

[Cite as *State v. Hill*, 2009-Ohio-4283.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MARK HILL

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09 CA 28

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Municipal Court,
Case No. 08 CRB 835

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 21, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

TRICIA M. MOORE
ASSISTANT LAW DIRECTOR
40 West Main Street
Newark, Ohio 43055

MARK A. HILL
PRO SE
Post Office Box 30823
Gahanna, Ohio 43230

Wise, J.

{¶1} Appellant Mark Hill appeals his conviction, in the Licking County Municipal Court, for allowing horses to run at large. The relevant procedural facts leading to this appeal are as follows.

{¶2} On April 18, 2008, the State issued four summonses charging appellant with four counts (one charge per summons) of allowing animals to run at large, in violation of R.C. 951.02. These counts were labeled, respectively, A,B,C, and D. Specifically, the State alleged that on November 2, 2007, November 19, 2007, November 23, 2007, and November 30, 2007, horses belonging to appellant had escaped their fenced enclosure. Appellant was served with all four summonses on April 22, 2008, under the case caption 08CRB00835.

{¶3} Appellant had also been charged, on December 20, 2007, under the same statute as a continuing course of conduct; however, that case had been dismissed by the trial court on April 17, 2008, prior to any trial, as further discussed infra. That case was captioned 07CRB02955. It appears undisputed that both cases stemmed from the same alleged events in November 2007.

{¶4} In the case presently appealed from, 08CRB00835, appellant was arraigned on May 2, 2008, and pled not guilty. On May 9, 2008, appellant filed a motion to transfer the case from Judge Higgins to Judge Branstool. The court denied said motion on May 12, 2008.

{¶5} On May 27, 2008, appellant filed a motion to dismiss on speedy trial grounds. The trial court conducted a hearing on said motion prior to the scheduled trial

on June 3, 2008. On that date, the motion to dismiss was denied, and the trial court proceeded to find appellant guilty on Counts B,C, and D.

{¶6} On July 3, 2008, appellant filed a notice of appeal. On January 28, 2009, this Court remanded the matter to the trial court for correction of the judgment entry pursuant to *State v. Baker* (2008), 119 Ohio St.3d 197. Appellant now raises the following sole Assignment of Error:

{¶7} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT BY DENYING HIS MOTION TO DISMISS, BASED ON THE OHIO SPEEDY TRIAL STATUTE, AND WHICH WAS MADE PRIOR TO THE TRIAL OF THIS CASE."

I.

{¶8} In his sole Assignment of Error, appellant challenges the trial court's denial of his statutory speedy trial motion to dismiss.

{¶9} The right to a speedy trial is encompassed within the Sixth Amendment to the United States Constitution. The availability of a speedy trial to a person accused of a crime is a fundamental right made obligatory on the states through the Fourteenth Amendment. *State v. Ladd* (1978), 56 Ohio St.2d 197, 383 N.E.2d 579; *State v. Pachay* (1980), 64 Ohio St.2d 218, 416 N.E.2d 589. Ohio's Speedy Trial statute codifies the constitutional guarantee of a speedy trial. *Pachay*, supra. Our review of a trial court's decision regarding a motion to dismiss based upon a violation of the speedy trial provisions involves a mixed question of law and fact. *State v. McDonald* (June 30, 1999), Mahoning App. Nos. 97CA146 and 97CA148. Due deference must be given to the trial court's findings of fact if supported by competent, credible evidence. *Id.*

However, we must independently review whether the trial court properly applied the law to the facts of the case. *Id.* Furthermore, when reviewing the legal issues presented in a speedy trial claim, an appellate court must strictly construe the relevant statutes against the state. *Id.*, citing *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 57, 661 N.E.2d 706.

{¶10} Our chief task in reviewing a statutory 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. *Oregon v. Kohne* (1997), 117 Ohio App.3d 179, 180, 690 N.E.2d 66; *State v. DePue* (1994), 96 Ohio App.3d 513, 516, 645 N.E.2d 745. R.C. 2945.71(B)(1) mandates that a person against whom a charge of a third- or fourth-degree misdemeanor is pending shall be brought to trial within forty-five days after the person's arrest or the service of summons.

*Speedy Trial Time Pertaining to Case 07CRB02955*¹

{¶11} It appears undisputed in this matter that the starting point for speedy trial purposes would be December 20, 2007, the date of the summons for the “animals at large” complaint in the first case, 07CRB02955, (ultimately dismissed by the trial court), which the prosecutor had charged on a “continuing course of conduct” basis. In *State v. Adams* (1989), 43 Ohio St.3d 67, 68, 538 N.E.2d 1025, the Ohio Supreme Court held: “[W]hen new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within

¹ Neither party in this appeal has supplemented the record with the trial court file from 07CRB02955. We herein are relying on the assertions in both briefs concerning the procedural details in said case.

which trial is to begin on the additional charges is subject to the same statutory limitations period that is applied to the original charge.” (Internal citations omitted.)

{¶12} Appellant failed to appear for his arraignment in case 07CRB02955 on January 3, 2008. Therefore, the starting date for speedy trial purposes must be pushed forward from December 20, 2007, due to appellant’s failure to appear at the arraignment, to the date appellant responded to the complaint, which in this case was his motion to continue the arraignment, which he filed on January 9, 2008. See *State v. Bauer* (1980), 61 Ohio St.2d 83, 84. However, the time after January 9, 2008 must be tolled due to appellant’s said motion to continue. See R.C. 2945.72(E). Appellant was finally arraigned on January 24, 2008. This would start the speedy trial clock under these circumstances.

{¶13} Trial was then set for February 13, 2008 in 07CRB02955. However, appellant requested a continuance thereof on February 5, 2008, which is a tolling event. The continuance was granted. Appellant then requested and obtained another continuance, on February 19, 2008, of the rescheduled trial.² The trial was therefore rescheduled one more time for the date of April 18, 2008; as noted previously, the court dismissed the case the day before said trial date, finding that appellant had not been adequately apprised of the dates of the offenses in the continuing course of conduct.

{¶14} Upon review, we find that twelve days from January 24, 2008 to February 5, 2008, are chargeable to the State in case 07CRB02955. The remaining delays and continuances must be attributed to appellant’s motions. Appellant protests that he could

² Appellant points out that the State also filed a motion to continue on February 19, 2008. We find this is akin to a joint motion for continuance, which tolls a defendant’s speedy trial time. See *State v. Brown*, Mahoning App.No. 03-MA-32, 2005-Ohio-2939, ¶ 44.

not obtain the dates of the charged offenses from the prosecutor; however, it was his decision to seek trial continuances rather than seeking to compel discovery.

Speedy Trial Time Pertaining to Case 08CRB00835

{¶15} Appellant was served with the summonses in 08CRB00835, the State's second action against appellant, on April 22, 2008. Appellant was not arraigned until May 2, 2008, which results in ten days charged against the State. Seven more days then ran until May 9, 2008, when appellant filed a motion to transfer the case to a different judge. The court denied said motion on May 12, 2008, following which fifteen more days ran against the State until appellant filed a motion to dismiss the charges on May 27, 2008. We find this motion to dismiss again tolled speedy trial days until said motion was heard and denied on June 3, 2008, just before the trial commenced.³

Conclusion

{¶16} Accordingly, we find the time to be counted for speedy trial purposes in 08CRB00835 is 10 + 7 + 15, plus 12 days in 07CRB02955, for a total of 44 days, within the 45-day limit of R.C. 2945.71(B)(1). Therefore, we hold appellant's speedy trial claim is without merit, and the trial court did not err in denying the motion to dismiss on June 3, 2008.

³ See *State vs. Bickerstaff* (1984), 10 Ohio St.3d 62, 67 (holding that "a motion to dismiss acts to toll the time in which a defendant must be brought to trial.")

{¶17} Appellant's sole Assignment of Error is overruled.

{¶18} For the reasons stated in the foregoing opinion, the judgment of the Municipal Court of Licking County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Edwards, J., concur.

JUDGES

JWW/d 720

