Stephen D. Spivey of Stephen D. Spivey, P.A. and Jonathan S. Dean and David E. Midgett of Dean and Dean, L.L.P., Ocala, for Appellants.

Steven L. Brannock, G. Calvin Hayes and Stacy D. Blank of Holland & Knight, L.L.P., Tampa, for Appellee.

PER CURIAM.

AFFIRMED. *See Hall v. Humana Hospital Daytona Beach,* 686 So.2d 653 (Fla. 5th DCA 1996), *rev. denied,* 694 So.2d 738 (Fla.1997).

COBB, HARRIS and PLEUS, JJ., concur.

1

Frank WOLF, Appellant,

v.

STATE of Florida, Appellee.

No. 5D99–2868.

District Court of Appeal of Florida, Fifth District.

June 16, 2000.

Appeal from the Circuit Court for Orange County, Bob Wattles, Judge.

James B. Gibson, Public Defender, and Lyle Hitchens, Assistant Public Defender, Daytona Beach, for Appellant.

No Appearance for Appellee.

PER CURIAM.

AFFIRMED. *See State v. Causey,* 503 So.2d 321 (Fla.1987).

THOMPSON, C.J., SAWAYA and PLEUS, JJ., concur.

2

Willie OLIVER, Appellant,

v.

STATE of Florida, Appellee.

No. 5D99–3022.

District Court of Appeal of Florida, Fifth District.

June 16, 2000.

Appeal from the Circuit Court for Brevard County, Wallace Hall, Senior Judge.

James B. Gibson, Public Defender, and Anne Moorman Reeves, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and David H. Foxman, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED. *See State v. Causey,* 503 So.2d 321 (Fla.1987).

COBB, W. SHARP, and SAWAYA, JJ., concur.

3

Kenneth Deon HAYDEN, Appellant,

v.

STATE of Florida, Appellee.

No. 2D96–4679.

District Court of Appeal of Florida, Second District.

June 16, 2000.

Following jury trial, defendant was convicted in the Circuit Court, Hillsbor-

ough County, Chet A. Tharpe, J., of burglary of a dwelling and dealing in stolen property. Defendant appealed. The District Court of Appeal, Northcutt, Acting C.J., held that prosecution's late disclosure of fingerprint comparison, which placed defendant at scene of burglary, entitled defendant to continuance.

Reversed and remanded.

1. Criminal Law ⇐590(1), 627.8(6)

Prosecution's failure to disclose fingerprint comparison, which placed defendant at burglary scene, until afternoon before trial entitled defendant to continuance, though late disclosure was not willful, as violation was substantial and seriously prejudiced defendant's preparation for trial.

2. Criminal Law ⇐627.8(2)

The state must furnish discovery within sufficient time to allow the defendant to prepare for trial without forfeiting his right to a speedy trial. U.S.C.A. Const. Amend. 6.

3. Criminal Law ⇐627.5(1)

A defendant does not relieve the state of its ongoing discovery obligation when he demands a speedy trial. U.S.C.A. Const. Amend. 6.

4. Criminal Law ⇐627.8(6)

When the trial court learns of a possible discovery violation, the court must determine: (1) whether the violation was inadvertent or willful, (2) whether the violation was trivial or substantial, and (3) what effect the violation had on the defendant's ability to properly prepare for trial.

James E. Felman of Kynes, Markman & Felman, P.A., Tampa, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Diana K. Bock, Assistant Attorney General, Tampa, for Appellee.

NORTHCUTT, Acting Chief Judge.

Kenneth Hayden appeals his convictions for burglary of a dwelling and dealing in stolen property. He contends his trial went awry when the court permitted the State to introduce fingerprint evidence produced on the eve of trial, and denied Hayden a continuance to allow him to obtain his own fingerprint expert. We conclude that refusing the continuance was an abuse of discretion which denied Hayden a fair trial. We reverse and remand for a new trial.

The State's case against Hayden was entirely circumstantial. On the day of the burglary in January 1996, police investigators obtained two fingerprints-a latent partial fingerprint lifted from a glass windowpane at the point of entry, and a thumbprint on a pawn ticket at the shop where some of the stolen items were pawned shortly after the burglary. Apparently through inadvertence, the police performed a fingerprint comparison only on the pawn ticket. The thumbprint was Hayden's. This fact and the name of the police fingerprint expert the State intended to present at trial were duly reported in the State's response to Hayden's discovery demand. After receiving the State's response and being otherwise prepared for trial, Hayden filed a demand for a speedy trial.

Hayden's jury was selected on August 19, 1996, with his trial scheduled to begin three days hence. On the day after jury selection the assistant state attorney assigned to the case realized that no comparison had been performed on the fingerprint taken from the windowpane. He ordered one. Thus, at 4:00 p.m. on August 21—the day before Hayden's trial was to begin—the State for the first time produced a print comparison reflecting that Hayden's fingerprint had been found at the scene of the burglary.

On the morning of trial Hayden's counsel complained that this last-minute evidence severely undercut her planned trial strategy. She moved to exclude the evi-

dence or to continue the trial so that the defense could have the fingerprint examined by its own expert. The trial court denied both requests.

The evidence at trial disclosed that the stolen items were pawned less than an hour after the burglary. The State's fingerprint examiner testified that the thumbprint on the pawn ticket was Hayden's. Over objection, he also opined that the fingerprint found on the windowpane at the burgled home matched Hayden's, as well. Hayden testified that, indeed, he had pawned the items. But he recounted that another fellow had paid him $20 to do so because the man lacked the required photo identification. Hayden maintained that he had never been at the scene of the burglary. In closing argument to the jury, Hayden's counsel posited that the State's fingerprint examiner, rushed to perform the last-minute comparison, simply was mistaken about the fingerprint on the windowpane. The jury found Hayden guilty as charged.

[1–4] The State must furnish discovery within sufficient time to allow the defendant to prepare for trial without forfeiting his right to a speedy trial. *See Staveley v. State,* 744 So.2d 1051 (Fla. 5th DCA 1999), *review denied,* No. 96,916, 760 So.2d 948 (Fla. March 6, 2000) (table opinion). Contrary to the prosecutor's assertion to the trial court, a defendant does not relieve the State of its ongoing discovery obligation when he demands a speedy trial. *See Hahn v. State,* 626 So.2d 1056 (Fla. 4th DCA 1993); *State v. Davis,* 532 So.2d 1321 (Fla. 2d DCA 1988). When the trial court learns of a possible discovery violation, the court must determine: 1) whether the violation was inadvertent or willful, 2) whether the violation was trivial or substantial, and 3) what effect the violation had on the defendant's ability to properly prepare for trial. *See Sims v. State,* 681 So.2d 1112, 1114 (Fla.1996); *Richardson v. State,* 246 So.2d 771 (Fla.1971). After considering these factors, the court has the discretion to fashion an appropriate remedy. *See Staveley,* 744 So.2d 1051.

Here, the trial court did not conduct a *Richardson* hearing, but the circumstances apparent in the record strongly suggest that the late disclosure of the fingerprint comparison was not willful. *See Davis,* 532 So.2d at 1322–1323 (characterizing State's failure to investigate and prepare case in prompt manner as "negligent"). In that case, it would have been an abuse of discretion to exclude the evidence. *See Wheeler v. State,* 754 So.2d 827 (Fla. 2d DCA 2000); *Davis,* 532 So.2d 1321. Aside from that, however, it is also apparent that the violation was substantial. Literally on the eve of trial the State for the first time revealed that it had physical evidence of Hayden's presence at the scene of the burglary, a circumstance which significantly bolstered the State's case both on the burglary charge and on the charge that Hayden had dealt in property he knew or should have known to be stolen.

Further, there can be no real doubt that the tardiness of this disclosure seriously prejudiced the preparation of Hayden's defense. In argument to the trial court on this point, the prosecutor urged that the defense was unaffected by the late disclosure, or even had invited the problem, because it had never deposed the State's fingerprint expert. But the State previously had disclosed only that the expert had connected the pawn ticket to Hayden, something Hayden did not deny—indeed, when pawning the items he had furnished his photo identification. Even if the defense had deposed the expert during its trial preparation, it would not have learned of the windowpane print comparison because the comparison was not even requested until the day after jury selection. On the other hand, if the information had been furnished to the defense in a timely manner, it could have had the fingerprint examined by its own expert in order to develop evidence with which to impeach the opinion of the State's witness.

The trial court abused its discretion by refusing to grant the requested continuance. *See Fennie v. State,* 648 So.2d 95 (Fla.1994) (holding that a trial court's ruling on a motion for continuance is subject to an abuse of discretion standard and is prone to reversal if the defendant can demonstrate undue prejudice); *Palmer v. State,* 752 So.2d 665 (Fla. 2d DCA 2000). We reverse Hayden's conviction, and remand for a new trial.

GREEN and DAVIS, JJ., Concur.

1

Eddie B. BRYANT, Appellant,

v.

STATE of Florida, Appellee.

No. 5D00–867.

District Court of Appeal of Florida, Fifth District.

June 16, 2000.

3.800 Appeal from the Circuit Court for St. Johns County, Robert K. Mathis, Judge.

Eddie B. Bryant, Perry, pro se.

Robert A. Butterworth, Attorney General, Tallahassee, and David H. Foxman, Assistant Attorney General, Daytona Beach, for Appellee.

W. SHARP, J.

Bryant appeals from an order of the trial court which granted in part, and denied in part, his motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Bryant challenges the legality of his habitual offender sentence and fine. Because the habitual offender sentence is improper on the face of the record, we reverse. *See State v. Mancino,* 714 So.2d 429 (Fla.1998); *Summers v. State,* 747 So.2d 987 (Fla. 5th DCA 1999); *Wright v. State,* 743 So.2d 103 (Fla. 1st DCA 1999).

Bryant was charged in case number 98–567 with trafficking in cocaine in an amount between 28 and 200 grams. Bryant pled *nolo contendere* and was sentenced to 20 years in prison as an habitual offender. The information alleged the offense was committed on January 22, 1998.

Pursuant to section 893.135(1)(b)1.a., Florida Statutes (1997), if the cocaine is 28 grams or more but less than 200 grams, "such person shall be sentenced pursuant to the sentencing guidelines and pay a fine of $50,000.00." This language places the lesser trafficking offenses under the guidelines and removes them from sentencing under the habitual offender statute. *See Clay v. State,* 750 So.2d 153 (Fla. 1st DCA 2000).

REVERSED and REMANDED for resentencing.

DAUKSCH and GRIFFIN, JJ., concur.

2

ORLANDO DINNER ENTERTAINMENT, INC., etc., Appellant/Cross–Appellee,

v.

SPAN SYSTEMS, INC., etc., et al., Appellee/Cross–Appellant.

No. 5D99–1566.

District Court of Appeal of Florida, Fifth District.

June 16, 2000.

Appeal from the Circuit Court for Orange County, Richard F. Conrad, Judge.

Scott E. Siverson, Orlando, for Appellant/Cross–Appellee.