

STATEMENT OF LEGAL ISSUES

- I. WHETHER THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, SECTION 7 OF THE SOUTH DAKOTA STATE CONSTITUTION WAS VIOLATED.

**The Circuit Court never addressed the issue of a constitutional claim of a right to speedy trial, but only the statutory 180 day rule and granted the State's Motion for Good Cause Delay.**

Sixth Amendment to the United States Constitution

Article VI, Section 7, South Dakota State Constitution

SDCL 23A-44-5.1(4) (A)

Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)

State v. Karlen, 589 N.W.2d 594 (S.D. 1999)

State v. Jones, 521 N.W.2d 662, 666 (S.D.1994)

- II. WHETHER THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS VIOLATED WHEN LAW ENFORCEMENT USED A CO-DEFENDANT TO ELICIT INFORMATION FROM THE DEFENDANT WHILE WAS REPRESENTED BY COUNSEL AND INCARCERATED IN THE PENNINGTON COUNTY JAIL?

**The Circuit Court answered the question in the negative and held that the Defendant's Rights were not violated.**

Sixth Amendment to the United States Constitution

Article VI, Section 7, South Dakota State Constitution

Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964)

United States v. Henry, 447 U.S. 264 (1980)

III. WHETHER THE COURT ERRED IN ALLOWING THE INTRODUCTION  
OF CO-CONSPIRATOR STATEMENTS UNDER SDCL 19-16-3(5).

**The Circuit Court allowed the Co-conspirator's  
statements under SDCL 19-16-3(5).**

SDCL 19-16-3(5)

State v. Stavig, 416 N.W.2d 39, 41 (S.D. 1987)

State v. Smith, 353 N.W. 2d 338, 344 (S.D. 1984)

State v. Kane, 266 N.W.2d 552, 556 (S.D. 1978)

IV. WHETHER A DEFENDANT CAN HAVE A CONSPIRACY WITH  
SOMEBODY THAT IS FOUND TO BE INCOMPETENT TO STAND  
TRIAL.

**The Circuit Court addressed this issue in the Co-  
conspirator's statements and found that a person can  
have a conspiracy with an incompetent person.**

SDCL 19-16-3

State v. Jenner, 434 N.W.2d 76, 81 (SD 1988)

Delaney v. State, 51 S.W. 2d 485 (TN 1932)

Regle v. State, 264 A.2d 119 (MD 1970)

V. WHETHER THE DEFENDANT WAS DEPRIVED OF HIS RIGHT TO  
CROSS-EXAMINE WITNESSES AGAINST HIM WHEN THE COURT  
ALLOWED THE STATE TO USE CO-CONSPIRATOR HEARSAY  
STATEMENTS IN TRIAL.

**The Circuit Court never specifically addressed this  
issue in deciding the co-conspirator hearsay  
statements.**

Sixth Amendment to the United States Constitution

Article VI, Section 7, South Dakota State Constitution

Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354,  
158 L.Ed.2d 177 (2004)

State v. Carothers, 692 N.W. 2d 544 (SD 2005)

VI. WHETHER THE COURT WAS DISPROPORTIONATE IN SENTENCING AND  
BASED SENTENCING ON FACTS THAT WERE NOT PART OF THE  
CHARGE OF KIDNAPPING.

**The Circuit Court stated that it took into  
consideration the facts and law in formulating a  
sentence.**

Eighth Amendment to United States Constitution

State v. Bonner, 577 N.W.2d 575 (SD 1998)

State v. Hinger, 600 N.W. 2d 542 (SD 1999)

State v. Piper, 709 N.W.2d 783 (SD 2006)