APPELLANT'S BRIEF

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs. **NO. 31006**

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT

OF THE

FIRST JUDICIAL CIRCUIT

CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

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Notice of Appeal Filed: February 6, 2025

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IN THE SUPREME COURT
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PRELIMINARY STATEMENT

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

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

JURISDICTIONAL STATEMENT

Winckler appeals to the Supreme Court from the Judgment of Conviction which was signed and filed on January 8, 2025. (SR 355-357). Notice of Appeal was served on all parties and filed on February 6, 2025. (SR 363). This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF THE LEGAL ISSUES

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

   The circuit court determined that it had jurisdiction and denied Winckler's Motion to Dismiss. (SR 118-141).

   McGirt v. Oklahoma, 591 U.S. 894, 140 S. Ct. 2452 (2020)
   South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 118 S. Ct. 789 (1998)
   Perrin v. United States, 232 U.S. 478, 34 S. Ct. 387 (1914)
   Johnson v. McIntosh, 21 U.S. 43 (8 Wheat. 543) (1823)

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

2. Whether the circuit court erred in denying Winckler's Motion to Dismiss for violation of the 180-day rule?

   The circuit court determined that the 180-day period within which to hold a trial had not run and denied Winckler's Motion to Dismiss. (SR 150-152).

   Hays v. Weber, 2002 SD 59, 645 N.W.2d 591
   State v. Head, 469 N.W.2d 585 (S.D. 1991)

   SDCL 22-12-15
   SDCL 23A-4-3
   SDCL 23A-44-5.1

3. Whether the circuit court erred in admitting Winckler's "bond form/bond paperwork" (State's Exhibit 1) into evidence at trial?

   The circuit court overruled Winckler's objections to the bond form and admitted into evidence as State's Exhibit 1. (SR 442-449, 515-516).

   Crawford v. Washington, 541 U.S. 36 (2004)
   State v. Taylor, 2020 S.D. 48, 948 N.W.2d 342
   Johnson v. O'Farrell, 2010 S.D. 68, 787 N.W.2d 307
   State v. Selalla, 2008 S.D. 3, 744 N.W.2d 802

U.S. Const., VI Amend.
U.S. Const., XIV Amend.
SDCL 19-19-401
SDCL 19-19-403
SDCL 19-19-801(c)
SDCL 19-19-802
SDCL 19-19-805
SDCL 23A-43-31

4. Whether the circuit court erred in permitting Winckler's former attorney to testify against him and admitting into evidence an attorney-client communication?

   The circuit court allowed Winckler's former counsel to testify against him and disclose an attorney-client communication to the jury. (SR 525-533).

   State v. Rickabaugh, 361 N.W.2d 623, 625 (S.D. 1985)

   SDCL 16-18-Appx., Rule 1.6
   SDCL 19-19-502
   Restat 3d of the Law Governing Lawyers, § 79, (c) 2000, The American Law Institute

5. Whether there was sufficient evidence to convict Winckler for failure to appear in violation of SDCL 23A-43-31?

   The circuit court denied Winckler's motion for judgment of acquittal and the jury returned a verdict of guilty. (SR 547-551, 582-584).

   State v. Wolf, 2020 S.D. 15, 941 N.W.2d 216

   SDCL 23A-43-31
   SDCL 23A-39-1

STATEMENT OF THE CASE AND FACTS

On November 14, 2023, in the Circuit Court, First Judicial Circuit, Charles Mix County, South Dakota, Winckler was charged by Complaint with failing to appear before the court as required in connection with a felony charge in violation of SDCL 23A-43-31 – for his failure to appear at a pretrial conference in a then pending felony case, at the Charles Mix County Courthouse in Lake Andes, South Dakota, on November 8, 2023. (SR 1). Following his subsequent arrest on January 28, 2024, Winckler made his initial appearance before Magistrate Judge Donna Bucher on January 30, 2024. (SR 3, 73-75). An Indictment was filed on February 22, 2024, and the case proceeded before the Hon. Bruce V. Anderson, Circuit Court Judge. (SR 4, 7-9).

On August 13, 2024, Winckler filed a Motion Dismiss for violation of the 180-day rule pursuant to 23A-44-5.1. (SR 20-22). The State responded; Winckler filed a Reply Brief attaching the South Dakota *eCourts* case summary showing that an arrest warrant was issued on November 22, 2023, and returned on January 29, 2024, after Winckler's arrest on January 28, 2024, and that his initial appearance occurred on January 30, 2024. (SR 68-69, 70-75). The circuit court's memorandum opinion dated November 26, 2024, denied Winckler's Motion to Dismiss for violation of the 180-day rule. (SR 150-152).

On August 14, 2024, Winckler filed a Motion to Dismiss based on a lack of jurisdiction, alleging that he is an Indian and the charged conduct occurred in Indian country. (SR 23-65, 79-117). Winckler's Motion to Dismiss was noticed for hearing which occurred on September 11, 2024. (SR 118, 374). The parties, having developed the record through their submissions and comments at hearing, stipulated to essential

underlying facts (SR 118-120, 141, 376-378) – i.e., that Winckler is an Indian, an enrolled member of the Yankton Sioux Tribe, and the alleged offense occurred on lands that were reserved in the 1858 Treaty between the Yankton Sioux Tribe and the United States, 11 Stat. 743 (App. 184-190), which lands were subsequently allotted by United States Trust Patent dated May 8, 1891, (App. 192), and then identified in Articles XIII and XIV of the Act of 1894, ch. 290, 28 Stat. 286, 314-319 (App. 194-202). The Yankton Sioux allotted lands at issue comprise what is now Lake Andes and the location of the alleged offense. (SR 119). The parties left for the circuit court to decide whether the lands at issue qualify as Indian country under federal law, 18 U.S.C. § 1151(a), (b), and (c). (SR 376-378). Following a hearing, (SR 374-401), the circuit court issued a memorandum decision rejecting Winckler's jurisdictional arguments and entered the Order Denying Defendant's Motion to Dismiss on October 11, 2024. (SR 118-141).

Winckler filed several objections, motions, and two proposed jury instructions. (SR 143-149, 157-164, 171-238). Winckler's pretrial objections and motions to limit or exclude based on challenges to the admissibility of certain evidence and testimony were heard and ruled on by the court before the start of trial. (SR 442-462). The circuit court also granted Winckler a continuing objection based upon his pretrial filings. (SR 508-509).

The State called two witnesses before resting, clerk Jennifer Robertson and Winckler's former court appointed counsel, Keith Goehring. (SR 510-540, 547). The State introduced Winckler's bond form (State's Exhibit 1) through Robertson who testified to its contents, over Winckler's objections. (SR 515-516, 265-267). On cross-examination, Robertson acknowledged that the court's original bond order did not

include any condition for Winckler to appear before the court on November 8, 2023. (SR 518, 289). Robertson also conceded that the bond form was from the Charles Mix County Sheriff's Office and was not issued nor signed by a court. (SR 519, 265-267). Additionally, Robertson explained the purpose and use of a certificate of service and that no certificate of service was filed with State's Exhibit 2, which was the scheduling order setting Winckler's pretrial conference. (SR 520, 268-269). Finally, in reference to the arraignment hearing, where the circuit court set Winckler's pretrial conference date from the bench, Robertson acknowledged that the court did not direct Winckler to appear at any hearings. (SR 522-525, 270-283).

Winckler objected to Goehring's testimony along with certain parts of his statements contained in State's Exhibit 5, based on privilege and confidentiality; Goehring stated no separate objection to testifying as Winckler's former attorney. (SR 525-526, 531-533). On cross-examination, Goehring explained the purpose of a certificate of service, that no certificate of service was included with State's Exhibit 2 (the Scheduling Order) and acknowledged that no pronouncements were made by the court at the arraignment hearing, directing Winckler to appear at his pretrial conference. (SR 534-535). Goehring also acknowledged that he was unable to testify that Winckler ever received any letter of his, that purportedly advised Winckler to be in court for the pretrial conference. (SR 536). No such letter was introduced into evidence.

Winckler moved for a judgment of acquittal, which the court denied. (SR 547-549). In closing arguments, the State relied heavily on the "bond paperwork" (Exhibit 1) and purported "letter from attorney" (Mr. Goehring). (SR 568-569, 575-576). Winckler argued that the State had not met its burden, while outlining the evidence. (SR 570-575).

The jury returned a verdict finding Winckler guilty on the charge of failure to appear. (SR 582, 335). Winckler subsequently entered a Stipulation and Agreement in which he waived his right to a jury trial on the Part II Habitual Information, admitting to portions of it. (SR 340-342, 419). The circuit court pronounced a sentence of six years suspended upon certain conditions and the payment of court costs. (SR 355-357, 371-373).

STANDARD OF REVIEW

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

Disputed factual issues are reviewed for clear error; legal conclusions and mixed questions of law and fact are reviewed de novo. Yankton Sioux Tribe v. Podhradsky, 606

F.3d 994, 1004 (8th Cir. 2010) (citation omitted). A motion for judgment of acquittal is reviewed de novo, as the appellate court independently determines whether the evidence presented at trial was sufficient to sustain the conviction. State v. Disanto, 2004 S.D. 112, ¶ 14, 688 N.W.2d 201, 206 (citing authorities).

ARGUMENT AND AUTHORITY

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

A. Cannons of Construction

Our United States Constitution entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land," Art. I, §8; Art. VI, cl. 2; see, e.g., Haaland v. Brackeen, 599 U.S. 255, 275 (2023) (describing "Congress's power to legislate with respect to the Indian tribes as 'plenary and exclusive'" (citing cases)); Perrin v. United States, 232 U.S. 478, 482-483 (1914) (same); see also McGirt v. Oklahoma, 140 S. Ct. 2452, 2461-2463 (2020) (Once Congress recognizes or establishes Indian lands, only Congress can divest such lands of Indian country status); id., 140 S. Ct. at 2474-2476 ("the most authoritative evidence…lies in the treaties and statutes…"); Johnson v. McIntosh, 21 U.S. (8 Wheat) 543 (1823) (Tribes retain the right to occupy and use their ancestral lands, while United States has ultimate title and authority which includes the exclusive right to extinguish Indian title); Blatchford v. Gonzales, 100 N.M. 333, 337 (1983-NMSC-060) ("courts have required a showing of a clear and specific indication of congressional intent to extinguish Indian title") (citing cases).

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

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

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

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

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

These cannons of construction provide compelling guidelines for review of the 1858 Treaty between the Yankton Sioux Tribe and the United States, 11 Stat. 743 (1858 Treaty), as well as the 1892 agreement ratified by Congress in the Act of 1894, 28 Stat. 286, 314-319 (1894 Act). As discussed below, the 1858 Treaty and 1894 Act affirmatively recognized and guaranteed the title of the Yankton Sioux in and to the land at issue in this case, and Congress has never subsequently passed any "equivalent law terminating" or extinguishing such title. McGirt, 140 S. Ct. at 2464 ("a statute evincing

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[1] McGirt, supra; 140 S. Ct. 2452, 2469-2470; Worcester v. Georgia, 31 U.S. 515, 6 Pet. 515, 582 (1832).

[2] South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998); Solem v. Bartlett, 465 U.S. 463, 470 (1984); see also id., 465 U.S. at 472 (requiring "substantial and compelling evidence of a congressional intention" to divest status of Indian lands).

[3] McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 174 (1973); Mattz v. Arnett, 412 U.S. 481, 504-505 (1973).

[4] Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 676 (1979); Jones v. Meehan, 175 U.S. 1, 11 (1899)).

anything like the 'present and total surrender of all tribal interests' in [all Indian title to] the affected lands") (alteration added).

B. Yankton Sioux Legal History

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

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

The 1858 Treaty, at Article I, provided that "the tribe of Indians do hereby cede and relinquish to the United States all the lands now owned, possessed, or claimed by them, wherever situated, *except for four hundred thousand acres thereof* ..." (emphasis added). At Article II, the 1858 Treaty affirmatively recognized the title of the Yankton Sioux, "that all the lands embraced in said limits are their own, and that they have full and exclusive right to cede and relinquish the same to the United States." At Article IV, § 1, the United States promised to protect the Yankton Sioux "in the quiet and peaceable

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

Though surveying and dividing reservation land was contemplated by Article X of the 1858 Treaty, see also, Gaffey I, 14 F. Supp. 2d, at 1139 (describing the parceling of reservation lands following 1858 Treaty), the practice of allotting reservation land to individual Indians began generally and on a nationwide basis with the 1887 passage of the General Allotment (Dawes) Act, ch. 119, 24 Stat. 388. Under the various legislative enactments implementing the practice, individual tribe members received patents for allotments of reservation land held in trust for a period of years. After the trust period, the land was conveyed to the tribal member, was freely alienable, and could be conveyed to Indians and non-Indians alike. McGirt, 140 S. Ct. 2452, 2463.

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

> In 1892, ...the Tribe agreed to sell all of the unallotted acreage to the United States for $600,000. The ceded land was to be opened to white settlement, with the exception of roughly 1,000 acres specifically reserved for use by the United States for "agency, schools, and other purposes." Act of August 15, 1894, ch. 290, 28 Stat. 286, 316 (1894 Act). ... The Supreme Court has commented that the set aside of these agency lands is evidence that Congress envisioned an ongoing reservation despite the sale of the surplus lands.

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

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

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

The 1894 Act, ch. 290, 28 Stat. 286, at 314-319, which recited the 1892 Agreement, specified in the preamble that the Yankton Sioux Tribe "is willing to dispose of *a portion of the land set apart and reserved to said tribe*, by the first article of the [1858 Treaty]." 28 Stat. 314 (emphasis added). At Article I of the 1894 Act, the Yankton Sioux agreed only to cede to the United States "*all their claim, right, title, and interest in and to all the unallotted lands* within the limits of the reservation[.]" (emphasis added). At Article II, the United States agreed to pay as "consideration for the lands ceded, ... the sum of six hundred thousand dollars ($600,000)[.]" Article V made

provisions for continuing federal support for the Tribe, including, "For the care and maintenance of…helpless persons of the Yankton tribe of Sioux Indians…; for schools and educational purposes of the said tribe; and for courts of justice and other local institutions…" Article VIII provided that "[s]uch part of the surplus lands…as may now be occupied by the United States for agency, schools, and other purposes," were to be reserved from sale to settlers until no longer required for such purposes. And, with specific reference to the Yankton Sioux allotted lands, Article XIII of the 1894 Act expressly guaranteed "Tribal rights," including "the undisturbed and peaceable possession of their allotted lands" and "all the rights and privileges of the tribe[.]" Article XIV guaranteed the allotted lands in perpetuity, "Congress shall never pass any act alienating any part of these allotted lands from the Indians." In addition, Article XVII proscribed certain conduct upon "lands within or comprising the reservations of the Yankton Sioux…as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off…" Article XVIII directed that "[n]othing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States" and the 1858 Treaty "shall be in full force and effect…"

C. Jurisdiction over Indians in Indian Country

It is established that state jurisdiction generally does not extend to Indians in Indian country. See, e.g., Williams v. Lee, 358 U.S. 217 (1959); Mille Lacs Band of Ojibwe v. Madore, Nos. 23-125, 23-1261, 23-1265, 2025 U.S. App. LEXIS 3279, at *8 (8th Cir. Feb. 12, 2025). "[A]s a general rule Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe

rather than the states." Podhradsky, 606 F.3d 994, 1006 (citing Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520, 527 n.1 (1998)); see 18 U.S.C. § 1151 (defining "Indian country" to mean "**(a)** all lands within the limits of any Indian reservations… **(b)** all dependent Indian communities…[and] **(c)** all Indian allotments, the Indian titles to which have not been extinguished").

As set forth in Winckler's Brief in No. 31007, the Court should reconsider the validity of case law which found the Yankton Sioux Reservation terminated or disestablished of lands under § 1151(a). Below, Winckler will address dependent Indian community status under § 1151(b), and Indian title, Yankton Sioux allotted lands, and extinguishment under § 1151(c).

D. Subsection (b) of § 1151

18 U.S.C. § 1151(b) defines Indian country to include "all dependent Indian communities" which are lands satisfying two requirements: "first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence." Native Village of Venetie Tribal Gov't, 522 U.S. 520, 527 [Venetie]; see also Podhradsky, 606 F.3d 994 (affirming conclusion that lands were part of "dependent Indian community" with respect to Yankton Sioux Tribe). "The federal set-aside requirement ensures that the land in question is occupied by an 'Indian community'." Id., 522 U.S., at 531. It "also reflects the fact that because Congress has plenary power over Indian affairs, see U.S. Const., Art. I, § 8, cl. 3, some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country." Id., at n. 6. "[T]he federal superintendence requirement guarantees that the Indian community is sufficiently

'dependent' on the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question." Id. 522 U.S., at 531.[5]

First, the lands in this case, allotted lands upon which Lake Andes is situated, were set aside for the Yankton Sioux Tribe. The lands are within the Tribe's traditional territory reserved in the 1858 Treaty which affirmatively recognized Indian title and established the Yankton Sioux Reservation, among the treaty promises respecting the lands reserved as the Tribe's permanent home. 11 Stat. 743, 744-749. The lands subsequently allotted were then confirmed by the Act of 1894 which guaranteed "Tribal rights" including "the undisturbed and peaceable possession of their allotted lands," that "Congress shall never pass any act alienating any part of these allotted lands from the Indians," proscribing certain conduct upon the ceded lands, and directing that the 1894 Act shall not be construed to abrogate the 1858 Treaty which "shall remain in full force and effect." (1894 Act, Arts. XIII-XIV, XVII-XVIII; 1858 Treaty, Arts. I-II, IV, X-XI); see, Perrin, 232 U.S. 478 (recognizing existence of federal authority that extended into the ceded territory for protecting Yankton Sioux in their allotted lands under 1894 Act). Congress, after passing the 1894 Act expressly guaranteeing the allotted lands and reaffirming the 1858 Treaty, has never passed any equivalent law or laws extinguishing Indian title to the allotments or terminating their status as Indian lands set aside as such.

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[5] In United States v. South Dakota, 665 F.2d 837 (8th Cir. 1981), the Eighth Circuit affirmed the district court's judgment that a housing project was a dependent Indian community under § 1151(b), based on evidence regarding the nature of the area, the title history of the land in question, the relationship of the inhabitants to the Indian Tribe and the federal government, and the cohesiveness of the community. In Owen v. Weber, 646 F.3d 1105, 1106, n.3 (8th Cir. 2011), the Eighth Circuit declined to directly say whether South Dakota retains validity in determining a dependent Indian community to which Venetie's test applies.

Yankton Sioux Tribe, 522 U.S. 329, 350 (observing 1894 Act's surplus lands set-aside provision reflected Congress's intent to maintain status of allotments as Indian lands); see also McGirt, 140 S. Ct. 2452 (Creek lands survived allotment and maintain status as Indian lands).

The set aside of these Yankton Sioux lands is further evidenced by the fact that Lake Andes, situated upon a Yankton Sioux allotment, is demarcated as a Tribal Block Group by the federal government on the 2020 US Census Tribal Tract Map. (SR 23-24, 63-65);[6] (*SR* 141, Ex. 12; App. 209) [7] Moreover, the Yankton Sioux Tribe, with whom the United States maintains a trust relationship, continues to recognize that the lands were set aside. (*SR* 203-208, Ex. 22; App. 261-266); (*SR* 163-169, Ex. 16; App. 221-227). The State also shows recognition to the existence of the federally set-aside lands for the Yankton Sioux. (*SR* 171-172, Ex. 17, State says no to Yankton Sioux Tribe's ask for National Guard help with flooding at Lake Andes; App. 229-230). Accordingly, because

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[6] See SR 24, doc n.1. While the exhibits submitted to the circuit court are included in the settled record for file 11CRI24-085, which is proceeding as appeal no. 31007, they do not appear included with the settled record for the instant appeal no. 31006. Accordingly, citations made in this brief to the record exhibits will refer to the settled record from appeal no. 31007, which will be designated as "*SR*" (italicized) followed by page and exhibit number. Excerpts of the cited record Exhibits are also being included in the Appendix with this brief.

[7] "A tribal block group is a statistical geographic subdivision of a tribal census tract. Tribal block groups are defined by the Census Bureau in cooperation with tribal officials to provide meaningful, relevant, and reliable data for small geographic areas within the boundaries of federally recognized American Indian reservations (AIFs) and/or off-reservation trust lands (ORTLs) without the imposition of state or county boundaries. The Census Bureau uses tribal block groups in the tabulation and presentation of data for the decennial census and the American Community Survey (ACS)." United States Census Bureau Form G-600 (11-19-2018) OMB. No. 0607-1003, available at <https://www2.census.gov/geo/pdfs/partnerships/psap/G-600.pdf?> last accessed April 29, 2025.

the lands at issue were set apart for the Yankton Sioux in the 1858 Treaty and Act of 1894, Venetie's federal set-aside requirement for a dependent Indian community is satisfied.

"Equally clear," e.g., Venetie, at 533, contra, the 1894 Act reaffirmed continuing federal superintendence over the Tribe's allotted lands. Yankton Sioux Tribe v. Podhradsky, 606 F.3d 985, 991 (8th Cir. 2010) (observing that 1894 Act "reflected parties' intent to 'preserv[e] the support of the federal government and its superintendence over [the allotted] lands'" (citations omitted) (alterations in Podhradsky)). As noted above, with the Act of 1894 Congress expressly guaranteed "Tribal rights" with respect to the allotted lands, while reaffirming the 1858 Treaty promises. In doing so, Congress made provisions for programs, services, and other local institutions, including: "For the care and maintenance of such orphans, and aged, and infirm, or other helpless persons of the Yankton tribe of Sioux Indians…; for schools and educational purposes for the said tribe; and for courts of justice and other local institutions for the benefit of the said tribe…" 1894 Act, Art. V, 28 Stat. 286, 315. Congress also provided that "[s]uch part of the surplus lands…as may now be occupied by the United States for agency, schools, and other purposes, shall be reserved from sale to settlers until they are no longer required for such purposes." Id., Article VIII. This is evidence that Congress intended continuing federal superintendence over the allotted lands. Yankton Sioux Tribe, 522 U.S. 329, 350. Moreover, Article XVII provided federal authority over ceded lands for purposes of enforcing its anti-liquor provisions and protecting the Yankton Sioux in their allotted lands. Perrin, supra. In addition, Article XVIII directed that the 1858 Treaty remains in force, and consistent with the 1894 Act's

statutory protections and provisions for support, Congress thus explicitly reaffirmed the 1858 Treaty stipulations and promises in which the Tribe's title to its traditional territory was recognized, lands reserved, and Tribal protection on the lands was guaranteed by the United States. 11 Stat. 743, at 744. It also affirmatively recognized the Tribe's "dependence upon the government of the United States," upheld tribal sovereignty and jurisdiction with federal authority over "all offenders against the treaties, laws, or regulations," and appointed an Indian agent "for the special benefit of the [Yanktons]." 11 Stat. at 747.

Congress has never abrogated these promises, guarantees, and protections, and the Federal Government has continued its superintendence over the lands in question in this case, "effectively acting as guardian for the Indians." Venetie, 522 U.S. at 533; Perrin, 232 U.S. at 481 (noting that the tribal relations had not been dissolved, "[a]n agent or superintendent remains in charge of their affairs and they are still wards of the Government"). As promised in the 1858 Treaty reaffirmed in the 1894 Act, the United States continues to maintain an Indian agent serving the Yankton Tribe for the benefit of Indians who occupy the lands at issue in this case. (*SR* 20-68, Exs. 1, 3-4; App. 192-201); (*SR* 134-172, Exs. 11-14, 16-17; App. 204-230). The lands are subject to federally dependent Tribal services, programs, and local institutions which support Yankton Sioux Indians inhabiting their allotted lands. Consistent with the 1858 Treaty and 1894 Act, federal superintendence over the land in question in this case is evident from the fact that the Tribe provides law enforcement services in Lake Andes, through federal support and assistance for such purposes. 1894 Act, Arts. V, VIII, XIII, XVIII; 1858 Treaty; (*SR* 154-155, Ex. 14; App. 218-219); (*SR* 203-260, 232, Ex. 22; App. 261-318, 290); (*SR* 262-266,

Ex. 23, Tribal law enforcement responding to suspected murder in Lake Andes; App. 320-325). Likewise, the Tribe's health services, schools, and other local institutions, as well as infrastructure in respect to the allotted lands, are also federally dependent. (*SR* 151-155, Ex. 14, Indian Health Services and Bureau of Indian Education; App. 215-219); (*SR* 203-260, 225, 232, 249-255, Ex. 22; App. 283, 290, 307-313); (*SR* 171-172, Ex. 17, documenting State's refusal to assist Tribe with flooding in Lake Andes because, according to state official, "the tribe has Bureau of Indian Affairs funding, materials, tribal equipment and personnel"; App. 229-230). Similarly, Yankton Sioux Tribe members, many of whom inhabit Lake Andes, benefit from federal payments to the Tribe for rental assistance which supports housing, and the Tribe also receives federal assistance to operate a transit system that includes Lake Andes. (*SR* 171-227, Exs. 17-22; App. 229-285). The dependency of the Yankton Sioux Tribe upon the federal government is particularly evident in view of any assistance from the State, (*SR* 171-172, Ex. 17; App. 229-230), notwithstanding shared aspects of responsibility in the community that requires state-tribal-local cooperation and respect. (*SR* 262-266, Ex. 23; App. 320-325).

Thus, far from being "merely forms of general federal aid," Venetie, at 534, the Tribe's dependency upon the federal government for local institutions, programs, and services, for housing, healthcare, schools, infrastructure, transit, and law enforcement in Lake Andes, on allotted lands within the Tribe's reserved traditional territory – considered together with the continuing 1858 Treaty promises consistent with the 1894 Act – is "indicia of active federal control over the Tribe's land sufficient to support a finding of federal superintendence." Id. Accordingly, the lands at issue, Yankton Sioux

allotted lands comprising Lake Andes, also meet the federal superintendence requirement of Venetie.

The circuit court's analysis with respect to dependent Indian community status correctly noted Venetie's two element test but effectively reduced it to less than a mere sidenote by relying entirely on considerations from Weddell v. Meierhenry, 636 F.2d 211 (8th Cir. 1980). (SR 121).[8] In doing so, the circuit court made observations about the land's individual ownership history and "the conveyance of the subject property (allotment) in this case from John Arthur or Cetantanka to John W. Harding, a non-Native American, on June 20, 1907[.]" (SR 122). However, Congress does not terminate Indian lands set-aside as such simply because it allows for individual ownership. E.g., McGirt, 140 S. Ct. 2452, 2464 ("patents transferred legal title and are the basis for much of the private land ownership … there is no reason why Congress cannot reserve land for tribes in much the same way, allowing them to continue to exercise governmental functions over land even if they no longer own it communally"); id., 140 S. Ct. at 2474-2475 (explaining dependent Indian community status is as resilient as reservation status, and "fee title" to either such lands *does not* make "tribal sovereignty easier to divest"). Likewise, federal authority and superintendence over the lands is not lost simply because "federal agencies having jurisdiction over Indian affairs are located in [the] City of Wagner, not Lake Andes" as the circuit court reasoned. (SR 123); see, e.g., Perrin, supra. The circuit court failed to discuss or consider the credible record evidence establishing Venetie's set-aside and superintendence requirements, the 1858 Treaty, Act of 1894, and

[8] But see, note 5 *supra*, South Dakota, 665 F.2d 837, 839 (discussing Weddell considerations); Owen, 646 F.3d 1105, 1106, n.3, indicating South Dakota no longer retains validity.

the continuing federal support consistent with the treaty promises and statutory provisions respecting the allotted lands.

Therefore, because both elements of the Venetie test are satisfied, the lands at issue qualify as a dependent Indian community under 18 U.S.C. § 1151(b). The location is within the Tribe's traditional territory on lands set aside and reserved for Indian use by the terms of the 1858 Treaty, which recognized the Tribe's title in and to such lands. The lands, subsequently allotted, were expressly guaranteed to the Tribe in perpetuity by the Act of 1894, in which the 1858 Treaty was reaffirmed. Congress has never abrogated its promises to the Tribe, as the lands in question have remained set-aside and occupied by an Indian community under continuing federal superintendence through provisions for local institutions, housing, transit, infrastructure, health services, schools, and law enforcement.

E. Subsection (c) of § 1151

18 U.S.C. § 1151(c) defines Indian country to include "all Indian allotments, *the Indian titles to which have not been extinguished…*" (emphasis added).[9]

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[9] "**INDIAN TITLE**. Claim of Indian tribes of right, because of immemorial occupancy, to roam certain territory to exclusion of any other Indians. Band of Shoshone Indians v. U.S., Ct. Cl. 65 S. Ct. 690, 324 U.S. 335, 89 L. Ed. 985." Black's Law Dictionary, at p. 912, 4th Ed. West Publishing (1951); see also, e.g., McGirt, supra, 140 S. Ct. at 2474-2476 (discussing Creek title); United States v. Sioux Nation of Indians, 448 U.S. 371, 415, 422 & note 29 (1980) (describing Indian lands subject to Indian title to include "recognized title" – i.e., Indian title for which "Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently"); 41 ALR Fed 425, Proof and extinguishment of aboriginal title to Indian lands; see also, e.g., Black's Law Dictionary, *supra*, pp. 290, 696, 1042, 1655-1656 (definitions and explanations of "Title…Real Property Law…General…Absolute title…Legal title…Chain of title…Extinguish…Extinguishment"); (SR 40-43).

The term "Indian title" has been long understood to evidence Indian right to lands, whether based on aboriginal occupancy or recognized by treaty or statute, for which Congress's authority is supreme. Johnson v. McIntosh, 21 U.S. 43 (8 Wheat. 543) (1823) (recognizing Indian title whereby tribes retain the right to occupy and use their ancestral lands, and it is the exclusive prerogative of the United States, which holds ultimate title, to extinguish Indian title); United States v. Shoshone Tribe, 304 U.S. 111, 117 (1938) (explaining right conferred through Indian title "is as sacred and as securely safeguarded as is fee-simple absolute title" (citing Cherokee Nation v. Georgia, 5 Pet. 1, 48 [30 U.S. 1 (1831)]; Worcester v. Georgia, 6 Pet. 515, 580 [31 U.S. 515 (1832)]). Indian title, and the rights conferred thereby, is to be recognized, preserved, and safeguarded by the law, unless extinguished by the United States. Buttz v. Northern Pacific Railroad, 119 U.S. 55, 68 (1886) (right conferred through Indian title "protected by the political power and respected by the courts until extinguished" (citation omitted)).

Chief Justice Marshall wrote that the various Acts of Congress respecting Indian trade and intercourse "manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States." Worcester, supra, 6 Pet. at p. 557; see also, e.g., Cramer v. United States, 261 U.S. 219 (1923) (recognizing right of Indians to lands occupied by 1859 and that such title, even if not formally recognized by statute or government action, was to be considered as sacred as fee simple ownership and could only be extinguished by Congress); Perrin, supra, 232 U.S. 422 (Congress's plenary power to legislate for the protection of Indian tribes extends to measures even on lands

that have passed into private ownership following cession, which was reasonably essential for guaranteeing Tribe's protection on unceded allotted lands); Bates v. Clark, 95 U.S. 204 (1887) (observing lands were "Indian country whenever the Indian title had not been extinguished, and continued to be Indian country so long as the Indians had title to it, …unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case"); Holden v. Joy, 84 U.S. 211 (1872) (affirming that Indian tribes possess a right of perpetual occupancy of their lands and that grants of such lands by the United States were subject to Indian title unless extinguished, typically through treaties or agreements); Mitchel v. United States, 34 U.S. 711 (1835) (affirming recognition and protection of Indian title to lands under federal law, which persists until extinguished). Thus, until extinguished, Indian title runs with the land and existence of the resident Indian tribe.

In United States v. Santa Fe P. R. Co., 314 U.S. 339 (1941), the Supreme Court examined various Acts of Congress to determine whether Indian title to the Walapais' aboriginal lands was extinguished. Id., 314 U.S. 339, 350. After searching "the public records in vain for any clear and plain" congressional intent, the Supreme Court found "no indication that Congress by creating [the Colorado River reservation] intended to extinguish all of the rights which the Walapais had in their ancestral home." Id., at 353. "That Congress could have effected such an extinguishment is not doubted. But an extinguishment cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards." Id., at 354. In United States v. Sandoval, the Supreme Court indicated that the Pueblos' title was not fee simple in the commonly understood sense of the term, as Congress had recognized the Pueblos' title to

their ancestral lands by statute, and Executive orders had reserved additional public lands for the Pueblos. Sandoval, 231 U.S. 28, 39 (1913). Congress had also enacted legislation with respect to the lands "in exercise of the Government's guardianship over the [Indian] tribes and their affairs" and federal authorities could therefore exercise jurisdiction over the Pueblo lands which were encumbered by Indian title. Id., at 48. In United States v. Pelican, the Supreme Court considered the distribution of Indian lands into separate holdings through the practice of allotment. "That the lands, being so held, continued to be under the jurisdiction and control of Congress for all governmental purposes, relating to the guardianship and protection of the Indians, is not open to controversy." Pelican, 232 U.S. 442, 447 (1914); id., at 449 ("the lands remained Indian lands set apart for Indians under governmental care"); see also McGirt, supra, 140 S. Ct. at 2475 (recognizing Creek held "fee simple title" to their lands which survived allotment and remain Indian lands).

Respecting Indian title, Section 4 of South Dakota's Enabling Act required that the Constitution of South Dakota include certain irrevocable provisions – "... that [it] forever disclaim all right and title to all lands owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States." Highrock v. Gavin, 43 S.D. 315, 361, 179 N.W. 12, 30 (1920) (Gates, J. (dissenting)); S.D. Const. Arts. XXII & XXVI § 18; Highrock, 43 S.D. at 349-350, 179 N.W. at 25 ("When the government grants an allotment to an Indian allottee, it does not extinguish Indian title, but creates a new one") (McCoy, J. (concurring)); see also Shoshone Tribe of Indians, 304 U.S. 111, 118 ("The authority of the United States to

prescribe title by which individual Indians may hold tracts selected by them within the reservation…detracts nothing from the tribe's ownership, but was reserved for the more convenient discharge of the duties of the United States as guardian and sovereign").

> …The right to extinguish original Indian title rests exclusively with Congress irrespective of who holds the underlying fee title in the land. Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 667-69 (1974); United States v. Santa Fe Pacific R. Co.; United States v. Kabinto, 456 F.2d 1087 (9th Cir. 1972); Narragansett Tribe, etc. v. So. R.I. Land Devel., 418 F.Supp. 789 (D.R.I. 1976). However, courts have required a showing of a clear and specific indication of congressional intent to extinguish Indian title. E.g., United States v. Santa Fe Pacific R. Co.; see Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 277 (1955); Buttz v. Northern Pacific Railroad Co., supra; United States v. Pueblo of San Ildefonso, 206 Ct.Cl. 649, 513 F.2d 1383 (1975).

Blatchford v. Gonzales, 100 N.M. 333, 337 (1983-NMSC-060); Pueblo of Jemez v. United States, 63 F.4th 881 (10th Cir. 2023) (Indian tribe continued to hold title to land at issue because it established title by 1650 and title had not been extinguished by the United States).

As demonstrated, Indian title can be based on immemorable use and occupancy or recognition through treaties or statutes, and it confers an Indian right in and to the land that is respected by the political power, safeguarded by the courts, and legally enforceable against everyone except the United States. Extinguishing Indian title involves terminating all rights of the Indians to the affected lands, by sovereign act – e.g., treaty with the Indians or Act of Congress – transferring full and absolute ownership between sovereigns (e.g., Tribe and United States) and thus removing any residual rights based on the title of the resident Indian tribe to the land. See McGirt, supra, 140 S. Ct. 2452, 2464 (diminishing sovereign claim over land requires "the transfer of a sovereign claim from one nation to another") (citing 3 E. Washburn, American Law of Real

Property *521-*524). Unless/until Indian title is extinguished, the land is encumbered by it regardless of who holds fee title, as the right to extinguish Indian title rests exclusively with Congress. Consistent with the cannons of construction, extinguishing Indian title requires a clear and specific congressional intent expressed in a treaty or legislative enactment. As such, the intent to extinguish must be unambiguous, requiring evidence that demonstrates plain intent by the sovereign.

Here, the land at issue is within the Yankton Tribe's traditional ancestral home on lands reserved by Article I of the 1858 Treaty. Confirming the Tribe's exclusive control of the lands described in the 1858 Treaty, Article II affirmatively recognized the Tribe's title to those lands. At Article IV, § 1, the United States promised "[t]o protect the said [Yankton Sioux Indians] in the quiet and peaceable possession of the…land so reserved for their future home[.]" Article VIII guaranteed the Tribe's access and use of the culturally sacred Red Pipestone quarry. Article X stipulated that the Yankton Sioux cannot alienate, sell, or dispose of any portion of their reserved tract except to the United States and provided the tract would be surveyed and divided among the Indians as directed by the Secretary of Interior, with certain rights or restrictions regarding alienation as deemed just. And Article XI upheld tribal title and sovereignty by making any offenders against the treaties or laws subject to federal jurisdiction.

Parcels of the reserved lands described in Article I of the 1858 Treaty were subsequently allotted to individual Tribe members, including by United States Trust Patent dated May 8, 1891, which describes the lands upon which Lake Andes is now situated. By the Act of 1894, then, Congress affirmatively reinforced the title of the Yankton Sioux to the allotted lands. Article XIII of the 1894 Act guaranteed "Tribal

rights" including "the undisturbed and peaceable possession of their allotted lands, and …all the rights and privileges of the tribe…" Article XIV guaranteed that "Congress shall never pass any act alienating any part of these allotted lands from the Indians." At Article XVII, Congress proscribed certain conduct on ceded lands to protect the Yankton Sioux in their allotted lands. And Article XVIII expressly reaffirmed the 1858 Treaty: "Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States. …all provisions of the said treaty of April 19th, 1858, shall be in full force and effect…"

Thus, the title of the Yankton Sioux to their ancestral homelands was established and recognized in the 1858 Treaty, and then reaffirmed and guaranteed with respect to the allotted lands in the Act of 1894, Arts. V, XIII, XIV, XVII, XVIII. Articles I and II of the 1858 Treaty reserved part of the Tribe's ancestral lands for their future home and affirmatively recognized the Tribe's title to the lands. 11 Stat. 743, at 744. In Article I of the 1894 Act, the Tribe agreed only to "cede, sell, relinquish, and convey to the United States all their claim, right, *title and interest in and to all the unallotted lands*[.]" 28 Stat. 286, at 314 (emphasis added). The Tribe has never agreed to cede, sell, relinquish, or convey to the United States their *title in and to any allotted lands*, and Congress has never passed any subsequent law or laws extinguishing such title. E.g., McGirt, 140 S. Ct. 2452, 2464 ("Missing…is a statute evincing anything like the 'present and total surrender of all tribal [title]' [to] the affected [allotted] lands") (alterations added). Yankton Sioux title continues to encumber the allotted lands upon which Lake Andes sits, where Winckler's alleged conduct occurred. Therefore, because the Indian title to

such land has never been extinguished by Congress, the land in question qualifies as Indian country under 18 U.S.C. § 1151(c).

2. The Circuit Court erred in denying Winckler's Motion to Dismiss for violation of the 180-day rule pursuant to SDCL 23A-44-5.1.

"Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days," which "period shall commence to run from the date the defendant has first appeared before a judicial officer on an indictment, information or complaint." SDCL 23A-44-5.1(1)-(2). Here, Winckler first appeared before a judicial officer on the complaint on January 30, 2024, his motion to dismiss was filed on August 13, 2024, and his trial was held on December 13, 2024. (SR 1-3, 70, 73-75). At the time of filing for dismissal, trial was set for August 19, 2024, or 202 days after Winckler's initial appearance. (SR 20). The circuit court's letter decision denying the motion to dismiss reasoned that any delay was caused by the defendant asking for a substitution of counsel and filing motions to dismiss asserting a lack of jurisdiction in various other then-pending case files. (SR 151).

Following Winckler's initial appearance on January 30, 2024, his first action was to advise the court that he was representing himself. (SR 150). Next, the record indicates that Winckler was appointed counsel and then requested a substitution of counsel, see, email from the clerk dated March 6, 2024, resolved by the court no later than March 11, 2024. (SR 7-9). The record does not reveal any further motions being filed until August 13, 2024. (SR 20-22). Nor does the record reveal any delay from other proceedings, such as an examination and hearing on competency, or due to incompetency to stand trial. SDCL 23A-44-5.1(4)(a). While Winckler filed various motions in his other cases, including motions dismiss or suppress evidence, the record does not indicate that those

motions necessarily affected any delay holding trial in the instant matter. Importantly, there was no time consumed due to any trials being held in any of Winckler's other cases. Id.

Additionally, the record does not appear to show that Winckler ever requested or consented to a continuance, which was approved by the court and a written order filed. SDCL 23A-44-5.1(4)(b).[10] Further, subsections (c), (d), (e), (f), (g), and (h), of SDCL 23A-44-5.1(4), appear plainly inapplicable to toll the statutory period here. And perhaps most importantly, the State did not file any motions for "good cause delay" pursuant to subsection (h) of the statute. See Hays v. Weber, 2002 SD 59, ¶ 20, 645 N.W.2d 591, 598; see also State v. Head, 469 N.W.2d 585 (S.D. 1991).[11] Accordingly, Winckler's Motion to Dismiss for violation of the 180-day rule should have been granted pursuant to SDCL 23A-44-5.1(5).

3. The Circuit Court erred in admitting Winckler's "bond form" (State's Exhibit 1).

Winckler's bond form, prepared by the Charles Mix County Sheriff's Office, indicated Winckler's November 8, 2023, court date for which he failed to appear and that Winckler had apparently signed the paperwork. (SR 166, 171-186, 265-267). The circuit court allowed the bond paperwork to be admitted into evidence through the testimony of

[10] No continuance motions appear from the record filings, and no hearing transcripts have been ordered by the State for appeal to show that Winckler ever consented to a continuance or otherwise waived his right to a trial within 180 days of his initial appearance on the charge of failure to appear.

[11] The circuit court's memorandum decision directed the State to submit findings of fact and conclusions of law in support of its decision. (SR 152). No such findings and conclusions appear from the record.

the circuit court clerk over Winckler's objections asserting foundational and relevance concerns, hearsay, confrontation clause, and incompleteness/inaccuracy of the documentation. (SR 171-187, 442-449, 461-462, 508-509, 515-516). The State relied heavily on Exhibit 1 in closing arguments. (SR 568-576).

"'Hearsay' means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." SDCL 19-19-801(c). Hearsay is generally not admissible. SDCL 19-19-802. State's Exhibit 1 involved three levels of out-of-court statements that, when contained in a written document, become hearsay within hearsay within hearsay. See SDCL 19-19-805; see also Johnson v. O'Farrell, 2010 S.D. 68, ¶ 16, 787 N.W.2d 307, 313 (explaining rules for hearsay within hearsay). This is because any court date, including any requirement that a defendant must attend, is set by the court; and the court did not prepare or sign the bond paperwork admitted into evidence as State's Exhibit 1. (SR 519). Page 3 of Exhibit 1 states that "[w]hen the State's Attorney of the court contact the Jail, the Jailer Shall initial each condition that applies." (SR 179). Thus, Exhibit 1 itself is first-level-reporter hearsay because it is the out-of-court statement of what the Charles Mix County jail staff recorded the State's Attorney stating to them about the conditions of bond. The State's Attorney's statements to the jail staff of what the Court imposed constitute second-level-reporter hearsay because they are the State's Attorney's out-of-court statements to jail staff of what the Court supposedly said were the conditions of release. The Court's statements which, according to the bond paperwork, are reported by the State's Attorney to jail staff, constitute third-level-witness hearsay because they are the Court's substantive oral assertion, written assertion, or

nonverbal conduct imposing certain conditions of release. At trial, the State offered Exhibit 1 solely through the testimony of the circuit court clerk, who had merely filed the document. (SR 515-516). Exhibit 1 lacked foundation and constituted inadmissible hearsay evidence. [12]

Additionally, admitting Exhibit 1 into evidence violated Winckler's Sixth Amendment right to confront witnesses.[13] The State used the bond form as substantive evidence to prove Winckler was required to appear before the court on November 8, 2023, and that he had notice of the requirement. However, the bond form is not a court order, and the individuals who created, prepared, or provided the information contained in the document did not testify at trial and were not subject to cross-examination. And the statements contained in the bond form are "testimonial" because they "were made under circumstances which would lead an objective witness to reasonably believe that the statement[s] would be available for use at a later trial." State v. Selalla, 2008 S.D. 3, ¶ 46, 744 N.W.2d 802, 815, n. 7 (quoting Crawford v. Washington, 541 U.S. 36, 51-53 (2004)); see also SDCL 23A-43-31 (failure to appear).

Furthermore, the "bond paperwork" was incomplete, inaccurate, and/or unreliable, which undermined its probative value and relevance. This is because it was prepared or produced because of a defendant having made bond, and much like the fact that only the court determines when it will hold hearing and whether a defendant is

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[12] "[A]dmission of evidence in violation of a rule of evidence is an error of law that constitutes an abuse of discretion[.]" Dubray v. S.D. Dep't of Soc. Servs., 2004 S.D. 130, ¶ 8, 690 N.W.2d 657, 661.

[13] The Confrontation Clause provides that in criminal cases, the accused has the right to be confronted with the witnesses against them. State v. Taylor, 2020 S.D. 48, ¶¶ 44-47, 948 N.W.2d 342, 355.

required to appear, only the court determines bond conditions also. Yet, as clerk Robertson acknowledged, Exhibit 1 was neither issued nor signed by the court. (SR 519). Robertson testified that Winckler's bond had been set by Judge Bucher via email dated July 20, 2023, as follows: "$5,000 cash, clean UA prior to release, twice weekly UA's and standard 1st circuit bond conditions." (SR 187).[14] While the original bond conditions were admitted into evidence as Defendant's Exhibit A (SR 289, 518-519), there was no evidence via court order that those bond conditions were ever changed by the court.[15] When Winckler posted the $5,000 bond on September 11, 2023, the paperwork included as Exhibit 1 was prepared by the Charles Mix County Sheriff's Office which added additional conditions that had not been imposed by the court in setting bond, Defendant's Exhibit A. Thus, particularly when considering the hearsay and confrontation issues discussed above, Exhibit 1 lacked proper foundation and was demonstratively unreliable. As such, its relevance was undermined because any probative value was substantially outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury. SDCL 19-19-401 & 403. Therefore, the circuit court erred in admitting State's Exhibit 1 into evidence.

[14] Nothing in the Standard Bond Conditions, Exhibit 1 at page 3, imposed any certain requirements for Defendant to appear before the court at any specific times nor any particular date.

[15] If bond had been changed by the circuit court, which does not affirmatively appear from the record, there is also no evidence in the record that Winckler was afforded with adequate notice and opportunity to be heard in respect to any change in bond conditions. U.S. Const., XIV Amend.

4. The circuit court erred in admitting the testimony of Winckler's former counsel and evidence of an attorney-client communication.

State's Exhibit 5 was redacted portions of the Transcript of Pretrial Conference held November 8, 2023, in 11CRI23-172. (SR 284-287). In it, the Court asked Winckler's counsel where his client was after calling the case for hearing. Counsel responded: "I do not know" – a direct response to what the Court had asked. However, without further prompting from the Court, counsel continued by offering further on the record comments that included disclosure of a confidential attorney-client communication. (SR 285, "I did send him a letter at the last known mailing address, ah, last Friday, advising him to be here today").

Under South Dakota law, a client has the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of facilitating the rendition of professional legal services to the client. SDCL 19-19-502; App. 330-331. Unauthorized disclosure by a lawyer not in pursuit of the client's interests does not constitute a waiver of the privilege. Restat 3d of the Law Governing Lawyers, § 79, (c) 2000, The American Law Institute. "Only a client can waive the attorney-client privilege if he voluntarily or through his attorney discloses the communication's contents or advice to someone outside the relationship. The State has the burden of proving that a waiver occurred." State v. Rickabaugh, 361 N.W.2d 623, 625 (S.D. 1985) (citation omitted). Additionally, the duty of confidentiality continues even after the client-lawyer relationship has terminated, and a lawyer is prohibited from revealing information relating to his representation of a client unless authorized or required by the Rules of Professional Conduct or other law; the rule applies to all

information relating to the representation, regardless of its source. SDCL 16-18-Appx., Rule 1.6; App. 326-329.

Here, the testimony of Winckler's former counsel, Exhibit 5, and the statements disclosing the contents of the letter communication he sent to Winckler purportedly advising him of the proper manner of further proceeding in his court case, disclosed a confidential communication because it was made by Winckler's attorney in the course of rendering legal services to Winckler and was intended only for Winckler. Winckler never placed his former counsel's advice at issue in the trial, and Winckler never waived the attorney-client privilege. While Winckler's former counsel was given an opportunity to address his former client's concerns of privilege and confidentiality – to which he indicated that he did not share any such concerns – Winckler's former counsel did not identify any exceptions to the rules governing attorney-client privilege and confidentiality to permit his testimony to information concerning his representation of Winckler and to disclose a confidential attorney-client communication. As noted, Winckler specifically objected to his former counsel's testimony and to his statements in Exhibit 5. (SR 224-228, 525-526, 531-533). Accordingly, the circuit court erred in admitting the testimony of Winckler's former counsel and his statements within State's Exhibit 5.

5. The evidence was insufficient to convict Winckler of failing to appear in violation of SDCL 23A-43-31.

Under SDCL 23A-43-31, sufficiency of the evidence review assesses whether the State presented evidence that, if believed, established beyond a reasonable doubt that:

1. Winckler was required to appear before the court in connection with a charge of a felony;
2. Winckler had notice of this requirement to appear; and

3. Winckler did fail to appear.

(SR 323, 547-549); see State v. Disanto, 2004 S.D. 112, ¶ 14, 688 N.W.2d 201, 206 (explaining review for sufficiency of the evidence); see also State v. Wolf, 2020 S.D. 15, ¶¶ 12-13, 941 N.W.2d 216, 220.

Here, the State called two witnesses before resting, clerk Robertson and Winckler's former counsel, Mr. Goehring. (SR 510-540, 547). Robertson testified that the court's original bond specifying Winckler's conditions of release did not include any condition for Winckler to appear before the court on November 8, 2023. (SR 518, 289). Robertson also testified that State's Exhibit 1, a form from the Charles Mix County Sheriff's Office, was not issued nor signed by any court. (SR 519). Robertson also explained her understanding of a certificate of service and that no certificate of service was filed with State's Exhibit 2, which was the scheduling order setting Winckler's pretrial conference. (SR 520). Thus, there was no evidence that the order directing Winckler to appear had even been provided to him. And, when the circuit court set Winckler's pretrial conference date from the bench at the arraignment hearing, Robertson acknowledged that the court did not direct Winckler to appear at any pretrial hearing. (SR 522-525).

Likewise, Goehring testified to the purpose of a certificate of service, that no certificate was included with State's Exhibit 2, and that the court made no pronouncements from the bench at the hearing setting the schedule which specifically directed Winckler to appear at his pretrial conference, or any other hearing. (SR 534-535). Further, Goehring was unable to testify that Winckler had received any letter sent to his last known address, which purportedly advised Winckler to be in court for the

pretrial conference. (SR 536). Thus, there was no evidence that Winckler received any letter, no such letter was introduced into evidence, and no evidence was introduced that Winckler was ever served a copy of the court order directing his appearance at the pretrial conference. Accordingly, the State's evidence was insufficient to prove beyond a reasonable doubt that Winckler had notice of the requirement to appear set by the Court's Scheduling Order, State's Exhibit 2.

CONCLUSION

Our Constitution gives Congress plenary authority over Indian affairs and directs that treaties and statutes are the Supreme Law of the Land. Once Indian country is established or recognized, only Congress can divest that Indian land of its status as such. Winckler respectfully asks this Court to uphold the 1858 Treaty, the Act of 1894, and reverse the circuit court's denial of his motion to dismiss for a lack of jurisdiction. Additionally, the circuit court should be reversed on the further grounds and for the reasons also stated above, and the Court should order appropriate relief accordingly.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests 30 minutes for argument.

Dated this 13th day of May 2025.

/s/ Tucker J. Volesky
TUCKER J. VOLESKY
Attorney for Appellant
305 N. Kimball, PO Box 488
Mitchell, SD 57301
tucker.volesky@tuckervoleskylaw.com

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	 No. 31006 **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that Microsoft Word was used in the preparation of the foregoing Appellant's Brief and that the word count done pursuant to that word-processing system calculated 9,949 words in the foregoing Appellant's Brief, in accordance with SDCL 15-26A-66.

Dated this 13th day of May 2025.

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

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31006 **CERTIFICATE OF SERVICE**

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

/s/ Tucker J. Volesky
TUCKER J. VOLESKY

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

STATE OF SOUTH DAKOTA, Plaintiff, vs. HAZEN HUNTER WINCKLER, Defendant.	CR-23-297 JUDGMENT OF CONVICTION

PLEA

An Indictment was filed with this Court on the 22nd day of February, 2024, charging the Defendant with the crime(s) of: Failure to Appear, SDCL 23A-43-31. Further a Part II Information was filed on April 8th, 2024, charging the Defendant as a Habitual Offender with SIX (6) prior felony convictions.

The Defendant was arraigned on said Indictment on the 8th day of April, 2024, and entered a plea of not guilty. The Defendant's attorney, Tucker Volesky, the Defendant, and Steven R. Cotton, prosecuting attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges which had been filed against the Defendant. The Court accepted said plea and established a factual basis for the plea.

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

It is, therefore, the JUDGMENT of this Court that the Defendant is guilty of Failure to Appear, SDCL 23A-43-31, a Class 6 Felony.

SENTENCE

On the 5th day of June, 2023, the Court asked the Defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant shall be confined to the South Dakota State Penitentiary, Sioux Falls, South Dakota, for a term and period of SIX (6) years, there to be fed, kept and

clothed in accordance with the rules and disciplines of said institution; and it is further

ORDERED that the Defendant shall pay court costs of One Hundred Sixteen Dollars and Fifty Cents ($116.50); and it is further

ORDERED that pursuant to SDCL 23A-27-18, the execution of the aforesaid penitentiary sentence shall be suspended upon the following conditions:

1. The Defendant shall obey all state, federal, municipal and tribal laws for a period of Five (5) years.
2. The Defendant shall enter into and abide by a standard adult probation agreement under the supervision of court services for a period of Five (5) years.
3. Defendant shall obtain a chemical dependency evaluation from a certified counselor within 40 days and shall comply with the recommendations of his treatment needs assessment in all respects including aftercare, AA meeting, treatment and therapy.
4. The Defendant shall not consume or ingest any alcohol, marijuana or controlled substance during the term of probation.
5. The Defendant shall not enter any establishment whose primary purpose is the sale of alcoholic beverages. With respect to convenience stores, the Defendant is allowed to enter such business but shall not enter any portion of the business that is secluded, by law, for video lottery purposes.
6. The Defendant shall participate in the 24/7 sobriety program at the discretion of court services, which may include the requirement that the Defendant participate in said program until completion of his probationary supervision.
7. The Defendant shall be subject to random warrantless testing of his blood, breath or urine at the request of court services, or by any law enforcement officer acting at the direction of court services.
8. The Defendant shall be subject to warrantless search and seizure of his person, residence, work establishment, automobile, and any other location that he frequents.
9. Defendant shall allow the court services officer access to all internet social media websites as well as his cell phone/smart phone, video games, computers, and any video/computer/gaming equipment and shall give the court services officer his password to all such sites and devices.
10. The Defendant shall participate in moral recognition therapy at the direction of court services.
11. The Defendant shall reimburse Charles Mix County for his court appointed attorney fees.
12. The Defendant shall pay prosecution fees, in the amount of $2,482.76 to Charles Mix County Auditor.
13. The Defendant shall pay his court costs, prosecution fees, and court appointed

attorney fees in accordance with a plan to be developed between the Defendant and the court services officer.

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

ORDERED that the Defendant shall receive credit for 378 days previously served; and it is further

ORDERED that the Defendant shall be released from jail today, December 30th, 2024; and it is further

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

1/8/2025 10:54:32 AM

BY THE COURT:

BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

Attest
Robertson, Jennifer
Clerk/Deputy

FILED

DEC 18 2024

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

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

COUNTY OF CHARLES MIX) FIRST JUDICIAL CIRCUIT

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

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

HAZEN WINCKLER,

Defendant.

STIPULATION AND AGREEMENT

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

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

DEFENDANT:

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

2. The Defendant will enter an admission to the Part II Habitual Offender Information in file 11CRI23-297, enhancing the underlying offense of Failure to Appear in violation of SDCL 23A-43-31, a Class 6 Felony to a Class 4 Felony, carrying a maximum possible penalty of ten (10) years in prison and/or a twenty thousand dollar ($20,000) fine.

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

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

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

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

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

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

STATE:

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

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

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

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

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

Dated this 18th day of December 2024.

Hazen Winckler – Defendant

Dated this 18th day of December 2024.

Tucker Volesky
Attorney for Defendant

Dated this 18th day of December 2024.

Steve Cotton
Charles Mix County State's Attorney

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

STATE OF SOUTH DAKOTA, Plaintiff,	11CRI23-297
-vs-	**TRANSCRIPT OF**
HAZEN HUNTER WINCKLER, Defendant.	**JURY TRIAL** Volume 1 of 2 Pages 1-40 and 53-163

B-E-F-O-R-E

The Honorable Bruce V. Anderson,
Circuit Court Judge,
at Lake Andes, South Dakota,
on December 13, 2024.

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

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

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

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

The following proceedings commenced on the 13th day of December, 2024, at 8:24 a.m. in the courtroom of the Charles Mix County Courthouse, Lake Andes, South Dakota.

I-N-D-E-X TO TRIAL
Volume 1 of 2

Page

STATE'S WITNESSES:

STATE'S EXHIBITS:

DEFENDANT'S EXHIBIT:

I-N-D-E-X TO TRIAL
Volume 2 of 2

Page

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

(State's Exhibits 1, 2, 3, 4, and 5 were premarked by counsel.)

(The following proceedings occur in the courtroom outside the presence of the prospective jury at 8:24 a.m. on December 13, 2024.)

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

(All comply.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: We're on the record in State of South Dakota Hazen Winckler. This is -- my computer's still coming on -- it's 07CRI, I think it's a 23?

MR. COTTON: 23-297, Your Honor.

THE COURT: 297.

Mr. Winckler is present today. His attorney is with him, and State's represented by Steve Cotton.

And this is the time set for a jury trial.

(The law clerk, Kendall Roeder, enters the courtroom.)

THE COURT: And we're in the courtroom, outside the presence of the jury at this time.

First item of business, I think the law clerk would have sent you the preliminary instructions.

Mr. Cotton, any objection by the State?

MR. COTTON: No, Your Honor.
THE COURT: Mr. Volesky, any objection by defense?
MR. VOLESKY: No, Your Honor.
THE COURT: Then we have a number of motions.
Mr. Cotton, do you have copies of these exhibits available?
MR. COTTON: I do, Your Honor.
THE COURT: You do have copies?
MR. COTTON: I do, Your Honor.
THE COURT: Do you have a copy for the Court and for counsel?
MR. COTTON: Yes, Your Honor.
THE COURT: Why don't you distribute those.
(Mr. Cotton complies.)
THE COURT: Do you have what, five of them?
MR. COTTON: Correct.
One and two.
One and two, Your Honor (indicating).
THE COURT: So there's a number of motions in limine that are dealing with these exhibits today.
I'm going to start out with Number 1. And, is that all of them, Mr. Cotton?
MR. COTTON: It is, Your Honor.
THE COURT: Mr. Volesky, do you have an objection to Number 1?
MR. VOLESKY: Yes, Your Honor.

THE COURT: Go ahead.

MR. VOLESKY: Your Honor, as stated, I would just note for the record the Defendant's objection to State's Exhibit 1 and motion in limine.

The Defendant believes the State's Exhibit 1 is far outweighed by prejudicial effect as opposed to the probative value it has for purposes of relevance. Also confusing the issues, misleading the jury, and needlessly presenting cumulative evidence, particularly as it relates to the subsequent pages after page 1. I would note it's not a Court order, it's not signed by the Court, it's not issued by the Court.

And this is whether or not the -- the charge at issue is whether or not the Defendant was required to appear before a court.

It is also hearsay, Your Honor, implicating a couple levels of hearsay. The document itself was prepared by the Charles Mix County Sheriff's Office, it appears. They received information what bond conditions were purportedly set as by the Court. And that was transferred to the Charles Mix County jail, presumably by the state's attorney as opposed to the Court.

So there's a hearsay objection, confrontation clause, if this gets in. The people who supplied the information, the individuals who created this document, supplied the

information for it, um, should be required to testify. If not, that would, ah, implicate constitutional concerns. And also the completeness and the accuracy of the document set, Your Honor, is at issue.

Attached to the motion as Exhibit A is Judge Bucher's original email setting the Defendant's bond in the matter. She found probable cause, there was a 5 thousand dollar cash, clean UA prior, prior to release, twice weekly UAs, standard First Circuit bond conditions. That was the extent of the email. There was no specific requirement as to appear in court particularly at a pretrial conference set for November 8th of 2025 (sic), so.

On that basis, Your Honor, we'd ask that Exhibit 1 be ruled inadmissible.

THE COURT: Mr. Cotton.

MR. COTTON: Your Honor, the State believes that the probative value far outweighs any prejudicial effect, if any.

It is a routine business document that is commonly filed. No defendant is released from jail without signing bond paperwork. Mr. Volesky's assumption that the state's attorney relays these conditions to the jail is incorrect. The jail staff is in the courtroom when the judge sets the bond. This bond was set by --

THE COURT: Not always, though.

MR. COTTON: Well --
THE COURT: Judge Bucher set that one before he ever came to court.
MR. COTTON: Well this, this, Your Honor, would be bond set after his arraignment hearing, where you had a chance to weigh in at the arraignment hearing.
THE COURT: Correct.
MR. COTTON: So Sheriff Thaler was here so --
THE COURT: It's not always the case that they hear it in court. Sometimes they get an email.
MR. COTTON: Fair.
THE COURT: Right?
MR. COTTON: That's fair, Your Honor.
So he's also incorrect that Judge Bucher's bond is the same as this, it's not. Her bond was just a preliminary email. The cash amount's the same. The First Circuit conditions are the same. However, at arraignment, you did set a preliminary -- or a pretrial conference for 11-8-23. The sheriff was here to hear that, and that is part of this record.
So I believe that the accuracy and reliability of this record is strong. It is a common record that is filed routinely in criminal cases. And should be admitted for that reason, Your Honor.
THE COURT: Why do you need everything past the first two

pages?
MR. COTTON: There is one standard First Circuit condition, Your Honor, which is defendant will keep the, their attorney and/or the Court apprised of their location at all times. That could come up at a later point in this trial. So that is page? --
THE COURT: That's page 3.
MR. COTTON: That's page 3 of the, the exhibit. Quite frankly, Your Honor, the first three pages are the most relevant and, ah, for the purposes of this trial.
THE COURT: Do you think that the waiver of extradition rights, the 24/7 participation agreement has any relevance to whether or not he appeared in court that day?
MR. COTTON: 24/7 would only have relevance, Your Honor, if, um, Mr. Winckler wants to somehow say he didn't know about his court date. Well, he didn't know about his court date because he quit coming to 24/7 and quit having contact with his attorney. So I don't want to get into a position where he's able to say, well I was never informed about my Court date. Well, because he was. He signed a document stating when the Court date was. And I don't want him to try to use the oh well, I just disappeared off the face of the earth for no reason. The reason he disappeared off the face of the earth is because he wasn't complying with 24/7. So I don't know -- I don't need 24/7 in the case-in-chief,

but I'd certainly like it available for impeachment.
THE COURT: Mr. Volesky, any response?
MR. VOLESKY: Yes. Thank you, Your Honor.
I don't think it's particularly directly relevant to whether or not he, ah, remained in contact with his attorney as, um, stated on a standard bond condition.
As it relates to the original bond order, yes, Judge Bucher set that and that's by that email, but there's nothing in the record tat explicitly changed that bond order, that condition of release. That remained the same throughout.
At arraignment, the Court did specifically address bond conditions, or conditions of release. It did allow what it called essentially a furlough to allow the Defendant to get out for work release. That was the extent of it. The Court didn't change any bond conditions.
In the arraignment transcript, the Court didn't explicitly say that he needed to appear at his pretrial conference. I know that's when the Court set the dates, but it wasn't specifically orally on the record, on the Court's order from the bench for him to appear at the pretrial conference or making, ah, any court appearances a requirement of his pretrial release from bond.
THE COURT: But you agree, it was in my order?
MR. VOLESKY: It was in your order --
THE COURT: I told him he had -- I tell everyone they have

to personally appear. I might not have said it to him on the record that day, but that's mandatory.

MR. VOLESKY: After the order was drafted and the Court signed it, it is included in the Court's order, which is the State's proposed Exhibit 2. But in terms of the arraignment transcript, there's no explicit statement setting a condition to appear at a pretrial conference, Your Honor.

THE COURT: All right. It's a failure to appear case. The cases say it's a strict liability offense. And one of the cases says that notice is important. I mean, they have to have sufficient notice for a reason -- reasonably intelligent person to be able to comply with the terms of the Court's order.

And in this case, he came in for arraignment. I did not reduce the bond. I did allow him to, um -- a furlough for work release. And then, the bond remained at 5 thousand dollars. A little while later, um, a family member, I believe, posted the bond, which produced Exhibit 1. Exhibit 1, all of these documents are records kept in the ordinary course of the Court's business. They meet the statutory definitions as an exception of hearsay, they are official court records.

These bond conditions that were made by the sheriff's office are done in a couple of ways. One is if someone's

arrested, the magistrate judge gets a police report, she reads it. She determines if there's probable cause. And if she does so, she emails the arresting officer or the jail and tells them she finds probable cause and then she sets a bond. That's initially what happened here. It's the last page of Exhibit 1, I believe? No, it's in there somewhere, though. That is not particularly relevant to this case.

They are not testimonial. So the Court does not find that there is a Crawford violation, a confrontation clause issue there. However, everything past page 3 is -- I don't find it to be relevant in the case, State's case-in-chief. So Exhibit 1 will consist of the bond, the second page is a signature page, and then the standard conditions will be allowed.

Um, the waiver of extradition and the rest of that exhibit is excluded from the State's case-in-chief. If Defendant presents a case where they become relevant, the State can remark those other pages as a separate exhibit. And offer them.

The next is Exhibit 2.

Mr. Volesky, do you object to Exhibit 2?

MR. VOLESKY: No, Your Honor.

THE COURT: And the next one I think you filed on was Exhibit 3?

MR. VOLESKY: Yes, Your Honor.
THE COURT: And same general arguments --
MR. VOLESKY: (Nods head.)
THE COURT: -- today as Exhibit 1 and in your brief?
MR. VOLESKY: Yes. As exactly in my brief.
THE COURT: Mr. Cotton, Exhibit 3, is this the one where you responded and said say it's only for rebuttal?
MR. COTTON: Correct, Your Honor.
THE COURT: All right.
Exhibit 3 is excluded from the State's case-in-chief. It's not relevant that he had a 24/7 violation presently. So if that issue arises and that door is opened, then it's possible we could get into that.
The next is Exhibit 4.
This is a transcript of the arraignment. It's the entire arraignment.
And Mr. Volesky, go ahead.
MR. VOLESKY: Thank you, Your Honor.
So there's, um, you know, extensive comment that went on at the arraignment. The Defendant was advised of the charges against him in detail, the max possible punishments, his statutory and constitutional rights --
THE COURT: Hold on, stop.
Who are you talking to?
THE DEPUTY SHERIFF GENE NIEHUS: Jen (indicating).

THE COURT: All right.
Go ahead, Mr. Volesky.
MR. VOLESKY: Thank you, Your Honor.
Um, so I think there's an issue with relevance as it relates to the entirety of the transcript. There are many parts in there that are not at all relevant to the charge of whether or not he's required to appear and failed to appear. To the extent that it is relevant and the relevance in the transcript, it's substantially outweighed by the present -- prejudicial effect, and other considerations it will have on the Defendant's case. Relevant evidence may be excluded for unfair evidence, confuse, confusion of the issues, misleading the jury, needlessly presenting cumulative evidence.
We think that transcript is highly prejudicial, particularly the Court's comments, discussing the background of the Defendant, his previous charges in detail, the max possible punishments, and also the experiences that the Court had with the Defendant when he released him at previous occasions. Authorities having to pick him up in other jurisdictions and bring him back. Hearsay, Your Honor. Out-of-court statement used to prove the truth of the matter asserted. Unless an exception applies, the statement should be excluded. Confrontation clause. If the statements are allowed, the Defendant would

have a right to cross-examine the individual who made the statements for which the matter is used -- being used to prove the truth of.

Additionally, as indicated, the Court goes over the Defendant's background, many convictions, how he did previously on bond. It's 404 evidence, Your Honor. It's character evidence. It's other bad acts. Allowing it would not allow the Defendant to get a fair trial and violate due process.

The State seems to be, if this entire transcript is allowed, it'll be able to use the prior charges, the potential punishments, the specific convictions, the past conduct to suggest that the Defendant has a propensity to commit crimes and disobey the Court.

Um, finally, ah, under 19-19-410, SDCL 19 hyphen 19 hyphen 410, these statements were all made in relation to the arraignment, where the Defendant was being advised of his rights, and whether or not he's going to plead guilty or not guilty, or some other plea, and it's in the context of the Defendant putting his pleas on the record.

On that -- those bases, Your Honor, we'd ask that Exhibit 4 be ruled inadmissible.

THE COURT: Mr. Cotton.

MR. COTTON: Your Honor, I believe this, again, falls under the public records sect -- ah, exception. This was a, this

was a -- this is a transcript of a open court hearing that was open to the public. Any number of people could come in here and sit and listen to it.

Um, the clerk records these. The Court records them with a court reporter.

Um, there's a certified copy of this transcript, Your Honor. I believe that it's good evidence. I believe it's relevant. It shows that Defendant was here. It shows that he was told when his Court date was. And also shows that it was in connection with the charge of a felony.

THE COURT: I'm finding that the transcript is relevant. I do find that there's some danger of unfair prejudice with it if it is not redacted. Even as redacted, there is still some unfair prejudice, but the -- it's highly relevant to this case, because the Court told the Defendant and counsel when the trial was, when the pretrial conference was. And it is -- with regard to any hearsay issues, the Court is confident that there's no issues as far as the veracity of the document or its truthfulness. It's a rendition by the court reporter of what occurred in court that day. It's taken down verbatim. There doesn't appear to be any difficulties or problems with the transcript itself, properly reflecting what happened that day.

Um, but there needs to be some redactions.

And the first redaction, I think that having, talking about

prior acts or the habitual offender is overly prejudicial. And on page 8, line 13, a redaction will start. And Mr. Winckler gets into a conversation with the Court about being punished twice, on page 10, that is all out. And that would go down to, that redaction would go to page 11 line 20.

Mr. Cotton, that has to be removed from that exhibit before you can offer it.

MR. COTTON: Okay, Your Honor.

Um, so page 10, where are we starting, which line?

THE COURT: Page 10 -- all of page 10 is out, all of page 9 is out. It starts at 8 line 13 and the redaction goes to 11 to line 21.

MR. COTTON: Okay. So take 20 out? And --

THE COURT: 20 is out.

MR. COTTON: Okay. And 21 is where we start reading again?

THE COURT: Right. Where I say, do you understand the charges?

MR. COTTON: Got it.

THE COURT: Then he's read the indictment. The pleas are accepted. The trial is set. "Anything else by the State" on page 12. And then on line 24, Mr. Cotton is saying "no, Your Honor," the redaction starts right above line 25. And it goes all the way to page 16, I'll leave in line 1: Mr. Goehring saying "no, Your Honor." "That concludes the

matter." So these redactions the State must complete before it can submit the exhibit. Otherwise, I find it's relevant. And any danger of unfair prejudice is outweighed by the high relevancy of the transcript. It's otherwise admissible.

Next is Exhibit 5.

Mr. Volesky.

MR. VOLESKY: Your Honor, could I get -- I'm sorry, could I get clarification on that last redaction from page 12 line 25 to --

MR. COTTON: I think all the way to 16.

THE COURT: 16.

MR. VOLESKY: 16. Okay.

THE COURT: The last thing on the transcript will be Mr. Goehring saying "no, Your Honor." That -- and then I say, "that concludes matter."

Any questions about that?

MR. VOLESKY: Ah, yes. I would ask that if, um, also the State's comment that "no, Your Honor," there was nothing else on page 12 of 24, um. Um, does the Court intend to redact that as well?

THE COURT: Well, that's what I always say. And I don't think it's harmful to anybody.

"Anything else by the State?" And then "no, Your Honor." And then the, the context would be then Mr. Goehring

saying, "no, Your Honor."
MR. VOLESKY: Okay. And so the State's "no, Your Honor," will not be redacted and then Mr. Goehring's "no, Your Honor" will?
THE COURT: Is there a reason I should?
MR. VOLESKY: I would say not to redact that part but --
THE COURT: Yeah, I don't plan on redacting it.
MR. VOLESKY: Okay. Thank you, thank you. So the redaction starts at line 12 line 25?
THE COURT: Okay. Page 12 line 25? So it'll say "anything else?" "No, Your Honor." "Anything else by defense?" And then you'll skip to page 16, "no, Your Honor" --
MR. VOLESKY: Okay.
THE COURT: -- okay? That's the way I intend on it being.
MR. VOLESKY: Understood.
THE COURT: All that discussion about the furlough and him running off before, that's all out.
MR. VOLESKY: Okay.
THE COURT: I will not allow it to be presented.
MR. VOLESKY: Very good. Thank you.
THE COURT: Are you ready to go to Exhibit 5?
MR. VOLESKY: Yes, Your Honor.
THE COURT: All right.
Mr. Volesky, go ahead.
MR. VOLESKY: Thank you, Your Honor.

Yes, the Defendant has also filed an objection to State's Exhibit 5 and a motion in limine that is on record. Am that is the transcript at the pretrial conference, where the Court comes on the record, asks Defendant's counsel where the Defendant is? And the Defendant's counsel directly responds, I don't know. Then the Defendant's counsel goes on further and talks about conversations he had with his mother and whether or not the Defendant was in con, staying in contact with his mother. And then the defense counsel goes on further and talks about a mailing that he sent to the Defendant, relating to the facilitation of legal services for the Defendant relating to the proceeding.

Um, as set forth in the argument and the brief, Your Honor, 401, 402, and 403 are all raised. And particularly there, there are comments on the transcript, as it relates to the State asking for a bench warrant, and citing a bond violation. Not particularly the absence at the arraignment, but the bond violation. And the Court after hearing from the Defendant's counsel, his comments, the Court does make the comment of looking up the Defendant's record on Odyssey and if there were any recent arrests and commenting that there's a lot in there.

So we believe those are highly, highly prejudicial, Your Honor.

Then there's a chance that, high danger of unfair prejudice with it, misleading the jury, confusing the issues. As with the other documents, it calls for hearsay. Out-of-court statements used to proof the truth of the matter asserted unless the exception applies it should be ruled inadmissible. Going hand in hand with that is also the confrontation clause issue that we've raised on the previous documents. If these statements are being offered to prove the truth of the matter asserted, the Defendant would have a right to confront these individuals in court. There's also the 404 fair trial, due process argument, as it relates to other acts, character evidence, particularly with the Court looking at the Odyssey and noting that there were many arrests in there. Nothing fresh. And then the State bringing up the fact of the bond violation and asking for a, an arrest warrant for that. Finally, the big issue, um, attorney-client privilege, confidentiality. Now, as an officer of the Court, Mr. Goehring gave a direct answer to the Court's question, but he went on further and did cite a communication that was sent to the Defendant in facilitation of his legal services. The Defendant has never waived attorney-client privilege. There's the --

THE COURT: Is that, is that a privileged communication?

MR. VOLESKY: It --
THE COURT: Doesn't attorney-client privilege protect communications? I mean the, the fact that he was asked on the record where his client was, that's not really a communication, is it, with the, with a client?
MR. VOLESKY: When he said I don't know, no, that wouldn't be. But when he went on to cite a letter he sent to the Defendant, what he advised him in that letter, that was a confidential communication for purposes of facilitating the legal services and the Defendant never waived that privilege.
THE COURT: Mr. Cotton.
MR. COTTON: Your Honor, I make the same arguments on this exhibit as I did Exhibit 4.
I'd also argue that sending a letter advising your client of what time their hearing is is not confidential. In fact, it's part of the court record.
THE COURT: I'm allowing Exhibit 5, but redacted. I do find that it is relevant. It is the day of the hearing that he's charged with missing that led to the failure to appear charge. I called the case. Asked his lawyer where his client is.
I note that he does not appear. There's some extraneous conversations in there that I think are improper for purposes of this trial. They would do really nothing more

than stain the Defendant's character, and so those would be overly prejudicial but otherwise overall, when I balance the danger of unfair prejudice against the relevance, um, I find that the relevance outweighs the danger of unfair prejudice with these exceptions:

On page 2 line 12 through 15 is redacted. The next line, "I did send him a letter at the last known mailing address on last Friday advising him to be here today. But again, he's not here," that will remain in. That is relevant because his lawyer sent him a letter telling him when court was.

On line 19, the Court, starting with "the Court" to line 23, that's excluded. It's prejudicial, talking about his Odyssey history is not relevant.

Then we're going to redact, I'm going to start at page 3 line 1, I'm going to leave in Mr. Winckler had posted a 5 thousand dollar bond. Starting at "failed to show up for ordered UAs," I'm redacting down to line 16, everything is excluded except "but for now," that is not excluded. And the rest will remain in.

So it's, it's allowed. It's -- the motion in limine's overruled to the extent to allow in what I've talked about. The rest must be redacted before it's offered, Mr. Cotton, so you have to get your staff working on that.

We're going to use the strike-down method. We're going to

have one alternate. I expect this trial to be one day. So we're going to have 13 over here (indicating), we'll have 20 back here, in rows 1, 2, 3, 4. We'll have those 33 somewhat sequestered. You'll just kind of get used to where they're at.

Everybody will have a number on their lapel for you to identify them. And they'll have a paddle, I guess, to raise their hand with now.

Mr. Volesky, what do you think -- give me an estimate of your time you think you need for jury selection.

MR. VOLESKY: No more than an hour, maybe less.

THE COURT: Okay.

MR. VOLESKY: Maybe.

THE COURT: I'm going to limit you to an hour and a half.

MR. VOLESKY: Okay, that'll be fine.

THE COURT: And, Mr. Cotton, you'll be limited to an hour. I don't think you'll need all that time.

MR. COTTON: I'd love 10 minutes, Judge.

THE COURT: If you do need it, let me know and I can extend it.

Is Mr. Goehring a case-in-chief witness?

MR. COTTON: Yeah.

Your Honor, after your rulings, I don't know if -- I don't know if I need to call anybody other than Mr. Goehring. I have people available, but.

THE COURT: Well, I think you need to call a lot of people (laughs) personally. I mean, just because I've ruled -- overruled portions of the motion in limine doesn't mean that there's any foundation for any of this, especially Exhibit 1, so. I don't want you to do -- try and do a paper trial. That causes me a lot of concerns.

MR. COTTON: Okay.

THE COURT: I plan on admonishing the jury, when the Clerks of Courts testifies, generally that just because she's a court employee, that does not mean that they give her any additional credence. That they are to weigh the credibility of her testimony just as any other witness and essentially not give any greater weight to her testimony because she works for the Court.

Any objection to that, Mr. Cotton?

MR. COTTON: No, Your Honor.

THE COURT: Mr. Volesky?

MR. VOLESKY: No, Your Honor.

THE COURT: All right.

Anything else? Before we begin?

MR. VOLESKY: Um, I would bring to the Court's attention, ah, the jury instructions. There's been two that have been requested by the Defendant, and it goes to the standard, ah --

THE COURT: The elements?

MR. VOLESKY: Yes.
THE COURT: And notice?
MR. VOLESKY: Correct, Your Honor.
THE COURT: Yeah.
We'll talk about those at our jury instruction conference. They're certainly well taken by the Court. They look to be correct. I don't remember the last time I looked, but, um, there's something on my mind about one of them jury instructions. That's the elements.
I don't even get a spinning wheel on that, it's just dead. Do you have Internet?
THE COURT: What panels do we have?
THE CLERK: One, three, and five.
THE COURT: Who was here Monday?
THE CLERK: One, two, and three.
THE COURT: Okay.
THE CLERK: But the ones that served on Monday are not.
THE COURT: Right.
No. You covered it. I think the State has to prove he was charged with a felony beyond a reasonable doubt. But it's in -- that's in that element, so.
Anything else before we bring the jury in to watch their movie?
MR. COTTON: Nothing from the State, Your Honor.
MR. VOLESKY: Just clarification, the State is required to

prove actual notice?
THE COURT: Well I think, I think they -- they have to prove notice. I'm not too sure what that case means. The one where -- I mean, Judge Hertz was overruled on that one, and they said well the terms of his order were somewhat vague. And then the lawyer was going to quit and, it's kind of a convoluted case, but I've always been of the position that the Defendant has to know he has court that day before he can be charged or convicted of failure to appear.
MR. VOLESKY: Okay.
THE COURT: He has to know when and where. And that's pretty much what the Supreme Court has said in that case. I think it should be actual notice, not constructive notice. And I'm not, I'm not ready to rule on that. I want to hear Mr. Cotton's position on the actual notice issue with that separate instruction you have.
MR. VOLESKY: Okay.
THE COURT: But, I think we're all definitely with those heading in the right direction, okay?
MR. VOLESKY: Okay.
THE COURT: Anything else?
MR. VOLESKY: No. Thank you, Your Honor.
THE COURT: All right.
So you two will go straight across over to the law library.

The State will then present its evidence and counsel for the Defendant may cross-examine.

Following the State's case, the Defendant may present evidence and the State may cross-examine.

After presentation of the evidence is complete, I will give you my final instructions. The attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

After that, you will retire to deliberate on your verdict.

(The Court signs and dates the preliminary instructions.)

THE COURT: Mr. Cotton, at this time you will read the -- oh, is this an information or an indictment?

MR. COTTON: Let me check, Your Honor.

I believe it's an indictment.

It's an indictment, Your Honor.

THE COURT: Read it to the jury.

MR. COTTON: Thank you, Judge.

State of South Dakota versus Hazen Winckler. The Charles Mix County grand jury charges: Count 1. That on or about November 8th, 2023, in the County of Charles Mix, State of South Dakota the above named Defendant did commit the public offense of failure to appear, in violation of South Dakota Codified Law 23A-43-31, in that the Defendant was

released and failed to appear before the Court as required in connection with the charge of a felony, to wit, Defendant did fail to appear for his pretrial conference hearing in CR23-172.

Contrary to the form of the statute in such case made and provided against the peace and dignity of the State of South Dakota. Dated the 22nd day of February, 2024, at Lake Andes, South Dakota. Signed, a true bill.

THE COURT: To this indictment, the Defendant has pled not guilty, putting each and every element of the offense at issue for your consideration and resolution.

Now, before we go to opening statements, I'm going to give you a few other admonishments and instructions.

The bailiff is going to hand out notepads. You can keep notes and please follow my instructions as to notes.

Flip that over. If it doesn't have your number on it, then write your name prominently on the back of that (indicating).

So it'll be back here (indicating). All right?

Every time you leave this courtroom, you put them notes upside down. On your chair. Okay? So no one else can read them.

If we take any extended breaks, like overnight, the bailiff will take them and lock them in the clerk's vault, but for the most part they remain in your chairs throughout the

day.
The second thing is when you leave after this session -- we can hand them out now. He's going to hand you out a laniard that says you're a juror.
And so you are required to wear that at all times on your outer garment. I always want it prominently displayed.
And here's why. You've heard all my admonitions, but there can be witnesses or other people involved in the trial out there in the hallway, you see. And when you go out there, I want them to know for sure who a juror is. All right?
When you come back from lunch or whenever, make sure that laniard is prominently displayed outside your outer garment in the parking lot so when you enter, people know that you're a juror.
Also, when we break for lunch, and I really don't think the case will go past one day, if we have to make a break for the evening, I require you to depart the courthouse grounds immediately. So I want you to go out and if you got to get your jacket in the jury room, that's fine, and then go. And get in your car and drive away.
The reason is the same. Lawyers are meeting with witnesses and other parties, and they may be talking about things in the hallway. And I don't want you to be here where you may overhear something that's not evidence, and that could cause a mistrial. So I want you to depart the courthouse

grounds promptly.
All right. Do any of the jurors have any questions about these preliminary instructions or admonishments?
All right.
At this time, the State will give their opening statement.
MR. COTTON: Thank you, Your Honor.
Good morning again, everybody. Thank you for being here. As Judge Anderson stated, we have a great judicial system in America. You being here is a huge part of that and we really appreciate you taking the time to be here.
This case is for a felony failure to appear.
So what the State needs to show you today is that the Defendant, Hazen Winckler (indicating), was charged with a felony. He had a court date set. He knew about that court date. And he failed to show up for that court date.
The State will put on witnesses and show you exhibits that will tend to prove that. Specifically that Mr. Winckler was in court for an arraignment, that he was told what his court date was, and that he then failed to appear for his next court date. Thank you.
THE COURT: Mr. Volesky. You may give an opening statement.
MR. VOLESKY: Thank you, Your Honor.
Thank you, members of the jury.
As the evidence comes in, remember that the State has the

highest, heaviest burden in this legal system, and that's proof beyond a reasonable doubt.

As the evidence comes in, will the State be able to meet its burden of specific proof to establish the facts of the charge?

Will the State be able to prove that the Defendant was required to appear for court?

That he had actual notice of his requirement to appear, including the day, the time, and the place he was required to appear and that he failed to appear?

Will the State's evidence be able to show that beyond a reasonable doubt?

We submit, members of the jury, that the State's evidence will fall short of that specific proof required to sustain a conviction.

And that, members of the jury, means reasonable doubt.

You are bound to do justice. And to uphold these great ideals of our system.

And this includes the presumption of innocence, when the evidence falls short of proof beyond a reasonable doubt.

Thank you.

THE COURT: Counsel, approach.

(Counsel comply and there is an off-the-record bench conference.)

THE COURT: All right. We'll take a recess.

MR. COTTON: Okay.
THE COURT: We've gone much quicker this morning than we anticipated. And so, there's other things that go on behind the scenes, and I need to make sure everybody's caught up before we start putting witnesses on the witness stand for you to testify.
The court reporter needs to get reorganized out of the witness stand and things like this. So we are going to take a recess.
It's required I admonish you at every recess. I know you heard it on the orientation tape and you heard me repeat over and over, but it is required that I admonish you at every recess.
And of course the later admonishments are much shorter. I know you understand it. I keep saying it because the law requires me to do it.
During our recess, it's your duty not to converse with or allow yourselves to be addressed by any other person on any subject of the trial. It is your duty not to form or express any opinion thereon. Or to deliberate about the case until the case is finally submitted to you for your consideration.
Put notepads facedown. You don't have anything on there yet for the most part. We'll take about 10 minutes, so they can get everything kind of ready to go and we can get

reorganized. Just follow the instructions of the bailiff. Avoid anyone in the hallway who you think may be involved in the case.

All rise for the jury.

(All comply; jury out at 11:11 a.m.)

THE COURT: Please be seated.

(All comply.)

THE COURT: All right.

Mr. Cotton, bring me what you have. And you've made a copy of the redacted exhibits and provided them to Mr. Volesky?

MR. COTTON: Yes, Your Honor.

(A phone rings.)

THE COURT: Is that your phone, Kendall?

MS. SCHUNK: No, actually it was mine.

THE COURT: Turn it off.

MS. SCHUNK: Yes, sir.

THE COURT: I don't want it on vibrate. I don't want it on silent.

MS. SCHUNK: I was going out and --

THE COURT: I want it turned off.

MS. SCHUNK: Yes, it's off. It's off, I apologize.

THE COURT: If it goes off again, I have to take it away from you.

MR. COTTON: 4 and 5, Your Honor.

THE COURT: And what about one you just took off --

MR. COTTON: I just took off all the back pages. It's just 1, 2, and 3 now.
THE COURT: All right.
So, for the record, we're in the courtroom. The jury's been excused. The Defendant and counsel are present. The jury is not present.
MR. GOEHRING: Hi there, Steve. I'm here.
THE COURT: So Number 1 shouldn't be an issue with my ruling with that one, Mr. Volesky. It's the first three pages, correct?
MR. VOLESKY: Correct, Your Honor.
THE COURT: Then let's go to 4.
The only issue I have with 4 is that lines 1 and 2 of page 12. Any thoughts, Mr. Cotton?
MR. COTTON: Lines 1 and 2, you said on 12, Your Honor?
THE COURT: Yeah.
MR. COTTON: The "do you understand how the punishment can be enhanced?" That one?
THE COURT: Yeah. 1, 2, and 3 maybe.
MR. COTTON: I thought ... let's see.
Just one moment, Your Honor.
Yeah, that would make sense to redact that out too.
THE COURT: You can redact that one. I'll give you a little bit of time before we start to get that done.
You just need to fix that one page.

Mr. Volesky, do you think that the Exhibit 4 otherwise complies with the Court's ruling?

MR. VOLESKY: Um.

I note that on number 12, lines 24 and 25, ah, unless it's been fixed, um.

MR. COTTON: That's the one we fixed by switching yours with mine.

MR. VOLESKY: Yep. Just wanted to note that --

MR. COTTON: He has the fixed one.

MR. VOLESKY: Otherwise I think that's pretty accurate of what the Court ruled, Your Honor.

THE COURT: All right.

You're using, I see the State using Wite-Out. You need to make sure that you put that on a copy machine so they can't hold that up to read through it.

Exhibit Number 5, Mr. Volesky, do you feel that the redactions comply with the Court's order?

Mr. Volesky, do you think that that exhibit, those redactions comply with my order?

MR. VOLESKY: I do, I do, Your Honor. Note exactly.

THE COURT: All right.

Mr. Cotton, the only thing is that last edit and redaction, I just don't want them to be able to read through the highlight, the Wite-Out, so go put that on the copy machine and get a new copy before it's admitted.

MR. COTTON: Will do, Judge.
THE COURT: Anything else by the State before we begin?
MR. COTTON: No, Your Honor.
THE COURT: Anything else by the defense before we begin?
MR. VOLESKY: Yes, Your Honor. I would anticipate the State's going to attempt to offer exhibits that have previously been objected to and motions in limine to exclude for various grounds stated in the motions. As opposed to objecting each time, could I get a standing objection to those items for the grounds stated in the motions in limine?
THE COURT: Any objection to that, Mr. Cotton?
MR. COTTON: Ah, no objection to the standing objection, Your Honor. I would also ask that the Court take judicial notice of CR23-172.
THE COURT: Well, for purposes of ruling on any motions in the case, I will. But I don't think I'm going to allow the jury to take judicial notice of that case. I don't know exactly what you're asking.
MR. COTTON: In relation to exhibits, Your Honor, any of the, ah, exhibits that the State would present, public record, I have certified copies of them. I believe they, they are admissible. I'll lay some foundation with Mr. Goehring and Ms. Robertson and --
THE COURT: Well, you're proving them up independently as

opposed to me taking judicial notice of an entire file, and so I can't say take judicial notice of the entire file. There's too much evidence and motions to suppress and all this stuff --

MR. COTTON: Okay.

THE COURT: -- jurisdiction, I can't do that.

MR. COTTON: Understood, Your Honor.

THE COURT: I only take judicial notice of the exhibits that you have up to this point presented. All right? Mr. Volesky, you get a continuing objection. I leave it to you, if you want to make any verbal objection at the time they're offered. But you do have a continuing objection based upon your motions in limine, that's granted.

MR. VOLESKY: Thank you.

THE COURT: Anything else by the defense?

MR. VOLESKY: No, Your Honor.

THE COURT: All right.

We'll take a short break. A couple minutes here, and we're going to use the restroom and then we'll come back, and the State may call their first witness.

(A recess is taken at 11:19 a.m. on December 13, 2024, after which the following proceedings occur at 11:25 a.m. on December 13, 2024.)

(Defendant's Exhibit A is marked for identification.)

THE BAILIFF: All rise for the jury.

(All comply; jury in at 11:27 a.m.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: We are back in the courtroom. The Defendant and counsel are present.

The jury is present.

Mr. Cotton, you may call your first witness.

MR. COTTON: Your Honor, State would call Clerks of Courts, Jennifer Robertson.

(The witness steps forward and is sworn in by the Court.)

JENNIFER ROBERTSON,

called as a witness, having been first duly sworn, testifies as follows:

THE COURT: Okay. Please have a seat.

(The witness complies.)

MR. VOLESKY: Your Honor, may I we approach?

THE COURT: You may.

MR. VOLESKY: Thanks.

(Counsel approach, and there is an off-the-record bench conference.)

THE COURT: All right.

What is your name, ma'am?

THE WITNESS: Jennifer Robertson.

THE COURT: And you are the Charles Mix County Clerks of Courts?

THE WITNESS: Correct.

THE COURT: All right.

So, ladies and gentlemen of the jury, it's unusual for me to start out examining a witness.

But I wanted to establish her name and her job.

Ms. Robertson works for the Clerks of Courts. She's worked here for a long time. She's the record keeper and has other functions.

You need to understand that since she's a court employee, that doesn't mean anything as far as her credibility.

You're not to give her testimony any greater or lesser weight than you would give any other witness, simply because she works for the Court.

You will weigh her testimony and the weight you feel it's entitled to as I instruct you in weighing the, the testimony of any other witness in the case, and you'll get instructions on that later.

But just because she's a court employee doesn't mean that she's worthy of any greater credence than any other witness.

You may proceed, Mr. Cotton.

DIRECT EXAMINATION

Q (BY MR. COTTON) Thank you, Your Honor.

Mrs. Robertson, were you working for the Charles Mix County Clerks of Courts office on July 31, 2023?

A Yes, I was.

Q And as part of your job, do you keep the docket for the circuit court?

A Yes, I do.

Q And does the circuit court deal with felony files?

A Yes.

Q Ah, on a typical court date, are there arraignment hearings?

A Yes.

Q On July 31, 2023, was Hazen Winckler scheduled for an arraignment hearing?

A Yes.

Q Did he have an attorney at the time?

A Yes, he did.

Q Do you recall who his attorney was?

A I believe it was Keith Goehring at that time.

Q And was Mr. Winckler here with Keith Goehring at that hearing on July 31, 2023?

A Yes, he was.

Q Um, as part of your recordkeeping duty, do you keep records of orders from the Court?

A Yes, I do.

Q At an arraignment hearing, if a defendant pleads not

guilty, what's the Court's standard procedure?
A. They set them up for a jury trial.
Q. Okay.
MR. COTTON: Your Honor, may I approach the witness?
THE COURT: You may.
Q. I'm going to show you, Mrs. Robertson, what's been labeled State's Exhibit 2 (indicating).
Can you identify that document for the record?
A. It is the standard order setting date and time for jury trial.
Q. And you stated that Mr. Winckler was at that arraignment on July 31st of '23?
A. Correct.
Q. And on this, ah, exhibit, ah, towards the bottom, maybe the fourth paragraph, can you read, "it is further ordered" is how it starts?
THE COURT: You need to offer it before you publish an exhibit.
MR. COTTON: Okay.
Your Honor, I would offer State's Exhibit 2 for the record.
THE COURT: Any objection?
MR. VOLESKY: No, Your Honor.
THE COURT: Exhibit 2 is received into evidence.
(State's Exhibit 2 is offered and received into evidence.)

Q Ah, specifically, this paragraph (indicating).
A Okay.
It is further ordered that all perfunctory pretrial motions shall be filed and served upon counsel with sufficient notice to be heard at the pretrial conference set for the 8th day of November, 2023, at 1:30 p.m.
Attendance at the pretrial hearing and conference is mandatory by both counsel and the Defendant, despite the absence of any motions noticed for hearing, unless the case has been resolved or continued prior to that date.
Q Thank you.
Now, is this order something that would be filed with your office?
A Yes.
Q And, in fact, was this order filed with your office?
A Yes.
Q And when the State files an order like this after Judge has signed it, does the defense get a copy?
A Yes.
Q So Mr. Goehring would have gotten a copy of this and been notified of it?
MR. VOLESKY: Objection.
Lack of personal knowledge.
THE COURT: Ah, sustained, as to the form. It can be rephrased.

Q So, in South Dakota, we use something called eCourts, or Odyssey File and Serve, correct?
A Correct.
Q And you can see who the parties to a case are?
A Correct.
Q And when something's filed, any party listed on that case would be notified, correct?
A If they're marked as served.
Q Okay.
And Mr. Goehring, being Mr. Winckler's attorney, would have been privy to that information?
A Correct.
Q Furthermore, it's a public document, correct?
A Yes.
Q Anybody from the public could come in and say I would like to see the order from July 31st, 2023, correct?
A Yes.
Q And they would be able to get that from your office?
A Yes.
Q Um, I would then like to show you what's been marked State's Exhibit 1 (indicating).
Can you please tell me what that document is.
A It is a cash bond form, or bond form.
Q Is that a document that gets filed with your office?
A Yes, it is.

Q And do you keep -- are you the custodian of those documents once they're filed?
A Yes.
MR. COTTON: Your Honor, I'd offer State's Exhibit 1 into evidence, page 1 through 3.
THE COURT: Any objection?
MR. VOLESKY: Yes, Your Honor. Object for the same reasons stated in the motion.
THE COURT: Your prior motion?
MR. VOLESKY: Yes.
THE COURT: Okay. I've ruled on that. It's overruled. State's Exhibit Number 1 is received into evidence.
(State's Exhibit 1 is offered and received into evidence.)
Q Thank you, Your Honor.
Now, Ms. Robertson, can you tell me, does this exhibit here (indicating) give Mr. Winckler a court date?
A Yes, it does.
Q And what does it say for the Court date on this exhibit?
A Ah --
MR. VOLESKY: Objection. Hearsay.
THE COURT: Overruled.
A Defendant shall appear in court in Charles Mix County on 11-8-2023 at 1:30 p.m.
Q And is that the same date and time that it says on State's

Exhibit 2 (indicating)?

A Yes, it does.

Q Ms. Robertson, were you working as the Clerks of Courts on November 8th, 2023, in the County of Charles Mix?

A Yes.

Q On that date, did we have pretrial conferences?

A Yes, we did.

Q Was Hazen Winckler's case one of the cases on the docket for pretrial conference?

A Yes, it was.

Q And did Hazen Winckler appear for his pretrial conference?

A No, he did not.

Q And that happened here in Charles Mix County?

A Correct.

Q And is Hazen Winckler in the courtroom today?

A Yes, he is.

Q And can you describe for the jury where he's seated?

A Hazen is sitting over at the defense table with braids.

Q And is that the same Hazen Winckler that was here for an arraignment on July 31st, 2023?

A Yes.

MR. COTTON: Your Honor, I have no further questions for the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

Q (BY MR. VOLESKY) Thank you, Your Honor.
Ms. Robertson, I'm handing you what's been marked as State's Exhibit A (indicating). Do you recognize that that -- or, excuse me, that's Defendant's Exhibit A, do you recognize that?
A Yes, I do.
Q What is that?
A This is a -- the answer from the judge when, um, original bond is set.
Q So this is the Court's order for bond?
A The original bond.
Q This is the original bond order?
A Yep.
Q Okay.
All right.
And there is nothing on the original bond order which states that the Defendant needs to appear on November 8th, 2023, for a pretrial conference, is there (indicating)?
A Not at that point in time, no.
MR. VOLESKY: Okay.
Your Honor, I'd offer what's been marked Defendant's Exhibit A.
THE COURT: Mr. Cotton, have you seen the copy?
MR. COTTON: I have, Your Honor.
THE COURT: Any objection to Exhibit A?

MR. COTTON: I would object just because it's confusing, Your Honor. That was a bond that was set preliminarily by the magistrate judge --

THE COURT: Nope, don't argue the objection. Ah, the objection's overruled. Exhibit A will be received.

(Defendant's Exhibit A is offered and received into evidence.)

Q Thank you.

A Mm-hmm.

Q And now looking at what has been given to you as Exhibit 1 (indicating), this is a form from the Charles Mix County Sheriff's Office, is it not?

A It is.

Q This wasn't issued by a court, was it?

A The bond form, no.

Q This isn't signed by the Court, is it?

A No.

Q This is from the Charles Mix County Sheriff's Office?

A Correct.

Q You didn't sign this, did you?

A No.

Q The Judge didn't sign it?

A No.

Q Now, Exhibit 2 was also given to you (indicating). State's Exhibit 2, which is the order setting date and time

for jury trial. Now, as the Clerks of Courts, do you generally see such things called certificates of service?

A Yes, I do.

Q Do you know what a certificate of service is?

A Yes.

Q Could you explain that to a jury?

A Certificate of service is usually attached to, um, an order or a notice of hearing or a document that gets sent out to, um, either the Defendant or a, a -- one of the, one of the parties in the case, so. And it -- it's attached to that document, stating that it has been mailed out.

Q So it's a certification stating that that document it's attached to actually was sent out and notified the person who the certi, the certificate states received service of it, correct?

A Correct.

Q That's pretty standard?

A Yes.

Q Is there a certificate of service attached to Exhibit 2, stating that the Defendant received it?

A No, there is not.

MR. VOLESKY: Okay.

No further questions, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

Q (BY MR. COTTON) Ah, just a few, Your Honor.
Ms. Robertson, you were given, I believe, what was labeled Defense Exhibit A, correct?
A Correct.
Q Is that an email?
A Yes, it is.
Q Is that from Judge Bucher?
A Correct.
Q And she's the magistrate judge?
A Yes.
Q So when someone's arrested on a felony, usually the magistrate judge sets a bond?
A Yes.
Q And that's before it ever gets to circuit court?
A Yes.
Q Once it's in circuit court, the circuit court judge can change that bond?
A Yes.
Q Put other conditions on?
A Yes.
Q Like a court date?
A Yep.
Q Can you tell me what the date of that email is?
A Thursday, July 20th, 2023.
Q So 11 days before the arraignment hearing?

A Yes.
Q And at that arraignment hearing, which you were present at, Judge set a pretrial conference date, correct?
A Correct.
Q And that's the same pretrial conference date in the bond papers and on the order for trial, correct?
A Correct.
MR. COTTON: I have no further questions, Your Honor.
THE COURT: Anything else, Mr. Volesky?

RECROSS-EXAMINATION

Q (BY MR. VOLESKY) At the arraignment hearing, did Judge state to the Defendant that he had to appear at that pretrial conference?
A It's usually stated that it is mandatory, but I can't say if it was, was stated or not that date, but it's usually, Judge usually makes that --
Q So --
A -- when he's reading the, um, when he sets -- states it to the defendants, that it's mandatory.
Q Okay.
So if I showed you a transcript, would that reflect -- refresh your recollection of what the George -- what the Judge said that day?
A Yes.
Q Okay.

I'm handing you a copy of the transcript of the arraignment (indicating).

Can I have you read here where it begins with "the Court" (indicating) on page 12 from line 17 through line 24.

Starting with "the Court"?

THE COURT: What's the number again?

MR. VOLESKY: Page 12. Line 17 through line --

THE COURT: Exhibit Number?

MR. VOLESKY: That's Exhibit marked 4.

THE COURT: 4?

MR. VOLESKY: But it has not been offered yet.

THE COURT: 4 hasn't been offered or received?

MR. VOLESKY: Correct.

THE COURT: I hate to publish out of an exhibit that hasn't been received into evidence.

MR. VOLESKY: Okay.

THE COURT: But I'll allow you to ask her that question, based on the transcript.

Q Thank you.

Can you please read lines 17 through 24 of the arraignment transcript.

A The Court. Those pleas are accepted. Your trial is set for the stack week of November 27, 2023. The motion deadline is October 27th. The final motion hearing and pretrial conference is November 8th at 1:30 p.m.

The State will prepare an order for trial.

Anything else by the State? Mr. Cotton. No, Your Honor.

The Court. Anything else by the defense?

Q Thank you.

So, the Court did not direct the Defendant to appear at any hearing including the pretrial conference, did he?

A Directly, no.

MR. VOLESKY: Thank you.

No further questions, Your Honor.

THE COURT: Any redirect, Mr. Cotton?

FURTHER DIRECT EXAMINATION

Q (BY MR. COTTON) That hearing was on July 31st, correct?

A Correct.

Q Can you look at State's Exhibit 2 and tell me what the date the Judge signed State's Exhibit 2 was?

A August 23, 2023.

Q Okay.

And that's the exhibit that says Defendant will appear for the pretrial conference, correct?

A Correct.

Q And that is a little less than three months before Defendant needs to appear for that, correct?

A Correct.

MR. COTTON: No further questions.

THE COURT: Does that prompt any other questions?

FURTHER RECROSS-EXAMINATION

Q (BY MR. VOLESKY) And just to confirm with Exhibit 2, there's no evidence that that was served on the Defendant? There's no certificate of service on it?

A In front of me, no.

MR. VOLESKY: Thank you.

THE COURT: Anything else, Mr. Cotton?

MR. COTTON: No, Your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: State may call their next witness.

MR. COTTON: Your Honor, State would call Keith Goehring to the stand.

(The next witness enters the courtroom.)

THE COURT: Stand in the middle of the well. Face the clerk.

(The witness complies and is sworn.)

KEITH GOEHRING,

called as a witness, having been first duly sworn, testifies as follows:

THE COURT: Come around (indicating). Watch your step, Mr. Goehring.

(The witness complies.)

MR. VOLESKY: Your Honor, I object to this witness. Privilege and confidentiality.

THE COURT: All right.

It's a pretty thorny issue, and, um, I'm going to rule on them per question.

MR. VOLESKY: (Nods head.)

THE COURT: But you have an overall attorney-client privilege objection, which I'm going to deny at this time, 'cause I don't know if the questions and answers deal with the facts that occurred or confidential client communications. And there's the distinction, so. He can testify to certain facts, but, Mr. Cotton, you're not allowed to go into any communications.

Mr. Goehring, you as his counsel, do you have a separate objection, as his former lawyer?

THE WITNESS: I do not, Judge.

THE COURT: All right.

Mr. Cotton, go ahead.

DIRECT EXAMINATION

Q (BY MR. COTTON) Would you please state your name for the record.

A Keith Goehring.

Q Mr. Goehring, how are you employed, or where are you employed?

A Um, I'm an attorney from Parkston.

Q Are you on the Charles Mix County Court appointed attorney list?

A Yes, I am.
Q How often are you in Lake Andes representing Charles Mix County defendants?
A Most all the time, so that would mean usually once every two weeks.
Q How many years have you been representing defendants in Charles Mix County?
A I think since about 1987.
Q Are you a licensed attorney in the State of South Dakota?
A Yes, I am.
Q Are you an active member of the State Bar of South Dakota?
A Yes, I am.
Q Have you represented Hazen Winckler in the past?
A Yes, I have.
Q More specifically, were you with him on July 31st, 2023, at an arraignment hearing in criminal file 23-172?
A Yes, I was.
Q I'm going to hand you, Mr. Goehring, what's been labeled State's Exhibit 4 (indicating).
Would you please take a minute and look over that document.
A (The witness complies.)
I've scanned it.
Q Could you please tell me what that document is?
A It's a transcript of an arraignment hearing that was held here on July 31st of 2023.

Q Here in Charles Mix County?
A Correct.
Q And who were you representing at that hearing?
A Hazen Winckler.
Q And was he charged with a felony at that time?
A Yes.
Q As his counsel -- or, just as counsel in general, how many documents like this have you seen in your career?
A Probably hundreds.
Q And this is a transcript?
A Correct.
Q Can you explain to the jury what a transcript is?
A Well, a transcript is, is something that's developed because of the court reporter is in the courtroom. Um, the court reporter takes down each question and takes down the answers.
And when I say "take down," she puts that in her machine. And then if anybody wants to have a transcript, then she goes ahead and puts it to paper and prints out exactly, um, who says what.
Q And is this an accurate reflection of the transcript -- or, is this transcript an accurate reflection of what was said on July 31st, 2023 at Mr. Winckler's arraignment hearing?
A Yes, I did have a chance to look at this before court. I did read it fairly carefully. And I believe it does -- and

I believe it is an accurate transcript, yes.
Q Now, Mr. Goehring, at that hearing, did Judge Anderson advise you and your client of when his pretrial conference would be?
A Yes.
Q And was that date October 8th of 2023 at 1:30 p.m.?
A I think November 8th.
Q Or, excuse me, that's what I meant, November 8th?
A Yes.
MR. COTTON: Thank you.
So, Your Honor, at this time I would ask that State's Exhibit 4 be entered into evidence.
THE COURT: Mr. Volesky?
MR. VOLESKY: Same objections, Your Honor.
THE COURT: All right.
The objection's overruled and Exhibit 4 is received into evidence. But I need to talk to you about some things. When I got to looking through the transcripts, there's two of them. There were some objections to the transcripts in general. And so, I ordered redactions. And that's because those areas of the transcript where you'll see blanks, those discussions were irrelevant to this case. They have nothing to do with the case, and so they were redacted from the transcript.
When you're going through the transcript during your

deliberations, or at any other time, you will ignore the fact that there are redactions. You will not try and guess what was talked about.

You will put it out of your mind and will not consider the fact that there's redactions in the transcript.

It's simply information that was not relevant.

Go ahead, Mr. Cotton. Exhibit 4 is received, as well as the other transcript you offered earlier.

Same admonishment, ladies and gentlemen, applies to both of those transcripts.

Go ahead, Mr. Cotton.

(State's Exhibit 4 is offered and received into evidence.)

Q (BY MR. COTTON) Thank you.

Mr. Goehring, I would like to direct your attention to page 6 of the State's Exhibit 4.

A I'm on page 6 (indicating).

Q Would you please read lines 22 through 24.

A The Court. Next is State of South Dakota versus Hazen Winckler. This is 11CRI23-172. Mr. Winckler is present. He's with his attorney, Keith Goehring.

Q So Mr. Winckler was present July 31st, 2023, in Charles Mix County Courthouse for that arraignment hearing?

A Correct.

Q Mr. Goehring, I would now like to direct you to what's been

marked State's Exhibit 5 (indicating).
Would you please explain for the record what that document is?
A Well, again, State's Exhibit 5 is a transcript of a pretrial conference that was held here in court in Lake Andes on November 8th of 2023.
Q Were you here for that hearing?
A Yes, I was.
Q Is this an accurate reflection -- it has been redacted, but is what you see here an accurate reflection of that hearing?
A Ah, yes. And be, sometime before today I did have a chance to read that very carefully, and it is an accurate reflection of what was said.
MR. COTTON: Your Honor, at this time the State would offer State's Exhibit 5.
THE COURT: Any objection to 5?
MR. VOLESKY: Continuing objection, Your Honor.
THE COURT: All right.
The objection is noted and it's overruled. Exhibit 5 is received into evidence.
(State's Exhibit 5 is offered and received into evidence.)
Q Again, you're -- Mr. Goehring, on November 8th, 2023, at this pretrial conference, you were here to represent Mr.

Winckler on a felony charge, correct?
A Correct.
Q Would you please read page 2 lines 2 through 6.
A The Court. Next is State of South Dakota versus Hazen Winckler. This is 11CRI23-172.
Mr. Winckler apparently does not appear today. His attorney, Keith Goehring, appears. Steve Cotton appears for the State.
Q Would you also read lines 9 through 11?
A Again, this is coming from the Court. It says we are here for, for pretrial conference. Where's Mr. Winckler? And line 11, Mr. Goehring, I do not know.
Q And also lines 16 through 18?
MR. VOLESKY: Objection, Your Honor. This is privilege.
THE COURT: Page 2?
MR. VOLESKY: Yes.
MR. COTTON: Page 2, Your Honor, lines 16 through 18.
THE COURT: You may approach.
(Counsel approach, and there is an off-the-record discussion.)
THE COURT: All right. You can have a seat.
(Counsel comply.)
THE COURT: The objection is noted and overruled. You may answer, 16 through 18.
A Those lines say this: I did send him a letter at the last

known mailing address last Friday, advising him to be here today. But again, he's not here. So.

Q Mr. Goehring, on the ledge there (indicating) you'll see State's Exhibit 2?

A Yes, I do see that, yes.

Q Can you describe for the jury what that document is?

A The title of State's Exhibit 2, it says, order setting date and time for jury trial. And --

Q And --

A -- it's basically an order that Judge Anderson signs for most all felony cases, advising the clients and advising attorneys that, you know, the dates for, for things that they have to happen by.

And it has a date for, um, jury trial. It has a date by which motions have to be filed. Before the jury trial takes place.

Q Does it also have the date of the pretrial conference?

A Yes, it does.

Q And is that date November 8th of 2023 at 1:30 p.m.?

A Yes, it -- yes, it is. Or was.

Q Is that a document that you would have received service of through Odyssey File and Serve?

A Yes.

Q And do you recognize that document from when you were served with that document?

A Yes, I do.

MR. COTTON: Your Honor, I can't remember if I offered State's Exhibit 5 for evidence, but I would offer it.

THE COURT: 5 has been offered and received.

MR. COTTON: Thank you, Your Honor.

I have no further questions for the witness.

THE COURT: Mr. Volesky. Cross.

CROSS-EXAMINATION

Q (BY MR. VOLESKY) Thank you, Your Honor.

Mr. Goehring, do you know what a certificate of service is?

A Yes.

Q Would you explain that to the jury.

A Well, a certificate of service is a document that's prepared usually by attorneys who send out motions or court documents, advising that they have, you know, sent this document to the particular attorney, and the date that it was, was sent to the attorney as well as the mailing address or email address that it was sent to.

Q Or the party, correct?

A Or the party, correct.

Q Would you look at Exhibit 2?

A (The witness complies.)

I see it.

Q There's no certificate of service on that document, is there?

A That's correct.
Q Thank you. You were at the arraignment hearing?
A Yes.
Q And the Court said on the record what its order was?
A Yes.
Q I'm going to show you a copy of the transcript of the arraignment.
Can I have you read page 12 line 17 beginning with the Court and ending with Mr. Cotton on line 24?
A Certainly.
Line 17. The Court says this: Those pleas are accepted. Your trial is set for the stack week of November 27th, 2023. The motion deadline is October 27th. The final motion hearing and pretrial conference is November 8th, at 1:30 p.m.
Ah, the State will prepare an order for trial.
Anything else by the State?
Then line 24, Mr. Cotton says, no, Your Honor.
Q So the Judge did not order the Defendant, Mr. Winckler, to appear at his pretrial conference from the bench at the arraignment, did he (indicating)?
A Well, there's no --
Q Just a "yes" or "no," did he?
A No.
Q Thank you.

Now we get to the pretrial conference, and you just testified to what occurred there, um. You can't testify that, in fact, the Defendant received any letter that you may have sent him, can you?

A No, I have no way of knowing that for sure.

MR. VOLESKY: No further questions, Your Honor.

THE COURT: Any redirect?

MR. COTTON: May I approach, Your Honor?

With counsel?

THE COURT: You may.

(Counsel approach, and there is an off-the-record bench conference.)

REDIRECT EXAMINATION

Q (BY MR. COTTON) Just a few for redirect, Your Honor.

Mr. Goehring, would you please look at page 3 of State's Exhibit 1?

A You said page 3?

Q Yes.

A (The witness complies.)

You said Exhibit 1?

Q Correct.

A Okay.

Q And what's it say at the very top of that sheet?

A Standard bond conditions.

Q And the very last sentence initialed HW, what does that

sentence say?

A That the Defendant will keep the Court ... of attorney, if represented by counsel, advised of his whereabouts at all times.

Q Did Mr. Winckler keep you advised of his whereabouts at all times?

MR. VOLESKY: Objection, privilege.

THE COURT: Sustained.

MR. COTTON: Your Honor, I -- the Defendant can't --

THE COURT: Sustained.

Q Mr. Goehring, you've, again, said that you were here on July 31st to represent Mr. Winckler. Is Mr. Winckler seated in the courtroom today?

A Pardon?

Q Is Mr. Winckler seated in the courtroom today?

A Yes, he is.

Q And that's the same Mr. Winckler that you've represented?

A Correct.

Q And that's the same Mr. Winckler you were representing on July 31st, 2023?

A Correct.

Q Here in Charles Mix County?

A Correct.

MR. COTTON: I have no further questions, Your Honor.

THE COURT: Any further cross?

MR. VOLESKY: Nothing further, Your Honor, no.
THE COURT: You may step down. You're free to go.
THE WITNESS: Thank you, Your Honor.
THE COURT: Yeah.
(Witness excused.)
THE COURT: We're going to take our lunch break. We'll take an hour. We'll have you back here at one o'clock. Please recall all of my prior admonishments, that I gave you earlier.
In addition, it is your duty not to converse with or allow yourselves to be addressed by any other person on any subject of the trial. It is your duty not to form or express any opinion thereon until the case is finally submitted to you for your consideration. You shall not deliberate among yourselves about the case until it is finally submitted.
So we'll take an hour. Remember, keep that laniard out and depart the courthouse grounds immediately. There could be witnesses and people talking in the hallway that I don't want you to be able to hear or possibly hear some information that's not evidence.
All -- and keep your notes facedown on your chair when you leave. Keep the laniard.
All rise for the jury.
(All comply; jury out at 12:04 p.m.)

A JUROR: See you in an hour.
Or sooner, hopefully.
(All jurors exit the courtroom.)
THE COURT: Please be seated.
(All comply.)
THE COURT: We remain in the courtroom. We're outside the presence of the jury.
The Defendant and counsel are present.
So during the bench conference with Mr. Goehring, the defense objected based upon attorney-client privilege. I denied the objection.
And here's the way I see the testimony of an attorney in Mr. Goehring's situation. There's certain things that he can observe and testify to as a fact that do not involve a confidential attorney-client privilege or any of that kind of information.
So, he -- by telling the jury, for example, that he was charged with a felony, there's nothing there that's attorney-client privilege. By saying that my client was with me in court that day does not involve any communication protected by attorney-client privilege. By saying that he was there at the time of the pretrial conference and the Defendant did not appear is, is not anything protected by attorney-client privilege. There's no communication going on. Just that there's a gentleman

there without his client.
And so that's my rationale for allowing the testimony of his prior counsel.
When it came to the State's question on Exhibit 1 page 3, I did feel like if, if the order said he had to keep his attorney informed of his whereabouts, that was broaching on and into communications Mr. Goehring would have had with his client. And I thought about the fact that the mere communication itself, did one exist, probably isn't protected. What was said is protected.
But I -- it's just a road I didn't want to go down, and it's a whole can of worms I didn't want to open up. And I didn't want Mr. Goehring saying that his client did or did not contact him in any particular period of time, especially when I don't have any idea what his answer was going to be.
There could have been -- it occurred to me, there could have been a conversation with Mr. Goehring and his client where he said you got to be in court on such-and-such a day and he told him to go suck eggs. And if any kind of answer like that would be blurted out, then we're really getting into some problematic territory that could lead to a mistrial, so I excluded that.
Mr. Volesky, anything you want to put on the record now because your bench conference was not on the record?

MR. VOLESKY: Um, just note that I did ask to seek -- or, for sequestration of witnesses --

THE COURT: That's correct. You wanted to make -- so we're done with the Goehring thing, you have no more on that? I just want to make sure we're done with that part.

MR. VOLESKY: I think the record's been adequately made based on the written motion in addition to what was stated on the record.

THE COURT: All right.

Those motions have all been considered and, as I said, they're, they're denied. I did strictly limit that testimony, as much as I could, to observations a lawyer made that were not connected with a client communication. That's the justification for my ruling.

The next thing was when we had -- we had another bench conference. The clerk approached and Mr. Volesky wanted to talk about the sequestration order because Sheriff Thaler, who is head of my security for trials, was in the room. I had other officers here. I could have, I could have sequestered him.

Mr. Volesky wanted me to enforce that as to him. The Court has discretion in who's sequestered and when.

And my decision was everybody kind of knows what the evidence is in the case anyway. And I didn't want him to be out of the courtroom because of just security reasons,

so I allowed the sheriff to stay.
Mr. Volesky, go ahead. Anything else on that particular issue?
MR. VOLESKY: Your Honor, in light of the fact that the sheriff has now heard the testimony of the prior two witnesses, um, I would ask that he be excluded from testifying.
THE COURT: Well, at the bench conference, Mr. Cotton also said, when Mr. Volesky brought it up, he's probably not calling the sheriff now.
Mr. Cotton, where are you at with that? Any objection to the sheriff being excluded?
MR. COTTON: I do object, Your Honor, 'cause I think I do now have two or three questions for the sheriff. It'll be very brief.
THE COURT: What are those questions?
MR. COTTON: I'm going to ask him about the bond paperwork, if that's the standard bond paperwork that his office deals out. And if every Defendant gets a copy of their bond paperwork when they walk out.
THE COURT: You have other witnesses on the list who can testify to that.
MR. COTTON: Is Jarred here?
THE SHERIFF: (Nods head.)
MR. COTTON: Okay.

THE COURT: Then it would just be duplicative, right?
MR. COTTON: Correct.
THE COURT: And when you say "Jarred," you mean Jarred Niehus, who's the chief jailer, who's the guy who, from my observations in the emails and everything, he's the guy who's doing it every single day? The bond work, right?
MR. COTTON: Yep.
THE COURT: Here's what I'm going to rule is, Mr. Volesky, your motion to exclude the sheriff as a witness based on the sequestration is under advisement. I'm going to take that as it comes and it depends on what the, what they're trying to elicit, that's why I wanted an offer of proof. It depends on whether it's necessary or otherwise duplicative testimony. And it also depends on whether or not that testimony, now that the sheriff has heard the testimony of others, would be prejudicial to the defense. Keeping in mind, the Court has fairly wide latitude on determining if, who, and the scope of sequestrations. I just simply didn't feel that he would hear any information during any testimony that he didn't already know. And I -- it's kind of a -- it's, we got transcripts and everything else for this case, and we have court documents. It's really hard for witnesses to collude on those types of issues. This is kind of a document case and the documents pretty much speak for themselves, so that's

the basis for that ruling.
MR. VOLESKY: Thank you, Your Honor.
THE COURT: Any other motions by the State before we recess for lunch?
MR. COTTON: No, Your Honor.
THE COURT: Anything by the defense?
MR. VOLESKY: No, Your Honor.
THE COURT: All right.
I'm going to work on the jury instructions here over the lunch hour. Hopefully I'll get them to you before we start for the afternoon. It's a fairly simple packet of instructions, but my plan is to be able to get you the Court's proposed instructions at that time. All right?
MR. VOLESKY: Thank you.
MR. COTTON: Thank you, Judge.
THE COURT: We'll be in recess. That concludes it.
MR. COTTON: What time do you want us back, Your Honor?
THE COURT: Well, be here -- show up right at one o'clock, will be fine.
MR. COTTON: Okay.
(A lunch recess is taken at 12:12 p.m. on December 13, 2024, after which the following proceedings occur in the courtroom outside the presence of the jury at 1:13 p.m. on December 13, 2024.)
THE COURT REPORTER: All rise in honor of the Court.

(All comply.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: We're waiting for Mr. Winckler to appear. We're in the courtroom.

And Mr. Winckler's being brought in.

(The Defendant enters the courtroom.)

THE COURT: And the jury is not present.

So, first item of business, while the jury is out, I gave -- I had the clerk provide you the Court's proposed instructions. And we have, just noting to you, this is everything we've submitted put in one package, so you have Instruction 8 and 8A.

I intend on giving 8A or some modification thereof, just so you know. I added Number 7 because I think it's required. It's not required, but it's suggested. And I simply modeled that over an old pattern and put in the language applicable.

So we will address those further at the, um, instruction conference after the close of the evidence, and for the record, they're instructions 1 to 22, and my proposals as have been submitted to you now will be filed with the clerk to make the record.

The second item of business is over the lunch hour, a juror's wife called the clerk. Curtis Pheifer, juror 52.

We've certainly, at least the Court, has not observed anything inappropriate with him, but his wife is concerned that he's here. First of all, she was not sure we were even having a trial today, and she asked the clerk and she said that we are and he's a juror. She's wondering when he's going to get home, how much he's getting paid, and just generally upset about the fact that her husband is here serving on a jury during Christmas season and she's worried that it'll impact their income and finances because he's only paid 50 dollars a day.

So we shared that with counsel in chambers just now. And we talked about it and what our options are. Right now, based upon the call from his spouse, I have no basis to remove that juror. He may not agree with anything his wife said. It's possible I could talk to him, pull him in and talk to him about how he feels. Or if he even knows that his wife has been making phone calls, we don't know.

So, um, any thoughts on that juror at this point in time, Mr. Cotton?

MR. COTTON: Nothing from the State, Judge.

THE COURT: Mr. Volesky?

MR. VOLESKY: Nothing from the defense, Your Honor.

THE COURT: All right.

Is everyone ready to go?

MR. VOLESKY: (Nods head.)

THE COURT: Mr. Cotton?
MR. COTTON: I am, Your Honor.
THE COURT: Who's your next witness?
MR. COTTON: Ah, the State rests, Your Honor.
THE COURT: All right.
Um, Mr. Volesky? Do you anticipate calling any witnesses?
MR. VOLESKY: I do not, Your Honor.
THE COURT: So the case is rested?
MR. COTTON: (Indicating thumb's up.)
I was wondering when you called --
THE COURT: I wish I would have known that (laughs).
MR. COTTON: I was wondering when you called for lunch, I wanted to pipe up, but I didn't know if I should interrupt.
THE COURT: All right.
Does the State rest at this point, Mr. Cotton?
MR. COTTON: Yes.
THE COURT: Mr. Volesky, do you have any motions?
MR. VOLESKY: Yes, Your Honor.
Ah, defense would make a motion for a judgment of acquittal, pursuant to SDCL 23A-23-1, based on insufficient evidence to sustain a conviction of the offense.
The State is required to prove beyond a reasonable doubt that the Defendant had actual notice of a court date that the Court required him to appear at. The State's evidence falls short of establishing that the Court required the

Defendant to appear for a specific date, time, and place. The State's evidence falls short that the Defendant had actual notice of the requirement to appear before the Court at a specific date, time, and place.

And based on that, Your Honor, we believe the evidence is insufficient to sustain a conviction.

THE COURT: Okay.

Mr. Cotton.

MR. COTTON: Thank you, Judge.

Ah, Your Honor, State believes that it has presented a prima facie case, that it should be sent to the jury for decision.

The Court heard evidence and was submitted evidence, showing that Mr. Winckler both heard the Court give him a court date, also that there was bond paperwork from the jail giving that same exact court date that the Court gave to him at his arraignment hearing. Thank you.

THE COURT: When a, the Court's ruling on a motion for a directed judgment of acquittal, the Court must take an initial review of the evidence presented up to this point to determine if the State has submitted a prima facie case. When I do that, I am to view all of the evidence in the light most favorable to the Defendant, and I'm -- most favorable to the State, excuse me, and I'm to give the State all reasonable inferences that could be drawn from

the evidence. So all those inferences must be in the State's favor.

In this case, I'm not quite sure yet, the type of notice. We have to sort that out in the instructions, but he does have to be given some notice. When I look at the, the law and the statute and the cases that have looked at it, he's got to know when -- what day, what time, and where, so that the order is sufficient for a person of reasonable intelligence to understand it and comply with it.

I'm not too sure that -- no one really said to appear in this courtroom in Lake Andes, but I think that can be inferred. That can be imputed. I mean, he would know that he's supposed to be here and not in Sioux Falls or Yankton or anywhere else.

So I'm not too sure that the instruction proposed on actual notice is the law. But there -- I do find there has to be notice. Otherwise, there's sufficient evidence in the record to raise a question for the jury to decide whether or not Mr. Winckler knew he had court and what date and time and where. And so consequently, since there are factual questions in issue, the motion for a directed judgment of acquittal is denied at this time.

Um, I'm thinking what I'll do is I'll bring the jury in, and I'll have -- Mr. Cotton, I'll have you announce you've rested. Mr. Volesky, I'll then ask if you have any

evidence -- if the defense desires to present any evidence and then you'll give response you don't have any, that's what you're going to stick with, I think. And then I'm going to excuse the jury and tell them I have to have my final jury instruction conference and that'll take us about a half an hour and then we'll be ready to finish up the trial. I'll kind of give them a roadmap of where we go from here.

Any objection to that process, Mr. Cotton?

MR. COTTON: No, Your Honor.

THE COURT: Mr. Volesky?

MR. VOLESKY: No, Your Honor.

THE COURT: All right. Bring in the jury.

(The sheriff complies; pause in the proceedings.)

THE BAILIFF: All rise for the jury.

(All comply; jury in at 1:22 p.m.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: Ladies and gentlemen of the jury, you'll notice that we stand when you enter. That's because right now you are cloaked with that state sovereignty as judicial officers. You've been sworn in as jurors to try the case, so we rise for you the same as they would rise for the robe that I wear. So that's what's going on.

We are back in the courtroom. Defense and counsel are

present.
At this time, does the State have any further witnesses?
MR. COTTON: No, Your Honor. The State rests its case.
THE COURT: All right.
Mr. Volesky, does the defense desire to present evidence?
MR. VOLESKY: No, Your Honor.
THE COURT: All right.
So, you've heard all the evidence you've heard in the case. I had to bring you in to go through this formality so that both sides, the State could properly rest, and the defense could tell us if they have evidence.
I have to have a jury instruction conference now. We're going to get those all the settled. We've been working on them. We did start a little late just now and I want you to know we didn't screw around. We were working while you were gone trying to figure out how the rest of the day would go.
And so, you've heard all the evidence. We now need to complete those instructions, get them all ready.
Where we go from here. After the instruction conference is complete and I've got those settled, you'll be brought back in. I will read you the instructions. Then the state's attorney will give his caressing argument. Then the defense will give closing argument. And then Mr. Cotton will give the final argument, and then the case will be

submitted to you for your deliberation.
So, be patient with us. We've got to go through the instructions and get those sorted out.
We'll bring you right back in, hopefully half an hour at the most. That's what I'm aiming for, but I'm not promising that, so. At any rate, we're about there.
Please recall all the prior admonishments I've given you. Do not discuss this case. Do not allow anyone to discuss it with you. Do not form or express any opinion on the case or deliberate about the case among yourselves until it's finally submitted.
So, you'll be waiting in the jury room or the hallway, please try and avoid close contact with any other people who might be out there.
We'll bring you back in as soon as we can get everything settled up.
All rise for the jury.
(All comply; jury out at 1:25 p.m.)
THE COURT: You can close the door.
Please be seated.
(All comply.)
THE COURT: We're in the courtroom outside the presence of the jury.
Do you need any time before we argue these?
None, Mr. Cotton?

MR. COTTON: No, Your Honor.
THE COURT: Mr. Volesky?
MR. VOLESKY: Um, I don't believe so, Your Honor.
THE COURT: All right.
We'll start with the State.
The Court gave you the proposed instructions over the lunch hour. They're essentially -- this is the packet you submitted as stipulated, and then I've added two instructions proposed by the defense. Mr. Cotton, I don't think you proposed any other instructions.
MR. COTTON: Correct, Your Honor.
THE COURT: Do you have any additional instructions you want to offer at this time, Mr. Cotton?
MR. COTTON: Just the change to Instruction 9 and Instruction 8A.
THE COURT: Okay.
And so you're just talking about objecting to the language in 9 and 8A?
MR. COTTON: Correct.
THE COURT: And my question, you don't have any additional instructions?
MR. COTTON: Correct, Your Honor.
THE COURT: All right.
Mr. Volesky, um, do you agree that these are the instructions that you submitted as stipulated plus the two

that you recommended?
What they call in the statute, your requested instructions.
MR. VOLESKY: Correct, Your Honor.
THE COURT: Do you have any additional instructions you want to offer?
MR. VOLESKY: No, Your Honor.
THE COURT: All right.
Mr. Cotton, let's get to 8 and 8A.
Do you object to Mr. Volesky's proposal in 8A?
MR. COTTON: I do to the word "actual," Your Honor. I don't know that that is what the statute sets. I don't see that in the statute for failure to appear.
Further, it's really the definition of "actual" that is concerning to the State, as I believe the definition would be found in 17-1-2. Number 1, in general, a person has notice of a fact when he has actual knowledge of it, has received notification of it, or from all the facts and circumstances known to him at the time in question, he has reason to know that it exists.
The word "express" in --
THE COURT: Okay. Now that's -- that's what now? What statute did you just read?
MR. COTTON: 17-1-2.
THE COURT: Okay. And you think that's what that Instruction 9 should say?

MR. COTTON: Correct.
THE COURT: All right.
Let's talk generally about 8A, other than "actual," do you have any other objection to how those elements are laid out?
MR. COTTON: No. I actually think that that -- I think 8A is correct.
THE COURT: All right.
Mr. Volesky, your argument on 8A and 9.
MR. VOLESKY: Thank you, Your Honor.
Um, I think it really comes down to, um, due process. Due process of the law. It requires notice, an opportunity to be heard. The Supreme Court has previously in failure to appear cases discussed sufficiency of orders and whether those certain notices were sufficient. Most recently, in a very recent case, In the Interest of N.K., 2024 S.D. 63, the Supreme Court did discuss notice of proceedings. And they, the South Dakota Supreme Court identified that actual notice complies with due process.
THE COURT: Well, that case, In N.K. was an abuse-and-neglect case. And the State had filed the father -- they had served the father with a petition, but it didn't have a summons. And then they had two years of litigation, and after the father's rights were terminated, the Supreme Court said he had actual notice because he had

attended court numerous times and was involved in the process and then didn't show up at a crucial hearing. And they said well, actual notice satisfies due process. That's because he was in court listening to the judge when they told him when certain hearings would be set, correct?

MR. VOLESKY: Correct.

THE COURT: So they're saying he had actual notice because he was there to hear and see in court, right?

MR. VOLESKY: Correct.

THE COURT: Um, but in State versus Vogel, Judge Hertz's order in the case over in Armour specifically said we're going to have a hearing in Olivet on a certain day. Right?

MR. VOLESKY: Correct.

THE COURT: And the Supreme Court, that's where they talk about the due process and the proper notice? Right?

MR. VOLESKY: That, that's correct. That also came down to due process and proper notice grounds.

THE COURT: And they said that his order was vague?

MR. VOLESKY: Vague, correct.

THE COURT: And the order was vague because it didn't say the Defendant had to personally appear? Right?

MR. VOLESKY: Right.

THE COURT: But my order says that he had to personally appear.

MR. VOLESKY: That's correct. And so the instruction, Your

Honor, is intended to get at that, he had actual notice of that order of yours to appear.

THE COURT: Okay. What if the Court just says the Defendant had notice of the requirement to appear and I use 17-1-2?

MR. VOLESKY: I still think it needs to be actual notice in order to meet due process, Your Honor. And I think there are a number of ways you can prove actual notice. You can't willfully be -- you can't be a part of proceedings and willfully ignore your mail and then say you didn't get notice of the proceedings. The Supreme Court kind of spoke to that most recently.

The, the actual notice is that he, he actually was given notice of the date -- of the order to appear. The date, time, and place to appear.

And --

THE COURT: And that's what they say in Vogel?

MR. VOLESKY: (Nods head.)

THE COURT: That he has to know the date, time, and place and the means of compliance. And Judge Hertz's order in that case was deemed to be vague --

MR. VOLESKY: Right.

THE COURT: -- so they reversed the conviction?

MR. VOLESKY: That's right. And so if you have an order that's not vague, and it survives vagueness, he still needs

to have actual notice of that order to meet due process.
THE COURT: What's different about Vogel than this case is Vogel wasn't told on the record by the Judge when his pretrial conference was.
The facts show that they had an arraignment and then later on the state's attorney asked for a, some deadlines and the Judge set them deadlines unilaterally.
And then the order the Supreme Court deemed to be inadequate, or vague, did not say the Defendant must personally appear. It's required by statute in South Dakota in a felony case that the Defendant must appear. He doesn't have any choice. Statutorily it's required under Defendant's presence.
And then different than the Vogel case, this Court personally told him when to be here. He signed a bond form indicating when he had to be here. And an order that the Court subsequently entered said that he had to be personally present.
So, I'm going to go with 8, but I'm going to say -- I'm going to strike "actual." Do you have that statute, 17-1?
MR. COTTON: I do, Your Honor. Did you mean 8A, Your Honor, you're going to strike?
THE COURT: 8A.
MR. COTTON: (Hands the Court a statute book.)
(The Court is reading.)

THE COURT: What did you read me, Mr. Cotton?
MR. COTTON: Right below 17-1-2, Your Honor (indicating), Number 1 down here.
THE COURT: Oh you were -- Western Bank versus RaDEC Construction?
MR. COTTON: Correct.
Well, that cites 57A-1-201(25), which is a Uniform Commercial Code statute. I don't know if I can use that in this criminal sense.
Here's what I plan on doing, and I'll let each of you -- I'll give you an opportunity to further object, but I plan on instructing the jury by having one instruction that includes 17-1-1, notice is either actual or constructive.
2, actual notice consists of express information of fact.
3, constructive notice is notice imputed by law to a person not having actual notice.
And 4, every person who has actual notice of circumstances sufficient to put a prudent man on inquiry as to a particular fact, and who omits to makes such inquiry with reasonable diligence, is deemed to have constructive notice of the fact.
My plan on notice is just to simply instruct them on all of those because I don't think it's limited to actual notice. I think there can be constructive notice.

Mr. Cotton, any objection?
MR. COTTON: No objection, Your Honor.
THE COURT: Mr. Volesky? Any objection?
MR. VOLESKY: I would object to the constructive notice, the additional notice. It's our position that the actual notice is the, ah, correct standard for due process.
THE COURT: All right.
I notice in Vogel, they don't use the word "actual notice." In fact, they're very careful, in my opinion, with regard to the use of the word "notice."
I've always been of a strong opinion -- I've had other arguments with Mr. Cotton on other occasions before about that, that you have to know when court is. And you have to have that notice.
Um, but that notice, I think, can come in numerous ways. And it's possible that a Defendant who is not personally handed a paper notice could still have constructive notice because someone told them that, in which event, it would turn into actual notice. If there's enough information to hear -- to determine it was actually communicated, even if verbally but not by paper, that's a -- that's notice.
So the objection is noted. It's well taken, but it's overruled. I'm simply going to it give them the general law, from the law book, from 17-1 about notice. I'm not going to dress it up fancy. It's simply going to provide

them the law as set out by the legislature.
8A will be given.
2 is amended to remove "actual" notice. And the jury will be instructed on all of them.
Okay.
State have any other issues with any other instruction?
MR. COTTON: No, Your Honor.
THE COURT: Does the defense have any other issues --
MR. COTTON: Um --
THE COURT: Go ahead.
MR. COTTON: Sorry, Your Honor.
So Instruction 9 is still being given?
THE COURT: No, I'm replacing that with what I just said.
MR. COTTON: Got it --
THE COURT: 17-1.
MR. COTTON: -- okay. Nothing further, Your Honor.
THE COURT: There's one that's got to come out.
12.
Mr. Cotton?
Has, do you think Mr. Winckler's made any admission or is that applicable to the evidence here?
MR. COTTON: (Reading the instruction.)
I don't think we need it, Your Honor.
THE COURT: Mr. Volesky?
MR. VOLESKY: Are you talking about 12?

THE COURT: 12.
MR. VOLESKY: Yeah, I don't believe he's made any admissions, Your Honor. Um --
THE COURT: I think it's -- kind of a non sequitur instruction in this, what the evidence is. The way I see it.
MR. COTTON: I would agree, Judge.
THE COURT: No objection to the Court removing that? Mr. Cotton?
MR. COTTON: No objection, Your Honor.
THE COURT: Mr. Volesky?
MR. VOLESKY: No objection, Your Honor.
THE COURT: Same with 13.
MR. COTTON: No objection to that being removed, Your Honor.
MR. VOLESKY: No objection to that being removed, Your Honor.
THE COURT: 13 is removed; it's out.
And there's another one.
15. I don't think it applies.
MR. VOLESKY: Yep, it's out. (Nods head.)
THE COURT: Mr. Cotton?
MR. COTTON: That's correct, Your Honor, I don't think it applies here.
THE COURT: Any objection to the Court taking it out?

MR. COTTON: No objection from the State.
THE COURT: Mr. Volesky?
MR. VOLESKY: No objection, Your Honor.
THE COURT: 15 is out. It's removed.
It's not applicable to any evidence in the case.
And those are all I had.
Any, anything else on the jury instructions before the law clerk gets to work on them?
MR. COTTON: No, Your Honor.
Nothing from the State.
THE COURT: Mr. Volesky?
You can take a moment, make sure both of you, we're getting it all covered.
MR. VOLESKY: Okay.
(Looking at the instructions.)
(Shakes head.)
THE COURT: Nothing?
MR. VOLESKY: No, Your Honor, nothing.
THE COURT: All right. We'll be in recess until the law clerk gets the instructions all ready to go.
Kendall, meet me in chambers.
THE CLERK: Are we doing the lot?
THE COURT: Oh. Before we recess, we talked in the jury room -- or in the court -- in the chambers, not the jury room, we talked in chambers about juror 52, Mr. Pheifer.

And picking the alternate. By statute, it would be Sharon Kriz, who's the last juror drawn.
Or it could be drawn by lot with agreement of the parties. We talked about what we wanted to do. Both of you seemed to be a little unsure. There is an option, by stipulation, if you agree, you can agree that Curtis Pheifer, the juror whose wife had called upset, is the alternate and he could be excused. Although there's no basis to believe anything of what she said or called has impacted him.
We can go with Ms. Kriz by statute or draw by lot.
What are your thoughts?
MR. VOLESKY: We -- I guess I'm open to drawing by lot, Your Honor.
MR. COTTON: I'd prefer we go by statute, Judge.
THE COURT: Well, then I don't have any choice, if there's not consensus, it has to -- I have to follow the statute.
So it's going to be Ms. Kriz. All right?
I let her hear the closing arguments and then I announce you're the alternate and you're excused.
All right? Anything else?
MR. COTTON: Nothing from the State.
THE COURT: All right.
MR. VOLESKY: Nothing, Your Honor.
THE COURT: All right.
We're in recess until we get the instructions done.

(A recess is taken at 1:45 p.m. on December 13, 2024, after which the following proceedings occur in the courtroom outside the presence of the jury at 2:06 p.m. on December 13, 2024.)

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

(All comply.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: We are back in the courtroom. The Defendant is present with counsel. The State's present.

And I had the clerk give you that last packet of instructions. And wanted you to take a moment just kind of make sure that that's the order we talked about. Mr. Volesky, I know you were out for a while. I'll give you a few moments.

(Pause.)

MR. VOLESKY: That's correct, Your Honor, I just note on these that I do have the citation. There is the citation on these that we were provided. They look correct.

THE COURT: Yes. They're, ah, so you both know, there are six copies of instructions here (indicating). I thought that's where you put them.

THE CLERK: Yeah.

THE LAW CLERK: They're on the second shelf, Judge.

THE COURT: So you're allowed to use those, but I do send

them to the jury, okay?
MR. VOLESKY: Okay.
THE COURT: I let every two jurors share a packet of instructions. That's the way I do it.
MR. VOLESKY: Got you. Yeah. Yeah.
THE COURT: So if you want to rely on those. Does anyone anticipate projecting an instruction on the screen?
MR. COTTON: No, Your Honor.
MR. VOLESKY: No, Your Honor.
THE COURT: All right.
Then it's okay if you're using your sourced instructions for your argument, but if you're going to display anything to the jury, it must be an unsourced jury instruction.
So we did talk during the break off the record about the timing of the arguments. I'm not putting any time restrictions on your arguments, but if I think you're going too long, I'm just going to say that you have -- it's your five-minute warning. You both indicated to me your arguments will be relatively brief.
Anything else, Mr. Cotton?
MR. COTTON: No, Your Honor.
THE COURT: Anything else, Mr. Volesky?
MR. VOLESKY: No, Your Honor.
THE COURT: All right.
Notify the jury, the bailiff to bring the jury in, sheriff.

(The sheriff complies; pause in the proceedings.)

THE BAILIFF: All rise for the jury.

(All comply; jury in at 2:09 p.m.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: As I indicated before, at this point, I will read you the instructions of the law applying to the -- to this case.

Each side will then be given an opportunity to make their closing arguments. I can and do limit the lawyers on their time. And then the case will be finally submitted to you for your consideration.

The following instructions, numbered 1 through 19, constitute the final instructions of the law in this case. I understand you can read. But the law requires me to read these to you. I simply can't hand you these and send you back there assuming you'll read them, so the law makes me read them. Secondly, I don't expect you to keep it all to memory. There's a lot in here. But you get these instructions with you, in the jury room, and you get to use them in your deliberations.

I provide the originals and six copies. You are -- will be instructed later to, you know, elect a foreperson. And that foreperson brings the original instructions and the verdict form back into court with you.

These are the instructions.

(The Court reads the instructions to the jury from 2:11 p.m. to 2:22 p.m.)

THE COURT: Mr. Cotton. You may give your final argument.

MR. COTTON: Thank you, Your Honor.

Ladies and gentlemen of the jury:

You've now heard all the evidence that the State has to put forth in this case.

You have just heard the instructions as well. The State is required to prove the matter beyond a reasonable doubt. That is a burden that the State takes very seriously and is happy to take on. Nobody in this country should be convicted of a crime they did not commit. So I happily take on that burden.

Um, as you can see from the evidence, there's a bond form signed, releasing the Defendant from custody with the Court date on it.

There's an order from the judge, filed in our Odyssey system, which is note -- which his attorney received notice of, stating when his court date would be.

He did not appear for that court date.

His attorney and the clerk both testified that he was at an arraignment hearing on July 31st, 2023, and was told that his next court date would be a pretrial conference on November 8th, 2023, at 1:30 p.m.

At his arraignment, he was informed of the charges against him, which were felony charges, so he failed to appear in connection with the felony, which is the second element of the crime of failure to appear.

Or, excuse me, was the -- is the first, um, the first element. The second element was that he had notice.

As we've established he had notice via the bond paperwork, the letter from his attorney, actually being in court with his attorney and being told when the Court date would be, and then the order from the Court also stating that he was required to be here.

The State believes it has met its burden of proof beyond a reasonable doubt.

You also heard from the clerk and the, Mr. Goehring, his -- Hazen Winckler's prior attorney, that he did fail to appear for that pretrial conference in November.

With that being said, ladies and gentlemen of the jury, you have a very important task, that task is to enforce the law.

The State believes it has reached its burden and would ask that you return a verdict of guilty in this case. Thank you.

THE COURT: Thank you, Mr. Cotton.

Mr. Volesky.

MR. VOLESKY: Members of the jury:

The Defendant (indicating), Hazen Hunter Winckler, is now afforded an opportunity to argue the case with you. But I'm not going to argue with you. I'm going to discuss some fundamental principles, which guide your consideration in this case.

America is by far the greatest experimental nation that ever existed. Built on a foundation of ideals from the Declaration of Independence, the Constitution, and the Bill of Rights, the presumption of innocence, and the right not to testify.

The proposition that before the government could take away life, liberty, or property, due process is required, including notice and opportunity to be heard.

In December 1770, John Adams, our forefather who would go on to become the second president of the United States, defended British soldiers accused of killings in the Boston Massacre. He did so because he upheld the ideals upon which America would be founded, stating, quote: What you, what you doubt of, do not do. Err on acquittal rather than punishment.

Because of our existence, so many around the globe have looked to us as a model, an example of freedom, liberty, democracy. A beacon of hope and a light to the future. You, members of the jury, are the embodiment of these ideals, which you uphold by your solemn duty in this

courtroom today.

Ultimately, it's what you determine to -- it's what you determine to be the facts, that's what's important. And we'll all live with that.

You have the empowered to do justice. You're empowered to ensure that this great system of ours works.

Listen for a moment. From history. Frederick Douglass, who was an adviser to one of our great forefathers, President Abraham Lincoln. He said shortly after the slaves were free, quote: In a composite nation like ours, as before the law, there is no rich, no poor, no high, no low, no white, no black, but common country, common citizenship, and a common destiny.

That marvelous statement was made more than 150 years ago. It's an ideal worth striving for and one we still strive for. Certainly in this great nation of ours, we're trying. With a jury such as this, we hope we can do that in this particular case.

Members of the jury, as we conclude this trial, I want to discuss with you the fundamental principles that guide our justice system. The presumption of innocence is the cornerstone of our legal system.

Hazen Winckler, a young Native American man, stands before you (indicating) -- sits before you, rather, presumed innocent of the charge against him.

This presumption has remained with him throughout the trial and can only be overcome if the State has proven his guilt beyond a reasonable doubt.

It is also fundamental that a defendant has a right not to testify. A right sacredly protected by our Constitution. This is a right that cannot be held against the Defendant in any way.

Our system requires that the burden of proof beyond a reasonable doubt lies entirely with the State, and the Defendant is under no obligation to prove his innocence or provide any explanation.

The State has the burden in this case.

They must present evidence that convinces you beyond reasonable doubt that the Defendant was ordered by a court to appear before it, that he had notice of that requirement, and that he failed to appear.

It's a high standard. The highest in our legal system. And it is not enough for the State to simply present a plausible or a likely scenario. They must provide evidence that leaves no room for any reasonable doubt.

I urge you to carefully consider whether the State's evidence meets the stringent and heavy burden required to convict. We heard the evidence presented by the State. There are gaps, uncertainties, inaccuracies, and plausible explanations that are unexplained in the State's case.

That leaves reasonable doubt, members of the jury.

We heard the State present evidence of a bond form, or bond paperwork. It was (indicating) Exhibit 1. This was produced by the Charles Mix County Sheriff's Office, it says. This is not a court order. The Judge didn't sign this. This isn't issued by a court.

In fact, if you look at the Court's original bond order for the case (indicating) that you have as Defendant's Exhibit A, specifying the conditions of release, the Court's actual bond order states nothing about appearing for a pretrial conference on November 8th, 2023.

The State has produced no other bond form.

Next, you heard evidence about an arraignment. On July 31st of 2023.

The Defendant was there. The Court gave its order from the bench. And Exhibit 4 is the transcript (indicating). The relevant part of Exhibit 4, page 12 lines 17 through 24, is the Court giving the oral argument -- or, the oral ruling from the bench, setting a pretrial conference date, but not stating anything about the Defendant being required to be there.

Then, you have the Court's order setting date and time for trial and that's Exhibit 2 you'll see. Exhibit 2 was issued after the arraignment on July 31st of 2023. There's absolutely zero evidence that the Defendant ever actually

received the order marked as Exhibit 2.
Where's the certificate of service?
We heard, from the Clerks of Courts, Clerk Robertson, testimony, no certificate of service on Exhibit 2. No certification that it was ever provided to the Defendant. I asked the State, where's the certificate of service at? There is no certificate of service. No evidence that the Defendant actually had notice of the Court's requirement to appear at the pretrial conference.
Finally, we heard from the Defendant's former counsel, Mr. Goehring. His testimony added nothing to support notice. Mr. Goehring never testified that he sent the Defendant a copy of Exhibit 2, the order requiring him to appear. Mr. Goehring merely stated that he sent the Defendant a letter, and you can read it in the transcript. He didn't produce any letter for evidence. What did it actually say? If it was even sent?
Most importantly, we heard Mr. Goehring admit on the stand that he doesn't even know if Mr. Winckler actually received his purported letter. He was Mr. Winckler's former attorney, and Mr. Goehring was enable to testify if Mr. Winckler had actually received notice of a requirement to appear on November 8th, 2023.
The State's evidence is weak. It's lackluster. And it's insufficient to meet the high and heavy burden required by

our system of justice.
As you deliberate, remember that you are empowered to do justice. The presumption of innocence is not a mere formality. It is a profound principle that insures fairness and justice. It requires that in the case of any reasonable doubt, you must return a verdict of not guilty. The State has not met its high and heavy burden in this case of proof beyond a reasonable doubt, as required to convince -- to convict the Defendant, Hazen Winckler, of the crime charged (indicating).
The evidence presented is insufficient. You, members of the jury, are therefore empowered by your solemn duty in our great system to uphold the presumption of innocence and return a verdict of not guilty.
Thank you for your time.
THE COURT: Thank you, counsel.
Mr. Cotton, you can give your final argument.
MR. COTTON: Thank you, Your Honor.
Ladies and gentlemen:
Once again, Mr. Winckler was given notice four different times. At his arraignment hearing on the bond paperwork, that he signed. Notice in the order from the Court, which was dated in August, so, after Exhibit A, which again, is a preliminary sent by -- a preliminary bond set by the magistrate judge. It happens in every single case. Judge

Anderson then had an arraignment, where he set additional conditions, including the court date, which was on the bond paperwork, signed by Mr. Winckler before his release. Um, and further, Mr. Goehring did send him a letter. So, the State believes that it has reached its burden of proof. Please go back, read the transcripts, look over the bond paperwork, and the Court order. Just look at the exhibits. Thank you.

THE COURT: Thank you, counsel.

At this time, the alternate is announced. And there's two ways it can be done. One is that the -- the default is that the last juror drawn is the alternate and the other is it can be drawn by lot. And in this case we're going with the default rule, so Sharon Kriz, you are the alternate juror. You are excused at this time. I'd like to thank you for taking the time today and sacrificing your day to come in here for this important service, but as you heard me tell the other people how important it is and I do appreciate you being here.

But we don't need you today. We've got the 12 we need and you're excused at this time. You're relieved of your admonishment. You're free to talk about your experience as a juror at this time.

JUROR MS. KRIZ: Okay.

THE COURT: You may go.

You'll give your laniard to the bailiff.

(The alternate juror, Ms. Sharon Kriz, exits the courtroom.)

THE COURT: The bailiff will now come forward and be sworn.

(The bailiff complies and is sworn.)

THE CLERK: Do you solemnly swear that you will take this jury to a private and convenient place, that you will not allow any person, including yourself, to communicate with the jurors except by order of the Court, until they have reached a verdict, and that when a verdict has been reached, you will return them into the Court, so help you God?

THE BAILIFF: I will.

THE COURT: All right.

Now, you'll go with the bailiff to the jury room to deliberate the case.

Now, if you -- in my instructions if you have any questions, you can send a note by the bailiff. And then the county would pay for your supper, if you're here that late. If you deliberate very long, it looks like you're going to get into the dinner hour, you need to let the bailiff know. Our options are essentially ordering pizza. We can chaperone you to a restaurant. That's Pickstown or Wagner or Geddes, so it's not very convenient for Lake Andes. Usually the jurors order a pizza or chicken or

something like that. The point is, if you get to that point in the day, let the bailiff know so we can get things promptly ordered for you.

All rise for the jury.

(All comply; jury out at 2:40 p.m.)

THE COURT: Please be seated.

(All comply.)

THE COURT: We remain in the courtroom. All parties and counsel are present. We're outside the presence of the jury.

Anything else by the State?

MR. COTTON: Nothing further, Your Honor.

THE COURT: Anything, Mr. Volesky?

MR. VOLESKY: Um, no, Your Honor.

THE COURT: All right. Counsel is to remain available. Mr. Volesky, I called you the other day and I got that phone number from Mr. Cotton. It's a 999, I think?

MR. VOLESKY: Correct.

THE COURT: Is that what I call you on now?

MR. VOLESKY: Yes.

THE COURT: Okay. I have still have it written on my -- in my chambers, so if we get a notes from the jury, I want you to respond as promptly as you can, so we can read the note together and fashion a response to it. And, so try and be prompt when we call you, all right?

MR. VOLESKY: Okay.
THE COURT: We're in recess until the jury reaches a verdict.
MR. VOLESKY: Okay.
THE COURT: Kendall?
THE LAW CLERK: Yes.
THE COURT: Give these instructions to the bailiff. I'm instructing the law clerk to give the original instructions to the bailiff for delivery to the foreperson. And they've got all them copies you made?
THE LAW CLERK: Yep. He got all of them.
THE COURT: All right.
(The proceedings then recess at 2:43 p.m. on December 13, 2024, after which the following proceedings occur in the courtroom at 3:05 p.m. on December 13, 2024.)
THE COURT REPORTER: All rise in honor of the Court.
(All comply.)
THE COURT: Thank you. Please be seated.
(All comply.)
THE COURT: The record should show that it is 3:06 p.m. We are in the courtroom. The Defendant and counsel are present. And Mr. Cotton appears for the State. I was advised by the bailiff that the jury has reached a verdict. Sheriff, tell the bailiff to conduct the jurors into the

courtroom.

(The sheriff complies.)

THE SHERIFF: (Out into the hallway): Mark.

(Pause in the proceedings.)

THE BAILIFF: All rise for the jury.

(All comply; jury in at 3:07 p.m.)

THE COURT: Thank you. Please be seated.

(All comply.)

THE COURT: The record should show we're in the courtroom. All necessary parties are present, including the Defendant and his counsel, and the state's attorney.

At this time it's required that the clerk call a roll of the jurors who decided the case.

Clerk will call the roll.

THE CLERK: Richard Lucas?

THE JUROR: Here.

THE CLERK: Kurt Breen?

THE JUROR: Yes.

THE CLERK: Linda Ellwanger?

THE JUROR: Here.

THE CLERK: Douglas Gunnare?

THE JUROR: Here.

THE CLERK: Jarod Tegethoff?

THE JUROR: Here.

THE CLERK: Lynn Stather?

THE JUROR: Here.
THE CLERK: Derek Dickerson?
THE JUROR: Here.
THE CLERK: Gary Boltjes?
THE JUROR: Here.
THE CLERK: Curtis Pheifer?
THE JUROR: Here.
THE CLERK: Ross Beeson?
THE JUROR: Here.
THE CLERK: Milton Mallory?
THE JUROR: Here.
THE CLERK: Kristen Maynard?
THE JUROR: Here.
THE COURT: Is that it?
THE CLERK: Yeah.
THE COURT: Mr. Cotton, are you satisfied this is the jury that was selected to try the issues in this case?
MR. COTTON: Yes, Your Honor.
THE COURT: Mr. Volesky, same question?
MR. VOLESKY: Yes, Your Honor.
THE COURT: Has the jury reached a verdict?
THE FOREPERSON: We have, Your Honor.
A JUROR: Yes.
THE COURT: Have you elected a foreperson?
THE FOREPERSON: We have.

THE COURT: Is that you, Mr. Dickerson?
THE FOREPERSON: Yes, Your Honor.
THE COURT: Have you filled out and completed the jury verdict form?
THE FOREPERSON: I have.
THE COURT: You will fold it in half with the contents inside. You will hand that to the bailiff.
(The foreperson complies; the bailiff hands the verdict to the Court.)
THE COURT: The bailiff will return the verdict form to the foreperson.
(The bailiff complies.)
THE COURT: Mr. Dickerson, you will stand and read the verdict.
THE FOREPERSON: We, the jury, duly impaneled in the above-entitled action, and sworn to try the issues therein, find the Defendant, Hazen Hunter Winckler, as to the charge of failure to appear, guilty.
THE COURT: And you've signed and dated it this day?
THE FOREPERSON: Yes, sir.
THE COURT: You will deliver the verdict to the bailiff. Bailiff will file it with the clerk, who will record it in the minutes.
(All comply.)
THE COURT: Does the State desire that the jury be polled?

MR. COTTON: No, Your Honor.
THE COURT: Mr. Volesky, do you desire that the jury be polled?
MR. VOLESKY: Yes, Your Honor.
THE COURT: All right. Every party has a right, including the State, to poll the jury.
And so the clerk will call another roll. And if you agree with the verdict as read by the foreperson, you will say yes. If you disagree with the verdict as read by the foreperson, you will say no.
So the question posed, is this your verdict? Yes or no? Tuesday we had people saying guilty, you know, whatever. That's not the issue. That's, that's not -- we're not asking for your vote.
The question is, do you agree with the verdict, is that your verdict?
The clerk will call the roll.
THE CLERK: Richard Lucas?
THE JUROR: Yes.
THE CLERK: Kurt Breen?
THE JUROR: Yes.
THE CLERK: Linda Ellwanger?
THE JUROR: Yes.
THE CLERK: Douglas Gunnare?
THE JUROR: Yes.

THE CLERK: Jarod Tegethoff?
THE JUROR: Yes.
THE CLERK: Lynn Stather?
THE JUROR: Yes.
THE CLERK: Derek Dickerson?
THE JUROR: Yes.
THE CLERK: Gary Boltjes?
THE JUROR: Yes.
THE CLERK: Curtis Pheifer?
THE JUROR: Yes.
THE CLERK: Ross Beeson?
THE JUROR: Yes.
THE CLERK: Milton Mallory?
THE JUROR: Yes.
THE CLERK: Kristen Maynard?
THE JUROR: Yes.
THE COURT: All right.
The verdict is unanimous.
At this time, I would like to thank you for your service. I can't thank you for a verdict and I do not do so, but I thank you for your service.
You heard what we've said before about how good of a system we have in our country and it all relies upon you people sacrificing your day for this important civil service. Without you, it doesn't work.

As I've said, it's -- there's a lot of brilliance to how our forefathers put it all together and we take all of you from different walks of life, different ages, experiences, and perspectives, and you sit and hear the evidence. And that's one good way to decide a case. That everybody has a voice. And you have to reach unanimity to make a decision, either way.

And so it only works with your help and sacrifice, so my much appreciation to you for coming in and doing this today.

You are relieved of your admonishments. You're free to talk about your experiences as a juror. You can post about it and blog about it and talk about it.

More importantly, if you don't want to talk about it, you don't have to and no one can force you to do so.

So, at this time, you're excused. And when you get up to leave, you can take your notes with you, if you want to. If you don't want them, you can leave them here. But when you get up to leave, hand the bailiff your laniard, and then you'll be free to go.

All rise for the jury.

(All comply; jury out at 3:14 p.m.)

THE COURT: Please be seated.

(All comply.)

THE COURT: We're in the courtroom. The jury's been

excused.
Mr. Cotton, you're directed to submit a judgment of conviction in accordance with South Dakota statute. All post-trial motions will be due in accordance with the rules of criminal procedure. Those are timed, whether they're a new trial or whatever the case may be. You can file them directly with the clerk, as far as getting them noticed up for hearing as well.
Does the State desire a presentence investigation?
MR. COTTON: No, Your Honor.
We do still have the matter of --
THE COURT: I guess we still have another trial before we get to that point, don't we?
MR. COTTON: Correct, Your Honor.
THE COURT: So, for this record, just to be clear, this trial was to commence on Wednesday. There were water main breaks around Lake Andes. It affected the courthouse where we didn't have water Wednesday until noon so I had to move the trial. I moved it to today. Today was the intention of the parties to try the Part II Information. And the Defendant wants a jury trial on that issue as well.
Mr. Volesky, is that still the case? A trial on that? Either a jury trial, a court trial, or admitting to some or a portion of the Part II Information?
MR. VOLESKY: Ah, yes, Your Honor. At this time nothing's

changed in that regard.
THE COURT: All right.
So, um, Mr. Winckler has other cases pending. We have a hearing set for Monday. And we're just going to have to regroup on Monday to figure out the status of those and reset that Part II Information trial as soon as we can. An interesting question has arisen, in my mind. The 180-day rule says we have to have a trial within 180 days on the indictment; I'm not too sure we have to have a trial in 180 days on the Part II. I don't -- I've never seen that issue raised before. And I don't know exactly what the law is. So we'll talk a little bit more about that on Monday.
The Defendant is remanded to the custody of the sheriff. Anything else by the State?
MR. COTTON: No, Your Honor.
THE COURT: Anything else, Mr. Volesky?
MR. VOLESKY: No, Your Honor.
THE COURT: That concludes the matter.
MR. VOLESKY: Thank you.
MR. COTTON: Thank you, Judge.
THE COURT: State will submit the judgment.
(The trial proceedings then conclude at 3:17 p.m. on December 13, 2024.)

STATE OF SOUTH DAKOTA)
:ss REPORTER'S CERTIFICATE
COUNTY OF DOUGLAS)

This is to certify that I, Melissa A. Odens, RPR, Official Court Reporter and Notary Public in and for the above-named county and state, do hereby certify that I reported the proceedings of the foregoing case, and the foregoing 162 pages, inclusive, contain a full, true, and accurate record of the proceedings so had.

Dated at Armour, South Dakota, this 14th day of March, 2025.

My commission expires: April 4, 2026

/s/ Melissa A. Odens
Melissa A. Odens, RPR
Official Court Reporter
and Notary Public

First Judicial Circuit Court

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Circuit Court Judge
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Circuit Judges
Bruce V. Anderson
Patrick Smith
Chris Giles
Tami A. Bern
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Magistrate Judges
Donna Bucher
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November 26, 2024

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Re: State of South Dakota v. Hazen Winckler - 11CRI297

Dear Counsel:

This matter came before the Court on a motion to dismiss for violation of the 180 day rule filed by the Defendant, which was briefed by both sides, but never set for a hearing. The Defendant has various other cases pending with this Court, including a case of possession of a controlled substance and possession with the intent to distribute a controlled substance (11CRI23-172). The Defendant was released on bond on the possession of a controlled substance case and failed to appear for his arraignment. As a result, the State charged the Defendant in this case with felony failure to appear. Consequently, this case is derivative of the primary case against the Defendant. On August 13, 2024, the Defendant filed a motion to dismiss. On August 21, 2024, the State replied to the Defendant's motion to dismiss and on August 22, 2024, the Defendant filed a responsive brief. The matter was never set for a hearing before this Court and counsel reminded the Court of the motion during an informal status conference in chambers during the week of November 11th, 2024.

FACTS

The State filed a complaint initiating this case on November 14, 2023, alleging that the Defendant had failed to appear at his arraignment on on his primary charge (11CRI23-297) on November 8, 2023. A warrant was issued for the Defendant's arrest on November 22, 2023. The Defendant was arrested on January 28, 2024. The Court's file shows that the clerk went to conduct an initial appearance and the Defendant advised that he would be representing himself (see clerk notes). On February 13, the clerk notes indicate that there was good cause to continue

the preliminary hearing because the Defendant was now requesting a Court appointed attorney. On February 22nd, the Defendant was indicted for failure to appear and a preliminary hearing was not needed.

Initially an arraignment was scheduled on the indictment for March 11, 2024. A hearing was also held on the Defendant's controlled substance case on February 14, 2024, at which time, the Defendant had a conflict with his initial Court appointed counsel and wrote a letter to the Court (filed) asking for substitute counsel. The Defendant became disruptive in the courtroom on this day when the court initially denied the motion for substitute counsel and needed to be restrained by law enforcement. The Court denied his motion to terminate his counsel. The Court advised his initial Court appointed counsel, Keith Goehring, to give the Defendant a few days to cool off and then go back and talk to him in the hopes that any conflict could be resolved. Sometime later, his Court appointed counsel contacted the Court, and based upon that conversation, the Court determined that an obvious irreconcilable conflict exists that cannot be mended between Mr. Goehring and the Defendant. The Court sent an email confirming this on March 6, 2024, which is filed for the record. On March 11th, the Court appointed current counsel, Tucker Volesky, to represent the Defendant. The Court conducted an arraignment on the indictment in this case on April 8, 2024. Up to this time, most of the delay was caused by the Defendant refusing to allow the clerk to complete his initial appearance, his delay in getting Court appointed counsel for his preliminary hearing, and his letter motion in 11CRI23-297, requesting substitute counsel and the Court's consideration and resolution of that request.

At the arraignment, the Court set a trial for August 19, 2024. On May 13, 2024, the Court entered an order which scheduled a separate motion hearing to consider all of the Defendant's pending cases, including a motion to dismiss for lack of jurisdiction (tribal jurisdiction) and a motion to suppress evidence in the controlled substance case, which he filed on April 25, 2024. Consequently, the order setting a hearing filed on May 13, 2024, was to address the various motions the Defendant had filed in his other cases, as the Court was trying to keep all of the cases together on the same timeline as much as possible. It was agreed between the parties that all cases would be continued until the Court could resolve the Defendant's motion to dismiss for lack of jurisdiction, which was filed in all other cases and in this case on August 14, 2024. On August 13, 2024, the Defendant had filed the present motion to dismiss for violating the 180-day rule. On October 1, 2024, this Court issued its Memorandum Decision denying the motion to dismiss for lack of jurisdiction. Based on the prior continuance, the trial in this case is now set for December 9, 2024. This motion, filed August 13, 2024, as well as the motion to dismiss based upon lack of jurisdiction, stopped the 180-day clock from running as per the statute.

In this case, the Defendant has caused delay by filing a request for substitute counsel and the Court's efforts to resolve that issue. The Defendant also was refusing to accept Court appointed counsel initially, which caused a delay in him having a preliminary hearing on the matter. The Defendant has also filed motions in this case and his primary case asserting that this Court lacks jurisdiction. All of those motions in his various cases were resolved in one memorandum opinion and order in early October of 2024.

RULING

Based upon this Court's assessment of all of the facts, when it excludes all of the delay caused by the Defendant's actions, including his motions, the Court finds that the 180-day rule

has not expired, the delay having been caused by the Defendant's actions and motions, and that the motion do dismiss on the 180 day rule should be denied. The State shall submit detailed findings of fact and conclusions of law in support of this Memorandum Decision. The State should be mindful in doing so that actions taken in 11CRI23-297 and 11CRI23-172 both had an impact on this case and any delay that may have occurred.

Sincerely,

Hon. Bruce V. Anderson
Circuit Court Judge

cc: Clerk of Courts for filing

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

STATE OF SOUTH DAKOTA, Plaintiff, vs. HAZEN HUNTER WINCKLER Defendant.	CR-23-297 ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The above entitled matter having come before the Honorable Bruce V. Anderson on the 14th day of August, 2024, pursuant to a Motion to Dismiss filed by Defendant through his counsel of record Tucker J. Volesky, the State being represented by Chelsea Wenzel, Assistant Attorney General and Steven R. Cotton, Charles Mix County State's Attorney; the parties having entered into a stipulation and agreement as to the underlying facts; the Court having entered a briefing schedule and the parties respective briefs having been filed with the Court for its consideration herein; and the Court having been fully advised in the premises, it hereby

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

10/11/2024 3:14:22 PM

BY THE COURT:

BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

Attest:
Robertson, Jennifer
Clerk/Deputy

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

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

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

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

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

Facts

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

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

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

Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 15th day of October, 2024.

BY THE COURT:

Hon. Bruce V. Anderson
First Circuit Judge

ATTEST:
Clerk of Courts

FILED

APR - 7 2022

Lori Roberts
CHARLES MIX COUNTY CLERK OF COURTS

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

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

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

FACTS

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Of these six categories, the first four may be generically referred to as "trust lands" and the last two as "fee lands." *Id.* at 1001-1002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 7 day of April, 2022.

BY THE COURT:

Hon. Bruce V. Anderson
Circuit Court Judge

ATTEST:

Clerk of Court

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

STATE OF SOUTH DAKOTA, Plaintiff,
-vs-
HAZEN HUNTER WINCKLER, Defendant.

11CRI23-297

TRANSCRIPT OF

MOTIONS HEARING

STATE OF SOUTH DAKOTA, Plaintiff,
-vs-
HAZEN HUNTER WINCKLER, Defendant.

11CRI23-172

TRANSCRIPT OF

MOTIONS HEARING

STATE OF SOUTH DAKOTA, Plaintiff,
-vs-
HAZEN HUNTER WINCKLER, Defendant.

11CRI24-60

TRANSCRIPT OF

MOTIONS HEARING

STATE OF SOUTH DAKOTA, Plaintiff,
-vs-
HAZEN HUNTER WINCKLER, Defendant.

11CRI24-85

TRANSCRIPT OF

MOTIONS HEARING

B-E-F-O-R-E

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

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

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

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For the Defendant: Tucker J. Volesky
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P-R-O-C-E-E-D-I-N-G-S

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

* * *

I-N-D-E-X

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

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

(All comply.)

THE COURT: Thank you. Please be seated.

(All comply.)

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

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

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

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

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

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

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

MR. VOLESKY: I've reviewed it.

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

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

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

THE COURT: Yeah, and Sixth Circuit shouldn't be doing that because it causes those pleadings to be hidden. And I can scroll up and down, because I saw your email and I knew there was an affidavit, but I scrolled up and down and I didn't see one. And then finally I click on brief, and I'm like, well there it is. It's hidden behind that label. So I've instructed her to separate that out. Okay?

MS. WENZEL: I'm happy to refile too or whatever's easiest, I'm happy to do.

THE COURT: What's easier?

THE CLERK: It's done.

THE COURT: You got it done already?

THE CLERK: It's already done.

THE COURT: You're done, all right.

Going forward, I don't know, maybe you want to talk to Judge Klinger about that issue, that those things can be hidden when they're filed in that manner, so I always like mine all separate. And it's a lot easier to open them that way too.

All right.

Mr. Volesky, do you feel you're ready for arguments today?

MR. VOLESKY: I am, Your Honor.

THE COURT: All right.

And, Ms. Wenzel, the same question?

MS. WENZEL: Yes, Your Honor.

THE COURT: All right.
Mr. Volesky, it's your motion; you go ahead. I'm going to give you about 10 minutes.
MR. VOLESKY: Okay. Thank you, Your Honor.
May it please the Court, if I would be able to sit to look at my notes, if that's okay?
THE COURT: At your pleasure. You can stand or sit.
MR. VOLESKY: Thank you, Your Honor.
This case is resolved by the fundamental proposition that decisions about sovereign rights are for Congress to make, and Congress makes those decisions by speaking clearly. The Court should dismiss the cases against the Defendant because the text makes clear that Congress never disestablished the Yankton Sioux Reservation. And never extinguished the Indian title to the allotted lands.
Four concise points this afternoon, Your Honor.
First, the Yankton Indian title was recognized with a reservation established in the Treaty of 1858.
In the Act of 1894, Congress expressly confirmed allotments that had been made on the reservation lands, guaranteed the tribal rights, promised that Congress shall never alienate any part of these lands from the Indians, describing the lands as comprising reservations of the Yankton Sioux and specifically reinforcing the 1858 Treaty promises.
The texts of the 1858 Treaty and the 1894 Act expressly

identify Yankton lands as reservation and Indian allotments, recognizing and guaranteeing the title of the Yankton Sioux Indians. The status of the lands was thus established by Congress.

Second, Congress did not disestablish or extinguish the Yankton Sioux Indian title described in treaty and statute. In fact, Congress was keenly aware of the hallmark language required to do so, and it was rejected in the 1894 Act. Congress sought a session agreement. And precisely because the Tribe negotiated to preserve and guarantee the allotments in perpetuity as their continuing homelands, Congress expressly did just that with the language used under the Act. And it did so against the backdrop of existing treaty rights, which were also expressly reinforced. Those congressional judgments should be respected.

Third, Congress did not transfer criminal jurisdiction over Indians in Indian Country to South Dakota. The Tribe acknowledged its dependence on the United States in the 1858 Treaty, stipulating that all matters would be disposed of and decided federally.

At statehood, the General Crimes Act was in place, extending federal jurisdiction to Indian Country. And the Major Crimes Act established exclusive federal jurisdiction.

When Congress overrides treaties and statute and transfers jurisdiction to state, it does so expressly. And it has not done so here.

Finally, retroactive -- retroactivity, or the parade of horrible possibilities if the Court decides in favor of the Defendant in this case.

Although not particularly advanced by the State, it was noted as a current -- concern of this Court in Selwyn. Presumably, there may be habeas petitions if the Court decided in Defendant's favor.

However, the State would have those numbers, and it hasn't suggested that there is anything like hundreds of cases waiting in the wings to have their convictions overturned. Even if there were, statute of limitations and other procedural bars would need to be overcome.

And assuming those bars were overcome, the ultimate result would be that the Defendant would likely be subject to greater penalties in federal court.

In any event, the parade of horribles, or retroactivity, provides no reason to disregard the plain text, as discussed in McGirt. Because Congress is in the best place to change the text and add text if it wants to, as it routinely does in Indian Country, Congress knows how to do this. And the job to fix any consequences, if the Court perceives them, is with Congress.

The cases at bar, Your Honor, are governed by a plain text requirement, which has everything to do with the fact that these boundaries were set up by Congress. And so if you're going to undo that, Congress needs to speak and Congress needs to speak clearly.

You can call it a reservation, Indian allotment, dependent Indian community, or Indian lands. The text would be the same because we're talking about transfers of sovereign rights. And that must be done clearly in the text by Congress.

Thank you, Your Honor.

THE COURT: Ms. Wenzel.

MS. WENZEL: So I would break my argument down just a little bit differently.

Um, Indian Country is defined in, um, federal, ah, statute however refer to it as 1151. I think we're all familiar with that. Under subsection (a), commonly known as the reservation land, that's all land within the limits of Indian -- any Indian reservation under the jurisdiction of the United States government notwithstanding the issuance of any patent, including rights-of-way running through the reservation.

It is undisputed in the 8th Circuit -- well, it's undisputed, according to the Supreme Court of the United States, that any ceded lands are now -- any ceded lands

that were, um, sold to the United States diminished the reservation and would not be reservation land under subsection (a).

In the 8th Circuit under Gaffey, Podhradsky, Army Corps, um, it is undisputed and well held -- or, I guess I shouldn't say "undisputed," but it is conclusively held that the reservation was further diminished by any allotment, individual allotment that was patented in fee, and that which afterwards passed out of Indian hands.

Now, that is derived from that language of the 1894 Act. I understand that, um, the defense does not agree that that was clear in plain language from Congress, but the 8th Circuit has decided it was.

And this Court is bound both by the South Dakota Supreme Court and because of the full faith and credit, um, doctrine, also the federal court.

So that is -- that takes care of (a).

I would then like to go to subsection (c).

All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the state. Again, the 8th Circuit has conclusively held that the diminishment, um, of the lands through -- the diminishment of the reservation, excuse me, through the individual allotments that were patented in fee and that have subsequently passed out of Indian hands also would not

be Indian Country under subsection (c).
And I think when we look at how an allotment is defined that's a specific, um, term of art in Indian law. An allotment is ordinarily -- according to Black's Law Dictionary, ordinarily and commonly used to describe land held by Indians, after allotment, and before the issuance of the patent in fee that deprives the land of its character as Indian Country.
You know, the defense talks about Indian title. Indian title, according to Black's Law Dictionary, is not necessarily ownership or a sovereign right, but it is permissive right of occupancy granted by the federal government to aboriginal possessors of the land. It is possession, it is not ownership, and it can be extinguished by the federal government.
Extinguish it means -- extinguishment, excuse me, means the destruction or cancellation of a right. In this case, the cancellation of the possessive rights.
When the fee patents -- when the land, excuse me, when the allotments were patented in fee to individual Indians, that fee -- fee simple, fee absolute, we all remember from property, that's the whole bundle of sticks. That was given to individual Indians.
And at that point, any possessory right for the Tribe is gone. Because that land was passed in fee to an individual

person.
That --
THE COURT: So you're saying -- you're, you're focusing there on the individual Native American's rights as opposed to the Tribe's rights? The Tribe collectively?
MS. WENZEL: Yes. Because at the time that section 1151 was passed and before, because, as the 8th Circuit has explained, the SCOTUS has explained, 1151 codified prior caselaw having to do with Indian rights. The only thing that really changed is the thought that -- or, excuse me. Let me rephrase that.
What it codified, or at the time what was codified, was that Indian title had to do with Indian ownership and that meant communal title at the time. And when we're interpreting a statute, we have to look at the meaning of the words, the plain language, and their meaning at the time.
So that was the meaning at the time. So what 1151 did differently is saying that well, if it's a reservation, we're going to say no matter who owns the land, whether it was patented in fee or not, that is Indian Country if it is reservation land.
Allotments are off the reservation. So they are not reservation land, but an allotment by definition is a specific, again, Indian term of art, meaning an area of

land held in trust or alienated by the federal government but held in trust for the benefit of a specific person. Once it's patented in fee to that individual, it's no longer an allotment. It's a former allotment. So, under subsection (c).

Now, I realize that for purposes -- and I don't mean to get into the weeds, although I'm very, very good at it. But I realize that for purposes of this case, it doesn't matter whether you would agree with me on that part or whether, um, when we talk about Indian title or extinguishment of Indian title, that would mean the passing from Indian hands, which is what the 8th Circuit has, um, conclusively held. I think at this point, and according to Army Corps, the 8th Circuit has just said, you know, we're actually not going to speak on or haven't had the occasion to speak on what happens if the land is just patented in fee but still held, um, by -- or, in Indian ownership. So, again, for purposes of this case, it doesn't matter, 'cause the 8th Circuit has said once it passes out of Indian ownership, for sure, it's no longer an allotment under subsection (c). Um, I think that's all covered by this Court's Selwyn decision. I think the Selwyn decision did a nice job of saying what I'm trying to say but in a very concise manner, so I appreciate that.

The only thing that really wasn't covered in Selwyn was

subsection (b).
So all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of any state, that codified United States v. Sandoval. And United States v. McGowan.
And according to, um, Alaska v. Native Village of Venetie, a Supreme Court of the United States case, there are two requirements to be a dependent Indian community. First, federal set-aside.
That means that the land has to be held in trust or, um, otherwise set-aside by the federal government.
Now in Sandoval, which was also brought up by the --
THE COURT: Let's go to the Treaty of 1858.
MS. WENZEL: Okay.
THE COURT: That was a set-aside.
MS. WENZEL: Yes. I would agree (nods head).
THE COURT: But that's, that's 1151(a)?
MS. WENZEL: Yes. So the federal set-aside requirement because under subsection (b), it's not reservation and not an allotment. So they are supposed to be --
THE COURT: It's an odd situation.
MS. WENZEL: -- I don't want to say mutually exclusive, but they are, they have three different meanings, right? And I think they are supposed to, for the most part, or be

separate or at least for purposes of understandability, be separate. So yes, that is a federal set-aside, but like you said, that would be under subsection (a).

So the examples of a federal set-aside is land, um, held in trust by the United States for the benefit of the Tribe. Or, um, I think the example in Sandoval was, um, the Pueblos in New Mexico. And how the -- I don't think it was technically qualified -- or classified as a reservation. But they had noted that that was the Tribe's land. And it was interesting 'cause in Sandoval, they talked about it being held in fee. But then they also said, but not really. Um, because there is still the restriction on alienation. So that is what sets it apart from an allotment.

And that federal set-aside is important because, um, Congress has -- how it's explained in Venetie, Congress has the plenary power over Indian affairs. And so there has to be some move by Congress or some action. So that's, again, the held in trust, um, otherwise set-aside, I think the miscellaneous trust lands in Podhradsky are all examples. Here, we don't have that. This is privately owned land. It was a federal set-aside at one point, but it is no longer now. And the 8th Circuit has conclusively held that.

THE COURT: Well, the Supreme Court held that it was

diminished.
MS. WENZEL: Yes.
THE COURT: And you're saying the subsequent rulings in Gaffey and Podhradsky further diminished that set-aside?
MS. WENZEL: Yes. Yes.
They further diminished the reservation, technically. Or said that the Act of 1894 further diminished the reservation, meaning anything that was diminished, so their individual allotments that had passed out of Indian hands were not longer a federal set-aside. Now that doesn't mean they couldn't become a federal set-aside. As the Court in Podhradsky explained, or the facts kind of had to do with, I guess you could say, because the federal government can acquire trust lands for the benefit of the Tribe.
But here, in this case, the land and question -- in question in the City of Lake Andes has not been, um, I guess, it has not been purchased by the federal government and held in trust.
Both requirements are required. The State's position obviously is that the first one is not.
The second one also is not fulfilled here. And that's federal and super -- superintendence over the community.
Its important to focus on "community" in that meaning.
In Venetie, in note 5, um, the Tribes at issue argued that in the term dependent Indian community referred to

political defendants -- or "political" -- excuse me, dependents, meaning the Tribe is dependent on the federal government. And the Court said no, that's not what we mean.

That's why the fed -- again, why the federal set-aside requirement is also -- 'cause we're looking at the land in question. Is the land in question dependent on the federal government?

Dependent on the federal government can mean obviously that land held in trust, because at that point, um, and I -- I'm forgetting which case it was in, but it was in my brief, so I do apologize.

Um, it possibly was the Owen case.

Or no, the Owen case was not. So it was Podhradsky, I apologize. The BIA handled, um, any leases on the land. Any proceeds were handled by the federal government but then went back to the Tribe. So that's the type of federal superintendence.

Now, whether the Tribe is dependent on the federal government or not, um, again, isn't necessarily at issue here. Because the Tribe does not compose the grand majority of the town. Right? Does the town benefit, as Defendant alleges, from some federal programs indirectly? Sure. Of course. But by that argument, every town in South Dakota where a tribal member lives is, therefore, a

dependent Indian community. That's not the case. Um, here, the school is, ah, Andes Central. The, um, Charles Mix County provides the police services. Charles -- Charles Mix County, um, or the City of Lake Andes, excuse me, again, I forget, provides the fire services. The services are provided by the State or a political subdivision of the state by and large, so the community of Lake Andes is not dependent on the federal government. So this is not a dependent Indian community under subsection (b).

THE COURT: What about the fact that, when I was reading your brief, I wondered for 100 and some years, there's been a municipal government that runs this community, and they assess taxes on all property within the community. How does that play in the federal superintendence analysis? Because there's a government. A non-Indian government that assesses non-Native tax burdens on property.

MS. WENZEL: I think that goes in the way of not federal superintendence because -- and I, I apologize for not having a better answer for this, but my understanding is that if it is federal land, it can't be taxed by the state.

THE COURT: Correct.

MS. WENZEL: If it is Indian land, it can't be taxed by of the state. So if it is being taxed by the state, or the

municipal government, then it's not under federal superintendence so that's just one more factor showing it's not under federal superintendence. And those tax dollars are what goes to support the community.

Um, so under those, those are the only three ways we can have Indian Country. And none of those fit in this case. So the State properly has jurisdiction over this case.

THE COURT: All right.

Anything else?

MS. WENZEL: Not at this point.

THE COURT: Mr. Volesky.

MR. VOLESKY: Thank you, Your Honor. Just briefly.

In another lens, that is constitutional law, we also start with the text, history, precedent, policy. Federal laws applied to Indians also starts with the text. And it doesn't need to go any further.

As to what happened in Lake Andes over the last 120 years, the State government encroaching upon tribal rights, that doesn't make it right. The Court spoke to that very well, I think, in McGirt.

And just because a state encroaches on federal rights over a course of a hundred years, or on Native tribal rights over the course of many years, doesn't make it right. And the State wants this Court to again rely on, skip over the text. Skip over the history, go straight to precedent or

rely on precedent. And it speaks of courts diminishing the reservation.

Courts have no proper role in diminishing a reservation. That's a job of Congress.

Again, we come back to the text. 1858 Treaty. Set-aside. Recognizing Indian title.

Again, in the 1894 Act, set-aside specifically recognizing the allotments, guaranteeing them to the Tribe in perpetuity. The State has pointed to no language in 18 -- in the Act of 1894 that supports their proposition in this case (nods head).

Yankton Sioux Indian title was recognized. The allotments were established. Congress hasn't changed that. Thank you, Your Honor.

THE COURT: Um, and I agree with your assessment that the primary focus here is on two important documents. One is the treaty itself, and then the congressional act that adopts it.

And when this, when this reservation's issues went up to the U.S. Supreme Court, um, that's what they were doing is trying -- there was a disagreement on what the language meant in the Act. The congressional act.

And don't they have the authority to interpret the language of a congressional act? Isn't that what the U.S. Supreme Court did?

MR. VOLESKY: Absolutely and that was specifically limited to the ceded lands. That lands at issue in this case are not ceded lands. The Supreme Court went no further than that, and that, as a matter of fact, the Supreme Court indicated that the 1894 Act is evidence -- the language, is evidence of Congress's intention to maintain a continuing reservation, continuing Tribe.

THE COURT: But diminished?

MR. VOLESKY: Diminished to the extent of the ceded lands. And in the same Act, the allotments were specifically recognized and promised in perpetuity.

THE COURT: The 8th Circuit can do the same thing?

MR. VOLESKY: Correct.

THE COURT: And they did on the allotments, and a number of other issues in Gaffey and Podhradsky?

MR. VOLESKY: So in Gaffey II, the 8th Circuit did speak to the subject. It cited Stands. And it recognized that the Stands citation includes classic dicta. The supreme -- or the 8th Circuit came back in Podhradsky, it was all in the same case line, that applied to that case line. And the Supreme Court specifically limited -- or the 8th Circuit specifically limited its holding to trust lands only. And it recognized that it relied on certain assumptions including ditka -- dicta.

THE COURT: So, is part of your argument then -- and I, and

I addressed that head-on in, in Selwyn, um, when they decided the Yankton Sioux case, in the Supreme Court and the 8th Circuit, they interpreted the language and they used these interpretive tools, history and, you know, how'd the government treat it.

Do you think that after McGirt, because they use these interpretive tools, that they -- if it went back, it would come out with a different result?

MR. VOLESKY: Ah, I think it would be what issues are raised and actually litigated and decided in that case. Um, will it change the result in the previous cases? I, I can't speak to that. I think in a new case that comes before the Court, the Court should pay attention to what the United States Supreme Court said in McGirt. And make a decision from there based on the texts and applying Indian law canons.

THE COURT: All right.

Anything else, Mr. Volesky?

MR. VOLESKY: No, Your Honor.

THE COURT: All right. The motion's submitted. I'm going to take it under advisement. I'll get a decision out to you within a couple weeks.

MS. WENZEL: Could I have a brief reply, Your Honor? A response? I promise, it's brief.

THE COURT: The Supreme Court wouldn't let you do that, you

know?
MS. WENZEL: Yes.
THE COURT: He argues, you argue, and then he argues.
MS. WENZEL: And if --
THE COURT: I asked some questions that were a little bit off the topic, so I'll give you a short moment, and then Mr. Volesky gets the last word. It's his motion. Go ahead.
MS. WENZEL: Absolutely fair, Your Honor.
I did just -- and I apologize for not bringing this up in my initial response.
Um, the defense argues that through the 1894 Act, um, and subsequent -- or not "subsequent" but, um, other contextual things that occurred at the same time the Act was passed and negotiated, that the land was guaranteed to the Indians in perpetuity.
The State obviously disagrees with that. The specific language says, um, the Article XIII in the 1894 Act says, guarantees the undisturbed and peaceable possession of allotted lands. And then Article XIV confirms the allotments -- confirms the allotments and guarantees that Congress shall never pass any act alienating these allotted lands.
Now what the 8th Circuit has found -- or concluded, is that Congress hadn't passed a subsequent act. Instead, when the

lands were patented in fee, or whether -- when they passed out of Indian hands, that is what alienated the land, not some act of Congress. The only thing that language served to do was to say we're not going to come and take it from you. And if you want to pass it on yourself, that's obviously up to the person -- or, the owner in fee.

Also in Podhradsky, they talked about how, um, there's the quote, um, about how the Great White Father has told us that we -- you will not be forced to part with your land unless you want to. He does not want you to sell your homes. He wants you to keep them forever.

And when, when title was given to an allottee, under the Dawes Act, in fee, that allowed the person to keep it forever if they wanted to. That in no way guarantees an individual allottee the right to that land in perpetuity. And I think that's important because when we're -- if we are going to relook at the different things in the Act, we have to look at those words, um, themselves.

So it says nothing about "in perpetuity" or anything else, instead it talks about "fee." Again, the whole bundle of sticks.

Bruguier also had a, the Bruguier case from the South Dakota Supreme Court also talked about why the land was going to be patented in fee. And the understanding at the time, that that was the only way to make sure that the

individual Indians could keep that land and that the federal government wouldn't come back and take it. So that is how, I guess, the State would advocate for that to be interpreted.

And I think otherwise the Court hit on the fact of the 8th Circuit used the language to interpret. I'm not asking the Court just to go to precedent and do just what they say because they said it. They interpreted the language. They went through the different acts. They pointed out the parts of the Act. Um, the plain language -- and I did put in my brief where all of the different 8th Circuit and the South Dakota Supreme Court looked at the plain language -- so McGirt did not change any of that.

Instead, it reaffirmed that. Yes, that is absolutely a canon of construction. You start at the plain language. The fact that they went on to other stuff doesn't matter because, as the conclusions in all of the cases show, they determined under the plain language that this is what this meant and then they did go on to say this is either supported by or not overcome by the other considerations. And that's what I have.

THE COURT: Mr. Volesky?

MR. VOLESKY: Your Honor, the South Dakota Supreme Court in Bruguier interpreted a very materially distinguishable Act with respect to the Rosebud Tribe, which did specifically

provide for extinguishment and diminishment and they have that language. The South Dakota Supreme Court did not discuss Article XIII of the 1894 Act. They did not discuss Article XIV of the 1894 Act. Article XIII guaranteed the allotted lands and it specifically provided for all the rights of the Tribe. Article XIV guaranteed that Congress shall never alienate any of these lands from the Tribe. Neither was article --

THE COURT: She said Congress won't, but that doesn't mean an individual Native American couldn't do it on their own.

MR. VOLESKY: Yes, an individual -- no. No, Your Honor. An individual Native American cannot on its own divest sovereignty. That takes an act of a sovereign. That takes an act of Congress.

I would also just finally note that in Gaffey II, Articles XIII and Articles XIV, again, were not addressed substantively. And that that was the issue in Gaffey II, was reservation specifically under subsection (a). So, the Court proceeded on assumption with respect to title in fee and what happened to it.

Start with the text. The text is clear. Thank you, Your Honor.

THE COURT: Thank you, counsel.

I'll get a decision out to you within a couple weeks.

That concludes this hearing.

MR. VOLESKY: Thank you, Your Honor.

MR. COTTON: Thank you, Judge.

THE COURT: You bet.

(The proceedings then conclude at 2:53 p.m. on September 11, 2024.)

* * *

STATE OF SOUTH DAKOTA)
:ss REPORTER'S CERTIFICATE
COUNTY OF DOUGLAS)

This is to certify that I, Melissa A. Odens, RPR, Official Court Reporter and Notary Public in and for the above-named county and state, do hereby certify that I reported the proceedings of the foregoing case, and the 28 pages, inclusive, contain a full, true, and accurate record of the proceedings so had.

Dated at Armour, South Dakota, this 6th day of March, 2025.

My commission expires: April 4, 2026

/s/ Melissa A. Odens
Melissa A. Odens, RPR
Official Court Reporter
and Notary Public

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT
		11CR23-000297

STATE OF SOUTH DAKOTA,	)	
	)	
Plaintiff,	)	
	)	MOTION TO DISMISS
vs.	)	FOR LACK OF JURISDICTION
	)	
HAZEN WINCKLER,	)	
	)	
Defendant.	)	

COMES NOW, the above-named Defendant, by and through his undersigned attorney who moves the Court to dismiss this case against the Defendant based on lack of jurisdiction, in that the Defendant is an Indian and the location of the alleged offense was in Indian country. This Motion is supported by the record filings and documents herein. Specifically, the Defendant states that he is an enrolled member of the Yankton Sioux Tribe and the Indictment on file alleges that the Defendant committed a crime in Charles Mix County, South Dakota by failing to appear for a court appearance at the Charles Mix County Courthouse, which is in Lake Andes, South Dakota.

IN FURTHER SUPPORT OF THIS MOTION the Defendant asks the Court to take judicial notice of the filings and record documents in 11CRI24-000060 and 11CRI24-000085, wherein the Defendant has moved to dismiss each file based on lack of jurisdiction. Attached to this Motion are the following record documents from 11CRI24-60 and 11CRI24-85, the analysis from which applies equally as well herein:

Exhibit A Motion to Dismiss

Exhibit B – Brief in Support of Motion to Dismiss

Exhibit C – Affidavit of Tucker J. Volesky[1]

WHEREFORE, the Defendant prays that the Court grants this motion to dismiss.

Dated this 14th day of August 2024.

/s/ Tucker J. Volesky
Tucker J. Volesky
Attorney for the Defendant
305 N. Kimball
Mitchell, SD 57301
tucker.volesky@tuckervoleskylaw.com

CERTIFICATE OF SERVICE

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

Dated this 14th day of August 2024.

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

[1] The Affidavit of Tucker J. Volesky attaches twenty-three (23) exhibits which could not be submitted for filing electronically and required counsel to submit hard copies to the Clerk, which exhibits are on file in each 24-60 and 24-85. The Defendant respectfully requests the Court's notice of these exhibits also and asks that they be filed by the Clerk herein.

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF CHARLES MIX)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

FILED
JUN 28 2024
CHARLES MIX COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT SD

11CR24-000060
11CR24-000085

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

COUNTY OF BEADLE)
:SS
STATE OF SOUTH DAKOTA)

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

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

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

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

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

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

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

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

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

Exhibit C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tucker J. Volesky – Affiant
Attorney for the Defendant

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

Seal

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

CERTIFICATE OF SERVICE

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

Dated this 18th day of June 2024.

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

Ex. 1

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

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

April 19, 1858.

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

Preamble.

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

Pa-la-no-a-pa-pa, the man that was struck by the Ree.
Ma-to-au-ho-cha-a, the smutty bear
Charles F. Picotte, Eta-ka-cha.
Ta-too-ka-wote-co, the crazy bull.
Pa-cha-wa-ka, the jumping thunder.
Ma-za-ka-too, the iron horn.
Nombe-kah-pah, one that knocks down two.
Ta-too-ka-a-yah-ka, the flat bull.
A-ka-ka-au-co, the walking elk.
A-ka-ka-cu-cha, the standing elk.
A-ka-ka-ho-cha-cha, the elk with a bad voice.
Cha-too-wa-ka-pa, the grabbing hawk.
E-ka-wa-cha-cha, the owl man.
Pla-cau-wa-kau-au-ga, the white medicine cow that stands.
Ma-ga-cha-cha-ka, the little white swan.
Cha-cha-ka-wash-ta, the pretty boy.

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

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

Articles.

Pa-la-no-a-pa-pa, the man that was struck by the Ree.
Ma-to-au-ho-cha-a, the smutty bear.
Charles F. Picotte, Eta-ka-cha.
Ta-too-ka-wote-co, the crazy bull.
Pa-cha-wa-ka, the jumping thunder.
Ma-za-ka-too, the iron horn.
Nombe-kah-pah, one that knocks down two.
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A-ka-ka-cu-cha, the standing elk.
A-ka-ka-ho-cha-cha, the elk with a bad voice.
Cha-too-wa-ka-pa, the grabbing hawk.
E-ka-wa-cha-cha, the owl man.
Pla-cau-wa-kau-au-ga, the white medicine cow that stands.
Ma-ga-cha-cha-ka, the little white swan.
Cha-cha-ka-wash-ta, the pretty boy.

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

Exhibit 1

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

Boundaries of lands reserved.

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

Boundaries of lands ceded.

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

Islands in the Missouri River.

Title.

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

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

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

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

Agreements on the part of the United States.

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

Protection on the reserved lands.

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

Payment of annuities.

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

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

Subsistence.

Purchase of stock, &c.

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

Schools and school-houses.

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

Indians to furnish apprentices, &c. for mills.

President may discontinue allowance for schools.

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

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

Mills, &c. not to be injured.

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

If injured, value to be deducted from annuity.

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

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

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

Proviso.

Proviso.

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

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

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

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

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

United States may maintain military posts, &c.

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

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

No trade with Indians unless licensed.

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

Land not to be alienated except, &c.

The Yanctons to preserve friendly relations.

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

Surrender of offenders.

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

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

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

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

Release of all demands, &c.

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

Selling agent for the Yanctons.

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

Expenses hereof to be borne by the United States.

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

When to take effect.

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

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

Signatures.

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

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

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

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

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

Consent of senate, Feb. 16, 1859.

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

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

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

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

Attest: ASBURY DICKINS, *Secretary.*

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

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

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

JAMES BUCHANAN.

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

TREATY OF FORT LARAMIE.

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

Ex. 3

Trust Patent

The United States of America,

To all to Whom these Presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States, a schedule of allotments of land, dated November 11, 1890, from the commissioner of Indian Affairs, approved by the Acting Secretary of the Interior November 10, 1890, whereby it appears that under the provisions of the Act of Congress approved February 8, 1887, (24 Statutes, 388,) -

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

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

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

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

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

Seal

Given under my hand at the City of Washington, this Eighth day of May, in the year of our Lord one thousand eight hundred and Ninety-one, and of the Indepe. ndence of the United States the one hundred and fifteenth.

Recorded Vol. 6, P 373,

By the President: Benjamin Harrison.

By Miller Marfarland Asst. Secretary.

J. W. Townsend

Recorder of the General Land Office.

Exhibit 3

Ex. 4

August 15, 1894.

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

San Francisco, Cal. Revenue cutter authorized for harbor.

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

Proviso. Cost.

Approved, August 15, 1894.

August 15, 1894.

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

Indian Department appropriations.

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

Pay of agents at agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 4

At the Klamath Agency, Oregon, one thousand two hundred dollars;
At the La Pointe Agency, Wisconsin, one thousand eight hundred dollars;
At the Lemhi Agency, Idaho, one thousand two hundred dollars;
At the Mescalero Agency, New Mexico, one thousand six hundred dollars;
At the Mission Tule River Agency, California, one thousand six hundred dollars;
At the Navajo Agency, New Mexico, one thousand eight hundred dollars;
At the Neah Bay Agency, Washington, one thousand two hundred dollars;
At the Nevada Agency, Nevada, one thousand five hundred dollars;
At the New York Agency, New York, one thousand dollars;
At the Nez Percés Agency, Idaho, one thousand six hundred dollars;
At the Omaha and Winnebago Agency, Nebraska, one thousand six hundred dollars;
At the Osage Agency, Oklahoma Territory, one thousand six hundred dollars;
At the Pima Agency, Arizona, one thousand eight hundred dollars;
At the Pine Ridge Agency, South Dakota, one thousand eight hundred dollars;
At the Pottawatomie and Great Nemaha Agency, Kansas, one thousand two hundred dollars;
At the Ponca, Pawnee, Otoe and Oakland Agency, Oklahoma Territory, one thousand five hundred dollars;
At the Pueblo and Jicarilla Agency, New Mexico, one thousand five hundred dollars;
At the Puyallup (consolidated) Agency, Washington, one thousand six hundred dollars;
At the Rosebud Agency, South Dakota, one thousand eight hundred dollars;
At the Round Valley Agency, California, one thousand five hundred dollars;
At the Sac and Fox Agency, Iowa, one thousand dollars;
At the Sac and Fox Agency, Oklahoma Territory, one thousand two hundred dollars;
At the San Carlos Agency, Arizona, one thousand eight hundred dollars;
At the Santee Agency, Nebraska, one thousand two hundred dollars;
At the Shoshone Agency, Wyoming, one thousand five hundred dollars;
At the Siletz Agency, Oregon, one thousand two hundred dollars;
At the Sisseton Agency, South Dakota, one thousand five hundred dollars;
At the Southern Ute Agency, Colorado, one thousand four hundred dollars;
At the Standing Rock Agency, North Dakota, one thousand eight hundred dollars;
At the Tongue River Agency, Montana, one thousand five hundred dollars;
At the Tulalip Agency, Washington, one thousand two hundred dollars;
At the Uintah and Ouray Agency, Utah (consolidated), one thousand eight hundred dollars;
At the Umatilla Agency, Oregon, one thousand two hundred dollars;
At the Union Agency, Indian Territory, one thousand five hundred dollars;
At the Warm Springs Agency, Oregon, one thousand two hundred dollars;

Indian agents—Continued.

At the Western Shoshone Agency, Nevada, one thousand five hundred dollars;

At the White Earth Agency, Minnesota, one thousand eight hundred dollars;

At the Yakima Agency, Washington, one thousand eight hundred dollars;

At the Yankton Agency, South Dakota, one thousand six hundred dollars;

At the Quapaw Agency, Indian Territory, one thousand four hundred dollars:

Provisos.
Not available for Army officers as agents.

Provided, That the foregoing appropriations shall not take effect nor become available in any case for or during the time in which any officer of the Army of the United States shall be engaged in performance of the duties of Indian Agent at any of the agencies above named: *Provided, further*, That the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of any Indian agency upon the superintendent of the Indian training school located at such agency, whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents; in all, eighty-six thousand six hundred dollars and hereafter the annual salaries of the several Indian agents shall be as provided for in this Act.

Superintendents of schools may act as agents.

Interpreters.

For the payment of necessary interpreters, to be distributed in the discretion of the Secretary of the Interior, ten thousand dollars; but no person employed by the United States and paid for any other service shall be paid for interpreting.

Inspectors.

For pay of five Indian inspectors, at two thousand five hundred dollars per annum each, twelve thousand five hundred dollars.

Traveling expenses.

For necessary traveling expenses of five Indian inspectors, including telegraphing and incidental expenses of inspection and investigation, seven thousand dollars.

Superintendent of schools.

For pay of one superintendent of Indian schools, three thousand dollars.

Traveling expenses.

For necessary traveling expenses of one superintendent of Indian schools, including telegraphing and incidental expenses of inspection and investigation, one thousand dollars: *Provided*, That he shall be allowed three dollars per day for traveling expenses when actually on duty in the field, exclusive of cost of transportation and sleeping-car fare: *And provided*, That he shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior.

Proviso.
Per diem.

Other duties.

Agency buildings.
Fort Shaw, Mont.

For buildings and repair of buildings at agencies, forty-four thousand dollars, nineteen thousand dollars to be used for Fort Shaw Reservation and Indian Industrial School, Montana.

Contingent expenses.

For contingencies of the Indian service, including traveling and incidental expenses of Indian agents, and of their offices, and of the Commissioner of Indian Affairs, also traveling and incidental expenses of five special agents, at three dollars per day when actually employed on duty in the field, exclusive of transportation and sleeping-car fare, in lieu of all other expenses now authorized by law; for pay of employees not otherwise provided for, and for pay of five special agents, at two thousand dollars per annum each, forty thousand dollars.

Citizen commission.

Vol. 14, p. 48.

For the expenses of the commission of citizens, serving without compensation, appointed by the President under the provisions of the fourth section of the Act of April tenth, eighteen hundred and sixty-nine, to supervise the purchase of Indian supplies, four thousand dollars.

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

Improper inducements forbidden.

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

Agreement with Yankton Sioux, in South Dakota, ratified.

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

ARTICLES OF AGREEMENT.

Commissioners.

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

Vol. 27, p. 633.

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

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

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

ARTICLE I.

Unallotted lands ceded.

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

ARTICLE II.

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

ARTICLE III.

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

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

Interest.

ARTICLE IV.

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

ARTICLE V.

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

Equal amount to be appropriated.

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

ARTICLE VI.

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

ARTICLE VII.

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

ARTICLE VIII.

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

ARTICLE IX.

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

ARTICLE X.

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

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

ARTICLE XI.

Lands of Indians dying without heirs.

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

ARTICLE XII.

Prior depredations not to be deducted.

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

ARTICLE XIII.

Tribal rights.

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

ARTICLE XIV.

Allotments to be confirmed.

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

ARTICLE XV.

Payment of scouts.

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

ARTICLE XVI.

Pipestone Reservation.

Title to be adjudicated.

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

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

ARTICLE XVII.

Intoxicants prohibited.

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

ARTICLE XVIII.

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

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

ARTICLE XIX.

Copy of ratified agreement.

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

ARTICLE XX.

Signing agreement.

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

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

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

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

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

Witness our hands and seals of date as above.

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

Therefore,

Agreement confirmed.

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

Amount placed to credit of Indians.

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

Interest.

Immediately available.

Payments to adults.

Payments to accrue.

Proviso.
Prior depredations.

Lands opened to homestead and town site settlement.

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

Proviso.
Additional payment by settlers.

Soldiers and sailors R. S., secs. 2304, 2305, p. 432.

Patents to interpreters.

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

Sale, etc., of intoxicants prohibited.

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

Punishment.

18 USCS § 1151

Current through Public Law 119-5, approved April 10, 2025.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part I. Crimes (Chs. 1 — 123) > CHAPTER 53. Indians (§§ 1151 — 1170)

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title [*18 USCS §§ 1154* and *1156*], the term "Indian country", as used in this chapter [*18 USCS §§ 1151* et seq.], means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

History

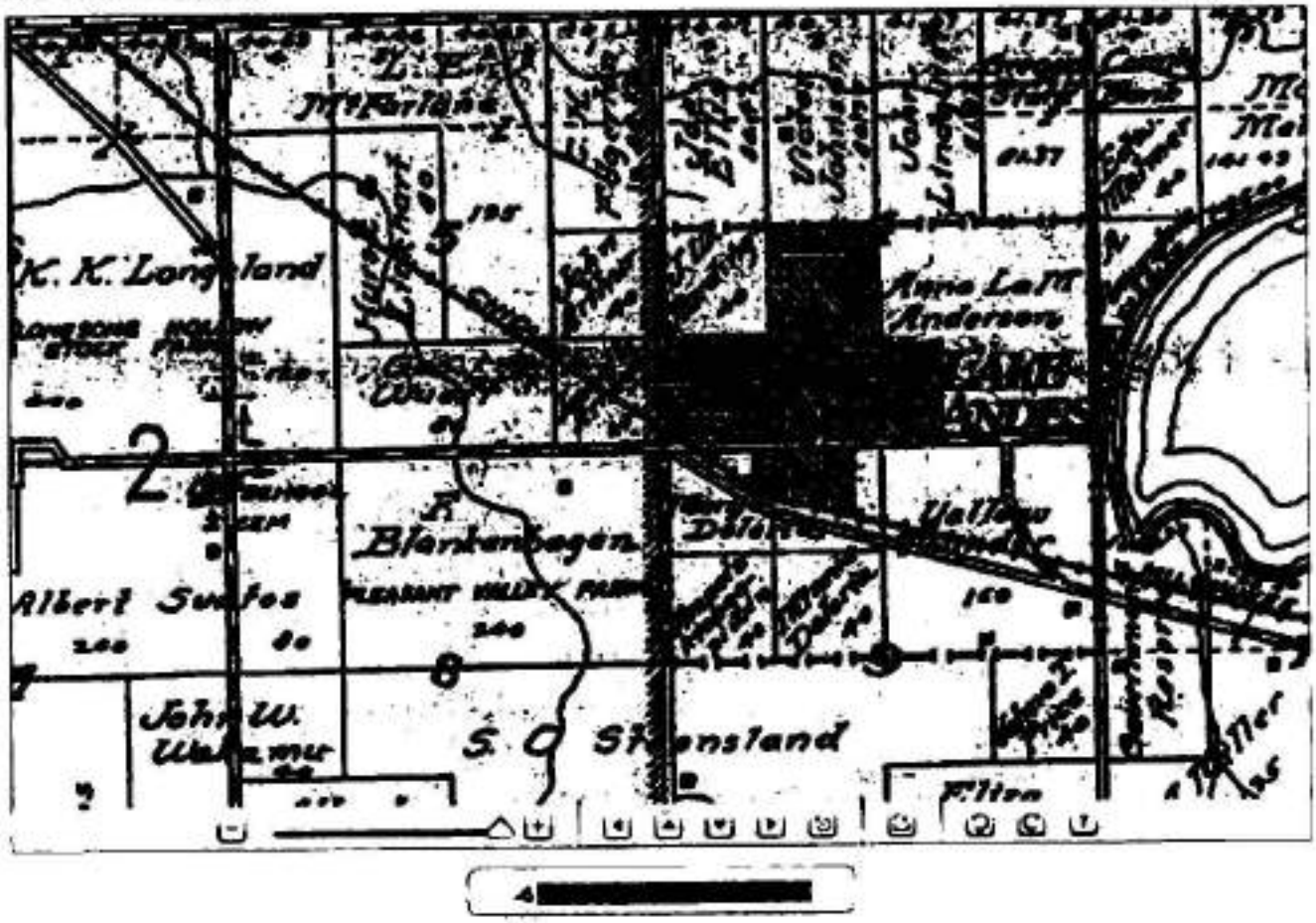
HISTORY:

June 25, 1948, ch 645, § 1, *62 Stat. 757*; May 24, 1949, ch 139, § 25, *63 Stat. 94*.

End of Document

Ex. 11

ITEM #US1592812
White Swan - Northeast, Lake Andes
From Charles Mix County 1931, South Dakota
Published by Webb Publishing Company in 1931
View all the images in Charles Mix County 1931



Map Information

Full Title: White Swan - Northeast, Lake Andes
Full Atlas Title: Charles Mix County 1931
State: South Dakota
Location 1: Unattributed
Location 2: Unattributed
Publish Date: 1931
Publisher: Webb Publishing Company
Number Maps in the Atlas: 54
Map Original Width: 12.32"
Map Original Height: 16.39"
Item Number: US1592812

Exhibit 11

Source Institution:
LIBRARY OF CONGRESS

Source Media:
Original Document

Collection: Historic Map Works Rare Historic Maps Collection
Image Quality: High quality scan of original that is perfect for printed fine-art quality reproduction.

Ex. 12

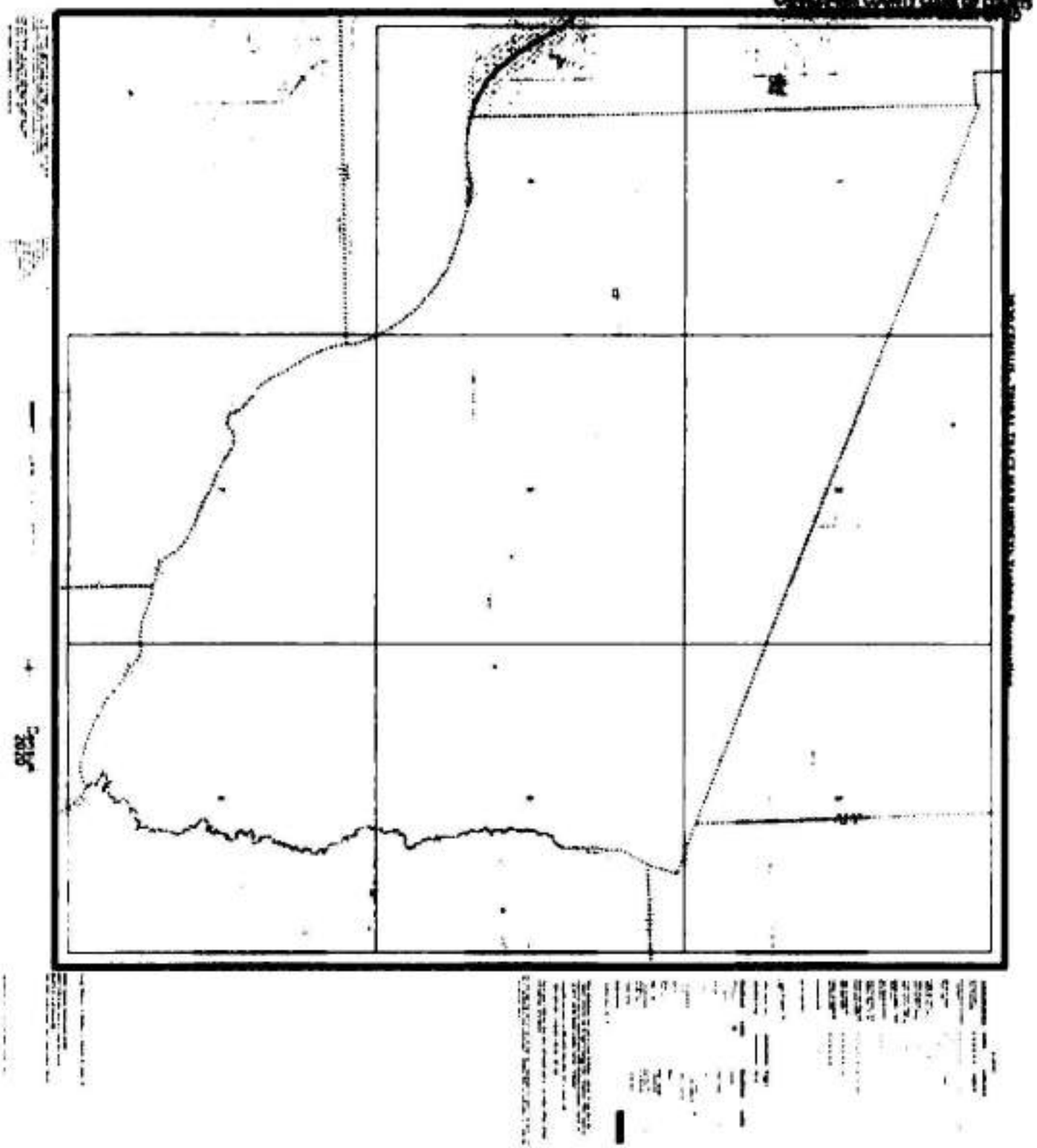


Exhibit 12

Ex. 13

U.S. Department of the Interior
Indian Affairs

Yankton agency

8:00 A.M. - 5:00 P.M. CST

Mark Freier, Acting Superintendent

Mailing Address:
Bureau of Indian Affairs
P.O. Box 577
Wagner, South Dakota 57380

Physical Address:
Bureau of Indian Affairs
29775 S. Main St.
Wagner, South Dakota 57380

Telephone: (605) 384-3651
Telefax: (605) 384-3876

Tribes Served: Yankton Sioux Tribe and Ponca Tribe of Nebraska

Yankton Sioux Tribe
Robert Flying Hawk, Chairman
P.O. Box 1153
800 Main Street, SW
Wagner, South Dakota 57380

Telephone: (605) 384-3641
Telefax: (605) 384-5687

Trust Land Base: 36,741 acres

Estimated Tribal Enrollment: 11,594 members

Exhibit 13

Ponca Tribe of Nebraska
Rebecca Sullivan, Vice Chairwoman
P.O. Box 288
2523 Woodbine Street
Niobrara, Nebraska 68760

Telephone: (402) 857-3391
Telefax: (402) 857-3736

Trust Land Base: 819 acres

Estimated Tribal Enrollment: 2,783 members

The Yankton Sioux Tribe is located in the lower eastern part of Charles Mix County. The Tribe has approximately 11,594 members and approximately 4,600 member reside within the boundaries.

- The Ponca Tribe has approximately 2,783 members
- Recently the National Indian Gaming Commission said the Ponca Tribe could proceed with a Class II facility in the State of Iowa. The gaming site is in Carter Lake, Iowa and is 200 miles from the Ponca Tribe Headquarters in Niobrara, Nebraska. However, on January 23, 1990, when Congress passed the "Ponca Restoration Act", lawmakers defined the Tribe's service areas that included the State of Iowa. The two-part determination process, as defined by the Indian Gaming Regulatory Act, requires federal and state approval for off reservation casino. The NIGC said the two-part determination process does not apply in the Ponca case. As a restored Tribe, the Ponca Tribe's quality for an exception in IRGA that makes it easier to open casinos away from existing reservations.

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Ex. 14

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Testimony of Robert Flying Hawk, Chairman
Yankton Sioux Tribe
June 8, 2017

Greetings Secretary Zinke and Acting Assistant Secretary Black. My name is Robert Flying Hawk and I am the Chairman of the Yankton Sioux Tribe Business and Claims Committee. I also serve as the Treasurer of the Great Plains Tribal Chairman's Health Board as well as the Great Plains representative on the Centers for Disease Control Tribal Advisory Committee. The Yankton Sioux Tribe appreciates this opportunity to testify today and to discuss concerns and ideas about the organization of the Department of the Interior and other agencies.

The Yankton Sioux Tribe is a resilient treaty tribe located in present-day South Dakota in the Northern Plains. We are a member of the *Oceti Sakowin* (the "Seven Council Fires," also known as the Great Sioux Nation). We have approximately 9,000 enrolled members. We value our government-to-government relationship and ask that you consider our testimony as you make decisions that affect our Tribe, our members, and our communities. We are located in the Great Plains Region for both Indian Health Services ("IHS") and the Bureau of Indian Affairs ("BIA"). We receive IHS direct services from the Wagner Service Unit and BIA services from the Wagner Agency; both are located in Wagner, South Dakota.

Indian Health Services

As you consider a reorganization of the government, consider addressing the IHS. As you may know, the IHS is the primary if not sole provider of health care for our tribal members living on the reservation.[1] The degree to which our members depend on the services that IHS provides for even the most basic care cannot be understated. We cannot continue to suffer cut after cut.

Service Unit Inpatient and Emergency Room.

In 1992, the IHS hospital at the Wagner Service unit was closed to inpatient care, yet there was no increase in funding for contract health services ("CHS") (now known as purchase referred care). IHS removed services and provided no additional funding to purchase the services elsewhere. It was unthinkable not only to our tribal members that depend on the inpatient care but also on the Wagner Service Unit that was left to balance the books without any increase in CHS or other funding to bridge the gap. The Tribe was against this decision not only as an immediate concern but also with concern for the future viability of the Wagner Service Unit. In spite of the Tribe's objections, the IHS made the decision to stop inpatient care.

[1] Our veterans are eligible to receive care from the Department of Veteran's affairs that does have a small clinic on our reservation, but most of the care for veterans is referred to larger cities like Sioux Falls, South Dakota where there is a VA hospital. There is also a small community clinic that accepts private insurance. Medicaid, and Medicare for those that have coverage.

Exhibit 14

Next, the IHS made the decision to close the 24-hour ER, and to open an urgent care facility in its place. The Tribe was forced to challenge the closure. While the Tribe was initially successful in its lawsuit, once the IHS met the statutory requirement that it produce a report to the Congress, it was free to close the ER.

In 2005, the IHS commissioned such a report to conduct a final evaluation of the Wagner Service Unit. "The Sharpless report recognized there would be significant hardships to tribal members if the emergency room were closed, but nevertheless recommended partial closure of the Wagner emergency room by replacements with an urgent care facility. The report notes that 'it could be forecasted that lives would certainly be lost' if the Wagner emergency room closed." *Yankton Sioux Tribe v. United Stated Dep't of Health & Human Services*, CIV 07-3096 (8th Cir. 2008). In March 2008, the IHS closed the 24-hour emergency room and compensated the Wagner Service Unit budget by adding $64,000 for "Priority I" care for the remainder of the year.[2] There have not been additional funds awarded to the Wagner Service Unit budget since that time to compensate for the additional CHS or purchase referred care services. It then became the norm that tribal members would seek emergency health care at the local non-IHS community emergency room. Tribal members were forced to seek this care even without knowing whether the IHS had the funds available to pay for those emergency services or whether the tribal member would become personally liable for payment of those medical bills. Unfortunately, it is more frequently the latter leading many of our tribal members to simply attempt to wait until the Wagner Service Unit IHS clinic opens rather than face the possibility of medical bills that could cripple their household's finances. Similarly, if tribal members are in need of CHS/purchase referred care and they do not meet the "Priority I" threshold, they are forced to suffer through the pain until funding becomes available. The real-life implications are that it is common-place to meet tribal members that live for months at a time or permanently with broken limbs and other ailments that are not treatable at the Wagner Service Unit clinic and yet do not amount to Priority I. This state of healthcare would be unacceptable in any other context yet it is what our tribal members face every day. Eventually, the prediction contained in the Sharpless report was realized when a tribal member lost his life in the parking lot while waiting for the IHS to open.

It was widely reported that funding was the reason the IHS closed the 24-hour emergency room because the facility did not meet the emergency room criteria as defined by the Center for Medicare and Medicaid Services and therefore the facility would not receive reimbursement from Medicare and Medicaid for those patients eligible for that third-party coverage. I am sorry to report that the sole licensed medical doctor at the Wagner Service Unit has recently retired. IHS allows non-licensed medical professionals that hold degrees from medical schools outside of the U.S. to practice in IHS facilities as long as there is a licensed doctor at the facility. Now, there is no longer a licensed doctor at our service unit. IHS has been bridging this gap by temporarily re-assigning commission corps but that is a temporary fix. We need to attract permanent licensed doctors to our service unit. I would also like to point out that while funding was the reason the IHS closed the 24-hour emergency room, there are more employees at IHS now than there were when the 24-hour emergency room was open. Now, as we know, there is a hiring freeze at IHS that has exacerbated the situation. Together with rumors of anticipated budget cuts in HHS and IHS

[2] Pursuant to 42 C.F.R. 136.23(e), each Area establishes the medical priority of care when CHS/purchase referred care is insufficient (it is insufficient every year). Priority I is emergent or acutely urgent care services that IHS defines as "diagnostic or therapeutic services that are necessary to prevent the immediate death or serious impairment of the health of the individual, and which, because of the threat to the life or health of the individual necessitate the use of the most accessible health care available and capable of furnishing such services. Diagnosis and treatment of injuries or medical conditions that if left untreated, would result in uncertain but potentially grave outcomes." https://www.ihs.gov/chs/index.cfm/module/chs_requirements_priorities_of_care

funding are essentially shutting down recruitment efforts. We already start out at a disadvantage because the salary is often below what a doctor could receive elsewhere, but coupled with the remote location and the possibility of reductions in staff, salary freezes, and limits on procurement, it becomes nearly impossible.

The Tribe seeks solutions that will serve the best interest of the Tribe and its members and in the context of health care, the Tribe wishes to ask for your help in re-opening the 24-hour emergency care at the Wagner Service Unit as well as help in re-opening the in-patient hospital services even as modestly as a few beds. It is also imperative that IHS recruit and maintain licensed medical doctors.

Doctor's Quarters

One of the ways to attract licensed medical doctors is to have living quarters available solely for IHS doctors. The IHS requested to obtain land from the Tribe in order to build doctor's quarters and the Tribe identified a parcel of land near the IHS facility. At the time the request was made, the Tribe was told by BIA that it would be placed into trust status in approximately three years. The Tribe applied for it to be placed into trust and was soon notified that State of South Dakota challenged the land-into-trust decision. The Tribe approved the lease based upon a letter from IHS that said, "[w]hile it is understood that the Tribe would have to pay taxes on the land if it is not in Trust status, the benefits of having ten (10) staff quarters far outweigh the potential of losing the project funding and ultimately not having any staff quarters built at Wagner." The land is still not in trust status due to multiple challenges by State and local governments. Meanwhile, the Tribe has continued to pay taxes amounting to hundreds of thousands of dollars but the IHS Wagner Service Unit still does not attract licensed medical doctors as mentioned above. The Tribe seeks solutions to address this situation.

Yankton Tribal Shares

The IHS currently utilizes a funding formula that calculates what the IHS calls "shares". These shares are calculated in a non-uniform manner according to each region's own formula. In addition, the funding formula that is administered by the Great Plains area office in Aberdeen, South Dakota has been in place for quite a while. Our concern is that our Tribe has increased the number of patients at the service unit since the implementation of the funding formula without a corresponding increase of shares. As a result, we believe the tribal shares allocated to our Tribe is not reflective of the actual care that is sought at the service unit. While we have repeated sought out information, we often receive no response or information that is not helpful at all. We seek basic information as well as creative solutions to ensure that each service unit is given resources that are reflective of actual need rather than an archaic funding formula that is based upon outdated data. The result of the discrepancy between funding formulas across regions is that some regions have high funding of patients per capita and some regions have significantly less funding of patients per capita.

Referred Care

Because our service unit consists of a small clinic, every day our people receive "referrals" from IHS physicians to specialists, labs, and hospitals. Tribal members used to go to those referrals assuming that any costs incurred would be borne by the IHS. Unfortunately, that is no longer the case. At Yankton, we have an ever increasing number of tribal members who have received thousands of dollars in medical bills in the mail that they did not expect, and that they cannot pay. This has become so prevalent that we not have tribal members who are refusing to seek the referral care that is necessary to protect their health, and in some cases, even their life, because they fear the possibility of being bankrupted by unpaid medical expenses. This is especially true for our veterans. A veteran may not initially want to drive 100 miles or wait three months to see a specialists, especially when the HIS is offering him a specialist which is closer

and an earlier appointment. He might feel differently, however, if he knew that he was going to receive a large bill for taking IHS up on its referral offer instead of the Veteran's Affairs.

We are asking that IHS implement a policy that includes a process to notify a patient in advance when IHS is not prepared to pay for a referral care visit and related costs. The IHS needs to acknowledge that unpaid medical bills can literally bankrupt a family, and our people have a right to make an informed decision about the care that they choose to seek. It can even be as simple as indicating the amount of coverage IHS is offering on the referral form itself. That way our members can make informed decisions.

Regional Office and Headquarters

We all know that there are never enough funds in the budget for IHS to provide all the care that is necessary for our members. The Tribe is concerned that there is unnecessary spending occurring at the headquarters and regional/area offices. It is a trickle-down effect that tribes, unfortunately, know all too well. The pot of money in the budget is spent at the headquarters, then the region/area, then to the service unit. By the time the funds get applied to actual services for patients, there is very little monies to provide patient care. The Tribe believes that a review or audit should be performed to review whether the current organization is the most efficient for the delivery of patient care. The Tribe is especially weary because cost was one of the reasons given for the closure of our hospital and emergency room, yet, as explained above, there is more staff at IHS than ever. Ironically enough, though, the IHS does not employ a United States certified medical doctor, as explained above. We ask that through this reorganization process, that you identify solutions to address these related concerns.

Bureau of Indian Affairs

The BIA suffers from a similar trickle-down effect. The funds are being spent to employ people at the headquarters and the regions/areas and provide services. The local agencies are then expected to work with reduced budgets and are often short-staffed. Recently, for example, a position opened up at our local BIA agency. We were told it would be filled but to this day, it has not been filled. We expect that either the work under that position is being handled by someone else on top of their regular duties or the work is being left undone.

Bureau of Indian Education

The Tribe is against the removal of Bureau of Indian Education ("BIE") Educational Line Officers ("ELO") further away from the reservation. Currently, the tribally operated BIA school on our reservation, the Marty Indian School, shares an ELO with the schools on the Rosebud Reservation, which is two hours west of our Reservation. BIE has in the past proposed a reorganization that would remove these ELOs further away and place them in the Minneapolis/St. Paul, MN area. Such a drastic move away from the schools would render the function and purpose of the ELOs meaningless. Furthermore, the Tribe believes the BIE should be returned back under the BIA.

Law Enforcement

The Tribe operates a P.L. 93-638 contract for law enforcement. The Tribe would like to see Law Enforcement moved to the BIA. We believe this reorganization will clear up the frequent occurrences of miscommunication that we currently experience. For example, we often meet with Law Enforcement representatives from D.C. via telephone and occasionally in person. At one such meeting, we were give certain information and assurances regarding our law enforcement. However, when the same person returned to Washington, D.C., the information had changed and what we were told was no honored. This miscommunication happens with more frequency that we are comfortable or satisfied with. Accordingly, we would like to see Law Enforcement moved to BIA and there be local employees at the BIA agency to work with on law enforcement matters. The Tribe is concerned that there is an information breakdown as

agency personnel travel to and from the reservation and we believe local personnel would address this concern.

USDA

The United States Department of Agriculture Commodity Supplemental Food Program is an example of a program that is well-run. The USDA provides a tremendous amount of support to the Tribe. For example, the Tribe is in the process of building a new building to accommodate the program on our reservation. The USDA has been fully supporting throughout the process. The Tribe's Commodity Director was selected to sit on a national board. This has been an invaluable relationship. The Tribe is fortunate enough to have direct representation on this board. We are able to provide direct input on matters affecting and concerning us the most. As a smaller tribe with modest resources, this sort of direct participation is very much appreciated.

Conclusion

The Yankton Sioux Tribe asks that you keep this information in mind as your agency and the administration moves forward with a reorganization plan. We hope that the testimony we have provided to you is a reminder that the decisions you make impact lives on the Yankton Sioux Reservation. Thank you for the opportunity to submit comments.

Ex. 16

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YANKTON SIOUX TRIBE

May 30, 2018

United States Department of Interior
Office of the Secretary
John Tahsuda
Principal Deputy Assistant Secretary-Indian Affairs
Washington DC 20240

RE: Meeting May 31, 2008

Mr. Tahsuda:

By this letter, the Yankton Sioux Tribe ("Tribe") is writing to confirm that the meeting scheduled for May 31, 2018, is not consultation. Pursuant to the *Ihanktonwan* Consultation *Wo'ope*. Consultation only occurs with the Tribe's General Council and any informational meeting leading up to consultation, is not consultation. The tribe considers the meeting scheduled for May 31, 2018, to be a preliminary informational session with consultation to occur at a later date.

The tribes Reality director, Sasheen Thin Elk will stand as proxy to this meeting on May 31, 2018 for myself, Chairman, Robert Flying Hawk.

Sincerely,

Robert Flying Hawk
Chairman, Yankton Sioux Tribe
Business and Claims Committee

Exhibit 16

Ihanktonwan Consultation Wo'ope

Protocols for Consultation with the Yankton Sioux Tribe

I. Purpose

The purpose of these protocols is to provide federal agencies with standards with which they must comply when engaging in consultation with the Yankton Sioux Tribe in order to ensure that consultation is meaningful and will fulfill the purpose and intent of Executive Order 13175 as well as applicable federal statutes, regulations, and agency policies, manuals, and Secretarial Orders. Consultation shall create understanding, commitment, and trust between the parties, and should be used to identify opportunities and solve problems.

II. Scope

These consultation protocols apply to any effort by a federal agency to consult with the Yankton Sioux Tribe pursuant to federal law(s), including but not limited to the National Environmental Policy Act implementing regulations (40 C.F.R. Part 1500), the National Historic Preservation Act (16 U.S.C. § 470 et seq.) and implementing regulations (36 C.F.R. Part 800), the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.) and implementing regulations (43 C.F.R. Part 10), the American Indian Religious Freedom Act (42 U.S.C. §§ 1996 & 1996a), the Archeological Resources Protection Act of 1979 (16 U.S.C. §§ 470aa-mm), Executive Order 13175, and Executive Order 12989.

III. Protocols

A. Cultural Protocols

1. Relationship-building should be at the center of any consultation, as this is a primary cultural protocol for the Ihanktonwan. Relationship building cannot occur through just one meeting, or by telephone or email. It requires time, trust, and respect for the relationship.

2. Agencies must recognize that water is viewed as the first medicine, and it must be honored and protected. Water is vital to the spiritual practices, culture, and health of the Ihanktonwan.

3. Agencies shall respect the fact that Yankton Sioux Tribal members have experience and knowledge that makes them uniquely qualified to identify Ihanktonwan cultural resources, and shall weigh their views accordingly.

4. Agencies must recognize that certain members of the Tribe possess inherent abilities and historical knowledge passed down through generations that make those tribal members uniquely equipped and able to identify sites of spiritual, cultural, and historical interest. These skills and knowledge should be utilized through tribal surveys of areas that may be impacted by a proposed action.

5. Agencies must recognize and respect the cultural practice of speaking in a "circular" manner, which may mean that it takes time for a speaker to arrive at the ultimate point but which conveys relevant information necessary to a proper understanding of that point.

6. Elders must be respected.

7. Agencies must recognize the Ihanktonwan practice reciprocity, which means that if remains are unearthed, something must be given back in return to restore balance. There are consequences dictated by the universe for disturbing graves and remains, and this should be avoided.

8. Agencies must respect the practice of making offerings.

9. Sharing a meal at the conclusion of a meeting is customary and expected.

B. Behavioral Protocols

1. Parties shall respect each participant and respect each other's diversity.

2. Parties shall speak with respect, courtesy, dignity, care, and moderation to maintain an amicable atmosphere.

3. Parties shall avoid the use of language of dominance and/or oppression.

4. Parties shall refrain from disruptive gestures or actions.

5. Parties shall avoid tactics to induce intimidation. This includes manner of dress. Parties should dress in traditional or civilian clothing.

6. Parties shall treat everyone involved in a consultation meeting, particularly elders, with respect.

7. When an individual is speaking, all parties must refrain from interrupting that individual.

8. Parties shall not be dismissive of any statement made, but rather, shall acknowledge and value all contributions and bring them into consideration in any decision.

9. Parties shall refrain from reaching any decision until consultation has concluded and sufficient information has been exchanged.

10. Parties shall contribute and express opinions with complete freedom.

11. Parties shall carefully examine the views of others and accept valid points when made by others.

12. Parties shall focus on the subject of the consultation and avoid extraneous conversation.

C. Procedural Protocols

1. Consultation shall only include government-to-government, in-person meetings with the Tribe's General Council. Consultation shall not be conducted via telephone or written correspondence unless expressly agreed to by the Chairman of the Yankton Sioux Tribe ("Tribe") in writing.

2. A meeting shall not be considered consultation unless the relevant federal agency is represented at the meeting by an individual with decision-making authority over the proposed federal action at issue.

3. Multi-tribal or public meetings shall not be considered consultation unless expressly agreed to by the Chairman of the Tribe in writing unless the meeting is comprised exclusively of the federal agency and the Oceti Sakowin.

4. The consultation process shall commence as early as possible. Initial notification by a federal agency to the Tribe of a proposed action shall occur within two weeks of the federal agency becoming aware of the proposed action.

5. A federal agency shall contact the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee for the Tribe to notify the Tribe of a proposed federal action and initiate the consultation process. If the proposed federal action is expected to impact tribal cultural, spiritual, or historical resources, the federal agency shall also contact the Tribal Historic Preservation Officer. Notification pursuant to this protocol does not constitute consultation, but merely initiates the consultation process.

6. The consultation process shall include a pre-consultation meeting at which preliminary information shall be exchanged and an overview of the proposed federal action shall be provided, to be scheduled by the Chairman of the Tribe and/or his staff.

7. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of the potential impacts on the Tribe of the proposed federal action.

8. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of which federal officials will make the final decision with respect to the proposed federal action.

9. Each consultation meeting shall be scheduled by the Chairman of the Tribe and his staff.

10. The pre-consultation meeting and consultation meetings shall be held at a time and location convenient for the Tribe.

11. Consultation meetings shall be scheduled a least thirty-five (35) days in advance to allow for adequate notice to the General Council, which is comprised of tribal members age 18 years and older and which is the governing body of the Tribe.

12. All meetings shall be opened with a prayer.

13. All meetings shall be closed with a prayer.

14. All meetings shall be followed by a meal or include a meal as part of the necessary relationship-building.

15. Consultation meetings shall not designate an end time, but shall continue until all have had an opportunity to speak.

16. The federal agency shall provide the services of a court reporter to record each consultation meeting. A transcription of each meeting shall be provided to the Tribe within ten (10) days following said consultation meeting.

17. Prior to the final consultation meeting, the parties shall mutually agree that the following consultation shall be the final consultation meeting. If agreement cannot be reached to terminate consultation after the subsequent meeting, the subsequent meeting shall not be deemed the final meeting. No party shall unreasonably withhold consent to terminate consultation, but consultation shall continue until each party is satisfied that meaningful consultation has been achieved.

18. While there is no set number of meetings required for consultation to be deemed sufficient, consultation shall consist of no less than two meetings and shall not be considered complete until the parties are satisfied that all necessary information has been adequately exchanged.

Summary of Consultation Steps:

1. Federal agency learns of proposed federal action that may affect the Yankton Sioux Tribe.
2. Federal agency promptly (within two weeks) notifies the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee (and the Tribal Historic Preservation Officer for the Tribe if the proposed action is expected to impact tribal cultural, spiritual, or historic resources) of the proposed action. The consultation process is thus initiated.
3. The Chairman and/or his staff schedules a pre-consultation meeting.
4. A pre-consultation meeting is held.
    a. Opening Prayer
    b. Meeting
    c. Closing Prayer
    d. Meal (may also occur during the midpoint of the meeting)
5. The Chairman or his staff schedules a consultation meeting.
6. A consultation meeting is held.
    a. Opening Prayer
    b. Meeting
    c. Closing Prayer
    d. Meal (may also occur during the midpoint of the meeting)
7. Federal agency provides the Chairman of the Tribe with a transcript of the consultation meeting within 10 days.
8. Repeat steps 5-7 until meaningful consultation has been fully achieved, mutually agreeing prior to the final meeting that it will be the final consultation meeting.

D. Governmental Protocols

1. Federal agencies shall respect the unique legal and political relationship between the United States and the Yankton Sioux Tribe.

2. Consultation shall be conducted in accordance with Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which requires the "free, prior and informed consent" of an Indian tribe prior to adopting and implementing legislative or administrative measures that may affect it.

3. Consultation shall be meaningful and shall include collaboration with tribal officials.

4. The Yankton Sioux Tribe's views shall be incorporated into a federal agency's decision-making process.

5. Consultation shall be conducted and resulting agency decisions shall be made in such a way that the government-to-government relationship between the Tribe and the United States is strengthened. The Yankton Sioux Tribe shall be considered as a collaborative partner with the federal agency.

6. Federal agencies shall recognize the Yankton Sioux Tribe's right to self-government and its inherent sovereign powers. Federal agencies shall be respectful of the Tribe's sovereignty.

7. Federal agencies shall acknowledge and abide by the treaties between the United States and the Yankton Sioux Tribe.

8. Federal agency actions during and after consultation shall reflect the trust responsibility of the United States to the Yankton Sioux Tribe.

IV. Compliance

All parties shall comply with the protocols contained herein when engaging in the consultation process. Should a party fail to comply with one or more protocols, the other party shall notify the non-compliant party of the violation and the parties shall mutually agree upon a time and location for a meeting between the parties to resolve the matter. The goal of this meeting shall be to restore balance and reduce or eliminate discord by talking through the violation and reaching a mutual understanding to move forward in compliance with the protocols. Should the non-compliant party fail to participate in this meeting or fail to correct its non-compliant behavior in subsequent meetings, the other party may pursue legal remedies through enforcement of these protocols in Yankton Sioux Tribal Court.

Ex 17

Argus Leader.

POLITICS

State says no to Yankton Sioux Tribe's ask for National Guard help with flooding

Lisa Kaczke
Argus Leader

The Yankton Sioux Tribe is requesting the National Guard's assistance with flooding in the White Swan community at Lake Andes.

However, the South Dakota Department of Public Safety responded that the tribe still has other options available to help with the flooding, and Gov. Kristi Noem has said the National Guard is only to be used as a last resort.

In a letter to the tribe on Monday, Public Safety Secretary Craig Price wrote that state officials share the tribe's concern about the flooding's impact on residents and have sent state staff to Lake Andes to meet with the tribal emergency manager and U.S. Army Corps of Engineers. He noted that the tribe requested the National Guard's help in a Sept. 20 letter to Noem, but didn't specifically state the reason it needs the National Guard.

Price suspected the tribe was requesting the National Guard's help in constructing a berm to protect the White Swan community. He noted that the tribe has Bureau of Indian Affairs funding, materials, tribal equipment and personnel, local contractors, and access to state and federal technical assistance to construct the berm.

The state has provided pumps the tribe requested and raised the roads to re-establish access to Lake Andes for tribal members, according to Price.

"We are still ready to assist the Yankton Sioux Tribe to keep your tribal members safe and rebuild after flood waters recede," Price wrote.

The letters are the latest in months of flooding problems at Lake Andes. Near the Yankton Sioux Tribe's reservation, the city of Lake Andes, which has fewer than 1,000 residents, has been dealing with flooded roads and closed businesses. Lake Andes Mayor Ryan Frederick told the Argus Leader on Monday that they don't have a lot of options.

More: 'It has never been this bad': How one South Dakota city is facing the floodwaters

The tribe said that the flooding has increased with each storm since the bomb cyclone in March. Sixty of the tribe's families were impacted by the flooding, with limited access to basic life services and their homes slowly becoming inhabitable, according to the tribe. The cause of the flooding is a blocked culvert between Lake Andes and the Missouri River, according to the tribe.

The Yankton Sioux Tribe said in August that it had been waiting six months for the state to stop the flooding at Lake Andes and fix the blocked culvert.

"Our community is literally drowning due to state negligence and indifference to the health and well-being of our people," the tribe said in an Aug. 12 statement.

The tribe alleged that Noem suggested tribal residents use surplus Army tents for temporary housing while Highway 18/50 was elevated, which would bring the road grade to a level that would cut off the connecting roads and further disconnect the community from emergency services, basic living necessities, jobs and schools.

Exhibit 17

Noem visited the Yankton Sioux Tribe's housing development in July to see the flooding firsthand and discuss the culvert issue with tribal officials. Since then, state officials have worked with FEMA to inspect affected homes and make arrangements to assist the tribe in repairing the damage and, if necessary, move residents to temporary housing, according to the governor's office. The state's plan to raise the highway grade included plans to raise a secondary road between tribal housing and the highway to Lake Andes, at no cost to the tribe, according to the governor's office.

Ex 18

U.S. DEPARTMENT OF THE TREASURY
EMERGENCY RENTAL ASSISTANCE PROGRAM
Data and Methodology for Allocations to
Indian Tribes and Tribally Designated Housing Entities
January 19, 2021

Section 501(b)(2)(A)(ii) of Division N of the Consolidated Appropriations Act, 2021 (the "Act") requires Treasury to allocate $797.6 million to Indian tribes and tribally designated housing entities (TDHE) using a formula based on the amounts they were eligible to receive for Fiscal Year (FY) 2020 from the Indian Housing Block Grant (IHBG) program.[1] Those amounts can be found here: https://www.hud.gov/sites/dfiles/PIH/documents/FY%202020%20Final%20Allocation%20Sheets.xls, column T.

The statute provides that each IHBG participant receives the same proportion of the $797.6 million as it was eligible to receive of total funding in FY 2020 for the IHBG program. The statute also provides that tribes that did not participate in the IHBG program in FY 2020 be given 30 days to determine whether to participate in the Emergency Rental Assistance (ERA) program. Treasury has received responses from those tribes. There are three tribes that elected not to participate in the total funding for the IHBG program.

The Chicken Ranch Rancheria of Me-Wuk Indians and the Prairie Island Indian Community, two of the three Indian tribes that did not choose to receive an FY 2020 IHBG allocation, have declined to participate in the ERA program.

The third Indian tribe that did not choose to receive an FY 2020 IHBG allocation, the Mohegan Tribe of Indians of Connecticut (Mohegan), has opted to participate in the ERA program.

To determine an amount to add for Mohegan, Treasury asked HUD to recompute the FY 2020 IHBG tribal allocations as though Mohegan had participated in the program. According to HUD, the allocation Mohegan would have received under the FY 2020 IHBG allocations is equal to the IHBG minimum. Accordingly, Treasury has assigned Mohegan an allocation equivalent to the IHBG minimum pro-rata share of ERA funding. This approach treats Mohegan equitably because it uses the same allocation framework as applies to the other Indian tribes. Further, it uses data available from HUD of the same vintage to make the computation and thereby does not place other participating Indian tribes at a disadvantage. Pro-rata reductions authorized under Section 501(b)(2)(B)(i) of Division N of the Act were made to ensure the total ERA tribal funding including Mohegan did not exceed $797.6 million.

Each tribe will receive approximately 121 percent of their FY 2020 IHBG formula allocation.

[1] Section 501(a)(2)(B) of Division N of the Act provides a total of $800 million for tribal communities. After subtracting the 0.3 percent ($2.4 million) allocated for the Department of Hawaiian Home Lands directed under Section 501(b)(2)(A)(i) of Division N of the Act, $797.6 million is available for Indian tribes and TDHEs.

Exhibit 18

Ex. 19

U.S. DEPARTMENT OF THE TREASURY
EMERGENCY RENTAL ASSISTANCE PROGRAM
Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Agua Caliente Band of Cahuilla Indians	$196,110.94
Ak-Chin Indian Community	$609,079.27
Akwesasne Housing Authority	$2,539,783.23
Alabama Quassarte Tribal Town	$176,783.60
Alabama-Coushatta Tribe of Texas	$204,123.36
Alatna Tribal Council	$64,489.02
Aleut Community of St. Paul Island	$273,555.62
Aleutian Housing Authority	$3,386,953.26
All Mission Indian Housing Authority	$2,189,800.02
Apache Tribe of Oklahoma	$1,462,868.49
Apsaalooke' Nation Housing Authority	$3,514,540.97
Arctic Village	$234,215.49
Aroostook Band of Micmacs	$1,132,374.31
Asa'carsarmiut Tribal Council	$552,042.27
Association of Village Council Presidents (AVCP) Regional Housing Authority	$18,711,964.76
Bad River Housing Authority	$2,125,362.82
Bah-Kho-Je Housing Authority	$140,918.62
Baranof Island Housing Authority (Sitka Tribe of Alaska)	$1,541,665.68
Bay Mills Indian Community Housing Authority	$1,004,457.02
Bear River Band of The Rohnerville Rancheria	$64,489.02
Bering Straits Regional Housing Authority	$8,040,729.02
Big Pine Paiute Tribe of The Owens Valley	$561,427.69
Big Sandy Rancheria Band of Western Mono Indians	$315,419.02
Big Valley Band of Pomo Indians	$641,662.57
Bishop Paiute Tribe	$1,870,399.03
Blackfeet Housing	$8,523,119.41
Bois Forte Reservation Tribal Council	$1,313,813.86
Bridgeport Indian Colony	$268,612.02
Bristol Bay Housing Authority	$5,890,845.86

Payments are as of February 26, 2021.

Exhibit 19

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Burns Paiute Tribe	$154,599.47
Caddo Nation of Oklahoma	$719,717.29
Campo Band of Mission Indians	$852,423.23
Catawba Indian Nation	$2,066,120.00
Cedarville Rancheria	$64,489.02
Chehalis Tribal Housing Authority	$1,354,071.29
Chemehuevi Indian Tribe	$1,101,207.76
Cherokee Nation	$39,169,218.69
Cheyenne and Arapaho Tribes	$2,894,565.18
Cheyenne River Housing Authority	$6,999,402.46
Chickahominy Indian Tribe	$339,296.89
Chickahominy Indian Tribe - Eastern Division	$66,681.61
Chickaloon Native Village	$137,650.64
Chickasaw Nation	$15,586,520.98
Chippewa Cree Housing Authority	$3,265,489.33
Chitimacha Tribe of Louisiana	$203,100.13
Choctaw Housing Authority	$4,151,889.12
Citizen Potawatomi Nation	$3,100,449.51
Cocopah Indian Housing and Development	$1,169,308.09
Coharie Intra Tribal Council, Inc.	$689,217.13
Colville Indian Housing Authority	$5,125,044.08
Comanche Nation Housing Authority	$3,074,263.98
Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians	$1,193,625.70
Confederated Tribes of Grand Ronde Housing Department/ Confederated Tribes of Grand Ronde	$3,910,097.57
Confederated Tribes of Siletz Indians	$5,099,504.73
Cook Inlet Housing Authority	$17,910,295.55
Copper River Basin Regional Housing Authority	$2,809,535.03
Coquille Indian Housing Authority	$1,415,490.31
Cow Creek Band of Umpqua Tribe of Indians	$1,232,346.67
Cowlitz Indian Tribal Housing	$1,999,326.16

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Coyote Valley Band of Pomo Indians	$737,434.99
Crow Creek Housing Authority	$2,097,791.57
CTUIR-Housing Department/ Confederated Tribes of the Umatilla Indian Reservation	$2,524,575.59
Delaware Nation	$119,906.37
Delaware Tribe of Indians	$735,300.57
Department of Hawaiian Home Lands	$2,400,000.00
Dry Creek Rancheria Band of Pomo Indians	$976,217.75
Duck Valley Housing Authority	$2,755,904.89
Eastern Band of Cherokee Indians	$4,450,158.50
Eastern Shawnee Tribe of Oklahoma	$87,154.48
Eastern Shoshone Housing Authority	$1,880,189.74
Eklutna Native Village	$63,711.50
Elem Indian Colony Sulphur Bank Rancheria	$100,532.68
Elk Valley Rancheria California	$64,489.02
Enterprise Rancheria Indian Housing Authority	$781,581.01
Fallon Paiute-Shoshone Tribe	$1,831,095.38
Flandreau Santee Sioux Tribe	$496,591.21
Fond du Lac Band of Lake Superior Chippewa	$4,766,497.96
Fort Belknap Tribal Housing Authority	$2,566,793.03
Fort Berthold Housing Authority	$5,455,177.93
Fort Bidwell Indian Community	$601,124.84
Fort Hall Housing Authority	$1,732,673.01
Fort Independence Indian Community of Paiute Indians	$112,560.53
Fort McDermitt Paiute Shoshone Tribe	$656,038.74
Fort Peck Housing Authority	$5,724,185.86
Gila River Indian Community	$9,777,922.88
Goshute Housing Authority	$565,982.13
Grand Portage Band of Lake Superior Chippewa	$518,878.18
Grand Traverse Band of Ottawa And Chippewa Indians	$1,626,852.51
Greenville Rancheria	$173,042.73

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Haliwa-Saponi Indian Tribe	$1,293,892.95
Hannahville Indian Community	$255,569.06
Havasupai Tribe	$207,628.11
Ho-Chunk Housing & Community Development Agency/ Ho-Chunk Nation	$5,440,071.86
Hoh Indian Tribe	$158,965.03
Hoonah Indian Association	$233,258.38
Hoopa Valley Housing Authority	$2,024,355.95
Hopi Tribe	$8,413,892.10
Houlton Band of Maliseet Indian Housing Authority	$831,552.89
Housing Authority of Choctaw Nation of Oklahoma	$14,063,789.18
Housing Authority of Seminole Nation of Oklahoma	$2,212,987.39
Housing Authority of The Iowa Tribe of Kansas & Nebraska	$653,194.53
Housing Authority of The Kaw Tribe	$958,673.85
Housing Authority of The Kickapoo Tribe of Oklahoma	$498,140.76
Housing Authority of The Sac and Fox Nation	$2,211,312.77
Hualapai Indian Tribe	$2,140,220.81
Iliamna Village Council	$64,489.02
Indian Township Tribal Government	$1,312,646.62
Interior Regional Housing Authority	$9,835,828.58
Ione Band of Miwok Indians	$464,467.82
Isleta Pueblo Housing Authority	$1,273,451.49
Jamestown S'Klallam Tribe	$392,453.92
Jicarilla Apache Housing Authority	$1,760,793.86
Kalispel Tribe of Indians	$127,057.28
Karuk Tribe Housing Authority (Karuk Tribe)	$5,180,444.72
Kashia Band of Pomo Indians	$763,322.54
Keweenaw Bay Indian Community (KBIC) Housing Department	$2,486,483.31
Kenaitze/Salamatof Tribally Designated Housing Entity (Kenaitze Indian Tribe)	$1,121,483.16
Ketchikan Indian Corporation	$1,132,932.09

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Kialegee Tribal Town	$278,834.86
Kickapoo Housing Authority	$1,110,793.80
Kickapoo Traditional Tribe of Texas	$262,792.84
Kiowa Tribe	$1,488,351.90
Knik Tribal Council	$1,815,484.45
Kodiak Island Housing Authority	$5,684,044.75
Lac Courte Oreilles Housing Authority	$3,942,134.32
Lac du Flambeau Chippewa Housing Authority	$2,401,858.78
Lac Vieux Desert Band of Lake Superior Chippewa	$338,057.63
Laguna Housing	$1,926,303.90
Leech Lake Band of Ojibwe	$5,091,313.06
Little River Band of Ottawa Indians	$382,238.52
Little Shell Tribe	$2,609,697.72
Little Traverse Bay Bands of Odawa Indians	$793,591.52
Lone Pine Paiute Shoshone Tribe	$356,013.31
Lower Brule Housing Authority	$1,679,194.36
Lower Elwha Klallam Tribe	$758,777.66
Lower Sioux Indian Housing Authority	$262,974.63
Lumbee Tribe of North Carolina / Lumbee Land Development, Inc.	$18,956,903.46
Lummi Indian Business Council	$4,195,376.49
Makah Tribe	$1,084,382.72
Mashantucket Pequot Tribal Nation	$70,817.27
Mashpee Wampanoag Tribe	$1,037,664.26
Menominee Indian Tribe of Wisconsin	$3,630,345.83
Mesa Grande Band of Mission Indians	$379,034.14
Mescalero Apache Tribe	$2,860,855.78
Metlakatla Housing Authority	$1,798,361.22
Miami Tribe of Oklahoma	$75,093.70
Mille Lacs Band of Ojibwe	$2,064,973.27
Modoc Housing Authority	$181,826.07

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Modoc Lassen Indian Housing Authority	$511,675.16
Monacan Indian Nation	$475,475.44
MOWA Choctaw Housing Authority	$2,914,915.09
Muckleshoot Housing Authority	$2,016,873.99
Muscogee (Creek) Nation	$20,759,703.76
Nambe Pueblo Housing Entity	$431,833.57
Nansemond Indian Nation	$191,368.17
Narragansett Indian Tribe	$500,679.73
Native Village of Barrow	$1,978,776.55
Native Village of Eyak	$134,921.94
Native Village of Fort Yukon	$526,855.36
Native Village of Kotzebue	$1,373,845.64
Native Village of Kwinhagak	$614,521.37
Native Village of Point Hope	$441,084.74
Native Village of Unalakleet	$373,195.85
Navajo Housing Authority	$93,187,351.36
Newhalen Village	$88,349.01
Nez Perce Tribal Housing Authority	$1,505,409.02
Nimilchik Village	$521,429.96
Nisqually Indian Tribe	$685,025.76
Nome Eskimo Community	$963,950.04
Nooksack Housing Authority	$1,068,087.74
North Fork Rancheria Indian Housing Authority	$1,315,246.06
North Pacific Rim Housing Authority	$3,727,433.50
Northern Arapaho Tribal Housing	$2,694,648.52
Northern Cheyenne Tribal Housing Authority	$3,762,465.46
Northern Circle Indian Housing Authority	$5,311,386.00
Northern Ponca Housing Authority	$3,245,697.03
Northwest Inupiat Housing Authority	$6,389,303.46
Northwestern Band of Shoshone Nation	$249,780.64

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Nulato Village	$188,385.56
Oglala Sioux (Lakota) Housing	$14,627,245.00
Ohkay Owingeh Housing Authority	$1,044,179.88
Omaha Tribal Housing Authority	$1,937,314.82
Oneida Nation of Wisconsin (WI)	$5,177,443.60
Orutsararmiut Traditional Native Council	$2,304,638.20
Osage Nation	$1,652,519.56
Otoe-Missouria Tribe	$472,439.65
Ottawa Tribe of Oklahoma	$292,815.34
Pala Band of Mission Indians	$667,286.62
Pamunkey Indian Tribe	$64,489.02
Pascua Yaqui Tribe	$6,462,317.19
Pawnee Nation Housing Authority	$724,178.00
Penobscot Indian Nation	$1,259,027.48
Peoria Housing Authority	$1,939,618.07
Picayune Rancheria of The Chukchansi Indians	$1,053,034.56
Pinoleville Pomo Nation	$303,396.55
Pit River Tribe	$1,549,360.30
Pleasant Point Indian Reservation	$1,047,271.89
Pokagon Band of Potawatomi Indians	$2,724,503.87
Ponca Tribe of Oklahoma	$1,140,894.98
Port Gamble S'Klallam Housing Authority	$1,249,966.17
Prairie Band Potawatomi Nation	$359,266.26
Pueblo de Cochiti Housing Authority	$334,049.12
Pueblo de San Ildefonso	$444,509.63
Pueblo of Acoma Housing Authority	$1,334,624.57
Pueblo of Jemez Housing Authority	$638,962.85
Pueblo of Picuris	$107,082.44
Pueblo of Pojoaque	$165,400.12
Puyallup Tribe of Indians	$4,186,808.52

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Pyramid Lake Housing Authority	$2,113,245.87
Quapaw Nation Housing Department	$251,025.78
Quartz Valley Indian Reservation	$588,660 66
Quechan Tribally Designated Housing Entity	$2,172,813.58
Quileute Housing Authority	$828,272.37
Quinault Housing Authority	$2,559,826.67
Ramona Band of Cahuilla	$64,489.02
Red Cliff Band of Lake Superior Chippewa	$1,463,837.84
Red Lake Band of Chippewa Indians	$5,843,078.07
Redwood Valley Little River Band of Pomo Indians	$324,512.94
Reno-Sparks Indian Colony	$1,594,361.55
Resighini Rancheria	$64,489.02
Robinson Rancheria of Pomo Indians of California	$506,473.38
Round Valley Indian Housing Authority	$4,650,277.58
Sac and Fox Nation of Missouri Housing Authority	$279,812.17
Sac and Fox Tribe of The Mississippi In Iowa	$415,257.74
Saginaw Chippewa Indian Tribe of Michigan	$2,022,682.92
Salish & Kootenai Housing Authority	$6,248,236.65
Salt River Pima Maricopa Indian Community	$2,767,037.74
San Carlos Apache Tribe	$7,999,035.43
San Felipe Pueblo Housing Authority	$725,947.78
San Pasqual Band of Mission Indians	$471,779.54
Santa Clara Pueblo Housing Authority	$940,618.86
Santa Rosa Band of Cahuilla Indians	$78,118.33
Santee Sioux Tribal Housing Authority	$1,211,446.03
Santo Domingo Tribal Housing Authority	$1,061,247.58
Sauk-Suiattle Indian Tribe	$666,647.23
Sault Tribe Housing Authority	$6,494,593.28
Scotts Valley Band of Pomo Indians	$221,243.83
Seneca Nation Housing Authority	$3,223,632.32

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Seneca-Cayuga Nation	$165,695.38
Shawnee Tribe	$64,489.02
Shingle Springs Rancheria	$434,077.79
Shinnecock Indian Nation	$146,531.61
Sicangu Wicoti Awayankape Corporation	$9,653,267.01
Sisseton Wahpeton Housing Authority	$4,696,975.57
Skokomish Indian Tribe	$764,773.15
Skull Valley Band of Goshute	$64,489.02
Sleetmute Traditional Council	$97,540.17
Snoqualmie Indian Tribe	$318,608.77
Sokaogon Chippewa Housing Authority	$1,185,378.63
Southern Ute Indian Housing Authority	$1,677,932.88
Spirit Lake Housing Corporation	$3,688,164.79
Spokane Indian Housing Authority	$3,178,156.80
Squaxin Island Tribe	$1,067,890.30
St. Croix Chippewa Housing Authority	$2,031,487.23
Standing Rock Housing Authority	$7,259,074.78
Stockbridge-Munsee Community	$707,160.03
Summit Lake Paiute Tribe	$64,489.02
Susanville Indian Rancheria Housing Authority	$1,009,564.70
Swinomish Housing Authority	$1,457,780.97
Tagiugmiullu Nunamiullu Housing Authority	$4,922,378.11
Taos Pueblo	$622,671.85
The Klamath Tribes	$3,949,414.40
The Mohegan Tribe of Indians of Connecticut	$64,489.02
The Suquamish Tribe	$1,080,285.84
The Tejon Indian Tribe	$64,489.02
The Wampanoag Tribe of Gay Head Aquinnah	$603,194.38
Thlopthlocco Tribal Town	$316,888.77
Timbisha Shoshone Tribe	$160,938.96

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Tlingit Haida Regional Housing Authority	$8,644,739.26
Tohono O'Odham Ki:Ki Association	$5,437,457.12
Tolowa Dee-Ni' Nation	$1,256,454.04
Tulalip Tribes of Washington	$3,810,166.83
Tule River Indian Housing Authority	$1,983,888.85
Tunica-Biloxi Tribe of Louisiana	$311,650.81
Turtle Mountain Housing Authority	$9,547,850.61
United Keetoowah Band of Cherokee Indians	$1,561,433.39
Upper Mattaponi Indian Tribe	$228,594.01
Upper Sioux Community Housing Authority	$480,856.46
Upper Skagit Indian Tribe	$1,651,540.75
Utah Paiute Tribal Housing Authority	$2,475,464.38
Ute Indian Tribally Designated Housing Entity	$1,958,943.94
Ute Mountain Ute Tribe	$1,627,347.88
Venetie Village Council	$275,834.36
Village of Aniak	$263,057.76
Waccamaw Siouan Tribe	$316,517.97
Walker River Paiute Tribe	$2,729,257.60
Warm Springs Housing Authority	$1,894,102.92
Washoe Housing Authority	$2,059,386.45
White Earth Band of Chippewa Indians	$4,215,554.34
White Mountain Apache Housing Authority	$9,068,815.81
Wichita and Affiliated Tribes	$640,731.99
Wilton Rancheria	$519,324.44
Winnebago Housing and Development Commission	$1,874,539.10
Wiyot Tribe	$64,489.02
Wyandotte Nation	$698,460.35
Yakama Nation Housing Authority	$7,860,258.38
Yankton Sioux Tribe	$2,853,249.59
Yavapai-Apache Nation	$1,423,613.75

Payments are as of February 26, 2021.

Payments to Tribes and Tribally Designated Housing Entities (TDHE)

Yerington Paiute Tribal Housing Authority	$961,675.36
Ysleta del Sur Pueblo	$2,294,592.84
Yurok Indian Housing Authority	$5,835,594.46
Zuni Housing Authority	$3,570,884.03

Payments are as of February 26, 2021.

Ex. 20

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 15, 2021

via Email

Dear Tribal Leader:

As Treasury's Point of Contact for Tribal Consultation, I would like to invite you to participate in a Tribal Consultation on Proposed Methodology for Reallocating Emergency Rental Assistance Program funds for Tribal governments and Tribally Designated Housing Entities (TDHEs). Consultation will be held Thursday, November 18, 2021 from 3:00 p.m. to 5:00 p.m. Eastern Time.

The Emergency Rental Assistance program makes available $25 billion to assist households that are unable to pay rent and utilities due to the COVID-19 pandemic. The funds are provided directly to States, U.S. Territories, local governments, and Indian tribes. Grantees use the funds to provide assistance to eligible households through existing or newly created rental assistance programs. More information on the program can be found here.

Congress anticipated that there would be a need to reallocate ERA1 funds in the fall of 2021 in order to address evolving needs for rental assistance over the course of the ERA program and to reflect the greater capacity of some recipients to deploy funding. The statute directs the Treasury Department to begin reallocating "excess" ERA1 funds on September 30, 2021 and empowers Treasury to develop reallocation procedures governing this process.

The Department of the Treasury is seeking your input on the methodology for reallocating Emergency Rental Assistance Program Funds to Tribal governments. Specifically, our questions are:

1. What factors should be considered when determining a Tribe's ability to expend funds that should be considered in reallocating funds?

2. What factors and data should be considered when determining the reallocation of funds to high-need, high-performing Tribes and TDHEs?

3. Reallocation for states were based on a minimum expenditure ratio. Are there any mitigating factors that are unique to Tribal governments and TDHEs that should be considered when reviewing the minimum expenditure ratio?

4. Are their circumstances where an increase in technical assistance to Tribes and TDHEs would greatly enhance performance? How would Treasury determine this need?

5. In the state program, states facing a reallocation were able to present a case for mitigating circumstances. What are circumstances likely to be presented by Tribes and TDHEs in requesting a review of potential reallocation?

Exhibit 20

6. In the state program, efforts were made to keep funds within the same state boundaries. Given the diversity in the geographic and demographic composition of American Indians, what would you recommend to Treasury that helps ensure reallocations are fair and equitable?

We respectfully request that each Tribe register one primary leader or designee to provide comments. If time permits, we will hear from Tribal stakeholders. All others are welcome to register as listen-only participants. Written comments are welcomed and should be submitted to EmergencyRentalAssistance.gov. ***The deadline for comments on implementation to be submitted is Tuesday, November 30, 2021 11:59 p.m. AK.***

Register here.

Consultations are off the record and not for press purposes.

We will send out an agenda to registered participants before or on Tuesday, November 16, 2021.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Nancy Montoya
Point of Contact for Tribal Consultation
and Treasury Tribal Affairs Program Coordinator
U.S. Department of the Treasury

Ex. 21

DOT FTA

U.S. Department of Transportation Federal Transit Administration

Application

Federal Award Identification Number (FAIN)	SD-2021-018-00
Temporary Application Number	7044-2021-2
Application Name	Yankton Sioux Tribe FFY20 CARES Act - Operating and Program Admin
Application Status	Final Concurrence / Reservation
Application Budget Number	0

Period of Performance Start Date	N/A	
Original Period of Performance End Date	11/30/2021	
Current Period of Performance End Date	N/A	Revision #: N/A

Part 1: Recipient Information

Name: Yankton Sioux Tribe

Recipient ID	Recipient OST Type	Recipient Alias	Recipient DUNS
7044	Indian Tribe	YANKTON SIOUX TRIBE DBA FORT RANDALL CASINO	122118409

Location Type	Address	City	State	Zip
Headquarters	1153 MAIN SW	WAGNER	SD	57380
Physical Address	1153 MAIN SW	WAGNER	SD	57380
Mailing Address	800 MAIN SW	WAGNER	SD	57380

Union Information

There are no union contacts for this application

Part 2: Application Information

Exhibit 21

Title: Yankton Sioux Tribe FFY20 CARES Act - Operating and Program Admin

FAIN	Application Status	Application Type	Date Created	Last Updated Date	From TEAM?
SD-2021-018-00	Final Concurrence / Reservation	Grant	3/3/2021	3/3/2021	No

Application Executive Summary
This is a FFY2020 Section 5311 Tribal CARES Act grant in the amount of $366,566 (full apportionment). Per the CARES Act, the grant requests 100% federal share. This grant utilizes CARES Act funding to prevent, prepare for, and respond to COVID-19.

The grant scope of work includes the following projects in support of the Tribal Transit Program:
1) Operating Assistance - $300,000
2) Program Admin - $66,566

The Recipient agrees that if it receives federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any federal share that duplicates funding provided by FEMA, another federal agency, or an insurance company.

The tribe selected pre-award authority and will draw the full grant amount to be reimbursed for expenses already incurred as soon as the grant is executed.

Purpose: Reimburse the tribe for expenses incurred in 2020.

Activities to be performed: Reimburse transit service and personnel admin leave for 3/14/2020 - 12/31/2020.

Expected Outcomes: Allow transit service to be maintained.

Intended Beneficiaries: Yankton Sioux Tribal members.

Subrecipient Activities: N/A

Frequency of Milestone Progress Reports (MPR)
Annual

Frequency of Federal Financial Reports (FFR)
Annual

Does this application include funds for research and/or development activities?
This award does not include research and development activities.

Pre-Award Authority
This award is using Pre-Award Authority.

Does this application include suballocation funds?
Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Will this Grant be using Lapsing Funds?
No, this Grant does not use Lapsing Funds.

Will indirect costs be applied to this application?
This award does not include an indirect cost rate.

Indirect Rate Details: N/A

Requires E.O. 12372 Review
No, this application does not require E.O. 12372 Review.

Delinquent Federal Debt
No, my organization does not have delinquent federal debt.

Application Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
Emma	Belmont	Transportation Program Specialist	emma.belmont@dot.gov	(303) 362-2392
Georgiana	Abdo	Transit Director	georgianaabdo2019@gmail.com	(605) 384-5050

Application Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5311 Tribal formula (CARES Act)	5311-7	20509	$366,566
Local			**$0**
Local/In-Kind			$0
State			**$0**
State/In-Kind			$0
Other Federal			**$0**
Transportation Development Credit			$0
Adjustment			**$0**
Total Eligible Cost			**$366,566**

Application Budget

Project Number		Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
SD-2021-018-01-00	600-00 (600-	OTHER PROGRAM COSTS	$366,566.00	$0.00	$366,566.00	2

A1)						
SD-2021-018-01-00	11.79.00	Project Administration	$66,566.00	$0.00	$66,566.00	1
SD-2021-018-01-00	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	$300,000.00	$0.00	$300,000.00	1

Discretionary Allocations

This application does not contain discretionary allocations.

Part 3: Project Information

Project Title: Yankton Sioux Operating and Program Admin

Project Number	Temporary Project Number	Date Created	Start Date	End Date
SD-2021-018-01-00	7044-2021-2-P1	3/3/2021	3/14/2020	12/31/2020

Project Description
Yankton Sioux Tribe will use FFY20 CARES Act funds to reimburse the tribe for operating and program administrative that began when the tribe instituted a tribal closure on 3/14/2020 related to the COVID-19 Pandemic. This closure required some transit staff to be on partial admin leave throughout the full year following the initial closure.

Federal share is 100%.

Project Benefits
Maintain transit program throughout the pandemic.

Additional Information
None provided.

Location Description
We service the Yankton Sioux area

Project Location (Urbanized Areas)

UZA Code	Area Name
460000	South Dakota

Congressional District Information

State	District	Representative

South Dakota	1	Kristi L. Noem

Program Plan Information

STIP/TIP
Date: N/A
Description: N/A

UPWP
Date: N/A
Description: N/A

Long Range Plan
Date: N/A
Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5311 Tribal formula (CARES Act)	5311-7	20509	$366,566
Local			$0
Local/In-Kind			$0
State			$0
State/In-Kind			$0
Other Federal			$0
Transportation Development Credit			$0
Adjustment			$0
Total Eligible Cost			$366,566

Project Budget

Project Number	Budget Item			FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
SD-2021-018-01-00	600-00 (600-A1)	OTHER PROGRAM COSTS		$366,566.00	$0.00	$366,566.00	2
SD-2021-018-01-00		11.79.00	Project Administration	$66,566.00	$0.00	$66,566.00	1
SD-2021-018-01-00		30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	$300,000.00	$0.00	$300,000.00	1

Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
OTHER PROGRAM COSTS (600-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	OPERATING ASSISTANCE	1

Extended Budget Description
FFY20 CARES Act funds will be used to provide operating assistance for the continued operations of the tribal transit program. This is 100% Federal.

Operating funds will cover the timeframe of 3/14/2020 - 12/31/2020, including expenses for: drivers and dispatchers salaries and fringe benefits, fuel, oil, and licenses, less revenues (fare revenue, advertising revenue). This also includes paying administrative leave for operations and maintenance personnel due to reductions/suspensions of service. Operating expenses are based on actuals spent in 2020.

Will 3rd Party contractors be used to fulfill this activity line item?
No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5311 Tribal formula (CARES Act)	5311-7	20509	$300,000
Local			**$0**
Local/In-Kind			**$0**
State			**$0**
State/In-Kind			**$0**
Other Federal			**$0**
Transportation Development Credit			$0
Adjustment			**$0**
Total Eligible Cost			**$300,000**

Milestone Name	Est. Completion Date	Description
Start Date	3/14/2020	
End Date	12/31/2020	

Budget Activity Line Item: 11.79.00 - Project Administration

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
OTHER PROGRAM COSTS (600-00)	11.79.00	PROJECT ADMINISTRATION	OTHER CAPITAL ITEMS (BUS)	1

Extended Budget Description
FFY20 CARES Act Tribal funds in the amount of $66,566 will be used for Program Administration for the timeframe of 3/14/2020 through 12/31/2020. When the COVID-19 Pandemic started the tribe initiated a nearly full closure and put approximately 50% of the transit staff on full admin leave. The amount of time personnel were on admin leave varied throughout this time as COVID-19 cases increased and declined throughout the months.

This is 100% federally funded. Documentation is available upon request.

Will 3rd Party contractors be used to fulfill this activity line item?
No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5311 Tribal formula (CARES Act)	5311-7	20509	$66,566
Local			$0
Local/In-Kind			$0
State			$0
State/In-Kind			$0
Other Federal			$0
Transportation Development Credit			$0
Adjustment			$0
Total Eligible Cost			$66,566

Milestone Name	Est. Completion Date	Description
Start Date	3/14/2020	Begin incurring expenses
End Date	12/31/2020	End incurring expenses

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description
Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand

Date Description	Date

Class IIc CE Approved	7/29/2021

Part 4: Fleet Details

No fleet data exists for this application.

Part 5: FTA Review Comments

FTA Comments for DOL

Comment By	Emma Belmont
Comment Type	DOL Review for Information
Date	8/19/2021
Comment	Stimulus funds for Operating for 1/1/2020-12/31/2020. Grantee contact: Georgiana Abdo (605) 384-5050 georgianaabdo2019@gmail.com

Application Review Comments

Comment By	Emma Belmont
Comment Type	Pre-Award Manager Returns Application
Date	8/16/2021
Comment	

Part 6: Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

GRANT AGREEMENT
(FTA G-28, February 9, 2021)

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:
(1) "Federal Transit Administration Master Agreement," FTA MA(28), February 9, 2021.

http://www.transit.dot.gov,
(2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
(3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

Recipient Information

Recipient Name: Yankton Sioux Tribe

Recipient ID: 7044

DUNS No: 122118409

Application Information

Federal Award Identification Number: SD-2021-018-00

Application Name: Yankton Sioux Tribe FFY20 CARES Act - Operating and Program Admin

Application Start Date: N/A

Original Award End Date: 11/30/2021

Current Award End Date: N/A

Application Executive Summary: This is a FFY2020 Section 5311 Tribal CARES Act grant in the amount of $366,566 (full apportionment). Per the CARES Act, the grant requests 100% federal share. This grant utilizes CARES Act funding to prevent, prepare for, and respond to COVID-19.

The grant scope of work includes the following projects in support of the Tribal Transit Program:
1) Operating Assistance - $300,000
2) Program Admin - $66,566

The Recipient agrees that if it receives federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any federal share that duplicates funding provided by FEMA, another federal agency, or an insurance company.

The tribe selected pre-award authority and will draw the full grant amount to be reimbursed for expenses already incurred as soon as the grant is executed.

Purpose: Reimburse the tribe for expenses incurred in 2020.

Activities to be performed: Reimburse transit service and personnel admin leave for 3/14/2020 - 12/31/2020.

Expected Outcomes: Allow transit service to be maintained.

Intended Beneficiaries: Yankton Sioux Tribal members.

Subrecipient Activities: N/A

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Pre-Award Authority: This award is using Pre-Award Authority.

Application Budget

Total Application Budget: $366,566.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): $366,566.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): $0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): $366,566.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): $0.00

Application Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
5311 Tribal formula (CARES Act)	5311-7	20509	$366,566
Local			$0
Local/In-Kind			$0
State			$0
State/In-Kind			$0
Other Federal			$0
Transportation Development Credit			$0
Adjustment			$0
Total Eligible Cost			**$366,566**

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Certification Date:

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:

FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info:
Award Date:

EXECUTION OF THE GRANT AGREEMENT

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:
(1) Affirms this FTA Award,
(2) Adopts and ratifies all of the following information it has submitted to FTA:
    (a) Statements,
    (b) Representations,
    (c) Warranties,
    (d) Covenants, and
    (e) Materials,
(3) Consents to comply with the requirements of this FTA Award, and
(4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:

Yankton Sioux Tribe

Ex. 22

Yankton Sioux Tribe

Comprehensive Economic Development Strategy (CEDS)

September 2022

Exhibit 22

Table of Contents

Tribal Contact Information

Yankton Sioux Tribe
PO Box 1153
Wagner, SD 57380
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www.yanktonsiouxtribe.net

Business & Claims Committee
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Jason Cooke, Vice Chairman
jwcooke69@gmail.com

Glenford "Sam" Sully, Secretary
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Kenneth Cook, Treasurer
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Gregory Cournoyer, Jr., Councilman
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Andrea Fischer, Councilwoman
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Kip Spotted Eagle, Councilman
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Jody Zephier, Councilman
zephierj@yahoo.com

Introduction

This document summarizes economic development planning efforts of the Yankton Sioux Tribe (YST). It follows the Comprehensive Economic Development Strategy (CEDS) Guidelines established by the Economic Development Administration (EDA). The YST recognizes the value in utilizing the CEDS as means of engaging Tribal members and entities in the development process. Tribal leaders also recognize that no single planning initiative or set of strategies can address every development challenge or situation.

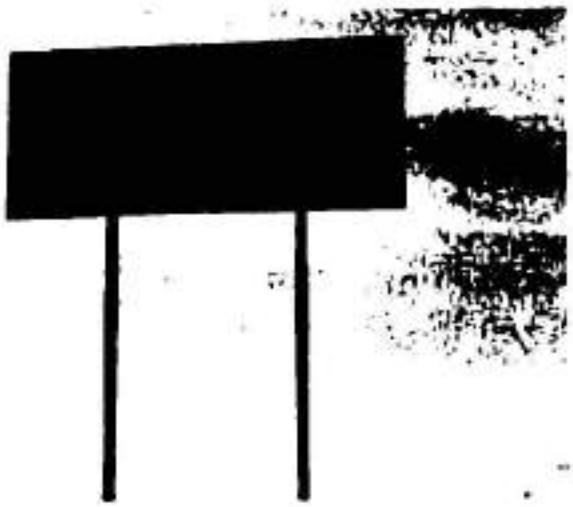
The CEDS will serve as:

1) An outline of Tribal development aspirations;
2) A reference guide for development related facts;
3) A vehicle for policy formation and public engagement; and
4) A baseline for measuring the impacts of Tribal actions and projects.

The CEDS process cannot be expected to:

1) Accurately predict all future events or development conditions;
2) Conclusively determine the direction the YST will take in response to development issues;
3) Precisely identify all projects and program priorities for a given period of time; and
4) Completely address known or anticipated development needs.

These limitations are a recognition that the development "environment" changes rapidly and continually. The YST will strive to update this document on a regular basis. It will also encourage Tribal program managers to incorporate elements of the CEDS into their specific issue areas (examples: infrastructure, transportation, workforce development, etc.). The scope and flexibility of the CEDS process will create an inclusive "tool box" of information, ideas and initiatives that may be utilized throughout Tribal government.

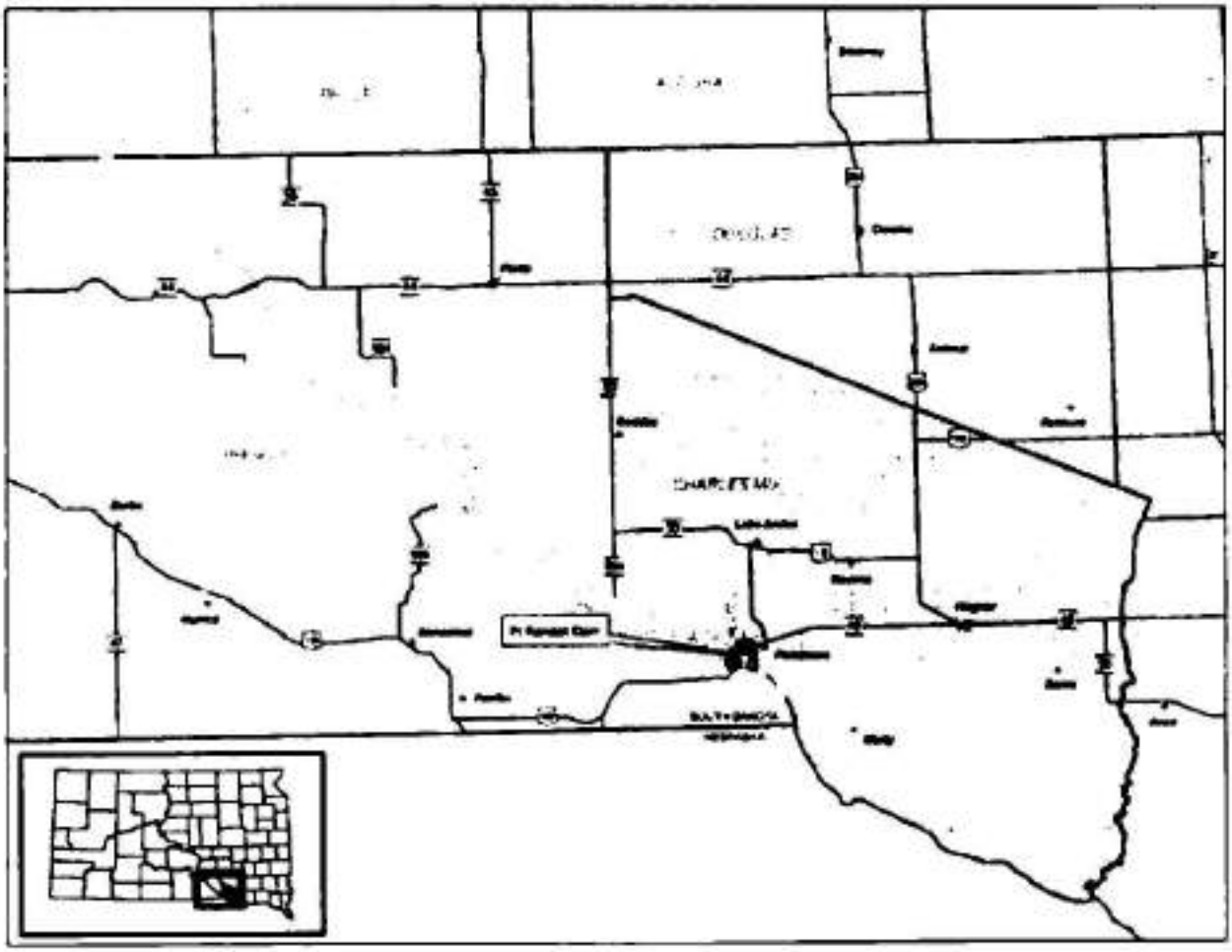


Summary Background

Tribal Characteristics

The YST is a non-IRA Tribe. It is also known as "Ihanktonwan Dakota Oyate" or "People of the End Village". The YST is located along the Missouri River in southeastern South Dakota (Figure 1). The YST Reservation has a total land area of approximately 672 square miles (430,504 acres), with all Tribal land being in Charles Mix County.

FIGURE 1
Yankton Sioux Tribe Map



The Reservation lies approximately 60 miles west of Yankton. The Missouri River is the primary natural feature in the area.

The following facts provide an overview of the Tribe's history and situation.

- Tribal Organization – The YST is an unincorporated Tribe operating under a constitution and by-laws initially approved in 1932.
- Governance – The "Genera Council" (all enrolled Tribal members 18 years of age and older) is the ultimate legislative authority of the Tribe.
- Management – The Business and Claims Committee (B&CC) conducts the day-to-day business of the Tribe. It consists of nine members who are elected every two years.
- Population – 6,945 *(2020 Census))*
- Largest Community – Wagner, population 1,490 *(2020 Census)*
- Language – Dakota dialect
- Cultural Identity – Ihanktonwan Dakota Oyate heritage of the Great Sioux Nation

Demographic and Socioeconomic Data

Population

The Yankton Sioux Tribe has a strong population base, especially when compared to Charles Mix County as a whole. The Tribe has seen some fluctuation in the population over the last 25 years which is shown in Table 1. The greatest growth was shown between 1990 and 2000. The population fell between 2000 and 2010, but then began to grow again between 2015 and 2020. The other reservations in the state also registered increases during this time period, in some cases much higher that the state rate. The reservation's population gain in the 2000's is likely due more to a natural increase, a significant increase in the fertility rate, than to in-migration.

Of the 6,945 people living within the Yankton Sioux Reservation, 2,885 are American Indian. There are 2895 enrolled members of the Yankton Sioux Tribe.

TABLE 1

Population Change 1990-2020

Area	1990	2000	2010	2015	2020	% Change 1990-2015	% Change 2015-2020
Yankton Sioux Tribe	6,269	6,500	6,465	6,498	6,945	3.7%	6.4
Charles Mix County	9,131	9,350	9,129	9,239	9373	1.2%	1.4
South Dakota	696,004	754,844	814,180	843,190	886,667	21.1%	4.9
United States	248,709,873	281,421,906	308,745,538	316,515,021	331,449,281	21.4%	4.5

Note: Change calculated from 1990-2010
Source: 1990, 2000, 2010, 2015, 2020 Census Data

As shown in Table 2, three commonly used population projection models all predict that the reservations' population will begin to slowly decline over the next few decades. This projection assumes that the out-migrations rate remains about the same. The predicted decline in population is similar to that of Charles Mix County as a whole, although the county's population is projected to decline at a faster rate than the Yankton Sioux Reservation.

Table 3 shows the percentage of the population under 18 and over 65 as well as the median age. A comparison of "population pyramids" for the reservation and the state illustrates the difference in population dynamics, see Tables 3A and 3B. The horizontal bars in the pyramids reflect the relative number of people in each of the age groups shown at the left. On the Yankton Sioux Reservation, the long bars at the bottom and the shorter bars toward the top indicate that there are many young people on the reservation and relatively few elderly residents. Statewide, there are relatively fewer young people, but more seniors.

TABLE 2

Population Projections for Yankton Sioux Tribe

Projection Model	Change 1990-2020	2030	2040	2050
Linear Model	106/Decade	6,694	6,801	6,907
Exponential Model	1.68%/Decade	6,699	6,812	6,926
Annual Growth Rate Model	.17%/Year	6,698	6,810	6,923

Source: Planning and Development District III

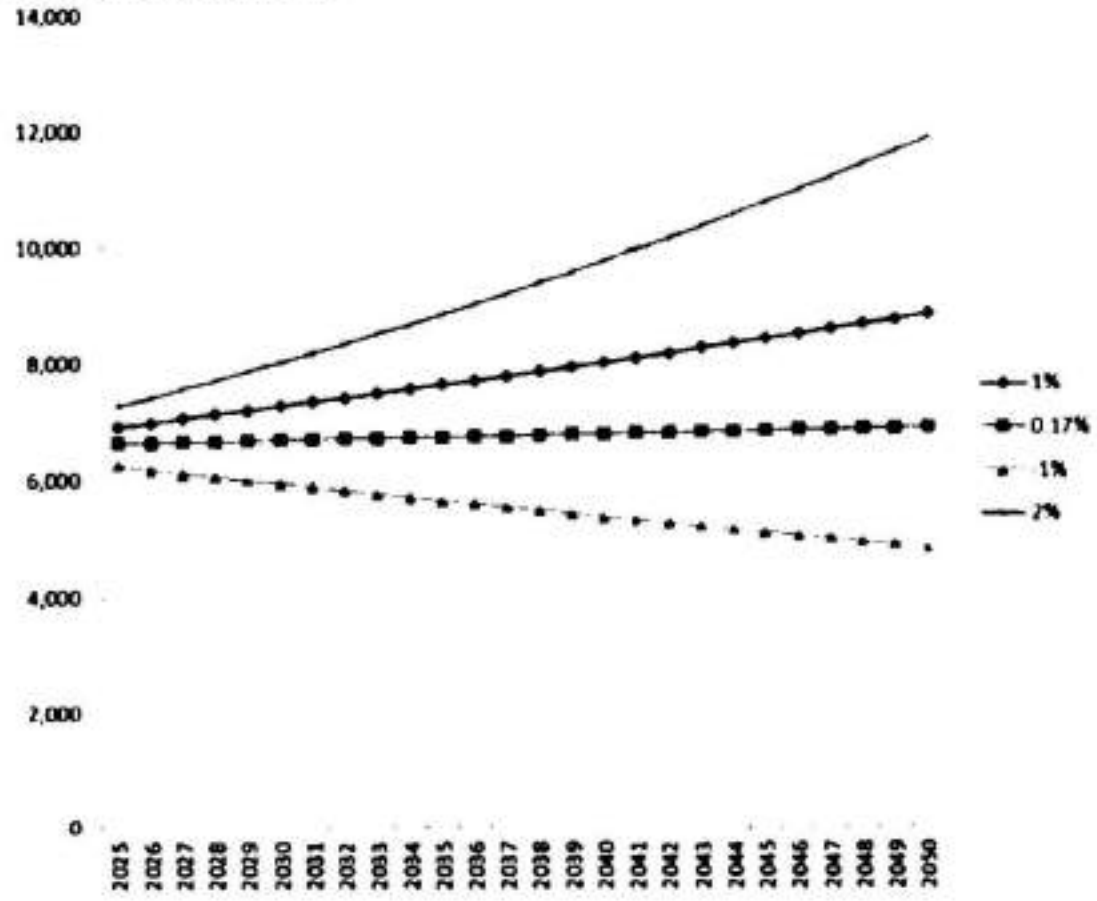


TABLE 3

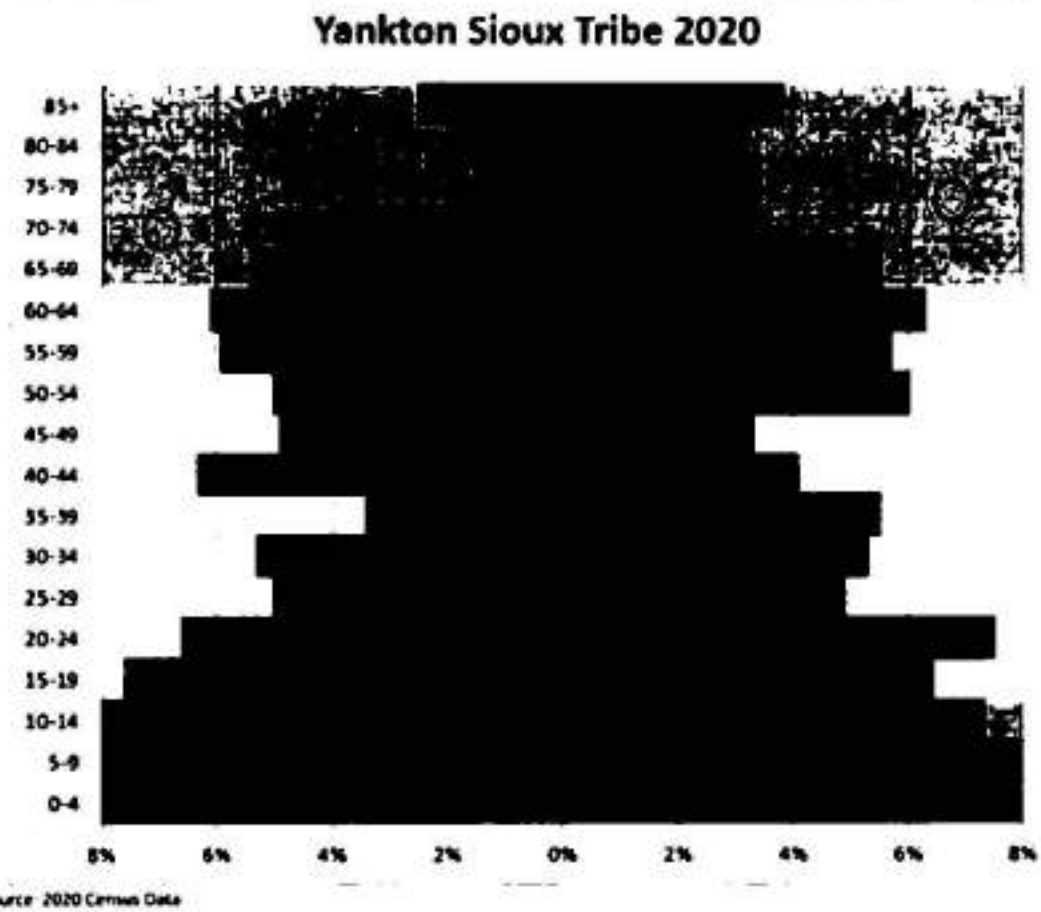
Age Characteristics

Area	% Under 18	% 65 and Over	Median Age
Yankton Sioux Tribe	31.6	17.3	33.8
Charles Mix County	29.6	18.4	36.3
South Dakota	24.5	16.7	37.2
United States	22.4	16.0	38.2

Source: 2020 Census Data

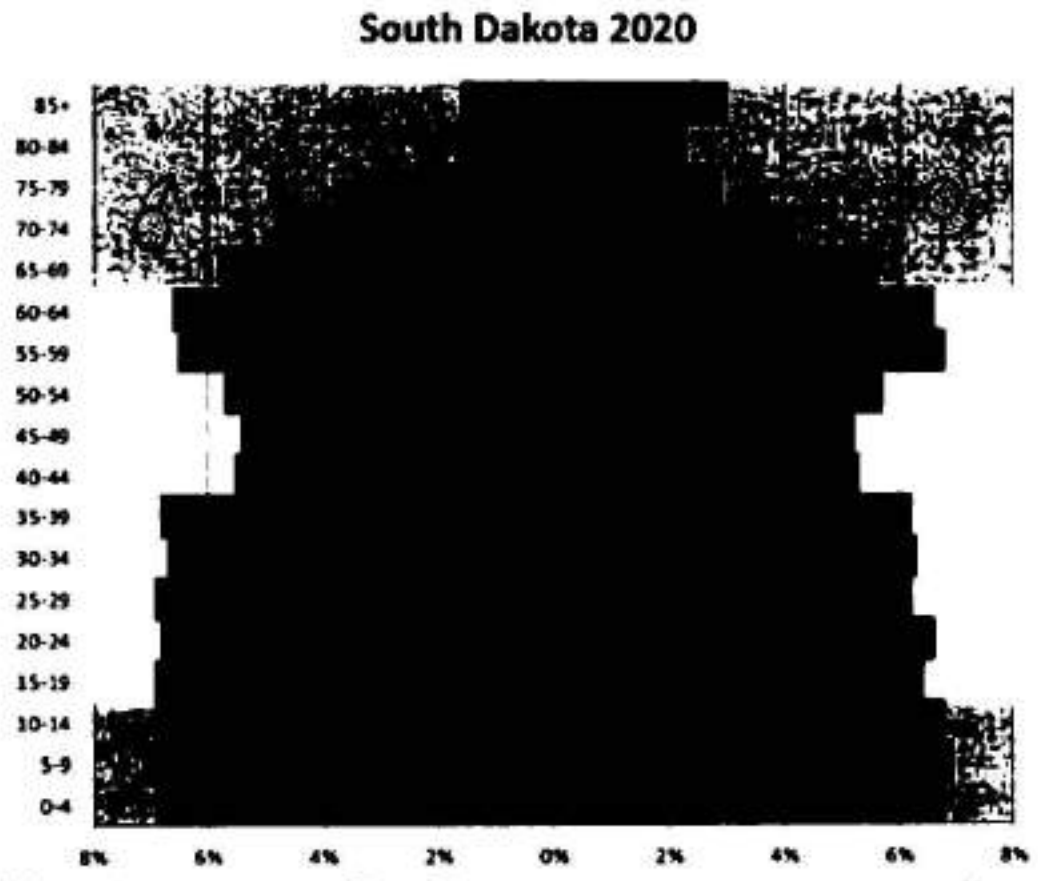
TABLE 3A

Yankton Sioux Tribe Population Pyramid (2020)



Source: 2020 Census Data

TABLE 38
South Dakota Population Pyramid (2020)



Source: 2020 Census Data

Income

Per capita income and median family income figures on the Yankton Sioux Reservation are much lower than in the state and the nation, but they are relatively close in comparison to those of Charles Mix County. The Yankton Sioux Reservation does compare more favorably to other reservations in the state. Low income on the reservation is due to a lack of quality jobs, most notably in the manufacturing and technology sectors, which leads to high unemployment levels. Many young people have no other choice but to leave the reservation in order to find jobs.

TABLE 4

Income Measures

Area	Per Capita Income	Median Household Income	Median Family Income
Yankton Sioux Tribe	$21,558	$48,177	$57,444
Charles Mix County	$23,626	$52,348	$61,585
South Dakota	$31,415	$59,896	$77,042
United States	$35,384	$64,994	$80,069

Source: 2020 Census Data

The percentage of people living in poverty on the reservation is considerably higher than in Charles Mix County, the state, and the nation, but roughly similar to other reservations, see Table 5.

TABLE 5

Percent of Population Living Below Poverty Level 2015, 2020

Area	2015	2020
Yankton Sioux Tribe	29.1%	22.2%
Charles Mix County	22.1%	20.8%
South Dakota	14.1%	12.8%
United States	15.5%	12.8%

Source: 2015, 2020 Census Data

Educational Achievement

The Tribe operates elementary, middle, and high schools; one of which, the Marty Indian School, offers a residential program for students in grades 7-12. In addition, the Tribe operates the Ihanktonwan Community College. Table 6 shows the educational attainment on the Yankton Sioux Reservation compared with Charles Mix County, as well as the state and the nation. The percentage of adults on the reservation with at least a high school diploma is slightly lower than the state and the nation, but is very similar to that of Charles Mix County. The same is true of the percentage of adults with a college degree when compared to the county, state, and nation.

TABLE 6

Educational Attainment among Persons 25 and Older

Area	2010		2020	
	HS Graduates	College Graduates	HS Graduates	College Graduates
Yankton Sioux Tribe	78.8%	14.3%	85.2%	18.6%
Charles Mix County	80.7%	15.5%	87.8%	20.2%
South Dakota	89.3%	25.3%	92.2%	29.3%
United States	85.0%	27.9%	88.5%	32.9%

Source: 2010, 2020 Census Data

Labor Force

As is the case on many Indian reservations in the United States, unemployment rates on the Yankton Sioux Reservation have traditionally been high, see Table 7. The Labor Market Information Center Confirmed this situation.

TABLE 7

Unemployment Rate, 2011-2020

Area	2011	2012	2013	2014	2015	2020
Yankton Sioux Tribe	11.3%	11.7%	9.9%	9.6%	7.8%	10.7%
Charles Mix County	8.1%	8.4%	7.0%	6.6%	5.1%	8.4%
South Dakota	4.8%	4.9%	5.0%	4.8%	4.5%	3.5%
United States	8.7%	9.3%	9.7%	9.2%	8.3%	5.4%

Source: Labor Market Information Center, SD Dept. of Labor & Regulation in cooperation with U.S. Bureau of Labor Statistics 2010-2015, 2020 American Community Survey Data, US Census Bureau

The reservation has seen a dramatic shift in the make-up of its work force. In 2010, over half of women 16 years of age and older on the reservation were in the labor force, but by 2020, 59% were a part of the labor force, see Table 8. The percentage of working women on the reservation who have young children has also increased substantially in the las few decades. These trends have brought about major social challenges, such as the need for more day care facilities. The Tribe provides day care programs for parents who are working, attending school, job training, or job search programs. The fees are determined on a sliding scale based on income.

TABLE 8

Percent of Women 16 and Over Employed in the Labor Force, 2010-2020

Area	2010	2020
Yankton Sioux Tribe	65.5%	59.4%
Charles Mix County	68.6%	62.3%
South Dakota	77.6%	67.9%
United States	67.3%	63.4%

Source: 2010, 2020 Census Data

Economy

The Yankton Sioux's employment base is dependent upon jobs within Education, Health Care, and Social Assistance. As noted in **Table 9**, 27% of jobs on the reservation fall within that sector. The next three largest employment sectors are Agriculture, Forestry, Fishing, and Hunting, Mining (13.1 %); Arts, Entertainment, and Recreation, Accommodation, Food Services (10.8%); and Public Administration 11.1%.

TABLE 9
Employment by Category, 2020

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
Industry	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
Civilian Employed Population, 16+	447,607		3,933		2,647	
Agriculture, Forestry, Fishing and Hunting, Mining	28,841	6.4%	618	15.7%	346	13.1%
Construction	31,693	7.1%	226	5.7%	139	5.2%
Manufacturing	44,942	10%	151	3.8%	95	3.6%
Wholesale Trade	12,558	2.8%	75	1.9%	31	1.1%
Retail Trade	51,419	11.4%	335	8.5%	233	8.8%
Transportation and Warehousing, Utilities	19,274	4.3%	248	6.3%	138	5.2%
Information	6,734	1.5%	48	1.2%	42	1.6%
Finance and Insurance, Real Estate and Rental/Leasing	32,792	7.3%	190	4.8%	131	4.9%
Professional, Scientific, Management, Administrative, Waste Management Services	29,580	6.6%	194	4.9%	113	4.3%
Educational Services, Health Care, and Social Assistance	107,425	24%	968	24.6%	715	27%
Arts, Entertainment, and Recreation, Accommodation, Food Services	40,036	8.9%	409	10.4%	286	10.8%
Other Services (excluding public administration)	20,237	4.5%	166	4.2%	83	3.1%
Public Administration	22,076	4.9%	305	7.8%	295	11.1%

Source: 2020 Census Data

The major employers on the reservation are as follows:

- Fort Randall Casino
- Indian Health Service
- Tribal Office
- Bureau of Indian Affairs
- Marty Indian School
- Yankton Sioux Travel Plaza

Housing

There are 2,627 total housing units on the Yankton Sioux Reservation as of 2020. Single family dwellings make up the clear majority, 84%, of the housing units on the reservation. This is a significant percentage as single-family dwellings make up only 71% of the total units in the state.

TABLE 10A

General Housing Characteristics

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
HOUSING OCCUPANCY						
Total Housing Units	372,328	396,817	3,850	3,912	2,584	2,627
Occupied Housing Units	330,858	347,878	3,171	3,149	2,114	2,125
Vacant Housing Units	41,470	48,939	679	763	470	502
Homeowner Vacancy Rate	1.6	1.2%	1.8	1.4	2.2	1.6
Rental Vacancy Rate	5.5	6.8%	8.7	8.8	8.6	8.6
UNITS IN STRUCTURE						
Total Housing Units	372,378	396,817	3,850	3,912	2,584	2,627
1-unit, detached	256,666	266,995	3,174	3,261	2,035	2,114
1-unit, attached	12,675	15,086	45	86	42	80
2 units	6,269	7,453	76	56	68	46
3-4 units	12,510	14,254	41	64	37	44
5-9 units	14,178	15,386	131	130	74	87
10-19 units	15,001	17,327	61	60	58	60
20+ units	22,114	25,792	67	61	57	58
Mobile Home	32,754	34,316	255	194	213	138
Boat, RV, Van, etc.	134	208	0	0	0	0

Source: 2015, 2020 Census Data

Units built on the reservation are slightly older than those built across the state, but slightly newer than those across the county. The median year a structure was built is 1970, meaning half of the units were built before that year and half were built after. Construction of homes remained fairly consistent from the 1950s through the 1990s. The decades which saw the most significant investment in housing construction, with the exception of homes built in 1939 or earlier, 1970s and 1990s. These were periods of massive involvement from the federal government using several programs to construct homes and other dwelling units. Table 10B illustrates the number of units that were built in each decade from the 1940s to present day, as well as the number of units constructed prior to 1940. In the Yankton Sioux Reservation's case, 25% of its units were constructed before World War II.

TABLE 10B

Year Structure was Built

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
Total Housing Units	372,328	396,817	3,850	3,912	2,584	2,627
2015 or later/2014 or later	545	18,750	6	75	6	41
2010-2014/2010-2019	9,069	16,954	53	87	37	63
2000-2009	57,744	55,234	244	307	169	201
1990-1999	48,426	50,640	464	342	367	269
1980-1989	38,008	37,980	385	421	243	300
1970-1979	63,226	64,536	540	566	416	456
1960-1969	32,512	32,818	290	397	213	270
1950-1959	34,306	34,472	382	347	267	269
1940-1949	19,333	16,455	218	183	130	100
1939 or earlier	69,159	68,978	1,268	1187	736	660
Median Year Built	1975	1977	1962	1966	1967	1970

Source: 2015, 2020Census Data

The growth of families on the reservation has led to the construction of units that include as many as five bedrooms. The most common unit contains three bedrooms as 963 of the reservation's 2,627 units or 37%. Table 10C shows the number of units by bedroom size. In South Dakota, the majority of units feature three bedrooms.

TABLE 10C

Number of Bedrooms per Housing Unit

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
Total Housing Units	372,328	396,817	3,850	3,912	2,584	2,627
No Bedroom	5,918	7,852	93	45	64	32
1 Bedroom	35,522	37,055	336	301	244	221
2 Bedrooms	103 439	109,658	903	934	597	653
3 Bedrooms	128,290	131,253	1,418	1,424	1,059	963
4 Bedrooms	71,848	78,906	810	841	429	558
5+ Bedrooms	27,311	32,183	290	367	191	200

Source: 2015, 2020 Census Data

On the Yankton Sioux Reservation, 54% of units are owner-occupied, which is significantly lower than the state percentage of 60%. The average owner-occupied household size on the reservation is 3.01 people, a figure that is similar to other reservations in the state, but significantly higher than the state average of 2.54 people.

TABLE 10D

Housing Tenure and Household Size

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
Total Housing Units	372,328	396,817	3,850	3,912	2,584	2,627
Occupied Housing Units	330,858	347,878	3,171	3,149	2,114	2,125
Owner-Occupied	225,219	236,495	2,223	2,215	1,380	1,410
Renter-Occupied	105,639	111,383	948	934	734	715
Average Size of Owner-Occupied Household	2.54	2.54	2.60	2.77	2.63	3.01
Average Size of Renter-Occupied Household	2.25	2.19	3.19	3.08	3.50	3.43

Source: 2010, 2015 Census Data

Housing values are much lower on the reservation than they are in the state. The median value of owner-occupied units for the Yankton Sioux Reservation in 2020 was $107,200, compared to $174,600 median value of owner-occupied units in the state. Table 10E displays the number of owner-occupied units by value ranges. The growth in median value has been average when compared to the median value at the state and county levels between 2015 and 2020; however, the median value for the Yankton Sioux Reservation remains quite low comparatively.

TABLE 10E

Value of Owner Occupied Units

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
Owner-Occupied Units	225,219	236,495	2,223	2,215	1,380	1,410
Less than $50,000	34,576	26,464	593	442	444	366
$50,000-$99,999	40,014	30,602	691	421	414	302
$100,000-$149,999	46,421	36,093	319	340	154	187
$150,000-$199,999	40,446	43,474	246	324	138	179
$200,000-$299,999	36,869	52,839	172	316	114	142
$300,000-$499,999	20,006	34,848	135	215	65	155
$500,000-$999,999	5,331	10,105	56	123	40	65
$1,000,000 or more	1,556	2,070	11	34	11	14
Median Value	$140,500	174,600	$82,700	127,900	$75,600	107,200

Source: 2015, 2020 Census Data

Table 10F displays the number of renter occupied units in various ranges of rent paid. 41% of the units on the reservation get less than $500 per month in rents; 53% of the units get between $500 and $999 in monthly rent; leaving just 6% that are receiving rent over $1000 in monthly rent. The median rent for the reservation was $552 in 2020. The figure is consistent with the median rent paid in Charles Mix County, but slightly less than the median rent paid in the state.

TABLE 10F

Rent Paid for Renter Occupied Units

	South Dakota		Charles Mix County		Yankton Sioux Tribe	
	2015	2020	2015	2020	2015	2020
Occupied Units Paying Rent	97,046	103,233	840	804	665	617
Less than $500	27,230	19,038	405	331	322	255
$500-$999	55,403	59,635	424	438	335	327
$1,000-$1,499	11,819	19,340	4	28	4	28
$1,500-$1,999	1,603	3,465	4	3	4	3
$2,000 or More/$2,000-$2,499	426	812	3	4	0	4
$2,500-$2,999	356	332	0	0	0	0
$3,000 or more	209	611	0	0	0	0
Median Rent	$655	$761	$508	$568	$508	$552
No Rent Paid	8,593	8,150	108	130	69	98

Source: 2015, 2020 Census Data

Transportation

The Yankton Sioux Reservation's transportation system is limited almost entirely to its roads and highways.

TABLE 11
Road Miles

	Length of Rural Roads (Charles Mix County)	Yankton Sioux Tribe's Main Highways
Gravel	1,113.398	South Dakota Highway 46
Bituminous	288.704	South Dakota Highway 50
Concrete	0	US Highway 18
Primitive	91.599	US Highway 281
Unimproved	78.715	
Grade	176.707	
Total	1,749.123	

Source: SD DOT 2021 Mileage Reports

For people who cannot drive, the Tribe provides a transit bus service within the reservation. As for other transportation options, there is no commercial air service on the reservation, but there is a small landing strip for private planes. The nearest commercial air service is located in Sioux Falls, approximately 115 miles from the Yankton Sioux Reservation.

Livability Index

The American Association of Retired Persons (AARP) recently developed an online tool called the "Livability Index." The Livability Index measures various components of community life including housing, transportation, environment, health, and civic engagement.

The index measures several values within each category and then a summary topic score is calculated. The scores for each category is compared to the United States benchmarks in the same categories. This information was determined for the total area within Charles Mix County and not just the Yankton Sioux Reservation. The overall livability index of Charles Mix County is 48.

Overall Livability Score

The overall livability index score for Charles Mix County South Dakota is 48

Total Population

9,349

African American 0%

Asian

Hispanic

White

Age 50+

Age 65+

Households w/Disabilities

Life Expectancy: 80 years old

Households Without a Vehicle

Median Income:

Poverty: 19%

Upward Mobility: 44

Sources for Demographic Data Points

The graphic below is a summary of the category indices which contributed to the overall livability index

Category Scores

These are the neighborhood scores for Charles Mix County, South Dakota. Explore the metrics and policies behind the numbers.

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The category scores are listed above. According to the calculations, engagement was the highest scoring category for Charles Mix County. The lowest scoring category for Charles Mix County was Health.

Analysts can drill deeper into each category to discover the issues that were evaluated in order to calculate the category score. Each issue illustrates the local value and the value for the median US neighborhood.

The following graphics are taken from the research of the livability index for Charles Mix County. They reveal how the scores for Engagement and Health were calculated. The indicators are coded to go along with the rankings.

In the Engagement category, Charles Mix received higher rankings in terms of opportunity for Voting Rate and Opportunity for Civic Involvement. The graphic below illustrates the details of the Engagement score.

The Health category is Charles Mix County's weakest area in terms of the overall Livability Index. Charles Mix County has higher indicators in many health-related behaviors and access to care. The behaviors include the prevalence of smoking and obesity as well as access to exercise facilities. Another high indicator for the county that is quite alarming is the Preventable Hospitalization rate. This looks at the number hospitalizations that could have been effectively treated or prevented with proper and routine outpatient care such as going to the clinic. Charles Mix County's rate is 81.9 versus the Median US neighborhood rate of 48.5. The index measures the access to health care professionals on a scale from 0 to 25, with lower scores being better. This is called the severity of clinician shortage. Charles Mix County measures in at 16, which is considered a critical shortage of health care professionals. The graphic below shows the scores which make up the Health index.

		Charles Mix County South Dakota	
Smoking prevalence	19%	24.5%	
Obesity prevalence	32.2%	36.4%	
Access to exercise opportunities	61.1%	54.9%	
Health care professionals shortage areas	0	10	
Preventable hospitalization rate	48.5	61.9	
Patient satisfaction	71.8%	74.3%	

Environmental, Geographic Climatic and Cultural Information

The YST is a sovereign nation with the responsibilities and authority associated with that status. The Tribe has an "Environmental Protection Office" whose mission includes the oversight of environmental regulations and the monitoring of sensitive areas:

A description of the area encompassing the YST Reservation would include:

Climate – semi arid, with annual rainfall averaging 24.8 inches (majority falling during the growing season of April – September).

Wind – The average wind speed is 13 miles per hour (mph) during the summer, primarily from the south and west. Winter season winds average 15 mph, primarily from the north and west.

Soils – The Reservation contains several different soil profiles, which are known to have various characteristics that impact agricultural productivity, construction limitations and drainage suitability.

Topography – The area contains numerous sloping land features associated with "Missouri River Breaks". The Tribe also utilizes river bottom land and upland locations for farming activities. The "breaks" have a tendency toward landslides and construction practices must take that factor into consideration.

Water Resources – The Missouri River is the primary water feature. The Reservation also contains several creeks and wetlands.

EDA's "Environmental Guidance for Grant Programs" is based upon the National Environmental Policy Act (NEPA). The following table provides an overview on the YST's relationship to common NEPA factors.

Table 12

Environmental Factors

Topic	YST's Situation
1. State or National Parks	Sothern Charles Mix County contains part of the "Missouri National Recreation River", below the Fort Randall Dam. There is also a National Wildlife Refuge near Lake Andes.
2. Wilderness Areas	None Exist
3. Wild or Scenic Rivers	No Designations
4. Endangered or Threatened Species	Endangered: Whooping Crane, Least Tern, and Pallid Sturgeon Threatened: Piping Plover
5. Prime/Unique Agricultural Lands	Exist – Under Tribal Control
6. Superfund Site	None Known
7. Hazardous Chemical Manufacturers, Users or Storage Facilities	Underground Fuel Tank Sites Known
8. Manufacturers or Users of Pesticides	Pesticides applied to farmland, per instructions. No manufacturing facilities known
9. Sole Source Aquifers	None Exist, according to the SD Department of Environment and Natural Resources (DENR)
10. Wellhead Protection Areas	None Established (DENR sources)
11. Nonattainment Areas for Critical Pollutants	No State or Tribal monitoring stations – Periodic dust conditions from agricultural practices and odor associated with organic fertilizer and lagoon turnover
12. 100 Year Flood Plains	Drainage areas are known
13. Archeological, Historic Prehistoric or Cultural Resource Sites	Sites are protected and strictly monitored by Tribal officials
14. Coastal Zones	Not Applicable
15. Constraints to Economic Development	Geographic isolation, federal government policies and a lack of development diversity are all constraints.
16. Environmental Justice	Tribal members have an acute awareness of and a visceral connection to the land and its role in their lives. YST development policies will emphasize the central place the environment has in the Tribe's future.

Major Environmental Issues (Not In Any Particular Order of Importance)

The Yankton Sioux Tribe has identified a number of environmental issues that directly impact the well-being of individuals and the community as a whole. The mission of the Tribe's Environmental Protection Program is:

"Protecting Human Health and the Environment."

This mission is expressed through seven purpose statements.

1) All Tribal members are protected from significant risks to human health and the environment where they live, learn and work;
2) Efforts to reduce environmental risk are based on the best available scientific information;
3) Federal laws protecting human health and the environment are enforced fairly and effectively;
4) Environmental protection is an integral consideration in U.S. Policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry and international trade and these factors are similarly considered in establishing environmental policy;
5) All parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks;
6) Environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and
7) The United States plays a leadership role in working with other nations to protect the global environment.

The Tribe will follow the guidance of the "Indian Environmental General Assistance Program Act of 1992" in developing and administering environmental programs. Examples of the Tribe's environmental protection efforts are presented in Table 13.

Table 13.

Environmental Initiatives

Program Area	Focus	Specific Actions	Outcomes
Solid Waste	• Water, air and land protection • Public participation	• Regular garbage collection • Public information • Replace Transfer Station • Reduce Solid Waste to Landfill by 50%	• Public awareness and enhanced quality of life • Animal and wildlife protection • Environmental feature presentation • Program delivery efficiency
Recycling	• Waste streams reduction • Productive reuse of specific materials	• Collection and material handling for cardboard, newspaper, plastic bottles, paper, aluminum cans and metal cans • Consumer education • Business participation	• Community unity and enhanced quality of life • Efficient program delivery • Material reuse • Environmental protection • Energy savings
Water Quality	• Water and wastewater infrastructure	• Monitoring, assessment, protection and precaution of polluted runoff in waterways and wastewater infrastructure • Public health education and outreach • Complete comprehensive update of USGS GWSI database	• Utilization of "green" products • Reduction in use of harmful chemicals • Improved environmental quality (water, air, etc.) • Personal health improvement • Public policy engagement
Hazardous Waste	• Identify Brownfield Projects	• Survey & Inventory Sites • Oversight & Enforcement Activities • Opportunities for Public Participation • Cleanup Plan Completion	• Successful completion of Brownfield projects

Program Area	Focus	Specific Actions	Outcomes
Air Quality	• Establish Indoor Air Quality Program	• Testing Homes for Radon Gas & Mold	• Ensure Homes are safe to inhabit

Environmental concerns require public awareness and a plan on how to address the concerns as there is a lack of public awareness of these issues due to newspapers and public television not being available in all areas. Lack of finance makes these types of media unavailable to tribal members. Often, the only awareness is by word of mouth, public speaking events or hand delivered pamphlets, posters. Public awareness of environmental concerns can only happen if the public is aware of them.

The Yankton Sioux Tribe has the management expertise and "community will" to pursue aggressive environmental protection endeavors. The Tribe's future is closely tied to its historic land base and natural resources. The link between people and place cannot be broken. This fact will play a role in all Tribal development decisions.

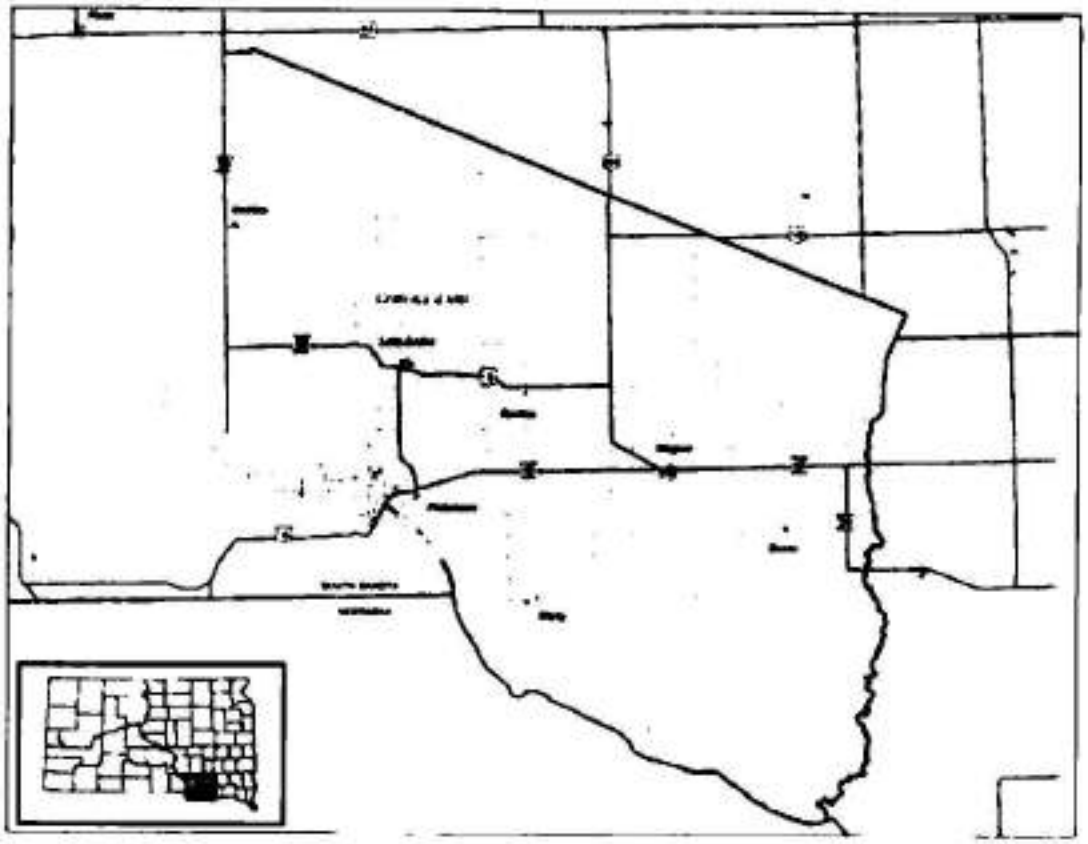
Infrastructure Assets

Transportation

The YST's transportation resources are centered around road access and public transit services. The "checkerboard" nature of reservation lands limits the extent of Tribal roads. The Tribe maintains 22 miles of Bureau of Indian Affairs (BIA) roads, including streets in Tribal communities and housing developments.

The Yankton Sioux Reservation is served by two federal highways (U.S. 281 and U.S. 18) along with two well maintained state highways (SD 50 and SD 46). Interstate highways close enough to provide reasonable product shipping and visitor access. Figure 2 shows the area road network.

Figure 2
Major Highways and Road Network

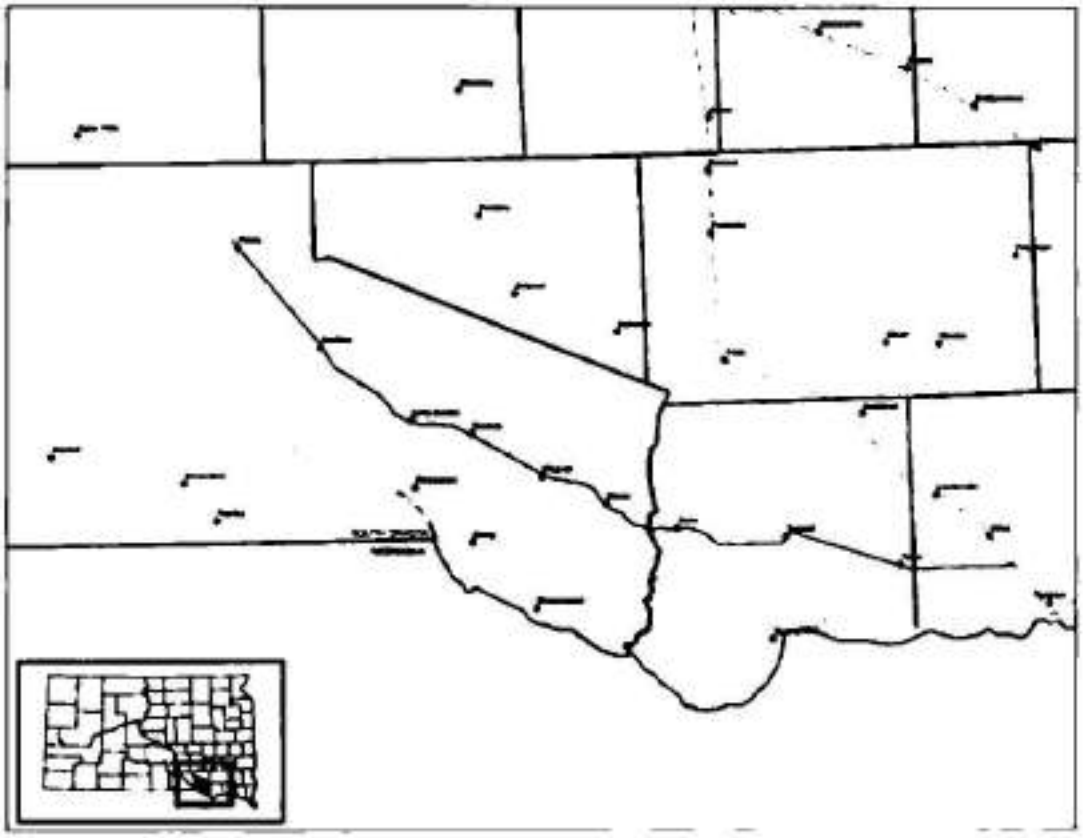


The Tribe's transit system maintains a fleet of three buses. Ridership exceeds 16,000 per year. The 2017 ridership of 16,292 persons was a 25 percent increase over 2016 figures.

Public transportation is a critical service for Tribal residents; especially persons with limited mobility and medical issues.

The Reservation is not currently served by a railroad. However, the "old" Napa-Platte line may be reactivated as development opportunities arise. The rail line has been rehabbed as far as Tyndall (Figure 3). Extending service to Wagner may be a realistic expectation in the foreseeable future.

Figure 3
Railroad Beds



General aviation facilities are accessible in Wagner. The nearest airports with regularly scheduled commercial air service are Sioux Falls (110 miles away) and Sioux City (118 miles away).

Another transportation issue that directly impacts Tribal members is pedestrian walkways. Housing subdivisions are often located on the edges of communities, which results in long walks to businesses or services. Safe walkways are important for all residents, but they are critical infrastructure for persons without other means of travel. The YST has expanded walkway networks and it intends to make pedestrian and bicycle routes part of all Tribal communities.

The YST's inclusion in the "Native American Scenic Byway" offers additional tourism potential. The Byway, when fully implemented, will present visitors with a unique view of Tribal culture and a perspective on the connection between the YST and its ancestral land.

Water and Sewer

The primary source of potable water on the Reservation is the Randall Community Water District. Randall serves both communities and rural residents. A number of rural homes are served by well water, but this source has significant limitations:

- ✓ High levels of bacteria or toxic compounds;
- ✓ Undesirable minerals;
- ✓ Poor flow rates; and
- ✓ High maintenance costs.

Water quality and quantity impact personal health and livestock production opportunities

Emerging or Declining Clusters or Industry Sectors

To evaluate the dynamics of industry clusters for the Yankton Sioux Tribe, a larger geographic region beyond the tribal boundaries was selected; namely Charles Mix, Douglas, and Gregory counties. Analysis of the industry clusters for the region considered the dynamics of cluster employment between 1998 and 2016 (the most recent data available using the Industry Clusters tool on the STATS America website.

The industry clusters that were considered "stars," both concentrated and growing (Location Quotient (LQ) greater than 1.2 and positive change in LQ between 2012 and 2019), were Livestock Farming (159 employed, 9.01 in LQ), Trailers, Motor Home & Appliance (70 employed, 7.87 in LQ) and Livstock Processing (98 employed, 4.34 in LQ). The trends surrounding each star industry cluster indicate that the clusters should continue to grow in employment. The region has had significant growth in agriculture, with Livestock Farming, Crop Farming and Livestock Processing. The region's agribusiness industry should remain strong as many communities invest in grain elevators and facilities. There is also a strong hospitality industry in the region due mainly to the operation of the Tribe's Fort Randall Casino and Hotel outside of Pickstown, SD.

The Hospitality cluster, which also has a LQ of .43 (specialized), there is a strong linkage to the marketing cluster. The Marketing cluster is linked to the Distribution and eCommerce cluster of LQ of .87.

While most of jobs in the Hospitality /Tourism, Production/Technology and Heavy Machinery, and Printing Services are the major clusters centered in Charles Mix County, the jobs in the agriculture clusters are highly concentrated in Douglas County due to the employment at elevators and co-ops and ag service establishments.

The emerging clusters in the region, those that are not concentrated but are growing, included Utilities (50 employed, 1.01 in LQ), Local Food & Beverage Processing & Distribution (264 employed, .68 in LQ), Local Household Goods & Services (88 employed, .67 in LQ), and Real Estate, Construction & Development (484 employed, .55 in LQ).

The region has specialized in the Local Health Services cluster. The cluster is concentrated in industries such as hospitals, home and residential care, healthcare provider offices, drug stores, funeral homes, and

medical equipment distribution. Most of the employment in this cluster is due to the concentration of employment in the health care sector in Wagner. The Indian Health Service (HIS) has a significant presence in the community.

Relationship of the Area's Economy to the Larger Region or State

Looking at employment on a more specific scale, there are some strengths and challenges in the Yankton Sioux Tribe's economy. Like the state, agriculture is an important component in the local economy with Crop Farming, Livestock Farming and Livestock Processing as the major clusters. The school or the hospital are usually the largest employers in a small town in South Dakota. For the Tribe, the hospitality and health care sectors are the largest employers.

Between 2015 and 2020, employment in the government sector has dropped significantly, but concentration in the sector remains concentrated. Yankton Sioux Tribe's LQ in government has decreased from 1.68 in 2015 to 1.06 in 2020, meaning that employment in this sector is very concentrated compared to the state. Such employment in government has limited employment opportunities in other productive sectors such as manufacturing or wholesale trade.

Factors That Directly Affect Economic Performance

Charles Mix County was used to evaluate its capacity for innovation and components of economic growth using the Innovation Intelligence application from Stats America. The overall innovation index for the county is above the benchmark level of 100, at 107.2.

Innovation Inputs

Within the **Human Capital and Knowledge Creation Major Index**, the *Educational Attainment Core Index* is the strongest component (index of 123.2). The county has above average marks for residents having attended some college, but no degree as well as those who have obtained an associate degree. The level of residents receiving bachelor's degrees and higher is also strong. the *Knowledge Creation and Technology Diffusion Core Index* is scored at 78.9. Factors under this Core Index include Patent Technology Diffusion, University Based Knowledge Spillovers, and Business Incubator Spillovers. Only Patent Technology Diffusion reported an index with 107.8.

Research on knowledge spillovers has often concentrated on the effects of industry R&D on regional innovation. It is thought, however, that universities are less competitive and less profit-driven than industries and, as a result, their knowledge should spread more widely across institutions and regions. These knowledge spillovers can travel through social ties, meetings and informal contacts.

The *STEM Education and Occupations Core Index* is 94.1, mainly due to the scores in the Technology-Based Knowledge Occupation Clusters index (120.9) and High-Tech Industry Employment Share (111.4). This trend is also observed nationwide, but it is expected that scores in STEM Education and Technical Occupations will rise in the future.

The Business Dynamics Major Index measures establishments, establishment dynamics, and venture capital. The *Establishment Formation Core Index* is 113.1, which includes a score of 115.2in the Establishment Births to All Establishments Ratio Index. The ratio shows how many new business locations are formed relative to all establishments. This is a measure that can provide insight into the economic "creative destruction" in a region. The Change in Establishment Births to All Establishments Ratio had a

score of 129.5, which measures the rate of business formation over time. If the establishment birth rate is declining, it signals a potentially less dynamic business environment. These measures signal healthy activity in the business market. However, there are no jobs that can be attributed to "export" activities in the county. The *Establishment Dynamics Core Index* measures establishment expansions versus contractions and establishment births versus deaths; basically, measuring how new firms are replacing older ones. Charles Mix County had index of 89.5 in these measures, respectively. There appears to be some room for development opportunities due to the dynamics of firm births versus deaths. The most significant score in this core index involved firms in traded (export) sectors Charles Mix County and the region has not had any venture capital investment over the past ten years, therefore it did not score an index value in this area.

The Business Profile Major Index measures foreign investment, high-speed internet connectivity, establishment size, and proprietorship rates. The strengths in this major index is the *Proprietorship Core Index* and the *Connectivity Core Index*. Charles Mix County had a score of 148.90 in the change in proprietorship rate, which is a five-year change in the proprietorship rate, showing whether proprietorship rates have increased or decreased. The county scores well in the measure of availability of capital from all banks. Local banks are more likely to lend to smaller firms where relationships and local knowledge are important, and startups and firms that do not have an established track record. Rural areas of South Dakota, including Charles Mix County, have relatively good internet access, and it is reflected in an index score of 157.1 in that area. Computer and internet usage by farmers is associated with higher complexity and greater sophistication in farm business and farm management. The index shows no foreign direct investment in the County.

Innovation Outputs

The output side of the Innovation Index includes the Employment and Productivity Major Index and the Economic Well-Being Major Index. These two major indices are strengths which contribute to Charles Mix County's headline index score.

The Employment and Productivity Major Index includes the *Industry Performance, Gross Domestic Product, and Patents Core Indices*. GDP per worker can be used as a measure of productivity and economic performance because it includes both compensation to labor and returns to capital. Innovative products or processes would not be undertaken if the action would not increase wages or profits. This measure tracks whether productivity in a region has been growing or is stagnant. The County excels in GDP per worker as well as the change in GDP per worker, earning index score of 151.5.

A couple of the lower-scoring indicators in the Employment and Productivity Major Index is the change in share of high-tech industry employment for Charles Mix County (108.0, which ranks Charles Mix 2,588th among over 3,000 counties) and the ratio between job growth and population growth (111.9). Just as the share of high-tech employment in a county is an important input, the extent to which that share is increasing relative to total employment is an important performance measure. In a similar way, this measure also registers the degree to which home-grown, high-tech firms have expanded their presence.

The County is strong in cluster diversity, strength, and growth. These " eggs in many baskets" measures quantify whether a region is relatively concentrated in just a few industries or whether the region has a broad assortment of industries by comparing the evenness of a region's industrial employment mix

against a national value of industry diversity. The County ranks 511 among these cluster measures. Recent investments in rail infrastructure will help diversify the economy even more in the years ahead.

The **Economic Well-Being Major Index** explores standard of living and other economic outcomes for a region. Of all the major indices, Charles Mix County scores the best in this area.

Measure	Index
Per Capita Personal Income Growth	184.8
Poverty Rate (Average)	106.1
Unemployment Rate (Average)	174.5
Net Migration (Average)	118.1
Growth in Wage/Salary Earnings per Worker (Average Annual)	181.7
Change in Proprietors' Income per Proprietor (Average Annual)	148.9

While there are several indicators which strengthen Charles Mix County's innovation capacity, there is certainly room for improvement in increased capacity in the areas of university-based knowledge spillover, venture capital, foreign investment, and patents.

Economic Relationships

The YST has advantages that contribute to its economic potential. The SWOT Analysis section will further explore the Tribe's economic situation, but several natural features and unique relationships with influence development decisions.

Missouri River

The YST has historical, cultural and physical relationships with the Missouri River and the Lake Francis Case Reservoir. The River served as the transportation corridor that led to the encounter between Native culture and Lewis and Clark. The legend associated with Struck-by-the-Ree and Merriweather Lewis framed a peaceful co-existence between vastly different cultures.

The Missouri National Recreation River borders Reservation lands for approximately half of its "39 Mile District". This natural flowing river segment offers dramatic scenery, wildlife viewing and water based recreation. Its tourism possibilities are virtually unlimited.

In addition to its historic significance and natural beauty the Missouri River landscape presents opportunities for passive and low density, limited development. Parks, nature areas and preserves could, in theory, exist alongside golf course, housing developments or tourist lodges. The "Missoun River breaks" offer unique vistas and native vegetation.

The Tribe has considered projects ranging from marinas to resorts. Regardless of the idea, the special relationship to the river will be preserved.

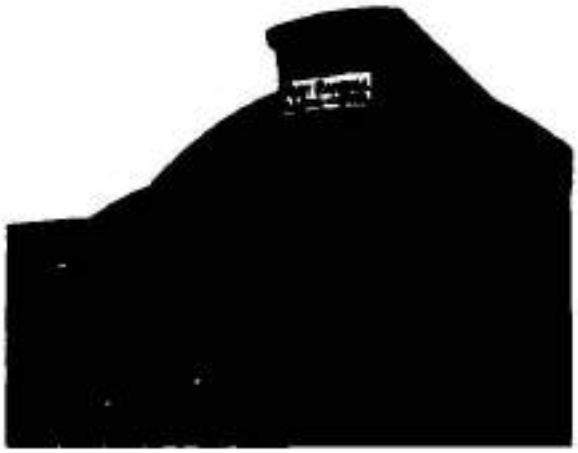
Employment Centers

The largest employers on the Reservation:

Fort Randall Casino-Hotel
Marty Indian School
Yankton Sioux Housing Authority
Yankton Sioux Substance Abuse Program facilities
Indian Health Services
Yankton Sioux Travel Plaza

The YST has continually strived for opportunities to manage its own affairs, while creating meaningful employment for Tribal members. A total of 12 programs are operated through the provisions of PL93-638.

- YST Higher Education
- YST Adult Education
- YST Adult Job Training
- Roads Maintenance
- Indian Child Welfare Act
- YST Social Services
- Game, Fish and Parks
- YST Court System
- Aid to Tribal Government Enrollment
- YST Realty
- Hazardous Fuels/Natural Resources
- YST Law Enforcement



As leaders of a sovereign nation, the YST Business and Claims Committee has responsibilities beyond just managing services and programs. However, what better way to promote self-sufficiency and mutual support than to create opportunities for employment and personal growth. Tribal government employment is one vehicle to achieve that goal.

Government, education, healthcare and the visitor industry are economic sectors that offer employment for a large number of Tribal members. Approximately 150 people work in government and over 300 Tribal and non-Tribal persons are employed by the Fort Randall Casino and Hotel. Work experience is a valuable asset for anyone seeking to establish a career. Tribal employment centers provide both gainful employment and the experiences that contribute to professional and personal advancement.

Community Dialog

Yankton Sioux Tribal leaders have embraced the values of partnerships and communication. Tribal services and allied programs are directed via the participation of 27 boards or committees. These bodies may be elected or appointed, depending upon the situation. Approximately 160 persons are involved

with the various boards. Their roles range from policy development and fundraising to program oversight and issue input.

The Tribe's dialog efforts are not limited to internal affairs. Tribal members have been working on mutual problems with individuals from area municipalities and organizations with Tribal connections. The willingness of the YST to engage in frank conversations on a wide variety of issues is a fundamental building block for improving conditions for its members.

The Tribe's inclination toward public inclusion stems, in part, from its governmental structure. The "General Council" is the "ultimate legislative authority of the Tribe." It consists of all enrolled members, age 18 and older. This form of grassroots democracy may be viewed as cumbersome or inefficient to an outsider, but it provides a voice for all members and ensures accountability in Tribal decision-making. Inclusive decisions provide clarity and direction. These qualities are an advantage in economic development undertakings.

Factors Impacting Economic Performance

The YST's economic situation is impacted by a number of factors. The following graphics illustrate common influences.

The YST is struggling with the social problems that plague other reservations and society as a whole. Drugs (meth and opioid addiction), broken families and crime are taking a toll on individuals and draining away the potential of too many people. Grassroots activism, Tribal initiatives and personal commitments are having an impact, but the challenges are too large to eliminate over a short timeframe.

Government policies are facts of life that contribute to slow or ineffective actions. As noted previously, the YST has assumed the responsibility for a number of services under Public Law 93-638. Managing resources closer to the ultimate beneficiaries should enhance effectiveness and efficiency.

Finally, Tribal employment prospects are related to the qualifications of individuals and the needs of employers. Tribal jobs offer a career starting point, but private employment may bring more opportunities to the most persons. The "gap" between skills and jobs is being narrowed, but more training and development incentives are needed.

The Tribe has to continually battle with the broader cultural conditions that weaken community unity Regardless of the influences, the YST's future is directly linked to its heritage and cultural strength. The Tribe's governmental structure, social customs and common belief systems are based upon mutual respect and support. This characteristic, while it may result in longer decision-making timeframes, ensures that major issues are addressed for the benefit of all members.

The reservation's physical qualities have been reviewed previously. The YST has the potential to develop high quality environment based experiences to attract investment and visitors.

The Tribe's future workforce has the numbers to entice employers. The relative "youth" of the demographic profile offers an opportunity for a wide variety of employment. Appropriate job training and life skill education will help the workforce reach its potential.

Other Factors

Access to quality healthcare is both a problem and opportunity. The YST has benefited from local dialysis treatment facilities and the construction of a Veteran's Administration Clinic in Wagner. Indian Health

Service policies have cost Tribal members access to emergency services and primary care. The Tribe has researched home health program issues and found that:

> "The delivery of medications and other rehabilitative services to eligible patients would also provide more employment opportunities in the health field."

The Tribe will continue to encounter challenges in providing health services, but it has the management structure in place to make progress.

- Tribal Health Director
- Tribal Substance Abuse Program
- IHS Contract Health
- Community Health Office
- Tribal Health Education
- Community Health Representative
- Youth Outreach Office

Education is a factor in Tribal development prospects. High school dropout rates are approximately 19 percent. The Tribe has developed alternative middle and high school courses to increase graduation rates. The Tribe's Ihanktonwan Community College provides a local alternative for higher education.

Another factor associated with economic potential is the Tribe's land base and agricultural potential. Approximately 100,000 acres of Tribal land is being farmed in 72 locations. Farming is a major industry in South Dakota and value-added agriculture has growth opportunities.

Value-added activities could include livestock raising, tourism or commodity processing. The Tribe's 175 head buffalo herd could generate income from all three activities. According to the South Dakota Department of Agriculture (August 2015), 56.8 percent of economic output in Charles Mix County was derived from agricultural sources, along with 35.5 percent of all jobs. Agriculture will be part of the YST's economic mix going forward.

SWOT Analysis

Analytical Context

The YST will review its development "strengths, weaknesses, opportunities and threats" within the values that influence Tribal decision-making. The development parameters may be illustrated through the Tribe's official insignia and motto, which was adopted on September 24, 1975.

The symbolism contained within the insignia is outlined below.

- The "Y" is also a pipe. It represents the ***strength*** of life. It also implies ***straight talk*** as being important in communicating.
- The "zigzag" means prayer, to bind the ***home*** in love and safety.
- The color "red" represents life and when painted around the lower part of the tipi assured a ***friendly welcome***.
- The use of "yellow" signifies ***happiness*** in the home.

In summary, Tribal values include:

- ✓ ***strength***
- ✓ ***straight talk***
- ✓ ***home***
- ✓ ***friendly welcome***

The Tribe's slogan of "Land of the Friendly People of the Seven Council Fires" imparts a similar theme.

These values illustrate the connection between the people and their leadership. Decisions are not always made based upon "cold, hard facts". Rather, the well-being and interests of the Tribe as a whole must be considered, along with historic and cultural factors, such as relationships to the land.

The Tribe, as a sovereign nation, cannot divorce its economic interests from its community responsibilities. Tribal leaders recognize the benefits of separating business operations from politics. However, any realistic analysis of Tribal development factors will, by necessity, include subjective

considerations. EDA's recommended data tools will be utilized, if they can add value to the Tribe's understanding of current or future conditions. The YST will not employ analytical tools or data sets that are not applicable or appropriate to its location characteristics or development situation.

Strengths

The following attributes enable the YST to:

- Expand existing development undertakings;
- Create development opportunities; and
- Sustain primary development foundations.

The attributes are not listed in any particular order of significance. They are numbered to facilitate further discussion. Each attribute will be explained via their elements and impacts.

1. Leadership Support
   - ✓ Elected Business and Claims Committee (Policy Development)
   - ✓ Management Expertise (Program Implementation)
   - ✓ Open Public Engagement (General Council)
   - ✓ Cooperation with other Governmental units

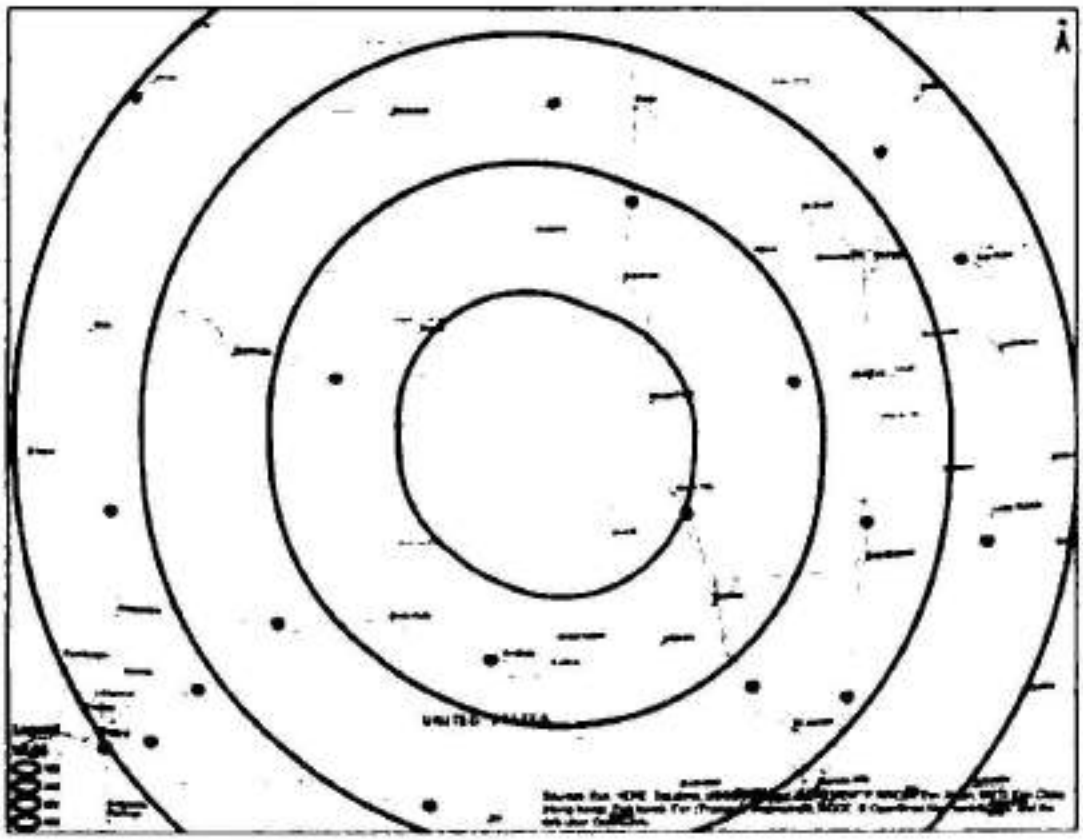
   The YST has demonstrated the ability to manage a wide variety of programs and services. The Tribe has codified public participation via the General Council and its democratic form of government. The Tribe has also cooperated with municipal, county and state agencies on issues of mutual interest.

2. Business Climate
   - ✓ Entrepreneurial Spirit
   - ✓ Ability to Partner
   - ✓ Foundational Perspective
   - ✓ Experience Based Adjustments

   The YST is willing to seek economic opportunities in a variety of sectors, ranging from "aquaponics" to wind energy. Its diverse interests are based upon knowledge that multiple approaches mitigate risk and that all ventures are not successful. Developing a business incubator, creating a Tribal corporation for Small Business Administration 8(a) contracting and establishing corporation codes will lay a foundation for future success.

3. Physical Site and Situation
   - ✓ Missouri River
   - ✓ Agricultural Land Base
   - ✓ Geographic proximity to Travel Corridors

- ✓ Relative Location to Metropolitan Areas



The Tribe's relationship to the Missouri River was reviewed earlier. The River provides both a high quality water resource and a visible link to the Tribe's history. The potential of agricultural land to generate income and jobs was also summarized previously. The YST Reservation is part of the "Oyate Trail" corridor, which promotes tourism along its 395 mile length. Corridor tourism promotion adds value to more localized efforts and the Oyate Trail complements the Tribe's marketing of its casino, travel center and associated attractions. The Reservation and Tribal communities are within 90 minutes of two metropolitan areas and close enough to other larger population centers to warrant consideration for business expansion projects.

4. Workforce
   - ✓ Younger Population
   - ✓ Training Opportunities
   - ✓ Employer Interest
   - ✓ Comprehensive Approach

The Tribe's primary development asset is its people. Younger members have the benefit of a wide range of training and professional education opportunities, that are often driven by

employers. The YST appreciates the need for complimentary workforce initiatives, such as housing and life skills education. The challenge will continue to be placing the right people in the right situation to succeed.

Summary: The YST is poised to make dramatic progress in economic development. Its strengths are tangible and the leadership appears to be in place to take advantage of them.

Weaknesses

For the purposes of the CEDS SWOT process, the term "weaknesses" include:

- Challenges to orderly development that may be internal or external in nature;
- Deficiencies in capabilities or capacities that could impede or hamper development undertakings;
- Gaps in information or knowledge that limit Tribal planning or development responses; and
- Problems of a chronic nature that demand public attention and Tribal resources.

As noted throughout this document, the YST has to address development from multiple perspectives. The following weaknesses represent one set of circumstances faced by Tribal leaders and community members. They will not impact every development situation.

1. Labor Force Engagement Challenges
   - ✓ Limited Ability to Commute
   - ✓ Education May Not Match Job Needs
   - ✓ Life Skills/Work Ethic Issues

   The Tribal leadership is aware of the needs associated with preparing individuals for the workplace. Training programs exist, but more needs to be done.

2. Infrastructure Needs
   - ✓ Administration and Detention Facilities
   - ✓ Transportation Support
   - ✓ Energy Initiatives
   - ✓ Water and Waste Utilities

   Infrastructure issues will benefit from the investment of additional resources. In most cases, the Tribe will require outside funding support. Some of the situations will be handled over a period of years. Others will require a special allocation to address immediate needs. The infrastructure issues are on the Tribe's priority "radar." They will remain priorities for the foreseeable future.

3. Baseline Information Gaps
   - ✓ Census data
   - ✓ Environmental Monitoring

- ✓ Program Coordination and Communication
- ✓ Public Awareness

The Tribe manages information in numerous forms. It often lacks access to accurate data from local, regional, and national sources. The gaps may be in form of a geographic omission (i.e. no specific information within Reservation land boundaries), technical shortcoming (i.e. no monitoring equipment), or management priorities (i.e. no sustained effort because of competing needs). Regardless of the circumstances, the Tribe would reap rewards from better information management systems. The "checkerboard" nature of Tribal land complicates the accurate collection of data.

4. Housing, Healthcare and Social Service Problems
   - ✓ Meeting Public Health and Safety Standards
   - ✓ Maximizing Outside Assistance
   - ✓ Building Service Sustainability
   - ✓ Combating Substance Abuse and Domestic Violence

The Tribe's responsibilities to its members extends to all areas of life. Economic development initiatives, while important, must be weighed in relation to the availability of scarce resources. Likewise, quality of life factors impact the success of development efforts since they affect the workforce and the public's perception of the YST.

Summary: Weaknesses are associated with interventions that involve public investment (i.e. infrastructure), community action (i.e. abuse situations), and solutions that require personal growth (i.e. work ethic commitment). The Tribe will attempt to address these situations as conditions demand and funding permits. It is not an issue of awareness, but rather a function of resource allocation and public resolution.

Opportunities

Opportunities include a range of development prospects and probabilities. The YST may not be able to take advantage of every opportunity, but it does have the expectation that every opportunity will lead to positive outcomes. The main variables are the degree of implementation along with the timing of the activity. Each of the identified opportunities will be considered in terms of its anticipated timeframe.

- Immediate – Ongoing
- Short-term – 1 to 5 Years
- Long Range – 5 Years Plus

Individual timeframe estimates will certainly change as the result of unforeseen conditions. Even longer-range opportunities could have immediate impacts.

1. Utilization of federal marketing, procurement and business support programs (Ongoing)
    - ✓ Small Business Administration (SBA) 8 (a) business planning
    - ✓ HubZone and Opportunity Zone Status
    - ✓ Federal contracting and disadvantaged business development assistance (SBA, Procurement Technical Assistance Center, etc.)
    - ✓ USDA Rural Business Development Grants and other resources

    The aforementioned programs offer advantages to Native American enterprises. The YST needs to engage program managers to take full advantage of federal assistance.

2. Facility Construction (Short-term)
    - ✓ Detention Center
    - ✓ Tribal Administration Building
    - ✓ Food Service Center
    - ✓ Business Incubator

    These facilities are in various stages of planning and/or construction. Their potential benefits to the Tribe includes better service delivery and job creation.

3. Labor Force Characteristics (Ongoing)
    - ✓ Large, younger demographic cohorts
    - ✓ Entry level wage earners (affordable workers)
    - ✓ Inexperienced, trainable, able bodied labor with broad employment potential
    - ✓ Available, middle management capable trainees

    The common characteristics of the Tribe's workforce are youth and training potential. The YST includes members that could perform a wide variety of construction, manufacturing and technical jobs with appropriate training and life skills education. Workforce is a "front burner" issue throughout South Dakota. The Tribe needs jobs to match with its labor pool. Recognizing and acting upon this opportunity will be key factors in the Tribe's economic development strategy.

4. Agricultural Product Diversification (Short-term)
    - ✓ Involvement from Tribal Farm Planning
    - ✓ Commodities for Tribal Food Consumption
    - ✓ Buffalo Herd
    - ✓ Farm Management Training

    The flexibility afforded by the Tribe's farming operation allows for the introduction of new, higher return crops. A bonus would be related, value added processing facilities. Markets, supply chain factors and management capacity will all play roles in Tribal

decisions to act on value added ventures. The local production of healthy food will benefit all members.

5. Local Entrepreneurial Climate (Long Range)
   - ✓ Potential for retail and service businesses
   - ✓ Internal markets
   - ✓ Access to technology (internet)
   - ✓ Attitudes

The YST has a tradition of entrepreneurship. The potential exists for the creation of small retail and service businesses that focus on local markets. Startup capital and business management support will be essential to give individuals a chance for success. Tribal members have an aptitude toward business development. They need support structures to minimize common startup challenges. While success is always predicated on numerous factors, the initiative to take risks is an essential first step.

Summary: The Tribe's opportunities include both human and physical attributes. Strengthening the potential of the labor force will involve a comprehensive approach that has educational and cultural elements. Building on locational advantages will require addressing a series of legal, financial and managerial tasks. The YST is well aware that its "path forward" will have to be traveled through a series of incremental steps. Experience and initiative will make the journey easier, but not without pauses or detours.

Threats

EDA's CEDS guidelines defines threats as:

"...chances or occasions for negative impacts on the region or regional decline."

Although this definition may apply to larger geographic areas and more "main stream" societies, it does not take into account the underlying importance of Tribal identity, culture and survival to each and every YST member. In other words, nothing compares in value to the sense of "people", "nation", and "heritage" that brings the Tribal community to life.

For the purposes of this document, the YST defines threats as:

"Any internal or external condition, influence or action that jeopardizes the cohesion of the Tribal community or erodes the linkage between the Tribe and its traditions."

Each threat will be considered in terms of its known and potential consequences.

1. Harmful Life Circumstances
   - ⇨ Drugs and Alcohol Abuse
   - ⇨ Teen Births

- ⇨ Single Parent Households
- ⇨ School Dropouts

These threats are typically the result of poor choices and/or social pressures. The impacts are both personal and community-wide. Their overall costs are almost beyond calculating if lost human potential is considered. The YST is attacking the issues with whatever means are at its disposal. The development impacts include limiting the workforce, diverting Tribal resources and weakening families. These issues demand immediate attention and will undermine the Tribe's overall well-being if not successfully addressed.

2. Quality of Life Conditions
   - ⇨ Housing
   - ⇨ Recreational Amenities
   - ⇨ Entertainment/Cultural Experiences

Although these issues may seem to be unlikely candidates for threat classification, they embody conditions that contribute to people moving away or not wanting to live on the Reservation. Maintaining decent housing stock is always problematic. Quality recreation facilities are expensive to build and maintain. In an age of "online" entertainment, providing opportunities for community relaxation and engagement is important for all age groups. The development threat posed by quality-of-life factors include a loss of workforce, failure to attract talented professionals or managers and public perceptions that the community is not a good place to live

3. Macro Forces
   - ⇨ Government Policies and Decisions
   - ⇨ Climate Change
   - ⇨ Global Markets

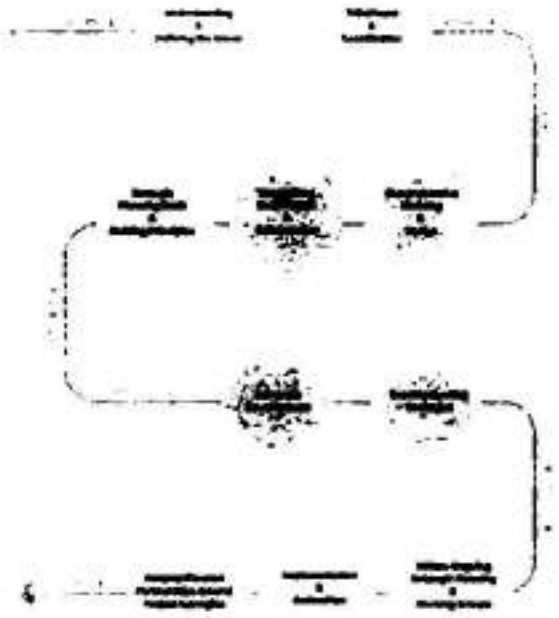
Although the YST is a sovereign nation, with delineated rights and responsibilities, it is still subject to outside forces that exceed Tribal control. Federal policies and decisions influence community life in areas ranging from healthcare to environmental protection. Weather influences include: Tribal agricultural production, Missouri River shoreline stabilization, and wildfire conditions. Commodity market swings may hamper farm income and Tribal development efforts. The best response to these threats involve resiliency measures which will be reviewed in another section. The nature of macro forces dictates that anticipation, preparation and communication are the most realistic approaches in adapting to the threats.

4. Health and Safety Concerns
   - ⇨ Chronic Health Problems
   - ⇨ Pedestrian Protection
   - ⇨ Access to Care

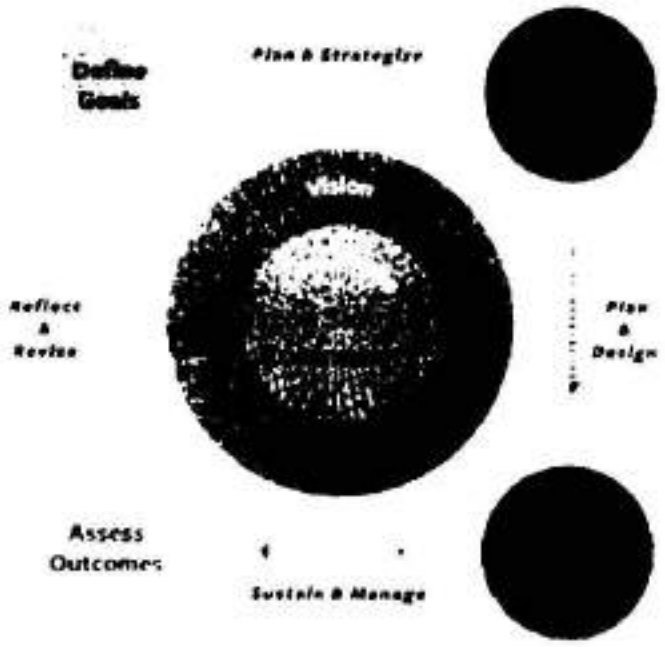
These threats are again associated with personal behaviors, along with community facilities. Health conditions, such as diabetes, are partly due to lifestyle choices. The Tribe has significant pedestrian traffic that contributes to transportation safety concerns. Access to healthcare impacts several situations such as infant mortality, low birth rates, and premature adult deaths. Again, the welfare of the community is a paramount concern of the Tribe. The economic development impacts of health and safety threats include: workforce limitations, competition for Tribal financial resources and public perceptions about community well-being.

Summary: The majority of identified threats directly impact individuals, along with the entire Tribal community. The threats are immediate obstacles to economic progress and long-term Tribal prosperity. The Tribe's leadership is continually reminded of the threats as it deals with the daily challenges of government. However, personal acceptance of responsibility in changing harmful behaviors will significantly alter the future impacts of community-wide dangers. Education, healthcare and cultural awareness programs will help individuals improve their personal lifestyles. These approaches should benefit from the active participation of respected elders and spiritual leaders.

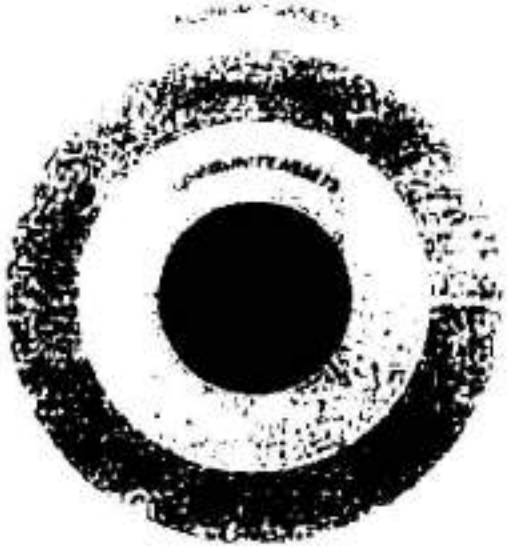
This SWOT exercise reflected the current thinking of Tribal leaders. The Tribe's emphasis on membership welfare was recently reinforced through a two-day strategic planning process. The following diagrams illustrate the planning process and its relationship to core Tribal values. The outcome of the planning work will be included in the next CEDS report. The process is closely related to the CEDS structure.



STRATEGIC PLANNING DIAGRAM



ASSET WHEEL



Strategic Direction/Action Plan

For the purpose of this document the YST has expressed the following vision for Tribal development:

"To achieve economic self-sustainability for the Yankton Sioux Tribe."

The fulfillment of this vision will require time and incremental implementation measures. The YST recognizes that chronic development challenges will not be overcome with anything short of long term commitments. The Tribe's development approach will be centered around five goals. Each goal will be further explained via a rationale statement and specific objectives. The objectives and associated action elements will be presented in tabular form.

The goals will *not* be given a particular priority status. Objectives, within each goal will be assigned a relative priority rating. The fact that the goal is identified by the Tribe imparts a clear degree of importance. Putting a number in front of a goal does not preclude unanticipated events from changing its status. In fact, the Tribe may be negatively affected by assigning priority numbers because it raises expectations that may not be met. It also imparts a rigidity that is inappropriate for a planning process of this type. Goals will usually be given a preference in terms of Tribal resources. Goals will be addressed collectively and/or individually as opportunities arise or problems demand more immediate attention.

The following goals will be Tribal priorities over the next five-year period (2018-2023). They are numbered for discussion purposes.

Tribal Development Goals

1. Expand economic development and Tribal employment opportunities.

   Rationale: The foundation of personal and Tribal prosperity has to include elements that lead to private and community wealth creation, along with the pride that comes from productive labor and achievement.

2. Build community services and facility capacities.

   Rationale: Tribal programs and their delivery systems are dependent, in part, on the quality of the service "environment." Staff training, physical spaces and associated tools all contribute to member participation and levels of success.

3. Foster human resources development.

   Rationale: Promoting personal safety, health and welfare are essential in meeting the needs of all persons, especially the very young and elders.

4. Manage natural resources development.

   Rationale: The Tribe's identity is expressed through its traditions, which include a strong connection to the natural world. Resources must be used in ways that both benefit the community and protect the environment.

5. Create additional educational opportunities.

   Rationale: The Tribe's heritage, workforce and overall quality of life hinge upon its ability to impart knowledge to future generations.

Action/Implementation Plan

As noted previously, the Tribe's development objectives will be laid out in tabular form. This format provides the reader with a snapshot of proposed activities on a goal by goal basis. The column headings are defined below.

Objective:	Measurable outcome
Lead Agency:	Entity with the primary responsibility in addressing the objective
Expected Results:	Benefits from achieving the objective
Performance Measures and Evaluation Indicators:	Tangible milestones, or benchmarks, that document progress
Funding Source/Agency:	Sources of revenue or technical assistance
Timeframe:	Activity implementation period or completion target
Jobs Created:	Estimated employment resulting from activity (if applicable)
Priority:	Indication of the comparative urgency or significance of the specific objective

The costs associated with the objectives are not listed for five reasons:

1. Cost factors will be evaluated as part of department or general budget processes;
2. Any cost figures would almost certainly be out of date before the activities are undertaken;
3. Listing costs may create undue tension or concern among implementing entities that are competing for Tribal resources;
4. Anticipated funding partners may or may not be realistic, depending upon future policy decisions; and
5. It is a futile exercise to play with numbers when specific project or program elements are not clearly identified.

The priority rating imparts a status that should lead to more financial investments, if funding is necessary. Sometimes it is public awareness, political support and managerial improvements that create change. Funding is not always the only resource that makes a difference.

Each rating category has a specific meaning. They are subject to change as the Tribe undertakes an annual CEDS review.

- High Priority — Community-wide issue, with immediate and/or sustained attention needed
- Medium Priority — Important issue with significant impacts
- Low Priority — Major issue with targeted impacts

Objectives may be moved into different priority categories as conditions change or opportunities arise.

The YST's Implementation Plan will serve as a guideline for the assigning of program and budget priorities. High priority activities are expected to receive attention via funding, political support and public awareness. Tribal development implementation will be affected by:

- Elected leaders;
- Tribal administrative staff; and
- Public opinion.

Situations and circumstances continually change. No one plan or set of strategies can be expected to be implemented without annual adjustments.

The Tribe will review the Implementation Plan on a regular basis. It will evaluate needs, costs and potential impacts in relation to feasibility, funding and immediate benefits. Realizing tangible outcomes will be a critical factor in maintaining development momentum.

CEDS ACTION/IMPLEMENTATION PLAN – Responsibly Engaged Government Developing Meaningful Tribal Projects and Initiatives

Objective or Task to be Implemented	Lead Agency	Expected Results	Performance Measures and Evaluation Indicators	Funding Source/Agency	Time Frame	Jobs Created	Priority
Develop a master site plan for business development that is compatible with the General Land Use: • Commercial Use • Cultural Center • Housing subdivision • Gas Station • Wellness Center • Laundry mat • Mixed use building	Business & Claims Committee YST Economic Development Development Trust Fund Rural Development Office of Indian Economic Development (OIED) Tax Department Yankton Sioux Housing Authority District IV	Establish technical assistance in supporting economic development Develop businesses annually Seek financing for businesses Develop a land use plan	Number of Tribal member businesses created Number of jobs created Increased revenue for Tribe Increasing capital for Tribe	American Rescue Plan funds Development Trust Fund Small Business Loan Other Tribal charitable giving programs	2022-2027	15	High
1 Energy Development: Solar, Wind and Geothermal • Solar mini-grid • Wind turbines • Geo-thermal	Business & Claims Committee Economic Development Office Department of Energy Ototi Sakowin YST Housing	Goal is to become 50% energy independent within five years Develop MOU's	Construction of 20 Large Wind Turbines 30 Smaller Community Wind Turbines Solar Arrays Geothermal System Increased energy self sufficiency	Department of Interior Department of Energy Shakopee Mdewakanton Sioux Tribe Ototi Sakowin Power Authority	2023-2028	50	High
2 Infrastructure Development • Holding Corporation • Commercial Codes • Incubator for Cultural and Micro-businesses • Value-added farm program and farmers market	B&C Committee Tribal Attorney Department of Law & Justice Tribal Courts Development Trust Fund USDA Food	Holding Corporation developed UCC codes developed Incubator created for cultural & micro-businesses Creation of Farmers Market	The Tribal Council will enact new ordinances, as needed based on input from: Tribal Law and Justice (enforcement), Tribal Courts (judgments), the Tribal Attorney and appropriate departments	Shakopee Mdewakanton Sioux Department of Treasury Development Trust Fund	2022-2027	10	High
3 Transportation • Obtain funding opportunities for roadway improvements • Increased infrastructure for camping and boating needs • Strategic planning for scenic byways	Business and Claims Committee YST Road Department Economic Development Office Environmental Protection Agency	Scenic byways Campgrounds Boat Landing	All involved agencies will monitor as planning and services progress	Yankton Sioux Tribe	2023-2028	N/A	High

Objective or Task to be Implemented	Lead Agency	Expected Results	Performance Measures and Evaluation Indicators	Funding Source/Agency	Time Frame	Jobs Created	Priority
1 Family Wellness Resource Center • Residential addiction rehab and mental health treatment center • Support emotional wellbeing activities • Foster family healing programs • Develop a reconnection program for families • Prevention, Treatment, and Recovery innovations	Business and Claims Committee Development Trust Fund YST Economic Development Office SAMSHA Canku Teca Department of Social Services Tribal Courts and other judicial systems Local agencies YST TDR department	Provide support services for YST Community More convenient location for community healthy lifestyles Provide medication assisted treatment (MAT) Reconnect and support reunification for families	Families served and preventative measures for the community will monitored through feedback surveys and job creation To facilitate the implementation of evidence-based treatment for opioid and meth abuse	YST ARPA funding Development Trust Fund Tax Program SAMHSHA Department of Justice (DOJ) CTAS Other Tribal Charitable programs	2022-2027	50	High

Objective or Task to be Implemented	Lead Agency	Expected Results	Performance Measures and Evaluation Indicators	Funding Source/Agency	Time Frame	Jobs Created	Priority
1 Home Ownership Development • Creation of Home Ownership Sub-division • Housing needs study • Credit Rebuilder Course • Home Ownership Down Payment • Strategize Housing Plan	Economic Development Office YST Housing BdC Committee CDFI Minnesota Housing Partnership SD Native Homeownership Coalition FHLB	Tribal Member will rebuild their credit to purchase their own home Home Purchasing Completed Housing Study Governor Houses Developed Housing Sub-division	Annual completion of Pre FHLB Grant applications for down payments Home ownership on sub-division Number of credit repairs Housing Need Study Number of Governor Houses procured	FHLB CDFI YST Housing US Veterans Affairs District III USDA SD Native Home Ownership Coalition	2023-2028	20	High
2 Diabetes/Tribal Health Improvement • Improved health strategies for at risk diabetes patients • More preventative programs • Increased awareness of health risks/behaviors • Administer Special Diabetes Program for Indians (SDPI) grant	Indian Health Service YST Tribal Health Business and Claims Committee Development Trust Fund Other Tribal agencies	Lowered number of diabetic patients Increased awareness of overall health risks Prevention of STI's, HIV and reduced number of teen pregnancies Acquire a new wellness center to provide diabetes treatment and /or prevention activities and/or services. Based on diabetes related community needs	All involved agencies will monitor as programs and services progress Create jobs	Indian Health Services YST Tribal Health Development Trust Fund Various preventative grants obtained	2022-2027	N/A	High
3 Tribal Law/Meth Codes • Improved codes for prevention of increased meth use and traffic within the YST Community	Business and Claims Committee YST Constitution and Revision Committee	Update of Meth codes within Tribal Law Handbooks	Increased prevention of meth use and traffic within the YST community	Yankton Sioux Tribe	2020-2025	N/A	High

Objective or Task to be Implemented	Lead Agency	Expected Results	Performance Measures and Evaluation Indicators	Funding Source/Agency	Time Frame	Jobs Created	Priority
1 Agriculture/Farming • Community Gardens • Tribal Member Farms • Bee Farms • Buffalo Ranch • High Tunnels • Fruit Trees • Hay Program • Beginning Farmer Program • Farm to School Program • Creation of Farm/Ranch Enterprise • Greenhouses • Develop Strategic Land Use Plan • Develop a Medical Cannabis Cultivation Program (MCCP) and Assessment	Business & Claims Committee YST Farm Board South Dakota State University Oweesta First Nations Boys & Girls Club Game Fish & Parks Farmer Service Agency FSA Charles Mix County Commissior Other Tribal agencies	Trust land farmed Increase buffalo herd to 250 Build community high tunners & greenhouses Value added products Farmer's Markets Establish Bee Farm Establish Farm/Ranch Operation Establish a beginners Farm to School program Creating revenue and jobs	200 acres leased & farmed annually for 10 years One high tunnel per community One garden created annually Amount of food harvested Income created from hay program Five-year Comprehensive Strategic Land Use Plan Increased revenue for Tribe	Development Trust Fund First Nations Oweesta Shakopee Mdewakanton Sioux YST Communities Sale of buffalo Economic Development Administration South Dakota State University Agriculture Department Other Tribal agencies	2022-2027	20	High
2 Historic Preservation • Preservation of all historical artifacts, landmarks and documents • Develop a cultural and language immersion program • Constitution and Revisor Policy Development	Tribal Historical Preservation Officer Business and Claims Committee Bureau of Indian Affairs Tribal Community Constitution and Revision Committee	Preservation of all obtained historical artifacts, landmarks and documents	All involved agencies will monitor as planning and services progress	Yankton Sioux Tribe Development Trust Fund First Nations Grants Native Governance Administration for Native Americans(ANA)	2023-2028	N/A	High

Objective or Task to be Implemented	Lead Agency	Expected Results	Performance Measures and Evaluation Indicators	Funding Source/Agency	Time Frame	Jobs Created	Priority
1 Expand vocational and on the job training	TERO Staff Presentation Community College (CC) Tax Program WIOA program	Additional skill development of new and experienced workers	Course completion and job placement	Yankton Sioux Tribe	2023-2028	2	High
2 Promote course preparation in Science, Technology Engineering and Math (STEM)	Local School District	Better graduation rates and placements to college and technical institutes	Enrollment, graduation and placement rates	BIA Tax Program Higher Education	2023-2028	N/A	High

Evaluation Framework

Framework Factors

The YST will measure CEDS performance through a framework that is built upon:

1. Relevancy – Does the evaluation methodology make sense?
2. Transparency – Can the evaluation methodology be understood by the intended audiences?
3. Consistency – Will the evaluation methodology be trackable over time?

Relevant factors will have the following characteristics:

- Suitable to the Tribe's situation;
- Based on reliable sources; and
- Expressed through comprehensible units or details.

Transparent factors include:

- Plain language that avoids jargon or bureaucratic verbiage;
- Honest and fair disclosure of positive and negative outcomes; and
- Open and timely access by all interested parties.

Consistency factors involve:

- Establishing credible data baselines;
- Creating practices that can be maintained, regardless of personnel changes; and
- Determining the time intervals that mean something in analyzing changes.

Each of the aforementioned factors is part of the "picture" that illustrates the Tribe's development progress. No single element will tell the whole story. The Tribal community is a composition of people, place and culture. Trying to evaluate change, based solely upon regional or national statistical indicators is not going to reflect reality. A blending of facts, perceptions and potential will get closer to the truth.

Audience

The CEDS will be evaluated with three primary end users in mind.

Tribal Community – the information should ***explain*** how Tribe's vision, priorities, and actions have made tangible differences.

Development Partners – the information should ***document*** a return on their investment of funding, expertise or credibility.

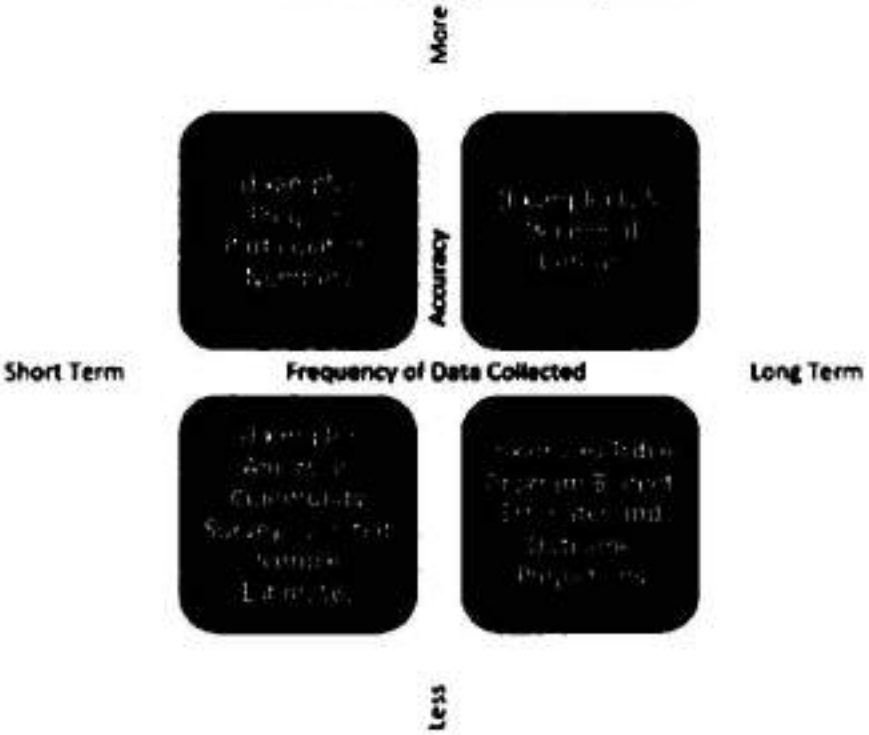
Tribal Leadership – the information should ***validate*** the approach being used and the CEDS process.

The evaluation will also provide feedback to program managers on their efforts to implement development related strategies. The CEDS authorship and ownership rests with the Tribe, but its reach extends to aligned entities and interests. CEDS performance is one way of demonstrating the Tribe's commitment to potential investors and entrepreneurs.

Evaluation Measures

The YST will strive to measure the CEDS using readily accepted and reliable data sets. A challenge will be analyzing outcomes for trends and changes. There is a relationship between data frequency and its accuracy in measuring meaningful changes or trends. Figure 4 illustrates the situation.

Figure 4
Data Trend/Change Reliability Matrix



They key take away from Figure 4 is that identifying trends or major changes in conditions may require more time than is covered by an annual CEDS report or the entire five-year CEDS period.

Each CEDS goal will be evaluated through the following measures. The initial activity of establishing a baseline or benchmark will take a variety of forms.

The benchmarks or baselines will be a primary activity during the first year of the CEDS. Although some outcomes may be available by the end of the year, the benchmarks need to come first.

PERFORMANCE MEASURES

1 Master Plan - Develop a master use plan for business development that is compatible with the General Land Use	· Number of businesses assisted · Jobs created · Revenue generated	· YST Economic Development Office	· Increased employment opportunities · Development of additional businesses · Formation of entrepreneurial support network
2 Energy Development	· Cost of energy to individuals and Tribal enterprises · Number of "green" energy units/projects	· Economic Development Office · Business and Claims Committee	· Reduction in energy costs and less reliance on traditional energy sources
3 Infrastructure Development	· Number and variety of development initiatives supported · Number of people assisted	· Business and Claims Committee · Program Managers	· Establishment of business support facilities and services · Creation of jobs and investment opportunities
4 Transportation Enhancements	· Number and type of new facilities and planning efforts · Additional funding secured	· Road Department · Economic Development Office	· Better travel and tourism facilities · Enhanced public safety

1 Family Wellness Resource Center	· Number and type of services · Number of people assisted	· Business and Claims Committee · Economic Development Office · General Council · Development Trust Fund	· Better food options for Tribal members · Decline in poor nutrition related problems · Acquire a new wellness center to provide diabetes treatment and /or prevention activities and/or services

1 Home Ownership Development	· Number of units built or improved · Number of people assisted · Number of jobs created	· YST Housing · Economic Development Office · Development Trust Fund · USDA	· Enhanced housing opportunities for Tribal members · Creation of housing related jobs
2 Tribal Health Initiatives	· Number of persons impacted · Reductions in specific health and social problems	· Indian Health Services · YST Tribal Health · Business and Claims Committee	· Better health conditions for Tribal members · More access to healthcare
3 Methamphetamine interventions	· Reductions in meth related court cases and treatment patients · Increased prosecution of meth distribution cases · Revisions to Tribal legal codes and policies	· Tribal courts and law enforcement agencies · Business and Claims Committee · YST Housing · Charles Mix County	· Enhanced personal welfare and public safety · More efficient court and social service systems

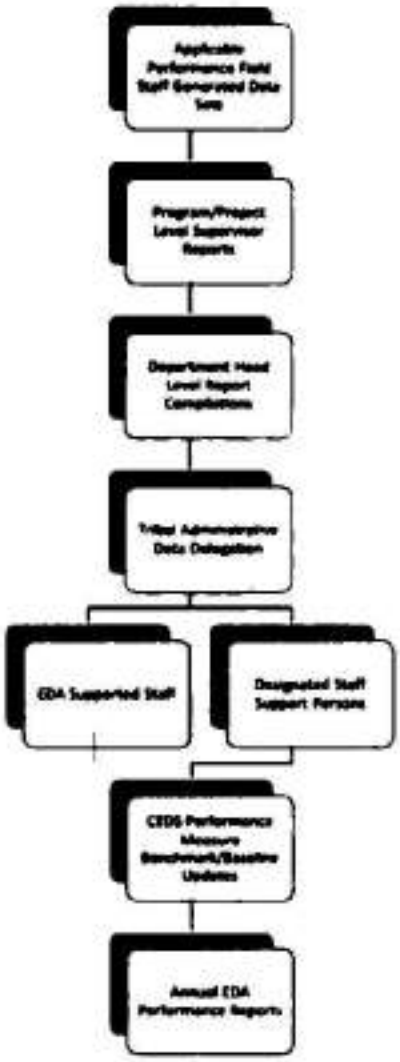
Benchmarks/Baselines	Measures/Examples	Information Compilation Responsibility	Outcomes Expected
1 Production and value added agriculture	Commodity production levels Variety of value added initiatives - Food accessibility - Acres farmed - Buffalo head size	YST Farm Board Business and Claims Committee Program Managers Charles Mix County	- Increased revenue to Tribal enterprises - Opportunities for entrepreneurs - Better access to healthy food
2 Cultural and Historic Preservation	- Documentation and conservation of important artifacts, landmarks and documents	Tribal Historic Preservation Office Bureau of Indian Affairs Business and Claims Committee	

Benchmarks/Baselines	Measures/Examples	Information Compilation Responsibility	Outcomes Expected
1 Vocational and program job training expansion	- Number and variety of programs - Number of program participants - Participants obtaining employment	- Tribal Employment Rights Office - Business and Claims Committee - Huntsmen Community College - WIOA program - Tax Program - Charles Mix Country	- Increase in Tribal member employment - Reduction in personnel assistance requests - Community Service
2 STEM Course Participation	- Number and type of STEM courses - Number of students participating in STEM classes	Tribal and Public School Administration	- Growth in students graduating from high school - Increase number of students attending college or technical institutes

The YST will compile performance measures through its regular program monitoring activities. These assessment products will include:

- Monthly Work Reports
- Quarterly Performance Summaries
- Annual Program or Project Outcome Documentation

The Tribal administration will rely upon the person's working directly on CEDS priority topics for the majority of performance data. These individuals will typically be department heads, program managers or service providers. The task of putting the data into a CEDS compatible format will fall to both EDA supported staff and designated personnel from each applicable Tribal government department. The flow of information is illustrated below.



As noted earlier, a key to accurately gauging performance will be the establishment of relevant data benchmarks or baselines. The first year of CEDS implementation will be focused on developing solid data points that will be readily evaluated by both Tribal leaders and community members. If the information makes sense to the Tribe, it should meet EDA's standards.

In addition to the "quantifiable" CEDS measurements the Tribe will be assessing the community's response in several subjective ways, including

- Public attitudes toward development issues;
- Engagement of elected and appointed officials in the development process;
- Participation of targeted groups (youth and elders) in development programs and activities; and
- Issue awareness within development circles and the community at large.

Meeting attendance and participation, along with social media traffic and news coverage will be observable indicators.

Annual adjustments to the CEDS may impact how performance is measured, but the data standards and process will remain consistent. The probability of an adjustment will increase with the:

- Completion or accomplishment of a goal or objective;
- Modification or elimination of a goal or objective because of changing conditions; or
- Identification of a new goal or objective because of an opportunity of challenge.

Adjustments will be an administrative decision, as directed by Tribal leadership

Economic Resilience

The YST cannot review resiliency without first recognizing the need for a united, strong community. The CEDS process has placed the wellbeing of Tribal members above every other development consideration. As a small population with limited resources, the YST has to factor in resiliency into every major decision. People will be negatively impacted with even minor disruptions to their economic and/or social lives. The Tribe is subject to outside influences that can and do result in economic downturns. Examples include:

- National and International agricultural market declines;
- Negative federal policies;
- Adverse weather events;
- Family and/or community tragedies; and
- Loss of employment opportunities.

YST resilience strategies will be based upon the "art of the possible". Tribal government will address the issue with the means at its disposal. It cannot afford to develop planning processes that create work or time demands that exceed its staff and financial capabilities. It has already been noted that resiliency concepts are already being incorporated into everyday development decisions. Applied common sense is nothing new to Tribal governments. Examples of resiliency efforts will be described via EDA's recommended "two-pronged approach" of "steady-state" and "responsive" initiatives.

Steady-State Initiatives

The following activities reflect the Tribe's efforts to cushion or mitigate negative economic shocks.

Agricultural Practices.

The Tribe will utilize irrigation systems to overcome frequent periods of drought or limited moisture. This practice helps to ensure crop production as a source of revenue and raw materials.

Value-Added Processes:

The Tribe intends to diversify its agricultural production utilizing crops and/or livestock. This approach will take some of the market risk away, while creating additional employment opportunities.

Workforce Development:

The Tribe's efforts to strengthen both the range and depth of workforce training will provide flexibility in attracting employers and opportunities for skilled trades to be utilized on the reservation.

Environmental Protection Codes and Ordinances:

Establishing new infrastructure, environmental protection and hazardous materials rules will prevent development problems and promote orderly land use practices.

Department Communication:

Improving the communication and collaboration of Tribal departments and agencies will result in more efficient service delivery and a faster reaction to development opportunities.

Responsive Initiatives

These actions address critical situations and emergency response capabilities. The YST has agencies with emergency response responsibilities. The Tribe has access to state and regional emergency situation resources, whether it involves communication systems, health and safety services or weather preparedness.

Pre-disaster Mitigation Planning:

The Tribe works closely with the Federal Emergency Management Agency (FEMA) to develop, update and employ measures to minimize disaster impacts.

Mutual Aid Agreements:

Whether it involves dispatching, law enforcement or emergency response services, the YST has developed backup arrangements for extreme situations.

Data Processing and Analysis:

The Tribe has access to Geographic Information System (GIS) technology, which provides spatial relationship perspectives that significantly improve disaster related analysis.

Response Infrastructure:

The Tribe has positioned equipment and emergency response vehicles in locations that promote a rapid response. It also has substantial bandwidth access via its internet provider.

A thorough Pre-disaster Mitigation Plan (PDM) involves a number of risk assessment activities, such as:

- Hazard identification
- Hazard profiles
- Vulnerability assessment

- Mitigation goals and priorities
- Mitigation action plan
- Plan monitoring and evaluation steps
- Public outreach

It is this process that will be the Tribe's primary recovery initiative. It will complement the CEDS and other existing Tribal planning undertakings.

The Yankton Sioux Tribe developed a COVID-19 Response plan, re-opening plan and risk level mitigation plan. This was adopted by resolution March 31, 2022. We currently use this COVID-19 guidance for preventative and preparedness measures.

End

Ex 23

Homicide investigation sparks rare level of state-tribal cooperation

Lake Andes incident speaks to operational difficulties of cross-border policing

BY JOHN HULT · MAY 31, 2024 · 4:55 PM

A double stabbing that left one man dead and another hospitalized led to a rare extradition order to state custody from the Yankton Sioux Tribe this week.

Mackenzie Antelope, 18, of Lake Andes, is charged with alternate counts of first- and second-degree murder and first-degree manslaughter in the death of 22-year-old Lake Andes resident Quinlan Ream.

Exhibit 23

Deputy cleared of misconduct in death of Native American man in Lake Andes jail

The Charles Mix County sheriff's deputy who arrested Robert "Berta" Enoch before his death by overdose in a Lake Andes jail will not be reprimanded for his actions. That was the decision of the South Dakota Law Enforcement Officers Standards Commission on Thursday in Pierre during a hearing for 31-year-old Jon Werkmeister. Enoch, a 35-year-old [illegible]

South Dakota Searchlight

Antelope is accused of stabbing Ream and 33-year-old Dylan Oulette of Lake Andes in a motel in that Charles Mix County town. He's facing an aggravated assault charge for the Oulette stabbing.

Oulette stumbled into the Lake Andes Gus Stop on May 21 at 10:41 p.m. with multiple stab wounds and reported the stabbing, according to an affidavit signed Tuesday in Antelope's criminal case file. He was soon taken to a hospital in Sioux Falls.

Sheriff's deputies followed a trail of blood to the Landing Strip hotel, located across a highway from the Gus Stop, to find Ream's body on the floor of one of the rooms.

Police later interviewed two witnesses who'd been drinking with the victims and suspect that evening, the affidavit says, and heard a description of a verbal altercation that ended with Antelope stabbing the victims. From his hospital room, Oulette identified Antelope as his assailant.

Antelope fled from the scene onto Yankton Sioux tribal land after the stabbing. State and county officers typically cannot arrest those suspected of committing state crimes if the suspect crosses onto Native land, and tribal officers cannot arrest suspects on state charges.

The Yankton Sioux Tribe's jurisdiction is "checkerboard," meaning tribal and other lands intermingle. Some of South Dakota's nine tribal nations, including Rosebud and Oglala, are situated on larger reservations with encompassing boundaries.

Recent controversies over jurisdictional challenges

Jurisdictional challenges have framed controversies between Gov. Kristi Noem and tribal leaders in recent months. Noem has called upon tribal leaders to ink memoranda of understanding with the state to allow outside law enforcement to assist tribal law enforcement.

Tribal officials, meanwhile, have bristled at Noem's accusations that some of them are "personally benefiting" from an infiltration of drug cartels onto tribal lands - something many tribal leaders dispute, even though drugs originally produced by cartels are widely available.

Attorney General Marty Jackley and Noem collaborated to launch a tribal law enforcement academy recently as a way to encourage more recruits to join tribal agencies. That basic certification course begins in Pierre on Monday.

Noem doubles down on cartel talk, asks tribes to partner with state

PIERRE — At the end of a week in which two more tribal nations voted to ban her from their lands, Gov. Kristi Noem called on tribal leaders to partner with state law enforcement to battle drug activity on reservations. The governor was flanked by her tribal relations secretary and newly hired tribal law enforcement [illegible]

— South Dakota Searchlight

Noem also recently called a tribal law enforcement summit and invited tribal leaders, even as the governments of all nine tribes have voted to banish her from their lands.

On Thursday, Oglala Sioux Tribe President Frank Star Comes Out said in a press release that the summit is a "divide and conquer tactic," and said he would not attend.

Jackley, meanwhile, has begun meeting with tribal officials on law enforcement issues. He met with the Lower Brule Tribal Council on Thursday.

In a recent opinion column, Jackley stressed that state and tribal law enforcement work together when necessary to overcome jurisdictional challenges.

"I do not accept 'jurisdiction' as an impediment to the ability and responsibility of law enforcement to collectively protect everyone in South Dakota, on and off reservations," Jackley wrote, in part. "We

can always strive to do better. Recent publicity has shed light on the importance to build upon and strengthen what law enforcement is already doing to protect all South Dakotans."

Stabbings prompt rare level of cooperation

Antelope's arrest stands as an example of how such collaborations play out in the absence of formal agreements between state and tribal agencies.

To facilitate Antelope's Wednesday arrest across the jurisdictional border, the tribe's chairman first needed to sign an extradition order, Yankton Sioux Tribal Police Chief Edwin Young said Friday.

Noem, Jackley offer summer law enforcement course just for tribal recruits

Gov. Kristi Noem and Attorney General Marty Jackley said Thursday they aim to open an extra basic law enforcement certification course for tribal police recruits this summer, but it's unclear how many tribal recruits will be able to meet the course's tight deadlines. Tribes can use federal funding to operate their own law enforcement agencies.

Continue reading

South Dakota Searchlight

That order, once ratified in tribal court, allowed Young's department to apprehend Antelope on Wednesday. Antelope waived an extradition hearing and will make his first appearance in court next week in Lake Andes.

Young, who started with the YST police in 2016, says he can only recall two other times when such an extradition order was signed. Misdemeanors and lower-level felonies typically don't see intervention from the tribe's chairman, he said.

"The county government and tribal government don't always see eye-to-eye, but on a major incident like this we have to work together," Young said.

In a press release, Charles Mix County State's Attorney Steve Cotton said the Charles Mix County Sheriff's Office, the state Division of Criminal Investigation and Yankton Sioux Tribal Police worked together to conduct interviews on both sides of the state-tribal border and across two counties.

Cotton lauded the cooperation.

"This case is a prime example of tribal, state, and county governments working together," Cotton wrote. "Due to this collaborative effort, law enforcement officers from multiple agencies were able to act swiftly in order to protect the public."

Ream, according to his obituary, attended college in Kansas after graduating high school in Montana. He had worked at Fort Randall Casino, and recently became a father.

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JOHN HULT

John is the senior reporter for South Dakota Searchlight. He has more than 15 years experience covering criminal justice, the environment and public affairs in South Dakota, including more than a decade at the Sioux Falls Argus Leader.

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SDS

S.D. Codified Laws § 16-18-Appx., Rule 1.6

*** Current through the 2025 Regular Session of the 100th South Dakota Legislative Assembly, with acts received March 21, 2025.***

Rule 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to the extent that revelation appears to be necessary to rectify the consequences of a client's criminal or fraudulent act in which the lawyer's services had been used;

(5) to comply with other law or a court order; or

(6) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their

rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[7a] In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited. Several situations must be distinguished. First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). Similarly, a lawyer has a duty under Rule 3.3 not to use false evidence. This duty is essentially a special instance

of the duty prescribed in Rule 1.2(d) to avoid assisting a client in criminal or fraudulent conduct. Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character. The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. Where practical, the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by paragraph (b)(1) does not violate this Rule.

[8] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[9] A lawyer entitled to a fee is permitted by paragraph (b)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[10] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(4) permits the lawyer to make such disclosures as are necessary to comply with the law.

[11] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

[12] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[13] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(4). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own

involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[14] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted by Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[15] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[16] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[17] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

History

SL 2004, ch 327 (Supreme Court Rule 03-26), eff. Jan. 1, 2004; SL 2018, ch 297 (SCR 18-06), eff. July 1, 2018.

End of Document

S.D. Codified Laws § 19-19-502

*** Current through the 2025 Regular Session of the 100th South Dakota Legislative Assembly, with acts received March 21, 2025.***

LexisNexis® South Dakota Codified Laws Annotated > Title 19 Evidence (Chs. 19-1 — 19-19) > Chapter 19-19 South Dakota Rules of Evidence (Arts. I — XI) > Article V Privileges (§§ 19-19-501 — 19-19-516)

19-19-502. Lawyer-client privilege — Definitions — General rule — Who may claim — Exceptions.

(a) Definitions. As used in this section:

(1) A "client" is a person, a fiduciary of a trust or estate, public officer, or corporation, limited liability company, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him;

(2) A representative of the client is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client;

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services;

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Between himself or his representative and his lawyer or his lawyer's representative;

(2) Between his lawyer and the lawyer's representative;

(3) By him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Among lawyers and their representatives representing the same client.

(c) Who may claim privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions. There is no privilege under this section:

(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) Documents attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) Joint clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

History

SL 1979, ch 358 (Supreme Court Rule 78-2, Rule 502); *SL 1994, ch 351*, § 39; SDCL §§ 19-13-2 to 19-13-5; SL 2020, ch 248 (Supreme Court Rule 19-18), effective September 6, 2019.

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31006

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

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

THE HONORABLE BRUCE V. ANDERSON
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed February 6, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31006

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Hazen Hunter Winckler, is called "Winckler." Plaintiff and Appellee, the State of South Dakota, is called "State." Because of the overlap between this case and its sister appeal, 31007, and because Winckler asks this Court to consider his jurisdictional arguments in both appeals by reference to the other, the State references both underlying circuit court cases in this brief. References to documents are as follows:

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

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

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

All document designations are followed by the appropriate page numbers.

JURISDICTIONAL STATEMENT

The Honorable Bruce V. Anderson, Charles Mix County Circuit Court Judge, filed a Judgment of Conviction on January 8, 2025, and an Amended Judgment of Conviction on March 6, 2025, in Charles Mix County Criminal File 23-297. SR:357, 373. Winckler filed a Notice of Appeal on February 6, 2025. SR:363. This Court has jurisdiction to hear the appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

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

The circuit court denied Winckler's motion to dismiss.

18 U.S.C. 1151

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

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

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

II.

WHETHER A 180-DAY VIOLATION OCCURRED?

The circuit court denied Winckler's motion to dismiss.

SDCL 23A-44-5.1

State v. Duncan, 2017 S.D. 24, 895 N.W.2d 779

State v. Webb, 539 N.W.2d 92 (S.D. 1995)

III.

WHETHER THE CIRCUIT COURT PROPERLY ADMITTED WINCKLER'S BOND FORM PAPERWORK?

The circuit court denied Winckler's motion in limine.

SDCL 19-19-803(6)

State v. Turner, 2025 S.D. 13, 18 N.W.3d 673

IV.

WHETHER THE CIRCUIT COURT ADMITTED PRIVILEGED LAWYER-CLIENT COMMUNICATIONS?

The circuit court denied Winckler's motion in limine.

SDCL 19-19-502

Voorhees Cattle Co., LLP v. Dakota Feeding Co., LLC, 2015 S.D. 68, 868 N.W.2d 399

V.

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

The circuit court denied Winckler's motion for judgment of acquittal.

SDCL 23A-43-31

State v. Rogers, 2025 S.D. 18, 19 N.W.3d 17

STATEMENT OF THE CASE

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

County Criminal File Number 24-85 for simple assault, violating SDCL 22-18-1(5). SR2:4.

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

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

STATEMENT OF THE FACTS

Winckler, a member of the Yankton Sioux Tribe, did not appear at the Charles Mix County Courthouse in Lake Andes on November 8, 2023, for a pretrial conference in a case involving controlled substance

violations. SR:4, 119. The State filed a Complaint for that failure to appear on November 14, 2023. SR:1. On November 22, 2023, the circuit court issued a warrant of arrest for Winckler. SR:2. Law enforcement arrested Winckler on January 28, 2024, and returned the warrant the next day. SR:74.

After a January 30, 2024, initial appearance in magistrate court where Winckler said he would be representing himself, a preliminary hearing occurred at Winckler's request on February 13, 2024. SR:75, 150, 769. At this hearing, Winckler said he wanted a court-appointed attorney instead. SR:769. The magistrate judge found good cause for delay and set another hearing for two weeks later. SR:770. In the interim, a grand jury indicted Winckler for felony failure to appear on February 22, 2024. SR:4. The preliminary hearing in magistrate court was cancelled, and the case moved to circuit court with an arraignment scheduled for March 11, 2024. SR:6, 75.

On March 6, 2024, the clerk of courts informed the circuit court that Winckler refused to leave his jail cell or have initial rights read to him. SR:7. The clerk went to the Charles Mix County jail to speak with Winckler, who said he would be retaining private counsel rather than proceeding with his court-appointed attorney Keith Goehring. SR:7. Up to that point, Winckler had been refusing to speak with Goehring. SR:7, 9. The circuit court granted a request made by Goehring to withdraw on March 11, 2024, and appointed substitute counsel the same day. SR:9.

The circuit court rescheduled the arraignment for April 8, 2024. SR:7, 9, 75.

While awaiting his arraignment date, Winckler attacked an inmate in the Charles Mix County Jail on April 2, 2024. SR2:2. Winckler and the victim were playing a board game, and the victim stated he no longer wanted to play. SR2:2. Winckler then declared the victim still owed him an item placed as a bet before the game started. SR2:2. As the victim walked away, Winckler ran at him and punched him in his face multiple times and pulled him down to the ground by his hair. SR2:2. He pressed the attack by punching the victim in the face several more times on the ground. SR2:2. Winckler then ran to his cell and tried to coax the victim to come in there with him. SR2:2. The State filed a Complaint charging Winckler with simple assault. SR2:4.

The April 8, 2024, arraignment occurred in the failure to appear case, and Winckler pleaded not guilty. SR:670. The circuit court entered an Order Setting Date and Time for Jury Trial scheduling the jury trial for August 19, 2024. SR:12-13. Winckler moved to dismiss the simple assault case on June 19, 2024, alleging that the circuit court lacked jurisdiction because the Charles Mix County jail, located in Lake Andes, was in Indian Country under federal law. SR2:12-14. Winckler also moved to dismiss in the failure to appear case on August 13, 2024, alleging a violation of the 180-day rule. SR:20-22. He claimed 202 days passed between his initial appearance and when the jury trial had been

set because he made his initial appearance January 30, 2024. SR:20-22. Winckler filed a third motion to dismiss on August 14, 2024, alleging that the Charles Mix County courthouse was in Indian Country. SR:23-24. To allow time to deal with these motions, the circuit court rescheduled the jury trial for the week of December 9, 2024, and it set a hearing for arguments on Winckler's jurisdiction motions for September 11, 2024. SR:66, 688; SR2:610.

After the hearing on September 11, 2024, the circuit court denied Winckler's motions to dismiss and issued memorandum decisions explaining its reasoning. SR:118, 141, 151. As to the 180-day motion, the circuit court held the start date for the 180-day calculation was the arraignment on April 8, 2024, because the original delays were caused by Winckler's refusal to complete his initial appearance and by his refusing counsel. SR:150. Thus, the August 19, 2024, trial date fell within the 180-day deadline. SR:150. Further, the circuit court held any delay beyond August 19, 2024, was because of Winckler's motions to dismiss, so no violation occurred. SR:150-51. The circuit court also ruled that the Charles Mix County Courthouse and jail did not meet the definition of Indian Country, and therefore it had jurisdiction over both criminal cases. SR:125; SR2:550.

Four days before trial, Winckler filed several motions in limine regarding Exhibits the State intended to use at trial. SR:171, 194, 219. He objected to State's Exhibit 1—which was a set of documents from

September 11, 2023, detailing his bond release conditions in the underlying controlled substances case—for hearsay, relevance, and violating his right to confront witnesses, SR:171-78. Winckler also objected to State's Exhibit 5, which was the November 8, 2023, pre-trial conference transcript from his underlying controlled substances case detailing that he did not appear, for the same reasons as well as containing impermissible character evidence and privileged communications by his previous attorney. SR:219-32.

The jury trial began December 13, 2024, and the circuit court heard arguments on the motions in limine before opening statements. SR:441-42. The State informed the circuit court that it was offering Exhibit 1 for the first three pages of the document. SR:442-46. The circuit court held Exhibit 1, the bond paperwork, was a record kept in the ordinary course of the court's business and met the statutory definitions as a business record exception to hearsay. SR:448. It further ruled that Exhibit 1 was non-testimonial, so it did not violate the right to cross-examine witnesses. SR:449. It also held Exhibit 1 needed to be redacted beyond page three to exclude irrelevant or unduly prejudicial information, but otherwise it was admissible. SR:449.

The circuit ruled Exhibit 5, the pretrial conference transcript, was relevant and the relevance outweighed any unfair prejudice, but it needed to be redacted to remove some statements that were irrelevant. SR:459-60. The irrelevant statements were what Goehring claimed

Winckler's mother had said about keeping in contact with Winckler, and references to Odyssey filings detailing Winckler's criminal record and failure to appear for a UA. SR:230, 460. The circuit court kept the fact that Winckler had posted bond, had his bond revoked, and had a bench warrant issued against him. SR:285-86, 460. The circuit court also kept that Goehring stated he sent a letter advising Winckler to be at the hearing. SR:285, 460. The circuit court permitted Winckler to make a standing objection to the Exhibits. SR:508.

The State's case consisted of testimony by Charles Mix County Clerk of Courts Jennifer Robertson and Winckler's former counsel Goehring. SR:510, 525. The State used Robertson to admit Exhibit 1, at which time Winckler objected to the redacted Exhibit and the circuit court overruled him. SR:515-16. When the State called Goehring, Winckler objected on the bases of privilege and confidentially. SR:525. The circuit court denied the objection and allowed Goehring to testify. SR:526. The State offered the redacted Exhibit 5 through Goehring, at which time Winckler made an objection and the circuit court overruled it. SR:531. Goehring read aloud from Exhibit 5 that he wrote Winckler reminding him when the pretrial conference was, and Winckler objected as to privilege. SR:532-33. The circuit court overruled the objection. SR:532. After the State's case in chief, Winckler moved for judgment of acquittal, which the circuit court denied, and he called no witnesses. SR:547, 551. The jury convicted Winckler. SR:582.

ARGUMENTS

I.

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

A. Background

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

B. Standard of Review

"Questions of jurisdiction are legal questions reviewed under a de novo standard." *State v. Bettelyoun*, 2022 S.D. 14, ¶16, 972 N.W.2d 124, 128-29 (quoting *State v. Owen*, 2007 S.D. 21, ¶10, 729 N.W.2d 356, 362). Winckler's motion to dismiss attacked this Court's subject matter jurisdiction over this case. When presented with a factual attack, the Court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Alone v. C. Brunsch, Inc.*, 2019 S.D. 41, ¶12, 931 N.W.2d 707, 711 (internal citation omitted). To resolve the

factual attack, the Court may consider evidence outside the pleadings. *Hutterville Hutterian Brethren, Inc. v. Waldner*, 2010 S.D. 86, ¶20, 791 N.W.2d 169, 174.

C. Analysis.

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

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

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

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

a. Historical Overview of Charles Mix County

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

> At the outset of the 19th century, the Yankton Sioux Tribe held exclusive dominion over 13 million acres of land between the Des Moines and Missouri Rivers, near the boundary that currently divides North and South Dakota. In 1858, the Yanktons entered into a treaty with the United States renouncing their claim to more than 11 million acres of their aboriginal lands in the north-central plains[.]

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

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

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

> [A]s immigration increased and pioneers advanced ever westward, settlers, railroaders, miners, and developers brought increasing pressure to further contain Indian tribes, calling for reservations to be opened for settlement and inevitably extinguished. Reformers hoping to improve the welfare of Indian people also sought to resolve the "Indian problem" through a plan of assimilation, encouraging Native Americans to become farmers and ranchers alongside homesteaders. Congress supervened with the Dawes Severalty Act (or General Allotment Act) of 1887, followed by a series of surplus land acts. With the allotment system, the homesteading ideal would be applied to "civilize" Indian people by forcing them onto individual plots cut out of reservations, while freeing unassigned lands for non-Indian settlement[.]
>
> The 1858 Yankton Treaty of Cession created a 430,495–acre reservation along the eastern bank of the Missouri River for the Yankton Tribe. Beginning in 1891, tracts within the reservation were allotted to individual Yankton Indians, leaving approximately 168,000 acres of unallotted land. The next year, in response to communications from the Tribe to

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

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

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

> After President Cleveland's proclamation opened the unallotted lands for settlement in 1895, the area filled with

settlers. The history is recounted in the writings of author and journalist, Adeline S. Gnirk. In her retelling, the Chicago, Milwaukee & St. Paul Railroad secured a right-of-way in 1897 to extend its line through the opened reservation from Napa to the place where the town of Platte was later founded. The railbed was completed in 1900. Within a year four townsites originated along the railway: Wagner, Lake Andes, Geddes and Platte[.] Typical perhaps is the rise of Lake Andes, which was platted in 1901 and formally established as a town in 1904.

> "When inherited Indian lands commenced to be sold, a location was secured on Section 4, the present site. This land including the 80 acres then platted and the 120 acres adjoining had been allotted to John Arthur, or Sparrow Hawk. He died and in 1904 his only heirs, his wife Taniyawakanwin, and daughter Bessie Zitka Koyewin were induced to sell 80 acres of this land to the Lake Andes Townsite Company.
>
> Even during the twenty-five year trust period required by the Dawes Act, Article XI of the 1894 Act allowed for the sale of allotted lands on the death of certain allottees. By 1916, Lake Andes won a decade-long battle with the other railroad towns to become the county seat, replacing Wheeler. Construction on the new courthouse began in 1917. The town remains the county seat to this day. Its courthouse and law enforcement center both sit on formerly allotted land."

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

b. Courts Have Consistently Held that Lake Andes is not an Indian Reservation.

The United States Supreme Court, Eighth Circuit Court of Appeals, and this Court have all evaluated the legal history of the Yankton Sioux Reservation and Lake Andes, with the conclusion being allotted lands that passed out of Indian ownership are not part the Yankton Sioux Indian Reservation under 18 U.S.C. 1151(a). *Yankton Sioux Tribe*, 522

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

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

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

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

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

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

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

> Pickstown is not Indian country under 18 USC § 1151. It is not situated within the boundaries of a reservation because the Yankton Sioux Reservation was effectively terminated by the 1894 Act. Nor is it trust land, a dependent Indian

> community, or property held by the Tribe. Consequently, the State properly exercised jurisdiction over Bruguier[.]

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

c. This Court Should Not Overturn Bruguier.

Winckler asks this Court to revisit this well-settled matter and overturn *Bruguier*. WB:25-31. This Court "[approaches] the question of whether to depart from precedent with great caution and restraint." *In re Noem*, 2024 S.D. 11, ¶48, 3 N.W.3d 465, 479 (quoting *Luze v. New FB Co.*, 2020 S.D. 70, ¶48, 952 N.W.2d 264, 276–77). Five factors are weighed in determining whether to "overrule flawed precedent: (1) the

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

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

Because *Bruguier* relied on cases involving other South Dakota

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

Bruguier is a workable opinion. *See generally* 1999 S.D. 122, 599 N.W.2d at 364; *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. Winckler asks this Court for an extreme result—the sudden declaration that half of Charles Mix County is still a reservation, which contradicts over a century of development in the area and multiple precedents ruling otherwise. WB:25-31; *see, e.g., Greger*, 1997 S.D. 14, 559 N.W.2d at 854. Such a result would be highly chaotic and unworkable, but keeping

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

This Court must look at developments since the opinion in question. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480. The major development cited in Winckler's brief is the U.S. Supreme Court holding 5-4 in *McGirt v. Oklahoma* that the Creek Reservation in Oklahoma was never disestablished. WB:25-31; *see generally* 591 U.S. 894. But in *McGirt*, the U.S. Supreme Court held "disestablishment has 'never required any particular form of words[.]'" *Id.* at 904 (quoting *Hagen v. Utah*, 510 U.S. 399, 411 (1994)). The *McGirt* Court continued, "[disestablishment] does require that Congress clearly express its intent to do so, '[c]ommon[ly with an] "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests."'" *Id.* (quoting *Nebraska v. Parker*, 577 U.S. 481, 488 (2016)).

This Court's ruling in *Bruguier* is consistent with *McGirt* because it

acknowledged clear language of cession in Articles I and II of the 1894 Act. *Id.*; 1999 S.D. 122, ¶27, 599 N.W.2d at 374. Such comportment with a major development means *Bruguier* is still good law that should not be overturned. *Id.*; *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480; *McGirt*, 591 U.S. at 904. Further, the U.S. Supreme Court in *McGirt* knew the Yankton Sioux Reservation was at least diminished because it favorably cited *Yankton Sioux Tribe*. *McGirt*, 591 U.S. at 915-16 (citing 522 U.S. at 355). Winckler failed to put forth a single reason this court should abandon its precedent. *In re Noem*, 2024 S.D. 11, ¶50, 3 N.W.3d at 480.

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

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

a. The Land is not Set Aside by Federal Government for use as Indian Land

"The federal set-aside requirement ensures that the land in

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

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

In this case, the land in question was set aside by the federal government for use as Indian land, but the status of the land changed when it was sold in fee to a non-Indian. *Bruguier*, 1999 S.D. 122, ¶¶4-5, 599 N.W.2d at 366-67. At that point, the land was used to form Lake

Andes, which was chartered under South Dakota law. *Id.* The ability to alienate the allotment to a non-Indian or use it for a non-Indian purpose means the land does not meet the federal set-aside requirement. *Venetie*, 522 U.S. at 532-33. Further, in *Venetie* the Neets'aii Gwich'in corporations' ownership of previous reservation land was not enough to fulfill the federal set aside requirement. *Id.* If Indian ownership of former reservation land is not enough to be a federal set-aside, then the land being a former allotment that passed out of Indian hands over one hundred years ago cannot be either. *See id.* Without the federal set-aside requirement, the community in Lake Andes cannot be designated as an "Indian community" and is not Indian country under 18 U.S.C. 1151(b). *Id.* at 530-31.

b. Lake Andes is not under Federal Superintendence

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

The population of Lake Andes is about two-thirds non-Indian. *Greger*, 1997 S.D. 14, ¶29, 599 N.W.2d at 867; *see also* SR2:313. The federal government provides services and programs to the Tribe, but neither the town of Lakes Andes nor the courthouse or jail directly

benefit from those services and programs. SR2:147, 151, 191-92. The programs and services are also spread across the county: Indian Health Services, the Bureau of Indian Affairs, the Yankton Sioux Tribal Headquarters, and tribal court are in Wagner, and Marty Indian School is in Marty. SR2:147, 151, 191-92; *Stathis v. Marty Indian School*, 2019 S.D. 33, ¶2, 930 N.W.2d 653, 655. Under *Venetie*, even if the federal government provides "health, social, welfare, and economic programs to the Tribe," those types of programs are classified as "general federal aid[,]" not "active federal control" that proves "federal superintendence." 522 U.S. at 534.

The State and its subdivisions are responsible for the care and superintendence of Lake Andes: the city of Lake Andes maintains the roads; Charles Mix County provides law enforcement services to the city; the Lake Andes School District provides educational services; and the Lake Andes Fire Department provides fire protection services. SR2:501-23. It is true that the Yankton Sioux Tribal Police has an office in Lake Andes, but there are some parcels of land in Charles Mix County that still constitute Indian country, so the tribal law enforcement services are needed there. SR2:263. Further, the land at issue is not held in trust, and it is not under the "absolute jurisdiction and control of the United States" or "under the jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians" like other dependent Indian communities. *Venetie*, 522 U.S. at

533-34 (internal citations omitted). The Charles Mix County courthouse and jail where Winckler committed his crimes are not Indian Country under 18 U.S.C. 1151(b).

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

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

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

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

Bruguier, 1999 S.D. 122, ¶22, 599 N.W.2d at 373 (quoting *Bates v. Clark*, 95 U.S. 204 (1887)). "Indian title in common, or put another way, tribal title, ended when tribal ownership ended." *Id.* (citations omitted). In *Bruguier*, this Court held the State has jurisdiction over allotted parcels no longer titled in Indian ownership. *Id.* ¶34, 599 N.W.2d at

376. Thus, the State had jurisdiction over Winckler because the land at issue is an allotment that passed to a non-Indian. *Id.*

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

II.

NO 180-DAY VIOLATION OCCURRED.

A. Background

The State filed a Complaint against Winckler for failure to appear on November 14, 2023. SR:1. On January 28 or 30, 2024, the clerk went to conduct an initial appearance and Winckler told the clerk he

would proceed pro se.[1] SR:75, 150, 768. The magistrate court scheduled a preliminary hearing for February 13, 2024, but there, Winckler changed course and asked for court-appointed counsel. SR:768. The magistrate court found good cause for delay and set another hearing for February 27, 2024. SR:770. The next day, Winckler asked again for substitute counsel but disrupted the courtroom and needed to be restrained by law enforcement. SR:151. The court denied his motion to fire his attorney. *Id.*

In the meantime, the State filed an Indictment February 22, 2024, and an arraignment in circuit court for that Indictment was scheduled for March 11, 2024. SR:6, 75. While awaiting that arraignment, Winckler refused to speak with his counsel or leave his jail cell. SR:7-9. Eventually, the circuit court allowed his attorney to withdraw and appointed new counsel on March 11, 2024. SR:9. Winckler's arraignment on the Indictment happened on April 8, 2024. SR:75. The circuit court determined that "most of the delay" in the case thus far was "caused by the Defendant refusing to allow the clerk to complete his

[1] The record reflects confusion on whether a formal initial appearance took place. Winckler filed an eCourts summary of the case suggesting an initial appearance was held on January 30, 2024, according to a scheduling note. SR:75. However, the circuit court found no initial appearance before a judicial officer took place because Winckler refused. SR:150. After Winckler's appellate briefs were filed, the State sought all missing transcripts from the circuit court in the underlying cases. There is no transcript of an initial appearance in CRI23-297. Where the trial court record is incomplete and not adequate to dispose of an issue, this Court presumes the circuit court acted properly. *Graff v. Children's Care Hosp. & Sch.*, 2020 S.D. 26, ¶16, 943 N.W.2d 484, 489.

initial appearance, his delay in getting Court appointed counsel for his preliminary hearing, and his letter motion . . . requesting substitute counsel and the Court's consideration and resolution of that request." SR:151.

The circuit court scheduled trial for August 19, 2024. SR:12-13. Winckler moved to dismiss for lack of jurisdiction and a 180-day violation on August 14, 2024. SR:151. According to the circuit court, "[i]t was agreed between the parties that all cases would be continued until the [c]ourt could resolve the Defendant's motion[s]. . ." SR:151. Trial was rescheduled and occurred December 13, 2024. SR:66, 688.

B. Standard of Review

This Court reviews de novo whether the State violated the 180-day rule. *State v. Duncan*, 2017 S.D. 24, ¶10, 895 N.W.2d 779, 781.

C. Analysis

"There are two requirements 'for the 180–day period to commence: 1) the defendant appears on a charging document; and 2) before a judicial officer.'" *Id.* ¶14, 895 N.W.2d at 781-82 (quoting *State v. Sorensen*, 1999 S.D. 84, ¶14, 597 N.W.2d 682, 684). Winckler argues his January 30, 2024, initial appearance on the Complaint is the start date for the 180-day calculation, so the August 19, 2024, trial date was 202 days from his first appearance. WB:28.

The magistrate court found good cause for the first delay in Winckler's postponed preliminary hearing because he changed his mind

about proceeding pro se. SR:770. The circuit court found Winckler caused the delays by his refusal to complete his initial appearance, belated request court appointed counsel, subsequent refusal to speak to counsel, and his pending motions including requesting substitute counsel, motion to dismiss for lack of jurisdiction, and motion to dismiss for violation of the 180 day rule. SR:151. The circuit court properly found all delays were "caused by the Defendant's actions and motions[.]" SR:151.

Even if this Court determines January 30, 2024, to be the appropriate start of the calculation, Winckler caused delays that put the August 19, 2024, trial date within 180 days. Winckler initially proceeded pro se, but then asked the magistrate court for court appointed counsel on February 13, 2024. SR:768. Winckler then refused to speak to his counsel or participate in initial proceedings, and new counsel was not appointed until March 11, 2024. SR:7, 9, 75. "The failure of a defendant to maintain contact with his attorney which necessitates the withdrawal of the attorney [. . .] is plainly attributable to the defendant." *State v. Webb*, 539 N.W.2d 92, 95 (S.D. 1995).

Winckler's request for a hearing to ask for court-appointed counsel after insisting he would proceed pro se, and his subsequent change in counsel after refusing to speak with his first court-appointment, caused a delay attributable to him. *Id.* Thus, the sixty-nine days between January 30, 2024, and April 8, 2024, should be excluded, resulting in

133 elapsed days. At the very least, the twenty-seven days between his request for counsel on February 13, 2024, and Gochring's replacement on March 11, 2024, should be excluded, which would total at most 175 days elapsed. In either scenario, no 180-day violation occurred. Of course, all delays after August 19, 2024, until the trial date are attributable to Winckler's motions to dismiss and should be excluded. SDCL 23A-44-5.1; *State v. Two Hearts*, 2019 S.D. 17, ¶10, 925 N.W.2d 503, 509. The circuit court did not err by denying Winckler's motion to dismiss.

III.

THE CIRCUIT COURT PROPERLY ADMITTED WINCKLER'S BOND FORM PAPERWORK.

A. Standard of Review

"[The] standard of review for evidentiary rulings 'requires a two-step process: first, to determine whether the trial court abused its discretion in making an evidentiary ruling; and second, whether this error was a prejudicial error that in all probability affected the jury's conclusion.'" *State v. Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d 21, 30. (quoting *State v. Thoman*, 2021 S.D. 10, ¶41, 955 N.W.2d 759, 772). "The trial court['s] evidentiary rulings are presumed to be correct." *Id.* (quoting *State v. Babcock*, 2020 S.D. 71, ¶21, 952 N.W.2d 750, 757). An abuse of discretion "is 'a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration,

is arbitrary or unreasonable.'" *Id.* ¶21, 982 N.W.2d at 30 (quoting *State v. Delehoy*, 2019 S.D. 30, ¶22, 929 N.W.2d 103, 109). Prejudicial error is when "in all probability [the error] produced some effect upon the jury's verdict and is harmful to the substantial rights of the party assigning it." *Id.* (quoting *State v. Reeves*, 2021 S.D. 64, ¶11, 967 N.W.2d 144, 147).

B. Analysis

i. Exhibit 1 is not Inadmissible Hearsay

The circuit court admitted Exhibit 1 under the business record exception to hearsay. SR:449. "Business records qualify for a hearsay exception if they are records of a regularly conducted business activity." *State v. Dickerson*, 2022 S.D. 23, ¶45, 973 N.W.2d 249, 265 (citation omitted). This exception necessitates:

> (A) The record was made at or near the time by—or from information transmitted by—someone with knowledge;
>
> (B) The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
>
> (C) Making the record was a regular practice of that activity;
>
> (D) All these conditions are shown by the testimony of the custodian or another qualified witness, or by certification that complies with a rule or a statute permitting certification; and
>
> (E) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

State v. Turner, 2025 S.D. 13, ¶38, 18 N.W.3d 673, 686 (citing SDCL 19-19-803(6)).

The State satisfied SDCL 19-19-803(6) by directing the circuit court's attention to the fact that Exhibit 1 was the circuit court's own record. SR:445-47. In evaluating Exhibit 1, the circuit court discussed the arraignment in the underlying controlled substances case that also occurred before it and from which the bond paperwork arose. SR:448. The circuit court commented on how it issued a pretrial order setting the pretrial conference date and how that information was relayed to the Sheriff's office, who then produced the bond paperwork and filed it with the Clerk of Courts. SR:445-47. This familiarity from the circuit court's own records that the office of the Sheriff—who was in the courtroom at the time of the arraignment—produced the bond paperwork satisfied the requirement that the proponent show the record was made by someone with knowledge. SDCL 19-19-803(6)(A); SR:445.

The fact that the circuit court knew bond paperwork is regularly produced after it conducts arraignments satisfied that the record "was kept in the course of a regularly conducted activity of a[n] [. . .] occupation, or calling, whether or not for profit[,] [and] making the record was a regular practice of that activity[.]" SDCL 19-19-803(6)(B) and (C). Under SDCL 19-19-803(6)(D), the foundation can be shown "by the testimony of the custodian or another qualified witness." The State provided testimony from the Charles Mix County Clerk of Courts.

SR:510, 515-16. She testified the bond paperwork had been filed with the circuit court. SR:516. This testimony alongside the circuit court's high degree of familiarity with its own bond paperwork process and discussions with counsel during arguments met the 19-19-803(6) elements. SR:445-48.

SDCL 19-19-803(6)(E) permits the opponent to overcome the foundation with a showing that "the source of information or the method or circumstances of preparation indicate a lack of trustworthiness." Winckler argues Exhibit 1 is not trustworthy because his bond conditions changed at one point and it is not signed by the circuit court. WB:32. But nothing about the circuit court's ability to acknowledge what happened at its own arraignment or how bond paperwork is produced in its criminal cases requires the bond conditions to remain static or the documents to be signed by the Judge, and Winckler produced no law stating as much. WB:32. Winckler failed to cast any doubt on the trustworthiness of the bond paperwork because it is so intimately tied to the circuit court's conduct of its own business. Thus, the circuit court did not make a choice outside the range of permissible choices by finding proper foundation existed for the bond paperwork to admit it as a business records exception to hearsay. *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30.

ii. Exhibit 1 is Relevant and Passes the Balancing Test

Winckler briefly alluded to Rule 403 Balancing in his argument

that Exhibit 1 was inadmissible hearsay. WB:32. "All relevant evidence is admissible[.]" *State v. Belt*, 2024 S.D. 82, ¶23, 15 N.W.3d 732, 738 (quoting SDCL 19-19-402). "Evidence is relevant if: (a) [i]t has any tendency to make a fact more or less probable than it would be without the evidence; and (b) [t]he fact is of consequence in determining the action." *Id.* (quoting SDCL 19-19-401). "A 'court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.'" *Id.* (quoting SDCL 19-19-403). "The moment evidence is found relevant, the scale 'tips emphatically in favor of admission' absent its probative value being substantially outweighed by Rule 403 concerns." *Id.* ¶24, 15 N.W.2d at 738 (quoting *State v. Richard*, 2023 S.D. 71, ¶23, 1 N.W.3d 654, 660).

Exhibit 1 was relevant because it showed that Winckler knew he was supposed appear at a pretrial conference on November 8, 2023. SR:265. Given this relevance and the deference granted the trial court, it cannot be said the circuit court made an impermissible choice by admitting Exhibit 1, especially when Winckler's argument for the relevance being outweighed erroneously depends on it not satisfying SDCL 19-19-803(6). *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30.

iii. Exhibit 1 did not Violate Winckler's Right to Confront Witnesses

Winckler argues Exhibit 1 violated his right to confront witnesses because he was not allowed to cross-examine the person who wrote it. WB:31. "[In] *Crawford v. Washington*, the [U.S. Supreme] Court instructed that the right to confrontation delineated in the Sixth Amendment requires exclusion of out-of-court testimonial statements[.]" *State v. Richmond*, 2019 S.D. 62, ¶24, 935 N.W.2d 792, 759-800 (citing 541 U.S. 36, 68-69). The U.S. Supreme Court "identified certain types of hearsay evidence that are categorically non-testimonial. These include business records[.]" *Id.* ¶28, 935 N.W.2d at 800-01. Thus, because Exhibit 1 meets the business records exception, it is categorically non-testimonial, and the circuit court did not abuse its discretion by admitting it. *Id.*; *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30.

Finally, even if this Court determines Exhibit 1 should not have been admitted, the strength of the State's case outlined in Section V. B. shows Winckler suffered no prejudice because the jury's verdict would not have changed without it. *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30.

IV.

THE CIRCUIT COURT DID NOT ADMIT PRIVILEGED LAWYER-CLIENT COMMUNICATIONS.

A. Standard of Review

The same standard in Section III. A. of this brief applies to this analysis.

B. Analysis

Winckler argues the circuit court improperly admitted Exhibit 5 because it contained a statement by Goehring that he wrote Winckler telling him when the pretrial conference was and telling him to be there. WB:33-34. He also argues Goehring should not have been allowed to testify at all. WB:34.

"Four minimum elements exist to invoke [lawyer-client] privilege: (1) a client; (2) a confidential communication; (3) the communication was made for the purpose of facilitating the rendition of professional legal services to the client; and (4) the communication was made in one of the five relationships enumerated in SDCL [19-19-502(b)]." *Voorhees Cattle Co., LLP v. Dakota Feeding Co., LLC*, 2015 S.D. 68, ¶10, 868 N.W.2d 399, 405 (quoting *State v. Rickabaugh*, 361 N.W.2d 623, 624–25 (S.D.1985)). "It is the client, not the attorney, with whom the lawyer-client privilege reposes." *Id.* (quoting *State v. Catch the Bear*, 352 N.W.2d 640, 645 (S.D. 1984)).

While Goehring reminding Winckler of a court date via letter satisfied the first, third, and fourth minimum elements, the second element requires the communication to be confidential. *Id.* A communication is confidential "*if not intended to be disclosed to third persons* other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." SDCL

19-19-502(a)(5) (emphasis added). In overruling Winckler, the circuit court referenced Exhibit 5 and reasoned "it is the day of the hearing that he's charged with missing that led to the failure to appear charge. I called the case, asked his lawyer where his client is. I note that he does not appear." SR:459. This reflected that the pretrial hearing date was known by all parties and part of the record, so Goehring referencing that he reminded Winckler of the date did not involve a confidential communication. SDCL 19-19-502(a)(5). Rather, the communication was simply the date of the pretrial conference, which was public record the circuit court set and the parties already knew about. SR:268, 281. Winckler did not have lawyer-client privilege because neither Goehring nor Exhibit 5 conveyed confidential information. *Voorhees Cattle Co.*, LLP, 2015 S.D. 68, ¶10, 868 N.W.2d at 405.

Regarding Goehring not being able to testify at all, the circuit court ruled "ther[e] [are] certain things that [Goehring] can observe and testify to as a fact that do not involve a confidential attorney client privilege . . . saying that he was there at the time of the pretrial conference and the defendant did not appear[,] is not anything protected by attorney-client privilege. There's no communication going on. Just that there's a gentleman there without his client." SR:539-40. That reasoning reflected that SDCL 19-19-502 prohibits testimony about specific types of communications, so a blanket testimony ban is unsupported by the plain language of the statute. In fact, SDCL 19-19-502(d) envisions

scenarios where no privilege applies, so there is not an absolute prohibition on a lawyer testifying about a client. SR:539-40. The circuit court did not make a choice outside the range of permissible choices by allowing Exhibit 5 or Goehring as a witness. *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30. But if this Court determines Exhibit 5 or Winckler's testimony should not have been admitted, the strength of the State's case outlined in Section V. B. shows Winckler suffered no prejudice. *Hankins*, 2022 S.D. 67, ¶20, 982 N.W.2d at 30.

V.

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

A. Standard of Review

"The denial of a motion for judgment of acquittal is a question of law [this Court] review[s] de novo." *State v. Rogers*, 2025 S.D. 18, ¶48, 19 N.W.3d 17, 30 (quoting *State v. Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d 20, 25). "The standard is 'whether the evidence was sufficient to sustain a conviction.'" *Id.* (quoting *Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d at 25)(other citation omitted). "When measuring the sufficiency of the evidence, [this Court asks] whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d at 25)(cleaned up). "[This Court accepts] the evidence and the most

favorable inferences fairly drawn therefrom, which will support the verdict." *Id.* (quoting *Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d at 25)(other citation omitted). "This Court will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence." *Id.* (quoting *Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d at 25).

B. Analysis

The jury convicted Winckler of violating SDCL 23A-43-31, which provides:

> Any person who, having been released pursuant to this chapter, fails to appear before any court or judicial officer as required shall [. . .]:
>
> (1) If he was released in connection with a charge of a felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be guilty of a Class 5 felony[.]

SR:335, 355. Thus, the State needed to prove Winckler: 1) was released on bond; 2) was required to appear in court; and 3) did not appear. *Id.*

The State's case consisted of testimony by two witnesses: Charles Mix County Clerk of Courts Jennifer Robertson and Winckler's former counsel Goehring. SR:510, 525. Robertson testified Winckler pleaded not guilty at an arraignment hearing in July 2023. SR:512-13. The State used her to admit Exhibit 2, a standard Order setting the time for Winckler's jury trial in that case. SR:268, 513. The Order specified that Winckler needed to appear at a pretrial conference on November 8, 2023. SR:268, 514. She testified the judge signed that Order and she filed it in Odyssey, which meant Winckler's counsel received a copy. SR:514-15.

The State also used her to admit Exhibit 1. SR:515-16. Robertson testified that Exhibit 1 also specified Winckler needed to appear in Court on November 8, 2023, at 1:30 p.m, which matched the time on Exhibit 2. SR:516-17. She also told the jury that Winckler did not appear at the pretrial conference on that date. SR:517.

"[This Court accepts] the evidence and the most favorable inferences fairly drawn therefrom, which will support the verdict." *Rogers*, 2025 S.D. 18, ¶48, 19 N.W.3d at 30 (quoting *Harruff*, 2020 S.D. 4, ¶15, 939 N.W.2d at 25)(other citation omitted). The jury could infer from Robertson's testimony that Winckler did not attend his pretrial conference that he was not in custody and compelled to attend, and therefore was out on bond. SR:517. They could see from Exhibit 2 that Winckler knew his pretrial conference date and requirement to attend it. SR:268. And they knew from Robertson's testimony that he did not appear at the pretrial conference. SR:517. Because they showed Winckler was released on bond, knew about a pretrial conference date, and did not appear, Robertson's testimony and Exhibit 2 alone are sufficient to establish the elements of SDCL 23A-43-31 for a rational trier of fact. *Rogers*, 2025 S.D. 18, ¶48, 19 N.W.3d at 30. Exhibit 1 strengthened the State's case and further demonstrated the elements were met by showing his bond conditions and his knowledge he had to attend his pretrial conference. SR:265-67.

Goehring testified that he was Winckler's counsel at the

arraignment in the underlying case. SR:527-28. The State used Goehring to admit Exhibit 4, which was the redacted transcript of that arraignment. SR:280-81, 527-28. Goehring testified the circuit court advised he and Winckler that the pretrial conference was on November 8, 2023, and Exhibit 4 showed the same. SR:281, 528. The State also offered Exhibit 5 through Goehring, who read aloud for the jury his statement at the pretrial conference that he had written Winckler telling him to come to it. SR:285-86, 532-33. Exhibit 5 also stated Winckler posted bond, which is an aspect of the Exhibit he has not argued was impermissible or should have been redacted. SR:286; *See generally* WB. Goehring also testified he received Exhibit 2 from Odyssey filing. SR:533. A rational trier of fact could find the elements of SDCL 23A-43-21 met with only Exhibit 4 or Exhibit 5 and Robertson's testimony, but the additional evidence was admissible and bolstered the State's case. *Rogers*, 2025 S.D. 18, ¶48, 19 N.W.3d at 30. The circuit court did not err in denying Winckler's motion for judgment of acquittal. *Id.*

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 9,601 words.

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

Dated this 12th day of September 2025.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 12, 2025, a true and correct copy of Appellee's Brief in the matters of *State of South Dakota v. Hazen Hunter Winckler*, Appeal No. 31006, was served via electronically through Odyssey File and Serve on Tucker Volesky at tucker.volesky@tuckervoleskylaw.com.

/s/ Jacob R. Dempsey
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Assistant Attorney General

REPLY BRIEF OF APPELLANT

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs. **NO. 31006**

HAZEN HUNTER WINCKLER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT

OF THE

FIRST JUDICIAL CIRCUIT

CHARLES MIX COUNTY, SOUTH DAKOTA

HONORABLE BRUCE V. ANDERSON
CIRCUIT COURT JUDGE

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Filed: 10/14/2025 4:16 PM CST Supreme Court, State of South Dakota #31006

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31006

PRELIMINARY STATEMENT

The Settled Record will be referred to by the designation "SR." Appellant's Appendix will be referred to by the designation "App" and is cross-referenced to the Settled Record in the foregoing Appendix Table of Contents. Hazen Winckler, Defendant and Appellant, will be referred to as "Winckler." Winckler's Appellant Brief filed in this appeal, No. 31006, will be referred to by the designation "WB." The State of South Dakota, Plaintiff and Appellee, will be referred to as "the State." The State's Appellee Brief in this appeal, No. 31006, will be referred to by the designation "SB." All document designations will be followed by the appropriate page numbers.

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

JURISDICTIONAL STATEMENT

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

STATEMENT OF THE CASE AND FACTS

The parties agree, and the circuit court found that "defendant [Winckler] is an enrolled member of the Yankton Sioux Tribe, and that all defendant's alleged crimes occurred on the same tract of land…" (SR 119-120; SB 4). The said tract of land – part of the aboriginal lands of the Yankton Sioux Indians reserved in the 1858 Treaty, 11 Stat. 743-747, subsequently allotted by US Trust Patent dated May 8, 1891, and specifically guaranteed to the Tribe in perpetuity in the Act of 1894, 28 Stat. 314-318 (App. 184-202) – is included in what is now Lake Andes.

REPLY TO STATE'S ARGUMENTS

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

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

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

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

Reservation status persists absent clear congressional disestablishment. Bruguier/Gaffey's incremental diminishment is incompatible with Solem/McGirt. Winckler's reply to the State's arguments under 18 U.S.C. § 1151(a) is set forth in the Reply Brief of Appellant in appeal no. 31007 and incorporated herein by this reference.

2. **A Dependent Indian Community Exists under 18 U.S.C. § 1151(b).**

With respect to dependent Indian community status under 18 U.S.C. § 1151(b), the State discusses and compares the United States Supreme Court's decision in Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520 (1998) [Venetie], but while conceding that the lands at issue in this case were set aside for the Yankton Sioux, the State directly relies upon Bruguier for its principal argument, that "the status of the land changed when it was sold in fee to a non-Indian." (SB 22 (citing Bruguier v. Class, 1999 S.D. 122, ¶¶ 4-5, 599 N.W.2d 364, 366-67)). As discussed in Winkler's briefing under § 1151(a), this theory of incremental diminishment taken from Bruguier is erroneous and should not be adhered to. Further, the US Supreme Court's decision in Venetie does not support the proposition advanced by the State in that regard. Venetie is materially distinguishable on statutory text and purpose and does not require the same result here.

In Venetie, the Neets'aii Gwich'in Indians of northern Alaska had been set aside lands by the Secretary of Interior in 1943 creating their reservation, which remained a reservation until it was revoked in 1971 when Congress passed the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 *et seq.*, "a comprehensive statute designed to settle all land claims by Alaska Natives." Venetie, 522 U.S. at 523. "In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian affairs that had previously marked federal Indian policy." Id., at 523-24. Importantly, ANCSA's text expressly stated that the goals of the statute were to be accomplished "...without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship.*" Id., 522 U.S. at 524 (quoting § 1601(b)) (alteration and emphasis in Venetie). Accordingly, "ANCSA revoked 'the various reserves set aside for Native use' by legislative or executive action...and completely extinguished all aboriginal claims to Alaska land." Id. (citing §§ 1603, 1618(a)). In doing so, "Congress authorized the transfer of $962.5 million in federal funds and approximately 44 million acres of Alaska to state-chartered private business corporations that were to be formed pursuant to the statute[.]" Id. (citing §§ 1605,1607, 1613).

From this background of ANCSA, two preliminary points are noted for foundation in comparison to the Act of 1894. First, and as further demonstrated below, Congress's 1971 passage of ANCSA is inapposite to the passage of the 1894 Act, as the two statutes were enacted almost 80 years apart to address different Tribes using different statutory content and language to accomplish different goals in different ways. Id., 522 U.S. 523-24; compare 1894 Act, 28 Stat. 314-318; see also 1858 Treaty, 11 Stat. 743-

747. Second, while the Yankton Sioux Tribe negotiated with the United States in the nature of treaty making[1] for the terms enacted in the Act of 1894, it appears Congress acted unilaterally with the ANCSA. Id.

In its decisional analysis, the Venetie Court found it significant that ANCSA "revoked the Venetie Reservation" and that "no Indian allotments are at issue." Venetie, 522 U.S. 520, at 527. Thus, unlike the case at bar, where Yankton Sioux Reservation allotments are at issue under the 1894 Act and 1858 Treaty, Venetie recognized that no allotted lands were at issue in that case and the reservation had been explicitly eliminated by Congress "[i]n no clearer fashion" with ANCSA. Id., 522 U.S. at 532. The Supreme Court also found it significant that Congress expressly stated that ANCSA was passed "with the goal of avoiding 'any permanent racially defined institutions, rights, privileges, or obligations'" and that it "intended to avoid a 'lengthy wardship or trusteeship.'" Id., 522 U.S. at 532-33 (quoting ANCSA § 1601(b)).

Here, by material contrast, with respect to the Yankton Sioux Reservation – established from the Tribe's aboriginal holdings in the 1858 Treaty and subsequently allotted to Tribe members – Congress, in passing the 1894 Act, guaranteed the Yankton Sioux "Tribal rights" including "the undisturbed and peaceable possession of their allotted lands," promised that "Congress shall never pass any act alienating any part of these allotted lands from the Indians," proscribed certain conduct on the ceded lands and

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[1] Congress terminated treaty making with Indian tribes in 1871, but the United States continued to negotiate agreements with them in much the same manner as it had negotiated treaties. Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010, 1020 n.9 (8th Cir. 1999) (citation omitted). The 1892 agreement negotiated between the Yankton Sioux Tribe and the United States and ratified by Congress in the Act of 1894 itself was and has been sometimes referred to as a "treaty." Id.

"upon any other lands within or comprising the reservations of the Yankton Sioux," and reaffirmed the 1858 Treaty stipulations and promises. 1894 Act, 24 Stat. 314-318, Arts. XIII, XIV, XVII, XVIII; 1858 Treaty, 11 Stat. 743-747. (App. 184-188, 200-201). In addition, the 1894 Act included specific provisions for continuing federal support and assistance for "the care and maintenance" of the Tribe's most helpless members, "for schools and educational purposes" for the Tribe, and "for courts of justice and other local institutions for the benefit of said tribe." 1894 Act, Art. V. (App. 198). The 1894 Act also set aside part of the surplus, unallotted lands that were ceded and sold to the United States, "for agency, school, and other purposes[.]" 1894 Act, Art. VIII. (App. 199). Finally, after passing the 1894 Act, Congress has never passed any equivalent law or laws terminating the status of the Yankton Sioux allotted lands, nor otherwise revoking the provisions promising continuing federal support and protection. Quite simply, then, ANCSA's explicit language terminating the existing reservations in Alaska with stated purposes of ending federal supervision of Alaskan Natives, stands in stark contrast to the guarantees, protections, and promises found in the 1894 Act and 1858 Treaty.

The State's brief (at pp. 22-23) points to Venetie's analysis and discussion of the federal set-aside requirement, Id., 522 U.S. at 532-533, where the Court addressed the Tribe's argument that the ANCSA lands were set aside with citations to United States v. McGowan, 302 U.S. 535, 538 (1938) (which cites United States v. Sandoval, 231 U.S. 28, 46 (1913)); and United States v. Pelican, 232 U.S. 442, 447 (1914). In this regard, the Venetie Court's language describing the nature of land ownership and use of the former Venetie Reservation under the ANCSA, as precluding it from finding that the land was federally set-aside by the Act, must not be read exceedingly broad to extrapolate a

generic, categorical rule based on considerations of private land ownership and use alone, or to conclude that the Indian country status of land may change merely because of its transfer to non-Indian fee ownership as the State argues.[2]

In United States v. McGowan, the United States Supreme Court considered what must be regarded as "Indian country" relative to a federal statute prohibiting the introduction of liquor therein, recognizing that while the term must be given meaning as defined in the statutes, "due regard must [also] be given to the fact that from an early period of our history, the Government has prescribed severe penalties to enforce laws regulating the sale of liquor on lands occupied by Indians under government supervision." Id., 302 U.S. 535, at 538; see also United States v. Perrin, 232 U.S. 478, 482-83 (1914) (recognizing that lands ceded to the United States by the 1894 Act "have largely passed into private ownership" but that federal jurisdiction existed on those lands to enforce the liquor prohibition in Article XVII) ("These Indian tribes are the wards of the Nation. …there arises the duty of protection, and with it the power." (citing United States v. Kagama, 118 U.S. 375, 383 (1886)). The Supreme Court in McGowan thus determined that the Reno Colony, which had been established on lands purchased by the United States for "needy Indians…to equip and supervise these Indians in establishing a permanent settlement," was Indian country and therefore subject to federal authority because "Congress possess the broad power of legislating for the protection of the

[2] See McGirt, 140 S. Ct. 2452, 2464-65 n.3-4 (2020); see also Id., 140 S. Ct. at 2474-2476 (addressing nature of dependent Indian community status).

Indians wherever they may be within the territory of the United States." Id., 302 U.S. at 537-39 (citation omitted).[3]

In United States v. Pelican, the Supreme Court likewise determined the question of whether land constituted "Indian country" and similarly considered a federal law prohibiting the introduction of intoxicating liquor "into the Indian country" which was expressly defined by the statute to "include any Indian allotment while title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States." Id., 232 U.S. at 447 (quoting Act of January 30, 1897, c. 109, 29 Stat. 506). Thus, while the statutory definition did not limit Indian country to only allotments held in trust, the Supreme Court concluded unsurprisingly that an allotment held in trust was Indian country. The Court reasoned that when the Colville Reservation was allotted in severalty and diminished to the extent of the unallotted lands, "the [allotted] lands remained Indian lands set apart for Indians under governmental care[.]" Id., 232 U.S. at 449. "We deem it to be clear that Congress had the power thus to continue the guardianship of the government…and these [statutory] provisions leave no room for doubt as to the intent of Congress with respect to the maintenance of the Federal jurisdiction over the allotted lands[.]" Id., at 451 (citing Perrin v. United States, supra, among other cases).

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[3] Notably, while the Venetie Court described the lands of the Reno Colony as being held in "trust," the lands of the Reno Colony were not allotted lands of a diminished reservation, but rather, they appear to have been lands purchased by the United States for "nonreservation Indians" wandering the State of Nevada. See McGowan, 302 U.S. at 537 & n.3-5.

Thus, neither McGowan nor Pelican stand for the proposition that the status of lands federally set-aside for Indians, as in the 1858 Treaty and 1894 Act, lose that status if sold to a non-Indian as the State argues here.[4] Instead, those cases reinforce the fundamental proposition reiterated in McGirt – that courts must look to the relevant Acts of Congress when determining lands' Indian country or 'federally set-aside' status, as was done in respect to the ANCSA lands in Venetie. As discussed above, Yankton Sioux Reservation allotments were made from the Tribe's aboriginal holdings reserved in the 1858 Treaty, and with the Act of 1894, Congress further prescribed the manner that this country's guardianship over the Yankton Sioux would be carried out, including guarantees and promises with respect to the Tribe's allotted lands. 1894 Act, Arts. XIII, XIV, XVII, XVIII. Congress also made specific provisions for continuing federal support and assistance for the benefit of the Tribe and its members occupying the lands. 1894 Act, Arts. V, VIII, XVIII. Hence, the Yankton Sioux legal history found in the 1858 Treaty and Act of 1894 is materially distinguishable from that of the Neets'aii Gwich'in people whose reservation was expressly revoked by the 1971 passage of the ANCSA, which eliminated previously existing Indian country in Alaska and was intended to end the country's guardianship over Alaskan Native nations. The status of the Yankton Sioux allotted lands guaranteed in the 1894 Act, on the other hand, has never

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[4] McGowan and Pelican followed the United States Supreme Court's decision in United States v. Sandoval, 213 U.S. 28, which is also cited in Venetie in its discussion of federal superintendence. Id., 522 U.S. at 533-34. In Sandoval, the Court concluded that the land in question was Indian country by looking to the relevant federal statute which prohibited "*the introduction of liquors into Indian country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico.*" Id., 213 U.S. at 37 n.1 (quoting Act of January 30, 1897, 29 Stat. 506, c. 109, as supplemented by § 2 of the act of June 20, 1910, 36 Stat. 557, c. 310) (emphasis in Sandoval).

been modified or revoked by Congress nor has this country's guardianship over the Yankton Sioux been terminated. Having been recognized as federally set-aside and being occupied by an Indian community under federal supervision, the lands at issue in this case are more like the lands Sandoval, Pelican, and McGowan determined to be Indian country. The federal set-aside requirement for a dependent Indian community is, therefore, satisfied.

With respect to the federal superintendence requirement, the State ignores the substance of the Indian country precedents cited and discussed in Venetie to assert that "[t]he inquiry is whether the entire community depends on the Federal Government, not just the Tribe members living in the community." (SB 23). The Supreme Court's decision in Venetie, however, plainly states that "while the federal set-aside requirement ensures that the land in question is occupied by an 'Indian community'; the federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government[.]" Venetie, 522 U.S. at 531. The Supreme Court determined the ANCSA ended federal superintendence over the Tribe's lands because it revoked the Venetie Reservation with the stated intent of settling all claims and "avoid a 'lengthy wardship or trusteeship.'" Id., at 533 (quoting ANSCA § 1601(b)). In doing so, the Supreme Court also considered its earlier cases which found federal superintendence was present where "the Federal Government actively controlled the lands in question, effectively acting as a guardian for the Indians." Id. (citing McGowan, supra; Pelican, supra; Sandoval, supra).

The State's arguments largely miss the legal question of federal superintendence. The State asserts (at SB 23) that "the population of Lake Andes is about two-thirds non-

Indian" (citing State v. Greger, 1997 S.D. 14, ¶ 29, 599 N.W.2d at 867). Paragraph 29 of Greger, however, discusses the population of Charles Mix County between 1890 and 1910 and, without citing any source, asserts that "[n]on-Indians comprise over two-thirds of the population in the area." Id. The State also cites its briefing before the circuit court, which disclosed: "In the Lake Andes community, 38.4% of residents identify as American Indian or Alaska Native, 32.3% identify as White (non-Hispanic), 16% identify as Multiracial (non-Hispanic), and 12.1% identify as Hispanic." (SB 23 (citing no. 31007, SR 313)). According to the U.S. Census Bureau 2020 Decennial Census,[5] Lake Andes had a total population of 710 inhabitants, of which 343 are identified as "American Indian and Alaska Native alone" compared with 286 identified as "White alone, not Hispanic or Latino."[6] Whatever the relevance of population statistics on the question of federal superintendence here, however, it is more telling that Lakes Andes is situated upon a Yankton Sioux allotment and demarcated as a Tribal Block Group by the federal government on the 2020 US Census Tribal Tract Map. (App. 209); (see WB 16 n.7). And as the State pointed out, the Lake Andes School District maintains Indian Policies and Procedures as required by federal law "for any children claimed who reside on eligible Indian lands." (no. 31007, SR 521).

What is particularly relevant to federal superintendence, as detailed in Winckler's opening brief (WB 17-21), is that the Yankton Sioux comprising the Indian community

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[5] https://data.census.gov/profile/Lake_Andes_city,_Charles_Mix_County,_South_Dakota?g=060XX00US4602335100 (official website of the United States government) (last accessed Sept. 27, 2025).

[6] These facts can be judicially noticed because they are generally known in the jurisdiction and can be accurately and readily determined from publicly available sources whose accuracy cannot reasonably be questioned. SDCL 19-19-201(b); n.5, *supra*.

situated in Lake Andes rely upon continuing federal support and assistance for health care, law enforcement, transportation, housing, infrastructure, and education, among other Tribal programs, services, and local institutions dependent upon the Federal Government. Consistent with provisions in the 1858 Treaty and 1894 Act for continuing federal protection and supervision, the State does not dispute the fact that more than ten tribal programs operate for the benefit of the Yankton Sioux through federal support and assistance. (App. 215-219, 290). This includes Yankton Sioux Tribe Law Enforcement which maintains a Law Enforcement Center in Lake Andes. (SB 24); (App. 215, 290, 320-323). The Tribe, with federal support, "maintains 22 miles of Bureau of Indian Affairs (BIA) roads, including streets in Tribal communities and developments." (App. 283-285, 290); (App. 229-30). The federal government continues to maintain an Indian agent serving the Yankton Sioux Tribe for the benefit of the Tribe and its members (App. 211), as promised in the 1858 Treaty reaffirmed in the 1894 Act. Federal superintendence over the lands in question is further evidenced by the fact that the State denied the Yankton Sioux Tribe's requests for assistance with flooding at Lake Andes, stating, "the tribe has Bureau of Indian Affairs funding, materials, tribal equipment and personnel[.]" (App. 229-30). And notwithstanding record evidence to the contrary, the State cites no authority establishing the relevance of its assertions that "neither the town of Lake Andes nor the courthouse or jail directly benefits from those services or programs [provided by the Federal Government for the Tribe]" and that "[t]he programs and services are also spread across the county." (SB 23-24).[7]

[7] As an example of evidence to the contrary, the entire community of Lake Andes certainly enjoyed the benefits of public safety, protection, and law and order when the

As demonstrated, these federally dependent Tribal programs, services, and other local institutions are specific to the Yankton Sioux occupying the lands in question and are not "merely forms of general federal aid," Venetie, 522 U.S. at 534. Considered with the guarantees and protections found in the 1858 Treaty and 1894 Act, they squarely comport with the retention of federal superintendence over the lands in question.

The State finally argues that "the land at issue is not held in trust…like other dependent Indian communities." (SB 24 (citing Venetie, 522 U.S. at 533-34)). These "other dependent Indian communities" is an apparent reference to McGowan, Pelican, and Sandoval addressed above; but none of those cases stand for the proposition that only "trust" lands can be under federal superintendence. Cf. Perrin, supra. Only Pelican considered allotted land held in trust; and Pelican, which considered the relevant statutes at issue in that case, does not say that such land would no longer be under federal superintendence or constitute Indian country merely because it may pass out of 'trust.'[8] Other than what is stated in Gaffey and Bruguier, the State fails to cite any decisional authorities that hold Indian allotted land loses Indian country status merely because the trust period on an individual allotment expires. McGirt reaffirms that only Congress can change the status of Indian lands after being recognized as such.

Thus, the mere fact that land has passed out of 'trust' status is not determinative of federal superintendence; rather, it is the showing of "active federal control over the

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federally dependent Tribal law enforcement apprehended the individual accused of murder at Lake Andes. (App. 320).

[8] In Sandoval, which preceded Pelican, it was noted that the Pueblos held their lands in fee simple title, but that did not preclude the Court from concluding that such lands were Indian country and thus "subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs." Sandoval, 213 U.S. 28, at 48 (citing cases).

Tribe's land" – i.e., land federally set aside and thus occupied by an Indian community – that "supports a finding of federal superintendence." Venetie, 522 U.S. at 534. The active federal control over the Yankton Sioux allotted lands at issue here is evidenced by the continuing presence of federally dependent tribal law enforcement, infrastructure, transportation, healthcare, education, housing, and other programs and local institutions that exist for the benefit and protection of the Yankton Sioux Indians – consistent with the 1858 Treaty and Act of 1894. Indeed, the Federal Government continues to "act as a guardian for the Indians" occupying the lands in question, Indian country under 18 U.S.C. § 1151(b).

3. Yankton Sioux Indian Title to the Allotted Lands was Never Extinguished under 18 U.S.C. § 1151(c).

As to sovereign Indian title and extinguishment under § 1151(c), the State relies on Bruguier and Gaffey. (SB 25-26). But in Bruguier and Gaffey, only the Yankton Sioux Reservation under § 1151(a) was at issue, actually litigated, substantively considered and necessarily decided. Referring to § 1151(c) to frame the question under § 1151(a), however, the Bruguier Court, much like the court in Gaffey, took for granted an assumption that the race of the individual land owner affects the land's status, considering, "whether parcels originally allotted to individual Yanktons compose part of a permanent reservation under 18 U.S.C. § 1151(a), or whether only those allotments still held in Indian hands are Indian country under 18 U.S.C. § 1151(c)." Id., 1999 S.D. 122, ¶ 15, 599 N.W.2d at 370. That assumption ignores the distinction that "Indian title" under § 1151(c) is a sovereign encumbrance preserved by the 1894 Act, and Congress has never passed a statute extinguishing that title.

To support its argument under § 1151(c) here, the State cites Bruguier's quotation from Bates v. Clark, 95 U.S. 204, 208 (1887), and then quotes Bruguier's direct assertion that "Indian title in common, or put another way, tribal title, ended when tribal ownership ended." (SB 25 (quoting Bruguier, 1999 S.D. 122, at ¶ 22)). The cited support for that assertion stems from language in Solem v. Bartlett, 465 U.S. 463, 468 (1984), cited in South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 346 (1999). These authorities do not support the assertion propounded by the Bruguier Court.

The referenced portion of Solem discussed the surplus land Acts which "seldom detail whether opened lands retained reservation status or were divested of all Indian interests." Id., 465 U.S. at 468.[9] The Supreme Court referenced the notion that "reservation status of Indian lands" was thought "coextensive with tribal ownership" and identified three judicially defined categories of "Indian lands" at the turn of the century, i.e., trust lands, individual allotments, and open lands that had not been claimed by non-Indians. Id. (citing Bates, supra; Ash Sheep Co. v. United States, 252 U.S. 159 (1920)). This language is not so constrained, absolute, nor a blanket rule of law generically applicable in the sense suggested by Bruguier – which ignored the limiting context of a general "*turn-of-the-century assumption*[.]" Id. (emphasis added). Solem explicitly cautioned that Congress at the time "believed to a man" that reservations would soon vanish as Indians assimilated, but history proved otherwise. Id., at 268-69; see McGirt, 140 U.S., at 2465. Solem also explained that "[o]nce a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the

[9] Solem held, based on the relevant surplus land Act at issue, that the reservation in question was not diminished or disestablished. Id., 465 U.S., at 475-76.

area, the entire block retains its reservation status until Congress explicitly indicates otherwise." McGirt, 140 U.S., at 2468 (quoting Solem, 465 U.S., at 470 (citing United States v. Celestine, 215 U.S. 278, 285 (1909))). To change the status of Indian lands encumbered by Indian title also necessarily requires sovereign action.

The flaw from Bruguier's use of 'Indian title,' 'tribal title,' and 'tribal ownership,' employed with a theory of incremental diminishment to ends of 'effective termination,' is that it ignores the sovereign nature of Indian title and "the most probative evidence of the Tribe's relationship to the land…in the treaties and statutes[.]" McGirt, 140 S. Ct. 2452, 2476. And where Indian title is shown to exist, whether by immemorable use and occupancy or recognition in a treaty or statute (see WB 21-25 n.9), extinguishment is not accomplished merely by the sale of an individual parcel of land and transfer of legal title from an individual Indian to an individual non-Indian. "To accomplish that [i.e., extinguishment] would require an act of cession, the transfer of a sovereign claim from one nation to another." McGirt, 140 S. Ct. at 2464 (citation omitted). In other words, changing who holds legal title to pieces of land through private real estate transactions is not the same as changing the land's sovereign status, as Bates v. Clark itself equated extinguishment of Indian title to Indians parting with their title by sovereign action – "treaty" or "act of Congress." See Id., 95 U.S. at 208 (citing The American Fur Company v. The United States, 2 Pet. 358 (1829)); see also United States v. Shoshone Tribe of Indians, 304 U.S. 111, 118 (1938) ("authority of the United States to prescribe title by which individual Indians may hold tracts selected by them within the reservation…detracts nothing from the tribe's ownership"); Blatchford v. Gonzales, 100 N.M. 333, 337 (1983-NMSC-060) (Congress has exclusive authority to extinguish Indian

title "irrespective of who holds the underlying fee title in the land" and "courts have required a showing of a clear and specific indication of congressional intent to extinguish Indian title" (citing cases)).

Without a doubt, by the 1858 Treaty, which affirmatively recognized their title, the Yankton Sioux "cede[d]" all their aboriginal holdings "except four hundred thousand acres thereof" for promises that included "the quiet and peaceable possession of the [...] lands so reserved for their future home." Arts. I-II, IV, 11 Stat. 743, 744. And in the Act of 1894, they "cede[d] and conveye[d] to the United States all their...*title...in and to all the unallotted lands*" of the Yankton Sioux Reservation. Art. I, 28 Stat. 286, 314 (emphasis added). But as to the allotted lands, they did not part with their title. Rather, the 1894 Act reinforced their title by guaranteeing "Tribal rights" including "the undisturbed and peaceable possession of their allotted lands," promising "Congress shall never pass any act alienating any part of these allotted lands from the Indians" and reaffirming the 1858 Treaty. Arts. XIII, XIV, XVIII, 28 Stat. at 317-318. These congressional promises and guarantees preserve Indian title as a sovereign interest independent of private ownership. Because there exists no treaty or statute extinguishing this title, it continues to run with the land and existence of the Tribe.

The State finally cites to Yankton Sioux Tribe v. U.S. Army Corps of Engineers, 606 F.3d 895 (8th Cir. 2010), but materially mischaracterizes the issue in that case by stating, "The Eighth Circuit examined jurisdiction on the Yankton Sioux Reservation under 18 U.S.C. 1151(c)." (SB 26). The opinion in U.S. Army Corps of Engineers does not once discuss Indian title or extinguishment under § 1151(c) and considered only the validity of certain land transfers relative to "the current boundaries of the Reservation."

Id., 606 F.3d at 896-97. In doing so, the Eighth Circuit followed the law of the case stemming from Gaffey/Podhradsky which is discussed under § 1151(a) above. Additionally, the Eighth Circuit also recognized the inconsistency between its Gaffey decision and what the Supreme Court stated in Solem – in that following a reservation's diminishment, "while non-Indians may acquire title to land in the remainder, its reservation status does not change." Id., 606 F.3d at 898 n.4 (citing Solem, 465 U.S. at 470-71). Because Gaffey considered only reservation status under § 1151(a), and because it employed an erroneous theory of incremental diminishment, U.S. Army Corps of Engineers does not provide substantive support for the State's argument under § 1151(c) here, where the circuit court improperly asserted criminal jurisdiction over an Indian for conduct occurring in Indian country.

CONCLUSION

For the foregoing reasons, and the arguments and authorities set forth in Winckler's opening briefing, Winckler's conviction should be vacated.

Dated this 13th day of October 2025.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	 No. 31006 **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that Microsoft Word was used in the preparation of the foregoing Appellant's Reply Brief and that the word count done pursuant to that word-processing system calculated 4,996 words in the foregoing Appellant's Reply Brief, in accordance with SDCL 15-26A-66.

Dated this 13th day of October 2025.

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

IN THE SUPREME COURT
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STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. HAZEN WINCKLER, Defendant and Appellant.	))))))	No. 31006 **CERTIFICATE OF SERVICE**

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

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

/s/ Tucker J. Volesky
TUCKER J. VOLESKY