

NOTICE
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2016 IL App (5th) 150050-U

NO. 5-15-0050

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Johnson County.
)	
v.)	No. 14-DT-29
)	
JERRY A. SHOEMAKER,)	Honorable
)	Charles C. Cavaness,
Defendant-Appellee.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court abused its discretion in rescinding the defendant's statutory summary suspension where the court's sanction was not commensurate with the State's violation, and the record supports a finding that the defendant had in his possession all subpoenaed documents to establish his case at the rescission hearing.

¶ 2 Following an arrest for driving under the influence, the defendant, Jerry A. Shoemaker (Shoemaker), had his driver's license summarily suspended on January 5, 2015. Shoemaker subpoenaed all documents in connection with his arrest for his rescission hearing. When the State failed to produce a copy of the DVD of the arrest and other state police records, Shoemaker moved for sanctions. The trial court granted

Shoemaker's request for sanctions and rescinded the statutory summary suspension based on the belief that the State had failed to produce the subpoenaed materials within a reasonable time. We reverse and remand.

¶ 3 The following facts are relevant to the instant appeal. On September 19, 2014, the arresting officer, Trooper D. Broadway, was patrolling between Highway 146 and west of Highway 37 when his attention was drawn to a vehicle weaving in the eastbound lane and traveling 80 miles per hour in a 50-mile-per-hour speed zone. Trooper Broadway began following the vehicle and observed it swerving toward the middle of the road and back to the right shoulder. Trooper Broadway subsequently stopped the vehicle and administered several roadside sobriety tests. After Shoemaker failed these tests, Trooper Broadway placed him under arrest for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a) (West 2014)).

¶ 4 As a result of the DUI arrest, the office of the Secretary of State informed the defendant that his driving privileges would be suspended for a minimum of 12 months pursuant to section 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501.1 (West 2014)). The suspension was to become effective on November 4, 2014. Additionally, Shoemaker was given notice to appear on October 20, 2014, for his rescission hearing.

¶ 5 On September 29, 2014, the defendant filed a petition to rescind the statutory summary suspension, alleging the following: (1) he was not properly placed under arrest; (2) the arresting officer did not have reasonable grounds to believe he was driving under the influence; (3) he was not properly warned by the arresting officer; and (4) he did not

refuse to submit to and/or complete the required chemical tests. See 625 ILCS 5/2-118.1(b) (West 2014).

¶ 6 On October 1, 2014, Shoemaker issued a subpoena *duces tecum* to the Illinois State Police (ISP), in which he requested, prior to October 15, 2014, any and all documents associated with his September 19, 2014, arrest.

¶ 7 On October 20, 2014, Shoemaker's statutory summary suspension hearing was set for proceedings. However, it was rescheduled until November 3, 2014, because the defense had not been provided a copy of the DVD of Shoemaker's arrest prior to the rescission hearing. The State notified the trial court that the DVD was in the file but had not been copied for the defense since the court clerk lacked the appropriate technology, thus, the State's Attorney's office was in the process of burning a copy.

¶ 8 On November 3, 2014, Shoemaker's statutory summary suspension hearing was set for proceedings. However, the requested copy of the DVD of Shoemaker's arrest had not yet been produced. Thus, the trial court ordered production of the subpoenaed documents to be provided to the defense within seven days following the State's acknowledgment that production "shouldn't be [a problem]" within one week.

¶ 9 On December 1, 2014, the defense filed a motion to compel production and a motion for summary judgment on the statutory summary suspension hearing, contending that because the State failed to forward the subpoenaed materials, both the October 20, 2014, and November 3, 2014, hearings were continued. As a result, the defense requested rescission of Shoemaker's statutory summary suspension.

¶ 10 On December 1, 2014, the trial court was set to proceed on the statutory summary suspension hearing. However, the court granted Shoemaker's request for continuance given that the State had produced a copy of the DVD that morning. Thus, the defense was not prepared to move forward without having first watched the DVD.

¶ 11 On January 5, 2015, the trial court was set to proceed on the statutory summary suspension hearing. However, at the hearing, the defense moved for summary judgment. The court granted the defendant's motion for summary judgment, rescinding the issue. The court found that such a sanction was proper in light of the State's failure on several occasions to produce the subpoenaed copy of the DVD of Shoemaker's arrest following the court's order. The State filed a timely notice of appeal.

¶ 12 At the outset, we note that the defendant failed to file a brief responding to the issues raised by the State on appeal. However, as the State's brief and the record are sufficient to resolve the issue on appeal, we will nonetheless consider the merits of the appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 The State argues that the trial court's order was against the manifest weight of the evidence, arguing the following: (1) Shoemaker failed to make a *prima facie* case for rescission; (2) the court improperly assumed that the State had failed to produce the subpoenaed material, however, all requested material was in the file by October 20, 2014, the first date set for the hearing; (3) the sanction of rescission was not designed to coerce compliance, but to punish the State; and (4) even if sanctions were appropriate, rescission was disproportionate to the State's actions.

¶ 14 The standard of review of decisions imposing sanctions for noncompliance with discovery and subpoenas is whether the trial court abused its discretion. *People v. Kladis*, 2011 IL 110920, ¶ 23. A court abuses its discretion when its decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." (Internal quotation marks omitted.) *Kladis*, 2011 IL 110920, ¶ 23. When imposing sanctions, the court's purpose is to coerce compliance with discovery rules and orders, not punish the dilatory party. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123 (1998). An order of a sanction that results in a dismissal should only be employed as a last resort and after all the court's other enforcement powers have failed to advance the litigation. *Shimanovsky*, 181 Ill. 2d at 123.

¶ 15 After a review of the record, we find that the trial court abused its discretion in rescinding Shoemaker's statutory summary suspension. First, Shoemaker's subpoena *duces tecum* requested the ISP to produce the DVD and other state police records on or before October 15, 2014. The record supports a conclusion that the ISP complied with the subpoena, as all requested materials were timely submitted to the court on October 15, 2014.

¶ 16 Next, it appears that the trial court misunderstood when the documents had in fact been produced. Following the January 5, 2015, hearing, the court wrote the following docket entry:

"On 11/3/14 the Court ordered that subpoenaed documents be provided to the Defendant within 7 days. Prior to 11/3/14 the documents had been subpoenaed

but had not been produced. On November 25, 2014 the documents had not been produced. Apparently, the documents were produced on or shortly before 1/5/15. The Court is aware that there was apparently some problem in burning the CD. Nevertheless, the Court finds the delay to be unreasonable. The Court, therefore, orders that the SSS be rescinded."

¶ 17 However, based on the record, all documents, including the copy of the DVD, had been delivered to, and in the possession of, the defense by December 1, 2014, the day Shoemaker moved for sanctions. When sufficient evidence is available to both parties which enables them to establish their case or defense, a sanction which disposes of a claim without a trial on the merits constitutes an abuse of discretion. *Shimanovsky*, 181 Ill. 2d at 128. On January 5, 2015, the defense had access to all of the same information, including the DVD of his arrest and requested state police records upon which the State would have relied on at the rescission hearing. Thus, we find the court abused its discretion.

¶ 18 Moreover, we find that the trial court's sanction of rescission was not commensurate with the violation (see *People v. Schambow*, 305 Ill. App. 3d 763, 769 (1999)), and that the court failed to determine the degree of prejudice suffered by Shoemaker. *People v. Ogle*, 313 Ill. App. 3d 813, 815 (2000); *Shimanovsky*, 181 Ill. 2d at 118.

¶ 19 Even if the State's delay in copying the DVD constituted noncompliance with the subpoena sufficient to activate the court's discretion to impose sanctions, prejudice to the parties is part of the analysis of sanctions for violations of a subpoena. *Ogle*, 313 Ill.

App. 3d at 815. As previously stated, Shoemaker had access to all subpoenaed items on or before December 1, 2014, for which the State would have relied on at the January 5, 2015, rescission hearing. Under the circumstances here presented, we find that the court abused its discretion in rescinding Shoemaker's statutory summary suspension.

¶ 20 For the foregoing reasons, the judgment of the trial court of Johnson County is reversed and the cause is remanded for additional proceedings.

¶ 21 Reversed and remanded.