

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

City of Columbia,)
)
Respondent,)
)
v.)
)
Shasha Rawlinson,)
)
Appellant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
DOCKET NO. : 2017-CP-40-01699

ORDER RECEIVED
JUL 11 2018
SC Court of Appeals

THIS MATTER came before me on April 13, 2018 on a municipal court appeal. The Appellant is represented in this matter by Jerry Leo Finney, Esquire of The Finney Law Firm. The Respondent is represented by Attorney Jessica Magnum of the City of Columbia Attorney's Office.

FACTUAL BACKGROUND

The Appellant was charged with shoplifting and providing false information to police. She requested a jury trial for these charges. Appellant properly requested discovery from the government in accordance with Rule 5 and Brady. However, Appellant was not provided any discovery of any kind. Nevertheless, on or about March 16, 2017, this jury trial was held before the City of Columbia Municipal Court Judge Susan Porter. After the jury was sworn, counsel for the Appellant made a verbal motion to dismiss the case based on the government's failure to comply with the constitutional mandates for discovery, including those set forth in Rule 5 and Brady. In addition to a motion to dismiss, counsel made a motion to suppress any and all evidence sought to be produced that was withheld by the government and not produced in discovery. Further, counsel made a motion for continuance so that he could review any discovery and prepare a defense in this case.

Despite the government's acknowledgment that it had not complied with discovery in this matter. The trial court denied all of the aforementioned motions. At trial, the presented to the Court several evidentiary items, such as videos, witness testimony, etc., which had not been timely produced in discovery, yet were all admitted at trial over Appellant's objections. The Appellant was convicted and sentenced to thirty (30) days of jail. This appeal followed. Consequent to the filing of this appeal, the transcript of the record of the trial was lost or destroyed and is not available to the Court.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Hewins, 409 S.C. 93, 102, 760 S.E.2d 814, 819 (2014) (citing State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)).

The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Hewins, 409 S.C. 93, 102, 760 S.E.2d 814, 819 (2014) (citing State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

An abuse of discretion occurs when the decision of the trial court is based upon an error of law or upon factual findings that are without evidentiary support. *Id.*

LAW/ANALYSIS

There is no genuine dispute that discovery in this case was not provided to the Appellant in accordance with established law, precedent, and constitutional mandate prior to the established trial date for this case. As such, the consideration in this case revolves around the trial court's handling of this discovery issue. Appellant asserts the trial court erred in failing to dismiss this case, that the trial court erred in failing to suppress any and all evidence that had not been timely

produced in discovery, and, failed in refusing to grant a continuance in this matter. The Respondent consents to a remand of this case based on the lack of an underlying transcript.

In Gibson v. State, the South Carolina Supreme Court acknowledged that

Brady is based on a sense of fairness, and a belief that society gains when a defendant is accorded a fair trial. The focus is not on the misconduct of the Prosecutor, but on the fairness of the procedure.” New York v. Jackson, 154 Misc.2d 718, 593 N.Y.S.2d 410, 417 (Sup.Ct.1992). As the Supreme Court explained in Brady, “[t]he principle ... is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. **Society wins not only when the guilty are convicted but when criminal trials are fair[.]**” Brady, 373 U.S. at 87, 83 S.Ct. at 1197, 10 L.Ed.2d at 218.

334 S.C. 515, 528, 514 S.E.2d 320, 326–27 (1999) (emphasis added). The treatment of the Appellant in this case was not fair. As such, I find that the trial court abused its discretion in not dismissing this action. In Graham v. Babb, Op No 2010-UP-298 (Ct. App. 2010), the South Carolina Court of Appeals affirmed dismissal on the basis of a discovery violation. The Court cited Rule 37 (b)(2)(C), SCRCP, noting “when a party fails to comply with a discovery order, the trial court has the discretion to impose any sanction it deems just, including dismissal of an action.” In State v. Hewins, 409 S.C. 93, 103, 760 S.E. 2d 814, 819 (2014), the Supreme Court of the State of South Carolina noted that an abuse of discretion occurs when the decision of the trial court is based upon an error of law, or upon factual findings that were without evidentiary support. I find and conclude that the trial judge committed an error and abused its discretion. I find and conclude that this case should be dismissed with prejudice.

CONCLUSION

Therefore, it is hereby ordered, decreed, and adjudged that, this case be dismissed with prejudice. Further ordered that the Appellant’s conviction and thirty (30) day sentence imposed in this matter is hereby vacated.

IT IS SO ORDERED.

The Honorable L. Casey Manning
Presiding Judge,

Columbia, South Carolina
June _____, 2018



Richland Common Pleas

Case Caption: City Of Columbia VS Shasha Rawlinson
Case Number: 2017CP4001699
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061