

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1996

FILED

July 26, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellant

vs.

JONATHAN D. GOLDEN,

Appellee

No. 01C01-9508-CC-00265

WILLIAMSON COUNTY

Hon. Donald P. Harris, Judge

(State Appeal - Dismissal of
Presentment)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The State of Tennessee appeals as of right from the trial court's dismissal of a two count presentment charging the appellee, Golden, with the misdemeanor offenses of possession of marijuana and possession of drug paraphernalia. Following presentment by the grand jury, the trial court granted the appellee's motion to dismiss finding that the State had acted in bad faith in depriving the appellee of his right to a preliminary hearing. The State contends that the trial court's finding of "bad faith" is not supported by the record. We disagree and affirm the judgment of the trial court.

BACKGROUND

The record reflects that the appellee was stopped for speeding on November 30, 1994, by a Williamson County deputy sheriff. At the deputy's request, the appellee consented to a search of his vehicle. During the search of the vehicle, the deputy seized a "smoking pipe" and "rolling papers." The appellee was issued a citation to appear in the General Sessions Court of Williamson County on the charge of possession of drug paraphernalia. Six days prior to the scheduled preliminary hearing, the appellee filed a motion to suppress the evidence obtained from the search of his vehicle. At the hearing on January 25, 1995, the appellee presented his motion to suppress. In support of the motion, the appellee called the arresting officer as his witness. At this time, the State advised the court that "for purposes of general sessions, for purposes of preliminary hearing, that we're not going to object to that motion" The court then granted appellee's motion to suppress and dismissed the case for lack of probable cause.

On February 13, 1995, the Williamson County Grand Jury returned a two count presentment against the appellee, charging him with possession of drug paraphernalia and possession of marijuana.¹ On March 23, 1995, the appellee filed a motion to dismiss the indictment upon the ground that he was denied his right to a preliminary hearing and a suppression hearing in the general sessions court. On May 23, 1995, the trial court granted the appellee's motion to dismiss finding that the State, acting in bad faith, effectively denied the appellee his right to a preliminary hearing. The State appeals from this ruling.

ANALYSIS

It is settled law in this jurisdiction that, while a preliminary hearing is not constitutionally required, it is a critical stage of a criminal prosecution mandated by statutory law and is an adversary proceeding at which the usual rules of evidence apply. Moore v. State, 578 S.W.2d 78, 80 (Tenn. 1979). (citing Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999 (1970); Waugh v. State, 564 S.W.2d 654 (Tenn. 1978); McKeldin v. State, 516 S.W.2d 82 (Tenn. 1974)).

The principal function of a preliminary hearing is to determine whether probable cause exists to believe that the accused committed the offense charged and to fix the amount of bail in bailable offenses. Tenn. R. Crim. P. 5.1; State v. D'Anna, 506 S.W.2d 200, 203 (Tenn. Crim. App. 1973). Inherent within the magistrate's findings of fact supporting the probable cause determination is the finding that the facts introduced are admissible and do not infringe upon constitutional guarantees. Rule 5.1(a) of the Tennessee Rules of Criminal Procedure provides in pertinent part:

¹The lab report from the Tennessee Bureau of Investigation filed in the record indicates that the appellee was allegedly in possession of 1.0 gram of marijuana.

. . . The finding that an offense has been committed and that there is probable cause to believe that the defendant committed it shall be based upon evidence which may not be inadmissible hearsay, except documentary proof of ownership and written reports of expert witnesses. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Rules excluding evidence from consideration by the magistrate on the ground that it was acquired by unlawful means are applicable. . . .

It is fundamental that motions to suppress illegally seized evidence are appropriate at the preliminary hearing.

The State argues that it complied with the applicable rules of criminal procedure when it obtained the presentment against the appellee following the dismissal of the case for lack of probable cause by the general sessions judge. Moreover, the State contends that it was not acting in bad faith when it acquiesced to the appellee's motion to suppress. Rule 5(e) of the Tennessee Rules of Criminal Procedure provides as follows:

Any defendant arrested prior to indictment or presentment for any offense, whether a misdemeanor or felony, except small offenses, shall be entitled to a preliminary hearing upon his request therefor, whether the grand jury of the county be in session or not. If the defendant is indicted during the period of time in which his preliminary hearing is being continued, or at any time before accused has been afforded a preliminary hearing on a warrant, whether at his own request or that of the prosecutor, he may dismiss the indictment upon motion to the court. Provided, however, that no such Motion to Dismiss shall be granted after the expiration of thirty days from the date of the defendant's arrest.

Tenn. R. Crim. P. 5(e) (emphasis added). The Tennessee Supreme Court in Moore, 578 S.W.2d at 78, created an exception to the thirty-day rule. In Moore, our supreme court held that:

The 30-day limitation . . . is applicable only when all parties -- including the defendant, who must act promptly -- have acted in good faith and in compliance with the statute. The failure of the court or the prosecution to exercise good faith and to abide the law operates to toll the statute and preclude its invocation.

Id. at 82. Thus, the question central to our review is whether the State acted in

"bad faith" to deprive the appellee of his right to a preliminary hearing.²

The trial court found that the state, in bad faith, effectively denied the appellee a preliminary hearing. The trial court noted:

In this and similar cases, the State has taken the position that if a defendant seeks to enforce his or her right to a preliminary hearing exclusive of illegally obtained evidence, the response will be to not oppose the motion to suppress and allow the warrant to be dismissed for lack of probable cause. . . . That the State's action is in bad faith is obviated by the fact it now seeks to use the same evidence whose suppression it did not oppose on preliminary hearing to prosecute the defendant after an indictment has been returned. It is the opinion of this court that the State should have not been allowed to ignore the procedural laws by such a stratagem. . . .³

We reach the same conclusion as did the trial court. The State offers no explanation why the same witness who testified before the grand jury was, in effect, not permitted to testify at the suppression hearing. Accordingly, we conclude that the State, in not opposing appellee's motion to suppress, was not acting in good faith.

Our ruling in this case does not intend to imply that the State is always precluded from presenting a case to the grand jury following a dismissal of the warrant before a preliminary hearing. Rather, this opinion permits a dismissal of an indictment when it has been determined that the State, acting in bad faith, effectively denies the accused a preliminary hearing.

Bad faith may be defined as the state of mind involved when one is not

²As authority for its position, the State cites to State v. Gant, 622 S.W.2d 75 (Tenn. Crim. App. 1981). We refrain from any attempt to analogize or distinguish the facts in the present case from those in Gant as the facts in Gant are not sufficiently developed to complete such an analysis. As the issue of determining "bad faith" is a fact specific issue, we are precluded from addressing the State's contention in this opinion.

³The presentment indicates that the only proof introduced to the grand jury, other than the TBI Crime Lab report, was the testimony of the Williamson County deputy sheriff who was the arresting officer in the case.

being faithful to one's duty or obligation. See generally BLACK'S LAW DICTIONARY 693 (6th ed. 1990). The duty of a prosecutor is twofold. In one instance, he is the guardian of the State's interest. At the same time, the prosecutor is the protector of the rights of the accused. At all times, the prosecutor's goal remains, not that he shall win a case, but that justice shall be done. See Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935). Thus,

[H]e may prosecute with earnestness and vigor - - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods as it is to use every legitimate means to bring about a just one.

Id. See also State v. Spurlock, 874 S.W.2d 602, 611 (Tenn. Crim. App. 1993); State v. Smith, 803 S.W.2d 709, 710 (Tenn. Crim. App. 1990). Although the prosecutor's actions in the present case may not have originated from a malicious intent, his intent, standing alone, is insufficient to remove the taint of "bad faith" from his actions. The record supports a finding that the prosecutor did not fulfill his duty as "protector of the rights of the accused." Accordingly, he acted in "bad faith."

For the reasons stated above, we affirm the judgment of the trial court.

DAVID G. HAYES, Judge

CONCUR:

JERRY L. SMITH, Judge

WILLIAM S. RUSSELL, Special Judge