

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2005-1788
	:	
Plaintiff-Appellant,	:	On Appeal From the
	:	Richland County Court of
vs.	:	Appeals, Fifth Appellate
	:	District
	:	
SANDRA AZBELL,	:	
	:	
Defendant-Appellee.	:	Court of Appeals
	:	Case No. 2005-CA-0004

MOTION FOR RECONSIDERATION OF APPELLEE SANDRA AZBELL

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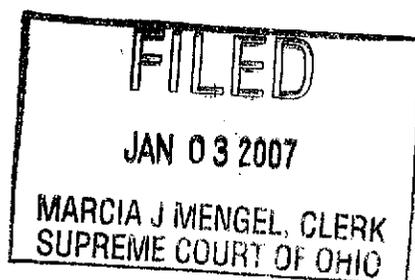
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**APPELLEE SANDRA AZBELL'S MOTION FOR RECONSIDERATION
AND MEMORANDUM IN SUPPORT**

On December 20, 2006, this Court entered a split 4-3 decision holding that, for the purposes of Ohio's speedy trial statute, R.C. 2945.71(C), a charge is not "pending" until the accused has been formally charged by a criminal complaint or indictment, is held pending the filing of charges, or is released on bail or recognizance. State v. Azbell, ___ Ohio St.3d ___, 2006-Ohio-6552, syllabus. Ms. Azbell moves this Court to reconsider its decision and find that, by its plain language, R.C. 2945.71(C) begins to run from the date of an individual's arrest.

The standard often adopted by courts in considering motions for reconsideration is "whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." Matthews v. Matthews (1982), 5 Ohio App. 3d 140, 143. Both parts of the Matthews standard are met here, because the plurality and concurring opinion's made an obvious error in construing R.C. 2945.71(C)(2) contrary to its plain language and because neither opinion addressed the conflict with Criminal Rule 4 nor the public's interest in procuring a speedy trial.

Revised Code 2945.71 establishes the statutory right to a speedy trial, and R.C. 2945.71(C) states, in relevant part: "A person against whom a charge of felony is pending...(2) Shall be brought to trial within two hundred seventy days after the person's arrest." Revised Code 2945.72 provides for certain events that can extend the time in which an individual can be brought to trial, but does not include any provisions for tolling the time after a person is arrested until that person is indicted. The State's failure to comply with the provisions of the speedy trial statute results in dismissal of the charges. R.C. 2945.73.

In construing 2945.71(C)(2), the plurality opinion of this Court stated as follows: “Because no charge was outstanding and she was not held pending a filing of charges or released on bail or recognizance, Azbell did not become a person ‘against whom a charge of felony is pending’ until she was arrested on the indictment in April 16, 2004.” State v. Azbell, ___ Ohio St.3d ___, 2006-Ohio-6552, ¶20. The concurring opinion of Justice O’Donnell goes further, saying that the Legislature did not contemplate the circumstance faced by Ms. Azbell in this case: “Reading the statute in its entirety in order to discern the legislative intent, it is apparent to me that this statute only applies to persons against whom charges are pending.... No subsection of R.C. 2945.71 pertains to the circumstance in which a person has been arrested but not charged; nor does the statute require that upon arrest, a charge must be presented against that person within any stated time period. Rather, this statute applies only to those who have charges pending against them.” State v. Azbell, ___ Ohio St.3d ___, 2006-Ohio-6552, ¶27-28 (O’Donnell, J., concurring).

The approach taken in the plurality and concurring opinions is contrary to the plain language of R.C. 2945.71(C)(2), which unambiguously defines the date of arrest as the triggering date for the computation of speedy trial time. Because the speedy trial provisions of R.C. 2945.71 et seq protect an individual’s constitutional right to a speedy trial, this Court has repeatedly held that they shall be strictly enforced by the courts. State v. Pachay (1980), 64 Ohio St. 2d 218, 221, 416 N.E.2d 589, 591; State v. Wentworth (1978), 54 Ohio St. 2d 171, 173, 375 N.E.2d 424, 426. Thus, any ambiguity in the statute must be construed against the State and in favor of defendants.

The concurring opinion holds that the language from R.C. 2945.71(C) “against whom a charge is pending” necessarily implies that the date for speedy trial purposes does not begin to

run until an indictment is filed, while the plurality opinion defines “a person against whom a charge is pending” so as to exclude those who are arrested and released without charges being filed. However, in the drafting of the statute, the “against whom a charge is pending” language is placed so that it modifies the word “person.” It does not modify the word “arrest,” which is found in R.C. 2945.71(C)(2). Nothing in the language of the statute suggests that the 270-day period set forth in the statute does not begin to run until a person becomes someone “against whom a charge is pending.”

The legislative history of the speedy trial statute supports a reading of the statute that starts the time for speedy-trial purposes as the date of arrest, even for individuals who are not held pending charges. In the 1974 committee comment to R.C. 2945.71, the committee described the section as follows: “This section requires preliminary hearings and trials to be held **within the following times after arrest** or the service of summons in criminal cases,” and detailed the times for trials for felony as 270 days or 90 days when the accused is confined in lieu of bail. Committee Report on 134 v. H. 511 (1974) (emphasis added). This committee comment reflects the legislature intention to start the 270-day speedy-trial period for felony cases as of the date of an individual’s arrest, as indicated by the plain language of R.C. 2945.71(C)(2).

Reading “against whom a charge is pending” to modify the word “person” merely means that an individual may only assert the statutory speedy-trial right once formal charges have been brought, but that the speedy-trial clock had already begun to run as of the date of that person’s arrest. Justice Moyer’s dissent gives full deference to the legislature’s intent:

Subsection (C) begins with “A person against whom a charge of felony is pending.” This clause means the person has already been indicted or subject to a bill of information when the motion to dismiss for a speedy trial violation is made. In this case a felony of the fifth degree is currently pending against the defendant Azbell. Subsection (C)(2) requires that she “be brought to trial within two hundred seventy days after [her] arrest.” It simply says “arrest”; it does not

say “arrest after indictment,” or “arrest after a warrant is issued.” Azbell was arrested on May 30, 2003. She was taken to the police station, given Miranda warnings, photographed, and fingerprinted. That is an arrest. Her freedom was curtailed. The plain language of the statute required that she be brought to trial no later than February 25, 2004.

Azbell, 2006-Ohio-6552, at ¶34 (Moyer, J., dissenting).

The approach advocated by the plurality and the concurring opinions represents a strained reading of R.C. 2945.71(C)(2) and it leads to an absurd result. The plurality concedes that individuals who are arrested and held in jail prior to the filing of charges or people who are released only after posting bail or on recognizance would be subject to the speedy-trial provisions. However, the plurality does not explain how the language “against whom a charge is pending” could encompass these individuals and not encompass those who have simply been arrested and released. The plurality opinion relies on cases construing the federal constitutional speedy-trial right to support its holding, but nowhere explains how the plain language of the Ohio statute supports its result. Contrary to the plain language of R.C. 2945.71, the speedy-trial time would commence for individuals arrested and held prior to charges being filed on the date of their arrest, but the speedy-trial time would not commence for individuals arrested and released without bond on the date of the arrest. As shown by the statute’s language and the committee comment, the legislature intended to treat all individuals who were arrested prior to the filing of charges against them the same: the speedy-trial time would commence on the date of arrest, regardless of whether or not the person has been formally charged or held prior to charges being filed.

In addition, the plurality and concurrence conflate the state statutory speedy-trial right with the federal and state constitutional speedy-trial right. The plurality’s approach effectively removes the words “after a person’s arrest” from the language of R.C. 2945.71 and rewrites the

statute to fit the parameters of the federal constitutional speedy-trial right, which is separate and distinct. By rewriting the statute to serve the federal constitutional guidelines, the plurality opinion undermined the intent of legislature to statutorily fix a more stringent speedy-trial time than that required by the federal or state constitution.

Furthermore, the approach adopted by the plurality and concurring opinions does not adequately account for the public's interest in obtaining speedy trials for those who have been arrested. The United States Supreme Court has recognized while the constitutional speedy-trial provisions are concerned with the rights of defendants, statutory speedy-trial provisions are also designed, in part, to recognize the interest of the public in obtaining speedy trials for individuals who are suspected of crimes. Zedner v. United States (2006), ___ U.S. ___, 126 S. Ct. 1976. Ohio courts, including this Court, have noted that the public interest in obtaining speedy trials is one of the interests protected by the speedy trial statutes. State v. Bonarrigo (1980), 62 Ohio St. 2d 7; State v. Reed (1977), 54 Ohio App. 2d 193. ("The statutory speedy trial provisions for adults in Ohio constitute a legislative determination that it is in the public interest that adults be tried within certain time limits.") This public interest in ensuring that individuals suspected of crimes are promptly brought into court was nowhere recognized or addressed by the plurality or dissenting opinions.

Although the public does have an interest in obtaining convictions of persons who have committed criminal offenses against the state, this competing interest was recognized by the legislature and is protected by 2945.72, which tolls the speedy-trial clock under many different circumstances. No provision in R.C. 2945.72 permits time to toll after an arrest has been made and prior to the filing of charges. To allow law enforcement to arrest individuals, release them, and delay the charging process indefinitely subverts the legislative will and undermines both the

individuals' and the public interest in swiftly getting these individuals before a court. Such a result could not have been intended by the legislature in enacting R.C. 2945.71(C)(2).

Finally, adopting the plurality and concurring opinions' reading of R.C. 2945.71(C)(2) would undermine the efficacy of a rule of criminal procedure promulgated by this court. Criminal Rule 4 was first adopted by this court in 1975, after the speedy-trial statute was enacted by the legislature in 1974. Criminal Rule 4(E)(2) provides: "Where a person is arrested without a warrant the arresting officer shall, except as provided in division (F), bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested." Criminal Rule 4(F) provides that: "In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure that person's appearance." Thus, under Criminal Rule 4, when police arrest someone for a felony without a warrant, as they did with Ms. Azbell in this case, the arresting officer shall "without unnecessary delay" bring the person before court and shall file a complaint.

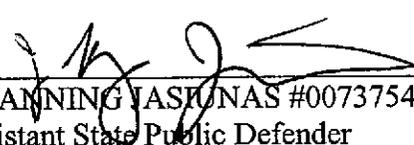
Criminal Rule 4 does not itself provide an enforcement mechanism to ensure that individuals are brought before the court within a reasonable time. The only enforcing mechanism to ensure that law enforcement fulfills its duty under Criminal Rule 4 is the speedy-trial statute, R.C. 2945.71(C). The only way to effectively implement this provision of Criminal Rule 4 is to apply R.C. 2945.71(C)(2) so that it begins to run as of the date of an individual's arrest. To read the statute as contemplated by the plurality and concurring opinions would give

law enforcement an incentive to arrest individuals and release them without bringing them into court or filing any formal charges, as this would prevent the speedy-trial clock from starting to run. Such a result could not have been contemplated by the legislature, and it was not contemplated by this Court when it adopted Criminal Rule 4, as it wholly undermines the provision requiring police to bring charges against arrested individuals without “unnecessary delay.”

In conclusion, because the plurality and concurring opinions in this case both made an obvious error in construing R.C. 2945.71(C)(2) contrary to its plain language, and because those opinions neglected to consider either the public interest in obtaining speedy trials or the conflict with Criminal Rule 4 raised by its decision, Ms. Azbell moves this Court to reconsider its decision and hold that R.C. 2945.71(C) begins to run from the date of an individual’s arrest.

Respectfully submitted,

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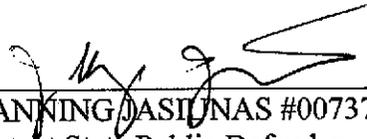
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLEE SANDRA AZBELL'S MOTION FOR RECONSIDERATION has been sent via regular U.S. Mail to Kirsten L. Pscholka-Gartner, Assistant Prosecuting Attorney, by U.S. Mail postage prepaid addressed to her office at 38 South Park Street, Mansfield, Ohio 44902, on this 3rd day of January, 2007.



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