In the Supreme Court
State of South Dakota

Appeal No. 30426

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

Brandon Hahn,

Defendant and Appellant.

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

The Honorable Matt Brown
Circuit Court Judge

APPELLANT'S BRIEF

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Notice of Appeal filed August 9th, 2023

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PRELIMINARY STATEMENT

Throughout this brief, Plaintiff and Appellee, State of South Dakota, is referred to as "state." The circuit court is referred to as "circuit court" or "court". Defendant and Appellant, Brandon Hahn, is referred to as "Brandon." All hearings relevant to this appeal are denoted "*JT*," with a description of either volume 1 or volume 2. All other documents filed are referenced by the document name followed by the date of its filing. "*App*" designates Appellant's Appendix.

JURISDICTIONAL STATEMENT

In this appeal, Brandon Hahn seeks review of the Court's denial of defense counsel's motion for a judgment of acquittal.

Brandon respectfully submits that jurisdiction exists pursuant to SDCL § 15-26A-3(1) (appeal from final judgment as a matter of right).

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. Whether the circuit court erred in denying defense counsel's motion for judgment of acquittal where the fair market value of the damaged property was not established.

State v. Ladu, 2016 S.D. 14, 876 N.W.2d 505

State v. Rich, 268 N.W.2d 603 (S.D. 1978)

STATEMENT OF THE CASE

On September 8th, 2021 Brandon Hahn was indicted by a Pennington County Grand Jury for one count of Intentional Damage to Private Property in the First Degree. The Honorable Matt Brown presided over this matter. A two-day jury trial commenced on June 12th, 2023 and on June 13th, 2023, Brandon is convicted of Intentional Damage to Private Property as well as Obstructing a Public Officer. On July 7th, 2023 Brandon was sentenced to 15 years in the South Dakota State Penitentiary with 10 years suspended and 312 days of credit time served. The sentence was ordered to run concurrent to Brandon's sentence in Meade County File 46CRI22-318.

FACTS

In the early hours of August 24, 2021, the homeowner of 217 North Platt Street in Rapid City awoke to the sound of pounding and hollering at her front door. *JT Volume 1*, 29, 12-15. Homeowner describes the noise that woke her up as "so much noise because it's a metal door, and you can't break a metal door so he broke the door around it." *Id.*15-17. Homeowner makes her way to her backyard where a neighbor was able to give assistance and calls emergency services. *Id.* 38, 13-18. That neighbor observes a male quickly leaving the area where the banging occurred and describes the suspect as in their late 20s to early 30s, "shirtless, in some sort of shorts-- cutoffs or cargo shorts-- with a buzzed haircut, young, male, Caucasian." *Id.* 39, 9-11.

Law enforcement arrive and describe the front door of the house. "[T]here were like these little plaques on the front door, and some of them were broken off. The door frame itself was busted into little parts. If you open the door and looked inside, there were wood pieces, parts of the frame, like, on the steps." *Id.* 84, 15-19. As part of their investigation law enforcement take photos of the door frame. *See Appendix Tabs* 3-6.

As law enforcement conducts their investigation, an individual matching the description given by the neighbor walks across the street. *Id.* 87, 18-19. Law enforcement approach the individual, later identified as Brandon Hahn (hereinafter Brandon) and begin questioning him. Brandon is quickly detained and, as law enforcement testify, "became kind of verbally combative with us." *Id.* 90, 1. Brandon is placed in a patrol car while law enforcement continue their investigation. Eventually a determination is made and he is arrested for the damage done to the property.

On August 24th, 2021 Brandon is indicted on one count of Intentional Damage to Private Property in the First Degree in violation of SDCL 22-34-1(2). Brandon is also charged with two misdemeanors, obstructing a public officer and disorderly conduct, both stemming from conduct after Brandon is detained.

A two-day jury trial commences June 12th, 2023. The state's theory regarding intentional damage to private property pertained solely to "the damage done to the door and the efforts made to repair it with the hope that [homeowner] would feel safe in her home again. They'll tell you that the damage to the door cost more than $1,000 to repair." *Id.* 18, 8-12. The state continues, "[y]ou'll also hear that Delores had homeowner's insurance and that the insurance company awarded over $1,300 for the damage to the door." *Id.* 12-14.

Homeowner testifies in her belief that she has lived in that same house since 1962. *Id.* 33, 2-3. She further testifies that the door which was kicked in was the original door from when the house was built. *Id.* 14-16.

The jury heard testimony that the "[f]ront door was kicked in with quite a bit of force. It was dead-bolted, but the wood that surrounded the casing of the door was just shattered." *JT Volume 2*, 211, 22-24. Homeowner's daughter testified that she paid "by check… for the special locking mechanism that was built and labor by [a carptenter] to do the installation. And then by credit card was the actual new door itself, the lock set, and then all the doorjamb materials, nuts, screws, et cetera, to install it." *Id.* 227, 1-6. When asked about amounts, daughter testified "[t]he credit card receipts totaled roughly $599, then $300 to [carpenter] for labor, and [$]575 for that specially manufactured locking mechanism." *Id.* 9-11.

The state elicited testimony that homeowner received a check from her insurance company in the amount of $384 and that homeowner's policy had a $1,000 deductible. *Id.* 225, 9-20. However, the state was not able to introduce any documents that pertained to the insurance company as they failed to comply with the discovery deadline ordered by the circuit court. *Id.* 218, 16-25.

During cross examination, counsel for defense focused on the amount of money spent to replace the property. *Id.* 227, 21-23. Defense counsel also inquiries into whether any assessment is ever done to the actual value of the damaged property. *Id.* 236-37, 23-25; 1. No witness could testify to the actual value. *Id.* 237, 2.

The state rested its case and defense made a motion for a judgment of acquittal, contending that the state failed to provide any evidence that the value of the damaged property was over $1,000. *Id.* 239, 2-3. Defense cites *State v. Rich*, arguing that "when a criminal statute provides for a greater penalty when the damage is over a certain sum, value means market value. Now, that makes sense too because if we don't go market value, if we go with replacement value, now it's subject to economic factors." *Id.* 251, 6-10. Defense continues, "we need to focus on what was actually the property at hand. What was the value of the property at the time. That's why it has to be fair market value." *Id.* 11-14. Finally, defense cites to South Dakota Pattern Jury Instruction 3-25-4 "[i]t says, the value of the damage to the property in question is equal to the value of reasonable repairs that will restore the property to substantially the same condition as it was immediately prior to the damage." *Id.* 253, 13-18.

In its response, the state believed their evidence supported the case going to the jury.

> We had testimony from [daughter] about the checks she received from the insurance company of $384 as well as the $1,000 deductible, and that was an award for the damage to the door. We also had testimony from [daughter] about the money she personally paid to repair and replace the door. I think there's a jury instruction that the jury can consider the amount of reasonable repairs in determining the value of property in this case. [Daughter] testified she spent over $1,000. If my calculations are correct, I believe she indicated she spent $1,474. That's not counting any money for the amount of work Robert Mudge put into that repairing the door, so State has met its burden and we believe that a reasonable jury could find in our favor and we would ask that the judgment of acquittal be overruled.

Id. 243, 5-24.

The state is further pressed on whether *Rich* is still an applicable case in regard to South Dakota Pattern Jury Instructions 3-25-4 and 3-25-5.

> *Rich* is clearly absent from the repair value pattern instruction. And so it seems to be that the pattern instruction committee considered that. They reference *Rich* in other instructions and they purposefully didn't include it in this instruction, that it should be reasonable repairs that will restore the property. And I think the fact that the owner doesn't have to testify to value, that's in the most recent case that we have – 2016, *Ladu* – that says that the owner doesn't have to testify to the value of the property, then that's saying there doesn't have to be evidence of fair market value and then you would rely on reasonable repairs to the property…The pattern jury instructions seem—they intend for it to apply and they don't include *Rich* on there and then *Ladu* is more recent than *Rich* and says the owner does not have to testify to value. That seems to be saying to me that repair value is what should be utilized.

Id. 254, 1-25.

The circuit court denied defense counsel's motion for judgment of acquittal that sufficient evidence in the light most favorable to the nonmoving party existed to meet the elements of damages. *Id.* 258, 15-19. The circuit court found that:

> Reasonable repair costs can be considered in assessing damage—and that's the word, that's the applicable word in the statute—that the jury can consider the repair costs as part of assessing the value of the damages…I do not believe that this ruling is consistent with what *Rich* has outlined. So there is, in this Court's opinion, a distinction between

> *Rich* and what the pattern instructions read and I am ruling that the repair costs can be considered in determining damages for the purposes of meeting the element of damages above a certain monetary value.

Id. 256, 3-16. The circuit court continued, citing *State v. Ladu*:

> Testimony about a repair bill, which is essentially what was offered here in this case, and even without—it doesn't even sound like the repair bill in that case was even offered, just the testimony about, well, I'm going to get a repair bill and I think it's going to be less than 400. The Supreme Court said, well, that's enough to meet the elements of the statute, including damages.

Id. 257-58, 22-25; 1-5.

The trial continues and Brandon was convicted of Count 1, Intentional Damage to Private Property, and Count 2, obstructing a public officer. On July 7th, 2023, Brandon admitted to being a habitual offender and the court proceeded with sentencing. On Count 1 Brandon was sentenced to a term of 15 years in the South Dakota State Penitentiary with 10 years suspended and 312 days credit. This sentence was ordered to run concurrently with Meade County File 46CRI22-318. On Count 2 Brandon was sentenced to 30 days in the Pennington County Jail and 30 days of credit for time served.

STANDARD OF REVIEW

This Court reviews "de novo a trial court's denial of a motion for a judgment of acquittal and decide anew whether there is sufficient evidence in the record to sustain the conviction." S*tate v. Miland*, 2014 S.D. 98, ¶ 11, 858 N.W.2d 328, 331 (citations omitted). The evidence is "viewed in the light most favorable to the verdict." *State v. Johnson*, 2015 S.D. 7, ¶ 39, 860 N.W.2d 235, 250 (quoting *State v. Hauge*, 2013 S.D. 26, ¶ 12, 829 N.W.2d 145, 149). "We will not set aside a jury's verdict if the evidence presented, including all favorable inferences drawn from it, provides a rational theory that supports the jury's verdict. *Id.*

ARGUMENT

I. THE CIRCUIT COURT ERRED WHEN IT DENIED DEFENSE COUNSEL'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE FAIR MARKET VALUE OF THE DAMAGED PROPERTY WAS NOT ESTABLISHED

The crux of this case concerns a door from a house built in 1962 yet no testimony was elicited regarding the actual market value of the door. Further, the jury heard no testimony regarding reasonable repairs that would have restored the property to substantially the same condition as it was immediately prior to the damages. The testimony focused on significant amounts of money spent to entirely replace the door, labor, and a special locking mechanism. It is unquestionable that a homeowner would fortify their home after an event like what occurred here. However, those efforts are not what South Dakota Codified Law nor this Court mandate in calculating the value of damaged property. Despite the clear law, the circuit court disregarded this Court's decision in *State v. Rich* as well as the South Dakota Pattern Jury Instructions and applied the wrong test in its determination that the jury could solely consider the replacement and repair costs in calculating the value of property which was never established. This Court must reverse the circuit court's denial of defense counsel's motion for judgment of acquittal as the state failed to prove a critical element, specifically the fair market value of the damaged property.

The State indicted Brandon of Intentional Damage to Property in violation of SDCL § 22-34-1 in that he injured, damaged, or destroyed private property in which any other person has an interest, without the consent of the other person and the damage to the property is more than $1,000.

In *State v. Rich* this Court reversed defendant's conviction where the state failed to prove the value of the destroyed property was more than $300, the amount that constituted a felony in 1978. 268 N.2.2d 603, 606 (S.D. 1978). There, defendant was convicted after breaking windows, making large holes in doors and destroying furniture in a home. *Id.* at 604. To prove the valuation of damages, the state called an employee who testified that "he approved all purchase orders for materials used to repair any damage done to any of the units and he kept records regarding the same…[H]e stated that the cost of the materials and labor required to repair the damage was $482.38." *Id.* at 605. This Court goes on to note that the employee was never asked the value of the property damaged. *Id.*

This Court held that solely testifying to the amount of repairs "was not the proper method of proving value in this case…[W]hen a criminal statute provides for a greater penalty when the damage is over a certain sum, value means the market value." *Id.* (quoting *50 Am.Jur.2d Larceny s 45; 52A C.J.S. Larceny s 60(2)).* In its rationale, this Court noted that more likely than not, "the building in question exceeded the value of three hundred dollars. The State could have produced a witness capable of stating the market value of the building, or if a market value could not be ascertained, the state could have resorted to reconstruction or some other applicable method." *Id.*

State v. Rich is the controlling authority and the present facts are analogous. No evidence is established at trial to ascertain the fair market value of the damaged property. The state solely relied on the testimony of lay witnesses regarding repairs and replacement. Further, the state's response to defense counsel's motion for judgment of acquittal confirms this crucial mistake. Specifically, the state argues that the motion

should be denied because elicited testimony established that more than $1,000 was spent on replacements of the damaged property and that did not account for any amount spent on repairs. *JT Volume 2*, 243, 10-24.

Such an argument is in complete contradiction of *Rich*. In its argument opposing judgment of acquittal, the state makes it abundantly clear that it did not attempt to establish the fair market value, "if [homeowner] [doesn't] have to testify to the value of the property, then that's saying there doesn't have to be evidence of fair market value and then you would rely on reasonable repairs to the property." *Id.* 254, 11-15. In making this argument, the state admits that no evidence was elicited to establish the fair market value of the property. The state failed to prove a crucial element that could have been addressed simply by producing a witness capable of stating the market value of the house or by another applicable method.

The present facts are even more in dispute than what this Court held in *Rich* as there is a significant probability that the damaged property here would not even constitute the requisite amount of $1,000. Homeowner testified that the damaged property is the same that was installed in the 1960's. *JT Volume 1*, 33, 2-3. The probability that the fair market value of the property is more than $1,000 is highly unlikely, however this Court need not consider this as the state provided no evidence of the fair market value.

Further, the state rested its case upon an insurance check that was provided to homeowner. While testimony was elicited that a check for $384 is given to homeowner who has a $1,000 deductible, the state did not produce any evidence regarding how the insurance company came to that figure. They provided no evidence regarding what

homeowner's $1,000 deductible was used for. It did not establish, for example, that the insurance company provided half of the amount for labor and half the amount for replacement of the property. The state had the burden of proof to show how the check establishes the element of value and it failed to do so.

The state implies that *State v. Ladu* in essence overrules this Court's holding in *Rich* as it pertains to calculating value. *JT Volume 2*, 254, 2-4. In its holding, the circuit court agrees with the state that this Court's holding in *Ladu* overruled the fair market value rule established in *Rich*. However, this finding constitutes error. This Court explicitly ruled that *Ladu* was distinguishable from *Rich*. *State v. Ladu*, 2016 S.D. 14 ¶ 17, 876 N.W.2d 505, 509.

In relevant part, *Ladu* pertained to a shattered window in which the owner testified she believed it would be less than $400 to replace. There, this Court upheld the conviction of a misdemeanor intentional damage to property, finding that all essential elements of SDCL 22-34-1 were met, even where the tenant of the apartment testified "she had not yet received the repair bill for the window but believed it would be less than $400." *Ladu* at ¶ 18.

Similar to *Rich*, the present facts are distinguishable from *Ladu*. First, here Brandon is facing a felony conviction as opposed to the defendant in *Ladu* who was only facing a class 2 misdemeanor. There, the damaged property was a pane of glass that would simply be replaced. *Id.* There was no testimony requiring the replacement of the window frame nor any mechanisms, simply the glass. Here, the state's testimony was that the entire door, locking mechanism and frame were damaged and required replacement. There, the state only needed to prove that damage was done to personal property and no amount

needed to be proved as it was below $400. Here, the state was required to establish that the damage is more than $1,000.

The state incorrectly argued to the circuit court that *Ladu* coupled with South Dakota Pattern Jury Instruction 3-25-4 overrules the fair market value rule established in *Rich*. The circuit court agreed, finding that the jury instruction is contradictory to *Rich*. *JT Volume 2*, 256, 2-16.

The circuit court erred in this determination. First, this Court had the opportunity in *Ladu* to overrule *Rich* and it did not. In fact, as previously mentioned, it completely distinguished *Ladu*. Secondly, SDPJI 3-25-4 states that "the value of the damage of the property in question is equal to the value of reasonable repairs that will restore the property to substantially the same condition as it was immediately prior to the damage." In *Ladu*, this was an easy determination as all that was required to restore the property to the same condition was a repair of a window. 2016 S.D. 14 at ¶ 18. Here, the theory of State's case does not regard a simple repair to a door from the 1960's. Their entire case revolves around the entire replacement and heightening of security for homeowner. In essence, the state's argument at trial is fatally flawed as their evidence does not comply with SDPJI 3-25-4.

Furthermore, in its rationale for denying the judgment of acquittal, the circuit court made no mention of an established fair market value as is required in SDPJI 3-25-5. That instruction is required to be read when there is a question of whether the damage exceeds the value of the property. The instruction provides that if the "value of reasonable repairs exceeds the value of the property as it was immediately prior to the damage, then you must find the amount of damage is equal to the fair market value of the property immediately prior to the damage." This instruction implies that in order to contemplate

the repairs to property, the initial value of the property must be established, something that the state never does.

In their response brief the state may argue defense had a chance to put on evidence to show that homeowner's actions in repair and replacements were not reasonable. However, such an argument is contradictory to the American jurisprudence as it would shift the burden to defense to disprove an element that the state never proved from the outset.

This is a case in which the state attempted to circumvent this Court's decades old controlling authority in *Rich.* They failed to provide any evidence of the fair market value of the damaged property and instead convict Brandon with inapplicable values. By failing to provide necessary evidence, specifically the fair market value of the damaged property mandated by *Rich,* the state could not prove the element of value and the circuit court erred in denying defense counsel's motion for judgment of acquittal.

CONCLUSION

The state has discretion to try its case in whatever way they deem appropriate. However, when they fail to provide any evidence to a crucial element of a felony, the circuit court should not let the case go to the jury. That is exactly what happened here. The circuit court erred in not granting defense counsel's motion for a judgment of acquittal as the state provided no evidence whatsoever of the fair market value of the damaged property. For all the aforementioned reasons, this Court should reverse and remand the circuit court's judgment.

REQUEST FOR ORAL ARGUMENT

Defendant/Appellant Hahn respectfully requests that he be allowed to present oral argument on this issue.

Respectfully submitted this 13th day of November 2023.

/s/ Kyle D. Beauchamp
Kyle Beauchamp
Colbath and Sperlich
kyle@acolbathlaw.com

CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word and contains 3,576 words from the Statement of the Case through the Conclusion. I have relied on the word count of a word processing program to prepare this certificate.

Dated this 13th day of November 2023.

/s/ Kyle D. Beauchamp
Kyle Beauchamp
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of foregoing Appellant's Brief and all appendices were filed online and served upon:

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Dated this 13th day of November 2023.

/s/Kyle D. Beauchamp
Kyle Beauchamp
Colbath and Sperlich
Attorney for Appellant

APPENDIX

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff.	)	File No. CRI21-3694
vs.	)	JUDGMENT
BRANDON DEAN HAHN, DOB: 7/4/93 Defendant.	)	

Appearance at sentencing:
Prosecutor: Aaron Hellbusch Defense attorney: Nicholas Peterson

The Defendant appeared in person for a jury trial and was found guilty on June 13, 2023, on Count 1, Intentional Damage to Private Property in the First Degree, Class 6 Felony, SDCL 22-34-1(2), occurring on or about August 24, 2021, and on Count 2, Obstructing a Public Officer, Class 1 Misdemeanor, SDCL 22-11-6, occurring on or about August 24, 2021. The Defendant appeared at sentencing on July 7, 2023, to which the Jury fount him guilty. The Court having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered, the Court therefore pronounced the following sentence.

Crime qualifier: (check if applicable): add
☐ Accessory 22-3-5 ☐ Aiding or Abetting 22-3-3 ☐ Attempt 22-4-1
☐ Conspiracy 22-3-8 ☐ Solicitation 22-4A-1

Habitual offender admitted on July 7, 2023
☐ SDCL 22-7-7 ☒ SDCL 22-7-8 ☐ SDCL 22-7-8.1

Part 2 Information (DUI) admitted on _____
☐ Third Offense; SDCL 32-23-4 ☐ Fourth Offense; SDCL 32-23-4.6
☐ Fifth Offense: SDCL 32-23-4.7 Sixth or Subsequent Offense: SDCL 32-23-4.9

Part 2 Information (ASSAULT) admitted on _____
☐ SDCL 32-23-4.9

It is hereby ORDERED:

☐ The Court suspends imposition of sentence.
☐ The Court defers imposition of sentence.

On Count 1: The Defendant is sentenced to serve a term of **15** year(s) in the South Dakota State Penitentiary with **10** year(s) suspended and **312** days credit plus each day served in the Pennington County Jail; and

On Count 2: The Defendant is sentenced to serve a term of **30** days in the Pennington County Jail; with **0** days suspended and **30** days credit for time served.

TERMS AND CONDITIONS
(x) terms and conditions that apply:

1. ☐ That the Defendant remain on good behavior and not commit another federal, state or local crime during the term of probation or suspension.
2. ☐ That the Defendant remains gainfully employed or enrolled in school throughout the probationary period and support any dependents to the best of his/her ability.
3. ☒ That Defendant pay court costs of $116.50.
4. ☒ That the Defendant's attorney's fees will be a civil lien in favor of Pennington County.
5. ☐ That Defendant pay fines imposed in the amount of $_____.
6. ☒ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of $1,889.89 to Delores Moen.
7. ☒ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of $384.28 to State Auto Insurance.
8. ☒ That Defendant pay prosecution costs: Transcript $63.75.
9. ☐ That Defendant pay prosecution costs in dismissed file _____:
   UA $_____, Drug test $_____, Blood $_____, Transcript $_____, SART Bill $____.
10. ☐ That the Defendant reimburse Pennington County for the cost of extradition in this matter in the amount of _____ to be paid through the Clerk of Court's Office.
11. ☐ That Defendant pay the statutory fee of $_____ DUI, $_____ DV.
12. ☐ That the Defendant obtain a drug/alcohol evaluation and complete any treatment recommendations.
13. ☐ That the Defendant attend ☐ AA / ☐ NA ____ times per week / ☐ obtain a sponsor.
14. ☐ That the Defendant obtain a mental health evaluation and follow any treatment recommendations.
15. ☐ That the Defendant take all medications as prescribed.
16. ☐ That the Defendant shall not purchase or possess any type of firearms.
17. ☐ That the Defendant shall not associate or have contact with any known felons.
18. ☐ That the Defendant obtain a high school diploma or GED
19. ☐ That the Defendant shall not consume alcoholic beverages nor enter establishments where alcohol is the primary item for sale.
20. ☐ That the Defendant neither use nor possess any controlled drugs or substances, or be present where such substances are being used. Defendant shall request prior approval to use medical cannabis while on probation by including proof of a registry identification card or proof of nonresident registration issued by the South Dakota Department of Health as well as a copy of the practitioner's written certification listing the debilitating medical condition consistent with SDCL 34-20G-1(8) provided to the Department of Health. Defendant must inform the Court Services Officer if Defendant has been issued, applied for, or has in his/her possession, a registry identification card for the use of medical cannabis in the State of South Dakota. If he/she is under probation supervision in South Dakota, a medical cannabis registry identification card or documentation issued by another state related to the use of medical cannabis does not permit the use of medical cannabis while on probation unless such use has been approved by the sentencing Court. Any use of medical cannabis while on probation must be in conformity with the medical instructions of his/her physician and must be in compliance with South Dakota law.
21. ☐ That Defendant submit to periodic tests of breath or bodily fluids as directed by the Court Services Officer and pay for those tests as required by UJS policy.
22. ☐ That Defendant submit his/her person and property to search and seizure upon demand by the Court Services Officer at any time of the day or night, with or without a search warrant.
23. ☐ That the Defendant obey all orders, rules and regulations of the Court Services Department including that the Defendant shall be subject to the UJS's Application of Supervisory Responses ASR Grid.

24. ☐ That the Defendant keep his/her Court Services Officer advised of any change in his employment or residence and shall obtain permission from his/her Court Services Officer before leaving this judicial circuit or state.
25. ☐ That the Defendant establish a payment plan with his/her Court Services Officer.
26. ☐ That the Defendant's driver's license is unconditionally revoked for _____.
    ☐ Work permit authorized if eligible.
27. ☐ That the Defendant shall attend the Victim Impact Panel / MADD Impact Panel /
    ☐ Restorative Justice
28. ☐ That the Defendant write an apology letter to _____.
29. ☐ That the Defendant attend and complete Moral Reconation Therapy (MRT).
30. ☐ That the Defendant attend and complete Cognitive-Based Intervention for Substance Abuse (CBISA) and follow the recommendations thereof.
31. ☐ That for a period of ____ days, the Defendant shall submit to ☐ random UAs; ☐ ____ UAs per week; ☐ ____ PBTs per day; ☐ SCRAM, per the requirements of the 24/7 Sobriety Program, 111 New York St. Ste. 300, Rapid City, South Dakota, and pay for the same; ☐ thereafter, he/she shall participate at the discretion and per the direction of his/her Court Services Officer.

Other Conditions:

☐ _____

☐ _____

☒ This sentence shall run concurrently with Meade County File 46CRI22-318.

☐ This sentence shall run consecutively to _____.

Pursuant to the plea agreement, the State's Attorney is dismissing the remaining counts to include the Part II Information, Habitual Offender, if applicable.

7/14/2023 2:16:41 PM
Attest:
Ricke, Jolonda
Clerk/Deputy

BY THE COURT:

_____
HON. MATTHEW M. BROWN CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA	)	File No: CRI 21-3694
	)	
Plaintiff,	)	**COUNT 1: C-6-FEL = 2/4**
	)	**COUNT 2: C-1-MISD**
vs.	)	**COUNT 3: C-2-MISD**
	)	**INDICTMENT FOR**
BRANDON DEAN HAHN,	)	
	)	**COUNT 1: INTENTIONAL DAMAGE**
Defendant.	)	**TO PRIVATE PROPERTY IN THE**
	)	**FIRST DEGREE**
	)	**COUNT 2: OBSTRUCTING A PULIC**
	)	**OFFICER**
	)	**COUNT 3: DISORDERLY CONDUCT**

THE PENNINGTON COUNTY GRAND JURY CHARGES:

COUNT 1: That on or about the **24th** day of **August, 2021,** in the County of Pennington, State of South Dakota, **BRANDON DEAN HAHN** did commit the public offense of **INTENTIONAL DAMAGE TO PRIVATE PROPERTY IN THE FIRST DEGREE,** in that s(he) did, with specific intent to do so, injure, damage or destroy property, in which **Delores Moen** had an interest, said injury, damage or destruction being in excess of the value of One Thousand Dollars ($1000.00) but less than or equal to Two Thousand Five Hundred Dollars ($2500.00), and being without the consent of **Delores Moen**, in violation of **SDCL 22-34-1(2),** and

COUNT 2: That on or about the **24th** day of **August, 2021,** in the County of Pennington, State of South Dakota, **BRANDON DEAN HAHN** did commit the public offense of **OBSTRUCTING A PUBLIC OFFICER** in that (s)he did then and there by using or threatening to use violence, force or physical interference or obstacle, intentionally obstruct, impair or hinder the official actions of a law enforcement officer, jailer, firefighter, emergency management personnel, or EMT, acting under the color of his/her official authority, in violation of SDCL 22-11-6, and

COUNT 3: That on or about the **24th** day of **August, 2021,** in the County of Pennington, State of South Dakota, **BRANDON DEAN HAHN**, did commit the offense of **DISORDERLY CONDUCT**, in that (s)he did then and there intentionally cause serious public inconvenience, annoyance, or alarm to any other person or create a risk thereof, by engaging in fighting, violent or threatening behavior, in violation of SDCL 22-18-35(1), or

contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 8th day of September, 2021, at Rapid City, Pennington County, South Dakota.

A True Bill

"A TRUE BILL"

THIS INDICTMENT IS MADE WITH THE CONCURRENCE OF AT LEAST SIX GRAND JURORS.

GRAND JURY FOREMAN

WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY IN REGARD TO THIS INDICTMENT.

OFFICER K. CRUMB
JASON PATE
DEORES MOEN

KRAIG MOEN

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

NOTICE OF DEMAND FOR ALIBI DEFENSE

I, Aaron Lougheed, Prosecuting Attorney in the above matter, hereby state that the alleged offense was committed on or about August 24, 2021, in Pennington County, South Dakota. I hereby request that the Defendant or his/her attorney serve upon me a written notice of his intention to offer a defense of alibi within ten (10) days as provided in SDCL 23A-9-1. Failure to provide such notice of alibi defense may result in exclusion of any testimony pertaining to an alibi defense.

For AL
Prosecuting Attorney

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

REQUEST FOR ARREST WARRANT

I, Aaron Lougheed, Prosecuting Attorney in the above matter do hereby request an Arrest Warrant to be issued against the above Defendant, **BRANDON DEAN HAHN**.

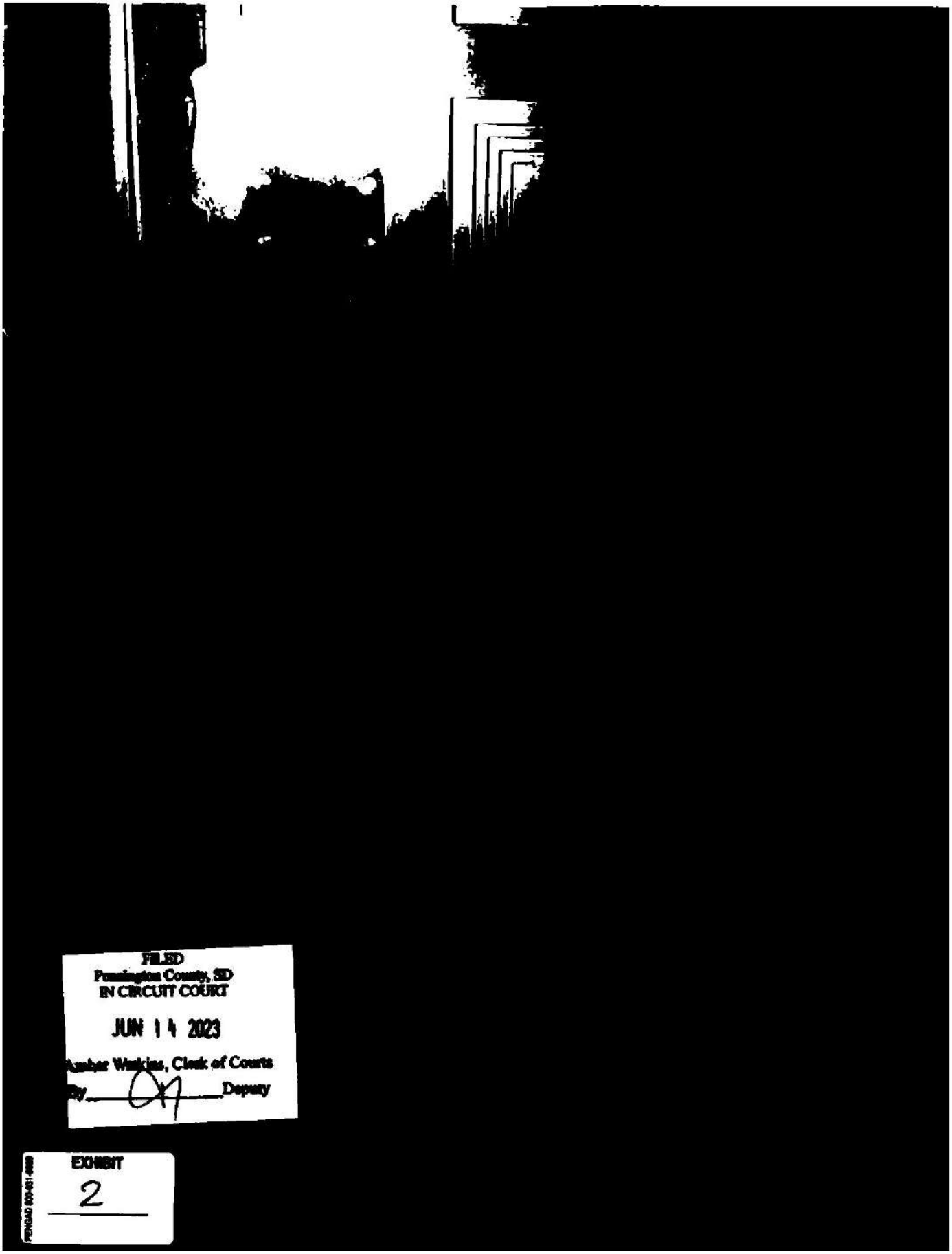
Dated this 8th day of September, 2021.

For AL
Aaron Lougheed
Prosecuting Attorney

Pennington County, SD
FILED
IN CIRCUIT COURT
SEP - 8 2021
Renae Truman, Clerk of Courts
By _____ Deputy

DEFENDANT IS TO APPEAR AT AN ARRAIGNMENT AT 8:30 A.M. ON October 18th, 2021, BEFORE THE HONORABLE Judge Davis ON THE THIRD FLOOR OF THE PENNINGTON COUNTY COURTHOUSE.

Pennington County, SD
FILED
IN CIRCUIT COURT
SEP - 8 2021
Ranae Truman, Clerk of Courts
By CR Deputy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Pennington County, SD
IN CIRCUIT COURT
JUN 14 2023
Deputy
EXHIBIT
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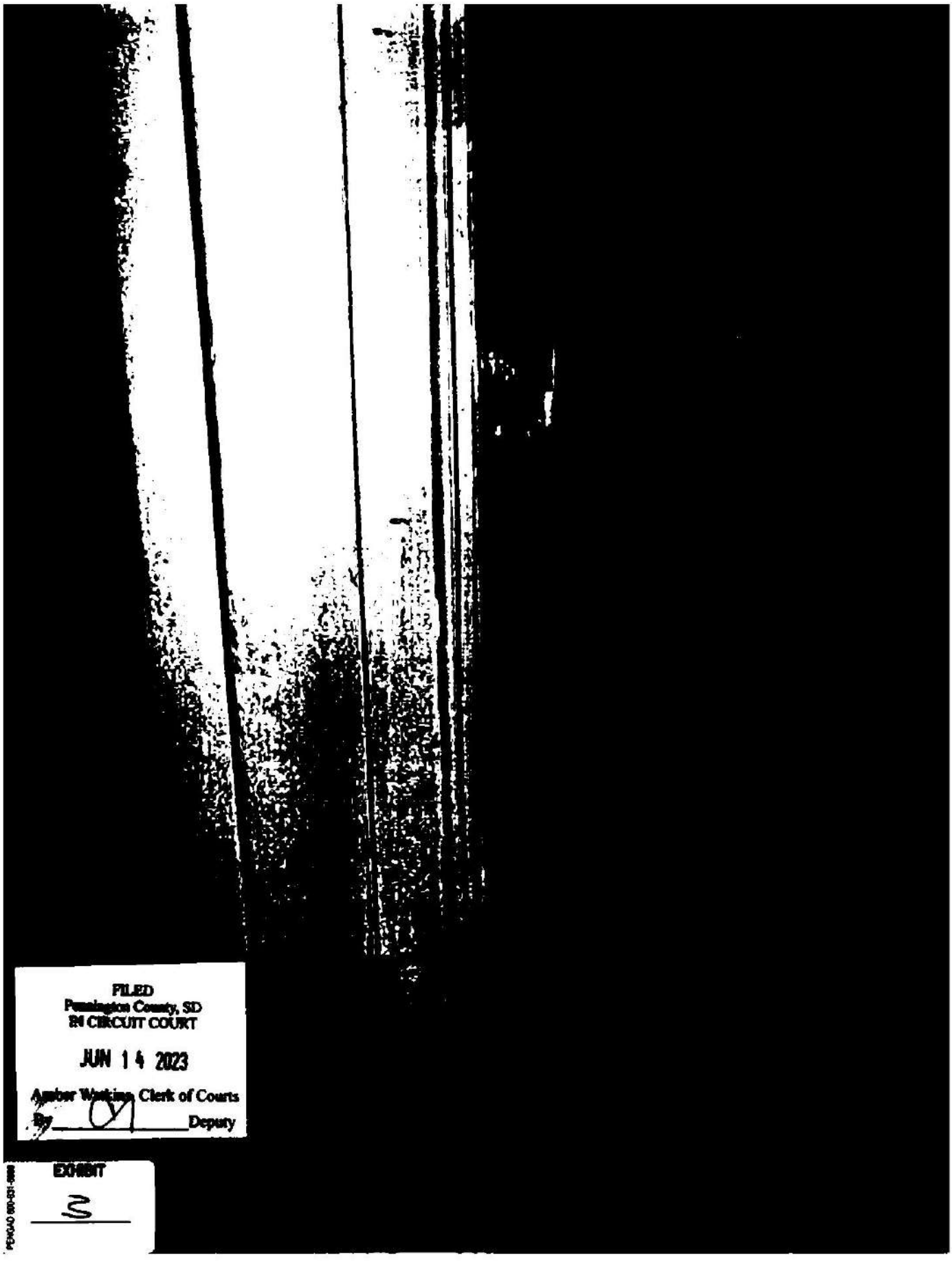
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JUN 14 2023
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By _____ Deputy
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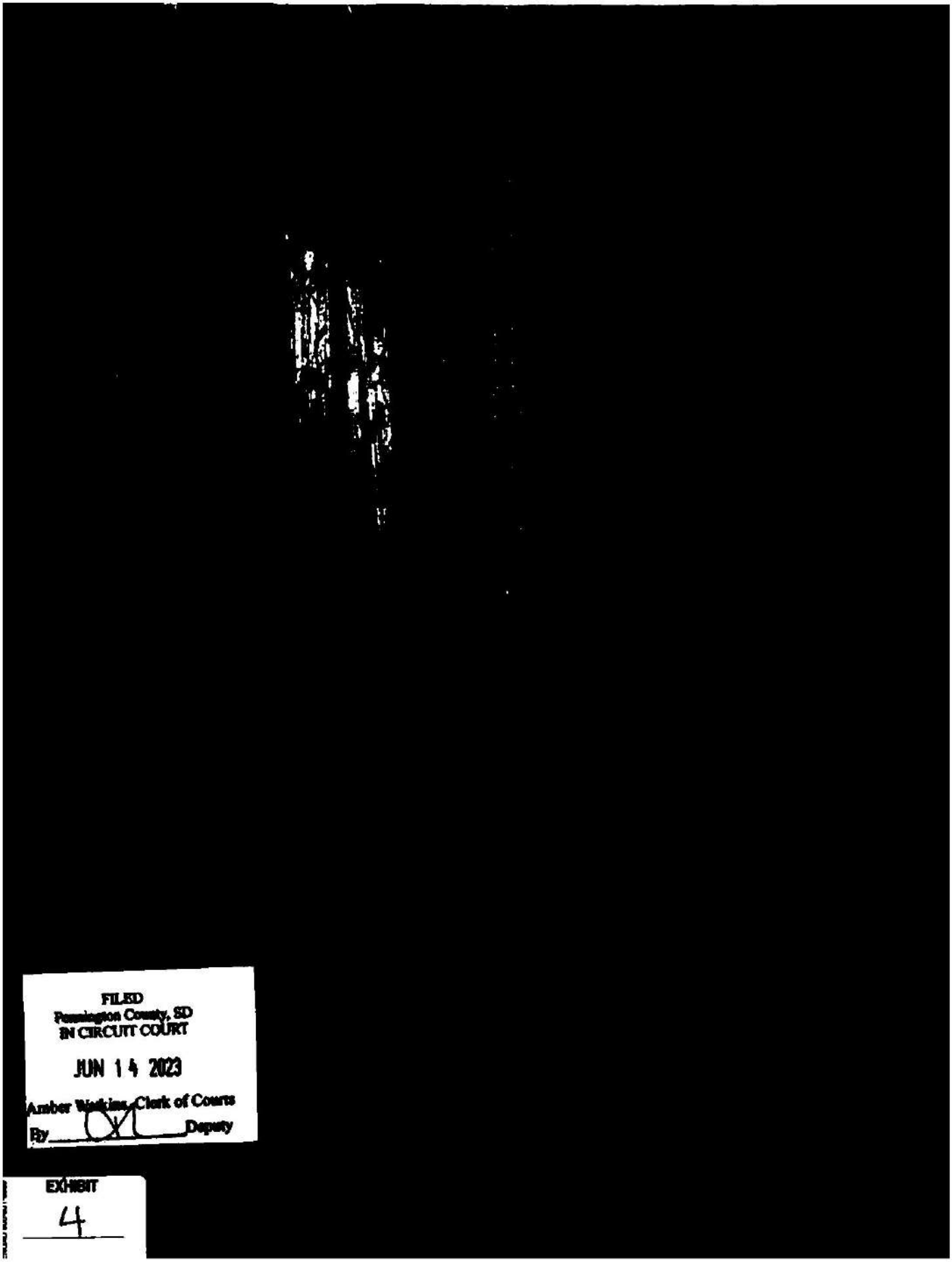

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By _____ Deputy

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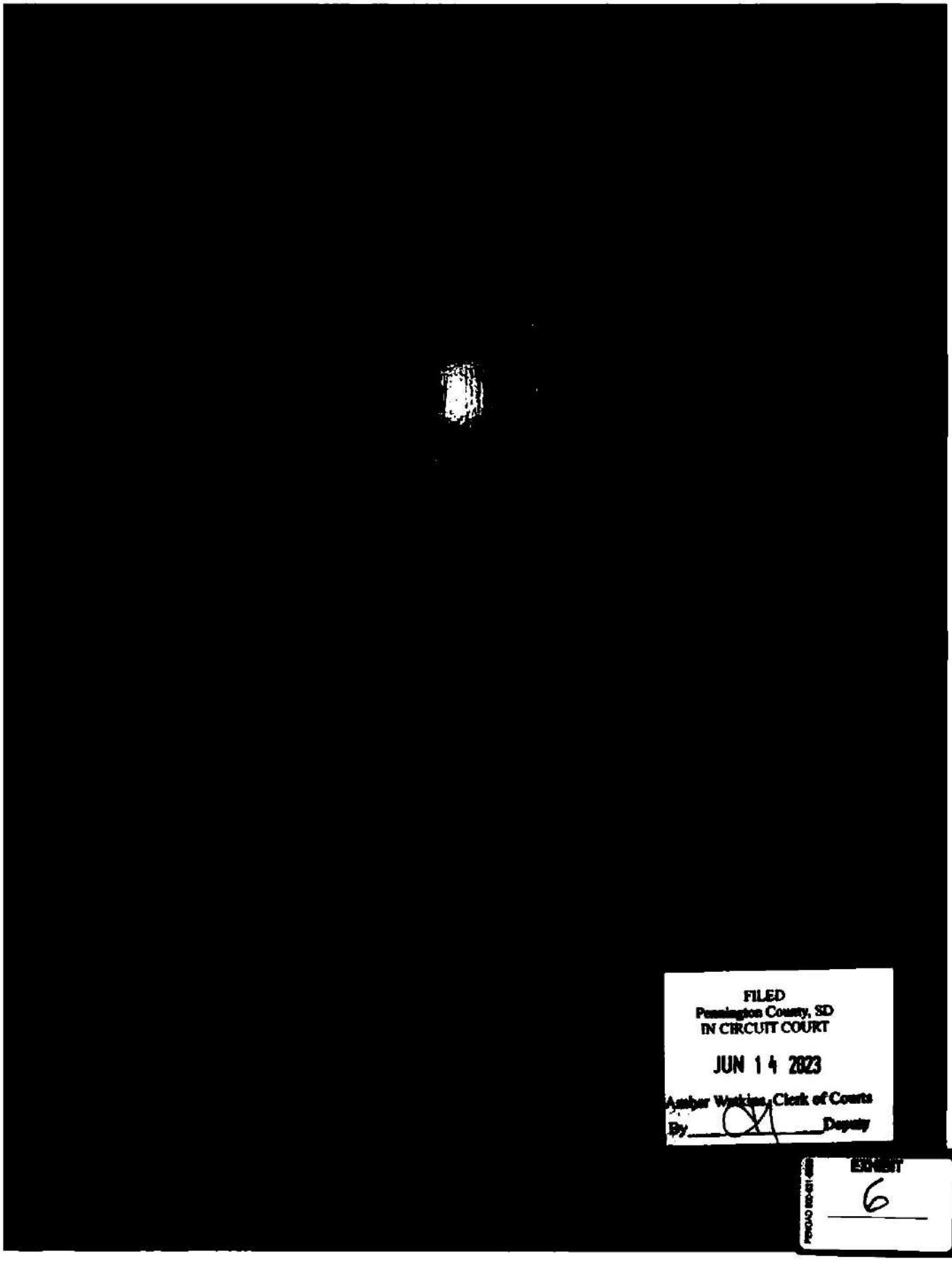
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Pennington County, SD
IN CIRCUIT COURT
JUN 14 2023
Amber Watkins, Clerk of Courts
By Deputy
EXHIBIT
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30426

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

BRANDON DEAN HAHN,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLEE'S BRIEF

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ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed August 9, 2023

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30426

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

BRANDON DEAN HAHN,

Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Plaintiff/Appellee, State of South Dakota, is referred to as "State." Defendant/Appellant, Brandon Dean Hahn, is referred to as "Defendant." Defendant's Brief is denoted as "DB." The settled record in the underlying case is denoted as "SR." Trial exhibits are referenced as "Ex" followed by the exhibit number and time stamp if applicable. All references to documents will be followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On July 14, 2023, the Honorable Matthew M. Brown, Circuit Court Judge, Seventh Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Brandon Dean Hahn*, Pennington County Criminal File Number 51CRI21-003694. SR:200-02. Defendant

filed his Notice of Appeal on August 9, 2023. SR:208. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER SUFFICIENT EVIDENCE ESTABLISHED THE VALUE OF THE DAMAGED PROPERTY TO SUSTAIN DEFENDANT'S CONVICTION?

The circuit court denied Defendant's motion for judgment of acquittal, finding the State presented sufficient evidence for the jury to convict Defendant.

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

State v. Ladu, 2016 S.D. 14, 876 N.W.2d 505

State v. Peltier, 2023 S.D. 62, ___ N.W.2d ___

SDCL 22-34-1(2)

STATEMENT OF THE CASE

On September 8, 2021, in *State of South Dakota v. Brandon Dean Hahn*, Pennington County Criminal File Number 51CRI21-003694, a grand jury issued an Indictment charging Defendant with three counts. SR:23-25. Count 1 charged Intentional Damage to Private Property in the First Degree in violation of SDCL 22-34-1(2). SR:23. Delores Moen was alleged to have an interest in the damaged property. SR:1. Count 2 charged Obstructing a Public Officer in violation of SDCL 22-11-6. SR:23. Count 3 charged Disorderly Conduct in violation of SDCL 22-18-35(1). SR:23. The State later dismissed Count 3. SR:100.

The State filed a Part II Information pursuant to SDCL 22-7-8 alleging four prior felonies arising out of South Dakota. SR:27-28. The four felonies included:

- November 27, 2012: Fourth Degree Rape;
- August 12, 2013: Possession of a Controlled Drug or Substance;
- March 12, 2014: Failure to Appear on a Felony; and
- October 30, 2017: Possession of a Controlled Drug or Substance.

SR:27-28. On October 31, 2022, Defendant appeared for an arraignment. SR:441-43.

The case proceeded to a jury trial on June 12, 2023, before the Honorable Matthew M. Brown, Circuit Court Judge, Seventh Judicial Circuit. SR:161, 250. During trial, the State offered Exhibit 22, insurance documents sent via email to Delores's son, Kraig Moen. SR:581-82. Defendant objected, arguing outside the presence of the jury that he did not receive offered Exhibit 22 until June 7, 2023, in violation of the discovery deadline. SR:584. The State responded that based on the records it had with it at trial, it could not find that the document was provided to Defendant at all. SR:585. The State further responded that if the document was not provided to Defendant, the State would not use it. SR:585. The State stated that it would look through its records during recess to determine whether the exhibit was provided to Defendant. SR:585-86. The circuit court recessed for

lunch. SR:586. After the recess, no further discussion occurred regarding offered Exhibit 22. *See* SR:586.

At the end of the State's case-in-chief, Defendant moved for judgment of acquittal. SR:605-06. Regarding the Intentional Damage to Property charge, Defendant argued that the jury could not find that the value of the damaged doorway was over $1,000 because, in part, the State "did not do the proper depreciation calculation." SR:606-08. Defendant argued that the market value, not the replacement value was the value of the property. SR:606.

The State argued that it met its burden to survive a motion for judgment of acquittal. SR:610. It pointed to the testimony of Delores's daughter, Deborah Mudge, about the check she received from the insurance company for $384 and the $1,000 deductible. SR:610. The State argued that Deborah also testified that she paid $1,474 to repair and replace the doorway, which did not include the cost of labor for Robert Mudge, Delores's son-in-law. SR:610. The circuit court denied the motion and the case proceeded to Defendant's case-in-chief. SR:625.

Before closing arguments, the parties settled jury instructions. SR:660; *see* SR:122-55 (Final Jury Instructions). Both parties stated that they had no objection to the proposed packet of final jury instructions. SR:660. Both parties also stated that they did not have

any record they wished to make regarding the jury instructions.[1] SR:660.

After closing arguments, the case was given to the jury. SR:705. On June 13, 2023, the jury found Defendant guilty of both counts. SR:156, 707.

On June 27, 2023, Defendant admitted to the Part II Information. SR:756, 760. On July 7, 2023, a sentencing hearing was held. SR:200-02. On Count 1, the circuit court sentenced Defendant to fifteen years in the South Dakota State Penitentiary with ten years suspended, and credit for time previously served. SR:200. On Count 2, the circuit court sentenced Defendant to thirty days in the Pennington County Jail, and thirty days credit for time served. SR:200. The circuit court imposed restitution and costs. SR:202. Specifically, the circuit court ordered Defendant to pay Delores $1,889.89 and State Auto Insurance Company $384.28. SR:201. The circuit court ordered that the sentences run concurrently with Meade County Criminal File 46CRI22-000318. SR:202. On July 14, 2023, the circuit court entered a written Judgment of Conviction. SR:200-02. On August 9, 2023, Defendant appealed. SR:208.

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[1] After closing arguments, the State and Defendant jointly addressed the circuit court, stating that the standard reasonable doubt jury instruction was missing from the jury instructions. SR:705. An instruction on reasonable doubt was added to the jury instructions, marked as 12A, and read to the jury. SR:704-06. Neither party raised issue with how the matter was handled. SR:704-06.

STATEMENT OF FACTS

On August 24, 2023, in Rapid City, Pennington County, South Dakota, at around 12:30 a.m., eighty-five-year-old Delores Moen was sleeping in her home when she was woken up by the sounds of pounding on her front door. SR:371, 590. She heard hollering and "so much noise" from the door frame breaking. SR:371. Delores was "scared to death" and fled her home out of a back patio door. SR:371-72. Delores did not know Defendant, nor did she permit him to damage her property. SR:372.

Jason Pate, who was located three houses away from Delores's home at the time of the incident, testified at trial. SR:378-82. He testified that around 12:30 a.m., Pate and his girlfriend were standing on the front deck of his girlfriend's house when he heard over ten loud banging noises. SR:379-82. Pate looked around to see if he could identify where the noise was coming from. SR:379-80. He heard screaming and a male voice threaten, "I'm going to fucking kill you, bitch." SR:380. Pate and his girlfriend called 911 as they headed down the street towards the noise. SR:380; *see* Ex:1. Then, Pate observed a young man, later identified as Defendant, jogging down a driveway where the noise was coming from. SR:380-82.

Pate and his girlfriend were around twenty to thirty feet away from Defendant at this point. SR:381. Pate described Defendant as a Caucasian male with a buzzed haircut and glasses. SR:381. Pate

believed Defendant was in his late 20s to early 30s. SR:381. Defendant was wearing cutoffs or cargo shorts without a shirt. SR:381.

Pate testified that he then heard screaming and calls for help from the backyard of the home that Defendant jogged away from. SR:382-85. Pate proceeded towards the screaming and found Delores hiding in her backyard. SR:383. Pate called 911 a second time, gave dispatch Delores's address, and gave dispatch a description of Defendant. SR:383; *see* Ex:1.

Walter Rock, Delores's next-door neighbor, testified at trial. SR:405. During the time of the incident, Rock was watching television in his living room. SR:406. Rock testified that he heard repeated banging noises that lasted almost a minute. SR:406. Rock looked out his front door and saw Defendant coming out of Delores's driveway. SR:407. Rock then heard someone screaming for help. SR:408. Rock turned his back light on and saw Delores standing by a fence that divided their property. SR:408-09. Rock called 911 and went to assist Delores. SR:410-11.

Kaleigh Crumb, a patrol officer with the Rapid City Police Department, was the first officer to arrive at Delores's home at around 1:00 a.m. SR:386, 423-25, 473. Officer Crumb testified that she spoke to witnesses, including Delores, Pate, and Rock. SR:425, 462. During Officer Crumb's interviews, witnesses relayed to her a description of Defendant. SR:386, 389, 452.

Joshua Hoefler, a patrol officer with the Rapid City Police Department, testified that he was the second officer to arrive at Delores's home. SR:472-73; *see* Ex:9. He received a description of Defendant and left to search the area. SR:474.

Defendant appeared back in the area. SR:386, 388-90. Pate first saw Defendant and alerted Officer Crumb. SR:386, 388-90. Pate estimated that fifteen minutes had passed from when he first saw Defendant flee to when Defendant reappeared. SR:388. Officer Crumb observed that Defendant matched the description relayed to her of the person who damaged Delores's doorway. SR:452-54. Officer Crumb radioed Officer Hoefler for backup, stating that the suspect returned to the scene. SR:474. Officer Crumb approached Defendant and attempted to speak with him, but Defendant would not make eye contact and kept walking away. SR:431, 455; Ex:9. Officer Hoefler arrived back on scene and assisted Officer Crumb with Defendant. SR:474; Ex:9.

Defendant became verbally combative. SR:431-32; Ex:9. Defendant told law enforcement his first name, but responded to other questions by saying it was none of their business. SR:434; Ex:9. At one point, Defendant asked, "Is there a problem? Is there a burglary going on, or?" Ex:9 0:15:50. Officer Hoefler believed Defendant was highly intoxicated. SR:477.

Law enforcement handcuffed Defendant and detained him in the patrol vehicle. SR:478; Ex:9. Officer Crumb testified how Defendant resisted being placed in the vehicle. SR:435. Defendant stopped using his feet, went limp, and became "deadweight." SR:466; *see* Ex:9 0:17:30. Law enforcement "basically kind of half carr[ied] him to the car." SR:466.

Once in the patrol vehicle, Defendant started yelling and hurting himself. SR:436-37; Ex:10 0:23:30. Defendant bashed his face into the cage of the patrol vehicle that divided the backseat from the front seat. SR:390; Ex:10 0:28:10. Defendant smashed his face so hard that he started bleeding. SR:436-37; Ex:10 0:28:20. Pate heard banging and observed the police vehicle physically rocking. SR:390.

Once Defendant began hurting himself, Officer Hoefler testified that his priority shifted from investigating the crime to addressing Defendant's behavior. SR:558. Law enforcement called an ambulance. SR:437. Law enforcement also determined a WRAP was necessary to restrain Defendant from hurting himself further or hurting other people. SR:438-39. Officer Crumb described a WRAP as something law enforcement uses to isolate a person's legs and feet by wrapping body parts tight together. SR:437.

Defendant became "much more aggressive, screaming" when law enforcement removed him from the patrol vehicle to place him in the WRAP. SR:391. Defendant disregarded law enforcements' commands.

SR:439; Ex:15 0:05:29. Defendant physically resisted, growled, yelled profanities, and was flinging blood everywhere. SR:439-40. Pate testified that Defendant's "voice would change from higher pitch to lower pitch, growling, pleading with the police at some points, [and] threatening police at some points." SR:391. Multiple law enforcement officers struggled with Defendant for fifteen to twenty minutes before Defendant was successfully placed in the WRAP. SR:441.

Once Defendant was in the WRAP, Officer Hoefler transported Defendant to Monument Health for evaluation. SR:533-34. During transport, Defendant yelled profanities. Ex:10 0:49:45-0:56:40. Defendant also stated to Officer Hoefler, "You're a fucking bitch dude. I'll fucking see you on the street, dude." Ex:10 0:49:45-0:56:40.

Multiple people testified about the damaged property. Delores testified about the background of her home and doorway. Delores testified that the doorway was part of her split-level home where she had resided since around 1962.[2] SR:369-72. Delores built the home and had a steel door installed as the front door. SR:375. While Delores was living alone at the time of the incident, her three children—Kraig, Deborah, and Cassandra—had lived in the home when they were young. SR:370.

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[2] After the incident, Delores moved out of her home and into an apartment. SR:369.

Pate observed the doorway shortly after the incident. SR:386. He testified that the "door was pretty much destroyed. Wood that had been on the door had come off. The trim was totally blown out." SR:386. Pate took a picture of the doorway after Defendant fled and the picture was shown to the jury. SR:387; Ex:2.

Officer Crumb described for the jury the damage to the door and door frame. SR:426. She observed boot marks on Delores's door.[3] SR:441. She described the door as having little plaques that were broken off. SR:426. She described the door frame as "busted into little parts" with pieces of the frame laying inside the home. SR:426. Officer Crumb took pictures of the damage, and those pictures were shown to the jury. SR:427-28; Ex:3-7.

Kraig Moen, Delores's son, testified that he arrived at Delores's home shortly after the incident. SR:576-78. He testified that he observed the damage to the entryway of the home. SR:578. Kraig testified that the door appeared to be deadbolted when it was kicked in. SR:578. The wood surrounding the casing of the door was shattered. SR:578. Kraig testified, "It was beyond, you know, repairing it. It needed to be replaced." SR:579.

Kraig testified that Delores had homeowner's insurance. SR:580. He filed an insurance claim for Delores, which included pictures of the

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[3] Officer Crumb believed Defendant's boot prints looked like the boot prints she observed on Delores's door. SR:441-42.

doorway. SR:580. Kraig received insurance paperwork back via email from the insurance adjuster. SR:580. Kraig testified that the email stated what the insurance company would pay for the damage. SR:580-81.

Deborah Mudge, Delores's daughter, testified that she observed the damage to the doorway. SR:588-89. Deborah testified that she observed boot prints all over the door and the door had been kicked in. SR:589. Deborah observed pieces of the doorjamb scattered across the room. SR:589. Some pieces of the doorjamb had flown across the home and were stuck in the drapes on the patio door. SR:589.

Deborah testified that she assisted Delores with her finances, which included handling money to repair the doorway. SR:590. Deborah testified that Delores's homeowner's insurance policy carried by State Auto Insurance Company, had a $1,000 deductible. SR:592-93. State Auto Insurance Company issued a $384 check addressed to Delores. SR:590-92. Deborah deposited the check into Delores's bank account. SR:592. On cross-examination, Defendant asked, "[D]o you have any information as to what the door was worth at the time that all this happened?" SR:593. Deborah responded, "Only the value that the insurance company placed on it." SR:594.

Deborah testified about payments she made for the repairs to the doorway. SR:593. Deborah paid $300 to a carpenter to install the doorway. SR:594. Deborah paid $599 for the new door itself, lock set,

doorjamb materials, nuts, screws, and other necessary materials to fix the doorway. SR:594. She also paid $575 for a locking mechanism. SR:594.

Robert Mudge, Delores's son-in-law, testified about damage to the doorway and his involvement with fixing it. SR:596-98. He testified that he first thought it would be cheaper to get a new door and frame rather than repairing the frame. SR:599. Robert tried to buy a new doorway from the lumber yard, but it was during COVID and the lumber yard stated that it would be very expensive and months until the lumber yard had what was needed. SR:598.

Instead, Robert decided to work with a carpenter and see what they could come up with. SR:599. The carpenter managed to cut just the bad parts out of the frame and rebuild it. SR:599. Robert testified that the new door put on the home was "[j]ust a standard metal door from Menards because that was in stock." SR:600. Robert testified that he spent around two days' worth of time locating material and fixing the doorway. SR:601. Robert testified that the value of the door was what it cost to repair it, but agreed that he did not assess the actual value of the door on the day of the incident. SR:601-04.

ARGUMENT

SUFFICIENT EVIDENCE ESTABLISHED THE VALUE OF THE DAMAGED PROPERTY TO SUSTAIN DEFENDANT'S CONVICTION.

A. *Background.*

On appeal, Defendant narrowly challenges the sufficiency of the evidence regarding one element of Intentional Damage to Property—the value of the damaged property. DB:2. Defendant does not challenge the sufficiency of the evidence for the other elements of Intentional Damage to Property or any element of the Obstructing a Public Officer conviction. *See* DB:2. When viewing the evidence in the light most favorable to the State, sufficient evidence established that the value of the damaged property exceeded $1,000 to support the jury's verdict of guilty. Sufficient evidence established that both the value of the doorway immediately prior to the damage and the value of reasonable repairs exceeded $1,000. Defendant is therefore entitled to no relief.

B. *Standard of Review.*

This Court reviews de novo the denial of a motion for judgment of acquittal and questions regarding the sufficiency of the evidence. *State v. Peltier*, 2023 S.D. 62, ¶ 24, ___ N.W.2d ___. This Court's "task is to determine whether the evidence was sufficient to sustain the conviction." *State v. Solis*, 2019 S.D. 36, ¶ 17, 931 N.W.2d 253, 258 (quotation omitted).

> To do so, [this Court] ask[s] whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. If the evidence, including circumstantial evidence and reasonable inferences drawn therefrom sustains a reasonable theory of guilt, a guilty verdict will not be set aside.

Id. (cleaned up). Likewise, "this Court will not resolve conflicts in the evidence, assess the credibility of witnesses, or reweigh the evidence." *State v. Fasthorse*, 2009 S.D. 106, ¶ 6, 776 N.W.2d 233, 236 (citations omitted).

C. *Sufficient Evidence of Damages Supports Defendant's Conviction.*

In determining the sufficiency of the evidence, this Court examines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Peltier*, 2023 S.D. 62, ¶ 25. Defendant disputes the damage element of Intentional Damage to Property in violation of SDCL 22-34-1(2). Pursuant to SDCL 22-34-1(2),

> Any person who, with specific intent to do so, injures, damages, or destroys . . . (2) Private property in which any other person has an interest, without the consent of the other person; is guilty of intentional damage to property. . . . Intentional damage to property is a Class 6 felony if the damage to property is two thousand five hundred dollars or less, but more than one thousand dollars.

SDCL 22-34-1(2). Defendant only challenges whether there was sufficient evidence presented that the damage to the doorway was more than $1,000.

As to the challenged element, the circuit court instructed, "The elements of the crime of Intentional Damage to Property . . . are that at the time and place alleged, . . . [t]he damage to the property was Two Thousand Five Hundred Dollars or less, but more than One Thousand Dollars." SR:131 (Instruction No. 18). The circuit court further instructed, "The value of the damage to the property in question is equal to the value of reasonable repairs that will restore the property to substantially the same condition as it was in immediately prior to the damage." SR:133 (Instruction No. 20); *see* South Dakota Criminal Pattern Jury Instruction 3-25-4 (same). Lastly, the circuit court instructed, "[I]f you find the value of reasonable repairs exceeds the value of the property as it was immediately prior to the damage, then you must find the amount of damage is equal to the fair market value of the property immediately prior to the damage." SR:134 (Instruction No. 21); *see* South Dakota Criminal Pattern Jury Instruction 3-25-5 (same).

Defendant relies on *State v. Rich*, 268 N.W.2d 603 (S.D. 1978), in support of his sufficiency of the evidence argument about the use of market value when determining damages. DB:2, 8-13. In *State v. Rich*, this Court held that "[g]enerally, when a criminal statute provides for a greater penalty when the damage is over a certain sum, the value means the market value." *Rich*, 268 N.W.2d at 605; *see generally State v. Martin*, 2006 S.D. 104, 724 N.W.2d 872 (discussing different ways

damages are calculated for restitution). Here, the jury was instructed on how to consider the market value of the damaged property.

Defendant did not argue below and does not challenge on appeal that the jury was improperly instructed on the law. Indeed, Defendant argued to the circuit court that South Dakota Criminal Pattern Jury Instruction 3-25-5 supported his motion for judgment of acquittal. SR:619-22. On appeal, Defendant applies South Dakota Criminal Pattern Jury Instruction 3-25-4 in support of his arguments. DB:12. Both pattern instructions were given to the jury. SR:133-34.

To the extent that Defendant's arguments are construed as challenging the jury instructions, Defendant has waived the issue. When settling the jury instructions, the following exchange occurred:

> THE COURT: We are outside the presence of the jury and settling instructions. The Court has provided to both parties Instructions Number 11 through 42. And after Instruction 42, there is a verdict form. The parties have had an opportunity to review the proposed packet by the Court. And any objections from the State as to the proposed packet?
>
> [THE STATE]: No. The State has no objections.
>
> THE COURT: Any objections from defense?
>
> [DEFENDANT]: No, Your Honor.
>
> THE COURT: Any record that either party wishes to make as to the proposed packet?
>
> [DEFENDANT]: No, Your Honor.
>
> [THE STATE]: No.

SR:660. Defendant has waived any issue about the jury instructions because failure to object to the jury instructions or propose an alternative instruction waives the issue for appeal. *See State v. Talarico*, 2003 S.D. 41, ¶ 33, 661 N.W.2d 11, 23 (citing *State v. Hage*, 532 N.W.2d 406, 412 (S.D. 1995)); *see also State v. Burtzlaff*, 493 N.W.2d 1, 7 (S.D. 1992); *State v. O'Connor*, 378 N.W.2d 248, 256 (S.D. 1985).

When a defendant does not object to a jury instruction or propose instructions of his own on the issue, "the jury instructions [are] the law of the case." *State v. Bosworth*, 2017 S.D. 43, ¶ 36, 899 N.W.2d 691, 701 (citing *Alvine Family Ltd. P'ship v. Hagemann*, 2010 S.D. 28, ¶ 20, 780 N.W.2d 507, 514); *see also Zeigler v. Ryan*, 271 N.W. 767, 768 (S.D. 1937) (stating that in the absence of an objection to the circuit court's jury instructions, the law set forth in those instructions becomes "the law of the case"); *Knudson v. Hess*, 1996 S.D. 137, ¶ 11, 556 N.W.2d 73, 77 (reasoning that "the complaining party must have properly objected to the instruction in order to preserve the issue on appeal, or the improper instruction becomes the law of the case." (quotations omitted)). "Therefore, because [Defendant] did not make [an] objection to [the jury instructions and agreed to the circuit court's final instructions, Defendant] may not argue on appeal a different state of the law than that upon which the jury was instructed . . . ." *Alvine Family Ltd. P'ship*, 2010 S.D. 28, ¶ 20, 780 N.W.2d at 514.

Not only does Defendant's arguments seem to overlook the fact that he agrees with the jury instructions, Defendant's arguments overlook the standard of review. In *State v. Peltier*, this Court recently rejected a defendant's sufficiency of the evidence argument that was based merely on the State's claims during its case-in-chief. *Peltier*, 2023 S.D. 62, ¶ 25. Instead, this Court reaffirmed that the correct standard tasks this Court to "look at the evidence as a whole to determine whether *any rational trier of fact* could have found the elements of [the crime] beyond a reasonable doubt." *Id.* ¶ 25 (emphasis added). Here, Defendant cites the correct de novo standard of review, but his arguments fail to apply the standard. *See* DB:7. Defendant argues that the circuit court erred in applying *State v. Rich* to this case and attacks the State's arguments made in opposition to his motion for judgment of acquittal. Like *Peltier*, Defendant's arguments seeking to narrow what can be considered on appeal should be rejected.

Accordingly, applying the de novo standard of review, the law of this case, and considering the evidence in the light most favorable to the State, Defendant's motion for judgment of acquittal was properly denied. It is rational to conclude that the jury looked to Instruction No. 20 and 21 and determined that it could find Defendant guilty because the damage to the doorway was more than $1,000, but less than $2,500. Sufficient evidence establishes that both the value of the

doorway at the time of the incident and the reasonable repair cost exceeded $1,000.

The jury heard testimony from Deborah that the doorway was worth the value the insurance company placed on it. *See* SR:594-93. Deborah testified that the insurance policy had a $1,000 deductible and the insurance company provided a check for $384 for the damage. SR:590-92. The jury was instructed that it could "use reason and common sense to draw deductions or conclusions from the facts which have been established by the evidence." SR:114. A commonsense conclusion and reasonable inference based off Deborah's testimony is that the insurance company placed a $1,384 valuation on the door at the time of the incident. *State v. Ladu*, 2016 S.D. 14, ¶ 18, 876 N.W.2d 505, 509 (holding that a jury is allowed to make reasonable inferences).

There is also sufficient evidence in the record that established the cost of reasonable repairs to the doorway. Delores testified that before the doorway was damaged, the door worked well and functioned as it should. SR:376. Other witnesses testified that to restore the doorway to working condition, the door needed to be replaced, SR:579, and the door frame needed to be rebuilt, SR:599. Robert's extensive testimony provided sufficient evidence for a jury to find that the cost of the repairs was reasonable. And the cost of the reasonable repairs was more than $1,000. These facts applied to the statutory language of SDCL 22-34-1(2) set forth in the jury instructions, provide a rational theory

that supports the jury's verdict. *See Ladu*, 2016 S.D. 14, ¶¶ 7, 18, 876 N.W.2d at 507, 509.

Defendant argues that the evidence was insufficient, in part, because the State "solely relied on the testimony of lay witnesses regarding repairs and replacement." DB:9. To the extent that Defendant is challenging the competency of the witnesses, lay witness testimony is sufficient to establish damages. In *State v. Ladu*, this Court held that testimony of a lessee—a lay witness—was sufficient evidence to sustain the defendant's conviction for Intentional Damage to Property where the damage to the property was $400 or less. 2016 S.D. 14, ¶ 18, 876 N.W.2d at 509. In *Ladu*, the lessee testified that the defendant was told by the lessee to leave a building he had no authority to be in. *Id.* ¶ 17, 876 N.W.2d at 509. Once the defendant was outside the building, he punched one of the building's windows with a handgun, causing the window to shatter. *Id.* ¶¶ 4, 18, 876 N.W.2d at 507, 509. Lessee testified that she had not received the repair bill for the window but believed it would be less than $400. *Id.* ¶ 18, 876 N.W.2d at 509. This Court held that there was sufficient evidence to sustain the conviction. *Id.* ¶ 19, 876 N.W.2d at 509-10. This Court reasoned that "[a]ll of the essential elements of SDCL 22-34-1[(2)] were met by, or a jury could reasonably infer from, [lessee's] testimony." *Id.* ¶ 18, 876 N.W.2d at 509.

The jury heard extensive testimony from competent witnesses regarding damage to the doorway. Like *Ladu*, where a lessee was competent to provide testimony about damages, family members of the eighty-five-year-old victim were competent to provide testimony about damages. *See generally Martin*, 2006 S.D. 104, ¶ 3 n.1, 724 N.W.2d at 874 n.1 ("An owner of property is also competent to testify to its value."). Kraig is Delores's son, filed the insurance claim with State Auto Insurance Company for Delores, and previously lived in the home when he was young. Deborah is Delores's daughter, assisted Delores with her finances, knew about the homeowner's insurance policy, deposited the insurance check in Delores's account, and paid to have the doorway repaired. Delores also previously lived in the home where the doorway was damaged. Robert is Delores's son-in-law and was extensively involved in receiving estimates from the lumber company on replacing the doorway, coordinating repairs to the doorway, and helping repair the doorway. All the lay witnesses were competent to testify to the doorway's damage.

In viewing the evidence at trial in a light most favorable to the verdict, along with the instructions the jury was given, there is sufficient evidence to support Defendant's conviction. Contrary to Defendant's assertion that damages were not proven, the evidence supports a finding that both the value of the doorway at the time of the incident and the reasonable repair cost exceeded $1,000. Therefore,

Defendant's motion for judgment of acquittal was properly denied, and the jury's verdicts should be affirmed.

CONCLUSION

Based upon the foregoing argument and authorities, the State respectfully requests that Defendant's convictions and sentences be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4,777 words.

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

Dated this 27th day of December 2023.

/s/ Jennifer M. Jorgenson
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Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 27, 2023, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Brandon Dean Hahn*, was served via Odyssey File and Serve upon Kyle Beauchamp at kyle@acolbathlaw.com.

/s/ Jennifer M. Jorgenson
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Assistant Attorney General

In the Supreme Court
State of South Dakota

Appeal No. 30426

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

BRANDON DEAN HAHN,

Defendant and Appellant.

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

The Honorable Matt Brown
Circuit Court Judge

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Notice of Appeal filed August 9, 2023

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ARGUMENT

I. THE CIRCIUT COURT ERRED WHEN IT DENIED DEFENSE COUNSEL'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE FAIR MARKET VALUE OF THE DAMAGED PROPERTY WAS NOT ESTABLISHED

The State correctly argues that Brandon's appeal solely contends with the trial court's error in denying the judgement of acquittal based upon the State's failure to establish fair market value. In doing so, appellant concedes that it is not objecting to, nor has it ever objected to, the instructions that were provided to the jury. In fact, as argued in appellant's brief, the jury instructions were proper yet the circuit court failed to apply them properly thus causing the error. *Appellant's Brief*: Pg. 12. Instead of distinguishing this Court's holding in *Rich*, where this Court established the proper method for calculating damages, the State's response brief only echoes the evidence at trial which established the amounts spent to entirely replace the door, labor, and a special locking mechanism. For all the foregoing reasons, this Court must reverse the circuit court's denial of defense counsel's motion for judgment of acquittal.

It is indisputable that this Court's holding in *State v. Rich* is the controlling authority in determining value in Intentional Damage to Property cases. There, this Court held that solely testifying to the amount of repairs "was not the proper method of proving value in this case…[W]hen a criminal statute provides for a greater penalty when the damage is over a certain sum, value means the market value." *State v. Rich*, 268 N.W.2d. 603, 605 (S.D. 1978) (quoting *50 Am.Jur.2d Larceny s 45; 52A C.J.S. Larceny s* 60(2)). In its rationale, this Court noted that more likely than not, "the building in question exceeded the value of three hundred dollars. The State could have

produced a witness capable of stating the market value of the building, or if a market value could not be ascertained, the state could have resorted to reconstruction or some other applicable method." *Id.*

The State's response brief does nothing to distinguish the present facts from *Rich*. Instead, it argues that consistent with this Court's holding in *Rich*, "the jury was instructed on how to consider the market value of the damaged property." *Appellee's Response Brief*: Pg. 17. The fatal flaw with this point is that the jury never heard actual testimony that would be consistent with this Court's holding in *Rich*. Further, as argued in Appellant's brief, it is highly unlikely that the door in question would have even met the $1,000 threshold. However, such a point is moot as the State provided no evidence that the jury could have considered the fair market value.

The State solely focuses its arguments on the repairs and replacements. At no point did the State "produce a witness capable of stating the market value of the [destroyed property], or if a market value could not be ascertained, the state could have resorted to reconstruction or some other applicable method." *Id.* at 606. The jury's role is to listen to the evidence and apply the law as instructed. The jury is not, and should not, be required to know the nuanced differences between market value and the costs of replacements. Therefore, just because Brandon was convicted does not justify the State's failure to provide actual evidence of fair market value.

The State in their response fails to show how testimony regarding homeowner's deductible meets the necessary elements required under *Rich*. As argued previously, no evidence was produced regarding how the insurance company came to that figure. No evidence was heard regarding the calculations involved. The State cannot simply

introduce evidence of money received by homeowner meet their burden that it shows fair market value.

At trial and in their response brief, the State relies on *State v. Ladu*, for the proposition that "lay witness testimony is sufficient to establish damages." *Appellee's Response Brief*: Pg. 21. However, as argued previously, *State v. Ladu* is distinguishable and the State failed to establish its applicability to the present facts. In *Ladu*, the damaged property was a pane of glass that needed replacing. 2016 S.D. 14 ¶ 17, 876 N.W.2d 505,509. There was no testimony requiring the replacement of the window frame nor any mechanisms, simply the glass. Here, the State's testimony was that the entire door, locking mechanism, and frame were damaged and required replacement. There, the State only needed to prove that damage was done to personal property and no amount needed to be proved as it was below $400. Here, the state was required to establish that the damage is more than $1,000. *Ladu* is inapplicable and this Court should not adhere to the State's argument that their lay witness testimony established the fair market value.

CONCLUSION

The trial court abused its discretion when it denied Brandon Hahn's motion for judgment of acquittal. This Court should reverse and remand the conviction, holding that the State must prove beyond a reasonable doubt that the fair market value of the door was over $1,000.

Respectfully submitted this 26th day of January 2024.

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word and contains 801 words from the Argument through the Conclusion. I have relied on the word count of a word processing program to prepare this certificate.

Dated this 26th day of January 2024.

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The undersigned hereby certifies that two true and correct copies of foregoing Appellant's Reply Brief were filed online and served upon:

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