

[Cite as *State v. Lane*, 2002-Ohio-2847.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO

CASE NUMBER 14-01-34

PLAINTIFF-APPELLEE

v.

OPINION

PAUL LANE

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment reversed and cause remanded.

DATE OF JUDGMENT ENTRY: May 30, 2002.

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Shaw, P.J.

{¶1} This is an appeal from a judgment of the Union County Court of Common Pleas following a jury trial in which Defendant-Appellant, Paul Lane (Lane) was found guilty of Trafficking in Marijuana and Complicity to Trafficking in Marijuana after the trial court prohibited him from presenting an entrapment defense and issuing a subpoena *duces tecum* for the reason that they were not timely filed pursuant to local rules.

{¶2} On June 18, 2001, Lane was indicted on one count of Trafficking Marijuana and one count of Complicity to Trafficking in Marijuana, felonies of the fifth degree, for participating in the sale of marijuana with an informant of the Union County Sheriff's Department. On September 14, 2001, Lane filed a pretrial statement which disclosed that Lane was going to assert a defense of entrapment. Later that day, the State filed a Motion to Strike based on Local Rule 25.10 which provides,

{¶3} **“Defense Counsel shall sign a receipt for the discovery packet, which receipt will contain an agreement for reciprocal discovery to the prosecutor pursuant to Crim.R. 16(C). That material shall include a statement of the nature of the defense (e.g. alibi,**

**mistaken identity, lack of criminal intent, validity of the statute).
Reciprocal discovery shall be delivered within 30 days of the receipt of
the discovery packet.”**

{¶4} Also on September 14, 2001, Lane requested that two subpoenas *duces tecum* be served on law enforcement officials for records pertaining to an informant who was being called as a state's witness.

{¶5} On September 17, 2001, the scheduled day of trial, the trial court sustained the State's Motion to Strike. Additionally, without allowing any argument on the issue, the court refused to allow the requested subpoenas as the requests were not timely pursuant to Union County Local Rule 22.01 which provides,

{¶6} “Except for good cause shown, the Clerk shall not be required to issue subpoenas, nor the Sheriff required to serve the same, unless requests are made with the Clerk at least three (3) business days prior to the time for trial.”

{¶7} A jury found Lane guilty on both counts of the indictment. He now appeals asserting two assignments of error. The first asserts,

{¶8} “The trial court erred in prohibiting Appellant from introducing evidence regarding the affirmative defense of entrapment, thereby depriving him of his right to a fair trial, to present a complete defense, and to due process of law as guaranteed by the sixth and fourteenth amendments to the United States Constitution and comparable provisions of the Ohio Constitution.”

{¶9} Pursuant to Crim. R. 16(C) a defendant in a criminal case who receives discovery from the state is required to provide the prosecution with reciprocal discovery information including generally, documents and tangible objects, reports of examinations and tests, and witness names and addresses.

Additionally, Crim.R. 12.1 provides that a defendant who wishes to assert an alibi defense must give notice to the prosecution at least seven days before trial.

Similarly, Crim. R. 12(B) provides for the raising of certain procedural defenses and/or motions to suppress which may have the effect of revealing a defense or defense strategy before trial. However, nothing in the Ohio Criminal Rules of Procedure (or in the related provisions of the Ohio Revised Code) requires a criminal defendant to expressly disclose any other substantive defense he may have, or anticipate having, as part of the discovery process or otherwise, in advance of trial.

{¶10} It appears that several states have adopted criminal rules which require a defendant to divulge its defenses prior to trial. See e.g., Ark.R.Crim.P.18.3; Colo.R.Crim.P.16 II(c), N.H.Super.Ct.R.101, Ariz.R.Crim.P. 15.2(b). Likewise, the Supreme Court indicated in *Williams v. Florida* (1970), 399 U.S. 78, 85 that "[n]othing in the Fifth Amendment privilege entitles a defendant to await the end of a state's case before announcing the nature of his defense."

{¶11} However, to date, the Supreme Court of Ohio in conjunction with the Ohio General Assembly to date have not promulgated or adopted a similar rule. Moreover, as an expression of Supreme Court and legislative intent, we find the lack of a broad rule all the more significant in view of the fact that, as noted earlier, Ohio has specifically enacted such a rule with regard to the alibi defense, and certain limited procedural defenses. As a result, to the extent that Union

County Common Pleas Court Local Rule 25.10 purports to require a criminal defendant to notify the state of any defenses (other than the alibi defense) prior to trial, we find that Rule 25.10 is inconsistent with the language and intent of the Ohio Rules of Criminal Procedure and is therefore, invalid. Moreover, the timetable for disclosure of the alibi defense is to be governed by Crim. R. 12.1.

{¶12} Because Local Rule 25.10 was used in this case to restrict the defendant from a full presentation of an entrapment defense, the first assignment of error is sustained.

{¶13} Appellant's second assignment of error asserts,

{¶14} “The trial court erred in preventing Appellant from issuing subpoenas duces tecum for records pertaining to the prosecuting attorney's confidential informant, thereby violating his right to compulsory process as guaranteed by the Sixth Amendment to the United States Constitution and comparable provisions of the Ohio Constitution.”

{¶15} The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution provide an accused with a right of compulsory process to obtain a witness's testimony or evidence. *State v. Boddie* (Sept.6, 2001), Allen App. No. 1-2000-72, citing *Pennsylvania v. Ritchie* (1988), 480 U.S. 39, 56. However, an accused's constitutional right of compulsory process may be limited by a state's discovery rules as a state has an "interest in the orderly conduct of a criminal trial [that] is sufficient to justify the imposition of firm, though not always inflexible, rules relating to the identification and presentation of evidence." *Taylor v. Illinois*, 484 U.S. 400, 411 (finding that in

that particular case, trial court properly quashed subpoenas where defendant failed to disclose the names of the witnesses in violation of Illinois' discovery rules).

{¶16} Additionally, Crim.R. 17 states

{¶17} “At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.”

{¶18} As with Union County Local Rule 25.10, we also find it significant that the Ohio Supreme Court and General Assembly have spoken on the issue of compulsory process but have not specified a time limit by which a party must request a subpoena as mandated by Union County Local Rule 22.01.

Furthermore, while it appears that it may not be a per se violation of the Sixth Amendment right to Compulsory Process for a state to adopt rules for requesting subpoenas within a certain period of time prior to trial, we believe that it is properly for the Ohio Supreme Court and the Ohio General Assembly to promulgate and adopt such rules, not the individual trial courts.¹ Therefore we also find Union County Common Pleas Court Local Rule 22.01 to be invalid and Lane’s second assignment of error is sustained.

{¶19} In sum, and to the extent indicated above, we find that Union County Common Pleas Court Local Rules 25.10 and 22.01 are in direct conflict with the

language and intent of the Ohio Rules of Criminal Procedure and are therefore invalid. We further find that each of these rules was improperly enforced against the defendant in this case, unduly restricting his right to present a full defense and thereby depriving him of a fair trial. As a result, the judgment and sentence of the Common Pleas Court of Union County is reversed and the case is remanded to that court for further proceedings according to law.

*Judgment reversed and cause
remanded.*

BRYANT and WALTERS, JJ., concur.

¹ Several states have adopted a time limit provision for subpoenas. See e.g. Md Rule Crim. P. 4-265; LA 1Dist.Court Crim. R. 9