

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee,

vs.

TIMOTHY H. COOPER,

Defendant-Appellant.

Case No. 10-2143

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

Court of Appeals
Case No. 10AP-325

APPELLEE'S MEMORANDUM IN OPPOSITION OF JURISDICTION

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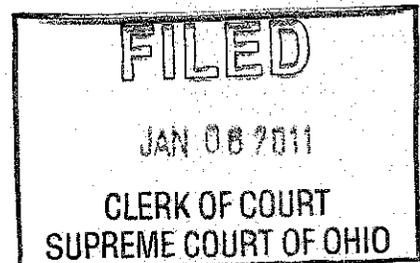


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INTRODUCTION

Appellant asks this Court to find that his proposition of law involves a substantial constitutional question or is of public or great general interest, when in actuality, Appellant is rearguing that his speedy trial rights were violated. Based on the nature of Appellant's proposition of law, which is fact specific, would only impact Appellant's case, and would have no application to future cases, this Court should decline jurisdiction.

STATEMENT OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Appellant was convicted of speeding in violation of Columbus City Code 2133.03(D)(2), a minor misdemeanor, and appealed his conviction to the Tenth District Court of Appeals on the basis that his right to a speedy trial under RC 2945.71 had been violated. At the trial level, the court journalized two separate entries indicating that Appellant had requested a continuance of his trial in order to obtain discovery and hire an attorney. The Tenth District Court of Appeals held that these two requests for continuance constituted tolling events under RC 2945.72(H), extending the time within which Appellant needed to be brought to trial and, thus, Appellant was tried within the time period mandated by RC 2945.71. *Columbus v. Cooper*, 10th Dist. No. 10AP-325, 2010-Ohio-5210, at ¶11-¶12.

On appeal, Appellant further argued that the trial court committed error when it failed to record his hearing dates, specifically the date of January 5, 2010, and this prejudiced Appellant because he could not demonstrate that he in fact did not request a continuance of his hearing dates. The Tenth District Court of Appeals correctly held,

though, that Crim. R. 22, as applied to Appellant's case through Traf.R. 20, only requires that proceedings involving petty offenses be recorded if requested by either party. *Id.* at ¶21. Nothing in the record demonstrated that either the State or Appellant requested that the proceedings be recorded and Appellant never alleged on appeal that he requested the trial court to record the proceedings, but was rebuffed by the court. *Id.* at ¶21.

Because the issues Appellant presents before this Court are specific to Appellant's case, and do not involve a novel legal issue that would impact other cases, jurisdiction should be denied.

STATEMENT OF FACTS AND OF THE CASE

On December 8, 2009, Appellant-Defendant, Timothy Cooper, was cited with one count of speed, in violation of Columbus City Code § 2133.03(D)(2), a minor misdemeanor. R. 1. Defendant was arraigned on December 16, 2009, and requested a speedy trial. R. 2. Defendant filed a Request for Discovery on December 24, 2010. R. 4. Defendant's case was scheduled for a court trial in front of the Honorable Judge Pollitt on January 5th, 2010 at 9 a.m. R. 5.

On January 5, 2010, Defendant made a motion to dismiss the charge filed against him, which was overruled by the trial court. R. 5, 1-5-10 J.E. Defendant requested a continuance of his trial, which was granted by the trial court. R. 5, 1-5-10 J.E. Defendant's trial was rescheduled for February 12, 2010. R. 5. The Defendant requested a second continuance of his trial date on February 12, 2010, which was granted by the trial court. R. 7, 2-12-10 J.E. Defendant's trial was rescheduled for March 10, 2010. R. 7. On March 10, 2010 Defendant's court trial was held and Defendant was convicted of one count of speed, in violation of CCC 2133.03(D)(2). R. 8, 3-10-10 J.E. Defendant

was fined fifty dollars plus court costs. R. 8, 3-10-10 J.E. Defendant filed his notice of appeal on April 8, 2010.

Reply to Appellant's Proposition of Law

Appellant's request for a continuance of his hearing date tolled his speedy trial time under RC 2945.72(H) and the trial court, pursuant to Crim.R. 22, was not required to record the proceedings.

Pursuant to R.C. 2945.71, a person against whom a minor misdemeanor charge is pending must be brought to trial within 30 days of arrest or service summons. R.C. 2945.71(A). In the event a defendant is not brought to trial within the statutory speedy trial time frame, R.C. 2945.73 provides the remedy: "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).

The court of appeals held that the proper standard of review in speedy trial cases is to simply count the number of days passed, while determining to which party the time is chargeable, as directed in R.C. 2945.71 and 2945.72. *Cooper* at ¶9. As such, the court of appeals held that Appellant's speedy trial time began to run on December 9, 2009, the day after he received service of his summons, and continued uninterrupted until his first scheduled trial date of January 5, 2010. *Id.* at ¶9. On January 5, 2010, 28 days of speedy trial had elapsed. On January 5, 2010 the trial court continued the matter until February 12, 2010 and the court of appeals held that the trial court's journal entry charging the continuance to Appellant was a tolling event pursuant to RC 2945.72(H) and thus the time that elapsed between January 5, 2010 and February 12, 2010 did not count toward the 30-day total. *Id.* at ¶10.

On February 12, 2010, Appellant requested another continuance in order to hire counsel and the matter was continued to March 10, 2010. The court of appeals held that this continuance was also a tolling event under RC 2945.72(H) and did not affect the overall speedy trial total. Id. at ¶12. Thus, when Appellant's trial took place on March 10, 2010, only 28 days of speedy trial had elapsed and Appellant's right to a speedy trial was not violated. Id. at ¶12.

Appellant claims that he did not request a continuance of the January 5, 2010 hearing date and that the trial court's journal entry is incorrect. The court of appeals found, though, that absent a transcript of proceedings, an appeals court must presume the regularity of proceedings surrounding a trial court's decision to issue a continuance. Id. at ¶14, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. As there was no recorded transcript of the January 5, 2010 proceedings, the Tenth District presumed the accuracy of the trial court's January 5, 2010 journal entry indicating that Appellant requested the continuance. Id. at ¶15. Additionally, the court of appeals held that the recorded transcript of Appellant's March 10, 2010 trial belied Appellant's argument that he never requested a continuance of his January 5, 2010 hearing date. Id. ¶16. The court of appeals pointed to the following exchange between Appellant and the trial court to support the trial court's journal entry indicating that Appellant requested a continuance of his January 5, 2010 hearing:

THE COURT: All right. Now, I do note here as of January 5th, this case was continued until February 12, at your request, to file motions, and then we were in court again on February the 12th, continued the court trial until today, at your request, to see whether or not you were going to be represented by counsel; is that correct?

DEFENDANT: Correct.

THE COURT: Okay. Mr. Cooper, your motion to dismiss is overruled.

Id. at ¶16. Accordingly, the court of appeals found Appellant's argument that he did not request a continuance of January 5, 2010 hearing unpersuasive given the above exchange and the trial court's journal entry assigning the continuance to Appellant. Id. at ¶22.

With respect to the trial court's failure to record the January 5, 2010 proceedings, the court of appeals held that Crim. R. 22, as applied to Appellant's case through Traf.R. 20, only requires that proceedings involving petty offenses be recorded if requested by either party. Id. at ¶21. Nothing in the record demonstrated that either the State or Appellant requested that the proceedings be recorded and Appellant never alleged on appeal, and still does not allege, that he requested the trial court to record the proceedings, but was rebuffed by the court. Id. at ¶21. Thus, the court of appeals correctly held that the trial court did not err in failing to record the January 5, 2010 proceedings. Id. at ¶23.

CONCLUSION

Appellant does not present unique issues of public or great general interest and does not raise substantial constitutional questions. As such, this court should decline to exercise jurisdiction.

Respectfully submitted,

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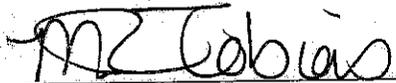


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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Memorandum in Opposition of Jurisdiction was mailed by regular U.S. Mail to Ambrose Moses III, Counsel for Appellant, 4200 Regent Street, Suite 200, Columbus, Ohio 43219, this 6th day of January, 2011.



Melanie R. Tobias (0070499)
Director – Appellate Unit