

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
STATE OF SOUTH CAROLINA,)
)
Appellant,)
)
v.)
)
LOUIE WEATHERS,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

C/A No. 2020-CP-18-00905

Ticket Nos.: 20192401233408-10
Charges: DUAC 1st, Open Container,
and Seatbelt Violation

RECEIVED

Nov 13 2020

ORDER

SC Court of Appeals

STATEMENT OF THE CASE

This matter came before the Court on July 20, 2020 as a criminal appeal filed by the State of South Carolina (“Appellant”) related to an order issued by the Dorchester County Magistrate denying Appellant’s motion for reconsideration. The Magistrate granted an earlier motion in favor of Louie Weathers (“Respondent”) based upon a violation of Rule 5 of the South Carolina Rules of Criminal Procedure (“SCRCrimP”). Specifically, the Magistrate found Appellant failed to provide discovery to Respondent in a timely manner, pursuant to Rule 5(a)(3), SCRCrimP. Due to extraordinary circumstances relating to the COVID-19 pandemic, the hearing was conducted via Webex. Both parties were represented by counsel.

Prior to the hearing, the Court reviewed the Magistrate’s Return of Appeal and accompanying records; briefs submitted by Appellant and Respondent; and the transcripts of hearings conducted on January 29, 2020, and June 3, 2020. The transcripts were provided as exhibits to Respondent’s brief. Having thoroughly considered these matters and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

On November 20, 2019, Lance Corporal K.C. Davis of the South Carolina Highway Patrol ("SCHP") arrested Respondent and charged him with Driving with an Unlawful Alcohol Concentration, .10 but less than .16, 1st Offense; Open Container; and a Seatbelt Violation. On December 9, 2019, counsel for Respondent mailed a discovery request to L/Cpl. Davis' Post headquarters in Walterboro, South Carolina. The case was scheduled for an initial appearance bench trial on December 18, 2019, nine days after the discovery request was mailed on behalf of Respondent. At the time of the December hearing, L/Cpl. Davis had not yet received the discovery request. Rather than proceed with the bench trial, the parties mutually agreed to continue the matter for the officer's next hearing date of January 29, 2020. Counsel for Respondent emailed a copy of the discovery request to L/Cpl. Davis on December 18, 2019, after the hearing.

The parties reconvened on January 29, 2020, at which time Respondent was still awaiting a response to his discovery request. Appellant concedes it was in violation of the 30-day time limit set forth in SCRCrimP Rule 5(a)(3), but L/Cpl. Davis had submitted a discovery response in December after the hearing and was unaware Respondent had not received discovery prior to the January 29, 2020 hearing. During this time, Appellant was in the process of changing its procedure for accommodating defense discovery requests. Since the SCHP Post patrolling Dorchester County is based outside of the county, troopers had been leaving discovery response packets at the magistrate courts in Dorchester so defendants would not have to travel to Walterboro to pick up discovery. Based on concerns by the courts, and to accommodate defendants, the Post was working with the First Circuit Solicitor's Office to coordinate dissemination of discovery responses to defendants directly. This transition was ongoing at the time of the Respondent's hearings and this particular request had unintentionally slipped through the cracks. The Trooper provided the

discovery response at the January 29, 2020, hearing upon learning of the lapse. Respondent brought a previously prepared motion to dismiss before the Magistrate, though neither the lack of a discovery response after the 30-day window nor the intent to make the motion to dismiss was communicated to Appellant in advance of the January 29, 2020 hearing.

The Magistrate heard arguments on the motion to dismiss at the January 29, 2020 hearing and ordered dismissal of the case based on a violation of SCRCRimP Rule 5. Appellant filed a motion for reconsideration, which was heard and denied on June 3, 2020. Appellant then filed this timely appeal. The Appellant argued the Magistrate Court abused its discretion in granting dismissal of the case, since the delay was unintentional, there was no evidence the delay had prejudiced the Respondent's right to a fair trial, and the Magistrate could have imposed less severe sanctions to remedy any prejudice if it did exist. The Respondent countered that the record demonstrated the Respondent's right to a fair trial had been prejudiced by the delay, the subsequent provision of discovery could not cure the delay, and that dismissal granted by the Magistrate was appropriate under the circumstances and did not constitute an abuse of discretion.

STANDARD OF REVIEW

In criminal appeals from magistrate court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception. S.C.Code Ann. § 18-3-70; State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001), cert. denied (March 22, 2002). In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial judge abused his discretion. Id. An abuse of discretion occurs when

the court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct.App.2002).

CONCLUSIONS OF LAW

In determining a suitable and effective sanction for a discovery violation, the Court must weigh: (1) the reasons for the government's delay and whether it acted intentionally or in bad faith; (2) the degree of prejudice, if any, suffered by the defendant; and (3) whether any less severe sanction will remedy the prejudice and the wrongdoing by the government. See United States v. Hastings, 126 F.3d 310, 317 (4th Cir. 1997). South Carolina weighs similar factors in determining whether a dismissal is an appropriate sanction for a violation of SCRCrimP Rule 5. See State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992).

The Court finds the delay in delivering discovery pursuant to SCRCrimP Rule 5 by Appellant was unintentional and there is no evidence in the record of willful misconduct by Appellant. Appellant agreed to continue the matter at the December hearing, even though Respondent made its discovery request only nine (9) days prior. Appellant was attempting to change its procedure for providing discovery responses to address concerns by the magistrate courts and defendants when the delay occurred. Respondent did not communicate the lapse after the Appellant's 30-day window for response to the discovery request had passed, or Respondent's intent to make a motion to dismiss, prior to the hearing on January 29, 2020. Had Respondent done so, Appellant may have been able to remedy the lapse in advance of the hearing. Additionally, the Court finds there is no evidence in the record to support a finding the delay by the Appellant in providing a response to discovery prejudiced Respondent's right to a fair trial. Had there been prejudice to the Respondent due to the delay, the Magistrate had several less severe sanctions available under the circumstances, including a continuance of the case, which would have ensured

a fair trial for the Respondent. The Court notes the diligent representation made by Respondent's counsel in arguing for affirmation of the Magistrate's dismissal and Respondent's objection to the above-referenced findings.

In light of these findings, the Court finds the Magistrate's dismissal of the case was an error of law and an abuse of discretion.

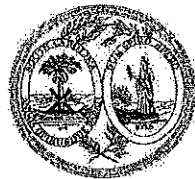
ORDER

THEREFORE, IT IS HEREBY ORDERED the denial of Appellant's motion for reconsideration and dismissal of the case is **REVERSED** and **REMANDED** to the Magistrate Court for a trial on the merits.

IT IS SO ORDERED.

The Honorable Diane Schafer Goodstein,
Circuit Court Judge

This _____ day of July, 2020
St. George, South Carolina



Dorchester Common Pleas

Case Caption: South Carolina State Of VS Louie Weathers
Case Number: 2020CP1800905
Type: Order/Other

This Order is Hereby GRANTED!

S/ Diane S. Goodstein (2112)

Certificate of Electronic Notification

Recipients

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Court: CIRCUIT COURT

Common Pleas

Dorchester

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Document(s) Submitted: Order/Reversed & Remanded to Magistrate Court
for Trial

Filed by or on behalf of: Diane Schafer Goodstein

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The following people were served electronically:

John Horton Guerry for Louie Weathers

Jerry Nicholas Theos for Louie Weathers

Mark Shelton Moore for South Carolina State Of

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

St. George Magistrate Court