STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1938

State of Minnesota,
Respondent,

vs.

Darren Michael Thompson,
Appellant.

Filed September 16, 2019
Affirmed
Hooten, Judge

Sherburne County District Court
File No. 71-CR-16-335

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this appeal from a conviction for driving while intoxicated in March of 2016, appellant argues that the 2017 amendments to the driving-while-impaired (DWI) statutes require that we vacate his conviction. We affirm.

FACTS

In March of 2016, appellant Darren Michael Thompson was arrested on suspicion of driving while impaired. After the arrest, police obtained a search warrant for a sample of appellant's blood to test for intoxicating substances, in part because appellant admitted to using methamphetamine, marijuana, and oxycodone in the days leading up to the arrest. Appellant initially refused to comply with the search warrant, but eventually complied. Police never read appellant the implied consent advisory or gave him the option to refuse the test. Testing of appellant's blood revealed: lorazepam (Schedule IV); hydrocodone (Schedule II); oxycodone (Schedule II); a metabolite of THC (marijuana); amphetamine (Schedule II); and methamphetamine (Schedule II).

The state's amended complaint charged appellant with first-degree driving while impaired (driving under the influence of a controlled substance), in violation of Minn. Stat. § 169A.20, subd. 1(2) (2014), first-degree driving while impaired (Schedule I or II controlled substance), in violation of Minn. Stat. § 169A.20, subd. 1(7) (2014), and driving in violation of a restricted license, in violation of Minn. Stat. § 171.09, subd. 1(f)(1) (2014). Appellant filed a motion to suppress and a motion to reconsider, both of which the district court denied. At a bench trial in April of 2018, the district court found appellant guilty of

all counts. The district court initially sentenced appellant on both driving-while-impaired charges, but in response to the parties' motions, resentenced appellant on only one count to 42 months stayed for seven years. This appeal follows.

D E C I S I O N

The sole issue in this case is whether the 2017 amendments to the DWI statutory scheme, which created Minn. Stat. § 171.177 and amended related statutes, apply to appellant's March 2016 DWI. According to Minn. Stat. § 171.177, "At the time a blood or urine test is directed pursuant to a search warrant . . . the person must be informed that refusal to submit to a blood or urine test is a crime." Minn. Stat. § 171.177, subd. 1 (Supp. 2017). And, then the relevant portion of the statute reads that if the search warrant provides for a blood or urine test, the police officer "may direct whether the test is of blood or urine." Minn. Stat. § 171.177, subd. 2 (Supp. 2017). Then, "If the person to whom the test is directed objects to the test, the officer shall offer the person an alternative test of either blood or urine." *Id.* Appellant argues that the amended version of the statute is applicable because his trial took place in April 2018, and the district court erred by denying his motion to suppress the results of his blood test. The parties do not dispute that the police officer, in March of 2016, failed to follow these requirements set forth in the 2017 version of the statute when the officer took a blood test over appellant's objection without offering him a urine test.

Appellant's arguments require this court to engage in statutory interpretation. "Statutory interpretation presents a question of law, which we review de novo." *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). "[I]t is the session laws and the revisor's

version of Minnesota Statutes that contain the official text of a statute." *Occhino v. Grover*, 640 N.W.2d 357, 362 (Minn. App. 2002), *review denied* (Minn. May 28, 2002).

Unless the statute is ambiguous, this court will apply the plain meaning of the statutory language. *State v. Moen*, 752 N.W.2d 532, 534 (Minn. App. 2008). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2018). Ambiguity exists if the statute "is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If ambiguity exists then courts will move to the second step, which is to attempt to discern the intent of the legislature using the canons of statutory construction. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

As noted above, the first step in statutory interpretation is to determine whether the statute at issue is ambiguous. *Moen*, 752 N.W.2d at 534. Here, the effective date set forth in the session law creating Minn. Stat. § 171.177 is unambiguous and the plain language should be applied. According to 2017, Minn. Laws ch. 83, art. 2, § 10, at 366, section 171.177 is "effective July 1, 2017, and applies to acts committed on or after that date." Appellant argues that the "act" the amendment could refer to the "judicial 'act'" of admitting evidence of intoxication, but provides no authority to support this interpretation. A "judicial act" is defined as "[a]n act involving the exercise of judicial power." Black's Law Dictionary 30 (10th ed. 2014). But appellant fails to explain how or when a judicial act would trigger application of the amendments. For example, under appellant's reading of the statute, if a trial is commenced prior to July 1, 2017, and continues on and after July

1, 2017, the amendments would not apply to the portion of the trial preceding July 1, 2017, but would apply to the portion of the trial after July 1, 2017. Obviously, this is an absurd and unworkable reading of the statute.

Instead, we conclude that a reasonable reading of the term "act" as referring to a DWI incident. And it makes sense for the legislature to have used the term "act" here, instead of "crime" as the legislature has in similar circumstances, because in amending statutes that cover both criminal and administrative penalties of license revocation, the legislature needed a term that was not restricted to one type of sanction. Consistent with this interpretation, we note that the amendments apply to acts "committed" on or after July 1, 2017, which further supports that the legislature intended that it refer to the commission of a crime. *See* Black's Law Dictionary 329 (10th ed. 2014) (defining "commit" as "[t]o perpetrate (a crime)").

Appellant relies on *State v. Kirby* to support his claim that the legislature intended the 2017 amendments to apply to all pending cases. 899 N.W.2d 485 (Minn. 2017). In that case, the court addressed the amelioration doctrine, which "applies to cases that are not yet final when the change in law takes effect." *Id.* at 488 (emphasis added). The court explained that this long-standing doctrine barred pending prosecutions or sentencings under a more severe version of a statute where the criminal law in effect had been amended or repealed. *Id.* at 489. In noting that the rule of law is clear, the court held that "[a]n amended statute applies to crimes committed before its effective date if: (1) there is no statement by the Legislature that clearly establishes the Legislature's intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment

has not been entered as of the date the amendment takes effect." *Id.* at 490. In applying this rule of law, the court stated that if the legislature stated that a statute only applied "to crimes committed on or after" its effective date, this clear language expressing legislative intent was sufficient to abrogate the amelioration doctrine. *Id.* at 491.

Here, the plain language of the session law creating Minn. Stat. § 171.177 states that it applies to "acts committed on or after" the date of enactment. This essentially mirrors the language approvingly cited to in *Kirby* as indicative of the legislature's intent to abrogate the presumption in favor of applying the law in place at the time of trial, with the substitution of "acts" for "crimes." *See id.* at 490. But, as noted, there is good reason for the legislature's substitution of "acts," as the relevant statutes refer to both criminal and administrative sanctions. And because the Minnesota Supreme Court has interpreted essentially similar statutory language as abrogating the common law presumption in favor of enforcing current law, we conclude that the legislature intended to abrogate the same presumption here. *See* Minn. Stat. § 645.17(4) (2018) ("[W]hen a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language . . . .").

Appellant also points to *State v. Hunn*, and argues that because the Minnesota Supreme Court cited to the 2017 version of Minn. Stat. § 171.177 in that case involving a February 2016 offense, that this was an indication that the supreme court would approve the application of the 2017 amendment to his case as well. *See State v. Hunn*, 911 N.W.2d 816, 820 (Minn. 2018). But, as our court observed in *Wood*, the section in *Hunn* that appellant relies on is dictum. *See State v. Wood*, 922 N.W.2d 209, 220–21 (Minn. App.

2019), *review denied* (Minn. Mar. 27, 2019). In *Hunn*, the issue was whether the limited right to counsel applied when the implied-consent advisory was not read. 911 N.W.2d at 818. Because the version of the statute that applied was not a dispositive issue, *Hunn* also does not provide appellant with relief. Moreover, in *Wood*, in response to a similar argument, we held that the 2017 amendments were not applicable to a March 2016 DWI. 922 N.W.2d at 220.

Finally, appellant requests that we reconsider our holding in *Wood*. However, based upon the fundamental principle of stare decisis, our published opinions are binding on us and the district court. *See, e.g.*, *State v. Peter*, 825 N.W.2d 126, 129 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013); *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). Therefore, because the plain language of the act appears to have only one reasonable interpretation and prior binding appellate precedent supports this interpretation, we conclude that the 2017 amendments to Minn. Stat. § 171.177 unambiguously do not apply to DWI incidents occurring before July 1, 2017.[1]

Affirmed.

[1] Because we conclude that the 2017 amendments to the DWI statutes do not apply to appellant's case, we do not reach the issue of what the effects of those amendments might be.