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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2016-2017

CR-15-1346

City of Florence

v.

Cody Yarborough

Appeal from Lauderdale Circuit Court
(CC-16-222; CC-16-224)

BURKE, Judge.

The City of Florence ("the City") appeals the Lauderdale Circuit Court's order in which the circuit court dismissed the City's cases against Cody Yarborough.

On or about March 11, 2016, Yarborough filed a notice of appeal to the Lauderdale Circuit Court of his municipal court convictions for speeding and driving under the influence of alcohol. The City filed a notice of appeal with the circuit court on March 28, 2016. On July 30, 2016, Yarborough filed a motion to dismiss the cases against him, arguing that the City had abandoned its appeal by failing to timely file the notice of appeal within 15 days from the time Yarborough filed his notice of appeal. On August 3, 2016, the City filed a response to Yarborough's motion to dismiss, arguing that its notice of appeal was timely filed. Both parties filed several subsequent responses.

The circuit court held a hearing on the matter on August 9, 2016. During the hearing, the court noted that after Yarborough had filed a motion to dismiss, the court spoke to the City's prosecutor, who initially stated that he had not abandoned the appeal. According to the court, the City's prosecutor later indicated to the court that the notice of appeal may have been untimely, and the court placed a note on the file to grant the motion to dismiss. The court noted that the City's prosecutor later contacted the court and stated

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that the notice of appeal had been timely. The court then heard arguments from both parties. On August 12, 2016, the circuit court entered a written order granting Yarborough's motion to dismiss.

On appeal, the City argues that the circuit court abused its discretion by granting Yarborough's motion to dismiss on the ground that the City's notice of appeal was untimely filed in the circuit court. The City argues that its notice of appeal was filed within the applicable period and, thus, that the cases should not have been dismissed. Yarborough now concedes on appeal that the City's notice of appeal to the circuit court was timely filed and, thus, that this Court should reverse the circuit court's order and remand this case to the circuit court for the case to be reinstated for trial.

The City may appeal to this Court from a pretrial order of the circuit court dismissing an indictment, information, or complaint. See Rule 15.7, Ala. R. Crim. P. Section 12-14-70(c), Ala. Code 1975, provides that a defendant may appeal a judgment of a municipal court to the circuit court within 14 days from the entry of the judgment. Section 12-14-70(d), Ala. Code 1975, states that "[w]hen an appeal has been taken the

municipality shall file the notice and other documents in the court to which the appeal is taken within 15 days, failing which the municipality shall be deemed to have abandoned the prosecution, the defendant shall stand discharged and the bond shall be automatically terminated." Rule 1.3(a), Ala. R. Crim. P., provides as follows:

"(a) Computation. In computing any period of time of more than twenty-four (24) hours prescribed by these rules, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday, legal holiday, a day the county courthouse is closed, or a day on which the appropriate clerk's office is closed pursuant to Rule 5(B) or (C), Alabama Rules of Judicial Administration (Ala.R.Jud.Admin.), in which case the period shall run until the end of the next day which is not a Saturday, Sunday, a legal holiday, a day the county courthouse is closed, or a day on which the clerk's office is closed pursuant to Rule 5(B) or (C), Ala.R.Jud.Admin. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays, days the county courthouse is closed, or days on which the clerk's office is closed pursuant to Rule 5(B) or (C), Ala.R.Jud.Admin., shall be excluded from the computation. As used in this rule, 'legal holiday' includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or as prescribed in Ala. Code 1975, § 1-3-8. Whenever a party has the

right or is required to take some action within a prescribed period after service of a notice or other paper and such service is allowed and made by mail, three (3) days shall be added to the prescribed period."

As noted earlier, in the present case, Yarborough filed a notice of appeal of his municipal-court convictions in the Lauderdale Circuit Court on March 11, 2016. Pursuant to § 12-14-70(c), Ala. Code 1975, the 15th day, which would be the last day in which the City could timely file its notice in the circuit court, would have been March 26, 2016. However, March 26, 2016, was a Saturday. Accordingly, under Rule 1.3(a), Ala. R. Crim. P., the period in which to file would run until the end of the next day that was not a Saturday, Sunday, legal holiday, or a day that the courthouse or clerk's office was closed, which, in this case, would have been March 28, 2016. The City's notice of appeal was filed in the circuit court on March 28, 2016. Therefore, as the City argues and as Yarborough concedes, the City timely filed its notice of appeal in the circuit court. Consequently, the circuit court erred in granting Yarborough's motion to dismiss.

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This case is, therefore, remanded to the circuit court with instructions to reverse its order of dismissal and proceed accordingly.

REVERSED AND REMANDED.

Windom, P.J., and Welch, Kellum, and Joiner, JJ., concur.