

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Plaintiff, vs LANCE LONG, Defendant.	NO. 30811 / 30812 Appellant's Brief
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Appeal from the Circuit Court of Corson County

Honorable John Fitzgerald, Judge

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Notice of Appeal filed August 17, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 30811 / 30812

State of South Dakota,

Plaintiff/Appellee,

v.

Lance Long,

Defendant/Appellant.

PRELIMINARY AND JURISDICTIONAL STATEMENT

Throughout this brief, Defendant and Appellant Lance Long will be referred to as “Long” or “Defendant.” Plaintiff and Appellee, State of South Dakota will be referred to “State.” References to other participants will be by name, except for any children involved who will be referenced by initials.¹

This appeal involves two cases joined for trial, 15CRI22-000007 and 15CRI22-000027. The appeal of the joint trial was consolidated in this court for briefing in files 30811 and 30812 respectively. File 15CRI22-000007 (Appeal file 30811) was designated the primary file in the trial court. As the records are similar, any citations to the settled record will be to the settled record in file 30811, denominated SR followed by the appropriate page number(s), unless specified otherwise.

By Indictment dated February 7, 2022, Long was charged with multiple offenses allegedly committed against child Abigail Alfrey. *SRI-4*. On September 12, 2022, Long was indicted in file 15CRI22-000027 for alleged

¹ The child identified as AA in the Indictment in appeal file 30811 has, between the time of the Indictment and trial changed her last name and is identified as AD in the trial transcripts. This child will be referred to as AD throughout.

offense committed against children ED, AD, IA, JA. *SR1-4 (Record 30812)*.²

On November 21, 2023, the trial court signed an order joining the indictments for trial and consolidating cases. *SR61*.

Jury trial commenced May 28, 2024. The jury returned a verdict of guilty as to all counts. *SR659-60*. Long admitted to the habitual offender information. *SR1031*. Long was sentenced on July 29, 2024. Separate judgments were filed in each of the underlying files. *SR934-940; SR813-818 (Appeal 30812)*. Judgments were filed in the trial court July 29, 2024. Notice of appeal was filed. August 17, 2024. *SR1009-1010; SR823-24 (Appeal 30812)*.

² Count five of file Appeal file 30812 (trial court file 15CRI22-000027 was dismissed prior to submission to the jury.

STATEMENT OF ISSUES

ISSUE 1

Whether the trial court abused its discretion when admitting to evidence multiple instances of other acts evidence spanning several years, counties, and states.

The trial allowed all requested other acts evidence to be introduced.

State v. Lassiter, 2005 S.D. 8, 692 N.W.2d 171

State v. Chamley, 1997 S.D. 119, 568 N.W.2d 607

ISSUE 2

Whether the trial court by failing to grant a judgment of acquittal in light of the lack of evidence presented on an element of the offense.

The trial denied Defendant's request for a judgment of acquittal.

State v. Haruff, 2020 S.D. 4, 939 N.W.2d 20

Ibrahim v. Dep't of Pub. Safety, 2021 S.D. 17, 956 N.W.2d 799

STATEMENT OF CASE AND FACTS

Long was initially charged in appeal file 30811 with multiple crimes committed against victim AD which were alleged to have occurred between approximately March 17, 2015, and July 2017. *SR1-3*. Count 1 was alleged to have occurred on the specific date March 17, 2015. The charges were expanded by the September 12, 2022, Indictment in appeal 30812 to include charges alleged against 4 other children during that same time period. *SR1-3 (Record 30812)*.

In 2015, AD made a report to the South Dakota Department of Social Services. *SR2065*. The only testimony regarding this report is that DSS checked on the children and the case was closed. *SR206*. Although the allegations in this case dated from 2015-2017, the Division of Criminal Investigation was contact regarding the allegations in 2020. *SR2029*. DCI agent Eggers testified that he was contacted by law enforcement in Minnehaha County after AD disclosed that she was abused by her father Long in Corson County. *SR2030*. Eggers testified that there was a pause in the investigation as an active investigation was ongoing in Minnehaha County regarding other charges alleged in that county. *SR2031*.

Long was convicted of four counts in Minnehaha County because of the investigation referenced by Eggers. *SR96-98*. The State provided notice of

intent to use this conviction, as well as several others, as impeachment should Long testify at trial under SDCL 19-19-609. *SR91-92*. The State also provided notice of intent to use the acts referenced in the Minnehaha County case, as well as numerous other alleged acts of abuse and drug use occurring in other counties and other states, as other acts evidence under SDCL 19-19-404(b). *SR93-95*. After hearing, the trial court filed an opinion allowing use of all other acts requested by the State. *SR191-96*.

All five children alleged to have the victims of abuse testified at the jury trial. AD, now 22, testified that Long moved in with all the children and their mother in Corson County, and became their stepfather, when she was about 13-14 years old. *SR1604*. A testified as to numerous alleged acts of both physical and sexual abuse. Although AD testified that these sexual incidents occurred on many occasions, see generally *SR1628-38*, she also testified that no one else knew about the incidents. *SR1678*. She testified that she had never, until on the stand at the jury trial, disclosed some of the details of the incidents. *SR1677*. She also told inconsistent stories about the locations of the alleged abuse. *SR1679-80*.

AD and the four younger children to various incidents of alleged physical abuse. Although the children testified to acts of alleged abuse, the testimony was riddled with contradictory accounts and troubles with memory. Additional facts will be discussed as they relate to the issues herein.

ARGUMENT

ISSUE 1

Whether the trial court abused its discretion when admitting to evidence multiple instances of other acts evidence spanning several years, counties, and states.

On July 14, 2023, the State filed a Notice of Intent to Offer Other Act Evidence pursuant to SDCL 19-19-404(b). *SR93-95*. The State's request was broad in scope, including allegations that spanned from 2015 to 2020 and included acts that allegedly occurred in other counties and other states.

1. Abuse and cruelty in Oklahoma between 2015 and 2016. While visiting family in Oklahoma, Defendant shocked the children with a cattle prod. Defendant also put a shock collar on J.A. and shocked him. A family member took the shock collar from Defendant afterwards.

2. Abuse and cruelty in Isabel, South Dakota, prior to 2019. Defendant used a "hot shot" to shock E.D. outside Great Western Bank in Isabel, South Dakota (Dewey County). Defendant grabbed the hot shot from the back of the pickup, opened the backdoor of the pickup, and shocked E.D. twice.

3. Abuse and cruelty between November 2019 and May 2020.

a. Defendant repeatedly shocked E.D., A.D., L.A., and J.A. with a hotshot and /or taser while he and the children lived in the same household. Defendant shocked the children as punishment and as intimidation.

b. Defendant repeatedly kicked and punched L.A.

and J.A.

c. In May 2020, while living in Sioux Falls, South Dakota, Defendant shocked J.A. with a taser after J.A. took a sex toy out of the garbage. The taser left red marks on his back and leg that were visible approximately one week afterwards.

d. A search of Defendant's storage units in Sioux Falls revealed devices matching the description of the tasers and hotshots given by the children.

e. Defendant beat J.A. by holding A.'S head between Defendant's legs and beating J.A. on the back.

f. Defendant held J.A. while LA. punched J.A. in the kidneys at Defendant's direction.

4. Abuse and cruelty between December 2017 and May 2020. Defendant repeatedly gave E.D. and A.D. illegal drugs (methamphetamine and marijuana) and alcohol. Defendant crushed the methamphetamine on a mirror or a phone and taught the children to snort it. Defendant also showed the children how to smoke methamphetamine and exposed them to various types and ways of using marijuana. The exposure to drugs commonly occurred in Defendant's bedroom.

5. Abuse and cruelty in 2020. Defendant gave LA. and J.A marijuana and alcohol. Defendant also gave LA. methamphetamine.

6. Sexual abuse in Phillip, South Dakota, between 2015 and 2017. While the family was living in Phillip, South Dakota (Haakon County), Defendant forced A.A. to have sex with him before she could go on a date. The family was living in Phillip because A.A.'S mother had a job at the hospital. The rape occurred on an air mattress at the apartment.

SR93-95.

Following a hearing on July 24, 2023, the trial court entered findings of fact and conclusions of law allowing introduction of all of the evidence the State requested to produce. *SR191-96.*

"The trial court's decision to admit the prior bad acts is governed by SDCL 19-19-404(b), which provides:

(1) Prohibited uses. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

While SDCL 19-19-404(b) is generally a rule of inclusion, *State v. Huber*, 2010 S.D. 63, 1156. 789 N.W.2d 283. 301, the State must still face the hurdles of relevancy and must articulate the purpose for which the evidence is being proffered. SDCL 19-19-404(b)(3). "Relevancy is demonstrated where evidence is necessary to prove an element of the crime, not simply to demonstrate defendant's character." *State v. Lassiter*, 2005 S.D. 8, ¶3, 692 N.W.2d 171 (2005). In the instant case, the elements of the crimes charged all occurred, allegedly, in Corson County. Not in Dewey County, not in Minnehaha County, and certainly not in any other state. Defendant should not be burdened with

needing to defend himself from acts that are alleged to have occurred in other jurisdictions other than the one in which he is currently charged.

The *Lassiter* Court additionally stated, "Evidence of other acts offered for the sole purpose of establishing a propensity to commit a crime is irrelevant, and therefore, inadmissible." *Id.* "There is a danger that the jury may use the prior bad acts to convict a defendant because they believe the defendant is a bad person." *State v. Chamley*, 1997 S.D. 107, ¶9, 568 N.W.2d 607, 611. There is an inherent danger of introducing prior convictions or prior (unproven) bad acts and the inflammatory effect it can have on a jury. It is simply not enough that the Defendant defend himself as to the accusations from this jurisdiction. It is not enough that he rebuts the elements of the crimes brought forth against him in this instance. To allow the admission of prior convictions and prior bad acts now places an insurmountable burden on the Defendant to defend all prior actions, even those unrelated to the crimes charged. "Prior ... acts evidence is not admissible to show that, merely because a defendant committed a similar offense on another occasion, he has a propensity to commit the offense charged." *State v. Armstrong*, 2010 S.D. 94, ¶ 11, 793 N.W.2d 6, 10 (citations omitted). The allegations from other jurisdictions do nothing to prove or disprove Defendant's actions in Corson County.

"Child injury cases are often emotion-charged. In deciding whether to

admit relevant other instances of abuse under § 404(b), trial judges should cautiously balance probative value against prejudicial effect.” *State v. Wright*, 1999 S.D. 50, ¶15, 593 N.W.2d 792, 799. The charges alleged in Corson County allegedly occurred between March 17, 2025, and July 2017. By allowing the State to present voluminous evidence of allegations from other times, other counties, and other states, the trial court allowed the State to greatly expand the evidence presented, paint the character of the Defendant in a negative light, and face an almost insurmountable task while attempting to defend the actual charges filed.

ISSUE 2

Whether the trial court by failing to grant a judgment of acquittal in light of the lack of evidence presented on an element of the offense.

At the close of the evidence, Long moved for a judgment of acquittal as to the rape allegations against AA. *SR2078*. There is no dispute regarding the standard of review this Court applies in reviewing a motion for judgment of acquittal.

The denial of a motion for judgment of acquittal is a question of law we review de novo. *State v. Brim*, 2010 S.D. 74, ¶ 6, 789 N.W.2d 80, 83. The standard is “whether the evidence was sufficient to sustain a conviction.” *State v. Klaudt*, 2009 S.D. 71, ¶ 14, 772 N.W.2d 117, 122 (*quoting State v. Tofani*, 2006 S.D. 63, ¶ 24, 719 N.W.2d 391, 398). When measuring the sufficiency of the evidence, “we 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.* “We accept the evidence and the most favorable inferences fairly drawn therefrom, which will support the verdict.” *Brim*, 2010 S.D. 74, ¶ 6, 789 N.W.2d at 83 (*quoting State v. Jensen*, 2007 S.D. 76, ¶ 7, 737 N.W.2d 285, 288). “This Court will not resolve conflicts in the evidence, assess the credibility of witnesses, or evaluate the weight of the evidence.” *Id.*

State v. Haruff, 2020 S.D. 4, ¶15, 939 N.W.2d 20, 25. “De novo refers to a plenary form of review that affords no deference to the previous decision maker.” *Fall River County v. S.D. Dept. Of Revenue*, 1996 S.D. 106, ¶14, 552 N.W.2d 620, 624. The “standard” quoted in *Haruff*, *supra* at ¶15, really sets forth the same questions asked by trial court when evaluating a motion for judgment of acquittal in the first place - whether the evidence, viewed in a light most favorable to the State, would allow a jury to reach a finding of guilt. However, under a de novo review, this Court reviews that same evidence with the same standards but without regard to the trial court’s ultimate conclusion as to whether the evidence reaches the standards set forth by this Court required to support a conviction.

AD testified that on St. Patrick’s Day, that the Defendant, while she was alone in his room with him, touched her vagina with his hand. *SR1628*. She also testified that Defendant penetrated her with his penis. *Id.* She testified that she was a virgin at the time and that the sexual act hurt. *Id. at*

1628·29. AD described how they were positioned and how the act occurred. *Id.* Based on this act, Defendant was charged in Count 1 of the Indictment with Rape in the Second Degree in violation of SDCL 22-22-1(2). *SR2.* In accordance with this statute, the trial instructed the jury that one of the elements of the offense is that

The defendant accomplished such act of sexual penetration through the use of force, coercion or threats of immediate and great bodily harm against AD or other person with AD's presence, accompanied by apparent power of execution.

SR569.

Significantly, AD did not testify that any coercion or threats were present. She did not testify that there existed any use of force, more than that required for the sexual act itself. Should there be no requirement under SDCL 22-22-1(2) that no force other than that accompanying the act itself be required, the language of the statute is superfluous. “We presume the Legislature does not insert surplusage into its enactments. Also, this court will not construe a statute in a way that renders parts to be surplusage.”

Ibrahim v. Dep't of Pub. Safety, 2021 S.D. 17, ¶ 13, 956 N.W.2d 799, 803 (quoting *Hollman v. S.D. Dep't of Soc. Servs.*, 2015 S.D. 21, ¶ 9, 862 N.W.2d 856, 859.

CONCLUSION

The trial court erred by allowing the introduction of other acts evidence which spanned multiple years, counties, and states. The only explanation of this breadth of other alleged – and unproven – activity, is to paint black the character of the defendant. Regarding the allegation of forcible rape against alleged victim AD, the State failed to present evidence that there existed any force other than that necessary to accomplish the sexual act itself. The trial court erred by not granting a judgment of acquittal. Defendant requests that the forcible rape allegation be dismissed in its entirety, and that the remainder be remanded to the trial court for a new trial without the introduction of the other acts evidence allowed in this trial.

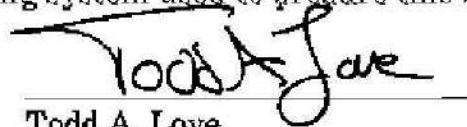
RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Todd A. Love", is written over a horizontal line.

Todd A. Love
Attorney for Defendant/Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), the undersigned does hereby certify that the length of this brief complies with the type and volume limitations set forth in SDCL § 15-26A-66(b)(2), being comprised of 2,779 words as calculated by the word processing system used to prepare this brief.

A handwritten signature in black ink, appearing to read "Todd A. Love", is written over a horizontal line.

Todd A. Love

Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the day below, a true and correct copy of Appellant's Brief with Appendix was served in the following manner upon the following person(s), pursuant to the service indicated, postage prepaid as applicable, addressed as follows:

Marty Jackley South Dakota Attorney General's Office Attorney for State of South Dakota	☐ U.S. Mail (First Class) ☒ Electronic Case Filing ☐ E-Mail
Shane Penfield Corson County State's Attorney's Office Attorney for State of South Dakota	☐ U.S. Mail (First Class) ☒ Electronic Case Filing ☐ E-Mail

Dated this 1st day of July, 2025.



Todd A. Love
Attorney for Defendant/Appellant

STATE V. LONG #30811 / 30812

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF CORSON	)	FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	
Plaintiff,	)	15 Cri. 22-7
	)	
v.	)	JUDGMENT OF CONVICTION
	)	
LANCE LOWELL LONG,	)	
DOB: 10/29/1983	)	
	)	
Defendant,	)	

An Indictment was filed with this Court on the 7th day of February, 2022, charging the Defendant with the crimes of Count 1: Rape in the Second Degree, in violation of SDCL 22-22-1(2), a Class 1 Felony, to have been committed on or about the 17th day of March, 2015; Count 2: Rape in the Third Degree, in violation of SDCL 22-22-1(4), a Class 2 Felony, to have been committed on or about the 17th day of March, 2015, and until July, 2017; Count 3: Rape in the Fourth Degree, in violation of SDCL 22-22-1(5), a Class 3 Felony, to have been committed on or about the 17th day of March, 2015, and until July, 2017; Count 4: Aggravated Assault, in violation of SDCL 22-18-1.1(1), a Class 3 Felony, to have been committed on or about the 17th day of March, 2015, and until July, 2017; Count 5: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony, to have been committed on or about the 17th day of March, 2015, and until July, 2017; Count 6: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony, to have been committed on or about the 17th day of March, 2015, and until July, 2017; Count 7: Abuse or Cruelty to a Minor, in violation of SDCL 26-10-1, a Class 4 Felony, to have

been committed on or about the 17th day of March, 2015, and until July, 2017.

The Defendant was arraigned on said Indictment on the 25th day of July, 2022. The Defendant, the Defendant's attorney, Aaron Roseland, and Shane Penfield, Corson County State's Attorney, appeared at the arraignment. The Court advised the Defendant of his constitutional and statutory rights pertaining to the charges that had been filed against him including, but not limited to, the right against self-incrimination, the right of confrontation, and the right to a jury trial. The Defendant pled not guilty to the charges in the Indictment and requested a jury trial.

A Part II Information For Habitual Offender was filed on the 2nd day of April, 2024. Defendant was arraigned on the Part II Information on the 12th day of April, 2024, and denied the allegations.

A jury trial commenced on May 28, 2024, and concluded on May 31, 2024. On May 31, 2024, the Corson County Jury returned a verdict finding Defendant Guilty as to Count 1: Rape in the Second Degree, in violation of SDCL 22-22-1(2), a Class 1 Felony; Count 2: Rape in the Third Degree, in violation of SDCL 22-22-1(4), a Class 2 Felony; Count 3: Rape in the Fourth Degree, in violation of SDCL 22-22-1(5), a Class 3 Felony; Count 4: Aggravated Assault, in violation of SDCL 22-18-1.1(1), a Class 3 Felony; Count 5: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony; Count 6: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony;

Count 7: Abuse or Cruelty to a Minor, in violation of SDCL 26-10-1, a Class 4 Felony.

An Amended Part II Information was filed on the 1st day of July, 2024, alleging three prior felony convictions under SDCL 22-7-8.1. The Defendant was arraigned the Amended Part II Information on the 12th day of July, 2024. The Defendant, the Defendant's attorney, Matthew Skinner, and Nolan Welker, Assistant Attorney General, appeared at the arraignment.

At the arraignment, the Court advised the Defendant of his constitutional and statutory rights pertaining to the allegations that had been filed against him including, but not limited to, the right against self-incrimination, the right of confrontation, and the right to a jury trial. The Court also advised the Defendant as to the consequences of admitting to the allegations in the Amended Part II Information. The Defendant admitted that he was the same person convicted of the three prior felonies in the Amended Part II Information, waived his statutory and constitutional rights, and provided a factual basis for the allegations. The Court found that the Defendant knowingly and voluntarily waived his statutory and constitutional rights and found that a factual basis existed for the admissions.

It is, therefore, the JUDGMENT of this Court that the Defendant is GUILTY of:

Count 1: Rape in the Second Degree, in violation of SDCL 22-22-1(2), a Class 1 Felony, which occurred on or about the 17th day of March, 2015 in Corson County, South Dakota;

Count 2: Rape in the Third Degree, in violation of SDCL 22-22-1(4), a Class 2 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota;

Count 3: Rape in the Fourth Degree, in violation of SDCL 22-22-1(5), a Class 3 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota;

Count 4: Aggravated Assault, in violation of SDCL 22-18-1.1(1), a Class 3 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota;

Count 5: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota;

Count 6: Aggravated Assault, in violation of SDCL 22-18-1.1(2), a Class 3 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota;

Count 7: Abuse or Cruelty to a Minor, in violation of SDCL 26-10-1, a Class 4 Felony, which occurred on or about the 17th day of March, 2015, and until July, 2017 in Corson County, South Dakota.

The Defendant is also the same person who committed the three prior felonies listed in the Amended Part II Information.

SENTENCE

On the 29th day of July, 2024, the Defendant, the Defendant's attorney, Matthew Skinner, and Chelsea Wenzel, Assistant Attorney General, appeared

for Defendant's sentencing. The Court heard argument of counsel and the statements of the Defendant and then asked whether any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

It is hereby ORDERED that as to Count 1: Rape in the Second Degree, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifty (50) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 2: Rape in the Third Degree, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of thirty (30) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 3: Rape in the Fourth Degree, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of twenty-five (25) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 4: Aggravated Assault, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 5: Aggravated Assault, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for**

a period of fifteen (15) years, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 6: Aggravated Assault, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 7: Abuse or Cruelty to a Minor, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of ten (10) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is further ORDERED that the **Defendant's sentences shall run concurrently with each other, but consecutively with the sentence in Corson County Criminal File No. 22-27.**

It is further ORDERED that the Defendant shall pay court costs in the amount of \$104.00, payable to the Corson County Clerk of Court's Office.

It is further ORDERED that the Sheriff's costs shall be paid by the Defendant in the amount of \$9,481.78. This amount includes costs of pre-trial incarceration, incarceration during trial, and related transportation costs. That amount is payable to the Corson County Sheriff's Office.

It is further ORDERED that Defendant shall pay for the psychosexual evaluation completed in this case in the amount of \$4,000.00. That amount is payable to the Corson County Sheriff's Office.

It is further ORDERED that Defendant shall pay his court appointed attorney's fees in this matter. That amount to be determined shall be payable to the Corson County Clerk of Court's Office.

It is further ORDERED that Defendant shall receive **credit for eighty-three (83) days previously served** on the above sentence.

It is further ORDERED that the Court expressly reserves the right to amend any or all of the terms of this Order at any time.

Dated this 29th day of July, 2024.

BY THE COURT:

Attest:
Gehring, Jennifer
Clerk/Deputy



A handwritten signature in black ink, appearing to read 'John Fitzgerald', written over a horizontal line.

John Fitzgerald
Circuit Court Judge

NOTICE OF RIGHT TO APPEAL

You, Lance Long, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of South Dakota and the State's Attorney of Lyman County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment of Conviction was signed, attested and filed.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF CORSON	)	FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	
Plaintiff,	)	15 Cri. 22-27
	)	
v.	)	JUDGMENT OF CONVICTION
	)	
LANCE LOWELL LONG,	)	
DOB: 10/29/1983	)	
	)	
Defendant.	)	

An Indictment was filed with this Court on the 12th day of September, 2022, charging the Defendant with the crimes of Count 1: Abuse or Cruelty to a Minor, involving E.D. (DOB 2/4/03) in violation of SDCL 26-10-1, a Class 4 Felony, to have been committed on or between the 17th day of March, 2015, and July, 2017; Count 2: Abuse or Cruelty to a Minor, involving A.D. (DOB 8/17/04) in violation of SDCL 26-10-1, a Class 4 Felony, to have been committed on or between the 17th day of March, 2015, and July, 2017; Count 3: Abuse or Cruelty to a Minor, involving I.A. (DOB 7/12/06) in violation of SDCL 26-10-1, a Class 4 Felony, to have been committed on or between the 17th day of March, 2015, and July, 2017; Count 4: Abuse or Cruelty to a Minor, involving J.A. (DOB 2/25/09) in violation of SDCL 26-10-1, a Class 4 Felony, to have been committed on or between the 17th day of March, 2015, and the 24th day of February, 2016; Count 5: Abuse or Cruelty to a Minor, involving E.D. (DOB 2/4/03) in violation of SDCL 26-10-1, a Class 4 Felony, to have been committed on or between the 25th day of February, 2016, and July,

2017. A Part II Information for Habitual Offender was filed on September 22, 2022.

The Defendant was arraigned on said Indictment and Part II Information on the 26th day of September, 2022. The Defendant, the Defendant's attorney, Aaron Roseland, and Shane Penfield, Corson County State's Attorney, appeared at the arraignment. The Court advised the Defendant of his constitutional and statutory rights pertaining to the charges that had been filed against him including, but not limited to, the right against self-incrimination, the right of confrontation, and the right to a jury trial. The Defendant pled not guilty to the charges in the Indictment, denied the allegations in the Part II Information, and requested a jury trial.

A jury trial commenced on May 28, 2024, and concluded on May 31, 2024. This Court dismissed Count 5 of the Indictment prior to the case being submitted to the jury. On May 31, 2024, the Corson County Jury returned a verdict finding Defendant Guilty as to Count 1: Abuse or Cruelty to a Minor, involving E.D. (DOB 2/4/03) in violation of SDCL 26-10-1, a Class 4 Felony; Count 2: Abuse or Cruelty to a Minor, involving A.D. (DOB 8/17/04) in violation of SDCL 26-10-1, a Class 4 Felony; Count 3: Abuse or Cruelty to a Minor, involving I.A. (DOB 7/12/06) in violation of SDCL 26-10-1, a Class 4 Felony; Count 4: Abuse or Cruelty to a Minor, involving J.A. (DOB 2/25/09) in violation of SDCL 26-10-1, a Class 4 Felony.

An Amended Part II Information was filed on the 1st day of July, 2024, alleging three prior felony convictions under SDCL 22-7-8.1. The Defendant

was arraigned the Amended Part II Information on the 12th day of July, 2024. The Defendant, the Defendant's attorney, Matthew Skinner, and Nolan Welker, Assistant Attorney General, appeared at the arraignment. The Court advised the Defendant of his constitutional and statutory rights pertaining to the allegations that had been filed against him including, but not limited to, the right against self-incrimination, the right of confrontation, and the right to a jury trial. The Court also advised the Defendant as to the consequences of admitting to the allegations in the Amended Part II Information. The Defendant admitted that he was the same person convicted of the three prior felonies in the Amended Part II Information, waived his statutory and constitutional rights, and provided a factual basis for the allegations. The Court found that the Defendant knowingly and voluntarily waived his statutory and constitutional rights and found that a factual basis existed for the admissions.

It is, therefore, the JUDGMENT of this Court that the Defendant is GUILTY of:

Count 1: Abuse or Cruelty to a Minor, involving E.D. (DOB 2/4/03) in violation of SDCL 26-10-1, a Class 4 Felony, which occurred on or between the 17th day of March, 2015, and July, 2017, in Corson County, South Dakota;

Count 2: Abuse or Cruelty to a Minor, involving A.D. (DOB 8/17/04) in violation of SDCL 26-10-1, a Class 4 Felony, which occurred on or between the 17th day of March, 2015, and July, 2017, in Corson County, South Dakota;

Count 3: Abuse or Cruelty to a Minor, involving I.A. (DOB 7/12/06) in violation of SDCL 26-10-1, a Class 4 Felony, which occurred on or between the 17th day of March, 2015, and July, 2017, in Corson County, South Dakota;

Count 4: Abuse or Cruelty to a Minor, involving J.A. (DOB 2/25/09) in violation of SDCL 26-10-1, a Class 4 Felony, which occurred on or between the 17th day of March, 2015, and the 24th day of February, 2016, in Corson County, South Dakota.

The Defendant is also the same person who committed the three prior felonies listed in the Amended Part II Information.

SENTENCE

On the 29th day of July, 2024, the Defendant, the Defendant's attorney, Matthew Skinner, and Chelsea Wenzel, Assistant Attorney General, appeared for Defendant's sentencing. The Court heard argument of counsel and the statements of the Defendant and then asked whether any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

It is hereby ORDERED that as to Count 1: Abuse or Cruelty to a Minor, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 2: Abuse or Cruelty to a Minor, the Defendant shall be **incarcerated in the South Dakota State Penitentiary**

for a period of fifteen (15) years, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 3: Abuse or Cruelty to a Minor, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is hereby ORDERED that as to Count 4: Abuse or Cruelty to a Minor, the Defendant shall be **incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years**, there to be kept, fed and clothed according to the rules and discipline governing the prison;

It is further ORDERED that the **Defendant's sentences shall run concurrently with each other, but consecutively with the sentence in Corson County Criminal File No. 22-7.**

It is further ORDERED that the Defendant shall pay court costs in the amount of \$104.00, payable to the Corson County Clerk of Court's Office.

It is further ORDERED that the Defendant will pay Sheriff's costs as listed in Corson County Criminal File No. 22-7.

It is further ORDERED that the Defendant will pay the costs of his psychosexual evaluation, as listed in Corson County Criminal File No. 22-7

It is further ORDERED that Defendant shall pay his court appointed attorney's fees in this matter. That amount to be determined shall be payable to the Corson County Clerk of Court's Office.

It is further ORDERED that Defendant shall receive **credit for seventy-seven (77) days previously served** on the above sentence.

It is further ORDERED that the Court expressly reserves the right to amend any or all of the terms of this Order at any time.

Dated this 29th day of July, 2024.

Attest:
Gehring, Jennifer
Clerk/Deputy



BY THE COURT:

A handwritten signature in black ink, appearing to read 'John Fitzgerald', written over a horizontal line.

John Fitzgerald
Circuit Court Judge

NOTICE OF RIGHT TO APPEAL

You, Lance Long, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of South Dakota and the State's Attorney of Lyman County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment of Conviction was signed, attested and filed.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Nos. 30811 / 30812

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

LANCE LOWELL LONG,

Defendant and Appellant.

APPEALS FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
CORSON COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN FITZGERALD
Circuit Court Judge

APPELLEE'S BRIEF

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AND APPELLEE

Notices of Appeal filed August 17, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Nos. 30811 / 30812

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

LANCE LOWELL LONG,

Defendant and Appellant.

PRELIMINARY STATEMENT

This Court entered an order on February 28, 2025, to consolidate appeal numbers 30811 and 30812 for purposes of briefing and submission to the court. Throughout this brief, Plaintiff/Appellee, State of South Dakota, is referred to as “State.” Defendant/Appellant, Lance Lowell Long, is referred to as “Defendant.” The victims are referred to by their initials. Corson County file numbers 15CRI22-000007 and 15CRI22-000027 are referenced as “SR1” and “SR2,” respectively. Trial exhibits are referenced as “Ex.” Defendant’s brief is denoted as “DB.” All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On July 29, 2024, the Honorable John Fitzgerald, Circuit Court Judge, Fourth Judicial Circuit, entered Judgments of Conviction in *State of South Dakota v. Lance Lowell Long*, Corson County Criminal File

Numbers 15CRI22-000007 and 15CRI22-000027. SR1:934-40; SR2:813-

18. Defendant filed his Notices of Appeal on August 17, 2025.

SR1:1009; SR2:823. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ALLOWING OTHER ACTS EVIDENCE?

The circuit court allowed testimony on how Defendant committed additional acts of physical and sexual abuse against the same children named in the indictments as evidence of motive, common plan or scheme, nature of the relationship, modus operandi, and unique pattern of behavior occurring with children in a family setting.

State v. Carter, 2023 S.D. 67, 1 N.W.3d 674

State v. Fisher, 2010 S.D. 44, 783 N.W.2d 664

State v. Medicine Eagle, 2013 S.D. 60, 835 N.W.2d 886

SDCL 19-19-404(b)

II.

WHETHER SUFFICIENT EVIDENCE ESTABLISHED SECOND-DEGREE RAPE TO SUSTAIN DEFENDANT'S CONVICTION?

The circuit court denied Defendant's motion for judgment of acquittal as to the second-degree rape count, finding the State presented sufficient evidence for the jury to deliberate on that count.

State v. Klaudt, 2009 S.D. 71, 772 N.W.2d 117

State v. Townsend, 2021 S.D. 29, 959 N.W.2d 605

SDCL 22-22-1(2)

STATEMENT OF THE CASE

On February 7, 2022, in Corson County Criminal File Number 15CRI22-000007, the Corson County Grand Jury indicted Defendant and charged him with seven counts. SR1:1-3. Count 1 charged second-degree rape in violation of SDCL 22-22-1(2). SR1:1-3. Count 2 charged third-degree rape in violation of SDCL 22-22-1(4). SR1:1-3. Count 3 charged fourth-degree rape in violation of SDCL 22-22-1(5). SR1:1-3. Count 4 charged aggravated assault in violation of SDCL 22-18-1.1(1). SR1:1-3. Counts 5 and 6 charged aggravated assault in violation of SDCL 22-18-1.1(2). SR1:1-3. Count 7 charged abuse or cruelty to a minor in violation of SDCL 26-10-1. SR1:1-3. These counts involved victim A.A.¹ SR1:4.

On September 12, 2022, in a second case, Corson County Criminal File Number 15CRI22-000027, the Corson County Grand Jury indicted Defendant and charged him with five additional counts. SR2:1-3. Counts 1 through 5 charged abuse or cruelty to a minor in violation of SDCL 26-10-1. Counts 1 and 5 named the victim as E.D. Counts 2 through 4 named the victims as A.D., I.A., and J.A., respectively.

The State requested the cases be joined for trial. SR2:32-33. The State argued joinder was proper because both indictments named

¹ A.A. went by a name with the initials of A.D. at trial. SR1:1650; SR2:1493. Since another child's initials are A.D., the State will reference A.A. as A.A. throughout this brief for clarity.

Defendant's stepchildren as the victims, involved similar conduct, and covered the same time period. SR2:32-33. The circuit court ordered the cases be consolidated. SR1:61, 203; SR2:103.

The State noticed its intent to offer evidence of other acts at trial under SDCL 19-19-404(b) ("Rule 404(b)"). SR1:94-138. The State sought, in part, to admit evidence that related to Defendant's same unique type of physical and sexual abuse as the charged conduct which was perpetrated against his same stepchildren named in the indictments. SR1:94-138. The State sought to use the evidence to show Defendant's common plan or scheme, motive, lack of mistake, and the nature of the relationship with the children. SR1:134. The circuit court entered written findings of facts and conclusions of law allowing the State's Rule 404(b) evidence. SR1:191-96; SR2:85-90.

The cases proceeded to a four-day jury trial commencing on May 28, 2024, before the Honorable John Fitzgerald, Circuit Court Judge, Fourth Judicial Circuit. SR1:1288; SR2:1131. At the end of the State's case, Defendant moved for judgment of acquittal on all twelve counts. SR1:2077-91; SR2:1920-34. The circuit court granted the motion as to Count 5 in Corson County Criminal File Number 15CRI22-000027 based on an error in the indictment. SR1:2091; SR2:1934. The circuit court denied the motion as to the remaining eleven counts. SR1:2087, 2091; SR2:1931, 1934. The jury found Defendant guilty on the eleven counts submitted to it. SR1:659-60; SR2:535-36.

On July 29, 2024, the circuit court sentenced Defendant and entered its written Judgments of Conviction. SR1:934-40; SR2:813-18. Defendant appealed. SR1:1009; SR2:823.

STATEMENT OF FACTS

Defendant stood trial before a jury on twelve charges involving rape, aggravated assault, and child abuse perpetrated against his stepchildren. SR1:562-63, 1683; SR2:438-39, 1526. While the abuse continued after the charged timeframe of March 17, 2015, to July 2017, the charges correspond to abuse in Corson County, South Dakota. *See generally* SR1:562-63; SR2:438-39.

The jury heard that in early 2015, Defendant moved in with Crystallynn Dugan, and her five children: A.A., E.D., A.D., I.A., and J.A. SR1:1601-02, 1743-44; SR2:1444-45, 1586-87. The family lived on a ranch in Corson County. SR1:1601; SR2:1444.

Soon after Defendant moved in, the abuse began. SR1:1667; SR2:1510. Defendant disciplined the children by spanking them with a belt and wooden spoon. SR1:1701; SR2:1544. The jury heard A.A., the oldest of the five children, testify about a specific occasion Defendant spanked her so hard with a spoon that it broke. SR1:1613; SR2:1456. Defendant proceeded to hit her bare skin multiple times with a braided paracord belt causing welts. SR1:1613; SR2:1456. A.A. was in

excruciating pain and cried.² SR1:1613; SR2:1456. A.A. described how she could not sit properly afterwards for a while.³ SR1:1613; SR2:1456.

The abuse escalated; Defendant became more aggressive and hit the children harder. SR1:1701-02; SR2:1544-45. The jury heard about a specific instance when Defendant abused A.A. in the garage.

SR1:1611; SR2:1454. A.A. testified that Defendant was picking on J.A. and A.A. told Defendant to stop. SR1:1611; SR2:1454. Defendant grabbed the back of A.A.'s head and smashed it into the garage's support beam post. SR1:1611; SR2:1454. A.A. fell to the ground. SR1:1611; SR2:1454. J.A. testified that he saw A.A. put her hands over her head and blood covered her hands. SR1:1712; SR2:1555. The next thing A.A. remembered was leaning over a bathtub with blood everywhere.

SR1:1611; SR2:1454. A.A. testified that she could still feel an indent in the right side of her head from where her head hit the beam. SR1:1611; SR2:1454.

The jury also heard about a separate incident between Defendant and J.A., the youngest of the children, where Defendant became upset with J.A. SR1:1796; SR2:1639. J.A. ran away from Defendant because

² A.A. was twenty-two years old at trial. SR1:1600; SR2:1443. Because of the beating Defendant inflicted on her with the braided paracord belt, she testified that "I still can't do belts. I don't do belts at all. I don't wear belts. You don't find one in my home [if I saw someone take off their belt] I would cower in the corner." SR1:1614; SR2:1457.

³ A.A. remembered another time that Defendant hit one of the "little boys," either I.A. or J.A., with the braided paracord belt. SR1:1614; SR2:1457. She testified that Defendant laughed and smiled about hitting the boy. SR1:1614; SR2:1457.

he was scared. SR1:1796; SR2:1639. Defendant drove after J.A. with his three-wheeler. SR1:1796; SR2:1639. When Defendant approached J.A., he did not stop. SR1:1796; SR2:1639. Instead, Defendant ran over J.A. with the three-wheeler. SR1:1796; SR2:1639. Defendant looped back around and ran over J.A. a second time. SR1:1796; SR2:1639. Defendant proceeded to run over J.A. a third time. SR1:1797; SR2:1640.

Within a few months of living with the family, Defendant began using a hotshot,⁴ or cattle prod, on the children. SR1:1615-17, 1747; SR2:1458-60, 1590. Defendant shocked the children with the hotshot regularly, typically on their arms and legs. SR1:1617; SR2:1460. A.A. described what it felt like when Defendant shocked her. SR1:1618; SR2:1461. She described it as similar to grabbing an electric fence. SR1:1618; SR2:1461. The shock would cause the children to jump, scream, and cry. SR1:1767; SR2:1610. She also described how the hotshot left two burn marks on the skin.⁵ SR1:1618; SR2:1461.

Defendant shocked the children as punishment for anything he deemed as unfit behavior. SR1:1616-17; SR2:1459-60. But Defendant also shocked the children for personal entertainment. SR1:1617;

⁴ J.A. described a hotshot as a device shaped like a stick with two prods on the end. SR1:1704; SR2:1547. Defendant would press a button on one end of the stick to send electricity to the metal prods. SR1:1704; SR2:1547.

⁵ Defendant also used a taser to shocked A.A. on her neck, arms, legs, and back. SR1:1619-21; SR2:1462-64; *see* Ex:6.

SR2:1460. Defendant frequently smiled and laughed while shocking the children. SR1:1617; SR2:1460.

The jury heard an example of one time Defendant used the hot shot on J.A. when he was five or six years old. SR1:1747; SR2:1590. Defendant directed J.A. to carry a saddle. SR1:1747; SR2:1590. J.A. struggled carrying the forty-pound saddle which weighed almost as much as he did. SR1:1747; SR2:1590. Defendant became angry when the saddle touched the ground, so Defendant shocked J.A. with the hotshot. SR1:1747; SR2:1590. J.A. fell to the ground. SR1:1747; SR2:1590. Defendant repeatedly shocked J.A. by jabbing the hotshot into his legs and lower abdomen. SR1:1748; SR2:1591.

One time, A.A. and A.D. asked Defendant if they could go on a double date with two brothers. SR1:1976; SR2:1819. Defendant stated the girls could go, but only if they let him shock their private areas first. SR1:1976; SR2:1819. Defendant shocked A.A.'s and A.D.'s bare genitals. SR1:1976-77, 2005; SR2:1819-20, 1848. E.D. testified how he witnessed Defendant shock A.A., describing Defendant's actions as "disturbing" and "sickening." SR1:1765; SR2:1608.

Defendant entertained himself by making a "game" out of shocking the children with the hotshot. SR1:1705-06; SR2:1548-49. Defendant would hold the hotshot up against each child and say "trust." SR1:1705-06; SR2:1548-49. If the child pulled away, Defendant shocked them. SR1:1753; SR2:1596. If the child did not move, Defendant may or may

not shock them. SR1:1753; SR2:1596. J.A. testified that he did not understand the game because Defendant always shocked him with the hotshot. SR1:1705-06, 1732; SR2:1548-49, 1575. A.D. also testified she was shocked every time. SR1:1983-84; SR2:1826-27.

A.A. and E.D., the two oldest children, described feeling terrible when they witnessed Defendant shock their younger siblings with the hotshot. SR1:1618, 1755; SR2:1461, 1598. They testified how they wanted to protect their siblings, but felt like there was nothing they could do to stop Defendant. SR1:1618, 1775; SR2:1461, 1598.

Defendant also used a shock collar for dogs on J.A. and I.A. SR1:1984-85; SR2:1827-28. Defendant would strap the collar around the child's neck or leg. SR1:1622; SR2:1465. He then pushed and held the button on the shock collar remote to administer a constant shock to the child. SR1:1622; SR2:1465. When Defendant shocked the child, the child rolled on the ground in agonizing pain, shaking, screaming, and crying. SR1:1622, 1778; SR2:1465, 1621. A.A. recounted a time when one of the two children even peed his pants. SR1:1623; SR2:1466.

The jury heard how Defendant raped A.A. for the first time. SR1:1628-32, 1673-77; SR2:1471-75, 1516-20. A.A. testified how Defendant touched her vagina with his hand and then made her take off her underwear. SR1:1630-31; SR2:1473-74. A.A. testified how Defendant put his penis in her vagina. SR1:1628-29; SR2:1471-72. The six-foot two-inch tall, 210-pound Defendant positioned his body on top of

A.A. SR1:1629, 1756; SR2:1472, 1599. She testified how she was scared, in pain, bleeding, and confused. SR1:1629-30; SR2:1472-73. A.A. directed Defendant to stop. SR1:1629; SR2:1471. He did not. SR1:1629-30; SR2:1472-73.

After the rape, Defendant said, "I'm really sorry." SR1:1631; SR2:1474. Defendant also threatened A.A. that if she told anybody, he knew exactly where to hide her body so no one would ever find it. SR1:1631-32; SR2:1474-75.

The jury heard that Defendant continued to rape A.A. approximately thirty more times until she was fifteen years old and moved off the ranch. SR1:1633, 1636; SR2:1476, 1479. She testified that after the first rape, "[t]he beatings got less. He started treating me better, but if I were to say no or to push him off of me, it just made it worse." SR1:1632; SR2:1475. Defendant frequently reminded A.A. that he knew where to hide her body. SR1:1633; SR2:1476.

A.A. testified regarding a specific occasion where Defendant took her on a four-wheeler ride. SR1:1632; SR2:1475. Defendant drove to an isolated pasture and penetrated her with his penis. SR1:1632; SR2:1475.

During other times, Defendant provided A.A. with alcohol and hydrocodone, a prescription painkiller. SR1:1635; SR2:1478. A.A. testified that her entire body became numb, she slurred her words, and she struggled to walk. SR1:1635; SR2:1478. Defendant then proceeded

to undress A.A. and do “whatever he wanted,” including using his penis to penetrate her. SR1:1636; SR2:1479.

In 2016, Defendant began bringing methamphetamine into the home. SR1:1791-92; SR2:1634-35. Sometimes, Defendant crushed up the methamphetamine into a powder. SR1:1792-93; SR2:1635-36. Defendant then directed E.D. and A.D. to snort it. SR1:1792-93; SR2:1635-36. Other times, Defendant provided the methamphetamine to E.D. and A.D. in a pipe that they smoked. SR1:1792-93; SR2:1635-36.

In late 2017 or early 2018, the family sold the ranch. SR1:1799; SR2:1642. At that time, A.A. had already moved off the ranch. SR1:1798; SR2:1641. Defendant, Crystallynn, and the remaining four children traveled around the country rodeoing. SR1:1799; SR2:1642. E.D. testified that while in Oklahoma, Defendant continued to use the hotshot and provide methamphetamine. SR1:1799-800; SR2:1642-43. A.D. testified that Defendant gave her both methamphetamine and marijuana while they traveled. SR1:1997-98; SR2:1840-41.

In the fall of 2019, the family moved to Sioux Falls, South Dakota. SR1:1800-01; SR2:1643-44. Despite no longer raising livestock, Defendant continued to possess a hotshot and use it on J.A. and I.A. SR1:1801-02, 1840; SR2:1644-45, 1683. Defendant also bought a new handheld black taser-style hotshot. SR1:1802; SR2:1645; Ex:7.

In Sioux Falls, Defendant provided E.D., I.A., and A.D. methamphetamine. SR1:1802, 1840; SR2:1645, 1683. He also provided all four children marijuana. SR1:1802, 1840; SR2:1645, 1683.

Around May 2020, E.D. entered the home and immediately knew Defendant gave his youngest brother, J.A., methamphetamine for the first time. SR1:1804, 1882; SR2:1647, 1725. E.D. witnessed J.A.'s pupils dilating in and out rapidly and J.A. engaging in odd behavior. SR1:1804; SR2:1647. E.D. made a report to law enforcement. SR1:1805; SR2:1648.

Law enforcement investigated. SR1:1888; SR2:1731. Law enforcement found a hotshot in the home and a bottle of hydrocodone. SR1:1888, 1902; SR2:1731, 1745. I.A. and J.A. were physically examined, and pictures documented their injuries. SR1:1888-91; SR2:1731-34; Ex:8-9. Two separate injuries showed an identical, symmetric, type of injury—two red impact marks consistent with being shocked with a taser or hotshot. SR1:1888-91; SR2:1731-34; Ex:8-9. A later search of the family's storage unit revealed hotshots and tasers. SR1:1891; SR2:1734; Ex:4-7, 12.

The above evidence, which included the five children's testimony, along with other evidence presented over the course of a four-day trial, resulted in Defendant's eleven convictions.

ARGUMENTS

I.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING OTHER ACTS EVIDENCE.

A. *Background.*

Defendant broadly argues that the circuit court abused its discretion by allowing Rule 404(b) evidence because 1) the evidence spanned across five years, and 2) the evidence occurred outside Corson County. DB:7-11. Defendant does not make specific arguments related to each of the State's noticed other acts evidence.

The noticed other acts were as follows:

1. Abuse and cruelty in Oklahoma between 2015 and 2016. While visiting family in Oklahoma, Defendant shocked the children with a cattle prod. Defendant also put a shock collar on J.A. and shocked him. A family member took the shock collar from Defendant afterwards.
2. Abuse and cruelty in Isabel, South Dakota, prior to 2019. Defendant used a "hot shot" to shock E.D. outside Great Western Bank in Isabel, South Dakota (Dewey County). Defendant grabbed hot shot from the back of the pickup, opened the backdoor of the pickup, and shocked E.D. twice.
3. Abuse and cruelty between November 2019 and May 2020.
 - a. Defendant repeatedly shocked E.D., A.D., I.A., and J.A. with a hotshot and/or taser while he and the children lived in the same household. Defendant shocked the children as punishment and as intimidation.
 - b. Defendant repeatedly kicked and punched I.A. and J.A.

- c. In May 2020, while living in Sioux Falls, South Dakota, Defendant shocked J.A. with a taser after J.A. took a sex toy out of the garbage. The taser left red marks on his back and leg that were visible approximately one week afterwards.
 - d. A search of Defendant's storage units in Sioux Falls revealed devices matching the description of the tasers and hotshots given by the children.
 - e. Defendant beat J.A. by holding J.A.'s head between Defendant's legs and beating J.A. on the back.
 - f. Defendant held J.A. while I.A. punched J.A. in the kidneys at Defendant's direction.
4. Abuse and cruelty between December 2017 and May 2020. Defendant repeatedly gave E.D. and A.D. illegal drugs (methamphetamine and marijuana) and alcohol. Defendant crushed the methamphetamine on a mirror or a phone and taught the children to snort it. Defendant also showed the children how to smoke methamphetamine and exposed them to various types and ways of using marijuana. The exposure to drugs commonly occurred in Defendant's bedroom.
 5. Abuse and cruelty in 2020. Defendant gave I.A. and J.A. marijuana and alcohol. Defendant also gave I.A. methamphetamine.
 6. Sexual abuse in Phillip, South Dakota, between 2015 and 2017. While the family was living in Phillip, South Dakota (Haakon County), Defendant forced A.A. to have sex with him before she could go on a date. The family was living in Phillip because A.A.'s mother had a job at the hospital. The rape occurred on an air mattress at the apartment.

SR1:93-95. The evidence showed Defendant engaged in unique, distinctive acts of abuse against the same children named in the indictments while living together as a family. The circuit court did not abuse its discretion by allowing the evidence to show motive, common

plan or scheme, nature of the relationship, modus operandi, and unique pattern of behavior occurring with children in a family setting.

B. *Standard of Review.*

A “trial court’s evidentiary rulings are presumed correct and will not be overturned absent a clear abuse of discretion.” *State v. Carter*, 2023 S.D. 67, ¶ 24, 1 N.W.3d 674, 685 (quotation omitted). An abuse of discretion “is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109. To prevail on a challenge to a circuit court’s evidentiary ruling, Defendant must show that the circuit court abused its discretion, and the error was prejudicial. *State v. Loeschke*, 2022 S.D. 56, ¶ 46, 980 N.W.2d 266, 280 (quoting *State v. Little Long*, 2021 S.D. 38, ¶ 49, 962 N.W.2d 237, 255).

C. *The Circuit Court Properly Allowed the Evidence.*

The admission of other acts evidence is controlled by Rule 404(b):

- (1) Prohibited uses. Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) Permitted uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

. . . .

SDCL 19-19-404(b). Rule 404(b) is a rule of inclusion, not a rule of exclusion. *State v. Medicine Eagle*, 2013 S.D. 60, ¶ 17, 835 N.W.2d 886, 892 (citing *State v. Wright*, 1999 S.D. 50, ¶ 13, 593 N.W.2d 792, 798). “All that is prohibited under § 404(b) is that similar act evidence not be admitted solely to prove character.” *Carter*, 2023 S.D. 67, ¶ 27, 1 N.W.3d at 686 (quoting *State v. Phillips*, 2018 S.D. 2, ¶ 14, 906 N.W.2d 411, 415).

A circuit court must apply a two-prong analysis to determine the admissibility of the other acts evidence. *Phillips*, 2018 S.D. 2, ¶ 14, 906 N.W.2d at 415 (citing *State v. Huber*, 2010 S.D. 63, ¶ 56, 789 N.W.2d 283, 301). This analysis requires the circuit court to determine “(1) whether the intended purpose is relevant to some material issue in the case, and (2) whether the probative value of the evidence is substantially outweighed by its prejudicial effect.” *Id.*; *see Carter*, 2023 S.D. 67, ¶ 29, 1 N.W.3d at 686 (“In cases of sexual assault and abuse, other acts evidence can be probative where there is a nexus of similarity between the uncharged conduct and the alleged criminal offense.”). “Upon a trial court’s determination that the proffered evidence is relevant, the balance tips emphatically in favor of admission unless the dangers set out in [SDCL 19-19-403] substantially outweigh the probative value” of the evidence. *Carter*, 2023 S.D. 67, ¶ 28, 1 N.W.3d at 686 (quoting *State v. Taylor*, 2020 S.D. 48, ¶ 33, 948 N.W.2d 342, 352).

Other acts evidence is admissible “where the uncharged misconduct is sufficiently similar to support the inference that they are manifestations of a common plan, design, or scheme” *State v. Big Crow*, 2009 S.D. 87, ¶ 8, 773 N.W.2d 810, 812 (citing *State v. Champagne*, 422 N.W.2d 840, 842 (S.D. 1988)). “All that is required to show a common plan is that the charged and uncharged events have sufficient points in common.” *Medicine Eagle*, 2013 S.D. 60, ¶ 19, 835 N.W.2d at 893 (cleaned up). “[W]here the defendant denies doing the charged act, evidence of a common plan or scheme to achieve the act is directly relevant to refute this general denial.” *Id.* ¶ 18, 835 N.W.2d at 893 (quoting *State v. Ondricek*, 535 N.W.2d 872, 875 (S.D. 1995)).

The circuit court concluded that the evidence was admissible under several permitted uses identified in Rule 404(b). The circuit court determined that the other acts evidence was relevant to show motive, common plan or scheme, nature of the relationship, modus operandi, and unique pattern of behavior occurring with children in a family setting. SR1:191-96, 587; SR2:85-90, 463. The points in common—same Defendant, same stepchildren, same acts—are more than sufficient for the evidence to be admissible for a permitted use. *See Medicine Eagle*, 2013 S.D. 60, ¶ 19, 835 N.W.2d at 893.

The evidence showed Defendant’s unique scheme and pattern of behavior. The other acts victims and the victims of the charged offenses were the same—Defendant’s stepchildren. The other acts showed

Defendant continuously engaged in similar, unique acts of abuse of the stepchildren by shocking them, providing them drugs, and forcing a sexual act as a “negotiating” mechanism. Defendant possessed shocking devices wherever the children were located—at the ranch, in a parking lot outside a bank, traveling, and living in Sioux Falls—even when the family no longer raised livestock. Defendant then shocked the children as his unique method of punishing the children. Defendant also engaged in a unique pattern of coercing A.A. to endure sexual abuse in exchange for going on a date. Because of the striking similarities of the other acts evidence to the underlying criminal activity, the other acts evidence is highly probative of the permitted uses.

The circuit court considered whether the probative value of the other acts evidence was substantially outweighed the prejudicial effect. SR1:193-96; SR2:87-90. The circuit court found that the evidence did not go to improper character or propensity and the probative value of the evidence was not substantially outweighed by any prejudicial effect. SR1:193-96; SR2:87-90. The circuit court then instructed the jury regarding the limited purpose of such evidence. SR1:587; SR2:463.

Defendant appears to argue that evidence of other acts is prohibited unless the proffered evidence occurred in the same county as the crimes charged. DB:9-10. Rule 404(b) contains no such categorical geographic prohibition, nor has this Court held such. Indeed, this Court has allowed other acts evidence that occurred in different counties. *See,*

e.g., *State v. Fisher*, 2010 S.D. 44, ¶ 21, 783 N.W.2d 664, 671 (affirming the admission of other acts that occurred in three different counties over a five-year time span).

Defendant also vaguely takes issue that the other acts evidence spanned from 2015 to 2020. DB:7, 11. The indicted conduct occurred within this time frame from March 17, 2015, to July 2017. And Defendant agreed with the circuit court “that other acts testimony is not limited to things that have happened in the past; they can actually have happened after the charged act took place.” SR1:1093; SR2:936.

To the extent Defendant is alleging the conduct is too remote to be relevant, this Court has “steadfastly refused to adopt an inflexible rule on remoteness.” *State v. Evans*, 2021 S.D. 12, ¶ 34, 956 N.W.2d 68, 82 (quotations omitted). Instead, admission depends, in part, “on the nature of the prior acts” and remoteness must be considered with similarity. *State v. Most*, 2012 S.D. 46, ¶ 17, 815 N.W.2d 560, 565. Even a twenty-seven-year-old prior act was held to be admissible when it was “strikingly similar” to the charged offense. *Evans*, 2021 S.D. 12, ¶ 35, 956 N.W.2d at 82. And here, the other acts were a continuous timeline of strikingly similar abuse involving the same Defendant and the same stepchildren.

Even if this Court holds that the circuit court abused its discretion, Defendant fails to show prejudice. Error is prejudicial when, “a reasonable probability [exists] that, but for [the error], the result of the

proceeding would have been different.” *Carter*, 2023 S.D. 67, ¶ 26, 1 N.W.3d at 686 (quotation omitted). In other words, “a probability sufficient [exists] to undermine confidence in the outcome.” *Id.* (quotation omitted).

Essentially, Defendant argues that the other acts evidence was inadmissible because it was unfavorable to him. Defendant alleges that he “should not be burdened with needing to defend himself from [the] acts.” DB:9-10. Defendant’s conclusory argument is not enough to show prejudice. *See generally State v. O’Brien*, 2024 S.D. 52, ¶ 32, 11 N.W.3d 881, 890-91 (holding that the defendant’s “conclusory argument[s] [are] insufficient to meet [his] burden” (quotation omitted)).

Therefore, the disputed evidence was admissible under permitted uses in Rule 404(b). The State had a strong case against Defendant and the evidence was unfavorable to him. That fact alone does not mean Defendant is entitled to suppression of evidence to weaken the State’s case. Nothing about this sort of other acts evidence had the capacity to persuade the jury by *illegitimate* means. *See Evans*, 2021 S.D. 12, ¶ 35, 956 N.W.2d at 82. Defendant does not and cannot show prejudice. Even if the circuit court did not allow the evidence, the jury would not have changed its conclusion that Defendant was guilty because the evidence was overwhelming. Therefore, the circuit court did not abuse its discretion when it allowed the evidence.

II.

SUFFICIENT EVIDENCE ESTABLISHED SECOND-DEGREE RAPE TO SUSTAIN DEFENDANT’S CONVICTION.

A. *Background.*

On appeal, Defendant narrowly challenges the sufficiency of the evidence regarding one element of his second-degree rape conviction.

DB:13. Defendant acknowledges that A.A. testified regarding an act of sexual penetration, but argues the record is void of any evidence that the act was accomplished by force, coercion, or threats. DB:13. He alleges the only evidence of “force” was the act of sexual penetration itself.

DB:14.

The jury’s conclusion that the penetration was accomplished by force, coercion, or threats was supported by vast trial testimony. When viewing all the evidence in the light most favorable to the State—including the nature of the relationship and A.A.’s testimony regarding the rape—sufficient evidence exists to support the jury’s verdict.

B. *Standard of Review.*

This Court reviews de novo the denial of a motion for judgment of acquittal and questions about the sufficiency of the evidence. *State v. Hillyer*, 2025 S.D. 30, ¶ 21, ___ N.W.3d ___ (quoting *State v. Bolden*, 2024 S.D. 22, ¶ 39, 6 N.W.3d 238, 246-47). This Court’s “task is to determine whether the evidence was sufficient to sustain the conviction.” *State v. Solis*, 2019 S.D. 36, ¶ 17, 931 N.W.2d 253, 258 (quotation omitted).

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

Id. (cleaned up). Likewise, “this Court will not resolve conflicts in the evidence, assess the credibility of witnesses, or reweigh the evidence.”

State v. Fasthorse, 2009 S.D. 106, ¶ 6, 776 N.W.2d 233, 236 (citations omitted). “It is the jury’s responsibility, not [this Court’s], ‘to decide what conclusions should be drawn from evidence admitted at trial.’” *Hillyer*, 2025 S.D. 30, ¶ 21 (quoting *Bolden*, 2024 S.D. 22, ¶ 39, 6 N.W.3d at 246-47).

C. *Sufficient Evidence of Force, Coercion, or Threats Supports Defendant’s Convictions for Second-Degree Rape.*

SDCL 22-22-1(2) defines second-degree rape as “an act of sexual penetration accomplished with any person . . . [t]hrough the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim’s presence, accompanied by apparent power of execution” SDCL 22-22-1(2). The circuit court instructed the jury consistently. SR1:569 (Instruction No. 18); SR2:445 (Instruction No. 18).

The circuit court also gave several other instructions consistent with the law. Instruction Number 4 stated, in part, “You are entitled to consider the evidence in the light of your own observations and

experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from the facts which have been established by the evidence” SR1:553; SR2:429. Further, Instruction Number 39 stated, “You are the exclusive judges of all questions of fact and the credibility of the witnesses . . . [Y]ou may and should consider . . . [a witness’s] conduct and demeanor while testifying . . . [and] the reasonableness of their statements” SR1:590; SR2:446.

This Court has elaborated on the definitions of force and coercion applicable to second-degree rape cases:

Coercion exists when “one is, by the unlawful conduct of another, induced to do or perform some act under circumstances which deprive her of the exercise of her free will; it may be either actual, where physical force is put on a [person] to compel her to do an act against her will, or implied, where the relation of the parties is such that one is under subjection to the other.”

State v. Townsend, 2021 S.D. 29, ¶ 23 n.1, 959 N.W.2d 605, 612 n.1.

For example, in *State v. Klaudt*, this Court held coercion was established where a foster parent, who was in an authoritative position over the victim, used financial promises and fabricated communications to pressure the victim into consenting to sexual acts. *State v. Klaudt*, 2009 S.D. 71, ¶ 46, 772 N.W.2d 117, 131.

This Court previously explained how force may be established by the physical means by which penetration was accomplished. *Townsend*, 2021 S.D. 29, ¶ 20, 959 N.W.2d at 611. In *State v. Townsend*, this Court held that force was established when the defendant physically blocked

the victim from leaving, pushed her back, removed her clothing, and caused physical injuries, including vaginal bruising. *Id.* ¶ 22, 959 N.W.2d at 611-12.

Accordingly, applying the de novo standard of review and considering the evidence in the light most favorable to the State, Defendant's motion for judgment of acquittal was properly denied as to the second-degree rape count. Defendant was in a position of authority and control over A.A. The jury heard testimony that Defendant was A.A.'s stepfather. SR1:2030; SR2:1873. Defendant asserted his authority and control over A.A. by administering physical abuse. SR1:1611-13; SR2:1454-56. If A.A. protested an action from Defendant she disagreed with, she was met with swift punishment like Defendant smashing her head into a post. SR1:1611; SR2:1454.

Even so, during the first rape, A.A. told Defendant to stop but he did not. SR1:1629-30; SR2:1472-73. A.A. described how she did not want Defendant to penetrate her and was scared. SR1:1630-31; SR2:1473-74. She described how Defendant positioned his body on top of hers. SR1:1629; SR2:1472. A.A. described how she was bleeding immediately after the rape. SR1:1629; SR2:1472. Defendant apologized and threatened to kill A.A. if she told anyone.⁶ SR1:1631-32;

⁶ In subsequent rapes, if A.A. said no or attempted to push Defendant off, Defendant beat her worse than he typically would. SR1:1632; SR2:1475. He also reminded A.A. that he knew where to hide her body. SR1:1633; SR2:1476.

SR2:1474- 75. This evidence, along with other evidence at trial, established that sexual penetration occurred by Defendant's force, coercion, or threats.

In viewing the evidence in a light most favorable to the State, sufficient evidence established that the sexual penetration occurred as a result of force, coercion, or threats to support Defendant's conviction. Therefore, Defendant's motion for judgment of acquittal was properly denied, and the jury's verdict should be affirmed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 5,332 words.

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

Dated this 15th day of August 2025.

/s/ Jennifer M. Jorgenson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 15, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Lance Lowell Long*, was served via Odyssey File and Serve upon Todd A. Love at todd@toddlove.lawyer.

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