In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-17-00217-CR

THE STATE OF TEXAS, Appellant

V.

CINDY ANN PASHIA-MCCORMICK, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. 23343

MEMORANDUM OPINION

In two issues on appeal, the State of Texas argues that the trial court abused its discretion by granting Cindy Ann Pashia-McCormick's motion to suppress evidence, and complains that the trial court erred by both entering and later amending findings of fact and conclusions of law concerning the suppression issue without good cause, and after the State filed a recusal motion. In its second issue, the State requests that we vacate the trial judge's findings of fact and conclusions of law and remand this cause to the trial court for a new suppression hearing with the judge who is currently assigned to hear the case, and for the issuance of new findings

of fact and conclusions of law. We reverse the trial judge's order granting Pashia-McCormick's motion to suppress evidence, vacate the trial judge's original and amended findings of fact and conclusions of law, and remand this cause to the trial court for a new suppression hearing with the judge who the presiding judge for the Second Administrative Region assigned to hear the case.

BACKGROUND

The State charged Pashia-McCormick with driving while intoxicated. Pashia-McCormick filed motions to suppress any tests, including blood alcohol test results, video or audio recordings, and statements obtained as a result of her unlawful stop and arrest. After conducting hearings on the motions to suppress, the trial court denied the motions. In June of 2017, Pashia-McCormick filed a second motion for rehearing of her motion to suppress, in which she argued that the trial court should suppress evidence of her use of hydrocodone. On June 12, the trial court granted Pashia-McCormick's request to suppress evidence concerning her use of hydrocodone.

On June 13, the day the trial was set to begin, the State advised the trial court of its intent to appeal the trial court's ruling and requested that the trial court issue findings of fact and conclusions of law. The trial judge stated that he had a "great feeling" that the State was appealing the ruling for the purpose of delaying the trial. The State explained that it was appealing because the evidence is admissible and

relevant to the indictment and not to delay the case. After the trial judge stated that he believed the State had "delayed this case for over a year[,]" the State advised the trial judge that it would be filing a motion to recuse. After mentioning that the State had also objected to discovery requests in the case, the trial judge stated:

> I feel like recusing myself right now because I have hard feelings against you in this matter. And I think that you're doing this for purposes that have nothing to do with justice, have nothing to do with being fair to this defendant who is entitled to a trial, a fair trial. . . . One that provides discovery throughout the whole case about everything, and you wanted to deny that."

When the State informed the trial judge that the court was demonstrating a bias against the prosecution, the trial judge stated he was "demonstrating a dissatisfaction with the prosecution's attitude about getting this case tried."

The State appealed the trial court's order suppressing evidence of Pashia-McCormick's use of hydrocodone, and requested findings of fact and conclusions of law concerning the suppression issue. At 8:54 a.m. on June 30, defense counsel filed Defendant's Proposed Findings of Fact and Conclusions of Law. At 10:08 a.m. on June 30, the State filed a motion for recusal, alleging that the trial judge's impartiality might reasonably be questioned because the trial judge had a personal bias or prejudice against the State. At 11:29 a.m. on June 30, the trial judge signed an order approving Defendant's Proposed Findings of Fact and Conclusions of Law.

On July 5, the trial judge amended the findings of fact and conclusions of law by making handwritten entries on the document, and the amendments included adding a finding of fact and conclusion of law stating that "[i]n the interest of [j]ustice this case should be dismissed." That same day, the State filed a First Supplemental Motion for Recusal, in which it argued that the trial judge's actions following the filing of the State's recusal motion violated Rule 18a of the Texas Rules of Civil Procedure and showed the judge's partiality and bias against the State. On July 7, the trial judge signed an order granting the State's motion for recusal. On July 20, the State filed a motion to vacate the trial court's original and amended findings of fact and conclusions of law, arguing that the trial court's actions violated Rule 18a.

ANALYSIS

In issue one, the State challenges the trial court's suppression of evidence concerning Pashia-McCormick's use of hydrocodone. In issue two, the State argues that the trial court erred by entering and amending findings of fact and conclusions of law without good cause after the State filed a recusal motion. We address issue two first.

The record shows that after the State filed a motion for recusal and before the trial court signed an order granting the State's motion, the trial judge entered an order approving the defendant's proposed findings of fact and conclusions of law, and later

amended the findings of fact and conclusions of law. Rule 18a of the Texas Rules of Civil Procedure, which concerns the recusal and disqualification of judges, applies in criminal cases. *Arnold v State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993); *see* Tex. R. Civ. P. 18a. Rule 18a sets forth the procedure a party must follow to recuse a trial judge. Tex. R. Civ. P. 18a. Rule 18(a)(f) states that once a motion to recuse is filed, the trial judge, within three business days after the motion is filed, must either sign an order of recusal or sign an order referring the motion to the regional presiding judge. Tex. R. Civ. P. 18a(f)(1). A trial court's failure to take one of these two required actions renders subsequent orders void. *In re Marshall*, 515 S.W.3d 420, 422 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

Rule 18a(f) further provides that if a motion for recusal is filed before evidence is offered at trial, "the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record." Tex. R. Civ. P. 18a(f)(2)(A). The "good cause" required by Rule 18a must relate to the necessity of taking further action in a case in which a recusal motion is pending. *Marshall*, 515 S.W.3d 420 at 422. The trial judge did not state "good cause" in writing or on the record for taking further action by entering findings of fact and conclusions of law while the State's recusal motion was pending. *See id.* Because the record fails to show that "good cause" existed for the trial judge to enter findings of fact and conclusions of law before deciding whether to grant or refer the

motion to recuse, we conclude that the trial judge failed to comply with Rule 18a(f). *See* Tex. R. Civ. P. 18a(f); *Marshall*, 515 S.W.3d at 423. We further conclude that the trial judge's failure to comply with Rule 18a(f) renders the findings of fact and conclusions of law void. *See id.* We sustain the State's second issue.

As a result from having sustained issue two, we also sustain issue one. Accordingly, we reverse the trial judge's order granting Pashia-McCormick's motion to suppress evidence, and we vacate the trial judge's original and amended findings of fact and conclusions of law. We remand this cause to the trial court for a new suppression hearing with the judge who is currently assigned to hear the case. *See Garcia v. State*, 15 S.W.3d 533, 535-37 (Tex. Crim. App. 2000) (holding that on remand for required findings as to the voluntariness of a statement, defendant was entitled to new hearing with a new judge because the judge presiding over the first hearing was no longer available).

REVERSED AND REMANDED.

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STEVE McKEITHEN
Chief Justice

Submitted on October 11, 2017
Opinion Delivered November 8, 2017
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Before McKeithen, C.J., Kreger and Horton, JJ.