

IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

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STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

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APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

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APPELLANT'S BRIEF

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NOTICE OF APPEAL FILED October 15, 2024

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	3.
JURISDICTIONAL STATEMENT .....	5.
STATEMENT OF LEGAL ISSUES – Sales Tax charges .....	5.
STATEMENT OF LEGAL ISSUES – Forgery charges .....	6.
PRELIMINARY STATEMENT .....	7.
FACTS – Sales Tax charges .....	7.
FACTS – Forgery charges .....	11.
ARGUMENT – Sales Tax charges .....	18.
CONCLUSION – Sales Tax charges .....	32.
ARGUMENT – Forgery charges .....	32.
CONCLUSION – Forgery charges .....	41.
REQUEST FOR ORAL ARGUMENT .....	41.

## TABLE OF AUTHORITIES

### Statutes Cited:

SDCL Chap. 10-45 .....	7, 9, 26.
SDCL 10-45-1 .....	24, 27.
SDCL 10-45-1(10) .....	24.
SDCL 10-45-1(11) .....	6, 20, 23.
SDCL 10-45-1(12) .....	6, 20, 24.
SDCL 10-45-2 .....	7, 9.
SDCL 10-45-4 .....	7, 9, 24.
SDCL 10-45-4.1 .....	24.
SDCL 10-45-5 .....	24.
SDCL 10-45-24 .....	7, 9.
SDCL 10-45-48.1 .....	23, 29.
SDCL 10-45-48.1(6) .....	5, 6, 7, 9, 18.
SDCL 22-30A-3 .....	36.
SDCL 22-39-36 .....	5, 6, 7, 12, 32.
SDCL 23A-32-2 .....	5.
SDCL 23A-32-15 .....	5.

### Cases Cited:

<i>Black Hills Truck and Trailer, Inc. v. SD Dept. of Revenue</i> , 881 N.W.2d 669 .....	24.
<i>Butler Machinery Co. v. S.D. Dept. of Revenue</i> , 2002 S.D. 134 ¶6, 653 N.W.2d 757, 759-760 .....	21, 24, 29.
<i>In Re State Sales &amp; Use Tax Liab. Of Palm Oil, Inc.</i> , 459 N.W.2d 251, 255 (S.D. 1990) ..	29.
<i>Jones</i> , 51 Cal.3 <sup>rd</sup> at 317, 320, 270 Cal.Rptr. 611, 792 P.2d at 656, 657 .....	19.
<i>Modern Merchandising, Inc. v. Dept. of Revenue</i> , 397 N.W.2d 470, 471 (S.D. 1986) ...	6, 21.
<i>Paul Nelson Farm v. SD Dept. of Revenue</i> , 847 N.W.2d 550, 553-554, 2014 S.D. 31 ¶7 ..	21, 24, 29.
<i>Sioux Falls Newspapers, Inc. v. Sec. of Revenue</i> , 423 N.W.2d 806, 810 (S.D. 1988) ..	21.
<i>State v. Anderson</i> , 1996 S.D. 46, ¶12, 546 N.W.2d 395, 399 .....	19.
<i>State v. Frias</i> , 2021 S.D. 26, ¶21, 959 N.W.2d 62, 68 .....	38.
<i>State v. Gallegos</i> , 316 N.W.2d 634, 638 (S.D. 1982) .....	23.
<i>State v. Greene</i> , 192 N.W.2d 712, 715 (S.D. 1971) .....	37.
<i>State v. Halverson</i> , 394 N.W.2d 886, 887 (S.D. 1986) .....	6, 23.
<i>State v. Hart</i> , 1996 S.D. 17, ¶8, 544 N.W.2d 206, 208 .....	37.
<i>State v. Hatchett</i> , 2014 S.D. 13 ¶11, 844 N.W.2d 610, 614 .....	29.
<i>State v. Jackson</i> , 765 N.W.2d 541, 545-546, 2009 S.D. 29, ¶18 .....	35, 36.
<i>State v. Kessler</i> , 772 N.W.2d 132, 133, 2009 S.D. 76, ¶1 .....	6, 7, 35, 36, 37.
<i>State v. Moeller</i> , 298 N.W.2d 93, 94 (S.D. 1980) .....	23.
<i>State v. Morse</i> , 2008 S.D. 66, ¶12, 753 N.W.2d 915, 919 .....	35, 36.
<i>State v. Muhm</i> , 775 N.W.2d 508, 516, 2009 S.D. 100 ¶¶25, 27 .....	19.
<i>State v. O'Neal</i> , 2024 S.D. 40, ¶47, 9 N.W.3d 728, 748) .....	38.
<i>State v. Plenty Horse</i> , 184 N.W.2d 654, 658 (S.D. 1971). .....	38.
<i>State v. Roubideaux</i> , 755 N.W.2d 114, 118, 2008 S.D. 81, ¶31. ....	38.

<i>State v. Smiley</i> , 2004 S.D. 119, ¶6, 689 N.W.2d 427, 429. ....	37.
<i>State v. Vogel</i> , 315 N.W.2d 321, 322 (S.D. 1982) . ....	23.
<i>State v. Wellner</i> , 318 N.W.2d 324, 332 (S.D. 1982) . ....	6, 23.
<i>United States v. Harriss</i> , 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989 . ....	30.



## JURISDICTIONAL STATEMENT

The State, in criminal case 71 Cri. 22-000116, charged Appellant with two counts of Forgery (SDCL 22-39-36). In criminal case 71 Cri. 22-000088, the State charged Defendant with two counts of Engaging in Business as a Retailer After Revocation of Sales Tax License (SDCL 10-45-48.1(6)). A jury trial was held July 22-25, 2024 in this matter, and Appellant/Defendant was tried on both of these cases in the same jury trial. The Defendant filed Motions for Judgment of Acquittal. The Circuit Court denied such motions. The jury found Defendant guilty of all charges, and Defendant appeals from such Judgments and Orders Suspending Execution of Sentence filed in each case.

This appeal is from the Order Suspending Execution of Sentence dated September 20, 2024 by the Hon. Julia M. Dvorak in the criminal matter 71 Cri. 22-000088, and is taken pursuant to SDCL 23A-32-2. Notice of Entry of such Order was served on Appellant's attorney on September 24, 2024. Notice of appeal in regard to such Order was filed on October 15, 2024.

This appeal is also from the Order Suspending Execution of Sentence dated September 20, 2024 by the Hon. Julia M. Dvorak in the criminal matter 71 Cri. 22-000116, and is taken pursuant to SDCL 23A-32-2. Notice of Entry of such Order was served on Appellant's attorney on September 23, 2024. Notice of appeal in regard to such Order was filed October 15, 2024.

This appeal is timely pursuant to SDCL 23A-32-15.

## STATEMENT OF LEGAL ISSUES – ENGAGING IN BUSINESS AS A RETAILER

### AFTER REVOCATION OF SALES TAX LICENSE

1. Whether the circuit court was in error denying the Defendant's Motion for Judgment of Acquittal.

Circuit Court: Denied the motion for judgment of acquittal.

Most Relevant Statute: SDCL 10-45-48.1(6); SDCL 10-45-1(11); SDCL 10-45-1(12)

Most Relevant Case: *State v. Wellner*, 318 N.W.2d 324 (S.D. 1982)

2. Whether there were any facts presented at the jury trial upon which the Defendant could have been found guilty beyond a reasonable doubt of engaging in a business as a retailer after revocation of his sales tax license.

Circuit Court: Denied Defendant's motion for judgment of acquittal.

Most Relevant Statute: SDCL 10-45-48.1(6)

Most Relevant Case: *State v. Halverson*, 394 N.W.2d 886 (S.D. 1986)

3. Whether a crime exists upon which the Defendant could have been found guilty for engaging in a business as a retailer after revocation of his sales tax license when the facts presented proved that a third party was operating the business and paying the sales tax on each transaction.

Circuit Court: Denied Defendant's motion for judgment of acquittal.

Most Relevant Statute: SDCL 10-45-48.1(6)

Most Relevant Case: *Modern Merchandising, Inc. v. Department of Revenue*, 397 N.W.2d 470 (S.D. 1986)

#### STATEMENT OF LEGAL ISSUES – FORGERY CHARGES

1. Whether the circuit court was in error in denying the Defendant's Motion for Judgment of Acquittal.

Circuit Court: Denied the motion for judgment of acquittal.

Most Relevant Statute: SDCL 22-39-36

Most Relevant Case: *State v. Wellner*, 318 N.W.2d 324 (S.D. 1982)

2. Whether the jury had facts presented in which to find the Defendant guilty of forgery beyond a reasonable doubt.

Circuit Court: Denied Defendant's motion for judgment of acquittal.

Most Relevant Statute: SDCL 22-39-36

Most Relevant Case: *State v. Kessler*, 772 N.W.2d 132, 2009 S.D. 76

3. Whether the jury had any facts presented of an intent to defraud upon which to find the Defendant guilty of forgery beyond a reasonable doubt.

Circuit Court: Denied Defendant's motion for judgment of acquittal.

Most Relevant Statute: SDCL 22-39-36

Most Relevant Case: *State v. Kessler*, 772 N.W.2d 132, 2009 S.D. 76

#### PRELIMINARY STATEMENT

All references to the Clerk's Index to the Clerk's Certificate will be "CI" followed by the page number. All references to the trial transcripts will be "TR" followed by the page and line numbers.

#### **FACTS – 71 CRI. 22-88, SALES TAX CHARGE – Count 1**

Count 1 of the Information filed February 7, 2023 states:

"That on or about the 7<sup>th</sup> day of February, 2022, in the County of Spink, State of South Dakota, Jesse L Wright, d/b/a Jim River Ranch, did commit the public offense of Engaging in Business as a Retailer Under SDCL Chapter 10-45 After Revocation of Sales Tax License (SDCL 10-45-48.1(6)) (class 6 felony) in that he did then and there engage in business as a retailer subject to the provisions of SDCL Chapter 10-45 after having his sales tax license revoked by the secretary of revenue contrary to SDCL 10-45-2, SDCL 10-45-4, SDCL 10-45-24, and SDCL 10-45-48.1(6), contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota." [CI 1]

Count 1 charges that Jesse Wright (Wright) operated a business as a retailer at a time when his license to operate a business, as a retailer, had been revoked. (CI, ¶1) This charge is directly related to a check dated February 7, 2022 in the amount of \$2,014 from Lookout Sky, LLC for hunting services made payable to Jim River Ranch. (Ex. 3

admitted into evidence; TR p. 311, lines 13-25; p. 312, lines 1-8) The check for \$2,014 was deposited to the Pheasant Capitol Hunting & Lodging account of Debra Visser at Heartland State Bank. (TR p. 104, lines 3-23; TR p. 311, lines 24-25; TR p. 312, lines 1-8; Ex. 103).

Debra Visser operated the hunting lodge, Pheasant Capitol Hunting & Lodging d/b/a JRR (Jim River Ranch) pursuant to a lease agreement with Jesse Wright. (TR p. 306, lines 14-18; Ex. 20) Debra Visser established her own checking account for Pheasant Capitol Hunting & Lodging with Heartland State Bank. (TR p. 306, lines 24-25; p. 307, line 1)

Debra Visser deposited the \$2,014 check to her Pheasant Capitol Hunting & Lodging business checking account in February of 2022. (Ex. 103; Ex. 3; TR p. 311, lines 13-19; p. 311, lines 24-25; p. 312, lines 1-2)

The check for \$2,014 from Lookout Sky, LLC was deposited to Pheasant Capitol Hunting & Lodging, Debra Visser's account in February of 2022 (TR p. 106, lines 17-19). Such deposit for \$2,014 was included in Deb Visser's computations for sales tax, and sales tax of 6% was paid upon such \$2,014 check for the hunting services provided by Pheasant Capitol Hunting & Lodging. (TR p. 106, lines 12-16 and lines 22-25, p. 107, lines 8-13) Such sales tax was paid by Deb Visser on moneys she received as lessee of Jim River Ranch and were reported on her sales tax report filed in March 2022 on moneys she received from hunters (\$2,014 from Lookout Sky, LLC) in February of 2022. (TR p. 107, lines 16-25, p. 108, lines 1-9; Ex. 103; Ex. 102)

The sales tax was paid by Deb Visser in March of 2022 on the receipt of \$2,014 received from Lookout Sky, LLC by Debra Visser in February of 2022. Debra Visser

received these monies from Lookout Sky as part of operating Jim River Ranch as the lessee of Jim River Ranch, and Debra Visser reported the income and paid the sales tax thereon.

There was no evidence whatsoever that Wright, the Defendant, received the \$2,014 alleged in Count 1 as a hunting receipt from Lookout Sky, LLC as a retailer. There is no evidence whatsoever that Wright was operating a business as a retailer in regard to the \$2,014 paid to Deb Visser as a fee for hunting. There is no evidence whatsoever that Wright received that hunting fee from Lookout Sky for hunting services or was required to pay sales tax thereon. In fact, the lessee of the hunting operation, namely Deb Visser, received the hunting fees as the lessee of JRR, and she paid the sales tax thereon.

**FACTS – 71 CRI. 22-000088, SALES TAX CHARGES – Count 2**

Count 2 charges that Wright operated a business, as a retailer, at a time when his license to operate a business, as a retailer, had been revoked. (CI 1)

Count 2 of the Information filed February 7, 2023 in 71 Cri. 22-88:

“That on or about the 3rd day of March, 2022, in the County of Spink, State of South Dakota, Jesse L Wright, d/b/a Jim River Ranch, did commit the public offense of Engaging in Business as a Retailer Under SDCL Chapter 10-45 After Revocation of Sales Tax License (SDCL 10-45-48.1(6)) (class 6 felony) in that he did then and there engage in business as a retailer subject to the provisions of SDCL Chapter 10-45 after having his sales tax license revoked by the secretary of revenue contrary to SDCL 10-45-2, SDCL 10-45-4, SDCL 10-45-24, and SDCL 10-45-48.1(6), contrary to statute in such

case made and provided against the peace and dignity of the State of South Dakota.” (CI 1)

This charge is directly related to a check dated March 3, 2022 in the amount of \$1,272 from South Suburban Church made payable to Jim River Ranch for hunting services. (Ex. 2; Ex. 2 admitted into evidence; TR p. 311, lines 1-5 and lines 24-25; TR p. 312, lines 1-8; TR p. 310, lines 21-25) The check for \$1,272 was deposited to the Pheasant Capitol Hunting & Lodging account of Debra Visser at Heartland State Bank. (TR p. 111, lines 21-24; TR p. 311, p. 24-25; TR p. 312, lines 1-2; Ex. 103; Ex. 2)

Debra Visser operated the hunting lodge, Pheasant Capitol Hunting & Lodging d/b/a JRR (Jim River Ranch) pursuant to a lease agreement with Wright. (TR p. 306, lines 14-18; Ex. 20) Debra Visser established the checking account for Pheasant Capitol Hunting & Lodging with Heartland State Bank. (TR p. 306, lines 24-25, p. 307, line 1)

Debra Visser deposited the \$1,272 check from South Suburban Church into her business checking account in March of 2022. (Ex. 103; Ex. 3; TR p. 310, lines 21-25; p. 311, lines 1-5) Sales tax of 6% was paid on such \$1,272. (TR p. 111, line 25; p. 112, line 1) Such sales tax was paid by Deb Visser on the money she received of \$1,272 as a lessee of Jim River Ranch and which she reported on her March sales tax report filed in April of 2022. (TR p. 109, lines 4-25; p. 110, line 1) (Ex. 103, Ex. 102) (TR p. 111, lines 8-25; p. 112, line 1)

The sales tax was paid by Deb Visser in April of 2022. Deb Visser received these monies from South Suburban Church as part of her operation of Pheasant Capitol Hunting & Lodging d/b/a Jim River Ranch as the lessee of Jim River Ranch.

There was no evidence whatsoever that Wright, the Defendant, received the \$1,272 alleged in Count 2 as hunting receipt from South Suburban Church as a retailer. There is no evidence whatsoever that Wright was operating a business as a retailer in regard to the \$1,272 paid to Deb Visser as a fee for hunting. There is no evidence whatsoever that Wright received such money from South Suburban Church or was required to pay sales tax thereon. In fact, all the evidence proves that the lessee of the hunting operation, namely Deb Visser, received the hunting fees and paid the sales tax thereon.

Deb Visser filed her business name with the South Dakota Secretary of State as Pheasant Capitol Hunting & Lodging d/b/a JRR (Jim River Ranch). (Ex. 101; TR p. 333, lines 9-16; TR p. 334, lines 9-13)

Deb Visser testified that the \$2,014 from Lookout Sky, LLC was deposited into Deb Visser's Pheasant Capitol Hunting & Lodging check account. (TR p. 367, lines 2-5) Deb Visser testified that she paid sales tax on such \$2,014 she received from Lookout Sky for hunting services. (TR p. 367, lines 6-7)

Deb Visser testified that she had a deposit of \$1,272 from South Suburban Church in March of 2022. (TR p. 368, lines 24-25; Ex. 103) Deb Visser testified that sales tax was paid by her on the \$1,272 hunting fee she received from South Suburban Church. (TR p. 370, lines 4-22; Ex. 103; Ex. 102)

#### **FACTS – 71CRI. 22-116, FORGERY CHARGES**

Appellant was charged in 71 Cri. 22-116 with the following criminal charges:

Count 1 of Information filed February 7, 2023 states:

“That on or about the 26<sup>th</sup> day of February, 2022, in the County of Spink, State of South Dakota, JESSE WRIGHT, did commit the public offense of FORGERY, in



violation of SDCL 22-39-36, in that he did with intent to defraud, falsely make, complete, or alter a written instrument of any kind, or passed a forged instrument of any kind i.e.: he endorsed a check, #1044, made payable to JRR, in the amount of \$2,000.00, on a Heartland State Bank checking account belonging to Debbie Visser, d/b/a Pheasant Capital Hunting & Lodging, while he was not authorized to write checks on her account, contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota. **CLASS 5 FELONY**”

Count 2 of the Information filed February 7, 2023 in 71 Cri. 22-116:

“That on or about the 6<sup>th</sup> day of April, 2022, in the County of Spink, State of South Dakota, JESSE WRIGHT, did commit the public offense of FORGERY, in violation of SDCL 22-39-36, in that he did with intent to defraud, falsely make, complete, or alter a written instrument of any kind, or passed a forged instrument of any kind ie: he endorsed a check #1055, made payable to Kevin Siebrecht, in the amount of \$1925.00, on a Heartland State Bank checking account belonging to Debbie Visser, d/b/a Pheasant Capital Hunting & Lodging, while he was not authorized to write checks on her account, contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota. **CLASS 5 FELONY**”

One of the elements of the forgery charges is that it must be proved by the State, beyond a reasonable doubt, that Jesse Wright had the specific intent to defraud Debra Visser. This is defined in the instructions as an intent to cheat or take money from another, with the specific intent to provide financial gain for oneself. (Instruction Nos. 3, 4, 12, and 16)



There was no evidence submitted to the jury in regard to any intent on the part of Jesse Wright to defraud Debra Visser. The only evidence submitted to the jury is that these were legitimate business expenses of the hunting operation, and that these legitimate business expenses were paid.

Count 1 alleges that Wright forged a check dated February 26, 2022 to JRR for \$2,000 with a memo on the check for “reimbursements.” (Ex. 17; TR p. 371, lines 10-24)

Debra Visser testified that when she started operating the Jim River Ranch hunting operation in October of 2022 there was no money, no capital, to operate the business. (TR p. 342, lines 11-13) The money to operate the business all came from Jesse Wright. (TR p. 342, lines 11-13)

Debra Visser testified that a pheasant hunting operation, a preserve, needs birds. (TR p. 344, lines 7-9) Debra Visser testified that birds are a necessary expense of running the preserve. (TR p. 344, lines 10-12)

Debra Visser testified that ShurShot Gamebirds had an invoice dated October 21, 2021 for gamebirds for the preserve in the amount of \$24,000. (Ex. 111, TR p. 343, lines 6-10)

Debra Visser testified that she paid \$6,400 on October 20, 2021 (Ex. 103) to ShurShot Gamebirds for a payment on the invoice (Ex. 111) for birds. (TR p. 343, lines 18-23; p. 344, lines 10-16)

Debra Visser testified that she made an additional payment on the ShurShot Gamebirds invoice of \$8,000 to Jesse Wright and it was for birds, but marked in the memo as “reimbursement.” (TR p. 344, lines 17-24; Ex. 103)

Debra Visser then testified that there was another check to Jesse Wright for \$3,000 for birds. (TR 345, lines 1-13)

Therefore, on the ShurShot Gamebirds invoice (Ex. 111), the amount of \$6,400 was paid directly to ShurShot Gamebirds by Debra Visser. Then, Debra Visser paid \$11,000 to Jesse Wright to reimburse him for a portion of the balance owed to ShurShot Gamebirds. The balance, therefore, on the birds for Debra Visser's hunting operation which had been paid by Jesse Wright remained at \$6,600.

Debra Visser testified that she was not sure, and that she did not know whether she had paid or reimbursed Jesse Wright for all of the birds purchased from ShurShot Gamebirds. (TR p. 353, lines 10-14, p. 353, line 18)

Debra Visser testified that she assumed that she reimbursed Jesse Wright for those birds. (TR p. 372, lines 13-14)

When specifically asked about Exhibit 17, the check to Jesse Wright for \$2,000 for a reimbursement, the basis of Count 1, the following question and answer was made by Debra Visser:

Q So in regard to Exhibit 17, we've already established that all the birds had not been paid for. Is that a possibility that that check was written to reimburse Jesse for birds?

A I don't know that, Casey. I don't know what the total was owed that he owed for birds or what that was. I don't know that.

(TR p. 372, lines 15-20)

The State is required to prove beyond a reasonable doubt that Jesse Wright forged a check (Ex. 17 for \$2,000 made payable to Jesse Wright for a reimbursement) and that he did so with the specific intent to defraud Debra Visser. There is no evidence that Jesse Wright forged such check or that he intended to defraud Debra Visser. There is no

evidence that Jesse Wright intended to deceive Debra Visser. The presumption is that Jesse Wright is innocent. The only evidence is that Debra Visser owed Jesse Wright at least \$6,600 for birds, and that a check (Ex. 17) for \$2,000 (Count 1) was paid to Jesse Wright for reimbursement "for birds."

In regard to Count 2 of the forgery charges, such related to Exhibit 18, a check to Kevin Siebrecht for \$1,925 for renting the Siebass house. The following question and answer took place in regard to such check:

Q In regard to Exhibit 18, the check to Kevin Siebrecht; was paying somebody like Kevin for renting a house for hunters a business expense of a hunting operation?

A ... Could it have? I guess, but I wasn't involved in it.

(TR p. 372, lines 21-23; p. 373, line 7)

Debra Visser continued her testimony:

Q So this could have been a payment for the rental or deposit on the rental of that house?

A Casey, once again, I can't honestly answer that because I didn't write the check. I don't know the purpose for it was.

(TR p. 373, lines 10-14)

Regarding the payment to Kevin Siebrecht for the Siebass house, the State questioned Kevin Siebrecht as follows:

Q Can you tell the members of this jury what that conversation [with Jesse Wright] was regarding?

A If he could rent my farmhouse, which is called the Siebass House, for some hunters.

(TR p. 152, lines 1-4)

Q Do you know Debbie Visser?

A I do.

Q And did you eventually come to an agreement on how the house could be rented?

A Yes.

Q And do you recall what the terms of that agreement were?

A Yeah, he had to put a down-payment down to get it - - to book them dates that he wanted. And then after that, had to be paid in full before he used it.

Q And was the amount down \$1,925?

A Yes, that sounds about right, yep.

Q Did you receive a check for that amount?

A We did.

(TR p. 152, lines 11-23)

The State continued:

Q Kevin, I'm handing you what's been marked as State's Exhibit Number 18. Would you take a moment to familiarize yourself with that Exhibit?

A Yes.

Q Do you recognize Exhibit 18?

A Yes, I do. It is the check we got from Debbie Visser.

Q Okay. And is that in regard to the Siebasse House?

A Yes.

Q And that's the deposit for that?

A Yep.

(TR p. 160, lines 1-10)

The facts are not in dispute. Visser was asked if Exhibit 18, the check to Kevin Siebrecht for \$1,925 was for renting the Siebass House for hunters. Debra Visser testified that it could have been.

The check was written to Kevin Siebrecht for a deposit to hold the Siebass House for hunters. The amount of the deposit paid was \$1,925. And this check (Exhibit 18) for \$1,925 is the check Kevin Siebrecht got from Debbie Visser in regard to a deposit to hold the house for hunters.

It was a legitimate business expense of Debra Visser operating Pheasant Capitol Hunting & Loding, the lessee of the Jim River Ranch hunting preserve.

There was no evidence that Jesse Wright had an evil intent, a specific intent to defraud Debra Visser. (Instruction No. 12) The only evidence is that this was a payment to rent a house for hunters, a legitimate business expense of the lodge.

A specific intent to defraud has not been proven. The motion for judgment of acquittal should have been granted. (Instruction No. 16)

Debra Visser was periodically reviewing the bank statements. (TR p. 374, lines 14-16) She never objected to these checks or notified the bank that these were forgeries.

Maria DeYoung, operations manager for Heartland State Bank, testified, in part, as follows [Regarding Ex. 17, this is the check or \$2,000 made payable to Jesse Wright for "reimbursement, and Ex. 18 is the check for \$1,925 made payable to Kevin Siebrecht as a deposit on the Siebasse house for Pheasant Capitol Hunting & Lodging to house hunters.]:

Q Did Deb Visser ever come in and say that's a forgery?

A Not that I'm aware of.

Q And did Deb Viser ever come in and say, Jesse Wright's not authorized to sign?

A Not that I'm aware of, no.

(TR p. 183, lines 15-19)

The Heartland State Bank operations manager, Maria DeYoung, testified that if Debbie Visser ever notified the bank of any problems with this account, it would show up in Exhibit 103, which is the Pheasant Capitol Hunting & Lodging bank statements and checking account for the hunting lodge establishment. (TR p. 184, lines 1-9)

Deb Visser never notified her bank that the check for \$2,000 to Jesse Wright for reimbursement (Count 1) or the check for \$1,925 to Kevin Siebrecht for renting the Siebass house (Count 2) were forgeries. Why didn't she notify the bank of the forgeries? Because these were not forgeries. These were legitimate business expenses. The check to Jesse Wright was to reimburse him for birds. The check to Kevin Siebrecht for \$1,925 was for renting the Siebass house for hunters.

**ARGUMENT – 71 Cri. 22-88, ENGAGING IN BUSINESS AS A RETAILER  
AFTER REVOCATION OF SALES TAX LICENSE**

Counts 1 and 2 of the Information and Complaint regarding sales tax violations, and facts presented to the jury, do not meet the elements of SDCL 10-45-48.1(6) and do not constitute a crime. Counts 1 and 2 alleging that Jesse Wright engaged in a business as a retailer at a time when his sale tax license had been revoked should have been dismissed. No crime was committed. A judgment of acquittal should have been granted to the Defendant.

The preliminary hearing in this matter held on January 24, 2023 provided testimony from Karen Swank, S.D. Revenue Service agent with the Department of

Revenue, that the two charges: Count 1 and Count 2 were based upon two checks received by Pheasant Capitol Hunting & Loding, Debra Visser.

“The general function of the indictment (or information) is to apprise the Defendant with reasonable certainty of the charge with which he is accused and to allow him to plead his acquittal or conviction as a bar to a subsequent prosecution for the same offense.” *State v. Anderson*, 1996 S.D. 46, ¶12, 546 N.W.2d 395, 399.

The preeminent due process principle is that one accused of a crime must be ‘informed of the nature and cause of the accusation.’ Due process of law requires that an accused be advised of the charges against him so that he has a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial. Thus, the right to defend has two related components, namely, the right to notice of the charges, and the right to present a defense to those charges. *Jones*, 51 Cal.3<sup>rd</sup> at 317, 270 Cal.Rptr. 611, 792 P.2d at 656 (citations omitted), as cited in *State v. Muhm*, 775 N.W.2d 508, 516, 2009 S.D. 100 ¶25.

As the California Supreme Court explained: “So long as the evidence presented at the preliminary hearing supports the number of offenses charged against Defendant and covers the time frame(s) charged in the information, a defendant has all the notice the Constitution requires.” *Jones*, 51 Cal.3<sup>rd</sup> at 312, 270 Cal.Rptr. 611, 792 P.2d at 653. We see no reason why the same rule should not apply when pretrial notice is furnished through a grand jury transcript or through “pretrial discovery procedures.” See *Id.* at 320, 270 Cal.Rptr. 611, 792 P.2d at 657 (cited in *State v. Muhm*, 775 N.W.2d 508, 516, 2009 S.D. 100 ¶27).

In this case, the Defendant was notified of two charges against him related to sales tax law violations. One, that he was operating a business as a retailer in regard to a check in the amount of \$2,014 dated February 7, 2022 made payable to Jim River Ranch which was deposited to the account of Deb Visser, d/b/a Pheasant Capitol Hunting & Lodging, and d/b/a JRR (Jim River Ranch), the lessee of the hunting operation. And two, that he was operating a business as a retailer in regard to a check in the amount of \$1,272 dated March 3, 2022 made payable to Jim River Ranch, which was deposited to the account of Deb Visser, d/b/a Pheasant Capitol Hunting & Lodging, d/b/a JRR, the lessee of the hunting operation.

The Defendant has a constitutional right to be informed of the charges against him, and to have an opportunity to defend himself. He did defend himself against these two allegations and proved that it was an impossibility for him to commit these crimes.

In this case, a retailer is a person in the service industry who provides a service for which consideration is paid to the retailer in return for the service provided. SDCL 10-45-1(11) and SDCL 10-45-1(12).

In this case, for both the Count 1 February 7, 2022 check in the amount of \$2,014 for services, and the Count 2 March 3, 2022 check in the amount of \$1,272 for services were both paid to Jim River Ranch. Under the certification for Pheasant Capital Hunting & Lodging that Deb Visser filed with the Secretary of State, she includes that she was operating under the d/b/a of JRR (Jim River Ranch). (Exhibit 101)

The monies were paid to Jim River Ranch, and endorsed Jim River Ranch and also endorsed Pheasant Capital Hunting & Lodging. The monies were deposited to the checking account of Deb Visser, d/b/a Pheasant Capital Hunting & Lodging.



The monies went to the retailer Deb Visser, d/b/a Pheasant Capital Hunting & Lodging, and Deb Visser, d/b/a Pheasant Capital Hunting & Lodging was the operator of the hunting operation. The monies did not go to Jesse Wright. This matter should have been dismissed. Even admitting the State's best version of the facts of the case submitted by the State confirm that a crime has not been committed.

To further cement the fact that Deb Visser, d/b/a Pheasant Capital Hunting & Lodging is the retailer, the State submitted facts that Deb Visser, d/b/a Pheasant Capital Hunting & Lodging d/b/a JRR (Jim River Ranch) paid the sales tax on the February 7, 2022 Count 1 hunt of \$2,014, and Deb Visser, d/b/a Pheasant Capital Hunting & Lodging, d/b/a JRR (Jim River Ranch) paid the sales tax on the March 3, 2022 Count 2 hunt of \$1,272.

The State of South Dakota cannot tax the same transaction twice. Such constitutes double taxation, and is prohibited. *Modern Merchandising, Inc. v. Department of Revenue*, 397 N.W.2d 470, 471 (S.D. 1986). *Sioux Falls Newspapers, Inc. v. Sec. of Revenue*, 423 N.W.2d 806, 810 (S.D. 1988). *Butler Machinery Co. v. S.D. Dept. of Revenue*, 2002 S.D. 134 ¶6, 653 N.W.2d 757, 759-760. Statutes which impose taxes are to be construed liberally in favor of the taxpayer and strictly against the taxing body. *Butler*, ¶15. As to the issue of double taxation, we have long held that the sales tax and the use tax are meant to be complimentary and should not both be used to tax the same transaction. *Paul Nelson Farm v. South Dakota Dept. of Revenue*, 847 N.W.2d 550, 553-554, 2014 S.D. 31 ¶7.

The State cannot claim that the same transaction, i.e. the \$2,014 payment for hunting services paid to Pheasant Capitol Hunting & Lodging d/b/a JRR, and on which

Deb Visser, d/b/a Pheasant Capitol Hunting & Lodging d/b/a JRR paid the sales tax, is also subject to a tax on Jesse Wright. This would constitute double taxation of the same transaction. Jesse Wright never received the \$2,014 from the hunter. Deb Viser received these monies and paid sales tax thereon. The facts alleged and the facts presented to the jury preclude the claim by the State that Jesse Wright was operating a business as a retailer. He was not. He never received the monies. Commission of this crime is an impossibility. The same argument applies to Count 2, the \$1,272 check. Such check was paid to Deb Visser, deposited to Deb Visser's checking account, and Deb Visser paid the sales tax thereon. It is an impossibility for Jesse Wright to have committed these two charges.

Counts 1 and 2 regarding allegations of operating a business as a retailer should have been dismissed. The State has no facts which would constitute a violation of the law by Jesse Wright. The facts which the State has presented constitute a complete defense to the crime. No crime has been committed.

If the state does not offer evidence that Jesse Wright engaged in business as a retailer, then the State's case regarding sales tax violation must be dismissed. The State must offer evidence. All the State had to do was provide evidence that Jesse Wright engaged in operating of a business as a retailer, and received payment for the services he provided. The State did not offer this evidence in its case in chief. Why? Because the State has no evidence that Jesse Wright received payment for services allegedly received in the operation of a business without a sales tax license.

When ruling on a motion for judgment of acquittal, the trial court must consider the evidence in the light most favorable to the nonmoving party who is also given the

benefit of all reasonable inferences in their favor. *State v. Wellner*, 318 N.W.2d 324, 332 (S.D. 1982); *State v. Gallegos*, 316 N.W.2d 634, 638 (S.D. 1982); *State v. Vogel*, 315 N.W.2d 321, 322 (S.D. 1982). A motion for judgment of acquittal is properly denied if the State has introduced evidence which, if believed by the jury, is sufficient to sustain a finding of guilt beyond a reasonable doubt for the crime charged. *State v. Halverson*, 394 N.W.2d 886, 887 (S.D. 1986); *Wellner*, *supra*; *State v. Moeller*, 298 N.W.2d 93, 94 (S.D. 1980).

Therefore, *ab initio*, it necessarily follows, that if the State's evidence offered in its case is "not sufficient to sustain a finding of guilt beyond a reasonable doubt for the crime charged," when the State is given the benefit of all reasonable inferences in their favor and does not offer evidence of the receipt of monies by Jesse Wright for operating a hunting business, then the Defendant is entitled to a judgment of acquittal on the motion of the Defendant at the close of the State's case.

Defendant has been charged with a violation of Chapter 10-45-48.1 (regarding sales tax in South Dakota as follows:

Any person who: (6) Engages in business as a retailer under this chapter after that person's sales tax license has been revoked by the secretary of revenue is guilty of a Class 6 felony.

The elements of the crime charged are: (1) A person; (2) engages in business; (3) as a retailer; (4) after that person's license has been revoked.

Under 10-45-1(11), a retailer is defined as "any person engaged in the business of selling tangible goods, wares, or merchandise at retail, ... ."

The term also includes any person subject to the tax imposed by §§10-45-4 (tax on services) and 10-45-5 (tax on specific services): SDCL 10-45-1, Definitions subsection (10) retail sale, does not include lease or rental for sublease or subrent.

Section (12) “Sale.” Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

Consideration, as defined in *Paul Nelson Farms*, 847 N.W.2d 550; *Black Hills Truck and Trailer, Inc. v. South Dakota Dept. of Revenue*, 881 N.W.2d 669, and as used in the definition of “sale” for tax purposes is a benefit conferred or agreed to be conferred upon the promisor.

The court must first determine whether a sale has occurred in the regular course of business.

SDCL 10-45-4.1. Service means all activities engaged in for other persons for a fee, retainer, commissions, or other monetary change, which activities involve predominantly the performance of a service as distinguished from selling property.

Whether a statute imposes a tax under a given factual situation is a question of law and thus no deference is given to any conclusion reached by the Department of Revenue or the circuit court. *Butler Machinery Co. v. S.D. Dep't of Revenue*, 2002 S.D. 134 ¶6, 653 N.W.2d 757, 759-760 (as cited in *Paul Nelson Farm v. South Dakota Dept. of Revenue*, 847 N.W.2d 550, 553-554, 2014 S.D. 31 ¶7.

The question in this case is whether a service was performed by Jesse Wright in which he received in return a fee for his services.

In this case, the State alleges that on or about February 7, 2022, Jesse Wright engaged in a business as a retailer after his license had been revoked in regard to a check

for \$2,014 to Jim River Ranch. (a check made out to Jim River Ranch in the amount of \$2,014 from Lookout Sky, LLC, Bobby K. Johnson, dated February 7, 2022.) The allegation is that since this check was written to Jim River Ranch, it constitutes operating a business.

The facts, however, are undisputed that this \$2,014 payment was deposited in the account of Pheasant Capitol Hunting and Lodging, a hunting operation operated by Deb Visser. Deb Visser deposited this in her account, as operator of the hunting lodge, and she paid the sales tax thereon. There is no proof in the State's case that Jesse Wright operated a business as a retailer after his license has been revoked.

Deb Visser was operating the hunting lodge pursuant to a lease with Jesse Wright. Jesse Wright leased the facility to Deb Visser.

There was no sale. There was no service provided for Lookout Sky, LLC by Jesse Wright in which he received money or consideration in return.

A judgment of acquittal is the appropriate resolution of this matter as there are no facts which support the allegations.

Also in this case, the State alleges that on or about March 3, 2022, Jesse Wright engaged in a business as a retailer after his license had been revoked in regard to a check for \$1,272 to Jim River Ranch. (a check from South Suburban Christian Church in the amount of \$1,272 made payable to Jim River Ranch dated March 3, 2022.) The allegation is that since this check was written to Jim River Ranch, it constitutes operating a business. There is no proof in the State's case that Jesse Wright operated a business as a retailer after his license had been revoked.

The facts, however, are undisputed that this \$1,272 payment was deposited in the account of Pheasant Capitol Hunting and Lodging, a hunting operation operated by Deb Visser. Deb Visser deposited this in her account, as operator of a hunting lodge, and she paid the sales tax thereon. Deb Visser is the retailer.

Deb Visser was operating the hunting lodge pursuant to a lease with Jesse Wright. Jesse Wright leased the facility to Deb Visser.

There was no sale. There was no service provided for South Suburban Christian Church by Jesse Wright in which he received money or consideration in return. In fact, the service was provided by Deb Visser, d/b/a Pheasant Capitol Hunting and Lodging, and Deb Visser reported the payment for services in her sales tax return and paid the tax on \$2,014.

A judgment of acquittal was the appropriate resolution of this matter as there are no facts which support the criminal allegations.

There was no sale. There was no service provided to Lookout Sky, LLC by Jesse Wright in which he received money or consideration in return.

Furthermore, it is without dispute that Deb Visser received the money, the consideration in return for the service she provided. And it is without dispute that Deb Visser reported the \$1,272 in her sales tax return and paid the sales tax on the \$1,272 she received.

A judgment of acquittal is required as a matter of law in regard to the sales tax charges.

It is important to note that the crime charged refers to “engaging in business as a retailer under this chapter [SDCL Chap. 10-45].”

This is the reason that the definitions are so important. The definitions are found in SDCL 10-45-1. The Court provided the following definitions to the jury:

“Instruction No. 25

The following definitions apply to the counts in the Informations.

The term “retail sale” or “sale at retail,” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

The term “sale,” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. The term “service” means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominantly the performance of a service as distinguished from selling property.

...

“Engaged in business as a retailer” means to carry on the business of selling tangible personal property or services, or both, to the ultimate consumer, or to any person for any purpose other than resale.

“Engaged in business as a retailer” includes engaging in, or practice of, any business or profession in which a service is rendered for payment.

“Engaged in business as a retailer” does not include isolated or occasional sales of personal property by one who does not hold himself out as being in the business of selling such property.

....”

In regard to this case, the salient definition is “Engaged in business as a retailer,” which means “to carry on the business of selling... services, ... to the ultimate consumer... .” (SDCL 10-45-1) (Instruction No. 25) It means engaging in any business “in which a service is rendered for payment.” (SDCL 10-45-1) (Instruction No. 25) This is what is required in order for a conviction of Jesse L. Wright under the allegations concerning sales tax violations.



This was not proven, and in fact, no evidence was provided that Jesse L. Wright received “consideration” from the consumer, i.e. a hunter. There is no evidence that Jesse Wright provided a service, and received a payment in return.

The Defendant proposed Instructions 38 and 39 in regard to the sales tax charges. These were as follows:

Instruction No. 38

In this case, in Count 1, the State alleges that on or about February 7, 2022, Jesse Wright engaged in a business as a retailer after his license had been revoked in regard to a check for \$2,014 made out to JRR in the amount of \$2,014 from Lookout Sky, LLC, Bobby K. Johnson, dated February 7, 2022.

If you find that the retailer, Debbie Visser, d/b/a Pheasant Capital Hunting & Lodging, received that fee [a check for \$2,014 from Lookout Sky, LLC, Bobby K. Johnson, the customer, dated February 7, 2022] and deposited such check in her business checking account, and paid the sales tax on such transaction, then you must find Jesse Wright not guilty of Count 1 of the crime of engaging in a business as a retailer after his sales tax license had been revoked.

Instruction No. 39

In this case, in Count 2, the State alleges that on or about March 3, 2022, Jesse Wright engaged in a business as a retailer after his license had been revoked in regard to a check for \$1,272 made out to Jim River Ranch in the amount of \$1,272 from South Suburban Christian Church on March 3, 2022.

If you find that the retailer, Debbie Visser, d/b/a Pheasant Capital Hunting & Lodging, received that fee [a check for \$1,272 from South Suburban Christian Church, the customer, dated March 3, 2022] and deposited such check in her business checking account, and paid the sales tax on such transaction, then you must find Jesse Wright not guilty of Count 2 of the crime of engaging in a business as a retailer after his sales tax license had been revoked.

When ruling on the jury instructions, the Court indicated that if the Court granted these instructions, then the motion for judgment of acquittal should have been granted. (TR p. 449, lines 15-22) This is correct. This is the law. The motion for judgment of acquittal should have been granted.



As the definitions provide, “engaged in business as a retailer” means to carry on the business of selling services to the ultimate customer (hunter) for a consideration. In order for these sales tax charges to be a violation of the law (SDCL 10-45-48.1), there must be a retail sale by Jesse Wright of services to a hunter for which Jesse Wright receives a consideration in return.

This did not happen, and as a matter of law, judgment of acquittal must be rendered on behalf of Jesse Wright on the sales tax charges.

“[O]n questions of law, we may ‘interpret statutes without any assistance from the administrative agency.’” *In Re State Sales & Use Tax Liab. Of Palm Oil, Inc.*, 459 N.W.2d 251, 255 (S.D. 1990) (cited in *Paul Nelson Farm, Id.* at page 554, ¶7).

“When engaging in statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole, as well as enactments relating to the same subject. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and this Court’s only function is to declare the meaning of the statute as clearly expressed.” *State v. Hatchett*, 2014 S.D. 13 ¶11, 844 N.W.2d 610, 614 (citations and internal quotation marks omitted) (as cited in *Paul Nelson Farm*, p. 554, ¶9).

Furthermore, “Statutes which impose taxes are to be construed liberally in favor of the taxpayer and strictly against the taxing body.” *Butler Machinery*, 2002 S.D. 134 ¶6, 653 N.W.2d at 759-60 (citations omitted).

The words in such statutes should be given a reasonable, natural, and practical meaning to effectuate the purpose of the statute. *Id.*

The statutes in this case must be construed strictly against the taxing body, i.e. the Department of Revenue, and the State of South Dakota.

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court. As was said in *United States v. Harriss*, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989:

“The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The main underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.”

There is no possible interpretation of this statute that could in any manner be construed to give fair warning to Jesse Wright that his conduct in helping out at the Pheasant Capitol Hunting & Lodging facility operated by Deb Visser and d/b/a JRR (Jim River Ranch) could be construed to inform Jesse Wright that he was operating the business as a retailer when he received no money and no payment from the hunters for his services. This is especially true when the Defendant and the State proved that Jesse Wright did not receive the monies for the hunts, and in fact, Deb Visser received the monies for the hunts and paid the sales tax on the monies for the hunts. This is exactly what she was required to do.

It is important to note that the State’s entire case was based upon its claim that Jesse Wright was operating a business at a time when his sales tax license was revoked. As the State argued in its opening:

“First off, engaging in business after revocation of sales tax license on or about February 7, 2022 and March 3, 2022.” (TR p. 8, lines 12-13) “What do we the people of South Dakota believe that the testimony and evidence is going to show? That the

Defendant Jesse Wright was engaging in a business after revocation of a sales tax license on more than one occasion.” (TR p. 9, lines 24-25; p. 10, lines 1-2)

There is no mention of the element of the crime that he must be operating the business as a retailer. If he is not receiving the money, he is not the retailer. Deb Viser received all of the money. She paid sales tax on all the monies. Deb Visser was the retailer. Jesse Wright has not committed the offense charged.

The State’s entire argument was that Jesse Wright operated a business at a time after his sales tax license had been revoked. This is not a crime. This was not the crime that was charged in the information. Jesse Wright did not commit a crime and no reasonable juror following the law could conclude that “beyond a reasonable doubt” Jesse Wright operated a business as a retailer.

Let’s remember what Karen Swank testified. She is a senior revenue agent with the Department of Revenue. (TR p. 45, lines 20-22) She testified that in order to commit the crime of operating a business as a retailer after his sales tax license had been revoked that Jesse Wright would have had to receive money from hunters. (TR p. 61, lines 17-18; p. 68, lines 23-25; p. 69, line 1; p. 72, lines 23-25; p. 73, lines 1-5) If Jesse Wright was receiving money from hunters then he has to pay sales tax on those monies. (TR p. 71, lines 5-7) Deb Visser was supposed to receive those payments. (TR p. 69, lines 2-5)

The investigator of this case, Karen Swank, testified that Exhibit 2, the \$1,272 check and Exhibit 3, the \$2,014 check, were the basis of the States sales tax charges against Jesse Wright. And Karen Swank testified that both of those checks, the \$1,272 check and the \$2,014 check went to Deb Visser and were deposited into her business

checking account and she paid the sales tax on those amounts. (TR p. 131, lines 17-25; p. 132, lines 1-5) There was never any check, including the \$1,272 and \$2,014 checks, that went to Jesse Wright (TR p. 132, p. 6-8) The State made the case for the acquittal of Jesse Wright. He received no monies from any of the hunters.

#### **CONCLUSION ON SALES TAX CHARGES**

The trial court was required to grant the Defendant's motion for judgment of acquittal. There were no facts submitted to the jury upon which a judgment of guilt can be sustained. Jesse Wright received no monies. He was not operating a business as a retailer.

#### **ARGUMENT – FORGERY 71CRI. 22-116**

SDCL 22-39-36 provides that any person who, with intent to defraud, falsely makes, completes or alters a written instrument of any kind ... is guilty of forgery.

The elements of the crime of forgery, each of which the State must prove beyond a reasonable doubt, are that at the time and place alleged:

1. That the Defendant falsely made, completed or altered a check belonging to Debbie Visser d/b/a Pheasant Capitol Hunting & Lodging.
2. That the Defendant did so with the intent to defraud.

Furthermore, Instruction 16 provides that, "In the crime of forgery there must exist in the mind of the perpetrator the specific intent to defraud. If specific intent did not exist, this crime has not been committed."

In this case, Deb Visser took over the operation of Jim River Ranch. Deb Visser became the lessee of the facility. She took in the money. She paid sales tax on the monies. She operated the business.

But Jesse Wright had operated the business for years. He had all of the contacts. He knew the guests. He knew the fields and the guides and where the birds for the preserve needed to be released. Deb Visser relied upon Jesse Wright to help her operate the lodge because he had been doing this for years.

Pheasant Capitol Hunting & Lodging had no money, so Jesse Wright paid for birds from ShurShot Gamebirds. And Deb Visser paid Jesse Wright \$11,000 to reimburse him on \$24,000 worth of birds that he had paid for. Deb Visser paid ShurShot Gamebirds directly \$6,400 on the invoice. Check #1044 paid to Jesse Wright was a reimbursement for those birds. Deb Visser acknowledged that she had not paid for all the birds and that this check for birds could have been a reimbursement to Jesse Wright for those birds (that he had paid for to get the business going).

Again, Deb Visser acknowledged that she paid ShurShot Gamebirds \$6,400. She acknowledged that there was still \$17,600 owed to Jesse Wright for the balance due for the birds. She acknowledged that she paid Jesse \$8,000, and then \$3,000 for birds, but that \$6,600 was still owing to Jesse Wright for the birds.

Deb Visser acknowledged that birds are a necessary business expense to operate the hunting preserve. If you didn't have birds and release birds, she had no preserve, and she would have no hunters.

To determine whether there is intent to defraud, i.e. to cheat Deb Visser out of monies, the jury can look at the circumstances surrounding the act, the manner in which it was done, and the means used. (Instruction No. 17)

Jesse Wright was owed \$6,600 as a reimbursement for birds. Deb Visser had paid \$17,400 for birds and knew she needed to pay Jesse Wright an additional \$6,600 to reimburse him for the birds.

Jesse Wright had the checkbook. Jesse Wright and Deb Visser discussed just putting Jesse Wright on the checking account so he could sign checks. (Ex. 112; TR p. 358, lines 8-15; TR p. 359, lines 3-24) The circumstances evidence that Jesse Wright was authorized by Deb Visser to sign those checks.

Finally, Deb Visser evidenced her agreement that this was a legitimate business expense, that she owed this to Jesse, and that \$6,600 was still owed to Jesse for birds, and that she authorized this check because they discussed putting him on the account so he could sign checks.

The final authorization and acknowledgment by Deb Visser that this was not a forgery is that she never, ever notified the bank that this check was a forgery. Her acquiescence acknowledges her acceptance of this check and the payment of a legitimate business expense of Pheasant Capitol Hunting & Lodging.

There is no evidence of intent to defraud.

The same elements apply to Count 2 of the forgery charges, Ex. 13, check #1055 made payable to Kevin Siebrecht in the amount of \$1,925 for rental of the Siebass house.

1. Deb Visser acknowledged that sometimes another house or lodge or place would be rented out to JRR in order to provide housing for hunters.

2. Deb Visser acknowledged that the payment of \$1,925 could have been a payment to rent out the Siebass house for Pheasant Capitol Hunting & Lodging hunters.

3. Kevin Siebrecht acknowledged that he received the payment from Deb Visser for the deposit to hold the house for certain dates for hunters which would be hunting at Jim River Ranch, but housed at the Siebass house.

4. Kevin Siebrecht acknowledged that he negotiated the deal with Jesse Wright, but received the payment from Deb Visser of \$1,925 for the deposit.

5. Deb Visser never alerted the bank that such check was a forgery and that such check should not be honored. Why not? Because it was for a legitimate business expense, a check for a deposit on the rental of the Siebass house.

There was no evidence of a specific intent to deceive or defraud on the part of Defendant.

In *State v. Kessler*, 772 N.W.2d 132, 133, 2009 S.D. 76, ¶1, the defendant (Kessler) had been found guilty of aggravated grand theft by deception. Kessler appealed, and the Supreme Court reversed on the basis that there was insufficient evidence that Kessler intended to deceive his victims at the time he entered into a loan agreement or accepted the loan proceeds. *Id.*

The Supreme Court reviewed Kessler's appeal based upon his motion for judgment of acquittal. The court ruled in *State v. Jackson*, 765 N.W.2d 541, 545-546, 2009 S.D. 29, ¶18, that there must be evidence of a purpose to deceive or an intent to defraud at the time the property or money is obtained. In *State v. Morse*, 2008 S.D. 66, ¶12, 753 N.W.2d 915, 919, intent to defraud "means to act willfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one's self."

In *State v. Kessler*, *State v. Jackson*, and *State v. Morse*, the Supreme Court reversed each case because the court found insufficient evidence to sustain the theft by deception conviction because there was no evidence in any of these cases that at the time Kessler or Morse or Jackson obtained the money that they intended to deceive. There are no facts, and there was no evidence presented by the State that Defendant Jesse Wright had any intent to deceive Debra Visser in regard to Count 1 of the forgery charges, the \$2,000 check for reimbursement for birds, or Count 2 of the forgery charges, the \$1,925 check for the rental deposit on the Siebass house.

Theft by deception is a specific intent crime that requires proof that Defendant obtained property with the intent to defraud. SDCL 22-30A-3. There must be evidence that Defendant acted “willfully and with the specific intent to deceive or cheat[,]” to either cause some financial loss to another or bring about some financial gain to himself. *State v. Morse*, 2008 S.D. 66, ¶12, 753 N.W.2d 919 (citations omitted). (As cited in *Kessler*, Id. ¶15, p. 137) SDCL 22-46-3 is a specific intent crime that requires proof that Defendant obtained property with the intent to defraud. There is no evidence that the Defendant wrote the \$2,000 check or the \$1,925 with the specific intent to deceive or cheat anyone. In *Kessler*, Id., the court stated: “The prosecution provided no evidence that at the time Defendant obtained the draws or when he entered into the loan contract, he did so with the intent to defraud.” In *State v. Wright*, the prosecution provided no evidence that at the time the \$2,000 check was written or the \$1,925 check was written that the Defendant did so with the intent to defraud.

As in *Kessler*, *Jackson*, and *Morse*, there is no evidence that Jesse Wright wrote any check with the specific intent to deceive. All checks were written to pay legitimate



business expenses of Pheasant Capitol Hunting & Lodging. Judgment of acquittal on all counts is required.

In *State v. Kessler*, 772 N.W.2d 132, 137, 2009 S.D. 76, ¶16, the court found that “[e]ssentially, the State argues that because defendant failed to proceed with the construction of the house in a timely fashion and spent part of the loan proceeds on items related to the construction of the house, [that] defendant stole money from the Hemmers by deception.” The court continued, “[a] crucial element of theft by deception is missing however. There is no evidence, and nothing by which this court can infer such evidence, that defendant entered into the loan agreement or obtained the loan proceeds with the intent to defraud.”

In the case against Jesse Wright, there is no evidence of intent to defraud. The Defendant should have been granted his motion for judgment of acquittal on the close of the State’s case.

The law still requires that evidence be presented which sustains a finding of guilt beyond a reasonable doubt. The question is whether the evidence “is sufficient to sustain a finding of guilt beyond a reasonable doubt.” *State v. Hart*, 1996 S.D. 17, ¶8, 544 N.W.2d 206, 208 (as cited in *State v. Smiley*, 2004 S.D. 119, ¶6, 689 N.W.2d 427, 429). Unless a defendant’s guilt is established beyond a reasonable doubt he is entitled to be acquitted. *State v. Greene*, 192 N.W.2d 712, 715 (S.D. 1971).

“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.” *State v.*

*Frias*, 2021 S.D. 26, ¶21, 959 N.W.2d 62, 68 (as cited in *State v. O'Neal*, 2024 S.D. 40, ¶47, 9 N.W.3d 728, 748).

In determining the sufficiency of the evidence on appeal, the issue is whether there is any evidence in the record which, if believed by the jury, is sufficient to sustain a finding of guilty beyond a reasonable doubt. *State v. Roubideaux*, 755 N.W.2d 114, 118, 2008 S.D. 81, ¶31.

Intent to defraud is an essential element of the crime of forgery. *State v. Plenty Horse*, 184 N.W.2d 654, 658 (S.D. 1971).

It is a fundamental principle of our law that a defendant in a criminal case is presumed to be innocent. This presumption follows the defendant throughout the trial and must continue unless you are satisfied from all the evidence beyond a reasonable doubt that the defendant is guilty. (Instruction No. 6)

The elements of the crime of forgery, each of which the state must prove beyond a reasonable doubt, are that at the time and place alleged: 1. The defendant falsely made, completed/alterd/passed a check, #1044, belonging to Debbie Visser d/b/a Pheasant Capitol Hunting & Lodging. 2. The defendant did so with the intent to defraud. -OR- 2. The check #1044 belonging to Debbie Visser d/b/a Pheasant Capitol Hunting & Lodging was passed, the defendant knew that the signature line was forged. 3. The defendant did so with the intent to defraud. (Instruction No. 27) In regard to check #1055, the same instruction was given as Instruction No. 28.

To act with “intent to defraud” means to act willfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one’s self. (Instruction No. 12)

We have dealt with the fact that there are no facts to support the State's contention that Defendant acted with any intent to defraud. These were bills, legitimate bills that needed to be paid. There was no cheating or deceiving Deb Visser in the check for Jesse Wright (check #1044) for a reimbursement for birds used on Deb Visser's hunting preserve, and there was no cheating or deceiving Deb Visser on the check to Kevin Siebrecht (check #1055) for a deposit to hold the dates of the rental of his house for Deb Visser's hunters. This issue resolves the forgery charges by itself.

However, there was also no evidence presented to the jury that Jesse Wright made out, or completed, or altered check #1044 or check #1055.

What was the evidence? Brett Christman testified that Jesse Wright denied forging any of the checks. (TR p. 190, lines 16-17)

Brett Christman testified that Jesse Wright told him that "they (meaning Deb Visser and himself) were both writing checks on that account. (TR p. 195, lines 11-13) And that Deb Visser and Jesse Wright were doing it together. (TR p. 195, lines 13-15)

Brett Christman testified that Jesse Wright told him that Deb Visser brought the checkbook out to him. (TR p. 207, lines 17-21) And that Jesse Wright indicated that Stephanie Eberle was going crazy and she (Deb) needed to get the checkbook out of the house and away from Stephanie. (TR p. 207, lines 22-25)

Brett Christman clarified that when Jesse Wright told him that "we wrote checks together" that he, Jesse Wright, did not say that he signed his name to those checks, just that they wrote them together for their business. (TR p. 208, lines 4-10) Brett Christman did not know whether Jesse Wright's statement meant that he (Jesse) filled out the check,

e.g. payable to Kevin Siebrecht, and then Deb Visser signed the check. (TR p. 208, lines 9-14)

The only evidence Deb Visser provided was that she was reviewing the bank statements periodically. (TR p. 308, lines 17-20) We know that she had to have been reviewing the bank statements at least monthly in order to compute the sales tax on the hunting revenue and file the sales tax returns with the Department of Revenue.

Deb Visser testified that in regard to Exhibit 17, the check to JRR for \$2,000 for reimbursements, that the check has her name in the signature line, but that is not her signature. (TR p. 309, lines 3-5) Further, Deb testified that Exhibit 18, the check to Kevin Siebrecht for \$1,925 has her name in the signature line, but that it is not her signature. (TR p. 309, lines 14-16)

There was not any evidence presented that the signature of Deb Visser on Exhibit 17, or the signature of Deb Visser on Exhibit 18 was a forgery of her name by the Defendant, Jesse Wright. The State just throws an allegation against the wall and hopes it might stick.

The facts are that Deb Visser was reviewing the bank statements periodically, and at least monthly in order to complete the sales tax returns, and she never once notified the bank that these checks [Ex. 17 and Ex. 18, the basis of Counts 1 and 2 of the forgery charges] were forgeries, or that they were not authorized by Deb Visser.

The State has failed to prove “beyond a reasonable doubt” that Jesse Wright committed the crimes of forgery.

### CONCLUSION IN REGARD TO FORGERY CHARGES

The Motion for Judgment of Acquittal should have been granted. Besides the fact that there was no evidence presented at trial that Jesse Wright forged the checks, there is no evidence of a specific intent to deceive Deb Visser. The checks were for legitimate business expenses.

### REQUEST FOR ORAL ARGUMENT

The Appellant requests oral argument in this matter.

Respectfully submitted this 13th day of January, 2025.

//ss//Casey N. Bridgman//

Casey N. Bridgman  
Attorney for Appellant Jesse L. Wright  
P.O. Box 356  
Wessington Springs, SD 57382  
(605) 539-1066

IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

AFFIDAVIT OF MAILING AND PROOF OF SERVICE

\*\*\*\*\*

STATE OF SOUTH DAKOTA )

:

COUNTY OF JERAULD )

Casey N. Bridgman, being first duly sworn on oath, deposes and says: That he is the attorney for the Appellant in the above-entitled action; that on January 13, 2025 he filed Appellant's Brief electronically through Odyssey's File & Serve system, and also served a true and correct copy of the Appellant's Brief on Appellees' counsel electronically at their email addresses of record in Odyssey's File & Serve system, and he further states that on January 13, 2025 he mailed one hard copy of the Appellant's Brief to the Clerk of the Supreme Court of South Dakota, 500 East Capitol Ave., Pierre, SD 57501-5070, by depositing the same in the United States Post Office at Wessington Springs, South Dakota, postage prepaid, addressed as stated above.

Dated this 13th day of January, 2025.

//ss//Casey N. Bridgman//  
Casey N. Bridgman

Subscribed and sworn to before me this 13th day of January, 2025.

//ss//Kendra Brandenburg//  
Notary Public

(SEAL)

My commission expires: 6-27-2025

IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

CERTIFICATE OF COMPLIANCE

\*\*\*\*\*

STATE OF SOUTH DAKOTA )

:

COUNTY OF JERAULD )

Casey N. Bridgman, being first duly sworn on oath, deposes and says: That he is the attorney for the Appellant in the above-entitled action, and that he certifies that Appellant's Brief complies with the type volume limitation contained in SDCL 15-26A-66(2), in that Appellant's Brief contains a word count of 9,958.

//ss//Casey N. Bridgman//

Casey N. Bridgman

Subscribed and sworn to before me this 13th day of January, 2025.

//ss//Kendra Brandenburg//

Notary Public

My commission expires: 6-27-2025

(SEAL)

IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

APPENDIX

\*\*\*\*\*



INDEX TO  
APPELLANT'S APPENDIX

Item	Page
1. Order Suspending Execution of Sentence dated September 20, 2024 by the Hon. Julia M. Dvorak in the criminal matter 71 Cri. 22-000088	1
2. Order Suspending Execution of Sentence dated September 20, 2024 by the Hon. Julia M. Dvorak in the criminal matter 71 Cri. 22-000116	4

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF SPINK

FIFTH JUDICIAL CIRCUIT

\*\*\*\*\*

STATE OF SOUTH DAKOTA

Plaintiff,

**ORDER SUSPENDING  
EXECUTION OF SENTENCE**

-VS-

**WRIGHT, Jesse**

Defendant.

**71 CRI 22 - 88**

\*\*\*\*\*

An Information was filed with this Court on February 7<sup>th</sup>, 2023, charging the Defendant with the crime of ENGAGING IN BUSINESS AFTER REVOCATION OF SALES TAX LICENSE – 2 COUNTS in violation of SDCL 10-45-48.1(6), CLASS 6 FELONIES. The Defendant was arraigned on said Information on February 7<sup>th</sup>, 2023. The Defendant, the Defendant's attorney Casey Bridgman and Victor B. Fischbach, prosecuting attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges that had been filed against the Defendant. The Defendant pled NOT GUILTY to the charges of ENGAGING IN BUSINESS AFTER REVOCATION OF SALES TAX LICENSE – 2 COUNTS in violation of SDCL 10-45-48.1(6), CLASS 6 FELONIES.

A jury trial was held July 22<sup>nd</sup> – July 25<sup>th</sup>, 2024; the jury returned a GUILTY verdict for 2 Counts of ENGAGING IN BUSINESS AFTER REVOCATION OF SALES TAX LICENSE in violation of SDCL 10-45-48.1(6).

It is the determination of this Court that the defendant has been regularly held to answer for said offense; that the defendant was represented by competent counsel; and that a factual basis existed for the charges.

It is, therefore, the judgment of this Court that the defendant is guilty of 2 Counts of ENGAGING IN BUSINESS AFTER REVOCATION OF SALES TAX LICENSE in violation of SDCL 10-45-48.1(6).

On August 20<sup>th</sup>, 2024, the defendant admitted to the Habitual Offender Petition that was filed on February 7<sup>th</sup>, 2024. The Court asked the defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

**Count One:**

**IT IS HEREBY ORDERED** that the Defendant is hereby sentenced to 5 years in the South Dakota State Penitentiary.

**IT IS FURTHER ORDERED** that the execution of the above sentence be suspended pursuant to SDCL 23A-27-18.

**IT IS FURTHER ORDERED** that the Defendant is placed on probation under the supervision of Court Services on the following conditions:

- 1) that the defendant obeys all of the conditions placed upon him by the Court Service Officer (said conditions to be attached and incorporated by reference with this Order and to be signed by the Defendant);
- 2) that the defendant shall be placed on probation for 4 years;
- 3) that the defendant shall have no further violations of any state, federal, or municipal laws for 4 years;
- 4) that the defendant shall be imposed a \$500.00 fine plus \$116.50 court costs;
- 5) that the defendant shall serve 30 days in jail, work release is not authorized;
- 6) that the defendant shall make restitution to Spink County for prosecution costs in the amount of \$1870.42;
- 7) that the defendant shall provide the Spink County Sheriff's Office a DNA sample.

**Count Two:**

**IT IS HEREBY ORDERED** that the Defendant is hereby sentenced to 5 years in the South Dakota State Penitentiary.

**IT IS FURTHER ORDERED** that the execution of the above sentence be suspended pursuant to SDCL 23A-27-18.

**IT IS FURTHER ORDERED** that the Defendant is placed on probation under the supervision of Court Services on the following conditions:

- 1) that the defendant obeys all of the conditions placed upon him by the Court Service Officer (said conditions to be attached and incorporated by reference with this Order and to be signed by the Defendant);
- 2) that the defendant shall be placed on probation for 4 years;
- 3) that the defendant shall have no further violations of any state, federal, or municipal laws for 4 years;
- 4) that the defendant shall be imposed a \$500.00 fine plus \$116.50 court costs;
- 5) that the defendant shall serve 30 days in jail, work release is not authorized;
- 6) that the defendant shall make restitution to Spink County for prosecution costs in the amount of \$1870.42;

- 7) that the defendant shall provide the Spink County Sheriff's Office a DNA sample.

**IT IS FURTHER ORDERED** that the suspended penitentiary sentences and jail shall run concurrently in this file and file 71 CRI 22 - 116. The defendant shall have 30 days to report to jail, from the date of his sentencing (August 20<sup>th</sup>, 2024).

**IT IS FURTHER ORDERED** that the Court expressly reserves control and jurisdiction over the Defendant for the period of sentence imposed and that this Court may revoke the suspension at any time and reinstate the sentence without diminishment or credit for any time that the defendant was on probation.

**IT IS FURTHER ORDERED** that the Court reserves the right to amend any or all of the terms of this Order at any time.

9/20/2024 3:47:01 PM

BY THE COURT:

Attest:  
Young, Lisa  
Clerk/Deputy



  
Circuit Court Judge

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF SPINK

FIFTH JUDICIAL CIRCUIT

\*\*\*\*\*

STATE OF SOUTH DAKOTA

Plaintiff,

**ORDER SUSPENDING  
EXECUTION OF SENTENCE**

-VS-

**WRIGHT, Jesse**

Defendant.

**71 CRI 22 - 116**

\*\*\*\*\*

An Information was filed with this Court on February 7<sup>th</sup>, 2023, charging the Defendant with the crime of FORGERY – 2 COUNTS in violation of SDCL 22-39-36, CLASS 5 FELONIES. The Defendant was arraigned on said Information on February 7<sup>th</sup>, 2023. The Defendant, the Defendant's attorney Casey Bridgman and Victor B. Fischbach, prosecuting attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges that had been filed against the Defendant. The Defendant pled NOT GUILTY to the charges of FORGERY – 2 COUNTS in violation of SDCL 22-39-36, CLASS 5 FELONIES.

A jury trial was held July 22<sup>nd</sup> – July 25<sup>th</sup>, 2024; the jury returned a GUILTY verdict for 2 Counts of FORGERY in violation of SDCL 22-39-36.

It is the determination of this Court that the defendant has been regularly held to answer for said offense; that the defendant was represented by competent counsel; and that a factual basis existed for the charges.

It is, therefore, the judgment of this Court that the defendant is guilty of 2 Counts of FORGERY in violation of SDCL 22-39-36.

On August 20<sup>th</sup>, 2024, the defendant admitted to the Habitual Offender Petition that was filed on February 7<sup>th</sup>, 2024. The Court asked the defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

**Count One:**

**IT IS HEREBY ORDERED** that the Defendant is hereby sentenced to 10 years in the South Dakota State Penitentiary.

**IT IS FURTHER ORDERED** that the execution of the above sentence be suspended pursuant to SDCL 23A-27-18.

**IT IS FURTHER ORDERED** that the Defendant is placed on probation under the supervision of Court Services on the following conditions:

- 1) that the defendant obeys all of the conditions placed upon him by the Court Service Officer (said conditions to be attached and incorporated by reference with this Order and to be signed by the Defendant);
- 2) that the defendant shall be placed on probation for 4 years;
- 3) that the defendant shall have no further violations of any state, federal, or municipal laws for 4 years;
- 4) that the defendant shall be imposed a \$500.00 fine plus \$116.50 court costs;
- 5) that the defendant shall serve 30 days in jail, work release is not authorized;
- 6) that the defendant shall make restitution to Spink County for prosecution costs in the amount of \$1870.42;
- 7) that the defendant shall provide the Spink County Sheriff's Office a DNA sample.

**Count Two:**

**IT IS HEREBY ORDERED** that the Defendant is hereby sentenced to 10 years in the South Dakota State Penitentiary.

**IT IS FURTHER ORDERED** that the execution of the above sentence be suspended pursuant to SDCL 23A-27-18.

**IT IS FURTHER ORDERED** that the Defendant is placed on probation under the supervision of Court Services on the following conditions:

- 1) that the defendant obeys all of the conditions placed upon him by the Court Service Officer (said conditions to be attached and incorporated by reference with this Order and to be signed by the Defendant);
- 2) that the defendant shall be placed on probation for 4 years;
- 3) that the defendant shall have no further violations of any state, federal, or municipal laws for 4 years;
- 4) that the defendant shall be imposed a \$500.00 fine plus \$116.50 court costs;
- 5) that the defendant shall serve 30 days in jail, work release is not authorized;
- 6) that the defendant shall make restitution to Spink County for prosecution costs in the amount of \$1870.42;

- 7) that the defendant shall provide the Spink County Sheriff's Office a DNA sample.

**IT IS FURTHER ORDERED** that the suspended penitentiary sentences and jail shall run concurrently in this file and file 71 CRI 22 - 88. The defendant shall have 30 days to report to jail, from the date of his sentencing (August 20<sup>th</sup>, 2024).

**IT IS FURTHER ORDERED** that the Court expressly reserves control and jurisdiction over the Defendant for the period of sentence imposed and that this Court may revoke the suspension at any time and reinstate the sentence without diminishment or credit for any time that the defendant was on probation.

**IT IS FURTHER ORDERED** that the Court reserves the right to amend any or all of the terms of this Order at any time.

9/20/2024 3:46:50 PM

BY THE COURT:

Attest:  
Young, Lisa  
Clerk/Deputy



  
Circuit Court Judge

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 30873

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

JESSE WRIGHT,

*Defendant and Appellant.*

---

APPEAL FROM THE CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA

---

THE HONORABLE JULIA M. DVORAK  
Circuit Court Judge

---

**APPELLEE'S BRIEF**

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ATTORNEY FOR DEFENDANT  
AND APPELLANT

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Notice of Appeal filed on October 15, 2024



## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF LEGAL ISSUES AND AUTHORITIES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS .....	3
ARGUMENTS	
I. THE CIRCUIT COURT PROPERLY DENIED WRIGHT’S MOTION FOR JUDGMENT OF ACQUITTAL FOR OPERATING AS A RETAILER WITHOUT A SALES TAX LICENSE.....	9
II. THE CIRCUIT COURT PROPERLY DENIED WRIGHT’S MOTION FOR JUDGMENT OF ACQUITTAL FOR FORGERY .....	17
CONCLUSION.....	22
CERTIFICATE OF COMPLIANCE.....	22
CERTIFICATE OF SERVICE .....	23

## TABLE OF AUTHORITIES

<b>CASES CITED:</b>	<b>PAGE</b>
<i>State v. Ahmed</i> , 2022 S.D. 20, 973 N.W.2d 217 .....	15
<i>State v. Belt</i> , 2024 S.D. 82, 15 N.W.3d 732 .....	2, 15, 16, 20
<i>State v. Bosworth</i> , 2017 S.D. 43, 899 N.W.2d 691 .....	2, 20
<i>State v. Burdick</i> , 2006 S.D. 23, 712 N.W.2d 5 .....	12, 14, 20
<i>State v. Frias</i> , 2021 S.D. 26, 959 N.W.2d 62 .....	10
<i>State v. Kessler</i> , 2009 S.D. 76, 772 N.W.2d 132 .....	2, 19, 20
<i>State v. Krouse</i> , 2022 S.D. 54, 980 N.W.2d 237 .....	10
<i>State v. Liaw</i> , 2016 S.D. 31, 878 N.W.2d 97 .....	19
<i>State v. Morse</i> , 2008 S.D. 66, 753 N.W.2d 915 .....	19
<i>State v. O'Neal</i> , 2024 S.D. 40, 9 N.W.3d 728 .....	Passim
<i>State v. Osman</i> , 2024 S.D. 15, 4 N.W.3d 558 .....	15
<i>State v. Podzimek</i> , 2019 S.D. 43, 932 N.W.2d 141 .....	9
<i>State v. Smith</i> , 2023 S.D. 32, 993 N.W.2d 576 .....	10, 21
<i>State v. Vandyke</i> , 2023 S.D. 9, 986 N.W.2d 772 .....	19

<i>State v. Wolf</i> , 2020 S.D. 15, 941 N.W.2d 216 .....	15
--	----

**STATUTES CITED:**

SDCL 10-45-1(2).....	11, 12, 13
SDCL 10-45-1(11).....	11, 13
SDCL 10-45-4 .....	11, 13
SDCL 10-45-4.1.....	11, 13, 14, 15
SDCL 10-45-48.1(6).....	Passim
SDCL 22-1-2(55).....	20
SDCL 22-39-36.....	3, 18, 20
SDCL 23A-32-2 .....	2

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 30873

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

JESSE WRIGHT,

*Defendant and Appellant.*

---

**PRELIMINARY STATEMENT**

In this brief, Defendant and Appellant, Jesse Wright, is called “Wright.” Plaintiff and Appellee, the State of South Dakota, is called “State.” References to documents are as follows:

Spink County Criminal File No. 22-88 ..... SR1

Spink County Criminal File No. 22-116 ..... SR2

July 22-25, 2024, Jury Trial Transcript.....JT

Wright’s Brief ..... WB

All document designations are followed by the appropriate page numbers. All Exhibits are followed by their appropriate designation.

**JURISDICTIONAL STATEMENT**

The Honorable Julia M. Dvorak, Spink County Circuit Court Judge, filed two Orders Suspending Execution of Sentence on September 20, 2024. SR1:764-66; SR2:745-47. Wright filed Notices of Appeal on

October 15, 2024. SR1:771; SR2:756. This Court has jurisdiction to hear the appeals under SDCL 23A-32-2.

### **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

#### **I.**

WHETHER THE CIRCUIT COURT PROPERLY DENIED WRIGHT'S MOTION FOR JUDGMENT OF ACQUITTAL FOR OPERATING AS A RETAILER WITHOUT A SALES TAX LICENSE?

The circuit court denied Wright's Motion for Judgment of Acquittal.

*State v. O'Neal*, 2024 S.D. 40, 9 N.W.3d 728

*State v. Belt*, 2024 S.D. 82, 15 N.W.3d 732

#### **II.**

WHETHER THE CIRCUIT COURT PROPERLY DENIED WRIGHT'S MOTION FOR JUDGMENT OF ACQUITTAL FOR FORGERY?

The circuit court denied Wright's Motion for Judgment of Acquittal.

*State v. O'Neal*, 2024 S.D. 40, 9 N.W.3d 728

*State v. Kessler*, 2009 S.D. 76, 772 N.W.2d 132

*State v. Bosworth*, 2017 S.D. 43, 899 N.W.2d 691

### **STATEMENT OF THE CASE**

The State filed a Complaint against Wright alleging three counts:

- Count 1: On or about February 7, 2022, Engaging in Business as a Retailer under SDCL 10-45 after Revocation of Sales Tax License, violating SDCL 10-45-48.1(6);
- Count 2: On or about March 3, 2022, Engaging in Business as a Retailer under SDCL 10-45 after Revocation of Sales Tax License, violating SDCL 10-45-48.1(6);

- Count 3: On or about December 22, 2004, Engaging in Business as a Retailer under SDCL 10-45 after Revocation of Sales Tax License, violating SDCL 10-45-48.1(6).

SR1:1-2. These counts are the basis for Spink County Criminal File 22-

88. SR1:1-3. The State filed an Amended Complaint in October 2022

alleging two counts:

- Count 1: On or about February 26, 2022, Forgery in violation of SDCL 22-39-36;
- Count 2: On or about April 6, 2022, Forgery in violation of SDCL 22-39-36.

SR2:1-2. These counts are the basis for Spink County Criminal File 22-

116. SR2:1-2.

The circuit court granted the State's Motion for Joinder on the cases, and a joint jury trial occurred on Counts 1 and 2 from the first Complaint and Counts 1 and 2 from the Amended Complaint in July 2024. SR1:26-27, 508-09; SR2:16-17. The jury convicted Wright on all counts. SR1:508-09; SR2:493-94. The circuit court entered two Orders Suspending Execution of Sentence in September 2024 sentencing Wright to probation. SR1:764-66; SR2:745-47.

### **STATEMENT OF THE FACTS**

The Department of Revenue suspended the sales tax license for Jesse L. Wright D/B/A Jim River Ranch in September 2019 because Wright repeatedly failed to pay sales tax in 2018 and 2019. JT:22; SR1:510. The conditions of the suspension were that Wright could not accept monies from hunters or payments for hunts, operate a website

soliciting business, set pricing packages for hunts, sell pheasants, or accept deposits for hunts. JT:24-25, 61-62, 69-70. Wright could only accept monies relating to the lodge as a W-2 employee. *Id.* He could enter into lease agreements with individuals to run the lodge, but he could not run it himself. JT:25-26.

After Wright lost his license, he began having financial problems, and he started selling land from the lodge to alleviate those problems. JT:217, 220. The loss of acres threatened Jim River Ranch keeping its hunting preserve status under state law. JT:139. To maintain enough acres to keep hunting preserve status, Wright entered several leases with local landowners. JT:139. The terms of these leases were Wright, acting as lessee, paid the landowners to allow hunters to access their land. SR1:540-44. Wright simultaneously entered a lease with Laura Menning and her husband Dean. JT:389, 391. That lease outlined that the Mennings, acting as lessees, would pay Wright \$1,000 a month for nine months. JT:389. In return, the Mennings would operate the lodge and get the profits from the operations. JT:389. The lease scheme was designed to keep the hunting preserve operational during Wright's suspension by maintaining enough acres and having someone run the lodge. JT:26, 139

Wright's relationship with the Mennings deteriorated during their lease, and the agreement ceased to be honored by either party. JT:389-91. After the Menning lease fell through, Wright needed someone to fill

their role in keeping Jim River Ranch operational. He therefore entered a lease agreement with Deb Visser, who knew him from working at Jim River Ranch with her daughter Stephanie Eberle. JT:304; SR1:551. That lease said Visser, acting as lessee, would pay Wright \$1,000 a month for October 2021 through March 2022, and Visser would run the lodge and get the profits from its operations. JT:305; SR1:551. The lease referred to Visser as “Pheasant Capitol Hunting & Lodging,” and she filed a Fictitious Business Name Registration to do business as such. SR1:551, 568. She also filed Fictitious Business Name Registration for Pheasant Capitol Hunting & Lodging to do business as “JRR.” SR1:611. She created a checking account solely in her name with Heartland State Bank to use with respect to the lodge’s operations. SR1:564; JT:178, 307. Wright called Heartland State Bank to become an authorized signer but was told that he could not without Visser’s permission, and he never became one. SR1:564; JT:180, 307.

During the Visser lease, Wright performed functions the Department of Revenue told him he could not. JT:25-26, 100-01. He scheduled several hunts via email in March 2022 and accepted deposits for them. SR1:518-27; JT:240. In these emails, he discussed different hunting packages and their costs. SR1:521-29, 533-38; JT:240. Deposits for the planned hunts were mailed to Jim River Ranch where Wright lived. JT:240, 318. Payments from completed hunts went to this address as well. JT:318. Wright also directed employees and controlled



their wages, including telling Eberle when hunters were coming so she could prepare lodgings for them and instructing an employee named Scott Lampher on where to guide hunters and release birds. JT:211-13, 246, 259; SR1:529. Wright ran a website soliciting business for Jim River Ranch during his suspension. JT:69-70. The website advertised silver, gold, and platinum hunting packages he designed, which were referenced in his email communications with prospective hunters. JT:69-70, 325-26; SR1:521-29, 533-38. Visser did not perform any of these functions. JT:214, 325. But she did issue a reimbursement check to Wright after he provided her with pheasants he purchased for use at the lodge. JT:324-25; SR1:570-71.

In January 2022, Visser accidentally left a bag at Jim River Ranch with her Heartland State Bank account checkbook in it. JT:307. She could not find the checkbook; nobody at the lodge knew where it had gone. JT:307. Visser eventually learned that Wright had taken the checkbook. JT:307. This led Visser to review her bank statements, revealing what eventually totaled over \$28,000 in checks she did not write or authorize, in addition to a series of deposits she did not make. JT:312. One of the unauthorized checks, check 1044, was written in February 2022. SR1:548. The memo said “reimbursement,” and it was written to “JRR” for \$2,000. *Id.* at JT: 309; SR1:548. The signature on the check was “Deb Visser,” but in Wright’s handwriting. JT:309-10.

Visser's review of her bank statements also revealed that Wright deposited checks into her account without her knowledge. JT:310. He deposited a check from South Suburban Church to Jim River Ranch for \$1,272, and it had Wright's endorsement signature beside "Jim River Ranch." JT:311; SR1:513-14. Another check deposited without Visser's knowledge came from Lookout Sky LLC for \$2,014, which was issued to Jim River Ranch for "SD Hunt." JT:311; SR1:516. The endorsement said, "Jim River Ranch Pheasant Capitol Hunting + Lodging," and was written by Wright. JT:311, 367; SR1:516-17.

Visser confronted Wright about the checkbook and the checks signed in her name. JT:319-20. Wright told Visser not to worry about the situation, but she felt uncomfortable and like he was intimidating her not to say anything about it. JT:319-20. Wright did not give her checkbook back, despite Visser never having authorized Wright to take it or sign checks for the account. JT:321.

Visser's lease with Wright expired in March 2022, but checks were still being forged with her name from her account. JT:331. One of these was check 1055, a \$1,925 hunting deposit written to a local landowner named Kevin Siebrecht. SR1:549. Check 1055 paid Siebrecht to allow a hunting party to use his house for lodging. JT:152. The signature on the check was "Deb Visser," but in Wright's handwriting. JT:309-10. The checks being written in her name after her

lease expired prompted Visser to report the activity to law enforcement. JT:331.

Spink County Deputy Bret Christman became involved in the case in July 2022 after Visser and Eberle contacted him about Wright committing forgery. JT:186-87. Visser brought Deputy Christman bank records from Heartland State Bank she claimed Wright had forged, specifically checks 1044 and 1055. JT:187-89; SR1:548-49. Deputy Christman contacted the Department of Revenue regarding the checks, and Revenue Agent Karen Swank investigated the case. JT:47. Agent Swank reviewed Wright's email communications, Visser's Heartland State Bank records, and Wright's website activity and leases. JT:61, 69-70; SR1:510-551. Agent Swank was also aware of Wright collecting reimbursement money from Visser for game birds. JT:98; SR:570-71. She concluded that he had been operating a pheasant hunting lodge as a retailer without a sales tax license. SR:61, 112-13. In August 2022, Deputy Christman arrested Wright on a warrant that emerged from the Department of Revenue investigation. JT:189; SR1:5. Wright spoke with Deputy Christman during this encounter and denied forging any checks. JT:190.

Deputy Christman interviewed Wright in May 2023 when Wright asked him to come to his home after alleging Visser stole money from him. JT:191, 195. During this interview, Wright brought up Visser's Heartland State Bank account and told Deputy Christman both he and

Visser wrote checks out of the account to run Jim River Ranch. JT:193, 195.

## **ARGUMENTS**

### **I.**

THE CIRCUIT COURT PROPERLY DENIED WRIGHT'S MOTION FOR JUDGMENT OF ACQUITTAL FOR OPERATING AS A RETAILER WITHOUT A SALES TAX LICENSE.<sup>1</sup>

#### **A. Background**

At the close of the State's case-in-chief, Wright moved for judgment of acquittal on the two counts of Operating as a Retailer without a Sales Tax License. JT:398. After the return of the jury's guilty verdict, the circuit court denied the motion. JT:508; SR1:760-62.

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<sup>1</sup> While discussing this issue in his brief, Wright briefly complains the State did not apprise him with reasonable certainty of the charge with which he was accused. WB:19. Yet Wright never raised this issue before the trial court, so it is waived on appellate review. *See State v. Podzimek*, 2019 S.D. 43, ¶ 27, 932 N.W.2d 141, 149 ("an issue not raised before the [circuit] court will not be reviewed at the appellate level"). Even if this Court reviews it for plain error, Wright's argument cannot stand. The State's Complaint against Wright informed him of the exact charges for which the jury found him guilty. SR1:1-2, 508. The State included dates in the Complaint that tied the allegations to the receipt of the checks from South Suburban Church and Lookout Sky LLC. JT:311, 367; SR1:1-2, 513-14, 516. The State presented testimony and exhibits proving the elements of the charges as discussed under this issue. Wright's argument that he was not apprised of his charges and could not present a defense simply do not have a basis in the settled record. *See generally* JT; SR1; SR2.

## **B. Standard of Review**

“[A] motion for judgment of acquittal attacks the sufficiency of the evidence, which is a question of law whether the motion is considered before or after the jury’s verdict.” *State v. O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d 728, 748 (quoting *State v. Krouse*, 2022 S.D. 54, ¶ 34, 980 N.W.2d 237, 247). “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.* (quoting *State v. Frias*, 2021 S.D. 26, ¶ 21, 959 N.W.2d 62, 68). “If the evidence, including circumstantial evidence and reasonable inferences drawn therefrom sustains a reasonable theory of guilt, a guilty verdict will not be set aside.” *Id.* (quoting *State v. Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d 576, 591). “[W]e will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.” *Id.* (quoting *Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d at 591).

## **C. Analysis**

The jury convicted Wright of two counts of violating SDCL 10-45-48.1(6) — one around February 7, 2022, and the other around March 3, 2022. SR1:1, 508-09. SDCL 10-45-48.1(6) provides, “any person who . . . [e]ngages in business as a retailer under this chapter after the person’s sales tax license has been revoked by the secretary of revenue is

guilty of a Class 6 felony.” There must therefore have been evidence rationally supporting that Wright: 1) engaged in business; 2) as a retailer; 3) after his sales tax license had been revoked. *Id.*; *O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. SDCL clarifies these elements as follows:

- SDCL 10-45-1(2) defines “business” as “any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit, or advantage, either direct or indirect[;]”
- SDCL 10-45-1(11) defines “retailer” as “any person subject to the tax imposed by §§ 10-45-4[;]”
- The tax imposed by SDCL 10-45-4 is “upon the gross receipts of any person from the engaging or continuing in the practice of any business in which a service is rendered[;]”
- And SDCL 10-45-4.1 defines “service” as “all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge[.]”

The circuit court provided the jury Instruction 25, which gave these definitions. SR1:474-75.

**i. Engaged in Business**

The first element of SDCL 10-45-48.1(6) required Wright to have “engaged in business,” which is to engage in any activity for gain, benefit, or advantage, either direct or indirect. SDCL 10-45-1(2). The State presented testimony and exhibits demonstrating he did. Wright entered leases to maintain enough acres to keep Jim River Ranch’s hunting preserve status. JT:139; SR1:540-42. Visser, Eberle, and Lampher all testified that during Wright’s lease with Visser, he directed

employee activities and wages. JT:211-13, 246, 259; SR1:529. This included instructions on how to prepare for hunters, where to guide, and where and when to release pheasants. JT:211-13, 246, 259; SR1:529. Doug Schinkel of the Department of Revenue Business Tax Division testified that Wright could not run Jim River Ranch, but multiple witnesses testified Wright oversaw everything, not Visser. JT:26, 214-15, 246, 259.

Wright also obtained pheasants for the lodge, and Visser reimbursed him for them. JT:324-25; SR1:570-71. Further, email exhibits and witness testimony showed that Wright advertised his hunting packages with a website, planned hunts, and accepted down payments for hunts. SR1:518-27, 521-29, 533-38; JT:69-70, 240, 325-26. The payments were sent to Wright's address. JT:240, 318. The payments included the hunting payment check sent from Lookout Sky LLC dated February 7, 2022, and a hunting deposit check from South Suburban Church dated March 3, 2022. SR1:514-16.

Wright's activities met the plain language of having engaged "in any activity for gain, benefit, or advantage, either direct or indirect." SDCL 10-45-1(2). Even if Wright had not directly profited off these activities, he still indirectly benefited from his business remaining afloat while his license was suspended. "When the language of a statute is clear and unambiguous, [this Court's] only function is to declare the meaning of the statute as clearly expressed." *State v. Burdick*, 2006 S.D.



23, ¶ 6, 712 N.W.2d 5, 7. The plain statutory language of “engaged in business” is met, and the jury’s finding that the State satisfied the first element of SDCL 10-45-48.1(6) beyond a reasonable doubt was rational. SDCL 10-45-1(2); *O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d 728, 748.

**ii. As a Retailer**

The second element of SDCL 10-45-48.1(6) required that Wright engaged in business “as a retailer.” The definition of “retailer” in SDCL 10-45-1(11) refers to the tax imposed by SDCL 10-45-4, which is upon a “service.” A “service” is “all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge[.]” SDCL 10-45-4.1. A retailer is therefore someone who provides a service for a monetary charge. *Id.*; SDCL 10-45-1(11); SDCL 10-45-4.

Schinkel testified that operating a hunting lodge is providing a service. JT:32-33; SDCL 10-45-4.1. The State proved Wright provided this service when he designed hunting packages, advertised them with his website, and planned hunts. JT:69-70, SR1:518-39. Payments were mailed to Wright’s address. JT:318. Wright endorsed the Lookout Sky LLC and South Suburban Church checks that paid for hunting services, and he deposited them into Visser’s Heartland State Bank account. JT:311, 367; SR1:513-14, 516. These facts rationally support that Wright acted as a retailer under SDCL 10-45-48.1(6). *O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d 728, 748.



Wright's strategy at trial was to cross-examine Schinkel, with the goal of getting him to say Wright needed to personally accept compensation for him to violate the retailer element of SDCL 10-45-48.1(6). JT:36. Thus, Wright's interpretation of the law is that he could perform the functions he normally did at the lodge, including accepting payments, because if the payments went to the leaseholder's bank account, he was not acting as a retailer. WB:25. But Schinkel summarized the statute as "if [he is] there out of the goodness of his heart and doing things, and *not asking for monies*, just doing it, we can't stop him from doing that. He's not acting as a retailer then." JT:37 (emphasis added). But Wright solicited business and asked for monies in his emails, and he received payments from hunters, including Lookout Sky LLC and South Suburban Church. SR1:514-29, 533-38; JT:240.

The plain language of the statutes is worth emphasizing here. See *Burdick*, 2006 S.D. 23, ¶ 6, 712 N.W.2d at 7. "Service" is "*all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge[.]*" SDCL 10-45-4.1 (emphasis added). The plain language of SDCL 10-45-4.1 does not require Wright to have received personal compensation, just for him to have performed a service for a monetary charge. Thus, Wright providing services — such as planning hunts for hunting packages he advertised on his website — and then endorsing and depositing the payments in the Heartland State Bank

account met the plain language of acting as a retailer. SDCL 10-45-48.1(6); SDCL 10-45-4.1. The jury's conclusion was therefore rationally supported by the evidence. *Id.*; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

It should be emphasized that this Court accepts “the evidence and the most favorable inferences that can be fairly drawn from it that support the verdict.” *State v. Belt*, 2024 S.D. 82, ¶ 36, 15 N.W.3d 732, 740 (quoting *State v. Wolf*, 2020 S.D. 15, ¶ 13, 941 N.W.2d 216, 220). Also “direct and circumstantial evidence have equal weight.” *State v. Osman*, 2024 S.D. 15, ¶ 41, 4 N.W.3d 558, 571 (quoting *State v. Ahmed*, 2022 S.D. 20, ¶ 23, 973 N.W.2d 217, 223). The jury heard Agent Swank's testimony that Wright advertised hunting packages and solicited business on his website in February and March of 2022. JT:69-70. A rational jury could have inferred from this and from Wright endorsing hunting payments from Lookout Sky LLC and South Suburban Church in February and March 2022 that those payments were for the same types of hunting packages Wright solicited on his website. *Id.*; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748; JT:69-70; SR1:513-16. These circumstances rationally supported finding that Wright acted as a retailer on those dates. *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748; SDCL 10-45-48.1(6); SR1:1-2.

Although it was not required, the record nevertheless shows that Wright did personally profit off deposits made in Visser's Heartland State

Bank account, albeit without Visser's knowledge. JT:312; SR1:582-88. After Visser's checkbook went missing, checks signing her name in Wright's handwriting were issued for "reimbursement" to "Jim River Ranch" and "JRR." JT:311-12; SR1:582-88. One of these forged checks even started with a "J" but then had Visser's name written over top of it, suggesting Jesse Wright started signing his own name but then corrected himself. SR1:588. Further, Wright endorsed the Lookout Sky LLC and South Suburban Church checks by signing as "Jim River Ranch," and his license suspension showed he did business with that name. SR1:510, 514-17. The evidence rationally tied him to "Jim River Ranch" and "JRR" written on the "pay to the order of" line of the forged checks. SR1:510, 582-93; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

Wright was only supposed to make \$6,000 off a lease with Visser, but checks from her to Wright totaled more than \$28,000. JT:312. The Heartland State Bank account funds came from hunter payments, including the payments from Lookout Sky LLC and South Suburban Church. JT:311, 367; SR1:514-17. Reimbursements occurred after the Lookout Sky LLC and South Suburban Church deposits were made. SR1:514-17, 582-88. The jury could infer from these circumstances that Wright cashed checks from the Heartland State Bank account and kept the money for himself, thereby using the account as an intermediary to receive monetary compensation for the hunting services he provided. *See O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748; *Belt*, 2024 S.D. 82,

¶ 36, 15 N.W.3d 732, 740. This and everything described rationally supported the jury's finding that Wright acted as a retailer under SDCL 10-45-48.1(6). *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

**iii. While his Sales Tax License Was Revoked**

As to the third element of SDCL 10-45-48.1(6), the Secretary of Revenue suspended Wright's sales tax license in 2019. JT:22; SR1:510. The license remained suspended during February and March of 2022 when the Lookout Sky LLC and South Suburban Church checks were deposited. JT:23-24; SR1:510, 514-17. The jury therefore rationally found the State satisfied the third and final element of SDCL 10-45-48.1(6). SR1:508-09; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. The circuit court properly denied Wright's motion for judgment of acquittal.

II.

THE CIRCUIT COURT PROPERLY DENIED WRIGHT'S MOTION FOR JUDGMENT OF ACQUITTAL FOR FORGERY.

**A. Background**

At the close of the State's case-in-chief, Wright moved for judgment of acquittal on the two counts for Forgery. JT:398, 404. After the return of the jury's guilty verdict, the circuit court denied the motion. JT:508; SR2:745-47.

**B. Standard of Review**

The same Standard of Review in Section I. B. applies to this issue.

### **C. Analysis**

The jury convicted Wright of two counts of Forgery violating SDCL 22-39-36 — one with check 1044, which was a reimbursement to JRR, and the other with check 1055, which was a deposit to Siebrecht. SR2:1, 493-94, 533-34. SDCL 22-39-36 provides “any person who, with intent to defraud, falsely makes, completes, or alters a written instrument of any kind, or passes any forged instrument of any kind is guilty of forgery.” The jury’s verdict must therefore be rationally supported by evidence that Wright: 1) had intent to defraud; and 2) falsely made, completed, or altered a written instrument of any kind, or passed any forged instrument of any kind. *Id.*; *O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

#### **i. Wright had Intent to Defraud**

The State proved Wright had intent to defraud through witness testimony and exhibits. Visser testified that she started the Heartland State Bank account and never made Wright an authorized signer. JT:307. Maria DeYoung of Heartland State Bank testified Wright called the bank to become an authorized signer but did not have Visser’s permission, so he could not become one. JT:177, 180. The State provided a bank record that showed that Visser was the only authorized signer. SR2:549.

Visser testified Wright took her checkbook without her knowledge in January 2022. JT:308. He initially would not admit to her that he

had the checkbook. JT:308. After she discovered he had it, he would not return it to her despite her asking. JT:320-21. Visser testified she never authorized Wright to sign checks 1044 or 1055. JT:309-10. She further testified Wright signed her name on those checks without her permission. JT:308, 311. She discovered the forged checks by going through her bank records — not because Wright told her about them. JT:308-09.

“Intent to defraud ‘means to act willfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one’s self.’” *State v. Kessler*, 2009 S.D. 76, ¶ 11, 772 N.W.2d 132, 136 (quoting *State v. Morse*, 2008 S.D. 66, ¶ 12, 753 N.W.2d 915, 919).

“Specific intent crimes require that the offender have ‘a specific design to cause a certain result.’” *State v. Vandyke*, 2023 S.D. 9, ¶ 18, 986 N.W.2d 772, 776 (quoting *State v. Liaw*, 2016 S.D. 31, ¶ 11, 878 N.W.2d 97, 100).

Visser’s testimony provided a rational basis to find Wright willfully signed her name on checks 1044 and 1055 without her permission. *Kessler*, 2009 S.D. 76, ¶ 11, 772 N.W.2d at 136; *see O’Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. Her testimony also rationally supported that Wright’s specific intent was to “deceive or cheat” her out of money in the Heartland State Bank account. JT:308-09; *Vandyke*, 2023 S.D. 9, ¶ 18, 986 N.W.2d at 776; *Morse*, 2008 S.D. 66, ¶ 12, 753 N.W.2d at 919. The

jury could rationally infer that Wright's purpose in forging check 1044, the reimbursement to Jim River Ranch, was to bring financial gain to himself. *Kessler*, 2009 S.D. 76, ¶ 11, 772 N.W.2d at 136; *Belt*, 2024 S.D. 82, ¶ 36, 15 N.W.3d at 740; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. The Siebrecht deposit for a Jim River Ranch hunt being in April 2022, after the termination of Visser's lease, rationally supported the inference that Wright made the deposit for his own profit, not Visser's. JT:305, 309, SR2:536; *Kessler*, 2009 S.D. 76, ¶ 11, 772 N.W.2d at 136; *Belt*, 2024 S.D. 82, ¶ 36, 15 N.W.3d at 740; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. The jury thus had a rational foundation to find Wright had intent to defraud Visser when he signed her name on checks 1044 and 1055. *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

## **ii. Wright Forged Written Instruments**

SDCL 22-39-36 states forgery is when one “falsely makes, completes, or alters a written instrument of any kind[.]” “False is defined as ‘1. Untrue. 2. Deceitful; lying. 3. Not genuine; inauthentic . . . . 4. Wrong; erroneous.’” *State v. Bosworth*, 2017 S.D. 43, ¶ 23, 899 N.W.2d 691, 698 (quoting Black's Law Dictionary (10th ed. 2014)). “The definition of forgery . . . covers a certain type of falsehood: falsity in execution.” *Id.* SDCL 22-1-2(55) provides that a “written instrument” is any paper used for conveying any money. The plain language of this definition includes a check. *See Burdick*, 2006 S.D. 23, ¶ 6, 712 N.W.2d at 7.



The State provided bank records for checks 1044 and 1055. SR2:533-34. Visser testified that the signature was not hers and matched Wright's handwriting, which she was familiar with from notes he wrote her. JT:308-10. Deputy Christman testified that in their second interview, Wright admitted to signing checks from Visser's Heartland State Bank account. JT:193. This evidence provided rational grounds for the jury to conclude Wright forged Visser's name on checks 1044 and 1055. SR2:533-34; *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748.

On appeal, Wright admits that he made the signatures. WB:34. He argues "the circumstances evidence that Jesse Wright was authorized by Deb Visser to sign those checks." WB:34. But Visser and DeYoung testified Wright was not authorized, and the State provided a bank record showing Visser was the only legitimate signer. JT:177, 180, 309-10; SR2:549. This Court "will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence." *O'Neal*, 2024 S.D. 40, ¶ 47, 9 N.W.3d at 748. (quoting *Smith*, 2023 S.D. 32, ¶ 45, 993 N.W.2d at 591). The jury's conclusion that Wright forged the checks should not be disturbed.



## **CONCLUSION**

Based on the foregoing arguments and authorities, the State requests that Wright's convictions and sentences be affirmed.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4618 words.

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

Dated this 25th day of February 2025.

/s/ Jacob R. Dempsey  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 25th, 2025, a true and correct copy of Appellee's Brief in the matters of *State of South Dakota v. Jesse Wright*, Appeal No. 30873, was served via electronically through Odyssey File and Serve on Casey Bridgman at [bandalaw@venturecomm.net](mailto:bandalaw@venturecomm.net).

/s/ Jacob R. Dempsey  
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IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

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NOTICE OF APPEAL FILED October 15, 2024

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	3.
FACTS .....	4.
ARGUMENT – Sales Tax charges .....	7.
ARGUMENT – Forgery .....	13.
ARGUMENT – Intent to Defraud .....	15.
CONCLUSION .....	20.
REQUEST FOR ORAL ARGUMENT .....	20.

## TABLE OF AUTHORITIES

### Statutes Cited:

SDCL 10-45-1.14 . . . . .	10.
SDCL 10-45-1(2) . . . . .	12.
SDCL 10-45-1(11) . . . . .	8.
SDCL 10-45-1(12) . . . . .	8.
SDCL 10-45-4 . . . . .	7, 8.
SDCL 10-45-4.1 . . . . .	8.
SDCL 10-45-48.1 . . . . .	11, 13.
SDCL 10-45-48.1(6) . . . . .	9, 10, 11, 12.
SDCL 15-26A-60(6) . . . . .	10, 11.
SDCL 22-1-2(42) . . . . .	10.
SDCL 23A-22-3 . . . . .	7.
SDCL 59-1-1 . . . . .	9.
SDCL 59-2-4 . . . . .	9.

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<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) . . . . .	7.
<i>In re Yanni</i> , 2005 S.D. 59, ¶15, 697 N.W.2d 394, 400 . . . . .	9.
<i>Paul Nelson Farm v. South Dakota Dept. of Revenue</i> , 2014 S.D. 31, ¶7, 847 N.W.2d 550, 554 . . . . .	9.
<i>State v. Carter</i> , 2023 S.D. 67, ¶ 69, 1 N.W.3d 674, 696 . . . . .	7.
<i>State v. Dixon</i> , 419 N.W.2d 699, 701 (S.D. 1988) . . . . .	11.
<i>State v. Knoche</i> , 515 N.W.2d 834, 840 (S.D. 1994) . . . . .	11.
<i>State v. Moschell</i> , 2004 S.D. 35, ¶40, 677 N.W.2d 551, 564 . . . . .	7.
<i>State v. Pelligrino</i> , 1998 S.D. 39, ¶22, 577 N.W.2d 590, 599. . . . .	11.
<i>United States v. Richter</i> , 796 F.3d 1173, 1188 (10 <sup>th</sup> Cir. 2015) . . . . .	12, 13.
<i>State v. Thomason</i> , 2014 S.D. 18, ¶30, 845 N.W.2d 640, 647. . . . .	7.
<i>State v. Winckler</i> , 260 N.W.2d 356, 366 (S.D. 1977) . . . . .	7.
<i>TRM ATM Corp. v. South Dakota Dept. of Revenue and Regulation</i> , 2010 S.D. 90, ¶4, 793 N.W.2d 1, 3. . . . .	10.
<i>United States v. Filer</i> , 56 F.4th 421, 425 (7th Cir. 2022) . . . . .	7.

## FACTS

The State has not accurately portrayed the facts.

1. The Department of Revenue did not suspend the sales tax license of Jesse L. Wright in September 2019.

2. A suspension entails a temporary deferment. The sales tax license of Jesse Wright was revoked. (TR p. 22: 15-18; Exhibit 1)

3. There were no conditions of the suspension as argued by the State, because there was no suspension.

4. Doug Schinkel, director of the business tax division of the Department of Revenue testified that the website for Jim River Ranch was acceptable since Visser is doing business as Jim River Ranch under a lease agreement. (TR p. 31: 21-25; p. 32: 1-7)

5. The cites given in the Appellee's Statement of Facts [TR pp. 24-25, 61-61, 69-70] all relate to the same comment by the Department of Revenue: Jesse could not accept any money from hunters. (TR p. 24: 21-22) He could not receive payments for package hunting deals. (TR p. 25: 3-5) He was not to accept any money for hunts. (TR p. 61: 17-19) He was not to receive any funds from hunters. (TR p. 68: 23-25, p. 69: 1) All directions given to Jesse were that he could not receive any payments for hunts from hunters.

6. Schinkel, an expert, testified that to be convicted of the crime with which he is charged, Wright must be "operating a business as a retailer." (TR p. 32: 8-13)

7. As long as Jesse is doing things out at the lodge (booking hunts, cooking meals, guiding, and living there) out of the goodness of his heart, and he is not receiving compensation, he is not acting as a retailer. (TR p. 37: 1-8)

8. If Jesse is not acting as a retailer, he is not committing a violation of the law. (TR p. 37: 9-11)

9. Schinkel testified that if the flow of money was that the monies went directly into Visser's checking account and she paid the sales tax on those amounts, Jesse would not have been responsible for sales tax on those monies. (TR p. 40: 19-24) Jesse is not a retailer.

10. Schinkel testified that a payment to Jim River Ranch was not a payment to Jesse because Jim River Ranch was operated by Visser d/b/a Jim River Ranch. (TR p. 44: 22-24)

11. Exhibit 101 was a registration with the State of South Dakota that Debra Visser, Pheasant Capitol Hunting & Lodging, was doing business as Jim River Ranch. (TR p. 73: 22-25)

12. Exhibits 2 and 3 were the checks made out to Jim River Ranch by South Suburban Church and Lookout Sky, LLC. These are the basis of Counts 1 and 2 of the State's sales tax charges. (TR p. 73: 12-16) [These checks are included in the Appendix as Items 2 and 3.]

13. These two checks were deposited to Visser's account, d/b/a Jim River Ranch, at Heartland State Bank. (TR p. 78: 20-21) The flow of these monies was directly into Visser's checking account.

14. Sales tax was paid by Visser on the amounts she received from South Suburban Church (Ex. 2) and Lookout Sky, LLC (Ex. 3). (TR p. 106: 17-23; p. 111: 21-25; p. 112: 1)

15. The only issue related to the sales tax charges [Count 1, Exhibit 3, \$2,014 check from Lookout Sky, LLC and Count 2, Exhibit 2, the \$1,272 check from South Suburban Church] are whether or not Jesse received those payments. (TR p. 81: 9-10)

16. Jesse did not receive these payments and he is not guilty of the crimes charged. (TR p. 81: 12-15) These payments from hunters to Jim River Ranch were deposited to Visser's d/b/a Jim River Ranch account; therefore, Jesse is not guilty of Counts 1 and 2 of the sales tax charges. (TR p. 82: 13-14)

17. A retailer must receive the money. (TR p. 83: 13-16) Jesse is not a retailer and did not receive any of the money from the hunters.

18. The \$2,014 from Lookout Sky, LLC (Count 1) and the \$1,272 from South Suburban Church (Count 2) were deposited in Visser's Jim River Ranch checking account. Visser received those monies from the hunters for providing the hunts. (TR p. 106: 17-21; p. 109: 4-9)

19. Swank, in her investigation, never found any check or any cash from a hunter that went to Jesse Wright. (TR p. 132: 6-11) Swank never found any credit card payments that went to Jesse from a hunter. (TR p. 132: 19-21)

20. The State did not meet its burden of proving an essential element of the crime charged, i.e. that Jesse operated a business as a retailer and received payments for hunting services from the hunter.



## ARGUMENT - SALES TAX CHARGES

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted. SDCL 23A-22-3.

“[ “A judgment of acquittal must be granted when the evidence is insufficient to sustain a conviction.” *United States v. Filer*, 56 F.4th 421, 425 (7th Cir. 2022).

“The central question is 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. Carter*, 2023 S.D. 67, ¶ 69, 1 N.W.3d 674, 696. “We will set aside a jury verdict only when the evidence and the reasonable inferences from it fail to sustain any rational theory of guilt.” *State v. Moschell*, 2004 S.D. 35, ¶40, 677 N.W.2d 551, 564.

“The State must prove all the elements of the crime charged.” *State v. Thomason*, 2014 S.D. 18, ¶30, 845 N.W.2d 640, 647. “The burden is upon the state to establish every element of the crime beyond a reasonable doubt.” *State v. Winckler*, 260 N.W.2d 356, 366 (S.D. 1977). (citing *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)).”

The State defines retailer as any person subject to the tax imposed by §§10-45-4. [Appellee Brief, p. 11] Only Visser, d/b/a Jim River Ranch, was subject to the tax imposed by §§10-45-4 on the monies she received from South Suburban Church (\$1,272), Count 2, and from Lookout Sky LLC (\$2,014), Count 1.

The State did not prove that Jesse received the \$1,272 payment from a hunter, or that he was subject to the tax imposed by §§10-45-4 on such amount. Count 2 has not been proved by the State.

The State did not prove that Jesse received the \$2,014 payment from a hunter, or that he was subject to the tax imposed by §§10-45-4. Count 1 has not been proved by the State.

A retailer is any person engaged in the business of providing a service [SDCL 10-45-1(11); SDCL 10-45-4] for a fee, retainer, commission, or other monetary charge. (SDCL 10-45-4.1) A sale contemplates receipt of consideration in return for the goods or services provided. SDCL 10-45-1(12).

The State argues that Jesse received payments from Lookout Sky, LLC and South Suburban Church. (Appellee's brief, p. 14) This is not true. Visser, d/b/a Jim River Ranch, received those payments. And, because Deb Visser received those payments, d/b/a Jim River Ranch, as the lessee of the hunting facility, she paid sales tax on those payments.

Visser, d/b/a Jim River Ranch, provided services to South Suburban Church and to Lookout Sky, LLC. South Suburban Church paid \$1,272 to Jim River Ranch for the hunting services provided. Lookout Sky, LLC paid \$2,014 to Jim River Ranch for the hunting services provided. Visser, d/b/a Jim River Ranch, received the \$1,272 and the \$2,014 for the services provided. And Visser, d/b/a Jim River Ranch, paid the sales tax on the \$1,272 and the \$2,014 received for the hunting services she provided.

Just because the checks were either mailed to Jesse Wright or had been delivered to Jesse Wright, such does not make him a retailer. The checks were made payable to

Jim River Ranch. As an agent for Visser, d/b/a Jim River Ranch, Jesse immediately deposited those checks to the account of his principal, Deb Visser, d/b/a Jim River Ranch. Visser acknowledged the receipt of those monies by paying the sales tax thereon.

On questions of law, the S.D. Supreme Court may interpret statutes without any assistance from the administrative agency. *Paul Nelson Farm v. South Dakota Dept. of Revenue*, 2014 S.D. 31, ¶7, 847 N.W.2d 550, 554. No deference is given to any conclusion reached by the Department of Revenue. *Id.* ¶7, p. 554.

Neither an agency nor this court should “enlarge the scope of the statute by an unwarranted interpretation of its language.” *In re Yanni*, 2005 S.D. 59, ¶15, 697 N.W.2d 394, 400. The Department of Revenue and the circuit court has interpreted this statute, SDCL 10-45-48.1(6), to encompass and to include a person who merely picked up the check from the mailbox or was given the check by the hunter and then deposited the check to the account of the actual person operating the hunting lodge. That is an unwarranted expansion of SDCL 10-45-48.1(6).

Agency is the representation of one called the principal by another called the agent in dealing with third persons. SDCL 59-1-1.

There were many, many deposits that were made out to Jim River Ranch or JRR that were deposited by Jesse Wright to Visser’s checking account. (Ex. 103) Visser, the principal, ratified these acts of her agent, Jesse Wright. (SDCL 59-2-4) Visser ratified these acts by accepting and retaining the benefit of the acts. (SDCL 59-2-4) Visser, by accepting and retaining those benefits, those monies, and with notice thereof, paid the sales tax on such deposits, ratifying the acts of her agent.

There was no receipt of these monies by the Jesse. Jesse, as agent, delivered all hunting receipts to Visser's account, and Visser, as principal, accepted those receipts and ratified the acts of her agent. If Jesse would have deposited those monies to his checking account, the State would have a case, but he did not. These monies were paid by hunters for services received from Visser. These monies were received by Visser for services provided to the hunters. The transaction was complete. Jesse was not engaging in a business as a retailer. He is not guilty of a violation of SDCL 10-45-48.1(6).

It is a requirement for a conviction under SDCL 10-45-48.1(6) that Jesse received a fee or a payment from a hunter in return for providing hunting services.

The State defines receipt as the delivery of the check representing payment for hunting services to Jesse Wright either by mailing the payment to him or hand delivering the check to him. The State provides no authority for this argument and it is waived. SDCL 15-26A-60(6). The checks were both made payable to Jim River Ranch. And Visser was leasing the hunting facility from Jesse and was operating, "doing business as," Jim River Ranch.

A sales tax is imposed on the gross receipts of businesses engaged in rendering services. *TRM ATM Corp. v. South Dakota Dept. of Revenue and Regulation*, 2010 S.D. 90, ¶4, 793 N.W.2d 1, 3. And, "gross receipts means the total amount or consideration, ... for which services are sold ... whether *received* in money or otherwise[.]" SDCL 10-45-1.14 (emphasis added). *Id.*

SDCL 22-1-2(42) defines receive as to acquire possession, control or title. The receipt of the hunting checks was not receipt of the monies which the checks represented. Visser d/b/a Jim River Ranch received the monies when the monetary amount was

credited to her account. Jesse did not acquire or gain possession of the \$1,272 paid by South Suburban Church to Jim River Ranch, and did not acquire or gain possession of the \$2,014 paid by Lookout Sky, LLC to Jim River Ranch. Visser gained possession of such monies by virtue of the fact that the check for \$1,272 and the check for \$2,014 were deposited to her account. She included such monies in her gross receipts for purposes of sales tax. She paid sales tax on such monies because she received those monies.

Jesse Wright is not guilty of engaging in business as a retailer after his license had been revoked. The trial court should have granted his motion for judgment of acquittal.

SDCL 10-45-48.1 required as an essential element that Jesse had to act as a retailer and actually receive money for himself from the hunter. The State, with this impossible task, attempts an unwarranted expansion of SDCL 10-45-48.1. The State contends that if Jesse were reimbursed for the birds he paid for, or was paid the contractual lease payments that he was entitled to, and he received those monies, that he is somehow acting as a retailer. (Appellee Brief, p. 15-17)

This contention has no merit because it has no case law or statutory law to support the proposition. “The failure to cite supporting authority is a violation of SDCL 15-26A-60(6) and the issue is thereby deemed waived.” *State v. Pelligrino*, 1998 S.D. 39, ¶22, 577 N.W.2d 590, 599 (quoting *State v. Knoche*, 515 N.W.2d 834, 840 (S.D. 1994); *State v. Dixon*, 419 N.W.2d 699, 701 (S.D. 1988).

SDCL 10-45-48.1(6) provides that the only person to be charged under such statute is a person who engages in a business as a retailer, and a retailer must receive payment for the services provided. In this case, Jim River Ranch, Visser, received the payments.

“We have consistently restrained our interpretation of a law to the plain meaning of the words and have declined to expand its meaning to what we think it should have said or what we think the legislature may have meant. We should also restrain ourselves in this case.

The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used.

Words and phrases in a statute must be given their plain meaning and effect.

When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court’s only function is to declare the meaning of the statute as clearly expressed. Moreover, [i]n arriving at the intention of the Legislature, it is presumed that the words of the statute have been used to convey their ordinary, popular meaning. SDCL 2-14-1 requires that words in a statute are to be understood in their ordinary sense. We finally note that a “[j]udicial interpretation of a statute that fail[s] to acknowledge its plain language would amount to judicial supervision of the legislature.”

*In re West River Electric Ass’n. Inc.*, 2004 SD 11, ¶21, 675 N.W.2d 222, 228 (citations and quotations omitted).

The plain meaning of the provisions of SDCL 10-45-48.1(6) apply to a retailer, not to an agent of the holder of the sales tax license who received a check and then deposits it into the licensee’s bank account.

Jesse did not profit off of deposits made to Visser’s account. Deb Visser admitted that she had not reimbursed Jesse for all of the birds that he had paid for, and had not paid him for the lease payments due to him. (TR p. 326: 12-19; p. 353: 10-18; p. 372: 15-20) The amounts owed to Wright will be set forth in further detail below.

“To comport with the Due Process Clause of the U.S. Constitution, a law must ‘give a person of ordinary intelligence fair notice that his conduct is forbidden by the statute.’” *United States v. Richter*, 796 F.3d 1173, 1188 (10<sup>th</sup> Cir. 2015). The State theorizes that Wright’s activities met the plain language of having engaged in a business, and cites SDCL 10-45-1(2). (Appellee’s Brief, p. 12) SDCL 10-45-1(2) provides a

definition of a business. However, the plain language of SDCL 10-45-48.1(6) is that Wright, to be convicted, must have engaged in a business as a retailer.

Schinkel testified that even if Wright is engaging in the business, the hunting lodge, and he is booking hunts or guiding hunters or cooking meals, that he is not a retailer if he is not receiving compensation. (Fact 7) This is the essential element that must be proved to convict Jesse Wright. He must have received monies from a hunter in return for services provided to the hunter. This was not proven regarding Counts 1 and 2 of the sales tax charges.

It would be an unwarranted expansion of criminal liability that would violate Jesse's right to fair warning for the State to expand SDCL 10-45-48.1 to allow a conviction where Jesse did not receive compensation from a hunter, and where the facts presented to the jury unequivocally prove that Jesse did not receive the monies claimed to have been paid to him as set forth in Counts 1 and 2 of the information. *United States v. Richter, Id., State v. Plastow*, 2015 S.D. 100, ¶22 and ¶25, 873 N.W.2d 222, 230-231.

#### ARGUMENT - FORGERY

Under the forgery issue, the State continues to misconstrue the facts. Jesse Wright did not call Heartland State Bank to become an authorized signor on Deb Visser's checking account. Jesse called the bank regarding having internet banking access to the account. (TR p. 180: 9-11) Jesse did not take Visser's checkbook without her knowledge. Visser testified that she had left her checkbook at the lodge. (TR p. 307: 22-25) She left the checkbook at the lodge sometime right after the first of the year, January 1, 2022. (TR p. 308: 3-7)



It is not a fact that Jesse would not return the checkbook to Visser despite her asking. Visser never asked for Jesse to return the checkbook. Visser testified that sometime after the first of the year she saw that checks were being written, signed in her name, and she was not happy about it. (TR p. 320: 6-8) However, she never asked for the checkbook to be returned to her.

On April 27, 2022, Visser initiated a text message to Jesse warning that Steph was on her way out to the lodge, and she was mad. Jesse responded that he wanted to help Steph, and that they would get through this. He then responded that Steph wanted our checkbook, and that he did not think that was a good idea to let her (Steph) have it. He kept it hidden or on his person at all times. And if she wanted the checkbook back, to just let him know. (Ex. 109 is in the Appendix as Item 1) This is not someone who is holding the checkbook without Visser's permission. Jesse specifically tells Visser that if she wants the checkbook back, she can have it.

Then the State makes another factual contention that has no basis. The State provides as a fact that Visser testified that Wright signed her name on those checks without her permission and cites TR p. 308, 311. (Appellee's brief, p. 19) This is not true. Exhibit 17 was the check #1044 to JRR for \$2,000 for a reimbursement. Exhibit 18 was check #1055 to Kevin Siebrecht for \$1,925. On page 311 cited by the Appellee, Visser is questioned about Exhibit 2, the check deposited into her account of the South Suburban Church monies of \$1,272. She testified that Jesse Wright's signature is on the back of that check, endorsing the monies over to Visser's account, d/b/a Jim River Ranch. (TR p. 310-311) Then Visser testified that the endorsement on Exhibit 3, the check for \$2,014 from Lookout Sky deposited to her account (TR p. 311), is Jesse's



signature. (TR p. 311) These deposited checks to Visser's account have nothing to do with Counts 1 and 2 of the forgery charges regarding the checks written for \$2,000 to JRR for a reimbursement for the birds, and to Kevin Siebrecht for \$1,925 for renting a house. Visser never testified that Wright signed her name on checks #1044 (Ex. 17) or #1055 (Ex. 18).

There was no testimony or evidence whatsoever that Debbie Visser's signature on the face of check #1044 to JRR was a forgery by Jesse Wright. There was no testimony or evidence whatsoever that Debbie Visser's signature on the face of check #1055 was a forgery by Jesse Wright. The State has not met its burden of proof that the signature on checks 1044 or 1055 is a forgery of Debbie Visser's signature by Jesse Wright.

#### ARGUMENT – INTENT TO DEFRAUD

The entire evidence set forth by the State regarding "intent to defraud" is as follows:

1. Jesse Wright was not an authorized signor on the checking account.
2. Deb Visser forgot the checkbook at the lodge sometime after January 1, 2022.
3. Deb Visser did not testify that Jesse Wright signed her name on checks #1044 or #1055.
4. Deb Visser saw checks #1044 and #1055 in her bank statements when she was periodically reviewing these statements and never complained about the checks or notified the bank that these were forgeries.

The fact that Jesse was not an authorized signor on the checking account does not rise to the level of a specific intent by Jesse to defraud or cheat Visser. There is no inference that can be made that Jesse specifically intended to defraud Visser by virtue of the fact that he was not an authorized signor on the account.

The fact that Visser forgot her checkbook at the lodge does not provide any evidence of a specific intent in the mind of Jesse to defraud Visser.

Visser did not even testify that Jesse forged checks #1044 or #1055.

Visser reviewed her bank statements periodically and discovered these checks. She did not notify the bank that these checks were forged. If anything, this is proof that Visser knew about checks 1044 and 1055 and approved and authorized these because these were paid from her checking account and these were legitimate business expenses of her Jim River Ranch hunting lodge.

Visser did have a conversation with Jesse about the checks being written. This took place right after the first of the year in January 2022. (TR p. 319: 25; p 320: 1-3) And with this knowledge, she did not tell Wright to stop writing checks. She did not ask Jesse to return the checkbook, and she did not notify her bank that these were forged signatures.

Ex. 112 is a text message between Visser and Jesse. Visser texted Jesse, stating “was thinking we should just add your name on the checking account so you can sign checks, plus our lease expires this month. Do we need to renew it?” TR p. 358: 8-15) The date of the text message is March 3, 2022. (TR p. 359: 1)

There is no admission that Jesse made the signature on checks 1044 and 1055 as argued by the State (Appellee’s brief, p. 21). The Information alleges that Jesse Wright committed a forgery “while he was not authorized to write checks on her account.”

The evidence indicates that Visser discussed the checks being written on her account with Jesse, and that Visser did not complain about the checks being written. Visser discussed putting Jesse’s name on the account so he could write checks. Visser

never notified the bank that these were forgeries. There was no evidence that Jesse forged the signature of Visser on checks 1044 or 1055. The evidence on this issue was that Jesse was authorized to write checks on this account. However, there is no evidence that Jesse did write checks on the account.

Visser is lying when she said that she did not know where the checkbook was at. She knew that it was at the lodge, and that Jesse was holding this so that Stephanie could not get to it. (Appendix Item 1)

It is important to note that Kevin Siebrecht testified that Deb Visser delivered the check #1055 for \$1,925 made payable to Kevin Siebrecht, Exhibit 18, to Kevin. Visser knew that this was a legitimate business expense. Deb knew that the signature was either hers or authorized by her, and gave the check to Kevin Siebrecht.

Q "Do you recognize Exhibit 18?

A Yes I do. It is the check we got from Debbie Visser."

(TR p. 160: 4-5, testimony of Kevin Siebrecht.)

Visser knew about these checks and authorized these checks and played a part in the payment of these checks by delivering one of the checks (#1055) to Kevin Siebrecht.

Exhibit 111 was an invoice from Shur Shot Gamebirds for \$24,000 for gamebirds provided to the JRR pheasant hunting operation. On October 20, 2021, Deb Viser paid \$6,400 to Shur Shot Gamebirds on this invoice for birds. (TR p. 343: 18-23; p. 344: 10-16) Visser made an additional payment on the Shur Shot Gamebirds bill of \$8,000 to Jesse. The \$8,000 paid to Jesse was for birds and marked in the memo line on the check was "reimbursement." (TR p. 344: 17-24; Ex. 103) Visser testified that there was another check to Jesse of \$3,000 for birds. (TR p. 345: 1-13) After applying those

checks, there remained \$6,600 owing to Jesse Wright for birds. The \$2,000 check, check #1044, Exhibit 17 to JRR was for birds. (Appendix, Item 5)

Everything was done in the open. Visser knew she owed JRR for birds. Visser herself paid JRR for birds. When the \$2,000 check was written, \$6,600 was still owed by Visser to JRR for birds. Visser saw this check coming back through her bank records in March of 2022. She did not notify the bank that this was a forgery, and in fact, discussed these checks with Jesse. There was nothing done in secret or behind Visser's back. There was no intent to defraud. There was merely a check written to reimburse JRR for birds.

The check written to Kevin Siebrecht was delivered by Visser to Kevin Siebrecht. She delivered the check to Kevin Siebrecht because he was owed the money for a deposit on the house that Jim River Ranch, Visser, was going to use to house hunters.

The State alleges that the lease expired March 31, 2022 and that the Siebrecht deposit for a Jim River Ranch hunt being in April 2022 supported the inference that Jesse made the deposit for his own profit, not Visser's. (Appellee's brief, p. 20)

Visser continued to operate the hunting lodge through June of 2022. (TR p. 375-377) She was receiving payments (deposits) for hunts through June of 2022, and paid sales tax on those hunting receipts. (TR p. 376) Deposits for hunters that were going to use the Siebasse house in September were included in the deposits Visser received in April, May, June and July of 2022.

Not only did Visser herself pay the \$1,925 to Kevin Siebrecht, but she received the monies related to this hunting deposit. Visser received the hunting payments until June of 2022. (Check #1055 is included in Appendix as Item 6.)

Exhibit 28 is attached in the Appendix as Item 4. This is included for a very specific purpose. Visser testified that Exhibit 28 represented \$28,000 in checks going to Jesse Wright or JRR. (TR p. 326: 20-23) Only \$12,378.50 was paid out as represented by Exhibit 28. (TR p. 354: 13-19) On redirect, Visser testified that the money paid to JRR out of her account as shown in Exhibit 28 was a little over \$21,000. (TR p. 384: 6-9)

Exhibit 28 only has checks written on Visser's Jim River Ranch account at Heartland State Bank as \$12,378.50 (TR p. 354: 13-19), not \$28,000 or \$21,000. Exhibit 28 proves that only \$11,300 was paid to Jim River Ranch. The balance of \$1,078.50 was paid to others, including Stephanie Eberle.

One of the checks comprising the \$11,300 total was check #1044 to JRR dated February 26, 2022 for \$2,000 (see Ex. 28). At such time, Visser owed Jesse \$6,600 for birds (see above), and \$5,000 in lease payments for the five months of October through February. Total owed to Jim River Ranch (JRR) as of February 26, 2022 was \$11,600. The checks written to JRR or Jim River Ranch were all for birds and lease payments. Visser paid \$11,300, represented in Ex. 28, on the amount of \$11,600 owed to Jesse. There was no defrauding of Visser. She was merely paying her bills.

The Defendant presented evidence of a credible affirmative defense, i.e. that he had no specific intent to defraud Visser, and the checks were for legitimate business expenses. SDCL 22-1-2(3). The State has not proven that the checks were not for legitimate business expenses, or that Defendant had the specific intent to defraud Visser. Defendant's conviction should be overturned. The trial court should have granted Defendant's motions for judgment of acquittal.

## CONCLUSION

The trial court erred when it denied Defendant's motions for judgment of acquittal. The Supreme Court should reverse that decision and vacate the judgments of conviction.

1. Jesse Wright was not a retailer. He received no monies, no fee, and no compensation from a hunter for providing hunting services. All hunting monies were paid to Visser operating as a retailer, doing business as Jim River Ranch.

2. The evidence does not support a finding that Jesse Wright had a specific intent to defraud Deb Visser. The check written to JRR was a reimbursement for birds purchased. The check written to Kevin Siebrecht was a payment for housing for JRR hunters. Both were legitimate expenses of Visser d/b/a Jim River Ranch.

## REQUEST FOR ORAL ARGUMENT

The Appellant requests oral argument in this matter.

Respectfully submitted this 25th day of March, 2025.

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IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

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AFFIDAVIT OF MAILING AND PROOF OF SERVICE

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STATE OF SOUTH DAKOTA )

:

COUNTY OF JERAULD )

Casey N. Bridgman, being first duly sworn on oath, deposes and says: That he is the attorney for the Appellant in the above-entitled action; that on March 25, 2025 he filed Appellant's Reply Brief electronically through Odyssey's File & Serve system, and also served a true and correct copy of the Appellant's Reply Brief on Appellees' counsel electronically at their email addresses of record in Odyssey's File & Serve system, and he further states that on March 25, 2025 he mailed one hard copy of the Appellant's Reply Brief to the Clerk of the Supreme Court of South Dakota, 500 East Capitol Ave., Pierre, SD 57501-5070, by depositing the same in the United States Post Office at Wessington Springs, South Dakota, postage prepaid, addressed as stated above.

Dated this 25th day of March, 2025.

//ss//Casey N. Bridgman//  
Casey N. Bridgman

Subscribed and sworn to before me this 25th day of March, 2025.

//ss//Kendra Brandenburg//  
Notary Public

(SEAL)

My commission expires: 6-27-2025

IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

CERTIFICATE OF COMPLIANCE

\*\*\*\*\*

STATE OF SOUTH DAKOTA )

:

COUNTY OF JERAULD )

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//ss//Casey N. Bridgman//

Casey N. Bridgman

Subscribed and sworn to before me this 25th day of March, 2025.

//ss//Kendra Brandenburg//

Notary Public

My commission expires: 6-27-2025

(SEAL)



IN THE SUPREME COURT OF THE  
STATE OF SOUTH DAKOTA  
APPEAL #30873

\*\*\*\*\*

STATE OF SOUTH DAKOTA, Plaintiff  
vs.

JESSE L. WRIGHT, Defendant

\*\*\*\*\*

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT  
SPINK COUNTY, SOUTH DAKOTA, THE HONORABLE  
JULIA M. DVORAK, CIRCUIT COURT JUDGE, PRESIDING

\*\*\*\*\*

APPENDIX

\*\*\*\*\*

INDEX TO  
APPELLANT'S APPENDIX

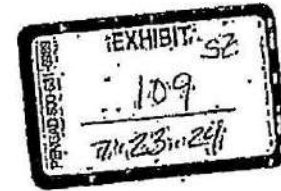
Item	Page
1. Exhibit 109 Text messages	1.
2. Exhibit 2 – South Suburban Church check	2.
3. Exhibit 3 – Lookout Sky LLC check	4.
4. Exhibit 28 checks	6.
5. Exhibit 17 – February 26, 2022 check	22.
6. Exhibit 23 – check to Kevin Siebrecht	23.

# New Message

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Item 1.

To: Deb Visser



Text Message  
Apr 27, 2022, 8:32 PM

Steph is on her way out there  
heads up she isnt happy

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JUL 25 2024  
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5TH CIRCUIT CLERK OF COURT  
By \_\_\_\_\_

Sorry, I can't talk right now.

Thanks Deb, for the heads up!  
Damn, sorry, not sure what that  
was about, but regardless I care  
about her Deb, we will get  
through it.

Call me when you get a minute

Or I'll call

She wanted our check book, I  
didn't think that was a good  
idea? I'll bring it into you if you  
want it. Just an FYI, I keep the  
check book hidden or on my  
person at all times.

Apr 27, 2022, 10:37 PM

Deb, let me know what I need to  
know to help Steph?

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(303) 798-2406

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82-504/1070

50434

03/03/2022

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One thousand two hundred seventy-two and 00/100 DOLLARS

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Harrisburg, PA 17101-1000*

005591725

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LOOKOUT SKY LLC  
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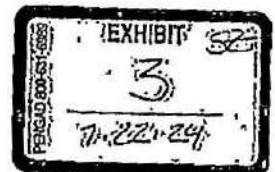
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Bobby K Johnson

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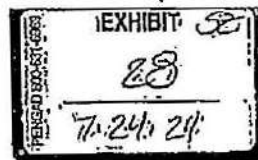
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1131



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David J. Chene

1:0914062601: 611 90511 01042

**Advertisement for the following product:**

**Product Name:** *Product Name*

**Manufacturer:** *Manufacturer Name*

**Address:** *Address*

**Phone:** *Phone Number*

**Website:** *Website*

**Product Description:** *Product Description*

**Price:** *Price*

**Quantity:** *Quantity*

**Ordering Information:** *Ordering Information*

**Shipping:** *Shipping Information*

**Return Policy:** *Return Policy*

**Warranty:** *Warranty*

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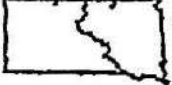
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Tim Roca Roca

\$1500.00

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
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Five Hundred and 00/100

DOLLARS 



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PAY TO THE  
ORDER OF

Jesse Wright

\$ 1000.00

ONE THOUSAND AND 00/100

DOLLARS



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Redfield, SD 57469  
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One Stop

\$300.00

Three hundred and 00/100

DOLLARS



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DATE 4/5/22

PAY TO THE  
ORDER OF

Jim River Ranch

\$ 1000.00

ONE THOUSAND AND NO/100

DOLLARS



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P.O. Box 478-8306

MEMO Remittance

Debra Vinner

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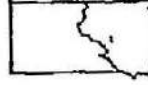
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*Debbie Visser*

\$ 100.00

*One Hundred and 00/100*

DOLLARS



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Y W

1059

DATE \_\_\_\_\_

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Food Price

\$100.00

ONE HUNDRED and  $\frac{10}{100}$

DOLLARS



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Dilip Chandra

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3441501

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Date 3/20/82  
Deps \$16.00  
Pays To Order of

N BANK  
Redfield, SD  
Units

\$16.00 - F MOBILE DEPOSIT  
3/20/82

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628  
914

1060

DATE

4/14/22

PAY TO THE  
ORDER OF

Jim Hetson

\$ 420.00

Four Hundred Twenty and 00/100

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Dennis Vanier

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DATE 2-26-22

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ORDER OF

TRR

\$ 200.00

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