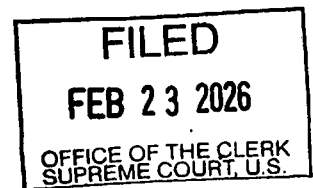


No. 25-7688



IN THE
SUPREME COURT OF THE UNITED STATES

DAVID PAUL TIMMONS — PETITIONER
(Your Name)

VS.
ALEJANDRO REYES, Warden
S.D. ATTORNEY GENERAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court of South Dakota, Central Div.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Paul Timmons
(Your Name)

Mike Durfee State Prison
1412 Wood Street
(Address)

Springfield, South Dakota 57062
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Trial Court in Hughes County, the S.D. Supreme Court, the U.S. Dist. Court of South Dakota and the 8th Circuit Court of Appeals error when it denied Petitioner/Defendant the right to reveal the truth, by denying him Due Process of Law when the records clearly show his innocents as follows:?

Insufficient Trial Evidence; Denial of Motion for a new Trial; (Ineffective Assistance of Counsel) when he failed to raise issues in Post Trial Motion; The use of Glossy v. Print photos; Failure to call Medical Expert: Shortcoming in cross examination; the alleged victim use of Meth and Medication; failed to question the Investigating Officer: Failure to Subpoena Disciplinary Reports: Failure to object to State leading witness on Direct; Sequestration The State's Prejudicial Closing statements; and the other similar issues as stated in Statement of Case.

2. Did the above stated Courts error when they denied Petitioner Effective assistance of Counsel?

3. Did the above stated Courts error, when the Petitioner has showed a overwhelming amount of evidence that show he is actual innocent of any criminal actions, yet they refuse to review the truth?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Alejandro Reyes Warden
Mike Durfee State Prison
1412 Wood St.
Springfield, S.D. 57062

S.D. Attorney General's Office
att: Attorney General
1302 E. Hwy. 34, Ste. 1
Pierre, S.D. 57501

RELATED CASES

NONE

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- (attached) N/A
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- (attached) N/A
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- (attached) N/A
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Hughes County Circuit Court of S.D. court appears at Appendix D to the petition and is

- (attached) N/A
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Dec. 30, 2025.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was 5/18/22.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Violation of Petitioner's Due Process of Law pursuant to U.S. Const. Amend. 5.
2. Violation of Petitioner's right to effective assistance of Counsel pursuant to U.S. Const. Amend. 6.
3. Violations of Petitioner's right to obtain witnesses in his favor (Medical Expert), U.S. Const. Amend. 6

STATEMENT OF THE CASE:

1. Background

Timmons objects, to the Magistrate using the term victim. *Report at 2*. Timmons has always maintained that K.C. was not a victim and that he was the victim, (the one that was assaulted). Timmons Affidavit, ¶ 3.

Timmons objects, to the Magistrate's Report that "the Supreme Court for a probable cause certificate was similarly denied – but for being a day overdue." *Report at 2*. The Magistrate failed to state why it was late by one day. See Timmons Affidavit, ¶ 4.

2. Standard of Review

Timmons does not object.

3. Discussion

Timmons does not object.

4. Ground One – Insufficient Trial Evidence

Timmons objects, to "Trial evidence corroborates his conviction." *Report at 5*. The Magistrate's speculation that K.C. "felt like [she] couldn't breathe." This alone is enough to support a finding that Timmons choked her. *Id.* This is simply inaccurate. K.C. did not state she could not breathe so there is no proof that she never could not breathe. Just like when you feel like you're going to throw up it does not mean that you actually throw up. This alone was not enough to support a finding that Timmons choked her. Moreover, if someone felt like killing someone it does not mean they actually killed the person nor should they be put on trial for murder. Next the Magistrate's Report cites the 9-1-1 call recording K.C. telling the operator that Timmons choked her. *Id.* Again, this is not proof that she was actually choked as can be heard on the call another person was telling her what to say. Timmons Affidavit, ¶ 5. Scratches are not proof of choking and the description of the assault was not under oath, but when K.C. was

testifying under oath she said she "felt" like she could not breathe, which is not proof. *Report at* 5. The Magistrate mischaracterized "A nurse, who saw K.C. the next day, **charted** bruising around her neck attributed to Timmons." This is not accurate. The nurse admitted she did not recall what it looked like, the alleged bruising. All the nurse did was document what K.C. said not her actual observations as the Doctors observations showed there was no bruising or marks of any kind.¹ Therefore Trial evidence cannot sufficiently corroborate the conviction. *Schlup v. Delo*, 513 U.S. 298, 330 (1995) (habeas review on sufficiency of the evidence asks only if "there is sufficient evidence which, if credited² could support the conviction").

Timmons objects, to "Timmons tried to induce fear of death or serious injury when he wrapped his arm around K.C.'s neck, causing her to struggle to breath[e]." *Report at* 6. Again, K.C. stated she "felt" like she could not breathe which does not mean she could not breathe or that she was struggling to breathe. Words matter just like stated earlier if you feel like you're going to throw up it does not mean you did. A jury listening to the actual words, would have heard K.C. state he was trying to restrain her³ this is not proof of strangulation or that K.C.'s airway was actually impeded in any way. Thus, the State did convict Timmons on constitutionally infirm evidence as will be shown in more detail herein.

5. Ground Two – Denial of Motion for New Trial

Timmons objects to the Magistrate's speculation that Timmons cannot show the "evidence would probably produce an acquittal on retrial" to get Habeas relief. *Report at* 7-8. Timmons can show the surprise revelations in the letter submitted by K.C. require a new trial lest he be denied his constitutional right to present a full defense. Timmons Affidavit, ¶ 6.

¹ Transcript of Jury Trial at 124: 16-19

² Credited according to Merriam-Webster Dictionary: reliance on the truth or reality of something. Because none of the trial evidence cited by the Magistrate is sufficiently reliable it cannot support the conviction.

³ DCD 2 at 11

Drug Use)

Timmons objects, to "He later admits to knowing that she was high at the time as well as telling counsel about her drug problems." *Report at 8*. The Magistrate did cite "Petitioner believed K.C. was high on meth at the time". *Id. at n.49*. Just because someone believes someone may be high does not mean they know they were actually high. Timmons Affidavit ¶¶ 7-8. Thus, K.C.'s declaration in her letter was new. *See Report 18-19*.

Timmons objects, to "Timmons cannot establish that such testimony, if elicited, would probably have produced an acquittal." *Report at 8*. The Magistrate is simply wrong and understates the impact of the drug use. The Jury at Timmons' trial without knowing about the drugs had pictured this innocent girl who was pregnant was just watching TV that was loud and on her phone and Timmons freaked out. Unfortunately, in stark contrast K.C. was high on meth by her own admission post-trial and did what most people do that are under the influence of meth, they are easily triggered and can become violent very quickly. *DCD 2 at 21*. This is why the drug use of meth would have resulted in a probable acquittal. As Timmons stated on the officers body cam that day, she went nuts and then she attacked me. *DCD 2 at 22*. As the Prosecutor stated to the jury who were unaware of K.C. being high on meth. Does that sound reasonable to you? ... That doesn't make sense. It just doesn't make sense that someone would attack someone because you said turn down the TV. *DCD 2 at p.22*. The Prosecutor was right it doesn't make sense when you believe K.C. is not on meth and is this innocent woman. However, when you know K.C. was on meth now Timmons' defense is viewed in a different light as now it is plausible why K.C. would attack and assault Timmons simply because he was worried about her not taking her medications. The knowledge of K.C.'s meth use would have contributed to Timmons' defense in his favor. The members of the jury are human beings and it

is with complete certainty they would have viewed K.C. differently; a druggie compared to an innocent woman. As was stated in Ground One the evidence relied on was just words and K.C.'s credibility goes to the heart of the trial and anything that would cause a jury to view K.C. dramatically different would significantly increase Timmons' chances of an acquittal.

Timmons objects to "counsel's failure to cross-examine K.C. on her drug use ... is unavailing." *Report at 8*. Timmons will explain later why that argument is availing and that he was not "harping" but stating facts.

Motive to Lie)

Timmons objects to "Reshaping that motive to conceal her drug use does not demand a new trial." *Report at 9*. Again, the Magistrate is understating the significance of the drug use. A motive to conceal K.C.'s drug use would have provided an additional theory grounded in truth and would have supported Timmons' defense impacting the trial significantly.

Prosecutorial Intimidation)

Timmons objects, to "Timmons could have discovered it during his several rendezvous with K.C. despite a no-contact order." *Report at 9*. This is merely speculation by the Magistrate. Timmons' attorney stated: your Honor, my comments are I don't know that there's actually been any admission by my client as to any contact.⁴ Timmons to this day has not been found in violation of the no-contact order. Timmons Affidavit, ¶ 9.

Timmons objects, to "counsel suggested that the prosecution used K.C. to manufacture a crime." *Report at 9-10*. All counsel asked is how many times K.C. met with the prosecution and if they were concerned about how she may testify. *DCD 2 at 19-20*. Counsel never suggested or even attempted to portray that the Prosecutor in any way intimidated or threatened K.C. to

⁴ Transcript of Jury Trial at 257: 1-3

manufacture a crime.⁵ The jury did not bite because they didn't even have a clue that there were serious credible threats against K.C. from the Prosecutor for testimony that did not match with the Prosecutors narrative. K.C.'s letter clearly demonstrates Timmons was denied the Constitutional Right to have a full defense that would have led to a probable acquittal.

6. Ineffective Assistance of Counsel

Timmons does not dispute. *Report at 10.*

7. Ground Three – Failing to Raise Issues in Post-Trial Motions and on Direct Appeal

Timmons objects, to "None of these issues are ones that counsel incompetently omitted or that the state habeas court unreasonably rejected." *Report at 11.* All 8 of the issues cited⁶ make it very difficult to conceive of a legitimate trial strategy or tactical advantages to be gained by not raising these issues. These issues demonstrate counsel's performance was deficient and no competent lawyer could have overlooked all of them, unless they were not interested in representing their client.

Timmons objects, to "the state court's rejection of these points was reasonable ... In sum, none of the points Timmons raises plausibly allege grounds for habeas relief." *Report at 12.* Again all of these issues⁷ demonstrate counsel's performance was deficient and no competent lawyer could have overlooked all of them, unless they were not interested in representing their client. For example, the Court records show [Timmons] never had violated his "No Contact Order", but yet this Magistrate states "Timmons could have discovered it during his several rendezvous with K.C. despite a no contact order." *Report at 9.*

⁵ The South Dakota Supreme Court stated in the Direct Appeal: Further [counsel] had the ability to discover any alleged threats by the State from K.C. by inquiring into her meetings with the State during his cross-examination of K.C. *State v. Timmons*, 2022 S.D. LEXIS 59, at *17 (May 18th 2022).

⁶ DCD 2 at 17; *Report at 11*

⁷ DCD 2 at 18; *Report at 12*

8. Ground Four – Glossy v. Print Photos

Timmons objects, to the Magistrate's flawed evaluation of Ground Four. *Report at 12-13.*

The Magistrate is mistaken, if he actually believes that the State's narrative was not so far elevated over counsels that it resulted in ineffective assistance. *Id. at 12.* The point is that, it is not just about the glitz and glam of the photos, but the intent. The State had taken many photographs of K.C.'s injuries at different intervals, at several different angles, inside and outside in full sunlight, to also include shortly after the alleged assault. In glaring contrast counsel did not take pictures of Timmons' injuries until days later, in a dimly lit jail cell, and on only a single occasion,⁸ counsel further added insult to Timmons' injuries by printing the photos on standard print paper and presenting those to the jury instead of equal quality photos presented by the prosecution which were printed on glossy photograph paper. This demonstrates how the Prosecutor did everything they could to appeal to the jury. Timmons' attorney did the opposite, he simply did not care.

Moreover, the Magistrate talks about the Jurors not being moths, which is correct they are human beings. *Report at 13.* The jury did evaluate the evidence that was presented and therein lies the problem. When a photo is printed on standard print paper it lacks the detail to evaluate the content displayed causing inaccuracy that most certainly did not help Timmons' case. Imagine you watch a football game from the 90's and then you watch a football game today in high definition 4K. Which one will you remember, be attracted to, or be more interested in. The game where the field is green (90's) or the one where you can see individual blades of grass on the field or freckles on a players face. Simply put, if the detail is not there to see, you just will not see it.

⁸ counsel did not even attempt to go to a conference room or somewhere with better lighting in the Jail

The Magistrate acts like the jurors were all lawyers and were to assume that, at one point Timmons' partially healed thumb was severely injured almost severed. Nope, one there was no instruction to the jury and two the jury saw a picture with barely any detail. To put a finer point on it, how often has the prosecution in any case submitted pictures on standard print paper? Close to zero. The reason being is a Prosecutor wants to present every detail and give it that pop. A defense lawyer knows the serious effects presentation can have and Timmons' Attorney made no effort to spend a few extra dollars and simply did not care what the jury would think. Worse, this ground clearly presents/demonstrates Timmons' Attorney in this case, which is to say he was either cheap, lazy, or simply did not care. Any of which or combination thereof prejudiced Timmons. Counsel was ineffective.

9. Ground Five – Medical Expert

Timmons objects, to "counsel was within his authority to weigh the use of a medical expert and recognize the little good it would do ... Timmons' imagination of what this expert would testify to is rank with speculation." *Report at 13-14.*

The state had the burden of proving that Petitioner was the cause of any alleged impeded breathing of K.C. A medical expert could have provided alternative theories and the examples cited by Timmons were not speculation, but facts of the case. *DCD 2 at 18-19.* An expert was necessary to counter Officer Brill's medical opinion that went un-objected to.⁹ The Magistrate was right that *Harrington v. Richter*, 562 U.S. 86, 107 (2011), noted counsel's discretion on how to "balance limited resources in accord with effective trial tactics and strategies." **The problem with that is Timmons' attorney did not call a single witness in Timmons' favor. It is difficult to conceive of a legitimate trial strategy or tactile advantage to be gained by not calling a single witness to counter the State's witnesses/experts.** This is another ground that

⁹ Brill testified the redness of K.C.'s neck were due to busted capillaries, inferring that it was strangulation

clearly shows Timmons' attorney was either cheap, lazy, or simply did not care. Any of which or combination thereof prejudiced Timmons. Counsel was ineffective.

10. Ground Six – Shortcoming in Cross-Examination

Timmons objects, to "Timmons['] theory is flawed for many reasons. For starters, K.C. could not answer for the prosecution why it was worried – only speculate. Counsel could not, therefore, have acted unreasonably in not pursuing this line of inquiry." *Report at 15.*

Unfortunately, for the Magistrate the South Dakota Supreme Court disagreed and stated it in the Direct Appeal: "Further [counsel] had the ability to discover any alleged threats by the State from K.C. by inquiring into her meetings with the State during his cross-examination of K.C." *State v. Timmons*, 2022 S.D. LEXIS 59, at *17 (May 18th 2022). *DCD 2 at 19.*

Timmons further objects, to "Besides what counsel had asked conveyed the point ... That the jury still believed K.C. is not attributable to poor lawyering, but the facts of the case." *Report at 15.* The Magistrate attempts to minimize the impact a threat of 30 years in prison for specific testimony compared to varying stories of what happened. The biggest issue that is being overlooked is why the Prosecutor threatened K.C. with perjury.¹⁰ It does not make sense why K.C. would be charged with perjury if she were to change her story at trial, because she was never deposed and never gave sworn testimony prior to trial. At most K.C. would have been charged with falsifying a police report if she testified truthfully that Timmons did not assault her. The point is whatever K.C. stated to the Prosecutor about what she wanted to testify to at trial caused the Prosecutor to threaten K.C. meaning the Prosecutor had to have felt it was significant enough to tank the Prosecution's case. This requires an evidentiary hearing to know what caused the Prosecutor to use perjury as a personal consequence.

¹⁰ Transcript of Sentencing at 19: 4-7

Moreover, the letter submitted to the Court by K.C., Timmons Affidavit, ¶ 6 **Exhibit A**, was at a minimum an attempt by K.C. to advise the Court that everything that she testified to may not be true.¹¹ One of the statements she states in there is she knew his intentions were not to hurt her, which goes to the heart of the case. Depending on the precise testimony K.C. wanted to give at trial it raises the possibility the trial could have resulted in a not guilty verdict.¹² The only way we can find out that testimony is with an evidentiary hearing and by asking K.C.

Timmons objects, to "Even though K.C. immediately had an opportunity to contradict what the Prosecutor said, she did not." *Report at 16*. The Judge, the Prosecutor, and the Defense Attorney did not ask K.C. about what the Prosecutor said and again this requires an evidentiary hearing.

Timmons objects, to "Even if the theory were true, every indication suggests K.C. would have maintained the rouse out of fear when counsel asked her about prosecutorial coercion." *Report at 16*. This is merely speculation by the Magistrate especially when K.C. knew she could go to prison for 30 years for what she wrote in the letter. The letter suggests K.C. did not testify at trial truthfully and every indication further suggests that whatever K.C. wanted to testify about at trial the Prosecutor thought it was severely harmful to the State's case. Ultimately, if K.C. is asked what she told the Prosecutor that day (prior to trial) it is more likely than not the outcome of the trial would have been different.

11. Ground Seven – Meth and Medication

Timmons objects, to "the chance is rare ... Timmons does not offer any exceptional circumstance to have justified a deposition." *Report at 17*. As Timmons stated he believed K.C.

¹¹ Note, despite the Prosecutor telling K.C. about the possibility of perjury K.C. was still willing to make an attempt to tell the Court she committed perjury at trial meaning she was willing to risk 30 years in prison in order to tell the Court that Timmons did not hurt her.

¹² Especially when the Prosecutor was spooked by whatever K.C. said, it could not have been good for the State's case.

was on meth at the time and was clearly under the influence of something to make her attack him. *DCD 2 at 21*. As stated by Timmons in Ground Thirteen K.C. always takes a situation and exaggerates it to make it extreme and get attention. *Id. at 36*. As stated by Timmons in Ground Fifteen K.C. admitted to the private investigator that she was the one who committed the assault not Timmons. *Id. at 38*. These facts were presented to Timmons' Attorney and were exceptional circumstances to necessitate a deposition. It was imperative to know which story K.C. was going to go with, preserving that testimony for trial especially if K.C. would have stated under oath at a deposition that she told the Private Investigator she assaulted Timmons, not Timmons assaulting her.

Moreover, pursuant to S.D. Codified Laws § 23A-12-8 (2025), "Nothing in this chapter shall preclude the taking of a deposition, for use at trial, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the Court." Therefore, due to the facts cited above if counsel wanted to be able to make informed and sound trial strategy a deposition was needed to know if K.C. was on meth or not in preparation for trial. Furthermore, when the Private Investigator informed counsel that K.C. admitted to assaulting Timmons not the other way around, it was necessary for counsel to have a hearing to record the testimony.¹³

Timmons objects, to any references by the Magistrate that Counsel's failure to investigate and/or question K.C.'s history of drug use may have been trial strategy. *Report at 17-18*. The Magistrate speculates that counsel "acted reasonably" and that it was not a lack of preparedness. This recommendation can be summarily rejected as it is baseless. This Ground as well as many others demonstrate counsel did not make an attempt to prepare for trial. Timmons Affidavit ¶¶ 10-11. A competent lawyer would have at least met with the client to discuss trial. *Id.*

¹³ S.D. Codified Laws § 23A-12-10 (2025) (Upon timely receipt of a notice that additional evidence has been newly discovered and for good cause shown, the Court may order an additional hearing to record the victim's testimony relevant to the newly discovered evidence on video.)

The complete lack of pretrial preparation denied Timmons the right to an “ample opportunity to meet the case of the prosecution,” and “the reliability of the adversarial testing process.” *Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986). In this case specifically, the importance of consultation with the client and pre-trial investigation was heightened where the physical evidence was less than conclusive and open to interpretation. Due to counsel’s inexcusable failure to even make an attempt to prepare for trial severely prejudiced Timmons. Having a warm body that did not prepare for trial does not satisfy the requirements of effective assistance of counsel.

Timmons **DOES NOT** object to “Timmons had no concrete basis for knowing K.C. was high that morning ... As Timmons describes it, counsel had neither – only Timmons[‘] belief based on K.C.’s history of drug use ... True, K.C. did admit to coming down from meth in her letter. **But that information was unavailable to counsel during trial.**” *Report at 18-19*.¹⁴ Therefore this letter did reveal new evidence that would have probably led to an acquittal in light of the evidence presented at trial. Timmons needs a new trial because the “[n]ewly discovered evidence¹⁵ material to the party making the application, which he could not with reasonable diligence have discovered and produced at the trial[.]” *SDCL § 15-6-59(a)(3)-(4)*.

The new revelation that K.C. was coming down from meth in the letter requires a new trial or Timmons would be denied his constitutional right to present a full defense. Counsel according to the Magistrate was never afforded an opportunity to consider a trial strategy in regards to K.C. coming down from meth at the time of the incident. Thus, would this now available evidence lead to a probable acquittal? Yes. The reason being is simple by taking a look at what the jury was told to do.

¹⁴ Respondents did not file an objection to this recommendation within 14 days.

¹⁵ “unavailable to counsel during trial” *Report at 19*.

Let's say that he was trying to restrain her. Now, you heard in that body cam video Mr. Timmons describe Karly as fragile. He had a lot of other things to say too, but that was one of them. Karly is fragile. And counsel got up here and said that Karly is mild and meek. He also said that if Mr. Timmons wanted to, he really could have hurt Karly. Okay ... If Mr. Timmons was defending himself, if this was about Karly going nuts and attacking him and Mr. Timmons is just defending himself, he doesn't have the right to use excessive force. And as counsel just said, he could have really hurt her if he wanted to, so he could have gotten her off. He's working in construction. She's, I think, probably 120 pounds stay-at-home mom. He does manual labor. I mean, you can look at the size difference, you can look at the age difference, you can look at the difference in demeanor and attitude. But, instead, he says I had to use nearly deadly force to restrain her. She was so crazy and out of control and coming at me and attacking me that I had to use nearly deadly force by strangling her. Now, it's up to you to decide whether you think that's a justification ... You have to look at what's reasonable. And he just told you what was reasonable. He could have gotten Karly off. He could have hurt Karly and he uses still potential deadly force.¹⁶

Timmons cannot emphasize the significance of K.C.'s meth use being unavailable at trial.

If it's unavailable, as the Magistrate has determined, then counsel cannot make a trial strategy therefore this Court in regards to the meth must determine if this new evidence could have produced a probable acquittal. It's unquestioned that Timmons had to restrain K.C.¹⁷

Therefore, what the jury heard is Timmons had to use all this force to restrain a 120lb, meek, and mild young lady. Clearly the jury thought that was excessive and not necessary because the jury did not know about the meth. Now, if you're a juror you get a complete different picture of what happened, instead of Timmons being excessive, he was defending himself from a violent, raging, drug induced person. As Timmons describes it, K.C. attacked him after he took her phone away in order to get her attention. She lunged from the couch and began to attack him. K.C. was very erratic swinging wildly at his head, neck, and body attempting to slap him and punch him. He tossed her to the bed, in an attempt to get her to quit hitting him. She again came at him attacking him swinging and slapping, he then again in an

¹⁶ Jury Trial Transcript at 238: 1-25 and 239: 1-7

¹⁷ K.C. testified to this. "Q. And why do you think he was putting his arm around your neck? A. To restrain me. Q. Okay, Do you think he was trying to hurt you? A. No." Jury Trial Transcript at 169: 3-7.

attempt to get her to stop re-directed her to the couch. K.C. kept coming and would not stop, he had to grab ahold of her wrists in order to get her to stop, but then she started kicking him. At that point K.C. got ahold of his thumb and began to bite down on it and would not let go. She tried to bite it off which caused Timmons to let her wrists go so he could attempt to get his thumb removed from K.C.'s clenched jaw. After K.C. released Timmons' thumb from her mouth they fell to the floor where he restrained or pinned her in the prone position without being on top of her. Timmons Affidavit, ¶¶ 12-37.

K.C. felt like she could not breathe because of her non-stop, ferocious attack on Timmons lasting for minutes. She was winded. There was no bruising on her neck the next day (Doctor's assessment) or the referred to next-day recording (un-produced officer body-cam video) indicating that any contact to the neck was minimal. Timmons claims he never choked her. Had Timmons actually strangled K.C. she would have had bruises and because he was so much bigger than her he could have killed her, but the evidence clearly shows otherwise.

The jury should have been informed that K.C. had been on meth and snapped. K.C. was the obvious aggressor she kept coming and coming and Timmons had to progressively attempt to get her to stop. The result was a pinning (not a choking) and K.C. eventually tired out. The victim in this case was convicted and the perpetrator got away with causing physical injury to Timmons leaving him with an almost severed thumb.

Timmons objects, to "In his cross-examination of the investigating officer, counsel probed whether K.C. may have been under the influence of any pain medication. What he received was not promising". *Report at 19*. The officer also told Timmons when they first started talking he was under arrest.¹⁸ The officer erroneously predetermined K.C. was the victim and did not pay close attention to whether she was coming down from drugs because his concern

¹⁸ Jury Trial Transcript at 54: 1-4

was about what allegedly happened to her. As the Magistrate noted the officer was not trained to run drug recognition tests. *Id.*

Timmons objects, to "K.C. may not have taken her prescriptions that day, causing her to suffer from mood swings. If the jury had followed that logic, then K.C. would have been prone to the same erraticism and aggression as if she were high on meth." *Report at 19.* First, counsel and the prosecution never asked K.C. if she did not take her medications that day or in the day(s) leading up to the incident.¹⁹ Thus, the jury did not know about K.C. not taking her medications. Second, the Magistrate's recommendation that the mood swings K.C. could suffer from not taking her medications are equivalent to as if she were high on meth are not comparable.

If K.C. had not taken her medications, as indicated by Timmons post-trial, there was no testimony or evidence at trial demonstrating that K.C. could be a danger to herself or to others. The biggest concern would be her having a Grand Mal seizure. K.C. not taking her medications would not have made her prone to commit a crime and she certainly would not be arrested and put in prison for forgetting to take her medications.²⁰ A person who takes/uses meth is a crime and can be sent to prison for a very long time because of the dangers meth poses, i.e., making individuals more prone to be violent and even deadly.

Third, the Magistrate ignores the compound effect on K.C. She did not take her medications,²¹ she was coming down from meth,²² and she was pregnant. All of which lead to the most important fact of the trial K.C. told both the Prosecutor and the Defense any alleged²³

¹⁹ Jury Trial Transcript 131-171

²⁰ Again, the Jury did not know K.C. did not take her medications and the Magistrate's recommendation that K.C. could have been prone to erraticism and aggression that day can be summarily rejected.

²¹ Jury did not know about

²² Jury did not know about

²³ No physical proof, no bruises on the neck according to the Doctor, which the jury also did not know about.

contact to the neck was to restrain her.²⁴ No one asked K.C. why she felt like he had to restrain her in the first place.

Timmons objects, to "Timmons has not generated the necessary doubt in his conviction to merit habeas relief on the issue." *Report at 20*. Timmons requires a new trial because he was denied his constitutional right to present a full defense. K.C. coming down from meth was unavailable until post-trial combined with the fact counsel was so ineffective that he was just a warm body sitting next to his client.

The Jury convicted Timmons because they were led to believe that he choked K.C. so violently her capillaries exploded (not true, more on that later) all because the TV was loud. Had the Jury known what actually happened with material facts such as the meth and not taking her medications it would have resulted in an acquittal. It is clear that K.C. snapped when Timmons took her phone and she just kept coming, persistently attacking. Timmons tried to get her to stop with the least amount of resistance possible that culminated in a pinning not a choking. The victim was convicted in this case and this Court is obligated to correct this miscarriage of justice.

12. Ground Eight – Investigating Officer

Timmons objects, to "counsel's alleged failings with the officer. None succeed." *Report at 20*. As will be shown below the Magistrate's opinion is flawed.

Timmons objects, to "Timmons believes that counsel should have played the next-day recording to show K.C.'s bruises around her neck had gone away. He is convinced that the bruises healing would have established that there "was no [] evidence of choking or strangulation."" *Report at 21*. Timmons never stated they "went away." There was **no bruising** the day prior. The officer stated "So when you experience that trauma, those capillaries burst and then that oxygen rich red blood is what pools to that area to where the trauma was. So when

²⁴ Jury Trial Transcript at 169: 3-5; 170: 23-25; 171: 1-2

I looked at [K.C.'s] injuries and her bruises specifically, they were red in color so I know that they had happened recently." *DCD 2 at 25*. The officer testified the bruises were red because they were so recent meaning they had not become the purplish, black, or yellowish color yet. Therefore, if as alleged by the non-medical expert Brill all these capillaries exploded, K.C. would have had significant bruising for days if not weeks.²⁵

The reason the State did not provide the officers body-cam recording of his next day meeting with K.C. was because it showed no bruising on K.C.'s neck. In the interest of justice, Timmons requests an evidentiary hearing and for the Court and both parties view this next day recording. It is simple, either K.C. has bruises/marks on her neck or she does not. If she does then this ground fails, but because the Doctor's assessment from the same day states no bruising,²⁶ it is more likely than not she has no bruises or marks on her neck. Timmons Affidavit, ¶ 38 Exhibit B.

K.C. not having bruising or marks on her neck is problematic to the State's case. Imagine you're a juror, your told these red marks are fresh bruising/trauma.²⁷ You would be thinking, oh my God of course he choked/strangled her = guilty verdict. However, if you're that same juror and you hear/see the Doctors assessment of no bruising and you see the next-day body cam recording showing no bruising you would be thinking wait a minute. You just told us all the capillaries exploded all over her neck due to violent trauma and were fresh bruising and it magically disappears in one day? Clearly the next day body cam recording does cast doubt on Timmons' conviction, paints an entirely different picture for the jury, and not having this next day recording denied Timmons' right to present a full defense requiring a new trial.

²⁵ Sometimes when you go to the Doctor and get blood drawn and you end up having a small bruise for a few days, same concept. If these capillaries exploded there would be evidence of that the next day.

²⁶ The Jury never got to see or hear due to ineffective counsel.

²⁷ They were not bruising, but scratches, likely defensive scratches from Timmons attempting to fend K.C. off of him.

Timmons objects, to "Timmons discounts K.C.'s bruising from the day of the incident". *Report at 21*. Timmons does not discount it, but disputes it because it was red scratch marks not bruises as proven by the Doctor's assessment and the next-day body cam recording.

Timmons objects, to "a nurse who saw K.C. the following day noted bruising on K.C.'s neck." *Report at 21*. When questioned, the nurse says she did not remember seeing bruising.²⁸ She then was given a document, what she had charted that day. The document revealed that the reason for the hospital visit was bruising.²⁹ The nurse admitted she does not do assessments because it is not under her scope of practice.³⁰ When you go to the Doctor during the normal course of business you see a nurse first. The nurse asks you a series of questions, i.e. - have you fallen in the last 3 months, what kind of medications are you on, why you're here today, etc. The point is the nurse is charting what you say, not making physical assessments because that is not their scope of practice. In this case, the Doctor who does have the scope of practice to make an assessment; assessed no bruises to K.C.'s neck meaning that it is more likely than not what the nurse charted is what K.C. told her. Either way it is a genuine dispute and again Timmons was denied the ability to present a full defense.

Timmons objects, to "counsel also never asked if the investigating officer had received his statutory-mandated domestic abuse training." *Report at 21-22*. The officer predetermined who was the victim and therefore could not have offered a fair assessment. Whether he received this training or not is an important fact that needs to be known in regards to his credibility with the jury.

Timmons objects, to "most of the officer's statements were what he saw, and what might teeter into the expert realm did not prejudice Timmons." *Report at 22*. The officer told the jury

²⁸ Jury Trial Transcript at 123: 3-6

²⁹ Jury Trial Transcript at 126: 4-5

³⁰ Jury Trial Transcript at 129: 4-5

the red marks on K.C.'s neck were from exploded capillaries; there is no way that was not prejudicial. The jury was under the impression that this was due to violent trauma rather than reality which was some scratches, i.e. - not strangulation/choking.

Timmons objects, to "counsel's statement must be taken for what it was: a joke bringing levity and building rapport with the witness and jury." *Report at 22*. The Magistrate's belief is merely conjectural. There is no proof this was a joke. Moreover, a juror could have taken it very seriously and discredited anything counsel said moving forward. This was a trial to determine if someone could potentially go to prison for decades. This was a serious matter and not a time for jokes. Given the trial record and the fact counsel was not interested in representing his client and according to this Magistrate counsel was more interested in jokes, it goes to what Timmons has repeatedly demonstrated, counsel pretty much did nothing. Seriously what did he do: did not want to jeopardize future deals with the Prosecutor, called no witnesses, did not discuss discovery or prep for trial with his client and his best action was helping the Prosecutor convict the victim in this case. Timmons understands Judges do not want to hold attorneys accountable, but this was so irresponsible it amounted to Timmons not even having an attorney. It is mandated that a person going to trial be afforded effective assistance of counsel. *See Sixth Amendment to the U.S. Constitution*.

Timmons objects, to "Timmons['] conviction is supported by more than the officer's singular contradiction." *Report at 23*. See above, the conviction was an error the victim of the case was convicted.

13. Ground Nine – Failure to Subpoena Disciplinary Reports

Timmons does not object, to "if the State had such materials, it needed to produce them regardless of whether a request had been made." *Report at 23*. Despite the Prosecution's

acknowledgment, they did not submit the next-day officer's bodycam recording showing K.C. had no bruising. *See previous ground.*

14. Ground Ten – Leading K.C. on Direct

Timmons objects, to this Ground because K.C. was not answering questions according to her account of what happened. She did not want to go to prison for 30 years for answering the Prosecutors questions incorrectly.³¹ *DCD 2 at 30.* Thus, the Prosecutor leading the witness was to have K.C. narrate the Prosecution's version of what happened.

15. Ground Eleven – Sequestration

Timmons does not object with the exception, it should be noted that K.C.'s letter post-trial indicated the Prosecutor threatened her with 30 years of imprisonment if she did not testify the way the Prosecutor wanted. This means the Prosecutor very likely coached K.C. over the recess³² to foil any attempt to introduce the Exhibit. *Report at 25.* Timmons was not just robbed of the ability to introduce the pertinent Exhibits for its intended effect, this is also yet another point to prove that K.C. did not testify truthfully which contributed to Timmons' conviction. If K.C. was allowed to speak the truth she would have testified that she assaulted Timmons and he did not assault, did not choke, or did not strangle her.

16. Ground Twelve – Prejudicial Closing

Timmons objects, to "None of Timmons['] objections rise to that level." *Report at 26.* As will be shown below.

Personal Opinions)

Timmons objects, to "yet they are not inappropriate when used to refer to the evidence and summarize the case." *Report at 27.* The problem with these statements is that K.C. never

³¹ Which the jury did not know

³² Without an evidentiary hearing to ask K.C. we do not know for sure, however, the actions of the Prosecutor in K.C.'s letter leads to a reasonable inference that the Prosecutor did.

testified to them. The statements implied knowledge of additional facts not presented to the jury and injected the Prosecutor's personal feelings, opinions, and experiences into the case. *DCD 2 at 33*. It is difficult to consider a scenario more prejudicial to a Defendant than to have the Prosecutor tell the jurors that K.C. was fighting for her life and was scratching and clawing at her neck in an attempt to get Timmons' arm off, even though K.C. never testified to such conduct.

Id.

The two instances cited did cross the line. *Report at 27*. The Prosecutor minimized the seriousness of K.C.'s differing testimony and put her personal opinion of why it was differing. *Id.* She then added her barrage of personal statements and feelings with "We can all have sympathy for that". *DCD 2 at 34*. Therefore, Timmons objects to the "comment[s] was slight". The State used the closing argument to appeal to the jury's sense of outrage at what allegedly happened to K.C. and asked the jury for sympathy for K.C. The Prosecutor had made a ploy for the jury to make an emotional or sympathetic determination rather than a factual one.

Misstatement of the Record)

Timmons objects, to "That contention is hyper-technical and ineffective." *Report at 28*. There is a significant difference between feeling like you can't breathe and actually not being able to breathe, which is what the State was required to prove.³³

Timmons objects, to "But the two are not exclusive". *Report at 28*. The Magistrate overlooks what K.C. said, that he was trying to restrain her and the implications therefrom. The question that must be asked is why did K.C. believe Timmons was trying to restrain her?³⁴ Timmons disputes any notion that he choked her and only pinned her to the ground in order to

³³ If someone thought about killing somebody but actually didn't, should they be charged with murder? Same concept. It is clear from the evidence, K.C. feeling like she couldn't breathe was from being winded because she kept attacking Timmons, relentlessly coming after him again and again.

³⁴ Despite all the inconsistencies in K.C.'s statements this is the one she never wavered from.

get her to stop assaulting him. Timmons Affidavit, ¶¶ 19-20. According to K.C.'s testimony she believed there was a need to be restrained demonstrating or implying that she was out of control. As we know this lasted for some time meaning it is clear that K.C. would have been winded.³⁵ There was no physical evidence of choking, no bruising and no marks on the next-day officer's bodycam recording, or the Doctor's assessment, all we have is K.C. answering yes or no questions by the Prosecutor related to any alleged choking. The letter post-trial describing the threat by the Prosecutor casts serious doubt as to the truthfulness of these statements. Again the victim was convicted in this case.

Inflammatory Comment)

Timmons objects, to "But context shows it was not." *Report at 29*. Asking the jury to have sympathy for the alleged victim was inappropriate. The statement by itself may not have made the trial unfair; however, the statement does add to the tally of ineffectiveness by counsel and continues to demonstrate that Timmons practically did not have an attorney.

17. Ground Thirteen – K.C.'s Attention Seeking

Timmons objects, to "And regardless of the depth of counsel's investigation, he acted reasonably and within his professional judgment in deciding not to pursue the loose end. There is always a feeling that more can be done; but realism must eventually take hold when facing limited time and resources." *Report at 30*. This was not a feeling that more could have been done; it was a requirement that counsel do something. In this case specifically Timmons and K.C. are the only ones that know what did or did not happen. The State was required to prove the act of choking happened. First, Timmons was not allowed to testify despite wanting to. Timmons Affidavit ¶ 40. The only version of events the jury heard was from K.C., a person who

³⁵ Feels like she can't breathe.

has trouble telling the truth and blows everything out of proportion for attention.³⁶ The evidence in this case without K.C.'s manipulated words by the Prosecutor would have not been sufficient for a conviction because none of the evidence proves choking.

Yes, K.C. did testify that she would do things to make others happy. *Report at 31*. Timmons objects to any implication that this is the equivalent of a liar and someone who exaggerates or blows things way out of proportion.

18. Ground Fourteen – Testifying

Timmons objects, to "Timmons never alleged coercion, he could not show any resulting prejudice." *Report at 33*. "Despite Petitioner's request to testify; counsel denied Petitioner this right." *DCD 2 at 37*. "If Petitioner was allowed the opportunity to testify". *DCD 2 at 38*. Timmons was not allowed to testify therefore coercion is implied.

The Magistrate is correct "the State habeas court dismissed the allegation ... without holding an evidentiary hearing." *Report at 32*. The Magistrate is also correct that the State habeas court's justification was incorrect or unreasonable.³⁷ The Magistrate correctly noted "The *Ice* court decided that the petitioner had waived his right to testify; absent from its ruling was any connection between coercion and prejudice." *Report at 33*.

First, the reason Timmons was not allowed to testify was because of an alleged deal made between the Prosecutor and his counsel. Timmons Affidavit, ¶ 40. If this is true then the Prosecutor and counsel conspired to deny Timmons his right to testify or if it is false and no deal was made then counsel lied to Timmons to get him not to testify. Either way his right was violated.

³⁶ The Jury did not know about.

³⁷ The State habeas court reasoned that according to *Ice v. Weber* Timmons was required to explain how counsel coerced his silence. *Report at 32*.

It is true that the Court does not have a record to evaluate Timmons' desire to testify due to the State habeas court's unreasonable application of case law. However, Timmons objects, to "But one is unnecessary for Timmons['] petition. That is because his proffered testimony casts no doubts on his conviction. Timmons['] recitation of what happened includes him putting "force[] against [K.C.'s] neck," (which would strengthen the finding he choked her) ... the testimony [would] have hurt Timmons['] case [.] *Report at 33-34.*

The Magistrate misrepresents what Timmons stated.³⁸ What happened is when K.C. pulled Timmons' thumb to her mouth and was biting down on it, in order to separate his thumb from her mouth he had to use his other arm/hand to reach over K.C.'s left shoulder from behind in order to pull her away from his other hand. Affidavit ¶ 17. In no way did this hurt K.C. In no way did this amount to a choking or strangulation. In no way was there any pressure against K.C.'s neck and at most lasted 1-2 seconds. Timmons Affidavit, ¶ 41.

Timmons objects, to "it may have also exposed him to more criminal charges." *Report at 34.* K.C. testified that she and Timmons violated the no-contact order. The Prosecutor prior to trial knew K.C. had been in contact with Timmons. The record is clear that the Prosecutor despite having this knowledge did not request a hearing to violate Timmons for the contact and certainly never charged him with more criminal charges. Therefore, there is no reasonable inference that would indicate Timmons would have faced more charges for this testimony. Moreover, the conversation cited by the Magistrate was prior to Timmons being arrested and prior to the no-contact order. Timmons Affidavit, ¶ 46.³⁹

³⁸ "Petitioner tried to step to the side, but because K.C. was biting down on his thumb, he could not get it released from her mouth and the forearm may have grazed her neck or been forced against her neck until she released his thumb from her mouth." *DCD 2 at 37.*

³⁹ Jury Trial Transcript at 35-36 Where Brill testifies this alleged contact occurred on April 10th 2020, the day after the incident.

Timmons objects, to “appears to admit to causing the bruises around K.C.’s neck during their fight, but then attributes the bruising to “rough sex” a few nights before.” *Report at 34*. First, there was no bruising from the “rough sex” two nights prior, there was no bruising on the neck the day of the incident,⁴⁰ and no bruising on the next day bodycam recording and Doctor’s assessment. Timmons did have “rough sex” with K.C. two nights prior. K.C. had asked Timmons to choke her. Timmons Affidavit, ¶ 42. Timmons finds it very odd that two days later K.C. says he choked her. Timmons Affidavit, ¶ 43.

Timmons objects, to “That Timmons never took the stand did not prejudice him.” *Report at 34*. The Jury only heard K.C.’s (Prosecutors) version⁴¹ of what allegedly happened. Had the Jury heard Timmons testimony and believed him⁴² that all he did was remove K.C. from his thumb and pinned her to the ground to get her to stop assaulting him or injuring herself, i.e. no choking, then he would have been acquitted. Yes Timmons was prejudiced severely the victim was convicted and received a 15 year prison sentence.

19. Ground Fifteen – Private Investigator

Timmons objects, to “*Stouffer* is different from what Timmons alleges here ... what K.C. confirmed on cross-examination is not too far off from what Timmons purports the investigator would have testified to.” *Report at 35*. The investigator would have testified that K.C. told him that “[she] was the one who committed the assault (not Timmons).” *DCD 2 at 38*. Additionally, K.C. stated that all of her alleged bruises, marks or scratches were from her attacking Timmons, including the redness and scratches on her neck. *Id.* K.C. testified that Timmons wrapped his arm around her neck and she felt like she couldn’t breathe, but she told the investigator that did not happen and she was the one who assaulted Timmons.

⁴⁰ The pictures revealed redness and scratches.

⁴¹ K.C. was threatened with 30 years in prison for certain testimony.

⁴² Credibility determinations are reserved for the jury.

20. Ground Sixteen – Failure to Request Discovery and Investigate

Timmons objects, to the Magistrate's recommendation that his allegations are unspecific, conclusory, or speculative. *Report at 35*. Timmons had cited several examples of where counsel had failed to do any investigation. *DCD 2 at 39-44*. This was done to demonstrate counsel's lack of interest in representing Timmons. It would have been one thing if he would have conducted a sufficient investigation and made strategic choices, however, that is not what happened here. Counsel did not want to defend Timmons.

Timmons objects, to "that mischaracterizes the officer's testimony, **who only testified** to what he observed when interviewing her." *Report at 36*. The officer testified about how bruising occurs in your body⁴³ and went on to say incorrectly that "when you experience that trauma, those capillaries burst and then that oxygen rich red blood is what pools to that area to where the trauma was." *DCD 2 at 25*. Moreover, the Magistrate's statement is contradicted by his earlier representation that "most of the officer's statements were what he saw, and what might teeter into the expert realm did not prejudice Timmons." *Report at 22*. It did prejudice Timmons because the jury was allowed to accept the medical opinion as evidence that K.C.'s capillaries on her neck exploded due to trauma; it wouldn't take much to conclude she had to have been choked, i.e., guilty verdict based on impermissible opinion.

Timmons objects, to "Timmons['] allegation that counsel failed to interview K.C. is contradicted by his earlier representation that a private investigator had spoken with her. Habeas relief is inappropriate on this claim." *Report at 36*. The Judge mischaracterizes this fact's implication. If a private investigator comes back saying that she assaulted the client not the other way around, should have prompted counsel to get that testimony on the record leading to a dismissal. Habeas relief is appropriate.

⁴³ A medical opinion.

21. Ground Seventeen – Conflict of Interest

Timmons objects, to “But now Timmons has had a change of heart, believing counsel’s acquiescence was ineffective lawyering.” *Report at 37*. Timmons always believed it was wrong since the beginning of trial. Timmons Affidavit, ¶ 44.

Timmons objects, to the Magistrate’s belief that this claim is speculative. *Report at 37*. As Timmons clearly stated the Judge admitted that the law clerk would help with research and jury instructions, which is a vital role in a jury trial. *DCD 2 at 44*. Not only was this an issue at trial with jury instructions but also with the Motions filed Post-Trial. *Id.* Let’s face it, if the arsonist is asked if they started the fire are they going to say, yes, it was me? Not likely.

The Magistrate states there is “nothing to suggest the clerk’s participation prejudiced” Timmons and “cannot even guess how the clerk exercised his fidelity to the State.” *Report at 37*. If there was no evidence in this case the Magistrate would be correct, however, when reviewing the record that is not the case.

First, the Prosecutor offered a job to a clerk who was clerking a case the Prosecutor was working on. Looks bad. Next, we have evidence that the same Prosecutor threatened K.C. with 30 years in prison for certain testimony. It is “utterly bonkers” to think a Prosecutor willing to make these threats, offering a job to a clerk on her case, and to think that is ok. *Wilson v. Midland Cnty.*, 116 F.4th 384, 387 (5th Cir. 2024) (enbanc).

Most importantly, *SDCL 16-2, Appx. A Canon 1 and 2* State a Judge shall Uphold the Integrity, Impartiality and Independence of the Judiciary and a Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge’s Activities. That certainly did not happen.

Ultimately, Timmons requests a fair trial, a trial that does not have the appearance of a law clerk and a Prosecutor working together. Furthermore, it looks much worse when the victim in the case is convicted.

22. Ground Eighteen – Juror(s) Access to Legal Pad

Timmons objects, to “did not call for an objection and that Timmons[‘] alleged prejudice was speculative.” *Report at 38*. It was not speculative. You have a Prosecutor threatening the alleged victim with 30 years of prison, you have a Prosecutor offering a job to a law clerk on the case, you have a Prosecutor making a deal with counsel to call no witnesses, and you have a Prosecutor that now leaves her legal pad with all her notes out for anyone to see. This is too good to be true. Talk about manipulating a trial (law clerk (Judiciary), counsel (Defense), Jury). Given the actions of the Prosecutor who knows what she wrote on that legal pad other than it did not help Timmons. Given the Prosecutor’s motives it would not be surprising if she wrote, damn I wish we could introduce that confession of Timmons where he said he strangled that bitch because she woke him up.⁴⁴

You get the point, all Timmons wants is a fair trial which he is yet to receive. Again the victim was convicted.

23. Ground Nineteen – Doctors Assessment

Timmons objects, to “charted her observations.” *Report at 38*. When questioned, the nurse says she did not remember seeing bruising.⁴⁵ She then was given a document, what she had charted that day. The document revealed that the reason for the hospital visit was bruising.⁴⁶ The nurse admitted she does not do assessments because it is not under her scope of practice.⁴⁷

⁴⁴ A complete lie.

⁴⁵ Jury Trial Transcript at 123: 3-6

⁴⁶ Jury Trial Transcript at 126: 4-5

⁴⁷ Jury Trial Transcript at 129: 4-5

Timmons objects, to "The nurse would not have been a competent witness to opine on the doctor's assessment. The state habeas court's decision to that effect is reasonable." *Report at 39.* Counsel could have and should have asked when the Doctor did his assessment why did he chart no bruising on the neck? The reason this question could be asked is because it directly contradicted her earlier statement. Regardless of how the nurse answered⁴⁸ it would have killed her credibility with the jury. Instead the jury was led to believe that she was credible and confirmed medical expert Officer Brill's incorrect opinion on bruising = guilty verdict for the victim of this case.

Timmons objects, to "it is simply silent on whether bruising is visible." *Report at 39.* The Magistrate's statement is merely speculative or a biased guess. The evidence is to the contrary as the Doctor did chart large bruises on her upper arms which goes to show he did document bruising but did not see any on K.C.'s neck. *DCD 15-1.* Especially, when the reason for the appointment was for "bruising." *Id.* Additionally, to suggest the Doctor failed to make a complete assessment is difficult to reconcile. At a minimum it casts doubt about Officer Brill's medical opinion that all these capillaries exploded due to severe trauma.

Timmons objects, to "yet it logs K.C. feeling "[m]ild diffuse pain" in her neck, as well other signs of a fight such as." *Report at 39.* First, K.C. feeling mild pain is not physical evidence that she was choked or strangled.⁴⁹ K.C. was known to exaggerate and she did not want to even go to the Doctor she was pressured to go. Timmons does not dispute that there were signs of a fight, he almost lost his thumb and had to defend himself from a violent drug induced person. The signs of a fight do not prove choking or strangulation which is what the

⁴⁸ (1) I charted what K.C. told me or (2) I don't know

⁴⁹ K.C.'s admitted pain especially in her neck and jaw would be more attributable to her being on meth. Any former meth addict would agree a side effect of using meth is clenching of the jaw as well as being hyper fixated on things (ones phone) keeping the neck bent/flexed for hours without a rest. K.C. having her head on the armrest of the couch all night could have easily been the cause of her neck pains.

State was required to prove. The Doctor's assessment casts doubt that there was choking or strangulation and is further supported by the next day bodycam recording showing no bruising or marks on K.C.'s neck. Habeas relief is warranted.

24. Ground Twenty – Expert Witness

Timmons objects, to “while the Court does not condone using the term, it was not prejudicial. The statement offers nothing worthy of habeas relief.” *Report at 41*. It is difficult to consider any scenario where it would not have been prejudicial. Imagine, you're a juror trying to decide whether there was a crime or not and this expert tells you there was a victim and the victim was female. It is difficult to conceive that the jury did not give this serious weight; this was an expert.

The expert's testimony was argumentative conveying the speaker's opinion that there was a crime violating the presumption of innocence. *DCD 2 at 47-48*. The testimony was supposed to be “helpful to the jury, without usurping the jury's role of assessing the victim's credibility and whether the abuse actually occurred.” *United States v. Kiekie*, 261 F.3d 761, 766 (8th Cir. 2001). *DCD 2 at 48*. The expert testifying about male privilege excessively compounded the egregious prejudice Timmons already had suffered, especially when she stated that she knew the gender of the victim. Counsel's failure to object allowed testimony that otherwise should have been excluded by the Trial Court. *DCD 2 at 49*.

Timmons stated that counsel was “perhaps maybe” sleeping during the expert's testimony because he had to nudge him to make sure he was awake during the testimony. Timmons Affidavit, ¶ 45.

REASONS FOR GRANTING THE PETITION

Petitioner has made a substantial showing of the denial of Constitutional rights. As for the Eighth Circuit Courts of Appeals denial of his CPA, this was an error, as the threshold for issuing a certificate is relatively low. The Appeals Court should review an issue if "jurist could conclude the issues presented are adequate to deserve encouragement to proceed further". Miller-El v. Cockrell, 537 U.S. 322, 336, (2003).

Furthermore, the State Courts and both Federal Courts clearly show the violation of Petitioner's U.S. Const. rights under the 5 and 6th Amendment as stated in the Statement of the Case.

Furthermore the State Courts and both Federal Courts issued opinions that conflict with well established Federal Court's Case Law as so stated in the Statement of The Case. Its like the Courts wanted their cake and eat it to, as well as the States Attorney General. This is contrary to the following case(s):

Harrington v. Richter, 562 U.S. 86, 107 (2011)

Kimmelman v. Morrisison, 477 U.S. 365, 385 (1986)

Wilson v. Midland Cnty. 116 F.4th 384, 387, (5th Cir. 2024);

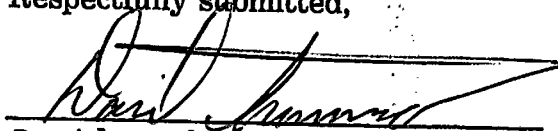
As you can see from the facts as stated herein, that an innocent man is stuck in Prison with no means of bringing forth the truth and clearing his name. It is a well established fact that in our Country if a man can show he is innocent of a crime the Court should do everything in its power to see that Justice is afforded to him.

Dated this 23 day of February, 2026.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



David Paul Timmons #47736
Mike Durfee State Prison
1412 Wood St.
Springfield, SD 57062

ACKNOWLEDGMENT

SUBSCRIBED AND SWORN, to before me now this 23rd day of February, 2026



Notary Public-SOUTH DAKOTA

My Commission Expires: 3-7-2028

SEAL:

