IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	Case No. 1009024052
	)	
ROBERT JONES,	)	
	)	
Defendant.	)	

Submitted: March 1, 2012
Decided: July 6, 2012

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ORDER

This matter is before the Court on defendant's motion to dismiss the Information for failure of the State to comply with *Court of Common Pleas Rule 16* Discovery requirements. I find as follows:

1) Robert Jones, (Defendant or "Jones"), was arrested on September 25, 2010 by the Delaware State Police for Driving While Under the Influence

of Alcohol on Blackbird Greenspring, Townsend, Delaware, New Castle County, Delaware.

2) Jones was arraigned on November 19, 2010 and the matter was scheduled for Case Review on December 10, 2010.

3) The scheduling order the Court entered on December 10, 2010, indicates that both the State and the Defendant were of the opinion that discovery appeared to be complete. The case was scheduled for trial March 28, 2011 and all motions were required to be filed by February 28, 2011. The case was subsequently rescheduled to June 28, 2011, for reasons not clear.

4) The Scheduling Order was amended on June 28, 2011, requiring the State to provide all *Rule 16* materials to the defense by July 1, 2011. The trial was rescheduled to November 3, 2011.

5) On November 3, 2011, the case was rescheduled to January 17, 2012. The State was unable to proceed to trial because the arresting officer failed to appear. Additionally, the State had not requested a rescheduling three (3) days prior to trial as required by the Court's policy.

6) The Court ordered on November 3, 2011 that the trial rescheduled to January 17, 2012 was mandatory for the State. The case did not proceed on January 17, 2012 because Defendant alleged the State failed to provide the 911 tape and there were other matters scheduled for trial.

7) On January 27, 2012, Jones filed this motion to dismiss for discovery violations and failure of the State to comply with the Court's mandatory scheduling order. In support of the motion, Jones alleged as follows:

(a) The defense made a request for discovery on October 25, 2010, to which the State did not respond.

1. The State's response refers the Court to the scheduling order where the State and the Defendant agreed on December 10, 2010 that discovery appears to be complete.

(b) On March 28, 2011, when all parties appeared for trial, the State for the first time disclosed there were photographs, however, the State previously at Case Review stated there were no photos.

1. The State does not challenge this allegation.

(c) The Court after considering the defense's objection to the materials being provided on the day of trial, the matter was rescheduled to June 28, 2011.

1. The State, relying upon the Court's docket, alleges that the matter was rescheduled at the Defendant's request.

(d) That Jones appeared for trial on June 28, 2011, and was informed by the State that the Alcohol Influence Report

provided in discovery was not for this case, but was for another Jones in an unrelated case. Thus, Jones argues he had twice appeared for trial and not provided with accurate discovery as required by the rules.

1. The State does not deny that inaccurate discovery was provided; however, the State asserts that the Court ruled both parties had sufficient opportunity to review the discovery to discover the error. Therefore, the case was rescheduled to November 3, 2011 with specific discovery deadlines. The Court order required discovery compliance by July 1, 2011.

(e) Jones argues discovery was not provided until July 2, 2011.

1. The State counters and submits a letter addressed to defense counsel dated June 29, 2011 outlining the documents and materials provided.

(f) Jones argues he appeared for trial on November 3, 2011 but the State could not proceed because the police officer failed to appear.

1. The State does not challenge this allegation and concedes the case was rescheduled to January 17, 2012 at the State's request.

(g) Jones argues that when granting the motion to continue the Court ordered, that the new trial date, January 17, 2012 was mandatory. Prior to January 17, 2012 trial, Jones raised the issue of the State's failure to provide the 911 call tape. But he alleged there were two (2) witnesses who had taken off from work and were prepared to testify for the defense. Jones argues that the State's should have been aware of the tape because it is clearly set forth in the Officer's report.

1. The State responds that it was ready to proceed without the 911 call tape, and it was the defense which requested the tape and the Defendant should have pursued matter prior to trial. Further, the State argues it has no duty to provide the 911 tape.

8) In determining the appropriate sanction for a discovery violation, the Court must weigh all relevant factors which include: (a) the reasons for the violation; (b) the extent of any prejudice to the defendant, and (c) the feasibility of curing the violation. *DeJesus v. State*, 655 A.2d 1180, 1207 (Del. Supr. 1995). The determination after weighing these factors and in deciding the sanctions to be imposed is addressed to the discretion of the Judge. In reaching this decision, the Court must take into consideration and balance the needs of

society with the defendant's right to a fair trial. *Cabrera v. State*, 840 A.2d 1256 (Del. Supr. 2004).

The facts which Jones alleges as a basis to dismiss the charge, rests primarily on errors of the State and somewhat on the defense's failure to properly prepare for trial. The parties initially agreed that discovery appears to be completed at the first Case Review. Later, however, it is discovered that the AIR report did not involve this individual, but another person with a similar name. It appears to me that both the Defense and the State share equally in these mistakes. Each party has a duty to review the documents prior to trial. The State should provide relevant and appropriate documents to the defense, and the defense has a duty to review the documents provided.

The basis for the second scheduled date of June 28, 2011 is not clear. The State points to the docket and argues the case was rescheduled at the defense's request. This however is not supported by the facts of this case, and that position is rejected. The only conclusion is that the Clerk incorrectly entered the data.

Defendant argues that the State failed to comply with the revised scheduling order issued by the Court on June 28, 2011. However, the State attached as an exhibit a letter dated June 29, 2011 outlining all the materials it was providing. Therefore, I find the defense' argument lacks merit on this point.

On the November 3, 2011 trial date, the Court heard the parties and all of the positions. Thereafter, the Court granted the State's request for a rescheduling and ordered that the next trial is mandatory. The next trial date was January 17, 2012 and the defendant makes much of the fact that the matter did not proceed to trial. Defendant seeks to lay blame on the State for not proceeding because it did not provide the 911 tapes. He, however, overlooks the fact that the police report clearly indicated the existence of such tape and the defendant had ample opportunity to request to review the tape prior to the date of trial. Moreover, in the defense colloquy with the Court, the Court inquired whether he wanted to proceed to trial on this case or another case which was pending. The defense selected to proceed on the other case.

In summary, I find that while this case could have been managed better, I do not find the discovery violations to the extent which would justify the ultimate sanction of dismissal.

Accordingly, the Motion to Dismiss is Denied.

SO ORDERED

Alex J. Smalls
Chief Judge

RobertJones-OP Jul 2012