

US Attorney Reviewing Execution Drug Allegations

BY GRANT SCHULTE
Associated Press

LINCOLN, Neb. — The U.S. attorney's office in Nebraska is reviewing allegations by a civil liberties group that state officials are trying to violate federal law through their attempts to import lethal injection drugs.

The American Civil Liberties Union of Nebraska obtained emails and other documents through a public records request and sent a letter Thursday to U.S. Attorney Deborah Gilg arguing that state officials are actively pursuing the drugs despite warnings from the U.S. Food and Drug Administration that they can't be legally imported. Amy Miller, the group's legal director, pointed to a 2012 incident where execution drugs had to be seized because they were shipped to the state illegally from India.

"Given the state's concrete and active efforts to violate federal law, we request your office initiate an investigation," Miller said in the letter.

Federal attorneys are looking over the documents, a spokesman for Gilg said Thursday. Jan Sharp, the U.S. attorney's Criminal Division chief in Omaha, said attorneys need time to review the papers but should decide by next week whether to act.

"Like any correspondence that comes in, we take it seriously," Sharp said. "... We don't disregard anything that gets sent to us. Whether or not we pick up and run with it is left to a prosecutor's discretion."

Gov. Pete Ricketts has said state officials are working with the U.S. Drug Enforcement Administration to import the required drugs — sodium thiopental and pancuronium bromide

— so the state can resume executions. But Nebraska lawmakers passed a bill that abolished the death penalty and overrode the governor's veto of the measure. Nebraska currently has 10 men on death row, and the state's last execution was in 1997.

The U.S. Drug Enforcement Administration has said Nebraska is legally registered to import drugs, but can be blocked from doing so if other federal agencies object. In a July 13 letter to Nebraska corrections director Scott Frakes, a DEA administrator said the FDA raised legal concerns about the state's effort.

"According to the FDA, there is no approved application for sodium thiopental, and it is illegal to import an unapproved drug into the United States," wrote Joseph Rannazzisi, a deputy assistant administrator within the agency.

In responding to the ACLU's allegations, Ricketts spokesman Taylor Gage referenced a possible 2016 ballot initiative that would reinstate the death penalty. The group Nebraskans for the Death Penalty has until Aug. 27 to gather enough signatures for a statewide ballot measure.

"The ACLU is clearly aligned with the side of the ballot initiative that does not want to give the voters of Nebraska a say on the death penalty — their letter should be viewed in that light," Gage said.

ACLU of Nebraska Executive Director Danielle Conrad said the state should abandon its efforts to obtain the drugs and request a refund for the "over \$50,000 of taxpayer funds" used to purchase the drugs in 2012.

Legislators Like New Method For Picking Tournament Spots

BY BOB MERCER
State Capitol Bureau

PIERRE — The directors for the South Dakota High School Activities Association changed their process in 2014 for selecting sites of state athletics and arts competitions. They changed the opinions of legislators too.

Members of the Legislature's interim committee looking into the SDHSAA gave a general thumbs-up to the new method Thursday.

Three of the directors and five high school officials — no two from the same community — now make the choices. They use written standards and decisions are made in the open three years in advance.

Linda Whitney of Sanborn Central High School was a panel member this year. "We had three meetings. They were intense, long meetings," she said. Basket-

ball took several tries. "We didn't make a decision the first time."

John Krogstrand, an assistant executive director for the association, said the new Premier Center in Sioux Falls offers a new opportunity for hosting larger events. He said big high schools in Class AA prefer that the boys and girls basketball tournaments be held together, and mid-sized high schools in Class A are willing to try the double format.

But the small high schools in Class B don't want to lock into one site. Approximately one quarter of the Class B schools are in western South Dakota and therefore, Krogstrand said, they want their state tournaments in a western location once every four years.

Whitney said that for Class AA and Class A schools, many years the same school is going to state tournaments for both boys and girls basketball teams.

That doesn't happen often for Class B schools, she said.

Krogstrand said approximately 70 percent of the association's operating revenue comes directly from ticket sales. Class A and Class B girls basketball, all three classes of boys basketball, football and track and field make money, while volleyball is "a toss-up proposition," he said.

Rep. Tim Rounds, R-Pierre, said the Legislature shouldn't get involved in the tournament site process. "I have to put a lot of faith and trust," he said.

Sen. Craig Tieszen, R-Rapid City, said it's important the selection standards are publicly available so community leaders can see whether their cities qualify. He said the system is logical.

"I appreciate the process that's used," Tieszen said.

Supreme Court Reverses Attempted Fetal Homicide Conviction

BY REGINA GARCIA CANO
Associated Press

SIoux FALLS — South Dakota's Supreme Court reversed the attempted fetal homicide conviction Thursday of a man accused of spiking his girlfriend's beverages with an herb in 2010 to try to induce an abortion.

Under the ruling, the high court found a lower court made mistakes by giving incorrect instructions to the jury about the elements of the charge and letting jurors listen to a phone call between defendant Alfredo Vargas and his wife.

"... Defendant was improperly convicted of the crime of attempted fetal homicide because the jury did not have to find that he had the specific intent to cause the death of the unborn child — an element which the State has the burden to prove," the court stated in its opinion.

A now-justice, Janine Kern, presided over the case when she was a judge in Pennington County and ordered Vargas to serve five years in prison in 2013. Kern did not participate in this decision.

Vargas, 38, was sentenced after jurors in Rapid City found him guilty of lacing his girlfriend's drinks with an herb that in large quantities can cause an abortion.

The state secured the conviction in a second attempt, after the first case filed against Vargas was thrown out when his attorney challenged the prosecution's expert witness.

Defense attorney Jamy Patterson said Thursday that she is pleased with the high court's decision and was working on notifying her client, who is being housed at the State Penitentiary in Sioux Falls.

Attorney General Marty Jackley said the decision over a possible retrial will be left to Pennington County State's Attorney Mark Vargo, whose office handled the case.

Vargo did not immediately return a call seeking comment Thursday. Patterson, however, said prosecutors have indicated that they intend to retry the case. In the event of a new trial, Patterson said she would ask the judge to allow Vargas to remain free during the proceedings.

The substance that a state laboratory found in a drink is known as pulegon. A medical toxicologist during the 2013 trial testified that pulegon can be extracted from the plant pennyroyal, which is part of the mint family, and it has been used to "bring on menstrual periods" and cause abortions.

During the trial, Lisa Komes testified

that she became suspicious of some bitter-tasting drinks that Vargas provided her and had law enforcement test them. She gave birth to a healthy boy in October 2010.

At the time of these incidents, Vargas was married to Melissa Vargas. The court tried to compel her to testify, but she did not appear in court despite a subpoena.

But the jury heard a conversation that was recorded when Melissa Vargas contacted the defendant with a detective in her presence. Alfredo Vargas admitted in the conversation to spiking Komes's drinks, but the Supreme Court concluded the jury should not have heard the conversation.

"The erroneous admission of this phone call was not harmless because it allowed the jury to hear Defendant admitting that he put pennyroyal into Komes's drinks on two different occasions," the justices wrote. "Although the State argues that the testimony of other witnesses and results of the contaminated beverages established the same thing, this phone call was the only admission by Defendant to any witness that he put pennyroyal in Komes's drinks."

Yankton Sioux Tribe Gets Reprieve On Late Testimony In Dakota Access Dispute

BY BOB MERCER
State Capitol Bureau

PIERRE — Written rebuttal testimony from a key witness for the Yankton Sioux Tribe in the Dakota Access permit case should be accepted even though it was filed one day late, the South Dakota Public Utilities Commission ruled Thursday.

Commissioner Gary Hanson said he wants the information. State Treasurer Rich Sattgast, serving as an acting commissioner in place of Kristie Fiegen who had a conflict, said he had reservations but agreed with Hanson.

"I don't think it will hurt the process by allowing more testimony in," Sattgast

said.

Commission chairman Chris Nelson said he "reluctantly" supported accepting the testimony. Nelson said deadlines are intentional — "We expect everybody to abide by that" — and the decision doesn't indicate the commission will start "fudging" on any other deadlines.

Hanson added the commission doesn't want the Dakota Access matter to become like some other dockets where people are repeatedly late. "It can become a real problem," he said. "Folks have a lot of time. It's not like a surprise they have to do filing."

The Yankton Sioux Tribe opposes a state permit for the pipeline, which would

transport oil from the Bakken formation of North Dakota and Montana through South Dakota en route to Illinois.

The testimony in question is from Jason Cooke, a member of the tribe's business and claims committee. Cooke alleges that the company didn't consult with the tribe on a number of important issues including artifacts, law enforcement, recreation, archeological surveys, emergency response plans and the proposed route.

The evidentiary hearing by the commission on the permit application is set for Sept. 29 through Oct. 2 and for Oct. 6 through Oct. 9 at the Capitol.

Sioux City Tickets South Dakota Speeders Despite Law Change

BY JAMES NORD
Associated Press

PIERRE — Officials in South Dakota are upset that an Iowa border town is ticketing South Dakota residents using speed cameras, despite a 2014 law aimed at preventing the practice.

South Dakota, which doesn't have red-light and speed cameras, passed a law in 2014 that is supposed to prevent other states from

accessing South Dakota residents' driver's license information for the purposes of issuing such tickets.

However, Sioux City, Iowa, police Chief Douglas Young confirmed Thursday that South Dakota residents are still being ticketed from the speed cameras. Young said his department contracts for the system with Arizona-based Redflex Traffic Systems. South Dakota has blocked Redflex's access to information on the state's residents, but Young

said his department is still able to get the information because it is a law enforcement agency.

"We've got two different states, and we're in Iowa, and these people are violating the speed limit in the state of Iowa, and there should be some penalty for it," he said. "We'll continue to write violators' citations regardless of what state they're from."

Matt Konenkamp, a policy adviser to South Dakota Gov. Dennis Daugaard, said

Thursday that it's "unfortunate that Sioux City doesn't want to honor South Dakota's desire with regard to use of its driver's information." He said the administration is studying the situation and how to prevent the information from being accessed.

Konenkamp said South Dakota officials in part object to Sioux City's ticketing procedure because it's a civil process and doesn't include rights afforded to citizens for criminal violations.

Authorities Investigating Fiery Crash

ALEXANDRIA (AP) — Authorities are diverting traffic off Interstate 90 east of Mitchell as they investigate a fiery two-car crash.

The *Daily Republic* reports that the wreck occurred about 4:30 p.m. in the westbound lanes near Alexandria. At least one of the vehicles caught fire.

Rescuers from Mitchell and law enforcement officers from the South Dakota Highway Patrol and Hanson and Davison counties responded to the scene. Officers closed the lanes in both directions and diverted traffic onto state Highway 38.

No additional information was immediately available.

Police Investigating Casino Robbery

RAPID CITY (AP) — Police in Rapid City say they're investigating the city's fourth casino robbery in two weeks.

Officers were called to a casino on Mount Rushmore Road about 9 a.m. Thursday after a suspect wearing a black hooded sweat shirt entered through a back door, demanded money and fled with cash. He was last seen riding a bicycle east through the alleyway behind the business.

Police say they don't believe that Thursday's suspect is the same person suspected in other recent robberies under investigation.

One person was arrested in one of the robberies, an Aug. 10 incident on Saint Patrick Street.

Autopsy Results Released In Boat Crash

RAPID CITY (AP) — Authorities say a Rapid City woman killed in a boat crash on Pactola Reservoir died of "multiple blunt force trauma."

The Pennington County Sheriff's Office released the autopsy results Thursday as part of its investigation into the death of 33-year-old Gabrielle Fisher. Fisher was one of two people on a boat that collided with a personal watercraft on Friday, Aug. 14.

The 29-year-old personal watercraft driver, Jody Kreycek, is facing charges of boating under the influence and second-degree manslaughter. He faces up to 11 years in prison if convicted.

Pactola Reservoir is about 20 miles west of Rapid City.

Teen Charged Will Be Tried As Adult

SIoux FALLS (AP) — A Sioux Falls teenager accused of killing another teen after a car chase will be tried as an adult.

Conner Hanson was 17 years old when he was arrested and charged with first- and second-degree murder in the January killing of 18-year-old Anthony Gabriel. Hanson pleaded not guilty.

KELO-TV reports that Circuit Court Judge Robin Houwman made the ruling during a hearing on Thursday morning.

Houwman said that it's not in Hanson's best interest, or the public's best interest, to try him as a juvenile, as he would age out of the juvenile system in just three years when he turns 21. Houwman said the adult system has many suitable treatment options for Hanson.

Nineteen-year-old co-defendant Robert Montes testified against Hanson last Friday as part of a plea deal.

Former Pastor Sentenced For Sex Crime

BROOKINGS (AP) — A former Brookings pastor convicted of having sexual contact with a child is heading to prison.

The *Brookings Register* reports that 38-year-old Timothy Bariteau has been sentenced to eight years behind bars. He had faced up to 15 years.

Bariteau was indicted last November and arrested in California, where he had been living. He was convicted in June after a Brookings County jury deliberated for about five hours.

Authorities say the crime against a child younger than 16 occurred in April or May of 2014 when Bariteau was one of the pastors at Morningside Community Church in Brookings.

Man Injured In Shooting Out Of Hospital

ABERDEEN (AP) — A man shot at a hotel in the northern South Dakota city of Aberdeen has been released from a hospital.

The mother of Curtis Paysen tells the *American News* that he was released from a Sioux Falls hospital on Wednesday, four days after he suffered a head injury in an early morning shooting at the Hampton Inn and Suites.

Nineteen-year-old Jordan Mercure, of Fort Collins, Colorado, faces a felony aggravated assault charge and several misdemeanors in the shooting that authorities allege happened during an alcohol-fueled argument. He hasn't yet entered a plea, and is due back in court Aug. 31.

Mercure and Paysen attended high school together in Aberdeen.

Video Shows Gray Wolf In Black Hills

RAPID CITY (AP) — A rural Hot Springs resident has shot video of what appears to be a rare gray wolf in the Black Hills.

Lance Verhulst isn't saying where he shot the video because he doesn't want people in his elk-hunting spot.

But South Dakota Game, Fish and Parks Regional Wildlife Manager John Kanta tells the *Rapid City Journal* that based on the video footage, officials are "pretty confident" the animal is a wolf. Kanta says it's likely a lone male traveling through from another state.

The video will go into a state database that houses all wolf sightings in South Dakota, whether or not they're confirmed.

Kanta says the last confirmed wolf in the Black Hills was in 2012, in Custer County. DNA testing determined it came from the Great Lake Region.

Victim Of Stabbing Death Identified

LEAD (AP) — Authorities have identified the victim in what they say is a homicide in Lead.

The Lawrence County Sheriff's Office says preliminary results from an autopsy indicate 27-year-old Caitlin Walsh, of Lead, died of stab wounds sometime before her body was discovered Monday evening.

Forty-four-year-old James Rogers Jr. was arrested Monday and is being held without bond on a first-degree murder charge. It's unclear if he has an attorney.

Authorities have not released details of the incident that led to Walsh's death.

Party Planned For New Monopoly Version

PIERRE (AP) — Board game enthusiasts rejoice: The new version of Monopoly featuring South Dakota's capital will be unveiled this week in Pierre.

Prairie Pages Booksellers in Pierre is hosting an unveiling party for the new game Friday. Owner Peggy Stout says the party is an opportunity for the public to take a look at the new game and revel in the accomplishment.

Pierre secured the most votes of any U.S. city in an online vote in February to win "Boardwalk" placement in the game. Pierre Mayor Laurie Gill spearheaded a campaign to get people to vote for the capital city.

Pierre will now hold the top spot in Monopoly's new version featuring U.S. cities. Hasbro Inc. left it to voters to choose which cities would appear in the new game.