

WEDNESDAY, MAY 21, 2008
11:00 A.M.

NO. 3

#24604

TIM DUDA,
Plaintiff and Appellant,

vs.

PHATTY McGEES, INC.,
d/b/a HOOKY JACKS,
Defendant and Appellee,

vs.

WILLIE GUERRERO,
Third-Party Defendant.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Thomas L. Trimble
Seventh Judicial Circuit
Pennington County

(CIV 04-65)

LEGAL ISSUES

1. Did the Trial Court err in its handling of the four "jury questions" that arose during the deliberations when it failed to give Duda the opportunity to object to its written instructions?

The Trial Court concluded "No."

SDCL § 15-6-51(d)

Riggs v. Syrovatka, 75 S.D. 338, 64 N.W.2d 297 (1954)

Dodson v. South Dakota Dept. of Human Services, 2005 SD 91, Pg. 15, 703 N.W.2d 353

2. Did the trial court abused its discretion by denying Duda's motion for directed verdict, and in the alternative, his motion for judgment notwithstanding the verdict or new trial?

The Trial Court concluded "No."

Miller v. Baken Park, Inc., 175 N.W.2d 605 (S.D. 1970)

Ray v. Downes, 1998 SD 40, 576 N.W.2d 896

3. Did the Trial Court err in giving the jury a verdict form that required an allocation of fault between Phatty's and Guerrero as defendants when Guerrero had not been named as a co-defendant by Duda?

The Trial Court concluded "No".

SDCL 15-6-14(a)

SDCL §15-6-42(b)

Sybesma v. Sybesma, (S.D.1995) 534 N.W.2d 355