APPELLANT'S BRIEF

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs. **NO. 31007**

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT

OF THE

FIRST JUDICIAL CIRCUIT

CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

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Notice of Appeal Filed: February 6, 2025

TABLE OF CONTENTS

PAGE(S)

APPENDIX – TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

CASES: **PAGE(S):**

U.S. CONSTITUTION, TREATIES, AND STATUTES:

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31007

PRELIMINARY STATEMENT

The Settled Record will be referred to as "SR" followed by the page number. Hazen Winckler, Defendant and Appellant, will be referred to as "Winckler." The State of South Dakota, Plaintiff and Appellee, will be referred to as "the State."

Winckler has filed coinciding appeals, No. 31006 and No. 31007, which encompass the same jurisdictional issue. To avoid overlong briefing and repetition, Winckler's arguments in No. 31006 focus on the specific legal questions under 18 U.S.C. § 1151(b) and (c), and his arguments in No. 31007 focus on the specific legal questions under 18 U.S.C. § 1151(a). All arguments under 18 U.S.C. § 1151(a), (b), and (c) apply equally as well in both appeals with respect to the jurisdictional issue raised, which Winckler joins for consideration in each appeal.

JURISDICTIONAL STATEMENT

Winckler appeals to the Supreme Court from the Judgment of Conviction which was signed and filed on January 8, 2025. (SR 600-601). Notice of Appeal was served on all parties and filed on February 6, 2025. (SR 604). This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF THE LEGAL ISSUE

1. Whether the circuit court erred in denying Winckler's Motion to Dismiss for lack of jurisdiction?

   The circuit court determined that it had jurisdiction and denied Winckler's Motion to Dismiss. (SR 550-573).

   McGirt v. Oklahoma, 591 U.S. 894, 140 S. Ct. 2452 (2020)
   South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 118 S. Ct. 789 (1998)
   Perrin v. United States, 232 U.S. 478, 34 S. Ct. 387 (1914)
   Johnson v. McIntosh, 21 U.S. 543 (8 Wheat. 543) (1823)

   U.S. Const., Art. I, § 8, cl. 3
   U.S. Const., Art. VI, cl. 2
   18 U.S.C. § 1151(a), (b), (c)
   Act of 1894, 28 Stat. 286, 314-319
   Treaty of 1858, 11 Stat. 743
   S.D. Const., Art. XXII
   S.D. Const., Art. XXVI, § 18

STATEMENT OF THE CASE AND FACTS

On April 4, 2024, in the Circuit Court, First Judicial Circuit, Charles Mix County, South Dakota, the State filed a Complaint and Information against Winckler, alleging simple assault in violation of SDCL 22-18-1(5). (SR 4, 7-8). The case was initially assigned to the Magistrate Judge and was subsequently re-assigned to the Hon. Bruce V. Anderson, Circuit Court Judge. (SR 546). The charged conduct was based on an altercation between Winckler and one Davian Zephier, which occurred at the Charles Mix County Jail in Lake Andes, South Dakota. (SR 2-3). Winckler applied for court appointed counsel by signing an application under oath, identifying the location of making the application as "Charles Mix County Jail/Yankton Sioux Tribe" and listing his address as "Yankton Sioux Tribe." (SR 9).

Winckler was assigned court appointed counsel who filed a Motion to Dismiss based on a lack of jurisdiction, alleging that Winckler "is an Indian and the location that the alleged offense[] took place is in Indian country." (SR 12-267, 270-303). The State filed a response. (SR 304-523). Winckler filed a reply brief in support of the Motion to Dismiss. (SR 524-545).

Winckler's Motion to Dismiss was noticed for hearing which occurred on September 11, 2024. (SR 547, 610). The parties, having developed the record through their submissions, stipulated to essential underlying facts (SR 550-552, 573, 613-614; App. 29-33) – i.e., that Winckler is an Indian, an enrolled member of the Yankton Sioux Tribe, (SR 270, 321), and the alleged offense occurred on lands that were reserved in the 1858 Treaty between the Yankton Sioux Tribe and the United States, 11 Stat. 743 (SR 20-26; App. 38-44), which lands were subsequently allotted by United States Trust Patent

dated May 8, 1891, (SR 33; App. 46), and then identified in Articles XIII and XIV of the Act of 1894, ch. 290, 28 Stat. 286, 314-319 (SR 63-68; App. 49-54). These Yankton Sioux allotted lands comprise what is now Lake Andes – or the location of the charged conduct. (SR 551). The parties left for the circuit court to decide whether the lands at issue qualify as Indian country under federal law, 18 U.S.C. § 1151(a), (b), and (c). (SR 613-614).

Following hearing, (SR 610-637), the circuit court issued a memorandum decision determining that "the location of the defendant's alleged crimes does not qualify as Indian country under subsection (a) or (c), of § 1151. Any additional or further novel arguments presented on those issues by the parties here are denied by this court." (SR 552). The circuit court also addressed Winckler's contention of a dependent Indian community under § 1151(b), which it rejected by citing to Weddell v. Meierhenry, 636 F.2d 211 (8th Cir. 1980). (SR 553-554).[1] The circuit court entered the Order Denying Defendant's Motion to Dismiss on October 11, 2024. (SR 573).

Winckler subsequently entered a Stipulation and Agreement in which he waived his right to a jury trial, stipulated to the factual basis for the charge, and specifically reserved his appeal rights including all issues. (SR 588-590). The circuit court adjudicated Winckler guilty of simple assault and pronounced a sentence of time served and the payment of court costs and court appointed attorney fees. (SR 600-601).

[1] The circuit court mistakenly cited subsection (c) of § 1151 in certain parts of its analysis of a dependent Indian community, which falls under subsection (b) of § 1151. It is recognized that judges are humans too and are not impervious to errors or mistakes. Though comprised of nine of our smartest jurists, even the United States Supreme Court in South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998), erroneously denominated Article VIII of the 1894 Act as Article VII in its opinion, 522 U.S. at 350.

STANDARD OF REVIEW

A motion to dismiss based on a lack of jurisdiction requires the court to determine whether it has authority to hear the case. In general, such a motion can be based on either a "facial" or "factual" attack on jurisdiction. Moss v. United States, 895 F.3d 1091, 1097 (8th Cir. 2018). A facial attack asserts that the jurisdictional allegations plead are insufficient, while a factual attack challenges the actual existence of jurisdictional facts. Id. When a factual attack is made, the court may look outside the pleadings to affidavits or other documents to determine if jurisdiction exists. Id. (citation omitted); see also Hutterville Hutterian Brethren, Inc. v. Waldner, 2010 S.D. 86, ¶ 20, 791 N.W.2d 169, 174-75. "Judicial notice may be taken of facts once judicially known," including from court filings, records, and proceedings relevant to the issues presently before the court. State v. Olesen, 331 N.W.2d 75, 77 (S.D. 1983) (citations and quotations omitted); SDCL 19-19-201; see also Healy v. Fox, 572 F. Supp. 3d 730, 738 (D.S.D. 2021) (citing Waldner v. N. Am. Truck & Trailer, Inc., 277 F.R.D. 401, 406 (D.S.D. 2011) (court may judicially notice adjudicative facts from documents and matters of public record)). The party invoking jurisdiction bears the burden of proving up jurisdictional facts, and "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Flores v. United States, 689 F.3d 894, 900 (8th Cir. 2012) (quotation omitted).

The "determination of disputed factual issues" is reviewed for clear error. Compart's Boar Store, Inc. v. United States, 829 F.3d 600, 604 (8th Cir. 2016) (quotation omitted). However, when the decision rests on the application of a legal standard to established facts, and "is predominantly one of determining whether established facts fall

within the relevant legal definition," the circuit court's decision is reviewed de novo. Bruguier v. Class, 1999 S.D. 122, ¶ 3, 599 N.W.2d 364, 366, n.2 (quotation omitted); see also Yankton Sioux Tribe v. Podhradsky, 606 F.3d 994, 1004 (8th Cir. 2010) (factual findings reviewed for clear error; "legal conclusions and mixed questions of law and fact" reviewed de novo) (citation omitted).

ARGUMENT AND AUTHORITY

1. The Circuit Court erred in denying Winckler's Motion to Dismiss for lack of jurisdiction because Winckler is an Indian and the charged conduct occurred in Indian country.

A. Cannons of Construction

Our United States Constitution entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land," Art. I, §8, cl. 3; Art. VI, cl. 2; see, e.g., Haaland v. Brackeen, 599 U.S. 255, 275 (2023) (describing "Congress's power to legislate with respect to the Indian tribes as 'plenary and exclusive'" (citing cases)); Perrin v. United States, 232 U.S. 478, 482-483 (1914) (same). Accordingly, to determine whether land is Indian land and therefore Indian country, "there is only one place we may look: the Acts of Congress." See McGirt v. Oklahoma, 140 S. Ct. 2452, 2461-2463 (2020) (Once Congress recognizes or establishes Indian lands, only Congress can divest such lands of Indian country status (citing Solem v. Bartlett, 465 U.S. 463, 470 (1984)); id., 140 S. Ct. at 2474-2476 ("the most authoritative evidence…lies in the treaties and statutes…"); see also Johnson v. McIntosh, 21 U.S. (8 Wheat) 543 (1823) (Tribes retain the right to occupy and use their ancestral lands, while United States has ultimate title and authority over those lands which includes the exclusive right to extinguish Indian title).

It is a "cardinal canon" of statutory interpretation "that a legislature says in a statute what it means and means in a statute what it says there." Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992); see McGirt, 140 S. Ct. 2452, 2469-2470 ("There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. ..."); see also South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) ("[O]nly Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain" (citations and internal quotation marks omitted)); id., 522 U.S. at 356 (subsequent treatment of affected lands "least compelling" evidence of congressional intent). While Congress alone wields "even the authority to breach its own promises and treaties," courts do not lightly infer such a breach once Congress makes promises to an Indian tribe by guaranteeing rights or recognizing Indian land, McGirt, 140 S. Ct. at 2462 (quotation omitted). "[T]reaty rights are to be construed in favor, not against, tribal rights." Id., 140 S. Ct. 2452, 2470 (citation omitted); see also Worcester v. Georgia, 31 U.S. 515, 6 Pet. 515, 582 (1832) ("The language used in treaties with Indians should never be construed to their prejudice" (McLean, J., concurring)).

Thus, terminating the status of Indian land requires that the "congressional determination to terminate ... be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." Mattz v. Arnett, 412 U.S. 481, 505 (1973); see also Blatchford v. Gonzales, 100 N.M. 333, 337 (1983-NMSC-060) ("courts have required a showing of a clear and specific indication of congressional intent to extinguish Indian title") (citing cases). "The congressional intent must be clear," e.g., DeCoteau v. Dist. County Court for Tenth Judicial Dist., 420 U.S. 425, 444 (1975), to

overcome "the general rule that '[doubtful] expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith.'" McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 174 (1973) (citation omitted). It is a "longstanding rule that an agreement between the United States and an Indian tribe should be 'construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.'" Yankton Sioux Tribe v. Podhradsky, 606 F.3d 994, 1008 (8th Cir. 2010) (quoting Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 676 (1979) (quoting Jones v. Meehan, 175 U.S. 1, 11 (1899))).

The rules and maxims that guide review and interpretation of written instruments respecting Indian tribes, e.g., United States Constitution, treaties, and statutes, have developed into the following "canons of construction":

1. Treaties and agreements enshrined in statute are construed in favor of Tribal rights.

2. Only Congress can alter the terms of an Indian treaty, and the intent to do so must be clear and plain.

3. Doubtful expressions of congressional intent are resolved in favor of the tribes. The Court must find clear intent to overcome this presumption either in a specific statement on the face of a statute or its legislative history.

4. Ambiguous expressions are construed as the Indians would have understood them and against the drafter.

These cannons of construction provide compelling guidelines for review of the 1858 Treaty between the Yankton Sioux Tribe and the United States, 11 Stat. 743 (1858 Treaty), as well as the 1892 agreement ratified by Congress in the Act of 1894, 28 Stat. 286, 314-319 (1894 Act). As discussed below, the 1858 Treaty and 1894 Act

affirmatively recognized and guaranteed the title of the Yankton Sioux in and to the land at issue in this case, and Congress has never subsequently passed any "equivalent law terminating" or extinguishing such title. McGirt, 140 S. Ct. at 2464 ("a statute evincing anything like the 'present and total surrender of all tribal interests' in [all Indian title to] the affected lands") (alteration added).

B. Yankton Sioux Legal History

At the turn of the 18th century, the Yankton Sioux/Ihanktonwan people exclusively controlled more than 13 million acres of land between the Des Moines and Missouri Rivers, south of the present boundary that divides North and South Dakota. See South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 333, 118 S. Ct. 789, 793 (1998) [Yankton Sioux Tribe]; see also Yankton Sioux Tribe v. Gaffey, 14 F. Supp. 2d 1135, 1138 (D.S.D. 1998) [Gaffey I].

The right of the Yankton Sioux to use and occupy these traditional territorial lands is evidenced by official action of the United States which affirmatively recognized the Tribe's title in the Treaty of 1858, 11 Stat. 743, 744. In recognizing Indian title, the United States also made promises respecting the reserved lands constituting the Yankton Sioux Reservation, established within the Tribe's ancestral home, comprising approximately 430,400 acres in what is now Charles Mix County, South Dakota. See Podhradsky, 606 F.3d 994, 998.

The 1858 Treaty, at Article I, provided that "the tribe of Indians do hereby cede and relinquish to the United States all the lands now owned, possessed, or claimed by them, wherever situated, *except for four hundred thousand acres thereof* ..." (emphasis added). At Article II, the 1858 Treaty affirmatively recognized the title of the Yankton

Sioux, "that all the lands embraced in said limits are their own, and that they have full and exclusive right to cede and relinquish the same to the United States." At Article IV, § 1, the United States promised to protect the Yankton Sioux "in the quiet and peaceable possession of the said tract of four hundred thousand acres of land so reserved for their future home[.]" Article VIII guaranteed the Tribe's access and use of the Red Pipestone quarry. Article X stipulated that the Yankton Sioux cannot alienate, sell, or dispose of any part of their reserved tract of land except to the United States, and provided that the tract would be surveyed and divided among the Indians as directed by the Secretary of Interior, including certain rights of possession or transfer as may be deemed just. In Article XI, the Yankton Sioux acknowledged their dependence upon the United States, pledging friendly relations, and federal authority was established over any offenders against the treaties, laws, and regulations, "who may be within the limits of their reservation[.]" Article XV of the 1858 Treaty assigned an Indian agent to serve the Yankton Sioux Tribe for the benefit of the Indians.

Though surveying and dividing reservation land was contemplated by Article X of the 1858 Treaty, see also, Gaffey I, 14 F. Supp. 2d, at 1139 (describing the parceling of reservation lands following 1858 Treaty), the practice of allotting reservation land to individual Indians began generally and on a nationwide basis with the 1887 passage of the General Allotment (Dawes) Act, ch. 119, 24 Stat. 388; see, *infra*, note 6 (discussing Dawes with authorities). Under the various legislative enactments implementing the practice, individual tribe members received patents for allotments of reservation land held in trust for a period of years. After the trust period, the land was conveyed to the tribal

member, was freely alienable, and could be conveyed to Indians and non-Indians alike. McGirt, 140 S. Ct. 2452, 2463.

In the case of the Yankton Sioux Reservation, individual allotments totaling approximately 262,300 acres were scattered across the Reservation among 168,000 acres of unallotted 'surplus' land. Podhradsky, 606 F.3d 994, 999.

> In 1892, a three member Yankton Indian Commission, which represented the Secretary of Interior, traveled to the reservation to discuss the federal government's interest in acquiring the Tribe's surplus land. After lengthy negotiations, the Tribe agreed to sell all of the unallotted acreage to the United States for $600,000. The ceded land was to be opened to white settlement, with the exception of roughly 1,000 acres specifically reserved for use by the United States for "agency, schools, and other purposes." Act of August 15, 1894, ch. 290, 28 Stat. 286, 316 (1894 Act). ... The Supreme Court has commented that the set aside of these agency lands is evidence that Congress envisioned an ongoing reservation despite the sale of the surplus lands.

Id., 606 F.3d at 999-1000 (citing Yankton Sioux Tribe, 522 U.S. 329, 350). In the circumstances surrounding the 1892 agreement, it was explained to the Tribe:

> [the Great White Father] wants to give you a chance to sell your surplus lands . . . . *He has told us to tell you that you will not be forced to part with your lands unless you want to . . . . He does not want you to sell your homes that he has allotted to you. He wants you to keep your homes forever.*

Podhradsky, 606 F.3d at 1008 (quoting Council of the Yankton Indians (Oct. 8, 1892), *transcribed in* S. Exec. Doc. 27, 53d Cong., 2d Sess., 47, 49 (1894)) (alteration and emphasis in Podhradsky); see also Gaffey I, 14 F. Supp. 2d 1135, 1142-1149 (detailing circumstances attendant to the making of the 1892 agreement ratified by 1894 Act). Accordingly, "[w]hile the 1894 Act clearly expressed Congress's intention to sever the ceded surplus lands from the reservation, Yankton Sioux Tribe, 522 U.S. at 357-58, Congress has never expressed a similar intention with respect to the allotted lands." Id.

The 1894 Act, ch. 290, 28 Stat. 286, at 314-319, which recited the 1892 Agreement, specified in the preamble that the Yankton Sioux Tribe "is willing to dispose of *a portion of the land set apart and reserved to said tribe*, by the first article of the [1858 Treaty]." 28 Stat. 314 (emphasis added). At Article I of the 1894 Act, the Yankton Sioux agreed only to cede to the United States "*all their claim, right, title, and interest in and to all the unallotted lands* within the limits of the reservation[.]" (emphasis added). At Article II, the United States agreed to pay as "consideration for the lands ceded, … the sum of six hundred thousand dollars ($600,000)[.]" Article V made provisions for continuing federal support for the Tribe, including, "For the care and maintenance of…helpless persons of the Yankton tribe of Sioux Indians…; for schools and educational purposes of the said tribe; and for courts of justice and other local institutions…" Article VIII provided that "[s]uch part of the surplus lands…as may now be occupied by the United States for agency, schools, and other purposes," were to be reserved from sale to settlers until no longer required for such purposes. And, with specific reference to the Yankton Sioux allotted lands, Article XIII of the 1894 Act expressly guaranteed "Tribal rights," including "the undisturbed and peaceable possession of their allotted lands" and "all the rights and privileges of the tribe[.]" Article XIV guaranteed the allotted lands in perpetuity, "Congress shall never pass any act alienating any part of these allotted lands from the Indians." In addition, Article XVII proscribed certain conduct upon "lands within or comprising the reservations of the Yankton Sioux…as described in the treaty between the said Indians and the United

States, dated April 19th, 1858, and as afterwards surveyed and set off…"[2] Article XVIII directed that "[n]othing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States" and the 1858 Treaty "shall be in full force and effect…" The undersigned is unaware of any subsequent equivalent law or laws in which Congress ever abrogated the 1858 Treaty stipulations and promises or consistent statutory protections and provisions found in the 1894 Act.

C. Jurisdiction over Indians in Indian Country

It is established that state jurisdiction generally does not extend to Indians in Indian country. See, e.g., Williams v. Lee, 358 U.S. 217 (1959); Mille Lacs Band of Ojibwe v. Madore, Nos. 23-125, 23-1261, 23-1265, 2025 U.S. App. LEXIS 3279, at *8 (8th Cir. Feb. 12, 2025) ("Though tribes no longer possess full sovereignty, their powers of self-government include 'the inherent power . . . to exercise criminal jurisdiction over all Indians,' including nonmembers" (citations omitted)). "[A]s a general rule Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe rather than the states." Podhradsky, 606 F.3d 994, 1006 (citing Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520, 527 n.1 (1998)).

> [T]he term "Indian country" …means **(a)** all land within the limits of any Indian reservation under the jurisdiction of the Unites States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, **(b)** all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the

[2] In Perrin v. United States, 232 U.S. 478, 34 S. Ct. 387 (1914), the Supreme Court recognized the existence of federal jurisdiction that extended into the ceded territory in enforcing the anti-liquor provision in Article XVII of the 1894 Act.

> limits of a state, and **(c)** all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1151.

The South Dakota Supreme Court and the Eighth Circuit Court of Appeals have decided previous cases, addressed herein, in which the parties put directly at issue the status of the Yankton Sioux Reservation and its lands under 18 U.S.C. § 1151(a). Though both Courts have also made certain references to notions of "Indian title" or "extinguishment" relative to the Yankton Sioux Reservation, along with the race of individual landowners, in those cases no issues under 18 U.S.C. § 1151(b) or (c) were substantively raised by the parties, actually litigated, nor necessarily determined by the Courts, particularly in the context of unceded allotted lands. Here, Winckler asks the Court to reconsider the validity of case law which found the Yankton Sioux Reservation terminated or disestablished of lands under § 1151(a) [discussed below], and to substantively determine issues raised and litigated for the first time under § 1151(b) and (c) [discussed in No. 31006]. Winckler's arguments will focus discussion on past cases regarding a so-called diminished or disestablished Indian country under § 1151(a), in addition to issues regarding dependent Indian community status under § 1151(b), and Indian title, Yankton Sioux allotted lands, and extinguishment under § 1151(c).

D. The Court should depart from its Indian country precedents which determined the Yankton Sioux Reservation was "disestablished" and its lands no longer constitute Indian country under 18 U.S.C. § 1151(a).

i. State v. Greger, 1997 S.D. 14, 559 N.W.2d 854 (S.D. 1997)

In Greger, an enrolled member of the Yankton Sioux Tribe was charged and convicted of aggravated assault based on conduct committed in Wagner, Charles Mix

County, South Dakota. Id., 1997 S.D. 14, ¶ 6, 559 N.W.2d 854, 859. Without specifically identifying or discussing whether the land in question was ceded surplus land or if it was unceded allotted land, the Court stated that "[i]f the 1858 boundaries are still in existence, they would encompass Wagner." Id. The Court next discussed the prior case law, including decisions finding the reservation "diminished or disestablished," and cited the analysis from Hagen v. Utah, 510 U.S. 399, 410-411(1994), calling it the "traditional approach to diminishment questions." 1997 S.D. 14, ¶¶ 7-13. The Court then reviewed the 1894 Act by focusing on Articles I and II, in addition to the surplus lands set-aside and anti-liquor provisions (Articles VIII and XVII), to broadly find an "intent to diminish." Id., 1997 S.D. 14, ¶¶ 14-18, 559 N.W.2d at 861-63.

The Court addressed Greger's principal argument based on Article XVIII of the 1894 Act, that it expressed a clear intent to maintain the reservation's boundaries as established in the 1858 Treaty, by flat rejecting it as "an extravagant misuse of the canons of statutory construction to salve modern sensibilities[.]" Id., 1997 S.D. 14, ¶¶ 19-23, 559 N.W.2d at 863-865.[3] The Court also offered a description of history surrounding the 1894 Act by piecing together snippets of language from reports of federal officials,

[3] Although not specifically stated in the opinion, it seems apparent when read together with Bruguier, discussed *infra*, that Greger involved conduct occurring on ceded surplus lands, as opposed to unceded allotted lands which are at issue here. Accordingly, the Greger Court's concern that "a literal reading" of Article XVIII of the 1894 Act would "impugn the entire sale" is grossly exaggerated, inaccurate, and not a material concern in this case because only unceded allotted lands are at issue. In that, giving effect to Article XVIII and the preeminence of the 1858 Treaty, with respect to the unceded allotted lands at issue here, would not 'impugn the entire sale' of ceded surplus lands, or any of them, at Articles I and II of the 1894 Act. In fact, far from allowing Article XVIII "to negate the preceding seventeen articles," its reaffirmation of the 1858 Treaty is consistent with "the plain meaning of the rest of the Agreement" see, e.g., 1894 Act, Articles V, VIII, XIII, XIV, XVI, XVII.

referencing maps made between 1889 and 1901, noting the Historical Atlas of South Dakota (1904) in reference to the "former" Yankton Reservation, discussing events occurring many years after the 1894 Act, and then citing the congressional record "concerning a series of reservation land purchases" in which lands were "restored to the public domain." Id., 1997 S.D. 14, ¶¶ 24-27, 559 N.W.2d at 865-866. Further, the Court discussed subsequent demographics and a described loss of Indian owned lands, concluding that "the Yankton reservation has been diminished" and the State therefore maintained jurisdiction in Greger's case. Id., 1997 S.D. 14, ¶¶ 28-31, 559 N.W.2d at 866-867. Thus, while the Greger Court found that Articles I and II of the 1894 Act diminished the Yankton Sioux Reservation – at least to the extent of the unallotted ceded, surplus lands – the Court did not substantively analyze nor discuss the 1858 Treaty, Articles XIII and XIV of the 1894 Act, the status of the allotted lands, questions concerning Indian title or extinguishment. Nor did it directly analyze or apply any specific subsections under 18 U.S.C. § 1151 to the facts of the case.

ii. Bruguier v. Class, 1999 S.D. 122, 599 N.W.2d 364 (S.D. 1999)

In Bruguier, the South Dakota Supreme Court framed a discreet question following the United States Supreme Court's decision in Yankton Sioux Tribe, 522 U.S. 329,[4] by endeavoring to "decide the status of allotted lands, which have passed into non-Indian ownership." Id., 1999 SD 122, ¶ 1, 599 N.W.2d at 365.[5] In doing so, the Court

[4] In Yankton Sioux Tribe, the United States Supreme Court noted the conflict between the Eighth Circuit "and a number of decisions of the South Dakota Supreme Court declaring that the reservation has been diminished." Id., 522 U.S. at 342, n. 4 (referring to Greger, supra, among other prior cases).

[5] In Yankton Sioux Tribe, the United States Supreme Court did not say that any such question existed in terms of "the status of allotted lands, which have passed into non-Indian ownership." See McGirt, 140 S. Ct. 2452, 2464 & n. 4 ("Congress does not

noted the posture before the habeas court, that "the parties stipulated that the offense occurred on allotted land to which Indian title had been extinguished[.]" Id., 1999 SD 122, ¶ 3, 599 N.W.2d at 366. The Court noted that the habeas court determined the offense occurred on "allotted land, 'the Indian title to which has long been extinguished [and] is now held in fee title by non-Indians'" and concluded the reservation was "disestablished" so that "no lands within the former 1858 boundaries now constitute a reservation under 18 U.S.C. § 1151." Id. The Court finally noted the U.S. District Court's ruling, issued almost simultaneously to the habeas court's decision, that "the 1858 boundaries remain intact." Id. (citing Gaffey I, 14 F. Supp. 2d 1135).

The Bruguier Court then framed its discussion in terms of "the Yankton Sioux Reservation[.]" Id., 1999 SD 122, ¶ 4, 599 N.W.2d at 366 (citing Yankton Sioux Tribe, 522 U.S. at 329, and Greger, 1997 SD 14, 559 N.W.2d at 854). In doing so, the Court cited to the 1887 passage of the General Allotment (Dawes) Act as being the enactment by which "the Yankton Reservation was to be partitioned" in parcels to individual Tribe members. Id., 1999 SD at ¶ 4.[6] The Court also described the "present character of the

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disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others") (citations omitted).

[6] While the Court failed to directly recognize that the 1858 Treaty, 11 Stat. 743, 747, Article X, provided for reservation lands to "be surveyed and divided…among said Indians," it is noted that the 1887 General Allotment Act (or Dawes Act) began the implementation of the government's allotment policy generally and on a national scale. Ch. 119, 24 Stat. 388 ("An act to provide for the allotment of lands in severalty to Indians on the various reservations…"). While the provisos expressly recognized allotments provided for in treaties and other acts of Congress, 24 Stat. at 388 ("Allotments by treaty or act not reduced"), the General Allotment Act makes no specific references to the Yankton Sioux Tribe, 1858 Treaty, Yankton Sioux Reservation, Indian title, or extinguishment. Instead, the legislation merely provided a general procedure implementing the practice of allotting reservation lands on a national scale with a framework for the subsequent sale and purchase of unallotted lands, providing:

area" and noted that "[f]rom the 262,000 acres originally allotted, only about fifteen percent remain in Indian hands." Id., 1999 SD at ¶ 7.

In its analysis, the Court correctly pointed out that "[t]he Federal Government generally has jurisdiction over Indian country, along with the Indian Tribe inhabiting it." Id., 1999 SD at ¶ 14 (citation omitted). In that regard, the Court noted Bruguier's contention that "whatever the present ownership, all originally allotted lands maintain Indian country status under 18 U.S.C. § 1151(a)," and the State's contention to the

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> That after the lands have been allotted to all the Indians of any tribe as herein provided...it shall be lawful for the Secretary of Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress...

24 Stat. at 389-390. Thus, the General Allotment Act was not aimed at any tribe in particular; it generally implemented the practice of allotment with a framework for the subsequent purchase of unallotted land "on such terms and conditions as shall be considered just and equitable" and approved by Congress. Id. By its terms the Act did not control over the prescriptions or rules otherwise governing reservations and allotments provided for in treaties or legislation specific to particular tribes or Indian lands. Nor did the Act in and of itself divest any land from its status as Indian land by extinguishing title with respect to any one tribe. See McGirt, 140 S. Ct. 2452, 2464-65, n. 4 (rejecting contention "that the passage of an allotment Act *itself* extinguishes title") (emphasis original); see also State v. Brester, 2023 OK CR 10, ¶¶ 26-35, 531 P.3d 125, 135-137 (rejecting argument that allotment and subsequent alienation of the original tribal patents in fee divested lands from Indian country status) (citing cases).

It should also be noted that the 1858 Treaty was ratified by the 35th United States Congress; the 49th United States Congress passed the 1887 General Allotment Act, and the 53rd United States Congress passed the Act of 1894 ratifying the Yankton Sioux Agreement. As such, each respective Congress, as well as presidential administration, would have had its own priorities, objectives, and agendas with respect to the tribes, both generally and individually.

contrary, "that the reservation was disestablished by the 1894 Act[.]" Id. Framing its decisional analysis, the Court restated the question as "whether parcels originally allotted to individual Yanktons compose part of a permanent reservation under 18 U.S.C. § 1151(a), or whether only those allotments still held in Indian hands are Indian country under 18 U.S.C. § 1151(c)." Bruguier, 1999 S.D. 122, ¶ 15. To frame that question, and the assumption it contains, however, the Court relied on analysis from State ex. rel. Hallow Horn Bear, 77 S.D. 527, 95 N.W.2d 181 (SD 1959). See id., 1999 S.D. at ¶ 16.

In Hallow Horn, the Court interpreted the Act of Congress of May 27, 1910,[7] with respect to the Pine Ridge Reservation and held that, under the relevant Act, Congress intended for the Indian title to certain allotted tracts within the opened portion of the reservation, to become extinguished when fee simple patents issued. Id., 77 S.D. 527, 532, 95 N.W.2d at 184. By material contrast, nothing in the 1894 Act respecting the Yankton Sioux speaks to extinguishing Indian title to the allotted lands which were expressly guaranteed in the 1894 Act, at Articles XIII and XIV, consistent with the preeminence of the 1858 Treaty reaffirmed at Article XVIII. Quite simply, then, the Act of May 27, 1910, which opened a portion of the Pine Ridge Reservation and specifically referred to a "diminished reservation," see Hallow Horn, 77 S.D. 527, 530, 95 N.W.2d 181, 182, is not like the Act of 1894 which confirmed, reinforced, and guaranteed Yankton Sioux title to the allotted lands 'forever,'[8] e.g., 1894 Act, 28 Stat. 317, at Art.

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[7] The United States Supreme Court has often warned that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." Yankton Sioux Tribe, 522 U.S. 329, 355 (quotation omitted).

[8] See Podhradsky, 606 F.3d 994, 1008 ("[the Great White Father] wants to give you a chance to sell your surplus lands…. *He has told us to tell you…. He does not want you to sell your homes that he as allotted to you. He wants you to keep your homes forever*")

XIII (guaranteeing "Tribal rights" including "the undisturbed and peaceable possession of their allotted lands"); Art. XIV (confirming allotments and guaranteeing that "Congress shall never pass any act alienating any part of these allotted lands from the Indians"); Art. XVIII ("Former treaty in force"), see, 1858 Treaty, 11 Stat. 743, 744, Art. I-II & IV (reserving traditional tribal territory, recognizing title thereto, and guaranteeing Tribe's protection on reserved lands); id., 11 Stat. at 747, Arts. X-XI & XV (providing for the surveying and dividing of reservation lands among Tribe members, federal authority over all offenders against the treaties, laws, or regulations, and for the appointment of an Indian agent to serve the Tribe).

The Court, in Bruguier, neglected to substantively discuss the 1894 Act in full textual terms and effectively dismissed the 1858 Treaty. Instead, it employed misconceived general notions concerning ownership relative to racial or political status,[9] Indian land, title, and extinguishment, to ultimately reason that "[e]ven if the more uncertain provisions of the 1894 Act cannot be wholly explained, congressional intent to end the Yankton Reservation is sufficiently clear" based solely on the Act's Articles I and

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(quoting Council of the Yankton Indians (Oct. 8, 1892)) (alteration and emphasis in Podhradsky) (abbreviated for length).

[9] In Morton v. Mancari, 417 U.S. 535 (1974), the United State Supreme Court announced that classifications based on tribal membership were political in nature rather than racial. See United States v. Antelope, 430 U.S. 641, 645 (1977) ("Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, *Worcester v. Georgia*, 31 U.S. 515, 6 Pet. 515, 557 (1832)") (quotation omitted); see also, e.g., Bruguier, 1999 SD 122, ¶ 12 ("Once a reservation has been established, or a dependent Indian community shown to exist, it will remain Indian country until terminated by Congress, *irrespective of the nature of the land ownership*" (quoting Monroe Price & Robert Clinton, Law and the American Indian 96 (2d ed 1973))) (emphasis added).

II. Id., 1999 SD 122, ¶¶ 17-27.[10] The Court proceeded by looking to the historical context by describing "inconsistencies in this sphere also," and then noting a "surge in non-Indian settlement" and subsequent developments "[i]n the century following the opening of the reservation." Id., 1999 SD 122, ¶¶ 28-32. The Court concluded its analysis by looking to contemporary demographics of affected lands, and citing previous decisions wherein the Court found a 'diminished or disestablished' Yankton Sioux Reservation. See Bruguier, 1999 S.D. at ¶ 33-34 (citing cases). The Court also made a conclusionary reference to "the justifiable expectations of the people living in the area" for support. Id., 1999 S.D. at ¶ 35 (citation omitted). And the Court went further by citing to the analysis from DeCoteau, 420 U.S. 425 – wherein the United States Supreme Court interpreted a materially distinguishable congressional enactment with respect to the Sisseton Wahpeton Oyate – to conclude that the parties to the 1892 agreement, ratified by the Act of 1894, also "intend[ed] to terminate the reservation and restore the land to the

[10] Recall, however, that Articles I and II of the 1858 Treaty reserved part of the Tribe's ancestral lands for their future home and affirmatively recognized Yankton Sioux title to the lands. 11 Stat. 743, at 744. Then, in Article I of the 1894 Act, the Tribe agreed only to "cede, sell, relinquish, and convey to the United States all their claim, right, *title and interest in and to all the unallotted lands*[.]" 28 Stat. 286, at 314 (emphasis added). Indeed, the preamble to the Yankton Agreement recited in the 1894 Act stated: "Whereas the Yankton tribe…is willing to dispose of *a portion of the land set apart and reserved* to said tribe, by the first article" of the 1858 Treaty. Id. (emphasis added). And, as discussed previously, Articles XIII and XIV explicitly referred to the Yankton Sioux allotted lands in guaranteeing "Tribal rights" and "the undisturbed and peaceable possession of their allotted lands, …all the rights and privileges of the tribe" and that "Congress shall never pass any act alienating any part of these allotted lands from the Indians." 28 Stat. at 317. The Tribe has never agreed to cede, sell, relinquish, or convey to the United States their *title in and to any allotted lands*, and Congress has never passed any subsequent law or laws extinguishing such title. E.g., McGirt, 140 S. Ct. 2452, 2464 ("Missing…is a statute evincing anything like the 'present and total surrender of all tribal [title]' [to] the affected [allotted] lands") (alterations added).

public domain." Bruguier, 1999 S.D. at ¶¶ 36-37.[11]

Thus, Bruguier relied on inapposite case law that analyzed different congressional enactments respecting different tribes to frame the question and conduct an analysis which accepted as a general assumption, that allotted lands transferred to non-Indians divests the land of its Indian country, reservation, status. However, Bruguier failed to identify any Act of Congress following the 1894 Act, which reaffirmed the 1858 Treaty, that extinguished Indian title to the allotted lands or terminated their reservation status. Without substantively discussing the Tribe's history, the 1858 Treaty, or the full text of

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[11] The Sisseton and Yankton Agreements are dissimilar in significant ways which show that Congress had a much different understanding about the future of the Lake Traverse Reservation upon ratification of that agreement than it had regarding the Yankton Sioux Reservation. The report of the Senate Committee on Indian Affairs recognized that each Sisseton would receive 160 acres, a departure from the allotment act, but nonetheless recommended ratification in light of the fact "that the additional allotments are *in lieu of any residue which, under their title, these Indians could have reserved for the future benefit of their families*, and the further fact that they are soon to assume the responsibilities of citizenship[.]" DeCoteau, 420 U.S. at 438-39 n. 19 (emphasis added). The report further explained that the Lake Traverse Reservation contained 918,780 acres, 127,887 of which had been allotted to the Indians under the Dawes Act. The additional allotments under the agreement required 112,113 more acres, for a total of 240,002 in allotments "which [left] a surplus, including the lands occupied by the agency and missionary societies, of 678,778 acres, *the Indian title to which [was] extinguished by the terms of the agreement.*" Id. (emphasis added).

Such explicit statements of congressional intent to terminate the reservation or extinguish Indian title to allotted lands do not appear in the statutory text or legislative history of the Act of 1894. Gaffey I, 14 F. Supp. 2d 1135, 1157-1159. To the contrary, Congress explicitly guaranteed the Yankton Sioux their rights and Indian title by promising "Tribal rights," including "the undisturbed and peaceable possession of their allotted lands," that "Congress shall never pass any act alienating any part of these allotted lands from the Indians," and reaffirming the 1858 Treaty stipulations and promises. 1894 Act, 28 Stat. 317-318; see, e.g., Gaffey II, infra, 188 F.3d 1010, 1020 ("The background of the Lake Traverse agreement was different from that of the 1894 Act…because the tribal members there had expressed their clear desire to terminate their reservation") (citing DeCoteau, 420 U.S. at 432).

the 1894 Act consistent with the 1858 Treaty, Bruguier relied on contemporary demographics of the area and supposed 'justifiable expectations' based on prior opinions, while ultimately holding that the Yankton Sioux Reservation was "disestablished." Furthermore, Bruguier was criticized by the Eighth Circuit in Podhradsky, 606 F.3d 994, 1005 n. 7, wherein it was noted that Bruguier "was more sweeping than necessary for resolution of the matter" and that its reasoning was similar to Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010 (8th Cir. 1999) [Gaffey II] – in that allotted lands which have passed into white ownership are not part of a diminished reservation.[12]

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[12] In Gaffey II, the Eighth Circuit reviewed the decision of Judge Lawrence L. Piersol whose rulings resulted, in relevant part, the following orders:

> (4) that *the Yankton Sioux Reservation, diminished by the 1894 Act only to the extent of the ceded lands,* includes all of the lands within the original exterior reservation boundaries established by the 1858 Treaty with the Yankton Sioux Tribe that were later allotted to the Yanktons, as well as the lands reserved from sale for agency, school, and other tribal purposes in the 1892 Agreement.
>
> (5) that *the Yankton Sioux Reservation, as described in the preceding paragraph, is "Indian Country" within the meaning of 18 U.S.C. § 1151(a).*
> ...

Gaffey I, 14 F. Supp. 2d 1135, 1160 (emphasis added). Notably, Judge Piersol's decision does not discuss nor include any rulings or orders under 18 U.S.C. § 1151 (b) or (c). Much like Bruguier, no questions under § 1151(b) or (c) were put at issue by the Tribe or the United States in Gaffey, actually litigated nor necessarily determined.

In addition, the Eighth Circuit, in Gaffey II, cited to United States v. Stands, 105 F.3d 1565, 1572 (8th Cir. 1997), to support the proposition that "lands that are owned in fee without such restrictions on alienation do not qualify as Indian country under § 1151(c)[.]" Gaffey II, 188 F.3d at 1022. In this regard, the Eighth Circuit later acknowledged that the citation to Stands includes "classic dicta." See Yankton Sioux Tribe v. Podhradsky, 606 F.3d 985, 991 (8th Cir. 2010); see also, Black's Law Dictionary, Deluxe 12th ed. 2024, at p. 570 (defining "judicial dictum," "obiter dictum," and "simplex dictum").

Further, the Eighth Circuit's holding in Gaffey II was explicitly qualified to include certain 'assumptions,' noted a "lack of controlling precedent," and it was also

iii. Stare decisis

The doctrine of stare decisis[13] promotes stability in the law by adherence to the holdings of prior decisions and regarding them as precedential. In re Noem, 2024 S.D. 11, ¶¶ 48-50, 3 N.W.3d 465, 479; see also, e.g., State v. Means, 268 N.W.2d 802, 811 (S.D. 1978) ("Stare decisis is a name given to a doctrine that, when the court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all further cases where the facts are substantially the same" (quotation omitted). However, when the Court is "convinced that a decision was wrongly decided," it remains free to correct it. Id. This is because "it is the manifest policy of our courts to hold the doctrine of stare decisis subordinate to legal reason and justice, and to depart therefrom when such departure is necessary to avoid the perpetuation of pernicious

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specifically limited: "At this time we hold only that the land reserved to the federal government in the 1894 Act and then returned to the Tribe continues to be a reservation under § 1151(a)[.]" Gaffey II, 188 F.3d 1010, at 1121 & 1030; see also Podhradsky, supra, 606 F.3d 985, 989-90 (discussing limits of Gaffey II holding); id., 606 F.3d 985, at 987-988 & n. 2 (acknowledging "dicta" in Gaffey/Podhradsky case line that "did not speak to any matter actually litigated and decided" and includes "language…extraneous to what was actually decided by the court").

Finally, the Eighth Circuit's analysis in Gaffey II was squarely rejected by the Seventh Circuit in Oneida Nation v. Vill. of Hobart, 968 F.3d 664, 680-681 (7th Cir. 2020) ("we are not persuaded [Gaffey II] fits within Supreme Court precedents on diminishment, either before or after *McGirt*") ("the theory of incremental diminishment embraced in *Gaffey* – in which individual parcels of land would be removed from the reservation as they passed into the hands of non-Indians – is at odds with *Seymour*, *Moe*, and the Supreme Court's hostility toward rules that would create checkerboard jurisdiction").

[13] See, e.g., Ute Indian Tribe v. Utah, 935 F. Supp. 1473, 1509 (D. Utah 1996) (discussing doctrine of stare decisis and citing authorities).

error." Id. (quotation omitted). Here, the Court's decision in Bruguier should be departed from as precedent.[14]

Courts consider five factors when deciding whether to depart from precedent: "(1) the quality of [the] prior decision's reason; (2) the workability of the prior rule established by its precedent; (3) the consistency of the prior decision with other related decisions; (4) subsequent developments since the erroneous decision; and (5) the extent of the reliance on the earlier decision." Earll v. Farmers Mut. Ins. Co. of Neb., 2025 S.D. 20, ¶ 33 (quoting Noem, 2024 S.D. 11, ¶ 48, 3 N.W.3d at 480); see also Janus v. AFSCME, Council 31, 585 U.S. 878, 917, 138 S. Ct. 2448, 2478-79, 201 L. Ed. 2d 924 (2018).

First, the quality of the Court's reasoning in Bruguier is problematic in several respects. In that regard, the basis for the Court's general proposition that land which passes out of individual Indian ownership no longer constitutes reservation or Indian land was because the Court said it was so, as the parties had entered an erroneous stipulation before the habeas court that it effectuated extinguishment. Bruguier, 1999 SD 122, ¶ 3. Indeed, the substantive question actually raised and litigated by the parties involved only the lands' "Indian country status under 18 U.S.C. § 1151(a), as they lie within the 1858 boundaries of the Yankton Sioux Indian Reservation." See Id., ¶ 14 & notes 10-11. While the Court also framed the question by broadly referencing terms under § 1151(b)

[14] Because substantive questions under subsections (b) and (c) of § 1151 were neither actually raised, litigated nor necessarily decided in previous litigation including Bruguier, stare decisis analysis is unnecessary with respect to applying those definitions of Indian country in Winckler's appeals.

and (c), subsections which were not put at issue by the parties,[15] it relied on Hallow Horn, supra, which involved a materially distinguishable Act of Congress relative to the Pine Ridge Reservation. Id., 1999 SD 122, ¶¶ 15-16.[16] Perhaps most problematic, the Court employed a flawed view of Indian country based on misconceived notions of "tribal ownership" and an erroneous assumption that the race of individual landowners affects the lands' Indian country status, Bruguier, 1999 SD at ¶¶ 22-23. In doing so, the Court failed to fully analyze, discuss, or properly credit relevant provisions in the 1858 Treaty and Act of 1894, e.g., Article XIII which provided for "Tribal rights" and "the undisturbed and peaceable possession of their allotted lands," and Article XVIII which directed that the 1858 Treaty recognizing title to the Tribe's ancestral lands, that had been reserved and subsequently allotted, shall remain in force. The Court merely described "a few of the purportedly discrepant provisions in the 1894 Act," discussing only Articles VIII and XIV while dismissing Article XVIII. Id., 1999 SD at ¶¶ 23-27. With respect to Article XIV, the Court little more than commented that it was "consistent with" the

[15] See, e.g., Greenlaw v. United States, 554 U.S. 237, 243 (2008) ("In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign the courts the role of neutral arbiter of the matters the parties present"); see also, e.g., In re Guardianship of Murphy, 2013 S.D. 23, ¶ 10, 827 N.W.2d 369, 372 (jurisdictional deficiencies require *sua sponte* notice).

[16] The Bruguier Court correctly noted the Reviser's Note to 18 U.S.C. § 1151, which was enacted in 1948, id., 1999 SD 122, ¶ 15, n. 13. In enacting the statute, Congress relied upon United States Supreme Court precedents, including, among them, United States v. Sandoval and United States v. Pelican. See, e.g., Sandoval, 231 U.S. 28 (1913) (recognizing "fee status" was neither necessary nor sufficient to "extinguish" Indian title); see also Pelican, 232 U.S. 442 (1914) (Indian allotments – parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians – remained Indian country after the reservation's diminishment).

twenty-five-year trust period under the Dawes Act. 1999 SD at ¶¶ 24-26; but see, note 6 *supra* (discussing Dawes Act with authorities).

The Court did not substantively analyze or discuss the 1894 Act in full textual and historical terms, Articles V, VIII, XIII, XIV, and XVIII, consistent with the 1858 Treaty stipulations and promises. The Court largely relied on analysis that included subsequent developments in the affected lands, contemporary demographics, and the purported number of Indian landowners versus white landowners in the area presently – considerations that have been rejected by United States Supreme Court precedents including McGirt among them. Further, the Court relied on DeCoteau to determine that the Yankton Sioux Reservation "was effectively terminated by the 1894 Act." Id., at ¶¶ 36-40. However, as discussed above, note 11 *supra*, the Sisseton Agreement is unlike the Yankton Agreement in significant ways showing that Congress had a much different understanding as to the status of affected lands upon ratification of the two separate and distinct Agreements. See, e.g., Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 143 L. Ed. 2d 270, 119 S. Ct. 11 (1999) ("argument that similar language in two Treaties involving different parties has precisely the same meaning reveals a fundamental misunderstanding of basic principles of treaty construction"); Gaffey II, 188 F.3d at 1020 & n. 9 (fundamental principles in construing treaties "play a similarly important role in interpreting" the Acts of Congress) (citation omitted); id., at 1022 ("[e]ach act must be analyzed individually" and "[t]he statutory language is the most probative evidence of congressional intent") (citing cases).

Moreover though, the analysis in Bruguier is like the Eighth Circuit's analysis in Gaffey II, to the extent both courts reasoned from perceived conceptions of the Dawes

Act and an 'assumption' that the race of an individual property owner affects the lands' Indian country status. In doing so, the respective courts erred, failed to recognize substantive components of the 1858 Treaty consistent with the 1894 Act, and they applied an "incremental approach to diminishment" – or disestablishment – that is irreconcilable with the Supreme Court precedents. See Oneida Nation v. Vill. of Hobart, 968 F.3d 664, 679-81 (7th Cir. 2020) (discussing precedents relative to Gaffey II); see also, e.g., Moe v. Confederated Salish & Kootenia Tribes of the Flathead Reservation, 425 U.S. 463 (1976) (holding that Section 6 of the Dawes Act not probative of diminishment because it *did not* establish general state jurisdiction over Indians living on fee-patented lands, id. at 478-79); Brester, note 6 *supra*, 2023 OK CR 10, ¶¶ 26-35, 531 P.3d 125, 135-137 (same) (discussing McGirt and other authorities).

Next, the decision in Bruguier is unworkable. This is because the theory of incremental diminishment, or disestablishment, it advanced – that individual parcels of land are purportedly removed from Indian country, or reservation, status as they pass into non-Indian hands – "is at odds with *Seymour*, *Moe*, and the Supreme Court's hostility toward rules that would create checkerboard jurisdiction." Oneida Nation, 968 F.3d 664, at 681. It necessarily requires resorting to a review of the title history of each particular parcel or lot within a given allotment, to attempt to undertake the unlikely task of deciphering the race of individual owners in the chain of record title. In this regard, that two individual parties to a deed for the sale of Indian land – not the Tribe and United States as parties – could effectuate a termination of Indian land, jurisdiction, and sovereignty, depending on the race of the individual transferee, has not been endorsed or prescribed by Congress and is contrary to real property law as well as federal law as

applied to Indians. McGirt, supra, 140 S. Ct. 2452, 2464 (diminishing sovereign claim over land requires "the transfer of a sovereign claim from one nation to another") (citing 3 E. Washburn, American Law of Real Property *521-*524); see also, e.g., Bruguier, 1999 SD 122, ¶ 12 ("Once a reservation has been established, or a dependent Indian community shown to exist, it will remain Indian country until terminated by Congress, *irrespective of the nature of the land ownership*" (quoting Monroe Price & Robert Clinton, Law and the American Indian 96 (2d ed 1973))) (emphasis added). Removing the race of the individual property owner from consideration in determining the lands' Indian country status, on the other hand, adheres to the workable rule that once the parameters of Indian country are recognized or established by Congress, only Congress can divest the land of its Indian country status and its intent to do so must be 'clear and plain.' Indeed, as noted above, the approach employed in Bruguier has been rejected by courts time and again because it is untenable legally and unworkable practically.

Finally, overruling Bruguier will not disrupt the overall state of the supreme Law of the Land; rather, it may serve to reconcile and clarify it in light of the conflicting Gaffey II opinion, inconsistencies with related decisional authorities, unanswered issues of first impression under § 1151 (b) and (c) that have never before been actually raised and necessarily decided in respect to Yankton Sioux title to allotted lands, and subsequent developments in United States Supreme Court case law, including McGirt, providing additional guidance. The current state of the law indicates reconciliation is needed in respect to interpretation of federal law as applied to Yankton Sioux Indians and their lands, and to do so, requires departure from the erroneous Bruguier decision. With respect to any reliance on the 1999 Bruguier decision, there is a greater sense that the

rulings in Bruguier, which followed the U.S. Supreme Court decision in Yankton Sioux Tribe, have given rise to a greater uncertainty with its incremental approach of disestablishing a reservation and terminating its lands from Indian country. Prior to the U.S. Supreme Court's 1998 decision in Yankton Sioux Tribe, the United States and the Yankton Sioux Tribe exercised jurisdiction over all lands within the 1858 Treaty boundaries.[17] Following the decision, tribal and federal authorities receded in asserting jurisdiction only to the extent of the unallotted ceded, 'surplus' lands – in compliance with Yankton Sioux Tribe – while state authorities started to illegally assert jurisdiction over certain unceded allotted, Indian lands beginning midnight, February 20, 1998. Id., note 17 *supra.* While the Court's Bruguier decision sanctioned the State's sweeping and indefinite assertion of criminal jurisdiction over Yankton Sioux allotted lands, the lack of clarity created and "uncertainty" perpetuated by it, note 17 *supra*; Bruguier, 1999 SD

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[17] In Bruguier, the Court received and reviewed briefs and exhibits submitted in Gaffey and stated that "[t]he status of approximately 222,000 acres of formerly 'allotted' land now owned by non-Indians in southern Charles Mix County is open to uncertainty." 1999 SD 122, ¶ 12, n. 9. While the Bruguier Court did not specifically identify what evidence supported its assertion regarding the number of acres of land owned by non-Indians, Gaffey's record evidence in fact included the Affidavit from the Bureau of Indian Affairs Superintendent for the Yankton Agency, that the Yankton Sioux Tribe and the United States continued to exercise criminal jurisdiction on all allotted lands, but discontinued exercising jurisdiction on the 'ceded' lands effective 12:01 am on February 21, 1998, in observance of the US Supreme Court's decision in South Dakota v. Yankton Sioux Tribe. *Yankton Sioux Tribe v. Gaffey, et al.*, Case 4:98-cv-04042-LLP, Doc. 5, Filed 03/13/98. Charles Mix County's official position following the Yankton Sioux Tribe decision was to make known its "intention to assert our jurisdiction over all land within Charles Mix County, except for approximately 37,000 acres of land presently held in trust, effective midnight, February 20, 1998." *Id.* Doc. 5 (citing attached letter exhibit from Charles Mix County State's Attorney Matt Gaffey). The Court may judicially notice public records and documents, including court filings, for relevant facts that are not subject to reasonable dispute because they are either generally known or are readily and accurately determinable from sources whose reliability cannot reasonably be questioned. SDCL 19-19-201.

122, ¶ 12, n. 9, prevents predictable and concrete reliance on what is or is not Indian country because it necessarily requires resorting to a review of the title history of each particular parcel or lot within a given allotment, to attempt to undertake the unlikely task of deciphering the race of individual owners in the chain of record title, to determine jurisdiction. On the other hand, identifying Yankton Sioux allotted lands is easily and readily accomplished from the U.S. Trust Patents on file for the title record evidencing the right of the Yankton Sioux, in local and federal lands offices, including in the office of the register of deeds for Charles Mix County. (SR 33).

Accordingly, it is prudent to reconsider and overrule Bruguier in certain respects, particularly as to the status of the Yankton Sioux Reservation and its lands under 18 U.S.C. § 1151(a); the notion that such lands have been congressionally "disestablished"; its analytical approach that dismissed the 1858 Treaty and pertinent statutory protections in the 1894 Act, and which went far beyond text and history by looking to subsequent developments, contemporary demographics, and present landownership statistics; and the incremental theory of disestablishing a reservation it adopted based on the race of individual landowners. Doing so would allow this Court to bring its federal law jurisprudence as applied to Indians into congruence with existing, settled constitutional directives and decisional authorities concerning Indian lands, and provide certainty for law enforcement authorities and stakeholders moving forward.[18]

[18] The Court need not necessarily reach each argument under 18 U.S.C. § 1151(a), (b), and (c), if the Court determines the lands in question are Indian country under any one of the subsections. See Winckler's Brief in No. 31006 for argument and analysis under subsections (b) and (c) of § 1151, which is joined herein.

CONCLUSION

Our Constitution gives Congress plenary authority over Indian affairs and directs that treaties and statutes are the Supreme Law of the Land. Once recognized or established, only Congress can divest Indian land of its status as such. The only proper role for a court is to uphold the rule of law as written, not to employ extratextual approaches to find the result of what some today may think the law should read. Winckler respectfully asks this Court to uphold the 1858 Treaty, the Act of 1894, and reverse the circuit court's denial of his motion to dismiss for a lack of jurisdiction.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests 30 minutes for argument.

Dated this 13th day of May 2025.

/s/ Tucker J. Volesky
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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	 No. 31007 **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that Microsoft Word was used in the preparation of the foregoing Appellant's Brief and that the word count done pursuant to that word-processing system calculated 9,990 words in the foregoing Appellant's Brief, pursuant to SDCL 15-26A-66.

Dated this 13th day of May 2025.

/s/ Tucker J. Volesky
TUCKER J. VOLESKY
Attorney for Appellant

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31007 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Appellant's Brief in the above-entitled matter was served electronically through Odyssey file and serve system which sent notification of such filing to the Attorney General for South Dakota, Marty Jackley and the Charles Mix County State's Attorney, Steve Cotton, on this 13th day of May 2025.

/s/ Tucker J. Volesky
TUCKER J. VOLESKY

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, vs. HAZEN HUNTER WINCKLER, Defendant.	CR-24-85 JUDGMENT OF CONVICTION

PLEA

An Information was filed with this Court on the 5th day of April, 2024, charging the Defendant with the crime of Simple Assault, SDCL 22-18-1(5).

The Defendant was arraigned on said Information on the 18th day of December, 2024 and entered a plea of guilty to Simple Assault, SDCL 22-18-1(5). The Defendant, his attorney of record, Tucker Volesky, and Steven R. Cotton, prosecuting attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges which had been filed against the Defendant. The Court accepted said plea and established a factual basis for the plea.

It is the determination of this Court that the Defendant has been regularly held to answer for said offense; that said plea was voluntary, knowing and intelligent; that the Defendant was advised of the right to be represented by an attorney; that the Defendant was represented by competent counsel; and that a factual basis existed for the plea.

It is, therefore, the JUDGMENT of this Court that the Defendant is guilty of: Simple Assault, SDCL 22-18-1(5), a Class 1 Misdemeanor.

SENTENCE

On the 30th day of December, 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:

ORDERED that the Defendant shall be confined in the Charles Mix County Jail, Lake Andes, South Dakota, for a term and period of 261 days, there to be fed, kept and clothed in accordance with the rules and disciplines of said institution; and it is further

ORDERED that the Defendant shall receive credit for 261 days previously served; and it is further

ORDERED that the Defendant shall pay court costs of $96.50; and it is further

ORDERED that the fine is this matter is waived due to financial hardship; and it is further

ORDERED that the Defendant shall pay his court costs and court appointed attorneys fees in accordance with a plan to be developed with the Defendant and the Court Services Officer; and it is further

ORDERED that this file shall run concurrent to 11CRI23-297; and it is further

ORDERED that the Defendant has the right to appeal within thirty (30) days of the entry of the Judgment; and that the Court expressly reserves jurisdiction and control over the Defendant and this matter in accordance with South Dakota law.

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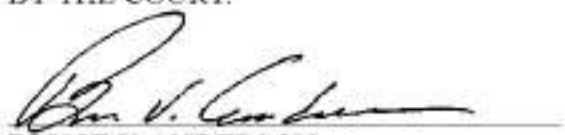
BY THE COURT:



BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

Attest:
Robertson, Jennifer
Clerk/Deputy

FILED

DEC 18 2024

Kim Robertson
CHARLES MIX COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

COUNTY OF CHARLES MIX) FIRST JUDICIAL CIRCUIT

11CR23-000172
11CR23-000297
11CR24-000060
11CR24-000085

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

HAZEN WINCKLER,

Defendant.

STIPULATION AND AGREEMENT

COMES NOW, the State of South Dakota by and through the Charles Mix County State's Attorney, Steve Cotton, and the Defendant, Hazen Winckler, and his attorney of record, Tucker Volesky, in the above captioned actions and case files, and hereby enter into this Stipulation and Agreement intending to be bound by the promises, covenants, stipulations and agreements set forth herein.

NOW THEREFORE, based on the stipulations and agreements set forth below, the State of South Dakota and the Defendant mutually and specifically agree and understand as follows:

DEFENDANT:

1. The Defendant does not concede jurisdiction in any of the above captioned cases and files.

2. The Defendant will enter an admission to the Part II Habitual Offender Information in file 11CR123-297, enhancing the underlying offense of Failure to Appear in violation of SDCL 23A-43-31, a Class 6 Felony to a Class 4 Felony, carrying a maximum possible penalty of ten (10) years in prison and/or a twenty thousand dollar ($20,000) fine.

3. The Defendant does not waive any issues for appeal and does not waive his right to appeal from any Judgment of Conviction and Sentence that may be entered in file 11CRI23-297. Defendant specifically reserves the right to raise all issues proper for review in such appeal, including without limitation, issues of jurisdiction, right to trial within 180-days, rulings on evidence or trial errs.

4. The Defendant waives his right to a jury trial in file 11CRI24-85, wherein the State charges Simple Assault in violation of SDCL 22-18-1(5), a Class 1 Misdemeanor which carries a maximum possible penalty of one (1) year in county jail and/or a two thousand dollar ($2,000) fine.

5. In file 11CRI24-85, the Defendant stipulates to the fact that he did intentionally cause bodily injury, which did not result in serious bodily injury, to Davian Zephier on April 2, 2024, by hitting Mr. Zephier and pulling his hair during a dispute over a board game they were playing at the Charles Mix County jail, in the County of Charles Mix, State of South Dakota.

6. The Defendant understands that the Court may find him guilty as charged in file 11CRI24-85, proceed to pronounce sentence, and enter Judgment of Conviction and Sentence.

7. The Defendant does not waive any issues for appeal and does not waive his right to appeal from any Judgment of Conviction and Sentence that may be entered in file 11CRI24-85. Defendant specifically reserves the right to raise all issues proper for review in such appeal, including without limitation, issues of jurisdiction.

8. The Defendant will appear before the Court for a sentencing hearing which will take place in the courtroom of the Charles Mix County Courthouse, on December 30, 2024. The Clerk of Courts can provide the exact time for the hearing.

STATE:

1. The State will move to dismiss all charges in files 11CRI23-172 and 11CRI24-60, including any Part II Habitual Offender Information.

2. The State agrees not to pursue any further, and not to bring any additional, charges against Defendant in connection with the factual circumstances underlying files 11CRI23-172, 11CRI23-297, 11CRI24-60, and 11CRI24-85.

3. The State agrees to recommend to the Court a cap of six (6) years for any term of imprisonment in file 11CRI23-297.

4. The State agrees to recommend to the Court that the Defendant be credited for time served and any remaining term of imprisonment be fully suspended in file 11CRI23-297.

5. Upon presentation of this Stipulation and Agreement to the Court for implementation, sentencing will be delayed until December 30, 2024, and the State agrees to recommend to the Court that the Defendant be granted a furlough so that the Defendant can spend time with his aged and ailing grandmother.

Dated this 18th day of December 2024.

Hazen Winckler – Defendant

Dated this 18th day of December 2024.

Tucker Volesky
Attorney for Defendant

Dated this 18th day of December 2024.

Steve Cotton
Charles Mix County State's Attorney

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, vs. HAZEN HUNTER WINCKLER Defendant.	CR-24-85 ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The above entitled matter having come before the Honorable Bruce V. Anderson on the 19th day of June, 2024, pursuant to a Motion to Dismiss filed by Defendant through his counsel of record Tucker J. Volesky, the State being represented by Chelsea Wenzel, Assistant Attorney General and Steven R. Cotton, Charles Mix County State's Attorney; the parties having entered into a stipulation and agreement as to the underlying facts; the Court having entered a briefing schedule and the parties respective briefs having been filed with the Court for its consideration herein; and the Court having been fully advised in the premises, it hereby

ORDERED that the Defendant's Motion to Dismiss is denied as reflected in the Court's Memorandum Decision filed on October 1st, 2024 and incorporated herein by this reference thereto.

10/11/2024 3:14:39 PM

BY THE COURT:

BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

Attest:
Robertson, Jennifer
Clerk/Deputy

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF CHARLES MIX) FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, vs. HAZEN HUNTER WINCKLER, Defendant.	*	11CRI23-172 11CRI23-297 11CRI24-60 11CRI24-85 **MEMORANDUM DECISION (JURISDICTION)**

This matter came before the Court on the defendant's motion to dismiss for lack of jurisdiction in 11CRI24-60 and 11CRI24-85 filed on June 19, 2024, as well as on subsequent motions to dismiss for lack of jurisdiction in 11CRI23-172 and 11CRI23-297. A judicial order of reassignment entered on August 22, 2024 permitted defendant's motions in all aforementioned cases to be brought on for a hearing on September 11, 2024. The hearing was held at the Charles Mix County Courthouse in Lake Andes, South Dakota, with the Honorable Bruce V. Anderson presiding. The State was represented by Charles Mix County state's attorney, Steven Cotton, Chelsea Wenzel, of the South Dakota Attorney General's Office. Hazen Hunter Winckler ("Defendant") was present and represented by Tucker J. Volesky.

Defendant, through his attorney, initially filed an Affidavit with Exhibits 1 through 23 on June 26, 2024 and a brief in support of their motions initially on July 10, 2024. The State, through its attorney's, initially filed a brief in response to the motion to suppress as well as an Affidavit with Exhibits A through G on August 9, 2024. Lastly, Defendant, through his attorney, filed a brief in response to the state's brief on September 10, 2024. The parties agree that the affidavits and exhibits submitted in support of or in opposition to the motion would constitute the factual record

upon which the issue would be decided and agreed that there would be no further testimony or evidence submitted on the motion. The Court, after reviewing the briefs and exhibits attached, now issues its decision.

Facts

On file 11CRI23-172 the defendant was charged by an information, alleging in Count 1, that on July 20, 2023, the defendant committed the offense of unauthorized distribution of a controlled substance, as to Count 2, on the same date, the state alleges the defendant committed the offense of unauthorized possession of a controlled substance, and that as to Count 3, on the same date, the state alleges that the defendant committed the offense of keeping place for use or sale of a controlled substance. These offenses allegedly occurred within the city of Lake Andes on a former Yankton Sioux allotment, the same allotment considered in State v Selwyn, 11CRI20-276.

As to file 11CRI23-297 the defendant was charged by indictment issued by the Charles Mix County grand jury, alleging in Count 1, that on November 8, 2023, the defendant committed the offense of failure to appear. This offense allegedly occurred at the Charles Mix County Courthouse in Lake Andes, on the same allotment. As to file 11CRI24-60 the defendant was charged by an information, alleging in Count 1 and 2, that on February 14, 2024, the defendant committed the offense of simple assault. These offenses also allegedly occurred at the Charles Mix County Courthouse in Lake Andes, on the same allotment. As to file 11CRI24-85 the defendant was charged by an information, alleging that on April 2, 2024, the defendant committed the offense of simple assault. This offense allegedly occurred at the Charles Mix County jail in Lake Andes, also on the same allotment.

The parties have agreed that the for the purposes of defendant's motions, defendant is an enrolled member of the Yankton Sioux tribe, and that all defendant's alleged crimes occurred on the same tract of land (a former allotment of the Yankton Sioux Reservation) discussed in great detail in this Court's decision in *State* v. *Selwyn* 11CRI20-276 (see attached) entered on April 7, 2022. Accordingly, the Court will rely on the classification and the chain of title of the property laid out in *Selwyn,* as supplemented by any additional materials submitted in this matter, for the purposes of ruling on the motions before the Court in this instance.

Analysis

Congress has defined Indian Country for purposes of jurisdiction in 18 U.S.C. 1151, which provides as follows:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Defendant argues that the location of all the alleged offenses qualifies as Indian country as defined under each subsection of, (a), (b), and (c), of § 1151. However, this Court finds that the defendant's arguments under subsection (a) and (c) are controlled by this Court's reasoning and decision in *Selwyn*. The relevant facts and the arguments advanced are essentially identical between the two cases for all constructive purposes. Consequently, this Court finds, based upon prior precedent and the reasoning laid out in *Selwyn,* that the location of the defendant's alleged crimes does not qualify as Indian country under subsection (a) or (c), of § 1151. Any additional or further novel arguments presented on those issues by the parties here are denied by this court.

The remaining question is whether the location of the alleged offenses qualifies as a dependent Indian community under §1151(b). The Supreme Court has held that qualification as Indian country as a "dependent Indian community" under subsection (b) of § 1151 "refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence." *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 525 (1998).

A similar argument was made concerning the City of Wagner in *Weddell v Meierhenry*, 636 F.2d 211 (8th Cir. 1980). In *Weddell*, the defendant argued that the State did not have jurisdiction over him for the burglary of a hardware store in Wagner, South Dakota. Wagner is also within the original boundaries of the Yankton Sioux reservation, is 15 miles Southeast of Lake Andes, and has similar and almost identical demographics and land title history, at least a portion of Wagner being a former tribal allotment. There are some important distinctions: 1) Wagner is currently the location of tribal headquarters; 2) Wagner is the location of the U.S. Department of Interior, Bureau of Indian Affairs office (BIA); 3) Wagner is the location of the Yankton Sioux Tribal Housing Authority (a federal agency operated in conjunction with the BIA and HUD); 4) Wagner is the location of the Indian Health Service hospital. Other than the change of the tribal headquarters, this court believes that all of the federal agencies listed above were present in Wagner in 1980 when Weddell was decided. By comparison, Lake Andes has much less federal agency presence and little, if any, formal agency location for the BIA or the Department of Interior.

In *Weddell* the 8th Circuit ruled that the City of Wagner was not a dependent Indian community. In doing so the Court stated:

"In our opinion, the district court correctly determined that the crimes of grand larceny and burglary did not occur in "Indian Country" as defined in 18 U.S.C. s 1151(b), so as to preclude state court jurisdiction. A review of the Stipulation of Facts entered into by the parties convinces us that Wagner is not a dependent Indian community. Wagner, South Dakota, is located within the exterior boundaries of the original Yankton Sioux Indian Reservation. **However, as a municipal corporation, Wagner is independent from the Yankton Sioux Tribe.** Approximately 95 percent of all property within the town limits, including the lot on which the Coast-to-Coast store is located, is deeded. Only 16.3 percent of the population of Wagner is Indian. And although federal funds comprise 25 percent of the Wagner School District budget, the district court found that funding to be proportionate to the Indian student enrollment. As the petitioner points out, the Bureau of Indian Affairs office and a Public Health Service hospital located in Wagner administer various federal programs for members of the reservation. **We agree with the district court that it would be unwise to expand the definition of a dependent Indian community under section 1151 to include a locale merely because a small segment of the population consists of Indians receiving various forms of federal assistance.** Although the community of Wagner is biracial in its composition and social structure, it is clearly not a dependent Indian community under any of the definitions set forth in the cases discussed above." *Weddell v. Meierhenry*, 636 F.2d 211 (8th Cir. 1980)

Weddell appears to remain good law and binding upon this Court in interpreting §1151(c).

The location of the alleged offenses in the present cases are on a former Yankton Sioux Tribe allotment that was owned by John Arthur. There has been no credible evidence presented here to support the assertion that following the conveyance of the subject property (allotment) in this case from John Arthur or Cetantanka to John W. Harding, a non-Native American, on June 20, 1907, that the property remains "set aside" for the use of Indians as Indian land as required under the first test required under §1151(c). The land was plotted into blocks, lots and streets and became the municipality of Lake Andes, which, as a municipality, and much the same as Wagner, is independent of the Yankton Sioux Tribe. *Weddell* at 212. There is no evidence that the federal government retains or asserts any ownership or control over the land, or that it was otherwise "set apart... for the protection of dependent Indian peoples". *Weddell* at p. 212. The land it is subject to county real property taxes, typical road/street maintenance, water and sewer service, as well as

other services are provided under South Dakota Law by a municipality. Law enforcement services are provided by the Charles Mix County Sheriff's office under an agreement with the City.

Similarly, this Court finds that there is insufficient evidence to establish that the subject property in this case is under federal superintendence. Like *Weddell*, this is due in part to the property being located within the municipality of Lake Andes, a municipal organization of the State which is independent of the tribe. As far as federal superintendence, most, if not all, of the federal agencies having jurisdiction over Indian affairs are located in City of Wagner, not Lake Andes. Wagner, with very similar demographics to Lake Andes, but with a with a much larger presence of federal agencies, was found not to be a dependent Indian community in *Weddell*. Neither party has presented any evidence showing that the United States has attempted to excersize its "authority to enact regulations and protective laws respecting this territory." *Weddell* @ 212. Accordingly, this Court finds that the locations of the defendant's alleged crimes do not qualify as a dependent Indian community and thus Indian country under subsection §1151(b) which deprives the State of jurisdiction. The motion to dismiss for lack of jurisdiction is denied on this issue.

In the present case Defendant argues that based upon the Supreme Court's ruling in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), that under the plain reading of the 1894 Act *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998) was decided incorrectly. This Court disagrees.

In *McGirt*, the Court interpreted the treaties and congressional acts involving the Creek Nation of Indians in Oklahoma. In ruling that the reservation remained intact the majority focused their analysis on the language of the treaty and the various associated congressional acts. When the State of Oklahoma argued that the Court may reach a different interpretation of the various agreements and congressional acts by using "extratextual" tools adapted long ago to assist in determining congressional intent with respect to reservation status, the court refused the offer. The

Court ruled that the language in the various treaties and congressional acts were clear and unambiguous and that extratextual tools including historical practices, contemporary usage, customs, practices, demographics, and other extratextual evidence were not needed to interpret congressional intent or were otherwise insufficient to prove disestablishment of the Creek Reservation.

This Court acknowledged in *Selwyn* that the analysis utilized in *McGirt* was different than that used in resolving *Yankton Sioux Tribe* as well as the numerous other cases making determinations of Indian reservation jurisdictional issues discussed in *Selwyn*. However, this Court believes that the holdings in *Yankton Sioux Tribe* and various other cases on this matter are final and that it is highly unlikely that the Supreme Court or the Eighth Circuit would consider the matter again, and if they did, it is even less likely that they would come to a different result by applying the textual analysis used in *McGirt*. Nothing in *McGirt* indicates that prior rulings which used extratextual tools for interpretation purposes were improperly decided, that those rulings needed to be reviewed again or that the use of the *McGirt* analysis was to be retroactively applied to cases long ago decided. This Court is bound by the prior holdings of the cases laid out in great detail in *Selwyn* concerning State, Tribal and Federal jurisdiction on the Yankton Sioux Reservation. Accordingly, this Court cannot find that these jurisdictional issues are to be reopened based upon the analysis in *McGirt*. Consequently, the Defendant's motion to dismiss on this basis is denied.

This Courts Memorandum Decision in *State v. Selwyn* 11CRI20-276 is attached hereto and its rulings, analysis and legal conclusions are incorporated herein by this reference.

Based upon all the above and foregoing, this Court determines that the State of South Dakota has criminal jurisdiction over both the Defendant as well as the locations and of the alleged offenses in these cases, and the defendant's motions to dismiss for lack of jurisdiction is denied.

This Memorandum Decision shall constitute the Court's findings of fact and conclusions of law. The state of South Dakota is directed to submit the appropriate order denying the motion to dismiss so that proper notice of entry of that order can be served upon the defendant and his counsel of record.

Dated this 15th day of October, 2024.

BY THE COURT:

Hon. Bruce V. Anderson
First Circuit Judge

ATTEST:
Clerk of Courts

FILED

APR - 7 2022

Jon Roberts
CHARLES MIX COUNTY CLERK OF COURTS

STATE OF SOUTH DAKOTA IN CIRCUIT COURT

COUNTY OF CHARLES MIX FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,	*	11CRI20-276
Plaintiff,	*	
v.	*	MEMORANDUM DECISION
	*	(JURISDICTION)
SHELBOURNE SELWYN,	*	
Defendant.	*	

This matter came before the Court on the defendant's motion to dismiss for lack of jurisdiction. The motion was submitted on stipulated facts with a Stipulation submitted filed May 19, 2021. The stipulation also contained a briefing schedule and after some extensions were granted, the final brief was filed on September 10, 2021. The parties have waived heating or oral argument on the motion. The state has appeared through the Charles Mix County state's attorney, Steven Cotton, and the Defendant appears through his attorneys, Kevin Loftus and Thomas Reynolds, of Yankton, South Dakota.

FACTS

The defendant was charged by an indictment issued by the Charles Mix County grand jury, alleging in Count 1, that on June 16, 2020, the defendant committed the offense of rape in the second degree, and that as to Count 2, on the same date, the state alleges the defendant committed the offense of aggravated incest.

As per the stipulation of facts presented, the defendant is an enrolled member of the Yankton Sioux Tribe. The parties also agree that the alleged victim is an enrolled member of the Yankton Sioux Tribe, and both of them are considered Indians under federal law.

The stipulation provides that the location of the alleged offense occurred at 445 Union Street, in Lake Andes, South Dakota. There is no dispute that this location is within the confines of the original boundaries of the Yankton Sioux Reservation as established by the Treaty with the Yankton Sioux in 1858. There is also no question that the location of the alleged offense was allotted to a Yankton Sioux tribal member, John Arthur or Cetantanka, by a trust patent issued by the United States government on May 8th, 1891. This trust patent granted the property to John Arthur as follows: The east half of the southwest quarter and the west half of the southwest quarter of Section 4, and the northeast quarter of the southeast quarter of Section 5 in Township 96 North, Range 65, west of the 5th Principal Meridian, Charles Mix County, South Dakota, containing 200 acres.

On March 3, 1903, a decree of distribution in the estate of John Arthur conveyed the property to his wife and daughter, who were also both members of the Yankton Sioux Tribe.

On June 20, 1907, the property was conveyed to John W. Harding, a non-Native American. Within that deed (Exhibit C-iii) there was a box for the "Department of the interior - Office of Indian Affairs". This box was filled out and completed on July 15, 1907, and provided that "the within deed is respectfully submitted to the secretary of interior with the recommendation that it is approved". This was signed by the acting commissioner of the Office of Indian Affairs. It appears that the department of interior was aware of this transaction and approved the same based upon the record provided.

Later, the property was platted as part of the city of Lake Andes, South Dakota. According to the parties' stipulation, the first plat was dated November 16, 1907. A second was plat was dated December 17, 1910. This second plat covered almost the identical area as the first plat.

John Harding, as the purchaser of the allotment, sold platted lots on the property to Joseph Pesicka. Mr. Pesicka originally acquired five lots in 1919.

The property remained in the Pesicka family name until December 29, 1977, when Norbert Pesicka conveyed the lot in question (445 Union Sueet) to Robert Krokaugger and Emma Krokaugger. Following the Krokaugger ownership of the property, it was conveyed by warranty deed on December 26, 2008, to Faith Spotted Eagle. Faith Spotted Eagle is an enrolled member of the Yankton Sioux Tribe. The land is located within the municipal boundaries of the City of Lake Andes and continues to be owned by Faith Spotted Eagle at the present time.

ANALYSIS

Prior to 1995, there was litigation concerning the jurisdiction over the Yankton Sioux Reservation. Both state and federal courts had previously ruled that some areas of the Yankton Sioux Reservation had lost its reservation status and that the State of South Dakota had criminal and civil jurisdiction, and that other areas maintained reservation status and the federal and tribal governments had civil and criminal jurisdiction. In 1995, the United States District Court in Sioux Falls, South Dakota, ruled that the original boundaries of the Yankton Sioux Tribe, as established in the 1858 treaty, remained intact and that the tribe had civil and criminal jurisdiction within those original boundaries. *Yankton Sioux Tribe v. Southern Missouri Waste Management District*, 890 F.Supp. 878 (D.S.D.1995), (concluding that the 1858 Reservation remained intact)

Yankton Sioux Tribe v. Southern Missouri Waste Management District was appealed and those appeals culminated in a partial resolution of jurisdictional issues on the Yankton Reservation by the United States Supreme Court in *Yankton Sioux Tribe v South Dakota*, 522 US 329 (1998). In *Yankton Sioux Tribe v. South Dakota*, the U.S. Supreme Court held that the Yankton Sioux Reservation was diminished when the tribe ceded and

relinquished its unallotted lands to the federal government in order to open the land to white settlors. The Court specifically rejected the state's argument that the reservation was disestablished or terminated, leaving civil and criminal jurisdiction exclusively to the state of South Dakota. Thus, the Supreme Court limited its holding only to the status of the ceded lands and found that the State had regulatory authority over the proposed landfil. This ruling reinforced prior rulings and historical understandings that the Yankton Sioux Reservation was a checkerboard jurisdiction where both the Tribe and the State shared jurisdiction depeading on the history of each parcel of land involved. The remaining jurisdictional issues were remanded for development of a factual record.

Following *Yankton Sioux Tribe v. South Dakota*, a number of additional decisions followed, in both the State and federal courts. Those subsequent rulings are summarized below.

Gaffey I. *Yankton Sioux Tribe v Gaffey, et. al.*, 14 F.Supp2nd 1135, (1998). Upon remand from the Supreme Court the Federal District Court consolidated several pending cases, including a case where the Yankton Sioux Tribe sued various state officials seeking a declaratory ruling on the status of the reservation and seeking an injunction against the State prohibiting them from enforcing criminal or civil jurisdiction within the original boundaries of the Yankton Reservation as established in the treaty of 1858. The District Court ruled that the Reservation had not been disestablished and included all land within original exterior Reservation boundaries not ceded to United States in the treaty of 1892 which was ratified by an act of congress in 1894.

Gaffey II. *Yankton Sioux Tribe v Gaffey*, 188 F3d. 1010 (8th Cir. 1999), was the appeal of the District Court's first remand ruling. The Eighth Circuit Court of Appeals reversed and remanded, ruling that "the Yankton Sioux Reservation has not been disestablished but that it has been further diminished by the loss of those lands originally allotted to

tribal members which have passed out of Indian hands. These are not part of the Yankton Sioux Reservation and are no longer" Indian country or reservation. *Gaffey* II @ 1030. The Court also ruled, that at a minimum, the reservation included at least certain reserved agency trust lands, but the Court noted that since both parties otherwise argued for all or nothing at the appellate and trial court level an inadequate record was presented for the court to make further rulings and the matter was remanded for further proceedings. The parties petitioned to the Supreme Court for certiorari which was denied.

Podhradsky I. In *Yankton Sioux Tribe v Podhradsky, et.al.*, 529 F.Supp.2d 1040, on remand from Gaffey II, the District Court ruled that certain trust land remained part of the reservation and that land continuously owned in fee by individual Indians also qualified as reservation.

Podhradsky II. In *Yankton Sioux Tribe v Podhradsky, et.al.*, 577 F.3d 951 (8th Cir. 2009) the Court of Appeals again reviewed the District Courts ruling. Now, with a more complete record before it, the 8th Circuit Court of appeals made more specific rulings as follows:

> (1) two parcels of agency trust land were "reservation land" under the controlling law of the case;
> (2) the decision of the Secretary of the Interior, to take former reservation land into trust for the Tribe pursuant to the Indian Reorganization Act (IRA), was sufficient to restore that land to its previous status as "reservation" land;
> (3) miscellaneous lands that were acquired in trust for the Tribe other than under the IRA constituted "dependent Indian communities" within meaning of statute establishing federal jurisdiction over Indian country;
> (4) statute freezing and prohibiting alterations to boundaries of Indian reservations except by act of Congress did not serve to establish that any lands alienated in fee to whites during effective period of such freeze should be considered part of the reservation; and
> (5) remanded the issue as to whether fee lands (former Indian allotments where the trust period either expired or a patent was forced under federal law) continuously held in Indian ownership are reservation.

The case was once again remanded to resolve further issues. This case was also the subject of a petition for certiorari to the Supreme Court which was also denied.

Podhradsky III. *Yankton Sioux Tribe v Podhradsky, et.al.*, 606 F.3d 985, (8th Cir. 2010) and amended opinion 606 F.3d 994 (8th Cir. 2010), the parties again argued all or nothing, the Tribe arguing that the original boundaries remained intact and the State arguing that the reservation was disestablished. The Court recognized several classifications of land in dispute.

"For ease of exposition, we have identified six general categories of land.

> (1) *Allotted Trust Lands*: lands allotted to members of the Tribe which have been continuously held in trust for the benefit of the Tribe or its members. This category includes allotments which were later transferred from individual to tribal control, so long as the trust status was maintained. The district court found 30,051.66 acres of land fit this description.[5]
> (2) *Agency Trust Lands*: lands ceded to the United States in the 1894 Act but reserved for "agency, schools, and other purposes" which then were returned to the Tribe according to the 1929 Act. The district court identified 913.83 acres of land within this category. The Court previously held this category of land to be part of the diminished Yankton Sioux Reservation in *Goffin II*, 188 F.3d at 1030.
> (3) *IRA Trust Lands*: lands acquired by the United States in trust for the benefit of the Tribe pursuant to the IRA. The district court identified 6,444.47 acres of such land.
> (4) *Miscellaneous Trust Lands*: lands acquired by the United States in trust for the benefit of the Tribe other than pursuant to the IRA. Approximately 174.57 acres fit within this category.
> (5) *Indian Fee Lands*: allotted lands later transferred in fee to individual Indians and which have never passed out of Indian ownership. The record does not identify lands which may fit this description.
> (6) *Non Indian Fee Lands*: lands ceded to the United States in the 1894 Act and subsequently opened to white settlement which have not been reacquired in trust; and nonceded lands originally allotted to tribal members but later transferred in fee to non Indians and never reacquired in trust.
>
> Of these six categories, the first four may be generically referred to as "trust lands" and the last two as "fee lands." *Id.* at 1001-1002.

In its decision in *Podhradsky III* the 8th Circuit ruled that the decision of the Secretary of the Interior to take former reservation land into trust for the tribe pursuant to the Indian Reorganization Act (IRA), was sufficient to restore those lands to its previous status as "reservation" land; that miscellaneous lands that were acquired in trust for the tribe other than under the IRA constituted "dependent Indian communities" within meaning of the statute establishing federal jurisdiction over Indian country; and a federal act, prohibiting alterations to boundaries of Indian reservations except by act of Congress, did not serve to

establish that any lands alienated in fee to whites during effective period of such freeze should be considered part of the reservation. The Supreme Court declined to review this decision making all the prior rulings the law of the case.

Podhradsky IV. In *Yankton Sioux Tribe v Podhradsky, et.al.*, 606 F.3d 985 (8th Cir. 2010) the Court was considering the State's petition for rehearing and rehearing en banc in *Podhradsky* III. The opinion resolved an issue which arose as to footnote 10 of *Podhradsky* III which considered the status of any allotments which may have been patented in fee since 1948 (after adoption of the IRA) and subsequently sold to white owners. In addition, the State once again made a claim that the reservation was disestablished and sought remand so that the District Court could consider the case again in light of the Supreme Court's decision in *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 217-21, 125 S.Ct. 1478, 161 L.Ed 2d 386 (2005) and , *Osage Nation v. Irby*, 597 F.3d 1117 (10th Cir.2010). The Court ruled that *City of Sherrill* an *Osage* were not applicable and denied the States renewed argument that the reservation had been disestablished, and lastly, ruled that the discussion in footnote 10 was dicta and ordered that an amended opinion would be issued without the footnote. Otherwise, the petition for rehearing was denied.

Bruguier. *Bruguier v Class*, 599 NW2d 364 (SD 1999) was decided while the federal litgation described above was pending. Bruguier was convicted of crimes in Pickstown, SD and alleged that the State lacked jurisdiction since Pickstown was within the original boundaries of the Yankton Reservation. Pickstown was located on a former allotment which was later transferred to a non-Indian. Later the allotment was taken by the U.S Corps of Engineers as part of its plans to construct the Ft. Randal Dam. When the property was no longer needed by the government the land was transferred to the City of Pickstown, a state municipal corporation. The *Bruguier* court went into detail regarding

the status of Indian allotments where Indian title had been extinguished by transfer to a non-Indian. The Court concluded that the location of Bruguier's crimes, being on a former allotment which was later sold to a non-Indian and then transferred to a municipal corporation within the original boundaries of the reservation as established in the treaty of 1858, was not reservation or Indian country, and that the State had jurisdiction over those offenses. The Court also ruled that the reservation was terminated. This broader ruling was later criticized and called into doubt by the 8th Circuit in Podhradsky III. (See *Podhradsky* III, footnote 7.)

Provost. *U.S. v Provost*, 237 F.3d 934 (8th Cir. 2001) involved a crime in the City of Lake Andes, SD, in the same community and nearby the location of the offense alleged in the present case. Provost was accused in federal court of burglary of Raymond Soulek's home in Lake Andes and attempted burglary of a business in Pickstown. The record in the present case does not show the location of the Soulek home but this Court assumes it was in a different part of the city of Lake Andes located upon a piece of ground different from the allotment to John Arthur or Cetantanka because the federal court determined it was on "unallotted" land. Prior to sentencing the Federal Court dismissed the charge in Count one as it found that Mr. Soulek's home was located on unallotted land ceded to the government as part of the 1892 treaty and that such unallotted ceded lands formerly located within the reservation was not Indian country and therefore came under the primary jurisdiction of the State of South Dakota. This issue was not appealed. With regard to the second count alleging attempted burglary of the business in Pickstown, the Court followed the ruling in Gaffey II and concluded that the offense occurred on land that was originally allotted to a member of the Yankton Sioux Tribe but has since "passed out of Indian hands" and that such lands are not Indian country within the meaning of 18 U.S.C. § 1151. The Court reiterated its ruling in Gaffey II that "the Yankton Sioux Reservation has not been

disestablished, but that it has been further diminished by the loss of those lands originally allotted to tribal members which has passed out of Indian hands", and concluded that the federal government lacked authority and jurisdiction to prosecute Provost in federal court for the state law offense of attempted third degree burglary. *Provost* @ 937.

Yankton Sioux v. COE. In *Yankton Sioux Tribe v U.S. Corp of Engineers*, 606 F.3rd 895 (8th Cir. 2010), (cert denied) the Yankton Sioux Tribe sued for a declaratory ruling that the land taken by the government to build the Ft. Randal Dam remained reservation or Indian country. The controversy arose as part of the Janklow-Daschle plan (Title VI of the Water Resources Development Act of 1999) where the U.S. Corp of Engineers would transfer large amounts of land, previously taken by the government as part of the Pick-Sloan program to build dams along the Missouri river, to the State of South Dakota. The Act specifically excluded from transfer any lands within the "external boundaries of a reservation of any Indian Tribe". Some of the lands taken by the Pick-Sloan program were former Yankton Sioux allotments within the original boundaries of the diminished reservation. The tribe argued that since these lands were within the external boundaries of the reservation the transfer was prohibited. Once again, the State argued that the reservation was terminated and the Tribe again argued the reservation was not diminished and that they maintained jurisdiction over all lands within the original boarders of the 1858 treaty except those lands ceded to the government under the 1892 treaty. The 8th Circuit firmly stated that the rulings in *Gaffey* and *Podhradsky* are final. *Id* @ 898. The Court went on to conclude that the former allotments involved lost their status as reservation or Indian Country because some were subsequently allotted to individual members of the Tribe and most parcels were either fee patented to allottees or their heirs and assigns and sold to non-Indians before the government took the property, or that by

the government taking the existing allotments the Indian chain of title was broken thus depriving them of reservation status and making them eligible for transfer to the State of South Dakota.

Charles Mix County v U.S. Dept. of Interior, 674 F.3d 898 (8th Cir. 2012) involved the Yankton Sioux Tribes endeavor to have 39 acres of property it acquired that had lost its reservation status placed under trust supervision pursuant to § 5 of the Indian Reorganization Act (IGA). *Podhradsky* III ruled that such lands, if placed back under trust supervision under the IGA, would regain their reservation status. The county resisted this request during the agency proceedings in the Department of Interior and appealed when the agency granted the Tribes request. The 8th Circuit denied various constitutional claims raised by the county and affirmed the agency decision finding that the agency properly considered all relevant factors before placing the property under agency trust supervision.

Congress has defined Indian Country for purposes of jurisdiction in 18 U.S.C. 1151, which provides as follows:

> "Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

In the present case the Defendant argues that the boundaries of the Yankton Reservation and jurisdiction therein, in the backdrop of the long litigious history resulting in the decisions resolving jurisdiction on the Yankton Reservation quoted above, need to be revisited in light of the Supreme Court's recent ruling in *McGirt v. Oklahoma*, 140 S.Ct. 2452, 207 L.Ed.2d 985 (2020). Once again, based upon the possibility that the door has cracked opened again, each side shoots for the moon with their all or nothing arguments

that have failed repeatedly before, the Defendant arguing that the Tribe has exclusive criminal jurisdiction on any land within the original 1858 boundaries of the reservation and the State arguing that the reservation has been disestablished and terminated.

In *McGirt* the Court interpreted the treaties and congressional acts involving the Creek Nation of Indians in Oklahoma. In ruling that the reservation remained intact (not diminished or disestablished) the majority focused their analysis on the language of the treaty and the various associated congressional acts. When the State of Oklahoma argued that the Court may reach a different interpretation of the various agreements and congressional acts by using "extratextual" tools adapted long ago to assist in determining congressional intent with respect to reservation status, the court refused the offer. The Court ruled that the language in the various treaties and congressional acts were clear and unambiguous and that extratextual tools including historical practices, contemporary usage, customs, practices demographics, and other extratextual evidence were not needed or were otherwise insufficient to prove disestablishment of the Creek Reservation.

This Court acknowledges that the analysis used in *McGirt* was different than prior analysis used by the Court in resolving *Yankton Sioux Tribe v. South Dakota* and other Indian reservation jurisdictional issues, with its primary focus on the text of the various treaties and associated congressional acts and ignoring extratextual interpretive tools. However, neither party has cited any authority to this Court in favor of or against the premise that the use of a different analysis by the Court in *McGirt* calls for a retroactive analysis of the treaties with the Yankton Sioux. In fact, this Court believes that the holdings in *Yankton Sioux Tribe v. South Dakota* and the various cases from the 8th Circuit cited above are the final say on the matter as to diminishment or disestablishment, and it is highly unlikely the matter would be revisited. The prior decisions of the federal courts on the issue are final and conclusive.

The state argues that the *McGirt* decision, when applied to the Yankton Sioux reservation and the 1892 treaty leads to the conclusion that the Yankton Sioux Reservation was completely disestablished and that the state has exclusive criminal and civil jurisdiction within the original boundaries established by the Treaty of 1858. This argument asks this Court to reconsider the prior holdings of the State and Federal Courts on the issue and to rule upon jurisdiction over property not involved in the present proceedings.

This Court is bound by the prior holdings laid out above consisting of both the state and federal courts concerning State, Tribal and Federal jurisdiction on the Yankton Sioux Reservation. This Court must decline the invitation to open up these jurisdiction issues once again based upon the analysis in *McGirt*. In almost every opinion summarized above the Courts have always carefully cast their primary focus on the language of the treaty and the various associated congressional acts involved. The language of the treaty of 1892 has been sliced and diced, flipped and turned, twisted and dissected, over the course of decades, by both sides involved, to reach a favorable resolution from their viewpoint. The primary focus of all of these cases was to determine the intent of the treaty of 1892, its companion act of congress in 1894 and associated federal acts. The fact that the various courts who have looked at the issue used "extratextual" tools to assist in that endeavor does not mean those decisions were wrongly decided or that those courts misconstrued the meaning and intent of the 1892 treaty. The 8th Circuit has said, in light of the denial of certiorari, that the decisions are final. *Yankton Sioux Tribe v U.S. Corp of Engineers* @ p. 898, and *Podhradsky IV*, @ 990. This issue of diminishment or disestablishment of the Yankton Reservation is resolved and final and this court will not revisit the issue based upon *McGirt*.

According to the 8th Circuit Court of Appeals and the South Dakota Supreme Court's decisions on the matter, as well as 18 U.S.C. 1151 the state of South Dakota has criminal and civil jurisdiction over any unallotted parcels of the former Yankton Sioux Reservation as well as any prior Indian allotments, where the Indian title has been extinguished. In this case the allotment was extinguished when the land was conveyed from the heirs of John Arthur or Cetantanka to John Harding, a non-Indian and the Department of Interior was notified of and approved such sale.

In the present case, the stipulated record shows that in 1907 the prior owners of 445 Union Street, who were tribal members, sold their prior trust allotment and the property was conveyed to John Harding, a nontribal member. This was an unreserved deed on a form entitled "DEED RECORD - Indian Deed - Inherited Lands" and was submitted to and approved by the US department of interior, Office of Indian Affairs. It is this Court's conclusion that this deed extinguished Indian title as of the time of that conveyance in 1907. Nothing in the deed anticipates continued trust supervision over the property. Because the Indian title was extinguished the property lost its status as reservation or Indian country as per §1151, leaving it to State jurisdiction.

Pursuant to the IRA an Indian tribe may petition the Department of Interior to place land back into trust. *Charles Mix County v U.S. Dept. of Interior*, supra. It is clear that since the land was transferred from tribal ownership in 1907 and the platting of the land and its inclusion into the municipality of Lake Andes, that the federal government has not exercised any trust or other federal supervision over the property for over 100 years. This is the case, despite the fact that the property is currently owned by Ms. Spotted Eagle, a member of the Yankton Sioux Tribe. Pursuant to the IRA, if the property was previously a part of an Indian reservation, the tribe may petition to have it included as part of the reservation trust as recognized through the United States Department of

Interior. The stipulation of the parties is silent on any efforts by Ms. Spotted Eagle or the Tribe to petition the Department of Interior to exercise federal trust superintendence over the property.

Consequently, this Court finds that despite the fact that the property is currently owned by a tribal member, Indian title to the property was extinguished when the deed was approved by the Department of Interior in 1907. To rule that the property had regained its status as a reservation or Indian country because it is now owned and occupied by a tribal member without further governmental or agency action would render §467 of the Indian Reorganization Act meaningless. Consequently, current ownership of the property by a tribal member does not restore the property to reservation or Indian country status.

Based upon all the above and foregoing, this Court determines that the State of South Dakota has criminal jurisdiction over both the location and of the alleged offense in this case, and the motion to dismiss based on jurisdictional grounds is denied.

This Memorandum Decision shall constitute the Court's findings of fact and conclusions of law. The state of South Dakota is directed to submit the appropriate order denying the motion to dismiss so that proper notice of entry of that order can be served upon the defendant and his counsel of record.

Dated this 7 day of April, 2022.

BY THE COURT:

Hon. Bruce V. Anderson
Circuit Court Judge

ATTEST:

Clerk of Court

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:ss
COUNTY OF CHARLES MIX) FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, -vs- HAZEN HUNTER WINCKLER, Defendant. | 11CRI23-297 | **TRANSCRIPT OF MOTIONS HEARING**

STATE OF SOUTH DAKOTA, Plaintiff, -vs- HAZEN HUNTER WINCKLER, Defendant. | 11CRI23-172 | **TRANSCRIPT OF MOTIONS HEARING**

STATE OF SOUTH DAKOTA, Plaintiff, -vs- HAZEN HUNTER WINCKLER, Defendant. | 11CRI24-60 | **TRANSCRIPT OF MOTIONS HEARING**

STATE OF SOUTH DAKOTA, Plaintiff, -vs- HAZEN HUNTER WINCKLER, Defendant. | 11CRI24-85 | **TRANSCRIPT OF MOTIONS HEARING**

B-E-F-O-R-E

The Honorable Bruce V. Anderson,
Circuit Court Judge,
at Lake Andes, South Dakota,
on September 11, 2024.

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: Chelsea Wenzel
Assistant Attorney General
Pierre, South Dakota

Steven R. Cotton
Charles Mix County State's Attorney
Lake Andes, South Dakota

For the Defendant: Tucker J. Volesky
Attorney at Law
Mitchell, South Dakota

P-R-O-C-E-E-D-I-N-G-S

The following proceedings commenced on the 11th day of September, 2024, at 2:18 p.m. in the courtroom of the Charles Mix County Courthouse, Lake Andes, South Dakota.

\+ + +

I-N-D-E-X

P-R-O-C-E-E-D-I-N-G-S

THE COURT REPORTER: All rise in honor of the Court.

(All comply.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: We're on the record in various cases entitled State of South Dakota versus Hazen Winckler.

And those include 11CRI23-172, that's a controlled substance case. And 11CRI23-297, which is a failure to appear. 11CRI24-60, which is a simple assault. Looks like more than one count. And then 11CRI24-85, also a simple assault.

Mr. Winckler is here today. He's present with his attorney, Tucker Volesky. The State is represented by the State, Steve Cotton, and Assistant Attorney General Chelsea Wenzel.

So this is the time the Court set to hear arguments on the motion to dismiss based on jurisdiction.

And I wanted a stipulation. I don't think I've ever seen a stipulation.

But then Ms. Wenzel filed a 120-some page affidavit.

Mr. Volesky, have you had time to look at that affidavit?

MR. VOLESKY: I've reviewed it.

THE COURT: Okay. Are you objecting to any of those contents?

MR. VOLESKY: I believe they're just public records, and previous case filings, I won't object.
THE COURT: No objection?
MR. VOLESKY: No.
THE COURT: You never did a stipulation?
MR. VOLESKY: We didn't --
THE COURT: If you did, I haven't seen it.
MR. COTTON: We did do one, Your Honor, we just never signed it and filed it. So Tucker had sent -- or, Mr. Volesky had sent one to me. Ms. Wenzel and I have both reviewed it. We have no issue with it.
THE COURT: So you know, in I think the first Gaffey case, in federal court, they actually had a trial that went on for weeks where they established, you know, historical title.
I don't necessarily think we have to do that. Especially when everybody's aware of my Selwyn decision, where we had a stipulation about the historical title.
Are you all agreeing that those same facts in Selwyn apply here?
MR. VOLESKY: I think the fundamental facts are undisputed, Your Honor, and it comes down to legal determinations. We've submitted 23 exhibits laying the foundation. The State doesn't object. The State's also laid the foundation. I think it just comes down out to how the

Court comes out on the legal conclusions.
THE COURT: Okay. On the legal questions?
MR. VOLESKY: Yes.
THE COURT: All right.
Ms. Wenzel, do you have any objection to Mr. Volesky's exhibits?
MS. WENZEL: No, Your Honor.
THE COURT: All right.
Ms. Wenzel, your brief and affidavit were filed together. And the problem with the way -- I know this might be your staff, but the way you filed it, I have a brief and an affidavit in one filing, and the clerk has to go through some extra work, she pointed it out to me today, but you can't file those as one. Your staff should file a brief and then file the affidavit separately.
'Cause now when someone is rereading the record, they see "brief."
And you don't know there's an affidavit in your file until you click on that brief. And then it gives you two subdirectories and, of course, the next one is the affidavit.
MS. WENZEL: I apologize, Your Honor.
THE COURT: Okay.
MS. WENZEL: That's how the Sixth Circuit likes it, but I am happy to do it differently in the First Circuit.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT

11CR24-000060
11CR24-000085

STATE OF SOUTH DAKOTA)
)
Plaintiff,)
) AFFIDAVIT OF TUCKER J. VOLESKY
vs.)
)
HAZEN WINCKLER,)
)
Defendant.)

COUNTY OF BEADLE	)	
	:SS	
STATE OF SOUTH DAKOTA	)	

Tucker J. Volesky, being first duly sworn upon oath, deposes and states as follows:

1. I have been appointed to represent the Defendant above named and make this affidavit in support of his Motion to Dismiss upon information and materials from public sources.

2. That attached hereto as Exhibit 1 is the Treaty between the Yankton Sioux Tribe and the United States, April 19, 1858, 11 Stat. 743.

3. That attached hereto as Exhibit 2 is the General Allotment Act (also known as the Dawes Act), ch. 119, 24 Stat. 388 (1887).

4. That attached hereto as Exhibit 3 is the Trust Patent dated May 8, 1891, and recorded December 2, 1903.

5. That attached hereto as Exhibit 4 is the Act of August 15, 1894, ch. 290, 28 Stat. 286, which ratified the 1892 cession agreement between the Yankton Sioux Tribe and the United States.

6. That attached hereto as Exhibit 5 is the Order Appointing Guardian of October 7, 1902, In the Matter of the Estate of Bessie Zitka Koyewin.

7. That attached hereto as Exhibit 6 is the Decree of Distribution of March 3, 1903, In the Matter of the Estate of John Arthur or Cetantanka.

8. That attached hereto as Exhibit 7 is the Indian Deed dated June 20, 1907.

9. That attached hereto as Exhibit 8 is the Order Confirming Sale of Real Estate filed January 9, 1908.

10. That attached hereto as Exhibit 9 is the Act of Congress of May 27, 1902, 32 Stat. 245.

11. That attached hereto as Exhibit 10 is the Act of Congress of February 2, 1903, 32 Stat. 793.

12. That attached hereto as Exhibit 11 is a map including Section Four, Township Ninety-five, North of Range Sixty-five, West of the Fifth Principal Meridian, Charles Mix County, South Dakota.

13. That attached hereto as Exhibit 12 is the 2020 Census Tribal Tract Map which demarcates Lake Andes as Tribal Block Group B.

14. That attached hereto as Exhibit 13 is a webpage from the United States Department of Interior, Indian Affairs, Yankton agency.

15. That attached hereto as Exhibit 14 is the Testimony of the Chairman of the Yankton Sioux Tribe from June 8, 2017.

16. That attached hereto as Exhibit 15 is the Yankton Tribe's "Comments on the Department of Interior's Proposed Revisions to Fee-to-Trust Regulations Contained at 25 CFR Part 151" dated January 12, 2018.

17. That attached hereto as Exhibit 16 is a letter from the Chairman of the Yankton Sioux Tribe to the Secretary of the United States Department of Interior dated May 30, 2018, including Protocols for Consultation with the Yankton Sioux Tribe.

18. That attached hereto as Exhibit 17 is an article from the Argus Leader published September 24, 2019, titled "State says no to Yankton Sioux Tribe's ask for National Guard help with flooding."

19. That attached hereto as Exhibit 18 is information on emergency rental assistance to Indian Tribes and Tribally Designated Housing Entities dated January 19, 2021, from the United States Department of the Treasury Emergency Rental Assistance Program.

20. That attached hereto as Exhibit 19 is a document from the United States Department of the Treasury Emergency Rental Assistance Program listing payments to various Tribes as of February 26, 2021, including $2,853,249.59 to the Yankton Sioux Tribe.

21. That attached hereto as Exhibit 20 is a letter dated October 15, 2021, to tribal leaders from the United States Department of the Treasury.

22. That attached hereto as Exhibit 21 is a 2021 Application and Grant Agreement from the United States Department of Transportation Federal Transit Administration, which awarded federal assistance to the Yankton Sioux Tribe.

23. That attached hereto as Exhibit 22 is the Yankton Sioux Tribe Comprehensive Economic Development Strategy from September 2022.

24. That attached hereto as Exhibit 23 is an article published by South Dakota Searchlight on May 31, 2024, titled "Homicide investigations sparks rare level of state-tribal cooperation."

Tucker J. Volesky – Affiant
Attorney for the Defendant

Subscribed and sworn to before me this 18th day of June 2024.

Seal

Notary Public – South Dakota
My Commission expires: 3-7-27

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Affidavit of Tucker J. Volesky in the above-entitled matter was served through Odyssey upon the following: Charles Mix County State's Attorney Steve Cotton, and electronically filed with the Charles Mix County Clerk of Courts through Odyssey.

Dated this 18th day of June 2024.

/s/ Tucker J. Volesky
Tucker J. Volesky
Attorney for the Defendant

Ex. 1

Treaty between the United States of America, and the Yancton Tribe of Sioux, or Dacotah Indians. Concluded at Washington, April 19, 1858. Ratified by the Senate, February 16, 1859. Proclaimed by the President of the United States, February 26, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

April 19, 1858.

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

Preamble.

WHEREAS a treaty was made and concluded at the city of Washington, on the nineteenth day of April, one thousand eight hundred and fifty-eight, by Charles E. Mix, as a commissioner on the part of the United States, and the following named chiefs and delegates of the Yancton Tribe of Sioux or Dacotah Indians, viz:

Pa-la-no-a-pa-pe, the man that was struck by the Ree.
Ma-to-sa-be-*che*-a, the smutty bear
Charles F. Picotte, Eta-ke-cha.
Ta-ton-ka-*wete*-co, the crazy bull.
Pse-cha-wa-*ksa*, the jumping thunder.
Ma-ra-*ka*-ton, the iron horn.
Nombe-kah-pah, one that knocks down two.
Ta-ton-ka-e-yah-ka, the fast bull.
A-ha-ka-ma-ne, the walking elk.
A-ha-ka-na-she, the standing elk.
A-ha-ka-ho-che-cha, the elk with a bad voice.
Cha-ton-wo-ka-pa, the grabbing hawk.
E-ha-we-cha-sha, the owl man.
Pla-sco-wa-*kan*-na-ge, the white medicine cow that stands.
Ma-ga-cha-*che*-ka, the little white swan.
Oke-*che-la*-wash-ta, the pretty boy.

They being thereto duly authorized by said tribe, which treaty is in the following words, to wit:

Contracting Parties.

Articles of agreement and convention made and concluded at the city of Washington, this nineteenth day of April, A. D. one thousand eight hundred and fifty eight, by Charles E. Mix, commissioner on the part of the United States, and the following named chiefs and delegates of the Yancton Tribe of Sioux or Dacotah Indians, viz:

Pa-la-no-a-pa-pe, the man that was struck by the Ree.
Ma-to-sa-be-che-a, the smutty bear.
Charles F. Picotte, Eta-ke-cha.
Ta-ton-ka-wete-co, the crazy bull.
Pse-cha-wa-ksa, the jumping thunder.
Ma-ra-ka-ton, the iron horn.
Nombe-kah-pah, one that knocks down two.
Ta-ton-ka-e-yah-ka, the fast bull.
A-ha-ka-ma-ne, the walking elk.
A-ha-ka-na-sha, the standing elk.
A-ha-ka-ho-che-cha, the elk with a bad voice.
Cha-ton-wo-ka-pa, the grabbing hawk.
E-ha-we-cha-sha, the owl man.
Pla-sco-wa-*kan*-na-ge, the white medicine cow that stands.
Ma-ga-cha-che-ka, the little white swan.
Oke-*che-la*-wash-ta, the pretty boy.

(The three last names signed by their duly authorized agent and representative, Charles F. Picotte,) they being thereto duly authorized and empowered by said tribe of Indians.

Exhibit 1

Lands relinquished to the United States, except, &c.

ARTICLE I. The said chiefs and delegates of said tribe of Indians do hereby cede and relinquish to the United States all the lands now owned, possessed, or claimed by them, wherever situated, except four hundred thousand acres thereof, situated and described as follows, to wit—Beginning at the mouth of the Naw-izi-wa-koo-pah or Chouteau River and extending up the Missouri River thirty miles; thence due north to a point; thence easterly to a point on the said Chouteau River; thence down said river to the place of beginning, so as to include the said quantity of four hundred thousand acres. They, also, hereby relinquish and abandon all claims and complaints about or growing out of any and all treaties heretofore made by them or other Indians, except their annuity rights under the treaty of Laramie, of September 17, A. D. 1851.

Boundaries of lands reserved.

Boundaries of lands ceded.

ARTICLE II. The land so ceded and relinquished by the said chiefs and delegates of the said tribe of Yanctons is and shall be known and described as follows, to wit—"Beginning at the mouth of the Tchan-kas-andata or Calumet or Big Sioux River; thence up the Missouri River to the mouth of the Pa-hah-wa-kan or East Medicine Knoll River; thence up said river to its head; thence in a direction to the head of the main fork of the Wan-dah-kah-for or Snake River; thence down said river to its junction with the Tchan-san-san or Jaques or James River; thence in a direct line to the northern point of Lake Kampeska; thence along the northern shore of said lake and its outlet to the junction of said outlet with the said Big Sioux River; thence down the Big Sioux River to its junction with the Missouri River." And they also cede and relinquish to the United States all their right and title to and in all the islands of the Missouri River, from the mouth of the Big Sioux to the mouth of the Medicine Knoll River.

Islands in the Missouri River.

Title.

And the said chiefs and delegates hereby stipulate and agree that all the lands embraced in said limits are their own, and that they have full and exclusive right to cede and relinquish the same to the United States.

Necessary roads may be built across the lands reserved, paying damages therefor.

ARTICLE III. The said chiefs and delegates hereby further stipulate and agree that the United States may construct and use such roads as may be hereafter necessary across their said reservation by the consent and permission of the Secretary of the Interior, and by first paying the said Indians all damages and the fair value of the land so used for said road or roads, which said damages and value shall be determined in such manner as the Secretary of the Interior may direct. And the said Yanctons hereby agree to *remove* and *settle* and *reside* on said reservation within one year from this date, and, until they do so remove, (if within said year,) the United States guarantee them in the quiet and undisturbed possession of their present settlements.

Indians to settle, &c., on reservation within a year.

Agreements on the part of the United States.

ARTICLE IV. In consideration of the foregoing cession, relinquishment, and agreements, the United States do hereby agree and stipulate as follows, to wit:

Protection on the reserved lands.

1st. To protect the said Yanctons in the quiet and peaceable possession of the said tract of four hundred thousand acres of land so reserved for their future home, and also their persons and property thereon during good behavior on their part.

Payment of annuities.

2d. To pay to them, or expend for their benefit, the sum of sixty-five thousand dollars per annum, for ten years, commencing with the year in which they shall remove to, and settle and reside upon, their said reservation—forty thousand dollars per annum for and during ten years thereafter—twenty-five thousand dollars per annum for and during ten years thereafter—and fifteen thousand dollars per annum for and during twenty years thereafter; making *one million and six hundred thousand dollars in annuities in the period of fifty years*, of which sums the President of the United States shall, from time to time, determine what proportion shall be paid to said Indians, in cash, and what proportion shall be expended for their benefit, and, also, in what manner and for what objects such expen-

diture shall be made, due regard being had in making such determination to the best interests of said Indians. He shall likewise exercise the power to make such provision out of said sums as he may deem to be necessary and proper for the support and comfort of the aged or infirm, and helpless orphans of the said Indians. In case of any material decrease of said Indians, in number, the said amounts may, in the discretion of the President of the United States, be diminished and reduced in proportion thereto—or they may, at the discretion of the President of the United States, be discontinued entirely, should said Indians fail to make reasonable and satisfactory efforts to advance and improve their condition, in which case, such other provision shall be made for them as the President and Congress may judge to be suitable and proper.

Subsistence.

3d. In addition to the foregoing sum of one million and six hundred thousand dollars as annuities, to be paid to or expended for the benefit of said Indians, during the period of fifty years, as before stated, the United States hereby stipulate and agree to expend for their benefit the sum of fifty thousand dollars more, as follows, to wit: Twenty-five thousand dollars in maintaining and subsisting the said Indians during the first year after their removal to and permanent settlement upon their said reservation; in the purchase of stock, agricultural implements, or other articles of a beneficial character, and in breaking up and fencing land; in the erection of houses, storehouses, or other needful buildings, or in making such other improvements as may be necessary for their comfort and welfare.

Purchase of stock, &c.

Schools and school-houses.

4th. To expend ten thousand dollars to build a school-house or school-houses, and to establish and maintain one or more normal labor schools (so far as said sum will go) for the education and training of the children of said Indians in letters, agriculture, the mechanic arts, and housewifery, which school or schools shall be managed and conducted in such manner as the Secretary of the Interior shall direct. The said Indians hereby stipulating to keep constantly thereat, during at least nine months in the year, all their children between the ages of seven and eighteen years; and if any of the parents, or others having the care of children, shall refuse or neglect to send them to school, such parts of their annuities as the Secretary of the Interior may direct, shall be withheld from them and applied as he may deem just and proper; and such further sum, in addition to the said ten thousand dollars, as shall be deemed necessary and proper by the President of the United States, shall be reserved and taken from their said annuities, and applied annually, during the pleasure of the President to the support of said schools, and to furnish said Indians with assistance and aid and instruction in agriculture and mechanical pursuits, including the working of the mills, hereafter mentioned, as the Secretary of the Interior may consider necessary and advantageous for said Indians; and all instruction in reading shall be in the English language. And the said Indians hereby stipulate to furnish, from amongst themselves, the number of young men that may be required as apprentices and assistants in the mills and mechanic shops, and at least three persons to work constantly with each white laborer employed for them in agriculture and mechanical pursuits, it being understood that such white laborers and assistants as may be so employed are thus employed more for the instruction of the said Indians than merely to work for their benefit; and that the laborers so to be furnished by the Indians may be allowed a fair and just compensation for their services, to be fixed by the Secretary of the Interior, and to be paid out of the shares of annuity of such Indians as are able to work, but refuse or neglect to do so. And whenever the President of the United States shall become satisfied of a failure, on the part of said Indians, to fulfil the aforesaid stipulations, he may, at his discretion, discontinue the allowance and expenditure of the sums so provided and set apart for said school or schools, and assistance and instruction.

Indians to furnish apprentices, &c. for mills.

President may discontinue allowance for schools.

U. S. to furnish mills, mechanic shops, &c.

5th. To provide the said Indians with a mill suitable for grinding grain and sawing timber; one or more mechanic shops, with the necessary tools for the same; and dwelling-houses for an interpreter, miller, engineer for the mill, (if one be necessary,) a farmer, and the mechanics that may be employed for their benefit, and to expend therefor a sum not exceeding fifteen thousand dollars.

Mills, &c. not to be injured.

ARTICLE V. Said Indians further stipulate and bind themselves to prevent any of the members of their tribe from destroying or injuring the said houses, shops, mills, machinery, stock, farming utensils, or any other thing furnished them by the government, and in case of any such destruction or injury of any of the things so furnished, or their being carried off by any member or members of their tribe, the value of the same shall be deducted from their general annuity; and whenever the Secretary of the Interior shall be satisfied that said Indians have become sufficiently confirmed in habits of industry, and advanced in the acquisition of a practical knowledge of agriculture and the mechanic arts to provide for themselves, he may, at his discretion, cause to be turned over to them all of the said houses and other property furnished them by the United States, and dispense with the services of any or all the persons hereinbefore stipulated to be employed for their benefit, assistance, and instruction.

If injured, value to be deducted from annuity.

Houses, &c. to be given to the Indians when, &c.

ARTICLE VI. It is hereby agreed and understood that the chiefs and head men of said tribe may, in their discretion, in open council, authorize to be paid *out of their said annuities* such a sum or sums as may be found to be necessary and proper, not exceeding in the aggregate one hundred and fifty thousand dollars, to satisfy their just debts and obligations, and to provide for such of their half-breed relations as do not live with them, or draw any part of the said annuities of said Indians: *Provided, however*, That their said determinations shall be approved by their agent for the time being, and the said payments authorized by the Secretary of the Interior: *Provided, also*, That there shall not be so paid out of their said annuities in any one year, a sum exceeding fifteen thousand dollars.

Portion of annuities may be paid for debts, &c.

Proviso.

Proviso.

ARTICLE VII. On account of their valuable services and liberality to the Yanctons, there shall be granted in fee to Charles F. Picotte and Zephyr Rencontre, each, one section of six hundred and forty acres of land, and to Paul Dorian one half a section, and to the half-breed Yancton, wife of Charles Roulo, and her two sisters, the wives of Eli Bedaud and Augustus Traverse, and to Louis Le Count, each, one half a section. The said grants shall be selected in said ceded territory, and shall not be within said reservation, nor shall they interfere in any way with the improvements of such persons as are on the lands ceded above by authority of law; and all other persons (other than Indians, or mixed bloods) who are now residing within said ceded country, by authority of law, shall have the privilege of entering one hundred and sixty acres thereof, to include each of their residences or improvements, at the rate of one dollar and twenty-five cents per acre.

Grants of land to Charles F. Picotte, Zephyr Rencontre, Paul Dorian, and others.

Persons other than Indians or mixed bloods, may enter 160 acres at $1.25 per acre.

ARTICLE VIII. The said Yancton Indians shall be secured in the free and unrestricted use of the Red Pipe-stone quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they shall desire.

Yanctons to be secure in the use of the Red Pipe-stone quarry.

ARTICLE IX. The United States shall have the right to establish and maintain such military posts, roads, and Indian agencies, as may be deemed necessary, within the tract of country herein reserved for the use of the Yanctons; but no greater quantity of land or timber shall be used for said purposes than shall be actually requisite; and if, in the establishment or maintenance of such posts, roads, and agencies, the property of

United States may maintain military posts, &c.

any Yanctons shall be taken, injured, or destroyed, just and adequate compensation shall be made therefor by the United States.

No trade with Indians unless licensed.

ARTICLE X. No white person, unless in the employment of the United States, or duly licensed to trade with the Yanctons, or members of the families of such persons, shall be permitted to reside or make any settlement upon any part of the tract herein reserved for said Indians, nor shall said Indians alienate, sell, or in any manner dispose of any portion thereof, except to the United States; whenever the Secretary of the Interior shall direct, said tract shall be surveyed and divided as he shall think proper among said Indians, so as to give to each head of a family or single person a separate farm, with such rights of possession or transfer to any other member of the tribe or of descent to their heirs and representatives as he may deem just.

Land not to be alienated except, &c.

The Yanctons to preserve friendly relations.

ARTICLE XI. The Yanctons acknowledge their dependence upon the government of the United States, and do hereby pledge and bind themselves to preserve friendly relations with the citizens thereof, and to commit no injuries or depredations on their persons or property, nor on those of members of any other tribe or nation of *of* Indians; and in case of any such injuries or depredations by said Yanctons full compensation shall, as far as possible, be made therefor out of their tribal annuities, the amount in all cases to be determined by the Secretary of the Interior. They further pledge themselves not to engage in hostilities with any other tribe or nation, unless in self-defence, but to submit, through their agent, all matters of dispute and difficulty between themselves and other Indians for the decision of the President of the United States, and to acquiesce in and abide thereby. They also agree to deliver, to the proper officer of the United States all offenders against the treaties, laws, or regulations of the United States, and to assist in discovering, pursuing, and capturing all such offenders, who may be within the limits of their reservation, whenever required to do so by such officer.

Surrender of offenders.

Tribal annuities to be withheld, if intemperate, &c.

ARTICLE XII. To aid in preventing the evils of intemperance, it is hereby stipulated that if any of the Yanctons shall drink, or procure for others, intoxicating liquor, their proportion of the tribal annuities shall be withheld from them for at least one year; and for a violation of any of the stipulations of this agreement on the part of the Yanctons they shall be liable to have their annuities withheld, in whole or in part, and for such length of time as the President of the United States shall direct.

Annuities not to be subject to debts except, &c.

ARTICLE XIII. No part of the annuities of the Yanctons shall be taken to pay any debts, claims, or demands against them, except such existing claims and demands as have been herein provided for, and except such as may arise under this agreement, or under the trade and intercourse laws of the United States.

Release of all demands, &c.

ARTICLE XIV. The said Yanctons do hereby fully acquit and release the United States from all demands against them on the part of said tribe, or any individual thereof, except the before mentioned right of the Yanctons to receive an annuity under said treaty of Laramie, and except, also, such as are herein stipulated and provided for.

Indian agent for the Yanctons.

ARTICLE XV. For the special benefit of the Yanctons, parties to this agreement, the United States agree to appoint an agent for them, who shall reside on their said reservation, and shall have set apart for his sole use and occupation, at such a point as the Secretary of the Interior may direct, one hundred and sixty acres of land.

Expense hereof to be borne by the United States.

ARTICLE XVI. All the expenses of the making of this agreement and of surveying the said Yancton reservation, and of surveying and marking said Pipe-stone quarry, shall be paid by the United States.

When to take effect.

ARTICLE XVII. This instrument shall take effect and be obligatory upon the contracting parties whenever ratified by the Senate and the President of the United States.

In testimony whereof, the said Charles E. Mix, commissioner, as afore-

Signatures.

said, and the undersigned chiefs, delegates, and representatives of the said tribe of Yancton Indians, have hereunto set their hands and seals at the place and on the day first above written.

CHARLES E. MIX, *Commissioner.* [L. S.]

PA-LA-NE-APA-PE, or the Man that was struck by the Ree, his x mark. [L. S.]
MA-TO-SA-BE-CHE-A, or the Smutty Bear, his x mark [L. S.]
CHARLES F. PICOTTE, or Ita-ke-cha, [L. S.]
TA-TON-KA-WETE-CO, or the Crazy Bull, his x mark. [L. S.]
PSE-CHA-WA-KEA, or the Jumping Thunder, his x mark. [L. S.]
MA-RA-HA-TON, or the Iron Horn, his x mark [L. S.]
NOMBE-KAH-PAH, or One that knocks down two, his x mark. [L. S.]
TA-TON-KA-E-YAH-KA, or the Fast Bull, his x mark. [L. S.]
A-HA-KA MA-NE, or the Walking Elk, his x mark. [L. S.]
A-HA-KA-NA-ZHE, or the Standing Elk, his x mark. [L. S.]
A-HA-KA-HO-CHE-CHA, or the Elk with a bad voice, his x mark. [L. S.]
CHA-TON-WO-KA-PA, or the Grabbing Hawk, his x mark. [L. S.]
E-HA-WE-CHA-SHA, or the Owl Man, his x mark. [L. S.]
PLA-SON-WA-KAN-NA-GE, or the White Medicine Cow that stands, by his duly authorized delegate and representative, Charles F. Picotte. [L. S.]
MA-GA-SCHA-CHE-KA, or the Little White Swan, by his duly authorized delegate and representative, Charles F. Picotte. [L. S.]
O-KE-CHE-LA-WASH-TA, or the Pretty Boy, by his duly authorized delegate and representative, Chas. F. Picotte. [L. S.]

Executed in the presence of—
A. H. REDFIELD, *Agent.*
J. B. S. TODD,
THEOPHILE BRUGUIER,
JOHN DOWLING,
FR. SCHMIDT,
JOHN W. WELLS,
D. WALKER,
E. B. GRAYSON,
S. J. JOHNSON,
GEORGE P. MAPES,
H. BITTINGER,
D. C. DAVIS,
ZEPHIER RONCONTRE, his x mark, *U. S. Interpreter.*

Witness: J. B. S. TODD,
PAUL DORAIN, his x mark.
CHARLES BULO, his x mark.
Witness: J. B. S. TODD.

Consent of senate. Feb. 16, 1859.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the 16th day of February, one thousand eight hundred and fifty-nine, advise and consent to the ratification of its articles by the following resolution:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES, February 16, 1859.

Resolved, (two thirds of the senators present concurring,) That the

Senate advise and consent to the ratification of the articles of agreement and convention between the United States and the Yancton Tribe of Sioux or Dacotah Indians. Signed the 19th day of April, 1858.

Attest: ASBURY DICKINS, *Secretary.*

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the sixteenth day of February, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty. Proclaimed. Feb. 26, 1859.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

Done at the city of Washington, this twenty-sixth day of Febru-
[SEAL] ary, in the year of our Lord, one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:
LEWIS CASS, *Secretary of State.*

TREATY OF FORT LARAMIE.

This treaty was concluded September 17, 1851. When it was before the Senate for ratification, certain amendments were made which require the assent of the Tribes, parties to it, before it can be considered a complete instrument. This assent of all the Tribes has not been obtained, and, consequently, although Congress appropriates money for the fulfillment of its stipulations, it is not yet in a proper form for publication. This note is added for the purpose of making the references from the Public Laws complete, and as an explanation why the Treaty is not published.

Ex. 3

Trust Patent

The United States of America,

To all to Whom these Presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States, a schedule of allotments of land, dated November 11, 1890, from the commissioner of Indian Affairs, approved by the Acting Secretary of the Interior November 14, 1890, whereby it appears that under the provisions of the Act of Congress approved February 8, 1887, (24 Statts, 388,) -

John Arthur or Cetantanka, an Indian of the Yankton Sioux tribe of Indians, has been allotted the following described land, viz:

The East half of the South West quarter and the West half of the South West quarter of Section four, and the North East quarter of the South East quarter of section five in Township Ninety-six North of Range Sixty-five West of the Fifth Principal Meridian in South Dakota, containing two hundred acres.

Now Know Ye, That the United States of America, in consideration of the premises and in accordance with the provisions of the fifth section of said Act of Congress of the 8th February, 1887, Hereby Declares - that it does and will hold the land thus allotted (subject to all the restrictions and conditions contained in said fifth section) for the period of twenty five years, in trust for the Sole use and benefit of the said John Arthur or Cetantanka,

or in case of his decease, for the sole use of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever; Provided, That the President of the United States may, in his discretion, extend the said period.

In Testimony Whereof, I, Benjamin Harrison, President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Seal

Given under my hand at the City of Washington, this eighth day of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Recorded vol. 6, p. 273.

By the President: Benjamin Harrison.

By Allen Macfarland Asst. Secretary.

J. W. Townsend

Recorder of the General Land office.

Filed for record the 24th day of Dec. 1891 at 11 o'clock A.M. and recorded in Book 18 of Deeds on Page 449

Ex. 4

August 15, 1894.

CHAP. 289.—An Act Making an appropriation and providing for the construction of a United States revenue cutter for service in the harbor of San Francisco, State of California.

San Francisco, Cal. Revenue cutter authorized for harbor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized to have constructed a revenue cutter for service in the harbor of San Francisco, State of California: *Provided*, That the cost of said construction shall not exceed the sum of fifty thousand dollars.

Proviso. Cost.

Approved, August 15, 1894.

August 15, 1894.

CHAP. 290.—An Act Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

Indian Department appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June thirtieth, eighteen hundred and ninety-five, and fulfilling treaty stipulations with the various Indian tribes, namely:

Pay of agents at agencies.

For pay of fifty-seven agents of Indian affairs at the following-named agencies, at the rates respectively indicated, namely:

At the Blackfeet Agency, Montana, at one thousand eight hundred dollars;

At the Cherokee School, North Carolina: Additional compensation to superintendent of said school for performing the duties heretofore required of the agency at the Cherokee Agency, two hundred dollars;

At the Cheyenne and Arapaho Agency, Oklahoma Territory, one thousand eight hundred dollars;

At the Cheyenne River Agency, South Dakota, one thousand seven hundred dollars;

At the Colorado River Agency, Arizona, one thousand five hundred dollars;

At the Colville Agency, Washington, one thousand five hundred dollars;

At the Crow Creek and Lower Brule Agency, South Dakota, one thousand eight hundred dollars;

At the Crow Agency, Montana, one thousand eight hundred dollars;

At the Devils Lake Agency, North Dakota, one thousand two hundred dollars;

At the Flathead Agency, Montana, one thousand five hundred dollars;

At the Fort Belknap Agency, Montana, one thousand five hundred dollars;

At the Fort Berthold Agency, South Dakota, one thousand five hundred dollars;

At the Fort Hall Agency, Idaho, one thousand five hundred dollars;

At the Fort Peck Agency, Montana, one thousand eight hundred dollars;

At the Grand Ronde Agency, Oregon, one thousand two hundred dollars;

At the Green Bay Agency, Wisconsin, one thousand eight hundred dollars;

At Hoopa Valley Agency, California, one thousand two hundred dollars;

At the Kiowa Agency, Oklahoma Territory, one thousand eight hundred dollars;

shall send to the Commissioner of Indian Affairs his certificate that such consent has been voluntarily given before such child shall be removed from such reservation. And it shall be unlawful for any Indian agent or other employé of the Government to induce, or seek to induce, by withholding rations or by other improper means, the parents or next of kin of any Indian to consent to the removal of any Indian child beyond the limits of any reservation.

Improper inducements forbidden.

AGREEMENT WITH THE YANKTON SIOUX OR DAKOTA INDIANS, IN SOUTH DAKOTA.

Agreement with Yankton Sioux, in South Dakota, ratified.

SEC. 12. The following agreement, made by J. C. Adams and John J. Cole, commissioners on the part of the United States, with the chiefs, headmen, and other male adults of the Yankton tribe of Sioux or Dakota Indians upon the Yankton Reservation, in the State of South Dakota, on the thirty-first day of December, eighteen hundred and ninety-two, and now on file in the Department of the Interior, and signed by said commissioners on behalf of the United States, and by Charles Martin, Edgar Lee, Charles Jones, Isaac Hepkigan, Stephen Cloud Elk, Edward Yellow Bird, Iron Lingthing, Eli Brockway, Alex Brunot Francis Willard, Louis Shunk, Joseph Caje, Albion Hitika, John Selwyn, Charles Ree, Joseph Cook, Brigham Young, William Highrock, Frank Felix, and Philip Ree, on behalf of the said Yankton tribe of Sioux Indians, is hereby accepted, ratified, and confirmed.

ARTICLES OF AGREEMENT.

Commissioners.

Whereas J. C. Adams and John J. Cole, duly appointed commissioners on the part of the United States, did, on the thirty-first day of December, eighteen hundred and ninety-two, conclude an agreement with the chiefs, headmen, and other male adults of the Yankton tribe of Sioux or Dacotah Indians upon the Yankton Reservation, in the State of South Dakota, which said agreement is as follows:

Vol. 27, p. 633.

Whereas a clause in the act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth (30th), eighteen hundred and ninety-three (1893), and for other purposes, approved July 13th, 1892, authorizes the "Secretary of the Interior to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress;" and

Whereas the Yankton tribe of Dacotah—now spelled Dakota and so spelled in this agreement—or Sioux Indians is willing to dispose of a portion of the land set apart and reserved to said tribe, by the first article of the treaty of April (19th) nineteenth, eighteen hundred and fifty-eight (1858), between said tribe and the United States, and situated in the State of South Dakota:

Now, therefore, this agreement made and entered into in pursuance of the provisions of the act of Congress approved July thirteenth (13th), eighteen hundred and ninety-two (1892), at the Yankton Indian Agency, South Dakota, by J. C. Adams of Webster, S. D., John J. Cole of St. Louis, Mo., and I. W. French of the State of Neb., on the part of the United States, duly authorized and empowered thereto, and the chiefs, headmen, and other male adult members of said Yankton tribe of Indians, witnesseth:

ARTICLE I.

Unallotted lands ceded.

The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as aforesaid.

ARTICLE II.

Consideration. In consideration for the lands ceded, sold, relinquished, and conveyed to the United States as aforesaid, the United States stipulates and agrees to pay to the said Yankton tribe of Sioux Indians the sum of six hundred thousand dollars ($600,000), as hereinbefore provided for.

ARTICLE III.

Cash payment per capita. SECTION 1. Sixty days after the ratification of this agreement by Congress, or at the time of the first interest payment, the United States shall pay to the said Yankton tribe of Sioux Indians, in lawful money of the United States, out of the principal sum stipulated in Article II, the sum of one hundred thousand dollars ($100,000), to be divided among the members of the tribe per capita. No interest shall be paid by the United States on this one hundred thousand dollars ($100,000).

Fund. SECTION 2. The remainder of the purchase money or principal sum stipulated in Article II, amounting to five hundred thousand dollars ($500,000), shall constitute a fund for the benefit of the said tribe, which shall be placed in the Treasury of the United States to the credit of the said Yankton tribe of Sioux Indians, upon which the United States shall pay interest at the rate of five per centum (5) per annum from January first, eighteen hundred and ninety-three (January 1st, 1893), the interest to be paid and used as hereinafter provided for.

Interest.

ARTICLE IV.

Payment of fund. The fund of five hundred thousand dollars ($500,000) of the principal sum, placed to the credit of the Yankton tribe of Sioux Indians, as provided for in Article III, shall be payable at the pleasure of the United States after twenty-five years, in lawful money of the United States. But during the trust period of twenty-five years, if the necessities of the Indians shall require it, the United States may pay such part of the principal sum as the Secretary of the Interior may recommend, not exceeding $20,000 in any one year. At the payment of such sum it shall be deducted from the principal sum in the Treasury, and the United States shall thereafter pay interest on the remainder.

ARTICLE V.

Distribution of interest. SECTION 1. Out of the interest due to the Yankton tribe of Sioux Indians by the stipulations of Article III, the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior shall determine, as follows: For the care and maintenance of such orphans, and aged, infirm, or other helpless persons of the Yankton tribe of Sioux Indians, as may be unable to take care of themselves; for schools and educational purposes for the said tribe; and for courts of justice and other local institutions for the benefit of said tribe, such sum of money annually as may be necessary for these purposes, with the help of Congress herein stipulated, which sum shall not exceed six thousand dollars ($6,000) in any one year: *Provided*, That Congress shall appropriate, for the same purposes, and during the same time, out of any money not belonging to the Yankton Indians, an amount equal to or greater than the sum set aside from the interest due to the Indians as above provided for.

Equal amount to be appropriated.

Distribution of fund when title of allottees is completed. SECTION 2. When the Yankton tribe of Sioux Indians shall have received from the United States a complete title to their allotted lands, and shall have assumed all the duties and responsibilities of citizenship, so that the fund provided for in section 1 of this article is no longer needed for the purposes therein named, any balance on hand shall be disposed of for the benefit of the tribe as the Secretary of the Interior shall determine.

ARTICLE VI.

Per capita distribution. After disposing of the sum provided for in Article V, the remainder of the interest due on the purchase money as stipulated in Article III shall be paid to the Yankton tribe of Sioux Indians semiannually, one-half on the thirtieth day of June and one-half on the thirty-first day of December of each year, in lawful money of the United States, and divided among them per capita. The first interest payment being made on June 30th, 1893, if this agreement shall have been ratified.

ARTICLE VII.

Coins to adult males. In addition to the stipulations in the preceding articles, upon the ratification of this agreement by Congress, the United States shall pay to the Yankton tribe of Sioux Indians as follows: To each person whose name is signed to this agreement and to each other male member of the tribe who is eighteen years old or older at the date of this agreement, twenty dollars ($20) in one double eagle, struck in the year 1892 as a memorial of this agreement. If coins of the date named are not in the Treasury coins of another date may be substituted therefor. The payment provided for in this article shall not apply upon the principle sum stipulated in Article II, nor upon the interest thereon stipulated in Article III, but shall be in addition thereto.

ARTICLE VIII.

Buildings, etc. Such part of the surplus lands hereby ceded and sold to the United States, as may now be occupied by the United States for agency, schools, and other purposes, shall be reserved from sale to settlers until they are no longer required for such purposes. But all other lands included in this sale shall, immediately after the ratification of this agreement by Congress, be offered for sale through the proper land office, to be disposed of under the existing land laws of the United States, to actual and bona fide settlers only.

ARTICLE IX.

Leases permitted. During the trust period of twenty-five years, such part of the lands which have been allotted to members of the Yankton tribe of Indians in severalty, as the owner thereof can not cultivate or otherwise use advantageously, may be leased for one or more years at a time. But such leasing shall be subject to the approval of the Yankton Indian agent by and with the consent of the Commissioner of Indian Affairs; and provided that such leasing shall not in any case interfere with the cultivation of the allotted lands by the owner thereof to the full extent of the ability of such owner to improve and cultivate his holdings. The intent of this provision is to compel every owner of allotted lands to cultivate the same to the full extent of his ability to do so, before he shall have the privilege of leasing any part thereof, and then he shall have the right to lease only such surplus of his holdings as he is wholly unable to cultivate or use advantageously. This provision shall apply alike to both sexes, and to all ages, parents acting for their children who are under their control, and the Yankton Indian agent acting for minor orphans who have no guardians.

ARTICLE X.

Lands for religious uses. Any religious society, or other organization now occupying under proper authority for religious or educational work among the Indians any of the land under this agreement ceded to the United States, shall

have the right for two years from the date of the ratification of this agreement within which to purchase the land so occupied at a valuation fixed by the Secretary of the Interior, which shall not be less than the average price paid to the Indians for these surplus lands.

ARTICLE XI.

Lands of Indians dying without heirs.

If any member of the Yankton tribe of Sioux Indians shall within twenty-five years die without heirs, his or her property, real and personal, including allotted lands, shall be sold under the direction of the Secretary of the Interior, and the proceeds thereof shall be added to the fund provided for in Article V for schools and other purposes.

ARTICLE XII.

Prior depredations to be deducted.

No part of the principal or interest stipulated to be paid to the Yankton tribe of Sioux Indians, under the provisions of this agreement, shall be subject to the payment of debts, claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of this agreement.

ARTICLE XIII.

Tribal rights.

All persons who have been allotted lands on the reservation described in this agreement and who are now recognized as members of the Yankton tribe of Sioux Indians, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians.

ARTICLE XIV.

Allotments to be confirmed.

All allotments of lands in severalty to members of the Yankton tribe of Sioux Indians, not yet confirmed by the Government, shall be confirmed as speedily as possible, correcting any errors in same, and Congress shall never pass any act alienating any part of these allotted lands from the Indians.

ARTICLE XV.

Payment of scouts.

The claim of fifty one Yankton Sioux Indians, who were employed as scouts by General Alf. Sully in 1864, for additional compensation at the rate of two hundred and twenty-five dollars ($225) each, aggregating the sum of eleven thousand four hundred and seventy-five dollars ($11,475) is hereby recognized as just, and within ninety days (90) after the ratification of this agreement by Congress the same shall be paid in lawful money of the United States to the said scouts or to their heirs.

ARTICLE XVI.

Pipestone Reservation.

Title to be adjudicated.

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians, under the treaty of April 19th, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, at least one competent attorney to represent the interests of the tribe before the court.

If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee to the land.

ARTICLE XVII.

Intoxicants prohibited.

No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded and sold to the United States, nor upon any other lands within or comprising the reservations of the Yankton Sioux or Dakota Indians as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians. The penalty for the violation of this provision shall be such as Congress may prescribe in the act ratifying this agreement.

ARTICLE XVIII.

Former treaty in force.
Vol. II, p. 318.

Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States. And after the signing of this agreement, and its ratification by Congress, all provisions of the said treaty of April 19th, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858.

ARTICLE XIX.

Copy of ratified agreement.

When this agreement shall have been ratified by Congress, an official copy of the act of ratification shall be engrossed, in copying ink, on paper of the size this agreement is written upon, and sent to the Yankton Indian agent to be copied by letter press in the "Agreement Book" of the Yankton Indians.

ARTICLE XX.

Signing agreement.

For the purpose of this agreement, all young men of the Yankton tribe of Sioux Indians, eighteen years of age or older, shall be considered adults, and this agreement, when signed by a majority of the male adult members of the said tribe, shall be binding upon the Yankton tribe of Sioux Indians. It shall not, however, be binding upon the United States until ratified by the Congress of the United States, but shall as soon as so ratified become fully operative from its date. A refusal by Congress to ratify this agreement shall release the said Yankton Indians under it.

In witness whereof, the said J. C. Adams, John J. Cole, and J. W. French, on the part of the United States, and the chiefs, headmen, and other adult male Indians, on the part of the said Yankton tribe of Sioux or Dakota—spelled also Dacotah—Indians, have hereunto set their hands and affixed their seals.

Done at the Yankton Indian agency, Greenwood, South Dakota, this thirty-first day of December, eighteen hundred and ninety-two (Dec. 31st, 1892).

JAMES C. ADAMS, [SEAL.]
JOHN J. COLE. [SEAL.]

The foregoing articles of agreement having been read in open council, and fully explained to us, we, the undersigned, chiefs, headmen, and other adult male members of the Yankton tribe of Sioux Indians, do hereby consent and agree to all the stipulations therein contained.

Witness our hands and seals of date as above.

Wicahaokdeun (William T. Selwyn), seal; and others:

Therefore,

Agreement confirmed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same hereby is, accepted, ratified, and confirmed.

Amount placed to credit of Indians.

That for the purpose of carrying the provisions of this Act into effect there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of six hundred thousand dollars, or so much thereof as may be necessary, of which amount the sum of five hundred thousand dollars shall be placed to the credit of said tribe in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum from the first day of January, eighteen hundred and ninety-three, said interest to be paid and distributed to said tribe as provided in articles five and six of said agreement. Of the amount herein appropriated one hundred thousand dollars shall be immediately available to be paid to said tribe, as provided in section one of article three of said agreement. There is also hereby appropriated the further sum of ten thousand dollars, or so much thereof as may be necessary, which sum shall be immediately available, to be paid to the adult male members of said tribe, as provided in article seven of said agreement. There is also hereby appropriated the further sum of eleven thousand four hundred and seventy-five dollars, which sum shall be immediately available, to be paid as provided in article fifteen of said agreement: *Provided*, That none of the money to be paid to said Indians under the terms of said agreement, nor any of the interest thereon, shall be subject to the payment of any claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of said agreement.

Interest.

Immediately available.

Payments to adults.

Payments to agents.

Proviso.
Prior depredations.

Lands opened to homestead and town site settlement.

That the lands by said agreement ceded, to the United States shall, upon proclamation by the President, be opened to settlement, and shall be subject to disposal only under the homestead and town-site laws of the United States, excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of the State of South Dakota: *Provided*, That each settler on said lands shall, in addition to the fees provided by law, pay to the United States for the land so taken by him the sum of three dollars and seventy-five cents per acre, of which sum he shall pay fifty cents at the time of making his original entry and the balance before making final proof and receiving a certificate of final entry; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid.

Proviso.
Additional payment by settlers.

Soldiers and sailors. R. S., secs. 2304, 2305, p. 452.

Patents to interpreters.

That the Secretary of the Interior, upon proper plats and description being furnished, is hereby authorized to issue patents to Charles Picotte and Felix Brunot, and W. T. Selwyn, United States interpreters, for not to exceed one acre of land each, so as to embrace their houses near the agency buildings upon said reservation, but not to embrace any buildings owned by the Government, upon the payment by each of said persons of the sum of three dollars and seventy-five cents.

Sale, etc., of intoxicants prohibited.

That every person who shall sell or give away any intoxicating liquors or other intoxicants upon any of the lands by said agreement ceded, or upon any of the lands included in the Yankton Sioux Indian Reservation as created by the treaty of April nineteenth, eighteen hundred and fifty-eight, shall be punishable by imprisonment for not more than two years and by a fine of not more than three hundred dollars.

Punishment.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31007

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
CHARLES MIX COUNTY, SOUTH DAKOTA

THE HONORABLE BRUCE V. ANDERSON
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed February 6, 2025

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases **Page**

Statutes

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31007

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Hazen Hunter Winckler, is called "Winckler." Plaintiff and Appellee, the State of South Dakota, is called "State." Because of the overlap between this case and its sister appeal, 31006, and because Winckler asks this Court to consider his jurisdictional arguments in both appeals by reference to the other, the State makes references to both underlying circuit court cases in this brief. References to documents are as follows:

Charles Mix County Criminal File No. 23-297..... SR

Charles Mix County Criminal File No. 24-85..... SR2

Winckler's Appellant Brief in Appeal No. 31006 ..... WB

Winckler's Appellant Brief in Appeal No. 31007 ..... WB2

All document designations are followed by the appropriate page numbers.

JURISDICTIONAL STATEMENT

The Honorable Bruce V. Anderson, Charles Mix County Circuit Court Judge, entered a Judgment of Conviction in Charles Mix County Criminal File 24-85 on January 8, 2025. SR2:600-01. Winckler filed a Notice of Appeal on February 6, 2025. SR2:604-05. This Court has jurisdiction to hear the appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT PROPERLY DENIED WINCKLER'S MOTION TO DISMISS FOR LACK OF JURISDICTION BECAUSE THE CHARLES MIX COUNTY COURTHOUSE AND JAIL ARE NOT IN INDIAN COUNTRY?

The circuit court denied Winckler's motion to dismiss.

18 U.S.C. 1151

South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998)

Bruguier v. Class, 1999 S.D. 122, 599 N.W.2d 364

Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520 (1998)

STATEMENT OF THE CASE

A grand jury indicted Winckler in February 2024 in Charles Mix County Criminal File Number 23-297 for felony failure to appear, violating SDCL 23A-43-31. SR:4-5. The State filed a Part II Information in April 2024. SR:10. While awaiting trial on his failure to appear case, the State filed a Complaint against Winckler in April 2024 in Charles Mix County Criminal File Number 24-85 for simple assault, violating SDCL 22-18-1(5). SR2:4.

After being found guilty of failure to appear in a December 2024 jury trial, Winckler entered a Stipulation with the State that same month. SR:335, 340-42. The Stipulation specified Winckler would admit to the Part II Information in Charles Mix County Criminal File Number 23-297 and enter a guilty plea for simple assault in Charles Mix County Criminal File Number 24-85. SR:340-41. The State agreed to dismiss charges in other criminal files and recommend a sentence of six years imprisonment with six years suspended for Charles Mix County Criminal File 23-297. SR:342.

The circuit court accepted the plea agreement and entered a Judgment of Conviction in January 2025 that sentenced Winckler to six years imprisonment with six years suspended, and it entered an Amended Judgment of Conviction in March 2025 that issued the same sentence. SR:355-57, 371-73. The circuit court also entered a Judgment of Conviction in January 2025 for Charles Mix County Criminal File Number 24-85 sentencing Winckler to 261 days in jail with 261 days credited for time served. SR2:600-01.

STATEMENT OF THE FACTS

Winckler, a member of the Yankton Sioux Tribe, was housed in the Charles Mix County jail on April 2, 2024, when he attacked a fellow inmate. SR2:2. Winckler and the victim were playing a board game, and the victim stated he no longer wanted to play. SR2:2. Winckler then declared the victim still owed him an item placed as a bet before the

game started. SR2:2. As the victim walked away, Winckler ran at him and punched him in his face multiple times and pulled him down to the ground by his hair. SR2:2. He pressed the attack by punching the victim in the face several more times on the ground. SR2:2. Winckler then ran to his cell and tried to coax the victim to come in there with him. SR2:2. The State filed a Complaint charging Winckler with simple assault. SR2:4.

Winckler moved to dismiss the simple assault case on June 19, 2024, alleging that the circuit court lacked jurisdiction because the Charles Mix County jail, located in Lake Andes, was in Indian Country under federal law. SR2:12-14. Winckler also filed a motion to dismiss in his failure to appear case on August 14, 2024, alleging that the Charles Mix County courthouse was in Indian Country. SR:23-24. To allow time to deal with these motions, the circuit court rescheduled Winckler's jury trial in the failure to appear case for the week of December 9, 2024, and it set a hearing for arguments on Winckler's jurisdiction motions for September 11, 2024. SR:66, 688; SR2:610.

After the hearing on September 11, 2024, the circuit court denied Winckler's motions to dismiss and issued memorandum decisions explaining its reasoning. SR:118, 141, 151. The circuit court ruled that the Charles Mix County courthouse and jail did not meet the definition of Indian Country, and therefore it had jurisdiction over Winckler's criminal cases. SR:125; SR2:550.

Winckler pleaded guilty to the simple assault charge and was sentenced to 261 days in jail with 261 days credited. SR2:600-01.

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED WINCKLER'S MOTION TO DISMISS FOR LACK OF JURISDICTION BECAUSE THE CHARLES MIX COUNTY COURTHOUSE AND JAIL ARE NOT IN INDIAN COUNTRY.

A. Background

Winckler moved to dismiss both cases, alleging that the circuit court lacked jurisdiction over his cases because the Charles Mix County courthouse and jail, located in Lake Andes, are in Indian Country under 18 U.S.C. 1151. SR:12-14, 23-25. After a hearing on September 11, 2024, the circuit court ruled it had jurisdiction over both cases because the courthouse and jail were not Indian Country. SR:118-25; SR2:550-57. For this Court's convenience, the Indian Country jurisdiction issue is replicated in its entirety, addressing all three subsections of 18 U.S.C. 1151, in appeals 31006 and 31007.

B. Standard of Review

"Questions of jurisdiction are legal questions reviewed under a de novo standard." *State v. Bettelyoun*, 2022 S.D. 14, ¶16, 972 N.W.2d 124, 128-29 (quoting *State v. Owen*, 2007 S.D. 21, ¶10, 729 N.W.2d 356, 362). Winckler's motion to dismiss attacked this Court's subject matter jurisdiction over this case. When presented with a factual attack, the Court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Alone v. C. Brunsch, Inc.*, 2019 S.D. 41,

¶12, 931 N.W.2d 707, 711 (internal citation omitted). To resolve the factual attack, the Court may consider evidence outside the pleadings. *Hutterville Hutterian Brethren, Inc. v. Waldner*, 2010 S.D. 86, ¶20, 791 N.W.2d 169, 174.

C. Analysis.

Under 18 U.S.C. 1151, Indian Country is defined as:

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
>
> (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
>
> (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The Charles Mix County courthouse and jail do not qualify as Indian Country under any of these definitions.

i. The Land is Not on an Indian Reservation under 18 U.S.C. 1151(a)

a. Historical Overview of Charles Mix County

The United States Supreme Court summarized the creation of the Yankton Sioux Reservation as follows:

> At the outset of the 19th century, the Yankton Sioux Tribe held exclusive dominion over 13 million acres of land between the Des Moines and Missouri Rivers, near the boundary that currently divides North and South Dakota. In 1858, the Yanktons entered into a treaty with the United

> States renouncing their claim to more than 11 million acres of their aboriginal lands in the north-central plains[.]
>
> The retained portion of the Tribe's lands, located in what is now the southeastern part of Charles Mix County, South Dakota, was later surveyed and determined to encompass 430,405 acres. In consideration for the cession of lands and release of claims, the United States pledged to protect the Yankton Tribe in their "quiet and peaceable possession" of this reservation and agreed that "[n]o white person," with narrow exceptions, would "be permitted to reside or make any settlement upon any part of the [reservation]." The Federal Government further promised to pay the Tribe, or expend for the benefit of members of the Tribe, $1.6 million over a 50–year period, and appropriated an additional $50,000 to aid the Tribe in its transition to the reservation[.]

South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 333-34 (1998) (internal citations omitted).

The federal government and the Tribe negotiated a second Treaty in 1892, which Congress adopted in 1894, and this Court summarized that history as follows:

> [A]s immigration increased and pioneers advanced ever westward, settlers, railroaders, miners, and developers brought increasing pressure to further contain Indian tribes, calling for reservations to be opened for settlement and inevitably extinguished. Reformers hoping to improve the welfare of Indian people also sought to resolve the "Indian problem" through a plan of assimilation, encouraging Native Americans to become farmers and ranchers alongside homesteaders. Congress supervened with the Dawes Severalty Act (or General Allotment Act) of 1887, followed by a series of surplus land acts. With the allotment system, the homesteading ideal would be applied to "civilize" Indian people by forcing them onto individual plots cut out of reservations, while freeing unassigned lands for non-Indian settlement[.]
>
> The 1858 Yankton Treaty of Cession created a 430,495–acre reservation along the eastern bank of the Missouri River for the Yankton Tribe. Beginning in 1891, tracts within the

> reservation were allotted to individual Yankton Indians, leaving approximately 168,000 acres of unallotted land. The next year, in response to communications from the Tribe to the Secretary of the Interior, the United States appointed the Yankton Indian Commission to negotiate for the sale of the surplus lands[.]
>
> [A]fter months of negotiation, a majority of the male tribal members and the Commission reached agreement. The first two articles provided:
>
> > Article I.
> >
> > The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as aforesaid.
> >
> > Article II.
> >
> > In consideration for the lands ceded, sold, relinquished, and conveyed to the United States as aforesaid, the United States stipulates and agrees to pay to the said Yankton tribe of Sioux Indians the sum of six hundred thousand dollars ($600,000), as hereinbefore provided for[.]
>
> [T]he unallotted lands were declared available for non-Indian settlement effective May 21, 1895. That same year, South Dakota took over civil and criminal jurisdiction in the region and has since continuously maintained it[.]

State v. Greger, 1997 S.D. 14, ¶¶3-4, 559 N.W.2d 854, 857-59 (internal citations omitted).

The Charles Mix County courthouse and jail sit on lands that were initially allotted to a Yankton Sioux Tribe member, but subsequently title to the land passed to non-Indian possession. *Bruguier v. Class*, 1999 S.D. 122, ¶¶4-5, 599 N.W.2d 364, 366-67. This Court has summarized the history of that land as follows:

> After President Cleveland's proclamation opened the unallotted lands for settlement in 1895, the area filled with settlers. The history is recounted in the writings of author and journalist, Adeline S. Gnirk. In her retelling, the Chicago, Milwaukee & St. Paul Railroad secured a right-of-way in 1897 to extend its line through the opened reservation from Napa to the place where the town of Platte was later founded. The railbed was completed in 1900. Within a year four townsites originated along the railway: Wagner, Lake Andes, Geddes and Platte[.] Typical perhaps is the rise of Lake Andes, which was platted in 1901 and formally established as a town in 1904.
>
> > "When inherited Indian lands commenced to be sold, a location was secured on Section 4, the present site. This land including the 80 acres then platted and the 120 acres adjoining had been allotted to John Arthur, or Sparrow Hawk. He died and in 1904 his only heirs, his wife Taniyawakanwin, and daughter Bessie Zitka Koyewin were induced to sell 80 acres of this land to the Lake Andes Townsite Company.
> >
> > Even during the twenty-five year trust period required by the Dawes Act, Article XI of the 1894 Act allowed for the sale of allotted lands on the death of certain allottees. By 1916, Lake Andes won a decade-long battle with the other railroad towns to become the county seat, replacing Wheeler. Construction on the new courthouse began in 1917. The town remains the county seat to this day. Its courthouse and law enforcement center both sit on formerly allotted land."

Bruguier, 1999 S.D. 122, ¶5, 599 N.W.2d at 366-67 (internal citations omitted).

b. Courts Have Consistently Held That Lake Andes Is Not an Indian Reservation

The United States Supreme Court, Eighth Circuit Court of Appeals, and this Court have all evaluated the legal history of the Yankton Sioux Reservation and Lake Andes, with the conclusion being allotted lands that passed out of Indian ownership are not part the Yankton Sioux

Indian Reservation under 18 U.S.C. 1151(a). *Yankton Sioux Tribe*, 522 U.S. at 357-58; *Bruguier*, 1999 S.D. 122, ¶40, 599 N.W.2d at 378; *Yankton Sioux Tribe v. U.S. Army Corps of Engineers*, 606 F.3d 895, 897 (8th Cir. 2010).

In *Yankton Sioux Tribe*, the United States Supreme Court acknowledged the Yankton Sioux Reservation was created through the Treaty of 1858. 522 U.S. at 334-35. The Court wrote, "only Congress can alter the terms of an Indian treaty by diminishing a reservation[,] and its intent to do so must be 'clear and plain[.]'" *Yankton Sioux Tribe*, 522 U.S. at 343 (citations omitted). Relying on the plain language of the 1894 Act, the Court held Congress diminished the Yankton Sioux Reservation. *Id.* at 343-51, 357. The Court did not evaluate whether Congress completely disestablished the reservation or whether a new boundary existed. *Id.* at 358; *Bruguier*, 1999 S.D. 122, ¶17, 599 N.W.2d at 371. But the Court held that the reservation boundaries of 1858 do not remain intact. *Yankton Sioux Tribe*, 522 U.S. at 357-58.

In *Yankton Sioux Tribe v. United States Army Corps of Engineers*, the Eighth Circuit summarized the subsequent history of Yankton Sioux Reservation federal litigation:

> In *South Dakota v. Yankton Sioux Tribe*[,] the Supreme Court held that the Reservation was diminished by the lands ceded to the United States under the 1894 Act. However, the Court declined to determine whether Congress disestablished the Reservation altogether and remanded the case for further proceedings. Since then, the remaining issues have been litigated in two separate lawsuits before District Judge

> Lawrence Piersol in the District of South Dakota and in multiple appeals to this court.
>
> The lead case concerned the jurisdiction of the Tribe, the State of South Dakota, and the United States over non-ceded lands within the Reservation's original 1858 boundaries. Initially, we rejected the State's contention that the Reservation was disestablished by the 1894 Act, but we held that the Reservation was further diminished when allotted lands passed out of Indian ownership. *Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010 (8th Cir. 1999). We remanded, instructing the district court to determine what categories of land comprised the diminished Reservation. Resolving appeals from that ruling, we recently held that the diminished Reservation consists of allotted lands that remain in trust, additional lands taken into trust, and ceded lands reserved by the 1894 Act ("agency trust lands").

606 F.3d at 897 (8th Cir. 2010) (internal citations omitted). Thus, under the rulings of Eighth Circuit Court of Appeals, allotments that passed out of Indian ownership are not part of the diminished Yankton Sioux Reservation. *Id.* Accordingly, because the land in question was sold to a non-Indian, the land is not Indian Country under 18 U.S.C. 1151(a). *Id.*; *Bruguier*, 1999 S.D. 122, ¶¶4-5, 599 N.W.2d at 366-67.

This Court has gone further than the Eighth Circuit and U.S. Supreme Court. In evaluating a similar jurisdictional issue to what Winckler raises, this Court held that the Yankton Sioux Reservation was "effectively terminated." *Bruguier*, 1999 S.D. 122, ¶40, 599 N.W.2d at 378. Regarding Pickstown, South Dakota, which is in in Charles Mix County, this Court explained that:

> Pickstown is not Indian country under 18 USC § 1151. It is not situated within the boundaries of a reservation because the Yankton Sioux Reservation was effectively terminated by

> the 1894 Act. Nor is it trust land, a dependent Indian community, or property held by the Tribe. Consequently, the State properly exercised jurisdiction over Bruguier[.]

Id. Like the land in this case, the land at issue in *Bruguier* was former allotment land that passed to non-Indian ownership. *Id.* ¶¶4-5, 599 N.W.2d at 366-67; *see also State v. Williamson*, 87 S.D. 512, 515, 211 N.W.2d 182, 183-84 (1973) (holding "the Act of 1894 disestablished that portion of the Yankton Reservation which was ceded and sold to the United States," including the cities of Lake Andes and Wagner). Putting these cases together creates the following overlap: the U.S Supreme Court held the Yankton Sioux Reservation was at the very least diminished in 1894, and this Court and the Eighth Circuit both concluded that the land at issue in Lake Andes cannot be Indian Country under 18 U.S.C. 1151(a) because it was allotted and sold to a non-Indian. *Yankton Sioux Tribe*, 522 U.S. at 343-51; *Bruguier*, 1999 S.D. 122, ¶40, 599 N.W.2d at 378; *Yankton Sioux Tribe*, 606 F.3d at 897. The circuit court had jurisdiction over Winckler.

c. This Court Should Not Overturn Bruguier

Winckler asks this Court to revisit this well-settled matter and overturn *Bruguier*. WB:25-31; WB2:15-23. This Court "[approaches] the question of whether to depart from precedent with great caution and restraint." *In re Noem*, 2024 S.D. 11, ¶48, 3 N.W.3d 465, 479 (quoting *Luze v. New FB Co.*, 2020 S.D. 70, ¶48, 952 N.W.2d 264, 276–77). Five factors are weighed in determining whether to "overrule flawed

precedent: (1) the quality of its prior decision's reasoning; (2) the workability of the prior rule established by its precedent; (3) the consistency of the prior decision with other related decisions; (4) subsequent developments since the erroneous decision; and (5) the extent of the reliance on the earlier decision." *Id.* ¶50, 3 N.W.3d at 480.

Bruguier is a well-reasoned opinion that should not be overturned. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480; *see generally* 1999 S.D. 122, 599 N.W.2d at 364. That is because this Court relied on the plain language of cession in the 1894 Act and compared it to the disestablishment of the Lake Traverse Reservation. *Bruguier*, 1999 S.D. 122 at ¶19, 599 N.W.2d at 371-72 (citing *DeCoteau v. Dist. Cnty. Court for Tenth Judicial Dist.*, 420 U.S. 425, 445 (1975)). This Court also contrasted the differences in the language of the 1894 Act from *Solem v. Bartlett*, where disestablishment of the Cheyenne River Reservation did not occur. *Id.* ¶24, 599 N.W.2d at 374 (citing 465 U.S. 463, 474 (1984)). This Court emphasized the historical understanding that loss of communal tribal ownership meant disestablishment, and highlighted the subsequent exercise of State jurisdiction over the area and historical developments since 1894. *Id.* ¶¶20-22, 35, 599 N.W.2d at 372-73, 376-77. This analysis resulted in a well-reasoned conclusion that Pickstown was not on a reservation because the reservation was "effectively terminated." *Id.* ¶40, 599 N.W.2d at 378.

Because *Bruguier* relied on cases involving other South Dakota tribes and very similar treaty language, it is consistent with other cases in the area. 1999 S.D. 122 at ¶¶22-26, 599 N.W.2d at 373-74; *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. This consistency includes *Yankton Sioux Tribe*, where the U.S. Supreme Court did not reach the disestablishment question because it did not have to, but still held the reservation had been diminished. 522 U.S. at 358. Further, when the U.S. Supreme Court did examine the language employed by the 1894 Act, it found the reservation disestablished. *DeCoteau*, 420 U.S. at 435 n. 16. *Bruguier* is also consistent with other South Dakota cases that predate it and hold that Lake Andes is not on a reservation. *See generally Greger*, 1997 S.D. 14, 559 N.W.2d at 854; *see also Williamson*, 87 S.D. at 515, 211 N.W.2d at 184 (1973). And while *Bruguier* does conflict with Eighth Circuit cases holding the reservation was not disestablished, under the Supremacy Clause those are not controlling authorities this Court must follow. *Greger*, 1997 S.D. 14, ¶6 n. 5, 559 N.W.2d at 859.

Bruguier is a workable opinion. *See generally* 1999 S.D. 122, 599 N.W.2d at 364; *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. Winckler asks this Court for an extreme result—the sudden declaration that half of Charles Mix County is still a reservation, which contradicts over a century of development in the area and multiple precedents ruling otherwise. WB:25-31; WB2:15-23; *see, e.g.*, *Greger*, 1997 S.D. 14, 559

N.W.2d at 854. Such a result would be highly chaotic and unworkable, but keeping the opinion intact is consistent with the historical developments and precedents. *See In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. Similarly, the reliance factor also favors not overturning the precedent. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. *Bruguier* has been extensively relied on because the State has continued to exercise jurisdiction in Charles Mix County. *Id.*; *see generally* 1999 S.D. 122, 599 N.W.2d at 364. This Court has also relied on the opinion by favorably citing it multiple times. See *State v. Owen*, 2007 S.D. 21, ¶40, 729 N.W.2d at 368; *see also State v. Aesoph*, 2002 S.D. 71, ¶44 n. 13, 647 N.W.2d 743, 758.

This Court must look at developments since the opinion in question. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. The major development cited in Winckler's brief is *McGirt v. Oklahoma*—the 5-4 U.S. Supreme Court decision holding that the Creek Reservation in Oklahoma was never disestablished. WB:25-31; WB2:29; *see generally* 591 U.S. 894. But in *McGirt*, the U.S. Supreme Court held "disestablishment has 'never required any particular form of words[.]'" *Id.* at 904 (quoting *Hagen v. Utah*, 510 U.S. 399, 411 (1994)). The *McGirt* Court continued, "[disestablishment] does require that Congress clearly express its intent to do so, '[c]ommon[ly with an] "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal

interests.'" *Id.* (quoting *Nebraska v. Parker*, 577 U.S. 481, 488 (2016)(other citation omitted)).

This Court's ruling in *Bruguier* is consistent with *McGirt* because it acknowledged clear language of cession in Articles I and II of the 1894 Act. *Id.*; 1999 S.D. 122, ¶27, 599 N.W.2d at 374. Such comportment with a major development means *Bruguier* is still good law that should not be overturned. *Id.*; *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480; *McGirt*, 591 U.S. at 904. Further, the U.S. Supreme Court in *McGirt* knew the Yankton Sioux Reservation was at least diminished because it favorably cited *Yankton Sioux Tribe*. *McGirt*, 591 U.S. at 914-16. Winckler failed to put forth a single reason this Court should abandon its precedent. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480.

ii. There is No Dependent Indian Community under 18 U.S.C. 1151(b)

18 U.S.C. 1151(b) defines Indian Country as "all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state." To be a "dependent Indian community" under U.S.C. 1151(b), the land must meet two requirements: 1) it must have been set aside by the Federal Government for the use of the Indians as Indian land; and 2) it must be under federal superintendence. *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998). The land at issue in Lake Andes meets neither of these requirements.

a. The Land Is Not Set Aside by the Federal Government for Use as Indian Land

"The federal set-aside requirement ensures that the land in question is occupied by an 'Indian community.'" *Venetie*, 522 U.S. at 531. In *Venetie*, the Village of Venetie, which is home to the Neets'aii Gwich'in people, sought to be recognized as a dependent Indian community. *Id.* at 524-25. The Secretary of the Interior had set up a reservation for the Neets'aii Gwich'in in 1943 out of land surrounding the Village of Venetie. *Id.* at 523. But in 1971, Congress enacted the Alaska Native Claims Settlement Act, or ANCSA. *Id.* Under ANCSA, Congress rescinded most of the land previously set aside for Alaska Natives and transferred about $962 million and 44 million acres to state-charted private business corporations with Native Alaskan shareholders. *Id.* at 524. The corporations received the land in fee simple with no federal restrictions. *Id.*

The Neets'aii Gwich'in corporations with Native Alaskan shareholders obtained title to former Native Alaskan reservation lands set aside before 1971. *Id.* The corporations then transferred title to the Native Village of Venetie Tribal Government. *Id.* The U.S. Supreme Court held that these lands did not qualify as being set aside for an Indian community because they were held in fee and capable of being alienated to non-Indians and used for non-Indian purposes. *Id.* at 532-33.

In this case, the land in question was set aside by the federal government for use as Indian land, but the status of the land changed when it was sold in fee to a non-Indian. *Bruguier*, 1999 S.D. 122, ¶¶4-5, 599 N.W.2d at 366-67. At that point, the land was used to form Lake Andes, which was chartered under South Dakota law. *Id.* The ability to alienate the allotment to a non-Indian or use it for a non-Indian purpose means the land does not meet the federal set-aside requirement. *Venetie*, 522 U.S. at 532-33. Further, in *Venetie* the Neets'aii Gwich'in corporate ownership of previous reservation land was not enough to fulfill the federal set aside requirement. *Id.* If Indian ownership of former reservation land is not enough to be a federal set-aside, then the land being a former allotment that passed out of Indian hands over one hundred years ago cannot be either. *See id.* Without the federal set-aside requirement, the community in Lake Andes cannot be designated as an "Indian community" and is not Indian country under 18 U.S.C. 1151(b). *Id.* at 530-31.

b. Lake Andes Is Not under Federal Superintendence

"The federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government [so] that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question." *Id.* The inquiry is whether the entire community depends on the Federal Government, not just the Tribe members living in the community. *Id.*

The population of Lake Andes is about two-thirds non-Indian. *Greger*, 1997 S.D. 14, ¶29, 599 N.W.2d at 867; *see also* SR2:313. The federal government provides services and programs to the Tribe, but neither the town of Lakes Andes nor the courthouse or jail directly benefit from those services and programs. SR2:147, 151, 191-92. The programs and services are also spread across the county: Indian Health Services, the Bureau of Indian Affairs, the Yankton Sioux Tribal Headquarters, and tribal court are in Wagner, and Marty Indian School is in Marty. SR2:147, 151, 191-92; *Stathis v. Marty Indian School*, 2019 S.D. 33, ¶2, 930 N.W.2d 653, 655. Under *Venetie*, even if the federal government provides "health, social, welfare, and economic programs to the Tribe," those types of programs are classified as "general federal aid[,]" not "active federal control" that proves "federal superintendence." 522 U.S. at 534.

The State and its subdivisions are responsible for the care and superintendence of Lake Andes: the city of Lake Andes maintains the roads; Charles Mix County provides law enforcement services to the city; the Lake Andes School District provides educational services; and the Lake Andes Fire Department provides fire protection services. SR2:501-23. It is true that the Yankton Sioux Tribal Police has an office in Lake Andes, but there are some parcels of land in Charles Mix County that still constitute Indian country, so the tribal law enforcement services are needed there. SR2:263. Further, the courthouse and jail are not held in

trust, and it is not under the "absolute jurisdiction and control of the United States" or "under the jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians" like other dependent Indian communities. *Venetie*, 522 U.S. at 533-34 (internal citations omitted). The Charles Mix County courthouse and jail where Winckler committed his crimes are not Indian Country under 18 U.S.C. 1151(b).

iii. The Land Is Not an Indian Allotment with Unextinguished Title under 18 U.S.C. 1151(c)

Under 18 U.S.C. 1151(c), "all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same" are Indian country. The land at issue is not Indian country under 18 U.S.C. 1151(c) because the Indian title was extinguished when the land was sold to a non-Indian. *Bruguier*, 1999 S.D. 122, ¶5, 599 N.W.2d at 367.

This Court quoted the U.S. Supreme Court to explain how "Indian title" is extinguished:

> The simple criterion is that as to all the lands thus described it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country, without any further act of Congress, unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case.

Bruguier, 1999 S.D. 122, ¶22, 599 N.W.2d at 373 (quoting *Bates v. Clark*, 95 U.S. 204 (1887)). "Indian title in common, or put another way,

tribal title, ended when tribal ownership ended." *Id.* (citations omitted). In *Bruguier*, this Court held the State has jurisdiction over allotted parcels no longer titled in Indian ownership. *Id.* ¶34, 599 N.W.2d at 376. Thus, the State had jurisdiction over Winckler because the land at issue is an allotment that passed to a non-Indian. *Id.*

The Eighth Circuit examined jurisdiction on the Yankton Sioux Reservation under 18 U.S.C. 1151(c) in *Yankton Sioux Tribe v. U.S. Army Corps of Engineers*, 606 F.3d 895 (8th Cir. 2010). The Eighth Circuit disagreed that the Yankton Sioux Reservation has been disestablished and described the boundaries: "[the] Reservation consists of allotted lands that remain in trust, additional lands taken into trust, and ceded lands reserved by the 1894 Act." *Id.* at 897. But the Eighth Circuit held "lands originally allotted to tribal members which have passed out of Indian hands" are not part of the diminished reservation. *Id.* at 898 (quoting *Gaffey*, 188 F.3d at 1030). Thus, despite disagreement on the disestablishment question, the Eighth Circuit and this Court agree that Indian title is extinguished on an allotment when it is sold to a non-Indian. *Id.* Because the former allotment at issue was sold to a non-Indian, the land is not Indian country under 18 U.S.C. 1151(c). *Bruguier*, 1999 S.D. 122, ¶5, 599 N.W.2d at 367. The circuit court properly denied Winckler's motion to dismiss because the State had jurisdiction over Winckler's simple assault that took place in the Lake Andes jail.

CONCLUSION

Based on the foregoing arguments and authorities, the State requests that Winckler'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 5,123 words.

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

Dated this 12th day of September 2025.

/s/ Jacob R. Dempsey
Jacob R. Dempsey
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 12, 2025, a true and correct copy of Appellee's Brief in the matters of *State of South Dakota v. Hazen Hunter Winckler*, Appeal No. 31007, was served via electronically through Odyssey File and Serve on Tucker Volesky at tucker.volesky@tuckervoleskylaw.com.

/s/ Jacob R. Dempsey
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Assistant Attorney General

REPLY BRIEF OF APPELLANT

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs. **NO. 31007**

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT

OF THE

FIRST JUDICIAL CIRCUIT

CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

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TABLE OF CONTENTS

PAGE(S)

APPENDIX – TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

CASES: **PAGE(S):**

U.S. CONSTITUTION, TREATIES, AND STATUTES:

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31007

PRELIMINARY STATEMENT

The Settled Record will be referred to by the designation "SR." Appellant's Appendix will be referred to by the designation "App" and is cross-referenced to the Settled Record in the foregoing Appendix Table of Contents. Hazen Winckler, Defendant and Appellant, will be referred to as "Winckler." Winckler's Appellant Brief filed in this appeal, No. 31007, will be referred to by the designation "WB." The State of South Dakota, Plaintiff and Appellee, will be referred to as "the State." The State's Appellee Brief in this appeal, No. 31007, will be referred to by the designation "SB." All document designations will be followed by the appropriate page numbers.

Consistent with Winckler's opening briefing (WB 1), Winckler's coinciding appeals, No. 31006 (11CRI23-297) and No. 31007 (11CRI24-085), encompass the same jurisdictional issue. Winckler's arguments in No. 31006 focus on the specific legal questions under 18 U.S.C. § 1151(b) and (c), and his arguments in No. 31007 focus on the specific legal questions under 18 U.S.C. § 1151(a). All arguments under 18 U.S.C. § 1151(a), (b), and (c) apply equally as well in both appeals with respect to the jurisdictional issue raised, which Winckler joins for consideration in each appeal.

JURISDICTIONAL STATEMENT

The parties agree that this Court has jurisdiction under SDCL 23A-32-2. (WB 1; SB 2).

STATEMENT OF THE CASE AND FACTS

The parties agree, and the circuit court found that "defendant [Winckler] is an enrolled member of the Yankton Sioux Tribe, and that all defendant's alleged crimes occurred on the same tract of land…" (App. 8-9; SB 3-4). The said tract of land – part of the aboriginal lands of the Yankton Sioux Indians reserved in the 1858 Treaty, 11 Stat. 743-747, subsequently allotted by US Trust Patent dated May 8, 1891, and specifically guaranteed to the Tribe in perpetuity in the Act of 1894, 28 Stat. 314-318 (App. 38-54) – is included in what is now Lake Andes.

REPLY TO STATE'S ARGUMENTS

This case is resolved by the fundamental principle that decisions about altering sovereign rights are the sole province of Congress, and Congress makes those decisions by speaking clearly in the text. The State's arguments across all subsections of 18 U.S.C. § 1151 hinge on the premise that Indian land here is divested of its Indian country status whenever an individual Indian sells and transfers such land to an individual non-Indian. This is mistaken because Indian country is a form of sovereign status that can only be changed by Congress. And the notion that a sovereign claim to land depends on the race or status of the private landowner has never been prescribed by Congress.

Indian country is defined under federal statute, 18 U.S.C. § 1151, to include all land within Indian reservations, dependent Indian communities, and Indian allotments where the Indian title has not been extinguished. This designation provides a geographic,

territorial basis for tribal sovereignty, where tribal and federal authority apply, and state jurisdiction is generally excluded or limited unless explicitly authorized by Congress. The recognition of Indian country as a distinct jurisdictional space is a form of sovereign status that is not lightly revoked, nor subject to divestiture merely by the transfer of land's legal title from an individual Indian to an individual non-Indian. See McGirt v. Oklahoma, 140 S. Ct. 2452, 2464 (2020).

1. **Indian Country, the Yankton Sioux Reservation, under 18 U.S.C. § 1151(a).**

Without direct reference to the cannons of construction, the State argues that the lands at issue are not Indian country under 18 U.S.C. 1151(a), because they "were initially allotted to a Yankton Sioux Tribe member, but subsequently title to the land passed to non-Indian possession." (SB 8 (citing Bruguier v. Class, 1999 S.D. 122, ¶¶ 4-5, 599 N.W.2d 364, 366-67)). First, the State's Brief (at pp. 6-7) quotes from South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998), wherein the United States Supreme Court recognized that the Yankton Sioux held exclusive dominion over 13 million acres of land by the year 1800 at the latest, and in 1858 the Tribe entered into a Treaty with the United States ceding all aboriginal lands except approximately 400,000 acres located in what is now Charles Mix County, South Dakota. Id. 522 U.S. at 333-34 (citing Treaty of Apr. 19, 1858, 11 Stat. 743, 744). In consideration for the cession of all aboriginal lands except 400,000 acres thereof, the United States promised to protect the Tribe in their "quiet and peaceable possession" of the reserved tract of land and "further promised to pay the Tribe, or expend for the benefit of the Tribe, $1.6 million over a 50-year period, and appropriated an additional $50,000 to aid the Tribe in its transition to the reservation through the purchase of livestock and agricultural implements, and the construction of

houses, schools, and other buildings." Id., at 334 (citing 1858 Treaty, Arts. IV, X, 11 Stat. 744, 747).

Next, however, with reference to the subsequent history including the practice of allotment, the 1892 Agreement and Act of 1894, the State quotes from parts of the South Dakota Supreme Court's descriptions in State v. Greger, 1997 S.D. 14, ¶¶ 2-4, 559 N.W.2d 854, 856-59. (SB 7-8). But see also Yankton Sioux Tribe, 522 U.S. 329, at 335-39; Yankton Sioux Tribe v. Gaffey, 14 F. Supp. 2d 1135, 1139-49 (D.S.D. 1998). The State also quotes from portions of Bruguier v. Class, 1999 S.D. 122, ¶¶ 4-5, 599 N.W.2d 364, 366-67, wherein it was recognized that Lake Andes was platted in 1901, situated within Tribal allotted land which was later acquired by the Lake Andes Townsite Company in 1904 and designated the county seat in 1916, and the county courthouse and law enforcement center both now sit on this land. (SB 8-9). Critically though, the State fails to identify any Act of Congress addressed in the cited case law to support its contention that whether or not allotted land is part of the Yankton Sioux Reservation and thus Indian country under 18 U.S.C. § 1151(a), depends on the race or status of individual landowners in the chain of title.

Neither the United States Supreme Court, Eighth Circuit Court of Appeals, nor South Dakota Supreme Court have ever identified any congressional enactment prescribing a rule of law that "allotted lands that passed out of Indian ownership are not part of the Yankton Sioux Reservation under 18 U.S.C. § 1151(a)." (SB 9-10 (citing Yankton Sioux Tribe, 522 U.S. at 357-58; Bruguier, 1999 S.D. 122, ¶ 40, 599 N.W.2d at 378; Yankton Sioux Tribe v. U.S. Army Corps of Engineers, 606 F.3d 895, 897 (8th Cir. 2010))).

In Yankton Sioux Tribe, the United States Supreme Court addressed a narrow question concerning the status of unallotted, 'surplus' lands that were ceded and sold to the United States under the 1894 Act and specifically limited its holding, concluding only that the 1894 Act "effected a diminishment of Indian territory, [so] the ceded lands no longer constitute 'Indian country' as defined by 18 U.S.C. § 1151(a), and the State now has primary jurisdiction over them." Id., 522 U.S. at 333. The Court wrote, "States acquired primary jurisdiction over unallotted opened lands where 'the applicable surplus land Act freed that land of its reservation status and thereby diminished the reservation boundaries.'" Id., at 343 (quoting Solem v. Bartlett, 465 U.S. 463, 467 (1984)). The Court relied on the 'cession' and 'sum certain' language in Articles I and II of the 1894 Act to hold that Congress diminished the Yankton Sioux Reservation of "all the unallotted lands within the limits of the reservation." Id., at 344, 357. The Court explicitly declined to decide whether the 1894 Act altered the status of the allotted lands which were not ceded to the United States by the Act. Id., at 358 (specifically limiting holding "to the narrow question presented: whether unallotted, ceded lands were severed from the reservation."). Thus, contrary to the State's assertion, the United States Supreme Court in Yankton Sioux Tribe did not conclude that allotted lands which passed out of individual Indian ownership and into the hands of white owners, are not part of the Yankton Sioux Reservation.

Here, under § 1151(a), the question is whether *allotted, non-ceded* lands remain part of the Yankton Sioux Reservation. That question can be answered in the affirmative. In that, because Congress has never passed any law or laws providing for the cession and fixed compensation with respect to any Yankton Sioux allotted lands, but in fact

guaranteed the allotted lands in perpetuity while reaffirming the 1858 Treaty promises in the Act of 1894, at Arts. XIII, XIV, XVIII (App. 39-42, 52-53), it follows that all allotted lands have remained part of the Yankton Sioux Reservation for "when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress." United States v. Celestine, 215 U.S. 278, 285 (1909); Yankton Sioux Tribe v. Podhradsky, 606 F.3d 994, 1010 (8th Cir. 2010) ("Having found no congressional intent in the 1894 Act to divest these lands of their reservation status, we can only conclude that they remain reservation to this day[.]") (citations omitted).

In Yankton Sioux Tribe v. United States Army Corp of Engineers, 606 F.3d 895 (8th Cir. 2010), the Eighth Circuit prefaced its decision upon the litigation history in the case line of Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010 (8th Cir. 1999) and Yankton Sioux Tribe v. Podhradsky, 606 F.3d 994 (8th Cir. 2010):

> "Because this appeal was briefed and argued with the cross appeals pending in Podhradsky, the parties have understandably reiterated their core positions in that case, namely, the Tribe's contention that the Reservation was diminished only by the sales of surplus lands ceded by the 1894 Act (as the Supreme Court held in Yankton Sioux Tribe), and the State's contrary contention that the Reservation was altogether disestablished by the 1894 Act. We rejected those contentions in Podhradsky. That decision is final (subject only to further review by this court or the Supreme Court). Therefore, we will discuss in this opinion only those issues raised by the Tribe that were not presented to and decided by the court in Podhradsky."

Id., 606 F.3d 895, 898. The opinion thus relied principally on "the law of the case"[1] from the Gaffey/Podhradsky litigation in that the Yankton Sioux Reservation continues to exist

[1] "The law of the case doctrine means 'that when a court decides a rule of law, that decision should govern the same issues in subsequent stages of the same case.'" Podhradsky, 606 F.3d 994, 1004 (quoting Gander Mountain Co. v. Cabela's, Inc., 540 F.3d 827, 830 (8th Cir. 2008)).

under § 1151(a), "but does not include allotted land that passed out of Indian hands." Id. (citing Podhradsky, 606 F.3d 994, 1004-1005, applying Gaffey, 188 F.3d at 1030). Much like the Court's analysis in Bruguier, however, certain conclusions in Gaffey are problematic and erroneous in important respects. (WB 16-31).[2]

Critically, the Eighth Circuit in Gaffey did not discuss, analyze, or substantively consider Articles XIII and XIV of the 1894 Act, which confirmed the allotted lands, guaranteed Tribal rights, and promised that Congress would never pass any law alienating any part of the allotted lands from the Yankton Sioux. Id., 188 F.3d 1010, at 1016, 1019 n. 8, 1023-1028. Instead, the Eighth Circuit commented that under the General Allotment or Dawes Act, "it was understood that when an allotment passed out of trust status and the allottee received that land in fee, he also became subject to the civil and criminal laws of the State see Dawes Act, 24 Stat. at 389-90, and could then sell his land to non Indians if he chose." Gaffey, 188 F.3d at 1016; but see also McGirt, 140 S. Ct. 2452, 2464 (discussing practice of allotment and explaining that "Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others"); State v. Brester, 2023 OK CR 10, ¶¶ 26-35, 531 P.3d 125, 135-137 (discussing allotment and Indian country status) (citing cases).

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[2] Notably, while the Court in Bruguier relied on DeCoteau v. Dist. Cty. Court for Tenth Judicial Dist., 420 U.S. 425 (1975), in finding a congressional intent to terminate the reservation, the Eighth Circuit in Gaffey found DeCoteau to be materially distinguishable and not controlling of the issues regarding Yankton Sioux allotted lands under the 1894 Act. Thus, although both Bruguier and Gaffey endorsed an incremental theory of diminishment, the two cases are conflicting on the issue of disestablishment. In any event, McGirt v. Oklahoma applies with equal force to both disestablishment and diminishment. See McGirt, 140 S. Ct. 2452, 2462 (2020) ("only Congress can divest a reservation of its land and diminish its boundaries") (citation omitted) (cleaned up).

Further, the Eighth Circuit couched the Gaffey decision by discussing the subsequent "treatment of the Yankton areas in the years following the passage of the Act" and the fact of non-Indian settlement in the affected region. Id., at 1028-29; but see McGirt, 140 S. Ct. at 2469 ("[t]here is no need to consult extratextual sources when the meaning of a statute's terms is clear"); Oneida Nation v. Vill. of Hobart, 968 F.3d 644, 675 n.4 (7th Cir. 2020) ("We read McGirt as adjusting this [Solem] framework by establishing statutory ambiguity as a threshold for any consideration of context and later history."). And while concluding that the 1894 Act "did not intend for the tribe to retain control over allotted lands which passed out of trust and into non Indian hands," the Eighth Circuit also explicitly qualified the Gaffey decision by acknowledging that it was based on a "lack of controlling precedent" and general 'assumption' that fee lands were not under tribal jurisdiction, and specifically limited its judgment to "hold only that the land reserved to the federal government in the 1894 Act and then returned to the Tribe continues to be a reservation under § 1151(a)[.]" Id., 188 F.3d at 1021, 1030; see also Yankton Sioux Tribe v. Podhradsky, 606 F.3d 985, 989-90 (8th Cir. 2010) (discussing limits of Gaffey holding). Finally, the Eighth Circuit's decision in Gaffey is an outlier that stands on its own as "the only case in which a Court of Appeals has embraced an incremental theory of diminishment." Oneida Nation, 968 F.3d 664, 680-681 ("the theory of incremental diminishment embraced in *Gaffey* – in which individual parcels of land would be removed from the reservation as they passed into the hands of non-Indians – is at odds with *Seymour*, *Moe*, and the Supreme Court's hostility toward rules that would create checkerboard jurisdiction").

Thus, U.S. Army Corps of Engineers merely noted adherence to Gaffey as the 'law of the case' in considering the validity of land transfers by the U.S. Army Corps of Engineers to the State of South Dakota. But Gaffey's approach of incremental diminishment is premised on the notion that the practice of allotment created the possibility that some parcels of the Yankton Sioux Reservation might – at some unknown times, perhaps decades later – pass into non-Indian hands and thereby further diminish the Reservation beyond the unallotted lands ceded by the Act of 1894. Illustrative of the fundamental flaw in that premise is the question recently posed by the Seventh Circuit, "How could we say that Congress clearly intended to do something (diminish the Reservation) when it had no idea when or to what extent the Reservation would be diminished?" Oneida Nation, 968 F.3d at 679 n.10. Still, as the State correctly notes, the South Dakota Supreme Court "has gone further" by concluding in Bruguier that the Yankton Sioux Reservation was "effectively terminated" because of incremental diminishment. (SB 11 (citing Bruguier, 1999 S.D. 122, ¶ 40, 599 N.W.2d at 378)). But that conclusion conflicts with Gaffey's conclusion of a continuing Yankton Sioux Reservation notwithstanding diminishment.

The State additionally cites State v. Williamson, 87 S.D. 512, 515, 211 N.W.2d 182, 183-184 (1973) (SB 12), which held that Articles I and II of the 1894 Act provided "an outright cession and sale by the Yankton Sioux Tribe of its unallotted lands within the reservation to the United States." Id. In so holding, however, the Court erroneously determined that the town of Lake Andes was situated upon unallotted lands ceded and sold by the Tribe to the United States. Id., 87 S.D. 512, at 514. Here, it is undisputed that Lake Andes is situated upon Yankton Sioux allotted land – that being, aboriginal lands

reserved in the 1858 Treaty, subsequently allotted, and specifically guaranteed to the Tribe in perpetuity in the 1894 Act. (App. 37-54).

The State contends this Court should continue to adhere to its Bruguier opinion. (SB 13-16). First, the State argues that the decision is well-reasoned because it relied on the "plain language" of cession in Articles I and II of the 1894 Act and compared it to similar language found in the Sisseton Agreement addressed in DeCoteau. (SB 13). However, while the 1894 Act's Article I provided for cession of "all the unallotted lands" and Article II provided for the sum certain payment of $600,000 in consideration for the unallotted lands thereby ceded, the State fails to identify any language in the Act of 1894 ceding any of the *allotted lands*. Nor did the Court in Bruguier identify any such language with respect to the allotted lands.

Instead, the Bruguier Court, as the State points out, cited to DeCoteau and likened the Yankton Agreement in the 1894 Act, to the Sisseton Agreement ratified by the Act of March 3, 1891, 26 Stat. 1035. However, if the US Supreme Court thought DeCoteau controlled the reservation status of the Yankton Sioux allotted lands, it would have held so in Yankton Sioux Tribe, wherein the State expressly made the claim. It did not. Moreover though, the Bruguier Court omitted important distinctions, including that the background of the Sisseton Agreement "was very different from that of the 1894 Act" because Tribe members to the Sisseton Agreement "expressed a clear desire to terminate their reservation," whereas "there was no expression by the [Yankton Sioux] of an intent to eliminate their reservation." Gaffey, 188 F.3d at 1020 (discussing and distinguishing DeCoteau). And most importantly, particularly considering the guidance provided in McGirt, "the content and wording of the agreements are very different, aside from the

particular cession language the Supreme Court compared in Yankton." Gaffey, supra, (citing 26 Stat. 1036-38, compared with 28 Stat. 314-18).

In this regard, the Sisseton Agreement was comprised of just six articles, Articles I through VI, 26 Stat. 1035-38, whereas the Yankton Agreement was comprised of twenty articles, Articles I through XX, 28 Stat. 314-318. Critically, there are no counterparts in the Sisseton Agreement to Articles V, VIII, XI, XIII, XIV, XVII, and XVIII found in the Yankton Agreement, see Article V (providing for the set aside and use of interest monies to continue funding services for Yanktons' most helpless members, for schools and educational purposes, and "for courts of justice and other local institution for the benefit of said tribe"); Article VIII (reserving from sale surplus lands occupied for agency, schools, and other purposes); Article XI (providing for the disposition of allotted lands of allottees who die without heirs); Article XIII (guaranteeing Yankton Sioux Tribal rights, including "the undisturbed and peaceable possession of their allotted lands" and "all the rights and privileges of the tribe"); Article XIV (promising that "Congress shall never pass any act alienating any part of these allotted lands from the Indians"); Article XVII (prohibiting liquor upon any ceded lands and "upon any other lands within or comprising the reservations of the Yankton Sioux"); and Article XVIII ("[1858 Treaty] shall be in full force and effect").

The provisions found in the 1894 Act express the clear intent of the parties to continue the Yankton Sioux Reservation, an intent that the United States Supreme Court did not find from the Sisseton Agreement. With respect to the allotted lands addressed in the 1894 Act, Congress explicitly guaranteed the Yankton Sioux "Tribal rights" including the "undisturbed and peaceable possession of their allotted lands," "all the rights and

privileges of the tribe[,]" and promised that "Congress shall never pass any act alienating any part of these allotted lands from the Indians." 1894 Act, Arts. XIII-XIV. The 1894 Act also specifically referenced and reaffirmed the 1858 Treaty promises. 1894 Act, Art. XVIII. By material contrast, no such language can be found in the Sisseton Agreement. The State fails reconcile the statutory text found in the Act of 1894 with the notion that the Yankton Sioux Reservation was "effectively terminated" or otherwise disestablished of its allotted lands by the Act.

The State further cites to the Bruguier Court's comment on the analysis taken from Solem v. Bartlett, 465 U.S. 463 (1984), wherein the Supreme Court considered the language of the Cheyenne River Act and concluded that Congress neither disestablished nor diminished the Cheyenne River Reservation. (SB 13 (citing Bruguier, 1999 S.D. 122, ¶ 24, 599 N.W.2d at 374, quoting Yankton Sioux Tribe, 522 U.S. at 350, discussing Solem, 465 U.S. at 474)). The Bruguier Court's review of language from Solem was limited to the import of Article VIII of the 1894 Act and went as far as to recognize that "[r]eserving to the United States lands for agency, school and other purposes suggests continued Government support for tribal members, and possibly evinces the notion of a continuing reservation." Bruguier, 1999 S.D. at ¶ 24, 599 N.W.2d at 374.

In dismissing that notion though, the Bruguier Court stated that "setting aside government land for school and agency purposes was common, even for a terminated reservation," citing footnotes 16 and 19 from DeCoteau and stitching together snippets from a report of Government negotiators and the Senate Committee on Indian Affairs, to posit that "it was understood that on the Lake Traverse Reservation, the United States would continue to own land for school and agency purposes." Bruguier, 1999 S.D. 122, ¶

25, 599 N.W.2d at 374 (citing DeCoteau, 420 U.S. at 345 n. 16, 348 n. 19). A full reading of footnotes 16 and 19, however, shows that DeCoteau is inapposite because the Sisseton expressed a clear desire to terminate their reservation in negotiating for greater allotments for all Tribe members and a price per acre payment for the unallotted land, through a comprehensive scheme unique and integral to the Sisseton Agreement. Further, in DeCoteau, where the Lake Traverse Reservation was held to be disestablished, the Supreme Court found that any school sections provisions were irrelevant to the dispute before the Court, recognizing that "[t]he 'school provisions' clause was not part of the 1889 [Sisseton] Agreement." DeCoteau, 420 U.S. at 444 n.33. In fact, while the Sisseton Agreement did provide a right to any religious society or organization occupying unallotted land for religious or educational work to purchase the land, at Article II, it is devoid of any provisions providing that the United States would continue to own land for school and agency purposes. See Articles I through VI, 26 Stat. 1035-38. Thus, the Bruguier Court seemingly missed this omission from the Sisseton Agreement, while giving gloss to discreet language from the historical record to dismiss the import of Article VIII of the 1894 Act.

Additionally, the State extrapolates the notion that "loss of communal tribal ownership meant disestablishment" from the Bruguier Court's statements on certain general perceptions and commentary from the allotment era, to support the argument of disestablishment based on subsequent events and expectations since 1894. (SB 13 (citing Bruguier, ¶¶ 20-22, 36, 599 N.W.2d at 372-73, 376-77)). Quite simply though, the analysis relied upon by the State ignores plain language of the 1894 Act explicitly guaranteeing "Tribal rights" to the Yankton Sioux, including the "undisturbed and

peaceable possession of their allotted lands" and "all the rights and privileges of the tribe[,]" promising that "Congress shall never pass any act alienating any part of these allotted lands from the Indians," and reaffirming the 1858 Treaty promises. 1894 Act, Arts. XIII, XIV, XVIII. It also squarely conflicts with the rule reiterated in McGirt "that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others." Id., 140 S. Ct. 2452, 2464-65 (citations omitted). Congress can reserve Tribal rights to allow them "to continue to exercise governmental functions over land even though they no longer own it communally." Id.

The rule extrapolated from Bruguier that private land ownership equates to disestablishment of a reservation is also contradicted by the Bruguier Court's quotation from Price and Clinton, recognizing, "Once a reservation has been established, or dependent Indian community shown to exist, it will remain Indian country until terminated by Congress, *irrespective of the nature of the land ownership.*" Id., 1999 S.D. at ¶ 12 (quoting Monroe Price & Robert Clinton, Law and the American Indian 96 (2d ed 1973)) (emphasis added). Considering the guidance provided by McGirt together with the explicit language in the 1894 Act guaranteeing to the Yankton Sioux the allotted lands in perpetuity and reinforcing the 1858 Treaty, the notion that private land ownership and subsequent events "effectively terminated" the Yankton Sioux Reservation is erroneous. While the prior cases of this Court conflict with Eighth Circuit cases holding that the Yankton Sioux Reservation continues to exist, McGirt is controlling authority with respect to the analysis that this Court must follow in interpreting federal law. Art. VI, cl. 2, US Const.

It follows that Bruguier is not a workable opinion nor consistent with related decisional authorities because it operates on an erroneous assumption that connects the nature of private land ownership to the lands' reservation or Indian country status, preventing concrete predictable reliance on what is or is not Indian country. Tying a sovereign claim to the "race of the owner" leads to absurd results of further patchwork jurisdiction toggling on every real estate transaction, which the law wisely avoids. Indian country status provides certainty based on historical and legal boundaries described in treaties and statutes, not based on fleeting demographics or individual land sales.

While the State characterizes Winckler's requested relief as "an extreme result" that would be "highly chaotic and unworkable," it does not describe how. (SB 14-15); (see SR 618). In fact, Winckler's appeals concern a state court's criminal jurisdiction over an Indian defendant on a specifically described parcel of land upon which Lake Andes is situated. Winckler's requested relief will not affect the state court's criminal jurisdiction over white people in the area, nor is Winckler asking this Court to determinate issues such as taxation, civil regulation, voting, economic development, or environmental protection, which would encompass additional factual and legal considerations not at issue here. Further, as to any effects on law enforcement matters, both the Yankton Sioux Tribe Law Enforcement Center and the Charles Mix County Sheriff's Office are in Lake Andes, so the lands at issue already have a strong law enforcement presence from multiple jurisdictional authorities. Without a doubt, cooperation among these governmental entities to provide law enforcement and public safety services to the area is advisable, and such government-to-government cooperation has already proven workable. E.g., Yankton Sioux Tribe v. Podhradsky, 529 F. Supp. 2d

1040, 1057-58 (D.S.D. Dec. 19, 2007) ("the federal, state, county and city law enforcement officers working on the Yankton Sioux Reservation have established a workable system regarding the exercise of criminal jurisdiction"); (see also SR 262-266). Any concern over jurisdictional gaps in the exercise of checkerboard criminal jurisdiction on the Yankton Sioux Reservation can be addressed by the appropriate authorities, including through cross-deputization, extradition, or other government-to-government cooperation agreements. And ultimately, Congress has the exclusive authority to define Indian country jurisdiction, which it can change and redefine if it so chooses.

The State fails to address the substance of Winckler's arguments and authorities explaining why the Bruguier opinion should be overruled. The fact that Bruguier has been cited for discreet propositions by the South Dakota Supreme Court in subsequent cases not involving the Yankton Sioux and has undoubtedly been pointed to by the State to support sweeping assertions of jurisdiction and disestablishing the Yankton Sioux Reservation, does not speak to the opinion's workability nor make it any more consistent with other decisions in this area of law. Any reliance on the 1999 opinion for the proposition that the Yankton Sioux Reservation has been "effectively terminated" cannot be justified given the Yankton Sioux legal history, 1858 Treaty and 1894 Act, public records, realities on the ground, the continuing presence of tribal and federal authority over the area and US Supreme Court and Eighth Circuit case law that continues to recognize the existence of the Yankton Sioux Reservation. In as much as Indian country status continues to exist with respect to allotted lands of the Yankton Sioux Reservation, Bruguier, like Gaffey, prevents predictable and concrete reliance on what is or is not Indian country with the theory of incremental diminishment.

Finally, to briefly touch on McGirt, the State points to the Supreme Court's recognition that disestablishing or diminishing a reservation requires that "Congress clearly express its intent to do so," which it has done with "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests" in the affected lands. (SB 15-16); see McGirt, 140 S. Ct. 2452, at 2463-64. But while Articles I and II of the 1894 Act contain language of cession and certain payment for the Yankton Sioux' unallotted lands, no such language exists with respect to the allotted lands. Instead, Congress explicitly guaranteed the allotted lands to the Yankton Sioux in perpetuity and reaffirmed the 1858 Treaty. 1894 Act, Articles XIII, XIV, XVIII. Moreover, the State does not point to any ambiguous language in the 1894 Act that could be read as an Act of disestablishing the allotted lands from the Yankton Sioux Reservation. "Nor may a court favor contemporaneous or later practices *instead* of the laws Congress passed." McGirt, 140 S. Ct. at 2468 (emphasis original). As the State acknowledges, the United States Supreme Court in McGirt cited Yankton Sioux Tribe in restating the fundamental rule of statutory interpretation: "There is no need to consult extratextual sources when the meaning of a statute's terms is clear." Id., 140 S. Ct. at 2469. Bruguier goes much further than the terms found in the plain text of the 1894 Act. 1999 S.D. 122, ¶¶ 28-35, 599 N.W.2d 364, at 375-376. Accordingly, and as previously discussed, this Court should reconsider and overrule Bruguier.

Winckler's reply to the State's arguments under 18 U.S.C. § 1151(b) and (c) is set forth in the Reply Brief of Appellant in appeal no. 31006 and is incorporated herein by this reference.

CONCLUSION

For the foregoing reasons, and those set forth in Winckler's opening brief, the Court should vacate Winckler's conviction.

Dated this 13th day of October 2025.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	 No. 31007 **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that Microsoft Word was used in the preparation of the foregoing Appellant's Reply Brief and that the word count done pursuant to that word-processing system calculated 4,906 words in the foregoing Reply Brief of Appellant, in accordance with SDCL 15-26A-66.

Dated this 13th day of October 2025.

/s/ Tucker J. Volesky
TUCKER J. VOLESKY
Attorney for Appellant

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31007 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Appellant's Reply Brief in the above-entitled matter was served electronically through Odyssey file and serve system which sent notification of such filing to the Attorney General for South Dakota, Marty Jackley, and Assistant Attorney General Jacob R. Dempsey, atgservice@state.sd.us, on the 13th day of October 2025.

The undersigned further certified that on the 14th day of October a true and correct copy of the foregoing Appellant's Reply Brief in the above-entitled matter was re-served electronically through Odyssey file and serve system on the Attorney General for South Dakota, Marty Jackley, Assistant Attorney General Jacob R. Dempsey, atgservice@state.sd.us, and Charles Mix County State's Attorney Steve Cotton, cmsacotton@heinet.net.

/s/ Tucker J. Volesky
TUCKER J. VOLESKY