

STATEMENT OF THE ISSUES

- I. Was there sufficient evidence to support the “specific intent” element of SDCL 22-19B-1 requiring the State to prove beyond a reasonable doubt that the defendant intended to intimidate or harass upon the basis of race or ethnicity?**

The trial court denied the defendant’s motion for judgment of acquittal.

- *People ex. rel. W.T.M.*, 2010 S.D. 45, 785 N.W.2d 264
- *State v. Kessler*, 2009 S.D. 76, 772 N.W.2d 132
- *State v. Halverson*, 394 N.W.2d 886 (S.D. 1986) (per curiam)
- *State v. Tofani*, 2006 S.D. 63, 719 N.W.2d 391

- II. Was there sufficient evidence to support the “specific intent” element of SDCL 22-32-1 requiring the State to prove beyond a reasonable doubt that the defendant entered an occupied structure intending to commit the specified crimes?**

The trial court denied the defendant’s motion for judgment of acquittal.

- *People ex. rel. W.T.M.*, 2010 S.D. 45, 785 N.W.2d 264
- *State v. Kessler*, 2009 S.D. 76, 772 N.W.2d
- *State v. Halverson*, 394 N.W.2d 886 (S.D. 1986) (per curiam)
- *State v. Tofani*, 2006 S.D. 63, 719 N.W.2d 391

- III. Was there sufficient evidence convict the defendant of committing a felony while armed with a firearm?**

The trial court denied the defendant’s motion for judgment of acquittal.

- *State v. Simons*, 313 N.W.2d 465 (S.D. 1981)
- *State v. Kessler*, 2009 S.D. 76, 772 N.W.2d
- *State v. Halverson*, 394 N.W.2d 886 (S.D. 1986) (per curiam)

IV. Did the trial court's exclusion of highly relevant evidence that the defendant's actions in accompanying Councilman Anderson to the home in question was not specifically related to race or ethnicity deprive the defendant of a full defense and deny him a fair trial?

The trial court granted, in part, the State's motion in limine to exclude evidence that the reason that Councilman Anderson asked the defendant to accompany him to the house in question was that Anderson suspected and had received complaints from residents regarding potential criminal activity by persons staying in the house.

- *State v. Huber*, 2010 S.D. 63, 789 N.W.2d 283
- *State v. Fisher*, 2010 S.D. 44, 783 N.W.2d 644
- *State v. Lamont*, 2001 S.D. 92, 631 N.W.2d 603