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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1522**

State of Minnesota,
Appellant,

vs.

Kyle Damion Rand,
Respondent.

**Filed February 5, 2008
Reversed
Toussaint, Chief Judge**

Anoka County District Court
File No. 02-KX-07-1437

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Carl J. Newquist, Sarah M. Kimball, 6401 University Avenue Northeast, Suite 301, Fridley, MN 55432 (for appellant)

Mary M. McMahon, McMahon & Associates Criminal Defense, Ltd., 670 Commerce Drive Suite 110, Woodbury, MN 55125-9210 (for respondent)

Elizabeth J. Richards, Minnesota Coalition for Battered Women, 590 Park Street, Suite 410, St. Paul, MN 55103 (amicus curiae)

Rana SA Fuller, Battered Women's Legal Advocacy Project, 1611 Park Avenue South, Suite 2, Minneapolis, MN 55404 (amicus curiae)

Kristine C. Lizdas, Battered Women's Justice Project, 2104 Fourth Avenue South, Suite B, Minneapolis, MN 55404 (amicus curiae)

Considered and decided by Kalitowski, Presiding Judge; Toussaint, Chief Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant State of Minnesota challenges the district court's pretrial order granting respondent Kyle Damion Rand's motion to dismiss the charge of domestic assault against him as a sanction for discovery violations. Because the district court erred in enforcing a discovery order that relied on erroneous information, we reverse.

FACTS

Respondent assaulted his girlfriend on July 22, 2006, and was subsequently convicted of felony domestic assault. Following that assault, his girlfriend sought services at Alexandra House, a nonprofit, nongovernmental organization that offers free services of temporary emergency shelter, support, court advocacy, and community advocacy to battered women and their families.

On February 10, 2007, respondent and his girlfriend were both arrested and subsequently charged with gross-misdemeanor fifth-degree domestic assault. The state later dismissed the charge against respondent's girlfriend.

During discovery, respondent asked the state for documents prepared and possessed by Alexandra House. At a hearing on March 27, 2007, counsel for respondent mistakenly claimed that Alexandra House representatives participated directly in the

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

investigation of the February 10, 2007 assault by interviewing respondent's girlfriend, and counsel offered to give the court a report prepared by law enforcement documenting the involvement of Alexandra House representatives on the day of the assault.¹ The district court ordered the state to obtain and disclose any documentation prepared by Alexandra House regarding the February 10, 2007 assault and any prior documents prepared by Alexandra House that concerned respondent and his girlfriend.

To comply with the court order, the state contacted Alexandra House and requested respondent's girlfriend's records. Alexandra House refused to disclose the records, claiming confidentiality, and asserted that it would resist any effort to subpoena the records.² Neither party subpoenaed Alexandra House to obtain the records.

On May 15, 2007, respondent's motion to dismiss and for sanctions against the state for failure to produce the Alexandra House records was heard. Counsel for respondent admitted that he had been mistaken in his claims regarding the involvement of Alexandra House in investigating the February 10, 2007 assault. The state conceded that Alexandra House provided victim services to respondent's girlfriend following that assault, but the record provides no evidence that anyone associated with Alexandra

¹ The record indicates that counsel for respondent was mistakenly referring to Alexandra House's involvement in the investigation following the prior felony assault. The prosecutor present at the hearing did not object to respondent's mistaken claims because she was unaware that they were false.

² We are mindful of the arguments made by amici curiae in this matter. We agree that confidentiality is an important issue for victims of domestic violence and understand the consequences of disclosing battered-women shelter documents to an alleged abuser.

House responded to the scene of the assault or collaborated with law enforcement in gathering evidence or investigating the assault.

The district court granted respondent's motion by dismissing this case with prejudice. The district court was aware that the information presented at the earlier hearing was erroneous.³

DECISION

"The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the [district] court," and the choice of sanctions will not be overturned "absent a clear abuse of discretion." *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979).

"There is no general constitutional right to discovery in a criminal case." *State v. Hummel*, 483 N.W.2d 68, 71 (Minn. 1992). But due process requires that criminal defendants have the right to put before a jury evidence that might influence the determination of guilt. *Id.* "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963); *see also* Minn. R. Crim. P. 9.01, subd. 1(6) ("The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged."). More specifically, the

³ The district court noted that the state could have moved for reconsideration, but did not.

prosecuting attorney's obligations under this rule extend to material and information in the possession or control . . . of any others who have participated in the investigation or evaluation of the case and who either *regularly report* or with reference to the particular case *have reported* to the prosecuting attorney's office.

Minn. R. Crim. P. 9.01, subd. 1(8) (emphasis added).

Here, the first district court judge ordered discovery of the documents based on an alleged reporting relationship between the state and Alexandra House following the February 10, 2007 assault. The second district court judge, knowing that the discovery order was based on incorrect information regarding the involvement of Alexandra House, nevertheless relied on the discovery order, determined that the state had violated it, and dismissed the case.⁴ Under these facts, we conclude that the district court abused its discretion by dismissing this case based on the state's failure to comply with an order that resulted from false information.

Reversed.

⁴ We note that an alternative procedure for the district court would have been to require that the Alexandra House documents be subpoenaed and then conduct *in camera* review of them to determine if they were discoverable.