



## Appellate Court Updates

[A16-0133](#) State of Minnesota, Appellant, vs. Harrison William Rund, Respondent.

Court of Appeals.

1. The reasons given by the district court for the downward durational sentencing departure in this case, which involved a conviction of terroristic threats, were improper.
2. The record contains insufficient evidence to justify a downward durational departure on the alternative grounds of remorse and the social media context of the terroristic threats.

Reversed and remanded. Justice Margaret H. Chutich.”

“[A16-0183](#) State of Minnesota, Respondent, vs. Trevor Joseph Steven Kottke, Appellant.  
Dakota County District Court, Hon. Judge Tim D. Wermager.

This matter came before us as both a direct appeal from appellant’s convictions of fourth- and fifth-degree criminal sexual conduct and an appeal from the district court’s denial of appellant’s postconviction petition. In his direct appeal, appellant alleged evidentiary errors and argued that he was deprived of his right to a fair trial because he was not given a meaningful opportunity to present a complete defense and the state failed to disclose exculpatory information. In his postconviction petition, appellant alleged that the state had committed a *Brady* violation and that newly discovered evidence justified a new trial. We affirm in part, reverse in part, and remand for a postconviction evidentiary hearing.

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

[A16-0533](#) State of Minnesota, Respondent, vs. Michael Robert Weldon, Appellant.

Olmsted County District Court, Hon. Robert Birnbaum.

An Olmsted County jury found Michael Robert Weldon guilty of violating a domestic-abuse no-contact order. The statute setting forth the offense requires proof beyond a reasonable doubt that a defendant knew of the existence of the order. The statute also defines the word “know” to mean that a person “believes that the specified fact exists.” Weldon argues on appeal that (1) the district court erred by limiting his testimony as to whether he believed that the domestic-abuse no-contact order was in effect, (2) the district court erred by declining to instruct the jury on the statutory definition of the word “know,” and (3) the prosecutor engaged in misconduct by misstating the law in closing argument. With respect to the first issue, we conclude that the district court erred in its evidentiary ruling, but we also conclude that the error is harmless. With respect to the

second and third issues, we conclude that the district court erred in its jury instructions and that the prosecutor misstated the law in closing arguments. Therefore, we reverse and remand for a new trial.

Reversed and remanded. Judge Matthew E. Johnson.

[A16-0726](#) State of Minnesota, Respondent, vs. Josue Robles Fraga, Appellant.

Nobles County.

1. The district court did not violate appellant's right to present a defense or abuse its discretion by excluding audio and video evidence of prior inconsistent statements made by a State witness.
2. The district court did not commit reversible error in evidentiary rulings challenged on appeal.
3. The prosecutor did not commit plain error in closing argument.
4. The alleged cumulative errors did not deny appellant a fair trial.
5. The sentencing order erroneously states that appellant was convicted of all five murder charges.

Affirmed and remanded. Chief Justice Lorie S. Gildea.

[A16-0947](#) State of Minnesota, Respondent, vs. Lionel Lopez, Appellant.

Kandiyohi County District Court, Hon. Michael J. Thompson.

A motel room is a structure suitable for affording shelter for human beings, and is a "building" within the meaning of Minn. Stat. §§ 609.581, .582 (2014).

Affirmed. Judge John R. Rodenberg.

Dissenting, Judge Larry B. Stauber, Jr.

[A16-1068](#) State of Minnesota, Respondent, vs. Bobby Joe Houle, Appellant.

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

Appellant argues that the district court erred when it accepted his guilty plea to the offense of placing an emergency call and reporting a fictitious emergency, claiming that the factual basis for his plea was not accurate. Because appellant did not "report" an emergency, fictitious or otherwise, at the time of placing an emergency call, we reverse and remand.

Reversed and remanded. Judge Renee L. Worke.

[A16-1071](#) State of Minnesota, Respondent, vs. Andrew Vincent Lafavor Montez, Appellant.

Washington County District Court, Hon. John C. Hoffman.

When a plea agreement provides that, a particular sentence will be imposed if a defendant complies with certain conditions and the defendant does not comply with those conditions, a district court's imposition of a different sentence is not a violation of the plea agreement and does not entitle the defendant to withdraw the plea.

Affirmed. Judge Francis J. Connolly.

[A16-1896](#) State of Minnesota, Appellant, vs. Amanda Jean Jenniges, Respondent.

Dakota County District Court, Hon. Arlene Perkkio.

In this sentencing appeal, appellant State of Minnesota argues that the district court abused its discretion when it granted respondent a downward durational departure based on factors typically used to support a dispositional departure. Because the district court improperly based the durational departure on offender-related factors, instead of the required offense-related factors, we reverse and remand.

Reversed and remanded. Judge Diane B. Bratvold.

[A16-1991](#) State of Minnesota, Respondent, vs. J. L. D., Appellant.

Anoka County District Court, Hon. Gabriel Giancola.

Appellant challenges the district court's order denying his petition for expungement, arguing that the district court made an erroneous finding, failed to provide written findings, and erred in its interpretation of the expungement statute. Because the order contained a clearly erroneous finding and there is no evidence in the record that the district court considered all of the statutory expungement factors, we reverse and remand for appropriate findings.

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

[A16-2059](#) State of Minnesota, Appellant, vs. Michael John Miller, Respondent.

Anoka County District Court, Hon. John Dehen.

Appellant State of Minnesota challenges the district court's sentence, which stayed imposition of sentence for respondent's conviction of felony driving while impaired (DWI). Because we conclude that Minn. Stat. § 169A.276, subd. 1(b) (2014), prohibits a district court from staying imposition of sentence for this conviction, we reverse and remand.

Reversed and remanded. Judge Diane B. Bratvold.

[A17-0088](#) Spidel Wayne Browder, petitioner, Appellant vs. State of Minnesota, Respondent.

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

A defendant imprisoned for aiding and abetting third-degree criminal sexual conduct is subject to the mandatory ten-year conditional-release period described by Minnesota Statutes section 609.3455, subdivision

6 (2012), because he is committed to the commissioner of corrections "for a violation of" Minnesota Statutes section 609.344 (2012).

Affirmed. Judge Kevin G. Ross.

[A17-0327](#) State of Minnesota, Respondent, vs. Robera Abdella Ganamo, Appellant.

Ramsey County District Court, Hon. David C. Higgs.

In this appeal from the district court's denial of appellant's request for sentence clarification, appellant contends that the district court erred in not allowing custody credit for time spent in a juvenile placement at Glen Mills Schools. Because appellant did not meet his burden of establishing that he was entitled to credit, and because the district court did not clearly err in its factual findings or misapply the law, we affirm.

Affirmed. Judge Francis J. Connolly.