IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

#31018

STATE OF SOUTH DAKOTA

Plaintiff and Appellant,

v.

AMANDA K. BITELER,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
LINCOLN COUNTY, SOUTH DAKOTA

THE HONORABLE JENNIFER MAMMENGA
Circuit Court Judge

APPELLANT'S BRIEF

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ORDER DIRECTING APPEAL TO PROCEED ON MAY 9, 2025.

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STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

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AMANDA K. BITELER,

Defendant and Appellee.

PRELIMINARY STATEMENT

The Plaintiff and Appellant, State of South Dakota, is referred to as "State." The Defendant and Appellee, Amanda Biteler, is referred to as "Defendant". The Honorable Jonathan Leddige, Magistrate Judge, presided over the criminal file and court trial and is herein referred to as "the magistrate court." The Honorable Jennifer Mammenga, Circuit Court Judge, presided over the appeal to circuit court and is herein referred to as "the circuit court." All other stated individuals are referred to by name or initials. Relevant documents, that may or may not be cited, are referred to as follows:

Lincoln County Criminal File No. 41CRI23-1594 ..... SR

Court Trial Transcript .....CT

Appellee's Circuit Court Appellant Brief..... ACB

Memorandum Opinion and Order..... MO

The appropriate page numbers follow all document designations. The appropriate identifiers follow all exhibit designations.

JURISDICTIONAL STATEMENT

The magistrate court filed the Judgment of Conviction on June 25, 2024, in 41CRI23-1594. The Defendant timely filed a Notice of Appeal to Circuit Court on June 27, 2024. The circuit court issued a Memorandum Opinion and Order on February 25, 2025. The State timely filed a Notice of Appeal pursuant to SDCL § 23A-32-4. This Court issued an Order Directing Appeal to Proceed on May 9, 2025. Thus, this Court has determined that it has jurisdiction to take this appeal.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

I. WHETHER THE CIRCUIT COURT ERRED IN CONCLUDING THAT DEFENDANT'S TRANSMISSION THROUGH THE 24/7 PROGRAM WAS NOT A REPORT PURSUANT TO SDCL § 22-11-9(3).

The circuit court concluded "that a breathalyzer submission or other bodily substance submission as occurred in this case is not a communication or report for purposes of [SDCL § 22-11-9(3)]."

SDCL § 22-11-9(3)

SDCL § 22-1-1

State v. Long Soldier, 2023 S.D. 37, 994 N.W.2d 212.

STATEMENT OF THE CASE

A Complaint and Information were filed on December 21, 2023, charging the Defendant with six (6) counts of False Report to

Authorities pursuant to SDCL § 22-11-9(3). SR, pgs.1-7. The Defendant waived her right to a jury trial and a court trial was held before the magistrate court on June 7, 2024. SR, pg. 101-180. At the conclusion of the trial, the magistrate court issued a Judgment of Conviction on Count 1 of the Complaint and Information. SR, pg. 90-92. The magistrate court entered acquittals on Counts 2 through 6. Id. The Defendant filed a Notice of Appeal on June 27, 2024. SR, pg. 94. The circuit court filed a Memorandum Opinion and Order on February 25, 2025, and "ORDERED that [Defendant's] Judgment and Sentence is reversed and vacated, and the case is remanded for further proceedings." SR, pg. 242-249 (See Attached).

STATEMENT OF FACTS

On March 6, 2023, Defendant was arrested for Driving Under Influence, 2nd Offense, in Lincoln County and a Complaint and Information were filed in 41CRI23-289[1]. On March 23, 2023, the Defendant was ordered to participate in the 24/7 alcohol monitoring program as a condition of bond. See 41CRI23-289, Bond Findings and Conditions of Release, filed March 23, 2023. Defendant was authorized to participate in the 24/7 program through the "SCRAM bracelet", "PBTs twice daily", or "Remote Breath". Id. On September 15, 2023,

[1] The State requests the Court take judicial notice of 41CRI23-289 and 41CRI23-1594.

Defendant requested to participate in the 24/7 program by "Remote Breath". CT 5, 23.

Since Defendant elected to participate via the authorized remote breath mechanism, she was required to blow into the remote device twice a day. CT 6, 4-6. However, the Defendant was allowed to choose the two (2) times to blow into the remote device, as long as the two (2) times were twelve (12) hours a part. Id. Those who choose to use the remote device can blow into the device from any location. Id. The remote device includes a camera which takes a photograph of the user as they blow, and then sends that photograph to Alcohol Monitoring System, Inc. ("AMS"). CT 6, 10-12. The facial recognition software of the device flags photos that it finds irregular for review by the Lincoln County Sheriff's Office. CT 11, 13-14; CT 11, 21-25.

On December 9, 2023, AMS flagged the Defendant's required P.M. submission and sent an alert that it could not recognize the Defendant's face. CT 24, 13-19. Upon review of the photograph by the Sheriff's Office, it appeared to be a different straw or air tube being used and another person blowing into the device. CT 24, 20 – CT 26, 18. Defendant was held for a 24/7 violation and the Sheriff's Office took away the Defendant's remote breath device. CT 26, 23 – CT 27, 4. The 27/7 violation was then sent to the Lincoln County State's Attorney's Office for review. CT, pg. 35, 10-13.

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT CONCLUDED THAT A BREATHALYZER SUBMISSION OR OTHER BODILY SUBSTANCE SUBMISSION, AS IT OCCURRED IN THIS CASE, IS NOT A COMMUNICATION OR REPORT FOR PURPOSES OF SDCL § 22-11-9(3)

Standard of Review

> We review issues of statutory interpretation de novo. *State v. Bettelyoun*, 2022 S.D. 14, ¶ 16, 972 N.W.2d 124, 129. "The rules of statutory interpretation are well settled." *Id.* ¶ 24, 972 N.W.2d at 131. "The purpose of statutory interpretation is to discover legislative intent." *Id.* (quoting *State v. Bryant*, 2020 S.D. 49, ¶ 20, 948 N.W.2d 333, 338). "[T]he starting point when interpreting a statute must always be the language itself." *Id.* (alteration in original) (quoting *Bryant*, 2020 S.D. 49, ¶ 20, 948 N.W.2d at 338). "We therefore defer to the text where possible." *Id.* (quoting *State v. Armstrong*, 2020 S.D. 6, ¶ 16, 939 N.W.2d 9, 13). "When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed." *Id.* (quoting *Armstrong*, 2020 S.D. 6, ¶ 16, 939 N.W.2d at 13). "In conducting statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole." *Id.* (quoting *State v. Thoman*, 2021 S.D. 10, ¶ 17, 955 N.W.2d 759, 767). "The rule of the common law that penal statutes are to be strictly construed has no application to [SDCL Title 22]. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice." SDCL 22-1-1.

State v. Long Soldier, 2023 S.D. 37, ¶ 11, 994 N.W.2d 212, 217.

SDCL § 22-11-9(3) provides:

> "Any person who makes a report or intentionally causes the transmission of a report to law enforcement authorities which furnishes information relating to an

> offense or other incident within their official concern, knowing that such information is false; is guilty of false reporting to authorities."

As the circuit court acknowledged, interpretation of "report" within SDCL § 22-11-9 is a matter of first impression in South Dakota. MO, pg. 5. Because persons might reasonably disagree on whether the verb "report" should be construed broadly or whether it has a narrower meaning, the statute is ambiguous**.** Therefore, we turn to rules of statutory interpretation. *Long Soldier*, 2023 S.D. 37, ¶ 11.

Within the respective briefs before the circuit court, the Defendant and State both cite and distinguish persuasive authorities from other jurisdictions. See *State v. Branch*, 362 Or. 351, 408 P.3d 1035 (Oregon 2018) (cited for the proposition that a new crime, or rather, new investigation is necessary in order to be guilty of false report.); *Com. v. Fortuna*, 80 Mass.App.Ct. 45, 52, 951 N.E.2d 687, 689 (2011) (Whether a crime occurred should "turn on the substance of the misinformation the defendant provided to the police, not on which party initiated the dialogue."); *State v. Ahitow*, 544 N.W.2d 270 (Iowa 1996) (adopting a narrow definition of report that required an "affirmative action by the person providing the information in initiation the information."); *State v. Nissen*, 224 Neb. 60, 395 N.W.2d 560, 563 (Neb. 1986) ("This is not to say that persons questioned may not have a right to refuse to answer such inquiry; but if they choose to answer,

they may not give false information without subjecting themselves to criminal liability under § 28–907(1)(a).")[2]

The circuit court disregarded the rationale provided by those authorities, reasoning that they provided limited assistance because of the substantial differences in the language of the respective false reporting statutes. MO, pg. 6. The State does not disagree with the circuit court's assessment in that regard. Just because another state statute contemplates "false reports" it does not mean that the South Dakota Legislature had the same legislative intent.

However, those persuasive authorities are instructive as to how each state interprets the legislative intent. For instance, the intentional broadness of South Dakota's statute is acknowledged by the dissenting justice in *State v. Bynum*, 937 N.W.2d 319, 329-334 (Iowa 2021) (Justice Appel Dissenting). Justice Appel specifically cites to SDCL § 22-11-9 as an example of South Dakota's adoption of a broadly framed false reporting statute. *Id.* at 331. The Dissent articulates an informative analysis of the creation and criminalization of false reporting. *Id.* at 330-31. It then analyzes the fact that some states, like South Dakota, have broadly framed false-report statutes

[2] See also *People v. Chavis*, 468 Mich. 84, 93-94 (2003) ("One who provides false details about the crime has made a false report..."); *Ramey v. Ping*, 190 N.E. 3d 392, 403 (Ind.Ct.App. 2022)("The [False Report] statute does not require the communication be direct.")

modeled after the Model Penal Code while other states have narrowly drawn statutes. *Id.*

The State argues that the South Dakota legislature intended for the statute, when reading SDCL § 22-11-9(3) as a whole, to be interpreted broadly. See *Long Soldier*, 2023 S.D. 37, ¶ 11, see also SDCL § 22-1-1. South Dakota's earliest version of its statute was enrolled in 1975 as follows:

> An Act to provide a penalty for false reporting to authorities.
>
> Section 1. For the purpose of this Act, a person commits a false reporting to authorities if he shall, for pecuniary gain, make any report or intentionally cause the transmission of any report to any law enforcement officer or peace officer of any crime or other incident within their official concern, when he knows that such crime or incident did not occur.
>
> Section 2. Any person who shall make any false report to any authority, pursuant to the provisions of section 1 of this Act, shall, upon conviction, be guilty of a misdemeanor.

See SL 1975, ch 171, §§ 1, 2.

South Dakota's statute was immediately broadened in 1976 to a version that reflects the modern-day statute. The statute was amended in 1976 as follows:

> Any person who:
> (1) Except as provided in 14A-9 of this Act, knowingly causes a false fire or other emergency alarm to be transmitted to, or within, any fire department, ambulance service, or other government agency which deals with emergencies involving danger to life or property;

> (2) Makes a report or intentionally causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern, when he knows that it did not occur; or
>
> (3) Makes a report or intentionally causes the transmission of a report to law enforcement authorities which furnishes information relating to an offense or other incident within their official concern, when he knows that such information is false;
>
> is guilty of false reporting to authorities. False reporting to authorities is a Class 1 misdemeanor.

See SL 1976, ch 158, § 11-23. The statute was last amended in 2005. SL 2005, ch 120, § 201 only amended "14A-9" to "22-11-9.2" and amended "when he knows" to "knowing". When reading SDCL § 22-11-9's statutory predecessor and the current version as a whole, it is clear that the legislature drafted subsection 3 to be intentionally broad. While §§ 22-11-9 (1) and (2) are intended to be narrower.

The State respectfully asserts that the circuit court erroneously utilized a narrow definition of "report" as a noun in reaching is conclusion. The definition of "report" as a noun is "a usually detailed account or statement". MO, pg. 6-7. The example given for the definition within Merriam Webster is "a news report." *See* https://www.merriam-webster.com/dictionary/report. Accessed May 29, 2025. Further, the circuit court erroneously cited to the common term "report", also designated as a noun, within Black's Law Dictionary. MO, pg. 7. Black's strict definition would require a "formal

oral or written presentation of the results of an investigation, research assignment, etc., often with a recommendation for action." Id. (citing Black's Law Dictionary (12th ed. 2024).

By utilizing these two definitions, the circuit court erroneously attributed a narrow interpretation to the statute that would require a formal or detailed oral or written statement or presentation in order for a person to be found in violation of the SDCL § 22-11-9(3). The court ignored the statutory language, "which furnishes information relating to an offense or other incident within their official concern." "In conducting statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole." *Long Soldier*, 2023 S.D. 37, ¶ 11 (citation omitted). "The rule of the common law that penal statutes are to be strictly construed has no application to [SDCL Title 22]. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice." *Id.* Thus, respectfully, the circuit court disregarded the application of statutory interpretation set forth in *Long Soldier*.

When reading the statute as a whole, the fair import of word "report", as utilized by SDCL § 22-11-9(3), is a verb, not a noun. The fair definition(s) to be used is the transitive verb definition, "to make known to the proper authorities (e.g., report a fire)", or intransitive definition, "to present [or account for] oneself (e.g., reported to the

front desk)[.]" *See* https://www.merriam-webster.com/dictionary/report. Accessed May 21, 2025. "Although either party may selectively cite dictionary definitions in favor of their position, at least some definitions are similarly broad." *Long Soldier*, 2023 S.D. 37, ¶ 17.

SDCL § 22-11-9(3) specifically states that the report or causing the transmission of a report is "furnishing information relating to an offense or other indent within law enforcement's concern." A violation of subsection 3 occurs when a person merely "supplies" or "gives" "information relating to an offense or other incident within law enforcement's concern, knowing that such information is false." *See* https://www.merriam-webster.com/dictionary/furnish. Accessed May 29, 2025. It does not require a detailed report. As the magistrate court correctly found, Subsection 3 only requires that a person falsely furnishes the information to law enforcement within their official concern. *See* CT, pg. 74, 12-17. The original magistrate court entered a finding of fact that there was a false report on December 9, 2023. CT, pg. 71.

Further, the appropriate definition that should have been cited out of Black's Law Dictionary is that of "false report", not "report". Black's defines "false report" as "[t]he criminal offense of informing law enforcement about a crime that did not occur." See FALSE REPORT, Black's Law Dictionary (12th ed. 2024). However, this definition is

distinguishable from SDCL § 22-11-9(3) because the South Dakota legislature intentionally broadened the definition of "report" to include, "which furnishes information relating to an...incident within their official concern, when he knows that such information is false." *See* SDCL § 22-11-9(3). A plain reading of SDCL § 22-11-9(3) does not require informing law enforcement of a crime that did not occur.

A further issue argued in front of the circuit court, which may be considered by this Court, was whether a defendant needs to take an affirmative step by initiating the contact with law enforcement or is simply providing false information to law enforcement sufficient.

The State argues, and the magistrate court agreed, that the plain reading of SDCL § 22-11-9(3) is purposely broad and no "affirmative steps" are necessary. *See* CT, pg. 74, 12-17; SDCL § 22-1-1. Thus, the State argues that the original magistrate court's broad statutory interpretation correctly followed South Dakota's rules of statutory construction, and the Defendant was correctly convicted by the magistrate court pursuant to SDCL § 22-11-9(3).

However, if this Court believes affirmative steps are necessary, such steps were taken by the Defendant in this matter. The Defendant may have been ordered to participate in the 24/7 program, but the Defendant voluntarily enrolled to be monitored by mobile testing. CT, *pg. 5, line 23.* She then took overt steps to circumvent the system and it was clear by the magistrate court's findings of fact that the system

caught and flagged the circumvention. CT, pg. 71, lines 6-10.[3] The Defendant could have submitted the test at a different time, could have not submitted to the testing, or she could have blown and possibly given a positive test. All would have simply been a violation.[4]

Instead, the Defendant specifically, purposefully, and intentionally attempted to circumvent the 24/7 program by submitting a false submission. *See* CT, pg. 75, lines 18-20. Such act intentionally caused the transmission of a report or notification to law enforcement authorities which furnished information relating to an offense or other incident within their official concern, when she knew that such information was false. *See* CT, pg. 14, line 6; see also SDCL § 22-11-9(3).

An argument also raised to the circuit court was that the "false communication did not start a new investigation"; therefore, she did not violate SDCL § 22-11-9(3). *See* ACB, at pg. 11 (citing *Branch*). As stated above, the plain language does not require a new investigation or reporting of a crime. The dissenting justice in *Bynum* states it best,

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[3] Defendant argues, because she was required to participate in the 24/7 program, it cannot be found that she took an affirmative step or initiated the report to Law Enforcement. The State believes this logic is flawed. For example, SDCL § 22-11-12 requires the reporting of a commission of felony. Under the Defendant's logic, a person could give false information about a felony but cannot be found guilty of the false reporting because that person was required by law to report to law enforcement.

[4] To be clear, the State does not believe all violations could also constitute a separate crime; however, some circumstances warrant criminal charges. For example, a defendant who cuts or intentionally damages their SCRAM bracelet may be found to violate the conditions of their bond and also be charged with Intentional Damage to Property.

"[T]he South Dakota false-reporting statute provides that a person who falsely reports a crime 'or other incident within [the] official concern [of law enforcement]' is guilty of the offense." *Bynum*, 937 N.W.2d 319, 331 (Iowa 2021) (citing SDCL § 22-11-9). "These false-reporting statutes, like the Model Penal Code, are broadly framed and do not require the commission of a crime." *Id.* A plain reading of the subsection does not require the reporting of a "crime" or "new investigation". It only requires a report or causing the transmission of a report to law enforcement "which furnishes information relating to an offense or other incident within their official concern, knowing that such information is false". SDCL § 22-11-9(3).

For the reasons stated above, the Defendant's false breathalyzer submission constitutes a violation of SDCL § 22-11-9(3) within the intentionally broad definition of the statute and the circuit court's Memorandum Opinion and Order should be reversed and the magistrate court's ruling with respect to the violation of SDCL § 22-11-9(3) should be affirmed.

CONCLUSION

For the reasons stated above, the State respectfully requests that this Court reverse the circuit court's Memorandum Opinion and Order and affirm the magistrate court's determination that the Defendant violated SDCL § 22-11-9(3).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains approximately 3,852 words.

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

Dated this 9th day of June, 2025.

/s/Drew W. DeGroot
Drew W. DeGroot
Chief Civil Deputy State's Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of June, 2025, a true and correct copy of Appellee's Brief in the matter of *State v. Biteler*, #31018, was served via the electronic Odyssey File and Serve system upon Nicole Griese, nicole@grieselawfirm.com.

/s/Drew W. DeGroot
Drew W. DeGroot
Chief Civil Deputy State's Attorney

STATE OF SOUTH DAKOTA) :SS COUNTY OF LINCOLN)	IN CIRCUIT COURT SECOND JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff and Appellee, vs. AMANDA BITELER, Defendant and Appellant.	41 CRI 23-1594 MEMORANDUM OPINION AND ORDER

Appellant Amanda Biteler (Appellant) appeals her conviction for False Reporting to Authorities in violation of SDCL 22-11-9(3). Appellant was convicted at the conclusion of a court trial held on June 7, 2024. Magistrate Judge Jon Leddige sentenced Appellant on June 18, 2024 to 180 days in jail with the entire sentence suspended upon certain conditions. Appellant filed an appeal of the Magistrate Court's *Judgment of Conviction.*

Now, having reviewed the record and considered the written arguments of counsel, Appellant's *Judgment of Conviction* is reversed.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2023, Appellant was charge in this case with six counts of False Reporting to Authorities. The charges arose from Appellant's 24/7 alcohol monitoring as a condition of her bond in 41 CRI 23-289 where she was charged with DWI-2nd offense. In September 2023, Appellant was allowed to switch from in-person reporting at the sheriff's office twice a day to testing with a remote breath device. Appellant was required to blow into the remote breath device

twice a day. The device is equipped with a camera that is triggered to take a photo as the individual blows into the device. The blowing into the device is what triggers the photo to be taken, which occurs while the blowing is actively occurring. The photo is then sent to the Alcohol Monitoring System (AMS) where it is compared using facial recognition software to an enrollment photo of the individual. If the individual's identity cannot be confirmed, an alert is sent to the testing authority.

On December 9, 2023, AMS sent an alert to the sheriff's department because it could not recognize Appellant's face in the photo taken. Based on the alert, Lincoln County Deputy Jamie Smith reviewed the photo. Deputy Smith testified at the court trial that it appeared that Appellant was using a longer, flexible straw rather than the shorter, non-flexible one issued with the device, that the straw was not in Appellant's mouth when the photo was taken, and there appeared to be another face in the background. He testified that the straw appeared to be twice as long as the one to be use with the device and appeared to curve away from her mouth. He also testified that based on his training and experience, it was his opinion that she was not the individual who was breathing into the device when the photo was taken. In addition to the issue with the straw, a second individual is visible in the photo. Upon further review of other photos, five other photos were found to be suspicious of circumventing the device in some way.

Deputy Smith was the only witness called by the State to testify at the court trial. The defense called no witnesses. Judge Leddige found Appellant

guilty as to the December 9th count only. Appellant appeals arguing: 1) that the magistrate judge improperly defined "report" under SDCL 22-11-9(3); and 2) that the magistrate judge abused his discretion in admitting Exhibits 1, 2, and 3 without proper foundation resulting in prejudice to Appellant.

STANDARD OF REVIEW

Under SDCL § 15-38-22, a final order or judgment of a magistrate court may be appealed to the circuit court. SDCL § 15-38-38 provides:

> When an appeal is taken to the circuit court from a judgment rendered in a magistrate court with a magistrate judge presiding, the circuit may review all matters appearing in the record relevant to the question of whether the judgment appealed from is erroneous; the circuit court may affirm, reverse, remand, or modify the judgment.

Evidentiary rulings are reviewed under an abuse of discretion standard:

> Our standard of review of "a trial court's evidentiary ruling is that of abuse of discretion." *State v. Bailey*, 1996 SD 45, ¶ 34, 546 N.W.2d 387, 394 (citations omitted). An abuse of discretion is " 'discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.' " *Larson v. Kreiser's, Inc.*, 472 N.W.2d 761, 764 (S.D. 1991)(quoting *Gross v. Gross*, 355 N.W.2d 4, 7 (S.D. 1984)).
>
> *Bad Wound v. Lakota Community Homes, Inc.*, 1999 SD 165, ¶ 6, 603 N.W.2d 723, 724-725. Accord *State v. Holzer*, 2000 SD 75, ¶ 11, 611 N.W.2d 647, 650 (trial court's evidentiary rulings are presumed correct and we review them under an abuse of discretion standard). " 'The test is not whether we would have made the same ruling, but whether we believe a judicial mind, in view of the law and the circumstances, could have reasonably reached the same conclusion' " *Id.* (quoting *State v. Oster*, 495 N.W.2d 305, 309 (S.D. 1993)).

State v. Machmuller, 2001 S.D. 82, ¶ 9, 630 N.W.2d 495, 498. A two-step process is used to review evidentiary rulings. First, the reviewing court must "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. Nohava*, 2021 S.D. 34, ¶ 24, 960 N.W.2d 844, 852 (citing *State v. Kvasnicka*, 2013 S.D. 25, ¶19, 829 N.W.2d 123, 128 (quoting *Supreme Pork v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 59, 764 N.W.2d 474, 491)).

AUTHORITY AND DECISION

I. Whether the Magistrate Court erred in finding Appellant guilty of violating SDCL 22-11-9(3).

Appellant argues that the Magistrate Court erred in determining that Appellant's conduct constituted a false report to law enforcement in violation of SDCL 22-11-9(3). Appellant asserts that Appellant's conduct did not constitute a "report" and that an affirmative act to communicate is necessary. Appellant argues that enrolling and participating in the 24/7 program should not be interpreted as intentional affirmative communication to law enforcement for purposes of the statute. Further, Appellant maintains that a breathalyzer submission or a bodily fluid submission is not a communication or "report" under the statute.

Both parties agree that this is a matter of statutory interpretation as to the language of SDCL 22-11-9(3). Issues of statutory interpretation are reviewed de novo. *State v. Long Soldier*, 2023 S.D. 37, ¶ 11, 994 N.W.2d 212, 217 (citing *State v. Bettelyoun*, 2022 S.D. 14, ¶ 16, 972 N.W.2d 124, 129).

> "The purpose of statutory interpretation is to discover legislative intent." Id. (quoting *State v. Bryant*, 2020 S.D. 49, ¶ 20, 948 N.W.2d 333, 338). "[T]he starting point when interpreting a statute must always be the language itself." Id. (alteration in original) (quoting *Bryant*, 2020 S.D. 49,

¶ 20, 948 N.W.2d at 338). "We therefore defer to the text where possible." *Id.* (quoting *State v. Armstrong*, 2020 S.D. 6, ¶ 16, 939 N.W.2d 9, 13). "When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed." *Id.* (quoting *Armstrong,* 2020 S.D. 6, ¶ 16, 939 N.W.2d at 13). "In conducting statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole." *Id.* (quoting *State v. Thoman*, 2021 S.D. 10, ¶ 17, 955 N.W.2d 759, 767). "The rule of the common law that penal statutes are to be strictly construed has no application to [SDCL Title 22]. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice." SDCL 22-1-1.

Long Soldier, 2023 S.D. 37, ¶ 11, 994 N.W.2d at 217.

SDCL 22-11-9 provides:

> Any person who:
> (1) Except as provided in § 22-11-9.2, knowingly causes a false fire or other emergency alarm to be transmitted to, or within, any fire department, ambulance service, or other government agency which deals with emergencies involving danger to life or property;
> (2) Makes a report or intentionally causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern, knowing that it did not occur; or
> (3) Makes a report or intentionally causes the transmission of a report to law enforcement authorities which furnishes information relating to an offense or other incident within their official concern, knowing that such information is false;
> is guilty of false reporting to authorities. False reporting to authorities is a Class 1 misdemeanor.

The Legislature did not define "report," and the South Dakota Supreme Court has not addressed what constitutes making a report or intentionally causing the transmission of a report for purposes of SDCL 22-11-9(3). The issue was presented at least in part, but not addressed, in *State v. Bingen*, 326 N.W.2d 99 (S.D. 1982). In *Bingen,* the trial court dismissed a count of an indictment that charged the defendant with false reporting to authorities in violation of

SDCL 22-11-9(3) because the trial court concluded from the testimony at the suppression hearing that the evidence did not support the indictment. *Id.* at 100. The allegation in the indictment was that the defendant furnished information relating to an offense of grand theft of a trailer by falsely stating he purchased the trailer for $20 when he knew such information was false. *Id.* The trial court concluded that furnishing such information did not constitute a false report within the meaning of SDCL 22-11-9(3). *Id.* The South Dakota Supreme Court reversed on the basis that the grounds for dismissing an indictment are set forth in SDCL 23A-8-2 and the indictment was not subject to dismissal under any of those grounds. *Id.* The South Dakota Supreme Court specifically expressed no opinion on the trial court's interpretation of SDCL 22-11-9(3). There appears to be no other South Dakota authority addressing the language of the statute at issue.

Both parties provide cases from other jurisdictions as persuasive authority. However, those cases are of limited assistance because of substantial differences in the language of the false reporting statutes from other states. Further, and most significantly, those cases all involve verbal communications made by a defendant, rather than breath or bodily fluid submissions as in this case. Neither party has cited, and this Court has not located, a factually similar case.

The word "report" is used as a noun in SDCL 22-11-9(3). Consideration of the common definition of that term is helpful. Merriam Webster defines the noun "report" as "a usually detailed account or statement." *See* "Report."

Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/report. Accessed 11 Feb. 2025. Black's Law Dictionary defines "report" as "[a] formal oral or written presentation of the results of an investigation, research assignment, etc." *See* REPORT, Black's Law Dictionary (12th ed. 2024). While the evidence may have established that Appellant failed to comply with the terms of her participation in the 24/7 program by submitting or attempting to submit a breath sample that was not her own, the issue comes down to whether, by doing so, Appellant made a report or intentionally caused the transmission of a report to law enforcement in violation of the plain meaning of SDCL 22-11-9(3). This Court concludes that a breathalyzer submission or other bodily substance submission as occurred in this case is not a communication or report for purposes of the statute. Appellant's conduct may have been a violation of the terms of the 24/7 program, and she could face consequences for her conduct within the DWI case, but her conduct was not a specific, intentional, affirmative communication, account, or statement to law enforcement. Therefore, the magistrate court erred in finding a violation of SDCL 22-11-9(3), and Appellant's conviction is reversed and vacated.

Having reached this conclusion, it is not necessary to reach the evidentiary issues raised by Appellant.

ORDER

Based upon the foregoing, it is hereby ORDERED that Appellant's *Judgment and Sentence* is reversed and vacated, and the case is remanded for further proceedings.

Dated this 18 day of February, 2025.

BY THE COURT:

Jennifer D. Mammenga
Circuit Court Judge

ATTEST: Clerk of Court

By: _____
DEPUTY

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

#31018

STATE OF SOUTH DAKOTA,

Petitioner and Appellant,

v.

AMANDA BITELER,

Respondent and Appellee.

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

THE HONORABLE JENNIFER MAMMENGA
Circuit Court Judge

APPELLEE'S BRIEF

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Appellant's Brief filed June 9, 2025

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OF THE STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant, APPELLEE'S BRIEF

v. #31018

AMANDA BITELER,
Defendant and Appellee,

PRELIMINARY STATEMENT

The transcript of the court trial held on June 7, 2024, will be cited as "CT" followed by the page number. Exhibits will be cited as "Ex." followed by the exhibit number. State's Appellate Brief will be cited as "AB," and the Circuit Court's Memorandum Opinion and Order will be cited as "MO." Record documents are cited by page number where applicable.

Defendant and Appellee, Amanda Biteler, will be referred to as "Biteler." The State of South Dakota will be referred to as "the State."

JURISDICTIONAL STATEMENT

The State of South Dakota appeals the Honorable Jennifer Mammenga's February 25, 2025 Memorandum Opinion and Order. The State filed a Notice of Appeal pursuant to SDCL § 23A-32-4. This Court issued an Order Directing Appeal to Proceed on May 9, 2025. Thus, this Court has determined that it has jurisdiction to take this appeal.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. WHETHER THE CIRCUIT COURT ERRED IN DETERMINING BITELER'S SUBMISSION OF BODILY FLUID IN 24/7 PARTICIPATION IS NOT A REPORT PURSUANT TO SDCL § 22-11-9(3).

Defendant's submission of bodily fluid in 24/7 program is not a report under SDCL § 22-11-9(3).

SDCL § 22-11-9 (3)
State v. Ahitow, 544 N.W.2d 270 (Iowa 1996)
State v. Branch, 362 Or. 351 (Or. 2018), 408 P.3d 1035

STATEMENT OF THE CASE

To avoid redundancy, the Statement of the Case is sufficiently laid out in Appellant's Brief.

STATEMENT OF FACTS

The facts are sufficiently set forth in the Memorandum Opinion and Order. MO 1-3. The facts are generally not in dispute between the parties.[1]

STANDARD OF REVIEW

To streamline, Defense agrees with the State on the standard of review of issues of statutory interpretation being de novo and the statutory interpretation of "report" within SDCL § 22-11-9(3) being a matter of first

[1] Another short summary of the facts: Lincoln County State's Attorney's Office, in its' notoriously draconian fashion, violated Biteler from the 24/7 program, had her sit in jail for the violation, took her remote breathalyzer device away from her, discussed the 24/7 violation in her DUI 2nd sentencing, and then also filed a new criminal charge of False Reporting under SDCL § 22-11-9(3) against her, all from the failed breathalyzer submission. They now request an overly broad definition of report so they can continue to overcharge defendants in Lincoln County.

impression in South Dakota. Both parties agree the language of SDCL § 22-11-9 (3) is ambiguous and unclear with defining the term "report." The relevant portion of the statute provides:

> "Any person who:
> ...
> (3) ***Makes a report or intentionally causes the transmission of a report*** to law enforcement authorities which furnishes information relating to an offense or other incident within their official concern, knowing that information is false; is guilty of false reporting to authorities. False reporting to authorities is a Class 1 misdemeanor" (emphasis added). *See* SDCL 22-11-9(3).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT A BREATHALYZER SUBMISSION IN THE 24/7 PROGRAM IS NOT A "REPORT" UNDER SDCL § 22-11-9(3).

A. LEGISLATIVE HISTORY OF SDCL § 22-11-9 (3)

The State appeals the Circuit Court's Memorandum Opinion as overly narrow and urges a broad interpretation of "report" based on historical revisions to SDCL § 22-11-9(3). However, the statute's evolution does not support the sweeping criminalization of passive law enforcement interactions. The Circuit Court properly considered the implications of such government overreach and concluded that Biteler's conduct—participation in routine alcohol pretrial testing—did not constitute a specific, intentional, affirmative communication, account or statement to law enforcement. MO 7.

The Defense acknowledges that the 1976 amendments to SDCL § 22-11-9 broadened the statute's scope, but they did not eliminate the fundamental requirement that a person "make" or "intentionally cause

the transmission of" a report. The Legislature's use of active verbs surrounding the term "report"—such as "makes," "causes," and "furnishes"—reinforces the intent to target affirmative acts of communication initiated by the defendant. These verbs do not convert "report" into a verb itself, as the State contends, but instead support the Circuit Court's interpretation that "report" is a noun referring to a discrete communicative act as defined in Webster's and Black's Law Dictionary. The Circuit Court was correct to interpret the statute in this light.

Notably, the State's argument glosses over the need for affirmative conduct to constitute a report under SDCL § 22-11-9 (3). AB 12. As the Circuit Court correctly noted, there is no indication that the Legislature intended to include passive, automated submissions—such as breathalyzer or bodily fluid testing during court-ordered supervision—as "reports" subject to criminal penalty. Criminal statutes must still provide fair notice and must be interpreted to avoid absurd results, such as treating every false submission of a breathalyzer or UA for false reporting.

The State's interpretation would produce precisely such absurdity. If accepted, every driver who, when stopped, claims to have had "just two beers" and is later shown to be well over the legal limit would be criminally liable of False Reporting under SDCL § 22-11-9(3). This would

collapse any meaningful distinction between routine investigatory encounters and the intentional transmission of false reports.

The State attempts to overcome the compelled nature of Biteler's 24/7 testing by arguing "voluntarily enrolled in the mobile testing." AB 12. But this ignores the coercive backdrop: Biteler participation in the 24/7 program was a court-ordered condition of release. Choosing between methods of compliance—SCRAM, PBTs, or remote breath—within a mandated system is not a voluntary act of communication to law enforcement. It is compliance, not communication.

Biteler's participation in the 24/7 program, even if the submission was false, did not constitute making or causing the transmission of a "report." Her conduct was monitored and flagged by the automated system—facial recognition software—not by any act of direct misrepresentation to law enforcement. To treat such conduct as criminal reporting would dramatically expand the reach of SDCL § 22-11-9(3) beyond anything contemplated by the Legislature.

Moreover, the State's emphasis on the phrase "furnishes information" as a catch-all fails under closer scrutiny. This language must be read in conjunction with the statute's requirement that a defendant "make a report or intentionally causes the transmission of a report." The term "furnishes" does not eliminate the requirement that the defendant affirmatively initiate the communication. If Legislature intended to criminalize every passive submission of data that later proves inaccurate

or deceptive, it could have said so explicitly. Instead, the statute targets false information transmitted as a report—not data automatically relayed as part of a mandatory compliance system like 24/7. Biteler's breathalyzer submission was part of routine, compelled monitoring, not a self-initiated or discretionary communication to law enforcement. As such, her conduct falls outside the intended scope of SDCL § 22-11-9(3).

B. PERSUASIVE AUTHORITY FOR DEFINING "REPORT" UNDER SDCL § 22-11-9(3)

a. State v. Ahitow (Iowa 1996)

Since this is a case of first impression in South Dakota, persuasive authority for this Court to consider is that of an Iowa Supreme Court case which directly addressed this issue of "report" in a False Reporting case being vague and ambiguous. *State v. Ahitow*, 544 N.W.2d 270 (Iowa 1996).

In *Ahitow*, the Defendant responded to questions by a police officer with a false alibi of his whereabouts during the time some newspaper vending machines had been knocked over. *Id.* at 272. At the time that Ahitow was convicted of false reporting, the Iowa statute read as follows, "A person who reports or causes to be reported false information to a fire department or law enforcement authority, knowing that information is false, or who reports the alleged occurrence of a criminal act knowing the same did not occur, commits a simple misdemeanor." *Id.*

Ahitow appealed claiming his false response to the officer's questions does not fall within this statute and asserted that the word "report" is

ambiguous and implies a requirement of affirmative conduct. *Id.* The Iowa Supreme Court in its' analysis found a plain meaning from Webster's dictionary to the word "report" to mean:

> "make known to proper authorities." The word "make" means "to cause to be or become: put in a certain state or condition." Thus, the word "report" may also have a more narrow definition: causing the authorities to know the information reported. This definition envisions some affirmative action by the person providing the information in initiating the information. *Id.* (quoting Webster's Third New Int'l Dictionary 1925 (1993)).

The Iowa Supreme Court then reversed Ahitow's false reporting conviction finding that reporting for False Reporting requires more than merely providing false information upon officer's questioning. *Id.* at 274.

Here, Biteler's case is similar to that of *Ahitow's* in that the information was transmitted in a passive way to law enforcement. Biteler was alleged to have submitted a false breath sample during regular routine participation in 24/7 testing to law enforcement as a condition of her pretrial release. She was then charged for False Reporting to Authorities. Like *Ahitow*, she did not call the authorities or initiate a report but others conducted a report on her testing submission. Also similar to *Ahitow*, the term "report" is not defined by our legislature as it wasn't in Iowa at the time of *Ahitow*. Further, Biteler's response to 24/7 testing is similar in nature to how *Ahito* responded to law enforcement inquiries as they both transpired in the regular course of law enforcement doing their job without instigating a new law enforcement investigation with additional resources. Finally, in both *Ahito* and here,

Defendants withheld potentially self-incriminating information through regular criminal procedure and investigation. The Court here should similarly conclude that Biteler's conviction cannot be upheld, as her behavior may have been false but it did not constitute a report under our False Reporting statute.

In the State's Appellant brief, it notes a comment in *Bynum's* dissent that South Dakota's statute is more broad in nature than Iowa's and therefore, the State jumps to the conclusion that our legislatures intended the broadest potential application possible. AB 8. The State is asking the Court to not just apply the definition of "report" broadly in this case but would be opening the door to a slippery slope of government overreach. The broad definition of report that the State is asking the Court to apply would be taking every 24/7 breathalyzer or urine submissions to be considered a "report" and therefore, every time a person shows up for testing and responds that "they're clean" but then has drugs in their system would be considered a false report under SDCL § 22-11-9(3).

b. State v. Branch (Oregon 2018)

The Oregon Supreme Court's interpretation of "initiating a false report" in *State v. Branch*, 362 Or. 351, 408 P.3d 1035 (2018), offers persuasive guidance for this Court. Though factually distinguishable, *Branch* provides a helpful framework for defining what constitutes a "report."

In *Branch*, the defendant, after rear-ending another driver while intoxicated, fled the scene. *Id.* at 353. When questioned by police, he falsely claimed the other driver had pointed a gun at him, prompting officers to immediately investigate the alleged weapon. *Id.* at 354. He was charged with and convicted of initiating a false report under ORS 162.375(1), which prohibits knowingly initiating "a false alarm or report" transmitted to emergency responders. *Id.* at 355.

On appeal, Branch argued that responding falsely during police questioning was not "initiating" a report. *Id.* The Oregon Supreme Court focused on the ambiguity of "initiates" and "report," finding the legislature intended to criminalize false communications that create a new emergency response or deployment of resources—not merely any falsehood during ongoing police interaction. *Id.* at 355–61. Importantly, the Court distinguished between false statements that spark a new investigation (as Branch's did) and those made in existing inquiries, such as a fabricated alibi. *Id.* at 359–61.

The Court used Webster's dictionary definitions and legislative history to conclude that a "report" must allege a situation likely to prompt an emergency response. *Id.* at 358–59. It emphasized the need to avoid sweeping in all false statements made to law enforcement, reaffirming that "not all false information conveyed to police is a 'report.'" *Id.* at 361, 364. Ultimately, the Court upheld Branch's conviction, finding

that his lie about a gun created a new emergency and resource deployment, separate from the existing DUI investigation. *Id.* at 362.

Applying *Branch* here supports the Circuit Court's ruling. Unlike Branch, Biteler did not initiate communication or make an emergency allegation. Her alleged false breathalyzer submission was part of routine 24/7 testing during pretrial release and did not trigger a new investigation or response. As in *Ahitow* and *Branch*, the distinction between conveying false information versus initiating a false report is key. Biteler's conduct falls outside the scope of SDCL § 22-11-9(3), and legislature did not intend such compliance data to qualify as a "false report."

CONCLUSION

Based upon the foregoing reasons, authorities cited, and upon the settled record, Biteler respectfully requests this Court to affirm the Circuit Court's Memorandum Opinion and Order dated February 18, 2025.

Respectfully submitted this 2nd day of August, 2025.

Nicole Griese

Nicole J. Griese
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I. I ceritify that the Appellant's Brief is within the limitation provided for in SDCL § 15-26A-66(b) using Bookman Old Style typeface in 12-point font. Appellee's Brief contains 2,198 words.

II. I certify that the word processing software used to prepare this brief is in Microsoft Wood 2007.

Respectfully submitted this 2nd day of August, 2025.

Nicole Griese

Nicole J. Griese
Attorney for Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Appellee's Brief was electronically served upon:

Drew DeGroot
ddegroot@lincolncountysd.gov
Attorney for Appellant, State of South Dakota

Respectfully submitted this 2nd day of August, 2025.

Nicole Griese

Nicole J. Griese
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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

#31018

STATE OF SOUTH DAKOTA

Plaintiff and Appellant,

v.

AMANDA K. BITELER,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
LINCOLN COUNTY, SOUTH DAKOTA

THE HONORABLE JENNIFER MAMMENGA
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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ORDER DIRECTING APPEAL TO PROCEED ON MAY 9, 2025.

Filed: 8/29/2025 4:07 PM CST Supreme Court, State of South Dakota #31018

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OF THE
STATE OF SOUTH DAKOTA

#31018

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

AMANDA K. BITELER,

Defendant and Appellee.

PRELIMINARY STATEMENT

The Plaintiff and Appellant, State of South Dakota, is referred to as "State." The Defendant and Appellee, Amanda Biteler, is referred to as "Defendant." The Honorable Jonathan Leddige, Magistrate Judge, presided over the criminal file and court trial and is herein referred to as "the magistrate court." The Honorable Jennifer Mammenga, Circuit Court Judge, presided over the appeal to circuit court and is herein referred to as "the circuit court." All other stated individuals are referred to by name or initials. Relevant documents, that may or may not be cited, are referred to as follows:

Lincoln County Criminal File No. 41CRI23-1594 ..... SR

Court Trial Transcript .....CT

Appellee's Circuit Court Appellant Brief..... ACB

Memorandum Opinion and Order..... MO

Appellee's Brief..... APB

The appropriate page numbers follow all document designations. The appropriate identifiers follow all exhibit designations.

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT CONCLUDED THAT A BREATHALYZER SUBMISSION OR OTHER BODILY SUBSTANCE SUBMISSION, AS IT OCCURRED IN THIS CASE, IS NOT A COMMUNICATION OR REPORT FOR PURPOSES OF SDCL § 22-11-9(3)

The Defendant, as she did to the circuit court, continues to argue that the Iowa Supreme Court's analysis of Iowa Code § 718.6 in *State v. Ahitow*, 544 N.W.2d 270 (Iowa 1996), and the Oregon Supreme Court's analysis of ORS § 162.375 in *State v. Branch,* 362 Or. 351, 408 P.3d 1035 (Oregon 2018), should be adopted by this Court when reviewing SDCL § 22-11-9(3). The State has provided just as many, if not more, persuasive authorities that align with a broad interpretation of "report."[1] To assert that the State's rationale is absurd[2] ignores the reality that rational justices and rational courts have disagreed on the

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[1] Another such case is *Stephens v. State*, 328 Ark. 570, 571, 944 S.W.2d 836. Arkansas' false reporting statute is narrow in the sense that it requires reporting of a crime or criminal act. However, it does not require initiation. In that case the defendant did not initiate the contact with law enforcement but the defendant gave a fictitious account of the facts of a crime to law enforcement. The defendant's conviction was upheld. "When interpreting statutes, this court adheres to the basic rule of statutory construction that gives effect to the intent of the legislature, making use of common sense." Citing *Sanders v. State,* 310 Ark. 630, 839 S.W.2d 518 (1992). Admittedly, Arkansas' statute actually defines report as "any communication, either written or oral, sworn or unsworn." ACA § 5-54-122(a).

[2] The Defendant uses additional intemperate language in a footnote to attack the integrity of the Lincoln County State's Attorney's Office. In maintaining proper decorum in front of this Honorable Court, the State will not address the footnote other than to state that such opinions are inappropriate and they provide no argumentative value to the Defendant's position.

subject. In this very case, the magistrate court and circuit court had different interpretations of legislative intent.

Another example of how rational minds can disagree is found in *State v. Levandowski*. In *Levandowski*, the Tennessee Court interpreted the word "report" and whether the statute required the person to initiate the contact with law enforcement. TCA § 39-16-502(a) (1991) provides, "It is unlawful for any person to (1) Report to a law enforcement officer an offense or incident within the officer's concern (C) knowing the information relating to the offense is false..." *State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997). The majority held that initiation by the defendant was required. *Id.*

However, the *Levandowski* majority highlighted the fact that Tennessee's statutory construction analysis is subject to "strict construction in favor of the defendant." *Id.* at 606. See also *State v. Ahitow*, 544 N.W.2d 270, 273-74, which requires statutes to be narrowly construed. Whereas in South Dakota, "[t]he rule of the common law that penal statutes are to be strictly construed has no application to [SDCL Title 22]. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice." SDCL § 22-1-1. Thus, highlighting the fact that if a South Dakota court were to simply adopt holdings from other jurisdictions it may cause the court to completely ignore the provisions set forth in SDCL §

22-1-1 and South Dakota's rule of statutory interpretation set forth in *Long Soldier*, 2023 S.D. 37, ¶ 11 (citations omitted) ("The purpose of statutory interpretation is to discover legislative intent.").

Even though Tennessee statutes are to be strictly construed, two justices in *Levandowski* dissented from the majority's holding that initiation is required. In Justice Drowota's dissent, the justices took the position that "[t]he natural and ordinary meaning of the word 'report', includes statements given in response to inquiries by law enforcement officials." *Levandowski*, 955 S.W.2d at 606. "To 'report' simply means '[t]o give an account of, to relate, to tell, to convey or disseminate information.'" *Levandowski*, 955 S.W.2d at 606 (quoting Black's Law Dictionary, 1300 (6th ed. 1990)). The definition of "report" found in Black's 6th Edition, and cited by the dissent in *Levandowski*, is no longer found in the 12th Edition cited by the circuit court. The circuit court's citations to the current definitions of "report" is an example of how simply adopting a modern dictionary definition can run afoul of legislative intent.

It must also be noted that Tennessee's previous false reporting statute was similar to South Dakota's prior to *Levandowski*:

> a) A person commits the offense of false reporting to authorities if he:
> ....
> (3) Makes a report, purposely causes the transmission of a report or *furnishes information* to law enforcement authorities concerning a crime or other incident within their official concern if he knows that he has no such

> information relating to such crime or incident or he knows that the information is false....

Levandowski, 955 S.W.2d at 604-605 (emphasis in original) (citing TCA § 39-16-502 (1983). Like South Dakota, the previous version of Tennessee's false reporting statute was modeled after the Model Penal Code. The majority in *Levandowski* highlighted the fact the Tennessee legislature intended to narrow the statute by amending it; thus, now requiring initiation by defendants. *Levandowski*, 955 S.W.2d at 605 (citing TCA § 39-16-502 (1983)).[3] Unlike Iowa's and Tennessee's false reporting statutes, the South Dakota Legislature has not materially amended SDCL § 22-11-9 since the 1976 version was adopted.

The Defendant takes issue with the State's citation to the dissent in *Bynum*; however, the State highlights the analysis provided by Justice Appel in *Bynum* because it is the type of analysis that should be done when conducting a statutory interpretation analysis. Respectfully, no meaningful statutory interpretation analysis is done by the Defendant. "The purpose of statutory interpretation is to discover legislative intent." *Long Soldier*, 2023 S.D. 37, ¶ 11. (quoting *State v. Bryant*, 2020 S.D. 49, ¶ 20, 948 N.W.2d 333, 338). Justice

[3] Tennessee amended TCA § 39-16-502 in 1998 in direct response to the *Levandowski* holding. The rationale provided by the sponsors of the bill was to rectify the unintended consequences of the 1991 amendment. The Tennessee General Assembly recriminalized providing false information to law enforcement, whether initiated by law enforcement or made in response thereto. See *State v. Smith*, 436 S.W.3d 751, 769-770 (Tenn. 2014).

Appel not only looked at the historical context of Iowa's false reporting statute but also South Dakota's.

Further, simply adopting a current dictionary definition of a word or words is problematic if the analysis fails to account for the legislative intent of those words at that time. "Of course, '[i]n construing statutes, we do not simply consult dictionaries and interpret words in a vacuum. Dictionaries, after all, do not tell us what words mean, only what words *can* mean, depending on their context and the particular manner in which they were used.'" *State v. Meiser*, 372 Or. 438, 462, 551 P.3d 349, 362 (Ore. 2024) (citations omitted) (emphasis in original).

Legislative intent of SDCL § 22-11-9(3) is clear when examining the origination of the statute. SDCL § 22-11-9(3) was modeled after § 241.5(2)(a) of the Model Penal Code. *See* Model Penal Code § 241.5(2) (ALA 1980) ("Fictitious reports. A person commits a petty misdemeanor if he (a) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur[.]") When reviewing the purpose and design of the statutes, the Model Penal Code commentaries are instructive. "Section 241.5 creates the misdemeanor of knowingly giving false information to law enforcement officers with purpose to implicate another in a crime and the petty misdemeanor of *giving fictitious reports to law enforcement officers in*

other contexts." Model Penal Code with Commentary, pg. 109 (ALA 1980) (emphasis added).

Further commentary is instructive in Part II of the commentaries. "There are also several [jurisdictions] that have followed the substance of Subsections (1) and (2) but have eliminated the grading differential between the two provisions." Model Penal Code Part II, Vol.3, pg. 161 (APA 7th Ed.1980). "In addition, several states have enacted or proposed a provision substantially the same as Subsection (2) but have omitted a provision comparable to Subsection (1)." Model Penal Code Part II, Vol.3, pg. 161 (APA 7th Ed.1980).[4] This Court has acknowledged that the South Dakota Legislature relied heavily on the Model Penal Code when it revised the South Dakota Criminal Code in 1976. See *State v. Scouten*, 2005 S.D. 122, ¶¶ 14-15, 707 N.W.2d 820, 824. "Reports, as set forth by Model Penal Code, simply mean false information to law enforcement. Respectfully, it is clear the legislature did not indent for it to mean a "formal oral or written presentation." See MO, pg. 7. "As originally drafted, Subsection (2) required proof that the actor 'cause[d] a law enforcement officer to act in reliance [the] false information.'" Model

[4] N.11 of the Model Penal Code Part II, Vol.3, pg. 161, specifically cites to S.D. § 22-11-9(3) as an example. The Defendant may argue that the footnote also cites to Iowa § 718.6; however, as the *Ahitow* court holds, Iowa requires its statutes to be narrowly construed, unlike South Dakota. Further, the *Ahitow* court relied on the 1995 amendment which added "provides" instead of "reports"; thus, the legislature must have contemplated a difference between the two words. Such rationale cannot be said to be the South Dakota Legislature's intent.

Penal Code Part II, Vol.3, pg. 162 (APA 7th Ed.1980). "False information of the sort covered in Subsection (2) is likely to lead to some police action in reliance thereon." Model Penal Code Part II, Vol.3, pg. 162 (APA 7th Ed.1980).[5] When reviewing the commentary of the Model Penal Code the South Dakota Legislature intended to adopt the rationale that any false information to law enforcement—whether the contact was initiated by the Defendant or not—may result in prosecution for false report. [6]

As this Court has stated, "The penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice." *Long Soldier*, 2023 S.D. 37, ¶ 11. This Court has traditionally recognized that South Dakota "[criminal] laws are usually written in a fashion to give broad application to the type of conduct sought to be forbidden. There is nothing inherently wrong with a broad application; for otherwise, there would exist a criminal law for each specific act." *State v. Dale*, 439 N.W.2d 98, 106 (S.D. 1989).

The Defendant asserts that the "State jumps to the conclusion that our legislature intended the broadest application possible." APB,

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[5] The commentary of the Model Penal Code also recognizes the possible prosecution of a false report where "false information consists of the denial of guilt by one who is interrogated during the course of an investigation." Model Penal Code Part II, Vol.3, pg. 162.

[6] "Accordingly, since the provision deals with behavior that is highly likely to have anti-social consequences and the actors who are consciously falsifying, the minor penalty may be preserved without inquiry into the actual result of the misbehavior." Model Penal Code Part II, Vol. 3, pg. 162.

p. 11. However, this is a mischaracterization of the State's position, as set forth in footnote 4 of Appellant's Brief. The Defendant further claims that, under the State's rationale, any individual who tells law enforcement "they're clean" but later tests positive for drugs, or who claims to have had "two beers" but is found to have a high blood alcohol content, would be making a false report. APB, p. 11. First, the hypotheticals presented by the Defendant are not this case. This Court does not have to contemplate such hypotheticals. See *Meinders v. Weber*, 2000 S.D. 2, ¶ 39, 604 N.W.2d 248. Second, as set forth below, statements in such limited context do not "have a disruptive effect on law enforcement activities." See Model Penal Code Part II, Vol.3, pg. 159. Finally, the Defendant's assertions are flawed because the State must still prove the elements of "knowing" or "intent." *See* South Dakota Pattern Jury Instruction, 3-9-19.

The definitions provided in SDCL § 22-1-2 bolster the State's position that, while the legislative intent of modeling SDCL § 22-11-9(3) after the Model Penal Code is a broad application, such application is still limited. Pursuant to SDCL § 22-1-2(1)(b), "The words, 'intent, intentionally,' import a specific design to cause a certain result..." The example of a person saying "they're clean" lacks the necessary components to violate the false reporting statute because 1) the statement has no bearing on the results of a 24/7 drug test and 2) the person may believe they are clean. *See* Pattern Jury

Instruction, 2-8-1. Nor does someone stating they had "two beers" have an effect on findings in the field sobriety tests or the blood alcohol content (BAC) results. "[I]t is inappropriate to select one statute on a topic and disregard another statute which may modify or limit the effective scope of the former statute." *Expungement v. Oliver*, 2012 S.D. 9, ¶ 9, 810 N.W.2 350, 352.

In this matter, the Defendant intentionally had another person submit a breathalyzer test on her behalf, which caused the transmission of a report to law enforcement. The Defendant attempts to minimize this intentional act as merely a "failed breathalyzer". See APB, n. 1. However, the intentional *false submission*, rather than a failed breathalyzer, was done with "specific design to cause a certain result." SDCL § 22-1-2(1)(b); *see also* ARSD 2:06:02:05 ("A participating agency shall contemporaneously record all participant resting results on the reporting system pursuant to § 2:06:04:01").

While this is not a case that reviews the constitutional vagueness of the entirety of the statute, this Court has held that such vagueness is eliminated when specific intent is required. "When the statute is read as a whole, any vagueness...is eliminated by the specific intent requirement." *State v. Hoeft*, 1999 S.D. 24, ¶ 18, 594 N.W.2d 323; *see also* SDCL § 22-1-2(1)(f) ("If knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element.").

The Defendant further argues that "criminal statutes must provide fair notice and must be interpreted to avoid absurd results." APB, pg. 7. However, "where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of the law." *State v. Hoeft*, 1999 S.D. 24, ¶ 17, 594 N.W.2d 323, 328 (citations omitted). When knowledge is essential to an offense you must look to "the language of the act in connection with the manifest purpose and design." *State v. Fideler*, 2023 S.D. 25, ¶ 33, 992 N.W.2d 19, 27-28. The manifest purpose and design of SDCL § 22-11-9(2) is to clearly criminalize those who waste law enforcement's time or resources by giving them false information "relating to an offense or other incident within their official concern."

When this Defendant knowingly has another person submit a breathalyzer test on her behalf, a test that generates the transmission of a report to law enforcement, the Defendant has knowledge of the fact that she is submitting false information to law enforcement with the intent to deceive. Therefore, these acts are within the purpose and design of SDCL § 22-11-9(3).

Based upon the foregoing, and as stated in Appellant's Brief, at page 10-11, the only fair import of the word "report" in SDCL 22-11-9(3) can be a verb, not a noun. The circuit court's opinion was

formulated by declaring "report", as used in the statute, is a noun that would require a "*formal oral or written presentation of the results of the investigation.*" See MO, pg. 7 (emphasis added). The Defendant acknowledges that the 1976 amendments to § 22-11-9 "broadened the statute's scope" but then asks this Court to adopt the circuit court's narrowest of interpretations. See APB, pg. 6-7. The Defendant's arguments are at odds with the Defendant's acknowledgment that the legislature intended to broaden the statute.

Respectfully, under the circuit court's narrow interpretation, the only instances where a person could be charged pursuant to SDCL § 22-11-9(3) would be if the person conducted his or her own investigation and the person then makes a formal oral or written presentation to law enforcement authorities. Certainly, the Legislature did not intend to require a person to conduct their own investigation as a condition precedent. Such interpretation clearly runs counter to legislative intent. *See Sanders v. State*, 310 Ark. 630, 839 S.W.2d 518 (1992)("...the basic rule of statutory construction that gives effect to the intent of the legislature, making use of common sense."). The circuit court's interpretation only adds ambiguity to the statute.

Under a proper statutory interpretation analysis, this Court should analyze what the Legislature's intent was at the time the statute was enrolled or amended. The State's position is solidified when reviewing the context of not only the Model Penal Code

commentary but also the definition of report found in past versions of Black's Law Dictionary. The definition of "report", found in Black's 6th (1990), "simply means '[t]o give an account of, to relate, to tell, to convey or disseminate information.'" *Levandowski*, at 606 (quoting Black's Law Dictionary, 1300 (6th ed.1990).

Black's 6th Edition specifically cites to *State v. Fenster*, 2 Conn. Cir. Ct. 184 (1962)(reversed on other grounds). In *Fenster*, the defendant argued that he did not initiate the contact because law enforcement officers came to the hospital after they received a call from the night nurse. *Id.* at 186. The officers arrived at the hospital, questioned the defendant, and an investigation was launched as a result. *Id.* As the court states, to adopt a narrow definition of report that requires initiation is to "exalt[] technicalities over substance." *Id.* at 193.

The Defendant's continued reliance on *Branch* is also misplaced because ORS § 162.375 provides, "A person commits the crime of initiating a false report if the person knowingly *initiates* a false alarm or report..." (emphasis added). The Defendant argues that "applying *Branch* here supports the circuit court's ruling." Such a statement highlights the fallacy of the Defendant's argument. The Oregon courts holding is distinguishable because of the useful statutory maxim, *expressio unius est exclusio alterius*. "[T]he expression of one thing is the exclusion of another." See *Sacred Heart Health Services, Inc. v.*

Yankton County, 2020 S.D. 64, ¶ 16, 951 N.W.2d 544. The Oregon Legislature plainly intended to require initiation by the person in order for culpability to attach. The South Dakota Legislature did not. The rules of statutory interpretation should not contemplate the injection of words that are not present within SDCL § 22-11-9(3) when the historical context and meaning is clear.

The Defendant asserts that the State glosses over the need for affirmative conduct or initiation to constitute a false report. APB, pg. 7. The State directly addressed this point in its brief, and the State's position is that affirmative conduct or initiation is not necessary as set forth above. AB, pg. 12-13. The Defendant asserts that her conduct should not be considered an affirmative step or initiation because of the "coercive backdrop" of required 24/7 testing. Such argument is void of any legal citation and merit. Essentially, the Defendant asserts that this Court must consider that she would not have intentionally submitted the false breathalyzer report but for the fact that she was required to submit a breathalyzer test. By any legal measure of voluntariness, the Defendant's conduct cannot be said that it was coerced. This Court has long held that in order for there to be coercion there "must be more than a 'but for' type causation." *State v. Tuttle*, 2002 S.D. 94, ¶ 23, 605 N.W.2d 20, 31 n.7(citation's omitted).

Even if this Court deems affirmative conduct is necessary, the Defendant's actions can only be construed as voluntary affirmative

conduct. The Defendant may have been ordered to participate in the 24/7 program, but the Defendant voluntarily enrolled to be monitored by mobile testing. CT, *pg. 5, line 23.* There was no compulsion to sign up for mobile testing. The magistrate court's findings of fact—that the system caught and flagged the circumvention—has not been contested by the Defendant. CT, pg. 71, lines 6-10. The Defendant could have submitted the test at a different time, could have not submitted to the testing, or she could have submitted her own breathalyzer test and possibly given a positive result. All would have simply been a "failed breathalyzer".

Instead, the Defendant, from the comfort of her own home or wherever she may have been, knowingly and intentionally attempted to circumvent the 24/7 program by submitting a false submission. *See* CT, pg. 75, lines 18-20. The Defendant had the "ability to make an unconstrained, autonomous decision" and she chose to have someone else submit a false breathalyzer on her behalf. *State v. Ghebre*, 2023 S.D. 21, ¶ 24, 991 N.W.2d 79, 86 (quoting *Tuttle*, 2002 S.D. ¶ 23). Such act intentionally caused the transmission of a report to law enforcement authorities that furnished false information related to an incident within their official concern, when she knew that such information was false. *See* CT, pg. 14, line 6; see also ARSD 2:06:02:07(4) ("The device provides immediate notification of a missed test, failed test, or a test where facial recognition is not confirmed to

the participating agency."). The Defendant's conduct "was calculated to mislead the police in the performance of their duties." *Fenster*, 2 Conn. Cir. Ct. at 193.

CONCLUSION

For the reasons stated above, the Defendant's false breathalyzer submission constitutes a violation of SDCL § 22-11-9(3). The circuit court's Memorandum Opinion and Order should be reversed and the magistrate court's ruling with respect to the violation of SDCL § 22-11-9(3) should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains approximately 4,286 words.

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

Dated this 29th day of August 2025.

/s/Drew W. DeGroot
Drew W. DeGroot
Chief Civil Deputy State's Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of August, 2025, a true and correct copy of Appellee's Reply Brief in the matter of *State v. Biteler*, #31018, was served via the electronic Odyssey File and Serve system upon Nicole Griese, nicole@grieselawfirm.com.

/s/Drew W. DeGroot
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