
State of North Dakota,)	
Plaintiff,)	
vs)	ORDER DENYING MOTION TO
)	COMPEL
Ian Zachary Laboyd,)	
Defendant,)	Case No. 53-2019-CR-01920

[¶1] The Defendant filed a motion to compel a discovery deposition, Dckt. 144. The Plaintiff resisted the motion, Dckt. 195. A hearing was held on March 09, 2020. The Plaintiff was represented by Attorneys Dillon and Rice who appeared by phone. The Defendant appeared via IVN. He was represented by Attorneys Chapman and Curran, who were present in the courtroom.

BACKGROUND

[¶2] The Defendant was charged with five (5) criminal offenses in the Information: murder, attempted murder, possession of stolen property, criminal attempt-delivery of a controlled substance, and tampering with physical evidence. Parker Haider (Haider) is the victim of the attempted murder charge. Haider is the subject of the defense’s motion to compel a deposition. Matthew York (York) was the victim of the murder charge. It appears that when the event occurred, Haider and York were in the alleyway with the Defendant. Haider is the only individual, other than the Defendant, who can testify as to what happened in the alleyway. Haider asserted his right under Marsy’s Law in declining to be deposed as a victim. This forced the Defendant to file his motion to compel.

DISCUSSION & ANALYSIS

Marsy’s Law

[¶3] Marsy’s Law is a constitutional amendment that was directly passed by the voters during the November General Election in 2016. Marsy’s Law constitutionalized victim’s rights in the North Dakota Constitution (Art. I, Sec. 25), which, up to that point, had been statutory. Marsy’s Law gives victims a constitutional right to privacy, which includes the right to refuse a deposition by the Defendant’s attorney. It should be noted that Marsy’s Law states: “Nothing in this section shall abrogate a defendant's sixth amendment rights under the Constitution of

the United States nor diminish the state's disclosure obligations to a defendant.” N.D. Const. Art. I, § 25(1)(f).

[¶4] Marsy’s Law, like many other constitutional amendments in the history of the State of North Dakota, was placed in the constitution through the initiative process by the people of North Dakota through an election. State v. Kostelecky, 2018 ND 12, ¶7, 906 N.W.2d 77; State v. Swanson, 407 N.W.2d 204 (ND 1987); State ex rel. Spaeth v. Olson ex rel. Sinner, 359 N.W.2d 876 (ND 1985). None of those cases, including Kostelecky which interpreted Marsy’s Law, questioned the process of how the constitution was amended. “When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning.” State v. Blue, 2018 ND 171, ¶ 22, 915 N.W.2d 122.

There is No General Constitutional Right to Discovery

[¶5] The United States Supreme Court has held, “There is no general constitutional right to discovery in a criminal case, and Brady did not create one; as the Court wrote recently, “the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded. . . .” Weatherford v. Bursey, 429 U.S. 545, 559 (1977) quoting Wardius v. Oregon, 412 U.S. 470, 474, 93 S.Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

[¶6] In reviewing North Dakota state court decisions, it does not appear that North Dakota has adopted a general constitutional right to discovery in a criminal case, which includes discovery depositions. Criminal rules governing discovery are not constitutional mandates and are designed to further the interests of justice and fairness. State v. Owens, 2015 ND 68, ¶12, 860 N.W.2d 817. Although there may be instances in which discovery violations may violate a defendant’s constitutional right to due process and a fair trial (see State v. Steffes, 500 N.W.2d 608, 612 (ND 1993)), a defendant does not have a constitutional right to conduct a discovery deposition.

The Confrontation Clause is a Trial Right

[¶7] The Confrontation Clause of the U.S. Const. amend. VI, states, “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against

him....” “The Confrontation Clause provides two protections to criminal defendants: the right to physically face someone who testifies against them, and the right to cross examine... [w]here testimonial evidence is at issue, ..., the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.” State v. Woinarowicz, 2006 ND 179, ¶ 8, 720 N.W.2d 635 quoting Pennsylvania v. Ritchie, 480 U.S. 39, 51, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) and Crawford v. Washington, 541 U.S. at 68, 124 S.Ct. 1354.

[¶8] Courts have consistently held the Confrontation Clause is a trial right, not a pre-trial discovery right. See Woinarowicz, at ¶¶8-9, and Milstead v. Johnson, 2016 S.D. 56, ¶12, 883 N.W.2d 725.

[¶9] In this case, the Defendant is arguing that the Confrontation Clause demands that the victim is required, under subpoena, to be subject to a deposition. This Court is unaware of any ruling from North Dakota, or other jurisdiction, which holds the Confrontation Clause grants a defendant the right to conduct a discovery deposition. The Confrontation Clause requires that Haider, if called as a witness, be present and subject to cross examination. There is nothing in the record to indicate that Haider is unavailable to testify at trial. As a deposition is not a trial, the Confrontation Clause is inapplicable and does not overcome the constitutional mandate of Marsy’s Law.

Due Process

[¶10] The Defendant also argues that preventing the taking of the victim’s deposition would violate the due process rights of a fair trial that the Defendant is guaranteed. The U.S. Supreme Court found that the Due Process Clause of the 14th Amendment guarantees a meaningful opportunity to present a complete defense. Crane v. Kentucky, 476 U.S. 683 at 690 (1986).

[¶11] North Dakota has not addressed whether the refusal of a victim to give a discovery deposition would violate a defendant’s due process rights. North Dakota has addressed due process in the light of prosecutor misconduct, and in those cases, the bar for showing a due process violation is high. See State v. Kalmio, 2014 ND 101, ¶45, 846 N.W.2d 752; City of Bismarck v. Sokalski, 2016 ND 94, ¶10, 879 N.W.2d 88; Steffes at 612. The core of the Due Process Clause argument is that a lack of deposition would so limit the defense’s ability to provide a meaningful defense that said lack of deposition would rise to the level of a

constitutional violation.

[¶12] The Defendant, in his brief, states that he has only received one interview and no cell phone download from Haider. However, the defense brief lays out numerous facts that have already been elicited from other defense depositions and law enforcement investigation. These facts include statements and actions of Haider. Much of the information that would be gathered from Haider in a discovery deposition, including cell phone data, can be obtained through use of motions to compel the underlying information, as opposed to a deposition of Haider.

[¶13] If the Court followed the Defendant's line of argument it would be reasonable to conclude that due process requires that a discovery deposition be done in all cases that involve a victim. That is simply not the case.

[¶14] This Court is unconvinced that the victim's refusal to do a discovery deposition violates the Defendant's due process rights, as the Defendant has other avenues available to receive much of the same evidence that would be gathered from the discovery deposition. Haider has already provided statements to law enforcement about the incident, and the Defendant will be able to cross examine Haider at trial.

Having a Discovery Deposition on Four Counts is Unworkable

[¶15] Finally, the Defendant argues that Haider is only a victim in one (1) count of the five (5) count Information. The Defendant argues since Haider is not a victim of all five (5) counts he has no right to refuse a deposition regarding the other four (4) offenses.

[¶16] This is an unworkable proposition. All five (5) counts are intertwined factually and charged in a single Information. Facts and questions regarding one count could implicate Haider's constitutional right not to be deposed on the attempted murder count.

[¶17] Given the interconnectedness of the counts, the Court does not believe it is possible to bifurcate the deposition so that the deposition only dealt with counts in which Haider was not a victim and still adequately protect Haider's victim rights under the North Dakota Constitution.

CONCLUSION

[¶18] Haider has properly invoked his constitutional rights under Art. I, Sec. 25 of the North Dakota Constitution (Marsy's Law). Under Marsy's Law, the right to decline a deposition will

not abrogate the Defendant's Sixth Amendment rights. The Defendant has argued that various constitutional rights held by the Defendant invalidate Marsy's Law. The Defendant also argues that Marsy's Law abrogates the Sixth Amendment rights that the Defendant currently possesses. None of the Defendant's arguments led to a conclusion that Marsy's Law, a properly enacted constitutional amendment, is invalid. The Defendant's arguments have also not convinced this Court that the victim's rights asserted are abrogating the Defendant's Sixth Amendment rights.

ORDER

[¶19] The Defendant's motion to compel, Dekt. 144, is DENIED.

Dated April 1, 2020.

BY THE COURT:



Benjamin J. Johnson
District Judge