

<p>Court of Appeals, State of Colorado 2 East 14th Ave., Denver, CO 80203</p> <p>Postconviction Appeal; Arapahoe County District Court; Honorable Eric B. White; Case Number 09CR1113</p>	<p>DATE FILED December 17, 2024 5:06 PM</p>
<p>THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>COREY RAY ALBAT,</p> <p>Defendant-Appellant.</p>	
<p>Attorney for Defendant-Appellant Krista A. Schelhaas (Alternate Defense Counsel) Schelhaas Law LLC PO Box 621355 Littleton, CO 80162 (303) 803-4750 kschelhaas@comcast.net Attorney Reg. No. 36616</p>	<p>Case No. 24CA714</p>
<p>OPENING BRIEF</p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

1. The brief complies with the applicable word limits set forth in C.A.R. 28(g). It contains 4,120 words.
2. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A). For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Krista A. Schelhaas  
Krista A. Schelhaas

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## STATEMENT OF THE ISSUE

Whether trial counsel rendered ineffective assistance of counsel for failing to investigate and pursue an intoxication defense.

## STATEMENT OF THE CASE AND FACTS

Corey Ray Albat shot his friend, Kyle Lathrop, during what police believed to be a dispute over \$250. CF, p 315. Mr. Lathrop and another man, Travis Snow, drove across town to collect the debt. *Id.* When Mr. Albat first approached the vehicle, he did not have the money. *Id.* He told Mr. Lathrop he would return with it. *Id.* According to Mr. Snow, Mr. Lathrop said, “Don’t be coming back strapped, because I’m strapped.” *Id.* When Mr. Albat returned, he had a gun. CF, p 316. Following a brief interaction, Mr. Albat shot Mr. Lathrop. *Id.* At trial, defense counsel argued Mr. Albat fired in self defense. CF, p 313. Following a jury trial, Mr. Albat was convicted of first degree murder and sentenced to life in prison without the possibility of parole. *Id.* His conviction was affirmed on direct appeal. *People v. Albat*, (Colo. App. No. 10CA1642, Oct. 3, 2013) (not published pursuant to C.A.R. 35(f)) (CF, p 311).

Those facts do not tell the whole story, however. On that fateful night,

twenty-one-year-old Corey Albat was addicted to oxycodone and Xanax.<sup>1</sup> TR 8/23/23, pp 20:17-22, 22:5-11; CF pp 671-72. He was also misusing alcohol and marijuana. TR 8/23/23, pp 20:17-22. The oxycodone dependence followed a terrible automobile accident that occurred forty days prior to the shooting, where Mr. Albat suffered a fracture of his cervical spine at several joints and a brain hemorrhage in his temporal lobe (an event similar to a stroke). CF, pp 667-68. The injury was a type of decapitation. TR 7/13/23, pp 60:22-61:2. Mr. Albat's cervical spine was fused to his skull. CF, p 668. He was prescribed Percocet — a drug containing oxycodone and acetaminophen — for his severe pain. TR 7/13/23, pp 25:1-12.

The Xanax dependence resulted from a longtime prescription to treat anxiety, likely due to the abuse and neglect he received as a child. TR 7/13/23, p 25:13-17; CF, p 671. As a young boy, Mr. Albat endured physical and sexual abuse, and was exposed to relationship violence, drugs and alcohol, and weapons. CF, p 669. As a teen, a Wyoming juvenile court found him to be a “Child in Need of Supervision” due to his runaway behavior and drug usage. CF, p 670. After

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<sup>1</sup> The experts used the brand name, Xanax, along with the generic name, alprazolam, interchangeably with benzodiazepines. CF, p 764-65.

Mr. Albat graduated from high school, his mother and stepfather taught him to sell cocaine for them. CF, p 670.

Trial counsel knew Mr. Albat was taking a high dosage of oxycodone and Xanax; Mr. Albat's mother testified at trial that she dispensed approximately ten pain pills and six to eight Xanax pills to him that day. TR 4/21/10, pp 76:21-77:3. She also witnessed him drinking whiskey straight out of a bottle. TR 4/21/10, pp 62:18-63:11. In a videotaped interview, Mr. Albat told police that he had been drinking and smoking marijuana; he also told them about his daily Xanax use. ENV, Motions Hearing EX 1, at 26:19-27:40, 29:30-29:49, 45:14-45:50.<sup>2</sup> Mr. Snow, the only eyewitness, described Mr. Albat's speech as mumbled and slurred. TR 4/20/10, p 160:19-24. He testified about Mr. Albat, "This guy's obviously on something and acting strange and this is a bad situation." *Id.* at 163:14-15. Because of this, a voluntary intoxication instruction was given at trial. CF, p 226. However, trial counsel did not investigate Mr. Albat's level of intoxication nor

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<sup>2</sup> The trial exhibit (Exhibit 29) in the appellate record is damaged. A copy of the full interview, however, was introduced at a motions hearing on February 19, 2010 (State's Exhibit 1). Trial Exhibit 29 is a redacted version of Motions Hearing Exhibit 1. Motions Hearing Exhibit 1 contains the information necessary for this appeal.

retain experts to explain the impact of those drugs.

Mr. Albat filed a timely pro se postconviction motion that was supplemented by appointed counsel. CF, pp 344-66, 397-419. The supplement included multiple claims, including a claim that trial counsel was ineffective for failing to investigate and retain an expert to present an intoxication defense. CF, p 406. The motion was originally denied without a hearing. CF, pp 521-34. Following an appeal, another division of this court reversed the order in part and remanded for an evidentiary hearing on only one claim: “with respect to [Mr. Albat’s] ineffective assistance of counsel claims premised on counsel’s failure to present an intoxication defense.” *People v. Albat*, (Colo. App. No. 20CA70, Oct. 20, 2022) (not published pursuant to C.A.R. 35(e)), at ¶ 31 (CF, p 614).

On remand, toxicologist Dr. Andrew Ewens opined that Mr. Albat was intoxicated. TR 8/24/23, pp 19:22-24, 33:14-17. Based on the trial testimony, he estimated Mr. Albat consumed 100mg of oxycodone and 6-8mg of alprazolam, along with alcohol and marijuana, on the date of the shooting. *Id.* at 32:12-19; CF, p 709. He explained that alprazolam causes sedation and confusion. TR 8/24/23, p 26:2-3. It can also cause “depersonalization where someone who’s taking it

doesn't necessarily feel that they are in control of themselves and it also makes it feel like what's going on around them is something they're observing and not something that they're participating in." *Id.* at p 26:3-7. Further, anyone with an underlying psychological condition — like Mr. Albat — can be more likely to develop paradoxical effects, such as disinhibition. *Id.* at p 26:7-13.

Dr. Ewens explained that oxycodone causes mental impairment, confusion, nervousness, anxiety, agitation, and hallucinations. CF, p 710. Among other things, alcohol "affects emotion and the perception of danger, causing irritation, agitation, anxiety, aggression, and violent behavior." CF, p 709. Additionally, marijuana can also cause anxiety, paranoia, hallucinations, and the loss of grip on reality. CF, p 710. Ultimately, Dr. Ewens concluded, "Mr. Albat did not have the intent to shoot and the ability to come up with this decision premeditated; that he had responded to the events that were occurring at the time, and that that was also driven by the drugs that he had taken and the effects that they had on his anxiety and paranoia and ability to do things that he probably would not have done if sober." CF, p 709.

A forensic psychologist, Dr. John Dicke, diagnosed Mr. Albat with "post-

traumatic stress disorder as the result of physical and emotional abandonment and abuse of childhood as well as a very serious life-threatening motor vehicle accident some 40 days before this homicide”; and “anxiety and depressive disorders defended against by hyperactivity and polysubstance including narcotics, anxiolytics, marijuana and alcohol.” CF, pp 666, 671. Dr. Dicke opined that the “unfortunate killing was drug induced confusion and paranoia.” CF, p 672. He explained:

[P]eople with a condition like his are hair-trigger. They're just very paranoid. They're very anxious all the time. They're very mistrusting, and they always think they're going to get screwed, and of course a lot of times they create situations which allows them to get screwed, but anything that's a threat or they perceive to be a threat to them, they can react in a moment's notice without even realizing what they're doing. They're red hot, white hot sometimes inside because they've been through all this sort of abuse that they've -- and abandonment they've suffered is kind of repressed and it lay dormant but when it's touched it can just go off, and I think that's what happened in this case.

TR 8/23/23, pp 19:24-20:11. He ultimately concluded that Mr. Albat “had no premeditation or deliberation at all.” *Id.* at p 27:1.

Dr. Raymond Singer, an expert in neuropsychology and neurotoxicology, testified that at the time of the shooting, Mr. Albat was in a delusional state. TR

8/23/23, pp 54:20-25, 64:15. He opined, “Mr. Albat’s ability to form an intent was significantly impaired. His ability to deliberate was significantly impaired and that would impact his intention to commit murder.” *Id.* at 72:9-12. In his opinion, “at the time of the charged offense Mr. Albat was reacting at the reflexive level rather than from a state of premeditation, deliberation, reflection, and judgment.” CF, p 844.

Pharmacogenetics expert, Dr. Selma Eikelenboom, testified that all these factors — multiple drugs, brain injury, and youth — coupled with Mr. Albat’s specific genetics, had a combined affect that increased the side effects and lowered Mr. Albat’s ability to clear the substances from his system. CF, pp 753, 766-68. She opined that his brain pathways were disturbed so that he could not “come up with a decision that is based in reality or moral sense.” TR 7/13/23, pp 40:23-41:7. He was unable to form intent or deliberation. *Id.* 41:22-42:1.

In short, four experts testified that Mr. Albat was not able to form the mens rea for first degree murder. Despite this evidence, the postconviction court issued an order denying Mr. Albat relief. CF, p 925-27. Mr. Albat now appeals that order.

## **SUMMARY OF THE ARGUMENTS**

Substantial evidence of Mr. Albat's intoxication existed pretrial, including that he ingested multiple pills, drank whiskey, smoked marijuana, and was acting strange. He disclosed to officers that he was dependent on Xanax. He had also recently suffered a horrible accident that resulted in a traumatic brain injury. All that information was available to trial counsel. Yet trial counsel did not further investigate or consult with an expert. When an attorney fails to investigate an available defense, any decision to forgo that defense, even if strategic, is not reasonable. Postconviction investigation revealed multiple experts who testified that Mr. Albat was not capable of deliberating or shooting with intent. If the jury had heard that information, the outcome likely would have been different. Under these circumstances, Mr. Albat's trial counsel rendered ineffective assistance and he is entitled to a new trial.

## ARGUMENTS

### **Mr. Albat Received Ineffective Assistance of Counsel Due to His Trial Counsel's Failure to Investigate and Pursue an Intoxication Defense**

#### A. Standard of Review

“The ultimate determination of whether an attorney rendered ineffective assistance of counsel is a question of law” reviewed de novo. *People v. Newmiller*, 2014 COA 84, ¶ 18, 338 P.3d 459, 463. Ineffective assistance of counsel claims present mixed questions of law and fact. *Id.*; *Dunlap v. People*, 173 P.3d 1054, 1063 (Colo. 2007). A trial court’s conclusions of law are reviewed de novo and findings of fact receive deference if they are supported by the record. *Newmiller*, ¶ 18.

#### B. Preservation

This issue is preserved in Mr. Albat’s postconviction motion, evidentiary hearing, and closing argument. CF, pp 406, 897-906. The postconviction court denied the claim in its written order. CF, p 927.

#### C. Ineffective Assistance of Counsel Standards

An accused has a constitutional right to the effective assistance of counsel. U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16; *Strickland v. Washington*,

466 U.S. 668, 686 (1984). Defense counsel can deprive an accused of the right to effective assistance of counsel “by failing to render ‘adequate legal assistance.’” *Strickland*, 466 U.S. at 686 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980)). The standard recognizes the “critical” role attorneys play in ensuring that the adversarial system produces “just results.” *Id.* at 685.

An accused receives ineffective assistance of counsel if (1) “counsel’s representation fell below an objective standard of reasonableness,” *id.* at 687-88; and (2) there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” where a reasonable probability is one “sufficient to undermine confidence in the outcome,” *id.* at 694.

D. *Strickland* Prong One: Trial Counsel Cannot Make a Sound Strategic Decision Based on a Faulty and Incomplete Investigation

“[C]ounsel has a duty to make reasonable investigations in connection with the case or to make a reasonable decision that makes particular investigations unnecessary.” *Hutchinson v. People*, 742 P.2d 875, 881 (Colo. 1987). This includes “pretrial investigation sufficient to reveal potential defenses.” *Davis v. People*, 871 P.2d 769, 773 (Colo. 1994). Adequate investigation and trial preparation requires the “vital” need to consult with experts. *Hutchinson*, 742 P.2d

at 881. This is because criminal cases routinely involve complex medical, psychiatric, and scientific concepts. *Id.*

“[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitation on investigation.” *Strickland*, 466 U.S. at 690-91. A “decision not to investigate must be directly assessed for reasonableness.” *Id.* at 691. When counsel limits the investigation without a reasonable basis, the decision to limit investigation is not reasonable. *Id.* This is because “counsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when s/he has not yet obtained the facts on which such a decision could be made.” *United States v. Gray*, 878 F.2d 702, 711 (3d Cir. 1989).

Trial counsel cannot rely on an incomplete investigation to support a tactical decision when the record reveals that the incomplete investigation resulted in an uninformed decision. *Lockett v. Anderson*, 230 F.3d 695, 714 (5th Cir. 2000). Thus, appellate courts should not defer to trial counsel’s decisions that are “uninformed by an adequate investigation into the controlling facts and law.” *Id.* (quoting *United States v. Drones*, 218 F.3d 496, 500 (5th Cir. 2000)).

The United States Supreme Court has provided a roadmap for determining whether an attorney’s performance is reasonable. First, appellate courts are guided by prevailing professional standards, including “standard practice” within the State and application of the American Bar Association (ABA) standards. *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). The next piece of the roadmap provided by the United States Supreme Court includes review of the record. *See Wiggins*, 539 U.S. at 526 (using the record to “underscore[ ] the unreasonableness of counsel’s conduct” because it showed the “failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment”).

At this stage, the focus is on “whether the investigation supporting counsel’s decision . . . *was itself reasonable.*” *Id.* at 523 (emphasis in original). In other words, the question is not whether the intoxication defense should have ultimately been pursued, but whether trial counsel had enough information to forgo pursuing it. *Id.* The record establishes that trial counsel did not make an informed decision.

1. Trial counsel failed to investigate an intoxication defense.

“[E]vidence of intoxication of the defendant may be offered by the defendant when it is relevant to negative the existence of a specific intent if such

intent is an element of the crime charged.” § 18-1-804(1), C.R.S. As pertinent here, “evidence of voluntary intoxication is admissible to counter the specific intent element of first-degree murder.” *People v. Miller*, 113 P.3d 743, 750 (Colo. 2005). “[A] criminal defendant who successfully introduces evidence of voluntary intoxication may circumvent conviction for a more serious specific intent crime while remaining liable for a lesser included general intent offense.” *Brown v. People*, 239 P.3d 764, 769 (Colo. 2010).

Trial counsel testified that he knew Mr. Albat was intoxicated after ingesting oxycodone, Xanax, and alcohol. TR 1/9/24, pp 6:9-16, 11:10-12. He did not consult with an expert. *Id.* at 8:8-9:2. Instead, he decided to pursue self defense only, even though he “had concerns about the self-defense altogether [because] it wasn’t like a perfect self-defense case by any stretch.” *Id.* at 9:3-18, 10:15-17.

His decision was based, in part, on the fact that he did not have scientific proof of intoxication. *Id.* at 20:20-22. However, he agreed that with an expert, “[h]ad we wanted to pursue an intoxication defense, I think we could have got to the point of trying to make those arguments.” *Id.* at 21:3-9.

Trial counsel agreed they were not “married to” Mr. Albat’s statement to

police about self defense, however, “we certainly thought that was a viable defense based on what he told police.” *Id.* at 22:22-23:8. It was also important to counsel that self defense is a complete defense and intoxication would only negate the mens rea for first degree murder. Ultimately,

the strategic decision that we made was that the intoxication information about his levels of intoxication would undercut our ability to run self-defense; self-defense being a reasonable person standard based on the totality of the circumstances. We wanted Mr. Albat to appear to have acted reasonably, to have acted rationally in his decision to pull the trigger and act in self-defense.

If we would have started going down the road of the intoxication, we felt like it would have undercut our arguments for self-defense, because on the one hand, we’re arguing that he acted reasonably, that he was rational, that he, you know, observed things rationally and did what a reasonable person would have done in his position.

The problem was then going into intoxication is you negate his reasonableness to a large extent. You start saying, well, he actually doesn’t perceive things properly. He actually was impaired to the point where he wasn’t reasonable. So it undercuts what we were trying to do with self-defense.

*Id.* at 24:5-25:1.

2. The decision to forgo investigation was unreasonable and demonstrates deficient performance.

An expert in criminal defense, Margaret Baker, testified that trial counsel's failure to investigate was unreasonable. She testified that ample pretrial evidence should have prompted further investigation, including:

- Mr. Albat took five to ten times the normal dosage of Xanax;
- Mr. Albat smoked marijuana and drank alcohol that day;
- Mr. Albat had a recent traumatic brain injury and internal decapitation;
- Mr. Snow testified that Mr. Albat was drunk or high or both; and
- Mr. Albat told police during the interrogation about his need for Xanax.

TR 1/9/24, p 63:5-64:13. “[T]here was very early in the case extensive information available to counsel demonstrating that there was intoxication as well as a traumatic brain injury at play.” *Id.* at 64:10-13. Yet, there was no indication that trial counsel even questioned, “What are we seeing if he has all these drugs in his system and especially on top of the traumatic brain injury?” *Id.* at 64:20-25.

Investigation was required. Ms. Baker explained that trial counsel

testified that he was considering intoxication all the way up till

trial. They did endorse intoxication as a possible defense right before trial, I believe within 35 days. And frankly, they did end up running an intoxication defense at trial; they just didn't call it that. But as the trial developed, that's exactly what happened, because they were trying to explain some of the holes in their self-defense case. But the primary way those holes could be explained was the effect of the drugs, the TBI, and the intoxication.

*Id.* at 67:14-24. She concluded that a “reasonable investigation was not completed.” *Id.* at 62:18-19; .

Ms. Baker, an expert with 32 years of experience in criminal defense,<sup>3</sup> testified that trial counsel's performance failed to meet prevailing professional norms. *Strickland*, 466 U.S. at 688; *see ABA Standards for Criminal Justice: The Defense Function*, 4-4.1 (4th ed. 2017) (Counsel “should determine whether the client's interests would be served by engaging” experts and “should regularly re-evaluate the need for such services throughout the representation.”)<sup>4</sup> Under these circumstances, Mr. Albat has established deficient performance. *See Wiggins*, 539 U.S. at 534

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<sup>3</sup> TR 1/9/24, p 52:5.

<sup>4</sup> Available at [https://www.americanbar.org/groups/criminal\\_justice/resources/standards/defense-function/](https://www.americanbar.org/groups/criminal_justice/resources/standards/defense-function/)

(deficient performance results from incomplete investigation).

E. *Strickland* Prong Two: Trial Counsel's Failure to Investigate the Intoxication Defense Undermined Confidence in the Trial Outcome

Prejudice under *Strickland* requires a petitioner to “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

Here, Mr. Albat established prejudice because an investigation into intoxication revealed multiple experts opining that he lacked the capacity to deliberate and act with intent. Four experts evaluated Mr. Albat’s substance use, brain injury, traumatic childhood, and diagnoses, and concluded that he lacked the mens rea for first degree murder. CF, pp 672, 713, 770, 844. One doctor testified that his neurotransmitters were severely damaged. TR 7/13/23, p 43:11-12. Another testified that he was “extremely paranoid and upset and hair-triggered.” TR 8/23/23, p 42:15-16. A third testified that Mr. Albat was delusional. TR 8/23/23, p 64:15. And the toxicologist testified that Mr. Albat was “very intoxicated.” TR 8/24/23, p 40:22. None of these opinions were equivocal or limited.

This is powerful evidence. *See Wiggins*, 539 U.S. at 536 (mitigation evidence of diminished mental capacity and years of abuse was powerful). Had the jury been confronted with this evidence, there is a reasonable probability that at least one juror would have been swayed. *Id.* (jury might have reached a different result if confronted by the powerful evidence); *Lockett*, 230 F.3d at 716 (“a reasonable juror could have found that [the defendant’s] particular mental condition . . . made him less morally culpable”). Indeed, even without the investigation and expert testimony, the jurors showed interest in Mr. Albat’s level of intoxication. TR 4/21/10, pp 76:18-77:13 (jury questioned “How many pain medications did Corey take throughout the day, if you know?”). With the investigation and expert testimony, the outcome likely would have been different.

The postconviction court concluded that the evidentiary hearing did not produce “substantial” enough evidence to show that the outcome would have been different. CF, p 926. But this conclusion overlooks key factors.

First, even though intoxication would negate the intent and deliberation elements for first degree murder and not the mens rea elements for the lesser included homicide elements, Mr. Albat’s first degree murder conviction carried a

penalty of life imprisonment without the possibility of parole. TR 6/25/10, p 31:19-21. This is a significant factor, particularly for a twenty-one-year-old. *Graham v. Florida*, 560 U.S. 48, 70 (2010) (quoting *Noavarath v. State*, 779 P.2d 944 (Nev. 1989)) (“A life without parole sentence . . . ‘means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days.’”). If Mr. Albat had been found guilty of second degree murder (or any lesser degree of homicide) his substantial mitigation and childhood trauma would also have been considered. Instead, during his sentencing, trial counsel offered “nothing.” TR 6/25/10, p 25:7. Thus, a defense negating intent and deliberation would have been hugely impactful.

Second, trial counsel proceeded with a partial intoxication defense (an intoxication instruction was given to the jury, *see* CF, p 226) but did not actually investigate that defense. That fact rebuts any finding that trial counsel’s decision was sound. The failure to investigate resulted in an uninformed decision. Under those circumstances, trial counsel was “not in a position to make a reasonable strategic choice.” *Wiggins*, 539 U.S. at 536.

Third, the experts also provided an explanation for Mr. Albat's statements to police that he acted in self defense. Dr. Dicke testified:

[H]e's trying to piece together trying to figure out how he could shoot his friend and dealer, and he was shocked that he had done so and in trying to figure out what had happened, but the most important thing is what happened at that particular second, did he form premeditation or deliberation, and my opinion is no, he didn't, he never got to a deliberative state at all.

TR 8/23/23, p 27:16-22. Ms. Baker testified that the police interrogation contained "leading and feeding from law enforcement. They gave him information. They had him repeat it back to them. I don't see a sign of clarity from him." TR 1/9/24, p 77:8-14. Thus, myriad factors in this case — the brain injury, youth, and drug interactions — also provide an explanation for the statements regarding self defense.

This is the rare type of case where counsel's performance, even though strategic, was deficient. Multiple experts testified that Mr. Albat did not have the capacity to deliberate or shoot with intent. If the jury had that information, the outcome of the trial would have been different. Under these unique circumstances, prejudice has been established. *Strickland*, 466 U.S. at 694.

## **CONCLUSION**

Mr. Albat respectfully requests that this Court reverse the postconviction order, remand for a new trial, and grant such other relief as the Court deems necessary.

Respectfully submitted,

s/ Krista A. Schelhaas  
Krista A. Schelhaas, #36616

## **CERTIFICATE OF SERVICE**

I certify that on the 17th day of December 2024, a copy of the foregoing OPENING BRIEF was filed through the Colorado Courts E-Filing System with a copy checked to be sent to the Office of the Attorney General, Criminal Division.

s/ Krista A. Schelhaas  
Krista A. Schelhaas