

#23772

STATEMENT OF LEGAL ISSUE

WHETHER THE TRIAL COURT ERRED BY DISMISSING A STATE CHARGE FOR A VIOLATION OF SDCL 22-22-1(5) (THIRD DEGREE STATUTORY RAPE) BROUGHT SUBSEQUENT TO THE DEFENDANT'S ACQUITTAL OF A CHARGE BROUGHT UNDER SDCL 22-22-1(4) (SECOND DEGREE RAPE-INTOXICATION), ARISING FROM THE SAME EVENT?

The Trial Court dismissed the subsequent case charged under SDCL 22-22-1(5) (Third Degree Statutory Rape), on Double Jeopardy grounds.

Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)

State v. Flittie, 318 N.W.2d 346 (S.D. 1982)

State v. Hoadley, 2002 SD 109, 651 N.W.2d 249

State v. Jensen, 1998 SD 52, 579 N.W.2d 613

U.S. Const. amend. V