

APPELLANT'S BRIEF

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NOV - 5 2024

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Clerk

CASE# POA24-301

NIKOLAS RICHARD WEEKS,
DEFENDANT AND PRO SE APPELLANT

V.

STATE OF SOUTH DAKOTA
PLAINTIFF APPELLEE

APPEAL FROM THE CIRCUIT COURT

OF THE

THIRD JUDICIAL CIRCUIT

BROOKINGS COUNTY, SOUTH DAKOTA

DAWN ELSHIRE

3rd Circuit Court Judge

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30833

Notice of Appeal Filed September 12, 2024.

Deadline of October 12th falls on Saturday and Monday was a federal holiday Columbus day/Native American day. Moving it to the next available day the clerk of courts and the post office are available to Tuesday October 15th 2024.

On October 23rd 2024 the clerk of courts returned my brief unfiled due to needed corrections. I have made the requested corrections to the best of my ability on November 4th 2024.

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Introduction Establishing Credibility

My name is Nikolas Weeks. I live on Lake Poinsett. I grew up in the mobile home transport business. Since I had my driver's license at 16 I was a certified pilot car driver working for my parents company as well as other companies they occasionally partnered with. One of the requirements for this job was we had to know the traffic laws in each state we operated in and maintain a clean driving record. From 2014 to 2022 I was a Level 2 Field Service Engineer for Worldwide Tech services. I specialize in warranty repair work for the big computer and printer companies. I am certified in servicing Dell, IBM, Lenovo, HP, Lexmark, Canon, Panasonic, General Dynamics, and even some TVs. I covered a large territory including Minnesota, North Dakota, South Dakota, Wyoming, Montana, Nebraska and Iowa. I do get sent to additional areas around the country on an as needed basis. So you can see I put on a lot of miles. I am paid hourly and by the mile so I have no reason to speed or run stop signs. I would be stupidly losing money if I did. Over 35% of my onsite customers were military bases, Law enforcement facilities, including state and federal government agencies. For example I have serviced computers at the Mickelson Criminal Justice Center. I have repaired printers at the FBI office next door. I have serviced computers for Pennington County. I have even taken part in a computer upgrade project at the Department of Justice in Pierre. I have done work for the Unified judicial systems, Legislative Research Council, BIT, DSS, IHS, BIA, IRS, DCI, Army Corps of engineers, highway patrol, US Marshals and USDA. The rest of my customers include colleges, schools, public utilities, hospitals, businesses, retail stores, agricultural services and in home repair. I am very proud of the work I have done. There are less than a handful of techs in this state that can do this work.

I will not disclose my current employment due to previous harassment, threats, safety and security concerns for myself, my family, coworkers and customers.

To even be considered for the sensitive positions in Information Technology that I have held. You have to maintain a clean driving record, pass drug tests, pass several rigorous background checks to be able to obtain necessary security clearances, and be of the highest moral character. I have never committed a crime or violated a traffic law in my life. I do not drink or do any drugs. I am always in control of my vehicle and I know what happens in it without question. With my dash cams and heads up displays there is no doubt to this.

I have 24 years of extensive martial arts training in various disciplines. Training 1-3 times a week and I instruct others as hobby during weekly practices. For 16 years I have passed the required background checks to maintain the enhanced concealed carry permits with valid reciprocity in over 38 states that I have done work in the past and may do additional work in the future. Just because I carry, possess the training and experience I have. Does not mean I am looking for trouble or looking for a chance to use it. I have made the conscious decision to protect myself and my family who rely on me so I can make it home to them safely no matter what. My firearms instructors I have received training from have been both former and current military and law enforcement as well as competition shooters. One of them was the man that wrote the current concealed carry law for Minnesota. I have family members that are retired law enforcement as well. I have the upmost respect for these men and women in law enforcement and those that I provide service to who are honorably carrying out their duties everyday helping make their communities safe. Any statements made by anyone saying otherwise are false and predicated upon a lie with malicious intent to cause harm to me.

On February 18th 2016 I was the victim of an illegal traffic stop and malicious prosecution conducted by the former Lake Norden city police chief Jimmy Murphy and city attorney Todd Boyd who was a former Brookings county prosecutor. During that traffic stop a civilian ride along attempted to pull a gun on me. I was falsely convicted without any evidence. I filed a complaint with the Sheriff, DCI and the city. I then appealed the case to the South Dakota Supreme Court where they issued an order of remand #27893. On November 18th 2017 Murphy conducted another illegal traffic stop and attempted to murder me in retaliation of this ongoing litigation and investigation into his misconduct. While Murphy was in his vehicle for a half hour I called 911 and the sheriff's department for help they sent a deputy Tate Alexander whose presence on scene saved my life. When Murphy's attempt on my life failed, Murphy conducted a false arrest in attempt to maliciously cause as much damage as he could to me. Due to the audio and video I provided the Hamlin County state's attorney John Delzer the charges were immediately dropped and a complaint was filed against Murphy. It was later found out Murphy and Boyd asked a forensics expert Detective Nic Ahmann to explicitly lie about evidence in the first case but he refused and testified against them at Murphy's Decertification. The first case was later dismissed in my favor and Murphy was later unanimously decertified by the public safety standards commission on July 18th 2018 a federal 1983 civil lawsuit is still ongoing today after several appeals. After the November 18th 2017 traffic stop a former Hamlin county sheriff's deputy and former Brookings city police officer Jamie Lantgen came forward with the information that Murphy and his buddies in the Highway Patrol were providing false information to the Brookings police department and other local agencies that I "Nikolas Weeks was a sovereign citizen who was heavily armed threat that hated law enforcement that would shoot and kill them if I was ever pulled over." Since Lantgen was present in the court room as a bailiff in

many of the trials and hearings in my case he knew this information was false and communicated that to his superiors stating “this guy isn’t a threat to us as long as we are doing our jobs correctly”. I believed that this information was thoroughly debunked at the time from what Lantgen told me and due to how closely I worked with law enforcement agencies at the time they knew I was never any threat. But recently it appears not because that false information is still in the highway patrol system and is still placing my life and my family’s life in danger with any encounter with law enforcement that false information is being shared with. Since 2016 I have noticed that I have been the victim of over 22 illegal traffic stops conducted by the highway patrol nearly all did not result in a ticket but those that did nearly all were dropped by providing my dash cam footage or the highway patrol did not show up to court several times or did not have any evidence proving I committed a crime or the evidence would have shown I was innocent. In my experience the highway patrol does not and will not provide any evidence if you are innocent of what you are accused of. I now know I have been illegally targeted and I still am being targeted by the Highway Patrol based on the false information from Murphy in 2017 and his friends. Due to the timing of this with my ongoing Federal section 1983 civil rights suit I believe this is a blatant attempt to interfere with that case by taking up my limited time and resources being forced to work on 2 appeals simultaneously. Nikolas Weeks v. City of Lake Norden, et al; Case #0:24-cv-02298 (8th Cir. 2024) I was one of the first to file a complaint against Murphy and it took over 2 years for him to get decertified unanimously by the state commission. So when I make the claims and complaints that I do, they are credible. I see David Lagroue’s behavior escalating and mirroring that of Murphy’s unless it is corrected.

PRELIMINARY STATEMENT

Throughout this brief, “I” or “Me” I am referring to myself Nikolas Weeks or “Appellant” unless otherwise noted using the Court Report “CR”. David Lagroue is the Highway Patrol officer. Austin Oxner is the Deputy States Attorney for Brookings County, “Prosecutor,” or “lawyer.” Abigail Howard the 3rd Circuit magistrate Judge, “The Court,” or “Judge.” All other parties will be referred to their name or title. All References and Sources will be listed and indented single spaced. Irrelevant or repealed parts may be omitted.

JURISTICTIONAL STATEMENT

This is an appeal to the Supreme Court of the State of South Dakota from the whole of the final judgement rendered by Dawn Elshire the 3rd Circuit Court Judge in regards to CASE# 05POA24-301, request a reversal of the final judgment, a retrial if necessary, and petition for innocence in Weeks favor. This Court possesses jurisdiction of this matter pursuant to SDCL 15-26A-3.

STATEMENT OF THE CASE

I come before you an innocent man trying to clear my name. I was falsely accused of not wearing a seatbelt and speeding by Highway patrol officer David Lagroue on February 12th 2024. {See Exhibit #1 Defendant’s written notes of 2-12-24 traffic stop} I was at the 66 gas station in Brookings getting gas after getting back in the vehicle both occupants put on our seatbelts. I then made a left turn on to 6th street heading west I was in the left lane and there were several cars behind me. Not once did my vehicle exceed 29 mph as my heads up display showed until after I was already past Western Ave in the 40 mph zone. After which I accelerated to 37mph over 2 blocks after already passing the officer who was sitting just before the 40mph zone

facing east. At this point there were several vehicles going in the opposite direction entering a 30 mph from a 40 mph zone and 3 vehicles that were accelerating behind me. After passing the curve the highway patrol vehicle turned on his lights and proceeded to pull me over. The only way he would have got the number of 37 mph was if he was pacing me right before he pulled me over or got a reading from other traffic pulling me over instead which has happened to me before. I pulled over safely into the apartment parking lot on 10th St W. My dash cam recording captured this interaction and the officer's inappropriate behavior sending up red flags my life and my daughter's life may be in danger. {See USB with defendant's dash cam video and audio of stop.} I rolled my window down 3 inches enough to hear the officer and pass my documents already in my hand as the law requires. {see sd-driver-manual-rev-12-2023 pages 61 and 62} Our seatbelts were still on. The officer walks up to my vehicle and asks to roll my window down when it was already rolled down enough to clearly communicate and pass documents as none of which were requested sending up a red flag. I was calm and courteous but you can hear the concern in my voice. I notified him that it is for my safety and gave him a legitimate reason that I was assaulted and almost killed before. My dash cam audio shows there was no issue with communication sending up a red flag. The officer did not have a body cam on or a name tag on. The officer did not identify himself another red flag. The officer was focused on escalating this stop before ever giving a reason for the stop showing he was not conducting a legitimate traffic stop. When I asked him what the reason for the stop was the officer lied saying it was speeding I told him "that is not true and the speed limit is 30 mph". The officer claimed that I was going 37. I told him I have a dash cam and I'll take him to court. The officer then claimed I was threatening him. I told him "Sir I am not threatening you. You are the one who is conducting an illegal traffic stop here". At this point the officer losses it and is visibly angry ripping open my

door before saying "OUT! OUT!". If I opened his door like that I would be charged with assaulting an officer. I was afraid I may have to defend myself. I unhooked my seatbelt, my daughter starts crying and I pull out a recording device and start recording as I step out notifying him I am recording this conversation. "so am I" The officer lied. I calmed my daughter down. After stepping out we go to the back of my vehicle. The officer starts mocking me acting like a creep "Where did you go to law school?" I told him "I didn't. I had to do it myself as there are no attorneys in this state that do this kind of work for people that don't have money and I have been very successful fighting false tickets on my own." The officer then lied "the reason I stopped you was you were not wearing a seatbelt and you were speeding." I did not feel safe this officer was making up false charges and I stayed back behind my vehicle. This officer clearly saw we had our seatbelts on and seat belts are a secondary violation. I told him that is a lie we had our seatbelts on. The officer said he "thinks they weren't on". Well his imagination is not evidence. I told him I am not a criminal and I do not drink or do drugs and I do not speed or violate traffic laws and we wear our seatbelts. I told him my dash cam heads up display shows my speed and that his radar got a bad reading because of the other traffic in the area and the vehicles going in the opposite direction that were going by from the 40mph to the 30mph zone. He went back in to his vehicle for several minutes.

He comes back out and says he has pulled me over before. I asked him who he was as I did not recognize him. He only identified himself as David. I said "David What?" He was still hesitant to identify himself but eventually said "David Lagroue" I immediately remembered him as the officer that falsely accused me of speeding twice and made uncalled for creepy comments mentioning my daughter at the second traffic stop he made 3 years ago where she was not present. I took this to be a possible threat against me and my family due to my ongoing civil case

against Lake Norden I did not have money or time to fight this at the time as I had federal court deadlines to meet and couldn't lose any more work and knowing that I would not get a fair trial in the 3rd circuit under Judge Spears who's previous rulings and findings of fact were the furthest from the truth were in defiance of the South Dakota Supreme Court's ruling of there was a Brady violation because Spears was covering for his buddy Todd Boyd conducting a malicious prosecution in Weeks first case against Lake Norden.(See City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016) and State of South Dakota Supreme Court Order of Remand #27893) Spears' findings were thoroughly discredited at the July 18th 2018 Decertification hearing. Where Todd Boyd made the call to not provide that evidence because he already had 2 coached witnesses to provide false testimony and the footage was never recovered or reviewed despite that being the standard procedure for such investigations. {see 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation} Boyd and Murphy further fabricated evidence in an attempt to make it look like he was complying with the South Dakota Supreme court's order to turn over the footage that was testified multiple times to exist and explicitly asked former Watertown police Detective Nic Ahmann to lie about their fabricated evidence to which he refused and testified against Murphy and Boyd at the 7-18-2018 Decertification Hearing of Murphy.

The first traffic stop conducted by Lagroue 4 years ago Lagroue said my license plate light was out and falsely stated that I was speeding. I got out of my vehicle and checked and it was in fact out. I thanked him for letting me know and I will have my mechanic fix it. I told him I wasn't speeding and my dash cam will show that I wasn't speeding. Lagroue wrote a warning and left. My dash cam showed I was not speeding but since no citation was given I didn't pursue it further at the time.

Lagroue was then waffling on the details of the previous traffic stops not clearly remembering them and I corrected him and told him it is not the first time you falsely accused me of speeding. Lagroue admitted I had a much better memory than he did. Lagroue said that he “was giving me a mulligan on the speed due to the other traffic that could have interfered with his readings” giving a warning and writing a ticket for the seatbelt violation only. I told him we were wearing our seatbelts. Lagroue said we can talk about it later and he never did. I went back to my vehicle where my daughter was crying and scared. I put my seat belt back on and went home. The next day with the aid of my dash cam I wrote down everything on hand written notes to prepare for trial.

On March 14th 2024 David Lagroue was sitting in the same position as the first stop. I was in the right lane this time exiting Casey’s Gas station when Lagroue recognized my vehicle and was pointing and laughing as I went by Lagroue was taunting me. I made note of this to present it to court. {See Exhibit #1 Defendant’s written notes of 2-12-24 traffic stop} These kinds of behaviors are not professional or conduct becoming of an officer or indicative of someone who is conducting legitimate traffic stops.

On April 22nd 2024 I spoke on the phone with Brooking County Deputy States attorney Austin Oxner before the trial that after noon regarding the complaint and adding additional charges of speeding as there was no ticket issued for speeding. Oxner stated he was not going to just bring a case just for a seat belt he was going to add what he could if it was being brought to court. He also admitted often it is their practice to give deals by charging lesser things like a seat belt instead of speeding as people are just as likely to pay the fine for the seatbelt instead of fighting a speeding ticket. So I am new the victim of a policing for profit revenue generation scheme. I asked him what if the person did neither of those how is that ethical for you to charge

people for something they didn't do knowing how much hassle court is? As I have witnessed several people in the 3rd circuit courts plead guilty to things it was obvious they did not do so they don't have to deal with additional hassles in court because the process has become so onerous. Oxner said it is up to the accused to decide how far they want to defend their rights. I asked about the complaint stating there was an investigation what was the result of the investigation? and what evidence did he have? Oxner admitted he only briefly spoke with the officer and that he didn't order any evidence. In his conversation with Lagroue he stated that Lagroue said that the reason he was prosecuting these charges is that because of the Highway patrol system it stated that I was a sovereign citizen who was heavily armed and dangerous that did not cooperate with law enforcement. I asked if Oxner could get me a copy of this he stated that the Highway patrol's system is separate from theirs and that he doesn't have access to it. I told him my background and history and that that false information has been debunked years ago after it was brought forward by Jamie Lantgen and that I was never a sovereign citizen or a threat to law enforcement as that false information came from Jimmy Murphy and his buddies in the highway patrol after I was attacked by him in 2017. I told Oxner that the term sovereign citizen is used by dishonest and less than ethical law enforcement to justify killing lawfully armed individuals and that being falsely labeled a sovereign citizen puts my life, my family's lives and anyone that may be using my vehicles lives in danger with any law enforcement agency that may not know me or the details of my case against Lake Norden. Law enforcement by far and large treat sovereign citizens the same as the military treats unlawful enemy combatants. I am not and have never been a violent domestic terrorist that wants to over throw the government and kill law enforcement. I do not know of or have ever encountered anyone who is a sovereign citizen. I have never killed anyone especially law enforcement that were once over 35% of my customers

that is absurd. It was very clear from this conversation with Oxner that there was no investigation as the complaint stated and I was being retaliated against because people just pay the smaller fine instead of fighting it in court because to them nobody is innocent and since I am falsely labeled a sovereign citizen that label will cause irreparable prejudice by law enforcement and the courts so I can be targeted for abuse by the system at will without any recourse. Oxner said I had a clean record and the court should take that into consideration but the court didn't. Oxner also made mention that he was sympathetic to drug related crimes and handed out lighter sentences to those he prosecuted. I was confused as Oxner may have mistaking me for someone that would agree with drug legalization which had nothing to do with the traffic stop or what I was accused of. I am strongly opposed to drug legalization and abuse.

I sat in the court room before my trial and witnessed several other people pleading guilty to things they didn't do even though they may have been guilty of other things they chose to do because court was too much hassle with lost work and return trips. When they tried to share facts of their case they were shushed by the court. This is the pattern of behavior I have witnessed over 16 times in the 3rd circuit in Brookings, Madison and Hayti since 2016. In my experience if you are innocent of what you are accused of you are treated worse than any criminal by the courts in the 3rd circuit and that needs to change.

April 22nd 2024 Trial See Court Report, Transcript of Trial 4-22-2024. The burden of proof was on the state and as an innocent man I was still falsely convicted of both charges without any evidence in retaliation for me fighting this seatbelt ticket. Lagroue was unsure of basic details of the case had me in the wrong lane mixing up the 2 times I drove by him in those positions and contradicted his previous statements he made at the traffic stop. Lagroue read from a script and committed perjury. Lagroue acted like he was a kicked puppy to garner sympathy

from the court. He did not give reason for the stop or identify himself until the very end of the stop both times I had to ask him for the reason and identification he would not provide it on his own. Lagroue lied saying he had a clear view from where he was sitting which was not true he was sitting at an angle with a line of sight obstructed by a line of 5 trees, a light post, street signs, parked cars, a business sign and a wooden porch. {See Exhibit B Photo showing officers obstructed view} Lagroue lied when he said the other vehicles and obstructions would not give bad readings when he said they would during the traffic stop. Whenever I tried to show basic photo evidence proving my innocence showing that he could not see our seatbelts due to distance and because of black interior, dark grey seat belts, window glare, dirty windows, window tint, black shirt and gray patches on my coat Oxner would object to it. {See Exhibit A and Exhibit C} This is one of the very reasons why seatbelt violations are a secondary offence because of the difficulty to see inside others vehicles while moving. You cannot be pulled over for just a seatbelt violation in this state. Lagroue admitted the seatbelts of all occupants were on when he approached the vehicle then immediately Oxner lied stating “it is common practice for people to put their seat belts on when they see law enforcement”. When there was no evidence of that happening so support Oxner’s claim. We put our seatbelts on before we left the 66 gas station. The court’s ruling is the furthest thing from the truth and is not uncommon for the 3rd circuit’s revenue generation scheme.

May 17th 2024 I contacted the Highway patrol to see if I could get a copy of their records stating that I was a sovereign citizen or a heavily armed danger to law enforcement that Lagroue told Oxner existed in the Highway patrol system. I was transferred to 2 different people who tried looking it up and they claimed it did not exist and were no notes in the traffic stop stating such. So if the state patrol officers that was in charge of records weren’t being dishonest or

incompetent then I believe Lagroue is a liar and that Oxner was dishonest as well. It also proves David Lagroue may be friends with Jimmy Murphy or one of Murphy's friends in the Highway patrol because where else would he had gotten that false information? The III Report or the NCIC? Did Lagroue make it up to prejudice Oxner and the court against me? If so Lagroue lacks the ethics and good moral character that citizens expect of Law Enforcement. If this officer is willing to make up a defamatory lie like this to try damage the reputation of an innocent man who stood up to him when he out right lied and conducted a poor excuse of a traffic stop then what is the limit of what he will sink to? This conviction will only embolden him to commit more of these acts and encourage him into escalating his misconduct thinking he can get away with anything. During these times a police officer abusing his badge and position like this is dangerous. I nearly lost my life to another out of control former officer who was increasingly and maliciously abusive to the public. It undermines the people's good faith in law enforcement at a time the relations between law abiding citizens and police are at a breaking point around the country.

Did David Lagroue receive training from (Street Cop Training)?

South Dakota is listed as one of the several states nationwide that had used public funds to pay for officers to receive this unconstitutional police training since 2013.

- Instructors at the Conference promoted the use of unconstitutional policing tactics teaching officer to stop motorists without a lawful basis and to illegally prolong traffic stops;
- Some instructors glorified violence and an excessively militaristic or "warrior" approach to policing. Other presenters spoke disparagingly of the internal affairs process; promoted an "us vs. them" approach; and espoused views and tactics that would undermine almost a decade of police reform efforts in New Jersey, including those aimed at de-escalating civilian-police encounters, building trust with vulnerable populations, and increasing officers' ability to understand, appreciate, and interact with New Jersey's diverse population; and

- The Conference included over 100 discriminatory and harassing remarks by speakers and instructors, with repeated references to speakers' genitalia, lewd gestures, and demeaning quips about women and minorities.
- The conference essentially was "a pep rally for bad policing," Walsh said.
- "What this training did was normalize discriminatory and harassing behavior, the kind of behavior and attitudes that lead to violations of constitutional rights to discrimination to excessive force complaints, and ultimately to lawsuits, which the taxpayers end up paying for," Walsh said. "New Jersey can't afford, can't allow this to continue any longer."

From what I have witnessed from all traffic stop's involving Lagroue's false accusations of speeding, creepy behavior, making comments about my daughter, Trying to escalate the stop before identifying himself or giving a legitimate reason for the stop then angrily ripping open my door giving rise to my right to self-defense, telling Oxner that I am a sovereign citizen and that is the reason I am being targeted and ticketed and then Lagroue strangely acting like a kicked puppy on when committing perjury the stand. Because of this I believe Lagroue has received either this or similar unconstitutional training. NJ Criminal Interdiction LLC d/b/a/ Street Cop Training v. Walsh, A-4009-21 (App. Div. Nov. 23, 2022), appeal denied 253 N.J. 287 (2023).

Evidence David Lagroue committed perjury SDCL 23-1A-5 and 22-29-1.

23-1A-5. Signature under oath on complaint--Traffic ticket issued by law enforcement officer.

Any person may sign a petty offense complaint for an offense which occurred in his presence. A petty offense complaint shall be signed under oath. It is sufficient if a law enforcement officer, in lieu of signing the petty offense complaint under oath, signs the following statement printed or written on a complaint or summons for a petty offense on a uniform traffic ticket: "I declare and affirm under the penalties of perjury that this complaint or summons has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." Any person who signs this statement as provided for in this section, knowing the statement to be false or untrue, in whole or in part, is guilty of perjury.

22-29-1. Perjury--Violation. Any person who, having taken an oath to testify, declare, depose, or certify truly, before any competent tribunal, officer, or person, in any state or federal proceeding or action in which such an oath may by law be administered, states, intentionally and contrary to the oath, any material matter which the person knows to be false, is guilty of perjury.

{See Court Report, Transcript of Trial 4-22-2024} and compare to statement of the case above.

Lagroue knew he did not have a good radar reading due to other traffic.

Oxner and Lagroue stated that Lagroue's equipment was operating and in working order but without any body cam or dash cam footage or audio verifying the tone of the audio radar alerts showing he was properly operating it that cannot be verified. Lagroue admitted another company did the calibration of his equipment and that he did not have any documentation that it was calibrated correctly. This is standard info to have on hand when one of your speeding tickets is being disputed and was the first time I witnessed an officer not having that on hand at trial.

In a multi vehicle group of traffic the radar cannot pick out which vehicle is speeding and the officer cannot be confident he has the right one. If an officer says he was able to pick out the speeding vehicle that the radar measured then the officer is lying or he doesn't understand how to work the radar. To understand this then I need to explain just a little about how police radar works. The radar sends out a radar signal. But this radar signal spreads out to the point where the radar beam is wider than the roadway. If you could see the radar beam it would look like a flashlight beam, which as you know gets pretty wide pretty fast. The radar beam bounces off everything it hits and returns to the radar unit. The radar unit then picks out the fastest speed out of all of these and displays that on the screen. So if there is a pack of 6 vehicles moving together down the highway the radar does not display 6 different speeds, but rather only the fastest speed. If these vehicles are the same size and the officer notices that one vehicle is traveling considerably faster than the rest of the pack then the officer may infer that the radar gun is showing the speed for that vehicle. But it is not a guarantee, but more like an educated guess. But wait, it gets worse. If the vehicles in this pack of traffic are of different sizes such as a compact car, a full size car, a minivan, a school bus, a semi-truck and motorcycle then it is impossible to determine which vehicle the radar unit is measuring. The reason being that the radar measures

the strongest signal it receives. The strongest signal comes from the fastest vehicle but also from the largest vehicle. So in our example if the semi-truck is the largest and the fastest then it is pretty certain the radar gun is measuring the truck's speed. But if the semi-truck is slow, but large in size and the motorcycle is small in size but fast in speed it confuses the radar gun and there is no telling which vehicle is being measured. I have seen this very thing and what the radar does is display different speeds very rapidly. An honest trained officer will realize he does not have a good speed measurement for this situation and will let the pack of traffic go. But it gets even worse. Officers have clocked cars that looked like they were going 25 mph but the radar says they are going 60 mph. What was happening was they were looking at a small car 1/4 mile away, but the radar was measuring the speed of a large and fast semi-truck that was 2 miles away, so far away that they could not see the speeding vehicle. As far as trees are concerned the line of trees the officer was sitting behind will also interrupt signal and give bad readings. See Exhibit B Photo showing officers obstructed view.

Lagroue knew he did not have a good reading due to other traffic which is why he only wrote a warning for the speed. It would also have Lagroue's admission to Weeks at the traffic stop that there was giving Weeks "a mulligan on speed because there was other traffic." Again the audio from Lagroue's Dash cam becomes exculpatory in Weeks favor. Weeks is not guilty of speeding as Weeks heads up display on his dash cam only showed 29 mph.

Was Weeks right of discovery violated by David Lagroue and Austin Oxner not preserving exculpatory evidence for trial?

I have asked if the officers video evidence and audio if it exists. It was not provided to me or shown at court. This evidence was clearly must have existed if Lagroue stated he was

recording during the stop and Lagroue stating "I would have to review the footage to be sure." It this statement from Lagroue indicates that it had existed but admits also he never reviewed the footage. Well obviously there is something to hide if exculpatory evidence is missing, destroyed, and never received. Oxner admitted he never viewed or requested the footage it despite that it will show I was not speeding and I was wearing my seatbelt. I am entitled to discovery of any exculpatory evidence whether there is a subpoena or not. If such evidence proving my innocence is not provided or is suppressed by the state then a Brady violation has occurred. I have already been the victim of dishonest officers and prosecutors not providing exculpatory evidence in the past and the conduct of Oxner and Lagroue directly mirror the conduct of Boyd and Murphy in a previous case provided in the examples below. City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016) 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation. State of South Dakota Supreme Court Order of Remand #27893

On July 18th 2018 the South Dakota public safety standards commission where Marty Jackley was also present at this hearing as a member of the commission. Kelly Marnette Questioned The City of Lake Norden Mayor on the importance of preserving evidence in the City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016).

Q. But would you agree that it's extremely important that law enforcement officers preserve all evidence?
A. Yes, I would.
Q. And he didn't do that in this case?
A. No, he didn't.
Q. He didn't do it. And then he came into court and testified about something that ended up not being true because he didn't even look at the evidence.
A. That's correct.

Here Clint Sargent questions Todd Boyd on the Brady rule violation.

A. there was an Order of Remand by the South Dakota Supreme Court for the trial court to go back and see if the Brady rule had been violated.

Q. And, just briefly, what does that mean?

A. That means if there's any exculpatory evidence that would help the Defendant -- or really not just exculpatory but just about any other evidence, then you give it to the Defendant and you give it to him prior to whether it be the trial or the preliminary hearing or ever what.

The Brady rule is the United States v. Brady. And that's what it states is that if there's evidence, the defense -- in many instances even if they don't request it, you give it to them, if they think that there's going to be something there that's going to help their defense.

Kelly Marnette questions Todd Boyd about committing a Brady violation without seeing the footage and making the call to not provide it. The South Dakota State Supreme court verifies there is an established duty of law enforcement to preserve and disclose evidence.

Q. Okay. And, obviously, you talked a little bit about Brady so let's talk about Brady.

You have the opinion that Brady wasn't applicable to the dashcam, even though you never saw the video; correct?

A. Correct.

Q. So you just talked to Jimmy, and you said, oh, you're telling me that it wouldn't have caught the actual violation so we don't need to preserve that and turn it over. So you're really basically taking the fall for Jimmy today?

A. It's a decision I made. Not his.

Q. Okay. The Supreme Court disagreed with you.

A. They remanded it.

Q. Yes. And basically they said that there's a duty to disclose it, first of all, no matter whether Mr. Weeks asked for it or not and, second of all, whether you as the prosecutor made a decision that, well, it's not relevant, it's not exculpatory, so I'm just not going to turn it over; right?

A. True.

Q. You knew that he had a dashcam in his patrol car at

the time of the Weeks video.

A. I think I did.

Q. Well, you definitely did --

A. Yeah. I did. I did.

Q. Because you decided not to turn it over.

A. That's true.

Q. Okay. And you didn't even have Officer Murphy preserve it, did you?

A. Did not.

Q. You knew this was going up to the Supreme Court. You knew it right away within 30 days, obviously, because that's the time for an appeal.

A. Well, at that time it would have been about five or six months after the video was taken, if there was one.

Q. Okay. But within 30 days of the trial you knew that.

A. Yes.

Q. Okay. Well, actually you knew before the trial because you told him don't bother giving it to me and don't bother preserving it.

A. True.

Q. Right. But you would agree with me that law enforcement also has a duty beyond what is -- you tell him. He has an independent duty to preserve the evidence. Yes?

A. I think that's important, yes.

Q. Absolutely important.

So you told him don't bother. We don't have to turn it over. Correct?

A. I said I -- to that effect.

Q. And part of that is because Mr. Weeks, who's acting pro se, didn't file a formal motion.

A. For me that wasn't really the reason but --

Q. Okay. The reason was because you said I don't have to turn it over because I don't think it's relevant or exculpatory.

A. I thought it did not fall within the purview of Brady, and the trial judge agreed.

Q. And the trial judge was obviously wrong too?

This is also important after the South Dakota Supreme Court remanded the case back to the third circuit Boyd conspired with his friend the 3rd Circuit court Judge Spears to deny there was a Brady violation when there clearly was and it was admittedly caused by Boyd's conduct.

Now in the responses by Oxner and rulings by Judge Elshire completely ignore the existence of the Brady violation despite Weeks raising it both in his briefs and at trial. In both of these cases it is shown that the practice of the third Circuit courts is to allow violations of due process rights of innocent victims of false charges brought by dishonest law enforcement officers. If the decisions in this case are not reversed and the case is remanded since the exculpatory evidence was never preserved by the state patrol in this case as is the standard practice of the highway patrol the lower court will merely follow its previous misconduct by defying the South Dakota Supreme courts orders and not turn over the exculpatory evidence proving the innocence of an innocent man resulting in yet another false conviction. Due to what I have witnessed and been through I do not believe there will be a fair trial or hearings if this case were to be remanded back to the third circuit. If you are innocent of what you are accused of you are treated worse than any criminal.

Has the prosecution committed a Brady violation?

In Oxner's reply brief he is avoiding the hot potatoes where we have a situation where the prosecution by Austin Oxner is withholding or destroying exculpatory evidence favorable to the defendant proving his innocence of both charges by admittedly not ordering it and allowing it to expire. This is not a case of technology failure this was Oxner's conscious decision not to order it. This admission was made by Oxner on the phone call with Weeks before trial as well as at the court trial. Oxner's reasoning was he already had the testimony of the officer (Who we now know is willing to lie under oath.) and relying on a court that has a cognitive bias. Whether it happened intentionally or unintentionally it still happened and triggers a Brady violation. Unfortunately this has been regular practice in the 3rd circuit courts for the last 50 years by unethical and lazy prosecutors like Todd Boyd who will do anything to tally another win on their

prosecutorial gun belt for personal advancement and generate revenue for their city or the state. This needs to change. Just because it is always how it has been done here doesn't make it right nor does it justify the abuse of people's rights for the purpose of revenue generation, personal gain of the prosecutor or meeting the ticket quota of an officer. The Federal Supreme Court as well as both the South Dakota Supreme Court has ruled in past cases and the State of South Dakota Law enforcement officer's standards and training commission agree that not preserving and providing exculpatory evidence is a violation of innocent defendants' constitutional rights. See 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation

Weeks believes that Lagroue's video footage will directly contradict most of Lagroue's given testimony on the stand and show Weeks' vehicle was not speeding, that the troopers bad reading came from one of the several other vehicles in traffic that were behind Weeks or going in the opposite direction. This has indeed happened multiple times to Weeks and Troopers who have made this very same mistake are not uncommon. It will also show Weeks' seatbelt was on and will show the difficulty of the trooper even being able to see a seatbelt inside of Weeks' vehicle. It would also have Lagroue's admission to Weeks that there was giving Weeks "a mulligan on speed because there was other traffic." which contradicts Lagroue's testimony at trial. It is well known other traffic will cause bad readings with radar. Doppler radar registers the fastest speed measured, not two different speeds. The radar cannot track the speed of multiple vehicles (3+ in this case). It would also have shown Lagroue's unprofessional behavior when instigating the stop. This is why that footage is never provided if you are innocent. Now if you are guilty they don't seem to have a problem with providing it to you before trial as I have personally witnessed observing other people's cases.

Brady v. Maryland, 373 U.S. 83 (1963).

A Brady violation occurs when a prosecutor fails to provide a defendant or their defense attorneys with evidence that is favorable to their case. This can include exculpatory or impeaching evidence, or evidence that is material to their defense. The evidence must have been suppressed by the state, either intentionally or unintentionally, and the defendant must not have been able to obtain it themselves. Brady violations are a violation of a defendant's constitutional rights and can lead to a number of outcomes, including:

- Mistrial

If the violation is discovered during trial, the court can declare a mistrial or prevent the prosecution from using the unfavorable evidence

- Overturned conviction

If the violation is discovered after the defendant has been convicted, the most common outcome is that the conviction will be overturned

- Dismissed charges

The case may be dismissed

- Prosecutorial misconduct charges

If the prosecution withheld evidence intentionally, they may be subject to sanctions or charges of prosecutorial misconduct

Am I being retaliated against by Oxner adding speeding charges I was not ticketed for at the traffic stop because I am fighting the seatbelt ticket? And is it a violation of my civil rights and/or a Malicious Prosecution?

YES and YES. The only ticket I received at the stop was a bogus seatbelt ticket. {See Exhibit #2 Letter adding additional charge of speeding and Exhibit #3 Complaint for speeding, highlighted false claim of investigation.} Oxner admitted he did not order any evidence or look at any. Mirroring what Todd Boyd did in 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation. So there was no investigation so that was also a lie to intimidate me to pay more in fines. It appears I am the victim of an unconstitutional policing for profit scam where

they label me a sovereign citizen to prejudice the court against me so they can extract as much money as they want in retaliation. From what I have witnessed by observing in several other cases that came up before mine in the third circuit court was that there are people being charged for things they didn't do or having extra charges filed against them and they are pleading guilty to because the accused do not want to go through the further burden of dealing with a corrupt court resulting in loss of work, time, money and additional stress. I believe this conduct should be investigated so it can be stopped as currently the 3rd circuit court is not able to recognize and protect the rights of the innocent instead prioritizes revenue generation at all costs.

Is the prosecution's case tainted because of the false information from Lagroue calling Weeks a sovereign citizen?

The pretrial phone call with Oxner where he admitted the reason that Weeks was being ticketed and charged was because they highway patrol had it in their system that Weeks was a "sovereign citizen" who was a danger to law enforcement. When questioned by Weeks, Oxner claimed this came from Lagroue and that Oxner did not have access to information in the highway patrol's systems. Weeks later called the highway patrol and they claimed there was no such information in the notes of this ticket or any of the past stops conducted by the highway patrol. I believe they are playing dumb to avoid being sued. It appears not even I can get copies of this on my own. So both Oxner and Lagroue thought they had a sure win against an innocent man by labeling him a sovereign citizen because he was defending himself in court to further prejudicing the court against Weeks. STATE OF SOUTH DAKOTA v. MARTY MULLER 2005

On page 3 of Oxner's reply brief both Lagroue and Austin Oxner are outright lying about Weeks interaction with Lagroue "claiming the trooper was there to kill him." Weeks' dash cam

footage audio discredits this along as the details of the case in my Appellate brief. Weeks' truthful Statement to the officer "that it was for my safety as I have been assaulted and almost killed by people I don't know wearing a badge before." Rolling 3-4 inches is enough to clearly communicate with the officer and pass documents and stating a valid reason for not rolling down a window further satisfies the law's requirement. See sd-driver-manual-rev-12-2023 pages 61 and 62 No documents were requested by the officer at that time nor were there any problems with communication as my dash cam audio showed and as well as the officers dash cam audio would have shown. See USB with defendant's dash cam video and audio of stop submitted at trial Requesting the window being rolled down when it is already down is a tactic used by dishonest officers to provoke unconstitutional escalations of traffic stops so they can attempt to prolong the stop to add more charges willfully violating a victim's 4th amendment rights. Terry v. Ohio, 392 U.S. 1 (1968) This is consistent with the unconstitutional training that has been provided by Street Cop Training that has been banned in several states but has still been used in South Dakota since 2013.

The Judge's ruling does not prove guilt beyond reasonable doubt.

Due to a lack of evidence the states burden of proof guilt beyond a reasonable doubt has not been met. There is reasonable doubt based on the statements made by Lagroue and due to the fact that there has been a Brady violation committed by the prosecution not providing the video and audio even bothering to look at evidence or to even see if it is exculpatory in nature. The exculpatory evidence was never viewed by the court, Lagroue or Oxner and was not preserved as is the practice when the evidence is not in the state's favor. Because who is going to hold them accountable? DCI and the highway patrol will not investigate this. DCI will even cover for these bad actors and will withhold any evidence they may have of the state's liability and their own

liability until after the statute of limitations has expired or they are incorrectly dismissed from the case. As I did not receive any of that evidence of this in my previous cases until November 2023 over 7 years after in the 2016 and 2017 illegal traffic stops conducted by Murphy.

Is this case an attempt at interfering and or retaliation for my ongoing federal litigation against the City of lake Norden and Jimmy Murphy?

Due to the timing of this case and how it is affecting me by draining my time and resources having to work on a federal appeal and a state appeal simultaneously at the same time and the Circuit court assigning a status hearing on the exact same date my federal appeal is due on August 28th 2024 I have no doubt this is beyond being a coincidence it is now blatant to see these cases are connected. See Nikolas Weeks v. City of Lake Norden, et al; Case #: 0:24-cv-02298 (8th Cir. 2024) And due to the small world nature of how the 3rd circuit operates where prosecutors, attorneys, judges, and officers know each other are friends with each other, worked with each other or covering for each other would it fall under a conspiracy against Weeks' rights? **18 U.S.C. § 241** Conspiracy Against Rights Section 241 makes it unlawful for two or more persons to agree to injure, threaten, or intimidate a person in the United States in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States or because of his or her having exercised such a right.

Unlike most conspiracy statutes, §241 does **not** require, as an element, the commission of an overt act.

The offense is always a felony, even if the underlying conduct would not, on its own, establish a felony violation of another criminal civil rights statute. It is punishable by up to ten years imprisonment unless the government proves an aggravating factor (such as that the offense involved kidnapping aggravated sexual abuse, or resulted in death) in which case it may be punished by up to life imprisonment and, if death results, may be eligible for the death penalty. Section 241 is used in Law Enforcement Misconduct and Hate Crime Prosecutions.

Conclusion

The Magistrate and Circuit courts erred in convicting an innocent man. The Appellant still maintains his innocence and has provided facts stating there is still reasonable doubt in regards to his conviction. Unless there is definitive untainted proof provided by the state like video evidence showing the Appellant speeding and not wearing a seatbelt the Appellant should be found innocent of the charges and the Magistrate and Circuit court's decision reversed. The Appellant provided reasonable examples that David Lagroue made false statements under oath. I also ask for compensation for my lost time and work working on this. I also ask that the court refund any fines paid and expunge from my record any tickets I may have received in Brookings County from the Highway Patrol due to being illegally targeted because of false information in their system claiming I am a sovereign citizen or a threat to law enforcement. I would also ask that any such false information wrongfully putting my life and my family's lives in danger be removed from their system and where ever else it may reside with proof of removal. I need to know exactly where it is at so we can get rid of it and stop whoever is still spreading it. If it is found that Lagroue or Oxner made this "sovereign citizen" nonsense up to irreparably prejudice the court against Weeks then I will be filing complaints against both Oxner and Lagroue. Prosecutorial misconduct charges should be considered against Oxner for malicious prosecution. I will be going public exposing this policing for profit scam that is being run in these courts. It should not be required to appeal to the State Supreme court outside of the 3rd circuit or to Federal appellate courts out of the state of South Dakota to for the innocent to even receive a fair trial and hearings. I apologize there is more I could add but due to my limited time, health and resources I must turn in what I have done already. If there are any questions for me please contact me and I can help. I thank you for your time and consideration.

CERTIFICATE OF SERVICE

I hereby certify that on November 4th, 2024, I Served a true and correct copy of the foregoing Appellate Brief and accompanying materials by depositing a copy thereof in the United States Mail, postage for first class mail prepaid, to the following persons, to-wit:

The Honorable Marty J. Jackley
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STATE OF SOUTH DAKOTA)
:SS
COUNTY OF BROOKINGS)

IN CIRCUIT COURT
MAGISTRATE DIVISION
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA
Plaintiff

Vs.

NIKOLAS WEEKS
Defendant/Appellant

)
)
) Case No. POA24-301

) **Affidavit of Service**
)
)
)

I Nikolas Weeks hereby certify that on November 4th, 2024, I Served a true and correct copy of the foregoing South Dakota State Supreme Court Appellate Brief and accompanying materials by Hand delivering a copy thereof to the following persons, to-wit:

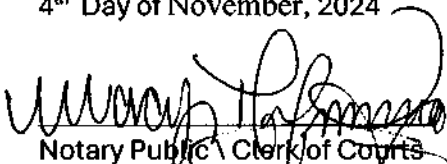
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or by leaving a copy of the documents at the Brookings States Attorney's Office in the presence of Austin Oxner, who works in that office as a deputy state's Attorney (describe relationship of person)

Dated this 4th Day of November, 2024.

Sworn/affirmed before me this
4th Day of November, 2024

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APPENDIX
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STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROOKINGS)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff/Appellee,

05 POA 24-301

vs.

**ORDER AFFIRMING
MAGISTRATE COURT DECISION**

NIKOLAS WEEKS,
Defendant/Appellant.

The above captioned matter having come before the Court for review, the State of South Dakota being represented by Austin J. Oxner, Deputy States Attorney, and Defendant Nikolas R. Weeks, representing himself *pro se*; the matter is before the Court on an appeal by Defendant/Appellant from a Judgment of Conviction, signed and filed on April 29, 2024, by the Honorable Abigail A. Howard, Magistrate Court Judge, convicting the Defendant of the offenses of Speeding §32-25-7, and Failure to Use Seatbelt §32-38-1, and the Court having reviewed the file *de novo*, the transcript, and the pleadings and papers filed by the parties, and finding no error by the Magistrate Court in entering said Judgment and Conviction, and the Court being in all things duly advised and good cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Judgment of Conviction signed by the Honorable Abigail A. Howard, Magistrate Court Judge, filed on April 29, 2024, which Judgment and Conviction convicted Defendant/Appellant of the offense of Speeding under SDCL §32-25-7, is affirmed in all respects, and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Judgment of Conviction signed by the Honorable Abigail A. Howard, Magistrate Court Judge, filed on April 29, 2024, which Judgment and Conviction convicted Defendant/Appellant of the offense of Failure to Use Seatbelt under SDCL §32-38-1, is affirmed in all respects

8/19/2024 10:13:47 AM

BY THE COURT:

Attest:
Ahmann, Angel
Clerk/Deputy




Dawn M. Elshere
Circuit Court Judge



STATE OF SOUTH DAKOTA
THIRD JUDICIAL CIRCUIT COURT

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August 16, 2024

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Re: State of South Dakota v. Nikolas Weeks 05POA24-301

Counsel:

A trial was held on April 4, 2024, regarding the ticket issued to Mr. Weeks for speeding on other roadways and a no seatbelt violation. On May 2, 2024, Mr. Weeks filed a notice of appeal regarding the Magistrate Court's decision. A status hearing was held on June 6, 2024, and subsequent briefs were filed regarding the appeal. The Court took the matter under advisement and now issues the following as its decision.

FACTS

Mr. Weeks was driving his vehicle through Brookings County on February 12, 2024. While driving, Mr. Weeks was stopped based on speeding in violation of SDCL §32-25-7. Mr. Weeks was issued a warning for the speeding violation but was cited for failure to use a seatbelt in violation of SDCL §32-38-1.

A Court Trial was held on April 22, 2024, where the Honorable Magistrate Abigail Howard found Mr. Weeks guilty of the above offenses. During the trial, both Mr. Weeks and Trooper LaGroue testified to the incident. Mr. Weeks testified that Trooper LaGroue pulled him over without proper cause because the objects between their vehicles obstructed the Trooper's view of Mr. Weeks' seatbelt. Contrary to Mr. Weeks' testimony, Trooper LaGroue stated that he could clearly see into the vehicle from his patrol car and had witnessed Weeks not wearing his seatbelt. Additionally, the Trooper testified that Mr. Weeks was speeding, as indicated by the radar gun and based upon the Trooper's experience and training. The Magistrate within her fact-finding discretion, found the testimony of Trooper LaGroue to be more credible than Mr. Weeks and found Mr. Weeks guilty of the above violations.

STANDARD OF REVIEW

“On appeal, the question before this Court is whether the evidence was sufficient to sustain the conviction.” *State v. Burkett*, 2014 S.D. 38, ¶ 38, 849 N.W.2d 624, 634 (citing *State v. Riley*, 2013 S.D. 95, ¶ 14, 841 N.W.2d 431, 436.) “In measuring the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (citation omitted). “Evidence is insufficient, and therefore not substantial, when no rational trier of fact could find guilt beyond a reasonable doubt.” *State v.*

Morse, 2008 S.D. 66, ¶ 10, 753 N.W.2d 915, 918. “[The reviewing Court] will not resolve conflicts in the evidence, assess the credibility of witnesses, or reevaluate the weight of the evidence.” *State v. Hauge*, 2013 S.D. 26, ¶ 12, 829 N.W.2d 145, 149).

DECISION

Mr. Weeks argues that the State failed to prove he was speeding and driving without a seatbelt based on his testimony at the trial court level. On the other hand, the State argues that based upon the trial court testimony of Trooper LaGroue, Mr. Weeks was speeding in a 30 miles per hour zone, traveling at 37 miles per hour, and was not wearing a seatbelt. The evidence viewed in the light most favorable to the prosecution can support a finding of guilt as to the speeding and driving without a seatbelt charge.

To sustain a conviction, each element of an offense must be supported by evidence. *State v. Plenty Horse*, 2007 SD 114, ¶¶ 8–9, 741 N.W.2d 763, 766. Here, the State has presented sufficient evidence to support a conviction. Based upon the Court’s review of the record, in the light most favorable to the verdict, Mr. Weeks (1) was traveling seven miles above the speed limit and (2) was driving without his seatbelt. The facts presented in accordance with the speeding charge are reliable and credible due to the radar gun speed assessment and Trooper LaGroue’s experience in viewing speeding vehicles. Additionally, despite Mr. Week’s having his seatbelt on when Trooper LaGroue approached the vehicle, Trooper LaGroue testified that in accordance with his training and experience an individual who is pulled over often fastens their seatbelt after the stop is initiated. Therefore, the decision of the Magistrate finding Weeks guilty of speeding and the seatbelt offense is affirmed.

In conclusion the appeal of Mr. Weeks is denied, and the judgment of convictions of the trial court is affirmed. An order affirming the decision of the trial court shall be prepared by counsel for the State and submitted to this Court for signature.

Sincerely,

Dawn M Elshere

Dawn M. Elshere

Circuit Court Judge

2-12-24

David LaRue
HP 177

West of case.
some vehicle Pontiac torrent

3rd illegal traffic stop by this trooper.
false accusations of speeding.

Window was rolled down enough to communicate clearly
and pass documents. No documents were requested
until outside of vehicle, falsely claimed I threatened him.
Trooper was frustrated and angrily opened my
door. He asked me where I went to law school?
IN A mocking tone and acting like a creep.

No reason for stop was given before exiting
the vehicle. false if accused me of speeding.
and no seatbelt. seat belts were on. He "thinks they were".
No name tag was visible. seat belt is secondary
I stayed out side of the vehicle.

First identified him self only as David.

I did not recognize him due to his appearance
changing. once he said his last name I recognized
him as the officer that made comments about my daughter
when she was not present at a previous stop sending up
immediate red flags, when some one makes a creepy
comment like that you kinda remember the person making them.

he waffled about the reasons for the other stops
I corrected him. he admitted I have a much better
memory than him. said he was giving me a million on speed due to traffic,
2 other vehicles behind me. one vehicle passed me going the opposite direction

officer was sitting at the change where it turns from 39 to 40.

3-14-24 he was sitting in the same spot laughing as I went by.
WINDOWS were dirty. car interior is black
MY dash cam showed speed of 29-30 before reaching 40 sign
the seat belts cannot be seen from the dash cam
the seat belts are black
his imagination is not evidence.
ONLY TIME I WAS GOING 37 I WAS IN THE 40 BEFORE
BEING PULLED OVER.

OFFICE OF STATES ATTORNEY
BROOKINGS COUNTY



520 THIRD STREET, SUITE 330 • BROOKINGS, SOUTH DAKOTA 57006
PHONE: (605) 692-8606 • FAX: (605) 692-6960

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dnelson@brookingscountysd.gov
BENJAMIN L. KLEINJAN, *Deputy*
bkleinjan@brookingscountysd.gov
AUSTIN J. OXNER, *Deputy*
aoxner@brookingscountysd.gov

March 22, 2024

Nikolas R. Weeks
19551 US Highway 81, Lot 11
Arlington, SD 57212

RE: State vs. Nikolas R. Weeks POA

Dear Mr. Weeks,

Enclosed please find a Complaint charging you with the additional charge of Speeding. This charge will be addressed along with the Seatbelt Charge.

You are currently scheduled for a Court Trial on Monday, April 15, 2024 at 1:30pm, however, due to officer scheduling, the Court Trial has been moved to Monday April 22, 2024. You will need to appear for the **Court Trial on April 22, 2024 at 1:30pm**. Please call our office to confirm receipt of this letter.

Please advise if you have any questions.

Thank you.

Sincerely yours,

Austin Oxner
Deputy States Attorney

AO:arj

CALL 10:30-11:00

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROOKINGS)

IN CIRCUIT COURT
MAGISTRATE DIVISION
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
NIKOLAS R. WEEKS)
DOB: 4-14-1984)
19551 US HIGHWAY 81, LOT 11)
ARLINGTON, SD 57212)
)
Defendant.)

POA24-301
COMPLAINT FOR:
SPEEDING
(37 IN A 30 MPH ZONE)
A CLASS 2 MISDEMEANOR
VIOLATION OF SDCL 32-25-7

That on or about the 12th day of February, 2024, in the County of Brookings, State of South Dakota, Nikolas R. Weeks did commit the public offense of Speeding, A Class 2 Misdemeanor, (SDCL 32-25-7), in that he did: drive and operate a motor vehicle upon a highway in an area where the maximum speed limit had been duly established at 30 miles per hour, and at such time and place the said Defendant did drive and operate such vehicle at a speed in excess of said posted speed limit, 37 miles per hour; contrary to statutes in such case made and provided against the peace and dignity of the State of South Dakota.

That Complainant states that he is the States Attorney in and for Brookings County and in such capacity files this Complaint based upon an investigation into said matter by the South Dakota Highway Patrol, such investigation evidencing that the foregoing Complaint is true and correct to the best of your Complainant's knowledge, information, and belief.

Dated this 22nd day of March, 2024, at Brookings, South Dakota.

-s- Austin Oxner

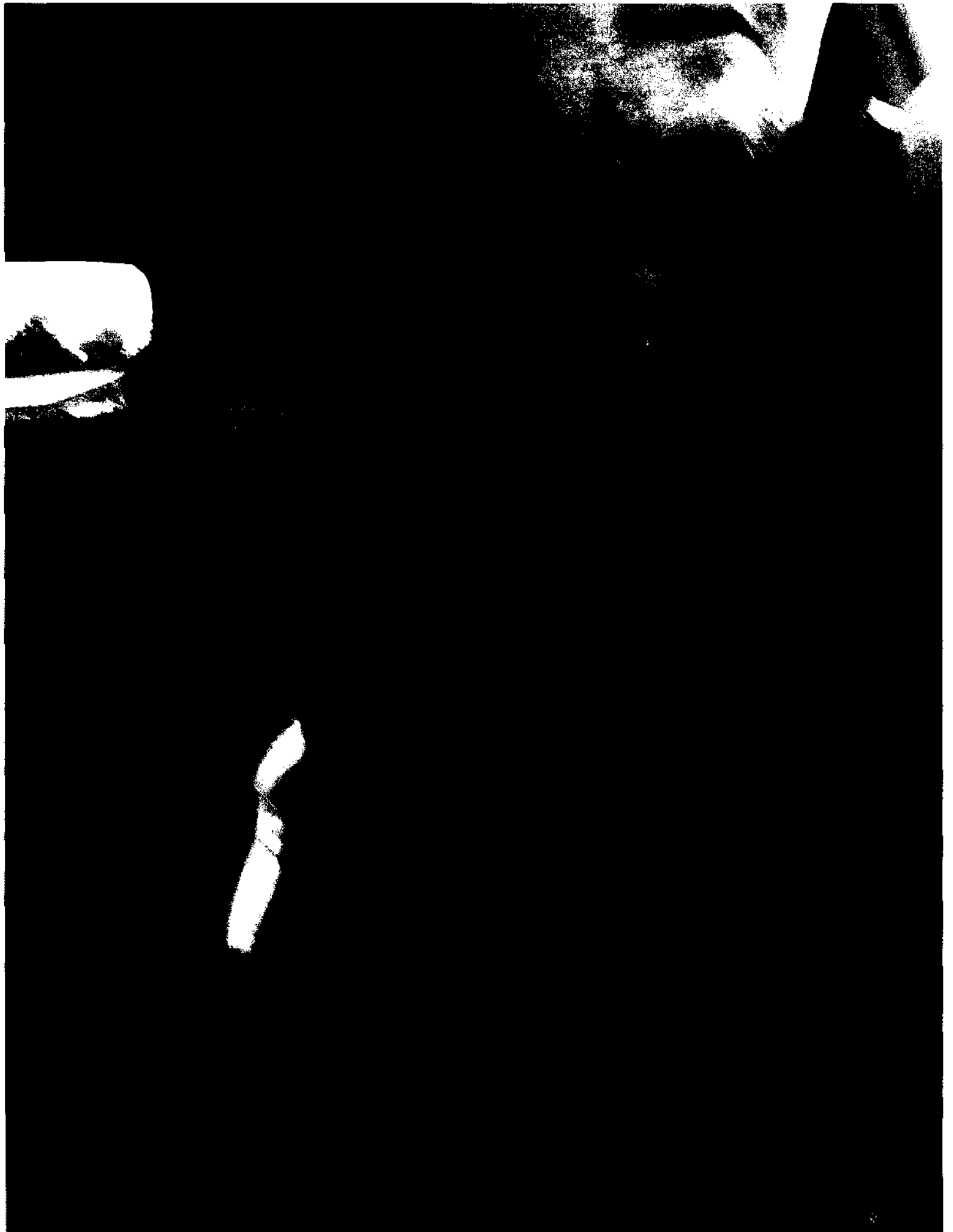
Complainant

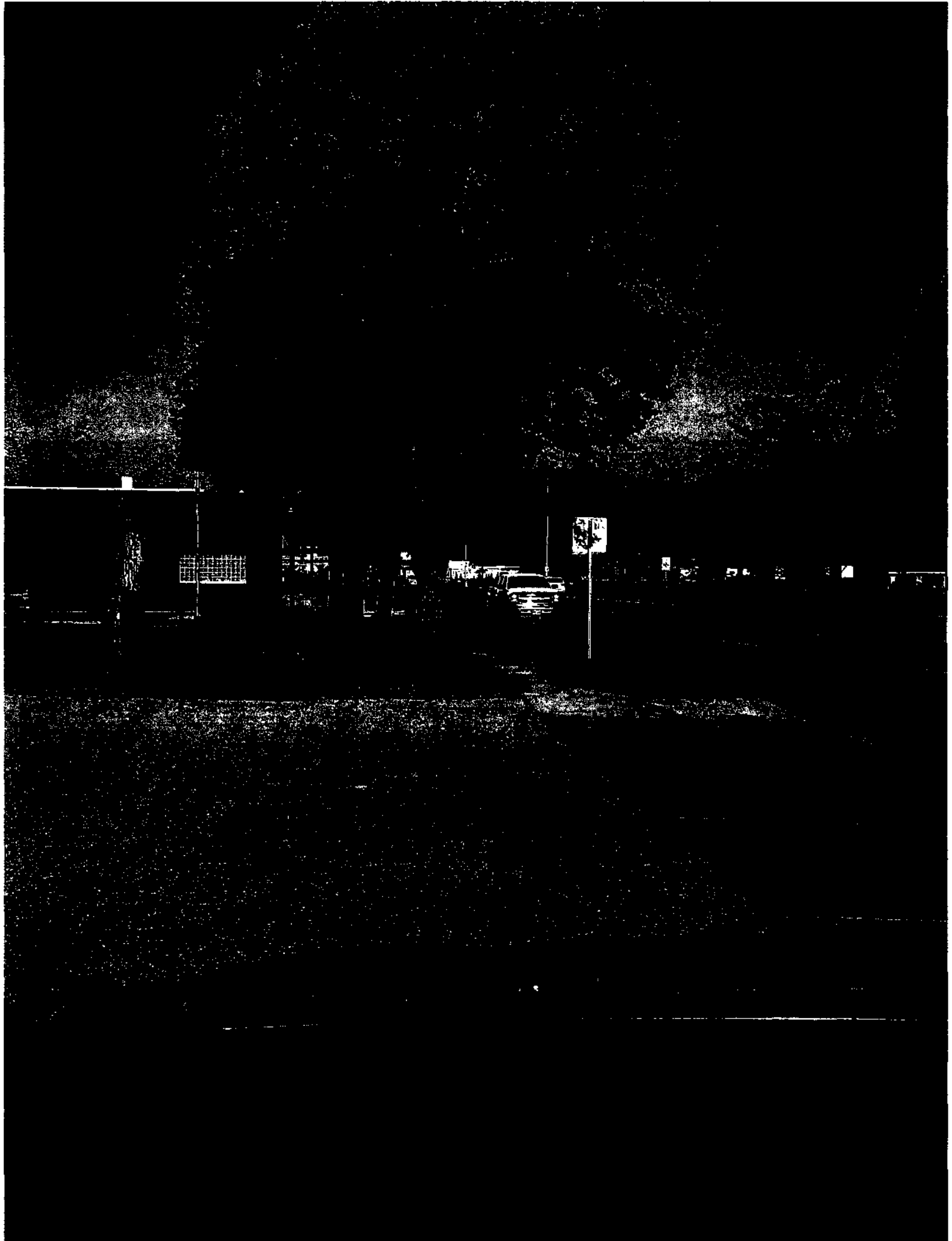
Subscribed and sworn to before me on this 22nd day of March, 2024.

-s- Abigail R. Jensen

Notary Public - South Dakota

My Commission Expires:
August 22, 2025







1 STATE OF SOUTH DAKOTA) IN MAGISTRATE COURT
2 COUNTY OF BROOKINGS) :SS
3) THIRD JUDICIAL CIRCUIT

4 * * * * *

5 STATE OF SOUTH DAKOTA,
6 Plaintiff, 05POA24-301

7 vs. COURT TRIAL

8 NIKOLAS R. WEEKS,
9 Defendant.

10 * * * * *

11 BEFORE: The Honorable Abigail A. Howard
12 Magistrate Court Judge

13 APPEARANCES: Mr. Austin J. Oxner
14 Brookings County State's Attorneys Office
15 Brookings, South Dakota
16 Appearing on behalf of the Plaintiff

17 Mr. Nikolas Weeks
18 Appearing Pro Se

19 PROCEEDINGS: The above-entitled proceeding commenced at
20 2:24 p.m. on the 22nd day of April, 2024,
21 at the Brookings County Courthouse,
22 Brookings, South Dakota.

23 TRANSCRIBED BY: Kristin A. Woodall, RPR, CRR, CRC
24 Official Court Reporter
25 314 6th Avenue
Brookings, South Dakota 57006
(605) 688-4206

I N D E X

1			
2	WITNESSES		PAGE
3	DAVID LaGROUE		
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16	<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>ID'D/RECV'D</u>
17			
18	Letter A	Picture of vehicle	12 **
19	B	Video of stop	22 24
20			
21			
22			
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P R O C E E D I N G S

1
2
3 THE COURT: Nikolas Weeks. All right, sir. You had
4 previously appeared, entered a not guilty plea on a speeding
5 citation, and today was the date and time scheduled for a court
6 trial in the matter. Are you still wishing to proceed with
7 your court trial?

8 MR. WEEKS: Yes.

9 THE COURT: And is the State ready to proceed?

10 MR. OXNER: The State is.

11 THE COURT: State may call their first witness.

12 MR. OXNER: The State would call David LaGroue, State
13 trooper with the South Dakota Highway Patrol, as its first
14 witness.

15 DAVID LaGROUE,

16 called as a witness herein, having been first duly sworn, was
17 examined and testified as follows:

18 THE COURT: Please have a seat.

D I R E C T E X A M I N A T I O N

19
20 BY MR. OXNER:

21 Q. Can you state your name and occupation for the record?

22 A. My name is Dave LaGroue and I'm a trooper for the
23 South Dakota Highway Patrol.

24 Q. And were you on patrol on February 12th of this year?

25 A. I was.

1 Q. And approximately 5:24 p.m., did you conduct a traffic
2 stop on a motor vehicle?

3 A. I did.

4 Q. What was the reason for the stop on that motor vehicle?

5 A. The reason for the stop was speeding, 37 in a
6 30-mile-per-hour zone.

7 Q. And how did you track the speed of that motor vehicle?

8 A. I activated my front radar antenna in the opposite
9 direction mode.

10 Q. And that then gave a reading of oncoming traffic?

11 A. Correct.

12 Q. Did you observe other traffic at that time or were you
13 able to identify that vehicle as traveling at that speed?

14 A. The vehicle appeared to be traveling faster than the
15 posted speed limit. There was some other traffic on the
16 roadway at the time, but none that would have interfered with a
17 radar reading.

18 Q. And where did -- where were you stationary at that time?
19 Where did you observe this vehicle initially?

20 A. I was stationary patrol in a parking lot near the
21 intersection of Western Avenue and 6th Street.

22 Q. And were you stationed close to the roadway or deep into
23 the parking lot?

24 A. I was stationed close to the roadway.

25 Q. As the -- that location, I should clarify, that location

1 is here in Brookings County?

2 A. It is.

3 Q. And when that motor vehicle passes, do you make any other
4 observations at that time?

5 A. I did. When the vehicle passed, I observed the driver was
6 not wearing a seat belt.

7 Q. And you then conducted a traffic stop on this motor
8 vehicle?

9 A. I did.

10 Q. And do you make contact with the driver?

11 A. I do.

12 Q. Who did you identify the driver as being?

13 A. I identified the driver as Nikolas Weeks, the defendant
14 sitting at the table over here.

15 MR. OXNER: Your Honor, may the record reflect that the
16 witness has identified the defendant.

17 THE COURT: The record may so reflect.

18 Q. (By Mr. Oxner) What occurs next during this traffic stop?

19 A. During the traffic stop, initially the driver, Mr. Weeks,
20 was uncooperative with me asking him to roll his window down
21 and then subsequently get out of the vehicle.

22 Q. And are there any statements or admissions made by the
23 defendant at that time?

24 A. During the initial contact, the driver rolled the window
25 down only slightly and stated to the effect that I was there to

1 murder him.

2 Q. And did you inform him of the reason for the stop at that
3 time?

4 A. I did.

5 Q. And the reasons were the speed and the seat belt?

6 A. Correct.

7 Q. And what occurs next?

8 A. I opened the driver's door and asked the driver several
9 times to get out and the driver finally complied.

10 Q. He provided you with his proper documentation?

11 A. He did.

12 Q. And ultimately did you cite Mr. Weeks?

13 A. I did. I cited Mr. Weeks for the seat belt and I warned
14 him for the speed.

15 MR. OXNER: Your Honor, I have no further questions.

16 THE COURT: All right. Mr. Weeks, do you have any
17 questions for this witness?

18 MR. WEEKS: Yeah.

19 CROSS-EXAMINATION

20 BY MR. WEEKS:

21 Q. So you're claiming now that I stated that you were there
22 to murder me. That's not correct.

23 A. Something to that effect.

24 Q. I gave you a legitimate reason.

25 MR. OXNER: Objection, argumentative.

1 MR. WEEKS: Okay.

2 THE COURT: So I will let you give me your side of the
3 story. This is just --

4 MR. WEEKS: I have audio --

5 THE COURT: Hold on. This is just your time to ask him
6 questions.

7 Q. (By Mr. Weeks) Okay. All right. What lane was I in,
8 observed in, traveling in?

9 A. You were in the -- so there's two lanes headed westbound
10 out of Brookings on 6th Street. You were in the lane to the
11 right.

12 Q. To the right. Are you sure about that?

13 A. Yes.

14 Q. All right. And you said there was additional traffic
15 there, correct?

16 A. There was traffic on the roadway, correct.

17 Q. Okay. So the vehicle that was passing me going the
18 opposite direction you're claiming would not interfere with
19 your readings?

20 MR. OXNER: Objection, assumes facts not in evidence.

21 THE COURT: Sustained.

22 Q. (By Mr. Weeks) Okay. When did you identify yourself to me
23 during the traffic stop?

24 A. Initially on walking up to the window.

25 Q. Why did you angrily open my door?

1 MR. OXNER: Objection, argumentative.

2 THE COURT: Sustained.

3 Q. (By Mr. Weeks) How many times did you ask me to exit the
4 vehicle? How long did that take?

5 A. I'd have to watch the dash cam video. Approximately at
6 least twice.

7 Q. Do you have that video here today?

8 A. I don't have it. It's available, but I don't have it here
9 today.

10 Q. Were you aware that I was recording?

11 A. Yes.

12 Q. Okay. What is the reason for removing me from the
13 vehicle?

14 A. Officer safety.

15 Q. So where a person is inside a vehicle, they're easier to
16 control and have less movement, you're having a person get out
17 of the vehicle where they're more likely to be able to --

18 A. Mr. Weeks --

19 Q. -- defend themselves?

20 A. -- stick with yes or no questions, please.

21 MR. OXNER: Objection, argumentative.

22 THE COURT: And let me advise the party how to ask the
23 questions, okay?

24 Sustained as argumentative.

25 Q. (By Mr. Weeks) There is a history with this particular

1 State trooper. There were two previous --

2 THE COURT: Is this a question for him or are you telling
3 me something? So I will absolutely give you --

4 MR. WEEKS: Not the right time for that.

5 THE COURT: I will give you time at the end to tell me
6 whatever you'd like to. This is only the time to just ask him
7 questions. If you don't have any other questions, he can be
8 seated and I will let you have your chance to speak as well.

9 Q. (By Mr. Weeks) Have you pulled over this particular
10 vehicle before?

11 A. Yes.

12 Q. What was the reason for that?

13 MR. OXNER: Objection, beyond the scope and relevance.

14 THE COURT: Sustained as irrelevant.

15 MR. WEEKS: It sets a past background and history. Also,
16 similar accusations were made then that were not ticketed for.

17 THE COURT: Okay. Well, I'm sustaining the objection. So
18 you need to move along.

19 MR. WEEKS: Okay.

20 Q. (By Mr. Weeks) At the traffic stop, you did make an
21 admission that I have a much better memory than you; is that
22 correct?

23 A. Yes.

24 Q. All right. What color was the interior of my vehicle?

25 A. I do not recall. I do believe it was, if I have to -- I

1 don't recall.

2 Q. What color were the seat belts?

3 A. Seat belts were gray.

4 Q. What color was the clothing that the occupants were
5 wearing?

6 A. You were wearing a jacket that had red on it. I do not
7 know what your daughter was wearing.

8 THE COURT: Do you have any other questions for this
9 witness?

10 Q. (By Mr. Weeks) On March 14th, you were sitting in the same
11 position; is that correct?

12 A. I do not recall.

13 Q. You don't recall? Did you recognize my vehicle on that
14 date?

15 MR. OXNER: Objection, relevance.

16 THE COURT: Sustained.

17 MR. WEEKS: The relevance is is he was sitting there and
18 he was observed pointing and laughing at me.

19 THE COURT: This is a month after this incident so I'm
20 finding it irrelevant. The objection is sustained. Move on.

21 MR. WEEKS: All right.

22 Q. (By Mr. Weeks) How far did you say that the window was
23 rolled down?

24 A. Not enough.

25 Q. What is enough?

1 A. At least halfway.

2 Q. At least halfway? So say this far would not be enough to
3 pass documents or communicate?

4 A. No.

5 Q. Did you have difficulty hearing me?

6 A. Yes.

7 Q. Was my vehicle on?

8 A. I do not recall.

9 Q. Can you repeat that?

10 A. I do not recall your vehicle --

11 Q. You do not recall, okay. When did you first ask for my ID
12 and my information?

13 A. At the vehicle.

14 Q. At what?

15 A. At the vehicle.

16 Q. At the vehicle?

17 A. Yes.

18 Q. Okay. While inside the vehicle?

19 A. Yes.

20 Q. And you are claiming you identified yourself while I was
21 still inside the vehicle?

22 A. Yes.

23 MR. WEEKS: I have an exhibit I'd like to show him. Is
24 that allowed?

25 THE COURT: Mark? We'll have to mark it as Defendant's

1 Exhibit A. Show Austin and then have Courtney mark it and then
2 hand it to the witness, please.

3 Go ahead, sir, with your questioning.

4 Q. (By Mr. Weeks) Is that the vehicle that you pulled over?

5 A. Yes.

6 Q. Can you see seat belts in there at all?

7 A. The photo is dark, so no.

8 Q. Okay. Was it also dark or getting dark during that time
9 that I was pulled over?

10 A. No.

11 Q. So it wasn't cloudy, overcast?

12 A. The sun was out.

13 Q. At that time that was before Daylight Savings Time.

14 MR. OXNER: Objection, argumentative.

15 THE COURT: Sustained.

16 Q. (By Mr. Weeks) Were you sitting at that distance that that
17 photo was taken?

18 A. Without measurements, it's hard to say.

19 Q. So would you say that that would be in your lane or far
20 lane? You're claiming right-right lane, correct?

21 A. This picture is obviously in a parking lot.

22 Q. So it would be roughly the distance that you were sitting
23 from where you observed the vehicle though?

24 A. Without measurements, I couldn't say.

25 Q. Okay. When you approached the vehicle, were all the

1 occupants wearing their seat belt?

2 A. Without reviewing the dash cam footage, I would be unsure
3 at that moment. I do believe that both occupants were wearing
4 their seat belts.

5 Q. When I exited the vehicle, did you witness me take off my
6 seat belt?

7 A. Yes.

8 MR. WEEKS: All right. I believe I'm done with
9 questioning for now.

10 THE COURT: Did you want to offer that document as an
11 exhibit or did you want it back?

12 MR. WEEKS: The Court can keep it so I can ...

13 THE COURT: Any objection, Mr. Oxner?

14 MR. OXNER: Your Honor, the State's concern here would be
15 authentication. I don't know the features under which this
16 photo was taken or how it was printed.

17 THE COURT: I'll sustain the objection. So it's not
18 admissible under this witness. If you're going to testify
19 regarding it, it may be admissible under you, but you have to
20 establish foundation for it. So, Mark, would you just return
21 that to Mr. Weeks, please.

22 Redirect, Mr. Oxner.

23 MR. OXNER: Yes, Your Honor.

24

25

REDIRECT EXAMINATION

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BY MR. OXNER:

Q. Do individuals ever put their seat belts on after a traffic stop is initiated?

A. Yes.

Q. And when that vehicle passed you that day, you believe that that driver, the defendant, did not have his belt on at that time?

A. Correct.

Q. In addition, there was also the issue as it relates to speed?

A. Correct.

Q. Do you have any reason to doubt that your radar equipment was in working order?

A. I have no reason to doubt.

MR. OXNER: Your Honor, I have no further questions.

THE COURT: Any recross, Mr. Weeks? That means any additional questions related to what Mr. Oxner just asked?

REXCROSS-EXAMINATION

BY MR. WEEKS:

Q. Do you have the calibration records of your device with you today?

A. No.

Q. How often do you calibrate that?

A. I do not calibrate my radar.

1 Q. Okay. Who does that?

2 A. It's done at the factory when it's sold to the agencies.

3 Q. What is the brand or the type model of that equipment?

4 A. It's a Stalker radar.

5 Q. And is that front-facing only?

6 A. I have a front-facing antenna and a rear-facing antenna.

7 Q. So it's not hand held, it's fixed, correct?

8 A. Correct.

9 Q. And those readings came from the front-facing or was it
10 the rear-facing?

11 A. Front-facing.

12 MR. WEEKS: All right. That's it with those questions,
13 yeah.

14 THE COURT: You may step down, Trooper.

15 State rest?

16 MR. OXNER: The State rests.

17 THE COURT: All right. Mr. Weeks, did you wish to
18 testify?

19 MR. WEEKS: Yes.

20 THE COURT: So I'm going to swear you in. You can stay
21 seated right there. Please raise your right hand.

22 NIKOLAS WEEKS,
23 called as a witness herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE COURT: All right. And I'm just going to caution you

1 anything you tell me I will give the State's attorney the
2 opportunity to cross-examine you. Okay?

3 MR. WEEKS: Okay.

4 THE COURT: Go ahead and tell me what you would like to
5 about the case.

6 MR. WEEKS: Okay. Do I introduce myself too at that time
7 or ...

8 THE COURT: Well, I know who you are. So I would just
9 start by telling me what you think happened on February 12th.

10 MR. WEEKS: Okay. February 12th, I was traveling west on
11 the street that goes through Brookings. The officer was
12 sitting in the position that he described except there's some
13 differences between the testimony. I was in the left lane. I
14 was not in the right lane. There were also two vehicles behind
15 me that were accelerating and there was another one that passed
16 going the opposite direction at that same time. That vehicle
17 where the officer was sitting is where it changes from a 40
18 into a 30. So the vehicle passing me in the opposite direction
19 was coming in from the 40 down to the 30.

20 And then once I was pulled over, just before that, the
21 only time that I would have been going 37 as the officer claims
22 would have been while I was in the 40. That would have been
23 behind him. And then it also would have been before he pulled
24 me over and in that section it would have been a 50 or a 55
25 there.

1 When I saw the officer, I looked up. I have a heads-up
2 display that tells me my speed. At that time that I looked up
3 there, I was going 29 miles an hour. I would trust the
4 instrumentation in my vehicle before I would trust the
5 instrumentation of somebody outside of my vehicle.

6 Let's see. I'm trying to process how to do this because
7 there's so much stuff that's not correct from the officer's
8 testimony so I'm trying to figure that out here. All right.
9 During the traffic stop, the officer did not identify himself
10 or tell me what the reason for the stop was. He was telling me
11 to roll down the window. The window was down fairly far. And
12 I gave him a reason that I have survived an attempted murder by
13 another law enforcement officer and I was afraid and I didn't
14 know what the reason for the stop was and I knew I wasn't
15 speeding or committing any violations. I also don't have a
16 history. I have a clean driving record.

17 When I told him my reason, he falsely claimed that I was
18 threatening him. He was frustrated and angrily opened my door,
19 just ripped it open and it scared my daughter. Also, after I
20 stepped out of the vehicle, he was mocking me and he asked me
21 where I went to law school and I told him that I've had to do
22 most of these myself. I had several illegal traffic stops.
23 This is not my first rodeo in this. I, again, was assaulted
24 and almost killed by the former Lake Norden city police chief
25 in retaliation for my first case against him which went to the

1 South Dakota Supreme Court. I'm still fighting that case in
2 federal court today. So there's quite a bit of history.

3 There's also a history with this particular State trooper
4 as well. Since my first traffic incident with that Lake Norden
5 police chief, I have been the victim of 22 illegal traffic
6 stops. As you can see by my driving record, not very many of
7 those survived to get to court or resulted in convictions.
8 Many of those were from the State patrol or the Highway Patrol
9 here.

10 And my job that I had at the time, I was the warranty
11 repair technician that traveled to fix computers. I covered
12 the area in between Duluth, Minnesota, and Gillette, Wyoming,
13 and Grand Forks all the way to Sioux City. That was my
14 territory. Most of my customers were law enforcement
15 government agencies. That is where most of my work came from.
16 So there's also a history from that first initial traffic stop
17 that I found out is still haunting me today. I spoke with the
18 State's attorney here earlier today --

19 MR. OXNER: Judge, I'm going to object as to this is under
20 the scope of plea negotiations.

21 THE COURT: Sustained. So that's not something you get
22 into for these purposes today.

23 MR. WEEKS: Well, I am being targeted. As you can see,
24 I'm not a person who's a law breaker. I'm not a felon or a
25 drug user or any of that despite how people are trying to paint

1 me. The language that the State patrol is using in there is
2 they're claiming I'm a sovereign citizen.

3 MR. OXNER: Objection.

4 MR. WEEKS: That is not true.

5 MR. OXNER: Objection, relevance.

6 THE COURT: Sustained. And I've heard no mention of that
7 at all today so that's not something that's been brought up in
8 this hearing.

9 MR. WEEKS: Well, I haven't had my chance to share that
10 evidence until now so ...

11 THE COURT: Okay. Do you want to tell me you're a
12 sovereign citizen?

13 MR. WEEKS: I am not a sovereign citizen.

14 THE COURT: Okay. Then it's been resolved. Continue.

15 MR. WEEKS: That's something that's been clearly affecting
16 how State patrol interacts with me. And again, this is the
17 third stop by this individual and his behavior is escalating.
18 It's not to the point of where he's another Jimmy Murphy, but
19 it's getting there where he's angrily ripping out opening my
20 door before he's even told me his name, who he is, or given a
21 legitimate reason for the stop.

22 And you can understand how I would be afraid and how it
23 scared my daughter when I'm in these situations. These
24 situations are life-threatening. If you haven't done anything
25 wrong and you've got somebody who is either having a bad day,

1 clearly mistaken, or has trouble remembering details, I mean,
2 there's issues with that. His credibility, he's made several
3 statements that bring his credibility into question. I mean,
4 claiming there was no seat belt when clearly it's difficult to
5 see a seat belt in there. I understand that may be probable
6 cause to an extent, but there's a reason why seat belt
7 violations are not a primary offense because it's difficult to
8 see that as shown in the photo I presented. I mean, I even
9 have the same vehicle here today for inspection if that's
10 necessary.

11 Let's see. He also had no name tag, no body cam on him.

12 MR. OXNER: Objection as to relevance.

13 THE COURT: Sustained.

14 MR. WEEKS: Okay. He did not identify himself until the
15 end of the traffic stop. At first, he only identified himself
16 as David. And I had to ask him, "David what," as I didn't
17 recognize him from the previous traffic stops because of the
18 amount of time that's passed. And once I recognized who he
19 was, then I remembered he was the same one from then. And the
20 only reason I remember who he is is because he made a comment
21 about my daughter when my daughter was not present at that
22 second traffic stop. So I have to take that as a threat
23 because I don't know this man. He doesn't know me or my
24 daughter.

25 MR. OXNER: Objection, speculative.

1 THE COURT: Sustained.

2 MR. WEEKS: After he identified himself, he was kind of
3 waffling about and incorrectly remembering what the reasons for
4 the previous traffic stops were. I corrected him and then, you
5 know, he also admitted I had a much better memory than he did.

6 He also said that he thinks the seat belts weren't on. So
7 that's -- he didn't know for sure. That's what I take away
8 from his statements there. And then --

9 MR. OXNER: Objection, argumentative.

10 THE COURT: Sustained.

11 MR. WEEKS: I'd like to submit a copy of my notes that I
12 wrote down from this traffic stop. I also have audio, partial
13 audio of the traffic stop before I was removed from the
14 vehicle.

15 THE COURT: All right. Well, regarding your notes, if
16 that's something you wrote, you can just read it.

17 MR. WEEKS: I went over a lot of that in the questioning,
18 but I know sometimes having a hard copy helps.

19 THE COURT: So you just want to submit a document of
20 everything you just said?

21 MR. WEEKS: Um, yes.

22 MR. OXNER: I would object as to relevance anyways,
23 Your Honor. The defendant can testify as to his notes or use
24 the notes to refresh his recollection for testimony.

25 THE COURT: Sustained. We typically don't accept

1 documents of something you've written because you can testify
2 to all of that. So if you've already covered that, then I
3 don't need to see it in writing. What else do you have?

4 MR. WEEKS: Let's see.

5 THE COURT: You mentioned a video. Is that something
6 you've got --

7 MR. WEEKS: Yes, I have my computer with and I also have
8 video of the traffic stop.

9 THE COURT: Okay, if you wish to offer that.

10 MR. OXNER: Your Honor, if there's no actual exhibits such
11 as a disk or a hard drive of some sort, I would -- I don't know
12 how it can be admitted or published without admission. I did
13 inform the defendant of this previously.

14 THE COURT: I think he has a flash drive.

15 MR. WEEKS: I have a USB.

16 MR. OXNER: Oh.

17 MR. WEEKS: Is that acceptable?

18 THE COURT: It is.

19 MR. WEEKS: All right.

20 THE COURT: And what is this a recording of? It's a --

21 MR. WEEKS: This would be my audio recorder inside the
22 vehicle because the video, it's front-facing and back-facing.

23 THE COURT: All right. Can someone help him set that up?

24 Mr. Oxner, she just stepped out, but I don't know if
25 Ms. Werder had a file we were taking up today. I did not have

1 her on my calendar.

2 MR. OXNER: Your Honor, we didn't have her on the calendar
3 either. I think she was going by the pretrial order. I've had
4 communications --

5 (Discussion off the record.)

6 MR. WEEKS: It's a video file. I have software that works
7 with my video.

8 (Discussion off the record.)

9 (Audio recording published.)

10 MR. WEEKS: Okay. You can hear him saying that I
11 threatened him. Did you hear any threats that I made that
12 would make an officer fear for their safety?

13 MR. OXNER: Objection.

14 THE COURT: I'm assuming that's rhetorical. You don't get
15 to ask the judge questions so ...

16 MR. WEEKS: Okay, yeah, I'm just pointing that out. So
17 I'll continue.

18 (Audio recording published.)

19 MR. WEEKS: So at this point he's ripping open my door
20 angrily and he has not identified himself yet and I've got
21 reason to fear for my safety now.

22 (Audio recording published.)

23 MR. WEEKS: Also, you can see that he did not ask for any
24 documentation at the time while I was inside the vehicle.

25 (Audio recording published.)

1 THE COURT: Is there any more audio on this video?

2 MR. WEEKS: This goes on for about 20 minutes where I'm
3 standing outside of the vehicle.

4 THE COURT: Well, I don't need to hear 20 minutes of
5 silence.

6 MR. WEEKS: Yeah, so they -- you can barely hear some of
7 it, but by removing me from the vehicle he's made my recording
8 of this incident less than useful.

9 THE COURT: Okay.

10 MR. WEEKS: And it's hard for me to be able to go over
11 some of that especially when all I have are my notes.

12 THE COURT: Okay. Were you wanting to offer that as an
13 exhibit in the case, what you just showed us?

14 MR. WEEKS: Yeah, because it contradicts a lot of his
15 testimony that he gave on the stand.

16 THE COURT: All right. Mr. Oxner, any objection to the
17 defendant's exhibit being admitted?

18 MR. OXNER: No objection.

19 THE COURT: Mark, I'll have you -- so we need your flash
20 drive. We'll have that marked at Defendant's Exhibit B.

21 MR. WEEKS: Okay.

22 THE COURT: That will be admitted and received into
23 evidence. Anything else today, Mr. Weeks?

24 MR. WEEKS: I have a sheet that's also from the public
25 safety driver's manual. And then it also states here that when

1 you're pulled over that you roll down the window so you can
2 communicate. This much I'm finding it hard to believe that he
3 wasn't able to communicate. And then previously before that
4 was updated, it also said to pass documents through. Now,
5 there's another section here when they're asked for that. I
6 was outside of the vehicle before I was asked for any
7 documentation.

8 THE COURT: Okay. Are you wanting to offer that as an
9 exhibit?

10 MR. WEEKS: Yes, I can offer that as an exhibit too. I
11 think this is from the 2023.

12 MR. OXNER: And I would object on the grounds of
13 relevance.

14 MR. WEEKS: The relevance would be that this guy's already
15 conducting a questionable traffic stop and that the rolling
16 down of a window like that when it's very clear that it's
17 sufficient for communication and passing through documents, the
18 officer's trying to escalate and he may not have a legitimate
19 traffic stop.

20 THE COURT: All right. Well, the objection is sustained
21 for our purposes today. I don't find that it would have a
22 relevant bearing. Anything else today?

23 MR. WEEKS: Part of me having to defend myself against a
24 lot of these things instead of paying fines for things I didn't
25 do which many people I have witnessed in courtrooms do

1 especially when I sat in court earlier is I observed what I
2 believed were people who were pleading guilty because they
3 didn't want to go through the hassle of court.

4 MR. OXNER: Objection, speculative.

5 THE COURT: And also irrelevant, sir. All we're here to
6 talk about today is your case. So whatever anybody else went
7 through today is, correct, it's speculative and it's irrelevant
8 to me ruling factually on your case.

9 MR. WEEKS: And part of that is I have to maintain for my
10 employment and for me obtaining a similar job than what I had
11 before, I have to maintain clean driving records and clean
12 criminal history. And I have been doing my hardest to do that
13 despite the efforts of people who seem to have it out for me.

14 THE COURT: Okay.

15 MR. WEEKS: And part of it is I have to pass background
16 checks. I also have to be able to get, obtain security
17 clearances and maintain a good moral character and that's
18 required for the employment that I've had in the past as well
19 as employment that I'm seeking in the future.

20 THE COURT: Okay.

21 MR. WEEKS: And I have to maintain that. I believe
22 through my efforts I have been doing that.

23 THE COURT: Okay. All right. Do you rest? No other
24 evidence or witnesses you wanted to offer today?

25 MR. WEEKS: I believe from the officer's testimony, he's

1 already said that he remembers seeing that my seat belts were
2 on when he approached my vehicle. He remembered me taking off
3 the seat belt when I exited the vehicle. I believe that the
4 officer's testimony was an exaggeration of what actually
5 happened falsely claiming that I stated he was going to murder
6 me or he was -- that, yeah, making those statements. That's
7 not true. And I believe that my security concerns are valid
8 considering what I've gone through in the past.

9 THE COURT: All right. Mr. Oxner, any cross?

10 MR. OXNER: Nothing further.

11 THE COURT: All right. Mr. Weeks, so I think you've
12 offered everything that you wanted to at this point, correct?

13 MR. WEEKS: I believe so.

14 THE COURT: All right. So both parties having rested
15 then, I do believe I have sufficient information to make a
16 ruling.

17 So a couple of things. You were combining a lot of
18 different arguments, Mr. Weeks. The first part of a hearing is
19 whether or not I find someone factually and legally guilty or
20 not guilty.

21 MR. WEEKS: Okay.

22 THE COURT: And a lot of what you were arguing today was
23 issues with law enforcement. They might be civil issues,
24 certainly things that you could take up in other courts or file
25 complaints with different law enforcement agencies if you wish

1 to do so. Some of that could bear on the lines of whether or
2 not charges should be dismissed, but ultimately that's the
3 Court's determination of who to find more credible in a
4 hearing.

5 In our instances today, I find the testimony of the
6 trooper to be more credible than the testimony of Mr. Weeks. I
7 find that law enforcement, in this case the trooper, had the
8 sufficient training and experience and equipment to understand
9 and recognize a speeding violation and that we didn't observe
10 dash camera or body camera footage. So we are taking his
11 eye-witness first-hand observations as the --

12 MR. WEEKS: So you're --

13 THE COURT: -- evidence in question. I am still giving my
14 ruling. Do not talk. I am finding that based on all of the
15 evidence and testimony presented, the State has proven beyond a
16 reasonable doubt that the defendant has committed the offenses
17 of speeding and a seat belt violation. And this Court having
18 jurisdiction and the venue being proper, I find the defendant
19 guilty.

20 I can either proceed with sentencing today or you're
21 entitled to a delay in sentencing if you wish to come back next
22 week. Do you want to proceed today or come back next week?

23 MR. WEEKS: What is the difference other than ...

24 THE COURT: Fines and costs. I either impose it now or I
25 impose it next week.

1 MR. WEEKS: I mean, right now I've been convicted without
2 exculpatory evidence. I mean, there's no -- if he would have
3 provided the video or if he had a body cam --

4 THE COURT: You're not asking for a delay in sentencing.
5 So I'm going to proceed today.

6 Mr. Oxner, any comments on sentencing?

7 MR. OXNER: Your Honor, the State would request that for
8 the speeding violation and the seat belt violation standard
9 fines and costs be imposed. State has already waived jail.

10 THE COURT: And, Mr. Weeks, anything else you want to tell
11 me today?

12 MR. WEEKS: Is it possible to get a court report?

13 THE COURT: To get a what?

14 MR. WEEKS: To get a court report.

15 THE COURT: You can get a transcript of the hearing if you
16 wish to do so following the hearing today.

17 MR. WEEKS: I mean, this is -- a \$25 ticket is now turning
18 into what's going to be several thousand dollars and an appeal
19 to the South Dakota Supreme Court.

20 THE COURT: Okay. It's going to be the sentence of the
21 Court today on the speeding citation that the defendant pay
22 fines and costs totaling \$117.50 and on the seat belt violation
23 that the defendant pay a fine of \$25. Can you pay that today
24 or do you need some time?

25 MR. WEEKS: So you're convicting me of something I didn't

1 do?

2 THE COURT: I will authorize 90 days to pay the fines and
3 costs. I have to tell you, and since you've indicated this you
4 probably understand it, but you have the right to appeal from
5 the judgment within 10 days after it's signed, attested, and
6 filed. If you wait more than 10 days, it would be too late to
7 appeal.

8 As I've indicated, I found the credibility of the witness
9 today to be sufficient for our purposes. I found there was
10 sufficient evidence presented to find you guilty.

11 MR. WEEKS: What evidence other than his testimony and his
12 testimony is questioned?

13 THE COURT: That will be the hearing. We will be in
14 recess as regards to this matter.

15 Lane Sohl.

16 MR. WEEKS: When will I be able to get my USB back?

17 THE COURT: You won't. You admitted that as an exhibit in
18 the case. It's part of the case file.

19 MR. WEEKS: Okay. So how long does that stay in your
20 custody for?

21 THE COURT: You can contact the clerk of courts office if
22 you have questions.

23 MR. WEEKS: Okay.

24

25 (The proceedings were concluded at 3:19 p.m.)

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STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF BROOKINGS)

I, KRISTIN A. WOODALL, RPR, CRR, CRC, Official Court Reporter for the Circuit Court, Third Judicial Circuit, Brookings, Brookings County, South Dakota, reported the proceedings of the foregoing case and that the foregoing 30 typewritten pages contain a full, true, and accurate transcript of said record.

Dated at Brookings, South Dakota, this 1st day of May, 2024.

/s/Kristin A Woodall

Kristin A. Woodall, RPR, CRR, CRC
Certified Court Reporter

after

brookings

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STATE OF SOUTH DAKOTA
LAW ENFORCEMENT OFFICERS
STANDARDS AND TRAINING COMMISSION

=====

IN THE MATTER OF THE LAW
ENFORCEMENT CERTIFICATION
OF JIMMY MURPHY

=====

Transcript of Hearing
July 18, 2018
10:00 a.m.

=====

BEFORE PAUL E. BACHAND, The Hearing Officer, and the
LAW ENFORCEMENT TRAINING AND STANDARDS COMMISSION,
Bryan Gortmaker, Chairman
Marty Jackley, Attorney General
Bob Perry, Commissioner
Mike Leidholt, Commissioner
Jo Vitek, Commissioner
Tom Wollman, Commissioner
Randall Rosenau, Commissioner
Matt Burns, Commissioner
Steve Allender, Commissioner
Sam Clark, Secretary

A P P E A R A N C E S

Kelly Marnette,
SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE,
Assistant Attorney General, 1302 East Highway 34,
Pierre, South Dakota 57501,
appearing on behalf of the Claimant;

CLINT LEE SARGENT,
MEIERHENRY SARGENT,
Attorneys at Law, 315 South Phillips Avenue,
Sioux Falls, South Dakota 57104,
appearing on behalf of Jimmy Murphy.

Reported by Cheri McComsey Wittler, RPR, CRR
Precision Reporting, 213 S. Main, Onida, South Dakota

1 Q. But, again, you're not law enforcement?

2 A. No.

3 Q. But would you agree that it's extremely important
4 that law enforcement officers preserve all evidence?

5 A. Yes, I would.

6 Q. And he didn't do that in this case?

7 A. No, he didn't.

8 Q. He didn't do it. And then he came into court and
9 testified about something that ended up not being true
10 because he didn't even look at the evidence.

11 A. That's correct.

12 Q. Okay. And as the mayor, do you see an issue with
13 that?

14 A. I think he's made some mistakes. And we've
15 reprimanded him for that.

16 Q. How many times have you reprimanded Officer Murphy?

17 A. How many? Twice.

18 Q. Okay. For what?

19 A. For what? Evidence. Holding evidence.

20 Q. I'm sorry. What did you just say?

21 A. Evidence. Like evidence on a stop. And Mr. Kopman.
22 The Mr. Kopman stop. Because that was obviously he
23 stopped.

24 Q. Okay. So what was -- how was he reprimanded on each
25 of those?

1 He took cash and filed the appeal with the Clerk of
2 Courts. It went up on appeal. There were briefs filed.
3 As per the exhibit, there was an Order of Remand by the
4 South Dakota Supreme Court for the trial court to go back
5 and see if the Brady rule had been violated.

6 Q. And, just briefly, what does that mean?

7 A. That means if there's any exculpatory evidence that
8 would help the Defendant -- or really not just
9 exculpatory but just about any other evidence, then you
10 give it to the Defendant and you give it to him prior to
11 whether it be the trial or the preliminary hearing or
12 ever what.

13 The Brady rule is the United States v. Brady. And
14 that's what it states is that if there's evidence, the
15 defense -- in many instances even if they don't request
16 it, you give it to them, if they think that there's going
17 to be something there that's going to help their defense.

18 Q. And a hearing was then held on Mr. Weeks's Motion to
19 Dismiss for a violation of the Brady rule; is that
20 correct?

21 A. There was a two part. I think it was July and
22 August of 2017, and Judge Spears continued it to August
23 and then ruled that there was no Brady violation. I
24 can't remember if his decision was in August. It might
25 have been September.

1 asking you, sir.

2 A. Okay.

3 Q. So you disagree that Jimmy Murphy's history needs to
4 be disclosed to Defense Counsel in any case that Jimmy
5 Murphy is involved in?

6 You don't see a Giglio issue?

7 A. Correct.

8 Q. Okay. And, obviously, you talked a little bit about
9 Brady so let's talk about Brady.

10 You have the opinion that Brady wasn't applicable to
11 the dashcam, even though you never saw the video;
12 correct?

13 A. Correct.

14 Q. So you just talked to Jimmy, and you said, oh,
15 you're telling me that it wouldn't have caught the actual
16 violation so we don't need to preserve that and turn it
17 over. So you're really basically taking the fall for
18 Jimmy today?

19 A. It's a decision I made. Not his.

20 Q. Okay. The Supreme Court disagreed with you.

21 A. They remanded it.

22 Q. Yes. And basically they said that there's a duty to
23 disclose it, first of all, no matter whether Mr. Weeks
24 asked for it or not and, second of all, whether you as
25 the prosecutor made a decision that, well, it's not

1 relevant, it's not exculpatory, so I'm just not going to
2 turn it over; right?

3 A. True.

4 Q. You knew that he had a dashcam in his patrol car at
5 the time of the Weeks video.

6 A. I think I did.

7 Q. Well, you definitely did --

8 A. Yeah. I did. I did.

9 Q. Because you decided not to turn it over.

10 A. That's true.

11 Q. Okay. And you didn't even have Officer Murphy
12 preserve it, did you?

13 A. Did not.

14 Q. You knew this was going up to the Supreme Court.
15 You knew it right away within 30 days, obviously, because
16 that's the time for an appeal.

17 A. Well, at that time it would have been about five or
18 six months after the video was taken, if there was one.

19 Q. Okay. But within 30 days of the trial you knew
20 that.

21 A. Yes.

22 Q. Okay. Well, actually you knew before the trial
23 because you told him don't bother giving it to me and
24 don't bother preserving it.

25 A. True.

1 Q. Right. But you would agree with me that law
2 enforcement also has a duty beyond what is -- you tell
3 him. He has an independent duty to preserve the
4 evidence. Yes?

5 A. I think that's important, yes.

6 Q. Absolutely important.

7 So you told him don't bother. We don't have to turn
8 it over. Correct?

9 A. I said I -- to that effect.

10 Q. And part of that is because Mr. Weeks, who's acting
11 pro se, didn't file a formal motion.

12 A. For me that wasn't really the reason but --

13 Q. Okay. The reason was because you said I don't have
14 to turn it over because I don't think it's relevant or
15 exculpatory.

16 A. I thought it did not fall within the purview of
17 Brady, and the trial judge agreed.

18 Q. And the trial judge was obviously wrong too?

19 A. No. Because we had to go back and try that issue.

20 Q. The Supreme Court remanded this for a reason.

21 A. Right. And there was a Brady hearing thereafter.

22 Q. All right. Where is the decision, the Brady
23 decision, that the court made in August of 2017? Do you
24 have it with you?

25 A. I think I have a copy. I'd have to go do some

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

CITY OF LAKE NORDEN,)	ORDER OF REMAND
Plaintiff and Appellee,)	
)	#27893
vs.)	
)	
NIKOLAS RICHARD WEEKS,)	
Defendant and Appellant.)	

The Court considered all of the briefs filed in the above-entitled matter, together with the appeal record. *Erickson v Weber*, 2008 S.D. 30 ¶ 18, 748 N.W.2d 739, 744-45 provides:

Whether the State suppressed evidence in violation of Erickson's due process rights when it allegedly failed to disclose to defense counsel the existence of an alleged plea agreement contained in the Fischbach Letter.

[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment irrespective of the good faith or bad faith of the prosecution.

Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963) (emphasis added). Since *Brady*, the United States Supreme Court has handed down several opinions, expanding the scope of what constitutes prosecutorial suppression of evidence that rises to the level of a due process violation. The Supreme Court's opinion in *Strickler v. Greene*, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999), sets out the evolution of the *Brady* doctrine:

[T]he duty to disclose [Brady] evidence is applicable even though there has been no request by the accused, *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392, [2399], 49 L.Ed.2d 342 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375,

[3380], 87 L.Ed.2d 481 (1985). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682, 105 S.Ct. at 3383, 87 L.Ed.2d 481; see also *Kyles v. Whitley*, 514 U.S. 419, 433-434, 115 S.Ct. 1555, [1565], 131 L.Ed.2d 490 (1995). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor." *Id.* at 438, 115 S.Ct. at 1568, 131 L.Ed.2d 490. In order to comply with *Brady*, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Kyles*, 514 U.S. at 437, 115 S.Ct. at 1567, 131 L.Ed.2d 490.

Strickler, 527 U.S. at 280-81, 119 S.Ct. at 1948, 144 L.Ed.2d 286 (emphasis added).

Further, the City of Lake Norden waived any additional formal discovery requirement by agreeing to provide requested discovery materials to Defendant Weeks and then failed to do so, now, therefore,

IT IS ORDERED that the matter is hereby remanded to the circuit court to consider whether the City's failure to provide the police report in a timely fashion and produce the video from the officer's dashcam and any accompanying audio recording and any other impeachment or exculpatory evidence was a violation of *Brady*. Defendant would have us vacate the judgment of conviction. However, as the circuit court made no findings of fact or conclusions of law on this issue, we cannot affirmatively say that vacating the judgment of conviction is warranted without ascertaining whether the alleged violation was prejudicial.

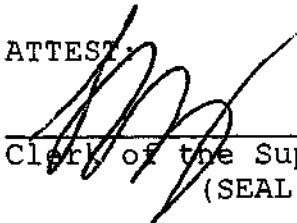
We remand the issue and instruct the City to disclose the police report, video from the officer's daschcam and any accompanying audio recording and any other impeachment or exculpatory evidence to Defendant Weeks and the circuit court. We also instruct the circuit court to enter findings of fact and conclusions of law as to whether there was a Brady violation and, if there was a violation, whether a new trial is warranted. It is further ordered that upon resolution of this issue and entry of findings and conclusions as directed, counsel for Lake Norden shall give immediate notification thereto to this Court.

DATED at Pierre, South Dakota, this 30th day of November, 2016.

BY THE COURT:


David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

(Justice Steven L. Zinter dissents.)

PARTICIPATING: Chief Justice David Gilbertson, Justices Steven L. Zinter, Glen A. Severson, Lori S. Wilbur and Janine M. Kern.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

NOV 30 2016


Clerk

STATE OF SOUTH DAKOTA - PLAINTIFF

ATTORNEY: NELSON, DANIEL

ATTORNEY: OXNER, AUSTIN J.

WEEKS, NIKOLAS RICHARD - DEFENDANT

ATTORNEY: WEEKS, NIKOLAS RICHARD

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State of South Dakota)	SS	Third Judicial Circuit
County of Brookings)		
STATE OF SOUTH DAKOTA VS. NIKOLAS RICHARD WEEKS)))))		Circuit Court Docket # 05POA24-000301
)		Supreme Court Docket #
)		Physical Exhibit List

Plaintiff's Exhibits

File Date	Plaintiff Exhibit Name	Exhibit #

Defendant's Exhibits

File Date	Defendant Exhibit Name	Exhibit #
4/22/2024	USB DRIVE IN EXHIBIT DRAWER	B

STATE OF SOUTH DAKOTA
COUNTY OF BROOKINGS

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA
Petitioner

CIRCUIT COURT FILE NO: 05POA24-000301
SUPREME COURT FILE NO: 30833

vs.

NIKOLAS RICHARD WEEKS
Respondent

STATE OF SOUTH DAKOTA
Third Judicial Circuit Court

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on file in my office on this date:

SEP 20 2024

Brookings County Clerk of Courts

By: *Ashley Runge*

CLERK'S CERTIFICATE

I, Ashley Runge, the duly appointed, qualified and acting Clerk of Court in and for Brookings County, South Dakota, hereby certify that I have this day fastened together and combined all papers and instruments now on file in the office of the Clerk of said Court in the above-entitled action, and I have paginated each of said pages and have prepared the foregoing Index thereof, and I do hereby certify that the record contains pages 1 through 177; 1 transcripts; 6 exhibits; 0 sealed items; and 0 confidential items.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Circuit of Brookings County, South Dakota.

DATED this 20th day of September, 2024.

BY THE COURT:

/s/ Ashley Runge, Clerk Magistrate
by: JSBR10201, Clerk Magistrate, Deputy

(SEAL)



IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30833

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

NIKOLAS RICHARD WEEKS,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
BROOKINGS COUNTY, SOUTH DAKOTA

THE HONORABLE DAWN M. ELSHERE
Circuit Court Judge

APPELLEE'S BRIEF

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PRO SE DEFENDANT AND APPELLANT

Notice of Appeal filed September 12, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30833

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

NIKOLAS RICHARD WEEKS,

Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Defendant/Appellant, Nikolas Richard Weeks, is referred to as “Weeks.” Plaintiff/Appellee, the State of South Dakota, is referred to as “State.” The settled record is denoted as “SR.” All references to the settled record are followed by the e-record pagination. Weeks’s brief is denoted as “AB.” The court trial transcript is designated as “CT.” All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On April 24 and April 29, 2024, the Honorable Abigail A. Howard, Magistrate Judge, Third Judicial Circuit, filed Weeks’s Judgments of Conviction in Brookings County POA File No. 24-301. SR:6-9. Weeks filed a Notice of Appeal to the circuit court on May 2, 2024. SR:10-11. The Honorable Dawn M. Elshere, Circuit Court Judge, Third Judicial Circuit, filed an Order Affirming Magistrate Court Decision on

August 19, 2024. SR:169. Weeks filed a Notice of Appeal on September 12, 2024. SR:170. This Court has subject matter jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES¹

I

WHETHER THE STATE COMMITTED A *BRADY* VIOLATION BY FAILING TO PROVIDE OFFICER LAGROUE’S DASH OR BODY CAMERA VIDEOS?

Neither the magistrate court nor the circuit ruled on this issue.

State v. Absolu, 2024 S.D. 66, --- N.W. 3d ---

State v. Andrews, 2007 S.D. 29, 730 N.W.2d 416

State v. Birdsheed, 2016 S.D. 87, 888 N.W.2d 209

United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976)

II

WHETHER THE STATE COMMITTED PROSECUTORIAL MISCONDUCT?

This issue was not raised before the magistrate court, and the circuit court did not rule on this issue.

Moeller v. Weber, 2004 S.D. 110, 689 N.W.2d 1

State v. Andrews, 2007 S.D. 29, 730 N.W.2d 416

¹ Weeks raised nine issues in his Appellant’s Brief. As explained in the “Arguments” section below, the State finds no meritorious legal issues to address in Weeks’s Issues I, II, III, or IX. In order to address Weeks’s remaining issues with greater brevity and conciseness, the State’s brief reorganizes Weeks’s remaining issues into the three issues listed.

III

WHETHER THERE WAS SUFFICIENT EVIDENCE TO
SUSTAIN WEEKS'S CONVICTIONS?

The magistrate court found Weeks guilty of a seat belt violation and speeding; the circuit court affirmed his convictions.

State v. Ahmed, 2022 S.D. 20, 973 N.W.2d 217

State v. Macy, 294 N.W.2d 435 (S.D. 1980)

State v. Smith, 2023 S.D. 32, 993 N.W.2d 576

STATEMENT OF THE CASE AND FACTS²

On February 12, 2024, Highway Patrol Trooper David LaGroue was watching traffic from a parking lot at Western Avenue and Sixth Street in Brookings. CT:4-5, 16. While stationed there, Trooper LaGroue noticed a vehicle, driven by Weeks, that appeared to be traveling faster than the posted speed limit. CT:5. Trooper LaGroue's radar showed Weeks driving 37 miles per hour in a 30-mile-per-hour speed zone. CT:4. When Weeks passed Trooper LaGroue's location, Trooper LaGroue also noticed Weeks was not wearing a seat belt. CT:4-5.

Following his observations, Trooper LaGroue conducted a traffic stop. CT:5. Trooper LaGroue approached the vehicle and informed the driver, identified as Weeks, of the reasons for the stop. CT:6. Weeks at first did not cooperate, refusing to roll down his window further at

² The Statement of the Case and the Statement of the Facts have been combined for brevity and conciseness.

Trooper LaGroue's request. CT:5-6. Trooper LaGroue then opened Weeks's door and asked him to get out of the car, which he eventually complied with. CT:6. After talking with Weeks, Trooper LaGroue cited him for failing to wear a seatbelt, in violation of SDCL 32-38-1, a petty offense, and warned him for speeding. CT:6.

The State filed a Complaint on March 22, 2024, charging Weeks with speeding, in violation of SDCL 32-25-7, a Class 2 misdemeanor, stemming from the February 12, 2024, incident. SR:2. Neither Weeks nor the State filed any motions or other documents before the court trial, which took place one month after the State filed the Complaint. See SR:1-12.

Weeks's court trial took place on April 22, 2024. CT:1. The State called Trooper LaGroue, who recounted the facts of the traffic stop. CT:1-7. Trooper LaGroue testified that his radar clocked Weeks's speed at 37 miles per hour in a 30-mile-per-hour speed zone. CT:4-5. Trooper LaGroue also said that he observed Weeks driving without his seat belt on when Weeks drove past him. CT:5.

Weeks cross-examined Trooper LaGroue. CT:6-13. Weeks asked Trooper LaGroue how many times he asked him to exit his vehicle; Trooper LaGroue stated he'd have to watch the dash camera video to know for sure. CT:8. Weeks then asked if Trooper LaGroue had the video with him in court. CT:8. Trooper LaGroue answered that he did not have the dash camera video with him, but that it was available.

CT:8. He reiterated on redirect examination that people can and have put their seatbelts on before a traffic stop and that his patrol vehicle's radar was working on the day of the stop. CT:13-14.

Next, Weeks took the stand to testify in his own defense. CT:15-27. Weeks sought to contradict Trooper LaGroue's testimony, citing that he was in a different lane, and that Trooper LaGroue's radar picked up a different vehicle's speed. CT:16. And Weeks claimed that he had a history with Trooper LaGroue and that he was the victim of 22 "illegal traffic stops." CT:17-18. Weeks admitted videos of his personal forward and rear-facing vehicle cameras that recorded the stop. CT:22-23. Weeks played some of the audio from his videos. CT:22-24. He claimed the videos showed that Trooper LaGroue did not ask for documentation before asking Weeks to get out of the car. CT:23-24.

After Weeks rested, the magistrate court found Weeks committed the seat belt and speeding violations beyond a reasonable doubt. CT:28. In its reasoning, the magistrate court found Trooper LaGroue's testimony more credible than Weeks's. CT:28. The magistrate court explained that Trooper LaGroue had the proper training, equipment, and experience to recognize a speeding violation, also noting there was no dash or body camera videos to counter the testimony. CT:28.

Before sentencing, Weeks claimed that had Officer LaGroue provided a body camera video, it could have been exculpatory evidence, but the magistrate court did not invite him to elaborate. CT:29. The

magistrate court proceeded to sentencing with Weeks's consent and ordered Weeks to pay \$117.50 in fines and costs for the speeding ticket and \$25.00 for the seat belt violation. CT:29-30.

Weeks appealed to the circuit court on May 2, 2024. SR:52. A status hearing was set for May 22, 2024. SR:53. Another status hearing was scheduled for early June, followed by one in late August. SR:56, 144.³ Weeks raised six issues in his appellant's brief to the circuit court. SR:61. The State only addressed whether the evidence was sufficient to convict Weeks of speeding and a seat belt violation in its brief. SR:138.

The circuit court issued a Memorandum Decision that affirmed Weeks's convictions for speeding and the seat belt violation. SR:165-68. The circuit court found that the evidence presented by the State was sufficient to sustain Weeks's convictions. SR:165-68. In its Memorandum Decision, the circuit court addressed only the sufficiency of the evidence in Weeks's convictions and addressed no other issues. SR:165-68. It filed a corresponding judgment a few days later stating that it conducted a complete de novo review of the file, including the transcript, pleadings, and papers, and found no error in the magistrate court's judgments. SR:169.

³ No transcripts of the above three hearings are in the settled record. *See generally* SR:1-180.

ARGUMENTS

Weeks raises nine issues in his brief. Of these, Issues I, II, III, and IX raise no meritorious legal issue, nor do they cite any relevant legal authority for Weeks's allegations. The State therefore does not address these issues in its brief. An appellant's failure to cite relevant supporting authority is a violation of SDCL 15-26A-60(6) and is deemed a waiver of the appellate issue. *State v. Boston*, 2003 S.D. 71, ¶ 27, 665 N.W.2d 100, 109. But should this Court disagree, the State will comply with any orders directing additional briefing on these issues. The State's brief condenses Weeks's remaining issues into three issues. The State's Issue I addresses Weeks's Issues IV and V; the State's Issue II addresses Weeks's Issues VI and VII; and the State's Issue III addresses Weeks's Issue VIII.

I

WEEKS HAS NOT SHOWN A *BRADY* VIOLATION OCCURRED.⁴

A. *Standard of Review.*

"Claims that a defendant's due process rights have been violated are reviewed de novo." *State v. Absolu*, 2024 S.D. 66, ¶ 38 n.7, ---

⁴ In his Issue Statement, Weeks claims that the State did not "preserv[e] exculpatory evidence for trial." AB:16. At trial, Trooper LaGroue testified that the dash camera video was available, but that he did not have it at trial. CT:8. It is unclear whether Weeks complains the video was not *preserved* or whether it was not *provided* to him. The State addresses the *Brady* claim on its merits while doing its best to respond to Weeks's claims as written.

N.W.3d --- (citing *State v. Apple*, 2008 S.D. 120, ¶ 8, 759 N.W.2d 283, 286).

B. No Brady Violation Occurred.

Weeks argues that the prosecution committed a *Brady* violation for failing to preserve Trooper LaGroue’s dash or body camera videos. He claims “Lagroue’s [sic] video footage will directly contradict most of Lagroue’s [sic] given testimony on the stand” AB:21. He contends that the video footage would also show Weeks’s seatbelt was on and that it would show Trooper LaGroue acknowledged there were other cars around at the time he caught Weeks speeding, which would put the radar reading into question. AB:21. Finally, Weeks argues the dash camera video would show Trooper LaGroue had a faulty reading from his radar gun or that he had a difficult time seeing Weeks’s seatbelt. AB:21.

“The Due Process Clause of the Fourteenth Amendment imposes upon states the requirement to ensure that criminal prosecutions . . . comport with prevailing notions of fundamental fairness.” *Absolu*, 2024 S.D. 66, ¶ 37 (citing *State v. Zephier*, 2020 S.D. 54, ¶ 20, 949 N.W.2d 560, 565) (cleaned up). Criminal defendants must be afforded a “meaningful opportunity to present a complete defense.” *Absolu*, 2024 S.D. 66, ¶ 37. “The resulting body of decisional law from the United States Supreme Court and this Court exists under a topical heading that might loosely be called the area of constitutionally guaranteed

access to evidence.” *Id.* (further citation omitted) (inner quotation omitted).

Included under this body of caselaw is the prosecution’s duty under *Brady v. Maryland* to “disclose evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed.” *Absolu*, 2024 S.D. 66, ¶ 38 (further citations omitted) (discussing *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d (1963)). Under *Brady*, such a duty exists even when a defendant fails to make a discovery request. *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999) (citing *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392 (1976)).

To successfully prove a *Brady* violation, an accused must show three things: “The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Absolu*, 2024 S.D. 66, ¶ 39 (citing *State v. Birdshead*, 2016 S.D. 87, ¶ 18, 888 N.W.2d 209, 215) (quoting *Strickler*, 527 U.S. at 281-82, 119 S.Ct. at 1948). “Prejudicial error is ‘that which in all probability must have produced some effect upon the final result and affected rights of the party assigning it.’” *Birdshead*, 2016 S.D. 87, ¶ 18, 888 N.W.2d at 215 (cleaned up). Suppressed evidence is “material only if there is a reasonable probability that, had the evidence been disclosed to the

defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985) (further citation omitted). “A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *Id.* “Exculpatory evidence” is “[e]vidence tending to establish a criminal defendant’s innocence.” *Black’s Law Dictionary*, 637 (9th ed. 2009).

The record does not reveal whether the prosecutor had Trooper LaGroue’s video, whether it was preserved or destroyed, or any discussion about the video besides the trooper’s testimony that he did not have it with him at the court trial but that the video does exist. The magistrate court did not make any ruling as to the production or availability of the video. And while Weeks raised an alleged *Brady* violation in his appellate brief to the circuit court, that court also did not directly address the *Brady* claim. Still, the circuit court said it “reviewed the file de novo, the transcript, and the pleadings and papers filed by the parties, and [found] no error by the Magistrate Court in entering said Judgment and Conviction” SR:169. There is no information in the record regarding the potential suppression of the video, but assuming the State did not turn over the dash camera video to Weeks, the State addresses the other two prongs – whether the evidence was material and exculpatory, and whether Weeks was prejudiced.

First, Weeks has not shown the dash or body camera videos is material, exculpatory evidence and thus did not trigger the government's duty to preserve it. *See Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567 (1995) (“[S]howing that the prosecution knew of an item of favorable evidence unknown to the defense does not amount to a *Brady* violation, without more.”). Weeks has not shown that any exculpatory purpose was apparent to law enforcement at the time of recording. *See California v. Trombetta*, 467 U.S. 479, 489, 104 S.Ct. 2528, 2534 (1984). The video does not appear in the record, nor is a description of its contents given. Weeks's description of what he believes the video will show is not enough to show that it would establish his innocence, especially not having viewed the video himself.

Although the video may have been useful to Weeks, he has not identified any exculpatory value beyond its *potential* benefit to him. “[M]ere speculation or allegations that the prosecution possesses exculpatory information will not suffice to prove ‘materiality.’” *United States v. Jordan*, 316 F.3d 1215, 1252 n.81 (11th Cir. 2003) (further citation omitted). Such a theoretical use is not sufficient. *See e.g. United States v. Ramos*, 27 F.3d 65, 71 (3d Cir. 1994) (discussing that merely speculating that destroyed notes of investigators may have included *Brady* material was not enough to implicate *Brady*). The video's primary purpose would have been to undermine

Trooper LaGroue's testimony, yet Weeks already did that on cross examination and with his own video evidence.

Indeed, Weeks's only argument is that the dash or body camera videos would differ from Trooper LaGroue's memory of the incident. *See West Virginia v. Farley*, No. 14-0132, 2015 WL 6181512, at *4-5 (W. Va. Oct. 20, 2015) (holding that the State's failure to furnish dash camera video of a traffic stop due to Farley's colored lights on her van was not a *Brady* violation in part because Farley failed to show how the video would help in her defense). In *West Virginia v. Farley*, when it rejected Farley's *Brady* claim, the West Virginia Supreme Court of Appeals noted that Farley's only argument was that the dash camera video *could have* differed from the officer's memory and testimony. *Id.*

Further, Weeks has not shown that the dash camera video would have affected the outcome of the trial. "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *Agurs*, 427 U.S. at 109-10, 96 S.Ct. at 2400, holding modified by *Bagley*, 473 U.S. 667, 105 S.Ct. 3375. With the video being absent from the settled record, Weeks's claim that the video would've helped in his defense and corroborated his version of events is just that, a "mere possibility." *See Agurs*, 427 U.S. at 109-10, 96 S.Ct. at 2400; *see also Mahaffey v. Texas*, 937 S.W.2d 51, 53 (Tex. App. 1996) (holding Mahaffey's assertions that a destroyed

videotape of his sobriety tests was “probably exculpatory” did not meet the standard of materiality and upheld the trial court’s denial of his motion to dismiss).

Second, even if Weeks could show that the dash or body camera videos were material and exculpatory, he cannot show he was prejudiced. Trooper LaGroue’s testimony was enough to convict Weeks. *See State v. Hoenscheid*, 374 N.W.2d 128, 132 (S.D. 1985) (the arresting officers’ testimony regarding their observations, if believed by the jury, was sufficient to sustain the conviction). *See also United States v. Hylor*, 353 F. App’x 361, 362 (11th Cir. 2009) (holding that an officer’s testimony alone was sufficient to support Hylor’s conviction of being in possession of a firearm or ammunition by a convicted felon); *Wilson v. Georgia*, 325 Ga. App. 479, 481, 753 S.E.2d 141, 143 (2013) (noting an undercover officer’s testimony alone was sufficient to establish Wilson was engaged in selling drugs); *Barberton v. Jenney*, 126 Ohio St. 3d 5, 11, 2010-Ohio-2420, 929 N.E.2d 1047, 1053, at ¶ 23 (holding that a law enforcement officer’s “unaided visual estimation of a vehicle’s speed is sufficient evidence” to support a speeding conviction if the officer is properly trained). Weeks’s brief admits as much: it states the prosecution’s alleged reasoning for not bringing the footage to trial was that it already had Trooper LaGroue’s testimony. AB:20.

Further, Weeks cross-examined the officer, took the stand in his own defense, and played audio of his own dash camera’s video of the

traffic stop.⁵ See CT:6-26. Still, the magistrate court found Trooper LaGroue's testimony more credible than Weeks's. CT:27-29. See also *State v. Rodriguez*, 2020 S.D. 68, ¶ 55, 952 N.W.2d 244, 260 (noting that the trial court becomes the finder of fact during a bench trial and determines witness credibility) and *United States v. Seys*, 423 F. Supp. 3d 585, 603 (N.D. Iowa 2019) (when a defendant also has his own video surveillance of an incident, such a factor "significantly undercuts his argument that he could not obtain comparable evidence by other reasonable means."). Weeks cannot show that the dash or body camera videos would have "in all probability" produced some effect on the outcome of trial, because the trooper's testimony was more credible than Weeks's. *Birdshead*, 2016 S.D. 87, ¶ 18, 888 N.W.2d at 215 (cleaned up).

⁵ Weeks's Exhibit B is video of his front and rear facing cameras during his encounter with Trooper LaGroue. See Exhibit B. There is a discussion of the exhibit on the record. CT:23-26. However, the transcript cites "Audio Recording Published" each time Exhibit B is played. CT:23-26. The settled record does not explicitly say if the magistrate court actually viewed the video, or just listened to the audio.

II

THE STATE DID NOT COMMIT PROSECUTORIAL MISCONDUCT.⁶

A. *Standard of Review.*

“[N]o hard and fast rules exist which state with certainty when prosecutorial misconduct reaches a level of prejudicial error which demands reversal of the conviction and a new trial; each case must be decided on its own facts.” *State v. Shult*, 380 N.W.2d 352, 355 (S.D. 1986) (quoting *State v. Webb*, 251 N.W.2d 687 (S.D. 1977)). “[T]he State in the exercise of its discretion may choose whether to prosecute individuals and what charges to bring against them.” *Moeller v. Weber*, 2004 S.D. 110, ¶ 42, 689 N.W.2d 1, 14. It is within the prosecutor’s discretion to select which charges to file against a defendant, within the bounds of the Constitution. *State v. Secrest*, 331 N.W.2d 580, 583 (S.D. 1983).

B. *There Was No Prosecutorial Misconduct.*

The State is not confined to a highway patrol officer’s ticket in making its charging decisions. Here, the prosecutor used the discretion he possesses in bringing charges when he filed a Complaint charging Weeks with speeding. SR:2-3. The evidence at trial (discussed in more detail under Issue III) proved to the magistrate court that Weeks was

⁶ Weeks argues the State committed malicious prosecution and/or treated him with bias. AB:22-23. The State reframes his claim as one of prosecutorial misconduct. To the extent this Court disagrees, this issue should be dismissed as a claim of malicious prosecution and bias must be brought in a separate lawsuit in civil court.

speeding. See CT:3-15, 25-29. There is no evidence in the settled record that the State brought the speeding charge against Weeks because he fought the traffic ticket. See generally, SR:1-180; see also *State v. Andrews*, 2007 S.D. 29, ¶ 9, 730 N.W.2d 416, 420 (stating that the party alleging error carries the responsibility of presenting an adequate record for review).

In addition, Weeks argues that the prosecution's case was tainted because the prosecutor allegedly called Weeks a sovereign citizen in a pretrial phone call. AB:23. There is no information about this alleged phone call in the settled record. See generally SR:1-180. "This Court has repeatedly instructed that the party claiming error carries the responsibility of ensuring an adequate record for review. . . . When confronted with an incomplete record, this Court presumes that the trial court acted properly." *Andrews*, 2007 S.D. 29, ¶ 9, 730 N.W.2d at 420 (further citation omitted).

Nor did the State call Weeks a sovereign citizen during trial; Weeks was the party who first used the term in front of the magistrate court. CT:19. Because Weeks cannot prove prosecutorial misconduct when the prosecution charged him with speeding, the State asks this Court to affirm Weeks's convictions.

III

THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN WEEKS'S CONVICTIONS.

A. *Standard of Review.*

Questions on sufficiency of the evidence are reviewed de novo. *State v. Ahmed*, 2022 S.D. 20, ¶ 14, 973 N.W.2d 217, 221. In reviewing sufficiency of the evidence, this Court considers “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d 576, 591 (further citations omitted) (inner quotations omitted).

In a bench trial, the trial court is the finder of fact and determines witness credibility and weight given to witness testimony. *Rodriguez*, 2020 S.D. 68, ¶ 55, 952 N.W.2d at 260. This Court does not “resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.” *Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d at 591 (citing *State v. Manning*, 2023 S.D. 7, ¶ 27, 985 N.W.2d 743, 752) (further citations omitted).

B. *Sufficient Evidence Exists to Uphold Weeks's Convictions.*

The magistrate court found Weeks guilty of failing to wear a seatbelt, in violation of SDCL 32-38-1, and speeding, in violation of SDCL 32-25-7. CT:27-28. To prove the failure to wear a seatbelt, the State had to prove beyond a reasonable doubt that Weeks, as the

operator of the vehicle, was not wearing a seatbelt when the vehicle was in forward motion. *See* SDCL 32-38-1. To find Weeks guilty of speeding, the State needed to show beyond a reasonable doubt that Weeks exceeded the posted speed limit (30 miles per hour). *See* SDCL 32-25-7.

The State presented sufficient evidence to the magistrate court to sustain Weeks's convictions. Trooper LaGroue testified at trial. CT:3-6. He identified Weeks as the driver he pulled over. CT:3-6. Trooper LaGroue testified he used his radar and clocked Weeks traveling at 37 miles per hour in a 30-mile-per-hour speed zone. CT:4. In addition, Trooper LaGroue observed Weeks appeared to be traveling faster than the posted speed limit before activating his radar. CT:4. He testified he had no reason to doubt his radar equipment was in proper working order. CT:14. Finally, Trooper LaGroue testified he saw Weeks not wearing his seat belt when Weeks drove past, and that in his experience, persons pulled over often will put their seatbelt on after being pulled over and before the officer approaches the vehicle. CT:4-5, 14.

It also appears the magistrate court also heard audio of the traffic stop from Weeks's dash camera video. *See* CT:23-24. Weeks also took the stand in his own defense. CT:15-24. Further, Weeks was able to cross-examine Trooper LaGroue. CT:6-13.

In its decision, the magistrate court chose to believe Trooper LaGroue's testimony over Weeks's testimony. CT:27-28; *see also Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d at 591; *State v. Macy*, 294 N.W.2d 435, 436 (S.D. 1980) (upholding Macy's conviction for speeding despite Macy's denial that he was speeding). In viewing the evidence in a light most favorable to the State, there is sufficient evidence to uphold the magistrate court's verdict. *Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d at 591.

CONCLUSION

The State respectfully requests this Court affirm Weeks's Judgments of Conviction.

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 3,828 words.

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

Dated this 18th day of December 2024.

/s/ Stephen G. Gemar
Stephen G. Gemar
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of December 2024, a true and correct copy of Appellee’s Brief in the matter of *State of South Dakota v. Nikolas Richard Weeks* was served through certified mail upon Nikolas Richard Weeks at 19951 U.S. Hwy 81 #11, Arlington, SD 57212. Because Nikolas Richard Weeks is pro se, a true and correct copy of Appellee’s Brief was also served upon him through email at xwingleder@aol.com.

/s/ Stephen G. Gemar
Stephen G. Gemar
Assistant Attorney General

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN 29 2025

Shel A. Johnson-Lloyd
Clerk

APPELLANT'S REPLY BRIEF

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

CASE# POA24-301

NIKOLAS RICHARD WEEKS,
DEFENDANT AND PRO SE APPELLANT

V.

STATE OF SOUTH DAKOTA
PLAINTIFF APPELLEE

APPEAL FROM THE CIRCUIT COURT

OF THE

THIRD JUDICIAL CIRCUIT

BROOKINGS COUNTY, SOUTH DAKOTA

DAWN ELSHIRE

3rd Circuit Court Judge

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Deadline of January 18th falls on Saturday and Monday was a federal holiday Martin Luther King day. Moving it to the next available day the clerk of courts and the post office are available to Tuesday January 21st 2025

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Introduction Establishing Credibility

My name is Nikolas Weeks. I live on Lake Poinsett. I grew up in the mobile home transport business. Since I had my driver's license at 16 I was a certified pilot car driver working for my parents company as well as other companies they occasionally partnered with. One of the requirements for this job was we had to know the traffic laws in each state we operated in and maintain a clean driving record. From 2014 to 2022 I was a Level 2 Field Service Engineer for Worldwide Tech services. I specialize in warranty repair work for the big computer and printer companies. I am certified in servicing Dell, IBM, Lenovo, HP, Lexmark, Canon, Panasonic, General Dynamics, and even some TVs. I covered a large territory including Minnesota, North Dakota, South Dakota, Wyoming, Montana, Nebraska and Iowa. I do get sent to additional areas around the country on an as needed basis. So you can see I put on a lot of miles. I am paid hourly and by the mile so I have no reason to speed or run stop signs. I would be stupidly losing money if I did. Over 35% of my onsite customers were military bases, Law enforcement facilities, including state and federal government agencies. For example I have serviced computers at the Mickelson Criminal Justice Center. I have repaired printers at the FBI office next door. I have serviced computers for Pennington County. I have even taken part in a computer upgrade project at the Department of Justice in Pierre. I have done work for the Unified judicial systems, Legislative Research Council, BIT, DSS, IHS, BIA, IRS, DCI, Army Corps of engineers, highway patrol, US Marshals and USDA. The rest of my customers include colleges, schools, public utilities, hospitals, businesses, retail stores, agricultural services and in home repair. I am very proud of the work I have done. There are less than a handful of techs in this state that can do this work.

I will not disclose my current employment due to previous harassment, threats, safety and security concerns for myself, my family, coworkers and customers.

To even be considered for the sensitive positions in Information Technology that I have held. You have to maintain a clean driving record, pass drug tests, pass several rigorous background checks to be able to obtain necessary security clearances, and be of the highest moral character. I have never committed a crime or violated a traffic law in my life. I do not drink or do any drugs. I am always in control of my vehicle and I know what happens in it without question. With my dash cams and heads up displays there is no doubt to this.

I have 24 years of extensive martial arts training in various disciplines. Training 1-3 times a week and I instruct others as hobby during weekly practices. For 16 years I have passed the required background checks to maintain the enhanced concealed carry permits with valid reciprocity in over 38 states that I have done work in the past and may do additional work in the future. Just because I carry, possess the training and experience I have. Does not mean I am looking for trouble or looking for a chance to use it. I have made the conscious decision to protect myself and my family who rely on me so I can make it home to them safely no matter what. My firearms instructors I have received training from have been both former and current military and law enforcement as well as competition shooters. One of them was the man that wrote the current concealed carry law for Minnesota. I have family members that are retired law enforcement as well. I have the upmost respect for these men and women in law enforcement and those that I provide service to who are honorably carrying out their duties everyday helping make their communities safe. Any statements made by anyone saying otherwise are false and predicated upon a lie with malicious intent to cause harm to me.

On February 18th 2016 I was the victim of an illegal traffic stop and malicious prosecution conducted by the former Lake Norden city police chief Jimmy Murphy and city attorney Todd Boyd who was a former Brookings county prosecutor. During that traffic stop a civilian ride along attempted to pull a gun on me. I was falsely convicted without any evidence. I filed a complaint with the Sheriff, DCI and the city. I then appealed the case to the South Dakota Supreme Court where they issued an order of remand #27893. On November 18th 2017 Murphy conducted another illegal traffic stop and attempted to murder me in retaliation of this ongoing litigation and investigation into his misconduct. While Murphy was in his vehicle for a half hour I called 911 and the sheriff's department for help they sent a deputy Tate Alexander whose presence on scene saved my life. When Murphy's attempt on my life failed, Murphy conducted a false arrest in attempt to maliciously cause as much damage as he could to me. Due to the audio and video I provided the Hamlin County state's attorney John Delzer the charges were immediately dropped and a complaint was filed against Murphy. It was later found out Murphy and Boyd asked a forensics expert Detective Nic Ahmann to explicitly lie about evidence in the first case but he refused and testified against them at Murphy's Decertification. The first case was later dismissed in my favor and Murphy was later unanimously decertified by the public safety standards commission on July 18th 2018 a federal 1983 civil lawsuit is still ongoing today after several appeals. After the November 18th 2017 traffic stop a former Hamlin county sheriff's deputy and former Brookings city police officer Jamie Lantgen came forward with the information that Murphy and his buddies in the Highway Patrol were providing false information to the Brookings police department and other local agencies that I "Nikolas Weeks was a sovereign citizen who was heavily armed threat that hated law enforcement that would shoot and kill them if I was ever pulled over." Since Lantgen was present in the court room as a bailiff in

many of the trials and hearings in my case he knew this information was false and communicated that to his superiors stating "this guy isn't a threat to us as long as we are doing our jobs correctly". I believed that this information was thoroughly debunked at the time from what Lantgen told me and due to how closely I worked with law enforcement agencies at the time they knew I was never any threat. But recently it appears not because that false information is still in the highway patrol system and is still placing my life and my family's life in danger with any encounter with law enforcement that false information is being shared with. Since 2016 I have noticed that I have been the victim of over 22 illegal traffic stops conducted by the highway patrol nearly all did not result in a ticket but those that did nearly all were dropped by providing my dash cam footage or the highway patrol did not show up to court several times or did not have any evidence proving I committed a crime or the evidence would have shown I was innocent. In my experience the highway patrol does not and will not provide any evidence if you are innocent of what you are accused of. I now know I have been illegally targeted and I still am being targeted by the Highway Patrol based on the false information from Murphy in 2017 and his friends. Due to the timing of this with my ongoing Federal section 1983 civil rights suit I believe this is a blatant attempt to interfere with that case by taking up my limited time and resources being forced to work on 2 appeals simultaneously. Nikolas Weeks v. City of Lake Norden, et al; Case #0:24-cv-02298 (8th Cir. 2024) I was one of the first to file a complaint against Murphy and it took over 2 years for him to get decertified unanimously by the state commission. So when I make the claims and complaints that I do, they are credible. I see David Lagroue's behavior escalating and mirroring that of Murphy's unless it is corrected. I find myself in a similar situation where I may be one of the first to make these complaints against Lagroue and Oxner in this venue

PRELIMINARY STATEMENT

Throughout this brief, “I” or “Me” I am referring to myself Nikolas Weeks or “Appellant” unless otherwise noted using the Court Report “CR”. David Lagroue is the Highway Patrol officer. Austin Oxner is the Deputy States Attorney for Brookings County, “Prosecutor,” or “lawyer.” Abigail Howard the 3rd Circuit magistrate Judge, “The Court,” or “Judge.” All other parties will be referred to their name or title. All References and Sources will be listed and indented single spaced. Irrelevant or repealed parts may be omitted.

JURISTICTIONAL STATEMENT

This is an appeal to the Supreme Court of the State of South Dakota from the whole of the final judgement rendered by Dawn Elshire the 3rd Circuit Court Judge in regards to CASE# 05POA24-301, request a reversal of the final judgment, a retrial if necessary, and petition for innocence in Weeks favor. This Court possesses jurisdiction of this matter pursuant to SDCL 15-26A-3.

STATEMENT OF THE CASE

I come before you an innocent man trying to clear my name. I was falsely accused of not wearing a seatbelt and speeding by Highway patrol officer David Lagroue on February 12th 2024. {See Exhibit #1 Defendant’s written notes of 2-12-24 traffic stop} I was at the 66 gas station in Brookings getting gas after getting back in the vehicle both occupants put on our seatbelts. I then made a left turn on to 6th street heading west I was in the left lane and there were several cars behind me. Not once did my vehicle exceed 29 mph as my heads up display showed

until after I was already past Western Ave in the 40 mph zone. After which I accelerated to 37mph over 2 blocks after already passing the officer who was sitting just before the 40mph zone facing east. At this point there were several vehicles going in the opposite direction entering a 30 mph from a 40 mph zone and 3 vehicles that were accelerating behind me. After passing the curve the highway patrol vehicle turned on his lights and proceeded to pull me over. The only way he would have got the number of 37 mph was if he was pacing me right before he pulled me over or got a reading from other traffic pulling me over instead which has happened to me before. I pulled over safely into the apartment parking lot on 10th St W. My dash cam recording captured this interaction and the officer's inappropriate behavior sending up red flags my life and my daughter's life may be in danger. {See USB with defendant's dash cam video and audio of stop.} I rolled my window down 3 inches enough to hear the officer and pass my documents already in my hand as the law requires. {see sd-driver-manual-rev-12-2023 pages 61 and 62}

Our seatbelts were still on. The officer walks up to my vehicle and asks to roll my window down when it was already rolled down enough to clearly communicate and pass documents as none of which were requested sending up a red flag. I was calm and courteous but you can hear the concern in my voice. I notified him that it is for my safety and gave him a legitimate reason that I was assaulted and almost killed before. My dash cam audio shows there was no issue with communication sending up a red flag. The officer did not have a body cam on or a name tag on. The officer did not identify himself another red flag. The officer was focused on escalating this stop before ever giving a reason for the stop showing he was not conducting a legitimate traffic stop. When I asked him what the reason for the stop was the officer lied saying it was speeding I told him "that is not true and the speed limit is 30 mph". The officer claimed that I was going 37. I told him I have a dash cam and I'll take him to court. The officer then claimed I was

threatening him. I told him "Sir I am not threatening you. You are the one who is conducting an illegal traffic stop here". At this point the officer loses it and is visibly angry ripping open my door before saying "OUT! OUT!". If I opened his door like that I would be charged with assaulting an officer. I was afraid I may have to defend myself. I unhooked my seatbelt, my daughter starts crying and I pull out a recording device and start recording as I step out notifying him I am recording this conversation. "so am I" The officer lied. I calmed my daughter down. After stepping out we go to the back of my vehicle. The officer starts mocking me acting like a creep "Where did you go to law school?" I told him "I didn't. I had to do it myself as there are no attorneys in this state that do this kind of work for people that don't have money and I have been very successful fighting false tickets on my own." The officer then lied "the reason I stopped you was you were not wearing a seatbelt and you were speeding." I did not feel safe this officer was making up false charges and I stayed back behind my vehicle. This officer clearly saw we had our seatbelts on and seat belts are a secondary violation. I told him that is a lie we had our seatbelts on. The officer said he "thinks they weren't on". Well his imagination is not evidence. I told him I am not a criminal and I do not drink or do drugs and I do not speed or violate traffic laws and we wear our seatbelts. I told him my dash cam heads up display shows my speed and that his radar got a bad reading because of the other traffic in the area and the vehicles going in the opposite direction that were going by from the 40mph to the 30mph zone. He went back in to his vehicle for several minutes.

He comes back out and says he has pulled me over before. I asked him who he was as I did not recognize him. He only identified himself as David. I said "David What?" He was still hesitant to identify himself but eventually said "David Lagroue" I immediately remembered him as the officer that falsely accused me of speeding twice and made uncalled for creepy comments

mentioning my daughter at the second traffic stop he made 3 years ago where she was not present. I took this to be a possible threat against me and my family due to my ongoing civil case against Lake Norden I did not have money or time to fight this at the time as I had federal court deadlines to meet and couldn't lose any more work and knowing that I would not get a fair trial in the 3rd circuit under Judge Spears who's previous rulings and findings of fact were the furthest from the truth were in defiance of the South Dakota Supreme Court's ruling of there was a Brady violation because Spears was covering for his buddy Todd Boyd conducting a malicious prosecution in Weeks first case against Lake Norden.(See City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016) and State of South Dakota Supreme Court Order of Remand #27893) Spears' findings were thoroughly discredited at the July 18th 2018 Decertification hearing. Where Todd Boyd made the call to not provide that evidence because he already had 2 coached witnesses to provide false testimony and the footage was never recovered or reviewed despite that being the standard procedure for such investigations. {see 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation} Boyd and Murphy further fabricated evidence in an attempt to make it look like he was complying with the South Dakota Supreme court's order to turn over the footage that was testified multiple times to exist and explicitly asked former Watertown police Detective Nic Ahmann to lie about their fabricated evidence to which he refused and testified against Murphy and Boyd at the 7-18-2018 Decertification Hearing of Murphy.

The first traffic stop conducted by Lagroue 4 years ago Lagroue said my license plate light was out and falsely stated that I was speeding. I got out of my vehicle and checked and it was in fact out. I thanked him for letting me know and I will have my mechanic fix it. I told him I wasn't speeding and my dash cam will show that I wasn't speeding. Lagroue wrote a warning

and left. My dash cam showed I was not speeding but since no citation was given I didn't pursue it further at the time.

Lagroue was then waffling on the details of the previous traffic stops not clearly remembering them and I corrected him and told him it is not the first time you falsely accused me of speeding. Lagroue admitted I had a much better memory than he did. Lagroue said that he "was giving me a mulligan on the speed due to the other traffic that could have interfered with his readings" giving a warning and writing a ticket for the seatbelt violation only. I told him we were wearing our seatbelts. Lagroue said we can talk about it later and he never did. I went back to my vehicle where my daughter was crying and scared. I put my seat belt back on and went home. The next day with the aid of my dash cam I wrote down everything on hand written notes to prepare for trial.

On March 14th 2024 David Lagroue was sitting in the same position as the first stop. I was in the right lane this time exiting Casey's Gas station when Lagroue recognized my vehicle and was pointing and laughing as I went by Lagroue was taunting me. I made note of this to present it to court. {See Exhibit #1 Defendant's written notes of 2-12-24 traffic stop} These kinds of behaviors are not professional or conduct becoming of an officer or indicative of someone who is conducting legitimate traffic stops.

On April 22nd 2024 I spoke on the phone with Brooking County Deputy States attorney Austin Oxner before the trial that after noon regarding the complaint and adding additional charges of speeding as there was no ticket issued for speeding. Oxner stated he was not going to just bring a case just for a seat belt he was going to add what he could if it was being brought to court. He also admitted often it is their practice to give deals by charging lesser things like a seat

belt instead of speeding as people are just as likely to pay the fine for the seatbelt instead of fighting a speeding ticket. So I am new the victim of a policing for profit revenue generation scheme. I asked him what if the person did neither of those how is that ethical for you to charge people for something they didn't do knowing how much hassle court is? As I have witnessed several people in the 3rd circuit courts plead guilty to things it was obvious they did not do so they don't have to deal with additional hassles in court because the process has become so onerous. Oxner said it is up to the accused to decide how far they want to defend their rights. I asked about the complaint stating there was an investigation what was the result of the investigation? and what evidence did he have? Oxner admitted he only briefly spoke with the officer and that he didn't order any evidence. In his conversation with Lagroue he stated that Lagroue said that the reason he was prosecuting these charges is that because of the Highway patrol system it stated that I was a sovereign citizen who was heavily armed and dangerous that did not cooperate with law enforcement. I asked if Oxner could get me a copy of this he stated that the Highway patrol's system is separate from theirs and that he doesn't have access to it. I told him my background and history and that that false information has been debunked years ago after it was brought forward by Jamie Lantgen and that I was never a sovereign citizen or a threat to law enforcement as that false information came from Jimmy Murphy and his buddies in the highway patrol after I was attacked by him in 2017. I told Oxner that the term sovereign citizen is used by dishonest and less than ethical law enforcement to justify killing lawfully armed individuals and that being falsely labeled a sovereign citizen puts my life, my family's lives and anyone that may be using my vehicles lives in danger with any law enforcement agency that may not know me or the details of my case against Lake Norden. Law enforcement by far and large treat sovereign citizens the same as the military treats unlawful enemy combatants. I am not and

have never been a violent domestic terrorist that wants to over throw the government and kill law enforcement. I do not know of or have ever encountered anyone who is a sovereign citizen. I have never killed anyone especially law enforcement that were once over 35% of my customers that is absurd. It was very clear from this conversation with Oxner that there was no investigation as the complaint stated and I was being retaliated against because people just pay the smaller fine instead of fighting it in court because to them nobody is innocent and since I am falsely labeled a sovereign citizen that label will cause irreparable prejudice by law enforcement and the courts so I can be targeted for abuse by the system at will without any recourse. Oxner said I had a clean record and the court should take that into consideration but the court didn't. Oxner also made mention that he was sympathetic to drug related crimes and handed out lighter sentences to those he prosecuted. I was confused as Oxner may have mistaking me for someone that would agree with drug legalization which had nothing to do with the traffic stop or what I was accused of. I am strongly opposed to drug legalization and abuse.

I sat in the court room before my trial and witnessed several other people pleading guilty to things they didn't do even though they may have been guilty of other things they chose to do because court was too much hassle with lost work and return trips. When they tried to share facts of their case they were shushed by the court. This is the pattern of behavior I have witnessed over 16 times in the 3rd circuit in Brookings, Madison and Hayti since 2016. In my experience if you are innocent of what you are accused of you are treated worse than any criminal by the courts in the 3rd circuit and that needs to change.

April 22nd 2024 Trial See Court Report, Transcript of Trial 4-22-2024. The burden of proof was on the state and as an innocent man I was still falsely convicted of both charges without any evidence in retaliation for me fighting this seatbelt ticket. Lagroue was unsure of

basic details of the case had me in the wrong lane mixing up the 2 times I drove by him in those positions and contradicted his previous statements he made at the traffic stop. Lagroue read from a script and committed perjury. Lagroue acted like he was a kicked puppy to garner sympathy from the court. He did not give reason for the stop or identify himself until the very end of the stop both times I had to ask him for the reason and identification he would not provide it on his own. Lagroue lied saying he had a clear view from where he was sitting which was not true he was sitting at an angle with a line of sight obstructed by a line of 5 trees, a light post, street signs, parked cars, a business sign and a wooden porch. {See Exhibit B Photo showing officers obstructed view} Lagroue lied when he said the other vehicles and obstructions would not give bad readings when he said they would during the traffic stop. Whenever I tried to show basic photo evidence proving my innocence showing that he could not see our seatbelts due to distance and because of black interior, dark grey seat belts, window glare, dirty windows, window tint, black shirt and gray patches on my coat Oxner would object to it. {See Exhibit A and Exhibit C} This is one of the very reasons why seatbelt violations are a secondary offence because of the difficulty to see inside others vehicles while moving. You cannot be pulled over for just a seatbelt violation in this state. Lagroue admitted the seatbelts of all occupants were on when he approached the vehicle then immediately Oxner lied stating “it is common practice for people to put their seat belts on when they see law enforcement”. When there was no evidence of that happening so support Oxner’s claim. We put our seatbelts on before we left the 66 gas station. The court’s ruling is the furthest thing from the truth and is not uncommon for the 3rd circuit’s revenue generation scheme.

May 17th 2024 I contacted the Highway patrol to see if I could get a copy of their records stating that I was a sovereign citizen or a heavily armed danger to law enforcement that Lagroue

told Oxner existed in the Highway patrol system. I was transferred to 2 different people who tried looking it up and they claimed it did not exist and were no notes in the traffic stop stating such. So if the state patrol officers that was in charge of records weren't being dishonest or incompetent then I believe Lagroue is a liar and that Oxner was dishonest as well. It also proves David Lagroue may be friends with Jimmy Murphy or one of Murphy's friends in the Highway patrol because where else would he had gotten that false information? The III Report or the NCIC? Did Lagroue make it up to prejudice Oxner and the court against me? If so Lagroue lacks the ethics and good moral character that citizens expect of Law Enforcement. If this officer is willing to make up a defamatory lie like this to try damage the reputation of an innocent man who stood up to him when he out right lied and conducted a poor excuse of a traffic stop then what is the limit of what he will sink to? This conviction will only embolden him to commit more of these acts and encourage him into escalating his misconduct thinking he can get away with anything. During these times a police officer abusing his badge and position like this is dangerous. I nearly lost my life to another out of control former officer who was increasingly and maliciously abusive to the public. It undermines the people's good faith in law enforcement at a time the relations between law abiding citizens and police are at a breaking point around the country.

In November 8th 2024 on a job site Weeks spoke with a former State Trooper, Tori Bjorke that that had a previous encounter a few years ago with Austin Oxner at his office on a case that took place at the former trooper's home. Oxner claimed that he had facts of the case that others were not privy to and showed her police reports. The she confronted Oxner on the several discrepancies in these reports containing false information and things that did not happen as if it were another case. The use of false and incomplete police reports containing information

that did not happen in this case and she said that this is sloppy work by the officers and Oxner was not properly doing his job. Oxner became unhinged and started screaming at this former trooper as if he could intimidate them. This is not how a prosecutor should be conducting themselves. Another person this former trooper knows of has also been branded by Oxner as a Sovereign citizen but that person is currently afraid or unwilling to talk about this at this time. When I shared the details of my cases with Bjorke she said that I was definitely not crazy as I am not the only one that is going through this or being targeted in this manner by the state patrol and Brookings County. I found this interesting and how it is establishing a relevant pattern of behavior by Oxner to do this to people he is charging that I was previously unaware of and did not have access to at the time of filing my appeals in this case.

Addressing the Arguments in the State's Reply

It appears the reply for the state was written by another attorney that was not present at trial who also has not reviewed the exculpatory evidence or even asked for it. Nor has this person writing the reply has ever contacted me previously. I am doing the best I am able to by myself to the best of my abilities I am not a lawyer nor do I want to be one. I do not waive any of my rights or waive any appellate issues these issues I have raised do have merit or I would not be making them. As there are issues on appeal that the courts do consider as an example in my first successful appeal to the state supreme court in the 2016 Jimmy Murphy case as a lay person I did not have knowledge or case law of what a Brady violation was at the time of writing my first appeal I simply stated facts of the case and that was sufficient for the state supreme court to take action and order that I be provided with the evidence that was withheld. (that evidence was never provided to me after the supreme court ordered it) and a remand the case back to the circuit court. I rely heavily on what happened in my cases as this is the same exact situation I find

myself in where exculpatory evidence has been denied to me by the prosecutor in this case that resulted in the false conviction of an innocent man. It is also often that new evidence is discovered after the court proceedings have concluded that new evidence is discovered proving ones innocence as what happened with the Murphy case Where it wasn't until July 18th 2018 Decertification hearing where Todd Boyd admitted making the call to not provide the exculpatory evidence before trial without ever looking at it committing a Brady violation because he already had the testimony of 2 witnesses but the commission found those witnesses to not be honest or credible even though the previous lower courts did. It wasn't discovered until 2023 that Boyd Specifically asked an expert to lie about the dash cam footage in the 2016 Murphy case and it wasn't discovered until October 11th 2023 that the state withheld and covered up evidence of their liability by covering up and lying about the evidence of Weeks innocence in the November 18th 2017 attack by Murphy that was in retaliation for appealing to the south Dakota supreme court in the 2016 case. When officers, prosecutors, investigators and lower courts are dishonestly conducting themselves in this manner it is clear there are serious issues that need to be addressed and corrected as evidenced by the fact I am going through all of this no fault of my own again as I was not speeding by going only 29 MPH in a 30 zone and we had our seatbelts on before leaving the gas station.

I. Brady Violation

Weeks has shown that a Brady violation occurred by the admitted acts of Oxner and Lagroue never reviewing the footage and never provided it. If it was impeaching evidence the prosecution would have shown it at trial instead of relying solely on the testimony of an officer that Weeks now knows to be dishonest and had testified to things that simply were not true and did not happen. This officer is willing to perjure himself in court contradicting what officer said

at the traffic stop. The evidence would be favorable to the accused as it would show Weeks was not speeding, there was other traffic that would have interfered with the radar reading, would prove the testimony of the officer at the traffic stop would not match the officer's testimony at trial and it would show that Weeks seatbelt was on or it would show how it would have been difficult for the officer to see it being on in the far lane and due to the dark interior of Weeks' vehicle the seat belt would have blended in with the dark spots on Weeks jacket as the photos Weeks submitted showing this with his appeal but was denied the ability submit this evidence at trial when he tried to in court. It does not require a request from me for a brady violation to have occurred.

Brady v. Maryland, 373 U.S. 83 (1963).

A Brady violation occurs when a prosecutor fails to provide a defendant or their defense attorneys with evidence that is favorable to their case. This can include exculpatory or impeaching evidence, or evidence that is material to their defense. The evidence must have been suppressed by the state, either intentionally or unintentionally, and the defendant must not have been able to obtain it themselves. Brady violations are a violation of a defendant's constitutional rights and can lead to a number of outcomes, including:

- Mistrial

If the violation is discovered during trial, the court can declare a mistrial or prevent the prosecution from using the unfavorable evidence

- Overturned conviction

If the violation is discovered after the defendant has been convicted, the most common outcome is that the conviction will be overturned

- Dismissed charges

The case may be dismissed

- Prosecutorial misconduct charges

If the prosecution withheld evidence intentionally, they may be subject to sanctions or charges of prosecutorial misconduct

II. Prosecutorial Misconduct

I believe that based on the previous Brady violations Weeks has been subjected to that this suppression by destruction or allowing it to expire was in fact intentional and has become standard practice for prosecutors to not provide this evidence to the defense as there has no real deterrent in South Dakota to stop them from behaving in this manner knowing they have most likely gotten away with it in the past and is business as usual in the 3rd circuit courts. Both Oxner and Lagroue stated that they never reviewed the footage and Oxner never ordered it and allowed it to expire. So how could they even know whether it was exculpatory or not if they never reviewed it knowing that this case was going to trial? By not reviewing the footage it would give them plausible deniability to further their false narrative in an attempt to convict an innocent man. This Mirrors exactly what Todd Boyd did in the Murphy case. There was also prejudice as Oxner stated over the phone to Weeks before trial that Lagroue claimed it said in the state patrols computer system that Weeks was a "Sovereign citizen who was heavily armed and a threat to law enforcement. This is why they are prosecuting Weeks and adding additional charge of speeding as Oxner was not going to take only a seat belt ticket to court." such claims by Oxner and Lagroue are false and prejudicial in nature and severely put my life and that of my family and coworkers lives in danger during any interaction with law enforcement that do not know me or the history of my cases. Weeks knows that this footage would be exculpatory and not in the prosecutions favor as Weeks was not speeding and was wearing his seatbelt and would overturn this false conviction. No effort has been made by the officer or prosecution to provide this footage.

The burden of proof is on the state not the accused it is not the responsibility of the accused to furnish evidence in the states possession that I never had access to. The State not preserving evidence is a violation of due process and is an expected duty of prosecutors and officers if a case is to be tried and this duty was expected of officers and prosecutors by the public but also was by the Commissioners the South Dakota public safety standards commission on July 18th 2018. Mirroring the Murphy case again Oxner and Lagroue came into court made statements under oath that were not true because they never looked at the evidence. I received a letter from Oxner there was an investigation but in court they admitted no investigation was ever done and we now know the footage was never looked at or ordered. Exhibit #2 Letter adding additional charge of speeding. Exhibit #3 Complaint for speeding. highlighted false claim of investigation. This letter was simply an intimidation tactic to get me to pay a fine for something I did not do. Oxner admitted he never viewed or requested the footage it despite that it will show I was not speeding and I was wearing my seatbelt. I am entitled to discovery of any exculpatory evidence whether there is a subpoena or not. If such evidence proving my innocence is not provided or is suppressed by the state then a Brady violation has occurred. I have already been the victim of dishonest officers and prosecutors not providing exculpatory evidence in the past and the conduct of Oxner and Lagroue directly mirror the conduct of Boyd and Murphy in a previous case provided in the examples below. City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016) 071818 Transcript Copy Pages 229, 247, 254-256 Brady violation. State of South Dakota Supreme Court Order of Remand #27893 Not once have I ever received footage from traffic stops showing me to be guilty of what I have been accused of because the footage was never in the states favor in the past nor would it be now in this case. I have seen other people's footage provided to them when they were guilty of what they were

accused of but I have never received footage provided by the state showing innocence of the individuals it has always had to come from other sources other than law enforcement such as personal phone video, personal dash cam or convenience store footage and even with that evidence it still is no guarantee you will be treated fairly in court. Like the Leonard Kopmann complaint against Murphy that was identical to the 2016 Weeks traffic stop the officer's footage was never provided both drivers were innocent. With the state and local law enforcement actively covering up and withholding evidence it makes it difficult if not impossible for those who are innocent to prove such. I am finding this misconduct is not a 1 off situation and is affecting other people as well. My credible testimony and innocence will never be enough in a Justice system that has clearly become pack of wolves and 1 sheep voting for what to have for dinner we all know how that turns out with the conviction of innocent people either for the prosecutors gain who's performance is based on how many convictions they can add to their prosecutorial gun belt, the officers gain who's performance in the state patrol is measured by his superiors on how many tickets he writes, or financial gain by the court and state institutions to which the fine money is distributed. Unless under extraordinarily rare circumstances do the innocent victims get justice in a situations like that especially if they are withholding evidence.

Definition: Withholding of evidence refers to the act of intentionally hiding or suppressing evidence that could be used in a legal case. This is considered a serious offense as it obstructs justice and can lead to wrongful convictions or acquittals. Like what was done to Weeks in these cases.

Example: A police officer who fails to disclose important information or evidence that could exonerate a suspect is guilty of withholding evidence. For instance, if a witness comes forward with information that contradicts the prosecution's case, but the police officer chooses not to

include it in the investigation report, this would be considered withholding of evidence. This was done to Weeks by Lagroue in this case as well as By Murphy, Boyd and DCI agent guy Dibennidetto(discovered 2023) in the 2016 and 2017 Murphy Cases. City of Lake Norden v. Nikolas Weeks, CASE# 28POA16-000125 (SD 3rd Cir. 2016) Nikolas Weeks v. City of Lake Norden, et al; Case #: 0:24-cv-02298 (8th Cir. 2024)

Another example: A prosecutor who intentionally withholds evidence that could help the defense is also guilty of this offense. For example, if a prosecutor fails to disclose a witness statement that could exonerate the defendant, this would be considered withholding of evidence.

These examples illustrate how withholding of evidence can lead to an unfair trial and a miscarriage of justice. It is important for all parties involved in a legal case to disclose all relevant evidence to ensure a fair and just outcome.

III. There is no evidence to uphold either of these convictions.

The only evidence they are relying on is a dishonest officer's testimony who testified to things that just simply were not true. He was unprepared even with the basic information officers normally had on hand in court. His testimony had me in the wrong lane. He was unsure of himself and admitted he would have to check his footage which he also admitted he never reviewed previously. Hello RED FLAG here. At this point it also shows that this evidence will be exculpatory. This is exactly word for word what happened in the 2016 Murphy case below.

On July 18th 2018 the South Dakota public safety standards commission where Marty Jackley was also present at this hearing as a member of the commission. Kelly Marnette Questioned The City of Lake Norden Mayor on the importance of preserving evidence in the

Transcript Copy Pages 229, 247, 254-256 Brady violation

Q. But would you agree that it's extremely important that law enforcement officers preserve all evidence?

A. Yes, I would.

Q. And he didn't do that in this case?

A. No, he didn't.

Q. He didn't do it. And then he came into court and testified about something that ended up not being true because he didn't even look at the evidence.

A. That's correct.

Here Clint Sargent questions Todd Boyd on the Brady rule violation.

A. there was an Order of Remand by the South Dakota Supreme Court for the trial court to go back and see if the Brady rule had been violated.

Q. And, just briefly, what does that mean?

A. That means if there's any exculpatory evidence that would help the Defendant -- or really not just exculpatory but just about any other evidence, then you give it to the Defendant and you give it to him prior to whether it be the trial or the preliminary hearing or ever what.

The Brady rule is the United States v. Brady. And that's what it states is that if there's evidence, the defense -- in many instances even if they don't request it, you give it to them, if they think that there's going to be something there that's going to help their defense.

Kelly Marnette questions Todd Boyd about committing a Brady violation without seeing the footage and making the call to not provide it. The South Dakota State Supreme court verifies there is an established duty of law enforcement to preserve and disclose evidence.

Q. Okay. And, obviously, you talked a little bit about Brady so let's talk about Brady.

You have the opinion that Brady wasn't applicable to the dashcam, even though you never saw the video; correct?

A. Correct.

Q. So you just talked to Jimmy, and you said, oh, you're telling me that it wouldn't have caught the actual violation so we don't need to preserve that and turn it over. So you're really basically taking the fall for Jimmy today?

A. It's a decision I made. Not his.

Q. Okay. The Supreme Court disagreed with you.

A. They remanded it.

Q. Yes. And basically they said that there's a duty to disclose it, first of all, no matter whether Mr. Weeks asked for it or not and, second of all, whether you as the prosecutor made a decision that, well, it's not relevant, it's not exculpatory, so I'm just not going to turn it over; right?

A. True.

Q. You knew that he had a dashcam in his patrol car at the time of the Weeks video.

A. I think I did.

Q. Well, you definitely did --

A. Yeah. I did. I did.

Q. Because you decided not to turn it over.

A. That's true.

Q. Okay. And you didn't even have Officer Murphy preserve it, did you?

A. Did not.

Q. You knew this was going up to the Supreme Court. You knew it right away within 30 days, obviously, because that's the time for an appeal.

A. Well, at that time it would have been about five or six months after the video was taken, if there was one.

Q. Okay. But within 30 days of the trial you knew that.

A. Yes.

Q. Okay. Well, actually you knew before the trial because you told him don't bother giving it to me and don't bother preserving it.

A. True.

Q. Right. But you would agree with me that law enforcement also has a duty beyond what is -- you tell him. He has an independent duty to preserve the evidence. Yes?

A. I think that's important, yes.

Q. Absolutely important.

So you told him don't bother. We don't have to turn it over. Correct?

A. I said I -- to that effect.

Q. And part of that is because Mr. Weeks, who's acting

pro se, didn't file a formal motion.

A. For me that wasn't really the reason but --

Q. Okay. The reason was because you said I don't have to turn it over because I don't think it's relevant or exculpatory.

A. I thought it did not fall within the purview of Brady, and the trial judge agreed.

Q. And the trial judge was obviously wrong too?

This is also important after the South Dakota Supreme Court remanded the case back to the third circuit Boyd conspired with his friend the 3rd Circuit court Judge Spears to deny there was a Brady violation when there clearly was and it was admittedly caused by Boyd's conduct. Now in the responses by Oxner and rulings by Judge Elshire completely ignore the existence of the Brady violation despite Weeks raising it both in his briefs and at trial. In both of these cases it is shown that the practice of the third Circuit courts is to allow violations of due process rights of innocent victims of false charges brought by dishonest law enforcement officers. If the decisions in this case are not reversed and the case is remanded since the exculpatory evidence was never preserved by the state patrol in this case as is the standard practice of the highway patrol the lower court will merely follow its previous misconduct by defying the South Dakota Supreme courts orders and not turn over the exculpatory evidence proving the innocence of an innocent man resulting in yet another false conviction. Due to what I have witnessed and been through I do not believe there will be a fair trial or hearings if this case were to be remanded back to the third circuit. If you are innocent of what you are accused of you are treated worse than any criminal. I have since found that this misconduct is happening to other people as well in Brookings county and is wide spread around the state. This needs to be stopped as innocent people are being preyed upon by our justice system.

Lagroue knew he did not have a good reading due to other traffic which is why he only wrote a warning for the speed. It would also have Lagroue's admission to Weeks at the traffic stop that there was giving Weeks "a mulligan on speed because there was other traffic." Again the audio from Lagroue's Dash cam becomes exculpatory in Weeks favor. Weeks is not guilty of speeding as Weeks heads up display on his dash cam only showed 29 mph.

Lagroue never testified that Weeks put his seatbelt on after seeing him that was offered by Oxner at court only after Lagroue admitted both occupants in Weeks vehicle were wearing seatbelt when he opened my door. It makes no sense that a seat belt would be off after both occupants put them on before leaving the 66 gas station. This bogus theory by Oxner of claiming of it is regular practice for people to put on a seat belt when they see law enforcement doesn't apply here as all occupants in Weeks vehicle had their seatbelts on since leaving the 66 gas station and Weeks did not remove it until after Lagroue ripped open my door. There is also no evidence of Oxner's claim as the state has not presented the footage would have showed weeks seat belt on. Again Oxner made a statement to something that was not true without seeing the evidence himself. This false theory of taking a seat belt off and putting it back on on after such a short distance of putting it on just because of seeing law enforcement is not just credible and but yet it still prejudiced the court against Weeks and falsely convict him of something he did not do.

Conclusion

Down the road this may be an official record of more Misconduct to come in the future from Oxner, Lagroue and the State to cover up officer and prosecutorial misconduct of how the justice system has been weaponized against the innocent. As I talk to more people and victims in the small world type of community where everyone is connected it is clear there is a problem and

I am not the only one this is happening to. The Magistrate and Circuit courts erred in convicting an innocent man. The Appellant still maintains his innocence and has provided facts stating there is still reasonable doubt in regards to his conviction. Unless there is definitive untainted proof provided by the state like video evidence showing the Appellant speeding and not wearing a seatbelt the Appellant should be found innocent of the charges and the Magistrate and Circuit court's decision reversed. The Appellant provided reasonable examples that David Lagroue made false statements under oath. I also ask for compensation for my lost time and work working on this. I also ask that the court refund any fines paid and expunge from my record any tickets I may have received in Brookings County from the Highway Patrol due to being illegally targeted because of false information in their system claiming I am a sovereign citizen or a threat to law enforcement. I would also ask that any such false information wrongfully putting my life and my family's lives in danger be removed from their system and where ever else it may reside with proof of removal. I need to know exactly where it is at so we can get rid of it and stop whoever is still spreading it. If it is found that Lagroue or Oxner made this "sovereign citizen" nonsense up to irreparably prejudice the court against Weeks then I will be filing complaints against both Oxner and Lagroue. Prosecutorial misconduct charges should be considered against Oxner for malicious prosecution. I will be going public exposing this policing for profit scam that is being run in these courts. It should not be required to appeal to the State Supreme court outside of the 3rd circuit or to Federal appellate courts out of the state of South Dakota to for the innocent to even receive a fair trial and hearings. I apologize there is more I could add but due to my limited time, health and resources I must turn in what I have done already. If there are any questions for me please contact me and I can help. I thank you for your time and consideration.

CERTIFICATE OF SERVICE

I hereby certify that on January 22nd, 2025, I Served a true and correct copy of the foregoing Appellate Brief and accompanying materials by depositing a copy thereof to the Email of the South Dakota Supreme Court, to the following persons, to-wit:

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Times New Roman typeface in 12 point type. Appellant's Brief contains 8900 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 21st day of January, 2025.

Nikolas Weeks

Nikolas Weeks
Pro Se Appellant