



Minnesota Court of Appeals

Significant Decisions

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PART I – CIVIL CASES

Administrative Law

***Builders Ass’n of Twin Cities v. Minn. Dep’t of Labor & Indus.*, 872 N.W.2d 263 (Minn. App. Oct. 13, 2015), review denied (Minn. Dec. 29, 2015) (A15-0116).**

When the Minnesota Department of Labor and Industry promulgates a rule that is not supported by substantial evidence in the record, such a rule is not based on the application of scientific principles, approved tests, and professional judgment as required by Minn. Stat. § 326B.106, subd. 1 (2014).

***Gustafson v. Comm’r of Human Servs.*, 884 N.W.2d 674 (Minn. App. July 25, 2016) (A15-1943).**

Subdivision 3(a) of section 245C.15 of the Minnesota Statutes, which provides that a person is disqualified from a program licensed by the department of human services for ten years after “the discharge of the sentence imposed,” applies only to a person who is disqualified because of a criminal conviction. Subdivision 3(e) of section 245C.15, which provides, among other things, that a person is disqualified for ten years after “the date the Alford Plea is entered in court,” applies only to a person who is disqualified because of a judicial proceeding that does not result in a criminal conviction.

Appellate Procedure & Review

***Vang v. Forsman*, 883 N.W.2d 288 (Minn. App. Aug. 1, 2016) (A16-0782).**

A respondent’s notice of related appeal (NORA) under Minn. R. Civ. App. P. 106 is not authorized in an appeal under the collateral-order doctrine, unless the NORA is limited to issues that are inextricably intertwined with the collateral-order issue, or the NORA is taken from an order or judgment that is independently appealable under Minn. R. Civ. App. P. 103.03.

Child Protection

***In re Welfare of Child of E.G.*, 876 N.W.2d 872 (Minn. App. Mar. 14, 2016), review denied (Minn. Apr. 11, 2016) (A15-2091).**

An intermediate dispositional order in a juvenile-protection proceeding is not appealable as a matter of right under Minn. R. Juv. Prot. P. 47.02, subd. 1.

***In re Welfare of Child of J.P.-S.*, 880 N.W.2d 868 (Minn. App. June 6, 2016) (A15-1729).**

In a child protection proceeding, the parental fee for costs associated with a court-ordered 24-hour out-of-home placement of a child who has an emotional disturbance is governed by Minnesota Statutes section 252.27 (2014 & Supp. 2015) only if the child is placed in a facility licensed by the Minnesota Department of Human Services. The parental fee for costs associated with any other placement is governed by Minnesota Statutes section 260C.331, subdivision 1 (Supp. 2015), unless the parent is exempt from paying fees under Minnesota Statutes section 256M.60, subdivision 6 (2014).

Civil Procedure

***Hinckley Square Assocs. v. Cervene*, 871 N.W.2d 426 (Minn. App. Nov. 9, 2015) (A15-0496).**

Unless otherwise authorized by court rule, limited partnerships must be represented by licensed attorneys in pleadings and practice in district court.

Contracts

***NJK Holding Corp. v. Araz Grp., Inc.*, 878 N.W.2d 515 (Minn. App. May 2, 2016), review denied (Minn. July 19, 2016) (A15-1628).**

A promise to forgive debt is a credit agreement within the meaning of Minn. Stat. § 513.33 (2014) and requires a writing to be enforceable.

Environmental Law

***In re N.D. Pipeline Co.*, 869 N.W.2d 693 (Minn. App. Sept. 14, 2015), review denied (Minn. Dec. 15, 2015) (A15-0016).**

When certificate of need proceedings precede routing permit proceedings for a large oil pipeline, the Minnesota Environmental Policy Act requires that an environmental impact statement be completed before a final decision is made on the certificate of need.

Family Law

***Newstrand v. Arend*, 869 N.W.2d 681 (Minn. App. Sept. 14, 2015), review denied (Minn. Dec. 15, 2015) (A14-0723).**

A court-ordered psychological evaluation under Minn. Stat. § 518.131, subd. 1 (2014), does not violate a parent’s constitutional freedom of conscience when the order is based on concerns about the parent’s mental health and fitness and no less-restrictive means exist to determine the parent’s mental health and fitness.

A district court may restrict parenting time under Minn. Stat. § 518.175, subd. 1(a), (b) (2014), without making findings on the best-interest factors in Minn. Stat. § 518.17, subd. 1(a) (2014).

***Ertl v. Ertl*, 871 N.W.2d 410 (Minn. App. Nov. 2, 2015) (A15-0163).**

1. Parties’ written agreement to limit division of property in marriage-dissolution action to husband’s “retirement benefits” is narrowly construed and does not include a presumptive award of “disability benefits” unless clearly set out in the dissolution judgment.

2. A district court deprives a litigant of due process of law by modifying a marriage-dissolution judgment and decree without providing litigant with notice or a meaningful opportunity to respond.

***Ramsey Cty. Child Support v. J.A.Q.*, 872 N.W.2d 755 (Minn. App. Nov. 30, 2015), review denied (Minn. Feb. 24, 2016) (A15-0618).**

A child support magistrate is not required to refer to the district court the issue of a minor child’s name change that was not presented in the pleadings and arose for the first time orally during an expedited hearing at which one of the parents was not present and was in default.

***In re Welfare of Child of A.H.*, 879 N.W.2d 1 (Minn. App. Apr. 25, 2016) (A15-1992).**

1. The juvenile court has “original and exclusive jurisdiction” over visitation issues raised in post-permanency proceedings under Minn. Stat. §§ 260C.503-.521 (2014).

2. The juvenile court must use the best-interests standard of Minn. Stat. § 260C.511 when deciding whether to modify visitation in a post-permanency proceeding.

***Knapp v. Knapp*, 883 N.W.2d 833 (Minn. App. Aug. 15, 2016) (A15-1914).**

When considering a motion to vacate a dissolution judgment, a district court need determine only whether the moving party has met the requirements of Minn. Stat. § 518.145, subd. 2 (2014), and does not abuse its discretion by not addressing Minn. R. Civ. P. 60.02.

Government & Immunity

***Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist.*, 873 N.W.2d 352 (Minn. App. Jan. 4, 2016) (A15-0713).**

Under Minnesota Statutes section 466.03, subdivision 15 (2014), a school district is not vicariously liable for the torts of its employees committed while acting outside the “scope of office or employment,” as that phrase is used in Minnesota Statutes section 3.736, subdivision 1 (2014), and defined in Minnesota Statutes section 3.732, subdivision 1(3) (2014).

***Hoff v. Surman*, 883 N.W.2d 631 (Minn. App. Aug. 8, 2016) (A16-0168).**

Statutory snow-and-ice immunity pursuant to Minn. Stat. § 466.03, subd. 4 (2014), does not extend to bar claims based solely on allegations of negligent driving.

Insurance Coverage

***Founders Ins. Co. v. Yates*, 876 N.W.2d 344 (Minn. App. Feb. 29, 2016), review granted (Minn. May 17, 2016) (A15-1174).**

Under the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2014), an out-of-state insurer that is not licensed to write motor-vehicle-accident reparation and liability insurance in Minnesota is not obligated to provide basic economic-loss benefits to its insured who was injured in an accident in Minnesota.

***Saengkeo v. Minn. Auto. Assigned Claims*, 877 N.W.2d 568 (Minn. App. Apr. 4, 2016) (A15-1267).**

Under Minn. Stat. § 65B.64, subd. 3 (2014), the assigned claims plan, an injured passenger of an uninsured vehicle is not entitled to economic loss benefits if the injured passenger is dwelling with a family member who is an uninsured owner of a vehicle that must be insured under Minn. Stat. § 65B.48 (2014), unless there is clear and convincing evidence that the owner did not contemplate the use or operation of his or her uninsured vehicle by anyone.

***Stand Up Multipositional Advantage MRI, P.A. v. Am. Family Ins. Co.*, 878 N.W.2d 21 (Minn. App. Apr. 25, 2016), review granted (Minn. June 21, 2016) (A15-0843).**

A patient’s assignment of a no-fault insurance claim to a medical provider is invalid and unenforceable if the applicable automobile insurance policy forbids such an assignment and if the patient makes the assignment before the medical provider bills the patient for medical services.

Jurisdiction & Procedure

***In re Cascarano*, 871 N.W.2d 34 (Minn. App. Oct. 19, 2015) (A15-1237).**

A district court lacks inherent authority to summarily impose a monetary sanction on a lawyer who fails to appear for a scheduled hearing in a criminal case, without following the procedures set forth in Minnesota’s contempt statutes, Minn. Stat. §§ 588.01-.15, .20 (2014).

***In re Welfare of A.S.*, 882 N.W.2d 633 (Minn. App. July 5, 2016) (A15-1904).**

The prerequisite for “special immigrant juvenile” (SIJ) status that the petitioner “has been declared dependent on a juvenile court” or has been “committed to, or placed under the custody of,” a state agency or department or an individual or entity “appointed by a [s]tate or juvenile court,” 8 U.S.C. § 1101(a)(27)(J)(i) (2012), is not met by a district court exercising jurisdiction over a juvenile traffic offense and placing the juvenile on probation with certain conditions.

Labor & Employment

***LaPoint v. Family Orthodontics, P.A.*, 872 N.W.2d 889 (Minn. App. Dec. 14, 2015), review granted (Minn. Mar. 15, 2016) (A15-0396).**

A prospective employee directly proved that an employer unlawfully discriminated against her on the basis of sex, where, inter alia, the employer repeatedly articulated two reasons for rescinding the prospective employee’s job offer: (1) her failure to disclose her pregnancy at the job interview and (2) the length of her desired maternity leave.

***Peterson v. City of Minneapolis*, 878 N.W.2d 521 (Minn. App. May 2, 2016), review granted (Minn. July 19, 2016) (No. A15-1711).**

A human resources complaint process may qualify as a “dispute resolution process” under Minnesota Statutes section 363A.28, subdivision 3 (2014) and toll the running of the Minnesota Human Rights Act’s one-year statute of limitations.

***In re Clarification of Appropriate Unit*, 880 N.W.2d 383 (Minn. App. May 16, 2016) (A15-1164).**

The school district’s pre-kindergarten instructors are not required to be licensed by the board of teaching or the commissioner of education because there is no licensure requirement in state statutes governing pre-kindergarten school-readiness programs, no licensure requirement in federal law governing pre-kindergarten programs receiving federal Title I funds, and no licensure requirement imposed by the school district. Accordingly, the school district’s pre-kindergarten instructors are not “teachers” for

purposes of the Public Employment Labor Relations Act and, therefore, are not included in the teacher bargaining unit.

***Burt v. Rackner, Inc.*, 882 N.W.2d 627 (Minn. App. June 27, 2016), *pet. for review filed* (Minn. Aug. 15, 2016) (A15-2045).**

In a civil action by an employee seeking redress for having been fired in violation of the Minnesota Fair Labor Standards Act (MFLSA), the statute unambiguously provides that the employee may seek wrongful-discharge damages, including back pay and other appropriate relief as provided by law.

Liens & Foreclosures

***City of Oronoco v. Fitzpatrick Real Estate, LLC*, 869 N.W.2d 332 (Minn. App. Sept. 8, 2015), *aff'd* (Minn. Aug. 10, 2016) (A15-0055).**

An attorney lien on a cause of action, under Minn. Stat. § 481.13, subd. 1(a)(1) (2014), is perfected as against parties and nonparties to the cause of action without notice and filing under Minn. Stat. § 481.13, subd. 2 (2014).

Local Government

***J & W Asphalt, Inc. v. Belle Plaine Twp.*, 883 N.W.2d 827 (Minn. App. Aug. 1, 2016) (A16-0016).**

Minn. Stat. § 161.16, subd. 4(b) (2014), is unambiguous and does not require that a political subdivision accept MnDOT's conveyance of a road that is a necessary part of an upgrade to a trunk highway system for the conveyance to be effective.

***Perschbacher v. Freeborn Cty. Bd. of Comm'rs*, 883 N.W.2d 637 (Minn. App. Aug. 8, 2016) (A15-0619, A15-2002).**

The provision of Minn. Stat. § 15.99, subd. 2(b) (2014), that a failed resolution or a failed motion to approve a request "constitute[s] a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request" does not require that the reasons for opposing the request be stated at the meeting where the voting occurs.

Probate

***In re Estate of Johnson*, 878 N.W.2d 510 (Minn. App. Apr. 25, 2016) (A15-1383).**

When an estate is administered by a court-appointed personal representative, Minnesota Statutes section 524.3-813 (2014) authorizes the personal representative to compromise claims against the estate without the consent of all beneficiaries under the will.

***In re Guardianship of Guaman*, 879 N.W.2d 668 (Minn. App. May 16, 2016) (A15-1412).**

I. A probate court is authorized to make special immigrant juvenile findings in a guardianship proceeding.

II. A probate court abuses its discretion by declining to consider a request for special immigrant juvenile findings in a guardianship proceeding when the record supports the appointment of a guardian and contains evidence as to each potential special immigrant juvenile finding.

Real Estate & Property Rights

***Cocchiarella v. Driggs*, 870 N.W.2d 103 (Minn. App. Sept. 8, 2015), *rev'd* (Minn. Aug. 31, 2016) (A14-1876).**

A person may not pursue a claim to recover possession of residential rental property under section 504B.375 of the Minnesota Statutes if the person never has occupied the property.

***Minnwest Bank v. RTB, LCC*, 873 N.W.2d 135 (Minn. App. Dec. 7, 2015) (A15-0261).**

1. A landowner awarded damages for an encroachment on real property is entitled to both diminution-in-value damages reflecting the value of the land pre- and post-encroachment and conveyance damages if the landowner is ordered to convey fee title to the encroached-upon property.

2. A district court should consider the size of the encroachment when balancing the equities and hardships to determine whether injunctive relief is warranted.

3. A landowner is not entitled to both diminution-in-value damages and the lost rental value of the encroached-upon land for the period of encroachment.

***Meleyco P'ship No. 2 v. City of W. St. Paul*, 874 N.W.2d 440 (Minn. App. Jan. 25, 2016) (A15-0775).**

For a nonconforming use to lose its legal status, the discontinuance of the nonconforming use must be attributable, at least in part, to the property owner.

***Landmark Cmty. Bank, N.A. v. Klingelhutz*, 874 N.W.2d 446 (Minn. App. Feb. 1, 2016), review denied (Minn. Apr. 27, 2016) (A15-0980).**

Real property securing a guaranty mortgage is an asset under the Minnesota Uniform Fraudulent Transfer Act when, at the time of transfer, there was no claim of default upon the underlying principal or the guaranty mortgage and the property had value. Minn. Stat. §§ 513.41-.51 (2014 & Supp. 2015).

***Burkhalter v. Mays*, 877 N.W.2d 788 (Minn. App. Apr. 11, 2016), review denied (Minn. June 29, 2016) (A15-1078).**

I. The protection afforded to good-faith “purchasers” under Minnesota Statutes section 508.25 (2014) encompasses good-faith encumbrancers.

II. A lender who secures a loan to purchase Torrens property is not disqualified from protection as a good-faith encumbrancer under Minnesota Statutes section 508.25 simply because the lender secured the loan after it became aware of circumstances on which the ostensible seller might eventually base an equitable-mortgage claim.

***In re Krenik*, 884 N.W.2d 913 (Minn. App. Aug. 22, 2016), (A15-1566).**

Minn. Stat. § 168.10, subd. 1e (2014), requires more than mere concealment of the aesthetic qualities of a vehicle stored outdoors in order for the vehicle to be “screened from ordinary public view.”

***650 N. Main Ass’n v. Frauenshuh, Inc.*, 885 N.W.2d 478 (Minn. App. Aug. 22, 2016), (A15-1547).**

(See pages 9-10 for additional syllabus point for this case.)

I. According to the plain language of the statute, a declarant-developer of a common interest community may be liable for breaching the implied warranties provided by Minnesota Statutes section 515B.4-113(b) (2014), even if the declarant does not cause the breach by its own actions, but only hires others whose actions breach the warranties.

II. A declarant-developer of a common interest community may be liable for breaching the implied warranties provided by Minnesota Statutes section 515B.4-113(b)(2), if a vendor-contractor hired by the declarant breaches the housing warranty provided by Minnesota Statutes section 327A.02, subd. 1(c) (2014), even if the vendor is exempt from liability due to lack of timely notice of the dwelling’s defects.

Remedies

***Poehler v. Cincinnati Ins. Co.*, 874 N.W.2d 806 (Minn. App. Jan. 25, 2016), review granted (Minn. Mar. 29, 2016) (A15-0958).**

Minnesota's prejudgment interest statute, Minn. Stat. § 549.09, subd. 1(b) (2014), does not apply to appraisal awards made pursuant to the terms of an insurance policy without an underlying breach of contract or actionable wrongdoing.

***State v. Moua*, 874 N.W.2d 812 (Minn. App. Jan. 25, 2016), review denied (Minn. Apr. 19, 2016) (A15-0984, A15-0998).**

1. The minimum restitution provision of the identity-theft statute, Minn. Stat. § 609.527 (2012), does not violate a defendant's right to procedural due process.

2. An individual experiences "loss or harm" as a result of identity theft when the individual either suffers economic loss or the theft involves the individual's name and private identifying information.

***Auers v. Progressive Direct Ins. Co.*, 878 N.W.2d 350 (Minn. App. Apr. 25, 2016), review denied (Minn. July 19, 2016) (A15-1832).**

1. Pursuant to *Swanson v. Brewster*, 784 N.W.2d 264 (Minn. 2010), a negotiated discount of medical expenses is a collateral source subject to offset under Minn. Stat. § 548.251 (2014).

2. A subrogee that has negotiated a discount of medical expenses may not assert a subrogation right for the discount under *Swanson*, and the subrogation right is limited to the amount of the subrogee's payment.

3. An injured plaintiff who purchases the subrogation interest of a health-insurance carrier is not entitled to recover the *Swanson* collateral-source offset under Minn. Stat. § 548.251 in his personal injury case.

***Wilbur v. State Farm Mut. Auto. Ins. Co.*, 880 N.W.2d 874 (Minn. App. June 20, 2016), review granted (Minn. Aug. 23, 2016) (A15-1438).**

In calculating the amount of a discretionary taxable costs award under Minnesota Statutes section 604.18 (2014) for an insurer's unreasonable denial of underinsured motorist benefits to an insured, the term "proceeds awarded," as used in subdivision 3(a)(1) of the statute, means the amount of the judgment entered by the district court as underinsured motorist benefits.

***650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478 (Minn. App. Aug. 22, 2016), (A15-1547).**

(See page 8 for additional syllabus points for this case.)

III. A district court's award of "costs of litigation" to a prevailing party under Minnesota Statutes section 515B.4-116(b) (2014) is not limited to only the costs and

reasonable disbursements that the district court “shall” award to the prevailing party in a district court action under Minnesota Statutes sections 549.02 and 549.04 (2014).

Torts

***Veit v. ProSource Techs., Inc.*, 879 N.W.2d 8 (Minn. App. May 9, 2016) (A15-1430).**

A professional-negligence action based on an allegedly negligent property appraisal accrues, and the statute of limitations begins to run, at the time the appraisal is completed.

Unemployment Benefits

***Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543 (Minn. App. Dec. 7, 2015) (A15-0797).**

An applicant for unemployment benefits is temporarily ineligible if the applicant is entitled to severance pay in an amount that exceeds the weekly amount of unemployment benefits. Pursuant to section 268.085, subdivision 3(b), of the Minnesota Statutes, the period of ineligibility is “the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a [severance] payment,” regardless of “[t]he date the payment is actually made or received.” This court’s opinion in *Van de Werken v. Bell & Howell, LLC*, 834 N.W.2d 220 (Minn. App. 2013), was abrogated by the legislature’s 2014 amendments to the statute.

***White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351 (Minn. App. Feb. 8, 2016) (A15-0892).**

When the evidence in the record strongly suggests that an unrepresented applicant for unemployment benefits was suffering from depression when she was terminated for alleged employment misconduct, the unemployment-law judge has a duty to assist the applicant in developing the record regarding whether the alleged misconduct was a consequence of the applicant’s mental illness or impairment.

***Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662 (Minn. App. May 9, 2016) (A15-1576).**

When an employee of an employer informs the employer and the employer’s client that the employee is unable to complete a job assignment because of a family crisis and tells the employer that the employee will reengage with the employer upon resolution of the family crisis, the employee has not quit employment under Minn. Stat. § 268.095, subd. 2(a) (2014).

***Yusuf v. Masterson Pers., Inc.*, 880 N.W.2d 600 (Minn. App. May 16, 2016) (A15-1434).**

When an employee completes a job assignment that is unsuitable because it is no longer in the employee's labor market, Minn. Stat. § 268.095, subd. 2(d) (2014), does not apply to preclude the employee from receiving unemployment benefits.

PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

Constitutional Law

***State v. Osorio*, 872 N.W.2d 547 (Minn. App. Dec. 14, 2015), review granted (Minn. Mar. 15, 2016) (A15-0921).**

The presumption that, in the absence of proof to the contrary, mail properly addressed and sent with postage prepaid is duly received by the addressee applies in a criminal case.

***State v. Geleneau*, 873 N.W.2d 373 (Minn. App. Dec. 21, 2015), review denied (Minn. Mar. 29, 2016) (A14-0718).**

This court will not consider whether a district court erred by not striking a juror for cause *sua sponte* if the appellant expressly waived the right to challenge the juror for cause.

***State v. Hensel*, 874 N.W.2d 245 (Minn. App. Jan. 25, 2016), review granted (Minn. Apr. 19, 2016) (A15-0005).**

Minn. Stat. § 609.72, subd. 1(2) (2012), is not void for vagueness or facially overbroad in violation of the First Amendment to the United States Constitution.

***State v. Shimota*, 875 N.W.2d 363 (Minn. App. Feb. 16, 2016), review denied (Minn. Apr. 27, 2016) (A14-1981).**

(See page 14 for additional syllabus point for this case.)

2. A criminal defendant has no Sixth Amendment right to create a video recording of her trial.

***State v. Muccio*, 881 N.W.2d 149 (Minn. App. June 20, 2016), review granted (Minn. Aug. 23, 2016) (A15-1951).**

I. Minn. Stat. § 609.352, subd. 2a(2) (2014), implicates the First Amendment because its reach is not limited to unprotected speech.

II. Minn. Stat. § 609.352, subd. 2a(2), is facially overbroad in violation of the First Amendment because it prohibits a substantial amount of protected speech.

III. Minn. Stat. § 609.352, subd. 2a(2), cannot be saved by employing a narrowing construction because it is not readily susceptible to such a construction.

IV. Minn. Stat. § 609.352, subd. 2a(2), is an unconstitutional content-based regulation of speech.

***Back v. State*, 883 N.W.2d 614 (Minn. App. July 18, 2016), *pet. for review filed* (Minn. Aug. 4, 2016) (A15-1637).**

(See page 16 for additional syllabus point for this case.)

II. Minnesota Statutes section 590.11, subdivision 1(1)(i), violates the Equal Protection Clause of the Minnesota Constitution by defining “exonerated” to require not only the vacation or reversal of a judgment of conviction “on grounds consistent with innocence,” but also the dismissal of the charges by a prosecutor.

***State v. Moser*, 884 N.W.2d 890 (Minn. App. Aug. 8, 2016) (A15-2017).**

(See page 20 for additional syllabus point for this case.)

1. By eliminating a mistake-of-age defense and imposing strict liability, Minnesota Statutes section 609.352, subdivisions 2 and 3(a) (2014), as applied to solicitation that occurs over the Internet, involves no face-to-face contact between the solicitor and the child, and where the child represents to the solicitor that he or she is 16 or older, violates substantive due process.

DWI & Implied Consent

***State v. Trahan*, 870 N.W.2d 396 (Minn. App. Oct. 13, 2015), *review granted* (Minn. Nov. 25, 2015) (A13-0931).**

1. When a warrantless search of a driver’s blood would not have been constitutional under an exception to the warrant requirement, charging the driver with violating Minn. Stat. § 169A.20, subd. 2 (2012), for refusing to submit to a blood test implicates a fundamental right.

2. Because Minn. Stat. § 169A.20, subd. 2, as applied to refusal of a warrantless blood test is not narrowly tailored to serve a compelling government interest, it violates a driver’s right to due process under the United States and Minnesota Constitutions.

***Poeschel v. Comm’r of Pub. Safety*, 871 N.W.2d 39 (Minn. App. Oct. 26, 2015) (A15-0142).**

An officer does not violate a driver’s statutory right to an additional chemical test under Minnesota’s implied-consent law by not offering the driver use of a telephone after the state’s test, where the driver does not request posttest access to a telephone.

***State v. Thompson*, 873 N.W.2d 873 (Minn. App. Dec. 28, 2015), *review granted* (Minn. Feb. 24, 2016) (A15-0076).**

1. Charging a driver with violating Minn. Stat. § 169A.20, subd. 2 (2010) for refusing to submit to a urine test implicates a fundamental right because a warrantless search of the driver’s urine would not have been constitutional under an exception to the warrant requirement.

2. When applied to the refusal of a warrantless urine test, Minn. Stat. § 169A.20, subd. 2 violates a driver’s right to substantive due process under the United States and Minnesota Constitutions because it is not narrowly tailored to serve a compelling government interest.

***State v. Shimota*, 875 N.W.2d 363 (Minn. App. Feb. 16, 2016), review denied (Minn. Apr. 27, 2016) (A14-1981).**

(See page 12 for additional syllabus point for this case.)

1. Minnesota Statutes section 169.91, subdivision 1 (2012), does not require an arresting police officer to present a suspected impaired driver to a judge before the officer completes all administrative duties attendant to an impaired-driving arrest, including administering the implied-consent testing required by Minnesota Statutes section 169A.51 (2012).

***Anderson v. Comm’r of Pub. Safety*, 878 N.W.2d 926 (Minn. App. May 9, 2016) (A15-1378).**

A district court in an implied-consent proceeding lacks jurisdiction to hear an untimely petition to rescind the revocation of a driver’s license, including where a driver is mentally incompetent at the time of the revocation. However, in a subsequent criminal proceeding, a driver may challenge the state’s use of such a revocation to enhance charges.

***Janssen v. Comm’r of Pub. Safety*, 884 N.W.2d 424 (Minn. App. Aug. 22, 2016) (A16-0099).**

The issue of whether the test results used to obtain a driver’s alcohol concentration were accurately evaluated is within the scope of an implied-consent hearing under Minn. Stat. § 169A.53, subd. 3(b)(10) (Supp. 2015), and Minn. Stat. § 169A.53, subd. 3(b)(8)(i) (Supp. 2015), providing that whether a driver’s alcohol concentration was 0.08 or more at the time of testing is also within the scope of an implied-consent hearing, does not preclude the district court at an implied-consent hearing from considering the accuracy of test results over 0.08.

Evidence

***Howard v. Svoboda*, 877 N.W.2d 562 (Minn. App. Mar. 7, 2016), review granted (Minn. May 17, 2016) (A15-0896).**

Under Minn. Stat. § 595.02, subd. 5 (2014), an “informal discussion” with a treating physician who has examined or cared for a party allows inquiry into “any information or opinion” the physician possesses, including opinions on the standard of care and causation relating to periods when the physician was not caring for the patient.

***State v. Nowacki*, 880 N.W.2d 396 (Minn. App. May 23, 2016) (A15-1328).**

Because polygraph testing has not been proven reliable, polygraph test results are not admissible as substantive evidence of a probation violation in probation-revocation proceedings.

Guilty Pleas

***State v. Townsend*, 872 N.W.2d 758 (Minn. App. Dec. 7, 2015) (A15-0050).**

A factual basis for a valid guilty plea to the crime of aiding an offender after the fact can be established without regard to whether the principal offender is convicted of the underlying offense.

Juvenile Delinquency

***In re Welfare of J.T.L.*, 875 N.W.2d 334 (Minn. App. Dec. 28, 2015) (A15-0905, A15-1117).**

In deciding a petition to expunge juvenile delinquency records, a district court must make findings of fact concerning the factors set forth in Minn. Stat. § 260B.198, subd. 6(b) (2014).

Postconviction

***Lunzer v. State*, 874 N.W.2d 819 (Minn. App. Feb. 1, 2016) (A15-0456).**

A stay of adjudication entered pursuant to Minn. Stat. § 152.18, subd. 1 (2006), is not a conviction for purposes of seeking postconviction relief.

***State v. S.A.M.*, 877 N.W.2d 205 (Minn. App. Mar. 21, 2016), review granted (Minn. May 31, 2016) (A15-0950).**

A felony conviction later deemed a misdemeanor conviction by operation of Minn. Stat. § 609.13, subd. 1(2) (2014), is a felony conviction for purposes of the expungement statute. A petitioner is not entitled to expungement when the felony offense is not one of the statutorily enumerated offenses for which relief may be sought under Minn. Stat. § 609A.02, subd. 3(b) (2015).

***State v. D.R.F.*, 878 N.W.2d 33 (Minn. App. Apr. 25, 2016) (A15-1591).**

An expungement petition based on the petitioner's acquittal cannot be denied on the ground that the petitioner might at some future time commit an offense, be charged with a crime, and have a bail hearing at which the petitioner's bench warrant history on the

acquitted crime would not be available because it has been expunged: such a hypothesis does not constitute the “clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record” within the meaning of Minn. Stat. § 609A.03, subd. 5(b) (2014).

***Back v. State*, 883 N.W.2d 614 (Minn. App. July 18, 2016), pet. for review filed (Minn. Aug. 4, 2016) (A15-1637).**

(See page 13 for additional syllabus point for this case.)

I. In determining whether a person who was previously convicted of second-degree manslaughter based on culpable negligence is an “exonerated” person under Minnesota Statutes section 590.11, subdivision 1(1)(i) (2014), and is therefore potentially eligible for compensation under the Minnesota Imprisonment and Exoneration Remedies Act, Minnesota Statutes sections 611.362 to 611.368 (2014), a reversal of the conviction on the ground that the person owed no legal duty to the victim or the perpetrator is a reversal “on grounds consistent with innocence” within the meaning of section 590.11, subdivision 1(1)(i).

Pretrial Procedure

***State v. Banks*, 875 N.W.2d 338 (Minn. App. Feb. 8, 2016), review granted and stayed (Minn. Apr. 19, 2016) (A15-0279).**

1. Rule 30.02 of the Minnesota Rules of Criminal Procedure, which permits the district court to dismiss a complaint if the prosecutor has unnecessarily delayed bringing the defendant to trial, applies to claims of pre-charge delay.

2. To warrant dismissal under rule 30.02 of the Minnesota Rules of Criminal Procedure on a claim of unnecessary pre-charge delay, a defendant must demonstrate that he has suffered prejudice by the delay.

Probation

***State v. Cleary*, 882 N.W.2d 899 (Minn. App. July 5, 2016) (A15-1493).**

When the sole basis for revoking probation is a probationer’s termination from drug court and the drug court judge participated in the drug court team’s decision to terminate the probationer from drug court, a probationer is entitled to have a judge other than the drug court judge preside over the probation revocation hearing.

Search & Seizure

***Illi v. Comm’r of Pub. Safety*, 873 N.W.2d 149 (Minn. App. Dec. 21, 2015) (A15-0359).**

Police do not seize the occupant of an already-stopped car by shining a squad car’s spotlight on it before approaching on foot.

***State v. Fawcett*, 877 N.W.2d 555 (Minn. App. Jan. 11, 2016), *aff’d* (Minn. Aug. 24, 2016) (A15-0938).**

When a blood sample is lawfully obtained, a chemical analysis of the sample that does not offend standards of reasonableness is not a distinct Fourth Amendment event requiring a warrant.

***State v. deLottinville*, 877 N.W.2d 199 (Minn. App. Mar. 21, 2016), *review granted* (Minn. May 31, 2016) (A15-1481).**

When police have probable cause to believe that the subject of a valid arrest warrant is present as a short-term social guest at another person’s residence, police may enter that residence to effectuate the arrest pursuant to the warrant without violating the Fourth Amendment rights of the person named therein.

***State v. Luhm*, 880 N.W.2d 606 (Minn. App. May 31, 2016) (A15-1356).**

1. A person residing in a condominium unit in a secured, multi-unit condominium building does not have a legitimate expectation of privacy in the common areas of the building so as to challenge a police officer’s warrantless entry into the building.

2. The area immediately outside the door of a condominium unit in a secured, multi-unit condominium building is not curtilage for purposes of the Fourth Amendment to the United States Constitution so as to preclude a law-enforcement officer from conducting a warrantless dog sniff in that area.

3. The dog sniff conducted immediately outside the door of appellant’s condominium unit in a secured, multi-unit condominium building was lawful under article I, section 10, of the Minnesota Constitution because the dog sniff was supported by a reasonable, articulable suspicion of criminal activity.

***City of Golden Valley v. Wiebesick*, 881 N.W.2d 143 (Minn. App. June 13, 2016), *review granted* (Minn. Aug. 23, 2016) (A15-1795).**

Because there is no principled basis for interpreting article I, section 10 of the Minnesota Constitution to provide greater protection than the Fourth Amendment to the United States Constitution in the context of rental-housing inspections, an administrative search warrant to conduct such an inspection need not be supported by individualized suspicion of a code violation in the rental unit to be inspected.

Sentencing & Restitution

***State v. Fleming*, 869 N.W.2d 319 (Minn. App. Sept. 8, 2015), *aff'd* (Minn. Aug. 17, 2016) (A14-2187).**

Under the plain language of Minn. Stat. § 244.10, subd. 5a(b) (2012), an aggravated sentence may be based on any aggravating factor arising from the same course of conduct as the sentencing offense.

***Reynolds v. State*, 874 N.W.2d 257 (Minn. App. Jan. 25, 2016), *review granted* (Minn. Mar. 29, 2016) (A14-0906).**

A motion to correct a sentence under rule 27.03, subdivision 9, is a proper mechanism for a convicted person to challenge the district court's decision to amend his sentence *sua sponte* by adding a statutorily required conditional-release term.

***State v. Drljic*, 876 N.W.2d 350 (Minn. App. Mar. 7, 2016) (A15-0714).**

For purposes of calculating felony criminal-history points for the crime of second-degree burglary, the burglary of three separate businesses in one building on one day does not constitute a single behavioral incident.

***State ex rel. Pollard v. Roy*, 878 N.W.2d 341 (Minn. App. Apr. 11, 2016), *review granted and stayed* (Minn. June 29, 2016) (A15-1580).**

Under Minn. Stat. § 609.3455, subd. 6 (Supp. 2005), an offender's conditional-release term is not reduced by the time that the offender is incarcerated during the supervised-release term.

***State v. Willis*, 883 N.W.2d 838 (Minn. App. Aug. 15, 2016) (A16-0275).**

The Minnesota Rules of Evidence do not apply to restitution hearings.

Sex Offender Commitment

***In re Commitment of Hand*, 878 N.W.2d 503 (Minn. App. Apr. 11, 2016), *review denied* (Minn. June 21, 2016) (A15-1341).**

1. If an individual committed as a sexually dangerous person (SDP) brings a motion pursuant to rule 60.02 of the Minnesota Rules of Civil Procedure for relief from an order for indeterminate commitment alleging that the Minnesota Commitment and Treatment Act (MCTA), Minn. Stat. §§ 253D.01-.36 (2014), is unconstitutional under *Karsjens v. Jesson (Karsjens I)*, 109 F. Supp. 3d 1139, 1157 (D. Minn. 2015), *motion to certify appeal denied*, Civ. No. 11-3659, 2015 WL 4478972 (D. Minn. July 22, 2015), and therefore his commitment to the Minnesota Sex Offender Program (MSOP) was unlawful ab initio, the motion is barred by the exclusive transfer-or-discharge remedies of the MCTA.

2. When an SDP seeks a temporary restraining order (TRO) or temporary injunction pursuant to rules 65.01 and 65.02 of the Minnesota Rules of Civil Procedure, respectively, and that person has failed to state a viable claim for relief from an order for indeterminate commitment, the district court does not abuse its discretion by denying such relief.

Substantive Criminal Law

***State v. Haywood*, 869 N.W.2d 902 (Minn. App. Sept. 28, 2015), review granted (Minn. Dec. 15, 2015) (A14-1792).**

A BB gun is a firearm within the meaning of prohibited possession of a firearm under Minn. Stat. § 609.165, subd. 1b(a) (2012).

***State v. Bakken*, 871 N.W.2d 418 (Minn. App. Nov. 9, 2015), aff'd (Minn. Aug. 3, 2016) (A14-2057).**

Each individual image depicting child pornography and stored on a computer drive is a separate pornographic work under the plain language of Minn. Stat. § 617.247, subd. 4(a) (2014).

***State v. Dye*, 871 N.W.2d 916 (Minn. App. Nov. 30, 2015) (A14-1778).**

Whether an intrusive gunshot wound creates “a high probability of death” under Minnesota Statutes section 609.02, subdivision 8 (2012), is determined at the time it is known what path the bullet took and what parts of the body were hit.

***State v. Ivy*, 873 N.W.2d 362 (Minn. App. Dec. 14, 2015), review denied (Minn. Mar. 15, 2016) (A14-1824).**

A peace officer working as a privately employed security officer who has probable cause to arrest an individual is executing a duty imposed by law under Minn. Stat. § 609.2231, subd. 1, the assault statute, and is acting in his capacity as a peace officer.

***State v. Dorn*, 875 N.W.2d 357 (Minn. App. Feb. 16, 2016), review granted (Minn. Apr. 19, 2016) (A15-0007).**

A person may be convicted of first-degree assault based on the intentional infliction of great bodily harm if that person commits a volitional act in a hostile manner, even where the degree of force is as slight as a push, so long as that act is a substantial cause of the bodily harm.

***State v. Boecker*, 880 N.W.2d 391 (Minn. App. May 23, 2016), review granted (Minn. July 19, 2016) (A15-1058).**

A prior felony conviction of criminal vehicular operation under Minn. Stat. § 609.21, subd. 2a(2)(i) (1996), is a predicate felony under the first-degree driving while impaired statute, Minn. Stat. § 169A.24, subd. 1(3) (2014).

***State v. Mitchell*, 881 N.W.2d 558 (Minn. App. May 31, 2016), review denied (Minn. Aug. 23, 2016) (A15-0982).**

Minnesota Statutes section 609.585 (2002), which provides that “a prosecution for or conviction of the crime of burglary is not a bar to conviction of or punishment for any other crime committed on entering or while in the building entered,” does not authorize a district court to enter convictions or impose sentences on multiple counts of burglary arising from a single course of conduct.

***State v. Thonesavanh*, 880 N.W.2d 625 (Minn. App. June 6, 2016), review granted (Minn. Aug. 23, 2016) (A15-1716).**

A person does not “take” a motor vehicle under Minnesota Statutes section 609.52, subdivision 2(a)(17) (2014), unless the person participates in the movement of the motor vehicle.

***State v. Shane*, 883 N.W.2d 606 (Minn. App. July 5, 2016) (A15-1579).**

Ballot destruction, as defined by Minn. Stat. § 204C.06, subd. 4(b) (2012), is a general-intent crime.

***State v. Moser*, 884 N.W.2d 890 (Minn. App. Aug. 8, 2016) (A15-2017).**

(See page 13 for additional syllabus point for this case.)

2. Defendants charged with violating Minnesota Statutes section 609.352, subdivision 2, solely over the Internet and without any face-to-face contact, must be given an opportunity to raise a mistake-of-age affirmative defense if the child represents to the defendant that he or she is 16 or older.

***State v. Olson*, 884 N.W.2d 906 (Minn. App. Aug. 22, 2016) (A15-0873).**

The term “child” as defined by Minn. Stat. § 609.352, subd. 1(a) (2012), means a person who has not yet attained the age of 16.

Trial Procedure

***State v. Thomas*, 882 N.W.2d 640 (Minn. App. July 5, 2016), *pet. for review filed* (Minn. Aug. 2, 2016) (A15-0708).**

I. Under Minnesota Rule of Criminal Procedure 26.03, the district court has discretion to grant or deny the state's motion to reopen its case to offer additional evidence where the motion is made after the state has rested without proving an element of its prima facie case and the defense has moved for judgment of acquittal.

II. In exercising its discretion on a motion to reopen, the district court should consider (a) when the motion is made, (b) whether the evidence is material, not cumulative, and concerns a controlling issue, and (c) whether the state had an improper purpose for failing to offer the evidence earlier.

***State v. DeLaCruz*, 884 N.W.2d 878 (Minn. App. Aug. 1, 2016) (A15-1177).**

I. The requirement of Minn. R. Crim. P. 26.04, subd. 1(3), that a defendant serve a new-trial motion within 15 days after a verdict or finding of guilty is a claim-processing rule, which is a procedural tool and not a jurisdictional requirement. Thus a district court has jurisdiction over a new-trial motion served more than 15 days after a verdict or finding of guilty.

II. The district court has discretion to consider an amended new-trial motion where the defendant also served a timely new-trial motion and then served an amended new-trial motion after the 15-day deadline in rule 26.04, subdivision 1(3), raising grounds not raised in the first motion.

III. In considering an amended new-trial motion, a district court should determine the amended motion on the merits when (a) the moving party has served a timely new-trial motion under rule 26.04, subdivision 1(3); and (b) the moving party has established satisfactory reasons for raising new grounds in the amended new-trial motion.