

Defendant shall serve ten (10) years in the state penitentiary on Count V. It was the further Order of the Court that the sentences in Counts III, IV and V shall run concurrent with one another. Notice Of Appeal was filed on June 30, 2001. This Court's jurisdiction is pursuant to SDCL §23A-32-2.

STATEMENT OF LEGAL ISSUES

- I. WHETHER THE TRIAL COURT ERRED IN NOT SUPPRESSING THE AUDIO TAPE RECORDING BETWEEN DANNY BURKHART AND THE APPELLANT.
- II. WHETHER THE TRIAL COURT ERRED IN NOT RECUSING HIMSELF FROM PRESIDING OVER THE DEFENDANT'S TRIAL.
- III. WHETHER THE TRIAL COURT ERRED IN NOT GRANTING A MISTRIAL AFTER THE STATE VIOLATED AN IN LIMINE ORDER.
- IV. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE USE OF TRANSCRIPTS.
- V. WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S PROPOSED INSTRUCTIONS FOR THE LESSER-INCLUDED OFFENSES OF HOMICIDE.

STATEMENT OF CASE

This is a criminal case venued in Circuit Court for the Fourth Judicial Circuit, Lawrence County, State of South Dakota. Charges were filed after the body of Chester Allan Poage was found in the Higgins Gulch area of Lawrence County outside Spearfish, South Dakota. Defendant was arraigned in Circuit Court on May 17, 2000, and to these charges he pleaded Not Guilty. The trial court accepted a change of plea on March 2, 2001 where the Defendant pled Not Guilty and Not Guilty By Reason Of Insanity to all charges.