

MINNESOTA

POLICE BRIEFS

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PART I RECENT MINNESOTA DECISIONS

Arrest, Search & Seizure

Snow Obstructing License Plate

The Court finds that an officer had a proper basis to stop the petitioner's motor vehicle where the license plate was partially obstructed by snow, making it impossible for the officer to read the plate or see the license tabs, and it had not snowed for several hours before the officer stopped the vehicle. Frazier v. Commissioner, A09-997 (Ct. App. Unpubl. 07/01/08)

Inadequate Findings - Search

In the absence of written or oral findings on the record concerning a contested search issue, the Court of Appeals remands the case to the District Court for additional findings, as the Court believed it was unable to conduct a review of the issue without those findings. State v. Ali, A07-294 (Ct. App. Unpubl. 07/01/08)

Independent Source Doctrine

The Court finds that, assuming that a previous police entry and conduct of a "protective sweep" was an illegal entry, this did not taint the issuance of a subsequent search warrant where the warrant application did not include any mention of the initial entry and it appeared that the issuance of the

warrant was independent of the previous warrantless entry. State v. Darnell Anderson, A07-0771 (Ct. App. Unpubl. 07/08/08)

Towing of Vehicle Illegal

The defendant was cited for no proof of insurance and requested to make arrangements for someone to come and get the vehicle. The officer declined and towed the vehicle, which was lawfully parked and, according to the District Court Judge did not constitute a traffic hazard in the middle of the day. Reversing the District Court, the Supreme Court finds that police did not have the authority to tow the vehicle, and therefore the subsequent inventory search that led to the discovery of drugs was unlawful and the evidence must be suppressed. State v. Gauster, A07-0488 (S. Ct. 07/10/08)

Inventory Search - Loose Panel

During an inventory search, the officer noticed a loose cassette player panel that appeared to have been removed. The officer removed the panel with his fingers and found a firearm that was placed inside a sock. The officer testified that he had found contraband and valuables in panels, compartments and vents in vehicles many times. The Court

finds that the inventory search was conducted in accordance with police department policy and affirms a denial of the defendant's motion to suppress. State v. Delaney Johnson, A07-0792 (Ct. App. Unpubl. 07/15/08)

Loud Muffler

The Court reverses the dismissal of a charge of felony fleeing a peace officer in a motor vehicle, and finds that the officer had a reasonable basis to stop the ATV the defendant was driving based on the officer's belief that the muffler violated Minn. Stat. § 169.69. It was only necessary that the officer reasonably believed that the muffler was unlawful. State v. Gedicke, A08-0135 (Ct. App. Unpubl. 07/29/08)

DWI

45 Minutes for Attorney

The Court affirms the revocation of petitioner's driving privileges where the petitioner was given approximately 45 minutes to contact an attorney, and he attempted to reach only one particular attorney and declined to contact any other attorney. The record shows that the petitioner refused to take a test without speaking to his attorney. Bray v. Commissioner, A07-1396 (Ct. App. Unpubl. 07/01/08)

Right to Counsel - No Glasses

Defendant was given 30 minutes to reach an attorney and claimed he couldn't read the phone books because he was missing his glasses. An officer provided a pair of reading glasses which the defendant stated did not help. The District Court Judge found that the defendant's claim that he could not read the phone book "did not appear genuine". The Court finds the defendant's right to counsel was vindicated. State v. Knutson, A07-0588 (Ct. App. Unpubl. 07/01/08)

Intoxilyzer Reliability

The Court affirms the revocation of the petitioner's driving privileges, rejecting the defendant's various challenges to the reliability of the Intoxilyzer test. Backstrom v. Commissioner, A07-1210 (Ct. App. Unpubl. 07/08/08)

Error on Revocation Notice

Petitioner was stopped by an officer and ultimately received a notice of revocation of his license that was misdated, with February 6 instead of February 16 being the effective date. The Court finds that the petitioner did not suffer prejudice because the petitioner testified that he could not afford to renew his insurance and therefore was not deprived of due process for failure to set forth properly a 7 day temporary license. Peterson v. Commissioner, A07-1568 (Ct. App. Unpubl. 07/15/08)

Reasonable Refusal Claim

The Court rejects the defendant's claim that his refusal to submit to a test was reasonable because he intended to plead guilty at his first available opportunity. Without deciding whether State, Department of Highways v. Schlieff is still good law, the Court finds that the defendant failed to establish that this was the reason for his refusal and he failed to plead guilty at his first available opportunity. Hess v. Commissioner, A07-1361 (Ct. App. Unpubl. 07/22/08)

Consecutive Sentencing

The court reverses defendant's 75 month consecutive sentence for 1st degree DWI committed while on supervised release from another alcohol related driving offense. The Court finds that a consecutive sentence is presumptive under the guidelines, but must be calculated based on a criminal history score of 1. State v. Nelson, A07-1238 (Ct. App. Unpubl. 07/22/08)

50 Minutes for Attorney

The Court affirms the revocation of the petitioner's driving privileges where the driver was given two opportunities adding up to 50 minutes of time to try to reach an attorney. The refusal was not reasonable and the PBT evidence was admissible to show the breath test was properly requested. Martin v. Commissioner, A07-1448 (Ct. App. Unpubl. 07/29/08)

Evidence

Identification - DL Photo

An undercover officer purchased some crack cocaine from a man and radioed the vehicle license number to other officers who stopped the car. One of the other officers radioed to the undercover officer the name of the driver, and the undercover officer looked up the driver's license photograph and identified the driver as the suspect. The Court affirms a District Court order finding the identification procedure was not so impermissibly suggestive as to violate the defendant's due process rights. State v. Hooks, A07-0597 (Ct. App. 07/01/08)

Hearsay - Harmless Error

The Court finds that the admission of hearsay evidence concerning the content of tips from neighbors concerning drug activity was harmless error in light of the fact that the hearsay evidence did not connect the defendant to the charged offense and there was overwhelming evidence of guilt. State v. Olson, A07-659 (Ct. App. Unpubl. 07/01/08)

Confrontation - Co-Defendant Statement

A co-defendant testified against the defendant as a part of a plea agreement, but refused to answer some of the questions and was held in contempt. The prosecutor then offered the witness's testimony made in connection with his guilty plea hearing. The Court

finds that the testimony was admissible under the residual hearsay exception and did not violate the defendant's right to confrontation. State v. Rosco Lewis, A07-0921 (Ct. App. Unpubl. 07/08/08)

Report in Jury Room

The Court finds that the presence of a police report containing some information that was not admitted in the trial was not harmless error. The defendant's conviction is reversed. State v. Chaney, A08-0066 (Ct. App. Unpubl. 07/08/08)

Prior Assault Conviction

The Court finds no error in allowing evidence of the defendant's prior 1999 felony assault conviction for impeachment purposes in the current 4th degree assault and obstructing legal process case where the defendant's credibility was the central issue. State v. Mathre, A07-0349 (Ct. App. Unpubl. 07/08/08)

Impeachment - Terroristic Threats

In defendant's trial for criminal sexual conduct, it was not error for the District Court to rule that the defendant could be impeached by his 2000 felony conviction of terroristic threats. State v. Zagrzebski, A07-0722 (Ct. App. Unpubl. 07/08/08)

Prior Assault and Graffiti

In defendant's trial for second degree murder and second degree assault, both for the benefit of a gang, the Court finds no error in admitting evidence of a subsequent assault and a graffiti conviction, related to gang issues, to prove motive identity and modus operandi. State v. Hernandez, A07-714 (Ct. App. Unpubl. 07/15/08)

Hearsay - Statement of Accomplice

In defendant's trial for burglary and armed robbery, the State offered evidence of part of a telephone conversation between the defendant and an alleged accomplice where the accomplice made a statement to the effect that the police did not find a gun on him to which

the defendant responded "yeah, they found it?". The Court finds that the statement of the alleged accomplice was not hearsay because it was not offered to prove truth of the statement but rather to provide a context for the defendant's statement. State v. Thomas, A06-1898 (Ct. App. Unpubl. 07/22/08)

Pre-Arrest Silence

The Court affirms the defendant's conviction of first degree murder committed during a sexual assault following the defendant's second trial, finding that a reference to the defendant's pre-arrest silence by the prosecutor was not plain error. Various other prosecutorial arguments were found to be either not plain error or not prejudicial. State v. Kent Jones, A07-457 (S. Ct. 07/31/08)

Sentencing

Statutorily Presumed Sentence

The Court finds that the defendant's sentence of 144 months, presumed to be the proper sentence under the statute, was not an upward departure and did not violate Blakely v. Washington. Griffin v. State, A07-1539 (Ct. App. Unpubl. 07/08/08)

Major Economic Offense

The Court affirms the defendant's sentence for an upward departure based upon the conduct being a "major economic offense" where the defendant, as a claims manager, fraudulently created numerous accounts, generating 415 false claims checks totaling close to \$900,000.00. State v. Rieck, A07-0531 (Ct. App. Unpubl. 07/08/08)

Fail to Appear for Sentencing

The defendant entered into a plea agreement with the prosecutor to be sentenced for 45 months for attempted second degree controlled substance crime, but if the defendant failed to appear for sentencing he would be sentenced for second

degree possession and would receive a guideline sentence of 67 months. The Court affirms the defendant's sentence for 67 months, affirming a denial of the defendant's motion to withdraw his plea. State v. Thomas, A07-620 (Ct. App. Unpubl. 07/1/508)

Probation Revocation - Drinking

The Court affirms a revocation of probation and execution of a prison sentence for violating probation on the defendant's 5th DWI conviction where, although the defendant was not ordered to complete treatment while on probation, treatment was available and the defendant violated his abstinence restriction. State v. Rolland, A07-1438 (Ct. App. Unpubl. 07/15/08)

No-Contact Order Improper

Defendant received an executed sentence for first degree criminal sexual conduct and was also ordered to have no contact with the victim. The Court finds that there was no authority by the District Court to impose a no contact order as a part of an executed sentence. State v. Pugh, A07-1171 (Ct. App. 07/22/08)

Consecutive Sentence - Upward Departure

The Court finds that a sentence for 3rd degree burglary that was ordered consecutive to probation sentences for offenses 5 years earlier failed to satisfy the criteria for permissive consecutive sentencing under the sentencing guidelines. The District Court failed to find "severe aggravating circumstances" which would have allowed it to impose both a durational departure and a consecutive sentence. State v. Midderigh, A07-1112 (Ct. App. Unpubl. 07/22/08)

Aggravating Factors

The Court affirms the defendant's sentence to an upward durational departure from 210

months to 360 months upon the defendant's conviction of 2nd degree unintentional murder. The jury found 9 aggravating factors, but only 1 was required. State v. Cindrich, A07-0261 (Ct. App. Unpubl. 07/29/08)

Shooting in a Crowd

The Court finds that an upward durational departure in sentence was justified in a drive by shooting case where the defendant fired a gun 7 times at a group of 9 people, seriously injuring 1. State v. Edwards, A07-1012 (Ct. App. Unpubl. 07/29/08)

Miscellaneous

Discovery Violation - Prejudicial

The State failed to disclose a law enforcement agent's pre-trial identification of the defendant in an earlier drug transaction that was relevant in defendant's trial for possession of drugs. The Court finds that the defendant may have pursued a different trial strategy had the defendant been aware of the identification and reverses the defendant's conviction. State v. Miramontes, A07-0135 (Ct. App. Unpubl. 06/27/08)

Prosecution Argument - "National Enquirer"

During closing argument the prosecutor stated that the defendant's alibi was "silly" and compared it with a story that might be found in the "National Enquirer". The Court finds that the prosecutor's comments did not constitute misconduct. State v. Soper, A07-535 (Ct. App. Unpubl. 07/01/08)

Terroristic Threats - Third Party

While defendant was being led away by officers after being sentenced for 4 counts of violating an order for protection, the defendant made explicit threats to kill the victim, his former wife, which comments were relayed to the victim due to concerns of the officer for the

victim's safety. The Court finds sufficient evidence to sustain the defendant's conviction for terroristic threats. State v. Franks, A07-1058 (Ct. App. Unpubl. 07/01/08)

Guilty Plea - Waivers Inadequate

The Court finds that the defendant did not knowingly and intelligently waive his right to counsel as a part of his guilty plea when defendant was not advised as required by Rule 5.02, subd. 1(4) and the form that the defendant signed waiving counsel did not contain information about possible defenses, mitigating circumstances or the consequences of waiving the right to counsel. State v. Hughes, A07-1030 (Ct. App. Unpubl. 07/01/08)

Post-Conviction Relief Denied

The Court affirms a denial of post-conviction relief from the defendant's conviction of first degree murder where the defendant's conviction was affirmed on appeal. The Court finds the defendant's post-conviction arguments to be procedurally barred. Bashby v. State, A07-2385 (S. Ct. 07/10/08)

Recantation After Trial

The Court affirms a summary denial of the defendant's petition for post-conviction relief based in part upon a partial recantation of two witnesses where the Court concluded that there lacked sufficient "indicia of the trustworthiness" of the recantation. Vance v. State, A07-1552 (S. Ct. 07/10/08)

Domestic Assault - Felony

The District Court had dismissed a felony domestic assault charge, stating that the defendant's prior conviction of assaulting a peace officer was not domestic violence related. The Court reverses and finds that under the clear language of the felony domestic assault and felony assault statute, the prior convictions do not

have to be against a family or household member to be "domestic violence" related as is the case for gross misdemeanor domestic assault. State v. Moen, A07-2365 (Ct. App. 07/08/08)

Prosecutor - Restricted Status

The Court affirms defendant's conviction of first degree assault, rejecting the defendant's various claims including that he was entitled to a new trial on the grounds that he was prosecuted by an assistant county attorney whose license to practice law was on a restricted status for failing to comply with CLE requirements. The Court discusses decisions in other jurisdictions and concludes that the defendant must show prejudice in order to be entitled to a new trial. State v. Ali, A07-0428 (Ct. App. 07/08/08)

Jurisdiction - Felony Theft

The Court finds that evidence that the defendant made false representations to the victim and engaged in "artifice, trick or device" while in Minnesota constituted "some operative event" such that Minnesota had jurisdiction over the prosecution even though the victim was outside the State of Minnesota when the money was actually obtained. State v. Steven Anderson, A07-0292 (Ct. App. Unpubl. 07/08/08)

Lothenbach Appeal

The Court rejects the defendant's challenge to the sufficiency of the evidence in a Lothenbach stipulated trial, indicating that a challenge to the sufficiency of the evidence is not proper in a Lothenbach proceeding. The Court further finds sufficient evidence to sustain the conviction for kidnapping. State v. Kennedy, A06-0192 (Ct. App. Unpubl. 07/08/08)

"I Submit" Statements in Argument

The Court affirms the defendant's conviction for felony

theft, finding that the prosecutor's statements in closing argument prefacing comments with "I submit" did not constitute improper vouching. State v. Brown, A07-1099 (Ct. App. Unpubl. 07/08/08)

Robbery - Force

The Court finds sufficient evidence to prove that force used to assault the victim was intended to overcome the victim's resistance or to compel acquiescence in taking the victim's wallet even though there was a separate motive for assaulting the victim and the wallet was taken minutes after the assault. State v. Olveda, A07-0822 (Ct. App. Unpubl. 07/08/08)

Mental Competency - Disruption

The Court affirms a District Court determination that the defendant's repeated conduct in disrupting his 4 re-sentencing hearings were deliberate attempts to disrupt the proceedings and did not provide a basis to question the defendant's competence. State v. Goodrich, A07-1018 (Ct. App. Unpubl. 07/08/08)

Post Conviction Relief Denied

The Court affirms a denial of post-conviction relief from the defendant's second trial on conviction of first degree murder, finding that his claims for relief are either merit less or procedurally barred. Hannon v. State, A07-1784 (S. Ct. 07/17/08)

Child Abuse - Venue

Affirming the defendant's conviction for first degree criminal sexual conduct, the Court finds that the proper venue of a prosecution for a child abuse offense may take place in the county where the victim of child abuse was "found, either at the time the abuse occurred or later when the abuse was reported". State v. Rucker, A07-0773 (Ct. App. 07/15/08)

Ineffective Assistance Claim

Affirming the defendant's conviction by his guilty plea to first degree criminal sexual conduct, the Court finds no error in rejecting the defendant's claim of ineffective assistance of counsel for failure to speak with a witness who had evidence regarding the victim's reputation for untruthfulness, where the defendant made a clear confession to the officers. State v. Babey, A06-2425 (Ct. App. Unpubl. 07/15/08)

Sex Offender Registration

The Court finds that charges for violating the predatory offender registration requirements may be brought in the county in which the offender last registered and can be brought for each failure to register a change of address without violating constitutional prohibitions against double jeopardy. However, the Court reverses the defendant's conviction for lack of a personal and explicit waiver of the right to testify at trial in connection with the State v. Lothenbach stipulation. State v. Ehmke, A07-824 (Ct. App. 07/15/08)

Jurisdiction - Tribal Member

The Court affirms defendant's convictions for speeding and failure to provide proof of insurance where the defendant was a member of the Minnesota Chippewa tribe, but the offense did not take place at the reservation where he was enrolled. State v. Davis, A07-0036 (Ct. App. Unpubl. 07/15/08)

Pre-Existing Non-Conforming Use

The Court reverses the defendant's conviction for placement of a lakeshore dock in violation of a recently amended ordinance, finding there was a right to continue a pre-existing non-conforming use where the County sought to enforce the ordinance shortly after it was adopted without an amortization period for the dock. The Court also finds that the defendant was not the owner and the State did not establish that the

defendant was responsible for the placement of the dock. State v. LaFon, A07-708 (Ct. App. Unpubl. 07/15/08)

Removal of Judge on Re-trial

Defendant's case was remanded for a new trial and was scheduled before the same judge that presided over the first trial. The defendant unsuccessfully sought to remove the same judge from presiding over the trial. The Supreme Court decides that the defendant had no right to remove the judge under these circumstances where the judge previously presided over a trial on the same incident. State v. Dahlin, A06-717 (S. Ct. 07/24/08)

Post-Conviction Relief Denied

The Court affirms a denial of post-conviction relief from the defendant's conviction of first degree murder, finding that the defendant's claims were procedurally barred and also without merit. Nunn v. State, A07-2235 (S. Ct. 07/24/08)

Escape From Custody - Venue

Defendant was placed in the Kandiyohi County Jail and was furloughed to a chemical dependency treatment facility in Yellow Medicine County, where he absconded and was found in Stevens County. The Court finds that venue for the escape from custody charge was proper in Stevens County because defendant continued to commit the escape offense while in Stevens County. State v. Giles, Jr., A07-1482 (Ct. App. Unpubl. 07/22/08)

Explosive Device

Defendant admitted that he possessed "MacGyver bombs" and a BCA chemist testified that a MacGyver bomb sprays an acid that can cause serious personal injury and the fireball resulting from the explosion can ignite combustible materials. The Court finds sufficient evidence to sustain the defendant's conviction of felon in possession of

an explosive device. State v. Wencil, A07-954 (Ct. App. Unpubl. 07/22/08)

Ex Parte Communication

The District Court Judge had a conversation with the prosecutor advising the prosecutor to be prepared to discuss the prejudice to the State or victims if defendant made a motion to withdraw his guilty plea. The Court concludes that this conversation was in appropriate ex parte communication, but that the defendant was not prejudiced by the communication. State v. Schlien, A07-874 (Ct. App. Unpubl. 07/22/08)

Speeding - Visual Estimate

A deputy patrolling a lake by snowmobile testified that he stopped to observe approaching snowmobiles and estimated the speeds between 30 and 40 miles per hour in an area where the nighttime shore zone speed limit was 15 miles an hour. The deputy testified that he had experience in estimating speeds and verifying those estimates with a radar or laser device. The Court finds that the officer had a reasonable, articulable suspicion to stop the snowmobiles for speeding. State v. Branson and Molick, A07-1184 (Ct. App. Unpubl. 07/22/08)

Prosecution Argument Not Improper

Reversing the Court of Appeals and upholding the defendant's conviction for 2nd degree criminal sexual conduct, the Court finds that the prosecutor did not commit misconduct by discussing the victim's pretrial statements about penetration even though the District Court dismissed the 1st degree charge involving penetration and instructed the parties not to address the matter further. The Supreme Court finds that the prosecutor's references to penetration were focused on the victim's credibility as a witness and were related to the facts and not the law. State v. McRay, II, A06-857 (S. Ct. 07/31/08)

Certification to Adult Court

The Court affirms a certification of the 15 year old who shot and killed his grandmother to adult court, but finds that one of the reasons for the certification, a prior history of delinquency, was improper because the prior delinquency was behavior that was not charged. The Supreme Court indicates that under the certification statute a prior record of delinquency refers to Juvenile Court petitions and adjudications. In the Matter of N.J. S., A06-2277 (S. Ct. 07/31/08)

Post-Conviction Claims - Prosecutor on Drugs

The Supreme Court affirms the summary denial of the defendant's third and fourth post-conviction petitions from his conviction of first degree murder, finding all of his claims are procedurally barred and his assertion that the prosecutor must have been on drugs lacked any factual support in spite of the fact the prosecutor later pled guilty to a drug offense. Perry v. State, A07-2454 (S. Ct. 07/31/08)

Post-Conviction Relief Denied

The Supreme Court affirms a denial of post-conviction relief from the defendant's conviction of first degree murder, finding that the evidence offered in support of his petition was not unknown at the time of his trial as required. Whitaker v. State, A07-2397 (S. Ct. 07/31/08)

The Supreme Court affirms a denial of post-conviction relief from the defendant's conviction of first degree murder, rejecting the defendant's claims of ineffective assistance of counsel due to an alleged conflict of interest and ineffective assistance of appellate counsel. Brocks v. State, A07-2146 (S. Ct. 07/31/08)

Firearms - "Fleeing Control"

The Court affirms the defendant's conviction for felon in possession of a firearm, finding no abuse of discretion by the District Court declining to instruct the jury on "fleeing control", noting that Minnesota has not adopted the notion of fleeing control as an exception to the rule of possession. State v. Riley, A07-1178 (Ct. App. Unpubl. 07/29/08)

PART II EIGHTH CIRCUIT DECISIONS

Mistake of Fact

The 8th Circuit Court finds that a vehicle stop based upon an officer believing the vehicle did not have a front license plate was objectively reasonable even though the vehicle actually had a front plate. The position of the plate was not centered on the front bumper in the usual manner and the darkness made it difficult for the officer to locate the front plate. U.S. v. Payne, #07-3142 (8th Circuit 07/25/08)

Detention in Vehicle

Police were patrolling a parking lot of a housing development where there had been previous drug related activity. Officers spoke with the occupants, received vague and then conflicting answers. The defendant leaned forward as if putting something under the front seat. The Court finds that the original encounter was consensual and the officers had a basis to expand the stop. The Court affirms a denial of the motions to suppress. U.S. v. Griffith, #07-1734 (8th Circuit 07/21/08)

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