



August 2017 Appellate Court Updates

[A15-1265](#) State of Minnesota, Respondent, vs. Antion Deion Shelby, a/k/a Antione Tony Hill, Appellant.

Ramsey County District Court, Hon. Joy D. Bartscher

On appeal from the denial of his petition for post-conviction relief, appellant argues that he should have been allowed to withdraw his guilty plea because his plea was not intelligent and that he received ineffective assistance of counsel. We affirm.

Affirmed. Judge Carol A. Hooten.

[A16-0594](#) State of Minnesota, Respondent, vs. David Martin Arth, Appellant.

Ramsey County District Court, Hon. Gary W. Bastian and Hon. Salvador Rosas.

In this appeal from convictions of multiple counts of possession of pornographic work involving minors, appellant argues that (1) the district court's suppression ruling must be reversed because the search-warrant affidavit did not provide probable cause to believe that a computer identified as client ID DAAF7 would be found at his apartment on June 10, 2010; and (2) his convictions on counts 1 through 13 must be reversed because the state failed to prove that he knowingly possessed those images. We affirm.

Affirmed. Judge Randolph W. Peterson."

[A16-0830](#) State of Minnesota, Respondent, vs. Daniel Joseph Decker, Appellant.

Steele County District Court, Hon. Judge Karen R Duncan.

Appellant Daniel Joseph Decker challenges his convictions of fifth-degree criminal sexual conduct and indecent exposure, arguing that his act of sending a photograph of his erect penis to the 14-year-old victim via Facebook Messenger did not constitute live exhibition or lewd exposure of his private parts in the victim's presence. Because the photograph was sent in the context of a continuing online conversation between Decker and the victim, we conclude that the offense was committed in the presence of the victim, and we affirm.

Affirmed. Judge Lucinda E. Jesson."

[A16-1048](#) State of Minnesota, Respondent, vs. Michael Angel Serrata, Appellant.

Ramsey County District Court, Hon. Judge Diane R. Alshouse.

On appeal from his convictions of malicious punishment of a child and first-degree assault, appellant argues that the district court unfairly limited his ability to present a complete defense by erroneously ruling that (1)

appellant's medical expert could not testify about a journal article that supported his testimony and (2) defense counsel could not impeach the state's medical experts about their medical opinions with learned treatises. We affirm.

Affirmed. Judge Peter M. Reyes, Jr."

["A16-1159](#) State of Minnesota, Respondent, vs. Bradley Stephen Rierson, Appellant.

Stearns County District Court, Hon. Judge Mary B. Mahler.

The state charged Bradley Rierson with seven counts of possessing child pornography or a computer containing child pornography. The jury found Rierson guilty. At trial, the jury learned that his son's former girlfriend—a child—sent Rierson nude pictures of herself and that Rierson's browser history indicated his sexual preference for minor females. Rierson argues on appeal that this Spreigl evidence unfairly prejudiced him. He argues alternatively that only two of the convictions can stand because the evidence, the district court's instructions, and the jury's verdict together establish only that he possessed two computers containing child pornography, not that he possessed seven images of child pornography. And he argues finally that his consecutive sentences exaggerate the singular nature of his illegal behavior. We reject his first argument because the purported Spreigl evidence was either properly admitted or was not truly Spreigl evidence. We reject his second argument because, even if the district court erred by not instructing the jury to decide whether Rierson possessed the pornographic works themselves, the error did not substantially affect the verdict. And we reject his sentencing argument because sufficient evidence allowed the district court to determine that the seven pornographic images showed seven different child victims. We affirm.

Affirmed. Judge Kevin G. Ross."

["A16-1236](#) State of Minnesota, Respondent, vs. Hassan Saleem McKeever, Appellant.

Ramsey County District Court, Hon. Judge Diane R. Alshouse.

Appellant argues that the evidence is insufficient to sustain his convictions because his convictions are based on the uncorroborated and incredible testimony of a single eyewitness. Appellant also argues that his conviction of attempted second-degree murder is not supported by sufficient evidence because the state failed to prove that he had the specific intent to kill the victim. We affirm.

Affirmed. Judge Carol A. Hooten."

["A16-1245](#) State of Minnesota, Respondent, vs. Israel Davis, Appellant.

Stearns County District Court, Hon. Frederick L. Grunke.

Appellant challenges his convictions of promotion of prostitution and sex trafficking in violation of Minn. Stat. § 609.322, subd. 1a (2012), arguing that the district court erred by (1) permitting expert testimony regarding sex trafficking, (2) following the Minnesota Sentencing Guidelines Commission and imposing a presumptive sentence for a conviction of aggravated sex trafficking and a permissive consecutive sentence for another conviction, and (3) entering judgments of conviction on six counts. Because we conclude that the district court did not abuse its discretion by admitting the expert testimony, we affirm in part. Because imposition of an aggravated sentence and a consecutive sentence based on the same victim exaggerates the criminality of the offense and because the district court erred by entering judgments of conviction on counts II, III, VI, and VIII, we reverse in part and remand to the district court for resentencing and to vacate the adjudications on counts II, III, VI, and VIII.

Affirmed in part, reversed in part, and remanded. Judge Jill Flaskamp Halbrooks.”

“[A16-1275](#) State of Minnesota, Respondent, vs. Deangelas Demoyne Cook, Appellant.

Blue Earth County District Court, Hon. Kurt D. Johnson.

Appellant challenges his conviction of first-degree controlled sale of methamphetamine, arguing that he is entitled to a new trial because the prosecutor committed prejudicial misconduct during closing argument; he also challenges his sentence on the ground that the district court committed reversible error by admitting an exhibit into the Blakely phase of the trial. Because appellant was prejudiced by the prosecutor’s misconduct and because the admission of the exhibit was reversible error, we reverse and remand for a new trial.

Reversed and remanded. Judge Francis J. Connolly.”

“[A16-1408](#) State of Minnesota, Respondent, vs. Ashley Shayia Lee, Appellant.

Ramsey County District Court, Hon. Judge Leonardo Castro.

Appellant challenges her conviction of aiding and abetting identity theft, arguing that the district court erred in finding her competent to stand trial despite the Minn. R. Crim. P. 20.01 evaluator’s contrary opinion. Because the district court gave proper weight to the evidence produced and because the record adequately supports the district court’s conclusion, we affirm.

Affirmed. Judge Louise Dovre Bjorkman.”

“[A16-1652](#) State of Minnesota, Respondent, vs. Robert Scott Wood, Appellant.

Ramsey County District Court, Hon. Joy D. Bartscher.

Appellant challenges his sentence for first-degree assault, arguing that the district court abused its discretion by denying his request for a downward departure from the presumptive sentence under the Minnesota Sentencing Guidelines. Appellant argues that his history of mental-health issues and his suicidal ideation at the time of the offense justified a downward departure. We affirm.

Affirmed. Judge Michelle A. Larkin.”

“[A16-1677](#) State of Minnesota, Appellant, vs. Jorge Armando Benavides, Respondent.

Kandiyohi County District Court, Hon. Michael J. Thompson.

Appellant State of Minnesota challenges the district court’s suppression of evidence and dismissal of the drug-possession charge resulting from a traffic stop that led to a narcotics-detection dog sniff around a vehicle in which respondent Jorge Armando Benavides was a passenger. The state contends that the expansion of the scope of the stop was supported by reasonable, articulable suspicion and that, even if it was not, the evidence should not be suppressed because it inevitably would have been discovered during a routine inventory search after the vehicle was towed from a no-parking zone. Because the state has not shown that the officer had a reasonable, articulable suspicion of drug-related criminal activity and the record does not establish that the evidence inevitably would have been discovered, we affirm.

Affirmed. Judge Tracy M. Smith.”

["A16-1709](#) State of Minnesota, Respondent, vs. Sean Fitzgerald Pozzi, Appellant.

Redwood County District Court, Hon. Judge Patrick R Rohland.

Appellant challenges his conviction of failure to register as a predatory offender, arguing that the district court committed reversible plain error by admitting evidence regarding his prior criminal-sexual-conduct and failure-to-register convictions even though he stipulated that he was required to register based on these convictions. We reverse and remand for a new trial.

Reversed and remanded. Judge Michelle A. Larkin."

["A17-0022](#) Kauser Mohamoud Yusuf, petitioner, Appellant, vs. State of Minnesota, Respondent.

Ramsey County District Court, Hon. Joy D. Bartscher.

Following a joint trial by jury, appellant Kauser Mohamoud Yusuf and codefendant Jonathan Edwards were both convicted of aiding and abetting first-degree sex trafficking of a juvenile, T.S. Because we conclude that the post-conviction court did not err in denying appellant's petition for post-conviction relief, we affirm.

Affirmed. Judge Michael L. Kirk."