

IN THE SUPREME COURT OF OHIO

ORIGINAL

IN RE: D.S.,

A Minor Child,

:
: Case No. 2012-1041
:
: On Appeal from the Cuyahoga
: County Court of Appeals
: Eighth Appellate District
:
: Court of Appeals
: Case No. 97757

**MEMORANDUM IN OPPOSITION OF JURISDICTION
OF APPELLEE D.S.**

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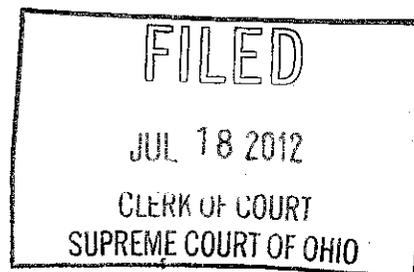


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**EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND DOES NOT INVOLVE
A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The State's proposition of law does not apply to the facts of this case. Appellee argues, an accused serious youthful offender has a statutory right to a speedy trial, and may toll his or her speedy trial clock. However, the State asks this Court to toll D.S. (DeAngelo)'s speedy trial clock by reaching back to events that occurred before the clock began to run.

The Eighth District Court of Appeals properly distinguished *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, from this case, and the State is now asking this Court to substitute its judgment for the court of appeals'. The court of appeals calculated the dates in question, determined that DeAngelo's right to speedy trial was violated, and that defense counsel was ineffective for failing to move the juvenile court to dismiss the case on speedy trial grounds. The court of appeals reviewed the record, and accurately calculated the statutory speedy trial time. The instant appeal is not a case of great general interest, and does not involve a substantial constitutional question.

STATEMENT OF THE CASE AND OF THE FACTS

The State alleged that a teenaged boy named Jimmie J. exchanged words with eighteen year-old Jerry Goodwin, whom he encountered at a bus stop in Cleveland, Ohio on September 22, 2009. The State's witnesses, Contez M. and Christopher M., testified that Jimmie declined to fight Jerry, but demanded that DeAngelo S. give him his "hammer", or, gun. Without warning, Jimmie took the gun from DeAngelo and shot Jerry, who died at the scene. Jimmie also fired shots at, but did not injure, Contez and Christopher.

The State refers to Christopher M.'s testimony that he felt that Jimmie and DeAngelo were using some sort of "code" to emphasize DeAngelo's involvement in the shooting. However, Christopher also testified about the shooting at DeAngelo's probable cause hearing, and Christopher did not mention anything about a "code". At the probable cause hearing, Christopher's testimony supports the conclusion that DeAngelo and Jimmie did not have anything planned. Moreover, the State's other eyewitness, Contez M., did not testify that DeAngelo pulled out a gun before Jimmie asked for it. At both the probable cause hearing, and at trial, Contez testified that after Jimmie and Jerry were arguing, Jimmie told DeAngelo to give him his "hammer." It was after that command that Contez saw DeAngelo with the gun. Contez did not testify that there seemed to be a code between DeAngelo and Jimmie. Moreover, the record reflects that Jimmie and DeAngelo came along and encountered Jerry and the others at the bus stop unexpectedly. There was no opportunity for the two to establish a "code" at this chance meeting. Further, Contez was also armed with a gun, and he fired shots as well.

On October 20, 2009, a complaint was filed in the Cuyahoga County Juvenile Court, charging then fifteen year-old DeAngelo with one count of murder, and corresponding one and three-year firearm specifications. At the juvenile court's January 21, 2010 hearing, the court

noted that DeAngelo had been in detention for eighty-seven days, and the State had not yet filed its motion to relinquish jurisdiction. The State filed its motion later that day. At an amenability hearing on April 28, 2010, the court denied the State's motion and retained jurisdiction, after considering that DeAngelo was not the person who fired the gun at the decedent, and that he had no prior court involvement. On May 4, 2010, the State filed a notice of intent to seek a mandatory serious youthful offender (SYO) dispositional sentence, at which time the speedy trial clock began to run.

The grand jury returned an SYO indictment against DeAngelo on May 28, 2010, charging him with one count of murder, with corresponding one and three-year firearm specifications, for purposefully causing the death of Jerry Goodwin, and one count of felonious assault and one count of attempted felonious assault, with corresponding firearm specifications, as to each of the two witnesses.

After trial on August 16, 2010, the juvenile court adjudicated DeAngelo delinquent on all charges and firearm specifications. The timeline of events in this case is set forth as following:

October 2009	October 20:	Complaint filed.
	October 29:	DeAngelo is admitted to detention.
November 2009		
December 2009		
January 2010	January 13:	Defense motion for Bill of Particulars/Discovery
	January 19:	State's motion for discovery
	January 21:	State's motion to relinquish jurisdiction to common pleas court
February 2010		
March 2010	March 15:	Probable cause hearing/witnesses testify
April 2010	April 28:	Amenability hearing
May 2010	May 4:	State files notice of intent to seek SYO <u>Speedy trial clock begins to run.</u>
	May 28:	Indictment filed
June 2010	June 16:	SYO arraignment
July 2010		
August 2010	August 16:	Trial

The juvenile court imposed a juvenile disposition for murder, and committed DeAngelo to the Department of Youth Services (DYS) until his twenty-first birthday. For the SYO portion of his sentence, the court imposed a fifteen-year to life adult prison term and a three-year firearm specification, for murder; two, one-year prison terms, and two three-year firearm specifications, for each of the attempted felonious assault charges; two, two-year prison terms, and two three-year firearm specifications, for each of the felonious assault charges. The juvenile court ordered each of the SYO firearm specifications to be served consecutively with and prior to any other term of imprisonment. The court ordered that the prison terms be served concurrently. The court stayed the adult portion of DeAngelo's sentence pending the successful completion of the juvenile disposition.

DeAngelo timely appealed. The court of appeals ultimately dismissed that appeal, finding that the dispositional entry from which DeAngelo appealed was not final and appealable, because the juvenile court had not imposed a juvenile disposition as to each delinquency count. *In re D.S.*, 8th Dist. No. 95803, 2011-Ohio-5250. Upon remand, the juvenile court conducted a second dispositional hearing, and ordered concurrent DYS commitments of a minimum of one year, maximum of his twenty-first birthday, and corresponding one-year firearm specifications, for the two counts of felonious assault. The court ordered that the two counts of attempted felonious assault, and their corresponding firearm specifications, merge with the counts of felonious assault, as they are allied offenses. DeAngelo timely appealed the second dispositional entry. The Eighth District Court of Appeals sustained DeAngelo's first assignment of error, holding that DeAngelo's right to speedy trial was violated, and that defense counsel was ineffective for failing to move to dismiss the charges on speedy trial grounds. *In re D.S.*, 8th Dist. No. 97757, 2012-Ohio-2213.

RESPONSE TO THE STATE'S PROPOSITION OF LAW

STATE'S PROPOSITION OF LAW: WHEN AN ACCUSED SERIOUS YOUTHFUL OFFENDER FAILS TO RESPOND TO THE STATE'S REQUEST FOR RECIPROCAL DISCOVERY, STATUTORY SPEEDY TRIAL TIME MUST BE TOLLED.

This Court recently reiterated its long-standing rule that “The prosecution and the trial courts have a mandatory duty to try an accused within the time frame provided by the statute. *State v. Singer*, 50 Ohio St.2d 103, 105, 362 N.E.2d 1216 (1977); *see also State v. Cutcher*, 56 Ohio St.2d 383, 384, 384 N.E.2d 275 (1978). Strict compliance with the statute is required. *State v. Davis*, 46 Ohio St.2d 444, 448, 349 N.E.2d 315 (1976).” *State v. Ramey*, Slip Opinion No. 2012-Ohio-2904, ¶14. And, “subject to certain tolling events, a jailed defendant must be tried within 90 days.” *Id.* at ¶15, citing R.C. 2945.71(E).

The State asks this Court to hold that under *State v. Palmer*, DeAngelo's speedy trial clock should have tolled for thirty days. *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374. In *Palmer*, this Court held that a defendant's failure to respond to the prosecution's request for reciprocal discovery constitutes neglect that tolls the running of speedy-trial time pursuant to R.C. 2945.72(D). *Palmer* at syllabus. That time is tolled by the number of days the defendant should have taken to have reasonably responded, “based on the totality of facts and circumstances of the case...”. *Id.* at syllabus, ¶24. *State v. Palmer* does not apply to this case; even if it did, it would not affect the speedy trial violation.

The State argues that under *Palmer*, DeAngelo's speedy trial time should have tolled, because he did not file a formal response to the State's discovery request. In *Palmer*, this Court stated that “the trial court did not abuse its discretion in tolling the running of speedy-trial time after 30 days had passed from service of the state's [discovery] request.” *Id.* at ¶23. The

distinction here is that the State made its request on January 19, 2010, before the right to speedy trial attached. At the time of the State's discovery request, DeAngelo was charged with one count of murder in the juvenile court. The State did not initiate the SYO proceedings until it filed a Notice of Intent to Seek a Serious Youthful Offender Disposition on May 4, 2010. DeAngelo did not have a statutory right to speedy trial until the State filed the Notice of Intent on May 4, 2010, and his speedy trial time did not begin to run until that date. R.C. 2152.13(C)(1).

The State's proposition of law does not apply to the facts of this case because the State and defense's discovery requests were filed in January 2010. Had this been a case in which the State had filed for reciprocal discovery after the speedy trial clock had started to run, and the defense failed to respond, then *Palmer* would apply. To toll the time for thirty days from the service of the State's discovery request under the facts of this case, would result in a date that is several months before DeAngelo had a right to speedy trial. It would be illogical for this Court to hold that the tolling would be suspended until DeAngelo's right to speedy trial was effectuated and the speedy trial time started to run, and *then* toll it for thirty days.

Even if this Court applies the *Palmer* holding, which requires the trial court to determine the date by which the defendant should reasonably have responded to a discovery request based on the totality of facts and circumstances of the case, a reasonable time in which for the defense to have responded to the State's discovery demand would certainly have been before DeAngelo's speedy trial time began to run. Therefore, *Palmer* does not affect the ninety days in which DeAngelo had to have been brought to trial after the May 4, 2010 Notice of Intent, which began his speedy trial time. Between May 4, 2010 and August 16, 2010, the date of trial, the juvenile court went on the record only one time—for the SYO arraignment on June 16, 2010. There were no further pleadings filed, and DeAngelo never tolled his speedy trial time.

Further, as the court of appeals reasoned, this case is distinguishable from *Palmer* because the State did not bring to the juvenile court's attention that DeAngelo did not file a formal response to its discovery request. *D.S.*, 2012-Ohio-2213, at ¶24-32. During the January 21, 2010 hearing, the State informed the defense that it would provide complete discovery by the end of the week, and the State told defense counsel, "if you believe * * * you still haven't received everything that you think is discoverable, then file a written motion immediately and then we'll go from there." Under the Rules of Juvenile Procedure, "If a request for discovery is refused, application may be made to the court for a written order granting the discovery. * * * If at any time during the course of the proceedings it is brought to the attention of the court that a person has failed to comply with an order issued pursuant to this rule, the court may grant a continuance..." Juv.R. 24(B),(C). At the January 21, 2010 hearing, and at the subsequent pretrial hearings, the State did not alert the court that the defense had not filed a formal response, or ask the court to order the defense to provide discovery. When the court asked the parties if there were issues to address, the State did not mention the discovery request.

The purpose of tolling speedy trial time pending discovery requests is so the parties have adequate time to review discovery, investigate, and prepare for trial. *D.S.* at ¶34-35, citing *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, ¶23, and *Palmer* at ¶18. Here, between the time that DeAngelo was initially charged and incarcerated, and the time that his speedy trial time started to run, the discovery process was complete. The juvenile court held a probable cause hearing on March 15, 2010, at which time both of the State's eyewitnesses testified. The defense and the prosecution stipulated to other discovery matters before that hearing. After the probable cause hearing, several more months passed while the juvenile court considered whether DeAngelo was amenable to the juvenile system. Although R.C. 2945.72(D) provides that a

defendant's right to speedy trial may be extended by the defendant's neglect that serves to delay the proceedings, "...there is no indication whatsoever in this record that the state was delayed in its preparation for trial by D.S.'s failure to respond to its request for discovery." *D.S.* at ¶36.

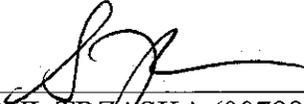
This case does not merit this Court's consideration. The State is asking this Court to apply the remedy from a case which the court of appeals soundly distinguished. DeAngelo was held in detention for eighty-seven days before the State filed any pleadings. He remained incarcerated for ninety-seven additional days while the State's motion to relinquish jurisdiction was pending. At the April 28, 2010 amenability hearing, the juvenile court stated that DeAngelo had been "locked up for six months now, so at this point I would like to move this case as quickly as possible." A week later, on May 4, 2010, the State filed its Notice of Intent, DeAngelo's right to speedy trial was effectuated and his speedy trial clock began to run. Through the entire pendency of the case, the State made no motion or application to the juvenile court for DeAngelo to comply with discovery. Juv.R. 24(B). Despite the fact that so much time had passed, and that the pretrial proceedings were long complete, the juvenile court *still* tried DeAngelo outside of the statutory limit.

CONCLUSION

The State has not set forth issues that will be broadly applicable through Ohio courts, nor issues that those courts require guidance in addressing. Therefore, DeAngelo S. respectfully asks that this Court decline to accept jurisdiction, and dismiss the State's appeal.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

BY: 

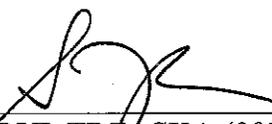
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MEMORANDUM IN OPPOSITION OF JURISDICTION OF APPELLEE D.S. was sent by regular U.S. Mail, postage prepaid, to Kristen Sobieski, Assistant Prosecuting Attorney, 1200 Ontario Street, Cleveland, Ohio 44113, this 18th day of July, 2012.



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