

ORIGINAL

NO. 2012-1041

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 97757

STATE OF OHIO,

Plaintiff-Appellant

-vs-

IN RE D.S.,

Defendant-Appellee

REPLY BRIEF OF APPELLANT, STATE OF OHIO

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RECEIVED

MAR 04 2013

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

MAR 04 2013

CLERK OF COURT
SUPREME COURT OF OHIO

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I. STATEMENT OF FACTS

The State relies on the Statement of the Facts as set forth in its merit brief.

II. STATEMENT OF THE CASE.

The State relies on the Statement of the Case as set forth in its merit brief.

III. LAW AND ARGUMENT.

A. PROPOSITION OF LAW NO. I: WHEN AN ACCUSED SERIOUS YOUTHFUL OFFENDER FAILS TO RESPOND TO THE STATE'S REQUEST FOR RECIPROCAL DISCOVERY, STATUTORY SPEEDY TRIAL TIME MUST BE TOLLED.

D.S.'s failure to respond to the State's discovery request throughout his SYO proceeding constitutes neglect, which tolls the running of speedy-trial time. The running of speedy-trial time should be tolled for at least a reasonable amount of time. See *State v. Palmer*, 112 Ohio St.3d 457, 860 N.E.2d 1011, 2007-Ohio-374, ¶ 20 (holding that a defendant's failure to respond within a reasonable time to State's request for discovery constitutes neglect that tolls the running of speedy trial time). If a defendant completely fails to respond, tolling of speedy-trial time may extend throughout the pretrial stages of the case.

Furthermore, the State must not be required to file a second, identical discovery request once SYO proceedings begin. Requiring the State to file a second discovery request before tolling speedy-trial time for a defendant's failure to respond frustrates the purposes of Ohio's discovery rules and permits the accused to ignore valid discovery requests in SYO proceedings.

- i. This Ohio Supreme Court and Ohio Courts of Appeals have held that speedy-trial time may be tolled until the defendant responds to the State's discovery request.**

Case law defeats Appellee's argument that speedy trial time can only be tolled thirty days from the service date of the State's discovery request. The Eighth District Court of Appeals has held that speedy trial time can be tolled from the date of service until the time of trial if the

defendant never responds to the state's discovery request; much longer than the reasonable period of tolling the State is requesting here. See *State v. Mitchell*, 8th Dist. No.88977, 2007-Ohio-6190 (holding that statutory speedy trial time was tolled from the date of the state's discovery request until the date of trial when the defendant failed to respond entirely—a period of more than 90 days); see also *State v. Winn*, 8th Dist. No. 98172, 2012-Ohio-5889, (holding that speedy trial time was tolled from the date of the state's discovery request for a period of 30 days when the defendant failed to respond entirely.)

Similarly, the Fourth District Court of Appeals also held that tolling of speedy trial time continues until the defendant responds to the prosecution's discovery request. In *State v. Saultz*, 4th Dist. No. 09CA3133, 2011-Ohio-2018, the Fourth District, applying *Palmer*, determined that the defendant should have responded to the prosecution's discovery request, made on November 13, 2007, within thirty days. The court concluded that speedy trial time was tolled for over three months, from December 14, 2007 until March 18, 2008, when the defendant finally responded to the State's discovery request. *Id.* at ¶ 16.

Here, unlike in *Saultz* where the defendant eventually responded to the discovery request, there is no discovery response from D.S. from where the speedy trial clock could be restarted, meaning tolling could even extend for the entirety of the pretrial stages in this case.

Although neither of the above cases deal specifically with SYO proceedings, the State argues that even in SYO prosecutions, the purpose of discovery is frustrated when a defendant is neglectful in responding to a reciprocal discovery quest. Therefore, the State requests that this Court find that D.S.'s neglect justifies at the least, a reasonable extension of speedy trial time.

- ii. **The State must not be required to file a second, identical discovery request once SYO proceedings begin in order to toll speedy-trial time.**

Appellee's claim that it would be illogical to suspend the requested 30 day tolling period until the speedy trial time started to run in May should be rejected. This is because it defies logic to require the State to re-file an identical discovery request at SYO intercession while its first discovery request is still outstanding. The initial outstanding discovery request remained valid until D.S. responds. See *In re D.S.*, 8th Dist. No. 87757, 2012-Ohio-2213, ¶ 43-44 (Gallagher, J. dissenting). The fact that D.S.'s statutory speedy trial time did not begin until May 4, 2010 due to his designation as an SYO should not matter because D.S.'s duty to respond to the initial discovery request did not cease simply because his case evolved into an SYO prosecution.

- iii. **The State is neither required to seek to compel compliance with its discovery request, nor is the State required to be prejudiced by a defendant's failure to respond before speedy-trial time tolls.**

This Court's holding in *Palmer* defeats D.S.'s and the Eighth District's reliance on the State's silence regarding the pending request for reciprocal discovery. This Court has determined, "[t]he tolling of statutory speedy-trial time based on a defendant's neglect in failing to respond within a reasonable time to a prosecution's request for discovery is not dependent upon the filing of a motion to compel discovery by the prosecution." *Palmer*, 112 Ohio St.3d 457 at paragraph two of the syllabus, citing *Lakewood v. Papadelis* (1987) 32 Ohio St.3d 1, 511 N.E.2d 1138. This Court also found that "[Rule 16] does not grant discretion to a party to ignore the request of an opposing party until a court orders compliance." *Palmer* at ¶ 19, citing *Lakewood* at 3-4.

In *In re D.S.*, the Eighth District wrongly emphasized that "the state was presented with four on-the-record opportunities to seek the court's intervention in compelling D.S. to respond . . . but never did... [i]t also never filed any request seeking the court's intervention." Similarly, D.S. argued that "the State did not argue that the defense had no complied with the discovery

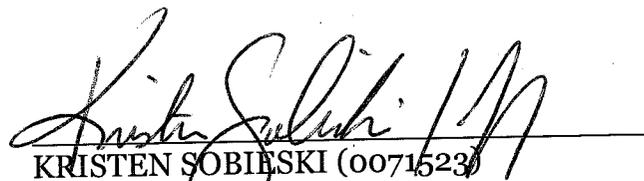
request, or ask the court to order the defense attorney to provide discovery.” (Brief of D.S. at 11). Yet, as stated above, the holding in *Palmer* does not require the prosecution to file a motion to compel or to ask the trial court to order compliance. Therefore, because D.S. did not respond to the State’s discovery motion and because it is irrelevant whether or not the State sought to compel a response, speedy-trial time was tolled.

IV. CONCLUSION

The State respectfully requests this Honorable Court reverse *In re D.S.*, in which the Eighth District undermined this Court’s precedent in *Palmer*. The decision of the Eighth District Court of Appeals in *D.S.* establishes a rule that would require the State to re-file identical discovery requests when SYO proceedings intercede in a juvenile delinquency case and to show that it sought to compel D.S. to comply with its discovery request before speedy-trial time may toll. Therefore, the State requests that this Honorable Court adopt the State’s proposition of law, reverse the holding of the Eighth District Court of Appeals, reinstate D.S.’s delinquency adjudications, and order his immediate return to the custody of the Ohio Department of Youth Services.

Respectfully Submitted,

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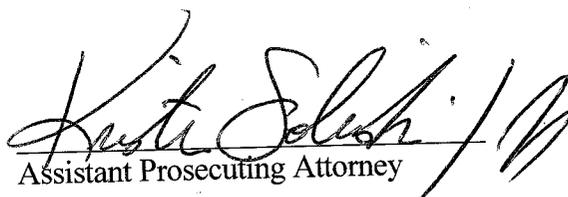
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V. CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief of Appellant has been mailed this 1st day of March 2013 via email sheryl.trzaska@opd.ohio.gov and U.S. regular mail to:

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