

EN BANC CALENDAR

Before the Minnesota Supreme Court

January 2009

SUMMARY OF ISSUES

Summaries prepared by the Supreme Court Commissioner's Office

Monday, January 5, 2009, 9:00 a.m.
Supreme Court Courtroom, State Capitol

City of West St. Paul, Appellant vs. Alice Jane Krengel, Respondent – Case No. A07-310: Respondent Alice Krengel owns a home in West St. Paul. Between September 2004 and July 2005, the police received more than two dozen reports regarding the property, and Krengel twice pleaded guilty to misdemeanor public nuisance for incidents, in November 2004 and April 2005. Under Minnesota Statutes § 617.81, subd. 2 (2006), a public nuisance exists upon proof of two or more separate incidents “committed within the previous 12 months.” In July 2005, the city put Krengel on notice of its intent to seek an injunction under Minn. Stat. § 617.83 (2006) closing the building. In August 2005, Krengel and the city agreed to an abatement plan. Although there were no further reports of nuisance, Krengel violated other terms of the abatement plan. In June 2006, the city notified Krengel of its intent to seek injunctive relief and in August 2006 the district court temporarily enjoined Krengel from living at the property for a period of one year. The injunction was made permanent in November 2006. The court of appeals reversed, holding that the statute requires at least two incidents of a statutorily defined public nuisance within the 12 months preceding the hearing on the request for a permanent injunction. Two issues are before the supreme court: (1) when a nuisance leads to an abatement plan and the plan is breached, is the county precluded from seeking injunctive relief to abate the nuisance when the date of the last nuisance activity is more than 12 months before the permanent injunction hearing but within the 12 months preceding the notice of injunctive action required by statute; and (2) when a nuisance results in an abatement plan and the plan is breached, are the nuisance abatement enforcement procedures found in the statute tolled while efforts are made to voluntarily address the nuisance during the term of the abatement plan? (Dakota County)

In the Matter of the Review of the 2005 Annual Automatic Adjustment of Charges for All Electric and Gas Utilities. – Case No. A07-653: Minnesota Statutes § 216B.16, subd. 7 (2006), allows regulated utilities to adjust rates between general rate cases to reflect fluctuations in the prices the utilities pay for gas or electricity purchased for delivery to ratepayers. Under Minn. R. 7825.2700, subp. 7, and 78.25.2810, subp. 1(2007), this automatic adjustment (called the “true-up”) is defined as the difference between the amount paid by ratepayers for gas and the amount paid by the utility for gas during the previous 12 months. The true-up is applied to billings during thenext 12 months. On September 1, 2005, CenterPoint Energy Minnesota Gas filed a true-up report covering the 12 months from July 1, 2004, through June 30, 2005. In 2006, CenterPoint notified the Minnesota Public Utilities Commission that its unrecovered gas costs for 2004-05 were \$9 million more than it had initially reported. CenterPoint also reported that it had erroneously omitted from previous true-up reports, dating back to 2000, more than \$12 million in unrecovered gas costs. CenterPoint sought from the Public Utilities Commission a variance allowing it to recover these gas costs from ratepayers over the next three years. The Public Utilities Commission denied CenterPoint's request. The court of appeals reversed. The question for the supreme court is whether, in reversing the Public Utilities Commission, the court of appeals impermissibly substituted its judgment forthat of the Commission. (Minnesota Public Utilities Commission)

Tuesday, January 6, 2009, 9:00 a.m.
Supreme Court Courtroom, State Capitol

Auto Owners Insurance Co., Respondent vs. Star Windshield Repair, Inc., as Intended Assignee of A & E Construction Supply, Inc., et al., Appellant – Case No. A07-972 AND Star Windshield Repair, Inc., as Assignee for Aaron Helget, Appellant vs. Western National Insurance Co., Respondent – Case No. A07-216 AND The Glass Network, Claimant, Auto Glass Express, as assignee for Kathy Heglos, claimant, Appellant vs. Austin Mutual Insurance Company, Respondent – Case No. A07-217 AND State Farm Mutual Automobile Insurance Company, Respondent vs. Archer Auto Glass, as assignee for Ronald Hornberg, Appellant – Case No. A07-830: There are four cases consolidated in this appeal. In each case, a vehicle's windshield or window was damaged. The vehicle's owner arranged to have the damaged glass replaced and the glass repair shop accepted as payment an assignment of the insurance proceeds due to the owner. The glass repair shop billed the owner's insurance company directly, but the insurance company failed to pay the full amount of the invoice. In three of the four cases, the glass company obtained an award against the insurer in arbitration; in the fourth case, the insurer sought a temporary restraining order to prevent the arbitration from going forward. The insurers then moved, with varying degrees of success, to vacate the arbitration awards, citing policy provisions that bar assignment of the insured's rights and duties under the policy. The court of appeals agreed that anti-assignment provisions in the respective insurance policies prohibited post-loss assignments of rights under the policies. The issue before the supreme court is whether the post-loss assignment of insurance proceeds due as a result of a broken automobile windshield or window is valid under Minnesota law, notwithstanding a provision in the insurance policy to the effect that "[n]o interest in this policy may be assigned without [the insurer's] written consent."

State of Minnesota, Respondent vs. Michael Joseph Hall, Jr., Appellant – Case No. A08-467: Michael Hall, Jr., was convicted of first-degree murder and appeals from that conviction. Hall presents the following issues for consideration by the supreme court: (1) whether the district court erred by allowing the jury to hear the portion of the audiotaped interrogation in which Hall makes an ambiguous request for the appointment of counsel; (2) whether the district court erred by not redacting from Hall's statement to police certain references to Hall's criminal history; (3) whether the district court improperly prevented Hall from challenging the credibility of his statement to police; (4) whether the district court improperly permitted the decedent to be referred to as the "victim," considering Hall's claim that he acted in self-defense; (5) whether the district court improperly barred Hall from impeaching the decedent's identification of Hall as the shooter; and (6) whether the district court erred in its instructions to the jury. (Ramsey County)

Wednesday, January 7, 2009, 9:00 a.m.
Supreme Court Courtroom, State Capitol

State of Minnesota, Respondent vs. Brandon D. Cox, Appellant – Case No. A08-145: Appellant Brandon Cox was convicted of first-degree murder. On appeal to the supreme court, Cox asks the supreme court to decide whether the district court's decision allowing the prosecution to introduce, on grounds of the witness's unavailability, the grand jury testimony of a witness who had been visited by Cox's mother and girlfriend, violated his rights under the Confrontation Clause. Cox raises additional issues in a pro se supplemental brief. (Hennepin County)

In re a Petition for Instructions to Construe Basic Resolution 876 of The Port Authority of the City of St. Paul. – Case Nos. A07-1512, A07-1513, and A07-1514: Appellants hold revenue bonds issued by the Port Authority of the City of St. Paul. Interest and principal on the bonds are paid from a common revenue bond fund, to which the available net revenues from designated Port Authority facilities were pledged. The bonds were issued without a trust indenture. In 2002, the district court granted the Port Authority's petition for authority to redeem bonds at a discount. In 2004, the district court granted the

Port Authority's petition to change the timing of interest and principal payments and to recover certain costs from the common revenue bond fund. In 2006, the district court granted the Port Authority's petition terminating the pledge of revenues to the bond fund in 2022. The court of appeals affirmed. On appeal from the court of appeals, four issues are before the supreme court: (1) whether a 1993 amendment to Minn. Stat. § 501B.25 (2006) allows the district court to authorize the Port Authority to deviate from the terms of the bond indenture with respect to bonds issued before 1993; (2) if not, whether the district court's lack of subject matter jurisdiction should be excused on grounds of futility; (3) whether an interpretation of the 1993 statutory amendment that allows the district court to authorize the Port Authority to deviate from the terms of the bond indenture with respect to bonds issued before 1993 violates the constitutional prohibition against the impairment of contracts; and (4) whether appellants are entitled to the appointment of a receiver for the common revenue bond fund. (Ramsey County)

Monday, January 12, 2009, 9:00 a.m.
Courtroom 300, Minnesota Judicial Center

International Brotherhood of Electrical Workers, Local No. 292, Appellant vs. City of St. Cloud, Respondent, Design Electric, Inc., Respondent – Case Nos. A07-1388 and A07-1418: Respondent Design Electric, Inc., was hired by the City of St. Cloud to work on a utility improvement project financed by state funds. To demonstrate that it had paid its employees the prevailing wage, as required by Minn. Stat. § 177.41 (2006), Design Electric filed payroll records with the city that included the names, home addresses, and wages of its employees. Appellant International Brotherhood of Electrical Workers, Local No. 292, requested the employees' names and addresses from the city under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (2006). The city declined to produce the information, citing Minn. Stat. § 13.43, subd. 6, which provides for dissemination of personnel data to labor organizations to the extent that the government entity holding the information deems it necessary to conduct elections, notify employees of fair share fee assessments, or implement the provisions of Minn. Stat. ch. 179 (which includes the Minnesota Labor Relations Act) or 179A (the Public Employment Labor Relations Act). The district court ordered the city to provide the union with the names and wages of Design Electric's employees, but ruled that the employees' home addresses were non-public data. The court of appeals affirmed. On appeal from the court of appeals, two issues are before the supreme court: (1) whether the Data Practices Act entitles a labor union to payroll information on a publicly-funded construction project in the same manner as such data would be available to anyone else; and (2) whether the addresses of employees listed on payroll records of a contractor performing work on a publicly-funded construction project are "public data" under the Data Practices Act. (Stearns County)

EN BANC NONORAL: Michael Charles Stewart, petitioner, Appellant vs. State of Minnesota, Respondent – Case No. A08-917: Appellant Michael Stewart was convicted of first-degree murder and first-degree manslaughter; his convictions were affirmed on direct appeal. *State v. Stewart*, 624 N.W.2d 585 (Minn. 2001). Stewart's first petition for postconviction relief was denied without an evidentiary hearing. In 2008, Stewart (acting pro se) filed a second petition for postconviction relief, claiming that the district court had no jurisdiction over him or his criminal case because the criminal complaint against him cited published Minnesota statutes, rather than the actual laws as enacted by the legislature. The district court denied the petition without an evidentiary hearing. On appeal to the supreme court, the question is whether Stewart's petition stated a claim on which the district court could have granted relief. (Ramsey County)

EN BANC NONORAL: Adrian D. Williams, petitioner, Appellant vs. State of Minnesota, Respondent – Case No. A07-2148: Appellant Adrian Williams was convicted of first-degree murder; his conviction was affirmed on appeal. *State v. Williams*, 586 N.W.2d 123 (Minn. 1998). In 2007, Williams (acting pro se) petitioned for postconviction relief, claiming that: (1) the district court abused its discretion by not removing a juror during the trial who denied hearing racist remarks made by another juror (who was removed from the jury); (2) the district court abused its discretion by offering the defense

only a two-day continuance to deal with a late-produced police report; (3) the prosecution engaged in misconduct that deprived Williams of a fair trial; and (4) his trial counsel was ineffective. Williams further claimed that his appellate counsel was ineffective for failing to raise these issues on direct appeal. The district court denied the petition without an evidentiary hearing. On appeal to the supreme court, the question is whether the petition for postconviction relief stated a claim on which relief could have been granted. (Hennepin County)

Tuesday, January 13, 2009, 9:00 a.m.
Courtroom 300, Minnesota Judicial Center

State of Minnesota, Respondent vs. Jarvis Jermaine Atkinson, Appellant – Case No. A08-146: Appellant Jarvis Atkinson was convicted of first-degree murder. On appeal to the supreme court, Atkinson presents the following issues: (1) whether the district court improperly restricted his ability to argue that another man committed the murder and to present evidence in support of that contention; (2) whether the introduction of rap lyrics attributable to him denied him a fair trial; and (3) whether he was denied a fair trial by prosecutorial misconduct. (Ramsey County)

In re Petition for Disciplinary Action against Benjamin S. Houge, a Minnesota Attorney, Registration No. 47387 – Case No. A07-2332: An attorney discipline case that presents the question of what discipline, if any, is appropriate under the facts of the matter.

Wednesday, January 14, 2009, 9:00 a.m.
Courtroom 300, Minnesota Judicial Center

State of Minnesota, Respondent vs. Cornelius H. Jackson, Appellant – Case No. A07-1239: Appellant Cornelius Jackson was convicted of first-degree murder and crime committed for the benefit of a gang. On appeal to the supreme court, Jackson presents the following issues: (1) whether the district court erred by joining his case with that of co-defendant Lamonte Martin; (2) whether the district court erred by allowing Jackson only ten preemptory challenges to potential jurors; (3) whether the district court erred by allowing the prosecution to use a preemptory challenge to remove an African-American from the jury panel; (4) whether prosecutorial misconduct deprived him of a fair trial; and (5) whether the evidence was sufficient to prove that the group for whom the murder was allegedly committed, the 19 Block Dipset, was a criminal gang. Jackson raises additional issues in a pro se supplemental brief. (Hennepin County)

State of Minnesota, Respondent vs. Lamonte Rydell Martin, Appellant – Case No. A07-1262: Appellant Lamonte Martin was convicted of first-degree murder and crime committed for the benefit of a gang. On appeal from these convictions, Martin presents the following issues to the supreme court: (1) whether Martin (who was age 17 when the murder was committed) should have been certified to stand trial as an adult; (2) whether sentencing him to life in prison without parole violates either the United States or Minnesota Constitution; (3) whether the district court erred by joining his case with that of co-defendant Cornelius Jackson; (4) whether the district court erred by allowing the prosecution to use a preemptory challenge to remove an African-American from the jury panel; (5) whether the evidence was sufficient to prove that the group for whom the murder was allegedly committed, the 19 Block Dipset, was a criminal gang; and (5) whether prosecutorial misconduct deprived him of a fair trial. Martin raises additional issues in a pro se supplemental brief. (Hennepin County)