

[Cite as *State v. Meyer*, 2011-Ohio-899.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO, VILLAGE OF FAIRFAX	:	APPEAL NO. C-090802 TRIAL NO. M-09TRD-49713
	:	
Plaintiff-Appellee,	:	<i>DECISION.</i>
	:	
vs.	:	
	:	
JOHN MEYER,	:	
	:	
Defendant-Appellant.	:	
	:	

**Criminal Appeal From: Hamilton County Municipal Court**

**Judgment Appealed From Is: Reversed and Appellant Discharged**

**Date of Judgment Entry on Appeal: March 2, 2011**

*Village of Fairfax Prosecuting Attorney, Dinsmore & Shohl LLP, and Richard P. Corthell, for Plaintiff-Appellee,*

*John Meyer, pro se.*

**Please note: This case has been removed from the accelerated calendar.**

**HILDEBRANDT, Judge.**

{¶1} Following a bench trial, defendant-appellant, John Meyer, was found guilty for having an expired vehicle registration in violation of Fairfax Municipal Code (“FMC”) 70.09 and for improper change of course at an intersection in violation of FMC 70.89. Meyer now appeals his convictions. Because we conclude that the village of Fairfax violated R.C. 2945.71, Ohio’s speedy-trial statute, we reverse the trial court’s judgment and discharge Meyer from further prosecution in this case.

{¶2} On April 22, 2009, Meyer was issued a citation for an expired vehicle registration and for improper change of course at an intersection. The citation instructed and summoned Meyer to personally appear at Fairfax Mayor’s Court (“mayor’s court”) on May 19, 2009. Meyer did not appear on that date, and the journal entry of the mayor’s court indicated that a *capias* was issued and that the case was continued to June 16, 2009. On that date, Meyer appeared, entered a plea of not guilty, and requested a trial. Thus, the case was continued at Meyer’s request to July 14, 2009. On that date, the mayor’s court journal entry indicated that another continuance was granted, on behalf of the state, to August 11, 2009. Meyer failed to appear for trial on August 11, 2009, so another *capias* was issued, and the case was continued to September 8, 2009. On that date, a bench trial was held at which Meyer was found guilty of the charged offenses. Meyer asserts that, prior to trial, he moved to dismiss the charges against him because his right to a speedy trial had been violated. Meyer states that this motion was overruled. Immediately following the trial, on September 8, 2009, Meyer filed a notice of appeal, requesting that his case

be heard before the Hamilton County Municipal Court and “waiv[ing] [his] right to a speedy trial pending the process of the appeal.”

{¶3} Prior to the beginning of the bench trial in municipal court, Meyer again moved to dismiss the charges against him, arguing that the state had violated Ohio’s speedy-trial statutes in mayor’s court. The trial court overruled the motion, conducted a de novo bench trial, and found Meyer guilty of the charged offenses.

{¶4} In this appeal, Meyer now sets forth two assignments of error, which we address out of order for purposes of this decision.

{¶5} In his second assignment of error, Meyer contends that the trial court erred by denying his motion to dismiss the charges against him because the state had violated Ohio’s speedy-trial statutes in mayor’s court.

{¶6} R.C. 2945.71(A) provides that “a person against whom a charge is pending in a court not of record, or against whom a charge of a minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person’s arrest or the service of summons,” unless that time is extended as provided for in R.C. 2945.72.

{¶7} Because a mayor’s court is not a court of record,<sup>1</sup> Meyer had to be brought to trial within 30 days of receiving his citation, which included a summons. Meyer was issued his citation on April 22, 2009. But he was not brought to trial until September 8, 2009, well beyond the 30-day statutory period.

{¶8} As here, when the statutory period for bringing an accused to trial has expired, the state bears the burden of showing that time was properly extended

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<sup>1</sup> *Blue Ash v. Madden* (1982), 8 Ohio App.3d 312, 313, 456 N.E.2d 1277.

under R.C. 2945.72, or that the accused waived his statutory right to a speedy trial.<sup>2</sup> Extensions of time under R.C. 2945.72 are to be strictly construed against the state.<sup>3</sup> If the state does not comply with the requirements of the speedy-trial statutes, the trial court must discharge the defendant upon the defendant's motion.<sup>4</sup>

{¶9} We analyze all the time periods from the date Meyer was issued a citation to his trial, resolving the relevant legal issues posed by this process. Speedy-trial time begins with the service of summons on the accused. Because the day that Meyer received the citation, which included a summons, did not count against the state, the speedy-trial clock began to run on April 23, 2009. Meyer was scheduled to appear for trial on May 19, 2009; thus, this 27-day period was chargeable to the state. On May 19, 2009, Meyer failed to appear for trial. R.C. 2945.72(D) provides that the statutory speedy-trial period may be extended by the “neglect or improper act of the accused.” Because Meyer failed to appear on the initial trial date, this improper act tolled the speedy-trial clock from that date until June 16, 2009, the next date the mayor's court was in session.

{¶10} On June 16, 2009, Meyer appeared and requested a trial and a continuance. Because R.C. 2945.72(H) extends the speedy-trial period time when an accused requests a continuance, 27 days remained all that was chargeable to the state until the next court date of July 14, 2009.

{¶11} On July 14, 2009, a continuance was granted to the state, and the trial was rescheduled for August 11, 2009. R.C. 2945.72(H) also extends the time in which an accused must be brought to trial for “the period of any reasonable

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<sup>2</sup> See *State v. Sheffield* (Oct. 11, 1995), 1st Dist. No. C-950223, citing *State v. Butcher* (1986), 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368.

<sup>3</sup> *State v. Singer* (1977), 50 Ohio St.2d 103, 362 N.E.2d 1216.

<sup>4</sup> See R.C. 2945.73.

continuance granted other than upon the accused's own motion." Thus, if the state requests a continuance, as happened here, that continuance will be charged against the state unless the court records the continuance in its journal entry before the expiration of the time limit set forth in R.C. 2945.71, identifying the party to whom the continuance is chargeable and stating the reasons for the continuance.<sup>5</sup> The requirement that the court state the reasons for the continuance exists so that an appellate court may determine if the reason for the continuance was "reasonable."<sup>6</sup>

{¶12} Unfortunately, the magistrate in mayor's court did not indicate the reason for granting the continuance to the state in the court's journal. Because extensions of time are to be construed strictly against the state, we are constrained to hold that the 29 days from July 14, 2009, to August 11, 2009, were chargeable to the state. This brought the total days chargeable to the state to 56. Although Meyer did not appear at the August 11 court date, and another *capias* was issued, that was of no legal consequence because the statutory speedy-trial period had expired before August 11, 2009. Accordingly, the mayor's court should have dismissed the charges against Meyer when he appeared for his trial scheduled in September. We note that the state argues that Meyer had waived his speedy-trial rights on June 16, 2009, when he requested a trial, but that written waiver is not in the record transcribed for our review. The only waiver in the record was signed by Meyer on September 8, 2009, and that only waived his right to a speedy trial pending the process of the appeal to the municipal court.

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<sup>5</sup> *State v. Veid* (Sept. 25, 1996), 1st Dist. No. C-950495; *State v. Stamps* (1998), 127 Ohio App.3d 219, 224, 712 N.E.2d 762.

<sup>6</sup> *Stamps*, *supra*, at 224.

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{¶13} Accordingly, we sustain Meyer's second assignment of error. Because we have held that the charges against Meyer should have been dismissed, his first assignment of error challenging the weight of the evidence underlying his convictions is now moot. Therefore, the judgment of the trial is reversed, and Meyer is discharged from further prosecution.

Judgment reversed and appellant discharged.

**SUNDERMANN and FISCHER, JJ., concur.**

Please Note:

The court has recorded its own entry on the date of the release of this decision.