

STATEMENT OF THE LEGAL ISSUES

- 1. Whether the trial court erred in denying Defendant's motions for mistrial and a new trial based upon Plaintiff's misconduct, which included injecting the issues of insurance, financial status of the parties, the lack of a criminal prosecution, and sexual dysfunction into the jury trial in violation of the trial court's orders and applicable legal principles.**

The trial court denied Defendant's motions for mistrial and a new trial.

Most Relevant Authority:

Kjerstad v. Ravellette Publications, Inc., 517 N.W.2d 419 (S.D. 1994).

Lowe v. Steele Const. Co., 368 N.W.2d 610 (S.D. 1985)

- 2. Whether the trial court erred in its evidentiary rulings by allowing Plaintiff to examine non-legal experts (chemist and sheriff) on the criminal laws of drinking and driving, and by allowing Plaintiff to exceed the scope of Defendant's examination in his re-cross of Defendant.**

The trial court allowed Plaintiff to examine non-legal experts on the criminal law and allowed Plaintiff's counsel to exceed the scope of Defendant's examination over Defendant's objections.

Most Relevant Authority:

France v. Southern Equip.Co., 689 S.E.2d 1 (W.Va. 2010)

32 C.J.S. Evidence §§ 695 & 851

Novak v. McEldowney, 2002 SD 162, 655 N.W.2d 909

- 3. Whether the trial court erred in giving jury instruction 19A which applied the criminal "presumption" law of SDCL § 32-23-7 to this civil case even though the statute expressly limits its application to criminal prosecutions as recognized by this Court and the majority of jurisdictions across the country.**

The trial court gave instruction 19A over Defendant's objections.

Most Relevant Authority:

Fossum v. Zurn, 100 N.W.2d 805 (S.D. 1960)

SDCL § 32-23-7

16 A.L.R.3d 748 (1967)

- 4. Whether the trial court erred in denying Defendant's motion for judgment as a matter of law based upon Plaintiff's admitted beer drinking and driving in violation of South Dakota's rules of the road, all of which constituted contributory negligence more than slight as a matter of law.**

The trial court found there were questions of fact and denied Defendant's motion for judgment as a matter of law.

Most Relevant Authority:

Lovell v. Oahe Elec. Coop., 382 N.W.2d 396 (S.D. 1986)

Fulker v. Pickus, 241 N.W. 321 (S.D. 1932)