

TUESDAY, APRIL 28, 2009
9:00 A.M.

#24815

NO.1

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

NEAL LEMLER,
Defendant and Appellant.

Ms. Rose Anne Wendell
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(FOR APPELLANT)

Mr. Max A. Gors
Assistant Attorney General
Department of Corrections
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(FOR APPELLEE)

The Honorable James W. Anderson
Sixth Judicial Circuit
Hughes County

(CR 05-605)

STATEMENT OF THE ISSUES

1. Did the trial court err when it concluded that Jeffrey Hawthorne is qualified to render expert opinions in the field of transdermal alcohol absorption?

The trial court concluded that Jeffrey Hawthorne was qualified to render an expert opinion.

Daubert v. Merrill Dow Pharmaceuticals, Inc. 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed 2d 469 (1993); State v. Moeller, 1996 SD 60 ¶72, 548 NW2d 465; SDCL 19-15-2

2. Did the trial court err when it concluded that the SCRAM device meets the Daubert test for admissibility of scientific evidence?

The trial court concluded that the device meet the Daubert test for admissibility.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 US 579, 593-594, 113 SCt 2786, 2797, 125 Led2d 469, 482-283 (1993). See e.g. First Premier Bank v. Kolcraft Enterprises, Inc., 2004 SD 92, ¶34, 686 NW2d 430, 446; State v. Hofer, 512 NW2d 482, 484 (SD 1994).

3. Did the trial court err when it concluded that Defendant Neal Lemler had violated the conditions of his probation?

The trial court concluded that Neal Lemler had violated the conditions of his probation.

Larson v. Syverson, 84 SD 31, 33, 166 NW2d 424, 425 (1959)

Rosseau v. Gesinger, 330 NW2d 522 (SD 1983)