

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23680
Plaintiff-Appellant	:	
	:	Trial Court Case No. 09-CRB-04358
v.	:	
	:	
LESLIE A. GUY	:	(Criminal Appeal from Dayton Municipal Court)
	:	
Defendant-Appellee	:	

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OPINION

Rendered on the 23rd day of December, 2010.

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JOHN J. DANISH, and STEPHANIE L. COOK, Atty. Reg. #0067101, by EDWARD C. UTACHT, II, Atty. Reg. #0022225, City of Dayton Prosecutor’s Office, 335 West Third Street, Room 372, Dayton, Ohio 45402
Attorney for Plaintiff-Appellant

DAVID W. WEHNER, Atty. Reg. #0016080, Law Office of the Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellee

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BROGAN, J.

{¶ 1} The Appellant, the City of Dayton (“The City”), appeals the decision of the Dayton Municipal Court, granting Leslie Guy’s Motion to Dismiss. The City contends that since the copy of the summons sent to Guy was returned five days after she appeared in court pursuant to the summons, and since she did receive summons via regular mail, but Crim. R. 4(D)(3) does not provide for service by

regular mail, receipt of summons by regular mail cannot begin the clock for speedy trial issues. Since notice of service through regular mail is not permissible under Crim. R. 4(D)(3), we must determine that Guy was never given notice of summons, and therefore, the speedy trial clock did not begin. For the following reasons, the judgment of the trial court will be reversed and remanded.

I

{¶ 2} On April 27, 2009, Guy was charged with Criminal Trespass, in violation of R.C. 2911.21(A)(3), a misdemeanor of the fourth degree, as well as Public Nuisance, in violation of R.C.G.O. 152.123(B), a misdemeanor of the third degree. On the same day the City sent a copy of the summons by certified mail to Guy, along with a copy of the summons by regular mail. At arraignment on May 7, 2009, Guy plead not guilty to both charges. On May 12, 2009, the summons sent by certified mail was returned undeliverable. The trial was set for June 16, 2009.

{¶ 3} On the date of the trial, June 16, 2009, Guy filed a Motion to Dismiss for Speedy Trial, claiming more than forty-five days had passed since she received her summons, which was in violation of R.C. 2945.71(B)(1). The trial court sustained Guy's motion and dismissed the case. The trial court determined that the summons were issued to Guy by both certified and regular mail. The summons sent via regular mail was not claimed. At the Motion to Dismiss hearing, Guy stated she did not know the exact date she received the summons, but she did have it at least one week prior to her May 7 arraignment. The trial court found this testimony to be credible, and that it was entirely reasonable to have a letter received within three days of being sent to an address within the city.

II

{¶ 4} The City puts forth one assignment of error, which states as follows:

{¶ 5} “THE TRIAL COURT ABUSED ITS DISCRETION TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT WHEN IT DISMISSED THE CASE FOR VIOLATION OF THE SPEEDY TRIAL ACT WHEN THE SPEEDY TRIAL PERIOD HAS NOT EXPIRED PURSUANT TO R.C. 2945.71.”

{¶ 6} The City contends that Guy should not be credited with receiving her summons on April 30, since the copy of the summons, sent via certified mail, was returned unclaimed on May 12, which was five days after Guy appeared in court for arraignment. The City also argues that since Crim. R. 4(D)(3) does not provide for service of the summons by regular mail, receiving summons via regular mail cannot start the speedy trial clock.

{¶ 7} Guy argues that the Ohio Rules and statutes concerning summons and service are designed to protect the offender, and the purpose of notice is to have the defendant appear in court. Appellee further states that since she appeared in court upon notice of the summons she received via regular mail, that notice should start the speedy trial clock.

{¶ 8} The issue in this case is whether the speedy trial time begins when notice of summons was served upon Guy through regular mail, since Crim. R. 4 (D)(3) does not expressly allow regular mail as a means of service.

{¶ 9} The speedy trial statute concerning third and fourth degree misdemeanors is R.C. 2945.71(B)(1), which states that the State must bring the

person to trial within forty-five days of the date of either the arrest or the service of summons.

{¶ 10} Crim. R. 4 (D)(3) states, in pertinent part:

{¶ 11} “Summons may be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant’s usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by certified mail with a return receipt requested.”

{¶ 12} Crim. R. 4(D)(3) does not allow for service via regular mail, only certified mail. Since the mail sent through certified mail service was not accomplished, Guy never received notice of summons and therefore, the speedy trial clock did not begin to run until she was arraigned on May 7, 2009.

{¶ 13} “The purpose of an arrest warrant or summons is to satisfy the due process requirement of notice of the charges filed against an alleged offender.” *State v. Hooper* (1971), 25 Ohio St.2d 59, 61. Guy’s voluntary appearance on May 7, 2009 constituted a confession of service. Her confession waives the Crim.R. 4(D)(3) notice defect. It also caused her speedy trial time to commence to run on that date. Guy prematurely moved for discharge pursuant to R.C. 2345.73(B) on June 16, 2009, only thirty-nine days after she was arraigned. The trial court erred when it granted Guy’s motion.

III

{¶ 14} The City’s assignment of error is sustained, the judgment of the trial court is reversed and the matter is remanded to the trial court for further proceedings.

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GRADY and CANNON, JJ., concur.

(Hon. Timothy P. Cannon, Eleventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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(sitting for Hon. Deirdre E. Logan)