

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	
	)	
-vs-	)	
	)	
Arnold Nudah Rennie	)	Supreme Ct. No. 20200307
	)	
Defendant-Appellant	)	District Ct. No. 08-2019-CR-03578

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**BRIEF OF PLAINTIFF-APPELLEE**

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APPEAL FROM THE CRIMINAL JUDGMENT  
ENTERED NOVEMBER 13, 2020

Burleigh County District Court  
South Central Judicial District  
The Honorable Thomas J. Schneider, Presiding

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**STATEMENT OF THE ISSUES**

[¶1] Whether the district court erred in denying Defendant's motion to dismiss based on discovery violations.

## STATEMENT OF THE CASE

[¶2] On November 27, 2019, the defendant, Arnold Rennie (hereinafter “Rennie”), was charged with the offenses of Gross Sexual Imposition, a Class AA Felony, and two counts of Corruption of a Minor, a Class C Felony. (Appellant’s Appendix (“App.”) pp. 4, 9-10). He made his initial appearance on January 7, 2020. (App. p. 4).

[¶3] On February 11, 2020, Rennie’s attorney requested Discovery from the State. (App. p. 5). A preliminary hearing was held on February 24, 2020. (Id.) On April 1, 2020, the State filed its discovery response. (Id.)

[¶4] Rennie’s attorney sent a request for specific discovery by letter dated April 7, 2020. (App. pp. 17-18). On May 20, 2020, Rennie’s attorney filed a motion to dismiss, alleging discovery violations. (App. pp. 15-16). On May 29, 2020, the State sent additional discovery to Rennie’s attorney. (App. p. 5).

[¶5] The State filed its response to the motion to dismiss on June 8, 2020. (App. p. 6). On June 18, 2020, a hearing was held on the motion. (Id.). On June 23, 2020, the District Court issued its order denying the motion, stating there was no prejudice to Rennie. (App. pp. 19-23).

[¶6] A jury trial was held on July 21-22, 2020 and Rennie was convicted of Gross Sexual Imposition and one count of Corruption of a Minor. (App. pp. 6-7, 24-26). A sentencing hearing was held on November 6, 2020 and the judgment was filed on November 13, 2020. (App. pp. 7, 27-29). Rennie filed a timely Notice of Appeal on November 17, 2020. (App. p. 30).

## **STATEMENT OF THE FACTS**

[¶7] On June 18, 2020, a hearing was held on the Motion to Dismiss alleging discovery violations. (App. p. 6; Motion Hearing Transcript (“Tr.”)). At the hearing, Rennie’s attorney requested specific discovery that had previously been requested by letter dated April 7, 2020. (Tr. p. 4:8-18; App. p. 17).

[¶8] The State responded to each specific request indicating that the certain information requested had already been provided, other information requested did not exist, and the remaining information had either been recently received or requested and would be sent as soon as it was received. (Tr. pp. 9:18-13:8). The State even indicated in one instance that the records requested did not exist, but the State requested that a record be made so the information could be disclosed to the attorney. (Tr. p. 10:12-17).

[¶9] The State argued there was no bad faith, no intentional violation of discovery, and no withholding of evidence or discovery. (Tr. p. 13:9-12). The district court noted that there were still five weeks before trial and there was no showing of prejudice to Rennie. (Tr. p. 15:9-12). The district court set a deadline for discovery and stated the sanction for not providing discovery by the deadline would be exclusion of that evidence at trial. (Tr. p. 15:12-19).

## ARGUMENT

[¶10] Whether the district court erred in denying Defendant’s motion to dismiss based on discovery violations.

[¶11] Rule 16 of the North Dakota Rules of Criminal Procedure governs discovery in criminal cases. The rule also provides for remedies if a party is noncompliant with the rule:

(2) *Failure to comply.* If a party fails to comply with this rule or with an order issued under this rule, the Court may:

- (i) order that party to permit the Discovery or inspection: specify its time, place and manner; and prescribe other just terms and conditions;
- (ii) grant a continuance;
- (iii) prohibit that party from introducing the undisclosed evidence;
- (iv) relieve the requesting party from making a disclosure required by this rule; or
- (v) enter any other order that is just under the circumstances.

N.D.R.Crim.P. 16(d)(2).

[¶12] When a discovery violation is alleged, the district court has broad discretion in determining a remedy and this Court has stated it will not overturn that decision unless there is an abuse of discretion. City of Grand Forks v. Ramstad, 2003 ND 41, ¶ 17, 658 N.W.2d 731. “A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, or when its decision is not the product of a rational mental process leading to a reasoned determination.” State v. Austin, 2007 ND 30, ¶ 10, 727 N.W.2d 790. This Court has stated the district court “should impose the least severe sanction that will rectify the prejudice, if any, to the opposing party”. State v. Kolstad, 2020 ND 97, ¶ 27. 942 N.W.2d 865. This Court has also said that Rule 16 is

not a constitutional mandate and “[i]f a discovery violation is not of constitutional magnitude, it is reversible error only upon a showing that the defendant has been denied substantial rights.” Ramstad at ¶¶ 17, 25. This Court has stated the district “court’s decision on a discovery violation is reversible error only if the defendant was denied a substantial right.” State v. Blunt, 2011 ND 127, ¶ 11, 799 N.W.2d 363. There is no substantial right affected when the defendant is not significantly prejudiced. Ramstad at ¶ 25. If a defendant cannot show significant prejudice, then failure to impose any specific sanction is not an abuse of discretion. Id. at ¶ 26.

[¶13] In this case, the district court found that no prejudice had occurred as Rennie had enough time prior to trial to review any discovery that was provided by the district court’s deadline. (Tr. p. 15:9-12). The district court set a deadline for discovery, indicating that any discovery produced after June 26, 2020 at 5:00 PM would be inadmissible at trial. (Tr. pp. 15:15-19, 16:6-8; App. p. 23). The district court expressly found that “dismissal with prejudice would not be appropriate in this case”. (App. p. 22).

[¶14] The district court imposed an appropriate remedy. In State v. Kolstad, this Court found the district court erred when it dismissed the case without first considering whether any less severe sanction was appropriate. 2020 ND 97, ¶ 31, 942 N.W.2d 865. That is not to say that a dismissal is never warranted in a case where discovery violations exist. If there are intentional and deliberate discovery violations or a there exists significant prejudice to the defendant, dismissal may be warranted, depending on the facts and



circumstances of the case. However, in this case, there was no intentional or deliberate violations, nor was there significant prejudice to Rennie. The district court imposed a sanction that allowed Rennie to receive the discovery in advance of trial so he had an opportunity to review the discovery prior to the trial and crafted a remedy if the discovery was not provided as ordered.

[¶15] At trial, Rennie did not object to the introduction of any of the State's evidence as being offered in violation of the district court's order dated June 23, 2020. (See generally Trial Transcript). He did not renew his motion for dismissal or request any other sanction for violations of the district court's order. *Id.* He did not request a continuance of the trial or in any other way indicate that he did not have time to review the discovery provided pursuant to the district court's order. *Id.* Rennie has not shown that he was prejudiced by the alleged discovery violation or by the district court's order.

### **CONCLUSION**

[¶16] Based upon the foregoing, the State respectfully requests that the jury verdict be affirmed.

Dated this 18<sup>th</sup> day of March, 2021.

*/s/ Julie Lawyer*  
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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	<b>CERTIFICATE OF</b>
	)	<b>COMPLIANCE</b>
-vs-	)	
	)	
Arnold Nudah Rennie,	)	Supreme Ct. No. 20200307
	)	
Defendant-Appellant	)	District Ct. No. 08-2019-CR-03578

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**CERTIFICATE OF COMPLIANCE**

[¶1] I hereby certify that this documents complies with the page limitations allowed by N.D.R.App.P. 32(8). The brief of Plaintiff-Appellee contains 9 pages.

Dated this 18<sup>th</sup> day of March, 2021.

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota,	)	
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Plaintiff-Appellee,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
-vs-	)	
	)	
Arnold Nudah Rennie,	)	Supreme Ct. No. 20200307
	)	
Defendant-Appellant	)	District Ct. No. 08-2019-CR-03578

[¶1] I hereby certify that on March 18, 2021, the following documents:

**Brief of Plaintiff-Appellee; and  
Certificate of Compliance**

were filed electronically with the Court through the North Dakota E-Filing Portal and service will be made via electronic service through the portal to the following:

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the above being the last known address of the addressee.

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