

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30720

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

NATHAN LEE PARRIS,

Defendant and Appellant.

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

THE HONORABLE JANE WIPF PFEIFLE
RETIRED CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal filed May 31, 2024

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PRELIMINARY STATEMENT

Throughout this brief, the defendant and appellant, Nathan Lee Parris, will be referred to as “Mr. Parris.” The plaintiff and appellee, the State of South Dakota, will be referred to as the “State.” References to the transcript of the suppression hearing held February 14, 2024 will be referred to as “SHT” followed by the page number and line number(s) referenced. By way of example, the citation “SHT 5:12-19” would refer to lines 12 through 19 on page 5 of the transcript. References to Officer Hood’s body camera video, which was admitted during the suppression hearing, will be referred to as “*State’s Exhibit 1*” followed by the timestamp of the referenced portion of the video exhibit. References to the settled record will be referred to as “SR ____.”

JURISDICTIONAL STATEMENT

Mr. Parris appeals from the circuit court’s Order Denying Defendant’s Motion to Suppress dated February 16, 2024 (App. 067; SR 54) and the subsequent Judgment filed May 8, 2024 (App. 068; SR 69). This Court has jurisdiction pursuant to SDCL §§ 15-26A-3(1) and 15-26A-3(4).

STATEMENT OF THE CASE

On June 28, 2022, Mr. Parris was taken into protective custody on a Petition for Emergency Commitment pursuant to SDCL Chapter 27A-10. Prior to being placed in protective custody, law enforcement searched Mr. Parris and removed several items from his person. Mr. Parris was then handcuffed and placed in the back seat of a patrol vehicle. Thereafter, law enforcement opened and searched a container that had been previously removed from Mr. Parris’s pocket and discovered approximately one gram of methamphetamine inside.

On June 28, 2022, a Pennington County Grand Jury indicted Mr. Parris on one count of Possession of a Controlled Drug or Substance (methamphetamine) in violation of SDCL § 22-42-5. Mr. Parris moved to suppress any evidence of the methamphetamine for the reasons that Officer Hood did not possess probable cause to take Mr. Parris into protective custody and that the search of the container from his pocket was an impermissible investigatory search in violation of Mr. Parris's right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the United States Constitution and Article V, Section 11 of the South Dakota Constitution.

The circuit court held an evidentiary hearing on February 14, 2024 where Officer Hood testified and the body camera video of his interaction with Mr. Parris was admitted into evidence. After hearing the evidence and the arguments of counsel, the circuit court denied Mr. Parris's Motion to Suppress and set the matter for trial.

Mr. Parris reserved his right to appeal the circuit court's denial of his Motion to Suppress and proceeded to a trial to the court on stipulated facts, which was held on March 14, 2024. Mr. Parris was convicted and sentenced to serve a term of five (5) years imprisonment (suspended) and placed on probation for two (2) years. The Judgement was filed on May 8, 2024 (App. 068; SR 69). This appeal timely followed.

STATEMENT OF THE LEGAL ISSUES

- 1. Whether the circuit court erred when it determined there was probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1.**

Most Relevant Legal Authority:

- SDCL § 27A-10-1.

2. **Even if probable cause existed to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1, whether the search of the closed container previously removed from Mr. Parris's person after he was in protective custody was a permissible good-faith non-investigatory search.**

Most Relevant Legal Authority:

- U.S. Const. amend, IV;
- S.D. Const. art. VI, § 11;
- *Cordell v. Weber*, 2003 S.D. 143, 673 N.W.2d 49.

STATEMENT OF THE FACTS

At approximately 9:00 PM on June 28, 2022, Rapid City Police Department patrol officer Trae Hood (hereinafter "Officer Hood") responded to a report from an out-of-state caller that her ex-boyfriend, Nathan Lee Parris (hereinafter "Mr. Parris") had sent her "messages that were concerning to her that were suicidal in nature" and that she was requesting law enforcement to perform a wellness check on Mr. Parris. SHT 11:10-12:1; 19:24-20:21. The text message Mr. Parris had sent to his ex-girlfriend said, "Don't waste your time. I'm not worth it." SHT 14:12-19; *State's Exhibit 1* at 0:09:20. Mr. Parris's ex-girlfriend told Officer Hood that the message was "out of character" for Mr. Parris and that such communications had not happened before. SHT 21:9-12; 22:22-23:1. Mr. Parris's ex-girlfriend gave Officer Hood Mr. Parris's home address and license plate number to assist law enforcement in locating him. *State's Exhibit 1* at 0:06:15.

Officer Hood and his training partner responded to the provided address looking for Mr. Parris and made contact with Mr. Parris's mother and stepfather at their home, where Mr. Parris was living. SHT 12:2-16; 24:10-12. When Officer Hood and his training partner arrived, Mr. Parris's mother was on the phone with Mr. Parris's ex-girlfriend. *State's Exhibit 1* at 0:01:00-0:01:20. Mr. Parris's mother and stepfather had just returned

home from a baseball game and had last seen Mr. Parris about two hours earlier. SHT 12:10-16.

Mr. Parris's mother explained to Officer Hood that, several hours before, Mr. Parris had argued with a man over the phone about a dog. SHT 13:14-25; *State's Exhibit 1* at 0:03:05-0:03:25. When Mr. Parris's mother and stepfather had returned home from the baseball game, Mr. Parris's truck was gone; and the tracking device that had been inside the truck had been left behind on the driveway. SHT 13:14-25. Mr. Parris's mother told Officer Hood that Mr. Parris had taken his dog with him when he left and advised Officer Hood that Mr. Parris owned a pistol, possessed a concealed carry permit, carried the gun frequently, and "most likely" had it in his possession but that she was not certain. *State's Exhibit 1* at 0:01:10-0:02:10.

Mr. Parris's mother explained to Officer Hood that Mr. Parris's ex-girlfriend had visited last weekend and that the two had hiked and driven around Spring Creek, Hill City, and Mystic and posited that perhaps Mr. Parris could be located in that vicinity. *State's Exhibit 1* at 0:02:10-0:02:50. Mr. Parris's mother told Officer Hood that Mr. Parris had never made suicidal threats before and that the entire situation was very out-of-character for him but that he had been under a lot of stress in recent days. SHT 24:21-23; 25:4-10. Officer Hood also learned that Mr. Parris had sent his father a text message saying his "truck will be in the Hills with me and my dog if we are found."¹ *Id.*; *State's Exhibit 1* at 0:05:25-0:06:00.

¹ Officer Hood testified that the text message Mr. Parris had sent to his father also included the statement "I'm done with fucking life[.]" however, that text message is not in the record and no such statement was relayed to Officer Hood and his training partner

Officer Hood collected Mr. Parris's cell phone number, a description of his truck and license plate number, Mr. Parris's photo, a description of his body type, and a description of the clothing Mr. Parris was wearing from his mother and began pinging Mr. Parris's phone to determine his location. SHT 14:22-15:10; *State's Exhibit 1* at 0:05:25-0:08:00. Officer Hood received location data from pinging Mr. Parris's cell phone and dispatched deputies to attempt to locate him without success. SHT 14:22-15:10.

After having been at Mr. Parris's home for approximately 45 minutes, Officer Hood learned that Mr. Parris had messaged his mother that he was returning home "just for her, for no other reason than for her[.]" *State's Exhibit 1* at 0:46:45; SHT 15:11-18. Officer Hood and his training partner then moved their patrol vehicles from in front of Mr. Parris's home and hid out of sight in the garage while they waited for Mr. Parris to return home to his waiting mother. *State's Exhibit 1* at 0:47:10-0:47:30, SHT 28:18-29:2. As they waited, Mr. Parris continued texting with his mother. *State's Exhibit 1* at 0:48:55-0:49:05. Mr. Parris's ex-girlfriend also sent a text to Mr. Parris's mother indicating that she was on the phone with Mr. Parris, that Mr. Parris was on his way home, and that she did not "want to tell him about the cops" because it "would freak him out." *State's Exhibit 1* at 0:49:40-0:50:00.

For approximately the next ten minutes, Officer Hood and his training partner waited in the garage for Mr. Parris to return home. During this time, Mr. Parris called his

by Mr. Parris's mother when she showed the subject text to them. *See* SHT 14:14-21; *State's Exhibit 1* at 0:05:25-0:06:00.

mother, and the two conversed over the phone for approximately five minutes while Mr. Parris drove home. *State's Exhibit 1* at 0:54:50-1:02:00.

Officer Hood and his training partner continued to conceal themselves in the garage as Mr. Parris pulled up. *State's Exhibit 1* at 1:05:00-1:08:30. As Mr. Parris walked into the garage, Officer Hood and his training partner approached Mr. Parris, and they exchanged greetings. *State's Exhibit 1* at 1:06:00; SHT 15:19-16:3. Officer Hood observed a firearm in Mr. Parris's pocket and removed it without incident. *State's Exhibit 1* at 1:08:30; SHT 15:19-16:3. Officer Hood's training partner advised Mr. Parris they just wanted to talk to him, and Mr. Parris agreed to talk. *State's Exhibit 1* at 1:08:30.

Officer Hood asked Mr. Parris what had been going on that night, and Mr. Parris responded he "just got a little upset with the way people had been treating [him]" and explained the reasons he had become upset that evening. During his conversation with Officer Hood and his training partner, Mr. Parris was calm and apologetic with his hands in his pockets. Officer Hood testified that, during their conversation in the garage, Mr. Parris was calm, did not make any wild gestures, was coherent, and did not appear to be under the influence of drugs or alcohol. SHT 31:3-12. Mr. Parris explained that his father was controlling and tracked all his movements (*e.g.*, the tracking device in his truck) and that "he just got really frustrated" and wanted to make his father "feel like shit" and "make a point to him." Mr. Parris told Officer Hood that he's "never actually wanted to kill [himself]" but that he was just frustrated, feeling like he was not loved by his own father and that it was "just hard." Mr. Parris made clear to Officer Hood that he had no intention of killing himself but that he carried his handgun with him about everywhere he went. SHT 31:13-14. Mr. Parris explained that his intention that night before speaking to

his mother was to “drive around probably all night until [he] had to go to work in the morning.” Mr. Parris explained that his actions that evening were “not the right way to handle things” but that he was “just real worked up and real upset the past couple days.” Mr. Parris explained that he had considered talking to someone about his issues but had not done so yet. *State’s Exhibit 1* at 1:08:30-1:19:45.

Officer Hood asked Mr. Parris whether he would be willing to talk to someone that night, and Mr. Parris responded that he would rather go to work tomorrow, talk to his doctor, and “continue doing the things that I need to be doing” but that he would be happy to schedule an appointment to talk to someone and wanted to but had been too busy working. *State’s Exhibit 1* at 1:19:45-1:20:35.

Officer Hood then advised Mr. Parris of his intention to take Mr. Parris into protective custody because of his text messages. Mr. Parris objected that protective custody was not needed and that his texts were only intended to “get them to understand how [he] was feeling” and that he would not actually kill himself. Mr. Parris explained that all he wanted was to get his ex-girlfriend to leave him alone and to get his father to understand how he felt but that he would not listen. *State’s Exhibit 1* at 1:20:35-1:21:48.

Undeterred, Officer Hood advised Mr. Parris that he would be taken into custody and placed on an emergency mental hold. On being so advised, Mr. Parris objected and resisted and was handcuffed behind his back and threatened with a taser. Resigned to his situation, Mr. Parris allowed himself to be escorted into a patrol vehicle. *State’s Exhibit 1* at 1:21:48-1:23:00.

Prior to being placed in the patrol vehicle, Officer Hood searched Mr. Parris’s person because he was “going into a secure facility such as a hospital, as well as ensuring

that there's no contraband." SHT 18:15-20; *State's Exhibit 1* at 1:23:33. During the search, Officer Hood removed a small white plastic container and other objects from Mr. Parris's pockets and placed them on top of the patrol vehicle. *State's Exhibit 1* at 1:23:30-1:23:50. While Mr. Parris was handcuffed and seated in the back of the patrol vehicle, Officer Hood explained to Mr. Parris's mother that Mr. Parris would be going to the hospital on a mental hold. Mr. Parris's mother expressed her disappointment and frustration with the fact that Mr. Parris had returned home to be with her and law enforcement was taking him away and making things worse. *State's Exhibit 1* at 1:26:38-1:27:38.

Approximately five minutes after Mr. Parris had been handcuffed and seated in the back of the patrol vehicle, law enforcement opened the small white plastic container that had previously been removed from Mr. Parris's pocket and discovered approximately one gram of methamphetamine inside. SHT 19:7-11; 35:9-17. *State's Exhibit 1* at 1:27:40.

STANDARD OF REVIEW

This Court reviews a lower court's denial of a motion to suppress involving an alleged violation of a constitutionally protected right under the de novo standard of review. *State v. Grassrope*, 2022 S.D. 10, ¶ 7, 970 N.W.2d 558, 560-61 (citing *State v. Short Bull*, 2019 S.D. 28, ¶ 10, 928 N.W.2d 473, 476 (citation omitted)). "The court's findings of fact are reviewed under the clearly erroneous standard, but we give no deference to the court's conclusions of law." *Id.* (citing *State v. Fischer*, 2016 S.D. 12, ¶ 10, 875 N.W.2d 40, 44 (citation omitted)).

As a general rule, this Court reviews two elements in probable cause determinations. First, it identifies all relevant facts known to the officer within the relevant period of time and, second, it decides, under a standard of objective reasonableness, whether those facts would give rise to finding of probable cause. *See, e.g., State v. Chavez*, 2003 S.D. 93, ¶ 48, 668 N.W.2d 89, 102-03.

ARGUMENT AND AUTHORITY

- 1. The circuit court erred when it determined there was probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1.**

SDCL § 27A-10-3 provides, in pertinent part, that “[a] peace officer may apprehend any person that he has probable cause to believe requires emergency intervention under the criteria in § 27A-10-1.” The criteria set forth in SDCL § 27A-10-1 requires probable cause that a person is alleged to be: 1) severely mentally ill and 2) in such condition that immediate intervention is necessary for the protection from physical harm to self or others. Mr. Parris argues that an objective review of the facts does not support a finding that probable cause existed to believe Mr. Parris was severely mentally ill and in a condition that immediate intervention was necessary to keep him from physically harming himself or others.

SDCL § 27A-1-1(24) defines the phrase “severe mental illness” as a

substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness.

In this case, an objective view of Mr. Parris's state and behavior does not lead to the conclusion that his judgment, behavior, or ability to cope with the basic demands of life were significantly impaired such that Mr. Parris was a danger to himself or others. Mr. Parris's mother made clear that her son had no history of suicidal ideation. As Officer Hood testified and as is apparent from the video of Mr. Parris's conversation with Officer Hood, Mr. Parris was calm and apologetic when he returned home. He did not make any wild gestures, was coherent, and did not appear to be under the influence of drugs or alcohol. SHT 31:3-12. He explained he had no intention of harming himself and acknowledged that his actions that evening were "not the right way to handle things." *State's Exhibit 1* at 1:08:30-1:19:45. The several messages Mr. Parris sent to his ex-girlfriend and father were not explicit suicidal threats but rather cries for help and attention, which were successful. His mother asked Mr. Parris to come home to her and for her, and he did. Under the totality of the circumstances, there was insufficient evidence to support a finding of probable cause that Mr. Parris was both severely mentally ill and in a condition that immediate intervention was necessary to keep him from physically harming himself or others.

Under the facts of this case, to uphold Officer Hood's determination that he had probable cause to believe that Mr. Parris was severely mentally ill and in a condition that immediate intervention was necessary to keep him from physically harming himself or others is to essentially hold that anyone who calls the Suicide Prevention Hotline or confides to a friend even the vaguest possible suicidal ideation is subject to emergency involuntary commitment by law enforcement. A plain reading of SDCL §§ 27A-10-1, 27A-10-3, and 27A-1-1(24) make it clear that was not the Legislature's intent. One

incident of arguably uttering vague suicidal ideations to family members and close confidants who can provide assistance is not a severe mental illness as that term is defined by law. Under the facts of this case, it is clear there was not sufficient probable cause to believe that Mr. Parris was severely mentally ill and in a condition that immediate intervention was necessary to keep him from physically harming himself or others. Accordingly, any search of his person (investigatory or otherwise) violated Mr. Parris's rights to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the United States Constitution and Article V, Section 11 of the South Dakota Constitution.

2. **Even if probable cause existed to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1, the search of the closed container removed from Mr. Parris's person after he was in protective custody was not a permissible good-faith non-investigatory search.**

“South Dakota’s involuntary commitment statutes . . . recognize the need to provide protection to the committed person and the public.” *Cordell v. Weber*, 2003 S.D. 143, ¶¶ 17-20, 673 N.W.2d 49, 54-55 (citing SDCL ch 27A-10). “Therefore, when placed in protective custody, a person’s reasonable expectation of privacy is curtailed for these purposes.” *Id.* “[A] reasonable and limited protective search incident to involuntary commitment is permitted in order to protect the mentally ill individual and that person’s custodians.” *Id.* “A person placed in protective custody, while not having the same diminished expectation of privacy as an arrestee, does have a lesser expectation of privacy than the average citizen on the street.” *Id.* “Moreover, a limited search under these circumstances is consistent with South Dakota law permitting inventory searches after a person is taken into custody.” *Id.* (emphasis added). “This Court has previously

recognized that when a person or property is taken into custody ‘a good faith, noninvestigatory inventory search’ is permissible.” *Id.* (citing *State v. Hejhal*, 438 N.W.2d 820, 821 (SD 1989) (further citation omitted) (emphasis added). “A so-called inventory search is not an independent legal concept but rather an incidental administrative step.” *Id.* This administrative step is supported by a need to (1) safeguard property; (2) insulate the police from groundless claims that property was not protected; and, (3) secure the detention facility by preventing introduction of weapons or contraband. *Id.* (citing *Illinois v. Lafayette*, 462 U.S. 640 (1983)).

For the purposes of this appeal, Mr. Parris concedes that, if probable cause existed to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1, the removal of the small white plastic container from Mr. Parris’s pocket prior to being taken into custody was a good faith, noninvestigatory inventory search of his person for a legitimate protective purpose. However, the subsequent opening and search of the interior of that closed container and its contents by law enforcement after Mr. Parris was already in protective custody was not. Once Mr. Parris was handcuffed and placed in the patrol vehicle for transport to the nearest regional facility, law enforcement’s legitimate protective purpose was satisfied. The subsequent search of the white plastic container after it had already been removed from Mr. Parris’s person and while he was already in protective custody was not a good faith, noninvestigatory inventory search for a legitimate protective purpose. Accordingly, the circuit court erred in holding otherwise and denying the motion to suppress.

In *Cordell v. Weber*, 2003 S.D. 143, 673 N.W.2d 49, law enforcement suspected the defendant of having committed arson and, during an interview, detected the odor of

petroleum on the defendant's person. *Cordell*, 2003 S.D. 143, ¶¶ 2-5, 673 N.W.2d at 51-52. During the interview, law enforcement determined the defendant was depressed and potentially suicidal. *Id.*, 2003 S.D. 143, ¶ 6, 673 N.W.2d at 52. As a result, the defendant was held for an emergency mental health commitment. *Id.* Pursuant to jail policy, the defendant was required to change into a jail jumpsuit. *Id.* The defendant's clothing was removed and placed into a locker by jail personnel. *Id.* The next morning, law enforcement seized the clothing the defendant had worn during his interview and sent it to a state laboratory for testing, which indicated the possible presence of an accelerant but no identifiable ignitable fluids. *Id.*, 2003 S.D. 143, ¶ 7, 673 N.W.2d at 52. At trial, the defendant was convicted by a jury of second-degree arson and third-degree arson. *Id.*, 2003 S.D. 143, ¶ 8, 673 N.W.2d at 52.

In a subsequent habeas action, the defendant argued his counsel was ineffective for failing to move to suppress the lab testing results. *Id.*, 2003 S.D. 143, ¶ 7, 673 N.W.2d at 52. "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Id.*, 2003 S.D. 143, ¶ 8, 673 N.W.2d at 52 (citing *Luna v. Solem*, 411 N.W.2d 656, 659 (SD 1987)). Therefore, in considering the habeas petition, this Court proceeded to determine the merits of the suppression issue and held that the defendant's clothing was removed for a legitimate custodial purpose. *Id.*, 2003 S.D. 143, ¶ 20, 673 N.W.2d at 55. This Court then turned to the issue of whether law enforcement "could extend the seizure of the clothing to a search for chemical traces by having the

clothing sent to the state crime lab for testing.” *Id.*, 2003 S.D. 143, ¶ 21, 673 N.W.2d at 55. This Court held that “a detainee’s items, which are seized pursuant to a protective inventory search and are already in the possession of the police, may be the subject of further search and testing if the extended search is supported by probable cause to associate the property with criminal activity.” *Id.* (emphasis added). This Court recognized that “absent probable cause to believe that [the seized item] is associated with criminal activity, a civil detainee (as compared to a person under arrest) has a higher level of expectation of privacy in their personal items for purposes of Fourth Amendment analysis. However, that privacy interest does not extend to items which are, on their face, associated with criminal activity.” *Id.*, 2003 S.D. 143, ¶ 23, 673 N.W.2d at 56. In *Cordell*, this Court found that “[t]he facts in Cordell’s case established probable cause to believe that the clothing contained evidence of an accelerant or other chemical and was evidence of a crime” based on a law enforcement officer’s testimony that he observed the odor of fuel during his interview. *Id.*

This case is distinguishable from *Cordell*. Here, once the white plastic container had been removed from Mr. Parris’s pocket for a legitimate protective purpose prior to his being taken into protective custody, there was no probable cause to associate the container with criminal activity to justify extending the search by opening the container and submitting its contents to a state laboratory for testing. There were no allegations, suspicions, or probable cause to suggest that Mr. Parris was either possessing or using drugs when he was taken into protective custody. SHT 31:3-12. The subsequent search of the white plastic container and its contents once law enforcement’s legitimate protective purpose was satisfied was without probable cause and in violation of Mr. Parris’s rights

to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the United States Constitution and Article V, Section 11 of the South Dakota Constitution.

CONCLUSION

Accordingly, the circuit court erred in denying Mr. Parris's Motion to Suppress. This Court should vacate Mr. Parris's conviction and reverse the circuit court's order with instructions to grant the motion.

Dated this 26th day of August, 2024.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

Counsel respectfully requests the privilege of oral argument in this case.

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 15 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 4,099 words in the body of this brief.

Dated this 26th day of August, 2024.

NELSON LAW

/s/ Eric Davis
Eric Davis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of August, 2024, he filed a true and correct copy of the foregoing Appellant’s Brief in the Office of the Clerk of the South Dakota Supreme Court and served true and correct copies of the same upon the following individuals or entities by way of Odyssey File and Serve:

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Dated this 26th day of August, 2024.

NELSON LAW

/s/ Eric Davis
Eric Davis

APPENDIX

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APPENDIX TO APPELLANT'S BRIEF

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1 (WHEREUPON, the following proceedings were duly
2 had:)

3 **THE COURT:** This is the time and place set on the Court's
4 calendar for consideration of matters in State v. Parris.

5 You are Nathan Parris?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** The Defendant is present in person.

8 Remind me --

9 **MR. DAVIS:** I'm Eric Davis. I'm an attorney in
10 Mr. Nelson's office. This is only the second time I've
11 appeared in front of you.

12 **THE COURT:** I knew you'd appeared before and I just
13 couldn't remember so thank you very much.

14 **MR. DAVIS:** Thank you.

15 **THE COURT:** And Mr. Houdek is here for the State.

16 Counsel, are we ready to proceed?

17 **MR. DAVIS:** Yes, Your Honor.

18 **MR. HOUDEK:** Your Honor, we are. Prior to this hearing,
19 however, we were just talking about the scope of this
20 hearing and I just wanted to clarify that prior to us
21 beginning.

22 **THE COURT:** Surely.

23 **MR. HOUDEK:** So -- and I don't think we came to a full
24 conclusion on this, but I think we found some common
25 ground. In the Defendant's motion to suppress, they assert

1 that law enforcement did not follow the procedure set forth
2 by law. I think that kind of bleeds into the third
3 allegation, which is that the officer lacked probable cause
4 to believe the Defendant required emergency services. That
5 is the procedure under the law of whether or not they can
6 detain somebody under SDCL 27A-10-3.

7 **THE COURT:** All right.

8 **MR. HOUDEK:** And then after the second one, whether -- the
9 officer did not submit the Defendant for an examination by
10 a qualified mental health professional. That would fall
11 after the search and whether they followed that procedure
12 or whether Monument is a mental health professional and
13 those categorizations. I think that that's more of a civil
14 issue than a criminal one. We're here to focus on whether
15 the search was appropriate and the search is subsequent to
16 the Defendant being detained and whether that was
17 appropriate is determined by 27-10-3.

18 **THE COURT:** And Mr. Davis?

19 **MR. DAVIS:** Yes, Your Honor.

20 As to the first issue with probable cause, I agree
21 with the State that that is one of the avenues that we
22 intend to pursue today. The question of whether there was
23 probable cause to believe the person requires emergency
24 intervention under the criteria set forth in 27A-10-1 so we
25 do intend to make that argument.

1 As to the second argument, I don't agree with the
2 State's position. I think the question of whether
3 Mr. Parris was actually delivered to a qualified mental
4 health professional is -- goes to the issue of whether
5 there's probable cause, essentially whether law enforcement
6 was acting in good faith or it's a question of whether this
7 was a ruse to arrest him or search him. However, what I
8 indicated this morning is that it is not our intention to
9 proceed in that way. I don't have the evidence that -- I
10 intended to get those records; the State wouldn't release
11 them to me; I didn't have time to subpoena them. And
12 that's not a direction we're planning to go anyway.

13 And then the only other issue that is raised in the
14 motion is whether the search was -- the subsequent search
15 or inventory or whatever the witnesses testify to today was
16 lawful under statutory, constitutional, and decisional law.

17 **THE COURT:** So, as I understand it, you agree we'd address
18 probable cause and the second one that we'd address is the
19 search?

20 **MR. DAVIS:** Yes, Your Honor.

21 **THE COURT:** But we're not addressing whether the place
22 where the Defendant was taken was an appropriate regional
23 facility as set forth in the statute?

24 **MR. DAVIS:** Correct. Whether -- and not just that issue,
25 but whether all of the statutory requirements were

1 followed. But, yes, we are not intending to pursue that
2 issue.

3 **THE COURT:** Well, just to be clear, 27A-10-3 says, *A peace*
4 *officer may apprehend any person he has probable cause to*
5 *believe requires emergency intervention under the criteria*
6 *set forth in 27A-10-1.* Okay. So that's one issue. And
7 then shall -- *The peace officer shall transport the person*
8 *to an appropriate regional facility.* And so at that point
9 27A-10-1.2 defines an appropriate regional facility.

10 Does't the peace officer's job end when he or she
11 gets the person to an appropriate regional facility?

12 **MR. DAVIS:** That's certainly an argument that may be
13 correct and not one that I've evaluated in detail. But,
14 again, we are not intending to make an argument that he
15 wasn't transferred.

16 **THE COURT:** All right. And so then, Mr. Houdek, do you
17 agree those two issues are before me, the probable cause
18 and the search, or not?

19 **MR. HOUDEK:** Your Honor, I agree, in that under these
20 circumstances as we're going to hear through testimony,
21 there is probable cause determination for him to be
22 detained and then the search was immediately following
23 that. So the search --

24 **THE COURT:** So you're -- oh.

25 **MR. HOUDEK:** Yeah. I just believe that those are two in

1 the same and that the search subsequent isn't really the
2 issue, whether or not the search took place. It's more
3 whether there was probable cause. And under case law --
4 which I don't know if the Court wants me to get into now or
5 if we wanted to argue this after, but I do believe that
6 South Dakota is clear in that -- and I'll just quote for
7 the Court -- the South Dakota Supreme Court found in
8 *Cordell versus Weber*, 2003 South Dakota 143, Paragraph 16,
9 they found that a search incident to protective custody,
10 just as a search incident to a lawful arrest, is allowed
11 under the constitution. So I see these two issues being
12 one and the same, whether there was probable cause to
13 detain him. If that is true, then law enforcement was
14 allowed to search.

15 **THE COURT:** All right.

16 **MR. DAVIS:** And, Your Honor --

17 **THE COURT:** Mr. Davis?

18 **MR. DAVIS:** -- just to respond to that. I agree that
19 *Cordell v. Weber* that's just been cited allows a search;
20 however, the case continues. I think it's more narrow than
21 that. In Paragraph 18 the Court indicates, *This Court has*
22 *previously recognized that when a person or property is*
23 *taken into custody, a good faith non-investigatory*
24 *inventory search is permissible.*

25 And I think that is a question of fact to be

1 determined at this hearing of the extent -- whether the
2 extent of the search was lawful. I think the facts in this
3 case establish that there's a distinction and it was not.

4 **THE COURT:** Very well.

5 All right. It will be the view of the Court that I'll
6 hear the evidence on those two issues, and then I
7 understand the position of the State that they're one and
8 the same, and the Defense that there is a -- believes that
9 there is a difference. So I'll be able to determine that
10 after I hear the evidence.

11 Are you ready?

12 **MR. HOUDEK:** Yes, Your Honor.

13 **THE COURT:** You may call your first witness.

14 **MR. HOUDEK:** The State calls Officer Trae Hood.

15 **THE COURT:** Officer, would you stand in front of me and
16 raise your right hand.

17 **OFFICER TRAE HOOD,**

18 called as a witness, being first duly sworn, testified as
19 follows:

20 **THE COURT:** Pull that mic down. It slides back and forth
21 and up and down, and just if you'd speak into it.

22 **DIRECT EXAMINATION**

23 **Q (BY MR. HOUDEK)** Can you please introduce yourself.

24 **A** Yep. Officer Trae Hood with the Rapid City Police
25 Department.

1 Q And can you spell your first and last name for the record.

2 A Yep. T-R-A-E H-O-O-D.

3 Q Now you said you're an officer with the Rapid City Police
4 Department. What is your specific role?

5 A Patrol officer.

6 Q And what are some of your duties and responsibilities?

7 A I respond to calls for service; address issues, assaults,
8 et cetera, as they come up. Enforce traffic laws,
9 et cetera.

10 Q How long have you been a patrol officer?

11 A Just over two years.

12 Q And in your line of work, are you trained or do you have
13 experience in dealing with mental holds?

14 A I do and I have.

15 Q And what is that?

16 A We're given a class on how to fill out paperwork for a
17 mental hold during our in-service, as well as throughout
18 the training process with a police training officer
19 throughout training. They explain how to fill those out.

20 Q And specifically what is a mental hold?

21 A It's when a subject is determined to be either a danger to
22 themselves or a danger to other people or unable to care
23 for themselves, they are placed on an involuntary hold to
24 where they're almost taken into formal protective custody.

25 Q And what is the procedure that you follow?

1 **A** If a subject is determined to be a danger to themselves,
2 danger to others, or unable to care for themselves, they're
3 taken into police custody, law enforcement custody, and
4 taken to the nearest regional facility, which here in
5 Rapid City would be Monument Health. At then at that point
6 they're transferred into Monument's custody.

7 **Q** And after they're determined just, for example, to be a
8 danger to themselves, is that individual typically
9 searched?

10 **A** They are.

11 **Q** Why is that?

12 **A** They're going into a secure facility and it would be
13 inevitable discovery.

14 **Q** And were you on duty on June 28th of 2022?

15 **A** I was.

16 **Q** And on that day did you come in contact with a
17 Nathan Parris?

18 **A** I did.

19 **Q** And do you see Mr. Parris in the courtroom today?

20 **A** I believe so.

21 **Q** And can you identify him by his position in the courtroom
22 and an article of clothing he's wearing?

23 **A** Yep. Beside the defense attorney wearing a gray jacket
24 and, I believe, tan pants.

25 **MR. HOUDEK:** Your Honor, let the record reflect the

1 identification.

2 **THE COURT:** Any objection?

3 **MR. DAVIS:** No, Your Honor.

4 **THE COURT:** All right. The record may so reflect.

5 **Q (BY MR. HOUDEK)** In approximately one -- sorry. I'll back
6 up.

7 Around 2100 hours, did you respond to a report of a
8 possible suicide attempt?

9 **A** I did.

10 **Q** And can you tell us about how you responded.

11 **A** Yep. I was dispatched to a possible suicide attempt, a
12 suicide call. I was informed that the subject
13 Nathan Parris had sent his, I believe, ex-girlfriend or
14 current girlfriend, it was a questionable relationship, but
15 texted her messages that were concerning to her that were
16 suicidal in nature.

17 **Q** And were you ever able to talk to that reporting party?

18 **A** I did.

19 **Q** What did you learn?

20 **A** I spoke with her over the phone while I was responding to
21 the address. I was informed that Nathan had sent her,
22 again, concerning messages. Nathan usually had a firearm
23 in his nightstand, which he sometimes carried on his
24 person, but usually did not. And that Nathan stayed at, I
25 believe, his parents' house and was possibly driving a GMC

1 pickup, I believe, silver in color.

2 **Q** And after learning this information, what did you do?

3 **A** I responded to that address and attempted to make contact
4 with him or any other residents in that address.

5 **Q** And when you arrived who, if anyone, did you make contact
6 with?

7 **A** I believe I spoke with his mother and stepfather, if I
8 recall correctly. I don't recall their names at this time,
9 but I spoke with them.

10 **Q** And after speaking with them, what did you learn?

11 **A** That they were at the address and had actually just gotten
12 back, I believe. That they had -- were at the address and
13 were getting ready to leave. Nathan was in an argument
14 with someone over the phone possibly involving some type of
15 dog. And then they had left the residence and came back,
16 and I don't believe Nathan was there at that time.

17 **THE COURT:** I'm sorry. I'm not following. What residence
18 are you at?

19 **THE WITNESS:** If I can review my report. I believe it was
20 an address on Cloud Peak Drive.

21 **THE COURT:** Who did it belong to?

22 **THE WITNESS:** I believe it was his mother.

23 **THE COURT:** All right. So you said they were there and
24 left while you were still there?

25 **THE WITNESS:** No. They -- this was before. I'm sorry,

1 Your Honor. So this is -- would be in the past. Just kind
2 of explaining what had occurred from the time that -- I'm
3 trying to think of the best way to explain it. So they
4 were at the residence and had left and came back and Nathan
5 was no longer there.

6 **THE COURT:** Oh.

7 **THE WITNESS:** And they were explaining what occurred before
8 they left and then they left, came back, and at which point
9 law enforcement, myself, made contact with them. I'm
10 sorry.

11 **THE COURT:** Okay. Thank you for that explanation.

12 **THE WITNESS:** Yes, ma'am.

13 **THE COURT:** Sorry. You may proceed.

14 **Q (BY MR. HOUDEK)** When you came in contact with them, what
15 did you learn?

16 **A** That Nathan had -- that I believe it was Jamie, if I
17 recall, but Nathan had been in an argument with someone
18 over the phone about possibly involving a dog. He was
19 yelling over the phone. And then they had left and came
20 back. Nathan was no longer there and the pickup was gone.
21 And I believe they found a tracker as well that was usually
22 in the pickup on the driveway.

23 **Q** And that tracker that they found, that was usually in
24 Nathan's vehicle?

25 **A** Correct.

1 Q And that was now out of his vehicle?

2 A Correct.

3 Q And specifically what were some of the texts that Nathan
4 was sending on that day?

5 If it would assist you in reviewing your report, would
6 that help refresh your recollection?

7 A It would.

8 MR. HOUDEK: Your Honor, permission for him to do so?

9 THE COURT: You may review your report. Don't read it, but
10 just review it to refresh your recollection.

11 THE WITNESS: Yes, ma'am.

12 (Complied.)

13 A All right.

14 Q (BY MR. HOUDEK) And what were some of those statements?

15 A I believe he sent Grace a message saying, *Don't waste your*
16 *time. I'm not worth it.*

17 He sent Robert a text message saying that he would
18 find his truck, his vehicle, in the Hills, along with his
19 dog. And then, quote, *I'm done with fucking life.*

20 THE WITNESS: Excuse my profanity, Your Honor, but that
21 was

his exact verbiage.

22 Q (BY MR. HOUDEK) And after learning this information what
23 happened?

24 A I requested -- due to the statements and concern for
25 Nathan's well being, requested that he be entered into our

1 national database as missing and/or endangered and
2 requested that his phone be pinged to attempt to find his
3 location and check his welfare.

4 **Q** Were you successful in being able to do that?

5 **A** We were able to get him entered into the national database
6 as missing and endangered as well as pinging his cell
7 phone. I believe it pinged on an address on Sheridan Lake
8 Road. I requested a deputy go and check that location.
9 The deputy was unable to find the vehicle or have any
10 contact with him in that area.

11 **Q** And at any point did you come in contact with Nathan Parris
12 on that night?

13 **A** I did.

14 **Q** How?

15 **A** Nathan's mother had actually called him and requested that
16 he come home. Nathan said that he would just for her, for
17 no other reason than for her, and he drove back to the
18 residence.

19 **Q** And when he arrived what happened?

20 **A** Myself and my training officer at the time,
21 Officer McCracken, were inside the garage. Nathan pulled
22 up to the driveway, exited his vehicle and began to
23 approach the garage at which point I saw a firearm hanging
24 out of his pocket. Not in any type of holster, just
25 hanging out of his pocket. I retrieved that firearm from

1 his person and handed it to Officer Crumb, who had just
2 arrived on scene.

3 **Q** And then did you have a conversation with Nathan?

4 **A** I did.

5 **Q** Is that captured on your body-worn camera?

6 **A** It was.

7 **Q** Did you have an opportunity to review that prior to today?

8 **A** I did.

9 **MR. HOUDEK:** Your Honor, may I approach the witness?

10 **THE COURT:** You may.

11 **Q (BY MR. HOUDEK)** Officer, do you recognize that?

12 **A** I do.

13 **Q** How do you recognize it?

14 **A** It was the body-worn -- or the CD that contains my
15 body-worn camera that we reviewed prior to this court
16 hearing.

17 **Q** And is it fair and accurate to the best of your knowledge
18 of the events that took place on June 28th of 2022?

19 **A** It is.

20 **MR. HOUDEK:** Your Honor, the State moves to admit what's
21 been marked as State's Exhibit 1 into evidence.

22 **THE COURT:** Any objection?

23 **MR. DAVIS:** Counsel, is this just one, one video, and it's
24 Officer Hood's body-worn camera video?

25 **MR. HOUDEK:** Yes.

1 **MR. DAVIS:** No objection.

2 **THE COURT:** Exhibit 1 will be received.

3 **MR. HOUDEK:** And, Your Honor, may I have a moment to speak
4 to defense counsel?

5 **THE COURT:** Surely.

6 **MR. HOUDEK:** (Complied.)

7 And I apologize, Your Honor, did I ask permission to
8 publish?

9 **THE COURT:** If you didn't, you may.

10 **MR. HOUDEK:** Thank you.

11 And just so the record is clear, contained on this
12 disk is actually three separate files, all of them being
13 Officer Hood's body-worn camera that was captured on that
14 day. I am playing what is marked as SUIC Number 1 from
15 1 hour and 8 minutes and 20 seconds.

16 We'll actually begin at from 1 hour 7 minutes and
17 46 seconds.

18 I apologize, Your Honor. Is there anything I need to
19 click on your side?

20 **THE COURT:** Oh, it is. Yes. Thank you. It's still on
21 Zoom rather than the AV Cart so I apologize I didn't see
22 that.

23 (Video published at this time.)

24 **MR. HOUDEK:** Let the record reflect that I'm stopping the
25 video at 1 hour 24 minutes 9 seconds.

1 **Q** (BY MR. HOUDEK) So, Officer Hood, in that video we saw
2 that you collected a firearm off of Nathan's person. Was
3 that firearm loaded?

4 **A** I do not recall. It was loaded. The magazine was loaded
5 with ammunition. I don't know if there was one in the
6 chamber or not.

7 **Q** And in your conversation with him, what was his demeanor
8 like?

9 **A** He was initially cooperative, but he was also emotional and
10 almost distraught at times. Kind of getting choked up,
11 teary-eyed, et cetera.

12 **Q** And when confronted with those text messages, what was his
13 response?

14 **A** That he was trying to get the other person's attention.

15 **Q** And then also towards the end of the video, we witnessed a
16 search. Why did you search Nathan?

17 **A** He was going into a secure facility such as a hospital, as
18 well as ensuring that there's no contraband. It would be
19 inevitable just whatever you do and when at the hospital
20 that, again, he'll be searched.

21 **Q** And when you're searching an individual who you're taking
22 into a secure facility, do you search the containers found
23 on that individual?

24 **A** Correct. Anything that can contain any type of contraband,
25 any type of weapons, anything like that.

1 Q And why do you search containers?

2 A Again, to ensure that there is nothing that will end up
3 harming any type of staff at that facility, anything that
4 would harm us, and any type of contraband. Anything like
5 that can -- a drug can fit in extremely small areas, which
6 would be contraband.

7 Q And as a result of this search, what, if anything, was
8 found?

9 A I believe Officer Crumb had located a plastic container
10 which contained a white crystal-like substance in it, which
11 was later identified as methamphetamine.

12 Q Did all of these events take place in Pennington County?

13 A They did.

14 MR. HOUDEK: Your Honor, I have no further questions for
15 this witness.

16 THE COURT: Cross-examination?

17 MR. DAVIS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 Q (BY MR. DAVIS) Officer Hood, you indicate in your
20 testimony -- and correct me if I'm wrong -- that the call
21 for service or initial call for service came from my
22 client's ex-girlfriend, correct?

23 A If that would be Grace, correct, I believe so.

24 Q And is it true that she was located in Cheyenne, Wyoming,
25 at the time she called?

1 **A** I believe she was not in Rapid City. I don't recall where
2 she was calling from.

3 **Q** Do you have a recollection if she indicated she was out of
4 state?

5 **A** I believe she was, but I don't recall specifically.

6 **Q** And she indicated to you that she'd received some suicidal
7 texts from her boyfriend, correct?

8 **A** Correct.

9 **Q** And did she identify Mr. Parris as her boyfriend?

10 **A** I believe in the call for service she was identified and I
11 believe she additionally informed me of that as well.

12 **Q** And you found out later in your investigation that that
13 wasn't accurate, correct?

14 **A** That Nathan claimed that she was an ex-girlfriend, that
15 would be correct. There is a discrepancy between the two.

16 **Q** Did his mother indicate that to you as well?

17 **A** I do not recall.

18 **Q** And this reporting party wanted you to conduct a wellness
19 check; is that correct?

20 **A** Correct. To ensure his well-being due to the concern with
21 the messages.

22 **Q** Did you ever personally review any of the texts that
23 Mr. Parris supposedly sent to the reporting party?

24 **A** I believe the messages were forwarded from Grace to the
25 mother.

1 Q Is that the message that you reference in your testimony
2 that was *Don't waste your time. I'm not worth it.*

3 A Correct.

4 Q Is that the only message that you're aware of?

5 A That I have record of, yes.

6 Q So she didn't read the messages to you over the phone,
7 correct?

8 A I do not recall.

9 Q In response to your questions, the reporting party
10 indicated that the messages were out of character for
11 Mr. Parris?

12 A Yes.

13 Q And did the reporting -- is it correct the reporting party
14 told you that Mr. Parris did not seem violent?

15 A Correct. I don't believe she made any mention about
16 violence.

17 Q Do you have any recollection of asking her whether he was
18 being violent?

19 A I do not have a recollection of that, sir.

20 Q Do you want an opportunity -- you did review and produce
21 the bodycam video of your phone call with the reporting
22 party, correct?

23 A Correct.

24 MR. DAVIS: And that has been admitted into evidence,
25 correct?

1 **MR. HOUDEK:** Yeah.

2 **Q (BY MR. DAVIS)** Do you have any recollection of whether she
3 told --

4 **THE COURT:** I'm sorry. Is it on the exhibit that I
5 received?

6 **MR. DAVIS:** Mr. Houdek indicated, I believe, that there
7 were actually three videos on that CD and there was -- you
8 know, I had limited my lack of objection based on the fact
9 that it was just Officer Hood's body-camera video.

10 **THE COURT:** So I'm going to stop you there. The question I
11 posed was -- you said it was admitted into evidence. My
12 question is, is it on Exhibit 1? Do you know the answer to
13 that?

14 **MR. HOUDEK:** Yeah.

15 **MR. DAVIS:** Yes. I believe it is, if Exhibit 1 is the CD
16 and not the video.

17 **THE COURT:** All right. Thank you.

18 **Q (BY MR. DAVIS)** So you don't have any recollection of
19 whether or not you inquired about whether Mr. Parris was
20 being violent or the reporting party's response to that?

21 **A** Correct.

22 **Q** Do you have any recollection of whether the reporting party
23 told you whether Mr. Parris had ever said anything like
24 this before?

25 **A** I believe I asked her and I believe she advised that this

1 had not happened before, if I recall correctly.

2 **Q** Do you have any recollection of whether she told you
3 Mr. Parris had any history of suicidal threats?

4 **A** I don't recall.

5 **Q** But she did tell you that Mr. Parris owns a handgun?

6 **A** Correct.

7 **Q** And I believe your testimony was that she indicated to you
8 that he doesn't usually carry it with him, but keeps it in
9 his nightstand; is that correct?

10 **A** Correct.

11 **Q** During the course of your investigation and in the video,
12 we saw a statement from Mr. Parris that would dispute that;
13 correct?

14 **A** Correct.

15 **Q** Was there any kind of statement from Mr. Parris' mother to
16 that effect that you recall?

17 **A** I don't recall exactly what she said. I do recall that I
18 had asked her, and she had actually went and found a
19 firearm case that was empty, a holster which was empty, and
20 the firearm missing.

21 **Q** But did she -- you don't recall if she made any indication
22 to you what Mr. Parris' habit was with carrying that gun?

23 **A** I don't recall.

24 **Q** And the reporting party gave you Mr. Parris' license plate
25 number so you could try to locate him; is that correct?

1 **A** I don't believe she did. I believe she gave a description
2 of a silver GMC pickup, but I don't believe she had a
3 license plate, if I recall correctly.

4 **Q** And so in response to this call for service, fair to say
5 you began looking for Mr. Parris?

6 **A** Correct.

7 **Q** And eventually, as you testified, you ended up at
8 Mr. Parris' mother's house?

9 **A** Correct.

10 **Q** And she -- and you understood Mr. Parris to be living with
11 his mother at the time?

12 **A** Correct.

13 **Q** When you made contact with Mr. Parris' mother, is it true
14 that she told you that she had just seen him a couple hours
15 before?

16 **A** I believe it was at around 7:00 p.m. and this was at
17 9:00 p.m., if I recall correctly.

18 **Q** And that she had indicated to you that she and Mr. Parris
19 had plans to attend a baseball game together?

20 **A** I believe so. That -- that sounds correct.

21 **Q** She told you Mr. Parris had never made suicidal threats
22 before?

23 **A** Correct.

24 **Q** And in response to your inquiry, she told you that
25 Mr. Parris wasn't on any medications?

1 **A** I believe that would be correct. I don't recall.

2 **Q** And she indicated to you that Mr. Parris had never dealt
3 with depression before?

4 **A** Again, I don't recall, but I believe that to be correct.

5 **Q** And did she indicate to you also that this was all very out
6 of character for Mr. Parris?

7 **A** Correct.

8 **Q** But she did indicate to you that Mr. Parris had been under
9 a lot of stress in recent days, correct?

10 **A** I believe that would be correct.

11 **Q** And I -- you may have answered this already. I'll ask
12 again. Do you have any recollection of whether she
13 indicated to you that Mr. Parris and his ex-girlfriend had
14 broken up about six months prior?

15 **A** I don't recall.

16 **Q** Do you have any recollection of whether she told you that
17 this particular ex-girlfriend calls Nathan a lot and shows
18 up in Rapid City for visits?

19 **A** I don't recall.

20 **Q** You don't have much of a recollection of whether Nathan's
21 mother's responses to your questions tend to corroborate --
22 I'll withdraw that question.

23 It's fair to say that she also informed you about some
24 of the incidents with Mr. Parris' dog?

25 **A** Such as? I guess I don't know how to answer that question.

1 Q Did she -- did she reference to you that Mr. Parris was
2 upset about his dog?

3 A Yes.

4 Q So you didn't learn about that the first time from
5 Mr. Parris in the video that we just watched?

6 A Correct. I believe the mother had brought it up
7 beforehand.

8 Q And is it accurate that she also explained to you that
9 Mr. Parris was having some issues with his father?

10 A Correct.

11 Q And she told you that Mr. Parris' father was a narcissistic
12 and controlling person? Do you recall that?

13 A I don't recall that exact verbiage, no, sir.

14 Q Was it your impression from speaking to Mr. Parris' mother
15 before he arrived that these recent stressful events that
16 she was relaying to you, if she was, and that Mr. Parris
17 later related to you in the garage were all fairly recent?

18 A Correct.

19 Q If you recall, how long were you and the other law
20 enforcement officer we saw in the video at Mr. Parris'
21 mother's house before he arrived?

22 A Probably around an hour.

23 Q And you were engaged in discussions with both her and her
24 boyfriend or fiance at the time?

25 A Correct.

1 Q And was the purpose of those discussions to try to
2 understand what might be going on in Nathan's life and
3 where he might be located?

4 A Correct.

5 Q And at some point you learned that Mr. Parris had texted
6 his mother and told her that he was coming home.

7 A I believe she had called him and requested him to come
8 home. I don't believe he sent her a message telling her
9 that she'll be home -- or that he'll be home.

10 Q Didn't you testify that there was a text that he had sent
11 that said, *I'm coming home but only for you?*

12 A Correct. And that was after she had requested him to come
13 home.

14 Q Okay.

15 A I don't believe it was of his -- unprovoked, if that makes
16 sense. I believe it was after multiple requests.

17 Q And so law enforcement had been out pinging Mr. Parris'
18 phone, attempting to locate him, entering him into I think
19 you said NC --

20 A NCIC. Correct. National database.

21 Q As kind of a missing person?

22 A Correct.

23 Q And so that part of your investigation was -- seemed to
24 be closed at that point then when you got indication that
25 Mr. Parris was coming home, correct?

1 **A** In order to remove anyone from the national database as
2 missing, we do have to have visual and contact with them
3 and verbal contact with them to ensure their well being.

4 **Q** Do you recall a conversation while you were in the garage
5 between Mr. Parris' mother and you, indicating that
6 Mr. Parris had also called his ex-girlfriend and let her
7 know that she was coming home?

8 **THE COURT:** He or she was coming home?

9 **Q (BY MR. DAVIS)** Excuse me. That Mr. Parris was coming
10 home?

11 **A** I don't recall that conversation, no, sir.

12 **Q** It's correct, isn't it, that you decided -- you and your --
13 the other law enforcement officer that was present decided
14 to wait there for Nathan to return home to his mother?

15 **A** Correct.

16 **Q** Expecting that he would?

17 **A** Correct.

18 **Q** Is it true that you moved your vehicles out of sight from
19 the house?

20 **A** Correct.

21 **Q** What was the purpose of that?

22 **A** Due to the concern that if he had seen the patrol vehicle,
23 he would continue driving and not return or cause a bigger
24 disturbance, something to that effect.

25 **Q** You were hiding out of sight in the garage for that reason

1 too, I would assume?

2 **A** Correct.

3 **Q** Is it accurate that after Mr. Parris indicated to his
4 mother that he was coming home, that she took a telephone
5 call with him?

6 **A** I believe so. I don't recall that series of events, but I
7 believe so.

8 **Q** Would that have been while she was in the garage?

9 **A** Possibly. I don't recall.

10 **Q** And Nate eventually did come home to his mother, correct?

11 **A** Correct.

12 **Q** And you and your law enforcement officers were still
13 concealing yourselves in the garage when he walked in?

14 **A** Correct.

15 **Q** And then we saw on the video -- correct me if I'm wrong --
16 that Mr. Parris greeted you?

17 **A** I believe so. I don't recall the exact greeting.

18 **Q** And fairly quickly your law enforcement partner wanted him
19 to put his hands up and submit to a pat-down search. And
20 he complied with that, correct?

21 **A** Correct. There was a firearm in plain view out of his
22 pocket.

23 **Q** Do you -- I believe your testimony was you don't have any
24 indication whether or not there was a round in the chamber?

25 **A** That would be correct. There was ammunition in the

1 magazine, but I handed it to another law enforcement
2 officer who arrived on scene. I informed her that I had
3 not cleared the firearm, but I had removed the magazine,
4 which had ammunition in it.

5 **Q** Do you have your law enforcement report in front of you?

6 **A** Yes, sir. I have mine.

7 **Q** You've indicated that you don't have any recollection on
8 whether or not there was a bullet in the chamber. I'm
9 going to ask you if you would review paragraph -- oh, it's
10 not your report.

11 Did you review Officer Crumb's report in connection
12 with your preparation for today's hearing?

13 **A** I did not.

14 **Q** You'd agree with me as we just watched that video, that
15 during the course of that conversa- -- I don't know -- let
16 me withdraw that.

17 I don't recall exactly when the times on that video
18 were started and stopped. Do you have a recollection of
19 about how long you were in the garage with Mr. Parris when
20 he arrived?

21 **A** How long I was speaking with him?

22 **Q** Yes.

23 **A** I don't recall. Around 5 to 10 minutes, maybe 15. I don't
24 recall exactly.

25 **Q** Okay. We would know from watching the video and looking at

1 the timestamps?

2 **A** Correct.

3 **Q** And I -- is it fair to say that during that conversation
4 Mr. Parris wasn't screaming?

5 **A** Correct.

6 **Q** He wasn't making any wild gestures?

7 **A** No, sir.

8 **Q** Did he seem coherent to you?

9 **A** Correct.

10 **Q** Did he seem to be under the influence of alcohol or drugs
11 to you?

12 **A** No.

13 **Q** And he did tell you he had no intention of killing himself.

14 **A** Correct.

15 **Q** And at that point he was safely at home with his mother.

16 **A** Correct.

17 **Q** And had been disarmed.

18 **A** Correct.

19 **Q** And he also indicated to you that he only made the
20 statements he did to let his dad and his ex-girlfriend know
21 how he was feeling?

22 **A** Correct.

23 **Q** With your -- based on your interactions with Mr. Parris'
24 mother, is it fair to say that she wasn't very happy with
25 him getting taken into custody?

1 **A** After the fact I believe she was just a little bit upset,
2 but after I explained the reasoning behind it and explained
3 the process, I believe she was fairly calm about it and
4 understanding of the situation.

5 **Q** And you testified and we saw it in the video that
6 Mr. Parris was searched prior to being placed in protective
7 custody, correct?

8 **A** After placing handcuffs, before being placed in the patrol
9 vehicle, that would be correct.

10 **Q** And did you perform that search?

11 **A** Myself and Officer Crumb both did.

12 **Q** So if I'm to understand correctly, was there anything other
13 than a gun removed from Mr. Parris' person while he was in
14 the garage?

15 **A** Before or after being placed in handcuffs, I'm sorry, sir?

16 **Q** I'm talking about because he -- the gun was removed from
17 his person before he was placed in handcuffs.

18 **A** Correct.

19 **Q** He was immediately subjected or consented to a pat-down
20 search of his person.

21 **A** Correct.

22 **Q** Was anything, other than the gun, removed at that time from
23 his person?

24 **A** No, sir. Just the firearm.

25 **Q** So you had your 5- or 10-, 15-minute conversation with him

1 in the garage, made the decision to take him into
2 protective custody, and then he was searched again before
3 being placed in the law enforcement vehicle.

4 **A** Correct.

5 **Q** What were the items that were taken from Mr. Parris' person
6 during that search?

7 **A** I don't recall exact items. I know, as was shown in the
8 bodycam video, as well as after he was placed in handcuffs,
9 I began to conduct a search, but it was after speaking with
10 Officer Crumb, we moved him to the patrol vehicle and
11 continued and executed that search, finished it.

12 **Q** I believe -- I believe that you testified there was a white
13 plastic container that was taken out of his pocket.

14 **A** Correct.

15 **Q** Was that a closed container?

16 **A** I believe so. I don't recall.

17 **Q** Was it -- could you see through it?

18 **A** I don't recall. I don't know.

19 **Q** You don't know if it was clear or if it was opaque?

20 **A** I don't recall.

21 **MR. DAVIS:** Your Honor, with the Court's permission, I'd
22 like to play just a portion of Exhibit 1.

23 **THE COURT:** Any objection?

24 **MR. HOUDEK:** No objection.

25 **THE COURT:** You may.

1 **Q (BY MR. DAVIS)** Before I do that, when the white -- excuse
2 me for a moment.

3 Did you perform the search of the plastic container
4 that was taken off of Mr. Parris' person or was that
5 another law enforcement officer?

6 **A** I believe that was Officer Crumb.

7 **Q** Were you present when that occurred?

8 **A** I was present when it was found, but I was not present
9 during the subsequent search.

10 **MR. HOUDEK:** Your Honor, permission to use my cell phone?

11 **THE COURT:** You may.

12 Do you need more light?

13 **MR. DAVIS:** That does help, Your Honor.

14 I'm sorry, I'm not familiar with your technology. I
15 apologize.

16 **MR. HOUDEK:** No problem.

17 **MR. DAVIS:** Your Honor, I apologize. For whatever reason
18 this flash drive was working on my computer this morning
19 but is not working now. It indicates it needs to be
20 formatted. So I don't have the ability to play or
21 introduce the videos I was intending to. The State has
22 indicated it is willing to stipulate to foundation and to
23 the admission of this exhibit if I can provide it to the
24 Court at a later time either by email or by a drive.

25 **THE COURT:** What is it?

1 **MR. DAVIS:** It is a bodycam video of Officer Crumb that was
2 taken in the presence of this testifying witness showing
3 the removal of the white plastic container and the
4 subsequent opening of that container.

5 **THE COURT:** All right. And so I certainly can review it
6 later. I don't have any objection to that. But a
7 container is opened, the officer finds what appears to be
8 drugs inside? Is that what we're talking about?

9 **MR. DAVIS:** That's my representation of what is in the
10 video is that a closed white opaque plastic container was
11 removed from Mr. Parris' pocket, it was placed on the top
12 of the patrol vehicle, and then several minutes later the
13 officer opened that container. That's the nature of the
14 search that I am challenging.

15 **THE COURT:** All right. Mr. Houdek, do you agree with that
16 proffer, that that's what the bodycam video would show?

17 **MR. HOUDEK:** I do, Your Honor.

18 **THE COURT:** All right. The Court can take that
19 representation. I'm not opposed to looking at it, but I'll
20 take that representation for purposes of today.

21 **MR. DAVIS:** Thank you, Your Honor.

22 **Q (BY MR. DAVIS)** Officer Hood, following your response and
23 investigation in this case, you obviously took Mr. Parris
24 into custody on an involuntary mental health hold, correct?

25 **A** Correct.

1 Q And you did this pursuant to your authority under
2 SDCL 27A-10-3?

3 A I believe that sounds correct.

4 Q And that would be the state statute that indicates that a
5 peace officer may apprehend any person that he has probable
6 cause to believe requires emergency intervention under the
7 criteria in 27A-10-1?

8 A Correct.

9 Q That's the provision of law that you're familiar with?

10 A Correct.

11 Q And I believe very early on in your testimony that you
12 indicated that the standard for a mental health hold was
13 that a person was either suffering a mental illness or a
14 danger to themselves or a danger to others; is that
15 correct?

16 A That would be correct.

17 Q That's a fair statement of the legal standard in your view
18 or at least that you've been trained on?

19 A It would be in imminent danger and there would be probable
20 cause that they are a danger to themselves.

21 Q And what was the nature of that determination that you made
22 with regard to Mr. Parris?

23 A As -- I guess are you asking as to why I placed him on an
24 involuntary mental hold?

25 Q Yes. What part of the standard did your investigation

1 discover had been satisfied?

2 **A** The danger to himself.

3 **Q** You determined that Mr. Parris was a danger to himself, a
4 continuing danger to himself, even though he had indicated
5 to you that he wasn't.

6 **A** Correct.

7 **Q** That he didn't intend to commit suicide that night.

8 **A** Correct.

9 **Q** And you had removed the apparent means that you thought he
10 could commit that act with, correct?

11 **A** In the imminent time. I mean, there's multiple -- a
12 multitude of weapons in any house so there are still
13 additional means.

14 **Q** Maybe. You don't have any direct information or --

15 **A** Correct.

16 **Q** -- evidence that --

17 **A** That would be correct, yes, sir.

18 **THE COURT:** All right. Let's -- you're going to wait for
19 the whole answer before you say anything and you're going
20 to wait for the whole question before you testify. You're
21 talking on top of each other. I don't get it and neither
22 does -- it makes the court reporter's job hard.

23 **MR. DAVIS:** Thank you, Your Honor.

24 **Q (BY MR. DAVIS)** You had indicated that the suspected
25 controlled substance discovered on Mr. Parris' person would

1 have been found as inevitable discovery; is that correct?

2 **A** Correct.

3 **Q** Is it your position that part of your duties involved
4 opening the white plastic container and searching it?

5 **A** It would be the same, same circumstance of inevitable
6 discovery. I guess I don't understand your question. I'm
7 sorry.

8 **Q** Well, you testified -- and correct me if I'm wrong -- that
9 the purpose, as you understand it, of this kind of search
10 when someone goes into protective custody is to keep
11 dangerous items or contraband out of facilities and law
12 enforcement vehicles, correct?

13 **A** Correct.

14 **Q** And if this contraband was contained in a closed plastic
15 container that had been removed from Mr. Parris' person and
16 placed on top of a law enforcement vehicle, wouldn't the
17 purpose of that search have been satisfied?

18 **A** No, sir.

19 **Q** You feel that it was necessary to open that container to
20 find out what was in it?

21 **A** Correct.

22 **Q** Was it your intention to send that container with
23 Mr. Parris?

24 **A** Correct.

25 **Q** Did you send other items with him?

1 **A** Correct. I don't recall what exact items, but any property
2 goes with them unless they specifically request -- like in
3 this case, specific circumstance, I believe he had a some
4 type of collar for his dog. He requested that stay at the
5 residence; therefore, it stayed at the residence.

6 **Q** And you testified after we watched the video of your
7 interaction with Mr. Parris in the garage that it was your
8 opinion that he seemed almost distraught at times. Is that
9 how you recall your testimony?

10 **A** Correct.

11 **MR. DAVIS:** Your Honor, I don't have any further questions
12 at this time.

13 **THE COURT:** Any redirect?

14 **MR. HOUDEK:** Yes, Your Honor.

15 **REDIRECT EXAMINATION**

16 **Q (BY MR. HOUDEK)** On cross-examination there was some
17 testimony about whether the firearm was open -- you
18 can't -- or, I apologize, whether there was a bullet in the
19 chamber. You were unable to tell us whether there was or
20 there wasn't.

21 **A** Correct.

22 **Q** In cases of firearms that have a loaded magazine, how
23 quickly does it take someone to have a bullet not in the
24 chamber to be in the chamber?

25 **A** If there's ammunition in the magazine, I'd say under half a

1 second.

2 **Q** And there was discussion on whether or not it was necessary
3 essentially to search the container found on Mr. Parris'
4 person. Does it matter to you whether the container is
5 clear or not clear?

6 **A** It does not.

7 **Q** And why is that?

8 **A** Contraband can be hidden in any form or fashion inside of
9 any container.

10 **Q** And, also, there was also talk that you removed the
11 firearm, which was the immediate danger, from Mr. Parris.
12 If it was determined that Mr. Parris was not to be placed
13 on a mental hold, what would happen with that firearm?

14 **A** The firearm would more than likely be returned to him,
15 unless he consented to it being placed for safety, which is
16 where he can go and retrieve said firearm at any time.

17 **Q** And looking at the totality of what you observed and what
18 you learned on that day, why did you ultimately place
19 Mr. Parris on a mental hold?

20 **A** It was determined that he was a danger to himself based off
21 of statements that he sent to multiple people, removing the
22 tracker so he could not be found, having a firearm without
23 any type of holster just hanging out of his pocket. It was
24 the totality of everything combined.

25 **MR. HOUDEK:** Your Honor, I have no further questions.

1 **MR. HOUDEK:** Nothing from the State, Your Honor.

2 **THE COURT:** Anything further?

3 **MR. DAVIS:** Your Honor, I've not done a suppression hearing
4 in front of you before. I'm not sure what your preferred
5 procedure is. I'm happy to make arguments or if you'd like
6 to receive proposed findings and conclusions.

7 **THE COURT:** I have had an opportunity to pull up the
8 *Cordell v. Weber* case that both of you discussed. I'm
9 happy to hear argument from you. If you feel you need to
10 brief it, I'll allow it, otherwise I do feel prepared to
11 rule today.

12 **MR. DAVIS:** If the Court would not mind, I would like to
13 make a short argument to summarize our position on the case
14 and our view of the evidence as it's comes in.

15 **THE COURT:** Surely.

16 And, State, do you as well?

17 **MR. HOUDEK:** Yes, Your Honor.

18 **THE COURT:** You may be heard.

19 **MR. HOUDEK:** Thank you.

20 As pointed out the beginning of this hearing, the law
21 in South Dakota is clear under these circumstances under
22 SDCL 27A-10-3. A peace officer may apprehend any person
23 that he has probable cause to believe requires emergency
24 intervention under the criteria of the statute that was
25 cited.

1 From our review, there is no bright-line rule when
2 you're looking at 27A-10-1. If you look in that
3 Subsection (1), it says that essentially the peace
4 officer's probable cause determination must be based off of
5 personal knowledge that such person who is subject as a
6 result of a severe mental illness is a danger to self or
7 others.

8 And given the facts presented here today, the State
9 does believe that we've met that burden. There was
10 multiple suicidal statements made via text messages that
11 was relayed to the officer. The officer had located a
12 firearm that had a loaded magazine on Mr. Parris' person
13 when he came in contact with him. The tracker of the
14 vehicle had been removed. This is especially concerning
15 when one of the text messages says *You'll find me in the*
16 *woods*, you know, implying that he was going to go somewhere
17 that no one could find him.

18 And, ultimately, his demeanor during that conversation
19 with law enforcement didn't ease anything. I understand
20 that Defense might argue that he made multiple statements
21 that he was not suicidal or that he doesn't have a history
22 of being suicidal. That certainly does not mean that
23 someone can't become suicidal or in a moment of weakness be
24 suicidal. And so given the circumstances presented to the
25 officer, I think that it's clear that he met that probable

1 cause belief under the circumstances.

2 Looking at *Cordell v. Weber*, South Dakota had adopted
3 the standard that a search incident to a protective custody
4 arrest just as a search incident to a lawful arrest is
5 allowed under the constitution. Under the case that they
6 had adopted, it's similar circumstances as here in which
7 law enforcement searched an individual; he was found to
8 contain methamphetamine.

9 The only caveat I would say, just in all candor to the
10 Court, is that was after a mental health professional had
11 asked law enforcement to place him in custody. And so I
12 could see that being a concern; however, our own case, the
13 *Cordell v. Weber*, is under circumstances similar to these,
14 in that the Defendant had come into law enforcement
15 agency's building, they had interviewed him, they had found
16 him to be a threat to himself and found him to be possibly
17 suicidal. His -- he was then placed into jail where his
18 items were recovered by law enforcement, placed into a
19 locker. Those items were later recovered as evidence
20 against him. So in that circumstance it's exactly what
21 we're having here, which is law enforcement made a probable
22 cause determination, arrested an individual, collected
23 evidence as a result of that arrest.

24 So given all of the circumstances, given the well
25 settled case law, I believe that the State has met its

1 burden.

2 Also, just with the talk of whether the container was
3 clear or not, law enforcement surely has an interest in
4 knowing what's in that container. We don't know what could
5 be in that container. And it's for the safety of the
6 Defendant, for the safety of the people around them that
7 law enforcement through their due diligence and search the
8 things that are found on the individual's person.

9 So given all of that, the State believes there's no
10 reason to suppress the evidence in this case. Thank you.

11 **THE COURT:** Counsel?

12 **MR. DAVIS:** Thank you, Your Honor.

13 Your Honor, it's my position that both Officer Hood
14 and the State are not correctly representing the state of
15 the statutory law. I agree that 27A-10-3 allows a peace
16 officer to apprehend any person that he has probable cause
17 to believe requires emergency intervention under the
18 criteria in 27A-10-1.

19 And I don't believe the State correctly described
20 27A-10-1, which provides *If any person is alleged to be*
21 *severely mentally ill and in such condition that immediate*
22 *intervention is necessary for the protection from physical*
23 *harm to self or others,* that would be the part of the
24 standard that I'm referring to. It's not either/or. It's
25 *severely mentally ill and in such condition that immediate*

1 *intervention is necessary for the protection from physical*
2 *harm to self or others.*

3 Looking down at Subsection (1), it indicates that such
4 person -- that the petitioner must believe that such
5 person, as a result of severe mental illness, is a danger
6 to others. This is a and standard, not an and/or standard.
7 Both conditions must be satisfied. Even if the evidence
8 suggested that Mr. Parris was in -- needed immediate
9 intervention to protect himself from harm -- and I do not
10 believe that the evidence, that the objective evidence,
11 leads to a probable cause determination in that regard,
12 there also has to be a finding that he is severely mentally
13 ill before he can be involuntarily committed. And I would
14 assume the reason for that is that the standard as it's
15 been expressed by Officer Hood and by the State is
16 essentially that if someone makes a suicidal ideation, a
17 call for help, and has any conceivable means in which they
18 can carry it out, that they are essentially per se subject
19 to an involuntary commitment. I don't think that's
20 supported by the statutory language. I don't think that's
21 supported by the purpose of the statute.

22 The purpose of an involuntary commitment statute, as
23 the Court well knows, is more akin to issues like someone
24 is having a schizophrenic break and there is no available
25 remedy for these people, other than to be taken into

1 custody and evaluated by a qualified mental health
2 professional.

3 I think that -- I think that the objective evidence
4 indicates that there was no probable cause. Once -- you
5 know, Mr. Parris, before he knew law enforcement was
6 involved, he was going home. He had, you know, expressed
7 some at least concerning messages. I would dispute the
8 idea that they were suicidal threats. All we have in the
9 records and all that we've seen is a text message to
10 Mr. Parris' ex-girlfriend that he's not worth it. And
11 then, you know, his message to his father, which he
12 indicated and which his mother indicated that he was trying
13 to express to his father how, you know, he was making him
14 feel. It was a call for help. That call for help was
15 successful. His mother was able to get him home. He was
16 coming home voluntarily to his mother. Not -- he had no
17 idea that law enforcement was there. He was there. He was
18 disarmed. The Court saw the video. He was cool, calm,
19 collected. He wasn't distraught. He didn't seem like a
20 person who needed to be taken into -- for an involuntary
21 hold.

22 So it's my position that the -- there is no probable
23 cause that can be determined from the face of
24 Officer Hood's affidavit, especially when it essentially
25 negates the fact that Mr. Parris was actively or seriously

1 contemplating harming himself. So I don't believe the
2 standard's -- I don't believe that the standard's been met
3 because there's no finding that he's suffering from a
4 severe mental illness. And even if that standard was not
5 required, I still don't think there's probable cause.

6 As to the search, I agree that *Cordell v. Weber* is the
7 controlling authority here. That it authorizes -- a
8 protective search is constitutionally permissible when an
9 individual is placed in protective custody; however, in
10 Paragraph 17 of that opinion, it continues, *We agree under*
11 *the Collins rationale, a reasonable and limited protective*
12 *search incident to involuntarily commitment is permitted in*
13 *order to protect the mentally ill individual and that*
14 *person's custodians.*

15 There is a footnote in this paragraph -- or in this
16 opinion, Footnote 2, that says, *However, a fair reading of*
17 *Collins does not support the proposition that such a search*
18 *is without constraint.* That search was made for a
19 protective purpose in the case that they're referencing,
20 therefore, it was consistent with the purpose of the
21 protective detention.

22 Paragraph 18 references that the search must be a good
23 faith, noninvestigatory search. And Paragraph 20 indicates
24 that based on the facts of this case, Mr. Cordell's
25 clothing was removed for legitimate custodial purpose.

1 And then in Paragraph 22 the Court recognizes that in
2 a non-arrest situation such as this, courts more diligently
3 guard the detained person's privacy interest in their
4 personal items.

5 So I think this is a separate and independent reason
6 to grant the motion to suppress. The first is the correct
7 standard was not applied. Even if it was, there is not
8 adequate probable cause within the four corners of
9 Officer Hood's affidavit. But even if there was and
10 Mr. Parris was taken into custody, I agree that the state
11 of case law is that it is appropriate for law enforcement
12 to search items, but the law makes a material distinction
13 and *Cordell* certainly makes a material distinction between
14 removing things from a person's property, but later going
15 in and searching closed items.

16 There's no indication that that item was going to be
17 sent with Mr. Parris. It was, as I believe Officer Hood
18 described in his testimony, an investigatory search. We
19 don't know what could be in that container. That's not the
20 purpose. The purpose is not an investigatory search. This
21 is not a search incident to an arrest. It's a different --
22 it's a less strict standard under *Cordell* for a non-arrest,
23 protective custody situation. And I believe that the
24 evidence in this case clearly suggests that this was an
25 investigatory search that didn't go to protecting

1 Mr. Parris or any other legitimate law enforcement
2 activities. And so it's our position that for those, I
3 guess, three independent reasons, the motion to suppress
4 should be granted.

5 **THE COURT:** Anything further?

6 **MR. HOUDEK:** Very briefly, Your Honor.

7 The State just wants to point out that under 27A-10-3
8 it says, *A peace officer may apprehend any person that he*
9 *has probable cause to believe requires emergency*
10 *intervention.* It's not conclude. Officer Hood's not a
11 mental health professional. He's just going off of the
12 surrounding circumstances as he sees them, which I believe
13 in this case are reasonable.

14 And as for the Defense's, you know, pointing --
15 correctly pointing out that *Weber* says that the search is
16 not without restraint, the State agrees. The officer
17 didn't search Mr. Parris' car; he didn't search his room;
18 he didn't search the house; he searched his immediate
19 person, which is necessary to protect not only Mr. Parris
20 but the individuals who he'll have contact with at that
21 secure facility. Thank you.

22 **THE COURT:** Anything further?

23 **MR. DAVIS:** They did search his person. There was two
24 searches here. There was a permissible search of his
25 person and then there was an impermissible investigatory

1 search much later of a closed container that could
2 have/should have been left at the house. So I don't agree
3 with that.

4 As far as the suggestion that this officer has -- you
5 know, just any reasonable belief will suffice, that is
6 simply not what the statute says. 27A-10-3 is very clear
7 that the officer must have probable cause to believe the
8 person requires emergency intervention under the criteria
9 set forth in 27A-10-1. So there is very specific criteria.
10 There should be findings and evidence on that criteria.
11 It's supposed to be included in the petition and it wasn't
12 in this case.

13 **THE COURT:** All right. The Court has considered -- it does
14 find it has jurisdiction, venue is appropriate. The Court
15 has considered the testimony of Officer Hood. I have
16 reviewed the body-worn camera of the interaction with the
17 Defendant. The Court does find that the officer did have
18 probable cause.

19 I do find that the person, reporting person, the
20 girlfriend, that he had lived with for five to six years
21 was the one who made the call and had grave concern about
22 what happened. I agree that when they found the tracker,
23 when he sent the message about *This is where you'll find my*
24 *pickup*, this was an adult male that he himself said he'd
25 been under stress; mother apparently said that. And the --

1 one time a relative said to me, *There's one thing worse*
2 *than knowing your child wants to take his own life and*
3 *that's that he's succeeded.*

4 Under any of these facts, if Mr. Parris had achieved
5 what he had threatened to do or was trying to infer he was
6 going to do and law enforcement hadn't responded, there
7 would be an extraordinary outcry or if they had left him
8 there that night. The Court's perfectly aware that there
9 are many ways that people have found to take their own
10 lives, besides having a weapon that he was carrying in his
11 pocket with a loaded magazine. That there are plenty of
12 ways someone can take their life.

13 The officers, in the view of the Court, spent a long
14 time, it appears to be 17 minutes by the amount we saw,
15 trying to analyze what was going on with the Defendant.
16 The Defendant, given the way he spoke, that he was tearful,
17 the reasons that he sent those text messages, that he had
18 been under stress for a long time and had not taken any
19 efforts to address his mental health issues by calling
20 someone, by seeing a doctor, in the view of the Court, all
21 of those were sufficient for these officers to have
22 probable cause to believe that he was severely mentally
23 ill. That an intervention was necessary that evening.

24 That it's the view of the Court in watching
25 Mr. Parris, that his simple statement *I wasn't going to do*

1 *anything*, that one could not take that at face value,
2 particularly in light of the -- the immature way in which
3 he had been dealing with his stress, the items that were
4 causing him stress, and his inability to appropriately
5 respond like a healthy person might to that sort of stress.

6 It's the view of the Court that the officers
7 absolutely had probable cause to believe that he was
8 severely mentally ill, that he intended to harm himself,
9 and that were he not taken into protective custody, that he
10 would figure out a way to do that, and simply removing the
11 gun was insufficient.

12 The Court has reviewed the *Cordell* case, *Cordell v.*
13 *Weber*, and the Court discusses there about in the -- when
14 you take someone into custody, that there is a -- it's a
15 diminished expectation of privacy, not as much as an
16 arrestee, but the inventory search is in Paragraph 18
17 described as an incidental administrative step. Safeguard
18 property; insulate the police from groundless claims the
19 property was not protected; secure the detention facility
20 by preventing introduction of weapons or contraband. Our
21 Supreme Court relies on the *Illinois v. Lafayette* Supreme
22 Court case.

23 In this situation, the officers open up the device,
24 the box, and they need to know, *Is there a weapon in there?*
25 If they keep the box, is it -- he's put something in there

1 that's going to explode? If they send it along with him,
2 is he going to introduce drugs or weapons into the
3 facility?

4 The Court doesn't find that was investigative, but
5 instead that it was administrative designed to protect not
6 only the officers, the facility, but Mr. Parris himself.
7 We don't know -- they had no idea -- had no ability to
8 guess what was in there, whether it was going to be a
9 thousand dollars that was there and Mr. Parris was going to
10 later claim the police took it. Was it a razor blade? Was
11 it something that could explode? Was it chewing gum? And
12 so the Court doesn't find that was investigative.

13 The Court observed that they didn't search the
14 vehicle, they didn't go search his house, they simply did
15 the search that was incident to protecting him, the
16 facility, and the police themselves from anything.
17 Accordingly, the motion to suppress will be denied.

18 The Court did find the testimony of Officer Cor- --
19 Hood to be credible. The officer testified to what he
20 could remember and when he couldn't remember, he was clear
21 about that. The Court did not find that he overstated the
22 case. He did refer to the Defendant as distraught. I
23 would agree he wasn't sobbing, but he was an adult male who
24 was struggling under a very calm situation to control his
25 emotions. And in the view of the Court, I could see how

1 the officer might refer to that as distraught.

2 So it appeared that Mr. Parris had a lot of people in
3 his life that cared very deeply about him and did not want
4 him to take his own life and so the call was made designed
5 to protect Mr. Parris and that's what happened, his life
6 was preserved.

7 And it's the view of the Court that too often these
8 cries for help are exactly that, that a person is severely
9 mentally ill and they need help. It's easy to claim after
10 the fact, *I didn't intend to do anything*. So I'm grateful
11 that Mr. Parris has people in his life that cared enough to
12 protect him and that he remains with us today.

13 All right. I'll ask you as the moving party to put an
14 order in Odyssey denying the motion to suppress.

15 This case is quite old. Do we need to get it set on
16 for trial or how are we going to go forward?

17 **MR. DAVIS:** Your Honor, I would need to check with
18 Mr. Nelson. My anticipation would be that it could be set
19 for trial. We'll continue negotiating with the State. I
20 would assume based on the Court's decision, there may be
21 a -- I will intend to submit that video just so it's in
22 evidence. It's possible that the trial will be done on
23 stipulated facts.

24 If we could -- I think if it was set for trial, we
25 could have this resolved fairly quickly.

1 **THE COURT:** One day, Mr. Houdek?

2 **MR. HOUDEK:** Yes, Your Honor.

3 **THE COURT:** All right. Well, let me get it on the calendar
4 so we have it and -- or I could give you a status hearing
5 so Mr. Nelson can be present. What do you prefer?

6 **MR. DAVIS:** A status hearing is what I would prefer just so
7 I can communicate with his staff about his calendar.

8 **THE COURT:** I could see you February 29th at 2:30.

9 **MR. DAVIS:** Excuse me, Your Honor, I apologize.

10 At what time did you say?

11 **THE COURT:** 2:30.

12 **MR. DAVIS:** That will work well, Your Honor. Thank you.

13 **THE COURT:** Mr. Parris, you can be here then?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** All right. Very well. Anything further?

16 **MR. DAVIS:** No, Your Honor.

17 **THE COURT:** All right.

18 (Hearing concluded at 10:09 a.m.)

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

I, KIMBERLY K. JOHNSON, RPR, an Official Court Reporter and Notary Public in the State of South Dakota, Seventh Judicial Circuit, do hereby certify that I reported in machine shorthand the proceedings in the above-entitled matter and that Pages 1 through 56, inclusive, are a true and correct copy, to the best of my ability, of my stenotype notes of said proceedings had before the HONORABLE JANE WIPF PFEIFLE, Circuit Court Judge.

Dated at Rapid City, South Dakota, this 16th day of July, 2024.

/s/ Kimberly K. Johnson

KIMBERLY K. JOHNSON, RPR
Official Court Reporter
My Commission Expires: 6/17/28

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STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

FILE NO. 51CRI22-3240

<p>STATE OF SOUTH DAKOTA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>NATHAN PARRIS,</p> <p>Defendant.</p>	<p>ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS</p>
--	--

An evidentiary hearing on the Defendant's Motion to Suppress was held before the Court on the 14th day of February, 2024. The State was represented by Pennington County Deputy State's Attorney, Braedon Houdek. The Defendant appearing personally and through his attorney, Eric Davis. The Court, having considered the testimony and evidence presented at the hearing and having heard the arguments of counsel, it is hereby;

ORDERED that Defendant's Motion to Suppress be DENIED.

2/16/2024 2:55:19 PM

BY THE COURT:

Attest:
Ricke, Jolonda
Clerk/Deputy



A handwritten signature in black ink, appearing to read "JWP", written over a horizontal line.

Honorable Jane Wipf Pfeifle
Circuit Court Judge

App. 067

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

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
 Plaintiff,)

File No. CRI 22-3240

vs.)

JUDGMENT

NATHAN LEE PARRIS,)
 DOB: [REDACTED])
 Defendant.)

Appearance at sentencing:
Prosecutor: Adam Shiffermiller Defense attorney: Nate Nelson

The Defendant having appeared at a Court Trial in the above-referenced matter on March 14, 2024, and the Court having found the Defendant guilty of the offense of Possession of a Controlled Drug or Substance, Class 5 Felony, SDCL 22-42-5, occurring on or about June 28th, 2022; and the Defendant having appeared at sentencing on March 14th, 2024; the Court having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered, the Court therefore pronounced the following sentence.

Crime qualifier: (check if applicable): add
 Accessory 22-3-5 Aiding or Abetting 22-3-3 Attempted 22-4-1
 Conspiracy 22-3-8 Solicitation 22-4A-1

Habitual offender (check if applicable) admitted on _____
 SDCL 22-7-7 SDCL 22-7-8 SDCL 22-7-8.1

Part 2 Information (DUI) (check if applicable) admitted on _____
 Third Offense; SDCL 32-23-4 Fourth Offense; SDCL 32-23-4.6
 Fifth Offense; SDCL 32-23-4.7 Sixth or Subsequent Offense; SDCL 32-23-4.9

Part 2 Information (ASSAULT) (check if applicable) admitted on _____
 SDCL 32-23-4.9

It is hereby ORDERED:

The Court suspends imposition of sentence.
 The Court defers imposition of sentence.

The Defendant is sentenced to serve a term of **5** year(s) in the South Dakota State Penitentiary; the penitentiary term shall be suspended for a term of **5** year(s), and the Defendant shall be placed on probation for a period of **2** year(s) upon the following terms and conditions;

This sentence shall run concurrently with _____.
 This sentence shall run consecutively to _____.

TERMS AND CONDITIONS
(x) terms and conditions that apply:

1. That the Defendant serve **180** days in jail, **158** days are suspended; with credit for time served of **22** days.
 - Electronic Monitoring
 - Work Release allowed
 - Immediate remand
 - Remanded to Court Services Office to schedule turn in time.
2. That the Defendant remain on good behavior and not commit another federal, state or local crime during the term of probation or suspension.
3. That the Defendant remains gainfully employed or enrolled in school throughout the probationary period and support any dependents to the best of his/her ability.
4. That Defendant pay court costs of **\$116.50**.
5. That the Defendant's attorney's fees will be a civil lien in favor of Pennington County.
6. That Defendant pay fines imposed in the amount of \$_____.
7. That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of \$_____ to _____.
8. That Defendant pay prosecution costs: Blood \$_____, Drug test **\$60.00**, UA \$_____, Transcript **\$22.80**, SART Bill \$_____.
9. That Defendant pay prosecution costs in dismissed file _____: UA \$_____, Drug test \$_____, Blood \$_____, Transcript \$_____, SART Bill \$_____.
10. That the Defendant reimburse Pennington County for the cost of extradition in this matter in the amount of _____ to be paid through the Clerk of Court's Office.
11. That Defendant pay the statutory fee of \$_____ DUI, \$_____ DV.
12. That the Defendant obtain a drug/alcohol evaluation and complete any treatment recommendations.
13. That the Defendant attend AA / NA _____ times per week / obtain a sponsor.
14. That the Defendant obtain a mental health evaluation and follow any treatment recommendations.
15. That the Defendant take all medications as prescribed.
16. That the Defendant shall not purchase or possess any type of firearms.
17. That the Defendant shall not associate or have contact with any known felons.
18. That the Defendant obtain a high school diploma or GED
19. That the Defendant shall not consume alcoholic beverages nor enter establishments where alcohol is the primary item for sale.
20. That the Defendant neither use nor possess any controlled drugs or substances, or be present where such substances are being used. Defendant shall request prior approval to use medical cannabis while on probation by including proof of a registry identification card or proof of nonresident registration issued by the South Dakota Department of Health as well as a copy of the practitioner's written certification listing the debilitating medical condition consistent with SDCL 34-20G-1(8) provided to the Department of Health. Defendant must inform the Court Services Officer if Defendant has been issued, applied for, or has in his/her possession, a registry identification card for the use of medical cannabis in the State of South Dakota. If he/she is under probation supervision in South Dakota, a medical cannabis registry identification card or documentation issued by another state related to the use of medical cannabis does not permit the use of medical cannabis while on probation unless such use has been approved by the sentencing Court. Any use of medical cannabis while on probation must be in conformity with the medical instructions of his/her physician and must be in compliance with South Dakota law.

21. That Defendant submit to periodic tests of breath or bodily fluids as directed by the Court Services Officer and pay for those tests as required by UJS policy.
22. That Defendant submit his/her person and property to search and seizure upon demand by the Court Services Officer at any time of the day or night, with or without a search warrant.
23. That the Defendant obey all orders, rules and regulations of the Court Services Department including that the Defendant shall be subject to the UJS's Application of Supervisory Responses ASR Grid.
24. That the Defendant keep his/her Court Services Officer advised of any change in his employment or residence and shall obtain permission from his/her Court Services Officer before leaving this judicial circuit or state.
25. That the Defendant establish a payment plan with his/her Court Services Officer.
26. That the Defendant's driver's license is unconditionally revoked for _____.
 Work permit authorized if eligible.
27. That the Defendant shall attend the Victim Impact Panel / MADD Impact Panel /
 Restorative Justice
28. That the Defendant write an apology letter to _____.
29. That the Defendant attend and complete Moral Reconciliation Therapy (MRT).
30. That the Defendant attend and complete Cognitive-Based Intervention for Substance Abuse (CBISA) and follow the recommendations thereof.
31. That for a period of **90** days, the Defendant shall submit to random UAs;
 2 UAs per week; ____ PBTs per day; SCRAM, per the requirements of the 24/7 Sobriety Program, 111 New York St. Ste. 300, Rapid City, South Dakota, and pay for the same;
 thereafter, he/she shall participate at the discretion and per the direction of his/her Court Services Officer.

OTHER CONDITIONS:

Pursuant to the plea agreement, the State's Attorney is dismissing the remaining counts to include the Part II Information, Habitual Offender, if applicable.

Attest:
 Ricke, Jolonda
 Clerk/Deputy



BY THE COURT:

5/8/2024 1:57:56 PM

HON. JANE WIFF PFEIFLE 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. 30720

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

NATHAN LEE PARRIS,

Defendant and Appellant.

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

THE HONORABLE JANE WIPF PFEIFLE
Retired Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed May 31, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30720

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

NATHAN LEE PARRIS,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Nathan Lee Parris, is called “Parris.” Plaintiff and Appellee, the State of South Dakota, is called “State.” References to documents and Video Exhibits are as follows:

Pennington County Criminal File No. 22-3240..... SR
Parris’ Appellant Brief PB
February 14, 2024 Suppression Hearing Transcript..... SH
March 14, 2024 Court Trial..... CT
Officer Trae Hood’s Body Worn Camera Video 1..... BWC
Officer Trae Hood’s Body Worn Camera Video 2..... BWC2

All document designations are followed by the corresponding page numbers. All Exhibits are followed by their appropriate designation, unless otherwise provided above. All video citations are followed by the times they occur in the files.

JURISDICTIONAL STATEMENT

The Honorable Jane Wipf Pfeifle, retired Pennington County Circuit Court Judge, filed a Judgment of Conviction on May 8, 2024. SR:71. Parris filed a Notice of Appeal on May 31, 2024. *Id.* at 72. This Court has jurisdiction to hear the appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ERRED IN FINDING LAW ENFORCEMENT HAD PROBABLE CAUSE TO PLACE PARRIS ON A MENTAL ILLNESS HOLD?

The circuit court found law enforcement had probable cause to take Parris into protective custody on a mental illness hold.

SDCL 27A-10-1

SDCL 27A-10-3

II.

WHETHER THE CIRCUIT COURT PROPERLY DENIED PARRIS' MOTION TO SUPPRESS THE METHAMPHETAMINE FOUND ON HIM DURING HIS MENTAL ILLNESS HOLD?

The circuit court denied Parris' Motion to Suppress.

Cordell v. Weber, 2003 S.D. 143, 673 N.W.2d 49

Illinois v. Lafayette, 462 U.S. 640 (1983)

STATEMENT OF THE CASE

Law enforcement placed Parris on a mental illness hold in June 2022 pursuant to SDCL 27A-10-1 and SDCL 27A-10-3. BWC:1:21:45-1:21:55; SH:6. They discovered methamphetamine on Parris during this

hold, and a grand jury indicted him on one Count of Possession of a Controlled Substance, violating SDCL 22-42-5, in August of 2022. SR:1. Parris moved to suppress discovery of the methamphetamine in January 2024. SR:51. A hearing occurred in February 2024 regarding the validity of the mental illness hold and the Motion to Suppress. SH:3-4. The circuit court found that law enforcement had probable cause to take Parris into protective custody pursuant to SDCL 27A-10-3, and it denied the Motion to Suppress the methamphetamine found on Parris during that hold. SH:51, 54.

Parris and the State entered a Stipulation in March 2024 where he admitted to having methamphetamine on him on the night of his mental illness hold. SR:56-57. A court trial occurred in March 2024 where the circuit court found him guilty of Possession of a Controlled Substance in violation of SDCL 22-42-5. CT:5. The circuit court entered a Judgment of Conviction on May 8, 2024, sentencing Parris to probation. SR:71

STATEMENT OF THE FACTS

Officers Trae Hood and Cody McCracken received a call regarding a potential suicide attempt by Parris in the evening of June 2022.

SH:11. The caller, named Grace, stated:

“My boyfriend is just having a hard time and he keeps saying he’s gonna kill himself. And he sends a text message to his dad basically telling him he was gonna kill himself and everything, and that’s just really out of character for him. And he’s not answering me or his mom or anyone else, and I’m out of state.”

BWC2:0:30-1:00. Grace provided Parris' mother Jamie's address, where he had been living, as well as a description of his vehicle and his license plate number. *Id.* at 1:10-2:05; SH:11-12. She also informed the officers that Parris owned a handgun that he might have on him. BWC2:2:45-3:00; SH:11. She ended the call by telling them that Parris had not done anything like this before, and that "basically he was just saying he's gonna kill himself. One of the last was just that he loves me and everything. Then I tried calling him a bunch but he wouldn't answer. Then he finally texts back 'stop calling me please.' He hasn't answered me since." *Id.* at 4:00-5:00.

At about 9:00 p.m., the officers arrived at the provided address and encountered Jamie and Parris' stepfather standing outside the garage trying to locate him. BWC:0:00:30-0:1:10; SH:12. Jaime was getting off the phone with Grace and told the officers that Parris left with his father's truck, which Parris had removed a tracker from that was normally in it. BWC:1:10-1:30; SH:13. She informed the officers "he's never, ever said anything before, but I do know he has a gun." BWC:1:30-1:45. When asked if he took it with him, she said "most likely." *Id.* at 1:40-1:55. She also informed the officer that Parris had been under considerable stress over the past several days. SH:25. The couple asked law enforcement if they wanted to search Parris' room for the firearm, but law enforcement responded that they could not. BWC:1:55-2:20. Jamie further informed law enforcement that Grace

had visited Parris the prior weekend, and they went for a hike on Spring Creek Road and around Hill City and Mystic. *Id.* at 2:20-2:50.

Jamie also explained to law enforcement that she had been at Parris' younger brother's baseball game that night with his stepfather and that Parris was supposed to attend with them. *Id.* at 3:00-3:30. But at about 7:15 p.m., Parris had gotten into an argument over the phone about a dog with someone named Eric, and he did not attend the game. *Id.* at 3:00-30, 5:25-35; SH13. Parris yelled during this argument, and he was not home when they returned from the game. BWC:0:50-1:05; SH:13.

Jamie showed the officers a text that Parris had sent to his father, which had been forwarded to her. BWC:5:45-6:25; SH:14. The text read in full: "Your truck will be in the Hills with me and my dog if we are found. I'm fucking done with life."¹ BWC:5:45-6:25; SH:14. Parris had also sent a text to Grace where he said, "don't waste your time, I'm not worth it." SH:14. Law enforcement put Parris in a missing person's database while his stepfather went to his room and searched for the gun. *Id.* at 15; BWC:15:30-15:40. He did not find the gun, but did find an empty case and the gun's holster that Parris had not taken with him.

¹ Jamie only read aloud to law enforcement the phrase "Your truck will be in the Hills with me and my dog if we are found." BWC:5:45-5:55. But she also showed them her phone screen, and the full text of the message on her screen can be seen in the video footage from Officer Hood's body worn camera. *Id.* at 6:00-6:25. Officer Hood testified at the suppression hearing that the message included, "I'm done with fucking life." SH:14.

BWC:15:30-15:40. Law enforcement began pinging Parris' phone and sent a Deputy to look for him. *Id.* at 34:00-36:00; SH:15.

Parris eventually answered Jamie's calls and told her he would come home but only because of her. SH:15. Concerns arose that if Parris saw the patrol vehicle parked at the home, he would become agitated and flee. BWC:45:00-45:30. Officer Hood therefore parked his car around the block and out of sight. *Id.* Jamie shared these same concerns when she said "Grace said he's on his way home. I'm on the phone with him. I don't want to tell him about the cops, it'll freak him out." *Id.* at 49:40-49:52. The police therefore stood behind a closed garage door as they waited for Parris to return. *Id.* at 1:00:30-35.

Parris parked outside the house, and Jamie went down to the street and spoke with him while law enforcement stayed in the garage. *Id.* at 1:00:30-1:00:50. When she returned to the garage without Parris, she informed them "he doesn't know you're here yet." *Id.* at 1:01:40-50. She also said, "he's really upset with his dad mostly I think." *Id.* at 1:04:00-1:04:12. Parris then walked up to the garage, and the officers approached him. *Id.* at 1:08:30-1:09:00; SH:15. Parris consented to a pat down search, and Officer Hood removed a handgun from Parris that was hanging from his pocket without a holster. BWC:1:08:30-1:09:00; SH:15. Officer Kaleigh Crumb arrived at the scene, and Officer Hood went down the driveway and gave the firearm to her. BWC:1:09:00-

1:09:25. He warned her that he had not checked the chamber, but the weapon was equipped with a loaded magazine. *Id.*; SH:18.

Parris agreed to speak with Officers Hood and McCracken, and did so by the open garage door. BWC:1:09:40-1:10:00. Throughout the interview, Parris had a hunched-over posture and placed his hands in his pockets. *Id.* at 1:09:40-1:20:00. He spoke with a shaky voice as he struggled to hold back his emotions. *Id.*; SH:18. His face clenched with visible tension, and he had an overall demeanor of someone struggling to contain emotional distress. BWC:1:09:40-1:20:00. At times, he became choked-up and teary-eyed. *Id.* at 1:12:40-1:13:05; SH:18.

Parris explained that he had been “just a little bit upset over the way people were treating me. My supposedly best friend, my dad, treating me like shit.” BWC:1:09:45-1:10:00. He described how he was upset about a situation where he was being denied a puppy. *Id.* at 1:10:00-1:10:30. Parris then relayed “my dad’s been lying to me for the last two weeks about the situation, saying one thing then doing another.” *Id.* at 1:10:30-1:10:40. Law enforcement asked, “the situation about puppies?” *Id.* at 1:10:40-1:10:52. Parris responded “well, I mean there’s more to it than that. It’s just the way he’s treated me my whole life.” *Id.* Parris continued “he doesn’t see me as his child or show me that he cares,” and “when he does talk to me it’s ‘how much money have you saved up’ and ‘how’s work going,’ it’s never ‘how are you doing?’” *Id.* at 1:12:30-1:12:45. Parris’ voice became choked-up and he teared-up as

he said, “I just got really frustrated” and “I really just wanted him to feel like shit, I wanted him to feel the way I was feeling.” *Id.* at 1:12:40-1:13:05; SH:18. He told law enforcement “I’ve never actually wanted to kill myself.” BWC:1:13:00-1:13:15.

Parris also communicated that Grace was his ex-girlfriend and the reason he lived in Rapid City was because she broke-up with him about six months prior. *Id.* at 1:13:45-1:14:40. He explained that it frustrated him that she kept visiting and talking to him despite him telling her he wanted to end the relationship permanently. *Id.* at 1:13:45-1:14:40. Parris explained “it just feels like nobody respects me, or what I feel, or what I have to say.” *Id.* at 1:14:30-1:14:40. He described how the last time he saw her was the prior weekend and they went out to dinner and a movie, but she paid for everything because he had not been working as an electrician due to a hand injury. *Id.* at 1:14:45-1:15:30.

After hearing Parris’ description, law enforcement asked “so this was kind of a pile up?” *Id.* at 1:15:35-1:15:45. Parris responded “yeah, the last twenty-four years of my life, just a little bit of everything.” *Id.* When asked why he had a handgun, Parris responded “I carry it with me about everywhere I go.” *Id.* at 1:15:50-1:16:00. Law enforcement replied, “but why didn’t you have it in your holster?” *Id.* Parris answered “I don’t really carry it on my hip because it weighs down my belt. I have my conceal carry, so about anywhere I go I try to conceal it instead of having it open carry. I’m a little guy, and it’s pretty obvious

where I have that on.” *Id.* at 1:16:00-1:16:25. Parris then offered that he smoked fentanyl in the past and at one point overdosed. *Id.* at 1:16:50-1:17:05. Law enforcement asked, “what did you mean when you told your mom that you were turning around but only for her, what was the other option?” *Id.* at 1:17:45-1:18:00. Parris answered, “probably just gonna drive around, probably all night.” *Id.*

The officers asked Parris whether he “considered talking to somebody about all the issues you have going on,” to which Parris replied, “I have.” *Id.* at 1:19:00-1:19:30. But when asked if he had talked to someone or gotten a hold of anyone, he replied he had not. *Id.* Law enforcement then asked, “would you be willing to talk to someone tonight?” *Id.* at 1:19:45-1:19:55. Parris said he would not but that he would “gladly take a phone number and call them and schedule an appointment.” *Id.* at 1:20:00-1:20:10. At that point, Officer Hood informed Parris, “we’re gonna take you in and get you someone to talk to.” *Id.* at 1:20:40-1:20:50. Parris asked why, and said “it’s not needed.” *Id.* at 1:20:50-1:20:55. Officer Hood answered, “because of the statements that you’ve made.” *Id.* Parris became emotional and replied “it was only to get them to understand how I was feeling. Guys, I wouldn’t actually do it.” *Id.* at 1:20:50-1:21:00. He continued “I was trying to get her to leave me alone, and I wanted my dad to understand how I felt . . . he never fucking listens.” *Id.* at 1:21:15-1:21:35. Officer Hood asked, “have you explained that to Grace?” *Id.* at 1:21:35-1:21:45.

Parris responded, “yeah she knows.” *Id.* Officer Hood replied, “so Nate, so I’m going to be taking you, and I’m going to be placing you just on a mental hold, alright.” *Id.* at 1:21:45-1:21:55.

Officer Hood began to place Parris’ hands behind his back to place him into protective custody, to which Parris cried “no!” *Id.* at 1:21:55-1:22:00. Parris tried to rip his arms away from Officer Hood and began yelling as he moved into the garage. *Id.* at 1:21:55-1:22:10. He struggled against Officer Hood’s grip as Officer McCracken and Jamie pleaded with him to stop. *Id.* Officers Crumb and Hood managed to contain him during the struggle and placed handcuffs on him as Officer McCracken continued to command him to stop struggling. *Id.* at 1:22:10-1:22:20. Officer McCracken finally resorted to saying “Nate, you’re gonna get tased. I don’t want to do that — I really don’t want to do that.” *Id.* at 1:22:20-1:22:25. Parris stopped struggling, though he criticized the decision to bring him into custody. *Id.* at 1:22:25-1:22:30.

Before placing him in Officer Crumb’s patrol car to transport him to the hospital, Officers Hood and Crumb searched Parris and removed the contents of his pockets. *Id.* at 1:23:30-1:24:00. They placed several items on the roof of the patrol vehicle. *Id.* Parris sat down in the back of the vehicle and Officer Crumb buckled him in. *Id.* at 1:24:00-1:24:20. Jamie walked down to the patrol vehicle and told law enforcement she did not like that they were taking Parris because he would feel cheated since he came home to his mother but was placed on a mental hold. *Id.*

at 1:26:35-55. Officer McCracken expressed how concerning and unusual it was that Parris took a gun with him but carried it in his pocket with no holster. *Id.* at 1:26:55-1:27:15. Before transporting Parris, Officer Crumb opened a small container they had removed from him, which contained a crystalline substance that field-tested positive for methamphetamine.² *Id.* at 1:27:40-1:27:50; SH:19. Law enforcement transported Parris to the hospital and placed the gun and methamphetamine into evidence. BWC:1:32:00-1:32:45.

ARGUMENTS

I.

THE CIRCUIT COURT DID NOT ERR BY FINDING LAW ENFORCEMENT HAD PROBABLE CAUSE TO PLACE PARRIS ON A MENTAL ILLNESS HOLD.

A. Standard of Review

This Court reviews the issuing court's determination of probable cause with "great deference," and "[is] not empowered to conduct an after-the-fact de novo probable cause determination[.]" *State v. Horse*, 2024 S.D. 4, ¶ 17, 2 N.W.3d 383, 390; *State v. Ostby*, 2020 S.D. 61, ¶ 13, 951 N.W.2d 294, 298 (quoting *State v. Raveydt*s, 2004 S.D. 134, ¶ 8, 691 N.W.2d 290, 293).

B. Analysis

Law enforcement put Parris on a mental illness hold pursuant to SDCL 27A-10-3, which provides, in pertinent part, "a peace officer may

² Lab testing confirmed the substance was methamphetamine. SR:5.

apprehend any person that he has probable cause to believe requires emergency intervention under the criteria in § 27A-10-1” The criteria required by SDCL 27A-10-1 are that the person is “alleged to be severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm to self or others” Thus, law enforcement needed probable cause to believe Parris: 1) required emergency intervention; 2) was alleged to be severely mentally ill; and 3) in such condition that immediate intervention was necessary for the protection from physical harm to himself or others. *Id.*

1) Law Enforcement Had Probable Cause to Believe Parris Required Emergency Intervention

While a mental illness hold is not an arrest, this Court has held that “it makes little difference whether we examine probable cause needed to search or probable cause needed to arrest,” because “[g]enerally, ‘the same quantum of evidence is required’ in either circumstance.” *State v. Smith*, 2014 S.D. 50, ¶ 19, 851 N.W.2d 719, 725 (quoting *State v. Hirning*, 1999 S.D. 53, ¶ 13, 592 N.W.2d 600, 604). Thus, this Court’s considerations regarding probable cause in arrest contexts are applicable in evaluating probable cause in a different scenario such as a mental illness hold. *See id.* at 725.

“Probable cause . . . exists where the facts and circumstances within the . . . officers’ knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a belief by a person of reasonable caution that a suspect has committed or is

committing an offense.” *Id.* (quoting *Hirning*, 1999 S.D. 53, ¶ 13, 592 N.W.2d at 604). “Probable cause deals with probabilities that are not technical but only the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.” *Id.* (quoting *Hirning*, 1999 S.D. 53, ¶ 13, 592 N.W.2d at 604). Probable cause “is a fluid concept—turning on the assessment of probabilities in particular contexts—not readily, or even usefully, reduced to a neat set of legal rules.” *State v. O’Neal*, 2024 S.D. 40, ¶ 16, 9 N.W.3d 728, 737 (quoting *Ostby*, 2020 S.D. 61, ¶ 15, 951 N.W.2d at 299). This Court therefore considers “the totality of the circumstances to decide if there was at least a ‘substantial basis’ for the issuing judge’s finding of probable cause.” *Id.* (quoting *Ostby*, 2020 S.D. 61, ¶ 15, 951 N.W.2d at 299).

The facts and circumstances known to law enforcement gave them probable cause to believe that Parris required emergency intervention, and the circuit court made appropriate findings concluding as much. *See id.*; SH:51-54. Grace, who had lived with Parris for five-to-six years and knew him well, called Officers Hood and McCracken and told them Parris had behaved out of character when he threatened suicide then became unresponsive to her. BWC2:0:30-1:10; SH:51. She feared he would take his own life. BWC2:4:00-5:00. When they arrived at Parris’ home, Jaimie and his stepfather were looking for him but could not locate him. BWC:0:30-1:00. Law enforcement discovered Parris owned

a gun that he probably had with him, and that he took the tracker out of his vehicle so he could not be located. *Id.* at 1:30-1:55; BWC2:2:45-3:00; SH:11,13, 51. They knew from both Jamie and Grace that he had not threatened suicide before, so the behavior was extremely erratic and unusual. BWC:1:30-1:45; BWC2:0:30-1:00.

Law enforcement also learned that Parris had been emotional for days, and that night he had been yelling over the phone about a puppy before disappearing. BWC:0:50-1:05, 3:00-30, 5:25-35; SH:13, 51-52. They saw the texts Parris sent to Grace and his father, which read “don’t waste your time, I’m not worth it,” and “your truck will be in the Hills with me and my dog if we are found. I’m fucking done with life.” BWC:5:45-6:25; SH:14. Another text read “this is where you’ll find your pickup.” SH:51. Parris further expressed suicidal themes when he told his mother he would come home but only for her, as if nothing else in his life was worth turning around for. BWC:1:17:45-1:18:00; *Id.* at 15. The only counter to these red flags were blanket statements such as “guys, I wouldn’t actually do it.” BWC:1:20:50-1:21:00; SH:52-53.

Law enforcement knew Parris had the means to kill himself because he took a gun with a loaded magazine with him. BWC:1:08:30-1:09:30; SH:15, 18, 52. When they encountered him, he exhibited strange conduct by carrying the gun in his pocket with no holster. BWC:1:08:30-1:09:30; SH:15, 52. Parris showed additional concerning behavior during his conversation with police. He had a hunched over

posture, held his hands in his pockets, had tension in his face, spoke with a shaky voice, and oftentimes became emotional and held back tears. BWC:1:09:40-1:20:00; SH:15, 51-52, 54. Parris explained that he had been frustrated over a pile up of his entire life, and that he wanted to make people feel as bad as he felt. BWC:1:10:40-1:10:52, 1:12:40-1:13:05. Taken together, the above established probable cause to believe that Parris required emergency intervention to protect him from the tragic and irreversible decision to end his own life.

The circuit court found that everything outlined above constituted probable cause and made it reasonable for law enforcement to believe Parris required emergency intervention. SH:51-54. It also noted that public outcry would have ensued had law enforcement ignored the red flags and declined to intervene and help. *Id.* at 52. Further, it characterized his vague assertions that he was not actually going to kill himself as “self-serving,” which was supported by the circumstances and the immaturity of his actions. *Id.* at 53. The circuit court found that all indicators pointed to the conclusion that had law enforcement only removed the gun and left Parris alone, he was likely to commit suicide some other way. *Id.* Thus, the circuit court considered the totality of the circumstances of what Parris described as “undergoing a pretty severe mental severe mental health crisis” that night. *Id.* at 51-54; CT:8. Based on law enforcement’s assessment of the probabilities in the context of Parris’ actions and statements, his family and Grace’s

concerns and observations, and Parris' decision to keep his loaded gun tucked in his pocket, it was reasonable for the circuit court to determine law enforcement had probable cause to believe Parris needed emergency intervention.

2) Parris was Alleged to be Severely Mentally Ill

SDCL 27A-10-1 requires that a person held for mental health reasons be “alleged to be severely mentally ill and in such a condition that immediate intervention is necessary for the protection from physical harm to self or others. . . .” Yet a law enforcement officer cannot, and need not, know a formal “severe mental illness” diagnosis exists at the time it determines whether probable cause exists for an emergency intervention. *See State v. Alexander*, 2022 S.D. 31, ¶ 19, 975 N.W.2d 592, 596 (holding an officer's sole determination of the elements of a statute do not suffice to prove that element exists; rather, the circuit court must make the legal determination). The officer here need only show it was “alleged” that the person was suffering from mental illness and in need of immediate intervention. Those qualifications were met here.

Merriam-Webster Dictionary defines “alleged” as something “accused but not proven or convicted.” <https://www.merriam-webster.com/dictionary/alleged> (last visited October 7, 2024). Another definition is “asserted to be true or to exist.” *Id.* The circuit found probable cause that Parris was severely mentally ill because of his

demeanor, he was tearful, his reasons for sending his texts, that he had been under stress for a long time, and that had not taken any steps to addressing his mental health issues. SH:52. For these reasons and those outlined above that were cited by the circuit court in finding probable cause existed for emergency intervention, it was proper for law enforcement to believe Parris' loved ones alleged him to be severely mentally ill at the time he was apprehended. SH:51-54.

There may be a causal connection between suicidality and severe mental illness. This Court has found in several cases that suicidal behavior was linked to clinically diagnosed mental illnesses. *See Dodson v. South Dakota Dept. of Human Services*, 2005 S.D. 91, ¶ 3, 703 N.W.2d 353, 355-56 (where a suicide attempt gave doctors notice of a decedent's bipolar disorder and manic depression); *Rennich-Craig v. Russell*, 2000 S.D. 49, ¶ 6, 609 N.W.2d 123, 125 (where a psychologist's report indicated a habeas corpus petitioner with PTSD and clinical depression attempted suicide); *See also* Nicole Belbin, *Criminal Law-Words Matter: Discouraging Suicide Through the Aid of Legislation*, 44 W. New Eng. L. Rev. 183, n. 17 (2022) ("there is growing evidence that leading causes of suicide include depression and other mental health issues").³ For these reasons, the circuit court properly supported law enforcement's determination that Parris was alleged to be severely mentally ill the night

³ The record does not say whether Parris had ever been diagnosed with clinical depression, but it does show that he never sought treatment to deal with his ongoing issues. BWC:1:19:00-1:19:30.

he was placed on hold.

3) Parris was in Such a Condition that Immediate Intervention was Necessary to Protect Himself or Others from Harm

Law enforcement also needed probable cause to believe Parris was a danger to himself or others to take him in for a mental illness hold.

SDCL 27A-10-1; SDCL 27A-10-3. SDCL 27A-1-1(7)(a) defines “Danger to self” as:

“A reasonable expectation that the person *will inflict serious physical injury upon himself or herself in the near future*, due to a severe mental illness, *as evidenced by* the person's treatment history and *the person's recent acts or omissions which constitute a danger of suicide* or self-inflicted serious physical injury. *Such acts may include a recently expressed threat* if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out”

(emphasis added).

After being upset for several days and yelling at someone on the phone, Parris sent messages threatening to end his life. BWC:5:45-6:25, 3:00-30, 5:25-35; SH:13, 25. He also took affirmative steps towards carrying out that threat by disappearing with a gun and a loaded magazine. BWC:5:45-6:25; SH:13-15, 18. He would not answer calls. BWC2:4:00-5:00. When he finally did, he said the only reason he was turning around was because of his mother, as if had she not asked him to come home he would have shot himself. BWC:1:17:45-1:18:00; SH:15. Thus, on the night of his mental illness hold, Parris performed “recent acts” and made “recently expressed threats” that he would

“inflict serious physical injury upon himself” and constituted a “danger of suicide.” SDCL 27A-1-1(7)(a).

The definition requires that threats and acts be looked at “in the light of its context.” *Id.* When law enforcement interviewed Parris, it became clear that the context of his actions and statements was someone under distress who became weepy at times and struggled to control his emotions. BWC:1:09:40-1:20:00; SH:18. Additional context was that Parris had never done anything of the sort before, so the behavior was extreme. BWC:1:30-1:45; BWC2:0:30-1:00. Thus, if law enforcement would have left Parris at home that night, they would have left someone without professional supervision who had already threatened suicide, taken steps towards committing suicide, and showed impulsive, emotional behavior. There was therefore substantial reason to believe Parris could have ultimately carried out his threat “in the near future.” SDCL 27A-1-1(7)(a).

Parris argues that he did not make explicit suicidal threats, only cries for help, and that to uphold the circuit court’s finding of probable cause would mean “anyone who calls the Suicide Prevention Hotline or confides to a friend the vaguest possible suicidal ideation is subject to an emergency involuntary commitment by law enforcement.” PB:10. This reasoning is flawed for two reasons. First, it downplays that Parris said “your truck will be in the Hills with me and my dog if we are found. I’m fucking done with life.” BWC:6:00-6:25; SH:14. This is not the vaguest

possible suicidal ideation—it is a clear threat that Parris would kill himself in the woods. *Id.* Second, Parris focuses exclusively on the suicidal statements while ignoring his actions in furtherance of carrying out the threats. PB:10. Because SDCL 27A-10-1 requires the individual to be a danger to themselves or others, having or communicating a suicidal thought alone would not be sufficient for a mental illness hold. Additional circumstances, such as Parris disappearing with a gun and clearly stating his intentions, caused SDCL 27A-10-1 to be met.

The circuit court concluded that Parris knowingly dumped the tracker from his truck, told his family he was done with life and where to find the truck, and kept a deadly weapon in his pocket with a loaded magazine. SH:51-53. Had law enforcement not helped him, the circuit court found Parris may have achieved his goal which would have resulted in “public outcry.” *Id.* Under the plain language of SDCL 27A-1-1(7)(a), law enforcement had probable cause to believe Parris was a danger to himself. Parris thus met the definition of “alleged to be severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm to self[.]” SDCL 27A-10-1. Law enforcement had probable cause to place Parris on a mental illness hold, and the circuit court did not err in ruling as much. SH:51-54.

II.

THE CIRCUIT COURT PROPERLY DENIED PARRIS' MOTION TO SUPPRESS THE METHAMPHETAMINE FOUND ON HIM DURING HIS MENTAL ILLNESS HOLD.

A. Standard of Review

This Court “review[s] the circuit court's grant or denial of a motion to suppress involving an alleged violation of a constitutionally protected right under the de novo standard of review.” *State v. Short Bull*, 2019 S.D. 28, ¶ 10, 928 N.W.2d 473, 476 (quoting *State v. Kleven*, 2016 S.D. 80, ¶ 7, 887 N.W.2d 740, 742). “The [circuit] court's findings of fact are reviewed under the clearly erroneous standard, but [this Court] give[s] no deference to the [circuit] court's conclusions of law.” *Id.* (quoting *State v. Fischer*, 2016 S.D. 12, ¶ 10, 875 N.W.2d 40, 44).

B. Analysis

“The Fourth Amendment of the Constitution guarantees citizens protection from unreasonable searches and seizures by government actors.” *Cordell v. Weber*, 2003 S.D. 143, ¶ 12, 673 N.W.2d 49, 53 (citing U.S. Const. amend. IV, S.D. Const., art. VI, § 11). “However, “[a]n individual must have a reasonable expectation of privacy in the place searched or the article seized before the Fourth Amendment will apply.” *Id.* (quoting *State v. Christensen*, 2003 S.D. 64, ¶ 11, 663 N.W.2d 691, 694). “[T]his privacy interest is determined by a two-prong test: (1) whether the defendant has exhibited an actual subjective expectation of

privacy[;] and (2) whether society is willing to honor this expectation as being reasonable.” *Id.* (quoting *State v. Lowther*, 434 N.W.2d 747, 754 (S.D. 1989)). Parris concedes that law enforcement had the right to remove the plastic container containing the methamphetamine from his person, but argues that opening the container was unlawful. PB:12. The issue is therefore whether Parris’ expectation of privacy in the contents of the container removed from his person during a mental illness hold is objectively reasonable. *Cordell*, 2003 S.D. 143, ¶ 12, 673 N.W.2d at 53.

This Court previously examined this issue in a case with similar facts. *Id.* In *Cordell*, this Court looked at the expectation of privacy during a mental health hold in the context of an arson suspect who was deemed to be suicidal during a police interview. *Id.* ¶ 6, 673 N.W.2d at 52. That suspect stayed overnight at the jail, and had his clothing placed into a locker as he wore a jail jumpsuit. *Id.* The suspect’s clothing was sent to a state laboratory for testing during the hold, and the suspect’s counsel moved to suppress the results of that test. *Id.* ¶ 7, 673 N.W.2d at 52. This Court held “a person placed in protective custody, while not having the same diminished expectation of privacy as an arrestee, does have a lesser expectation of privacy than the average citizen on the street.” *Id.* ¶ 17, 673 N.W.2d at 54-55. “Moreover, a limited search under these circumstances is consistent with South Dakota law permitting inventory searches after a person is taken into

custody. This Court has previously recognized that when a person or property is taken into custody ‘a good faith, noninvestigatory inventory search’ is permissible.” *Id.* ¶ 18, 673 N.W.2d at 55 (quoting *State v. Hejhal*, 438 N.W.2d 820, 821 (S.D.1989)). “A so-called inventory search is not an independent legal concept but rather an incidental administrative step.” *Id.* (quoting *Hejhal*, 438 N.W.2d at 821). “This administrative step is supported by a need to (1) safeguard property; (2) insulate the police from groundless claims that property was not protected; and, (3) secure the detention facility by preventing introduction of weapons or contraband.” *Id.* (citing *Illinois v. Lafayette*, 462 U.S. 640, 646 (1983)).

Parris’ expectation of privacy for the contents inside the container was not objectively reasonable, and law enforcement appropriately opened the container to as part of an administrative step to prevent the introduction of weapons or contraband into a secure facility. *See Cordell*, 2003 S.D. 143, ¶¶ 12, 18, 673 N.W.2d at 53, 55. It is not unheard of for “dangerous instrumentalities” such as razor blades or other weapons or drugs to enter secure facilities. *Lafayette*, 462 U.S. at 646. Given Parris’ suicidal behavior, the container could very well have contained razor blades, chemicals, or other dangerous contents that could be used to harm Parris or others. Further, Parris admitted to having used fentanyl and overdosed in the past, so law enforcement faced the potential of the container containing contraband that could be

introduced to the hospital, which it ultimately did. BWC:1:16:50-1:17:05, 1:27:40-1:27:50; SH:19.

Parris argues that law enforcement should have just taken the container to the hospital without opening it because it served no legitimate protective purpose to do so. PB:12. But this argument ignores the potential dangers that could be and were encountered. BWC:1:27:40-1:27:50; SH:19. Opening the container served the administrative purpose of a good faith, non-investigatory search to protect the facility from the introduction of weapons or illegal drugs. *Cordell*, 2003 S.D. 143, ¶¶ 12, 18, 673 N.W.2d at 53, 55.

The diminished expectation of privacy of an individual on a mental illness hold is not at the level of an arrestee, and any search must be non-investigatory. *Id.* at ¶¶ 12, 18, 673 N.W.2d at 53, 55. Here, the search met that definition. Law enforcement did not search Parris' vehicle or his room. BWC:1:55-2:20, 1:23:30-1:24:00. They limited the search to what was taken off his person while preparing to transport him to the hospital. *Id.* The opening of the container performed the administrative function of safeguarding the secure facility from what was found in that limited search. *Cordell*, 2003 S.D. 143, ¶ 18, 673 N.W.2d at 55.

The circuit court found that the officers search was administrative, not investigative. SH:54. It concluded the search functioned to protect the facility, law enforcement, and Parris himself. *Id.* It found that law

enforcement had no idea what the container contained and no ability to guess. *Id.* It noted the container could have contained money that Parris could later claim was taken, razor blades, or something explosive. *Id.* The circuit court also found that the search did not include looking inside Parris' vehicle or house, so it was incidental to protecting him, the facility, and the police. *Id.* All these findings were consistent with this Court's precedent. *Cordell*, 2003 S.D. 143, ¶¶ 12, 18, 673 N.W.2d at 53, 55. For these reasons, the circuit court did not err when it denied Parris' Motion to Suppress. SH:54.

CONCLUSION

Based on the foregoing arguments and authorities, the State requests that Parris' convictions and sentences be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee’s Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee’s Brief contains 5,804 words.

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

Dated this 9th day of October 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 9, 2024, a true and correct copy of Appellee’s Brief in the matters of *State of South Dakota v. Nathan Lee Parris*, Appeal No. 30720, was served electronically through Odyssey File and Serve on Eric Davis at eric@nelsonlawsturgis.com.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30720

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

NATHAN LEE PARRIS,

Defendant and Appellant.

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

THE HONORABLE JANE WIPF PFEIFLE
RETIRED CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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REPLY

A. Standard of Review

The State cites *State v. Horse*, 2024 S.D. 4, ¶ 17, 2 N.W.3d 383, 390 in support of its argument that this Court “reviews the issuing court’s determination of probable cause with ‘great deference,’ and ‘[is] not empowered to conduct an after-the-fact de novo probable cause determination[.]’” *Appellee’s Brief* at 11 (emphasis added). In *Horse*, however, this Court was reviewing a circuit court’s determination of probable cause to support the issuance of a search warrant. *Horse*, 2024 S.D. 4, ¶ 17, 2 N.W.3d at 390. In this case, however, the question is whether Officer Hood had probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1. As a general matter, “determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal.” *State v. Smith*, 2014 S.D. 50, ¶ 14, 851 N.W.2d 719, 724 (citing *State v. Hirning*, 1999 S.D. 53, ¶ 9, 592 N.W.2d 600, 603 (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)); *State v. Rosa*, 2022 S.D. 76, ¶ 12, 983 N.W.2d 562, 566. As a general rule, this Court reviews two elements in probable cause determinations. First, it identifies all relevant facts known to the officer within the relevant period of time and, second, it decides, under a standard of objective reasonableness, whether those facts would give rise to a finding of probable cause. *See, e.g., State v. Chavez*, 2003 S.D. 93, ¶ 48, 668 N.W.2d 89, 102-03.

Officer Hood’s and the circuit court’s determination that probable cause existed to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1 are subject to de novo review by this Court.

B. The circuit court erred when it determined there was probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1.

SDCL § 27A-10-1 sets forth a conjunctive, two-part test before a person can be apprehended and detained in law enforcement custody on an emergency involuntary mental commitment. The criteria set forth in SDCL § 27A-10-1 require probable cause that a person is alleged to be: 1) severely mentally ill and 2) in such condition that immediate intervention is necessary for the protection from physical harm to self or others. If one of these statutory requirements is objectively unsatisfied under the totality of the circumstances, probable cause for the emergency involuntary mental commitment does not exist.

As to the first part of the conjunctive, two-part test set forth in SDCL § 27A-10-1 the term “severe mental illness” is defined by statute and means: 1) a “substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory” which 2) “significantly impairs judgment, behavior, or ability to cope with the basic demands of life.” SDCL § 27A-1-1(24) (emphasis added).

An objective review of the facts available to Officer Hood does not support a finding that probable cause existed to believe Mr. Parris was 1) severely mentally ill and 2) in a condition that immediate intervention was necessary to keep him from physically harming himself or others. Having an exceptionally stressful day (or week), exhibiting “out-of-character” and temporary suicidal ideations in response, and reaching out to family and loved ones for help is not, without more, a “substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory.” *See* SDCL § 27A-1-

1(24). Even if, as the State argues, an inference can be drawn that Mr. Parris's judgment, behavior, or ability to cope with the basic demands of life was briefly and uncharacteristically impaired that evening, such a fact must coexist in conjunction with, and be the direct result of, a "substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory." SDCL § 27A-10-1. The circuit court's opinion, and the State's arguments, that "public outcry would have ensued had law enforcement ignored the red flags and declined to intervene and help" have no place in an objective analysis of whether Mr. Parris met the criteria for involuntary commitment set forth by statute. An equally compelling argument can be made that public outcry could and should ensue if law enforcement adopts a "better-safe-than-sorry" policy to involuntarily commit any person who makes vague suicidal ideations to family members and loved ones in a position to comfort, console, and counsel them. Both the State and the circuit court placed great weight on the fact that Mr. Parris legally possessed a loaded handgun and therefore had the "means to kill himself" that evening. The State argues that Mr. Parris "took affirmative steps towards carrying out that threat by disappearing with a gun and a loaded magazine." *Appellee's Brief* at 18. However, as the State acknowledges, Mr. Parris, Mr. Parris's mother, and Mr. Parris's ex-girlfriend all told law enforcement that Mr. Parris lawfully carries that firearm routinely. The State's argument that "had law enforcement only removed the gun and left [Mr.] Parris alone, he was likely to commit suicide some other way" is simply not supported by an objective review of the facts.

The State argues "it was proper for law enforcement to believe [Mr.] Parris' loved ones alleged him to be severely mentally ill at the time he was apprehended." *Appellee's*

Brief at 17 (emphasis added). Mr. Parris does not agree that an objective review of the facts available to Officer Hood can lead to the conclusion that Mr. Parris's loved ones alleged him to be "severely mentally ill" at any point that evening and certainly not at the time he was apprehended. The only "loved one" present at the time Mr. Parris was involuntarily committed while he was safely at home with his mother was, in fact, Mr. Parris's mother, who objected to Officer Hood's decision to involuntarily commit Mr. Parris. *State's Exhibit 1* at 1:26:38-1:27:38.

The State also takes issue with Mr. Parris's argument that Officer Hood's and the circuit court's findings of probable cause would mean "anyone who calls the Suicide Prevention Hotline or confides to a friend the vaguest possible suicidal ideation is subject to an emergency involuntary commitment by law enforcement." *Appellee's Brief* at 19. The State argues this reasoning is flawed because "it downplays that [Mr.] Parris said "your truck will be in the Hills with me and my dog if we are found. I'm fucking done with life." *Id.* The State argues this statement is "a clear threat that Parris would kill himself in the woods." *Id.* at 20. Perhaps if, under different facts, law enforcement had located Mr. Parris sitting in his truck in the woods, hysterical, with a loaded gun pointed to his head, such would be cause to believe Mr. Parris was, at that moment 1) severely mentally ill and 2) in such condition that immediate intervention was necessary for the protection from physical harm to himself under SDCL § 27A-10-1. But, those are not the facts of this case. Mr. Parris, with no knowledge that law enforcement was even aware of his situation, came home voluntarily to his mother after having expressed cries for help to loved ones, which were successful. Even assuming, for the sake of argument, that

probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1 existed at any point that evening, surely such probable cause ceased to exist once Mr. Parris was safely at home with his mother. An objective view of the totality of the facts and circumstances available to Officer Hood does not support the conclusion that Mr. Parris was 1) severely mentally ill and 2) in such condition that immediate intervention was necessary for the protection from physical harm to himself at the time he was apprehended and committed.

C. Even if probable cause existed to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1, the search of the closed container removed from Mr. Parris's person after he was in protective custody was not a permissible good-faith non-investigatory search.

The State argues that Mr. “Parris concedes that law enforcement had the right to remove the plastic container containing the methamphetamine from his person, but argues that opening the container was unlawful.” *Appellee's Brief* at 22. This is a correct representation of Mr. Parris's argument if this Court determines that, under the totality of the circumstances, Officer Hood possessed probable cause to believe that Mr. Parris was 1) severely mentally ill and 2) in such condition that immediate intervention was necessary for the protection from physical harm to himself at the time he was apprehended and committed. However, if this Court determines Officer Hood lacked probable cause to involuntarily commit Mr. Parris, then law enforcement had no authority to remove the plastic container from Mr. Parris's person because law enforcement had no authority to take Mr. Parris into protective custody. Mr. Parris and the State each acknowledge that, when a person is lawfully taken into law enforcement custody, a good-

faith noninvestigatory inventory search is supported by a need to (1) safeguard property; (2) insulate the police from groundless claims that property was not protected; and, (3) secure the detention facility by preventing introduction of weapons or contraband.”

Appellee’s Brief at 22 (citing *Cordell v. Weber*, 2003 S.D. 143, ¶ 12, 673 N.W.2d 49, 53).

The State argues that “[t]he issue is therefore whether [Mr.] Parris’ expectation of privacy in the contents of the container removed from his person during a mental illness hold is objectively reasonable.” *Appellee’s Brief* at 22. This was the issue in *Cordell*, but Mr.

Parris does not agree that this is the issue under the facts of this case. In *Cordell*, Cordell arrived at the police station wearing his clothing and was required to remove that clothing for a legitimate custodial purpose. *Cordell*, 2003 S.D. 143, ¶ 20, 673 N.W.2d at 55.

Cordell’s clothing was subsequently placed in a locker by jail personnel. *Id.* This Court held that “the initial seizure of Cordell’s clothing was lawful because it was a reasonable administrative step following his detention.” *Id.* Having determined that the initial seizure of Cordell’s clothing was lawful, this Court turned to the secondary question of “whether the police could extend the seizure of the clothing to a search for chemical traces by having the clothing sent to the state crime lab for testing” and held “a detainee’s items, which are seized pursuant to a protective inventory search and are already in the possession of the police, may be the subject of further search and testing if the extended search is supported by probable cause to associate the property with criminal activity.”

Cordell, 2003 S.D. 143, ¶ 21, 673 N.W.2d at 56 (emphasis added).

This case is materially distinguishable from *Cordell* for two reasons. First, Cordell arrived at the police station wearing his clothing. Requiring Cordell to remove

that clothing and change into a jail jumpsuit pursuant to jail policy “was a reasonable administrative step following his detention.” *Cordell*, 2003 S.D. 143, ¶¶ 6, 20. At that time, Cordell’s clothing was already lawfully in the possession of law enforcement. In this case, however, Mr. Parris was searched and the plastic container removed from his person prior to his being placed in law enforcement custody. At that time, the plastic container was not lawfully in the possession of law enforcement; it was just removed from Mr. Parris’s person and placed on the top of a law enforcement vehicle before Mr. Parris was placed inside. Unlike Cordell, Mr. Parris did not bring the plastic container to the hospital. If he had done so, Mr. Parris concedes it would have been appropriate for law enforcement to perform a noninvestigatory inventory search of the plastic container prior to entering the hospital. The State argues that “law enforcement appropriately opened the container to [sic] as part of an administrative step to prevent the introduction of weapons or contraband into a secure facility.” *Appellee’s Brief* at 23. The State claims Mr. Parris argues that “law enforcement should have just taken the container to the hospital without opening it because it served no legitimate protective purpose to do so.” *Appellee’s Brief* at 24 (citing *Appellant’s Brief* at 12). Mr. Parris made no such argument in his opening brief and makes no such argument now. The question is, why did law enforcement think the plastic container needed to go to the hospital at all? The circuit court’s conclusion that the search of that container was administrative and not investigatory rests on the faulty premise that there was some reason this plastic container must accompany Mr. Parris to the hospital. Mr. Parris did not request to take this container with him. Mr. Parris was home when he was apprehended, and law

enforcement allowed Mr. Parris to leave other items of personal property on his person when he was apprehended at home. *State's Exhibit 1* at 1:23:15-1:24:00. Law enforcement could have asked Mr. Parris whether he wanted to leave any items of personal property at home (or take any items (such as an overnight bag) from home with him to the hospital) but did not. Instead, Mr. Parris was treated like a common criminal, searched, handcuffed, and imprisoned overnight unnecessarily and against his will.

The second reason this case is materially distinguishable from *Cordell* is that, even if the plastic container had been seized pursuant to a protective inventory search and already in the lawful possession of law enforcement, this Court held in *Cordell* that such property “may be the subject of further search and testing if the extended search is supported by probable cause to associate the property with criminal activity.” *Cordell*, 2003 S.D. 143, ¶ 21, 673 N.W.2d at 56 (emphasis added). Unlike the clothing in *Cordell*, in this case, law enforcement had no probable cause to believe the plastic container contained contraband.

CONCLUSION

Surely the facts that Mr. Parris was released immediately upon being evaluated by a qualified mental health professional with no diagnosis and no treatment plan and continues to be alive today are evidence that law-enforcement overreacted in this case. This case should not set the standard for how South Dakota law enforcement officers approach involuntary mental health commitments. Considering the facts of that evening, Mr. Parris’s needs would have been better served by allowing him to stay at home under

the care and supervision of his mother instead of alone in a hospital bed in the mental ward waiting to see a qualified mental health professional at some point the next day.

Officer Hood lacked probable cause to believe Mr. Parris required emergency intervention under the criteria set forth in SDCL § 27A-10-1. Even if probable cause existed, law enforcement's search of the white plastic container and its contents once law enforcement's legitimate protective purpose was satisfied was without probable cause and in violation of Mr. Parris's rights to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the United States Constitution and Article V, Section 11 of the South Dakota Constitution. The circuit court's order denying Mr. Parris's motion to suppress and his judgment of conviction should be vacated and the case remanded to circuit court with instructions to grant Mr. Parris's motion to suppress.

Dated this 8th day of November, 2024.

Respectfully submitted,

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Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 10 pages in length. The word processor used to prepare this brief indicates there are 3,071 words in the body of this brief.

Dated this 8th day of November, 2024.

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/s/ Eric Davis
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of November, 2024, he filed a true and correct copy of the foregoing Appellant’s Reply Brief in the Office of the Clerk of the South Dakota Supreme Court and served true and correct copies of the same upon the following individuals or entities by way of Odyssey File and Serve:

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