

IN THE SUPREME COURT OF OHIO

07-1211

STATE OF OHIO, :
 :
 APPELLANT, : On Appeal from the Miami
 : County Court of Appeals
 VS. : Second Appellate District
 :
 JAMES DANKWORTH, : Court of Appeals
 : Case No. 06-CA-21
 APPELLEE. :

MERIT BRIEF
OF APPELLANT, STATE OF OHIO

James D. Bennett (0022729)
First Assistant Prosecuting Attorney
Miami County Prosecutor's Office
201 West Main Street
Troy, Ohio 45373
(937) 440-5960
(937) 440-5961 (fax)
jdbennett@co.miami.oh.us

COUNSEL FOR APPELLANT
STATE OF OHIO

L. Patrick Mulligan (0016118)
George A. Katchmer (0005031)
L. Patrick Mulligan & Associates
28 North Wilkinson, P.O. Box 248
Dayton, Ohio 45402
(937) 258-1800
(937) 258-1810 (fax)
probu@lycos.com

COUNSEL FOR APPELLEE
JAMES DANKWORTH

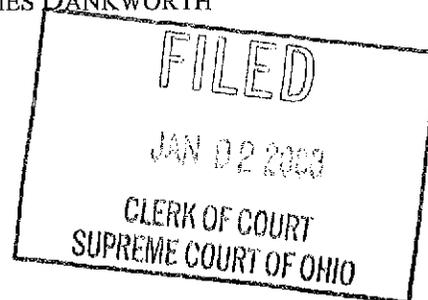


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STATEMENT OF THE CASE AND FACTS

On July 20, 2005, Appellee was arrested and held on the following charges: one count of felony theft, two counts of violation of protection order, one count of aggravated arson, and one count of burglary. These charges arose from several separate incidents that occurred between June 17, 2005, and July 20, 2005. The Appellee was also charged with one count of the unauthorized use of a motor vehicle for an incident which took place on July 13, 2005.

On July 28, 2005, the Appellee waived his right to a preliminary hearing, and the cases were bound over to the Common Pleas Court for Grand Jury consideration. After the bind over occurred, there were numerous and lengthy negotiations between the State and the Miami County Public Defender's Office about whether the Appellee would proceed on a bill of information prior to Grand Jury indictment. No agreement was reached.

On November 30, 2005, the Appellee was still being held on cash bonds for all the charges listed above. In addition, Appellee was being held on a separate bond that resulted from an OVI charge. The State subsequently dismissed all the charges but the OVI. On December 1, 2005, the State re-filed the following charges in the Miami County Municipal Court: one count of forgery, one count of theft, one count of unauthorized use of a motor vehicle, one count of aggravated arson, two counts of violation of protection order, and one count of burglary. The defendant remained in jail on cash bonds.

On December 16, 2005, the Appellee was indicted on one count of Theft, ORC §2913.02(A)(1)(4), a felony of the third degree; two counts of Violating a Protection Order, ORC §2919.27(A)(1)(B)(4), felonies of the third degree; one count of Burglary, ORC §2911.12(A)(4), a felony of the fourth degree; one count of Arson, ORC §2909.02(A)(2), a

felony of the fourth degree; and one count of Forgery, ORC §2913.31(A)(1), a felony of the fourth degree.

The Appellee was arraigned in the Common Pleas Court on December 22, 2005, and the Court set a bond in the amount of \$75,000.00. A joint demand for discovery was filed December 23, 2005, signed by both the prosecutor and the public defender. The State provided discovery at that time. The Appellee requested a pretrial, and one was set for January 3, 2006.

On December 28, 2005, a new defense counsel entered an appearance on behalf of Appellee and served a written request for discovery. The State provided a discovery packet once again. At the pretrial conference on January 3, 2006, the Court scheduled a trial date for February 28, 2006. Between December 28, 2005 and February 16, 2005, the Appellee was provided with discovery, a witness list, and updates to those materials.

On February 16, 2006, the last item of discovery was sent to the Appellee, which added of couple of potential witnesses to the witness list. On that date, the Appellee also filed his motion to dismiss. The Court set the motion to dismiss for hearing on February 24, and 27 of 2006.

On February 27, 2006, the Court overruled the Appellee's motion for dismissal. The Appellee withdrew his former pleas of not guilty and offered a no contest plea to all counts of the indictment. On April 10, 2006, the Court sentenced the Appellee to a total of seven years incarceration. The Appellee filed a timely appeal with the Miami County Court of Appeals, Second Appellate District, assigning two Assignments of Error.

On May 25, 2007, the Court of Appeals issued a decision which reversed the trial court's finding that the Appellee was held in jail in lieu of bail in excess of the time limit set forth in ORC §2945.71. Specifically, the Court of Appeals found that time did not toll for purposes of

speedy trial calculation upon the Appellee's new counsel's discovery request filed on December 28, 2005.

The Court of Appeals erred in ruling that the Appellee's right to a speedy trial was violated. The Appellant now requests that this Court correct the error of the Court of Appeals.

ARGUMENT

Proposition of Law No. I: The filing of a second request for discovery upon the appearance of new counsel is a tolling event pursuant to ORC §2945.71.

The right of a criminal defendant to a speedy trial is guaranteed by the Sixth Amendment of the United States Constitution, and Article 1, Section 10, of the Ohio Constitution. State v. Ladd (1978), 56 Ohio St.2d 197, 200, 10 O.O.3d 363, 383 N.E.2d 579. In Ohio, the statutory scheme set forth in ORC §2945.71, et seq., implements the defendant's constitutional right to a speedy trial by imposing definite obligations on the State. State v. Pachay (1980), 64 Ohio St.2d 218, 221, 18 O.O.3d 427, 416 N.E.2d 589. Divisions (C)(2) and (E) of R.C. §2945.71 require the State to bring a defendant, against whom a felony charge is pending, to trial within 270 days of arrest or within the 90 days if held in jail in lieu of bail on the pending charge. This is referred to as the triple-count provision. When the accused files a motion in a pending case, the speedy trial time is tolled for such reasonable time as it takes for the matter to be decided by the court. ORC §2945.72(E). This includes motions to dismiss, to suppress, and to enforce rules or orders. State v. Wyde (1993), Ohio App.3d 471, 629 N.E.2d 1079; State v. Vickerstaff (1984), 10 Ohio St.3d 62, 461 N.E.2d 892; State v. Bunyan (1988), 51 Ohio App.3d 190, 555 N.E.2d 980.

The issue presented concerns discovery. It has been widely held that the demand for discovery or a bill of particulars is a tolling event for purposes of the speedy trial statute. State v. Brown (2002), 98 Ohio St.3d 121, 2002-Ohio-7040. In this case, two demands for discovery were filed. On December 23, 2005, the first demand, using the standard form used in Miami County, Ohio arraignments, was executed by the Prosecutor and the Miami County Public Defender and filed accordingly. The Appellant provided a discovery packet on that date to the Miami County Public Defender. The second demand, a written request for discovery filed by the Appellee's second counsel, was received on December 28, 2005. The State must respond to a

discovery demand in a reasonably, timely fashion. State v. McDonald, 153 Ohio App.3d 679, 686, 2003-Ohio-4342. In this case, the State responded quickly to the initial demand from the Public Defender. Contrary to the finding of the Court of Appeals, the Appellee's second counsel, who entered an appearance on December 28, 2005, served a demand for discovery. The State complied with this demand and provided him with a discovery packet.

Criminal Rule 16 does not require a defendant to file a demand for discovery. However, the demand for discovery is the norm in criminal cases and not the exception. The usual practice is to make a record for review by both the trial court and the appellate court. By its filing it is clear what day the demand was made, and, by its response, the State and/or the defendant shows compliance. Further, the State has a continuing duty to supplement discovery. In this case, the State received no discovery from either counsel for the accused.

In reviewing this case, the Appellate Court erroneously relied upon State v. Knight Greene App. No. 03-CA-14, 2005-Ohio-3179. In Knight the court held that a defendant's filing of a discovery request does not toll the speedy trial time when the State has preemptively complied with the defendant's discovery request. The Court stated that if the State provides discovery before the request is made, a subsequent request for discovery could not divert the prosecutor's attention from preparing the case for trial. [Citing State v. Brown, supra]. The instant matter is distinguishable from Knight. Once Appellee's second counsel entered the case, the discovery process had to begin once again.

When new counsel enters a case, it is rare that they are ready to proceed to trial. The prosecutor must deal with any new issues raised, discovery, plea negotiations, along with the complexities of the case. It is not unreasonable to assume that the prosecutor's attention is diverted, temporarily, when new counsel enters an appearance.

Further, when new counsel entered an appearance, his focus was not on trial, but rather on raising a speedy trial issue.

Thus, the appellate court erred in determining that the tolling requirement under Brown was inapplicable to this case. Consequently, the Court of Appeal's failure to recognize the tolling event from the date of the pretrial January 3, 2006 to February 16, 2006, when the motion to dismiss was filed, provided the Appellee with the triple-count provision under §2945.71, thereby, making the speedy trial calculation outside the 270 day limit.

Thus, the Appellate Court's determination that the State did nothing with regard to discovery, except updating a witness list, was an erroneous finding of fact. The Appellee's second discovery request filed by new counsel tolled the speedy trial time calculation in this case.

Proposition of Law No. II: The triple-count provision of ORC §2945.71(E) does not apply to a multiple count indictment where all counts are not related, are not part of a common litigation history, and thus should not be treated as a single charge.

This Court recently held in State v. Parker 113 Ohio St.3d 207, 2007-Ohio-1534, that criminal charges arising out of the same incident, when filed simultaneously, will always be deemed to have a common litigation history for purposes of invoking the triple-count provision of §2945.71, even if they are prosecuted in separate jurisdictions. The issue that now remains is whether the Parker decision is applicable to the frequently occurring situation where a defendant commits several unrelated offenses, over a period of days, and is charged with all of the offenses in a single indictment. This presents the question of whether the accused becomes entitled to the triple-count provision of the speedy trial statute when multiple charges are unrelated, and do not have a common litigation history until charged in a single indictment. Clearly, the State could indict each unrelated offense separately but this would require separate trials. The State, in this

case, for purposes of judicial economy and to dispose of the matter quickly and as efficiently as possible, gave the Appellee the advantage of the triple-count provision for speedy trial purposes.

This Court has long held that the statutory speedy trial limitations are mandatory and the State must strictly comply with them. State v. Hughes (1999), 86 Ohio St.3d 424, 427, 715 N.E.2d 540. In the instant case, subsequent and multiple indictments would have required the Appellee's local incarceration to be extended longer than it would have been by combining the cases into one indictment. In State v. Baker (1997), 78 Ohio St.3d 108, 112, 676 N.E.2d 883, the Court recognized an exception to the speedy trial time table for subsequent indictments: when additional criminal charges arise from facts distinct from those supporting an original charge, or the State was unaware of such facts at that time, the State is now required to bring the accused to trial within the same statutory period as the original charge under §2945.71, et seq. This same rationale may be applied to the instant case.

Although this issue has not been addressed by this Court, several other courts in Ohio have held that when an accused is charged with several unrelated offenses in a multiple count indictment and all counts are to be tried in a single trial, the indictment is treated as a single charge and the accused is entitled to the triple-count provision. State v. Collins (1993), 91 Ohio App.3d 10, 14-5, 631 N.E.2d 666; State v. Armstrong (May 25, 1989) Franklin App. No. 87AP-1166; State v. Bowman (1987), 41 Ohio App.3d 318, 535 N.E.2d 730, abrogated on other grounds in State v. Palmer, 84 Ohio St.3d 103, 105, 1998-Ohio 507, 702 N.E.2d 72. Further, it is noted that the Appellant in this case conceded at the Court of Appeals level that the triple-count provision applied to once all charges were joined in a single indictment. That concession was made in error. Other courts have held if more than one charge arises from the same incident and the multiple charges do not share a common litigation history from arrest onward, the triple

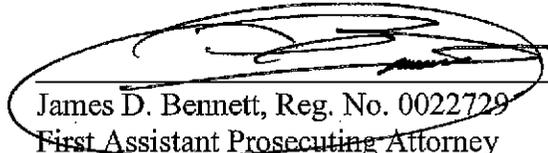
count provision will not apply. State v. Parsley (1993), 82 Ohio App.3d 567, 571, 612 N.E.2d 813. See also, State v. Fielder (1994), 66 Ohio Misc.2d 163, 166, 643 N.E.2d 633. State v. Eldrige (March 10, 2003), Scioto App. 02CA2842, 2003-Ohio-1198.

McDonald, supra, and Ladd, supra, held that ORC §2945.71(E) applies only when a defendant is held in jail in lieu of bond on a single pending charge. That is not the case before this Court. Even though appellate courts have found that the purpose behind the speedy trial statute is to avoid undue pretrial detention, it does not necessarily follow that the triple-count provision should be applied in cases where the charges are unrelated and could have been brought separately thereby delaying the disposition of the cases even further.

CONCLUSION

The Appellant, therefore, respectfully requests that the Court reverse the decision of the Court of Appeals. Further, Appellant request that the Court find that the filing of a second request for discovery upon the appearance of new counsel is a tolling event pursuant to ORC §2945.71 and further find that the triple-count provision of ORC §2945.71(E) does not apply to a multiple count indictment where all counts are not related, are not part of a common litigation history, and thus should not be treated as a single charge.

Respectfully submitted,



James D. Bennett, Reg. No. 0022729
First Assistant Prosecuting Attorney
Miami County Prosecutor's Office
201 West Main Street – Safety Building
Troy, Ohio 45373
(937) 440-5960
(937) 440-5961 (fax)
jdbennett@co.miami.oh.us

COUNSEL FOR APPELLANT
STATE OF OHIO

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Brief of Plaintiff-Appellee was sent by regular U.S. Mail to Appellee's attorney, Mr. George A. Katchmer, L. Patrick Mulligan & Associates, 28 North Wilkinson Street, P.O. Box 248, Dayton, Ohio 45402 on this 31st day of December, 2007.


James D. Bennett
First Assistant Prosecuting Attorney

APPENDIX

FILED
MIAMI COUNTY
COURT OF APPEALS
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CLERK OF COURTS

IN THE SUPREME COURT OF OHIO

07-1211

STATE OF OHIO, :
 :
 APPELLANT, : On Appeal from the Miami
 : County Court of Appeals,
 VS. : Second Appellate District
 :
 JAMES DANKWORTH, : Court of Appeals
 : Case No. 06-CA-21
 :
 APPELLEE. :

NOTICE OF APPEAL OF APPELLANT
STATE OF OHIO

FILED
JUL 06 2007
CLERK OF COURT
SUPREME COURT OF OHIO

James D. Bennett (0022729)
First Assistant Prosecuting Attorney
Miami County Prosecutor's Office...
201 West Main Street
Troy, Ohio 45373
(937) 440-5960
(937) 440-5961 (fax)
jdbennett@co.miami.oh.us

COUNSEL FOR APPELLANT
STATE OF OHIO

L. Patrick Mulligan (0016118)
George A. Katchmer (00050331)
L. Patrick Mulligan & Associates
28 North Wilkinson, P.O. Box 248
Dayton, Ohio 45402
(937) 258-1800
(937) 258-1810 (fax)
probu@lycos.com

COUNSEL FOR APPELLEE
JAMES DANKWORTH

Notice of Appeal of Appellant, State of Ohio

Now comes the State of Ohio, by and through counsel, and hereby gives notice of its appeal to the Supreme Court of Ohio from the judgment of the Miami County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. 06-CA-21 on May 25, 2007.

This case presents a question of great general and public interest, involves a substantial constitutional question, and involves a felony.

Respectfully submitted,

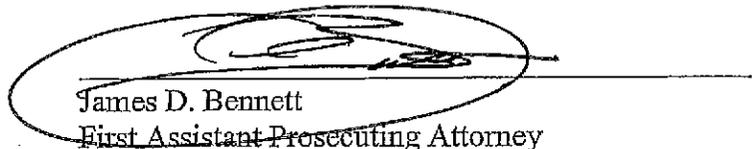


James D. Bennett, Reg. No. 0022729
First Assistant Prosecuting Attorney
Miami County Prosecutor's Office
201 West Main Street – Safety Building
Troy, Ohio 45373
(937) 440-5960
(937) 440-5961 (fax)
jdbennett@co.miami.oh.us

ATTORNEY FOR APPELLANT
STATE OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of July, 2007, the foregoing Notice of Appeal was served, via regular U.S. Mail, upon George A. Katchmer, Counsel for the Appellee, L. Patrick Mulligan & Associates, 28 North Wilkinson, P.O. Box 248, Dayton, Ohio 45402.



James D. Bennett
First Assistant Prosecuting Attorney

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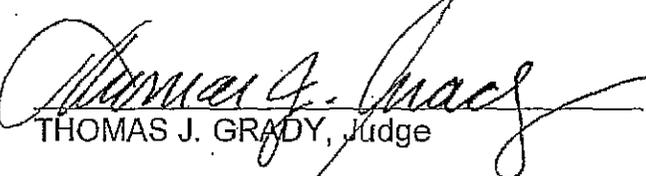
IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE OF OHIO	:	
	:	
<i>Plaintiff-Appellee</i>	:	Appellate Case No. 06-CA-21
v.	:	Trial Court Case No. 05-CR-605
	:	
JAMES DANKWORTH	:	(Criminal Appeal from
	:	Common Pleas Court))
<i>Defendant-Appellant</i>	:	
	:	FINAL ENTRY

Pursuant to the opinion of this court rendered on the 25th day of May, 2007, the judgment of the trial court is **Reversed**; and Dankworth is ordered Discharged with respect to the convictions with which this appeal is concerned.

Costs to be paid as stated in App.R. 24.


MIKE FAIN, Judge


THOMAS J. GRADY, Judge


MARY E. DONOVAN, Judge

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Copies mailed to:

George A. Katchmer
L. Patrick Mulligan & Assoc.
28 N. Wilkinson Street
P.O. Box 248
Dayton, OH 45402

James D. Bennett, Esq.
Miami County Prosecutor's Office
201 W. Main Street
Troy, OH 45373

Hon. Robert J. Lindeman
Miami County Common Pleas Court
201 W. Main Street
Troy, OH 45373

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5-25-07

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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

JAMES DANKWORTH

Defendant-Appellant

Appellate Case No. 06-CA-21

Trial Court Case No. 05-CR-605

(Criminal Appeal from
Common Pleas Court)

.....
OPINION

Rendered on the 25th day of May, 2007.
.....

JAMES D. BENNETT, Atty. Reg. #0022729, Miami County Prosecutor's Office, 201 West Main Street – Safety Building, Troy, Ohio 45373
Attorney for Plaintiff-Appellee

GEORGE A. KATCHMER, Atty. Reg. #0005031, L. Patrick Mulligan & Assoc. Co., LPA, 28 N. Wilkinson Street, P.O. Box 248, Dayton, Ohio 45402
Attorney for Defendant-Appellant
.....

FAIN, J.

Defendant-appellant James Dankworth appeals from his conviction and sentence, following a no-contest plea, for theft, two counts of violating a protective order, burglary,

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arson, and forgery. Dankworth contends that the trial court erred by denying his motion to dismiss on speedy trial grounds. Dankworth asserts that his speedy trial time began to run for each charge on July 20, 2005, and that the trial court erred in tolling the speedy trial time between December 28, 2005, when Dankworth filed a discovery request, and February 16, 2006, at which time the State provided an updated witness list.

Based on our review of the record, we conclude that the trial court correctly calculated which days were to be calculated on a one-for-one basis and which on a three-for-one basis. We further conclude, however, that the trial court erred in determining the period tolled by Dankworth's discovery request. Because Dankworth was incarcerated pending trial for a period greater than allowed by the speedy trial statute, the judgment of the trial court is Reversed, and Dankworth is Discharged with respect to these offenses.

I.

According to the record, on July 13, 2005, Dankworth was arrested and charged in the Miami County Municipal Court with unauthorized use of a motor vehicle. Case No. 2005-CRA-3146. On the same day, he was released on a personal recognizance bond. On July 20, 2005, Dankworth was arrested and separately charged with theft (Case No. 2005-CRA-3244), aggravated arson (Case No. 2005-CRA-3246), burglary (Case No. 2005-CRA-3247), and two violations of a protective order (Case Nos. 2005-CRA-3245 & 3248). The court set a separate cash bond for each of the charges. Dankworth waived his preliminary hearing on the charges, and the cases were bound over to the common pleas court for consideration by the grand jury. Dankworth remained incarcerated.

Ab

On December 1, 2005, the State again filed charges against Dankworth in the Miami County Municipal Court for theft (Case No. 2005-CRA-5512), unauthorized use of a motor vehicle (Case No. 2005-CRA-5513), aggravated arson (Case No. 2005-CRA-5514), two violations of a protective order (Case Nos. 2005-CRA-5515 & 5516), burglary (Case No. 2005-CRA-5517), as well as one count of forgery (Case No. 2005-CRA-5511). A separate cash bond was set for each charge, which Dankworth did not pay, and he remained in jail. On December 9, 2005, the forgery, unauthorized use of a motor vehicle, theft, and burglary charges were dismissed. On December 14, 2005, Dankworth waived his right to a preliminary hearing on the aggravated arson and the protective order charges, and those three charges were bound over to the common pleas court to be presented to the grand jury.

On December 16, 2005, Dankworth was indicted for theft (count one), two violations of a protective order (counts two and three), burglary (count four), arson (count five), and forgery (count six). Miami Case No. 2005-CR-605. Count One alleged that Dankworth stole a firearm on July 12, 2005. Counts Two and Three alleged that Dankworth violated a protective order on July 18, 2005, and July 20, 2005. The burglary offense allegedly occurred on July 18, 2005, and the arson offense allegedly occurred on July 20, 2005; these actions were apparently connected to the violations of the protective order. Count Six alleged that Dankworth forged the writing of an elderly person on June 17, 2005. Dankworth was arraigned on December 22, 2005. Dankworth pled not guilty and requested a pre-trial conference, which was scheduled for January 3, 2006. The court set a cash bond of \$75,000.

On December 23, 2005, a joint demand for discovery, signed by both the prosecutor

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and defense counsel, was filed. In a subsequent hearing, Dankworth indicated that the State had provided its discovery at the arraignment and that he had no discovery to provide to the State. On December 28, 2005, Dankworth obtained new counsel. On the same day, Dankworth requested a continuance of the pre-trial conference and filed a new request for discovery. The pre-trial conference was held on January 3, 2006, as scheduled, and trial was set for February 28, 2006. On February 16, 2006, the State provided an amended witness list to Dankworth. On the same day, Dankworth filed a motion to dismiss, pursuant to R.C. 2945.71, asserting a violation of his statutory right to a speedy trial.

On February 22 and 27, 2006, the trial court held a hearing on the motion to dismiss. At the conclusion of the hearing, the court ruled that Dankworth's speedy trial rights had not been violated. After the ruling, Dankworth entered a no-contest plea to all charges. The court found him guilty, and imposed an aggregate sentence of seven years in prison, restitution and costs. Dankworth appeals from his conviction and sentence.

II

Dankworth presents two assignments of error. His First Assignment of Error is as follows:

"THE CALCULATION OF TIME FOR SPEEDY TRIAL PURPOSES COMMENCES ON THE DATE OF ARREST."

Dankworth's Second Assignment of Error is as follows:

"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.”

Under his two assignments of error, Dankworth contends that the trial court erred in calculating the pre-indictment period of his speedy trial time on a one-for-one basis and in tolling the speedy trial time following the filing of his discovery motion. Because of the interrelatedness of the assignments of error, they will be addressed together.

In overruling Dankworth’s motion to dismiss, the trial court calculated the speedy trial time as follows:

“The Court initially computed the Defendant’s time in this case as follows (see Court’s Exhibit A):

“July 2005	12 days	
“August 2005	31 days	
“September 2005	30 days	
“October 2005	31 days	
“November 2005	30 days	
“December 2005	15 days	(It is unclear to the Court because neither side produced any evidence, if the initial charges were dismissed or ignored in Common Pleas Court which would have resulted in no charges pending between December 9-16)

“Corrected Total 149 days

“Since the Defendant was held on individual charges arising on different dates with

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different bonds, the Court concludes he is not eligible for the 3-for-1 provision (R.C. 2945.71(E)) from July to December 15, 2005. *St. v. Johnson*, 2003 Ohio App. Lexis 2903.

"The Defendant was indicted on December 16, 2005. Pursuant to *St. v. Bowman* (1987), 41 Ohio App.3d 318, second syllabus, once the State joined the charges in a single indictment and intended to proceed to trial on a single trial date, the Defendant was entitled to the 3-for-1 provision of 2945.71.

"Therefore the court further computes the time as follows:

"December 16 to December 22 7 days x 3 = 21

"On December 22nd, the Defendant was arraigned and requested a pretrial conference. (See transcript of arraignment filed in this case.) This tolled the time until the pretrial date, January 3, 2006.

"However, on December 23, 2005 and on December 28, 2005, demands for discovery were filed; the first being a standard form used at Miami County arraignments and the latter being a written request for discovery filed by the Defendant's new counsel.

"Pursuant to *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, demands for discovery are tolling events. The question is, how long do they toll?

"This Court concludes that this answer must be determined on a case by case basis, and the State must respond to the discovery demand in a reasonably timely fashion. *St. v. Staton* (Dec. 14, 2001), Miami App. No. 2001CA10 at pg.4-5, citing *St. v. Bengé* (Apr. 24, 2000), Butler App. No. CA99-05-095, etc., *St. v. McDonald*, 153 Ohio App.3d 679, 686, 2003-Ohio-4342.

"In the *McDonald* case, the state did not respond to the discovery requests until eleven months had lapsed. This, the court concluded, was not a reasonably timely

response. The *McDonald* court noted it would not set a bright line rule for every case, but after four months, the motion stopped acting as a tolling event. *McDonald*, 686, 687.

"In the present case, it appears there are three separate alleged victims and four separate incident dates, involving three separate locations.

"Accordingly, development of the case could possibly take some time. To the Court's questioning, the parties noted the last of the discovery was exchanged February 16, 2006, the same day the motion to dismiss was filed, about one and one-half months after it was demanded.

"The Court does not perceive any dilatory or bad faith action by the State in this regard. By the time of the arraignment (January 3, 2006), both sides were already resolute in their positions on the speedy trial; the State thought that the multiple counts tolled the time until April, the Defendant thought the time had expired 90 days after July 20, 2005.

"This Court, of course has taken a slightly different approach in the ultimate analysis.

"Nevertheless, the Court will find the request for discovery, Court's Exhibit B, tolled the time in which the Defendant was to be brought to trial and the State responded reasonably by February 16, 2006 at which time Defendant's motion to dismiss further tolled the time.

"Accordingly, 270 days has not elapsed and the Defendant's motion to dismiss must be overruled."

On appeal, Dankworth argues that the speedy trial clock began for each charge on July 20, 2005 – the date of his arrest – and that the speedy trial time for all of these charges expired on October 20, 2005. Dankworth's argument is premised on the idea that,

because he was arrested for all of the charges on the same date, they should be treated together for speedy trial purposes and the three-for-one provisions applied as of July 2005.

"The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution. In Ohio, R.C. 2945.71 requires the State to bring a felony defendant to trial within two hundred and seventy days of arrest. R.C. 2945.71(C). Each day during which the accused is held in jail in lieu of bail on the pending charge is counted as three pursuant to the triple-count provision of R.C. 2945.71(E)." *State v. Hart*, Montgomery App. No. 19556, 2003-Ohio-5327. This "triple-count" provision would reduce to ninety days the time for bringing to trial an accused who is incarcerated the entire time preceding trial.

However, an accused is only entitled to the triple-count provision when he is held in jail *solely* on the pending charge. *State v. Kaiser* (1978), 56 Ohio St.2d 29, 381 N.E.2d 633, paragraph two of the syllabus; *State v. DeLeon*, Montgomery App. No. 18114, 2002-Ohio-3286. The days will not be counted triply if he is also being held for additional charges. See *State v. MacDonald* (1976), 48 Ohio St.2d 66, 357 N.E.2d 40; *State v. Davenport*, Butler App. No. CA2005-01-05, 2005-Ohio-6686, ¶19.

The Supreme Court of Ohio has recently considered when multiple charges should be considered, collectively, as a "pending charge" for purposes of R.C. 2945.71(E). *State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534, 863 N.E.2d 1032. In *Parker*, the defendant was arrested in connection with the discovery of a methamphetamine lab. His arrest resulted in three separate complaints charging the illegal manufacture of drugs, possession of drugs, and carrying a concealed weapon. Separate bonds were set for the three charges, and the two felony charges were bound over to the court of common pleas.

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Parker eventually posted a personal recognizance bond in the court of common pleas, but he remained jailed on the misdemeanor charge, which still required cash bail or a surety bond. The misdemeanor charge was subsequently dismissed.

Upon review, the *Parker* court concluded that the triple-count provision applied to the three charges, despite the fact that Parker was arraigned on three separate complaints. The court held that "when multiple charges arise from a criminal incident and share a common litigation history, pretrial incarceration on the multiple charges constitutes incarceration on the 'pending charge' for the purposes of the triple-count provision of the speedy-trial statute, R.C. 2945.71(E)." *Parker* at ¶21. The court noted: "[T]he charges at the time of the complaints could have proceeded together in one jurisdiction. Parker had no control over the decision to refer only the drug charges to the grand jury. The state cannot reasonably argue that it has a mechanism at its disposal whereby after bringing both misdemeanor and felony charges based on a single criminal incident, and retaining the misdemeanor as a pending action in municipal court, it can obviate any triple-count concerns." *Id.*

Unlike in *Parker*, Dankworth's July 20th arrest was not related to a single criminal incident which resulted in multiple charges. Rather, Dankworth had engaged in four unrelated acts of criminal conduct, involving at least three separate victims, on four separate dates: forgery on July 17, 2005; theft of a firearm on July 12, 2005; violation of a protective order and burglary on July 18, 2005; and violation of a protective order and arson on July 20, 2005. The State filed separate complaints, and the municipal court imposed separate cash bonds for each of the offenses. Because Dankworth was arrested for numerous unrelated charges, he was not held in jail in lieu of bail on a single "pending

charge.” To the contrary, Dankworth was held in jail in lieu of bail on several unrelated charges. Accord *State v. Johnson*, Cuyahoga App. Nos. 81692 & 81693, 2003-Ohio-3241, ¶¶15-17. Under the circumstances presented, the fact that he was arrested on the same date for each of the unrelated criminal incidents is inconsequential. Moreover, although the State later combined these charges in a single indictment, nothing in the nature of the unrelated charges suggested that the State would or should do so. Contrast *Parker*, supra. Accordingly, the trial court properly calculated the period between July 20, 2005 and December 15, 2005 on a one-to-one basis. Not counting the date of Dankworth’s arrest, *State v. Stewart*, Montgomery App. No. 21462, 2006-Ohio-4164, ¶16 (day of arrest is not counted in computing speedy trial time), that period amounted to 148 days.

Dankworth’s First Assignment of Error is overruled.

We further agree with the trial court that, once an indictment including all of the charges was filed on December 16, 2005, Dankworth was entitled to the triple-count provision of R.C. 2945.71(E). Although this issue has not been directly addressed by the Ohio Supreme Court or by this court, several courts have held that, when an accused is charged with several unrelated offenses in a multiple-count indictment and all counts are to be tried in a single trial, the indictment is treated as a single charge, and the accused is entitled to the triple-count provision. *State v. Collins* (1993), 91 Ohio App.3d 10, 14-15, 631 N.E.2d 666; *State v. Armstrong* (May 25, 1989), Franklin App. No. 87AP-1166; *State v. Bowman* (1987), 41 Ohio App.3d 318, 535 N.E.2d 730. We agree with this proposition and note that the State likewise concedes that the triple-count provision applied once all charges were joined in a single indictment.

Moreover, we find no basis to conclude that *Parker* requires us to treat the multiple counts in the indictment on a one-to-one basis. *Parker* addressed the situation where multiple related charges were brought separately, and the Ohio Supreme Court concluded, in essence, that the State could not circumvent the triple-count provision by charging the related offenses in separate complaints and addressing them in multiple courts. *Parker* does not address the reverse situation where multiple unrelated charges are brought in a single multiple-count indictment, as is the case herein, nor does *Parker* suggest that the triple-count provision applies only when factual circumstances similar to *Parker's* exist. Accordingly, we conclude that, because Dankworth was in jail in lieu of bond on a single indictment, the time between December 16, 2005, and February 27, 2006, was properly counted triply. That time period amounted to an additional 222 days in jail.

Accordingly, between July 21, 2005, and February 27, 2006, Dankworth was incarcerated for a total of 370 days (148 days + 222 days).

A defendant must be brought to trial within the time limit set by statute unless the time is tolled by one of the exceptions listed in R.C. 2945.72. Under R.C. 2945.72, the speedy trial time may be tolled during any period of delay "necessitated by reason of a * * * motion, proceeding, or action made or instituted by the accused." R.C. 2945.72(E).

Dankworth does not dispute that certain dates of his incarceration did not count against the State for speedy trial purposes. Dankworth was arraigned on December 22, 2005, and he requested a pre-trial conference at that time. The speedy trial time was thus tolled until January 3, 2006, when the pre-trial conference was held. This period was also tolled by Dankworth's request for a continuance of the pre-trial conference, filed on December 28, 2005. Because that motion was denied and the pre-trial conference was

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held as scheduled, the tolling period resulting from the motion for a continuance likewise ended on January 3, 2006. Dankworth also does not challenge that the speedy trial time was tolled from February 16, 2006, when he filed his motion to dismiss, until his plea on February 27, 2006. Accordingly, Dankworth does not challenge that 75 days (25 days counted triply) were properly considered tolled by the trial court.

In his Second Assignment of Error, Dankworth contends that the trial court abused its discretion when it tolled the period between December 28, 2005, when Dankworth's new counsel filed a discovery request, and February 16, 2006, when the State filed its amended witness list.

The Ohio Supreme Court has held that a defendant's demand for discovery or a bill of particulars is a tolling event, pursuant to R.C. 2945.72(E). *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, 781 N.E.2d 159. The court reasoned that "[d]iscovery requests by a defendant divert the attention of prosecutors from preparing their case for trial, thus necessitating delay. If no tolling is permitted, a defendant could attempt to cause a speedy-trial violation by filing discovery requests just before trial." *Id.* at 124.

In *State v. Knight*, Greene App. No. 03-CA-14, 2005-Ohio-3179, we held that a defendant's filing of a discovery request did not toll the speedy trial time when the State had preemptively complied with the defendant's request (i.e., the State had provided the requested discovery before the request was made). We stated:

"On May 6, 2002, Defendant timely filed his request for discovery. Ordinarily, that demand would toll the speedy trial time for the reasonable period of time necessary for the State to respond. *Brown, supra.* However, the State had already filed its 'Rule 16 Compliance' on May 1, 2002. Consequently, Defendant's request for discovery could not

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divert the prosecutor's attention from preparing the case for trial, *Brown, supra*, because the State had already provided discovery. Therefore, Defendant's May 6, 2002, request for discovery did not toll the speedy trial time." *Id.* at ¶18.

The present circumstances are similar to those in *Knight*. Here, it is undisputed that Dankworth and the State provided reciprocal discovery following the arraignment on December 22, 2005. As indicated by the trial court, on the following day, the parties filed a standard form in which Dankworth both demanded discovery and acknowledged receipt of presently available discovery from the prosecutor. The form further acknowledged Dankworth's receipt of the State's demand for discovery. When Dankworth obtained new counsel on December 28, 2005, his new counsel filed a second request for discovery. However, the record reflects that the State had no additional discovery to provide. In our view, the State's filing of an amended witness list on February 16, 2006, was not a response to the discovery request but merely satisfied the State's continuing obligation to notify the defense of its intended witnesses at trial. Thus, in accordance with *Knight*, Dankworth's December 28th request did not toll the speedy trial time, at least not beyond the reasonable time it should have taken the State to examine that request and determine that no additional discovery, beyond the discovery already provided, was being requested. In our view, the State had ample opportunity to come to this conclusion by the time of the pre-trial conference on January 3, 2006. Consequently, the trial court erred when it tolled the time between January 3, 2006, and February 16, 2006. As a result, Dankworth was held in jail in lieu of bail in excess of the time limit set forth in R.C. 2945.71, and the trial court should have granted his motion to dismiss.

Dankowrth's Second Assignment of Error is sustained.

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Dankworth's Second Assignment of Error having been sustained, the judgment of the trial court is Reversed, and Dankworth is ordered Discharged with respect to the convictions with which this appeal is concerned.

.....

GRADY and DONOVAN, JJ., concur.

Copies mailed to:

James D. Bennett
George A. Katchmer
Hon. Robert J. Lindeman

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AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

(Effective 1791)

[Next Part>>](#)

OH Const. Art. I, § 10

Baldwin's Ohio Revised Code Annotated [Currentness](#)

Constitution of the State of Ohio

☒ [Article I. Bill of Rights](#)

→O Const I Sec. 10 Rights of criminal defendants

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851)

R.C. § 2945.72

Baldwin's Ohio Revised Code Annotated Currentness

Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

^Chapter 2945. Trial

^Schedule of Trial and Hearings

➔**2945.72 Extension of time for hearing or trial**

The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

(A) 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;

(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

(C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

(D) Any period of delay occasioned by the neglect or improper act of the accused;

(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

(F) Any period of delay necessitated by a removal or change of venue pursuant to law;

(G) Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order;

(H) The 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;

(I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending.

(1978 H 1168, eff. 11-1-78; 1976 S 368; 1975 H 164; 1972 H 511)

R.C. § 2945.72, OH ST § 2945.72

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R.C. § 2945.71

Baldwin's Ohio Revised Code Annotated CurrentnessAppendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)*Chapter 2945. Trial*Schedule of Trial and Hearings***2945.71 Time within which hearing or trial must be held**

(A) A person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after his arrest or the service of summons.

(B) A person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record, shall be brought to trial:

(1) Within forty-five days after his arrest or the service of summons, if the offense charged is a misdemeanor of the third or fourth degree, or other misdemeanor for which the maximum penalty is imprisonment for not more than sixty days;

(2) Within ninety days after his arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.

(C) A person against whom a charge of felony is pending:

(1) Notwithstanding any provisions to the contrary in Criminal Rule 5(B), shall be accorded a preliminary hearing within fifteen consecutive days after his arrest if the accused is not held in jail in lieu of bail on the pending charge or within ten consecutive days after his arrest if the accused is held in jail in lieu of bail on the pending charge;

(2) Shall be brought to trial within two hundred seventy days after his arrest.

(D) A person against whom one or more charges of minor misdemeanor and one or more charges of misdemeanor other than minor misdemeanor, all of which arose out of the same act or transaction, are pending, or against whom charges of misdemeanors of different degrees, other than minor misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial within the time period required for the highest degree of misdemeanor charged, as determined under division (B) of this section.

(E) For purposes of computing time under divisions (A), (B), (C)(2), 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 three days. This division does not apply for purposes of computing time under division (C)(1) of this section.

(F) This section shall not be construed to modify in any way section 2941.401, or sections 2963.30 to 2963.35 of the Revised Code.

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(1981 S 119, eff. 3-17-82; 1980 S 288; 1975 S 83; 1973 H 716; 1972 H 511)

R.C. § **2945.71**, OH ST § **2945.71**

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