

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR 08-194

BRENDA JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 10, 2008

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. CR-2007-2042]

HONORABLE CHRISTOPHER  
CHARLES PIAZZA, JUDGE

AFFIRMED

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**SARAH J. HEFFLEY, Judge**

Appellant, Brenda Jackson, was convicted of possession of a controlled substance, possession of drug paraphernalia, and maintaining a drug premises. She now appeals her convictions and contends that the trial court committed reversible error by allowing a forensic chemist from the Arkansas State Crime Lab to testify, when appellant was not given prior notice of this witness and was also not provided a copy of the analysis and report produced by the witness. We find no error and affirm.

Appellant was charged with the above-mentioned crimes on May 24, 2007. On July 19, 2007, appellant filed both a motion for discovery and a notice specifically reserving her right to cross-examine any witnesses who may submit reports on the evidence. The State filed a response to appellant's discovery motion that indicated its "open file" policy, whereby

defense attorneys can inspect the entire file upon three days' notice and up to three days prior to trial.

The case proceeded to a jury trial on October 17, 2007. The State called Lisa Wilcox, a forensic chemist employed with the Arkansas State Crime Lab, as one of its witnesses. Appellant promptly moved to exclude Wilcox as a witness, arguing that the defense was never given Wilcox's name as the chemist in this case and that the defense was never given a copy of the report showing Wilcox's analysis and conclusions. The motion was denied, and Wilcox testified that the substance found in appellant's possession was cocaine base. Appellant was found guilty and sentenced to two consecutive terms of ten years' imprisonment and one concurrent term of six years' imprisonment. This timely appeal followed.

On appeal, appellant again argues that the trial court erred in allowing Wilcox to testify when the State had failed to disclose Wilcox as a witness and had not provided appellant with a copy of Wilcox's report. The circuit court has wide discretion in making evidentiary rulings, and we will not reverse its ruling on the admissibility of evidence absent an abuse of discretion. *Gikonyo v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (April 30, 2008).

Rule 17.1 of the Arkansas Rules of Criminal Procedure provides:

[T]he prosecuting attorney shall disclose to defense counsel, upon timely request, ... the names and addresses of persons whom the prosecuting attorney intends to call as witnesses ... [and] any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments or comparisons.

Ark. R. Crim. P. 17.1(a)(i) & (iv) (2008). However, Rule 17.2 allows a prosecuting attorney to fulfill these obligations by adopting an "open file" policy and "notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested,

copied, recorded or photographed, during specified reasonable times.” Ark. R. Crim. P. 17.2(b)(i) (2008). If a prosecutor’s office intends to fulfill its discovery obligations by relying upon an open file policy, it must make every practicable effort to ensure that the information and records contained in the file are complete and that the documents employed at trial are identical to the material available to the defense in the open file. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003).

In this case, appellant cites the State’s duty to disclose under Rule 17.1, but fails to acknowledge the open file policy allowed by Rule 17.2. Nor does appellant contend that the information and records contained in the State’s file were inadequate or unavailable in any way. In addition, appellant made no objection to the State fulfilling its discovery obligation through an open file policy prior to trial, and appellant asked only for an exclusion of the witness instead of asking for a continuance or any lesser sanction allowed by law.<sup>1</sup> *See Smith, supra* (affirming trial court’s denial of motion to exclude State’s witnesses when no objection was made to open file policy prior to trial and appellant requested only extreme remedy of excluding all witnesses for the State). Under these circumstances, we find no abuse of discretion in the trial court’s decision to deny the motion to exclude Wilcox’s testimony.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.

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<sup>1</sup> Under Ark. R. Crim. P. 19.7 (2008), a court has four options to remedy a violation of discovery rules: permit discovery, grant a continuance, exclude the undisclosed evidence, or enter an order as deemed appropriate by the court under the circumstances.