

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff/Appellee,

vs.

CORY BROMLEY,

Defendant/Appellant.

No. 31306

APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Tami A. Bern

APPELLANT'S BRIEF

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Notice of Appeal Filed on November 14, 2025

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PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR.” The Transcripts of the Jury Trial, volume 1 and volume 2, are referred to as “JT.” Witness Kyle Tifft will be referred to as “Tifft.” Damion Williams will be referred to as “Williams.” Defendant and Appellant, Cory Bromley, will be referred to as “Bromley.”

JURISDICTIONAL STATEMENT

Bromley appeals from the Judgment of Conviction and Sentence filed November 3, 2025. SR 479. Notice of Appeal was filed November 14, 2025. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUE

I. WHETHER THE CIRCUIT COURT ERRED IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL?

The circuit court erred in denying Bromley's Motion for Judgment of Acquittal as to all counts. The record lacked sufficient evidence to prove beyond a reasonable doubt that Bromley knowingly and intentionally aided, abetted, or advised the perpetrators.

State v. Jucht, 2012 S.D. 66, 821 N.W.2d 629

State v. Tofani, 2006 S.D. 63, 719 N.W.2d 391

Rosemond v. U.S., 572 U.S. 65, 78 (2014)

State v. Henderson, 908 N.W.2d 868 (Iowa 2018)

SDCL 22-3-3

STATEMENT OF CASE

On March 6, 2025, the State filed a grand jury indictment charging Bromley with nine counts. SR 1. Bromley's trial began August 11, 2025. JT 24. At the close of evidence, the defense made a motion for judgment of acquittal. JT 164. The circuit court dismissed four counts and allowed five of the counts to proceed to the jury. JT 164. The jury convicted Bromley on all five counts: Count I – Robbery, First Degree (by the use of a dangerous weapon); Count II – Burglary, First Degree; Count IV – Commission of a Felony While Armed with a Firearm; Count VI – Kidnapping, Second Degree (to facilitate the commission of any felony or flight thereafter); Count VIII – Petty Theft. SR 300. The only theory presented at trial was that Bromley aided and abetted the above listed crimes. JT 181-83.

STATEMENT OF FACTS

In the early morning hours of March 1, 2025, Bromley visited Tifft at his home in Alcester, SD. Ex.1; JT 43. Tifft wanted to purchase drugs from Bromley that night. JT 60, 64-65. Tifft and Bromley had known each other for years. *Id.* 28-29. The street in front of Tifft's home is a one-way road. *Id.* 43. Tifft waited on his porch and watched Bromley drive up the street and park his Dodge Dakota truck in front of Tifft's home. *Id.* at 55. Tifft watched as Bromley exited his truck and walked the path towards the front door. Ex. 7. Bromley and Tifft entered the house together at 1:15 a.m. JT 55. After entering, Tifft invited Bromley to go downstairs to the basement where they could talk and smoke. *Id.* at 45, 64.

While Bromley and Tifft are in the basement, Williams and another unidentified man entered through the front door uninvited. JT 56. Tifft testified that Bromley "got a text message and then, all of a sudden, it was -that's when I heard people coming upstairs." *Id.* at 46-47. Tifft heard a loud thud from upstairs and his girlfriend, Michelle McFarland, was yelling. *Id.* He ran upstairs leaving Bromley in the basement. *Id.* The State admitted a recording from Tifft's ring doorbell camera showing two masked men with firearms entering the unlocked door of the home at 1:28 a.m. Ex. 7. At trial, the State asserted that one of the masked men was Williams, however, the other individual was never identified. JT 223-24.

When Tifft entered the kitchen he saw the unidentified individual, who he described as a "kid," with a gun. JT 47. He pointed the gun at Tifft and said

“freeze.” *Id.* Then, Williams came charging into the kitchen saying, “[g]et down on the ground” and “give me your wallet.” *Id.* 47-48. While Tift was on his knees, Williams came up behind him and shot him in the head. *Id.* at 47. The bullet grazed Tift’s head causing a superficial injury. JT 48; Ex. 3-6. Williams took Tift’s “brown leather wallet” which had his social security card, driver’s license, and \$400 to \$450 cash. JT 57. No further description of the wallet was given.

McFarland exited the bedroom and saw the two men running out the front. *Id.* at 79. Both Williams and the unidentified individual ran out the front door of the house, made a left, and then ran towards the back of the house, in a different direction from Bromley’s truck. *Id.* at 97.

Meanwhile, Bromley, who was in the basement during the shooting, tried to exit out the garage, but he could not get the door to work. JT 65. McFarland was on the phone with 911 during the aftermath, when she saw Bromley trying to leave. *Id.* at 80. Not knowing who he was, she “flipped out and punched him.” *Id.* He then ran out of the house through the back door. *Id.* at 96. A few minutes later, Bromley made his way to his truck, which was parked directly in front of Tift’s house, and left. *Id.* at 65-66, Ex. 7.

The next morning (still March 1, 2025), Bromley returned to Tift’s house and told Tift that he had nothing to do with the incident. JT 61. Tift testified, “I don’t think that anyone had any idea that Damion was going to go in there and actually pull the trigger, either. So, I think that kinda caught everyone off guard.”

JT 67. Bromley returned \$100 to Tifft through a cash app to partially refund him for the drugs. *Id.* at 64-65.

On March 4, 2025, Bromley was interviewed by law enforcement. JT 139. Officer Conley went to 410 South Pleasant Street in Canton to investigate Williams for an assault on Rachel Verley which had occurred the night prior. *Id.* at 139, 148. Officer Conley noticed a blue Chevy Silverado with a trailer at 410 Pleasant St. *Id.* at 142. A few hours prior, on his way to work, Officer Conley saw the same Chevy truck and trailer at 512 Wheelock Street in Hudson. *Id.* at 141-42.

As Bromley exited the residence in Canton, Officer Conley approached and asked if he was Williams. Bromley identified himself as “CJ,” Bromley’s nickname. *Id.* at 141. Officer Conley told Bromley that he was looking for Williams for an assault on Verley. *Id.* at 141, 151. Bromley told Officer Conley that Williams could be found at the house in Hudson. *Id.* at 142. Bromley explained that Williams was trying to get out of town because of the incident with Verley. *Id.* at 149. Bromley further explained he was doing a favor for Williams by taking the trailer to Sioux Falls. He was supposed to drop it off with “Matt.” *Id.* at 142-43. Bromley left the keys to the Dodge Dakota truck with Williams. *Id.* at 144.

Officer Conley asked Bromley if he possessed any weapons. JT 144-45. Bromley said “[n]o.” *Id.* Then Officer Conley asked if there would be any reason that Bromley’s fingerprints would be on two handguns. *Id.* at 145. Bromley explained that “about a week prior” to the conversation, he had handled or

touched guns that Williams had. *Id.* Although prints were taken from guns, no results were introduced as evidence.

Bromley also spoke about the events in Alcester. Bromley told Officer Conley that he was at the Tifft's house in Alcester on March 1, 2025, and "he'd never been so scared in his life and he took off running." JT 149.

A search of the Chevy Silverado yielded an empty brown leather wallet with a stag on front, a black zippered pouch containing Bromley's ID and Visa debit card, used black rubber gloves, and a purple zipper pouch containing medications belonging to Williams. JT 145-46. Officer Conley was unable to verify that the wallet belonged to Tifft, and Tifft never identified the wallet during trial. *Id.* at 153. The black gloves were tested, but no results were introduced as evidence. *Id.* at 157.

The Dodge Dakota truck was registered to Mary McAthie, a girlfriend of Bromley's. JT 154. A few days after this incident, McAthie reported her truck stolen by Williams. *Id.* at 155. The truck was eventually recovered in Montana, and Williams was arrested on a warrant in Oregon. *Id.* at 155, 94.

A Samsung cell phone was seized from Bromley. JT 107. A search warrant authorized the search of the phone limited to February 28, 2025, through March 4, 2025. JT 130. The cell phone belonged to a juvenile male but was being used by Bromley between February 28, 2025, to March 4, 2025. *Id.* at 112, 119, 132, 136-37. Text messages and Facebook chats between Tifft and Bromley were found on the Samsung phone. The first message received on the phone was on February 28,

2025, at 6 a.m. Ex. 13. That message, and many other messages sent by Williams show “[n]o message content available.” Ex. 13. “No message content available” can mean one of two things: 1) the message was automatically encrypted by Facebook with a disappearing message, or 2) the message was deleted by the sender. JT 133-34.

STANDARD OF REVIEW

“The denial of a motion for judgment of acquittal presents a question of law that [the Court] review[s] de novo.” *State v. Brim*, 2010 S.D. 74, ¶ 6, 789 N.W.2d 80, 83 (quoting *State v. Klaudt*, 2009 S.D. 71, ¶ 14, 772 N.W.2d 117, 122). “There must be substantial evidence to support the conviction.” *State v. Jucht*, 2012 S.D. 66, ¶ 17, 821 N.W.2d 629, 633 (quoting *State v. Tofani*, 2006 S.D. 63, ¶ 37, 719 N.W.2d 391, 401). “The ultimate question in such an appeal is ‘whether there is evidence in the record which, if believed by the fact finder, is sufficient to sustain a finding of guilt beyond a reasonable doubt.’” *State v. Martin*, 2015 S.D. 2, ¶ 13, 859 N.W.2d 600, 606 (quoting *State v. Carter*, 2009 S.D. 65, ¶ 44, 771 N.W.2d 329, 342). The Court “accept[s] the evidence and the most favorable inferences that can be fairly drawn from it that support the verdict.” *Id.* The Court will “not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence on appeal.” *Id.* “[T]he evidence is insufficient only when no rational trier of fact could find guilt beyond a reasonable doubt.” *Martin*, 2015 S.D. 2, ¶ 13, 859 N.W.2d at 606 (quoting *State v. Brende*, 2013 S.D. 56, ¶ 21, 835 N.W.2d 131, 140) (internal quotation omitted).

ARGUMENT

I. THE RECORD CONTAINS INSUFFICIENT EVIDENCE TO PROVE THAT BROMLEY KNOWINGLY AND INTENTIONALLY, THROUGH WORDS OR CONDUCT, AIDED AND ABETTED.

At trial, the only theory presented was that Bromley was an aider and abettor. JT 167-69. It was clear from the evidence, the State's closing arguments, and the arguments made during the hearing on the motion for judgment of acquittal, that the only theory on which a conviction could be based was aiding and abetting for all counts. JT 225-229. The jury was instructed per the South Dakota Pattern Jury Instructions on aiding and abetting for every count that was submitted to the jury. SR 267-271 (Jury Instruction Nos. 18-22). The five charges submitted to the jury were:

- Count 1 – Robbery, First-Degree
- Count 2 – Burglary, First-Degree
- Count 4 – Commission of a Felony While Armed with a Firearm
- Count 6 – Kidnapping, Second-Degree
- Count 8 – Petty Theft, First-Degree

S.R. 300. The crime of aiding and abetting is enumerated in SDCL 22-3-3:

Any person who with the *intent to promote or facilitate* the commission of the crime, *aids, abets, or advises* another person in planning or committing the crime, is legally accountable, as a principle.

(emphasis added). To prove that a defendant is guilty of any crime of aiding and abetting, the State must prove that:

- 1) The perpetrator completed the crime,
- 2) The defendant knew the perpetrator intended to commit the crime,
- 3) The defendant intended to promote or facilitate (or aid and abet) the

commission of the crime, AND

- 4) The defendant's words or conduct did in fact aid or abet the perpetrator's planning or commission of the crime.**

State v. Thoman, 2021 S.D. 10, ¶¶ 33-35, 955 N.W.2d 759, 770-71 (citing *State v. Jucht*, 2012 S.D. 66, ¶ 22, 821 N.W.2d 629, 634), SDCL 22-3-3, *State v. Tofani*, 2006 SD 63, ¶ 36, 719 N.W.2d 391, 400 (citing *State v. Brings Plenty*, 490 N.W.2d 261, 268 (SD 1992), *See also* South Dakota Pattern Jury Instructions § 3-28-5 (2023)).¹

Bromley concedes that Williams completed the crimes, but contests elements two, three, and four. The record lacks evidence sufficient to support a jury finding that Bromley knowingly and intentionally helped the commission of the crimes. The record also lacks substantial evidence to support a finding that Bromley's words and conduct *in fact* aided or abetted Williams.

A. The State failed to prove that Bromley's words or conduct in fact aided or abetted the commission of the crimes.

The State must prove beyond a reasonable doubt that the defendant in some way acted or advised in furtherance of the offense. "Because, under SDCL 22-3-3, aiding and abetting requires 'the intent to promote or facilitate the crime, the evidence must show that [the defendant] 'knowingly did something to assist' in its commission.'" *State v. Tofani*, 2006 SD 63, ¶ 36, 719 N.W.2d 391, 400 (citing *State v. Brings Plenty*, 490 N.W.2d 261, 268 (S.D. 1992)). Here, the State must prove

¹ For clarity, the above listing of the elements varies slightly in wording, but not in substance, from the South Dakota Pattern Jury Instructions. *See* SDPJ I § 3-28-5 (2023).

that Bromley in fact committed some act or gave some advice that helped Williams.

During closing argument, the State presented three theories of guilt concerning the act or advice given by Bromley:

- 1) Bromley gave Williams a ride to Tift's house. JT 225.
- 2) Bromley provided Tift's address to Williams. *Id.* at 227.
- 3) Bromley set up the meeting with Tift and helped Williams get into the house. *Id.* at 229.

The State's argument that Bromley aided and abetted by helping the perpetrators enter the home is without supporting evidence. When the perpetrators entered, the storm door and the front door were closed and latched but not locked. Ex. 7. No evidence was introduced concerning who shut the door after Bromley and Tift entered. If Tift shut the door, then obviously Bromley did not assist the perpetrators by leaving the door unlocked. There is no evidence that Bromley tried to prevent Tift from locking the door. There is no evidence that Tift routinely locks his door, but because of Bromley's visit, left it unlocked that night. There is no evidence that Bromley had knowledge of whether Tift routinely locks or leaves his door unlocked. In other words, the perpetrators could have entered the same way whether Bromley was in the home or not. Moreover, Tift could not remember if he asked Bromley to come over or if Bromley asked him to come over. JT 44. There is no evidence that Bromley even initiated his visit to Tift's home.

The State argued that the timing of Bromley's visit, being late in the nighttime, served as evidence of a set up. But during closing arguments, the State misstated the testimony and argued there was no evidence introduce that Tifft wanted to buy drugs from Bromley. JT 243. In fact, Tifft unequivocally testified that he intended to purchase drugs from Bromley; Tifft even explained why he was disingenuous about drug use when speaking to the police. *Id.* at 60, 64-65. Tifft's desire purchase drugs from Bromley is circumstantial evidence that Bromley was at Tifft's by coincidence, not by design. The timing suggests a drug deal, not a pre-planned set up to assist Williams in an armed burglary, robbery, and kidnapping.

The State further argued that Bromley *sent* a text to Williams while he was in Tifft's basement, thereby tipping Williams off to enter. But there is no evidence Bromley *sent* a text while in Tifft's home. The testimony by Tifft was, "I don't know if [Bromley] sent one or not. I know he got one." JT 46. None of the messages introduced at trial show that Bromley received any texts from Williams during the time of the incident.

The State argued that Bromley aided by giving Williams Tifft's address, but the evidence presented shows that Williams already knew Tifft's address. JT 227. The last time that Tifft spoke to Williams, he was picking his son up from Tifft's house because Tifft was dating Williams' former girlfriend. JT 62. Williams would pick up his son, take him to the park, and then take his son back to Tifft's

house. *Id.* at 62. Williams knew where Tift lived, because he had been to his house on prior occasions. Tift knew Williams for more years than Tift knew Bromley. *Id.* at 40, 62. Moreover, a Google search would have revealed Tift's address. Williams did not need Bromley to get an address, and it strains credulity to assert that Bromley aided Williams by providing an address that Williams was already privy to.

The State argued that Bromley and Williams were communicating days before and days after the incident and this is circumstantial evidence that Bromley provided Tift's address. None of the messages introduced show that Bromley sent any messages to Williams until hours after the incident. *See* Ex.1, 2, 13. Williams sent a message to Bromley on February 28, 2025, around 6:00 a.m. Ex. 13. Bromley did not respond. *Id.* Williams sent four more messages on the morning of March 1, 2025. *Id.* The first time Bromley responded was on March 1, 2025, at 12:18 p.m., over 10 hours after the incident. In that message, Bromley told Williams he was good, but he doesn't have his phone. Ex. 13. The testimony is that only the *sender* of the messages can delete the messages causing no message content to appear. Bromley did not delete any of his messages, all the content was available. Ex. 1, 2, 12, 13. Only Williams' messages read "*no message content available.*" Ex. 13.

The argument that Bromley intended to help Williams flee after the incident is not supported by the evidence. It was three days after the incident

that Bromley left his keys to the Dodge with Williams. Officer Conley explained to Bromley that he was looking for Williams related to an assault on Verley the night before, March 3, 2025. JT 148. In response, Bromley told Officer Conley that Williams was trying to get out of town and told Officer Conley where Williams could be found. JT 142, 149. If anything, Bromley was helping Williams get out of town after Verley made a report concerning assault, not the robbery. Bromley told Officer Conley he left the keys to the Dodge with Williams in Hudson. Just a few hours prior, Officer Conley saw the Chevy parked outside the Hudson house. JT 141-42. Furthermore, McAthie eventually reported the Dodge Dakota stolen by Williams. Bromley's statements to Officer Conley are consistent with the text messages introduced at trial. Bromley explained that he was doing a favor for Williams by dropping the trailer off in Sioux Falls at the Valhalla apartments. JT 150; Ex. 13.

The presence of a brown leather wallet in the Chevy is not circumstantial evidence that Bromley by words or conduct in fact aided and abetted. There is no evidence that the wallet recovered from the truck was Tiff's. Tiff never identified the wallet as his, not prior to trial and not during trial. JT 153. The lack of evidence leads to the conclusion that it was not Tiff's wallet. And the wallet found in the Chevy had a distinguishing feature, a stag on the front, which Tiff never described. JT 145-46.

The State's theories of guilt were premised on pure speculation, not evidence: the coincidental timing of the perpetrators entering 15 minutes after Bromley, his presence on scene, and the fact that he is known to be friends with Williams. This evidence is not sufficient to prove beyond a reasonable doubt that Bromley in fact assisted Williams in committing any of the offenses. *Tofani* provides a comparative example of sufficient evidence in an aiding and abetting case. *State v. Tofani*, 2006 SD 63, 719 N.W.2d 391. Here, unlike *Tofani*, there is no evidence of a meeting of minds between Williams and Bromley regarding the crimes charged. The record lacks evidence of the content of their communications, and there was no further evidence of how any plan developed. JT 144-45. This evidence is not sufficient to prove beyond a reasonable doubt that Bromley in fact assisted Williams in committing any of the offenses.

B. *The State's evidence was insufficient to show that Bromley knew Williams or the unidentified perpetrator would use a dangerous weapon.*

In Count 1, Bromley is charged with First-Degree Robbery, which requires the use of a dangerous weapon or use of a physical object simulating a weapon. SR 1; SDCL 22-30-1, 22-30-6, 22-30-7. The State is required to prove that Bromley *knew* and *intended* for the perpetrators to commit a First-Degree Robbery. *State v. Jucht*, 2012 S.D. 66, ¶ 27, 821 N.W. 2d at 636. In *Jucht*, this Court rejected the reasoning that an aider and abettor is criminally liable for "any offense that is a reasonably foreseeable consequence of defendant's actions" and held that an aider and abettor must possess the same mental state required for the underlying

crime. *Id.* 2012 S.D. 66, 821 N.W.2d 629, 641 n. 1. To prove Bromley aided and abetted First-Degree Robbery, which requires the use of a dangerous weapon, the State was required to prove that Bromley knew that a dangerous weapon would, in fact, be used. *See Rosemond v. United States*, 572 U.S. 65, 78 (finding that to be convicted of aiding and abetting the crime of using a firearm during drug trafficking, the defendant must have possessed advance knowledge of the firearm's presence). The State's evidence, however, did not establish that Bromley knew the perpetrators would commit a *First-Degree Robbery* with a dangerous weapon, or that the perpetrators would commit a Felony *while Armed with a Firearm*.²

On this point, *State v. Henderson*, 908 N.W.2d 868 (Iowa 2018), a decision from the Supreme Court of Iowa, is instructive. In *Henderson*, the defendant agreed to serve as the getaway driver for two individuals robbing a pharmacy. 908 N.W.2d at 870. The robbery occurred, but the two individuals who committed the robbery were apprehended before the defendant could provide the getaway transport. *Id.* Because a gun was used in the robbery, the defendant,

² The circuit court did instruct the jury that “[i]n order to aid or abet the Commission of a Felony while Armed with a Firearm, the defendant must have advanced knowledge that the offender would use or carry a firearm. SR 272 (Jury Instruction No. 23). While it would have been appropriate to request a similar instruction related to the Robbery-First Degree offense, as knowledge of the perpetrator's use of a dangerous weapon is necessary to sustain a conviction under the aiding and abetting theory, trial counsel did not request such an instruction, and accordingly, the argument was not preserved for appeal.

as well as the two principal actors, were charged with and convicted of first-degree robbery. *Id.*

The defendant's appeal to the intermediate court of appeals, which argued "the record did not contain substantial evidence that he knew a gun would be used in the robbery[.]" was affirmed. *Id.* The defendant appealed to the Iowa Supreme Court, which reversed the lower court decision, holding "that the defendant's conviction under an aiding and abetting theory required the State to prove the defendant not only participated in or encouraged the crime, but also *knew* of it, including the dangerous weapon element." *Id.* Moreover, the *Henderson* court determined "the State failed to prove defendant had knowledge or intent of the use of a gun, a motion for judgment of acquittal on this basis would have been meritorious."³ *Id.*

Like *Henderson*, the State's evidence did not contain any evidence proving that Bromley knew that Williams, or the unidentified perpetrator, intended to use a gun in the commission of the alleged crimes. As the *Henderson* court noted, knowledge of the perpetrator's use of a dangerous weapon is necessary for a conviction:

Therefore, in the context of a first-degree robbery prosecution under the dangerous weapon alternative, the State must prove the alleged aider and abettor had knowledge that a dangerous weapon would be or was being used. *See* Iowa Code § 711.2 ("A person commits robbery in the first

³ The *Henderson* court also held that "the defendant's trial counsel rendered ineffective assistance in failing to move for acquittal on this basis." *Id.*

degree when, while perpetrating a robbery, the person ... is armed with a dangerous weapon.”). Otherwise, the aider and abettor may have knowledge or intent to commit a robbery, but not first-degree robbery.

Henderson, 908 N.W.2d at 876.

Here, the only evidence that the State produced at trial related to Bromley’s general knowledge that Williams possessed firearms at some point in the recent past. JT 144-45. In fact, the prosecution’s closing argument acknowledged it:

So he knew Damion had guns. He had the foreknowledge that is required for the use of a firearm during the commission of a felony. To be an aider and abettor, he has to know he’s had the guns. He saw the guns, he touched the guns.

JT 225.

While Bromley knew that Williams possessed guns at some point prior to the incident, that testimony was insufficient to prove that Bromley knew the perpetrators would use a gun while committing these offenses. Also, the State’s closing argument directly contravenes Jury Instruction No. 23, which explicitly required that Bromley have “advance knowledge that the offender would use or carry a firearm.”⁴ SR 272.

⁴ In addition, the prosecutor referenced Bromley and Williams as “bad, bad people” during closing argument:

You’re not making an assumption of guilt here. The evidence proves it. These are bad, bad people. Damion obviously did what he did, and Cory assisted him in the beginning to – maybe he didn’t think Damion would do it, but it doesn’t matter, because when you try to help someone commit a felony, like robbery, you are on the hook.

Nothing in this record establishes that Bromley *knew* Williams intended *use a firearm* while committing the alleged crimes. Not only is the record entirely devoid of any testimony or exhibits that show Bromley was aware the perpetrators would illegally enter Tift's residence to commit these criminal offenses, but it is entirely devoid of any testimony or exhibits which established Bromley would illegally enter Tift's residence *with guns*.

Because the State did not provide sufficient evidence to prove Bromley knew that the perpetrators would *use* a gun in the commission of these offenses, the circuit court should have granted Bromley's motion for judgment of acquittal on Counts 1 and 4.

C. The State's evidence was insufficient to show that Bromley knew and intended for Williams or the unidentified perpetrator to unlawfully confine Tift.

The evidence supporting the conviction for Second-Degree Kidnapping was likewise insufficient. Williams and the identified individual were only in the house for two minutes. JT 56-57. The video evidence and Tift's testimony confirmed that Williams and the unidentified individual left the house prior to Bromley's departure. JT 68-69; Ex. 7. Therefore, the burglary, robbery, and assaults were all completed within two minutes. Furthermore, Tift and

JT 246. These comments were not directed toward the evidence presented in the State's case-in-chief. Instead, the prosecutor's comments were more akin to an improper community conscience argument inviting a jury to decide the case based on emotion rather than evidence. However, trial counsel did not object to the prosecutor's comments, and therefore, the argument is not preserved for appeal.

McFarland were not moved to a different area or room in the home, and Tift's retention lasted less than two minutes.

Based upon the facts on the record, Tift's brief confinement during the robbery was no more likely part of a premeditated plan than a spontaneous reaction that was incidental to the underlying offenses. Absent evidence that Bromley knew of and intended to aid in the retention or confinement of Tift during the robbery, the conclusion that Bromley shared such intent is purely speculative under these facts. Accordingly, the circuit court erred in denying Bromley's motion for judgment of acquittal on Count 6.

CONCLUSION

The circuit court erred in denying the Motion for Judgment of Acquittal as to Counts 1, 2, 4, 6, and 8. The record lacks substantial evidence proving that Bromley knowingly and intentionally aided or abetted Williams. For the reasons enumerated above, authorities cited, and upon the settled record, Bromley requests this Court remand his case to the circuit court with an order directing the circuit court to enter judgments of acquittal on each count and vacate the corresponding sentences.

REQUEST FOR ORAL ARGUMENT

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

Respectfully submitted on this 30th day of March, 2026.

/s/ Justine Avtjoglou

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 5,081 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 30th day of March, 2026.

/s/ Justine Avtjoglou
Justine Avtjoglou
Attorney for Appellant

CERTIFICATE OF SERVICE

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Dated this 30th day of March, 2026.

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APPENDIX

Judgment of Sentence.....	A-1
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STATE OF SOUTH DAKOTA

FILED

IN CIRCUIT COURT

COUNTY OF UNION

NOV 03 2025

FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

UNION COUNTY CLERK OF COURT
FIRST JUDICIAL CIRCUIT COURT OF SD

vs.

Cory Brontay

Defendant.

**CRIMINAL
JUDGMENT AND SENTENCE**
(Suspended Imposition/Deferment)
(Suspended Execution)

The above-entitled matter having come on for hearing and the State of South Dakota being present and represented by Kathy Zenner/ Kimora Cross G Wunder (Deputy) State's Attorney, Asst. Attorney General _____ and the Defendant being personally (present) (by ITV at Defendant's request or with Defendant's consent) (by Zoom at Defendant's request or with Defendant's consent) and represented by R. Jensen.

And the Defendant having been advised of all his/her constitutional and statutory rights pertaining to the charges contained in the charging document including but not limited to the right against self-incrimination, the right to confrontation and the right to jury trial and the Court having determined that the Defendant has been regularly held to answer for said offense and that the Defendant was represented by competent counsel and the Defendant having (~~pled~~) (been found guilty) to Count(s) 1, 2, 4, 6, 8 of the charging document and the Court finding that the Defendant understood the nature and consequence of the plea; that the same was knowing and voluntary and that a factual basis exists for the same, now therefore the Defendant

IS ACCORDINGLY (FOUND GUILTY) (~~NO FINDING OF GUILT~~) OF THE FOLLOWING OFFENSES:

Count	Nature of Offense	Statute	Date of offense
<u>1</u>	<u>Robbery 1st</u>	<u>22-30-1.6</u>	<u>3-1-25</u>
<u>2</u>	<u>Burglary 1st</u>	<u>22-32-1(3)</u>	<u>3-1-25</u>
<u>4</u>	<u>Felony with Firearm</u>	<u>22-14-12</u>	<u>3-1-25</u>
<u>6</u>	<u>Kidnapping 2nd</u>	<u>22-14-1.1(1)</u>	<u>3-1-25</u>
<u>8</u>	<u>Petty Theft 1st</u>	<u>22-30A-1.17.2</u>	<u>3-1-25</u>

Qualifier of accessory to a crime; aiding, abetting or advising; attempt; conspiracy; or criminal solicitation.

The remaining charges set forth in the charging document and Part II Information for Multiple Offender or Habitual Offender as the case may be are dismissed by the State with prejudice except as set forth above.

The matter having come on for sentencing on this date and no legal cause being shown as to why sentence should not now be pronounced, now therefore,

It is ORDERED, ADJUDGED, and DECREED that the said defendant is sentenced as provided this judgment.

It is FURTHER ORDERED, ADJUDGED, and DECREED that the said defendant immediately pay to the Clerk of Courts of this county, court costs for these proceedings in the sum of \$116.50 on each felony count, \$96.50 on each class 1 misdemeanor count and \$78.50 on each class 2 misdemeanor count.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

20 That the Defendant be imprisoned in the South Dakota State Penitentiary for a term of Count 1 20 years; Count 2 20 years; Count 4 5 years; Count 6 20 years (years)(months), there to be kept, fed and clothed according to the rules and discipline governing said institution (and is remanded into the custody of the sheriff of this county effective (immediately) (at M, for transportation to the South Dakota State Penitentiary.)

 That although the Defendant has been convicted of a non-violent Class 5 or 6 felony, the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation pursuant to SDCL 22-6-11 as follows: (DEPARTURE PREUMPTIVE PROBATION)

20 That years of said sentence as to Count 2 and 6 are is suspended pursuant to SDCL § 23A-27-18 and the Defendant is placed upon (probation) / (parole) for a term of 20 years, upon the terms and conditions provided herein. (SUSPENDED EXECUTION)

consecutive to Counts 1 and 4

 That the Court having received a verdict or plea of guilty for a felony not punishable by death or life imprisonment by a person never before convicted of a crime which at the time of conviction thereof would constitute a felony in this state, does suspend the imposition of sentence pursuant to SDCL § 23A-27-13 and the Defendant is placed on probation for a term of years, upon the terms and conditions provided herein. (SUSPENDED IMPOSITION)

 That the Court receiving a plea of guilty for a violation of § 22-42-5 or 22-42-5.1 and the Defendant never having before received a deferred imposition of sentence and no aggravating circumstances existing pursuant to SDCL 22-6-11, and without entering a judgment of guilt, and with the consent of the defendant, defers the imposition of sentence pursuant to SDCL 23A-27-53 and places the defendant on probation as set forth herein including but not limited to requiring the defendant to complete a drug and alcohol evaluation and complete any recommended course of treatment. If after one year, the defendant has successfully completed the course of treatment and complied with all conditions of probation or parole, the court shall dismiss the charge under § 22-42-5 or 22-42-5.1 upon the defendant pleading guilty to ingestion under § 22-42-15 or possession under § 22-42-15.1. If the defendant violates any conditions of probation or parole, the court or the Board of Pardons and Paroles shall revoke the deferred imposition of sentence and impose and execute the sentence. (DEFERRED IMPOSITION)

Serve _____ days in the (County Jail)(South Dakota State Penitentiary) as a condition of a suspended imposition, deferment or execution of sentence as the case may be pursuant to SDCL § 22-6-1.1 or §23A-27-18.1. Specific dates are to be arranged with his court services officer. _____ days of jail time is credited against this amount imposed. Court services may waive _____ days of this jail term without further order of the Court. Defendant may be eligible for work release on any jail term imposed if deemed appropriate by Defendant's court services officer and county sheriff. Electronic monitoring or house arrest are not authorized in any manner.

It Said sentence is to be served (concurrently)(~~consecutively~~) to the sentences imposed on count(s) 1 and 4 which shall be served in the following order: Counts 2 and 6 concurrent to each other but consecutive to counts 1 and 4.

Pay a fine in the sum of \$ _____.

It Pay restitution in the sum of \$ 6344 it severely with any other convicted defendant if so ordered

The Defendant's privilege to drive in this state is revoked for a term of _____ years following his release from incarceration. After a term of _____, the Defendant may apply for a permit to drive for purposes authorized by SD statute pursuant to the requirements and application required by SD law and this court.

It He/she shall repay this county for all of their court appointed attorney's fees to the County Auditor.

It All financial obligations imposed herein shall be due by 11-3-2030.

It Costs of Prosecution 20 GJT

772.25 transport 95 digital review

It Shall receive 5 days of jail credit.

It The Defendant is/is (not) currently serving in or is a veteran of the United States Armed Forces and appropriate consideration was made pursuant to SDCL 23A-27-52.

THE DEFENDANT SHALL ABIDE BY THE FOLLOWING TERMS AND CONDITIONS AS A REQUIREMENT OF ANY SENTENCE SUSPENDED PURSUANT TO SDCL § 23A-27-18, OR PROBATION IMPOSED PURSUANT TO SDCL § 23A-27-12 or 13:

1. During the period of said probation or suspended sentence, he/she shall be under the supervision of the Chief Court Service Officer of this circuit or the Board of Pardons and Paroles, as the case may be, or their representatives and shall obey all of their rules and regulations and all conditions imposed by them even though they may not have been specifically set out by this Court. ~~If deemed appropriate by court services, he/she shall participate in and successfully complete Hope Court Probation.~~ If he/she has financial obligations under this judgment, they shall work out a payment schedule with their probation or parole officer and if deemed necessary by them, shall execute a wage assignment form.
2. The Defendant shall not commit any federal, state, or local crime during the term of probation or suspended sentence and be a good and law-abiding citizen in all respects.
3. He/she shall be subject to random search and seizure by their probation or parole officer or any law enforcement officer upon reasonable suspicion that they are violating any provision of this sentence or of any probation or parole agreement.

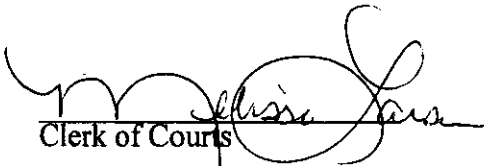
4. _____

~~The Court reserves control and jurisdiction over the defendant for the period of the sentence imposed and may revoke any suspension or probation at any time and reinstate the sentence without diminishment or credit for the time that he/she was on probation and reserves the right to amend any or all of the terms of this sentence at any time; and~~

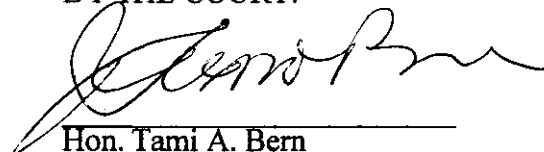
THE DEFENDANT WAS ADVISED THAT HE/SHE HAS A RIGHT TO APPEAL FROM THIS JUDGMENT WITHIN 30 DAYS AFTER IT IS SIGNED, ATTESTED AND FILED, THAT IF THEY WAIT MORE THAN 30 DAYS IT WILL BE TOO LATE TO APPEAL, AND THAT IF THEY ARE INDIGENT, THIS COURT WOULD APPOINT AN ATTORNEY TO HANDLE THAT APPEAL FOR THEM.

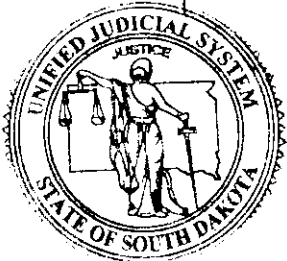
Date of Sentence: 11-3-2015

Attest:


Clerk of Courts

BY THE COURT:


Hon. Tami A. Bern
Circuit Court Judge



IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31306

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

CORY J. BROMLEY,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, SOUTH DAKOTA

THE HONORABLE TAMI A. BERN
Circuit Court Judge

APPELLEE'S BRIEF

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ATTORNEY FOR DEFENDANT AND
APPELLANT

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed November 14, 2025

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PRELIMINARY STATEMENT

Cory J. Bromley was convicted of robbery, burglary, committing a felony with a firearm, kidnapping, and petty theft because he aided and abetted Damion Williams's commission of those crimes. Bromley now claims the evidence was insufficient to support his convictions, arguing that he never helped Williams commit the crimes; he was simply "in the wrong place at the wrong time." He also argues that, even if he did help Williams, he did not know a firearm would be used or that the victim would be confined while the other crimes were committed, making it incidental to those crimes. But Bromley's arguments fail procedurally and on the merits.

For his procedural failures, Bromley does not cite authority to support his argument that the kidnapping was incidental to the other crimes. That citation failure waives this claim on appeal. His kidnapping argument also implicates the *Curtis/Reiman* doctrine, yet Bromley did not make that argument before the circuit court, and he does not address it in his brief. Thus, any arguments on that score are waived and abandoned.

Turning to the merits, the evidence shows Bromley helped Williams plan the crimes and used his connection with Kyle Tifft, the victim, to set up a ruse to get inside Tifft's house. Bromley also helped commit the crimes by being the "drop-off driver," using his friendship with Tifft to make getting inside easier for Williams, and giving the "go" signal once

inside. That planning and acting as the “drop-off driver” gave Bromley advance knowledge that a firearm would be used in the crimes and that Tift’s movements would be restricted during the crimes. Simply put, there is sufficient evidence to support all of Bromley’s convictions, and they should be affirmed.

In this brief, the State of South Dakota is called “the State.” All other individuals are referenced by name. Relevant documents are referenced as follows:

Settled Record (Criminal File 63CRI25-86)..... SR
Jury Trial Transcript Volumes 1 and 2 (August 11 and
August 12, 2025)..... JT
Sentencing Hearing Transcript (November 3, 2025)ST
Bromley’s Appellant’s Brief..... AB

The appropriate page numbers follow all document references. And the exhibits from Bromley’s jury trial are referred to as “Ex.” followed by the appropriate identifier.

JURISDICTIONAL STATEMENT

On November 3, 2025, the Honorable Tami A. Bern filed a Criminal Judgment and Sentence that sent Cory Bromley to prison for first degree robbery and the commission of a felony with a firearm. Bromley also received suspended executions of sentence for first degree burglary and second degree kidnapping. SR: 479-82. Under SDCL 23A-32-15, Bromley timely filed and served his Notice of Appeal on November 14,

2025. SR: 483, 487. This Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF THE LEGAL ISSUE AND AUTHORITIES

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

At the close of the State's case, Bromley moved for a judgment of acquittal on all nine charges he faced. The circuit court granted the motion as to four counts and denied it as to the other five. The jury found Bromley guilty on those five counts, after the State relied on an aiding and abetting theory of guilt.

State v. Brings Plenty, 490 N.W.2d 261 (S.D. 1992)

State v. Falkenberg, 2021 S.D. 59, 965 N.W.2d 580

State v. Lilly, 930 N.W.2d 293 (Iowa 2019)

State v. Otobhiale, 2022 S.D. 35, 976 N.W.2d 759

SDCL 22-3-3

STATEMENT OF THE CASE AND FACTS¹

This case revolves around an interconnected group of friends and acquaintances. Kyle Tift has known Damion Williams since 2015.

JT: 41. Tift has known Cory Bromley since 2018. JT: 40. Williams and Bromley are also friends. JT: 41, 91-92.

Tift hadn't seen Bromley in a couple of years because Bromley was in jail. JT: 44. But in early February 2025, Bromley reached out, asking

¹ The State has combined these sections for brevity, clarity, and readability.

for Tift's phone number. Ex. 2. On March 1, 2025, Bromley texted Tift before 1:00 A.M. JT: 42-43; Ex. 1. The two planned to meet at Tift's house in Alcester; Bromley was going to sell Tift drugs, and they were going to use them together. JT: 62, 64-65.

Shortly after 1:00 A.M., Michelle McFarland, Tift's partner, was upstairs in the bedroom, while Tift waited outside for Bromley. JT: 70-71; Ex. 7. Once Bromley arrived, he and Tift went into the basement. JT: 46. While down there, Bromley was on his phone, but Tift wasn't sure if Bromley sent a text or received one. JT: 46. Minutes later, Tift heard "some thuds" upstairs and he heard McFarland scream. JT: 46-47. Two masked robbers, armed with pistols, had burst through the front door. Ex. 7.

After hearing McFarland scream, Tift ran upstairs, where he was met in the kitchen by "a kid . . . with a gun[,]" who told him to "freeze." JT: 47. The second robber came from the bedroom—where he had tried to shoot McFarland, but his gun malfunctioned—and ordered Tift to kneel on the ground. JT: 47-48, 74-75. The second robber demanded Tift's wallet, which he took. JT: 48. Tift described it as a "brown leather wallet" that held his driver's license, social security card, and \$400 to \$450 in cash. JT: 57.

After taking the wallet, and making him kneel on the floor, the robber shot Tift in the back of the head. JT: 48. Luckily, the bullet grazed Tift's head and got lodged in a floor joist. JT: 49. McFarland

called 911; law enforcement responded to the house, photographing Tift's injuries and locating the bullet. JT: 78-79, 86-87, 92; Exs. 3-6.

After the shooting, the robbers fled out the front door, turning left toward the backyard; Bromley fled out the back door, into the backyard. JT: 50-51, 97; Ex. 7. Tift identified Damion Williams as the robber who shot him, after watching his Ring Doorbell video of the robbers. JT: 48-49; Ex. 7. McFarland also identified Williams as the robber that tried to shoot her. JT: 76-77.

As their investigation progressed, officers started looking for Williams and Bromley. JT: 139. On March 4, 2025, Officer Nielson Conley found Bromley at a house in Canton, initially thinking he was Williams. JT: 140-41. Outside the house was a Chevy pickup that Bromley said Williams had given him. JT: 142. Officer Conley recognized the pickup as the same one he saw outside of a house in Hudson, where Williams lived. JT: 142. Officer Conley searched the pickup, finding Bromley's ID card and debit card, medications prescribed to Williams, and a "brown leather wallet that had a buck design on it that was empty." JT: 146.

When asked about the pickup, Bromley said he was taking it to Sioux Falls for Williams and leaving his vehicle for Williams to use. JT: 144. Bromley also admitted he knew Williams was trying to get out of town. JT: 150. Bromley's vehicle, which belonged to his girlfriend, was reported stolen days later. JT: 154-55. It was eventually found in

Montana; police believed Williams abandoned it there before he was arrested in Oregon. JT: 94, 160.

The State believed Bromley aided and abetted Williams barging into Tiff's house, attacking him, and stealing his wallet. JT: 31-33. And the Union County Grand Jury indicted Bromley on nine counts:

- Count 1: First Degree Robbery in violation of SDCL 22-30-1, SDCL 22-30-6, and SDCL 22-30-7;
- Count 2: First Degree Burglary in violation of SDCL 22-32-1(3);
- Count 3: First Degree Robbery in violation of SDCL 22-30-1, SDCL 22-30-6, and SDCL 22-30-7;
- Count 4: Commission of a Felony (Kidnapping) While Armed with a Firearm in violation of SDCL 22-14-12;
- Count 5: Aiding and Abetting First Degree Robbery in violation of SDCL 22-3-3 and SDCL 22-30-1;
- Count 6: Second Degree Kidnapping in violation of SDCL 22-19-1.1(2);
- Count 7: Simple Assault in violation of SDCL 22-18-1(1);
- Count 8: First Degree Petty Theft in violation of SDCL 22-30A-1 and SDCL 22-30A-17.2; and
- Count 9: Intentional Damage to Property in violation of SDCL 22-34-1(2).

SR: 1-5. The State filed a Part II Information, alleging Bromley had two prior felony convictions, one for possessing a controlled substance and one for grand theft. SR: 6-7, 62-63.

At trial, Bromley claimed he "was at the wrong place at the wrong time." JT: 36. He had gone to Tiff's to "catch up" with an old friend. JT: 35. And he wasn't involved in Williams's crimes. JT: 35-37. At the close of the State's case, Bromley moved for a judgment of acquittal on all charges. JT: 164. The circuit court granted the motion as to Counts

3, 5, 7, and 9, but denied it as to Counts 1, 2, 4, 6, and 8. JT: 172-74. The jury convicted Bromley on the remaining counts. SR: 300-01.

The court sentenced Bromley to twenty years in prison on Counts 1, 2, and 6, and five years in prison on Count 4. SR: 479-82; ST: 30-31. It ordered Bromley to serve his sentences for Counts 1 and 4 concurrent with each other, it also ordered him to serve his sentences for Counts 2 and 6 concurrent with each other, but consecutively to Counts 1 and 4. SR: 480-81; ST: 31-32. The court suspended execution of the sentences for Counts 2 and 6. SR: 480-81; ST: 31. And the court simply imposed court costs for the petty theft conviction in Count 8. ST: 36.

STANDARD OF REVIEW

When a circuit court denies a motion for judgment of acquittal, this Court asks “whether the evidence was sufficient to sustain a conviction.” *State v. Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d 58, 81 (quoting *State v. Rogers*, 2025 S.D. 18, ¶ 48, 19 N.W.3d 17, 30). That question is reviewed de novo. *Id.*

But that de novo review comes with a measure of deference to the evidence presented. This Court looks at the evidence “in the light most favorable to the prosecution” and decides if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81 (quoting *Rogers*, 2025 S.D. 18, ¶ 48, 19 N.W.3d at 30). It also “accept[s] the evidence and the most favorable inferences fairly drawn therefrom,

which will support the verdict.” *Id.* But it “will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.” *Id.*

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED BROMLEY’S MOTION FOR JUDGMENT OF ACQUITTAL.

There is no difference between those defendants who commit a crime and those who act as accessories or aid and abet its commission. SDCL 22-3-3.1. All defendants—principals, accessories, and aiders and abettors—face the same punishments. *Id.* Relevant here, aiding and abetting means “[a]ny person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime. . . .” SDCL 22-3-3.

But the law protects against incongruous results for principals and aiders and abettors. An aider and abettor must act with the same intent that a principal must act with to commit the underlying crime. *State v. Jucht*, 2012 S.D. 66, ¶ 26, 821 N.W.2d 692, 635. “[T]he evidence must [also] show the principal offender committed all the elements of the underlying offense.” *State v. Tofani*, 2006 S.D. 63, ¶ 36, 719 N.W.2d 391, 400 (quoting *State v. Shearer*, 1996 S.D. 52, ¶ 29, 548 N.W.2d 792, 798).

Additionally, the aiding and abetting must occur before the underlying crimes are completed, otherwise that would be acting as an

accessory. SDCL 22-3-3; SDCL 22-3-5.² And when a firearm is involved, the aider and abettor must have advance knowledge that the firearm will be used. See SR: 272 (Jury Instruction No. 23);³ *Rosmund v. United States*, 572 U.S. 65, 67 (2014)(holding a defendant must have advance knowledge a firearm will be used in a crime of violence or a drug crime to be guilty of aiding and abetting that crime).⁴

Summed up, the State had to prove:

- Damion Williams or the other assailant committed first degree robbery, first degree burglary, second degree kidnapping, commission of a felony—second degree kidnapping—with a firearm, and petty theft;
- Bromley acted with the intent to aid and abet those crimes;
- Bromley acted before the crimes were completed; and
- Bromley knew a firearm would be involved.

SR: 267-72 (Jury Instruction Nos. 18, 19, 20, 21, 22, and 23).

Working within this framework, Bromley concedes Williams committed the underlying crimes (AB: 9), but he raises three arguments about his own conduct—one that generally applies to all five convictions and two that are conviction-specific. His general claim is that the

² “A person is an accessory to a crime, if, with the intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person.” SDCL 22-3-5.

³ Neither party proposed this instruction, nor did they object to the circuit court giving it. However, there is no mention in the record of the court’s legal basis for giving this instruction. JT: 178-84.

⁴ *Rosemond*’s advance knowledge rule comes in the context of analyzing 18 U.S.C. § 924(c), not announcing a general constitutional or common law rule of substantive criminal law. But its logic applies to Bromley’s first degree robbery conviction, requiring that crime to be committed with a “dangerous weapon,” which includes a firearm. SDCL 22-1-2(10); SDCL 22-30-6; SR: 267 (Jury Instruction No. 18).

evidence fails to show his “words or conduct in fact aided or abetted the commission of the crimes.” AB: 9. His first conviction-specific claim is that the evidence fails to show he “knew Williams or the unidentified perpetrator would use a dangerous weapon.” AB: 14. His second conviction-specific claim is that the evidence fails to show he “knew and intended for Williams or the unidentified perpetrator to unlawfully confine Tiff[,]” as part of the second degree kidnapping.⁵ AB: 18. But Bromley’s arguments fail procedurally and on the merits.

For his procedural failures, Bromley’s argument focusing on kidnapping is waived because he cites no authority to support it. Similarly, tangential arguments that flow from that challenge suffer double failures. Those arguments were not raised with the circuit court, so they are not preserved for appeal, and, because he doesn’t try to raise them on appeal, even under plain error review, they are abandoned. And his preserved arguments ignore the established standards of review for evidentiary sufficiency claims, as well as the accepted types of evidence the State can use to prove its case.

As for the merits, there is sufficient evidence to show Bromley acted to aid and abet Williams’s crimes, Bromley knew a firearm would

⁵ Because Bromley concedes Williams committed the underlying crimes, the State focuses on Williams in its arguments, for simplicity’s sake. But those arguments apply equally to the unidentified assailant, and show Bromley aided and abetted both in committing the underlying crimes.

be used in the crimes, and Bromley knew Tiff's movements would be restricted.

A. Bromley has waived his challenge to his kidnapping conviction by not supporting it with legal authorities and he has abandoned any tangentially related arguments by not raising them with the circuit court or briefing them on appeal.

Bromley challenges his kidnapping conviction by claiming "Tiff's brief confinement during the robbery was no more likely part of a premeditated plan than a spontaneous reaction that was incidental to the underlying offenses." AB: 19. Yet he cites no authority to support his claim. That citation failure violates SDCL 15-26A-60(6) and waives the issue on appeal. *State v. Patterson*, 2017 S.D. 64, ¶ 31, 904 N.W.2d 43, 52.

Bromley's "incidental confinement" argument also implicates the *Curtis/Reiman* doctrine. That doctrine says a defendant cannot be convicted of kidnapping and another crime—like rape or robbery—when the kidnapping is incidental to that other crime. *State v. Lykken*, 484 N.W.2d 869, 876 (S.D. 1992); *Eaglehorse v. State*, 286 N.W.2d 329, 330 (S.D. 1979). But any argument that the *Curtis/Reiman* doctrine applies here is prohibited twice over.

First, Bromley made no *Curtis/Reiman* claim to the circuit court. *See generally* SR: 1-968. "Issues not advanced at trial cannot ordinarily be raised for the first time on appeal." *State v. Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439, 443 (citing *State v. Henjum*, 1996 S.D. 7, ¶ 13, 542 N.W.2d 760, 763). Second, Bromley does not specifically raise a

Curtis/Reiman issue in his brief. *See generally* AB: 1-20. Claims “not briefed and argued [are] deemed abandoned.” *Giesen v. Giesen*, 2018 S.D. 36, ¶ 23, 911 N.W.2d 750, 756 (quoting *Sabhari v. Sapari*, 1998 S.D. 35, ¶ 1 n.3, 576 N.W.2d 886, 888 n.3). Nor can Bromley fix that by raising it in his reply brief. *Ellingson v. Ammann*, 2013 S.D. 32, ¶ 10, 830 N.W.2d 99, 102.

That said, Argument Section E explains why Bromley’s waived and abandoned arguments fail on the merits anyway.⁶

B. Bromley’s arguments incorrectly require direct evidence that he aided and abetted Williams’s commission of the underlying crimes.

There is a common throughline in Bromley’s brief: He believes he cannot be convicted without direct evidence that he aided and abetted Williams. *E.g.*, AB: 10-11, 13, 16-17, 19. But that myopic view is wrong.

“All elements of a crime, including intent, may be established circumstantially.” *State v. Otohiale*, 2022 S.D. 35, ¶ 38, 976 N.W.2d 759, 772 (quoting *State v. Jensen*, 2007 S.D. 76, ¶ 9, 737 N.W.2d 285, 288)(cleaned up). That’s because “[d]irect and circumstantial evidence

⁶ If the Court considers Bromley’s waived and abandoned claims, they are reviewed for plain error. *State v. McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d 725, 729 (applying plain error review “[b]ecause McMillen failed to preserve error on either of the issues he raises on appeal[.]”). Under plain error review, Bromley “must establish that there was: (1) error, (2) that is plain, (3) affecting substantial rights; and only then may [this Court] exercise [its] discretion to notice the error if (4) it seriously affects the fairness, integrity, or public reputation of the judicial proceedings.” *State v. Janes*, 2026 S.D. 9, ¶ 14, 32 N.W.3d 377, 383 (quoting *State v. Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d 196, 200) (cleaned up).

have equal weight. In fact, in some instances circumstantial evidence may be more reliable than direct evidence.” *State v. Osman*, 2024 S.D. 15, ¶ 41, 4 N.W.3d 558, 571 (quoting *State v. Ahmed*, 2022 S.D. 20, ¶ 23, 973 N.W.2d 217, 223). And “[c]ircumstantial evidence is critically important” to determine Bromley’s intent as “an aider and abettor because a state of the mind is rarely proved by direct evidence.” *Otohhiale*, 2022 S.D. 35, ¶ 38, 976 N.W.2d at 772 (quoting *Jucht*, 2012 S.D. 66, ¶ 29, 821 N.W.2d at 637)(cleaned up).

The types of circumstantial evidence that can prove, beyond a reasonable doubt, that a crime was committed run the gamut. For example, “a party’s presence at the scene of a crime . . . along with all other circumstantial evidence, can establish his guilt as an aider and abettor.” *State v. Brings Plenty*, 490 N.W.2d 261, 267-68 (S.D. 1992)(citing *State v. Ashker*, 412 N.W.2d 97 (S.D. 1987)). That presence at the scene can also connect with “conduct after the offense” to establish guilt as an aider and abettor. *Brings Plenty*, 490 N.W.2d at 268. Also, “a close association between the defendant and an accomplice in the area where the crime was committed may sufficiently connect the defendant with the commission of the crime. . . .” *State v. Kihega*, 2017 S.D. 58, ¶ 16, 902 N.W.2d 517, 523 (quoting *State v. Nelson*, 310 N.W.2d 777, 779 (S.D. 1981)).

What’s more, evidence that a defendant concealed or tried to conceal a crime can show a consciousness of guilt. *State v. Falkenberg*,

2021 S.D. 59, ¶ 44, 965 N.W.2d 580, 593. A consciousness of guilt can also be shown when a defendant destroys evidence. *See Kihega*, 2017 S.D. 58, ¶¶ 13-14, 902 N.W.2d at 523. Or when a defendant creates a false alibi. *See Tofani*, 2006 S.D. 63, ¶ 16 n.1, 719 N.W.2d at 396 n.1 (noting the State’s theory that Tofani kept a hotel receipt in “a conscious effort to build an alibi for himself”). Each of these categories of evidence are involved here, as the next sections show, and prove Bromley aided and abetted Williams’s crimes.

C. A rational jury could determine that Bromley aided and abetted Williams’s underlying crimes.

A review of the evidence presented, “in the light most favorable to the prosecution,” shows a rational jury could determine that Bromley aided and abetted Williams’s commission of the underlying crimes. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81 (quoting *Rogers*, 2025 S.D. 18, ¶ 48, 19 N.W.3d at 30). Based on that evidence, and “the most favorable inferences fairly drawn therefrom,” *id.*, the jury could determine Bromley aided and abetted Williams because he helped plan the crimes, he helped Williams commit them, and he tried to cover them up afterward. Thus, this Court should affirm Bromley’s convictions.

1. Bromley helped plan the crimes, handled the firearms, and used his connection to Tifft to get Williams in the house more easily.

Based on the evidence presented, and the reasonable inferences from that evidence, a clear scenario unfolds: Bromley helped plan the crimes against Tifft. Three weeks before the crimes, Bromley

reconnected with Tifft. Ex. 2. About a week before the crimes, Bromley met up with Williams, who he had known for years. JT: 41. Having known Williams for years, he also knew Williams and Tifft may have had “beef” because Tifft had dated the mother of Williams’s child. JT: 62-63.

That “beef,” Bromley’s connection to Tifft, Bromley’s involvement in the drug scene, and his intent to sell drugs to Tifft, created an opportunity for a robbery. *See State v. Frias*, 2021 S.D. 26, ¶¶ 3-13, 959 N.W.2d 62, 65-67 (detailing the facts of a drug deal that devolved into a planned robbery and a double murder). Given this “drug rip” context, the jury could determine Williams intended to take Tifft’s money, and Bromley helped set it up.⁷ JT: 57.

Bromley set up the drug deal with Tifft as a ruse to get into Tifft’s house, allowing him to signal Williams when it was time to execute their plan.⁸ JT: 62, 64-65; Ex. 1. By getting inside the house, Bromley also paved the way for an easier entry for Williams—it got the door unlocked, if it was even locked in the first place. *See State v. Holzer*, 2000 S.D. 75, ¶ 3, 611 N.W.2d 647, 649 (noting the victim’s friend left the home’s doors

⁷ Bromley claims there is no evidence connecting him to the robbery and petty theft. According to him, the wallet found during the investigation wasn’t Tifft’s because he didn’t identify it as such and because it had a distinctive feature that Tifft had not testified to. AB: 13 (citing JT: 145-46, 153). That raises a question of evidentiary weight that this Court cannot resolve. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

⁸ Bromley claims he didn’t aid and abet the crimes because “Tifft could not remember if he asked Bromley to come over or if Bromley asked him to come over.” AB: 10 (citing JT: 44). That creates a conflict in the evidence and a question of evidentiary weight, neither of which this Court can resolve. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

unlocked because she “expected her boyfriend to stop by later”). And this part of the plan worked. The Ring Doorbell video shows Williams had no trouble getting into the house. Ex. 7. He went through the screen door and the main door within seconds.⁹ Ex. 7.

During their planning session, the topic of using weapons also came up. Bromley admitted that, before the crimes, he met with Williams and Williams showed him two pistols, which Bromley handled. JT: 144-45. The jury could determine those pistols weren’t shown in passing; they were discussed during an in-depth planning of the crimes. *See United States v. Aguilar-Banuelos*, 768 F.App’x 864, 866 (10th Cir. 2019)(determining the evidence showed Aguilar-Banuelos helped a kidnapping, in part, because he “attended a planning meeting[,]” he was “given a handgun[,]” and he “obtained ammunition for the handgun. . .”). Indeed, Bromley admitted that his fingerprints would be on those guns because he handled them.¹⁰ JT: 144-45. That handling leads to the reasonable inference that Bromley looked the guns over, helping Williams decide if they would get the job done. *See United States v. Nelson*, 137 F.3d 1094, 1104 (9th Cir. 1998)(holding there was sufficient evidence for aiding and abetting robbery because the use of firearms was discussed

⁹ This video evidence contradicts Bromley’s claims that “[t]here is no evidence that Bromley tried to prevent Tiffit from locking the door[,]” and “[t]here is no evidence that . . . because of Bromley’s visit, [Tiffit] left it unlocked that night.” AB: 10.

¹⁰ That no fingerprint testing results were presented at trial created an evidentiary weight question that only the jury could resolve. JT: 156; *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

during the planning phase). What's more, both assailants were armed with pistols, leading to the conclusion that the two pistols Bromley handled were the guns they used. Ex. 7.

This planning evidence is enough to support Bromley's convictions under an aiding and abetting theory. See SDCL 22-3-3 ("Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in *planning . . . the crime*, is legally accountable. . . .")(emphasis added). Thus, this Court should affirm his convictions.

2. Bromley drove Williams to the scene, gave him the "go" signal from inside Tiff's house, and tried to cover up his involvement afterward.

The evidence supports the prosecutor's theory that Williams rode with Bromley to Tiff's neighborhood. JT: 225. Bromley drove past Tiff's house and had to turn around, after Tiff saw him drive past. Ex. 1. This could be viewed as he was lost and needed help with where to go. Or it could be viewed as Bromley taking Williams to a secluded area to wait for the signal. Other evidence supports the latter view, which must be accepted. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

Had Bromley needed help finding Tiff's house, he could have used Google Maps to find his way, like he did when he, as a favor to Williams, was going to take a pickup to Valhalla Boulevard in Sioux Falls.

JT: 143-44; Ex. 16. This shows that Bromley's being "lost" was a ruse to get Williams into position.

The uncontested evidence also shows Williams stole a pickup to flee the area after the crimes. JT: 65-66, 69. If Williams had driven to the house on his own, as Bromley claimed (JT: 235), there was no need to steal a vehicle, he could have left in the one he brought.

The jury could also reject Bromley's "wrong place, wrong time" defense given a Facebook message he received six hours after the crimes. "BZtwisted Jester" told Bromley, "Damian wants know if ur good, or if ur home?" Ex. 11.¹¹ A rational jury could determine Williams wanted to know if Bromley had gotten away or if he had gotten jammed up with the police after Williams fled the house. If Bromley was at the wrong place at the wrong time, Williams's question makes no sense. Thus, Bromley's presence at the scene and this message shows he aided and abetted Williams's crimes. *Brings Plenty*, 490 N.W.2d at 267-68.

The evidence also shows that once he was inside Tiff's house, Bromley gave Williams the "go" signal. Tiff testified that while in the basement, Bromley got a text on his phone. JT: 46. Minutes after Bromley got the text, Williams stormed through the front door. JT: 46. Given the proximity between Bromley being on his phone and the crimes

¹¹ The Facebook messages in this case were sent to or received from a profile using the name "Cj Bromle." Ex. 11, 13, 14. The jury could determine that was Bromley's Facebook account because the last name is only one letter off from his last name, and because he goes by C.J. JT: 140-41; Ex. 15.

starting, the jury could determine Bromley gave the “go” signal after Williams asked if everything was squared away.¹²

Moreover, if Bromley was an innocent bystander caught in the middle, there was no reason for him to tell Tifft he wasn’t involved with the crimes. JT: 51. Bromley also offered Tifft \$100, under the guise of that being the money Tifft paid for the drugs he never received from Bromley because they were interrupted by the crimes. JT: 64-65. These actions were Bromley trying to distance himself from the crimes and throw everyone off his trail. *See Virgo v. State*, 931 So.2d 1010, 1013 (Fla. Dist. Ct. App. 2006)(“Virgo’s attempt to fabricate an alibi was evidence of his need to disassociate himself from his vehicle and the items found in it that connected him to the robberies.”).

Bromley also tries to diminish the evidence of his involvement by pointing out that all the messages recovered by law enforcement were sent after the crimes were committed. AB: 11. But that ignores the vital point about why messages sent before the crimes were not recovered. After the crimes, Bromley asked Tifft if he had left his phone in the house. JT: 131. The jury could determine this was a way to hide the truth of what happened to the phone: Bromley destroyed it to cover up that he sent Williams the “go” signal. *See Falkenberg*, 2021 S.D. 59, ¶ 44, 965 N.W.2d at 593 (noting that evidence showing “Falkenberg’s

¹² This point holds true even though Tifft testified he didn’t know if Bromley sent a text or not. JT: 46. What to make of that point was for the jury to decide. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

efforts to conceal” the victim’s identity and “dispose of her head, hands, and feet were highly relevant [because h]er missing body parts could have provided valuable clues to the cause of her death and Falkenberg’s role in causing it”).

Bromley’s “lost” phone ruse becomes even more concrete when connected to DCI Special Agent Toby Russell’s testimony. Agent Russell examined a phone that was collected after Bromley was arrested.

JT: 107. That examination showed Bromley started using that phone on March 1, 2025, hours after the crimes. JT: 107, 112. But Bromley wasn’t the only one who used that phone; Williams also used it between March 1 and March 5, 2025. JT: 112. This close association between Bromley and Williams circumstantially shows Bromley was involved in these crimes. *See Kihega*, 2017 S.D. 58, ¶ 16, 902 N.W.2d at 523 (“[A] close association between the defendant and an accomplice . . . may sufficiently connect the defendant with the commission of the crime. . .” (quoting *Nelson*, 310 N.W.2d at 779)).

Finally, the evidence shows that Bromley and Williams tried covering their tracks by using Facebook messages. Agent Russell testified that Facebook messages are “end-to-end encrypted.” JT: 133. That means one of two things: “there can be disappearing messages that will expire after the messages are read or *the messages can be deleted by the sender of those messages.*” JT: 134 (emphasis added). So when the messages collected from Bromley and Williams’s joint phone said “No

message content to display,” that means the encryption feature was used. JT: 134; Ex. 11, 12, 13. And the jury could determine Bromley and Williams intentionally deleted incriminating messages because the “no message content” warnings were intermingled with innocent messages in Exhibits 11, 12, and 13.¹³ See *State v. Aesoph*, 2002 S.D. 71, ¶¶ 50-52, 647 N.W.2d 743, 759-60 (affirming the trial court giving a “concealment” jury instruction because “there was sufficient evidence that [Aesoph] attempted to conceal the crime.”); *State v. Hibbert*, 14 S.W.3d 249, 253 (Mo. Ct. App. 2000)(recognizing inferences of guilt “may be drawn from acts or conduct of an accused subsequent to an offense if they tend to show a consciousness of guilt by reason of a desire to conceal the offense or accused’s role”); *United States v. Juarez Samayoa*, 827 F.App’x 967 (11th Cir. 2020)(per curiam)(noting the defendant obstructed an immigration investigation by deleting text messages during a traffic stop).

Simply put, all this evidence, and the inferences from it, are enough to support Bromley’s convictions under an aiding and abetting theory. See SDCL 22-3-3 (“Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another

¹³ Exhibit 11 shows Bromley used the encryption feature when messaging “BZtwisted Jester.” That undercuts Bromley’s claim that he “did not delete any of his messages, all the content was available.” AB: 12.

person . . . *committing the crime*, is legally accountable. . . .”(emphasis added). Thus, this Court should affirm his convictions.

3. Bromley helped Williams flee town after the crimes.

Even though an aider and abettor must act before a crime is complete, SR: 267-71 (Jury Instruction Nos. 18, 19, 20, 21, and 22), their “conduct after the offense” can circumstantially establish their guilt. *Brings Plenty*, 490 N.W.2d at 268. Here, Bromley admitted that he knew Williams was trying to flee town. JT: 149-50. The evidence also shows that Bromley helped Williams flee, leaving the keys to his vehicle with Williams. JT: 144. Days later, Bromley’s vehicle was found in Montana, where police believed Williams ditched it; Williams was arrested in Oregon, and Montana is along the logical route to Oregon. JT: 94, 160.

Bromley tried to distance himself from the theory that he helped Williams flee the crimes at Tiff’s house. He claimed that he thought Williams was fleeing a warrant for assaulting his wife. JT: 148, 239. But the jury didn’t have to buy that explanation. SR: 287 (Jury Instruction No. 38, telling jury it was the sole judge of credibility and determining the facts of the case). That creates an evidentiary conflict that only the jury could resolve. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

When Bromley’s after-the-fact help links up with all the other evidence, it supports a single conclusion: he is guilty of aiding and

abetting Williams's underlying crimes. And this Court should affirm his convictions.

D. A rational jury could determine that Bromley knew Williams would use a firearm when committing the underlying crimes.

Bromley claims there is no evidence that he knew Williams would use a firearm during the crimes, so he cannot have aided and abetted first degree robbery or the commission of a felony with a firearm.

AB: 14-18. Intermixed with this argument is a fundamental misunderstanding of how Williams had to use the gun during the crimes. Bromley's argument reads like he had to know Williams would fire the gun during the crimes. AB: 14-18. But that's not the law.

While first degree robbery requires that "[t]he offender use[] a dangerous weapon[,]” SR: 258 (Jury Instruction No. 9), “use” does not mean shooting the gun. Flashing the gun, pointing it, using it as a bludgeon, or miming you have a gun is enough to commit robbery. *See State v. Long Soldier*, 2023 S.D. 37, ¶ 1, 994 N.W.2d 212, 214 (Long Soldier was convicted of first degree robbery after pistol whipping a casino cashier); *State v. Pasek*, 2004 S.D. 132, ¶¶ 6-13, 691 N.W.2d 301, 305-07 (affirming Pasek's first degree robbery conviction after he passed a note to a bank teller, who acted as if he had a gun, even though he never brandished one).

The evidence also shows that Bromley knew Williams was going to use a gun during the crimes. Again, Bromley met with Williams to plan the crimes and Williams showed him two pistols. JT: 144-45. This

planning and talk of the guns are sufficient to prove Bromley knew the guns would be used. *See United States v. Easter*, 66 F.3d 1018 (9th Cir. 1995)(affirming aiding and abetting a crime of violence because, the night before the robbery, the assailants “discussed . . . that guns would be present during the robbery.”).

An armed Williams also rode with Bromley to Tift’s neighborhood. JT: 225; Ex. 1. Because Bromley was the “drop-off driver,” “it is rational to conclude he would have seen the gun in the car. . . .” *State v. Lilly*, 930 N.W.2d 293, 309 (Iowa 2019). And given that they were together immediately before the crimes, after planning them together, “a reasonable jury could have concluded [Bromley] knew [Williams] would be armed during the robbery.” *United States v. Akiti*, 701 F.3d 883, 887 (8th Cir. 2012).

Because the evidence shows Bromley knew Williams would use a gun during the crimes, there is sufficient evidence to support his convictions for first degree robbery and commission of a felony while armed with a firearm.

E. A rational jury could determine that confining Tift was not incidental to the other crimes.

Bromley claims the evidence cannot support aiding and abetting second degree kidnapping because Williams and the other assailant were only in Tift’s house for two minutes. AB: 18. Based on that short duration, he argues “Tift’s brief confinement during the robbery was no more likely part of a premeditated plan than a spontaneous reaction that

was incidental to the underlying offenses.” AB: 19. This argument recognizes there are two conflicting views that the evidence could support. That cannot be grounds for reversing Bromley’s conviction on sufficiency of the evidence grounds. *Winckler*, 2026 S.D. 19, ¶ 69, 33 N.W.3d at 81.

Besides that, the evidence shows Bromley knew Tifft was going to be confined during the break-in. Again, Bromley helped plan these crimes. JT: 62, 64-65, 144-45. Tifft’s confinement was part of that plan. One robber stayed in the kitchen, where he confronted Tifft, telling him to “freeze” as soon as he came upstairs. JT: 47. While that robber waited for Tifft, Williams ran down the hall to pilfer Tifft’s property. JT: 74. That’s where their plan fell apart for a split second, because, unknown to Bromley and Williams, McFarland was in the bedroom. JT: 74, 173. But Williams immediately regained control, ordering McFarland to “get down on the ground. Freeze[.]” JT: 74. While even the best laid plans never survive first contact, Daniel J. Hughes, *Moltke on the Art of War: Selected Writings*, pg. 45-47 (Presidio Press 1993), that doesn’t matter here. The planning alone makes Bromley an aider and abettor to the kidnapping. SDCL 22-3-3.

But just because that confinement was part of the plan, that doesn’t make it “incidental” to the burglary. That crime was completed when the assailants burst through the front door, intending to commit another crime. SR: 259, 268 (Jury Instruction Nos. 10 and 19).

Controlling Tift wasn't "incidental" to the robbery either. Making him kneel on the floor with a gun to his head was meant to terrorize and humiliate him. JT: 48. Thus, that control wasn't "merely incidental" to the robbery; it was "a separate, distinct offense punishable as such." *Eaglehorse*, 286 N.W.2d at 331 (citing *State v. Deutsch*, 126 N.W.2d 112 (S.D. 1964))(footnote added).

Given that the kidnapping was part of the plan all along, and it was not incidental to the other crimes, there is sufficient evidence to support Bromley's conviction for second degree kidnapping.

CONCLUSION

The evidence presented at trial shows Bromley was intimately involved in planning the crimes at Kyle Tift's house. The evidence also shows Bromley helped Damion Williams carry out the crimes, acting as the "drop-off driver," getting inside the house to give the "go" signal, and making it easier for Williams to get through the front door. And the evidence shows Bromley tried to cover his tracks and disassociate himself from the crimes by destroying evidence and creating false alibis. All that evidence, and its reasonable inferences, shows Bromley aided and abetted Williams in committing robbery, burglary, kidnapping, commission of a felony while armed with a firearm, and petty theft.

Therefore, the State requests that this Court affirm Bromley's convictions and sentences.

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 6,502 words.

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

Dated this 4th day of May, 2026.

/s/ Matthew W. Templar
Matthew W. Templar
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of May, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Cory J. Bromley* was served via the Odyssey electronic filing system upon Justine Avtjoglou, at Justine.Avtjoglou@state.sd.us.

/s/ Matthew W. Templar
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff/Appellee,

vs.

CORY BROMLEY,

Defendant/Appellant.

No. 31306

APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Tami A. Bern

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

To avoid repetitive arguments, Appellant, Cory Bromley, confined this response to “new matters” raised in the Appellee’s brief. SDCL 15-26A-62. Any issue raised in Bromley’s initial brief, but not mentioned herein, is not intended to be waived.

The brief of the Plaintiff and Appellee, the State of South Dakota, is referred to as “SB.” The brief of the Appellant, Cory Bromley, will be referred to as “AB.” Transcripts of the Jury Trial, volume 1 and volume 2, are referred to as “JT.” Witness Kyle Tifft will be referred to as “Tifft.” Damion Williams will be referred to as “Williams.” Defendant and Appellant, Cory Bromley, will be referred to as “Bromley.” All citations will be followed by the appropriate page number. Bromley relies on the Jurisdictional Statement, Statement of the Case,

Statement of Facts, and Statement of Legal Issues presented in his initial brief.

ARGUMENT

I. BROMLEY DID NOT WAIVE HIS ARGUMENT THAT THE EVIDENCE OF AIDING AND ABETTING KIDNAPPING WAS INSUFFICIENT TO CONVICT.

Bromley's Appellant Brief argued that the State failed to introduce sufficient evidence to prove an element of the crime of aiding and abetting kidnapping. AB 18-19. In response, the State argued that Bromley waived this claim by failure to cite legal authority. SB 11. As the State acknowledged, this was a conviction specific argument. SB 9-10. The legal elements required for aiding and abetting any crime, including kidnapping, are enumerated along with the appropriate legal citations. AB 8-9. Bromley's Appellant Brief provided case and offense specific factual argument with citations to the record. AB 18-19. As the State accurately summarized in its brief, Bromley claimed that the evidence failed to show that he "knew and intended for Williams or the unidentified perpetrator to unlawfully confine Tifft." SB 10. Bromley's Appellant Brief argued that an aider and abettor must know the perpetrator intended to commit the crime and must intend to facilitate or promote the crime – in advancing this contention, Bromley provided supporting citations. AB 8-9 (citing *State v. Thoman*, 2021 S.D. 10, ¶¶ 33-35, 955 N.W.2d 759, 770-71; *State v. Jucht*, 2012 S.D. 66, ¶ 22, 82, N.W.2d 629, 634; SDCL 22-3-3; *State v. Tofani*, 2006 S.D. 63, ¶ 36, 719 N.W.2d 391; 400; *State v. Brings Plenty*, 490 N.W.2d 261, 268 (SD 1992); SDPJL § 3-28-5 (2023), and SDCL 22-3-3). Therefore, Bromley's claim was not waived. The

State must prove that Bromley knew and intended for Williams to kidnap Tifft to sustain a conviction. AB 8-9, 18-19.

II. ONLY REASONABLE INFERENCES LOGICALLY DRAWN FROM CIRCUMSTANTIAL EVIDENCE CAN SUPPORT A CONVICTION.

The State presumed that a “planning session” occurred, but no evidence was ever introduced leading to a reasonable or logical inference that a planning session occurred. SB 16. The argument ignored a fundamental principle of circumstantial evidence. A conviction based solely on circumstantial evidence only withstands if the circumstantial evidence supports *reasonable inferences* that point to guilt. *State v. Breed*, 399 N.W.2d 311, 312-13 (1987). “Circumstantial evidence means evidence that proves a fact from which you *logically* and *reasonably* infer the existence of another fact.” *Id.* at 312 (emphasis added). When circumstantial evidence is used to speculate, the evidence is insufficient to form the basis of a conviction. And, when all the circumstantial evidence, viewed as a whole, has a reasonable interpretation that points to a theory of innocence, then a conviction does not survive review. *Id.*

“[W]here a case of the state rests substantially or entirely on circumstantial evidence, [the jury is] not permitted to convict the accused unless (1) the proved circumstances are not only consistent with the guilt of the accused, but cannot be reconciled with any other rational conclusion and (2) each fact which is essential to complete a set of circumstances necessary to establish the accused guilt has been proven beyond a reasonable doubt.” *Breed*, 399 N.W.2d at

312-13 (citing *State v. Luna*, 264 N.W.2d 485 (1978); *State v. Schafer*, 297 N.W.2d 473 (1980); *State v. Hall*, 353 N.W.2d 37 (1984); *State v. Weisenstein*, 367 N.W.2d 201 (S.D.)). Moreover, “If all the facts and circumstances shown can be reasonably accounted for upon any theory consistent with the innocence of the defendant, the jury must acquit the defendant.” *Id.* at 313 (citing the South Dakota Criminal Pattern Jury Instruction 1-16). On review, this Court must examine the circumstantial evidence and view it as a whole, “to see whether in its totality it is enough to rule out any reasonable hypothesis of innocence.” *State v. Carter*, 2009 S.D. 65, ¶ 44, 771 N.W.2d 329, 342 (citing *State v. Shaw*, 2005 SD 105, ¶ 45, 705 N.W.2d 620).

The State argued that “Bromley set up the drug deal,” “signal[ed] Williams” when it was time to enter and “got the doors unlocked.” SB 15. There is no evidence, circumstantial or direct, that Bromley initiated the drug deal. An absence of evidence does not implicate issues of “evidentiary weight” as the State argued. *See* SB 15 n.7. In fact, Tifft could not remember if he asked Bromley to come over or Bromley asked him. JT 44.

Furthermore, there is no evidence, circumstantial or direct, that Bromley signaled Williams to enter. On this point, the State’s factual recitation is misleading. SB 4. According to the State, “Tifft wasn’t sure if Bromley sent a text or received one.” *Id.* The State misstated the testimony. Tifft was sure that Bromley received a message, but he didn’t know “if he sent one or not.” JT 46. Tifft did not elaborate as to who the message was from, or how he knew it was a

message as opposed to another type of notification, or whether it was a Facebook message or a text message. There is no other evidence regarding the alleged tip-off on the record.

Tiff's testimony confirming that he did not know or did not remember amounts to a lack of evidence, not affirmative evidence that something occurred. If the State had introduced evidence that Bromley *sent* a message shortly after entering, a reasonable inference suggesting a tip-off could be drawn, but the State did not introduce that evidence. It is speculation to assume Bromley *sent* a message tipping Williams off, and its speculation to presume that Bromley *sent* message because he *received* one from some unknown person. These facts and circumstances can be reasonably accounted for upon a theory of innocence.

The State also argued that a reasonable interpretation of the circumstantial evidence introduced is that "Bromley destroyed his phone to cover up that he sent Williams the go signal." SB 19. Bromley used the cell phone recovered by police from February 28, 2025, to March 4, 2025; it was being used prior to and at time of the incident. JT 112, 119, 132, 136-37. If he destroyed a phone to hide evidence, he would have destroyed the phone he was using prior to and at the time of the incident. It is not reasonable to infer that Bromley destroyed the phone, much less destroyed the phone to destroy messages sent the day of the incident. The State further argued that both Bromley and Williams used the phone and their "*close association* circumstantially shows Bromley was involved in the crimes." SB 20 (emphasis added). The State relied on mere association with

Williams as the circumstantial evidence of guilt.

The State further argued that Bromley “got the doors unlocked.” When Bromley arrived at Tifft’s house, Tifft opened the door and Bromley entered. Ex. 7. When the perpetrators entered, both doors were closed. *Id.* That is the only evidence on the record relevant to the unlocked door. There is no evidence that Bromley encouraged Tifft to leave the door unlocked, that Bromley closed the door or discouraged Tifft from locking it, that Bromley knew Tifft would leave the door unlocked, or that the door was ever locked that night in the first place. The jury had to make a series of assumptions to conclude that Bromley orchestrated keeping the doors unlocked after he entered. Bromley consensually entering Tifft’s to sell his friend drugs, a fact that is not in dispute, does not logically lead to the inference that Bromley orchestrated keeping the doors unlocked so Williams could enter.

The State failed to introduce circumstantial evidence sufficient to *reasonably* support the inference of an orchestrated set up. Inferring the fact of an orchestrated set up from Bromley’s mere presence at the scene and association with Williams is, per se, legally insufficient to convict. *State v. Carter*, 2009 S.D. 65, ¶44, 771 N.W.2d 329, 342.

Contrary to the State’s assertions, Bromley did not argue that “he had to know Williams would fire the gun during the crimes.” SB 23; *See* AB 14-18. Rather, Bromley argued that he must have advance knowledge that Williams intended to “use,” not fire, a firearm to be convicted of First-Degree Robbery. AB

18. In the case of Commission of a Felony with a Firearm, the State must prove advance knowledge that the offender would “use or carry” a firearm. AB 17. There are many ways to use a firearm short of firing it, including pointing or brandishing it to commit a kidnap. The State’s mischaracterization attempted to diminish the legal standard by comparing it to a more rigorous phantom argument. While Bromley did not have to know Williams would fire the gun, general knowledge that Williams possessed guns prior to the incident is not sufficient. The State only proved beyond a reasonable doubt that Bromley handled guns that belonged to Williams’ days before the incident. A reasonable and logical inference based on this circumstantial evidence is that Bromley knew Williams possessed firearms, but this is insufficient to satisfy the advance knowledge requirement.

The State argued that from the evidence introduced, namely Bromley’s handling of guns that Williams possessed week prior, “[t]he jury could determine those pistols weren’t shown in passing; they were discussed during an in-depth planning of the crimes.” To draw an inference of an “in-depth planning of the crimes,” from this brief, undetailed interaction is not reasonable. The State’s speculative leap is an attempt to legitimize the argument that the simple handling the guns leads to an inference of guilt; the argument is circular. The State failed to introduce evidence that a plan was even discussed, much less a plan that included Williams using those guns to commit an armed Robbery and Kidnap at Tiff’s house in the middle of the night a week later.

By way of comparison, the *Aguilar-Banuelos* case cited by the State provides an example of sufficient circumstantial evidence to sustain a conviction for aiding and abetting. The following evidence was introduced to prove aiding and abetting kidnap:

Mr. Aguilar-Banuelos had attended a planning meeting at his apartment, let the kidnappers use his apartment to keep the victim, helped the kidnappers activate the cell phones that they later used to demand the ransom, told the kidnappers where they could get the security uniforms later worn during the abduction, and asked one of the kidnappers when the “fiesta” (code word for the kidnapping) would happen so that he’d know when to leave the apartment. For his efforts, Mr. Aguilar-Banuelos was paid and given a handgun.

U.S. v. Aguilar-Banuelos 768 Fed.Appx 864, 866 (2019). Here, the record is devoid not only of circumstantial evidence of a plan, but also of circumstantial evidence that Bromley in fact aided and abetted Williams.

In summary, the State relied on unreasonable and illogical inferences drawn from circumstantial evidence. The jury lacked sufficient evidence to convict. Substantial evidence is required to support a conviction. *State v. Jucht*, 2012 S.D. 66, ¶ 17, 821 N.W.2d 629, 633 (quoting *State v. Tofani*, 2006 S.D. 63, ¶ 37, 719 N.W.2d 391, 401). The State relied on speculation, mere presence on scene, and mere association with Williams. Looking at the circumstantial evidence fairly and drawing only *reasonable and logical* inferences from that evidence, a reasonable hypothesis of innocence cannot be ruled out.

CONCLUSION

For the reasons stated above and in Appellant’s initial brief, authorities

cited, and upon the settled record, Bromley respectfully asks this Court to remand his case to the circuit court with an order directing the circuit court to enter judgments of acquittal on each count and vacate the corresponding sentences.

REQUEST FOR ORAL ARGUMENT

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

Respectfully submitted on this 3rd day of June 2026.

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Reply Brief contains 2,031 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 3rd day of June 2026.

/s/ Justine Avtjoglou
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CERTIFICATE OF SERVICE

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

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