Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V JALEN DESMOINE WOMBLE

Docket No. 377486

LC No. 22-006385-01-FC

Sima G. Patel
Presiding Judge

Allie Greenleaf Maldonado

Adrienne N. Young
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application for leave to appeal, the trial court's March 27, 2025 order is REVERSED, and the matter REMANDED for further proceedings consistent with this order. Defendant moved to dismiss this case in a motion filed September 5, 2023. The motion was denied at a hearing held on September 11, 2023, before a visiting Judge. However, a written order denying the motion was not entered. When the current presiding Judge returned to the bench, she asked if the motion had been addressed at multiple hearings. Defense counsel and the trial court both indicated that the motion should be denied and that a written order to that effect should be entered. Yet, and for reasons that are difficult to understand, a written order was not entered, and by December 2024, the court indicated that it would hold an evidentiary hearing on the motion. While no additional evidence was ever taken, at a March 27, 2025 hearing that it was now granting "relief from judgment" under MCR 2.612(C), and dismissing the case, on the basis of discovery violations.

This was a clear abuse of discretion. *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2002). The alleged discovery violations concern "case tracking notes" and a forensic interview with MS, who is not the victim in this matter. Rather, the prosecution intends to present evidence concerning defendant's actions with MS in this case as other acts of sexual assault against a minor under MCL 768.27a. Defendant is being prosecuted for his alleged acts of sexual assault against MS in a separate case which has not been dismissed.

It does not appear that there were any discovery violations in this case. As to the case tracking notes, defendant's request for these notes was made on August 6, 2023. The prosecutor provided the notes to defendant by August 27, 2023, 21 days later. That fully complies with MCR 6.201(F). And while it appears the police initially resisted providing the notes to the prosecutor absent a court order, the emails between the parties show that the prosecutor agreed with defense counsel's position and then obtained the notes without a court order.

As to the interviews with MS, there were two such interviews. We do not dispute that the first interview would be exculpatory. However, there is no dispute that in MS's second interview, she discussed the first and recanted her statements made during the first. The second interview with MS was provided to defendant before the preliminary examination in the present case. The first was not. Defendant made vague discovery requests in August 2023, none of which specifically requested the first interview, despite it being obvious at that point that the interview occurred and could be exculpatory. Nonetheless, defendant then filed the motion to dismiss on September 5, 2023, arguing that the failure to disclose the first interview with MS and the case tracking notes—which were now in defense counsel's

possession—warranted dismissal. The prosecutor then provided the first interview with MS to defense counsel by September 8, 2023. Given that defendant never made a clear request for this interview recording until the motion was filed on September 5, 2023, and the recording was then provided to counsel on September 8, 2023, we do not believe that there was a discovery violation with respect to this video either. See MCL 600.2163a(11) (such recordings are to be provided to the defense *on request* by the defense); MCL 600.2163a(13) (except as provided in MCL 600.2163a, such recordings cannot be released); MCR 6.201(K) ("Nothing in this rule shall be construed to conflict with MCL 600.2163a").

Yet even if there was a discovery violation in this case, the extreme sanction of dismissal was clearly an abuse of discretion. When deciding on a proper sanction for a discovery violation, the exercise of the trial court's "discretion involves a balancing of the interests of the courts, the public, and the parties." *People v Davie*, 225 Mich App 592, 598; 571 NW2d 229 (1997) (quotation marks and citation omitted). "It requires inquiry into all the relevant circumstances, including the causes and bona fides of tardy, or total, noncompliance, *and a showing by the objecting party of actual prejudice*." *Id*. (emphasis added; quotation marks and citation omitted).

There can be no possible prejudice to defendant in terms of trial preparation. At the time the trial court dismissed this case, defense counsel had been in possession of the notes and interview for roughly 18 months. Defendant clearly has had ample time to prepare for trial, with full knowledge of the evidence. Defendant argued below that he was prejudiced by not having MS's first interview before "a" preliminary examination, which meant that he was unable to then cross-examine MS and impeach her with her statements made in the first interview. We first note that the case at hand concerns JW, not MS. MS did not testify at JW's preliminary examination and was thus not there to be impeached. Defendant did not seek, nor did the court order, dismissal of the case pertaining to MS. Second, when MS testified at the preliminary examination in the separate prosecution concerning her, defense counsel should have been aware of the first interview, as the defense was in possession of the second interview, where MS discussed (and disavowed her statements made in) the first. Third, despite dismissing this prosecution, the trial court found that defendant was not prejudiced because, at most, impeaching MS with her statements made at the first interview would have created a factual question for the jury. And fourth, defense counsel too agreed that dismissal would be inappropriate, because an alternate remedy would be to remand for another preliminary examination.

On the whole, dismissing this case as a discovery sanction was a clear abuse of discretion. The trial court's order is reversed, and the matter remanded for further proceedings consistent with this order. This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

March 19, 2026
Date

Chief Clerk