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A Saari v. State, 2025 Minn. App. LEXIS 426**Copy Citation**

Court of Appeals of Minnesota

December 30, 2025, Filed

A25-0116

Reporter**2025 Minn. App. LEXIS 426 * | 2025 LX 621387 | 2025 WL 3786126**

Joseph Thomas Saari, petitioner, Appellant, vs. State of Minnesota, Respondent.

Prior History: [*1] St. Louis County District Court. No. 18-69D-CR-18-4166.
State v. Saari, 2020 Minn. App. Unpub. LEXIS 495, 2020 WL 377657 (Minn. Ct. App., June 15, 2020).**Core Terms**

mens rea, announce, retroactively, rule of criminal procedure, district court, appellate court's review, postconviction, watershed

Case Summary**Overview****Key Legal Holdings**

- Saari's conviction for aggravated tampering with a witness in the first degree under Minn. Stat. § 609.498, subd. 1b(a)(6) (2018) was constitutional under Countermand

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because it required an intentional mens rea, which exceeds the reckless mens rea standard required by Counterman.

- The NetChoice decision did not apply retroactively to Saari's conviction for nonconsensual dissemination of private sexual images because it was neither a substantive rule (it did not alter the range of punishable conduct) nor a rule of criminal procedure (it did not regulate the manner of determining culpability).

Material Facts

- Saari was convicted of felony domestic assault, aggravated tampering with a witness in the first degree, and nonconsensual dissemination of private sexual images.
- Count IV (aggravated tampering with a witness) required an intentional mens rea.
- Count V, which had a 'knew or should have known' mens rea standard, was dismissed by the district court.
- Saari filed his petition for postconviction relief after the Supreme Court decided Counterman and NetChoice.

Controlling Law

- Counterman v. Colorado (2023): In true-threats cases, the state must prove the defendant acted with at least a reckless mens rea.
- Teague v. Lane (1989): New rules apply retroactively only if they are substantive rules or watershed rules of criminal procedure.
- Minn. Stat. § 590.01, subd. 4(b)(3) (2024): Exception to two-year statute of limitations for postconviction relief when petitioner asserts a new interpretation of law that is retroactively applicable.

Court Rationale

The court rejected Saari's Counterman claim because his conviction for aggravated tampering with a witness required an intentional mens rea, which exceeds Counterman's reckless mens rea requirement. The court also found that NetChoice did not announce a substantive rule or a watershed rule of criminal procedure, as it merely defined the process for evaluating facial challenges to laws without altering the range of punishable conduct or the manner of determining culpability. Therefore, NetChoice did not apply retroactively to Saari's case.

Outcome

Procedural Outcome

The Minnesota Court of Appeals affirmed the district court's order summarily denying Saari's petition for postconviction relief. The court issued a nonprecedential order opinion.

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HN1 [Standards of Review, Abuse of Discretion](#)

An appellate court reviews a district court's decision to summarily deny a postconviction petition for abuse of discretion. The district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record. The appellate court reviews the district court's legal conclusions de novo. [More like this Headnote](#)

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HN2 [Postconviction Proceedings, Motions to Vacate Judgment](#)

An exception to the two-year statute of limitations for postconviction relief occurs when the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case. [Minn. Stat. § 590.01 \(4\)\(b\)\(3\)\(2004\)](#). [More like this Headnote](#)

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HN3 [Terroristic Threats, Elements](#)

In true-threats cases, the state must prove that the defendant acted with at least a reckless mens rea. [More like this Headnote](#)

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HN4 [Verdicts, Inconsistent Verdicts](#)

Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense. An intentional mens rea necessarily encompasses the knew or should have known mental state, which is a negligent

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mens rea, making the verdicts consistent with each other. A knows or has reason to know standard is a negligence mens rea. [More like this Headnote](#)

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HN5 [Standards of Review, De Novo Review](#)

Whether a rule of federal constitutional law applies retroactively to convictions that were final when the rule was announced is a legal question that appellate courts review de novo. The Teague standard is applied to determine the retroactive effect of a rule of federal constitutional law. [More like this Headnote](#)

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HN6 [Retroactive Treatment, Teague Exceptions](#)

A new rule should be applied retroactively if it is substantive, that is, if it places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe. Retroactivity is also reserved for watershed rules of criminal procedure that alter understanding of the bedrock procedural element that must be found to vitiate the fairness of a particular conviction. Retroactivity is limited to new procedures without which the likelihood of an accurate conviction is seriously diminished. [More like this Headnote](#)

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HN7 [Retroactive Treatment, Teague Exceptions](#)

A procedural rule regulates only the manner of determining the defendant's culpability. Procedural rules alter the range of permissible methods for determining whether a defendant's conduct is punishable. [More like this Headnote](#)

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HN8 [Retroactive Treatment, Teague Exceptions](#)

A rule is substantive if it alters the range of conduct or the class of persons that the

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law punishes.  [More like this Headnote](#)

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Judges: Considered and decided by Smith, Tracy M., Presiding Judge; Harris, Judge; and Florey, Judge. 

Opinion by: James Florey

Opinion

ORDER OPINION

BASED ON THE FILE RECORD, AND PROCEEDINGS, AND BECAUSE:

1. This appeal arises from a district court's summary denial of appellant Joseph Thomas Saari's petition for postconviction relief. Saari challenges the constitutionality of his conviction for aggravated tampering with a witness in the first degree based upon the Supreme Court's ruling in Cougle v. Colorado, 600 U.S. 66, 73, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023). Saari also challenges the constitutionality of his conviction for nonconsensual dissemination of private sexual images based upon the Supreme Court's ruling in Moody v. NetChoice, LLC, 603 U.S. 707, 144 S. Ct. 2383, 219 L. Ed. 2d 1075 (2024), which he claims announced a new water-tight rule of criminal procedure that requires this court to conclude that the statute under which he was convicted is unconstitutional.

2. In 2019, a jury found Saari guilty of all eight of the counts with which he was charged. The district court entered a judgment of conviction on only four of those counts, although one of those convictions was later reversed on appeal. See State v. Saari, No. A19-1102, 2021 Minn. App. Unpub. LEXIS 579, 2021 WL 2645818 at *3-4 (Minn. App. June 28, 2021). Saari currently stands convicted of Count I (felony domestic assault), Count IV (aggravated tampering [*2] with a witness in the first degree), and Count VII (nonconsensual dissemination of private sexual images).

3. **HN1** This court reviews a district court's decision to summarily deny a postconviction petition for abuse of discretion. Paul v. State, 20 N.W.3d 48, 54 (Minn. 2025). The district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." Riley v. State, 792 N.W.2d 831, 833 (Minn. 2011). The appellate court reviews the district court's legal conclusions de novo. Paul, 20 N.W.3d at 54.

4. Minnesota Statutes section 590.01, subdivision 4(a) (2024) provides that "[n]o petition for postconviction relief may be filed more than two years after . . . an appellate court's disposition of petitioner's direct appeal." **HN2** An exception to the two-year statute of limitations occurs when "the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case." Minn. Stat. § 590.01, subd. 4(b)(3) (2024).

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5. **HN3** The Supreme Court held in Counterman that, in true-threats cases, the state must prove that the defendant acted with at least a reckless mens rea. 600 U.S. at 73. In a nonprecedential decision, we interpreted Counterman as announcing a substantive [*3] rule of law because it required proof of the actor's subjective mens rea for crimes involving true threats. Corrigan v. State, No. A23-1942, 2024 Minn. App. Unpub. LEXIS 604, 2024 WL 3493348 at *3 (Minn. App. July 22, 2024).

6. Saari was convicted of aggravated tampering with a witness in the first degree (Count IV) in violation of Minnesota Statutes section 609.498, subdivisions 1b(a)(6) (2018). This count requires an intentional mens rea. See Minn. Stat. § 609.498, subd. 1b(a) (2018). Saari concedes that Count IV required a mens rea that was sufficient under Counterman but argues that the inclusion of Count V amongst other related counts "rendered the judgment void." Saari contends that because the jury found him guilty of multiple charges based on a December 4, 2018 telephone conversation, and one charge (Count V) required a "knew or should have known" mens rea, "an objective mind-state negates the subjective mind-states of the counts that are sufficient under Counterman." See Minn. Stat. § 609.749, subd. 5 (2018). We find no support in the record for Saari's contention that the jury confused the criminal counts against Saari.

7. Furthermore, Count V was dismissed by the district court, so there is no judgment of conviction against Saari for Count V. Because Saari's challenge relates to a charge that was dismissed and never adjudicated, there is no relief that can be granted to him, and the issue is moot. See State v. Levie, 895 N.W.2d 619, 629 (Minn. App. 2005) (holding that appellant's [*4] claims were moot when the challenged convictions and sentences had been previously vacated).

8. Even if we considered Saari's claims on the merits, they fail. The district court properly determined from the record that the jury instructions given for Count IV included an intentional mens rea. Furthermore, the verdicts were not inconsistent with each other. **HN4** "Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense." State v. Cole, 542 N.W.2d 43, 50 (Minn. 1996). An intentional mens rea necessarily encompasses the "knew or should have known" mental state, which is a negligent mens rea, making the verdicts consistent with each other. See Matter of Welfare of A.J.B., 929 N.W.2d 840, 850 (Minn. 2024) (stating that a "knows or has reason to know" standard is a negligence mens rea). Furthermore, of the charges emanating from his conduct on December 4, 2018, Saari was convicted only of Count IV, which requires an intentional mens rea, satisfying the Counterman requirement that the state prove that the defendant acted with at least a reckless mens rea. See Counterman, 600 U.S. at 73, 81-82.

9. Saari next argues that the United States Supreme Court, in NetChoice "announced a new watershed rule of criminal procedure that applies retroactively to his case." Saari was convicted of nonconsensual [*5] dissemination of private sexual images in violation of Minnesota Statutes section 617.261, subdivision 1 (2018). Saari's claim that NetChoice announced a new watershed rule of criminal procedure is unconvincing because the NetChoice rule is neither substantive nor a rule of criminal procedure. **HN5** "Whether a rule of federal constitutional law applies retroactively to convictions that were final when the rule was announced is a legal question that [appellate courts] review de novo." Johnson v. State, 916 N.W.2d 674, 681 (Minn. 2018). The standard from Teague v. Lane,

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489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989) is applied "to determine the retroactive effect of a rule of federal constitutional law." *Id.*

10. **HN6** A new rule should be applied retroactively if it is substantive, that is, if it "places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague*, 489 U.S. at 307 (quotation omitted). Retroactivity is also reserved for "watershed rules of criminal procedure" that "alter our understanding of the *bedrock procedural element* that must be found to vitiate the fairness of a particular conviction." *Id.* at 311 (quoting *Mackey v. United States*, 401 U.S. 667 693-94, 91 S. Ct. 1160, 28 L. Ed. 2d 404 (1971)); see also *Schiro v. Summerlin*, 542 U.S. 348, 351-52, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004) (describing a substantive rule). Retroactivity is limited to "new procedures without which the likelihood of an accurate conviction is seriously diminished." *Id.* at 313.

11. **HN7** A procedural rule "regulate[s] only the [*6] manner of determining the defendant's culpability." *Johnson*, 916 N.W.2d at 682 (quoting *Schiro*, 542 U.S. at 353) (emphasis added). Procedural rules "alter the 'range of permissible methods for determining whether a defendant's conduct is punishable.'" *Id.* at 682 (quoting *Welch v. United States*, 578 U.S. 120, 129, 136 S. Ct. 1257, 194 L. Ed. 2d 387 (2016)) (emphasis added). The rule announced in *NetChoice* defined the process by which courts should evaluate a facial challenge to a law. 603 U.S. at 723. The Supreme Court's ruling did not regulate the manner of determining a defendant's culpability, nor does it alter the range of methods for determining whether a defendant's conduct is punishable. Therefore, the *NetChoice* rule is not a rule of criminal procedure.

12. **HN8** A rule is substantive if it "alters the range of conduct or the class of persons that the law punishes." *Schiro*, 542 U.S. at 353. By this definition, if the Supreme Court had ruled on the constitutionality of the statute involved, it may have announced a substantive rule. But the *NetChoice* court did not make this determination because the lower courts had not performed the proper facial analysis, the parties had not briefed the critical issues, and the record was undeveloped. *NetChoice*, 603 U.S. at 726. Instead, it remanded the cases to their respective courts, requiring that the courts "evaluate the full scope of the law's coverage." *Id.* at 744. Therefore, *NetChoice* did [*7] not announce a substantive rule.

13. Because the mens rea in Count IV satisfies the *Counterman* rule, the district court was not required to reverse Saari's conviction for aggravated tampering with a witness in the first degree. And because *NetChoice* announced a rule that was neither substantive nor a rule of criminal procedure, it has no applicability to Saari's appeal of his conviction of nonconsensual dissemination of private sexual images.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: December 30, 2025

BY THE COURT

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Footnotes



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

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APPENDIX B.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

File No.: 69DU-CR-18-4166

STATE OF MINNESOTA,

Respondent,

ORDER

vs.

Joseph Thomas Saari,

Petitioner.

The above-entitled matter came before the Court, the Honorable Shawn B. Reed presiding, pursuant to Defendant Joseph Thomas Saari's ("Petitioner") Motion for Post-Conviction Relief and Request for Evidentiary Hearing and other ancillary motions.¹

The Court reviewed the file, the pleadings, the arguments of the parties, the pertinent legal authorities, and deeming itself advised of the premises now makes the following:

ORDER

1. Petitioner's Petition for Post-Conviction Relief is hereby **DENIED** without a hearing.
2. Petitioner's separate Motion to Permit Supplemental Authority for Issue Two of Post-Conviction Remedy is hereby **DENIED**.
3. Petitioner's separate Motion to Permit Expansion of the Evidentiary Hearing by Order of the Postconviction Court is hereby **DENIED**.
4. Petitioner's separate Motion for Default Judgment for Post-Conviction Relief is hereby **DENIED**.

¹ A detailed recitation of the procedural posture is fully set forth in the incorporated memorandum.

5. Petitioner's separate Motion to Preclude the State of Minnesota from Introduction of the Moot Doctrine Until a Precondition is Met is hereby **DENIED**.
6. The attached Memorandum is incorporated by reference.

BY THE COURT:

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Honorable Shawn B. Reed
Judge of District Court

MEMORANDUM

This is the Petitioner's latest petition for post-conviction relief. Petitioner seeks relief on two grounds. For the first ground, Petitioner cites to *Counterman v. Colorado*, 600 U.S. 66 (2023) for relief. He seeks to have his conviction for Count IV, Aggravated Tampering with a Witness in the First Degree in violation of Minnesota Statutes § 609.498, subdivision 1(b)(a)(6) vacated. (Petition p. 2)(Index No. 165). Alternatively, Petitioner seeks a new trial on Counts III, IV, and VI without the use of the pattern of stalking statute. (*Id.*)² The Petitioner did not request an evidentiary hearing for this ground. (*Id.*)

For the second ground, Petitioner cites to *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) for relief. Petitioner argues that the *Moody* decision reflects a new procedural "watershed" rule that must be applied retroactively to his matter. (Memorandum, pp. 2-3)(Index No. 165). The Petitioner requested an evidentiary hearing for this ground.

² Count III, Aggravated Tampering with a Witness in the First Degree in violation of Minnesota Statutes § 609.498, subdivision 1(b)(a)(3), was dismissed. (Amended Sentencing Order dated November 1, 2021)(Index No. 149). Count VI, Threats of Violence in violation of Minnesota Statutes § 609.713, subdivision 1, was dismissed. (*Id.*) As this Court previously noted in its Order dated November 2, 2021, the Petitioner's requested relief centers on charges that were dismissed by the Court, there is no basis for further relief under the first ground as it relates to Counts III and VI. (Order dated November 2, 2021, p. 3, ¶ 10)(Index No. 151). This is a variation of a repeated theme for the Petitioner. The Minnesota Court of Appeals noted the same when previously addressing the Petitioner's argument relating to pattern of stalking jury instruction. The *Saari* court held, in part, that:

"[b]ecause the jury instructions Saari challenges on appeal relate to a charge that was dismissed and never adjudicated, there is no relief that can be granted to him, and the issue is moot. *Amundson v. State*, 714 N.W.2d 715, 719 (Minn. Ct. App. 2006) *rev. denied* (Minn. Aug. 15, 2006); *see also State v. Levie*, 695 N.W.2d 619, 629 (Minn. Ct. App. 2005)(holding that appellant's claims were moot when the challenged convictions and sentences had been previously vacated."

Procedural History

This Court previously issued an order denying the Petitioner's prior motion for post-conviction relief. This Court takes judicial notice of the procedural history stated in its Order dated November 2, 2021. (Index No. 151).

On December 13, 2021, the Petitioner appealed the Order dated November 2, 2021 denying post-conviction relief. (Index No. 156).

On July 6, 2022, the Minnesota Court of Appeals entered an Order Opinion affirming this Court's Order dated November 2, 2021 denying Petitioner's prior motion for post-conviction relief. (Index No. 161) (*Infra* at n. 2).

On November 22, 2024, Petitioner filed the instant Petition for Post Conviction Relief and a Memorandum of Law. (Index Nos. 165 and 166).

On December 23, 2024, the State filed a Response to Post Conviction Relief. (Index No. 168)

On January 14, 2025, the undersigned Judge was assigned to this case, and subsequently took this Petition under advisement. (Index Nos. 169 and 172).

On February 21, 2025, Petitioner filed a Motion to Permit Supplemental Authority for Issue Two of Post-Conviction Relief. (Index No. 174).

On February 28, 2025, Petitioner filed a Motion to Permit Expansion of the Evidentiary Hearing by Order of the Post Conviction Court. (Index No. 176).

On March 3, 2025, the State filed a Memorandum Opposing Consideration of Supplemental Authorities and Expansion of Post-Conviction Evidentiary Hearing. (Index No. 178).

(Order Opinion dated July 6, 2022)(Index No. 161).

On March 10, 2025, Petitioner filed a Motion for Default Judgment for Post-Conviction Relief. (Index No. 180).

On March 24, 2025, the State filed correspondence in response to Petitioner's Motion for Default Judgment for Post-Conviction Relief. (Index No. 182).

On April 7, 2025, Petitioner filed a Motion to Preclude the State of Minnesota from Introduction of the Moot Doctrine Until a Precondition is Met. (Index No. 184). Petitioner further filed Petitioner's Reply to the State's Memorandum in Opposition to Petition for Post-Conviction Relief. (Index No. 186).

Analysis

Post-conviction conviction relief is governed by Minnesota Statutes Chapter 590. Minnesota Statutes § 590.04, subdivision 1 states that:

“[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response thereto, and promptly determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief.”

Minn. Stat. § 590.04, subd. 1 (1983). Further, a district court “may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.” *Id.*, subd. 3; *see also, McDonough v. State*, 707 N.W.2d 384, 388 (Minn. 2006).

Once a direct appeal is taken, all issues that were raised or were known but not raised by that direct appeal are barred from consideration on future post-conviction petitions. *Hanley v. State*, 534 N.W.2d 277, 279 (Minn.1995); *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

A petition for relief must be filed within two years of the disposition of a direct appeal. Minn. Stat. §590.01, subd. 4 (1983). If a petition is filed after the two year deadline, it must meet one of the exceptions found in Minnesota Statutes § 590.01, subdivision 4(b).

Petitioner's Petition falls outside the two year period. Therefore, Petitioner brings the Petition under the exception contained within clause (b)(3) asserting that a:

“new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case.”

Minn. Stat. § 590.01, subd. 4(b)(3) (1983).

As noted above, Petitioner argues that *Counterman v. Colorado*, 600 U.S. 66 (2023) and *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) are new interpretations of federal or state constitutional law that should be applied retroactively in this matter. For all the reasons discussed below, this Court denies the Petition and the Petitioner's ancillary motions.

Denial of post-conviction relief – First Ground – Counterman does not apply.

As indicated above, Petitioner relies upon *Counterman v. Colorado*, 600 U.S. 66 (2023) to have his conviction for Count IV, Aggravated Witness Tampering in the First Degree vacated. *Supra*. In the alternative, Petitioner sought a new trial on Counts III, IV, and VI without the use of the pattern of stalking statute. *Supra*. Counts III and VI were previously dismissed. *Supra* at n. 2. Accordingly, this Court will only address Count IV Aggravated Witness Tampering in the First Degree.

The *Counterman* court announced a new substantive rule of constitutional law that applies retroactively for crime involving true threats. *Counterman* 600 U.S. at 73. The *Counterman* court held that crimes based on true threats of violence must be proved

by a subjective *mens rea* standard. *Id.* The *Counterman* court held that a recklessness standard of *mens rea* is sufficient. *Id.*

The Minnesota Court of Appeals held that *Counterman* indeed announced a new substantive rule of constitutional law. *Corrigan v. State*, 2024 WL 3493348 *3 (Minn. Ct. App. July 22, 2024) *rev. denied* September 17, 2024 (Minn.) The *Corrigan* court noted, in part, that:

“...we conclude that the rule announced in *Counterman*, requiring a subjective mental state of recklessness for crimes involving true threats, is a new rule because it imposes a subjective *mens rea* requirement that was not dictated by precedent.”

Id.

In this case, Petitioner attempts to apply *Counterman* to his conviction for the intentional crime of aggravated witness tampering through a speculative argument that the jury may have improperly applied the “pattern-of-stalking” *mens rea* standard. (Memorandum dated November 22, 2024, p. 2)(Index No. 165). Specifically, the Petitioner acknowledges that, “[t]he witness tampering Statute uses the word ‘intentionally’ which makes it a specific intent crime.” (*Id.*) Despite that acknowledgment, the Petitioner argues:

“...the Pattern-of-Stalking Statute has the *mens rea* requirement that ‘the defendant must know or has reason to know,’ and the Supreme Court has identified this phrase is a negligence standard.

Mr. Saari now complains the Pattern-of-Stalking Statute was unconstitutionally applied to him, by allowing the jury to consider an insufficient *mens rea* to convict of a crime involving a true threat of violence. It is tur [s.i.c.] that there were multiple crimes of offenses involving the December 2018 threat allegation and that some would be sufficient under *Counterman*.... Aggravated Witness Tampering in the first degree (The witness tampering Statute uses the word “intentionally” which makes it a specific intent crime).... However, no distinction was ever made by the district court or the Jury never made a specific finding on which standard it rested it's [s.i.c.] verdict on.”

(*Id.*) This argument must be rejected.

First, the jury received specific jury instructions for the crime of aggravated witness tampering. (*See* Transcript – Jury Trial, March 13, 2019, Volume II, pp. 243-244)(Index No. 94). Those instructions referenced the proper standard for *mens rea*. The instruction stated, in part, as follows:

“[f]irst, the Defendant intentionally caused injury or threatened to cause injury to any person or property....”

(*Id.* p. 243, lines 11-13)(Emphasis supplied). In other words, this Court instructed the jury that the offense of aggravated witness tampering was a specific intent crime. *See, St. v. Bjerum*, 771 N.W.2d 53, 57 (Minn. Ct. App. 2009)(citing Minn. Stat. § 609.02, subd. 9(1)). The inclusion of the word “intentionally” satisfies the *Counterman* standard that true threats of violence must be proved by a subjective *mens rea* standard.

Second, Petitioner’s argument is couched solely in his ongoing speculation that “...it is impossible to conclude which standard the jury actually rested it’s verdict on....” (Memorandum dated November 22, 2024, p. 2)(Index No. 165). This is mere “argumentative assertions without factual support.” That is not sufficient to warrant an evidentiary hearing. *Davis v. State*, 15 N.W.3d 635, 645 (Minn. 2025)(citing, *Beltowski v. State*, 289 Minn. 215, 183 N.W.2d 563, 564 (Minn. 1971)).

Given the foregoing, Petitioner’s request for post-conviction relief based upon the first ground is hereby **DENIED** without a hearing.

Denial of post-conviction relief – Second Ground – Moody v. NetChoice, LLC.

Petitioner argues that *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) announced a new federal constitutional rule of criminal procedure that should be applied retroactively. (Memorandum dated November 22, 2024, p. 2)(Index No. 165). Petitioner

argues that *NetChoice, LLC* “effectively overturned” *State v. Casillas*, 952 N.W.2d 629 (Minn. 2020).

The NetChoice “rule.”

NetChoice addressed a facial challenge to both state laws of Florida and Texas regulating social media platforms to control whether and how third-party posts are presented to other users; or, simply put, content moderation. *NetChoice*, 603 U.S. at 717.³ The *NetChoice* Court directed the following procedure as it related to content-based restriction on speech:

“[t]he first step in the proper facial analysis is to assess the state’s law’s scope.

The next order of business is to decide which of the laws’ applications violate the First Amendment, and to measure them against the rest.”

Id. 603 U.S. at 724, 725. Stated another way, the *NetChoice* Court held that

“[t]o decide the facial challenges here, the courts below must explore the laws’ full range of applications—the constitutionally impermissible and permissible both—and compare the two sets.”

Id. at 603 U.S. at 726.

Petitioner argues that *NetChoice* applies retroactively under the second exception as a “watershed” rule set forth by *Teague*. Petitioner argues, in part, that:

“Mr. Saari states that the rule announced in Moody v. Netchoice is a new procedural rule and it is an exception to the Teague bar. Before Moody v. NetChoice all courts were unclear on what the relationship was in respect to the overbreadth doctrine and the scrutiny analysis.

This court should hold that Moody v. Netchoice is a ‘watershed’ procedural rule in the context of whether it retroactively applies to final conviction.”

³ Instead of addressing the statutes facially, the lower court improperly conducted an as-applied analysis *NetChoice* 603 U.S. at 724.

(Memorandum p. 3)(Index No. 165)(Emphasis supplied). As Petitioner limits his argument to the “watershed” rule exception, this Court will not address the first exception.

NetChoice is not a “watershed” rule of criminal procedure and does not apply retroactively.

Generally, a new rule of law will not apply retroactively to a final criminal conviction. *Johnson v. State*, 916 N.W.2d 674, 681 (Minn. 2018)(citing *Schiro v. Summerlin*, 542 U.S. 348 (2004)). Minnesota applies the standard from *Teague v. Lane*, 489 U.S. 288 (1989) to determine whether a rule of federal constitutional law will apply retroactively to a final criminal conviction. *Id.*

Under *Teague*, there are two exceptions for which a federal constitutional law may apply retroactively. *Id.*, citing *Teague*, 489 U.S. at 311. A new rule may apply retroactively if it: 1) is substantive rather than procedural, or 2) is a new “watershed” rule of criminal procedure. *Id.*

A “watershed” rule are those that “...will properly alter our understanding of the *bedrock procedural elements* that must be found to vitiate the fairness of a particular conviction.” *Teague v. Lane*, 489 U.S. 288, 311 (1989)(citing *Mackey v. United States*, 401 U.S. 667, 693-694 (1971)(Emphasis in original).⁴ Additionally, a “watershed” rule must be necessary to prevent “an ‘impermissible large risk’ of an inaccurate conviction.” *Whorton v. Bockting*, 549 U.S. 406, 417 (2007)(citing, *Schiro v. Summerlin*, 542 U.S. 348, 356 (2004)). The “watershed” rule exception is “extremely narrow.” *Id.* (citing, *Schiro v. Summerlin*, 542 U.S. at 352).

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963) is provided as an example or guidance in determining whether the *Teague* exception of a “watershed” rule has been established by a decision. *Whorton v. Bockting*, 549 U.S. 406, 419 (2007).

The *NetChoice* decision did not determine whether the Florida or Texas laws under consideration violated the First Amendment. Rather, *NetChoice* resulted in a remand to the lower courts. The *NetChoice* stated:

“...on remand, each court must evaluate the full scope of the law's coverage. It must then decide which of the law's applications are constitutionally permissible and which are not, and finally weigh the one against the other.”

NetChoice, 603 U.S. at 744.

The *NetChoice* decision did not alter the bedrock procedural elements that must be found to vitiate the fairness of a particular conviction. Nor is it necessary to prevent and “impermissible large risk” of an inaccurate conviction.” This is not a “watershed” rule that this Court must apply retroactively.⁵

As the Petition, files, and records of this proceeding conclusively demonstrate that the Petitioner is not entitled to relief, there is no need for an evidentiary hearing. Minn. Stat. §590.04, subd. 1 (1983).

Given the foregoing, Petitioner's request for post-conviction relief based upon the second ground is hereby **DENIED** without a hearing.

Petitioner's Separate and Ancillary Motions are summarily denied.

Petitioner, in addition to his motion for post-conviction relief, brought the following additional motions: 1) Motion to Permit Supplemental Authority for Issue Two of Post-Conviction Remedy; 2) Motion for Default Judgment for Post-Conviction Relief; and, 3) Motion to Permit Expansion of the Evidentiary Hearing by Order of the

⁵ As *NetChoice* does not apply retroactively, this Court need not address Petitioner's argument that *NetChoice* “effectively overturned” *State v. Casillas*, 952 N.W.2d 629 (Minn. 2020). (Memorandum, p. 2)(Index No. 165). That said, this Court takes judicial notice of the State's analysis of *Casillas* in conjunction with the *NetChoice* framework and concludes that *Casillas* was not “effectively overturned.”

Postconviction Court; and, 4) Motion to Preclude the State of Minnesota from Introduction of the Moot Doctrine Until a Precondition is Met.

For the reasons noted in the State's responsive memorandum dated March 3, 2025, its separate correspondence dated March 24, 2025, and for the reasons more fully stated above, Petitioner's ancillary motions are hereby **DENIED**.

S.B.R.

APPENDIX C.

STATE OF MINNESOTA

IN SUPREME COURT

A25-0746

FILED

**OFFICE OF
APPELLATE COURTS**

Date:

2026.03.

13

16:27:53

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Joseph Thomas Saari,

Petitioner,

vs.

State of Minnesota,

Respondent.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Joseph Thomas Saari for further review is denied.

Dated: March 13, 2026

BY THE COURT:

Natalie E. Hudson

Natalie E. Hudson
Chief Justice

App. C-1



A Neutral
As of: April 17, 2024 2:25 PM Z

State v. Saari

Court of Appeals of Minnesota

June 28, 2021, Filed

A19-1102

Reporter

2021 Minn. App. Unpub. LEXIS 579 *; 2021 WL 2645818

State of Minnesota, Respondent, vs. Joseph Thomas Saari, Appellant.

Notice: THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Subsequent History: Decision reached on appeal by Saari v. State, 2021 Minn. App. Unpub. LEXIS 965, 2021 WL 5872511 (Minn. Ct. App., Dec. 13, 2021)

Prior History: [*1] St. Louis County District Court. File No. 69DU-CR-18-4166.

State v. Saari, 2020 Minn. App. Unpub. LEXIS 495, 2020 WL 3172657 (Minn. Ct. App., June 15, 2020)

Disposition: Affirmed in part, reversed in part, and remanded.

Core Terms

dissemination, sentences, videos, sexual, district court, nonconsensual, images, convictions, offenses, posted, argues, counts, unconstitutionally vague, vagueness, assault, witness tampering, fail to prove

Case Summary

Overview

HOLDINGS: [1]-Defendant's claim that his convictions for nonconsensual dissemination of private sexual images must be reversed since Minn. Stat. § 617.261 (2016) was constitutionally vague on its face was without merit because the record showed a reasonable

and sensible construction of Minn. Stat. § 617.261 (2016)'s language conveys a sufficiently definite warning of the prohibited conduct to a person of common intelligence; [2]-Defendant's claim that the district court erred by imposing multiple sentences for his convictions for nonconsensual dissemination of private sexual images was meritorious because the state failed to prove lack of unity of time and place between the acts and that the conduct was motivated by different criminal objectives, the state failed to meet its burden of showing that the offenses arose from separate behavioral incidents.

Outcome

Judgment affirmed in part, reversed in part, and case remanded.

LexisNexis® Headnotes

Criminal Law &

Procedure > ... > Reviewability > Preservation for Review > Constitutional Issues

HN1 [1] Preservation for Review, Constitutional Issues

The law is clear in Minnesota that the constitutionality of a statute cannot be challenged for the first time on appeal. Nevertheless, reviewing courts may address constitutional or other issues when the interests of justice require their consideration and when doing so would not work an unfair surprise on a party.

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Constitutional Law > ... > Fundamental
 Freedoms > Judicial & Legislative
 Restraints > Overbreadth & Vagueness of
 Legislation

Governments > Legislation > Vagueness

Constitutional Law > ... > Fundamental
 Rights > Procedural Due Process > Scope of
 Protection

HN2 Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation

A vagueness challenge to a statute is grounded in the Due Process Clause. U.S. Const. amend. V. A statute that imposes criminal liability must meet due process standards of definiteness under the federal and state constitutions. The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

Constitutional Law > ... > Fundamental
 Freedoms > Judicial & Legislative
 Restraints > Overbreadth & Vagueness of
 Legislation

Governments > Legislation > Vagueness

HN3 Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation

Ordinarily, a defendant whose conduct is proscribed by a statute cannot challenge the vagueness of the statute as applied to the conduct of others, but, when a defendant challenges the statute on First Amendment grounds, a facial challenge is permitted. Defendant may challenge statute that purports to regulate First Amendment rights, even if the statute is neither vague nor overbroad as applied to the defendant), review denied. The constitutionality of a statute is a question of law that the appellate court reviews de novo.

Criminal Law & Procedure > ... > Defective Joinder
 & Severance > Multiplicity > Challenges & Waivers

HN4 Multiplicity, Challenges & Waivers

If a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses. Minn. Stat. § 609.035, subd. 1 (2020). With a few exceptions, Minn. Stat. § 609.035 bars multiple sentences for crimes arising from a single behavioral incident. The question of whether multiple offenses are part of a single behavioral incident is a mixed question of law and fact: The appellate court reviews the district court's findings of historical fact under the clearly erroneous standard but reviews the application of the law to those facts de novo.

Criminal Law & Procedure > ... > Sex
 Crimes > Obscenity > Elements

Evidence > Burdens of Proof > Allocation

Evidence > Burdens of Proof > Preponderance of
 Evidence

Criminal Law & Procedure > Trials > Burdens of
 Proof > Prosecution

HN5 Obscenity, Elements

The supreme court uses different tests to determine whether two crimes arose from a single behavioral incident, and which test applies depends on whether the crime at issue contains an intent element. Nonconsensual dissemination of private sexual images has an intent element—it requires a defendant to intentionally disseminate the image. To determine whether two intentional offenses are part of a single behavioral incident, trial courts consider factors of time and place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective. The application of this test depends heavily on the facts and circumstances of the particular case. The state bears the burden of establishing by a preponderance of the evidence that the conduct was not a single behavioral incident.

Criminal Law & Procedure > Sentencing > Multiple
 Convictions

HN6 Sentencing, Multiple Convictions

An appellant does not waive claims of multiple convictions or sentences by failing to raise the issue at

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the time of sentencing.

Criminal Law & Procedure > Sentencing > Multiple Convictions

HN7[↓] Sentencing, Multiple Convictions

Under Minn. Sent. Guidelines 2.B.1.e (2017), multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred, and, as each offense is sentenced, it is included in the criminal history on sentencing the next offense.

Governments > Courts > Judicial Precedent

HN8[↓] Courts, Judicial Precedent

Unpublished decisions are not precedential. Minn. R. Civ. App. P. 136.01, subd. 1(c).

Counsel: For respondent: Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota.

For appellant: Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota.

Judges: Considered and decided by Smith, Tracy M., Presiding Judge; Johnson, Judge; and Cochran, Judge.

Opinion by: SMITH, TRACY M.

Opinion

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On remand from the supreme court, appellant Joseph Thomas Saari argues that his convictions for nonconsensual dissemination of private sexual images must be reversed because Minn. Stat. § 617.261 (2016) is unconstitutionally vague on its face. Alternatively, Saari argues that the district court abused its discretion by imposing two sentences for his convictions for nonconsensual dissemination of private sexual images

because the state failed to prove that the offenses involved separate behavioral incidents. We affirm Saari's convictions but reverse and remand for resentencing.

FACTS

The supreme court remanded this matter to address issues that [*2] were not decided in Saari's direct appeal when this court reversed his convictions for nonconsensual dissemination of private sexual images on the ground that the statute was unconstitutionally overbroad. State v. Saari, No. A19-1102, 2020 Minn. App. Unpub. LEXIS 495, 2020 WL 3172657, at *6 (Minn. App. June 15, 2020), rev'd (Minn. Feb. 16, 2021) (mem.). The facts are set forth in detail in our prior opinion. The following summarizes facts relevant to the remanded issues.

The state charged Saari by amended complaint with the following offenses against A.C., with whom he was in a relationship: felony domestic assault, two counts of threats of violence, one count of harassment/stalking, and two counts of nonconsensual dissemination of private sexual images. The state also charged Saari with two counts of aggravated first-degree witness tampering. At trial, A.C. testified that, in September 2018, after Saari had assaulted her, she discovered that Saari had posted two videos of their sexual activities on a pornography website—PornHub. One video depicted A.C. fellating Saari, and the other depicted them engaging in sexual intercourse. A.C.'s face and tattoos are visible. In a recorded interview, A.C. told police that one video was made at A.C.'s house and one was made in Saari's parent's garage. Although [*3] A.C. consented to Saari recording the videos, she did not consent to his posting the videos, and she did not know when he posted them. Saari stipulated that he posted the two videos to PornHub between July and August 2018 but did not recall exactly when. Saari also stipulated that the images depicted sexual acts, that A.C. is identifiable, and that A.C. resided in St. Louis County.

A jury found Saari guilty of all counts. The district court entered judgments of conviction for domestic assault, one count of aggravated first-degree witness tampering, and two counts of nonconsensual dissemination of private sexual images. Based on trial testimony regarding the order in which the offenses were committed, the district court imposed sentences of 19 and 21 months' imprisonment for the two convictions for

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nonconsensual dissemination of private sexual images, 27 months' imprisonment for the assault conviction, and 158 months' imprisonment for the aggravated witness tampering conviction, with the sentences to run concurrently.

Saari appealed. We concluded that Saari had forfeited his argument that the district court erred by refusing to sever the nonconsensual-dissemination-of-private-sexual-images [*4] charges from the other charges and that Saari was not entitled to have his conviction for aggravated witness tampering reduced to first-degree witness tampering. Saari, 2020 Minn. App. Unpub. LEXIS 495, 2020 WL 3172657, at *4, *6. But we reversed Saari's convictions for nonconsensual dissemination of private sexual images based on our decision in State v. Casillas, 938 N.W.2d 74, 77 (Minn. App. 2019), rev'd, 952 N.W.2d 629 (Minn. 2020), in which we held that the statute was unconstitutionally overbroad. 2020 Minn. App. Unpub. LEXIS 495, [WL] at *6. Because we reversed Saari's nonconsensual-dissemination-of-private-sexual-images convictions, we did not reach his vagueness challenge to the statute or his sentencing argument. *Id.* The supreme court granted the state's petition for review, denied Saari's petition, and stayed further proceedings pending its final disposition in Casillas. After issuing its decision reversing Saari's convictions for nonconsensual dissemination of private sexual images and remanded with the instruction to address the remaining issues. We then reinstated this appeal.¹

DECISION

I. Minn. Stat. § 617.261 is not unconstitutionally vague on its face.

Saari argues that section 617.261 is unconstitutionally vague on its face under U.S. Const. amend. I and Minn. Const. art. 1, § 3. Saari did not challenge the constitutionality of the statute in district court. HN1 [↑] "The law is clear in Minnesota [*5] that the constitutionality of a statute cannot be challenged for the first time on appeal." State v. Engholm, 290 N.W.2d 780, 784 (Minn. 1980). Nevertheless, reviewing courts

may address constitutional or other issues "when the interests of justice require their consideration and when doing so would not work an unfair surprise on a party." State v. Williams, 794 N.W.2d 867, 874 (Minn. 2011). The state fully briefed the vagueness issue and did not argue that Saari forfeited it by failing to raise it in district court. We will, therefore, consider Saari's vagueness challenge despite his failure to raise it in district court.

HN2 [↑] A vagueness challenge to a statute is grounded in the Due Process Clause. See United States v. Williams, 553 U.S. 285, 304, 128 S. Ct. 1830, 1845, 170 L. Ed. 2d 650 (2008) (citing U.S. Const. amend. V). A statute that imposes criminal liability "must meet due process standards of definiteness" under the federal and state constitutions. State v. Newstrom, 371 N.W.2d 525, 528 (Minn. 1985). "The void-for-vagueness doctrine requires that 'a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" State v. Bussmann, 741 N.W.2d 79, 83 (Minn. 2007) (quoting Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983)).

HN3 [↑] Ordinarily, a defendant whose conduct is proscribed by a statute cannot challenge the vagueness of the statute as applied to the conduct of others, but, when a defendant challenges the [*6] statute on First Amendment grounds, as Saari does, a facial challenge is permitted. Williams, 553 U.S. at 304, 128 S. Ct. at 1845; see also State v. Campbell, 756 N.W.2d 263, 269 (Minn. App. 2008) (stating defendant may challenge statute that purports to regulate First Amendment rights, "even if the statute is neither vague nor overbroad as applied to the defendant"), review denied (Minn. Dec. 23, 2008). The constitutionality of a statute is a question of law that we review de novo. See State v. Cox, 798 N.W.2d 517, 519 (Minn. 2011).

In Casillas, on remand from the supreme court, we concluded that section 617.261 is not unconstitutionally vague. State v. Casillas, No. A19-0576, 2021 Minn. App. Unpub. LEXIS 550, slip op. at 9 (Minn. App. June 14, 2021). In our analysis, we observed that the supreme court determined in that case that the state has a compelling interest in preventing the nonconsensual dissemination of so-called "revenge porn" and that section 617.261 is "narrowly tailored" and "the least restrictive means" for serving that compelling interest. *Id.* at 6 (citing Casillas, 952 N.W.2d at 642-44). We further observed that, in so holding, the supreme

¹In the order reinstating this appeal, we gave the parties an opportunity to submit supplemental briefs updating their research on the remaining issues. The parties have not submitted supplemental briefs.

court relied on the fact that the statute explicitly defines the conduct that is prohibited, contains a mens rea requirement, and sets out seven enumerated exemptions from liability. *Id.* at 6-7. We reasoned that this analysis by the supreme court "significantly undermines" the argument that section 617.261 is unconstitutionally vague. *Id.* at 7. We concluded that a "reasonable and sensible [*7] construction of that statute's language conveys a sufficiently definite warning of the prohibited conduct" to "a person of common intelligence." *Id.* at 9.

Saari makes virtually identical arguments to those made by Casillas. We reject Saari's arguments for the same reasons that we rejected Casillas's and conclude, as we did in *Casillas*, that section 617.261 is not unconstitutionally vague. We, therefore, affirm Saari's convictions for nonconsensual dissemination of private sexual images.

II. The state failed to prove that the two counts of nonconsensual dissemination of private sexual images arose from separate behavioral incidents.

Saari alternatively argues that the district court erred by imposing multiple sentences for his convictions for nonconsensual dissemination of private sexual images. HN4 [↑] "[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2020). With a few exceptions, section 609.035 bars multiple sentences for crimes arising from a single behavioral incident. State v. Bookwalter, 541 N.W.2d 290, 293 (Minn. 1995). The question of whether multiple offenses are part of a single behavioral incident is a mixed question of law and fact. The appellate court reviews the [*8] district court's findings of historical fact under the clearly erroneous standard but reviews the application of the law to those facts de novo. State v. Jones, 848 N.W.2d 528, 533 (Minn. 2014).

HN5 [↑] The supreme court uses different tests to determine whether two crimes arose from a single behavioral incident, and "[w]hich test applies depends on whether the crime at issue contains an intent element." State v. Bauer, 792 N.W.2d 825, 827-28 (Minn. 2011). Nonconsensual dissemination of private sexual images has an intent element—it requires a defendant to "intentionally" disseminate the image. Casillas, 952 N.W.2d at 643. To determine whether two intentional offenses are part of a single behavioral incident, courts consider "factors of time and place . . .

[and w]hether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." Bauer, 792 N.W.2d at 828 (quoting State v. Johnson, 273 Minn. 394, 141 N.W.2d 517, 525 (Minn. 1966)). "The application of this test depends heavily on the facts and circumstances of the particular case." *Id.* "The state bears the burden of establishing by a preponderance of the evidence that the conduct was not a single behavioral incident." State v. Degroot, 946 N.W.2d 354, 365 (Minn. 2020).

Without citing any authority, the state argues that Saari cannot challenge the multiple sentences because he did not object at sentencing. HN6 [↑] But "an appellant does not waive claims of multiple convictions [*9] or sentences by failing to raise the issue at the time of sentencing." Spann v. State, 740 N.W.2d 570, 573 (Minn. 2007).

The state also argues that multiple sentences are permitted because Saari posted two videos, each depicting a different sex act, "suggesting separate motivations" for showing A.C. involved in private sex acts and exposing A.C. "to continued victimization each time a user accesses one of the two videos." Saari does not dispute that he committed two separate acts or that the district court properly entered two convictions for both acts. Saari argues only that he cannot be sentenced for both offenses because the state failed to prove that they arose out of separate behavioral incidents. He contends that "the state presented no evidence" regarding when the videos were posted to Pornhub and that it is impossible to tell whether the videos were disseminated at different times or places.

The state agrees that the record does not include any information regarding "[t]he exact time and location" that appellant disseminated the videos to Pornhub. From our review of the record, the only evidence regarding when the videos were disseminated is A.C.'s discovery of the videos in September 2018 and Saari's stipulation that the [*10] videos were posted between July and August 2018, before he assaulted, threatened, and harassed A.C. On this record, it is not possible to determine that Saari did not post the videos at the same time, from the same place. And, because Saari posted the videos before he began assaulting, harassing, and threatening A.C., it is unclear what his objective was for posting the videos or whether his objective for posting each video was different. *Cf. Jones*, 848 N.W.2d at 533 (stating that 33 text messages sent during a two-and-one-half-hour period with the intent to harass demonstrated a single criminal objective). Because the

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state failed to prove a lack of unity of time and place between the acts and that the conduct was motivated by different criminal objectives, the state did not meet its burden of showing that the offenses arose from separate behavioral incidents. The district court, therefore, erred by imposing sentences for both offenses.

The parties disagree about the appropriate remedy. Saari argues that one of the sentences must be vacated and, because the district court *Hernandized*² the sentences, "a remand to the district court for resentencing is necessary to reduce his criminal history score." The state [*11] argues that, because Saari did not object to multiple sentences for nonconsensual dissemination of private sexual images, the state should have an opportunity to develop the record on remand to prove that the offenses arose from separate behavioral incidents.

In *State v. Outlaw*, we remanded to the district court for further development of the record and resentencing after we concluded that the state had failed to prove that the defendant's prior out-of-state convictions were felonies that should have been included in his criminal history. 748 N.W.2d 349, 356, 360 (Minn. App. 2008), review denied (Minn. July 15, 2008).³ We disagree with

the state's argument that it should have a similar opportunity to develop the record here. In *Outlaw*, the facts relevant to the defendant's criminal history would only have been proved at sentencing and, because the defendant did not challenge his criminal-history score, the state did not develop a record on the issue. Here, the state was already put to its proof regarding the facts underlying the crimes, and the question of whether Saari's two criminal acts were committed in the same behavioral incident could have been answered by the state's evidence to prove guilt at trial. Permitting the state [*12] to introduce additional evidence on remand to show the time, place, and criminal objective of the offenses would give the state a second opportunity to introduce evidence relevant to guilt. We are not persuaded that the state should be permitted to introduce additional evidence on remand to show the time, place, and motive of the conviction offenses.

We, therefore, reverse [*13] and remand for the district court to vacate one of the sentences for nonconsensual dissemination of private sexual images. The district court will then need to resentence Saari on the remaining counts to reflect the change in his criminal history.

Affirmed in part, reversed in part, and remanded.

² *State v. Hernandez*, 311 N.W.2d 478, 480 (Minn. 1981); Minn. Sent. Guidelines 2.B.1.e **HN7** (Supp. 2017) (stating that multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred, and, as each offense is sentenced, it is included in the criminal history on sentencing the next offense).

³ The state relies on an unpublished opinion to support its argument. *State v. Brown*, No. A13-1683, 2014 WL 2807683, at *3 (Minn. App. June 23, 2014). We are not persuaded that this decision permits the state an opportunity to develop the record to support multiple sentences. **HN8** Unpublished decisions are not precedential. See *Minn. R. Civ. App. P. 136.01, subd. 1(c)*. *Brown* is also distinguishable because it involved a guilty plea and not a trial, as here. *Brown*, 2014 WL 2807683, at *2-3. And our remand instructions did not say that the state should have the opportunity to develop the record on remand; instead, we held that "[t]he lack of a developed record prevents us from determining whether appellant's actions constitute a single behavioral incident," and we remanded for the district court to make that determination. *Id.* at *3. In another unpublished decision, our remand instructions expressly directed the district court to vacate one of the sentences. *State v. Owens*, No. A19-1871, 2020 Minn. App. Unpub. LEXIS 751, 2020 WL 5361657, at *5 (Minn. App. Sept. 8, 2020), review denied (Minn. Dec. 15, 2020).

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Succinct - Brief, Concise
Salient - Prominent
Pertinent - Relevant

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CERTIFICATE OF COMPLIANCE

No. -

Joseph Thomas Saari,
Petitioner,

v.

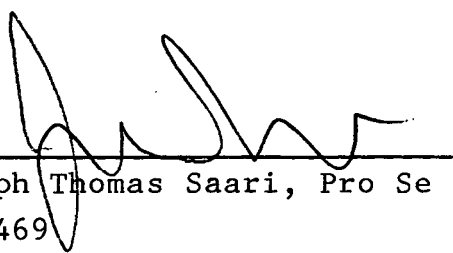
State of Minnesota,
Respondent.

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 1024 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2026

X



Joseph Thomas Saari, Pro Se
#205469

1000 Lakeshore Drive
Moose Lake, MN 55767