

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-0433

HENRY SULLIVAN JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
John Miller, Judge.

October 14, 2026

ROWE, J.

Henry Sullivan Jr. appeals his judgment and sentence for possession of a controlled substance. He argues that the trial court erred when it failed to conduct a proper inquiry after a discovery violation by the State and when it failed to grant his motion for mistrial. Sullivan asserts that his defense was procedurally prejudiced by the State's late disclosure of statements between law enforcement and Sullivan about a substantial assistance agreement. We reverse and remand for a new trial.

In May 2023, Pensacola Police Department (PPD) officers conducted a traffic stop after they saw Sullivan roll through a stop sign. The officers searched Sullivan's pockets and found two baggies containing a white powdery substance. The officers

submitted the baggies to their evidence department. But Sullivan was not arrested that night. In January 2024—eight months after the traffic stop—Sullivan was arrested. And a few weeks later, PPD sent the two baggies recovered from Sullivan to the Florida Department of Law Enforcement (FDLE) for testing. The State charged Sullivan with possession of a controlled substance, and the case went to trial.

In the opening statement, the defense emphasized the nine-month delay between when the police seized the baggies from Sullivan and when they sent the contents of the baggies to FDLE for testing. The defense suggested that the delay between the traffic stop and the evidence's submission to FDLE created reasonable doubt as to Sullivan's guilt.

Two PPD officers and an FDLE laboratory analyst testified for the State. The officers described the traffic stop. The analyst explained how she determined that the substance submitted to FDLE was cocaine. Defense counsel cross-examined all three witnesses about their handling of the baggies during the eight months between the traffic stop and the State filing charges against Sullivan.

Because the defense's cross-examination was designed to call into question the chain of custody and handling of the baggies during the eight-month delay, the State asked to proffer testimony from one of the officers to explain the delay. The court allowed the proffer. The officer explained that Sullivan was not immediately arrested after the traffic stop because Sullivan agreed to act as a confidential informant and provide substantial assistance leading to the arrest of others. But in the months that followed, Sullivan failed to provide law enforcement with any significant leads. Sullivan was then arrested in January 2024.

Immediately after the proffer, the defense requested a *Richardson** inquiry, arguing that the State's failure to disclose the substantial assistance agreement was a discovery violation. The

* *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

State responded that it learned of the agreement only after the defense began questioning the officers about the chain of custody.

The trial court determined no discovery violation occurred because the State had just learned about the agreement and Sullivan was not prejudiced by the late disclosure. The court allowed the State to present the officer's proffered testimony about the chain of custody and delay issues that the defense had raised. The State rested.

The defense called the girlfriend of Sullivan's son. She testified that Sullivan's son placed the baggies in Sullivan's pocket without his knowledge. Then, the defense rested and moved for a mistrial based on the alleged discovery violation. The court denied the motion. The jury found Sullivan guilty of possession of a controlled substance, and the trial court sentenced him to sixty months in prison. This appeal follows.

Sullivan argues that the trial court reversibly erred when it failed to conduct an adequate *Richardson* inquiry and when it denied his motion for mistrial. Because the State violated the discovery rules by not disclosing the substantial assistance agreement, he contends that his defense was prejudiced by the failure to disclose the agreement.

The State's failure to disclose the substantial assistance agreement until mid-trial was a discovery violation. The State must disclose "any written or recorded statements and the substance of any oral statement made by the defendant." Fla. R. Crim. P. 3.220(b)(1)(C). Here, there is no dispute about the statements by Sullivan accepting the officers' proposal to act as a confidential informant. That the prosecutor did not know of the statements until trial is irrelevant. Prosecutors are charged with constructive knowledge of information known by police officers. *Gorham v. State*, 597 So. 2d 782, 784 (Fla. 1992).

The trial court was therefore required to conduct a *Richardson* inquiry. In making that inquiry, the trial court had to assess whether Sullivan was prejudiced by the alleged violation. *Wilson v. State*, 261 So. 3d 723, 725–26 (Fla. 1st DCA 2018). That assessment required the trial court to consider *at least* these three factors: (1) whether the violation was "inadvertent or [willful]"; (2)

“whether the violation was trivial or substantial”; and, “most importantly,” (3) what effect the violation had on Sullivan’s ability to “properly prepare for trial.” *Richardson*, 246 So. 2d at 775.

The trial court properly considered the first factor and determined that the State did not intentionally withhold the information. But the court did not consider whether the violation was trivial or substantial and what effect the violation had on Sullivan’s ability to prepare for trial. Thus, the court’s *Richardson* inquiry was incomplete.

When a trial court fails to conduct an adequate *Richardson* inquiry, the appellate court must apply the special harmless error test set out in *State v. Schopp*, 653 So. 2d 1016 (Fla. 1995), to determine whether the discovery violation was harmless. Under that test, the appellate court can find harmless a trial court’s failure to conduct an adequate *Richardson* inquiry “only if [it] can say beyond a reasonable doubt that the defense was not procedurally prejudiced by the discovery violation.” 653 So. 2d at 1021. “[T]he defense is procedurally prejudiced if there is a reasonable possibility that the defendant’s trial preparation or strategy would have been materially different had the violation not occurred.” *Id.* at 1020.

On the record before us, we cannot say beyond a reasonable doubt that the State’s discovery violation did not procedurally prejudice Sullivan’s defense. The defense’s trial strategy hinged on the unexplained nine-month delay between the traffic stop and the evidence’s submission to FDLE for testing. The defense sought to raise reasonable doubt as to whether the baggies submitted to FDLE for testing were the same as those seized from Sullivan during the traffic stop. There is a reasonable possibility that, had the defense known of the substantial assistance agreement between Sullivan and the police, it would have chosen a different trial strategy to avoid the prejudice associated with Sullivan’s work as a confidential informant. *See Young v. State*, 369 So. 3d 1243, 1252 (Fla. 6th DCA 2023) (explaining that “[a]n offer to be an informant implies actual knowledge of drugs or drug dealing” and that “possessing such knowledge is entirely inconsistent” with the defense that the drugs were not the defendant’s).

Sullivan was no doubt aware of his statements to police regarding the substantial assistance agreement and his work as a confidential informant. Even so, Sullivan’s defense counsel is not charged with constructive knowledge of Sullivan’s statements to police. The State failed to disclose those statements to the defense. And on this record, we cannot say beyond a reasonable doubt that had the State provided to defense counsel statements by his client “that directly undermined his trial strategy, he would not have altered his trial strategy or preparation in a manner that could have reasonably benefitted” Sullivan. *Id.*

For these reasons, we cannot conclude that the trial court’s failure to conduct an adequate *Richardson* inquiry was harmless under the *Schopp* standard. We thus grant Sullivan a new trial, and we need not decide whether the court abused its discretion in denying Sullivan’s motion for mistrial. *See id.* at 1246 (“Because we grant Young a new trial based on the trial court’s failure to conduct a *Richardson* hearing, we need not decide whether the trial court erred by denying Young’s motion for mistrial.”).

REVERSED and REMANDED for a new trial.

LEWIS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Kasey Lacey, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Amanda Bosman, Assistant Attorney General, Tallahassee, for Appellee.