

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

vs.

JAMES DANKWORTH

Defendant-Appellee.

SUPREME COURT CASE NO. 07-1211

**ON APPEAL FROM THE MIAMI
COUNTY COURT OF APPEALS,
SECOND APPELLATE DISTRICT**

**COURT OF APPEALS CASE NO.
06-CA-21**

**MEMORANDUM IN RESPONSE OF APPELLEE,
JAMES DANKWORTH**

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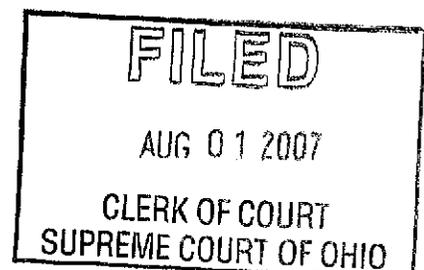


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**WHY THIS CASE INVOLVES SUBSTANTIAL CONSTITUTIONAL ISSUES
AND IS OF GREAT PUBLIC INTEREST**

The law on when speedy trial calculations commence on any charge, whether aggregated or not, is the date of arrest. R. C. 2945.71(A), (B). It makes no difference if a defendant was arrested on one thousand individual, unrelated charges on a single date, the time for commencing time calculations on each individual charge would still be the date of arrest. Accordingly, it follows that if such a defendant is incarcerated, the triple count provisions of R. C. 2945.71(E) would apply. Why would any of this change simply because the charges were all eventually subsumed under a single indictment? This is, in fact, the position that the Appellant would like this Court to adopt, but such a position contradicts the statutory law which is quite clear.

The Appellant would also like this Court to adopt the proposition that the simple filing of a discovery request by new counsel automatically tolls time in an open-ended fashion even in circumstances where no additional discovery is provided. The Appellant simply wants to count empty time in which no event occurs and state that if this empty time is not too long, the statutory time restrictions should be tolled. Such a procedure would effectively prevent the filing of discovery requests by new counsel since counsel would be put in the position of eliminating his client's speedy trial protections even in circumstances where no new discovery exists.

Accordingly, since the law, and simple logic, are clear in this matter, there is nothing that requires clarification by this Court and jurisdiction should be denied.

Statement of the Case

Appellee was arrested on July 20, 2005. On the same date the following charges were filed against him in Miami County Municipal Court:

1. Case No. 05CRA 3244, theft,
2. Case No. 05CRA3245, violation of protection order,
3. Case No. 05CRA3246, aggravated arson,
4. Case No. 05CRA3247 burglary,
5. Case No. 05CRA3248, violation of protection order.

A preliminary hearing was scheduled for July 28, 2005. But waived by the Appellant and the case was bound over for the Miami County Grand Jury .On December 1,2005 the following charges were filed in Miami County Municipal Court :

1. Case No. 05CRA5511, forgery
2. Case No. 05CRA5512, theft
3. Case No. 05CRA5513, unauthorized use of a motor and vehicle
4. Case No. 05.CRA555514, aggravated arson
5. Case No. 05CRA5515, Violation of a protection order
6. Case No. 05Cra5516, Violation of a protection order
7. Case No. 05CRA5517, burglary

A charge of unauthorized used motor in vehicle had been previously charge against the Appellant on July 13, 2005.

On December 16, 2005 the Appellee was indicted for theft, two counts of violating a protective order, burglary ,aggravated arson and forgery. The Appellee had been incarcerated

from the date of his arrest.

A pre-trial conference was set for January 3, 2006 .but vacated. A discovery demand was filed on December 28, 2006. Trial was set for February 28, 2006. The Appellee filed a Motion to Dismiss on speedy trial grounds on February 16, 2006 A hearing was held on February 22, 2006 and the Appellee's Motion was denied on February 28, 2006 The Appellee entered a no contest plea to all counts on February 28, 2006. Timely Notice Appeal was filed subsequently. The Second District Court of Appeals reversed this matter on May 25, 2007. Notice of Appeal was filed in this Court on July 6, 2007.

Statement of the Facts

Appellee allegedly took a handgun from his father without permission to do so, appeared at his wife's house twice, trespassed once on his wife's property , attempted to set the fire to her garage and forget a check.

Memorandum

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW:

Proposition of Law No. 1: The Calculation of Time for Speedy Trial Purposes Commences on the Date of Arrest.

R.C. 2945.71(C)(2) states in part, “ A person against whom a felony charge is pending shall be brought to trial within 270 days.” R,C. 2945.71 (E) states “For purposes of computing time under divisions (A), (B),(C),and (D) of this section , each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as a three days ...,” The statutory

speedy trial time begins to run with the arrest or its functional equivalent. State v. Brock (May 22, 1991) Montgomery App. No. 12227, see also, State v Stone (1975), 73 O. O. 2d 496 (Date time commences is the date of the arrest not the date of the offense). Further even in a situation where there is a dismissal of original charges and the refileing of the new charges based upon the same underlying facts, the time is not tolled if the defendant is in jail or released on bail. State v. DePue (1994) 96 Ohio App. 3d 513, see also, State v. Broughton (1991) 63 Ohio St. 3d 253 (The period between the dismissal without prejudice of the original indictment and the filing subsequent indictment based upon the same facts is not counted unless the defendant is in jail or released on bond), State v. Staton 2001 Ohio 7004 ,Miami App. No. 2001 CA 1.

In the present matter , the Appellee was arrested on July 20, 2005 for offenses that occurred between July 12, 2005 and July 20, 2005. It is of no consequence whether the charges are aggregated or separated , the arrest date on all of these charges is July 20,2005 . Time thus commences on each and every charge on July 20, 2005. Accordingly ,time for these charges would have run out on or about October 20, 2005 . New charges, based on absolutely the same facts, were filed on December 1, 2005. Again the Appellee remaining incarcerated throughout, this period was not tolled by the December 1,2005 filing.

The Trial Court and the Court of Appeals relied upon State v. Johnson 2003 Ohio 3241, Cuyahoga App. Nos. 81692, 81693 in denying the Appellee's Motion to Dismiss. Johnson, however, stands for nothing new or novel , but only for the proposition that if a defendant is being held on a separate unrelated charge, the three for one provisions don't apply . Stating this , however, does not extended the time on individual charges. There are no separate arrest dates on the present offenses and no new charges based on different facts made against the Appellee after

July 20, 2005. The simple fact that there are separate charges does not extend the time computation for the unquestioned arrest date in this matter. To say such a thing is refute it .

Proposition of Law No. 2: It is an Abuse of Discretion to Toll the Statutory Speedy Trial Limits Due to the Filing of a Request for Discovery Absent a Showing of a Reasonable Delay in Responding by the State

The standard for reviewing claims of speedy trial violations is whether the trial court's ruling is supported by the evidence or whether the court abuses its discretion by making a finding manifestly against the weight of the evidence .Stanton, supra Speedy trial analysis must be strictly construed in favor of the defendant . Id.

In the present matter, a discovery demand was made on December 28, 2005. The State responded on that date . On February 16, 2006 the date that the Appellee's Motion to Dismiss was filed , the State "Updated the witness list " In its decision ,the Trial Court simply made a blanket assertion that the time elapsed from December 28,2005, until February 16, 2006 , the date the witness list was updated , was not unreasonable .

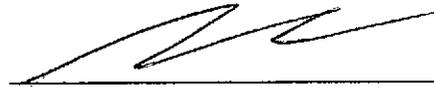
Such a conclusion misses the point. It is not the length of the time that is relevant as to whether the statute is tolled, but the reasonableness of the delay. Here where was no finding that the excuse of an updated witness list was reasonable . In fact, the state did not elaborate or any evidence concerning the reason for this delay. It simply made this one isolated statement.

Accordingly , the Trial Court's decision is not supported by any evidence and its finding of reasonableness is, therefore, an abused of discretion . The Court of Appeals Decision reversing this matter on this basis is, therefore, correct and jurisdiction should be denied.

Conclusion

For the reasons stated herein, this Court should deny jurisdiction in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction of Appellee was served upon the Miami County Prosecutor, 201 West Main Street, Troy, OH. 45373 by ordinary U.S. Mail on this day of filing.



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