

[Cite as *State v. Hitchcock*, 2009-Ohio-6455.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92263

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

FELTON HITCHCOCK

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-510755

BEFORE: Jones, J., Gallagher, P.J., and Boyle, J

RELEASED: December 10, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Felton Hitchcock (“Hitchcock”), appeals the trial court’s denial of his motion to dismiss his case. Finding no merit to the appeal, we affirm.

{¶ 2} In 2008, Hitchcock was charged in a three-count indictment with drug trafficking, drug possession, and possessing criminal tools. He initially pled not guilty and filed a motion to suppress evidence, which the trial court denied after a full hearing. Hitchcock also filed a motion to dismiss based on an alleged violation of his right to a speedy trial, which the trial court also denied.

{¶ 3} Hitchcock pled no contest and the trial court found him guilty of drug trafficking and drug possession. The court found him not guilty of possessing criminal tools.

{¶ 4} Hitchcock appeals the judgment of the trial court, raising one assignment of error for our review. In his sole assignment of error, Hitchcock argues that the trial court erred in denying his motion to dismiss.

{¶ 5} First, we note that while Hitchcock does briefly allege in his appellate brief that his statutory speedy trial rights were violated, the crux of his argument is that the trial court erred in failing to hold a sufficiently thorough hearing on his motion to dismiss. In fact, Hitchcock does not request a dismissal of his case, rather, he requests that we order a remand for a hearing on that motion.

{¶ 6} That being said, we do not find that the trial court erred in its handling of Hitchcock’s motion to dismiss. Crim.R. 12(F) clearly states that “[t]he court

may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means. * * * Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.”

{¶ 7} In this case, there was ample discussion regarding Hitchcock’s pro se motion to dismiss before and after the hearing on his motion to suppress. The trial court made the specific factual findings that Hitchcock was arrested February 29, 2008, posted bond and was out of jail until he was indicted on June 5, 2008. The court noted that Hitchcock requested numerous pretrials and continuances. The court concluded that Hitchcock had three days left in which to be tried and proceeded to the hearing on the motion to suppress.

{¶ 8} We find that the trial court complied with Crim.R.12(F) when it held an informal hearing prior to the hearing on the motion to suppress and stated its findings of fact on the record.

{¶ 9} The next step is to consider, de novo, whether Hitchcock’s statutory speedy trial rights were violated. If we conclude that Hitchcock’s right to a speedy trial was violated, we would not remand the case for a hearing; instead we would dismiss the case in toto. See R.C. 2945.73(B).

{¶ 10} R.C. 2945.71(C)(2) states that a person against whom a felony charge is pending shall be brought to trial within 270 days after his arrest. For purposes of computing time under R.C. 2945.71(C)(2), each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as

three days. See R.C. 2945.71(E). Consequently, “[a] felony defendant in Ohio must be tried within ninety days if incarcerated on the pending charge or within two hundred seventy days if on bail.” *State v. Coleman* (1989), 45 Ohio St.3d 298, 304, 544 N.E.2d 622. If the state violates a defendant’s right to a speedy trial, then the court must dismiss the charges against the defendant. R.C. 2945.73(B).

{¶ 11} The speedy trial statute may be tolled by several events, set forth in R.C. 2945.72. For example, a defendant’s demand for discovery or a bill of particulars tolls the speedy trial period. *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, 781 N.E.2d 159, ¶ 26. The period is also tolled by “[t]he period of any continuance granted on the accused’s own motion, and the period of any reasonable continuance granted other than upon the accused’s own motion[.]” R.C. 2945.72(H); *State v. Baker* (1993), 92 Ohio App.3d 516, 636 N.E.2d 363.

{¶ 12} In general, the trial court should, but is not required to, identify the party against whom it will charge the continuance. *Cleveland v. Ali*, Cuyahoga App. No. 88604, 2007-Ohio-3902, ¶22-23.

{¶ 13} For purposes of calculating speedy trial time, the first day counted is the day after the arrest. In this case, Hitchcock was arrested on February 29, 2008 and arraigned on June 5, 2008. Hitchcock told the court that he posted bond and was out on bond until his arraignment. Then from June 10, 2008 until August 4, 2008, Hitchcock requested numerous continuances. Hitchcock filed a motion to suppress on August 4, 2008, which tolled the time until the hearing on

September 18, 2008. Thus, we find that ample time was left in which to bring Hitchcock to trial; therefore, the state did not violate Hitchcock's statutory right to a speedy trial.

{¶ 14} Hitchcock argues that he did not give his counsel permission to request pre-trial continuances; therefore, the time should be charged against the state. We disagree. In *State v. Phillips*, Clark App. No. 2003-CA-15, 2004-Ohio-4688, the court pointed out that "[t]he fact that an attorney seeks a continuance, even though it may toll a client's speedy trial time, doesn't necessarily portray a violation of counsel's duty of representation, even when, as Defendant claims, requesting a continuance was contrary to the client's instructions. The client's preferred defense strategies do not necessarily govern his counsel's decisions." Likewise, in *State v. Parker* (May 24, 1990), Franklin App. No. 89AP-1217, the court found that "[d]efense counsel should be given the latitude to bind defendant to the extension requested by his counsel without his consent, as ordinarily it is in the client's best interest that a trial be continued to a date compatible with his counsel's court schedule. It is not necessary that the trial court inquire into arrangements between defendant and his counsel as counsel's action is presumed to be in defendant's best interest."

{¶ 15} We agree with the reasoning of these two courts and also note that Hitchcock has not assigned as error a claim that his counsel was ineffective in representing him.

{¶ 16} Therefore, the sole assignment of error is overruled.

{¶ 17} Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY JANE BOYLE, J., CONCUR