IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	
	*	Case #30894
v.	*	
	*	
RENEE LOUELLA TWO BULLS,	*	
	*	
Defendant and Appellant.	*	
	*	

30894

APPEAL FROM THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

The Honorable
Circuit Court Judge
Jon Sogn

APPELLANT'S BRIEF

Marty Jackley
Office of the Attorney General
1302 E Highway 14 STE 1
Pierre, SD 57501

Daniel Haggar
States Attorney
415 N Dakota Ave
Sioux Falls, SD 57104

Mark Kadi & Tracy Miller
Appellant's Counsel
415 N Dakota Ave
Sioux Falls, SD 57104

Notice of Appeal filed on November 13, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGE(S)**

STATUTES:

OTHER CITATIONS:

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	
	*	Case #30894
v.	*	
	*	
RENEE LOUELLA TWO BULLS,	*	
	*	
Defendant and Appellant.	*	
	*	

PRELIMINARY STATEMENT

The Arraignment transcript will be referred to as "A" followed by the page number. The trial transcripts will be referred to as "T" followed by the transcript volume number and page number. The settled record will be referred to as "SR" followed by the page number. The sentencing hearing transcript will be referred to as "S" followed by the page number. Any exhibits will be referred to as "E" followed by an exhibit letter or number. The Appellant will be referred to as the "Appellant" or "Defendant" or "Two Bulls". Appellant's counsel at the underlying proceedings in circuit court will be referred to as "trial counsel".

JURISDICTIONAL STATEMENT

The trial court entered the Appellant's judgment and sentence in Minnehaha County CR. 22-8099 on October 21,

2024. SR90. A Notice of Appeal was timely filed on November 13, 2024. SR286. This Court has jurisdiction of this appeal pursuant to SDCL 15-26A-3, SDCL 23A-32-2, and SDCL 23A-32-9.

LEGAL ISSUES ON APPEAL

I. WHETHER TRIAL COURT ERRED DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE EVIDENCE FAILED TO ESTABLISH THE DEFENDANT ATTEMPTED TO USE HER CAR AS A DEADLY WEAPON TO INFLICT BODILY INJURY BY DRIVING HER CAR AWAY FROM THE ALLEGED VICTIM IN ABSENCE OF ANY VERBAL THREATS.

The trial court denied the motion.

State v. Robertson, 2023 S.D. 19, 990 N.W.2d 96.

State v. Seidschlaw, 304 N.W.2d 102, 105 (SD 1981)

State v. Beshara, 65 S.D. 445, 274 N.W. 836, 837 (1937)

STATEMENT OF THE CASE

On December 15, 2022, the Minnehaha County grand jury indicted the Defendant on charges of Aggravated Assault on a Law Enforcement Officer (Dangerous Weapon) per SDCL 22-18.1.1(2). The Appellant was arraigned on this charge on December 28, 2022, where she entered a plea of not guilty. The matter proceeded to jury trial on March 6, 2023, wherein the jury rendered a guilty verdict. SR82. On October 15, 2024, the trial court sentenced her to 15 years

in the penitentiary, of which 5 years was suspended. SR90. This appeal followed.

STATEMENT OF FACTS

On December 1, 2022, Renee Two Bulls and her sister, Shakiara Two Bulls, stopped at a Kum n' Go gas station in Sioux Falls, South Dakota. T15. Renee was driving a red Buick and pulled it up to a gas pump in the middle of the island, parked, and then entered the gas station with the front seat passenger, Shakiara. Ex.4. T16. Meanwhile, Officer McMahon with the Sioux Falls Police Department was on patrol duty this day and was in the parking lot of the Kum n' Go gas station at the same time Renee and Shakiara arrived. T15. The red Buick caught his attention as he believed it may be one of interest from a call for service the evening before, where a person of interest in that call was identified as Shakiara Two Bulls. T16.

As the women entered the gas station, Officer McMahon called for backup officers to assist him in the investigation of the red Buick. T17. Before those officers arrived, though, Renee and Shakiara exited the gas station and returned to the Buick parked at the center gas pump. T17. Instead of waiting for backup officers to

arrive, on his own, Officer McMahon decided to approach who he believed to be Shakiara. T17, 29.

Officer McMahon pulled his vehicle up to the gas pump directly behind the red Buick but did not activate his amber or emergency lights equipped on his patrol vehicle. Ex.4. T29. T30. Renee entered the driver's seat door simultaneously to Officer McMahon's vehicle stopping at the gas pump behind them. Ex.4. T18, 30. Officer McMahon then exited his patrol vehicle and started to walk towards Shakiara who was still standing near the gas pump. Ex.4.

As Officer McMahon reached the front of his patrol vehicle, Shakiara then began to walk towards the front seat passenger door. Ex.4. T18. As she's approaching the front passenger door, Officer McMahon says the first words to her of "hello" and "hey." Ex.5. T31-32.

Then as Shakiara entered the front passenger seat, Officer McMahon placed his hands on her shoulders from behind and started to pull on her shoulders and arms in an effort to yank her out of the front passenger seat. Ex.5. T32. The only thing he said while he was pulling on Shakiara was "no, no, no". Ex.5. T32. At no time did Officer McMahon say "Police, stop", "freeze", or "get out of the vehicle". Ex.5. T32. He also never delivered any

commands to Renee at any time, and instead just tugged on Shakiara's arms saying "no". Ex.5. T35. As the yanking of Shakiara's body ensued, Shakiara can be heard yelling "go" and Renee can be heard saying "get your hands off of her." Ex.5. T32.

Seconds later Renee put the vehicle into drive, and it propelled forward briefly before the brake lights can be seen jolting the vehicle to a quick stop. Ex.4. T34. During that brief propel forward, Officer McMahon released his grip of Shakiara as the vehicle moved forward. Ex.4. T34. Instead of letting the moving car leave, though, Officer McMahon chose to grip on to the moving vehicle again and continued to run alongside it. Ex.4. Ex.5. T34.

Immediately in front of the red Buick was a cement curb bordering the parking lot; there were no exits directly in front of the Buick. Ex.4. T34. Having nowhere to go directly ahead of her, Renee turned the vehicle to the right to avoid the curb as Officer McMahon continued to hold on to the vehicle until it completed a full turn. Ex.4. T34. Officer McMahon "wish[ed] there wasn't a curb because she would have went straight." T34. He then released his grip of the Buick, did a little spin, and fell into the snowbank. T35.

Simultaneous to the release of the vehicle, his backup officer, Officer Pina, arrived on scene as the red Buick left the parking lot. T35. Neither officer pursued the red Buick as it left the parking lot. T35. Officer McMahon later testified at trial that he sustained a very small scratch. T28. He later admitted at trial that it was possible he testified before the grand jury under oath that he did not sustain any injuries. T28.

ARGUMENT

I. THE TRIAL COURT ERRED DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE EVIDENCE FAILED TO ESTABLISH THE DEFENDANT ATTEMPTED TO USE HER CAR AS A DEADLY WEAPON TO INFLICT BODILY INJURY BY DRIVING HER CAR AWAY FROM THE ALLEGED VICTIM IN ABSENCE OF ANY VERBAL THREATS.

The Defendant presented a motion for judgment of acquittal which the trial court denied. T:55-57. The trial court shall grant a motion for judgment of acquittal where "the evidence is insufficient to sustain a conviction of the offense or offenses." SDCL 23A-23-1. In this case, there was no evidence demonstrating the Appellant attempted to use her car as a deadly weapon to inflict bodily injury. The trial court denied the Defendant's motion for judgment of acquittal thereby committing error. *De novo* review should apply on this appeal. See State v. Berhanu, 2006 S.D. 94, 724 N.W.2d 181.

This Court recently addressed aggravated assault charges concerning use of a car as a deadly weapon in State v. Robertson, 2023 S.D. 19, ¶ 3, 990 N.W.2d 96, 98. In Robertson, the defendant entered the victim's truck as the victim endeavored to chase the defendant. State v. Robertson, 2023 S.D. 19, ¶¶ 3-5, 990 N.W.2d 96, 98-99. The defendant sat in the driver's seat while the door remained open. Id. The victim had slipped, which delayed his approach. The defendant had since put the truck in gear. Id.

The victim reached inside the truck to hold something which prevented the defendant from shutting the door. Id. Both the truck and the victim were moving as the victim was now being dragged. Id. The victim further reached into the cab to put the defendant into a headlock. Id. The defendant then told the victim "let's go for a [deleted] ride". Id. The victim eventually pulled the defendant out of the truck, causing the defendant to fall on top of the victim. Id. The defendant did not hold onto the victim or otherwise restrain him. State v. Robertson, 2023 S.D. 19, ¶ 26, 990 N.W.2d 96, 103. The victim received injuries, but this Court noted the case was charged out as aggravated

assault via physical menace per SDCL 22-18-1.1(5). Id. Injuries were not a required element for such a charge.

The defendant argued on appeal, inter alia, there was "insufficient evidence that he used Tucker's pickup as a 'deadly weapon' in a physically menacing manner." State v. Robertson, 2023 S.D. 19, ¶ 26, 990 N.W.2d 96, 103. The defendant tactically attempted to minimize the impact of the defendant's "let's go" language by arguing that more than mere words were required to constitute an aggravated assault. Actions were required. State v. Robertson, 2023 S.D. 19, ¶ 30, 990 N.W.2d 96, 104.

This Court noted that a truck "is not calculated or designed to inflict death or serious bodily harm, it can be used in a manner that is likely to inflict death or serious bodily harm and, when so used, it constitutes a dangerous weapon." State v. Robertson, 2023 S.D. 19, ¶ 28, 990 N.W.2d 96, 103; citing State v. Seidschlaw, 304 N.W.2d 102, 105 (S.D. 1981)); State v. Koester, 519 N.W.2d 322, 325 (S.D. 1994). It further noted "'[p]hysical menace 'requires more than words: there must be some physical act on the part of the defendant.'" State v. Robertson, 2023 S.D. 19, ¶ 27, 990 N.W.2d 96, 103. This Court concluded "Robertson's *actions and statement* are sufficient to show

that he attempted to put Tucker in fear of imminent serious bodily harm by physical menace with a deadly weapon." State v. Robertson, 2023 S.D. 19, ¶ 32, 990 N.W.2d 96, 104 (emphasis *added*). The combination of actions and a nefarious statement justified rejection of his motion for judgment of acquittal.

The defendant's "let's go" *statement* provided necessary augmentation to the defendant's *actions* to sustain a conviction. Otherwise, simply trying to drive away would not present a physical menace. See State v. Robertson, 2023 S.D. 19, ¶ 26, 990 N.W.2d 96, 103. The likelihood that fear of physical harm must be more than a possible result: it must be a probable result. State v. Robertson, 2023 S.D. 19, ¶ 30, 990 N.W.2d 96, 103; citing State v. Seidschlaw, 304 N.W.2d 102, 106 (S.D. 1981)("It cannot be said that an automobile being driven in a lawful manner and at a lawful speed, or even one being driven carelessly, is being used in a manner that will probably result in death or serious bodily harm. Although such a result may be possible, it is not probable."); see also State v. Beshara, 65 S.D. 445, 274 N.W. 836, 837 (1937) ("The State failed to present other evidence of the conduct of the appellant. It does not necessarily follow, from the

fact that an automobile strikes and passes over a pedestrian, that its driver is guilty of the conduct described by the statute in question.").

In the present case, the State accused the Defendant of attempting to cause or actually cause bodily injury per SDCL 22-18.1.1(2). Physical menace was not alleged per SDCL 22-18.1.1(5). The vehicle did not strike him. T:45. He told Officer Pina he was "OK". T:35. As such, an opportunity to convict for a bodily injury that actually occurred was not conceivably available for a rational jury to consider.

A defendant's statements may be pertinent to whether an attempt occurred. See State v. Robertson, 2023 S.D. 19, ¶ 31, 990 N.W.2d 96, 104. The Defendant's brief statement to Officer McMahon "to get your hands off her" lacked any inference of harm directed to him. T:14. This is especially so in light of Officer McMahon's communication being limited to "no no no". T:11; T:13; T:19. No threatening language can be discerned from the record. There was no equivalent of "get your hands off her, (*or else* you will go for a ride)".

Complying with less than vague directions from an individual merely purporting to be a law enforcement

officer is not without risks for the citizens of our state or other states. In a case involving explicit commands to a person, a capital defendant's past crime of impersonating an officer to kidnap a young woman was addressed in State v. Robert, 2012 S.D. 60, ¶ 35, 820 N.W.2d 136, 147. Robert involved a capital punishment sentence review. Part of that review involved examination of that defendant's 2005 kidnapping conviction. In that case, the defendant kidnapped the victim equipped with rope, a shovel, and pornographic material. State v. Robert, 2012 S.D. 60, ¶ 35, 820 N.W.2d 136, 147. The defendant had initially pulled over the victim's vehicle posing as a law enforcement officer. Id.; State v. Robert, 49CRI11-2028, Findings of Fact and Conclusions of Law (November 10, 2011)(Finding of Fact #87-88). The victim was placed in the trunk of her vehicle but was eventually rescued.

Unfortunately, fears arising from actions by those purporting to a be a law enforcement, who in fact are not, have been present and justified by victims in case law throughout time. See Montsdoca v. State, 84 Fla. 82, 85, 93 So. 157, 158 (1922). In Montsdoca, Florida law permitted robberies to be charged when fear is used to implement a taking of property. Id. In that case, the

defendant posed as a law enforcement officer who pretended he was authorized to seize the property, with threats of prosecution otherwise for noncompliance. Montsdoca v. State, 84 Fla. 82, 88, 93 So. 157, 159 (1922); see also Williams v. State, 51 Neb. 711, 71 N.W. 729, 730 (1897) ("the third defendant, appeared upon the scene, representing himself as a police officer"); Bussey v. State, 71 Ga. 100, 101 (1883)("the defendant pretended that he was marshal of the town").

The act of proceeding away from a situation such as this case denotes an intent to flee from fear by the defendant, not to instill fear in another (uncharged), or attempt to cause them injury (charged). As per Robertson, this Court's focus should be "on what the defendant was *attempting* to do[.]" State v. Robertson, 2023 S.D. 19, ¶ 31, 990 N.W.2d 96, 104. (emphasis *original*). An intent to drive away alone per Robertson, is insufficient to establish aggravated assault.

Evidence of any criminal intent to attempt to cause bodily injury is similarly speculative and completely absent. Officer McMahon conceded at trial he "could not speak" as to what was the Defendant's knowledge. T:36. However, guilty verdicts cannot be grounded in speculation.

State v. Beshara, 65 S.D. 445, 274 N.W. 836, 837 (1937) ("The State failed to present other evidence of the conduct of the appellant. It does not necessarily follow, from the fact that an automobile strikes and passes over a pedestrian, that its driver is guilty of the conduct described by the statute in question."). The facts do not demonstrate that mere use of a vehicle to leave implies an attempt was made to cause injury.

In the present case, the Defendant proceeded to leave the area, before any verbal indication of authority was presented to her. All that the officer communicated was "no no no". T:19. At that point, another option such as "Police! Stop!" was not heard. T:35. As such, any order to stop was not even given to be complied with. Officer McMahon conceded "No, I did not give her any commands. I just didn't have the opportunity. Well, I shouldn't say I didn't have the opportunity to do it. My thought process was elsewhere." T:35-36. As such, there was no order to stop made for which she could even arguably choose to disobey if she were so inclined. The context regarding mere statements of "no" were not discernable.

The opportunities for the officer to properly identify himself, prior to assuming the risk the suspect might

depart, were numerous. E:5. Exhibit #5 (McMahon's Bodycam video) demonstrated the officer approaching the Defendant's vehicle from behind it, not directly in the Defendant's view. The video demonstrates six seconds elapsed during the officer's journey from his patrol car to the Defendant's vehicle. E:5 (bodycam time: 11:38:36 through 11:38:42). Each passing second along that journey represented a lost opportunity for the officer to shout out "Police! Stop!". A certain, specific warning would halt the Defendant's departure so that Officer McMahon could continue his investigation.

The path taken by the vehicle was rational rather than criminal. The vehicle drove to the right as it departed the area. T:21. Any intent shown was not to drive forward, or even at the officer. The officer was not in front of the vehicle. The vehicle did not strike him. T:45.

Officer McMahon was situated to the side of the vehicle, not in front of vehicle. If infliction of bodily injury were the goal, the act of backing up directly toward Officer McMahon would be a more productive means to the end of attempting to cause bodily injury. The act of proceeding away from Officer McMahon demonstrates an

attempt to do the opposite. The opportunity to cause injury objectively decreased, as the distance between the car and Officer McMahon increased, as the Defendant's vehicle moved further away.

The path of travel also resulted from the presence of a curb which would prevent any other similarly situated vehicle from proceeding directly forward, both legally and physically. T:34. See SDCL 31-8-15. Officer McMahon himself acknowledged this obstacle at trial. T:34. Upon cross-examination, Officer McMahon was asked "She couldn't go straight forward because there was a curb there; correct?" T:34. He responded "Correct. I wish there wasn't a curb because she would have went straight.". If attempting to inflict boldly injury were the intended goal, the vehicle utilized the least effective means by driving away.

Case law addressing cars as deadly weapons reveal fact patterns displaying far more aggression, power and speeds directed at a victim, and not away from the victim. Guilty verdicts were justified where a defendant's "'act" of intentionally driving into Sandal, who was walking toward the entrance of the Wal-Mart store, and not stopping until he crashed into Zahn's vehicle, was a result that was

'likely to occur.'" State v. Berhanu, 2006 S.D. 94, ¶ 18, 724 N.W.2d 181, 186. Also, verdicts remain intact where the "vehicle was being operated on the wrong side of the road and without headlights," prior to a collision causing death and injuries. State v. Stetter, 513 N.W.2d 87, 88 (S.D. 1994). The manner in which a vehicle was used demonstrated a deadly weapon where "the acts of boxing the Dell Rapids car in on the interstate and maintaining a blockade in front of it in order to subject the Dell Rapids students to swinging baseball bats and sticks as well as threats, taunts, insults and other humiliations." State v. Koester, 519 N.W.2d 322, 324 (S.D. 1994).

In contrast to those cases, this Appellant merely attempted to drive away. Accordingly, the crime as charged was not proven here. The facts presented do not sustain a reasonable theory of guilt upon which a rational trier of fact could rely. State v. Robertson, 2023 S.D. 19, ¶ 33, 990 N.W.2d 96, 104. Accordingly, the trial court erred denying the Appellant's motion for judgment of acquittal. This matter should be reversed and remanded with instructions to the trial court to enter a judgment of acquittal.

CONCLUSION

The trial court errored when it denied the Defendant's motion for judgment of acquittal. The State did not charge an aggravated assault charge based on physical menace. The facts presented were insufficient as a matter of law to establish the charge which was actually charged. No rational jury would conclude the Defendant's car was used in a manner likely to inflict bodily injury. The Defendant drove away from, and not at the Officer. No threatening language similarly was directed the officer's way to further establish any deadly aspects in the vehicle's operation. As such, this Court should remand this matter to the trial court with instructions to enter a judgment of acquittal.

CERTIFICATE OF COMPLIANCE

This brief meets applicable page and word limitations (4318) required by this Court.

Dated this 20th day of August, 2025.

TRACY MILLER
c/o Public Advocate Office
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392

MARK KADI
c/o Public Advocate Office
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392

tmiller@minnehahacounty.gov
Attorney for Appellant

mkadi@minnehahacounty.gov
Attorney for Appellant

REQUEST FOR ORAL ARGUMENT

The Appellant requests 20 minutes for oral argument per, inter alia, SDCL 15-26A-82 and SDCL 15-26A-82.

TRACY MILLER
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392
tmiller@minnehahacounty.gov
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of August, 2025, a true and correct copy of the foregoing Appellant's Brief was served electronically on:

Marty Jackley
Attorney General
1302 E. Hwy, Suite 1
Pierre, SD 57501
ATGservice@state.sd.us

Daniel Haggar
M.C. States Attorney
415 N. Dakota Ave
Sioux Falls, SD 57104
ujsservice@minnehahacounty.gov

Attorney for Appellant

APPENDIX

Exhibit

STATE OF SOUTH DAKOTA) : SS		IN CIRCUIT COURT
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT
		PD 22-026373 & 22-026401
STATE OF SOUTH DAKOTA, Plaintiff,	+	49CRI22008099
vs.	+	JUDGMENT & SENTENCE
RENEE LOUELLA TWOBULLS, Defendant.	+	

An Indictment was returned by the Minnehaha County Grand Jury on December 15, 2022, charging the defendant with the crime of Count 1 Aggravated Assault (Dangerous Weapon) Against Law Enforcement Officer on or about December 1, 2022. The defendant was arraigned upon the Indictment on December 28, 2022, Tracy Miller appeared as counsel for Defendant; and, at the arraignment the defendant entered her plea of not guilty of the charges in the Indictment.

The case was regularly brought on for trial, Colleen Moran, Deputy State's Attorney appeared for the prosecution and, Tracy Miller, appeared as counsel for the defendant. A Jury was impaneled and sworn on March 6, 2024 to try the case. The Jury, after having heard the evidence produced on behalf of the State of South Dakota and on behalf of the defendant on March 6, 2024 returned into open court in the presence of the defendant, returned its verdict: "We the Jury, find the defendant, RENEE LOUELLA TWOBULLS, guilty as charged as to Count 1 Aggravated Assault (Dangerous Weapon) Against Law Enforcement Officer (SDCL 22-18-1.1(2) and 22-18-1.05)," with sentencing continued to October 15, 2024.

Thereupon on October 15, 2024, the defendant (appearing via Zoom) was asked by the Court whether she had any legal cause why Judgment should not be pronounced against her. There being no cause, the Court pronounced the following Judgment and

SENTENCE

AS TO COUNT 1 AGGRAVATED ASSAULT (DANGEROUS WEAPON) AGAINST LAW ENFORCEMENT OFFICER : RENEE LOUELLA TWOBULLS shall be imprisoned in the South Dakota State Women's Prison, located in Pierre, County of Hughes, State of South Dakota for fifteen (15) years with credit for seventy-one (71) days served and with five (5) years of the sentence suspended on the condition that the defendant comply with all terms of Parole Agreement.

It is ordered that this sentence shall run consecutively with #49CRI20-004412, #49CRI21-007241 and #49CRI21-007233.

It is ordered that the attorney fees in this matter be converted to a civil lien in favor of Minnehaha County and the fine and court costs be and hereby are waived.

It is ordered that the defendant shall provide a DNA sample, pursuant to SDCL 23 – 5A – 5, provided the defendant has not previously done so at the time of arrest and booking for this matter.

There to be kept, fed and clothed according to the rules and discipline governing the South Dakota State Women's Prison.

10/21/2024 8:44:38 AM

BY THE COURT:

Attest:
Tilo, Lynde
Clerk/Deputy

JUDGE JON C. SOGN
Circuit Court Judge

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30894

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

RENEE LOUELLA TWO BULLS,

Defendant and Appellant.

APPEALS FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE JON C. SOGN
Circuit Court Judge

APPELLEE'S BRIEF

Tracy Miller
Mark Kadi
Public Advocate Office
415 N. Dakota Ave.
Sioux Falls, SD 57104
Telephone: (605) 367-7392
Email:
tmiller@minnehahacounty.gov
mkadi@minnehahacounty.gov

ATTORNEYS FOR DEFENDANT
AND APPELLANT

MARTY J. JACKLEY
ATTORNEY GENERAL

Abuk Akoi, Legal Extern
Sarah L. Thorne
Deputy Attorney General
1302 SD Highway 1889, Suite 1
Pierre, SD 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed November 13, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES CITED: **PAGE(S**

CASES CITED:

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30894

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

RENEE LOUELLA TWO BULLS,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Renee Louella Two Bulls, is referred to as "Two Bulls." Plaintiff and Appellee, the State of South Dakota, referred to as "State." References to documents are designated as follows:

Settled Record..... SR

Defendant's Brief..... DB

Jury Trial Transcript..... JT

All document designations are followed by the appropriate page number.

JURISDICTIONAL STATEMENT

On October 21, 2024, the Honorable Jon C. Sogn, Minnehaha County Circuit Court Judge, filed a judgment of Conviction. SR:90. Two Bulls filed a Notice of Appeal on November 13, 2024. SR:286. This Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT PROPERLY DENIED TWO BULLS'S MOTION FOR JUDGMENT OF ACQUITTAL?

After the jury returned a verdict of guilty for Aggravated Assault (Dangerous Weapon) against a Law Enforcement Officer, Two Bulls moved for judgment of acquittal. The circuit court denied her motion.

State v. Barrientos, 444 N.W.2d 374 (S.D. 1989)

State v. Robertson, 2023 S.D. 19, 990 N.W.2d 96

SDCL 22-18-1.05

SDCL 22-18-1.1(2)

STATEMENT OF THE CASE

On December 15, 2022, Two Bulls was charged by Complaint with Aggravated Assault (Dangerous Weapon) against Law Enforcement Officer per SDCL 22-18-1.1(2) and SDCL 22-18-1.05. SR:1. The matter was tried before a jury on March 6, 2023, and the jury rendered a guilty verdict. SR:82. Before the parties delivered their closing arguments, Two Bulls moved for a judgment of acquittal, SR:521, which the court denied. SR: 523. On October 15, 2024, Two Bulls was sentenced to fifteen years in the South Dakota Women's Prison, of which five years were suspended. SR:90.

STATEMENT OF FACTS

On December 1, 2022, Officer Jonathan McMahon was on duty with the Sioux Falls Police Department, working the morning shift. JT:15-16. His assignment that day included investigating a red Buick sedan with temporary paper license plates. JT:15-16.

Earlier that day, he had taken a report from a man who stated he had been assaulted by his wife and possibly four or five other females. *Id.* Officer McMahon knew that Skakiara Two Bulls was associated with the incident and had a description of her. JT:16-17. While pulling into the Kum & Go gas station near 11th and Grange to get a cup of coffee, Officer McMahon saw an older-model red Buick with paper plates at a pump. JT:15-16. The vehicle matched the description he had received, and he observed three females inside, one of whom he believed was Shakiara. JT:16-17.

Officer McMahon notified dispatch that he had located the vehicle and requested a second unit. *Id.* As the women entered and later exited the store, Officer McMahon positioned his patrol car behind the Buick to initiate contact with Shakiara. JT: 17-18. At the same time, Shakiara walked to the driver's side of the Buick, opened the gas tank, and appeared ready to pump gas, while Two Bulls got into the driver's seat. JT:18. When Officer McMahon exited his vehicle and greeted Shakiara, she abandoned the gas pump and left the gas door open. *Id.*

When Officer McMahon attempted to speak with Shakiara, she looked at him but quickly walked from the driver's side around to the passenger side, forcing him to increase his pace to keep up. JT:19. She entered the vehicle, and McMahon grabbed a hold of her, telling her "no, no, no." JT:19-20. Although the car door remained open, Shakiara resisted by holding onto the seatbelt, and Officer McMahon was unable to remove her. JT:19. During this struggle, Shakiara told Two Bulls to drive, and Two Bulls responded by telling Officer McMahon to let Shakiara go. *Id.* Two Bulls then drove the vehicle forward as Officer McMahon's upper body was inside the car while his legs remained outside. JT:19-20.

Typically, Officer McMahon would have disengaged in such a situation, but because Two Bulls turned the vehicle sharply to the right and he was hanging from the passenger side, he feared being pulled under the car. JT:20-21. He held on until his grip broke as the vehicle turned from facing westbound to eastbound, at which time he fell into a snowbank. JT:21. Two Bulls did not stop, did not check the Officer's condition, and did not render aid. JT:21. Two Bulls sped away, leaving Officer McMahon on the ground. *Id.* Officer McMahon sustained minor scratches, protected in part by the snow. JT:25.[1]

---

[1] Video footage from our sources: Officer McMahon's body worn camera (trial Exhibit 5), Officer McMahon's vehicle dash camera (Exhibit 4), the Kum & Go surveillance footage (Exhibit 7), and responding Officer Gren Pina's vehicle dash camera (Exhibit 6) confirmed what Officer McMahon Described.

ARGUMENT

I.

THE CIRCUIT COURT PROPERLY DENIED TWO BULLS'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE SUFFICIENT EVIDENCE SUPPORTED THE JURY'S VERDICT.

A. Standard of Review

The denial of a motion for judgment of acquittal is reviewed de novo. *State v. Rouse*, 2025 S.D. 29, ¶ 19, 23 N.W.3d 467, 474. Such motions challenge the sufficiency of the evidence. *Id.* "In measuring the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (citing *State v. Frias*, 2021 S.D. 26, ¶ 21, 959 N.W.2d 62, 68). The jury is the exclusive judge of witness credibility and the weight of the evidence, and this Court does not resolve conflicts in the evidence, pass on credibility, or reweigh the evidence. *Id.*

B. Legal Analysis

Two Bulls was convicted of a violation of SDCL 22-18-1.05 and SDCL 22-18-1.1(2), so the State had the burden of proving beyond a reasonable doubt that Two Bulls 1) attempted to cause, or knowingly caused, bodily injury to Officer McMahon, a law enforcement officer, 2)

did so with a dangerous weapon.[2] The State did so by proving Two Bulls was cognizant of certain facts which should have caused her to believe that her actions would have caused bodily injury to Officer McMahon and the Buick was used as a dangerous weapon. *State v. Barrientos*, 444 N.W.2d 374, 377 (S.D. 1989).

1. Two Bulls had the necessary general intent.

Two Bulls argues that SDCL 22-18-1.1(2) imposes a specific intent requirement, insisting the State must show that causing harm was Two Bulls's objective. First, she compares her lack of nefarious statements with the defendant in *State v. Robertson*, 2023 S.D. 19, 990 N.W.2d 96, to suggest that a lack of threatening language means she lacked "any criminal intent to attempt to cause bodily injury." DB:12-16. Next, Two Bulls suggests this Court believe that Officer McMahon's inability to vouch for Two Bulls's mental state means "[e]vidence of any criminal intent to attempt to cause bodily injury is . . . speculative and completely absent." DB:14. She also asserts the direction in which she sped away reveals a lack of intent, alluding "if infliction of bodily injury were the goal, the act of backing up directly toward Officer McMahon would be a more productive means to the end of attempting to cause bodily injury." DB:16.

---

[2] The jury was properly instructed that there were four total elements necessary to find Two Bulls guilty, but Two Bulls does not contest that Officer McMahon was a law enforcement officer or that he was engaged in the performance of his duties. SR:68.

However, this Court has explicitly rejected these arguments for specific intent, holding that "it was not necessary for State to prove that [the defendant] acted with a specific design to cause bodily injury to [the victim.] All State had to prove was that [the defendant] was cognizant of certain facts which should have caused [her] to believe that [her] act would cause bodily injury to [the victim]." *Barrientos*, 444 N.W.2d at 377. Even so, Two Bulls asserts that this Court should focus "on what the defendant was attempting to do." DB:14. She argues that "[a]n intent to drive away alone per *Robertson* is insufficient to establish aggravated assault." *Id.* However, *Robertson* was charged under the "physical menace" subsection, where words combined with actions mattered. *Robertson*, 2023 S.D. 19, ¶ 32, 990 N.W.2d at 104. In contrast, Two Bulls was charged under SDCL 22-18-1.1(2), where no verbal threat is required. *Barrientos*, 444 N.W.2d at 377. The dangerous use of the vehicle itself is sufficient. *Id.*

The State was not required to prove specific intent because Aggravated Assault under SDCL-22-18-1.1(2) is a general intent crime. Two Bulls theorizes "the act of proceeding away from the situation such as this case denotes an intent to flee from fear by the defendant, not to . . . attempt to cause them injury." DB:14. So Two Bulls effectively asks this Court to evaluate her mental state beyond the act itself, as specific intent would require. Yet as this Court has explained, "we do not find intent to cause bodily injury to be an element of aggravated assault by 'knowingly'

causing bodily injury to another." *Barrientos*, 444 N.W.2d at 376 (citing SDCL 22-18-1.1(2)). Thus, "there is no additional mental state required beyond the 'knowledge' which must accompany the act causing bodily injury." *Id.*

There was sufficient evidence from which the jury could conclude that Two Bulls was cognizant of certain facts which should have caused her to believe that her act would cause bodily injury to Officer McMahon. She was looking directly at Officer McMahon when he was hanging halfway outside the open passenger door of the vehicle. JT:19. She yelled at Officer McMahon to let her sister go. *Id.* She accelerated quickly while Officer McMahon was hanging from her vehicle, and she turned sharply to the right—the side on which Officer McMahon was holding on. JT:21. As Officer McMahon testified, such a maneuver would reasonably be understood to have caused him to be run over. Instead, Officer McMahon lost his grip and slipped on the ice, landing in a snowbank on the side of the road. *Id.* Two Bulls's deliberate choice to speed away with a law enforcement officer hanging from her vehicle proved to the jury that she knew exactly what she was doing.

2. *The Buick Two Bulls drove was used as a dangerous weapon.*

The evidence is sufficient to establish that the red Buick, as used by Two Bulls, fits the statutory definition of a "dangerous weapon." A "dangerous weapon" or a "deadly weapon" is defined as "any . . . device, instrument, material, or substance, whether animate or inanimate,

which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm." SDCL 22-1-2(10). The word "likely," along with "probably" or "in all probability" are used synonymously. *State v. Seidschlaw*, 304 N.W.2d 102, 103 (S.D. 1981). "Although an automobile is not calculated or designed to inflict death or serious bodily harm, it can be used in a manner that is likely to inflict death or serious bodily harm and, when so used, it constitutes a dangerous weapon within the meaning of SDCL 22-1-2[(10)]." *Robertson*, 2023 S.D. 19, ¶ 28, 990 N.W.2d at 103 (quoting *Barrientos*, 444 N.W.2d at 377). Importantly, "whether damages resulted from the use of an automobile alleged to have been used as a deadly weapon in an aggravated assault is not the test for determining whether the automobile was used as a deadly weapon." *State v. Koester*, 519 N.W.2d 322, 325 (S.D. 1994). Courts instead look at the totality of the circumstances, including factors such as reckless driving.

Indeed, erratic driving behavior was sufficient to categorize an automobile as a dangerous weapon in *Seidschlaw*, 304 N.W.2d at 105. In *Seidschlaw*, the defendant's actions attracted the attention of two police officers who initiated a high-speed chase. *Id.* at 103. Throughout the pursuit, Seidschlaw's automobile occupied the entire street. *Id.* Seidschlaw violated various traffic signals and signs, traversed a residential lawn, and momentarily went airborne. *Id.* Her dangerous maneuvers culminated in a collision with a small pickup truck at a busy

intersection, which caused the tragic death of two people. *Id.* at 104. While thankfully no fatality occurred here, Two Bulls's use of the red Buick included speeding away and turning sharply off a curb and into a busy street while Officer McMahon hung from the car.[3] JT:21. It was clear she attempted to get away no matter the result of her actions.

Perhaps most similar to this case, a defendant's use of a vehicle was sufficient to establish an attempt to put the victim in fear of imminent serious bodily harm by physical menace with a deadly weapon in *Robertson*, 2023 S.D. 19, ¶ 32, 990 N.W.2d at 102. In *Robertson*, the defendant dragged the victim alongside a pickup truck while making threatening statements. *Id.* ¶ 5. Robertson argued that his use of the pickup did not meet the criteria for a "deadly" or "dangerous weapon," asserting that his use of a vehicle must be such that it was probable, rather than possible, the use resulted in serious bodily harm. *Id.* ¶ 30. However, this Court upheld the aggravated assault conviction and reinforced that the defendant's conduct not only created a likelihood of causing significant bodily harm but also reasonably placed the victim in imminent apprehension of such harm. *Id.* ¶ 32. Here, Two Bulls did nearly the same thing, without direct verbal threats of harm but with a uniformed law enforcement officer hanging from the vehicle. JT:21.

---

[3] As noted in *Koester*, 519 N.W.2d at 325, "it was [a] matter of good fortune that the [driver] did not cause a serious accident..."

Taken together, Two Bulls's conscious decision to accelerate while Officer McMahon clung to the vehicle demonstrated she acted with the requisite intent, and her reckless use of the Buick transformed it into a dangerous weapon under South Dakota law. These combined elements fully support the jury's verdict of Aggravated Assault (Dangerous Weapon) against a law enforcement officer.

CONCLUSION

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

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Abuk Akoi
Abuk Akoi
Legal Extern

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General
1302 SD Highway 1889, Suite 1
Pierre, SD 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 2,220 words.

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

Dated this 6th day of October, 2025.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 6th, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Renee Louella Two Bulls* was served via Odyssey File and Serve on Traci Miller at tmiller@minnehahacounty.gov and Mark Kadi at mkadi@minnehahacounty.gov.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	
	*	Case #30894
v.	*	
	*	
RENEE LOUELLA TWO BULLS,	*	
	*	
Defendant and Appellant.	*	
	*	

APPEAL FROM THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

The Honorable
Circuit Court Judge
Jon Sogn

APPELLANT'S REPLY BRIEF

Marty Jackley
Office of the Attorney General
1302 E SD Highway 14 STE 1
Pierre, SD 57501

Daniel Haggar
States Attorney
415 N Dakota Ave
Sioux Falls, SD 57104

Mark Kadi
Appellant's Counsel
415 N Dakota Ave
Sioux Falls, SD 57104

Tracy Miller
Appellant's Counsel
415 N Dakota Ave
Sioux Falls, SD 57104

Notice of Appeal filed on November 13, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGE(S)**

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,	*	
	*	
Plaintiff and Appellee,	*	Case #30894
	*	
v.	*	REPLY BRIEF
	*	
RENEE LOUELLA TWO BULLS,	*	
	*	
Defendant and Appellant.	*	
	*	

PRELIMINARY STATEMENT

The Appellant renews factual statements and legal arguments originally presented in the Appellant's brief. Reference to the trial court's record remains the same. The Appellant and Appellee briefs will be referred to as "AT" and "AE", respectively.

ARGUMENT

The Appellee asserts the Appellant was "cognizant of certain facts which should have caused her to believe that her act would cause bodily injury to Officer McMahon." AE:8; citing State v. Barrientos, 444 N.W.2d 374, 376 (SD 1989). The facts in the record demonstrate otherwise.

McMahon testified about what would normally be the appropriate response on his part. AE:4. "Typically, Officer McMahon would have disengaged in such a situation."

AE:4; T:20-21. However, he affirmatively chose not to do so.

If disengagement from an alleged threat would have been normal, it does not follow that the Appellant would expect him to do otherwise. McMahon testified about what he perceived in front of him. In contrast, the Defendant does not know what normal reaction would be disregarded by McMahon who was behind her, out of her range of vision at that instant. See Nugent v. Quam, 82 S.D. 583, 596, 152 N.W.2d 371, 378 (1967)(a claimant's want of care for his own protection against the risk of injury under the circumstances must be compared with the defendant's want of care under the circumstances for protection of others, whatever may be their activities or the instrumentalities used."); see also Zerfas v. AMCO Ins. Co., 2015 S.D. 99, ¶ 16, 873 N.W.2d 65, 71("Yet when examining foreseeability of harm, we have said that '[n]o one is required to guard against or take measures to avert that which a reasonable person under the circumstances would not anticipate as likely to happen.'").

McMahon demonstration of continued presence under the circumstances was not normal. The Appellant proceeded in a direction where McMahon did not occupy a position in her range of vision. As such, cognizant knowledge of requisite

facts was not shown to allow a rational jury to convict the Defendant.

CONCLUSION

The Appellant was wrongfully denied a judgment of acquittal, to which she was entitled. This Court should remand the matter to enter a judgment of acquittal.

CERTIFICATE OF COMPLIANCE

This Reply Brief meets applicable page (3) and word limitations (402) required by this Court.

Dated this 24th day of October, 2025.

Mark Kadi
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392
mkadi@minnehahacounty.gov
Attorney for Appellant

Tracy Miller
415 N Dakota Ave
Sioux Falls, SD 57104
(605) 367-7392
tmiller@minnehahacounty.gov
Attorney for Appellant

CERTIFICATE OF SERVICE

On October 24, 2025, a true and correct copy of the foregoing Appellant's Reply Brief was served by email on:

Marty Jackley
Attorney General
1302 E Hwy 14, Suite 1
Pierre, SD 57501
ATGservice@state.sd.us

Daniel Haggar
M.C. States Attorney
415 N Dakota Ave
Sioux Falls, SD 57104
ujsservice@minnehahacounty.gov

Attorney for Appellant.