

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 30765

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

RONALD TRIBBLE,
Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

HONORABLE MARK BARNETT
Circuit Court Judge

APPELLANT'S BRIEF

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Notice of Appeal Filed on July 16, 2024

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

No. 30765

RONALD TRIBBLE,

Defendant and Appellant.

PART A

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as "SR." The transcript of the Arraignment Hearing held September 18, 2023, is referred to as "ARR." The transcript of the Jury Trial held May 23, 2024 is referred to as "JT1." The transcript of the Jury Trial held May 24, 2024 is referred to as "JT2". The transcript of the Sentencing Hearing held July 1, 2024, is referred to as "ST." All references are followed by the appropriate page number. Defendant and Appellant, Ronald Tribble, is referred to as "Tribble."

JURISDICTIONAL STATEMENT

Tribble appeals the Judgment and Sentence entered July 08, 2024, by the Honorable Mark Barnett, Retired Circuit Court Judge, on Tribble's conviction on

Abuse or Cruelty to Minor Victim and Driving Under Influence- 5th Offense or Subsequent. SR 105. Tribble timely filed his Notice of Appeal on July 16, 2024. SR 227. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2.

STATEMENT OF CASE

On September 13, 2023, the Minnehaha County Grand Jury returned an indictment against Tribble for the following charges: Count 1, Abuse or Cruelty to a Minor, on August 28, 2023, in violation of SDCL 26-10-1; Count 2- Driving Under Influence, on August 28, 2023, in violation of SDCL 32-23-1 (1); and Count 3- Driving Under Influence, on August 28, 2023, in violation of SDCL 32-23-1(2). SR 7. The State filed a Part II Information against Tribble alleging Count 2 and Count 3 of the indictment to be a 5th offense Driving Under Influence, in violation of SDCL 32-23-1, 32-23-4.5, 22-18-36; and/or 22-16-41. SR 9.

A Jury Trial was held on May 23, 2024 and May 24, 2024. *See generally* JT1 and JT2. No significant motions had been filed prior to the Jury Trial in this case. *See generally* SR. A jury, duly empaneled, returned a verdict of guilty as to Count 1, Abuse or Cruelty to a Minor; Count 2, Driving Under Influence; and Count 3, Driving Under Influence. JT2 33. Immediately proceeding the guilty verdict, Tribble was advised and plead guilty to the Part II Information in this case. JT2 34-45.

Sentencing was held July 1, 2024. *See* ST. On Count 1, Judge Barnett imposed 6 years in the South Dakota State Penitentiary with credit for 66 days previously served. ST 18. On Count 2, Judge Barnett imposed 4 years in the

South Dakota State Penitentiary with credit for 66 days previously served. ST 18. Count 1 and Count 2 were ordered to run concurrent to each other. ST 18. The Judgment and Sentence was entered on July 08, 2024. SR 112.

STATEMENT OF FACTS

On August 28, 2023, Tribble brought his son to Little Hands Little Feet Daycare located on 601 South Cleveland Avenue in Sioux Falls. JT1 107; 109. After dropping off his son, Tribble made contact with daycare employee Cara Demand inside the daycare at roughly 7AM. JT1 110. The two had a brief exchange, during which time Cara observed indicators of impairment on Tribble. JT1 111. Tribble then left the daycare. JT1 111. Shortly after, Cara was advised by a coworker that there was yelling coming from the daycare parking lot. JT1 111. Cara observed Tribble's car touching another car in the parking lot, license plate to license plate. JT1 111-112. Tribble was observed outside of his vehicle talking to the other driver in the parking lot. JT1 112. Shortly after, Tribble left the daycare. JT1 113. Cara then called law enforcement to make a report. JT1 113.

Officers were dispatched to the daycare at roughly 8:32AM. JT1 113. After speaking to Cara, the officers spoke to the driver of the other vehicle, Salome Flomo. JT1 121. Salome indicated that she also observed indicators of impairment while interacting with Tribble. JT1 97. Salome also indicated that her vehicle received minor damage as a result of this event. JT1 99. Officers photographed Salome's vehicle at a different location. JT1 103. After interviewing Salome, officers went to Tribbles address at 901 North Cleveland Avenue, in Sioux Falls.

JT1 121. Tribble's vehicle was observed in the apartment parking lot and was subsequently photographed. JT1 121.

Officer Maule observed some damage to the front of Tribble's vehicle consistent with a low speed crash but could not determine if this was new or old damage. JT1 123. Officer Maule then made contact with Shaina Demarrias at Tribble's apartment. JT1 124. Shaina called into the apartment for Tribble to come speak to the officers. JT1 124. Officers made contact with Tribble at roughly 9:11AM, and indicated they observed signs of impairment. JT1 125. Shaina spoke to Officers and showed them a bottle of New Amsterdam Peach Vodka in the apartment that Tribble was drinking. JT1 125. Tribble was arrested and brought to the jail where blood was then drawn. JT1 131. The sample was later tested at the State Health Lab and found to have a blood alcohol content of .307 percent by weight JT1 147.

COUNSEL'S STATEMENT

This case is being submitted pursuant to *South Dakota v. Korth*, 2002 S.D. 101, 650 N.W.2d 528.

Counsel for Tribble has thoroughly reviewed the record and discussed this case with Tribble. Counsel for Tribble also discussed the case with then trial counsel Edward Angel.

Upon reviewing the record and relevant authority, and discussing this case with Tribble and then trial counsel, counsel for Tribble has not identified any arguably meritorious issues for appeal.

Respectfully submitted this 7th day of January, 2025.

A handwritten signature in black ink that reads "Lisa Capellupo". The signature is written in a cursive style with a horizontal line drawn across the middle of the name.

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(605) 367- 4242

ATTORNEY for APPELLANT

PART B

Part B, as required by Korth, is meant to include the Appellant's submission, unedited by counsel. Counsel has informed Tribble that counsel could not find or present a non-frivolous issue. Counsel requested that Tribble provide counsel with a written statement or argument regarding all of the issues Tribble wishes to submit to the Court as Part B of this brief, including the grounds on which he contends he was denied his basic constitutional rights.

Counsel received the following verbatim response from Tribble:

I would like the south dakota supreme court to look into the fact my legal counsel did not provide me effective legal assistant through out this trial. As a result of my ineffective legal assistant of counsel which gave me a deficient performance at trial and render me a unfair and unjust verdict. The record will clearly reveal how ineffective my legal assistant of counsel was thourgh out my trial. My trial counsel fail to provide me a adequate and sufficient/ efficient defense at trial. My trial counsel fail to give objection through out my trial and he also fail to call me and my girlfriend to the stand to give testimony pertaining to this case. My blood being admitted into evidence is the first legal error in this case because of the simple fact I was at home consumeing alcohol at the time of my arrest. My girlfriend would have gave clear testimony to this because she is the one that gave the police my drink that I came home with after I drop my son off at daycare and I've been drinking at home every since I return home. The body cam video that is part of this case will show my girlfriend Shaina Demeairrias giving the police my drink on our balcony inside our home. Now due to that fact my blood should have never been admitted into evidence but my defensive counsel fail to object to the entry of my blood into evidence. From the time I return home up until the time I was arrested I have been consumeing alcohol in my home that whole time. The picture of my alcohol bottle that was admitted into evidence prove I was drinking inside my home. Due to these facts my blood should have never been admnitted into evidence. There was never a traffic violation, there was no reason for a stop, I never got pull over, theres no field sobriety test, no

dash cam video of me driving under the influence of alcohol or any facts that consistent with a dui traffic violation. The record will prove all this to be facts.

The second legal error I would like the supreme court to look into is the abuse cruelty to a minor conviction. The state said I expose my son to needless risk and found me guilty of that charge and I got sentence to 6 years at 100%. The thing with this charge is that I never expose my son to needless risk because I never drove with my son under the influence of anything. The state never prove I was under the influence of anything at the time I drop my son off. The state had they chemist give testimony about my bac at the time of my arrest at my home. Which was very high but at the same time I was in my home so my bac can be whatever inside my home. The state chemist gave false testimony stating at the time I drop my son off my bac was over the legal limit base on what my bac was at the time I was arrested at home which is impossible. There's no way possible the state chemist knew what my bac was when I drop my son off and there's no evidence supporting his statement that my bac was over the legal limit because I was arrested inside my home with a high bac. By him stating my bac was over the legal limit at the time I drop my son off with no proof miss lead the jury and made them believe I was drunk when I drop off my son with no proof and base on my bac at my home at the time of my arrest. I know that's a major legal issue because there's no way possible the state chemist knew what my bac was but he still gave a statement about my bac being high at the time I drop my son off. The state chemist should've stated it's impossible for him to know my bac without taking into account six different elements that goes along with the bac. He made up a number and miss lead the jury. Still my trial counsel fail to object to the state chemist testimony which I was convicted of a unfair and unjust trial. I ask the south dakota supreme court to grant me a new trial and new counsel. The record shows not one objection from my legal counsel.

The next issue I would like the south dakota supreme court to look into is the pictures of my car and the pictures of the other party car that was admitted into evidence. The damage done to those cars wasn't a result of an accident that occur in the daycare parking lot but they was admitted into evidence with the theory being that the damage done to both cars is a result of an accident that happen in the daycare parking lot and that's just not true and still my counsel fail to object to the entry of those pictures. The damage done to the buick is the result of a accident my girlfriend Shaina Demarrias got in and she could have gave testimony of that if I had effective

assistant of counsel. That would have called her to the stand to gave testimony about the damage done to that car. So those picture was given to the jury as proof of the accident that happen in the parking lot. As my legal counsel didnt object to and they found me guilty base on them pictures. The police officer gave testimony that the accident was a low impact accident and he couldnt say damage was done to eighther car. The daycare lady said there wasnt a accident at all. But still them pictures was entered into evidence as proof of an accident and right here the jury is miss lead again by the state and I was convicted at an unfair and unjust trail. The record will reflect that everything I've written in this statement is true and just. Again I ask to be granted a new trial and new counsel.

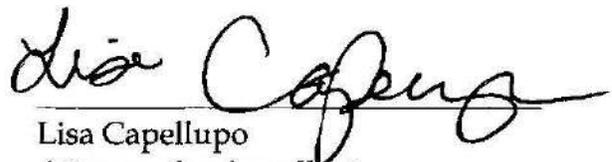


Ronald Tribble

CERTIFICATE OF COMPLIANCE

1. 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 2,309 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2024.

Dated this 7th day of January, 2025



Lisa Capellupo
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the APPELLANT BRIEF were electronically served upon:

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Dated this 8th day of January, 2025.

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APPENDIX

Judgment and Sentence.....A-1
Ronald Tribble Original ArgumentB-1

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
	: SS	
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,		PD23-018757
Plaintiff,	+	49CRI23005838
vs.	+	JUDGMENT & SENTENCE
RONALD TRIBBLE,		
Defendant.	+	

An Indictment was returned by the Minnehaha County Grand Jury on September 13, 2023, charging the defendant with the crimes of Count 1 Abuse or Cruelty to Minor-Victim Under the Age of 7 on or about August 28, 2023; Count 2 DWI on or about August 28, 2023; Count 3 DWI on or about August 28, 2023; Count 4 Driving Under Suspension on or about August 28, 2023; Count 5 Failure to Maintain Insurance on or about August 28, 2023; and a Part II Fifth Offense DWI Information was filed. The defendant was arraigned upon the Indictment and Information on September 18, 2023, Victoria Reker appeared as counsel for Defendant; and, at the arraignment the defendant entered his plea of not guilty of the charges in the Indictment.

The case was regularly brought on for trial, Aaron Lougheed, Deputy State’s Attorney appeared for the prosecution and, Edward Angel, appeared as counsel for the defendant. A Jury was impaneled and sworn on May 23, 2024, to try the case. The Jury, after having heard the evidence produced on behalf of the State of South Dakota and on behalf of the defendant on May 24, 2024, returned into open court in the presence of the defendant, returned its verdict: “We the Jury, find the defendant, RONALD TRIBBLE, guilty as charged as to Count 1 Abuse or Cruelty to Minor-Victim Under the Age of 7 (SDCL 26-10-1); guilty as to Count 2 DWI (SDCL 32-231(1)); not guilty as to Count 3 DWI (SDCL 32-23-1(2)); not guilty as to Count 4 Driving Under Suspension (SDCL 32-12-65(2)); not guilty as to Count 5 Failure to Maintain Insurance (SDCL 32-35-113).” The Part II Fifth Offense DWI Information (SDCL 32-23-4.7) was admitted to by the defendant. The Sentence was continued to July 1, 2024.

Thereupon on July 1, 2024, the defendant was asked by the Court whether he had any legal cause why Judgment should not be pronounced against him. There being no cause, the Court pronounced the following Judgment and

S E N T E N C E

AS TO COUNT 1 ABUSE OR CRUELTY TO MINOR-VICTIM : RONALD TRIBBLE shall be imprisoned in the South Dakota State Penitentiary, located in Sioux Falls, County of Minnehaha, State of South Dakota for six (6) years with credit sixty-six (66) days previously served (concurrent to Count 2) on the following conditions:

1. That the defendant comply with all terms and conditions of parole.
2. That the defendant pay \$116.50 court costs through the Minnehaha County Clerk of Courts; which shall be collected by the Board of Pardons and Paroles.

AS TO 2 DWI / FIFTH OFFENSE : RONALD TRIBBLE shall be imprisoned in the South Dakota State Penitentiary, located in Sioux Falls, County of Minnehaha, State of South Dakota for four (4) years with credit sixty-six (66) days previously served (concurrent to Count 1) on the following conditions:

1. That the defendant comply with all terms and conditions of parole.
2. That the defendant pay \$116.50 court costs, \$40.00 testing fee, and \$50.00 DWI fee through the Minnehaha County Clerk of Courts; which shall be collected by the Board of Pardons and Paroles.

It is ordered that the defendant's driving privileges are to be revoked immediately and for three (3) years upon release from custody.

It is ordered that the defendant shall provide a DNA sample upon intake into the South Dakota State Penitentiary, pursuant to SDCL 23 – 5A – 5, provided the defendant has not previously done so at the time of arrest and booking for this matter.

There to be kept, fed and clothed according to the rules and discipline governing the South Dakota State Penitentiary.

7/8/2024 10:39:23 AM

BY THE COURT:

 for
JUDGE MARK BARNETT
Circuit Court Judge

Attest:
Folk, Suzanne
Clerk/Deputy



Filed on:07-08-2024 Minnehaha County, South Dakota 49CRI23-005838

RONALD TRIBBLE, 49CRI23005838
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①

I WOULD LIKE THE SOUTH DAKOTA SUPREME COURT TO LOOK INTO THE FACT MY LEGAL COUNSEL DID NOT PROVIDE ME EFFECTIVE LEGAL ASSISTANT THROUGH OUT THIS TRIAL AS A RESULT OF MY INEFFECTIVE LEGAL ASSISTANT OF COUNSEL WHICH GAVE ME A DEFICIENT PERFORMANCE AT TRIAL ^{AND} RENDER ME A UNFAIR AND UNJUST VERDICT. THE RECORD WILL CLEARLY REVEAL HOW INEFFECTIVE MY LEGAL ASSISTANT OF COUNSEL WAS THROUGH OUT MY TRIAL. MY TRIAL COUNSEL FAIL TO PROVIDE ME A ADEQUATE AND SUFFICIENT EFFICIENT DEFENSE AT TRIAL. MY TRIAL COUNSEL FAIL TO GIVE OBJECTIONS THROUGH OUT MY TRIAL AND HE ALSO FAIL TO CALL ME AND MY GIRLFRIEND TO THE STAND TO GIVE TESTIMONY PERTAINING TO THIS CASE.

MY BLOOD BEING ADMITTED INTO EVIDENCE IS THE FIRST LEGAL ERROR IN THIS CASE BECAUSE OF THE ~~THE~~ SIMPLE FACT I WAS AT HOME CONSUMING ALCOHOL AT THE TIME OF MY ARREST. MY GIRLFRIEND WOULD HAVE GAVE CLEAR TESTIMONY TO THIS BECAUSE SHE IS THE ONE THAT GAVE THE POLICE MY DRINK THAT I CAME HOME WITH AFTER I DROP MY SON OFF AT DAYCARE AND I'VE BEEN DRINKING AT HOME EVERY SINCE I RETURN HOME. THE BODY CAM VIDEO THAT IS PART OF THIS CASE WILL SHOW MY GIRLFRIEND SHADIA DEMERZONS GIVING THE POLICE MY DRINK ON OUR BALCONY INSIDE OUR HOME. NOW DUE TO THAT FACT MY BLOOD SHOULD HAVE NEVER BEEN ADMITTED INTO EVIDENCE BUT MY DEFENSIVE COUNSEL FAIL TO OBJECT TO THE ENTRY OF MY BLOOD INTO EVIDENCE. FROM THE TIME I RETURN HOME UP UNTIL THE TIME I WAS ARRESTED I HAVE BEEN CONSUMING ALCOHOL IN MY HOME THAT WHOLE TIME. THE PICTURE OF MY ALCOHOL BOTTLE THAT WAS ADMITTED INTO EVIDENCE PROVE I WAS DRINKING INSIDE MY HOME. DUE TO THESE FACTS MY BLOOD SHOULD HAVE NEVER BEEN ADMITTED INTO EVIDENCE. THERE WAS NEVER A TRAFFIC VIOLATION, THERE WAS NO REASON FOR A STOP, I NEVER GOT PULL OVER, THERES NO FIELD SOBRIETY TEST, NO DASH CAM VIDEO OF ME DRIVING UNDER THE INFLUENCE OF ALCOHOL OR ANY FACTS THAT'S CONSISTENT WITH A DUI TRAFFIC VIOLATION. THE RECORD WILL PROVE ALL THIS TO BE FACTS.

(2)

THE SECOND LEGAL ERROR I WOULD LIKE THE SUPREME COURT TO LOOK INTO IS THE ABUSIVE
CROUITY TO A MINOR CONVICTION. THE STATE SAID I EXPOSE MY SON TO NEEDLESS RISK AND
FOUND ME GUILTY OF THAT CHARGE AND I GOT SENTENCE TO 6 YEARS AT 100%. THE THING
WITH THIS CHARGE IS THAT I NEVER EXPOSE MY SON TO NEEDLESS RISK BECAUSE I NEVER
DROVE WITH MY SON UNDER THE INFLUENCE OF ANYTHING. THE STATE NEVER PROVE I WAS
UNDER THE INFLUENCE OF ANYTHING AT THE TIME I DROP MY SON OFF. THE STATE HAD
THEY CHEMIST GAVE TESTIMONY ABOUT MY BAC AT THE TIME OF MY ARREST AT MY HOME.
WHICH WAS VERY HIGH BUT AT THE SAME TIME I WAS IN MY HOME SO MY BAC CAN BE
WHATEVER INSIDE MY HOME. THE STATE CHEMIST GAVE FALSE TESTIMONY STATING AT THE
TIME I DROP MY SON OFF MY BAC WAS OVER THE LEGAL LIMIT BASE ON WHAT MY BAC
WAS AT THE TIME I WAS ARRESTED AT HOME WHICH IS IMPOSSIBLE. THERES NO WAY
POSSIBLE THE STATE CHEMIST ~~KNOW~~ KNEW WHAT MY BAC WAS WHEN I DROP MY SON OFF
AND THERE'S NO EVIDENCE SUPPORTING HIS STATEMENT THAT MY BAC WAS OVER THE LEGAL
LIMIT BECAUSE I WAS ARRESTED INSIDE MY HOME WITH A HIGH BAC. BY HIM STATING
MY BAC WAS OVER THE LEGAL LIMIT AT THE TIME I DROP MY SON OFF WITH NO PROOF
~~LEAD~~ LEAD THE JURY AND MADE THEM BELIEVE I WAS DRUNK WHEN I DROP OFF MY SON
WITH NO PROOF AND BASE ON MY BAC AT MY HOME AT THE TIME OF MY ARREST. I KNOW
THATS A MAJOR LEGAL ISSUE BECAUSE THERES NO WAY POSSIBLE THE STATE CHEMIST KNEW
WHAT MY BAC WAS BUT HE STILL GAVE A STATEMENT ABOUT MY BAC BEING HIGH AT
THE TIME I DROP MY SON OFF. THE STATE CHEMIST SAHULVE STATED ITS IMPOSSIBLE
FER HIM TO KNOW MY BAC WITHOUT TAKING INTO ACCOUNT SIX DIFFERENT ELEMENTS THAT
~~GOES~~ GOES ALONG WITH THE BAC HE MADE UP A NUMBER AND MISS LEAD THE ~~JURY~~ JURY.
STILL MY TRIAL COUNSEL FAIL TO OBJECT TO THE STATE CHEMIST TESTIMONY WHICH I
WAS CONVICTED OF A UNFAIR AND UNJUST TRIAL. I ASK THE SOUTH DAKOTA SUPREME COURT
TO GRANT ME A NEW TRIAL AND NEW COUNSEL. THE RECORD SHOWS NOT ONE OBJECTION FROM
MY LEGAL COUNSEL.

(3)

THE NEXT ISSUE I WOULD LIKE THE SOUTH DAKOTA SUPREME COURT TO LOOK INTO IS THE PICTURES OF MY CAR AND THE PICTURES OF THE OTHER PARTY CAR THAT WAS ~~ADMITTED~~ ADMITTED INTO EVIDENCE. THE DAMAGE DONE TO THOSE CARS WASNT A RESULT OF AN ACCIDENT THAT OCCUR IN THE DAYCARE PARKING LOT BUT THEY WAS ADMITTED INTO EVIDENCE WITH THE THEORY BEING THAT THE DAMAGE DONE TO BOTH CARS IS A RESULT OF AN ACCIDENT THAT HAPPEN IN THE DAYCARE PARKING LOT AND THATS JUST NOT TRUE AND STILL MY COUNSEL FAIL TO OBJECT TO THE ENTRY OF THOSE PICTURES. THE DAMAGE DONE TO THE BUICK IS THE RESULT OF A ACCIDENT MY GOBLTOWNED SILVANA DEMARRIAS GOT IN AND SHE COULD HAVE GAVE TESTIMONY OF THAT IF I HAD EFFECTIVE ASSISTANT OF COUNSEL. THAT WOULD HAVE CALLED HER TO THE STAND TO GAVE TESTIMONY ABOUT THE DAMAGE DONE TO THAT CAR. SO THOSE PICTURE WAS GIVEN TO THE JURY AS PROOF OF THE ACCIDENT THAT HAPPEN IN THE PARKING LOT. AS MY LEGAL COUNSEL DIDNT OBJECT TO AND THEY FOUND ME GUILTY BASE ON THEM PICTURES. THE POLICE OFFICER GAVE TESTIMONY THAT THE ACCIDENT WAS A LOW IMPACT ACCIDENT AND HE COULDNT SAY DAMAGE WAS DONE TO EITHER CAR. THE DAYCARE LADY SAID THERE WASNT A ACCIDENT AT ALL BUT STILL THEM PICTURES WAS ENTERED INTO EVIDENCE AS PROOF OF AN ACCIDENT. AND RIGHT HERE THE JURY IS MISS LEAD AGAIN BY THE STATE AND I WAS CONVICTED AT AN UNFAIR AND UNJUST TRAIL. THE RECORD WILL ~~REFLECT~~ REFLECT THAT EVERYTHING I VE WRITTEN IN THIS STATEMENT IS TRUE AND JUST AGAIN I ASK TO BE GRANTED A NEW TRAIL AND NEW COUNSEL.

IN THE SUPREME COURT
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No. 30765

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

RONALD TRIBBLE,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE MARK BARNETT
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed July 16, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30765

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

RONALD TRIBBLE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Ronald Tribble, will be referred to as “Defendant” or “Tribble.” Plaintiff and Appellee, State of South Dakota, will be referred to as “State.” References to documents will be as follows:

Settled Record SR

Defendant’s Brief.....DB

All documents will be followed by its appropriate page number(s).

JURISDICTIONAL STATEMENT

Tribble appeals from his Judgment and Sentence issued by the Honorable Mark Barnett, Circuit Court Judge, on July 8, 2024. SR:112-13. Defendant filed his Notice of Appeal on July 16, 2024. SR:227.

This Court has jurisdiction in this matter pursuant to SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

PART A.

PURSUANT TO *STATE V. KORTH*, 2002 S.D. 101, 650 N.W.2D 528, APPELLATE COUNSEL DID NOT RAISE ANY ISSUES.

The State concurs with Defendant’s counsel that there are no arguably meritorious issues for appeal based on the settled record.

State v. Korth, 2002 S.D. 101, 650 N.W.2d 528

State v. Arabie, 2003 S.D. 57, 663 N.W.2d 250

PART B.

DEFENDANT HAS NOT RAISED A COHERENT LEGAL ISSUE THAT CAN BE IDENTIFIED AND ADDRESSED.

The circuit court did not rule on this issue.

State v. Korth, 2002 S.D. 101, 650 N.W.2d 528

State v. Arabie, 2003 S.D. 57, 663 N.W.2d 250

STATEMENT OF THE CASE AND FACTS

On September 13, 2023, a Minnehaha County Grand Jury filed a four-count Indictment charging Tribble with:

- Count 1: Abuse or Cruelty to a Minor, by exposing a minor under seven years of age to abuse, torture, torment or cruelly punish a minor, in a manner not constituting aggravated assault, on August 28, 2023, in violation of SDCL 26-10-1;
- Count 2: Driving Under the Influence or in actual physical control of any vehicle while there is .08 percent or more by weight of alcohol in the blood, on August 28, 2023, in violation of SDCL 32-23-1(1);

- Count 3: Driving Under the Influence or in actual physical control of any vehicle while under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription or any combination of alcoholic beverage, marijuana or such controlled drug or substance, contrary in violation of SDCL 32-23-1(2);
- Count 4: Driving a motor vehicle upon public highway at a time when his privilege to so do was suspended in violation of SDCL 32-12-65(2); and
- Count 5: While the driver or owner of a motor vehicle, failed to maintain in force one of the forms of financial responsibility on the motor vehicle, in violation of SDCL 32-35-113.

SR:7-8.

A Part II Information was also filed against Tribble. It alleged that he has two or more prior convictions for violations of SDCL 32-23-1, 32-23-4.5, 22-18-36 and/or 22-16-41. SR:9.

Defendant made his Initial Appearance on August 29, 2023.

SR:247. His arraignment took place on September 18, 2023, at which time the circuit court recited his constitutional rights. SR:264-71. Not guilty pleas were entered on all charges. SR:273.

Various motions were filed. Defendant filed motions for Discovery, Sequestering State's Witness, Disclosure of Other Bad Acts Evidence, Discovery of Impeachment Evidence, and motions to delay. SR:24, 28, 31-36. The State also filed motions regarding Reciprocal Discovery, Disclosure of Defense Witnesses, Disclosure of Third Party Perpetrator and Demand for Alibi or Insanity Defense motions. SR:11, 38-41.

On May 23, 2024, the jury trial began. Before the jury was

empaneled, the State dismissed Counts 4 and 5 of the Indictment. SR:315. The State's first witness was Salome Flomo. SR:393. She testified that on August 28, 2023, she dropped her daughter off at daycare around 6:45 a.m. SR:394-95. While in the daycare parking lot, she noticed a vehicle moving towards her. SR:396. She tried honking at the vehicle and then rolled down the window and began waving at the vehicle's driver in hopes of getting him to stop. That driver was later identified as Defendant. SR:397-98. Other people also began yelling at Defendant to stop but he ignored them all and hit Ms. Flomo's car, did not stop, but kept pushing her vehicle. SR:398. Ms. Flomo said that Defendant started cursing, swearing and threatening her and made her scared. SR:397-98. She was frightened when he inferred that later "he was going to find" her. SR:399. Another driver who witnessed the event told Ms. Flomo to call the police, but she did not because she was already running late for a job interview. SR:398.

Ms. Flomo stated that Defendant's eyes and speech reflected someone who was "drunk or sleepy." SR:400. She also stated that he damaged the headlight and bumper of her car. SR:401. A witness to the accident called the police. SR:401-02. Law enforcement later contacted Ms. Flomo and took photos of the car damage. SR:401-02.

The State then called Cara Demand who served as the assistant director of the daycare called Little Hands Little Feet. SR:408. She recalled that on August 28, 2023, Defendant dropped off his child at the

daycare and she spoke “face to face” with him. SR:411-12. Ms. Demand described how Defendant smelled of alcohol and he talked “slow.” SR:412. She said she also found it strange that he asked if he could buy her flowers. *Id.* Shortly thereafter, Ms. Demand heard yelling in the parking lot and saw Defendant’s car “against another car” that was Ms. Flomo’s. SR:413-14. Ms. Demand testified that Ms. Flomo moved her car, and Defendant left the parking lot. SR:415. Ms. Demand also contacted law enforcement. SR:415.

The State also called Sioux Falls Police Department Detective Geno Maule to testify. SR:419. He stated that on August 28, 2023, he was on duty and dispatched to the daycare following a call to law enforcement. SR:419, 422. He examined the damage on the front end of the car that appeared to result from a low-speed crash. SR:425.

Detective Maule eventually went to Defendant’s apartment and was greeted at the door by Defendant’s girlfriend, Shaina Demarrias. SR:426. Ms. Demarrias then called for Defendant. Detective Maule said that while he was in the apartment Ms. Demarrias showed him a 375-milliter bottle of New Amsterdam Peach Vodka that appeared half empty. SR:427-28. When the Detective encountered Defendant, he described him as having a hard time with his balance and was “unsteady.” SR:426-27. He also said Defendant’s eyes were “bloodshot” and “watery.” SR:427.

Detective Maule said he engaged Defendant in discussion and noticed that Defendant had “slurred speech” and considered Defendant to

be “highly intoxicated.” SR:429. Defendant was then arrested and transported Defendant to the Minnehaha County Jail, where a “blood draw” was conducted. SR:430-32.

The State next called Cody Geffre, a forensic chemist at the State Health Laboratory in Pierre, South Dakota. SR:441. The circuit court found him to be a qualified expert in forensic chemistry. SR:444. State’s Exhibit 14 was admitted into evidence; it contained Mr. Geffre’s findings after he conducted tests on Defendant’s blood sample. SR:448. He determined that Defendant’s blood alcohol content (BAC) was .307. SR:451. He further explained that for a 160-pound male to have a .307 would require “about 13 standard drinks in their system” with each drink being either a “12-ounce light beer, five ounces of wine, or an ounce shot of 80-proof liquor.” SR:451.

Mr. Geffre conducted “retrograde extrapolation” to estimate the blood alcohol content at the time he was driving. SR:452. In his expert opinion, Mr. Geffre found Defendant would have had a BAC above .08 at the time he was last seen driving. SR:455. Mr. Geffre also conducted an extrapolation on the theory that the half empty 375-milliliter bottle of Amsterdam Vodka was the source of alcohol in his blood when it was drawn. He testified that if he subtracted the contribution of the alcohol from the half empty vodka bottle, Defendant’s BAC at the blood draw would be around .203. SR:456. It was further estimated around the time

he was driving, approximately two hours and 15 minutes before the draw, he would have a BAC between .225 and .248. SR:456.

After the State rested its case, Defendant brought a motion for judgment of acquittal on all counts. SR:467-68. The circuit court found the State had presented sufficient evidence for all three counts and denied the motion. SR:472. The circuit court also asked Defendant if he has consulted with his attorney regarding presenting his own testimony. Defendant said that he had and that he did not want to testify. SR:481.

Closing arguments were held, and the jury deliberated. SR:633. Forty-two minutes later, the jury returned to the courtroom with a verdict of guilty on Counts I, II and III. SR:634-35. Defendant was then informed of his rights and penalties in reference to the Part II Information. SR:637-41. Defendant then plead guilty to the Part II Information. SR:641. A factual basis was taken regarding the four prior convictions. SR:642-46.

Defendant's sentencing took place on July 1, 2024. SR:282. He acknowledged that he has been convicted of seven misdemeanors and five felonies. SR:284. The circuit court commented that for being thirty-six years old, Defendant has accumulated several convictions. SR:298. Defendant argued to the circuit court that if he were sentencing himself, "I would actually sentence me to the, um, bare minimum of this case" SR:296. The circuit court commented that the pre-sentence investigation found Defendant scoring "poorly on [the] risk" of

reoffending. SR:297. The circuit court sentenced Defendant to six years on Child Abuse conviction, and four years on Driving Under the Influence conviction. SR:112-13, 299. The two sentences are to run concurrent to each other. *Id.*

ARGUMENTS

PART A

PURSUANT TO *STATE V. KORTH*, 2002 S.D. 101, 650 N.W.2D 528, APPELLATE COUNSEL DID NOT RAISE ANY ISSUES.

Defendant's attorney has filed a brief pursuant *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528. Defense counsel has made the statements required in that case, as well as in *State v. Arabie*, 2003 S.D. 57, 663 N.W.2d 250. Among other things, counsel stated that:

Counsel for Tribble has thoroughly reviewed the record and discussed this case with Tribble. Counsel for Tribble also discussed the case with then trial counsel Edward Angel.

Upon reviewing the record and relevant authority, and discussing this case with Tribble and then trial counsel, counsel for Tribble has not identified any arguably meritorious issues for appeal.

DB:4.

The State has also examined the settled record and likewise found no meritorious issues. The State believes that the governing standards for the filing of a "*Korth* brief" are set out in *Arabie*, 2003 S.D. 57, ¶¶ 8-18, 663 N.W.2d at 254-56. In examining Part A of the brief, it appears to comply with *Arabie*, in that it contains a thorough statement

of the case and facts and makes the required statements of counsel without raising any arguably meritorious issues. The State, therefore, requests that this Court affirm the Judgment of Conviction and Sentence.

PART B

DEFENDANT STATES VARIOUS COMPLAINTS REGARDING EVIDENCE, HIS COUNSEL AND THE JUDGE IN HIS CASE ARE WITHOUT MERIT.

I. *Part B Introduction.*

In reference to Defendant's Part B, if the Court identifies one or more "arguably meritorious" issues, it must notify Defendant's counsel of those issues and afford counsel time to file a supplemental brief addressing them. *Korth*, 2002 S.D. 101, ¶ 16 n.6, 650 N.W.2d at 535 n.6. If the Court finds such arguably meritorious issues, the Court must also afford the State time to file a supplemental response brief. *Id.*

Under this case law, the State has found no arguably meritorious issues despite an examination of the record. If, however, the Court should find any arguably meritorious issues, the State requests that it be granted sufficient time to respond to such additional briefing as Defendant's counsel may file. Should the Court not find such arguably meritorious issues, the State asks this Court to affirm Defendant's Judgment of Conviction and Sentence.

II. Defendant's Nonjurisdictional Claims Are Forfeited

Issues not preserved at the trial court level are forfeited for appellate review. *State v. Podzimek*, 2019 S.D. 43, ¶ 27, 932 N.W.2d 141,

149. A trial “court must be given an opportunity to correct any claimed error before [this Court] will review it on appeal.” *State v. Gard*, 2007 S.D. 117, ¶ 15, 742 N.W.2d 257, 261. To “preserve issues for appellate review, litigants must make known to trial courts the actions they seek to achieve or object to the actions of the court, giving their reasons.” *State v. Bryant*, 2020 S.D. 49, ¶ 18, 948 N.W.2d 333, 338; SDCL 23A-8-3 (listing issues that must be raised before trial). “A defendant must obtain a definitive ruling on the record admitting or excluding the evidence.” *State v. Birdshead*, 2015 S.D. 77, ¶ 53, 871 N.W.2d 62, 79.

A defendant can also forfeit issues at the appellate level by disregarding appellate procedure. SDCL 15-26A-60(4)¹ requires a concise statement of the legal issues and “a concise statement of how the trial court decided it.” *Miller v. Hernandez*, 520 N.W.2d 266, 272 (S.D. 1994) (plaintiff waived an issue by failing to assign it as a legal issue in the brief); *United States v. Sineneng-Smith*, 590 U.S. 371, 371-72 (2020) (“In both civil and criminal cases . . . we rely on the parties to frame the issues for decision.”). SDCL 15-26A-60(6) states that the argument section for each issue must contain “citations to the authorities relied on.” Failure to adequately present arguments and authority in a brief constitutes waiver on appeal. *Kern v. Progressive Ins. Co.*, 2016 S.D. 52, ¶ 35, 883 N.W.2d 511, 518; *State v. Fool Bull*, 2009 S.D. 36, ¶ 46, 766 N.W.2d 159, 169

¹ Per SDCL 23A-32-14, the statutes regarding civil appeals apply to criminal appeals as well.

(quoting *State v. Pellegrino*, 1998 S.D. 39, ¶ 22, 577 N.W.2d 590, 599).

Because Tribble failed to concisely state the legal issues and cite the legal authorities he relies on, his claims are waived for appellate review.

III. Ineffective Assistance

Throughout Defendant’s Part B, he makes a variety of complaints related to the effectiveness of his counsel. See DB:6. These include claiming his counsel “fail[ed] to give objection . . .” and failed to call certain witnesses and have other evidence admitted. *Id.*

Generally, this Court will not address ineffective assistance of counsel claims on direct appeal absent “exceptional circumstances.” *State v. Manning*, 2023 S.D. 7, ¶ 57, 958 N.W.2d 743, 759. Exceptional circumstances exist only when trial counsel’s representation was so casual and ineffective as to cause “a manifest usurpation of the defendant’s constitutional rights.” *State v. Vortherms*, 2020 S.D. 67, ¶ 30, 952 N.W.2d 113, 120-21. This Court generally eschews ineffectiveness claims on direct review “because the record on direct appeal typically does not afford a basis to review the performance of trial counsel.” *Id.* Rather, ineffective assistance claims are better heard through a writ of habeas corpus. *Manning*, 2023 S.D. 7, ¶ 57, 958 N.W.2d at 759; *Vortherms*, 2020 S.D. 67, ¶ 30, 952 N.W.2d at 120. “[T]hrough habeas, an attorney charged with ineffectiveness can explain or defend actions and strategies,” allowing this Court to “obtain a ‘more complete picture of what occurred.’” *State v. Gollither-Weyer*, 2016 S.D.

10, ¶ 9, 875 N.W.2d 28, 31-32. Given that there exist an undeveloped record and the record does not reflect “exceptional circumstances” regarding trial counsel’s performance, this Court should decline to address an alleged ineffective assistance of counsel claim on direct appeal. *State v. Washington*, 2024 S.D. 64, ¶ 40, 13 N.W.3d 492, 504.

Defendant then claims that his “second legal error . . . is abuse cruelty to a minor conviction.” DB:7. He makes an evidentiary complaint that “[t]he state never prove I was under the influence of anything at the time I drop off my son off.” DB:7. To reach his conclusion, Defendant must dismiss the evidence at trial. Two different witnesses encountered him at the daycare. One was Ms. Flomo, who said that Defendant’s speech and eyes appeared like someone who was “drunk or sleepy.” SR:397-400. A second witness, Ms. Demand, said she was “face to face” with Defendant who was talking slow and smelled of alcohol. SR:411-12. There also was expert testimony by Mr. Geffre, who estimated the blood alcohol content was above .08 at the time he was last seen driving. SR:455. Despite Defendant’s desire to have the evidence retried on appeal, “this Court will not resolve conflicts in the evidence, assess the credibility of witnesses, or reweigh the evidence.” *State v. Fasthorse*, 2009 S.D. 106, ¶ 6, 776 N.W.2d 233, 236.

At the conclusion of the State’s evidence, Defendant moved for a judgment of acquittal on all counts. SR:467-68. Defendant specifically claimed that the State failed to make a prima facia case for Count 1, child

abuse. SR:468. The court denied the motion having found “sufficient evidence for all three counts to go to the jury.” SR:468-69, 472. The jury also found the State’s evidence proved beyond a reasonable doubt that Defendant was guilty of child abuse.

Defendant’s Part B also makes a general complaint that the State admitted photos showing damage to the cars. DB:7. He claimed that the damage did not occur at the daycare. *Id.*

The photos were admitted during the testimony of Ms. Flomo, who Defendant ran into. SR:402. She testified that the photos “fairly and accurately depicted the state of [her] car on” August 28, 2023. *Id.* Defendant did not object to the admission of the photos at trial. *Id.* The State responds that Defendant’s convictions did not require damage to his or Ms. Flomo’s car. Evidence that was necessary, dealt with Defendant’s intoxicated state that morning, and was directly testified to by Ms. Flomo and indirectly by Mr. Geffre.

CONCLUSION

It is a prosecutor’s overriding obligation to seek justice and see that a defendant receives a fair trial. *State v. Brandenburg*, 344 N.W.2d 702, 705 (S.D. 1984). That has occurred here. The State responds to Defendant’s Part B by affirming the view of Defendant’s attorney, that there is not a coherent legal issue set forth to be identified and addressed. Because no arguably meritorious issues have been raised for appellate review and no arguably meritorious issues exist, the State

respectfully requests that appellant's Judgment and Sentence be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ John M. Strohman

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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 2,859 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 4th day of February, 2025.

/s/ John M. Strohman
John M. Strohman
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of February, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Ronald Tribble*, was served electronically through Odyssey File and Serve on Lisa Capellupo at lcapellupo@minnehahacounty.org

/s/ John M. Strohman
John M. Strohman
Assistant Attorney General



Minnehaha County Public Defender

February 26, 2025

Ms. Shirley Jameson-Fergel
Clerk of the Supreme Court
500 E. Capitol Avenue
Pierre, SD 57501

RE: State of South Dakota v. Ronald Tribble 30765

Dear Ms. Jameson-Fergel,
Please be advised that upon reviewing the brief submitted by Appellee in the above-entitled matter, Appellant has decided not to reply to Appellee's Brief. Defendant requests this Court to rely on arguments and issues addressed in Defendant's Korth brief submitted to the Court on January 8th, 2025.

Sincerely,

Lisa Capellupo
Deputy Public Defender

LC/sms



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