

Union County State's Attorney

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Press Release - For Immediate Release

Defendant's Name: Donald Embry
Age: 29
City and State of residence: Salem, SD
Criminal File Number: 15-333
Offense Occurred On: September 20, 2015
Preliminary Hearing: October 5, 2015
Arraignment: October 15, 2015
Plead Guilty On: November 23, 2015
Convicted of: Ct. 1: Commission of a Felony while Armed with a Firearm, 22-14-12 (F2)
Ct. 3: Possession of a Schedule 1 or 2 Controlled Substance, 22-42-5 (F5)
Sentencing Date: January 25, 2016
Arresting Officer: Trooper Trent Heuertz – SD Highway Patrol
SA Brian Schnabel – SD DCI
SA John Barnes – SD DCI
Trooper / Sgt. Robert Whisler – SD Highway Patrol
Trooper Stuart Griffith – SD Highway Patrol
Court-Appointed Attorney: Jeff Myers

Case Synopsis:

On September 20, 2015, Trooper Heuertz, of the SD Highway Patrol, began an investigation after stopping a vehicle on Interstate 29 at about mile marker 31. Trooper Heuertz stopped the vehicle for traveling 89 mph in an 80 mph zone. Trooper Heuertz observed the occupants in the vehicle moving about the vehicle prior to stopping. The described type of moving about in the car is uncharacteristic in this officer's experience. James Franch was found to be the driver of the vehicle. When Franch exited the vehicle, Trooper Heuertz noticed an empty holster on Franch's belt line. Franch avoided the question as to the location of the weapon for the empty holster, which caused Trooper Heuertz to call for back up. Franch was searched and was found to be in possession of two knives. Franch stated that the magazine / clip that was in his holster would match a weapon in the vehicle, and then identified that there were no weapons in the vehicle. Franch was identified to be on probation and that part of his terms and conditions would be that he does not have search and seizure rights. Additionally as a convicted felon, he is not allowed to have, or possess a weapon.

Once the vehicle and the occupants were searched, Donald Embry, a passenger in the Franch vehicle, was found to be in possession of controlled substances, namely methamphetamine, as well as the possession of a concealed weapon without a permit. Embry's criminal history shows that he has prior conviction of felony offenses which is classified as violent offence pursuant to our statutes. Embrey is prohibited from being in possession of a weapon based upon his criminal history status. Additionally, Embry was committing a felony offense of possession of a controlled substance while armed with a weapon. Embry provided a urine sample which tested positive for Amphetamine at 2,338 ng/ml Methamphetamine at 20,697 ng/ml.

Sentencing Synopsis:

On the charge in count 1, Commission of a Felony while Armed with a Firearm, a class 2 felony, the Court ordered that Embry to a Five year sentence to the state penitentiary with the sentence to begin immediately. Donald Embry was further ordered to do pay the following:

- \$104.00 in Court Costs; and

On the charge in count 3, Possession of a Schedule 1 or 2 Controlled Substance, a class 5 felony, the Court ordered that Embry to a Five year sentence to the state penitentiary with the sentence to begin immediately. The Court gave Donald Embry credit for the One Hundred and Twenty-seven days he spent incarcerated prior to sentencing. The sentence on this charge in count 3 is to run consecutive to his sentence in count 1. Donald Embry was further ordered to do pay the following:

- \$104.00 in Court Costs;
- \$176.50 to the SD Drug Control Fund; and
- Court Appointed Attorney Fees in the amount of \$1,193.50

Criminal History:

This appears to be Donald Embry's fourth career felony conviction.