

December 2017 Appellate Court Updates



A15-1915

State of Minnesota, Respondent, vs. Daniel Gebreamlak, Appellant.

Affirmed. Judge Kevin G. Ross.

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

A jury learned that a police officer saw Daniel Gebreamlak speeding, temporarily losing control of his car, failing to signal a lane change, and failing to promptly stop when the officer signaled him to stop. The jury also learned that the officer noticed that Gebreamlak smelled like an alcoholic beverage, fumbled for his driver's license, had bloodshot and watery eyes, and slurred his speech. The officer administered both the horizontal- and vertical-gaze nystagmus tests, which indicated that Gebreamlak was intoxicated. The jury found Gebreamlak guilty of driving under the influence of alcohol, and Gebreamlak asks us to reverse his conviction because, he maintains, the evidence was insufficient to prove him guilty. We are unpersuaded by his argument and affirm.

A16-0005

State of Minnesota, Respondent, vs. Leroy Lamar Morris, Appellant.

Affirmed. Judge John P. Smith.*

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

We affirm the district court's denial of appellant's plea withdrawal motion because appellant received the full benefit of his plea bargain.

A16-0225 Brian Keith Hooper, Appellant, vs. State of Minnesota, Respondent.

Hennepin County.

The postconviction court did not abuse its discretion by summarily denying appellant's fourth petition for postconviction relief because the petition was untimely under the 2-year postconviction statute of limitations, and appellant's previously raised claims are procedurally barred. Affirmed. Justice G. Barry Anderson. Took no part, Justice David L. Lillehaug.

A16-1100 State of Minnesota, Appellant, vs. Demarcus Lemaine Barker, Respondent.

Rice County District Court, Hon. Judge Christine Long.

Probable cause that a defendant was in actual possession of a controlled substance can be established by circumstantial evidence. Reversed and remanded. Judge Renee L. Worke.

A15-1607

State of Minnesota, Respondent, vs. Bryan Blocker, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Heidi S. Schellhas.

Dakota County District Court, Hon. Judge Colleen G. King.

Appellant challenges his conviction and sentence for kidnapping, arguing that (1) the evidence is insufficient to prove that the victim suffered great bodily harm, (2) the evidence is insufficient to prove the existence of the eight aggravating facts found by the jury in regard to the kidnapping count, (3) the district court erred in calculating appellant's criminal-history score, and (4) the district court abused its discretion by sentencing appellant to the statutory maximum for kidnapping. We affirm in part, reverse in part, and remand.

A16-0018

State of Minnesota, Respondent, vs. Ramsey Louis Kettle, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Louise Dovre Bjorkman.

Otter Tail County District Court, Hon. Barbara R. Hanson.

Appellant challenges his convictions of second-degree assault, making terroristic threats, and fifth-degree assault, arguing that the district court abused its discretion by denying his motion for a mistrial, allowing him to be impeached with four prior felony convictions, and adjudicating him guilty on multiple offenses that arose from the same behavioral incident. We affirm in part, reverse in part, and remand.

A16-0262

State of Minnesota, Respondent, vs. Scott James Boorman, Appellant.

Reversed and remanded. Judge Tracy M. Smith.

St. Louis County District Court, Hon. James B. Florey.

Appellant Scott James Boorman argues that his sentence for third-degree criminal sexual conduct must be reversed because the district court did not use a criminal-history score of zero in calculating his consecutive sentence and did not explain its departure. The state agrees. Because we conclude that the district court erred in not using a criminal history score of zero, we reverse and remand for resentencing.

A14-1936 Junious Taylor, Jr., Appellant, vs. State of Minnesota, Respondent.
Court of Appeals.

The statutory duty to register as a predatory offender is a collateral consequence of a guilty plea. Because a criminal defendant need not be warned of a collateral consequence before entering a guilty plea, the defense attorney's failure to advise the appellant of the duty to register as a predatory offender did not violate the appellant's right to effective assistance of counsel under the United States and Minnesota Constitutions. Affirmed. Justice G. Barry Anderson. Took no part, Justices Margaret H. Chutich and Anne K. McKeig.

A16-0002

State of Minnesota, Respondent, vs. Johnnie Robert Capers, Appellant.

Affirmed. Judge Denise D. Reilly.

Ramsey County District Court, Hon. Judith M. Tilsen.

A jury found appellant guilty of test-refusal after police arrested him on suspicion of driving while intoxicated. Appellant challenges the conviction on the grounds that the test-refusal statute is unconstitutional and the state failed to produce sufficient evidence that he refused to take a breath test and that he was driving while intoxicated. Because we determine that the state produced sufficient evidence to support the verdict and Minnesota's test-refusal statute is not unconstitutional as applied to a breath test, we affirm.

A15-2014

State of Minnesota, Respondent, vs. Euric Ards, Appellant.

Affirmed. Judge Lucinda E. Jesson.

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

Appellant Euric Ards argues that the district court committed reversible error by failing to instruct the jury on unanimity and by entering judgments of conviction for both violating a domestic abuse no-contact order and violating an order for protection. Ards also raises several issues in a pro se supplemental brief. Because no specific unanimity instruction was required and both of Ards's protective-order violation convictions are permissible, and because Ards's pro se arguments are without merit, we affirm.

A14-0906 Willie Edd Reynolds, Respondent, vs. State of Minnesota, Appellant.
Court of Appeals.

1. The imposition of a 10-year conditional-release term in violation of *Blakely v. Washington*, 542 U.S. 296 (2004), is a sentence not authorized by law under Minn. R. Crim. P. 27.03, subd. 9.

2. Because applying the 2-year limitations period in Minn. Stat. § 590.01, subd. 4 (2014), to a motion brought under Minn. R. Crim. P. 27.03, subd. 9, violates the separation of powers, an offender who contends under Rule 27.03, subdivision 9 that his sentence was not authorized by law is not required to bring such a challenge in a postconviction petition.

Affirmed. Chief Justice Lorie S. Gildea.

A15-0007 State of Minnesota, Respondent, vs. Alie Christine Theodore Dorn, Appellant.
Court of Appeals.

1. The mens rea required for assault-harm, Minn. Stat. § 609.02, subd. 10(2) (2014), is the general intent to commit an act that constitutes a battery.

2. The actus reus required for assault-harm is an “infliction” of bodily harm, which refers to an act that constitutes a battery.

3. Assuming without deciding that the Legislature’s use of the word “infliction” in the assault-harm definition requires direct causation between the act and the harm, appellant directly inflicted bodily harm.

Affirmed. Justice Anne K. McKeig.

Took no part, Chief Justice Lorie S. Gildea and Justice Margaret H. Chutich.

A15-2072 State of Minnesota, Respondent, vs. Gregory Allen Olson, Appellant.
St. Louis County District Court, Hon. Judge Mark M. Starr.

Statements expressing the mere hope that another person will be subject to a crime of violence, unaccompanied by additional statements or conduct demonstrating that future crimes of violence could follow, do not constitute threats for purposes of establishing the crime of terroristic threats.

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

A15-1984 State of Minnesota, Respondent, vs. Shane Lee Olson, Appellant.

Sherburne County District Court, Hon. Sheridan Hawley.

A police officer's controlled testing of a handheld laser speed-measuring device to establish that it is accurately measuring distance to a stationary object satisfies the foundational external-test requirement of Minnesota Statutes section 169.14, subdivision 10(a) (2014), allowing the district court to admit into evidence the officer's testimony of the device's speed readings.

Affirmed. Judge Kevin G. Ross.

A15-1645 State of Minnesota, Respondent, vs. Donald Joseph Hall, Jr., Appellant.

Lac Qui Parle County District Court, Hon. Thomas W. Van Hon.

Minnesota Statutes section 609.749, subdivision 2(4) (2014), which defines stalking to include repeatedly making telephone calls, is not unconstitutionally overbroad on its face or as applied in violation of the First Amendment to the United States Constitution.

Affirmed. Judge Lucinda E. Jesson.

A15-1478

State of Minnesota, Respondent, vs. Ely Ovis Emmanuel Ana El Sabahot, Appellant.

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

Crow Wing County District Court, Hon. Judge Earl E. Maus.

Ely Ovis Emmanuel Ana El Sabahot pleaded guilty pursuant to a plea agreement to a drug-possession charge and a charge of assaulting a peace officer. On appeal, he argues that his guilty pleas are invalid because they are not supported by proper factual bases. We conclude that a proper factual basis exists for Sabahot's plea to the drug-possession charge. But we conclude that a proper factual basis does not exist for Sabahot's plea to assaulting a peace officer. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

A16-0607

State of Minnesota, Respondent, vs. Braden Jay Olson, Appellant.

Reversed and remanded. Judge Larry B. Stauber, Jr.

St. Louis County District Court, Hon. James B. Florey.

Appellant argues that the district court erred by imposing a sentence that is a dispositional departure from the presumptive sentence without impaneling a sentencing jury or accepting a waiver of a sentencing jury from appellant. We reverse and remand.

A15-1853

State of Minnesota, Respondent, vs. Jose Amador Molina, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Michael L. Kirk.

Clay County District Court, Hon. Michelle W. Lawson.

After a hit-and-run accident, appellant was charged with driving after cancellation, felony driving while impaired (DWI), and multiple counts of criminal vehicular operation (CVO). Appellant challenges: (1) the district court's denial of his pretrial motion to suppress blood-alcohol evidence; (2) the jury's determination that he was driving the vehicle at the time of the accident; and (3) the district court's decision to sentence him on the DWI charge after also entering a conviction for an alcohol-related CVO offense. We affirm in part, reverse in part, and remand.

A15-1732

State of Minnesota, Respondent, vs. Cass Howard Ellingboe, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Peter M. Reyes, Jr.

Yellow Medicine County District Court, Hon. Dwayne Knutsen.

Appellant argues that the district court erred when it admitted two of his prior burglary convictions for impeachment purposes and convicted him of both third-degree assault and felony fifth-degree assault. Because we conclude that the district court was well within its discretion in admitting these convictions for impeachment purposes but that felony fifth-degree assault is a lesser included offense of third-degree assault, we affirm in part, reverse in part, and remand.

A15-1924

State of Minnesota, Respondent, vs. Christopher Ray Maeyaert, Appellant.

Affirmed. Judge Peter M. Reyes, Jr.

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

Appellant argues that the state committed reversible error when the prosecutor asked him "were they lying" questions and used appellant's responses during closing argument. Because we conclude that any error did not affect appellant's substantial rights, we affirm.

A16-0176

State of Minnesota, Respondent, vs. Kevin Charles Owens, Appellant.

Affirmed. Judge Denise D. Reilly.

Scott County District Court, Hon. Judge Rex D. Stacey.

Appellant asks us to reverse his conviction of second-degree test refusal, arguing that the district court committed instructional error and that the test-refusal statute is unconstitutional. We affirm

A15-1432 State of Minnesota, Respondent, vs. Jose Martin Lugo, Jr., Appellant.
Court of Appeals.

1. State v. Webber, 262 N.W.2d 157 (Minn. 1977), did not establish a deferential standard of review of a district court's legal conclusions in pretrial appeals by the State under Minn. R. Crim. P. 28.04.

2. Law enforcement officers' use of a trained drug-detection dog to sniff the exterior of appellant's vehicle was supported by a reasonable, articulable suspicion of drug-related criminal activity.

Affirmed. Justice David L. Lillehaug.

Concurring, Justice David R. Stras.

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

A16-0976

State of Minnesota, Appellant, vs. Joshua David Gehloff, Respondent.

Affirmed. Judge Jill Flaskamp Halbrooks.

Winona County District Court, Hon. Judge Mary C. Leahy.

In this prosecution appeal, appellant state challenges the district court's order to suppress respondent's urine test results and dismiss one count of driving while impaired (DWI), arguing that the district court erred by suppressing the test results on the basis of a due-process violation. We affirm.

A15-1805

State of Minnesota, Respondent, vs. Yachin Kadimel Scott, Appellant.

Affirmed. Judge Renee L. Worke.

Hennepin County District Court, Hon. Daniel H. Mabley.

Appellant challenges his attempted second-degree murder conviction, arguing that his right to a speedy trial was violated and that the district court abused its discretion by denying his motion to dismiss the charges against him under Minn. R. Crim. P. 30.02 for unnecessary delay by the prosecutor in bringing the case to trial. We affirm.

A15-1678 State of Minnesota, Respondent, vs. Chantel Lynn Carson, Appellant.

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

For purposes of proceedings under chapter 169A, 1,1-difluoroethane, known as DFE, meets the definition of a hazardous substance.

Affirmed. Judge Renee L. Worke.