

TUESDAY, NOVEMBER 17, 2009
10:00 A.M.

NO. 2

#25164

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

BARRY GLENN THUNDER
Defendant and Appellant.

Mr. Ryan Kolbeck
Minnehaha County Public
Defender's Office
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Sioux Falls SD 57104
605-367-4242

(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Joseph Neiles
Second Judicial Circuit
Minnehaha County

(CR 08-2922)

(20-20-10)

ISSUE AND AUTHORITIES

I.

WHETHER OFFICER FLOGSTAD VIOLATED MR. THUNDER'S FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES WHEN HE SEARCHED MR. THUNDER'S CELL PHONE WITHOUT CONSENT, A WARRANT, OR EXIGENT CIRCUMSTANCES.

- (a) Whether Mr. Thunder possessed a reasonable expectation of privacy in the cell phone taken from his locked private bedroom.
- (b) Whether Mr. Thunder retained an expectation of privacy in the videos searched by Officer Flogstad after the private searches were completed.

The trial court found that any privacy expectation that Mr. Thunder had in the cell phone camera was defeated by the private searches and the subsequent search did not exceed the scope of the private searches in any significant way.

Relevant Cases: U.S. v. Jacobsen, 446 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984); Walter v. U.S., 447 U.S. 649, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980); State v. Schwartz, 2004 SD 123, 689 N.W.2d 430.