

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

DEREK AT THE STRAIGHT,

Petitioner and Appellant,

No. 31236

vs.

AMBER PIRRAGLIA,

Respondent and Appellee.

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Christina Klinger

APPELLANT'S BRIEF

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Notice of Appeal Filed on October 2, 2025

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PRELIMINARY STATEMENT

All references herein to the settled record in the underlying habeas proceeding will be referred to as “HSR.” The transcript of the motions hearing held on March 27, 2025, will be referred to as “MH.” The transcript of the habeas court trial held on July 21, 2025, will be referred to as “HT.” All references to documents will be followed by the appropriate page number. Exhibits admitted at the habeas trial are referred to as “Ex.,” followed by the exhibit number. The transcript of the jury trial held August 2 through August 4, 2021, will be referred

to as “JT1,” JT2,” and “JT3,” respectively.¹ The transcript of the deposition of Izebella Garreaux will be referred to as “DT,” followed by the appropriate page number.² Exhibits admitted at the jury trial will be referred to as “Tr. Ex.,” followed by the exhibit number. Petitioner and Appellant, Derek At The Straight, will be referred to as “At The Straight.”

JURISDICTIONAL STATEMENT

At The Straight appeals the order granting a directed verdict in favor of Respondent. HSR 413, 702. The Findings of Fact and Conclusions of Law, and corresponding Order were signed by the Honorable Christina Klinger, Circuit Court Judge of the Sixth Judicial Circuit, on August 4, 2025, and filed the same day. *Id.* at 400-13. Notice of Entry of this Order was filed on September 2, 2025. *Id.* at 417. The Order Granting Certificate of Probable Cause was filed on September 16, 2025. *Id.* at 434. At The Straight timely filed a Notice of Appeal on October 2, 2025. SR 438. This Court has jurisdiction over the appeal pursuant to SDCL 21-27-18.1.

STATEMENT OF LEGAL ISSUES

1. WHETHER AT THE STRAIGHT’S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO ADEQUATELY INVESTIGATE ALIBI WITNESSES.

The circuit court found At The Straight failed to show by a preponderance

¹ The full transcript of the jury trial was made part of the record in the underlying criminal case in 32CRI20-0466. The habeas court took judicial notice of 32CRI20-0466, and all the documents contained therein. HT 69; *see* HSR 386.

² This transcript was filed August 4, 2021. *See* 32CRI20-0466.

of the evidence that trial counsel rendered ineffective assistance.

Strickland v. Washington, 466 U.S. 668 (1984)

Schocker v. Fluke, 2024 S.D. 65, 13 N.W.3d 477

Ally v. Young, 2023 S.D. 65, 999 N.W.2d 237

Siers v. Class, 1998 S.D. 77, 581 N.W.2d 491

STATEMENT OF CASE

On August 11, 2020, a Hughes County Grand Jury returned an indictment charging At The Straight with one count of attempted murder in the first degree, four counts of aggravated assault and one count of commission of a felony while armed with a firearm. HSR 216-18. On August 13, 2020, the State filed a Part II Information alleging At The Straight was a habitual offender with three or more prior convictions for nonviolent felony offenses under SDCL 22-7-8.1.³

A jury trial commenced on August 2, 2021, and on August 4, 2021, At The Straight was found guilty on all counts in the indictment. Ex. I, N, M; HSR 348-51, 381-83, 387. On October 5, 2021, a Hughes County jury found At The Straight had five prior convictions for nonviolent felony offenses. HSR 384-85. At The Straight's conviction on the Part II Information resulted in a two-level enhancement of the maximum penalty for each conviction in the indictment. *See* SDCL 22-7-8.1. On November 5, 2021, the circuit court sentenced At The Straight to 25 years in prison for attempted first degree murder, 15 years on one count of

³ *See* 32CR120-0466; HSR 386.

aggravated assault, and 25 years – with 5 of those years suspended – for commission of a felony while armed with a firearm. HSR 388. The sentences were ordered to run consecutive. *Id.* The circuit court did not impose sentences on the other three counts of aggravated assault. *Id.* At The Straight filed a notice of appeal on December 7, 2021. *See* 32CRI20-0466. On January 4, 2023, this Court issued an opinion and affirmed the circuit court’s Judgment and Order. Ex. Q; *see State v. At The Straight*, 2023 S.D. 1, 984 N.W.2d 715.

Habeas counsel was appointed to represent At The Straight on February 10, 2023. HSR 2. At The Straight filed an application for writ of habeas corpus on January 26, 2025. *Id.* at 4-10. The application alleged multiple claims of ineffective assistance of counsel under the Sixth Amendment, and contended At The Straight’s sentence violated the Eighth Amendment’s prohibition on cruel and unusual punishment. *Id.* A writ of habeas corpus was awarded by the circuit court the following day. HSR 16.

On February 10, 2025, Respondent filed a motion to dismiss the application for writ of habeas corpus on the grounds that At The Straight failed to state a claim for which relief could be granted under SDCL 15-6-12(b), and res judicata. HSR 22-29. After further briefing of the issues by the parties, a motions hearing was held on March 27, 2025. MH. At the conclusion of the hearing, the circuit court denied Respondent’s motion to dismiss on the issue of whether trial counsel’s failure to investigate alibi witnesses amounted to ineffective assistance of counsel. *Id.* at 32-34. The circuit court granted Respondent’s motion to dismiss

on all other claims raised in the application. *Id.* at 25-36. The circuit court's Findings of Fact and Conclusions of Law Order was filed on April 8, 2025. HSR 96-102.

A habeas court trial was held on July 21, 2025. *See generally* HT. At the conclusion of the trial, the circuit court granted Respondent's motion for a directed verdict, finding At The Straight failed to prove by a preponderance of the evidence that trial counsel rendered ineffective assistance of counsel by failing to investigate alibi witnesses. HT 127-29. At The Straight appeals the circuit court's Findings of Fact, Conclusions of Law, and Order filed on August 4, 2025.

STATEMENT OF FACTS

On July 9, 2020, a shooting occurred outside the residence of Chanel Big Eagle ("Chanel") at 412 West Prospect Avenue in Pierre, South Dakota. HSR 271, 297-98. Chanel's brother, Dillon Big Eagle ("Dillon"), suffered non-fatal gunshot wounds. *Id.* at 265, 271. At the time of the shooting, Chanel and At The Straight were involved in a romantic relationship and Chanel was not getting along with Dillon. *Id.* at 265-67. At trial, Dillon testified that he had been involved in a verbal argument with At The Straight a few weeks before the shooting. *Id.* at 270-71.

Dillon was a four-time convicted felon. *Id.* at 287. He knew a lot of people in prison. *Id.* at 285. On the day of the shooting, Dillon was with Chanel's friend Marcus Knight, who had recently been released from prison. *Id.* at 266. Knight had been good friends with Chanel's late boyfriend and wanted to visit Chanel.

Id. at 266-67. Knight's niece, Izebella Garreaux, drove Knight and Dillon over to Chanel's house to visit. *Id.* at 267. Chanel was not home when they arrived, so Dillon called Chanel over the phone and let her know they were at her house and Knight wanted to see her. *Id.* at 267-68. When Chanel arrived, Garreaux stayed in the car while Dillon and Knight helped Chanel move some boxes. *Id.* at 268-69. A short time later, Chanel told Dillon to leave. *Id.* at 269.

Dillon testified that as he was leaving Chanel's house, At The Straight pulled up in his black Chevy car. *Id.* at 271-72. According to Dillon, At The Straight exchanged a few words with Dillon and Knight, then stepped out of the vehicle, raised a firearm and began shooting. *Id.* at 272-73. Dillon received gunshot wounds to his arms, leg and chest. *Id.* at 276. Garreaux subsequently drove Dillon to the hospital. *Id.* at 276-77.

Dillon testified that he had previously witnessed At The Straight in possession of a 9-millimeter firearm. *Id.* at 273. He stated At The Straight and Chanel had given him a ride from Sioux Falls to Aberdeen after his car broke down less than month before the shooting. *Id.* at 274. During the trip, At The Straight test-fired the gun while driving on a back road. *Id.*

At the time of trial, Dillon was in the Hughes County Jail. *Id.* at 278. He testified that a week or two before the trial he received two notes in the jail.⁴ *Id.* at

⁴ The first note stated: "Aye, I just got off a 3 way phone call with Adam PB down in Mike Durfee one of 'your RBH Homies', Well he happens to be one of my best good friends. Anyways, they were wondering about you and your status. I told em your next door and I could get word to you? He said what's up and if you

278, 280-83. Another inmate at the jail, Daniel Puppel, testified he had written the notes for At The Straight to send to Dillon. *Id.* at 215. Puppel was being housed in the same pod as At The Straight and passed the notes under the door to Dillon's pod. *Id.* at 215-17. Puppel stated the notes were intended as a sort of threat to Dillon. *Id.* at 216. According to Puppel, At The Straight admitted shooting Dillon and later discarded the gun components out the window while driving to Bonesteel, South Dakota. *Id.* at 219-20. Puppel admitted he was providing testimony as part of an agreement with the State to get his bond reduced in his pending criminal case. *Id.* at 226.

Garreaux's deposition testimony was read into evidence at trial. JT2 168. Garreaux said she was waiting in her car on the street outside the home while Dillon and Knight were visiting with Chanel. DT 6-7. Roughly 10 minutes later, a black or dark-colored car approached from behind Garreaux's vehicle. *Id.* at 7. Garreaux did not see who was driving the vehicle because she was on her phone and listening to music. *Id.* at 7-8. A short time later, Garreaux heard three gunshots. *Id.* at 8. Dillon entered her vehicle, said he had been shot and told

wanna be like then you know what time it is...Anyways, see you in that court room. See what your made of. 'I dunno know who shot you.'" HSR 280; Tr. Ex. 4.

The second note stated: "I just 3 way'd phone call with Adam PB, down in Mike Durfee. Your RBH Homie... they was askin about your status. He said whats up and if you wanna be like that you know the deal. Yea he is one of my buddies. Anyways.. I Don't know who shot you.. Fuck what you talk about... your all something else.. wanna talk & testify... I don't know yall. Or the shit yall talk about." HSR 283; Tr. Ex. 5.

Garreaux to take him to the hospital. *Id.* at 8. Garreaux did not know who shot Dillon. *Id.* at 11. Knight did not testify at trial. *See generally* JT2-JT3.

Law enforcement located three spent 9-millimeter casings at the scene and a blood trail leading from the driveway of Chanel's home to the street. JT2 173; Tr. Ex. 9-12. Two days after the shooting, on July 11, 2020, at approximately 9:37 a.m., Deputy Patrick Rose with the Pennington County Sheriff's Office found At The Straight's black Chevy Impala parked off a roadway at 173rd Avenue and 232nd Street near Rapid City. JT2 238-42; *see* JT2 188-92; Tr. Ex. 23. While waiting for a tow truck, Deputy Rose observed a white Ford pickup without license plates arrive at the scene and conducted a traffic stop. JT2 239. At The Straight was one of three occupants inside the Ford pickup. *Id.* at 239-41. Deputy Rose conducted a search of the pickup and located a key to the Impala and a wallet containing At The Straight's bank card. *Id.* at 241-42.

Law enforcement executed a search warrant on the Impala and located two loaded magazines for a 9 mm Beretta PX4 Storm pistol and other ammunition inside the vehicle. JT2 188-99; Tr. Ex. 25-29. The major contributing DNA profile obtained from swabs collected from the Impala's steering wheel and door latch were consistent with originating from At The Straight. JT3 278-81; Tr. Ex. 36. Jessica Simon, forensic scientist with the South Dakota Forensic Lab, testified that multiple DNA profiles were also obtained from the firearm magazines and unspent shells found in the vehicle, but At The Straight was not identified as a DNA contributor to those items. JT3 283-86. DNA on the spent

shell casings found at the scene of the shooting was insufficient for comparisons. Tr. Ex. 37.

A search warrant was also executed on Chanel's cell phone. JT2 200-01. Detective Charles Swanson with the Pierre Police Department testified that the shooting occurred at approximately 8:54 p.m., and the 911 call was made about one minute later at 9:55 p.m. JT2 201-02. The call log on Chanel's phone showed an outgoing call to At The Straight at 8:48 p.m. and an incoming call from At The Straight roughly two minutes before the shooting at 8:52 p.m. *Id.* at 203-04. A photo from Chanel's phone showing At The Straight pointing a gun at the camera while sitting on a couch with Chanel was admitted into evidence. *Id.* at 205; Tr. Ex. 7. According to Detective Swanson, the gun appeared to be consistent with a Baretta PX4 Storm subcompact model with a laser sight. *Id.* Detective Swanson admitted the photo was not taken around the time of the shooting. *Id.* at 207-08.

Frans Maritz, a forensic firearms and toolmark examiner with the South Dakota Forensics lab, examined the three spent shell casings found at the scene of the shooting as well as the ammunition located in At The Straight's vehicle. JT3 250, 253, 256. Maritz testified that the three spent shell casings were 9-millimeter Luger caliber and all were fired from the same firearm. *Id.* at 253-54. Two of the casings were manufactured by Federal Cartridges, and the third casing was manufactured by Winchester but marketed as Herter's and sold exclusively at Cabela's and Bass Pro Shops. *Id.* at 253-54. The magazines found in

At The Straight's vehicle were for a Beretta PX4 Storm handgun. *Id.* at 257. All the ammunition located in At The Straight's vehicle was 9 mm Luger caliber from three manufacturers, two of which were Federal Cartridges and Winchester marketed as Herter's being sold through Cabela's and Bass Pro Shops. *Id.* at 256-60. The firearm connected to the shooting was never recovered. *See* JT2 136.

In closing argument, At The Straight's attorney argued that the State had no evidence that "[At The Straight] was in town" at the time of the shooting. HT 337.

At The Straight was convicted by a jury on all counts in the indictment as well as the Part II Information. Ex. 1, N, M; HSR 348-51, 381-85, 387. He was sentenced to a total of 65 years, with 5 of those years suspended. HSR 388. This Court affirmed At The Straight's conviction on direct appeal. Ex. Q; *see State v. At The Straight*, 2023 S.D. 1, 984 N.W.2d 715. At The Straight filed an application for writ of habeas on January 26, 2025. SR 4-10. *Id.* A writ of habeas corpus was awarded by the circuit court the following day. HSR 16. On July 21, 2025, an evidentiary court trial was held on the issue of whether trial counsel's failure to investigate alibi witnesses amounted to ineffective assistance of counsel.⁵ *See generally* HT.

At The Straight's mother, Wilma Hero, testified at the habeas trial. HT 17. Hero lived in Rapid City with her husband for the past nine years. *Id.* Her house

⁵ At The Straight's trial attorney, Brad Schreiber, passed away prior to the filing of the application for a writ of habeas corpus. *See* MH 4

was located on Vale Street by the National Guards on the west side of town. *Id.* at 22. She testified that she believed she saw At The Straight in Rapid City on July 9, 2020, but she was not certain of the exact date. *Id.* at 18, 32-34, 44-45. Hero recalled At The Straight was working in Rapid City on and off in the summer of 2020. *Id.* She recalled seeing At The Straight almost everyday around that time because he would visit her home in the evenings. *Id.* In early July 2020, Hero's sister, Cheryl Young Bear, had a heart attack and was admitted to Monument Health Hospital in Rapid City. *Id.* at 18, 31. Hero remembered seeing At The Straight at the hospital visiting Young Bear one evening between 7:00 p.m. and 8:00 p.m. *Id.* at 19. After leaving the hospital, At The Straight stopped by her home between 10:00 p.m. and 10:30 p.m. later that night to get some fry bread. *Id.* at 20-21. They had a short visit and [At The Straight] said he was going back to the Valley. *Id.* at 21. The Valley is on the south side of Rapid City and about a 20-25 minute drive from Hero's home. *Id.* at 22.

The next day, between 10:00 a.m. and 11:00 a.m., Hero met At The Straight at a gas station located in the Valley. *Id.* at 23-25. They discussed At The Straight's pending warrants out of Rapid City at the time. *Id.* at 24-25. Hero believed the warrants were for noncompliance with probation. *Id.* at 25. Hero testified that she believed At The Straight was arrested on the warrants either later that evening or the following day, because she received a call from At The

Straight's Rapid City attorney.⁶ *Id.* at 25. Hero remembered At The Straight being in jail in Rapid City before learning he had been transported to Hughes County related to the shooting incident. *Id.* at 26. Hero contacted At The Straight's attorney's office on the Pierre charges but she "would just get the, well, he's not in his office or I got your number, I'll have him return your call." *Id.* at 27. But she never heard back from anyone. *Id.* at 28.

On cross-examination, Hero agreed she had up to hundreds of phone calls with At The Straight while he was in jail in Hughes County. *Id.* at 34-35. Respondent admitted into evidence a recording of one such phone conversation between Hero and At The Straight on July 20, 2020, during which At The Straight discussed Chanel being his only witness at trial. *Id.* at 37-38; Ex. F. Hero acknowledged she was present at her son's jury trial. *Id.* at 38. According to Hero, "not once did anybody come to us and ask if we were the family of [At The Straight]." *Id.* at 38-39. Hero also testified that she continued phone calls with At The Straight while he was in prison. *Id.* at 39. Respondent admitted one such phone call from February 8, 2025. *Id.* at 39-40; Ex. R. When asked about her discussion with At The Straight concerning Hero not being a good alibi witness, Hero responded, "why would I be an alibi, you know. I'm his mother." *Id.* at 41. Hero admitted she loved her son and wanted him to get out of jail. *Id.* at 42. She

⁶ At The Straight was arrested on July 11, 2020. *See* HT 33.

denied trying to deceive the circuit court or making up a story about seeing At The Straight around the time of the shooting. *Id.* at 44-45.

Damion Goings, also known as Damion Red Cloud, testified via zoom from Mike Durfee State Prison, where he was incarcerated. *Id.* at 45-46. Goings was serving a 25 year sentence for aggravated assault on law enforcement. *Id.* at 46. He met At The Straight in prison in 2016. *Id.* at 47. In July 2020, Goings was living in the Star Village Apartments in Rapid City. *Id.* Goings admitted he did not remember every date and time perfectly from five years prior, but he remembered spending time with At The Straight shortly after the Fourth of July in 2020. *Id.* Goings recalled being with his children from July 1st through the 4th that year. *Id.* Sometime after that, Goings had contact with At The Straight and gave him rides “here and there” because At The Straight’s car was having problems. *Id.* at 48. They spent several days together during that time “cruising around,” “getting high” on meth, and living out of Goings’ vehicle. *Id.* Goings believed he was with At The Straight “the 8th through maybe the 11th, maybe even the 12th” of July 2020. *Id.* Goings agreed that July 8th through July 12th may have not been the exact dates. *Id.* at 49, 57-59.

Goings explained he would pick up At The Straight and drop him off at places because he needed a ride. *Id.* at 48. He recalled giving At The Straight a ride to Hero’s home more than once. *Id.* at 49. When At The Straight needed another ride, Goings would pick him up and then drop him off at another location. *Id.* at 49. Goings stated he would be with At The Straight a majority of

the day riding around and stopping at various places. *Id.* at 50. The last time he picked up At The Straight from Hero's home, they rode around and lived out of his car for about two days, stopping at gas stations, restaurants and other random places before ultimately dropping him off in the Valley at a trailer belonging to a person nicknamed "50." *Id.* at 51-52. Goings told At The Straight to get ahold of him if he needed a ride, but never heard from him again. *Id.* at 52. Goings believed he dropped off At The Straight at "50's" trailer on the 10th or the 11th of July 2020. *Id.*

Goings testified that nobody from At The Straight's attorney's office ever reached out to him about his contact with At The Straight in July 2020. *Id.* at 53. Goings acknowledged he had contact with At The Straight in the "fish tank" at the South Dakota State Prison when Goings was coming back from federal custody. *Id.* at 52-53. He denied having any discussions with At The Straight about making up testimony for the hearing. *Id.* at 53-54. Goings admitted being reluctant to testify in court because it was frowned upon by other prisoners and perceived as "snitching." *Id.* at 54.

Shawn Hawley testified via zoom at the hearing from Federal Correctional Institute Allenwood in White Deer, Pennsylvania. *Id.* at 5. Hawley was incarcerated there on a conviction for conspiracy to distribute methamphetamine. *Id.* at 11. Hawley confirmed he was known by the nickname of "50." *Id.* Hawley met At The Straight in the Rapid City Minimum Unit in 2015. *Id.* at 6. After his release from prison, Hawley maintained intermittent contact

with At The Straight. *Id.* In July 2020, he lived in the Valley in Rapid City and ran a motorcycle shop out of his home. *Id.* at 6. He stated that on July 10, 2020, the day before At The Straight's arrest, At The Straight came to his home around noon. *Id.* at 7, 13. At The Straight spent the whole day helping Hawley in his shop. *Id.* at 7. That evening, they had dinner and "hung out" and drank beer. *Id.* At The Straight slept in Hawley's spare bedroom, and the next day At The Straight was arrested after leaving Hawley's home. *Id.*

Hawley testified that he spoke with At The Straight a couple times over the phone in 2020 after he was arrested, but he had not spoken to him since then. *Id.* at 10. He denied being asked to make up a story about At The Straight being at his home in Rapid City in July 2020. *Id.*

At The Straight testified that he was arrested on July 11, 2020, for a warrant on a probation violation related to an aggravated eluding conviction out of Rapid City. *Id.* at 62. One of Hawley's friends was giving him a ride to pick up a car at the time of his arrest. *Id.* Before his arrest, At The Straight was at Hawley's home in the Valley. *Id.* at 66. He had been at Hawley's home the day before and stayed overnight. *Id.* at 66-67. The day prior to his arrest, on July 10, 2020, Goings had dropped him off at Hawley's home. *Id.* at 67. Earlier that same day, At The Straight met Hero at a gas station in the Valley near Hawley's home. *Id.* The evening before that, on July 9, 2020, At The Straight visited his mother at her home in Rapid City. *Id.* at 67-68. At The Straight recalled his aunt being sick at the time and the stress it caused the family. *Id.* at 68.

After his arrest, At The Straight was in jail in Rapid City for roughly a month before he was transported to Hughes County Jail. *Id.* at 62-63. Attorney Brad Schreiber was appointed to represent him on the Hughes County charges and they had their initial meeting at the jail the same week. *Id.* at 63. During their second meeting, At The Straight provided his attorney the names and contact information for Hero, Goings and Hawley as witnesses. *Id.* at 64-66. At The Straight observed his attorney write down the contact information for these witnesses on one occasion. *Id.* He testified that he shared this information about his whereabouts between July 9 and July 11, 2020, every time he met with his attorney. *Id.* In February 2021, At The Straight wrote two letters to the trial judge requesting a new attorney. HSR 48-55. In a letter from February 14, 2021, At The Straight wrote:

My current attorney is Brad Schreiber but I am requesting a different one please. I feel attorney/ client privilege is damaged beyond repair. He said things to me that makes me know and feel he ain't for me/ gonna fight for me. I don't trust him. The only time I hear from him is when he tries to make me take a plea for something I didn't do.. He treats me like I'm guilty.. I don't like it.. I feel several of my rights have been violated....

HSR 48.

At The Straight stated he wrote those letters due to his frustration with his attorney for not contacting his witnesses. *Id.* at 69-70. It was this issue that sparked their arguments. *Id.* at 71-72. When At The Straight argued with his attorney about not contacting his witnesses, his attorney "sat back and said do you want to pay me \$100,000. Why should I work hard for you. I'm court

appointed.” *Id.* at 72. According to At The Straight, his attorney said he was not contacting the witnesses because they had criminal records and the jury would not believe them. *Id.* This exchange with his attorney eventually prompted At The Straight’s letters to the judge requesting a new attorney. *Id.*

On cross-examination, At The Straight admitted he also told his attorney he wanted Chanel to testify for him, and records indicated his attorney hired a private investigator who later interviewed Chanel as an alibi witness. *Id.* at 84; Ex. B; HSR 242. At The Straight denied having any conversations with his attorney about the private investigator while the case was pending. HT 99.

Respondent questioned At The Straight about his recorded phone call with Hero on July 20, 2021, during which At The Straight discussed having Chanel present at trial as his only alibi witness. HT 89-90; Ex. F. In the call, At The Straight talked about trial and says, “Chanel will be there. They said, uh, they said she said she said she wouldn’t think I would do that, and she didn’t see me do it, she hadn’t seen me I was in Rapid, (unintelligible) were saying I’m in Rapid, you know cuz I was, so, like so....” Ex. F at 9:12-9:31. Hero responded, “I know cuz you were up here, you seen me before curfew.” *Id.* at 9:31-9:36. At The Straight then discussed talking to his attorney about an alibi and telling his attorney he was in Rapid City, “but there’s like no proof of it.” *Id.* 9:37-9:46. When questioned about the phone call at the habeas hearing, At The Straight explained his attorney had previously told him that because there was no proof of him being at the other witnesses’ houses, and the witnesses had criminal records, they were not calling

those witnesses testify. *Id.* at 91. But since Chanel knew At The Straight was not at her home in Pierre at the time of the shooting, Chanel was the only witness his attorney was in favor of calling at trial. *Id.*

According to trial counsel's vouchers from the case, At The Straight's second meeting with trial counsel took place on August 24, 2020. Ex. B; HSR 221. Trial counsel's motion and order to hire a private investigator to interview witnesses was drafted three days later, on August 27, 2020, *Id.* However, there is no documented communication between trial counsel and the private investigator during the next 7 months. HSR 221-31. The vouchers document no in person meetings between trial counsel and At The Straight between November 18, 2020 and June 28, 2021. *Id.* at 227-35. Trial counsel's only documented communication with the private investigator occurred on March 29, 2021. *Id.* at 235. The private investigator's sole witness interview, with Chanel, appears to have been conducted in early July 2021.⁷ *Id.* at 242.

Attorney John Hinrichs testified as an expert at the hearing. HT 105. Hinrichs has been a partner at a law firm in Sioux Falls since 2016, where a significant part of his practice includes criminal defense in federal and state courts. HT 107; Ex. 1. From 2007 to 2016, he was a magistrate judge in the Second Judicial Circuit in South Dakota. HT 108; Ex. 1. Before that, he was an assistant

⁷ The private investigator's invoice is dated August 6, 2021, following the jury trial. HSR 242. In the description column, the invoice notes "system did not charge on 7-5-21 at 10:01." *Id.*

public defender at the Minnehaha County Public Defender's Office for six years and was assigned to cases involving high level felony charges. *Id.* at 108-09. He is a member of the National Association of Criminal Defense Lawyers, the South Dakota Association of Criminal Defense Lawyers, and the Criminal Justice Act Panel for the Southern District of South Dakota. *Id.* at 109.

Hinrichs testified that an attorney's duty to his client as a court appointed attorney is the same as an attorney hired by a client. *Id.* at 109-10. This includes the attorney's duty to conduct a reasonable investigation under the circumstances. *Id.* at 110. In preparation for his testimony, Hinrichs reviewed the transcript of At The Straight's jury trial and materials from trial counsel's case file, including correspondence between Mr. Schreiber and At The Straight, correspondence sent by At The Straight to the trial court, and copies of Mr. Schreiber's court-appointed attorney vouchers and timesheets. *Id.* at 110. Hinrichs also reviewed At The Straight's brief in support of his amended petition for habeas corpus and Respondent's pretrial brief. *Id.* In reviewing those materials, particularly the jury trial transcripts, it was apparent to Hinrichs that Mr. Schreiber's trial strategy was to argue to the jury that At The Straight was not the person who shot Dillon. *Id.*

Hinrichs testified that a reasonable investigation in a case like this would require the attorney to get as much information from the client as possible related to the allegations, the circumstances surrounding the offense, and the client's role, if any, in the matter. *Id.* at 111. Next, the attorney should follow up

on the information to identify, locate and interview witnesses. *Id.* at 111-12. A reasonable investigation does not require the attorney to turn over “every single rock,” but the investigation must be reasonable. *Id.* at 112. If the attorney becomes aware of a potential alibi witness, the attorney has a duty to conduct a reasonable investigation into that potential defense. *Id.*

Hinrichs testified that when a State serves a request for notice of an alibi defense, it is counsel’s duty to respond to the request if there is a chance that an alibi defense will be submitted at trial. *Id.* at 113-14. This duty never shifts to the client if the client is represented by counsel. *Id.* at 114. Hinrichs opined that, particularly in light of the trial strategy employed by trial counsel, if information was provided to Mr. Schreiber related to Hero, Goings and Hawley as potential alibi witnesses, “it was unreasonable not to at least follow up and conduct further investigation in an attempt to interview those witnesses.” *Id.* at 118. Alibi defenses “are sort of the unicorn of defenses.” *Id.* at 116. “[I]t’s rare that there’s a different strategy that is going to be superior to that.” *Id.*

At the conclusion of the hearing, the circuit court made oral findings of fact and concluded At The Straight failed to prove by a preponderance of the evidence that trial counsel rendered ineffective assistance of counsel by failing to investigate alibi witnesses. HT 127-29. Accordingly, the habeas court granted Respondent’s motion for a directed verdict. *Id.* at 130. In its written findings of fact, the habeas court concluded both Hero and Hawley were not alibi witnesses. HSR 401-03. As to Hawley, the habeas court found his testimony irrelevant

because the crimes were committed on July 9, 2021, and Hawley only testified to At The Straight's whereabouts on July 10 and 11, 2021. *Id.* at 401-02. Similarly, the habeas court found Hero was not an alibi because she testified it was possible she saw At The Straight at the gas station on the same day he was arrested. *Id.* at 402. If true, "the dates At The Straight stopped for fry bread were possibly July 10, 2021, and the following day at the gas station was July 11, 2020. *Id.* at 402-03. Therefore, because the crimes were committed on July 9, 2020, Hero's testimony left open the possibility that At The Straight committed the crimes. *Id.* at 403.

ARGUMENT

AT THE STRAIGHT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO ADEQUATELY INVESTIGATE ALIBI WITNESSES.

A. Standard of Review

"[This Court's] review of a habeas corpus proceeding is limited because it is a collateral attack on a final judgment." *Piper v. Young*, 2019 S.D. 65, ¶ 21, 936 N.W.2d 793, 803 (quoting *Miller v. Young*, 2018 S.D. 33, ¶ 12, 911 N.W.2d 644, 648) (citation modified). A habeas proceeding is not a substitute for appeal. *Id.*

"Accordingly, habeas corpus can be used only to review (1) whether the court has jurisdiction of the crime and the person of the defendant; (2) whether the sentence was authorized by law; and (3) in certain cases whether an incarcerated defendant has been deprived of his basic constitutional rights." *Oleson v. Young*, 2015 S.D. 73, ¶ 5, 869 N.W.2d 452, 455 (quoting *McDonough v. Weber*, 2015 S.D. 1, ¶ 15, 859 N.W.2d 26, 34) (citation omitted).

“The petitioner must prove he is entitled to relief by a preponderance of the evidence.” *McDonough v. Weber*, 2015 S.D. 1, ¶ 15, 859 N.W.2d 26, 34 (quoting *Vanden Hoek v. Weber*, 2015 S.D. 1, ¶ 8, 724 N.W.2d 858, 861-62) (citation modified); *But see Strickland v. Washington*, 466 U.S. 668, 693-94 (1984) (recognizing the “reasonable probability” burden to show prejudice on ineffective claims is higher than proof that counsel’s errors had some conceivable effect on the outcome of the proceeding, but less than a preponderance of the evidence). “Preponderance of the evidence is defined as the greater weight of evidence.” *Oleson*, 2015 S.D. 73, ¶ 5, 869 N.W.2d at 455 (quoting *Pieper v. Pieper*, 2013 S.D. 98, ¶ 22, 841 N.W.2d 781, 787) (citation modified). This Court “review[s] habeas factual findings under the clearly erroneous standard and legal conclusions under the de novo standard.” *Id.* (quoting *Meinders v. Weber*, 2000 S.D. 2, ¶ 5, 604 N.W.2d 248, 252) (citation modified).

B. Ineffective Assistance of Counsel

“The deprivation of one’s Sixth Amendment right to counsel through ineffective assistance is enough to render a conviction and sentence void.” *Ally v. Young*, 2023 S.D. 65, ¶ 33, 999 N.W.2d 237, 249 (citing *Medetzke v. Dooley*, 2018 S.D. 38, ¶ 10, 912 N.W.2d 350, 354) (citing *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). This Court applies *Strickland*’s two-prong standard in determining whether a defendant has received ineffective assistance counsel:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel”

guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction... resulted from a breakdown in the adversary process that renders the result unreliable.

Reay v. Young, 2019 S.D. 63, ¶ 13, 936 N.W.2d 117, 120 (quoting *Strickland*, 466 U.S. at 687).

“To establish that trial counsel’s performance was deficient, the petitioner must show that counsel’s representation fell below an objective standard of reasonableness.” *Ally*, 2023 S.D. 65, ¶ 34, 999 N.W.2d at 250 (*McDonough*, 2015 S.D. 1, ¶ 22, 859 N.W.2d at 37) (quoting *Strickland*, 466 U.S. at 688). “The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. The Court “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” *Strickland*, 466 U.S. at 689 (citation modified). “Counsel has a duty to make a reasonable investigation based on information provided by a defendant, particularly when an alibi is involved.” *Siers v. Class*, 1998 S.D. 77, ¶ 17, 581 N.W.2d 491, 495 (quoting *Hadley v. Groose*, 97 F.3d 1131, 1135 (8th Cir. 1995)) (citation omitted); see *Spruk v. Class*, 1997 SD 134, ¶ 24, 572 N.W.2d 824, 829.

“Even if trial counsel’s performance was deficient, the petitioner must also show that counsel’s deficient performance prejudiced the defense.” *Ally*, 2023 S.D. 65, ¶ 35, 999 N.W.2d at 250. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* (quoting *McDonough*, 2015 S.D. 1, ¶ 23, 859 N.W.2d at 37) (quoting *Strickland*, 466 U.S. at 691). Counsel’s deficient performance “must be prejudicial to the defense in order to constitute ineffective assistance of counsel under the constitution.” *Id.* (quoting *Strickland*, 466 U.S. at 692). This Court has held that counsel’s deficient representation is prejudicial to the defense “when there is a reasonable probability of a different outcome.” *Reay v. Young*, 2019 S.D. 63, ¶ 15, 936 N.W.2d at 121 (quoting *Knecht v. Weber*, 2002 S.D. 21, ¶ 5, 640 N.W.2d 491, 495) (citation modified). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

C. Trial Counsel’s Failure to Reasonably Investigate At The Straight’s Alibi Witnesses was Constitutionally Deficient.

The testimony and evidence admitted at the habeas trial established by a preponderance of the evidence that At The Straight informed trial counsel of the names and contact information of the individuals he was with in Rapid City around the time of the shooting incident, and trial counsel failed to conduct any follow up investigation with these witnesses. In light of the trial strategy employed, trial counsel’s failure to conduct any follow up investigation with At

The Straight's Rapid City witnesses fell below the objective standard of reasonableness guaranteed by the Sixth Amendment.

- i. *The Evidence Established by a Preponderance of the Evidence that At The Straight Informed Trial Counsel of the Alibi Witnesses.*

The habeas court clearly erred in finding there was no evidence beyond At The Straight's "self-serving testimony" that he provided trial counsel with the names and contact information of the alibi witnesses. HSR 405. Although there is no explicit documentation in the record to prove At The Straight's claim beyond all doubt, the evidence corroborated At The Straight's testimony and established by a preponderance of the evidence that trial counsel was provided this information.

At The Straight testified that his frustration and arguments with trial counsel during the case stemmed from trial counsel's failure contact his Rapid City witnesses. At The Straight recounted their contentious meeting on this issue when trial counsel told At The Straight he was "court-appointed" and asked if he wanted to pay trial counsel \$100,000. HT 72. This eventually led At The Straight to write the circuit court and request a new attorney. HSR 48-55. In one letter, At The Straight wrote that trial counsel "said things to me that makes me know and feel he ain't for me/ gonna fight for me. I don't trust him. The only time I hear from him is when he tries to make me take a plea for something I didn't do." HSR 48. This letter supports At The Straight's testimony about the source of his contentious meeting with trial counsel. Further, Hero's testimony confirming she

contacted trial counsel's office multiple times, was told by a staff member that trial counsel was unavailable but never received a call back corroborates not only trial counsel's awareness of Hero, but his failure to follow up with her.

At The Straight's phone call with Hero on July 20, 2021, two weeks before the trial, further supports his testimony. Ex. F at 9:12-9:36. At The Straight's statements during the call prove that prior to the jury trial, At The Straight claimed to be in Rapid City at the time of the shooting, and Hero's statements prove she claimed to have seen him there. Their discussion about seeing each other in Rapid City at the time of the shooting and At The Straight's simultaneous statement that there was no proof that he was there appears to be contradictory and raises questions about At The Straight's understanding at the time about what constituted "proof" of an alibi. However, at the habeas hearing, At The Straight explained it was trial counsel who said he was unwilling to call his Rapid City witnesses at trial because the jury would not believe them due to their criminal records and because there was no proof that he was at any of their homes when the shooting occurred. HT 91. Nevertheless, this evidence supports the likelihood that At The Straight at least provided trial counsel with these witnesses' information.

Trial counsel's vouchers documenting his work on the case bolsters – and provides additional context to – At The Straight's claim that trial counsel failed to investigate his Rapid City witnesses. At The Straight's second meeting with trial counsel occurred on August 24, 2020. HSR 221. It was at this meeting At The

Straight testified to providing trial counsel with the names and contact information of the witnesses at issue. HT 64-66. Three days later, on August 27, 2020, trial counsel drafted the motion and order to hire a private investigator to interview witnesses. HSR 221. However, there is no documented communication between trial counsel and the private investigator during the next 7 months. *Id.* at 221-31. Further, the vouchers document no in person meetings between trial counsel and At The Straight between November 18, 2020 and June 28, 2021. *Id.* at 227-35. At The Straight wrote letters to the trial court requesting new counsel in February 2021, and a hearing on the matter was held on March 8, 2021. HSR 48-55. Trial counsel's only documented communication with the private investigator occurred on March 29, 2021. *Id.* at 231. The private investigator's sole witness interview, with Chanel, appears to have been conducted in early July 2021. *Id.* at 242. Trial counsel's infrequent in-person visits with At The Straight throughout much of the case, At The Straight's letters to the court requesting new counsel and trial counsel's minimal contact with the private investigator supports At The Straight's assertion that trial counsel failed to follow up on his request to contact the Rapid City witnesses.

Based on the totality of the relevant circumstances, the testimony and evidence in the record establishes At The Straight, more likely than not, provided trial counsel with the names and contact information of the alibi witnesses.

- ii. *Trial Counsel's Failure to Investigate the Alibi Witnesses was Objectively Unreasonable.*

“Counsel has a duty to make a reasonable investigation based on information provided by a defendant, particularly when an alibi is involved.” *Siers v. Class*, 1998 S.D. 77, ¶ 17, 581 N.W.2d 491, 495 (quoting *Hadley v. Groose*, 97 F.3d 1131, 1135 (8th Cir. 1995)) (citation omitted). A decision to forgo an investigation into potential witnesses must be reasonably related trial strategy. *Schocker v. Fluke*, 2024 S.D. 65, ¶¶ 35-36, 13 N.W.3d 477, 487.

Here, the testimony and evidence established by a preponderance of the evidence that trial counsel made no attempt to investigate, or even contact, the Rapid City witnesses. There is no evidence in the record to suggest otherwise. Goings testified that he was never contacted by anyone with At The Straight’s attorney’s office. HT 53. Likewise, Hero claimed she called At The Straight’s attorney’s office multiple times, but was never called back. *Id.* at 26. At The Straight testified about his argument with trial counsel for not contacting Hero, Hawley and Goings, as well as trial counsel’s explanation for not doing so. *Id.* at 69-72, 91. At The Straight’s frustration with trial counsel over his inaction led At The Straight to write letters to the circuit court requesting new counsel. HT 69-70; HSR 48-55.

Further, the circuit court clearly erred insofar as it found Hero had “adequate knowledge of the underlying criminal matter, ample opportunity to testify,” or that it fell on her “to explain why she did not testify, and she failed to do so.” HSR 403. Hero’s hundreds of phone calls with her son during the pendency of the case did not confer upon her any expertise in the legal

profession or in the formulation of alibi defenses. Beyond knowledge that she saw At The Straight in Rapid City in the days immediately prior to his arrest, there's no evidence that she was aware her testimony was essential to At The Straight's alibi defense, or that she saw him on the very date of the crime. This fact was only verified in collaboration with Hawley's testimony at the habeas trial. Hero made attempts to call trial counsel's office. Any follow up investigation by trial counsel or his private investigator may, and probably would have, uncovered these facts much earlier. The responsibility to conduct a reasonable investigation into potential witnesses fell on trial counsel, not Hero.

Trial counsel's decision not to investigate these witnesses was objectively unreasonable because the decision could not have been reasonably related to trial strategy. As Attorney Hinrichs testified, counsel's trial strategy was to argue to the jury that At The Straight was not the person who shot Dillon. HT 110. In closing arguments, counsel argued the State had no evidence that "[At The Straight] was in town" at the time of the shooting. HT 337. The testimony of the Rapid City witnesses went to the heart of that strategy. Trial counsel could not have made a reasonably strategic decision not to call the Rapid City witnesses at trial until trial counsel first followed up with and interviewed these witnesses. By not conducting this follow up, trial counsel's performance fell below an objective standard of reasonableness.

D. Trial Counsel's Deficient Performance Prejudiced At The Straight.

On the sufficiency of an alibi defense, this Court has held:

Alibi evidence must show that the accused could not have committed the alleged crime because at the time of its commission, he was at a place other than where such offense was committed. An alibi to be successful must cover the entire time [appellant's] presence was required for accomplishment of the crime.... [A] purported alibi that leaves it possible for the accused to be the guilty person is no alibi at all.

Siers v. Class, 1998 SD 77, ¶ 23, 581 N.W.2d 491, 497 (quoting *Sprik v. Class*, 1997 SD 134, ¶ 40, 572 N.W.2d 824, 829) (citation modified). “To establish prejudice from counsel’s failure to investigate a potential witness, a petitioner must show that the witness would have testified and that their testimony would have probably changed the outcome of the trial.” *Id.* at ¶ 25 (quoting *Hadley v. Goose*, 97 F.3d 1131, 1135 (8th Cir. 1996) (citation modified).

Here, the testimony of Hawley and Hero provided a valid alibi defense. Their collective testimony established At The Straight visited with Hero at Monument Health hospital in Rapid City on July 9, 2020, between 7:00 p.m. and 8:00 p.m., and again at Hero’s home on Vale Street in west Rapid City later the same night between 10:00 p.m. and 10:30 p.m. At The Straight’s presence in Rapid City would have made it impossible for him to be outside Chanel’s house at 412 Prospect Avenue in Pierre when the shooting occurred at approximately 8:54 p.m.⁸ Had their testimony been presented, there is a reasonable probability the result of the proceeding would have been different.

⁸ At The Straight requests this Court to take judicial notice of the distance between the location of the shooting incident in Pierre in Rapid City Hero stated she met with At The Straight on the evening of July 9, 2020. The Court may

i. *The Habeas Court Clearly Erred in Finding Hawley and Hero were not Alibi Witnesses.*

The habeas court clearly erred in finding Hero and Hawley were not alibi witnesses. Hawley's testimony that At The Straight arrived at his home in the Valley sometime around noon on July 10, 2020, stayed the whole day, spent the night at his home and left the following day was critical to At The Straight's alibi defense. It provided a benchmark to verify Hero saw At The Straight on the evening of July 9, 2020, as well as the following day, July 10, 2020, despite her uncertainty as to the exact dates. HT 7, 18-25, At The Straight was arrested on July 11, 2020. *Id.* at 33. Hawley knew At The Straight had been arrested the same day he left Hawley's home after spending the night. *Id.* at 7. This verifiable date solidified Hawley's testimony that At The Straight arrived to his home on July 10, 2020.

judicially notice "a fact that is not subject to reasonable dispute because it: (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." SDCL 19-19-201; *See Ryno v. City of Waynesville*, 58 F.4th 995, 1002 n. 2 (8th Cir. 2023) (noting the Court "may take judicial notice of a fact for the first time on appeal, *Gustafson v. Cornelius Co.*, 724 F.2d 75, 79 (8th Cir. 1983), including the distance between two places, *Mut. Benefit Life Ins. Co. v. Robison*, 58 F. 723, 732 (8th Cir. 1893)"). According to Google Maps, the distance between Monument Health in Rapid City and 412 West Prospect Avenue in Pierre is approximately 173 miles, with an estimated driving time of 2 hours and 45 minutes by vehicle. Google Maps, Directions from 412 West Prospect Ave, Pierre, SD 57501 to Monument Health Rapid City Hospital, 353 Fairmont Blvd, Rapid City, SD 57701. <https://maps.google.com> (last visited Jan. 8, 2026). The distance between 412 West Prospect Ave in Pierre to Vale Street in Rapid City is 174 miles with an estimated driving time of 2 hours and 41 minutes. Google Maps, Directions from 412 West Prospect Ave, Pierre, SD 57501 to Vale Street, Rapid City, SD 57702. <https://maps.google.com> (last visited Jan. 8, 2026).

Hero testified that the last time she saw At The Straight in July 2020 was at a gas station in the Valley between 10:00 a.m. and 11:00 a.m., and At The Straight was arrested either later that evening or the following day. *Id.* at 23-25. Based upon this testimony, the circuit court found it was possible that Hero saw At The Straight at her house to give him fry bread on the evening of the July 10, 2020, and at the gas station on the following day, July 11, 2020, the same day he was arrested. HSR 402-03. As such, the habeas court found that Hero may not have seen At The Straight on the evening of July 9, 2020, when the shooting occurred. *Id.* However, At The Straight could not have been arrested later in the evening on the same day Hero saw him at the gas station because Deputy Rose came in contact with At The Straight at 173rd Avenue and 232nd Street shortly after 9:37 a.m. when he was arrested on July 11, 2020. JT2 238-41. Moreover, if At The Straight arrived at Hawley's home around noon on July 10, 2020, stayed at his home that whole day and spent the night, then At The Straight would have had to have been arrested the day after he saw Hero at the gas station, which was also consistent with her testimony. That is, Hero could not have seen At The Straight at the gas station on July 11, as well as the evening prior at her home on July 10, because At The Straight was at Hawley's home in the Valley the entire evening of July 10, 2020. HT 7. Therefore, Hero must have saw At The Straight at her home on the evening of July 9, 2020, and the following day at the gas station on July 10, 2020.

Accordingly, the circuit court clearly erred in finding Hawley and Hero were not alibi witnesses because their collective testimony provided a valid alibi defense.

ii. The Habeas Court Clearly Erred in Finding Goings' Testimony Inconsistent with Hero's Testimony

Although Goings' testimony was not essential to At The Straight's alibi, the circuit court clearly erred in finding "Goings testimony was opposed to Hero's in many ways, in that Hero indicated only seeing At The Straight twice, while Goings indicated multiple drop-offs and pick-ups at Hero's home." HSR 404. In addition to Hero's testimony about the last two times she saw At The Straight before his arrest, Hero also testified that she had "seen him, like, almost every day. He would come, like, in the evening times." HT 18. Hero's testimony was consistent with Goings account that he had dropped-off and picked-up At The Straight multiple times in early July 2020. In that regard, Goings testimony corroborated Hero's assertion she was with At The Straight in the days immediately prior to his arrest. Although Goings was uncertain as to the precise dates he spent with At The Straight in early July, 2020, his testimony about the last time he saw At The Straight was when he dropped him off at "50's" home in the Valley also corroborated Hawley's account of being with At The Straight on July 10 and 11, 2020.

iii. Hero's and Hawley's Testimony was Credible, and the Prosecution's Evidence at Trial was not Overwhelming.

In analyzing whether there is a reasonable probability the witnesses' testimony would have resulted in a different outcome, the Court considers the following factors: "(1) the credibility of all witnesses, including the likely impeachment of the uncalled defense witnesses; (2) the interplay of the uncalled witnesses with the actual defense witnesses called; and (3) the strength of the evidence actually presented by the prosecution." *Siers*, 1998 SD 77, ¶ 25, 581 N.W.2d at 497-98 (quoting *McCauley-Bey v. Delo*, 97 F.3d 1104, 1106 (8th Cir. 1996)).

Here, Hawley's and Hero's testimony at the habeas trial was credible, and the habeas court did not find otherwise. In fact, in its oral disposition, the habeas court noted that Hawley "may have been truthful." HT 130. Although Hero, being At The Straight's mother, would have been subject to impeachment as to her bias, and the prosecution would have attempted to impeach Hawley's credibility on account of his criminal record, the jury may have legitimately found their testimony credible. Because there were no witnesses called by the defense at trial, and trial counsel's strategy at trial was to argue to the jury that At The Straight was not the shooter, Hero's and Hawley's testimony would have strengthened At The Straight's defense.

Finally, the prosecution's evidence was not overwhelming at trial. The prosecution's primary witness, Dillon, is a multiple time convicted felon. HSR 287. He knew a lot of people in prison. *Id.* at 285. Dillon was the only individual who allegedly witnessed At The Straight commit the crime, and he arguably had a motive to lay the blame on At The Straight given their strained relationship.

Puppel's testimony was provided in exchange for the State's help in reducing his bond on his pending criminal charges. *Id.* at 226. No weapon connected with the shooting was ever recovered, and no DNA evidence placed At The Straight at the scene. JT3 283-86; Tr. Ex. 37. Thus, had Hawley's and Hero's testimony been presented at trial, there is a reasonable probability the result of the proceeding would have been different.

CONCLUSION

Trial counsel's failure to reasonably investigate At The Straight's alibi witnesses was objectively unreasonable and deprived At The Straight of his Sixth Amendment right to counsel. For the aforementioned reasons, authorities cited, and upon the settled record, At The Straight respectfully requests this Court to reverse the habeas court's Order granting Respondent a directed verdict and vacate his conviction and sentence.

REQUEST FOR ORAL ARGUMENT

The attorney for the Appellant, Derek At The Straight, respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted this 8th day of January 2026.

/s/ Beau Blouin
Beau Blouin
South Dakota Office of Indigent Legal Services
ATTORNEY for APPELLANT

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 9,966 words.
- II. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 8th day of January 2026.

/s/ Beau Blouin

Beau Blouin

Attorney for Appellant

CERTIFICATE OF SERVICE

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

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Dated this 8th day of January 2026.

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APPENDIX

Judgment & Sentence.....	A-1
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SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT - 8 2025

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

Shirley A. Johnson-Lee
) Clerk

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

DEREK AT THE STRAIGHT,
Petitioner,

v.

AMBER PIRRAGILA, or successor, Warden,
South Dakota State Penitentiary,
Respondent.

32 CIV 23-26

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

On July 21, 2025, this matter came before the Court for the evidentiary hearing on Petitioner's Sixth Amendment claims regarding ineffective assistance of counsel regarding Petitioner's allegations that trial counsel failed to call certain potential alibi witnesses. By agreement, the evidentiary hearing took place at the Stanley County Courthouse in Fort Pierre, SD. Petitioner, Derek At The Straight, appeared via ITV from the South Dakota State Penitentiary, and was represented by Attorney Nicole J. Laughlin. Respondent was represented by Hughes County Deputy State's Attorney Edward S. Hruska III and Jenna R. Severyn.

Upon the conclusion of Petitioner's case, Respondent moved for a directed verdict pursuant to SDCL 15-6-50. The Court, having heard the arguments of the parties and having reviewed the prior transcripts and pleadings, and for good cause appearing, granted a directed verdict. Pursuant to SDCL 15-6-52(a), counsel for Respondent was directed to submit Findings of Fact, Conclusions of Law, and Orders. Pursuant to that directive, the Court now issues the following Findings of Fact, Conclusions of Law, and Orders.

FINDINGS OF FACT

1. On April 8, 2025, the Court issued Findings of Fact, Conclusions of Law, and Order granting Respondent's Motion to Dismiss *except* for the very narrow issue, to wit: Petitioner's Sixth Amendment claim of ineffective assistance of counsel regarding the allegations underlying trial counsel's failure to call certain potential alibi witnesses.

2. On July 21, 2025, Petitioner presented its case in chief. Petitioner submitted Exhibit 1 into evidence, and called witnesses Shawn Hawley, Wilma Hero, Damion Goings, Derek At the Straight, and attorney John Hinrichs.

The Testimony of Shawn Hawley

3. On July 21, 2025, Shawn Hawley (Hawley) was sworn and gave testimony.

4. Hawley indicated he is currently serving time in federal custody for conspiracy to distribute methamphetamines.

5. Hawley generally testified about himself and Petitioner's relationship.

6. The Court took judicial notice of Hawley's criminal history, which included multiple felonies as well as federal charges.

7. Hawley testified that Petitioner Derek At The Straight (At The Straight) was at his home the day prior to his arrest.

8. Hawley testified that At The Straight spent the night at Hawley's home.

9. Hawley testified that the other two witnesses that could corroborate this information are now deceased.

10. The Court finds that Hawley's testimony is not relevant.

11. Hawley does not present as an alibi, as he only testified to At The Straight's whereabouts on July 10-11, 2020.

12. At The Straight was convicted of crimes occurring on July 9, 2020. As such, Hawley is not an alibi witness, as this purported alibi witness leaves it possible for At The Straight to be the guilty person, and therefore is no alibi at all.

The Testimony of Wilma Hero (a/k/a Wilma At the Straight)

13. On July 21, 2025, Wilma Hero (Hero) was sworn and gave testimony.

14. Hero testified that At The Straight had a construction job in Rapid City during this time.

15. Hero testified that she was "pretty sure" about seeing At The Straight, sometime during the second week of July 2020.

16. Hero based her testimony around her sister being admitted to Monument Hospital in Rapid City sometime during the first two weeks of July 2020.

17. Hero testified that At The Straight came to visit his aunt in the hospital during this time.

18. That said, Hero testified that she wasn't sure of the dates and admitted her dates could be off or different.

19. Hero testified that of what she recalled, At The Straight came one night for fry bread, and she saw him the following day at a gas station, and that was all she saw of him prior to his arrest.

20. Hero testified that it could have been that the day she saw At The Straight at the gas station was the same day that At The Straight was arrested, meaning that the dates At The

Straight stopped for fry bread were possibly July 10, 2020, and the following day at the gas station was July 11, 2020.

21. As the crimes were committed on July 9, 2020, Hero presents the same issues as Hawley, namely, that she is not an alibi witness, as this purported alibi witness leaves it possible for At the Straight to be the guilty person, and therefore is no alibi at all.

22. Hero testified that she had hundreds of phone calls with At The Straight from January – August 2021, leading up to At The Straight’s criminal trial.

23. Hero further testified that she was personally present for At The Straight’s criminal trial.

24. Hero testified that in certain of the phone calls published, that At The Straight discusses alibi witnesses, to wit: Chanel Big Eagle, and that At The Straight indicated that Chanel Big Eagle is the “only one he wants there.”

25. Hero testified that after his conviction, At The Straight contacted her to use her as an alibi witness for this habeas matter, and a recording of the same was published for the Court.

26. Hero also testified that as a mother she is concerned about At The Straight and wants to see that he is released from custody, which while natural, implies bias.

27. The Court finds that Hero had adequate knowledge of the underlying criminal matter, ample opportunity to testify, and was present for the criminal trial itself. In this sense, it falls to Hero to explain why she did not testify, and she failed to do so.

The Testimony of Damion Goings

28. On July 21, 2025, Damion Goings (Goings) was sworn and gave testimony.

29. Goings testified that he is currently serving a 25-year sentence for aggravated assault on law enforcement.

30. Goings testified generally about his and At The Straight's relationship.

31. Goings testified that he had numerous criminal convictions, felonies, and had been convicted of multiple crimes of dishonesty and deception.

32. Goings testified that At The Straight was having car troubles during this time, and that he would provide At the Straight with rides.

33. Goings testified that he and At The Straight would have met up sometime in the first or second week of July 2020.

34. Goings testified that he and At The Straight would drive around together and get high during this time.

35. Goings admitted to being a regular user of methamphetamines during this time, and that he began using methamphetamines about a day or two after July 4, 2020.

36. Goings testified that when he uses methamphetamines, "dates blur together."

37. Goings testimony was opposed to Hero's in many ways, in that Hero indicated only seeing At the Straight twice, while Goings indicated multiple drop-offs and pick-ups at Hero's home.

38. Further, Goings testified that At The Straight was with him on July 12, 2020. This is a factual impossibility, as At The Straight was arrested on July 11, 2020.

39. The Court finds that Goings testimony was not credible.

The Testimony of Petitioner Derek At the Straight

40. On July 21, 2025, At The Straight was sworn and gave testimony.

41. At The Straight testified that he received the Indictment in the criminal case, and that the State had duly demanded any Alibi Defense be tendered, pursuant to SDCL 23A-9-1.

42. At The Straight testified that he was generally unaware of the measures that attorney Schreiber took on his behalf, including that attorney Schreiber hired a private investigator to look into any alibi witnesses.

43. While At The Straight testified he informed attorney Schreiber of these potential alibi witnesses, At The Straight did not produce any evidence beyond self-serving testimony.

44. At The Straight testified that he has multiple felony convictions.

45. At The Straight testified that he expected Chanel Big Eagle to testify; however, upon being pressed, At The Straight testified that he understood that if she was an unfavorable witness, attorney Schreiber would not want her to testify, as she would not provide an alibi.

46. At The Straight confirmed that he and Hero had hundreds of phone calls, and that she was personally present at the trial.

47. The Court finds that the phone calls speak volumes about At The Straight's lack of credibility. The phone calls prior to trial indicate that At The Straight had informed his attorney of a possible alibi witness (Chanel Big Eagle), and that she was the only one he wanted present, as she will "get with it," in his words. The phone calls after conviction and immediately filing this habeas application also indicate a plan for Hero and At The Straight to collaborate and "get our stories straight."

48. At The Straight testified that in these phone calls, he indicated that his only alibi witness he wanted present was Chanel Big Eagle and further confirmed that this was the person attorney Schreiber had his private investigator look into.

49. At the Straight did not present any credible evidence that he had let attorney Schreiber know of these other alibi witnesses, but did confirm that he thought Chanel Big Eagle would be an alibi witness.

50. Upon being pressed, At The Straight agreed that based upon his knowledge of Chanel Big Eagle's deposition testimony, she would not have made a favorable alibi witness, and that the same was known to attorney Schreiber and his investigator. This knowledge of Chanel Big Eagle's unfavorable testimony places her within the realm of tactical decisions available to trial counsel.

51. Respondent offered into evidence the following documents and recordings, and the same were received by the Court:

- Ex. A: Indictment and demand for alibi from *State v. At the Straight*, 32 CRI 20-466;
- Ex. B: Attorney Schreiber's Vouchers for Compensation and Expenses from *State v. At the Straight*, 32 CRI 20-466;
- Ex. F: July 20, 2021, phone call from At the Straight to Wilma Hero;
- Ex. G: August 3, 2021, phone call from At the Straight to Wilma Hero;
- Ex. I: Transcript of Direct and Cross Examination of Dillon Big Eagle in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. J: Transcript of Direct and Cross Examination of Special Agent Swanson in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. K: Transcript of Direct and Cross Examination of Daniel Puppel in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. L: Transcript of Direct and Cross Examination of forensic scientist Frans Maritz in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. M: Transcript of the Jury Verdict in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. N: Verdict form in the case of *State v. At the Straight*, 32 CRI 20-466;

- Ex. O: Part II Verdict in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. P: Judgment and Conviction in the case of *State v. At the Straight*, 32 CRI 20-466;
- Ex. Q: Judgment and Remittitur from the appeal of the case of *State v. At the Straight*, 32 CRI 20-466; and
- Ex. R: August 3, 2021, phone call from At the Straight to Wilma Hero.

52. The Court finds from the record and evidence presented that no other potential alibi witnesses were ever mentioned anywhere by At The Straight until these habeas proceedings were commenced.

The Testimony of Attorney John Hinrichs

53. On July 21, 2025, attorney John Hinrichs (Hinrichs) was sworn and gave testimony.

54. Hinrichs testified generally about his educational and work-related experience as an attorney.

55. Exhibit 1 was entered into evidence, and that accurately outlines Hinrichs' education and work experience, albeit with very minor changes.

56. Hinrichs testified generally about the duties of an attorney, regardless of whether the attorney was retained or court-appointed.

57. Hinrichs testified generally that he had performed a very limited review of the casefile itself and was limited to only those materials supplied by Petitioner's counsel of record. Attorney Hinrichs had not reviewed the complete public file; he had not contacted anyone from attorney Schreiber's office, had not reviewed any private file materials, and generally thought that to do so was "beyond his scope."

58. Hinrichs testified that he had not seen any evidence that any of these purported alibi witnesses (Hawley; Goings; or Hero) were ever made known to attorney Schreiber.

59. Upon conclusion of Petitioner's case in chief, Respondent moved for a directed verdict.

60. Petitioner's counsel was heard in opposition.

61. After its colloquy, the Court ruled in favor of the directed verdict and directed Respondent's counsel to prepare Findings and Conclusions.

62. Any Finding of Fact included in the Conclusions of Law, or vice versa, is hereby incorporated by reference herein.

63. Based upon the foregoing Findings of Fact, the Court hereby issues the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The circuit court's review of a habeas corpus proceeding is limited because it "is a collateral attack on a final judgment." *Miller v. Young*, 2018 S.D. 33, ¶ 12, 911 N.W.2d 644, 648 (quoting *Vanden Hoek v. Weber*, 2006 S.D. 102, ¶ 8, 724 N.W.2d 858, 861).

2. Habeas corpus review does not substitute for direct review or appeal. *See Wright v. Young*, 2019 S.D. 22, ¶ 10, 927 N.W.2d 116, 119 (explaining that review of a habeas action is more limited than for a direct appeal because it is a collateral attack upon a final judgment).

3. The South Dakota Supreme Court has pointed out the circumstances under which a habeas corpus procedure may be used:

"Habeas corpus can be used only to review (1) whether the court has jurisdiction of the crime and the person of the defendant; (2) whether the sentence was authorized by law; and (3) in certain cases whether an incarcerated defendant has been deprived of basic constitutional rights.

Habeas corpus is not a remedy to correct irregular procedures, rather, habeas corpus reaches only jurisdictional error.”

Piper v. Weber, 2009 S.D. 66, ¶ 7, 771 N.W.2d 352, 355.

4. A Sixth Amendment claim of ineffective assistance of counsel is analyzed according to the test set out in *Strickland v. Washington*, 466 U.S. 668 (1984).

5. To prevail on a claim of ineffective assistance of counsel under *Strickland*, there must be a showing of both (1) deficient performance by counsel, and (2) resulting prejudice to the defense. *Strickland*, 466 U.S. 668, 687 (1984).

6. It is Petitioner’s legal burden to prove by a preponderance of the evidence that he is entitled to habeas relief. *Ally v. Young*, 2023 S.D. 65, ¶ 32, 999 N.W.2d 237, 249.

7. Regarding the performance component, the highly deferential examination of counsel’s actions is based on whether counsel’s actions, or inactions, were reasonable under the circumstances. *Strickland, supra.*, 466 U.S. at 688-90 (citations omitted).

8. Collateral attacks on convictions based on trial counsel’s alleged ineffectiveness are generally disfavored under the law, as “[t]he petitioner must overcome the ‘strong presumption that counsel’s performance falls within the wide range of professional assistance.’” *Denoyer, supra.* “Effective assistance of counsel is not equated with a successful result... This Court presumes that an attorney is competent until a showing to the contrary is made, so a petitioner, who is alleging ineffective assistance of counsel, carries a heavy burden.” *Sprick v. Class*, 1997 S.D. 134, ¶ 23, 572 N.W.2d 824, 829 (citations omitted). “While this court will not compare counsel’s performance to that of some idealized ‘super-lawyer’ and will respect the integrity of counsel’s decision in choosing a particular strategy, these considerations must be balanced with the need to ensure that counsel’s performance was within the realm of competence required of members of the profession.” *Id.*, ¶ 24, 572 N.W.2d at 829 (citing *Roden v. Solem*, 431

N.W.2d 665, 667 n. 1 (S.D. 1988)). "The selection of a defense is a trial strategy this Court will seldom reevaluate." *Spruk, supra.*, ¶ 24, 572 N.W.2d at 829 (citing *Lodermeier v. Class*, 1996 S.D. 134 at ¶ 12, 555 N.W.2d 618; *Fast Horse v. Leapley*, 521 N.W.2d 104, 106 (S.D. 1994)).

9. In evaluating trial counsel's performance, the S.D. Supreme Court has refused to "engage in some sort of twenty-twenty hindsight or Monday morning quarterbacking." *Denoyer*, ¶ 18, 694 N.W.2d at 855 (citations omitted).

10. Interviewing potential witnesses is an action counsel may take in preparing for a trial; however, a failure to interview witnesses does not automatically constitute ineffective assistance of counsel. *See Schocker v. Fluke*, 2024 S.D. 65, ¶ 35, ___ N.W.2d ____.

11. Any decision to forgo the investigation of a potential witness must be reasonably related to trial strategy, and a reviewing court must give heavy deference to counsel's judgment as to whether an investigation is worth pursuing. *Id.* ¶ 35-36.

12. However, the S.D. Supreme Court has noted that, under the deficiency prong of *Strickland, supra.*, "[c]ounsel has a duty to make a reasonable investigation based on the information provided by a defendant, particularly when an alibi is involved." *Siers v. Class*, 1998 S.D. 77, ¶ 17, 581 N.W.2d 491, 495 (internal citations omitted).

13. The "[a]libi evidence must show that the accused could not have committed the alleged crime, because at the time of its commission he was at a place other than where such offense was committed." Moreover, "[a]n alibi to be successful must cover the entire time when [petitioner's] presence was required for accomplishment of the crime.... [A] purported alibi that leaves it possible for the accused to be the guilty person is no alibi at all." *Siers*, ¶ 23, 581 N.W.2d at 497 (citing *Spruk v. Class*, 1997 S.D. 134, ¶ 40, 572 N.W.2d 824, 832 (internal citations omitted)).

14. "To establish prejudice from counsel's failure to investigate a potential witness, a petitioner must show that the witness would have testified and that their testimony 'would have probably changed the outcome of the trial.'" *Siers*, ¶ 25, 581 N.W.2d at 497 (quoting *Stewart v. Nix*, 31 F.3d 741, 744 (8th Cir.1994)).

15. The S.D. Supreme Court has held that in conducting such an analysis, the following must be considered: "(1) the credibility of all witnesses, including the likely impeachment of the uncalled defense witnesses; (2) the interplay of the uncalled witnesses with the actual defense witnesses called; and (3) the strength of the evidence actually presented by the prosecution." *Id.*, ¶ 25, 581 N.W.2d at 497-8 (quoting *McCauley-Bey v. Delo*, 97 F.3d 1104, 1106 (8th Cir.1996)).

16. The Court concludes that At The Straight falls exceedingly short of his legal burden of showing by a preponderance of the evidence that he has a colorable claim for habeas relief.

17. The Court concluded that the public record itself shows that his competent counsel filed multiple motions, deposed parties, cross-examined witnesses, confronted the State's evidence, and prepared the case for trial. *See* Trial Record, *State v. At the Straight*, 32 CRI 20-466. Counsel's performance under the *Strickland* test was not deficient in that regard. Moreover, it is undisputed that on August 11, 2020, the State made its alibi demand in its indictment, pursuant to SDCL 23A-9-1, and provided opportunity for the presentation of any alibi defenses prior to trial, and none were presented by At The Straight.

18. The Court concludes that attorney Schreiber's vouchers and his trial preparation (his retention of a private investigator; investigation into Chanel Big Eagle; and subpoena for

Chanel Big Eagle) outline that he did undertake investigations and interviews with potential alibi witnesses. Ex. B.

19. The Court concludes that At The Straight has failed to provide any credible testimony, evidence, or documentation to support his claim that these purported alibis were 1) made known to attorney Schreiber, or 2) that even if known, the testimony would have changed the outcome of the criminal trial.

20. A motion for a directed verdict under SDCL 15-6-50(a) questions the legal sufficiency of the evidence to sustain a verdict against Petitioner's habeas petition. Upon such a motion, this Court must determine whether there is any substantial evidence to sustain the action. The evidence must be accepted which is most favorable to Petitioner, and this Court must indulge all legitimate inferences therefrom in his favor. If sufficient evidence exists so that reasonable minds could differ, a directed verdict is not appropriate.

21. This Court concludes that a directed verdict is wholly appropriate. Petitioner failed to show by preponderance of the evidence any credible evidence that these purported alibi witnesses were 1) known to attorney Schreiber; 2) if known, that attorney Schreiber failed to investigate; or 3) if known and disregarded, that these purported alibi witnesses would have changed the outcome of the trial.

22. By contrast, the overwhelming weight of the evidence tends to show that attorney Schreiber provided competent counsel, filing numerous pleadings, attending depositions, filing motions in limine, retained and directed a private investigator into alibi witnesses, and defending at trial. Petitioner's own phone calls indicate that the only alibi witness he wanted present was Chanel Big Eagle, a person who was investigated and would not have provided favorable testimony.

Based upon the foregoing Findings of Fact; Conclusion of Law; upon a review of all Witnesses, pleadings, and exhibits received at the hearing; upon a review of the entire record in this matter; and for good cause appearing, it is hereby

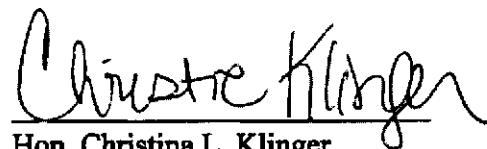
ORDERED, ADJUDGED, AND DECREED that verdict is hereby rendered in favor of Respondent and against Petitioner. It is further

ORDERED, ADJUDGED, AND DECREED that Petitioner's remaining claims are hereby DISMISSED, and Petitioner's Application for Writ of Habeas Corpus filed January 26, 2025, is hereby DISMISSED in its entirety.

IT IS SO ORDERED.

Dated: 8/4/2025 3:13:40 PM

BY THE COURT:



Hon. Christina L. Klinger
Circuit Court Judge

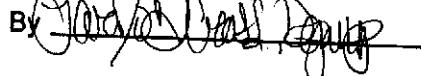
Attest:
Booth, Alison
Clerk/Deputy



STATE OF SOUTH DAKOTA
Sixth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:

OCT 06 2025

Kelli Sitzman
Hughes County Clerk of Courts

By 

A-14

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31236

DEREK AT THE STRAIGHT,

Petitioner and Appellant,

v.

AMBER PIRRAGLIA, Warden,
South Dakota State Penitentiary,

Respondent and Appellee.

APPEALS FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

THE HONORABLE CHRISTINA L. KLINGER
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed October 2, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31236

DEREK AT THE STRAIGHT,

Petitioner and Appellant,

v.

AMBER PIRRAGLIA, Warden,
South Dakota State Penitentiary,

Respondent and Appellee.

PRELIMINARY STATEMENT

Derek At The Straight was convicted of attempted murder, aggravated assault, and commission of a felony with a firearm. He sought habeas relief, challenging his trial attorney's actions and claiming his Eighth Amendment rights were violated. After his case was dismissed, the circuit court granted At The Straight a certificate of probable cause on one claim—whether he received ineffective assistance of counsel because trial counsel allegedly failed to investigate three potential alibi witnesses.

In this brief, Appellant, Derek At The Straight, is referred to as “At The Straight.” Appellee, the State of South Dakota, is referred to as “State.” References to documents are designated as follows:

Settled Record (Hughes County Civil File No. 23-26) SR

Hughes County Criminal File 20-466 ¹	CR
Jury Trial Transcript (August 2 - August 4, 2021).....	JT
Habeas Court Trial Transcript (July 21, 2025)	HT
Habeas Court Trial Exhibits	EX
At The Straight's Appellant's Brief	AB

JURISDICTIONAL STATEMENT

On July 15, 2025, the Honorable Christina L. Klinger, Circuit Court Judge, Sixth Judicial Circuit, dismissed At The Straight's habeas petition, finding he failed to show by preponderance of evidence that any credible evidence supported his allegations. SR 400-12. The circuit court issued a certificate of probable cause on September 16, 2025. SR 434. At The Straight filed his Notice of Appeal on October 2, 2025. This Court has appellate jurisdiction over this case under SDCL 15-26A-3(2) and SDCL 21-27-18.1.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR
HOW HE INVESTIGATED AT THE STRAIGHT'S ALIBI
DEFENSE?

The circuit court dismissed At The Straight's habeas petition, finding he failed to show by preponderance of evidence t

hat any credible evidence supported his allegations.

¹ This is At The Straight's underlying criminal file. The circuit court took judicial notice of the criminal file during the habeas court trial. HT 69.

STATEMENT OF THE CASE

Derek At The Straight was indicted for the attempted murder² of Dillion Big Eagle. CR 11-14. The State filed a Part II Information alleging At The Straight had five prior felony convictions. CR 15-17. A jury convicted him on all six counts of the indictment. CR 427-29. At a separate trial, a jury found At The Straight to be the same person to have committed the five crimes alleged in the Part II Information. CR 697-98. The circuit court sentenced At The Straight to twenty-five years in prison for attempted murder, fifteen years in prison for aggravated assault, and twenty-five years in prison for the commission of a felony with a firearm. CR 1196. The sentences were ordered to run consecutively. CR 1196.

After this Court affirmed At The Straight's convictions on direct appeal, he filed a habeas corpus application. SR 4-10; *State v. At The Straight*, 2023 S.D. 1, 984 N.W.2d 71. He raised two claims: ineffective assistance of counsel and cruel and unusual punishment. SR 4-10. At The Straight made several ineffective assistance claims, but the circuit court dismissed all but one; the court also dismissed the Eighth Amendment allegation. The surviving ineffective assistance claim was whether At The Straight's trial attorney, Brad Schriber, properly investigated three purported alibi witnesses. SR 8.

² At The Straight was charged with one count of attempted murder, four counts of aggravated assault, and one count of the commission of a felony with a firearm. CR 11-14.

The circuit court held a court trial on the remaining claim and granted Warden Pirraglia's motion for a directed verdict.³ HT 126. The court determined that At The Straight did not meet his burden of showing he received ineffective assistance of counsel. HT 130.

STATEMENT OF FACTS

One summer night in 2020, Dillion Big Eagle had to walk from Fort Thompson to Pierre. JT 143. He was mad no one picked him up. JT 143. When he got home, his girlfriend; his sister, Chanel Big Eagle; and At The Straight were there.⁴ Big Eagle, in a bad mood, started loudly arguing with his girlfriend. JT 143. At The Straight told him to be quiet. JT 143. Big Eagle felt At The Straight insulted him and the two "had some words" and things "almost got physical." JT 143-44. Chanel and Big Eagle's girlfriend also argued that night. JT 144. Big Eagle's girlfriend eventually left, and Big Eagle followed her. JT 144.

A couple of weeks later, Big Eagle was spending time with Markus Knight and Izabella Garreaux.⁵ JT 139. Knight was friends with Chanel's deceased boyfriend and wanted to see her. JT 139. Garreaux drove the three of them to Chanel's house in Pierre. JT 140. Chanel was not home, so Big Eagle called her. JT 141. She said she would be there shortly. JT 141.

³ While Warden Pirraglia was in charge of the penitentiary when At The Straight filed his habeas action, Joseph Roemmich is now the Warden of that facility.

⁴ Chanel and At The Straight were dating. JT 138.

⁵ Garreaux is Knight's niece. JT 139.

Upon arrival, Chanel hugged Knight. JT 141. Big Eagle also tried to make amends with Chanel from the fight a couple of weeks prior.

JT 141. Garreaux stayed in the car while Knight and Big Eagle helped Chanel move some boxes.⁶ JT 141. When Big Eagle asked Chanel where he should put a box, she told him to leave. JT 142.

Big Eagle started to leave when At The Straight pulled in front of Chanel's house in a black Chevrolet car. JT 144-45. When At The Straight got out of the car he still seemed to be upset about the prior argument. JT 145-46. At The Straight said something to Knight. JT 146. At The Straight then reached down into his car and pulled out a gun. JT 146. He pointed the gun at Big Eagle and fired several shots. JT 146.

Big Eagle was hit by multiple bullets, in his arms, chest, and abdomen. JT 149. He got in Garreaux's car, and she drove him to the hospital. JT 149. While enroute, Big Eagle called 911 to report what happened and that he was on his way to the hospital.⁷ JT 149. He thought he would die, so he told Garreaux to tell his family he loved them. JT 149.

At the hospital, Big Eagle collapsed as soon as he got through the hospital doors. CR 274. The attending physician, Dr. James Bear, saw that Big Eagle was bleeding and in severe distress. CR 275. Hospital

⁶ Chanel was moving. JT 141. She had boxes in her garage she was putting in her vehicle. JT 141.

⁷ At some point Big Eagle gave Garreaux the phone and told her what to say. SR 294.

staff took Big Eagle to a trauma bay where they could treat him. CR 275. Big Eagle had three or four gunshot wounds,⁸ and he experienced shortness of breath and chest and abdominal pain. His blood pressure was extremely low, and he was in shock. CR 275.

In response to Big Eagle's 911 call, law enforcement went to Chanel's residence. JT 171-72. There was blood in the driveway consistent with human blood spatter. JT 173. Three 9-millimeter shell casings were located near the blood spatter. JT 176. A trail of blood led to the curb and then vanished.⁹ JT 176. Law enforcement took swabs of the front passenger seat of Garreaux's car, which was covered in a large pool of blood. JT 186.

A couple of days later, Rapid City Police Officer Patrick Rose was dispatched for an abandoned vehicle.¹⁰ JT 238. Officer Rose called for a tow truck; while he was waiting for it to arrive, a white Ford pickup approached him. JT 239. The passenger of the vehicle tried to cover his face. JT 239. The passenger originally told Officer Rose his name was Lane Jandreau, but when Officer Rose checked the name in the NCIC database there were no matches. JT 239-40. Officer Rose asked the passenger again how to spell his name. JT 240. This time, he spelled his last name as "Jandreaux." JT 240. The passenger also provided the

⁸ It was unclear if Big Eagle was shot four times, or if a bullet had gone through him and caused a second wound. CR 275. Big Eagle was ultimately airlifted to Sioux Falls. CR 277.

⁹ This was consistent with someone entering a vehicle. JT 176.

¹⁰ The abandoned vehicle was a black, 2013 Chevrolet Impala. JT 238.

officer with a social security number that belonged to a female. JT 240. Officer Rose suspected the passenger was lying about his identity. JT 241. He searched the vehicle and found the passenger's wallet which contained a bank card with At The Straight's name. JT 241. Officer Rose ran At The Straight's name through NCIC, and the photograph matched the passenger's identity. JT 241.

A search of the pickup revealed a key¹¹ to the abandoned car. JT 241-42. Law enforcement searched the Impala and inside was a bill of sale and a piece of mail, both with At The Straight's name on them. JT 192-93. There was also unspent 9-millimeter, full metal jacket ammunition, and two 9-millimeter magazines. JT 194. Additional ammunition was found in the seat pocket of the passenger seat. JT 198.

Later, while in jail, At The Straight confided in a fellow inmate detailing the crime. JT 218-19. He said Chanel called to tell him Big Eagle was at her house, and he went over there and shot Big Eagle. JT 218-19. As part of the investigation, law enforcement obtained Chanel's call log from her cell phone. JT 202; CR 308. Chanel's call log shows the following calls on the date of the shooting:

- Chanel missed a call from Big Eagle at 8:46 p.m.;
- Chanel called Big Eagle at 8:47 p.m. (call lasted 19 seconds);

¹¹ The key was found on the passenger seat of the pickup, where At The Straight was sitting. JT 241-42.

- Chanel called At The Straight¹² at 8:48 p.m. (call lasted 14 seconds);
 - Chanel received a call from At The Straight at 8:52 p.m. (call lasted 1 minute and 16 seconds);
 - Chanel called At The Straight at 8:54 p.m. (call lasted 2 seconds);
 - Chanel called At The Straight at 8:54 p.m. and 8:57 p.m. (there was no call duration¹³);
 - Chanel called At The Straight again at 8:57p.m. (call lasted 1 minute and 2 seconds);
 - Chanel called At The Straight at 9:10 p.m. (call lasted 42 seconds);
- JT 202-05; CR 308.

ARGUMENT

TRIAL COUNSEL WAS NOT INEFFECTIVE FOR HOW
HE INVESTIGATED AT THE STRAIGHT'S ALIBI
DEFENSE.

A. Background.

At The Straight argues that he received ineffective assistance of counsel because his attorney refused to investigate three alibi witnesses that could put At The Straight in Rapid City at the time of the shooting.

AB 24. But no evidence supported that his attorney knew about the alibi

¹² Chanel had the phone number saved under the name “Boo”; the number associated with the name is At The Straight’s phone number. JT 203.

¹³ Law enforcement stated when there is not a call duration it means no one answered on the other end. JT 204-05.

witnesses and even if he did, their testimony was irrelevant and not credible.

B. *Standard of Review.*

Habeas corpus is a collateral attack on a final judgment, therefore the “scope of review is limited.” *Shocker v. Fluke*, 2024 S.D. 65, ¶ 27, 13 N.W.3d 477, 485 (quoting *Wright v. Young*, 2019 S.D. 22, ¶ 10, 927 N.W.2d 116, 119). This Court will only review three things: “(1) whether the court had jurisdiction of the crime and the person of the defendant; (2) whether the sentence was authorized by law; and (3) in certain cases whether an incarcerated defendant has been deprived of basic constitutional rights.” *Gonzales v. Markland*, 2025 S.D. 14, ¶ 19, 18 N.W.3d 658, 667 (quoting *Jenner v. Dooley*, 1999 S.D. 20, ¶ 11, 590 N.W.2d 463, 468). This Court reviews findings of fact under the clearly erroneous standard and conclusions of law de novo. *Gonzales*, 2025 S.D. 14, ¶ 19, 18 N.W.3d at 667 (citing *Erickson v. Weber*, 2008 S.D. 30, ¶ 17, 748 N.W.2d 739, 744). But this Court “may substitute its own judgment for that of the circuit court as to whether defense counsel's actions or inactions constituted ineffective assistance of counsel.” *Schocker*, 2024 S.D. 65, ¶ 29, 13 N.W.3d at 486 (quoting *Engesser v. Dooley*, 2008 S.D. 124, ¶ 10, 759 N.W.2d 309, 313).

C. *Trial counsel was not ineffective.*

“Claims of ineffective assistance of counsel must be evaluated in light of the totality of the circumstances.” *Schocker*, 2024 S.D. 65, ¶ 28,

13 N.W.3d at 485 (quoting *Dillon v. Weber*, 2007 S.D. 81, ¶ 11, 737 N.W.2d 420, 425). At The Straight must “prove by a preponderance of the evidence that he is entitled to habeas relief.” *Schocker*, 2024 S.D. 65, ¶ 28, 13 N.W.3d at 485 (citing *McDonough v. Weber*, 2015 S.D. 1, ¶ 15, 859 N.W.2d 26, 34).

Strickland v. Washington established the two-prong test to evaluate claims of ineffective assistance of counsel. 466 U.S. 668 (1984).

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversar[ial] process that renders the result unreliable.

Schocker, 2024 S.D. 65, ¶ 30, 13 N.W.3d at 486 (quoting *Reay v. Young*, 2019 S.D. 63, ¶ 13, 936 N.W.2d 117, 120). At The Straight does not make it past the first prong.

To prevail under the first prong, At The Straight “must show that counsel’s representation fell below an objective standard of reasonableness.” *Schocker*, 2024 S.D. 65, ¶ 31, 13 N.W.3d at 486 (quoting *McDonough v. Weber*, 2015 S.D. 1, ¶ 22, 859 N.W.2d at 37). “The question is whether counsel was deficient under prevailing professional norms, as opposed to ‘compar[ing] counsel's performance to that of some idealized ‘super-lawyer[.]’” *Schocker*, 2024 S.D. 65, ¶ 31, 13

N.W.3d at 486 (quoting *Denoyer v. Weber*, 2005 S.D. 43, ¶ 18, 694 N.W.2d 848, 855).

There also is a strong presumption that trial counsel was competent that At The Straight must overcome. *Footte v. Young*, 2024 S.D. 41, ¶ 22, 10 N.W.3d 202, 209 (citing *Reay*, 2019 S.D. 63, ¶ 14, 936 N.W.2d at 121). And this Court doesn't "second guess decisions of experienced trial attorneys regarding matters of trial tactics[.]" *Id.* Rather, this Court makes "every effort... to eliminate the distorting effects of hindsight[.]" *Id.*

At The Straight's claimed Schriber was ineffective because he failed to investigate three alibi witnesses before trial. SR 8. To support his claim, the three purported alibi witnesses testified at the court trial: Wilma Hero,¹⁴ Shawn Hawly, and Damion Goings. HT 5-60. At The Straight testified that he told Schriber of the three alibi witnesses and Schriber told him he wouldn't investigate them because he was court-appointed and not paid enough to do that kind of work. HT 73. But not only was there no evidence Schriber knew about the purported alibis, but also when the alibi witnesses testified at the habeas trial, they were biased and not helpful to At The Straight's defense.

The only evidence to show At The Straight told Schriber about the

¹⁴ Wilma is At The Straight's mother. HT 17.

three alibi witnesses were At The Straights's own self-serving testimony.¹⁵ *See generally* HT. And the evidence shows the contrary: At The Straight never told Schriber about the three witnesses. For instance, Schriber hired a private investigator. EX B pg. 2. At The Straight acknowledged the private investigator was hired to look into alibi witnesses. HT 82. The private investigator invoice stated he interviewed Chanel Big Eagle. EX B pg. 23. At The Straight also told Wilma that he told Schriber that Chanel was the only person he wanted on his side at trial. EX F. In fact, At The Straight expressed to his mother that Schriber asked if he had an alibi and admitted that there was no proof that he was in Rapid City at the time Big Eagle was shot. EX F. There was also never any indication, during that conversation, that Wilma could vouch for At The Straight's whereabouts during the shooting. EX F.

Not only was there no evidence that At The Straight told Schriber about his purported alibi witnesses, but he also seemed pleased with Schriber's performance leading up to the trial. EX F. In fact, At The Straight told Wilma that Schriber felt good about the trial and that he was really preparing for it. EX F. He continually reassured Wilma everything would be fine. EX F. He also expressed no concerns with Schriber's representation. EX F.

¹⁵ This Court should be skeptical of a habeas petitioner's testimony when they have an "obvious motive to fabricate. . . ." *Thornell v. Jones*, 602 U.S. 154, 160 (2024)(quoting *State v. Medrano*, 914 P.2d 225, 227 (Ariz. 1996)).

Further, even if At The Straight had told Schriber about the three witnesses, their testimony would not have changed the outcome of the trial. None of witnesses could put At The Straight in Rapid City at the time of the shooting, and none of their testimony was credible.

Hawly testified that he was with At The Straight July 10-11, 2020. He said At The Straight arrived at his house around noon on July 10th and spent the night. HT 7. The next day, Hawly was driving At The Straight to his car when they were pulled over for speeding.¹⁶ HT 9. Law enforcement ran At The Straight's name and arrested him. HT 9. While Hawly mentioned two people who allegedly saw At The Straight with him, both were deceased at the time of the habeas trial. HT 6, 8.

Further, At The Straight shot Big Eagle on July 9th. Hawly only spoke about At The Straight being with him July 10th and 11th. Therefore, his testimony wasn't credible nor relevant.

Wilma testified that she was "pretty sure" she saw At The Straight in Rapid City the second week of July. She remembered he came to visit his aunt in the hospital but was unsure of when she was admitted. HT 27, 31. Wilma also remembered that At The Straight came to her house one night for some fry bread and then saw him the next day at the

¹⁶ He claimed they were about a mile from At The Straight's vehicle, but at the jury trial, evidence showed At The Straight was arrested at his car. JT 239, 241; HT 9.

gas station. HT 20-23. But the only thing she could remember was these visits happened prior to At The Straight's arrest. HT 17-45.

Not only was Wilma's testimony not helpful, but there was no evidence that she tried to provide the alibi information to Schriber. She testified that she sat through his trial and never once told Schriber she could vouch for At The Straight's whereabouts. HT 38-39.

Finally, Goings testified that he was with At The Straight sometime after the Fourth of July. HT 59. He claimed the two drove around and got high on methamphetamine. HT 59. He also alleged that he would often drop At The Straight off to visit his mother.¹⁷ HT 49. Goings also said he was with At The Straight on July 12th, but that was impossible because At The Straight was arrested the day before. HT 58.

Not only were the witnesses' testimonies not credible, but it was also irrelevant. None of the three could definitively say they were with At The Straight at the time of the shooting.

At The Straight also had attorney John Hinrichs testify as an expert regarding the level of competency for a criminal defense attorney. HT 105-26. He did not have access to Schriber's files and only reviewed the material provided by At The Straight. HT 110. Hinrichs testified that if a defendant's attorney becomes aware of a possible alibi, it is their duty to investigate the alibi. HT 110. But Hinrichs also admitted he had not

¹⁷ But Wilma said she only saw At The Straight twice. HT 20-23.

seen anything to suggest Schriber was aware of the three alibi witnesses. HT 123.

In short, At The Straight failed to show how Schriber was ineffective. There was no evidence that Schriber even knew about the three alibi witnesses. In fact, evidence supports the contrary. At The Straight told Wilma before trial that Chanel was the only witness he wanted. And Schriber hired a private investigator to investigate Chanel, and any other alibi witnesses. Because At The Straight failed to show Schriber's performance fell below reasonable professional norms, he did not meet the first prong of *Strickland*. Therefore, his argument fails.

Even if this Court finds the first prong of *Strickland* was met, At The Straight cannot show he was prejudiced. To succeed on the second prong of *Strickland*, At The Straight “must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Schocker*, 2024 S.D. 65, ¶ 33, 13 N.W.3d at 487 (quoting *Strickland*, 466 U.S. at 694). This is a high standard that “requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a *trial whose result is reliable*.” *Shocker*, 2024 S.D. 65, ¶ 41, 13 N.W.3d at 488 (emphasis in original) (quoting *Spaniol v. Young*, 2022 S.D. 61, ¶ 22, 981 N.W.2d 369, 404).

Again, none of the purported alibi witnesses could definitely vouch for At The Straight's whereabouts during the shooting. So even if Schriber knew about the witnesses and called them at trial, their testimony would not have exonerated At The Straight. In fact, their credibility would have been attacked the same way it was attacked at the habeas trial. Therefore, he cannot show how he was prejudiced by not calling them as witnesses at the jury trial.

CONCLUSION

Based on the arguments and authorities, Warden Pirraglia respectfully requests that this Court affirm the circuit court's dismissal of At The Straight's habeas action.

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 3,594 words.

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

Dated this 18th day of February 2026.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 18, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Derek At The Straight* was served via electronic mail upon Beau Blouin at beau.blouin@state.sd.us.

/s/ Erin E. Handke
Erin E. Handke
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

DEREK AT THE STRAIGHT,

Petitioner and Appellant,

No. 31236

vs.

AMBER PIRRAGLIA,

Respondent and Appellee.

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Christina Klinger

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Notice of Appeal Filed on October 2, 2025

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DEREK AT THE STRAIGHT,

Petitioner and Appellant,

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vs.

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PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Derek At The Straight, (“At The Straight”), will limit discussion to the issues that need further development or argument. Any matter raised in At The Straight’s initial brief, but not specifically mentioned herein, is not intended to be waived. At The Straight will attempt to avoid revisiting matters adequately addressed in the initial brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as “SB.” Appellant’s initial brief is referred to as “AB.” All citations will be followed by the appropriate page number. At The Straight relies upon the

Jurisdictional Statement, Statement of the Case and Facts, and Statement of Legal Issues presented in his initial brief, filed with the Court on January 8, 2026.

ARGUMENT

AT THE STRAIGHT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO ADEQUATELY INVESTIGATE ALIBI WITNESSES.

The State contends that even if At The Straight told trial counsel about the Rapid City alibi witnesses, their testimony failed to “put At The Straight in Rapid City at the time of the shooting, and none of their testimony was credible.” SB 13. At The Straight opposes both of these assertions. Although the habeas court concluded that Hawley’s and Hero’s testimony was irrelevant to At The Straight’s alibi defense, it did not find that their testimony lacked credibility. HSR 401-03; *see* HT 130. Further, the habeas court clearly erred in finding Hawley’s and Hero’s testimony was irrelevant to At The Straight’s alibi defense because their combined testimony placed At The Straight in Rapid City on the night of the shooting on July 9, 2020. *See* SR 401-03.

As to Hawley’s credibility, the State calls attention to his testimony regarding the circumstances of At The Straight’s arrest and its purported inconsistency with the evidence produced at the jury trial. SB 13. According to the State, Hawley claimed to have given At The Straight a ride to his car when they were pulled over about a mile away from At The Straight’s vehicle, but the “evidence showed At The Straight was arrested at his car.” SB 13. The State misconstrues Hawley’s testimony. Hawley testified that his friend Shannon

Walker, not Hawley, gave At the Straight a ride from Hawley's home before At the Straight's arrest later the same day. HT 8-9. As far as Hawley knew, Walker was taking At the Straight to his car. *Id.* According to Hawley, Walker returned to Hawley's house after the incident and told Hawley he had made it about a mile to At the Straight's vehicle when they were pulled over for speeding and At the Straight was arrested. *Id.* The only inconsistency in Hawley's testimony surrounding At The Straight's arrest would have stemmed from the information Walker told Hawley after he returned to Hawley's home. *Id.* Hawley did not claim he was with At The Straight during his arrest. *Id.*

Hawley and Hero provided a sufficient alibi defense. "Alibi evidence must show that the accused could not have committed the alleged crime because at the time of its commission, he was at a place other than where such offense was committed." *Siers v. Class*, 1998 SD 77, ¶ 23, 581 N.W.2d 491, 497 (quoting *Sprick v. Class*, 1997 SD 134, ¶ 40, 572 N.W.2d 824, 829) (citation modified). An alibi is sufficient if it accounts for the defendant's whereabouts during the entire time in which the crime was committed. *Id.* Here, the shooting occurred in Pierre on July 9, 2020, at approximately 8:54 p.m. JT2 201. It is undisputed that At The Straight was arrested east of Rapid City at 173rd Avenue and 232nd Street on the morning of July 11, 2020. JT2 238-41. Hawley testified that At The Straight arrived at his home in the Valley sometime around noon the day before the arrest. HT 7. At The Straight stayed at Hawley's place the whole day, spent the night at his home and left the following day with his friend Walker. *Id.* Hawley

stated that At The Straight was arrested the same day he left Hawley's home after spending the night. *Id.* at 7-9. Because the arrest occurred on July 11, 2020, Hawley's testimony places At The Straight at his home from around noon on July 10 until he left the following morning on July 11, 2020. *Id.*

Hawley's testimony also provided a benchmark to verify that Hero not only saw At The Straight at the gas station in Rapid City during the mid-to-late morning hours on July 10 but also the night prior on July 9 when the shooting occurred, despite her uncertainty as to the specific dates. HT 7, 18-25. Hero testified that the last time she saw At The Straight in July 2020 was at a gas station in the Valley between 10:00 a.m. and 11:00 a.m., and At The Straight was arrested either later that evening or the following day. *Id.* at 22-25. At The Straight could not have been arrested later in the evening on the same day Hero saw him at the gas station because Deputy Rose came in contact with At The Straight shortly after 9:37 a.m. when he was arrested on July 11, 2020. JT2 238-41. However, Hero's and Hawley's testimony is consistent with At The Straight being arrested the day after Hero met him at the gas station. At The Straight would have met Hero at the gas station between 10:00 a.m. and 11:00 a.m. on July 10, At The Straight arrived at Hawley's home the same day around noon, stayed the night and was arrested the following morning on July 11. HT 7-9, 19-22, 24. Further, Hero's testimony that she met with At The Straight both at the hospital and her home in Rapid City the night before she last saw him at the gas station

places At The Straight in Rapid City at the time of the shooting on July 9, 2020. HT 19-22.

While Hero's individual testimony left questions about the timing of her meetings with At The Straight, Hero's and Hawley's collective testimony established that At The Straight visited with Hero at Monument Health hospital in Rapid City on July 9, 2020, between 7:00 p.m. and 8:00 p.m., and again at Hero's home on Vale Street in west Rapid City later the same night between 10:00 p.m. and 10:30 p.m. HT 19-22. If this is true, At The Straight could not have been in Pierre on July 9 at 8:54 p.m. when the shooting occurred. *See* AB 31.¹ Thus, the circuit court clearly erred in finding Hawley's and Hero's testimony irrelevant to At The Straight's alibi defense.

CONCLUSION

In light of At The Straight's strategy at trial, his attorney's failure to conduct any follow up investigation with the Rapid City witnesses fell below the objective standard of reasonableness guaranteed by the Sixth Amendment. The testimony and evidence established by a preponderance of the evidence that At The Straight provided trial counsel with the names and contact information for Hero, Hawley and Goings. Hero and Hawley's collective testimony established a valid alibi defense, and there is a reasonable probability their testimony at trial

¹ As noted in At The Straight's initial brief, according to Google Maps the shooting location in Pierre is an estimated driving distance of roughly 2 hours and 40 minutes from the locations at which Hero testified to seeing At The Straight in Rapid City.

would have resulted in a different outcome. For the aforementioned reasons, authorities cited, and upon the settled record, At The Straight respectfully requests this Court to reverse the habeas court's Order granting Respondent a directed verdict and vacate his conviction and sentence.

Respectfully submitted this 11th day of March 2026.

/s/ Beau Blouin

Beau Blouin

South Dakota Office of Indigent Legal Services

ATTORNEY for APPELLANT

CERTIFICATE OF COMPLIANCE

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 1,325 words.
2. I certify that the word processing software used to prepare this brief is Microsoft 365, MSO Version 2508.

Dated this 11th day of March 2026.

/s/ Beau Blouin

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

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