

**Introduction to**  
**The South Dakota**  
**Supreme Court**



**and**  
**Case Summaries for**  
**Oral Arguments at the**  
**April Term of Court**  
**April 26 and April 27, 2022**

**South Dakota Mines**  
**Rapid City, South Dakota**

*Steven R. Jensen*  
CHIEF JUSTICE



*Supreme Court*  
STATE OF SOUTH DAKOTA

April 26, 2022

To our Guests Observing the  
April Term Arguments of the  
South Dakota Supreme Court

Ladies and Gentlemen:

Your Supreme Court welcomes you to our April Term of Court.

This brochure has been prepared as part of the continuing effort of the Supreme Court to promote increased public knowledge of the state judicial system. We hope it will assist you in understanding some of the functions of the Supreme Court and make your observation of the Court hearings a more valuable and enjoyable experience.

Sincerely yours,

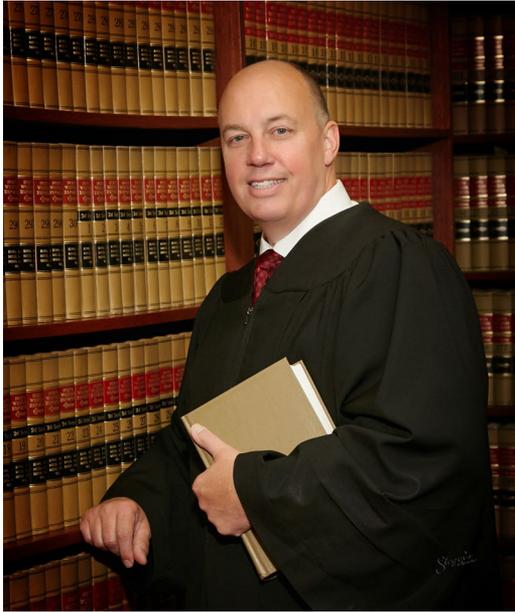
A handwritten signature in blue ink, appearing to read "Steven R. Jensen".

Steven R. Jensen  
Chief Justice

# Table of Contents

<u>Title</u>	<u>Page</u>
Chief Justice Steven R. Jensen.....	1
Justice Janine M. Kern.....	2
Justice Mark E. Salter.....	3
Justice Patricia J. DeVaney.....	4
Justice Scott P. Myren.....	5
Clerk of the Supreme Court.....	6
Supreme Court Law Clerks.....	7
Summary of Court Jurisdictions.....	8
Supreme Court Process.....	9
Map of Appointment Districts.....	11
Courtroom Protocol.....	12
Case Summaries for this Term of Court:	
<b><u>Tuesday, April 26, 2022</u></b>	
Nationwide Agribusiness Insurance v. Fitch.....	14
State v. Larson.....	17
Baker v. Rapid City Regional Hospital.....	19
<b><u>Wednesday, April 27, 2022</u></b>	
State v. Hernandez.....	22
Davis v. Otten and Meemic Insurance.....	25
State v. Krouse.....	27
Glossary of Terms.....	32

*The justices have extended an invitation to the public to attend any of the Court's sessions. To assist with the Supreme Court visit, persons in attendance must abide by proper courtroom etiquette. The Supreme Court employs security methods to ensure the well-being of all who attend its proceedings and all attending the morning court sessions will be requested to pass through a metal detector. Backpacks and book bags should not be brought, and other bags and purses are subject to inspection and search by security personnel.*



## ***Chief Justice Steven R. Jensen***

Chief Justice Jensen was elected to a four-year term as Chief Justice by the members of the Supreme Court in 2021. Chief Justice Jensen was appointed to the Supreme Court by Governor Dennis Daugaard and sworn in on November 3, 2017. Chief Justice Jensen represents the Fourth Supreme Court District consisting of Union, Clay, Yankton, Hutchinson, Hanson, Davison, Bon Homme, Douglas, Aurora, Charles Mix, Gregory, McCook, Turner, and Lincoln counties. Chief Justice Jensen grew up on a farm near Wakonda, South Dakota. He received his undergraduate degree from Bethel University in St. Paul, Minnesota, in 1985 and his Juris Doctor from the University of South Dakota School of Law in 1988. He clerked for Justice Richard W. Sabers on the South Dakota Supreme Court before entering private practice in 1989 with the Crary Huff Law Firm in Sioux City, Iowa and Dakota Dunes, South Dakota. In 2003, Chief Justice Jensen was appointed as a First Judicial Circuit Judge by Governor M. Michael Rounds. He became the Presiding Judge of the First Judicial Circuit in 2011. Chief Justice Jensen served as chair of the Unified Judicial System's Presiding Judges Council, president of the SD Judges Association, and has served on other boards and commissions. In 2009, Chief Justice Jensen was appointed as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington D.C. Chief Justice Jensen and his wife, Sue, have three children.



### *Justice Janine M. Kern*

Justice Kern, who was appointed to the Supreme Court on November 25, 2014, by Governor Dennis Daugaard, represents the First Supreme Court District, which includes Custer, Lawrence, Meade, and Pennington counties. She received a Bachelor of Science degree in 1982 from Arizona State University and a Juris Doctor degree from the University of Minnesota Law School in 1985. Justice Kern worked in the Attorney General's office from 1985-1996 serving in a variety of capacities including the appellate division, drug prosecution unit, and as Director of the Litigation Division. She was appointed a Circuit Court Judge in 1996 in the Seventh Judicial Circuit comprised of Custer, Fall River, Oglala Lakota, and Pennington Counties and served 18 years on the trial court bench. She is a member of the American Law Institute, the National Council of Juvenile and Family Court Judges, the State Bar Association, the Pennington County Bar Association, the American Bar Association Fellows, and past President of the South Dakota Judges Association. She served on the Council of Juvenile Services from 2004-2013 and on the Federal Advisory Committee on Juvenile Justice from 2004-2008 and on numerous other boards and commissions. Justice Kern and her husband, Greg Biegler, make their home in the beautiful Black Hills.



## *Justice Mark E. Salter*

Justice Salter began as a member of the Supreme Court on July 9, 2018, following his appointment by Governor Dennis Daugaard. Justice Salter received a Bachelor of Science degree from South Dakota State University in 1990 and his Juris Doctor degree from the University of South Dakota School of Law in 1993. After clerking for a Minnesota state district court, he served on active duty in the United States Navy until 1997 and later served in the United States Naval Reserve. Justice Salter practiced law with the Sioux Falls firm of Cutler & Donahoe, where he became a partner before leaving in 2004 to return to public service with the United States Attorney's Office for the District of South Dakota. As an Assistant United States Attorney, Justice Salter focused on appellate practice and became the chief of the office's Appellate Division in 2009. He was appointed as a Circuit Court Judge by Governor Daugaard and served in the Second Judicial Circuit from 2013 until his appointment to the Supreme Court in 2018. Justice Salter served as the presiding judge of the Minnehaha County Veterans Treatment Court from its inception in 2016 until 2018. He also serves as an adjunct professor at the Knudson School of Law where he has taught Advanced Criminal Procedure and continues to teach Advanced Appellate Advocacy. Justice Salter represents the Second Supreme Court District which includes Minnehaha County. He and his wife, Sue, have four children.



## *Justice Patricia J. DeVaney*

Justice DeVaney was appointed to the Supreme Court by Governor Kristi Noem to represent the Third Supreme Court District. She was sworn in on May 23, 2019. Justice DeVaney was born and raised in Hand County and graduated from Polo High School in 1986. She received her Bachelor of Science degree in 1990 from the University of South Dakota, majoring in political science, and received her Juris Doctor degree from the University of Virginia School of Law in 1993. Justice DeVaney began her career of public service as an Assistant Attorney General in the South Dakota Office of Attorney General, where she practiced law from 1993 to 2012. She began her practice in the appellate division, then moved to the litigation division where she spent seventeen years as a trial lawyer, prosecuting major felony offenses as well as representing the State in civil litigation in both state and federal trial and appellate courts. During her tenure at the Attorney General's Office, she also handled administrative matters for state agencies and professional licensing boards. Justice DeVaney was appointed by Governor Dennis Daugaard as a Circuit Judge for the Sixth Judicial Circuit in 2012, where she presided over criminal, civil and juvenile proceedings, heard administrative appeals, and assisted as the second judge for the Sixth Circuit DUI/Drug Court. Justice DeVaney has served as the Secretary-Treasurer, and is currently the President-Elect, of the South Dakota Judges Association. She has also served on various other committees and boards in her professional capacity and in the Pierre community, where she resides with her husband, Fred, and their three children.



### *Justice Scott P. Myren*

Justice Scott P. Myren, who was sworn in to represent the Fifth Supreme Court District on January 5, 2021, was appointed by Governor Kristi Noem. Justice Myren grew up on his family farm in rural Campbell County and graduated from Moberg High School in 1982. He received a Bachelor of Science Degree, double majoring in history and political science from the University of South Dakota in 1985. He earned his Juris Doctorate from Rutgers University in 1988, where he was the Research Editor of the Rutgers Law Journal. Justice Myren practiced law in Denver, Colorado, before returning to South Dakota to work as a staff attorney for the South Dakota Supreme Court. He served as an administrative law judge for the Office of Administrative Hearings and Magistrate Judge for the Sixth Judicial Circuit. In 2003 he was appointed as a Circuit Judge for the Fifth Judicial Circuit by Governor M. Michael Rounds. He was re-elected to that position by the voters in 2006 and 2014. Chief Justice David Gilbertson appointed him the Presiding Judge for the Fifth Judicial Circuit in 2014. Justice Myren served as chair of the Unified Judicial System's Presiding Judges' Council and president of the South Dakota Judges' Association. He served on numerous committees, including the Court Improvement Program and Juvenile Detention Alternative Initiative, which he chaired. He was selected as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington D.C., in 2009. He served on Governor Dugaard's South Dakota Criminal Justice Initiative workgroup and Juvenile Justice Reinvestment Initiative workgroup. He supervised the rural and urban pilot programs, which led to the implementation of Hope Probation across South Dakota. He served as Drug Court and DUI court judge for Brown County. He and his wife, Dr. Virginia Trexler-Myren, have two daughters. The Fifth Supreme Court District includes Harding, Butte, Perkins, Corson, Ziebach, Dewey, Campbell, Walworth, Potter, McPherson, Edmunds, Faulk, Brown, Spink, Marshall, Day, Clark, Coddington, Hamlin, Roberts, Grant, and Deuel counties.



### ***Clerk of the Supreme Court***

Shirley Jameson-Fergel is the Clerk of the South Dakota Supreme Court. It is the function of this office to assist the Supreme Court, and especially the Chief Justice, in the organization of the correspondence, exhibits, and other documentation related to the formal activities of the Supreme Court. This includes monitoring the progress of appeals; scheduling oral arguments before the Court; recording Court decisions, orders and directives; and controlling their release and distribution. The Clerk's office is also responsible for the management of all legal records of the Court, compiling appellate statistics, and documenting and disseminating Court rules.



### ***2021-2022 Supreme Court Law Clerks***

Law Clerks are employed by the Court to assist the Justices with research and writing of the opinion on the cases under consideration. In the photograph above from left to right, Keely Kleven (Supreme Court Law Clerk), Samuel Briese (Justice Myren), Thomas Scharz (Justice Salter), Courtney Buck (Chief Justice Jensen), Gabrielle Metzger (Justice Kern), and Jennifer Williams (Justice DeVaney).

## **Summary of Jurisdictions for the South Dakota Court System**

### **Supreme Court**

Five justices appointed by the Governor from judicial appointment districts are subject to statewide electoral approval three years after appointment and every eight years thereafter. Retirement at age seventy.

Has court terms held throughout the calendar year.

Has appellate jurisdiction over circuit court decisions.

Has original jurisdiction in cases involving interests of state.

Issues original and remedial writs.

Has rule-making power over lower court practice and procedure, and administrative control over the Unified Judicial System.

Renders advisory opinions to the Governor, at his or her request, on issues involving executive power.

### **Circuit Court**

Circuit Court services are available in each county seat.

Counties are grouped into seven circuits, served by forty-four judges elected from within their circuits for eight-year terms. Vacancies are filled by the Governor, who appoints replacements from a list of candidates recommended by the Judicial Qualifications Commission.

Trial courts of original jurisdiction in all civil and criminal actions. Exclusive jurisdiction in felony trials and arraignments, and civil actions involving damages of more than \$12,000. Jurisdiction of less serious civil and criminal matters is shared with magistrate courts, over which the circuit courts have appellate review.

## **The Supreme Court Process**

The judicial system of South Dakota has two levels. The circuit courts are the lower courts through which criminal prosecutions and most civil lawsuits are processed. The South Dakota Supreme Court is the state's highest court and the court of last resort for parties who seek to change adverse decisions of the circuit court. The Supreme Court is the final judicial authority on all matters involving the legal and judicial system of South Dakota.

When an individual involved in a legal action is convinced that the judge in the circuit court has made an error in deciding the law of the case, that party may bring the case to the Supreme Court for a remedy. This is called an "appeal" and the court hearing the appeal is called the "appellate" court. The party bringing the appeal is an "appellant" and the other party—usually the party who was successful in the lower court—is the "appellee." Most of the work of the Supreme Court involves its appellate jurisdiction.

In an appellate action, the Court may decide to hear "oral arguments" in the case, in which both parties are permitted to come before the Court and give a short presentation (an argument) to support their position in the case. There is no trial, the lawyers do not confront each other, and the Court does not take testimony from witnesses. Usually, the attorneys for the parties involved stand before the Court and speak for twenty minutes to emphasize or clarify the main points of the appeal. The members of the Court may ask questions or make comments during the lawyer's

presentation. After hearing the oral arguments, the Court discusses the case and one justice is assigned to write the opinion in the case. Other justices may write concurring or dissenting opinions to accompany the majority opinion, all of which are published as formal documents by the West Publishing Company in the North Western Reporter. The Court's opinions are also available online at: <http://ujs.sd.gov/>

In addition to its appellate jurisdiction, the Supreme Court has its own area of "original" jurisdiction. It is also responsible for a wide range of administrative duties involving the personnel and procedures of the court system and the professional conduct of attorneys throughout the state.

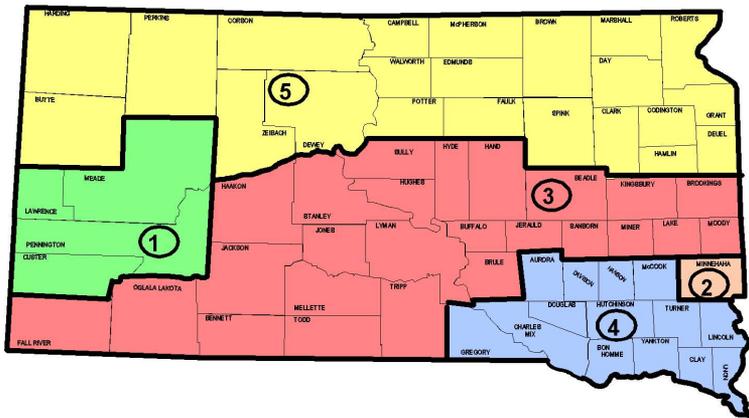
The five members of the Court (four justices and a chief justice) are responsible for making decisions as a group regarding appellate cases and other judicial business. It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench to assist in the decision-making process. Such an appointment may occur when a justice is disqualified. A justice may be disqualified when the justice appears to have a conflict or personal involvement in a case, or if there is a vacancy on the Court caused by the illness or departure of a justice.

All of those who sit on the Supreme Court must be licensed to practice law in the state and permanent justices must be voting residents of the district from which they are appointed at the time they take office. There is no formal age requirement for those who serve on the Court, but there is a statutory requirement that a justice must retire shortly after reaching the age of seventy. A retired justice, if available, may be called back to temporary judicial service in any of the state's courts.

Under the terms of a constitutional amendment passed by the voters in November 1980, vacancies on the Supreme Court are filled by governor’s appointment. This appointment must be made from a list of two or more candidates recommended by the Judicial Qualifications Commission. All Supreme Court justices must stand, unopposed, for statewide approval or rejection by the electorate in a retention election. For newly appointed justices, the retention vote is held at the next general election following the third year after appointment. After the first election, justices stand for retention election every eighth year.

Chief Justice Jensen was appointed in 2017 from District Four, Justice Kern was appointed in 2014 from District One, Justice Salter was appointed in 2018 from District Two, Justice DeVaney was appointed in 2019 from District Three, and Justice Myren was appointed in 2021 from District Five.

South Dakota Supreme Court Appointment Districts  
*Effective January 23, 2012*



**In the Supreme Court  
of the  
State of South Dakota**

<b>Courtroom Protocol</b>
---------------------------

The following list of Do's and Don'ts was prepared for the benefit of anyone attending one of the Court's sessions. Your cooperation in observing proper Courtroom protocol will assure that the lawyers presenting argument before the Court will not be unduly distracted and that the proper respect for the judiciary will be maintained.

Your cooperation is appreciated.

**DO**

- Remove caps/hats before entering the Courtroom
- Enter the Courtroom prior to the commencement of an argument
- Stand when the Justices enter and leave the Courtroom
- Listen attentively
- Turn cell phones off before entering the Courtroom

**DO NOT**

- Bring food, drinks, cameras or recording equipment into the Courtroom
- Enter or leave the Courtroom during the course of an argument
- Chew gum or create any distraction
- Engage in any conversation once an argument begins

**Supreme Court of South Dakota**  
**April 2022 Term**

Six cases are scheduled for oral argument during this term. For these cases, attorneys are permitted to appear before the Court to emphasize certain points of the case and respond to the Court's questions. In addition to these oral arguments, numerous other cases will be considered by the Court during this term without further argument by the attorneys. These cases are on the Court's "non-oral" calendar. After hearing oral arguments each day, the Court will consider several non-oral cases.

<b>Case Summaries</b>
-----------------------

The case summaries on the following pages have been prepared only for the cases scheduled for oral argument. The case number, date and order of argument appear at the top of each summary.

## Nationwide v. Fitch

Where the terms of a liability insurance policy apply, the insurer will provide two distinct types of coverage: 1) the cost of paying for, or indemnifying, any loss caused by its customer, who is also called the insured; and 2) the cost of defending the insured in litigation brought by the person alleging the insured caused them an injury. However, sometimes a liability insurance policy does not apply because its language does not cover the situation presented in a given case. In these instances, insurance companies may elect to clarify their obligation to the insured by seeking a declaration from a court as to whether an alleged loss is covered. This case is that type of declaratory judgment action brought by Nationwide Agribusiness Insurance Company (Nationwide).

The underlying injury at the center of the case dates back to August 13, 2017, when Hunter Peterson was spraying weeds in a pasture owned by his grandparents, Burjes and Cheryl Fitch. Hunter was driving a John Deere Gator (a brand of utility-terrain vehicle), which was supplied by the Fitches, when the Gator rolled over due to uneven terrain, pinning Hunter's legs underneath and causing permanent bodily injuries.

Hunter later filed a lawsuit against Burjes and Cheryl Fitch, his two uncles Truett and Theo Fitch, and two business entities owned by the Fitches (collectively, the Defendants), seeking damages for his injuries under negligence theories.

Nationwide issued a farm liability insurance policy to the Fitches, who are named as the insureds on the policy. But the policy also allowed for others to be considered “insureds” in certain instances and, significant to this appeal, excluded coverage for bodily injuries sustained by any insured, named or otherwise. In this current action to determine whether the liability coverage applies, Nationwide argues that Hunter was an insured under the policy and, therefore, may not recover under its terms. Nationwide also cites a different exclusion under the policy, claiming Hunter was an employee who was operating a recreational vehicle as part of the Fitches’ farm operation. This, Nationwide claims, serves as another basis for its argument that the policy’s liability coverage does not apply.

The circuit court decided the coverage issue in Nationwide’s favor, concluding that Nationwide did not have a duty to pay for the Fitches’ defense in the action brought by Hunter and would not have a duty to pay any damages Hunter might ultimately prove. Though the circuit court determined that there were disputed issues of material fact as to whether Hunter was an “employee,” or a “farm employee,” it concluded that the terms of the policy expressly excluded coverage from injuries resulting from the operation of a “recreational vehicle.”

Both Hunter and Nationwide seek review of the circuit court’s decision, raising the following issues:

1. Whether the circuit court correctly determined that the policy excluded injuries caused by the use of recreational vehicles.

2. Whether the circuit court correctly determined that genuine issues of material fact were in dispute as to Hunter's status as an "employee" or "farm employee."

Mr. Michael J. McGill and Mr. Bret C. Merkle,  
Attorneys for Defendant and Appellant Hunter  
Peterson

Mr. Michael F. Shaw and Ms. Terra M. Larson,  
Attorneys for Plaintiff and Appellee Nationwide  
Agribusiness Insurance Company

**State v. Larson**

Tristin Larson (Larson) and Elizabeth Felix (Felix) had been in a relationship for ten to eleven months. On April 16, 2020, Larson watched Felix's two-year-old son E.F. while Felix was at work. While watching E.F., Larson became angry when E.F. did not listen to him and pushed E.F. on the forehead. E.F. fell to the floor and hit his head. E.F. stood up but fell and hit his head again. E.F. began to shake and have a seizure. Ultimately, E.F. was taken to Avera St. Mary's Hospital in Pierre, South Dakota. At the hospital, Larson and Felix told law enforcement that E.F. was jumping on the bed and their dog knocked him down. E.F. was airlifted to Sioux Falls, South Dakota, but passed away on April 18, 2020.

At an interview with the Pierre Police Department on April 18, 2020, Larson admitted that he pushed E.F. and had lied to law enforcement at the hospital. Larson was arrested and indicted for aggravated battery of a child and alternative counts of second-degree murder or aggravated manslaughter.

Larson filed a motion to suppress all his statements to law enforcement at the April 18 interview. He argued that because he was distraught over E.F.'s death at the time of the interview, he was unable to voluntarily, intelligently, and knowingly waive his *Miranda* rights. The circuit court denied the motion to suppress after determining that Larson had voluntarily, knowingly, and intelligently waived his *Miranda* rights.

A four-day jury trial was held starting on May 25, 2021. During the trial, Larson requested a judgment of acquittal and argued that, based on the evidence presented by the State, a rational trier of fact could find the essential elements of each crime charged beyond a reasonable doubt. The circuit court denied this motion. The jury found Larson guilty of aggravated battery of an infant and second-degree murder. The circuit court sentenced Larson to life imprisonment for second-degree murder and fifty-five years for aggravated battery of an infant but ordered that the two sentences be served concurrently.

Larson appeals the following issues:

1. Whether the circuit court erred in denying Larson's motion to suppress his statements made to law enforcement at the April 18, 2020 interview.
2. Whether the circuit court erred in denying Larson's motion for judgment of acquittal and whether the evidence was sufficient to sustain the convictions.

Mr. Brad A. Schreiber, Attorney for Defendant and Appellant Tristin Larson

Mr. Jason R. Ravnsborg, Attorney General, and Mr. Paul S. Swedlund, Solicitor General, Attorneys for Plaintiff and Appellee State of South Dakota

**Baker v. Rapid City Regional Hospital, Inc.**

In November 2013, William Baker worked as a psychiatric technician at Rapid City Regional Hospital (Hospital). While working, Baker was struck in the head by a patient. Baker did not have any visible injuries but sought treatment in his employer's emergency room. His head CAT (CT) scan came back normal as did his Glasgow Coma Scale test, an exam that tests a patient's eye movement, speech/verbal skills, and motor skills. He was prescribed Naprosyn—an anti-inflammatory medication. Although Baker returned to the emergency room a few days later claiming that he lost his prescription, Baker did not seek additional treatment regarding this incident and returned to work.

In December 2014, Baker was again struck in the head by a patient while working. He visited the emergency room the following day seeking treatment. Baker's head CT and Glasgow Coma Scale test were both normal, and he returned to work a few days later. Later that month, Baker was diagnosed with Post-Concussive Syndrome (PCS) and was referred for a neuropsychological evaluation which indicated he was on the severe end of a mild concussion.

In February 2015, Baker saw a neurologist and was diagnosed with PCS, vertigo, mild cognitive disorder, and hypersomnia with sleep apnea. A second neuropsychological evaluation was conducted in April 2015, which resulted in various diagnoses: (1) a developing anxiety disorder due to PCS; (2) posttraumatic stress disorder (PTSD); and (3)

adjustment disorder with anxiety and depression. Later that month, Baker's neurologist recommended he no longer work in the psychiatric ward due to his anxiety and PTSD; he was referred to a psychiatrist, a doctor specializing in the diagnosis and treatment of mental and emotional disorders, for counseling. Baker briefly began work as a hand washing monitor but was recommended, by his psychiatrist, to take off work for six months due to PTSD, PCS, and depression. Baker has been unemployed ever since.

Baker also underwent an independent medical evaluation (IME) by a psychiatrist in June 2015. The psychiatrist concluded that Baker's earlier work injuries were not a major contributing cause to his current mental impairments and that he was not totally disabled. However, Baker's previous neurologist and psychologist disagreed with the IME conclusions.

Baker was released from work restrictions in October 2015 but advised that he was incapable of work at the Hospital or any healthcare facility. Between October 2015 and January 2016, Baker saw a different psychiatrist who diagnosed him with PTSD. A vocational consultant was assigned to Baker to find Baker alternative employment; however, Baker's psychiatrist took him off work in November 2015. In January 2016, the psychiatrist reiterated that Baker was unable to work.

Throughout 2016 and 2017, Baker continued to complain of headaches, PTSD, and PCS symptoms. He visited several doctors and remained unemployed. Baker filed numerous pro se lawsuits against the Hospital, Hospital employees, the Hospital's attorneys,

the workers' compensation adjuster, and the adjuster's supervisor.

The Department of Labor (Department) held a hearing on Baker's workers' compensation claim on October 2, 2017. The Department concluded that Baker failed to prove that his work injury was a major contributing cause of his mental impairments and that he was not permanently and totally disabled. Baker appealed the Department's decision to the circuit court, which reversed and remanded the Department's decision that Baker's work injury was not the cause of his mental impairments but affirmed the Department's determination that he was not permanently and totally disabled.

On remand, the Department entered an order and its findings of fact and conclusions of law determining what medical expenses and/or benefits Baker was entitled to. On August 20, 2021, the circuit court entered a final order, making the court's previous decision final. Baker appealed the circuit court's decision to this Court, raising the following issue on appeal:

Whether the circuit court erred when it affirmed the Department's determination that Baker is not permanently and totally disabled under SDCL 62-4-53.

Mr. Michael J. Simpson, Attorney for Appellant William Baker

Ms. Jennifer Wosje, Attorney for Appellees Rapid City Regional Hospital and Hartford Insurance

**State v. Hernandez**

On August 14, 2019, at around 1:30 p.m., police responded to a 911 call for an unresponsive three-year-old child, A.H. When the officers arrived, they determined that the child was dead. A few days later, A.H.'s mother, Amanda Hernandez, was arrested and charged based on allegations that she assaulted and abused A.H., causing her death.

Hernandez was indicted by a grand jury with one count of second-degree murder, two counts of first-degree manslaughter, one count of aggravated assault, and one count of abuse of or cruelty to a minor.

Hernandez's case has not yet gone to trial. Her case is before this Court on intermediate appeal, as the State has appealed the trial court's ruling that Hernandez can present certain evidence at trial as part of her defense.

Specifically, Hernandez would like to present evidence at trial that a different person, known as a third-party perpetrator, caused A.H.'s death instead of Hernandez. Hernandez appears to be pursuing the theory that N.M., who was a ten-year-old child when A.H. died, caused A.H.'s death.

When A.H. passed away, she and Hernandez were staying at a friend's home, and N.M. is the child of that friend. N.M. was present in the home when A.H. was found dead. N.M. appears to have been left

without adult supervision at the home with A.H. during the time that the injuries that caused her death may have been inflicted, although when the injuries actually occurred is disputed.

Hernandez would like to call an expert witness to testify at trial that N.M. was mentally capable, despite being a child, of having caused A.H.'s death. In support of this opinion, the expert witness would explain that N.M. has been exposed to domestic violence and describe the negative effects that exposure can have on a child. The expert would further analyze certain prior conduct and behaviors by N.M. to show that he was mentally capable of acting violently against A.H. to a degree where he could have caused her death.

The trial court ruled that Hernandez could have the expert testify but limited the prior acts that the expert could rely upon when explaining his opinion. The State requested an intermediate appeal of this ruling, which this Court granted.

The State raises the following issues on appeal:

1. Whether the trial court misapplied the rules of evidence in permitting an expert witness to opine as to an alleged third-party perpetrator child's mental capacity to commit a crime.
2. Whether an expert witness can serve as a conduit for otherwise inadmissible propensity and other-acts evidence.

Mr. Jason R. Ravensborg, Attorney General, Ms. Sarah L. Thorne, Deputy Attorney General, Ms. Lindsey Quasney and Ms. Katie Mallery, Assistant Attorneys General, Attorneys for Plaintiff and Appellant State of South Dakota

Mr. Timothy R. Whalen, Attorney for Defendant and Appellee Amanda Hernandez

**Davis v. Otten and Meemic Insurance Company**

On July 28, 2019, Catherine Davis was injured in a motorcycle accident in South Dakota when the motorcycle on which she was riding as a passenger collided with a motorcycle driven by Richard Otten. Davis claims that Otten caused the accident.

Davis sued both Otten and Meemic Insurance Company. She sued Otten for personal injury and Meemic, her motor vehicle insurer, for breach of contract. Only Meemic, and not Otten, is involved in this appeal.

Meemic is an insurance company organized in Michigan. It offers insurance coverage in Michigan and is not authorized to offer insurance to South Dakota residents. Davis is a resident of Michigan, and Meemic issued her a motor vehicle insurance policy which included coverage for underinsured claims under the terms of the policy and was in effect on the day of Davis's accident with Otten.

Davis, having sustained in excess of \$300,000 in medical expenses, presented a claim for personal injury protection benefits to Meemic arising from the accident with Otten. Meemic denied Davis's claim on July 24, 2020, on the basis that Davis was injured while using a motorcycle, which did not fall into the insurance policy's definition of a "motor vehicle," and Davis's policy only covered injuries arising from use of motor vehicles.

Davis then filed her lawsuit against Otten and Meemic. Specific to Meemic, Davis argued that Meemic breached the terms of its insurance policy with her by denying her coverage.

Meemic filed a motion to dismiss Davis's claim against Meemic, arguing that the South Dakota trial court did not have personal jurisdiction over Meemic. The trial court denied Meemic's motion to dismiss in a written order on May 24, 2021.

Meemic requested permission from this Court to appeal the trial court's denial of its motion to dismiss, and this Court granted intermediate appeal. Meemic raises the following issues:

1. Whether Meemic had minimum contacts with the State of South Dakota in order to allow the trial court to exercise personal jurisdiction over Meemic.
2. If the trial court lacked personal jurisdiction over Meemic, whether Davis's complaint then lacked a necessary element for a viable breach of contract cause of action, subjecting the complaint to dismissal pursuant to SDCL 15-6-12(b)(5) for failing to state a cause of action.

Ms. Susan B. Meyer and Mr. Earl G. Greene, III,  
Attorneys for Defendant and Appellant Meemic  
Insurance Company

Mr. Dean Faust, Attorney for Plaintiff and Appellee  
Catherine Davis

**State v. Krouse**

On March 13, 2019, Jacqueline Krouse’s home, valued at over \$1 million, started on fire. Before being suppressed, the fire burned basement walls through the upstairs floor and caused significant smoke damage. Sioux Falls Fire and Rescue Inspector Tyler Tjeerdsma was assigned to investigate. After collecting information and evidence at the scene and interviewing Krouse and her boyfriend, Steven Veenhof, Tjeerdsma determined that the fire started in the mechanical room in the basement. Tjeerdsma traced the point of origin to the east wall of the mechanical room by some charred cardboard boxes. However, he could not determine the cause of the fire and wrote in his report that “[w]ithout the benefit of additional evidence or information the specific cause of the fire will remain undetermined.” He further wrote that his analysis of the evidence and information supported “that the fire was the result of an unintentional act” and that “no evidence or information was discovered that would support any deliberate act which would have caused this fire.”

The day after the fire, Krouse submitted a claim to her insurer, State Farm Insurance Company, seeking to recover for the damage to her home. The State’s evidence at trial established that State Farm was suspicious about the cause of the fire. State Farm hired a private fire investigator, who conducted two investigations at the home, and an electrical engineer/forensic specialist, Dan Choudek, who assisted in the second investigation. The investigator, Jeff Blomseth, and State Farm’s claims representatives,

Myra Olson and Julie Mrozle, also interviewed Krouse and Veenhof multiple times.

Olson testified that certain things stood out to her during her walkthrough of Krouse's home, including that the furniture in the living room had been pushed to the middle of the room, there were no photographs on the walls, and it appeared that personal items in the home had been removed. Olson further testified that it seemed unusual that Krouse's purse, laptop, and contacts were in her vehicle the night of the fire. Mrozle testified that it concerned her that Krouse had been planning to list the house for sale, but before she could do so, the house needed multiple repairs and it appeared that Krouse had a lot of outstanding debt. It was later established, however, that Krouse was receiving \$21,000 per month in alimony (\$252,000 a year) and was current on her mortgage. Mrozle testified that it was also concerning that the fire started late in the evening and that Krouse was in the area the fire originated when the fire started.

Blomseth testified that he ruled out electrical and mechanical sources of ignition as well as candles and cigarettes. He also ruled out spontaneous combustion because, in his view, Krouse's timeline was inconsistent with such a theory. Choudek similarly believed that the fire originated in the mechanical room and was not caused by electrical issues. He also ruled out a battery as a potential ignition source. Blomseth ultimately opined that the cause of the fire was an application of flame to combustible materials and was thus an "incendiary fire." He testified that he formed this opinion based on his investigations and interviews and

on Krouse's in-home security video footage from the night of the fire. According to Blomseth, the footage showed Krouse holding a small rectangle box, consistent with the size of a matchbox, while walking into the mechanical room; that she made a striking motion prior to walking into the room; and that approximately two minutes after she entered the room, thick smoke can be seen emerging. Blomseth shared the video footage with Investigator Tjeerdsma and contacted the Sioux Falls Police Department. Tjeerdsma testified that after viewing the video footage, he did not change his findings in his report because that information was not available to him during his initial investigation. However, he further testified that ignition by spontaneous combustion would not be consistent with the way the smoke developed as depicted in the video.

On September 3, 2019, Krouse was indicted on one count of second-degree arson in violation of SDCL 22-33-9.2, which makes it a crime to start a fire with the intent to destroy or damage property to collect insurance for such loss. Krouse waived her right to a jury trial, and a three-day trial to the court began on March 16, 2021. When the State concluded its presentation of evidence, Krouse filed a motion for judgment of acquittal. She claimed that the State failed to present sufficient evidence to prove that she started the fire or acted with the requisite intent to cause damage in order to collect insurance proceeds. The circuit court denied Krouse's motion.

As part of her defense, Krouse presented expert testimony from certified fire investigator Cliff Dahl. Dahl interviewed Krouse and her boyfriend and conducted an onsite investigation of the fire. He testified that contrary to Blomseth's opinion, the

circumstances leading up to the fire support that it was caused by spontaneous combustion. In particular, he testified that rags used for staining woodwork, which Krouse explained were balled up in the mechanical room, likely started heating and ignited once being hit with oxygen.

At the conclusion of the case, the court issued an oral ruling, finding that Krouse's version of her movements prior to the fire starting was not consistent with the evidence. In the court's review of the video footage, it found Krouse carried a small rectangular box consistent with the size of a kitchen matchbox and that her "pace" and "body language" after the fire started "suggest an absence of panic." The court rejected Krouse's theory, and her expert's opinion, that the fire started as a result of spontaneous combustion, in part, because the expert indicated in his May 15<sup>th</sup> report that he could not swear under oath that the fire was caused by spontaneous combustion. The court determined that the State proved Krouse's guilt beyond a reasonable doubt.

Krouse appeals, asserting the following issues:

1. Whether the circuit court erred as a matter of law in denying Krouse's motion for judgment of acquittal.
2. Whether the circuit court's factual findings are insufficient as a matter of law to support Krouse's conviction.
3. Whether circumstances surrounding the investigation of the fire and prosecution of

Krouse deprived her of her constitutional right to a fair trial.

Mr. Shawn M. Nichols and Ms. Claire E. Wilka,  
Attorneys for Defendant and Appellant  
Jacqueline Krouse

Mr. Jason R. Ravnsborg, Attorney General and Mr.  
Stephen G. Gemar, Assistant Attorney General,  
Attorneys for Plaintiff and Appellee State of  
South Dakota

## Glossary of Terms

**Affirm** - When the Supreme Court “affirms” a circuit court’s action, it declares that the judgment, decree or order must stand as decided by the circuit court.

**Appeal** - The Supreme Court’s review of a circuit court’s decision in a lawsuit. The Supreme Court does not consider new evidence or listen to witnesses. Rather, it reviews the record of a case and applies the proper law to determine if the circuit court’s decision is correct.

**Appellant** - The person who takes an appeal from the circuit court to the Supreme Court. (In other words, the person who does not agree with the result reached in circuit court.)

**Appellee** - The person in a case against whom an appeal is taken; that is, the person who does not want the circuit court’s decision reversed. Sometimes also called the “respondent.”

**Brief** - A document written by a person’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which his legal position is based. The brief tells the Supreme Court the facts of the case, the questions of law involved, the law the attorney believes should be applied by the Court and the result the attorney believes the Court should reach.

**Defendant** - The person sued by the plaintiff or prosecuted by the state in the circuit court.

**Oral Argument** - An opportunity for the attorneys to make an oral presentation to the Supreme Court when the appeal is considered. Oral arguments also give the Court an opportunity to ask the attorneys questions about the issues raised in their briefs.

**Plaintiff** - The person who brings a lawsuit in the circuit court.

**Record** - All the papers filed in a circuit court case including any transcripts. This includes the original complaint, motions, court orders and affidavits and exhibits in the case.

**Remand** - The Supreme Court “remands” an appealed case back to the circuit court for some further action. For example, the Supreme Court might remand a case to the circuit court and require that court to hear additional evidence and make further factual findings that are important in deciding the case.

**Reverse** - When the Supreme Court “reverses” a circuit court decision, it finds that a legal error was made and requires that the decision be changed.

**Transcript** - A document that contains a verbatim account of all that was said in a circuit court case by the parties, the attorneys, the circuit judge, and any witnesses. The transcript is prepared by the court reporter and it is reviewed by the Supreme Court as part of the appeal process.