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2014 IL App (3d) 130772-U

Order filed October 10, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-13-0772
)	Circuit No. 12-DT-1693
CATHERINE KENNEY,)	
Defendant-Appellee.)	Honorable Bennett Braun, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice O'Brien dissented.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in excluding laboratory test results from evidence as a sanction for discovery violation.

¶ 2 Defendant, Catherine Kenney, was charged with driving under the influence (625 ILCS 5/11-501(a)(4) (West 2010)). The State provided the defense with the results of defendant's laboratory blood tests four days beyond the deadline for discovery. The court granted Defendant's motion barring the admission of the lab test results from evidence as a sanction for

the State's untimely production of discovery. The State appeals pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013). We affirm.

¶ 3

FACTS

¶ 4

On December 22, 2012, defendant was charged with operating a motor vehicle while under the influence of a drug or combination of drugs to such a degree that rendered defendant incapable of safely driving pursuant to section 11-501(a)(4) of the vehicle code. 625 ILCS 5/11-501(a)(4) (West 2010). Defendant provided a blood sample which the State promptly submitted to the Illinois State crime lab for analysis. When the case appeared ready for trial six months later, the crime lab had not yet analyzed defendant's blood sample. Consequently, on May 30, 2013, the court ordered the State to provide the lab results to defendant by July 19, 2013 and scheduled the jury trial for August 20, 2013.

¶ 5

Due to a backlog in the Illinois State crime lab, the State did not receive a copy of the lab results before July 19, 2013, the court's deadline. On July 24, 2013, the State forwarded a copy of the lab report to the defense.

¶ 6

On July 26, 2013, defendant filed a motion for sanctions due to the untimely production of discovery by the State. During arguments before the court, the State urged the court to deny the defendant's motion for sanctions because defendant had actually received the laboratory results prior to the hearing.

¶ 7

When considering whether the discovery violation warranted sanctions, the judge questioned the State's failure to request an extension of time for the production of discovery. The court observed it "may very well have extended [the deadline for] a short amount of time," if the State had simply filed a motion requesting an extension. The prosecutor explained to the court the State did not submit a motion requesting more time because it was "probably easier just

to mail out the Report when we obtain[ed] it than to come in and ask for an Extension.”

Ultimately, the court allowed defense counsel’s request and barred the State from introducing the lab test results as a sanction for the discovery violation. The State appeals on the basis that this ruling constituted an abuse of discretion.

¶ 8

ANALYSIS

¶ 9

We begin our analysis by addressing our jurisdiction to consider this appeal by the State. Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013) allows the State to appeal from, *inter alia*, an order which results in the suppression of evidence. *Id.* In this case, the State filed the requisite *Young* certificate to properly perfect this appeal. *People v. Young*, 82 Ill. 2d 234 (1980). Thus, this court has jurisdiction over this interlocutory appeal by the State.

¶ 10

The imposition of sanctions for discovery violations is governed by Illinois Supreme Court Rule 415(g)(i) (eff. Oct. 1, 1971). The rule provides that when a party violates a discovery rule or order, “the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such other order as it deems just under the circumstances.” *Id.* We review a trial court's decision as to the appropriate sanction for a discovery violation for abuse of discretion. *People v. Mullen*, 313 Ill. App. 3d 718 (2000).

¶ 11

In the present case, the State elected to simply ignore the court’s discovery deadline because this approach was “probably easier” for the State. The trial court seemed surprised by the State’s explanation for missing the discovery deadline. Similarly, we note the prosecutor’s justification that it was easier to produce untimely discovery rather than requesting a short continuance is not a valid reason to ignore the court’s deadline. Yet, faced with this articulated

response by the State, the court found it necessary to take a serious view of the failure to comply with the court's discovery deadline.

¶ 12 Based on the unusual circumstances of this case, we conclude the trial court's ruling barring the introduction of the State's evidence clearly, but judiciously, reinforced the principle that court orders are not to be taken lightly or ignored by counsel on either side of a controversy. Therefore, we conclude the trial court's approach did not constitute an abuse of discretion and was warranted by the unique facts of this case.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.

¶ 16 JUSTICE O'BRIEN, dissenting.

¶ 17 Excluding evidence as a sanction for a discovery violation is appropriate in only the most extreme situations. *People v. Houser*, 305 Ill.App.3d 384, 390 (1999). It should be used only as a last resort, where a recess or continuance would be ineffective or prejudice the opposing party. *People v. Sutton*, 327 Ill.App.3d 273, 283 (2002). Since the defendant did not argue, nor did the trial court find, that the discovery violation was either intentional or that granting a continuance as a lesser sanction was prejudicial, the imposition of the harshest penalty by the trial court for said violation was an abuse of discretion. Therefore, I would reverse the judgment of the trial court and remand to the trial court for additional proceedings consistent with that determination.