

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
STATE OF SOUTH CAROLINA)
vs.)
BRYAN REARICK,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2010-GS-07-1469

RECEIVED

AUG 06 2014

Order Denying Defendant's Motion to Bar
Prosecution

SC Court of Appeals

NOW COMES BEFORE THE COURT Defendant's Motion to Bar Prosecution, heard April 8, 2014. Present on behalf of Defendant Bryan Rearick was Lauren Carroway, Esq., of the Beaufort County Public Defender's Office. Present on behalf of the State was Assistant Solicitor Lynorr Musser. The instant motion arises out of a bench trial which began Thursday, January 30, 2014, was continued to February 4, 2014, and ended in a mistrial.

BACKGROUND

The incident leading to the prosecution at issue occurred on May 30, 2010, at which time it is alleged that the Defendant left a drinking establishment on Hilton Head Island and was driving West on Route 278 when he entered the wrong lane of travel while making a left-hand turn, struck another vehicle and caused a head-on collision. The victim died as a result of the injuries sustained. The Defendant was indicted for Driving Under the Influence, Death Results pursuant to S.C. Code Ann. § 56-05-2945(A)(2) on July 22, 2010.

Upon the agreement of counsel and waiver by the Defendant, the case was called for a bench trial before me on January 30, 2014. Testimony and oral argument commenced related to several pre-trial motions as well as the trial. After testimony from the State's MAIT expert, Ben Ashe, Ms. Carroway advised the Court that Mr. Ashe had referred to a page in his report that she did not receive in her discovery.

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The State's trial attorney, Assistant Solicitor Adam Russo, advised the Court that former Deputy Solicitor Angela McCall-Tanner had turned over discovery to Ms. Carroway and had documented the file by way of copies of correspondence to Ms. Carroway. The file contained four (4) letters to Ms. Carroway dated July 6, 2010, August 31, 2010, November 1, 2010, and November 15, 2010. The letter dated November 1, 2010, specifically indicates that a CD containing the complete MAIT file was being provided to Ms. Carroway.

Additionally, the State called lead investigator Trooper Summers to testify regarding the Defendant's Pre-Trial Motion to Dismiss for Failure to Comply with § 56-5-2953 and § 56-5-2950 as well as its case-in-chief. Trooper Summers' testimony raised additional questions regarding whether all discoverable information had been made available to Ms. Carroway. Specifically, Trooper Summers' testimony included the names of Beaufort County Sheriff Deputies that were present at the time he arrived at the accident scene as well as the potential existence of video taken from his patrol vehicle. The fact that Trooper Summers had previously prepared an Affidavit with respect to the lack of video confounded the issue of whether video presently exists or existed in the past but was not preserved.

As this potential problem with discovery arose, the Court recessed and scheduled the trial to resume the following Tuesday, directing Assistant Solicitor Russo to either locate the outstanding evidence or obtain affidavits from the South Carolina Highway Patrol and Beaufort County Sheriff's Office stating that said evidence does not exist and scheduled a meeting with them on Monday, February 3, to confirm that this discrepancy in discovery had been resolved in the manner prescribed.

At that meeting, Mr. Russo provided affidavits stating that video in this case did not exist; however, he had received a CAD report and one page Incident Report from the Beaufort

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County Sheriff's Office which indicated that several additional previously unidentified Sheriff Deputies were present at the accident site.

At the time the trial was scheduled to resume, the undersigned declared a mistrial, making a finding that although there had been some documents that were not turned over to defense counsel, there was no prosecutorial misconduct. Five separate Assistant Solicitors had dealt with the file in the three and a half years from in the case's inception. In support of its ruling, the Court outlined the options currently before it: (1) continuing the trial to give defense counsel additional time to prepare in light of the recently obtained information, (2) dismissing the case or (3) declaring a mistrial. A mistrial was declared over the Defendant's objection for reasons discussed herein.

LEGAL STANDARD

In a bench trial, jeopardy attaches when the court begins to hear evidence. *Serfass v. U.S.*, 420 U.S. 377, 388 (1975). The principles of double jeopardy bar a subsequent prosecution following an improvidently granted mistrial. *State v. Rowlands*, 343 S.C. 454, 458, 539 S.E.2d 717, 718 (Ct. App. 2000).

A mistrial is not improvidently granted so long as the declaration of a mistrial is "dictated by manifest necessity of the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." *State v. Baum*, 355 S.C. 209, 214, 584 S.E.2d 419, 422 (Ct. App. 2003) (quoting *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). "Manifest necessity is not a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Id.* The word 'necessity' is not to be interpreted literally, and "there need only be a 'high degree' of necessity in order to conclude that a mistrial



is appropriate under the circumstances." *Id.* (quoting *Arizona v. Washington*, 434 U.S. 497, 505-06 (1978)).

"The 'manifest necessity' rule is easy to state but sometimes difficult to apply. In borderline cases, it is the inclination of appellate courts to sustain the judge in the exercise of his discretion." *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 473 (1983). "The power of the court to declare a mistrial ought to be used with the greatest of caution and for plain and obvious causes stated into the record by the judge." *Id.* at 33, 301 S.E.2d at 472. Further, "'manifest necessity stands as a command to trial judges not to foreclose the defendant's option until a scrupulous exercise of judicial discretion leads to the conclusion that the ends of public justice would not be served by a continuation of the proceedings.'" *State v. Kirby*, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) (quoting *U.S. v. Jorn*, 400 U.S. 470, 485 (1971)).

DISCUSSION

The declaration of a mistrial was warranted and supported by the facts contained in the record. Discovery issues became clear throughout the proceedings and continued on the day that the bench trial was set to resume. Five different Assistant Solicitors had handled the file over a three and a half year period between indictment and trial. Each available outcome was considered in the light most favorable to the Defendant to determine what, if any, prejudice the Defendant might suffer under each scenario.

A continuance was not appropriate because the trial had already commenced, defense counsel had not been given sufficient time to review the new information on her own or with an expert, the opportunity for the defense to cross-examine witnesses had been lost, and the defense did not have time to locate the additional Sheriff's deputies. Additionally and of added import,



the Defendant's election to waive his right to a jury trial may have been different had he known about the evidence that was not previously produced.

Dismissing the case as requested by the Defendant is not in the public interest given the nature of the charge. The public interest in a felony driving under the influence case where the victim has died as a direct result of injuries sustained in the collision is great, and the Defendant is entitled to a just result and an opportunity to fully prepare a defense to the case against him. Dismissal of the charge was also not appropriate due to the evidence presented by the State at the time the mistrial was declared.

After full consideration of the options available to the Court, I do find in the exercise of judicial discretion that there does exist a high degree of necessity to declare a mistrial in the instant circumstance. Late-appearing discovery prejudices the Defendant's ability to adequately prepare for the trial that was already underway. Further, the nature of that discovery may lead to the Defendant's altering his decision to agree to a bench trial.

CONCLUSION

Given the foregoing reasons, it is hereby ORDERED, ADJUDGED, AND DECREED THAT the Defendant's Motion to Bar Prosecution is DENIED because of the granting of a mistrial out of manifest necessity. As such, double jeopardy has not attached and the State is not barred from prosecution.

AND IT IS SO ORDERED.



Carmen Mullen
Fourteenth Judicial Circuit

June 24, 2014
Beaufort, South Carolina

