

[Cite as *State v. Rankin*, 2024-Ohio-4565.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 30754

Appellant

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR-2021-04-1284-A

JAVION D. RANKIN

Appellee

DECISION AND JOURNAL ENTRY

Dated: September 18, 2024

CARR, Judge.

{¶1} Appellant, the State of Ohio has appealed a discovery order of the Summit County Court of Common Pleas excluding a report and related testimony placing Defendant-Appellee Javion D. Rankin’s cyber profile near a crime scene. This Court reverses and remands the matter for proceedings consistent with this decision.

I.

{¶2} In April 2021, an indictment was filed charging Rankin and two other individuals with several serious crimes including aggravated murder. A supplemental indictment was later filed. Rankin filed a motion to suppress, which was subsequently denied in part and granted in part. Certain statements made by Rankin during a police interview were suppressed.

{¶3} In May 2023, the State provided Rankin with a CyberCheck report and information about Adam W. Mosher, the CEO of Global Intelligence Inc., who developed CyberCheck. The report defines CyberCheck as “an Open-Source Intelligence Framework which provides law

enforcement agencies and intelligence communities a narrative representation of a crime, defined by a series of events.” An event is defined as “any detectable and discernable cyber based occurrence (i.e., such as an email ID hitting off a wireless access point) which can be correlated back to a suspect, person of interest and/or a victim.” The CyberCheck report places Rankin’s cyber profile near the murder scene close in time to the murder.

{¶4} On June 1, 2023, Rankin filed a motion to compel the State and Mr. Mosher to produce numerous items, including, but not limited to, a list of cases where Mr. Mosher testified as an expert as to CyberCheck, sources Mr. Mosher reviewed to place Rankin near the crime scene, a list of software programs used, a copy of Global Intelligence Inc.’s software used in the report, the underlying data used to establish the accuracy and strength values in the report, artificial intelligence software or algorithms, and proprietary code structures. Rankin argued that the information was necessary “to properly evaluate a *Daubert* challenge and possible motion to suppress” and for Rankin’s expert witness to prepare for trial. The State did not file an opposition to the motion to compel. A hearing was held on June 6, 2023, where the State did challenge Rankin’s motion.

{¶5} On June 9, 2023, the trial court granted Rankin’s motion to compel. The trial court ordered the State to “make available to defense counsel the CyberCheck software, proprietary algorithms, machine learning, artificial intelligence, and all data and methodologies used in generating the conclusion contained in CyberCheck case 20-155466, FORTHWITH.” (Emphasis in original.) The State did not appeal this ruling.

{¶6} On June 13, 2023, the State filed what it captioned as “Response to Motion to Compel or Exclude CyberCheck Report and Testimony[.]” Therein, the State stated that everything requested at the hearing was or would be provided to Rankin, aside from CyberCheck’s

algorithms software. The State maintained that it was not in possession of the algorithms software and was not able to provide it because it was unable to obtain it. The State argued that Rankin's expert should nonetheless be able to fully challenge the evidence before trial and during trial. On June 14, 2023, Rankin filed a response in opposition.

{¶7} On June 21, 2023, the trial court issued an order excluding the CyberCheck evidence for the State's failure to comply with the prior order. In so doing, the trial court conducted its own independent investigation and experiments to attempt to verify the information in the CyberCheck report.

{¶8} The State appealed the trial court's June 21, 2023 order, and also submitted a motion for leave to appeal in the alternative. This Court provisionally granted the State's motion to the extent it was necessary.

{¶9} In January 2024, Rankin filed a motion in the trial court to supplement the record. The trial court held a hearing in February 2024. The trial court then supplemented this Court's record with a transcript of that hearing and 11 exhibits. The materials that the trial court supplemented the record with were not considered by the trial court in reaching the decision on appeal. Accordingly, we cannot say that the materials correct an error or misstatement under App.R. 9(E). Thus, they are not appropriate and are struck from the record.

{¶10} The State has raised a single assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION BY EXCLUDING TESTIMONY AND ASSOCIATED EVIDENCE FROM THE CYBERCHECK REPORT.

{¶11} The State argues in its sole assignment of error that the trial court abused its discretion in excluding the CyberCheck report and related testimony.

{¶12} “This Court generally reviews a trial court’s decision to admit or exclude evidence for an abuse of discretion.” *State v. Campbell*, 9th Dist. Lorain No. 19CA011545, 2021-Ohio-2050, ¶ 16; *see also State v. Calise*, 9th Dist. Summit No. 26027, 2012-Ohio-4797, ¶ 30.

{¶13} Here, the trial court, citing Crim.R. 16(L), stated that it was excluding the evidence because the State failed to produce the algorithms software. The State’s obligation in discovery is to provide certain items set forth in the rule that are “within the possession of, or reasonably available to the state[] * * *.” Crim.R. 16(B). Crim.R. 16(L)(1) provides:

The trial court may make orders regulating discovery not inconsistent with this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

“[W]hen imposing a discovery sanction, the court must impose the least severe sanction that is consistent with the purpose of the rules of discovery.” *In re D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, ¶ 15, citing *Lakewood v. Papadelis*, 32 Ohio St.3d 1 (1987), paragraph two of the syllabus. “[T]his rule applies equally to discovery violations committed by the state and to discovery violations committed by a criminal defendant.” *In re D.M.* at ¶ 15.

{¶14} In its analysis, the trial court’s focus was not Crim.R. 16, whether the State could comply with the prior order, or the severity of the sanction. Instead, it focused on examining the credibility of Mr. Mosher and the reliability of the CyberCheck report. In fact, the trial court conducted independent research and testing by using Google in an attempt to replicate the results. It is apparent from reading the trial court’s order that this independent research impacted the trial

court's decision as the trial court went as far as to include images from its search in the entry. "[I]t was impermissible for the trial court to consider evidence outside the record and conduct its own investigation of the facts." *State v. Bayliff*, 3d Dist. Auglaize No. 2-10-08, 2010-Ohio-3944, ¶ 27. "There is no authority for a trial court's independent investigation." *Id.*

{¶15} Given the foregoing, we agree that the trial court committed reversible error. The trial court must apply Crim.R. 16 and the related precedent in the first instance without relying upon evidence outside the record.

{¶16} The State's sole assignment of error is sustained, and the matter is remanded to the trial court so that it can appropriately apply the law to the facts in the first instance.

III.

{¶17} The State's assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is reversed, and the matter is remanded for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to

mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

DONNA J. CARR
FOR THE COURT

STEVENSON, P. J.
HENSAL, J.
CONCUR.

APPEARANCES:

ELLIOT KOLKOVICH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellant.

DONALD MALARCIK, Attorney at Law, for Appellee.

ALAN MEDVICK, Attorney at Law, for Appellee.