

SOUTH DAKOTA SUPREME COURT

—Traveling Term of Court—



 UNIVERSITY OF
SOUTH DAKOTA
KNUDSON SCHOOL OF LAW

October 7-8, 2026

Knudson School of Law

University of South Dakota, Vermillion

9:00 a.m. CDT

Photo: University of South Dakota, Adam Pearson



SOUTH DAKOTA
UNIFIED JUDICIAL SYSTEM

Steven R. Jensen
CHIEF JUSTICE



Supreme Court
STATE OF SOUTH DAKOTA

October 7, 2026

To Our Guests Observing the
October 2026 Term Arguments
of the South Dakota Supreme Court

Ladies and Gentlemen:

Your Supreme Court welcomes you to our October 2026
Term of Court.

This booklet has been prepared as part of the continuing
effort of the Supreme Court to promote increased public
knowledge of the South Dakota Unified Judicial System.

We hope it will assist you in understanding some of
the functions of the Supreme Court and make your
observation of the Court hearings a more valuable and
enjoyable experience.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Steven R. Jensen", is written over a light blue horizontal line.

Steven R. Jensen Chief Justice

TABLE OF CONTENTS

CHIEF JUSTICE STEVEN R. JENSEN.....	4
JUSTICE MARK E. SALTER.....	5
JUSTICE PATRICIA J. DEVANEY	6
JUSTICE SCOTT P. MYREN.....	7
JUSTICE ROBERT GUSINSKY.....	8
CLERK OF THE SUPREME COURT	9
SUPREME COURT LAW CLERKS.....	9
SOUTH DAKOTA COURT SYSTEM.....	10
SUPREME COURT PROCESS.....	12
SUPREME COURT DISTRICT MAP	15
COURTROOM PROTOCOL.....	16
TERM OF COURT CASE SUMMARIES.....	17
CASES	18
Linda Muellenberg v. Redfield Ace Hardware DBD Investment Enterprises, and First Dakota Indemnity Company.....	18
State v. Beaudion, Jr.	21
State v. Hade	24
Lesley Russell, Personal Representative of the Estate of Daniel E. Duling, v. Goosmann Law Firm P.L.C. and Jeffrey T. Myers.....	27
State v. Reginald Scott, Jr.....	29
Midcontinent v. Department of Revenue	31
State v. Monroe	33
GLOSSARY OF TERMS	36
NOTES.....	38

The Justices have extended an invitation to the public to attend any of the Court's sessions. To assist with the Supreme Court visit, persons in attendance must abide by proper courtroom etiquette. The Supreme Court employs security methods to ensure the well-being of all who attend its proceedings, and all attending the morning court sessions will be requested to pass through a metal detector. Backpacks and book bags should not be brought, and other bags and purses are subject to inspection and search by security personnel.



CHIEF JUSTICE STEVEN R. JENSEN

Fourth Supreme Court District

Chief Justice Steven R. Jensen was appointed to the South Dakota Supreme Court by Gov. Dennis Daugaard and sworn in on Nov. 3, 2017. He was selected by his colleagues on the Supreme Court to serve as Chief Justice in 2021. He was reselected to a second, four-year term as Chief Justice beginning Jan. 6, 2025. Chief Justice Jensen grew up on a farm near Wakonda, S.D. He received his undergraduate degree from Bethel University in St. Paul, Minn., in 1985 and his juris doctor from the University of South Dakota School of Law in 1988. He clerked for Justice Richard W. Sabers on the South Dakota Supreme Court before entering private law practice in 1989. In 2003, Chief Justice Jensen was appointed as a First Judicial Circuit judge by Gov. Mike Rounds. He became presiding judge of the First Judicial Circuit in 2011. Chief Justice Jensen served as chair of the Unified Judicial System's Presiding Judges Council, president of the South Dakota Judges Association, and has served on other boards and commissions. In 2009, Chief Justice Jensen was appointed as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington, D.C.



JUSTICE MARK E. SALTER

Second Supreme Court District

Justice Mark E. Salter was appointed to the South Dakota Supreme Court by Gov. Dennis Daugaard and sworn in on July 9, 2018. Justice Salter received a bachelor of science degree from South Dakota State University in 1990 and his juris doctor from the University of South Dakota School of Law in 1993. After clerking for a Minnesota state district court, he served on active duty in the United States Navy until 1997 and later served in the United States Naval Reserve. Justice Salter practiced law with the Sioux Falls firm of Cutler & Donahoe, where he became a partner before leaving in 2004 to return to public service with the United States Attorney's Office for the District of South Dakota. As an assistant United States attorney, Justice Salter focused on appellate practice and became the chief of the office's appellate division in 2009. He was appointed as a circuit court judge by Gov. Dennis Daugaard and served in the Second Judicial Circuit from 2013 until his appointment to the Supreme Court. He served as the presiding judge of the Minnehaha County Veterans Court from its inception in 2016 until 2018. Justice Salter serves as an adjunct professor at the University of South Dakota Knudson School of Law, where he has taught Advanced Criminal Procedure and continues to teach Advanced Appellate Advocacy.



JUSTICE PATRICIA J. DEVANEY

Third Supreme Court District

Justice Patricia J. DeVaney was appointed to the South Dakota Supreme Court by Gov. Kristi Noem and sworn in on May 23, 2019. Justice DeVaney was born and raised in Hand County and graduated from Polo High School in 1986. She received her bachelor of science degree in political science from the University of South Dakota in 1990 and her juris doctor from the University of Virginia School of Law in 1993. Justice DeVaney began her career of public service as an assistant attorney general in the South Dakota Office of Attorney General, where she practiced law from 1993 to 2012. She began her practice in the appellate division, then moved to the litigation division where she spent 17 years as a trial lawyer, prosecuting major felony offenses as well as representing the state in civil litigation in both state and federal trial and appellate courts. She also handled administrative matters for state agencies and professional licensing boards. Justice DeVaney was appointed by Gov. Dennis Daugaard as a circuit court judge for the Sixth Judicial Circuit in 2012. She served as the second judge for the Sixth Circuit Drug & DUI Court. Justice DeVaney has served as the secretary-treasurer and president of the South Dakota Judges Association. She has co-chaired the Supreme Court's Commission on Sexual Harassment in the Legal Profession and serves as vice-chair of the Courthouse Security Committee.



JUSTICE SCOTT P. MYREN

Fifth Supreme Court District

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Justice Scott P. Myren was appointed to the South Dakota Supreme Court by Gov. Kristi Noem and sworn in on Jan. 5, 2021. Justice Myren grew up on his family farm in rural Campbell County and graduated from Mobridge High School in 1982. He received a bachelor of science degree, double majoring in history and political science from the University of South Dakota in 1985. He earned his juris doctor from Rutgers University in 1988. Justice Myren practiced law in Denver before returning to South Dakota to work as a staff attorney for the South Dakota Supreme Court. He served as an administrative law judge for the Office of Administrative Hearings and magistrate judge for the Sixth Judicial Circuit. In 2003, he was appointed as a circuit court judge for the Fifth Judicial Circuit by Gov. Mike Rounds. He was re-elected to that position by the voters in 2006 and 2014. He served as judge for the Brown County Drug and DUI Court. He was appointed presiding judge for the Fifth Judicial Circuit in 2014. Justice Myren served as chair of the UJS Presiding Judges' Council and president of the SD Judges' Association. He served on numerous committees, including the Court Improvement Program and Juvenile Detention Alternative Initiative, which he chaired. He was selected as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington, D.C., in 2009.



JUSTICE ROBERT GUSINSKY

First Supreme Court District

Justice Robert Gusinsky was appointed to the South Dakota Supreme Court by Gov. Larry Rhoden and sworn in on Dec. 8, 2025. Justice Gusinsky was born in Latvia. After emigrating with his parents through Israel and Germany, he settled in California and became a U.S. citizen. Justice Gusinsky received his undergraduate degree in aeronautical engineering in 1990 from Embry Riddle Aeronautical University. He worked as a commercial airline pilot and flight instructor before changing course to pursue law. Justice Gusinsky received his juris doctor from the University of South Dakota School of Law in 1996. Following graduation, Justice Gusinsky practiced as a trial lawyer at Lynn, Jackson, Shultz & Lebrun and later at Clayborne, Loos, Strommen & Gusinsky in Rapid City. He next served as an assistant U.S. Attorney with the U.S. Attorney's Office from 2007 to 2013, when Gov. Dennis Daugaard appointed him a circuit court judge for the Seventh Judicial Circuit. Justice Gusinsky became presiding judge of the Seventh Judicial Circuit in 2024.

CLERK OF THE SUPREME COURT



Shirley Jameson-Fergel is the clerk of the Supreme Court. This office assists the Supreme Court, and especially the Chief Justice, in the organization of correspondence, exhibits and other documentation related to formal activities of the Court. This includes monitoring the progress of appeals; scheduling oral arguments before the Court; recording Court decisions, orders and directives; and controlling their release and distribution. The office is also

responsible for management of all legal records of the Court, compiling appellate statistics, and documenting and disseminating Court rules.

SUPREME COURT LAW CLERKS

Law clerks are employed by the Court to assist the Justices with research and writing opinions on the cases under consideration.



L-R: Mayson Coyle, law clerk for the Supreme Court; Isaac Rillo, law clerk for Justice Gusinsky; Pat Archer, law clerk for Justice DeVaney; Jennifer Giles, law clerk for Chief Justice Jensen; Julianne Severson, law clerk for Justice Salter; Taylor Casey, law clerk for Justice Myren; Dana Van Beek Palmer, law clerk for the Supreme Court

SOUTH DAKOTA COURT SYSTEM

The South Dakota Unified Judicial System consists of the Supreme Court, circuit courts and State Court Administrator's Office. The Supreme Court is the state's highest court and final decision maker on South Dakota law. The circuit courts are the state's trial courts where criminal proceedings and civil litigation are handled. The State Court Administrator's Office provides centralized administrative assistance and support services for the South Dakota judiciary.



SUPREME COURT

The South Dakota Supreme Court is the state's highest court and the court of last resort for state appellate actions.

The Supreme Court is comprised of the Chief Justice, who is the administrative head of the Unified Judicial System, and four justices who are the final judicial authority on all matters involving the legal and judicial system of South Dakota.

Supreme Court justices are appointed by the Governor from a list of nominees selected by the South Dakota Judicial Qualifications Commission. One justice is selected from each of five geographic appointment districts. Permanent justices must be voting residents of the district from which they are appointed at the time they take office. Justices face a nonpolitical retention election three years after appointment and every eight years after that.

The Supreme Court:

- Holds court terms throughout the calendar year.
- Has appellate jurisdiction over circuit court decisions.
- Has original jurisdiction in cases involving interests of the state.
- Issues original and remedial writs.
- Has rule-making power over lower court practice and procedure and has administrative control over the Unified Judicial System.
- Renders advisory opinions to the Governor, at his or her request, on issues involving executive power.



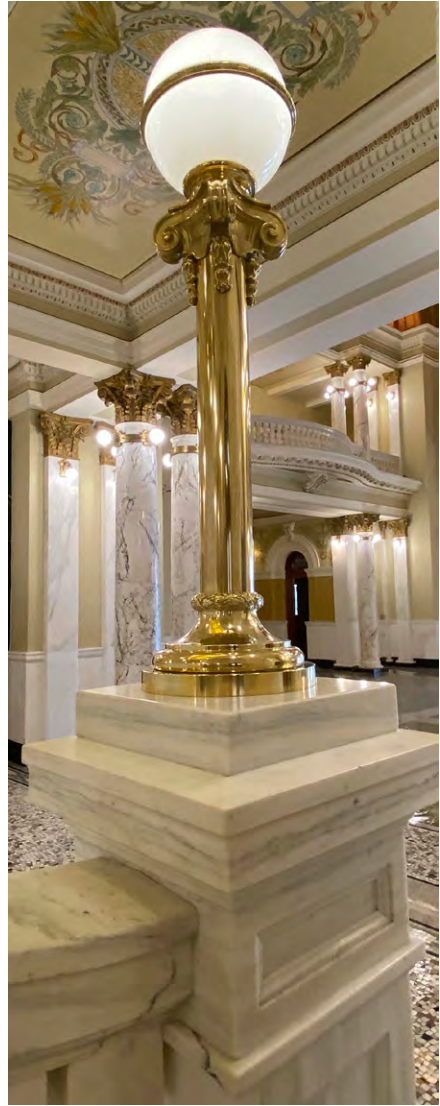
CIRCUIT COURTS

Circuit courts are the state's trial courts of general jurisdiction through which the bulk of criminal proceedings and civil litigation are processed.

South Dakota has seven judicial circuits, 46 circuit judges and 17 magistrate judges. Circuit court services are available in each county seat.

Circuit court judges are elected by the voters within the circuit where they serve. The judges must be voting residents of their circuit at the time they take office. In the event of a vacancy, the Governor appoints a replacement from a list of nominees selected by the Judicial Qualifications Commission.

- Circuit courts are trial courts of original jurisdiction in all civil and criminal actions.
- Circuit courts have exclusive jurisdiction in felony trials and arraignments and civil actions involving damages of more than \$12,000.
- Jurisdiction of less serious civil and criminal matters is shared with magistrate courts, over which the circuit courts have appellate review.



SUPREME COURT

SUPREME COURT PROCESS

The judicial system of South Dakota has two levels. The circuit courts are the lower courts through which criminal prosecutions and most civil lawsuits are processed. The South Dakota Supreme Court is the state's highest court and the court of last resort for parties who seek to change adverse decisions of the circuit court. The Supreme Court is the final judicial authority on all matters involving the legal and judicial system of South Dakota.



Appellate Jurisdiction

When an individual involved in a legal action is convinced that the judge in the circuit court has made an error in deciding the law of the case, that party may bring the case to the Supreme Court for a remedy. This is called an “**appeal**,” and the court hearing the appeal is called the “**appellate**” court. The party bringing the appeal is the “**appellant**” and the other party—usually the party who was successful in the lower court—is the “**appellee**.” Most of the work of the Supreme Court involves its appellate jurisdiction.

- In an appellate action, the Court may decide to hear “oral arguments” in the case, in which both parties are permitted to come before the Court and give a short presentation (an argument) to support their position in the case.

SUPREME COURT

- There is no trial, the lawyers do not confront each other, and the Court does not take testimony from witnesses.
- Usually, the attorneys for the parties involved stand before the Court and speak for 15 minutes to emphasize or clarify the main points of the appeal.
- The members of the Court may ask questions or make comments during the lawyer's presentation.
- After hearing oral arguments, the Court discusses the case, and one justice is assigned to write the opinion in the case.
- Other justices may write concurring or dissenting opinions to accompany the majority opinion, all of which are published as formal documents by the West Publishing Company in the North Western Reporter. Opinions are also available online at: <https://uj.s.sd.gov>.



Original Jurisdiction

In addition to its appellate jurisdiction, the Supreme Court has its own area of “**original**” jurisdiction. It is also responsible for a wide range of administrative duties involving the personnel and procedures of the court system and the professional conduct of attorneys throughout the state.



Justices

The five members of the Supreme Court (four justices and a chief justice) are responsible for making decisions as a group regarding appellate cases and other judicial business.

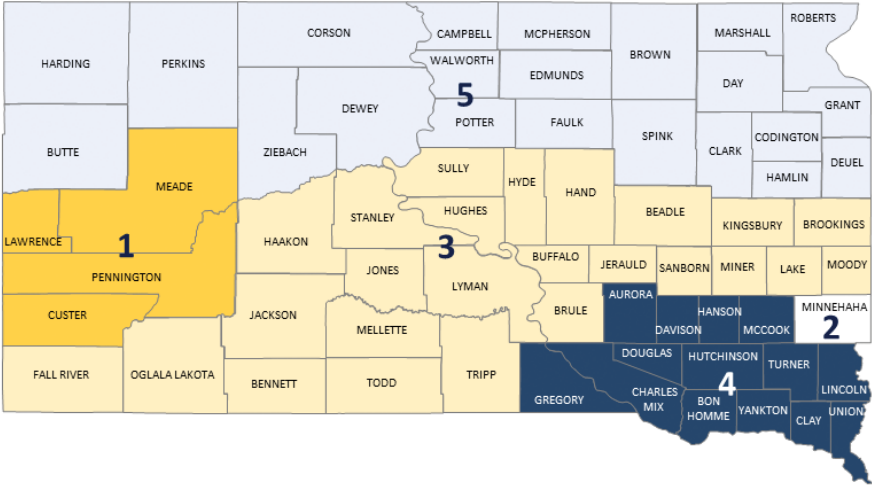
It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench to assist in the decision-making process. Such an appointment may occur when a justice is disqualified. A justice may be disqualified when the justice appears to have a conflict or personal involvement in a case, or if there is a vacancy on the Court caused by the illness or departure of a justice.



Those who sit on the Supreme Court must be licensed to practice law in the state, and permanent justices must be voting residents of the district from which they are appointed at the time they take office. There is no formal age requirement for those who serve on the Court, but there is a statutory requirement that a justice must retire shortly after reaching the age of 70. A retired justice, if available, may be called back to temporary judicial service in any of the state's courts.

Under the terms of a constitutional amendment passed by the voters in 1980, vacancies on the Supreme Court are filled by the Governor's appointment. This appointment must be made from a list of two or more candidates recommended by the Judicial Qualifications Commission. All Supreme Court justices must stand, unopposed, for statewide approval or rejection by the electorate in a retention election. For newly-appointed justices, the retention vote is held at the next general election following the third year after appointment. After the first election, justices stand for retention election every eighth year.

SUPREME COURT DISTRICT MAP



- **Chief Justice Steven R. Jensen**
Appointed to the Supreme Court in 2017 from district four.
- **Justice Mark E. Salter**
Appointed to the Supreme Court in 2018 from district two.
- **Justice Patricia J. DeVaney**
Appointed to the Supreme Court in 2019 from district three.
- **Justice Scott P. Myren**
Appointed to the Supreme Court in 2021 from district five.
- **Justice Robert Gusinsky**
Appointed to the Supreme Court in 2025 from district one.

Our Mission

The Unified Judicial System (UJS) is dedicated to providing a fair, impartial, and accessible court system that upholds the rule of law and is worthy of the public's trust and confidence.

Our Vision

Justice for All.

COURTROOM PROTOCOL

The following list of do's and do not's was prepared for the benefit of anyone attending one of the Supreme Court's sessions. Your cooperation in observing proper courtroom protocol will assure that the lawyers presenting argument before the Court will not be unduly distracted and that the proper respect for the judiciary will be maintained. Your cooperation is appreciated.



DO

- Remove caps/hats before entering the courtroom.
- Enter the courtroom prior to the commencement of an argument.
- Stand when the justices enter and leave the courtroom.
- Listen attentively.
- Turn cell phones off before entering the courtroom.



DO NOT

- Bring food, drinks, cameras or recording equipment into the courtroom.
- Enter or leave the courtroom during the course of an argument.
- Chew gum or create any distraction.
- Engage in any conversation once an argument begins.

TERM OF COURT CASE SUMMARIES

Seven cases are scheduled for oral argument during the Supreme Court's October 2026 Term of Court.

Wednesday, October 7, 2026

9:00 a.m. Muellenberg v. Redfield Ace Hardware (#31386)
9:45 a.m. State v. Beaudioun, Jr. (#31160)
10:30 a.m. State v. Hade (#31301)

Thursday, October 8, 2026

9:00 a.m. Russell v. Goosmann Law (#31381)
9:45 a.m. State v. Scott, Jr. (#31255)
10:30 a.m. Midcontinent v. Department of Revenue
 (#31375, #31396)
11:15 a.m. State v. Monroe (#30985)

For these cases, attorneys are permitted to appear before the Court to emphasize certain points of the case and respond to the Court's questions. Case summaries have been prepared for the cases scheduled for oral argument and are provided on the following pages.

In addition to these oral arguments, numerous other cases will be considered by the Court during this term of court without argument by the attorneys. These cases are on the Court's "non-oral" calendar.

CASES

Case #31386

Wednesday, October 7, 2026—Number 1

Linda Muellenberg v. Redfield Ace Hardware DBD Investment Enterprises, and First Dakota Indemnity Company

This is a workers' compensation dispute regarding permanent total disability benefits (also known as "odd-lot" disability benefits).

Linda Muellenberg injured her eye while working at Ace Hardware on December 3, 2020. That day, a freight shipment arrived, which included PVC pipe bundled in shrink wrap. In the store aisles, Ace displayed their PVC pipes vertically, leaning them against a wall and in a gap between two shelving units. A bungee cord spanned the space between the two shelves, keeping the pipes from falling into the aisle. While Muellenberg was putting the PVC pipes away, the bungee cord came loose, and the metal hook struck her in the left eye.

Muellenberg was taken to the emergency room and seen by an optometrist in a clinic that day. The next morning, she saw an ophthalmologist in Aberdeen and continued to receive treatment over the next week for pain and eye pressure. Although Muellenberg's condition initially improved over the next month, she developed a traumatic cataract, which worsened her symptoms. Out of her left eye, she could only see shapes and contrast in lighting.

Ultimately, Muellenberg underwent a multi-procedure surgery in Minnesota that included a cataract procedure. After surgery, Muellenberg's vision stabilized over the course of months, and her work restrictions were lifted. But she continued to experience pain, blurry vision, headaches, and diminished peripheral vision. Almost a year after the injury, Muellenberg was diagnosed with cystoid macular edema (swelling in the retina). She received further treatment, but her symptoms arising from the injury remained. She did not resume work at Ace and began receiving workers' compensation benefits.

CASES

Muellenberg filed a petition for hearing to the Department of Labor that she was permanently and totally disabled. The hearing was held on July 10, 2024. At the hearing, the administrative law judge heard testimony from Muellenberg, her husband, her sister, and her vocational expert. Muellenberg also offered the deposition testimony of her treating ophthalmologist of three years. Ace offered the deposition of their vocational expert and the report of their independent medical examiner who personally examined Muellenberg.

At the hearing, Muellenberg and her witnesses testified to her continued experience of pain, decreased peripheral vision, dizziness, blurry vision, and poor depth perception. As a result of these symptoms, Muellenberg and her witnesses testified that she does not feel safe driving on highways and has difficulty performing everyday tasks. Muellenberg's vocational expert opined that Muellenberg's issues with driving and her need for frequent breaks to rest her eyes make her obviously unemployable. In his deposition, Muellenberg's treating ophthalmologist stated that her symptoms were consistent with her diagnoses and that he defers to her judgment with respect to driving.

Ace's experts did not contest Muellenberg's subjective account of her symptoms. Nor did they dispute her permanent eye damage that resulted in diminished visual acuity and loss of peripheral vision. However, they opined that her subjective complaints are not enough for odd-lot benefits. They emphasized that she is still employable because her doctors never imposed long-term work restrictions, she has transferable skills, and despite the injury, she can legally drive. Ace's experts noted that Muellenberg's own treating physician, like their independent medical examiner, has had patients that drive comfortably with one eye.

After hearing testimony and considering the evidence, the Department found that Muellenberg was not entitled to odd-lot disability benefits. On appeal, the circuit court agreed.

On appeal to the Supreme Court, Muellenberg raises the following issue and sub-issues:

CASES

1. Whether the Department erred in denying Muellenberg odd-lot disability benefits.
 - a. Whether Muellenberg made a prima facie showing that she is obviously unemployable based on her physical condition, age, training, and experience.
 - b. Whether Ace met their burden of showing that suitable employment within Muellenberg's limitations is actually available in her community.
 - c. Whether Muellenberg made a prima facie showing that she made reasonable efforts to find work and was unsuccessful.

Ms. Jami J. Bishop of Johnson Janklow & Abdallah, LLP, and Ms. Renee H. Christensen and Mr. Michael J. Christensen of Christensen Law Office, P.C., for Appellant Linda Muellenberg

Mr. Charles A. Larson and Ms. Kristin N. Derenge of Boyce Law Firm, LLP, for Appellee Redfield Ace Hardware and First Dakota Indemnity Company

CASES

Case #31160

Wednesday, October 7, 2026—Number 2

State v. Beaudion, Jr.

Pasqalina Badi was reported missing on January 6, 2020. The Sioux Falls Police Department conducted an investigation that led them to Walmart, where Badi worked and was last seen. Police learned that shortly after Badi clocked in for her shift the previous morning, she went home sick. Video surveillance from Walmart captured Badi exiting the store and walking toward her car in the parking lot. The tapes also caught a man, later identified as Amir H. Beaudion, Jr., approaching Badi's car. After a short conversation, the footage showed Beaudion getting into Badi's car and the two driving away. Police collected Badi's cell phone records in an effort to track where they traveled. The records showed Badi's phone leaving the parking lot and traveling to rural Lincoln County where it remained for eight to 11 minutes before heading north on I-29. Her phone detected no movement after that.

A woman discovered Badi's deceased body in a ditch in Lincoln County the next day. Badi's autopsy revealed that she died from asphyxia due to manual strangulation with a contributing cause of death of blunt force injury to the head. After Beaudion was identified, law enforcement took him into custody, and he admitted to getting into a physical argument with Badi and leaving her unconscious in the ditch. The State initially charged Beaudion with seven felonies, including first-degree murder. Pursuant to a plea agreement, Beaudion later pleaded guilty to one count of first-degree manslaughter.

At his change of plea hearing, Beaudion submitted a written factual basis statement where he admitted to driving to Lincoln County with Badi to engage in sexual intercourse on January 5, 2020. Beaudion's statement noted that Badi became upset, and pepper sprayed his privates. This angered Beaudion and he admitted that a physical argument ensued, and he hit Badi "multiple times, including on her head, while she was on the ground and held her down with [his] hand on her throat, choking her." Beaudion admitted in the statement that Badi eventually stopped fighting back and appeared to Beaudion to be unconscious. Beaudion noticed that she was not moving but did not try to help her. Instead, he "left her there and drove away." The

CASES

circuit court accepted this statement and Beaudion's guilty plea and ordered that a presentence investigation report (PSI) be prepared.

Beaudion's PSI summarized his childhood, education, and criminal history. Regarding his upbringing, the PSI stated that Beaudion was born into a family that included substance abuse, as well as physical, mental, and sexual abuse. In school, Beaudion was suspended or expelled for showing up late and missing school before dropping out his freshman year. He did not obtain a GED. Beaudion's criminal history included one felony count of possession of a firearm with an altered serial number. He was placed on probation for that offense. While on probation, he was charged with the first-degree manslaughter offense before the circuit court and an attempted kidnapping that occurred at Hy-Vee just four days before Badi's death. While being incarcerated for these offenses, Beaudion was additionally charged with aggravated assault on a correctional officer. At Beaudion's sentencing hearing, law enforcement officers testified that eight to 10 women contacted them after the offense to report that they had been approached by him in Walmart and Hy-Vee parking lots and that he had asked them for a ride. One of these reports involved the attempted kidnapping charge where Beaudion followed the woman to her apartment after asking for a ride at Hy-Vee. Beaudion's ex-girlfriend also told police that he had kidnapped and strangled her multiple times throughout the course of their relationship. Lastly, the officers informed the court that, since being incarcerated, Beaudion had obtained over 150 write-ups as well as the additional charge of aggravated assault on a correctional officer for shoving a female jailer into a closet, striking her, and strangling her.

The State argued at sentencing that Badi's death amounted to first-degree murder and asked the circuit court to consider his other actions that were testified to at the hearing. Beaudion argued that his actions were not premeditated and instead resulted from a mutual fight. Beaudion urged the court to consider the mitigating factors that were outlined in his sentencing memorandum and PSI such as his young age, traumatic upbringing, and intellectual disability, emphasizing his IQ of 51. He acknowledged that a lengthy sentence was appropriate but argued that, because of his young age, it should be for a term of years to eventually allow for his release and recognize the possibility that he could be rehabilitated.

CASES

After considering the circumstances of the offense, as well as mitigating and aggravating evidence, the circuit court imposed a life sentence for first-degree manslaughter, with no possibility of parole.

Beaudion appeals, raising the following issues:

1. Whether the circuit court abused its discretion when it imposed Beaudion's sentence.
2. Whether Beaudion's sentence was a cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

Mr. Christopher Miles of the South Dakota Office of Indigent Legal Services for Appellant Amir H. Beaudion, Jr.

Mr. Marty Jackley, Attorney General, and Mr. Paul Swedlund, Solicitor General, and Mr. Mark Vargo, Assistant Attorney General, for Appellee the State of South Dakota

CASES

Case #31304

Wednesday, October 7, 2026—Number 3

State v. Hade

Matthew Hade and Madyson Reed were in a relationship and living together. One evening, Reed confronted Hade about texts he had been sending to another woman. The ensuing argument led to multiple confrontations in different rooms of the home. During this time, Hade grabbed Reed's hair, punched her, slammed her head into their bed's headboard, and strangled her twice. Eventually, the fight subsided, and the couple fell asleep. A noise woke Reed in the middle of the night. In the kitchen, she discovered that Hade had damaged the refrigerator by breaking the retainer bar on an internal shelf. In the morning, Hade renewed the violence by throwing a bottle and a weight at Reed and choking her again before he left for work.

After Hade left, Reed called law enforcement and was subsequently interviewed by Deputy Kyle Worden. His body-worn camera recorded their conversation. Though Reed initially declined medical treatment from paramedics at the scene, she later went to an emergency room where she was examined by Dr. Kirsten Busse (who noted that Reed had no visible injuries to her throat or neck).

A grand jury indicted Hade with aggravated assault under SDCL 22-18-1.1(5), which states, "No person may [a]ttempt to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth."

Hade pleaded not guilty and requested a jury trial. He submitted multiple motions in limine relevant to this appeal. In one motion, Hade requested that the circuit court prevent the State from introducing Reed's 911 phone call. Hade contended that this phone call was inadmissible hearsay that did not qualify as an excited utterance because the call happened a significant amount of time after the assault.

Two of Hade's motions addressed the State's plan to introduce the weight he threw and the broken piece of refrigerator as *res gestae* evidence. *Res gestae* evidence is evidence of wrongful conduct other

CASES

than the charged criminal conduct, offered to provide context for the charged crime. Hade argued that neither the weight nor the broken piece of refrigerator was relevant to the charge of aggravated assault and that their probative value was substantially outweighed by their unfair prejudicial effect.

In the final motion in limine relevant on appeal, Hade asked the circuit court to prevent the State from using the footage from Deputy Worden's body-worn camera. Hade argued that the footage contained impermissible hearsay evidence and that its probative value was substantially outweighed by its unfair prejudicial effect.

The circuit court denied all four of these motions.

Because Hade and Reed were the only parties present when the assault occurred, Hade's strategy at trial centered on Reed's credibility, specifically that she bore no visible injuries from the assault. To counter this, the State called Dr. Busse as an expert witness in emergency medicine and strangulation. Hade objected, asserting that the State had failed to show that she was an expert on strangulation. The circuit court overruled this objection and recognized Dr. Busse as an expert in both fields.

Dr. Busse testified that during her 20 years in emergency medicine, she had encountered roughly six to eight strangulations per year. She further testified that 30% of strangulations result in injuries so faint that they are hardly perceptible, and in 50% of strangulations there are no visible wounds at all. Additionally, Dr. Busse testified about the nature of strangulation injuries and how, like domestic violence, they may be underreported.

The jury found Hade guilty of aggravated assault, and the circuit court sentenced him to 10 years in the penitentiary.

Hade appeals his aggravated assault conviction, raising the following issues:

1. Whether the circuit court abused its discretion when it admitted Dr. Busse's expert testimony without addressing the factors required by South Dakota's expert testimony statute.

CASES

2. Whether the circuit court abused its discretion when it admitted a broken piece of a refrigerator and a weight as res gestae evidence.
3. Whether the circuit court abused its discretion when it admitted Reed's out-of-court statements made in the 911 call and in Deputy Worden's body-worn camera footage.

Mr. Derek D. Friese of South Dakota Office of Indigent Legal Services,
Attorney for Appellant Matthew C. Hade

Mr. Marty J. Jackley, Attorney General, and Mr. Matthew W. Templar,
Assistant Attorney General, Attorneys for Appellee State of South
Dakota

CASES

Case #31381

Thursday, October 8, 2026—Number 1

Lesley Russell, Personal Representative of the Estate of Daniel E. Duling, v. Goosmann Law Firm P.L.C. and Jeffrey T. Myers

Statutes of repose limit the time a person has to bring certain claims. For legal malpractice claims, SDCL 15-2-14.2 establishes a three-year statute of repose that begins running on the date of the occurrence that prompts the claim. In cases involving a continuing tort, or a continuing wrong, the repose period starts after the completion of the last alleged negligent act.

Dan Duling retained Jeffrey Myers of Goosmann Law Firm to aid with a shareholder dispute involving his brother, Raymond Joe Duling (Joe) and their closely held corporation—Duling Sons, Inc, (the Corporation)—which owns a substantial amount of agricultural real estate. On December 16, 2019, Joe and Dan agreed that the Corporation would issue Dan 251,000 shares of stock to repay Dan for money the Corporation owed him and in an apparent effort to allow Dan to obtain control of the Corporation. However, Dan's additional shares did not include voting rights because all of the authorized voting stock had already been issued, and a majority of it continued to be owned by Joe.

In 2020, Myers agreed to separately represent the Corporation in a foreclosure action filed by Metropolitan Life Insurance (MetLife). Myers negotiated a repayment agreement with MetLife in which Dan individually contributed money on behalf of the Corporation. Myers claimed that Dan represented himself during this negotiation. Around the same time, the Corporation claimed to have revoked Joe's shares for offering the Corporation's real estate as collateral on his personal loan with MetLife.

In 2021, Joe reasserted his rights as the majority shareholder and reclaimed control of the Corporation under the theory that his rights could not simply be revoked, and in a separate proceeding, a circuit court judge agreed and held that Joe remained the owner of the majority voting shares. Myers represented the Corporation throughout that separate case and terminated his representation

CASES

after the court's ruling in March.

In December 2022, amid allegations of legal malpractice by Myers, the parties and their representatives entered into a “tolling agreement” which stated that the statute of repose period would be tolled, or held in abeyance, from December 1, 2022, until December 1, 2023. There appears to have been at least one other tolling agreement, but the parties disagree about the intended length of additional tolling. They seem to agree, however, that the intended tolling should have been lasted until at least August 1, 2024.

Dan has since passed away, and Lesley Russell was named the personal representative of his estate. Dan's estate formally commenced this legal malpractice action on February 21, 2025, alleging, among other things, that Myers was negligent by not assuring that Dan obtained a controlling ownership interest in the Corporation. Without admitting negligence, Myers and the Goosmann firm filed a motion for summary judgment, or disposition without a trial, arguing that the action should be dismissed because Dan's estate brought the action outside the three-year repose period. The circuit court granted the motion for summary judgment, determining that the alleged negligent act occurred on December 16, 2019. The court did not consider the tolling agreements but held that the legal malpractice claims were time-barred even if the tolling agreements applied.

Dan's estate appeals, arguing the circuit court erred when it determined the last culpable act occurred on was on December 16, 2019. In the estate's view, there were genuine issues of material fact concerning the correct date for commencing the repose period because Myers continued a “course of representation” after December 16, 2019, and failed to disclose his errors and an asserted conflict of interest between Dan and the Corporation.

Mr. Murray Ogborn and Mr. Mike Ogborn of Ogborn Mihm, LLP, Attorneys for Appellant Lesley Russell, Personal Representative of the Estate of Daniel E. Duling

Ms. Sarah Baron Houy, Mr. Jeffery Bratkiewicz, and Ms. Kathryn Hoskins of Bangs, McCullen, Butler, Foye & Simmons, LLP, Attorneys for Appellee Goosmann Law Firm, PLC and Jeffrey Myers

CASES

Case #31255

Thursday, October 8, 2026—Number 2

State v. Reginald Scott, Jr.

On the evening of April 8, 2024, Reginald Scott went to the Taco John's restaurant in Brandon and ordered food at the drive-through. An employee of Taco John's who interacted with Scott called 911 to report a suspected intoxicated driver. The caller informed the 911 operator that the driver was belligerent and slurring his words. The caller described the driver as a black male driving a red Kia Soul with a Kansas license plate. This information was relayed to law enforcement, and two Brandon police officers driving separate patrol vehicles responded to the call.

Both officers saw the vehicle matching the 911 caller's description leave the Taco John's drive-through and park in an adjacent parking lot. Neither observed any driving irregularities or traffic violations. To investigate whether the car was being driven by an intoxicated driver, both officers entered the parking lot and parked near the Kia Soul. The first officer approached the driver's side of the vehicle, shined a flashlight into the car, and then knocked on the driver's window. Scott rolled down the window and the officer told him he had been called in as a possible drunk driver. By that time, the other officer had approached the Kia Soul on the passenger side and saw an open alcoholic beverage container in the center console. He shared this observation with the other officer, who then asked Scott to come to his patrol vehicle where he noted that Scott had bloodshot eyes, slurred speech, and smelled of alcohol. He had Scott perform field sobriety tests, which he failed, then arrested him for driving under the influence.

Prior to a trial on the DUI charge, Scott filed a motion to suppress all evidence derived from his interaction with the officers in the parking lot, arguing that the officers violated his Fourth Amendment right against unreasonable searches and seizures. He asserted the information provided by the Taco John's employee was insufficient to provide reasonable suspicion of criminal activity, a standard that must be met to justify an investigatory stop.

CASES

After an evidentiary hearing, the circuit court determined that the officers had reasonable suspicion to conduct an investigatory stop based on the fact that an identifiable caller provided specific details that would reasonably give rise to an inference that the reported driver was intoxicated. The court denied Scott's motion to suppress and later found Scott guilty on the DUI charge after a court trial. Scott appeals, asserting the circuit court erred in denying his motion to suppress.

Ms. Justine Avtjoglou of the South Dakota Office of Indigent Legal Services for Appellant Reginald Scott, Jr.

Mr. Marty Jackley, Attorney General, and Ms. Erin E. Handke, Assistant Attorney General, for Appellee State of South Dakota

CASES

Case #31375, #31396

Thursday, October 8, 2026—Number 3

Midcontinent v. Department of Revenue

South Dakota law provides for a use tax on the value of tangible personal property used in the state. Syndicated television programming constitutes tangible property, but it is statutorily exempt from use tax where it is purchased for resale. And services, which would generally be subject to state sales tax, may also be exempt where they are connected to the syndicated programming and under certain qualifying conditions.

Under a written agreement between Midcontinent Communications and Comcast, Comcast is obligated to negotiate and secure broadcast programming for Midco, who, in return, pays Comcast for the cost of the programming used by its customers along with a 3% fee, referred to as an “administrative fee” or a “management fee.”

According to the parties’ agreement, the fee includes “management, selection, billing, and collection of Programming Services” and further states that Comcast is “authorized to control and direct the promotion and marketing of the Programming Services.” Comcast’s invoices to Midco have historically listed the 3% fee as a “management fee” and noted that the fee is “Taxable in State of SD.”

In connection with a Department of Revenue audit, Midco hired a tax consulting firm which concluded that Midco had been paying use tax on the 3% fee in error. The Department disagreed, taking the position that the fee was, in fact, subject to use tax. Midco requested a refund and initiated a contested case.

An administrative hearing examiner agreed with Midco’s legal argument without receiving evidence concerning the nature of the 3% fee. However, the Department retained final decision-making authority and disagreed with the hearing examiner, finding “it is not clear what, if anything, the 3% administrative fee charged by Comcast to Midco entails or involves.”

The case returned to the hearing examiner who received documentary evidence about the Midco/Comcast agreement as well as testimony from witnesses about the 3% fee. Based upon the

CASES

evidence, the hearing examiner again concluded that the fee was exempt, and recommended that the money previously paid by Midco in error should be refunded. In the hearing examiner's view, the fee was not taxable because it was not a separate service provided to Midco but instead "a markup on the cost of securing programming to sell to Midco," which, in turn, enables it to sell the programming to its customers without deriving any independent value from the Comcast fee. However, the Department again disagreed and determined that the 3% fee was taxable and not exempt.

Midco then filed an appeal with the circuit court which, like the hearing examiner, concluded that the 3% fee was exempt from use tax under a state law—SDCL 10-46-1(17)—because the fee was "part and parcel to the tangible property" Comcast sold to Midco in the form of the programming. In addition, the court also held the 3% fee was exempt under an administrative rule—ARSD 64:06:01:08.03—because "there is nothing Comcast is providing to Midco above and beyond the programming. This makes the fee an inextricable part of the sale of programming."

The circuit court also awarded Midco attorney's fees, finding the Department's position was not "substantially justified." However, the circuit court denied Midco's request for interest because interest is not available for an overpayment of taxes.

The Department appeals raising three issues:

1. Whether the circuit court erred in concluding the fee was not a service subject to tax and rather was exempt from use tax.
2. Whether the circuit court erred in concluding Midco satisfied its burden to establish a tax exemption.
3. Whether the circuit court erred in awarding Midco attorney's fees under SDCL 10-59-34.

Midco appeals the circuit court's decision denying its request for interest.

Mr. Nicholas M. Ramos and Ms. Kirsten E. Jasper, Special Assistant Attorneys General, Attorneys for Appellant Department of Revenue

Mr. Daniel R. Fritz and Mr. Timothy R. Rahn of Ballard Spahr, LLP, Attorneys for Appellee Midcontinent Communications

CASES

Case #30985

Thursday, October 8, 2026—Number 4

State v. Monroe

Two inmates at the South Dakota State Penitentiary were arrested and charged with attempted first-degree murder of a law enforcement officer and aggravated assault against a Department of Corrections employee; additionally, one of the inmates was charged with simple assault against a Department of Corrections employee.

The incident giving rise to the charges occurred on August 24, 2023. Surveillance cameras at the prison captured the moments leading up to the incident and the incident itself. Prior to the incident, Lester Monroe is seen walking back and forth from his cell to the section door, peering through the section door and into the common area of his unit. At one point before the section door opens, Monroe went to the upstairs level in his section and spoke with another inmate, Kyle Jones. While the two were conversing, the section door leading to the common area opened. After the door opened, Monroe headed toward the staff desk where Corporal Harms was standing. Monroe began walking past Corporal Harms and into the faculty hallway. Corporal Harms stopped Monroe and asked where Monroe was headed, to which Monroe stated he wanted to see Mike, the Native American Cultural leader. Corporal Harms told Monroe he could not go to see Mike because he did not ask for permission first.

Monroe allegedly responded, “Why are you always such a dick to me?” Monroe is then seen striking Corporal Harms in the face. Monroe then pushed Corporal Harms onto the staff desk and began to punch Corporal Harms in the head. Next, Monroe threw Corporal Harms onto the ground near the desk and continued to punch him in the head. During this altercation, Jones is seen running over and joining Monroe in punching Corporal Harms in the head. Both inmates continue punching Corporal Harms in the head while Corporal Harms attempts to shield his head. The altercation persists for 45 seconds before other officers contain Monroe and Jones.

In interviews following the incident, Monroe claimed that the fight was spontaneous and that he acted in the moment out of emotion. He offered to take a polygraph test at the suggestion of law enforcement. Law enforcement, however, did not ever arrange

CASES

to have Monroe take a polygraph. Prior to trial, the State sought to exclude evidence of Monroe's willingness to take a polygraph test. The court granted the motion finding the probative value was substantially outweighed by issues of jury confusion.

After the altercation, Jones made several phone calls from prison to his mother that were recorded. In these calls, Jones suggests he "thought about the consequences and stuff" and "was thinking of everything before we did it." Throughout the phone conversations, Jones never refers to Monroe by name but speaks of someone he refers to as "his brother" or otherwise generally "he/him." In response to his mother saying "he" should have known better, Jones stated, "Well, he's under me." In addition, Jones stated, "the one that did it with me is . . . he's always been there . . . I tell him to do something he does it without hesitation," and "that's my brother. Everything I told him to do he does, he did it without hesitation."

Due to the State's plan to use Jones' phone calls, Monroe moved to sever the trial. He argued that admitting a non-testifying co-defendant's statements in a joint trial would violate Monroe's Sixth Amendment right to confront witnesses against him. Monroe further argued that the phone calls essentially identified him as acting with Jones to attack Corporal Harms. Monroe claimed the statements were prejudicial as they described "joint action, direction, and coordination between these two individuals" necessary to support the State's theory that Monroe acted with a premeditated design to effect the death of Corporal Harms — an essential element for attempted first-degree murder. The State argued the statements did not require severance of the trial. The State also argues on appeal that the statements made by Jones to his mother were non-testimonial and did not violate the Confrontation Clause.

The court denied the motion to sever, finding the phone calls did not explicitly name Monroe and were not facially incriminating as to Monroe. The court found that a limiting instruction stating that the jury could only use the statements against Jones would suffice to protect Monroe's right to a fair trial. At the joint trial, Jones' phone calls with his mother were played for the jury and the jury was instructed not to use such statements against Monroe.

CASES

During closing arguments, the State referenced statements of Monroe and inadvertently attributed those to Jones. Defendants moved for a mistrial based on the State's mistake. The court denied the motions for a mistrial, determining that it was a single unintentional misstatement made by the State and the State could clear this up on rebuttal. The court also noted that the jury would be instructed that they could not use a statement by one defendant against the other and the State reinforced that instruction several times during closing argument. As such, the court did not issue a further instruction or correct the State's misstatement. The State did correct the misstatement in the rebuttal argument.

The jury found both Monroe and Jones guilty of counts one and two — attempted first-degree murder of a law enforcement officer and aggravated assault against a Department of Corrections employee. The circuit court sentenced Monroe to 50 years imprisonment, with 15 years suspended for count one and 20 years imprisonment, with 20 years suspended for count two.

Monroe appeals, raising the following issues:

1. Whether the circuit court erred in denying Monroe's motion to sever the joint trial.
2. Whether the circuit court erred by precluding evidence of Monroe's willingness to take a polygraph test.
3. Whether the circuit court erred in denying Monroe's motion for a mistrial.
4. Whether the circuit court committed plain error and violated Monroe's right against double jeopardy by entering a conviction and sentence for Monroe on both first-degree murder and aggravated assault.

Mr. Mark Kadi and Ms. Tracy Miller of the Office of the Public Advocate, Attorneys for Appellant Lester Monroe

Mr. Marty J. Jackley, Attorney General, and Ms. Renee Stellagher, Assistant Attorney General, for Appellee State of South Dakota

GLOSSARY OF TERMS

Affirm

When the Supreme Court “affirms” a circuit court’s action, it declares that the judgment, decree or order must stand as decided by the circuit court.

Appeal

The Supreme Court’s review of a circuit court’s decision in a lawsuit. The Supreme Court does not consider new evidence or listen to witnesses. Rather, it reviews the record of a case and applies the proper law to determine if the circuit court’s decision is correct.

Appellant

The party who takes an appeal from the circuit court to the Supreme Court. (In other words, the party who does not agree with the result reached in circuit court.)

Appellee

The party in a case against whom an appeal is taken; that is, the party who does not want the circuit court’s decision reversed. Sometimes also called the “respondent.”

Brief

A document written by a party’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which their legal position is based. The brief tells the Supreme Court the facts of the case, the questions of law involved, the law the attorney believes should be applied by the Court, and the result the attorney believes the Court should reach.

Defendant

The party sued by the plaintiff or prosecuted by the state in the circuit court.

GLOSSARY OF TERMS

Oral Argument

An opportunity for the attorneys to make an oral presentation to the Supreme Court when the appeal is considered. Oral arguments also give the Court an opportunity to ask the attorneys questions about the issues raised in their briefs.

Plaintiff

The party who brings a lawsuit in the circuit court.

Record

All the papers filed in a circuit court case including any transcripts. This includes the original complaint, motions, court orders, and affidavits and exhibits in the case.

Remand

The Supreme Court “remands” an appealed case back to the circuit court for some further action. For example, the Supreme Court might remand a case to the circuit court and require that court to hear additional evidence and make further factual findings that are important in deciding the case.

Reverse

When the Supreme Court “reverses” a circuit court decision, it finds that a legal error was made and requires that the decision be changed.

Transcript

A document that contains a verbatim account of all that was said in a circuit court case by the parties, the attorneys, the circuit judge and any witnesses. The transcript is prepared by the court reporter, and it is reviewed by the Supreme Court as part of the appeal process.

NOTES

NOTES



SOUTH DAKOTA SUPREME COURT JUSTICES

L-R: Justice Scott P. Myren, Justice Mark E. Salter, Chief Justice Steven R. Jensen, Justice Patricia J. DeVaney and Justice Robert Gusinsky



SOUTH DAKOTA SUPREME COURT

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