

STATEMENT OF THE LEGAL ISSUES

1. Did the trial court err by refusing to grant Mr. Thomason's motion for judgment of acquittal?

The trial court denied Mr. Thomason's motion for judgment of acquittal and found that a sufficient factual scenario existed to allow the case to be considered by the jury. JT 668-704.

State v. Podzimek, 2010 SD 17, 779 N.W.2d 407
SDCL 22-1-2(36)

State v. Jackson, 2009 SD 29; 756 N.W.2d 541

2. Did the trial court err by failing to instruct the jury regarding the defense of advice of counsel?

The trial court declined to instruct the jury related to the defense of advice of counsel as proposed by the defense. JT 710-13.

United States v. Hurwitz, 459 F.3d 463 (4th Cir. 2006)

Wren v. Rahfeld, 157 N.W. 323 (S.D. 1916)

Bucher v. Staley, 297 N.W.2d 802 (S.D. 1980)

3. Did the trial court err by instructing the jury that it could consider defendant's flight as it related to consciousness of guilt?

The trial court instructed the jury that it could consider "flight" as it related to the defendant's criminal intent, over the defense's objection. Id.

State v. Fender, 623 N.W.2d 49 (S.D. 2001)

[*State v. Menard*, 424 N.W.2d 382, 384 \(S.D.1988\)](#)