

Circuit Court for Wicomico County
Case No: C-22-CV-18-000060

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 673

September Term, 2019

JERMAINE HARRIS

v.

WICOMICO COUNTY STATES ATTORNEY

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 5, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Jermaine Harris, appellant, filed a Maryland Public Information Act (“MPIA”) request with the Wicomico County State’s Attorney Office (the “State’s Attorney”), appellee, seeking the complete file associated with his 2008 conviction for murder in the first degree. In 2018, Mr. Harris acknowledged that, in response to his request, the State’s Attorney had provided the “file except for two items that he [was] aware of.” He first contended that the State’s Attorney failed to provide the “whole interview by [Detective] Larry Corregan with [witness] Mr. Kellam” and, instead, provided a DVD of the interview which “[did] not start at the beginning.” Secondly, he contended that the State’s Attorney withheld a DVD of the interview by Detective Donohoe with witness, Mr. Kellam and his mother. It was the State’s Attorney’s position that they did not possess the two items sought by Mr. Harris.

In response, Mr. Harris filed a petition for judicial review in the Circuit Court for Wicomico County. Following a January 2019 hearing, the court granted, in part, a motion to compel filed by Mr. Harris, permitting him to send a designated representative to the State’s Attorney’s Office to review his entire file. After reviewing the file, Mr. Harris contended in a May 2019 hearing that he had identified “five or six recordings that [were] not present” in the State’s Attorney’s file, despite the file containing a list which suggested that the recordings had been in the State’s Attorney’s possession at one point in time. The State’s Attorney maintained that they were not currently in possession of the items sought by Mr. Harris and had complied with the MPIA request to the best of its ability. Ultimately, the court held that “the MPIA request [had] been complied with” and denied Mr. Harris’s petition.

On appeal, Mr. Harris presents two questions for our review, which we have rephrased and consolidated into one:¹

1. Was it clear error for the circuit court to find that the State’s Attorney’s Office had complied with Mr. Harris’s MPIA request for recordings it denied having in its possession?

For the following reasons, we shall affirm the judgment of the circuit court.

DISCUSSION

The State’s Attorney, upon receiving Mr. Harris’s MPIA request, was required to “conduct a search in good faith that [was] reasonably designed to capture all responsive records.” *Glass v. Anne Arundel County Maryland, et. al.*, 453 Md. 201, 232 (2017). In determining the reasonableness of its search, the court was tasked with measuring “prospectively...how the [State’s Attorney] designed the effort to find responsive records, not retrospectively by its success in locating every responsive record.” *Id.* “A search may be reasonable and adequate without being perfect.” *Id.* Moreover, the State’s Attorney was “not expected to divert its resources to an exhaustive search in response to a broadly worded request...at an expense that will not be recovered.” *Id.*

So, at the crux of the dispute between the parties is whether the State’s Attorney performed an adequate search for the alleged missing recordings in response to Mr.

¹ The first question posed by Mr. Harris on appeal asks whether “the circuit court err[ed] when it ruled judicial review [was] an improper venue, regarding a MPIA request dispute.” This question misconstrues some “unsolicited advice” given by the court as the basis for its overall decision. On the contrary, the court merely suggested that Mr. Harris was not using the “proper vehicle” for his overall ends and that he should consider “a Post Conviction proceeding.” Moreover, the ultimate basis of the court’s opinion denying his MPIA petition was premised on the State’s Attorney’s compliance with the MPIA request and not on the issue of venue.

Harris’s MPIA request. Though Mr. Harris provided a 2008 chain of custody log which suggested that the State’s Attorney possessed the sought-after recordings at some point in time, Mr. Harris could not show that the recordings remained in the State’s Attorney’s possession at the time of his request and, if so, where the recordings would be if not in his file. Moreover, Carsten Wendlandt, the public information officer for the State’s Attorney, offered explicit testimony that the office had “produced the entire case file as it exists with [the State’s Attorney] to Mr. Harris.”

With regard to the interview which “did not start at the beginning,” Mr. Wendlandt testified that there were problems “with the recordings from...Delaware State Police at Troop 4 in Georgetown” and that the recordings “may have started at different times” such that the beginning of the interview may not have been recorded at all. Mr. Wendlandt further testified that there were recordings “that were recorded on proprietary software that [the State’s Attorney] no longer [had] access to from Delaware State Police.” As to any related 911 recordings, Mr. Wendlandt testified that there were no such recordings in the file.

The record does not reveal any evidence that the State’s Attorney failed to make a diligent effort to search for the records. On the contrary, Mr. Wendlandt testified that in response to the multiple MPIA requests made by Mr. Harris, he and other assistant state’s attorneys had reviewed his case file and responded to each request in turn. Though Mr. Harris suggested that the court direct the State’s Attorney to go further and search every file from every murder case in its possession to recover the recordings, it was not improper for the court to reject this proposal as it would have imposed an undue burden and expense

on the State’s Attorney. Moreover, given the opportunity to cross-examine Mr. Wendlandt, Mr. Harris failed to elicit any testimony regarding any other potential location, outside of his case file, where the alleged missing recordings might be. Therefore, even if the court suspected that the missing recordings were at some unknown location within the State’s Attorney’s office, the court could not direct the State’s Attorney to search in some potential location where the records might be held, as no potential location had been specified. Lastly, the record contains no evidence that the State’s Attorney had deliberately hidden the recordings sought by Mr. Harris.

Because the record contains competent and material evidence that the State’s Attorney made diligent efforts to search for the recordings requested by Mr. Harris and provided his entire case file for review, the circuit court’s finding that the State’s Attorney had complied with the MPIA request did not constitute clear error.

**JUDGMENT OF THE CIRCUIT
COURT FOR WICOMICO COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**