IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

APPELLANT'S BRIEF
MACKENZIE ANTELOPE

STATE OF SOUTH DAKOTA
Plaintiff/Appellee

vs.

MACKENZIE ANTELOPE
Defendant/Appellant

DOCKET #31041

APPEAL FROM THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
Presiding Circuit Judge

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PRELIMINARY STATEMENT

The Appellant herein shall be referred to as "MacKenzie." The Appellee shall be referred to herein as "State." The victims of the crimes will be referred to herein by their first names as indicated in the body of this brief. References to the Register of Actions shall be by "RA" followed by the page number thereof. References to the initial appearance hearing transcript shall be by "IA" followed by the page number of the transcript and the line number, if necessary. References to the arraignment hearing transcript shall be by "AA" followed by the page number of the transcript and the line number, if necessary. References to motion hearing transcript shall be by "MH" followed by the date of the hearing, the page number of the transcript, and line number, if necessary. References to the change of plea hearing transcript shall be by "COP" followed by the page number of the transcript and the line number, if necessary. References to the sentencing hearing transcript shall be by "SH" followed by the page number of the transcript and the line number, if necessary. References to exhibits shall be by "Exh" followed by the number or letter of the exhibit.

JURISDICTIONAL STATEMENT

Mackenzie was charged by Indictment with Count 1: Second Degree Murder; Count 2: Manslaughter in the First Degree; Count 3: Attempted First Degree Murder; and Count 4: Aggravated Assault. *RA, p. 11.* Pursuant to a plea agreement, MacKenzie entered a plea of guilty to one count of manslaughter in the first degree and all other charges in this case and all charges in another pending file were dismissed. *COP, pp. 4-10.* MacKenzie was sentenced on February 28, 2025. *RA, pp. 110, 117; SH, p. 1.* MacKenzie was sentenced to 85 years in the South Dakota State Penitentiary with 35 years suspended. *SH, p. 61; RA, p. 484.* Notice of Appeal was filed March 28, 2025.

RA, p. 503. This Court has jurisdiction over this matter pursuant to SDCL 23A-32-2, 23A-32-14, and 15-26A-3.

STATEMENT OF THE LEGAL ISSUES

ISSUE 1: WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED THE DEFENDANT.

Trial court holding: No.

Relevant court cases:

1. *State v. Bear Robe*, 2024 S.D. 77, 15 N.W.3rd 460
2. *State v. Beckley*, 2007 SD 122, 742 NW2d 841
3. *State v. Caffee*, 2023 S.D. 51, 996 N.W.2d 351.
4. *State v. Mitchell*, 2021 S.D. 46, 963 N.W.2d 326

Relevant statutes or authority:

Minnesota, North Dakota, Nebraska, Iowa homicide statutes

ISSUE 2: WHETHER THE TRIAL COURT'S SENTENCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

Trial court holding: No.

Relevant court cases:

1. *State v. Bear Robe*, 2024 S.D. 77, 15 N.W.3rd 460
2. *State v. Beckley*, 2007 SD 122, 742 NW2d 841
3. *State v. Caffee*, 2023 S.D. 51, 996 N.W.2d 351.
4. *State v. Mitchell*, 2021 S.D. 46, 963 N.W.2d 326

Relevant statutes or authority:

Minnesota, North Dakota, Nebraska, Iowa homicide statutes

STATEMENT OF THE CASE

Mackenzie was charged by Indictment with Count 1: Second Degree Murder; Count 2: Manslaughter in the First Degree; Count 3: Attempted First Degree Murder; and Count 4: Aggravated Assault. *RA, p. 11.* MacKenzie initially pled not guilty to all counts and a jury trial was scheduled. *AA, pp. 10-17.* The parties reached a plea agreement and the agreement was reduced to writing. *RA, p. 479.* MacKenzie entered a

plea of guilty to one count of manslaughter in the first degree and all other charges in this case and all charges in another pending file were dismissed. *COP, pp. 4-10.* A presentence investigation was ordered and completed and MacKenzie was sentenced on February 28, 2025. *RA, pp. 110, 117; SH, p. 1.* MacKenzie was sentenced to 85 years in the South Dakota State Penitentiary with 35 years suspended. *SH, p. 61; RA, p. 484.* MacKenzie asserts the trial court abused its discretion when it sentenced him, that the sentence constitutes cruel and unusual punishment, and that his case should be remanded for re-sentencing. Notice of Appeal was filed March 28, 2025. *RA, p.503.*

STATEMENT OF THE FACTS

MacKenzie turned 18 years old on March 31, 2024. *RA, p. 1.* Fifty-one days later on May 21, 2024, he was involved in the events that lead to his criminal conviction. *RA, pp. 1, 11, 431.* The events which lead to MacKenzie being charged with the homicide charges occurred in a hotel room in Lake Andes, South Dakota. *RA, p. 1.* MacKenzie and others were at the hotel room and had been drinking heavily all day long and using illegal drugs. *COP, pp. 10-12; SH, pp. 30-33; RA, pp. 1, 431.* At some point in time in the hotel room, Quinlan Ream (Quinlan), Dylan Ouellette (Dylan), and MacKenzie had an encounter. *SH, pp. 30-33; RA, p. 1.* An eyewitness to the event, Richard Gunhammer (Richard), was in the room with the victims and MacKenzie. *Id.* Richard had been drinking and using drugs the same as the other individuals. *Id.* Dylan locked the hotel room door and blocked the exit for both Richard and MacKenzie. *SH, pp. 30-33; RA p. 1.* Dylan had been hitting Richard and MacKenzie during the encounter in the hotel room. *Id.* Richard and MacKenzie asserted that either Dylan or Quinlan had a firearm when the incident transpired, but during law enforcement's investigation of the incident, they failed to ask Richard, or any other witnesses, whether or not Dylan or Quinlan had a firearm that night. *SH, pp. 30-33.* Richard indicated that although Dylan wanted to fight

with MacKenzie and attempted to antagonize MacKenzie, MacKenzie refused to engage Dylan in any fighting behavior. *Id.* Other witnesses reported a different story to law enforcement and reported that MacKenzie had a knife and threatened to poke or stab anyone who attacked him. *RA, p. 1.* According to Richard, MacKenzie attempted to calm Dylan and tried to keep him from coming any closer to him, but Dylan was in MacKenzie's face. *SH, pp. 30-33.* Law enforcement reports indicate that at various times MacKenzie had the knife in his hand and threatened Dylan and Quinlan with same. *RA, p. 1; SH, pp. 30-33.* Richard indicated that he observed the events while cowering in the corner of the hotel room. *SH, pp. 30-33.* Dylan was a 33 year-old male, drunk and high, and was aggressive toward MacKenzie. *Id.* Quinlan was a 22 year-old male, drunk and high, and began attacking MacKenzie from behind when Dylan was confronting MacKenzie. *SH, pp. 30-33.* MacKenzie reacted to both Dylan and Quinlan and began stabbing uncontrollably at Quinlan and Dylan. *Id.* Quinlan died as a result of multiple stab wounds and Dylan was severely injured. *Id.* MacKenzie had opportunities to leave the premises before the confrontation occurred, but failed to do so. *SH, pp. 30-33; RA, pp. 1, 117; Exhs. A and B.* MacKenzie was not forthcoming with law enforcement officers when they confronted him about the incidents that lead to Quinlan's death and Dylan's injuries. *Id.* MacKenzie discarded the knife used in the incident, refused to provide his shoes to law enforcement when asked, fled the scene of the crime, and did not call for emergency services after he inflicted the knife wounds to Quinlan and Dylan. *RA, p. 117; Exhs. A and B.* MacKenzie was willing to plea to the first degree manslaughter charge because of the circumstances associated with the death of Quinlan and because he felt he went too far in defending himself from Dylan and Quinlan. *SH, pp. 30-33.*

Prior to the plea, MacKenzie was evaluated by Dr. Clay Pavlis. *RA, p. 60; SH pp. 6-7; Exhs. A and B.* Dr. Pavlis diagnosed MacKenzie with Attention Deficit Hyperactivity Disorder per history; Adjustment Disorder, with anxious Distress; and Antisocial Personality Disorder Traits. *Exhs. A and B.* Dr. Pavlis' reports indicate that MacKenzie was premature at birth and his biological mother used alcohol and drugs extensively while she was pregnant with MacKenzie and thereafter. *Id.* MacKenzie's home life while growing up was devoid of any male role model or supervision. *SH, pp. 27-30; RA, p. 431.* When MacKenzie was approximately 3 years old, his mother abandoned him and he began living with his grandmother. *Exhs. A and B.* MacKenzie's grandmother reported that when she got custody of him, he was like an animal, he had fended for himself for food and water, had limited language skills, was not able to speak at all until age 5, was not toilet trained, drank from the toilet bowl, and ate with his hands instead of utensils. *Exhs. A and B.* MacKenzie, Dr. Pavlis noted, suffered from behavioral problems from an early age, frequently fought with his peers, and had "melt downs" at school and home. *Id.* MacKenzie attended pre-school two years, repeated Kindergarten twice, and repeated 1st grade once. *Id.* In 2009 MacKenzie received a special education evaluation and qualified for special education services under the category Developmental Delay. *Id.* Shortly before MacKenzie's 6th birthday, the disability category was changed to Specific Learning Disability. *Id.* MacKenzie did not graduate from high school, is very poorly educated and may function at a low elementary grade level. *SH, p. 33; RA, pp. 34, 39, and 45.* During the proceedings at the trial court level, MacKenzie constantly and repeatedly looked at his counsel for assistance to answer even the simplest of the trial court's questions. *Id.*

A presentence investigation report (PSI) was ordered and prepared by the Unified Judicial System Court Services Officer for Charles Mix County. *RA, pp. 110, 117.* The

report is part of the appellate record, but is sealed. *Id.* The PSI included all relevant information about MacKenzie, the reports and investigation documents, and Dr. Pavlis' reports. The trial court had access to and considered the PSI. MacKenzie filed a Sentencing Memorandum prior to sentencing and included as part of that memorandum a survey of sentences for persons convicted of the crime of first degree manslaughter in South Dakota over the past 10 years. *RA, p. 431.* The survey of sentences and Dr. Pavlis' reports were received into evidence at MacKenzie's sentencing. *SH, pp. 6-7; Exhs A and B.*

ARGUMENT

A. Standard of Review.

The standard of review for trial court sentencing decisions is abuse of discretion. *State v. Bear Robe*, 2024 S.D. 77, ¶11, 15 N.W.3rd 460. An "... abuse of discretion is 'a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.'" *Id.*, at ¶11. The standard of review for whether a trial court's sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment is de novo. *State v. Caffee*, 2023 S.D. 51, ¶16, 996 N.W.2d 351.

B. Discussion of the Issues.

ISSUE 1: WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED THE DEFENDANT.

A sentencing Court possesses "... broad discretion 'within constitutional and statutory limits' to determine 'the extent and kind of punishment to be imposed'" in any given criminal case. *State v. Mitchell*, 2021 S.D. 46, ¶28, 963 N.W.2d 326. A sentencing Court is obligated to consider many factors when fashioning an appropriate sentence, but this Court has made it abundantly clear that "... [i]t is the duty of a sentencing court to

insure that the punishment 'fit[s] the offender and not merely the crime.' ..." *State v. Beckley*, 2007 SD 122, ¶32, 742 NW2d 841. Furthermore, this Court has directed that "...[t]he primary criterion in sentencing is good order and protection of the public and society, and all other factors must be subservient to that end." *Id.*, at ¶32. In order to comply with the above duties and impose an appropriate sentence in this case, the trial court was obligated to acquire a thorough and complete knowledge and acquaintance with the character and history of MacKenzie. *Id.*, at ¶32. The sentencing court was required to "... consider the traditional sentencing factors of retribution, deterrence - both individual and general - rehabilitation, and incapacitation without regarding any single factor as preeminent over the others." *Mitchell*, 2021 S.D. at 46, ¶28. As a general rule, however, the sentencing court should always be mindful that all sentencing factors and considerations are "... to be weighed 'on a case-by-case basis' depending on the circumstances of the particular case.'" *Id.*, at ¶28. The Supreme Court has directed that

> ... [i]n the exercise of its solemn sentencing role, circuit courts must look at both the person before them and the nature and impact of the offense. As to the former, we have frequently held that 'the sentencing court should acquire a thorough acquaintance with the character and history of the [person] before it.' ... 'This requires studying 'a defendant's general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.'" (Citations omitted)

Id., at ¶29. Further direction from the Supreme Court requires sentencing courts to "... consider sentencing evidence tending to mitigate or aggravate the severity of a defendant's conduct and its impact on others. ... Sentencing courts are often required, in this regard, to accurately assess the "true nature of the offense." (Citations omitted). *Id.*, at ¶30. Although there are guiding factors to consider, the sentencing court may also "... consider a wide range of information from a variety of sources." *Id.*, at ¶31. Sentencing courts are permitted to consider "... conduct that was uncharged or served as

the basis for charges that later resulted in a dismissal or acquittal as long as the State proves the conduct by a preponderance of the evidence." *Id.*, at ¶31. Additionally, a trial court "... can accept [a] reduced manslaughter plea as provident and still rely upon additional evidence adduced at sentencing to determine the actual level of culpability in order to formulate an appropriate sentence." *State v. Bear Robe*, 2024 S.D. 77, ¶13, 15 N.W.3d 460.

The trial court had all the information provided in the PSI, was knowledgeable about MacKenzie's prior history, and had all the tools necessary to formulate a sentence in this case. It is MacKenzie's argument that the trial court abused its discretion by failing to fully and properly consider his personal and environmental facts such as his age, mental capacity, educational level, family life, upbringing, environment during his youth, and evidence of self defense. The trial court considered MacKenzie's age from the literal standpoint as opposed to the reality of the situation. While MacKenzie was 18 years old at the time of the criminal events, he functionally was at about the low elementary educational level. Dr. Pavlis noted the horrid circumstances in which MacKenzie was raised prior to being placed with his grandmother. MacKenzie was clearly dysfunctional in school and unable to relate to his peers. He was highly susceptible to escaping reality by drinking and using illegal drugs. MacKenzie was exceptionally irresponsible and failed all aspects of the norms and expectations of society for a young man his age. In court, MacKenzie had extreme difficulty following and answering the trial court's questions. Although Dr. Pavlis passed MacKenzie on the competency and insanity evaluations, it was clear from his report that MacKenzie was not a functioning adult. MacKenzie's dysfunctional life caused him to rely upon alcohol and drugs and the people who provided same for his daily sustenance and existence. Clearly, MacKenzie functioned at a very low level mentally, although he was an adult by virtue of

his age. These are the same deficiencies and inherent aliments that were at the center of the United State's Supreme Court decision of *Roper v. Simmons* when the court held it was cruel and unusual punishment to apply the death penalty to a juvenile offender even though his conviction was when he was an adult. 543 U.S 551, 125 S.Ct. 1183, 161 L.Ed.2d (2005). While MacKenzie was not under the age of 18 and was formally an adult when he committed the offense, his functional level was much lower and the equivalent of a 12-13 year-old youth which makes the *Roper* decision applicable and persuasive here. Mentally, emotionally, and psychologically MacKenzie was a juvenile even though his age qualified him as an adult. The elements and factors cited in *Roper* that persuaded the United State's Supreme Court to prohibit the execution of a juvenile apply here even though this is not a death penalty case. See, *Roper*, 543 U.S. at 569. MacKenzie lacked the maturity of a young adult raised in a reasonably decent home. He had an underdeveloped sense of responsibility, he was impetuous and engaged in ill-considered actions and decisions. MacKenzie was prone to reckless behavior and failed to appreciate the consequences of his actions. He was highly susceptible to negative influences and pressure to engage in bad behavior, especially with the older drug users he was associating with when the criminal conduct occurred. MacKenzie, like the juvenile offender, exhibited substantially less control over his environments and did not have the sufficient mental capacity to extricate himself from criminogenic settings. Given MacKenzie's failings, mentally, socially, psychologically, and otherwise, the trial court should have given him more consideration and exercise more leniency than it would when sentencing an adult who had engaged in the same type of conduct, and its failure to do so was an abuse of discretion.

Recently, this Court considered a case similar in nature to the case at bar in *State v. Mitchell*. 2021 S.D. at 46. In *Mitchell* the defendant plead guilty to first degree

manslaughter a violation of SDCL 22-16-15(4) which is the unnecessary killing of another person while resisting the other person's criminal actions. *Id.,* at ¶¶11, 37. This plea implicated an "imperfect self-defense" theory as a mitigating factor at sentencing. *Id.*, at ¶37. The trial court, after considering the presentence investigation report and all factors required by the Supreme Court, imposed a 124 year sentence to the penitentiary with no time suspended, but credited Mitchell with 214 days served while awaiting process on his case. *Id.*, at ¶25 The Supreme Court reversed the sentence after analyzing and discussing the sentencing criteria required by the governing law. *Id.*, at 42. The basic reason for the reversal in *Mitchell* appeared to be that the trial court failed to adequately consider the impact of an imperfect self-defense claim and the mitigating effect it had on Mitchell's culpability in his crime. *Id.*, at ¶¶37-42. MacKenzie asserts that *Mitchell* is persuasive in his case because, although he did not plead to SDCL 22-16-15(4), he asserted an imperfect self-defense as a mitigating factor at sentencing and, therefore, the analysis is applicable to his case. MacKenzie's crime was a violation of SDCL 22-16-1(2) and 22-16-15(3). MacKenzie admitted that he believed he acted in self-defense, but that he went too far in his actions to defend himself and thereby committed the crime of first degree manslaughter as charged in the Indictment. MacKenzie believes the trial court did not place sufficient weight on the imperfect self-defense mitigating factor in his case and placed all culpability for the crime on his shoulders, when Quinlan and Dylan both should have been held culpable for certain aspects of the criminal event. Specifically, Quinlan and Dylan had locked the door to the hotel room and prohibited MacKenzie from leaving. MacKenzie had been backed into a corner in the room by Dylan. Dylan and Quinlan were antagonizing MacKenzie and had been aggressive toward him. Dylan began fighting with MacKenzie, and Quinlan jumped on MacKenzie's back. All involved were highly intoxicated on alcohol and drugs. Both

Dylan and Quinlan were much older than MacKenzie. The inducement for MacKenzie to plead to the first degree manslaughter charge was that he could not recall all the specifics of the evening due to his intoxication, he deceived law enforcement, hid the knife, failed to call emergency services, and fled the scene. Moreover, Richard as the only eyewitness to the events, had credibility issues which could have proven problematic at trial. If MacKenzie had proceeded to trial, the top count in the Indictment was second degree murder. If he had been convicted of second degree murder, he would have faced a mandatory life sentence without possibility of parole. *SDCL 22-16-12 and 22-6-1(2).* The trial court should have placed more emphasis on the drug and alcohol infused environment and the shared culpability in the crime as mitigating factors in MacKenzie's sentencing and its failure to do so was an abuse of discretion.

ISSUE 2: WHETHER THE TRIAL COURT'S SENTENCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

"The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment ..." and "... [t]his restriction applies to the states through the Fourteenth Amendment ..." to the United States Constitution. *Caffee*, 2023 S.D. at 51, ¶16. To determine whether the trial court's sentence in this case violates the Eighth Amendment, this Court must first determine "... whether the sentence is 'grossly disproportionate to the corresponding offense ...'" *Id.*, at ¶17. In order for this Court to accomplish the aforesaid task, it must "... first compare the gravity of the offense – i.e., 'the offense's relative position on the spectrum of all criminality' – to the harshness of the penalty – i.e., 'the penalty's relative position on the spectrum of all permitted punishments.'" *Id.*, at ¶17. In the event the penalty "... does appear 'to be grossly disproportionate to the gravity of the offense, then ... [the Supreme Court] ... will compare the sentence to those 'imposed on other criminals in the same jurisdiction' as

well as those imposed for commission of the same crime in other jurisdictions.'" *Id.*, at ¶17.

1. Gravity of the Offense.

MacKenzie was convicted of first degree manslaughter in that "... without any design to effect death, but by means of a dangerous weapon, to wit: a knife, did cause the death of a human being, to wit: Quinlan Ream." *RA, p. 11; SDCL 22-16-15(3).* MacKenzie understands that homicide is recognized as "... 'the highest crime against the law of nature, that man is capable of committing' ..." *Caffee*, 2023 S.D. at 51, ¶18. The consequences of taking another human life are "... incalculable.' ..." *Id.*, at ¶18. Clearly and without question first degree manslaughter in and of itself is a grave offense, but, as this court recognizes, "... [i]n addition to considering the gravity of the offense in the abstract, 'the circumstances of the crime of conviction affect the gravity of the offense ...'" as well. *Id.*, at ¶19. It is incumbent upon this Court when it considers the "... threshold comparison between the crime and the sentence, ... [to] ... also consider other conduct relevant to the crime.'" *Id.*, at ¶19.

As argued *supra*, the events which transpired on the night that Quinlan was killed are central to the issue herein. MacKenzie was part of a lengthy and extensive drinking and drug-fueled evening that included both Quinlan and Dylan. Quinlan and Dylan were much older than MacKenzie. The actions by Quinlan and Dylan were aggressive and involved intimidation activities. Dylan locked the door to the hotel room and blocked MacKenzie's exit. MacKenzie was backed into a corner in the room, and when Dylan began to assault him, he fought back with a knife. Quinlan became involved in the fracas and MacKenzie lost control and killed Quinlan and severely injured Dylan. A sober examination of the events after-the-fact leads one to quickly conclude that the outcome was or should have been expected and predictable. However, viewing the circumstances

through MacKenzie's eyes at the time of the events, based upon his upbringing and life experiences, and seeing what he saw and experiencing what he experienced, leads to a different conclusion. MacKenzie did not act out of deliberation and anger, but reacted out of fear and in the same capacity as his mentality permitted. MacKenzie fended for himself since, practically, birth. His instinct was aggression and self preservation as that is all he has ever known. MacKenzie was a dysfunctional adult with a 12-13 year-old mentality in an 18 year-old body. His development was severely dwarfed and he did not have the ability to engage in rational thought due to his poor life experiences and the fact that he had consumed large amounts of alcohol and drugs. MacKenzie verily believed that he acted in self-defense, but in hind-sight and after a thorough examination of the facts and evidence, he realized that he went too far. When these events are examined, it mitigates the gravity of the offense and, although not excusable, it does provide an explanation. In *Mitchell, supra*, shared culpability resulted in a reversal of a 124 year penitentiary sentence for a first degree manslaughter conviction. *Mitchell*, 2021 S.D. at 46. The central facts in this case are that MacKenzie did not act alone in the events which lead to Quinlan's death. The culpability for Quinlan's death and Dylan's injury were shared to a certain degree by Quinlan and Dylan. The shared responsibility for the events mitigates the gravity of the crime and warrants a reversal.

The trial court here imposed an 85 year sentence with 35 years suspended which results in MacKenzie serving 50 years. In light of the parole statute, MacKenzie may not qualify for parole and will serve all of his active sentence. *SDCL 24-15A-32.* Consequently, MacKenzie will be 69 years of age when he is released from prison. Essentially, this is a life sentence for MacKenzie. At sentencing MacKenzie provided the trial court with a sentencing survey for first degree manslaughter cases in South Dakota over the past 10 years. *Exh. C.* There were approximately 122 cases in the sentencing

survey where a sentence was imposed for the crime of first degree manslaughter. The sentences for the crime of first degree manslaughter vary in length from no prison sentence to a prison sentence of 999 years. The most common sentence was 40 years. In 55 of the 122 cases (45%) the courts imposed a suspended sentence of some sort. It is not possible from the survey to ascertain the nature of each case and the particular circumstances associated therewith, so the reasoning behind the sentence cannot be determined. It is apparent, however, from the survey that many of the cases involved multiple offenses and/or an habitual offender information which one can conclude played a significant role in the sentencing court's mind. The cases noted in the survey illustrate the wide variety of sentences fashioned by the courts in South Dakota in an effort to create and impose a fair, impartial, and judicious sentence. The courts clearly attempted to design a sentence which fit not only the crime, but also the person who committed the crime and to adhere to the sentencing criteria established by this Court. This is evident from the enormous variation in sentences from 0 years in the penitentiary to 999. Here the trial court exceeded the average sentence, the actual sentence to be served, by 10 years for an offender who was 18 years old at the time of the offense and 19 years old when sentenced. The trial court imposed a harsh, long sentence for the actions of a dysfunctional 12-13 year-old in an 18 year-old body who had no guidance or direction in his life, who shunned any educational opportunities due to his lack of normalcy in life, and acted out of fear and drug and alcohol induced delusion. Given the circumstances of this case, the penalty of MacKenzie's crime appears to be grossly disproportionate to the gravity of the offense. *Caffee*, 2023 S.D. 51, at ¶17.

2. Sentences in South Dakota and Other Jurisdictions.

When the penalty appears to be "... grossly disproportionate to the gravity of the offense, then ..." this Court is required to "... compare the sentence to those 'imposed on

other criminals in the same jurisdiction' as well as those imposed for commission of the same crime in other jurisdictions.'" *Caffee*, 2023 S.D. at 51, ¶17. As argued *supra*, the evidence at sentencing included a sentencing survey. The statistics are set forth *supra*, but the most informative statistic here is the average sentence for first degree manslaughter in South Dakota for the past 10 years is 40 years. The sentencing range is wide and goes from 0 penitentiary time to 999 years. Clearly, other circumstances affect a sentence such as multiple offenses, criminal history, and habitual offender informations. MacKenzie, as noted by the trial court, had a juvenile history and had another adult file pending that was dismissed pursuant to the plea agreement. The dismissed file included charges for attempted first degree murder and aggravated assault. *State v. MacKenzie Antelope, 11CRI23-279.* The facts of that case, however, did not present a strong case for the attempted first degree murder charge nor the aggravated assault. Moreover, the aforesaid case occurred when MacKenzie was a juvenile and involved a number of juveniles in Wagner, South Dakota, fighting in a mutual combatant scenario at the Labor Day celebration. MacKenzie fully intended to litigate this case to trial if necessary given the weakness thereof. The type of sentence imposed by the trial court in the case at bar was more consistent with a recidivist offender of the adult system and not one consistent with a young man with MacKenzie's dysfunctions as set forth *supra*.

Additionally, the surrounding states have a wide variety of prescribed punishments for homicide cases. In Minnesota, North Dakota, Nebraska, and Iowa there are no homicides classified the same as in South Dakota. In Minnesota, a homicide is murder in the first degree with a maximum punishment of life in prison. *Minn. Stat. §609.185 (2024).* The next level of homicide in Minnesota is second degree murder and the maximum punishment is 40 years in prison. *Minn. Stat. §609.19 (2024).* Manslaughter in the first degree in Minnesota is punishable by a maximum of 15 years in

prison or a fine not to exceed $30,000 or both such fine and imprisonment. *Minn. Stat. §609.20 (2024).* The elements of second degree murder in Minnesota seem to align more with first degree manslaughter in South Dakota, but the penalty is much less.

In North Dakota there are three classifications of homicide. Murder is the first class of homicide and is a class AA felony punishable by life in prison. *N.D.C.C §12.1-16-01 and §12.1-32-01.* There is only one class of manslaughter in North Dakota and it is a class B felony punishable by 10 years in the penitentiary or fine of $20,000 or both such fine and imprisonment. *N.D.C.C. §12.1-16-02 and §12.1-32-01.* The final classification for homicide in North Dakota is negligent homicide which is a class C felony with a maximum punishment of 5 years in the penitentiary or a $10,000 fine or both such fine and imprisonment. *N.D.C.C. §12.1-16-03 and §12.1-32-01.*

In Nebraska there are three classifications of homicide. Murder in the first degree is a class I or IA felony which is punishable by a maximum of death (class I felony) or life in prison (class IA felony.) *Neb. Rev. Stat. §28-303 and §28-105.* Murder in the second degree is a class IB felony which is punishable by a maximum sentence of life in prison. *Neb. Rev. Stat. §28-304 and §28-105.* Manslaughter in Nebraska is a class IIA felony and is punishable by a maximum sentence of 20 years in prison. *Neb. Rev. Stat. §28-305 and §28-105.*

In Iowa there are four classifications of homicide. Murder in the first degree is a class A felony and is punishable by a maximum of life in prison. *Iowa Code §707.2 and §902.9.* Murder in the second degree is a class B felony and is punishable by a maximum of 25 years in prison. *Iowa Code §707.2 and §902.9.* Voluntary manslaughter is a class C felony and is punishable by a maximum of 10 years in prison or a fine between $1370 and $13,660 or both such fine and imprisonment. *Iowa Code §707.4 and §902.9.* Involuntary manslaughter is a class D felony and is punishable by a maximum of 5 years

in prison or a fine between $1025 and $10,245 or both such fine and imprisonment. *Iowa Code §707.5 and §902.9.*

Clearly, the punishments vary greatly among our neighboring states. The more serious punishments of life in prison are reserved for the murder charges. South Dakota classifies homicides as first degree murder, second degree murder, first degree manslaughter, or second degree manslaughter. The maximum punishments are death or mandatory life in prison for the murder statutes and a maximum of life in prison for first degree manslaughter. While the other jurisdictions have different classifications for homicides, what is apparent is that a maximum punishment of life in prison is reserved for the more harsh murder statutes and not the manslaughter statutes. The trial court sentence in this matter of 85 years with 35 suspended exceeds the maximum punishments for second degree murder and first degree manslaughter in Minnesota, manslaughter in North Dakota, manslaughter in Nebraska, and second degree murder and the manslaughter crimes in Iowa. The sentence in this case is the equivalent of the murder punishments in all four of the other states referenced herein. Consequently, given MacKenzie's age, mental capacity, and other factors relative to his status in life as set forth *supra* his sentence is the equivalent of a life sentence and constitutes cruel and unusual punishment.

CONCLUSION

In light of the above and foregoing, MacKenzie verily believes that the trial court abused its discretion in the sentence it imposed and that said sentence constitutes cruel and unusual punishment and the trial court should be reversed and the matter remanded back to the trial court for re-sentencing.

REQUEST FOR ORAL ARGUMENT: MacKenzie hereby requests oral argument.

Dated this 18th day of July, 2025.

/S/TIMOTHY R. WHALEN
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
Telephone: 605-487-7645
whalawtim@cme.coop
Attorney for the Appellant

CERTIFICATE OF COMPLIANCE

Timothy R. Whalen, the attorney for the Appellant, hereby certifies that the Brief of Appellant complies with the type volume limitations provided for in SDCL 15-26A-66(b)(4). The Brief of Appellant contains 28,275 characters and 5,580 words. Further, the undersigned relied upon the word count of the word processing system used to prepare the Brief of Appellant

Dated this 18th day of July, 2025.

/S/ TIMOTHY R. WHALEN
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
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whalawtim@cme.coop
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the Brief of Appellant on the attorneys for the Appellee at their e-mail addresses as follows:

Marty Jackley/Sarah Thorne
South Dakota Attorney General's Office
1302 E. Highway 14, Ste 1
Pierre, SD 57501-8501
atgservice@state.sd.us
Attorneys for the Appellees

Steven R. Cotton
Charles Mix County State's Attorney
P.O. Box 370
Lake Andes, SD 57356
cmsacotton@hcinet.net

by the UJS Odyssey System on the 18th day of July, 2025, at Lake Andes, South Dakota.

Further, the undersigned hereby certifies that the original of the above and foregoing Brief of Appellants was mailed to Shirley Jameson-Fergel, Clerk of the Supreme Court, State Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070 on the 18th day of July, 2025.

/S/TIMOTHY R. WHALEN
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Attorney for Appellant

APPENDIX

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STATE OF SOUTH DAKOTA	) :SS	IN CIRCUIT COURT
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, v. MACKENZIE ANTELOPE, DOB: 03/31/06 Defendant	11CRI24-132 JUDGMENT OF CONVICTION AND ORDER SUSPENDING SENTENCE

On June 4, 2024, an Indictment was filed with this Court charging the above named Defendant with Count 1 – Second Degree Murder, SDCL 22-16-1(1), 22-16-7 & 22-16-12, a Class B Felony, Count 2 – Manslaughter in the First Degree, SDCL 22-16-1(2) & 22-16-15(3), a Class C Felony, Count 3 – Attempted Murder, First Degree, SDCL 22-16-1(4), 22-4-1, a Class 2, and Count 4 – Aggravated Assault, SDCL 22-18-1.1(5), a Class 3 Felony that occurred on or about the 21st day of May, 2024, in Charles Mix County, South Dakota.

On June 17, 2024, the Defendant was arraigned on said Indictment. The Defendant appeared personally, along with his attorney, Timothy R. Whalen, the State of South Dakota appeared by and through Steven Cotton, Charles Mix County State's Attorney. The Court advised the Defendant of all of the Defendant's constitutional and statutory rights and maximum penalties pertaining to the charges that had been filed against the Defendant, including but not limited to, the right against self-incrimination, the right to confrontation, and the right to a jury trial. The Defendant pled not guilty to the charges contained in the Indictment.

Thereafter, a change of plea hearing took place on the 30th day of December, 2024. The Defendant appeared personally along with his attorney Timothy R. Whalen, and the State of South Dakota appeared by and through Katie L. Mallery, Assistant Attorney General. The Court again advised the Defendant of all the Defendant's constitutional and statutory rights pertaining to the charge that had been filed against him, including but not limited to, the right against self-incrimination, the right to confrontation, and the right to a jury trial. The Defendant pled guilty to Count 2 – Manslaughter in the First Degree, SDCL 22-16-1(2) & 22-16-15(3), a Class C Felony. The State dismissed Counts 1, 3 and 4 pursuant to plea agreement.

The Court having determined that the Defendant has been regularly held to answer for said offense; that said plea was voluntary, knowing and intelligent; that the Defendant was represented by competent counsel; that the Defendant understood the nature and consequences of the plea at the time said plea was entered; that the Defendant voluntarily, knowingly, and intelligently waived his constitutional and statutory rights, including but not limited to, the right

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against self-incrimination, the right to confrontation, and the right to a jury trial; and that a factual basis existed for the plea. It is, therefore,

ORDERED, ADJUDGED, AND DECREED that the Defendant is guilty of Count 2 – **MANSLAUGHTER IN THE FIRST DEGREE**, SDCL 22-16-1(2) & 22-16-15(3), a Class C Felony.

SENTENCE

The matter came before this Court on February 28, 2025, for sentencing. The Court having previously ordered a presentence investigation in the matter, which had been received and reviewed by the Court and the parties. The Defendant appeared at said hearing in person along with his attorney Timothy R. Whalen, and the State appeared by and through Assistant Attorney General Katie L. Mallery and Charles Mix County State's Attorney Steven Cotton. Members of the victim's family were also present and were provided opportunity to be heard by the Court. The Court asked whether any legal cause existed to show why sentence should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

It is now therefore

ORDERED, ADJUDGED, AND DECREED that the Defendant shall be imprisoned in the South Dakota State Penitentiary for a term of eighty-five (85) years, there to be kept, fed, and clothed according to the rules and regulations governing said institution. It is further

ORDERED, ADJUDGED, AND DECREED that thirty-five (35) years of the eighty-five (85) year penitentiary sentence shall be suspended. It is further 3/3/2025 12:20:49 PM
The Department of Corrections/Parole shall have jurisdicition over the suspended portion of the sentence..

ORDERED, ADJUDGED, AND DECREED that the Defendant shall receive credit for all time served pretrial, which as of the date of sentencing is two hundred seventy-four (274) days credit. It is further

ORDERED, ADJUDGED, AND DECREED that the Defendant shall pay a $2,000 fine, to be paid by Defendant to the Charles Mix County Clerk of Court's office. It is further

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to the South Dakota Crime Victim's Compensation, 118 W. Capitol Ave., Pierre, South Dakota 57501. It is further

ORDERED, ADJUDGED, AND DECREED that court appointed attorney fees and expenses shall be repaid by the defendant to Charles Mix County. It is further

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ORDERED, ADJUDGED, AND DECREED that Defendant shall obey all federal, state, tribal and local laws and be a good law-abiding citizen in all respects. It is further

ORDERED, ADJUDGED, AND DECREED that Defendant shall pay all financial obligations as ordered by the court. Defendant shall work out a payment schedule with parole.

RIGHT TO APPEAL

You, **Mackenzie Antelope**, are hereby notified that you have a right to appeal as provided for by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of the State of South Dakota by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment of Conviction and Order Suspending Sentence was signed, attested and filed.

3/3/2025 12:21:02 PM

BY THE COURT:

Bruce V. Anderson
Circuit Court Judge

Attest:
Robertson, Jennifer
Clerk/Deputy

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STATE OF SOUTH DAKOTA)
: SS
COUNTY OF CHARLES MIX)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

****

STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

MACKENZIE ANTELOPE,
Defendant.

FILE NO. 11CRI24-132

NOTICE OF APPEAL

****

TO: STEVEN R. COTTON, CHARLES MIX COUNTY STATE'S ATTORNEY, P.O. BOX 370, LAKE ANDES, SD 57356; KATIE MALLERY, ATTORNEY GENERAL'S OFFICE, 2000 E. 52ND STREET N., SIOUX FALLS, SD 57104, AND THE HONORABLE MARTY J. JACKLEY ATTORNEY GENERAL, 1302 E. HWY. 14, STE #1, PIERRE, SD 57501:

HEREBY TAKE NOTICE, that pursuant to SDCL 23A-32-15, et seq., the above named Defendant, MacKenzie Antelope, appeals to the Supreme Court of South Dakota from the final Judgment of Conviction rendered in the above entitled action on the 28th day of February, 2025, which Judgment of Conviction was filed of record on March 3, 2025. The appeal in this matter is from the sentencing portion of the Judgment of Conviction entered by the Court. A copy of said Judgment of Conviction is attached hereto.

Dated this 28th day of March, 2025.

TIMOTHY R. WHALEN, Bar #1821
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
Telephone: (605)487-7645
Attorney for the Defendant/Appellant
whalawtim@cme.coop

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, v. MACKENZIE ANTELOPE, DOB: 03/31/06 Defendant	11CRI24-132 JUDGMENT OF CONVICTION AND ORDER SUSPENDING SENTENCE

On June 4, 2024, an Indictment was filed with this Court charging the above named Defendant with Count 1 – Second Degree Murder, SDCL 22-16-1(1), 22-16-7 & 22-16-12, a Class B Felony, Count 2 – Manslaughter in the First Degree, SDCL 22-16-1(2) & 22-16-15(3), a Class C Felony, Count 3 – Attempted Murder, First Degree, SDCL 22-16-1(4), 22-4-1, a Class 2, and Count 4 – Aggravated Assault, SDCL 22-18-1.1(5), a Class 3 Felony that occurred on or about the 21st day of May, 2024, in Charles Mix County, South Dakota.

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The Court having determined that the Defendant has been regularly held to answer for said offense; that said plea was voluntary, knowing and intelligent; that the Defendant was represented by competent counsel; that the Defendant understood the nature and consequences of the plea at the time said plea was entered; that the Defendant voluntarily, knowingly, and intelligently waived his constitutional and statutory rights, including but not limited to, the right

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to the South Dakota Crime Victim's Compensation, 118 W. Capitol Ave., Pierre, South Dakota 57501. It is further

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BY THE COURT:

Bruce V. Anderson
Circuit Court Judge

Attest:
Robertson, Jennifer
Clerk/Deputy

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31041

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

MACKENZIE ANTELOPE,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
CHARLES MIX COUNTY, SOUTH DAKOTA

THE HONORABLE BRUCE V. ANDERSON
Circuit Court Judge

APPELLEE'S BRIEF

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ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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Email: whalawtim@cme.coop

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed March 28, 2025

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CASES CITED: **PAGE**

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31041

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

MACKENZIE ANTELOPE,

Defendant and Appellant.

PRELIMINARY STATEMENT

Antelope appeals arguing the circuit court abused its discretion in sentencing him and his sentence violated the Eighth Amendment.

References to the Settled Record, 11CRI24-132, are denoted "SR." References to the Appellant's Brief are denoted "AB." The proper page number(s) follows the references.

JURISDICTIONAL STATEMENT

This is an appeal of a Judgment and Sentence entered on March 3, 2025. SR:484-86. Antelope timely filed a Notice of Appeal on March 28, 2025. SR:503; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN SENTENCING ANTELOPE?

The circuit court did not rule on this issue.

- *State v. Peltier*, 2023 S.D. 62, 998 N.W.2d 333
- *State v. Banks*, 2023 S.D. 39, 994 N.W.2d 230

II.

WHETHER ANTELOPE'S SENTENCE VIOLATED THE EIGHTH AMENDMENT?

The circuit court did not rule on this issue.

- *State v. Shelton*, 2021 S.D. 22, 958 N.W.2d 721
- *State v. Bear Robe*, 2024 S.D. 77, 15 N.W.3d 460

STATEMENT OF THE CASE

Antelope pled guilty to first-degree manslaughter pursuant to SDCL 22-16-15(3); in exchange, the State dismissed the remaining counts of the Indictment: second-degree murder, attempted first-degree murder, and aggravated assault. SR:352-56. The State also dismissed 11CRI23-279 against Antelope, where approximately eight months prior to his current offense he was charged with attempted first-degree murder and aggravated assault. *Id.*; *see supra page 11.*

Antelope requested a penitentiary sentence of five to ten years. SR:304-10, 708. The State argued Antelope has shown a "clear and escalating pattern of violence that cannot be[] ignored[,]" so "a life sentence is warranted and necessary to ensure that no more innocent people in this community fall victim." SR:691, 695. The circuit court

found several aggravating factors and sentenced Antelope to eighty-five years in the South Dakota State Penitentiary with thirty-five years suspended and credit for 274 days served. SR:484-86, 733.

STATEMENT OF THE FACTS

On May 21, 2024, Quinlan Ream, Dylan Ouellette, Richard Gunhammer, and Antelope were in Ouellette's hotel room[1] in Lake Andes. SR:237-38, 241. Everyone heavily consumed alcohol and at least some ingested methamphetamine (meth). SR:604, 723. It was common for people to go to Ouellette's room to consume drugs and alcohol. SR:723.

At one point, Ouellette became "animated" and "in some ways aggressive" as he discussed his sister's death by overdose. SR:238, 724. During Ouellette's rant, he touched Antelope and Gunhammer in the chest. SR:238, 725. Antelope tried to get Ouellette to settle down, but Antelope raised his voice and "escalat[ed] the situation." *Id.* Ouellette locked the motel room door and sat by the door. *Id.*

As Antelope and Ouellette were talking about fighting, Antelope grabbed a little "metal thing," which looked like a pair of large pliers. *Id.* Ouellette didn't have "anything on him." *Id.* Antelope, still armed with the metal item, told Ouellette there were "no rules in a street fight." *Id.*

After some time, Ouellette settled down and Antelope put down the

[1] Ouellette lived in the hotel room. SR:217.

metal object. *Id.* The two started yelling at each other again. *Id.* Suddenly, Antelope stood up, grabbed a butterfly knife, and said, "If you come towards me again, I'm gonna poke you." *Id.* Ouellette stood up and approached Antelope.[2] *Id.*

Suddenly, Antelope repeatedly started stabbing Ouellette with the knife, causing severe injuries. SR:238-39. To try to prevent Antelope from stabbing Ouellette, Ream jumped onto Antelope's back and placed Antelope in a headlock. SR:239. Antelope, while in a headlock, stabbed Ream five times on the left side of his body. SR:238-39. Antelope fled the room. *Id.* Antelope "had opportunities to leave the premises before the confrontation occurred[] but failed to do so." AB:4 (citing SR:702-05).

Ouellette, in an attempt to save his life, ran across the street to the gas station. SR:196, 203. Ouellette requested that someone "call an ambulance" because he believed he was going to die. SR:205. Ouellette's life was saved through the efforts of first responders and medical personnel at the hospital. SR:726.

Law enforcement followed Ouellette's blood trail and found Ream deceased in the hotel room. SR:3-4, 196-97. Antelope "discarded the knife used in the incident, . . . fled the scene of the crime, and did not call for emergency services after he inflicted the knife wounds[.]" AB:4.

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[2] Gunhammer told law enforcement he was unsure if Ouellette was trying to give Antelope a hug or rush him. SR:238-39.

The next day, law enforcement contacted Antelope. SR:228-29. Antelope stated he was at Ouellette's hotel room earlier in the day but denied witnessing any stabbings and accused others of the attack. SR:228-29, 693-94. Later that same day, law enforcement met with Antelope and requested his consent in collecting his clothing and searching his room. SR:243. Antelope consented to both requests, but he denied any responsibility for the stabbings. SR:243-44.

Approximately a week later, Antelope was arrested, and law enforcement searched Antelope's house. SR:246-47, 252, 254-55. Antelope was interviewed; he confessed to stabbing Ouellette and Ream but asserted he acted in self-defense. SR:255-56.

ARGUMENTS

I.

ANTELOPE RECEIVED AN APPROPRIATE SENTENCE.

A. *Background.*

Antelope argues that although the circuit "court had all the information provided in the PSI, was knowledgeable about [Antelope]'s prior history, and had all the tools necessary to formulate a sentence in this case[]" it abused its discretion because it did not "fully and properly consider his personal and environmental fact[or]s[.]" AB:8. The circuit court properly weighed the ample evidence and fashioned an appropriate sentence. And how the circuit court weighed mitigating factors against aggravating factors "does not amount to a fundamentally wrong or

impermissible choice" entitling Antelope to relief. *State v. Lanpher*, 2024 S.D. 26, ¶ 30, 7 N.W.3d 308, 318.

B. *Standard of review.*

When imposing a sentence, a circuit court may impose a sentence within a broad range of permissible choices; only if the sentence is outside this broad range, the sentence is an abuse of discretion. *State v. Henry*, 2024 S.D. 30, ¶ 23, 7 N.W.3d 907, 912 (citing *State v. Deleon*, 2022 S.D. 21, ¶ 17, 973 N.W.2d 241, 246). However, when this Court reviews a circuit court's discretion, it does not "substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence." *Lanpher*, 2024 S.D. 26, ¶ 26, 7 N.W.3d at 317 (quoting *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 358). "Within constitutional and statutory limits, the trial courts of this state exercise broad discretion when deciding the extent and kind of punishment to be imposed." *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (citation omitted).

Circuit "[c]ourts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation." *State v. Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d 351, 360 (citation omitted). Circuit courts should weigh these factors "on a case-by-case basis" and may determine "which theory is accorded priority" in each case. *Id.*

As part of its consideration, "[t]he sentencing court should have

access to 'the fullest information possible concerning the defendant's life and characteristics.'" *State v. Manning*, 2023 S.D. 7, ¶ 52, 985 N.W.2d 743, 758 (quotation omitted). "[A] circuit court can accept [a] reduced manslaughter plea as provident and still rely upon additional evidence adduced at sentencing to determine the actual level of culpability in order to formulate an appropriate sentence." *Bear Robe*, 2024 S.D. 77, ¶ 13, 15 N.W.3d at 465-66 (quoting *State v. Mitchell*, 2021 S.D. 46, ¶ 32 n.7, 963 N.W.2d 326, 333 n.7). "Courts may even consider conduct that was uncharged or served as the basis for charges that later resulted in a dismissal or acquittal as long as the State proves the conduct by a preponderance of the evidence." *State v. Peltier*, 2023 S.D. 62, ¶ 32, 998 N.W.2d 333, 342 (quoting *Mitchell*, 2021 S.D. 46, ¶ 31, 963 N.W.2d at 333).

"Circuit 'courts must consider sentencing evidence tending to mitigate or aggravate the severity of a defendant's conduct and its impact on others. Sentencing courts are often required, in this regard, to accurately assess the 'true nature of the offense.'" *State v. Bear Robe*, 2024 S.D. 77, ¶ 13, 15 N.W.3d 460, 465 (quoting *Caffee*, 2023 S.D. 51, ¶ 28, 996 N.W.2d at 360). "[T]he mere presence of mitigating evidence does not entitle a defendant to a diminished sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider." *State v. Klinetobe*, 2021 S.D. 24, ¶ 41, 958 N.W.2d 734, 744.

C. *The circuit court did not abuse its discretion when sentencing Antelope.*

Prior to sentencing, the circuit court considered Antelope's general moral character, mentality, habits, social environment, tendencies, age, inclination to commit crime, life, family, occupation, and criminal record. *See Manning*, 2023 S.D. 7, ¶ 52, 985 N.W.2d at 758. The circuit court reviewed Antelope's PSI, Antelope's competency evaluation, Antelope's insanity evaluation, and Ream's autopsy. SR:677-80, 711-12; *see* SR:117-302, 357-60, 426-34. Before sentencing Antelope, the circuit court heard victim impact statements, counsels' arguments, and Antelope's statements. SR:675-709. The parties did not have any objections or corrections to the circuit court's review of the record. SR:678-80.

The PSI contained, among other things, information about Antelope's extensive criminal history, family history, education, employment history, social circumstances, and attitudes/orientation. SR:117-302. The PSI also included impact statements from both the victims and Antelope's family. SR:120-22, 298-300. The PSI stated Antelope's Level of Service Inventory–Revised score fell in the upper range of the high-risk category. SR:301. Antelope had high or very high risks/needs in the categories of education/employment, family/parenting, leisure/recreation, companions, and alcohol/drug. *Id.*

1. Sentencing factors

In making its decision, the circuit court explicitly considered the

traditional sentencing factors of "retribution, deterrence, both individual and general, [] rehabilitation, and protection of the community." SR:726-27 (citing *State v. Pulfrey*, 1996 S.D. 54, 548 N.W.2d 34; *Kennedy v. Louisiana*, 554 U.S. 407 (2008)). The circuit court acknowledged Antelope's age, upbringing, sixth-grade education level, and "severe[] intellectual[] and emotional[] immatur[ity]." SR:729.[3] The circuit court considered that Antelope functioned at a very low level mentally, although he was an adult by virtue of his age. *Id.*

a. Rehabilitation

In considering Antelope's rehabilitation, the circuit court went into detail outlining Antelope's activity as a "youthful offender." *See* SR:715-23. When Antelope was fourteen, he moved to Lake Andes to live with his mother. SR:714. Previously, Antelope lived in Wagner with his paternal grandmother. SR:122. After Antelope's move, he had "significant behavioral changes and discipline problems[.]" SR:715. The circuit court commented that while Antelope was in Wagner, "[h]e was simply on the loose, on the run, and for lack of a better explanation, he was turning feral." *Id.*

[3] Antelope's PSI states he is diagnosed with Attention Deficit Hyperactivity Disorder and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. SR:126; 297; *see* SR:431.

The circuit court[4] placed Antelope on juvenile probation and ordered him to live with his paternal grandmother. Promptly thereafter, Antelope violated his probation because he was in Lakes Andes and was associating with his mother. SR:716. At the time of his arrest, he physically resisted officers. *Id.* Antelope was placed on intensive probation, as a CHIN. SR:717.

Approximately three months later, he committed an assault and ran away from a secure facility. *Id.* Antelope was detained because his "bad behaviors had escalated to the point where [the circuit court] felt he had to be held." *Id.*

Nineteen days later, Antelope escaped from the security facility again. SR:717-18. Law enforcement located Antelope where he resisted arrest and gave a false name. SR:718. He was placed in an in-patient psychiatric treatment center; approximately a month later, he was kicked out of for assaultive and disruptive behavior. SR:718-19. The circuit court "took the extraordinary step" of placing Antelope in the Department of Corrections (DOC)'s custody. SR:719. The circuit court commented that it is the goal of the court to keep juveniles out of these programs but "Antelope had escalated his behavior, where [the circuit court] could not get any type of rehabilitation completed with him." SR:720.

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[4] The judge who presided over Antelope's juvenile proceedings also imposed the present sentence. SR:716.

Fifteen days later, he escaped the secure facility. *Id.* While he absconded, he was indicted for attempted murder and aggravated assault. *Id.*; *see* 11CRI23-279. Surveillance video captured a physical fight between a group of boys; during the fight, Antelope stabbed a man in the abdomen with a knife. SR:286-88, 720.[5]

The circuit court also outlined Antelope's educational and work history. *See* SR:721. Antelope dropped out of school in the sixth grade and, despite the circuit court's efforts, has not pursued any further education. *Id.* While in school, Antelope had frequent unexcused absences and tardiness that progressively worsened. *Id.* To the circuit court's knowledge Antelope has never been employed. *Id.* According to his PSI, he spends most of his time listening to music, playing video games, and engaging in the consumption of drugs and alcohol. *Id.*

The circuit court also commented that Antelope is impulsive, quick to anger, and could not get along with peers. *Id.* While at in-patient treatment, he attempted to assault his peers, trashed his room, and was administered Zyprexa due to his aggression. *Id.*

The circuit court concluded "despite his horrendous record as a CHIN" and "the tragedy which has led up to this case, it has not been

[5] The circuit court stated Antelope's act of stabbing the man in the abdomen can be "seen very clearly" on surveillance video. SR:720; *see Manning*, 2023 S.D. 7, ¶ 52, 985 N.W.2d at 758.

established that rehabilitation is so unlikely so as to be removed from consideration in sentencing." SR:729-30.

b. Deterrence

The circuit court held "[g]iven the magnitude of offense here, this Court feels that there must be special deterrence of this offender and general deterrence overall so that these behaviors stop[.]" SR:731.

The circuit court stated:

> With regard to deterrence, the Court has noticed a general increase in young adults engaging in aggressive, gang-involved, assaultive type behavior. [The circuit court has] see[n] numerous kids who are truant from school who don't want to go to school because they feel threatened by the gang activity and the gang members who intimidate kids. [The circuit court has] had a number of kids recently who show up in court with possession of weapons at school. And they always say that they have to bring a weapon because they are in fear of gang members at school. The [circuit c]ourt is mindful that oftentimes these kids are gang members themselves. They're all playing the game. And they all have this in their head. In fact, the hat the Defendant was wearing on the night of the offense had the name Compton, which may have been innocent, but it conjures up inferences of the gangs of Compton, California, and it seems like a lot of these young people want to romanticize that thug life. Mr. Antelope was wearing that hat around the time of this offense.

SR:730.

The circuit court stated "[a]s far as deterrence in this particular case, three people have been stabbed by Mackenzie Antelope in the past couple years." SR:731. The circuit court noted recidivism information is "never actually a true tell of what the future holds." SR:730-31. The circuit court considered the fact that at the time of Antelope's offense he

was awake "for two weeks, using and hustling. Meth kept [him] going. [He] was drinking alcohol and smoking Ish."[6] SR:430, 722.

c. Retribution

The circuit court held based on Antelope's past conduct, including his history of escaping from court ordered placements and his prior attempted murder and aggravated assault indictment, "retribution needs to be serious." SR:731. The circuit court reasoned "[b]ecause of the extent of the seriousness of this offense, a lack of respect for the law and social norms, and due to the fact that two persons have been injured and one has been killed, the [circuit c]ourt must impose a substantial sentence." SR:732. The circuit court held if Antelope was given a five to ten year sentence, he will be "in the middle of a bad transition to maturity. He would come out probably a more hardened criminal than we're presently dealing with. And he would probably be more dangerous; consequently, more time is warranted." *Id.*

d. Incapacitation

The circuit court held Antelope will be released from custody when he is in his "late sixties" and at that point he "will no longer be a danger to the community and to those around [him]." SR:733-34. The circuit court ordered that DOC has "complete jurisdiction over the suspended portion of the sentence[]" and commented "there's light at the end of the tunnel." SR:734.

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[6] Antelope stated "ish" is meth mixed with other chemicals. SR:430, 722.

2. Antelope's sentence

The circuit court sentenced Antelope to eighty-five years imprisonment with thirty-five years suspended for committing the offense of manslaughter in the first-degree. SR:733. Antelope's maximum possible sentence was life imprisonment and a $50,000 fine. SDCL 22-6-1; 22-16-15. Because Antelope's sentence was within the statutory maximum, his sentence should not be disturbed on appeal. *See Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83.

3. Antelope's Contentions on Appeal

Antelope argues given his "failings, mentally, socially, psychologically, and otherwise, the trial court should have given him more consideration and exercise more leniency than it would when sentencing an adult who had engaged in the same type of conduct, and its failure to do so was an abuse of discretion." AB:9. Additionally, Antelope cited two cases, *Simmons* and *Mitchell*, to support his argument that the circuit court abused its discretion. AB:8 (citing *Roper*, 543 U.S. 551 (2005) and *Mitchell*, 2021 S.D. 46, 963 N.W.2d 326).

In *Roper v. Simmons*, the United States Supreme Court held the constitution "forbid[s] imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed." 543 U.S. at 578-79 (2005). Antelope argues while he "was not under the age of 18 and was formally an adult when he committed the offense, his functional level was much lower and the equivalent of a 12-13 year-old youth which

makes the *Roper* decision applicable and persuasive here." AB:9. *Roper* is inapplicable because Antelope was not facing the death penalty and was not a juvenile when he committed his crime.

In *State v. Mitchell*, the defendant pled guilty to first-degree manslaughter under SDCL 22-16-15(4). 2021 S.D. 46, ¶ 33, 963 N.W.2d at 334. SDCL 22-16-15(4) requires the killing to have occurred "while resisting an attempt by the person killed to commit a crime[.]" *Id.* (quoting SDCL 22-16-15(4)). During Mitchell's change of plea hearing, the prosecutor candidly expressed concern about the risk of obtaining a conviction due to the self-defense claim. *Id.* ¶ 38. In remanding the case, this Court held the circuit court "overlooked the element of SDCL 22-16-15(4) that contemplates criminal conduct by [the victim] which provided some degree of partial justification for [the defendant's] response." *Id.* *Mitchell* is not similarly situated to Antelope for three reasons.

First, Antelope pled guilty to SDCL 22-16-15(3), which, unlike SDCL 22-16-15(4), does not include an element requiring the murder to have occurred while resisting an attempt by the person killed to commit a crime.

Second, unlike Mitchell, Antelope abandoned his self-defense claim and decided to plead guilty. At Antelope's change of plea hearing, he affirmed that based on conversations he had with his attorney about his self-defense argument, he decided to abandon that defense. SR:605.

Antelope's attorney[7] confirmed, after speaking with their private investigator, he visited at length with Antelope about the risks and benefits of the self-defense argument. *Id.* After "numerous" conversations, the two concluded Antelope's self-defense argument was "not available for trial." SR:605, 612-14. At Antelope's sentencing, his counsel advised the circuit court that because Antelope "went too far[,]"[8] any self-defense argument would not have "carried the day." SR:705. Additionally, unlike in *Mitchell*, the State did not express any concern that there would not be a conviction due to a claim of self-defense.

Third, the circuit court properly considered the facts of Antelope's offense, namely Ouellette's emotional and aggressive state and the consumption of drugs and alcohol. SR:723-24. The circuit court considered Antelope's claim of an imperfect self-defense and considered the culpability of everyone involved. The State agrees that the "shared responsibility for the events mitigates the gravity of the crime[,]" but that "does not entitle" Antelope "to a diminished sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider." AB:13; *Klinetobe*, 2021 S.D. 24, ¶ 41, 958 N.W.2d at 744 ("mitigating evidence does not entitle a defendant to a diminished

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[7] The counsel who represented Antelope before the circuit court also serves as his appellate counsel.

[8] Antelope's counsel stated, "[b]y going too far, that constitutes the crime of first-degree manslaughter." SR:705.

sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider").

This case is similar to *Banks*, where this Court held "unlike in *Mitchell*, the circuit court did not fail to consider evidence relating to an essential element of the first-degree manslaughter offense to which [Defendant] had pled guilty." *State v. Banks*, 2023 S.D. 39, ¶ 22, 994 N.W.2d 230, 236; *see Peltier*, 2023 S.D. 62, ¶ 32, 998 N.W.2d at 342 (This Court found that "[i]n contrast with the court in *Mitchell*, the circuit court here undoubtedly considered [Defendant's] conduct in the events leading up to the stabbing."). Here, the circuit court recognized Antelope's mitigating circumstances, including his claim of imperfect self-defense, and rejected the State's request for a life sentence. SR:729.

The circuit court's prior involvement in Antelope's juvenile cases provided it with a comprehensive understanding of his background and prior conduct. SR:609. The circuit court also considered Antelope's pre-dispositional case study from one of his juvenile cases, JUV20-11. *Id.*[9] The circuit court assessed the "true nature of Antelope's offense" as it had the benefit of direct familiarity with the evidence in the case and a detailed PSI. Among its reflections, the court extensively considered Antelope's age, lack of education, and mental condition, finding Antelope to be "severely intellectually and emotionally immature." SR:729.

[9] Antelope's pre-dispositional case study is not a part of this record.

4. Conclusion

The circuit court considered the sentencing factors and appropriately weighed them as part of a reasoned, careful, and informed review of Antelope and his crime. The circuit court determined that based on Antelope's offense, his prior conduct, and his demonstrated tendency for propensity, he deserved an eighty-five-year sentence with thirty-five years suspended. Antelope's intoxication at the time of the crime and his unstable past do not excuse the extreme nature of his conduct. The circuit court conducted a complete examination and did not arrive at an impermissible conclusion.

II.

ANTELOPE'S SENTENCE DOES NOT VIOLATE THE EIGHTH AMENDMENT.

A. Background.

Antelope argues, "given [his] age, mental capacity, and other factors relative to his status in life . . . his sentence is the equivalent of a life sentence and constitutes cruel and unusual punishment." AB:17. Considering the gravity of the crime Antelope committed, his sentence is not grossly disproportionate to his crime.

B. Standard of review.

This Court reviews de novo whether a defendant's sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. *Lanpher*, 2024 S.D. 26, ¶ 18, 7 N.W.3d at 315. The Eighth Amendment "forbids only extreme sentences that are 'grossly

disproportionate' to the crime." *State v. Shelton*, 2021 S.D. 22, ¶ 34, 958 N.W.2d 721, 732 (quoting *State v. Quevedo*, 2020 S.D. 42, ¶ 37, 947 N.W.2d 402, 410).

To determine whether the Eighth Amendment has been violated, first, this Court looks at "[t]he gravity of the offense, [which] refers to the offense's relative position on the spectrum of all criminality." *Id.* ¶ 36, 958 N.W.2d at 732 (quotation omitted). If the penalty imposed appears to be grossly disproportionate to the gravity of the offense, only then will this Court compare the sentence to those imposed on other criminals. *Rice*, 2016 S.D. 18, ¶ 13, 877 N.W.2d at 80 (citing *State v. Chipps*, 2016 S.D. 8, ¶ 38, 874 N.W.2d 475, 489).

C. Antelope's sentence did not violate the Eighth Amendment.

As Antelope stated, he committed "the highest crime against the law of nature, that man is capable of committing." AB:12 (quoting *Caffee*, 2023 S.D. 51, ¶ 18, 996 N.W.2d at 358). "[T]he consequences of taking a life are not simply grievous, they are incalculable[.]" *Bear Robe*, 2024 S.D. 77, ¶ 22, 15 N.W.3d at 467. Therefore, "[c]learly and without question[,] first degree manslaughter in and of itself is a grave offense." AB:12.

In addition to considering the gravity of the offense in the abstract, "the circumstances of the crime of conviction affect the gravity of the offense." *Caffee*, 2023 S.D. 51, ¶ 19, 996 N.W.2d at 358 (quoting *Chipps*, 2016 S.D. 8, ¶ 36, 874 N.W.2d at 488). And "[i]n conducting the

threshold comparison between the crime and the sentence, [this Court] also consider[s] other conduct relevant to the crime." *Id.* (quoting *Chipps*, 2016 S.D. 8, ¶ 40, 874 N.W.2d at 490). "When the undisputed facts of a case establish that a defendant had greater involvement in a crime than reflected in their plea to a lesser charge, the circuit court in imposing sentence can consider the true nature of the offense and whether it was 'among the more serious commissions of the crime[.]'" *Id.* (quoting *Klinetobe*, 2021 S.D. 24, ¶ 43, 958 N.W.2d at 744).

Here, Antelope's offense arose from an evening during which himself, Ream, and Ouellette, engaged in substantial alcohol and drug consumption. The trio were in an argument and Antelope "lost control" and stabbed Ream five times resulting in his death and severely injured Ouellette by stabbing him fives. AB:12. The State agrees with Antelope that "[a] sober examination of the events after-the-fact leads one to quickly conclude that the outcome was or should have been expected and predictable." *Id.* Antelope's actions are representative of a callous disregard for the laws of society and human life.

As for the harshness of the sentence, the harshness is reflected by the penalty's "relative position on the spectrum of all permitted punishments." *Shelton*, 2021 S.D. 22, ¶ 37, 958 N.W.2d at 732 (quotation omitted). Antelope pled guilty to first-degree manslaughter, a Class C felony; Antelope's maximum possible sentence was life imprisonment and a $50,000 fine. SDCL 22-6-1; 22-16-15. The circuit

court sentenced Antelope to eighty-five years imprisonment, with thirty-five years suspended. SR:733. His sentence was well within the authorized range of sentence. *Id.* Though any sentence of confinement is, by its nature, grave and sobering, considering the gravity of the crime Antelope committed, his sentence is not grossly disproportionate to his crime. *See Bear Robe*, 2024 S.D. 77, ¶ 23, 15 N.W.3d at 467. Because "the threshold requirement of gross disproportionality is not met, the analysis under the Eighth Amendment ends." *Id.* (quoting *State v. Traversie*, 2016 S.D. 19, ¶ 15, 877 N.W.2d 327, 332); *see Lanpher*, 2024 S.D. 26, ¶ 24, 7 N.W.3d at 317.

CONCLUSION

In light of Antelope's disregard for human life, the circuit court did not abuse its discretion in imposing an eighty-five-year sentence on Antelope, nor was the sentence cruel and unusual in violation of the Eighth Amendment of the United States Constitution. Therefore, the State respectfully requests that Antelope's sentence 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 4,433 words.

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

Dated this 28th day of August 2025.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 28th, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Mackenzie Antelope*, was served via Odyssey File and Serve upon Timothy R. Whalen at whalawtim@cme.coop.

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

APPELLANT'S REPLY BRIEF

STATE OF SOUTH DAKOTA
Plaintiff/Appellee

vs.

MACKENZIE ANTELOPE
Defendant/Appellant

DOCKET #31041

APPEAL FROM THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
Presiding Circuit Judge

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NOTICE OF APPEAL FILED MARCH 28, 2025

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PRELIMINARY STATEMENT

As in the Appellant's Brief, Appellant shall be referred to herein as "MacKenzie;" the Appellee shall be referred to herein as "State; " and the victims of the crimes will be referred to herein by their first names as indicated in the body of this brief.

The Jurisdictional Statement, Statement of the Legal Issues, Statement of the Case, and Statement of the Facts will not be restated herein, but will be relied upon in the form and content set forth in the Appellant's Brief. MacKenzie disputes the State's Statement of the Facts to the extent same is inconsistent with or contrary to MacKenzie's Statement of Facts.

ARGUMENT

The Standard of Review as to each issue on appeal was addressed in detail in the Appellant's Brief and will not be restated herein, but will be referred to in support of MacKenzie's reply brief and the arguments herein as may be needed.

ISSUE 1: WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED THE DEFENDANT.

The State argues that the trial court had all the necessary tools available to it as required under the law and considered same so the sentence imposed in this case was legal and the trial court did not abuse its discretion. The State ignores key and instrumental legal and factual matters that are required to be considered by a trial court when fashioning a sentence in a criminal case. A sentencing court is obligated to consider many factors when fashioning an appropriate sentence; however, this Court has made it abundantly clear that "... [i]t is the duty of a sentencing court to insure that the punishment 'fit[s] the offender and not merely the crime.' ..." *State v. Mitchell*, 2021 S.D. 46, ¶28, 963 N.W.2d 326; *State v. Beckley*, 2007 SD 122, ¶32, 742 NW2d 841. The

trial court clearly was obligated to acquire a thorough and complete knowledge and acquaintance with the character and history of MacKenzie. *Mitchell*, 2021 S.D. at 46, ¶29; *Beckley*, 2007 S.D. at 122, ¶32. While the sentencing court was required to consider the traditional sentencing factors, it is paramount that the sentencing court weigh and apply the sentencing factors on a case-by-case basis depending on the unique circumstances of the particular case before it. *Mitchell*, 2021 S.D. at 46, ¶28. Moreover, the Supreme Court has directed that "... [i]n the exercise of its solemn sentencing role, circuit courts must look at both the person before them and the nature and impact of the offense. *Id.*, at ¶29. The evaluation of the person before the sentencing court cannot be in a vacuum and the court must consider all aspects of the functionality, both physically and mentally, of the person being sentenced. In applying the sentencing factors, the sentencing court is required to "... accurately assess the "true nature of the offense." *Id.*, at ¶30.

A. Facts Inadequately Considered at Sentencing.

The State largely glosses over essential issues in this case. The State's analysis and argument begs that MacKenzie address three key issues. First, the State ignores the mutuality of culpability among the parties involved. Second, the State minimizes the drug and alcohol infused environment associated with the incident. Third, the State ignores MacKenzie's level of dysfunction, both physically and mentally. Although MacKenzie focuses on these issues herein, he is not abandoning his other arguments as set forth in the Appellant's Brief.

1. Mutuality of Culpability.

MacKenzie argued at sentencing, and does again here, that the concept of an imperfect self-defense was a mitigating factor here. The State ignores this concept and

the trial court did not adequately consider the issue at sentencing. During the events of this case, Quinlan Ream (Quinlan) and Dylan Ouellette (Dylan) had locked the door to the hotel room where the events occurred and prevented MacKenzie from leaving. MacKenzie had been backed into a corner in the room by Dylan. Dylan and Quinlan were antagonizing MacKenzie and had been physically aggressive toward him. Dylan began fighting with MacKenzie, and Quinlan jumped on MacKenzie's back. Both Dylan and Quinlan were much older than MacKenzie. All parties were heavily intoxicated from drug and alcohol consumption. Clearly, there were substantial facts which supported the imperfect self-defense claim and should have weighed heavily in favor of a lesser sentence than what the trial court imposed. At the plea hearing and at sentencing, MacKenzie addressed the imperfect self-defense claim and the reason why he did not proceed to trial with same, i.e., there was other evidence that tended to challenge a full self-defense claim.

The State appears to argue that the imperfect self-defense claim is only available if one is charged under SDCL 22-16-15(4). Self-defense is available in any homicide regardless of the statutory basis for the charge. *SDCL 22-14-35.* Moreover, under the governing law, MacKenzie was permitted to offer to the trial court all evidence in mitigation of his sentence at his sentencing hearing. *SDCL 23A-27-1.* Consequently, the mere difference in the statutory basis for the charge is not relevant, nor determinative on the issues herein.

2. Evidence of Intoxication.

There was ample evidence at sentencing to show that the individuals involved in this case were all highly intoxicated on drugs and alcohol. Both the State and MacKenzie admitted to the Court that drugs and alcohol were heavily involved in all aspects of this

criminal action. The trial court recognized the heavy use of drugs and alcohol in this case. This issue is without dispute and should have been relied upon by the trial court more heavily than it was to establish a lesser sentence for MacKenzie.

3. MacKenzie's Level of Function.

MacKenzie's level of functioning, both physically and mentally, had a substantial impact upon his ability to rationalize and contemplate appropriate reaction to a threatening and dangerous situation. While MacKenzie was 18 years old at the time of the criminal events, he functionally was at the low elementary educational level. Dr. Clay Pavlis, who performed the psychiatric evaluations of MacKenzie, noted the horrid circumstances in which MacKenzie was raised prior to being placed with his grandmother. MacKenzie was clearly dysfunctional in school and unable to relate to his peers. He was highly susceptible to escaping reality by drinking and using illegal drugs. MacKenzie was exceptionally irresponsible and failed all aspects of the norms and expectations of society for a young man his age. Although Dr. Pavlis passed MacKenzie on the competency and insanity evaluations, it was clear from his report that MacKenzie was not a functioning adult. MacKenzie's dysfunctional life caused him to rely upon alcohol and drugs and the people who provided same for his daily sustenance and existence. Mentally, emotionally, and psychologically MacKenzie was a 12-13 year-old juvenile even though his age qualified him as an adult. Moreover, MacKenzie suffered the failings of a youthful offender. Specifically, MacKenzie lacked the maturity of a young adult raised in a reasonably decent home. He had an underdeveloped sense of responsibility; he was impetuous and engaged in ill-considered actions and decisions. MacKenzie was prone to reckless behavior and failed to appreciate the consequences of his actions. He was highly susceptible to negative influences and pressure to engage in

bad behavior, especially with the older drug users he was associating with when the criminal conduct occurred. MacKenzie exhibited substantially less control over his environments and did not have the sufficient mental capacity to extricate himself from criminogenic settings. All this lead to the unfortunate circumstances that caused the death of one person and severe injury to another.

B. Error Regarding the Rehabilitation Factor.

The State correctly identified the standard and traditional sentencing factors in its brief, but MacKenzie does not agree with the State's analysis and arguments. One factor, however, bears further argument herein. The State asserts that the trial court adequately considered the rehabilitation factor in MacKenzie's sentence. The sentence imposed by the trial court for MacKenzie, a 19 year-old offender, was 85 years with 35 years suspended. MacKenzie will be required to serve all 50 years of his sentence under the new parole statutes. *SDCL 24-15A-32.* The trial court's sentence bears no rational relationship to rehabilitation, but only relates to the punishment/retribution, deterrence and incapacitation factors. The law requires that the trial court equally address the above factors, but not give more weight to one over the others. *Mitchell*, 2021 S.D. at 46, ¶28. Here, however, the trial court did not give equal consideration to the rehabilitation factor, but diminished it by the weight it placed on the other factors. This is an abuse of discretion.

Additionally, the trial court failed to consider the evolution of the prison systems in our country. The prison systems have largely abandoned the rehabilitation aspect of a sentence and are primarily focused on housing the inmates until their sentences are served. See, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, November 30, 2001,* https://aspe.hhs.gov/reports/psychological-impact-

incarceration-implications-post-prison-adjustment-0. This is so because the other aspects of operating a prison have consumed rehabilitation. Over-crowding, disciplinary matters, under staffing, and operational logistics all play a part in the denigration of rehabilitation aspect of a penal institution. Consequently, since the trial court's sentence focused on incarceration only, the sentence here is virtually devoid of any rehabilitational considerations. This constitutes an abuse of discretion.

C. A Sentence that Fits the Criminal.

The State also attacks MacKenzie's arguments on the basis of the cases cited by him in support of his arguments. The State attempts to distinguish *Roper v. Simmons* on the basis that MacKenzie was not a juvenile, nor facing the death penalty. 543 U.S 551, 125 S.Ct. 1183, 161 L.Ed.2d (2005). The State misapprehends MacKenzie's reliance on *Roper*. *Roper* was decided by the United States Supreme Court in 2005. The analytical import of *Roper* is that the United States Supreme Court began its process of analyzing and acting upon the need for modification of sentencing practices of juveniles, or youthful offenders, because of their unique life situations and the vast differences between them and adults. See, *ABA Law Review: Psychological Research, Juvenile Justice, and the Need for More Reform, November 19, 2019, Article 3, issue-2---vol-18/law-review-psychological-research-juvenile-justice-and-the-need-for-more-reform/.* Subsequent to *Roper*, the United States Supreme Court engaged a wholesale reform of the sentencing practices regarding youthful offenders on cases involving life sentences. See, *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Miller v. Alabama and Jackson v. Hobbs*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407(2012), and *Montgomery v. Louisiana*, 577 U.S 190, 136 S.Ct. 718, 193 L.E.2d. 599 (2016). *Roper* and its progeny recognized the differences between juvenile offenders and adult

offenders and the justification for disparity in their treatment at sentencing. *Id.*, at 569-572. MacKenzie is functionally a 12-13 year old. His mental deficiencies, as established by Dr. Pavlis, show his immaturity, lack of growth mentally, and his gross misunderstanding of his position in life due to the horrid treatment he suffered during his childhood. His background and upbringing establish the complete lack of guidance, mentoring, nurturing, direction, and benefits a young person might get from an adult who was actively involved in their life. Furthermore, it is well known that brain development in young people is an evolving concept. *Maturation of the adolescent brain, Arain M, Haque M, Johal L, Mathur P, Nel W, Rais A, Sandhu R, Sharma S., Neuropsychiatr Dis Treat. 2013;9:449-61. doi: 10.2147/NDT.S39776. Epub 2013 Apr 3. PMID: 23579318; PMCID: PMC3621648., https://pmc.ncbi.nlm.nih.gov/articles/ PMC3621648.* Typically, a young person's brain does not fully mature until sometime between the ages of 18-24. *Id.*, p.18. Environmental conditions will greatly affect the development of a young person's brain. *Id.*, p. 1. MacKenzie was beat before he had a chance to attain the age of 5. His grandmother who took him in described him as "savage-like" due to the tremendous deficiencies in his life. This is the exact concept that *Roper* and its progeny were addressing in youthful offenders. There is a grave difference between MacKenzie and a normal adult offender. His upbringing was worse than most children in third-world countries and his lack of development was consistent therewith. MacKenzie fits the description of the juvenile or youthful offender in the *Roper* line of cases. The guidance, then, from *Roper* is not to match the facts so as to put it on all fours with the case at bar, but to follow the analytical trend and guidance therefrom when dealing with a youthful offender such as MacKenzie and to fashion a sentence that fits not only the crime, but also the criminal as the law requires.

The other aspect of this issue that detracts from the State's argument on this issue are the effects and consequences of extensive imprisonment of a youthful offender. MacKenzie will be subject to the controls and disciplines of the penitentiary for virtually all of his adult life. The effect from this imprisonment is significant. Imprisonment impacts an inmate on his release in a significant manner. *The Psychological Impact of Incarceration.* MacKenzie is 19 now and when he is released from prison he will be 69. All of his developmental years will have been spent in a prison where he is subject to penal rules and regulations, and a completely structured environment designed to confine people. He will not have the ability to mature and evolve so as to leave the uncontrolled life he previously lived behind. His ability to adapt to a society so as to be a productive member of a community will not develop. The net effect is that he will not be rehabilitated, but institutionalized. This is not consistent with the governing law on sentencing practices as espoused by this Court in its precedent.

Additionally, the State attempts to distinguish the *Mitchell* case so as to reduce its impact on the issues herein. 2021 S.D. at 46. The State argues that Mitchell is distinguishable on the basis of the charge. This argument is specious as argued *supra*. The State further asserts that *State v. Banks* is on all fours with the case at bar and is persuasive. 2023 S.D. 39, 994 N.W.2d 230. In *Banks* two defendants were charged with a murder, but both plead to first degree manslaughter. *Id.*, at ¶2. Banks and the co-defendant blamed each other for the homicide. *Id.*, at ¶¶3-7. Banks attempted to have a polygraph examination admitted at sentencing, but the sentencing court refused to admit same. *Id.*, at ¶ 9. Banks appealed on the polygraph issue and not on his sentence. *Id.*, at ¶17. In *dicta*, this Court addressed sentencing issues similar to what occurred in *Mitchell*. *Id.*, at ¶¶21-22. The Court held that *Mitchell* and *Banks* were different cases, not

because of the statutory provision they were charged under, but because they were accomplices and the trial court determined, correctly, that regardless of who pulled the trigger to accomplish the death, both were equally responsible for the crime of first degree manslaughter. *Id.*, at ¶¶21-22. Clearly, *Banks* is neither controlling, nor persuasive here.

The State further argues that MacKenzie abandoned the self-defense claim when he pled guilty. This is a patent misapprehension of the law and facts herein. MacKenzie need not proceed to trial to assert mitigating evidence or circumstances at sentencing. *SDCL 23A-27-1.*

In light of the above, it is clear the trial court abused its discretion by imposing the sentence it did on MacKenzie and there are sufficient grounds for reversal and remand of this case to the trial court for re-sentencing.

ISSUE 2: WHETHER THE TRIAL COURT'S SENTENCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

There are two prongs to the analysis of whether or not a sentence is cruel and unusual. The first prong is to determine "... whether the sentence is 'grossly disproportionate to the corresponding offense ...'" *State v. Caffee*, 2023 S.D. 51, ¶17, 996 N.W.2d 351. In order for this Court to accomplish the aforesaid task, it must "... first compare the gravity of the offense – i.e., 'the offense's relative position on the spectrum of all criminality' – to the harshness of the penalty – i.e., 'the penalty's relative position on the spectrum of all permitted punishments.'" *Id.*, at ¶17. The Supreme Court has concluded that this "... analysis will 'typically mark the end of our review' as gross disproportionality is rarely found ...'" *Id.*, at ¶17. The second prong of the analysis is that if the penalty "... does appear 'to be grossly disproportionate to the

gravity of the offense, then ... [the Supreme Court] ... will compare the sentence to those 'imposed on other criminals in the same jurisdiction' as well as those imposed for commission of the same crime in other jurisdictions.'" *Id.*, at ¶17.

A. Gravity of the Offense.

The State hinges its argument on the cruel and unusual punishment issue on the strength of its analysis of the first prong of the gross disproportionality issue. The State concludes that the sentence imposed by the Court is not grossly disproportional to the gravity of the offense since first degree manslaughter involves the death of another human being and the maximum punishment is life in prison. This analysis is based upon the language in *Caffee* wherein this Court indicates that "... [h]omicide has long been considered 'the highest crime against the law of nature, that man is capable of committing ...'" and the "... consequences of taking a life are not simply grievous, they are incalculable. ..." *Id.*, at ¶18. The State brushes by the consideration of the conduct associated with the crime analysis and concludes that since the trial court did not impose the maximum punishment, the gross disproportionality issue is resolved and no further analysis is required. The State, however, misses the mark on this issue.

This Court has held that the gross disproportionality issue must be analyzed from two perspectives. *Id.*, at ¶¶18-19. The examination begins with an analysis in the abstract based upon the type of crime and the maximum punishment allowed by law. *Id.*, at ¶18. After the abstract examination, then it is required that the "... circumstances of the crime ..." MacKenzie was convicted of be examined in light of the facts associated therewith. *Id.*, at ¶19. The second analysis requires that "... other conduct relevant to the crime ..." be examined in detail. *Id.*, at ¶19.

MacKenzie was convicted of first degree manslaughter and understands the

severity and gravity of that crime in the abstract. However, when the circumstances and conduct involved in the crime are examined the pendulum on the gravity of the crime analysis should swing in favor of MacKenzie. As argued *supra* and in MacKenzie's Appellant's Brief, the events which transpired on the night that Quinlan was killed are central to the issue herein. MacKenzie was part of a lengthy and extensive drinking and drug-fueled evening that included both Quinlan and Dylan. Quinlan and Dylan were much older than MacKenzie. The actions by Quinlan and Dylan were aggressive and involved physical assault and mental intimidation. Dylan locked the door to the hotel room and blocked MacKenzie's exit. MacKenzie was backed into a corner in the room, and when Dylan began to assault him, he fought back with a knife. Quinlan became involved in the fracas and MacKenzie lost control and killed Quinlan and severely injured Dylan. Viewing the circumstances through MacKenzie's eyes at the time of the events, based upon his upbringing and life experiences, and seeing what he saw and experiencing what he experienced, leads to a different conclusion than asserted by the State. MacKenzie did not act intentionally nor deliberately, or out of anger, but reacted out of fear and in the same capacity as his mentality permitted. MacKenzie fended for himself since birth. His instinct was aggression and self preservation, as that is all he has ever known. MacKenzie was a dysfunctional person with a 12-13 year-old mentality in an 18 year-old body. His development was severely dwarfed and he did not have the ability to engage in rational thought due to his poor life experiences and the fact that he had consumed large amounts of alcohol and drugs. MacKenzie verily believed that he acted in self-defense. When these events are examined, it mitigates the gravity of the offense and shows that the sentence imposed by the trial court was grossly disproportionate to the corresponding offense which provides a basis to proceed from the

first prong of the cruel and unusual punishment argument to the second.

B. Sentences in South Dakota and in Other Jurisdictions.

The second prong of the cruel and unusual punishment issue requires that this Court "... compare the sentence to those 'imposed on other criminals in the same jurisdiction' as well as those imposed for commission of the same crime in other jurisdictions.'" *Id.*, at ¶17. The State did not address this portion of MacKenzie's arguments on this issue in its Appellee's Brief, as the State concluded that the inquiry on this issue ended with the gravity of the offense analysis. Consequently, MacKenzie has nothing to rebut from the State's brief on the second prong of the cruel and unusual punishment issue and stands on the arguments made in his Appellant's Brief.

CONCLUSION

In light of the above and foregoing, MacKenzie verily believes that the trial court abused its discretion in the sentence it imposed and that said sentence constitutes cruel and unusual punishment and the trial court should be reversed and the matter remanded back to the trial court for re-sentencing.

REQUEST FOR ORAL ARGUMENT: MacKenzie hereby requests oral argument.

Dated this 29th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

Timothy R. Whalen, the attorney for the Appellant, hereby certifies that the

Appellant's Reply Brief complies with the type volume limitations provided for in SDCL 15-26A-66(b)(4). The Brief of Appellant contains 18,688 characters and 3,569 words. Further, the undersigned relied upon the word count of the word processing system used to prepare the Appellant's Reply Brief.

Dated this 29th day of September, 2025.

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The undersigned hereby certifies that he served a true and correct copy of the Appellant's Reply Brief on the attorneys for the Appellee at their e-mail addresses as follows:

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by the UJS Odyssey System on the 29th day of September, 2025, at Lake Andes, South Dakota. Further, the undersigned hereby certifies that the original of the above and foregoing Appellant's Reply Brief was mailed to Shirley Jameson-Fergel, Clerk of the

Supreme Court, State Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070 on the 29th day of September, 2025.

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