



April 2017 Appellate Court News

[A15-1456](#) State of Minnesota, Appellant vs. Johnathon Michael Honeycutt, Respondent.
Reversed and Remanded. Judge Denise D. Reilly.
Ramsey County District Court, Hon. Judge Diane R. Alshouse.

The state challenges the district court's dispositional departure from the presumptive prison sentence for respondent's conviction of first-degree criminal sexual conduct. Because the district court's factual findings are not supported by the record, we reverse and remand for resentencing.

[A14-1679](#) Francisco Herrera Sanchez, Appellant, vs. State of Minnesota, Respondent.
Court of Appeals.

Defense counsel was only required to inform a noncitizen client that his guilty plea to third-degree criminal sexual conduct may subject him to removal from the United States, Minn. Stat. § 609.344, subd. 1(b) (2016), because it was not "truly clear" that the offense constituted "sexual abuse of a minor" under the aggravated-felony provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(A) (2015).

Affirmed. Justice David R. Stras.

Concurring, Justice David L. Lillehaug.

Took no part, Justices Margaret H. Chutich and Anne K. McKeig.

[A16-0622](#) State of Minnesota, Respondent, vs. Dillen James Hinkemeyer, Appellant.
Affirmed. Judge Michelle A. Larkin.

Hennepin County District Court, Hon. William H. Koch.

Appellant challenges his conviction of possession of a firearm by a prohibited person, arguing that the district court erred by denying his motion to suppress the firearm as the fruit of an unconstitutional traffic stop. We affirm.

[A16-0304](#) State of Minnesota, Respondent, vs. Kevin Ray Goulet, Appellant.
Affirmed. Judge Lucinda E. Jesson.

Dissenting, Judge Kevin G. Ross.

Otter Tail County District Court, Hon. Mark F. Hansen.

Appellant Kevin Goulet argues that the district court committed reversible error by refusing to strike a juror for cause because the juror displayed actual bias when she expressed that she did not know whether she could be fair and impartial in a case involving children, and the district court's questioning did not rehabilitate her. Because Goulet has failed to establish actual bias, and the district court's questioning rehabilitated the juror with respect to any possible bias, we affirm.

[A15-2053](#) State of Minnesota, Respondent, vs. Quentin Todd Chute, Appellant.
Ramsey County District Court, Hon. Patrick C. Diamond.

When a police officer enters the curtilage of a home for the purpose of conducting a warrantless search, the officer's position within the curtilage is not lawful and the warrantless search violates the Fourth Amendment.

Affirmed in part, reversed in part, and remanded. Chief Judge Edward J. Cleary.

[A16-0129](#) State of Minnesota, Respondent, vs. Tiffany Nicole Phillips, Appellant.
Reversed and remanded. Judge Kalitowski.
Scott County District Court.

Appellant, Tiffany Nicole Phillips, challenges the district court's denial of her motion to suppress the results of a blood test to which she consented after being read the Minnesota Implied Consent Advisory, and the district court's denial of her motion to vacate the verdict in the interests of justice following this court's decision in *State v. Trahan*, 870 N.W.2d 396 (Minn. App. 2015), *review granted* (Minn. Nov. 25, 2015). We reverse and remand.

[A16-0133](#) State of Minnesota, Appellant vs. Harrison William Rund, Respondent.
Affirmed. Judge Stauber.
Dissenting, Judge Ross.
Dakota County District Court.

In this sentencing appeal, the state challenges the district court's imposition of a 365-day stayed sentence for respondent's terroristic-threats conviction. The record supports the district court's determination that the offense was a result of youthful indiscretion and thus less serious than the typical offense, justifying the one-day downward durational departure from the presumptive sentence. We affirm the duration of the sentence imposed by the district court but reduce the probationary term to two years because the three-year probationary term imposed by the district court is unauthorized by law.

[A16-0892](#) State of Minnesota, Respondent, vs. Sarar Chan Chhoy, Appellant.
Affirmed. Judge Heidi S. Schellhas.
Ramsey County District Court, Hon. Rosanne Nathanson.

Appellant challenges his convictions for possession of a firearm by an ineligible person and reckless discharge of a firearm. We affirm.

[A16-0638](#) State of Minnesota, Respondent, vs. Anthony Logrant Freeman, Appellant.
Affirmed. Judge Larry B. Stauber, Jr.
Ramsey County District Court, Hon. Jeffrey Bryan.

On appeal from his conviction of failing to register as a predatory offender, appellant argues that the district court committed reversible error by denying his motion for a mistrial based on the introduction of inadmissible and highly prejudicial evidence that the investigating police officer worked "in the predatory offender unit under the Sex Crimes Unit" and checked on "offenders at their households" to ensure compliance. We affirm.

[A16-0605](#) State of Minnesota, Respondent, vs. Sergio Javier Saldana-Viryen, Appellant.
Affirmed. Judge Tracy M. Smith.
Ramsey County District Court, Hon. Salvador Rosas.

Appellant Sergio Javier Saldana-Viryen appeals his conviction of second-degree criminal sexual conduct, arguing that the district court committed reversible error by admitting inadmissible hearsay testimony. Because we conclude that the district court did not plainly err in permitting the testimony, we affirm.

[A16-0912](#) Otis Rodney Elder, Jr., Petitioner, Appellant, vs. State of Minnesota, Respondent.
Affirmed. Judge Diane B. Bratvold.
Ramsey County District Court, Hon. Joy D. Bartscher.

Appellant argues: (1) the district court erred by denying his motion for judgment of acquittal because the state failed to offer the parties' stipulation into evidence; (2) the district court abused its discretion by granting the state's motion to reopen its case; (3) he was denied his right to an impartial judge; and (4) the district court committed reversible error in its jury instructions. We affirm.

[A15-1951](#) State of Minnesota, Appellant, vs. Krista Ann Muccio, Respondent.
Court of Appeals.

Based on our analysis, we hold that Minn. Stat. § 609.352, subd. 2a(2), is not facially unconstitutional under the First Amendment. Accordingly, we reverse the decision of the court of appeals.

Reversed. Chief Justice Lorie S. Gildea.

[A16-0773](#) State of Minnesota, Appellant, vs. Athena Mae Sagataw, Respondent.
Mille Lacs County District Court, Hon. Leonard A. Weiler.

Under Minn. Stat. § 609.14, subd. 1(c), when the state properly and timely initiates revocation of a stayed sentence, a district court retains jurisdiction to conduct probation revocation proceedings. The district court does not have discretion to dismiss revocation proceedings because the hearing is conducted after the stayed sentence has expired, although the district court may dismiss revocation proceedings for other reasons as provided by Minn. R. Crim. P. 27.04.

Reversed and remanded. Judge Diane B. Bratvold.

[A16-1371](#) State of Minnesota, Respondent, vs. Jack Lawrence Schwab, Appellant.
Reversed and remanded. Judge Heidi S. Schellhas.

Goodhue County District Court, Hon. Judge Lawrence F. Clark.

Appellant challenges his probation revocation, arguing that the district court abused its discretion by finding that he violated conditions of his probation without his admission or clear and convincing evidence and without satisfying the Austin factors. We reverse and remand.

[A16-0598](#) State of Minnesota, Respondent, vs. Reginald Oranz Calhoun, Appellant.
Affirmed in part, reversed in part, and remanded. Judge Michael L. Kirk.
Hennepin County District Court, Hon. Joseph R. Klein.

A jury found appellant guilty of attempted third-degree criminal sexual conduct, fourth-degree criminal sexual conduct, and fifth-degree criminal sexual conduct. Appellant requests a new trial, arguing that the district court erred by: (1) denying his two Batson challenges; (2) allowing the state to present impeachment evidence; and (3) allowing the state to present rebuttal evidence. Appellant also asks this court to correct his sentence because the district court erred by entering multiple convictions and by imposing a lifetime term of conditional release. Because the district court did not err in its trial rulings, but did err at sentencing, we affirm in part, reverse in part, and remand.

[A16-0683](#), [A16-0684](#) State of Minnesota, Respondent, vs. Anthony K. Adams, Appellant.
Affirmed in part, reversed in part, and remanded. Judge Tracy M. Smith.
Nobles County District Court, Hon. Christina M. Wietzma.

Appellant challenges his DANCO-violation conviction, arguing that he is entitled to a new trial because his trial counsel conceded guilt without his consent or acquiescence. He also challenges the revocation of probation in the assault case and asserts that the sentence in that case must be reversed because the sentencing court failed to provide a valid reason for departing from the sentencing guidelines. Because appellant acquiesced in his trial counsel's strategy in the DANCO-violation case, we affirm that conviction. As for the assault case, we conclude that the district court did not abuse its discretion in revoking probation; however, because the sentencing court in that case did not provide a valid reason for the upward durational departure when sentencing appellant to 120 months in prison, we reverse that sentence and remand for resentencing.

[A15-1754](#) State of Minnesota, Respondent, vs. Tyrone Levar Price, Appellant.
Affirmed. Judge John R. Rodenberg.
Mower County District Court, Hon. Jeffrey Kritzer.

Appellant challenges his convictions of attempted first- and second-degree murder and first-degree assault. He argues that (1) the district court abused its discretion by erroneously excluding evidence at trial, (2) the prosecutor committed misconduct by eliciting improper character evidence and referencing in trial summation appellant's refusal to submit to a DNA test, and (3) the district court abused its discretion by refusing to compel discovery or conduct an in camera review of police records. We affirm.

[A16-0623](#) State of Minnesota, Respondent, vs. Leontawan Lentz Holt, Appellant.

Affirmed. Judge Jill Flaskamp Halbrooks.

Concurring specially, Chief Judge Edward J. Cleary.

Hennepin County District Court, Hon. Fred Karasov.

Appellant challenges his conviction of possession of a firearm by a prohibited person in violation of Minn. Stat. § 624.713, subd. 1(2) (2014), arguing that the district court erred by denying his motion to suppress evidence of the firearm because it was the fruit of an unconstitutional search. We affirm.

[A15-0950](#) State of Minnesota, Respondent, vs. S.A.M., Appellant.

Court of Appeals.

A felony conviction deemed a misdemeanor under Minn. Stat. § 609.13, subd. 1(2) (2016), is not eligible for expungement under Minn. Stat. § 609A.02, subd. 3(a)(3) (2016).

Affirmed. Justice G. Barry Anderson.

Dissenting, Justices David L. Lillehaug, Margaret H. Chutich and Anne K. McKeig.

[A16-0736](#) Tony Webster, Appellant, vs. Hennepin County and Hennepin County Sheriff's Office,

Respondents.

Court of Appeals.

1. On a motion for a stay pending appeal, a trial court must identify the relevant factors, weight each factor, and then balance them, applying the court's sound discretion.
2. The decision of the administrative law judge to issue a stay pending appeal was not an abuse of discretion.

Affirmed. Justice David L. Lillehaug.

[A16-1046](#) State of Minnesota, Respondent, vs. Guy Robert Franklin Rabold, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Renee L. Worke.

St. Louis County District Court, Hon. Eric Hylden.

Appellant challenges his 240-month sentence for first-degree aggravated robbery, arguing that the district court abused its discretion by imposing an upward durational departure to the statutory maximum sentence. Appellant also argues that the district court erred by imposing a sentence on his theft-of-a-motor-vehicle conviction. Because the district court did not abuse its discretion by sentencing appellant to 240 months for aggravated robbery based on its determination that appellant is a dangerous offender, we affirm in part. But because appellant's theft-of-a-motor-vehicle conviction arose out of the same behavioral incident as other offenses for which he was also sentenced, we reverse in part and remand for the district court to vacate that sentence. We also conclude that the issues raised in appellant's pro se supplemental brief are without merit.

[A16-0402](#) State of Minnesota, Respondent, vs. David Lee Blanshan, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Matthew E. Johnson.

Cass County District Court, Hon. Judge Janna M. Austad.

A Cass County jury found David Lee Blanshan guilty of fourth-degree assault of a peace officer, obstruction of legal process, and failure to wear a seatbelt. We conclude that the evidence is sufficient to support the conviction of fourth-degree assault of a peace officer, that the district court did not err in its evidentiary rulings, and that the prosecutor did not engage in misconduct in closing arguments. But we conclude that the

district court erred by sentencing Blanshan on both the charge of fourth-degree assault of a peace officer and the charge of obstruction of legal process. Therefore, we affirm in part, reverse in part, and remand for resentencing.

[A16-0430](#) State of Minnesota, Respondent, vs. Brandon Christopher Bush, Appellant.

Affirmed in part, reversed in part, and remanded. Judge John R. Rodenberg.

Clay County District Court, Hon. Galen J. Vaa.

Appellant Brandon Christopher Bush challenges the district court's jury instruction concerning the charge of attempted second-degree intentional murder and its upward sentencing departure. We affirm in part, reverse in part, and remand for resentencing.

[A16-1357](#) State of Minnesota, Appellant, vs. Sharlene Melissa Stewart, Respondent.

Affirmed. Judge Michelle A. Larkin.

Nobles County District Court, Hon. Gordon L. Moore, III.

In this pretrial appeal, the state challenges the district court's suppression of evidence found during a search of respondent's bedroom in her grandmother's home, after her grandmother consented to the search. Because the record does not establish that respondent's grandmother had mutual use of respondent's bedroom and, therefore, authority to consent to the search, we affirm.

[A16-0242](#) State of Minnesota, Respondent, vs. Scotty Nicolas Perez, Appellant.

Affirmed. Judge Diane B. Bratvold.

Polk County District Court, Hon. Eric P. Schieferdecker.

Appellant challenges his convictions of two fifth-degree controlled-substance crimes, arguing that (1) the district court erred by failing to suppress evidence from the search of a car that was improperly impounded, (2) the evidence was insufficient to support the finding that appellant sold a controlled substance, and (3) the district court erred by failing to suppress appellant's statements that were obtained in violation of the Fifth Amendment. Because we conclude that appellant did not raise the impoundment issue below, the state presented sufficient evidence that appellant gave marijuana to the car driver in exchange for transportation, and any error from not suppressing appellant's statements was harmless, we affirm.

[A16-0822](#) State of Minnesota, Respondent, vs. Larry Demetrius Pearson, Appellant.

Ramsey County.

1. Because the record supports the postconviction court's finding that the testimony of the newly discovered witness was doubtful, the court did not abuse its discretion when, following an evidentiary hearing, it denied appellant's request for a new trial based on a claim of newly discovered evidence.
2. Because appellant's claim of ineffective assistance of trial counsel is procedurally barred by *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976), the postconviction court did not abuse its discretion when it summarily denied the claim.
3. Because appellant's claims for ineffective assistance of postconviction counsel fail under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the postconviction court did not abuse its discretion when it summarily denied the claims.

Affirmed. Justice Margaret H. Chutich.

[A16-0864](#) State of Minnesota, Respondent, vs. Brittany Ann Vacko, Appellant.

Affirmed. Judge Michelle A. Larkin.

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

Appellant challenges her convictions of perjury and forgery, arguing that the district court violated her right to present a complete defense, that the state engaged in prosecutorial misconduct, and that the cumulative effect of the purported trial errors deprived her of her right to a fair trial. We affirm.

A16-1013 State of Minnesota, Respondent, vs. Tony Dejuan Jackson, Appellant.
Affirmed; motion denied. Judge John R. Rodenberg.
Ramsey County District Court, Hon. Shawn M. Bartsh.

Appellant Tony Dejuan Jackson challenges the district court's denial of his motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that the Ramsey County District Court's life sentence was not authorized by law. We affirm.

A16-0801 State of Minnesota, Respondent, vs. Brent Lanier Lynch, Petitioner, Appellant.
Affirmed. Judge Matthew E. Johnson.
Ramsey County District Court, Hon. Judge Robyn A. Millenacker.

In 2012, Brent Lanier Lynch pleaded guilty to intentional second-degree murder. His conviction and sentence were affirmed on direct appeal. In 2015, Lynch petitioned for postconviction relief, alleging four claims, including a claim of ineffective assistance of appellate counsel. The postconviction court denied the petition, concluding that his appellate counsel was not ineffective and that the other three claims are procedurally barred. We affirm.

A15-0708 State of Minnesota, Respondent, vs. Quintin Lynn Thomas, Appellant.
Court of Appeals.

1. Although a district court may not reserve its ruling on a motion for judgment of acquittal made at the close of the State's case, the court is not required to rule on the motion before ruling on the State's motion to reopen its case-in-chief.
2. The district court did not abuse its discretion when it allowed the State to reopen its case-in-chief in response to appellant's motion for judgment of acquittal.

Affirmed. Chief Justice Lorie S. Gildea.

A15-1111 State of Minnesota, Respondent, vs. David Earnest Osorio, Appellant.
Hennepin County.

1. The evidence was sufficient to support the appellant's convictions of first-degree premeditated murder and attempted first-degree premeditated murder.
2. The district court did not abuse its discretion when it limited testimony about the dangerous nature of the location where the shooting occurred.
3. The postconviction court did not abuse its discretion when it refused to review the nontestimonial portions of the grand-jury transcript.
4. The district court, on remand, should vacate the appellant's convictions of three duplicative drive-by-shooting offenses.

Affirmed and remanded. Justice David R. Stras.

Took no part, Justices Margaret H. Chutich and Anne K

A16-1342 State of Minnesota, Respondent, vs. Peter Reat Thong, Petitioner, Appellant.
Mower County District Court, Hon. Jeffrey Kritzer.

Minnesota Statutes section 609.14, subdivision 3(2) (2012), which provides that upon revocation of a stay of execution a district court may "order execution of the sentence previously imposed," does not prohibit a district court from imposing a previously unpronounced conditional release period mandated by Minnesota Statutes section 169A.276, subdivision 1(d) (2012), when the district court executes a stayed sentence.

Affirmed. Judge Carol A. Hooten.

A16-1658 State of Minnesota, Respondent, vs. Robert Louis Hodge, Defendant, Fokiss, LLC, Appellant.
Reversed, Judge John P. Smith.
Dakota County District Court, Hon. Timothy J. McManus.

We reverse the district court's order denying reinstatement of the appellant surety's bail bond because the district court did not apply the correct legal standard (Shetsky factors) in its determination.

[A16-1104](#) State of Minnesota, Appellant, vs. Shane Douglas Lynch, Respondent.
Reversed and Remanded. Judge Heidi S. Schellhas.
Dakota County District Court, Hon. Judge Cynthia McCollum.

Appellant challenges the district court's grant of a downward dispositional sentencing departure, arguing that the district court erred by failing to impose a statutorily mandated two-year minimum sentence. We reverse and remand.

[A16-0815](#) State of Minnesota, Respondent, vs. Travis Clay Andersen, Appellant.
Affirmed. Judge Carol A. Hooten.
Carver County District Court, Hon. Judge Eric J. Braaten.

In this appeal from his conviction for violation of an order for protection (OFP), appellant argues that the prosecutor committed multiple reversible errors and that the district court erred by allowing the state to use his prior felony conviction for violation of an OFP as impeachment evidence. We affirm.

[A16-0644](#) State of Minnesota, Respondent, vs. Troy Donald Emmons, Appellant.
Affirmed. Judge Michael L. Kirk.
Isanti County District Court, Hon. Lawrence R. Johnson and Hon. James Dehn.

Appellant Troy Donald Emmons challenges his conviction of fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014). Appellant asserts that the district court erred when it admitted a lab report into evidence over his chain-of-custody objection, and the evidence was insufficient to support his conviction. Because the district court did not abuse its discretion when it concluded the lab report was admissible evidence and the record evidence supports appellant's conviction, we affirm.