IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31189

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

CHRIS DAVID KUJAWA,

Defendant and Appellant.

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

HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLANT'S BRIEF

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IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA *Plaintiff and Appellee,* vs. CHRIS DAVID KUJAWA, *Defendant and Appellant.*	No. 31189

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as "SR" and will be followed by the appropriate page number. Exhibits are referred to as "Ex." followed by the exhibit number or letter. All references are followed by the appropriate page number. The transcripts are referred to as follows:

Initial Appearance (January 8, 2025) ..... IA

Motions Hearing (March 6, 2025) ..... MH

Pretrial Conference (April 16, 2025) ..... PTC

Voir Dire (May 5, 2025) ..... VD

Jury Trial (May 5 – May 6, 2025) JT1-JT2

Status Hearing (May 8, 2025) ..... SH

Sentencing (June 25, 2025) ..... SENT

Defendant and Appellant, Chris Kujawa, will be referred to as "Kujawa." David Jasper, the State's complaining witness, will be referred to as "Jasper."

JURISDICTIONAL STATEMENT

Kujawa appeals the Judgment and Sentence entered June 30, 2025, and the Memorandum Opinion on Motion for a New Trial and Order, entered August 11, 2025, by the Honorable Matthew M. Brown, Circuit Court Judge of the Seventh Judicial Circuit. SR 240-41; SR 270-73. Kujawa's Notice of Appeal was filed August 15, 2025. SR 274. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUES

I. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN EXCLUDING EVIDENCE OF JASPER'S PRIOR CONVICTIONS UNDER SDCL 19-19-609.

The circuit court excluded evidence of the statutory names of prior convictions, dates of convictions, and nature of the crimes.

State v. Swallow, 405 N.W.2d 29 (S.D. 1987)

United States v. Howell, 285 F.3d 1263 (10th Cir. 2002)

SDCL 19-19-609

II. WHETHER KUJAWA'S CONSTITUTIONAL RIGHT TO CONFRONTATION WAS VIOLATED.

The circuit court limited Kujawa's cross-examination of the State's complaining witness regarding his criminal history.

State v. Dickerson, 2022 S.D. 23, 973 N.W.2d 249

State v. Richmond, 2019 S.D. 62, 935 N.W.2d 792

U.S. Const. amend. VI

III. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN RESPONDING TO THE JURY'S QUESTION.

The circuit did not provide clarification for the jury's question but instead directed the jury back to previously given instructions.

Bollenbach v. United States, 326 U.S. 607 (1946)

United States v. Nunez, 889 F.2d 1564 (6th Cir. 1989)

State v. Harruff, 2020 S.D. 4, 939 N.W.2d 20

STATEMENT OF CASE AND FACTS

On January 22, 2025, a Pennington County Grand Jury returned an Indictment charging Kujawa with the following: Count 1, First Degree Burglary, in violation of SDCL 22-32-1(1), and Count 2, Aggravated Assault – Physical Menace with a Deadly Weapon, in violation of SDCL 22-18-1.1(5). SR 29-30. The Indictment was filed on January 23, 2025. *Id.* A Motions Hearing was held on March 6, 2025 and the circuit court granted pretrial motions. *See generally* MH. A Pretrial Conference was held on April 16, 2025. *See generally* PTC. A jury trial commenced May 5, 2025, and continued through May 6, 2025. *See generally* VD, JT1-JT2.

At trial, testimony established that Kujawa had rented space from David Jasper in a storage unit in Box Elder, South Dakota. JT2 48. Kujawa performed vehicle repairs and welding with equipment and tools he stored at Jasper's storage unit. JT2 48-49. Jasper eventually sold the storage unit. JT2 48. According to Jasper, he notified Kujawa the storage unit had been sold and told him to

remove the equipment or speak with the new owner. JT2 49. Jasper stated that Kujawa did not remove his items, and he did not have contact with Kujawa following the sale and transfer of ownership. JT2 49-50.

On January 6, 2025, law enforcement responded to 237 Mockingbird Court in Box Elder, South Dakota for a reported assault. JT2 163. Jasper's wife reported that her husband was struck with a firearm. JT2 85-87. According to Jasper's testimony, he was at home when he heard a knock on his door. JT2 50. Jasper admitted to initially reporting that Kujawa had kicked down the door. JT2 64-65. ln direct examination, he stated that upon opening the door, Kujawa pushed his way in and held a gun to Jasper's head, telling him to prepare to die for stealing his equipment. JT2 51. Jasper told Kujawa he didn't steal his equipment, and that Kujawa should speak with the new owner. *Id*. Jasper claimed that Kujawa forced him to turn around, held the gun to the back of his head, and forced him into the bedroom. JT2 51-53. Jasper then heard the slide rack engage. JT2 51-52. Kujawa kicked and pushed Jasper down with his feet, stating, "l got one in the chamber. This is it, you're done," and threatened that Jasper's wife would be next. JT2 52. Jasper described the gun as a pistol. *Id*. He also claimed his nose was bleeding from hitting the floor. JT2 53.

Jasper explained that Kujawa then "just got up and he just went out the door and he was gone." JT2 55. Jasper called his wife, who reported the incident to police. JT2 56. Law enforcement responded quickly, and Jasper reported the

incident to the responding officers. JT2 56-57. Jasper's wife also responded to the home within minutes. JT2 57.

Kujawa sought to impeach Jasper with prior convictions. Discussion regarding impeachment began after jury selection. *See generally* JT1. Defense counsel raised a concern regarding Kujawa's ability to impeach Jasper without documentation of known prior convictions. JT1 22-26. The circuit court stated the State should provide the "Triple I," and if further documentation of prior convictions were necessary, it would be provided. JT1 24-26.

The following day, prior to opening statements, the parties advised the circuit court that the Triple I document regarding Jasper's criminal history did not contain known convictions. JT2 32. Defense counsel advised the circuit court of its intent to impeach Jasper with a Grand Theft conviction from South Dakota,[1] and a related federal conviction. JT2 31-34. Defense counsel was concerned that federal convictions were sealed and not available for impeachment purposes. JT2 34. According to the prosecution, the federal conviction was for "possession of eagle feathers." JT2 33. The State also assured the circuit court that Jasper "will admit to those felony convictions." JT2 33.

The defense requested latitude in cross-examining Jasper, specifically, the defense intended to elicit testimony related to the details of Jasper's prior convictions because the nature of the convictions related to defense theory. JT 34.

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[1] Defense counsel referenced the file number: 49C01004983A0.

Jasper's credibility was central to the defense. *Id.* Defense counsel explained that Jasper's Grand Theft conviction involved deceitful financial dealings with several victims. JT2 34. The defense was concerned that Jasper may be a charismatic speaker in testimony, but his credibility should be understood within the context of his documented history of being a skillful con man. JT2 34-35.

The circuit court ultimately provided a preliminary ruling, stating it would initially permit two questions under SDCL 19-19-609. JT2 39. Specifically, it would limit the inquiry to whether Jasper had been convicted of prior felonies and whether one conviction was for a crime of dishonesty. *Id.* The circuit court prohibited questions regarding the statutory names of convictions or "what the details were." *Id.*

On direct examination, the State elicited Jasper's acknowledgement of his prior convictions with the following line of questioning:

> Q: "Okay. Now, just to get this part out of the way, David, do you have two prior felonies?
> A: Yes, sir.
> Q: All right. And do you have a – is one of those felonies a crime of dishonesty from 2002?
> A: Yes.

JT2 58. Defense counsel attempted to cross examine Jasper with evidence of his prior convictions. JT2 73-75. The State objected and the circuit court limited cross examination during the following exchange:

> Q: Now, I wanted to – you have multiple felony convictions, don't you?
> A: No.

Q: Well, you have some state convictions and some federal convictions; fair?
A: Yes.
Q: Okay. And you have convictions that are felonies that were actually crimes of dishonesty; right?
A: lt was white collar, yes.
Q: Well, an actual crime of being a dishonest.

JT2 73-74. At this point, the State requested a bench conference and the parties spoke with the circuit court off the record. JT2 74.

Questioning resumed with defense counsel asking, "Mr. Jasper, what is a white-collar crime?" JT2 74. The State objected, and another bench conference was held off the record. *Id.* The circuit court sustained the objection. *Id.* Defense counsel then sought to clarify the dates of conviction and Jasper's release from the Department of Corrections. *Id.* The State objected again, and the circuit court sustained the objection. JT2 75. Defense counsel then asked Jasper to confirm his "second felony was in 2018." JT2 75. The State objected and moved to strike the question. *Id.* The circuit court sustained the objection and ordered the jury to "ignore that question, not to consider it if this matter gets to deliberations." *Id.*

The circuit court addressed the impeachment issue outside the presence of the jury. JT2 89. Defense counsel argued that Jasper's comment regarding "white-collar crime" was an attempt to minimize his prior conviction, which invited inquiry into the actual conviction. JT2 89-90. The State responded that Jasper had already admitted to his prior crimes, including "a crime of dishonesty," and that Jasper's characterization of his history of "white-collar crime" was sufficient for purposes of SDCL 19-19-609. JT2 90-91. The circuit court explained that it

sustained the State's objections because Jasper's response did not necessitate evidence about "what the actual crime was." JT2 93. The circuit court reasoned that Jasper "did not open the door by saying that it was a white-collar crime." *Id.*

The State also called Jasper's wife, Deanna ("Deedee") Jasper. JT2 82. Deedee recounted receiving a call from Jasper, who indicated he was assaulted, and speeding home to find him in the bedroom crying. JT 85-86. ln cross-examination, Deedee admitted she did not observe injuries to Jasper. JT2 104-05. When Deedee called law enforcement, she reported that Jasper had been "pistol-whipped." JT2 86, 96. Officer Stephanie Bright testified that she arrived and did not observe any injuries or bleeding from Jasper. JT2 114. Officer Bright searched the room for a bullet that may have been ejected during the alleged assault, but found none. JT2 142-43. Officer Bright located and arrested Kujawa at Oley Hansen's house. JT2 117-19.

The State called Hansen to testify. JT2 150. According to Hansen, he had been at the hospital with his wife during the incident. JT2 157. Kujawa, however, told Hansen about his interaction with Jasper, indicating he'd gone to Jasper's home to ask for money and when he knocked, Jasper fell to the floor. JT2 153-54. Officer Gunnar Grass searched Hansen's home and did not find a pistol. JT2 168.

The State rested and the circuit court denied the defense motion for judgment of acquittal. JT2 179-180. ln closing arguments, the parties referenced the evidence of Jasper's prior convictions. JT2 195-JT2 223; JT2 225-26. Defense counsel argued that Jasper's prior felony "with dishonesty" should affect his

credibility. JT2 223. ln rebuttal, the State emphasized the prior conviction "was from 23 years ago." JT2 225. Defense counsel asked for a bench conference and the circuit court instructed the jury that "arguments of counsel are not evidence." JT2 225. The State then reemphasized the conviction was "for something 20-plus years ago." JT2 226.

During deliberations, the jury submitted a question to the circuit court. SR 126. The question read:

> ls a guilty verdict possible on Count One First Degree Burglary, if there is a reasonable doubt as to the involvement of a weapon?

Id. Defense counsel argued the question was "clearly a legal question," and the circuit court should respond by stating "no, you cannot convict if you do not believe beyond a reasonable doubt that a weapon was used." JT2 237. The State argued that the instructions previously given adequately answered the jury's question. JT2 236. The circuit court directed the jury to review previously given instructions, specifically identifying Jury lnstruction # 17, 28, and 28A. SR 126.

The jury returned guilty verdicts on both counts. JT2 240-41; SR 127. On June 30, 2025, Kujawa was sentenced to 12 years on each count, concurrently. SR 240. The defense timely moved for a new trial based on the circuit court's handling of the impeachment evidence related to the prior convictions and the circuit court's response the jury's question. SR 246-253. Regarding the jury question issue, the defense supported its motion with an affidavit from a juror. SR 244. The juror stated that upon reading the instructions, they did not believe

proof beyond a reasonable doubt that a gun was used was required to find Kujawa guilty. *Id.* The circuit court denied the motion for new trial. SR 270-73.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN LIMITING EVIDENCE OF JASPER'S PRIOR CONVICTIONS.

A. *Standard of Review*

Evidentiary rulings regarding impeachment under SDCL 19-19-609 are reviewed for abuse of discretion. *State v. Rudloff*, 2024 S.D. 73, ¶¶ 49-50, 15 N.W.3d 468, 486 (citing *State v. Dickson*, 329 N.W.2d 630, 633 (S.D. 1983)). "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.'" *State v. Harruff*, 2020 S.D. 4, ¶ 14, 939 N.W.2d 20, 25 (quoting *State v. Kvasnicka*, 2013 S.D. 25, ¶ 17, 829 N.W.2d 123, 127-28). "Under the abuse of discretion standard, 'not only must error be demonstrated, but it must also be shown to be prejudicial.'" *Id.* (quoting *State v. Stone*, 2019 S.D. 18, ¶ 22, 925 N.W.2d 488, 497).

B. *The Circuit Court Erred in Prohibiting Evidence of the Statutory Names of Prior Convictions, Dates of Convictions, and Nature of the Crimes.*

lmpeachment by evidence of a criminal conviction is governed by SDCL 19-19-609(a), which provides, in relevant part:

> (1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
>
> (A) Must be admitted, subject to § 19-19-403, in a civil case or in a criminal case in which the witness is not a defendant; and

> (B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
> (2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving--or the witness's admitting--a dishonest act or false statement.

Convictions dated ten years from release from confinement are admissible if the probative value outweighs its prejudicial effect. SDCL 19-19-609(b)(1). This rule mirrors Fed. R. Evid. 609.

Before adopting the language contained in Fed. R. Evid. 609, South Dakota's rule concerning impeachment by evidence of a criminal conviction did not differentiate between the accused and a State witness, and provided for a different balancing test. *See* Chris Hutton, *South Dakota Evidence: Significant Developments*, 63 S.D. L. Rev. 239, 261-62 (2018). Preceding SDCL 19-19-609, the prior rule, SDCL 19-14-12, read as follows:

> For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted but only if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party or the accused and the crime
> (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or
> (2) involved dishonesty or false statement, regardless of the punishment.

State v. Swallow, 405 N.W.2d 29, 36 n. 1 (S.D. 1987) (quoting SDCL 19-14-12).

In *Swallow*, a defendant sought to impeach the State's witness with a prior murder conviction. *Id.* The defendant argued the trial court abused its discretion in prohibiting inquiry into the nature of the witness's prior conviction. *Id.* This

Court affirmed the lower court's evidentiary ruling, but the decision was delivered with an important caveat: "[w]hile the limitation of cross-examination placed on Swallow in this case may be an abuse of discretion under the federal rule, we do not believe it is an abuse of discretion under SDCL 19-14-12." *Id.*

Here, the circuit court considered the admission of two prior felony convictions of the State's complaining witness under SDCL 19-19-609. JT2 39. And unlike *Swallow*, where the critical distinction between SDCL 19-14-12, which "speaks of prejudicial effect *to a party or the accused*[,]" and Fed. R. Evid. 609, which "speaks of prejudicial effect *to the defendant*[,]" controlled this Court's holding, this Court should find an abuse of discretion in the circuit court's application of SDCL 19-19-609. *Id.*

The circuit court's evidentiary ruling significantly limited Kujawa's defense, initially allowing only two questions related to Jasper's prior felony convictions: "have you been convicted of a felony or two felonies and is one of them a crime of dishonesty." JT2 39. However, the circuit court did not apply a proper balancing test to either conviction, nor specify whether it was considering the admission of Jasper's convictions as felonies under SDCL 19-19-609(a)(1)(A), or crimes of dishonesty under SDCL 19-19-609(a)(2). JT2 39; JT2 89-93. *Id.*

The circuit court abused its discretion by erroneously applying SDCL 19-19-609, enforcing a "blanket rule" which deemed the nature of Jasper's felony convictions to be "categorically inadmissible." *United States v. Howell*, 285 F.3d 1263, 1268 (10th Cir. 2002). Under both SDCL 19-19-609(a)(1)(A) and SDCL 19-19-

609(a)(2), the circuit court should have permitted Kujawa to elicit, at minimum, testimony related to the dates, statutory names, and nature of Jasper's convictions.

C. *Evidence of Jasper's Prior Convictions Was Admissible Under SDCL 19-19-609(a)(1)(A).*

In *Howell*, the Tenth Circuit held that the district court violated Fed. R. Evid. 609(a)(1) because it refused to admit the nature of prior felony convictions of numerous government witnesses without first conducting the required balancing test under Rule 403. *Howell*, 285 F.3d at 1265. The defendant in *Howell* was a correctional officer indicted for the beatings of two inmates. *Id.* at 1265-66. Twelve inmates testified in support of the government's case. *Id.* at 1266. The defendant sought to introduce evidence of the nature and date of each prior conviction of the government witnesses and requested the district court make determinations on a witness-by-witness basis. *Id.* The district court limited the impeachment evidence to the fact of conviction, date of conviction, and number of convictions. *Id.* at 1266-67. In reversing the district court's ruling, the Tenth Circuit held that "ordinarily, evidence of a witness's felony conviction shall include information about the nature of that conviction unless, after Rule 403 balancing, the probative value of such evidence is outweighed by its prejudicial effect." *Id.* at 1268-69. *See also United States v. Burston*, 159 F.3d 1328, 1336 (11th Cir. 1998) (holding "Rule 609(a)(1) requires a district court to admit evidence of the nature and number of a non-defendant witness' prior felony convictions").

Moreover, the *Howell* court observed that Rule 609(a)(1) "demonstrates a greater concern about admitting potentially prejudicial information about the accused than about a mere witness." 285 F.3d at 1267. *See also United States v. Estrada*, 430 F.3d 606, 619 (2nd Cir. 2005) (stating "courts should consider, when undertaking the balancing analysis under Rule 609(a)(1), whether the witness is testifying for the defendant or the government"). This Court has also observed this critical distinction, even before 19-19-609 was adopted. *Swallow*, 405 N.W.2d at 36. Furthermore, federal courts interpreting Rule 609(a)(1) have determined that even felonies "not involving dishonesty or false statement such as to fall within the scope of Rule 609(a)(2) nonetheless bear on credibility in varying degrees." *Estrada*, 430 F.3d at 617. *See also Burston*, 159 F.3d at 1335-36 (stating "the implicit assumption of Rule 609 is that prior convictions have probative value" which "varies with their nature and number," and holding "Rule 609(a)(1) requires a district court to admit evidence of the nature and number of a non-defendant witness' prior felony convictions").

The circuit court did not properly apply the balancing test under SDCL 19-19-609(a)(1). The record does not demonstrate the circuit court weighed the probative value against the prejudicial effect of either conviction under SDCL 19-19-403, as required. *See Howell*, 285 F.3d at 1270 (holding "the court must conduct a Rule 403 balancing before determining what information about a witness's prior felony conviction, including its nature, should be admitted or excluded"); *Estrada*, 430 F.3d at 619 (holding "[w]e thus find the gradations among Rule

609(a)(1) crimes, in terms of their bearing on truthfulness, to lie at the heart of the Rule 403 analysis that district courts must undertake when determining whether to admit for impeachment purposes evidence of a witness's convictions, including their statutory names, under Rule 609(a)(1)"). The circuit court's ruling only considered whether Jasper "opened the door" to effective questioning about his convictions. JT2 93. The jury heard that Jasper had "two prior felonies" and "one of those felonies [was] a crime of dishonesty from 2002," JT2 58, but defense counsel was prohibited from expounding upon the nature, statutory name, or date of the convictions. JT2 73-75. This was an abuse of discretion under SDCL 19-19-609(a)(1).

D. *Evidence of Jasper's Prior Grand Theft Conviction Was Admissible Under SDCL 19-19-609(a)(2).*

Evidence of crimes of dishonesty is admissible under SDCL 19-19-609(a)(2) if it has occurred within ten years. *Rudloff*, 2024 S.D. 73, ¶ 46, 15 N.W.3d at 485. Under SDCL 19-19-609(a)(2), crimes relating to dishonesty "must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement." Such crimes are "*per se* probative of credibility." *Estrada*, 430 F.3d at 615. ln *Rudloff*, defendant was charged with three counts of first-degree rape of a minor under 13 years old. 2024 S.D. 73, ¶ 1, 15 N.W.3d at 472. At trial, the victim children's mother testified for the State about disclosures the children made to her regarding sexual abuse. *Id.* at ¶ 14, at 476. The defendant sought to impeach

the State's witness with her prior conviction for "false reporting of rape and kidnapping." *Id.* at ¶ 45, at 484. Because the conviction was more than ten years old, the circuit court weighed its probative value against danger of confusing the jury and unfair prejudice. *Id.* at ¶ 48, at 486. This Court found no abuse of discretion where the circuit court applied the appropriate analysis. *Id.* at ¶ 51, at 487.

Here, there was no dispute that Jasper's prior conviction for Grand Theft was within the required ten-year period and constituted a crime of dishonesty under SDCL 19-19-609(a)(2). JT2 31-32. Defense counsel believed there was an associated federal conviction. JT2 31-34. Although the State explained a federal conviction existed for "possession of eagle feathers," the circuit court did not inquire further. JT2 33. The circuit court never definitively determined the number, statutory names, dates, or nature of Jasper's convictions. *See generally* JT2. Therefore, the circuit court could not conclude whether Jasper's convictions may be required to be admitted under SDCL 19-19-609(a)(2). Because the State's criminal history report did not contain known convictions, it was not clear to the parties, nor the circuit court, whether more convictions should be admitted as crimes of dishonesty. JT2 32-34. Furthermore, the jury never heard that at least one of Jasper's convictions was for Grand Theft. *See generally* JT2. Defense counsel also asked Jasper if he had a felony conviction from 2018. JT2 75. The circuit court sustained the State's objection and struck the testimony from the record. *Id.* The circuit court abused its discretion because it did not determine

what convictions existed for impeachment purposes under SDCL 19-19-609(a)(2), and did not allow for clear evidence of the nature, statutory name, or dates of Jasper's convictions.

E. The Circuit Court's Error Caused Significant Prejudice to Kujawa's Defense.

The circuit court ruling allowed Jasper to characterize his prior convictions as "white collar." JT2 74. As defense argued, this allowed Jasper to minimize the nature of his criminal history. JT2 90. Jasper's description of his criminal history as "white collar" obfuscated his prior convictions. *See White-Collar Crime*, Black's Law Dictionary (12th ed. 2024) (stating "[o]nce the phrase appeared, however, legal observers began endlessly grappling with the meaning of so-called white-collar criminality"); Stuart P. Green, *The Concept of White Collar Crime in Law and Legal Theory*, 8 Buff. Crim. L. Rev. 1, 1 (2004) (stating in defining "white collar crime," scholars "find a remarkably wide range of both proposed definitions and terminological alternatives"). Under these circumstances, further cross-examination is permissible. *See United States v. Collier*, 527 F.3d 695, 700 (8th Cir. 2008) (stating "[w]hen an accused, on direct examination, attempts to minimize his guilt or culpability, a more detailed cross examination is permissible").

Jasper's credibility was central to Kujawa's defense theory. JT2 34. As the circuit court acknowledged, the case "really rests upon Mr. Jasper's testimony along with – primarily Mr. Jasper's testimony." JT2 180. On this record, it is not clear whether Jasper's characterization of his criminal history as "white collar"

was itself a dishonest statement. However, because of the circuit court's restrictions during cross-examination, defense counsel was limited to informing the jury that Jasper "had a felony dealing specifically with dishonesty" during closing argument. JT2 223. The circuit court significantly limited Kujawa's defense, and he suffered substantial prejudice from its rulings under SDCL 19-19-609.

II. KUJAWA'S CONSTITIONAL RIGHT TO CONFRONTATION WAS VIOLATED.

A. *Standard of Review*

A defendant has a constitutional right to confront witnesses. U.S. Const. amend. Vl. Kujawa did not expressly base his request for cross-examination on the confrontation clause. *See generally* JT1-JT2. However, this Court "may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved." *State v. Spaniol*, 2017 S.D. 20, ¶ 21, 895 N.W.2d 329, 338 (quoting SDCL 19-19-103(e)). Kujawa requests this Court review this issue for plain error. To establish reversible plain error, Kujawa must show "(1) error, (2) that is plain, (3) affecting substantial rights; and only then may this Court exercise its discretion to notice the error if (4) it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *State v. Scott*, ¶ 16, 2024 S.D. 27, 7 N.W.3d 320, 327 (citation modified).

B. *Kujawa Was Not Given a Full and Fair Opportunity to Confront Jasper Regarding his Credibility.*

"A defendant's constitutional right to cross-examine witnesses is 'generally satisfied when the defense is given a full and fair opportunity to probe and expose a witness' infirmities through cross examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witnesses' testimony.'" *State v. Richmond*, 2019 S.D. 62, ¶ 31, 935 N.W.2d 792, 801 (quoting *State v. Carothers*, 2006 S.D. 100, ¶ 16, 724 N.W.2d 610, 618). The circuit court's limitation of Kujawa's cross examination of Jasper amounted to a confrontation clause violation. *See Swallow*, 405 N.W.2d at 36 (stating "[t]he limitation of cross-examination of a prosecution witness also raises confrontation clause questions"). "Moreover, the right of cross-examination is more than a desirable rule of trial procedure. lt is implicit in the constitutional right of confrontation, and helps assure the accuracy of the truth-determining process." *Dickerson*, 2022 S.D. 23, ¶ 39, 973 N.W.2d at 262 (citation modified). The confrontation clause requires a defendant be allowed to impeach the credibility of a prosecution witness by cross-examination with evidence of prior criminal history. *See generally Davis v. Alaska*, 415 U.S. 308 (1974). A reasonable jury may have interpreted Jasper's testimony differently had Kujawa's counsel been permitted to pursue the proposed line of questioning. *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986)).

As the circuit court observed, the State's case was based almost exclusively on Jasper's testimony. JT2 180. The circuit court committed plain error because it significantly limited Kujawa's ability to confront Jasper with his criminal history. This was reversible error because it seriously affected the fairness and integrity of the trial.

III. THE CIRCUIT COURT ABUSED ITS DISCRETION IN RESPONDING TO THE JURY'S QUESTION.

A. *Standard of Review*

This Court has held that "a trial court may answer questions posed by the jury during deliberations." *State v. Moran*, 2003 S.D. 14, ¶ 67, 657 N.W.2d 319, 333 (citing *State v. Kaiser*, 504 N.W2d 96, 101 (S.D. 1993)). The circuit court's response to a jury question is reviewed for abuse of discretion. *Id.* "The decision whether to provide further instruction to the jury rests within the sound discretion of the trial court." *State v. Rhines*, 548 N.W.2d 415, 454 (S.D. 1996) (citing *State v. Floody*, 481 N.W.2d 242, 250 (S.D. 1992)). "If the circuit court's answer provided to the jury was erroneous, [defendant] must establish prejudice, 'to the point where the jury would probably have returned a different verdict if the court's answer had not been given.'" *State v. Hillyer*, 2025 S.D. 30, ¶ 24, 23 N.W.3d 782, 790 (quoting *Moran*, 2003 S.D. 14, ¶ 71, 657 N.W.2d at 334).

B. *The Circuit Court's Response to the Jury's Question was an Abuse of Discretion Because it Did Not Answer the Direct Question Posed.*

The United States Supreme Court has stated that "[w]hen a jury makes explicit its difficulties a trial judge should clear them away with concrete

accuracy." *Bollenbach v. United States*, 326 U.S. 607, 612-13 (1946). When the jury's question "indicates confusion about an important legal issue, it is not sufficient for the court to rely on more general statements in its prior charge." *United States v. Nunez*, 889 F.2d 1564, 1568 (6th Cir. 1989).

Here, the jury's question indicated confusion about the elements the State must prove beyond a reasonable doubt – an important legal issue, to be sure. And this specific issue relating to the elements of the offense was the subject of extended discussion during the settlement of jury instructions. JT2 183-191. Specifically, the jury asked whether a guilty verdict on the First-Degree Burglary count was possible if there was a reasonable doubt as to the use of a weapon. SR 126. In settling instructions, the parties had agreed the use of a weapon was an element required for conviction on both counts. JT2 183-191. As defense counsel argued, the circuit court's response to the jury should have clarified that a conviction could not be sustained if there was reasonable doubt regarding the involvement of a weapon. JT2 237.

Of course, this Court "presume[s] that juries follow their instructions[.]" *State v. Black Cloud*, 2023 S.D. 53, ¶ 43, 996 N.W.2d 670, 682. But in this case, the instructions, as given, left the jury with a significant misunderstanding of the State's burden to prove every element of the charged offenses. And instead of providing the jury with clear, concrete, and specific answer to this important legal question, the circuit court referred the jury back to the original instructions. In light of the question raised by the jury, and the importance of clarifying that

all elements must be proven beyond a reasonable doubt to return a guilty verdict, the circuit court's answer allowed the jury's confusion to impact the verdict. Under the circumstances presented in this case, the decision to refer the jury back to the original instructions was "a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration is arbitrary or unreasonable." *Harruff*, 2020 S.D. 4, ¶ 14, 939 N.W.2d at 25. The circuit should have responded to the jury in the negative, as Kujawa requested, and instructed the jury that a conviction cannot be sustained if there is reasonable doubt as to the use of a weapon.

Had the circuit court properly informed the jury that the involvement of a weapon was an element the State must prove beyond a reasonable doubt, the jury would have returned a different verdict.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Appellant respectfully asks this Court to remand the case to the circuit court with an order directing the court to reverse the Judgment and Sentence and schedule a new trial.

REQUEST FOR ORAL ARGUMENT

The attorney for the Appellant, Chris Kujawa, respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted this 18th day of December, 2025.

/s/ Derek D. Friese
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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 5,396 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 18th day of December, 2025.

/s/ Derek D. Friese
Derek D. Friese
Attorney for Appellant

CERTIFICATE OF SERVICE

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

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Dated this 18th day of December, 2025.

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APPENDIX

Judgment & Sentence A-1

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff,	)	File No. 51CRI25-124
vs.	)	**JUDGMENT**
CHRIS DAVID KUJAWA, DOB: 12/19/1962 Defendant.	)	

Appearance at sentencing:
Prosecutor: Adam Shiffermiller Defense attorney: Martha Rossiter
Date of sentence: June 25, 2025
Count 1:
Date of offense: January 6, 2025
Charge: 1st Degree Burglary
Class: 2 Felony SDCL: 22-32-1
Convicted at trial on May 6, 2025
Count 2:
Date of offense: January 6, 2025
Charge: Aggravated Assault
Class: 3 Felony SDCL: 22-18-1.1(5)
Convicted at trial on May 6, 2025

On Count 1: The Defendant is sentenced to serve a term of 12 year(s) in the South Dakota State Penitentiary; the penitentiary term shall be suspended for a term of 0 year(s), and 169 days credit plus each day served in the Pennington County jail.; and
On Count 2: The Defendant is sentenced to serve a term of 12 year(s) in the South Dakota State Penitentiary; the penitentiary term shall be suspended for a term of 0 year(s), and 169 days credit plus each day served in the Pennington County jail.; and

☒ Count 1 sentence shall run concurrent with Count 2 sentence.
☒ That Defendant pay court costs of $116.50.
☒ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11 in the amount of $2,196.00.
☒ That Defendant pay prosecution costs: Transcript $49.00.
☒ That the Defendant shall not have contact with David Jasper.

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

6/30/2025 11:13:18 AM
Attest:
Patterson, Meghan
Clerk/Deputy

BY THE COURT:

HON. MATTHEW M. BROWN CIRCUIT JUDGE

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31189

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

CHRIS DAVID KUJAWA,

Defendant and Appellant.

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

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AND APPELLANT

Notice of Appeal filed August 15, 2025

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OTHER REFERENCES:

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31189

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

CHRIS DAVID KUJAWA,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Chris David Kujawa, is referred to as "Kujawa" and "the Defense." Plaintiff and Appellee, the State of South Dakota, is referred to as "the State." Exhibits used are referred to as "Ex" followed by their exhibit number. References to documents are denoted as follows with corresponding page number(s) indicated thereafter:

Settled Record (51CRI25-000124).....SR

Appellant's Brief.....AB

JURISDICTIONAL STATEMENT

This is an appeal of an Amended Judgment entered on June 30, 2025. SR:240. On July 11, 2025, Kujawa filed a Motion for New Trial. SR:246-54. On August 11, 2025, the circuit court denied Kujawa's Motion. SR:270-73. Kujawa filed his Notice of Appeal on August 15,

2025. SR:274. This Court has jurisdiction to hear this appeal.

SDCL 23A-32-2, 23A-32-15.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN MAKING ITS EVIDENTIARY RULING?

Kujawa informed the circuit court of his intent to impeach the victim with his prior convictions. The circuit court allowed evidence that the victim had two prior felony convictions and one was for a crime of dishonesty.

State v. Black Cloud, 2023 S.D. 53, 996 N.W.2d 670

SDCL 19-19-609

II.

WHETHER THE CIRCUIT COURT COMMITED PLAIN ERROR IN LIMITING KUJAWA'S RIGHT TO CONFRONTATION?

The circuit court did not rule on this issue.

State v. Krueger, 2020 S.D. 57, 950 N.W.2d 664

State v. McMillen, 2019 S.D. 40, 931 N.W.2d 725

III.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN RESPONDING TO THE JURY'S QUESTION?

The jury asked the circuit court a question during deliberation. The circuit court referred the jury to their instructions.

State v. Hillyer, 2025 S.D. 30, 23 N.W.3d 782

SDCL 22-32-1(1)

STATEMENT OF THE CASE

On January 22, 2025, Kujawa was indicted for first-degree burglary in violation of SDCL 22-32-1(1)[1] and aggravated assault in violation of SDCL 22-18-1.1(5).[2] SR:29. The jury convicted Kujawa of both counts. The circuit court sentenced Kujawa to twelve years on each count to run concurrently. SR:240.

For brevity and clarity, the relevant procedural information necessary to dispose of each issue is described below.

STATEMENT OF THE FACTS

On January 6, 2025, David Jasper was at his home in Box Elder, when he heard someone knocking on his front door. SR:615, 618. David opened the door and saw a person pointing a pistol at his face. SR:618, 620. The intruder pushed his way into David's home. SR:618.

David recognized the intruder as Kujawa. SR:618. Approximately seven months earlier, David operated a storage rental business where Kujawa rented a unit for his welding business. SR:616-17. David

---

[1] First degree burglary, defined by SDCL 22-32-1(1), states, "Any person who enters or remains in an occupied structure, with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, is guilty of first degree burglary if: (1) The offender infiicts, or attempts or threatens to infiict, physical harm on another."

[2] Aggravated Assault, defined by 22-18-1.1(5), states, "Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm."

eventually sold Kujawa's unit; before selling the unit, David informed Kujawa he must move his stuff out or talk to the new owner. SR:616-17.

While Kujawa held a gun to David's head, he commanded David to "say [his] prayers and prepare to die for stealing all his stuff." SR:619. Kujawa directed David to turn around and drop to his knees. SR:619, 621. Kujawa pointed the gun at the back of David's head and kicked David in his back, knocking him to the ground. SR:619. David's face hit the carpet, causing his glasses to fly off and his nose to bleed. SR:621, 625. David heard Kujawa rack the slide of the gun. SR:619-20. Kujawa retorted, "It's time for you to talk to your maker, I got one in the chamber. This is it, you're done." SR:620. Kujawa declared David's wife would be next. SR:620.

Suddenly, with David still on the floor, Kujawa ran out of the house. SR:620, 623. David laid frozen on the floor, unable to move. SR:623-24.

ARGUMENTS

I.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN MAKING ITS EVIDENTIARY RULING.

On the start of the second day of trial, the Defense informed the circuit court that David's Triple I[3] does not contain a complete record of his criminal history. SR:599. The Defense remarked:

> There was a state and federal conviction. Both are felonies from 2002. However, his discharge from DOC wasn't until September of 2016. So I believe it falls within the 10 years. That was a grand theft, and he was essentially ordered to pay hundreds of victims in excess of a million dollars in restitution. To be blunt, Mr. Jasper's kind of a con man. And he took family heirlooms from people purporting to be able to fix them and took their money and did nothing and ended up getting some time and obviously having a substantial amount of restitution. So I think it falls under 609(a)(2), that it's a dishonest act that must be allowed in but we wanted to address that one specifically beforehand because it is an older case. And I'm not sure that the State knows about it because the Triple I didn't have anything in it.

SR:599-600. The circuit court inquired about the nature of David's federal conviction and the State responded, "possession of eagle feathers." SR:601. No further information was ever provided. [4]

The circuit court allowed the Defense to ask David if he had two felonies and if one of those felonies was for a crime of dishonesty.

---

[3] A Triple I refers to the Interstate Identification Index (III), an FBI-maintained database containing criminal history records for individuals arrested or indicted for serious offenses.

[4] Possession of eagle feathers without a permit is a federal misdemeanor, not a felony, as it is punishable by a fine of up to $5,000 or imprisonment of not more than one year, or both. 16 U.S.C. § 668.

SR:602. The Defense requested "more latitude" to question David on his grand theft conviction because

> it's a portion of [Kujawa's] defense that [David] is a con man that frequently doesn't pay people that he owes money and doesn't -- swindles people out of money and has been doing that for years and he's very good at it and he's going to be very charismatic on the stand, and I think the jury needs to know he has hundreds if not thousands of- -[.]

SR:602. The State interjected "609(a) is not a tool to create a defense. It's simply an impeachment tool[.]" SR:602. The circuit court reiterated that the Defense was limited to asking David if he had prior felonies and whether one was for a crime of dishonesty; unless David opened the door by misleading the jury or minimizing his prior convictions. SR:603.

At trial, on direct examination, the State asked David if he had "two prior felonies"; David responded "Yes, sir." SR:626. The State then asked if "one of those felonies [was] a crime of dishonesty from 2002?" SR:626. David agreed. SR:626.

On cross-examination, the Defense asked David if he had "some state court convictions and some federal convictions" and David confirmed he did. SR:641. Then the Defense asked David if he had "convictions that are felonies that were actually crimes of dishonesty" and David stated, "It was white collar, yes." SR:642. The Defense responded "Well, an actual crime of being [] dishonest." SR:642.

The State interjected and asked to approach the bench. SR:642. A bench conference was held off the record. SR:641. After the bench conference, the Defense asked David, "What is a white-collar crime?"

SR:642. The State objected; another off-the-record bench conference was held, and the court sustained the objection. SR:642.

The Defense then asked David if he was "released from DOC in 2016." SR:642. The State objected as to relevancy and the circuit court sustained the objection. SR:643. The Defense continued, "Your second felony that we're talking about was --." SR:643. The State objected to that line of questioning under SDCL 19-19-609. SR:643. The circuit court sustained the objection. SR:643.

During a recess and outside the jury's presence, the circuit court allowed the parties access to the record regarding the bench conferences. SR:657-58. The Defense and the State made arguments about whether the Defense could ask David what he defines as a white-collar crime. SR:657-59. The Defense argued he should be able to ask David "what the term [white color crime] means to him." SR:658. The State responded that at the time David was asked the question, he already admitted twice that he was a convicted felon and convicted of a crime of dishonesty which satisfied SDCL 19-19-609(a). SR:658-59.

The circuit court held David "did not open the door by saying that it was a white-collar crime[;]" therefore, it determined Kujawa could not ask David for an explanation about what white-collar crime meant to him or details about "what the actual crime was." SR:660-61.

On appeal, Kujawa argues the circuit court erred in prohibiting evidence of the names of David's prior convictions, the dates of the

convictions, and the nature of the crimes. AB:10. Kujawa also argues the circuit court did not apply a proper balancing test to either conviction. AB:12 (citing SR:607, 657-61). The record fails to substantiate Kujawa's contention. Rather, the circuit court properly exercised its discretion by permitting the evidence of the prior convictions, and Kujawa was permitted to impeach David with them.

A. Standard of Review.

A "trial court's evidentiary rulings are presumed correct and will not be overturned absent a clear abuse of discretion." *State v. Carter*, 2023 S.D. 67, ¶ 24, 1 N.W.3d 674, 685 (quotation omitted). In this context, "an abuse of discretion occurs when a trial court misapplies a rule of evidence, not when it merely allows or refuses questionable evidence." *State v. Stone*, 2019 S.D. 18, ¶ 22, 925 N.W.2d 488, 497 (quoting *State v. Asmussen*, 2006 S.D. 37, ¶ 13, 713 N.W.2d 580, 586). 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." *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109.

To prevail on a challenge to a circuit court's evidentiary ruling, a defendant must show that the circuit court abused its discretion and the error was prejudicial. *State v. Loeschke*, 2022 S.D. 56, ¶ 46, 980 N.W.2d 266, 280 (citation omitted). Prejudice exists when "a reasonable jury probably would have a significantly different impression if otherwise

appropriate cross-examination had been permitted." *State v. Kryger*, 2018 S.D. 13, ¶ 13, 907 N.W.2d 800, 807 (quoting *State v. Birdshead*, 2015 S.D. 77, ¶ 36, 871 N.W.2d 62, 76).

B. The circuit court did not misapply SDCL 19-19-609 when it ruled that the Defense could introduce evidence of David's prior convictions.

SDCL 19-19-609 allows for the admission of evidence of a criminal conviction for the purposes of impeachment. In relevant part, it says:

> (a) In general**.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
>
> > (1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
> >
> > > (A) Must be admitted, subject to § 19-19-403, in a civil case or in a criminal case in which the witness is not a defendant; and . . .
> >
> > (2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving--or the witness's admitting--a dishonest act or false statement.
>
> (b) Limit on using the evidence after 10 years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:
>
> > (1) Its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
> >
> > (2) The proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

At the outset, Kujawa argues the circuit court did not apply a proper balancing test to either conviction. AB:14 (citing *United States v. Howell*, 285 F.3d 1263, 1270 (10th Cir. 2002) (holding "the court must conduct a Rule 403 balancing before determining what information about a witness's prior felony conviction, including its nature, should be admitted or excluded")). But Kujawa's complaint is misplaced because he prevailed on the admission of the evidence. Both of David's prior convictions *were* admitted.

Even so, "[t]he fact that the circuit court did not conduct a Rule 403 balancing on the record is not necessarily fatal."[5] *State v. Black Cloud*, 2023 S.D. 53, ¶ 60, 996 N.W.2d 670, 684 (quoting *State v. Scott*, 2013 S.D. 31, ¶ 28, 829 N.W.2d 458, 468 ("holding that conducting a Rule 403 balancing analysis on the record assists with appellate review but is not 'explicitly require[d]' by the rule")). "Balancing under Rule 403, as *Scott* indicates, is best conducted on the record in order to enhance appellate review, but the absence of the balancing, though suboptimal, does not categorically preclude appellate review where we are able to meaningfully assess the exercise of the circuit court's discretion." *Id.*

[5] Under the plain wording of the statutes, the balancing test is only required if the prior conviction was let in under SDCL 19-19-609(a)(1)(A) because it implicates SDCL 19-19-403. It is possible the circuit court admitted the evidence under SDCL 19-19-609(a)(2), because, as the State conceded, David was willing to admit he had the prior felony convictions. SR:601. SDCL 19-19-609(a)(2) makes no reference to Rule 403 or a balancing test. Either way, it is of no consequence because the evidence was let in.

The court here, as in *Black Cloud*, "detailed the winding course of [defendant's] impeachment theory" by asking questions about David's criminal history and ruling based on the information before it.[6] But here, unlike *Black Cloud*, the court allowed the evidence in. Kujawa merely complains that what was let in wasn't enough.

To that end, this Court has not specifically defined what *must* be introduced to impeach a non-defendant witness with prior convictions. True, it has held "[t]he name and nature of the crime *may* be brought out but not its details and incidents." *State v. Van Beek*, 87 S.D. 517, 520 (1973) (emphasis added). But *Van Beek* involved a criminal defendant, not a non-defendant witness, and it was considered before SDCL 19-19-609 was enacted.[7] Although *Van Beek* said the name and nature of the crime *may* be brought out, it did not say the name and nature *must* be; so, the circuit court here did not abuse its discretion by permitting the information it did let in. The circuit court determined that the Defense could ask David if he had prior felony convictions and if one was a crime

---

[6] Kujawa faults the circuit court for "never definitively determin[ing] the number, statutory names, dates, or nature of [David's] convictions." AB:16. But it is not the court's job to do his research. Kujawa did not mention his desire to impeach David with prior convictions until the second day of trial. Neither conviction appeared on David's Triple I. The circuit court cannot be held to have "abused its discretion because it did not determine what convictions existed for impeachment purposes" when Kujawa did not present the court with this proposed evidence. AB:16-17.

[7] When *Van Beek* was decided, SDCL 19-14-12 was still in effect.

of dishonesty. The court's decision was well within the range of permissible choices, as no authority exists to the contrary.

Kujawa relies on out-of-state authority to urge this Court to hold that the name and nature of crimes under SDCL 19-19-609 for non-defendant witnesses *must* be disclosed.[8] If the Legislature had intended such specificity in SDCL 19-19-609, it could have said so. If this Court desires to define it now, it has the authority to interpret statutes and the Legislature's intent. But here, the record shows the circuit court found David's conviction for grand theft must be admitted under 19-19-609(a)(2) and David's conviction for possession of eagle feather under SDCL 19-19-609(b). Either way, Kujawa prevailed, so the convictions were let in, and he cannot show the circuit court abused its discretion in doing so.

C. Because the evidence was admitted, Kujawa was not prejudiced.

Kujawa told the jury that David was a felon and was convicted of a crime of dishonesty. He suggests the jury should have known the names of his crimes, but he does not say how the result of the trial would have been different had the jury known. AB:16-17. He only mentions that David's "credibility was central to Kujawa's defense theory." AB:17. But

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[8] Kujawa also purports to support his position by comparing his case to *State v. Rudloff*, 2024 S.D. 73, 15 N.W.3d 468. AB:15-16. But the relevant witness in *Rudloff* was convicted of a crime of dishonesty more than ten years prior, so the analysis in that case centered around SDCL 19-19-609(b). The circuit court in that case did perform a balancing test on the record, as explicitly required by that statute, and excluded the evidence instead of admitting it. *Id.* ¶ 48.

that is not enough to prove prejudice. And Kujawa was still allowed to impeach David, as he did when questioning him about his criminal history.

Because David's Triple I came up blank, the purported conviction for possession of eagle feathers came from David himself. SR:600-01. Had the jury been privy to the details of this alleged conviction, it could have led to more confusion and questions than it would help the jury determine David's credibility. Neither the Defense nor the State fully understood David's prior federal conviction(s). So, it is hard to fathom how that information would have helped the jury when neither the attorneys nor the court knew the details of David's conviction.

As to David's conviction for grand theft, Kujawa was not prejudiced by the circuit court's limitation because David still testified to the nature of his crime and date of conviction. Specifically, David testified that he committed a previous felony involving a white-collar crime of dishonesty and was convicted in 2002. SR:626, 641-42.

Black's Law Dictionary defines white-collar crime as "a nonviolent crime usually involving cheating or dishonesty in commercial matters. Examples include fraud, embezzlement, bribery, and insider trading." *White-collar crime,* Black's Law Dictionary (8th ed. 2004). Therefore, even if Kujawa had been able to press David about his definition of "white collar," he would have found David's term to be

accurate. The jury was informed that David's prior crime probably involved cheating or dishonesty in commercial matters.

David did not attempt to mislead the jury or minimize his prior misconduct and his statement that he committed a "white-color crime" did not open the door to additional questioning. David's testimony was more fact specific than simply stating the statutory name (grand theft), which provided the jury with a clearer picture of David's previous felony. The circuit court correctly held David "did not open the door by saying that it was a white-collar crime." SR:661.

It is not clear specifically what else David would have testified to at trial because there was no offer of proof made. While Kujawa alleges "[t]he circuit court never definitively determined the number, statutory names, dates, or nature of [David's] convictions," AB:16, neither did the Defense. On appeal, this Court cannot guess what the jury would have possibly heard as testimony. The Defense failed to offer a copy of the judgment to impeach David in case he denied the prior conviction. As discussed, the only information provided to the circuit court was that David was previously convicted in a federal court for "possession of eagle feathers." SR:601. The Defense did not provide the circuit court with adequate information to support its challenge.

Further, the Defense was able to discredit David via his other testimony. *See* SR:629-47. Kujawa's trial defense was simple: David is "con man that frequently doesn't pay people that he owes money and . . .

swindles people out of money[.]" SR:11; AB:6. To establish Kujawa's trial defense, he questioned David about his and Kujawa's prior relationship. SR:644.

First, the Defense asked David if Kujawa "came over to your house that day to express that you owed him a great deal of money[;]" David responded, "He accused me of stealing his stuff." SR:644. The Defense asked David if he agreed to pay Kujawa money for the things that had been lost. SR:644. The Defense questioned if Kujawa ever told David that he was going to sue him and if David was "concerned about being sued[.]" SR:645. The Defense asked if David "knew that if you called the police, Mr. Kujawa could not file his suit successfully[;]" David denied knowing that. SR:645.

Kujawa cross-examined David about inconsistencies between what he reported to his wife, what he reported to law enforcement, and what he testified to at trial. SR:632-33. The Defense inquired about the inconsistency between David's statements to his wife and law enforcement alleging Kujawa kicked in the door and the physical evidence showing no damage or forced entry. SR:633-34. David was confronted with the inconsistency between his direct testimony—that he was only kicked in the back—and his prior statement to police that he was kicked in the back, arms, and legs. SR:635. Finally, the Defense asked David if he owned any guns and then stated, "I mean, you're prohibited from having guns; fair?" SR:638.

Both parties openly acknowledged that David was a convicted felon. In fact, the State in its closing, right off the bat, told the jury that if they find Kujawa guilty, they will "be stuck having to trust the word of a convicted felon." SR:763-64. The Defense in their closing statement said:

> Having a felony conviction in and of itself allows you to question someone's credibility because felonies are not great to have. But you also know that he had a felony dealing specifically with dishonesty, and that also can play into your determination of whether or not you can trust what he's saying.

SR:791. The State remarked in its rebuttal argument, "So you've been asked to discredit [David] for something 20-plus years ago." SR:794.

The Defense sufficiently attacked David's credibility; consequently, more evidence attacking his credibility would have been cumulative. Because the jury had a complete picture of David's dishonest character, there is no probability that the jury would have returned a different verdict had they known that information.

At trial, the evidence supporting Kujawa's conviction was overwhelming. Credible testimony established that Kujawa had been seen returning from David's house. Kujawa told his friend, Oley Hansen,[9] that he went to David's home "to ask him for money and when he knocked on the door, David fell on the fioor[]" and "[s]tarted crying."

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[9] Oley allowed Kujawa to stay at his home, which Kujawa would do "every once in while when it was cold[,]" including the night prior to the burglary and aggravated assault. SR:720. Oley's house is approximately a half mile from Dave's house. SR:720-22.

SR:722. Kujawa said he didn't "collect any money[.]" SR:723. Oley confirmed he had guns at his house, including many rifles and shotguns, which were not secured in a safe. SR:724.

The jury heard the testimony of Deedee Jasper, that her husband, David, called her panicked, scared, and crying, and said Kujawa held him at gunpoint. Deedee observed David shaking, crying, and holding his head between his hands. SR:654. Deedee, in her fifteen years of knowing David, had never seen him cry or be this upset before. SR:668. Law enforcement observed David was verbally upset, hunched over, and had been crying. SR:682, 732. David appeared to experience soreness and pain in his shoulders, back, and arms. SR:672. Law enforcement documented the blood on David's sleeve, which is consistent with him falling on the carpet. SR:625; Ex. 1.

Kujawa informed officers of his whereabouts that day, stating he went with Oley to go pay a water bill at the City Hall, was dropped off at Oley's house, and didn't go anywhere else. SR:689. Kujawa said he had not seen David in months, but he did not have any problems with him. SR:690.

While David's testimony may have been key evidence in this case, generous evidence existed to support Kujawa's conviction for aggravated assault and first-degree burglary regardless of David's testimony. Kujawa failed to show he was prejudiced by the exclusion of the specific names of the crimes David was convicted of.

II.

THE CIRCUIT COURT DID NOT COMMIT PLAIN ERROR IN LIMITING KUJAWA'S CROSS-EXAMINATION.

Kujawa asks this Court to conduct a plain-error analysis of whether his right to confrontation was violated by the circuit court's limitation of Kujawa's cross examination of David. AB:18-20. Kujawa argues, "[t]he confrontation clause requires a defendant be allowed to impeach the credibility of a prosecution witness by cross-examination with evidence of prior criminal history." AB:19. But, as discussed above, Kujawa was afforded the opportunity to impeach David; therefore, his Sixth Amendment rights were not violated.

A. Standard of Review.

Because Kujawa did not raise this issue before the circuit court, this Court is limited to a plain-error analysis. *State v. Stevens*, 2024 S.D. 3, ¶ 14, 2 N.W.3d 372, 376-77 (quotation omitted). Discretionary review under the plain-error doctrine should be applied "cautiously and only in exceptional circumstances." *State v. Krueger*, 2020 S.D. 57, ¶ 38, 950 N.W.2d 664, 674 (quoting *State v. McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d 725, 729). To establish plain error, a defendant "must show (1) error, (2) that is plain, (3) affecting substantial rights; and only then may this Court exercise its discretion to notice the error if, (4) it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d at 729-30.

"[W]ith plain error analysis, the defendant bears the burden of showing the error was prejudicial." *Id.* (quotation omitted).

B. Kujawa's constitutional right to present a defense was not violated.

As argued above, the Defense was able to cross-examine David. Not only was evidence of David's prior convictions allowed, but the Defense also pointed out inconsistencies with David's statements to his wife, law enforcement, and at trial. The Defense's inability to cross-examine David in the precise manner he preferred does not equate to a denial of his Sixth Amendment rights. "An individual is only guaranteed 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.' " *State v. Kryger*, 2018 S.D. 13, ¶ 16, 907 N.W.2d 800, 808 (quoting *State v. Spaniol*, 2017 S.D. 20, ¶ 29, 895 N.W.2d 329, 340).

Further, Kujawa was able to present his defense that David was a liar and made up the attack. He was not prohibited from making this argument. As discussed at length under Issue I., Kujawa challenged David's credibility with his convictions and in other ways; therefore, Kujawa was not prejudiced. This is not an exceptional circumstance warranting this Court's discretionary review.

III.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN RESPONDING TO THE JURY'S QUESTION.

At trial, the jury asked the circuit court "[i]s a guilty verdict possible on Count One First Degree Burglary, if there is a reasonable

doubt as to the involvement of a weapon?" SR:126. The circuit court and the parties discussed an appropriate response. SR:801-07. The State argued the proper authority was outlined within Instructions 17 and 28. SR:804. The Defense argued the answer was "clearly a no, you cannot convict if you do not believe beyond a reasonable doubt that a weapon was used." SR:805. The circuit court responded:

> The choice that the Court believes it has is as follows, and I think these are the positions of both parties: Either the Court says no, or some version of no, which is what is being advocated by defense counsel. Or I believe the State has taken the position that, at the very least, that the jury be instructed to review Instruction 28, which does have the following language[.]
>
> An element of the crime of first-degree burglary is that the unlawful entering or unlawful remaining in an occupied structure was with the specific intent to commit the crime of aggravated assault. And then it further delineates what -- that is, it says, with the specific intent to attempt by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm.
>
> By logic in reading that, the Court believes that a reasonable juror or juror could read that and understand that if there's not a weapon, that it would be a factual impossibility to menace someone with a deadly weapon if there's no deadly weapon. The difference is either I directly tell them no or refer to the instructions.

SR:806; *see* SDCL 22-32-1(1). Kujawa asked for the inclusion of Instruction 28A in the court's response. SR:807-08. The circuit court

told the parties it was responding to the jury, in writing, "[t]he jury is instructed to review Instructions 17, 28, and 28A."[10] SR:126, 807.

Kujawa argues the court abused its discretion by not directly answering the question the jury asked during deliberations. As to prejudice, Kujawa makes a blanket statement that without the alleged error, the result of trial would have been different, but he doesn't say how or why. The record supports that the circuit court appropriately answered the jury's question.

A. Standard of review.

"Trial courts have considerable discretion in responding to jury requests during deliberations, and on appeal, their decision will not be disturbed except for abuse of discretion." *State v. Hillyer*, 2025 S.D. 30, ¶ 24, 23 N.W.3d 782, 790 (quotation omitted). If the circuit court provides an erroneous response to the jury, the defendant "must

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[10] Instruction 17 outlined the elements of the first-degree burglary. SR:97. Instruction 28 stated:

> "An element of the crime of First-Degree Burglary is that the unlawful entering or unlawful remaining in an occupied structure was with the specific intent to commit the crime of aggravated assault, that is, with the specific intent to attempt by physical menace *with a deadly weapon* to put another in fear of imminent serious bodily harm. The offense is complete when the unlawful entering or unlawful remaining is made with such specific intent regardless of whether the aggravated assault is committed."

SR:108 (emphasis added). Instruction 28A stated, for first-degree burglary, "specific intent to commit an Aggravated Assault after entering or remaining in an occupied structure [must exist]. If specific intent did not exist, this crime has not been committed." SR:109.

establish prejudice, 'to the point where the jury would probably have returned a different verdict if the court's answer had not been given.' " *Id.* (quotation omitted).

If the court, acting within its sound discretion, determines that no additional information or instructions are necessary, it may deny the jury's request. *Id.* ¶ 25, 23 N.W.3d at 790 (citing *State v. Rhines*, 1996 S.D. 55, ¶ 178, 548 N.W.2d 415, 454 (when "the instructions given by the trial court fully and accurately advised the jurors of the law governing the case[,]" there is "no error in simply referring the jurors to these instructions."); *State v. Schrempp*, 2016 S.D. 79, ¶ 25, 887 N.W.2d 744, 751 ("Referring the jury to instructions already given is not error.")).

B. The circuit court directed the jury to the proper instructions.

At trial and on appeal, Kujawa does not challenge Instruction 17, 28, or 28A. *See* AB; SR:758-59.[11] And at trial, when the circuit court suggested referring the jury to Instruction 28, the Defense asked the court to also refer them to Instruction 28A, which the court did. On appeal, Kujawa does not challenge the legal accuracy of the instructions—he only argues the circuit court erred in referring the jury back to the instructions.

The jury asked whether it could convict Kujawa of burglary if there was reasonable doubt as to the involvement of a weapon. Instruction 28

[11] After the circuit court added Instruction 28A, Kujawa withdrew his objection to Instruction 17. SR:759.

specified a First-Degree Burglary conviction requires they find Kujawa acted "with the specific intent to attempt by physical menace *with a deadly weapon* . . ." The circuit court referred the jury to the applicable law; the jury was instructed that it must find that Kujawa acted with a deadly weapon to convict him of First-Degree Burglary. The instructions left the jury with a clear, concrete standard of the law and no further instructions were necessary.

This Court "presume[s] that juries follow their instructions[.]" *Black Cloud*, 2023 S.D. 53, ¶ 43, 996 N.W.2d at 682. Kujawa has not attempted to and cannot show how it was reversible error for the circuit court to refer the jury back to the agreed upon and unchallenged jury instructions.

CONCLUSION

Based on the arguments above and authorities, the State respectfully requests Kujawa's convictions 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 3,500 words.

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

Dated this 2nd day of February 2026.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 2, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Chris David Kujawa*, was served via Odyssey File and Serve upon Derek D. Friese at ILSService@state.sd.us.

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

NO. 31189

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

CHRIS DAVID KUJAWA,

Defendant and Appellant.

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

HONORABLE MATTHEW M. BROWN
Circuit Court Judge

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IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA *Plaintiff and Appellee,* vs. CHRIS DAVID KUJAWA, *Defendant and Appellant.*	No. 31189

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Chris Kujawa, will limit discussion to the issues that need further development or argument. Any matter raised in Kujawa's initial brief, but not specifically mentioned herein, is not intended to be waived. Kujawa will attempt to avoid revisiting matters adequately addressed in the initial brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as "SB." All citations will be followed by the appropriate page number. Kujawa relies upon the Jurisdictional Statement, Statement of the Case and Facts, and Statement of Legal Issues presented in his initial brief, filed with the Court on December 18, 2025.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN LIMITING EVIDENCE OF JASPER'S PRIOR CONVICTIONS.

A. The Circuit Court Erred in Prohibiting Evidence of the Statutory Names of Prior Convictions, Dates of Convictions, and Nature of the Crimes.

The State argues that Kujawa prevailed on the admission of Jasper's convictions and therefore Kujawa cannot show the circuit court abused its discretion. SB 10-12. But Kujawa did not prevail, because the circuit court significantly limited the "evidence" admitted under SDCL 19-19-609. Preliminarily, the circuit court ruled only "two questions" were allowed to impeach Jasper and strictly enforced this ruling despite defense counsel's attempted questioning. JT2 39. *See also* JT2 73-75. The circuit court excluded evidence of the date, statutory names of the crimes, and anything related to the underlying nature of the convictions. JT2 73-75. Kujawa asserts this evidence is the minimum required for admission under SDCL 19-19-609.

The State is correct in observing "this Court has not specifically defined what *must* be introduced to impeach a non-defendant witness with prior convictions." SB 11. However, to begin, a State witness should be subject to the same impeachment as a testifying defendant would be. *See State v. Van Beek*, 87 S.D. 517, 520, 211 N.W.2d 355, 357 (1973) (holding "the name and nature of the crime may be brought out but not its details and incidents" when a defendant

testifies).[1] This Court recognized this distinction prior to SDCL 19-19-609 aligning South Dakota with the federal rule. *See State v. Swallow*, 405 N.W.2d 29, 36 (S.D. 1987) (contrasting Fed. R. Evid. 609 with previous statute of SDCL 19-14-12, stating "the limitation of cross-examination placed on Swallow in this case may be an abuse of discretion under the federal rule, we do not believe it is an abuse of discretion under SDCL 19-14-12").

For a witness of the State, SDCL 19-19-609 requires the court to conduct a balancing test, depending on whether the evidence in question relates to a felony or a crime involving dishonesty. Here, the circuit court conducted neither test. The lack of analysis was an abuse of discretion because it resulted in an arbitrary and unreasonable decision.

The State claims Jasper did not "open the door" to impeachment evidence. SB 14. However, this is the State's witness and under SDCL 19-19-609, there is no door to open. Jasper was not a defense witness, and prejudice to him is not a concern. *See United States v. Fawley*, 137 F.3d 458, 472-74 (7th Cir. 1998)

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[1] In fact, cases interpreting the tenets of impeachment evidence by way of felony conviction observe criminal defendants are afforded heightened protection in comparison to non-party witnesses. *See, e.g., Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 511-524 (1989) (detailing history of Rule 609 and stating "only the accused in a criminal case should be protected from unfair prejudice"); *United States v. Howell*, 285 F.3d 1263, 1267 (10th Cir. 2002) (observing "the Rule in fact demonstrates a greater concern about admitting potentially prejudicial information about the accused than about a mere witness"). *See also United States v. Smalls*, 752 F.3d 1227, 1240 (10th Cir. 2014) (detailing "special balancing test" used for the "unique risk of prejudice" for defendant witnesses, and outlining five-factor analysis for admissibility of such evidence).

(discussing "wider latitude" in impeaching a non-defendant witness). The rule is clear: impeachment by evidence of a criminal conviction must be admitted if it is a non-defendant's felony or any witness's crime involving "a dishonest act or false statement." SDCL 19-19-609. The circuit court simply forewent any analysis and imposed an arbitrary requirement that Jasper must first 'open the door' to impeachment. JT2 93. While a 'door' may exist for a testifying defendant, the circuit court arbitrarily imposed the same protection for a non-party witness.

Even if this were the proper analysis under SDCL 19-19-609, that requirement was satisfied when Jasper attempted to minimize his criminal history. JT2 73-74. As stated, Jasper, as a non-defendant, should be held to the same standard under 19-19-609 as a testifying defendant. *See State v. Van Beek*, 87 S.D. 517, 520, 211 N.W.2d at 357 . *See also Swallow*, 405 N.W.2d at 36 (suggesting federal rule would allow more extensive cross-examination).

B. Evidence of Jasper's Prior Convictions Was Admissible Under SDCL 19-19-609(a)(1)(A).

Evidence of non-defendant's felony conviction must be admitted subject to the 403 balancing test. SDCL 19-19-609(a)(1)(A). The State argues the circuit court's failure to analyze the impeachment evidence under SDCL 19-19-403 is not fatal. SB 10 (citing *State v. Black Cloud*, 2023 S.D. 53, 996 N.W.2d 670).[2] But the

[2] In the passage from *Black Cloud* the State cites, this Court was reviewing the circuit court's decision to exclude a murder victim's parole status under SDCL 19-19-401. But unlike SDCL 19-19-401, the pertinent substance of SDCL 19-19-609 cross-references SDCL 19-19-403 and requires the balancing test.

circuit court's abuse of discretion is evident in its dearth of analysis.[3] Here, there was no analysis. The circuit court's decision was arbitrary, shielding Jasper from meaningful attack on his character for truthfulness. This evidence was not only admissible under SDCL 19-19-609, but it was required. lmportantly, the circuit court imposed this exclusion without articulating any reason.[4] The decision was both arbitrary and unreasonable and was therefore an abuse of discretion.

C. *Evidence of Jasper's Prior Grand Theft Conviction Was Admissible Under SDCL 19-19-609(a)(2).*

Under the SDCL 19-19-609(a)(2), evidence regarding a witness' conviction must be admitted "if the court can readily determine that establishing the elements of the crime required proving – or the witness admitting – a dishonest act or false statement." The State argues that the circuit court admitted evidence of Jasper's grand theft and "possession of eagle feather," so that "[e]ither way, Kujawa prevailed." SB 12. However, the jury never heard the nature of Jasper's convictions, let alone the statutory names. Further, the circuit court did not attempt to determine whether the second felony in question[5] involved a

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[3] As the State correctly observes, the circuit court did not specify whether it was considering the impeachment evidence as a prior felony, a prior crime involving dishonest act or false statement, both, or neither. Nor did it indicate which balancing test from SDCL 19-19-609 it was conducting.

[4] *See United States v. Burston*, 159 F.3d 1328, 1336 (11th Cir. 1998) (finding abuse of discretion in district court's decision to shield government witness from impeachment, assigning error to the to lack of analysis or 403 balancing of probative value against danger of prejudice, confusion, or delay).

[5] Defense counsel stated its belief that there was a sealed or undisclosed federal conviction associated with the state-level grand theft. JT2 31-34.

dishonest act or false statement.[6] On this record, the circuit court did not establish whether any convictions were admissible as crimes of dishonesty under SDCL 19-19-609(a)(2).

D. The Circuit Court's Error Caused Significant Prejudice to Kujawa's Defense.

The State argues that Kujawa suffered no prejudice, because he was able to attack Jasper's credibility. SB 12-17. The State claims Jasper's characterization of his criminal convictions as "white collar" was "more fact specific than simply stating the statutory name," and "provided the jury with a clearer picture of David's prior felony." SB 14. However, the jury was left with an even less clear picture of the nature of Jasper's prior felonies, and perhaps even a dishonest characterization. The issue is that Kujawa was not allowed to elicit testimony which was necessary for the jury to make that credibility determination itself. Had Kujawa been allowed to pursue his questioning of Jasper regarding his prior

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[6] The State seems to argue the circuit court did not have any responsibility to establish what prior convictions existed or were admissible. SB 11 n. 7. The State actually faults Kujawa because he "did not present the court with this proposed evidence." SB 11 n. 7. Kujawa rejects any implication that he is at fault for lack of disclosure. The sequence of events should be reiterated. First, the defense asked for the Triple I for impeachment. JT1 22-26. The circuit court characterized this as "impeaching information that the State, under *Brady*, would have to have turned over." JT1 24. The circuit court further stated impeachment documentation would be provided. JT1 26. The following day, the parties advised the Triple I was inexplicably empty. JT2 31-34. The State proffered its understanding of Japser's convictions. JT2 33. Defense responded "[t]here is another federal case," sealed, and "connected to that grand theft." JT2 34. The circuit court made its preliminary ruling with this information. JT2 35-39. Ultimately, the defense resorted to asking Jasper himself to name his prior crimes and the circuit court shut down that line of questioning completely.

convictions, and what he meant by "white collar," the jury may have had a different impression of his testimony and credibility. Certainly, when a witness attempts to minimize their criminal history, more detailed cross examination is permissible. *United States v. Collier*, 527 F.3d 695, 700 (8th Cir. 2008). Instead, the circuit court allowed Jasper and the State to characterize admissible evidence the way they wanted, without due examination.

According to the State, "evidence supporting Kujawa's conviction was overwhelming" even without Jasper's testimony. SB 16. The State's argument is controverted by the record and the circuit court's own characterization of the evidence. JT2 180. Absent Jasper's testimony, the evidence was underwhelming, even to the jury. SR 126; SR 244-45. Kujawa suffered prejudice from the abuse of discretion and his conviction should be reversed. *See Howell*, 285 F.3d at 1270-72 (finding error not harmless where district court applied a categorical exclusion of impeachment evidence against witnesses "obviously crucial to the government's case" and other trial evidence was "not overwhelming, and the jury encountered considerable difficulty reaching its verdict").

II. KUJAWA'S CONSTITUTIONAL RIGHT TO CONFRONTATION WAS VIOLATED.

The circuit court committed plain error because Kujawa was not given a full and fair opportunity to confront Jasper regarding his credibility. The State argues that Kujawa's constitutional right to present a defense was not violated. SB 19. But the circuit court significantly limited Kujawa's right to confront his accuser.

See Swallow, 405 N.W.2d at 36 (stating "[t]he limitation of cross-examination of a prosecution witness also raises confrontation clause questions"). This right is distinct from procedural evidentiary rules and "helps assure the accuracy of the truth-finding process." *State v. Dickerson*, 2022 S.D. 23, ¶ 39, 973 N.W.2d 249, 262. Kujawa was not permitted to question Jasper about his truthfulness and was thereby precluded from asserting a meaningful defense. The circuit court's limitations affected the fairness and integrity of the trial.

III. THE CIRCUIT COURT ABUSED ITS DISCRETION IN RESPONDING TO THE JURY'S QUESTION

The State claims "Kujawa makes a blanket statement that without the alleged error, the result of the trial would have been different, but he doesn't say how or why." SB 21. As stated in Kujawa's initial brief, the jury would have returned a different verdict had it been instructed concretely, upon the jury's question, that the involvement of a weapon was an element. That is the how and why, as expressed in the record. SR 244-45.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Appellant respectfully asks this Court to remand the case to the circuit court with an order directing the court to reverse the Judgment and Sentence and schedule a new trial.

Respectfully submitted this 4th day of March, 2026.

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 2,529 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 4th day of March, 2026.

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CERTIFICATE OF SERVICE

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

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