

TUESDAY, MAY 25, 2010
10:00 A.M.

NO. 2

#25116

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

KENNETH C. HUBER,
Defendant and Appellant.

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(FOR APPELLEE)

The Honorable James W. Anderson
Sixth Judicial Circuit
Hyde County

(CR 07-15)

20-20-10

STATEMENT OF LEGAL ISSUES

1. DID THE TRIAL COURT ERR IN ADMITTING THE OPINION TESTIMONY OF THE STATE'S FIREARM TRAINING EXPERT, JOHN FARNAM, WHO TESTIFIED THAT THE EVENTS IN THIS CASE WERE NOT CONSISTENT WITH AN ACCIDENTAL SHOOTING?

The trial court permitted the State's expert to testify that the shooting in this case was not consistent with an accidental shooting. The trial court did not verify the reliability of the expert's theory or method used to arrive at his opinion. TT 1828

State v. Guthrie, 627 N.W.2d 401 (SD 2001).

2. DID THE TRIAL COURT ERR IN EXCLUDING ALL OF THE TESTIMONY OF THE DEFENDANT'S EXPERT, DR. ROGER ENOKA, PH.D., ON CAUSES OF ACCIDENTAL FIREARM DISCHARGES?

The trial court excluded all the testimony of Dr. Roger Enoka, Ph.D. as not relevant to the issues in the case. The trial court did not consider the relevancy of Dr. Enoka's testimony to rebut the testimony of the State's expert, John Farnam, or the State's "well-trained" officer theory of the case. MHT 11/19/08 p. 205.

State v. Packed, 736 N.W.2d 851 (SD 2007).

3. DID THE TRIAL COURT ERR IN EXCLUDING DEFENDANT'S REBUTTAL EVIDENCE OF OTHER ACCIDENTAL FIREARM DISCHARGES BY LAW ENFORCEMENT OFFICERS IN THE STATE OF SOUTH DAKOTA?

The trial court excluded all evidence of other accidental firearms discharges by law enforcement officers, finding that the evidence was only peripherally relevant to Huber's theory of defense and more prejudicial than probative. The trial court did not consider the relevancy of the other accidental discharges to rebut the testimony of the State's expert, John Farnam, or the State's "well-trained" officer theory of the case.

State v. Packed, 736 N.W.2d 851 (SD 2007).

4. DID THE TRIAL COURT ERR IN ADMITTING HEARSAY STATEMENTS OF PAM HUBER?

The trial court admitted all hearsay evidence.

State v. Aesoph, 647 N.W.2d 743 (SD 2002)
State v. Davi, 504 N.W.2d 844 (SD 1993)
State v. Kerkove, 423 N.W.2d 160 (SD 1988)

5. THE TRIAL COURT ERR IN ADMITTING OTHER ACTS EVIDENCE?

The trial court admitted all other acts evidence.

State v. Wright, 593 N.W.2d 792 (SD 1999)
Huddleston v. United States, 485 US 681 (1988)