A Survey of Recent Developments in the Law: Evidence Law

Daniel Lainsbury

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EVIDENCE LAW

A. Fourth Amendment Exclusionary Rule Held Inapplicable in Parole/Probationary Hearings

On June 8, 1999, the Minnesota Court of Appeals held that evidence improperly obtained by the state in violation of the Minnesota Constitution need not be excluded from parole or probation revocation hearings. In State v. Martin, the court adopted the approach of the United States Supreme Court in Pennsylvania Board of Probation and Parole v. Scott, which held that the exclusion of wrongfully obtained evidence in parole hearings was improper.

In Martin, the defendant pled guilty to a third-degree controlled substance crime for possession of drugs. The defendant received a thirty-four month stayed sentence, and was placed on probation for three years, on condition that he not possess any nonprescription drug. Approximately one year later, the defendant was stopped and arrested for careless driving. A search incident to the arrest revealed crack cocaine in the defendant's pocket, which resulted in a charge of fifth-degree possession of a controlled substance.

At trial, Martin moved to suppress the crack cocaine, arguing that his arrest was illegal under Minnesota Rule of Criminal Procedure 6.01. Martin argued that the arrest was barred under

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4. See id. at 358; see also Mapp v. Ohio, 367 U.S. 643 (1961) (holding that state courts violate the U.S. Constitution when they allow the prosecution to admit improperly obtained evidence in criminal trials).
5. See Martin, 595 N.W.2d at 215.
6. See id.
7. See id.
8. See id.
9. See id. at 215-16 (noting that Martin contended the illegality of the arrest, arguing that police should have given him a citation for misdemeanor careless driving).
the rule, and that the evidence should be suppressed as a result. The district court agreed, withheld the crack cocaine evidence, and dismissed the fifth-degree possession charge.

At Martin's later probation revocation hearing, the district court held that the cocaine was admissible to prove that he had violated the conditions of his probation. The court revoked Martin's probation, and ordered him to serve his thirty-four months in prison. Martin appealed the decision, arguing that the illegally obtained evidence should have been excluded from his revocation hearing.

The Minnesota Court of Appeals adopted the reasoning of the recent Scott decision, holding that the Fourth Amendment exclusionary rule does not apply to parole revocation hearings. As a preliminary matter, the Minnesota Court of Appeals held that though Scott applied only to parole hearings, there was no material difference between parole and probationary hearings.

Martin argued that Minnesota should construe its exclusionary rule more expansively than the federal rule, in order to better protect citizens from impermissible governmental conduct.

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Driving instead of arresting him. Minnesota Rules of Criminal Procedure 6.01 subdivision 1(1)(a) provides:

Law enforcement officers acting without a warrant... shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation.

MINN. R. CRIM. P. 6.01, subd. 1(1)(a).

10. See Martin, 595 N.W.2d at 215-16.
11. See id. at 216.
12. See id.
13. See id.
14. See id.
15. See id.; see also Pennsylvania Board of Probation and Parole v. Scott, 524 U.S. 357, 358 (1998) ("Application of the exclusionary rule [to parole violations] would be incompatible with the traditionally flexible, nonadversarial, administrative procedures of parole revocation... in that it would require extensive litigation to determine whether particular evidence must be excluded... ").
16. See Martin, 595 N.W.2d at 216.
17. See id. at 217 ("[T]he separate state constitution will be of little value if a reviewing court automatically follows a United States Supreme Court decision interpreting a provision in the federal constitution that is identical with a provision in the state constitution.").
Specifically, Martin urged the court to adopt a “right-vindicating” rationale for the rule, as had the Oregon Supreme Court. Under the “right vindicating” theory, illegally obtained evidence is suppressed in order to vindicate the rights of an aggrieved party, rather than solely to deter wrongful governmental conduct.

The court of appeals rejected Martin’s arguments, stating that the Minnesota Supreme Court has held repeatedly that the sole purpose of Minnesota’s exclusionary rule is the same as the federal rule—to deter improper governmental conduct. The court held that in order to apply the exclusionary rule in the present case, the benefits of deterrence must outweigh any negative impact on the probationary system.

The Minnesota Court of Appeals placed great weight on the fact that the offending officer had no knowledge of Martin’s probationary status at the time of the violation. For this reason, the court decided that the “marginal deterrent effect” of the exclusionary rule under the circumstances was outweighed by the potential costs to the probationary system, thus rejecting Martin’s appeal and affirming the lower court’s revocation of probation.

B. Benefit of Evidence of Crimes By Other Gang Members Essential to Convict Defendant of Crime Committed For the Benefit of a Gang Outweighed Prejudice to Defendant

In State v. Chuon, the Minnesota Court of Appeals had an opportunity to consider the elements of Minnesota Statute section 609.229, commission of crimes for the benefit of a gang. Here,

18. See id.; see also State v. Davis, 834 P.2d 1008, 1012 (Or. 1992).
19. See Scott, 524 U.S. at 358 (“The exclusionary rule is ... a judicially created means of deterring illegal searches and seizures.”).
20. See Martin, 595 N.W.2d at 218.
21. See id. at 219. The court of appeals reasoned that “[t]he purpose of probation is rehabilitation without incarceration.” Id. The court was also concerned that the exclusionary rule might obstruct the probation system from accomplishing its remedial purpose by “(1) preventing the court from considering relevant evidence in deciding whether to revoke probation; (2) allowing probationers to escape the consequences of noncompliance; and (3) making courts reluctant to place defendants on probation,” due to the fear that they will be unable to consider relevant evidence in a future probation proceeding. Id.
22. See id.
23. See id.
25. See MINN. STAT. § 609.229 (1998) (stating that a violation of this statute is a substantive criminal offense, not merely a sentence enhancement factor).
the court of appeals reviewed the district court's decision to allow testimony regarding arrest and conviction of the other members of the defendant's gang and the potential unfair prejudice the testimony may create.

Monivorn Kim, a member of the "Asian Boyz" street gang, was shot in the shoulder after confronting a member of a rival gang, the "Red Cambodian Bloods," in the parking lot of a St. Paul gas station. Kim and three other eyewitnesses identified the defendant, Phoeuy Chuon, as the man who had shot him.

Defendant Chuon was convicted of attempted first-degree murder, attempted second-degree murder, drive-by shooting and crime committed for the benefit of a gang. For these offenses, Chuon was sentenced to 186 months in prison.

To prove that Chuon had committed the crime for the benefit of a gang, the state was required to demonstrate that the crime had actually benefited a gang. A gang is defined as a group that

(1) has, as one of its primary activities, the commission of one or more of the offenses listed in section 609.11, subdivision 9; (2) has a common name or common identifying sign or symbol; and (3) includes members who individually or collectively engage in or have engaged in a pattern of criminal activity.

To prove the first and third elements, the district court allowed the state to present the testimony of a police officer having extensive experience with Asian gangs. The officer estimated the number of members of the Red Cambodian Bloods to be about

26. See Chuon, 596 N.W.2d at 269 (noting that Kim identified Chuon as a red-shirted car passenger who pointed and then fired a gun at him).
27. See id.
28. See id.
29. See id.
30. See id.
31. Id. (citing MINN. STAT. § 609.229, subd. 1 (1998)); see also MINN. STAT. § 609.11, subd. 9 (including the following offenses: murder in the first, second, or third degree; assault in the first, second or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct; escape from custody; arson in the first, second, or third degree; drive-by shooting; or any attempt to commit any of these offenses).
32. See Chuon, 596 N.W.2d at 269 (reporting that the officer was assigned to the Gang Strike Force and was familiar with Asian gangs).
fifty, and offered the names of the members as evidence. The officer gave his expert opinion that one of the primary objectives of the Red Cambodian Bloods was the commission of violent crimes.

To support his opinion, the officer cited arrests and charges filed against members of the gang for attempted murder, aggravated robbery, and carrying a gun without a permit. The officer then gave his expert opinion that the shooting at issue was committed to uphold the honor of the gang against the victim's challenge at the gas station.

On appeal, defendant Chuon argued that the trial court had abused its discretion by allowing the officer's testimony regarding crimes committed by other members of the gang. Chuon argued that he had quit the gang several years earlier, and that the evidence of crimes committed by others was improper and had led to his conviction on all counts.

The Minnesota Court of Appeals recognized that relevant evidence might be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The court also recognized that the commission of a crime for the benefit of a gang is a separate criminal offense. Given the elements of the statute, the evidence was not only probative, but was essential to the state's case. Thus, the court held that, "[t]he prejudice to Chuon therefore, even if 'unfair' prejudice, is far outweighed by the probative value of the evidence."

C. Tape Recording of Defendant's Statements to Companion in the Back of a Squad Car Did Not Violate Fifth Amendment Right Against Self-Incrimination

On May 14, 1998, the Minnesota Supreme Court considered the admissibility of surreptitiously tape-recorded statements made by an arrested party while seated in the rear of a squad car. In State

33. See id.
34. See id.
35. See id.
36. See id.
37. See id. at 270.
38. See id. at 269-70.
39. See id. at 270; MINN. R. EVID. 403.
40. See Chuon, 596 N.W.2d at 270.
41. See id.
42. Id.
v. Edrozo, the court concluded that under the circumstances, the statements were not compelled and thus did not violate the defendant's right against self-incrimination.

On the evening of July 25, 1996, Stillwater police officers responded to a call of two vehicles drag racing. Upon arrival, officers were met by a group of young men, who reported that their vehicle had been rear-ended by a truck driven by the defendant. The young men stated that the defendant was armed, had threatened them, and had driven onto the sidewalk numerous times in an attempt to run them over. As the officer was speaking with the men, the suspect vehicle drove past, approximately one block away. The officer pursued and stopped the vehicle.

The officer found several young men in the vehicle. Two of the victims were transported to the scene and positively identified the defendant as the driver who had tried to run them over.

The defendant, Edrozo, was placed in the rear of a squad car along with one of his companions. The officer left them alone in the rear of the squad. Unbeknownst to either Edrozo or his companion, the officer had left a tape recorder running to capture their conversation. The conversation included threats against the alleged victims, and a statement that the police would not find any evidence of their truck being involved in the collision. At the time, neither Edrozo nor his companion had been formally placed under arrest nor been advised of their Miranda rights.

At the omnibus hearing, the trial court suppressed the recorded statement on the grounds that it was unfairly obtained, and violated Edrozo's Fifth Amendment right to not incriminate himself. The court of appeals affirmed.

43. 578 N.W.2d 719 (Minn. 1998), rev'd, 567 N.W.2d 59 (Minn. Ct. App. 1997).

44. See id. at 726.
45. See id. at 721.
46. See id.
47. See id.
48. See id.
49. See id.
50. See id.
51. See id.
52. See id.
53. See id.
54. See id.
55. See id. at 722.
56. See id.
57. See id.
In reversing the lower courts, the Minnesota Supreme Court reiterated its understanding of the rule from *Miranda v. Arizona,* stating "[s]tatements made by a suspect during custodial interrogation are generally inadmissible unless the suspect is first given a *Miranda* warning." Thus, the inquiry must consider two factors: (1) whether or not the suspect was in custody; and (2) whether the person in custody is subjected to express questioning, or its "functional equivalent."

The Minnesota Supreme Court took issue with the appellate court's finding that the police conduct in question amounted to the "functional equivalent" of interrogation. The "functional equivalent" of interrogation arises when the person in custody subjectively believes that he is being compelled to offer a statement. In reversing the appellate court, the supreme court held that the correct analysis should revolve around the perspective of the suspect, rather than the intent of the police.

The Minnesota Supreme Court thus held that Edrozo's statements were not compelled, and that nothing should prevent his words from being used against him. Therefore, the suppression order of the district court was clearly erroneous, and the case was remanded.

**D. "Past Pattern of Domestic Abuse" is Not "Other Crimes" Evidence in Prosecution for First-Degree Domestic Abuse Homicide**

On April 23, 1998, the Minnesota Supreme Court decided two important issues that arose in connection with Minnesota Statute section 609.185(6), Minnesota's first-degree domestic abuse homicide statute. In *State v. Cross,* the supreme court held that evidence of other criminal acts that establish a past pattern of domestic abuse is an element of the crime, and thus will not be

60. See *Edrozo,* 578 N.W.2d at 719.
61. See *id.*
62. See *id.*
63. See *id.* at 725.
64. See *id.*
65. See *id.* at 726.
66. See *id.*
68. 577 N.W.2d 721 (Minn. 1998).
considered "other crimes" evidence under Minnesota Rule of Evidence 404(b). In addition, it was held that the statute only requires proof beyond a reasonable doubt of a past pattern of domestic abuse, not proof as to each individual underlying act, as the defendant had argued.

On June 28, 1996, two witnesses observed defendant Cross and the victim sitting in a car parked at the side of the road. They saw Cross "vigorously" slapping the victim, who was sitting behind the wheel. The witnesses, who were driving past, circled the block to find Cross standing outside the car, leaning through the driver's window while his arms and upper body moved back and forth in a "jerking" motion.

The witnesses called police, and upon their arrival, the police found the victim outside the car, with bystanders administering CPR. The victim was taken to the hospital where she was pronounced dead. The medical examiner determined that the cause of death was manual strangulation.

Cross was charged with first-degree domestic abuse homicide. The domestic abuse homicide statute refers to conduct that "causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim and the death occurs under circumstances manifesting an extreme indifference to human life." At trial, the state offered, and the court admitted numerous pieces of evidence to show that Cross had engaged in such a past pattern of domestic abuse against the victim. Cross was ultimately convicted of domestic abuse homicide, as well as second-degree intentional homicide.

69. See id. at 725; Minn. R. Evid. 404(b).
70. See Cross, 577 N.W.2d at 726-27.
71. See id. at 723.
72. See id.
73. See id.
74. See id.
75. See id.
76. See id.
77. See id.
79. See Cross, 577 N.W.2d at 724. The prosecution offered the testimony of persons who had either witnessed Cross abusing the victim, or had seen evidence of such abuse. See id. In addition, the state was allowed to offer testimony by the medical examiner that described older injuries that appeared to be consistent with abuse inflicted by another, as opposed to accidental injury. See id.
80. See id.
On appeal, Cross argued that Minnesota Rule of Evidence 404(b) should have governed the evidence regarding his past conduct. Under the rule, "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Thus, the evidence should have been subject to the safeguards established by State v. Billstrom, and proven by clear and convincing evidence. In addition, Cross argued that the domestic abuse homicide statute itself required that each incident offered to show the past pattern of domestic abuse must be proven beyond a reasonable doubt.

The Minnesota Supreme Court rejected both of Cross's arguments. The court recognized that the evidence of the prior abusive conduct was not offered to show "other crimes" within the meaning of Rule 404(b), but was direct evidence, necessary to prove an element of the crime with which Cross was charged. As such, the state must be allowed to offer relevant evidence of a past pattern of domestic abuse, so long as its probative value is not substantially outweighed by the danger of unfair prejudice.

In response to Cross's second argument, the court held that the plain language of the statute indicated that only the past pattern of domestic abuse need be proven beyond a reasonable doubt. Therefore, each underlying act comprising the pattern of abuse need not be individually proven beyond a reasonable doubt as Cross had asserted.

E. A Clarification of "Stale Prior Convictions" Under Minnesota Rule of Evidence 609

In State v. Ihnot, the Minnesota Supreme Court considered for the first time the appropriate end point for the ten-year period that defines a stale claim under Minnesota Rule of Evidence 609(b).
Rule 609(b) deals with the admission of evidence regarding past convictions offered to attack the credibility of a witness at trial. 93

Rule 609 mandates that evidence of a conviction is not admissible if more than ten years has elapsed since the date of conviction or the release of the witness from confinement imposed for the conviction, whichever is longer. 94 The rule does not, however, denote the end point for that time period in relation to a present action. 95 Should the ten-year period have elapsed, the evidence of the prior conviction will not be admitted absent a finding by the court that, in the interests of justice, the probative value of the conviction substantially outweighs its prejudicial effect. 96

In Ihnot's district court trial, the state filed a motion seeking to introduce evidence of his prior felony convictions, should he decide to testify on his own behalf. 97 The district court ruled that the evidence was admissible because the current crime was committed within ten years of Ihnot's release from probation from the previous crime. 98 Ihnot did not testify, and the jury did not hear the impeachment evidence regarding the prior conviction. 99 Ihnot was convicted of four counts of first-degree criminal sexual conduct. 100

The Minnesota Court of Appeals reversed, holding that the trial court erred in ruling that release from probation was the appropriate date from which to begin counting the ten-year period. 101 Thus, the prior conviction was stale, and the district court had neglected to make the required finding that the probative value of the evidence "substantially" outweighed its prejudicial effect. 102 The court of appeals further held that "Ihnot was deprived of his right to testify in his own defense due to the threatened use of improperly admitted impeachment evidence." 103

On review, the Minnesota Supreme Court carefully considered differing federal and state standards used to define the end of the ten-year period for evidence of a past conviction to be considered.

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93. See Minn. R. Evid. 609(b).
94. See id.
95. See id.
96. See id.
97. See id.
98. See id.
99. See id.
100. See id.
101. See id.
102. See id.
103. Id. at 583-84.
The court identified three possible approaches: (1) the date the trial begins; (2) the date the witness testifies; or (3) the date of the charged offense. The court rejected the first two options as infirm, due to the potential for unfair manipulation by opposing counsel. In choosing the third approach and reversing the court of appeals, the Minnesota Supreme Court recognized the potential difficulty in pinpointing the exact date of the charged offense, but held that it was the most workable and most closely embodied the values behind the rule. Therefore, the evidence of Ihnot’s prior conviction was not stale, as ten years had not elapsed between his release from probation and the commission of the present offense.

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104. See id. at 584-85.
105. See id. at 585.
106. See id. The court noted that the purpose behind the rule was to limit the probative value of prior convictions if the witness had exhibited “good behavior” during the preceding ten years. See id. Thus, the period to be measured should be just that—the period of unquestioned good behavior. See id. (discussing U.S. v. Cathey, 591 F.2d 268, 277 (5th Cir. 1979)).
107. See id.