



June 2017 Appellate Case Updates

[A15-1402](#) Jerrell Michael Brown, Appellant, vs. State of Minnesota, Respondent.
[A16-0648](#) Hennepin County.

1. The post-conviction court did not abuse its discretion when it denied appellant's witness-recantation claim under the Larrison standard.
 2. The post-conviction court did not abuse its discretion when it denied appellant's claim that the State had engaged in prosecutorial misconduct.
 3. The post-conviction court did not abuse its discretion when it denied appellants untimely filed post-conviction claim that the State knowingly used false evidence.
 4. The post-conviction court did not abuse its discretion when it denied appellants untimely filed post-conviction claim that a State witness testified falsely at trial.
 5. The post-conviction court did not abuse its discretion when it denied appellants untimely filed post-conviction claims that he received ineffective assistance of trial counsel and appellate counsel.
- Affirmed. Justice David L. Lillehaug.

[A16-0026](#) State of Minnesota, Respondent, vs. Romego Jewel Young, Appellant.
St. Louis County District Court, Hon. Judge Mark M. Starr.

In this appeal from his conviction of third-degree assault, appellant Romego Jewel Young asserts that the district court plainly erred in permitting respondent State of Minnesota to elicit testimony regarding the state's unsuccessful efforts to procure the presence at trial of the victim, a nontestifying witness. Because admitting such evidence was a plain error affecting Young's substantial rights, we reverse and remand.

Reversed and remanded. Judge Tracy M. Smith.

A16-0229 State of Minnesota, Respondent, vs. Erik John Heinonen, Appellant.
Sherburne County District Court, Hon. Thomas D. Hayes.

Because a request that a suspect consent to provide a DNA sample does not constitute interrogation under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), and DNA evidence is not testimonial or communicative in nature, a police officer does not violate a suspect's Fifth Amendment rights by asking for such consent after the suspect has invoked his or her right to remain silent.

Affirmed. Judge Carol A. Hooten

[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.

[A16-0894](#) State of Minnesota, Respondent, vs. Montrell Maurice Webster, Appellant.
Hennepin County.

1. The State presented evidence sufficient to prove beyond a reasonable doubt that appellant killed the victim while attempting to commit an aggravated robbery.

2. The district court did not commit plain error in instructing the jury on the requirements of first-degree felony murder.

Affirmed. Justice Anne K. McKeig.

[A16-0956](#) State of Minnesota, Respondent, vs. James Richard Jerome Cochran, Appellant.
Winona County District Court, Hon. Judge Mary C. Leahy.

Appellant challenges his conviction of three counts of first-degree criminal sexual conduct, arguing that: (1) the district court abused its discretion by denying his request for a continuance; (2) the court erred by allowing a medical doctor to testify on the prosecution's behalf as an expert; (3) the court violated appellant's right to a fair trial by allowing an expert witness to vouch for the complainant; (4) the court erred by denying his motion for a mistrial; (5) the court abused its discretion by admitting the complainant's forensic interview into evidence; (6) the court erred by preventing appellant from attacking the credibility of complainant's mother; (7) insufficient evidence supports the convictions; (8) appellant's trial counsel was ineffective; and (9) the cumulative effect of these errors deprived appellant of his right to a fair trial. We affirm.

Affirmed. Judge Peter M. Reyes, Jr.

[A16-1192](#) State of Minnesota, Respondent, vs. Keith Eugene Washington, Appellant.
Hennepin County District Court, Hon. Elizabeth V. Cutter.

Appellant Keith Eugene Washington asks us to reverse his convictions for attempted criminal sexual conduct, first-degree aggravated robbery, and first-degree assault, challenging the seizure and search of his grocery bag, the warrantless collection of his DNA, the admission of Spreigl evidence, and other pro se issues. He also challenges his sentence. Because the district court did not err on the Fourth Amendment and evidentiary issues, and because Washington's pro se arguments lack merit, we affirm his convictions. But because the district court improperly imposed a life sentence for an attempt crime, we reverse Washington's sentence and remand for resentencing.

Affirmed in part, reversed in part, and remanded. Judge Roger M. Klaphake.

[A16-1325](#) State of Minnesota, Respondent, vs. Peter James Nelson, Appellant.
Ramsey County District Court, Hon. Joy D. Bartscher.

Appellant challenges his conviction of possession of child pornography, arguing that the district court erred by denying his motion to suppress evidence found on his cell phones. We affirm.

Affirmed. Judge Michelle A. Larkin.

[A16-1336](#) State of Minnesota, Respondent, vs. Jason Howard Sindt, Appellant.
Mahnom County District Court, Hon. Judge Anne Marie Rasmusson.

Appellant challenges his convictions for assault and for violating a domestic-abuse no-contact order (DANCO), arguing that the district court incorrectly instructed the deliberating jury and committed evidentiary error. Because the district court plainly erred by instructing the jury that it could not reach a partial verdict, we reverse and remand for a new trial.

Reversed and remanded. Judge Louise Dovre Bjorkman.

[A16-1355](#) State of Minnesota, Respondent, vs. Justin Allen Hanson, petitioner, Appellant.
Crow Wing County District Court, Hon. Judge Earl E. Maus.

Appellant Justin Allen Hanson challenges his conviction of possession of a firearm by a prohibited person, arguing that the prosecutor committed misconduct in her opening and closing statements. He also contends that there is insufficient evidence to sustain his conviction. Because the prosecutor misstated the evidence on the pivotal issue presented to the jury—when Hanson possessed the firearm—we reverse and remand for a new trial.

Reversed and remanded. Judge Lucinda E. Jesson.

[A16-1404](#) State of Minnesota, Respondent, v. Bielmar Alvarez-Agular aka Beilmar
Freeborn County District Court, Hon. Steven Schwab.

On appeal from his conviction of first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by considering immigration consequences when denying his motion for departure. We affirm.

Affirmed. Judge Francis J. Connolly

[A16-1566](#) Michelle Rae Wilson, petitioner, Appellant, vs. State of Minnesota, Respondent.
Ramsey County District Court, Hon. Judge Stephen L. Smith.

In this appeal from the denial of her second petition for post-conviction relief on the basis that the petition was time-barred, appellant argues that her petition was timely under the interests of justice exception to the two-year statute of limitations. Because the post-conviction court correctly concluded that appellant's petition is time-barred, we affirm.

Affirmed. Judge Roger M. Klaphake.

[A16-1615](#) Travis Clay Andersen, petitioner, Appellant, vs. State of Minnesota, Respondent.
Carver County District Court, Hon. Eric J. Braaten.

Following his conviction of violation of an order for protection (OFP), appellant Travis Clay Andersen argues that the district court committed reversible error by (1) permitting his prior convictions to be used to impeach him, (2) giving a cautionary jury instruction that did not conform to the suggested wording of the jury instruction guidelines, and (3) making a spontaneous statement at trial that contradicted Andersen's sworn testimony. We affirm.

Affirmed. Judge Thomas J. Kalitowski.

[A16-1619](#) State of Minnesota, Appellant, v. Willie James Brown, petitioner, Respondent.
Ramsey County District Court, Hon. Judge Diane R. Alshouse.

1. A potential out-of-state probation-violation penalty in an unrelated case is not a direct consequence of a criminal defendant's conviction.

2. Misinformation about a collateral consequence does not render a guilty plea unintelligent and manifestly unjust.

Reversed and remanded. Judge Kevin G. Ross.

[A16-1778](#) State of Minnesota, Respondent, vs. Ronald James Fairbanks, Appellant.
St. Louis County District Court, Hon. Sally Tarnowski.

On appeal from his conviction, appellant Ronald James Fairbanks argues that his guilty plea is invalid because the factual basis fails to establish that he knowingly violated the predatory offender registration requirements as a homeless offender. This matter was assigned to the special term panel, after the state conceded that appellant was entitled to relief and appellant requested expedited processing of the appeal. We reverse and remand.

Reversed and remanded. Chief Judge Edward J. Cleary.