[Cite as *State v. Elder*, 2014-Ohio-4312.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-L-001**
- vs -	:	
EMMANUEL ELDER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 13 CR 000415.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor and *Teri R. Daniel*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Emmanuel Elder, pro se, PID# A644514, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, OH 44901 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Emmanuel Elder, appeals his convictions in the Lake County Court of Common Pleas for Failure to Comply with Order or Signal of Police Officer, Obstructing Official Business, Failure to Register, a Headlight Violation, and a No Tail Light or Rear License Plate Light Violation. The issues to be determined by this court are whether a trial court lacks jurisdiction to hear a case when the defendant is properly indicted, following the issuance of a traffic ticket and a complaint for a felony

charge; whether Obstructing Official Business and Failure to Comply are allied offenses; whether an officer's testimony is sufficient to prove the location of the crime; whether jury instructions on Failure to Comply are proper when they require a separate finding by the jury regarding the risk of harm; whether a defendant is properly advised of the crimes for which he is charged through a bill of particulars and discovery; and whether a defendant's rights to speedy trial are violated when a period of time is tolled by the filing of various motions. For the following reasons, we affirm the decision of the trial court.

{¶2} On March 8, 2013, a Complaint was filed against Elder, asserting that he violated R.C. 2921.331, for willfully eluding or fleeing a police officer, a felony of the third degree. The Complaint arose from the stop of Elder's vehicle for various traffic violations on March 7, 2013.

{¶3} On June 4, 2013, a written plea of "not guilty," signed by Elder, was entered in the Willoughby Municipal Court.

{¶4} On June 12, 2013, the municipal court issued a Judgment Entry, noting that a preliminary hearing was conducted and there was probable cause to believe a felony offense was committed by Elder, and he was bound over to the Lake County Grand Jury.

{¶5} On July 19, 2013, the Lake County Grand Jury issued an Indictment, charging Elder with the following: Failure to Comply with Order or Signal of Police Officer (Count One), a felony of the third degree, in violation of R.C. 2921.331(B); a Headlight Violation (Count Two), a minor misdemeanor, in violation of R.C. 4513.14; a No Tail Light or Rear License Plate Light Violation (Count Three), a minor misdemeanor, in violation of R.C. 4513.05; Failure to Register (Count Four), a

misdemeanor of the fourth degree, in violation of R.C. 4503.11; and Obstructing Official Business (Count Five), a misdemeanor of the second degree, in violation of R.C. 2921.31.

{¶6} On July 22, 2013, the trial court issued an Arraignment Judgment Entry, noting that Elder entered no plea, and that the court "hereby enters a plea of 'Not Guilty.'"

{¶7} Prior to trial, Elder filed various motions, including a motion for summary judgment and multiple motions to dismiss the charges, which were denied. In these motions, he raised various issues, including, inter alia, that the court lacked territorial jurisdiction and was an improper venue, that no victims' names were provided to whom he caused a risk of harm, that his traffic tickets had been dismissed in the municipal court, that there were no uniform traffic citations, that there was a lack of evidence that he failed to stop upon signal of an officer, and that the police vehicle video did not prove jurisdiction. He repeatedly asserted that there was no proof the offense occurred in Lake County. These motions were denied by the trial court in several Orders and Journal Entries.

{¶8} Elder filed a Motion to Suppress on August 1, 2013, in which he raised many of the foregoing arguments, unrelated to suppression of evidence, emphasizing that several of the charges had already been dismissed in the municipal court, and seeking suppression of evidence of a prior warrant and testimony of the officers. Elder filed a second Motion to Suppress on August 26, 2013, raising similar issues. The trial court denied these motions as failing to raise any specific factual or legal bases for suppression.

{¶9} A jury trial was held on September 17 and 18, 2013. Patrolman Erik Kupchik testified that he observed Elder driving his vehicle on March 7, 2013, in Willoughby Hills, Lake County, Elder's vehicle had only one functioning headlight, and the license plate was not properly illuminated. Upon calling the vehicle into dispatch, Patrolman Kupchik learned that its registration was expired and that Elder had an active warrant from the Ashtabula Police Department. Kupchik initiated a stop of the vehicle, remaining within the city of Willoughby Hills, and obtained Elder's identification. After asking Elder to exit the vehicle, due to his "suspicious" actions, Elder turned on the vehicle and drove away. At that time, Kupchik had not completed the stop and had not yet told Elder if he was receiving a warning or a ticket or informed him of the final status of the warrant.

{¶10} Patrolman Kupchik pursued Elder, activating his siren during the pursuit. A video of this incident was played for the jury. Kupchik explained that the pursuit began in Willoughby Hills and continued to several other cities in Cuyahoga County. During this pursuit, he drove at speeds of up to 90 mph in a 60 mph zone. Kupchik testified, while showing the video, that an overpass in the video helped identify that the stop and pursuit began in Willoughby Hills. He also pointed to a sign, which he testified showed the Cuyahoga County limits. Kupchik explained that during the pursuit, Elder crossed between various lanes of traffic without signaling. The chase was called off after approximately 10 miles. Kupchik believed that Elder put other motorists at substantial risk of serious physical harm during the course of the pursuit.

{¶11} Kupchik testified that he cited Elder for four violations occurring before the stop, which were the light violations, the expired plates violation, and a marked lanes violation.

{¶12} Patrolman James Ours, of the Willoughby Hills Police Department, testified that he went to the Cleveland police impound lot on a date subsequent to the March 7, 2013 incident, photographed the vehicle Elder had been driving on that date, and matched the VIN number of that vehicle with the VIN number on the title. Although he was not present during the stop of Elder, he testified that, after viewing the video, he recognized that the stop occurred in Willoughby Hills.

{¶13} Following the jury trial, Elder was found guilty on Counts One, Four, and Five. The court found Elder guilty on the remaining two counts, which were minor misdemeanors. On September 24, 2013, the trial court issued a Judgment Entry memorializing the verdict.

{¶14} On the same date, a Judgment Entry of Sentence was filed, ordering that Elder serve a term of 30 months for Failure to Comply and 30 days for Obstructing Official Business, to be served concurrently. Elder was also ordered to pay fines on the remaining counts, totaling $100.

{¶15} On October 1, 2013, Elder filed a Motion for New Trial. In this Motion, he raised various issues, including several alleged jurisdictional defects. On December 5, 2013, the trial court issued an Opinion and Judgment Entry, denying Elder's Motion for New Trial. Elder appealed from that Judgment Entry, which was affirmed by this court on June 16, 2014. *State v. Elder*, 11th Dist. Lake No. 2013-L-128, 2014-Ohio-2567.

{¶16} Elder appeals from the judgment entering his convictions and sentence and raises the following assignment of error:

{¶17} "[1.] Appellant was prejudiced when the trial court failed to find the state failed to establish territorial jurisdiction pursuant to O.R.C. 2938.10, due to failing to prove beyond a reasonable doubt that each of the offenses cited in the 7/19/2013 (5) count indictment were initiated and or committed within the territorial jurisdiction of Lake County, Ohio, Therefore defining [sic] violation of appellant[']s right against unreasonable search and seizure and or probable cause under the 4th U.S.C.A. in violation of appellant[']s right to a full and fair trial and a[n] impartial trier of fact under the 6th U.S.C.A, in violation of appellant[']s right to due Process and Equal protection of Law under the 14th U.S.C.A. (sic).[1]

{¶18} "[2.] Appellant was prejudiced when the trial court failed to find that O.R.C. 2921.31 Obstructing Official Business and O.R.C. 2921.331(D) Failure to Comply (F-3), was of the same animus of similar import pursuant to O.R.C. 2945.25 and Crim.R. 4 * * *. (sic)

{¶19} "[3.] Appellant was prejudiced when the trial court failed to find that the state lacked Personal jurisdiction, Territorial jurisdiction and Subject matter jurisdiction for counts 1, 2, 3, and 4 of the 7/19/2013 (5) count indictment, due to failure to apply the controlling law(s) of Crim.R. 4, Crim.R. 5(B)(7), Crim.R. 48(A), Crim.R.5(B)(4)(C), R.C. 2936.26 (B)(1)(2)(4) * * *.

1. To avoid unnecessary and lengthy repetition, we note that each of Elder's nine assignments of error allege that some or all of the foregoing rights were violated and we have excluded the restatement of these rights in the quotation of the remaining assignments of error.

{¶20} "[4.] Appellant was prejudiced by trial court[']s jury verdict form, due to it omitting the misdemeanor elements for O.R.C. 2921.331(B), Failure to Comply, (F-3), for which violated O.R.C. 2945.75 (A)(2) * * *. (sic)

{¶21} "[5.] Appellant was prejudiced when trial court failed to apply the controlling law of Crim.R. 41(a) when the appellant[']s objection during trial to not allow the state to utilize the 15 photos officer James Ours obtained from private property outside the territorial jurisdiction of Lake [C]ounty, Ohio * * *. (sic)

{¶22} "[6.] Appellant was prejudiced when trial court denied the appellant[']s request to submit exculpatory evidence of the Willoughby Municipal Court judge Harry Field's 8/28/2013 judgment entry of dismissal of the 4 misdemeanor traffic cases and appellant[']s motion to dismiss said traffic offenses for case number 13TRD04272 for which were dismissed pursuant to O.R.C. 2937.04, O.R.C. 2941.33, O.R.C. 2945.71, O.R.C. 2935.26, Crim R. 48(A), and Crim.R. 5(B)(4)(C), defining violations of appellant[']s right against double jeopardy under the 5th U.S.C.A. * * *. (sic)

{¶23} "[7.] Appellant was prejudiced when trial court failed to apply controlling law of Crim.R. 31(A) and O.R.C. 2945.71 when the jurors failed to provide signed unanimous juror's verdict of guilty on all 5 counts of the 7/19/2013 indictment, for which defines violation of appellant[']s right to a full and fair trial and public trial of a jury of his peers * * *. (sic)

{¶24} "[8.] Appellant was prejudiced when trial court failed to apply controlling laws of Crim.R. 7(e) and Crim.R. 16 due to the state[']s failure to provide the appellant with an amende[d] Bill of Particulars of the chronological times each offense

commenced, mile marker locations of each offense, times of each offense, jurisdiction and or the venue of each offense * * *. (sic)

{¶25} "[9.] Appellant was prejudiced when trial court failed to schedule a[n] in camera hearing pursuant to Crim.R. 16(B)(1)(G) and a hearing pursuant to R.C. 2705.02(C) and 2705.05 when the appellant filed affidavit and petition to find officer James Ours and Officer Erik Kupchik in violation of perjury and contempt due to their deliberate indifference to subpoenas duly served on them via the Clerk of Common Pleas on the request of the appellant pursuant to Crim.R. 17(C) * * *." (sic)

{¶26} In his first assignment of error, Elder argues that the trial court erred in failing to find that it lacked jurisdiction.

{¶27} Regarding jurisdiction, "[a] person is subject to criminal prosecution and punishment in this state if * * * [t]he person commits an offense under the laws of this state, any element of which takes place in this state." R.C. 2901.11(A)(1). While Elder notes that he is challenging jurisdiction, he also appears to be challenging venue, since he questions whether the State proved the county in which the offenses occurred. *State ex rel. Handwork v. Goodrich*, 11th Dist. Ashtabula No. 2012-A-0018, 2012-Ohio-2835, ¶ 13 (when the defendant is "alleging his crimes were committed in a different county, not a different state, he is really challenging venue in the trial court"). Pursuant to R.C. 2901.12(A), "[t]he trial of a criminal case in this state shall be held * * * in the territory of which the offense or any element of the offense was committed." "When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred." R.C. 2901.12(H).

{¶28} A challenge to venue, based on assertions that the State did not introduce evidence to support a conclusion that the crime occurred within the county where the conviction occurred, has been evaluated as a challenge to the sufficiency of the evidence. *State v. Camplese*, 11th Dist. Ashtabula No. 2007-A-0072, 2008-Ohio-3254, ¶ 16. "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury," i.e., "whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary (6 Ed.1990), 1433. In reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶29} Regarding jurisdiction, this court has noted that, a challenge to territorial jurisdiction is presented through a motion to dismiss, and we review rulings on the denial of the motion under a de novo standard of review. *State v. Rode*, 11th Dist. Portage No. 2010-P-0015, 2011-Ohio-2455, ¶ 14.

{¶30} Elder asserts that the video presented failed to show where the stop of his vehicle and any subsequent pursuit occurred, and the evidence did not support a finding that the criminal acts took place in Lake County, depriving the court of jurisdiction.

{¶31} There was more than sufficient evidence to prove that the crime occurred in the state of Ohio and in Lake County. Patrolman Kupchik testified that the crimes precipitating the stop, as well as the beginning of the pursuit, occurred in Willoughby

Hills, within Lake County. Kupchik pointed out an overpass and sign, which he used as landmarks to support this conclusion. Regardless of whether the jury could specifically read the sign, this description by Kupchik, based on his experience of working in the area of the stop, as well as Ours' similar testimony, supported a finding that the offenses occurred in Lake County. Since Elder was brought to trial in the state and county where the offenses were committed, he was not prevented from presenting a competent defense on this ground, as he contends.

{¶32} The first assignment of error is without merit.

{¶33} In his second assignment of error, Elder argues that the trial court abused its discretion in failing to find that Obstructing Official Business and Failure to Comply with Order or Signal of Police Officer are allied offenses.

{¶34} Generally, "[a]n appellate court should apply a de novo standard of review in reviewing a trial court's R.C. 2941.25 merger determination." *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 28.

{¶35} "R.C. 2941.25 codifies the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution, which prohibits multiple punishments for the same offense." *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 23. It provides that "[w]here the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." R.C. 2941.25(A). However, "[w]here the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or

similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them." R.C. 2941.25(B). "[I]f the court determines that the commission of one offense will *never* result in the commission of the other, or if the offenses are committed separately, or if the defendant has separate animus for each offense, then, according to R.C. 2941.25(B), the offenses will not merge." *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 51.

{¶36} Elder did not object to the trial court's failure to merge the counts in question at the time of sentencing. The Supreme Court of Ohio has held that the "imposition of multiple sentences for allied offenses of similar import is plain error." (Citation omitted.) *Underwood* at ¶ 31.

{¶37} Pursuant to R.C. 2921.331(B), Failure to Comply occurs when a person "operate[s] a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." Obstructing Official Business occurs when a defendant, "with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties." R.C. 2921.31(A).

{¶38} It appears that the Obstructing Official Business charge, as was argued in the State's closing argument, was based on the fact that Elder left the scene of the traffic stop without remaining to receive a ticket or warning for the offenses that were committed, preventing the officer from completing his business. The Failure to Comply is based on Elder's continuing conduct in fleeing from Kupchik while he was trying to

effectuate a second stop of Elder's vehicle, with his lights and siren activated, causing a risk to the public through his evasive and dangerous driving. In the absence of any argument to the contrary by Elder, we cannot find that it was plain error not to merge the offenses or find that they were committed with the same animus or conduct.

{¶39} Elder also asserts that the State failed to prove that he directly interfered with Kupchik's duties. This relates to the sufficiency of the evidence as to the Obstruction conviction. Kupchik testified that he had instructed Elder to turn off the car, had taken his driver's license, and then ordered him to exit the car. Elder disobeyed these instructions by not exiting the car, turning on his vehicle, and leaving the scene before the stop had been completed. Elder fails to present any specific argument as to how this conduct does not constitute interference with Kupchik's duties. While he asserts that Kupchik did not tell him to stop while he was driving away, this is not only disingenuous, since it would be clear to the average person that he was not yet permitted to leave, but is also irrelevant, given the foregoing evidence of Elder's failure to follow the other instructions given by Kupchik.

{¶40} Elder finally argues that Kupchik did not have the authority to arrest him on the Ashtabula warrant outside of the city of Ashtabula. There is no evidence that Kupchik ever arrested him on that warrant, since the pursuit stopped before Elder was arrested. Further, Kupchik noted that the stop was conducted based on several traffic violations, not just his knowledge of the existing warrant.

{¶41} The second assignment of error is without merit.

{¶42} In his third and sixth assignments of error, Elder raises several arguments regarding the improper application of certain laws.

{¶43} To the extent that arguments within these assignments of error relate to issues of law, our standard of review is de novo. *State v. Perry*, 11th Dist. Lake No. 2011-L-125, 2013-Ohio-5803, ¶ 5. Regarding the admission of evidence, "[t]he trial court has broad discretion * * * and unless it has clearly abused its discretion and the defendant has been materially prejudiced thereby, an appellate court should not disturb the decision of the trial court." *State v. Issa*, 93 Ohio St.3d 49, 64, 752 N.E.2d 904 (2001).

{¶44} Elder first argues that the trial court abused its discretion by failing to find that the traffic tickets should not be admitted into evidence, since he never received them. However, Elder himself submitted the traffic tickets into the record, making it clear that he had a copy of them.

{¶45} Elder's assertions that the tickets did not have a date and were not properly submitted to the grand jury also fail, since it is clear he was appropriately charged and the offenses were properly before the jury. Even if the tickets were not correctly filed or did not contain all of the information Elder believes was necessary, the fact that he was indicted would remedy that issue. When the ultimate conviction is not based on an allegedly defective complaint in the municipal court but the criminal proceedings were "predicated upon an indictment," such defects were harmless and have no effect on the trial court's jurisdiction. *State v. Porterfield*, 11th Dist. Trumbull No. 2012-T-0039, 2013-Ohio-14, ¶ 11; *State v. Jenkins*, 4th Dist. Lawrence No. 02CA5, 2003-Ohio-1058, ¶ 23 (a subsequent indictment, which included a traffic offense, rendered the jurisdictional issue in the municipal court a nullity, since "grand juries can indict originally, without a complaint in an inferior court").

{¶46} The municipal court's dismissal of the misdemeanor charges did not prohibit these charges from being raised in the court of common pleas, for similar reasons. The municipal court's docket clearly notes that the misdemeanor charges were dismissed due to the bind over of the felony charge. Thus, the trial court did not err in failing to determine that the dismissal below did not prevent the charges in the court of common pleas from going forward.[2]

{¶47} The third and sixth assignments of error are without merit.

{¶48} In his fourth assignment of error, Elder argues that the Failure to Comply jury instruction was improper and confusing, since it included references to both a misdemeanor statute for R.C. 2921.331 and a felony, but references to the misdemeanor on the first page of the verdict form were omitted.

{¶49} Generally, "it is within a trial court's 'sound discretion' to determine whether the evidence presented at trial warrants a particular jury instruction." (Citation omitted.) *State v. Frasca*, 11th Dist. Trumbull No. 2011-T-0108, 2012-Ohio-3746, ¶ 24. Elder did not object to the jury instructions prior to their presentation to the jury, although he had a chance to review them. "In criminal appeals where no objection was made to erroneous jury instructions, the Ohio Supreme Court permits the use of plain error doctrine to reverse a conviction only when, but for the error, the outcome of the trial clearly would have been otherwise." *State v. Meyers*, 11th Dist. Lake Nos. 2013-L-

2. We note that Crim.R. 5(B)(1) has been amended and, as of July 1, 2014, now states the following: "Except upon good cause shown, any misdemeanor, other than a minor misdemeanor, arising from the same act or transaction involving a felony shall be bound over or transferred with the felony case." Since this law was not in effect at the time of the proceedings below, its potential applicability was not considered in this appeal. *See State v. Fussell*, 8th Dist. Cuyahoga No. 95875, 2011-Ohio-4950, ¶ 30, fn. 1 (noting that an amendment to the criminal rules regarding discovery did not apply, since discovery had been completed as of the date the amendment became effective).

042 and 2013-L-043, 2014-Ohio-1357, ¶ 34. We do note that Elder objected *after* the instructions had been given. Under either standard, however, Elder's argument fails.

{¶50} The jury was instructed that, if it found Elder failed to comply with the police signal to stop, it was also required to make an additional finding as to whether the operation of the motor vehicle caused a substantial risk of serious physical harm to people or property. Page one of the jury verdict form required the jury to find whether Elder failed to comply, and then instructed the jury to make the harm finding, "if [the jury] found the defendant guilty of Count 1." The second section required the jury to find that Elder "'did' or 'did not' cause a substantial risk of serious physical harm."

{¶51} We cannot find any error in the instruction to the jury or the jury verdict form. Although Elder asserts that the jury was "compelled" to find him guilty of the third degree felony by not referring a misdemeanor on the verdict form, the verdict form stated both the level of the offense and the circumstances necessary to convict him of that offense. *See State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, 860 N.E.2d 735, ¶ 14.

{¶52} While Elder argues that the jury was instructed as to the "misdemeanor statute" for R.C. 2921.331, the jury was instructed of the exact elements of the crime for which Elder was indicted. *See State v. Scott*, 8th Dist. Cuyahoga No. 99524, 2013-Ohio-4599, ¶ 28 (the jury instruction was proper for Failure to Comply when it informed the jury that it must first determine whether the defendant was guilty of failure to comply and then consider the specification). While it appears Elder is now arguing that some type of a lesser included instruction should have been given, at trial, he specifically

asserted both that he did not want a lesser included instruction and that he should not be convicted of a misdemeanor count since he was not indicted for one.

{¶53} The fourth assignment of error is without merit.

{¶54} In his fifth assignment of error, Elder argues that the photos of his vehicle, taken by Patrolman Ours, should not have been admitted into evidence, since they were taken on the private property of the Cleveland Police impound lot and without a search warrant.

{¶55} Elder argues that these photos were admitted in violation of his Fourth Amendment rights, since they were taken without a warrant. We note, however, that Elder failed to file a Motion to Suppress as to this issue. An appellant waives such an issue when it is not included in a motion to suppress. *State v. Johnson*, 11th Dist. Trumbull No. 2011-T-0075, 2012-Ohio-3035, ¶ 13.

{¶56} Regardless, Elder articulates no valid reason why a warrant was required. Ours testified that he had permission to be on the lot to take the photographs, which were only of the outside of Elder's car. The outside of a vehicle is not a place where an individual has an expectation of privacy. *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) ("[w]hat a person knowingly exposes to the public * * * is not a subject of Fourth Amendment protection").

{¶57} The fifth assignment of error is without merit.

{¶58} In his seventh assignment of error, Elder argues that his speedy trial rights were violated when he was not tried within 30 to 90 days, depending on the level of the offense, pursuant to R.C. 2945.71.

{¶59} "The standard of review of a speedy trial issue is to count the days of delay chargeable to either side and determine whether the case was tried within the time limits set by R.C. 2945.71." *State v. Blumensaadt*, 11th Dist. Lake No. 2000-L-107, 2001 Ohio App. LEXIS 4283, 17 (Sept. 21, 2001).

{¶60} Initially, we note that "[a] person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged." R.C. 2945.71(D). Here, Elder's offenses all arose from his conduct on March 7, 2013. *See State v. Madden*, 10th Dist. Franklin No. 04AP-1228, 2005-Ohio-4281, ¶ 27 (finding that OVI, driving under suspension, and fleeing, charges that resulted from events occurring on the same date and proximate time, arose out of the same act and transaction). The highest level of offense for which Elder was indicted was a felony. R.C. 2945.71(C)(2) provides that "[a] person against whom a charge of felony is pending: * * * (2) [s]hall be brought to trial within two hundred seventy days after the person's arrest." Pursuant to R.C. 2945.71(E), "[f]or purposes of computing time * * *, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days." R.C. 2945.71(E) applies only when the defendant is in jail solely on the pending charges. *State v. Dach*, 11th Dist. Trumbull Nos. 2005-T-0048 and 2005-T-0054, 2006-Ohio-3428, ¶ 28.

{¶61} Although the Complaint on the Failure to Comply was originally filed on March 8, 2013, Elder was being held in the Cuyahoga County Jail and was not arrested in this matter until June 3, 2014. The trial court found that there was somewhat of a

question as to whether a detainer or holder was placed on Elder on March 13, 2013 (the day he was arrested in Cuyahoga County on separate charges), noting that an accused's speedy trial time runs on a one-to-one basis when he or she is also being held on a holder and when he is not being held solely on the pending charge and found that, "assuming a detainer was placed on Elder, * * * he would be entitled to 82 days against the speedy trial limit." *See State v. Wellman*, 2nd Dist. Miami No. 2006 CA 42, 2007-Ohio-6896, ¶ 17. In this case, Elder was being held on charges filed separately in Cuyahoga County and, thus, was not entitled to the application of the triple count provision.

{¶62} From June 4 to June 25, 2013, Elder was entitled for the triple count provision to apply, since he was being held on the charges in Lake County. This totals 22 days, or 66 under the triple count provision.

{¶63} Commencing on June 25, 2013, Elder began to file a series of motions, which ultimately totaled over 60. This included a Motion for Summary Judgment and a Motion to Dismiss on June 25, Motions to Dismiss on July 22 and 29, a Motion to Suppress on August 1, 2013, and a Motion to Compel on August 7. On August 23, the trial court filed a Judgment Entry, noting that there had been over 50 motions filed in the case and that the court "needs adequate time to consider and rule upon all motions before trial," although it did rule on many motions on that date. It noted that tolling of speedy time that had been necessitated by the delay was charged to Elder. Three days later, Elder filed another Motion to Suppress, and on August 28, he filed various Motions to Impugn. The trial court issued rulings on September 9, and ultimately issued even more rulings on the date of the trial, due to the additional motions filed shortly prior to

trial. Pursuant to R.C. 2945.72(E), the time during which an accused may be brought to trial may be extended by "[a]ny period of delay necessitated by reason of a * * *, motion, proceeding, or action made or instituted by the accused."

{¶64} Based on these ongoing and lengthy motions, it is apparent that time was tolled from June 25 until the date of trial. "While the speedy trial clock is not tolled indefinitely by a motion, it is tolled for a reasonable time." *State v. Barr*, 11th Dist. Portage No. 2008-P-0031, 2009-Ohio-1146, ¶ 46, citing *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, 853 N.E.2d 283, ¶ 27. The amount of time utilized to rule on these motions was reasonable, given their volume and frequency, and time was tolled during the duration of this time period.

{¶65} Given the foregoing, it is clear that, when giving Elder all possible credit, his trial was still held well before the 270 day time limitation expired.

{¶66} Although Elder also argues that he was denied a copy of the jury verdict with the jury names, he fails to point to where such a request was denied, except in the ruling on his Motion for New Trial, which is not before this court at the present time. The names of the jurors were not kept from him, he obtained their names through the jury selection process, and the verdict form is part of the record in this case, which he could view in preparing any potential appellate arguments.

{¶67} While Elder also claimed that he was "surprised" by the fact that the court, rather than the jury, found him guilty of the minor misdemeanors, there is no basis for such surprise. The law is clear that the "right to be tried by a jury * * * does not apply to a violation of a statute that is * * * a minor misdemeanor." R.C. 2945.17(B)(1).

{¶68} The seventh assignment of error is without merit.

{¶69} In his eighth assignment of error, Elder essentially argues that he was not provided with "discovery" of certain facts relating to the stop and crimes committed, including discovery of "mile points, times, county, city, state, and the chronological order each offense is said to have occurred."

{¶70} The State's failure to provide discovery is reversible error if there is a showing that the prosecution's failure to disclose was a willful violation of Crim.R. 16, that foreknowledge of the statement would have benefited the accused in the preparation of his defense, or that the accused was prejudiced by the use of the statement. *State v. Parson*, 6 Ohio St.3d 442, 453 N.E.2d 689 (1983), syllabus.

{¶71} Although somewhat confusing, in this assignment of error, Elder argues that he should have received discovery related to the foregoing facts. However, these issues are simply facts that were in dispute, such as where the crime happened and when the various traffic violations occurred. Much of the evidence related to these facts was elicited from Kupchik's testimony. It is unclear what could have been provided through discovery other than any documentation or videos of the incident, all of which were given to Elder if they existed. The fact that Elder does not think that the quality of the video proved his guilt is not a discovery issue, nor does it demonstrate a failure on the behalf of the State to provide required evidence.

{¶72} Elder also argues that the bill of particulars provided to him was not sufficiently specific to advise him of the charges.

{¶73} Crim.R. 7(E) states that "[w]hen the defendant makes a written request * * *, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charge and of the conduct of the defendant alleged

to constitute the offense." "In a criminal prosecution the state must, in response to a request for a bill of particulars * * *, supply specific dates and times with regard to an alleged offense where it possesses such information." *State v. Sellards*, 17 Ohio St.3d 169, 478 N.E.2d 781 (1985), syllabus. Where a proper bill of particulars is not filed, the issue "ultimately turns on the question whether appellant's lack of knowledge concerning the specific facts a bill of particulars would have provided him actually prejudiced him in his ability to fairly defend himself." *State v. Chinn*, 85 Ohio St.3d 548, 569, 709 N.E.2d 1166 (1999).

{¶74} We cannot say that any specific facts excluded from the bill of particulars prejudiced Elder. He was provided with a police report of the incident in question, which alleged each of the individual offenses, including the traffic violations that occurred prior to the stop, the details of Elder leaving the scene of the stop, and of the pursuit. He viewed the video that showed most of the incident. Elder was able to ask questions during cross-examination regarding the circumstances surrounding when he left the scene of the stop, which was the basis for the Obstruction of Official Business charge which he argues was unclear from the bill of particulars. Under these circumstances, we find no basis for reversal. *State v. Turner*, 11th Dist. Ashtabula No. 2010-A-0060, 2011-Ohio-5098, ¶ 41 (where a bill of particulars was inadequate, "the defendant's ability to learn of the conduct related to the crime through discovery [and] the defendant's references to the conduct during trial," combined with a showing of a lack of prejudice, precluded reversal) (citation omitted).

{¶75} The eighth assignment of error is without merit.

{¶76} In his ninth assignment of error, Elder argues that a hearing should have been held when he alleged that Kupchik and Ours provided perjured testimony during the trial, which he brought to the attention of the trial court through his Motion for New Trial.

{¶77} As noted by Elder himself, he raised this issue in his Motion for New Trial and it was ruled upon at that time, when the court found that no evidence of perjury was presented. As the alleged perjury relates to the fairness of Elder's trial, Elder merely contends that the two officers lied when stating that they were "not notified to be at the appellant's trial," which Elder asserts is untrue since they were in fact present at the trial. It is unclear exactly what testimony Elder is referencing, and he fails to explain how this issue constituted perjury. It does not appear that any misstatement regarding whether the officers were subpoenaed by Elder has a bearing on the fairness of his trial or anything to do with his ultimate convictions.

{¶78} The ninth assignment of error is without merit.

{¶79} For the foregoing reasons, Elder's convictions for Failure to Comply with Order or Signal of Police Officer, Obstructing Official Business, Failure to Register, a Headlight Violation, and a No Tail Light or Rear License Plate Light Violation, in the Lake County Court of Common Pleas, are affirmed. Costs to be taxed against appellant.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents.