveheart "had the right to stand his ground and had no duty to retreat." AB:13. Braveheart is correct, prior to Braveheart shooting Odom, he was not engaged in criminal activity and was in a place where he had a right to be. However, when Braveheart made the conscious decision to roll down his window, get out of his vehicle, and grab his gun, he escalated the situation and therefore relinquished his right to self-defense for his subsequent actions. SR:166. At the time Odom was shot, Odom's behavior did not justify Braveheart's use of deadly force.

Braveheart argues he was justified in using deadly force because his case is similar to *Jaukkuri* and *Scott*. AB:14 (citing *South Carolina v. Scott*, 819 S.E.2d 116 (S.C. 2018); *State v. Jaukkuri*, 168 N.W. 1047 (S.D. 1918)). Those cases are materially distinguishable from Braveheart.

In *Scott*, a vehicle drove by Scott's house, where his family was present, and began shooting at their home. *Scott*, 819 S.E.2d at 118. Scott, standing on his stoop, responded by firing a warning shot; the shot hit a passenger in the vehicle. *Id.* In South Carolina, there are four

elements that must be established to justify the use of deadly force as self-defense. *Id.* The circuit court found: (1) Scott was without fault in bringing on the difficulty; (2) Scott actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in such imminent danger; (3) Scott's belief of imminent danger was supported by a reasonable prudent man; and (4) Scott had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did. *Id.*

The present case differs from *Scott* because the circuit court found:

> The evidence is clear and convincing that while Odom open-handed hit Defendant in the face twice outside of the vehicle, his actions did not indicate imminent death or great bodily harm to justify Defendant's use of deadly force. Thus, Defendant's act of shooting Odom was not justifiable under the circumstances.

SR:167. Because Braveheart's alleged fear was not reasonable, he was not justified in his use of deadly force.

This Court previously reversed a conviction because it found "the defendant was justified, at the time he fired the fatal shot, in the belief that [the victim] was threatening either to kill him or to inflict great bodily injury upon him." *Jaukkuri*, 168 N.W. at 1050. This Court found the victim "made sufficient demonstration to convince a reasonably prudent person that he intended to continue the assault upon defendant and inflict all the injury upon him that he could." *Id.* The law at that time stated if the defendant could have retreated with safety, then he was

not justified in using deadly force. *Id.* This Court noted "[i]t is not material who was the aggressor in the first encounter between defendant and [the victim], nor what the result of that encounter was." *Id.* at 1049.

The present case differs from *Jaukkuri* because, as previously discussed, the circuit court found because Braveheart "waited roughly three seconds to raise the handgun and shoot Odom, who had taken two or three steps back with his arms out at his side[,]" "any threat of harm had dissipated[.]" SR:167. The circuit court, in denying Braveheart's motion to dismiss, held Odom did not intend to continue the assault.

E. Braveheart was not prejudiced by the circuit court's denial of his motion for acquittal.

Finally, Braveheart was not prejudiced by the circuit court's denial of immunity because, although the jury was instructed on self-defense, it still found Braveheart guilty beyond a reasonable doubt of first-degree manslaughter. SR:469-76; *see State v. Smith*, 2023 S.D. 32, ¶ 36, 993 N.W.2d 576, 588 (concluding that the circuit court did not err in denying Smith's immunity motion because he was convicted at trial, which requires a higher burden of proof). Because the burden of convicting Braveheart is a higher burden than the standard in an immunity hearing, there was no harm in finding that Braveheart was not immune from prosecution. *See id.*

F. Conclusion

The record supports the circuit court's finding that the State met its burden, by proving by clear and convincing evidence, that Braveheart

did not act in self-defense. The circuit court, as fact finder, was tasked with weighing the credibility of witnesses and ascertaining the facts. Braveheart failed to show the circuit court was clearly erroneous in its findings. The circuit court's denial of Braveheart's motion to dismiss based on statutory immunity should be affirmed.

II.

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT BRAVEHEART'S CONVICTION.

A. *Background.*

Braveheart argues there was insufficient evidence for the jury to convict him of first-degree manslaughter. AB:18-21. But he fails to look at the evidence in light most favorable to the State. When doing so, the State presented sufficient evidence to support the conviction.

B. *Standard of review.*

"This Court reviews 'a denial of a motion for judgment of acquittal de novo.'" *Tuopeh*, 2025 S.D. 16, ¶ 45, 19 N.W.3d at 54 (quoting *State v. Peneaux*, 2023 S.D. 15, ¶ 24, 988 N.W.2d 263, 269). "[A] motion for a judgment of acquittal attacks the sufficiency of the evidence[.]" *Id.* (quotation omitted). "In measuring the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quotation omitted). "[T]he jury is the exclusive judge of the credibility of the witnesses and the weight of the evidence, and this Court will not resolve

conflicts in the evidence, pass on the credibility of witnesses, or weigh the evidence." *Id.* (quotation omitted). "It is the jury's responsibility, not [this Courts], 'to decide what conclusions should be drawn from evidence admitted at trial.'" *State v. Hillyer*, 2025 S.D. 30, ¶ 21, 23 N.W.3d 782, 789 (quoting *State v. Bolden*, 2024 S.D. 22, ¶ 39, 6 N.W.3d 238, 246-47).

C. *Braveheart's conviction was supported by sufficient evidence.*

"Homicide is manslaughter in the first degree if perpetrated without any design to effect death . . . but by means of a dangerous weapon." SDCL 22-16-15(3). The jury was instructed that manslaughter in the first degree consists of four elements, each of which must be proven beyond a reasonable doubt: (1) Braveheart caused the death of Odom; (2) the killing by Braveheart was done by means of a dangerous weapon; (3) Braveheart did so without any design to effect the death of Odom; and (4) the killing was not excusable or justifiable. JT Inst. 21.

1. Braveheart caused Odom's death.

Braveheart's actions of shooting Odom in the chest are captured on cellphone video, which was introduced at trial. SR:1412; EX. 22. Eyewitness, including Braveheart, testified at trial that Braveheart shot Odom. SR:1125, 1151, 1185, 1398-99. Dr. Habbe, a forensic pathologist who conducted Odom's autopsy, testified that Odom's cause of death was a gunshot wound. SR:427-32, 1266, 1270-75. Sufficient evidence existed that Odom's death was caused by Braveheart.

2. Braveheart killed Odom with a dangerous weapon.

A dangerous weapon is defined as "any firearm . . . which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm." SDCL 22-1-2(10). Braveheart killed Odom with a gun. Braveheart's gun is a "semi-automatic weapon." SR:1125, 1399, 1411; EX. 7. Braveheart's gun fits the definition of a dangerous weapon as it is a firearm and designed to inflict death or serious bodily harm.

3. Braveheart killed Odom without any design to do so.

After the jury listened to the testimony and viewed the evidence, it determined Braveheart did not intend to kill Odom but did intentionally shoot Odom. The cellphone video, which shows Braveheart shoot Odom and Braveheart's statements prior to and after the shooting, supports the jury's findings. EX. 22; SR:1163, 1170, 1377.

4. Odom's death was not excusable or justifiable.

a. Braveheart forfeited any right to self-defense when he chose to seek out a quarrel with Odom.

The jury was instructed of the State's burden to prove beyond a reasonable doubt that Braveheart did not act in self-defense. JT Inst. 33. The court instructed the jury: "A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself or another, or to prevent the imminent commission of a forcible felony." JT Inst. 30.

Assuming, arguendo, Braveheart was entitled to the self-defense presumption[4] initially when Odom was reaching into his vehicle and slapping him. However, Braveheart forfeited that presumption when he chose to seek out a quarrel by rolling down his window, engaging in an argument, and exiting his vehicle with his gun in hand. *See* JT Inst. 30, 31; SDCL 22-18-4.3. Because Braveheart willingly engaged and sought out the quarrel, his use of deadly force was not justified.

A person who has been attacked "may not only defend against the attack but also may pursue the assailant until secure from danger if that course appears to the defendant and would appear to a reasonable person in the same situation, to be reasonable and apparently necessary[.]" JT Inst. 34. Braveheart only had two reasonable and apparently necessary options: (1) remain in his vehicle with his window up;[5] and/or (2) drive away. To secure oneself from danger, a reasonable person would not leave the safety of one's own vehicle to engage with an individual who was arguing with them. Braveheart's course of action was not a reasonable or apparently necessary way to secure his safety; therefore, his conduct was not justified.

---

[4] "A person who unlawfully enters or attempts to enter another's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence." JT Inst. 31.

[5] It must be noted that Braveheart rolled down his window *after* the argument started, further inducing the argument. That was the first moment his immunity failed.

Further, Braveheart was not in fear of danger, as evidenced through his statements during and after the shooting, he was not seeking to secure himself from danger. *See* EX. 22. When Braveheart and Odom were standing face to face Braveheart did not appear to be in fear and instead stood confidently in front of Odom. Braveheart's confidence is evidenced by his statement "you are about to get your ass blown, nigga." This is not a statement of fear, this is a statement meant to tell Odom that Braveheart was in control. After Odom was murdered, Braveheart said "told your ass, nigga." Even after Braveheart shot Odom, Braveheart continued to berate and taunt Odom saying, "You think I'm playing with you, [inaudible]. The fuck? You think you can come up and slap me like I'm some bitch, nigga?" This evidence is more than sufficient for a jury to find Braveheart was not in fear of danger.

Eyewitness testimony at trial also supports the determination that Braveheart was not in fear of danger. One witness testified that after the shooting, Braveheart's demeanor was "like there was a little bit of an ego had kicked in. . . . he wasn't afraid." SR:1129. Another testified Braveheart never appeared scared of Odom and Braveheart's demeanor after shooting Odom was that he became "cocky[,]" "started talking smack[,]" and appeared proud of shooting Odom. SR:1154-55.

Braveheart shot Odom because he wanted to; this is not protected by law. *See State v. Rich*, 417 N.W.2d 868 (S.D. 1988). In *Rich*, the defendant "chose to go to the area of conflict. He chose to respond in an

aggressive, rather than conciliatory, manner . . . [the defendant] voluntarily entered into the conflict which resulted in the assault and was precluded from any instruction on justification, self-defense or defense of others." *Id.* at 872. This Court restated that, "conditions brought about by one's own conduct may not be relied upon to invoke the excuse of self[-]defense." *Id.* (citing *State v. Means*, 276 N.W.2d 699 (S.D. 1979)). Because Braveheart choose to engage in the quarrel with Odom, he is precluded from the legal defense of self-defense.

b. Braveheart's use of force was not reasonable.

The right to self-defense and use of deadly force is not unlimited. The jury was properly instructed:

> The kind and degree of force which a person may lawfully use in self-defense are limited by what a reasonable person in the same situation, seeing what the defendant sees and knowing what the defendant knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive.

JT Inst. 39; *see Smith*, 2023 S.D. 32, ¶ 48, 993 N.W.2d at 592.

The jury was further instructed that, "Where an assault is made with only the hands and fists but with such force and in such force and in such manner as is likely to produce great bodily injury, the person attacked may lawfully resist the attack with whatever force is reasonably and apparently necessary." JT Inst. 36. However, "[i]f an assault with the fists or hands or by means not likely to produce great bodily injury is being used, and if the person attacked is not deceived as to the character of the assault, that person is not justified in using a deadly force in self-

defense." JT Inst. 37; *State v. Stone*, 2019 S.D. 18, ¶ 45, 925 N.W.2d 488, 501 ("the question of whether [the defendant] was justified in using deadly force against an unarmed man, under all the circumstances, was a question for the jury").

Here, Odom's slap was not enough to give rise to a reasonable fear of great bodily injury nor was he committing a forcible felony, and, therefore, Braveheart's use of deadly force is not protected under the law. A couple of slaps to the face, without more, does not rise to fear of serious bodily injury or a forceful felony. Further, Braveheart did not suffer from injuries, as evidence of lack of injury from Odom's slap as Braveheart refused any medical treatment. SR:1402. There was simply no threat that existed which would give rise to a reasonable fear of great bodily injury. Therefore, Braveheart's use of deadly force was excessive and not protected by the law.

c. Any potential harm had dissipated.

The jury was further instructed that, "A person who defends against unlawful attack must stop the use of force as soon as danger of attack has ended. If it would appear to a reasonable person in the same position that there is no further danger, there should be no further force." JT Inst. 38; *see Smith*, 2023 S.D. 32, ¶ 50, 993 N.W.2d at 592-93 ("as the threat of harm dissipates, so does the reasonableness of the force used").

Even if Braveheart held a reasonable fear of death or great bodily injury, which the State does not concede, sufficient evidence exists that when Braveheart used deadly force, the fear of danger had dissipated. Braveheart did not choose to shoot Odom while he sat in his vehicle, nor immediately after Odom slapped him in the face; instead, Braveheart waited to shoot the unarmed man until he walked backwards, arms in the air, because Odom was egging him on saying "shoot me."

d. Braveheart arguments are without merit.

Braveheart, relying on *Sullivan*, argues "the record is utterly devoid of any evidence" on three factual matters. AB:20-21 (citing *State v. Sullivan*, 2003 S.D. 147, ¶ 15, 673 N.W.2d 288, 293). In *Sullivan*, because "the record contains no evidence of an element of the crime charged the South Dakota Supreme Court has found the trial court erred in overruling the defendant's motion for acquittal." *Id.* Braveheart's arguments involve factual matters, not elements of first-degree manslaughter. Specific evidence is not required to sustain a conviction, all that is needed is to show that after "viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Tuopeh*, 2025 S.D. 16, ¶ 45, 19 N.W.3d at 54. As previously explained, there was sufficient evidence presented for the jury to find the essential elements of first-degree manslaughter beyond a reasonable doubt.

First, Braveheart argues, "the record is utterly devoid of any evidence that Odom did not enter or continually attempt to enter Braveheart's vehicle. The jury was instructed that Odom was to be presumed to be entering the occupied vehicle with the intent to commit and unlawful act involving force or violence." AB:20 (quoting JT Inst. 31).

When Odom initially approached Braveheart, Odom was harassing Braveheart through his vehicle's window. At that time, if Odom was trying to enter Braveheart's vehicle, Braveheart had a reasonable fear of imminent peril of death or great bodily harm while he remained in his vehicle. However, he forfeited that presumption when he chose to continue the quarrel with Odom by rolling down his window, engaging in an argument, and exiting his vehicle. *See Jaukkuri*, 168 N.W. at 1049 ("It is not material who was the aggressor in the first encounter between defendant and [the victim][.]"). As captured by cellphone video, when Braveheart shot Odom, Odom was not entering or attempting to enter Braveheart's vehicle. EX. 22.

Second, Braveheart argues the record is "devoid of any evidence that Odom was not committing or had not committed a forcible felony. The trial court arguably instructed the jury that Odom had done so." AB:21 (quoting SR:477; JT Inst. 31). Braveheart does not specify what forcible felony Odom is alleged to have committed. *Id.* The State assumes Braveheart is alleging Odom was committing aggravated

criminal entry of motor vehicle or aggravated assault. *See* AB:12; SDCL 22-18-1.1. Before Braveheart shot Odom, Odom stepped away from Braveheart, and Braveheart waited approximately three seconds to raise the handgun and shoot Odom. Because of Braveheart's delay in shooting Odom, any threat of assault, or any forcible felony, had dissipated.

Third, Braveheart argues,

> the record is utterly devoid of any evidence that Braveheart was engaged in a criminal activity nor not in a place where he had a right to be. The jury was instructed that Braveheart is justified in using deadly force to prevent the imminent commission of a forcible felony as long as Braveheart was not engaged in a criminal activity and in a place he had a right to be."

SR:21 (citing SR: 476; JT Inst. 30). Jury instruction 30[6] states:

> A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.
>
> A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:
> (1) Not engaged in a criminal activity; and
> (2) In a place where the person has a right to be.

SR:467. The second paragraph of SDCL 22-18-4.1 only applies if the first paragraph is met. Because, as discussed previously, there is sufficient evidence that Braveheart did not reasonably believe that using

[6] Jury instruction 30 is identical to SDCL 22-18-4.1.

deadly force was necessary to prevent imminent death or great bodily harm or to prevent the imminent commission of a forcible felony, he was not justified in using deadly force. *See* SDCL 22-18-4.1; *see Bolden*, 2024 S.D. 22, ¶ 41, 6 N.W.3d at 247.

In conclusion, South Dakota's immunity laws do not extend to those who instigate a quarrel, use deadly force where no actual threat of imminent death or great bodily harm are present, and choose to execute an unarmed individual after the threat dissipated. The evidence presented during Braveheart's trial established that he did all of these. Therefore, the circuit court did not err when it denied Braveheart's motion for judgment of acquittal.

D. *Conclusion.*

It was for the jury to decide if homicide was justified. *State v. Frias*, 2021 S.D. 26, ¶ 29, 959 N.W.2d 62, 70. The jury had the opportunity to consider all the evidence, including eyewitness testimony, weigh the credibility of the witnesses, and make its determinations as to whether Braveheart was acting reasonably in self-defense. *See Smith*, 2023 S.D. 32, ¶ 50 993 N.W.2d at 593. The evidence presented at trial supports the jury's conviction of Braveheart for first-degree manslaughter.

CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully requests that Braveheart's conviction be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General
1302 East Highway 1889, Suite 1
Pierre, S.D. 57501
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 5,069 words.

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

Dated this 22nd day of September 2025.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 22, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Derrek Ryan Braveheart*, was served via Odyssey File and Serve upon Bryan T. Andersen at bryana@pennco.org.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General