2023 MINNESOTA SUPREME COURT UPDATE

OVERVIEW

- New Chief, New Court

Opinion Count

Year	Opinions	Dissents
2023	92	23 (25%)
2022	64	15 (23%)
2021	81	15 (18%)

INTRODUCTIONS

Angela Behrens – Constitutional & Election Law

Janine Kimble – Employment & Tort Law

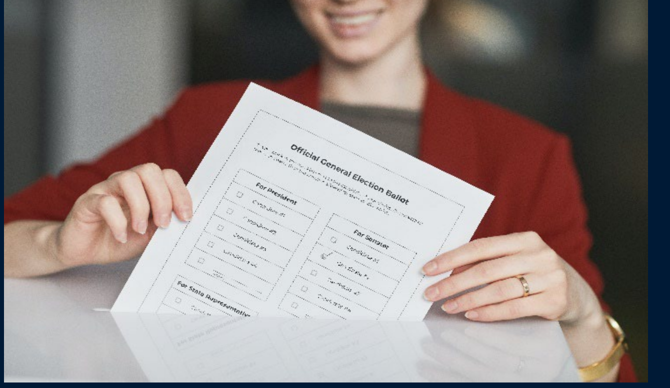
Brandon Boese – Practice, Procedure, Justiciability

Pete Farrell – Environmental & Property Law

Zuri Balmakund – Criminal Law

Constitutional & Election Law

Angela Behrens



Overview

- What/who goes on a ballot: *Kranz, Growe*
- Who can vote: *Schroeder*
- How absentee ballots are reviewed: *Minnesota Voters Alliance*

Schroeder v. Simon, 985 N.W.2d 529 (Minn. 2023)

Felony Disenfranchisement in Minnesota

Year	Law	Restoration
1851	**Territorial statute:** Could not vote "unless restored to civil rights"	Restored only through pardon
1858	**State constitution:** Cannot vote "unless restored to civil rights." (art. VII, § 2)	Restored only through pardon
1858-1866	**No restoration statute**	Restored only through pardon
1867-1962	**Patchwork of statutes** restoring voting rights	Generally discretionary and needed approval from court or governor
1963-2023	**Automatic restoration upon completion of sentence** (Minn. Stat. § 609.165)	Must complete probation, supervised release, or prison term

Lawsuit (2019)

- Challenged constitutionality of Minn. Stat. § 609.165 under Minnesota Constitution

  (1) Constitution restores voting rights whenever in community

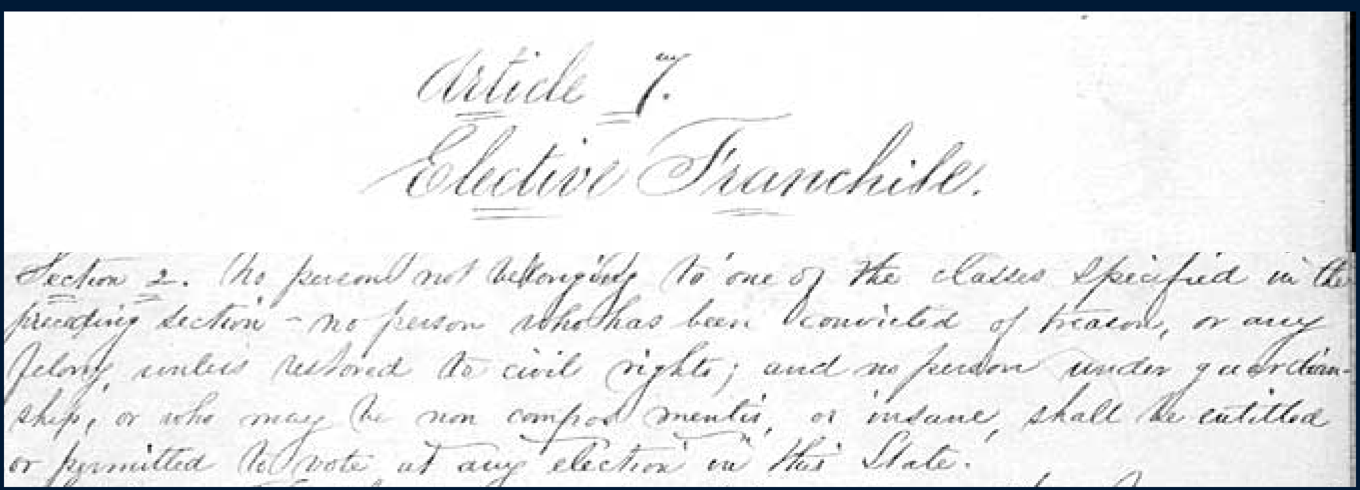
  (2) Statute violates right to vote

  (3) Statute violates right to equal protection

- District Court: Summary judgment for Secretary of State
  - Minnesota Court of Appeals: Affirmed. *Schroeder v. Simon*, 962 N.W2d 471 (Minn. Ct. App. 2021)

Minn. Const. art. VII, § 1

Eligibility; place of voting; ineligible persons. Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. . . . The following persons shall not be entitled or permitted to vote at any election in this state: . . . a person who has been convicted of treason or felony, unless restored to civil rights . . . .


Article 7.
Elective Franchise.

Section 2. No person not belonging to one of the classes specified in the preceding section – no person who has been convicted of treason, or any felony, unless restored to civil rights; and no person under guardianship, or who may be non compos mentis, or insane, shall be entitled or permitted to vote at any election in this State.

Minnesota Supreme Court

No constitutional right to vote while serving felony sentence in community

- **Plain text:** Restoration is not automatic
  - Principles of constitutional interpretation are same as those for statutory interpretation
- **Historical support:** Constitutional convention and legislative enactments ("compelling clues")
- **Restoring voting rights requires an affirmative act or mechanism by the government**
  - Legislature has broad discretion over whether and when to restore rights; discretion is not a mandate

The section was read as follows:

"Sec. 8. No person shall be qualified to vote at any election who shall be convicted of treason —or any felony—or of voting, or attempting to vote, more than once at any election—or of procuring or inducing any person to vote illegally at any election; *Provided*, That the Governor or the Legislature may restore any such person to civil rights."

Mr. MORGAN. I move to strike out the whole section. I believe it is unusual, in this connection, to introduce such a section as this. I have never seen it in any other Constitution, and it certainly is a very sweeping piece of legislation, and a matter wholly within the province of the Legislature. This provision is certainly a very stringent one, and difficult of application, and in many cases would work great hardship.

The motion was not agreed to.

Mr. BUTLER. I move to amend by striking out the word "procuring," and inserting "voting."

The amendment was agreed to.

Mr. BALCOMBE. I move to strike out all after the word "felony."

Mr. COLBURN. I object to that, for the reason that it would cut off the power of the Legislature to restore civil rights to any person who may be convicted of violating the provisions of this section.

Mr. MORGAN. A pardon always restores a person to his legal civil rights.

Mr. COLBURN. That is usually the case

No equal protection violation

- **Similarly situated:** Regardless of sentence completion, all convicted of a felony

- **Standard of review:** Traditional, not heightened, rational basis
  - No evidence *statute* demonstrably and adversely affected one race differently than others (*Russell*)
  - Left open whether *Russell* applies to remedial statutes that expand rights

- **Rational basis:** Expanding voting rights in 1963 furthered rehabilitation

Remedy?

- Striking down statute would remove mechanism for restoring voting rights – is effective remedy possible even if statute were unconstitutional?

Other Opinions

- **Concurrence** (Justice Anderson, joined by Chief Justice Gildea)
  - Plaintiffs not similarly situated
  - Majority raised argument that parties didn’t (plaintiffs compared selves only to VAP)
- **Dissent** (Justice Hudson)
  - Should apply heightened rational basis to strike down statute
    - Similarly situated isn’t an element when applying heightened rational basis
    - Because legislature chose to act, responsible for disparate impact
  - Court would find remedy

2023 Epilogue

Voting rights restored to 50,000 under new Minnesota law

Dana Ferguson St. Paul March 3, 2023 1:41 PM

- February 15: Minnesota Supreme Court decision
- March 3: Governor signed bill changing law
  - 2023 Minn. Laws ch. 12, § 1, ch. 62, art. IV, §§ 10, 92.
- June 1: Eligible to vote when not incarcerated for a felony offense
  - Codified at Minn. Stat. § 201.014, subd. 2a.

Minnesota Voters Alliance v. Office of Minnesota Secretary of State, 990 N.W.2d 710 (Minn. 2023)

- Declaratory-judgment action alleging conflict between statute and rule:
  - Who can compare signatures when reviewing absentee ballots
  - What evidence may be considered in deciding whether voter signed ballot

- Minnesota Court of Appeals upheld rule. 2022 WL 3348641 (Minn. Ct. App. Aug. 15, 2022).

Voter Process

- Apply for ballot: provide identification number (driver's license, state i.d., SSN) and sign application
- Complete ballot and put it in signature envelope
- Complete signature envelope: provide identification number and sign oath

Ballot Board Review

Minn. Stat. § 203B.121, subd. 2

- Determine whether voter signed signature envelope
- Determine whether identification numbers on envelope and application match
- If number mismatch, compare signatures

Ballot board members = Election judges and deputy county auditors or city clerks

Minnesota Supreme Court

Key principles for determining whether administrative rule and statute conflict:

- Conflict if rule violates plain meaning of statute

  (1) Adds different requirement, or

  (2) Changes explicit terms of statute

- Will not find conflict through inference or legislative silence

- May conflict even if can comply with both (conflict-preemption analysis doesn't apply)

Signature-comparison duties

Minn. Stat. § 203B.121, subd. 2(b)(3)	Minn. R. 8210.2450, subp. 3
"If the number does not match, **the election judges must compare the signature** provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted"	"If the [identification] numbers do not match or the voter did not provide identification numbers on both documents, **the ballot board members must compare the signatures** on the absentee ballot application and on the signature envelope to determine whether the ballots were returned by the same person to whom they were transmitted."

Conflict

- Although can comply with both, rule changed terms of statute and technically permits something statute prohibits (no evidence that non-election judges were doing signature comparisons)

Reviewing and comparing signatures

Minn. Stat. § 203B.121, subd. 2(b)(2)	
Ballot board members mark signature envelope "accepted" if majority of members examining an envelope "are **satisfied that** . . . **the voter signed** the certification on the envelope"	
Minn. R. 8210.2450, subp. 2 ("voter signed")	**Minn. R. 8210.2450, subp. 3 (signature comparison)**
When deciding whether the voter signed the signature envelope, "**[u]se of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection.** . . . **A ballot must be rejected** under this subpart on the basis of the signature **if the name signed is clearly a different name** than the name of the voter as printed on the signature envelope. **This is the only circumstance under which a ballot may be rejected on the basis of signature** under this subpart."	If identification numbers do not match, ballot board members "must compare the signatures on the absentee ballot application and on the signature envelope to determine whether the ballots were returned by the same person to whom they were transmitted. **Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection.** . . ."

No conflict

- "The voter" means the person who is entitled to cast the ballot
- Statute doesn't give discretion to consider any evidence; won't find conflict through inference or legislative silence
- Subpart 2 only governs review under that subpart, not signature comparisons under subpart 3 (which are done *only* when identification numbers don't match per Minn. Stat. § 203B.121, subd. 2(b)(3))

Kranz v. City of Bloomington, 990 N.W.2d 695 (Minn. 2023)

<u>Background</u>: City council rejected as manifestly unconstitutional a citizen-initiated petition to amend the city charter to end ranked-choice voting (RCV).

Proposed Amendment	**State Law** (Minn. Const. art. XII, § 5; Minn. Stat. § 410.12, subds. 1, 4)
• To reinstate RCV, **two-thirds voters** must approve at a **regular municipal election** • Reinstated primary elections and empowered council to enact ordinances as necessary to regulate • Established filing deadlines for candidates	• Citizen-initiated charter amendments need **51%** of votes to pass at **general *or special* election**

<u>Lawsuit</u>: Petition under Minn. Stat. § 204B.44 to require city to either place amendment on ballot as proposed or to sever the disputed section.

- District court denied petition: Improper to sever because RCV provision was integral to purpose

Minnesota Supreme Court

Affirmed (on accelerated review)

- Duty to submit proposed amendments to voters unless manifestly unconstitutional
- No clear authority to sever pre-enactment (and declined to decide whether prior case authorized)
  - Even if authorized, this amendment failed to meet high bar;
  - Severance would deprive amendment its efficacy or strength (comparing original proposal with remainder); can't conclude voters who signed petition would still support as severed

Dissent (Justice Thiessen)

- Should presume charter amendments are severable; overcome presumption only if
  - (1) provisions are so dependent on each other that citizens would not have proposed the valid ones without the severed ones; and
  - (2) cannot independently execute remaining provisions
- Valid provisions here accomplish purpose of replacing RCV with primary and general elections

Growe v. Simon, 997 N.W.2d 81 (Minn. 2023)

(full opinion forthcoming)

- Section 204B.44 petition to declare potential presidential candidate ineligible to appear on 2024 ballots under section 3 of the Fourteenth Amendment

- **Petition dismissed**
  - Petitioners have standing
  - Claims are ripe as to primary election (March 2024), but not general election (November 2024)
  - No error to correct as to primary
    - Presidential primary is internal party election
    - Winning primary does not put person on general election ballot
    - State law doesn't prohibit party from putting ineligible candidate on primary ballot

- **Dismissal without prejudice as to later raising claims**

Employment & Tort Law

Janine Kimble

Cases we will cover

Henry v. Independent School District #625
(St. Paul Public Schools)

Johnson v. Freborg

McDeid v. Johnston

More briefly:

Maslowski v. Prospect Funding Partners LLC

Ringsred v. City of Duluth

Henry v. Independent School District #625, 988 N.W.2d 868 (Minn. 2023)

- Age-based employment discrimination claim under the Minnesota Human Rights Act
- Opinion authored by Justice Moore; concurrence/dissent written by Justice Anderson (joined by Gildea, C.J.)
- The court did three things:
  - First, it concluded the alleged actions were not sufficiently severe or pervasiveness to support a hostile work environment claim.
  - Second, it concluded there was a genuine issue of material fact as to whether the plaintiff had been constructively discharged.
  - Third, it rejected the court of appeals' adoption of the "cumulative effects" theory to prove the disparate treatment claim.

Henry (cont.)

- Procedural Posture
  - Plaintiff alleged that she suffered a hostile work environment and disparate treatment culminating in constructive discharge.
  - The district court granted summary judgment for the school district, because the Plaintiff "voluntarily resigned" her position without taking advantage of the District's anti-discrimination policy.
  - The court of appeals reversed summary judgment on the disparate treatment claim but affirmed summary judgment on the hostile work environment claim.

Henry (cont.)

- Facts
  - Plaintiff started working with the District in 1997.
  - In fall 2016, two new hires performed performance reviews and Plaintiff received a below standards review for the first time in her 19-year tenure.
    - November 2016: performance improvement plan.
    - Late November 2016: another below standards performance rating **and** a second performance improvement plan.
    - April 2017: follow-up performance review, which was below standards again.
    - May 2017: the Deputy Chief told Plaintiff he was considering terminating her employment for failing to meet the terms of the performance improvement plan. Plaintiff retired.
  - Discovery revelations regarding the Deputy Chief.

Henry (cont.)

- Applicable statute
  - An employer may not, because of age, discharge or discriminate against an employee. Minn. Stat. Section 363A.08, subd. 2(2)-(3).
  - Although the court may look to federal law interpreting Title VII, it does not bind Minnesota courts in interpreting the MHRA and historically, the MHRA has provided more expansive protections to Minnesotans then federal law. Citing *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222 (Minn. 2020).
- Holdings
  - First, no reasonable juror could conclude that the conduct was severe and pervasive.
  - Third, the Court declined to adopt a rule of law that would allow a plaintiff to prove constructive discharge based on "cumulative effects."

Henry (cont.)

- Second holding regarding disparate treatment claim
  - Plaintiff presented sufficient evidence that she suffered an adverse employment action—constructive discharge.
  - To show constructive discharge, the plaintiff must show
    - (1) objectively intolerable working conditions that are
    - (2) created by the employer with the intention of forcing the employee to quit.
  - The test is objective
    - =/= what is required for a hostile work environment
    - The handwriting is on the wall and the axe is about to fall.
  - The Plaintiff must show employer-intent
    - Plaintiff is not required to show that she informed the employer.
    - Plaintiff does not need to show employer's actions were motivated by discrimination.

Henry (cont.)

- Here, the Court pointed to several pieces of evidence that the employer's intent was to force Plaintiff to quit.
  - The Court focused on 8 items
- The Court noted that placing an employee on a performance improvement plan—alone—does not establish de facto grounds for a constructive discharge claim, when the performance improvement plan is reasonable or minimally onerous.
- Concurrence/dissent (Anderson, J.; joined by Gildea, C.J.)
  - Disagreed that Plaintiff pleaded anything other than a hostile work environment claim.

Johnson v. Freborg, 995 N.W.2d 374 (Minn. 2023)

- This was a defamation case where the Court decided whether a statement in a Facebook post was about a matter of public concern.
- Opinion authored by Justice Chutich; dissent was written by Chief Justice Gildea (joined by Anderson & Hudson, JJ.)
- The Court concluded the "overall thrust and dominant theme of [the] post—based on its content, form, and context—involved a matter of public concern, namely, sexual assault in the context of the #MeToo movement."
  - Therefore, the statement is entitled to heightened protection under the First Amendment. As such, plaintiff must show the defendant's speech was not only false, but also made with actual malice.

Johnson (cont.)

- Procedural history
  - Johnson, a private figure, brought a defamation claim against Freborg after a post on Freborg's Facebook page accused Johnson and two other dance instructors from the Twin Cities dance community of varying degrees of sexual assault.
  - The district court granted defendant's motion for summary judgment, concluding the statement was true and, alternatively, that it involved a matter of pu8blic concern and plaintiff had not shown actual malice.
  - The court of appeals reversed, concluding that there were fact issues regarding whether the statement was true or false. The court also concluded the statement was a matter of private concern.

Johnson (cont.)

Kaija Rae

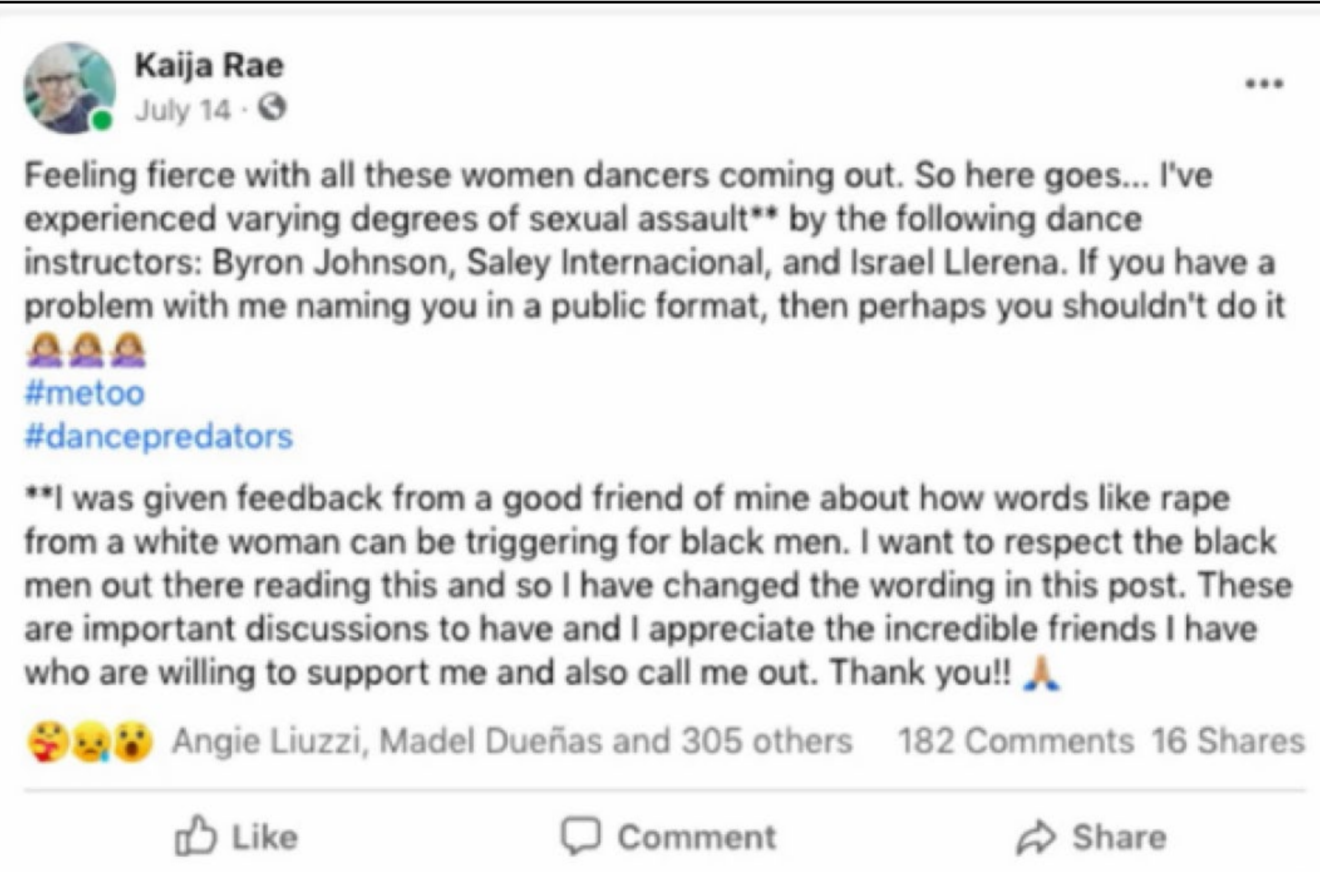
8m ·

Feeling fierce with all these women dancers coming out. So here goes...I've been gaslighted/ coerced into having sex, sexual assaulted, and/or raped by the following dance instructors: Byron Johnson, @Saley Internacional, and @Israel Llerena. If you have a problem with me naming you in a public format, than perhaps you shouldn't do it

#metoo
#dancepredators

6 2 Comments

Johnson (cont.)


Kaija Rae
July 14 ·

Feeling fierce with all these women dancers coming out. So here goes... I've experienced varying degrees of sexual assault** by the following dance instructors: Byron Johnson, Saley Internacional, and Israel Llerena. If you have a problem with me naming you in a public format, then perhaps you shouldn't do it 🙅🏼‍♀️🙅🏼‍♀️🙅🏼‍♀️
#metoo
#dancepredators

**I was given feedback from a good friend of mine about how words like rape from a white woman can be triggering for black men. I want to respect the black men out there reading this and so I have changed the wording in this post. These are important discussions to have and I appreciate the incredible friends I have who are willing to support me and also call me out. Thank you!! 🙏🏽

Johnson (cont.)

- Facts
  - The Defendant explained that she “did this for the safety of other women.”
  - The post was public. Over 300 people reacted to her posts, 182 readers commented on them, and they were shared 16 times.
  - About 2 weeks after the original post was published, the defendant deactivated her Facebook account.
  - The Defendant presented evidence about the MeToo movement.

Johnson (cont.)

- Legal background
  - Elements of a defamation claim: defendant (1) made a false and defamatory statement about the plaintiff, (2) in an unprivileged publication to a third party; (3) that harmed the plaintiff's reputation in the community.
    - Defamation per se
    - The Court cannot chill speech on matters of public concern "which occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection."
    - A private plaintiff cannot recover presumed damages for defamatory statements involving a matter of public concern unless the plaintiff can establish actual malice.
    - Actual malice = a statement made with the knowledge that it was false or with reckless disregard of whether it was false or not
  - Generally, speaking about domestic violence is a matter of public concern. *See Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 881 (Minn. 2019).

Johnson (cont.)

- Test:
  - On a case-by-case basis, the court must apply the totality of the circumstances test and balance the **content, form, and context** of the speech, as well as any other pertinent factors, to determine whether speech involves a purely private matter or is a statement about a matter of public concern intended to influence public discussion about desired political or social change.
- Holding
  - Although some of the speech involved personal aspects "the predominant theme of [defendant's] speech involved a matter of public concern, namely sexual assault in the context of the #metoo movement."
    - Content
    - Form—the "where"
    - Context—the "how"
  - How much will this standard affect the outcome in this case?

Johnson (cont.)

- Dissent (Gildea, C.J.; joined by Anderson & Hudson, JJ)
  - The Facebook posts were personal.
  - A matter of public concern is citizen commentary on the performance of their government. There must be some connection between the speech and principles of a successful democracy. To receive heightened First Amendment protection, the speech must relate to self-government.
  - In the dissent’s view, the Court’s rule means adding a hashtag means the speech is a matter of public concern.
    - The Court stated the use of a hashtag was not dispositive.
  - False accusations. (e.g., the Tulsa Race Riot, the Scottsboro Boys)
    - The Court observed that false accusations are rare.

McDeid v. Johnston, 984 N.W.2d 864 (Minn. 2023)

- This case involves two individuals civilly committed to the Minnesota Sex Offender Program who received orders from the Commitment Appeal Panel finding them appropriate to be moved to a non-secure setting. The moves did not occur for over two years.
- The question in this case was about qualified immunity only. The Court held that the right to transfer to Community Preparation Services within a "reasonable amount of time" of the CAP order was, as a matter of state law, clearly established when the CAP orders in this case were issued.
- Opinion was written by Justice Thissen.

McDeid (cont.)

- Procedural history:
  - The district court concluded that no statute nor the CAP orders nor any precedent stated when a person must be moved after issuance of a CAP order.
- Background legal framework
  - Qualified immunity: (1) violation of a statutory or constitutional right; (2) whether the right was clearly established at the time of the alleged violation.
    - This opinion is about the second element only.
    - Sufficient level of particularity / sufficiently detailed / controlling authority or robust consensus
    - Where cases are less fact-bound, and decisions do not need to be made quickly in a fluid situation, the law requires some but not precise correspondence with precedents. Officials must follow general, well-developed legal principles.
  - The statute here says no CAP order granting transfer "shall be made effective sooner than 15 days after it is issued." The Court interpreted the CAP order as mandatory if it is not appealed, 15 days after issuance.
  - The Court cited 8th Circuit authority that it is not lawful to disobey a final and nonappealable court order.

McDeid (cont.)

The Court ruled that the statute stating "a civilly committed sex offender may be placed in [CPS] only upon an order of the [CAP]" did not make the order something other than mandatory.

The Court did not decide whether in this case the transfers were in a reasonable amount of time, instead holding that "[w]hat amount of time is reasonable in any given set of circumstances is an issue of fact to be determined by the district court."

On remand…

Maslowski v. Prospect Funding Partners LLC, 994 N.W.2d 293 (Minn. 2023)

Prospect Funding sought enforcement of a litigation financing agreement.

Opinion by Justice McKeig; concurrence by Justice Moore (joined by Hudson & Chutich, JJ.)

Earlier appeal in this case.

The Court concluded that the usury rate did not apply.

- The agreement is contingent.

And the repurchase rate began to accrue pursuant to the terms of the agreement, not when the Court abolished champerty.

The agreement is still subject to the common law defense of unconscionability.

The Court and concurrence invited the Legislature to regulate the area.

Ringsred v. City of Duluth, 995 N.W.2d 146 (Minn. 2023)

- This case is about tolling of the statute of limitations of a First Amendment retaliation claim.
- The opinion was authored by Chief Justice Gildea.
- The Court held that because the complaint alleged discrete acts of retaliation that do not constitute a continuing violation, the continuing violation theory did not apply to toll the statute of limitations—even if that principle could apply in such a case.
  - The Court has previously adopted this rule in only two contexts.
  - The Court declined to adopt (or reject) it in First Amendment retaliation cases, stating that even if it could apply, it doesn't in this case.
  - The Complaint described events beginning in 1996 and several alleged retaliatory actions by the City.
  - Legal conclusion in Complaint not given weight.

Practice, Procedure, Justiciability

Brandon Boese

Overview

1

Mootness doctrine

2

Hip-pocket service

3

Initiating appellate review under MAPA

Exceptions to the Mootness Doctrine

Capable of repetition yet evading review

Functionally justiciable

Collateral consequences

Snell v. Walz, 985 N.W.2d 277 (Minn. 2023)

- Challenge to Governor's mask mandate and authority to declare peacetime emergency
- Mask mandate and peacetime emergency ended while appeal was pending

Snell v. Walz, 985 N.W.2d 277 (Minn. 2023)

1.

Is issue of Governor's authority to declare peacetime emergency in response to a public health crisis functionally justiciable?

YES

"[T]his important legal question should be decided now so that any lack of clarity can be settled before it is necessary for a governor to invoke the Act again."

2.

Is issue of statewide mask mandate functionally justiciable?

NO

"Any future statewide mask mandate would likely have different terms and exclusions that might address the . . . challenges raised here by [Plaintiff]."

Snell v. Walz, 985 N.W.2d 277 (Minn. 2023)

3.

Is issue of statewide mask mandate capable of repetition yet evading review?

NO

"[Plaintiff] offers only speculation about another COVID-19 resurgence . . . ."

4.

Does the voluntary cessation exception apply to the statewide mask mandate?

NO, but adopts exception

The defendant "bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur."

Post-*Snell* Exceptions to the Mootness Doctrine

Capable of repetition yet evading review

Functionally justiciable

Collateral consequences

Voluntary cessation

Hip-Pocket Service

Minn. R. Civ. P. 3.01

"A civil action is commenced against each defendant . . . when the summons is served upon that defendant . . . ."

Minn. R. Civ. P. 5.04(a)

"Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties . . . ."

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

- **June 11, 2019**
- Oct. 22, 2019
- Jan. 30, 2020
- Feb. 26, 2021
- Mar. 3, 2021

Glen Edin serves summons and complaint

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

Oct. 22, 2019

Jan. 30, 2020

Feb. 26, 2021

Mar. 3, 2021

Glen Edin files motion to appoint neutral umpire for appraisal, and attaches summons and complaint as exhibit to affidavit in support

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

- June 11, 2019
- Oct. 22, 2019
- **Jan. 30, 2020**
- Feb. 26, 2021
- Mar. 3, 2021

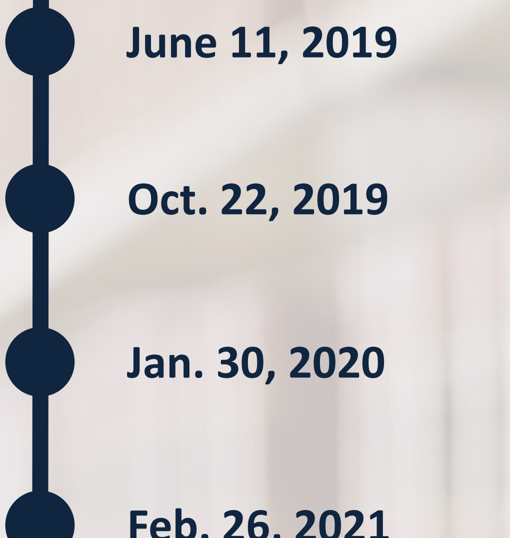
Hiscox files answer to Glen Edin's complaint in same court proceeding

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

- June 11, 2019
- Oct. 22, 2019
- Jan. 30, 2020
- **Feb. 26, 2021**
- Mar. 3, 2021

Hiscox notifies Glen Edin it failed to file complaint within one year of service

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)



Glen Edin files summons and complaint

Glen Edin of Edinburgh Ass’n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

District court dismisses case

Court of Appeals reverses

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

Issue 1: Is filing an answer sufficient to meet Rule 5.04(a)'s filing requirement?

Majority: Hudson (author), Gildea, Thissen, Anderson

"[T]he complaint (and summons, per Rule 3.01) is the 'action' that must be filed [under Rule 5.04(a)]."

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

Issue 1: Is filing an answer sufficient to meet Rule 5.04(a)'s filing requirement?

Dissent: Chutich (author), McKeig, Moore

"[A] broader interpretation of 'action' under Rule 5.04(a) to include more than the 'single act' of filing a complaint is consistent with our precedent and with legislative thought."

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

Issue 2: Do the summons and complaint need to be filed as standalone documents under Rule 5.04(a)?

Majority: Chutich (author), McKeig, Moore, Anderson

"[N]othing in the text of Rule 5.04(a) suggests that filing the summons and complaint must be in standalone form; indeed, the rule broadly states only that the action must be 'filed with the court within one year of commencement' without any specific reference to form."

Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co., 992 N.W.2d 393 (Minn. 2023)

Issue 2: Do the summons and complaint need to be filed as standalone documents under Rule 5.04(a)?

Dissent: Hudson (author), Gildea, Thissen

The majority's holding "undermines the text and policy objectives of Rule 5.04(a)."

In re Polymet Mining Inc., 991 N.W.2d 867 (Minn. 2023)

Environmental advocacy organizations sought appellate review under MAPA of mining permit

Minn. Stat. §§ 14.63 and 14.64 require service of appellate papers on “all parties”

Appellants served required documents on Respondent’s CEO and registered agent (but not counsel of record)

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In re Polymet Mining Inc., 991 N.W.2d 867 (Minn. 2023)

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of

Issue: Is service of the party directly, even if represented by counsel, sufficient to involve appellate jurisdiction under MAPA?

Holding: Yes

"To invoke appellate jurisdiction under [MAPA], a petitioner may effectuate service on 'parties to the contested case' . . . By serving those parties directly, whether or not they are represented by counsel"

Environmental & Property Law

Pete Farrell

PolyMet 4

PolyMet 4

In re Denial of Contested Case Hearing Requests, 993 N.W. 627 (Minn. 2023) (aka "PolyMet 4")

- Fourth PolyMet-related case to reach the Supreme Court.
- Concerned MPCA's decision to issue a water quality permit.
- This permit would regulate the mine's discharges of wastewater.

PolyMet 4

what are other words for irregularities?

flaw, inconsistency, distortion, malfunction, abnormality, anomaly, violation, breach, infringement, crime

Thesaurus.plus

- Court of appeals transferred case to Ramsey County District Court for evidentiary hearing on “alleged irregularities” in procedure.
  - Minn. Stat. § 14.68.
- Core allegation: MPCA suppressed comments from EPA that were critical of the draft permit to avoid bad publicity.

PolyMet 4

District Court

- Found that MPCA primarily wanted EPA to delay written comments to avoid bad press
- But not a “procedural irregularity” because “there is no statute, rule, regulation, or other formally adopted policy that prohibits MPCA from asking the EPA to delay an optional course of action.

Court of Appeals

- Don’t need to get into the “procedural irregularity” mess because MAPA only cares about “unlawful procedure[s].”
  - Minn. Stat. § 14.69(c).
- But what really matters is lack of prejudice: at the end of the day, everyone had the opportunity to comment on the draft permit, including EPA.

PolyMet 4

- **Supreme Court**: reversed and remanded to the agency.

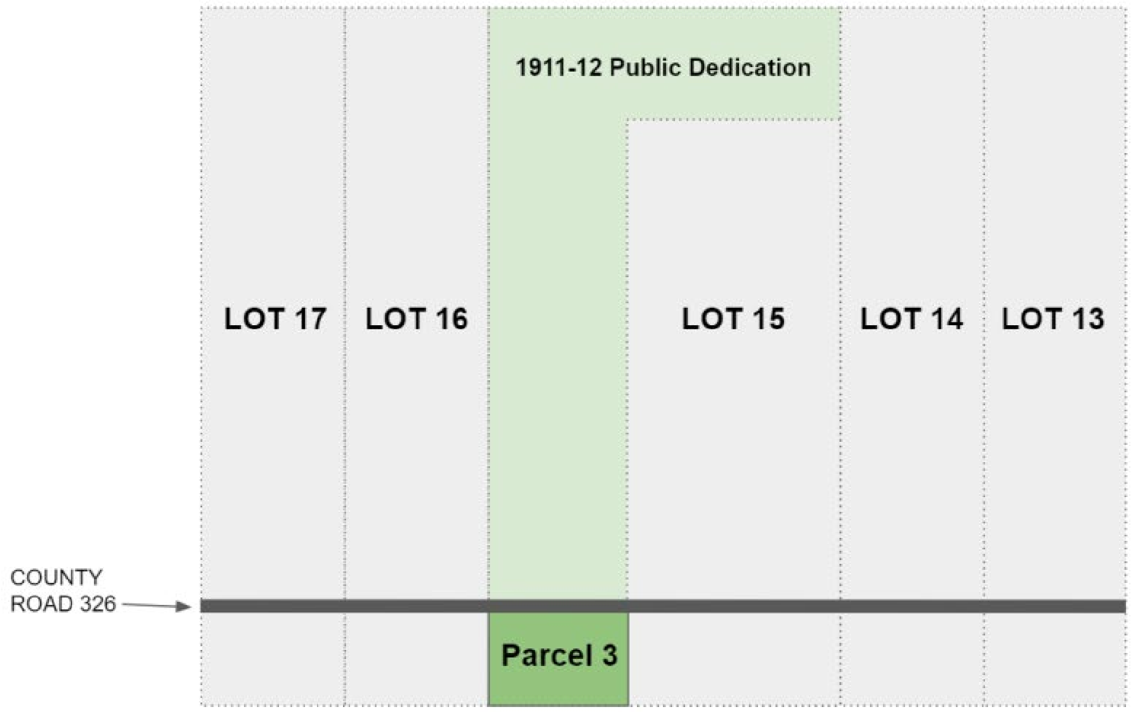
KEY LEGAL PRINCIPLES
Procedural irregularities include "any agency procedure" that thwarts the purposes of MAPA: agency oversight, public accountability, and public access. • The challenged procedures don't have to violate a written law or rule. • The challenged procedures don't have to be unlawful.
Procedural irregularities can be "danger signal" of arbitrary or capricious decision-making.
Only need to show a "probability or possibility" of prejudice.

PolyMet 4

KEY HOLDINGS
Combination of danger signals in permitting process rendered the permit arbitrary or capricious.
No ruling on the merits of challenges to permit because procedural irregularities rendered the record inadequate.
Limited remand to MPCA to reopen EPA comment period and resolve EPA concerns on draft permit.
Permit also violated groundwater rule that prohibits discharge to unsaturated zone; additional remand to consider whether variance is available.

Public Waters

In re Application of Moratzka, 988 N.W.2d 42 (Minn. 2023)



- Technical issue:
  - Whether the Marketable Title Act operates to extinguish platted roads and lake accesses.
- But potentially broad impact:
  - Thousands and thousands of platted roads and lake accesses across the state

Public Waters

- The Marketable Title Act does not apply to public interests dedicated by plat.
- Statute was ambiguous.
- But better interpretation was that it didn't extend to plats.
  - Purpose of MTA
  - Consequences
  - Strong public interest in access to public waters

Grab Bag

CASE	HOLDING
Wood v. Cnty. of Blue Earth, 994 N.W.2d 309 (Minn. 2023)	• Landowners did not have right of access to a newly constructed control-access highway, so Blue Earth County did not owe just compensation to the landowners because no taking occurred.
Wilmington Tr. v. 700 Hennepin Holdings LLC, 988 N.W.2d 895 (Minn. 2023)	• Under the Minnesota Receivership Act, a receiver steps into the shoes of the person over whose property the receiver is appointed. • When that person is a landlord, the receiver succeeds to the landlord's rights and duties under a lease agreement and is bound by an arbitration provision in that agreement.
Windcliff Ass'n v. Breyfogle, 988 N.W.2d 911 (Minn. 2023)	• An ambiguous restrictive land use covenant is a question for a jury unless extrinsic evidence proffered by the parties is conclusive as to the covenanting parties' intent. • The jury should only strictly construe an ambiguity in a restrictive covenant against the land use restriction if the jury is unable to resolve the ambiguity from the extrinsic evidence by a preponderance of the evidence.

Criminal Law

Zuri Balmakund Santiago

State v. Tate, 985 N.W.2d 291 (Minn. 2023)

Facts

- Defendant was charged with 3rd Degree Sale of a Controlled Substance.
- The District Court allowed one of the State's five witnesses to testify live via Zoom after the witness was exposed to COVID-19 and forced to quarantine.
- Following a guilty verdict, Defendant challenged her conviction, arguing that her constitutional right to confrontation was violated by the Zoom witness' testimony.

Issue

- Whether the use of remote video technology for a witness' testimony during the COVID-19 pandemic violated Defendant's right to confrontation?

Held

- No. Defendant's rights under the Confrontation Clause were not jeopardized by a witness' live virtual testimony.

State v. Tate, 985 N.W.2d 291 (Minn. 2023)

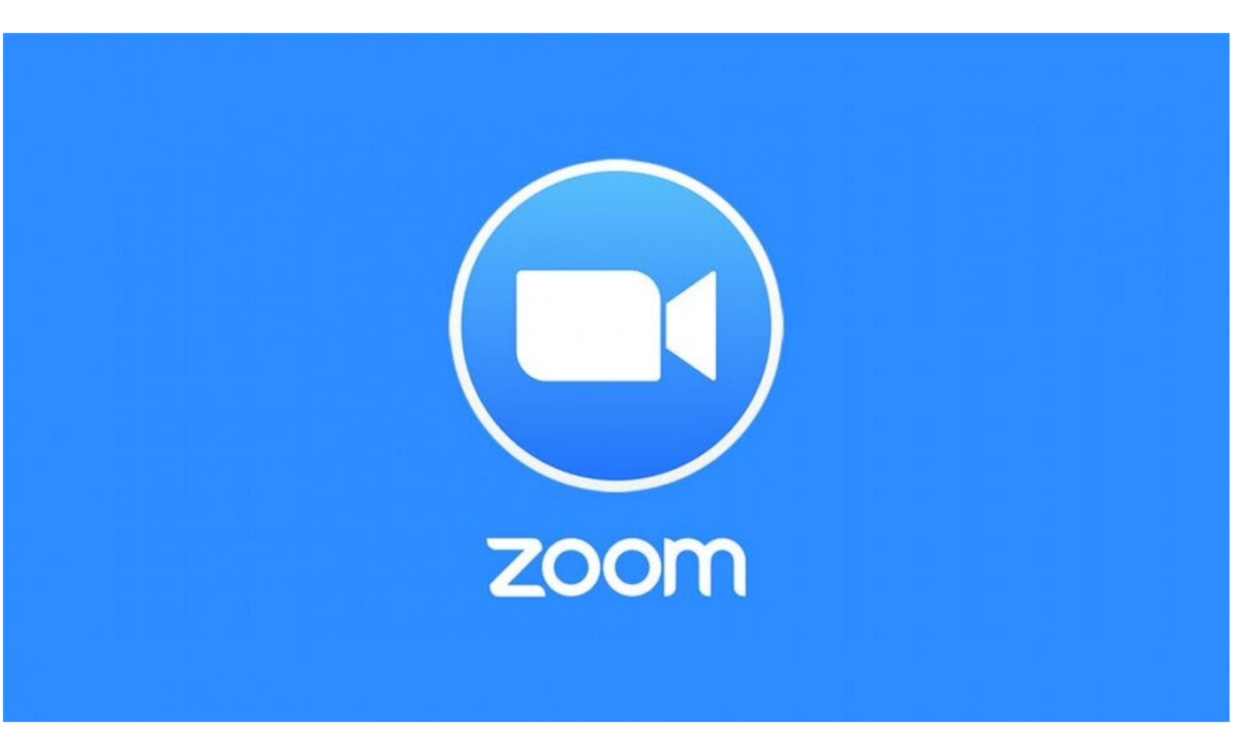
Highlights

- "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. Const. amend. VI; Minn. Const. art. I, § 6.
- To reach its holding, the Court applied the test identified in *Maryland v. Craig*, 497 U.S. 836 (1990). Defendant's right to confrontation is satisfied, where:
  - (1) Denial was necessary to further an important public interest; and
  - (2) The reliability of the testimony is assured.
- Basis for Holding: Because: (1) the circumstances surrounding the witness' testimony necessitated the use of remote testimony; and (2) the testimony was sufficiently trustworthy, upon which the jury to rely, the Court had discretion to permit the use of Zoom for the witness' testimony.

State v. Tate, 985 N.W.2d 291 (Minn. 2023)

Big Picture

- The right to personally confront a witness is not absolute. *Coy v. Iowa*, 487 U.S. 1012 (1988).
- Holding allows for cases to move forward to resolution in a post-pandemic world.
- So long as the circumstances require the use of remote testimony and the testimony has indicia of sufficient reliability, this litigation tool may be explored in future cases.



State v. Torgerson, 995 N.W.2d 164 (Minn. 2023)

Facts

- On July 5, 2021, just before 10 p.m., a Litchfield Police Officer stopped a vehicle because the light bar mounted on the vehicle's grill had more auxiliary driving lights than permitted by Minnesota statute.
- Based on the odor of marijuana perceived after the stop, the officer and his partner searched the vehicle.
- Defendant was charged with Possession of Methamphetamine Paraphernalia in the Presence of a Minor and 5th Degree Possession of a Controlled Substance.

Issue

- Whether the odor of marijuana is a sufficient standalone basis for the warrantless search of a vehicle?

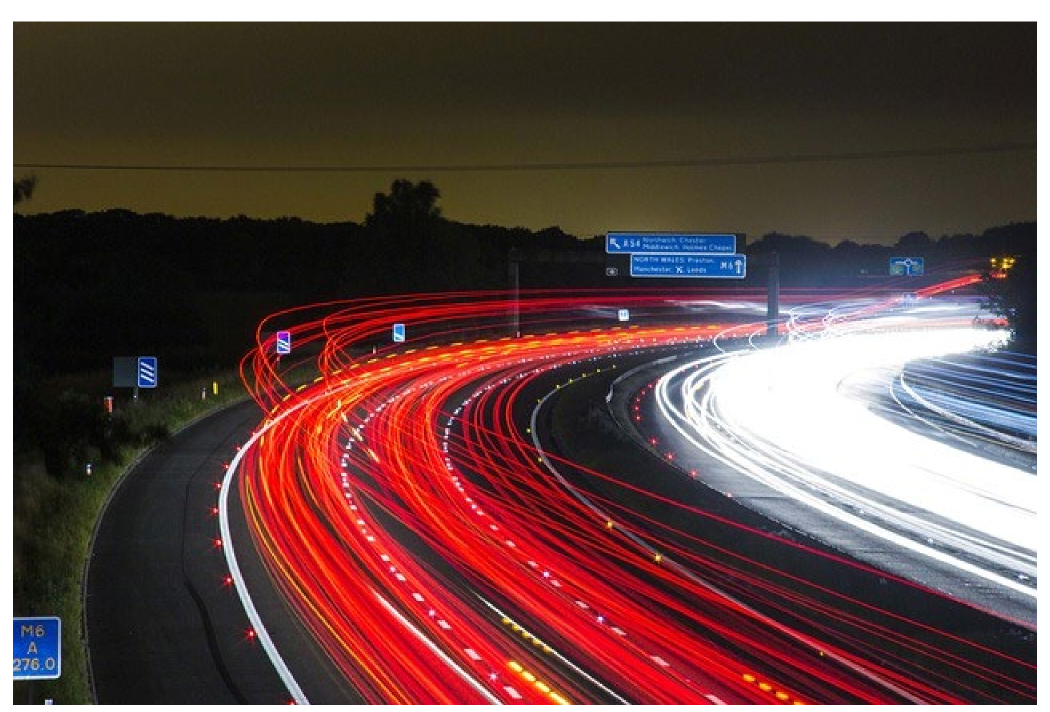
Held

- No. The odor of marijuana alone is insufficient to create probable cause to search a vehicle under the automobile exception to the warrant requirement.

State v. Torgerson, 995 N.W.2d 164 (Minn. 2023)

Highlights

- A well-delineated exception to a search warrant is the automobile exception, which permits officers to search a vehicle without a warrant where there is probable cause to believe that the search will result in the discovery of evidence or contraband.
- The Court disagreed with the State's position that the smell of marijuana alone has historically been sufficient to establish probable cause to search a vehicle without a warrant.
- The Court supported its reasoning by drawing analogy to odor of alcohol caselaw; which similarly, did not independently support a warrantless search of a vehicle.



State v. Torgerson, 995 N.W.2d 164 (Minn. 2023)

Big Picture

- “The State essentially asks us to create a bright-line rule by holding that the odor of marijuana emanating from a vehicle, on its own, will always create the requisite probable cause to search a vehicle. Our precedent, however, shows that we have shied away from bright-line rules regarding probable cause and we have never held that the odor of marijuana (or any other substance), alone, is sufficient to create the requisite probable cause to search a vehicle.”
- The odor of marijuana is one of the circumstances in the totality of circumstances analysis that should be considered in determining probable cause.

State v. Stone, 995 N.W.2d 617 (Minn. 2023)

Facts

- Law enforcement found a disassembled 20-gauge shotgun in a backpack belonging to a Defendant, who was ineligible to possess a firearm because he was previously convicted of a crime of violence.
- Defendant was charged with Possession of a Firearm by an Ineligible Person.

Issue

- Whether shotgun parts, including a stock, receiver, and two barrels are sufficient to establish possession of a firearm?

Held

- Yes. A disassembled and incomplete shotgun is sufficient to establish possession of a firearm.

State v. Stone, 995 N.W.2d 617 (Minn. 2023)

Highlights

- This case rested on the Court's statutory interpretation.
- A disassembled and incomplete shotgun meets the plain language definition of a firearm: "any person who … ships, transports, possesses or receives a firearm ... commits a felony. Minn. Stat. § 609.165, subd. 1b(a).
- In applying a "plain meaning" analysis, the Court concluded that a "firearm" is a weapon by design, and its operability or completeness is irrelevant.

State v. Stone, 995 N.W.2d 617 (Minn. 2023)

<u>**Big Picture**</u>

- The Court's interpretation of the statute criminalizes the *possession* versus the *use* of the weapon.
- Operability of a weapon is a not a defense to a charge for Possession of a Firearm by an Ineligible Person.
- A dissembled clarinet is still a clarinet.

Douglas v. State, 986 N.W.2d 705 (Minn. 2023)

Facts

- Defendant in this case was accused of folding aluminum foil around anti-theft security sensors on unpurchased retail merchandise to evade detection by the retail store's electronic article surveillance system.
- The State charged Defendant with Possession of Shoplifting Gear and a jury found her guilty.

Issue

- Whether aluminum foil can be characterized as shoplifting gear?

Held

- Yes. Any instrument designed to shoplift, defeat electronic surveillance, or adapted to assist in either action is considered shoplifting gear. Accordingly, aluminum foil, under this fact pattern meets the definition.

Douglas v. State, 986 N.W.2d 705 (Minn. 2023)

Highlights

- This is another case resolved by the Court's statutory interpretation of the plain meaning of the term "shoplifting gear."
- The Court held that under the plain language of the possession of shoplifting gear statute, an "instrument designed to assist in shoplifting or defeating an electronic article surveillance system" means any item produced with special intentional adaptation to assist the defendant in shoplifting or defeating an electronic article surveillance system. Minn. Stat. § 609.521(b).

Douglas v. State, 986 N.W.2d 705 (Minn. 2023)

Big Picture

- Everyday items can be branded as shoplifting gear where the item is adapted to assist in shoplifting.
- A shoplifting device is identified by its adaptation and not its original intended purpose.
- This interpretation of shoplifting gear could potentially change the landscape of theft prosecutions.

THANK YOU!

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