



January 2017 Appellate Court Updates

[A16-0220](#) Justin Stephen Ries, petitioner, Respondent, vs. State of Minnesota, Appellant.

Affirmed. Judge Louise Dovre Bjorkman.

Ramsey County District Court, Hon. Judge Leonardo Castro.

A defendant is not required to use a peremptory challenge to strike a juror who should have been removed for cause in order to preserve the claim that the for-cause denial impaired the defendant's right to a fair trial.

[A15-1826](#) State of Minnesota, Respondent, vs. Final Exit Network, Inc., Appellant.

Affirmed. Judge Tracy M. Smith.

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

The district court's jury instructions on assisting another in taking the other's life were not unconstitutionally overbroad under the First Amendment because the instructions followed the language of the Minnesota Supreme Court's decision in *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014)

[A15-2057](#) State of Minnesota, Respondent, vs. David John Young, Appellant.

Reversed and remanded. Judge Kevin G. Ross.

Polk County District Court, Hon. Tamara Lynn Yon.

Appellant challenges his conviction of escape from custody and his sentence for financial card fraud, arguing that his conviction and sentence needed to be reversed because his waiver of his right to legal representation was invalid. The record does not show that appellant's counsel advised him of the risks in proceeding unrepresented in both cases. Given the circumstances, we reverse appellant's sentence for financial transaction card fraud as well as his conviction for escape from custody and remand both cases to the district court for further proceedings.

[A15-1755](#) State of Minnesota, Respondent, vs. Matthew Elijah Mason, Appellant.

Affirmed in part and reversed in part. Judge Michelle A. Larkin.

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

Appellant challenges his convictions of first-degree aggravated robbery and possession of a firearm by a prohibited person, as well as the district court's imposition of an aggravated sentence on the aggravated robbery

conviction. Because the evidence was sufficient to sustain appellant's conviction of first-degree aggravated robbery and appellant does not establish plain error justifying reversal of that conviction or the attendant sentence, we affirm in part. However, we reverse and vacate appellant's conviction of possession of a firearm by a prohibited person based on recent decisions of the Minnesota Supreme Court and this court.

[A15-1512](#) State of Minnesota, Respondent, vs. Joshua Williams Wermers, Appellant.

Affirmed. Judge Denise D. Reilly.

Crow Wing County District Court, Hon. David J. Teneyck.

Appellant Joshua Wermers challenges his criminal-sexual-conduct convictions, arguing that the district court violated his constitutional due-process right to present a meaningful defense by excluding the testimony of his expert witnesses. He also argues that the prosecutor's misconduct during closing arguments violated his right to a fair trial. Because we see no due-process violation in the exclusion of the expert-witness testimony and no misconduct in the prosecutor's closing statements, we affirm appellant's conviction.

[A15-1637](#) Danna Rochelle Back, Respondent, vs. State of Minnesota, Appellant.

Reversed and remanded. Judge Hooten.

Dissenting, Judge Halbrooks.

Hennepin County District Court.

Respondent was convicted of second-degree manslaughter; however, the Supreme Court reversed the conviction. In December 2014, appellant petitioned the district court to be declared eligible for compensation based on exoneration under the Minnesota Imprisonment and Exoneration Remedies Act, Minn. Stat. § 611.362-.368 (2016). Respondent argued that she is an "exonerated person" within the meaning of Minn. Stat. § 590.11 subdivision 1(1) (i) (2016). The district court denied the petition. A divided panel of the court of appeals reversed and remanded.

[A15-1371](#) State of Minnesota, Respondent, vs. Tammy Jo Schoenrock, Appellant.

Affirmed. Judge Reilly.

Hennepin County District Court.

Appellant was charged with theft by false representation. Appellant pleaded not guilty and demanded a jury trial. At trial, appellant argued the standard jury instruction misstated the elements of the charged offense because it did not include an intent-to-defraud element. The district court used the standard jury instruction. The jury found appellant guilty, and the court of appeals affirmed.

[A15-0708](#) State of Minnesota, Respondent, vs. Quintin Lynn Thomas, Appellant.

Affirmed. Judge Bratvold.

St. Louis County District Court.

Appellant, Quintin Thomas appeals his conviction of second-degree driving while impaired, arguing that the district court abused its discretion by allowing the state to reopen its case on a motion made after the state had rested and the defense had moved to acquit based on a deficiency in the state's prima facie case. Appellant

argues that the district court improperly instructed the jury that the police officer who testified regarding the operation of a breath-testing machine was testifying as an expert. The court of appeals concludes that the district court did not abuse its discretion in allowing the state to reopen its case or by instructing the jury as it did. Therefore, the court of appeals affirms the conviction.

[A15-0684](#) State of Minnesota, Respondent, vs. Earl Lionell Ward, Appellant.

Affirmed. Judge Diane B. Bratvold.

Ramsey County District Court, Hon. Judge Leonardo Castro.

Appellant challenges the district court's denial of his petition for post-conviction relief, which sought to overturn his convictions for criminal vehicular operation and the sentence imposed. Appellant argues that his guilty plea was unintelligent, his trial counsel was ineffective, and the district court improperly imposed a sentence that was an upward durational departure from the sentencing guidelines. Since appellant's plea was intelligent, and he failed to demonstrate that his trial counsel's performance was unreasonable, and the district court did not abuse its discretion in sentencing him under the career offender statute, we affirm.

[A16-1124](#) State of Minnesota, Respondent, vs. Reginald Lee Gail, Appellant.

Affirmed. Justice David R. Stras.

Hennepin County.

The post-conviction court did not abuse its discretion when it denied the appellant's petition for post-conviction relief without holding an evidentiary hearing because Minn. Stat. § 590.04, subd. 3 (2016), bars appellant's claims. Therefore, we affirm the post-conviction court's decision.

[A16-0243](#) State of Minnesota, Respondent, vs. Daniel Irlas, Appellant.

Mower County District, Hon. Jeffrey Kritzer.

A state witness who is present at trial but who invokes the Fifth Amendment privilege, whether validly or not is unavailable and cannot be considered subject to cross-examination for confrontation clause purposes, thereby precluding admission of the witness's out-of-court testimonial statement.

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

[A16-0860](#) State of Minnesota, Appellant, vs. Russell Dennis Farrell, Respondent.

Appeal dismissed. Judge Carol A. Hooten.

Olmstead County District Court, Hon. Joseph F. Chase.

In this appeal by the state, the state challenges the district court's grant of a new trial to the respondent defendant after a jury found him guilty of patronage of a prostitute in a public place. Because we conclude that the state is not entitled to as appeal as of right from the order granting a new trial, we dismiss the appeal.

[A16-0667](#) State of Minnesota, Respondent, vs. John William Zastrow, Appellant.

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

Hennepin County District, Hon. Toddrick S. Barnette.

Appellant argues that the district court's restitution order failed to address his argument that restitution should be offset by debts owed to him and that the district court did not select between alternative award amounts for three victims. Because we conclude that restitution cannot be offset by debts owed, but that the district court failed to select between alternative restitution award amounts, we affirm in part, reverse in part, and remand.

[A16-0015](#) State of Minnesota, Respondent, vs. Damien Kent Hallmon, Appellant.

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

Hennepin County District Court, Hon. Jay Quam.

Appellant challenges his convictions of first-degree aggravated robbery, felon-in possession of a firearm, and fifth-degree possession of a controlled substance. He argues that (1) the district court erred in denying his motion to suppress physical evidence; (2) the district court committed reversible error in admitting *Spreigl* evidence of his prior bad acts; (3) there was insufficient evidence to convict him; and (4) he was sentenced improperly. We affirm in part, reverse in part, and remand.

[A16-0121](#) State of Minnesota, Respondent, vs. Justin Thomas Keodouangdy, Appellant.

Affirmed. Judge John R. Rodenberg.

Carver County District Court, Hon. Michael Wentzell.

On appeal from his conviction of aiding and abetting burglary in the second degree, appellant challenges the validity of the search warrants authorizing the search of a cell phone, residence, and SUV. Appellant also argues that he is entitled to a new trial because the district court plainly erred by failing to instruct the jury concerning the term "intentionally aiding" and in failing to give an accomplice liability instruction. We affirm.

[A16-0060](#) State of Minnesota, Respondent, vs. Cassandra Lee Lundgren, Appellant.

Affirmed. Judge Renee L. Worke.

Dissenting, Chief Judge Edward J. Cleary.

Concurring specially, Judge Diane B. Bratvold.

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

Appellant challenges her drug-possession conviction arguing that (1) the warrantless dog sniff outside of her apartment door was unconstitutional, (2) without information from the dog sniff, the district court lacked probable cause to issue the search warrant, and (3) the information in the search warrant was stale. Because the dog sniff was constitutional and the information supporting the search warrant was not stale, we affirm.

[A15-2013](#) State of Minnesota, Respondent, vs. Neal Curtis Zumberge, Appellant.

Ramsey County.

1. The district court did not abuse its discretion when, by pretrial order, it excluded certain evidence proffered by appellant. The district court's exclusion of one piece of evidence as harmless error.
2. The district court did not abuse its discretion when it denied appellant's request for a third-degree murder instruction.
3. The district court did not err when it denied appellant's motion to dismiss the charges of first-degree murder.

Affirmed. Justice David L. Lillehaug.

[A16-0149](#) State of Minnesota, Respondent, vs. Matthew Thomas Javiar Bruss, Appellant.

Affirmed. Judge Heidi S. Schellhas.

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

Appellant argues that he is entitled to withdraw his guilty plea because he was induced to plead guilty with the false promise that he would have a chance at receiving a probationary sentence. We affirm.

[A16-0305](#) State of Minnesota, Respondent, vs. Ronald Gene Kremmin, Appellant.

Rice County District Court, Hon. John T. Cajacob.

The plain language of Minn. Stat. § 609.605, subd. 1(b)(8) (2014), which defines the crime of trespass, requires both a command to leave the property and a command not to return to the property.

Reversed. Judge Francis J Connolly.

[A16-0342](#) State of Minnesota, Respondent, vs. Lionel Curtis Drew, Appellant.

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

Sequestration of a deliberating jury is a matter of trial procedure, not of substantive law; therefore Minn. R. Crim. P. 26.03, subd. 5, controls, not Minn. Stat. § 631.09 (2014).

Affirmed. Judge Michael L. Kirk.

[A16-1534](#) State of Minnesota, Respondent, vs. John Joseph Plevell, Petitioner.

St. Louis County District Court, Judge Gary Pagliaccetti.

1. Although the Minnesota Rules of Evidence do not apply to grand jury proceedings, the state must comply with Minn. R. Crim. P. 18.05 and demonstrate that hearsay evidence presented to a grand jury will be admissible at trial.
2. For an out-of-court statement to be admitted as a prior consistent statement in a grand jury proceeding, the witness must testify, the prior statement must be consistent with that testimony, and the statement must be helpful in evaluating the witness's credibility.

Petition denied. Chief Judge Edward J. Cleary.

[A16-0836](#) State of Minnesota, Respondent, vs. Randy Joseph Fellman, Appellant.

Affirmed. Judge Kevin G. Ross.

Goodhue County District Court, Hon. Thomas William Bibus.

The state filed criminal charges against appellant for sexually abusing multiple boys orally and giving children drugs, after which he pleaded guilty to first-degree criminal sexual conduct, two counts of second-degree criminal sexual conduct, and contributing to the delinquency of a minor. Consistent with the plea agreement, the district court sentenced appellant to 216 months in prison and imposed two consecutive periods of conditional release. Appellant moved to correct his sentence, arguing that consecutive conditional-release terms are unauthorized by law. The district court construed the motion as a post-conviction petition and denied it as *Knaffla*-barred. We affirm because Appellant's challenge is a post-conviction petition subject to *Knaffla*.

[A15-1701](#) State of Minnesota, Respondent, vs. Juanel Anthony Mikulak, Appellant.

Affirmed. Judge Peterson.

Ramsey County District Court.

In this appeal from a conviction of failing to register as a predatory offender, appellant argues that the factual basis for his guilty plea is insufficient. We affirm.

[A16-0597](#) State of Minnesota, Respondent, vs. Deandre Lashawn Robinson, Appellant.

Affirmed. Judge Matthew E. Johnson.

Ramsey County District Court, Hon. Jeffrey Bryan.

The district court revoked appellant's probation because he violated a condition of probation that prohibited him from being present in an automobile with a firearm. Appellant argues that the district court erred because the condition is invalid and because the state did not prove by clear and convincing evidence that he intentionally violated the condition. We affirm.

[A16-0283](#) In re Timothy Leslie, Dakota County Sheriff, Appellant, State of Minnesota, Appellant, vs. John David Emerson, Respondent.

Court of Appeals.

The district court exceeded its lawful authority when, in a criminal proceeding and without the authorization of any rule or statute, it granted a motion and issued an order to restrain a non-party to that proceeding.

Reversed, writ of prohibition used. Justice David L. Lillehaug.

[A16-0040](#) State of Minnesota, Respondent, vs. Edwin Gochingco Reyes, Appellant.

Dakota County District Court, Hon. Arlene Perkkio.

A step grandfather-step granddaughter relationship constitutes a "significant relationship" as defined by Minn. Stat. § 609.341, subd. 15 (2010).

Affirmed. Judge Jill Flaskamp Halbrooks.

[A16-0788](#) State of Minnesota, Respondent, vs. Joel Patrick Rodriguez, Appellant.

Clay County District Court, Hon. Judge Jerome B. Abrams.

A criminal defendant has a constitutional right to be present at a restitution hearing because such hearing is a critical stage of the sentencing process.

Reversed and remanded. Judge Carol A. Hooten.

[A16-0198](#) State of Minnesota, Respondent, vs. Emile Rey, Appellant.

Dakota County District Court, Hon. Judge Jerome B. Abrams.

The minimum-restitution provision in Minnesota Statutes section 609.527, subdivision 4 (2014), which requires a district court to order a person convicted of identity theft to pay restitution of not less than \$1,000 to each victim, does not violate substantive due process.

Affirmed. Judge Stephen L. Muehlberg.

[A16-1191](#) State of Minnesota, Appellant, vs. Kim Marie Halvorson, Respondent.

Affirmed. Judge Louise Dovre Bjorkman.

Rice County District Court, Hon. Judge Thomas M. Neuville.

Appellant challenges the district court's dismissal of all but two charges against respondent, arguing that the void-for-vagueness doctrine does not apply and that there is probable cause to believe respondent violated a conditional-use permit. We affirm.

[A15-1172](#) State of Minnesota, Appellant, vs. Renee Anita Vasko, Respondent.

Court of Appeals.

1. To determine whether a respondent's conviction is supported by sufficient evidence, an appellate court must first determine the meaning of the ordinance under which the respondent was convicted.

2. The plain language of Lester Prairie Municipal Code section 5.5.1.2 (2014) prohibits a person from keeping a junked or abandoned vehicle or other scrap metal on her property for longer than 30 days without a special use permit.

3. The State presented sufficient evidence to prove that respondent violated Lester Prairie Municipal Code section 5.5.1.2 because she kept an abandoned vehicle on her property for longer than 30 days without a special use permit.

Reversed and remanded. Justice Margaret H. Chutich.

Took no part, Justice Natalie E. Hudson.

[A16-0137](#) In re Petition for Disciplinary Action against Jesse David Matson, a Minnesota Attorney, Registration No. 0389131.

Supreme Court.

Supreme Disbarment is the appropriate discipline for an attorney who misappropriated client funds, made false statements to clients, fabricated a document, neglected and abandoned numerous clients, failed to abide by court rules, filed a frivolous motion, failed to place client funds in trust, failed to return unearned fees, used improper fee agreements, failed to cooperate with the investigation of several disciplinary complaints, and was suspended by the North Dakota Supreme Court.

Disbarred. Per Curiam.Court.

[A16-0588](#) Maurice Lovell Anderson, Petitioner, Appellant, vs. State of Minnesota, Respondent.

Affirmed. Judge Kevin G. Ross.

Ramsey County District Court, Hon. Margaret M. Marrinan.

The state charged appellant with one count of second-degree intentional murder and two counts of second-degree assault, but it amended charges shortly before trial, and, at the close of evidence, it also successfully urged the district court to include instructions on lesser-included offenses. A jury found appellant guilty of second-degree felony-murder, two counts of first-degree assault, and two counts of second-degree assault. It acquitted him of second-degree intentional murder, two counts of attempted murder, and one count of second-degree assault. We affirmed the convictions in 2009. Anderson petitioned for post-conviction relief in 2015, and the district court denied the petition. We affirm that denial because Anderson's petition is untimely and does not meet any deadline exception.

[A16-0286](#) State of Minnesota, Respondent, vs. Kong Pheng Vue, Appellant.

Affirmed. Judge Heidi S. Schellhas.

Ramsey County District Court, Hon. Salvador Rosas.

Appellant challenges his convictions for possession of a firearm by an ineligible person and motor-vehicle theft. We affirm.

[A16-0153](#) State of Minnesota, Respondent, vs. Rosalyn Mary Brooks, Appellant.

Affirmed. Judge Michelle A. Larkin.

Ramsey County District Court, Hon. Salvador Rosas.

Appellant challenges her conviction of engaging in the business of concealing criminal proceeds and the district court's assignment of a severity level of six to that offense for sentencing purposes. We affirm.

[A15-1172](#) State of Minnesota, Appellant, vs. Renee Anita Vasko, Respondent.

Court of Appeals.

1. To determine whether a respondent's conviction is supported by sufficient evidence, an appellate court must first determine the meaning of the ordinance under which the respondent was convicted.
2. The plain language of Lester Prairie Municipal Code section 5.5.1.2 (2014) prohibits a person from keeping a junked or abandoned vehicle or other scrap metal on her property for longer than 30 days without a special use permit.
3. The state presented sufficient evidence to prove that respondent violated Lester Prairie Municipal Code section 5.5.1.2 because she kept an abandoned vehicle on her property for longer than 30 days without a special use permit.

Reversed and remanded. Justice Margaret H. Chutich.

Took no part, Justice Natalie E. Hudson.

[A16-0051](#) State of Minnesota, Respondent, vs. Justin Dillard Thomas, Appellant.

St. Louis County District Court, Hon. Mark A. Munger.

In the absence of expert testimony proffered by a party, it is not an abuse of discretion for the district court to refuse to give a jury instruction informing a jury of recent social and scientific developments in assessing evidence.

Affirmed. Judge Francis J. Connolly.

[A15-2075](#) State of Minnesota, Respondent, vs. Matthew Vaughn Diamond, Appellant.

Carver County District Court, Hon. Michael Wentzell.

A district court order compelling a criminal defendant to provide a fingerprint to unlock the defendant's cellphone does not violate the Fifth Amendment privilege against compelled self-incrimination.

Affirmed. Judge Tracy M. Smith.

[A16-0392](#) State of Minnesota, Respondent, vs. Peter Clare Hoagland, Appellant.

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

Kandiyohi County District Court, Hon. Judge Jennifer Fischer.

Appellant challenges his criminal-sexual-conduct convictions and argues that the district court abused its discretion by imposing a triple upward departure, a double upward departure, and consecutive sentences, and denying his motion for a downward dispositional departure. Because the district court properly accepted appellant's pleas and did not abuse its discretion by imposing consecutive sentences and denying appellant's motion for a downward dispositional departure, we affirm in part. However, because the district court abused its discretion by imposing a triple upward departure and relied on erroneous aggravating factors in imposing a double upward departure, we reverse in part and remand for resentencing.

[A16-0097](#) State of Minnesota, Respondent, vs. Dana John Thompson, Appellant.

Reversed and remanded. Judge Renee L. Worke.

Wabasha County District Court, Hon. Jeffrey D. Thompson.

Appellant challenges his terroristic-threats conviction, arguing that the district court abused its discretion by failing to instruct the jury on the crime of violence he threatened and the elements of that crime. Appellant also argues that the district court committed plain error by failing to give a specific unanimity instruction and raises several issues in his pro se supplemental brief. We reverse and remand.

[A16-0311](#) State of Minnesota, Respondent, vs. Heath Jarrette Allen, III, Appellant

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

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

Appellant challenges his conviction of three counts of aggravated first-degree robbery and one count of aggravated first-degree assault. Appellant argues that the district court reversibly erred both by denying him

allocution before it imposed a sentence and by sentencing him on two convictions that arose from the same behavioral incident. We affirm in part and remand for resentencing.

[A15-0789, A16-0287](#) State of Minnesota, Respondent, vs. Ryan Emmett Moore, Appellant, and Ryan Emmett Moore, Petitioner, Appellant, vs. State of Minnesota, Respondent.

Reversed and remanded. Judge Roger M. Klaphake.

Pope County District Court, Hon. Charles Crawford Glasrud.

Appellant challenges the order denying his petition for post-conviction relief, arguing that the district court erred in refusing to allow him to withdraw his *Alford* plea. Because the plea colloquy was insufficient on the strength of the state's case, we reverse and remand.

[A16-0835](#) State of Minnesota, Respondent, vs. Jetaun Helen Wheeler, Petitioner, Appellant.

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 counsels, monitors those discussions, and informs counsel of those plea proposals of which the court would likely disapprove.

Affirmed. Judge John R. Rodenberg.