IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA *Appellee,* vs. DAVID J. SHANGREAUX, JR., *Appellant.*	No. 31143

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Christina Klinger

APPELLANT'S BRIEF

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Notice of Appeal Filed on July 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page(s)

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OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 31143

vs.

DAVID J. SHANGREAUX, JR.,

Defendant and Appellant.

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as "SR." The transcripts are referred to as follows:

Arraignment Hearing (January 17, 2024) ..... AH

Motions Hearing (February 29, 2024) MH1

Competency Hearing (April 17, 2024) CH1

Competency Hearing (September 3, 2024) CH2

Motions Hearing (March 19, 2025) MH2

Motions Hearing (April 8, 2025) MH3

Voir Dire (April 23, 2025) .....VD

Jury Trial (April 25, 28, 29, 30, 2025) JT1-JT4

Sentencing (July 15, 2025) ....ST

All references to documents will be followed by the appropriate page number. Exhibits are referred to as "Ex." followed by the exhibit number. Defendant and Appellant, David Shangreaux, will be referred to as "Shangreaux."

JURISDICTIONAL STATEMENT

Shangreaux appeals the Judgment and Sentence entered July 15, 2025, by the Honorable Christina Klinger, Circuit Court Judge of the Sixth Judicial Circuit. SR 826-29. Shangreaux's Notice of Appeal was filed July 17, 2025. SR 2129, 2134. 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 CLEARLY ERRED IN SUSTAINING THE STATE'S PEREMPTORY STRIKE OF A NATIVE AMERICAN MEMBER OF THE JURY POOL.

The circuit court found that the State's asserted reasons for the peremptory strike of the prospective juror were not a pretext for racial discrimination.

Batson v. Kentucky, 476 U.S. 79 (1986)

State v. Scott, 2013 S.D. 31, 829 N.W.2d 458

Miller-El v. Dretke, 545 U.S. 231 (2005)

Foster v. Chatman, 578 U.S. 488 (2016)

II. WHETHER THE STATE'S COMMENTS DURING CLOSING ARGUMENT WERE IMPROPER AND DENIED SHANGREAUX HIS DUE PROCESS RIGHT TO A FAIR TRIAL.

This circuit court did not rule on this issue.

State v. Heer, 2024 S.D. 54, 11 N.W.3d 905

State v. Janis, 2016 S.D. 43, 880 N.W.2d 76

United States v. Jones, 865 F.2d 188 (8th Cir. 1989)

United States v. Younger, 398 F.3d 1179 (9th Cir. 2005).

STATEMENT OF CASE

On December 12, 2023, a Hughes County Grand Jury returned an Indictment charging Shangreaux with the following: Count 1, Murder in the First Degree, in violation of SDCL 22-16-4(1); Count 2, Murder in the Second Degree, in violation of SDCL 22-16-7; and Count 3, Aggravated Assault – Physical Menace with Deadly Weapon, in violation of SDCL 22-18-1.1(5). SR 23-25. Arraignment on the Indictment was held January 17, 2024. *See generally* AH.

A motions hearing was held February 29, 2024. *See generally* MH1. Competency hearings took place on April 17 and September 3, 2024.[1] *See generally* CH1, CH2. Pretrial motions hearings were held March 19 and April 8, 2025. *See*

[1] At the hearing on April 17, 2024, a competency evaluation report was admitted into the record and the circuit court found Shangreaux incompetent without objection from the parties. CH1 3-9; *see* SR 68, 79-80, 142-52, 155-56. An updated competency evaluation report, dated July 30, 2024, concluded Shangreaux had been restored to competency. SR 175-85. On the agreement of the parties, the circuit court found Shangreaux competent at the hearing on September 3, 2024, and Shangreaux was rearraigned at that time. CH2 3-13.

generally MH2, MH3. A jury trial commenced April 23, 2025, and continued April 25, 28, 29, and 30, 2025. *See generally* VD, JT1 -JT4. At the conclusion of the trial, the jury found Shangreaux guilty in Count 2, Murder in the Second Degree. JT4 692. The jury acquitted Shangreaux on charges of Murder in the First Degree and Aggravated Assault. *Id*. On July 15, 2025, the circuit court sentenced Shangreaux to mandatory life in prison. ST 10.

STATEMENT OF FACTS

In November 2023, Shangreaux and his girlfriend, Liv Guerue ("Guerue"), resided together at an apartment in Pierre, SD. JT1 75. Shangreaux and Guerue met E.M. while dining at Perkins, where E.M. worked as a waitress. *Id*. at 77. In late November, Guerue and E.M. exchanged messages on social media and Guerue invited E.M to their apartment to hangout. *Id*. at 78. E.M. agreed and invited her friend Whitley Woehl to the small gathering, and Woehl invited her friend L.B. to join them.[2] *Id*. at 28-29, 48. On November 30, 2023, at around 5:00 p.m., Shangreaux and Guerue picked up E.M. from her home in Pierre and drove back to their apartment. *Id*. at 25, 78. Woehl and L.B. arrived together at the apartment between 6:00 p.m. and 7:00 p.m., and the five of them played games, talked and consumed alcohol in the living room. *Id*. at 30, 35, 49.

A short time later, the group left the apartment and stopped at a store to purchase more alcohol. *Id*. at 36. They bought Crown Royal and BuzzBallz, after

[2] Guerue was previously acquainted with both Woehl and L.B. *Id*. at 29, 48, 78.

which they returned to the apartment and continued drinking. *Id.* at 35-37, 66. All of them were taking shots of the Crown Royal until the bottle was empty. *Id.* at 67. L.B. stated that Shangreaux was taking "guzzles" of the whiskey and seemed "wasted." *Id.* The group sat in a circle in the living room and talked while Shangreaux played a card game with E.M. *Id.* at 37. E.M. was winning the card game and Shangreaux appeared frustrated. *Id* at 37-40; Ex. 3. During the card games, Shangreaux talked about some things that made Woehl and L.B. feel uncomfortable. *Id.* at 40, 56.

Later that evening, Guerue became sick and went to the bathroom to vomit and L.B. followed behind her to hold her hair back. *Id.* at 56, 80. Shortly thereafter, Shangreaux entered the bathroom and told L.B. to get out of his house. *Id.* at 68. According to Woehl and L.B., Shangreaux pushed L.B. out of the bathroom and then blocked the front door to the apartment and began waving a knife around at them.[3] *Id.* at 41-42, 57-58. Shangreaux eventually stepped away from the door and Woehl and L.B. left the apartment. *Id.* at 42-43, 58-59, 70. Before leaving, Woehl asked E.M. to go with them but she declined. *Id.* at 43. L.B. posted a Snapchat video from her phone at 8:17 p.m. as she walked out to the parking lot with Woehl. Ex. 4; JT1 59, 63, 71. In the video, L.B. is laughing and says, "Yo, what the fuck. Naw that nigga was tweek as fuck because tell me why

[3] Guerue testified that Shangreaux was mad when he entered the bathroom but nothing happened. Shangreaux and L.B. subsequently walked out of the bathroom and Woehl and L.B. left the apartment. JT1 80.

he was all trying to fight me. Bitch, bye." Ex. 4 at 00:02 – 00:10. Woehl and L.B. claimed they went directly to Woehl's home after leaving the apartment. *Id.* at 43, 64. Neither Woehl nor L.B. called the police to report the alleged incident. *Id.* at 45, 70-72. Law enforcement located them the next day at Woehl's residence. *Id.* at 72.

After Woehl and L.B. left the apartment, Guerue became sick again. *Id.* at 81. This time, E.M. followed her into the bathroom. *Id.* Guerue testified that Shangreaux reentered the bathroom and was mad. *Id.* at 81. According to Guerue, Shangreaux had a knife and was arguing with E.M. while Guerue stood between them in the bathroom. *Id.* at 81-82. Shangreaux shoved Guerue into the bathroom door, prompting her to flee the apartment and run across the parking lot to the nearby Taco Johns. *Id.* Guerue left the apartment with E.M.'s phone. *Id.* at 83.

Police received two calls to the apartment that night. JT1 102; JT2 152-53. One of those calls was made by Christina Mack, Shangreaux's neighbor. JT1 102; Ex. 6. Mack lived in Apartment 1 of the four-unit complex, which was located up the stairs and to the left from the front entrance. JT1 119-20; JT2 155-56. Shangreaux's Apartment 4 was located downstairs on the right. JT1 119-20. On the evening of November 30, 2023, Mack was home with her teenage and adolescent children. JT1 99-100. Between 8:15 and 8:30 p.m., while washing dishes in her kitchen, Mack observed through her open window two girls exit the apartment complex and run out to a car in the parking lot. JT1 100-01. The

girls were laughing and one of them appeared to be taking a selfie with her phone. *Id.* at 101. Sometime between 8:45 and 9:00 p.m., Mack's niece,[4] who was outside with some friends on the steps of the apartment complex, ran into Mack's apartment and told her that Shangreaux was outside "yelling around." *Id.* at 113. Mack could hear Shangreaux yelling cuss words and repeatedly saying, "Babe!" *Id.* After placing a call to her landlord, Mack called 911 at approximately 9:03 p.m. *Id.* at 112, 116; Ex. 6. While on the phone with dispatch, Mack described Shangreaux walking out to an SUV in the parking lot. *Id.* at 106-07; Ex. 6; *see* SR 576-78. He had a glove on one hand and was holding an unidentified object, which he used to bang on the passenger window of the SUV. *Id.* at 107. Mack agreed that Shangreaux was staggering around and appeared very intoxicated. *Id.* at 118.

The other 911 call was made 15 minutes earlier at approximately 8:48 p.m. by E.M.'s boyfriend, Keenan Running Crane. JT1 24; JT2 152-55. Running Crane identified himself to dispatch as E.M.'s brother and asked to have someone check on E.M. at the apartment. JT2 152-55. Sergeant Jacob Harlow and Officer Gregory Jones with the Pierre Police Department were the first responders. JT1 122-23. When Sgt. Harlow arrived outside the apartment, he observed a silver Saturn SUV in the parking lot but noticed nobody around the vehicle. *Id.* at 123. Sgt. Harlow went down to Shangreaux's apartment while Ofc. Jones went upstairs to

[4] Mack clarified that she referred to her niece as one of her children. JT1 108.

speak with Mack. *Id.*

When Shangreaux answered the door, he was sweating and breathing heavily, and the blade of a knife was sticking out from his left pants pocket. JT1 124-25; Ex. 7 at 00:20 – 00:35; Ex. 8. Sgt. Harlow inquired whether someone had been hitting the SUV parked outside. Ex. 7 at 00:20 – 00:45. In response, Shangreaux confirmed the SUV belonged to his "wife" and acknowledged that she had been the one banging on it. *Id.* Shangreaux agreed to let Sgt. Harlow talk to Guerue and walked back into the apartment to retrieve her while Sgt. Harlow stayed at the door. *Id.* at 00:44 – 01:30. Shangreaux returned to the door moments later and told Sgt. Harlow that everyone was trying to sleep. *Id.* at 01:30 – 01:33. He assured Sgt. Harlow everything was ok and that nobody was having an argument. *Id.* at 01:33 – 01:50. Sgt. Harlow asked Shangreaux for his name; however, Shangreaux declined to provide it, stating, "Unless, you know, whenever I'm ready to go, I'll tell you my, my name." *Id.* at 01:56 – 02:07. Sgt. Harlow asked him where he was ready to go and Shangreaux – while gesturing upstairs with his hand – indicated the "people up here" were trying to kill him. *Id.* at 02:07 – 02:17.

At that point, Sgt. Harlow noticed blood on Shangreaux's arm and asked him about it. *Id.* at 02:17. Shangreaux again pointed upward and said, "These people up here." *Id.* at 02:17 – 02:30. Sgt. Harlow confirmed with Shangreaux that only he and Guerue were in the apartment, and Shangreaux agreed to retrieve Guerue again and walked back into the apartment a second time. *Id.* at 02:34 –

02:57. From the doorway, Sgt. Harlow observed Shangreaux walking back and forth between rooms at the back of the apartment, at one point standing silently in the bedroom with his hands on his head. *Id.* at 02:57 – 03:25. Sgt. Harlow called up to Ofc. Jones to assist him downstairs. JT1 128-29; Ex. 7 at 04:14 – 04:26. When Shangreaux returned to the doorway without Guerue, Sgt. Harlow detained him in handcuffs and directed Ofc. Jones to look in the bathroom. Ex. 7 at 04:31 – 04:48. Ofc. Jones found E.M. deceased on the bathroom floor. JT2 148; Ex. 10 at 00:10 – 00:25.

A data extraction of E.M.'s phone later revealed she had taken a photo of Shangreaux smiling next to Guerue with his head somewhat down as if to kiss Guerue's hand at 8:40 p.m. that night. JT3 389. Video surveillance showed Guerue arrive at the Taco Johns at approximately 8:59 p.m. JT2 185; Ex. 102. Guerue said she went there to find help. JT1 83. She did not use E.M.'s phone to call for help but claimed she tried to call 911 from the phone at Taco Johns until she saw the police already going to the apartment. *Id.* at 83-84. Guerue could not explain why she did not walk back to the apartment to speak with police. *Id.* at 85. Instead, she called River City Transit for a ride to the Clubhouse Hotel and Suites where she was employed. JT1 84, 89; JT2 180-81. The transit bus arrived at the Taco Johns roughly 15 minutes later, but the driver ultimately denied Guerue a ride because she had no money. JT1 90; Ex. 103. The driver offered to call police for Guerue, but she declined and went back inside the restaurant. JT1 90-91; JT2 212. At around 10:00 p.m., Guerue received a ride from a Taco Johns employee's

father to the Clubhouse hotel. JT1 84-85, 90-91; JT2 212-13. When she arrived there, Guerue did not tell her coworkers what happened at the apartment. JT2 86. She gave E.M.'s phone to the front desk clerk[5] and asked her boss for a room. *Id.* at 86, 92; Ex. 104.

Later that night, police were able to trace Guerue's whereabouts to the Clubhouse hotel after learning the transit bus driver had called dispatch earlier to report a suspicious interaction with Guerue at Taco Johns.[6] JT2 180-81, 210-11. Patrol Sergeant Cole Martin met Guerue at the Clubhouse hotel at approximately 11:48 p.m. JT2 165. Guerue had no visible injuries and no observable blood on her clothing. JT2 166; Ex. 13-35. Sgt. Martin took photos of Guerue and her clothing at the hotel. JT2 168; Ex. 13-35. Video surveillance from the Taco Johns, River City Transit bus and Clubhouse hotel showed Guerue wearing the same clothing earlier that night. JT2 184-86; Ex. 102-104. Sgt. Martin did not collect Guerue's clothing for further testing. JT2 215. No swabs from Guerue's hands nor scrapings from her fingernails were collected by law enforcement. *Id.* at 215-16.

Special Agent Trevor Swanson with the South Dakota Division of Investigation assisted at the scene of the apartment and took photographs. JT2 291-93. Items that had been removed from Shangreaux's pockets during his

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[5] On cross-examination, Guerue denied telling the front desk clerk that she found the phone between the Clubhouse and the entrance. JT1 92.

[6] On cross-examination, Sgt. Martin acknowledged the video surveillance appeared to show Guerue go to the bathroom in Taco Johns, but he did not search the bathroom for signs of blood residue around the sink. JT2 211-12; Ex. 102.

arrest were laying on the kitchen counter, including a black left-hand baseball glove and a Cuisinart knife sheath. *Id.* at 302-03; Ex. 53-54. Chairs had been arranged in the living room where several open alcohol containers and a deck of cards were observed on the floor. JT2 304-05; Ex. 56-61. In the main bedroom, a large eight-inch Cuisinart knife was on a shelf under some clothing. JT2 308-10; Ex. 67, 74-75. In the small hallway just outside the doorway to the main bedroom, a three-and-a-half-inch Cuisinart paring knife was stuck in the wall. JT2 310-11; Ex. 79-83. Additionally, a five-and-a-half-inch Cuisinart utility knife was located on the windowsill in the bathroom near E.M.'s body. JT2 319; Ex. 88-89. Several shoe tread impressions were observed in the blood on the floor of the bathroom. JT2 315; Ex. 84-85. According to Agent Swanson, several of those treads were consistent with law enforcement style tactical boots commonly worn by police and first responders. *Id.* He opined that one other shoe tread impression he observed on the bathroom floor was consistent with having been made by FUBU Knight basketball sneakers, which Shangreaux was wearing the night of his arrest. *Id.* at 316-18; *see* JT3 412-13; Ex. 119.

Sgt. Martin and Det. Estes conducted interviews with Shangreaux at the Hughes County Jail on December 1 and 2, 2023. JT2 190, 196; JT3 433; Ex. 11, 12; *see* SR 596-653. On December 1, Shangreaux initially told investigators he did not know what happened because he was blacked out. JT2 219-20; *see* SR 603. Shangreaux asked if somebody died and whether Guerue was a victim of something or being charged with a crime. JT2 221; Ex. 11; *see* SR 598-99, 601. He

recalled sitting on the bathroom floor with Guerue and E.M. that night. Ex. 11; *see* SR 602-04. Guerue was getting angry, and he was trying to calm her down. *Id.* Shangreaux also recalled looking for Guerue and getting blood on his hands while trying to help E.M. off the bathroom floor when the police arrived. Ex. 11; *see* SR 605.

After further questioning, Shangreaux told investigators that he and Guerue both "did it." JT2 194; *see* SR 621. He explained that Guerue was mad and she and E.M. confronted each other face-to-face. Ex. 11; *see* SR 622. Guerue went to the kitchen to grab a knife then came back and stabbed E.M. in her upper chest. JT2 221; *see* SR 622. Shangreaux grabbed the knife from Guerue and discarded it on the floor. JT2 223; *see* SR 622, 625. Later in the interview, Shangreaux agreed that he had also taken a swing at E.M. and stabbed her once in the back with the same knife he had taken from Guerue.[7] *Id.; see* SR 626-27.

On December 2, investigators asked Shangreaux about the knife being in his pocket when he first had contact with police. JT2 201; *see* SR 637. Shangreaux stated that it was the same knife used to stab E.M. which he had taken away from Guerue. *Id.* Shangreaux told investigators he had the knife in his pocket earlier in the day, but he gave it to Guerue after she went looking for the big knife in the kitchen during the incident. JT2 200-01; *see* 643-44. He believed

[7] Shangreaux answered "Yep," and "Yeah," to the investigator's leading questions, but did not otherwise introduce facts related to his own actions. JT2 223; *see* SR 626-27.

Guerue was just going to use the knife to scare E.M. and tell her to leave. Ex. 12; *see* SR 644. When asked whether it was the same knife that ended up on the bathroom shelf, Shangreaux said he did not know and only remembered bits and pieces of the night. JT2 227-28; *see* SR 639. Sgt. Martin asked Shangreaux if it was possible he stabbed E.M. more than once. Ex. 12; s*ee* SR 640. Shangreaux acknowledged that Guerue may have stabbed E.M. three times and he may have stabbed her twice.[8] *Id*. Shangreaux did not remember where he stabbed E.M.; however, when pressed further, he agreed that he may have stabbed her in the back but also "in the front." JT2 228; *see* SR 641. Shangreaux denied knowing who was lying on the bathroom floor or that she was dead until he tried to lift E.M. off the floor. Ex. 12; *see* SR 637, 650. He also denied taking his knife out or holding it at Woehl or L.B. earlier in the night. Ex. 12; *see* SR 644-45.

Minnehaha County Coroner Kenneth Snell conducted the autopsy on E.M. JT3 488-89. Her injuries included one incise wound on her left cheek and seven stab wounds to her neck and back area. *Id*. at 491-501; Ex. 93-98. The only injury to the front of E.M.'s body was the laceration on her cheek. JT3 509. The stab wounds caused a small fracture at the base of her skull, a broken rib and seven punctured lungs which resulted in her death. *Id*. at 494-99. Dr. Snell opined that E.M. would have died from her injuries within roughly 10 to 20 minutes. *Id*. at

[8] In a jail phone call on December 2, 2023, Shangreaux told "Gage" that Guerue stabbed E.M. twice and ran out the door, E.M. charged at him and he "finish[ed] her off…." Ex. 125; JT3 434-36; *see* SR 690.

512-13.

Forensic Chemist Cody Geffre with the South Dakota Health Lab tested Shangreaux's blood sample. JT2 260. The blood sample was collected at 1:40 a.m. on the night of Shangreaux's arrest, more than four hours after police responded to the apartment. *Id.* at 264. The testing results showed Shangreaux had a blood alcohol level of .141 at the time his blood was collected. *Id.* at 262; Ex. 111. Geffre opined that, assuming the alcohol was absorbed into Shangreaux's bloodstream five hours before his blood was drawn, his blood alcohol level would have been between a .191 and .241 at 8:40 p.m. JT2 266-67.

Forensic Examiner Bincy Thankachan with the Rapid City Police conducted fingerprint examinations on the three knives collected from Shangreaux's apartment. JT3 469, 473; *see* Ex. 179; SR 711. Thankachan located five latent prints on the knife found on the bathroom windowsill. JT3 473-74; Ex. 117, 188. The prints were compared to those of Shangreaux, Guerue, and E.M. JT3 474; Ex. 123, 127-28. Three of the five latent prints found on the knife were determined to be of value for comparison. JT3 473-79; Ex. 180; SR 717. Two prints on the handle of the knife were identified as Shangreaux's right palm and index prints. JT3 473-76; Ex. 188. A third print on the blade of the knife was identified as Shangreaux's left thumbprint. JT3 478-79; Ex. 195.

Forensic DNA analyst Molly Raber with the South Dakota Forensics Lab conducted DNA testing on multiple swabs taken from individuals, clothing and various items recovered from the apartment. JT3 523-29; Ex. 129-32. DNA results

from the various swabs were compared to known samples from Shangreaux, E.M., Guerue, Ofc. Jones, L.B. and Woehl. JT3 534-35. The knife found on the bathroom windowsill and the knife stuck in the hallway wall both tested positive for the presence of blood. JT3 543-44, 549-52; Ex. 116, 117. E.M. was found to be the major contributor[9] of the mixture of DNA obtained from swabs of stains on the handles of both knives as well as the unstained edges of the handle of the knife in the wall. JT3 546-47, 553; Ex. 162-63, 165; SR 700-01. The DNA profile obtained from the swab of the blade of the knife in the wall matched that of E.M. JT3 545-46; Ex. 161; SR 700. The DNA sample obtained from the handle edges of the knife found in Shangreaux's bedroom was identified as a mixture of DNA from Guerue and Shangreaux. SR 702.

The DNA profile obtained from swabs of Shangreaux's right middle index finger and right thumb tested positive for the presence of blood and was consistent with a mixture of DNA from Shangreaux and E.M.[10] JT3 533-35; Ex. 133-34; SR 699. Both E.M.'s and Shangreaux's DNA were found on a sample obtained from a stain on the thigh of Shangreaux's black pants. JT3 538; Ex. 118; SR 700. E.M.'s DNA was also identified as a major contributor of the samples obtained from stains on Shangreaux's black tank top, the soles of his shoes, and the inside cuff of the right-hand baseball glove found in the apartment. JT3 555-

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[9] A major contributor is a more prominent contributor of DNA to a particular sample. JT3 528.

[10] Det. Estes obtained buccal and body swabs from Shangreaux and collected his clothing and shoes the night of his arrest. JT3 403-15; Ex. 118-20.

65. Ex. 113, 119, 120; SR 705-06. Raber could not include or exclude other minor contributors of these DNA mixtures. *Id.*

Jury Selection

Jury selection was held April 23, 2025. Toward its conclusion, each side exercised 20 peremptory strikes. VD 230-42. The State used one peremptory strike to remove Juror 78, P.D, who was one of two Native American members in the jury pool. *Id.* at 231, 239, 241. During voir dire, P.D. offered responses to five questions from the attorneys. *Id.* at 127-28, 190-91, 200-01, 208-09, 211-12. P.D. volunteered that he knew two other prospective jurors in the courtroom but indicated it would not cause any conflict or undue influence between them during deliberations. *Id.* at 190-91. Later, P.D. shared he had previously been a victim of a serious crime. VD 200-01. On the follow-up question from defense counsel, P.D. said he could still presume Shangreaux innocent at the outset of the trial despite his prior experience. *Id.* at 201. Asked by the prosecutor how he assesses the truth of what somebody tells him, P.D. said, "Just look at the person." *Id.* at 211-12. P.D. also volunteered that he had heard of or read about Clint Sargent, one of the defense attorneys on the case, but on follow-up confirmed he would not give defense counsel's arguments or words more credence than anybody else. *Id.* at 127-28. When the prospective jurors were asked whether anyone had a previous negative experience with law enforcement, P.D. had the following exchange with the prosecutor:

P.D.: Yep. So about 20 years ago, I had one of the – sustained for

complaint against the Rapid City Police Department. Just one night walking home, just pulled over, handcuffed, and they started harassing me.

State: You said it was about 20 years ago?

P.D.: Yep.

State: You heard the names of the law enforcement officers who might testify in this case. Was it any of them?

P.D.: It was definitely not any of them.

State: It wasn't me or Ernest, right?

P.D.: No.

State: 20 years ago. I was 10.

P.D: No comment.

State: Anything about that situation that you're going to hold against the State based on what comes out as evidence in this case?

P.D.: No.

State: Ok. Thank you for telling us that.

Id. at 208-09.

After the State exercised a peremptory strike on P.D., defense counsel raised a *Batson* challenge. *Id.* at 231. In response, the prosecutor provided two reasons for the strike: (1) the juror indicated he "knows of Clint Sargent," and (2) "we looked at his history, his criminal history prior to coming here today. He has a criminal history, and he talked a little bit about that today." *Id.* In response, defense counsel disagreed that P.D. ever talked about his criminal history, but acknowledged he

did indicate an instance of mistreatment by law enforcement. *Id.* at 232. Defense counsel also stated that he didn't believe the prospective juror knowing of him was a race-neutral reason to strike the juror. *Id.* The circuit court noted it did not recall any criminal history being discussed. *Id.* The prosecutor then doubled back and explained to the court that he meant to say, as a basis for the strike, what defense counsel noted about P.D. – that he was previously mistreated by law enforcement. *Id.* at 232. The prosecutor said he assumed it was related to his criminal history. *Id.* When the circuit court attempted to specify P.D.'s statement, the prosecutor stated he "had a hard time understanding that particular statement." *Id.*

The attorneys and the court attempted to recollect P.D.'s responses, and the circuit court noted again it did not recall any criminal history comments. *Id.* at 232-33. The prosecutor responded: "Correct. Not as far as convictions go, but the general statements he made are the reasons the State is striking him." *Id.* at 233. At this point, the court again asked the State what its reasons were for striking the prospective juror. *Id.* The prosecutor responded: "His…he has a known criminal history when we looked him up. And the statements about his criminal history, which would include his statements about unfair treatment by law enforcement, are the State's concerns." *Id.* Defense counsel noted his interpretation of P.D.'s statement as saying he was harassed by police because of his race, and defense counsel had concerns with the State striking P.D. on account of that experience. *Id.* at 233-34. Defense counsel also noted that based upon their criminal history search,

P.D. did not have a criminal history. *Id.* at 234-35. The following discussion continued:

> **State**: In his questionnaire, he wrote – I'm pretty certain he marked that he had been convicted of a crime other than a traffic violation.
>
> As far as the reason he was harassed, I don't know if we have a sufficient record for that, whether that was based on his race or not.
>
> **Defense**: And we're just going by the criminal history record provided to us by the State of the jurors.
>
> **Court**: And it's not showing he has a criminal history?
>
> **Defense**: Not on the spreadsheet we received.
>
> **State**: I don't know if that one doesn't. I'm not going to argue with them if it doesn't. What I'm saying is I'm going off his questionnaire.

Id. at 235.

The circuit court confirmed P.D. did indicate on his questionnaire that he had a criminal conviction other than a traffic violation. *Id* .at 237. Despite its initial reasoning for the strike, the State conceded that it did not know the crime of conviction. *Id.* at 238. The court further questioned the state:

> **Court**: The State is striking [P.D.] based on contact he had with law enforcement 20 years ago? That's the State's position?
>
> **State:** Along with the criminal history and the other things put forward. Yes Judge.

Id. at 239. The circuit court noted it was "certainly concerned." *Id.* at 240. The State admitted that P.D.'s knowledge of one of the defense attorneys was not as

big a concern but reiterated its concern as it related to law enforcement. *Id.* at 239, 241. The court responded:

> The problem with that is if we have the concerns, we could have followed up with him in the room. Nobody followed up with him in the room, and now we're striking what appears to be one of two Native Americans when we have a Native American defendant who's entitled to have a jury of his peers. And the basis for that strike, that he had a criminal history, which is unknown what that was, and that he may have a distrust or be biased against law enforcement, which was not followed up with in any manner. There was no second question that followed that. There was no indication that this was an issue until we've released all the potential jurors.

Id. at 241-42.

Despite its concerns, the circuit court found the State's strike of P.D., based on his possible criminal history and prior interaction with police, was not "merely a pretext" for racial discrimination and the strike was upheld. *Id.* at 242-43.

Shangreaux testified in his defense at trial and recounted the events leading up to law enforcement arriving at his door on November 30, 2023. JT4 598-604. Shangreaux recalled the five of them sitting in the living room, playing games and drinking alcohol, then leaving to the store to purchase more alcohol and returning to the apartment. *Id.* at 599-601. He remembered playing a card game with E.M. while Guerue and L.B. were in the bathroom. *Id.* at 601. Shangreaux later pushed the door open and told L.B. she needed to leave. *Id.* L.B. walked toward the bathroom door, told Shangreaux to get out of her way and called him a "bitch." *Id.* L.B. tried to "shoulder check" Shangreaux and he responded by shoving her in the right shoulder. *Id.* L.B. and Woehl then gathered

their belongings and walked to the front door to leave. *Id.* at 602. Before leaving, Woehl offered E.M. a ride home but she declined, indicating she would wait for her ride to arrive. *Id.*

Shangreaux testified that he blacked out after Woehl and L.B. left. *Id.* When he came to, he recalled sitting on the bathroom floor with E.M. while Guerue was throwing up. *Id.* Guerue was getting mad and arguing with Shangreaux while E.M. was attempting to calm them down. *Id.* He next recalled lying on the bed in the room and E.M. sitting next to him on the carpet. *Id.* at 602-03. Three people barged in the room and Shangreaux remembered hearing a woman's voice before blacking out again. *Id.* at 603. When he came to again, he heard screaming and a banging noise in the bathroom. *Id.* Someone was standing above him pushing his shoulders down while another person with a beaked hat[11] was doing something to his right hand. *Id.* Shangreaux remembered getting up and seeing someone standing against the sink in the bathroom with a cut on her cheek. *Id.* He went outside to the SUV and banged on the windows because Guerue was in the vehicle with some other people. *Id.* at 603-04. Shangreaux then went back inside the apartment and remembered standing by the bathroom and seeing a person fall over on her front side. *Id.* at 604. He tried helping the person off the floor but had no memory of answering the door or talking to cops. *Id.* Shangreaux did not remember having the knife in his pocket. *Id.*

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[11] Shangreaux testified that the only person wearing a beaked hat was L.B. JT4 618.

When asked why he told investigators that he and Guerue did it, Shangreaux stated that he was trying to get them to look at Guerue because she had something to do with E.M.'s death. *Id.* at 605. He told detectives he and Guerue both did it because the detectives did not believe him when he told them Guerue was involved. *Id.* For the same reason, Shangreaux told Gage over the jail phone that he and Guerue did it– he needed investigators to look at Guerue. *Id.* at 606. Shangreaux denied stabbing E.M. and denied witnessing the stabbing. *Id.* at 12. He believed Woehl and L.B. had something to do with it because Woehl told Austin Doll and Running Crane that somebody had been stabbed. *Id.* at 612-13. Running Crane called dispatch about E.M., but it was never investigated. *Id.* 615-16.

At trial, on cross-examination, Det. Estes acknowledged that a witness reported hearing a scream inside the apartment before L.B. and Woehl left the scene. JT3 439-41. Law enforcement also received information that L.B. and Woehl had returned and driven by the scene while law enforcement was present. *Id.* at 441. Det. Estes admitted that Keenan Running Crane called 911 and misidentified himself as E.M.'s brother about 20 minutes before Mack contacted police. *Id.* at 441-43. The detective later followed up with Running Crane over the phone about his involvement, but law enforcement did not attempt to obtain the phone records of Running Crane, Woehl, or L.B., and never investigated any of their communications that night. *Id.* at 443-44. Additionally, in February 2024, Det. Estes reached out to Guerue to collect the clothing she was wearing the

night of E.M.'s death. *Id.* at 445. Guerue agreed and provided Det. Estes with clothing that clearly did not match the clothes she wore that night. *Id.* Det. Estes followed up later and was informed by Guerue's mother the clothes had been disposed of. *Id.* at 445-46.

Closing Argument

During closing arguments, on rebuttal, the prosecutor made the following statements:

> We heard the defendant himself say he doesn't think he was involved, Keenan Running Crane was involved.[12] Whether you believe him or not is up to you. *We know he probably lied on the stand.*

JT4 680-81 (emphasis added). Later in the rebuttal, the prosecutor continued:

> *Self-serving lies on the stand don't create a reasonable doubt. We know what happened.* We know from the evidence the defendant stabbed [E.M.] seven times, probably some while she was standing, and probably some with that knife while she was laying on the floor because we know that cast off pattern on the toilet. *We know the intent with which he did it. We know he intended to cause her death. We know that the result is a guilty verdict on first-degree murder.*

Id. at 683 (emphasis added).

The jury returned a verdict of guilty to Count 2, Murder in the Second Degree. JT4 692. He was later sentenced to life in prison. ST 10.

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[12] When asked on redirect whether he believed Running Crane was involved with E.M.'s death, he responded: "No. I don't believe it. I just think he heard something about that party. JT4 615.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN SUSTAINING THE STATE'S STRIKE OF A NATIVE AMERICAN MEMBER OF THE JURY POOL.

A. Standard of Review

"The finding of intentional discrimination is a factual determination." *State v. Hatchett*, 2014 S.D. 13, ¶ 21, 844 N.W.2d 610, 616 (quoting *State v. Ryan*, 2008 S.D. 94, ¶ 6, 757 N.W.2d 155, 158) (citations omitted). Accordingly, "this Court reviews a trial court's ruling on a *Batson* challenge for clear error." *State v. Roach*, 2012 S.D. 91, ¶ 32, 825 N.W.2d 258, 258 (citing *State v. Mulligan*, 2007 S.D. 67, ¶ 34, 736 N.W.2d 808, 820).

B. The Circuit Courts Finding that the State's Peremptory Strike was not Based on Discriminatory Intent was Clearly Erroneous.

The State's use of peremptory challenges to strike individual jurors "is subject to the commands of the Equal Protection Clause." *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). The "Constitution forbids striking even a single prospective juror for a discriminatory purpose." *United States v. Hampton*, 887 F.3d 339, 342 (8th Cir. 2018) (quoting *Foster v. Chatman*, 578 U.S. 488, 499 (2016)) (quoting *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008)). Under *Batson* and its progeny, a trial court must apply a three-step analysis in determining whether a peremptory strike was based in substantial part on purposeful discrimination:

> First, the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. Second, once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the racial exclusion by offering permissible race-neutral

> justifications for the strikes. Third, [i]f a race-neutral explanation is tendered, the trial court must then decide…whether the opponent of the strike has proved purposeful racial discrimination.

State v. Guthmiller, 2014 S.D. 7, ¶ 12, 843 N.W.2d 364, 368 (quoting *State v. Scott*, 2013 S.D. 31, ¶ 16, 829 N.W.2d 458, 465-66) (alteration in original) (quoting *Johnson v. California*, 545 U.S. 162, 168 (2005) (citation modified).

After the defendant makes out a prima facie case of discriminatory intent, the proponent of the strike "must give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenges[.]" *Purckett v. Elem*, 514 U.S. 765, 768 (1995) (per curium) (quoting *Batson*, 476 U.S. at 98, n. 20) (quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 258 (1981)) (citation modified). The prosecutor's persuasiveness in justifying its peremptory strike only becomes relevant in the pivotal third step. *State v. Scott*, 2013 S.D. 31, ¶ 18, 829 N.W.2d 458, 466 (citations omitted). That step "requires the judge to assess the plausibility" of the prosecutor's reasons. *Miller-El v. Dretke*, 545 U.S. 231, 251-52, (2005). "The trial judge must determine whether the prosecutor's proffered reasons are the actual reasons, or whether the proffered reasons are pretextual and the prosecutor instead exercised peremptory strikes on the basis of race. The ultimate inquiry is whether the State was motivated in substantial part by discriminatory intent." *Flowers v. Mississippi*, 588 U.S. 284, 303, (2019) (quoting *Foster*, 578 U.S. at 513 (2016)) (citation modified). "A court's findings are afforded great deference, as the analysis depends highly on credibility." *Scott*, 2013 S.D. 31, ¶ 18, 829 N.W.2d at 466) (citing *United States v. Maxwell*, 473 F.3d

868, 872 (8th Cir. 2007)).

The Supreme Court, in *Miller-El v. Dredtke*, observed:

> It is true that peremptories are often the subjects of instinct, and it can sometimes be hard to say what the reason is. But when illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. A Batson challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.

545 U.S. at 252 (citation modified). "[I]mplausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." *Purkett*, 514 U.S. at 768 (per curium).

This Court, and others, have generally found a prospective juror's criminal history or prior negative experiences with law enforcement as race-neutral reasons for peremptory challenges. *State v. Ryan*, 2008 SD 94, ¶¶ 11, 14, 757 N.W.2d 155, 158-59 (upholding peremptory challenge of prospective juror who had recently been prosecuted by the State for DUI 3rd); *State v. Hatchett*, 2014 S.D. 13, ¶¶ 23, 27, 844 N.W.2d 610, 617 (upholding as a race-neutral reason juror's questionnaire answer indicating family members had been convicted of crimes); *United States v. Brooks*, 2 F.3d 838, 841 (8th Cir. 1993) (strike of prospective juror who was a prior victim of police brutality was race-neutral); *State v. Mootz*, 808 N.W.2d 207, 219 (Iowa 2012) (noting that a juror's interactions with police are a "valid, race neutral reason for a peremptory strike"); *State v. Sanders*, 933 N.W.2d 670, 679 (Wis. App. 2019) (prospective jurors prior bad experiences with

law enforcement were race-neutral reasons for strikes).

However, in assessing the veracity of the State's proffered reasons, the Supreme Court and other courts of appeal have identified indicators of pretext and discriminatory intent, including one or more of the State's proffered reasons not holding up to scrutiny, shifting explanations, misstatements of the record, and a failure to engage in any meaningful voir dire on the topic of the State's purported concern. see *McClain v. Prunty*, 217 F.3d 1209, 1221 (9th Cir. 2000) ("The fact that one or more of a prosecutor's justifications do not hold up under judicial scrutiny militates against the sufficiency of a valid reason"); *Foster*, 578 U.S. at 512 (finding shifting explanations and misstatements of the record factors indicative of discriminatory intent); *State v. Clegg*, 380 N.C. 127, 154, 867 S.E.2d 885, 906 (2022) (accord); *Flowers*, 588 U.S. at 312 ("A State's failure to engage in any meaningful voir dire examination on a subject the State alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination"). In *Miller-El*, the Supreme Court characterized the prosecutor's purported reason for a peremptory strike – that prospective juror's brother had a prior conviction – as "reek[ing] of afterthought" because it was provided only after defense counsel had discredited the prosecutor's earlier stated reason. 545 U.S. at 245-46. The Court further stated that the trial court's "readiness to accept the State's substitute reasons ignores not only its pretextual timing but the other reasons rendering it implausible." *Id.* at 246.

Here, the entirety of the prosecutor's statements about Prospective Juror

78, P.D., raises questions about the credibility of any purported race-neutral concerns. The State's two initial reasons for the peremptory strike – that P.D. had a "known criminal history" and said he knew of one of the defense attorneys on the case – did not hold up to scrutiny. JT5 231-39. First, as to knowing defense counsel, both the circuit court and defense counsel stated they recalled P.D. saying he had heard of or read about cases defense counsel had tried, not that P.D. knew him personally. *Id.* at 232-33. The prosecutor said he had "no reason to doubt that" and later conceded this reason was not a big concern. *Id.* 237, 239. Without specifically ruling on the pretextual nature of this purported concern, the circuit court did not find it to be a valid race-neutral reason. *Id.* at 242.

As a second reason, the prosecutor told the circuit court that P.D. had a "known criminal history" and they had looked him up "before coming here today." *Id.* at 231, 233. The prosecutor also mentioned that P.D. had talked a little bit about his criminal history during voir dire. *Id.* Both the circuit court and defense counsel noted they did not hear P.D. talk about any criminal history but recalled him mentioning he had once been detained and harassed by police for no reason. *Id.* at 232. After being corrected as to the nature of P.D.'s statement, the prosecutor adopted as one of its reasons P.D.'s negative experience with law enforcement. *Id.* The prosecutor said he assumed the statement had to do with criminal history. *Id.* When the circuit court attempted to clarify what P.D. said, the prosecutor stated he "had a hard time understanding that particular statement." *Id.*

Defense counsel also noted for the record that the criminal history sheet for prospective jurors provided by the prosecution showed no criminal history for P.D. *Id.* at 235. The prosecutor did not dispute defense counsel's contention and later admitted to the circuit court that he did not know P.D.'s alleged crime. *Id.* at 235, 238. After being confronted with P.D.'s apparent lack of criminal history, the prosecutor pointed to P.D.'s response on the jury questionnaire as the reason for the strike. *Id.* at 234-35.

"[D]etermining whether invidious discriminatory purpose was a motivating factor demands inquiry into such circumstantial… evidence of intent as may be available." *Foster*, 578 U.S. at 501 (citation modified). "Where the facts in the record are objectively contrary to the prosecutor's statements, serious questions about the legitimacy of a prosecutor's reasons for exercising peremptory challenges are raised." *McClain v. Prunty*, 217 F.3d 1209, 1221 (9th Cir. 2000). Although the prosecutor ultimately offered two reasons for the peremptory strike that courts have generally recognized as race-neutral, he only did so after the circuit court and defense counsel had largely discredited his initial justifications. The prosecution's shifting explanations and the failure of its initial justifications to withstand scrutiny undermines the credibility of its asserted concerns. The mischaracterization of the prospective juror's statement as pertaining to criminal history – along with the prosecutor's admitted difficulty understanding what was said – further erodes the legitimacy of the prosecution's rationale. Moreover, the prosecutor's limited and superficial questioning of the

prospective juror following his allegedly concerning statement demonstrated a lack of genuine interest in meaningfully exploring the very topic the State later claimed was the basis for its concern. JT1 208-09. The record demonstrates that the prosecutor's concerns about P.D.s prior negative experience with law enforcement were an afterthought which only came to light after his mischaracterization of P.D.'s statement was corrected.

The circuit court expressed significant concern about the State's proffered reasons for the peremptory strike. JT1 241-42. Notably absent from the circuit court's final analysis was one of the State's initial reasons – the prospective juror's knowledge of defense counsel – which had already been refuted, and the prosecutor's mischaracterization of P.D.'s stated mistreatment by law enforcement. The circuit court's willingness to accept the prosecutor's substitute justifications overlooked not only their pretextual timing, but also the additional factors that rendered those justifications implausible.

Considering the entirety of the record and the multiple indicators of pretext, the evidence establishes that the peremptory strike was not genuinely race-neutral but was instead substantially motivated by discriminatory intent. In finding otherwise and sustaining the State's peremptory challenge, the circuit court clearly erred and Shangreaux's equal protections rights were violated, warranting a new trial.

C. *The Circuit Court Relied on Clearly Erroneous Facts in Conducting its analysis on the Record.*

In expressing it concerns on the record, the circuit court correctly noted that no meaningful follow-up questions were asked of the prospective juror regarding any potential distrust or bias stemming from his prior experience. JT1 241-42. However, it relied on clearly erroneous facts in finding "[t]here was no second question that followed that." *Id.* at 242. On follow-up questioning, the prospective juror confirmed the incident was 20 years ago, and none of the Rapid City police from that time were involved in Shangreaux's case. *Id.* at 208-09. The prospective juror also said he would not hold the experience against the State in weighing the evidence. *Id.* at 209. Equipped with this information in the record, the circuit court could have conducted further analysis or questioned the prosecutor on his view of the prospective juror's neutral answers. Had the circuit court been aware of the prospective juror's responses to these follow-up questions, that information may have influenced its ultimate conclusions on this closely decided issue. Thus, the circuit court's reliance on the clearly erroneous facts rendered its findings inadequate and incomplete.

Accordingly, even if this Court concludes the circuit court did not clearly err in finding the State's reasons for the peremptory strike were not motivated in substantial part by race, a limited remand ordering the circuit court to continue its analysis under the facts in the record is appropriate.

II. THE PROSECUTOR'S COMMENTS IN CLOSING ARGUMENT CONSTITUTED VOUCHING AND IMPROPER PERSONAL ASSERTIONS OF KNOWLEDGE ABOUT SHANGREAUX'S CREDIBILITY, INTENT AND CULPABILITY.

A. Standard of Review

"[I]f an issue of prosecutorial misconduct is not properly preserved for appeal, this Court will analyze the claim under plain error." *State v. Hayes*, 2014 S.D. 72, ¶ 24, 855 N.W.2d 668, 675 (citing *State v. Beck*, 2010 S.D. 52, ¶ 10, 785 N.W.2d 288, 293). "Plain error merits reversal only when there is an (1) error, (2) that is plain, (3) affecting substantial rights; and only then may we exercise our discretion to notice the error if (4) it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *State v. Janis*, 2016 S.D. 43, ¶ 21, 880 N.W.2d 76, 82 (citation modified). The burden is on the defendant to show the plain error resulted in prejudice. *Id.*

B. The Prosecutor's Comments Constituted Vouching and Improper Expressions of Personal Knowledge on the Critical Issues in the Case.

This Court has described prosecutorial misconduct as "a dishonest act or an attempt to persuade the jury by the use of deception or by reprehensible methods." *State v. McMillan*, 2019 S.D. 40, ¶ 27, 931 N.W.2d 725, 733 (quoting *Janis*, 2016 S.D. 43, ¶ 22, 880 N.W.2d at 82) (quoting *Hayes*, 2014 S.D. 72, ¶ 23, 855 N.W.2d at 675). "This Court will find that prosecutorial misconduct has occurred if (1) there has been misconduct, and (2) the misconduct prejudiced the party as to deny the party a fair trial." *State v. Hankins*, 2022 S.D. 67, ¶ 32, 982 N.W.2d 21, 33 (quoting *Hayes*, 2014 S.D. 72, ¶ 23, 855 N.W.2d at 675). "[N]o hard and fast

rules exist which state with certainty when prosecutorial conduct reaches a level of prejudicial error which demands reversal of a conviction and a new trial; each case must be decided on its own facts." *Hankins*, 2022 S.D. 67, ¶ 33, 982 N.W.2d at 33 (quoting *McMillen*, 2019 S.D. 40, ¶ 27, 931 N.W.2d at 733 (alteration in original) (quoting *State v. Stetter*, 513 N.W.2d 87, 90 (S.D. 1994). "A criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, but, if the prosecutor's conduct affects the fairness of the trial when viewed in context of the entire proceeding, reversal can be warranted." *Janis*, 2016 S.D. 43, ¶ 22, 880 N.W.2d at 82 (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)) (citation modified).

"It is the exclusive province of the jury to determine the credibility of witnesses." *State v. Heer*, 2024 S.D. 54, ¶ 24, 11 N.W.3d 905, 912 (quoting *State v. Snodgrass*, 2020 S.D. 66, ¶ 45, 951 N.W.2d 792, 806 (quoting *State v. McKinney*, 2005 S.D. 73, ¶ 32, 699 N.W.2d 471, 481) (citation modified). "[P]rejudice can result from the prosecution placing the prestige of the government behind the witness and implying that the prosecutor knows what the truth is and thereby assures its revelation." *State v. Nelson*, 2022 S.D. 12, ¶ 38, 970 N.W.2d 814, 826 (quoting *State v. Westerfield*, 1997 S.D. 100, ¶ 12, 567 N.W.2d 863, 867) (citation omitted). "If a prosecutor conveys this message explicitly or implicitly, they are improperly vouching." *Id.* (citation omitted).

The United States Court of Appeals for the Eighth Circuit has recognized that "it is improper for the prosecutor to express his opinion that a defendant has

lied on the witness stand." *United States v. Jones*, 865 F.2d 188, 191 (8th Cir. 1989) (citing *United States v. Peyro*, 786 F.2d 826, 831 (8th Cir. 1986)) (finding the prosecutor's comment in closing that the defendant was a liar "has no place in a criminal trial"). A prosecutor may make arguments that "fairly characterize uncontroverted evidence[.]" *Heer*, 2024 S.D. 54, ¶ 27, 11 N.W.3d at 912 (quoting *Jones*, 865 F.2d at 191) (citation modified). Also, "it is not improper for the prosecutor to suggest the jury should not believe a defendant's testimony, so long as the suggestion is based on evidence contrary to the defendant's testimony." *United States v. Truax*, 64 F.4th 963, 968 (8th Cir. 2023) (citation omitted). But the "[t]he prosecutor has no authority to sit as a thirteenth juror and cast a ballot on the issue." *United States v. Peyro*, 786 F.2d 826, 831 (8th Cir. 1986) (quoting *United States v. Splain*, 545 F.2d 1131, 1134 (8th Cir. 1976)) (citation modified). The Ninth Circuit has observed:

> We do not condone the prosecutors' use of "we know" statements in closing argument, because the use of "we know" readily blurs the line between improper vouching and legitimate summary. The question for the jury is not what a prosecutor believes to be true or what "we know," rather, the jury must decide what may be inferred from the evidence. We emphasize that prosecutors should not use "we know" statements in closing argument.

United States v. Younger, 398 F.3d 1179, 1191 (9th Cir. 2005).

During closing argument, the prosecutor's statements, "We know he probably lied on the stand; "We know the intent with which he did it; "We know he intended to cause her death"; and "We know that the result is a guilty verdict on first-degree murder," were improper. *See* JT5 680-81, 683. The

statements are more akin to governmental assurances regarding the defendant's credibility, intent and guilt, than a fair marshalling of the evidence. These assurances were made on the elements and issues at the heart of the case and matters squarely within the province of the jury.

Immediately preceding the assertion about knowing Shangreaux had lied on the stand, the prosecutor stated, "Whether you believe him or not is up to you." *Id.* at 681. While this remark appears to have been an attempt to preemptively mitigate the impropriety of the subsequent comment, it did not cure the improper nature of the prosecutor's personal assertions. See *State v. Santiago*, 269 Conn. 726, 749, 850 A.2d 199, 251 (2004) (finding improper the prosecutor's remark, "I question [the defendant's] credibility, but that is up to you to determine"). It is also noteworthy that immediately prior to asserting knowledge of Shangreaux's lack of credibility, the prosecutor mischaracterized Shangreaux's testimony as claiming "Keenan Running Crane was involved" with E.M.'s death. JT5 680-81. In fact, Shangreaux testified that he did not believe Keenan Running Crane was involved in her death, but that he had heard something about the incident. *Id.* at 615.

Although it is impossible to know what impact the improper comments had on the minds of the jurors, the prosecution asserted its knowledge about critical issues at trial, including Shangreaux's intent. Significant questions were raised at trial surrounding the actions of Guerue, L.B. and Woehl, and their possible involvement. In finding Shangreaux not guilty of aggravated assault,

the jury must have discredited key testimony from both L.B. and Woehl alleging they were threatened by Shangreaux with a knife shortly before E.M.'s death. JT2 47-49, 57-59. The evidence showed that Guerue left the apartment with E.M.'s phone just minutes after E.M. had taken a photo of Shangreaux smiling next to Guerue with his head somewhat down as if to kiss her hand. JT2 89; JT3 185; JT4 389; Ex. 102. Guerue never contacted the police. JT2 85-92. In concluding Shangreaux had caused E.M.'s death, the jury also had to determine Shangreaux's intent. The jury was held to decide whether his intent was premeditated, or whether he was evincing a depraved mind, without regard for human life, or a lesser intent amounting to manslaughter in the first degree. *See* SR 775-77. The evidence showed Shangreaux was not only extremely intoxicated that night but also potentially delirious. The evidence suggested Shangreaux had a difficult time understanding what was happening around him that night.

The prosecutor's personal assurances in closing argument on the critical issues of the case exerted improper influence on the jury and undermined the fairness of the trial. Without those comments, the result of the trial may have been different. Thus, Shangreaux was denied his right to a fair trial.

CONCLUSION

The circuit court clearly erred in finding the State's peremptory strike was not motivated in substantial part by discriminatory intent. In addition, the circuit court relied on clearly erroneous facts in conducting its *Batson* analysis on the record. Shangreaux's right to a fair trial was violated when the prosecutor

expressed personal assurances of Shangreaux's lack of credibility, intent, and guilt. Accordingly, Shangreaux 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. In the alternative, a limited remand with an order directing the circuit court to conduct its *Batson* analysis on the entirety of the factual record is warranted.

REQUEST FOR ORAL ARGUMENT

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

Respectfully submitted this 17th day of November 2025.

/s/ Beau Blouin
Beau Blouin
South Dakota Office of Indigent Legal Services
ATTORNEY for APPELLANT

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 9,636 words.

II. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 17th day of November 2025.

/s/ Beau Blouin
Beau Blouin
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 17th day of November 2025.

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APPENDIX

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	32CRI23-600
	)	
Plaintiff,	)	
	)	
v.	)	JUDGMENT OF CONVICTION
	)	
	)	
DAVID J. SHANGREAUX, JR., DOB: 12/28/1999	)	
	)	
	)	
Defendant.	)	

An Indictment was filed with this Court on the 12th day of December, 2023, charging the Defendant with the crimes of Count 1: First Degree Murder, in violation of SDCL 22-16-1(1), 22-16-4, and 22-16-12, a Class A Felony and Count 2: Second Degree Murder, in violation of SDCL 22-16-1(1), 22-16-7, and 22-16-12, a Class B Felony and Count 3: Aggravated Assault, in violation of SDCL 22-18-1.1(5), a Class 3 Felony, to have been committed on or about the 30th day of November, 2023.

The Defendant was arraigned on said Indictment on the 17th day of January 2024. The Defendant, the Defendant's attorneys, Justin Bell and Cody Honeywell, and Ernest Thompson, Deputy Attorney General, and Nolan Welker, Assistant Attorney General, appeared at the Defendant's arraignment. After undergoing competency restoration, the Defendant was re-arraigned on said Indictment on the 3rd day of September 2024. The Defendant, the Defendant's attorneys Clint Sargent and Raleigh Hansman, and Nolan Welker, Assistant Attorney General, appeared at the subsequent arraignment. At both

arraignments, the Court advised the Defendant of his constitutional and statutory rights pertaining to the charges that had been filed against him including, but not limited to, the right against self-incrimination, the right of confrontation, and the right to a jury trial. The Defendant pled not guilty to the charges in the Indictment. The Defendant requested a jury trial on the charges contained in the Indictment.

A jury trial commenced on the 23rd day of April 2025, in Pierre, South Dakota on the charges. The Defendant was personally present at trial and was represented by his attorneys, Clint Sargent and Raleigh Hansman. The State was represented by Ernest Thompson, Deputy Attorney General, and Nolan Welker, Assistant Attorney General. On the 30th day of April, 2025, the Hughes County jury returned a verdict of Not Guilty as to Count 1, First Degree Murder, in violation of SDCL 22-16-1(1), 22-16-4, and 22-16-12, a Class A Felony and a verdict of Guilty as to Count 2: Second Degree Murder, in violation of SDCL 22-16-1(1), 22-16-7, and 22-16-12, a Class B Felony and a verdict of Not Guilty as to Count 3: Aggravated Assault, in violation of SDCL 22-18-1.1(5), a Class 3 Felony.

It is therefore ORDERED that a Judgment of Guilty is entered as to Count 2: Second Degree Murder, in violation of SDCL 22-16-1(1), 22-16-7, and 22-16-12, a Class B Felony which occurred on or about the 30th day of November 2023.

SENTENCE

On the 15th day of July 2025, the Defendant, the Defendant's attorney, Clint Sargent, and Ernest Thompson, Deputy Attorney General, and Nolan Welker, Assistant Attorney General, appeared for Defendant's sentencing. The Court heard argument of counsel and the statements of the Defendant and then asked whether any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

It is hereby ORDERED that **as to Count 2**: the Defendant shall **be incarcerated in the South Dakota State Penitentiary for life**, there to be kept, fed, and clothed according to the rules and discipline governing the prison;

It is further ORDERED that the Defendant shall pay financial obligations in the below amounts to the Hughes County Clerk of Courts according to a payment plan to be developed with the Department of Corrections and the Board of Pardons and Paroles:

(a) Court costs in the amount of one hundred and sixteen dollars and fifty cents ($116.50);

(b) Court-appointed attorney's fees in an amount to be determined;

(c) Court-appointed Private Investigator's fees in the amount of six thousand three hundred twenty-five dollars and fifty cents ($6,325.50) billed from Astria Security and Investigations and two thousand seven hundred dollars ($2,700) billed from Mitchell Vilhauer;

(d) Psychological evaluation costs in the amount of two thousand five hundred dollars ($2,500) billed from Dr. Ada Murphy;

(e) Psychological evaluation costs in the amount of six thousand five hundred eighty-seven dollars and fifty cents ($6,587.50) billed from Dr. Clay Pavlis;

(f) Costs of prosecution in the amount of two thousand seven hundred fifteen dollars ($2,715) for forensic consultation and witness fees billed from Dr. Kenneth Snell and three thousand eight hundred thirty-seven dollars and fifty-three cents ($3,837.53) for other witness' fees and expenses;

(g) Restitution to SD Crime Victim's Compensation Program in the amount of nine thousand ten dollars ($9,010.00) for services and resources provided to Evie Maxey, and Opal Maxey.

It is further ORDERED that the Defendant shall have no contact with any family member of E.M. during the term of his incarceration and

It is further ORDERED that the Court expressly reserves the right to amend any or all of the terms of this Order at any time.

Nunc pro tunc July 15, 2025

BY THE COURT:

Christie Klinger

Christina Klinger
Circuit Court Judge

Attest:
Deuter-Cross, TaraJo
Clerk/Deputy

NOTICE OF RIGHT TO APPEAL

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31143

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAVID JAMES SHANGREAUX, JR.,

Defendant and Appellant.

APPEALS FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

THE HONORABLE CHRISTINA L. KLINGER
Circuit Court Judge

APPELLEE'S BRIEF

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ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed July 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED: **PAGE**

STATUTES CITED:

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31143

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAVID JAMES SHANGREAUX, JR.,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, David James Shangreaux Jr., is referred to as "Shangreaux." Appellee, the State of South Dakota, is referred to as "State." References to documents are designated as follows:

Settled Record
(Hughes County Criminal File No. 23-600)..... SR

Jury Trial Transcript (April 25-30, 2025) .....JT

Shangreaux's Appellant's Brief ..... AB

JURISDICTIONAL STATEMENT

On July 15, 2025, the Honorable Christina L. Klinger, Circuit Court Judge, Sixth Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. David James Shangreaux Jr.*, Hughes County Criminal File Number 23-600. SR 826-29. Shangreaux filed his Notice

of Appeal on July 17, 2025. SR 2129. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. WHETHER THE CIRCUIT COURT CORRECTLY SUSTAINED THE STATE'S STRIKE OF A NATIVE AMERICAN MEMBER OF THE JURY POOL?

Shangreaux asserted a *Batson* challenge regarding the State striking a Native American juror. After going through the three steps required by *Batson v. Kentucky*, 476 U.S. 79 (1986), the circuit court denied Shangreaux's challenge.

Batson v. Kentucky, 476 U.S. 79 (1986)

State v. Guthmiller, 2014 S.D. 7, 843 N.W.2d 364

State v. Scott, 2013 S.D. 31, 829 N.W.2d 458

United States v. Young, 129 F.4th 459 (8th Cir. 2025)

II. WHETHER THE STATE'S COMMENTS IN CLOSING ARGUMENT CONSTITUTED AS VOUCHING?

This issue is being raised for the first time on appeal.

State v. Heer, 2024 S.D. 54, 11 N.W.3d 905

United States v. Bentley, 561 F.3d 803 (8th Cir. 2009)

United States v. Melton, 870 F.3d 830 (8th Cir. 2017)

STATEMENT OF THE CASE

The Hughes County Grand Jury indicted Shangreaux on the following counts:

- Count 1: First-Degree Murder, contrary to SDCL 22-16-1(1), SDCL 22-16-4(4), and SDCL 22-16-12, a Class A felony;

- Count 2: Second-Degree Murder, contrary to SDCL 22-16-1(1), SDCL 22-16-7, SDCL 22-16-12, a Class B felony;
- Count 3: Aggravated Assault, contrary to SDCL 22-18-1.1(5), a Class 3 felony;

SR 23-25.

Shangreaux filed a motion for a mental health competency evaluation, which the circuit court granted. SR 68-69, 79-80. He was found not competent to proceed with trial. SR 155-56. After some time in a rehabilitative program, he was deemed competent to stand trial. SR 175-85.

After a five-day trial, the jury returned a guilty verdict on Count 2: Second-Degree Murder. SR 782. He was acquitted on the remaining counts. SR 782. The circuit court sentenced Shangreaux to life in prison. SR 826-29.

STATEMENT OF FACTS

The State agrees with Shangreaux's recitation of the facts in his Appellant's Brief. AB 4-23.

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY SUSTAINED THE STATE'S STRIKE OF A NATIVE AMERICAN MEMBER OF THE JURY POOL.

A. *Background.*

Shangreaux argues the State improperly used a peremptory strike to remove a potential juror who was Native American. AB 24. The State used one of its strikes to remove Juror 78. JT 231. Shangreaux

submitted a *Batson*[*] challenge. JT 231. The State responded with non-race related concerns regarding the reason for the elimination. JT 231-41. After considering the three factors in *Batson*, the circuit court denied Shangreaux's challenge. JT 242.

B. *Standard of Review.*

"This Court reviews a trial court's ruling on a *Batson* challenge for clear error." *State v. Roach*, 2012 S.D. 91, ¶ 32, 825 N.W.2d 258, 267 (citing *State v. Mulligan*, 2007 S.D. 67, ¶ 34, 736 N.W.2d 808, 820).

C. *The State did not challenge Juror 78 due to his race.*

A *Batson* challenge requires a three-step analysis. First, the defendant must make a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *State v. Scott*, 2013 S.D. 31, ¶ 16, 829 N.W.2d 458, 66 (cleaned up). Once the defendant establishes a prima facia case, the "burden shifts to the State to explain adequately the racial exclusion by offering permissible race-neutral justifications for the strikes." *Id.* Finally, if the State provides a race-neutral explanation, the circuit court "must then decide whether the opponent of the strike has proved purposeful racial discrimination." *Id.* ¶ 16, 829 N.W.2d at 456-66.

[*] *Batson v. Kentucky*, 476 U.S. 79 (1986)

1. Shangreaux did not make a prima facia showing that the peremptory strike was based on race.

When making a *Batson* challenge, "'the defendant must point to more than the bare fact of the removal of certain venirepersons and the absence of an obvious valid reason for the removal' before the prosecution is required to offer a race-neutral reason for the strike." *United States v. Young*, 129 F.4th 459, 466 (8th Cir. 2025) (quoting *United States v. Young-Bey*, 893 F.2d 178, 180 (8th Cir. 1990)). Defense needs to "'present facts to the [circuit] court which raise an inference that the jurors were struck *because of their race.*'" *Young*, 129 F.4th at 467 (quoting *Young-Bey*, 893 F.2d at 180). It is not enough to simply state that a Native American juror was struck from the jury. *Young*, 129 F.4th at 467 (citing *United States v. Wolk*, 337 F.3d 997, 1007) (8th Cir. 2003).

After the State struck Juror 78, counsel for Shangreaux stated, "Your Honor, the State's fourth strike is [Juror 78], who I believe is Native American, and so we would submit a *Batson* challenge as to the State's fourth strike of [J]uror 78..." JT 231. There were no other facts to indicate that State improperly struck Juror 78 based on his race. Counsel merely stated Juror 78 was Native American, so they were raising a *Baston* challenge.

Shangreaux did not make a prima facia showing that the State struck Juror 78 based on race. Since the first step of *Batson* was not

met, Shangreaux's argument fails. Even if this Court disagrees, the State provided race neutral justification for the strike.

2. The State provided a race-neutral explanation for the exclusion of Juror 78.

In the second step of *Batson*, the circuit court must determine whether the State provided "facially race-neutral justifications for its strike[]." *State v. Guthmiller*, 2014 S.D. 7, ¶ 18, 843 N.W.2d 364, 370. This is not a high hurdle for the State to overcome because,

> [t]he second step of *Batson* does not demand an explanation that is persuasive, or even plausible. 'At this [second] step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.'

State v. Guthmiller, 2014 S.D. 7, ¶ 18, 843 N.W.2d at 370 (quoting *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995)).

Immediately after Shangreaux made his *Batson* challenge, the State offered its reasoning behind striking Juror 78. JT 231. It explained that Juror 78 said he knew of defense counsel, and he had a criminal history. JT 231. Shangreaux replied that he did not recall Juror 78 discussing his criminal history during the voir dire process. JT 232. The State elaborated that when it presumed Juror 78's mistreatment by law enforcement was related to his criminal history. JT 232. After the circuit court and Shangreaux stated their recollections of Juror 78's disclosure, the State followed up with, "the general statements he made are the reasons the State is striking him." JT 233.

The circuit court then asked the State to repeat its reasons for the strike. JT 233. The State reiterated its reasoning stating, "he has a known criminal history when we looked him up. And the statements he made about his criminal history, which would include his statements about unfair treatment by law enforcement, are the State's concerns." JT 233.

While Shangreaux may disagree with the reasons the State provided, all that is required is that "the prosecutor must present a comprehensible reason, the [law] does not demand an explanation that is persuasive, or even plausible; so long as the reason is not inherently discriminatory, it suffices." *United States v. Johnson*, 954 F.3d 1106, 1113 (8th Cir. 2020) (quoting *Rice v. Collins*, 546 U.S. 333, 338 (2006)). The State provide non-race related reasons for striking Juror 78. Therefore, the State overcame its low burden of proving a race-neutral justification for its strike of Juror 78.

The third and final step in a *Batson* challenge requires the circuit court to determine whether Shangreaux proved purposeful racial discrimination. *State v. Scott*, 2013 S.D. 31, ¶ 18, 829 N.W.2d at 466. The analysis highly depends on credibility and, therefore, the court's findings are given great deference. *Id.* The circuit court need not accept any excuse provided by the State but must "decide if the reason offered for the strike was 'merely a pretext designed to mask the improper consideration of race to exclude' a juror.'" *Scott*, 2013 S.D. 31, ¶ 19, 829

N.W.2d at 466 (quoting *Coombs v. Diguglielmo*, 616 F.3d 255, 261 n. 5 (3rd Cir. 2010)).

"[T]here are no 'magic words' the trial court must use in order to fulfill a *Batson* analysis." *Guthmiller*, 2014 S.D. 7, ¶ 16, 843 N.W.2d at 369 (quoting *State v. Ryan*, 2008 S.D. 94, ¶ 13, 757 N.W.2d 155, 159). In fact, a circuit court "implicitly conducts [the required] analysis when it accepts or rejects the State's explanations for use of its peremptory challenges." *Id.*

Here, the circuit court accepted the State's reasoning for striking Juror 78. JT 242. It found Juror 78's prior interactions with law enforcement were an adequate non-race related reason for the strike. *Id.*

Prior encounters with law enforcement have been upheld as valid non-race related reasons to challenge a venireperson. *See United States v. Allen*, 644 F.3d 748, 753 (8th Cir. 2011). (upholding the trial court's denial of a *Batson* challenge for a venireperson who expressed prior dissatisfaction with law enforcement), *United States v. Booker*, 576 F.3d 506 (8th Cir. 2009) ("A juror's expression of past dissatisfaction with law enforcement officers, which could indicate potential bias against the prosecution, is a legitimate race neutral reason for striking prospective jurors.").

Because State provided race neutral reasons for striking Juror 78 the circuit court properly upheld the strike.

II. THE STATE DID NOT COMMIT PROSECUTORIAL MISCONDUCT DURING CLOSING ARGUMENTS BY IMPROPERLY VOUCHING FOR SHANGREAUX'S CREDIBILITY.

A. Background.

Shangreaux argues the State committed prosecutorial misconduct by improperly commenting on his credibility. AB 34. He claims the State's comments were "more akin to governmental assurances regarding the defendant's credibility, intent and guilt, than a fair marshalling of the evidence." AB 35. Contrary to Shangreaux's argument, the State's closing remarks were not improper because they did not constitute impermissible vouching for Shangreaux's credibility.

B. *Standard of Review.*

Typically, claims of prosecutorial misconduct are reviewed under the abuse of discretion standard. *State v. Hankins*, 2022 S.D. 67, ¶ 31, 982 N.W.2d 21, 32-33 (citing *State v. Hayes*, 2014 S.D. 72, ¶ 24, 855 N.W.2d 668, 675). But when "the defendant did not object, the error has not been preserved, and we review the claim under the plain error doctrine." *State v. Heer*, 2024 S.D. 54, ¶ 11, 11 N.W.3d 905, 909 (citing *State v. McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d 725, 729). To establish plain error, Shangreaux 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." *Heer*, 2024 S.D.

54, ¶ 12, 11 N.W.3d at 909 (quoting *McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d at 729). Shangreaux bears the burden of showing the error was prejudicial. *Id.* An "error is prejudicial when, in all probability ... [it] produced some effect upon the final result." *State v. Carter*, 2023 S.D. 67, ¶ 25, 1 N.W.3d 674, 685 (*State v. Little Long*, 2021 S.D. 38, ¶ 49, 962 N.W.2d 237, 255).

C. *The State did not commit prosecutorial misconduct during its closing argument.*

"Prosecutorial misconduct implies a dishonest act or an attempt to persuade the jury by use of deception or by reprehensible methods." *State v. Hankins*, 2022 S.D. 67, ¶ 32, 982 N.W.2d at 33 (quoting *State v. Hayes*, 2014 S.D. 72, ¶ 22, 855 N.W.2d at 675). The prosecutor shares the trial court's responsibility to ensure the defendant receives a fair trial and "must not appeal to the prejudices of the jury." *State v. Janis*, 2016 S.D. 43, ¶ 22, 880 N.W.2d 76, 82. But "'[a] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" *Janis*, 2016 S.D. 43, ¶ 22, 880 N.W.2d at 82 (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)). Prosecutorial misconduct occurs when "there has been misconduct" and the misconduct prejudiced the defendant as to deny him a fair trial. *Hayes*, 2014 S.D. 72, ¶ 22, 855 N.W.2d at 675 (quoting *State v. Smith*, 1999 S.D. 83, ¶ 43, 599 N.W.2d 344, 354).

"Improper vouching invite[s] the jury to rely on the government's assessment that the witness is testifying truthfully." *Heer*, 2024 S.D. 54, ¶ 24, 11 N.W.3d at 911 (quoting *State v. Snodgrass*, 2020 S.D. 66, ¶ 45, 951 N.W.2d 792, 806). The State is prohibited from placing "the prestige of the government behind the witness and imply that the prosecutor knows what the truth is and thereby assure its revelation." *Heer*, 2024 S.D. 54, ¶ 24, 11 N.W.3d at 911 (quoting *State v. Nelson*, 2022 S.D. 12, ¶ 38, 970 N.W.2d 814, 826). Such sentiment would be improper vouching. *Id.*

Shangreaux takes issue with comments made by the State during closing arguments. AB 34. In particular, he claims the statements "We know he probably lied on the stand," "We know the intent with which he did it," "We know he intended to cause her death," and "We know that the result is a guilty verdict on first-degree murder," all were improper. AB 34. But when read in context, these statements were appropriate.

Throughout its closing argument, the State referred to Shangreaux's conduct upon law enforcement's arrival at the apartment as "play acting" or a "Shakespearean attempt." JT 643, 647, 654, 655, 679. It discussed how he came up with a "script" for law enforcement. It then pointed out inconsistencies in his statements to law enforcement, his trial testimony, and his defense. JT 680. For instance, he testified that he "blacked out and doesn't remember what happened." JT 680. But he told the detectives when he blacks out, he usually just eats, not

stab people, so how could he have "blacked out" that night. JT 680. Or how his defense had tried to cast reasonable doubt by asserting that law enforcement didn't thoroughly investigate Keenan Running Crane, but Shangreaux testified that he didn't think Running Crane killed E.M. JT 615, 680. The State then said, "whether you believe him or not is up to you. We know he probably lied on the stand." JT 681.

This statement was not the State confirming the veracity of Shangreaux's testimony but was pointing out inconsistencies in his statements and defense. It is appropriate for the State to draw attention to the inconsistencies in closing arguments. In fact, "[s]o long as prosecutors do not stray from the evidence and the reasonable inferences that may be drawn from it, they, no less than defense counsel, are free to use colorful and forceful language in their arguments to the jury." *United States v. Melton*, 870 F.3d 830, 841 (8th Cir. 2017) (quoting *United States v. Robinson*, 110 F.3d 1320, 1327 (8th Cir. 1997)).

In *Melton*, the Eighth Circuit found no plain error when the prosecutor told the jury the defendant was "lying bold face to you," and "tried to lie to you." *Melton*, 870 F.3d at 841. It was determined the "comments did not warrant reversal because the prosecutor 'outlined the evidence and highlighted the reasons he believed the defendant's testimony was not credible,'" and it "was not 'a miscarriage of justice.'" *Melton*, 870 F.3d at 841 (quoting *United States v. White*, 241 F.3d 1015, 1023 (8th Cir. 2001)).

Similarly, in *White,* there was no prosecutorial misconduct when the prosecutor called the defendant a liar because it "outlined the evidence and highlighted the reasons he believed White's testimony was not credible." *United States v. White,* 241 F.3d 1015, 1023 (8th Cir. 2001). The court held that it was permissible for the prosecutor to argue, based on the evidence, that the defendant was not truthful. *Id.*

Both cases are like this case. The State was pointing out inconsistencies in Shangreaux's testimony and its interpretation of that was he was probably lying. The State did not invade the province of the jury. In fact, it told the jury they are the ones to determine whether they believed Shangreaux or not. JT 680.

The other comments Shangreaux took issue with during the State's closing include statements such as "We know the intent with which he did it," "We know he intended to cause her death," and "We know that the result is a guilty verdict on first-degree murder." AB 34. He argues these were questions for the jury to determine and by the State prefacing them with "we know" it gave the jury "personal assurances" that Shangreaux was guilty. AB 35-36.

While this type of language is often criticized and discourages by courts, "it is not always improper." *United States v. Bentley,* 561 F.3d 803, 811 (8th Cir. 2009) (citing *United States v. Beaman,* 361 F.3d 1061, 1065 (8th Cir. 2004)). Saying "we know" in closing argument is "only improper when it suggests that the government has special knowledge of

evidence not presented to the jury, carries an implied guarantee of truthfulness, or expresses a personal opinion about credibility." *Bentley*, 561 F.3d at 812 (citing *Beaman*, 361 F.3d at 1065).

The State used the phrase "we know" to discuss the evidence presented. Throughout its closing argument the State used the phrase "we know" before discussing evidence that was presented throughout trial. For example, the State said, "We know that there's nothing going on with Liv's clothes. We saw what she was wearing at Taco John's... We have a whole bunch of pictures we put on up there that shows there was nothing going on with her clothes." JT 681. And "we know there was one stab wound right here... The evidence shows he stabbed her seven times." JT 682. "We know what happened. We know from the evidence the defendant stabbed Evie Maxey seven times, probably while she was standing, and probably some with that knife while she was laying on the floor because we know that cast off pattern on that toilet." JT 683.

Immediately after, the State said, "We know the intent with which he did it. We know he intended to cause her death. We know that the result is a guilty verdict on first-degree murder." JT 683. Reading the State's closing as a whole, the State was not suggesting it had special knowledge of Shangreaux's guilt. Instead, the phrase "we know" was accompanied by evidence and explained the elements the State believed it met to result in a guilty verdict for first-degree murder.

D. *Shangreaux was not prejudiced by the State's closing argument.*

Even if this Court were to find the State's closing remarks to be erroneous, Shangreaux failed to show how he was prejudiced.

Shangreaux also argues the fact he was acquitted of aggravated assault means "the jury must have discredited key testimony from both L.B. and Woehl alleging they were threatened by Shangreaux with a knife shortly before E.M.'s death." AB 35-36. But he is forgetting the overwhelming evidence against him at trial.

For instance, the jury heard him *admit* to law enforcement that he and Guerue both "did it." SR 621. He *admitted* he stabbed E.M. once in the back with the knife he claimed he took from Guerue. SR 626-27. And when law enforcement arrived at his apartment, he had the same knife used to stab E.M. in his front pocket. SR 637. He later *admitted* to stabbing E.M. in the front and back. SR 640-41.

Further, Shangreaux's finger and palm prints were on the handle and blade of the knife. JT 473-79. His DNA was on the knife. SR 702. And E.M.'s DNA was on his hand, pants, tank top, shoes, and inside the cuff of a baseball glove found in the apartment.

Even if the State's closing argument was improper vouching, Shangreaux cannot show how he was prejudiced. Therefore, his claim fails.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 3,200 words.

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

Dated this 31st day of December 2025.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 31, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. David James Shangreaux Jr.* was served via electronic mail upon Beau Blouin at beau.blouin@state.sd.us.

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31143

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

DAVID J. SHANGREAUX, JR.,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

HONORABLE CHRISTINA KLINGER
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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Notice of Appeal Filed on July 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page(s)

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 31143

vs.

DAVID J. SHANGREAUX, JR.,

Defendant and Appellant.

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, David Shangreaux, Jr., ("Shangreaux"), will limit discussion to the issues that need further development or argument. Any matter raised in Shangreaux's initial brief, but not specifically mentioned herein, is not intended to be waived. Shangreaux 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. Shangreaux 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 November 17, 2025.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN SUSTAINING THE STATE'S STRIKE OF A NATIVE AMERICAN MEMBER OF THE JURY POOL.

A. Shangreaux's Prima Facie Showing

The State argues Shangreaux failed to make a prima facie showing to satisfy the first step under *Batson*. SB 5-6. In *United States v. Young*, the Eighth Circuit observed that a prima facie showing requires the defendant to show more than simply the removal of a Native American juror before the State is required to offer race-neutral reasons for the strike. *United States v. Young*, 129 F.4th 459, 466-67 (8th Cir.2025); SB 5. According to the State, Shangreaux's prima facie showing was insufficient because the only initial reason asserted as a basis for the challenge was that Juror 78 is Native American. SB 5-6.

The State's argument fails because the facts in record are sufficient to raise an inference that the prosecution struck Juror 78 on account of race. Further, the State failed to raise this argument to the circuit court and offered its purported race-neutral reasons for the strike, and the circuit court ruled on the ultimate question of intentional discrimination. Accordingly, the State's argument is moot.

This Court has stated that a defendant establishes a prima facie case of purposeful discrimination "by showing he or she is a member of a cognizable racial group, and the State used its peremptory challenges to remove members of the defendant's race from the potential jury candidates." *State v. Roach*, 2012 S.D.

91, ¶ 33, 825 N.W.2d 258, 267 (quoting *State v. Mulligan*, 2007 S.D. 67, ¶ 33, 736 N.W.2d 808, 820) (citation modified); *see State v. Scott*, 2013 S.D. 31, ¶ 16, 829 N.W.2d 458, 465-66; *see also Johnson v. California*, 545 U.S. 162, 168, 170 (2005) (recognizing "States do have flexibility in formulating appropriate procedures to comply with *Batson*" but finding the State requiring proof "more likely than not" in step one was beyond what *Batson* requires).

In *Batson*, the Supreme Court held that a prima facie case may be made out by a variety of facts and circumstances "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." 476 U.S. 79, 93-94 (1986) (citation modified). There, the Court found that to establish a prima facie case of purposeful discrimination based solely on the prosecutor's use of peremptory challenges in the selection of the jury, the defendant must show he is a member of a cognizable racial group, and the prosecutor exercised peremptory challenges to strike members of the defendant's race. *Id.* at 96. Once this showing is made, "the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection process that permits those to discriminate who are of a mind to discriminate." *Id.* (citation modified). The defendant must show the combination of these facts "and any other relevant circumstances raise an inference" that the prosecutor's peremptory challenges were made "on account of race." *Id.* This burden is not onerous and is one of production, not persuasion. *California v. Johnson*, 545 U.S. 162, 163 (2005) (finding the prosecutor's use of 3 out of 12 strikes to remove the

remaining black prospective jurors was sufficient to raise an inference of purposeful discrimination).

Here, the record establishes that Shangreaux is Native American, and the State used a peremptory strike on one of only two Native American members in the jury pool. VD 239, 241. During questioning of the prospective jurors, Juror 78 volunteered he was a victim of a serious crime, VD 201, and in all his responses to questions from the attorneys Juror 78 confirmed he could be fair and impartial to both sides in rendering a verdict. On this record, the facts and relevant circumstances were sufficient to raise an inference that the State's strike of Juror 78 was on account of race. *Id.* 127-28, 190-91, 201, 209

The State's argument is also moot. In *Young*, the Eighth Circuit Court noted the defendant's failure to make a prima facie case was "arguably moot" and declined to affirm the defendant's conviction on the issue because the district court made a final ruling on purposeful discrimination after the prosecution had already provided its reasons for the strike. 129 F.4th at 467, 473 n.4; *see United States v. Hill*, 31 F.4th 1076, 1081-82 (8th Cir. 2022); *Hernandez v. New York*, 500 U.S. 352, 359 (1991) (plurality opinion) (holding once the prosecutor has stated his race-neutral reasons and the court has ruled on purposeful discrimination, "the preliminary issue of whether the defendant has made a prima facie showing becomes moot").

After Shangreaux's counsel raised a *Batson* challenge to the State's strike of Juror 78, the prosecutor immediately proffered the State's reasons for the

strike and did not argue Shangreaux failed to make a prima facie case. VD 231. The circuit considered the State's proffered reasons and ultimately ruled on the question of intentional discrimination. *Id.* at 231-43. Thus, the State's argument on appeal is moot.

B. *The State's Race-Neutral Explanations*

The State asserts it provided race-neutral reasons for striking Juror 78. The second step in *Batson* looks only to the facial validity of the prosecutor's proffered race-neutral reasons and does not consider the persuasiveness, or even the plausibility, of the explanation. *State v. Guthmiller*, 2014 S.D. 7, ¶ 18, 843 N.W.2d 364, 370 (citation omitted).

Shangreaux agrees that the circuit court appropriately moved onto step three of the analysis. The prosecutor's claims that Juror 78 indicated he was familiar with defense counsel's name in the news, and that the State had looked up and confirmed Juror 78 had a criminal history, suffices as facially valid race-neutral reasons.

C. *The Circuit Court Clearly Erred in Upholding the Strike because the Prosecutor's Claim that Juror 78 had a Known Criminal History did not Hold up to Scrutiny, and the Circuit Court Relied on Clearly Erroneous Facts making its Ruling.*

For the reasons and the facts cited in Appellant's Initial Brief, the record establishes the prosecutor's initially proffered race-neutral reasons did not hold up to scrutiny. The Supreme Court has stated:

> [W]hen illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the

> plausibility of the reasons he gives. A Batson challenge does not call for *a mere exercise in thinking up any rational basis.* If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.

Miller El v. Dretke, 545 U.S. 231, 252 (2005) (emphasis added) (citation modified).

Batson credibility turns on available circumstantial evidence in the record. *Foster* v. *Chatman*, 578 U.S. 488, 501 (2016). When the record contradicts the prosecutor's account, the legitimacy of a peremptory strike is questionable. *McClain v. Prunty*, 217 F.3d 1209, 1221 (9th Cir. 2000). The State's initial justifications were discredited by the court and defense; its subsequent, "race-neutral" reasons arrived only after the mischaracterization of Juror 78's statement was corrected. The prosecutor's admitted confusion about what P.D. said, coupled with minimal follow-up with Juror 78 demonstrates post hoc rationalization rather than a bona fide concern. Both the evolving justifications and the superficial voir dire weigh heavily against the legitimacy of the prosecution's explanation, and the circuit court clearly erred in sustaining the strike of Juror 78.

Further, the circuit court's evident misgivings over the State's lack of inquiry with Juror 78 required a thorough review of Juror 78's answers to the follow-up questioning. VD 241-42. The circuit's erroneous recall of this exchange may have influenced its ultimate ruling as to whether the State's explanations were merely pretextual. *Id.* Under these circumstances, the circuit court's reliance on clearly erroneous facts rendered its findings incomplete.

II. THE PROSECUTOR'S COMMENTS IN CLOSING ARGUMENT CONSTITUTED VOUCHING AND IMPROPER PERSONAL ASSERTIONS OF KNOWLEDGE ABOUT SHANGREAUX'S CREDIBILITY, INTENT AND CULPABILITY.

Based on the reasons set forth in Appellant Initial Brief, Shangreaux maintains that the prosecutor's "we know" statements in closing argument constituted personal assurances regarding Shangreaux's credibility, intent and ultimate culpability, undermining Shangreaux's right to a fair trial.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Shangreaux respectfully asks this Court to vacate the Judgment and Sentence and order a new trial, or in the alternative, remand the case to the circuit court for further analysis and findings on step three of *Batson* in light of the facts in the record.

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 1,539 words.

2. I certify that the word processing software used to prepare this brief is Microsoft 365, MSO Version 2508.

Dated this 30th day of January, 2026.

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CERTIFICATE OF SERVICE

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

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