IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31116

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

LUCIAN CELESTINE,

Defendant and Appellant.

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

HONORABLE ROBERT GUSINSKY
Circuit Court Judge

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as "SR." The transcripts will be referred to as follows:

Initial Appearance (July 1, 2020) .....IA

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All references will be followed by the appropriate page number. All exhibits will be referred to as "Ex." followed by the appropriate exhibit number.

Defendant and Appellant, Lucian Celestine, will be referred to as "Celestine." The President of the United States, Donald Trump, will be referred to as "President." The Federal Bureau of Investigation will be referred to as "FBI." FBI Special Agent, James Lafferty, will be referred to as "Lafferty." Brookings Police Department Lieutenant, Drew Gary, will be referred to as "Gary." Pennington County Sherriff's Office Sergeant, Jeremy Milstead, will be referred to as "Milstead."

JURISDICTIONAL STATEMENT

Celestine appeals from the Judgment and Sentence entered on June 4, 2025, by the Honorable Robert Gusinsky, Circuit Court Judge of the Seventh Judicial Circuit. SR 832. Celestine timely filed Notice of Appeal on June 6, 2025. SR 838. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUE

I. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY DENYING CELESTINE'S MOTION TO WITHDRAW HIS *ALFORD* PLEA.

The circuit court abused its discretion by denying Celestine's motion to withdraw his *Alford* plea based on the totality of the circumstances and relevant factors.

SDCL 23A-27-11

SDCL 22-8-13

Bottoms v. Commonwealth, 281 Va. 23, 704 S.E.2d 406 (2011)

State v. Engelmann, 541 N.W.2d 96 (S.D. 1995)

State v. Schmidt, 2012 S.D. 77, 825 N.W.2d 889

STATEMENT OF THE CASE

On July 1, 2020, the State filed a Complaint charging Celestine with a sole count of Threat of Felony Terrorism, a Class 5 Felony, in violation of SDCL 22-8-13. SR 1. That same day, Celestine appeared in magistrate court for his initial appearance. SR 853. At his initial appearance, Celestine asked the magistrate court for a trial on the matter. IA 6. On July 15, 2020, a Pennington County Grand Jury returned an Indictment charging Celestine with a sole count of Threat of Felony Terrorism, a Class 5 Felony, in violation of SDCL 22-8-13. SR 22.

On August 17, 2021, October 19, 2021, June 21, 2022, and September 13, 2022, the circuit held status hearings. *See generally* SH1; SH2; SH3; SH4. At these hearings, the circuit court indicated Celestine was in federal custody – the State court case was continued to accommodate the pending federal proceedings. SH1 2; SH2 2; SH3 2; SH4 2.

On January 17, 2023, the circuit court held an arraignment where Celestine was advised of the charge, the maximum penalty if convicted, and his statutory and constitutional rights. ARR1 2-6. On February 21, 2023, the circuit court held a status hearing and scheduled a non-evidentiary pre-trial motions hearing. SH5 2.

On April 11, 2023, the circuit court held the motions hearing where standard pre-trial motions from both parties were addressed and granted. MH1 2-4.

On June 13, 2023, the circuit court held a pre-trial conference. *See generally* PTC1. At this hearing, neither party submitted any motions, objections, or notices. PTC1 2. Rather, the parties indicated both sides were prepared for the jury trial to commence. PTC1 2.

On June 30, 2023, the circuit court held a motions hearing. *See generally* MH2. At this hearing, the parties addressed defense's motion in limine regarding a September 1, 2019, telephone call made by Celestine to the FBI's National Threat Operation Center. MH2 2. The circuit court reviewed the audiotape of that call. MH2 9-10. After hearing arguments from the parties pertaining to admissibility of the call, the circuit court overruled defense's motion in limine, finding the call served as *res gestae* evidence to be considered by the jury. MH2 9-15. In addition, the State presented a motion in limine seeking to preclude testimony related to Celestine's schizophrenia diagnosis. MH2 16-17. Celestine did not object, and the circuit court granted the State's motion in limine. MH2 18.

On July 5 and 6 of 2023, the circuit court held a jury trial. *See generally* JT1, JT2. In the afternoon of July 6, 2023, jury deliberations began. JT2 179. The jury did not reach a verdict that day and requested to return the following morning to resume deliberations. JT2 181. The circuit court released the jurors for the evening and instructed them to return in the morning. JT2 181-183.

On July 7, 2023, the parties were notified that the jurors were hopelessly divided and unable to return a unanimous verdict. JT3 186. Subsequently, the circuit court brought the jury into the courtroom and the foreperson advised the court that additional time, after a lengthy deliberation process, would not be fruitful to continue deliberations. JT3 187-188. Therefore, the circuit court declared and ordered a mistrial. JT3 188.

On August 1, 2023, the circuit court held a status hearing where Celestine requested to represent himself for the remainder of future proceedings. SH6 2. Celestine advised the court that he "spent [his] entire time in jail preparing for trial" and believed he was best suited to represent himself in further proceedings. SH6 2. The circuit court denied this request and found that Celestine's concerning mental health precluded him from the ability to intelligently waive his right to counsel. SH6 5[1]. At the conclusion of this hearing, the circuit court scheduled a second jury trial. SH6 5-6.

On September 21, 2023, the State filed a Superseding Indictment. SR 507. The Superseding Indictment did not add any additional criminal allegations. *Id.* Rather, it simply changed the date range as the State elected to pursue a different

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[1] SH6, Pg. 5, Lines 5-10:

THE COURT: And so I don't believe that he understands what he's doing. I don't believe that he understands what he's doing. I don't believe that he's competent to represent himself in that sense and I strongly believe that he's not intelligently waiving his right to be represented by counsel. So his motion to proceed pro se is denied.

date range at the second jury trial. *Id*. On October 3, 2023, the circuit court held an arraignment on the Superseding Indictment where Celestine was advised of the State's new date range. ARR2 2-5. At the conclusion of this hearing, the circuit court scheduled the second jury trial. ARR2 7.

On February 26, 2024, the State filed a motion in limine seeking to preclude testimony related to Celestine's general mental health, his schizophrenia diagnosis, any prescribed mental health medications, and any impact the voices in his head had on his decisions. SR 544. On February 28, 2024, the circuit court held a pre-trial conference and denied the motion. PTC2 24-28.

On March 22, 2024, defense counsel moved for a competency evaluation. SR 597. On March 26, 2024, the circuit court signed an order for competency evaluation. SR 599. On April 9 and May 28 of 2024, the circuit court held status hearings and continued the matter pending the completion of the court ordered competency evaluation. SH7 2; SH8 2.

On July 30, 2024, the circuit court held a status hearing. *See generally* SH9. Defense counsel advised the court that the competency evaluation was complete, and Celestine was deemed competent to proceed. SH9 2. At the conclusion of this hearing, the circuit court scheduled a pre-trial conference and the second jury trial. SH9 4-5.

On September 30, 2024, the State filed a motion to reconsider its February, 26, 2024 motion in limine. SR 648. On October 8, 2024, the circuit court held a pre-

trial conference. *See generally* PTC3. At this hearing, the circuit court denied the State's motion to reconsider. PTC3 10-11.

On November 14, 2024, the circuit court held a change of plea hearing. *See generally* COP. At this hearing, defense counsel advised the circuit court that Celestine agreed to enter a plea to Attempted Threat of Felony Terrorism, in violation of SDCL 22-8-13 and SDCL 22-4-1. COP 2. In exchange, the State agreed to recommend 287 days credit for time already served. COP 2. The circuit court canvassed Celestine regarding his understanding of the plea. COP 3-5. The following plea colloquy took place:

THE COURT:	Then as to the charge in the information for attempted threat of felony terrorism how do you plead?
THE DEFENDANT:	I accept the benefits of these charges.

COP 5. Defense counsel then advised that Celestine sought permission of the court to enter an *Alford* plea. COP 5. The circuit court granted permission to enter an *Alford* plea, and the plea was accepted after the court received a factual basis from defense counsel. COP 6-10. Subsequently, the court scheduled a sentencing date and ordered a pre-sentence investigation report. COP 10.

On November 22, 2024, the Court Services Office for the Seventh Judicial Circuit contacted the circuit court to advise that Celestine indicated a desire to withdraw his plea. SR 753. On December 3, 2024, defense counsel filed Celestine's motion to withdraw his plea, and the State filed its response on December 6, 2024. SR 755, 758.

On December 10, 2024, the circuit court held a motions hearing to address Celestine's motion to withdraw his plea. *See generally* MH3. At this hearing, the circuit court stated "the motion indicates that he moves to withdraw his guilty plea, primarily on the basis that his right, as he alleges, his right for self-representation was violated. There is also an allegation that he is factually innocent." MH3 2.

Regarding Celestine's continued request to represent himself, the circuit court steadfastly denied the request. MH3 3. The court cited *Indiana v. Edwards*, 554 U.S. 164, 128 S. Ct. 2379 (2008), and explained:

> The Court's decision to deny Mr. Celestine's right to represent himself was based on *Indiana versus Edwards* where our Supreme Court, United States Supreme Court, held that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits states to insist upon representation by counsel for those competent enough to stand trial but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. There's no dispute in this case that Mr. Celestine suffers from a diagnosed mental illness, and I won't repeat it in court, but it's all part of the record.

MH3 3. Next, the circuit court asked both parties whether there was any dispute that Celestine suffered from a diagnosed mental illness and both sides agreed as to the validity of Celestine's mental illness diagnosis. MH3 3. The circuit court noted "I should add that the Court heard testimony regarding his mental illness at the first trial." MH3 4. The circuit court further explained:

> To the Court, opposing or saying that one will oppose the

> dismissal of the case by the State is the very height of not understanding what is going on and not being able to conduct a trial that, by the way, the State at that point wouldn't want to conduct and it's irrelevant that the State never sought to dismiss the charges. It's his belief that he wanted to go forward even if the State doesn't that gave the Court significant trouble.

MH3 4.

Regarding Celestine's submission of innocence, the circuit court found that it's "just a conclusory statement saying that he's asserting that." MH3 9. Regarding the delay between time of plea and time of request to withdraw plea, the circuit court agreed "[i]t's a short time period. It favors Mr. Celestine." MH3 9. Regarding judicial resources, the circuit court opined "there was no judicial resources wasted on calling a jury. However, the State makes a compelling argument in its submission that as this matter drags out, it would be more difficult to locate and subpoena witnesses." MH3 10. Regarding defense counsel representation, the circuit court opined Celestine received "extremely competent representation." MH3 10. Finally, the circuit court found a knowing and voluntary plea took place. MH3 8. Therefore, based on the totality of the circumstances, the circuit court denied Celestine's motion to withdraw his plea. MH3 10.

On March 4, 2025, the circuit court held a sentencing hearing. *See generally* SENT. Defense counsel and the State jointly requested the circuit court impose a sentence of credit for 287 days already served. SENT 3. The circuit court expressed concern regarding a lack of responsibility and stated "I don't see any

of that here and, in fact, it goes the other way. He tried to withdraw his guilty plea not because of any – well, you might disagree – not because of any valid reason, but essentially because he thought that a jury ought to decide his fate after he pled guilty which to me is an indication that he still does not believe that what he did was wrong." SENT 7-8. The circuit court asked Celestine if he desired to make a statement to the court prior to the imposition of sentence. SENT 9. Celestine responded, "Your Honor, I just don't like child rapists. That is all I'll say about that." SENT 9. The circuit court rejected the sentencing recommendation of both parties and imposed the maximum penitentiary sentence available. SENT 9.

STATEMENT OF FACTS

On September 1, 2019, Celestine called the FBI because he heard voices in his head that he believed communicated with him telepathically. JT1 5, 9, 18, 83-84. The voices told Celestine that all rapists should be executed, and the voices advised him that the President was a rapist. JT1 5, 9, 18, 83-84.

At trial, Lafferty testified that he worked for the FBI within its National Threat Operation Center unit. JT1 15-16. Lafferty described the contents of Celestine's September 1, 2019 telephone call to the FBI, indicating "the caller stated that he was calling the FBI because he was hearing voices and those voices were telling him that they needed to kill rapists, specifically Donald Trump." JT1 18. Without objection, the circuit court received the recorded call into evidence and the State published the recording to the jury. JT1 18-19; Ex. 1.

After Lafferty testified, Gary, of the Brookings Police Department, testified. JT1 23. Gary traded and sold firearms through a website called Armslist. JT1 29-30. In June of 2020, Gary advertised a rifle for sale on Armslist. JT1 31. On June 21, 2020, Celestine contacted Gary about potentially purchasing the rifle. JT1 31-32. Celestine did not indicate any intended use for the weapon, made no mention of the President, and never purchased the rifle. JT1 32, 37. Gary "was selling this rifle as a civilian" separate from his law enforcement employment. JT1 36.

After Gary testified, the State called its final witness, Milstead, of the Pennington County Sherriff's Office. JT1 38. In June of 2020, Milstead investigated a possible threat to the President after receiving information from federal agencies. JT1 40. Law enforcement had concern due to the aforementioned FBI call regarding the President's safety for a scheduled July 4, 2020, visit to Mount Rushmore in Rapid City, South Dakota. JT1 40-41.

On June 30, 2020, Milstead went to Celestine's residence with two United States Secret Service Agents. JT1 41-42. Law enforcement spoke with Celestine in his driveway. JT1 43. Celestine told law enforcement he had a firearm in his possession, specifically in his car, that he purchased from a citizen in Box Elder, South Dakota. JT1 44. Celestine consented to a search of his vehicle and stated he intended to use the firearm for target practice. JT1 45. The State introduced Celestine's firearm into evidence, without objection, as State's Exhibit 2. JT1 46-47. The State introduced firearm ammunition located in Celestine's vehicle into

evidence, without objection, as State's Exhibits 3 and 4. JT1 47-49. The State introduced a receipt from the Black Hills Gold local store, a firearm ammunition expended shell casing from Celestine's vehicle, four shooting targets, and a receipt from the First Stop Gun local store into evidence, without objection, as State's Exhibits 5, 6, and 7. JT1 58-59. In addition to searching Celestine's vehicle, law enforcement searched his residence, with his consent, and found no items of evidentiary value to this investigation. JT1 62, 96.

After the investigation at Celestine's residence, law enforcement detained and transported Celestine to the Pennington County Public Safety Building. JT1 62. The State introduced Milstead's body worn video camera and audio footage from that day, without objection, as State's Exhibits 8 and 9. JT1 63-64, 73-74. At the Public Safety Building, law enforcement considered placing Celestine on an involuntary mental health hold. JT1 68.

Celestine told Milstead he heard voices in his head which told him to shoot the President, to execute rapists, and that the President was a rapist and tyrant. JT1 69, 72-73, 76. Celestine told Milstead that he had no desire to hurt anyone. JT1 95. Milstead testified that Celestine did not make any political statements. JT1 96. Rather, Celestine spoke with law enforcement about his mental health and his concern regarding rapists. JT1 96-97. During Milstead's conversation with Celestine, Celestine was primarily focused on his belief that the President was a rapist. JT1 105-106.

Celestine told Milstead he contemplated hiking to the back side of Mount Rushmore while the President visited for the July 4th holiday in 2020. JT1 107. At the conclusion of Milstead's conversation with Celestine at the Public Safety Building, Celestine was arrested by law enforcement and taken into custody for allegations of terrorist threats. JT1 114.

STANDARD OF REVIEW

"We review a trial court's refusal to permit a defendant to withdraw a guilty plea prior to sentencing under an abuse of discretion standard." *State v. Bailey*, 1996 S.D. 45, ¶ 11, 546 N.W.2d 387, 390-91; *State v. Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d 571, 575; *State v. Ceplecha*, 2020 S.D. 11, ¶¶ 40-41, 940 N.W.2d 682, 694. "The term abuse of discretion refers to a decision exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Bailey*, 546 N.W.2d at 390-391 (citation modified). "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." *State v. Alvarez*, 2022 S.D. 66, ¶ 24, 982 N.W.2d 12, 17-18.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DENYING CELESTINE'S MOTION TO WITHDRAW HIS *ALFORD* PLEA.

"The law inclines toward a trial on the merits; and where it appears that the interests of justice would be served, the defendant should be permitted to withdraw his plea." *Tanzi v. State*, 964 So.2d 106, 113 (Fla. 2007). A defendant's

pre-sentencing motion to withdraw a plea should be granted "if any reasonable ground is offered for going to the jury." *Commonwealth v. Holland*, 304 Va. 34, 48, 910 S.E.2d 327, 335 (2025). However, "because a defendant no longer enjoys the presumption of innocence after pleading guilty, the defendant bears the burden of production and persuasion." *Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d at 575 (quoting *Ceplecha*, 2020 S.D. 11, ¶ 40-41, 940 N.W.2d at 694).

"SDCL 23A-27-11 allows a defendant to move to withdraw a guilty plea." *Trueblood*, 2024 S.D. 17, ¶ 9, 5 N.W.3d at 574. When a defendant moves to withdraw a plea prior to sentencing, the circuit court's discretion should be exercised liberally in favor of withdrawal. *Trueblood*, 2024 S.D. 17, ¶ 9, 5 N.W.3d at 574-75. "[T]his presentence standard is favorable to defendants, and trial courts are encouraged to liberally grant motions made before sentencing." *Tanzi*, 964 So.2d at 113. The trial court's discretion is not unfettered, and courts must be mindful that the law requires trial courts to grant pre-sentence plea withdrawal motions liberally to "show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial – perhaps the most devastating waiver possible under our constitution." *Commonwealth v. Garcia*, 2022 PA Super 63, 280 A.3d 1019, 1024 (2022). "[T]he trial judge should always exercise his discretion with caution in refusing to set aside a plea of guilty, to the end that one accused of crime may have a fair and impartial trial." *State v. Phelps*, 329 S.W.3d 436, 444 (Tenn. 2010) (citation modified).

"After a defendant pleads guilty pursuant to a plea agreement, she may not withdraw her plea unless she shows a fair and just reason for doing so." *Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d at 575 (citation modified). "The threshold just reason requirement is not an onerous burden." *State v. Baxter*, 163 Idaho 231, 234, 409 P.3d 811, 814 (2018). "It is a reasonable requirement, to be administered liberally and with due recognition of the serious consequences attending a guilty plea." *Id.* Determining whether a defendant's reasons for withdrawal are "fair and just" is determined by several factors and considerations, none of which are exhaustive or dispositive in the circuit court's analysis. *Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d at 575 (quoting *Ceplecha*, 2020 S.D. 11, ¶ 40-41, 940 N.W.2d at 694).

Generally, the circuit court should evaluate (1) whether the defendant asserts innocence; (2) the time period delay between the date of plea entry and date of the request for withdraw; (3) whether the plea was knowingly and voluntarily entered; (4) whether the defendant received competent assistance of counsel in making the decision to enter a plea; (5) whether withdrawal would prejudice the prosecution; and (6) whether withdrawal would waste judicial resources. *Id.*; *Alvarez*, 2022 S.D. 66, ¶ 26, 982 N.W.2d at 18 (citation modified). "[I]n a close case, the scales should usually tip in favor of defendant." *State v. Munroe*, 210 N.J. 429, 441, 45 A.3d 348, 355 (2012) (citation modified).

A. <u>Celestine presented a credible and compelling assertion of innocence that weighed strongly in favor of withdrawal.</u>

It is well-settled that self-serving testimony concerning a defendant's innocence by the defendant has not been found to provide a basis for permitting the withdrawal of a guilty plea. *Trueblood*, 2024 S.D. 17, ¶ 13, 5 N.W.3d at 576; *Alvarez*, 2022 S.D. 66, ¶ 27, 982 N.W.2d at 18; *Ceplecha*, 2020 S.D. 11, ¶ 53, 940 N.W.2d at 697; *State v. Thielsen*, 2004 S.D. 17, ¶ 19, 675 N.W.2d 429, 434.

However, "[a] fair and just reason exists where the defendant makes claim of innocence that is at least plausible." *Garcia*, 180 A.3d at 1023. A jury determines guilt or innocence, therefore, the "law does not require a compelling case for the defendant's innocence, only a plausible one based on the available facts." *Id.* at 1027. A credible claim of innocence should tip the scale in favor of permitting a defendant to withdraw his plea. *State v. Butterfield*, 2025 ME 57, ¶ 16, 339 A.3d 808, 814. A legitimate legal assertion of innocence is one of the most important factors in the withdrawal analysis. *Phelps*, 329 S.W.3d at 446.

"A defendant must support the assertion of innocence with a credible argument, meaning he must make a factual argument that supports a legally cognizable defense." *United States v. Marceleno*, 819 F.3d 1267, 1273 (10th Cir. 2016) (citation modified). Federal courts have explained "that a credible assertion of innocence has the quality or power of inspiring belief and tends to either defeat the elements in the government's prima facie case or make out a successful affirmative defense." *Id.* at 1275 (citing *United States v. Thompson-Riviere*, 561 F.3d 345, 353 (4th Cir. 2009)). "A defendant is not required to provide conclusive proof of his innocence." *Id.* The circuit court "need not be convinced

that it is a winning argument because, in the end, legitimate factual disputes must be resolved by the jury." *Munroe*, 210 N.J. at 442.

Here, the State charged Celestine with one count of violation of SDCL 22-8-13 which reads as follows:

> Any person who threatens to commit a crime of violence, as define by subdivision 22-1-2(9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with intent to:
>
> (1) Intimidate or coerce a civilian population;
> (2) Influence the policy or conduct of any government or nation;
> (3) Affect the conduct of any government or nation; or
> (4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;
>
> is guilty of making a terrorist threat. A violation of this section is a Class 5 Felony.

SR 22.

At the conclusion of the first day of the jury trial, the parties addressed the defense's motion for judgment of acquittal. JT1 118. At that time, the State conceded that it could not prove any evidence supporting any rational theory of guilt regarding subsection (4) of the specific intent requirement in SDCL 22-8-13. JT1 121. The circuit court inquired if the State intended to pursue an argument that the trial evidence supported a rational theory of guilt as to subsection (1) of the specific intent requirement. JT1 121. The State indicated it intended to do so. JT1 121. After hearing arguments from the parties, the circuit court held the motion in abeyance until further proceedings resumed the next morning. JT1

121-127. On July 6, 2023, the circuit court granted the defense's motion for judgment of acquittal as to subsection (1) as the State could not present any rational theory of guilt that Celestine specifically intended to "intimidate or coerce a civilian population" based on the evidence presented at trial. JT2 132-133.

However, the circuit court found that sufficient evidence was presented at trial to permit the State to argue subsections (2) and (3) of SDCL 22-8-13. JT2 133. After two days of jury deliberations, the jury refused to convict Celestine of either subsections (2) or (3). JT2 179, 181-183; JT3 186-191.

At the December 10, 2024, motion to withdraw plea hearing, the circuit court noted that Celestine moved to withdraw his plea primarily for two reasons, one of which being an assertion of innocence. MH3 2. The circuit court found Celestine's innocence assertion to be "just a conclusory statement[.]" MH3 9. However, the record, primarily the jury trial held in the matter, reveals an abundance of evidence establishing Celestine lacked the specific intent required as an essential element in order for Celestine to be guilty of a violation of either SDCL 22-8-13(2) or 22-8-13(3).

Celestine's primary defense at trial was that he lacked the required specific intent element of the statute. JT2 159, 163-166, 169. And that defense was compelling enough to result in a hung jury. SR 128. South Dakota does not have any caselaw applicable to Celestine's specific circumstances. However, the Virginia Supreme Court's decision in *Bottoms v. Commonwealth*, is most

instructive in evaluating this specific intent defense issue. *See generally* 281 Va. 23, 704 S.E.2d 406 (2011).

In *Bottoms*, the defendant was charged with construction fraud. 704 S.E.2d at 408. The statute at issue required "fraudulent intent" meaning "intent to defraud at the time the advance of money is received." *Id.* at 413. The defendant argued he could rebut the government's case by showing he had a specific intent defense to the charge. *Id.* Specifically, "at the time he entered into contracts, he fully intended to perform the work, he fully performed the contract for renovation of the home, and he stopped work on the renovation of the church when it was approximately half complete merely because it was determined that he was not properly licensed to perform the work and was not following the proper building code requirements." *Id.*

The Virginia Supreme Court explained that a motion to withdraw should be granted "when the evidence supporting the motion shows that there is a reasonable defense to be presented to the judge or jury trying the case." *Id.* at 412 (citing *Justus v. Commonwealth*, 274 Va. 143, 155-56, 645 S.E.2d 284, 290 (2007)). "The circuit court in this case did not consider whether Bottoms' proffered defense was reasonable, and not 'merely dilatory or formal'" and "the Court of Appeals implicitly found that the proffered defense was not reasonable because it was 'vague.'" *Id.* at 413.

The Virginia Supreme Court disagreed with both the circuit court and the appellate court. *Id.* "There is nothing 'vague' or merely 'formal' in the asserted

defense of lack of intent to defraud." *Id.* "The asserted defense, if proven, would not affirmatively establish that Bottoms was not guilty as a matter of legal impossibility…[h]owever, the defense was sufficient under the circumstances of this case to permit Bottoms to assert that he had 'a reasonable defense to be presented to the judge or jury trying the case.'" *Id.* (citing *Justus*, 645 S.E.2d at 289). The Virginia Supreme Court held "that the circuit court erred in not permitting Bottoms to withdraw his guilty in order to have the case go forward to trial." *Id.*

Here, first, unlike *Bottoms*, Celestine's specific intent defense, if proven, is a complete, not partial, defense to the charge. The statute requires a political motivation and proof beyond a reasonable doubt of Celestine's specific intent to "influence the policy or conduct of any government or nation" or "affect the conduct of any government or nation." *See* SDCL 22-8-13. A complete defense to a crime is a stronger reason for withdrawal than the partial defense that was still sufficient for reversal and withdrawal in *Bottoms*. Second, even if Celestine's proffered defense was a partial defense, as in *Bottoms*, the matter is for the jury to decide. Therefore, the circuit court abused its discretion by denying Celestine's motion to withdraw his plea based on the proffered complete defense to the specific intent requirement of SDCL 22-8-13.

South Dakota caselaw addresses numerous instances where the request for withdrawal was merely a claim of innocence by the defendant that was not supported by the record. *See e.g. Trueblood*, 2024 S.D. 17, ¶ 13, 5 N.W.3d at 575-76;

Alvarez, 2022 S.D. 66, ¶ 30, 982 N.W.2d at 19; *Ceplecha*, 2020 S.D. 11, ¶ 53, 940 N.W.2d at 697; *Thielsen*, 2004 S.D. 17, ¶ 19, 675 N.W.2d at 434; *Bailey*, 1996 S.D. 45, ¶ 27, 546 N.W.2d at 393; *State v. Losieau*, 266 N.W.2d 259, 262 (S.D. 1978).

Celestine's record presents an entirely different circumstance. The record is replete with support for his submission of legal innocence regarding the lack of specific intent defense. First, Celestine's statements throughout this case were never of a political nature. Rather, Celestine consistently indicated he heard voices that told him the President committed sexual assault. *See* JT1 18 ("In general the caller stated that he was calling the FBI because he was hearing voices and those voices were telling him that they needed to kill rapists, specifically Donald Trump."); JT1 69-70 ("[H]e thought President Trump was a rapist and he also said the voices told him he was a rapist."); JT1 76 ("I mean, he talked about killing President Trump specifically and then the rapist seemed to come up pretty consistently as well."); JT1 96-97 ("I don't recall any politics specifics."); JT1 105-106.

Second, law enforcement's investigation revealed no corroborating evidence to support a theory of guilt regarding Celestine's specific intent to have a political impact. Instead, the record reveals further support for Celestine's specific intent defense. Celestine authorized law enforcement to search his residence and nothing of a political nature was found. *See* JT1 91, 97-98.

Finally, and most importantly, when Celestine moved to withdraw his plea, he had already been placed in jeopardy before a Pennington County jury

that deadlocked after receiving all of the State's evidence and hearing his specific intent defense to the crime alleged. There can be no greater evidence of a credible claim of legal innocence than a jury that refused to convict. Because specific intent was the lynchpin of this case, and the State was required to prove specific intent beyond a reasonable doubt, the circuit court abused its discretion in discounting Celestine's compelling claim of legal innocence as to the required specific intent element of the crime alleged.

B. The seven-day delay period between plea and withdrawal request weighed strongly in favor of Celestine.

The "presence or absence of undue delay impacts a defendant's entitlement to pre-sentence plea withdrawal." *State v. Walter*, 156 Haw. 65, 75, 569 P.3d 1249, 1259 (2025) (citation modified). "A swift change of heart is a strong indication that the plea was entered in haste while an undue delay may not warrant withdrawal." *Id.* The "longer a defendant delays in filing a withdrawal motion, the more substantial reasons he must proffer in support of his motion." *United States v. Lord*, 915 F.3d 1009, 1015 (5th Cir. 2019) (citation modified).

In *State v. Kvasnicka*, the South Dakota Supreme Court found that a delay of ten months from date of plea to date of the defendant's withdrawal request to weigh against granting the motion. 2016 S.D. 2, ¶ 15, 873 N.W.2d 705, 712. In *Bottoms v. Commonwealth*, the Virginia Supreme Court held the "motion to withdraw the guilty plea was clearly filed in a timely manner, over one month before his scheduled sentencing hearing." 704 S.E.2d at 412.

Here, the circuit court agreed that the delay factor weighed in favor of withdrawal. *See* MH3 9 ("The other factors with respect to delay, he didn't wait very long. He waited seven days. It's a short time period. It favors Celestine."). There can be no doubt that this factor strongly weighs in favor of withdrawal. Celestine demanded a jury trial at his initial appearance, fought his case before a jury that would not convict him three years later, and took only a week to request withdrawal for leave to proceed to a second jury trial on the merits. *See* IA 6; *see generally* JT1; JT2; JT3; *see also* SR 753, 755, 758.

C. Celestine's undisputed mental illness casts significant doubt regarding the knowing and voluntary nature of the plea and therefore weighed strongly in favor of withdrawal.

In *State v. Schmidt*, in the context of a plea withdrawal motion, the defendant argued "an alleged mental impairment rendered her incapable of entering her guilty pleas knowingly and voluntarily." 2012 S.D. 77, ¶ 18, 825 N.W.2d 889, 895. This Court reviewed whether the defendant's mental state presented "a tenable reason to allow withdrawal." *Id.* "Whether an accused is capable of making the reasoned choice essential to the validity of a guilty plea and the waiver of constitutional rights such as the plea entails depends upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." 2012 S.D. 77, ¶ 19, 825 N.W.2d at 895.

In *Schmidt*, in the context of knowing and voluntariness of the plea, this Court explained that the defendant did not have auditory or visual

hallucinations. 2012 S.D. 77, ¶ 8, 825 N.W.2d at 893. Furthermore, "[t]here was no showing of mental illness impacting Schmidt's ability to proceed." 2012 S.D. 77, ¶ 22, 825 N.W.2d at 896. Therefore, this Court found the defendant's mental state did not present a tenable reason for withdrawal. *Id.*

In *State v. Engelmann*, this Court held that the circuit court abused its discretion by refusing to allow the defendant to withdraw his *Alford* plea because the defendant's diagnosed mental health condition showed he did not enter into a plea agreement knowingly and voluntarily. 541 N.W.2d 96, 103 (S.D. 1995). The State's own psychiatrist "confirmed Engelmann's blunted thought processes and diminished mental clarity." *Id.* This Court held that a diagnosed, recognized mental health disorder, namely Severe Depressive Episode, "reduced Engelmann's decision-making ability." *Id.* Moreover, the existence of a "serious mental disorder was not a frivolous excuse." *Id.* This Court reversed and remanded the matter because "Engelmann should have been allowed to withdraw" his plea. *Id.*

Here, Celestine's undisputed mental illness casts significant doubt as to the knowing and voluntary nature of the plea, thus weighing strongly in favor of withdrawal. Unlike *Schmidt*, Celestine's mental impairment presented a tenable reason to liberally permit withdrawal because the State's own trial evidence established that Celestine suffered from auditory hallucinations. *See* JT1 18 ("the caller stated he was calling the FBI because he was hearing voices and those voices were telling him that they needed to kill rapists, specifically Donald

Trump."). At trial, Milstead testified that Celestine talked about the voices in his head. JT1 69. The voices told Celestine to shoot the President, and he heard voices from the United States Federal Government's Central Intelligence Agency telling him what to do. JT1 69, 72, 84. Celestine's mental health was a primary topic of the conversation while speaking to Milstead. JT1 96-97.

At the change of plea hearing, the circuit court asked for Celestine's plea, and he responded, "I accept the benefits of these charges." COP 5. Not only is this not a plea that can be entered, but a conviction of any kind is not a benefit to a defendant. Celestine's statement to the court casts a significant shadow of concern over the validity of the plea entered.

Most importantly, the circuit court acknowledged and was acutely aware of Celestine's significant mental health issues. *See* MH3 4 ("Before I continue, I should add that the Court heard testimony regarding his mental illness at the first trial."). In addition, the circuit court asked the parties whether anyone disputed that Celestine suffered from a diagnosed mental illness, and neither party disputed this reality. MH3 3. Furthermore, the circuit court discussed Celestine's July 13, 2023, letter to the court which demanded the State not dismiss this case. MH3 4; SR 145. The circuit court explained that this "is the very height of not understanding what is going on" and this gave the court "significant trouble." MH3 4.

As in *Engelmann*, Celestine was undeniably mentally ill. To determine if Celestine entered a knowing and voluntary plea, his severe mental health issues

cannot be overlooked. These concerns weigh strongly in favor of Celestine's withdrawal request.

D. Celestine's circumstances created no prejudice to the prosecution and therefore weighed strongly in favor of withdrawal.

Withdrawal may be denied when "it appears that the state has detrimentally relied upon the plea and the prosecution of the defendant has been thereby prejudiced." *Trueblood*, 2024 S.D. 17, ¶ 9, 5 N.W.3d at 574-75; *Bailey*, 1996 S.D. 45, ¶ 12, 546 N.W.2d at 391. "However, even when the prosecution is substantially prejudiced, other factors favoring withdrawal may outweigh prejudice against the State." *Walter*, 569 P.3d at 1260. "Moreover, the relevant period to evaluate prejudice against the State is the time between the guilty plea and motion to withdraw the guilty plea, not the time between the underlying incident and the plea withdrawal motion." *Id.* at 1261. Withdrawal "shortly after the event will rarely prejudice the Government's legitimate interests." *Phelps*, 329 S.W.3d at 446 (citation modified). The critical inquiry "is whether the passage of time has hampered the State's ability to present important evidence." *Munroe*, 210 N.J. at 443.

Here, the prejudice factor weighs strongly in favor of Celestine. First, this matter was pending for exactly three years before it proceeded to jury trial, and the State had no difficulty producing the witnesses and its evidence three years later. Second, in analyzing the time between date of plea entry and initiation of the withdrawal request, there is no reason to believe that seven days hampered

the State's ability to produce its case at a second jury trial. In fact, the date of the change of plea hearing, November 13, 2024, was the same date the second jury trial was scheduled to begin. SH9 3-4. A month prior, the circuit court held the final pre-trial conference before the scheduled second jury trial, and the State never indicated any difficulty with its witnesses or its evidence. PTC3 2-16.

E. Judicial Resources

The South Dakota Supreme Court has made clear that "whether withdrawing the plea will waste judicial resources" is a relevant factor in the analysis. *Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d at 575; *Alvarez*, 2022 S.D. 66, ¶ 26, 982 N.W.2d at 18; *Ceplecha*, 2020 S.D. 11, ¶ 40, 940 N.W.2d at 694; *Kvasnicka*, 2016 S.D. 2, ¶ 9, 873 N.W.2d at 709. However, this Court has not defined this factor.

Here, the circuit court noted that "there was no judicial resources wasted on calling a jury." MH3 10. However, the circuit court opined that "as this matter drags out, it would be more difficult to locate and subpoena witnesses." *Id.* Similarly to the previously discussed prejudice factor, the record reveals that the witnesses and evidence remained available to the State several years after the commencement of the action. Furthermore, any potential weight in favor of the State on this factor is not dispositive in the analysis. Celestine submits the strength of the innocence, delay, and knowing and voluntariness factors strongly override and outweigh any weight applicable to this undefined factor in the analysis.

CONCLUSION

For the foregoing reasons, the circuit court abused its discretion in denying Celestine's motion to withdraw his *Alford* plea based on the totality of the analysis. Celestine respectfully requests that this Court vacate the Judgment and Sentence, and remand to the circuit court to allow Celestine to withdraw his plea and proceed to a second jury trial on the merits.

REQUEST FOR ORAL ARGUMENT

Celestine respectfully requests permission to present oral arguments on this matter at a date and time convenient to this Court.

CERTIFICATE OF COMPLIANCE

I. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellant's brief contains 7,592.

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

Dated this 8th day of December, 2025.

/s/ Matthew R. Mirabella
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Brief were electronically served upon the following individuals:

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Dated this 8th day of December, 2025.

/s/ Matthew R. Mirabella
Matthew R. Mirabella
Attorney for Appellant
South Dakota Office of Indigent Legal Services
PO Box 88237, Sioux Falls, SD 57109

APPENDIX

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff,	)	File No. CRI20-2774
vs.	)	**NEW JUDGMENT PURSUANT TO SDCL 23A-27-51**
LUCIAN UNDDAS CHARI CELESTINE, DOB: 6/22/91 Defendant.	)	

Appearance at sentencing:
Prosecutor: Jason Thomas Defense attorney: Elizabeth Regalado

Date of sentence: 3/4/25
Date of offense: 6/30/20
Charge: Attempted Threat of Felony Terrorism
Class: 1/2 C-5-FEL Felony SDCL: 22-1-2(9) and SDCL 22-4-1
Plea of Alford entered on 11/13/24

The State is submitting this Second Amended Judgment due to extenuating circumstances, and at the request of Defense Counsel. The State does not object to this amendment.

CRIME QUALIFIER: (CHECK IF APPLICABLE):
☐ Accessory 22-3-5 ☐ Aiding or Abetting 22-3-3 ☐ Attempt 22-4-1
☐ Conspiracy 22-3-8 ☐ Solicitation 22-4A-1

Habitual offender admitted on: _____
☐ SDCL 22-7-7 ☐ SDCL 22-7-8 ☐ SDCL 22-7-8.1

Part 2 Information (DUI) admitted on _____
☐ Third Offense; SDCL 32-23-4 ☐ Fourth Offense; SDCL 32-23-4.6
☐ Fifth Offense; SDCL 32-23-4.7 ☐ Sixth or Subsequent Offense; SDCL 32-23-4.9

Part 2 Information (ASSAULT) admitted on _____
☐ SDCL 22-18-1

Part 2 Information (VPO DV/ VNCO DV) admitted on _____
☐ SDCL 25-10-13

☒ The Defendant having pled an Alford plea and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:
2.5 years in the State Penitentiary with 0 years suspended and 287 days credit plus each day served in the Pennington County jail.

JG
6/6/25

☐ Fully Suspended Pen

Check if applicable:
☐ The sentence shall run concurrent with ____.
☐ The sentence shall run consecutive to ____.

☒ That Defendant pay court costs of $106.50.
☒ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11 in the amount of $2,294.00.
☒ That Defendant pay prosecution costs: UA $___, Drug Test $___, Blood $___, SART Bill $___; Transcript $37.50.
☐ That Defendant pay prosecution costs from dismissed file ___: UA $___, Drug Test $___, SART Bill $___; Blood $___, Transcript $.
☐ That Defendant pay the statutory fee of $___ DUI, $___ DV.
☐ That Defendant pay fines imposed in the amount of $___.
☐ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of $___ to ___.

Other Conditions:
☐ _____
☐ _____

☒ Pursuant to SDCL 22-6-11, a Court shall sentence a Defendant convicted of a Class 5 or Class 6 felony to a term of probation unless the Court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation; and the Court having found the following aggravating factors exist justifying a deviation, to-wit:

☐ Failure to comply with terms of probation
☐ Poor performance on bond
☐ Escalating behavior
☒ Failure to accept responsibility
☐ _____
☐ Criminal history
☐ Multiple files
☐ Picking up new files while on bond
☐ On Parole when committed offense

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

Amber Watkins, Clerk of Courts
By _____ Deputy

BY THE COURT:

HON. ROBERT GUSINSKY CIRCUIT JUDGE

UNIFIED JUDICIAL SYSTEM STATE OF SOUTH DAKOTA

FILED
Pennington County, SD
IN CIRCUIT COURT
JUN - 4 2025
Amber Watkins, Clerk of Courts
By _____ Deputy

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31116

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

LUCIAN CELESTINE,

Defendant and Appellant.

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

THE HONORABLE ROBERT GUSINSKY
Circuit Court Judge

APPELLEE'S BRIEF

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AND APPELLANT

Notice of Appeal filed June 6, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31116

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

LUCIAN CELESTINE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Lucian Celestine, is referred to as "Celestine." Plaintiff and Appellee, the State of South Dakota, is referred to as "the State." Exhibits used during the trial will be referred to as "Ex." References to documents are denoted as follows with corresponding page number(s) indicated thereafter:

Settled Record (CRI20-2774)..... SR

Appellant's Brief..... AB

JURISDICTIONAL STATEMENT

This is an appeal of an Amended Judgment entered on June 4, 2025. SR:821-22. Celestine timely filed a Notice of Appeal on June 6, 2025. SR:838; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN DENYING CELESTINE'S MOTION TO WITHDRAW HIS *ALFORD* PLEA?

The circuit court did not rule on this issue.

State v. Alvarez, 2022 S.D. 66, 982 N.W.2d 12

State v. Ceplecha, 2020 S.D. 11, 940 N.W.2d 682

State v. Trueblood, 2024 S.D. 17, 5 N.W.3d 571

STATEMENT OF THE CASE

On June 30, 2020, Celestine was indicted for threat of felony terrorism, in violation of SDCL 22-8-13. SR:22. Simultaneously, Celestine was detained and charged by the Federal Government; therefore, his state case was continued.[1] SR:42, 914-18, 1042. On January 17, 2023, the circuit court held an arraignment where Celestine was advised of the charge against him, the maximum penalty if convicted, and his statutory and constitutional rights. SR:909-18.

In July 2023, Celestine had a jury trial where the jury was unable to return a unanimous verdict; therefore, Celestine consented to a mistrial. *See* AB:5; *see* SR:148-506. On August 1, 2023, the circuit court held a status hearing where the State indicated they were asking for a retrial. SR:967. The trial was scheduled to begin on January 24,

[1] On January 9, 2023, Celestine pled guilty to possession of a firearm by a prohibited person in federal court and was sentenced to supervised release. SR:762, 1017-18.

2024. SR:971. On October 3, 2023, the circuit court held an arraignment on the Superseding Indictment[2] where Celestine was readvised of his constitutional and statutory rights. SR:978-84.

On March 22, 2024, defense counsel moved for a competency evaluation, which the circuit court granted. SR:597. On June 30, 2024, the circuit court held a status hearing where defense counsel advised that the competency evaluation was complete and Celestine was deemed competent to stand trial. SR:942-58.

On November 14, 2024, Celestine entered an *Alford* plea. SR:741-51. The circuit court advised Celestine that in exchange for his plea, he was waiving his *Boykin* rights.[3] SR:744. Celestine affirmed he understood and wanted to waive those rights. SR:745. Celestine stated he was satisfied with his attorney's representation and understood the maximum penalty he faced. SR:745.

When asked how he wished to plead to the charge of attempted threat of felony terrorism, Celestine stated, "I accept the benefits of these charges." SR:745. His attorney advised the circuit court that Celestine wished to enter an *Alford* plea. SR:745. The circuit court explained:

> [A]n *Alford* plea is the same thing as a guilty plea, it's a benefit of the bargain type plea, and so if you plead guilty pursuant to an *Alford* plea, you still would be guilty of the

---

[2] The Superseding Indictment changed the date range. SR:507.
[3] A defendant's *Boykin* rights are their right to a jury trial, confront their accusers, and against compulsory self-incrimination. *State v. Bilben*, 2014 S.D. 24, ¶ 2, 846 N.W.2d 336, 337 (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)).

> charge to which you plead but you would not be required to tell me what happened but I would have to be satisfied from the record in this case that there is a sufficient factual basis for me to accept your guilty plea. Do you understand the *Alford* plea issue, Mr. Celestine?

SR:746. Celestine confirmed he understood what an *Alford* plea was and wished to enter the plea. SR:746. The circuit court asked, "pursuant to an *Alford* plea, how do you plead" and Celestine stated "guilty." SR:746.

Celestine again acknowledged that entering into the plea agreement resulted in a waiver of his *Boykin* rights. SR:746. The circuit court asked Celestine if he understood that it was not bound by the terms of the plea agreement and could sentence him up to two and a half years in the state penitentiary and a $5,000 fine. SR:747. Celestine confirmed he understood the circuit court's sentencing ability. SR:747.

On November 20, 2024, a court services officer emailed the circuit court that Celestine told her he wanted to withdraw his plea. SR:753. On December 3, 2024, a motion was filed requesting to withdraw his plea. SR:755-57. The State opposed the motion. SR:758-66. The circuit court, based on the totality of the circumstances, denied Celestine's request to withdraw his plea. *See* SR:1000-16.

On March 4, 2025, the circuit court held a sentencing hearing. SR:1016-23. Both parties requested a sentence of credit for 287 days served. SR:1017-18. The circuit court, opining Celestine lacked remorse and failed to accept responsibility, sentenced Celestine to two and a half years in the state penitentiary with credit for time served. SR:1023.

STATEMENT OF THE FACTS

On September 1, 2019, Celestine called the Federal Bureau of Investigation's (FBI) National Threat Operations Center and reported that for the previous nine months he had been hearing the voice of God instructing him to kill rapists, specifically President Donald Trump. SR:312, 698; Ex. 1.[4]

On November 14, 2019, Celestine contacted the U.S. Secret Service Protective Intelligence Operations Center (PIOC) to report he had strong urges to kill rapists and Trump was a rapist. SR:378, 698. Celestine stated he realized the voices instructing him to purchase a rifle and assassinate Trump were coming from the Central Intelligence Agency's "God's Voice" system. SR:698. Celestine told the PIOC he had not taken any steps to obtain a weapon. SR:698.

In June 2020, Drew Gary,[5] in his role as a private citizen, listed a Sako TRG-22 308 for sale on Armslist.com.[6] SR:317, 324. Celestine contacted Gary about purchasing the firearm. SR:326. Celestine asked Gary to mount a scope on the rifle for a range of up to 600 yards and to provide ammunition; Gary thought those were odd requests. SR:326-27. Celestine appeared in a rush to get the firearm and did not want to go through the appropriate steps of ensuring he had the proper background check and paperwork completed. SR:327. Later, Celestine informed

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[4] Exhibit 1 is the recording of Celestine's phone call to the FBI. SR:86.
[5] Gary is a police officer for the Brookings Police Department. SR:317.
[6] Armslist.com is a firearms classified website. SR:324-26.

Gary that he decided to obtain a firearm locally instead of purchasing Gary's gun. SR:327-28. Due to Celestine's strange behavior, Gary reported the interaction to the South Dakota Department of Criminal Investigation. SR:328.

In preparation for Trump's visit to South Dakota,[7] Sergeant Jeremy Milstead with the Pennington County Sheriff's Office received information that Celestine was a possible threat to Trump. SR:334. Sergeant Milstead learned Celestine contacted the FBI to threaten Trump and attempted to purchase a sniper style rifle. SR:334-35.

On June 30th, 2020, Sergeant Milstead and two Secret Service Agents drove separately to Celestine's house. SR:336; Ex. 8.[8] When they arrived, Debbie Karr, Celestine's mother, was outside; Celestine came outside and spoke to the law enforcement officers. SR:336. Celestine acknowledged he called the FBI and stated he recently obtained a rifle from a gentleman in Box Elder. SR:338. Celestine stated the firearm was in his vehicle and allowed law enforcement to search the vehicle. SR:339. In the vehicle's trunk, law enforcement located ammo, targets, and a Browning X-Bolt 300 Winchester Magnum. SR:340; Ex. 2.[9]

---

[7] Trump attended the 2020 Rushmore Fireworks Celebration. *See* Donald J. Trump, Remarks at South Dakota's 2020 Mount Rushmore Fireworks Celebration in Keystone, South Dakota (July 3, 2020), in White House Briefings & Statements, https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-south-dakotas-2020-mount-rushmore-fireworks-celebration-keystone-south-dakota/.

[8] Exhibit 8 is the recording from Sergeant Milstead's body worn camera during his encounter with Celestine.

[9] Exhibit 2 is a photograph of the rifle found in Celestine's trunk. SR:86.

Due to the concerning statements Celestine made, he was taken to the Public Safety Building and placed on an involuntary mental hold. SR:362; Ex. 9.[10] Celestine started to make incriminating statements, so he was advised of his *Miranda* rights. SR:365. Celestine waived his *Miranda* rights and stated voices in his head told him to kill Trump. SR:366. Celestine said regardless of the voices he would kill Trump because he is a rapist. Ex. 9. Celestine said his plan was to go to Mount Rushmore and hike on the top of the Presidents' heads. SR:366, 401. After Celestine made the incriminating statements, based on the totality of the situation, he was arrested for making a terrorist threat. SR:407-08, 410.

ARGUMENT

I.

THE CIRCUIT COURT PROPERLY DENIED CELESTINE'S MOTION TO WITHDRAW HIS *ALFORD* PLEA.

A. *The standard of review.*

This Court uses the abuse of discretion standard to review a circuit court's ruling on a defendant's motion to withdraw a plea. *State v. Trueblood*, 2024 S.D. 17, ¶ 10, 5 N.W.3d 571, 575 (quoting *State v. Ceplecha*, 2020 S.D. 11, ¶¶ 40-41, 940 N.W.2d 682, 694). An abuse of discretion is "a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which on full consideration, is

[10] Exhibit 9 is a recording from Sergeant Milstead's body worn camera of his interview of Celestine at the Public Safety Building.

arbitrary or unreasonable." *State v. Stone*, 2019 S.D. 18, ¶ 34, 925 N.W.2d 488, 499-500 (citation omitted).

B. *Celestine failed to show a fair and just reason to withdraw his plea.*

SDCL 23A-27-11 allows a defendant to move to withdraw a plea before he is sentenced. While a circuit court "should exercise its discretion liberally in favor of withdrawal[,]" there is no guarantee that a plea will be withdrawn. *State v. Kvasnicka*, 2016 S.D. 2, ¶ 8, 873 N.W.2d 705, 708. Instead, a defendant "must show a 'fair and just' reason for withdrawing" his plea. *State v. Alvarez*, 2022 S.D. 66, ¶ 25, 982 N.W.2d 12, 18 (citing *Ceplecha*, 2020 S.D. 11, ¶ 39, 940 N.W.2d at 694). The defendant bears this "burden of production and persuasion" because he "no longer enjoys the presumption of innocence after pleading guilty[.]" *Ceplecha*, 2020 S.D. 11, ¶ 41, 940 N.W.2d at 694 (citing *State v. Schmidt*, 2012 S.D. 77, ¶ 16, 825 N.W.2d 889, 894).

Whether a defendant's reasons to withdraw a guilty plea are "fair and just" depends on multiple factors including:

> whether the defendant knowingly and voluntarily pleaded guilty; whether the defendant asserts [he] is innocent; delay between the defendant's plea and request for withdrawal of the plea; whether the defendant received competent assistance of counsel in making the decision to plead guilty; whether withdrawing the plea will prejudice the prosecution of the defendant; and whether withdrawing the plea will waste judicial resources[.]

Trueblood, 2024 S.D. 17, ¶ 10, 5 N.W.3d at 575. Additional considerations comprise of whether the plea is contrary to the truth and

whether the plea was procured by misapprehension and improper means via coercion. *State v. Thielsen*, 2004 S.D. 17, ¶ 17, 675 N.W.2d 429, 433.

1. *Celestine's plea was knowing, voluntary, and not the product of any misapprehension of fact or coercion.*

"When assessing voluntariness, [this Court] do[es] not consider a defendant's after-the-fact regret about his decision to plead guilty. Rather, [this Court] review[s] the defendant's competency to waive his constitutional rights and his appreciation of the consequences of pleading guilty at the time of the plea." *Trueblood*, 2024 S.D. 17, ¶ 15, 5 N.W.3d at 576 (citation omitted).

> A plea is intelligent and voluntary when the accused has a full understanding of his constitutional rights and, having that understanding, waives those rights by a plea of guilty. In order for a plea to be voluntary, a defendant must "be advised of his rights relating to self-incrimination, trial by jury, and confrontation[.]" After this advisement, the defendant must "intentionally relinquish or abandon [those] known rights." If the record demonstrates "that the defendant understood his rights" and the consequences of his guilty plea, [this Court] will find that the defendant's plea was "entered intelligently and voluntarily." Because the record "must affirmatively show the plea was voluntary[,]" [this Court] reviews the circumstances of each plea in its entirety to determine whether they each "understood the consequences of pleading guilty[.]"

Id. ¶ 15, 5 N.W.3d at 576 (quoting *Ceplecha*, 2020 S.D. 11, ¶ 45, 940 N.W.2d at 695). In examining the totality of the circumstances, this Court considers: the defendant's age; his prior criminal record; whether he is represented by counsel; the existence of a plea agreement; and the time between advisement of rights and entering a plea of guilty. *State v. Goodwin*, 2004 S.D. 75, ¶ 11, 681 N.W.2d 847, 852 (citations omitted).

In determining Celestine's plea was knowing and voluntary, the circuit court considered his educational background; he was not under the influence of alcohol or drugs; he was read the charge; he was advised of the maximum penalty and his *Boykin* rights; he acknowledged he understood his rights, the offense, and the maximum penalty; he indicated he had sufficient time to discuss this matter with his lawyer; and he was satisfied with the representation he received. SR:1005-06. The circuit court took into account that, when Celestine entered his guilty plea, he referenced receiving a "benefit of the bargain" and the circuit court explained the effect of an *Alford* plea. SR:1006. Celestine then acknowledged he was waiving his *Boykin* rights and acknowledged he wished to plead guilty pursuant to *Alford.* SR:1006. Finally, the circuit court considered that Celestine stated he understood that the circuit court was not bound by the plea agreement, including the sentencing recommendation. SR:1006. The circuit court thoroughly evaluated the totality of the circumstances in determining Celestine's plea was knowingly and voluntarily made and this Court should uphold its decision.

Celestine's personal characteristics also support the assertion that he entered his plea of guilty knowingly, voluntarily, and without misapprehension of fact or coercion. Celestine was 33 years old when he entered the plea. SR:743. Celestine was familiar with the criminal justice system, having plead guilty, in a case arising out of the same

facts and circumstances here, to possession of a firearm by a prohibited person in federal court. SR:762, 914. Celestine was represented when he pled guilty, and attorney Elizabeth Regalado[11] provided competent assistance of counsel in making his decision to accept the plea agreement.[12] The plea agreement contained a recitation of the maximum possible penalty and Celestine was advised of his maximum penalty at his arraignments and change of plea hearing. SR:744-45, 747, 857, 913, 981. The length of time between the advisement of rights and entering of the plea of guilty was brief as Celestine was advised of and confirmed he understood his rights minutes before pleading guilty. SR:44-48. Celestine's personal characteristics support the assertion that his plea was voluntary.

On appeal, Celestine argues his "undisputed mental illness casts significant doubt as to the knowing and voluntary nature of the plea, thus weighing strongly in favor of withdrawal." AB:25 (citing *State v. Engelmann*, 541 N.W.2d 96 (S.D. 1995)).

In *Engelmann*, this Court held that the circuit court abused its discretion by refusing to allow the defendant to withdraw his *Alford* plea because Engelmann's decision-making ability was significantly impaired by a serious mental disorder, of which his attorney and the circuit court

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[11] It appears Matthew Mirabella, Celestine's appellate counsel, was also his attorney at his trial for a period of time. SR:977.

[12] The question of whether the circuit court violated Celestine's rights by denying his request to proceed pro se will be addressed later.

were unaware. *Engelmann*, 541 N.W.2d at 103. Engelmann asserted he did not completely apprehend the details of the plea he entered. *Id.* at 99. To confirm this assertion, he offered evidence that he was diagnosed with "a serious mental illness." *Id.* at 99-100. At the time Engelmann entered his plea, he was taking an anti-depressant and a minor tranquilizer. *Id.* The State's psychiatrist noted that Engelmann's ability to think would have been "blunted." *Id.* Engelmann's assertion, coupled with evidence, led this Court to hold that his "serious mental disorder was not a frivolous excuse." *Id.* at 103.

Here, although Celestine suffered from mental illness, he was found competent to face the criminal proceedings against him. SR:603 (confidential). Further, there was no question that "the circuit court acknowledged and was acutely aware of Celestine's significant mental health issues." AB:26. While Celestine experienced hallucinations in the past, there is no evidence Celestine was experiencing a blunted or altered mental state when he entered his *Alford* plea. Prior to entering his plea, Celestine was informed of and waived his constitutional and statutory rights. Celestine confirmed he understood his plea agreement and no other promises were made to secure his plea. SR:746. The record confirmed Celestine's plea was knowingly and voluntarily made.

2. *Celestine did not assert actual innocence.*

"Self-serving testimony in which a defendant proclaims his innocence is not a persuasive basis for allowing a defendant to withdraw

his guilty plea." *Alvarez*, 2022 S.D. 66, ¶ 27, 982 N.W.2d at 18 (quoting *Ceplecha*, 2020 S.D. 11, ¶ 53, 940 N.W.2d at 697). This is especially true when, in the absence of "a compelling explanation[,]" the defendant makes a belated challenge to the factual basis for the plea. *Kvasnicka*, 2016 S.D. 2, ¶ 13, 873 N.W.2d at 710 (quoting *United States v. Peterson*, 414 F.3d 825, 827 (7th Cir. 2005) ("[A] motion that can succeed only if the defendant committed perjury at the plea proceedings may be rejected out of hand unless the defendant has a compelling explanation for the contradiction.")).

The circuit court reviewed Celestine's claim of "actual innocence" as a ground for withdrawing his plea and held Celestine "doesn't in any way suggest or set forth any facts suggesting he is innocent. It's just a conclusionary statement saying that he's asserting that." SR:1007 (citing *State v. Caplecha*, 2020 S.D. 11, 940 N.W.2d 682). The circuit court correctly held Celestine's conclusionary claim was not a fair and just reason to allow Celestine to withdraw his plea.

Moreover, the contradictory nature of his statements puts the circuit court in the precarious position of accepting an admission of perjury as a basis for withdrawal, something this Court has justifiably decried. *See Kvasnicka*, 2016 S.D. 2, ¶ 18, 873 N.W.2d at 713 ("Lying to a plea-taking court does not support a fair and just reason for later withdrawing a guilty plea[.]"). The circuit court did not abuse its discretion in denying Celestine's motion to withdraw his plea.

a) *Celestine's arguments are without merit.*

On appeal, Celestine argues for the first time that he is innocent because he lacked the specific intent necessary to sustain the conviction. AB:19-22. Celestine argues, without citing any caselaw, that his statements "were never of a political nature" and he was "already placed in jeopardy before a Pennington County jury[.]" AB:22-23.

Unlike his previous claims, Celestine failed to preserve this argument for appellate review. Celestine also failed to invoke plain error; thus, this Court could decline to review the issue.[13] *State v. Gard*, 2007 S.D. 117, ¶ 15, 742 N.W.2d 257, 261 (to preserve an issue for appellate review, "[t]he trial court must be given an opportunity to correct any claimed error before we will review it on appeal") (citation omitted). Regardless, the State will address Celestine's arguments.

Celestine entered an *Alford* plea to attempted felony terrorist threat, in violation of SDCL 22-8-13, which defines making a terrorist threat as

> Any person who threatens to commit a crime of violence, as defined by subdivision 22-1-2(9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with the intent to:
>
> (1) Intimidate or coerce a civilian population;

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[13] The State is not requesting or invoking plain error review on behalf of Defendant. *See State v. Mulligan*, 2007 S.D. 67, ¶ 25, 736 N.W.2d 808, 818 (refusing to apply plain error review in the absence of a party's request). *See id.* ("As a general rule, an appellate court may review only the issues specifically raised and argued in an appellant's brief." (quoting *United States v. Simmons*, 964 F.2d 763, 777 (8th Cir. 1992))).

(2) Influence the policy or conduct of any government or nation;
(3) Affect the conduct of any government or nation; or
(4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services

is guilty of making a terrorist threat.

SR:821. It is not a requirement of SDCL 22-8-13 that Celestine's threats be of a political nature nor is it a requirement that there be corroborating evidence to support Celestine's intent to have a political impact. At Celestine's change of plea hearing, his attorney provided a factual basis for his plea stating:

> On or about June 30th, Celestine was contacted by the FBI as well as members of local law enforcement here in Pennington County. They did so because they had received a report of some concerning behavior regarding trying to purchase a gun. When they contacted Mr. Celestine, they became aware that he had recently purchased a rifle that had capabilities of shooting at long distance. They found a number of other things including bullets and human shaped targets.
>
> During the course of that conversation Mr. Celestine expressed that he had a plan to shoot President Trump when he had come to visit a couple days later [] in July of 2020.
>
> I think the State would argue at trial . . . that any attempts to an assassinate a governmental figure could influence policy or the conduct of the government or nation and so I do think that, given the totality of the facts, the State has a substantial likelihood of being successful in the trial.

SR:746-48. The parties and the circuit court agreed a sufficient factual basis existed. SR:749-50.

Celestine cites to *Bottoms* to support his position that withdrawal of his plea should have been permitted. AB:19-21 (citing *Bottoms v.*

Commonwealth, 281 Va. 23, 704 S.E.2d 406 (2011)). In *Bottoms*, the Virigina Supreme Court held the circuit court erred in not permitting Bottoms to withdraw his guilty because there was evidence Bottoms learned of the availability of his defense only after his new counsel had performed additional research. *Bottoms*, 281 Va. at 36.

On appeal, Celestine argues his primary defense at trial was that he lacked the required specific intent element of the statute. AB:19. Unlike *Bottoms* where the defense was discovered after the plea of guilty was made, Celestine asserted defense was argued previously, including at his jury trial.

As for Celestine's double jeopardy claim, it is well-settled that "[a] state may not put a defendant in jeopardy twice for the same offense." *State v. Rose*, 2024 S.D. 56, ¶ 26, 12 N.W.3d 127, 135 (quoting *State v. Delfs*, 396 N.W.2d 749, 751 (S.D. 1986)). In a jury trial, jeopardy attaches when the jury is impaneled and sworn. *Id.* (citation omitted). Determining that jeopardy has attached is only the first step in analyzing whether the Double Jeopardy Clause bars a retrial. *Id.* (citation omitted).

Where the action has not concluded in a final judgment, a retrial is not automatically precluded.

> Because of the variety of circumstances that may make it necessary to discharge a jury before a trial is concluded, and because those circumstances do not invariably create unfairness to the accused, his valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury.

> Yet in view of the importance of the right, and the fact that it is frustrated by any mistrial, the prosecutor must shoulder the burden of justifying the mistrial if he is to avoid the double jeopardy bar.

Id. ¶ 27, 12 N.W.3d at 135 (quoting *Delfs*, 396 N.W.2d at 751).

Celestine consented to the circuit court granting a mistrial due to jury's inability to reach a verdict. SR:285-86, 289-90. Consent to a mistrial defeats any double jeopardy claim. Because the jury was unable to reach a unanimous verdict, there was manifest necessity for a new trial. Therefore, Celestine was not placed in double jeopardy.

3. *Celestine's motion was not unreasonably delayed.*

Celestine pled guilty pursuant to *Alford* on November 13, 2024. SR:741-51. On November 20, 2024, a court services officer emailed the circuit court that Celestine informed her he wanted to withdraw his plea. SR:753. On December 3, 2024, twenty days after his plea was entered, Celestine filed a motion to withdraw his *Alford* plea. SR:755-57. The State opposed the motion. SR:758-66. The circuit court stated Celestine "didn't wait very long" so that "favors Mr. Celestine." SR:1000-16. The short period of delay does not weigh against him.

4. *Celestine received competent assistance of counsel.*

Celestine provided no substantial argument on how he received incompetent counsel. *See generally* AB. Because Celestine offered nothing in furtherance of showing his counsel was incompetent, he failed to meet his burden to produce a fair and just reason for allowing withdrawal. Furthermore, the circuit court observed, based on

Celestine's representation during his first trial, subsequent motions practice, and the plea agreement, he received "extremely competent representation." SR:1007-08. Instead, Celestine's argument is that his right for self-representation was violated. SR:756.

After a mistrial based on a hung jury, Celestine first requested to represent himself. SR:145, 967, 1001. Celestine advised the court he believed he was best suited to represent himself in further proceedings. SR:967. The circuit court stated that it heard testimony regarding Celestine's mental health at his trial and commented:

> while a defendant has the absolute right to represent himself badly upon a knowing and intelligent waiver of his right to assistance of counsel, this Court, relying on the *Indiana versus Edwards* case, found that coupled with his diagnosed mental illness, Mr. Celestine's bizarre understanding of his rights, especially, especially coupled with his desire to oppose dismissal of the action, rendered hm not competent to conduct this trial.

SR:969-70, 1001-02 (citing *Indiana v. Edwards*, 554 U.S. 164 (2008)). As the circuit court stated, *Edwards* held "the Constitution permits states to insist upon representation by counsel for those competent enough to stand trial but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." SR:1001 (citing *Edwards*, 554 U.S. 164).

From September 2023 to July 2024, Celestine sent four letters to the circuit court requesting to represent himself with the assistance of standby counsel; the circuit court denied each

request. SR:521, 522, 546, 547, 559, 601, 1002. The circuit court held "a change of heart, once again, runs contra to a knowing and voluntary waiver and constitutes waffling." SR:559, 1003. On July 30, 2024, Celestine's competency evaluation deemed him competent to stand trial. *See* SR:603-43 (sealed). The circuit court remarked that reading the evaluation "reinforced its decision to not allow him to represent himself[.]" SR:871-73, 1003-04.

The circuit court "further note[d] that [] Celestine never sought an intermediate appeal on his denial for self-representation and then on November 13, 2024, which was the date for [] Celestine's second trial, he pled guilty pursuant to an *Alford* plea and a nonbinding plea agreement." SR:1004. By pleading guilty, "Celestine waived all non-jurisdictional defects that transpired in this case." SR:1004 (citing *State v. Anderson*, 417 N.W.2d 403 (S.D. 1988)).

Here, the circuit court did not abuse its discretion in denying Celestine's right to self-representation. The circuit court properly relied on *Edwards* in holding that due to Celestine's mental illness, he was competent to stand trial but was not competent to represent himself. *See United States v. Reed*, 668 F.3d 978 (8th Cir. 2012).

Because Celestine received "extremely competent representation[,]" this is not a fair and just reason for withdrawing his plea.

5. *Withdrawal will prejudice the prosecution.*

The circuit court remarked the plea was entered on the first day of trial, but it had advanced notice of the plea agreement; therefore "there was no judicial resources wasted on calling a jury." SR:1008. However, the circuit court found "the State ma[de] a compelling argument in its submission that as this matter drags out, it would be more difficult to locate and subpoena witnesses." SR:1008. The State agrees.

Assuming arguendo this Court finds the circuit court's arguments to be speculative, this Court has held the absence of prejudice is not determinative. *See Schmidt*, 2012 S.D. 77, ¶ 23, 825 N.W.2d at 896 (The "absence of prejudice to the prosecution, by itself, is insufficient to mandate permission for withdrawal of a guilty plea.").

6. *Withdrawal would waste judicial resources.*

Overturning the circuit court's denial of the motion to withdraw and permitting Celestine to go to trial would waste judicial resources. Celestine admitted to attempting to make a threat of felony terrorism under SDCL 22-8-13. SR:507. Granting him a trial out of his mere desire to have one would needlessly waste judicial resources.

CONCLUSION

Celestine's motion to withdraw his *Alford* plea is based on his post-plea dissatisfaction. The record demonstrates that his plea was knowing, voluntary, and supported by a sufficient factual basis. He was advised of his constitutional rights and confirmed he understood he was waiving those rights. Celestine's conclusory assertions do not constitute a "fair and just" reason for withdrawal under SDCL 23A-27-11.

Permitting withdrawal under these circumstances would undermine the integrity of plea agreements, prejudice the State, and waste judicial resources. The circuit court carefully considered the totality of the circumstances and acted well within its discretion.

For these reasons, the State respectfully requests that this Court affirm the circuit court's denial of Celestine's motion to withdraw his *Alford* plea and uphold the judgment of conviction.

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 4,859 words.

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

Dated this 16th day of January 2026.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 16th, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Lucian Celestine* was served electronically through Odyssey File and Serve upon Matthew R. Mirabella at matthew.mirabella@state.sd.us.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA *Appellee,* vs. LUCIAN CELESTINE, *Appellant.*	No. 31116

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

HONORABLE ROBERT GUSINSKY
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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Notice of Appeal Filed on June 6, 2025

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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs. No. 31116

LUCIAN CELESTINE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Lucian Celestine (hereinafter "Celestine"), will limit discussion to the issues that need further development or argument. Any matter raised in Celestine's initial brief, but not specifically mentioned herein, is not intended to be waived. Celestine will attempt to avoid revisiting matters adequately addressed in the initial appellant's brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as "SB." All citations will be followed by the appropriate page number. Celestine relies upon the Jurisdictional Statement, Statement of Legal Issue, Statement of

the Case, and Statement of Facts presented in his initial appellant brief, filed with this Court on December 8, 2025.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DENYING CELESTINE'S MOTION TO WITHDRAW HIS ALFORD PLEA.

A. *There are no perjury concerns associated with Celestine's plea or motion to withdraw.*

The State claims that Celestine's motion to withdraw his plea "puts the circuit court in the precarious position of accepting an admission of perjury as a basis for withdrawal, something this Court has justifiably decried." SB 13. Notably, the State neither indicates what statements it believes Celestine made nor how any alleged statements are inconsistent. *Id.*

The State is correct that "[l]ying to a court is a not a 'fair and just reason' for allowing a plea to be withdrawn." *See State v. Kvasnicka*, 2016 S.D. 2, ¶ 12, 873 N.W.2d 705, 710; SB 13. However, the record is clear that Celestine never lied to the circuit court in entering his plea. *See generally* COP.

Celestine entered an *Alford* plea. COP 5-6. "The so-called '*Alford* plea' is nothing more than a guilty plea entered by a defendant who either: 1) maintains that he is innocent; or 2) without maintaining his innocence, 'is unwilling or unable to admit' that he committed 'acts constituting the crime.'" *State v. Nachtigall*, 2007 S.D. 109, ¶ 5, 741 N.W.2d 216, 219 (quoting *United States v. Tunning*, 69 F.3d 107, 110 (6th Cir. 1995)). At the change of plea hearing, Celestine

neither made statements establishing his factual guilt nor statements about the facts of this case whatsoever. *See generally* COP. There is no contradiction when there are no statements. Therefore, any suggestion of perjury by the State is unfounded.

B. *Celestine maintained his innocence throughout this case and never wavered from it*.

The State claims "[o]n appeal, Celestine argues for the first time that he is innocent because he lacked the specific intent necessary to sustain the conviction." SB 14. This is not true. At Celestine's initial appearance in 2020, he demanded a jury trial on the allegation. IA 6. In 2023, Celestine faced a Pennington County jury and specifically asserted his innocence of the statute's specific intent requirement. JT2 159, 163-65, 169. In late 2024, at the change of plea hearing, the *Alford* plea itself was not an admission of guilt. Celestine's assertion of innocence persisted for five years before the Appellant's brief was filed.

C. *The specific intent requirement of SDCL 22-8-13 cannot be ignored*.

The State claims that "[i]t is not a requirement of SDCL 22-8-13 that Celestine's threats be of a political nature nor is it a requirement that there be corroborating evidence to support Celestine's intent to have a political impact." The plain language of the statute states otherwise. SDCL 22-8-13 reads as follows:

> Any person who threatens to commit a crime of violence, as defined by subdivision 22-1-2(9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device,

> **with intent to**:
>
> (1) Intimidate or coerce a civilian population;
> (2) **Influence the policy or conduct of any government or nation**;
> (3) **Affect the conduct of any government or nation**; or
> (4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;
>
> is guilty of making a terrorist threat. A violation of this section is a Class 5 Felony.

(emphasis added).

The statute is unambiguous: a threat alone will not sustain a conviction. Furthermore, the statute is also specific that it requires politically based intentions. At trial, the circuit court granted defense's motion for judgment of acquittal precluding the State from arguing a theory of guilt under SDCL 22-8-13(1), and the State conceded it could not reasonably argue a theory of guilt under SDCL 22-8-13(4). JT1 121; JT2 132-33.

The remaining subsections, SDCL 22-8-13(2) and 22-8-13(3), both require a politically based intention. The record, and jury's inability to convict, reveal Celestine never had politically motivated intention. Black's Law Dictionary defines the term "political" as "Of, relating to, or involving politics; pertaining to the conduct of government." POLITICAL, Black's Law Dictionary (12th ed. 2024). SDCL 22-8-13(2) and 22-8-13(3) require specific intention, accompanying the alleged threat, to influence or affect the conduct of government. Therefore, Celestine respectfully disagrees with the State's argument and maintains that

Celestine's threats must be specifically politically motivated. A threat alone is not sufficient.

D. *No prejudice to the prosecution resulted from Celestine's motion to withdraw his plea.*

The State cited to the circuit court's statement at the motion to withdraw hearing that "the State makes a compelling argument in its submission that as this matter drags out, it would be more difficult to locate and subpoena witnesses." SB 20; MH3 10. In its Appellee Brief, the State writes "the State agrees" without further articulation of prejudice. SB 20.

As explained in Appellant's initial brief, this matter was pending for exactly three years before it proceeded to jury trial, and the State neither had, nor articulated, any difficulty producing its witnesses and its evidence. Furthermore, the date of the change of plea hearing, November 13, 2024, was the same date that the second trial was scheduled to commence. SH9 3-4. The State was ready to commence a second trial and at no point indicated any difficulty in procuring its witnesses. PTC3 2-16. The State correctly noted "the absence of prejudice is not determinative" in the withdrawal analysis. SB 20. As the State tacitly recognized, there is no prejudice in this record to discuss. And while the absence of prejudice may not be determinative, it certainly weighs in Celestine's favor.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Appellant respectfully requests this Court vacate and remand for the opportunity to withdraw his *Alford* plea.

Respectfully submitted this 17th day of February, 2026.

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1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellant's Reply Brief contains 1,493 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 17th day of February, 2026.

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