

STATE OF LOUISIANA

*

NO. 2018-KA-0149

VERSUS

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COURT OF APPEAL

TIMREK ANDREWS

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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CONSOLIDATED WITH:

CONSOLIDATED WITH:

IN RE: TIMREK ANDREWS

NO. 2018-K-0339

LOBRANO, J., DISSENTS AND ASSIGNS REASONS.

I respectively dissent from the majority opinion that affirmed the denial of the State’s motion to continue to allow for a contradictory hearing on the motion to quash filed by Timrek Andrews (“Defendant”).

It is well settled that district court rulings on motions to quash are reviewed under an abuse of discretion standard. *State v. Brown*, 15-1319, p. 7 (La. App. 4 Cir. 4/20/16), 193 So.3d 267, 271.

This court addressed the issue of whether the state is entitled to a hearing on a defendant’s motion to quash and time in which to prepare in *State v. Williams*, 17-0239 (La. App. 4 Cir. 9/6/17), --So.3d--, 2017 WL 3887457. We reviewed the case law and held that a district court was required to grant a continuance to the state so that it could better prepare to defend against the motion. In *State v. Bryant*, 14-0653 (La. App. 4 Cir. 12/10/14), –So.3d —, *unpub.*, 2014 WL 6989388, we stated:

“[O]ur jurisprudence has established that the State should have been afforded an opportunity to review and prepare an argument against the motion to quash.”

14-0653 at p. 2.

La. C.Cr.P. art. 537 mandates that “[a]ll issues, whether of law or fact, that arise on a motion to quash shall be tried by the court without a jury.” Louisiana jurisprudence has consistently held that La. C.Cr.P. art. 537 mandates a contradictory hearing on motions to quash. *State in Interest of M.J.*, 14-0622, p. 15, fn. 10 (La.App. 4 Cir. 2/4/15), 160 So.3d 1040, 1049 (noting trial court erred in failing to hold a hearing on the merits of a motion to quash); *State v. Nguyen*, 14-639, p. 17 (La.App. 3 Cir. 11/5/14), 150 So.3d 562, 572 (granting motion to quash without a hearing was improper); *State v. Sensat*, 07-425, p. 4 (La.App. 3 Cir. 11/7/07), 969 So.2d 1274, 1276 (the state was entitled to a contradictory hearing on motion to quash); *State v. Stewart*, 02-0196 (La.App. 3 Cir. 10/2/02), 827 So.2d 1277, 1281-82 (La. C.Cr.P. art. 537 required a hearing); *State v. Lowry*, 00-107, p. 6 (La.App. 5 Cir. 6/27/00), 762 So.2d 1275, 1278 (citing La. C.Cr.P. art. 537 and remanding for hearing on motion to quash).

The transcript from September 25, 2017 reflects that the State requested to continue the trial in order to proceed to trial on another matter. The State noted a new assistant district attorney had been assigned to Defendant’s case. Defendant objected and provided the State with a courtesy copy of his motion to quash immediately prior to the district court announcing it would consider the motion on the date it was filed. The State requested it be given an opportunity to prepare a response to the motion to quash. The district court found Defendant was prejudiced by the delay and granted Defendant’s motion to quash without providing the state with an opportunity to prepare for the hearing or file a response.

I find that the district court abused its discretion in failing to allow the State an opportunity to prepare a response and hold a meaningful hearing on Defendant’s motion to quash. *Williams*; La. C.Cr.P. 537. Accordingly I would reverse the district court’s judgment and remand the matter to the district court for an appropriate hearing.