2021 Minnesota State Supreme Court Update

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Overview

*81 opinions (down from 96 in 2020)
* lots of public law (17 AGO cases/ 34 criminal)
*15 (18%) had dissents
*(24 in 2020 – 25%)
*CJ Gildea has most dissents (8)
*3-minute opening, then full stop

Introductions

Criminal Law Decisions

Ed Stockmeyer

Fourth Amendment—Reasonable Suspicion

State v. Taylor, 965 N.W.2d 747 (Minn. 2021)

Facts

- Routine traffic stop;
- Officer sees open case of beer with missing cans but no empties;
- Query of driver's name reveals his license is cancelled as "IPS;"
- Officer testifies that, in his experience, license cancelled as IPS is usually the result of a lengthy history of DWI infractions;
- No observable physical signs of alcohol impairment.

State v. Taylor, 965 N.W.2d 747 (Minn. 2021)

Issue

Were the open beer case and the status of the driver's license as cancelled as IPS sufficient to create a reasonable suspicion of DWI in the absence of physical symptoms of impairment?

State v. Taylor, 965 N.W.2d 747 (Minn. 2021)

Majority (Chutich, 5-2)

- Reasonable suspicion is a low standard;
- the *combination* of the cancelled license and missing beers were sufficient

Dissent (Thissen and Anderson)

- Inferences re: prior DWIs and who drank the beers are speculative;
- cannot be supported given absence of symptoms of impairment

State v. Taylor, 965 N.W.2d 747 (Minn. 2021)

One notable section of Justice Thissen's dissent was not joined by Justice Anderson. Key quote:

"Our standard for establishing a reasonable suspicion to justify a stop or expanded search . . . should account for the systemic racial imbalances and inequities that we observe in this corner of our criminal justice system and our societal interest in treating all Minnesotans the same when it comes to fundamental liberty interests like the right to be free of unreasonable searches."

Interpreting Criminal Statutes

Common theme

The Court will not be swayed by arguments about what the criminal law should be, or what it was intended to be, if the statutory language or existing precedent are clear.

State v. Khalil, 956 N.W.2d 627 (Minn. 2021)

Facts

- Sexual assault against an unconscious victim, who had been drinking alcohol.

- Defendant found guilty of third-degree CSC, which requires the defendant to have known the victim was "mentally incapacitated or physically helpless" Minn. Stat. § 609.344, subd. 1(d) (2020).

State v. Khalil, 956 N.W.2d 627 (Minn. 2021)

"Mentally incapacitated" defined in § 609.341, subd. 7 (2020):

Lacking judgment to consent due to the "influence of alcohol, a narcotic, anesthetic, or any other substance, *administered to that person without the person's agreement*"

State's theory: voluntary alcohol impairment is sufficient because the language requiring involuntary administration only applies to "any other substance."

State v. Khalil, 956 N.W.2d 627 (Minn. 2021)

Held: a person under the influence of alcohol is not "mentally incapacitated" unless it was involuntarily administered.

Decision generated significant publicity.

Legislature enacted numerous amendments to CSC statutes in special session. "Mental incapacitation" now includes voluntary intoxication that renders a person unable to consent.

State v. Noor, 964 N.W.2d 424 (Minn. 2021)

Facts

- Mohamed Noor fired his gun at Justine Ruszczyk while responding to a routine 911 call, causing her death.

- Noor acquitted of second-degree murder, found guilty of third-degree depraved mind murder and second-degree manslaughter.

State v. Noor, 964 N.W.2d 424 (Minn. 2021)

Third-degree depraved mind murder, § 609.195(a):

Causing another's death, without intent, "by perpetrating an act eminently dangerous to others" that "*evinces a depraved mind, without regard to human life*."

State v. Noor, 964 N.W.2d 424 (Minn. 2021)

Held: Depraved mind requires the defendant to exhibit indifference to "human life in general." It does not apply to conduct "directed with particularity" at the victim.

<u>Examples of depraved-mind murder</u>

- Driving into a crowd
- Obstructing train tracks
- Riding "an unruly horse among a crowd of persons"

Retroactivity

State v. Robinette, 964 N.W.2d 143 (Minn. 2021)

Amelioration Doctrine

Changes to sentencing rules apply to sentences imposed before the effective date if:

(1)The new sentencing rule mitigates punishment;

(2) the judgment was not final on the effective date; and

(3) the Legislature did not expressly "abrogate" amelioration

State v. Robinette, 964 N.W.2d 143 (Minn. 2021)

Facts

- New Sentencing Guidelines take effect while direct appeal pending;
- defendant asks to be resentenced under one of the new rules;
- new Guidelines clearly state they are prospective only, and that the amelioration doctrine should not apply.

Issue

Under third prong of amelioration test, can the Sentencing Guidelines Commission abrogate the amelioration doctrine?

State v. Robinette, 964 N.W.2d 143 (Minn. 2021)

Majority: Abrogation must be a "statement by the Legislature," i.e. legislation. Statements by Commission cannot abrogate ameliorative effect of Sentencing Guidelines.

Dissent: Even if Commission can't abrogate, the amelioration doctrine does not apply to new Sentencing Guidelines. It only applies to new sentencing statutes.

Majority: That threshold issue was not presented by the parties.

Other Retroactivity Decisions

Johnson v. State, 956 N.W.2d 618 (Minn. 2021)

Holding from *Missouri v. McNeely,* 569 US 141 (2013) (DWI tests) is not retroactive because it is a procedural rule, not a substantive rule.

Aili v. State, 963 N.W.2d 442 (Minn. 2021)

The two-year statute of limitations for postconviction petitions seeking retroactive application of a new court decision runs from the date of that decision, not the date of a later decision assessing its retroactivity.

Environmental & Energy

Pete Farrell

General Observations

- Busy year for the court's environmental and energy docket:

Year(s)	Cases (with caveats)
2021	~5
2020	~4
2019	~1
2016 to 2018	~0

General Observations

- Trend?
  - Large, controversial projects that have generated a lot of environmental litigation, with more to come.
  - But expanded docket may be driven by more general administrative law issues.
  - Grant on Dec. 28, 2021, in important case involving the classification of public waters; oral argument held on April 11.

ENVIRONMENTAL & ENERGY

- ***In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.***, 954 N.W.2d 572 (Minn. 2021)
  - *Issue*
    - Whether groundwater is a Class 1 water under Minnesota law.
  - *Why It Matters*
    - If groundwater is a Class 1 water, then it is subject to more stringent drinking water standards promulgated by EPA, and MPCA can use those standards in water pollution permits.
  - *Holding*
    - Groundwater is a Class 1 water under Minnesota law, and therefore MPCA properly applied the relevant drinking water standards to U.S. Steel's permit.

ENVIRONMENTAL & ENERGY

- ***U.S. Steel Corp.*** (cont'd)
  - *Key Takeaways*
    - If a regulation is ambiguous, the agency's interpretation is entitled to considerable deference, especially when:
      - The regulation involves the agency's technical expertise
      - The agency's interpretation is longstanding
      - The administrative history supports the agency's interpretation
    - Strong reaffirmation of principle of agency deference.
    - Contrast with SCOTUS, where agency deference appears to be encountering real skepticism.

ENVIRONMENTAL & ENERGY

- ***In re NorthMet Project Permit to Mine Application Dated Dec. 2017,*** 959 N.W.2d 731 (Minn. 2021)
  - *Main Issues*
    - Whether the existence of a fact dispute requires the DNR to hold a contested case hearing on a permit to mine.
    - Whether the permit to mine is required to have a fixed term.
  - *Why It Matters*
    - If a fact dispute is enough to warrant a contested case, there will be a lot more contested case hearings in complex permitting matters.
    - If a permit to mine is required to have a fixed term, then the DNR cannot use more flexible, indefinite, performance-based standards.

ENVIRONMENTAL & ENERGY

- ***NorthMet Project*** (cont'd)
  - *Main Holdings*
    - The DNR is not required to hold a contested case hearing whenever there is a fact dispute. The DNR has discretion to determine whether a contested case would aid the decision-making process.
    - The permit to mine is required to have a fixed term.
  - *Key Takeaways*
    - Environmental agencies are going to get a lot of deference in permitting decisions. But they still need to show their work.
    - Useful synthesis of the substantial evidence standard:
      - "Although we have used different formulations, this standard reflects a singular legal principle: a substantial-evidence analysis requires us to determine whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record." 959 N.W.2d at 749 (cleaned up).

ENVIRONMENTAL & ENERGY

- ***In re Minn. Power's Pet. for Approval of the EnergyForward Res. Package***, 958 N.W.2d 339 (Minn. 2021)
  - *Issue*
    - Whether the Public Utilities Commission (PUC) must conduct environmental review before approving affiliated-interest agreements that will govern the construction and operation of a power plant in a neighboring state.
  - *Why It Matters*
    - What is the causation standard for environmental review under the Minnesota Environmental Policy Act (MEPA) – "but for" or something more?

ENVIRONMENTAL & ENERGY

- ***EnergyForward Res. Package*** (cont'd)
  - *Holding*
    - The PUC is not required to conduct environmental review before approving an affiliated-interest agreement that will govern an out-of-state project.
  - *Key Takeaways*
    - The federal causation standard for environmental review applies to MEPA. There needs to be a "reasonably close causal relationship" between the environmental effect and the alleged cause.
    - The PUC's approval of the affiliated-interest agreements was too attenuated to meet the standard – in essence, the Wisconsin facility could be built and run without PUC approval.

ENVIRONMENTAL & ENERGY

- ***State by Smart Growth Minneapolis v. City of Minneapolis***, 954 N.W.2d 584 (Minn. 2021)
  - *Issues*
    - Whether a plaintiff can seek environmental review of a local government's comprehensive plan under the Minnesota Environmental Rights Act (MERA).
    - Whether a plaintiff states a claim under MERA if the comprehensive plan does not, by itself, cause any environmental effects.
  - *Why It Matters*
    - Comprehensive plans are exempt by regulation from environmental review. Is MERA a workaround?

ENVIRONMENTAL & ENERGY

- ***State by Smart Growth*** (cont'd)
  - *Main Holding*
    - A plaintiff can challenge a comprehensive plan and seek environmental review as a remedy under MERA. There is no exemption from the broad scope of MERA absent express statutory language to that effect.
  - *Key Takeaways*
    - MERA is a broad statute that enables a plaintiff to get relief that would be prohibited by other environmental statutes.
    - It's really, really hard to get a MERA claim tossed on a motion to dismiss.

Pleading Standards

Angela Behrens

Overview

- **2021:** 16 opinions in civil cases arising from rule 12 and 56 motions
  - At least partial reversal in 10 cases (63%)
    - 4 of 8 cases arising from motion to dismiss
    - 6 of 8 cases arising from summary-judgment motions

- **Reaffirmed General Principles**
  - Notice-pleading state; construe pleadings liberally
  - Minnesota doesn't follow federal "plausibility" standard
    - *Walsh v. U.S. Bank N.A.*, 851 N.W.2d 598, 603 (Minn. 2014)
  - De novo standard of review
  - Review facts, including all reasonable inferences, in the light most favorable to the non-moving party

Notice Pleading

Halva v. Minnesota State Colleges & Universities, 953 N.W.2d 496, 500-02 (Minn. 2021)

- Alleged violations of Minnesota Government Data Practices Act and Official Records Act

State ex rel. Smart Growth Minneapolis v. City of Minneapolis, 954 N.W.2d 584, 593-97 (Minn. 2021)

- Alleged city's comprehensive plan violated MERA

Werlich v. Schnell, 958 N.W.2d 354, 363 (Minn. 2021)

- Challenged constitutionality of predatory-offender registration and collateral consequences of registration

- **Short and plain statement showing entitled to relief.** Minn. R. Civ. P. 8.01.

- **Fair notice**
  - Don't lose sight of the procedural posture
  - Only need information sufficient to fairly notify party of claims

- **Sufficiency of allegations**
  - Focus on adequacy of allegations, not the likelihood of proving them
  - Sufficiently state claim "if it is possible, on any evidence that might be produced, to grant the relief demanded"
    - Broad general statements that express conclusions can be sufficient
    - Lack of judicial deference to "labels and conclusions" refers to *legal* conclusions
  - Dismiss only if it appears certain that party could introduce no facts consistent with pleading to support granting relief

- **Damages**
  - Speculative/remote nature of alleged damages is a trial standard to be considered at the summary-judgment stage, not on a motion to dismiss
  - Alleging "factual nexus" is sufficient

- **Constitutional claims**
  - Rule 12.02 motions should be "even more sparingly granted" when complaint alleges constitutional errors

- **Proper for motion to dismiss**
  - Justiciability of constitutional claims
  - Claims hinging on statutory interpretation
  - Claims relying on erroneous legal theories

Summary Judgment

Staub v. Myrtle Lake Resort, LLC, 964 N.W.2d 613, 620-22 (Minn. 2021)

- Wrongful-death action after decedent fell down resort stairs; no one saw the beginning of the fall

- Competing expert reports about the stairs' condition

- District court: SJ for resort. Because no one saw the decedent fall, the jury would have to speculate about the cause
  - Court of appeals: Affirmed
  - Supreme court: Reversed

- **Evidence at the Summary Judgment Stage**
  - Summary judgment is inappropriate when the evidence permits reasonable people to draw different conclusions
  - Circumstantial evidence is evidence
    - Eyewitness testimony is unnecessary to establish proximate cause
      - *Majerus v. Guelsow*, 113 N.W.2d 450 (Minn. 1962)
    - Must be more than something "merely consistent" with the plaintiff's theory
    - Need reasonable basis for jury to infer defendant's negligent act proximately caused the injury

- Multiple theories of proximate cause:
  - When the plaintiff and defendant have inconsistent theories of proximate cause, the plaintiff's theory must "reasonably preponderate" over the other theories to survive summary judgment
  - Summary judgment is inappropriate when the plaintiff's theory is consistent with alternative proximate-cause theories

*625 Here, viewed in a light most favorable to Staub, the evidence—including deposition testimony, expert reports, and photographs—establishes the following facts:

- The stair was degraded and in poor condition; the landing was rough and rocky and the steps themselves were cracked, chipped, inconsistently spaced, leaning, and unsafe to use. [11]
- Sam and Joyce had complained to Lown about the state of the stair and had warned Lown that the stair represented a safety hazard.
- Joyce regularly used the stair leading out of the lodge and had complained about the challenge of using it. She had previously used the longer set of steps down which she fell.
- Finally, on the date of the fall, Joyce exited the lodge onto the landing. Shortly thereafter, she fell down the longer set of steps, although how she began to fall remains uncertain. She died as a result of injuries sustained during her fall.

26 27 28 Life experience and common sense, which a jury may rely on to draw reasonable inferences when making a decision, tell us that a degraded, cracked, and chipped stair, leaning away from a building, is a dangerous condition that may cause a person using the stair to fall. And at this stage in the proceeding, we must accept the fact that the stair was in a poor and degraded condition. We also accept Staub's reasonable inference that the condition of the stair meant that it was unsafe

Anderson, J., dissenting:

I disagree. The only evidence to support Staub's theory is evidence of the defective condition of the stair. Perhaps this evidence shows that the condition *could* have caused Joyce to fall. But the record contains no other evidence suggesting that, on this particular occasion, the condition of the stair was the cause of Joyce's fall. We know only that Joyce fell; no one saw how that fall began. Witnesses saw her on the landing before she fell and on the steps as she was falling, but they did not see the start of her fall. There also is no physical evidence from the landing, steps, or rail, such as a fresh chip of cement, to suggest that a specific defect caused her to fall. And the record does not contain any statements from Joyce about why she fell.

Other Rule 12 and 56 Cases

- **Rule 12**
  - *Bergstrom v. McEwen*, 960 N.W.2d 556 (Minn. 2021) (election contest)
  - *Hall v. City of Plainview*, 954 N.W.2d 254 (Minn. 2021) (unpaid wages)
  - *Moore v. Robinson Environmental*, 954 N.W.2d 277 (Minn. 2021) (statute of limitations)
  - *Poitra v. Short*, 966 N.W.2d 819 (Minn. 2021) (enforceability of insurance-policy exclusion)
  - *Walmart v. Winona County*, 963 N.W.2d 192 (Minn. 2021) (property tax assessment)

- **Rule 56**
  - *City of Waconia v. Dock*, 961 N.W.2d 220 (Minn. 2021) (zoning regulation/timing of appeal)
  - *Hagen v. Steven Scott Management, Inc.*, 963 N.W.2d 164 (Minn. 2021) (unpaid wages)
  - *Jepsen v. County of Pope*, 966 N.W.2d 472 (Minn. 2021) (negligence)
  - *King's Cove Marina, LLC v. Lambert Commercial Construction, LLC*, 958 N.W.2d 310 (Minn. 2021) (insurance coverage)
  - *Menard v. Commissioner of Revenue*, 955 N.W.2d 284 (Minn. 2021) (tax assessment)
  - *Shefa v. Ellison*, 964 N.W.2d 157 (Minn. 2021) (mem.); 968 N.W.2d 818 (Minn. 2022) (full opinion) (pardon board)
  - *Sheridan v. Commissioner of Revenue*, 963 N.W.2d 712 (Minn. 2021) (constitutionality of tax)

Employment Law

Cicely Miltich

Key Takeaways

- It’s a good time to be an employee
- Common sense and fairness are recurring themes
- Pleading and proof standards feature prominently
- Granting review in public employer cases

Hall v. City of Plainview

- 954 N.W.2d 254 (Minn. 2021)
- Employee sued after City terminated him and refused to pay out 1,778.73 hours of unused PTO
- District Court dismissed; COA affirmed
- MN Supreme Court: Did employer handbook (with disclaimer) create contract to pay accrued PTO?

Hall – Handbook Language

- "When an employee ends their employment with the City, for any reason, 100% of the accrued unused personal leave time will be paid up to 500 hours, unless the employee did not give sufficient notice required by the policy."

- "The Personnel Policies and Procedures Manual is not intended to create an express or implied contract of employment between the City of Plainview and an employee. The [Manual] does contain language dealing with the grievance procedure, employee discipline or termination, which the City may choose to follow in a particular instance. These provisions, however, are not intended to alter the relationship between the City as an employer, and an individual employee, as being one which is 'at will', terminable by either at any time for any reason."

- "The purpose of these policies is to establish a uniform and equitable system of personnel administration for employees of the City of Plainview. They should not be construed as contract terms."

Hall – Unilateral Contract

- Handbook created unilateral contract
- "[E]mployer states its take-it-or-leave-it terms and the employee can choose to either accept or reject those terms by performing the requested labor."
- Payment is "fundamental" to employment relationship
- Terms were sufficiently definite (despite reservation of discretion and right to amend)

Hall - Disclaimers

- Disclaimers not enough to prevent formation of contract
- Compensation is different - right attaches as soon as employee worked
- First disclaimer, relates solely to City's discretion to terminate
- Second disclaimer, ambiguous in its applicability to PTO
  - General, lacks precision
  - Internally inconsistent – how is a system "uniform" while retaining sole discretion?
  - Alternative reasonable reading is it allows the City to alter its "uniform and equitable system" on a prospective basis within its discretion
  - Conflicts with more detailed PTO section
  - Meaning of disclaimer, question for a factfinder

Hall – Take Aways

- Reached the issue despite possible easier way out
- Emphasis on fairness and common sense
  - What would most employees expect
  - Arbitrary to pay out PTO for some employees
- No floodgates (as predicted by dissent) "we are confident that most Minnesota employers do not act like the City did in this case."
- More disclaimers – unclear how effective they will be
- Use your PTO!

Hagen v. Steven Scott Mgmt.

- 963 N.W.2d 164 Minn. 2021)
- Former employee property manager sued alleging failure to pay wages
- District Court granted SJ; COA affirmed
- Court:
  - Did use of rent credits to pay wages violate MFLSA or Equal Pay for Equal Work Law?
  - Did employer fail to pay for on-call shift work?

Hagen – Statutory Interpretation

- Rent credits are wages under MFLSA (per rule of Department of Labor and Industry)
  - Unambiguous
  - Wages include compensation "subject to the allowances permitted by the rules of the department"

- Rent credits are wages (not deductions) under Minn. Stat. § 181.79
  - Unambiguous
  - Wages = all compensation for services

Hagen – Statutory Interpretation

- "Hours worked" includes when employee is "performing any duties of employment," but not when employee "is on the premises and available to perform duties of employment and is not performing duties of employment" Minn. Stat. § 177.23, subd. 10

- "Performing any duties of employment" and "available to perform any duties of employment" ambiguous as applied to on call work

- Fact question

Themes – Contrasting Cases

- *Reetz v. City of Saint Paul*, 956 N.W.2d 238 (Minn. 2021)
  - City refused to indemnify police officer working as private security guard
  - Arbitrary, oppressive, unreasonable standard
  - Employee given multiple opportunities to submit evidence
  - Upheld municipality's decision

- *In re: The Year 2019 Salary of Freeborn County Sheriff*, 955 N.W.2d 917 (Minn. 2021)
  - County Board set Sheriff's salary "without discussion or explanation"
  - Arbitrary and capricious standard
  - Found decision based on "whim or is devoid of articulated reasons"

Constitutional Decisions + Other

Liz Kramer

U.S. CONSTITUTION

- Second Amendment
- *State v. Hatch,* 962 N.W.2d 661 (Minn. 2021) (7-0, Hudson author) *pet. for cert. denied*
- Issue: Does Minnesota's permit-to-carry requirement violate the Second Amendment?
  - Answer: No

U.S. CONSTITUTION

Hatch, cont'd

- Minn. Stat. § 624.714, subd. 1a requires individuals to obtain a permit to carry a handgun in public
- Hatch was convicted of carrying a firearm without a permit. He challenged the statute as unconstitutional.
- District court and COA found statute constitutional.
- SupreMNes duck issue of intermediate v. strict scrutiny, by finding statute passes even strict scrutiny

U.S. CONSTITUTION

Hatch, cont'd

- Parties agreed state has compelling interest in public safety, protecting people from gun violence
- Court finds law narrowly tailored because:
  - Minn. law makes it easy to obtain a permit
  - Allows many circumstances to have pistol without permit

"In short, the minimally burdensome requirements of Minnesota's firearm permitting statute are sufficiently close to the government's interest in ensuring public safety to satisfy the narrow tailoring requirement."

U.S. CONSTITUTION

Hatch, cont'd – on "strict scrutiny"

- "The narrow tailoring requirement, however, "does not require exhaustion of every conceivable ... alternative, nor does it require a dramatic sacrifice of the compelling interest at stake."
- Not "fatal in fact"
- Must be "not substantially broader than necessary to achieve the government's interest"
- Criminal penalty is not dispositive

U.S. CONSTITUTION

- Supremacy Clause
- *Musta v. Mendota Heights Dental Ctr.*, 965 N.W.2d 312 (2021) (6-1, Anderson author, Chutich dissent) *petition for cert. filed*
- Companion case: *Bierbach v. Digger's Polaris*, 965 N.W.2d 281 (Minn. 2021)
- Issue: Does the federal Controlled Substance Act preempt Minnesota law requiring an employer to reimburse injured employee for cost of medical cannabis?
- Answer: Yes

U.S. CONSTITUTION

Musta, cont'd

- Employee has chronic pain after injury at work, physician certified her for medical cannabis.
- Employee sought reimbursement from employer.
- Workers Compensation Court of Appeals decides in employee's favor.
- Employer appeals.
- Parties stipulate that employee's use of cannabis complies with Minnesota law and is reasonable, medically necessary, and causally related to work injury.

U.S. CONSTITUTION

Musta, cont'd

- First issue is: Does WCCA have subject matter jurisdiction to determine federal preemption?
  - Answer: No.
- Second, substantive issue is preemption (conflict).
  - Minn. Stat. 176.135, subd. 1 requires employer to "furnish any medical... treatment" reasonably necessary to treat a work-related injury.
  - Federal law (CSA) prohibits the possession of cannabis.

U.S. CONSTITUTION

Musta, cont'd

- **Employer** argued direct conflict b/c
  - if it reimburses employee
  - it is guilty of aiding and abetting possession of cannabis
  - citing Maine decision from 2018, Mass. from 2020.
- **Employee** responded that there is no conflict b/c
  - Congress prohibits DOJ from spending money to prosecute people who use medical cannabis consistent with state law
  - when employer reimburses, no mens rea and crime is completed
  - two states have found no conflict -- N.H. and N.J.

U.S. CONSTITUTION

Musta, cont'd

- Court says:
  - Congressional appropriation riders are temporary measures.
  - Congress has not de-scheduled or re-scheduled cannabis.
  - Mens rea could be established under federal law.
  - After-the-fact reimbursement would not be complete defense.

    "We conclude that mandating Mendota Heights to pay for Musta's medical cannabis, by way of a court order, makes Mendota Heights criminally liable for aiding and abetting the possession of cannabis under federal law... As it is impossible to comply with both state and federal law, the compensation court's order is preempted by the CSA."

MN CONSTITUTION

"Aircraft Amendment" Minn. Const. Art. 10, § 5

- *Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712 (Minn. 2021) (7-0, Moore author)
- Issue: Does provision in Minnesota constitution about aircraft taxes preclude sales/use tax on aircraft purchase?
  - Answer: No

MN CONSTITUTION

Sheridan, cont'd

> The legislature may tax aircraft using the air space overlying the state on a more onerous basis *than other personal property*. Any such tax on aircraft shall be in lieu of *all other taxes*.
>
> Minn. Const. Art. 10, § 5

- Minnesota imposes two types of taxes on aircraft: Initial sales/use tax on purchase price; and annual tax.
- Two plane owners demand use tax unconstitutional.
- Lost at tax court.

MN CONSTITUTION

Sheridan, cont'd

- Court found amendment ambiguous.
- Focuses on effectuating intent of "the people who ratified" amendment
  - Preamble language in session law said "in lieu of personal property taxes"
  - A.G. statement of purpose (was published)
  - Hennepin Lawyer article
  - Ballot language used in 1944 election
  - All showed "all other taxes" referred only to personal property taxes existing

OTHER CIVIL

- *Samuels v. City of Mpls.*, __ N.W.2d __, 2021 WL 5227155 (Minn. Nov. 10, 2021) (6-0, Gildea author, Chutich TNP)
- Issue: Was the proposed public safety ballot language "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote"?
- Answer: No.

OTHER CIVIL

Samuels, cont'd

- Initial ballot question enjoined
- City immediately approves revised language
- New language enjoined
- SupreMNes grant petition for accelerated review
- Reverse in two days

OTHER CIVIL

Samuels, cont'd

- Highly deferential review of ballot questions
- All that's required is that "clear and essential purpose" of amendment is "fairly expressed" without being "misleading or unreasonable."
- Here, ballot language met the standards.
- The essential purpose is fairly communicated, and it is not misleading or vague.
- District court mis-read 2012 *League of Women Voters* case to require meaning and effect of amendment be included in ballot question.

OTHER CIVIL

- *State v. Malone*, 963 N.W.2d 453 (Minn. 2021) (5-2, Moore authoring)
- Issue: Did district court judge's conduct during a pretrial proceeding call his impartiality into question and preclude him from presiding?
- Answer: Yes.

OTHER CIVIL

Malone, cont'd

- Doctor charged with domestic assault. Chief judge of district is presiding, issues DANCO (no contact order)
- Malone violates DANCO, which results in new charge.
- Morning of trial, Malone brings motion to dismiss, saying county can't provide knowledge of DANCO.
- Alleges didn't receive notice.

OTHER CIVIL

Malone, cont'd

- Judge says Malone not being truthful.
  - Communicates with law clerk to verify how notices sent
  - Law clerk communicates with court admin to confirm Malone's attorney opened e-served notice
  - Law clerk sends court admin note, telling them to call county atty
- Malone makes motion to remove
  - Assistant Chief judge denies.
- Trial finds Malone guilty.
- He appeals conviction, saying judge was disqualified.

OTHER CIVIL

Malone, cont'd

> Rule 2.11 Disqualification (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding

- Court cites 1950 case saying "judge must not act as counsel for a party to the litigation" and frequent cases saying judges should always avoid appearance of impropriety.
- Court holds that "judge's conduct would lead a reasonable examiner to question the judge's impartiality"

OTHER CIVIL

Malone, cont'd

- WHY?
  - the judge investigated a fact not introduced into evidence
  - announced the findings from that investigation to the parties
  - relied on those findings in rejecting Malone's motion to dismiss
  - suggested that the State might want to consider calling a second witness
  - Staff communicated about identity of a potential witness
  - judge's investigation revolved around "an essential element of the crime"
  - No cure/mitigation that judge not factfinder

- BUT, not "actual bias" in violation of constitutional guarantee
- Nevertheless, court reverses for new trial, due to "the risk of undermining the public's confidence in the judiciary."

Thanks!

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