

[Cite as *State v. Truitt*, 2010-Ohio-5972.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellant, :  
 :  
 v. : No. 10AP-473  
 : (M.C. No. 2009 TRC 212041)  
 James M. Truitt, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellee. :

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D E C I S I O N

Rendered on December 7, 2010

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*Richard C. Pfeiffer, Jr.*, City Attorney, *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellant.

*Jeffrey S. Anderson*, for appellee.

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APPEAL from the Franklin County Municipal Court.

SADLER, J.

{¶1} Plaintiff-appellant, state of Ohio ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Municipal Court dismissing this case based on expiration of the speedy trial period. For the reasons that follow, we reverse.

{¶2} On November 28, 2009, defendant-appellee, James M. Truitt ("appellee"), was arrested for operating a vehicle while under the influence of alcohol in violation of

R.C. 4511.19(A)(1)(a), a misdemeanor of the first degree, and for driving left of center in violation of R.C. 4511.25. Appellee was summoned into court on the charges and was not incarcerated. On December 4, 2009, appellee was arraigned and entered a plea of not guilty, requested a trial by jury, and invoked his speedy trial rights pursuant to the requirements of R.C. 2945.71. Appellee also filed a demand for discovery and orally appealed the administrative license suspension ("ALS") that had been imposed.

{¶3} The case was set for pretrial on December 28, 2009. On that date, appellee requested the pretrial be continued to January 26, 2010. On January 26, 2010, the case was reassigned for a motion hearing to take place on March 18, 2010. This entry indicated that defense counsel was to file motions. The March 18, 2010 motion hearing was reassigned at the request of defense counsel to April 22, 2010. Appellee's counsel signed each of the entries reassigning the case, although speedy trial was never specifically waived. Appellee filed a motion to suppress on April 16, 2010.

{¶4} Appellant filed a memorandum contra appellee's motion to suppress and a hearing was held on April 22, 2010. After the hearing on the motion to suppress, the trial court overruled appellee's motion and lifted the previously entered stay of the ALS and re-imposed the ALS to run from April 22, 2010 through April 14, 2011.

{¶5} After the hearing, the trial court sua sponte noted that, despite appellee's representation to the court that motions would be filed on January 26, no motions were filed by appellee until April 16, 2010. The trial court stated that because speedy trial had not been waived by appellee, the running of the speedy trial time was not tolled in this matter until the motion was filed. The trial court then invited appellee to assert that,

under these circumstances, appellee had been deprived of his right to a speedy trial. After consulting with his client, appellee's counsel informed the court that he was asserting appellee had been deprived of his speedy trial rights, effectively requesting a dismissal. Without allowing appellant to respond, the trial court dismissed the case pursuant to R.C. 2945.72. Appellant did not object.

{¶6} Appellant filed this appeal asserting the following assignment of error:

The trial court erred in dismissing the Defendant's charges on statutory speedy trial grounds.

{¶7} Because appellant did not object at the time of the dismissal of the charges, the parties agree that appellant has waived all but plain error. In order to constitute plain error, the error must be an obvious defect in the trial proceedings, and the error must have affected substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68. Crim.R. 52(B) provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

{¶8} Appellant argues that plain error occurred in this case because its substantial right to have a criminal trial conducted according to law was compromised when the court dismissed its case without a trial and prior to the expiration of speedy trial time. Appellee argues that the record does not establish plain error because appellee never specifically waived speedy trial and thus, the time to bring appellee to trial within speedy trial time had expired prior to trial being set.

{¶9} "When a defendant moves for dismissal on the basis that the state has failed to bring him to trial within the time frame set forth in the speedy trial statutes, the

initial burden lies with the defendant to make a prima facie showing that he is entitled to the dismissal." *State v. Mixon*, 10th Dist. No. 09AP-51, 2009-Ohio-5024, ¶6, citing *State v. Price* (1997), 122 Ohio App.3d 65, 68. Once that prima facie showing has been made, the burden shifts to the state to prove that some provision of the speedy trial statutes extended the time in which the state was required to bring the defendant to trial. *Mixon* at ¶6. Here, appellant was never provided the opportunity to demonstrate that speedy trial time had been tolled and was thus lawfully extended. We now review the record on a plain error analysis.

{¶10} Because appellee was not incarcerated on these charges and was instead held in lieu of bond pending trial, appellee was not entitled to the triple count provision in R.C. 2945.71(E), and appellant effectively had 90 days in which to bring appellee to trial. Speedy trial time began to run on November 29, 2009, the day after appellee's arrest.

{¶11} The record demonstrates that speedy trial was tolled prior to appellee filing his motion to suppress. The first tolling event occurred when appellee filed for discovery. A defendant's motion for discovery tolls the statutory speedy trial period pursuant to R.C. 2945.72(E). *State v. Gonzalez*, 10th Dist. No. 08AP-716, 2009-Ohio-3236, ¶22, citing *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, syllabus.

{¶12} Appellee made a demand for discovery at arraignment on December 4, 2009. Although the record does not show that discovery was ever provided by appellant to appellee, a demand for discovery tolls the speedy trial time for the time it would reasonably take the state to respond to the request. *Gonzalez* at ¶22. We cannot say that the 24 days between the arraignment and the next scheduled hearing

was an unreasonable period of time for appellant to respond to the discovery request. Thus, time was tolled from December 4, 2009 until December 28, 2009.

{¶13} On December 28, 2009, the court, at the request of appellee, continued the pretrial date until January 26, 2010. R.C. 2945.72(H) provides that the speedy trial time is expanded for "[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." Thus, the speedy trial time was tolled again during the time period between December 28, 2009 and January 26, 2010, and again from March 18, 2010 when appellee requested the motion hearing date be continued until April 22, 2010.

{¶14} The only remaining time frame to be considered is the continuance from January 26, 2010 reassigning the scheduled pretrial to March 18, 2010. The stated reason for the continuance was that appellee's counsel was to file "motions." Given the stated purpose of the continuance, this time frame can either be construed as requested by appellee or a sua sponte continuance at the request of the trial court.

{¶15} Regardless of how this continuance is construed, speedy trial was tolled. A sua sponte continuance must affirmatively demonstrate that the continuance was reasonable in light of its necessity or purpose. *State v. Bounds*, 5th Dist. No. 2009-CA-0063, 2009-Ohio-4767. The issue of whether a continuance is reasonable must be established on a case-by-case basis. *State v. Saffell* (1988), 35 Ohio St.3d 90. In our view, a continuance based on the representation of appellee's counsel that motions will be filed is reasonable. We cannot say the length of time from January 26, 2010 to March 18, 2010 was unreasonable, thus speedy trial was tolled during this time period.

{¶16} Having reviewed the record, we find the trial court committed plain error in dismissing this case prior to trial because at the time of the dismissal, appellee's speedy trial time rights had not been violated.

{¶17} Accordingly, appellant's assignment of error is sustained, the judgment of the Franklin County Municipal Court is reversed, and this matter is remanded for trial.

*Judgment reversed;  
cause remanded.*

TYACK, P.J., and BRYANT, J., concur.

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