

Filed in District Court
State of Minnesota

MAR 31 2022

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Stephen Carl Allwine,
Petitioner,

Case No: 82-CR-17-242

v.

MOTION TO
COMPEL
DISCOVERY

STATE OF MINNESOTA,
Respondent.

TO: Washington County District Court, 14949 N. 62nd St., P.O. Box 3802,
Stillwater, MN., 55082

Mr. Nicholas Hydukovich, Washington County Attorney, 15015 62nd St. N.,
Stillwater, MN., 55082

Petitioner is in receipt of a letter written by Mr. Nicholas Hydukovich (Assistant Washington County Attorney) to the Honorable Douglas B. Meslow (Judge of District Court), dated March 21, 2022. In this letter Mr. Hydukovich states that "the State does not intend to comply with Petitioner's request for discovery." They suggest that Petitioner must obtain the discovery from previous attorneys (Mr. DeVore or Ms. Groshek).

Prior to requesting discovery from the State, Petitioner did attempt to contact Mr. DeVore and received no answer. He also contacted Ms. Groshek multiple times, and had his Power of Attorney contact Ms. Groshek to request required discovery. She did send some discovery, but not all items requested. Petitioner recognizes that there is voluminous discovery, and that it does take time to provide requested discovery. That is why the Petitioner did not request all the discovery, but rather analyzed what discovery he had, what discovery was needed for his Memorandum of Law, and compared that to the list of discovery items that the State provided in response to their original discovery response (almost 50 pages and 400 items). Petitioner then requested

only the specific items that were needed to properly prepare the Memorandum of Law. Additionally, Petitioner included items in the Discovery Request that the State has not included in their previous discovery results and have previously withheld, in violation of Brady v. Maryland, 373 U.S. 83 (1963).

A prosecutor is to be "a minister of justice whose obligation it is to guard the rights of the accused" (State v. Mayhorn, 720 N.W.2d 776, 790) and their duty is to seek justice. (Berger v. U.S., 295 U.S. 78 (1935)) Therefore, it is not proper for the State to misquote law in order to try to withhold discovery. In the State's letter, Mr. Hydukovich claims that State v. Allwine, 963 N.W.2d 178, 189 (Minn. 2001) somehow removes their duty to disclose discovery "upon request". The argument in Allwine had nothing to do with discovery requests. The argument to the Minnesota Supreme Court was whether the State had an "ongoing duty" to proactively inform the Defendant of potentially exonerating information (Brady evidence) post-conviction. The MN Supreme Court ruled on Minn. R. Crim. P. 9.03, subd. 2(c), and stated that the prosecutor's continuing duty to disclose exculpatory evidence was "before and during trial." Since the trial was over, the Court ruled that the proactive obligation no longer applied. (DA's Office v. Osborne, 557 U.S. 52, 68 - Brady obligation exists before and during trial) However, that is significantly different than Minn. R. Crim. P. 9.01 which is the delivery of discovery "upon defense request".


The U.S. Supreme Court acknowledges in Osborne, that even in postconviction proceedings the Petitioner has a "liberty interest" because the Petitioner has the possibility to vacate the conviction based on the State postconviction procedures. In Osborne they held that the State could not "transgress any recognized principle of fairness" or "offend some principle of justice so rooted in the traditions and conscience of our people as to be ranked

fundamental." (Id at 69) It is clear that if the State did not provide some method for obtaining discovery in postconviction, that the State would violate these fundamental principles.

Since the State is choosing not to uphold their duty, Petitioner is requesting that the Court order the State to provide the discovery requested in the Petitioner's previous Discovery Request.

Respectfully Submitted,

Dated this 27th day of March, 2022



Stephen Allwine (in pro se)

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MINNESOTA
JUDICIAL
BRANCH