

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

DONALD DALE SMITH, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO.: 2015-AP-00006-A-O

Lower Court Case: 2014-MM-012298-A-O

Appeal from the County Court,
in and for Orange County, Florida,
Deb Blechman, County Court Judge.

Robert Wesley, Public Defender
and Natasha Vasquez, Assistant Public Defender,
for Appellant.

Jeffrey Ashton, State Attorney
and Carol Levin Reiss, Assistant State Attorney
for Appellee.

Before MYERS, G. ADAMS, and HIGBEE, J.J.

PER CURIAM.

FINAL ORDER AND OPINION REVERSING TRIAL COURT

Appellant, Donald Dale Smith, Jr. (“Smith”), timely appeals the trial court’s judgment for Resisting an Officer without Violence rendered on January 7, 2015. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A).

Procedural History

On November 4, 2014, at approximately 8:15 p.m., Officer Stack attempted to stop Smith in response to two traffic violations. He claimed that Smith sped by him at a great speed as

he was conducting an unrelated traffic stop, and he then failed to come to a full and complete stop at a red light. He alleged that Smith then failed to respond to his display of sirens and emergency lights, causing him to believe that he was attempting to flee. Upon stopping at a red light, Officer Stack exited his vehicle and approached Smith's driver's side window. He ordered him to turn off the engine, repeating himself in quick succession. He then ordered him to exit the vehicle, repeating himself in the same quick manner. After concluding that Smith was not obeying orders, Officer Stack opened the door, grabbed him by the arm and forced him to exit the vehicle. He then began to handcuff Smith, who asked why he was being arrested and received no response. Officer Stack secured Smith and cleared the scene.

At trial on January 7, 2015, Smith's counsel questioned Officer Stack about a Computer-Aided Dispatch ("CAD") report, who testified that it was a computer log of an officer's radio traffic. He testified that a report was generated in this case based upon the calls he made to dispatch on the day in question. Smith then attempted to admit a copy of the CAD report to which the State objected. The State argued that this report was inadmissible hearsay and that Smith had not given notice that it would be used during trial. The State argued that Smith was attempting to introduce numerous new items at trial without prior notification. It was also alleged that the entry of the report was prejudicial as the parties were in the middle of the trial.

Smith initially argued that there was no *Richardson*¹ issue, and then stated the State had constructive knowledge and possession of the report due to it being in the custody of the Orlando Police Department. The trial court determined that it was prejudicial as it was being introduced in the middle of the trial, but did not address if it was willful or inadvertent, and trivial or substantial. The report was excluded and Smith was not permitted to use it for any purposes, including attempting to later refresh the recollection of the witness.

¹ *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

Officer Stack also testified that, during a brief recess, he spoke with the State's attorneys about his testimony and whether there was anything additional which he would like to add. He also testified that he discussed strategy with the State and they helped him prepare for possible questions.

Arguments on Appeal

Smith argues that the trial court abused its discretion 1) in determining that there was a discovery violation, 2) in failing to address all elements required for a full *Richardson* inquiry, 3) in failing to consider less severe sanctions other than exclusion, 4) in precluding the use of the CAD report for the purposes of impeachment and refreshing recollection, and 5) for failing to grant a mistrial upon the alleged violation of the rule of sequestration by State.

State argues that 1) the *Richardson* inquiry was adequate or, in the alternative, was merely harmless error, 2) the trial court did not abuse its discretion or committed harmless error when it excluded the CAD report instead of imposing a less severe sanction, and 3) the trial court did not abuse its discretion in denying Smith's motion for mistrial.

Standard of Review

The appellate court reviews a trial court's discovery ruling using an abuse of discretion standard. *Whites v. State*, 730 So. 2d 762 (Fla. 5th DCA 1999).

Analysis

Smith argues that there was no discovery violation as the State had constructive knowledge or possession of the CAD report due to it being in the custody of law enforcement. When a party claims a violation of the rules of discovery, the trial court must first determine whether there was a discovery violation. If there has been a violation, the court must determine whether the violation was "willful or inadvertent, if the violation was trivial or substantial, and

whether it ‘resulted in prejudice or harm to the defendant.’” *Whites v. State*, 730 So. 2d 762, 764 (Fla. 5th DCA 1999). The State is found to have constructive possession of all information and evidence in the hands of its agents, including the police. *Rojas v. State*, 904 So. 2d 598, 600 (Fla. 5th DCA 2005); *McArthur v. State*, 671 So. 2d 867 (Fla. 4th DCA 1996).

The trial court improperly determined that there was a discovery violation and that the State did not have constructive possession of the CAD report. The State cannot complain that Smith has committed a discovery violation by not providing material that is in the State’s possession and control. *Hrehor v. State*, 916 So. 2d 825, 827 (Fla. 2d DCA 2005). Any information that is in the possession of a police officer is in the constructive possession of the prosecutor. *Hasty v. State*, 599 So. 2d 186, 189 (Fla. 5th DCA 1992). Therefore, there was no discovery violation, making the sufficiency of the *Richardson* hearing moot and the exclusion of the report an abuse of discretion.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court’s Judgment is **REVERSED** and this matter is **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 12th day of October, 2015.

/S/
DONALD A. MYERS, JR.
Presiding Circuit Judge

G. ADAMS and HIGBEE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge Deb Blehman**, 425 N. Orange Avenue, Orlando, Florida 32801; **Natasha Vasquez, Assistant Public Defender**, at 435 North Orange Avenue, Orlando, Florida 32801, as counsel for Appellant; and **Carol Levin Reiss, Assistant State Attorney**, at P.O. Box 1673, Orlando, Florida 32802, as counsel for Appellee on this 13th day of October, 2015.

/S/ _____
Judicial Assistant