

NOTICE
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2014 IL App (5th) 130194-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NOS. 5-13-0194, 5-13-0195, and 5-13-0196 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Massac County.
)	
v.	)	No. 12-DT-75
)	
MICHAEL B. RILEY,	)	Honorable
	)	Mark M. Boie,
Defendant-Appellee.	)	Judge, presiding.

THE PEOPLE OF THE STATE OF ILLNOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Massac County.
)	
v.	)	No. 11-DT-57
)	
JOSEPH T. POWERS,	)	Honorable
	)	Mark M. Boie,
Defendant-Appellee.	)	Judge, presiding.

THE PEOPLE OF THE STATE OF ILLNOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Massac County.
)	
v.	)	No. 12-DT-62
)	
ASHLEY SEXTON,	)	Honorable
	)	Mark M. Boie,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* Where the State's failure to produce a video recording of defendants' stop and arrest is the result of mere inadvertence, it cannot be deemed a discovery violation that warrants exclusion of the testimony of the state trooper who conducted the stop and arrest.

¶ 2 Defendants, Joseph T. Powers, Ashley D. Sexton, and Michael B. Riley, were charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)). Defendants subsequently filed motions for discovery pursuant to Supreme Court Rule 412 (eff. Mar. 1, 2001), requesting that the State provide video recordings of the arrests made from the camera located inside the state trooper's vehicle. After the State was unable to provide video recordings of the arrests as directed by section 30 of the State Police Act (20 ILCS 2610/30 (West 2010)), the circuit court of Massac County granted defendant Powers' motion to suppress evidence and quash arrest, defendant Sexton's motion to suppress evidence, and defendant Riley's motion to suppress evidence and quash arrest, barring each state trooper from testifying as to any of the events surrounding the arrests. The State timely filed a notice of appeal and a certificate of substantial impairment.

¶ 3 The State raises two issues on appeal: (1) whether the failure to record defendants' arrests pursuant to section 30 of the State Police Act (20 ILCS 2610/30 (West 2010)) constitutes a discovery violation and whether the resulting barring of evidence as a sanction for failure to comply with the statute was appropriate, and (2) whether

defendants satisfied their burden of proof that suppression was justified. We reverse and remand for further proceedings.

¶ 4

BACKGROUND

¶ 5 This is a consolidated appeal. Defendants, in their separate cases, were each charged with DUI. Each DUI arrest was made at a roadside safety check organized by the Illinois State Police at the intersection of U.S. Highway 45 and Devers Road in Metropolis, Massac County, Illinois.

¶ 6 At approximately 11:59 p.m. on June 25, 2011, Illinois State Trooper Timothy Baker approached defendant Powers' vehicle and observed Powers to have an odor of alcohol coming from his breath. At approximately 1:40 a.m. on June 24, 2012, Illinois State Trooper Brian Graff approached defendant Sexton's vehicle and observed Sexton to have slurred speech, delayed movement, red bloodshot eyes, and difficulty finding her insurance card. At approximately 1:27 a.m. on August 19, 2012, Illinois State Trooper Timothy Baker approached defendant Riley's vehicle and observed Riley to have an odor of alcohol coming from his breath.

¶ 7 At each separate date and time, the state trooper on duty instructed defendants to pull their vehicle over to a secondary screening area after suspecting that alcohol may have impaired their ability to operate a vehicle. When pulled over, each defendant was questioned by the state trooper and asked to step out of the vehicle to perform standardized field sobriety testing. Each defendant was arrested for DUI after failing the standardized field sobriety test. Each defendant was then transported to the Massac County jail where they were issued a citation for DUI.

¶ 8 Following the DUI citations, each defendant filed a motion for discovery pursuant to Supreme Court Rule 412, requesting the State to turn over any audio/video recordings of the scene of their stop and arrest, scene of the field sobriety test, or any other potential evidence. Although the State provided the video recordings requested, the video recording did not display any visual of the defendants' arrests or any interaction between defendants and the state trooper. Defendants subsequently filed motions to suppress evidence and quash arrest. The circuit court granted defendants' motions to suppress evidence and quash arrest, effectively placing a discovery violation sanction against the State that barred the state trooper involved in each DUI arrest from introducing any testimony surrounding the events of defendants' arrests.

¶ 9 The State now appeals.

¶ 10 STANDARD OF REVIEW

¶ 11 The State argues a *de novo* standard. We agree with defendants that the standard is abuse of discretion as per *People v. Kladis*, 2011 IL 110920, ¶ 23, 960 N.E.2d 1104.

¶ 12 ANALYSIS

¶ 13 The primary issue on appeal is whether the failure to comply with section 30 of the State Police Act (Act) (20 ILCS 2610/30 (West 2010)) constitutes a discovery violation for which the court can impose a sanction. Defendants contend the trial court did not abuse its discretion in excluding video recordings and testimony concerning their arrests as a sanction for the State's alleged discovery violation of failing to turn over mandated video recordings of defendants' arrests.

¶ 14 The State does not dispute that it violated the Act by failing to video record defendants' DUI arrests. However, the State does dispute the circuit court's finding that the State's violation of the Act constituted a discovery violation for which the court could impose a sanction that barred the arresting officers from testifying as to any and all matters surrounding defendants' arrests. The State contends its failure to video record defendants' field sobriety tests and arrests is not a discovery violation and there is no basis for exclusion of testimony. The State asserts no sanction is appropriate from the facts of these cases as there was no willful or deliberate action on its part. We conclude that the State's failure to record the traffic stops in the instant cases was inadvertent. For the following reasons, we reverse and remand for further proceedings.

¶ 15 A trial court's decision to impose sanctions is reviewed under an abuse of discretion standard. *People v. Kladis*, 2011 IL 110920, ¶ 23, 960 N.E.2d 1104. A trial court abuses its discretion when its decision is " 'fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it.' " *Kladis*, 2011 IL 110920, ¶ 23, 960 N.E.2d 1104 (quoting *People v. Ortega*, 209 Ill. 2d 354, 359, 808 N.E.2d 496, 500-01 (2004)).

¶ 16 The Illinois Supreme Court has held that videotapes are discoverable in misdemeanor DUI cases. *Kladis*, 2011 IL 110920, ¶ 29, 960 N.E.2d 1104. In *Kladis*, the supreme court upheld the judgment of the appellate court that granted the defendant's motion for sanctions and barred the State from testifying as to the events surrounding the defendant's arrest after it was discovered that the State destroyed the police squad car's recording of the defendant's arrest.

¶ 17 The court in *Kladis* noted:

"[T]he use of video recordings as evidence at trial has become a common practice to allow a defendant the opportunity to present an effective defense and to further the truth-seeking process." *Kladis*, 2011 IL 110920, ¶ 28, 960 N.E.2d 1104.

¶ 18 The court in *Kladis* emphasized that courts across the country have become more dependent upon video recordings to present an objective view of the facts in litigation. The court noted that through the Act, the General Assembly stressed the great importance of the production and preservation of video and audio recordings of law enforcement actions. *Kladis*, 2011 IL 110920, ¶ 30, 960 N.E.2d 1104. The court found video recordings of arrests to be relevant and significant evidence that falls within the scope of materials held to be discoverable.

¶ 19 The State distinguishes *Kladis* from the instant cases. The State asserts the destruction of video recordings that occurred in *Kladis* and the failure of the State to produce video recordings of the traffic stops in the instant cases are two different situations. The State contends *Kladis* does not apply to the instant cases because there was no destruction of any videotape and the State disclosed exactly what it possessed, arguing the circuit court should not have imposed a discovery sanction because the State committed no intentional violation of a discovery rule. We agree with the State.

¶ 20 Unlike in *Kladis*, the State in the instant cases did not destroy an existing, discoverable piece of evidence. Rather, the State's failure to produce video recordings of defendants' DUI arrests was inadvertent and not the result of willful, deliberate intent.

¶ 21 The instant cases are more analogous to *People v. Borys*, 2013 IL App (1st) 111629, 995 N.E.2d 499, which involved a defendant who was convicted of aggravated DUI (625 ILCS 5/11-501(d) (West 2010)). On appeal, the defendant argued the trial court erred by permitting the arresting officer to testify about events that occurred during the traffic stop because the patrol vehicle was not equipped to make an audio/video recording as mandated by statute. The defendant alleged that the appropriate remedy for the State's noncompliance with section 30 of the Act was to remand for a new trial where the State is barred from introducing the arresting officer's testimony about events that should have been captured on the mandated audio and video recordings.

¶ 22 The appellate court found no error occurred in the trial court's admission of the arresting officer's testimony, as the admission of evidence was within the trial court's discretion and should not be reversed without a clear showing of abuse of that discretion. *Borys*, 2013 IL App (1st) 111629, ¶ 22, 995 N.E.2d 499. The court stated: "Nothing in the plain and unambiguous language of section 30 of the Act indicates that an officer's testimony concerning a traffic stop is inadmissible if his patrol vehicle does not have the required video recording equipment." *Borys*, 2013 IL App (1st) 111629, ¶ 22, 995 N.E.2d 499.

¶ 23 The defendant in *Borys* relied on *Kladis* to support her claim that the arresting officer's testimony was inadmissible. As discussed above, the supreme court in *Kladis* upheld the judgment of the appellate court that granted the defendant's motion for sanctions and barred the State from testifying as to the events surrounding the defendant's

arrest after it was discovered the State destroyed the police squad car's recording of the defendant's arrest.

¶ 24 The appellate court in *Borys* distinguished its facts from *Kladis*, noting that the State in its case did not destroy an existing, discoverable piece of evidence. The appellate court found *Kladis* did not support the defendant's assertion that the absence of functioning video equipment in a patrol car renders an officer's testimony about the traffic stop inadmissible in a criminal trial. The court indicated *Kladis* found no abuse of discretion where the trial court precluded an officer's testimony regarding the recorded portion of a traffic stop as a sanction for the State's discovery violation resulting from the State's failure to inform the police department to preserve the recording which was subsequently destroyed.

¶ 25 Specifically, the court in *Borys* indicated:

"Unlike in *Kladis*, the State in the instant case did not destroy an existing, discoverable piece of evidence. Moreover, defendant did not allege before or at the trial that a discovery violation occurred. In addition, section 30 of the Act gives the Department of State Police discretion to continue using patrol cars despite recording problems and technical difficulties based upon the public interest." *Borys*, 2013 IL App (1st) 111629, ¶ 28, 995 N.E.2d 499.

¶ 26 Defendants have not alleged the State withheld any evidence, and have not alleged any bad faith or due process violation by the State. The record reveals the State turned over all discovery in its possession, including the recordings of the enforcement stops that failed to video record the stops, but did record the voices of the officers and defendants

during the field sobriety tests. As the State indicates, this was the most the State could disclose pursuant to Supreme Court Rule 412 because it is all that existed. Ill. S. Ct. R. 412 (eff. Mar. 1, 2001). Accordingly, the State did not commit a discovery violation.

¶ 27 The instant cases also resemble *People v. Strobel*, 2014 IL App (1st) 130300, 14 N.E.3d 1202, which involved a defendant who was charged with misdemeanor DUI (625 ILCS 5/11-501(a)(2) (West 2012)). In *Strobel*, the defendant requested all video and audio recordings produced from the squad car involved in his DUI stop and arrest. The police department gave the squad car's video to the defendant's attorney, but the video did not contain any audio.

¶ 28 The defendant subsequently requested an order excluding any testimony from the State's witnesses regarding events captured on the squad car's video, asserting the absence of audio on the video recording amounted to the destruction of evidence which constitutes a discovery violation. Relying on *Kladis*, the defendant argued that traffic stop videos are to be preserved until final disposition of a case and sanctions against the State preventing it from using the officer's testimony and the video evidence may be imposed where the video evidence was destroyed after being requested. The trial court granted the defendant's motion *in limine* and for discovery sanctions, and the State appealed.

¶ 29 On appeal the State argued the trial court abused its discretion when it imposed a discovery sanction barring testimony and video evidence of the defendant's stop and arrest. The State argued no discovery violation occurred because it produced all that it possessed and controlled, which was the video recording of the incident lacking audio.

¶ 30 The appellate court agreed with the State, finding the trial court abused its discretion in barring any testimony concerning the defendant's arrest and prohibiting the video evidence showing the defendant's performance of field sobriety tests because it lacked audio on the video recording. The court determined the State did not commit a discovery violation because it never destroyed any evidence, as no audio recording ever existed.

¶ 31 Similar to the facts in *Strobel*, the State in the instant cases never destroyed any evidence as video recording never existed. The failure of the state trooper's camera to record defendants' stops and arrests was not the result of willful, deliberate choice, but rather inadvertence. Accordingly, the State did not commit a discovery violation.

¶ 32 Defendants argue the State has a statutory duty pursuant to section 30 of the Act to produce video recordings of any enforcement stop that results from any violation of the Illinois Vehicle Code, including defendants' DUI arrests. Defendants cite *People v. Cunningham*, 332 Ill. App. 3d 233, 249, 773 N.E.2d 682, 695 (2002), which found that the State has a duty to use due diligence to assure that it becomes cognizant of discoverable matters and must see that there is an appropriate flow of information between all the branches and personnel of its law enforcement agencies and legal officers.

¶ 33 Statutes are deemed mandatory if the intent of the legislature directs a certain consequence from noncompliance with the statute. *Pullen v. Mulligan*, 138 Ill. 2d 21, 561 N.E.2d 585 (1990). As the supreme court expressed in *Kladis*, the legislative intent reflected in the Act is to record traffic stops so those recordings can serve as objective

evidence that assists in the truth-seeking process. *Kladis*, 2011 IL 110920, ¶ 34, 960 N.E.2d 1104. Defendants indicate that when the supreme court has interpreted a statute, that interpretation attaches itself to the statute unless and until the legislature amends it in a manner contrary to that interpretation. *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 387, 712 N.E.2d 298, 302 (1998).

¶ 34 While defendants accurately indicate the State has a statutory duty to produce video recordings of enforcement stops pursuant to section 30 of the Act, defendants incorrectly assert that duty is mandatory rather than directory. As noted above, the court in *Borys* specifically addressed section 30's statutory duty:

"Nothing in the plain and unambiguous language of section 30 of the Act indicates that an officer's testimony concerning a traffic stop is inadmissible if his patrol vehicle does not have the required video recording equipment. [Citation.] Section 30 is a legislative directive to the Department of State Police to install recording equipment in squad cars and to preserve the recordings for a minimum time period; it does not address criminal procedure or the admission of evidence in a criminal trial." *Borys*, 2013 IL App (1st) 111629, ¶ 22, 995 N.E.2d 499.

¶ 35 In the instant cases, the State abided by section 30's statutory duty. It was by mere inadvertence defendants' stops and arrests were not recorded by the video recording equipment located in the state trooper's vehicle.

¶ 36 The next issue the State raises on appeal is whether the trial court's sanction for the State's discovery violation that barred the state trooper's testimony concerning defendants' arrests was appropriate. The State asserts that the Act does not provide a

remedy for when an enforcement stop is not recorded, and, therefore, the trial court erred in barring testimony as a sanction for the State's discovery violation. Because we find no discovery violation from the State's failure to turn over video recording of defendants' arrests, this court need not address this issue. However, we will briefly discuss the matter.

¶ 37 We review a trial court's imposition of a discovery sanction under the abuse of discretion standard. *People v. Ramsey*, 239 Ill. 2d 342, 429, 942 N.E.2d 1168, 1216 (2010). "An abuse of discretion exists only where the trial court's decision is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court." *Ramsey*, 239 Ill. 2d at 429, 942 N.E.2d at 1216.

¶ 38 Defendants cite to *Kladis*, which found that a discovery violation sanction is a decision properly left to the trial court whose decision shall be given great weight. *Kladis*, 2011 IL 110920, ¶ 42, 960 N.E.2d 1104. The court in *Kladis* concluded that the "trial court is in the best position to determine an appropriate sanction based upon the effect the discovery violation will have on the defendant." *Kladis*, 2011 IL 110920, ¶ 42, 960 N.E.2d 1104.

¶ 39 Defendants accurately indicate discovery sanctions are within the court's discretion and there is no specific discovery sanction required. However, it does not apply to the instant cases because the State did not commit a discovery violation. The trial court would have had discretion to appropriately sanction the State in the instant cases if a discovery violation occurred, but no discovery violation occurred.

¶ 40 Also on appeal the State contends defendants did not satisfy their burden of presenting evidence sufficient to support the circuit court's order barring evidence as a sanction for the State's failure to comply with the Act. The State argues that defendants' failure to establish prejudice supports a reversal. Because we find the State did not commit a discovery violation, this court need not address this issue.

¶ 41 **CONCLUSION**

¶ 42 For the reasons stated herein, we reverse the judgment of the circuit court of Massac County and remand the cause for further proceedings.

¶ 43 Reversed and remanded.