

STATEMENT OF ISSUES

1. Whether the trial court committed reversible error in admitting evidence of uncharged misconduct that occurred 27 to 34 years prior to present charges with respect to his first victim and 12 to 19 years prior to present charges with respect to his second victim where the prior victims were young children related to Most and the acts were similar in nature to the present charges?

The trial court denied Most's motion in limine and ruled that the probative value of the uncharged misconduct clearly outweighed the prejudicial effect to Most, that the acts were similar to the current charges, the victims were all young children, the victims were related or close to Most's intimate family and the uncharged misconduct was relevant to mistake and intent.

Fischer v. State, 641 N.E.2d 105, 109 (In.Ct.App. 1994).  
State v. Wright, 1999 S.D. 50, 593 N.W.2d 792.  
State v. Steele, 94 S.D.O. 1, 510 N.W.2d 661 (1994).  
State v. Fischer, 2010 S.D. 44, 783 N.W.2d 664.

2. Whether the trial court committed reversible error in denying Most's motion to enter evidence of a prior false allegation of sexual assault where the matter was not prosecuted.

The court ruled that Most failed to prove that the victim's allegations were demonstrably false.

State v. Sieler, 397 N.W.2d 89 (S.D. 1986).

3. Whether there was sufficient evidence to sustain the conviction where there were inconsistencies in the victim's story and Most provided testimony creating a reasonable doubt on access?

Interests of W.Y.B., 515 N.W.2d 453 (S.D. 1994).

State v. Morse, 2008 S.D. 66, paragraph 10, 753 N.W.2d 915, 918.

The trial court found a reasonable doubt with respect to the rape charges but convicted Most on the sexual contact charges.

## LEGAL ISSUES

1. Whether a South Dakota general choice-of-law provision in a contract will preempt the Federal Arbitration Act when the contract at issue affects interstate commerce?

The trial court held in the affirmative.

*Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995)

*Smith Barney, Inc. v. Critical Health Sys.*, 212 F.3d 858 (4th Cir. 2000)

*Chiron Corp. v. Ortho Diagnostic Sys. Inc.*, 207 F.3d 1126 (9th Cir. 2000)

*National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129 (2d Cir. 1996)

2. Whether there was evident partiality in the arbitration panel when the Panel did not disclose to the parties that, prior to the arbitration, one of the arbitrator's law firms had a relationship with a key adverse witness to DT-Trak, and Prue's co-conspirator, in a lawsuit involving the same facts and parties as the arbitration?

The trial court held in the negative.

*Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145 (1968)

*Schmitz v. Zilveti*, 20 F.3d 1043 (9th Cir. 1994)

*Olson v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 51 F.3d 157 (8th Cir. 1995)

*Green V. Montgomery County, Alabama*, 784 F.Supp. 841, 845 (M.D.Ala. 1992)

9 U.S.C. § 10(a)(2)

SDCL Rules of Professional Conduct, Appendix, Ch. 16-18 Rule 1.10(a)

SDCL § 19-13-3

SDCL Rules of Professional Conduct, Appendix, Ch. 16-18 Rule 1.18

3. Whether the arbitration panel provided an award that confirmed to the requirements of the parties' arbitration agreement when the arbitration agreement required the panel to provide findings of fact

and conclusions of law regarding its decision, but the panel failed to make any findings on any disputed issue of material fact?

The trial court held in the affirmative.

*Vold v. Broin & Associates, Inc.*, 2005 SD 80, 699 N.W.2d 482

*New Elliott Corp. v. Man Gutehoffnungshutte AG*, 969 F.Supp. 13 (S.D.N.Y. 1997)

9 U.S.C. § 10(a)(4)