

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-04-014
- vs -	:	<u>OPINION</u> 3/1/2010
ERIC LANG,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. CR2006-2153

Jessica A. Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellant

Thomas J.C. Arrington, P.O. Box 612, London, Ohio 43140, for defendant-appellee

HENDRICKSON, J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals a decision of the Brown County Court of Common Pleas dismissing criminal charges against defendant-appellee, Eric Lang, on speedy trial grounds. For the reasons outlined below, we reverse and remand.

{¶2} On June 8, 2006, Lang was indicted on one count of aggravated burglary in violation of R.C. 2911.11(A)(1), a first-degree felony; one count of assault in violation of R.C. 2903.13(A), a first-degree misdemeanor; and one count of criminal damaging in

violation of R.C. 2909.06(A)(1), a second-degree misdemeanor. Lang filed a request for discovery on June 26, 2006. The state complied, providing discovery and requesting reciprocal discovery from Lang on July 5, 2006. Lang never responded to the state's reciprocal discovery request.

{¶3} Following a number of pretrial hearings, Lang moved to dismiss the indictment on speedy trial grounds on March 11, 2009. The trial court granted the motion, finding that Lang's constitutional speedy trial rights had been violated. The state timely appeals, raising one assignment of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT ERRED BY DISMISSING THE CASE FOR VIOLATIONS OF [LANG'S] RIGHT TO A SPEEDY TRIAL."

{¶6} In its single assignment of error, the state argues that the trial court erred in granting Lang's dismissal motion because Lang's failure to respond to the state's request for reciprocal discovery tolled the speedy trial time. The state also maintains that Lang's statutory and constitutional speedy trial rights were not violated.

{¶7} At the outset, we hold that this case must be reversed in accordance with our decision in *State v. O'Hara*, Brown App. No. CA2009-04-015, 2010-Ohio-107. In *O'Hara*, this court expressed concern with the manner in which the Brown County Court of Common Pleas disposed of speedy trial cases without conducting the requisite analysis. The trial court in *O'Hara* filed a number of preprinted journal entries which used waiver and tolling provisions interchangeably, even though "time waivers and tolling events [under R.C. 2945.72] are 'two separate[,] distinct concepts that affect speedy-trial calculations in different ways.'" *O'Hara* at ¶14, quoting *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, ¶16. Finding the record ambiguous and confusing, we remanded the case for the trial court to analyze the nature and effect of

its preprinted journal entries and to conduct the requisite statutory and, if need be, constitutional speedy trial analyses. *O'Hara* at ¶17-18.

{¶8} A number of the same preprinted journal entries were employed in Lang's case. In addition, the trial court failed to conduct a proper statutory and, if necessary, constitutional speedy trial analyses. As such, this case must also be remanded to the trial court for further proceedings pursuant to *O'Hara*.

{¶9} Although this case is similar to *O'Hara*, we write separately to highlight an additional omission that the trial court must address in speedy trial cases involving reciprocal discovery violations. The Ohio Supreme Court has held that "a defendant's failure to respond within a reasonable time to a prosecution request for reciprocal discovery constitutes neglect that tolls the running of speedy-trial time pursuant to R.C. 2945.72(D)." *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, ¶24. The *Palmer* court ruled that "[the] trial court shall determine the date by which the defendant should reasonably have responded to a reciprocal discovery request based on the totality of facts and circumstances of the case, including the time established for response by local rule, if applicable." *Id.*

{¶10} In the present matter, it is undisputed that the state submitted a request for reciprocal discovery when it responded to Lang's discovery demand on July 5, 2006. Lang also does not dispute the fact that he never responded to the state's reciprocal discovery request. Rather, he contends that it is a customary practice in the Brown County Court of Common Pleas for a defense attorney who is not in possession of any discoverable information to refrain from filing a formal response to a reciprocal discovery request until the date of the final pretrial hearing. Referring to this customary practice as the "local rule," Lang concludes that the date by which he should reasonably have responded to the state's reciprocal discovery request had not yet arrived.

{¶11} While it appears that Lang mischaracterizes the meaning of the phrase "local rule" in the *Palmer* decision to include local customs rather than rules of procedure promulgated by the local court, the trial court is ultimately tasked with resolving the reciprocal discovery issue in this case. On remand, the trial court must determine what amount of time was reasonable for Lang to have provided discovery to the state based upon the facts and circumstances of this case. Id.

{¶12} Accordingly, we sustain the state's assignment of error only to the extent that we reverse the trial court's decision granting Lang's motion to dismiss, and remand this matter for further proceedings consistent with this opinion.

{¶13} Judgment reversed and remanded.

POWELL, P.J., and RINGLAND, J., concur.