STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0884

Melissa Lynn Hanson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 13, 2023
Affirmed
Smith, Tracy M., Judge

Freeborn County District Court
File No. 24-CR-21-137

Melissa Lynn Hanson, Hayward, Minnesota (pro se appellant)

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

Kelly Martinez, Albert Lea City Attorney, Albert Lea, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Melissa Lynn Hanson appeals from the district court's order denying postconviction relief from her misdemeanor convictions for operating her bar and restaurant in violation of emergency executive orders during the COVID-19 pandemic. Hanson argues that she was entitled to postconviction relief because the district court

violated her due-process rights in various ways in connection with her prosecution and convictions. Because we conclude that Hanson's due-process rights were not violated, we affirm.

FACTS

This case stems from Hanson's operation of the Interchange Wine & Coffee Bistro in Albert Lea. Hanson does not dispute the facts underlying her convictions. On six occasions during December 2020 and January 2021, Hanson kept the Interchange open for on-premises consumption of food and beverages, in violation of provisions in certain executive orders issued during the COVID-19 peacetime emergency.[1]

On January 25, 2021, respondent State of Minnesota filed a complaint, signed by the Albert Lea city attorney, charging Hanson with six misdemeanor counts of violating an emergency-powers order or rule under Minnesota Statutes section 12.45 (2020). The probable-cause section of the complaint identified the executive orders that Hanson allegedly violated—Executive Orders 20-99, prohibiting on-premises consumption of food and beverages, and 20-103, prohibiting all indoor, on-premises consumption of food and beverages. Emerg. Exec. Order No. 20-99, *Implementing a Four Week Dial Back on Certain Activities to Slow the Spread of COVID-19* (Nov. 19, 2020) (effective from November 20, 2020, at 11:59 p.m. through December 18, 2020, at 11:59 p.m.); Emerg. Exec. Order No. 20-103, *Extending and Modifying Executive Order 20-99* (Dec. 17, 2020) (effective from December 18, 2020, at 11:59 p.m. through January 10, 2021, at 11:59 p.m.).

[1] Hanson has appeared pro se for the entirety of the criminal proceedings, including on appeal.

At her first appearance on January 28, Hanson stated that she had not received the complaint. The district court, at Hanson's request, set a new arraignment date for February 4. At the February 4 arraignment, Hanson objected to the proceedings, alleging jurisdictional defects. The district court stated that it had jurisdiction and, after advising Hanson of the charges and her rights, informed Hanson that it was arraigning her.

Over the following nine months, Hanson continued to file various pretrial motions asserting that the case should be dismissed. During this time—on July 1, 2021—the peacetime emergency ended.

In early December 2021, the district court denied Hanson's pretrial motions and ruled on the state's motions in limine. As relevant to this appeal, the district court granted the state's request to prohibit Hanson from challenging before the jury the validity of the executive orders or the district court's jurisdiction.

On December 6, the deputy sheriff served a summons and amended complaint on Hanson, and the amended complaint was filed in the district court.

Hanson's jury trial began on December 7. On December 9, the final day of Hanson's jury trial, Hanson objected to the proposed jury instructions and filed a motion arguing that the district court improperly prohibited her from making constitutional arguments. The district court rejected Hanson's arguments, and the jury found her guilty of all six counts of willfully violating the executive orders. The district court convicted Hanson of six misdemeanors under Minnesota Statutes section 12.45 and imposed concurrent sentences of 90 days in jail as well as a $1,000 fine. Hanson did not appeal her convictions.

Hanson petitioned for postconviction relief on February 9, 2022. In response to her petition, the district court corrected Hanson's sentence and removed the $1,000 fine, concluding that section 12.45 authorized either 90 days of jail time or a $1,000 fine, not both. The district court later denied Hanson's petition for postconviction relief without an evidentiary hearing.

Hanson appeals.

DECISION

An appellate court reviews the denial of a petition for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A district court abuses its discretion if it erroneously applies the law. *Id.* A district court may deny a petition without an evidentiary hearing only if "the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018) (quotation omitted). When determining whether an evidentiary hearing is required, a district court "considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Id.* at 422-23 (quotation omitted).

On appeal, Hanson makes five arguments. Framing each as a due-process violation, Hanson argues that (1) the executive orders on which her convictions were based exceeded the governor's statutory authority; (2) because the peacetime emergency ended and the executive orders terminated, the amelioration doctrine required the state to halt the prosecution; (3) the district court lacked jurisdiction because the prosecuting city attorney failed to execute an oath of office; (4) the district court lacked personal jurisdiction because

of insufficient service of process; and (5) the jury instructions violated her right to a jury trial. We review each argument in turn.[2]

I. The governor had statutory authority to issue the executive orders under the Minnesota Emergency Management Act of 1996.

Hanson argues that Executive Orders 20-99 and 20-103, the orders on which her convictions were based, exceeded the governor's statutory authority under the Minnesota Emergency Management Act of 1996 (MEMA), and thus that the district court violated her due-process rights by allowing the criminal proceedings against her. MEMA confers emergency powers on the governor, including the ability to declare a peacetime emergency and to issue necessary orders. *See* Minn. Stat. §§ 12.21, .31-.32 (2022). The scope of the governor's authority under MEMA presents an issue of statutory interpretation that we review de novo. *See Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020).

Our role in interpretating statutes "is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2022). When a statute's intent is clear, appellate courts "apply the statute according to its plain meaning." *Strommen*, 943 N.W.2d at 177 (quotation omitted). To determine a statute's plain meaning, we construe words and phrases "according to rules of grammar and according to their common and approved

[2] In lieu of a formal brief, the state filed a one-page letter asserting that, under subdivisions 3 and 4 of Minnesota Statutes section 590.01, Hanson is not entitled to postconviction relief. The state misreads the postconviction-relief statute. Subdivision 3 applies only to persons convicted of and sentenced for a crime committed before May 1, 1980, which does not include Hanson. Subdivision 4 establishes a two-year time limit for filing a petition for postconviction relief and provides exceptions to the time limit, including an exception for nonfrivolous petitions that should be heard in the interests of justice. Hanson's petition was filed well within the two-year time limit, and the interests-of-justice exception is therefore irrelevant.

usage." Minn. Stat. § 645.08(1) (2022). But appellate courts "do not read words in isolation; the meaning of a word is informed by how it is used in the context of a statute." *Strommen*, 943 N.W.2d at 177. And appellate courts "consider a statute as a whole 'to harmonize and give effect to all its parts'" because courts "presume that the Legislature 'intended the entire statute to be effective and certain.'" *Id.* (quoting *Van Asperan v. Darling Olds, Inc.*, 93 N.W.2d 690, 698 (Minn. 1958)).

With these principles of statutory interpretation in mind, we turn to Hanson's arguments about the governor's statutory authority under MEMA. Hanson was convicted under Minnesota Statutes section 12.45, which states that "a person who willfully violates a provision of this chapter or a rule or order having the force and effect of law issued under authority of [MEMA] is guilty of a misdemeanor." She makes two arguments for why Executive Orders 20-99 and 20-103 did not qualify as "order[s] having the force and effect of law issued under authority of [MEMA]." First, Hanson argues that Executive Orders 20-99 and 20-103 did not have "the full force and effect of law" because the governor did not have statutory authority to declare a peacetime emergency based on the COVID-19 pandemic. Second, she argues that Executive Orders 20-99 and 20-103 were not issued "under authority of [MEMA]" because MEMA does not authorize the governor to prohibit on-premises consumption of food and beverages. We review each argument in turn.

A. The COVID-19 pandemic was a valid basis for declaring a peacetime emergency.

The governor's authority to promulgate executive orders that have the full force and effect of law is predicated on the declaration of an emergency. Minn. Stat. §§ 12.21,

subd. 1, .32. As relevant here, MEMA authorizes the governor to declare a peacetime emergency "only when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation." Minn. Stat. § 12.31, subd. 2(a).

On May 13, 2020, the governor declared a peacetime emergency based on the COVID-19 pandemic, designating the COVID-19 pandemic an "act of nature." Hanson contends that the COVID-19 pandemic is not a qualifying "act of nature," and thus that the governor did not have statutory authority to declare a peacetime emergency under the plain language of the statute. We disagree. Based on a careful review of MEMA as a whole, we conclude that the COVID-19 pandemic was an "act of nature" constituting a valid basis for declaring a peacetime emergency.

In general, "[w]hen a statute does not define a word or phrase, [courts] construe words and phrases according to their plain and ordinary meaning." *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). Courts may consider dictionary definitions when determining a word or phrase's plain and ordinary meaning, *id.*, including *Black's Law Dictionary*, *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759 n.2 (Minn. 2010). *Black's* does not define "act of nature," but its entry for "act of God" states that "act of nature" is synonymous. *Black's Law Dictionary* 43 (11th ed. 2019). *Black's* defines "act of God" as "[a]n overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado." *Id.* As noted in *Black's*, a federal statute gives a broader definition of "act of God" that includes "an unanticipated grave natural disaster or other

natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight." 42 U.S.C. § 9601(1) (2018). Similarly, although the *American Heritage Dictionary* does not define "act of nature," that dictionary defines an "act of God" as (1) "[a] violent or destructive natural event, such as a lightning strike or earthquake" or (2) "[a]n occurrence, such as a natural event, that is beyond human control and whose consequences are therefore not a basis for legal liability." *The American Heritage Dictionary of the English Language* 17 (5th ed. 2011).

We conclude that the COVID-19 pandemic qualifies as an "act of nature" consistent with these definitions. COVID-19 is a communicable disease caused by a naturally occurring and highly contagious virus. Although the virus spreads between persons, that spread occurs via natural mechanisms despite significant efforts to mitigate that spread. For example, Executive Order 20-99 stated that there were (at that time) more than 240,000 confirmed COVID-19 cases in Minnesota alone and that the "rate of 'community spread'—meaning those cases that [Minnesota Department of Health] cannot link to another case or a source of exposure—is particularly concerning." We need not specify the precise contours of the phrase "act of nature" to conclude that the COVID-19 pandemic—an unexpected and uncontrollable event caused by a naturally occurring virus—falls within the phrase's broad scope.[3]

[3] We decline to adopt Hanson's assertion that an act of nature must be "in no sense attributable to human agency." To do so would require a court to identify whether any human action had contributed at all to naturally occurring forces or events—an inquiry that may often prove impossible to resolve but that also does not appear in the statute. *See Great*

Hanson also cites section 12.31's requirement that the basis for a peacetime emergency "endanger[] life and property" to contend that the COVID-19 pandemic cannot be an "act of nature." Minn. Stat. § 12.31, subd. 2(a) ("A peacetime declaration of emergency may be declared only when an act of nature . . . endangers life and property and local government resources are inadequate to handle the situation."). Hanson asserts that a virus cannot "endanger property" and thus that the COVID-19 pandemic cannot be an "act of nature." We are unpersuaded, for two reasons.

First, although neither the statute nor Hanson defines "property," Hanson appears to presume that property is limited to real property. But common definitions of "property" are not so limited. For example, *Black's Law Dictionary* defines property as "[c]ollectively, the rights in a valued resource such as land, chattel, or an intangible" and "[a]ny external thing over which the rights of possession, use, and enjoyment are exercised." *Black's Law Dictionary* 1470 (11th ed. 2019). The *American Heritage Dictionary* presents similarly expansive definitions of property: "Something owned; a possession"; "A piece of real estate"; "Something tangible or intangible to which its owner has legal title"; "Something tangible or intangible, such as a claim or a right, in which a person has a legally cognizable, compensable interest"; and "Possessions considered as a group." *The American Heritage Dictionary of the English Language* 1412 (5th ed. 2011). Because those broad definitions

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River Energy v. Swedzinski, 860 N.W.2d 362, 364 (Minn. 2015) (explaining that appellate courts "cannot add words to a statute that the Legislature intentionally or inadvertently left out" (quotation omitted)).

unambiguously include both tangible and intangible property, we decline to limit "property" to only real property.[4]

Second, contrary to Hanson's framing, the question is not whether a virus, in the abstract, endangers property. The governor designated the COVID-19 pandemic as the basis for the emergency. Thus, the question is whether that pandemic "endangers life and property." Hanson does not dispute that the COVID-19 pandemic endangers life. *See* Emerg. Exec. Order No. 20-99 ("Today we mark another grim milestone, grieving the loss of 67 of our neighbors, the highest number of deaths in a single day."). And Hanson does not dispute that the COVID-19 pandemic caused major economic impacts throughout Minnesota and put Minnesotans' housing, livelihood, and jobs at risk. *See* Emerg. Exec. Order 20-99 ("For the benefit of our economy and all Minnesotans, we need to buckle down."). Given these impacts, we conclude that the COVID-19 pandemic endangered property.

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[4] The term "property" is found in multiple locations in MEMA, and, in those other contexts, the statute specifies "real property" or "personal property." *See, e.g.*, Minn. Stat. §§ 12.03, subds. 4f ("'Facility' means any real property, building, structure, or other improvement to real property or any motor vehicle, rolling stock, aircraft, watercraft, or other means of transportation."), 6a ("The term medical supplies does not apply to medication, durable medical equipment, or other material that is personal property being used by individuals or that has been borrowed, leased, or rented by individuals for the purpose of treatment or care."); .22, subd. 2 ("Whenever a person offers to the state or to a political subdivision of the state, services, equipment, supplies, materials, real property, or funds by the way of gift, grant, or loan, for purposes of civil emergency management, the state, acting through the governor, or a political subdivision, acting through its governing body, may accept the offer and then may authorize an officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, real property, or funds on behalf of the state or political subdivision, and subject to the terms of the offer.") (2022). Here, the use of the word "property," without a modifier, supports our reading that "property" is not limited to real property.

Our conclusion that the COVID-19 pandemic is a valid basis for a peacetime emergency under the plain language of section 12.32 is confirmed by other sections in MEMA that contemplate that a communicable disease may be the basis for a peacetime emergency. For example, Minnesota Statutes section 12.39 (2022) protects an individual's fundamental right to refuse treatment despite directives made during a peacetime emergency. That section also provides that individuals who refuse treatment may be placed into isolation or quarantine, but only if the individual is infected with or reasonably believed to be infected with a communicable disease and that communicable disease "is the basis for which the . . . peacetime emergency was declared."[5] Minn. Stat. § 12.39. Concluding that a communicable disease like COVID-19 is not a valid basis for a peacetime emergency would contradict the express language of section 12.39, violating the principle of statutory interpretation that we "consider a statute as a whole to harmonize and give effect to all its parts." *See Strommen*, 943 N.W.2d at 177 (quotation omitted). Because we presume that the legislature "intended the entire statute to be effective and certain," we conclude that the COVID-19 pandemic is a valid basis for a peacetime emergency. *Id.* (quoting *Van Asperan*, 93 N.W.2d at 698).

Throughout her briefing, Hanson cites the legislative history of section 12.32 to argue that the COVID-19 pandemic does not qualify as a basis for declaring a peacetime

[5] Hanson argues that we should not consider section 12.39, claiming that it expired under a sunset provision. But Hanson misreads the legislative history, which amended sunset provisions in a separate public law. H.F. 1555, 2005-2006 Reg. Sess., § 14 (5th engrossment); *see* 2004 Minn. Laws ch. 279, art. 11, § 7 (amending 2002 Minn. Laws ch. 402, § 21). Section 12.39 remains good law. Minn. Stat. § 12.39.

emergency. We note that this court generally turns to the legislative history only if we determine that the statute under review is ambiguous. Minn. Stat. § 645.16; *see State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). Because we conclude that the COVID-19 pandemic is unambiguously within the scope of section 12.32, our analysis ends here. Nonetheless, we briefly address MEMA's legislative history to demonstrate its consistency with our ruling.

Hanson's legislative history argument centers on the 2005 amendments to MEMA, which removed "public health emergency" as a specific basis for declaring a peacetime emergency. H.F. 1555, 2005-2006 Reg. Sess., § 10 (5th engrossment).[6] The 2005 amendments did remove all references to "public health emergency" throughout MEMA, including from section 12.31. H.F. 1555, 2005-2006 Reg. Sess. (5th engrossment). But we disagree with Hanson's conclusion that the amendments suggest the legislature's intent to disallow the declaration of a peacetime emergency based on a communicable disease. Rather, the amendments simply subsumed emergencies based on a communicable disease within the other emergencies remaining in MEMA.

Read as a whole, the amendments confirm that a communicable disease may still be a basis to declare a peacetime emergency. For example, although the legislature amended

[6] Before 2005 amendments removing the phrase "public health emergency," the relevant part of section 12.31 provided that "[a] peacetime declaration may be declared only when an act of nature, a technological failure or malfunction, a terrorist incident, *a public health emergency*, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation." Minn. Stat. § 12.31, subd. 2(a) (2004) (emphasis added). We note that this historical version of the statute appears to presume, consistent with our reading of the statute's plain language, that a public health emergency may "endanger[] . . . property." *Id.*

section 12.39 to remove the phrase "public health emergency," the legislature retained language stating that a "communicable disease" may be "the basis for which the national security emergency or peacetime emergency was declared." H.F. 1555, 2005-2006 Reg. Sess., § 10 (5th engrossment). And the 2005 amendments removing "public health emergency" also added section 12.61, which provides that an "emergency plan" includes "any plan for managing an emergency threatening public health" developed by the commissioner of health, local public health agency, or other health care facilities. H.F. 1555, 2005-2006 Reg. Sess., § 12 (5th engrossment). In addition, section 12.61 similarly grants the governor specific authority to issue an emergency executive order, during a peacetime emergency, "upon finding that the number of seriously ill or injured persons" exceeds the capacity at regional hospitals. H.F. 1555, 2005-2006 Reg. Sess., § 12 (5th engrossment); Minn. Stat. § 12.61, subd. 2 (2022). Thus, taken as a whole, the legislative history aligns with our conclusion that the governor did not exceed his statutory authority under MEMA by declaring a peacetime emergency based on the COVID-19 pandemic.

B. The governor had statutory authority to prohibit on-premises consumption of food and beverages.

In the alternative, Hanson contends that, even if the COVID-19 pandemic was a valid basis for a peacetime emergency, the prohibitions in Executive Orders 20-99 and 20-103 exceeded the governor's statutory authority because they improperly regulated private businesses and people. Those orders were issued under subdivision 3(1) of section 12.21:

> In performing duties under [MEMA] and to effect its policy and purpose, the governor may: (1) make, amend, and rescind the *necessary orders* and rules to carry out the provisions of [MEMA] and section 216C.15 *within the limits*

> *of the authority conferred by this section*, with due consideration of the plans of the federal government and without complying with sections 14.001 to 14.69, but no order or rule has the effect of law except as provided by section 12.32.

Minn. Stat. § 12.21, subd. 3(1) (emphasis added). Thus, under subdivision 3(1), the governor's orders must fall "within the limits of the authority" conferred by section 12.21 as a whole.

Section 12.21 grants the governor, along with the specific authority to issue "necessary orders" under subdivision 3(1), the general authority to respond to emergencies. That grant of general authority, as relevant to peacetime emergencies, provides: "The governor (1) has general direction and control of emergency management, [and] (2) may carry out the provisions of [MEMA]." Minn. Stat.§ 12.21, subd. 1. We conclude, contrary to Hanson's assertions, that the prohibition of on-premises consumption is consistent with that first grant of general authority—the governor's "general direction and control of emergency management"—and thus falls "within the limits of the authority conferred by" section 12.21.

The governor has "general direction and control of emergency management." Minn. Stat. § 12.21, subd. 1. MEMA defines "emergency management" as:

> [*T*]*he preparation for and the carrying out of emergency functions*, other than functions for which military forces are primarily responsible, *to prevent, minimize and repair injury and damage resulting from disasters*, from acute shortages of energy, or from incidents occurring at nuclear power plants that pose radiological or other health hazards.

Minn. Stat. § 12.03, subd. 4 (emphasis added). Thus, the issue before us is whether the prohibition of on-premises consumption during the COVID-19 pandemic falls within "the preparation for and the carrying out of emergency functions . . . to prevent, minimize and repair injury and damage resulting from disasters." We conclude it does.

First, the COVID-19 pandemic is a "disaster" as defined by MEMA. Under MEMA, a "disaster" is:

> *[A] situation that creates an actual or imminent serious threat to the health and safety of persons*, or a situation that has resulted or is likely to result in catastrophic loss to property or the environment, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

Minn. Stat. § 12.03, subd. 2 (emphasis added). We do not believe that the COVID-19 pandemic—a global pandemic, which, on the day that Executive Order 20-99 was issued, killed 67 Minnesotans—can be considered anything but "a situation that creates an actual or imminent serious threat to the health and safety of persons."

Second, we conclude that the prohibition of on-premises consumption is consistent with the "functions" in MEMA's definition of "emergency management." That definition explains:

> These functions include, *without limitation*, firefighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency human services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, implementation of energy supply emergency conservation and allocation measures, and *other functions related to civilian protection, together with all other activities*

> *necessary or incidental to preparing for and carrying out these functions*.

Minn. Stat. § 12.03, subd. 4 (emphasis added). As stated in Executive Order 20-99, the on-premises-consumption prohibition was put in place following "30 additional outbreaks connected to the gatherings, bars, and restaurants" subject to previous restrictions. Emerg. Exec. Order 20-99. The order explained that Minnesota's "statewide cases, hospitalization rates, and . . . levels of community spread demonstrate that a temporary dial back on in-person social activity and restrictions on certain businesses are necessary." Emerg. Exec. Order 20-99. The on-premises-consumption prohibition fell within "other functions related to civilian protection, together with all other activities necessary or incidental to preparing for and carrying out these functions." Minn. Stat. § 12.03, subd. 4.

We are also guided by the section authorizing the governor to cooperate with the officers and agencies of the federal government and other states "in matters pertaining to the emergency management of the state and nation." Minn. Stat. § 12.21, subd. 3(7). Subdivision 3(7) lists examples of such matters, including

> the direction or control of: . . . (iv) the conduct of persons in the state, including entrance or exit from any stricken or threatened public place, occupancy of facilities, and the movement and cessation of movement of pedestrians, vehicular traffic, and all forms of private and public transportation during, prior, and subsequent to drills or actual emergencies; (v) public meetings or gatherings; and (vi) the evacuation, reception, and sheltering of persons.

Id. Under this language, regulating the conduct of persons and the occupancy of facilities falls within "matters pertaining to emergency management."[7]

In sum, the prohibition of on-premises consumption of food and beverages is consistent with MEMA's definition of "emergency management." This prohibition, at least under the circumstances identified in the executive orders, falls within the scope of functions in the definition of "emergency management" and, because it entails the direction and control of the conduct of persons, occupancy of facilities, and public gatherings, is a "matter[] pertaining to the emergency management of the state." As a result, we conclude that the prohibition of on-premises consumption of food and beverages in Executive Orders 20-99 and 20-103 falls within the governor's "general direction and control of emergency management."[8]

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[7] Hanson contends that the governor only gains the authority to regulate these matters when cooperating with the federal government. We are not persuaded. Subdivision 3(7) of section 12.21 authorizes the governor to cooperate with the federal government and other states in these matters. We do not read subdivision 3(7) to exclude the specific examples of "matters pertaining to emergency management" from the governor's general authority to direct and control emergency management.

[8] Hanson does not make arguments about the other grant of general authority, which provides, "The governor . . . may carry out the provisions of [MEMA]." Minn. Stat. § 12.21, subd. 1(2). That grant of general authority may also authorize the prohibition of on-premises consumption of food and beverages. As discussed above, the governor may issue orders and rules "[i]n performing the duties under [MEMA] and to effect its policy and purpose." And MEMA's policy declaration states that the legislature conferred the powers in that act to "(1) ensure that preparations of the state will be adequate to deal with disasters, (2) generally protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state." Minn. Stat. § 12.02, subd. 1 (2022). Given the context of the COVID-19 pandemic, the prohibition here appears consistent with the governor's statutory authority to "carry out the provisions of [MEMA]." Minn. Stat. §§ 12.02, subd. 1, .21, subd. 1(2). However, because of the lack of briefing on section 12.21, subdivision 1(2), and our conclusion that the prohibition is authorized by the grant

Because the governor had statutory authority to declare a peacetime emergency and issue an order prohibiting on-premises consumption of food and beverages, the district court did not violate Hanson's due-process rights by allowing the case to proceed. Thus, Hanson is not entitled to relief on this basis.

II. Neither the amelioration doctrine nor the abatement doctrine applies.

Hanson next argues that, even if the executive orders fell within the governor's statutory authority, the amelioration doctrine required that the prosecution cease when the peacetime emergency ended on July 1, 2021.

To begin, Hanson appears to conflate the amelioration doctrine with the abatement doctrine. The amelioration doctrine is the "presumption in Minnesota that an amendment mitigating punishment applies to non-final cases." *State v. Kirby*, 899 N.W.2d 485, 490 (Minn. 2017). By contrast, the abatement doctrine is the common-law presumption that the state must halt its prosecutions under a criminal statute if the legislature repeals that statute. *Id.* at 494. We conclude that neither the termination of the executive orders nor the end of the peacetime emergency entitles Hanson to relief under either doctrine.

First, the amelioration doctrine is inapplicable. That doctrine applies only when the legislature alters the punishment for a crime, such as by reducing the maximum sentence. *See Kirby*, 899 N.W.2d at 489-90. Here, the penalties for violating executive orders, as imposed by Minnesota Statutes section 12.45, did not change during Hanson's criminal

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of general authority under section 12.21, subdivision 1(1), we need not reach whether the governor's grant of general authority under section 12.21, subdivision 1(2), also authorizes the prohibition of on-premises consumption.

proceedings. As a result, the amelioration doctrine does not apply. *Cf. In re McCulloch*, 980 N.W.2d 599, 608 (Minn. App. 2022) (explaining, in the context of the Minnesota Department of Health's imposition of administrative penalties and license suspensions, that the amelioration doctrine does not apply to the rescission of executive orders).

Second, even if the abatement doctrine applied to this situation—involving terminated executive orders rather than a repealed criminal statute—it likewise would not entitle Hanson to relief. The abatement doctrine has long been abrogated in Minnesota and thus would not have been a basis for terminating Hanson's prosecution. *See Kirby*, 899 N.W.2d at 494-95 (citing *State v. Smith*, 64 N.W. 1022, 1022-23 (Minn. 1895)); *see also* Minn. Stat. § 645.35 (2022).

In sum, whether premised on the amelioration or abatement doctrine, we conclude that Hanson's due-process rights were not violated and she is not entitled to relief on either basis.

III. The district court did not lack jurisdiction.

Hanson argues that the district court lacked jurisdiction because the Albert Lea city attorney failed to complete an oath of office, which Hanson asserts is required by Minnesota Statutes section 358.05 (2022). Appellate courts consider questions of jurisdiction de novo. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007). Although the record supports Hanson's contention that the Albert Lea city attorney who prosecuted this case did not take an oath of office, we conclude that Hanson's argument does not entitle her to relief.

We disagree with Hanson's contention that a prosecutor subject to a statutory oath of office must complete that oath for the district court to have jurisdiction. In Minnesota, city attorneys are granted the authority to prosecute misdemeanors in their jurisdiction by Minnesota Statutes section 484.87, subdivision 3 (2022). *Cf. State v. Persons*, 528 N.W.2d 278, 279-80 (Minn. App. 1995). Hanson does not dispute that she was charged by the proper prosecuting authority in the proper venue, nor does she dispute that the City of Albert Lea had authority to prosecute the case. As a result, whether the prosecuting city attorney took an oath of office does not affect the district court's jurisdiction over Hanson's prosecution. *See State v. Ali*, 752 N.W.2d 98, 106-08 (Minn. App. 2008) (rejecting the defendant's contention that the district court lacked jurisdiction to prosecute the defendant when the prosecuting assistant county attorney was on restricted status), *rev. denied* (Minn. May 27, 2009).[9]

Instead of being a jurisdictional concern, we conclude that this asserted error is, at most, a technical defect in the prosecution of Hanson's case and that our analysis is governed by *State v. Abbott*, 356 N.W.2d 677 (Minn. 1984). In that case, the Minnesota Supreme Court rejected a defendant's claim that he was denied due process when the

[9] Hanson's only authority that the district court lacked jurisdiction are U.S. Supreme Court cases involving challenges to judicial authority based on violations of the federal constitution. *See, e.g.*, *Ryder v. United States*, 515 U.S. 177, 182-83 (1995) (challenging appointment of civilian judges of the Coast Guard Court of Military Review under the federal appointments clause); *Glidden Co. v. Zdanok*, 370 U.S. 530, 535-36 (1962) (challenging judicial authority based on alleged violation of Article III). Because those cases involve constitutional challenges to judicial authority, rather than challenges involving a prosecutor's failure to comply with an alleged statutory requirement, those cases are inapplicable.

prosecuting attorney "was not properly appointed an assistant county attorney." *Id.* The supreme court held that, "even if the prosecutor's appointment was technically defective, the defect did not prejudice defendant or deprive him of a fair trial." *Id.* And, in *Ali*, we held that the defendant, who was prosecuted by an attorney whose license to practice law was on restricted status, was not entitled to a new trial. 752 N.W.2d at 109. Rather, citing *Abbott*, we affirmed the defendant's conviction because he failed to establish prejudice. *Id.* at 108-09.

Hanson similarly fails to explain how the failure to take an oath of office prejudiced her or rendered her trial unfair. As a result, even assuming the city attorney was required by statute to take an oath of office, this asserted error does not entitle Hanson to relief. Thus, we do not reach whether Minnesota Statutes section 358.05 requires the Albert Lea city attorney to take such an oath.

IV. The district court did not lack personal jurisdiction based on inadequate service of process.

Hanson argues that she was arraigned without having received valid service of a summons and complaint and thus that the district court lacked personal jurisdiction over her. Hanson acknowledges that a valid summons and complaint was filed with the district court to begin the proceedings and that a valid summons and amended complaint was served before the jury trial. Nonetheless, she contends that, because she was not validly served with a summons and complaint before her January 28, 2021 first appearance, the district court lacked personal jurisdiction.

We are not persuaded that the district court's personal jurisdiction over Hanson required service of the summons and complaint. *Cf. State v. Burch*, 170 N.W.2d 543, 550 (Minn. 1969) (holding that constitutionally defective complaint and invalid arrest did not deprive district court of jurisdiction over the defendant who appeared and defended on the merits). Hanson cites a single civil case when arguing that her misdemeanor convictions are void because of insufficient service of process. *See Bode v. Minn. Dep't of Nat. Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999), *aff'd*, 612 N.W.2d 862 (Minn. 2000). But formal service of a misdemeanor complaint is not required by the Minnesota Rules of Criminal Procedure. Minn. R. Crim. P. 4.02, subd. 5(3); *see State v. Wood*, 845 N.W.2d 239, 242 (Minn. App. 2014) (rejecting, in a petty misdemeanor case, defendant's assertion that the district court lack jurisdiction because of ineffective service of the complaint), *rev. denied* (Minn. June 17, 2014). Rather, the Minnesota Rules of Criminal Procedure provide that the defendant must be arraigned following *filing* of a valid complaint. Minn. R. Crim. P. 4.02, subd. 5(3).

Hanson does not dispute that a valid complaint was filed before both the January 28 first appearance and the February 4 arraignment, nor does she dispute that a valid amended complaint was filed and served before the jury trial. And Hanson does not explain how the purported deficiency prejudiced her. Accordingly, we conclude that Hanson's challenge to personal jurisdiction does not entitle her to relief.

V. The jury instructions did not constitute a directed verdict.

Hanson's final argument is that the jury instructions improperly "established a conclusive presumption" that the executive orders had "the full force and effect of law."

We construe this as an argument that the jury instructions constituted a directed verdict, violating Hanson's right to have a jury decide each element of the offense. *See State v. Moore*, 699 N.W.2d 733, 736-37 (Minn. 2005). We review the adequacy of jury instructions for an abuse of discretion. *Id.* at 736. "An instruction is in error if it materially misstates the law." *Id.*

Hanson was charged under Minnesota Statutes section 12.45, which provides that "a person who willfully violates a provision of [MEMA] or a rule or order having the force and effect of law issued under authority of [MEMA] is guilty of a misdemeanor." The jury instructions explained that Executive Orders 20-99 and 20-103 "prohibited places of public accommodation from offering food or beverages (including alcoholic beverages) for on-premises consumption and closed the places of public accommodation for use and occupancy by members of the public." The jury instructions also stated that Executive Orders 20-99 and 20-103 had "the full force and effect of law."

The district court then instructed the jury to determine whether "the defendant willfully violated a term or condition of emergency executive order 20-99" or "the defendant willfully violated a term or condition of emergency executive order 20-103." Hanson contends that this instruction was improper because the jury had to decide whether the governor had statutory authority to issue Executive Orders 20-99 and 20-103—i.e., that the jury should have determined whether the executive orders had "the force and effect of law" and were "issued under authority of [MEMA]."

Hanson's argument is analogous to the question considered by this court in *State v. Bowen*. 910 N.W.2d 39 (Minn. App. 2018), *aff'd*, 921 N.W.2d 763 (Minn. 2019).[10] In *Bowen*, the district court substituted "bottle of liquor" for "personal property" when instructing the jury on the elements of simple robbery. *Id.* at 49. The defendant contended that the district court directed the verdict with that substitution and thus violated the defendant's right to a jury trial. *Id.* at 47. We held that the substitution did not violate the defendant's right to a jury trial because a bottle of liquor was, as a matter of law, personal property. *Id.* at 49. Thus, although it is improper to take an issue of fact or an issue requiring the application of law to facts away from the jury, *id.*, a district court does not err by taking a question of law away from the jury.

Here, like in *Bowen*, the district court's jury instruction took an issue of law away from the jury, and thus the instruction did not violate Hanson's right to a jury trial. Although Hanson asserts that there are issues of fact about whether Executive Orders 20-99 and 20-103 had the full force and effect of law and were authorized by MEMA, we disagree. Hanson's asserted "issues of fact" simply reiterate her prior arguments about the statutory authority granted by MEMA. As discussed above, the prohibition of on-premises consumption in Executive Orders 20-99 and 20-103 was, as a matter of law, a valid exercise of the governor's statutory authority under MEMA. As a result, the district court did not err by instructing the jury that the executive orders had "the full force and effect of law."

[10] The supreme court granted review to interpret the meaning of "personal property" in the simple-robbery statute. *Bowen*, 921 N.W.2d at 765.

In sum, the petition, file, and record conclusively showed that none of Hanson's claims entitled her to relief. Accordingly, the district court did not abuse its discretion by denying Hanson's petition for postconviction relief without an evidentiary hearing.

Affirmed.