

SUPREME COURT OF NORTH DAKOTA

State v. Thorson

660 N.W.2d 581 (N.D. 2003) · No. No. 20020212 · Decided May 6, 2003

SUMMARY

The Supreme Court of North Dakota affirmed David L. Thorson's convictions for two counts of gross sexual imposition. The court held that the State's failure to disclose a form 960 suspected-child-abuse report did not constitute reversible obvious error or a Brady violation because Thorson failed to show prejudice, and he could have obtained the report with reasonable diligence.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. Vande Walle, Chief Justice; William A. Neumann, Justice; Mary Muehlen Maring, Justice; Carol Ronning Kapsner, Justice
JURISDICTION	North Dakota
DECIDED	May 6, 2003
DOCKET	No. 20020212
DISPOSITION	affirmed
PROCEDURAL POSTURE	Thorson appealed his judgment of conviction on two class B felony counts of gross sexual imposition, asserting that the State violated criminal discovery obligations and Brady v. Maryland by failing to disclose a form 960 report of suspected child abuse.
STANDARD OF REVIEW	Unpreserved issues were reviewed under the obvious-error standard. Decisions concerning sanctions for discovery violations are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of North Dakota; precedential.
PARTIES	David L. Thorson v. State of North Dakota

TOPICS

- discovery criminal
- criminal procedure
- due process
- appellate procedure
- preservation of error

PRACTICE AREAS

criminal law

criminal procedure

appellate law

constitutional law

evidence and discovery

QUESTIONS PRESENTED

1. Whether the State violated N.D.R.Crim.P. 16 by failing to provide Thorson with a copy of the form 960 report.
2. Whether the State violated Brady v. Maryland and due process by suppressing the form 960 report.
3. Whether the nondisclosure constituted reversible obvious error warranting reversal of the convictions and a new trial.

HOLDINGS

1. Assuming the form 960 report was discoverable under N.D.R.Crim.P. 16, Thorson was not entitled to relief because he failed to show that nondisclosure prejudiced his defense.
2. Thorson failed to establish a Brady violation because he did not show that disclosure of the report would probably have changed the outcome and did not act with reasonable diligence to obtain the report.
3. The State's failure to provide the form 960 report did not constitute reversible obvious error, and Thorson was not entitled to reversal or a new trial.

KEY QUOTATIONS

"Having reviewed the record for obvious error, we conclude Thorson has failed to meet his burden of establishing there was plain error that affected his substantial rights, causing him to suffer serious injustice."
(660 N.W.2d at 585)

FACTUAL BACKGROUND

Thorson was convicted of two counts of gross sexual imposition arising from separate incidents in which he touched the vagina of his girlfriend's nine-year-old daughter. The investigating officer's investigation began after an August 28, 2001, form 960 report of suspected child abuse was filed with the Department of Human Services. Although the police report disclosed to Thorson referred to the form 960 report, the State did not provide Thorson a copy of it. The defense argued that the delayed reporting supported a theory that the accusation was fabricated by the victim's mother after her relationship with Thorson ended.

PROCEDURAL HISTORY

Thorson was charged with and convicted by a jury of two counts of gross sexual imposition. During trial, the investigating officer testified about a form 960 report that had not been disclosed to the defense and was not admitted into evidence. Thorson had not raised the discovery issue in the district court, so the Supreme Court reviewed it for obvious error and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Bingaman, 2002 ND 202, ¶ 9, 655 N.W.2d 51
- State v. Yineman, 2002 ND 145, ¶ 22, 651 N.W.2d 648
- State v. Weisz, 2002 ND 207, ¶ 6, 654 N.W.2d 416
- State v. Ensminger, 542 N.W.2d 722, 723 (N.D. 1996)
- City of Grand Forks v. Ramstad, 2003 ND 41, ¶ 25, 658 N.W.2d 731
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- State v. Goulet, 1999 ND 80, ¶ 15, 593 N.W.2d 345
- State v. Sievers, 543 N.W.2d 491, 495-96 (N.D. 1996)