

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31148

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

TELL CADOTTE,

Defendant and Appellant.

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

HONORABLE ROBERT GUSINSKY
Circuit Court Judge

APPELLANT'S BRIEF

MATTHEW R. MIRABELLA
South Dakota Office of Indigent
Legal Services
PO Box 88237
Sioux Falls, SD 57109

Attorney for Defendant/ Appellant

MARTY JACKLEY
Attorney General
1302 Hwy 1889, Suite 1
Pierre, SD 57501

LARA ROETZEL
Pennington County State's Attorney
130 Kansas City Street, Suite 300
Rapid City, SD 57701

Attorneys for State/ Appellee

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PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR.” The transcripts will be referred to as follows: the April 6, 2021 arraignment will be referred to as “ARR”; the January 23, 2025 pre-trial conference will be referred to as “PTC”; the February 5, 2025, evidentiary hearing will be referred to as “EH”; the first day of the jury trial, March 5, 2025, will be referred to as “JT1”; the second day of the jury trial, March 6, 2025, will be referred to as “JT2”; the third day of the jury trial, March 7, 2025, will be referred to as “JT3”; and the July 15, 2025, sentencing hearing will be referred to as “SENT.” All references will be followed by the appropriate page number. All exhibits will be referred to as “Ex.” followed by the appropriate number.

Defendant and Appellant, Tell Cadotte, will be referred to as “Cadotte.”

The child witness will be referred to as “A.R.”

JURISDICTIONAL STATEMENT

Cadotte appeals from the Amended Judgment and Sentence entered on July 28, 2025, by the Honorable Robert Gusinsky, Circuit Court Judge of the Seventh Judicial Circuit. SR 516. Cadotte timely filed Notice of Appeal on July 22, 2025. SR 504. 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 BY FAILING TO PROVIDE A REASONABLE REMEDY FOR THE DISCOVERY VIOLATION UNDER SDCL 23A-13-17.

The circuit court abused its discretion by not providing the defense a reasonable remedy to cure the State’s discovery violation.

SDCL 23A-13-17

State v. Turner, 2025 S.D. 13, 18 N.W.3d 673

II. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING PREJUDICIAL HEARSAY EVIDENCE IN VIOLATION OF SDCL 19-19-802.

The circuit court abused its discretion by admitting inadmissible hearsay evidence, over defense counsel’s objection, and there is a reasonable probability that the evidence impacted the verdict.

SDCL 19-19-801

SDCL 19-19-802

State v. Osman, 2024 S.D. 15, 4 N.W.3d 558

STATEMENT OF THE CASE

On March 17, 2021, a Pennington County Grand Jury returned a thirteen count Indictment charging Cadotte with the following criminal charges:

- Counts 1-12: First Degree Rape, a Class C Felony, in violation of SDCL 22-22-1
- Count 13: Sexual Contact with a Child Under Sixteen Years, a Class 3 Felony, in violation of SDCL 22-22-7

SR 39.

On April 6, 2021, the circuit court held an Arraignment on the Indictment where Cadotte was advised of the charges, the maximum penalty if convicted, and his statutory and constitutional rights. ARR 3-9. The circuit court held multiple status hearings and continued the matter while Cadotte was in federal custody. *See generally* SR.

On August 8, 2023, the circuit court held a status hearing and defense counsel requested a competency evaluation. SR 370-373. On December 5, 2023, the circuit court held a status hearing where defense counsel advised the doctor's competency report extinguished competency concerns. SR 377-378. On May 3, 2024, defense counsel notified the circuit court and the State that Cadotte reached a plea agreement. SR 130. On August 28, 2024, defense counsel notified the circuit court and the State that there was no longer an agreement. SR 134.

On September 17, 2024, the circuit court held a status hearing and scheduled a jury trial. SR 382-385. On October 18, 2024, the State filed its Notice of Trial Witnesses and Tangible Evidence, which indicated the State intended to

introduce “All Photos.” SR 216. That same day, the State filed its Notice of Intention to Offer Child Hearsay Evidence pursuant to SDCL 19-19-806.1. SR 143. Cadotte objected to this notice. PTC 2, SR 389-392.

On February 5, 2025, the circuit court held an evidentiary hearing regarding the State’s child hearsay notice. *See generally* EH. At this hearing, Petro testified to a forensic interview conducted with A.R. on January 29, 2021. EH 7-8. After Petro testified, the circuit court heard argument from both the parties. EH 58-69. The circuit court found Petro’s testimony did not provide the court with a sufficient indicia of reliability and sustained defense counsel’s objection to the notice. EH 71-72; SR 263.

The jury trial began March 5, 2025. *See generally* JT1. Prior to opening statements on March 6, the defense asked the circuit court for access to the record regarding a discovery issue. JT2 5-13. Defense indicated the State arrived in court that morning with “a binder full of approximately 70 images that are sanitized images that we were never provided...I haven’t seen them until this morning, and moreover, they had notes from [Sergeant] Walker’s meeting with the alleged victim’s mom in this case and the State intended to show her the photos with the notes where she essentially says various things that he records.” JT2 6. Defense advised the court, in preparing for trial, “I went to the Internet Crimes Against Children facility...[w]hile I was there I was given four sanitized images of some of these photographs and was told that these were the sanitized photos that they had...it remains that the State is intending on admitting evidence that was never

provided to me and because of the nature of this case I, quite frankly, didn't know existed." JT2 6, 10.

In response, the State argued they had "provided the photos as we had them as soon as we had them which was this morning" and indicated these photographs were available in the Rapid City Evidence Building. JT2 7. The State agreed "[w]e didn't provide it[.]" JT2 7, 9. After hearing from the parties, the circuit court overruled defense's discovery violation objection and permitted the State to use all photographs without limitation. JT2 10. After the circuit court's ruling, Defense counsel supplemented the record, and reiterated the defense was not aware of the existence of the photograph binder until second day of the jury trial. JT2 12. The circuit court did not alter its original ruling. JT2 13.

After the State rested, the circuit court addressed the defense's motion for judgment of acquittal. JT3 253-262. The circuit court granted defense's motion for judgment of acquittal, in part, and dismissed Count 12 (First Degree Rape). JT3 262.

After the parties presented closing arguments, the jury returned guilty verdicts on Counts 1-9 (First Degree Rape) and Count 13 (Sexual Contact). JT3 307-308. The jury returned not guilty verdicts on Counts 10-11 (First Degree Rape). *Id.*

On July 15, 2025, the circuit court held a sentencing hearing. *See generally* SENT. The circuit court imposed a sentence of seventy years in the penitentiary. SENT 6, 17-20.

STATEMENT OF FACTS

At trial, A.R. testified that her brother, Cadotte, orally raped her while she was blindfolded during the times he babysat her. JT2 26-31. A.R. did not recall exactly how many times this occurred but testified “I know more than 10 times.” JT2 32-33. A.R. believed Cadotte recorded these occurrences “because [she] heard a camera, camera on his phone.” JT2 34. A.R. also testified there were times when Cadotte would touch, but not penetrate, her rear-end with his private parts. JT2 36. Finally, A.R. testified that Cadotte forced her to touch his private parts in a car. JT2 37-38.

Tina Cadotte (“Tina”), A.R. and Cadotte’s mother, also testified during the State’s case-in-chief. JT2 72-73. Tina testified that Cadotte sometimes babysat A.R. after school. JT2 75-76. On January 7, 2021, A.R. made a disclosure to Tina who reported the matter for investigation to law enforcement. JT2 76-78. Sergeant Seth Walker (“Walker”) of the Rapid City Police Department interviewed Tina and showed her photographs hoping to identify A.R. in the photographs. JT2 79. Tina believed A.R. was identifiable in some of the photographs, but not all of them. JT2 79.

When the State showed Tina a photograph she reviewed with Walker, Ex. 6, , defense objected on the basis of the discovery violation, and the circuit court overruled the objection. JT2 81. The State showed Tina additional photographs,

Ex. 15-18, defense again objected, and the circuit court again overruled the objection. JT2 82.

The State published Ex. 16 for the jury and Tina indicated the child in the photograph “look[ed] like [A.R.],” but she “[couldn’t] really tell.” JT2 83. Tina identified a mirror in the background of the photograph that she believed to be the same mirror in her bedroom. JT2 83. The State showed Tina another photograph, Ex. 15, and she identified a hat, nightgown, and dream catcher that caused her to believe the photograph was taken in her bedroom. JT2 83-84. Tina, however, could not be completely sure these items came from her home. JT2 93. Tina believed the child depicted in these photographs “look[ed] like [A.R.] with the long hair.” JT2 84.

Tifanie Petro (“Petro”) testified generally regarding forensic interview techniques used to interview children that disclose allegations of sexual abuse. JT2 113-133. Petro conducted a forensic interview with A.R. JT2 129-130. However, due to the circuit court’s ruling regarding the child hearsay notice, Petro could not testify to the statements made by A.R. during the forensic interview. SR 263.

Walker testified that he was assigned to investigate A.R.’s disclosure and attended the forensic interview conducted on January 29, 2021. JT2 160-161. On February 2, 2021, Walker obtained, and assisted in executing, a search warrant for Cadotte’s residence to search for electronic devices that may have contained child pornography. JT2 162. During the search, other members of law

enforcement took photographs and seized electronic devices. JT2 167. Walker met with Hollie Strand ("Strand") of the Pennington County Sheriff's Internet Crimes Against Children task force and reviewed images of child pornography that were located on computers seized from the residence. JT2 167. The photographs contained a white belt with plaid designs believed to be the same belt Walker observed in Cadotte's residence. JT2 169. The photographs contained several items, such as sleeping masks, a hat, towels, and blankets believed to assist in identifying A.R. in the images. JT2 169-172.

Walker reviewed "several photographs of a young female performing oral sex on a male" during this investigation. JT2 167. Walker testified that the plaid white belt, believed to be Cadotte's belt, was shown in the photographs. JT2 168. Walker showed Tina "a pretty large packet of photos" and spoke with her about the images. JT2 170-173. Walker hoped Tina could provide "a positive identification of the young female in the photos[.]" JT2 171-172. During Walker's direct examination, the following exchange occurred:

Q: And was Tina able to identify photos that she believed [A.R.] was present in?

DEFENSE: Objection, hearsay.

THE COURT: Overruled. You can answer.

A: Yes, ma'am.

Q: And did she also tell you that there were photos that she -

DEFENSE: Objection, hearsay.

THE COURT: Well, let's hear the question.

Q: Did she also identify photos that she did not believe were [A.R.]?

THE COURT: The objection is overruled. You can answer.

A: Yes, I believe so.

JT2 171.

At trial, the State introduced Cadotte's change of plea hearing transcript from his federal court case. JT2 187-189. A portion of the federal court hearing transcript was read to the jury which indicated Cadotte pled guilty to receiving child pornography. JT2 188. The State also read the federal court factual basis statement to the jury which indicated Cadotte knowingly possessed child pornography that was discovered during the search of his residence. JT2 189-192.

Prior to calling its last witness, Strand, the State indicated it intended to show the witness images of child pornography. JT2 195. Due to the discovery issue, "the defense wanted an opportunity to look at the nine specific pictures out of the, what I presume were many, many pictures that were provided, in order to prepare for the testimony." JT2 196. The circuit court advised the defense "[w]e've got 15 minutes. If you need more time, let me know. It should be enough to look at nine pictures, but if you need more time, let me know[.]" JT2 196.

The defense requested that Strand "not [be] permitted to testify that these images are, in fact, [A.R.]. I believe that those are based on hearsay." JT2 197. In

addition, the defense noted that Tina did not “come in and identify the nine photos and said these are my daughter...that didn’t happen[.]” JT2 197. In response, the State agreed that Strand “would not be able to testify from her own knowledge this is [A.R.]”. JT2 198. However, the State believed Strand should be permitted “to testify that pursuant to the course of this investigation, that the child in these photos was understood to be [A.R.]” or “it was a child that was suspected to be [A.R.]” JT2 198-199. When questioned further by the circuit court, the State agreed “Strand cannot testify that that is [A.R.]” JT2 199. The defense responded that the “suspicion that this is [A.R.] is all based on hearsay.” JT2 199. The circuit court denied defense’s oral motion in limine regarding this testimony. JT2 197, 201-202.

Strand’s testimony detailed the forensic examinations performed on electronic devices seized during the search warrant. JT2 207, 209-219. Strand located child pornography images on two laptops found during the search. JT2 219, 224-255.

Strand estimated that forty-one images showed “one particular child.” JT2 226. Amongst those forty-one images, Strand testified that nine specific sexual acts, from one specific child, are captured in the images. JT2 227. On cross-examination, Strand was asked “[a]nd so when you send it off to the clearinghouse, they don’t come back and say we recognize these people and you don’t recognize those people.” JT2 238. Strand initially answered “No[.]”, however, without being asked another question, stated “[s]o once we identified

[A.R.] in those images[.]” JT2 238. Defense objected, neither the circuit court nor the State addressed the objection, and the witness stated “Oh, sorry.” JT2 238-239. After Strand testified, the State rested. JT2 248.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY FAILING TO PROVIDE THE DEFENSE A REASONABLE REMEDY TO CURE THE STATE’S DISCOVERY VIOLATION.

A. Standard of Review

The “‘remedy for nondisclosure of discoverable material is left to the sound discretion of the trial court’ and will not be disturbed absent an abuse of discretion.” *State v. Turner*, 2025 S.D. 13, ¶ 34, 18 N.W.3d 673, 685 (citing *State v. Onken*, 2008 S.D. 112, ¶ 18, 757 N.W.2d 765, 770). “An abuse of discretion is ‘discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.’” *Id.* (citing *State v. Carter*, 2023 S.D. 67, ¶ 24, 1 N.W.3d 674, 685). “If we conclude that the circuit court did not abuse its discretion, ‘we need not determine whether [the defendant] was prejudiced.’” *Id.* (citing *State v. Richard*, 2023 S.D. 71, ¶ 29, 1 N.W.3d 654, 661). “Prejudice means ‘a reasonable probability that, but for [the error], the result of the proceeding would have been different.’” *Id.* (citing *Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d at 686).

B. The circuit court abused its discretion by denying Cadotte exclusion of the evidence, or alternatively, a continuance of the trial.

“Discovery statutes exist to eliminate trial by ambush.” *State v. Sorenson*, 2000 S.D. 127, ¶ 9, 617 N.W.2d 146, 148 (citing *State v. Oster*, 495 N.W.2d 305,

309). “Where a late discovery or disclosure occurs, SDCL 23A-13-17 outlines the remedies available to the circuit court in the event of a discovery violation.”

Turner, 2025 S.D. 13, ¶ 35, 18 N.W.3d at 685-86. SDCL 23A-13-17 provides:

If, at any time during the course of a proceeding, it is brought to the attention of a court that a party has failed to comply with an applicable discovery provision, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place, and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

“The purpose of discovery statutes and pretrial orders requiring parties to disclose the exhibits they intend to utilize at trial is to ‘eliminate trial by ambush.’” *Fiechtner v. Am. Ins. Co.*, 2025 S.D. 60, ¶ 80 (citing *City of Sioux Falls v. Missouri Basin Mun. Power Agency*, 2004 S.D. 14, ¶ 16, 675 N.W.2d 739, 744). The “purpose of pretrial discovery is to allow ‘the parties to obtain the fullest possible knowledge of the issues and facts before trial.’” *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 14, 764 N.W.2d 474, 481 (citing *Papke v. Harbert*, 2007 S.D. 87, ¶ 55, 738 N.W.2d 510, 529). “This is to promote the truth finding process and avoid trial by ambush.” *Id.*

In *Turner*, the defendant argued that the State’s late disclosure of a ballistic report violated SDCL 23A-13-17 and “caused him to suffer material prejudice.” 2025 S.D. 13, ¶ 33, 18 N.W.3d at 685. He argued for either dismissal of the indictment, exclusion of the report, or alternatively, a continuance. *Id.* The circuit court did not find “bad faith involved in any of this. It’s just an honest mistake.”

Id. The circuit court gave Turner the option to allow the ballistic report into evidence “and we don’t delay trial, or we delay trial and give you the chance to see what you want to do” with the new evidence. *Id.* “Turner chose the continuance.” *Id.*

The *Turner* Court did not find an abuse of discretion because once “the circuit court was made aware of the State’s late disclosure, the circuit court granted one of the forms of relief contemplated by SDCL 23A-13-17.” 2025 S.D. 13, ¶ 36, 18 N.W.3d at 686. “It granted a continuance to give Turner an opportunity to prepare his response to the [ballistic] report.” *Id.*

Here, unlike *Turner*, the circuit court gave no reasonable relief to Cadotte to address the State’s trial by ambush. The State was authorized to proceed with the exhibits it disclosed to the defense the morning of the second day of the jury trial. The circuit court abused its discretion because the State’s late disclosure warranted an exclusion of the evidence or a continuance, but the circuit court provided neither.

This case began on March 5, 2021, exactly four years before the jury trial began in this matter. SR 1. On March 23, 2022, defense counsel filed pre-trial non-evidentiary motions. SR 93. First, the defense made a general discovery request. SR 93. And later, the defense specifically requested “the State to **specify** any and all tangible, physical and/or demonstrative evidence, including **any and all pictures, photographs**, or slides, the State intends to attempt to introduce as evidence or use for demonstrative purposes at the trial in this case.” SR 93

(emphasis added). After four years, the record reveals that the State did not comply. On October 18, 2024, the State filed its Notice of Trial Witnesses and Tangible Evidence, vaguely identifying “All Photos.” SR 216.

On March 5, 2025, the jury trial began with jury selection that lasted the entirety of the day. *See generally* JT1. At no time during that day did the State alert the defense or the circuit court that it would arrive the following morning with a binder of approximately seventy new images that were not provided in discovery. JT2 4-5; *see also* JT2 5-13. After the jury was impaneled, the circuit court asked both parties if anything needed to be addressed before the testimony and evidence began the following day, and the State indicated “[n]othing from the State” before the court excused the parties for the evening. JT2 5.

The next morning, on March 6, 2025, the State provided the binder of images to the defense for the first time. JT2 5-6. Defense immediately requested access to the record. JT2 5. Despite the vague “All Photos” notice, Defense counsel advised the circuit court of counsel’s diligence in investigating the matter. Specifically, defense counsel went to the Internet Crimes Against Children facility, and while there, “[counsel] was given **four** sanitized images of some of these photographs and was told that these were the sanitized photos that they had.” JT2 6 (emphasis added). However, “[t]his morning [defense counsel] comes to court and there is a binder full of approximately **70 images** that are sanitized images that we were never provided.” JT2 6 (emphasis added). Defense counsel had not seen this discovery until moments before the State called the first

witness. JT2 6. The State intended “on admitting evidence that was never provided to [defense] and because of the nature of this case [defense], quite frankly, didn’t know existed.” JT2 6.

The State did not dispute that it failed to provide this discovery to the defense. *See* JT2 7 (“We didn’t provide it[.]”); JT2 9 (“we didn’t provide it prior to this[.]”). Defense counsel further explained to the circuit court that “the problem [was] that when [counsel went] to ICAC and [counsel] was told and provided the sanitized images that were shown to [Mother], [counsel] was given **four**.” JT2 10 (emphasis added). Instead, the State was permitted to introduce nine, not four, photographs and argue in closing remarks that it had proven nine counts of first-degree rape from nine photographs.

Based on these circumstances, the only reasonable remedies, under SDCL 23A-13-17, to accommodate this discovery violation was either a continuance or an exclusion of the additional exhibits.

C. The circuit court’s decision to permit the State to use nine, rather than four, images prejudiced Cadotte’s case and influenced the outcome.

If an abuse of discretion occurred, this Court must still evaluate whether reversible prejudice occurred in Cadotte’s case. *See Turner*, 2025 S.D. 13, ¶ 34, 18 N.W.3d at 685. “Prejudice means ‘a reasonable probability that, but for [the error] the result of the proceeding would have been different.’” *Id.* (*Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d at 686).

Here, the circuit court's decision under SDCL 23A-13-17 significantly prejudiced Cadotte. The jury's verdict reveals the prejudice and establishes that the outcome would have been different had the circuit court excluded the additional images. The State surprised the defense with double the number of sanitized images at trial and utilized the nine images to argue in closing that it had proven nine counts of first-degree rape. JT3 273-274. The defense was not given a reasonable opportunity to meet the evidence at trial – it never knew more than 4 sanitized images existed. *See* JT2 6.

Had the circuit court excluded the additional images or a granted a continuance for the defense to evaluate this significant change in the evidence, there is a reasonable probability the jury's verdict would have been different. Certainly, the State capitalized on the admission of these images by arguing in closing that the *nine* images established conclusive proof to support *nine* convictions for first-degree rape. JT3 273-274. Had the additional images been excluded, the State would not have been able to tie nine specific allegations to nine specific images.

The verdict establishes the prejudicial impact of the State's discovery violation. In addition to the nine counts based on nine images, the State sought two additional convictions (Counts 10-11) for first-degree rape which were solely based on A.R.'s testimony. JT3 276 ("You also have two additional counts of rape and one count of sexual contact with a child, and the evidence you have supporting those counts are [A.R.]'s testimony."). The jury acquitted Cadotte on

the only two rape allegations that were exclusively based on the witness's testimony. SR 382. In other words, the admission of the additional images was not harmless error because the jury acquitted Cadotte on the allegations which were premised on A.R.'s testimony alone. *See* SR 382.

The circuit court's decision regarding the last-minute disclosure of critical trial evidence establishes sufficient prejudice in this case and constitutes an abuse of discretion under SDCL 23A-13-17.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING PREJUDICIAL HEARSAY EVIDENCE.

A. Standard of Review

“We review evidentiary rulings under our abuse of discretion standard.” *State v. Osman*, 2024 S.D. 15, ¶ 35, 4 N.W.3d 558, 569 (citing *State v. Malcom*, 2023 S.D. 6, ¶ 31, 985 N.W.2d 732, 740). “When hearsay statements are erroneously admitted, ‘reversal may not always be necessary.’” *Id.* (citing *State v. Loeschke*, 2022 S.D. 56, ¶ 46, 980 N.W.2d 266, 280). “To establish reversible error with regards to an evidentiary ruling, ‘a defendant must prove not only that the trial court abused its discretion in admitting the evidence, but also that the admission resulted in prejudice.’” *Id.* (citing *State v. Little Long*, 2021 S.D. 38, ¶ 49, 962 N.W.2d 237, 255). Prejudice means “a probability sufficient to undermine confidence in the outcome.” *Id.* (quoting *Owens v. Russell*, 2007 S.D. 3, ¶ 9, 726 N.W.2d 610, 615).

B. The circuit court abused its discretion by finding that Walker’s testimony identifying A.R. was not inadmissible hearsay evidence.

Generally, hearsay evidence is not admissible at trial. SDCL 19-19-802.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” *State v. Roach*, 2012 S.D. 91, ¶ 26, 825 N.W.2d 258, 266 (citing SDCL 19-19-801); *Osman*, 2024 S.D. 15, ¶ 38, 4 N.W.3d at 570 (citing SDCL 19-19-801).

In *State v. Osman*, this Court recently found an abuse of discretion where the circuit court erroneously admitted hearsay evidence over proper objection. 2024 S.D. 15, ¶ 40, 4 N.W.3d at 571. In *Osman*, the defendant was charged with several driving-related offenses, and law enforcement was permitted to testify, over hearsay objection, to being told by a witness that “Osman was driving the car.” 2024 S.D. 14, ¶ 36, 4 N.W.3d at 569. This Court disagreed with the circuit court’s determination that this evidence was not hearsay. 2024 S.D. 15, ¶ 39-40, 4 N.W.3d at 570-71. The circuit court abused its discretion because the evidence was offered for the truth of the matter asserted and was not offered to explain any law enforcement investigative action. *Id.*

Here, Tina was interviewed by Walker and shown “a pretty large packet of photos” to see if she could identify A.R. JT2 79, 170-173. Tina testified that she “believed” A.R. was in some, but not all of the photographs. JT2 79. Tina testified that “[i]t look[ed] like [A.R.]” but she “[couldn’t] really tell.” JT2 83. On re-direct examination, Tina stated: “I mean, even these photos, you know, I don’t know if

that's [A.R.]". JT2 95. During a conference outside the presence of the jury, defense advised the circuit court that Tina did not "come in and identif[y] the nine photos and [say] these are my daughter...that didn't happen[.]" JT2 197.

Nevertheless, the State sought to cure Tina's failure to identify A.R. by introducing prior, out of court statements through Walker. JT2 171.

Undoubtedly, the State's purpose in eliciting this testimony was to establish the truth of the State's assertion that A.R. was, in fact, the individual depicted in the photographs. JT2 171. Walker was allowed to testify, for the truth of the matter, that Tina told him that A.R. was present in photographs he showed Tina. JT2 171. Walker's testimony was not offered to explain any context for law enforcement investigative action, but to establish a critical component of the State's case. Like it did with law enforcement's testimony in *Osman*, this Court should deem Walker's testimony to be inadmissible hearsay.

C. The circuit court's admission of inadmissible hearsay evidence prejudiced Cadotte's case and influenced the outcome.

Cadotte must also show prejudice by establishing "a reasonable probability that, but for the error, the jury's verdict would have been different." *Osman*, 2024 S.D. 15, ¶ 41, 4 N.W.3d at 571 (citing *Carter*, 2023 S.D. 67, ¶ 25, 1 N.W.3d at 685). In *Osman*, the defendant's conviction was affirmed because he failed on the prejudice requirement. 2024 S.D. 15, ¶¶42-43, 4 N.W.3d at 571. Here, unlike *Osman*, Cadotte suffered reversible prejudice. In closing argument, the State argued that "nine of those photos you were shown...support[ed] nine of

the counts of first degree rape...photos of Tell having [A.R.] perform oral sex on him, exactly what she described to you.” JT3 273. The State argued the pictures constituted “[n]ine documented incidents of first degree rape.” JT3 274. But without the admission of Walker’s testimony recounting Tina’s out of court statements, the State would not have been able to argue that A.R.’s identity had been established, by Tina, in all of the images. JT2 79, 83, 95, 171, 197.

The jury’s verdict establishes that had the hearsay testimony been excluded, the result would have been different. The State’s closing argument specifically asked the jury to consider the images to be documented instance of rape in which A.R. was the victim. JT3 274. After hearing inadmissible hearsay evidence of A.R.’s identification, the jury returned that verdict. SR 382.

The verdict shows the substantial impact Walker’s inadmissible hearsay testimony had on the jurors, and the State’s closing argument centered on the premise that A.R. was identified in the photographs. Tina’s out of court statement allegedly identifying A.R. in the images impacted the verdict. Therefore, Cadotte was substantially prejudiced by the admission of inadmissible hearsay, and his case should be remanded for a new trial.

CONCLUSION

For the foregoing reasons, the circuit court abused its discretion by both failing to provide a reasonable remedy to address the State's late disclosure of critical exhibits. Additionally, the circuit court abused its discretion by admitting prejudicial, inadmissible hearsay. Cadotte respectfully requests that this Court vacate the Amended Judgment and Sentence and remand this case to the circuit court for a new jury trial.

REQUEST FOR ORAL ARGUMENT

Cadotte respectfully requests permission to present oral arguments on this matter at a date and time convenient to this Court.

CERTIFICATE OF COMPLIANCE

- I. 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 5,405 words.
- II. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 8th day of December, 2025.

/s/ Matthew R. Mirabella
Matthew R. Mirabella
Attorney for Appellant
South Dakota Office of Indigent Legal Services
PO Box 88237, Sioux Falls, SD 57109

CERTIFICATE OF SERVICE

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

MARTY JACKLEY
Attorney General
atgservice@state.sd.us
Attorney for Appellee, State of South Dakota

LARA ROETZEL
Pennington County State's Attorney
larar@pennco.org
Attorney for Appellee, State of South Dakota

ELIZABETH REGALADO
The Law Office of the Pennington County Public Defender
elizabeth.regalado@pennco.org
Trial Attorney for Appellant

OLE OLESEN
The Law Office of the Pennington County Public Defender
ole.olesen@pennco.org
Trial Attorney for Appellant

Dated this 8th day of December, 2025.

/s/ Matthew R. Mirabella
Matthew R. Mirabella
Attorney for Appellant
South Dakota Office of Indigent Legal Services
PO Box 88237, Sioux Falls, SD 57109

APPENDIX

AMENDED JUDGMENT.....A-1

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

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
Plaintiff,)
vs.)
TELL LOGAN CADOTTE,)
DOB: 10/18/90)
Defendant.)

File No. CRI21-884

AMENDED JUDGMENT

Appearance at sentencing:

Prosecutor: Olivia Siglin Defense attorney: Elizabeth Regalado

Date of sentence: 7/15/2025

Date of offense: Counts 1-9: Between September 1, 2016 and August 31, 2020

Count 13: January 26, 2021

Charge: Counts 1-9: 1st Degree Rape and Count 13: Sexual Contact with Child Under Sixteen Years of Age

Counts 1-9: Class C Felony SDCL: 22-22-1(1) and SDCL 22-22-1.2 and Count 13: Class 3 Felony SDCL 22-22-7 and SDCL 22-22-1.2

Guilty by jury of counts 1-9 and count 13 on or about March 7, 2025

CRIME QUALIFIER: (CHECK IF APPLICABLE):

Accessory 22-3-5 Aiding or Abetting 22-3-3 Attempt 22-4-1
 Conspiracy 22-3-8 Solicitation 22-4A-1

Habitual offender admitted on: _____

SDCL 22-7-7 SDCL 22-7-8 SDCL 22-7-8.1

Part 2 Information (DUI) admitted on _____

Third Offense; SDCL 32-23-4 Fourth Offense; SDCL 32-23-4.6
 Fifth Offense; SDCL 32-23-4.7 Sixth or Subsequent Offense; SDCL 32-23-4.9

Part 2 Information (ASSAULT) admitted on _____

SDCL 22-18-1

Part 2 Information (VPO DV/ VNCO DV) admitted on _____

SDCL 25-10-13

The Defendant having been found guilty at jury trial and the Court having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:

On counts 1-9: 70 years in the South Dakota State Penitentiary with 0 years suspended and 1,594 days credit plus each day served in the Pennington County jail.

On count 13: 10 years in the South Dakota State Penitentiary with 0 years suspended and 1,594 days credit plus each day served in the Pennington County jail.

Fully Suspended Pen

Check if applicable:

The sentence shall run concurrent with each count and;

The sentence shall run consecutive to federal prison sentence for child pornography.

That Defendant pay court costs of \$116.50.

That Defendant's attorney's fees in the amount of \$6,104.50 will be a civil lien (hardshipped due to lengthy incarceration) pursuant to SDCL 23A-40-11.

That Defendant pay prosecution costs: UA \$ ___, Drug Test \$ ___, Blood \$ ___, SART Bill \$ ___; Transcript \$127.50.

That Defendant pay prosecution costs from dismissed file ___: UA \$ ___, Drug Test \$ ___, SART Bill \$ ___; Blood \$ ___, Transcript \$ ___.

That Defendant pay the statutory fee of \$ ___ DUI, \$25.00 DV.

That Defendant pay fines imposed in the amount of \$ ___.

That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of \$ ___ to ___.

Other Conditions:

That the Defendant pay a \$95.00 Digital Forensic Exam Cost

Pursuant to SDCL 22-6-11, a Court shall sentence a Defendant convicted of a Class 5 or Class 6 felony to a term of probation unless the Court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation; and the Court having found the following aggravating factors exist justifying a deviation, to-wit:

Failure to comply with terms of probation

Criminal history

Poor performance on bond

Multiple files

Escalating behavior

Picking up new files while on bond

Failure to accept responsibility

On Parole when committed offense

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

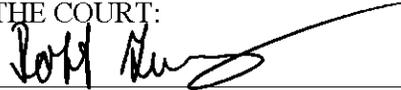
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Attest:

Ricke, Jolonda
Clerk/Deputy



BY THE COURT:



HON. ROBERT GUSINSKY 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. 31148

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

TELL LOGAN CADOTTE,

Defendant and Appellant.

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

THE HONORABLE ROBERT GUSINSKY
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Roberto Nolasco-Cruz
Legal Intern

Matthew R. Mirabella
South Dakota Office of
Indigent Legal Services
P.O. Box 88237
Sioux Falls, SD 57109
Telephone: (605) 362-2759
Email: matthew.mirabella@state.sd.us

ATTORNEY FOR DEFENDANT
AND APPELLANT

Erin E. Handke
Assistant Attorney General
1302 E. SD Highway 1889, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed July 22, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31148

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

v.

TELL LOGAN CADOTTE,
Defendant and Appellant.

PRELIMINARY STATEMENT

Tell Logan Cadotte was convicted of Rape and Sexual Contact with Child Under Sixteen for sexually assaulting his younger sister, A.R. Cadotte appeals his judgment and sentence and requests a new trial. Cadotte raises two issues related to discovery disclosure and hearsay evidence. But Cadotte’s arguments are unsupported by the record, and his judgment should be affirmed.

In this brief, Defendant and Appellant, Tell Logan Cadotte, is referred to as “Cadotte.” Plaintiff and Appellee, the State of South Dakota, is referred to as “State.” The victim, a minor, is referred to as “A.R.” All other individuals are referred to by name. References to documents are designated as follows:

- Settled Record
(Pennington County File CRI21-0884)..... SR
- Appellant’s Brief..... AB
- Trial Exhibits Ex.

All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Cadotte appeals from an amended final judgment and sentence entered by the Honorable Robert Gusinsky, Circuit Court Judge*, Seventh Judicial Circuit. Judgment was filed on July 16, 2025. SR: 413. And an Amended Judgment was filed on July 28, 2025. SR: 516-17. Cadotte filed a Notice of Appeal on July 22, 2025. SR: 504. This Court has jurisdiction under SDCL 23A-32-2

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT ALLOWED PROPERLY DISCLOSED EVIDENCE TO BE ADMITTED AT TRIAL?

Cadotte asked the circuit court to exclude images from the trial, claiming he had never seen them before. The circuit court found the State provided Cadotte the opportunity to view the images before trial

Fiechtner v. Am. W. Ins. Co., 2025 S.D. 60, 27 N.W.3d 746

State v. Richard, 2023 S.D. 71, 1 N.W.3d 654

State v. Turner, 2025 S.D. 13, 18 N.W.3d 673

* The Honorable Robert Gusinsky officially began his duties as a Justice of this South Dakota Supreme Court on December 9, 2025. Justice Gusinsky was the Circuit Court Judge presiding over this case until his final action in the case, the filing of an Amended Judgment, on July 28, 2025.

II.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY PERMITTING SERGEANT WALKER'S TESTIMONY AT TRIAL?

Cadotte objected to Sergeant Walker's testimony claiming it was hearsay. The circuit court overruled the objection, allowing him to testify.

Hoffman v. Hollow Horn, 2024 S.D. 59, 12 N.W.3d 322

State v. Knecht, 1997 S.D. 53, 563 N.W.2d 413

State v. Osman, 2024 S.D. 15, 4 N.W.3d 558

State v. Shepard, 2009 S.D. 50, 768 N.W.2d 162

STATEMENT OF THE CASE

On March 17, 2021, the Pennington County Grand Jury indicted Cadotte on thirteen counts, charging him with:

- Counts 1-12: First Degree Rape in violation of SDCL 22-22-1(1) and SDCL 22-22-1.2, a Class C felony; and
- Count 13: Sexual Contact with Child Under Sixteen Years of Age in violation of SDCL 22-22-7 and SDCL 22-22-1.2, a Class 3 felony.

SR: 39-41.

Cadotte's case proceeded to a three-day trial. SR: 617-833 (sealed), 834-909, 937-1292. Following the State's Case-in-Chief, Cadotte motioned for judgment of acquittal. SR: 836-45. The circuit court granted the motion, in part, dismissing Count 12 First-Degree Rape. SR: 845.

The jury found Cadotte guilty of Counts 1-9 for First-Degree Rape and Count 13 for Sexual Contact with Child Under Sixteen Years of Age. SR: 891, 1274. The circuit court sentenced Cadotte to seventy years for the nine counts of First-Degree Rape and ten years for the one count of Sexual Contact with a Minor. SR: 516-17. The court ordered the sentences to run concurrently with one another but consecutive to his federal sentence.¹ SR: 516-17, 928.

STATEMENT OF THE FACTS

On January 27, 2021, Rapid City Police Officer Mackenzie Armstrong was dispatched to the Public Safety Building at 300 Kansas City Street responding to a possible rape/sexual contact with a minor. SR: 7(sealed), 15 (sealed), 441-44 (sealed), 1039-45. Officer Armstrong spoke with the victim's mother, Tina. *Id.* Tina reported that her eight-year-old daughter, A.R., disclosed that Cadotte, Tina's oldest son who frequently babysat for Tina, was inappropriately touching her breast and vagina, and that this behavior continued for the last two years, with the latest incident on January 26, 2021.² *Id.*

Tina reported that A.R. said the inappropriate touching began when she was six years old. *Id.* During most recent incident, A.R. shared that Cadotte made her sit at the edge of the bed while he rubbed

¹ Cadotte plead guilty and received a twenty-year sentence in federal court for Receipt of Child Pornography. SR: 604, 917.

² Cadotte was thirty years old at the time of the disclosure. SR: 3-7 (sealed), 1009. At the time, Cadotte lived with his father, but he did have a key to Tina's house. SR: 7 (sealed), 1010.

A.R.'s breast before making A.R. touch him. *Id.* In separate incidents, A.R. described how Cadotte would take his penis and rub it on her vagina. *Id.* A.R. further shared another incident describing how Cadotte put his penis, in her mouth. *Id.* A.R. also shared that Cadotte had graphic pictures of her on his phone.³ *Id.*

The case was assigned to Sergeant Seth Walker with the Rapid City Police Department. SR: 15 (sealed), 441-44 (sealed), 1097. Sergeant Walker contacted Tina and scheduled a forensic interview for A.R. with Tifanie Petro at the Children's Home Child Advocacy Center. *Id.* During the forensic interview, A.R. provided more detailed descriptions of incidents that stood out to her and drew four images depicting the incidents. SR: 14-31 (sealed), 441-46 (sealed); Ex.: 1-4 (sealed).

Following the forensic interview Sergeant Walker obtained a search warrant for electronic devices that could contain explicit images at Cadotte's residence. SR: 441-44 (sealed), 1098-108. Law enforcement executed the warrant at Cadotte's residence where they photographed the scene and gathered electronic devices.⁴ *Id.*

Forensic Investigator Hollie Strand at the Internet Crimes Against Children agency (ICAC) notified Sergeant Walker that the electronic

³ Tina reported that A.R. communicated seeing pictures of what Cadotte did to her on his phone. SR: 1 (sealed), 15 (sealed), 441-44 (sealed), 1039-45; Ex.: 6 (sealed), 15-18 (sealed).

⁴ There were twelve electronic devices gathered from Cadotte's residence that included phones, laptops, flash drives, hard drives, a digital camera, tablet, and a desktop computer. SR: 168-214 (sealed), 1146-68.

devices⁵ seized from Cadotte's residence contained hundreds of sexually explicit images of children, including images created by Cadotte.

SR: 168-214 (sealed), 440-44 (sealed), 1098-108, 1126, 1146-68; Ex.: 6 (sealed), 15-18 (sealed).

Sergeant Walker reviewed dozens of photographs and noticed in some of the photographs a white plaid belt that had a similar pattern to a belt hanging in Cadotte's closet. *Id.* He met with Tina, wondering if she recognized either A.R. or other items in the images. *Id.*; SR: 16-17 (sealed), 1020, 1103-07. He showed her the sanitized⁶ print outs of the explicit images, and, in twenty-three photographs, she was able to identify A.R. along with articles of clothing and household items that belonged to the family.⁷ *Id.* at 443 (sealed); SR: 1015-21, Ex.: 6 (sealed), 15-18 (sealed), 21-24. Of the twenty-three images, Tina identified A.R. in nineteen images where she was involved in sexual acts with Cadotte. *Id.* at 443 (sealed), 1015; Ex.: 6 (sealed), 15-18 (sealed).

Law enforcement arrested Cadotte for First-Degree Rape, Sexual Contact, and Manufacturing, or Distributing Child Pornography and transported to the Pennington County Jail. *Id.* Officers executed a

⁵ At the time the electronic devices were discovered at Cadotte's residence, encryption and deletion software were actively running when seized, and all the information contained within the devices may not have been recovered. SR: 443 (sealed), 1149-79.

⁶ At trial, the cleansed or censored images were referred to as sanitized images. *See generally* 834-1292.

⁷ The items Tina recognized in the images included a white and blue night gown, pink fuzzy pillow, sleep masks, Peppa Pig hat, black and white blanket, yellow shirt, Hello Kitty blanket, pink pajamas with black sleeves, and a gold mirror. SR: 443 (sealed), 1019-21, 1026-31.

second search of Cadotte’s residence, this time looking for items identified by Tina in the photographs. *Id.* Along with the items collected during the search, two cellphones and a camcorder were collected as evidence and sent to ICAC for processing.⁸ *Id.*; SR: 443 (sealed), 1019-21, 1026-31, 1105.

The investigation uncovered “several hundred images of child pornography,” with twenty-seven images of child pornography made by Cadotte. *Id.* Nineteen images were determined to include A.R. performing sexual acts with Cadotte. *Id.*; Ex.: 6 (sealed), 15-18 (sealed).

STANDARD OF REVIEW

The “remedy for nondisclosure of discoverable material is left to the sound discretion of the trial court’ and will not be disturbed absent an abuse of discretion.” *State v. Turner*, 2025 S.D. 13, ¶ 34, 18 N.W.3d 673, 685 (citing *State v. Onken*, 2008 S.D. 112, ¶ 18, 757 N.W.2d 765, 770). “[This Court also] review[s] evidentiary rulings under [its] abuse of discretion standard.” *State v. Osman*, 2024 S.D. 15, ¶ 35, 4 N.W.3d 558, 569 (citing *State v. Malcom*, 2023 S.D. 6, ¶ 31, 985 N.W.2d 732, 740). “An abuse of discretion is ‘discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.’” *Turner*, 2025 S.D. 13, ¶ 34, 18 N.W.3d at 685. (citing *State v. Carter*, 2023 S.D. 67, ¶ 24, 1 N.W.3d 674, 685). “If [this Court] conclude[s] that

⁸ The items collected included leopard print towels, blankets, some sleeping masks, and a hat. SR: 1105.

the circuit court did not abuse its discretion, “[this Court] need not determine whether [the defendant] was prejudiced.” *Id.* (citing *State v. Richard*, 2023 S.D. 71, ¶ 29, 1 N.W.3d 654, 661). “Prejudice means ‘a reasonable probability that, but for [the error], the result of the proceeding would have been different.’” *Id.* (citing *Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d at 686).

ARGUMENTS

Cadotte raises two claims challenging whether the circuit court abused its discretion by failing to provide the defense a reasonable remedy to cure the state’s discovery violation, and whether the circuit court abused its discretion by admitting prejudicial hearsay evidence. *See generally* AB. Neither Cadotte’s brief nor the settled record support his claims. Because of this and as discussed below, Cadotte’s conviction and sentencing should still be affirmed.

I.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY ALLOWING PROPERLY DISCLOSED EVIDENCE.

Cadotte argues that by the State providing the sanitized photographs on the morning of trial, it was late in disclosing the evidence it intended to use at trial. AB: 11-17. But since the photographs were available to Cadotte for inspection at ICAC, his claim fails.

A. Background.

At trial, before the start of evidence, Cadotte motioned the circuit court to prohibit the State from admitting certain photographs at trial. SR: 941-42. He claimed the State provided him with a binder of seventy images that morning, all but four of which had not previously been disclosed. *Id.* The State explained the images were available for defense to view, in an evidence locker at ICAC. SR: 943. Further, the images in question were sanitized or censored images that defense previously saw. SR: 944. The circuit court denied Cadotte’s motion finding the images had been properly provided. SR: 946.

Cadotte argues that because the State did not comply with the rules of discovery, the circuit court abused its discretion when it allowed their admittance. AB: 11-15. But because the evidence was provided to Cadotte, there was no discovery violation.

B. The circuit court did not abuse its discretion when it denied Cadotte’s motion in limine to exclude the photographs he believed were not properly disclosed.

“South Dakota's rules of criminal procedure require a prosecuting attorney to make available for inspection all its discovery upon a defendant's written request.” *Richard*, 2023 S.D. 71, ¶ 34, 1 N.W.3d at 662 (citing SDCL 23A-13-3, SDCL 23A-13-4). “The purpose of discovery statutes and pretrial orders requiring parties to disclose the exhibits they intend to utilize at trial is to ‘eliminate trial by ambush.’” *Fiechtner v. Am. W. Ins. Co.*, 2025 S.D. 60, ¶ 80, 27 N.W.3d 746, 768 (quoting *City of*

Sioux Falls v. Missouri Basin Mun. Power Agency, 2004 S.D. 14, ¶ 16, 675 N.W.2d 739, 744 (citation omitted)).

Under SDCL 23A-13-3, the statute provides that:

Upon written request of the defendant, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecuting attorney and which are material to the preparation of his defense or intended for use by the prosecuting attorney as evidence in chief at the trial, or were obtained from or belong to the defendant.

SDCL 23A-13-3. Similarly, SDCL 23A-13-4 provides that:

Upon written request of a defendant, the prosecuting attorney shall permit a defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecuting attorney, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney, and which are material to the preparation of the defense or are intended for use by a prosecuting attorney as evidence in chief at the trial.

SDCL 23A-13-4.

Cadotte filed a Motion for Discovery, which included a request for, amongst other things, photographs the State had or planned to use at trial. SR: 93. Due to the explicit nature of some of the photographs, the images were kept at ICAC available for both parties to view. SR: 943. When presented with a binder of images the morning of trial, Cadotte asked the court to exclude the evidence because he claimed it had never been produced for him to look at. SR: 941-42.

The State explained to the circuit court the images in the binder had not been previously provided to Cadotte.⁹ SR 943. It clarified that the binder was sanitized images for use at trial that was available for review by Cadotte at ICAC. SR: 943. It further explained that non-sanitized images had been available for review as well. SR: 944. When questioned by the circuit court, defense counsel admitted to having access to the images but was unaware they were in the locker. SR: 945, 948. Counsel further admitted to reviewing the non-sanitized images prior to trial. SR: 944-45. The circuit court allowed the images, finding the images were available for Cadotte to look at. SR: 946.

Cadotte improperly relies on *State v. Turner* to support his claim. *Turner*, 2025 S.D. 13, 18 N.W.3d 673; AB: 12-13. In *Turner*, the State's ballistic report was not made available or known to the defendant until ten days before trial. *Turner*, 2025 S.D. 13, ¶ 15, 18 N.W.3d at 681. This Court held that the circuit court in that case did not abuse its discretion because it properly provided alternative remedies to cure the discovery violation. *Turner*, 2025 S.D. 13, ¶ 36, 18 N.W.3d at 686.

Here, and fundamentally different from *Turner*, Cadotte had more than ten days to review and inspect the photographs and was provided with notice and unrestricted access to the same photographs through ICAC. SR: 216-17, 944-45. The fact Cadotte and his defense counsel

⁹ The State told the circuit court the reason they did not provide the binder of images earlier was because they were checked out from the evidence department that morning. SR: 943.

had direct access to the all the photographs, including the non-sanitized child pornography photographs, through ICAC, contradicts his claim of late disclosure.

Further, Cadotte's reliance on SDCL 23A-13-17¹⁰ is misplaced, as the evidence was disclosed and made available for review before trial.

AB: 12-17. Because the evidence was disclosed to Cadotte, there was no need for the circuit court to provide any remedies as the evidence had been properly disclosed.

The State complied with South Dakota's discovery statutes and made the images available to Cadotte to view. He does not dispute the fact he had access to the evidence at ICAC, nor does he dispute he viewed the non-sanitized images prior to trial. Therefore, the court didn't abuse its discretion when it denied Cadotte's motion.

C. Cadotte cannot show that he was prejudiced by the evidence.

Even if this Court finds that the circuit court abused its discretion, Cadotte cannot show that he was prejudiced by the evidence. Cadotte argues that he was prejudiced by the circuit court's decision to allow the photographs at trial. AB: 15-17. But the evidence presented at trial was

¹⁰ "If, at any time during the course of a proceeding, it is brought to the attention of a court that a party has failed to comply with an applicable discovery provision, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence *not disclosed*, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place, and manner of making the discovery and inspection and may prescribe such terms and conditions as are just." SDCL 23A-13-7 (emphasis added).

so overwhelming as to Cadotte's guilt, that he cannot establish any prejudice. Because even if the court denied the use of the photographs, there is not a reasonable probability that, but for the use of the photographs, the result of the trial would have been different.

First, A.R.'s testimony, as stated above, provided firsthand accounts of sexual acts Cadotte performed and forced A.R. to participate in. SR: 957-1007. She was able to articulate specific acts, recalled hearing camera sounds while Cadotte was forcing her to perform sexual acts, and recalled more than ten separate instances where Cadotte made her perform oral sexual acts on him, this does not include the acts performed on A.R.'s anal region. *Id*

A.R. testified that Cadotte would usually babysit at her house and sometimes at his house. SR: 963. When Cadotte would babysit, she shared that he would rape her. SR: 965. She defined rape as "sexual contact without someone's will" then provided examples of the sexual contact Cadotte would do, like touching her with his hand and his penis on her butt and mouth. *Id*. Cadotte would also make her touch him with her hand. SR: 965-66.

A.R. said that Cadotte would put his penis on her mouth and made her "suck his penis," and how he would blindfold her using blindfolds and scarfs every time. SR: 966-67. She shared how Cadotte would put green apple flavored "candy" from a syringe on his penis before he made her suck his penis. SR: 967-68. A.R. stated that between the age of six

and eight, from what she remembered, Cadotte made her suck his penis more than ten times. SR: 968-69. She recalled “it felt like an eternity” when asked how long it would last when Cadotte would make her suck his penis, and she knew it was over when he would remove his penis from her mouth. SR: 969.

After Cadotte finished putting his penis in her mouth, A.R. shared how she remembered times where he would tell her to keep it a secret. SR: 969-70. She also remembered that during the sexual acts, she would think Cadotte was taking pictures of her because she would hear “chhhh” camera sounds coming from his phone while she was blindfolded. SR: 970.

A.R. also recalled instances when Cadotte would use his penis on her butt while on the couch at her house. SR: 971, 973. She shared that Cadotte would call it “white stuff”, and he would “put it in [her] butt crack.” SR: 971. A.R. stated how Cadotte would position her face down on her belly when he would put the white stuff on her butt crack. SR: 971-72. She remembered how the white stuff felt warm and disgusting, and how she knew it was white because Cadotte told her. SR: 972.

In other instances, A.R. remembered times when Cadotte would make her use her hands on his penis. SR: 973. She described an instance when Cadotte was driving her to her father’s house, and, on the way, Cadotte “started making me like grab his penis and go make my

hands go back and forth.” *Id.* She remembered how she did not want to, remaining silent, and hearing Cadotte make moaning noises. SR: 974. She knew Cadotte was finished because he zipped his pants when they arrived at her father’s house. SR: 974-75.

She said that Cadotte would make her lie, and she would lie because she was “scared that he was going to hurt [her] if [she] didn’t.” SR: 975. Cadotte would bring candy as a gesture to keep the sexual acts a secret, and she knew the candy was to keep the secret because Cadotte would tell her “[r]emember our secret.” SR: 976. A.R. also testified to the first sexual thing Cadotte had her do at around the age six, and she shared that “the first thing he made me do was like I’m getting in a straddling position only in my underwear on him.” SR: 977-78. She remembered Cadotte was sitting on the couch, and she straddled him with a leg on each side while facing him. SR: 978.

A.R. also testified about four pictures she drew during her forensic interview at the Children’s Home Child Advocacy Center. SR: 15 (sealed), 441-44 (sealed), 980-84, 1097, Ex.: 1-4 (sealed). In the drawings, she described that the images were depictions of her and Cadotte in a car, another in a time in her living room, another on a chair in her parent’s bedroom, and the last one depicting her sucking Cadotte’s penis. SR: 980-83; Ex.: 1-4 (sealed). Sergeant Walker testified to the discovery of about twenty-seven child pornographic images created by Cadotte. SR: 1103-08. In several graphic photographs provided by ICAC of a

young female performing oral sex on a male, Sergeant Walker recognized “a very distinct white belt with plaid designs on it.” SR: 1103-04. The belt that was prominent throughout these images “was the same belt that [he] saw hanging in [Cadotte’s closet on the original search warrant.” SR: 1104.

This connection led to a follow-up interview with Tina. *Id.* Tina’s own testimony highlighted that during her interview with Sergeant Walker, she identified A.R. in the explicit photographs along with the white belt. SR: 1020; Ex.: 18. She identified at least twenty-three images that contained A.R. and recognized other objects within those images, like a mirror that located her bedroom, a dream catcher hanging on the wall, a Peppa Pig hat, a yellow night gown, and the white belt with plaid designs. SR: 1018-21; Ex.: 15-18 (sealed), 21-24.

Strand also testified to her forensic investigation and how she was able to determine the explicit images recovered from Cadotte’s electronic devices were created by Cadotte. SR: 1157-83; Ex.: 6 (sealed), 15-18 (sealed). She described how her analysis allowed her to compare the photographs taken of Cadotte’s home to the explicit photographs and determine that the explicit images occurred within Cadotte’s home. SR: 1162-83. In her testimony, Strand compared items found in the explicit images, like a the Peppa Pig hat, a dreamcatcher on the wall, a pink mask, a white belt with plaid designs, dark blue curtains, a mirror, and different articles of clothing, to the images captured during the

search of Cadotte's residence. SR: 1166-69. This led her to know those images were created by Cadotte, and she distinguished nine separate instances of sexual acts with A.R. *Id.*; SR: 1160-65.

Because of the overwhelming evidence, even without the images, Cadotte fails to show prejudice. The overwhelming evidence showed at least nine separate incidents of sexual contact with A.R., and that there was not a reasonable probability that, but for the allowance of the images, the result of the proceedings would have been different.

Cadotte fails to establish that the circuit court abused its discretion because the State complied with South's Dakota discovery statutes and made the images available to Cadotte to view. Cadotte also does not dispute he had access to the evidence at ICAC, nor does he dispute he viewed the non-sanitized images prior to trial. And even if this Court finds abuse of discretion, Cadotte cannot show that there was a reasonable probability that, but for the discover violation, the result of the proceedings would have been different.

II.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING SERGEANT WALKER'S TESTIMONY.

Cadotte's second issue challenges whether the circuit court abused its discretion when it overruled defense counsel's objection claiming hearsay over a line of questioning during Sergeant Walker's direct examination. AB: 17-20. Sergeant Walker testified about his investigation and the reasoning behind why he proceeded the way he did.

SR: 1103-08. He testified he “was showing [Tina] those photos to try and get a positive identification on the young female in the photos and to attempt to locate any other evidence to corroborate where and who may have taken those photos.” SR: 1107. However, the circuit court did not err in allowing these statements because they were made to establish Sergeant Walker’s context of his investigative procedure in acquiring a second search warrant and not to identify A.R. in the photographs.

A. Sergeant Walker’s testimony was not hearsay under the applicable statutory requirements.

Hearsay statements are generally not admissible under SDCL 19-19-801. SDCL 19-19-801. Hearsay is defined as “a statement that (1) [t]he declarant does not make while testifying at the current trial or hearing, and (2) [a] party offers in evidence to prove the truth of the matter asserted in the statement.” SDCL 19-19-801(c). “[A] statement is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted.” *Hoffman v. Hollow Horn*, 2024 S.D. 59, ¶ 30, 12 N.W.3d 322, 331 (quoting *State v. Whitfield*, 2015 S.D. 17, ¶ 13, 862 N.W.2d 133, 138 (citing *State v. Graham*, 2012 S.D. 42, ¶ 28, 815 N.W.2d 293, 305)). “The circuit court has discretion to determine whether a particular statement is made for the truth of the matter asserted.” *Id.* When determining the scope a witness may testify, SDCL 19-19-602 provides that “A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal

knowledge may consist of the witness's own testimony.” SDCL 19-19-602.

During his testimony, Sergeant Walker explained his process as an investigator. SR: 1094-112. He described recognizing a distinct white belt with plaid designs in explicit images found on Cadotte’s devices and recognized it as the same belt he saw hanging in Cadotte’s closet. *Id.* at 1104. He stated that the purpose behind conducting an interview with Tina was “to try and get a positive identification on the young female in the photos and to attempt to locate any other evidence to corroborate where and who may have taken those photos.”¹¹ *Id.* at 1107.

Following his interview with Tina, and as discussed above, her positive identification of A.R. and specific items depicted in the images, including the white belt with plaid designs, allowed Sergeant Walker to obtain the second search warrant and gather more evidence presented at trial. SR: 1018-21; Ex.: 15-18 (sealed), 21-24. Cadotte’s objection to Sergeant Walker’s testimony of Tina positively identifying A.R. in the photographs as hearsay is improper because Sergeant Walker was testifying to his methods in conducting his investigation, and the circuit court properly overruled the objection.

¹¹ The interview with Tina followed the initial search warrant that led to the discovery of twenty-seven child pornographic photographs believed to be created by Cadotte and possibly containing A.R. SR: 13-31 (sealed), 168-214 (sealed), 1094-112.

As stated above, hearsay is a statement that a declarant does not make while testifying at the current trial or hearing, and the statement is offered to prove the truth of the matter asserted. SDCL 19-19-801(c). Here, statements made by Sergeant Walker that Tina identified A.R. and the other objects within the explicit images were not used to prove the identity of A.R. Sergeant Walker's testimony was used to establish his investigatory process and how the images were corroborated and tied back to Cadotte.

Tina's positive identification of both A.R. and the recognizable items allowed Sergeant Walker to discern between the twenty-seven photographs, narrow his investigation to the twenty-three images recognized by Tina, and locate and gather some of the items confirmed in the images during the subsequent search warrant. SR: 1094-112.

Cadotte relies on this Court's decision in *Osman* as his justification for why the circuit court abused its discretion in allowing Sergeant Walker's testimony. AB: 17-19; *see also Osman*, 2024 S.D. 15, 4 N.W.3d 558. But Cadotte misapplies the facts and holding in *Osman* to this case. While Cadotte is correct that in *Osman* this Court found an abuse of discretion where the circuit court erroneously admitted hearsay evidence over proper objection, his own summary of *Osman* highlights the exact difference between that case and this case that establishes Sergeant Walker's testimony was not hearsay. AB: 18; *Osman*, 2024 S.D. 15, ¶¶ 35-42, 4 N.W.3d at 569-71.

Osman was charged with several driving offenses. At trial, a law enforcement officer testified he learned from a witness that Osman was the driver of a vehicle and that he should have a set of keys on him. *Osman*, 2024 S.D. 15, ¶¶ 16-18, 39, 4 N.W.3d at 564-65, 570. On direct and cross-examination, the officer’s testimony included statements that “[the witness] stated that this person, [] Osman, was driving the vehicle.” *Id.*

The circuit court determined that the officer’s testimony was not hearsay “because it was admitted simply as context to explain the sequence of events in [their] investigation.” *Osman*, 2024 S.D. 15, ¶ 40, 4 N.W.3d at 570-71. This Court held that the circuit court abused its discretion because the officer’s testimony was hearsay and the hearsay statement “was not necessary to show context.” *Id.* This Court reasoned that “[t]he jury could have understood [the officer’s] actions without knowing that [the witness] told [the officer] that Osman was driving the vehicle,” and, therefore, “the statement from [the witness] to [the officer] . . . was not necessary to show context.” *Osman*, 2024 S.D. 15, ¶ 40, 4 N.W.3d at 571.

Here, Sergeant Walker’s testimony provided his reason for showing Tina the photographs. SR: 1094-112. To continue with his investigation, it was crucial for Tina to recognize A.R. or other items with the images collected from Cadotte, as he was trying to determine if any of the images were created Cadotte. *Id.* His testimony provided the

exact context necessary for the jury to understand his actions and reasoning in obtaining search warrants and how the physical evidence was identified and tied to the overall case.

B. Cadotte cannot show that he was prejudiced by Sergeant Walker's testimony.

Even if this Court finds that the circuit court abused its discretion, Cadotte cannot show that he was prejudiced by Sergeant Walker's testimony. Cadotte argues that he was prejudiced by the circuit court's decision to admit the testimony into evidence. AB: 19-20. But Cadotte fails to establish any prejudice because not only was the evidence cumulative to Tina's testimony, but there was also an abundance of evidence of Cadotte's guilt. *See Osman*, 2024 S.D. 15, ¶ 41, 4 N.W.3d at 571 (finding that there was strong evidence of Osman's guilt and, therefore, not a reasonable probability that, but for the admission of the testimony, the results of the proceedings would have been different); *see also Hoffman*, 2024 S.D. 59, ¶ 31, 12 N.W.3d at 331-32 (finding that the abundance of evidence outside the potentially inadmissible testimony, along with an inability to articulate how the statements' admission in all probability affected the outcome of the case, did not lead to a conclusion of prejudice); *State v. Knecht*, 1997 S.D. 53, ¶ 7, 563 N.W.2d 413, 417.

“Where inadmissible evidence admitted at trial is cumulative only and other admissible evidence supports the result, the cumulative evidence, though inadmissible, is nonprejudicial.” *State v. Shepard*, 2009 S.D. 50, ¶ 16, 768 N.W.2d 162, 167 (quoting *State v. Tribitt*, 327 N.W.2d

132, 135 (S.D.1982)). Evidence is cumulative when it is “of the same character as evidence previously produced and which supports the same point.” *Knecht*, 1997 S.D. 53, ¶ 7, 563 N.W.2d at 417.

Here, Sergeant Walker’s testimony is cumulative to Tina’s testimony that she identified A.R. in some of the images Sergeant Walker showed her. At trial, Tina recalled being interviewed by Sergeant Walker and said the reason for the interview was “to identify [A.R.]” SR: 1015. She confirmed that she was shown an estimate of “over 20” images during the interview. *Id.*; Ex.: 6 (sealed), 15-18 (sealed), 21-24. This included explicit images where she articulated that the person in the image “looks like [A.R.]” SR:1015. She was also able to identify the location of the picture as being her house, along with identifying specific objects in the images, like a mirror, a dream catcher hanging on a wall, a Peppa Pig hat, and a yellow nightgown. SR: 1015-21, 1026-31; Ex.: 6 (sealed), 15-18 (sealed), 21-24.

Later at trial, Sergeant Walker testified that he showed Tina photographs and asked her if she recognized A.R. in any of the images. SR: 1106-07. He said Tina recognized A.R. in some of the photographs. SR: 1106-08. Sergeant Walker’s testimony was merely cumulative to Tina’s testimony. Cadotte fails to demonstrate how, but for Sergeant Walker’s testimony, that the outcome would have been different, prejudiced him.

Not only was the testimony cumulative, but the evidence against Cadotte was overwhelming. *See* Appellee’s Brief 19-20. And Cadotte failed to show how the outcome of the trial would have changed but for Sergeant Walker’s testimony that Tina recognized A.R. in some of the images found at Cadotte’s residence.

Cadotte also argues that during closing arguments when the State argued that the images shown at trial constituted “[n]ine documented instances of first-degree rape,” and those statements, along with Sergeant Walker’s testimony prejudiced him because Sergeant Walker’s testimony was allowed into evidence as inadmissible hearsay. AB: 19-20; SR: 1240. Cadotte claims that without Sergeant Walker’s statement regarding Tina’s interview, then “the State would not have been able to argue that A.R.’s identity had been established, by Tina, in all of the images.” AB: 20. But Cadotte is mistaken because Tina also testified, as discussed above, that she recognized A.R. in some of the images Sergeant Walker showed her.

Even without Sergeant Walker’s statement regarding Tina’s identification of A.R. in the child pornographic photographs, as argued above, the evidence against Cadotte was overwhelming and he fails to show he was prejudiced by the testimony.

Sergeant Walker’s testimony was not hearsay. It merely was used to give context of how and why he conducted his investigation the way he did. And even if it was hearsay, Cadotte wasn’t prejudiced because the

testimony was not only cumulative and but the evidence at trial was overwhelming as to his guilt. Therefore, the circuit court did not abuse its discretion in allowing Sergeant Walker's testimony.

CONCLUSION

For the reasons stated above, the State respectfully requests that Cadotte's judgment and sentence be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Roberto Nolasco-Cruz
Roberto Nolasco-Cruz
Legal Intern

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General
1302 E. SD Highway 1889, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee’s Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee’s Brief contains 5,576 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated this 22nd day of January, 2026.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of January 2026, a true and correct copy of Appellee’s Brief in the matter of *State of South Dakota v. Tell Logan Cadotte* through odyssey file and serve upon Matthew R. Mirabelle at Matthew.Mirabella@state.sd.us.

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA

Appellee,

vs.

TELL CADOTTE,

Appellant.

No. 31148

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

HONORABLE ROBERT GUSINSKY
Circuit Court Judge

APPELLANT'S REPLY BRIEF

MATTHEW R. MIRABELLA
South Dakota Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
Attorney for Appellant

MARTY JACKLEY
Attorney General
1302 E. Highway 1889, Suite 1
Pierre, SD 57501

LARA ROETZEL
Pennington County State's
Attorney
130 Kansas City Street, Ste. 300
Rapid City, SD 57701
Attorneys for State/Appellee

Notice of Appeal Filed on July 22, 2025

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

No. 31148

TELL CADOTTE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Tell Cadotte (hereinafter “Cadotte”), will limit discussion to the issues that need further development or argument. Any matter raised in Cadotte’s initial brief, but not specifically mentioned herein, is not intended to be waived. Cadotte will attempt to avoid revisiting matters adequately addressed in the initial appellant’s 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. Cadotte relies upon the Jurisdictional Statement, Statement of Legal Issue, Statement of

the Case, and Statement of Facts presented in his initial appellant brief, filed with this Court on December 8, 2025.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY FAILING TO PROVIDE THE DEFENSE A REASONABLE REMEDY TO CURE THE STATE'S DISCOVERY VIOLATION.

A. The record establishes that the defense did not have significant discovery and was denied a meaningful opportunity to respond to critical exhibits.

The State contends that the photographs were available to the defense and thus there was no discovery violation. SB 8-9. However, the State agrees that the exhibits in question were not provided to the defense until the morning of the second day of the jury trial. SB 11; JT2 7, 9. On March 23, 2022, the defense filed pre-trial non-evidentiary motions requesting, among other standard requests, that the State “specify any and all tangible, physical and/or demonstrative evidence, including any and all pictures, photographs, or slides, the State intends to attempt to introduce as evidence or use for demonstrative purposes at the trial[.]” SR 93. The State did not do so.

Despite the lack of notice, the defense diligently investigated the case by visiting the Internet Crimes Against Children law enforcement facility to review the State's evidence. JT2 6. The defense was provided four sanitized images “and was told these were the sanitized photos that they had.” *Id.* During the conference outside the presence of the jury, the defense advised the circuit court that it “quite frankly, didn't know” the evidence existed. JT2 10. The State

submits that Cadotte “improperly relies on *State v. Turner*” because “[i]n *Turner*, the State’s ballistic report was not made **available or known** to the defendant until ten days before the trial.” SB 11 (emphasis added). Cadotte disagrees.

First, these critical exhibits were not made available to the defense. The defense visited the evidence facility but was not provided the materials the State later introduced. JT2 6, 10. Second, the photographs were not known to the defense until the morning of the second day of the jury trial as Cadotte’s counsel advised the circuit court of that fact immediately. JT2 6 (“[T]he State is intending on admitting evidence that was never provided to me and because of the nature of this case, quite frankly, didn’t know existed.”).

As in *Turner*, critical evidence in Cadotte’s case was neither made available nor known to the defense. Furthermore, Cadotte’s case is more concerning than the late disclosure issue in *Turner*. In *Turner*, the defendant had ten days advance pre-trial notice whereas the evidence here was made available and known to Cadotte in the middle of the jury trial. *State v. Turner*, 2025 S.D. 13, ¶ 15, 18 N.W.3d 673, 681. Therefore, the circuit court’s decision to permit the use of the new exhibits, without exclusion or a continuance to address the late disclosure, constituted an abuse of discretion under SDCL 23A-13-17.

B. The admission of nine, rather than four, sanitized images prejudiced Cadotte’s case and influenced its outcome.

The State contends that even if the admission of these exhibits constituted an abuse of discretion, the evidence did not impact the outcome of the case. SB

13. Cadotte disagrees based upon the jury's verdict. During the middle of the jury trial, the State produced significantly more exhibits than defense anticipated and utilized nine of those images to argue in closing remarks that it had proven nine counts of first-degree rape. JT2 5-10; JT3 273-74. In preparing for trial, the defense was apprised of four sanitized images. JT2 5-10. It was only during the trial the defense became aware the State intended to utilize and argue that each image supported a separate and independent conviction. Due to the late disclosure, the defense did not have the ability to properly prepare its defense or effectively meet the State's argument at trial.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY ADMITTING PREJUDICIAL HEARSAY EVIDENCE.

A. Walker's testimony was not offered to explain any context for law enforcement investigation and was offered to prove identification.

The State argues that Walker's testimony was not hearsay because the testimony was "not used to prove the identity of A.R." SB 20. The State submits that "Walker's testimony was used to establish his investigatory process and how the images were corroborated and tied back to Cadotte." *Id.* Furthermore, the State argues that Walker's testimony was cumulative to Tina's trial testimony as Tina identified A.R. in the images shown to her by Walker. *Id.* at 22-24.

First, after Tina testified and prior to the State calling its last witness, the defense made a record that Tina's trial testimony did not establish that she could definitively identify A.R. in the exhibits. JT2 197. At trial, Tina testified that the individual in the photographs looked similar to A.R., however, Tina "[couldn't]

really tell” whether it was A.R. or another person. *Id.* at 83-84. Tina was directly asked if “those photographs that I’ve just showed you, were those [A.R.]?” and Tina responded the child looked like A.R. *Id.* at 84. Most significantly, on re-direct examination, the State again attempted to obtain testimony that Tina could identify A.R. in the photographs and Tina could not do so. *Id.* at 95 (“I mean, even these photos, you know, I don’t know if that’s [A.R.]”). Therefore, Tina could not identify A.R., and her testimony was speculative, not cumulative, which establishes the significance of the hearsay evidence admitted over objection through Walker.

Second, Walker’s testimony was hearsay evidence offered for the truth of the matter: that the person in the nine photographs was A.R. It was not offered for any other purpose. The circuit court did not make a record that Walker’s testimony was not being received for the truth of the matter asserted and the jury was not instructed that the evidence could not be received for the truth of the matter. *Id.* at 171. Walker testified that he investigated the initial disclosure from A.R. and attended the forensic interview. *Id.* at 160-61. Subsequent to the forensic interview, Walker obtained and assisted in executing a search warrant of Cadotte’s residence seeking electronic devices that may contain incriminating evidence. *Id.* at 162. Walker reviewed images found on laptops from that search and attempted to get a positive identification of A.R. in the images from Tina. *Id.* at 170-72. Walker obtained a second search warrant because he hoped to recover a belt from Cadotte’s residence. *Id.* at 168. There were no steps in Walker’s

investigation that required testimony related to what Tina told Walker. The sole purpose for Walker's testimony was to establish that Tina, in an out-of-court statement, previously identified A.R. in the photographs because Tina's trial testimony did not. Therefore, the evidence constituted inadmissible hearsay in violation of SDCL 19-19-802. The circuit court erred in allowing the jury to hear, with no instruction that it could not be relied on for its truth, that Tina told Walker A.R. was the person in the photographs.

B. The circuit court's admission of inadmissible hearsay evidence prejudiced Cadotte's case and influenced its outcome.

The State contends that even if the evidence constituted inadmissible hearsay, the evidence did not impact the outcome as "the evidence against Cadotte was overwhelming." SB 24. Cadotte disagrees based upon the trial evidence and the jury's verdict. The State recounts A.R.'s trial testimony in support of the assertion that the evidence was overwhelming. *Id.* at 13-15. At trial, the State argued that the jury should convict of two specific and distinct allegations of first-degree rape solely based on A.R.'s testimony. JT3 276 ("You also have two additional counts of rape and one count of sexual contact with a child, and the evidence you have supporting those counts are [A.R.'s] testimony."). However, the jury's verdict reveals that the jurors were not convinced as the jury acquitted Cadotte of both first-degree rape allegations that were based on A.R.'s testimony. SR 382. Had the remaining evidence, without

Walker's hearsay testimony, been overwhelming, the jury would have convicted on those counts.

Instead, the jury convicted Cadotte of nine counts of first-degree rape and one count of sexual contact based upon the State's closing argument that nine of the photographs were direct evidence depicting Cadotte and A.R. JT3 273-74; SR 382. The verdict rendered establishes the significance of the impact of Walker's hearsay testimony. Tina could not establish that A.R. was definitively in the photographs. JT2 83-84, 95, 197. Without Walker's testimony asserting Tina had previously identified A.R. in the photographs, the State would not have been able to argue in closing remarks that A.R. was in the pictures establishing "[n]ine documented incidents of first degree rape." JT3 274. After hearing inadmissible hearsay evidence of A.R.'s identification, the jury returned a corresponding verdict, therefore significantly altering the outcome of the case.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, the circuit court abused its discretion by failing to provide a reasonable remedy to address the State's late disclosure of critical exhibits. Additionally, the circuit court abused its discretion by admitting prejudicial, inadmissible hearsay. Appellant Cadotte respectfully requests that this Court vacate the Amended Judgment and Sentence and remand this case to the circuit court for a new jury trial.

Respectfully submitted this 23rd day of February, 2026.

/s/ Matthew Mirabella
Matthew R. Mirabella
South Dakota Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
matthew.mirabella@state.sd.us
ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellant's Reply Brief contains 2,040 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 23rd day of February, 2026.

/s/ Matthew Mirabella
Matthew R. Mirabella
South Dakota Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
matthew.mirabella@state.sd.us

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

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

MARTY JACKLEY
Attorney General
atgservice@state.sd.us
Attorney for Appellee, State of South Dakota

ERIN HANDKE
Assistant Attorney General
erin.handke@state.sd.us
Attorney for Appellee, State of South Dakota

LARA ROETZEL
Pennington County State's Attorney
larar@pennco.org
Attorney for Appellee, State of South Dakota

ELIZABETH REGALADO
The Law Office of the Pennington County Public Defender
elizabeth.regalado@pennco.org
Trial Attorney for Appellant

OLE OLESEN
The Law Office of the Pennington County Public Defender
ole.olesen@pennco.org
Trial Attorney for Appellant

Dated this 23rd day of February, 2026.

/s/ Matthew Mirabella
Matthew R. Mirabella
South Dakota Office of Indigent Legal Services
PO Box 88237
Sioux Falls, SD 57109
matthew.mirabella@state.sd.us

ATTORNEY FOR APPELLANT