



**Minnesota Court of Appeals**

**Significant Decisions**

**September 2016-August 2017**

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## PART I – CIVIL CASES

### Administrative Law

***In re Application for Licensure of Griepentrog*, 888 N.W.2d 478 (Minn. App. Dec. 12, 2016) (A16-0090).**

The supervision requirement of Minnesota Statutes section 146B.03, subdivision 4(4) (2014), which requires 200 hours of supervision by a licensed Minnesota body-art technician for occupational licensing as a body-art technician in Minnesota, is not unconstitutional on the grounds that it unlawfully delegates legislative power, violates principles of equal protection, or violates the Dormant Commerce Clause.

***Partners in Nutrition’s Appeal*, 896 N.W.2d 564 (Minn. App. May 15, 2017), *pet. for review filed* (Minn. Aug. 30, 2017) (A16-1422).**

A state agency charged with administering federal regulations proceeds under an erroneous theory of the law when it substitutes its own legal standards for those expressly stated in the federal regulations.

***State v. Eide*, 898 N.W.2d 290 (Minn. App. May 30, 2017) (A16-1373).**

Because the Metropolitan Airports Commission is not a “governmental subdivision” or any of the other identified entities preempted from regulating firearms under Minnesota Statutes section 417.633 (2016), the legislature has not preempted the commission from prohibiting the undisclosed placement of firearms through airport security-checkpoint screening equipment.

***W. McDonald Lake Ass’n v. Minn. Dep’t of Nat. Res.*, 899 N.W.2d 832, (Minn. App. June 19, 2017), *pet. for review filed* (Minn. July 19, 2017), (A16-1469).**

The federal water-transfer rule, 40 C.F.R. § 122.3(i) (2015), is not an exemption incorporated by reference in Minnesota’s National Pollutant Discharge Elimination System (NPDES) program, pursuant to Minn. R. 7001.1030 (2015). Therefore, the federal water-transfer rule does not apply in Minnesota.

### Appellate Procedure & Review

***Cruz-Guzman v. State*, 892 N.W.2d 533 (Minn. App. Mar. 13, 2017), *review granted* (Minn. Apr. 26, 2017) (A16-1265).**

Claims based on a purported right to an education of a certain quality under the Education Clause, article XIII, section 1, of the Minnesota Constitution, are not justiciable.

***Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360 (Minn. App. Mar. 20, 2017), review granted (Minn. June 20, 2017) (A16-0855).**

(See page 3 for additional syllabus point for this case.)

1. Denial of a motion for summary judgment arguing that a party has not pleaded fraud with sufficient particularity under Minn. R. Civ. P. 9.02 is not within an appellate court's scope of review after a trial has been held and the parties have been given a full and fair opportunity to litigate their claims.

***Johnson v. Princeton Pub. Utils. Comm'n*, 899 N.W.2d 860, (Minn. App. July 10, 2017) (A16-1737).**

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

II. When this court decides an issue and indicates in its opinion that it intends the decision to be final, a district court, on remand, may not reconsider that issue.

## **Civil Procedure**

***Kelbro Co. v. Vinny's on the River, LLC*, 893 N.W.2d 390 (Minn. App. Mar. 13, 2017) (A16-0548).**

I. Minnesota Rule of Civil Procedure 15.02 does not authorize the amendment of a pleading to add a party over the proposed party's objection.

II. If a pleading is amended to add an adverse party after judgment has been entered on the claims asserted in the pleading, the new party must have an opportunity to contest its liability on the claims before the party may be added as a judgment debtor.

***Ernster v. Scheele*, 895 N.W.2d 262 (Minn. App. Apr. 17, 2017) (A16-1169).**

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

II. When an offer of judgment under Minn. R. Civ. P. 68.01 is not accepted and a defendant-offeror makes another offer of judgment, the earlier offer of judgment is repealed, and the later offer takes the place of the earlier offer.

***Cornell v. Ripka*, 897 N.W.2d 801 (Minn. App. May 15, 2017) (A16-1742).**

1. After an action has been deemed dismissed with prejudice under Minn. R. Civ. P. 5.04, it is no longer subject to voluntary dismissal without prejudice under Minn. R. Civ. P. 41.01(a).

2. When considering a motion to vacate a judgment under Minn. R. Civ. P. 60.02, substantial prejudice to the opponent must be measured from the time the judgment was entered.

***Kokosh v. \$4657.00 U.S. Currency*, 898 N.W.2d 284 (Minn. App. May 22, 2017), review denied (Minn. Aug. 8, 2017) (A16-1229).**

Service of a demand for judicial determination of administrative forfeiture under Minn. Stat. § 609.5314, subd. 3 (2016), requires that a complaint be served on the opposing party in accordance with Minnesota Rule of Civil Procedure 4 and electronic service is not effective absent consent by the opposing party.

***All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, (Minn. App. July 3, 2017) (A16-1780).**

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

II. Offensive collateral estoppel may be applied in an action to pierce the corporate veil where required factors are satisfied and its application is fair.

### **Contracts**

***State v. Minn. Sch. of Bus.*, 885 N.W.2d 512 (Minn. App. Sept. 12, 2016), rev'd (Minn. July 26, 2017) (A16-0239).**

I. Minnesota Statutes section 334.16 (2014) adopts the definitions and provisions of the federal Truth in Lending Act and Regulation Z that were in effect on June 5, 1971, but it does not adopt any subsequent amendments to them.

II. Minnesota Statutes section 56.01(a) (2014) does not require a lender engaged in the business of making loans under \$100,000 to obtain a license unless the interest rate the lender charges is greater than the rate otherwise permitted by law.

***Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360 (Minn. App. Mar. 20, 2017), review granted (Minn. June 20, 2017) (A16-0855).**

(See page 2 for additional syllabus point for this case.)

2. A merchant's fraudulent misrepresentation about the condition, value, quality, or fitness of the goods for any purpose is a "circumstance" under Minn. Stat. § 336.2-316(3)(a) (2016) that may invalidate a warranty disclaimer.

***Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115 (Minn. App. Apr. 10, 2017), review granted (Minn. June 28, 2017) (A16-1146).**

When determining the meaning of ambiguous terms in a non-adhesion contract, a factfinder may construe such ambiguous terms against the contract drafter only if the mutual intent of the parties cannot be determined from the evidence.

***Glacial Plains Coop. v. Chippewa Valley Ethanol Co.*, 897 N.W.2d 834 (Minn. App. June 12, 2017), review granted (Minn. Aug. 22, 2017) (A16-1626).**

1. When the language of a contract reflects the parties' intent to create a contract of perpetual duration, the contract is not subject to the general rule that contracts of indefinite duration are terminable at will.

2. A district court does not abuse its discretion by granting specific performance of a services contract when the district court finds that the value of the nonbreaching party's expectancy under the contract cannot be correctly estimated and that specific performance is the only fair remedy.

***Capistrant v. Lifetouch Nat'l Sch. Studios, Inc.*, 899 N.W.2d 844, (Minn. App. July 3, 2017), pet. for review filed (Minn. Aug. 2, 2017) (A16-1829).**

When an employer's duty in an employment contract to pay an employee a non-compete fee is triggered by a condition precedent, the non-occurrence of the condition will be excused if enforcement results in a disproportionate forfeiture and if the time frame for the employee to fulfill the condition is not a material part of the contract.

### **Environmental Law**

***In re Hibbing Taconite Mine & Stockpile Progression*, 888 N.W.2d 336 (Minn. App. Dec. 5, 2016) (A16-0363).**

The authority of the commissioner of natural resources, under Minnesota Statutes section 103G.222 (2014), to approve wetlands replacement for activities requiring a permit to mine does not include the authority to approve the reservation of wetland credits for future use by a permit-to-mine applicant without deposit into the state wetlands bank.

### **Family Law**

***Baertsch v. Baertsch*, 886 N.W.2d 235 (Minn. App. Oct. 11, 2016) (A16-1279).**

Conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2014), may be awarded against any party "who unreasonably contributes to the length or expense" of family-law proceedings under Minnesota Statutes chapters 518 and 518A. Because conduct-based fees may be awarded against a party who ultimately prevails on the merits of the claims, this category of fees is a separate claim, rather than a collateral matter analogous to costs or sanctions. Therefore, a district court's postdecree order that does not fully determine a motion for conduct-based attorney fees is not final and immediately appealable.

***Tornstrom v. Tornstrom*, 887 N.W.2d 680 (Minn. App. Nov. 21, 2016), review denied (Minn. Feb. 14, 2017) (A16-0209).**

1. A husband and wife consent to a mediated settlement agreement under Minn. Stat. § 518.619, subd. 7 (2014), and agree that it will be submitted to and enforced by the district court before it is reduced to a signed marital-termination agreement (MTA) by orally recording the terms of the settlement and acknowledging their intent to form a binding agreement.

2. The terms of a mediated settlement agreement may be incorporated into a dissolution judgment and decree and enforced by the district court where the parties had a meeting of the minds on its essential terms and the agreement was supported by consideration.

***Kremer v. Kremer*, 889 N.W.2d 41 (Minn. App. Jan. 9, 2017), review granted (Minn. Mar. 28, 2017) (A15-2006).**

The procedural fairness of an antenuptial agreement that covers or includes marital property is assessed under the common law, using the multifactor test outlined in *In re Estate of Kinney*, 733 N.W.2d 118 (Minn. 2007).

***In re Welfare of Children of N.L.*, 889 N.W.2d 803 (Minn. App. Jan. 17, 2017) (A16-1828).**

A district court's amended final order in a juvenile-protection proceeding is independently appealable, if the amended order is filed within the 20-day period under Minn. R. Juv. Prot. P. 47.02, subd. 2.

***Beckendorf v. Fox*, 890 N.W.2d 746 (Minn. App. Feb. 13, 2017) (A15-1991).**

Evidence of prospective childcare expenses may constitute “documentation of child care expenses” for purposes of Minn. Stat. § 518A.40, subd. 3(a)(2016).

***In re J.M.M.*, 890 N.W.2d 750 (Minn. App. Feb. 13, 2017) (A16-0646).**

Minn. Stat. § 259.10, subd. 1 (2016), does not require an applicant-parent to provide notice of a name-change application filed on behalf of a minor child to a biological parent who does not have a legally recognized relationship with the child under the Minnesota Parentage Act, Minn. Stat. §§ 257.51-.74 (2016).

***Hansen v. Todnem*, 891 N.W.2d 51 (Minn. App. Feb. 13, 2017), review granted (Minn. May 16, 2017) (A16-0698).**

I. When parents have a monthly combined parental income for child support (PICS) over \$15,000, Minnesota Statutes section 518A.35, subdivision 1(e) (2016), does not require that the combined PICS be capped at \$15,000 in order to calculate the presumed basic child support obligation.

II. While a district court may modify a parenting time arrangement if the modification is in the best interests of the child, the district court need not make explicit findings on all the best interest factors listed in Minnesota Statutes section 518.17, subdivision 1(a) (2016), if the proposed modification is insubstantial or a mere clarifications.

III. For purposes of calculating a parent's medical support obligation, the district court does not abuse its discretion by evaluating a medical insurance policy's deductibles and co-payments, in addition to monthly premium costs, when considering the policy's affordability.

IV. The federal tax code does not prohibit the district court from allocating the federal dependency exemption to an unmarried parent who is not able to claim head of household status that taxable year.

***Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837 (Minn. App. Mar. 13, 2017) (A16-1568).**

Under the Minnesota Domestic Abuse Act, when a district court holds a hearing on a petition and affidavit for an order for protection pursuant to Minn. Stat. § 518B.01, subs. 5, 7 (2016), the district court errs by basing its finding of domestic abuse solely on inadmissible hearsay statements in the petition and affidavit.

***Shearer v. Shearer*, 891 N.W.2d 72 (Minn. App. Feb. 27, 2017) (A16-0434).**

A district court does not err when, on motion, it modifies a parenting-time arrangement based on a finding that the modification would be in the children's best interests and the modification does not restrict parenting time.

***Anderson v. Anderson*, 897 N.W.2d 828, (Minn. App. May 30, 2017), review granted (Minn. Aug. 22, 2017) (A16-2006).**

If a spousal-maintenance award is disputed, a recipient of the disputed award can preserve any right to a biennial cost-of-living adjustment under Minnesota Statutes section 518A.75 (2016) by sending notice of the adjustment to the obligor and, if the obligor contests the adjustment, asking the district court to hold in abeyance the question of whether to grant the adjustment.

***In re Custody of M.J.H.*, 899 N.W.2d 573, (Minn. App. July 3, 2017), pet. for review filed (Minn. Aug. 2, 2017) (A16-1056).**

I. When a parent's proposed modification of parenting time would result in the parent having equal or nearly equal parenting time, the district court errs by treating the proposed modification as a change in a child's primary residence solely based on the apportionment of parenting time.

II. In determining whether a proposed modification of parenting time would constitute a change in a child's primary residence, the district court should consider not only the apportionment of parenting time under the proposed modification, but also the

child's other relevant attachments to each parent's place of residence and the impact of the modification on those attachments.

***Gill v. Gill*, 900 N.W.2d 717, (Minn. App. Aug. 14, 2017), (A16-1421).**

When the marital interest in a business entity is sold and includes, as part of the sale price, a provision for "earn-out" payments based on future company performance, the earn-out payments are marital property, notwithstanding purchaser's employment of one of the spouses under a separate employment agreement during the "earn-out" period.

### **Government & Immunity**

***Mobile Diagnostic Imaging, Inc. v. Hooten*, 889 N.W.2d 27 (Minn. App. Dec. 19, 2016), review granted (Minn. Mar. 14, 2017) (A16-0241).**

(Wee page 9 for additional syllabus points for this case.)

2. Minn. Stat. § 148.103, subd. 1 (2014), provides immunity for the act of reporting a licensee's or potential licensee's misconduct to the Minnesota Board of Chiropractic Examiners, but this immunity does not apply to the act of disclosing this same information to others.

***Scheffler v. City of Anoka*, 890 N.W.2d 437 (Minn. App. Feb. 6, 2017), review denied (Minn. Apr. 26, 2017) (A16-0252).**

I. Minnesota Statutes sections 13.03, subdivision 3, and 13.04, subdivision 3 (2016) of the Minnesota Government Data Practices Act require the release of government data only when the requestor makes his data-access request to the government entity's responsible authority or designee.

II. A government entity is not liable for alleged violations of Minnesota Statutes sections 13.03, subdivision 3, or 13.04, subdivision 3, if the data requestor did not make a request to the government entity's responsible authority or designee and the responsible authority or designee did not receive the data request.

III. The Minnesota Government Data Practices Act does not recognize responsible authorities or designees by operation of apparent authority.

***Magnolia 8 Props., LLC v. City of Maple Plain*, 893 N.W.2d 658 (Minn. App. Apr. 17, 2017) (A16-1199).**

The discretionary-acts exception to municipal liability pursuant to Minn. Stat. § 466.03, subd. 6 (2016), is absolute and shields a municipality's planning-level decisions from strict-liability claims.

***Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549 (Minn. App. Apr. 24, 2017) (A16-1398).**

Minnesota Statutes section 253B.23, subdivision 4 (2016), provides good-faith immunity only to causes of action that arise under the Minnesota Commitment and Treatment Act.

***Otto v. Wright Cnty.*, 899 N.W.2d 186, (Minn. App. May 30, 2017), review granted (Minn. Aug. 8, 2017) (A16-1634).**

1. Minn. Stat. § 6.481 (2016) does not violate the separation-of-powers requirements of Minn. Const. art. III, § 1.

2. The Minnesota Legislature did not violate the Single Subject Clause of the Minnesota Constitution by passing Minn. Stat. § 6.481 as part of the State Government Finance Omnibus Bill.

***Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, (Minn. App. June 12, 2017) (A16-1606)**

State sovereign immunity barred private damages actions against state employers based on violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) until after the state expressly permitted USERRA civil actions in 2012 Minn. Laws ch. 192, § 1, at 1 (codified at Minn. Stat. § 1.05, subd. 5 (2016)).

***Johnson v. Princeton Pub. Utils. Comm’n*, 899 N.W.2d 860, (Minn. App. July 10, 2017) (A16-1737).**

(See page 2 for additional syllabus point for this case.)

I. A public utilities commission created by a statutory city pursuant to Minn. Stat. §§ 412.321-.391 (2016) is a political subdivision of the state for purposes of Minn. Stat. § 549.09, subd. 1(c)(1)(i) (2016).

## **Insurance Coverage**

***Ronning v. State Farm. Mut. Aut. Ins. Co.*, 887 N.W.2d 35 (Minn. App. Nov. 7, 2016), review denied (Minn. Jan. 17, 2017) (A16-0538).**

When an insured cannot recover from an underinsured motorist tortfeasor because the insured failed to sue the tortfeasor within the applicable limitations period, the insured may not bring a claim for underinsured motorist benefits because the claim has not ripened.

***Castillo v. Am. Standard Ins. Co. of Wis.*, 889 N.W.2d 591 (Minn. App. Jan. 17, 2017) (A16-1002).**

When determining whether repairing or servicing a motor vehicle “occurs off the business premises” for purposes of the no-fault benefits exclusion under Minnesota

Statutes section 65B.43, subdivision 3 (2016), a business premises may include a mobile business.

***Linn v. BCBSM, Inc.*, 890 N.W.2d 160 (Minn. App. Jan. 30, 2017), review granted (Minn. Apr. 26, 2017) (A16-0986).**

The determination of medical necessity in an external-review process conducted under Minnesota Statutes section 62Q.73 (2016) is contractually binding on a health insurer.

***Jansen v. State Farm Mut. Auto. Ins. Co.*, 891 N.W.2d 69 (Minn. App. Feb. 21, 2017), review denied (Minn. Apr. 26, 2017) (A16-0916).**

For purposes of Minn. Stat. § 65B.525, subd. 1 (2016), a claim is the dollar amount of no-fault benefits alleged to be due and owing from the reparation obligor at the time the no-fault proceeding is commenced.

### **Jurisdiction & Procedure**

***Mobile Diagnostic Imaging, Inc. v. Hooten*, 889 N.W.2d 27 (Minn. App. Dec. 19, 2016), review granted (Minn. Mar. 14, 2017) (A16-0241).**

(See page 7 for additional syllabus point for this case.)

1. The procedural requirements of Minnesota's anti-SLAPP statute, Minn. Stat. § 554.02 (2014) violate the non-moving party's constitutional right to a jury trial by requiring a court to make a pretrial factual determination that the non-moving party has produced clear and convincing evidence to support his claim.

3. A person pursuing a private attorney-general claim under Minn. Stat. §§ 325F.69, subd.1; 8.31, subds. 1, 3a (2014), must demonstrate that the cause of action benefits the public.

***Maslowski v. Prospect Funding Partners, LLC*, 890 N.W.2d 756 (Minn. App. Feb. 13, 2017), review denied (Minn. May 16, 2017) (A16-0770).**

A district court does not abuse its discretion by refusing to enforce a forum-selection clause that is inconsistent with Minnesota's local interest against champerty.

## **Labor & Employment**

***First Class Valet Servs., LLC v. Gleason*, 892 N.W.2d 848 (Minn. App. Mar. 20, 2017) (A16-1242).**

An employer required by Minnesota Statutes section 181.970 (2016) to indemnify its employee may not bring a negligence action against that employee to recoup payments made by the employer to a third party.

***St. Jude Med., Inc. v. Carter*, 899 N.W.2d 869, (Minn. App. July 10, 2017), *pet. for review filed* (Minn. Aug. 9, 2017) (A16-2015).**

If a noncompete clause in an employment contract provides that irreparable harm occurs upon an employee's breach and specifies remedies for the breach, the district court, upon a finding of breach by the employee, must enforce the contract against the employee by awarding injunctive relief or other appropriate relief as provided for under the contract.

## **Liens & Foreclosures**

***U. S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699 (Minn. App. Dec. 27, 2016), *review denied* (Minn. Apr. 18, 2017) (A16-0073) (A16-0258).**

A borrower's waiver of the statutory right to redeem foreclosed property in a foreclosure by advertisement is unenforceable.

***Dusenbery v. Hawks*, 895 N.W.2d 640 (Minn. App. Apr. 10, 2017) (A16-0961).**

A bailee-in-possession's lien, governed by Minnesota Statutes section 514.18, subdivision 1 (2016), has priority over any security interest, regardless of whether a secured party had notice of the bailee's lien interest when its security interest was created.

***M & G Servs., Inc. v. Buffalo Lake Advanced Biofuels, LLC*, 895 N.W.2d 277 (Minn. App. Apr. 17, 2017), *review denied* (Minn. June 28, 2017) (A16-1347).**

The ongoing removal and distribution of a byproduct of an ethanol production process does not contribute to the improvement of real estate by performing labor, or furnishing skill, material, or machinery for the erection, alteration, repair, or removal of any building under Minn. Stat. § 514.01 (2016).

***Randall v. Paul*, 897 N.W.2d 842, (Minn. App. June 19, 2017) (A16-1734).**

I. A debt collector engaged in the business of debt collection within the meaning of the Federal Debt Collections Practices Act (FDCPA), 15 U.S.C. § 1692a(6) (2016), who serves a debtor with a mechanic's lien statement in compliance with the Minnesota mechanic's lien statute, Minn. Stat. § 514.08 (2016), is not immune from the FDCPA's requirements.

II. A debt collector’s communication with a debtor is made “in connection with the collection of a debt,” triggering FDCPA notice requirements, if the communication’s “animating purpose” is to induce payment by the debtor. Therefore, we adopt the approach set forth by the U.S. Eighth Circuit Court of Appeals in *McIvor v. Credit Control Servs., Inc.*, 773 F.3d 909, 913 (8th Cir. 2014).

***Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, (Minn. App. July 3, 2017), *pet. for review filed* (Minn. July 31, 2017) (A16-1875).**

1. Respondent complied with section 580.08 of the Minnesota Statutes by selling the mortgaged property in a single foreclosure sale because the mortgaged property does not consist of separate and distinct tracts, even though it consists of four parcels for purposes of property taxes.

2. Respondent complied with section 580.04(a)(3) of the Minnesota Statutes by accounting for all debts owed to it by the debtor and the guarantor when stating the amount “due on the mortgage” in the notice of foreclosure sale.

### **Local Government**

***Anzures v. Ward*, 890 N.W.2d 127 (Minn. App. Jan. 3, 2017), *review denied* (Minn. Mar. 28, 2017) (A16-0739).**

When a municipality’s decision that an employee is not entitled to defense and indemnification under Minn. Stat. § 466.07, subd. 1 (2016), meets the requirements for a quasi-judicial decision, a writ of certiorari is the exclusive method by which to challenge the decision.

***834 VOICE v. Indep. Sch. Dist. No. 834*, 893 N.W.2d 649 (Minn. App. Apr. 3, 2017), (A16-0472).**

A school board does not violate the public-hearing requirement of Minn. Stat. § 123B.51, subd. 5 (2016), when it imposes reasonable time restrictions on parties speaking at a school-closing hearing.

***Rochester City Lines Co. v. City of Rochester*, 897 N.W.2d 792 (Minn. App. May 15, 2017), *review granted* (Minn. Aug. 8, 2017) (A16-1515).**

A best-value competitive bidding process and any contract awarded through that process are rendered unreasonable, arbitrary, or capricious, in violation of the rule announced in *Griswold v. Ramsey County*, 242 Minn. 529, 65 N.W.2d 647 (1954), by a provision in the request for proposals that creates an appearance of bias.

***Douglas v. Indep. Sch. Dist. No. 834*, 899 N.W.2d 546, (Minn. App. June 19, 2017) (A16-1686).**

1. Pursuant to Minn. Stat. § 475.58, subd. 4 (2016), the ballot language alone defines the scope of the purpose of a municipality's bond referendum.

2. A municipality may abandon portions of a project approved by a bond referendum if the abandonment does not radically alter the purpose stated in the ballot language.

***Mathews v. City of Minnetonka Beach*, 899 N.W.2d 881, (Minn. App. July 17, 2017) (A16-2032).**

A city does not have statutory authority to certify landowners' purported debt for appeal expenses to a county auditor for collection with landowners' real estate taxes.

### **Real Estate & Property Rights**

***Kaeding v. Auleciems*, 886 N.W.2d 658 (Minn. App. Oct. 31, 2016) (A16-0479).**

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

I. An attempt to waive Minn. Stat. § 504B.178 (2014) by agreeing to forfeit a security deposit as a remedy for violating a lease provision that does not require a payment of funds to the landlord is void and unenforceable under Minn. Stat. § 504B.178, subds. 3, 10.

***Rush v. Westwood Village P'ship*, 887 N.W.2d 701 (Minn. App. Dec. 5, 2016), review denied (Minn. Mar. 14, 2017) (A16-0249) (A16-0250).**

Minnesota Statutes section 504B.161, subdivision 1(a)(2) (2014), imposing a covenant of reasonable repair upon the landlord of residential premises, does not extend to a tenant's personal property. Minnesota Statutes section 504B.161, subdivision 1(a)(1) (2014), recognizing the covenant to ensure that a residential premises is fit for its intended use, does not impose a duty on a landlord to employ a tenant's chosen method of pest eradication.

***In re Final Order of Bd. of Managers*, 889 N.W.2d 575 (Minn. App. Dec. 19, 2016), review denied (Minn. Mar. 28, 2017) (A16-0488).**

I. A drainage authority may not limit the scope of a redetermination of benefits and damages under Minnesota Statutes section 103E.351 (2014) to the drainage system's originally assessed area.

II. Costs and expenses resulting from a redetermination of benefits and damages can be assessed against the drainage system's account under Minnesota Statutes section 103E.651, subdivision 2 (2014).

***Hall v. State*, 890 N.W.2d 728 (Minn. App. Jan. 23, 2017), review granted (Minn. App. 18, 2017) (A16-0874).**

The Minnesota Uniform Disposition of Unclaimed Property Act (MUPA), Minn. Stat. §§ 345.31-.60 (2016), does not create an unconstitutional taking and satisfies procedural due-process concerns.

***Bryant Ave. Baptist Church v. City of Minneapolis*, 892 N.W.2d 852 (Minn. App. Mar. 27, 2017), review denied (Minn. June 20, 2017) (A16-1328).**

Churches are not exempt from special assessments as a result of the 1970 amendment to Minn. Const. art. X, § 1.

***Great N. Ins. Co. v. Honeywell Int’l, Inc.*, 895 N.W.2d 255 (Minn. App. Apr. 10, 2017), review granted (Minn. June 28, 2017) (A16-0997).**

The plain meaning of “equipment or machinery” includes a heat-recovery ventilator under Minn. Stat. § 541.051, subd. 1(e) (2016).

***Vermillion State Bank v. State*, 895 N.W.2d 269 (Minn. App. Apr. 17, 2017) (A16-1284).**

Minn. Stat. § 177.045 (2016) entitles a landowner who successfully brings an inverse condemnation action to petition the court for attorney fees and other costs; the landowner’s attorney has no standing to petition for fees and costs directly and independently of the landowner.

## **Remedies**

***Kaeding v. Auleciems*, 886 N.W.2d 658 (Minn. App. Oct. 31, 2016) (A16-0479).**

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

II. When a conciliation court decision is appealed by removal to the district court and the removing party does not prevail, the opposing party is not limited by Minn. Stat. § 491A.02, subd. 6 (2014), to recovering \$50 for costs and disbursements.

***Ernster v. Scheele*, 895 N.W.2d 262 (Minn. App. Apr. 17, 2017) (A16-1169).**

(See page 2 for additional syllabus point for this case.)

I. When there has been an offer of judgment under Minn. R. Civ. P. 68.01, a plaintiff-offeree who obtains a verdict and judgment against the defendant-offeror is allowed reasonable disbursements as the prevailing party under Minn. Stat. § 549.04 (2016) even if the judgment is less favorable to the plaintiff-offeree than the offer of judgment and less favorable to the plaintiff-offeree than the limit on relief that the defendant-offeror sought at trial.

***All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, (Minn. App. July 3, 2017) (A16-1780).**

(See page 3 for additional syllabus point for this case.)

I. In order to satisfy an outstanding judgment, a creditor is not required to exhaust legal remedies before bringing a creditor's suit to pierce the corporate veil.

III. Interest awarded on a judgment in a creditor's suit to pierce the corporate veil is not prejudgment interest when the creditor's suit is ancillary to the original judgment and is intended only to satisfy an existing judgment.

***Blum v. Thompson*, 901 N.W.2d 203, (Minn. App. Aug. 14, 2017) (A16-1241).**

1. A plaintiff who establishes liability on a claim of breach of fiduciary duty may, in appropriate circumstances, obtain relief in the form of monetary damages.

2. A document that is not an agreement between or among shareholders may be relevant to the reasonable expectations of shareholders in a closely held corporation for purposes of Minnesota Statutes section 302A.751, subdivision 3a.

## **Torts**

***Range Dev. Co. of Chisholm v. Star Tribune*, 885 N.W.2d 500 (Minn. App. Sept. 12, 2016) (A16-0122).**

The standards for ordering disclosure of a journalist's confidential source under Minnesota Statutes section 595.025, subdivisions 1, 2 (2014), require an affirmative demonstration that the identity of the source will lead to persuasive evidence on the elements of a defamation claim.

***Greenpond S., LLC v. Gen. Elec. Capital Corp.*, 886 N.W.2d 649 (Minn. App. Oct. 24, 2016), review granted and stayed (Minn. Jan. 17, 2017) (A16-0350).**

When the business entities that were utilized in a Ponzi scheme filed for bankruptcy, a plaintiff lender-investor lacks authority to bring fraud-related claims arising out of the Ponzi scheme against an earlier lender-investor, absent an allegation of an injury separate and distinct from an injury suffered by the entities. Such fraud-related cause of action is derivative and belongs to the bankruptcy estate.

***TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423 (Minn. App. Jan. 23, 2017) (A16-0741).**

The district court erred by granting summary judgment to respondent on appellant's claims of fraudulent misrepresentation and breach of fiduciary duty. Appellant has established respondent's liability on those two claims. The amount of appellant's damages is to be determined by a factfinder at trial.

***Ariola v. City of Stillwater*, 889 N.W.2d 340 (Minn. App. Jan. 23, 2017), review denied (Minn. Apr. 18, 2017) (A16-0750).**

1. A court-appointed trustee's failure to file an oath under Minn. Stat § 573.02, subd. 3 (2016), does not deprive the court of subject-matter jurisdiction over a wrongful death action that is timely and otherwise properly commenced.

2. A plaintiff who asserts the adult trespasser exception to recreational-use immunity under Minn. Stat. § 466.03, subd. 6e (2016) and the Restatement (Second) of Torts § 335 must establish a municipality's actual knowledge of an artificial condition likely to cause death or serious bodily harm. Thus, *Noland v. Soo Line R.R.*, 474 N.W.2d 4 (Minn. App. 1991), review denied (Minn. Sept. 13, 1991), is overruled.

***Ouradnik v. Ouradnik*, 897 N.W.2d 300 (Minn. App. May 8, 2017), review granted (Minn. July 18, 2017) (A16-1516).**

The recreational-use statute, Minn. Stat. §§ 604A.20-.27 (2016), does not apply when a landowner does not offer private land to the public for recreational purposes.

***Sec. Bank & Trust Co v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 897 N.W.2d 821 (Minn. App. May 15, 2017), review granted (Minn. Aug. 8, 2017) (A16-1810).**

For purposes of determining when a cause of action for legal malpractice arising from estate planning services accrues, "some damage" occurs when the client takes action pursuant to the attorneys' allegedly negligent advice.

***Nelson v. State*, 896 N.W.2d 879 (Minn. App. May 22, 2017), review denied (Minn. Aug. 8, 2017) (A16-1620).**

The right to seek compensation under the Minnesota Imprisonment and Exoneration Remedies Act (MIERA), Minn. Stat. §§ 611.362-.368 (2016), does not survive an exonerated person's death unless there is a pending order issued under Minn. Stat. § 590.11 (2014) or a pending claim under MIERA.

***Phone Recovery Servs., LLC v. Qwest Corp.*, 901 N.W.2d 185, (Minn. App. Aug. 7, 2017) (A17-0078).**

I. The 911, Telecommunications Access Minnesota (TAM), and Telephone Assistance Plan (TAP) charges are taxes.

II. For purposes of Minn. Stat. § 15C.03 (2016), a statute is one "relating to taxation" if it has a connection, relation, or reference to or concerns the imposition of a tax, the amount assessed as tax, or the revenue gained from taxes.

***State v. Larsen*, 901 N.W.2d 433 (Minn. App. Aug. 21, 2017), (A16-1365).**

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

## **Unemployment Benefits**

***Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137 (Minn. App. May 1, 2017) (A16-1433) (A16-1504).**

I. When an employee performs more than 50% of his or her total hours during a calendar quarter in Minnesota, the employment was “performed primarily in Minnesota” and therefore the employee’s entire employment during the calendar quarter is “covered employment,” as defined in Minn. Stat. § 268.035, subd. 12(a)(1)(i) (2016).

II. A business is not subjected to double taxation in violation of the Dormant Commerce Clause by application of Minn. Stat. § 268.035, subd. 12(a) (2016).

## PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

### Constitutional Law

***State v. Hall*, 887 N.W.2d 847 (Minn. App. Dec. 5, 2016), review denied (Minn. Feb. 22, 2017) (A15-1645).**

Minnesota Statutes section 609.749, subdivision 2(4) (2014), which defines stalking to include repeatedly making telephone calls, is not constitutionally overbroad on its face or as applied in violation of the First Amendment of the United States Constitution.

***State v. Final Exit Network, Inc.*, 889 N.W.2d 296 (Minn. App. Dec. 19, 2016), review denied (Minn. Mar. 14, 2017) (A15-1826).**

The district court's jury instructions on assisting another in taking the other's life were not unconstitutionally overbroad under the First Amendment because the instructions followed the language of the Minnesota Supreme Court's decision in *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014).

***State v. Irlas*, 888 N.W.2d 709 (Minn. App. Dec. 27, 2016) (A16-0243).**

A state witness who is present at trial but who invokes the Fifth Amendment privilege, whether validly or not, is unavailable and cannot be considered subject to cross-examination for confrontation clause purposes, thereby precluding admission of the witness's out-of-court testimonial statement.

***State v. Rodriguez*, 889 N.W.2d 332 (Minn. App. Jan. 9, 2017) (A16-0788).**

A criminal defendant has a constitutional right to be present at a restitution hearing because such hearing is a critical stage of the sentencing process.

***State v. Rey*, 890 N.W.2d 135 (Minn. App. Jan. 9, 2017), review granted (Minn. Mar. 28, 2017) (A16-0198).**

The minimum-restitution provision in Minnesota Statutes section 609.527, subdivision 4 (2014), which requires a district court to order a person convicted of identity theft to pay restitution of not less than \$1,000 to each victim, does not violate substantive due process.

***State v. Diamond*, 890 N.W.2d 143 (Minn. App. Jan. 17, 2017), review granted (Minn. Mar. 28, 2017) (A15-2075).**

A district court order compelling a criminal defendant to provide a fingerprint to unlock the defendant's cellphone does not violate the Fifth Amendment privilege against compelled self-incrimination.

***State v. Heinonen*, 889 N.W.2d 817 (Minn. App. Jan. 30, 2017), review granted (Minn. Apr. 26, 2017) (A16-0229).**

Because a request that a suspect consent to provide a DNA sample does not constitute interrogation under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), and DNA evidence is not testimonial or communicative in nature, a police officer does not violate a suspect's Fifth Amendment rights by asking for such consent after the suspect has invoked his or her right to remain silent.

***State v. Andersen*, 900 N.W.2d 438 (Minn. App. July 3, 2017) (A16-1018).**

A doctor's report that is prepared for treatment purposes and that is only coincidental to a criminal investigation is not a testimonial statement subject to the Confrontation Clause.

***State v. Edwards*, 900 N.W.2d 722 (Minn. App. Aug. 14, 2017) (A16-1482).**

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

***State v. LaFountain*, 901 N.W.2d 441 (Minn. App. Aug. 28, 2017) (A16-1754).**

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

***State v. Hazley*, 901 N.W.2d 452 (Minn. App. Aug. 28, 2017) (A16-1988).**

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

### **DWI & Implied Consent**

***State v. Carson*, 884 N.W.2d 917 (Minn. App. Sept. 6, 2016), review granted (Minn. Nov. 23, 2016) (A15-1678).**

For purposes of proceedings under chapter 169A, 1,1-difluoroethane, known as DFE, meets the definition of a hazardous substance.

***Johnson v. Comm’r of Pub. Safety*, 889 N.W.2d 36 (Minn. App. Dec. 27, 2016) (A16-0506).**

To find the 30-day limitations period to petition for judicial review of a driver’s license revocation has begun to run under Minn. Stat. § 169A.53, subd. 2(a), the district court must find that the driver received a notice and order of revocation, and the record is insufficient to support such a finding when it lacks evidence that the driver received a complete notice and order of revocation by document or other means.

***Johnson v. Comm’r of Pub. Safety*, 887 N.W.2d 281 (Minn. App. Nov. 7, 2016), review granted (Minn. May 30, 2017) (A16-0502).**

1. If a person challenges the accuracy of an implied-consent advisory as a violation of due process, the claim should be analyzed under the Due Process Clause, consistent with Minnesota precedent.

2. An implied-consent advisory violates due process when it threatens a criminal test-refusal charge that the state is not authorized to impose.

***Briles v. 2013 GMC Terrain*, 892 N.W.2d 525 (Minn. App. Mar. 13, 2017), review granted (Minn. May 30, 2017) (A16-0768).**

1. An owner who claims that his vehicle is not subject to forfeiture under Minnesota Statutes section 169A.63 (2016) because the offense prompting the vehicle’s seizure occurred after the vehicle was stolen or taken in violation of law, forfeits that claim unless he raises it in a timely civil complaint demanding a judicial determination of the forfeiture’s validity.

2. The phrase “[a]ll right, title, and interest” in a vehicle subject to forfeiture under Minnesota Statutes section 169A.63, subdivision 3, does not include the right to insurance proceeds arising from a crash.

***Willits v. Comm’r of Pub. Safety*, 891 N.W.2d 79 (Minn. App. Mar. 6, 2017) (A16-0248).**

A law-enforcement officer does not prevent or delay a suspected drunk driver’s statutory right to an additional chemical test under Minn. Stat. § 169A.51, subd. 7(b) (2014), when the officer provides the driver with a county-issued medical-grade specimen cup to collect the driver’s urine sample.

***Brooks v. State*, 897 N.W.2d 811 (Minn. App. May 15, 2017), review denied (Minn. Aug. 8, 2017) (A16-1630, A16-1713).**

The rules announced in *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016), cert. denied, 2017 WL 131941 (U.S. Mar. 20, 2017), and *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), regarding the search-incident-to-arrest exception to the Fourth Amendment’s warrant requirement, are new rules of federal constitutional criminal procedure that generally do not apply retroactively on collateral review of a final conviction.

***State v. Norgaard*, 899 N.W.2d 205 (Minn. App. June 5, 2017) (A16-1122).**

A district court may take judicial notice of the legislative facts in a criminal case that the commissioner of public safety, as authorized by Minn. Stat. Sec. 169A.03, subd. 11, and Minn. R. 7502.0425, had approved a DataMaster breathalyzer for use by law enforcement.

***State v. Hunn*, 899 N.W.2d 541 (Minn. App. June 19, 2017), *pet. for review filed* (Minn. July 19, 2017) (A16-2001).**

Where the implied-consent statute is not invoked, advisement of the limited right to counsel is not a prerequisite to admitting chemical-test results in a criminal prosecution for driving while impaired (DWI) because the suspect does not face immediate license revocation for test refusal.

## **Evidence**

***State v. Olson*, 887 N.W.2d 687 (Minn. App. Dec. 5, 2016) (A15-1984).**

A police officer's controlled testing of a handheld laser speed-measuring device to establish that it is accurately measuring distance to a stationary object satisfies the foundational external-test requirement of Minnesota Statutes section 169.14, subdivision 10(a) (2014), allowing the district court to admit into evidence the officer's testimony of the device's speed readings.

***State v. Plevell*, 889 N.W.2d 584 (Minn. App. Jan. 3, 2017) (A16-1534).**

1. Although the Minnesota Rules of Evidence do not apply to grand jury proceedings, the state must comply with Minn. R. Crim. P. 18.05 and demonstrate that hearsay evidence presented to a grand jury will be admissible at trial.

2. For an out-of-court statement to be admitted as a prior consistent statement in a grand jury proceeding, the witness must testify, the prior statement must be consistent with that testimony, and the statement must be helpful in evaluating the witness's credibility.

## **Guilty Pleas**

***State v. Brown*, 896 N.W.2d 557 (Minn. App. May 8, 2017), *review denied* (Minn. July 18, 2017) (A16-1619).**

1. A potential out-of-state probation-violation penalty in an unrelated case is not a direct consequence of a criminal defendant's conviction.

2. Misinformation about a collateral consequence does not render a guilty plea unintelligent and manifestly unjust.

***State v. Montez*, 899 N.W.2d 200 (Minn. App. June 5, 2017) (A16-1071).**

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

***State v. Ellis-Strong*, 899 N.W.2d 531 (Minn. App. June 19, 2017) (A16-1260).**

Affirmative misadvice on a collateral consequence of a conviction renders a guilty plea constitutionally invalid and manifestly unjust when such misadvice amounts to ineffective assistance of counsel.

### **Postconviction**

***Williams v. State*, 899 N.W.2d 504 (Minn. App. June 12, 2017), review granted (Minn. Aug. 22, 2017) (A16-1526, A16-1527).**

On a Minn. R. Crim. P. 27.03, subd. 9, motion to correct sentence based on an alleged error in the defendant's criminal-history score brought after the time to appeal the sentence, the defendant has the burden of proof.

### **Pretrial Procedure**

***Ries v. State*, 889 N.W.2d 308 (Minn. App. Dec. 19, 2016), review granted (Minn. Mar. 14, 2017) (A16-0220).**

A defendant is not required to use a peremptory challenge to strike a juror who should have been removed for cause in order to preserve the claim that the for-cause denial impaired the defendant's right to a fair trial.

***State v. McKinley*, 891 N.W.2d 64 (Minn. App. Feb. 13, 2017), review denied (Minn. Apr. 26, 2017) (A16-0265).**

A district court does not err when it sustains a for-cause challenge of a juror under Minn. R. Crim. P. 26.02, subd. 5(1)(1), because the juror is untruthful, evasive, or lacking in candor during voir dire and the court is satisfied that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.

## **Probation**

***State v. Sagataw*, 892 N.W.2d 47 (Minn. App. Mar. 6, 2017) (A16-0773).**

Under Minn. Stat. § 609.14, subd. 1(c), when the state properly and timely initiates revocation of a stayed sentence, a district court retains jurisdiction to conduct probation revocation proceedings. The district court does not have discretion to dismiss revocation proceedings because the hearing is conducted after the stayed sentence has expired, although the district court may dismiss revocation proceedings for other reasons as provided by Minn. R. Crim. P. 27.04.

## **Search & Seizure**

***State v. Liebl*, 886 N.W.2d 512 (Minn. App. Oct. 17, 2016) (A16-0618).**

Absent application of a specific exception to the warrant requirement, law enforcement's warrantless installation and monitoring of a global positioning system mobile tracking device on a target's vehicle is an unreasonable search requiring suppression of the resulting evidence.

***State v. Chute*, 887 N.W.2d 834 (Minn. App. Nov. 21, 2016), review granted (Minn. Feb. 14, 2017) (A15-2053).**

When a police officer enters the curtilage of a home for the purpose of conducting a warrantless search, the officer's position within the curtilage is not lawful and the warrantless search violates the Fourth Amendment.

***State v. Dotson*, 900 N.W.2d 445 (Minn. App. July 17, 2017) (A16-1338).**

Minnesota Statute § 504B.211, subd. 4(1), (3) (2016) gives property managers rights of entry, not rights of use, and therefore does not confer authority to consent to a search of the leased premises.

## **Sentencing & Restitution**

***Thong v. State*, 892 N.W.2d 842 (Minn. App. Mar. 20, 2017), review denied (Minn. May 30, 2017) (A16-1342).**

Minnesota Statutes section 609.14, subdivision 3(2) (2012), which provides that upon revocation of a stay of execution a district court may "order execution of the sentence previously imposed," does not prohibit a district court from imposing a previously unpronounced conditional release period mandated by Minnesota Statutes section 169A.276, subdivision 1(d) (2012), when the district court executes a stayed sentence.

***State v. Washington*, 894 N.W.2d 168 (Minn. App. Mar. 27, 2017), review granted (Minn. June 28, 2017) (A16-0834).**

When determining whether a prior felony has decayed for the purpose of sentencing a current continuing offense, the “date of the current offense” is the date on which the continuing offense begins.

***Browder v. State*, 899 N.W.2d 525 (Minn. App. June 12, 2017), review denied (Minn. Aug. 22, 2017) (A17-0088).**

A defendant imprisoned for aiding and abetting third-degree criminal sexual conduct is subject to the mandatory ten-year conditional-release period described by Minnesota Statutes section 609.3455, subdivision 6 (2012), because he is committed to the commissioner of corrections “for violation of” Minnesota Statutes section 609.344 (2012).

***State v. Christensen*, 901 N.W.2d 648 (Minn. App. Aug. 7, 2017) (A16-1029, A16-1372).**

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

***State v. Provost*, 901 N.W.2d 199 (Minn. App. Aug. 14, 2017) (A17-0130).**

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

### **Sex Offender Commitment**

***In re Civil Commitment of Kropp*, 895 N.W.2d 647 (Minn. App. Apr. 10, 2017), review denied (Minn. June 20, 2017) (A16-1944).**

Under Minn. Stat. § 253D.28, subd. 3 (2016), the legislature has vested the judicial appeal panel with the power to grant or deny petitions for provisional discharge from the Minnesota Sex Offender Program (MSOP); therefore, the executive director of MSOP cannot unilaterally prevent provisional discharge by refusing to approve placement to a residential location that otherwise complies with the approved provisional-discharge plan.

### **Substantive Criminal Law**

***State v. Yang*, 887 N.W.2d 40 (Minn. App. Nov. 14, 2016) (A15-2061).**

A BB gun that is powered by compressed air is not a “firearm,” as the term is used in section 624.713, subdivision 1, of the Minnesota Statutes.

***State v. Olson*, 887 N.W.2d 692 (Minn. App. Dec. 5, 2016) (A15-2072).**

Statements expressing the mere hope that another person will be subject to a crime of violence, unaccompanied by additional statements or conduct demonstrating that future crimes of violence could follow, do not constitute threats for the purpose of establishing the crime of terroristic threats.

***State v. Barker*, 888 N.W.2d 348 (Minn. App. Dec. 12, 2016) (A16-1100).**

Probable cause that a defendant was in actual possession of a controlled substance can be established by circumstantial evidence.

***State v. Kremmin*, 889 N.W.2d 318 (Minn. App. Jan. 3, 2017), review denied (Minn. Mar. 28, 2017) (A16-0305).**

The plain language of Minn. Stat. § 609.605, subd. 1(b)(8) (2014), which defines the crime of trespass, requires both a command to leave the property and a command not to return to the property.

***State v. Reyes*, 890 N.W.2d 406 (Minn. App. Jan. 9, 2017) (A16-0040).**

A stepgrandfather-stepgranddaughter relationship constitutes a “significant relationship” as defined by Minn. Stat. § 609.341, subd. 15 (2010).

***State v. McCabe*, 890 N.W.2d 173 (Minn. App. Feb. 6, 2017), review denied (Minn. Apr. 26, 2017) (A16-1024).**

Minnesota Statutes section 169.48, subdivision 1(a) (2014), requires drivers to display lighted headlamps and lighted tail lamps at any time when it is raining, regardless of visibility.

***State v. Henderson*, 890 N.W.2d 739 (Minn. App. Jan. 30, 2017), review granted (Minn. Apr. 26, 2017) (A16-0575).**

The manipulation of the steering wheel of a moving vehicle by a passenger constitutes “operation” of a motor vehicle under Minn. Stat. § 609.21 (2012).

***State v. Litzau*, 893 N.W.2d 405 (Minn. App. Mar. 27, 2017), review denied (Minn. June 20, 2017) (A16-0907).**

Minn. Stat. § 609.50, subd. 1(2) (2014), prohibits a person from obstructing and resisting a peace officer effectuating that person’s arrest.

***State v. Nyagwoka*, 894 N.W.2d 174 (Minn. App. Apr. 3, 2017) (A16-1418).**

Misdemeanor domestic assault is not a lesser-included offense of second-degree assault.

***State v. Lopez*, 897 N.W.2d 295 (Minn. App. Apr. 24, 2017), review granted (Minn. June 20, 2017) (A16-0947).**

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

***State v. Larson*, 895 N.W.2d 655 (Minn. App. Apr. 24, 2017), review denied (Minn. July 18, 2017) (A16-1538).**

The term “carry” in Minnesota Statutes section 624.7142, subdivision 1, subsection 4 (2014), which prohibits carrying a pistol in a public place while under the influence of alcohol, includes transporting the pistol unloaded in an enclosed case.

### **Trial Procedure**

***State v. Drew*, 889 N.W.2d 323 (Minn. App. Jan. 3, 2017) (A16-0342).**

Sequestration of a deliberating jury is a matter of trial procedure, not of substantive law; therefore Minn. R. Crim. P. 26.03, subd. 5, controls, not Minn. Stat. § 631.09 (2014).

***State v. Thomas*, 890 N.W.2d 413 (Minn. App. Jan. 17, 2017), review denied (Minn. Mar. 28, 2017) (A16-0051).**

In the absence of expert testimony proffered by a party, it is not an abuse of discretion for the district court to refuse to give a jury instruction informing a jury of recent social and scientific developments in assessing evidence.

***Wheeler v. State*, 889 N.W.2d 807 (Minn. App. Jan. 23, 2017), review granted (Minn. Apr. 18, 2017) (A16-0835).**

A district court does not impermissibly involve itself in plea negotiations when it encourages plea discussion between counsel, monitors those discussions, and informs counsel of those plea proposals of which the court would likely disapprove.

***State v. Carpenter*, 893 N.W.2d 380 (Minn. App. Mar. 27, 2017) (A16-0170).**

The district court’s authority to decide a post-verdict motion to acquit under Minnesota Rule of Criminal Procedure 26.03, subdivision 18, section 3, is the same in a court trial as in a jury trial.

***State v. Pollard*, 900 N.W.2d 175 (Minn. App. July 10, 2017) (A16-1005).**

It is error for a district court to use an unmodified CRIMJIG 7.06, the justifiable-taking-of-life jury instruction, when the defendant asserts self-defense and claims the resulting death was accidental.

***State v. Smith*, 901 N.W.2d 657 (Minn. App. Aug. 21, 2017) (A16-1607).**

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