

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31314

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

GEORGE LUNA,

Defendant and Appellee.

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 November 24, 2025

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PRELIMINARY STATEMENT

In this brief, the Appellant, State of South Dakota, is referred to as “the State.” The Defendant and Appellee, George Luna, is referred to as “Defendant” or “Luna.” All other individuals are referred to by name or initials (if a minor child). References to documents are designated as follows:

Settled Record (Pennington Co. 51C84000048A0)..... SR

Settled Record (Pennington Co. 51CIV18-1694) SR2¹

Appendix to this Brief.....APP

Corresponding page numbers follow all document designations.

¹ Pennington Co. 51CIV18-1694 is the most recent habeas file related to Luna. By order of the circuit court, most of the pleadings in 51CIV18-1694 were later filed into the original criminal file as well, 51C84000048A0. SR 5154; SR2 330. The State will cite to both records when appropriate.

JURISDICTIONAL STATEMENT

The circuit court entered its Amended Decision Granting New Trial on October 31, 2025. SR 5158-5223; APP 001-066. The State filed its Notice of Appeal on November 24, 2025. SR 5224-25.

Shortly thereafter, this Court considered a motion filed by Luna to dismiss the appeal for lack of jurisdiction, along with the State's response and Luna's reply, but denied the motion. *See* Motion to Dismiss Appeal for Lack of Jurisdiction dated December 8, 2025; State's Response to Defendant's Motion to Dismiss dated December 22, 2025; Reply to State's Response to Motion to Dismiss Appeal for Lack of Jurisdiction dated December 22, 2025; Order Denying Appellee's Motion to Dismiss Appeal dated January 30, 2026. This Court has jurisdiction to hear this appeal under SDCL 23A-32-4(3).

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT GRANTED LUNA'S MOTION FOR NEW TRIAL?

The circuit court granted Luna's motion for new trial, finding that the DNA test results, when considered with all other evidence in the case, establish by compelling evidence that a new trial would result in the acquittal of the felony offense for which Luna is imprisoned.

State v. Corean, 2010 S.D. 85, 791 N.W.2d 44.

State v. Muhm, 2009 S.D. 100, 775 N.W.2d 508.

SDCL 23-5B-15

SDCL 23-5B-16

STATEMENT OF THE CASE AND FACTS²

On May 1, 1983, the bodies of George Luna's wife, Lynn Luna, and her mother, Helen Thomas, were located in their residence at 713 Fairview Street in Rapid City, Pennington County, South Dakota. SR 2256, 2839. Lynn's body was located in her bedroom and Helen's body was located in the kitchen near the top of the basement stairs. SR 2936-37.

The cause of death for both women was found to be blunt force trauma to the head. SR 2913. Dr. Thomas Henry, the forensic pathologist who conducted the autopsies, testified that Helen suffered three to five blows to her head and three blows to her extremities, and Lynn suffered four to six blows to her head and three blows to her extremities. SR 2893, 2910. Dr. Henry also described the relative damage to Helen and Lynn as follows:

Well, on Helen Thomas, there was a severe damage with the bone being fractured and pushed in; and I think the relative degree of damage is shown on the skulls. The whole left side of Lynn Luna's head was basically pulverized, all the bones crushed into smaller pieces. So, there is a marked difference in the severity to the side of Lynn Luna's head as opposed to Helen Thomas' head.

SR 2914. Time of death was estimated to be between 11:00 p.m. on April 30 to 4:00 or 5:00 a.m. on May 1. SR 2853, 2942.

² The Statement of the Case and Statement of the Facts are combined given the history of the case over a period of time exceeding forty years.

Luna and Lynn were separated and in the middle of divorce proceedings at the time of the deaths. SR 2567, 3350-51. They shared a child, A.L., who was only about five months old at the time. SR 2582, 2600. A.L. lived with Lynn and Helen in the Fairview Street house,³ but Luna had supervised visitation with A.L. twice a week. SR 2591-92.

Law enforcement had contact with Luna at his residence later in the morning of May 1, 1983 and informed him of Lynn and Helen's deaths. SR 3196, 3210, 3404. Luna's residence was searched with his consent, his clothing was collected as evidence, and he was questioned by law enforcement. SR 2371, 2376-79, 3223.

On September 21, 1983, the Pennington County Grand Jury indicted Luna on two counts of Murder in the First Degree, pursuant to SDCL 22-16-4,⁴ for the deaths of Helen Thomas and Lynn Luna. SR 3-4. Luna was arrested on September 22, 1983. SR 2, 3423, 3427.

A series of pre-trial motions and notices were filed by both parties. The State filed several notices of its intent to introduce hearsay statements made by Lynn and Helen to various individuals, either orally, in affidavits, or in writings, that Luna had threatened to kill them and

³ Helen's mother and Lynn's grandmother, Jessie Nicksic, also lived in the residence. SR 3348-49.

⁴ The version of SDCL 22-16-4 in effect in 1983 stated that "[h]omicide is murder in the first degree when perpetrated without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, or when committed by a person engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or unlawful throwing, placing, or discharging of a destructive device or explosive. SL 1980, ch. 173, § 9.

displayed violent aggressive behavior towards them during the divorce proceedings. SR 266-68, 323-24, 450, 4121. The trial court issued an order allowing the State to introduce certain hearsay statements of Lynn and Helen at trial. SR 539-40, 1089-1109.

Luna filed a Notice of Alibi Defense, alleging that at the time of the murders, he was at various bars in Rapid City, then at his home until 2:30 a.m. on May 1, 1983, and then at the Outlaw Motel in Sturgis from 3:30 a.m. to approximately 9:30 a.m. on May 1, 1983. SR 171. He also sought to introduce third-party perpetrator evidence against two individuals, Doug Thomas and Joe Leonard.

Doug Thomas was the son of Helen and brother of Lynn. SR 1191. Luna alleged that Doug had threatened Helen in early 1981, causing Helen and Lynn to move to New Mexico because they were afraid of him. SR 271-72, 526, 1195-96, 1206-07, 1223-24. Doug had no contact with either Helen or Lynn for over a year prior to their deaths, but Luna alleged that Doug showed up at the residence shortly after their bodies were found, had information that only the murderer would know, had a dubious alibi at the time of the murders, and was the sole heir to Helen's estate. SR 272, 526-27, 704-05, 1193-94, 1198-99, 1219.

Joe Leonard was a transient who entered a convenience store less than a block from the Fairview residence at approximately 2:30 a.m. on May 1, 1983. SR 527, 705. He had blood on his hands and Luna alleged that Leonard later told an acquaintance that he had committed the

murders. SR 705. Luna also claimed that he had received two steel pipes from Leonard's acquaintance, which were allegedly in Leonard's possession at one time, and that either one of the steel pipes could have been the murder weapon. SR 705.

The trial court did not allow the third-party perpetrator evidence to be admitted at trial, finding that the purported evidence was not sufficient to show motive, opportunity, or any facts supporting the commission of the murders by either Doug Thomas or Joe Leonard. SR 1681, 1684-85. Luna again raised the issue during trial and the trial court renewed its prior decision to exclude any third-party perpetrator evidence. SR 3107-17.

The jury trial commenced on May 14, 1984 and lasted almost three weeks. SR 1558, 4056. The evidence that the State presented at trial was largely circumstantial. Much of the State's evidence dealt with microscopic glass particles found on Luna's clothing and their match to the window of the back door of 713 Fairview Street (which was broken at the time of the murders). SR 2468-76, 2489-90, 2513-14; Exhibits 107-108. The State also offered evidence of the hearsay statements made by Lynn and Helen regarding Luna's violent behavior towards them and threats to kill them, as well as testimony from several witnesses related to either threatening statements that Luna made directly to them about Lynn and Helen or prior incidents of violence between Luna and Lynn. SR 2577-78, 2584-89, 2618-23, 2790, 2793, 2810-11, 2830-31, 2957,

2964, 3007-08, 3054-56, 3073-74, 3076, 3083, 3126, 3134-36, 3139, 3144-45, 3147, 3149, 3183-85, 3190, 3194, 3204-05, 3210, 3239, 3243; Exhibits 1-12, Exhibit 142.

In addition, the State presented evidence concerning hairs that were found on Helen and Lynn's bodies, specifically one hair from Helen's finger and several hairs from Lynn's hand. SR 2653, 2719-20, 2842; Exhibit 21, Exhibit 23. Law enforcement also collected hair samples from Luna, A.L., Lynn, Helen, Doug Thomas, Joe Leonard, Jessie Nicksic, and other individuals and officers who had been in the residence at 713 Fairview Street. SR 2654-57, 2720-25, 2842, 2953, 3151-52; Exhibit 22, Exhibits 24-57.

Andrew Podolak was a special agent with the Federal Bureau of Investigation and certified expert in the examination, identification, and comparison of hair. SR 3153. He received the samples of hair located on Helen and Lynn's bodies, as well as the known hair samples collected from the various individuals, for comparison. SR 3161. He placed the unknown hair from Helen's finger on a slide marked Q1. SR 3162-63. He testified that this hair was a body area hair with Caucasian characteristics, but was not suitable for comparison. SR 3163.

The hair found in Lynn's hand was placed on a slide marked Q4. Mr. Podolak testified that slide Q4 contained light brown head hairs with Caucasian characteristics that matched the known head hairs of Lynn in every observable microscopic characteristic. SR 3171. Slide Q4 also

contained a reddish-brown head hair with Caucasian characteristics. SR 3171. Mr. Podolak compared this hair to the known hair samples, but it did not match any of the samples, including those of Luna, Doug Thomas, and Joe Leonard. SR 3171, 3181-82. Both slides Q1 and Q4 were admitted into evidence at trial as Exhibit 23A. SR 2784, 3176-77.

Luna testified in his defense at the trial. Although he admitted slapping Lynn one time to “try to calm her down” during an argument, he denied making any threats or engaging in any violent behavior against Helen or Lynn. SR 3352, 3358-59, 3361-67, 3431-36. He testified to his alibi for the night of the murders and denied having any involvement in Helen or Lynn’s deaths. SR 3373-91, 3455. Luna also attempted to rebut the State’s evidence on the microscopic glass particles from his clothing through his own glass expert, who testified that the particles could not have come from the back door window. SR 3742, 3749-50, 3775.

On June 1, 1984, the jury returned a guilty verdict on both counts. SR 4058. On June 4, 1984, Luna was given concurrent life imprisonment sentences. SR 940-41. He appealed his conviction on June 6, 1984. SR 1036. Luna also filed a motion for new trial, which was considered by the trial court after remand from this Court and denied. SR 1509, 1514, 1521-57, 4082-84.

On November 20, 1985, this Court issued a written decision affirming Luna’s convictions. *State v. Luna*, 378 N.W.2d 229 (S.D. 1985).

Specifically, this Court upheld the exclusion of the third-party perpetrator evidence, citing the trial court's findings that there was no linkage between Joe Leonard and Helen or Lynn, and there was no physical evidence tying Doug Thomas to the murders. *Id.* at 233.

Luna filed an application for writ of habeas corpus on February 11, 1986. SR 4152-55. A writ was granted on May 7, 1986, with an amended writ granted on May 29, 1986. SR 4161, 4169. An evidentiary hearing was held on June 12, 1986, and the circuit court issued a memorandum decision on August 4, 1986, dismissing the application and quashing the amended writ of habeas corpus. SR 4334-4346. A Certificate of Probable Cause was issued on August 20, 1986, so that Luna could appeal. SR 4369, 4371. This Court affirmed the dismissal of the application for writ of habeas corpus by decision dated August 19, 1987. *Luna v. Solem*, 411 N.W.2d 656 (S.D. 1987).

Over the years, Luna sought post-conviction relief several more times. He requested court-appointed counsel in September 1990 for a "re-appeal." SR 4374-76. Appointed counsel informed the circuit court in February 1992 that any further efforts for post-conviction relief would be fruitless. SR 4416. On April 15, 1994, Luna filed another application for habeas corpus relief, alleging that jury instructions given at trial were constitutionally defective.⁵ SR 4487-4504. The writ was quashed by the circuit court by order dated June 20, 1994. SR 4581-82. Luna then

⁵ See Pennington County File No. 51CIV94000868.

filed a pro se application for habeas relief with the circuit court on September 24, 2004, which was denied on September 29, 2004.⁶

Starting in 2007, Luna filed several pro se pleadings seeking DNA testing on the hair from Lynn's hand. SR 4643-45, 4670, 4711-14, 4732. Counsel was appointed to represent Luna, but ultimately, the circuit court denied Luna's requests for DNA testing of the hair. SR 4730-31, 4736, 4743, 4766. Eventually, as a result of Luna's numerous "frivolous" filings, the circuit court issued an order directing the Pennington County Clerk of Courts to not accept any more filings from Luna unless they are signed by an attorney in good standing with the State Bar of South Dakota. SR 4773-74.

In April 2015, an attorney with the Minnesota Innocence Project sought to file a petition for post-conviction DNA testing. SR 4775. Luna and the State entered into a stipulation for mitochondrial DNA (mtDNA) testing of the hair found in Lynn's hand. SR 4782-91. Testing was performed by Bode Cellmark Forensics in September 2016, and mtDNA profiles were determined for Luna, Joe Leonard, and Doug Thomas. SR 5020; SR2 173. A mtDNA profile was also obtained from one 3.5 centimeter hair found in Lynn's hand. SR 5021; SR2 174. The hair was consumed during testing. SR 5039; SR2 192.

The mtDNA profile obtained from the hair was determined to not be consistent with the mtDNA profiles of Luna and Joe Leonard, but it

⁶ See Pennington County File 51CIV04000776.

was found to be consistent with the mtDNA profile of Doug Thomas. SR 5021; SR2 174. The Bode report indicated that “[m]itochondrial DNA is inherited maternally. A mtDNA match cannot exclude any maternal relatives.” SR 5021; SR2 174. Therefore, Doug Thomas could not be excluded as the contributor of the hair, but Luna and Joe Leonard could be excluded. SR 5021; SR2 174.

In October 2018, Luna filed a pro se motion for an order allowing him to file a subsequent application for writ of habeas corpus, which was granted by the circuit court.⁷ SR 4875, 4880. Although represented by counsel, Luna also filed two pro se motions for new trial due to a claim of “actual innocence” supported by the DNA test result. SR 4918, 4921-22; SR2 49, 78-79. Luna’s current counsel was appointed to represent him in the criminal case in July 2020 and the habeas case in August 2020. SR 4965-66; SR2 123.

Luna’s habeas application asserted several claims for relief, the first of which was actual innocence as proven by the DNA testing of the hairs. SR2 3. The other claims for relief were dismissed by the circuit court in September 2020, on the basis that they were barred by res judicata and claim preclusion. SR 4971-72; SR2 3-7, 129-30.

Luna and the State stipulated to additional DNA testing of slides Q1 and Q4 due to new testing methods that were not available at the

⁷ Pennington Co. File 51CIV18-1694 was opened for the habeas action. All subsequent pleadings were placed in that file until the circuit court entered an order to also file them into the original criminal case. SR 5154; SR2 330.

time of the prior DNA testing. SR 4992-95; SR2 146-49. The circuit court ordered the further DNA testing in January 2021. SR 4989-91; SR2 150-52. However, no further testing was done as slides Q1 and Q4 could not be located. SR 5124; SR2 277.

An evidentiary hearing was held on October 27, 2022, where the parties put forward evidence related to the 2016 DNA testing, specifically that Luna and Joe Leonard were excluded as possible contributors to the mtDNA profile derived from the hair. SR 5020-23, 5043; SR2 173-76, 196. The mtDNA profile of Doug Thomas was consistent with the mtDNA profile from the hair, but the DNA analyst testified that “everybody in the same maternal line, maternal lineage, they’re going to have the same mitochondrial DNA profile” and that at a minimum, Doug Thomas shares maternal DNA with the contributor of that hair. SR 5033, 5048, 5054; SR2 186, 201, 207.

The parties also submitted evidence of DNA testing done by the South Dakota Forensic Laboratory in January 2020. SR 5013-16; SR2 166-69. Partial DNA profiles were obtained from several items, including stains from two towels, a kitchen sink stain, a sample of blood from the kitchen wall, and Lynn’s hand bag, however, the only conclusion reached by the forensic scientist was that the DNA originated from a female (with the DNA profiles from the items consistent with originating from a common source), or there was not enough DNA to compare to other profiles. SR 5062-67, 5070; SR2 215-20, 223. The forensic scientist was

not able to develop DNA profiles for either Lynn or Helen as their reference samples were degraded. SR 5064-65; SR2 217-18. There were several more items tested for the presence of blood in which blood was not detected, including Luna's boots that were taken from him on May 1, 1983. SR 5014; SR2 167.

The circuit court issued a Memorandum Decision on February 28, 2023, granting Luna's motion for new trial and denying the application for subsequent writ of habeas corpus.⁸ SR 5126; SR2 279. The circuit court found that the "DNA testing calls into question that "Doug Thomas w[as] excluded as possible matches for hair samples found on the victims,' and that '[n]o physical evidence ties Thomas to the crime.'" SR 5124; SR2 277. The circuit court reasoned that "the mtDNA evidence may not confirm Thomas was at the scene, but it is physical evidence that possibly ties Thomas to the scene" and "the hair was found in the hand of Lynn Luna, linking it to the time of the murder." SR 5125; SR2 278. Therefore, "[w]ith this evidence, Petitioner would be permitted to present third-party perpetrator evidence in a new trial" and "the DNA test results, when considered with all other evidence in the case,

⁸ The State correctly pointed out at the October 27, 2022 evidentiary hearing that although the case was proceeding as a habeas matter, the statutes dealing with DNA testing, found in SDCL Ch. 23-5B, provide that "[n]othing in this chapter provides a basis for relief in any state or federal habeas corpus proceeding." SDCL 23-5B-17. Rather, the proper channel for using DNA test results to challenge a prior conviction is through a motion for new trial under SDCL 23-5B-15. The circuit court acknowledged the proper statutory procedure by granting the motion for new trial and denying habeas relief.

establish by compelling evidence that a new trial would result in the acquittal of the felony offense.” SR 5125; SR2 278 (citing SDCL 23-5B-16).

After the Memorandum Decision was issued, the circuit court and the parties communicated via email regarding an incorrect statement contained in the Memorandum Decision that the DNA test result was “in direct contradiction to the argument at the original trial that ‘the hair’ matched George Luna.” SR 5124; SR2 277. To correct this statement, the circuit court reviewed the testimony and evidence submitted at the 1984 trial and, in doing so, located slides Q1 and Q4 which were previously thought to have been lost. SR 5128, 5142; SR2 281, 314. The State requested that a final order on the Memorandum Decision be held in abeyance pending further DNA testing of slides Q1 and Q4. SR 5128-29; SR2 281-82).

Bode Technology conducted additional DNA testing in May and November 2024. SR 5135-39. One hair was found on slide Q1, which was the body area hair from Helen found unsuitable for comparison at the original trial, and in 2024 could not be processed further. SR 3163, 5135. Slide Q4 had hairs from Lynn’s hand, most of which matched the known head hairs of Lynn in every observable microscopic way at the original trial. SR 3171. In 2024, there were three hairs on Q4, with one hair being tested and consumed during testing. SR 5136. Crucially, the

only information that could be obtained from that hair was that it originated from a female. SR 5138, 5142; SR2 314.

Given this crucial discovery, the State filed a motion to vacate and reconsider the circuit court's February 28, 2023, Memorandum Decision in light of the 2024 DNA testing. SR 5140-44; SR2 312-16. The State argued that as the 2024 testing shows that the hair originated from a female, Doug Thomas was excluded as a contributor to the hairs found on the victims and "[t]he testing puts the parties in the same position they were in when the jury trial court denied third-party perpetrator evidence." SR 5143; SR2 315. "[T]here was and still is no evidence that connects Doug Thomas to the crime or another perpetrator to the crime." SR 5143; SR2 315.

On October 31, 2025, the circuit court issued an Amended Decision Granting New Trial. SR 5158-5223; APP 001-066. In its lengthy decision, the circuit court initially conceded that the 2024 DNA testing excluded Doug Thomas as the source of the hair. SR 5162; APP 005. Although that fact alone should have changed the circuit court's prior decision granting Luna a new trial (as the basis of the prior decision was the third-party perpetrator evidence and DNA evidence tying Doug Thomas to the scene of the murders), the circuit court went on to reanalyze all of the evidence presented at the jury trial, including an analysis of the purported third-party perpetrator evidence under the lens of more recent legal authority. SR 5166-5220; APP 009-063. Based on

this analysis, the circuit court granted the motion for new trial, concluding that “the standard under SDCL 23-5B-15 has clearly been met” — that the DNA evidence, when considered with all other evidence in the case, establishes by compelling evidence that a new trial would result in Luna’s acquittal. SR 5221, 5223; APP 064, APP 066.

STANDARD OF REVIEW

“Whether a new trial should be granted is left to the sound judicial discretion of the trial court, and this Court will not disturb the trial court’s decision absent a clear showing of abuse of discretion.” *State v. Muhm*, 2009 S.D. 100, ¶ 43, 775 N.W.2d 508, 523 (quoting *State v. Gehm*, 1999 S.D. 82, ¶ 12, 600 N.W.2d 535, 539). “An abuse of discretion ‘is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, arbitrary or unreasonable.’” *State v. Miller*, 2014 S.D. 49, ¶ 11, 851 N.W.2d 703, 706 (quoting *Thurman v. CUNA Mut. Ins. Soc’y*, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616).

“If DNA test results obtained pursuant to [SDCL Ch. 23-5B] exclude the petitioner as the source of the DNA evidence, the petitioner may file a motion for a new trial.” SDCL 23-5B-15. “The Court shall grant the motion of the petitioner for a new trial if the DNA test results, when considered with all other evidence in the case, establish by compelling evidence that a new trial would result in the acquittal of the felony offense . . . for which the petitioner is under a sentenced of

imprisonment.” SDCL 23-5B-16. However, “[i]f DNA test results obtained pursuant to [SDCL Ch. 23-5B] are inconclusive, the circuit court shall deny the petitioner relief.” SDCL 23-5B-12.

ARGUMENT

THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT GRANTED LUNA’S MOTION FOR NEW TRIAL

- A. *The DNA test results do not constitute compelling evidence that a new trial would result in Luna’s acquittal as they do not change the evidence presented to the jury in the 1984 trial.*

This Court has not defined what constitutes “compelling evidence that a new trial would result in the acquittal of the felony offense” under SDCL 23-5B-16, but can look at its precedent on the grounds for a new trial under SDCL 23A-29-1 and SDCL 15-6-59(a) for guidance.

To succeed on a motion for a new trial based on after-discovered evidence, a defendant must prove that ‘(1) the evidence was undiscovered by the movant at the time of trial; (2) the evidence is material, not merely cumulative or impeaching; (3) that it would probably produce an acquittal; and (4) that no lack of diligence caused the movant to fail to discover the evidence earlier.’

State v. Timmons, 2022 S.D. 28, ¶ 25, 974 N.W.2d 881, 889 (quoting *State v. Corean*, 2010 S.D. 85, ¶ 18, 791 N.W.2d 44, 51). “[N]ew trial motions based on newly discovered evidence request extraordinary relief; they should be granted only in exceptional circumstances and then only if the requirements are strictly met.” *Corean*, 2010 S.D. 85, ¶ 18, 791 N.W.2d at 51-52 (quoting *Gehm*, 1999 S.D. 82, ¶ 15, 600 N.W.2d at 540).

This Court first recognized the admissibility of DNA testing in *State v. Wimberly*, 467 N.W.2d 499 (S.D. 1991). The State concedes that DNA testing was not available in 1984 and therefore, the DNA evidence was undiscovered by Luna at the time of trial and no lack of diligence caused Luna to fail to discover the evidence earlier.

However, Luna has failed to prove the other elements to succeed on a motion for new trial. First, the DNA test results are cumulative. “Cumulative evidence is evidence of the same character as evidence previously produced and which supports the same point.” *Stormo v. Strong*, 469 N.W.2d 816, 824 (S.D. 1991)(citing *State v. DeMarias*, 27 S.D. 303, 308, 130 N.W. 782, 784 (1911)). “[W]hen there is nothing to indicate that the [defendant’s] new evidence would be different from witnesses who had testified, it can only be considered cumulative.” *State v. Gerdes*, 258 N.W.2d 839, 842 (S.D. 1977). The evidence presented to the jury was that the hair found in Lynn’s hand did not belong to Luna and the DNA results do not change this evidence.

In addition, the DNA results from both the 2016 and the 2024 testing do not reveal any new evidence that would probably lead to an acquittal. While the DNA testing excludes Luna as the source of the hair, the prior hair comparison done by Andrew Podolak also excluded Luna as the source. Even when only the 2016 results were available, at most, they strengthened Luna’s third-party perpetrator defense. But in no conceivable way had those results suggested Luna’s acquittal. After the

2024 results confirmed the source of the hair was a female, the door shut completely on Luna's third-party perpetrator defense.

At trial, Mr. Podolak identified two types of hair found in Lynn's hand — one type was consistent with Lynn's hair, but the other type was not consistent with the known hair samples provided by any of the other individuals. SR 3171, 3181-82. The circuit court correctly pointed out that it was unknown whether the singular hair tested in 2016 came from the type consistent with Lynn's hair, or whether it was one of the "unidentified" hairs. SR 5160; APP 003. As the hair was consumed during the testing, there is no way of answering this question. SR 5162; APP 005. It also brings into question the reliability of the 2016 DNA test results.

The most that could be said from the 2016 testing is that the hair came from someone in Lynn's maternal line, which would include Doug Thomas, but would also include the four occupants of the residence — Lynn, Helen, A.L., and Jessie Nicksic. As Mr. Podolak compared the known hair samples of all these individuals to the "unidentified" hair with no matches, it is most likely that the hair tested in 2016, which matched to Lynn's maternal line, was not one of the "unidentified" hairs, but rather was one of Lynn's own hairs. Therefore, the 2016 testing essentially has no evidentiary value and certainly none that could be considered "compelling evidence" that would lead to Luna's acquittal.

The 2024 DNA testing likewise contributes nothing to the “compelling evidence” determination. This testing showed that the hair in Lynn’s hand could only have come from a female, which excludes not only Luna as the source of the hair, but Doug Thomas as a possible third-party perpetrator. SR 5138, 5142; SR2 314. Evidence that does not even support Luna’s defense does not lead to a possible acquittal determination.

Luna argued at trial that the hair found in Lynn’s hand belonged to the murderer.

This was a gob of hair in Lynn Luna’s hand. Now, ladies and gentlemen, that hair had to belong to whoever killed these women. You remember Dr. Henry said that there was some evidence of wounds on both of these bodies that could be--that could have been made by a fist or a slap. The wounds inside the mouth. Maybe there was a struggle ahead of time. Maybe Lynn Luna did get a handful of hair from one of the assailants or from the assailant. But ladies and gentlemen, the State of South Dakota came in here and proved to you conclusively that that hair didn’t belong to George Luna.

SR 4009.

Andy Podolak of the FBI testified that the hair in Lynn Luna’s hand did not match George’s or anybody else. He said it was-- he would say it was an intruder that evidently knew the family.

SR 4024.

[A]nd, ladies and gentlemen, the crowning piece of evidence, the bunch of hair in Lynn Luna’s hand, it had to be the murderer’s and it wasn’t George’s. The State proved that conclusively.

SR 4034.

The State, on the other hand, did not present any testimony or argument that the hair found in Lynn's hand came from the murderer. Rather, the hair was just one piece of evidence considered by the jury, and even if it had exonerated Luna, the remaining evidence presented to the jury, properly weighed, showed his guilt. And by finding Luna guilty of the two murders, the jury clearly rejected his argument that the hair in Lynn's hand belonged to the murderer.

The serology and DNA testing of items from the home in 2020 also did not provide any new compelling evidence either. SR 5013-16; SR2 166-69. While there was testimony at trial that human blood was detected on items and swabs from the residence, the jury was not given any evidence as to the source of the blood. SR 2867-79. The 2020 testing also showed any DNA derived from blood on items or swabs from the residence was from a female. There is no new DNA evidence supporting Luna's acquittal.

Finally, the determination that no blood was detected on Luna's boots does not change the evidence presented at trial. SR 5014; SR2 167. The jury heard testimony that no blood was detected on Luna's jacket that was collected from him on May 1, 1983. SR 2873; Exhibit 64A. It was the jury's duty to weigh the lack of blood from a crucial piece of Luna's clothing with evidence showing the amount of blood at the crime scene. It should also be noted that Luna himself also expressed some doubt at trial as to whether the boots in evidence (which were the

ones tested in 2020) were the same boots that were taken from him.

SR 3603-04; Exhibits 68-69. Given this disputed evidentiary value of the boots, the results of the 2020 testing of the boots provide no support for an acquittal.

Luna bears the burden of showing that the DNA results, combined with the entire evidentiary record, compellingly establish that a new trial would result in acquittal. He cannot do so. The DNA results themselves do not constitute “compelling evidence.” Rather, they confirm what the jury had been told at the original trial — that the hair found in Lynn’s hand did not belong to Luna and that the source of the blood on the items and swabs from the residence is unknown. And, as set out below, consideration of “all other evidence in the case” along with the DNA test results in its analysis leads to the same conclusion — that Luna has failed to show “compelling evidence that a new trial would result in the acquittal of the felony offense.”

B. The circuit court improperly reweighed the evidence presented to the jury in the 1984 trial.

When the circuit court entered its Memorandum Decision in February 2022, granting Luna’s motion for new trial, it found that the 2016 DNA testing provided physical evidence linking Doug Thomas to the murders and therefore supported Luna’s third-party perpetrator theory. SR 5125; SR2 278. And in entering the Amended Decision Granting New Trial, the circuit court noted that the 2024 DNA testing “leads the Court to the same conclusion it had previously come to, however, under slightly

different, and *stronger* support.” SR 5158; APP 001. (emphasis added).

But the opposite is true. The 2024 DNA testing actually provides little to no support for the circuit court’s decision granting a new trial.

While the 2016 DNA testing may have shown some slight connection between Doug Thomas and the murders, again only possible supporting Luna’s third-party perpetrator defense, the 2024 testing takes that connection away completely. So, in order to compensate for the loss of evidence linking Doug Thomas to the murders, the circuit court reviewed all of the evidence presented at the 1984 trial in order to find “compelling evidence” that would lead to an acquittal. However, the circuit court’s analysis of the “other evidence” is no more than an improper reweighing of the evidence presented to the jury.

Because the DNA evidence presented no new information beneficial to showing Luna’s innocence, it was improper for the circuit court to replace itself as the fact finder. Even if this Court were to review the sufficiency of the evidence as if this were Luna’s first direct appeal, this Court “will not ‘resolve conflicts in the evidence, assess the credibility of witnesses, or reevaluate the weight of the evidence.’” *State v. Morgan*, 2012 S.D. 87, ¶ 10, 824 N.W.2d 98, 101 (citing *State v. Beck*, 2010 S.D. 52, ¶ 7, 785 N.W.2d 288, 292). This principle should equally apply to the circuit court’s consideration of the evidence in this case. But this is exactly what the circuit court did, questioning the jury’s analysis of the

evidence and the credibility of the witnesses, essentially saying that it would have reached a different verdict had it been the fact finder.

The proper test for the circuit court was whether “*the DNA test results*, when considered *with* all other evidence in the case, establish by compelling evidence that a new trial would result in the acquittal of the felony offense.” SDCL 23-5B-16. (emphasis added). It was not whether a court, not a jury, in reconsideration of all the old and new evidence, over forty years later, would have acquitted Luna.

As set out above, the State’s primary evidence of Luna’s guilt was (1) the microscopic glass particles found on his clothing that were consistent with the broken window on the back door of the residence, and (2) the violent behavior and threats by Luna towards Lynn and Helen in the months preceding their deaths. Luna offered his own evidence to rebut the State’s evidence, through cross-examination of the State’s witnesses and his case-in-chief. The jury did its duty by examining the evidence before it, assessing the credibility of the witnesses (including Luna), and making its decision.

The DNA test results do not change the evidence presented at trial. The circuit court was correct in its assertion that none of the DNA evidence connects Luna to the murders. SR 5162; APP 005. But that was true at the time of trial and the jury was not told otherwise. And both the evidence linking Luna to the scene of the murders (glass particles on his clothing) and the evidence of Luna’s violent and

threatening behavior towards Lynn and Helen were not affected by the DNA testing. Because the DNA results change nothing that was presented at trial, the circuit court abused its discretion by replacing itself as the trier of fact, reweighing the evidence, reassessing the credibility of witnesses, and finding that Luna is entitled to a new trial.

C. The circuit court improperly reanalyzed the exclusion of the third-party perpetrator evidence.

In its Amended Decision Granting New Trial, the circuit court engaged in an in-depth analysis of the third-party perpetrator evidence that Luna sought to introduce at trial, set out in witness statements, affidavits, and deposition testimony. SR 5180-5206; APP 023-049. None of this evidence was allowed at trial. SR 1681, 1684-85, 3107-17. And this Court upheld the exclusion of the third-party perpetrator evidence on appeal. *Luna* at 233.

The circuit court noted that in upholding the exclusion of the third-party perpetrator evidence, this Court applied the balancing test set out in *Perry v. Rushen*, 713 F.2d 1447 (9th Cir. 1983), “a test which does not address whether third-party perpetrator evidence is admissible on account of relevancy rules.” SR 5215. The circuit court then went on to state that this Court “did not proceed to examine whether the evidence was admissible under state rules of evidence” and therefore, “no court has determined whether the third-party perpetrator evidence in Luna is admissible under the South Dakota Rules of Evidence.” SR 5216.

The circuit court noted that “since the time of Luna’s trial, the South Dakota Supreme Court has provided guidance in regard to the admission of third-party perpetrator evidence under the rules of evidence.” SR 5218. This “guidance” is set out in SDCL 19-19-403 (“Rule 403”) and provides that if purported third-party perpetrator evidence is found to be relevant, then the trial court must determine whether the probative value of the evidence is substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. The circuit court concludes:

On account of guidance from the South Dakota Supreme Court, which was unavailable at the time of the 1984 trial, regarding how third-party perpetrator evidence is to be analyzed under state rules of evidence--including the high court’s clarification that the law favors the admission of relevant evidence--and the new testing results in this case, it appears likely that a trial court would now admit Luna’s third-party perpetrator evidence if a new trial were to take place.

SR 5220.

The circuit court’s conclusion is wrong in several aspects. First, the circuit court ignores that the trial court’s exclusion of the third-party perpetrator evidence did include an analysis of Rule 403:⁹

Based on all of the facts submitted to the Court, the arguments of counsel, and the affidavits, the Court feels this is an insufficient showing of motive, opportunity, or underlying facts to have commission of the crime by either of these two individuals; and *it would be confusing for the jury* to bring in such collateral evidence.

⁹ At the time of trial and the appeal, Rule 403 was set out in SDCL 19-12-3.

SR 1684-85 (emphasis added).

It is the feeling of this Court that to allow collateral evidence of other individuals potentially committing the crime at this point is inappropriate in that *it could be confusing to the jury*. It is not sufficient to reasonably establish a possibility of the commission of a crime by either Joe Leonard or Doug Thomas. There is considerable lack of motivation, opportunity or facts to support either of these individuals as possibly committing the crime; therefore, the Court feels that it is appropriate to exclude this evidence to *avoid confusion and unduly tying up the Court process* and to ensure that the jury is able to focus on the facts of the case itself without what appears to this Court to be *irrelevant evidence* concerning other relationships or facts that exist, which are not pertinent to the incident in question.

SR 3113-14 (emphasis added).

In addition, this Court's application of the *Perry* balancing test also included an analysis of Rule 403.¹⁰ "When the rules of evidence were adopted in 1978, they became the criteria for admissibility of evidence." *Luna* at 232. However, "[s]tate evidentiary rules may not be applied mechanistically to defeat the ends of justice." *Id.* at 233. "[T]he defendant's general right to present evidence is undeniably strong; yet the State's legitimate interest in reliable and efficient trials is often compelling." *Id.* "We then balance the equation in the manner suggested in *Perry*. We start by giving due weight to the substantial state interest in *preserving orderly trials*, and judicial sufficiency, and in *excluding unreliable or prejudicial evidence*." *Id.* at 234 (emphasis added).

¹⁰ It is important to note that this Court has said that *Luna* is simply an illustration of the probative/prejudicial balancing requirement of Rule 403. *State v. Jenner*, 451 N.W.2d 710, 723 (S.D. 1990).

The application of Rule 403 to the admission of third-party perpetrator evidence as set out in *Luna* has been reiterated by this Court several times. *See, e.g., State v. Braddock*, 452 N.W.2d 785, 789 (S.D. 1990)(“Third-party perpetrator evidence is not automatically suspect, but is not to be admitted if the State’s interest in exclusion of the evidence outweighs its probative value); *State v. Larson*, 512 N.W.2d 732, 740 (S.D. 1994)(“[W]e find that any probative value in Larson’s favor is, in light of the *Luna*, *Jenner*, and the circumstances of this case, outweighed by the state’s legitimate interests in presenting reliable evidence and promoting orderly and efficient trials.”); *State v. Fisher*, 2010 S.D. 44, ¶ 15, 783 N.W.2d 664, 670 (“[T]he court performed the requisite balancing test and found that the probative value of the evidence was substantially outweighed by the risk that the evidence would have an undue tendency to move the jury to decide the case on an improper basis.”); *State v. Hernandez*, 2023 S.D. 17, ¶ 27, 989 N.W.2d 525, 534 (“We now reiterate that the proper test for admissibility of third-party perpetrator evidence is: (1) whether the evidence is relevant . . . , and (2) whether the probative value of the evidence is substantially outweighed by the risk of unfair prejudice or the other considerations listed in SDCL 19-19-403.”).

The test for the admission of third-party perpetrator evidence has not changed. It was the same at the time of *Luna*’s trial and appeal as it is now. However, the circuit court’s reanalysis of the purported third-party perpetrator evidence is essentially a determination that it would

have reached a different decision on the third-party perpetrator evidence if it had considered the issue. But it was improper for the trial court to make that determination, and base its decision to grant a new trial on that determination, especially in the continued absence of evidence to support Luna's innocence or either Doug Thomas or Joe Leonard's involvement in the murders.

Finally, the circuit court noted that "in reaching their decisions on whether the third-party perpetrator evidence was admissible, neither the trial court nor the South Dakota Supreme Court had the benefit of the 2020 serology and DNA testing or the subsequent testing testified to in April, 2025." SR 5216. However, that does not matter to the determination of whether a new trial should be granted. There was and still is no evidence suggesting Luna's innocence or connecting Doug Thomas or Joe Leonard to the murders.

CONCLUSION

The circuit court abused its discretion in granting Luna a new trial. The DNA test results, when considered with all other evidence in the case, do not establish by compelling evidence that a new trial would result in Luna's acquittal. The DNA test results do not change any of the evidence presented to the jury. The circuit court improperly reweighed all the evidence, including the purported third-party perpetrator evidence, as a basis for granting a new trial. The circuit court's decision is arbitrary and unreasonable in light of the entire record.

The State requests that this Court reverse the circuit court's order granting Luna's motion for new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains 7,218 words.

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

Dated this 12th day of May, 2026.

/s/ Angela R. Shute
Angela R. Shute
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 12, 2026, a true and correct copy of Appellant's Brief in the matter of *State v. George Luna* was served electronically through Odyssey File and Serve on John R. Murphy at john@murphylawoffice.org.

/s/ Angela R. Shute

Angela R. Shute
Assistant Attorney General

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31314

STATE OF SOUTH DAKOTA,
Plaintiff and Appellant,

v.

GEORGE LUNA,
Defendant and Appellee.

APPELLEE'S BRIEF

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge _____

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Notice of Appeal filed November 24, 2025

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PRELIMINARY STATEMENT

In this brief, the Appellant, State of South Dakota, is referred to as “the State” and the Appellant’s Brief is cited as “SB.” Defendant/Appellee George Luna is referred to as “Defendant” or “Luna.” Individuals are referred to by last name, except when full names are necessary to avoid confusion. Materials in File 51C84000048A0 are cited as “SR.”

The primary document at issue in this appeal is the Amended Decision Granting New Trial. SR 5158-5223. It is 66 pages long and was included in the State’s Appendix. SB APP 001-066. It is included in Luna’s Appendix with the same pagination used by the State and is cited as “APP.”

JURISDICTIONAL STATEMENT

The Circuit Court entered its Amended Decision Granting New Trial on October 31, 2025. SR 5158-5223; APP 001-066. On that date, both the Circuit Court judge and the clerk of court emailed the State and Luna notifying them of the entry of the decision and attaching a PDF copy of it. The State filed its Notice of Appeal on November 24, 2025. SR 5224-25.

Luna reasserts his contention that this Court lacks jurisdiction to consider the State’s appeal. As detailed in his Motion to Dismiss, the State’s Notice of Appeal was untimely because it was filed over 20 days past the deadline for filing a notice of appeal regarding orders granting new trials.

SDCL 23A-32-6 states that a party appealing an Order granting a new trial must file notice thereof within 10 days of receiving written notice of entry of the Order. In this case, the Circuit Court judge and the clerk of court notified the State in writing that the Order had been entered, and provided it with a copy of the Order, on October 31, 2025. Pursuant to *State v. Sharpfish*, 2018 S.D. 63, ¶ 13, 917 N.W.2d 21, 23, the written notice from the judge and the clerk commenced the jurisdictional clock for filing a notice of appeal. The State failed to meet that deadline and this Court lacks jurisdiction to hear the State's appeal. However, in light of this Court's ruling denying Luna's motion to dismiss, Luna responds to the State's brief as if the Court has jurisdiction over the matter.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

1. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT GRANTED LUNA'S MOTION FOR NEW TRIAL

The Circuit Court granted Luna's motion for new trial, finding that the DNA test results, when considered with all other evidence in the case, established by compelling evidence that a new trial would result in the acquittal of the felony offense for which Luna is imprisoned.

Authorities:

SDCL 23-5B-16

State v. Strahl, 2009 S.D. 54, 768 N.W.2d 546

Tunender v. Minnaert, 1997 S.D. 62, 563 N.W.2d 849

State v. Hernandez, 2023 S.D. 17, 989 N.W.2d 525

STATEMENT OF THE CASE AND FACTS¹

In 1983, Luna was charged with murdering his wife, Lynn Luna, and his mother-in-law, Helen Thomas. Both women were found in Helen Thomas's home. During Luna's trial in 1984, the State admitted evidence of hairs found in Lynn Luna's hand at the crime scene and blood found throughout the home. SR 5159. DNA testing did not exist at that time.

At trial, Luna was prohibited from admitting evidence that implicated Doug Thomas, Lynn's brother and Helen's son, and Joseph Leonard, a homeless person, as potential third-party perpetrators. Luna's trial defense was that he was not present in Helen Thomas' house at or near the time of the murders. He asserted that he was in Sturgis at the time of the murders. At trial, Luna had no forensic evidence that supported his contention that he was not in Helen's home at or near the time of the crime.

Luna was convicted of the murders and received life sentences. He appealed the trial court's exclusion of his third-party perpetrator defense. In

¹ The facts discussed herein are taken primarily from the Circuit Court's Amended Decision Granting New Trial and the exhibits referenced therein. APP 001-066. These facts are not contested by the State in its brief.

the decision denying Luna's direct appeal, *State v. Luna*, 378 N.W.2d 229 (1985), the Court noted that one of the facts relied upon by the trial court for excluding evidence regarding Joseph Leonard was that "it was obvious from the sink and towel at the scene that the perpetrator cleaned his hands before leaving." *State v. Luna*, 378 N.W.2d 229, 232 (S.D. 1985). This was an important fact to the Court because Leonard was observed near the crime scene with blood on his hands. Thus, Leonard was an unlikely suspect because the killer would have had clean hands due to evidence that the culprit had cleaned his or her hands at the crime scene. *Id.* Swabs from the sink and towels were taken into evidence in 1983, but DNA testing was not done on them until 2020. SR 5013.

At trial, the State called a "hair analyst" as an expert witness. SR 5159. The expert testified that, based on then-existing technology, neither Luna nor any other person could be excluded as the source of the hairs. SR 5160 (quoting Trial Transcript at pp. 1568-1579); APP 3. As a result, this evidence did not support Luna's contention that he was not in the home.

During its investigation in 1983, law enforcement collected serology samples from Luna's clothing, the sink and towels from the kitchen, and other items in the house. At Luna's trial, the State offered testimony regarding the serology testing on these items. SR 5163 & nn. 18, 19, 20;

APP 6. The test results were non-specific: multiple samples were described as possibly being human or animal. SR 5163-64 & nn. 18, 19, and 20; APP 6. As with the hair samples, this evidence, which was gathered from multiple locations in the home, did not definitively exclude Luna as a source or support his defense that he was not in the home.

Between 2016 and 2024, the South Dakota Forensic Lab and Bode Technologies conducted multiple kinds of modern, forensic testing on the hair, blood and biological samples recovered from the crime scene in 1983. SR 5020, 5013, 5135, 5138 Unlike the ambiguous, incomplete, and non-exclusionary testing done in 1983 and 1984, this new testing resulted in unambiguous, definitive, exclusionary results.² SR 5160-5166; APP 3-9.

The 2016 testing involved utilization of mitochondrial DNA testing (mtDNA) on a hair fragment found in Lynn Luna's hand. SR 5020, 5160; APP 3. The results were definitive: "George Luna (CCB1590-0368-R02) and Joseph Leonard (CCB1590-0368-R03) can be excluded as possible contributors of sample CCB1590-0368-E01b [the hair]." SR 5021, 5160;

² The parties jointly agreed to the DNA testing done in this case. *See* SR 4792, 4796, 4992. State and defense investigators worked together to locate, identify, and ship samples to the laboratories, and the State stipulated to the results. Due to the unavailability of a DNA technician from Bode at the final hearing, the parties stipulated that a forensic analyst from the South Dakota Forensic Laboratory could lay the foundation for the admission of the 2024 test results. April 29, 2025, Evidentiary Hrg. Tr. p. 22.

APP 3. For the first time in this litigation, un-controverted forensic testing expressly and unequivocally excluded George Luna as a contributor to the hair samples found at the crime scene. SR 5160 (citing at notes 3-7 to the transcript of the motions hearing on 10/27/22 [filed 11-15-22] [SR 5025] and the Bode Cellmark Forensic Lab report dated 9/19/16 [filed 10-31-22][SR 5020-5023]; SR 5162. To some extent, this testing supported Luna's contention that he was not at the crime scene, though it only did so in regard to the hairs found in one victim's hand.

The 2016 mtDNA testing of hair led to expanded forensic testing of multiple items collected in 1983. As noted by the Circuit Court, the 2016 mtDNA testing was "the first of *many pieces of DNA evidence that exclude George Luna as a contributor* to evidence found at and beyond the scene." SR 5162 (emphasis in original); APP 5.

In response to the 2016 Bode Cellmark's mtDNA hair testing, in 2020 the State conducted serological and STR DNA testing of multiple items found throughout Helen's home that were recovered in 1983. SR 5013, 5164; APP 7. Since the 2016 evidence excluded Luna as a contributor, it can be reasonably inferred that the reason the State conducted expansive DNA and serological testing in 2020 was to find evidence that placed Luna in Helen's home, which would have rebutted his defense.

The State Lab’s 2020 DNA tests, however, substantially added to the body of evidence that supported Luna’s defense. The State Lab’s test results specifically excluded George Luna as a contributor to these items. SR 5164 (“None of the serology or DNA testing placed George at the crime scene.”), APP 7; SR 5013-15 (Luna excluded as contributor to DNA samples recovered from items throughout the house, including samples taken from the towels and sink). Because the tested samples had more DNA material than the hair fragment tested in 2016, the State was able to utilize STR DNA testing on these items. STR testing produces a binary or complete exclusionary result³. SR 5063 [Motion Hrg. (10/27/22) Tr. p. 39]. As with the Bode testing, the State did not contest any of the 2020 DNA or serology results or conclusions. Indeed, these results and conclusions were not produced by a defense expert, but by forensic scientists from the South Dakota Forensic Laboratory. SR 5013, 5057.

In its Amended Decision, the Circuit Court noted the importance of this serological and DNA testing of items other than the hairs. It corroborated the DNA testing done by the Bode Cellmark in 2016, and it was identified by the State’s investigator as being noteworthy due to the complete absence of any of the victims’ blood on any of Luna’s clothing or

³ STR testing produces a DNA profile “unique to each individual unless they have an identical twin.” SR 39.

boots. SR 5165 & n. 22; APP 8. Importantly, the 2020 testing expressly excluded Luna as a DNA contributor to the biological materials found on the towels at the residence. SR 5014-5015; *c.f. Luna, supra*, 378 N.W.2d at 232. For the first time, un-contested forensic testing exculpated Luna by eliminating him as a source of the DNA found on the towels that were allegedly used by the killer to clean his hands after the crime. The 2020 testing demonstrated that Luna's DNA was not found anywhere in the multitude of samples taken from the crime scene, which substantially weakens the prosecution's case.

In 2024, additional DNA testing was conducted. SR 5135, 5136, 5138; TR of April 29, 2025, Evidentiary Hearing, pp. 2-17⁴. This occurred after additional hairs from Lynn Luna's hand were discovered by the Circuit Court in the evidence files from the 1983 investigation. TR of April 29, 2025, Evidentiary Hearing, pp. 16, 20-21. These additional hairs gave the lab more DNA material to work with than from the original hair fragment tested in 2016. *Id.* These newly discovered hairs were tested by Bode Technology (formerly Bode Cellmark), using autosomal DNA processing.

⁴ This transcript was not ordered by the State and was not part of the Settled Record. It was ordered by Luna during the briefing schedule when its absence from the record was discovered by him. As such, at the time this brief was written, it was not included in the settled record, and Luna does not have a SR citation to provide. It will be part of the record by the time the Court reviews the briefs.

Id. p. 7. Autosomal DNA testing is generally accepted in the scientific community, Bode Technology was accredited by the same organization as the South Dakota Forensic Laboratory, and the results of the 2024 testing were stipulated to by the parties. *Id.* at pp. 4, 6, 7.

The result of the 2024 testing added additional corroboration to Luna's defense. The 2016 mtDNA testing was conducted on a single hair fragment with minimal DNA substance and could only exclude persons not related to Helen Thomas. The 2024 testing, which was conducted on a larger DNA sample that could be subjected to autosomal DNA testing, excluded all males from consideration. *Id.* at 9; SR 5138 (finding "0 ng/uL male DNA"); SR 5162, APP 5. This corroborated and added to the body of exclusionary evidence produced by the 2016 and 2020 testing.

In its Amended Decision Granting New Trial, the Circuit Court considered all of the above-described, newly acquired forensic evidence, and the extensive record amassed during the litigation in 1983 and 1984. The later included the pre-trial litigation regarding the third-party perpetrator defense which identified suspicious conduct by Lynn Luna's brother, Doug Thomas, on the day her body was discovered, weaknesses in Doug Thomas's alibi, and Thomas's history of violence towards the decedents. SR 5167-68 & nn. 33-34, APP 10-11; SR 5076-78. It also included

concessions by the State's expert witness, and the testimony of the defense expert, that no conclusion could be reached as to whether Luna had glass particles in his clothing, and, even if he had, whether these came from the broken window at the crime scene. SR 5175-5177. The Circuit Court also conducted an extensive review of other items of physical evidence, such as Luna's boots, SR 5177, and gloves. SR 5178.

The Circuit Court complied with its statutory mandate to consider the forensic evidence in conjunction with "all other evidence in the case." SR 5159; APP 2. In addition to the forensic testing, the Circuit Court reviewed dozens of pleadings, trial transcripts, deposition transcripts, evidentiary hearing transcripts, witness statements, and transcripts of recorded conversations. SR 5182-5197, nn. 109-160.

From its thorough and expansive review of the new DNA and serology evidence in conjunction with all other evidence in the case, the Circuit Court properly concluded that a new trial would have resulted in Luna's acquittal. SR 5221; APP 64.

STANDARD OF REVIEW

Recognizing the heightened standard of review applicable to cases where a trial court has granted a new trial is vitally important to resolution of this appeal. In its brief, the State recites the generic definition of the abuse

of discretion standard of review. SB 16. The State does not acknowledge or discuss the well-established, heightened standard of review that applies when this Court is asked to review an Order granting a new trial.

“When a trial court grants, rather than denies, a new trial, a clearer showing of an abuse of discretion is required.” *State v. Strahl*, 2009 S.D. 54, ¶ 9, 768 N.W.2d 546, 548–49 (citing to *State v. Springer-Ertl*, 2000 S.D. 56, ¶ 9, 610 N.W.2d 768, 770). This Court has repeatedly noted that orders granting new trials stand on “firmer ground” and should be afforded greater deference than when a motion is denied:

A motion for a new trial is addressed to the sound discretion of the trial court; we will not overturn the court's ruling unless it appears affirmatively from the record there has been an abuse of discretion. Additionally, this court has consistently stated that more deference is given to the trial court's grant of a new trial than to its denial of one: In conducting our review we must keep in mind that orders granting new trials stand on firmer ground than orders denying them as they are not conclusive or decisive of any rights or issues. On the contrary they merely open the way for a reinvestigation of the case upon its facts and merits. In this connection, this court views the evidence most favorable to the conclusions reached by the trial court rather than most favorable to the verdict when a new trial is denied. If the trial court finds that an injustice has been done by the jury's verdict, the remedy lies in granting a new trial.

Tunender v. Minnaert, 1997 S.D. 62, ¶ 9, 563 N.W.2d 849, 851 (numerous internal citations and quotations omitted). *e.g. Atkins v. Stratmeyer*, 1999 S.D. 131, ¶ 7, 600 N.W.2d 891, 895 (“Orders granting new trials stand on

firmer ground than orders denying them.”) (citations and quotations omitted).

One of the most significant aspects of this heightened deferential standard is the way in which this Court must approach its review of the Amended Decision and the conclusions reached by the Circuit Court therein. A reviewing court should “view[] the evidence most favorable to the conclusions reached by the trial court rather than most favorable to the verdict when a new trial is denied.” *Tunender v. Minnaert*, 1997 S.D. 62, ¶ 9, 563 N.W.2d 849, 851.⁵ The standard is not whether this Court would have made the same ruling as the trial court, but whether the Circuit Court’s analysis and conclusions constitute “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. An abuse of discretion exists only when the court’s discretion is “exercised to an end or purpose not justified by, and clearly against, reason and evidence.” *State v. Carter*, 2023 S.D. 67, ¶ 24, 1 N.W.3d 674, 685 (quoted in *State v. Turner*, 2025 S.D. 13, ¶ 34, 18 N.W.3d

⁵As discussed, *infra*, the State refers the Court to authority from a post-verdict sufficiency of the evidence challenge, and the principle that evidence should be viewed in the light most favorable to the verdict. That case law is not appropriate in the context of this case, and the opposite approach is mandated by precedent specific to the review of orders granting new trials.

673, 685, *reh'g denied* (Apr. 29, 2025)). If inferences must be drawn or ambiguities addressed, this process should be done with an eye towards supporting the conclusions reached by the Circuit Court. *See Tunender, supra*.

In this case, the Circuit Court concluded that the DNA test results, when considered with all other evidence in the case, established by compelling evidence that a new trial would result in the acquittal of the felony offenses. This Court should review the evidence in the light most favorable to that conclusion.

Though not directly related to the standard of review, a brief discussion as to the parties' burdens is appropriate. In its Brief, the State attempts to reverse the burden. It states, "Luna bears the burden of showing that the DNA results, combined with the entire evidentiary record, compellingly establish that a new trial would result in acquittal. He cannot do so." SB 22. This assertion improperly reverses the appellate burden.

Luna has met his burden, which is reflected by the Amended Decision granting him a new trial. At this juncture, the only party bearing a burden is the State. That burden is to prove that the Circuit Court's conclusion that Luna should receive a new trial represents a fundamental error of judgment, outside the range of permissible choices, which is arbitrary or unreasonable,

and clearly against reason and the evidence. The State has failed to meet this burden.

ARGUMENT

1. THE CIRCUIT COURT DID NOT CLEARLY ABUSE ITS DISCRETION WHEN IT GRANTED LUNA’S MOTION FOR NEW TRIAL

In its Brief, the State asks this Court to incorporate standards and provisions pertaining to SDCL 23A-29-1 and SDCL 15-6-59(a) in its analysis of the statute at issue in this case, SDCL 23-5B-16. SB 17 (“This Court has not defined what constitutes ‘compelling evidence that a new trial would result in the acquittal of the felony offense under SDCL 23-5B-16, but it can look at its precedent on the grounds for a new trial under SDCL 23A-29-1 and SDCL 15-6-59(a) for guidance.”).

The suggestion that this Court needs to look to other statutes for guidance is unfounded. The term “compelling evidence” in the operative statute is plain and unambiguous, and the statutes to which the State refers the Court are not applicable to the SDCL 23-5B-16 analysis.

Luna’s motion was presented pursuant to, and resolved by the trial court under, SDCL 23-5B-16. That statute states in full:

The court shall grant the motion of the petitioner for a new trial if the DNA test results, when considered with all other evidence in the case, establish by compelling evidence that a new trial would result in the acquittal of the felony offense, as referenced in § 23-5B-1, for which

the petitioner is under a sentence of imprisonment.

Not a single word or phrase in this statute is vague, ambiguous, or in need of reference to other statutes or axioms of construction to understand. Pursuant to this statute, a trial court is told to grant a motion for a new trial if DNA test results (whether they are exclusionary or inclusionary), when considered with all other evidence in the case (not limited to evidence presented at trial or newly discovered evidence), establishes by compelling evidence that a new trial would result in an acquittal.

Rather than address this statute on its face, the State asks the Court to look at SDCL 23A-29-1 and SDCL 15-6-59(a), and cases that construe these statutes, for “guidance” as to the definition of “compelling evidence that a new trial would result in the acquittal of the felony offense.” SB 17. This argument by the State is a distraction from the issue at hand, i.e. whether the Circuit Court’s decision constituted an abuse of discretion.

Neither of the statutes cited by the State contain the word “compelling” or refer in any way to the standard a trial court should utilize when assessing evidence in support of or against granting a new trial motion. In fact, SDCL 15-6-59(a) merely gives a laundry list of grounds upon which a new trial may be granted pursuant to that statute. It does not offer suggestions on how evidence should be viewed or what threshold of proof it

must reach in order to warrant a new trial. It is unclear how either of these statutes could illuminate this Court's understanding of what "compelling evidence" is since neither of the statutes discuss that term.

Similarly, the State refers this Court to two cases, *State v. Timmons*, 2022 S.D. 28, 974 N.W.2d 881, and *State v. Corean*, 2010 S.D. 85, 791 N.W.2d 44, for guidance as to what constitutes compelling evidence under SDCL 23-5B-16. Neither case has anything to do with the issue in dispute or the statute at hand. Neither case involves the addition of DNA findings to the existing evidence pool. Based on the procedural postures of the cases (direct appeal challenging the sufficiency of the evidence), the alleged newly discovered evidence was reviewed in the context of the evidence admitted at trial, not all the evidence available in the case. In neither case was the trial or reviewing court asked to consider the impact of DNA evidence in conjunction with all other available evidence in the case to determine whether the totality of it was compelling evidence that a new trial would result in an acquittal. These cases are not on point and offer no meaningful guidance as to whether the State has met its burden in this appeal.

Additionally, the State claims that the DNA and serological testing from 2016, 2020, and 2024 was cumulative to the evidence presented in Luna's 1984 trial, SB 18, and were not compelling evidence on any point in

dispute, SB 20. This is not accurate and ignores the body of evidence described and analyzed by the Circuit Court.

The results of these tests, which were not available in 1984, conclusively establish that Luna's DNA was not on any of the stains, towels, clothing, swabs, or other things recovered in the house or from the bodies. SR 5221, ADD 64. As a result of this testing, for the first time, Luna had complete, exclusionary evidence from all of the physical evidence. This was particularly important in regard to evidence presented and inferences that the jury was permitted to make in this circumstantial case⁶ pertaining to the blood in the sink and human biologics left on the hand towels in the kitchen, SR 5221, ADD 64. The Circuit Court directly addressed this issue:

In summary, none of the 2020 or 2025 [sic] serology or DNA testing results placed George at the crime scene. These new test results completely exonerate George if, as assumed by the trial and supreme courts, the perpetrator's hands were cleaned at the sink and with a towel since the blood at issue is now known to be of female origin and there is no DNA on the towel to link George Luna to the bloody towel left at the scene.

SR 5221, ADD 64.

The State asserts that the forensic testing from 2016 to 2024 "do not change the evidence presented to the jury in the 1984 trial." SB 17. Nothing in SDCL 23-5B-16 requires that the new evidence contradicts a previously

⁶ The State acknowledged in its Brief that "[t]he evidence that the State presented at trial was largely circumstantial." SB 6.

asserted fact. The issue is whether the addition of the DNA evidence, in consideration with all the other case facts, is compelling. In this case, the addition of the DNA and serology evidence is not inconclusive or ambiguous: it excludes Luna as a contributor of DNA and serological evidence obtained from multiple locations in the house and from Lynn Luna's body.

The Circuit Court's findings and conclusions as to the significance of this evidence is not fundamentally erroneous, outside the range of permissible choices, arbitrary or unreasonable, or clearly against reason and the evidence. The State has failed to meet its burden of proving that the Circuit Court's conclusions constituted an abuse of discretion.

2. THE STATE'S "REWEIGHING" ARGUMENT IS INCONSISTENT WITH THE CIRCUIT COURT'S ANALYSIS AND THE MANDATES OF THE APPLICABLE STATUTE

In its brief, the State makes the claim that the Circuit Court improperly "reweighed the evidence presented to the jury in the 1984 trial." SB 22. The State faults the trial court for "replac[ing] itself as the fact finder," reevaluating the weight of the evidence, and making credibility determinations. SB 22-23. This argument ignores the plain language of the statute and the Circuit Court's obligations as described therein.

The Circuit Court had a statutorily mandated obligation to consider *all the evidence* in the case to determine whether compelling evidence exists to find that a new trial would have resulted in an acquittal. SDCL 23-5B-16 (emphasis added). The term “evidence” in the statute includes more than directly proved facts. As acknowledged by the State, this case was based largely on circumstantial evidence. SB 6. This means that the case involved inferential conclusions as to existence or establishment of facts. *E.g. State v. Webster*, 2001 S.D. 141, ¶ 9, 637 N.W.2d 392, 395 (“Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.”).

Additionally, the Circuit Court was required to consider far more than the trial record (as it would do insufficiency of the evidence claim). It was required to consider all the evidence, including the DNA testing, the third-party perpetrator evidence that was not admitted at trial, evidence supporting Luna’s alibi, and other facts and circumstances presented.

The basis for the State’s “reweighing” complaint is unclear. It doesn’t define what it means by “improper reweighing” or identify an instance where evidence had been given a definitive weight or value at one point but was given a different weight or value by the Circuit Court. SB 22-25. Of note, in this entire section of the State’s Brief there isn’t a single citation to

any portion of the Amended Decision where the alleged “improper reweighing” occurred.

Similarly, the State complains that the Circuit Court replaced itself as the factfinder. SB 23. The Circuit Court was mandated to consider *all* the evidence. To do so, the Circuit Court was required to identify all of the evidence. The Circuit Court did a heroic job of wading through over 40 years of materials, including tens of thousands of pages of file materials, recordings, deposition transcripts, and pallets full of tangible objects, to determine what evidence existed in the case. This evidence is described in over 200 footnotes to the Amended Decision. Though it alleges improper fact-finding by the Circuit Court, the State’s Brief fails to identify a single instance where the Circuit Court invented a fact or created evidence. And the State fails to explain how a Circuit Court can consider “all of the evidence” without finding what the facts are.

Last, the State asserts that the Circuit Court erred by making credibility determinations. As with its previous two complaints, the State fails to identify a single instance where the Circuit Court allegedly made an improper credibility determination. As with the prior two complaints, the State keeps “throwing stones” at the Circuit Court without citing to anything in the Amended Decision that supports its allegations.

The authority cited by the State in support of this third criticism is *State v. Morgan*, 2012 S.D. 87, 824 N.W.2d 98. SB 23. *Morgan* involved a defendant's sufficiency of the evidence claim on direct appeal. It has nothing to do with a Circuit Court's responsibilities under SDCL 23-5B-16. *Morgan* states that this Court should review the evidence in the light most favorable to the verdict when considering a defendant's sufficiency of the evidence claim on direct appeal. That approach is opposite to the standard for factual review in cases when a new trial motion has been granted. *See Tunender v. Minnaert*, 1997 S.D. 62, ¶ 9, 563 N.W.2d 849, 851 (facts should be viewed in the light most favorable to the Circuit Court's conclusions).

A Circuit Court can never state with absolute certainty that a new trial would result in acquittal. The task is inherently speculative. The safeguard is that the Court is required to identify compelling evidence leading it to the conclusion that a new trial would result in an acquittal. In this case, the trial court identified hundreds of facts, both new and old, that it found were compelling evidence that a new trial would result in an acquittal. The trial court's findings and analysis were well-supported by the entire record. It did not improperly re-weigh the evidence, improperly find facts, or improperly make credibility determinations.

This section of the State's Brief takes direct aim at the manner in which the Circuit Court conducted its analysis. The most significant omission in this section of the State's Brief is the absence of citations to the Amended Decision that demonstrate that the Circuit Court made a fundamental error of judgment that was outside the range of permissible choices and which is arbitrary or unreasonable and clearly against reason and the evidence. The State has failed to meet its burden, and, thus, the Circuit Court's Amended Decision should be affirmed.

3. THE CIRCUIT COURT DID NOT IMPROPERLY REANALYZE THE EXCLUSION OF THE THIRD-PARTY PERPETRATOR EVIDENCE.

The State's final argument in opposition to the Amended Decision involves a discussion as to whether the Circuit Court should have considered the previously excluded third-party perpetrator analysis, and whether the Circuit Court's understanding of the third-party perpetrator rule and Rule 403 (then SDCL 19-12-3) was correct. SB 25-29. The State's argument overlooks the actual analysis conducted by the Circuit Court in regard to the third-party perpetrator analysis. And, the State's argument fundamentally misunderstands the actual status of the third-party perpetrator rule, to the extent that the rule even exists under current jurisprudence.

First, as stated repeatedly above, the Circuit Court had a statutorily mandated duty to consider all the evidence in the case. The Circuit Court did so and included in its Amended Decision approximately 20 pages of facts related to the third-party perpetrator defense. SR 5180-5211; APP 23-54.

This factual review was essential to assessing how the new DNA and serological evidence fit into the entire scope of the case. SR 5216; APP 59 (“ . . . neither the trial court nor the South Dakota Supreme Court had the benefit of the 2020 serological and DNA testing or the subsequent testing testified to in April 2025 . . .”). For example, as noted by the Circuit Court, the underlying courts, in their analysis of the third-party perpetrator defense, found it significant that the then-existing forensic evidence obtained at the scene did not implicate Joseph Leonard as a potential third-party perpetrator. SR 5215; APP 58. The Circuit Court noted that this analysis in 1983 and 1984 demonstrates the significance of the exclusionary, forensic evidence pertaining to Luna that was obtained in 2016, 2020, and 2024. The absence of evidence linking Leonard to the crime scene was identified by the trial court and reviewing court as an important fact that formed the basis for excluding evidence pertaining to him. In the Amended Decision, the Circuit Court notes that the same importance must be given to the newly acquired

forensic evidence that excluded Luna as a contributor to the forensic evidence found at the scene. SR 5216; APP 59 (“The Supreme Court noted the trial court’s assumption that the perpetrator’s hands were cleaned at the sink, and with a towel, at the crime scene – one of the main reasons evidence concerning Joe Leonard and his bloody hands were excluded from the trial. If the courts were correct that the perpetrator’s hands were cleaned at the sink, and with a towel, *then the new evidence completely exonerates George since the DNA from the towels at the crime scene was of female origin.*”) (emphasis in original).

Second, the State spends much of its argument debating whether the Circuit Court’s understanding of the intersection between Rule 403 and the case law relating to third-party perpetrator evidence was correct. SB 25-28. This misses the point made by the Circuit Court in the Amended Decision.

As an initial point, it is important to highlight a significant concession made by the State in its brief. The State does not argue that it was improper for the Circuit Court to consider, under the rules of evidence as they are understood today, whether previously excluded evidence would now be admitted. Indeed, there is nothing in SDCL 23-5B-16 that suggests this mode of analysis. The plain language of the statute suggests the opposite: the Circuit Court is to consider all of the evidence and determine whether a

new trial would result in acquittal. That is a present-time directive, not an exercise in retroactive analysis.

Instead of making that claim, the State mis-represents the historical evolution of the law, specifically regarding third-party perpetrator evidence. The State asserts, “[t]he test for the admission of third-party perpetrator evidence has not changed. It was the same at the time of Luna’s trial and appeal as it is now.” SB 28. This claim – that our understanding as to the foundational pre-requisites for the admission of third-party perpetrator evidence has not changed in the 42 years since Luna went to trial – ignores the past four decades of jurisprudence regarding the issue.

In the *Luna* decision, the Court agreed with the trial court that Luna’s proposed third-party perpetrator evidence should be excluded because “[t]here is considerable lack of motivation, opportunity or facts to support either of these individuals as possibly committing the crime.” *State v. Luna*, 378 N.W.2d 229, 234 (S.D. 1985). Five years after *Luna*, the Court was again faced with determining the foundational pre-requisites for admission of third-party perpetrator evidence. In *State v. Braddock*, 452 N.W.2d 785, 790 (S.D. 1990), the Court quoted a Wisconsin case for the proposition that the foundation for admission of this kind of evidence is established “where it is shown that a third person not only had the motive and opportunity to

commit the crime but also was placed in such proximity to the crime as to show he may have been the guilty party[.]” *Id.* (quoting *State v. Denny*, 120 Wis.2d 614, 624, 357 N.W.2d 12, 17 (Ct.App.1984)). Thus, based on *Luna* and *Braddock*, a perception existed that the third-party perpetrator rule was a three-prong test that required the proponent of the evidence to establish that the alleged third-party had motive, opportunity, and proximity to the crime.

Four years after *Braddock*, the Court was again asked to articulate the foundational requirements for admission of third-party perpetrator evidence. In *State v. Larson*, 512 N.W.2d 732 (S.D. 1994), the State asserted that the three-prong test described above was the appropriate foundational standard for the admission of the evidence. The Court rejected the notion that the three-part test was the standard for admissibility, or that any “heightened foundation” was appropriate. *Id.* at 739. It stated that the three prongs identified in *Luna* were to be considered illustrations of foundations that could be developed to support admission. *Id.* And, it described the rule as one of inclusion if standard foundational requirements are met: “No special foundation is required because the third-party perpetrator rule cannot be used to prevent the defendant from establishing his defense or deny him the right to a fair jury trial.” *Id.* (internal quotations and citation omitted).

The Court was again forced to push back against the historical understanding of the third-party perpetrator rule in *State v. Hernandez*, 2023 S.D. 17, 989 N.W.2d 525. In that case, which was issued 38 years after *Luna*, the Court was required to “reiterate that the proper test for admissibility of third-party perpetrator evidence” was not the three-prong test derived from the *Luna* and *Braddock* decisions but was the standard relevancy and prejudice versus probative standards set forth in SDCL 19-19-401 and 403. *State v. Hernandez*, 2023 S.D. 17, ¶ 27, 989 N.W.2d 525, 534.

Though the State has tried to resuscitate the three-prong *Luna/Braddock* test in various cases since *Braddock*, that is not the present state of the law. *Larson* and *Hernandez* shifted our understanding as to how the foundation for this kind of evidence should be considered, and, in effect, eliminated the notion of a special “third-party perpetrator rule.” And, as described in these more recent cases, because relevant evidence is generally supposed to be admitted absent a showing that its prejudicial value is substantially outweighed by its potential for prejudice, the rule is now viewed as one of inclusion rather than exclusion. *E.g. Hernandez, supra*, at PP 26-27, p. 534 (citing to SDCL 19-19-401 and 403). The Court would not have to periodically re-state or clarify the foundation for admission of this

evidence if, as alleged by the State, the “test for the admission of third-party perpetrator evidence has not changed” since Luna’s trial. SB 28.

In the Amended Decision, the Circuit Court describes the evolution of the third-party perpetrator rule. It describes the evolution of the rule from the mechanistic three-part (motive, opportunity, proximity) test for admissibility first described in *State v. Luna*, 378 N.W.2d 229 (S.D. 1984), and *State v. Braddock*, 452 N.W.2d (S.D. 1990), to the more inclusive, less-rigid foundational test described in *State v. Larson*, 512 N.W.2d 732 (S.D. 1994), which was affirmed and clarified in *State v. Packed*, 2007 S.D. 75, 736 N.W.2d 851, and reiterated in *State v. Hernandez*, 2023 S.D. 17, 989 N.W.2d 525. SR 5218-5220; APP 61-63.

The Circuit Court’s legal analysis was accurate. The point it was making was that, under the present state of the law, the trial court’s decision in 1984 may not be the same decision made by a trial court today. SR 5220; APP 63. This is particularly true in light of the new forensic evidence.

Furthermore, as made clear throughout the Circuit Court’s Amended Decision, it is not one point or one fact that led it to the conclusion that a retrial would likely result in an acquittal. As set forth in the Circuit Court’s conclusion, aptly entitled “All the other evidence in the case . . .”, SR 5221; APP 64, it was the DNA and serological testing in conjunction with all of

the other evidence in the case that led it to grant Luna's motion for a new trial. The State has failed to show that this conclusion constituted an abuse of discretion, particularly under the heightened deference afforded to decisions in which a new trial is ordered.

CONCLUSION

The Circuit Court's Amended Decision and its Order granting Luna a new trial should be affirmed. The Circuit Court's findings and conclusions as to the significance of the DNA and serological evidence, when considered with all the other evidence in the case, were not fundamentally erroneous, outside the range of permissible choices, arbitrary or unreasonable, or clearly against reason and the evidence. The State has failed to meet its burden of proving that the Circuit Court's conclusions constituted an abuse of discretion.

Dated this 26th day of August 2026.

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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 Times New Roman typeface in 14-point type. Appellee's Brief is 29 pages long, contains 6,347 words and 31,993 characters.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2019.

Dated this 24th day of August 2026.

/s/ John R. Murphy

John R. Murphy
Attorney for Appellee Luna

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 24, 2026, a true and correct copy of Appellant's Brief in the matter of *State v. George Luna* was served electronically through Odyssey File and Serve on Marty Jackley, South Dakota Attorney General, at atgservice@state.sd.us, and Matthew Templar, at Matthew.Templar@state.sd.us.

Dated this 24th day of August 2026.

/s/ John R. Murphy

John R. Murphy
Attorney for Appellee Luna

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31314

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

GEORGE LUNA,

Defendant and Appellee.

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

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Notice of Appeal filed November 24, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31314

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

GEORGE LUNA,

Defendant and Appellee.

PRELIMINARY STATEMENT

To comply with SDCL 15-26A-62 and to avoid repetitive arguments, the State limits its response to the issues addressed in Luna’s Appellee’s Brief. The State does not intend to waive any issues raised in its Appellant’s Brief. The State also relies on, without restating, its Jurisdictional Statement, Statement of the Issue and Authorities, Statement of the Case and Facts, and Appendix presented in its Appellant’s Brief.

The State uses all document designations in the Preliminary Statement of its Appellant’s Brief. On top of those designations, this reply brief refers to Luna’s Appellee’s Brief as “AP.” This reply brief also refers to the State’s Appellant’s Brief as “AB.” These brief designations are followed by the appropriate page numbers.

ARGUMENT

THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT GRANTED LUNA'S MOTION FOR A NEW TRIAL.

While the abuse of discretion standard of review is deferential, “it does not immunize a trial court’s decision from appellate review.” *State v. Huante*, 2026 S.D. 6, ¶ 31, 31 N.W.3d 715, 725. For example, if the court misapplies an applicable rule, “it abuses its discretion.” *Id.* ¶ 30, 31 N.W.3d at 725 (quoting *State v. Birdshead*, 2015 S.D. 77, ¶ 51, 871 N.W.2d 62, 79). It also abuses its discretion when it “clearly errs in weighing the relevant factors. This includes instances where the court fails to consider a relevant factor that should have received significant weight, or gives significant weight to an improper or irrelevant factor.” *Huante*, 2026 S.D. 6, ¶ 31, 31 N.W.3d at 725 (quoting *Olson v. Huron Reg’l Med. Ctr., Inc.*, 2025 S.D. 34, ¶ 19, 24 N.W.3d 405, 412-13).

Here, the circuit court abused its discretion when it granted Luna’s motion for a new trial, based on new DNA testing, under SDCL 23-5B-16. It had no authority to reevaluate the excluded third-party perpetrator evidence because that exclusion was affirmed on direct appeal, becoming the law-of-the-case. Likewise, the jury did not consider that excluded evidence, so it is a non-starter to consider that evidence when analyzing whether the jury’s verdict would have been different with the new DNA testing.

As for the DNA evidence itself, the jury knew that the hairs in Lynn Luna’s hand did not belong to George Luna, Doug Thomas, or Joe

Leonard. The DNA testing reiterates that the hair did not belong to Luna, Thomas, or Leonard, which undercuts Luna's defense theory that it belonged to the real killer, who was either Thomas or Leonard.

Similarly, the DNA testing of various stains and Lynn's purse determined that the DNA found on those items either belonged to a female or could not be compared to known profiles because the sample size was too small. Those test results did not change the evidentiary picture provided to the jury. So they cannot amount to "compelling evidence" that Luna is entitled to a new trial.

But before reaching those points, the State addresses Luna's erroneous claim that it is inappropriate to look to authorities from other contexts to help frame how to review this case of first impression.

A. Because this Court has not yet addressed the application of SDCL 23-5B-16 and how it is reviewed, looking to authorities from other contexts is appropriate to help frame what is "compelling evidence" warranting a new trial.

South Dakota's DNA exoneration statutory framework, in the grand scheme of our criminal justice system, is a new development. In the early 2000s, several states, including South Dakota, looked at enacting postconviction DNA testing legislation. David DeFoore, *Postconviction DNA Testing: A cry for Justice from the Wrongly Convicted*, 33 TXTLR 491, 511 (2002). But Governor Janklow vetoed SB 228. S. 228, 76th Leg., Reg. Sess. (S.D. 2001).¹

¹ Available at <https://sdlegislature.gov/Session/Bill/16005> (last visited August 28, 2026).

The Legislature took another run at that topic in 2009 with HB 1166, entitled “An Act to provide for DNA testing for certain inmates for the purposes of determining whether they may have been wrongfully convicted.” 2009 S.D. Sess. L. ch. 120, §§ 1-17. Governor Rounds signed HB 1166 into law on March 10, 2009. H. 1166, 84th Leg., Reg. Sess. (S.D. 2009).² That Act is codified at SDCL 23-5B-1 through SDCL 23-5B-17.

Since then, this Court has not had the chance to consider those statutes, how a circuit court applies them, or how this Court reviews rulings on motions for a new trial under those statutes. Given that, the State urged the Court to look to its cases on motions for a new trial in other contexts for guidance. AB: 17-18. According to Luna that is inappropriate because SDCL 23-5B-16’s language is “plain and unambiguous.” AP: 14.

But Luna’s position is wrong. Regardless of whether the statutory language is plain and unambiguous, or is vague and ambiguous—requiring statutory construction,—it is appropriate to lean on existing authorities to properly frame the review of an issue of first impression. *See State v. Long Soldier*, 2023 S.D. 37, ¶¶ 11-16, 994 N.W.2d 212, 216-18 (using various authorities to determine that the “plain language of SDCL 22-30-1, [defining the crime of robbery,]

² Available at <https://sdlegislature.gov/Session/Bill/1103> (last visited August 28, 2026).

requires the property taken to be both in the possession of the victim and taken from either the victim's person or immediate presence.”).

What's more, the State does not dispute that SDCL 23-5B-16 says what it says. Nor does the State claim that it is confusing. That said, “compelling evidence” is not statutorily defined, so it is also appropriate to turn to the dictionary to set the scope of that phrase. *See People in Interest of D.S.*, 2022 S.D. 11, ¶¶ 26-27, 970 N.W.2d 547, 555-56 (turning to the dictionary to define the phrase “viable alternative” in SDCL 26-8C-7(1) because no statutory definition was given for the phrase); SDCL 2-14-1 (“Words used are to be understood in their ordinary sense except also that words defined or explained in [SDCL] 2-14-2 are to be understood as thus defined or explained.”).

Merriam-Webster says “compelling” is an adjective that means it “compels” in a forceful way or “demanding attention.” Merriam-Webster Online Dictionary.³ For its part, “compel” is a transitive verb that means “to drive or urge forcefully or irresistibly” or “to cause to do or occur by overwhelming pressure.” Merriam-Webster Online Dictionary.⁴

But no matter what this Court decides “compelling evidence” means in practice for postconviction DNA testing, Argument Section C shows there is no compelling evidence that a new trial is warranted here.

³ Available at <https://www.merriam-webster.com/dictionary/compelling> (last visited August 28, 2026).

⁴ Available at <https://www.merriam-webster.com/dictionary/compel> (last visited August 28, 2026).

The DNA testing evidence did not alter the evidentiary picture presented to the jury in a way that calls into doubt Luna's convictions. If that evidence calls anything into doubt, it's Luna's third-party perpetrator theory.

B. The circuit court had no authority to reevaluate Judge Tice's third-party perpetrator ruling because this Court was the final arbiter of that issue in the direct appeal.

Judge Tice prohibited Luna from presenting a third-party perpetrator defense that specifically claimed Doug Thomas (Helen Thomas's son and Lynn Luna's brother) or Joe Leonard committed the murders. SR: 1681, 1684-85, 3107-17. This Court affirmed that decision on direct appeal. *State v. Luna (Luna I)*, 378 N.W.2d 229, 231-34 (S.D. 1985). In fact, the Court went so far as to "agree with" Judge Tice's determinations that

[t]here is considerable lack of motivation, opportunity or facts to support either of these individuals as possibly committing the crime; therefore the court feels that it is appropriate to exclude this evidence to avoid confusion and unduly tying up the court process and to insure that the jury is able to focus on the facts of the case itself without what appears to this court to be irrelevant evidence concerning other relationships or facts that exist, which are not pertinent to the incident in question.

Luna I, 378 N.W.2d at 234.

Luna argues that the circuit court was free to reevaluate Judge Tice's decision because it "had a statutorily mandated duty to consider all the evidence in this case." AP: 23. That argument is wrong for four reasons.

First, once this Court affirmed Judge Tice’s ruling, it became the “law of the case” and it applied “in all its subsequent stages[.]” *In re Pooled Advocate Trust*, 2012 S.D. 24, ¶ 23, 813 N.W.2d 130, 139. There are five recognized policy considerations for the law-of-the-case-doctrine: “(1) to protect settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end.” *In re Pooled Advocate Trust*, 2012 S.D. 24, ¶ 26, 813 N.W.2d at 139 (quoting *In re Estate of Jetter*, 1999 S.D. 33, ¶ 20, 590 N.W.2d 254, 258). This case illustrates why these policy considerations exist. The circuit court’s reanalyzing of the third-party perpetrator issue upset the settled expectation that this Court had definitively decided the issue, it created incompatibility and inconsistency between Judge Tice’s ruling and the court’s amended decision (APP 23-54) in the same proceedings and inappropriately upset the finality of Luna’s convictions after they were affirmed twice over. *Luna I*, 378 N.W.2d at 283; *Luna v. Solem (Luna II)*, 411 N.W.2d 656, 662 (S.D. 1987).

Second, even though the law-of-the-case-doctrine “is not a rigid rule” and “a court may reopen a previously resolved question if the evidence . . . is substantially different or if a manifest injustice would otherwise result[.]” that is not the case here. *In re Pooled Advocate Trust*, 2012 S.D. 24, ¶ 26, 813 N.W.2d at 139 (quoting *In re Estate of Siebrasse*,

2006 S.D. 83, ¶ 17, 722 N.W.2d 86, 91). At trial, Special Agent Podolak testified that the hairs found in Lynn’s hand did not match the hair samples taken from George Luna, Doug Thomas, or Joe Leonard.

SR: 3171, 3181-82; AB: 8. The 2016 DNA testing reaffirmed that original conclusion regarding Luna and Leonard. SR: 5020-23, 5043; SR2: 173-76, 196; AB: 10-12. As for Doug Thomas, while the 2016 testing could not exclude him as the contributor of that hair, the 2024 testing definitively excluded him because it came from a female. SR: 5021, 5033, 5048, 5054, 5138, 5142-433; SR2: 174, 186, 201, 207, 314-15; AB: 11-12, 15.

What’s more, the only conclusion that could be reached through DNA testing of stains from two towels, a kitchen sink stain, a sample of blood from the kitchen wall, and Lynn’s handbag was that it came from a female or there was not enough DNA to make a comparison to other profiles. SR: 5062-67, 5070; SR2: 215-20, 223; AB: 12. This evidence leads to two possible conclusions: 1) it belonged to one of the females living in the home (Lynn, Helen, Jessie Nicksic, or A.L.) and it could not implicate Leonard or Doug Thomas; or 2) it is inconclusive as to whether it belonged to Luna, Leonard, or Doug Thomas.⁵

⁵ Given that the results were inconclusive as to these three men, it cannot form the basis for Luna to argue that the evidence somehow allowed the circuit court to reevaluate the third-party perpetrator issue and grant him a new trial. AP: 22-29. SDCL 23-5B-12 mandates that “[i]f DNA test results . . . are inconclusive, the circuit court shall deny the petitioner relief.”

Third, even though SDCL 23-5B-16 says the DNA evidence has to be “considered with all other evidence in the case,” that does not give the circuit court license to reexamine the legal analysis surrounding the third-party perpetrator issue. SDCL ch. 23-5B’s DNA testing scheme “is an extraordinary post-conviction remedy designed to free the innocent.” *State v. Robertson*, 958 So.2d 787, 788 (La. Ct. App. 2007). Said another way, its purpose “is to locate and test evidence that might exonerate defendants who have been allegedly wrongfully convicted[,]” *Washington v. State*, 37 A.3d 932, 947 (Md. Ct. App. 2012), not to provide another avenue for attacking an otherwise valid conviction.

Finally, “all other evidence in the case” does not mean whatever evidence may be in the record. It is limited to the evidence presented to the jury.⁶ See Black’s Law Dictionary 696 (12th ed. 2024)(defining “evidence” as “[t]he collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute[.]”). It would make little sense to allow information not presented to the jury to drive whether new DNA evidence “would result in the acquittal of the felony offense” at trial. SDCL 23-5B-16. Allowing that expansive review would put a new trial motion under that statute at odds with all other remedial requests that challenge a conviction, when those reviews are cabined to the evidence

⁶ Other courts agree that the review of a new trial motion based on new DNA testing is limited to considering that new DNA evidence in the context of the evidence presented at trial. *Jones v. State*, 177 A.3d 534, 540 (Conn. 2018); *Arrington v. State*, 983 A.2d 1071, 1087 (Md. Ct. App. 2009); *State v. Brest*, 155 A.3d 541, 554 (N.H. 2017).

presented to the jury. *See e.g., Guzman v. Sullivan*, 2026 S.D. 38, ¶ 31, 37 N.W.3d 491, 505 (rejecting Guzman’s ineffective assistance of counsel claim “because there is no reasonable probability that counsel’s failure to request additional psychiatric examinations of the victims or to present testimony from a defense expert that was largely presented by the State’s expert witnesses would have altered the outcome of the trial.”); *State v. Janes*, 2026 S.D. 9, ¶ 23, 32 N.W.3d 377, 385 (holding Janes suffered no prejudice because “much of the [challenged] evidence is cumulative to the testimony at trial.”); *State v. Rodriguez*, 2020 S.D. 68, ¶ 36, 952 N.W.2d 244, 254 (applying the harmless error and noting “the error was harmless if ‘the evidence was cumulative of other evidence presented independently at trial’”(quoting *State v. Davi*, 504 N.W.2 844, 855 (S.D. 1993))).

Had the Legislature wanted to depart from this common review scheme, it would have drafted SDCL 23-5B-16 differently. *See Sanford v. Sanford*, 2005 S.D. 34, ¶ 19, 694 N.W.2d 283, 289 (“We presume the Legislature acts with knowledge of our judicial decisions” and “[t]he Legislature knows how to include and exclude specific items in its statutes.”) In fact, it had multiple examples to draw from if that were the case. *E.g.*, Ark. Code Ann. § 16-112-208(e)(3) (West)(“The court may grant the motion . . . for a new trial or resentencing if the . . . test results, when considered with all other evidence in the case *regardless of whether the evidence was introduced at trial*, establish by compelling evidence

that a new trial would result in an acquittal.”)(emphasis added); N.J. Stat. Ann. § 2A:84A-32a(d)(5) (West)(authorizing the trial court, “in its discretion,” to “consider any evidence *whether or not it was introduced at trial*[.]”)(emphasis added).⁷

C. The DNA testing evidence does not change the evidentiary picture presented to the jury, so it cannot amount to “compelling evidence” that warrants a new trial.

Luna claims the circuit court “did a heroic job of wading through over 40 years of material” to grant him a new trial. AP: 20. But that generous nod ignores that the DNA testing does not change what the jury already knew.

To recap, the State’s theory, which was presumably accepted by the jury through its guilty verdicts, is that Luna killed Lynn and Helen because he was furious that Lynn wanted to divorce him and take their child from him. SR: 577-89, 3935-36.

The State circumstantially linked Luna to the murders through his statements and threats to Lynn and Helen, as well as threatening songs that he sent to Lynn. SR: 577-89, 3937-44. The State also relied on glass fragments found on Luna’s clothes that matched the broken window on the back door of the home. SR: 592, 595, 3960-61, 3965-66. The State ruled out robbery by an unknown person as a possibility

⁷ Ark. Code Ann. § 16-112-208(e)(3) was drafted by the Arkansas Legislature in 2005. H. 2857, 85th Leg., Reg. Sess. (Ark. 2005). N.J. Stat. Ann. § 2A:84A-32a(d)(5) was drafted by the New Jersey Legislature in 2001. 2001 N.J. Sess. Law Serv. Ch. 377.

because no money was missing from the home, even though the family had cash and coin collections.⁸ SR: 593-94, 3932.

The State also addressed the hairs found in Lynn's hand. It didn't use those hairs to tie Luna to the murders because everyone agreed they did not belong to him. SR: 3171, 3181-82, 4043-44. Nor did they belong to Doug Thomas or Joe Leonard. SR: 3171, 3181-82, 4043-44.

Decades later, DNA testing confirmed the hairs did not belong to Luna or Leonard. SR: 3171, 3181-82, 5020-23, 5043; SR2: 173-76, 196. While Doug Thomas was not excluded by the initial round of testing in 2016, he was excluded by the 2024 testing because the hairs came from a female. SR: 5033, 5048, 5054, 5138, 5142, 5250-51; SR2: 186, 201, 207, 314. That conclusion links up with Agent Podolak's trial testimony that those hairs matched Lynn's hair in every observable microscopic characteristic. SR: 3171.

As for the various stains and Lynn's purse that were tested, the DNA found on those items either belonged to a female or could not be compared to known profiles because the sample size was too small. SR: 5062-67, 5070; SR2: 215-20, 223. So, while Luna was excluded as the source on some items but not others, at best those DNA results are inconclusive, and at worst they exclude Doug Thomas and Joe Leonard, again undercutting his third-party perpetrator defense. Given that the

⁸ This also rules out Luna's pretrial argument that Doug Thomas had a motive to murder Lynn and Helen because he would financially benefit from their deaths. SR: 1127-29.

best picture those results paint is an inconclusive one, Luna's motion should have been denied under SDCL 23-5B-12.

While appellate litigation under South Dakota's DNA exoneration statutory scheme has been nonexistent, appellate litigation under Nebraska's scheme has been active. And there are two cases that help show why the circuit court abused its discretion here.

In *State v. Parmar*, the prosecution's theory was that LeRoy Parmar and others murdered his neighbor after the neighbor received a divorce settlement. *State v. Parmar*, 808 N.W.2d 623, 626-27 (Neb. 2012). Two female accomplices testified that Parmar "was the only male present" during the murder, which happened while the victim was in bed. *Id.* at 627. Postconviction DNA testing of bloodstains on the bedsheets revealed important results for Parmar. *Id.* at 627-28. Two samples excluded Parmar outright, while two other samples showed a mixture of DNA from two men, but excluded Parmar. *Id.*

The Nebraska Supreme Court determined those DNA results warranted a new trial because they "tend to create a reasonable doubt about Parmar's guilt and were probative of a factual situation different from that testified to by the State's two eyewitnesses against him." *Id.* at 634. That is because "[h]ad Parmar presented DNA evidence showing that two males contributed their DNA to the bloodstains found on [the victim's] bedsheet and that neither of those males was Parmar, the jurors

certainly would have questioned the factual account presented by the State’s eyewitnesses.” *Id.*⁹

Luna’s case is unlike *Parmar* because the postconviction DNA testing did not contradict the evidence presented to the jury. Just the opposite: it confirmed Agent Podolak’s testimony that excluded Luna, Doug Thomas, and Joe Leonard as the source of the hair in Lynn’s hand. That makes this case like *State v. Duncan*, 960 N.W.2d 576 (Neb. 2021).

Duncan was convicted of murdering his neighbor, and during the investigation police found two billfolds near the body, but there were no fingerprints on them. *Id.* at 577-78. Duncan secured postconviction DNA testing on those billfolds, which showed each billfold had a mixture of DNA from two people on them. *Id.* at 580. For one billfold Duncan could not be excluded as a source of the DNA, and no conclusions could be drawn for the other billfold. *Id.*

Despite those less than helpful results, Duncan claimed they “tend to suggest that he did not touch the . . . billfolds” and “they contradict

⁹ Nebraska’s postconviction DNA testing statutes have two remedial paths: “(1) an extraordinary remedy—vacation of the judgment—for the *compelling circumstance* in which actual innocence is conclusively established by DNA testing and (2) an ordinary remedy—a new trial—for circumstances in which newly discovered DNA evidence would have, if available at the former trial, probably produced a substantially different result.” *Parmar*, 808 N.W.2d at 629 (emphasis added). So, despite the DNA results “calling into question the State’s evidence that Parmar was the sole assailant[,]” it did not show compelling evidence that “prove[d] Parmar did not participate in the crime. Parmar could have participated without leaving DNA evidence at the scene.” *Id.* at 631.

the State’s theory . . . that Duncan killed [the victim] during a robbery.” *Id.* at 582. But the Nebraska Supreme Court concluded “[w]e do not consider the DNA test results to be as convincing as Duncan does” and affirmed the denial of his new trial motion. *Id.* at 583. Duncan did not deserve a new trial because “the new DNA evidence did nothing to contradict other evidence of Duncan’s guilt[,]” which included Duncan’s incriminating statements and circumstantial evidence placing him in the area—even at the crime scene itself—at the time of the murder. *Id.*

Additionally, because the hair testing results confirmed Agent Podolak’s opinion that they did not match the samples taken from George Luna, Doug Thomas, or Joe Leonard, this case is nearly identical to *State v. LaPointe*, 434 P.3d 850 (Kan. 2019). There, the Kansas Supreme Court affirmed the denial of LaPointe’s new trial motion because postconviction DNA testing “affirmed the hair comparison expert’s opinion [at trial] that the hair [found on clothing belonging to the perpetrator] was probably not LaPointe’s.” *Id.* at 858-59.

Finally, just because Luna’s DNA was excluded from some stains found at the scene, that doesn’t mean he wasn’t Lynn and Helen’s killer. “DNA evidence is not a videotape of a crime, and the nonpresence of an individual’s DNA profile in a biological sample does not preclude that individual from having been present or in possession of the item tested.” *Duncan*, 960 N.W.2d at 583 (quoting *State v. Myers*, 937 N.W.2d 181, 188 (Neb. 2020)). And “if DNA testing does not detect the presence of a

[defendant's] DNA on an item of evidence, such a result is at best inconclusive, especially when there is other credible evidence tying the defendant to the crime.” *Id.* (citing *State v. Amaya*, 938 N.W.2d 346 (2020)); *see Parmar*, 808 N.W.2d at 629 (noting that “postconviction DNA evidence that does not falsify or discredit evidence that was necessary to prove an essential element of the crime does not exonerate the [defendant].”).

Simply put, regardless of what this Court decides “compelling evidence” means, Luna could not show that the new DNA testing results, when connected with the trial evidence, would have led the jury to probably find him not guilty.

CONCLUSION

As Judge Tice recognized, “We’re all confined to the truth and the quicker we can get to it, the better.” SR: 1425. This case has been lurking for more than forty years, but new DNA testing has destroyed Luna’s theory that the hair found in Lynn Luna’s hand belonged to her and Helen Thomas’s killer. It cannot be Joe Leonard because DNA evidence excluded him as a suspect. Nor can it be Doug Thomas because, while the hair belonged to someone in Helen Thomas’s maternal familial line, DNA testing shows it was a female’s hair.

As for the other items that were submitted for DNA testing, for Luna position, at best they produced inconclusive results of whether the

DNA found belonged to Luna, Leonard, or Thomas. At worst, it excluded Leonard and Doug Thomas because the DNA found belongs to a female.

That leaves Luna as the sole suspect. And the jury received extensive evidence about how he had the motive, opportunity, and time to commit theses dreadful murders, as well as sufficient circumstantial evidence proving he was the killer.

Because the new DNA testing did not change the evidentiary picture painted for the jury in 1984, the circuit court abused its discretion by granting Luna a new trial. Therefore, this Court should reverse that order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4,052 words.

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

Dated this 16th day of September, 2026.

/s/ Matthew W. Templar

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Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of September, 2026, a true and correct copy of Appellant's Reply Brief in the matter of *State of South Dakota v. George Luna* was served via the Odyssey electronic filing system upon John R. Murphy at john@murphylawoffice.org.

/s/ Matthew W. Templar

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