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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0437, A12-0438**

State of Minnesota,  
Plaintiff,

vs.

Jordan Anthony Achin,  
Defendant (A12-437),

Daniel Richard Kemp,  
Defendant (A12-438).

**Filed October 9, 2012  
Certified question answered in the negative  
Worke, Judge**

St. Louis County District Court  
File No. 69DU-CR-11-4235

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and

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Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Stauber, Judge.

## **UNPUBLISHED OPINION**

**WORKE**, Judge

In these consolidated appeals, the district court certified the following question: “Does Minn. Stat. § 629.75 [the domestic-abuse-no-contact-order (DANCO) statute] violate a defendant’s constitutional right to procedural due process?” We answer the certified question in the negative.

### **FACTS**

Defendant Daniel Richard Kemp was arraigned on charges of interfering with an emergency call and domestic assault. Defendant Jordan Anthony Achin was arrested for assaulting his girlfriend and a judicial determination that probable cause existed to detain him for fifth-degree domestic assault was issued. The district court issued a DANCO in each matter. Defendants challenged the constitutionality of the DANCO statute. The district court concluded that the DANCO statute violated the defendants’ right to procedural due process and certified the following question to this court: “Does Minn. Stat. § 629.75 [(2010)] violate a defendant’s constitutional right to procedural due process?”

## DECISION

The constitutionality of a statute presents a question of law, which this court reviews de novo. *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006). In doing so, we presume that Minnesota statutes are constitutional and will strike down a statute as unconstitutional only if absolutely necessary. *Id.* To prevail, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision. *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979).

Defendants argue that Minn. Stat. § 629.75 is unconstitutionally vague because it provides no guidance to the district court regarding its imposition, which leads to arbitrary application and enforcement. “Vague penal statutes are prohibited as a violation of due process.” *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). This court recently addressed this argument in *State v. Ness*, 819 N.W.2d 219, 228 (Minn. App. 2012). There, we concluded that application of the statute is not unconstitutionally vague because a district court’s discretion in issuing a DANCO is preceded by a criminal proceeding filed regarding an enumerated offense (domestic abuse, harassment or stalking of a family or household member, violation of an order for protection, or violation of a prior DANCO) before a court can issue a DANCO. *Ness*, 819 N.W.2d at 229. Additionally, the enumerated offense must have been committed against a “family or household member”—a term that is defined under Minn. Stat. § 518B.01, subd. 2(b) (2010). *Id.*

This court further determined that in deciding whether to issue a pretrial DANCO, a district court may find guidance in the factors a court considers in setting conditional-release terms found under Minn. R. Crim. P. 6.02, subd. 2. *Id.* Such factors include: facts surrounding the arrest, the weight of evidence against the defendant, the defendant's criminal record, the seriousness of the offense, the threat posed by the defendant having contact with the alleged victim, and the preference of the alleged victim. *Id.* at 229-30; *see also* Minn. R. Crim. P. 6.02, subd. 2. And we noted that district courts currently apply these factors in deciding whether to issue a pretrial DANCO. *Ness*, 819 N.W.2d at 230 n.4. Finally, this court stated that because there is a criminal-domestic-abuse charge, a probable-cause determination has already been made, which the defendant is able to challenge at an initial appearance. *Id.* at 230. For these reasons, this court determined that the DANCO statute is not unconstitutionally vague.

Defendants argue that the DANCO statute is unconstitutional because it violates a defendant's due-process rights. This court held in *Ness* that "because Minn. Stat. § 629.75 provides a defendant with adequate notice and a meaningful opportunity to be heard and is not unconstitutionally vague . . . the statute does not violate the due-process clauses of the United States [and] Minnesota [] Constitutions." *Id.* at 221. We follow this court's precedent and conclude that the DANCO statute is not unconstitutionally vague and does not violate a defendant's due-process rights.

Defendants also argue that the DANCO statute is unconstitutional because it violates the separation-of-powers doctrine. Analysis of this question is outside the scope of the certified question. This court may not address questions that are outside the scope

of a question certified by the district court. *State v. Lilleskov*, 658 N.W.2d 904, 907 (Minn. App. 2003) (declining to address constitutional issues related to interpretation of amendment to sex-offender-registration statute when question certified by district court included only whether amendment to statute could be applied retroactively); *State v. Saunders*, 542 N.W.2d 67, 70 (Minn. App. 1996) (declining to address additional constitutional issues raised by appellant when certified question by the district court included only a void-for-vagueness issue). Here, the question certified by the district court asked only whether the DANCO statute violated the defendants’ “constitutional right to procedural due process.” Thus, the separation-of-powers issue is outside the scope of the certified question, and we decline to address it in this appeal.

The DANCO statute is not unconstitutionally vague, and it does not violate a defendant’s right to due process. Therefore, we answer the certified question in the negative.

**Certified question answered in the negative.**