



**Minnesota Court of Appeals**

**Significant Decisions**

**September 2017-August 2018**

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## PART I – CIVIL CASES

### Administrative Law

***Forster v. Theis*, 906 N.W.2d 846 (Minn. App. Dec. 18, 2017) (A17-0459).**

Once a bankruptcy action is closed, and a bankruptcy trustee's exclusive authority to pursue a claim on behalf of the bankruptcy estate under the federal bankruptcy code has expired, an unsecured creditor may pursue a fraudulent-transfer avoidance claim in district court to the extent permissible under state law, so long as the bankruptcy trustee has not affirmatively acted to reopen the action in bankruptcy court.

***In re Application of Baker*, 907 N.W.2d 208 (Minn. App. Jan. 8, 2018) (A17-0911).**

Minn. Stat. § 122A.23, subd. 2 (2016), does not require an applicant to show that the training program underlying her out-of-state teaching license is similar to the training program underlying the Minnesota license for which she applies.

***Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611 (Minn. App. Jan. 16, 2018) (A17-0787).**

The Minnesota Department of Health is not required to remove a finding of physical abuse from the nursing-assistant registry after the nursing assistant's disqualification period under the Minnesota Department of Human Services Background Studies Act (Background Studies Act), Minn. Stat. §§ 245C.01-.34 (2016 & Supp. 2017), has ended.

### Appellate Procedure & Review

***County of Hennepin v. Bhakta*, 907 N.W.2d 908 (Minn. App. Dec. 26, 2017), review granted (Minn. Mar. 20, 2018) (A17-1539).**

Pretrial evidentiary rulings must be assigned as error in a motion for a new trial or amended findings to properly preserve objections for appellate review.

***In re Cummins*, 906 N.W.2d 280 (Minn. App. Dec. 26, 2017) (A17-1568).**

1. The 60-day appeal period under Minn. Stat. § 508.29(4) (Supp. 2017) applies to any appealable order relating to registered land after its original registration, including an order denying a motion for a new trial.

2. A proper and timely motion of a type specified in Minn. R. Civ. App. P. 104.01, subd. 2, extends the time to appeal an order or judgment that is appealable under Minn. Stat. § 508.29 (Supp. 2017).

***Sela Invs. Ltd. v. H.E.*, 909 N.W.2d 344 (Minn. App. Mar. 19, 2018) (A17-1178, A17-1179).**

A party requesting review of a countersigned housing-court order is not in default within the meaning of Minn. R. Gen. Pract. 611(a) for failure to obtain a transcript within the time period prescribed in Minn. R. Gen. Pract. 611(c).

### **Child Protection**

***In re Aljubailah ex rel. A.M.J.*, 903 N.W.2d 638 (Minn. App. Oct. 23, 2017) (A17-0153).**

The district court is not required to make custody findings pursuant to Minnesota Statutes section 518.17 (2016), when ordering temporary custody and parenting time in conjunction with an order for protection (OFP) under Minnesota Statutes section 518B.01 (2016).

***In re Welfare of Children of A.R.B.*, 906 N.W.2d 894 (Minn. App. Jan. 26, 2018) (A17-1218).**

A county does not satisfy its obligation under Minnesota Statutes, section 260C.219(a)(2)(i) (2016), to make reasonable efforts to reunite a family before terminating a father's parental rights when the county fails to produce a written case plan as described in section 260C.212, subdivision 1 (2016), and the county is not excused of the obligation by a father's brief opposition to participating in developing a case plan.

***In re Welfare of Child of J.A.K.*, 907 N.W.2d 241 (Minn. App. Jan. 26, 2018), review denied (Minn. Feb. 26, 2018) (A17-1072).**

In a proceeding for the termination of parental rights, a parent may rebut the presumption of palpable unfitness set forth in section 260C.301, subdivision 1(b)(4), of the Minnesota Statutes by producing evidence that would be sufficient to justify a finding of fact that the parent is not palpably unfit. If a parent introduces evidence in an attempt to rebut the statutory presumption, a district court must determine whether the evidence is sufficient to raise a genuine issue of fact as to whether the parent is palpably unfit.

### **Civil Procedure**

***Johnson v. City of Duluth*, 903 N.W.2d 1 (Minn. App. Oct. 9, 2017), review denied (Minn. Dec. 19, 2017) (A17-0275).**

A served but unfiled civil action's dismissal, which occurs automatically upon the one-year complaint-filing deadline of rule 5.04(a), constitutes a "proceeding . . . taken" under rule 60.02 and begins the one-year filing period for a rule-60.02 motion for relief from dismissal.

***Maethner v. Someplace Safe, Inc.*, 907 N.W.2d 665 (Minn. App. Feb. 12, 2018), review granted (Minn. Apr. 25, 2018) (A17-0998).**

Allegedly defamatory statements about criminal conduct by the plaintiff that were made by an award recipient at a fundraising banquet and also in an article published by the sponsor organization for fundraising purposes were not protected by a qualified privilege.

***Bandemer v. Ford Motor Co.*, 913 N.W.2d 710 (Minn. App. Apr. 23, 2018), review granted (Minn. July 17, 2018) (A17-1182).**

Minnesota's five-factor test to determine whether Minnesota has specific personal jurisdiction over a nonresident is consistent with the principle reiterated by the United States Supreme Court in *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773 (2017), that there must be a connection between the forum and the specific claim at issue.

***Firkus v. Harms*, 914 N.W.2d 414 (Minn. App. Apr. 30, 2018) (A17-1088).**

Under the expert-review statute, Minn. Stat. § 145.682 (2016), plaintiffs must file an affidavit of expert identification in medical malpractice cases within 180 days of the "commencement of discovery." For purposes of this statute, discovery commences no later than the date of a discovery conference pursuant to Rule 26.06, or 30 days after the answer is initially due, whichever is earlier.

## **Contracts**

***Trebelhorn v. Agrawal*, 905 N.W.2d 237 (Minn. App. Nov. 20, 2017) (A17-0584).**

The four-year statute of limitations in Article II of the Uniform Commercial Code (UCC) applies to claims arising from a sale-of-goods transaction styled as a suit on an account stated.

***In re Caswell*, 905 N.W.2d 507 (Minn. App. Dec. 11, 2017) (A17-0427).**

When a valid contract exists between a client and an attorney and the attorney completes the work under the terms of the contract and achieves a settlement or recovery, the attorney is entitled to fees under the terms of the contract and does not release his attorney lien under Minn. Stat. § 481.13, subd. 1 (2016), by returning the settlement check to the insurance company pending resolution of a fee dispute.

***Woischke v. Stursberg & Fine, Inc.*, 906 N.W.2d 586 (Minn. App. Jan. 16, 2018), vacated (Minn. Nov. 28, 2018) (A17-0408).**

A contract involving illegally conducted business is itself void and unenforceable if the legislature has expressly or implicitly declared its intent that such a contract be illegal. The legislature has expressly and implicitly indicated its intent that a person who contracts

to receive a commission or fee to attempt to negotiate a real-estate sale or a loan secured by a mortgage under Minnesota Statutes section 82.55, subdivision 19 (2016), but who lacks a broker's license required by section 82.81, subdivision 1 (2016), has entered into an illegal contract, which is void and unenforceable as to the unlicensed broker as a matter of law.

## **Family Law**

***De Guardado v. Guardado Menjivar*, 901 N.W.2d 243 (Minn. App. Sept. 11, 2017) (A16-1973).**

I. A Minnesota district court has authority to make special-immigrant-juvenile (SIJ) findings in a dissolution proceeding involving a custody determination.

II. An award of sole legal and sole physical custody of a child to one parent, for purposes of SIJ findings, is a placement "under the custody of . . . an individual . . . appointed by a [s]tate or juvenile court." 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

***Johnson v. Johnson*, 902 N.W.2d 79 (Minn. App. Sept. 25, 2017) (A16-1323).**

If a dissolution judgment awarding the marital home to a spouse has become final, a subsequent postdissolution order directing that spouse to sell the home is an improper modification of the judgment's property division, unless the judgment authorizes the sale.

***Berberich v. Mattson*, 903 N.W.2d 233 (Minn. App. Oct. 2, 2017), review denied (Minn. Dec. 27, 2017) (A16-1535).**

Federal law preempts state courts from dividing a veteran's military disability compensation as marital property and renders such property divisions unenforceable, even if agreed upon, overruling parts of *Gatfield v. Gatfield*, 682 N.W.2d 632 (Minn. App. 2004), review denied (Minn. Sept. 29, 2004).

***Medvedovski v. Medvedovski*, 903 N.W.2d 646 (Minn. App. Nov. 6, 2017) (A17-0915).**

A custody-modification motion filed within two years after disposition of a prior motion on its merits is procedurally barred under Minn. Stat. § 518.18(b) (2016), unless the court finds the existence of persistent and willful denial or interference with parenting time, or the court has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

***Palmquist v. Devens*, 907 N.W.2d 204 (Minn. App. Dec. 26, 2017) (A17-0268).**

When a district court awards a father, mother, and grandmother joint physical custody of a child, the presumptively appropriate guideline basic support obligation is calculated based on the parents' combined parental income for child support (PICS) under

Minn. Stat. § 518A.35, subd. 1(b) (2016), and not the parents' individual PICS under Minn. Stat. § 518A.35, subd. 1(c) (2016).

***Cook v. Arimitsu*, 907 N.W.2d 233 (Minn. App. Jan. 22, 2018), review denied (Minn. App. Apr. 17, 2018) (A17-0861).**

I. Under the Uniform Child Custody Jurisdiction and Enforcement Act, a court has home-state jurisdiction to make an initial child-custody determination if the state was the home state of the child within six months before the commencement of the proceeding, and the child is absent from the state but a parent or person acting as a parent continues to live in this state. Further, if a child is not in what would otherwise be the child's home state, the six-month period within which a parent can commence a custody proceeding in the state does not begin to run until that parent has reason to recognize the permanency of the child's absence from the state.

II. Substantial compliance with the notice requirements of Minn. Stat. § 518D.305 (2016) is sufficient to allow a Minnesota district court to confirm the registration of a foreign custody determination.

***In re SH RG*, 907 N.W.2d 680 (Minn. App. Feb. 12, 2018) (A17-1040).**

The Adoption Assistance and Child Welfare Act, 42 U.S.C. § 673 (2012), does not preempt a state law that excludes a child subject to direct-placement adoption from receiving adoption assistance, as provided in Minn. Stat. § 256N.23, subd. 6(3) (2016).

***Amarreh v. Amarreh*, 918 N.W.2d 228 (Minn. App. Aug. 13, 2018), review denied (Minn. Oct. 24, 2018) (A18-0198).**

When a moving party in a custody-modification proceeding makes a prima facie showing of substantial interference with the parent-child relationship, the moving party has made a prima facie case for child emotional endangerment under Minn. Stat. § 518.18(d)(iv) (2016), and therefore is entitled to an evidentiary hearing.

### **Government & Immunity**

***Linert v. MacDonald*, 901 N.W.2d 664 (Minn. App. Sept. 11, 2017) (A17-0127).**

Minn. Stat. § 211B.02 (2016), which prohibits candidates from knowingly making false claims of support or endorsement, is not facially overbroad in violation of the First Amendment.

***City of Richfield v. Law Enf't Labor Servs., Inc.*, 910 N.W.2d 465 (Minn. App. Apr. 9, 2018), rev'd (Minn. Feb. 13, 2019) (A17-1275).**

To prevent the use of excessive physical force by the police, there is a clear public policy in favor of transparency and proper reporting on the use of force. An arbitrator's decision to reinstate a police officer who was terminated by his municipal employer

violates that public policy and will not be enforced where the police officer failed to report his use of force in violation of the employer's policy and had been previously disciplined, trained, and counseled for failing to report prior instances of the use of force.

***Larson v. Gannett Co.*, 915 N.W.2d 485 (Minn. App. May 7, 2018), review granted (Minn. July 17, 2018) (A17-1068).**

The fair-report privilege extends to protect news reports that accurately summarize or fairly abridge information relayed at a law-enforcement agency's official press conference or by a law-enforcement agency's official news release.

***Raymond v. Pine Cty. Sheriff's Office*, 915 N.W.2d 518 (Minn. App. May 7, 2018), review denied (Minn. July 17, 2018) (A17-1578).**

A public official may be entitled to official immunity if he or she is alleged to have committed a tort while performing official duties. A public official may not invoke the doctrine of official immunity if he or she was not performing official duties when he or she engaged in the conduct that a plaintiff alleges was tortious.

***Minnesota Sands, LLC v. County of Winona*, 917 N.W.2d 775 (Minn. App. July 30, 2018), review granted (Minn. Oct. 24, 2018) (A18-0090).**

A county ordinance that even-handedly bans all industrial-mineral mining, including silica-sand mining, within the county does not discriminate against interstate commerce in violation of the dormant Commerce Clause. A party must have a compensable property interest to assert a viable regulatory-takings claim.

### **Insurance Coverage**

***W. Nat'l Ins. Co. v. Nguyen*, 902 N.W.2d 645 (Minn. App. Sept. 18, 2017), *aff'd* (Minn. Mar. 23, 2018) (A17-0314).**

Minn. Stat. § 62Q.75, subd. 3 (2016), applies in the no-fault context and may bar an insured's claim for medical-expense benefits from his no-fault insurer if the statute's application results in the insured not suffering a "loss" as defined in Minn. Stat. § 65B.54, subd. 1 (2016).

***Depositors Ins. Co. v. Dollansky*, 905 N.W.2d 513 (Minn. App. Dec. 11, 2017), *aff'd* (Minn. Nov. 14, 2018) (A17-0631).**

Minnesota Statutes section 60A.41(a) (2016), prohibits an insurer from subrogating against its own insured for the same loss even when the insured is not a named insured in the policy.

***Russell v. Sentinel Ins. Co.*, 906 N.W.2d 543 (Minn. App. Jan. 2, 2018) (A17-0591).**

When an uninsured-motorist policy provision does not define “hit-and-run vehicle,” a vehicle is a “hit-and-run vehicle” if the vehicle does not stop and leaves the accident scene and the insured does not have an opportunity to obtain the unidentified driver’s information.

***K & R Landholdings, LLC v. Auto-Owners Ins.*, 907 N.W.2d 658 (Minn. App. Feb. 12, 2018) (A16-0660).**

I. Commercial policy insureds are entitled to preaward interest on appraisal awards, “except as otherwise provided by contract or allowed by law” under Minn. Stat. § 549.09, subd. 1(b) (2016).

II. Preaward interest on appraisal awards involving commercial insurance policies is not “otherwise . . . allowed by law” under Minn. Stat. §§ 60A.0811, 334.01 (2016), within the meaning of Minn. Stat. § 549.09, subd. 1(b).

***Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 916 N.W.2d 870 (Minn. App. July 2, 2018), review granted (Minn. Sept. 18, 2018) (A17-1800).**

When a workers’ compensation insurer refuses to pay for chiropractic services because it has determined under Minn. Stat. § 176.83, subd. 5(c) (2016), that the services are excessive according to the standards established by the workers’ compensation rules, Minn. Stat. § 176.83, subd. 5(c), does not relieve an automobile insurer of its obligation to pay basic economic loss benefits according to Minn. Stat. § 65B.54, subd. 3 (2016), to reimburse its insured for the expense of the chiropractic services.

## **Labor & Employment**

***In re Serv. Emps. Int’l Union v. Univ. of Minn.*, 902 N.W.2d 54 (Minn. App. Sept. 5, 2017) (A16-1985).**

When the legislature has clearly defined bargaining units under the Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.25 (2016), the Bureau of Mediation Services lacks authority to reassign employee classifications to bargaining units unless those classifications have been significantly modified.

***Safety Ctr., Inc. v. Stier*, 903 N.W.2d 896 (Minn. App. Nov. 6, 2017) (A17-0360).**

1. A noncompete agreement unsupported by independent consideration is not enforceable where the record supports the district court’s factual finding that the noncompete agreement was not ancillary to the employment agreement.

2. A district court does not clearly err when it finds the existence of a contract for employment by inference from an employer’s letter to an employee confirming the

offer and acceptance of employment, despite neither party having a present recollection of the details of the offer and acceptance.

***McBee v. Team Indus., Inc.*, 906 N.W.2d 880 (Minn. App. Jan. 16, 2018), review granted (Minn. Mar. 28, 2018) (A17-0060).**

I. The Minnesota Human Rights Act (MHRA) does not require an employer to engage in an interactive process to determine whether an appropriate reasonable accommodation is necessary.

II. Where a reprisal claim based on retaliatory discharge mirrors a disability-discrimination claim in both facts and law, a successful serious-threat defense may apply to preclude the retaliatory-based reprisal claim.

***Long v. Indep. Sch. Dist. No. 332*, 907 N.W.2d 228 (Minn. App. Jan. 22, 2018) (A17-0788, A17-0903).**

The unambiguous language of Minn. Stat. § 122A.40, subd. 5 (2016), provides that a teacher who completes three consecutive years of teaching in a single Minnesota school district is entitled to a one-year probationary period in each subsequent Minnesota school district, not in a city of the first class, in which the teacher is later employed.

***In re Minn. Living Assistance, Inc.*, 919 N.W.2d 87 (Minn. App. Aug. 20, 2018), review granted (Minn. Nov. 13, 2018) (A17-1821).**

The language in Minn. R. 5200.0140 (2017), allowing an employer to deduct premium pay for overtime work for purposes of calculating an employee's regular rate of pay, is ambiguous. The Minnesota Department of Labor and Industry's interpretation of that rule to allow deductions only for overtime work in excess of 48 hours per week constitutes an invalid unpromulgated rule that may not be the basis for agency action.

## **Liens & Foreclosures**

***Bremer Bank, Nat'l Ass'n v. Matejcek*, 916 N.W.2d 688 (Minn. App. July 2, 2018) (A17-1477).**

For purposes of Minn. Stat. § 336.9-610(a) (2016), a secured party on a defaulted loan does not dispose of collateral by consenting to a joint debtor's sale of collateral and, therefore, is not subject to statutory notice or other disposition requirements.

***Christensen Law Office, PLLC v. Olean*, 916 N.W.2d 876 (Minn. App. July 9, 2018), review denied (Minn. Sept. 26, 2018) (A17-1158, A17-1320).**

An attorney lien under Minn. Stat. § 481.13 (2016) does not attach to a client's homestead property unless the attorney has obtained a valid waiver of that client's homestead exemption under Minn. Stat. § 510.05 (2016).

## **Local Government**

***Harstad v. City of Woodbury*, 902 N.W.2d 64 (Minn. App. Sept. 18, 2017), *aff'd* (Minn. Aug. 15, 2018) (A16-1937).**

A statutory city lacks express or implied authority under Minn. Stat. § 462.358, subd. 2a (2016), to impose a road assessment as a condition for its approval of a developer's subdivision application.

***Jennissen v. City of Bloomington*, 904 N.W.2d 234 (Minn. App. Nov. 20, 2017), *rev'd* (Minn. June 20, 2018) (A17-0221).**

Section 115A.94 of the Minnesota Waste Management Act (MWMA), Minn. Stat. §§ 115A.01-.99 (2016), mandating a municipality's adherence to a specific process when establishing a system of organized collection of solid waste, preempts a proposed city charter amendment to require voter approval before a municipality establishes organized collection of solid waste.

***In re Dahlgren Twp.*, 906 N.W.2d 512 (Minn. App. Dec. 18, 2017) (A17-0550).**

When parties to an orderly annexation agreement agree to a tax-reimbursement amount, Minn. Stat. § 414.036 (2016) does not restrict that amount.

***In re Annexation of Certain Real Prop.*, 910 N.W.2d 460 (Minn. App. Apr. 9, 2018), *review granted* (Minn. June 27, 2018) (A17-1210).**

A nonparty to an orderly annexation agreement made pursuant to Minn. Stat. § 414.0325 (2016) may annex real property within the designated area by ordinance pursuant to Minn. Stat. § 414.033, subd. 2(3) (2016), if all relevant statutory requirements for annexation by ordinance are satisfied.

***State ex rel. Neighbors for E. Bank Livability v. City of Minneapolis*, 915 N.W.2d 505 (Minn. App. May 7, 2018), *review denied* (Minn. Aug. 7, 2018) (A17-1480).**

An adopted small area plan that is incorporated into a city's comprehensive plan is subject to the comprehensive plan's subsequent amendments, unless stated otherwise.

## **Probate**

***In re Estate of Nelson*, 901 N.W.2d 234 (Minn. App. Sept. 5, 2017), *review denied* (Minn. Nov. 28, 2017) (A16-1545, A16-1546).**

When a decedent has a presumed father under the parentage act's paternity presumption in the Minnesota Parentage Act, Minn. Stat. § 257.55, subd. 1 (2016), a claim by a party seeking to establish a genetic relationship to the decedent through the decedent's

father for the purpose of intestate succession under the Uniform Probate Code is governed by the parentage act, Minn. Stat. §§ 257.51-74 (2016).

***Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6 (Minn. App. Oct. 9, 2017), *aff'd* (Minn. June 20, 2018) (A17-0162).**

Under Minn. Stat. § 524.3-101 (2016), a valid, transferable ownership interest in real property devolves immediately upon a testator's death to a person to whom the property is devised by the testator's will, even if the property is devised through a residuary clause rather than through a specific devise.

***In re Estate of Strub*, 907 N.W.2d 676 (Minn. App. Feb. 12, 2018), *review denied* (Minn. May 15, 2018) (A17-0943, A17-0981).**

A district court has subject-matter jurisdiction to remove a personal representative in an informal probate proceeding under Minn. Stat. § 524.3-301 (2016).

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

***Rolling Meadows Coop., Inc. v. MacAtee*, 904 N.W.2d 920 (Minn. App. Nov. 27, 2017) (A17-0176).**

After termination of occupancy and membership in a housing cooperative, a housing-cooperative member has no right to redeem occupancy of premises or housing-cooperative membership under Minnesota Statutes chapters 308A and 504B.

***McCullough & Sons, Inc. v. City of Vadnais Heights*, 905 N.W.2d 878 (Minn. App. Dec. 11, 2017) (A17-0281).**

When Minn. Stat. § 429.081 (2016) is read in conjunction with Minn. Stat. § 429.061 (2016), the unambiguous statutory language provides that a property owner who, without reasonable cause, fails to sign a written objection to an assessment and to either (1) file the objection with the municipal clerk prior to the assessment hearing or (2) present the objection to the presiding officer at the assessment hearing, is precluded from appealing the assessment to the district court.

***ACC OP (Univ. Commons), LLC v. Rodriguez*, 906 N.W.2d 509 (Minn. App. Dec. 18, 2017) (A17-0692).**

Under Minn. Stat. § 504B.291, subd. 1(a) (2016), a landlord may not bring an action to evict based on failure to pay attorney fees in excess of five dollars incurred in a previous eviction action for nonpayment of rent.

***Eich v. City of Burnsville*, 906 N.W.2d 867 (Minn. App. Jan. 8, 2018) (A17-0496).**

Neither Minnesota law nor the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401-5426 (2012) preempts a local or municipal authority from enforcing zoning, subdivision, architectural, or aesthetic codes applicable to manufactured home parks, provided that they do not involve construction or safety standards related to manufactured housing.

***Compart v. Wolfstellar*, 906 N.W.2d 598 (Minn. App. Jan. 16, 2018), review denied (Minn. Apr. 17, 2018) (A17-0705).**

I. An adverse claimant's acceptance of a conveyance of real property from the record title holder, before the statutory period has run, only interrupts his adverse possession if the adverse claimant acknowledges the grantor's superior title in the conveyed interest.

II. A purchaser who obtains title at a mortgage foreclosure sale takes title subject to a prior adverse possession unless, within the applicable statutory period, either the adverse claimant abandons its possession or one with a superior right to possess the real property ejects the adverse claimant.

***County of Hennepin v. 6131 Colfax Lane*, 907 N.W.2d 257 (Minn. App. Jan. 29, 2018) (A17-0831).**

The housing-calendar program, also known as the housing court, lacks authority under Minnesota Statutes section 484.013, subdivision 1(a) (2016), to hear and determine any matter unrelated to "residential rental housing."

***Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900 (Minn. App. Feb. 5, 2018), review denied (Minn. Mar. 28, 2018) (A17-0937).**

The exclusionary rule, as adopted by the United States Supreme Court and as codified in Minnesota Statutes section 626.21 (2016), is inapplicable to civil eviction actions brought by private landlords under Minnesota Statutes sections 504B.281–.371 (2016).

***Cent. Hous. Assocs., LP v. Olson*, 910 N.W.2d 485 (Minn. App. Apr. 9, 2018), review granted (Minn. June 27, 2018) (A17-1286).**

A tenant who has not filed a tenant-remedies action under Minnesota Statutes, section 504B.395 (2016) cannot avoid a holdover, breach-of-lease eviction under section 504B.285, subdivision 1(a)(3) (2016), by claiming that the eviction resulted from the landlord's retaliatory motives.

***Neumann v. Anderson*, 916 N.W.2d 41 (Minn. App. Apr. 30, 2018), review denied (Minn. July 17, 2018) (A17-1450).**

1. In a partition action, a referees' report is entitled to the same force and effect as a jury's verdict or a district court's finding and may be set aside by the district court only in extreme cases.

2. Although a partition action is governed by statute, a district court may exercise its general equitable powers by ordering a remedy that accounts for the particular circumstances of the case.

***Ellis v. Doe*, 915 N.W.2d 24 (Minn. App. May 7, 2018), review granted (Minn. Aug. 7, 2018) (A17-1611).**

A tenant is not required to follow the procedures set forth in Minn. Stat. § 504B.385 (2016), governing a rent-escrow action brought by a tenant, before asserting a habitability defense pursuant to *Fritz v. Warthen*, 298 Minn. 54, 213 N.W.2d 339 (1973).

## **Remedies**

***State v. Minn. Sch. of Bus.*, 915 N.W.2d 903 (Minn. App. June 4, 2018), review granted (Minn. Aug. 21, 2018) (A17-1740).**

To recover damages under the Minnesota Consumer Fraud Act, a consumer must prove a causal nexus between wrongful conduct and harm. A district court may not presume a causal nexus as a matter of law.

***Alby v. BNSF Ry. Co.*, 918 N.W.2d 562 (Minn. App. Aug. 6, 2018), review granted (Minn. Oct. 16, 2018) (A17-1242)**

The federal postjudgment interest rate applies to a state court judgment granted under the Federal Employers Liability Act, 45 U.S.C. § 51 (2012).

## **Torts**

***Fenrich v. Blake Sch.*, 901 N.W.2d 223 (Minn. App. Sept. 5, 2017), rev'd (Minn. Nov. 21, 2018) (A17-0063).**

Because the risk of an automobile accident in this particular case was not foreseeable, respondent school did not assume a duty of reasonable care to the general public by agreeing that one of its students would drive himself and other students to an out-of-town, extra-curricular activity in his family's vehicle.

***Henson v. Uptown Drink, LLC*, 906 N.W.2d 533 (Minn. App. Dec. 26, 2017), *aff'd* (Minn. Jan. 23, 2019) (A17-1066).**

I. Primary assumption of the risk does not bar, as a matter of law, a negligent-innkeeper claim if the evidence is inconclusive on whether the injured party had actual knowledge of the particular risks associated with helping to remove an intoxicated patron from a premises, and there is evidence that the innkeeper enlarged those risks.

II. For purposes of a dram-shop claim, proximate cause is not lacking, as a matter of law, despite the injured party assuming risk in helping to remove an intoxicated patron from a premises, so long as there is sufficient evidence that the intoxication was a substantial factor in causing the injury, and a direct link exists between the intoxication and the injurious act.

***Soderberg v. Anderson*, 906 N.W.2d 889 (Minn. App. Jan. 16, 2018), *aff'd* (Minn. Jan. 23, 2019) (A17-0827).**

I. Primary assumption of the risk does not, as a matter of law, bar a claim for personal injury arising out of a skiing or snowboarding collision when a genuine issue of material fact exists as to whether a skier or snowboarder's conduct is so reckless or inept as to be wholly unanticipated.

II. Primary assumption of the risk does not, as a matter of law, bar a claim for personal injury when a genuine issue of material fact exists as to whether a skier or snowboarder enlarged the well-known, inherent risks of those activities under circumstances in which a skier is crushed from above.

### **Unemployment Benefits**

***Svihel Vegetable Farm, Inc. v. Dep't of Emp't & Econ. Dev.*, 915 N.W.2d 501 (Minn. App. May 7, 2018), *review granted* (Minn. Aug. 7, 2018) (A17-1250).**

The exclusion of agricultural labor performed by H-2A visa holders and J-1 visa holders from the federal definition of employment under the Federal Insurance Contributions Act, 26 U.S.C. ch. 21 (2012), and the Federal Unemployment Tax Act, 26 U.S.C. ch. 23 (2012), does not exclude that labor from being agricultural employment subject to unemployment-insurance taxation under Minn. Stat. § 268.035 (2016).

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

### Constitutional Law

***State v. Holloway*, 905 N.W.2d 20 (Minn. App. Nov. 20, 2017), *aff'd* (Minn. Aug. 1, 2018) (A16-1489).**

Minnesota Statutes sections 609.344, subdivision 1(b) (2014), and 609.345, subdivision 1(b) (2014), do not violate a criminal-sexual-conduct defendant's substantive due process or equal protection rights by limiting the mistake-of-age defense only to defendants who are less than 120 months older than their child-victims.

***Vondrachek v. Comm'r of Pub. Safety*, 906 N.W.2d 262 (Minn. App. Dec. 18, 2017), *review denied* (Minn. Feb. 28, 2018) (A17-0462).**

A driver's Fourth Amendment rights are not violated when a police officer, acting on reasonable suspicion of impaired driving, asks the driver of a lawfully stopped motor vehicle to exit and perform roadside field sobriety tests.

***State v. Noor*, 907 N.W.2d 646 (Minn. App. Feb. 12, 2018), *review denied* (Minn. Apr. 25, 2018) (A17-0349).**

The admission of a Certificate of Order Sent, a document attesting to the accuracy of public records and their mailing date, does not violate a criminal defendant's Sixth Amendment right to confrontation when the underlying records are nontestimonial.

***In re Welfare of A.J.B.*, 910 N.W.2d 491 (Minn. App. Apr. 9, 2018), *review granted* (Minn. June 27, 2018) (A17-1161).**

Minn. Stat. §§ 609.749, subd. 2(6), and .795, subd. 1(3) (2014), are not unconstitutionally overbroad, either facially or as applied, in violation of the First Amendment to the United States Constitution or article I, section 3 of the Minnesota Constitution.

***State v. Madden*, 910 N.W.2d 744 (Minn. App. Apr. 9, 2018), *review denied* (Minn. June 19, 2018) (A17-0755).**

Minn. Stat. § 609.101, subd. 2 (2014), is not facially unconstitutional because it does not establish a mandatory-minimum fine in violation of the Excessive Fines Clauses of the United States and Minnesota Constitutions.

***State v. Schloegl*, 915 N.W.2d 14 (Minn. App. May 7, 2018), *review denied* (Minn. July 17, 2018) (A17-0898, A17-1301).**

A district court's no-contact order violates a criminal defendant's constitutional right to confront a witness when the order states that the defendant is prohibited from

contact with the witness even in a court proceeding, the defendant indicates that he interprets the order as prohibiting him from personally cross-examining the witness, and the district court does not relieve the defendant of the purported consequences of violating the order for the purpose of facilitating cross-examination.

### **DWI & Implied Consent**

***Gray v. Comm’r of Pub. Safety*, 918 N.W.2d 220 (Minn. App. Aug. 6, 2018) (A18-0270).**

Petitioners at implied-consent hearings have the right to raise procedural due-process arguments.

***State v. Mike*, 919 N.W.2d 103 (Minn. App. Aug. 27, 2018), review granted (Minn. Nov. 13, 2018) (A18-0730).**

Failure to comply with the requirement in Minnesota Statutes section 171.177, subdivision 1 (Supp. 2017), that “[a]t the time a blood or urine test is directed pursuant to a search warrant . . . , the person must be informed that refusal to submit to a blood or urine test is a crime” does not justify suppression of the test results in a criminal prosecution for driving while impaired.

### **Evidence**

***State v. Souder*, 902 N.W.2d 86 (Minn. App. Sept. 25, 2017), review denied (Minn. Dec. 27, 2017) (A16-1940).**

Minnesota Rule of Evidence 609 does not preclude evidence of a criminal defendant’s conviction from being admitted to impeach the defendant’s trial testimony simply because the conviction and its underlying offense occurred after the defendant’s charged offense.

***State v. Brazil*, 906 N.W.2d 274 (Minn. App. Dec. 26, 2017), review denied (Minn. Mar. 20, 2018) (A16-2058).**

A DataMaster breath-test result is direct evidence of the alcohol concentration in a person’s body, and a conviction based on such a result and report is reviewed under the traditional direct-evidence analysis.

***State v. Melanson*, 906 N.W.2d 561 (Minn. App. Jan. 8, 2018), review granted (Minn. Mar. 28, 2018) (A16-1567).**

The district court’s failure to give a limiting instruction sua sponte regarding the admission of relationship evidence was not plainly erroneous.

***State v. Lopez-Ramos*, 913 N.W.2d 695 (Minn. App. Apr. 16, 2018), review granted (Minn. June 27, 2018) (A17-0609).**

(See page 23 for first syllabus point for this case.)

II. When the state seeks to admit into evidence a criminal defendant's admission made through an interpreter, upon a Confrontation Clause or hearsay objection, a district court must determine as a preliminary fact question whether the interpreter's translation can fairly be attributable to the defendant, or whether the interpreter is an independent declarant.

III. When a defendant is deemed the declarant of his or her translated statement, the Confrontation Clause is not implicated, and the statement is admissible as a party admission under Minn. R. Evid. 801(d)(2)(A).

### **Juvenile Delinquency**

***In re Welfare of I.N.A.*, 902 N.W.2d 635 (Minn. App. Sept. 5, 2017), review denied (Minn. Nov. 28, 2017) (A17-0053).**

When a district court continues a case without a finding of delinquency pursuant to Minn. Stat. § 260B.198, subd. 7 (2016), the district court may order the juvenile to pay reasonable restitution under Minn. Stat. § 260B.198, subd. 1(5) (2016).

***In re Welfare of C.S.N.*, 917 N.W.2d 427 (Minn. App. July 23, 2018) (A17-1736).**

A juvenile district court may only continue a case without an adjudication of delinquency for one 180-day period, and can only extend the continuance up to an additional 180-day period after the court has reviewed the case. If the court fails to conduct a review hearing before extending a continuance, the district court loses jurisdiction to consider a probation revocation proceeding commenced after the first 180-day period has ended.

### **Postconviction**

***State v. Parnell*, 905 N.W.2d 895 (Minn. App. Dec. 18, 2017) (A16-2009).**

When a defendant is acquitted of a gross misdemeanor offense and is only found guilty of a misdemeanor offense and given a petty misdemeanor sentence, the case is not a gross misdemeanor case for purposes of the rule specifying the deadline for a direct appeal, and any appeal must be filed within the period allotted for misdemeanors.

***State v. A.S.R.*, 906 N.W.2d 526 (Minn. App. Dec. 26, 2017) (A17-0284).**

A criminal charge that is continued for dismissal and subsequently dismissed without an admission or finding of guilt is "resolved in favor of the petitioner" under Minn.

Stat. § 609A.02, subd. 3(a)(1) (2016), presumptively entitling the petitioner to expungement under Minn. Stat. § 609A.03, subd. 5(b) (2016).

***Johnson v. State*, 906 N.W.2d 861 (Minn. App. Jan. 2, 2018), *rev'd* (Minn. Aug. 22, 2018) (A17-0842, A17-0883).**

The new rules of procedure announced in *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), and *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016), do not apply retroactively on collateral review of a final conviction.

***State v. C.W.N.*, 906 N.W.2d 549 (Minn. App. Jan. 2, 2018) (A17-0728, A17-0729).**

To be eligible for expungement of executive-branch records of a petty-misdemeanor or misdemeanor conviction under Minn. Stat. § 609A.02, subd. 3(a)(3) (2016), a petitioner must not have been convicted of a new crime for at least two years immediately preceding the filing of an expungement petition. To be eligible for expungement of executive-branch records a gross-misdemeanor conviction under Minn. Stat. § 609A.02, subd. 3(a)(4) (2016), a petitioner must not have been convicted of a new crime for at least four years immediately preceding the filing of an expungement petition.

### **Pretrial Procedure**

***State v. Curtis*, 907 N.W.2d 215 (Minn. App. Jan. 16, 2018), *rev'd* (Minn. Dec. 19, 2018) (A17-0373).**

A district court determines competency under Minn. R. Crim. P. 20.01, subd. 5(f), based on the greater weight of the evidence without regard to burden of proof.

***State v. Roy*, 917 N.W.2d 423 (Minn. App. July 23, 2018) (A18-0054).**

A defendant's motion to dismiss a complaint for lack of probable cause tolls the 180-day speedy-trial period under the Interstate Agreement on Detainers, Minn. Stat. § 629.294, subd. 1, art. III(a) (2016).

### **Probation**

***State ex rel. Huesby v. Roy*, 903 N.W.2d 633 (Minn. App. Oct. 9, 2017), *review denied* (Minn. Dec. 27, 2017) (A17-1073).**

An inmate who is transferred to a work release program, authorized by Minn. Stat. § 241.26 (2016), has not been "released from prison" so as to begin the five-year conditional release term required by Minn. Stat. § 169A.276, subd. 1(d) (2016).

***Heilman v. Courtney*, 906 N.W.2d 521 (Minn. App. Dec. 18, 2017), review granted (Minn. Feb. 28, 2018) (A17-0863).**

An inmate who enters phase II of the Challenge Incarceration Program (CIP) has not been “released from prison” for the purpose of commencing a conditional-release term imposed under Minn. Stat. § 169A.276, subd. 1(d) (2016).

***State ex rel. Leino v. Roy*, 910 N.W.2d 477 (Minn. App. Apr. 9, 2018), review granted (Minn. June 27, 2018) (A17-1278).**

The Minnesota Department of Corrections’ use of review hearings in administering re-incarceration of offenders for violations of conditional release is lawful.

### **Search & Seizure**

***State v. Edstrom*, 901 N.W.2d 455 (Minn. App. Sept. 5, 2017), *aff’d in part & rev’d in part* (Minn. Aug. 15, 2018) (A16-1382).**

The use of a narcotics-detection dog at the door of an apartment inside a secured, multi-unit apartment building implicates a legitimate expectation of privacy and is a search for purposes of the Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution that is unlawful absent a warrant or an exception to the warrant requirement.

***State v. Bursch*, 905 N.W.2d 884 (Minn. App. Dec. 18, 2017) (A16-1961).**

An individual who is not on probation but knowingly resides with a probationer has a diminished expectation of privacy in common areas of the residence shared with the probationer. A legitimate probation-based search of such shared areas does not violate Fourth Amendment rights even if the search is done over the objection of the individual who is not on probation.

***State v. Bradley*, 908 N.W.2d 366 (Minn. App. Mar. 5, 2018) (A17-0466).**

A purse in a suspected shoplifter’s possession at the time the suspect is detained by a merchant’s employee remains immediately associated with the suspect’s person, and the responding officer may search the purse along with the suspect incident to a lawful arrest when the officer knew or had reason to know the suspect possessed the purse at the time of detention.

***Olson v. One 1999 Lexus*, 910 N.W.2d 92 (Minn. App. Apr. 2, 2018), review granted (Minn. June 19, 2018) (A17-1083).**

Minn. Stat. § 169A.63, subd. 9(d) (2016), is unconstitutional as applied to respondents, the driver and the registered owner of a vehicle that was seized after driver’s driving while impaired (DWI) arrest, because their right to procedural due process was

violated when they were denied prompt, post-deprivation judicial review for over 18 months pending the resolution of the driver's related criminal action.

***State v. Davis*, 910 N.W.2d 50 (Minn. App. Apr. 2, 2018) (A17-0545).**

When police stop and detain a person unconstitutionally and obtain information that leads them to search the area, the district court is not precluded from applying the fruit-of-the-poisonous-tree doctrine and suppressing evidence found during the search even if the defendant abandoned the evidence before police began the unconstitutional detention.

***State v. Taylor*, 910 N.W.2d 60 (Minn. App. Apr. 2, 2018), review denied (Minn. June 19, 2018) (A17-0491).**

A search warrant that mistakenly includes an incorrect person's name does not lack sufficient particularity when the warrant provides a description of the correct person to be searched that includes the correct person's name, date of birth, and location, and the person intended to be searched was searched.

***State v. Atwood*, 914 N.W.2d 422 (Minn. App. Apr. 30, 2018), review granted (Minn. July 17, 2018) (A17-1463).**

The seizure of a patient's blood sample pursuant to a search warrant addressed to a hospital does not violate the statutory physician-patient privilege because a blood sample collected by the hospital as part of medical treatment does not constitute "information" under the plain language of Minn. Stat. § 595.02, subd. 1(d) (2016).

***State v. Brown*, 915 N.W.2d 896 (Minn. App. May 29, 2018), review granted (Minn. Aug. 7, 2018) (A17-0870).**

Applying the three-factor balancing test in *Winston v. Lee*, 470 U.S. 753, 105 S. Ct. 1611 (1985), a procedure to remove suspected narcotics from appellant's rectum, which was authorized by a valid search warrant and performed by a medical doctor in a hospital setting after appellant declined less-intrusive options, did not violate federal and state constitutional protections against unreasonable searches and seizures.

### **Sentencing & Restitution**

***Luna-Pliego v. State*, 904 N.W.2d 916 (Minn. App. Nov. 20, 2017) (A17-0232).**

Appellant is not entitled to resentencing under the sentencing guidelines that were modified pursuant to section 18 of the Drug Sentencing Reform Act, 2016 Minn. Laws ch.

160, because he was sentenced more than 11 months before May 23, 2016, the effective date of section 18, and did not pursue a direct appeal.

***State v. Bradley*, 906 N.W.2d 856 (Minn. App. Dec. 18, 2017), review denied (Minn. Feb. 28, 2018) (A17-1024).**

Where a district court stays imposition of a presumptively stayed sentence under the Minnesota Sentencing Guidelines, if that stay of imposition is later vacated at a probation revocation hearing and the sentence is imposed and executed without jury findings or a waiver, there is no Sixth Amendment violation under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

***State v. Davis*, 907 N.W.2d 220 (Minn. App. Jan. 16, 2018), review denied (Minn. Apr. 17, 2018) (A17-1108).**

A district court cannot require a victim to forgo reasonable restitution for out-of-pocket losses incurred as a result of a crime only because the defendant is in prison and does not have the ability to pay.

***Howard v. State*, 909 N.W.2d 595 (Minn. App. Mar. 26, 2018) (A17-0976).**

When an offender challenges restitution under Minn. Stat. § 611A.045, subd. 3(b) (2014), a district court must schedule a restitution hearing.

***State v. Longo*, 909 N.W.2d 599 (Minn. App. Mar. 26, 2018) (A16-1995).**

A sentencing court cannot use the *Hernandez* method when sentencing a defendant under Minn. Stat. § 609.910 (2014) for both racketeering and controlled-substance crimes committed as part of a single behavioral incident.

***State v. Walker*, 913 N.W.2d 463 (Minn. App. May 14, 2018) (A17-0993).**

A “merged” or “combined” conviction or sentence is not a permissible disposition under Minnesota law.

***State v. Greenough*, 915 N.W.2d 915 (Minn. App. June 11, 2018) (A17-1915).**

A district court may not vacate a stay of adjudication, impose a presumptively stayed sentence, and execute that sentence, without additional findings satisfying *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

***State v. Oreskovich*, 915 N.W.2d 920 (Minn. App. June 11, 2018) (A18-0193).**

Under the 2012 revisions of the Minnesota Sentencing Guidelines, one custody-status point is added to a sex offender’s criminal-history score for a prior sex offense when the offender is no longer on probation but is still within the original term of probation for a sex offense other than Failure to Register as a Predatory Offender.

***Verhein v. Piper*, 917 N.W.2d 96 (Minn. App. July 16, 2018) (A17-1938).**

A condition of random drug testing within Minnesota Statutes section 256D.024, subdivision 1(a) (2016), for receipt of benefits under chapter 256D, applies to persons who become eligible for benefits during the five-year period following completion of a court-ordered sentence for a qualifying drug crime and does not extend beyond the five-year period.

***State v. Dentz*, 919 N.W.2d 97 (Minn. App. Aug. 27, 2018) (A18-0068).**

If a person is convicted of engaging in or soliciting a minor to engage in prostitution, in violation of Minn. Stat. § 609.324, subd. 1 (2016), the fact that the person did not initially intend to solicit a minor is not a proper reason for a downward durational sentencing departure.

### **Sex Offender Commitment**

***Favors v. Kneisel*, 902 N.W.2d 92 (Minn. App. Sept. 25, 2017) (A17-0506).**

Minnesota Statutes section 144.651 (2016) does not create a private cause of action in favor of a civilly committed patient at an inpatient facility against employees of the Minnesota Department of Human Services.

***In re Commitment of Fugelseth*, 907 N.W.2d 248 (Minn. App. Jan. 29, 2018), review denied (Minn. Apr. 17, 2018) (A17-1236).**

If a person who was civilly committed as a sexually dangerous person or a sexual psychopathic personality seeks a full discharge and satisfies the initial burden of production, he must be discharged unless the party opposing discharge proves by clear and convincing evidence that, first, he continues to need inpatient treatment and supervision and, second, he continues to be dangerous to the public.

***In re Commitment of Duvall*, 916 N.W.2d 887 (Minn. App. July 16, 2018), review denied (Minn. Sept. 18, 2018) (A18-0130, A18-0132).**

On appeal, we review a judicial appeal panel's order granting provisional discharge for clear error. We will not reverse the panel's provisional discharge unless the party opposing discharge proves by clear and convincing evidence that the provisional discharge should be denied.

## **Substantive Criminal Law**

***State v. Ivy*, 902 N.W.2d 652 (Minn. App. Sept. 25, 2017), review denied (Minn. Dec. 19, 2017) (A16-1339).**

I. The term “offense” contained in Minn. Stat. § 609.322, subd. 1(b) (2014), refers to a single charge in a criminal complaint.

II. The statutory aggravating factor of multiple victims contained in Minn. Stat. § 609.322, subd. 1(b)(4), is not implicated unless the specifically charged offense alleged multiple victims.

***Lapenotiere v. State*, 902 N.W.2d 464 (Minn. App. Sept. 25, 2017), aff’d (Minn. Aug. 1, 2018) (A17-0456).**

The term “school zone” as defined by Minn. Stat. § 152.01, subd. 14a (2012), includes all city blocks that surround a school property.

***State v. Janecek*, 903 N.W.2d 426 (Minn. App. Oct. 9, 2017) (A16-1838).**

By the plain meaning of Minnesota Statutes section 609.72, subdivision 1(3) (2014), a conviction of disorderly conduct does not require a contemporaneous witness to the underlying conduct.

***Kruse v. Comm’r of Pub. Safety*, 906 N.W.2d 554 (Minn. App. Jan. 8, 2018) (A17-0552, A17-0564).**

Driving a vehicle on a marking that delineates a lane for traffic constitutes movement from the lane within the meaning of Minn. Stat. § 169.18, subd. 7(a) (2016).

***State v. Pakhnyuk*, 906 N.W.2d 571 (Minn. App. Jan. 8, 2018), review granted (Minn. Mar. 20, 2018) (A17-0474).**

A conviction for surreptitious interference with privacy under Minn. Stat. § 609.746, subd. 1(a) (2010), does not require the defendant to have the “intent to intrude upon or interfere with the privacy of a member of the household” when he enters the property of another.

***State v. Jama*, 908 N.W.2d 372 (Minn. App. Mar. 5, 2018), review granted (Minn. May 29, 2018) (A17-0481).**

(See page 24 for second syllabus point for this case.)

I. Indecent exposure is a general-intent crime.

***State v. Bowen*, 910 N.W.2d 39 (Minn. App. Apr. 2, 2018), *aff'd* (Minn. Jan. 16, 2019) (A17-0331).**

(See page 24 for second syllabus point for this case.)

1. The term “personal property,” as used in section 609.24 of the Minnesota Statutes, means all property that is not real property. The term includes property owned by or belonging to a human being as well as property owned by or belonging to a business entity.

***State v. Lopez-Ramos*, 913 N.W.2d 695 (Minn. App. Apr. 16, 2018), *review granted* (Minn. June 27, 2018) (A17-0609).**

(See page 16 for second and third syllabus points for this case.)

I. When an interpreter contemporaneously translates a criminal defendant’s foreign-language statement to law enforcement, absent a motive to mislead or distort, or other facts indicating miscommunication or inaccuracy, the interpreter’s translation may be regarded as the statement of the defendant.

***State v. Overweg*, 914 N.W.2d 410 (Minn. App. Apr. 30, 2018), *rev'd* (Minn. Jan. 23, 2019) (A17-1978).**

The ten-year conditional-release term mandated under Minn. Stat. § 617.247, subd. 9 (2008), is authorized only if an offender was convicted and sentenced for a qualifying offense before the commission of the present offense.

***State v. Rogers*, 912 N.W.2d 687 (Minn. App. Apr. 30, 2018), *review granted* (Minn. July 17, 2018) (A17-0986).**

The plain language of Minn. Stat. § 609.582, subd. 1(b) (2014), requiring possession of “any article . . . fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon,” does not require a burglary victim to be present, observe the article, and subjectively conclude that it is a dangerous weapon. It is sufficient that the article’s appearance supports an objective belief that it is a dangerous weapon.

***State v. Clarin*, 913 N.W.2d 717 (Minn. App. May 14, 2018), *review denied* (Minn. Aug. 7, 2018) (A17-1050).**

The state must prove beyond a reasonable doubt that appellant unlawfully possessed methamphetamine because unlawfulness is an element of the charge of second-degree controlled-substance crime, Minn. Stat. § 152.022 (2014).

***State v. Gundy*, 915 N.W.2d 757 (Minn. App. May 29, 2018), *review denied* (Minn. Aug. 7, 2018) (A17-0647).**

Under Minn. Stat. § 609.352, subd. 2a(1) (2012), statements made to an intermediary constitute electronic solicitation of a child when the person makes the statements with the objective of engaging a child in sexual conduct.

***State v. Hall*, 915 N.W.2d 528 (Minn. App. May 29, 2018), review granted (Minn. Aug. 21, 2018) (A17-0710).**

I. Under Minn. Stat. § 609.195(a) (2014), the phrase “without intent to effect the death of any person” is an element of the crime of third-degree murder that the state is required to prove beyond a reasonable doubt.

II. The phrase “any person” in Minn. Stat. § 609.195(a) extends to any person, including the appellant.

### **Trial Procedure**

***State v. Sam*, 904 N.W.2d 463 (Minn. App. Nov. 13, 2017) (A17-0012).**

A district court does not err by instructing the jury that it should not draw any adverse inference from a defendant’s decision not to testify where the instruction is requested by defense counsel and, because the defendant is voluntarily absent from trial, his personal consent is not obtained on the record.

***State v. Schnagl*, 907 N.W.2d 188 (Minn. App. Dec. 18, 2017), review denied (Minn. Feb. 28, 2018) (A16-1509).**

In a trial for third-degree murder, under Minn. Stat. § 609.195(b) (2012), a district court does not abuse its discretion by refusing to give a specific joint-acquisition jury instruction based on *State v. Carithers*, 490 N.W.2d 620 (Minn. 1992), if the defendant and the decedent were not spouses.

***State v. Jama*, 908 N.W.2d 372 (Minn. App. Mar. 5, 2018), review granted (Minn. May 29, 2018) (A17-0481).**

(See page 22 for first syllabus point for this case.)

II. A defendant is not entitled to a jury instruction on the common-law defense of involuntary intoxication where it is impossible to ascertain the source of his intoxication.

***State v. Winbush*, 912 N.W.2d 678 (Minn. App. Mar. 12, 2018), review denied (Minn. May 29, 2018) (A17-0344).**

When a defendant has been charged with the possession of chemical reagents or precursors with the intent to manufacture methamphetamine, it is plain error to fail to instruct the jury as to which items in the defendant’s possession are chemical reagents or precursors under Minn. Stat. § 152.0262, subd. 1(b) (2016).

***State v. Bowen*, 910 N.W.2d 39 (Minn. App. Apr. 2, 2018), *aff'd* (Minn. Jan. 16, 2019) (A17-0331).**

(See page 22 for first syllabus point for this case.)

2. In a trial on a charge of simple robbery under section 609.24 of the Minnesota Statutes, a district court is not required to use the term “personal property” in its jury instructions. If the item allegedly taken is personal property as a matter of law, a district court does not violate a defendant’s constitutional right to a jury trial by identifying in its jury instructions the specific item allegedly taken.

***State v. Gayles*, 915 N.W.2d 6 (Minn. App. Apr. 30, 2018) (A17-1710).**

The probable-cause standard applies when determining whether the law and proffered evidence support submission of an aggravating sentencing factor to the jury under Minnesota Rule of Criminal Procedure 11.04, subdivision 2(a).