[Cite as *State v. Lapoint*, 2015-Ohio-1990.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-14-1140

Appellee — Trial Court No. CR0201302551

v.

Sarah S. Lapoint — **DECISION AND JUDGMENT**

Appellant — Decided: May 22, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brad A. Smith, Assistant Prosecuting Attorney, for appellee.

Kent Sobran, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Following her April 1, 2014 theft conviction, defendant-appellant, Sarah Lapoint, appeals the judgment of the Lucas County Court of Common Pleas of the same date denying her motion to dismiss for violation of her right to a speedy trial. For the following reasons, we reverse the trial court's judgment.

A. Background

{¶ 2} The charges against Lapoint arise out of a scheme carried out on or about March 5, 2012, in which she sold a vehicle to a car dealer for $7,000, reported the car stolen, then reclaimed possession of the vehicle without returning the $7,000 purchase price to the dealer. A complaint was filed on May 14, 2012, in the Sylvania Municipal Court, alleging theft, a violation of R.C. 2913.02, a felony of the fifth degree. The Sylvania Municipal Court issued an arrest warrant that was served on Lapoint on August 8, 2012. She appeared before the municipal court that day and her bond was set at a supervised OR. The bond report reflects that there was a holder from Jacksonville, Florida. The matter was set for a preliminary hearing on September 5, 2012.

{¶ 3} On August 9, 2012, a fugitive warrant from the state of Florida was filed in the Lucas County Court of Common Pleas alleging charges of burglary, unauthorized use of a credit card, theft, and forgery. The court set bond at $75,000 and continued the case until August 13, 2012, for counsel to appear. The matter was continued to August 16, 2012, at which time Lapoint waived her right to an extradition hearing and consented to being transported to the Florida authorities. She was delivered to their custody on August 23, 2012. The fugitive warrant was dismissed on August 27, 2012.

{¶ 4} Because she was in custody in Florida, Lapoint failed to appear for her September 5, 2012 preliminary hearing in Sylvania Municipal Court. The court issued a bench warrant on September 13, 2012. It did not enter the warrant into a database.

{¶ 5} Lapoint was released from the Duval County jail in Jacksonville, Florida, on June 19, 2013. There were no holders from Ohio, however, she turned herself in on the Sylvania bench warrant on June 24, 2013. After being held for two days, she was released on a supervised OR bond.

{¶ 6} On February 25, 2014, Lapoint filed a motion to dismiss in the trial court, arguing that her right to a speedy trial, under R.C. 2945.71(C)(2), was violated. She claimed that 320 days passed between the date the arrest warrant was served on August 8, 2012, until she turned herself in to the Sylvania Municipal Court on June 24, 2013. R.C. 2945.71(C)(2) required that she be brought to trial within 270 days after her arrest. She spent 300 days in the Duval County jail and she contended in her motion that those 300 days count against the state for speedy trial purposes. She argued that R.C. 2945.72(A) did not toll the speedy trial time because she was unavailable for hearing or trial because of other criminal proceedings outside the state. She claimed that the state could not show that it exercised reasonable diligence to secure her availability as required to toll the time despite indications in discovery responses that Ohio authorities knew Lapoint may be in Florida.

{¶ 7} The state argued that there is nothing in the record indicating that the Sylvania Municipal Court was made aware of the fugitive warrant, and nothing to suggest that the Lucas County Court of Common Pleas was aware of the proceedings in Sylvania. As such, it claimed that the time was tolled while Lapoint was unavailable for trial due to her confinement in Florida. It later filed a supplemental brief citing the Interstate

Agreement on Detainers ("IAD"), codified in R.C. 2963.30 to 2963.35, which, the state argued placed the burden on Lapoint to provide the state of Ohio notice of her imprisonment elsewhere and to request a final disposition of the proceedings against her.

{¶ 8} The trial court denied Lapoint's motion to dismiss on March 31, 2014, journalized the following day. The court premised its ruling on *State v. Jennings*, 10th Dist. Franklin No. 07AP-443, 2007-Ohio-7015. It distinguished our decision in *State v. Rumer*, 6th Dist. Lucas No. L-07-1178, 2009-Ohio-265, the principal case relied upon by Lapoint.

{¶ 9} Following the trial court's denial of her motion to dismiss, Lapoint entered a plea of no contest, reserving her right to appeal the court's decision denying her motion. She appealed and assigns the following errors for our review:

> I. APPELLANT'S RIGHT TO A SPEEDY TRIAL, AS GUARANTEED BY R.C. 2945.71 AND THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE ONE, SECTION TEN OF THE OHIO CONSTITUTION WAS VIOLATED.
>
> II. THE TRIAL COURT'S [sic] ERRED WHEN IT DENIED APPELLANT'S MOTION TO DISMISS THE INDICTMENT AGAINST HER BASED ON A VIOLATION OF HER SPEEDY TRIAL RIGHTS.

B. Law and Analysis

{¶ 10} The Sixth Amendment to the U.S. Constitution and Section 10, Article I of the Ohio Constitution both guarantee a criminal defendant the right to a speedy trial.

That right has also been codified in R.C. 2945.71, which prescribes specific time requirements within which the state must bring an accused to trial. The particular time limits are determined according to the classification and degree of the pending charge. R.C. 2945.72 sets forth the permissible reasons for extending those time limits.

{¶ 11} "Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code." R.C. 2945.73(B). These provisions are mandatory, and strict compliance is required by the state. *State v. Hohenberger*, 189 Ohio App.3d 346, 2010-Ohio-4053, 938 N.E.2d 419, ¶ 35 (6th Dist.). "[W]hen a criminal defendant shows that he was not brought to trial within the proper period, the burden shifts to the State to demonstrate that sufficient time was tolled or extended under the statute." *Hohenberger* at ¶ 35.

{¶ 12} A trial court's decision denying a motion to dismiss based on an alleged violation of the speedy trial statutes involves a mixed question of law and fact. *State v. Rumer*, 6th Dist. Lucas No. L-07-1178, 2009-Ohio-265, ¶ 7, citing *State v. Brown*, 131 Ohio App.3d 387, 391, 722 N.E.2d 594 (4th Dist.1998). While we accord reasonable deference to the trial court's findings of fact if supported by competent, credible evidence, we independently determine whether the trial court properly applied the law to the facts of the case. *Id.*

{¶ 13} Lapoint was charged with a fifth-degree felony, therefore, the time within which she was required to be tried was 270 days. Without question, she was not tried

within 270 days. The state argues that time was tolled pursuant to R.C. 2945.72(A), which provides that time may be extended by:

> Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability.

{¶ 14} Lapoint argues that the state failed to exercise reasonable diligence to secure her availability, thus the time for bringing her to trial was not properly tolled. The state argues that it was incumbent on Lapoint to deliver written notice advising the prosecutor and the state of the place of her imprisonment and requesting disposition. To that point, Lapoint counters that she was in Duval County jail—not prison. Thus, she claims, there was no mechanism for providing such notice. She also contends that the state had a duty to place a holder and detainer on her, but failed to do so, thus the provision of the IAD requiring written notice from the defendant is inapplicable.

{¶ 15} The state cites the Ohio Supreme Court's decision in *State v. Hairston,* 101 Ohio St.3d 708, 2004-Ohio-969, 804 N.E.2d 472, ¶ 20, for the proposition that it was Lapoint's duty "to cause written notice to be delivered to the prosecuting attorney and the appropriate court advising of the place of his imprisonment and requesting final disposition." *Hairston* applied R.C. 2941.401, which provides:

> When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance.

{¶ 16} R.C. 2941.101 is inapplicable here because Lapoint had not "entered upon a term of imprisonment in a correctional institution of *this state*." (Emphasis added.) The state acknowledges this, but it argues that it is counterintuitive that the state would be required to locate a defendant confined in another state when it is not required to do so for defendants in *this* state. In fact, R.C. 2963.30, Ohio's codification of the IAD, is the appropriate statute where a defendant has entered a term of imprisonment in another state. It provides:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which

> *a detainer has been lodged* against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. (Emphasis added.) R.C. 2963.30(a).

{¶ 17} "A 'detainer' is 'a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.'" (Citations omitted.) *State v. Braden*, 197 Ohio App.3d 534, 2011-Ohio-6691, 968 N.E.2d 49, ¶ 22 (11th Dist.). The IAD is triggered only when a detainer is filed with the institution currently holding the prisoner. In the present case, it is undisputed that no detainer was lodged by the state. We, therefore, apply R.C. 2945.71 and 2945.72, thus requiring us to determine whether the state exercised reasonable diligence to secure Lapoint's availability.

{¶ 18} Lapoint cites our decision in *State v. Rumer*, 6th Dist. Lucas No. L-07-1178, 2009-Ohio-265, as mandating the conclusion that the speedy trial statute was violated. In *Rumer*, the defendant was convicted of several felonies in Florida in the

2003-2004 time period. He served his probation relative to these convictions in Ohio under the authority of the Interstate Commission for Adult Offender Supervision. He signed a waiver explicitly stating that he could be transported to Florida without further hearings or notice.

{¶ 19} At Florida's instruction, Ohio authorities issued a fugitive warrant and arrested Rumer on January 5, 2006. He was released on bond and a hearing was set for January 12, 2006. Rumer failed to appear. On January 18, 2006, he was indicted for failing to appear and an arrest warrant was issued on January 19, 2006. On February 24, 2006, he was arrested in Ohio for the failure to appear charge. On March 2, 2006, the court set a trial date of April 24, 2006. Rumer posted bond on March 7, 2006. On March 14, 2006, he was arrested in Lucas County on both the January 5, 2006 fugitive warrant and the January 19, 2006 warrant on the failure to appear. He was extradited to Florida and was incarcerated from March 30 through December 8, 2006. On May 4, 2006, the fugitive warrant case was dismissed following notification to the court that Rumer had been returned to Florida. He missed his April 24, 2006 trial date in Ohio on the failure to appear charge. He was arrested in Ohio on the outstanding warrant on December 12, 2006.

{¶ 20} Rumer moved to dismiss for violation of the speedy trial statute. The trial court denied the motion, holding that the time Rumer spent imprisoned in Florida tolled the speedy trial time calculation. On appeal, we determined that 253 days spent in prison in Florida were to be counted against the state unless the state could show that it made

good faith efforts to bring Rumer to trial during the period he was in custody. We explained that the state could show that it made diligent efforts to secure Rumer's availability at trial by, for example, "issuing a holder and detainer instructing authorities in another jurisdiction of the necessity that a defendant appear to answer charges against him." *Id.* at ¶ 18. Because there was no evidence that the state had taken this step, we found that the time Rumer spent imprisoned in Florida was not tolled.

{¶ 21} The state addressed the *Rumer* case in the trial court and argued that implicit in our ruling in *Rumer* was that the state, in fact, knew Rumer's whereabouts. It argued that there was nothing in the present case indicating that the state knew Lapoint's whereabouts. The state addressed Lapoint's representation that it acknowledged in discovery that it was aware that Lapoint was in Florida. The premise for this contention by Lapoint was that in the police report dated May 2, 2012, the detective authoring the report noted that "Deputy Smithmeyer stated that he had heard that [Lapoint] had gone to Florida with her father." The state urged that second-hand knowledge that Lapoint may have been in Florida in May of 2012, should not have led the state to believe that Lapoint was then in Florida, especially given that she had been in the custody of the Lucas County jail on August 8, 2012.

{¶ 22} The state also addressed the fact that Lapoint had been extradited to Florida by the same trial judge assigned to the present case. It argued that there was no information to suggest that the court knew of the charges arising out of Sylvania Municipal Court or that the Sylvania Municipal Court was aware of the extradition.

{¶ 23} The trial court determined that *Rumer* was distinguishable because "Rumer was under indictment and before the court at the time that he was sent back to Florida, having waived"[1] and "the state did nothing to bring the defendant back on the instant indictment." It indicated its skepticism that second-hand information that Lapoint may have been in Florida put the state on notice that Lapoint was actually in Florida. The court also cited R.C. 2930.30(a), suggesting that it believed that Lapoint had some duty to put the state and the court on notice that she was incarcerated in Florida. The court cited *State v. Jennings*, 10th Dist. Franklin No. 07AP-443, 2007-Ohio-7015, as authority for its decision.

{¶ 24} In *Jennings*, the defendant was incarcerated for seven years in federal prison in Arizona. The Inmate Systems Manager for the Federal Bureau of Prisons requested information from the Franklin County Sheriff's Office about the disposition of two Franklin County cases. It advised of the procedure necessary to place a detainer. Neither the Franklin County Sheriff's Office nor the Franklin County Prosecutor's Office responded. The defendant argued that the state failed to comply with the IAD, thus he was entitled to dismissal for violation of the speedy trial statute. The court explained that "the IAD mandates that prison authorities notify prisoners of detainers placed against them and their right to demand a speedy trial. The existence of a detainer is a

[1] The court did not finish this thought, but it appears that it was saying that in *Rumer*, the defendant waived any right to notice or a hearing before being extradited to Florida.

prerequisite to the applicability of the IAD." *Id.* at ¶ 9. Because no detainer was lodged, the court found the IAD inapplicable. *Id.*

{¶ 25} *Jennings,* therefore, does not support the trial court's conclusion here because it is undisputed that no detainer was placed. To the contrary, *Jennings* reinforces that the IAD is inapplicable. The analysis then becomes essentially identical to that which we undertook in *Rumer*. Our decision in *Rumer* makes no distinction as to whether an indictment had or had not been issued. And as in *Rumer,* there is no evidence here that the state made any attempt to secure Lapoint's availability. Despite the state's suggestion that it had no reason to know that Lapoint returned to Florida, the bond report issued in August of 2012 notes that Lapoint was "booked w/holder from Jacksonville, Florida." With reasonable diligence, the state could have ascertained that Lapoint was confined in Florida and could have secured her availability at trial.

{¶ 26} We, therefore, conclude that consistent with our decision in *Rumer*, Lapoint's right to a speedy trial was violated and the trial court erred in denying her motion to dismiss. We find Lapoint's two assignments of error well-taken.

C. Conclusion

{¶ 27} We find Lapoint's assignments of error well-taken. We reverse the April 1, 2014 judgment of the Lucas County Court of Common Pleas denying her motion to

dismiss and finding her guilty of violating R.C. 2913.02(A)(3) and (B)(2). Consequently, we also vacate the trial court's May 30, 2014 judgment entered following Lapoint's sentencing. The state is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgments reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE