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**Sep 22 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Dorchester County  
The Honorable Dianne S. Goodstein, Circuit Court Judge  
The Honorable Victor G. Stephens, Magistrate Court Judge

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Appellate Case No. 2020-001524

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THE STATE,

RESPONDENT,

V.

LOUIE WEATHERS,

APPELLANT.

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**FINAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUE ON APPEAL**

A trial court may impose "just" sanctions for a party's refusal to comply with a Rule 5 discovery request. The State negligently failed to respond to Weathers' discovery request within 30 days, but provided discovery within 42 days, well before the case was ripe for trial. Did the magistrate court abuse its discretion when it dismissed the case without considering whether Weathers was prejudiced by the delay, without considering whether there was willful misconduct by the State, and without considering a more proportional remedy such as a continuance?

## STATEMENT OF THE CASE

Louie Weathers was arrested for DUI on November 20, 2019. According to defense counsel, Weathers sent a Rule 5 discovery request to the arresting officer on December 9, 2019. (R. 4).<sup>1</sup> An initial appearance date was set for December 18, 2019. (R. 120-22). At this hearing, defense counsel told the trooper he had sent a discovery request on December 9. The trooper responded that she had not received a request. By consent of both parties, the case was continued to January 29, 2020. (R. 111). Weathers emailed a discovery-related document to the trooper that same day. (R. 111). The trooper acknowledged receipt of the document via email. (R. 22). The document itself does not appear in the record, but the trooper apparently treated the document as a discovery request.

Pursuant to a recently-initiated discovery policy, the trooper forwarded the request to the First Circuit Solicitor's Office. Apparently because of an oversight at the solicitor's office, a response was not sent within the 30 days provided by Rule 5, SCRCrimP. (R. 28). Weathers did not personally appear at the January 29 hearing, but defense counsel appeared on his behalf. The arresting trooper appeared on behalf of the State. Before the hearing, defense counsel informed the trooper that he had not received discovery. The trooper gathered discovery documents and provided them to defense counsel before the hearing began. (R. 2).

At the hearing, defense counsel moved to dismiss the entire case because of the State's failure to respond within the 30 days prescribed by Rule 5. He argued Weathers was "entitled to dismissal" because "discovery wasn't provided in a timely fashion," denying Weathers due

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<sup>1</sup> The record does not contain a copy of a discovery request sent to the trooper on December 9. It contains only a notice of representation dated December 10 and a Rule 5 proof of service dated December 9 addressed to the clerk of court and Chief Magistrate Tera Richardson, which avers that a copy of that request was sent to the trooper. However, the request was not addressed to the trooper, only the magistrate. (R.16-21). This is in line with the discovery practice in Dorchester County up until the procedural change which preceded this case.

process of law. (R. 3). The trooper replied that she forwarded Weathers' discovery request to her supervisor when she received it and did not know why the response was not sent to defense counsel. She informed the court that she provided defense counsel with a "complete copy" of the Rule 5 response before the hearing. (R. 3). The trooper noted that the certificate of service defense counsel provided was not addressed to her, but to the magistrate court. (R. 3). She argued that a 12-day delay in discovery did not violate Weathers' due process rights. (R. 5).

Defense counsel responded that "this is not over 12 days. . . . This is about failure to comply with the rules." (R. 5). Defense counsel admitted he had not requested a jury trial. (R. 6). The magistrate found that the trooper was not at fault. (R. 6). Nevertheless, the court dismissed the case, explaining that it had "been having problems over the last 6–8 months getting the information to the right location for the Rule 5 requests. It was straightened up and supposed to go to headquarters instead of coming through our courts . . . . That's not happening on time, on a timely schedule. Therefore these cases are being dismissed because it's not following the law with the Rule 5 with the 30 day." (R. 6).

The State filed a motion to reconsider and a hearing was held on June 3, 2020. (R. 7-9; 23). The State was represented by counsel at this hearing. The State argued dismissal was not an appropriate remedy for the delayed discovery response. Specifically, the State argued the delay was not intentional but that the county's new discovery system "had not caught up" with pending discovery requests. (R. 28). The State further argued that Weathers was provided discovery at the January hearing and was not prejudiced by the 12-day delay, pointing out that the case was still new and not ripe for trial. (R. 31). The State argued the magistrate should have simply continued the case and allowed the parties more time to resolve the case or prepare for trial.

In response, Weathers argued he was not required to show prejudice. (R. 30, line 19). He offered a formalistic argument that "rules are rules." (R. 31). In announcing his refusal to reconsider its prior ruling, the magistrate reasoned that the State "dropped the ball" and declared it was "not going to elaborate a whole lot on it . . . ." (R. 32). When the State asked specifically for a ruling on whether Weathers was prejudiced by the State's late disclosure, the magistrate responded only: "Uh, the motion is denied." (R.32).

The State appealed to the Circuit Court. A hearing was held before the Honorable Diane S. Goodstein on July 20, 2020. (R. 96). The State argued the magistrate "failed to weigh the reasons for the delay and whether they were intentional or in bad faith, the degree of prejudice that would have been suffered by the Defendant, if any, and whether or not a less severe sanction would have remedied the prejudice or wrongdoing." (R. 97). The State admitted it "made a mistake" and acknowledged the delay occurred during a "period of transition" in the State's discovery response process. (R. 98). The State again pointed out that the case was not ripe for trial, Weathers did not expect to try the case on January 29, and the case could have been continued with no prejudice to Weathers. (R. 98-99; 103).

Defense counsel argued in response that there was a "clear Brady violation" and argued he was entitled to dismissal. (R. 101). He admitted he did not file a motion to compel discovery, could point to no evidence of willful misconduct, and that he did not serve the motion to dismiss on the State before the hearing. (R. 104-05).

The circuit court reversed the dismissal and remanded the case for trial. The court found Weathers failed to show any prejudice from the delayed disclosure, failed to show any willful conduct by the State, and failed to make any good faith attempt to obtain discovery prior to making a motion to dismiss at the January 29 hearing. (R. 105-08). The court further found it

"would have been a simple matter for the Court to grant a limited continuance to allow for the discovery to have occurred," but it instead "went to the most extreme remedy . . . ." (R. 106-07). Weathers now appeals from this ruling.

## STANDARD OF REVIEW

Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion. State v. Davis, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct. App. 1992). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. Halcomb, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). A trial court's improper imposition of a discovery sanction amounts to an error of law. State v. Mabe, 306 S.C. 355, 359, 412 S.E.2d 386, 389 (1991) ("There being no showing appellant failed to comply with our holding in Jackson [302 S.C. 313, 396 S.E.2d 101 (1990) (requiring showing of bad faith to justify suppression of destroyed evidence)], we hold respondent was not denied due process because he was unable to independently analyze the cocaine. The trial judge erred as a matter of law in granting respondent's motion to suppress evidence of the amount, weight, and analysis of cocaine.").

## ARGUMENT

**The circuit court correctly found the magistrate court abused its discretion by dismissing a DUI case based on the State's late response to a Rule 5 discovery request without considering a lesser sanction, the willfulness of the State's conduct, or whether Weathers suffered any prejudice from the delay.**

The circuit court correctly reversed the magistrate's dismissal of Weathers' DUI charge based solely on a 12-day delay in the State's discovery response because the magistrate failed to consider a lesser sanction, the willfulness of the State's conduct, or whether Weathers suffered any prejudice from the delay. The magistrate court abused its discretion when it refused to consider these facts. This Court should affirm.

Rule 5(d)(2), SCRCrimP provides:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

Discovery rules are designed "to ensure that a miscarriage of justice does not occur." State v. Kennerly, 331 S.C. 442, 454, 503 S.E.2d 214, 220 (Ct. App. 1998), aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999). The trial court may impose an "appropriate" discovery sanction when a party fails to respond to a discovery request. State v. Newell, 303 S.C. 471, 476, 401 S.E.2d 420, 424 (Ct. App. 1991). A violation of Rule 5 is not reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006) (citing State v. Hughes, 336 S.C. 585, 593, 521 S.E.2d 500, 504 (1999)).

Before the magistrate court, Weathers erroneously argued he was not required to show prejudice. (R. 30). His argument boiled down to the formulaic assertion that "rules are rules."

(R. 30-31). He made a misplaced analogy to dismissal of a DUI case for failure to produce a video of field sobriety tests, falsely asserting that "the law is clear . . . we're entitled to a dismissal." (R. 3).

While S.C. Code Ann. § 56-5-2953 (Supp. 2016) explicitly provides for dismissal when the State totally fails to produce a video complying with that section, Rule 5 does not list dismissal as a sanction for a discovery violation, much less for a mere delay in a discovery response. Rather, the rule provides that court may "order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances." Rule 5, SCRCrimP. While dismissal could arguably be a "just" remedy for an egregious discovery violation, Rule 5 does not contemplate complete dismissal of a charge, the most extreme possible remedy, for an unintentional 12-day delay in a discovery response made at the very outset of a criminal prosecution. The absence of dismissal among the rule's enumerated remedies and the nonexistence of any reported cases where a trial court dismissed a case based on a mere delayed discovery response illustrates the glaring inappropriateness of the magistrate's ruling.

The record shows the magistrate failed to consider whether Weathers suffered any prejudice from the 12-day delay. In ruling on Weathers' motion to dismiss, the court failed to enunciate any prejudice caused by the delay. Instead, he seemed to be punishing the State for past difficulties in instituting new countywide discovery procedures. He explained the State had "been having some problems over the last 6–8 months getting the information to the right location for the Rule 5 requests. It was straightened up and supposed to go to headquarters instead of coming through our courts . . . . That's not happening on time, on a timely schedule. Therefore these cases are being dismissed because it's not following the law with the Rule 5 with

the 30 day." (R. 6). Likewise, in announcing his refusal to reconsider its prior ruling, the magistrate reasoned that the State "dropped the ball" and declared he was "not going to elaborate a whole lot on it . . . ." (R. 32). When the State asked specifically for a ruling on whether Weathers was prejudiced by the State's late disclosure, the magistrate responded only: "Uh, the motion is denied." (R. 32). The magistrate refused to consider the specific facts of this individual case, choosing instead to punish the State for past difficulties initiating a new county-wide discovery response procedure. This was an error of law and an abuse of discretion.

Weathers suffered no prejudice from the delay. His case was less than two months old and this was his first court hearing.<sup>2</sup> The case was not ripe for trial and Weathers did not seriously expect to try the case that day. Certainly Weathers did not "proceed to trial" on January 29 because the State did not call the case for trial. Brief of Appellant at 8. Weathers was not even personally present at the hearing. (R. 28). Weathers' argument that he was "disadvantage[d] in trying the case" was disingenuous because the case was not going to trial. Furthermore, the trooper provided him with discovery before the hearing began, meaning discovery had already been provided when Weathers moved to dismiss based on failure to disclose. Based on all of this, Weathers was in "no different position on the date of disclosure than he would have been had disclosure been timely made." State v. Wilkins, 310 S.C. 81, 84, 425 S.E.2d 68, 70 (Ct. App. 1992). There was no evidence to support Weathers' conclusory assertion that he was prejudiced by the State's late disclosure.

Not only did the magistrate fail to consider whether Weathers was prejudiced by the delay, it refused to consider any more proportional sanctions. The obvious remedy for the State's late response was to simply continue the case, a remedy enumerated in Rule 5. This almost

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<sup>2</sup> As discussed in the Statement of the Case, Weathers' initial appearance was continued by consent after Weathers apparently failed to properly serve the State with a Rule 5 request.

certainly would have happened anyway, even if the State had timely responded to Weathers' Rule 5 request, because the case was not ready for trial and the State had no intention on calling the case for trial. As discussed above, Weathers argued that dismissal was the only proper remedy, analogizing a delayed discovery response to the nonexistence of a sobriety test video required by S.C. Code Ann. § 56-5-2953 (Supp. 2016). The trial court apparently agreed with this misstatement of law. Rule 5 does not list dismissal among the enumerated sanctions for a discovery violation, indicating this is an exceptional remedy. Even if dismissal could be considered a "just" remedy in an appropriate case, it was grossly inappropriate in this case. The court's refusal to consider a more proportional sanction was an abuse of discretion.

Finally, the magistrate failed to consider the bad faith or willfulness of the violation, a prerequisite for a finding of a due process violation.<sup>3</sup> See State v. Reaves, 414 S.C. 118, 127–28, 777 S.E.2d 213, 218 (2015). Rather, it seemed to be punishing the State for its inability to efficiently institute a new discovery procedure. (R. 6). The court did not find, and Weathers did not even allege, bad faith on the part of the State. The circuit court correctly noted this in its order. (R. 113). The magistrate's failure to consider the existence of bad faith in relation to Weathers' due process argument constituted an error of law and an abuse of discretion.

Weathers claims the circuit court applied the incorrect standard of review. This claim is meritless. The circuit court ruling was not based on a disputed factual finding. The parties agreed throughout this case that the State unintentionally failed to provide discovery within 30 days. The issue before the court was a pure matter of law. By failing to consider the factors relevant to proper regulation of discovery, the magistrate failed to follow the law. Our Supreme

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<sup>3</sup> Before the magistrate, Weathers alleged a due process violation as well as a Rule 5 violation. Weathers has not raised a due process issue on appeal. However, the trial court's failure to consider the existence of bad faith illustrates the arbitrariness of its ruling.

Court has explained that a trial court's improper imposition of a discovery sanction without considering the relevant factors enunciated by that Court is an error of law. State v. Mabe, 306 S.C. 355, 359, 412 S.E.2d 386, 389 (1991) ("There being no showing appellant failed to comply with our holding in Jackson [302 S.C. 313, 396 S.E.2d 101 (1990) (requiring showing of bad faith to justify suppression of destroyed evidence)], we hold respondent was not denied due process because he was unable to independently analyze the cocaine. The trial judge **erred as a matter of law** in granting respondent's motion to suppress evidence of the amount, weight, and analysis of cocaine.") (emphasis added). An error of law amounts to an abuse of discretion. State v. Halcomb, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). Furthermore, the magistrate flatly refused to even consider the prejudice to Weathers or the imposition of any lesser sanctions, possibly because of defense counsel's erroneous argument that dismissal was the only proper remedy and his false assertion that Weathers was not required to show prejudice. The refusal to exercise discretion is an abuse of discretion. State v. Hughes, 346 S.C. 339, 343, 552 S.E.2d 35, 37 (Ct. App. 2001) ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly."). The circuit court properly reversed the magistrate's ruling.

The magistrate's total dismissal of Weathers' charges based only on the State's negligent 12-day delay in its discovery response was an abuse of discretion. Weathers suffered no prejudice from the delay, the State did not act in bad faith, and the magistrate erroneously failed to consider any lesser, more proportional remedies. The circuit court correctly reversed its ruling. This Court should affirm.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that the order of the circuit court reversing dismissal be affirmed.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”


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