

TUESDAY, OCTOBER 5, 2010
10:00 A.M.

NO. 2

#25436

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

TAD BLACKBURN,
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Thomas L. Trimble
Seventh Judicial Circuit
Pennington County

(CR 07-5131)

(20-20-10)

LEGAL ISSUES PRESENTED

I. THE STATE VIOLATED BLACKBURN'S RIGHT TO A FAIR TRIAL

US Constitution, Amendments 5, 6 and 14.

A. AARON JONES' INVOCATION OF HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION BEFORE THE JURY WAS UNFAIRLY PREJUDICIAL – PLAIN ERROR

Namet v. United States, 373 US 179, 83 SCt 1151 (1963).

Mitchell v. United States, 526 US 314, 119 SCt 1307 (1999).

State v. Fox, 313 NW2d 38 (SD 1981).

State v. Allen, 224 NW2d 237 (IA 1974).

B. JEREMY SMITH'S REFUSAL TO TESTIFY BEFORE THE JURY WAS UNFAIRLY PREJUDICIAL – PLAIN ERROR

Namet v. United States, 373 US 179, 83 SCt 1151 (1963).

Crawford v. Washington, 541 US 36, 124 SCt 1354 (2004).

United States v. Reyes, 326 F3d 536 (8th Cir. 2004).

C. TRIAL COURT ERRED IN ADMITTING THE NEW TESTIMONY OF SMITH AND ROOT REGARDING CONSPIRACY

State v. Packed, 2007 SD 75, 736 NW2d 851.

State v. Krebs, 2006 SD 43, 714 NW2d 91.

State v. Michalek, 407 NW2d 815 (SD 1987).

D. THE CUMULATIVE EFFECT OF TRIAL ERRORS AND PROSECUTORIAL MISCONDUCT DENIED BLACKBURN A FAIR TRIAL

State v. Frazier, 2001 SD 19, 622 NW2d 246.

State v. Smith, 1999 SD 83, 599 NW2d 344.

State v. Wilson, 2008 SD 13, 745 NW2d 666.

Smith v. Goose, 205 F3d 1045 (8th Cir. 2000).

II. TRIAL COURT ERRED IN DENYING MOTION FOR NEW TRIAL BASED ON INSUFFICIENCY OF EVIDENCE

State v. Shaw, 2005 SD 105, 705 NW2d 620

State v. Fasthorse, 2009 SD 106, 76 NW2d 233.