



**Factual and Procedural Background**

{¶2} On May 12, 2010, the State filed a complaint in the trial court alleging that F.S. was a delinquent child due to chronic and unexcused school absences in violation of R.C. 2152.02(D) and R.C. 3321.19(A)(2). The complaint also charged appellee, F.S.'s mother, for failure to send her child to school in violation of R.C. 3321.38. On July 9, 2010, personal service of the delinquent summons on appellee and F.S. was attempted but refused. On October 15, 2010, the trial court filed a document titled "Instructions for Citation," which instructed the clerk of courts to issue a citation to appellee and F.S. There is no indication when or if appellee received such a citation. However, appellee and her child both appeared at the scheduled November 4, 2010 preliminary hearing. At that hearing, the trial court appointed a public defender to represent F.S. and scheduled a trial for December 10, 2010. The State subsequently sought and was granted the dismissal of the complaint against F.S. while continuing to proceed only against appellee. At the December 10, 2010 hearing, the trial court granted appellee a continuance until February 4, 2011 to obtain counsel. Appellee obtained counsel who filed a request for discovery from the State on December 14, 2010. There is no indication when or if the State responded to that request.

{¶3} On February 2, 2011, appellee's counsel filed a motion to dismiss the complaint, arguing that the State's delay in bringing appellee to trial violated her right to a speedy trial pursuant to R.C. 2945.71 et seq. Specifically, the motion claimed that

because the charge of failing to send a child to school was a minor misdemeanor, appellee had to be brought to trial within 30 days of her arrest or service of summons. The motion alleged that appellee was served with the summons sometime after October 15, 2010 and was not timely brought to trial. The State opposed appellee's motion, arguing that the speedy trial rights set forth in R.C. 2945.71 did not apply to violations of R.C. 3321.28.

{¶4} After hearing arguments from each party, but not taking any evidence, the trial court granted appellee's motion and dismissed the charge against her. The trial court first concluded that the speedy trial provisions of R.C. 2945.71 et seq. applied to violations of R.C. 3321.28. The trial court then determined that the alleged offense was an unclassified misdemeanor.<sup>1</sup> A defendant charged with an unclassified misdemeanor must be brought to trial within 45 days of the service of summons. R.C. 2945.71(B)(1). Without making any specific factual findings, the trial court concluded that appellee was not brought to trial within 45 days of the service of summons. Therefore, the trial court dismissed the charge against her.

{¶5} The State appeals that judgment and assigns the following errors:

[I]. THE TRIAL COURT ERRED BY APPLYING THE SPEEDY-TRIAL PROVISIONS OF R.C. 2945.71 ET SEQ. TO A PROSECUTION FOR FAILURE TO SEND A CHILD TO SCHOOL UNDER R.C. 3321.38(A).

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<sup>1</sup> A violation of R.C. 3321.28 is not a minor misdemeanor because it falls outside the definition of a minor misdemeanor contained in R.C. 2901.02(G).

[II]. EVEN IF THE STATUTORY SPEEDY-TRIAL PROVISIONS APPLIED TO A VIOLATION OF R.C. 3321.28(A), THE TRIAL COURT ERRED BY GRANTING THE MOTION TO DISMISS.

{¶6} Because it is dispositive of this appeal, we first address the State's second assignment of error. In so doing, we assume without deciding that a violation of R.C. 3321.28 is an unclassified misdemeanor pursuant to R.C. 2901.02(F) and that the speedy trial provisions of R.C. 2945.71 apply.<sup>2</sup>

### **Speedy Trial Right**

{¶7} An accused is guaranteed the constitutional right to a speedy trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Section 10, Article I, Ohio Constitution. *State v. Taylor*, 98 Ohio St.3d 27, 2002-Ohio-7017, ¶32. Ohio's speedy trial statutes, found in R.C. 2945.71 et seq., were implemented to enforce those constitutional guarantees. *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 55; *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, ¶10. The speedy trial statutory provisions are mandatory and require strict compliance by prosecutors as well as strict enforcement by the courts. *State v. Bayless*, 10th Dist. No. 02AP-215, 2002-Ohio-5791, ¶16. If a defendant is not brought to trial within the time required, the trial court shall discharge the defendant, upon a timely motion. R.C. 2945.73(B); *Dublin v. Streb*, 10th

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<sup>2</sup> If a violation of R.C. 3321.28 is not a minor misdemeanor or an unclassified misdemeanor, the speedy trial provisions in R.C. 2945.71 would not apply at all.

Dist. No. 07AP-995, 2008-Ohio-3766, ¶23. The proper standard of review in speedy trial cases is to simply count the number of days passed, while determining to which party the time is chargeable, as directed in R.C. 2945.71 and 2945.72. *State v. Gonzalez*, 10th Dist. No. 08AP-716, 2009-Ohio-3236, ¶9.

{¶8} Assuming without deciding that a violation of R.C. 3321.28 is an unclassified misdemeanor, appellee's trial had to occur within 45 days of her arrest or the service of summons. R.C. 2945.71(B)(1). If a criminal defendant demonstrates that she was not brought to trial within the limits imposed by the statute, she presents a prima facie case for discharge. *State v. Butcher* (1986), 27 Ohio St.3d 28, 31. The burden then shifts to the state to demonstrate that, as a result of tolling or extension of the statutory time limit, the right to a speedy trial has not been violated. *State v. Kist*, 173 Ohio App.3d 158, 2007-Ohio-4773, ¶22. The State argues that appellee failed to make a prima facie showing that her speedy trial right had been violated. We agree.

{¶9} Appellee was not arrested on this charge. Therefore, the speedy trial time period could only begin on the day appellee was served with a summons. R.C. 2945.71(B)(1). The trial court, however, did not specifically determine when appellee was served. The trial court noted that appellee was served "sometime in between October 15, 2010 and when she appeared in court on November 4, 2010." This statement does not permit a speedy trial calculation. Appellee's trial was scheduled for February 4, 2011. If the start date for the speedy trial calculation began on October 15, 2010, 56 days passed

between that date and the scheduled trial date. If November 4, 2010 is the start date for the speedy trial calculation, only 36 days passed between that date and the scheduled trial date.<sup>3</sup> Therefore, determining the precise start date among the range of dates noted by the trial court is critical to the calculation. Appellee presented no specific evidence and the trial court made no specific finding as to when appellee was served with the citation.<sup>4</sup> Moreover, mailing is insufficient to start the speedy trial time period. See *State v. Stewart*, 2d Dist. No. 19663, 2003-Ohio-4329, ¶6-9 (rejecting State's argument that speedy trial clock began on date of mailing of summons without evidence that summons was actually served on defendant).

{¶10} Because appellee failed to present any evidence establishing when she was actually served, appellee failed to establish a prima facie case for dismissal. *State v. Howard*, 7th Dist. No. 08 BE 6, 2009-Ohio-3251, ¶19-20 (absence of evidence in the record to determine a start date prevented defendant from establishing prima facie case of speedy trial error). Accordingly, the trial court erred by granting appellee's motion to dismiss.

{¶11} We sustain the State's second assignment of error, a disposition that renders the State's first assignment of error moot. Accordingly, we reverse the judgment

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<sup>3</sup> The time between the original trial date of December 10, 2010 and February 4, 2011 was tolled based on appellee's request for that continuance. R.C. 2945.72(H).

<sup>4</sup> For purposes of our speedy trial analysis, we also assume, without deciding, that the service of the citation is equivalent to the service of summons for purposes of R.C. 2945.71(B)(1).

of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, and remand the matter for further proceedings.

*Judgment reversed and remanded  
for further proceedings.*

BRYANT, P.J., and DORRIAN, J., concur.

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