



September 2017 Appellate Court Decisions

[A17-0292](#) ***State of Minnesota, Respondent, vs. Mark John Mimbach, Appellant.***
Ramsey County District Court, Hon. Judge Jennifer Frisch.

Appellant challenges the district court's restitution order following his conviction of, and sentence for, failing to file tax returns for the tax years 2009-2013. Appellant argues that the district court (1) abused its discretion by basing its restitution award on an erroneous valuation of his trailer business and (2) erred by concluding that appellant was not a professional gambler for purposes of Minnesota's Alternative Minimum Tax (AMT).

Affirmed. Judge James B. Florey.

[A16-1029](#) ***State of Minnesota, Respondent, vs. David Arthur Christensen, Appellant.***
[A16-1372](#) Redwood County District Court, Hon. Judge Patrick R Rohland.

Because Minn. Stat. § 611A.01(b) (2016), which identifies the victims of crimes who are entitled to restitution, does not include conservators, a court may not find that a conservator is entitled to restitution.

Affirmed in part, reversed in part, and remanded. Judge Francis J. Connolly.
Concurring in part, dissenting in part, Judge Tracy M. Smith.

[A17-0092](#) ***State of Minnesota, Respondent, vs. Jeremy James McNitt, Appellant.***
Dakota County District Court, Hon. Judge Cynthia McCollum.

On appeal from three convictions of possession of pornographic work involving minors, appellant argues (1) the district court erred in denying his pretrial motion to dismiss counts two and three on the basis that those counts were barred by the statute of limitations; (2) the district court erred in denying his motions to suppress evidence; and (3) the evidence was insufficient to convict appellant of the charged offenses. We affirm in part, reverse appellant's convictions on counts two and three, and remand.

Affirmed in part, reversed in part, and remanded. Judge Carol A. Hooten.

[A16-1294](#) ***State of Minnesota, Respondent, vs. Maurice Nathaniel Wilson, Appellant.***
Hennepin County.

1. The district court did not clearly err by finding that appellant failed to make a prima facie showing that respondent had exercised a peremptory challenge to a potential juror on the basis of race.
2. The district court did not abuse its discretion by excluding irrelevant evidence and speculative argument.

Affirmed. Justice G. Barry Anderson.

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

1. The district court made sufficient findings of fact to support the grounds for the dispositional sentencing departure.

2. The record supports the district court's finding that the respondent's offense was less serious than the typical offense of third-degree criminal sexual conduct.

Affirmed. Justice Margaret H. Chutich.

Dissenting, Justice Natalie E. Hudson.

Took no part, Justice Anne K. McKeig.

[A16-1482](#) ***State of Minnesota, Respondent, vs. Tommy James Edwards, Appellant.***

St. Louis County District Court, Hon. Sally L. Tarnowski.

When determining whether a juvenile's conviction following certification for adult prosecution in another state should properly be included in an offender's Minnesota criminal history score, a district court does not violate an offender's constitutional right to a sentencing jury trial when it compares the Minnesota statute with that of the certifying state to decide whether the juvenile would have been certified as an adult under Minnesota law.

Affirmed. Judge John R. Rodenberg.

[A17-0130](#) ***State of Minnesota, Respondent, vs. Shawn Michael Provost, Appellant.***

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

A sentence based on an incorrect criminal history score is an illegal sentence subject to correction under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, even if the sentence would still be within the presumptive sentencing guidelines range when calculated with the correct criminal history score.

Reversed and remanded. Judge Carol A. Hooten.

[A16-1710](#) ***State of Minnesota, Respondent, vs. Christian David-Robert Wille, Appellant.***

Ramsey County District Court, Hon. Judge Jennifer Frisch.

Appellant challenges his convictions of third-degree criminal sexual conduct, arguing that the state committed prosecutorial misconduct by referencing a controversial rape case in her rebuttal argument. In his pro se supplemental brief, appellant also argues that (1) the district court erred by failing to instruct the jury on the definition of intent, (2) the state's evidence is insufficient to sustain his convictions, (3) the district court erred in sentencing him to consecutive prison terms, and (4) his constitutional right to effective assistance of counsel was violated.

Affirmed. Judge Jill Flaskamp Halbrooks.

[A16-1351](#) ***State of Minnesota, Respondent, vs. Austin Thomas Whiteaker, Appellant.***

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

Appellant Austin Thomas Whiteaker challenges his convictions of first-degree assault, malicious punishment of a child, and third-degree assault, arguing that (1) the circumstantial evidence presented at trial was insufficient to prove beyond a reasonable doubt that appellant was the person who caused the infant great bodily injury and (2) the district court committed plain error by failing to give a specific instruction on unanimity.

Affirmed. Judge Denise D. Reilly.

[A16-1607](#) ***State of Minnesota, Respondent, vs. Daley Marie Smith, Appellant.***

Mille Lacs County District Court, Hon. Judge Steven A. Anderson.

A district court does not err by instructing the jury that the knowledge requirement for accomplice liability under Minn. Stat. § 609.05 (2012) is satisfied if the defendant knew the alleged accomplices "were going to or were committing a crime."

Affirmed. Judge John R. Rodenberg.

[A16-1365](#) ***State of Minnesota, Respondent, vs. Brandon Ray Larsen, Appellant.***

Stearns County District Court, Hon. Sarah E. Hennesy.

For purposes of Minnesota Statutes section 169.09, subdivision 5 (2014), which requires a driver involved in a collision with a fixture to notify the owner of property damage, the term "fixture" does not include a house.

Affirmed in part, reversed in part, and remanded. Judge Lucinda E. Jesson.

[A16-1378](#) ***State of Minnesota, Respondent, vs. Denise Ann Kline, Appellant.***

Becker County District Court, Hon. Michael D. Fritz.

Appellant challenges her conviction of second-degree controlled-substance crime, arguing that the district court abused its discretion by declining to sanction the state following its discovery violation and that her conviction should be reduced from second degree to third degree in accordance with the 2016 Drug Sentencing Reform Act (DSRA). In the alternative, appellant argues that she is entitled to be resentenced in accordance with the DSRA. We affirm appellant's conviction but reverse her sentence and remand to the district court for resentencing pursuant to *State v. Kirby*, ___ N.W.2d ___ (Minn. July 26, 2017), and *State v. Otto*, ___ N.W.2d ___ (Minn. July 26, 2017).

Affirmed in part, reversed in part, and remanded. Judge Tracy M. Smith.

[A16-1370](#) ***State of Minnesota, Respondent, vs. Clint Scott Bearce, Appellant.***

Mille Lacs County District Court, Hon. Leonard A. Weiler.

Appellant challenges his convictions of first- and second-degree manslaughter for the death of his girlfriend's 14-month-old child. Appellant argues: (1) the district court abused its discretion in its evidentiary rulings; (2) the jury's verdict is based on insufficient evidence; and (3) the district court abused its discretion by imposing an aggravated sentence. Because we conclude the district court's decision to limit defense expert testimony was harmless beyond a reasonable doubt, the circumstantial evidence is sufficient to convict appellant of first-degree manslaughter, and the district court did not abuse its discretion in sentencing appellant, we affirm in part. But because second-degree manslaughter is a lesser-included offense of first-degree manslaughter, we reverse in part and remand to the district court with instructions to vacate the formal adjudication of guilt on that count, but to leave the jury's guilty verdict in place.

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

[A16-1894](#) ***State of Minnesota, Respondent, vs. John Melvin Karnes, Appellant.***

Mower County District Court, Hon. Kevin Siefken.

Appellant challenges his disorderly conduct conviction, arguing that (1) he was convicted based on constitutionally protected speech and expressive conduct in violation of his First Amendment rights, (2) the district court plainly erred by failing to instruct the jury that it could not convict based on expressive conduct that is inextricably linked with speech, and (3) the district court violated his right to counsel when it stated that he did not have a right to counsel after he asserted his right to self-representation.

Affirmed. Judge Tracy M. Smith.

[A17-0469](#) ***State of Minnesota, Respondent, vs. Nathaniel Christopher Glass, Appellant.***

Ramsey County District Court, Hon. Nicole J. Starr.

Appellant challenges an order denying his motion to correct two sentences imposed in December 2005, asserting that his sentences are based on an erroneously calculated criminal-history score that includes an Illinois conviction.

Affirmed. Judge Heidi S. Schellhas.

[A16-1552](#) ***State of Minnesota, Respondent, vs. David Brandyn Earley, Appellant.***
Hennepin County District Court, Hon. Jeannice M. Reding.

On appeal from his conviction of two first-degree driving-while-impaired (DWI) offenses, appellant David Brandyn Earley argues that the district court erred by restricting his closing argument and by formally adjudicating him guilty of both DWI counts. Because the restriction of Earley's closing argument was not reversible error, we affirm the closing argument restriction. But because the district court erroneously convicted Earley of both DWI counts, we reverse and remand for correction of the warrant of commitment.

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

[A16-2027](#) ***State of Minnesota, Respondent, vs. Amy Lyn Heitman, Appellant.***
Renville County District Court, Hon. Randall Slieter.

In this sentencing appeal, appellant Amy Lyn Heitman contends that the district court abused its discretion in denying her motion for a downward dispositional departure. Heitman additionally argues that she should receive the benefit of the 2016 Drug Sentencing Reform Act's (DSRA) reduction in the presumptive guidelines sentence for second-degree possession. Because Heitman is entitled to the benefit of the DSRA's reduction in the presumptive guidelines sentence, we reverse and remand.

Reversed and remanded. Chief Judge Edward J. Cleary.

[A17-0008](#) ***Brian Allen Barthel, petitioner, Appellant, vs. State of Minnesota, Respondent.***
Stearns County District Court, Hon. Mary Mahler.

Appellant challenges his conviction for interfering with an emergency call, arguing that he is entitled to withdraw his guilty plea because it lacked an accurate factual basis. Appellant also moves to strike portions of the state's brief as referencing matters outside the record on appeal. Because the state's brief did not reference matters outside the record, we deny appellant's motion. But because the factual basis for appellant's plea fails to establish the existence of an emergency, we reverse and remand.

Reversed and remanded; motion denied. Judge Renee L. Worke.

[A16-1481](#) ***State of Minnesota, Respondent, vs. Christopher Blane Hughes, Appellant.***
St. Louis County District Court, Hon. Gary Pagliaccetti.

Appellant Christopher Blane Hughes challenges his conviction of a controlled substance crime in the third degree, arguing that the district court erred in denying his motion to suppress the drug evidence. In the alternative, Hughes argues that he is entitled to be resentenced to the penalty for a controlled-substance crime in the fifth degree under the 2016 Drug Sentencing Reform Act (DSRA) and the amended sentencing guidelines grid. Because law enforcement had a reasonable suspicion that Hughes was committing a crime and was armed and dangerous, we affirm. We also conclude that Hughes is not entitled to resentencing under the DSRA-amended fifth-degree controlled-substance crime because the legislature did not intend for the DSRA's increased-weight threshold to apply to Hughes's crime, and the DSRA-amended sentencing grid does not mitigate Hughes's sentence.

Affirmed. Chief Judge Edward J. Cleary.

[A16-0326](#) ***State of Minnesota, Respondent, vs. Ryan Jameson Ojibway, Appellant.***
St. Louis County District Court, Hon. Eric Hylden.

In this combined direct and postconviction appeal, following a stay and remand, appellant argues that the postconviction court (1) abused its discretion by denying his postconviction claims pertaining to a witness's

proposed testimony that he claims would establish that he received ineffective assistance of counsel or the presence of newly discovered evidence that would entitle him to a new trial; (2) erred by applying the wrong evidentiary burden in denying appellant's newly-discovered-evidence claim; and (3) erred by limiting its consideration of trial counsel's allegedly deficient performance to the bench trial and not the jury trial phase. Because we conclude that the postconviction court did not err by denying appellant's proposed witness's testimony, the error in applying the wrong evidentiary burden to the newly-discovered-evidence claim did not affect the outcome of the proceeding; and the postconviction court did not err in considering trial counsel's allegedly deficient performance, we affirm.

Affirmed. Judge Francis J. Connolly.

[A16-1676](#) ***State of Minnesota, Respondent, vs. Christopher Thomas Russell, Appellant.***
Hennepin County District Court, Hon. Kathryn L. Quaintance.

Appellant challenges his second-degree assault conviction, arguing that the district court committed reversible error by admitting evidence of two types: (1) relationship evidence of domestic conduct that occurred after the assault; and (2) statements of a non-testifying police officer about what appellant said shortly after the assault. Because the district court did not abuse its discretion when it admitted the evidence, and because any error in the limiting jury instruction did not affect appellant's substantial rights, we affirm.

Affirmed. Judge Diane B. Bratvold.

[A16-1730](#) ***State of Minnesota, Respondent, vs. Chad Alan Norberg, Appellant.***
Polk County District Court, Hon. Tamara Lyn Yon.

Appellant Chad Norberg broke into his girlfriend's home, threatening to kill whoever was in the house with her. Norberg challenges his conviction of first-degree burglary, arguing that the evidence is insufficient to show that, when he entered the dwelling, he intended to commit a crime because any intent to kill was conditioned on another person being in the house. We affirm.

Affirmed. Judge Tracy M. Smith.

[A16-1287](#) ***State of Minnesota, Respondent, vs. Dion Lavell Abrams, Appellant.***
Olmsted County District Court, Hon. Ross L. Leuning.

Appellant challenges his conviction of multiple counts of burglary, assault, and possession of a firearm by an ineligible person, arguing that (1) the evidence was insufficient to prove beyond a reasonable doubt that he aided and abetted the commission of a crime, (2) the evidence was insufficient to convict him of being a felon in possession of a firearm, (3) the district court erred in its instructions to the jury, and (4) the district court abused its discretion by imposing an upward departure. We grant the state's motion to strike appellant's supplemental briefing and affirm the conviction.

Affirmed; motion granted. Judge Edward Toussaint, Jr.

[A16-1988](#) ***State of Minnesota, Respondent, vs. Glenn Kevin Hazley, Appellant.***
Hennepin County District Court, Hon. William H. Koch.

Where the district court has offered an in-custody defendant the opportunity to wear street clothes at his trial, and the defendant appears at his court trial in jail clothes without objection or explanation on the record, the defendant's constitutional rights have not been violated.

Affirmed. Judge John R. Rodenberg.

[A16-1754](#) ***State of Minnesota, Respondent, vs. Adam Allan LaFountain, Appellant.***

Fillmore County District Court, Hon. Matthew J. Opat.

Because the Minnesota predatory-offender-registration statute, Minnesota Statutes § 243.166 (2014), is not a penal statute, compliance with the requirements of that statute does not implicate the Fifth Amendment privilege against self-incrimination.

Affirmed. Judge Lucinda E. Jesson.