

LEGAL ISSUES

1). WHETHER A SINGLE INCIDENT THAT WAS ALLEGED TO HAVE OCCURRED NEARLY THREE YEARS AFTER THE INSTANT CASE, MAY BE ADMITTED UNDER SDCL § 19-12-5 AS THE SOLE EVIDENCE OF A COMMON SCHEME OR PLAN ALLEGED TO EXIST AT THE TIME OF THE INSTANT CASE?

The Trial Court allowed the state to introduce such evidence as the sole “other acts” evidence in this case.

SDCL § 19-12-5

State v. Champagne, 422 N.W.2d 840 (S.D. 1988)

State v. Armstrong, 2010 S.D. 94, 793 N.W.2d 6

State v. Thomas, 381 NW2d 232 (S.D. 1986)

2). WHETHER THE DEFENDANT’S CONSTITUTIONAL RIGHT TO CONFRONTATION WAS IMPERMISSIBLY VIOLATED WHEN THE STATE’S DNA EXPERT WITNESS WAS PERMITTED TO TESTIFY ABOUT THE RESULTS OF DNA TESTING PERFORMED BY NON-TESTIFYING ANALYSTS?

The Trial Court permitted the testimony, overruling the Appellant’s argument that his Constitutional right to confrontation was violated.

Bullcoming v. New Mexico, 564 U.S. ___, 131 S.Ct. 2705, 180 LEd2d 610 (2011)

Williams v. Illinois, ___ US ___ (Slip Op. June 18, 2012)

3). WHETHER THE TRIAL COURT WAS DEPRIVED OF JURISDICTION IN THE HABITUAL OFFENDER TRIAL BY THE STATE’S VOLUNTARY DISMISSAL OF THE AMENDED PART II INFORMATION PRIOR TO THE COMMENCEMENT OF THE HABITUAL OFFENDER TRIAL?

The Trial Court held that the original Part II Information was effectively revived by the dismissal of the Amended Part II Information.

S.D. Const. Art. VI § 7

S.D. Constitution Art. VI, § 10

SDCL § 23A-44-2

State v. Eidahl, 486 N.W.2d 257 (S.D. 1992)

Surgical Institute of South Dakota v. Sorrell, 2012 S.D. 48, ___ N.W.2d ___

State v. Alexander, 313 N.W.2d 33 (S.D. 1981)