

2016 Criminal Law News Archive

Ringstrom Law ▪ Moorhead and Detroit Lakes, Minnesota

Minnesota Arrest Fees Might Be Challenged in U.S. Supreme Court

Dec. 27 - The U.S. Supreme Court may consider a challenge to a Ramsey County (Minn.) "policy of charging 'booking fees' - a growing trend in strapped municipalities," reports the New York Times. The case was filed by Corey Statham and his attorney Michael Carvin, who wrote in his Supreme Court brief, "Providing a profit motive to make arrests gives officers an incentive to make improper arrests." Even when those arrested are never charged with a crime, Ramsey County requires them to "submit evidence to prove they are entitled to get their money back."

Software Glitches Leading to Wrongful Arrests and Jail

Dec. 19 - A recent Slate article examines the serious, often complicated consequences of software and data errors in the criminal justice system. Author Elizabeth Joh uses an example from Alameda County, California, where software problems have led to "dozens of cases in which people have been wrongfully arrested, detained in jail when they should have been released, or erroneously told to register as sex offenders." The software used in Alameda County is used around the country, including in Minnesota.

Joh, who is a law professor, offers this analysis: "Criminal cases are individual, but in the age of big data, problems and solutions have to be systematic. When there are few incentives to audit databases or check for software errors, mistaken arrests and detentions should be no surprise." Moreover, 4th Amendment protections and remedies can be more difficult to obtain when software and data management are involved.

Enforcing "Ban the Box" Rules and Other MN Human Rights Concerns

Dec. 8 - In a recent editorial, the Star Tribune advocated for a sufficient 2017 budget for the Minnesota Department of Human Rights, which has had its duties expanded and its staff cut in the past several years. Among its newest duties are the "'ban the box' rules that make sure employers don't ask about criminal history on initial employment applications." Although some think other agencies could deal with Minnesota's human rights cases, and some legislators have previously tried to cut the MDHR's budget, the Tribune states, "More than ever, the agency is needed to help promote equal opportunity and equity for all Minnesotans."

Bruce Ringstrom Jr. to Present at Scientific Conference

Dec. 1 - Bruce Ringstrom Jr. will give a presentation at the 69th annual scientific meeting of the American Academy of Forensic Sciences on February 16, 2017, in New Orleans. Along with John Carney and Joseph Parise, Mr. Ringstrom will discuss the forensics of mobile devices and services in distracted driving cases.

ND Passes Marsy's Law, Medical Marijuana

Nov. 13 - Last week, North Dakotans voted to approve two ballot measures related to criminal law. Marsy's Law, which supporters say will help crime victims, was passed despite opposition and warnings from a wide range of legal and law enforcement organizations. Certain medical uses of marijuana will be de-criminalized, but "it will likely be some time before a dispensary opens in the state," according to this Bismarck Tribune article.

BB Gun Ruling Will Overturn Convictions

Nov. 3 - With the Minnesota Supreme Court having ruled last month that BB guns are not firearms, prosecutors are starting to review cases where people were convicted for possessing these guns, reports MPR. According to Hennepin County prosecutor David Brown, some people in jail or prison "will be eligible for immediate release." And those who have already completed their sentences for BB gun possession may be eligible for expungements.

"Due Process Out the Window" as Colleges Handle Sexual Assault Allegations

Oct. 24 - The Today show recently reported on how American colleges and universities are handling sexual assaults on campus, stating that "[r]ecent years have seen aggressive government action to try to protect alleged victims." Some experts are arguing that "the well-intentioned rush to ramp up enforcement has created a broken system." According to Harvard law professor Janet Halley, for instance, "Under pressure from the Department of Education Office for Civil Rights, schools across the country have thrown due process out the window." The Today story shares an example from the University of North Dakota, where a police investigation eventually led to a student's accuser being charged with false reporting.

Slower Justice Would Be a Product of ND Court Employee Cuts

Oct. 12 - North Dakota's courts, which are among the state agencies being asked by Gov. Jack Dalrymple to cut 10 percent of their budgets, may be forced to "[eliminate] 14 to 15 percent of district court employees," reports the Forum. If the employee reduction happens in July, as proposed, the consequences could include "longer waits for judges' orders and opinions," the shuttering of drug court in Grand forks, and more drawn-out civil trials. Judge Frank Racek, who presides in the East Central Judicial District, explains that any delays in criminal trials as a result of the cut would lead to overflowing jails, and calls the plan "picking among bad choices."

Eliminating Calif. Statute of Limitations Has Risks

Oct. 3 - The governor of California recently "signed a bill that ends a statute of limitations on prosecuting rape cases," reports MPR. Previously the state's statute of limitations had been 10 years, generally. (Minnesota's statute of limitations for criminal sexual conduct crimes is generally nine years if DNA evidence wasn't collected and preserved.) Critics of the new

California law say it "could lead to false convictions as memories fade among victims and witnesses," reports the Associated Press.

Committee Formed Against Marsy's Law Ballot Measure

Sept. 25 - The Forum reports that opponents of Marsy's Law for North Dakota (Measure 3 on the state's November ballot) "have formed a campaign committee chaired by former attorney general and district judge Robert Wefald of Bismarck." Wefald says that Marsy's Law is constitutionally unsound and that language in the law claiming to protect the Sixth Amendment rights of the accused wouldn't actually do so. The Association of Criminal Defense Lawyers as well as the State's Attorneys' Association are among groups opposed to the proposed law.

Former Wetterling Suspect Claims "Miscarriage of Justice"

Sept. 15 - Daniel Rassier of St. Joseph, MN, a former suspect in the Jacob Wetterling case, "plans to sue law enforcement authorities for how they treated him," reports MPR. In an interview, Rassier specified the Stearns County Sheriffs Department, the Minnesota Bureau of Criminal Apprehension, and the FBI as government agencies that mishandled the investigation against him. "Court documents show how authorities tried to build a case against Rassier, digging up his yard, secretly recording him, looking into his love life and otherwise probing deeply into his affairs"—activities Rassier describes as a "blatant, horrific, miscarriage of justice."

"Suspicious" Driver's License Lookups by MN Law Enforcement

Sept. 5 - The 8th Circuit Court of Appeals recently ruled on a group of similar lawsuits relating to driver's license lookups. The lawsuits allege that law enforcement officers and officials in various Minnesota cities "improperly searched individuals' driver's license data," reports MPR. Although some of the lawsuits were affirmed as dismissals, the appeals court "found there were a few cases in which some lookups could be seen as suspicious and required further explanation from local agencies." One example of this suspicious search activity is "that law enforcement in various cities accessed data for a radio personality while she was on the air, and at a time when she was not driving in any of those cities."

ND Defense Attorney Allowed Right to Interview

Aug. 30 - A Grand Forks judge recently ruled that Robert Hoy, the defense attorney of former teacher James Whalen, may interview the case's alleged victim in a deposition, reports the Dickinson Press. Mr. Whalen is accused of sexual contact with a student. Though the prosecution argued that the student has already been interviewed several times by law enforcement and should not be subjected to further distress, Hoy argued that the defense deserves its own chance to interview her. "Nowhere in the record is the state's outrage or concern expressed about law enforcement interviewing her (four) separate times for up to five hours and causing her stress or concern or emotional harm," Hoy said. "Apparently, that's OK."

A Move Toward Better Prison Conditions

Aug. 22 - The federal government recently announced that it "will phase out its use of some private prisons," reports MPR. In addition to a decreasing number of federal prisoners, the reasons seem to include audit results showing that "private facilities have more safety and security problems than government-run ones." Prisoner advocates and organizations such as Amnesty International are encouraging states to move from private to public prisons as well.

Due-Process Rights Strengthened in Minnesota

Aug. 12 - Through a successful appeal, the "mistake of age" defense is now allowed in certain Minnesota sex cases. Judge Lucinda Jesson stated that there isn't "compelling state interest" to prohibit this defense when someone is charged with soliciting sex from a child over the Internet, and that such a prohibition denies proper due-process rights. Mark Moser, whose conviction was being appealed, has written of "the reality that people on the Internet often misrepresent themselves, and that determining a person's true age over the Internet is almost impossible. A person should not be prosecuted because a child has managed to fool him into believing she or he is an adult."

New Criminal Laws in Minnesota, Effective Aug. 1

Aug. 3 - Some new Minnesota laws relating to crime went into effect on August 1, reports MPR. Revised drug sentencing rules "are designed to make drug dealers spend more time in prison, while addicts spend less." These rules do not apply to offenses committed before Aug. 1. Another law relates to the criminalization of "revenge porn": it is now "illegal to distribute private sexual images without consent from both parties." The new law "Drake's Law... increases the maximum penalty for any criminal vehicular homicide involving drunken driving." Fourth, the wording of the statute for assaulting officers with bodily fluids has been modified, so that this crime no longer requires an accompanying physical assault to occur.

Criticism of "Bulletproof Warrior" Police Training

July 26 - The recent shooting of Philando Castile in Falcon Heights, MN, has brought increased attention to the "Bulletproof Warrior" training course used by some police departments, reports the New York Times. The booklet used in this training course "portrays a world of constant and increased threat to officers, despite more than two decades of declining violent crime in the United States, and the fact that the last few years have been among the safest to be an American police officer." Such portrayals of "constant and increased threat" run contrary to the "guardian mentality" other police departments have been trying to cultivate since the Ferguson, Missouri, shooting in 2014.

Flawed Field Testing and Wrongful Drug Convictions

July 18 - The field tests routinely used by law enforcement around the country to make drug arrests are "far from reliable," reported the New York Times recently. Factors such as hot or cold weather, roadside lighting conditions, and mistaking legal household substances for illegal drugs can all lead to false positive results and wrongful arrests. Although these tests aren't allowed in the vast majority of criminal trials, the frequency of plea bargains means that many defendants are convicted based on field tests anyway.

Minnesota Men to Be Compensated for Wrongful Imprisonment

July 9 - Through an "annual claims law" law recently passed, Minnesota will compensate three people who should not have been imprisoned but were, reports MPR. A total of nearly \$1.8 million will go to Michael Hansen (faulty medical examiner diagnosis), Koua Fong Lee (whose vehicle malfunctioned and crashed), and Roger Olsen (unreliable accusations).

Supreme Court Allows Warrantless Breath Tests, Rejects Warrantless Blood Tests

July 1 - Late last month, the U.S. Supreme Court ruled against criminalizing blood test refusals in suspected DUI cases but in favor of criminalizing DUI breath test refusals. The court considered three cases from Minnesota and North Dakota in coming to a decision on test refusal laws. In his written opinion, Justice Alito stated, "[A blood test] is significantly more intrusive than blowing into a tube." Dissenting from the majority, Justice Sotomayor argued that it's reasonable to require warrants for both kinds of tests.

The 4th Amendment Suffers a Blow

June 21 - In yesterday's 5-3 ruling, the U.S. Supreme Court "further weakened the Fourth Amendment by making it even easier for law enforcement to evade its requirement that stops be based on reasonable suspicion," reports the New York Times. Justice Sonia Sotomayor dissented from the majority, writing, "Do not be soothed by the opinion's technical language. This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants — even if you are doing nothing wrong."

Ringstrom Wins Acquittal in Attempted Murder Trial

June 15 - At the end of a trial lasting five and a half days, a Clay County jury determined that Lenard Wells was not guilty of all six counts of attempted murder that he had been charged with. Mr. Wells' attorney, Bruce Ringstrom Jr., told the Forum, "I believe that we were able to show the jury that Mr. Wells was honest and forthcoming in his statement to law enforcement and that Mr. Wells' accuser just wasn't credible."

"You Have the Right to Remain Silent" Turns 50

June 6 - This month marks the 50th anniversary of the Miranda warning, frequently given by law enforcement officers as "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to an attorney. If you cannot afford an attorney, one will be provided to you." As noted in an American Bar Association article by Brooks Holland, "Despite concerted efforts over the years to reverse Miranda, the Supreme Court has remained committed to Miranda's underlying principle: when the police take a suspect into custody for interrogation, that environment is inherently coercive, and the police must dispel that coercion by ensuring the suspect understands and waives his or her right against self-incrimination."

Dilworth Police Initiating Body Cameras in F-M

May 25 - Dilworth recently became the first city in the Fargo-Moorhead metro to use police body cameras, reports the Forum, joining regional cities Grand Forks, Devils Lake, and Duluth. Dilworth police chief Ty Sharpe cites the transparency of police/public interactions and the efficiency of evidence distribution as some of the benefits of body cameras. However, the cameras won't be "a mandatory tool on every call." At this time, no other law enforcement agency in Fargo-Moorhead is committing to using body cameras.

Checks and Balances to Phone Surveillance Fail in MN

May 22 - Twin Cities-based Fox 9 News recently went public with an investigation on the Stingray devices used by law enforcement to covertly locate cell phones. The warrants used to obtain a judge's permission for Stingray surveillance "have routinely been kept sealed," reports Fox 9, "despite a [Minnesota] law requiring them to become public with 90 days." In addition, letters the courts are supposed to send to subjects of the Stingray warrants aren't being sent, so these people may be unaware their phones are being investigated by the government.

Keeping Criminal Records Out of the College Application Process

May 11 - The U.S. education secretary is "urging universities and colleges to re-evaluate how questions about an applicant's criminal history are used in the admissions process," reports the New York Times. Secretary John King stated in a letter to the nation's higher ed institutions that around 70 million Americans have a criminal record of some kind, and these people "continue to face significant hurdles in obtaining access to higher education or career training." Though in recent years more schools have started asking about criminal history, King said there's a lack of evidence that these inquiries actually help reduce crime on college campuses.

Minnesota's Drug Sentences May Be Lightened

May 2 - A proposal announced last week "could be the most significant reforms to [Minnesota's] drug laws in decades," reports the Star Tribune. A group of legislators, criminal defense

representatives, and law enforcement representatives have been negotiating since February and are now presenting to the Legislature a proposal that would lower many penalties. Among the details: "reduce the recommended prison sentence for first-degree sale and possession of heroin, cocaine and methamphetamine"; "drop the sentence for second-degree drug sale... for heroin, cocaine and meth"; and "raise the minimum weight to qualify for high-level charges" for meth and cocaine. On the other hand, the proposal would "stiffen marijuana laws."

Supreme Court Considers DWI Test Refusal Laws

April 23 - This week the U.S. Supreme Court heard arguments on various states' DWI laws that criminalize test refusal, and "a majority of [the] justices cast doubt" on the laws, reports USA Today. "While many justices acknowledged the laws' good intentions... they wondered why police can't get warrants first." Some of the justices seemed to lean toward allowing warrantless breath tests but not warrantless blood or urine tests. The case is not expected to be decided until sometime this summer. Minnesota and North Dakota are among the states with laws that would be affected.

A Court Trying to Remedy Prosecutorial Misconduct

April 11 - "Why do state court judges uphold convictions that are riddled with misconduct?" and "Why do state prosecutors insist on defending them?" asks Slate writer Lara Bazelon in a recent article. Bazelon examines the "judicial shaming of prosecutors" by Judge Alex Kozinski of the 9th Circuit Court of Appeals. Kozinski's efforts have often stood alone against laws making it extremely difficult to appeal a case based on the bad conduct of prosecutors, even when that conduct is egregious. In March 2016, for example, he "devoted an entire section [of his written opinion] to detailing the misdeeds of two Seattle prosecutors."

Unreliability of Eyewitness Testimony Discussed on MPR

April 4 - Two experts on eyewitness testimony discussed the issue on Minnesota Public Radio this morning. Brandon Garrett of the University of Virginia and Sandra Guerra Thompson of the University of Houston Law Center, along with host Kerri Miller, considered questions such as "Why is eyewitness testimony so unreliable?" and "What is the role of an officer's eyewitness testimony?"

DUI Conviction Overturned by ND Supreme Court

Mar. 18 - On Tuesday the North Dakota Supreme Court "overturned the conviction of a man who was tried last year on a 20-year-old drunken driving charge," reports Dave Kolpack of the Associated Press. Scott Brand, attorney for defendant Jason Gale, said about the case, "The government was clearly negligent. It's 20 years, memories are going to fade and that was obvious at the trial." Though Grand Forks prosecutor Kristi Pettit Venhuizen "had argued that Gale made a concerted effort to avoid prosecution and that there was ample evidence to pursue the case," the Supreme court disagreed.

State Courts' Fines and Fees "Chastised" by Justice Dept.

Mar. 16 - This week the U.S. Justice Department "called on state judges across the country to root out unconstitutional policies that have locked poor people in a cycle of fines, debt and jail," reports the New York Times. In addition to sending a letter to judges and court administrators, the Justice Dept. has \$2.5 million in grant funding to help courts achieve its recommended changes, which include putting a stop to "using arrest warrants as a way to collect fees." The Times called such a letter an "unusual" step that may not "have the force of law" but does "declare the federal government's position and put local officials on notice about its priorities."

Criticism of Minneapolis' Police Body Camera Policy

Mar. 10 - An oversight commission for the Minneapolis Police Dept.'s body camera program has shared concerns about the draft policy for the program, reports MPR News. Andrea Brown, a criminal defense attorney on the commission, stated that "the policy is not in line with the Fifth Amendment." Commission member Jenny Singleton commented, "We want to make sure that if the camera isn't on that there is a documented reason that it's not on. And if there is not that very clear documented reason that it's not on, there is a presumption against the officer that there was some type of misconduct that did happen."

Former MN Judge Speaks Out on Prison Reform

Mar. 1 - Last week Minnesota legislators were addressed by retired Minn. appellate judge and senator Jack Davies, who "was chair of the Judiciary Committee and helped pass the sentencing guidelines that have affected people's lives ever since," reports the Star Tribune. Davies spoke "to try to persuade [legislators] to correct what he calls 'the biggest mistake I ever made,'" referring to sentencing guidelines that led to the parole board being discontinued. Says the Tribune, "Davies has proposed a bill... that would restore a parole board of three retired or sitting district or appellate judges who would hear inmates' petitions for release and decide who to let out." Says Davies of the addicts who make up such a large percentage of Minnesota's prisoners, "Give them treatment right away, then let them go."

More Voices Join Debate About Marsy's Law

Feb. 22 - North Dakota attorneys, law enforcement officers, and others remain divided about Marsy's Law, which supporters hope to bring to the November 2016 ballot. Mandan attorney Shane Goettle and Cass County Sheriff Paul Laney are among those who think the law is necessary to adequately help and protect crime victims. On the other side, some prosecutors and defense attorneys think the law would cause more harm than good. Says Cass County State's Attorney Birch Burdick, "Once having [taken the approach of a constitutional measure], it's almost impossible to fine-tune it," he said. Ted Sandberg of the North Dakota Association of Criminal Defense Lawyers says, "It will add another layer of conflict [to trying cases] and I'm not sure that does any benefit."

Growing Doubt About Bite Mark Evidence

Feb. 12 - Yesterday Texas "moved to the brink... of becoming the first state to formally call for a ban on bite mark evidence, which could influence judges across the U.S. and whether they will accept the disputed forensic science in courtrooms," reports ABC News. The Texas Forensic Science Commission looks likely to "recommend a moratorium on using bite mark evidence pending more research," a move the news report called unprecedented. Nationwide, many defense attorneys and prosecutors alike believe that bite mark evidence is unscientific and doesn't belong in the courtroom.

Ringstrom Wins Acquittal of Felonies in Homicide Trial

Feb. 4 - After a six-day Clay County trial, a jury determined that Sarah Braith was not guilty of three felony counts, including criminal vehicular homicide. Ms. Braith's attorney, Bruce Ringstrom Jr., explained that although key digital evidence was disclosed in summer 2015, the case still proceeded to trial.

MN Court Ruling Gives Search Warrants Broader Scope

Jan. 15 - If law enforcement has a warrant to test someone's blood for alcohol in a drunk driving investigation, that same warrant allows them to test for other drugs, the Minnesota Court of Appeals ruled this week. The Star Tribune calls this "the latest ruling in a variety of legal challenges to blood draws in DWI cases." In the 2014 criminal vehicular homicide case being appealed, "defense attorneys argued that allowing authorities to test the samples for more than what is authorized in a search warrant creates a dangerous precedent." Some expect this case to move up to the Minnesota Supreme Court or even the U.S. Supreme Court.

Program Praised for Increasing Gov't Transparency in MN Courts

Jan. 7 - In an editorial yesterday, the Duluth News Tribune praised the new pilot program in Minnesota allowing cameras in criminal courtrooms for certain proceedings. "The public can welcome and cheer the unprecedented access this week in Duluth to our criminal justice system. The more we're able to monitor and clearly see what government is doing the more likely it is to do the right things," the editorial reads. Minnesota Supreme Court Chief Justice Lorie Gildea made a similar comment about this issue in October: "I think it's really important from a transparency standpoint... that we take this step."