

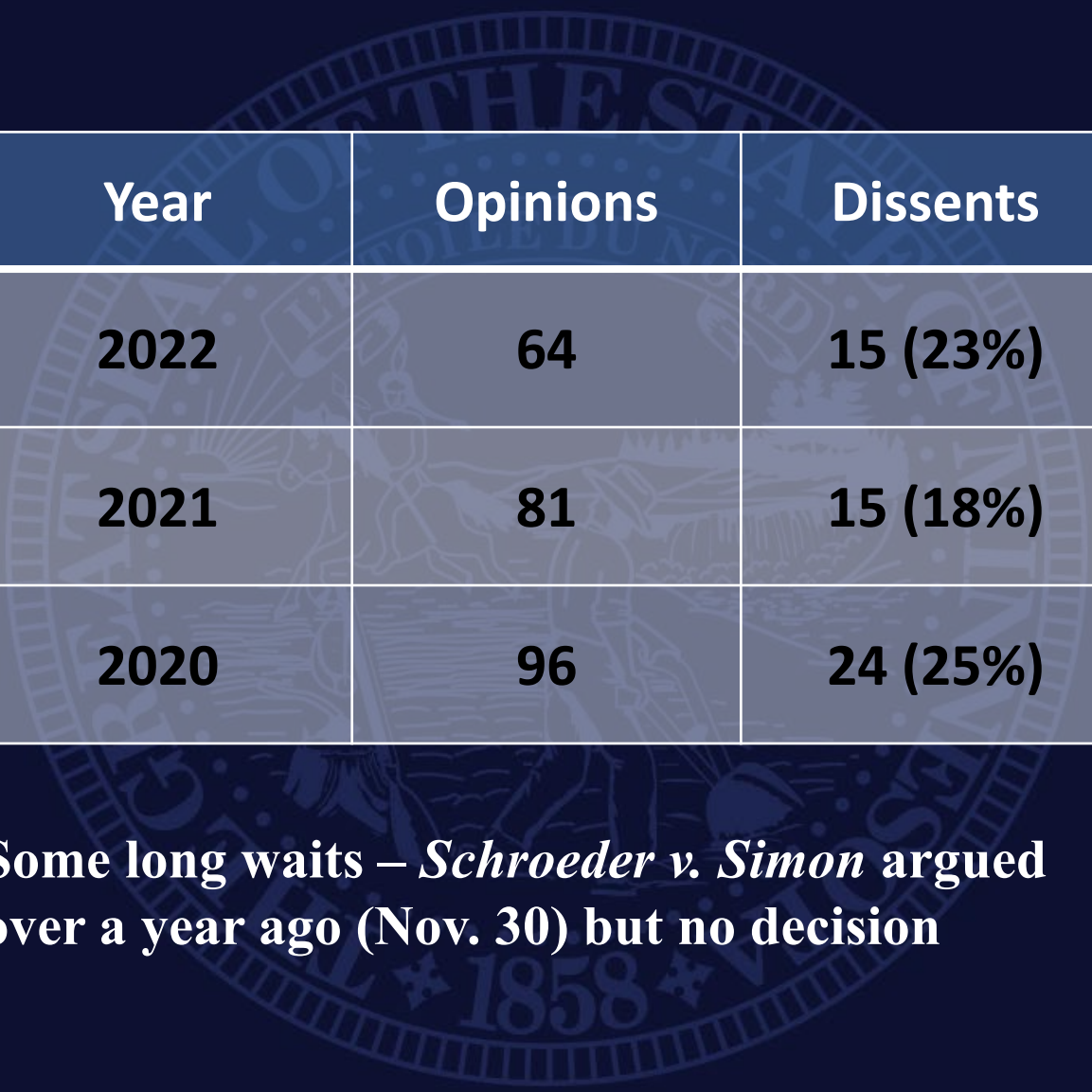


2022 Minnesota State Supreme Court Update

Presented by: Pete Farrell
Angela Behrens
Ed Stockmeyer
Adam Welle
Liz Kramer



Overview



Year	Opinions	Dissents
2022	64	15 (23%)
2021	81	15 (18%)
2020	96	24 (25%)

Some long waits – *Schroeder v. Simon* argued over a year ago (Nov. 30) but no decision

The Great Seal of the State of Minnesota is a circular emblem. It features a central scene with a Native American on the left and a settler on the right, both engaged in agricultural or labor activities. Above them is a banner with the French motto "L'ETOILE DU NORD". The outer ring of the seal contains the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" and the year "1858" at the bottom, flanked by two stars.

Introductions

The Great Seal of the State of Minnesota is a circular emblem. It features a central figure of a Native American man in traditional dress, holding a bow and arrow. Above him is a banner with the French motto "L'ÉTOILE DU NORD". The seal is surrounded by the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" and the year "1858" at the bottom. The entire seal is rendered in a light blue color against a dark blue background.

Lawyering

Pete Farrell

Overview

- Broad category
- Focus on recent developments and potential pitfalls for state practitioners
- Cases fall into three main categories
 - Privilege (with a side helping of the DPA)
 - Experts
 - Appealability

EPA v. Ellison, 980 N.W.2d 146 (Minn. 2022)

Overview

- Minnesota recognizes the common-interest doctrine
- The attorney-client privilege may apply to internal communications among attorneys in public law agencies, even if the communication does not involve a client
- All AGO data identified in Minn. Stat. § 13.65, subd. 1, are “private data on individuals,” even if the data do not pertain to individuals

EPA v. Ellison, 980 N.W.2d 146 (Minn. 2022)

Common-Interest Doctrine

- **The Rule.** In Minnesota, the common-interest doctrine applies when:
 - two or more parties,
 - represented by separate lawyers,
 - have a common legal interest,
 - in a litigated or non-litigated matter,
 - the parties agree to exchange information concerning the matter, and
 - they make an otherwise privileged communication in furtherance of formulating the joint legal strategy

EPA v. Ellison, 980 N.W.2d 146 (Minn. 2022)

Common-Interest Doctrine

- **Limitation.**
 - The common-interest doctrine requires a common *legal* interest
 - May encompass a “non-litigated matter”
 - “But a purely commercial, political, or policy interest is insufficient for the common-interest doctrine to apply”
- **Extends to Attorney Work Product.**
 - General approach of federal and state courts across country
 - Consistent with the Restatement (Third) of the Law Governing Lawyers

EPA v. Ellison, 980 N.W.2d 146 (Minn. 2022)

Attorney-Client Privilege

- **Scope of the Privilege.**
 - ACP may apply to internal communications among attorneys at a public law agency, even if the communication does not involve a client
 - Emphasis on work of the AGO; often no “client” in the traditional sense
- **Stay Tuned.**
 - No delineation of “the precise circumstances” when the ACP applies to inter-attorney communications
 - Fact-intensive inquiry
 - District court needs to sort out in the first instance

EPA v. Ellison, 980 N.W.2d 146 (Minn. 2022)

Data Practices Act

- **Divided Court.**

- Majority (Chutich + Hudson, McKieg, Moore)

- All AGO data listed in section 13.65, subdivision 1 are “private data on individuals,” even if the data are not about individuals

- Dissent (Thissen + Gildea, Anderson)

- “Put quite simply: I find it hard to understand how data can be ‘private data on individuals’ when it is not data on individuals”

In re Hope Coalition, 977 N.W.2d 651 (Minn. 2022)

Sexual-Assault-Counselor Privilege

- **Facts.**

- Criminal defendant sought records from Hope Coalition, a non-profit that advises survivors of sexual assault
- Hope Coalition argued that Minn. Stat. § 595.02, subd. 1(k), was absolute statutory privilege that protected records from disclosure

- **District Court.**

- Ordered Hope Coalition to produce responsive records within 30 days for *in camera* review

- **Court of Appeals.**

- Denied Hope Coalition's request for a writ of prohibition

In re Hope Coalition, 977 N.W.2d 651 (Minn. 2022)
Sexual-Assault-Counselor Privilege

- **Supreme Court.**

- The statutory sexual-assault-counselor privilege does not permit disclosure of records unless
 - the victim consents or
 - the court finds good cause in matters involving neglect or termination of parental rights
- So, no disclosure in criminal proceeding, even for in camera review
- Application of the privilege did not violate the defendant's constitutional rights
 - to confront his accusers or
 - his due process right to a fair trial

Mittelstaedt v. Henney, 969 N.W.2d 634 (Minn. 2022)

Expert-Affidavit Requirement

- **Facts.**

- Plaintiff sued his former attorney for breach of fiduciary duty. He did not comply with the expert-affidavit requirement in Minn. Stat. 544.42

- **Court of Appeals.**

- The expert-affidavit requirement applies to breach-of-fiduciary duty claims against attorneys
- Why? Breach-of-fiduciary duty claims are like professional negligence claims

Mittelstaedt v. Henney, 969 N.W.2d 634 (Minn. 2022)

Expert-Affidavit Requirement

- **Supreme Court.**

- Right answer, wrong reasons

- Professional negligence claims are not the same as breach-of-fiduciary duty claims

- But section 544.42 applies to “malpractice” actions, which includes breach-of-fiduciary duty claims

- **Limitation.**

- Medical-malpractice presumption does not apply to legal malpractice cases

- Case-by-case analysis to determine whether expert affidavit necessary to establish prima facie case

Appealability

- *Stern 1011 First St. S. LLC v. Gere*, 979 N.W.2d 216 (Minn. 2022)
 - A request to file a motion to reconsider under Minn. R. Gen. Prac. 115 does not toll the time to appeal under Minn. R. Civ. App. P. 104.01, subd. 2
- *In re Estate of Figliuzzi*, 979 N.W.2d 225 (Minn. 2022)
 - In supervised probate proceedings, a decision denying a petition for interim relief was not appealable as
 - a “final order” under Minn. R. Civ. App. P. 103.03(g) or
 - as the denial of “injunctive relief” under Minn. R. Civ. App. P. 103.03(b)

Appealability

- Takeaways
 - Form over function (*Stern*)
 - Advisory committee notes not binding but persuasive authority (*Stern*)
 - Do not expect the “interests of justice” backstop to save an untimely appeal (*Stern*)
 - An order that has the “effect” of an injunction cannot generally be appealed under 103.03(b) (*Figliuzzi*) unless
 - The order relates to the preservation of the status quo
 - The order addresses injunctive-relief factors

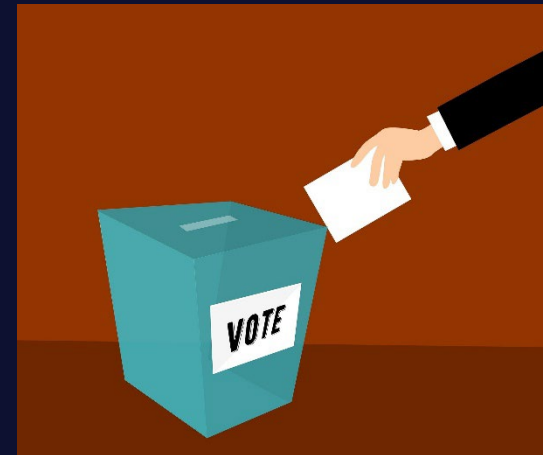
The background features a large, faint, circular seal of the State of Minnesota. The seal contains the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" around the perimeter, "1858" at the bottom, and "L'ETOILE DU NORD" in the center. The central image depicts a Native American figure holding a bow and arrow, with a plow and sheaf of wheat nearby.

Elections and Pandemic

Angela Behrens

Elections

- **January 1 – December 7, 2022: 8 decisions**
 - Ballot boards
 - Ballot errors and omissions
- **Reaffirmed general principles**
 - Plain language controls reading statutes
 - Policy choices are for the legislature
 - Mandamus is an extraordinary remedy
 - Laches: Don't sit on your claim



Ballot Boards: Minnesota Voters Alliance v. County of Ramsey, 971 N.W.2d 269 (Minn. 2022)

Minn. Stat. § 203B.121, subd. 1(a) (2020):

“The board must consist of a sufficient number of election judges trained in the handling of absentee ballots and appointed as provided in sections 204B.19 to 204B.22. The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.”

- Minn. Stat. §§ 204B.19-.22: Election judge qualifications and appointment process
 - Major political parties submit list of potential judges
 - Governing body appoints from list; can appoint others after exhausting list
 - Election judges must disclose party affiliation; no more than half of election judges in a precinct may be affiliated with same party

- **Challenged ballot boards (2020 election)**
 - Ramsey County = 62 election judges + 5 deputy county auditors
 - Olmsted County = 26 election judges + 3 deputy county auditors
 - Resolution: appointed elections staff as deputy county auditors and then named subset as election judges
- **Mandamus claims: Ineligible board members**
 - Deputy county auditors must be appointed following the same process as election judges; party parity required
 - Only “bona fide” deputy county auditors are eligible

- **Mandamus standard**

- Non-discretionary duty clearly imposed by law;
- Public wrong specifically injurious to petitioner; and
- No other adequate remedy available at law

- **Decisions**

- **District court:** Dismissed; failed to prove any element of claim
- **Court of appeals:** affirmed; failed to prove first element (did not reach others)

- **Minnesota Supreme Court: Affirmed**
 - No violation of a clear duty
 - Plain language distinguishes election judges and deputy auditors
 - Must vs. may
 - Need “sufficient number of election judges,” but not exclusive
 - Can appoint election judges outside of list
 - At least one duty (signature comparison) limited to election judges
 - Discretion to determine “sufficient number”
 - Nothing limits deputies to pre-existing county officers (those who already had full powers of county auditor)

- Policy decision for legislature to change composition or duties:

“[T]he current law represents the careful thought and compromise of the Legislature. The Legislature has a long history of regulating voting. . . . It is true that that use of absentee ballots has grown in the last decade. But it is also true that the Legislature has not found it necessary to amend section 203B.121. Our role is limited to interpreting the current law; it is not our place to decide whether a law represents appropriate or preferred policy.”

- **2022 Election: Orders on § 204B.44 Petitions**

- **Residency**

- *Fischer v. Simon*, 980 N.W.2d 142 (Minn. 2022): Failed to prove candidate ineligible for legislative seat
 - *Landis v. Simon*, 977 N.W.2d 663 (Minn. 2022): Metro resident ineligible to be candidate for SD2 primary election
 - *Olson v. Simon*, 978 N.W.2d 269 (Minn. 2022): Dismissed based on laches

- **Electronic voting equipment**

- *Kieffer v. Governing Body of Municipality of Rosemount*, 978 N.W.2d 442 (Minn. 2022): Dismissed based on laches

– **Printing mistakes:** Granted requests to correct ballots and gave instructions for notifying affected voters

- *In re 2022 General Election Ballot for Minn. House of Rep. Dist. 67A*, 980 N.W.2d 308 (Minn. 2022)
- *In re Roseau County Ballot for Nov. 8, 2022 General Election*, A22-1418, and *In re Kittson County Ballot for Nov. 8, 2022 General Election*, No. A22-1426, 980 N.W.2d 809 (Minn. 2022)
- *In re Murray County Ballot for Nov. 8, 2022 General Election for Minn. Senate Dist. 21 & Minn. House of Representatives Dist. 21A*, A22-1466, 980 N.W.2d 815 (Minn. 2022)

- **Pending Election Cases**

- *Schroeder v. Simon*, A20-1264 (argued 11/30/21): restoration of voting rights after felony conviction
 - 962 N.W.2d 471 (Minn. Ct. App. 2021)
- *Kranz v. City of Bloomington*, A22-1190 (accelerated review granted; argued 11/28/22): ballot initiatives
- *Minnesota Voters Alliance v. Office of the Minnesota Secretary of State*, A22-0111 (briefing): reviewing signatures on absentee ballots
 - 2022 WL 3348641 (Minn. Ct. App. Aug. 15, 2022)

Pandemic



- **Executive Orders**

- *Buzzell v. Walz*, 974 N.W.2d 256 (Minn. 2022): “Commandeering” property

- **Criminal Proceedings**

- *State v. Paige*, 977 N.W.2d 829 (Minn. 2022): Speedy trial
- *Pulczynski v. State*, 972 N.W.2d 347 (Minn. 2022): Public trial
- *State v. Epps*, 977 N.W.2d 798 (Minn. 2022): Guilty plea out of duress (issue remanded)

- **Miscellaneous: Doesn’t excuse due diligence**

- *In re Disciplinary Action Against McCloud*, 971 N.W.2d 78 (Minn. 2022): completing the MPRE
- *Chambers Self-Storage Oakdale, LLC v. County of Washington*, 971 N.W.2d 64 (Minn. 2022): serving subpoena

Business closures: *Buzzell*

- Executive Orders: limits on places of public accommodation (EOs 20-04, 20-33, 20-62, 20-63)
 - Plaintiff business owner: Governor commandeered property and owed compensation under Minn. Stat. § 12.34
- Minn. Stat. § 12.34:
 - Subd. 1: “When necessary to save life, property, or the environment . . . during a peacetime emergency, the governor . . . may . . . commandeer, for emergency management purposes as directed by any of the persons described of above, any motor vehicles, tools, appliances, medical supplies or other personal property and any facilities.”
 - Subd. 2: Owner of commandeered property must be promptly paid just compensation for use of, and any damages to, the property

District court: Dismissed

```
graph LR; A[District court: Dismissed] --> B["'Commandeer' = 'seize for military or police use; confiscate,' 'to take arbitrarily or by force,' or 'to force into military service.'"]; C[Court of appeals: Affirmed] --> D["'Commandeer' = direct, active use of private property by government"];
```

“Commandeer” = “seize for military or police use; confiscate,” “to take arbitrarily or by force,” or “to force into military service.”

Court of appeals: Affirmed

“Commandeer” = direct, active use of private property by government

Supreme court: Reversed and remanded



“Commandeer” = “the government must exercise exclusive control over or obtain exclusive possession of the property such that the government could physically use it for an emergency management purpose.”

Exclusive physical control/possession = “only the government may exercise control or possession of the property and the owner is denied all control over or possession of the property.”



Commandeer

- 1** Compel to perform military service

- 2** Seize for military purposes

- 3** Take arbitrary or forcible possession of



1 Compel to perform military service

Government-compelled service covered elsewhere and not subject to compensation provision

2

Seize for military purposes

Seize = take possession of or confiscate

3

Take arbitrary or forcible possession of

Possession = control or occupancy of property without regard to ownership

Seize = take possession of
or confiscate

Possession = control or
occupancy of property
without regard to
ownership

Commandeer under 12.34 = “the government must exercise exclusive control over or obtain exclusive possession of the property such that the government could physically use it for an emergency management purpose.”

- Exclusive physical control/possession = “only the government may exercise control or possession of the property and the owner is denied all control over or possession of the property.”

Legislature didn't intend to import regulatory takings

- Used “commandeer,” not “taking”
- Headnote isn't part of the statute
- Items subject to commandeering are all physical items

Speedy Trial: *Paige*

105 days

Orders on Continuing Operations of Courts (ADM20-8001)

- March 13: No new jury trials except those subject to speedy-trial demand to start for 30 days beginning March 16
- March 20: No new jury trials to start until earlier of April 22 or further court order
- April 9: No jury trials until earlier of May 4 or court order
- May 1: No jury trials before June 1; pilot program for evaluating jury trial process
- May 15: Pilot program jury trials to start June 1; no others before July 6

January 21:
Charged,
held on bail

February 18:
Speedy trial
demand (jury);
trial set for
March 31

March 11:
WHO declares
global health
pandemic

March 13:
Governor declares
peacetime
emergency

March 26: Court
finds good cause
to extend trial to
April 28

May 26:
Paige waives
right to jury
trial

June 2:
Trial

- **Speedy trial**

- U.S. Const. amend. VI; Minn. Const. art. I, § 6

- Purposes:

- Prevent undue and oppressive incarceration before trial
 - Minimize anxiety and concern accompanying public charges
 - Limit risk of delay impairing ability to defend against charges

- Minn. R. Crim. P. 11.09(b):

- Trial must start within 60 days of demand, unless good cause exists
 - If trial doesn't start within 120 days and no exigent circumstances exist, must release defendant from custody with nonmonetary conditions

- Apply four *Barker* factors

Barker Factors

Length of Delay

- Move to other factors because more than 60 days (Minn. R. Crim. P. 11.09)

★ Reason for Delay

- Parties agreed delay was attributable to the state
- What, if any, weight should court give?

Assertion of Right

- Undisputed; reasons for asserting right are immaterial

Prejudice to Defendant

- 45-day delay did not result in unfair prejudice
- Anxiety and concern insufficient
- Alleged discovery violations and pro se status unrelated to delay

Weight against State Based on Reason for Trial Delay



Justified (no weight)

- External factors: death of judge, courthouse burning down

Neutral (moderate weight)

- Internal factors: court congestion

Deliberate (heavy weight)

Statewide orders reflected policy decision addressing *external* public health crisis; responding “to a deadly and virulent illness over which the court had no control.”

The background of the slide features a large, faint, circular seal of the State of Minnesota. The seal contains the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" around the perimeter, "1858" at the bottom, and "L'ETOILE DU NORD" in the center. The central image depicts a Native American figure holding a bow and arrow, with a plow and a sheaf of wheat nearby.

Criminal Law Decisions

Ed Stockmeyer

In re Welfare of H.B.

No. A20-0954, -- N.W.2d -- (Minn. 2022)

Facts

- 15-year-old charged with several armed crimes, including murder;
- Hennepin County files a petition to prosecute him as an adult;
- “significant exposure to childhood trauma and history of extensive contact with child protective services;”
- District court denies petition to certify him as an adult and prosecution appeals.

Issue

Did the district court abuse its discretion?

Held

The district court abused its discretion due to clearly erroneous factual findings.

In re Welfare of H.B.

No. A20-0954, -- N.W.2d -- (Minn. 2022)

Minn. Stat. § 260B.125, subd. 4 (public safety factors)

- (1) Seriousness of the offense;
- (2) Culpability of the child;
- (3) Prior record of delinquency;
- (4) Prior programming history;
- (5) Adequacy of punishment and programming in the juvenile system;
- (6) Dispositional options available in the juvenile system.

In re Welfare of H.B.

No. A20-0954, -- N.W.2d -- (Minn. 2022)

What about studies indicating that juveniles may have diminished culpability?

- Majority holds that statutory factors do not permit consideration of this research.
- Dissent (Justice Thissen): disagrees; the text does allow it to be considered.

Concurrence (Justices McKeig, Chutich, Moore)

Ultimately concludes that it is the Legislature's job to address these "deeply complex policy issues."

State v. Hassan

977 N.W.2d 633 (Minn. 2022)

Facts

- At age 21, Hassan participated in a shooting that killed one person, paralyzed another, and seriously injured a third;
- Hassan found guilty of premeditated murder and sentenced to mandatory life without the possibility of release (LWOR).

Issue

Does Article I, Sec. 5 of the Minnesota Constitution prohibit the imposition of mandatory LWOR on a 21-year-old defendant?

Basically, defendant seeking to apply *Miller v. Alabama* (holding the 8th Amendment prohibits mandatory LWOR for juveniles) to a young adult.

State v. Hassan

977 N.W.2d 633 (Minn. 2022)

Article I, Sect. 5

- Prohibits imposition of “cruel *or* unusual” punishment;
- More protective than the 8th Amendment, which prohibits “cruel *and* unusual punishment;”
- Hassan concedes his punishment is not unusual;
- Punishment is “cruel” if disproportionate to the gravity of the offense.

Held

“A mandatory sentence of [LWOR] is not unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant who has been convicted of first-degree premeditated murder.”

State v. Hassan
977 N.W.2d 633 (Minn. 2022)

What about studies indicating that young adults may have diminished culpability?

- In a footnote, the Court concludes that the scientific literature is “inconclusive.”
- “We consequently decline to invalidate a law based on conflicting science and leave it to the Legislature to assess the evidence and enact policy accordingly.”

State v. Dixon

A21-0205, -- N.W.2d -- (Minn. 2022)



State v. Dixon

981 N.W.2d 387 (Minn. 2022)

Facts

- During a traffic stop, driver admits that he has some marijuana in the car;
- Officer finds 58.93 grams of something that looks like marijuana;
- Substance tests positive for THC in a preliminary field test, but field tests cannot determine concentration of THC;
- Driver charged with possession of marijuana.

Issue

Was there probable cause for the criminal charge without evidence regarding the concentration of THC in the substance?

Definitions of Marijuana and Hemp

Marijuana (amended in 2019)

- Minn. Stat. § 152.01, subd. 9. → “Marijuana does not include hemp as defined in section 152.22, subd. 5a.”

Hemp

- Minn. Stat. § 152.22, subd. 5a → “Hemp” means “industrial hemp.”
- Minn. Stat. § 18K.02, subd. 3 → “Industrial hemp means the plant *Cannabis sativa* L. . . . with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis. Industrial hemp is not marijuana as defined in section 152.01, subdivision 9.”

State v. Dixon
981 N.W.2d 387 (Minn. 2022)

District Court

Dismissed the charge, reasoning that THC concentration, not merely presence, is a necessary element of the crime.

Held

THC concentration testing was not required because a defendant's confession that a substance is marijuana does not need to be corroborated to survive a motion to dismiss.

The court “assume[s] without deciding” that THC concentration is a necessary element of the crime.

State v. Pauli
979 N.W.2d 39 (Minn. 2022)



State v. Pauli

979 N.W.2d 39 (Minn. 2022)

Facts

- Dropbox reported to National Center for Missing & Exploited Children (NCMEC) that Pauli's account has dozens of images of suspected child pornography;
- NCMEC and then BCA each review 2 photos and confirmed their contents;
- BCA gets a warrant and eventually finds many images in Pauli's possession.

Issue

Was the initial warrantless review of Pauli's files by NCMEC and BCA permitted under the private search doctrine?

Private Search Doctrine

Rule: Under the Fourth Amendment, the government does not frustrate a reasonable expectation of privacy by repeating a search a private party already conducted.

At suppression hearing, government has initial burden to prove:

- A) The original search was conducted by a private party;
- B) The subsequent government search did not exceed the private search.

Burden then shifts to Defendant to prove:

- A) The private party that did the original search was acting as a government agent.

State v. Pauli

979 N.W.2d 39 (Minn. 2022)

Held

The private search doctrine applies because the district court did not clearly err in finding that Dropbox was private party and that the searches by NCMEC and BCA did not exceed the scope of Dropbox's original private search.

Second Unresolved Issue

Do Dropbox users have a “reasonable expectation of privacy” in data stored on the cloud where the terms of service warn of potential examination and disclosure?

- If not → a warrantless search does not violate the Fourth Amendment.
- Court does not reach this issue.

The background of the slide features a large, faint, circular seal of the State of Minnesota. The seal contains the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" around the perimeter, "L'ETOILE DU NORD" in the center, and "1858" at the bottom. The central image depicts a Native American figure holding a bow and arrow, with a plow and a sheaf of wheat nearby.

Examples of Statutory Interpretation

Adam Welle

Walsh v. State

975 N.W.2d 118 (Minn. 2022) (Thissen, J.)

- **Facts:** Tribe brought fed. suit against sheriff & county attorney over land & jurisdictional disputes; officials sought indemnification from state via State Tort Claims Act
- **Interpretive Question:** Were they “acting on behalf of the state in an official capacity” under Minn. Stat. § 3.732?
- No plain language: two interpretations: (1) ”acting on behalf” can mean “exercising authority statutorily delegated to them ... enforce or prosecute state [laws]” or (2) officials work for county, which is not a listed “state” entity under definition in § 3.732
- Court considers other laws that deem county sheriffs and attorneys as “*county* officials” elected by county residents to enforce laws and perform other duties in/for that county, report to county board

Walsh v. State

975 N.W.2d 118 (Minn. 2022) (Thissen, J.)

- Counties & other municipalities indemnified by those entities under Municipal Tort Claims Act: “separate statutory schemes for defense and indemnification by municipalities for municipal employees and for defense and indemnification by the State for state employees”
- “Consequences” of broader reading would be state indemnifying ever municipal employee, which would be “expansive” and not applied that way for “half century since it was passed”
- Officials are county employees and not indemnified under State Tort Claims Act

State v. McReynolds

973 N.W.2d 314 (Minn. 2022) (McKeig, J.)

- **Facts:** Defendant admitted using phone to record woman nude without consent while in room with her, charged with interference with privacy, Minn. Stat. § 609.746, subd. 1(b)
- **Interpretive Question:** Did he record “through the window or any other aperture of a house or place of dwelling of another”?
- Court rejects State’s definition that aperture could include camera lens under secondary dictionary definition: “the aperture must be ‘of a house or place of dwelling of another’”
- Court looks to dictionary and style manual for use of the word, “of”

State v. McReynolds

973 N.W.2d 314 (Minn. 2022) (McKeig, J.)

- Rejects argument that element is satisfied by crossing through door to gain access to person as violating “basic rules of grammar”; “through” as adverbial phrase
- Court also rejects “absurdity” argument; identifies just one case where court departed from plain language based on absurdity and never in criminal case
- “[W]hether technological advancements should prompt amendments to this statute is a question for the Legislature, not this court”

Thompson v. St. Anthony Lease Housing Assoc.
979 N.W.2d 1 (Gildea, C.J.)

- **Facts:** Tenant brought class action for violation of lease and statutory fraud claims based on rent in excess of Minnesota Bond Allocation Act
- **Interpretive Question:** Does “area fair market rent ... as established by HUD” refer to annual HUD publications or amounts set by local housing agencies?
- Court holds that “context ... makes clear” that reference is to “rent figures that HUD establishes” for federal assistance programs and statute elsewhere invokes those programs

Thompson v. St. Anthony Lease Housing Assoc.
979 N.W.2d 1 (Gildea, C.J.)

- Court applies “special meaning given to the term in federal housing assistance law” and notes ubiquity of term in federal law
- Dissent (Thissen, J.): Agrees that case does not concern “ordinary meaning” and rather definitions in “federal affordable housing law” dictate result; finds it could be HUD rates for affordable housing projects or rates set by local housing agencies for voucher programs; considers detailed regulatory history of HUD classifications and finds that definition of rent set by local public housing agency more logical

St. Matthews v. State Farm

2022 WL 17171479 (Minn. Nov. 23, 2022) (Thissen, J.)

- **Facts:** Storm damaged drywall, but masonry needed repair (per code) before replacement
- **Interpretive Question:** What are limits of “damaged property” covered by insurer “in accordance with the minimum [state/local] code” under Minn. Stat. § 65A.10, subd. 1?
- Plain language: “partial loss,...coverage applies only to the damaged portion”; Definition of “portion” and “only” means “obligation to bring the property up to code does not extend beyond that portion of the property that was damaged in the covered event”

St. Matthews v. State Farm

2022 WL 17171479 (Minn. Nov. 23, 2022) (Thissen, J.)

- Court rejects broader reading of “loss” because it would cover all repairs necessary to bring up to code before permit is issued, without limits
- Insurer not required to pay for masonry; standard qualified as “fact specific inquiry” depending on damage, repair need, & code requirements
- Dissent (Hudson, J.): “applying the statutory language to the property here does not yield a clear result” because “the wall” (including masonry affixed to drywall) could be “the damaged portion”; 645.16 factors favor claimant

Takeaways

- Guidance from Supreme Court case can be difficult because these are hardest questions
- For more routine issues, identify and apply plain language
- “Absurdity” arguments are unlikely to be accepted
- For harder issues, understand entire statute, consult attys w/ deep area knowledge, learn history and legal subject matter well—make arguments within that context

The background features a large, faint, circular seal of the State of Minnesota. The seal contains the text "THE GREAT SEAL OF THE STATE OF MINNESOTA" around the perimeter, "1858" at the bottom, and "L'ETOILE DU NORD" in the center. The central image depicts a Native American figure holding a bow and arrow, with a plow and sheaf of wheat below.

Constitutional + Other Civil

Liz Kramer

Minnesota Constitution

- *Shefa v. Ellison*, 968 N.W.2d 818 (Minn. 2022) (6-0, Anderson author)
- Issue: Does Minnesota's statute requiring pardon board act unanimously violate the Minnesota Constitution?
 - Answer: No

Minnesota Constitution

- Case involved Gov Walz on opposite side of case from AG Ellison and Chief Justice Gildea.
- Article 5 Section 7:
 - The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.
- Minn. Stat. Section 638.02, subd. 1:
 - Every pardon or commutation of sentence shall be in writing and shall have no force or effect *unless granted by a unanimous vote* of the board duly convened.

Minnesota Constitution

Holdings:

1. Constitutional language (“governor in conjunction with the board of pardons”) is ambiguous. Could mean Governor only, or could mean both governor and board have insufficient but necessary power (like two keys to launch missile).
2. History and circumstance of the 1896 constitutional amendment shows purpose was to ensure pardon was not power exclusive to Governor. So, “two keys” interpretation wins.
3. Because constitutional provision would have allowed either Governor plus one, or unanimous vote, statute is not unconstitutional.
4. Also no separation-of-powers problem.

U.S. Constitution

- *State v. Mrozinski*, 971 N.W.2d 233 (Minn. 2022)
(6-1, Chutich author, Thissen dissenting)
- Issue: Does Minnesota's statute prohibiting threats of violence violate the First Amendment?
 - Answer: No

U.S. Constitution

- Mrozinki threatens to kill county social workers involved in her child protection case.
- Convicted under Minn. Stat. § 609.713, subd. 1.
- Makes it a crime for a person to “threaten[], directly or indirectly, to commit any crime of violence with purpose to terrorize another ... or *in a reckless disregard of the risk of causing such terror.*”

U.S. Constitution

- Raised facial challenge to statute based on overbreadth. Must prove statute prohibits substantial proportion of protected speech in comparison with unprotected speech.
- Court holds “true threats do not require specific intent.” Upshot is broader scope of conduct falls outside First Amendment (reckless).
- Statute only punishes true threats.

Minneapolis

- *Spann v. Mpls. City Council*, 979 N.W.2d 66 (Minn. 2022) (7-0, Gildea author)
- Issues: 1. Was Mpls obligated to fund and employ police force of at least 731 officers? 2. If so, did it violate that duty?
- Answer: City Council has duty to fund them, and is meeting duty. Mayor has duty to employ, court remands to assess whether violating.

Minneapolis

- District court had issued writ of mandamus.
- Language of City Charter at issue (.0017 employees of police force per resident.)
- Ambiguous, so looked to history to conclude Mayor has “clear legal duty to employ” 731 officers and council has duty to fund that many.
- Not that many on staff (but funds for 770)
- Remands for consideration of whether cause has been shown for Mayor’s noncompliance.

Medical Malpractice

- *Smits v. Park Nicollet Health Servs.*, 979 N.W.2d 436 (Minn. 2022) (fractured opinion)
- Patient's suicide does not relieve mental healthcare provider of duty to patient to exercise usual degree of skill/care. (4-3, Hudson author)
- Mental healthcare provider's duty does not extend to uninvolved family members; murder not foreseeable when no threats and no history (5-2, Anderson author)

Waiver of Liability

- *Justice v. Marvel, LLC*, 979 N.W.2d 894 (Minn. 2022) (5-2, McKeig author)
- Parent's nightmare: 7 year old injured at Pump It Up party. TBI.
- Mom had signed waiver of liability on behalf of child.
- When child is 18, sues on own behalf.

Waiver of Liability

- Indemnity clause and exculpatory clauses subject to same strict construction
- Must use specific, express language that clearly and unequivocally states parties' intent.
- Here, waiver did not specifically note that Marvel not liable for its own negligence, so claim not barred.

UCC

- *Vermillion State Bank v. Tennis Sanitation*, 969 N.W.2d 610 (Minn. 2022) (6-1, Moore author)
- Breach of oral contract for both tangible and intangible assets in bankruptcy
- Jury finds for bank.
- Post-trial motion: contract unenforceable under UCC. Denied.

UCC

- Court refuses to break contract into two parts – one for goods, and other for everything else.
- Instead, predominant purpose test applies.
 - Issue of law; not for jury.
- Here, majority of value in customer routes, intangible asset, so common law governs.
- Hail mary: post-judgment interest statute violates equal protection? Nope.

Employment

- *Hanson v. DNR*, 972 N.W.2d 362 (Minn. 2022) (7-0, Gildea author)
- Despite amici advocating for it, court declines to toss out *McDonnell Douglas* framework.
- Chutich & Thissen concur, but assert *McDonnell Douglas* is “cumbersome and increasingly obsolete” and should not apply to state whistleblower claims. Just use Rule 56.

Thanks!

You can reach us at:

- Angela.Behrens@ag.state.mn.us
- Peter.Farrell@ag.state.mn.us
- Liz.Kramer@ag.state.mn.us
- Adam.Welle@ag.state.mn.us
- Ed.Stockmeyer@ag.state.mn.us