



February 2017 Appellate Court Case Summaries

[A15-0584](#) Eugene Lee Rushton, Appellant, vs. State of Minnesota, Respondent.

Court of Appeals.

The phrase “minimum term of imprisonment,” as used in Minnesota Statutes § 609.3455, subd. 5 (2016), means any sentence within the presumptive range of the sentencing guidelines unless there are identifiable, substantial, and compelling circumstances that support a departure, or an applicable mandatory minimum sentence, whichever is greater.

Affirmed. Justice Margaret H. Chutich.

[A15-0835](#) Jetaun Helen Wheeler, Petitioner, Appellant, vs. State of Minnesota, Respondent.

Hennepin County District Court, Hon. Martha A. Holton Dimick.

A district court does not impermissibly involve itself in plea negotiations when it encourages plea discussions between counsel, monitors those discussions, and informs counsel of those plea proposals of which the court would likely disapprove

Affirmed. Judge John R. Rodenberg.

[A16-0194](#) State of Minnesota, Respondent, vs. Ira Dell Sholar, Appellant.

Affirmed. Judge Peter M. Reyes, Jr.

Hennepin County District Court, Hon. Judge Gina M. Brandt.

Appellant argues that the district court committed plain error that affected his substantial rights when the complainant was not sworn in before testifying and the district court’s post-testimony questioning of the complainant was not a sufficient remedy. Because we conclude that any error did not affect appellant’s substantial rights, we affirm.

[A15-1897](#) State of Minnesota, Respondent, vs. Joseph Benjamin Klanderud, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Larry B. Stauber, Jr.

Isanti County District Court, Hon. Judge Amy R. Brosnahan.

On appeal from his convictions of two counts of first-degree criminal sexual conduct, appellant argues that the district court erred by (1) convicting and sentencing him on both counts because they arose from the same behavioral incident and (2) imposing a lifetime conditional-release term. We affirm in part because the

two offenses did not arise out of the same behavioral incident. However, we reverse in part and remand because the district court erred by imposing a lifetime conditional-release term.

[A15-1651](#) State of Minnesota, Respondent, vs. Eric Jason Yankovec, Appellant.

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

Hennepin County District Court, Hon. Kathryn L. Quaintance.

Appellant, who was convicted of three firearm offenses following the search of his storage unit, argues that the warrant authorizing the search was issued without probable cause. Because the contents of the warrant application did not establish a sufficient nexus between earlier criminal activity involving appellant at another location and appellant's storage unit, the warrant to search the storage unit was issued without probable cause. We therefore reverse and remand.

[A15-1823](#) State of Minnesota, Appellant, vs. Brian William Meger, Respondent.

Affirmed. Judge Michael L. Kirk.

Scott County District Court, Hon. Christian S. Wilton.

Appellant State of Minnesota argues that the district court erred in: (1) applying *State v. Her* retroactively to respondent Brian William Meger's sentence; (2) construing Meger's request as a motion to correct an unauthorized sentence and not as a petition for post-conviction relief; and (3) not allowing Meger to withdraw his guilty plea. Because the district court properly applied *Her* and modified Meger's sentence to the maximum contemplated in the plea agreement, we affirm.

[A15-1417](#) State of Minnesota, Respondent, vs. Devon Derrick Parker, Appellant.

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

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

On appeal from his conviction of second-degree intentional murder, appellant argues that the district court (1) erred in denying his request for a change of venue, and (2) abused its discretion by imposing an upward durational sentencing departure based on the fact that the crime occurred in the victim's zone of privacy. Because the district court acted within its discretion in denying appellant's change-of-venue request, we affirm his conviction; because the district court abused its discretion by imposing an upward durational departure at sentencing, we reverse and remand for resentencing.

[A15-0117](#) State of Minnesota, Respondent, vs. Michael William Kirby, Appellant.

Affirmed. Judge Bjorkman.

Steele County District Court.

Appellant challenges his conviction of first-degree controlled-substance crime, arguing that (1) the evidence was not sufficient to prove he knowingly possessed methamphetamine, (2) the district court abused its discretion by permitting an expert to testify about the value of methamphetamine, and (3) he is entitled to a new trial based on recanted testimony and newly discovered evidence. We affirm.

[A15-1454](#) State of Minnesota, Respondent, vs. Travis Richard Otto, Appellant.

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

Sherburne County District Court.

Appellant challenges his convictions of first-degree controlled-substance crime and fourth-degree driving while impaired, arguing that law enforcement detained him without reasonable, articulable suspicion; impermissibly expanded the scope of the investigatory detention; and coerced his consent to a warrantless test of his blood. We affirm in part, reverse in part, and remand.

[A15-1247, A15-1255](#) State of Minnesota, Appellant (A15-1247), Respondent (A15-1255), vs. Randall Samuel Stempfley, Respondent (A15-1247), Appellant (A15-1255).

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

Dissenting, Judge Halbrooks.

Cass County District Court.

In these consolidated appeals, Stempfley challenges his conviction and sentence arguing that: (1) the evidence was insufficient to prove that he aided and abetted third- and fourth-degree criminal sexual conduct; (2) under the law-of-the-case doctrine, the sufficiency of the evidence should be assessed against the jury instruction, which in this case included an unnecessary additional element; and (3) the district court erred in imposing a ten-year conditional-release term. The state argues that the district court abused its discretion in granting Stempfley's motion for a downward dispositional departure. We affirm Stempfley's conviction and the district court's downward dispositional departure, but reverse the ten-year conditional-release term and remand so the district court can correct the sentence.

[A16-0275](#) State of Minnesota, Respondent, vs. Berry Alan Willis, Appellant.

Affirmed in part, reversed in part, and remanded.

Hennepin County District Court.

Appellant challenges the restitution award in this aggravated forgery case, arguing that the district court erred by (1) considering hearsay evidence of the victim's economic loss and (2) ordering restitution for expenses the victim incurred prior to appellant's charged conduct. Because the rules of evidence do not apply to restitution hearings but restitution awards must reflect loss directly caused by the offense, we affirm in part, reverse in part, and remand.

[A15-1713](#) State of Minnesota, Respondent, vs. Adam John Lilienthal, Appellant.

Anoka County.

1. The district court did not commit plain error in admitting evidence of appellant's post-arrest, pre-Miranda silence during the State's case-in-chief.
2. Any error by the district court in permitting the State to discuss appellant's post-arrest, pre-Miranda silence in closing argument was harmless.
3. The district court did not abuse its discretion in denying appellant's request to give a jury instruction on defense of dwelling.

Affirmed. Justice Natalie E. Hudson.

[A16-1117](#) State of Minnesota, Appellant, vs. Anthony Ra Hare, Respondent.

Reversed and Remanded. Judge Lucinda E. Jesson.

Ramsey County District Court, Hon. Rosanne Nathanson.

In this sentencing appeal, appellant State of Minnesota challenges the district court's imposition of a 48-month stayed sentence for first-degree aggravated robbery, which constitutes a downward dispositional departure from the presumptive guidelines sentence of 48 months in prison. Because the district court abused its discretion by failing to find substantial and compelling circumstances to justify a sentencing departure, we reverse and remand for resentencing.

[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.

[A16-0575](#) State of Minnesota, Respondent, vs. Tchad Tu Henderson, Appellant.

Anoka County District Court, Hon. Thomas M. Fitzpatrick.

The manipulation of the steering wheel of a moving motor vehicle by a passenger constitutes "operation" of a motor vehicle under Minn. Stat. § 609.21 (2012).

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

[A16-0617](#) State of Minnesota, Appellant, vs. Alec Evert Adolfson, Respondent.

Affirmed. Judge Renee L. Worke.

Chisago County District Court, Hon. Judge Suzanne Bollman.

In this sentencing appeal, the state argues that the district court erred by denying its motion for an order requiring respondent to provide a biological sample for DNA analysis. Because respondent's misdemeanor conviction did not arise out of the same set of circumstances as a felony offense with which he was charged but not convicted, we affirm.

[A16-0232](#) State of Minnesota, Respondent, vs. Sean Adam Peake, Appellant.

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

Dissenting, Judge Renee L. Worke.

St. Louis County District Court, Hon. Judge Mark M. Starr.

On appeal from his conviction of fifth-degree controlled-substance possession, following proceedings under Minn. R. Crim. P. 26.01, subd. 4, appellant argues that the district court erred in denying his motion to suppress evidence discovered after a pat-frisk. Because the officer conducted the pat-frisk without reasonable, articulable suspicion of criminal activity and after the initial basis for the stop had been dispelled, we reverse.

[A16-0467](#) State of Minnesota, Respondent, vs. Gary Lee Hanson, Jr., Appellant.

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

Cottonwood County District Court, Hon. Christina M. Wietzema.

Appellant Gary Lee Hanson, Jr., appeals from his convictions of one count of second-degree burglary (theft of services), one count of second-degree burglary (stalking), and one count of stalking, challenging the sufficiency of the evidence on all three counts. The state concedes that the evidence is insufficient to support appellant's conviction for second-degree burglary (theft of services), but argues that there is sufficient evidence to sustain the remaining two convictions. We affirm in part, reverse in part, and remand.

[A16-0079](#) State of Minnesota, Appellant, vs. David Israel Buenano, Respondent.

Reversed. Judge Carol A. Hooten.

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

In this pretrial appeal by the state, the state argues that the district court's dismissal of the state's refiled complaint must be reversed because its decision was based on an opinion of this court that was subsequently reversed by the Minnesota Supreme Court. We reverse.

[A15-2093](#) State of Minnesota, Respondent, vs. Scott Joseph Arnes, Appellant.

Affirmed. Judge Kevin G. Ross.

Hennepin County District Court, Hon. Judge Marta M. Chou.

After Scott Arnes fought with B.L.S. in a restaurant parking lot, B.L.S. said he saw Arnes walking around B.L.S.'s Mercedes Benz. Police arrived and found numerous recent scratches on B.L.S.'s car, which led to charges and a jury finding that Arnes committed first-degree damage to property. Arnes argues on appeal that the district court's admission of allegedly vouching testimony requires us to reverse his conviction. Because the district court did not plainly err by failing to sua sponte strike the testimony or give a curative instruction, we affirm.

[A16-0347](#) State of Minnesota, Appellant, vs. Jessica Corinne Anich, Respondent.

Affirmed. Judge Peter M. Reyes, Jr.

Ramsey County District Court, Hon. Judge Leonardo Castro.

In this pretrial prosecution appeal, appellant argues that the district court's decision to dismiss the aiding-an-offender charges filed against respondent was based on the following erroneous legal conclusions: (1) the state was required at the pretrial hearing to prove the underlying criminal conduct, which respondent purportedly aided, beyond a reasonable doubt; (2) to convict someone of aiding an offender, the offender

must be convicted of the underlying criminal offense; and (3) the facts are insufficient to prove the offender committed the underlying criminal offense. We affirm.

[A16-0233](#) State of Minnesota, Respondent, vs. Taeng Yang, Appellant.

Affirmed. Judge Matthew E. Johnson.

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

On appeal, Yang argues through counsel that the district court erred by denying his pre-trial request for a different public defender, by allowing the state to introduce relationship evidence, by ruling that the state could impeach him with a 2013 burglary conviction, and by submitting the issue of guilt and the issue of aggravated sentencing factors to the jury at the same time. Yang makes additional arguments for reversal in a pro se supplemental brief. We affirm.

[A16-0444](#) State of Minnesota, Respondent, vs. Tavaris Jermaine McDaniel, Appellant.

Affirmed. Judge Louise Dovre Bjorkman.

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

Appellant challenges his prohibited-possession-of-a-firearm conviction, arguing that the district court abused its discretion by admitting his aunt's out-of-court statements to responding police officers. We affirm.

[A16-0498](#) Kevin Terrance Hannon, Appellant, vs. State of Minnesota, Respondent.

Stearns County.

The post-conviction court did not abuse its discretion when it denied appellant's claims without holding an evidentiary hearing.

Affirmed. Justice Natalie E. Hudson.

[A16-1024](#) State of Minnesota, Appellant, vs. Catherine Nyree McCabe, Respondent.

Hennepin County District Court, Hon. Judge Paul Scoggin.

Minnesota Statutes section 169.48, subdivision 1(a) (2014), requires drivers to display lighted headlamps and lighted tail lamps at any time when it is raining, regardless of visibility.

Reversed and remanded. Judge Heidi S. Schellhas.

[A16-1261](#) Jeremy Shane Zimmerman, Petitioner, Appellant, vs. State of Minnesota, Respondent.

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

Scott County District Court, Hon. Christian S. Wilton.

Appellant argues that the district court erred by refusing to permit him to withdraw his guilty plea to failure to register as a predatory offender for reasons of manifest injustice. We reverse and remand for further proceedings consistent with this opinion.

[A16-0469](#) State of Minnesota, Respondent, vs. Robert Todd Ferguson, Appellant.

Reversed. Judge John R. Rodenberg.

Carlton County District Court, Hon. Judge Leslie Beiers.

Appellant challenges his conviction of third-degree murder, arguing that (1) the conviction was based on the uncorroborated testimony of an accomplice, and (2) the state failed to prove that appellant's actions were the proximate cause of death. Appellant also raises several pro se arguments. Because the evidence of record fails to sufficiently corroborate the accomplice testimony on which appellant's conviction rests, we reverse.

[A16-1290](#) State of Minnesota, Appellant, vs. Mary Lynn Boline, Respondent.

Affirmed. Judge Peter M. Reyes, Jr.

Hennepin County District Court, Hon. Philip D. Bush.

Appellant State of Minnesota challenges the district court's order granting respondent Mary Lynn Boline's pretrial motion to suppress evidence, arguing that the district court erred in concluding that the police officer lacked reasonable, articulable suspicion to justify stopping respondent's car. We affirm.

[A16-0515](#) State of Minnesota, Respondent, vs. Michael Anthony Davis, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Diane B. Bratvold.

Hennepin County District Court, Hon. Judge Nicole A. Engisch.

On appeal from his convictions of felony domestic assault and simple robbery, appellant argues that (1) the district court erred by not renewing appellant's waiver of counsel after it allowed, on the first day of trial, the state's amended charge of simple robbery, which increased appellant's potential punishment, (2) the evidence is insufficient to support his convictions; and (3) the district court erred in admitting as evidence the victim's statement to the police. Because the district court erred in not renewing appellant's waiver of counsel after the state amended its complaint, we reverse in part and remand. Additionally, we conclude that the evidence is sufficient to support appellant's conviction for felony domestic assault and the district court did not err in admitting the victim's statement, therefore, we affirm in part.

[A16-0265](#) State of Minnesota, Respondent, vs. Jacob Michael McKinley, Appellant.

Ramsey County District Court, Hon. Judge Jennifer Frisch.

A district court does not err when it sustains a for-cause challenge of a juror under Minn. R. Crim. P. 26.02, subd. 5(1)(1), because the juror is untruthful, evasive, or lacking in candor during voir dire and the court is satisfied that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.

Affirmed. Judge Heidi S. Schellhas.

[A15-1481](#) State of Minnesota, Respondent, vs. Leona Rose deLottinville, Appellant.

Court of Appeals.

Neither the United States Constitution nor the Minnesota Constitution requires police to obtain a search warrant before entering a third party's home to execute a lawfully issued arrest warrant for a guest.

Affirmed. Justice David L. Lillehaug.

Dissenting, Justice Margaret H. Chutich.

[A16-0512](#) State of Minnesota, Respondent, vs. Galen Dale Littlewind, Appellant.

Reversed. Judge Randolph W. Peterson.

Clay County District Court, Hon. Steven J. Cahill.

In this appeal from his conviction of escape from custody, appellant argues that the evidence was insufficient to sustain the conviction. We reverse.

[A16-0395](#) State of Minnesota, Respondent, vs. Joseph Greene, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Francis J. Connolly.

Steele County District Court, Hon. Joseph A. Bueltel.

Appellant challenges his conviction of second-degree assault with a dangerous weapon and felony domestic assault. We conclude that the district court did not abuse its discretion in allowing evidence under Minn. Stat. § 634.20 and that felony domestic assault is not a lesser-included offense of second-degree assault. However, because we conclude that appellant's criminal-history score was improperly calculated, we reverse and remand in part for resentencing based on the correct criminal-history score.

[A16-1240](#) State of Minnesota, Respondent, vs. Joseph Michael Galler, Appellant.

Reversed. Judge Michael L. Kirk.

Waseca County District Court, Hon. Larry M. Collins.

Appellant challenges the district court's denial of his motion to suppress evidence, arguing that the court erred in determining that the traffic stop of his vehicle was supported by reasonable articulable suspicion. Because the district court erred in determining that suspicious behavior on the part of appellant's backseat passenger after an unlawful seizure provided reasonable articulable suspicion to support the traffic stop, we reverse.

[A15-2037](#) State of Minnesota, Respondent, vs. Jack Warren Nomeland, Appellant.

Reversed and Remanded. Judge Peter M. Reyes, Jr.

Pennington County District Court, Hon. Judge Anne Marie Rasmusson.

Appellant challenges the district court's imposition of a ten-year conditional-release term following his conviction for failure to register as a predatory offender. Because the jury did not find, and appellant did not admit, that appellant was a risk-level-III offender at the time of the offense, we reverse and remand.

[A16-0294](#) State of Minnesota, Respondent, vs. Noor Muhina Salim, Appellant.

Affirmed in part, reversed in part, and remanded. Judge Diane B. Bratvold.

Blue Earth County District Court, Hon. Krista J. Jass.

Appellant challenges his convictions of first-degree aggravated robbery, simple robbery, theft, two counts of fifth-degree assault, and disorderly conduct. We conclude that the evidence establishes infliction of bodily harm during the carrying away of stolen property, therefore we affirm appellant's first-degree aggravated robbery conviction. Because simple robbery, theft, and fifth-degree assault are lesser-included offenses, we reverse and remand to the district court with instructions to vacate the formal adjudicated convictions of those counts, consistent with this opinion. Since disorderly conduct is not a lesser-included offense of first-degree aggravated robbery, we affirm that conviction.

[A16-0641](#) State of Minnesota, Respondent, vs. Mohamed Adel Alwan, Appellant.

Affirmed. Judge Lucinda E. Jesson.

Hennepin County District Court, Hon. Judge Gina M. Brandt.

Appellant challenges his conviction of attempted second-degree intentional murder. He argues that the district court (1) plainly erred by admitting the victim's prior statements to a detective; (2) violated his confrontation right by limiting his cross-examination of an inmate incarcerated with him; and (3) deprived him of the full number of peremptory challenges by failing to remove an alternate juror until after trial commenced. Because the district court acted within its discretion, and no plain error occurred, we affirm.

[A16-0789](#) State of Minnesota, Respondent, vs. David William Reynolds, Appellant.

Affirmed. Judge Tracy M. Smith.

Otter Tail County District Court, Hon. Waldemar B. Senyk.

Following a court trial, appellant David William Reynolds was convicted of misdemeanor driving after suspension of his license. On appeal, Reynolds challenges the district court's denial of his requests for peremptory and for-cause removal of the presiding judge under subdivisions 14(3) and 14(4) of the Minnesota Rule of Criminal Procedure 26.03. Reynolds's pro se supplemental brief raises an additional argument challenging the constitutionality of Minnesota's misdemeanor-driving-after-suspension statute. We affirm.

[A16-0477](#) State of Minnesota, Respondent, vs. Adam Blaine Davis, Appellant.

Affirmed. Judge Michael L. Kirk.

Marshall County District Court, Hon. Judge Anne Marie Rasmusson.

Appellant challenges his conviction of criminal vehicular homicide, arguing that the district court erred in holding that there was probable cause to believe that he had committed a crime and that exigent circumstances existed justifying a warrantless blood draw. We affirm.