

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A26-0450**

State of Minnesota,
Respondent,

vs.

Alberto Jimenez,
Appellant.

**Filed August 31, 2026
Reversed and remanded
Bond, Judge**

Lyon County District Court
File No. 42-CR-24-684

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Paul Engh, Minneapolis, Minnesota; and

Kent Marshall, Barrett, Minnesota (for appellant)

Considered and decided by Rasmusson, Presiding Judge; Johnson, Judge; and Bond,
Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

This is an appeal from an order denying appellant's ex parte application requesting funds for expert-witness services under Minn. Stat. § 611.21(a) (2024) to defend against criminal charges related to the death of his infant child. Appellant, who retained private

counsel at the outset of the prosecution but has since become indigent, argued in the district court that he is entitled to funds under the statute and, alternatively, that the statute is unconstitutional as applied because it violates his due-process right to present a defense. The district court determined that appellant was not entitled to funds under the statute's unambiguous language and denied his motion without addressing appellant's constitutional argument. We reverse and remand for the district court to consider whether section 611.21(a) is unconstitutional as applied to appellant.

FACTS

In June 2024, respondent State of Minnesota charged appellant Alberto Jimenez with second- and third-degree murder for the 2016 death of Jimenez's infant child. *See* Minn. Stat. §§ 609.19, subd. 2(1), .195(a) (2014). The complaint alleged that, according to the opinions of medical providers, the child had been abused and died as a result of abusive head trauma (AHT).

Jimenez retained private counsel and moved for a *Frye-Mack* hearing to challenge the admissibility of the AHT diagnosis on the ground that it lacked foundational reliability. *See* Minn. R. Evid. 702 (requiring expert-witness opinions to have foundational reliability to be admissible). For support, Jimenez primarily relied on foreign legal authority calling into question the reliability of AHT diagnoses in infants. *See State v. Nieves*, 345 A.3d 1127, 1164-72 (N.J. 2025) (concluding that the government failed to establish that AHT was accepted in the relevant scientific community “because the research, studies, and testimony presented at the hearing reflect a lack of general acceptance in the biomechanical community regarding SBS/AHT without impact”). Jimenez also submitted expert opinions

disputing the state's theory on the child's cause of death and opining that the child's subdural hematomas were not caused by trauma. The district court denied Jimenez's request for a *Frye-Mack* hearing, but it ruled that Jimenez could move in limine to exclude or limit expert testimony on the AHT diagnosis based on foundational reliability.

In December 2025, in conjunction with other motions related to AHT and the child's cause of death, Jimenez filed an ex parte application under Minn. Stat. § 611.21(a) and federal constitutional caselaw to authorize funds for expert-witness fees. Under the statute, appointed counsel representing an indigent defendant or counsel "representing a defendant who, at the outset of the prosecution, has an annual income not greater than 125 percent of the poverty line" as established by federal law may request expert or other services necessary to an adequate defense. Minn. Stat. § 611.21(a). Jimenez's application alleged that (1) he suffers from a serious health condition and was indigent; (2) he had retained expert witnesses who would offer testimony at trial disputing the state's theory on the child's cause of death and, instead, opine that the child's subdural hematoma and retinal hemorrhages were caused by pre-existing medical conditions; (3) he has a due-process right pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *State v. Beecroft*, 813 N.W.2d 814 (Minn. 2012), to present expert witnesses to counter the state's experts; and (4) expert testimony is necessary to his defense but he is unable to compensate his expert witnesses "without statutory assistance."

The district court denied the application in an order filed on January 8, 2026, determining that Jimenez was ineligible for funds because he is represented by private counsel and had not submitted financial information establishing that his annual income

was not greater than 125% of the poverty line at the outset of the prosecution in June 2024. *See* Minn. Stat. § 611.21(a). Jimenez subsequently filed a supplemental affidavit with financial and past employment information. On January 30, the district court again denied Jimenez’s motion for funds, finding that Jimenez’s income was greater than 125% of the poverty line at the outset of the prosecution and he is therefore financially ineligible for publicly funded expert services under the statute. The district court did not expressly analyze Jimenez’s due-process argument.

Jimenez moved for reconsideration, reiterating his argument that application of the financial eligibility criteria under section 611.21(a) violates his constitutional rights to due process and to present a defense. The district court denied Jimenez’s motion for reconsideration on March 4, 2026.¹ The district court acknowledged Jimenez’s “need” for expert services and found that Jimenez is “presently indigent, and his current income is not greater than 125 percent of the poverty line.” But it determined that, because section 611.21 “does not provide for any exceptions to the requirement that a defendant with private counsel have an annual income not greater than 125 percent of the poverty line at the outset of the prosecution,” it must deny Jimenez’s application. The district court did not address Jimenez’s constitutional argument.

Jimenez appeals.

¹ The district court noted that Jimenez had not requested permission to file a motion for reconsideration as required by Minn. Gen. R. Prac. 115.11, but considered Jimenez’s motion as one requesting permission to file a motion for reconsideration and decided it on the merits.

DECISION

We review a district court’s decision to deny funds under Minn. Stat. § 611.21(a) for an abuse of discretion, but we review issues of statutory interpretation de novo. *State v. Cruz Montanez*, 926 N.W.2d 434, 436 (Minn. App. 2019), *rev. granted* (Minn. Apr. 8, 2019) *and appeal dismissed* (Minn. Mar. 11, 2020).

Section 611.21(a) provides:

Counsel appointed by the court for an indigent defendant, or representing a defendant who, at the outset of the prosecution, has an annual income not greater than 125 percent of the poverty line . . . may file an ex parte application requesting investigative, expert, interpreter, or other services necessary to an adequate defense in the case.

Minn. Stat. § 611.21(a). “Section 611.21 ensures that the state provides indigent defendants with the raw materials integral to the building of an effective defense as required by the state and federal constitutions.” *Cruz Montanez*, 926 N.W.2d at 437 (quotation omitted).

The supreme court has interpreted section 611.21 as establishing “two categories of defendants: (1) those with ‘counsel appointed by the court for an indigent defendant’ and (2) those with private counsel who have an annual income not greater than 125 percent of the poverty line ‘at the outset of the prosecution.’” *State v. Allwine*, 963 N.W.2d 178, 191 n.22 (Minn. 2021) (quoting Minn. Stat. § 611.21(a)). In *Allwine*, the supreme court affirmed the district court’s denial of a defendant’s motion for funds under section 611.21 because the defendant was represented by a private attorney and had not established that

his annual income was not greater than 125% of the poverty line at the outset of the prosecution. *Id.*²

Here, the district court found that, while Jimenez is presently indigent, he is represented by private counsel and had not established that his annual income was not greater than 125% of the poverty line at the outset of the prosecution, as required by section 611.21(a).³ On appeal, Jimenez does not dispute these factual findings and he appears to concede they render him ineligible for funds under the plain language of section 611.21(a). Instead, Jimenez argues that the district court's denial of his request for expert-witness funds under section 611.21(a) must be reversed because the statute as applied violates his due-process right to present a complete defense.⁴

² The supreme court's decision in *Allwine* is based on the plain language of section 611.21(a) and does not address the issue raised in this case—whether section 611.21(a) is unconstitutional as applied because it violates an indigent defendant's due-process right to present a complete defense.

³ The state argues that this appeal is moot, asserting that Jimenez is no longer indigent because his affidavit indicates that he had been “tentatively approved for social security disability payments.” The district court found that Jimenez is “presently indigent.” To the extent the state is asking this court to determine that Jimenez is no longer indigent based on his anticipated Social Security disability payments, appellate courts do not find facts on appeal. *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966).

⁴ Jimenez additionally argues that proceeding without expert witnesses would render his attorneys' performance deficient and give rise to a claim of ineffective assistance of counsel. We agree with the state that any alleged ineffective-assistance-of-counsel claim is not ripe. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 339 (Minn. 2011) (stating that an unripe issue is not justiciable because it is hypothetical and has “no existence other than in the realm of future possibility” (quotation omitted)). Because there is no justiciable ineffective-assistance-of-counsel claim, we do not consider this argument.

Courts presume statutes are constitutional and exercise the “power to declare a statute unconstitutional with extreme caution and only when absolutely necessary.” *State v. Rey*, 905 N.W.2d 490, 493 (Minn. 2018) (quotation omitted). In an as-applied challenge, review of a statute’s constitutionality is “limited to whether the statute impermissibly burdens the appellant’s right based on the facts presented by the case at hand.” *State v. Jones*, 25 N.W.3d 732, 736 (Minn. App. 2025). As the party challenging the constitutionality of section 611.21, Jimenez “bears the burden of demonstrating beyond a reasonable doubt that a constitutional violation has occurred.” *State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999).

The Due Process Clauses of the United States and Minnesota Constitutions guarantee a criminal defendant’s right to present a complete defense. U.S. Const. amend. XIV; Minn. Const. art. I, § 7; *see Beecroft*, 813 N.W.2d at 838-39 (“The right of a defendant to present a complete defense is an essential principle of our criminal justice system and is guaranteed by the Due Process Clause of both the United States Constitution and the Minnesota Constitution.”).⁵ The right to present a complete defense “is grounded in principles of fundamental fairness and includes the right to present evidence.” *State v. Foster*, 20 N.W.3d 6, 18-19 (Minn. 2025) (quotation omitted).

Jimenez’s due-process argument rests primarily on three cases. First, in *Ake v. Oklahoma*, the Supreme Court held that the government was required to provide an

⁵ The Minnesota Supreme Court has generally regarded the due-process protections of the federal and state constitutions as coextensive. *See Rey*, 905 N.W.2d at 493-94; *State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012).

indigent defendant with access to a psychiatrist to assist in his defense when the defendant's sanity was a "significant factor" at trial. 470 U.S. at 74. The Supreme Court reasoned that "[m]eaningful access to justice" and the due-process right to present a complete defense encompass a right to the "basic tools of an adequate defense." *Id.* at 77. Thus, when scientific evidence is a "significant factor" at trial, one "basic tool" that must be available to indigent defendants is access to the assistance of an expert for conducting professional examinations, consulting on possible affirmative defenses or trial strategies, and preparing to cross-examine the government's expert witnesses. *See id.* at 82-83. *Ake* identified three factors to determine whether due process requires the state to provide an indigent defendant with access to expert services in a particular case: (1) the private interest that will be affected by the state's action, (2) the state's interest, and (3) the value of the expert assistance sought and the risk of a resulting erroneous deprivation of rights if assistance is not provided. *Id.* at 77.

Second, Jimenez relies on *Beecroft*. In *Beecroft*, the Minnesota Supreme Court considered a defendant's due-process right to present expert medical testimony to defend against homicide charges for killing her newborn child. 813 N.W.2d at 831. Discussing *Ake*, the supreme court reasoned that, "if factfinders are exposed to the opinions of the government's expert witnesses, a defendant must have an equal opportunity to present to the factfinders the opposing views of the defendant's experts." *Id.* at 839; *see also id.* (stating that, "Not only does a defendant have a right to present a complete defense, a defendant has a right—at least in theory—to meet the State as an equal in our adversarial system of justice: 'strength against strength, resource against resource, argument against

argument.” (quoting *United States v. Bagley*, 473 U.S. 667, 694 n.2 (1985) (Marshall, J., dissenting)). The supreme court ultimately reversed the defendant’s murder conviction under its supervisory powers, concluding that state actors imperiled the defendant’s constitutional rights by improperly interfering with her ability to consult with and call expert witnesses. *Id.* at 847.

The third case relied on by Jimenez is *State v. Pederson*. In *Pederson*, the supreme court exercised its supervisory powers to reject the state’s policy which precluded an indigent defendant represented by private counsel on appeal from accessing public funding for preparation of the trial transcript. 600 N.W.2d 451, 453-55 (Minn. 1999). The supreme court reasoned that because the right to representation by the public defender and the right to a transcript at public expense are “two separate rights,” *id.* at 453, Pederson “ha[d] the right to refuse the services of the public defender, yet receive a trial transcript at public expense,” *id.* at 454. *Pederson* thus “direct[ed] the public defender . . . to pay the cost” to prepare the indigent defendant’s trial transcript even though the defendant was represented by private counsel on appeal. *Id.* at 455. Jimenez contends that, under *Pederson*, the state cannot condition his right to public funding for necessary expert witnesses on his acceptance of representation by the public defender.

The state disagrees. The state distinguishes *Pederson* because the supreme court expressly based its decision on the absence of any applicable legal authority and its supervisory powers over the criminal justice system. *Id.* And the state maintains that Minn. Stat. § 611.21(a) satisfies the state’s constitutional obligation under *Ake* because the statute provides “access” to expert services for indigent criminal defendants who are either

represented by the public defender or, if represented by private counsel, satisfy certain financial eligibility requirements. *See Ake*, 470 U.S. at 74 (“[T]he Constitution requires that a State provide access to psychiatrist’s assistance on this issue if the defendant cannot otherwise afford one.”).

The district court did not address the merits of Jimenez’s constitutional argument. We therefore conclude that remand is appropriate to permit the district court to consider Jimenez’s argument that section 611.21(a) is unconstitutional as applied. The district court may exercise its discretion how best to consider Jimenez’s as-applied challenge, including whether to reopen the record for briefing or additional information on Jimenez’s current financial status. *See Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005) (“[D]istrict courts are given broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided.”). We express no opinion on the merits of Jimenez’s constitutional argument, the necessity and reasonableness of his requested funds, or any other aspect of this case pending in district court.

Reversed and remanded.