

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31095

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

FARON MESTETH,

Defendant and Appellant.

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLANT'S BRIEF

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Notice of Appeal filed May 21, 2025

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IN THE SUPREME COURT
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FARON MESTETH,

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PRELIMINARY STATEMENT

Faron Mesteth was found guilty of two counts of Vehicular Homicide on January 19, 2025. On April 23, 2025, Mesteth was sentenced to 20 years in the South Dakota State Penitentiary on each count, with each sentence to run consecutive to each other.

In this brief Faron Mesteth will be referred to as “Mesteth”, and the State of South Dakota will be referred to as “State.” There were two deceased victims in this case, Jamie Sayler who will be referred to as “Jamie”, and Jade Fenhaus who will be referred to as “Jade”. Other individuals are referred to by name. Documents will be referenced as follows:

Settled Record (Pennington Co. Criminal File 23-4815).....SR
Jury Trial Transcript Volume 1 (January 13, 2025)JT1
Jury Trial Transcript Volume 2 (January 14, 2025)JT2
Jury Trial Transcript Volume 3 (January 15, 2025)JT3
Jury Trial Transcript Volume 4 (January 16, 2025)JT4

All document designations will be followed by the appropriate page numbers. All relevant jury trial exhibits will be referred to as "Exhibit" followed by the appropriate identifiers.

REQUEST FOR ORAL ARGUMENT

Mesteth respectfully requests the privilege of being heard on oral argument on all of the issues raised in this appeal.

JURISDICTIONAL STATEMENT

On April 23, 2025, the Honorable Matthew M. Brown, Pennington County Circuit Judge, filed a Judgment ordering Mesteth to serve two 20-year consecutive sentences. SR:821. Mesteth timely filed his Notice of Appeal on May 21, 2025. SR:828.

STATEMENT OF THE LEGAL ISSUES AND AUTHORITIES

- I. Whether the Circuit Court erred when it denied Mesteth's Motion for Judgment of Acquittal on the charges of vehicular homicide

Authority: SDCL § 22-16-41
State v. Lamont, 2001 S.D. 92, 631 N.W.2d 603
State v. Halverson, 394 N.W.2d 886 (S.D. 1986)
State v. LaCroix, 423 N.W.2d 169 (S.D. 1988)

- II. Whether Mesteth was denied his constitutional right to a fair trial due to excessive pre-indictment delay and law enforcement investigating this matter in such a way so as to deliberately deny Mesteth the ability to defend himself at trial

Authority: United States v. Marion, 404 U.S. 307 (1971)
State v. Packed, 2007 S.D. 75, 736 N.W.2d 851,
State v. Huber, 2010 S.D. 63, 789 N.W.2d 283
United States v. Jackson, 446 F.3d 847 (8th Cir. 2006)

STATEMENT OF THE CASE

A. Mesteth's charges, and the parties' pretrial motions practice

A Pennington County Grand Jury indicted Mesteth on two counts of Vehicular Homicide, in violation of SDCL § 22-16-41, resulting from an automobile accident that occurred on December 25, 2021 in which Jade Richard Fenhaus and Jamie Scott Saylor died. SR:1. The State also filed a Part II Information alleging that Mesteth had been convicted of three prior felonies: second degree escape and unauthorized ingestion of a controlled drug or substance. SR:4.

B. Mesteth's jury trial

Mesteth's jury trial lasted three days. The jury heard testimony from twenty-three witnesses including police officers, an accident reconstruction expert, a drug recognition expert, a pathologist, a medical expert regarding the effects of the use of methamphetamine, an expert on the "black box" data from the vehicle involved in the accident, a DNA expert, the family of the deceased occupants of the accident, and Mesteth's mother. JT1-4.

After deliberating for a half day, the jury found Mesteth guilty of both counts of Vehicular Homicide. SR:441.

C. Mesteth's sentencing hearing and Notice of Appeal

The circuit court sentenced Mesteth to twenty years on each of the counts to run consecutive to each other. SR:831. Mesteth filed his Notice of Appeal on May 21, 2025. SR:828.

STATEMENT OF FACTS

On December 24, 2021, Mesteth was at his mother's house located at 612 Farlow Street, Rapid City, South Dakota. JT3:511. At approximately 10:30 p.m. that evening, Mesteth began helping his mother Sonja Black Bear (hereinafter "Sonja") make salads for the next day which was Christmas. JT3:513. Mesteth went to bed sometime around one o'clock in the morning. JT3:514.

At approximately 5:20 a.m. on Christmas morning, as Sonja was cleaning the kitchen, she heard a knock at the door. JT3:522. There were two boys at the door who Sonja did not immediately recognize. JT3:515. The two individuals asked Sonja if they could speak with her son and indicated that they had been trying to call him. JT3:515. Sonja told the individuals he was sleeping. JT3:516. The two individuals were insistent that they needed to speak with her son. JT3:516. Sonja went downstairs and woke him up. JT3:516.

The two individuals were Jamie Saylor and Jade Fenhaus. JT3:517. They asked Mesteth to give them a ride somewhere. JT3:517. Sonja then recognized Jamie as one of Mesteth's friends who she had met before. JT3:516. Jamie asked Sonja if her son could use her 2007 Lexus RX350 to give them a ride somewhere. JT3:517, 529. It was never determined where they had planned to go. JT3:517, 529. Sonja said that she didn't want her son driving as he was very tired, and he had a revoked license due to a recent child support issue. JT3:516, 529. Jamie asked if he could drive the Lexus so Sonja asked to see Jamie's driver's license. JT3:516. After Sonja verified that Jamie had a valid license, she handed the keys to him. JT3:17. The three boys then left together. JT3:517-9, 520.

As they left, Sonja watched the boys enter the Lexus. JT3:519. Jamie entered the driver's seat. JT3:519. Jade entered the front passenger seat. JT3:519. Mesteth got into the

rear of the car. JT3:519. Sonja estimated that the car left her home somewhere around 5:30 a.m. JT3:531.

At 5:50 a.m. on December 25, 2021, Pennington County Emergency Services Communications Center received a 911 phone call for service to the area near Thompson Auto located at 2017 East Highway 44, Rapid City. JT1:19. The call had come from a passing motorist called saying that there was a man standing in the center of Highway 44 waving his arms. JT1:20, 24. Rapid City Police Officer Cody McCracken was dispatched to the scene. JT1:20, 24. He heard Mesteth yelling from the parking lot of Thompson Auto. JT1:20-24. He found that Sonja's Lexus had been in an accident, and was resting against a steel billboard post partially on top of a Jeep. JT1:25.

Law enforcement determined from multiple sources that the accident had occurred at 5:37 a.m. JT3:382. Officer McCracken viewed that tire tracks were visible in fresh snow. JT1:60. The tire tracks showed that the Lexus had been eastbound on East Highway 44 when it left the paved roadway, going into the south ditch area of the road before hitting a glancing blow off a parked car and becoming airborne when it hit an embankment of the driveway of Thompson Auto. JT1:60. The Lexus flew through the air for 78 feet, and then hit a steel post for a billboard located in the car dealership. JT1:69; 2:219; 3:382. When the Lexus hit the steel post, it rotated left, wrapping around the sign post and coming to rest facing nearly the opposite the direction of its initial travel. JT1:69. That's when it came to rest mostly on top of another parked vehicle. JT1:69, 3:382.

Officer McCracken made contact with Mesteth, who was disorientated and was attempting to get help for the rear passenger of the Lexus. JT1:25. Mesteth believed the rear passenger was his girlfriend. JT1:25. The only open door on the Lexus was the rear

passenger door where Mesteth had exited the vehicle. Police officers later confirmed this by viewing the surveillance tape of Thompson Auto. JT1:25, 59, 65. 68.

Officer McCracken questioned Mesteth. He indicated that he had been asleep in the back of the car when the crash happened. JT1:27, 39. Mesteth did not know which way the vehicle had been traveling and did not know who the people were in the car. JT1:36, 39; 3:451. Mesteth was extremely disorientated and was crying uncontrollably. JT1:25, 36. Mesteth told law enforcement that his brother Cruz may be in the car. JT1:38.

At trial, the State presented evidence from the "black box" of the Lexus which showed that the car had essentially driven off the south side of the road and then hit the embankment of the entrance to Thompson Auto. JT1:69, 3:401-5. No braking had been made, and the gas pedal had been fully depressed once the Lexus hit the embankment. JT1:69, 3:401-5. The black box revealed that within 150 feet, the Lexus had gone from 47.3 mph to a dead stop. JT3:391-398. The black box data was not able to provide any information as to the positions that any of the people who were in the car had been sitting. JT2:165, 215-7, 3:403. The black box did show that the passenger side airbag did not deploy as the sensor had wrongly determined that a child was in the passenger seat. JT2:202, 217.

The photos and videos of the car showed that each of the people in the car had been thrown from the position they had been sitting. JT1:26, 46, 51; 2:265; Exhibit 5. Jamie was found lying over the center console with his head near the steering wheel in the floor area of the driver's seat. JT1:26, 51. Blood was found on the airbag that appeared to have come from Jamie, but was never tested for DNA as Jamie's DNA was never taken by law enforcement. JT1:53, 69-71; 2:274. Jade was found stretch out across the back seat of the

vehicle with his head near the rear passenger floorboard. JT 1:45-6. Mesteth was given a PBT which indicated no alcohol was in his system. JT1:74.

All three occupants were taken to the hospital. JT1:81. Only Mesteth survived. Mesteth was not arrested or charged with vehicular homicide for nearly two years, which was on November 29, 2023.

STANDARDS OF REVIEW

The Court reviews a denial of a motion for judgment of acquittal *de novo*, which presents a question of law. State v. Brim, 2010 S.D. 74, ¶ 6, 789 N.W.2d 80, 83 (quoting State v. Klaudt, 2009 S.D. 71, ¶ 14, 772 N.W.2d 117, 122).

While findings of fact are reviewed under the clearly erroneous standard, conclusions of law are reviewed *de novo*. State v. Fierro, 2014 S.D. 62, ¶ 12, 853 N.W.2d 235, 239. Once the lower court has determined the facts “the application of a legal standard to those facts is a question of law.” Id.

Alleged violations of a defendant’s constitutional right to due process are reviewed *de novo*. State v. King, 2014 S.D. 19, ¶ 4, 845 N.W.2d 908, 910

ARGUMENT

I. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN DENYING MESTETH’S MOTION FOR JUDGMENT OF ACQUITTAL

A. Standard of Review

“Denial of a motion for judgment of acquittal is reviewed *de novo*.” State v. Ware, 2020 S.D. 20, ¶ 12, 942 N.W.2d 269, 272 (quoting State v. Traversie, 2016 S.D. 19, ¶ 9, 877 N.W.2d 327, 330). “On appeal, ‘the relevant question is 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 State v. Martin, 2015 S.D. 2, ¶ 13, 859 N.W.2d 600, 606).

B. The Required Elements for Vehicular Homicide.

The offense of vehicular homicide includes the following essential elements:

1. The defendant operated or drove a motor vehicle in a negligent manner;
2. The defendant was under the influence of an alcoholic beverage; controlled drug or substance or combination thereof;
3. The negligent operation or driving was the proximate cause of death of the individual killed;
4. The defendant did so without a design to effect the death of the individual killed.
5. The killing was not excusable or justifiable.

SDCL § 22-16-41; State v. Lamont, 2001 S.D. 92, ¶ 14, 631 N.W.2d 603, 608.

The State failed to present evidence from which a rational factfinder could make either a proper finding of guilt against Mesteth on elements 1 through 4 noted above. The trial erred in denying Mesteth’s motion for judgment of acquittal. The denial of a motion for judgment of acquittal presents a question of law that the Supreme Court reviews *de novo*. State v. Brim, 2010 S.D. 74, ¶ 6, 789 N.W.2d 80, 83 (quoting State v. Klaudt, 2009 S.D. 71, ¶ 14, 772 N.W.2d 117, 122). In measuring the sufficiency of the evidence, the Court is to ask “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Id. The Court “accept[s] the evidence and the most favorable inferences fairly drawn therefrom, which will support the

verdict.” Id. (quoting State v. Jensen, 2007 S.D. 76, ¶ 7, 737 N.W.2d 285, 288). In addition, the Court does not resolve conflicts in the evidence, assess witness credibility, or evaluate the weight of the evidence. Id. The Court gives “no deference to the circuit court’s determination regarding the sufficiency of the evidence.” State v. Chipps, 2016 S.D. 8, ¶ 50, 874 N.W.2d 475, 492. This standard applies to both jury trials and bench trials. See State v. Most, 2012 S.D. 46, ¶ 29, 815 N.W.2d 560, 568.

If the Court concludes that the evidence was insufficient to sustain the conviction, a judgment of acquittal must be entered, and the State is constitutionally prohibited from retrying the defendant. State v. Frazier, 2001 S.D. 19, ¶ 43, 622 N.W.2d 246, 261. Based on double jeopardy principles, the Court first examines the sufficiency of the evidence. Id.

C. The State presented insufficient evidence to show that Mesteth was the operator of the motor vehicle.

The evidence that the jury was presented at trial consisted of the following witnesses and their testimony: Mesteth’s mother Sonja testified that on the morning of December 25, 2021, Mesteth was asleep at home at approximately 5:20 a.m. JT3:515. Sonja woke up very early on Christmas morning to begin preparing for Christmas dinner. JT3:515. At approximately 5:20 a.m., an unknown car dropped off Jamie and Jade at Sonja’s house. They came to her door and asked to speak to the Defendant. JT3:515. Sonja’s security camera at her home showed Jamie and Jade arriving at 5:20 a.m. JT3:522. Jamie and Jade were there for approximately ten minutes before leaving at 5:30 a.m. that morning. JT3:522. Jamie and Jade wanted Mesteth to give them a ride somewhere, but Sonja did not want her son driving as he was tired and his driver’s

license had been revoked due to missed child support payments. JT3:516. Jamie asked Sonja if he could drive her car, and he told her he had a valid driver's license. JT3:517. Jamie handed Sonja his driver's license, which she reviewed and determined to be valid. JT3:517. Sonja handed the keys to her Lexus to Jamie, and watched the three boys walk to her car. JT3:518. Sonja witnessed Jamie get into the driver's side and Jade get into the front passenger seat. JT3:517-20. Her son got into the rear of the car. JT3:517-20.

Sonja was the only person who witnessed the Lexus driving that morning

Due to the arrangement of the roads in Rapid City, the Lexus would have had to proceed eastbound through Rapid City on the main highway through Rapid City which is known as Omaha Road/Highway 44. This is the only road which would have taken to the Lexus to the location of the accident on Highway 44 in 8 minutes, which is the amount of time from when the Lexus left Sonja's home to the time of the accident. JT3:522.

The black box recorder on the Sonja's Lexus indicated that the car did not stop anywhere on its travel through town. Exhibit 84. The jury was informed there was a security camera at Western Dakota Technical College. JT3:40. It showed the Lexus just prior to the accident, but the driver of the vehicle could not be determined as the camera was too far away for an identification. JT3:408. Several officers testified about the security camera at Thompson Auto which showed the accident, but the driver of the vehicle could not be determined. JT1:40; 3:326, 396. The security camera footage did show Mesteth leaving the Lexus from the rear passenger door of the car. Exhibit 90.

When law enforcement reviewed the Thompson Auto security camera, they saw the Lexus hit a parked car just slightly and then jump the entrance road to Thompson

Auto, hit an embankment and flew through the air striking the Thompson Auto billboard sign, wrapping around the steel sign post, turning left, and coming down with the rear wheels on top of another car facing southwesterly. JT1:24; 3:326, 396; Exhibit 90.

About a minute later, the video showed Mesteth getting out the rear driver's side of the Lexus, and running up to Highway 44 to get help. JT3:326, 396; Exhibit 90. The video is consistent with the testimony of several law enforcement officers who responded to the accident scene and found the Lexus with the rear driver's side door open and the two front doors closed. JT 1:25, 40-2, 47, 68, 140. Law enforcement testified that there were no problems with either of the front doors of the Lexus, and law enforcement was able to open them without assistance when they unlocked the doors by breaking the glass. JT1:40-3, 47.

There were no eye witnesses to the accident itself. The first report of the wreck was a call that came into 911 dispatch from a passing motorist who had not witness the accident, but had seen an individual in the middle of Highway 44 waiving his arm trying to get help. JT1:24. The report was of an individual with a beard, long hair and wearing dark colored clothing and snow boots that did not match Mesteth's physical description. JT1:41, 51. The caller called back to 911 dispatch at 5:51 a.m., and said he turned around and saw that an accident that had occurred at Thompson Auto. JT1:51.

Officer Cody McCracken testified that he arrived at the accident scene at 5:58 a.m., and found Mesteth yelling for help from the Thompson Auto car lot. JT1:26, 36, 73; Exhibit 2.

Mesteth was taken away from the accident scene while law enforcement worked on the other two occupants who were still in the car. JT1:32. Mesteth told Officer

McCraken that he did not know who the driver of the vehicle was, because he was asleep in the back of the car and had awakened when the car hit a pole. JT1:26-8, 36, 73; Exhibit 2. Mesteth implored to the officers to help a person in the back seat floorboard of the car, who he thought was his girlfriend. JT1:27, 36-8. Mesteth could not tell the officers which way the vehicle had been traveling or where they were going. JT1:26, 36. Mesteth in fact told officers that believed that the car was heading west into town when the crash occurred, likely because the car landed facing westerly after the crash. JT1:39. Mesteth also told the officers that he believed his brother Cruz was the other person located in the front driver's seat of the Lexus. JT1:38, 63. Mesteth had suffered injuries to the front of his face, and he was bleeding profusely from his nose. JT1:26,73, 93; 3:451.

Slumped across the center console with his head in the driver's wheel-well was Jamie. JT1:26, 45-6, 50, 65. Jade was located with his head resting on the rear driver's side floorboards. JT1:26, 45-6, 50, 65. Both of them bleeding profusely from their heads. JT1:45-6. Both of them were breathing at the time that law enforcement officers opened both front doors of the Lexus. JT1:45-6. The officers removed both Jamie and Jade from the car. JT1:31-2. Jamie and Jade were taken to the hospital. JT1:32.

At trial, none of the law enforcement officers who worked the scene of the crash were able to testify as to who the driver of the Lexus was based upon their review of the accident scene. JT1:75. The black box of the Lexus provided no information to determine who the driver was. JT3:402. Likewise, the State's expert testifying on the results of the black box review could not provide an opinion of who the driver was based upon the information of the black box. JT3:403. However, the black box data did show

that this had been an extremely violent crash with the speed of the Lexus going from approximately 47.3 mph to a dead stop within 150 feet when it hit a steel post. JT3:403. The doctor testified he did not see seatbelt burns on any of the occupants of the Lexus. JT2:252. Dr. Habbe was not able to determine where the individuals were in the car based upon their injuries either. JT2:252-3, 255-6.

The position of the State at trial was that Mesteth had been the driver of the Lexus because of a drop of blood found on the center of the airbag having DNA matching that of Mesteth. JT2:130-40. This position was contrary to the photographic evidence which noted that every surface of the vehicle, and all of the seats, the headliner, the door panels, the interior roof as well as the dashboard had blood splatter on them. JT1:72; 2:130, 212; Exhibits 17, 18, 31-45. Law enforcement testified that the force of this type of accident would have had the occupants flying about the interior of the vehicle "like socks in a dryer". JT1:53; 2:165, 201, 253. There was damage to the passenger seat, which was pushed forward towards the front of the Lexus. JT1:53; 2:93,165, 201-9. The sunroof sustained impact damage, as well as did the windshield. JT1:38-9, 53; 2:93,165, 201-9.

This evidence did not provide conclusive proof upon which a jury could conclude beyond a reasonable doubt that Mesteth was the driver. Making a conclusion that Mesteth was the driver would be physically impossible as Jamie was found to be laying on the driver's seat after the accident. JT1:26, 52-3, 59. 65. Officer Kouris testified, if Mesteth had been the driver, he would have had to crawl over the top of Jamie, who was slumped over the center console with his head near the steering wheel, to get to the rear door to exit the car. JT1:26, 52-3, 59. 65. A review of the photo exhibits indicated that such an attempt would have resulted in the blood coming from Jamie's head to pool in

several different spots when he would have been moved by Mesteth's attempts to crawl over the top of him in order to access the rear door. JT1:36, 41, 59; Exhibit 5. This logically would make no sense as Mesteth would have had a much lower access point in opening the front doors of the Lexus as the back door was higher in the air than the front seat of the Lexus due to the rear end of the Lexus being on top of a car. JT1:24, 41.

As noted by several law enforcement officers, there was absolutely nothing wrong with either of the front doors of the Lexus, and either front door could have been opened had Mesteth been in the front of the vehicle, as was proposed by the State at trial. JT1:57, 59 73.

There simply was insufficient evidence presented at trial that supported beyond a reasonable doubt that Mesteth was the driver of the Lexus. Thus, it was reversible error for the Circuit Court to have denied Mesteth's Motion for Judgment of Acquittal.

D. The State presented insufficient evidence to show that any negligence by Mesteth caused the deaths.

To sustain a conviction for vehicular homicide, the State must prove that the defendant operated his vehicle in a negligent manner and that his negligence caused the death of another person. SDCL § 22-16-41. Mesteth argues the evidence was insufficient to establish that: (1) that he was a driver of any vehicle; (2) that he was negligent in the operation of any vehicle; or (3) that any negligence on his part was a proximate cause of Jamie or Jade. In South Dakota, a driver can only be convicted of vehicular homicide only if there's proof that he was in fact the driver and that his negligent driving was a legal cause of the death. State v. Lamont, 2001 S.D. 92, ¶ 14, 631 N.W.2d 603, 608.

If it is proven that a defendant is the driver, it's is not enough to merely show that the defendant drove negligently while under the influence and someone died—there needs to be a direct link between the defendant's negligence and the death. State v. Two Bulls, 1996 SD 53. Because a finding of ordinary negligence is sufficient to establish vehicular homicide or battery, the appropriate standard of causation is that employed in tort law. Commonwealth v. Berggren, 398 N.E.2d 660, 661-62 (Mass 1986).

The pattern jury instruction on proximate cause in this case, Jury Instruction Number 22, stated as follows:

By "proximate cause of the death" is meant that cause which, in the natural and continuous sequence, or chain of events, unbroken by any intervening cause, aids in producing the death, and without which it would not have occurred. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the death.

At trial, the State presented expert testimony from Chuck Matson. He testified to the effects he believed alleged methamphetamine use had on Mesteth the date of the incident but could not provide any evidence to show that Mesteth was in fact the driver of the Lexus. JT3:433. Matson had not met Mesteth or spoken to him as part of his review and had reviewed no forensic evidence upon which to determine who was driving. JT3:433. Matson offered purely speculative testimony as to why that the vehicle involved in the crash had drifted off the road and ultimately hit a sign post. JT3:435. Matson testified that he the driver of the vehicle may have been texting, fallen asleep, passed out or just not have been paying attention. JT3:436. Matson could only guess as

to possible causes of the crash, but had no first-hand knowledge of why the Lexus went off the side of the road. JT3:435-7. Matson provided no forensic evidence correlating with any of his proposed possible causes for the accident nor did he provide any forensic support for one of his guesses that this accident could have been something as simple as the driver falling asleep and going off the road. JT3:377, 384. According to the Lexus black box, the car was traveling 47 mph in a 45-mph zone so speed did not appear to be a factor. JT3:325, 386. The slow drift of the Lexus into the ditch could not be conclusively explained through any forensic evidence in any way by Matson. JT3:325, 386.

Another expert witness, Dr. Gregory Dooley, testified that Mesteth had a high level of methamphetamine (in excess of 1300 ng/ml) which he theorized could have possibly resulted impulsivity, sleepiness, poor decision making, etc. JT3:486-9. But he also didn't know what had caused the vehicle to drift off the road. JT3:486-9. He further testified that he did not have personal knowledge that Mesteth was driving, but was only providing testimony of the effects of methamphetamine. JT3:486-90. Dr. Dooley additionally testified that in his review, Mesteth's demeanor and actions would be consistent with Mesteth just waking up in the back seat of the Lexus as Mesteth had reported to officer. JT3:491. Dr. Dooley conceded that had no first-hand knowledge that Mesteth was the driver of the Lexus, or as to any negligent actions or conduct Mesteth committed. JT3:491. Dr. Dooley was simply providing his expert opinion as to the effect that methamphetamine could possibly have on a driver, but had no insight as to who the driver of the vehicle was or what caused of the vehicle to drift off the road.

At best, the testimony of the State's experts caused the jury to guess whether the driver had fallen asleep, had been texting or perhaps had simply lost control on snow covered roads. JT3:331-9.

The investigating officers likewise could not point to any convincing knowledge of negligence by Mesteth that would have resulted in the car going off the road. JT3:486-9. The very nature of this accident, the severity of damage to the Lexus, and the fact there was no witness to who was the driver precludes a finding that Mesteth was culpably negligent in any way. JT1:73; 3:486-9.

The jury instructions require that jurors find that every element must be satisfied beyond a reasonable doubt. This includes finding that Mesteth was the driver and that his "negligent operation or driving was the proximate cause of death". In this case there simply was no evidence presented to the jury of any negligence on Mesteth's part. Contrary to this strict requirement, the State provide expert testimony asking jurors to guess as to what the cause of the accident was.

The black box of the Lexus is the best indicator of what happened. The State's expert, Derek Mann, was unable to provide any conclusion through his review of negligence on the part of the driver of the Lexus whoever it was that day. JT3:387-384. In fact, the black box data tended to prove that the State's theory of whoever had drove off the road was not sleeping, as the accelerator of the Lexus was pressed all the way to the floor resulting in a very high rpm of the Lexus engine prior to the crash. JT3:357, 377, 384. That situation could be consistent with a vehicle malfunction, someone trying to accelerate out of the ditch or many other possibilities but would not be consistent with

someone having fallen asleep or driving off the road while texting, which were both of the possible guesses by the States' experts. JT.3:384-8, 399.

If the State's expert on the black box data, and the investigating officers, were not capable of testifying as to any known negligence on the part of the driver of the Lexus, it would not be impossible for the jury to find that Mesteth, who was not driving, was negligent beyond a reasonable doubt. JT1:75.

II. MESTETH WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL DUE TO EXCESSIVE PRE-INDICTMENT DELAY AND LAW ENFORCEMENT'S INVESTIGATION IN SUCH A WAY TO DELIBERATELY DENY MESTETH THE ABILITY TO DEFEND HIMSELF AT TRIAL

Under the Due Process Clause, the South Dakota Supreme Court has repeatedly declared that a person who is accused of a crime is constitutionally entitled to a fair opportunity to defend against the charges he or she is facing. State v. Huber, 2010 S.D. 63, ¶ 37, 789 N.W.2d 283, 295l. "An accused must be 'afforded a meaningful opportunity to present a complete defense.' Those denied the ability to respond to the prosecution's case against them are effectively deprived of a 'fundamental constitutional right to a fair opportunity to present a defense.' " State v. Packed, 2007 S.D. 75, ¶ 27, 736 N.W.2d 851, 860 (quoting State v. Iron Necklace, 430 N.W.2d 66, 75 (S.D. 1988); Lamont, at 92, ¶ 16); see also State v. Logue, 372 N.W.2d 151, 158 (S.D. 1985) ("Not every accused is guilty, but every accused, innocent or guilty, is entitled to a fair trial."). A bedrock principle of our legal system requires that all criminal investigations conducted by law enforcement, and governmental prosecutions, are to comport with prevailing notions of fundamental fairness. California v. Trombetta, 467 U.S. 479, 485, 31 104 S. Ct. 2528, 2532 (1984). These principles are exemplified and protected through

numerous governmental obligations, such as the “Brady Doctrine,” properly maintaining the chain of custody of evidence, and operating within constitutional boundaries in conducting searches, seizures, and custodial interrogations. See, e.g., U.S. Const. Amend. IV; U.S. Const. Amend. V; Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963); State v. Reay, 2009 S.D. 10, ¶ 25, 762 N.W.2d 356, 364. “Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.” Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1197 (1963).

To properly prepare a defense to a vehicular homicide charge, a defendant must have timely access to review the forensic evidence involved to properly prepare for trial due to spoliation and to properly prepare to meet the evidence being prepared by the prosecution. See generally Danielle M. Rang, The Waiting Game: How Preindictment Delay Threatens Due Process and Fair Trials, 66 S.D. L. REV. 143 (2021), see also Id. at 160, quoting State v. Duong, 2020 49CRI17-9948 at 2-3. In this case, there was an intentional and unreasonable delay prior to filing charges against Mesteth that resulted in actual and substantial prejudice to him in his ability to defend himself. This delay violated his due process rights found within the Due Process Clause of the Fifth Amendment. Consequently, this impropriety requires that Mesteth’s convictions ought to be reversed and dismissed. U.S. Const. Amend. V; United States v. Marion, 404 U.S. 307, 324 (1971) (holding that “...the Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the preindictment delay caused substantial prejudice to the appellees' rights to a fair trial and that the delay was an intentional device to gain a tactical advantage over the accused.”).

The intentional and extreme delay in investigating and charging this case put Mesteth at an unfair disadvantage, in that law enforcement had the only access to the evidence, and made several critical errors in investigating this case including not getting DNA samples from all of the individuals within the car to establish who had been the driver. JT2:274; State v. Stock, 361 N.W.2d 280, 283 (S.D. 1985). Mesteth had no proper ability to defend himself in this case. See United States v. Lovasco, 431 U.S. 783, 790 (1977).

A short recitation of the timeline of this case demonstrates the extreme delay in the investigation and prosecution of this case. The crash occurred in December of 2021, but the prosecution of this case did not begin until December of 2023. On the night of the accident, law enforcement had no forensic evidence which would indicate that Mesteth was the driver. He was not arrested, but rather was released from the hospital and sent to the Pennington County Detoxification Center. There was no information on his whereabouts provided to his family despite their numerous calls. JT3:520. Law enforcement failed to advise Mesteth's mother, Sonja of his whereabouts, provide information whether he was alive or not, or provide any information about her Lexus. JT3:520-1.

It was not until July 7, 2022, that Mesteth's blood was analyzed by the South Dakota State Laboratory despite being taken at the hospital the day of the crash. Mesteth's blood results were sent to the State's expert on the effects of methamphetamine, Dr. Greg Dooley. The doctor did not speak with detectives regarding his conclusions until December 9, 2022. An Indictment for this case was not issued until November 29, 2023. Mesteth made his initial appearance on December 7, 2023.

It was not until January 4, 2024, more than two after the accident, that law enforcement sought a search warrant for the Lexus. The black box data and DNA swabs of the vehicles were obtained thereafter. The results from the State Laboratory came back on March 23, 2024. The DNA of Mesteth was not requested for comparison until March 24, 2024. JT2:215. Law Enforcement had never sought the DNA of Jamie when it could have been collected. After Jamie was buried, no DNA comparison was possible. JT2:282-6.

The State's Drug Recognition Expert Chuck Matson completed his accident investigation and DRE Post Incident Review on April 28, 2024. Mesteth was not provided with access to the Lexus nor was he allowed additional DNA testing until April 1, 2024. However, by that time the Lexus had been sitting outside at the Rapid City Police Impound lot for twenty-eight months during which it was exposed to the weather. JT2:286. Much of the testing came back as insufficient for DNA analysis. JT2:286.

In addition to sitting outside in the elements, the condition of the Lexus was also altered prior to Mesteth being able to review it, due to a theft occurring at the Rapid City Police Impound Lot in which the catalytic converters of the vehicle had been cut off of it during a theft.

Although DNA testing had finally been done at the request of Mesteth, those tests were not able to compare the DNA swabs he requested against the DNA of Jamie which was no longer available. JT2:283-6. The conclusion of the DNA report was simply that the blood found below the driver's seat and on the door was not from Mesteth or Jade. JT2:286. But it could not determine whose DNA was present due to the lack of DNA sample for comparison to Jamie. JT2:286.

At minimum, an investigation into who the driver of the Lexus was should have included the preservation of the DNA of Jamie, who was found lying with his head resting on the drivers' side airbag in the driver's side footwell of the car. JT2:212. The failure to do this rendered it impossible for Mesteth to effectively prepare for trial. See United States v. Jackson, 446 F.3d 847 (8th Cir. 2006); United States v. Day, 697 A.2d 31 (D.C. 1997). In short, due to the law enforcement blunder, Mesteth was robbed of his best evidence for trial.

The actions in law enforcement in not preserving Jamie's DNA evidence was purposeful. Law enforcement knew, or should have known, Jamie would be considered a primary suspect of having been the driver due to his location in the driver's seat of the car following the accident.

There simply isn't any other explanation of why DNA samples would have been taken from Jade, who was found lying in the back seat of the Lexus, but not taking DNA samples from Jamie, whose blood was clearly on the airbag in the photos taken at the scene of the accident. JT1:71; 2:130-144, 270-87. At trial, there was no explanation provided by law enforcement for this incredible lapse in investigation, nor was there an explanation provided as to why the airbag only had a blood drop in the center of the airbag tested when it was clearly evident that the airbag was soaked in blood in other locations. JT2:130-144, 212-6, 282-6. Officer LeLaCheur testified that it was the longest investigation that he had ever been involved with, and yet only one blood spot was tested from the airbag and the cell phones of the occupants were never accessed or reviewed. JT2:144.

Mesteth was not able to obtain the DNA from Jaime, or from the Combined DNA Index System which is used by all law enforcement departments because Jaime had never been convicted of a felony and thus his DNA had never been entered into the system. JT2:214-5. Mesteth was required to proceed to trial with the State presenting to the jury the one drop of blood of Mesteth on the airbag as being alleged proof that he was the driver of the vehicle despite the nearly certain evidence that Jaime's blood was also all over the airbag. JT2:265, 270, 279, 280-7. This resulted in Mesteth being denied his right to submit to the jury the most important evidence in the case. This constitutes a denial of Mesteth's right to a fair trial.

CONCLUSION

For the reasons set forth above in this Brief, this Court should vacate Mesteth's convictions, order that a judgment of acquittal be entered, or the case dismissed due to Mesteth's inability to fairly and constitutionally defend himself due to excessive pre-indictment delay and deliberate efforts on the part of law enforcement to appropriately investigate this case in such a way as to allow Mesteth a fair trial.

Dated this 12 day of November, 2025.

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APPENDIX

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

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
 Plaintiff,)
vs.)
)
FARON ARLEN MESTETH,)
 DOB: 03-09-1995)
 Defendant.)

File No. CRI23-4815

AMENDED JUDGMENT

Appearance at sentencing:
Prosecutor: KELSEY BLAIR Defense attorney: JOHN RUSCH

Date of sentence: APRIL 23, 2025
Date of offense: DECEMBER 25, 2021
Charge: COUNT 1: VEHICULAR HOMICIDE
Class: 3 Felony SDCL: 22-16-41
FOUND GULTY AT TRIAL JANUARY 16, 2025

Charge: COUNT 2: VEHICULAR HOMICIDE
Class: 3 Felony SDCL 22-16-41
FOUND GUILTY AT TRIAL JANUARY 16, 2025

Habitual offender (COUNT 1 and COUNT 2) admitted on: JANUARY 29, 2025

SDCL 22-7-7 SDCL 22-7-8 SDCL 22-7-8.1

The Defendant having been found guilty and the Court having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IN COUNT 1 IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:
20 YEARS in the South Dakota State Penitentiary with 0 suspended and 406 days credit plus each day served in the Pennington County jail.

- That Defendant pay court costs of \$116.50.
- That Defendant pay prosecution costs: Blood \$380.00; Transcript \$170.00.

IN COUNT 2 IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:
20 YEARS in the South Dakota State Penitentiary with 0 suspended and credit for each day served in the Pennington County jail while awaiting transport.

- That Defendant pay court costs of \$116.50.
- The sentence in Count 2 shall run consecutive to the sentence ordered in Count 1 herein.

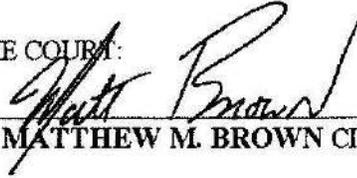
Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

Attest:
Greenamyre, Kylie
Clerk/Deputy



4/29/2025 9:11:45 AM

BY THE COURT:


HON. MATTHEW M. BROWN CIRCUIT JUDGE

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

Page 2 of 2

St V Faron Arlen Meseth; CR123-4815

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31095

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

FARON ARLEN MESTETH,

Defendant and Appellant.

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

THE HONORABLE MATTHEW M. BROWN
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

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Notice of Appeal filed May 21, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31095

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

FARON ARLEN MESTETH,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Faron Mesteth, is referred to as “Appellant” or “Mesteth.” Plaintiff and Appellee, the State of South Dakota, is referred to as “State.” All other individuals are referred to by name. References to documents are designated as follows:

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JURISDICTIONAL STATEMENT

Mesteth appeals the Amended Judgment entered by the Honorable Matthew M. Brown, Circuit Court Judge, Seventh Judicial Circuit, Pennington County. SR 823-24. The Amended Judgment was filed on April 29, 2025. SR 824. Mesteth filed a Notice of Appeal on May 21, 2025. SR 828. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I

WHETHER THE CIRCUIT COURT ERRED IN DENYING MESTETH'S MOTIONS FOR JUDGMENT OF ACQUITTAL?

The circuit court denied each of Mesteth's motions for judgment of acquittal.

State v. Morgan, 2012 S.D. 87, 824 N.W.2d 98.

State v. Uhing, 2016 S.D. 93, 888 N.W.2d 550.

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

SDCL 22-16-41

II

WHETHER MESTETH PRESERVED THE ISSUE RELATED TO DENIAL OF HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL BASED ON THE INVESTIGATION AND PRE-INDICTMENT DELAY, OR IN THE ALTERNATIVE, WHETHER MESTETH ESTABLISHED PLAIN ERROR?

This issue was raised for the first time on appeal.

State v. Fifteen Impounded Cats, 2010 S.D. 50, 785 N.W.2d 272.

State v. Jones, 2012 S.D. 7, 810 N.W.2d 202.

State v. O'Neal, 2024 S.D. 40, 9 N.W.3d 728.

United States v. Lewis, 146 F.4th 621 (8th Cir. 2025).

STATEMENT OF THE CASE AND FACTS¹

On December 25, 2021, at approximately 5:30 a.m., Officer Cody McCracken of the Rapid City Police Department was dispatched to 2017 East Highway 44 in Rapid City, South Dakota, for a welfare check on a subject walking in the roadway and waving his arms. SR 1181; JT1 24. When he arrived at that location at approximately 5:51 a.m., he discovered a vehicle crash where a Lexus SUV² had gone off the roadway, hit a pole, and landed partially on top of another vehicle, facing downward with heavy front-end damage. SR 1181-82, 1192, 1219-20, 1624; JT1 24-25, 35, 62-63; JT3 327. Other officers and medical personnel responded to the scene as well. SR 1201-02, 1219, 1235, 1372, 1394-95; JT1 44-45, 62, 78; JT2 172, 194-95.

There were two individuals located in the Lexus. One individual, later identified as Jade Fenhaus, was laying in the backseat of the vehicle, face down on the floorboard and bleeding profusely from his head. SR 1182-83, 1202-03, 1222; JT1 25-26, 45-46, 65. Jade was taken to the hospital, where he underwent surgery and was placed in the ICU, but he never regained consciousness and passed away on January 2, 2022. SR 1319, 1357; JT2 119, 157.

¹ The Statement of the Case and the Facts are combined for brevity and clarity.

² The Lexus was registered to Mesteth and his mother, Sonja Black Bear. SR 1624; JT3 327.

The other individual, later identified as Jamie Sayler, was unresponsive and laying with his head near the steering wheel, torso on the center console area, and legs and feet pinned in the front passenger area compartment. SR 1183, 1202-03, 1210, 1222; JT1 26, 45-46, 53, 65. Officer Thanasis Kouris of the Rapid City Police Department attempted to get open the front doors of the Lexus, but they were either locked or unable to be opened, so he broke both front windows to get Jamie out. SR 1203-04, 1236; JT1 46-47, 79. Paramedic Dustin Larsen attempted advanced life support procedures on Jamie, but he did not regain any pulse, breath, or consciousness. SR 1236, 1238; JT1 79, 81. Jamie was also taken to the hospital, where he was declared dead shortly after arriving. SR 1230, 1350; JT1 73; JT2 150.

Faron Mesteth was standing outside the Lexus, bleeding from a wound on his face. SR 1183, 1220; JT1 26, 63. He was hysterical, crying, and yelling at officers about a female in the vehicle; however, no female was located in the vehicle or in the area. SR 1184-85; JT1 27-28. Mesteth was unable to tell officers how many occupants were in the vehicle or who was driving. SR 1185, 1220; JT1 28, 63. He said that the last thing he remembered was waking when they hit the pole. SR 1195, 1231; JT1 38, 74. He told Officer McCracken that he climbed into the backseat to help the person behind him and got out of the vehicle through the rear driver's side door, which was open when law

enforcement arrived on scene. SR 1193, 1196, 1199, 1204, 1231; JT1 36, 39, 42, 47, 74.

Mesteth was uncooperative with medical personnel at the scene when asked about the crash and any possible injuries he had. SR 1246-47, 1251; JT1 89-90, 94. He was taken to the hospital, where he became very lethargic and sleepy. SR 1189, 1328; JT1 32; JT2 128. Blood samples were taken from Mesteth at 7:21 a.m., 7:30 a.m., and 10:29 a.m. SR 180, 181, 201, 1189-90, 1328-29; JT1 32-33; JT2 128-29; Exhibits 3, 4, 23.

The Lexus was towed to the evidence facility to be processed. SR 1373, 1396; JT2 172, 196. A search warrant was executed on the vehicle on December 27, 2021. SR 1335, 1396; JT2 135, 196. Officers took several swabs from the vehicle and cut out the steering wheel air bag and driver's side knee air bag, as both had deployed in the crash. SR 1227-28, 1336, 1396-97; JT1 70-71; JT2 136, 196-97; Exhibit 47. Some of the swabs and the steering wheel air bag were sent to the South Dakota Forensic Lab (SDFL) for DNA testing. SR 1336; JT2 136.

Amber Bell, a forensic scientist at the SDFL, conducted serology³ and DNA testing in this case. SR 1458-59; JT2 258-59. She took a swab of a stain near the center of the steering wheel air bag. SR 1463-64; JT2 263-64. From that swab, she was able to obtain a DNA profile from a single source consistent with originating from a male, which she

³ Serology is testing for the presence of bodily fluids, specifically blood in this case. SR 1459; JT2 259.

matched to Mesteth's profile from the lab's database. SR 242, 1465-66; JT2 265-66; Exhibit 75. Ms. Bell later received a buccal sample from Mesteth, which she confirmed matched the single-source profile she obtained from the steering wheel air bag. SR 245, 1470-71; JT2 270-71; Exhibit 76. She also tested a swab from the steering wheel and found DNA consistent with originating from two individuals, concluding that Mesteth could not be excluded as one of the contributors. SR 246, 1474; JT2 274; Exhibit 76.

On November 29, 2023, the Pennington County Grand Jury indicted Mesteth on two counts of Vehicular Homicide, in violation of SDCL 22-16-41, each a Class 3 felony. SR 1-2. The State filed a Part 2 Information that same day, alleging three prior felony convictions. SR 4-5. An Amended Part 2 Information was filed on December 10, 2024, also alleging three prior felony convictions.⁴ SR 162-63.

A jury trial was held from January 13 through January 16, 2025. *See, generally*, JT1, JT2, JT3, JT4. The jury found Mesteth guilty of both counts of Vehicular Homicide. SR 441, 2006; JT4 591. Mesteth admitted to the Amended Part 2 Information on January 29, 2025. SR 2043; COP 3. On April 23, 2025, the circuit court sentenced Mesteth to twenty years in the state penitentiary on each count, to run consecutive. SR 2087; SENT 38.

⁴ The only change in the Amended Part 2 Information was the correction of the case number for one of the prior convictions. SR 162.

ARGUMENTS

I

THE CIRCUIT COURT DID NOT ERR WHEN IT DENIED MESTETH'S MOTIONS FOR JUDGMENT OF ACQUITTAL.

A. *Standard of Review.*

Mesteth contends the circuit court erred by denying his motions for judgment of acquittal. AB 7. At trial, Mesteth moved for a judgment of acquittal twice, first at the end of the State's case-in chief and then at the end of Mesteth's case-in-chief. SR 1796-97, 1839; JT3 499-500, 542. The circuit court denied Mesteth's motions for judgment of acquittal each time. SR 1799-1806, 1839; JT3 502-09, 542.

"[A] motion for judgment of acquittal attacks the sufficiency of the evidence, which is a question of law whether the motion is considered before or after the jury's verdict." *State v. Wolf*, 2020 S.D. 15, ¶ 12, 941 N.W.2d 216, 220. This Court reviews the denial of a motion for judgment of acquittal de novo. *State v. Uhing*, 2016 S.D. 93, ¶ 10, 888 N.W.2d 550, 553. The question is "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.*, ¶ 10, 888 N.W.2d at 554 (citing *State v. Plenty Horse*, 2007 S.D. 114, ¶ 5, 741 N.W.2d 763, 765).

"Claims of insufficient evidence are viewed in the light most favorable to the verdict." *State v. Morgan*, 2012 S.D. 87, ¶ 10, 824

N.W.2d 98, 100 (quoting *State v. Beck*, 2010 S.D. 52, ¶ 7, 785 N.W.2d 288, 292). “If the evidence, including circumstantial evidence and reasonable inferences drawn therefrom sustains a reasonable theory of guilt, a guilty verdict will not be set aside.” *Uhing*, 2016 S.D. 93, ¶ 10, 888 N.W.2d at 554 (quoting *State v. Hauge*, 2013 S.D. 26, ¶ 12, 829 N.W.2d 145, 149). This Court “will not resolve conflicts in the evidence, assess the credibility of witnesses, or reevaluate the weight of the evidence.” *Morgan*, 2012 S.D. 87, ¶ 10, 824 N.W.2d at 101 (quoting *Beck*, 2010 S.D. 52, ¶ 7, 785 N.W.2d at 292).

B. Legal Analysis

Mesteth was charged with two counts of Vehicular Homicide under SDCL 22-16-41. To convict Mesteth of either count, the State had the burden to prove the following elements: (1) Mesteth operated or drove a motor vehicle in a negligent manner; (2) Mesteth was under the influence of an alcoholic beverage, controlled drug or substance, or combination thereof; (3) the negligent operation or driving was the proximate cause of death of Jade Fenhaus and/or Jamie Sayler; (4) Mesteth did so without a design to effect the death of Jade Fenhaus and/or Jamie Sayler; and (5) the killing was not excusable or justifiable. SDCL 22-16-41; SR 412-13. Mesteth’s argument focuses on what he claims was insufficient evidence related to the first three elements, so the State will address those elements as well.

Reviewing the evidence in the light most favorable to the State and fairly drawing all inferences therefrom to support the jury's verdict, the State met its burden of proof beyond a reasonable doubt that Mesteth operated or drove the vehicle in a negligent manner while under the influence of methamphetamine, and that such negligent operation or driving was the proximate cause of the deaths of Jade Fenhaus and Jamie Sayler.

1. There was sufficient evidence for the jury to find that Mesteth was the driver of the vehicle.

There were no direct witnesses to the crash. The only living person present during the crash was Mesteth, and he could not tell officers who was driving. SR 1185, 1220; JT1 28, 63. However, the State was able to present many pieces of evidence to the jury when, viewed collectively, were sufficient for the jury to conclude that Mesteth was the driver of the vehicle at the time of the crash.

Mesteth was the sole source of the DNA found on the steering wheel air bag. SR 245, 1470-71; JT2 270-71; Exhibit 76. Mesteth also could not be excluded as a contributor to the DNA on the steering wheel. SR 246, 1474; JT2 274; Exhibit 76. Former Detective Jacob LeLaCheur of the Rapid City Police Department testified that he requested charges against Mesteth based on the presence of Mesteth's DNA on the air bag, stating "that's how that works when an air bag impacts you." SR 1340-41; JT2 140-41. Amber Bell testified that she took the swab from the center of the air bag because "you would anticipate that may be where

somebody's head would hit when it went off" and "the central portion is generally where it might -- impact may occur." SR 1479-80; JT2 279-80.

Dr. Stephen Dick, an emergency medicine physician at Monument Health in Rapid City, treated Mesteth the day of the crash. SR 1313, 113. He testified that Mesteth's injuries were relatively minor despite the severity of the crash, and included a contusion or bruise on his arm and small laceration over the bridge of his nose. SR 1321-22; JT2 121-22. These injuries are consistent with the deployment of the steering wheel air bag. SR 1643-44; JT3 346-47.

Besides the presence of Mesteth's DNA on the steering wheel air bag and the steering wheel itself, it is also important to note that Mesteth's DNA was not found on swabs taken from the backseat of the vehicle, where he claimed to have been. Specifically, Amber Bell found that a partial DNA profile obtained from a swab of the back of the driver's seat was consistent with originating from Jade, and that Mesteth could be excluded as a source of the partial DNA profile. SR 248, 1478; JT2 278; Exhibit 77. In addition, the DNA profile obtained from a swab taken below the speaker on the driver's side rear passenger door matched the DNA profile of Jade, not Mesteth. SR 248, 1478-79; JT2 278-79; Exhibit 77.

When the Lexus was processed, the driver's seatbelt was unbuckled but locked out, meaning that someone was wearing it when the crash occurred. SR 1345, 1405, 1416; JT2 145, 205, 216. Detective

Andrew Randazzo of the Rapid City Police Department testified that when a seatbelt is worn in a crash, it will lock into place and not move again as the pretensioner system is damaged due to the force of the crash and weight pulling on it. SR 1403-04; JT2 203-04. Detective Randazzo also testified that he observed discoloration on the webbing of the driver's seatbelt, which is caused by the seatbelt stretching to restrain a body during a crash. SR 1404-05; JT2 204-05. Finally, he opined that the driver's seatbelt had been unbuckled by the driver in order to get out the vehicle. SR 1416; JT2 216. Mesteth was the only occupant of the vehicle who was able to get out.

In contrast, the front passenger seatbelt was buckled when law enforcement processed the vehicle, but it was tensioned and there was no stretching, leading law enforcement to believe the seatbelt was buckled behind the front seat passenger. SR 1406-07; JT2 206-07. None of the seatbelts in the backseat were buckled or stretched, indicating that no backseat passenger was buckled in during the crash. SR 1405-06; JT 205-06.

The fact that Mesteth did not appear to have any injuries from a seatbelt does not negate the evidence placing him in the driver's seat. EMT Daniel Anderson testified that a "seat belt burn" is not always present on individuals involved in car accidents. SR 1253; JT1 96. And Dr. Donald Habbe, the forensic pathologist who conducted the autopsies of Jade and Jamie in this case, testified that "[p]eople that are seat belted

don't end up with me." SR 1423, 1456; JT2 223, 256. Again, Mesteth was the only person to walk away from this crash alive.

The front passenger air bag did not deploy during the crash. SR 1402, 1644; JT2 202; JT3 347. Derek Mann, a former state trooper and current crash reconstructionist for the Rapid City Police Department, testified that if someone was in the passenger seat (and not buckled in as the evidence showed), that person might have come off the seat when the vehicle went airborne, leading the air bag sensor to show that there was a child in that seat and not deploy the air bag. SR 1644-45; JT3 347-48.

Mesteth argues that placing him in the driver's seat would be "physically impossible" due to Jamie's position in the vehicle. AB 13. However, Officer Kouris testified that although Jamie was laying over the center console, he was not fully blocking the ability of somebody to get into the backseat. SR 1209; JT1 52. Former Detective LeLaCheur also testified that he believed a person could get from the front seat to the backseat even with Jamie's body in the way. SR 1341; JT2 141. Again, Officer Kouris had to break the front windows of the vehicle to get Jamie out because the front doors were either locked or unable to be opened. SR 1203-04; 1236; JT1 46-47, 79. The jury could reasonably conclude that Mesteth had no choice but to climb into the backseat to get out of the vehicle if he was unable to open the front doors.

The positioning of Jade's body and Jaime's body also support the jury's finding that it was Mesteth driving, not Jade or Jamie. Jade was located facedown on the floorboard in the backseat area. SR 1182-83, 1202-03, 1222; JT1 25-26, 45-46, 65. Jamie was located in the front, but his legs and feet were pinned in the front passenger area compartment and his torso was over the center console. SR 1183, 1202-03, 1210, 1222; JT1 26, 45-46, 53, 65. If Jade was the driver, he would have had to fly backwards out of the driver's seatbelt, over the driver's seat and front passenger seat, and land face down in the backseat where Mesteth claims to have been. If Jamie was the driver, he would have had to fly sideways out of the driver's seatbelt and land with his feet down in the front passenger seat. However, as Derek Mann testified, this was a forward collision, with the majority of the force directed towards the front of the vehicle, making either scenario of Jade moving backwards or Jamie moving sideways implausible. SR 1699; JT3 402. And as both Jade and Jamie suffered significant injuries in the crash, with neither one conscious when law enforcement responded, the jury could conclude that they did not move themselves into the positions in which they were found after the crash. SR 1203; JT1 46.

The only evidence before the jury that Mesteth was not the driver of the vehicle came from Mesteth's mother, Sonja Black Bear. SR 1808;

JT3 511. She testified that at approximately 5:30 a.m.⁵ on December 25, 2021, two males came to her house and asked for Mesteth. SR 1811-13; JT3 514-16. One of the males (who she identified as Jamie) wanted Mesteth to give him a ride in her vehicle. SR 1813-14; JT3 516-17. She did not want Mesteth to go anywhere as he was tired. SR 1814; JT3 517. However, Mesteth wanted to give them a ride. SR 1814; JT3 517. As Mesteth did not have a driver's license at the time, Sonja verified that Jamie had a driver's license and gave him the keys to the Lexus. SR 1814; JT3 517. Finally, she testified that she observed Jamie get in the driver's seat of the vehicle, with "the other boy" (Jade) in the front passenger seat and Mesteth in the backseat. SR 1816; JT3 519.

It was the duty of the jury to weigh the evidence and determine the credibility of the witnesses on the issue of who was driving the vehicle at the time of the crash. Even though Sonja testified that she gave her keys to Jamie and saw him get into the driver's seat when leaving her house, the jury had to weigh that against all of the evidence placing Mesteth in the driver's seat at the time of the crash. And the jury could also find Sonja's testimony to be uncredible, especially her testimony that she didn't want Mesteth to drive because he was tired, yet gave her keys to Jamie who was found to have a blood alcohol content of .17%, twice the

⁵ Sonja's timeframe is likely incorrect as the testimony from Officer McCracken showed that he was dispatched on the welfare check at approximately 5:30 a.m. and discovered the vehicle crash when he arrived on scene a short time later. SR 1181; JT1 24.

legal limit, at the time of his death. SR 226 (confidential), 1435, 1827-28; JT2 235; JT3 530-31; Exhibit 69 (confidential).

Considering all of the above, there was sufficient evidence for the jury to find that Mesteth was the driver of the vehicle. Mesteth was the only person who walked away from this crash. The only seatbelt that was worn during the crash was the driver's seatbelt. The only air bag that deployed was the steering wheel air bag. Mesteth was the single source of DNA present in the center of the air bag, where one is most likely to hit the air bag when it deploys. Mesteth's only injuries are consistent with an air bag deployment. And the positioning of both Jade and Jamie in the vehicle show that neither one was in the driver's seat at the time of the crash.

2. There was sufficient evidence for the jury to find that Mesteth was under the influence of methamphetamine.

Blood samples were taken from Mesteth at 7:21 a.m., 7:30 a.m., and 10:29 a.m. on December 25, 2021. SR 180, 181, 201, 1189-90, 1328-29; JT1 32-33; JT2 128-29; Exhibits 3, 4, 23. Those samples were sent to the State Health Lab for alcohol and drug testing. Cody Geffre, a forensic chemist, tested one of the blood samples for alcohol. SR 1488-89, 1491-92; JT2 288-89, 291-92. The test result showed that ethyl alcohol was not detected in Mesteth's blood. SR 254-55, 1493; JT2 293; Exhibit 79.

Jeremy Kroon, also a forensic chemist, tested the 7:30 a.m. and 10:29 a.m. blood samples for drugs. SR 1495, 1498-99; 1505-06; JT2

295, 298-99, 305-06. The test result for the first sample showed the presence of 1,313 nanograms per milliliter of methamphetamine in Mesteth's blood, as well as 118 nanograms per milliliter of amphetamine. SR 259-61, 1501-02; JT2 301-02; Exhibit 81. The test result for the second sample showed the presence of 1,158 nanograms per milliliter of methamphetamine in Mesteth's blood, with 113 nanograms per milliliter of amphetamine. SR 262-64, 1503-04; JT2 303-04; Exhibit 82. Mr. Kroon testified that the amphetamine was likely present as a metabolite of the methamphetamine, rather than from a separate amphetamine drug. SR 1502-04; JT2 302-04. He testified that metabolization would start almost immediately after using methamphetamine, with the amphetamine metabolite reaching a detectable level within three to four hours after use. SR 1508; JT2 308.

Chuck Mattson is a certified drug recognition evaluator and expert on the effect of psychoactive drugs on a person's performance, including operation of a vehicle. SR 1709-11; JT3 412-14. He testified about the effects of methamphetamine, including increased heart rate, increased blood pressure, increased body temperature, hyperfocus with the inability to do multiple things at once, excitability, restlessness, increased propensity for risk-taking. SR 1726-28; JT3 429-31. He also testified about the effects when one is coming down off a methamphetamine high, which include somnolence, tiredness, fatigue, and irritability. SR 1734; JT3 437.

Mr. Mattson conducted a post-incident review of the crash to form an opinion as to whether methamphetamine was a cause of the crash. SR 1728-29; JT3 431-32. He reviewed law enforcement reports, medical reports, the crash reconstruction report, photographs, video footage from Thompson Auto, and body-worn camera footage from law enforcement. SR 1729; JT3 432. He also reviewed the drug testing reports from the State Health Lab for Mesteth. SR 1731; JT3 434; Exhibits 81, 82. His education and experience, along with his review of these items, led him to opine that Mesteth was impaired by methamphetamine at the time of the vehicle crash on December 25, 2021. SR 1739; JT3 442.

Mr. Mattson testified that the crash was consistent with the presence and use of methamphetamine, particularly the downside or “crash phase” of methamphetamine. SR 1736; JT3 439. He noted that it is common for someone coming off meth to pass out or lose consciousness while driving and run into something. SR 1736; JT3 439. He testified that Mesteth’s behavior following the crash (restless and excited with rambling inconsistent answers) was consistent with methamphetamine use. SR 1737; JT3 440. The drug test results, with the second test showing a lower amount of methamphetamine in Mesteth’s blood than the first test, indicates that Mesteth was coming down during the period of time between the blood draws, so the level of methamphetamine in his system at the time of the crash was probably even higher. SR 1738; JT3 441.

Finally, Dr. Gregory Dooley, a professor at Colorado State University, testified about his work in the area of forensic toxicology and adverse effects of drugs on humans. SR 1763, 1766-67; JT3 466, 469-70. He testified that with regard to methamphetamine, a medicinal or therapeutic range is 10 to 50 nanograms per milliliter, with abusive or nontherapeutic ranges being above 200 nanograms per milliliter. SR 1771-72; JT2 474-75.

Dr. Dooley described the “upside” effects of methamphetamine to include euphoria, excitement, talkativeness, exaggerated movements, and increase in energy, with the “downside” effects being loss of energy, fatigue, exhaustion, and extended periods of sleep. SR 1774-75; JT3 477-78. He testified that there can also be some back and forth between the upside and downside, with an individual getting tired and then waking back up before getting tired again. SR 1777; JT3 480.

In the context of driving a vehicle, Dr. Dooley testified that the cognitive processing, decision-making, and reaction of someone on methamphetamine would be affected as the nervous system is overwhelmed and the thought process is not normal. SR 1778-79; JT3 481-82. If a driver is on the downside of methamphetamine, there could be issues with delayed reactions to hazards. SR 1779; JT3 482. He opined that it is dangerous to drive a motor vehicle while under the influence of methamphetamine, during both the upside and downside phases. SR 1779-80, 1786; JT3 482-83, 489.

Dr. Dooley also reviewed the blood testing reports for Mesteth, as well as a law enforcement report and body-worn camera footage from Officer McCracken showing his interactions with Mesteth, both at the scene of the crash and at the hospital. SR 1780-81; JT3 483-84. He testified that the amount of methamphetamine in Mesteth's blood was above therapeutic use. SR 1781-82; JT3 484-85. He testified that both the crash and Mesteth's behavior on scene and at the hospital were consistent with methamphetamine use. SR 1784-85; JT3 487-88. Finally, he opined that based on his experience and the totality of the evidence he reviewed, he believed that Mesteth was unable to safely operate a motor vehicle on December 25, 2021. SR 1786; JT3 489.

In considering the amount of methamphetamine in Mesteth's blood as shown by the drug testing results by Mr. Kroon, as well as the professional opinions of Mr. Mattson and Dr. Dooley, there was sufficient evidence for the jury to conclude that Mesteth was under the influence of methamphetamine at the time of the crash on December 25, 2021.

3. *There was sufficient evidence for the jury to find that Mesteth drove the vehicle in a negligent manner, which was the proximate cause of the deaths of Jade Fenhaus and Jamie Saylor.*

Derek Mann, the crash reconstructionist, responded to the scene at approximately 6:30 a.m. on December 25, 2021. SR 1622; JT3 325. He walked through the scene and could see where the Lexus drifted off the roadway into a ditch, traveled approximately 214 feet and hit a Jeep Cherokee, traveled another 49 feet and vaulted off a driveway approach,

went airborne for approximately 72 feet, and struck a sign pole, coming to a rest with its back end on a Ford Expedition. SR 267, 1623-24, 1628-29; JT3 326-27, 331-32; Exhibit 84. Law enforcement also obtained videos from Western Dakota Tech (located across the highway from the crash scene) and Thompson Auto (scene of the crash), both of which showed the vehicle leave the roadway, hit a driveway approach, go airborne, and hit the sign post. Exhibits 89, 90. The video from Thompson Auto also showed that the brake lights did not come on until the vehicle was airborne. SR 1660, 1672; JT3 363, 375; Exhibit 90.

Mr. Mann was able to pull data from the air bag control module that was removed from the Lexus. SR 270-89, 1400; JT2 200; Exhibit 87. He calculated the vehicle's speed at 54 miles per hour. SR 1666-68, 1671; JT3 369-71, 374. The vehicle actually sped up to that speed after entering the ditch, which Mr. Mann testified could happen even if the driver was falling asleep and his foot pushed the accelerator pedal all the way to the floor. SR 1672-73, 1681, 1685; JT3 375-76, 384, 388. There was no reaction (braking) when the vehicle hit the Jeep Cherokee. SR 1674; JT3 377. There was no attempted steering correction or attempt to get the vehicle back on the road. SR 1697-98; JT3 400-01. Again, no corrective action or braking was attempted until the vehicle was already airborne. SR 1660, 1672; JT3 363, 375; Exhibit 90.

Mr. Mann testified that in his opinion, inattentiveness by the driver was the likely cause of the crash, such as the driver falling asleep behind

the wheel. SR 1636, 1673-74; JT3 339, 376-77. The jury could reasonably conclude from all of the evidence presented on the crash reconstruction that the driver (Mesteth) operated the vehicle in a negligent manner, especially when coupled with the evidence of his impairment from methamphetamine.

There was also sufficient evidence presented for the jury to determine that Mesteth's negligent operation of the Lexus was the proximate cause of death for Jade and Jamie. Proximate cause "means that cause which is an immediate cause and which, in natural or probable sequence, produced the injury complained of. It is a cause without which the injury would not have been sustained." *Driscoll v. Great Plains Marketing Co.*, 322 N.W.2d 478, 479 (S.D. 1982) (citing *Leslie v. City of Bonesteel*, 303 N.W.2d 117, 120 (S.D. 1981)).

Dr. Dick treated Jade on December 25, 2021, upon his initial admittance to the hospital. SR 1315; JT2 115. He testified that Jade was unresponsive with a traumatic brain injury and a large laceration on his neck that was bubbling blood, indicating a serious deep injury with some interruption to the airways or lungs. SR 1316-17, 1323, 1325; JT2 116-17, 123, 125.

Former Deputy Samuel Funk of the Pennington County Sheriff's Office, who acted as the coroner in this case, testified about the injuries he observed on both Jamie and Jade. SR 1350, 1357; JT2 150, 157.

Jamie had a significant number of lacerations all over his body and an

abrasion or burn down his torso from his neck. SR 1351-53; JT2 151-53. Jade also had multiple laceration covering his body, although former Deputy Funk was able to see that he had received medical treatment. SR 1357-60; JT2 157-60. Former Deputy Funk also testified that Jade's and Jamie's injuries were consistent with a vehicle accident. SR 1363; JT2 163.

Finally, Dr. Habbe testified about the autopsies he conducted on Jade and Jamie. Jamie's autopsy took place on December 27, 2021. SR 1428; JT2 228. Dr. Habbe noted that Jamie's injuries included significant internal blunt force trauma, a laceration to one chamber of his heart, head trauma and bleeding on the brain, lacerations on his liver, and rib fractures. SR 1433-34; JT2 233-34. Dr. Habbe testified that the cause of Jamie's death was blunt force injury, consistent with being in a car accident. SR 226-31 (confidential), 1436; JT2 236; Exhibit 69 (confidential).

Jade's autopsy occurred on January 5, 2022. SR 1436; JT2 236. Dr. Habbe noted that Jade's injuries included blunt force injury, significant neck and tracheal injury to include neck/spine fractures, blunt force trauma to the head, and blood on the surface of the brain. SR 1438-39, 1440-41; JT2 238-39, 240-41. Although Dr. Habbe did state that he observed evidence of medical treatment performed on Jade, no evidence was presented to the jury that such medical treatment led to Jade's death. SR 1438-39; JT2 238-39. Rather, as with Jamie,

Dr. Habbe testified that the cause of Jade's death was blunt force trauma consistent with a car accident. SR 232-36 (confidential), 1442; JT2 242; Exhibit 70 (confidential).

In summary, “[i]t is the jury’s role to decide whether the elements of an offense have been met.” *State v. Lybarger*, 497 N.W.2d 102, 105 (S.D. 1993). In reaching a verdict of guilty on each count of Vehicular Homicide, the jury determined that the elements of each offense were met based on the evidence presented. The evidence presented at trial was more than sufficient for the jury to find that the State had met its burden and proved the elements of each count of Vehicular Homicide beyond a reasonable doubt, and this Court should not reassess the witnesses’ credibility or reevaluate the weight of the evidence. Rather, this Court should affirm the denial of Mesteth’s motions for judgment of acquittal.

II

MESTETH FAILED TO PRESERVE THE ISSUE RELATED TO DENIAL OF CONSTITUTIONAL RIGHT TO A FAIR TRIAL BASED ON THE INVESTIGATION AND PRE-INDICTMENT DELAY, OR IN THE ALTERNATIVE, FAILED TO SHOW SUCH INVESTIGATION AND PRE-INDICTMENT DELAY CONSTITUTED PLAIN ERROR.

A. *Standard of Review.*

Mesteth claims that he was denied his constitutional right to a fair trial due to “excessive pre-indictment delay” and law enforcement’s investigation “in such a way to deliberately deny Mesteth the ability to defend himself at trial.” AB 18. This Court reviews “[a]n alleged

violation of a defendant's constitutional right to due process' under a de novo standard." *State v. O'Neal*, 2024 S.D. 40, ¶ 35, 9 N.W.3d 728, 744 (quoting *State v. Krouse*, 2022 S.D. 54, ¶ 47, 980 N.W.2d 237, 251). However, Mesteth has waived this issue on appeal because he did not raise it at the trial level.

"To preserve issues for appellate review litigants must make known to trial courts the actions they seek to achieve or object to the actions of the court, giving their reasons." *State v. Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439, 443 (citing SDCL 23A-44-13). "Issues not advanced at trial cannot ordinarily be raised for the first time on appeal." *Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d at 443 (citing *State v. Henjum*, 1996 S.D. 7, ¶ 13, 542 N.W.2d 760, 763). "Even issues over the denial of constitutional rights may be deemed waived by failure to take action to preserve the issues for appeal." *State v. Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 10, 785 N.W.2d 272, 277 (citing *Schlenker v. South Dakota Dept. of Public Safety*, 318 N.W.2d 351, 353 (S.D. 1982)).

When an issue has not been preserved at the circuit court level, this Court's review is limited to plain error. *Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 11, 785 N.W.2d at 277. To establish plain error, Mesteth must show that there was "(1) error, (2) that is plain, (3) affecting substantial rights; and only then may [this Court] exercise [its] discretion to notice the error if (4) it seriously affect[s] the fairness, integrity, or public reputation of the judicial proceedings." *State v.*

Jones, 2012 S.D. 7, ¶ 14, 810 N.W.2d 202, 206 (citing *Beck*, 2010 S.D. 52, ¶ 11, 785 N.W.2d 288, 293). In addition, Mesteth must show prejudice under the third prong. “Without prejudice, the error does not ‘affect substantial rights’ under the third prong of plain error review and ‘[an appellate court] ha[s] no authority to correct it.’” *Jones*, 2012 S.D. 7, ¶ 17, 810 N.W.2d at 206 (citing *United States v. Olano*, 507 U.S. 725, 741, 113 S.Ct. 1770, 1781 (1993)). Finally, this Court invokes its discretion under the plain error rule “cautiously and only in ‘exceptional circumstances.’” *Jones*, 2012 S.D. 7, ¶ 14, 810 N.W.2d at 205 (quoting *State v. Bowker*, 2008 S.D. 61, ¶ 46, 754 N.W.2d 56, 70).

B. Legal Analysis

Mesteth has failed to show plain error related to the investigation and pre-indictment delay. And his blanket assertion that his constitutional right to a fair trial was violated is not sufficient. “[A] constitutional violation alone is not enough to warrant reversal under the plain error rule—the alleged violation must prejudice the appellant.” *State v. Fischer*, 2016 S.D. 1, ¶ 15, 873 N.W.2d 681, 688. “To show such prejudicial error an appellant must establish affirmatively *from the record* that under the evidence the jury might and *probably would have returned a different verdict* if the alleged error had not occurred.” *Id.* ¶ 15, 873 N.W.2d at 687-88 (quoting *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 58, 764 N.W.2d 474, 491) (emphasis in original).

“The Due Process Clause of the Fifth Amendment protects a criminal defendant against unreasonable pre-indictment delay.” *United States v. Lewis*, 146 F.4th 621, 629 (8th Cir. 2025) (citing *United States v. Sturdy*, 2007 F.3d 448, 451-52 (8th Cir. 2000)). However, in order to prove a violation of due process, Mesteth “must establish that: (1) the delay resulted in actual and substantial prejudice to the presentation of the defense; and (2) the government intentionally delayed his indictment either to gain a tactical advantage or to harass him.” *Lewis*, 146 F.4th at 629 (quoting *Sturdy*, 2007 F.3d at 452).⁶

“Actual prejudice requires that ‘a defendant must specifically identify witnesses or documents lost during delay properly attributable to the government.’” *Lewis*, 146 F.4th at 629 (quoting *Sturdy*, 2007 F.3d at 452). “It is not sufficient for a defendant to make speculative or conclusory claims of possible prejudice as a result of the passage of time.” *Lewis*, 146 F.4th at 629 (quoting *Sturdy*, 2007 F.3d at 452).

Without any living witnesses to the crash other than Mesteth, who said he did not know what happened, law enforcement had to essentially start from scratch and gather many pieces of evidence to put together to determine who was driving and if charges should be requested. Former Detective LeLaCheur testified that he likes to get all evidence returned before making charging decisions or “decisions that impact people’s lives” and that it took some time to get testing results back from the SDFL.

⁶ This Court follows the same standard for alleged due process violations in state cases. See *O’Neal*, 2024 S.D. 40, ¶ 37, 9 N.W.3d at 745.

SR 1337; JT2 137. Detective Randazzo testified similarly, stating that DNA testing takes a significant amount of time and that testing of blood and urine at the State Health Lab takes even longer. SR 1415; JT2 215. He testified that it took a long time to charge Mesteth in this case because law enforcement needed to do its due diligence. SR 1415; JT2 215.

Law enforcement did not delay in beginning its investigation. The Lexus was processed pursuant to a search warrant within a couple days of the crash, with swabs taken from various locations in the vehicle and the steering wheel air bag removed and preserved for testing. SR 1335-36, 1396; JT2 135-36, 196. Derek Mann also received the air bag control module at that time so he could download the information for his crash reconstruction work. SR 1400, JT2 200.

The first set of DNA test results, showing that Mesteth's DNA was the single source of DNA on the steering wheel airbag, were not completed until May 4, 2022. SR 242-43; Exhibit 75. Although law enforcement was not able to obtain and send in a buccal sample from Mesteth to confirm the DNA testing until after the indictment was issued, those first results provided them with enough information to continue their investigation against Mesteth. SR 244-46; Exhibit 76.

Jeremy Kroon did not complete his testing on Mesteth's blood samples until July 6, 2022, and July 10, 2022. SR 259, 262; Exhibits 81, 82. Law enforcement and the State also sought professional opinions

from Chuck Mattson and Dr. Dooley on whether Mesteth was under the influence at the time of the crash. Although there is no written report from Chuck Mattson contained in the record, Dr. Dooley did not issue a written report with his opinion until June 26, 2023. SR 490-92 (sealed document).

Mesteth focuses on the fact that law enforcement did not obtain a DNA sample from Jamie, and that failure to do so “rendered it impossible for Mesteth to effectively prepare for trial” and he was “robbed of his best evidence for trial.” AB 22. However, any claim that Jamie’s DNA would have provided evidentiary value to Mesteth’s defense or changed the jury’s verdict are purely speculative.

The presence of Mesteth’s DNA on the air bag was not conclusive on the issue of who was driving the vehicle. Likewise, the presence of Jamie’s DNA on the air bag, if at all, would not have been conclusive either. Rather, it would have just been one piece of evidence for the jury to consider with all other pieces of evidence that do place Mesteth in the driver’s seat.

Mesteth has not shown actual and substantial prejudice resulting from the investigation and pre-indictment delay. “[T]he possibility that exculpatory evidence might have been lost is not sufficient to establish actual and substantial prejudice.” *O’Neal*, 2024 S.D. 40, ¶ 39, 9 N.W.3d at 745. In addition, “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does

not constitute a denial of due process of law.” *Arizona v. Youngblood*, 488 U.S. 51, 58, 109 S.Ct. 333, 337 (1988). Other than his assertion that law enforcement’s actions in not preserving Jamie’s DNA was “purposeful,” Mesteth has not shown how law enforcement acted in bad faith. AB 22. All of the evidence gathered by law enforcement during its investigation put Mesteth in the driver’s seat, not Jamie. And “the police do not have a constitutional duty to perform any particular tests.” *Id.* at 59, 109 S.Ct. at 338.

Mesteth has also failed to show that law enforcement intentionally delayed its investigation in order to gain a tactical advantage or harass him. Any delay occurred so that law enforcement could conduct a thorough investigation, complete DNA and drug testing, and consult experts to ensure that appropriate charges were requested against the right person.

Finally, Mesteth had the opportunity at the trial to present evidence in support of his defense that he was not the driver. He fully cross-examined the State’s witnesses. The testimony of his witness, Sonja Black Bear, placed Jamie in the driver’s seat of the Lexus, at least when it left Mesteth’s house. And during closing arguments, his attorney argued about the alleged deficiencies in the investigation and evidence presented to the jury. In fact, he called the investigation and evidence a “gigantic steaming pile of crap.” SR 1988; JT4 573. While that characterization may not have been appropriate, Mesteth was still able to

make the argument to the jury that the evidence was not sufficient for it to find that the State proved the elements of the offenses beyond a reasonable doubt.

Mesteth has failed to show actual and substantial prejudice to the presentation of his defense, intentional delay by law enforcement and the State to gain a tactical advantage or harass him, or bad faith by law enforcement in its investigation. Therefore, he has failed to show a violation of his due process rights or prejudice affecting substantial rights to establish plain error in the investigation and pre-indictment delay.

CONCLUSION

For the reasons stated above, the State respectfully requests that the convictions and Amended Judgment 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 7,109 words.

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

Dated this 22nd day of December, 2025.

/s/ Angela R. Shute
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22 day of December, 2025, a true and correct copy of Appellee’s Brief in the matter of *State of South Dakota v. Faron Arlen Mesteth* was served via electronic mail upon John S. Rusch at john.rusch@renschlaw.com.

/s/ Angela R. Shute
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 31095

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

FARON MESTETH,

Defendant and Appellant.

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed May 21, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 31095

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

FARON MESTETH,

Defendant and Appellant.

Appellant reasserts the statement of facts, as well as all legal points, case law, and argument and authorities contained in Appellant's Brief as previously served and tendered.

STATEMENT OF THE LEGAL ISSUES AND AUTHORITIES

- I. Whether the Circuit Court erred when it denied Mesteth's Motion for Judgment of Acquittal on the charges of vehicular homicide.

Authority: SDCL § 22-16-41
State v. Lamont, 2001 S.D. 92, 631 N.W.2d 603 (S.D. 2001)
State v. Halverson, 394 N.W.2d 886 (S.D. 1986)
State v. LaCroix, 423 N.W.2d 169 (S.D. 1988)

- II. Whether Mesteth was denied his constitutional right to a fair trial due to excessive pre-indictment delay and law enforcement investigating this matter in such a way so as to deliberately deny Mesteth the ability to defend himself at trial

Authority: United States v. Marion, 404 U.S. 307 (1971)
State v. Packed, 2007 S.D. 75, 736 N.W.2d 851 (S.D. 2007)
State v. Huber, 2010 S.D. 63, 789 N.W.2d 283 (S.D. 2010)
United States v. Jackson, 446 F.3d 847 (8th Cir. 2006)

ARGUMENT

I. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN DENYING MESTETH'S MOTION FOR JUDGMENT OF ACQUITTAL

In the Appellee's brief, the State argues that the State's testimony regarding a drop of blood containing Mesteth's DNA located on the steering wheel airbag provides sufficient evidence to support the jury's determination that Mesteth was guilty of vehicular homicide. See Appellee's Brief at 9. In their brief, the State inaccurately states, "Mesteth was the sole source of the DNA found on the steering wheel airbag," implying that other spots were tested, which was not the case. Appellee's Brief at 9. Only one pencil tip-sized drop of blood on the center of the airbag was tested by law enforcement despite the airbag being covered in the blood of Jamie Saylor. Law enforcement readily admitted in their testimony that there were at least two person's blood on the airbag as Jamie was found lying with his head in the driver's well of the Lexus and his blood from his head left large amounts of blood on the airbag. JT2:208-9, 212; State's Exhibit 5, 6, and 41.

Law enforcement didn't take a DNA sample from Jamie, which means that DNA testing of the largest area of blood on the airbag was not done. JT2:284. At trial, the State's DNA expert Amber Bell testified:

Q: Okay. So, it's that one drop right there; correct?

A: Correct.

Q: Okay. And explain to me again why you wouldn't check multiple spots.

A: Generally, we just start with one area and we follow up, and then we ask if additional testing is requested. And if not, then we stop at that point.

Q: Okay. And why do we not choose the biggest spot?

A: Because we choose the area that law enforcement think is the most probative, which means the most relevant or the area that may show that's where impact occurred. I mean, that's -- it's kind of up to them in all reality.

(JT2:280-1, 212)

The State argues that the jury's verdict was also supported by their hypothesis that the only reason that Mesteth was the only surviving party from the vehicle accident, was due to the fact that he was wearing a seatbelt at the time of the accident. Appellee's Brief at 9. The State's theory is unsupported by any expert testimony, and no doctor or other witness testified that Mesteth had seatbelt marks on him which would have been consistent with this hypothesis. JT2:135. The only testimony regarding seatbelt injuries was from Detective Sayler, who testified that Jamie had injuries consistent with seat belt injuries and those would have been as the driver:

Q: On Mr. Sayler you noted a burn across his left neck; is that correct?

A: Yes, I did.

Q: Wouldn't that be consistent with a seat belt?

A: That would be consistent. I couldn't make that determination myself, but it would be consistent.

Q: Okay. And if the -- if it was on the left neck, it would be consistent with the seat belt being on the left of his neck?

A: That's correct

JT1:163

Additionally, Mesteth was observed on video exiting out of the rear driver's side door of the Lexus, whereas Jamie was found lying in the footwell of the driver's side of the car, with his body blocking the center-counsel which was the only path to the back of the Lexus. See Exhibits 5 and 6; JT 1:25, 40-2, 47, 68, 140. A review of the exhibits admitted in the trial showed that Mesteth would not have been able to crawl from the driver's seat of the Lexus to the rear, and if he had somehow been able to accomplish this, he would have had blood all over his clothing that was not evident on him following the accident. JT1:26, 51. It also logically would not have made sense for Mesteth to climb to the back door of the Lexus as it was higher up off the ground than the front seat making it more difficult to get out of the vehicle which had its rear tires on top of another vehicle. JT1:25, 59, 65, 68. Lastly, law enforcement testified that there was nothing wrong with the front doors of the Lexus and that Mesteth was disorientated which would make the State's theory that he made a calculated decision to someone crawl to the back over Jamie to make it look like he wasn't the driver simply implausible. JT1:25, 51, 59

There was also two large impacts on the front windshield of the Lexus in front of the drivers' seat and the passenger seat consistent with both the driver and the passenger having impacted the windshield. JT1:139.

Detective Blair testified:

Q: So you suspect that the people had buckled the seat belts to get it to quit beeping and put it behind them?

A: That was my understanding, yeah.

Q: And that would be consistent because of the two impacts to the windows?

A: Yeah. It could be.

JT1:143

There was no testimony presented to the jury regarding Mesteth's negligence to support their verdict as no witnesses was able to articulate what negligence Mesteth had allegedly been guilty of that had caused the accident. Both the State's Drug Recognition Evaluator, Craig Mattson, and the State's Forensic Toxicologist, Dr. Greg Dooley, merely speculated on several possible causes of the crash, i.e. falling asleep, texting while driving, delayed reaction to hazards or emergency situations, etc., but neither of them articulated to the jury what the cause of the accident was to any degree of certainty. JT3:345; 486-90. Derek Mann, the State's Accident Crash Reconstruction expert, additionally was not able to tell the jury why the Lexus drove off the side of the road that morning. JT3:391-405. Officers had testified that the road was snow covered from fresh snow that had fallen the night before. JT1:69. While all of these theories were possible explanations, there simply wasn't any evidence presented to the jury to prove beyond a reasonable doubt as to what the cause of the accident was and that it was the result of Mesteth's negligence. Thus, the jury had no basis upon which to conclude that there was a "direct link between the defendant's negligence and the death." State v. Two Bulls, 1996 SD 53, 547 N.W.2d 764 (S.D. 1996); JT3:384-387. It was reversible error for the

Circuit Court to have denied Mesteth's Motion for Judgment of Acquittal due to the lack of evidence supporting the elements noted-above.

II. MESTETH WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL DUE TO EXCESSIVE PRE-INDICTMENT DELAY AND LAW ENFORCEMENT'S INVESTIGATION IN SUCH A WAY TO DELIBERATELY DENY MESTETH THE ABILITY TO DEFEND HIMSELF AT TRIAL

The State argues that Mesteth failed to preserve his right to appeal the issue of preindictment delay due to his alleged failure to file a Motion to Dismiss prior to trial. Appellee's Brief at 25. The clear language of SDCL § 23A-8-2 provides only the following grounds upon which a Motion to Dismiss may be filed:

SDCL § 23A-8-2. Upon motion of a defendant made pursuant to subdivision SDCL § 23A-8-3 (1), (2), or (3), the court must dismiss an indictment or information in any of the following cases:

- (1) When it is not found, endorsed, and presented or filed as prescribed by this title;
- (2) When the names of the witnesses are not inserted at the foot of the indictment or information or endorsed thereon;
- (3) When it does not substantially conform to the requirements of this title;
- (4) When more than one offense is charged in a single count;
- (5) When it does not describe a public offense;
- (6) When it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to the prosecution;

Preindictment delay is not a listed basis for filing a Motion to Dismiss under the statute. Thus, there was not a mechanism under which Mesteth could have filed a Motion to Dismiss at the trial court level.

The information needed for making a valid claim of preindictment delay prejudicing Mesteth's right to a fair trial was not available until after law enforcement officials testified at Mesteth's jury trial. None of the required information was provided in discovery and Mesteth was without an avenue to show that law enforcement purposely delayed indicting his case until after trial. Mesteth knew that law enforcement had not taken Jamie's DNA and knew that there was considerable delay before his charges were filed, but Mesteth had no access to determine why this had happened until each of the officers and experts involved in the case disclosed their individual role in the delay. Only after cross examining the State's law enforcement witnesses, was Mesteth able to make a determination that there was purposefully or grossly negligent conduct in the investigation of this case which severely impacted his right to a fair trial. JT1:55, 74; 2:137. At trial, Mesteth was able to illicit testimony for each of the people involved in this case that there wasn't a case agent handling overseeing the case and that the law enforcement policies and procedures that were being utilized by the State did not ensure that cases were properly investigated in a timely manner. JT1:55, 74; 2:137-9.

The current South Dakota statutory framework simply doesn't provide for an avenue to address preindictment delay prior to trial. State v. Huber, 2010 S.D. 63, ¶ 37, 789 N.W.2d 283, 295l. Additionally, there are no safeguards in place to make sure that cases are brought to trial before evidence disappears through time as the right to a speedy trial doesn't provide any protection for a defendant until a case is charged under the Sixth

Amendment to the Constitution. JT2:137-9. What has been repeatedly stated by this Court is that “An accused must be ‘afforded a meaningful opportunity to present a complete defense.’ Those denied the ability to respond to the prosecution’s case against them are effectively deprived of a ‘fundamental constitutional right to a fair opportunity to present a defense.’ ” State v. Packed, 2007 S.D. 75, ¶ 27, 736 N.W.2d 851, 860 (quoting State v. Iron Necklace, 430 N.W.2d 66, 75 (S.D. 1988); Lamont, at 92, ¶ 16; see also State v. Logue, 372 N.W.2d 151, 158 (S.D. 1985)).

South Dakota is one of the few states in which it is unclear of how the issue of preindictment delay is to be addressed. Danielle M. Rang, The Waiting Game: How Preindictment Delay Threatens Due Process and Fair Trials, 66 S.D. L. REV. 143 (2021) Appendix A. The closest this Court has come to addressing the issue is found in South Dakota v. Stock, in which the Court discussed which test it would apply but ruled otherwise since the Court was found that the preindictment delay in that case was related to a valid, ongoing investigation. 361 N.W.2d 280, 282-83 (S.D. 1985). While not directly addressing the issue, the Stock case appears to require Mesteth to show prejudice at a pretrial stage, placing upon him at an unfair burden upon him to prove the subjective intention of the prosecutor and law enforcement at a stage in the case where discovery would simply not cover any of those issues. Id. Requiring Mesteth to show intentional conduct on the part of law enforcement in a claim of preindictment delay fails to recognize that, whether the conduct of law enforcement was intentional or negligent, the lack of DNA of all occupants of the vehicle is equally damaging to Mesteth’s rights.

JT2:215.

The compartmentalized and division centered structure of law enforcement hierarchy and police operations today precludes a determination of intentional conduct as there simply isn't one person in charge of an investigation. JT2:137-141. Each of the divisions and departments involved in this case simply claimed they were not in charge of the investigation and attributed the delay to other departments or divisions. JT2:215, 217. Each of the witnesses from the responding officers, the accident scene experts, the DNA and evidence department, the State Health Lab, the case agent, the retained experts on intoxication and causation and ultimately the State's Attorney's Office blamed the other for the delay in this case being charged. JT2:137-141, 217-8. Each of them offered testimony about their own individual involvement but none of them could articulate why the other departments had so much delay, thus, making Mesteth prove intentional conduct is nearly impossible. JT2:174, 190, 217-8. Additionally, Officer Jacob LeLaCheur who was the primary officer on the case, was transferred back to patrol and a new case officer was not assigned to the case. Ultimately, the case was finally reviewed by his supervisor, Sergeant Young at some unspecified time. JT2:137-141, 144.

A two-prong preindictment analysis places a daunting, nearly insurmountable, burden on the accused by requiring a demonstration not only that the delay caused prejudice but also that the State orchestrated the delay in order to obtain a tactical advantage. Tennessee v. Gray, 917 S.W.2d 668, 673 (Tenn. 1996). Mesteth respectfully urges that the Court to adopt instead a balancing test of the following issues: (1) the prejudice suffered by the defendant; (2) the prosecution's justification for the delay; and (3) the absolute length and necessity of the delay, and balance them to determine if due process was denied. See Montana v. Krinitt, 823 P.2d 848 (Mont. 1991)

A review under such a balancing test would clearly indicate that the extreme delay in investigating and charging this case put Mesteth at an unfair disadvantage and deprived him of a right to a fair trial. JT2:274; Stock, at 283. The Court should further find that due to these delays, Mesteth was denied his ability to properly defend himself, and that the case should now be reversed, and should have been dismissed.

Lastly, the State argues unpersuasively that having DNA evidence from Jamie would not have provided evidentiary value to Mesteth in his defense. See Appellee's Brief at 28. The absence of Jamie's DNA allowed the State to argue that only Mesteth's DNA was found on the airbag, and thus he had been the driver -- despite Jamie being found lying in the driver's footwell of the Lexus with his head bleeding on the airbag. JT2:212. The evidence presented at trial showed that the entire vehicle was covered with blood splatters, due to the force of the impact. Officer Mathies testified:

Q: Okay. And in the photographs that we look at, there isn't a spot in that car that doesn't have blood splatter; isn't that correct?

A: There was blood splattered throughout the various spots of the vehicle, yes.

JT1:72.

This error prevented Mesteth to counter the State's primary argument, that only his DNA was found on the airbag. Testing the multiple blood splatter of Jamie throughout the entire Lexus was simply unavailable to assist in determining the location of each of these people prior to the crash. JT1:71; 2:130-144, 270-87. As Dr. Habbe noted, in this type of accident, the occupants of the vehicle would tumble about the interior of the vehicle like socks in a dryer or missiles which makes determining who the

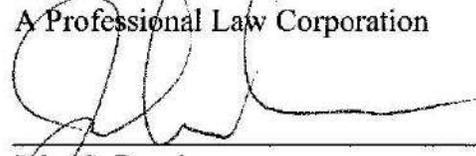
drivers was based on the injuries noted almost impossible. JT2:253. Dr. Habbe was not able to conclude based on the injuries of the occupants where any of them had been originally seated. JT2:254. With no video, no eye witnesses and injuries which didn't provide any help as to who the driver was, the DNA evidence became the primary evidence in the case. JT2:253. Being able to show to the jury that both Jamie's blood and Mesteth's were on the airbag was of utmost importance to his defense. JT2:130-144, 212-6, 282-6. This was not speculative evidence, as the State primarily relied on the DNA evidence through the entire trial. JT2:208-9, 212; State's Exhibit 5, 6, and 41. The State should not have been allowed to present evidence to the jury of DNA evidence positive to their case, while at the same time preclude Mesteth from presenting a defense based on DNA evidence the State failed to preserve through its own negligence and preindictment delay. It is patently unfair to allow the State to present their DNA evidence that favors their theory in the case and deny Mesteth the ability to defend himself based upon the gross negligence or intentional conduct of law enforcement in investigation of this case.

CONCLUSION

For the reasons set forth above in this Brief, Mesteth urges this Court to vacate his convictions, enter an order that a judgment of acquittal be entered, or that the case be dismissed due to Mesteth being denied his right to fairly and constitutionally defend himself in this case.

Dated this 14 day of January, 2026.

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