

[Cite as *State v. Vrapı*, 2012-Ohio-1018.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-700
v.	:	(M.C. No. 2011 CRB 011214)
	:	
Eduart Vrapı,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 13, 2012

Richard C. Pfeiffer, Jr., City Attorney, and *Orly Ahroni*, for appellant.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellee.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶ 1} Plaintiff-appellant, the state of Ohio (the "state"), appeals the judgment of the Franklin County Municipal Court, which dismissed a criminal trespass charge against defendant-appellee, Eduart Vrapı ("appellee"). For the following reasons, we reverse that judgment and remand the matter to the trial court with instructions to reinstate the charge.

I. BACKGROUND

{¶ 2} Appellee was served with a summons for his charge on May 26, 2011. He pleaded not guilty and asserted his right to a speedy trial. He also requested the assistance of an Albanian interpreter. On June 16, 2011, he filed a discovery request, but the record does not indicate whether or when the state responded to that request. Next, a trial was scheduled for July 5, 2011, however appellee requested a continuance on that date because an interpreter was not available. The trial was rescheduled for July 21, 2011, but it was later continued on the court's own motion to July 25, 2011.

{¶ 3} An interpreter was still not available when the parties met for trial on July 25, 2011, and the court concluded that it was the last day to bring appellee to trial under Ohio's speedy trial statutes. The court asked if the prosecutor agreed, and although she initially said that she did, she stated later that the trial could be rescheduled due to events that tolled speedy trial time. The court rejected that argument and dismissed appellee's criminal trespass charge. The prosecutor objected to the dismissal.

II. ASSIGNMENT OF ERROR

{¶ 4} The state filed a timely notice of appeal and assigns the following as error:

The trial court erred when it dismissed Appellee's case on statutory speedy trial grounds because at the time of the dismissal, Appellee's speedy trial time had not expired.

III. DISCUSSION

{¶ 5} In its single assignment of error, the state argues that the trial court erred by dismissing appellee's criminal trespass charge. We agree.

{¶ 6} The trial court dismissed the charge after concluding that appellee was not brought to trial within the time allowed under the speedy trial statutes. "The proper standard of review in speedy trial cases is to simply count the number of days passed, while determining to which party the time is chargeable, as directed in R.C. 2945.71 and 2945.72." *In re F.S.*, 10th Dist. No. 11AP-244, 2011-Ohio-6135, ¶ 7, quoting *State v. Gonzalez*, 10th Dist. No. 08AP-716, 2009-Ohio-3236, ¶ 9. Because appellee's criminal

trespass charge was a fourth-degree misdemeanor, his trial had to occur within 45 days of service of summons unless time tolled. *See* R.C. 2945.71 and 2945.72.

{¶ 7} Under R.C. 2945.72(E), a defendant's discovery request tolls speedy trial time. *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, ¶ 26. Appellee filed a discovery request, but the record does not indicate that the state ever responded to it. Consequently, tolling occurred during what would have been a reasonable time for the state's response. *See State v. Truitt*, 10th Dist. No. 10AP-473, 2010-Ohio-5972, ¶ 12. While discovery can sometimes be turned over immediately in an uncomplicated case, and the state may have done so here, we conclude that the 19 days from the discovery request to the original date of trial was a reasonable tolling period. In addition, under R.C. 2945.72, speedy trial time tolled for an additional 16 days because of the continuance appellee obtained to reschedule the trial from July 5 to July 21, 2011. *See* R.C. 2945.72(H). Based on these tolling events, only 25 days of speedy trial time passed between the service of summons and the date the trial court dismissed appellee's charge. Accordingly, the trial court erred by dismissing the charge well before the time to bring appellee to trial had expired.

{¶ 8} Nevertheless, appellee contends that the state forfeited its arguments against the dismissal because the prosecutor initially agreed with the trial court that the last day to start the trial was July 25, 2011. As the discussion evolved in the trial court, however, the prosecutor argued that tolling events extended the time to bring appellee to trial. The trial court and both counsel discussed the issue at length, and the prosecutor objected when the trial court dismissed appellee's charge. Therefore, this is not a case where there was no challenge in the trial court against appellee's charge being dismissed, and we conclude that the state did not forfeit its arguments against the dismissal.

{¶ 9} In any event, we review a speedy trial case by independently calculating when the time to bring a defendant to trial expires. *See In re F.S.* at ¶ 7. Given our calculation of speedy trial time here, we have concluded that the trial court erred by

dismissing appellee's charge. Accordingly, we sustain the state's single assignment of error.

IV. CONCLUSION

{¶ 10} Having sustained the state's single assignment of error, we reverse the judgment of the Franklin County Municipal Court. We remand the matter to that court with instructions to reinstate appellee's criminal trespass charge.

*Judgment reversed;
cause remanded with instructions.*

BROWN, P.J., and KLATT, J., concur.
