

MONDAY, MARCH 23, 2009
10:00 A.M.

NO. 2

#24883

WILLIAM GUTHRIE,
Petitioner and Appellant,

vs.

DOUGLAS WEBER, WARDEN,
SOUTH DAKOTA STATE PENITENTIARY
Respondent and Appellee.

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(FOR APPELLEE)

The Honorable Tim D. Tucker
Third Judicial Circuit
Beadle County

(CIV 01-386)

STATEMENT OF LEGAL ISSUES

1. WHETHER THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT ESTABLISHED PROBABLE CAUSE TO SEIZE THE CHURCH COMPUTER?

Trial Court: Held that the Affidavit established probable cause.

State v. Helland, 707 NW2d (SD 2005)

State v. Kaseman, 273 NW2d (SD 1969)

United States v. Minis, 666 F2d 134 (5TH CIR. 1982)

Kimmelman v. Morrison, 477 US 365 (1986)

2. WHETHER THE STATE'S USE OF INVESTIGATIVE SUBPOENAS DUCES TECUM CONSTITUTED AND UNLAWFUL SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT AND ARTICLE VI, SECTION 11 OF THE SOUTH DAKOTA CONSTITUTION?

Trial Court: Held that the use of the investigative subpoenas to obtain Petitioner's prescription drug records violated Petitioner's constitutionally protected right of privacy, but that the State would nevertheless have inevitably discovered these records by other independent means.

Mancusi, Warden v. DeForte, 392 US 364 (1968)

Douglas v. Dobbs, 419 F3d 1097 (10th Cir. 2005)

State v. Boll, 651 NW2d 710 (SD 2002)

Nix v. Williams, 467 US 431 (1984)