

CSouth Dakota Codified Laws [Currentness](#)

Title 19. Evidence

Chapter 19-15. Opinions and Expert Testimony

→ 19-15-3. (Rule 703) Factual basis for expert opinions

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Source: Supreme Court Rule 78-2, Rule 703.

See [Rule 703, Federal Rules of Evidence](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Kern and Swier, [Daubert, Kumho, and Its Impact on South Dakota Jurisprudence: An Update](#), 49 S.D. L. Rev. 217 (2004).

Schmitt, Note: [Marnette v. Morgan: When Other Evidence Contradicts the Expert Testimony-Admissibility or Credibility?](#), 38 S.D. L. Rev. 763 (1993).

LIBRARY REFERENCES

Criminal Law 486.

Evidence 555 to 557.

Westlaw Key Number Searches: 110k486; 157k555 to 157k557.

[C.J.S. Criminal Law § 1080](#).

[C.J.S. Evidence §§ 223, 597 to 598, 601 to 609, 611 to 616, 620 to 623, 634, 639 to 643, 649, 652, 662 to 665, 682, 713, 755](#).

RESEARCH REFERENCES

ALR Library

Inadmissible hearsay evidence introduced without objection, consideration of, by expert witness in forming his opinion, 79 A.L.R.2d 919.

Treatises and Practice Aids

[American Law of Products Liability 3d § 54:82](#).



Wharton's Criminal Evidence §§ 13:8, [62:43](#), [64:43](#).



[SF78 American Law Institute-American Bar Association 149](#).



NOTES OF DECISIONS


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The value of the opinion of an expert witness is no better than the facts upon which it is based; it cannot rise above its foundation and proves nothing if its factual basis is not true. [In re South Dakota Microsoft Antitrust Litigation, 657 N.W.2d 668, 2003 SD 19](#). Evidence  555.2; Evidence  570



The value of the opinion of an expert witness is no better than the facts upon which they are based; it cannot rise above its foundation and proves nothing if its factual basis is not true. [Schneider v. South Dakota Dept. of Transp., 628 N.W.2d 725, 2001 SD 70](#). Evidence  555.2; Evidence  570


Value of the opinion of an expert witness is no better than the facts upon which it is based, and it cannot rise above its foundation and proves nothing if its factual basis is not true. [Wiedmann v. Merillat Industries, 623 N.W.2d 43, 2001 SD 23](#). Evidence  555.2; Evidence  570


Basis of an expert's opinion is generally a matter going to the weight of the testimony rather than the admissibility. [SDCL 19-15-2. First Western Bank Wall v. Olsen, 621 N.W.2d 611, 2001 SD 16](#). Evidence  555.2


Extent to which the facts are inconsistent with an expert's opinions affect only the weight to be given to the opinions, not their admissibility. [In re Estate of Dokken, 604 N.W.2d 487, 2000 SD 9](#). Evidence  555.1

Basis of an expert's opinion is generally a matter going to the weight of the testimony rather than the admissibility. [In re Estate of Dokken, 604 N.W.2d 487, 2000 SD 9](#). Evidence  555.2


Purpose of expert testimony is to assist jury as the trier of fact and not to supplant it, as South Dakota is not trial-by-expert jurisdiction; value of opinion of expert witness is no better than facts upon which it is based, as opinion cannot rise above its foundation and proves nothing if its factual basis is not true, and opinion may prove little if only partially true. [Bridge v. Karl's, Inc., 1995, 538 N.W.2d 521](#). Evidence  508; Evidence  555.2


Trial court did not abuse discretion by sequestering defendant's fingerprint expert in burglary and theft prosecution so as to preclude expert from hearing testimony of State's fingerprint expert, where both experts had access to physical evidence and had met and discussed their conclusions just prior to trial, so that it did not appear that defendant's expert's presence was required during trial to ascertain facts or data upon which to base expert opinion or was essential to presentation of defendant's cause. [SDCL 19-14- 29\(3\)](#), 19-15-3. [State v. Traversie, 1986, 387 N.W.2d 2](#), denial of habeas corpus affirmed [982 F.2d 526](#). Criminal Law  665(1)

Testimony of condemnee's witness, a realtor, regarding fair market value of property after stating that easement property could be fenced off by State and excess denied condemnee was admissible, despite claim that testimony was based on an improper element of damage because property was not fenced off, where testimony was in reference to fact that a title search for a prospective buyer would reveal that State as condemnor had been granted a permanent drainage easement that it was obligated to maintain and service and that present gravel crossing did not comport with amended plans, and such considerations in unique circumstances of case could cause some uncertainty about what could be done in future by State and would be considered by an ordinarily prudent buyer. [State By and Through Dept. of Transp. v. Richey Motor Co., Inc., 1980, 296 N.W.2d 505](#). Evidence  555.6(4)

Figures as to value of mobile home given by both witnesses for plaintiffs, a mobile home dealer who stated amount he would pay for trailer wholesale and one of plaintiffs who stated unequivocally that he did not know fair market value and whose backhanded estimate of value was, at best, statement of what trailer was worth to him, were too speculative to form foundation upon which to base award of damages, in breach of warranty action by buyers of mobile home against mobile home dealer. SDCL 57-8-37. [Fredrick v. Dreyer, 1977, 257 N.W.2d 835](#). Evidence  555.6(1)

2. Admissibility not required

Playpen manufacturer's expert could base his opinion in products liability action, that dropping of cigarette or knocking off of cigarette ash when infant was placed in playpen was most likely cause of the fire, on fact that infant's parents smoked, regardless of whether their smoking habits were admissible as evidence or were instead inadmissible hearsay; fact that residents of a dwelling smoked was evidence of a type an expert could reasonably rely upon to form an opinion regarding the cause of a fire. [First Premier Bank v. Kolcraft Enterprises, Inc., 686 N.W.2d 430, 2004 SD 92](#). Evidence  555.5

While there must be some factual data to support opinion of expert, these facts need not be admissible in evidence to support expert testimony. SDCL 19-15- 3, [19-15-4](#). [Stormo v. Strong, 1991, 469 N.W.2d 816](#). Evidence  555.4(3)

Where expert witness is required to specify data on which his opinions or inferences are based, such facts need not be admissible in evidence if they are of type reasonably relied upon by experts in particular field in forming opinions

on subject. SDCL 19-15-3, [19-15-4](#), [State v. Gallegos, 1982, 316 N.W.2d 634](#). Criminal Law ↪ 486(4)

Rebuttal testimony of State's expert witness in prosecution for aggravated assault was not excludable on grounds that it was based in part on results of psychological tests taken by his assistant which were not admitted into evidence and that expert's interview with defendant's wife was not admissible under spousal immunity doctrine. SDCL 19-15-3, [19-15-4](#), [State v. Gallegos, 1982, 316 N.W.2d 634](#). Criminal Law ↪ 486(6)

3. Reliability, generally

Fact that fire inspector had ruled out cigarette butts as ignition source for fire in playpen, because he could not find any cigarette butts in children's bedroom after fire and because burn characteristics for playpen were inconsistent with cigarette ignition, did not preclude playpen manufacturer's expert from forming opinion, in products liability action, that the dropping of a cigarette or knocking off of cigarette ash when infant was placed in playpen was the most likely cause of the fire; manufacturer's expert was not required to begin and end his analysis with fire inspector's premise, and instead was free to use his expertise to reach his own conclusion. [First Premier Bank v. Kolcraft Enterprises, Inc., 686 N.W.2d 430, 2004 SD 92](#). Evidence ↪ 555.5

In determining the admissibility of expert testimony, trial judge must determine that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. [SDCL 19-15-2](#), [Boomsma v. Dakota, Minnesota & Eastern R.R. Corp., 651 N.W.2d 238, 2002 SD 106](#), rehearing denied. Evidence ↪ 508; Evidence ↪ 555.2

The requirements of the test for admitting expert testimony are satisfied if the expert testimony is relevant and has a reliable basis in the knowledge and experience of his discipline. [SDCL 19-15-2](#), [Boomsma v. Dakota, Minnesota & Eastern R.R. Corp., 651 N.W.2d 238, 2002 SD 106](#), rehearing denied. Evidence ↪ 508; Evidence ↪ 555.2

Evidence established the reliability of expert testimony on battered women's syndrome and the "cycle of violence," in prosecution for simple assault; both concepts had been subjected to peer review, were not new concepts in the field of domestic abuse counseling, and were accepted in the field, and the expert had been working in the field of domestic abuse of women for the past 25 years. [State v. Weaver, 648 N.W.2d 355, 2002 SD 76](#). Criminal Law ↪ 478(1); Criminal Law ↪ 486(1)

Trial court did not abuse its discretion in trial of defendant for murder of his wife by finding that testimony of accident and injury reconstruction expert had reliable foundation, where expert testified he based his opinion upon his experience, forensic findings, physical evidence, autopsy reports, and his own observations of crime scene. [State v. Aesoph, 647 N.W.2d 743, 2002 SD 71](#). Criminal Law ↪ 486(4)

Generally, an expert's opinion is reliable if it is derived from the foundations of science, rather than subjective belief. [SDCL 19-15-2](#), [State v. Guthrie, 627 N.W.2d 401, 2001 SD 61](#), rehearing denied. Criminal Law ↪ 486(1)

In deciding whether to admit expert testimony, a court must ensure that the opinion abides on a reliable foundation. [SDCL 19-15-2](#), [State v. Guthrie, 627 N.W.2d 401, 2001 SD 61](#), rehearing denied. Criminal Law ↪ 486(2)

While challenges to the facts underlying an expert's opinion present issues for a jury, when dealing with expert opinion, the trial court must fulfill a gatekeeping function, ensuring that the opinion meets the prerequisites of relevance and reliability before admission. [Garland v. Rossknecht, 624 N.W.2d 700, 2001 SD 42](#). Evidence ↪ 508; Evidence ↪ 555.2

A fundamental baseline for reliability of expert opinions is that experts are limited to offering opinions within their expertise. [Garland v. Rossknecht, 624 N.W.2d 700, 2001 SD 42](#). Evidence ↪ 555.2

Under the test for admission of expert testimony, the trial judge must simply determine that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand, for the testimony to be admissible. [SDCL 19-15-2](#). [First Western Bank Wall v. Olsen, 621 N.W.2d 611, 2001 SD 16](#). Evidence ↪ 508; Evidence ↪ 555.2

Principles governing admissibility of expert testimony are satisfied if the expert testimony is relevant and has a reliable basis in the knowledge and experience of his discipline. [SDCL 19-15-2](#). [First Western Bank Wall v. Olsen, 621 N.W.2d 611, 2001 SD 16](#). Evidence ↪ 508; Evidence ↪ 555.2

In ruling on admissibility of scientific expert testimony, trial judge must simply determine that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand; pertinent evidence based on scientifically valid principles will satisfy those demands. [SDCL 19-15-2](#). [In re Estate of Dokken, 604 N.W.2d 487, 2000 SD 9](#). Evidence ↪ 508; Evidence ↪ 555.2

In order for expert scientific testimony to be admissible, the trial judge must determine that the expert's testimony both rests on a reliable foundation and is relevant to the task at hand. [State v. Edelman, 593 N.W.2d 419, 85 A.L.R.5th 783, 1999 SD 52](#). Criminal Law ↪ 486(2)

Under the Daubert test for admissibility of expert scientific testimony, general acceptance in the scientific community is not required. [State v. Edelman, 593 N.W.2d 419, 85 A.L.R.5th 783, 1999 SD 52](#). Criminal Law ↪ 486(2)

Under Daubert test for admissibility of expert scientific testimony, although general acceptance in scientific community is not required, trial judge has task of ensuring that expert's testimony both rests on reliable foundation and is relevant to task at hand. [SDCL 19-15-2](#). [Kuper v. Lincoln-Union Elec. Co., 557 N.W.2d 748, 1996 SD 145](#). Evidence ↪ 508; Evidence ↪ 555.2

Even under Daubert test for admissibility of expert scientific testimony, trial court needs to exercise its gatekeeping function when ruling on admissibility of expert opinion; expert opinions still need reliable foundation. [SDCL 19-15-2](#). [Kuper v. Lincoln-Union Elec. Co., 557 N.W.2d 748, 1996 SD 145](#). Evidence ↪ 555.2

When presented with question of admitting expert testimony, trial court's task is to ensure that expert testimony rests on reliable foundation and is relevant, which occurs if pertinent evidence is based on scientifically valid principles. [SDCL 19-12-3](#). [State v. Schweitzer, 1995, 533 N.W.2d 156](#). Criminal Law ↪ 486(1)

4. Opportunity for observation

Fact that police officer, experienced in estimating speed, observed defendant's vehicle in his rearview mirror and based his estimate of defendant's speed on such observation and observation as defendant passed officer did not affect officer's competency but rather weight to be given his testimony in prosecution for violation of city ordinance governing speed. SDCL 19-15-30. [City of Vermillion v. Williams, 1970, 84 S.D. 589, 174 N.W.2d 331](#). Criminal Law ↪ 486(4)

Where no question was raised touching the qualifications of a witness to testify as a medical expert, the objection going solely to the witness' knowledge of the condition of the deceased at the time of death, and where, before the questions were asked and as a foundation for them, the witness was fully examined as to his opportunity for observing the condition of deceased, the foundation laid was sufficient to permit the witness to give his opinion whether deceased's death was caused directly or indirectly by reason of pregnancy or by anything growing out of or connected therewith. [Stegner v. Modern Broth. of America, 1909, 24 S.D. 371, 123 N.W. 842](#). Evidence ↪ 545; Evidence ↪ 555.10

5. Methodology

A trial court can consider the following nonexclusive guidelines for assessing an expert's methodology: (1) the ability to test or falsify the method; (2) peer review; (3) the known or potential error rate; (4) standards to control procedures for the method; (5) general acceptance; (6) the relationship of the technique to methods that have been established as reliable; (7) the qualifications of the expert; and (8) the non-judicial uses to which the method has been put. [SDCL 19-15-2](#), [State v. Guthrie, 627 N.W.2d 401, 2001 SD 61](#), rehearing denied. Criminal Law ⚡ 488

Forensic anthropologist's testimony that his methodology was completely untested by other scientists made his testimony as to murder victim's estimated time of death inadmissible. [State v. Miller, 1988, 429 N.W.2d 26](#), denial of habeas corpus affirmed [472 N.W.2d 517](#), habeas corpus granted [1993 WL 172904](#), reversed [34 F.3d 582](#). Criminal Law ⚡ 488

6. Challenges to basis of opinion

Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible expert evidence. [In re South Dakota Microsoft Antitrust Litigation, 657 N.W.2d 668, 2003 SD 19](#). Evidence ⚡ 555.2; Evidence ⚡ 558(1)

State could not object to admissibility of landowner's expert's testimony on valuation in condemnation action, due to his failure to consider the sale of subject property, since basis of expert's opinion went to weight, not admissibility of evidence. [SDCL 31-19-1](#) et seq. [State By and Through Dept. of Transp. v. Spiry, 543 N.W.2d 260, 1996 SD 14](#). Evidence ⚡ 555.6(3)

Challenge to factual basis for expert's testimony went to weight of evidence, not its admissibility. SDCL 19-15-3. [Stormo v. Strong, 1991, 469 N.W.2d 816](#). Evidence ⚡ 555.1

Age of dental records used to identify murder victims went to weight of the evidence as distinguished from its admissibility. SDCL 19-15-3; [Fed.Rules Evid.Rule 703, 28 U.S.C.A.](#) [State v. Esslinger, 1984, 357 N.W.2d 525](#). Criminal Law ⚡ 436(5)

7. Particular basis for expert opinion--Accident reconstruction

In action arising out of accident in which car missed curve and rolled over, physics professor's opinion that car was traveling 30 miles per hour when it left highway had sufficient factual foundation where opinion was based on mathematical calculations involving dimension of ditch, marks in gravel leading to car, placement of car in ditch, distance car traveled after leaving blacktop, damage to car and absence of gouge marks on bank of ditch; fact that professor did not examine car, conduct skid test or examine accident debris only went to weight of professor's opinion. [Buckley v. Fredericks, 1980, 291 N.W.2d 770](#). Evidence ⚡ 555.8(2)

Expert's testimony was inadmissible in head-on collision case, for lack of proper foundation, insofar as it related to position of automobiles on highway at time of collision. [Kleinsasser v. Gross, 1964, 80 S.D. 631, 129 N.W.2d 717](#). Evidence ⚡ 555.8(1)

8. --- Assumed facts, particular basis for expert opinion

Certain facts can be assumed for purpose of expert opinion extrapolating blood alcohol content at time of driving, although there is no specific evidence regarding facts. [State v. Fode, 1990, 452 N.W.2d 779](#). Criminal Law ⚡ 486(2)

Where there was evidence that a piano was in good order and as good as when bought two years before, the answer of a witness, fixing the value thereof on the assumption that it had been taken good care of and had not been subjected to extreme heat or cold and was in good condition, was not objectionable as based on assumptions not proved. [Bailey v. Walton, 1909, 24 S.D. 118, 123 N.W. 701](#). Evidence ⚡ 553(3); Evidence ⚡ 555.6(1)

2. ---- Comparable sales, particular basis for expert opinion

Admission of comparable sales rests largely within discretion of trial court in condemnation proceeding. [City of Sioux Falls v. Kelley, 1994, 513 N.W.2d 97](#). Evidence ⚡ 555.6(10)

In landowners' proceeding for just compensation for destruction of property during cleanup operation following flooding, trial court did not err in admitting landowners' expert evidence of value which was not based on entirely comparable transactions where property was unavailable for comparison because it no longer existed at time of trial and problem in valuation existed due to depressed status engendered by flood. [Boland v. City of Rapid City, 1982, 315 N.W.2d 496](#). Evidence ⚡ 555.6(10)

When evidence is introduced for purposes of foundation and background for an expert's opinion on value, rule of comparability is not nearly as strict as when it is used as direct and independent proof of value of property in question. [State By and Through Dept. of Transp. v. Richey Motor Co., Inc., 1980, 296 N.W.2d 505](#). Evidence ⚡ 555.6(10)

In action against manufacturer for breach of warranty with respect to modular home, expert's opinion as to value of home at time and place of delivery based upon comparable sales and extrapolation from present value by deduction of cost of repairs, cost of other improvements and cost of land and adjustment for either appreciation or depreciation was admissible. SDCL 57-8-36 to 57- 8-40. [Carlson v. Rysavy, 1978, 262 N.W.2d 27](#). Evidence ⚡ 555.6(10)

In condemnation action in which there was disparity of between \$8,000 and \$10,000 in damage estimates of expert witnesses, it was crucial that each side be allowed to introduce evidence to show that its particular expert witness used all available methods in making his appraisal and thus condemnor was prejudiced and trial court abused its discretion in ruling inadmissible evidence of sales which were relied upon by condemnor's expert appraisers and which were suitably comparable in time of sale, location and soil conditions to be introduced for foundational purposes. [State Highway Commission v. Anderson, 1976, 90 S.D. 503, 242 N.W.2d 674](#). Eminent Domain ⚡ 262(5); Evidence ⚡ 555.6(10)

Sales, if in fact comparable, are admissible in eminent domain proceedings as substantive proof of value of property to which comparison relates and to give account of factual basis on which expert founds his opinion of value of real estate in controversy. [State Highway Commission v. Anderson, 1976, 90 S.D. 503, 242 N.W.2d 674](#). Evidence ⚡ 142(1); Evidence ⚡ 555.6(10)

In condemnation action, certain sales on which State Highway Commission's expert appraisers relied in arriving at their respective appraisals of defendants' land and total damages sustained by condemnation were suitably comparable in time of sale, location, and soil conditions to be introduced for foundational purposes, with factors not comparable going to weight rather than admissibility of evidence and with defendants having opportunity on cross-examination to bring out all of the variables. SDCL 19-6-12, 19-6-13. [State Highway Commission v. Anderson, 1976, 90 S.D. 503, 242 N.W.2d 674](#). Evidence ⚡ 555.6(10)

In eminent domain action, trial court erred in refusing to receive evidence of comparable sale of land as a foundation for the appraisal of state's two expert witnesses. [State Highway Commission v. Schiltz, 1976, 90 S.D. 498, 242 N.W.2d 156](#). Evidence ⚡ 555.6(10)

Recent and comparable sales of real estate are admissible as evidence in condemnation cases either as substantive proof of value of condemned property or as foundation and background for expert's opinion of value; but if such evidence is admitted on latter basis, rule on comparability is not nearly as strict as when it is used as direct and independent proof of value. [State Highway Commission v. Hayes' Estate, 1966, 82 S.D. 27, 140 N.W.2d 680](#). Evidence ⚡ 142(3); Evidence ⚡ 555.6(10)

Whenever value of condemned land is in issue, evidence of other recent and comparable real property for sale in the neighborhood may be shown on direct examination of an expert land value witness as independent proof of value of land in controversy, or as foundation for expert's opinion of value, but in either event, competency, relevancy, and similarity of such other sales are matters committed to sound judicial discretion of the trial court. [Nystrom v. State, 1962, 80 S.D. 58, 119 N.W.2d 123](#). Evidence ⚡ 142(4); Evidence ⚡ 555.6(10)

It was not abuse of discretion in condemnation action to permit state's expert witnesses to testify as to sales of other property in locality as foundation for their testimony, as against contention that properties to which witnesses testified were dissimilar. [State Highway Commission v. Lacey, 1962, 79 S.D. 451, 113 N.W.2d 50](#). Evidence ⚡ 555.6(10)

10. ---- Evidence in record, particular basis for expert opinion

Economist's testimony concerning automobile accident victim's future economic loss due to unemployability was supported by adequate factual basis and was properly admitted; in addition to orthopedic surgeon's testimony establishing 26% permanent partial disability rating, testimony by rehabilitation consultant indicated reduction, due to her injuries, in number of jobs which victim could perform in current labor market and provided alternative evaluations of her reduced employability based on her attainment of high school or advanced education. SDCL 19-15-3, 19-15-4. [Stormo v. Strong, 1991, 469 N.W.2d 816](#). Evidence ⚡ 555.9

Family farm corporation's witness qualified as expert, and there was sufficient factual testimony in record to form foundation for his opinion concerning cause of problems with farm's cattle; further, witness was properly allowed to testify concerning ultimate issue of causation without having performed any tests on rumen and tissue samples from dead animals. [Cargill, Inc. v. Elliott Farms, Inc., 1985, 363 N.W.2d 212](#). Evidence ⚡ 529; Evidence ⚡ 544; Evidence ⚡ 555.5



In action brought against ladder manufacturer to recover for injuries sustained when plaintiff fell off ladder, trial court did not err in allowing economist to testify as to economic loss in the event plaintiff were to lose his job, since ample evidence existed to justify economist's projections regarding part-time versus full-time employment, and there was adequate evidence to permit forecast as to lost wages due to termination. [Klug v. Keller Industries, Inc., 1982, 328 N.W.2d 847](#). Evidence ⚡ 555.9



11. ---- Future earnings, particular basis for expert opinion


It was proper for expert witness in personal injury suit to consider plaintiff's earnings after injury to determine impairment of future earning capacity. [Martino v. Park Jefferson Racing Ass'n, 1982, 315 N.W.2d 309](#). Evidence ⚡ 555.9

12. ---- Generally accepted principles, particular basis for expert opinion


Trial court did not abuse its discretion by admitting testimony of optometrist as an expert witness, for purposes of negligence action brought by motorist and passenger against railroad, which resulted after vehicle motorist and passenger were riding in hit flatbed railcar that had stopped at railroad crossing; optometrist had devoted time to research in the area of vehicular visibility and traffic safety, optometrist had written several articles and had contrib-

uted to academic textbooks, and optometrist's opinions were accepted in the scientific community. [SDCL 19-15-2. *Boomsma v. Dakota, Minnesota & Eastern R.R. Corp.*, 651 N.W.2d 238, 2002 SD 106](#), rehearing denied. Evidence  539.5(1); Evidence  555.10


Expert appraiser's opinions as to valuation of fractional shares in corporate bank were relevant and based on generally accepted valuation principles, and thus were admissible, even though opinion differed from opinion of corporation's expert, where appraiser examined corporation's historical income growth, financial ability to pay dividends, and general financial health, local economic climate, number of mergers in similar business and resulting increase in stock values, and difference was result of experts having emphasized one valuation method over other and disparate opinions as to growth rate and cash flow. [SDCL 19-15-2. *First Western Bank Wall v. Olsen*, 621 N.W.2d 611, 2001 SD 16](#). Evidence  525; Evidence  555.6(1)

Use of generally accepted valuation principles is sufficient to establish admissibility of an expert appraiser's opinion. [SDCL 19-15-2. *First Western Bank Wall v. Olsen*, 621 N.W.2d 611, 2001 SD 16](#). Evidence  555.6(1)


13. ---- Interviews, particular basis for expert opinion


Trial court in prosecution for aggravated assault did not err in admitting testimony of psychiatrist which repeated portion of interviews with third persons upon which he relied. [SDCL 19-15-4. *State v. Gallegos*, 1982, 316 N.W.2d 634](#). Criminal Law  486(6)

14. ---- Observations and experience, particular basis for expert opinion


Suicidologist's psychological autopsy that victim did not commit suicide was inadmissible in murder prosecution; the knowledge was based primarily on observation and experience, not traditional empirical studies, and the Daubert standards for reliability were not satisfied. [SDCL 19-15-2. *State v. Guthrie*, 627 N.W.2d 401, 2001 SD 61](#), rehearing denied. Criminal Law  486(6)

15. ---- Reports or records, particular basis for expert opinion



In proceeding in which accused was convicted of second-degree manslaughter of her 18-month-old son, orthopedic surgeon, who had personally observed and treated victim, could give expert opinion testimony, though surgeon relied on reports of others and such reports were not in evidence. [SDCL 22-16-20. *State v. Best*, 1975, 89 S.D. 227, 232 N.W.2d 447](#). Criminal Law  486(10)

Better view is that expert medical testimony should not be subject to hearsay objection that such testimony is based on hospital records not in evidence. [State v. Best, 1975, 89 S.D. 227, 232 N.W.2d 447](#). Criminal Law  486(5)

16. ---- Scientifically valid principles, particular basis for expert opinion

Under Daubert test for admissibility of expert scientific testimony, pertinent evidence based on scientifically valid principles will satisfy demands that expert's testimony rest on reliable foundation and be relevant to task at hand. [SDCL 19-15-2. *Kuper v. Lincoln-Union Elec. Co.*, 557 N.W.2d 748, 1996 SD 145](#). Evidence  555.2

17. ---- Self-appraisal, particular basis for expert opinion

Opinion of forensic economist assigning disability rating to motorist injured in car accident was not admissible, as economist had no expertise in assessing vocational disabilities, and assessment was based solely on motorist's self-appraisal of his work capacities. [Garland v. Rossknecht, 624 N.W.2d 700, 2001 SD 42](#). Evidence  543.5; Evidence  555.9

18. ---- Tests, particular basis for expert opinion

In child sex abuse prosecution, DNA analyst's expert testimony that tests performed on swatches cut from child victim's bedsheets indicated that defendant could not be excluded as source of DNA material found there, and that seminal fluid found on swatches, which contained no sperm cells, was consistent with fact that defendant had undergone vasectomy, was reliable and assisted trier of fact to understand evidence, and thus was admissible under Daubert standard. [State v. Edelman, 593 N.W.2d 419, 85 A.L.R.5th 783, 1999 SD 52](#). Criminal Law ↪ 488

In child sex abuse prosecution, expert testimony by criminalist from state forensic laboratory who specialized in serology that cellular material removed from swatches taken from child victim's bedsheets was consistent with vasectomized man such as defendant, and that material was from person with same rare blood type as defendant, was admissible under Daubert standard, even though expert had done no statistical samples herself on percentage of population with same blood type as defendant. [State v. Edelman, 593 N.W.2d 419, 85 A.L.R.5th 783, 1999 SD 52](#). Criminal Law ↪ 488

19. ---- Unconsummated purchase contracts, particular basis for expert opinion

Unconsummated purchase contracts entered by landowners in good faith were admissible, as part of foundation for expert's appraisal of value of condemned property. [City of Sioux Falls v. Kelley, 1994, 513 N.W.2d 97](#). Evidence ↪ 555.6(10)

S D C L § 19-15-3, SD ST § 19-15-3

Current through 2006 Reg. Session, Sup. Ct. Rule 06-72,
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