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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Bryan Lyons,
Appellee-Defendant.

May 11, 2022

Court of Appeals Case No.
21A-CR-2187

Interlocutory Appeal from the
Lawrence Superior Court

The Honorable John M. Plummer,
III, Judge

Trial Court Cause No.
47D01-1707-F1-973

Bradford, Chief Judge.

Case Summary

- [1] In June of 2017, five-year-old C.L. reported to her grandmother that she had been sexually abused by Bryan Lyons, her father. Lyons denied the allegations but entered into an agreement with the State to take a stipulated polygraph examination, the results of which would be admissible at trial. During the pre-polygraph screening, Indiana State Police Sergeant Dan Gress changed the polygraph from stipulated to non-stipulated due to concerns over Lyons's mental state. Lyons made incriminating statements during the post-polygraph interview. At the time, the prosecutor was not made aware that the polygraph had been changed to non-stipulated and was therefore now inadmissible. In July of 2017, Lyons was charged with Level 1 felony child molesting and the case moved forward with Lyons operating on the assumption that the polygraph was stipulated.
- [2] On July 19, 2021, the first day of trial, Lyons filed a motion to continue due to the State's failure to disclose that the polygraph was non-stipulated until a few days before trial. The trial court granted that continuance and ultimately suppressed any evidence of the polygraph results and Lyons's post-polygraph statements. The State appeals, arguing that the trial court abused its discretion in excluding Lyons's post-polygraph statements. Because the trial court has broad discretion to impose discovery sanctions, and a serious discovery violation occurred in this case, we affirm and the matter is remanded for further proceedings.

Facts and Procedural History

- [3] On June 13, 2017, five-year-old C.L. reported to her grandmother that Lyons had sexually abused her. On June 15, 2017, Lyons was interviewed by Sergeant Gress regarding the allegation. Lyons denied the allegations but agreed to take a polygraph examination when given that option. On June 19, 2018, Lyons, the Lawrence County Prosecuting Attorney, and Bedford Police Department Detective Kevin Jones executed a stipulation that the polygraph results “shall be admissible at any trial or hearing that might result from said allegation.” Ex. Vol. I p. 9. On June 22, 2017, before conducting the polygraph examination, Sergeant Gress reviewed the polygraph waiver and consent form with Lyons, which form included information on Lyons’s *Miranda*¹ rights, and both signed the document. At the top of his handwritten notes, Sergeant Gress wrote “stipulated” based on the executed agreement between the prosecutor and Lyons. Tr. Vol. II p. 151.
- [4] Sergeant Gress also screened Lyons’s mental and physical suitability to take the polygraph before beginning the examination. Lyons reported that he had been diagnosed with “generalized anxiety, A.D.D., personality disorder,” and “bipolar disorder” and that he had seen “spiritual shadows” on the wall that had talked to him in the last two or three days. Tr. Vol. II pp. 60–61. Sergeant Gress asked Lyons whether he knew the difference between “what’s real” and

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

“what’s not real,” and Lyons confirmed that he did. Tr. Vol. II p. 61. At the conclusion of the pre-polygraph interview, Sergeant Gress determined that Lyons was not a suitable candidate for an evidentiary polygraph, which is admissible through stipulation. However, Sergeant Gress also concluded that Lyons was still a suitable candidate for a non-stipulated, investigatory polygraph, which is inadmissible. Sergeant Gress then stepped out of the room and informed Detective Jones, who had been observing the pre-polygraph interview, that he was going to conduct a non-stipulated, investigatory polygraph instead and that Detective Jones should not turn in the stipulation. When Sergeant Gress returned to the room, he forgot to change the stipulated notation to non-stipulated on the top of his handwritten notes.

[5] Sergeant Gress conducted a post-polygraph interview to allow Lyons an opportunity to explain his reactions during the examination. Lyons made incriminating statements during the post-polygraph interview. At some point, Detective Jones delivered the stipulation to the prosecutor, despite having been advised by Sergeant Gress not to.

[6] On July 3, 2017, Lyons was charged with Level 1 felony child molesting. The State also alleged that Lyons was a repeat sexual offender based on his 2010 convictions for Class D felony child solicitation. On August 8, 2020, following three years of pre-trial litigation, Lyons filed a motion to suppress the polygraph on the basis that Lyons was not advised of his right to counsel before signing the stipulation.

- [7] In preparing for the evidentiary hearing on Lyons’s motion to suppress, Sergeant Gress printed out his report, reviewed the video recording of the polygraph, and took notes on the original paper copy of his handwritten notes as a working document. In doing so, Sergeant Gress remembered that he had changed the polygraph from stipulated to non-stipulated, so he wrote “non-stipulated” on the top of the notes to remind himself. Defendant’s Ex. B.
- [8] On August 11, 2020, the trial court held a hearing on Lyons’s motion to suppress at which Detective Jones and Sergeant Gress testified regarding the pre-polygraph interview. Detective Jones testified as to how polygraphs are conducted generally, how Lyons’s polygraph took place, and answered several questions that related tangentially to the difference between the admissibility of stipulated polygraphs and non-stipulated polygraphs. Sergeant Gress testified about, among other things, the information he had gathered during the pre-polygraph interview concerning Lyons’s mental fitness to take the polygraph. Tr. Vol. II p. 64. While the question was never directly asked, neither Sergeant Gress nor Detective Jones testified that the polygraph had been changed from stipulated to non-stipulated. Following the hearing, the trial court denied the motions to suppress. Lyons petitioned the trial court for an interlocutory appeal, which the trial court certified. We declined to exercise jurisdiction over that interlocutory appeal on December 10, 2020.
- [9] Ultimately, a five-day jury trial was scheduled for July 19, 2021. The trial court summarized the discovery that the polygraph had been deemed non-stipulated as follows:

43. On July 19, 2021, the jury venire appeared at the courthouse for jury selection at 8:30 a.m. When the trial judge arrived at the courthouse that morning, he was notified for the first time that on July 18, 2021, at 9:34 p.m., defense counsel had filed motion to continue the jury trial based upon violations of *Brady* and *Kyles v. Whitely*.

44. On July 19, 2021, the morning of the first day of jury selection, while the jury venire waited in a room in the courthouse with the bailiff, the court held a hearing outside the presence of the jury venire on the defense motion regarding allegations that the State of Indiana had violated the Defendant's rights under *Brady v. Maryland* and *Kyles v. Whitely*.

45. On July 19, 2021, after hearing argument on the defense motion, the Court, although quite irritated with the ongoing pretrial issues, found the defense motion had merit on constitutional level, and granted the defense motion to continue the jury trial.

Appellant's App. Vol. III p. 14.

[10] The trial court held a hearing on August 12, 2021, to address

whether [Lyons's] constitutional rights were violated due to the state failing to disclose to the defense that the [Sergeant Gress] had made unilateral determination that the polygraph stipulation was invalid because [Lyons] had recently (within the last two or three days) seen black shadows move across the wall and those shadows said something to him.

Appellant's App. Vol. III p. 14. The trial court concluded that "the State of Indiana violated [Lyons's] rights by failing to disclose materially exculpatory evidence[.]" Appellant's App. Vol. II p. 16. The trial court also concluded that the State "has materially breached Trial Rule 37(B)(2) by failing to disclose to the defense in a timely manner the invalidation of the stipulation of the polygraph." Appellant's App. Vol. II p. 16. The trial court imposed sanctions "against the State of Indiana under Trial Rule 37(B)(2) by excluding any and all

evidence generated or acquired by Sgt. Dan Gress,” including “[Lyons] agreeing to take a polygraph, taking the polygraph, being at the Indiana Police Post in Jasper, meeting with Sgt. Gress, or being interviewed during the post polygraph interview.” Appellant’s App. Vol. III p. 17. Further, the trial court ordered that Lyons be “released from custody on his own recognizance[,]” because of the State’s violations of his rights, noting that as of “the morning of the first day of jury selection, [...] [Lyons] had been held in continuous pretrial custody at the Lawrence County Jail since the date of his arrest, totaling four years and 16 days[.]” Appellant’s App. Vol. III p. 14. The trial court certified the State’s motion for interlocutory appeal on September 21, 2021, and we accepted jurisdiction on October 29, 2021.

Discussion and Decision

I. Admissibility

[11] “We review a trial court’s decision to admit or exclude evidence for an abuse of discretion.” *McVey v. State*, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007) (citing *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006), *trans. denied.*). “Because of its questionable reliability, it is well settled in Indiana that absent a proper waiver or stipulation by the defendant and the prosecuting attorney, the results of a polygraph examination are not competent evidence and are inadmissible in a criminal proceeding.” *Id.* at 441 (citing *Sanchez v. State*, 675 N.E.2d 306, 308 (Ind. 1996); *Kochersperger v. State*, 725 N.E.2d 918, 922 (Ind. Ct. App. 2000);

Greenlee v. State, 477 N.E.2d 917, 919 (Ind. Ct. App. 1985)). “However, a distinction must be made between the admissibility of the polygraph’s result and the defendant’s post-polygraph statements.” *Id.* “The majority rule in the United States permits the introduction of voluntary statements made during a polygraph test.” *Id.* (citing *State v. Damron*, 151 S.W.3d 510, 516 (Tenn. 2004)).

Statements are not inadmissible merely because they were made during the course of a polygraph examination. Accordingly, a defendant’s challenge to the admissibility of a statement made during a polygraph test will be unsuccessful unless the defendant can show that the statement was involuntary. Voluntary statements made during the course of a polygraph are admissible as long as they are consistent with other applicable constitutional and evidentiary rules.

Id. (citing *Damron*, 151 S.W.3d at 516).

[12] The State puts great emphasis on the distinction between the polygraph results and Lyons’s post-polygraph statements. The State argues in part that, because Lyons’s post-polygraph statements are separately admissible, the trial court abused its discretion in excluding them. However, the post-polygraph statements were not excluded simply because the trial court found them to be inadmissible, but rather because of the State’s discovery violation.

II. Discovery Violation

[13] When challenged on appeal, trial court sanctions imposed as a penalty for failure to comply with court orders are reviewed for an abuse of discretion. *See*

Wiseheart v. State, 491 N.E.2d 985, 987 (Ind. 1986). Lawrence County Local Trial Rule 108(C)(1)(h) requires that “The State shall disclose [...] any material or information within its possession or control that tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment for such offenses.” Indiana Trial Rule 37 provides the trial court with a mechanism to “ensure compliance with the trial rules and obedience to its orders.” *Wright v. Miller*, 989 N.E.2d 324, 327 (Ind. 2013) (citing *Whitaker v. Becker*, 960 N.E.2d 111, 116 (Ind. 2012), *Rumfelt v. Himes*, 438 N.E.2d 980, 982 (Ind. 1982)).

[14] “Trial Rule 37 provides broad latitude for the trial court to impose sanctions to ensure cooperative discovery, and thus encompasses remedies which may be sought by or imposed against either party.” *Id.* “Trial Rule 37(B) permits the trial court to ‘make such orders... as are just,’ including ‘treating as a contempt of court the failure to obey,’ ‘prohibiting [the disobedient party] from introducing designated matters into evidence,’ ‘dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party’ when that party ‘fails to obey an order to provide or permit discovery.’” *Id.* “Yet, in exercising this inherent power, ‘the trial court should seek to apply sanctions which have a minimal effect on the evidence presented at trial and the merits of the case,’” [*Wiseheart*, 491 N.E.2d at 990], keeping in mind ‘that sanctions should not be imposed when circumstances make

sanctions unjust,’ *Outback Steakhouse of Fla. Inc. v, Markley*, 856 N.E.2d 65, 82 (Ind. 2006)[.]” *Wright*, 989 N.E.2d at 330.

[15] The State argues that the prosecutor immediately informed Lyons upon learning that the polygraph was non-stipulated, that this is a case of “misfeasance not malfeasance[.]” and that the trial court was overbroad² in excluding Lyons’s post-polygraph statements when only his non-stipulated polygraph should have been deemed inadmissible. Appellant’s Br. p. 2. While we understand that the prosecutor in this case may have acted as quickly as possible under the circumstances, we have little doubt that a discovery violation took place. “The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 432 (1995). Further, though the State argues that the exclusion of Lyons’s post-polygraph statements amounts to an unjust sanction, the State had ample opportunity to disclose this information in a timely fashion.

[16] Sergeant Gress informed Detective Jones that he had changed the polygraph from stipulated to non-stipulated on the day the polygraph was taken. There

² The State also argues that the trial court abused its discretion in determining that the pretrial disclosure of the non-stipulated nature of the polygraph amounted to a violation of the principles outlined in *Brady v. Maryland*, 373 U.S. 83 (1963). Because our determination that the trial court did not abuse its discretion in excluding the post-polygraph statements as a discovery sanction reaches the merits of this case, we need not weigh in on the relevance of *Brady*. However, we note the continued relevance of the principle that “[s]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 87.

was ample opportunity pre-trial for Sergeant Gress and Detective Jones, acting as agents of the State, to ensure that all parties were informed that the polygraph was non-stipulated, including a hearing concerning the admissibility of the polygraph at which the two testified. Further, the trial court held a hearing following the State's late disclosure of the non-stipulated nature of the polygraph. At that hearing, Sergeant Gress and others testified concerning the State's chain of communication and why the State had failed to disclose that the polygraph was non-stipulated until a few days before trial. At that hearing, Sergeant Gress stated that he brought up the non-stipulated nature of the polygraph "way before [a] week before trial." Tr. Vol. II p. 197.

[17] We are unconvinced by the State's argument that the discovery violation resulted in no significant prejudice to Lyons's defense because the argument fails to acknowledge the broader implications that pretrial discovery violations may have on a case. The State's argument focuses solely on the fact that the disclosure, however late, revealed that damaging polygraph results were no longer admissible. "The purpose of Indiana's discovery rules is 'to allow a liberal discovery procedure' for the purpose of providing litigants 'with information essential to the litigation of all relevant issues, eliminate surprise and to promote settlement.'" *Doherty v. Purdue Properties I, LLC*, 153 N.E.2d 228, 235 (Ind. Ct. App. 2020) (quoting *Canfield v. Sandock*, 563 N.E.2d 526, 528 (Ind. 1990)). It is easy to imagine a scenario in which Lyons entered into a plea agreement with the State before ever finding out that the polygraph results would not have been admissible in a trial. For the above reasons, we conclude

that the trial court did not abuse its discretion in excluding all evidence related to the polygraph, including Lyons's post-polygraph statements.

[18] The judgment of the trial court is affirmed and the matter is remanded for further proceedings.

Crone, J., and Tavitas, J., concur.