

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	Case No. 2011-597
Plaintiff-Appellee,	:	
	:	
v.	:	On appeal from the Clark County
	:	Court of Appeals, Second Appellate
Keith Ramey,	:	District, Case No. 2010CA19
	:	
Defendant-Appellant.	:	

Merit Brief of Appellant Keith Ramey

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Introduction

[T]he economy and convenience of a joint trial can be considerations in determining good cause to delay the trial of codefendants beyond the speedy-trial deadline. However, the convenience and economic benefits of a joint trial do not alone establish good cause and do not normally take precedence over a defendant's right to a speedy trial.

State v. Winters, 690 N.W. 2d 903, 909 (Iowa 2005).

Statement of the Case and the Facts

I. Summary

The State chose to try Jonathon Keeton and Appellant Keith Ramey together for robbery and related offenses. Ramey remained in the Clark County jail, but Keeton was able to post bond and remained free before the trial. During that time, Keeton filed a motion to suppress, which Ramey did not join. The motion sought to suppress evidence that was either irrelevant to Ramey (Keeton's photo array identification) or that Ramey would have no standing to protest (a duffle bag and back pack found in the home of Keeton's father).

After the trial court denied the motion to suppress, the trial court set the trial date, which was set more than 90 days after Ramey's arrest. On the day of trial, the trial court denied Ramey's speedy trial motion, and the court of appeals upheld that decision holding that the speedy-trial time was tolled merely because Keeton filed the motion to suppress.

II. Factual History

Daniel Miller testified on an afternoon in October 2009, Keith Ramey's wife, Amy Cornell, drove him to the alley behind a Springfield tattoo parlor.

Ramey and Keeton were already there, and they had bags and a lock box. T.p. 162. They loaded the bags and box into the car, and Miller and Ms. Cornell returned to Miller's home. T.p. 163. About that time, police responded to a 911 call reporting that two men had left a safe in a trash can behind a home. T.p. 279-81. The safe had the name of the tattoo parlor on it. T.p. 281-82.

The police initially charged Miller with involvement in the crimes, but the charges were dropped before the trial. T.p. 178-81. Miller then left the state. Debi Segrest-Adams, from the Clark County Prosecutor's Victim Witness office admitted that she told Miller that her office would charge him again if he did not return to the State and testify against Ramey. T.p. 537-44.

After leaving the alley, Keeton and Ramey returned to Miller's house separately, and the two sorted through the property, including tattoo equipment, ink, a laptop computer, a printer, and other items. The two then split the property between themselves. Tr. at 164; 376-389; 447-451; 502-506; 561-62; 558-59. They loaded Keeton's portion of the items back into Miller's car, and the four left the house in the car.

They stopped at a Speedway to get gas. Miller initially testified that Ramey had not shown a gun to him. T.p. 165-67. On cross examination from Mr. Keeton's counsel, though, Miller said that Ramey had shown him a gun. T.p. 227-35. Miller also said that when Keeton returned to the car, Keeton held up that same gun and said that anyone who said something would be shot. T.p. 165-66, 229-233.

According to Miller, they then drove to the house of Keeton's father. Ramey and Keeton unloaded most of the items, but not the laptop and printer. They then drove to the home of Mr. Keeton's grandmother. Keeton took the laptop and printer into the house and came back to the car. T.p. 167-69.

Miller also testified that when the four were near the edge of downtown Springfield, they saw Howard Fannon walking on the sidewalk. T.p. 169-70. According to Miller and Fannon, Ramey said the Fannon owed him food stamps, and Keeton got out of the car, began walking with Fannon, and showed Fannon the gun in his (Keeton's) waistband. T.p. 171, 551-53, 556. Miller said that Ramey then got out of the car and shocked Fannon with a stun gun. T.p. 171-5, 550-60. Keeton hit Fannon with the butt of his pistol, turned the gun around, pointed the gun at Fannon, and demanded Fannon's jewelry. Fannon complied. T.p. 558-66.

After the four drove away, Fannon called 911. T.p. 560. He was taken to the hospital, where he was treated for a 3.5 centimeter cut on the back of his head, which was closed with seven staples. T.p. 324-29. A test showed that he had two contusions, one on each side of his head. T.p. 326-30.

The police arrived at Miller's house shortly after the four arrived, and arrested Ramey. Keeton escaped behind the house. T.p. 178-79, 438-40. The police found property from the tattoo parlor in the house. T.p. 290-91, 445-46.

The police then searched the house of Keeton's father, after obtaining the father's consent to do so. T.p. 446-47. They found tattoo bottles and a tattoo ink gun. T.p. 447-51.

The next day, the police arrested Keeton in his father's house. T.p. 415-6. They found a gun, a backpack and a duffle bag containing property taken from the tattoo parlor, as well as Fannon's gold chains. T.p. 373-89, 416. Keeton's grandmother later turned over the laptop and printer that had been left at her house. T.p. 485-7, 502-6.

III. Trial Court History

On October 13, 2009, the State filed a joint indictment of Keeton and Ramey in Case No. 09-CR-0869 for one count of aggravated robbery (deadly weapon), one count of aggravated robbery (serious physical harm), one count of felonious assault (deadly weapon), one count of felonious assault (serious physical harm), and one count of breaking and entering. The aggravated robbery and felonious assault charges each contained a firearm specification. On December 21, 2009, the State filed a second joint indictment in Case No. 09-CR-1051, alleging that both men possessed a weapon while under disability.

At his arraignment on October 16, 2009, Ramey pled not guilty, and his bond was set at \$50,000.00. Ramey could not post bond and, therefore, remained in jail awaiting trial. Keeton, however, posted his \$50,000 bond on October 30, 2009 and remained free until trial.

Because of a conflict of interest, Ramey's appointed counsel filed a motion to withdraw on October 16, 2009. On October 20, 2009, the trial court granted the motion and appointed new counsel. The case was reassigned to the Clark County Probate Judge on November 10, 2009.

On December 9, 2009, the parties held a pretrial hearing. Counsel for the defendants stated that they intended to file motions to suppress and to sever. The trial court set a hearing for those motions on January 5, 2011. Entry, Dec. 9, 2009.

Ramey did not file any motions, but on December 10, 2009, Keeton filed a motion to suppress the observations of the arresting officer, evidence found in his father's house, and statements he made when arrested. Keeton argued that the officer did not have sufficient grounds 1) to stop or arrest him; or 2) to search the duffle bag, backpack and gun found at his father's house. He filed a supplemental motion on December 29, 2009, and challenged the photo array that had been used to identify him.

The trial court held the suppression hearing on January 5, 2010, and on January 6, 2010, the trial court issued an entry overruling the motion to suppress in its entirety. In that entry, the trial court also ruled that "Counsel have indicated their respective availability for trial to commence at 9:00 o'clock a.m. on February 1, 2010." The next day, the trial court issued an entry moving the trial date to February 2, 2010, because the Second District Court of Appeals was using the courtroom for oral arguments on February 1, 2010. On February 1, 2010, the original trial date, Ramey filed a motion to dismiss for violation of his right to a speedy trial. After a brief hearing, the trial court denied the motion. Despite the previous entry that stated that counsel had "stated their respective availability for trial" that day, the trial court stated at

the hearing that counsel had “agreed” to the February 1, 1999 date. Nothing in the record supports that finding.

After trial, the jury found Ramey guilty of two counts of aggravated robbery with firearm specifications, one count of felonious assault (deadly weapon), and one count of having a weapon while under disability. The jury acquitted him of one count of felonious assault (serious physical harm) and of breaking and entering. At the sentencing hearing on February 8, 2010, the trial court merged the two counts of aggravated robbery and sentenced Ramey to three years on the firearm specification, eight years for the aggravated robbery, five years for felonious assault, and one year for having a weapon while under disability. The trial court ordered that the three-year term for the firearm specification was to be served consecutively and prior to the other sentences, which were to be served concurrently to one another, for a total prison sentence of eleven years. Judgment Entry of Conviction, Feb. 8, 2010, amended May 13, 2010.

IV. Appellate History

Ramey appealed, asserting that his speedy-trial rights had been violated. The State responded that the time was tolled both because of Keeton’s motion and because Ramey “agreed” to the trial date. The court of appeals implicitly rejected the latter claim by reviewing it on the merits and by finding that the weapons under disability conviction fell beyond Ramey’s speedy-trial deadline. Opinion at ¶23-30. Accordingly, the court granted Ramey relief as to the

second indictment (weapon under disability) because it held that the tolling time for the motion to suppress did not apply to that case.

The court of appeals denied Ramey's speedy trial claim as to all other charges, solely because it held that Keeton's motion to suppress tolled Ramey's speedy-trial time. Opinion at ¶25. Because the trial court sentenced Ramey to concurrent time for the weapons under disability charge, the partial reversal did not change his term of imprisonment.

This Court accepted Ramey's timely discretionary appeal.

Argument

Proposition of Law:

The filing of a motion to suppress by a co-defendant does not, by itself, automatically toll the other co-defendant's speedy-trial time.

I. **Different defendants, different cases, different speedy-trial times.**

When the State chooses to try two cases together, it must be aware that the speedy-trial deadlines could differ. The time begins for each case independently, and different tolling events can affect each case. Here, the trial and appellate courts ruled that Mr. Ramey's speedy-trial time was tolled solely because his co-defendant, Jonathon Keeton, filed a motion to suppress, without any argument that Keeton's motion impeded the State's prosecution of Mr. Ramey. Worse, the issues in that motion were either irrelevant to Mr. Ramey, or were issues that Mr. Ramey had no standing to raise, so the motion could not have benefited him in any way.

Mr. Ramey did not file any motions that tolled the speedy-trial time, and he had no interest in his Keeton's motion to suppress. Moreover, the State did not and cannot provide a reason why Keeton's motion impeded the ability to try Mr. Ramey in a timely fashion. Accordingly, the trial court should have dismissed the charges against Mr. Ramey.

II. **Under R.C. 2945.72, only a motion for a continuance tolls time without regard to the filing party.**

Under R.C. 2945.72(H), a motion *for a continuance* that is granted tolls time regardless of who files it. Time is tolled for "the period of any reasonable continuance granted *other than upon the accused's own motion*[".]” *Id.*

(emphasis supplied) By contrast, the paragraph that applies to this case addresses only those motions filed by the defendant. R.C. 2945.72(E). That paragraph tolls time for “[a]ny period of delay necessitated by reason of a . . . motion . . . *made or instituted by the accused*[.]” (Emphasis supplied.)

Keeton’s motion was not “made or instituted by” Mr. Ramey, so R.C. 2945.72(E) cannot apply. And because this was the first trial date set in the case, the trial court never granted a continuance, so R.C. 2945.72(H) cannot apply. But even if either section did apply, the court of appeals would have still been wrong, because there was no showing by the State or holding by the trial court that 1) Keeton’s motion to suppress “necessitated” a delay in Mr. Ramey’s case, or 2) that the “continuance” was “reasonable.” Instead, the court of appeals incorrectly held that the mere fact that Keeton filed a motion tolled Mr. Ramey’s speedy-trial time. Opinion at ¶25.

III. A defendant controls the motions he files, but not the motions a co-defendant files.

A defendant controls the motions he or she files. *See, e.g., State v. Blackburn*, 118 Ohio St.3d 163, 169 (2008) (“it is the defendant's own actions that cause the time to be tolled.”) A defendant who wants a speedy trial can make that happen by foregoing motion practice and proceeding to trial. The distinction makes sense, but attributing the strategy and actions of one co-defendant to a defendant who has very different aims does not.

It is true that courts must sometimes continue a trial for reasons beyond a defendant’s control. And in those circumstances, a court can continue the case as needed, so long as the record shows that the continuance was

“reasonable.” Trial courts have wide latitude to enter such continuances, because their decisions on reasonableness are reviewed only for an abuse of discretion. See, e.g., *State v. Adkins*, 144 Ohio App.3d 633, 640 (10th Dist. 2001).

But here, the State made no showing that Keeton’s hearing delayed the preparation of the State’s case against Mr. Ramey. In fact, there is no way that the State could have made such a showing, since the issues in the suppression hearing pertained only to Mr. Keeton, not Mr. Ramey. Keeton challenged the 1) photo array used to identify him, 2) the statements he made upon arrest, 3) the victim’s backpack, Keeton’s duffle bag, and a gun the police found in the home of Keeton’s father, 4) the gun found, and 5) the observations of the arresting officer on the argument that the officer lacked sufficient grounds to stop and arrest him. T.p. 38-42 (suppression hearing). Mr. Ramey had no interest in suppressing Keeton’s identification, had no standing to seek suppression of Keeton’s duffle bag or the victim’s back pack, and had neither interest or standing to challenge any impropriety in Mr. Keeton’s arrest. In short, Mr. Ramey had no stake whatsoever in Keeton’s motion to suppress, and whether or not the motion was granted had no impact on the State’s ability to use the evidence challenged by Mr. Keeton against Mr. Ramey.

Finally, it is worth observing that a trial court has the authority to toll speedy-trial time by granting a continuance, but defense counsel does not have that power. Counsel for a co-defendant cannot toll time for all defendants merely by filing a motion to suppress (or any other motion, for that matter).

IV. Defendants don't have to waive their speedy trial to assert their speedy-trial rights.

The State has argued that Mr. Ramey should have filed a motion to sever to preserve his speedy-trial rights. But that “remedy” would require Mr. Ramey to waive his speedy-trial rights for as long as it took the trial court to decide his speedy-trial rights. See, e.g., *State v. Starks*, 6th Dist. No. L-05-1417, L-05-1419, 2007-Ohio-4897, ¶48-9 (motion to sever one of several motions that tolled speedy-trial time). A defendant should not have to waive his speedy-trial time to enforce his speedy-trial time.

Further, as the Iowa Supreme Court noted, it is the State, not the defendant, that chooses to seek joinder of the cases:

[T]he economy and convenience of a joint trial can be considerations in determining good cause to delay the trial of codefendants beyond the speedy-trial deadline. However, the convenience and economic benefits of a joint trial do not alone establish good cause and do not normally take precedence over a defendant's right to a speedy trial.

State v. Winters, 690 N.W. 2d 903, 909 (Iowa 2005). The high courts of Florida and Mississippi agree. *Flores v. State*, 574 So. 2d 1314, 1321 (Miss. 1990) (“Since the right to a speedy trial is a right personal to the accused, the right should not be waived because of delays occasioned by a codefendant for which the accused is not in any way responsible”); *Miner v. Westlake*, 478 So.2d 1066 (Fla. 1985) (“Defendant's right to a speedy trial takes precedence over the mere convenience to the state of trying him and his co-defendants together. . . . The trial judge has no choice, and consequently no discretion, when convenience is asserted as the sole basis for extending defendant's speedy trial period.”).

In contrast, courts in New York have held that a co-defendant's motion can toll the speedy-trial time of another defendant, but only because that state's speedy trial statute expressly states that time is tolled for "a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial pursuant to this section has not run and good cause is not shown for granting a severance[.]" N.Y. Crim. Proc. Law § 30.30(4)(D), cited in *People v. Fullen*, 160 A.D.2d 219, 221-2, 553 N.Y.S.2d 670 (1st Div. 1990). Unlike the New York statute, Ohio's speedy trial statute contains no tolling exception based on a co-defendant's case. Ohio's statute places the burden on the State to show that a defendant's motion "necessitated" a delay or that a continuance was "reasonable." R.C. 2945.72(E) and (H).

Because the State makes the initial choice to seek joinder, the State must be responsible for remaining mindful of the consequences of its own decision. A defendant need not seek severance and thereby waive his right to a speedy trial in order to enforce his right to a speedy trial.

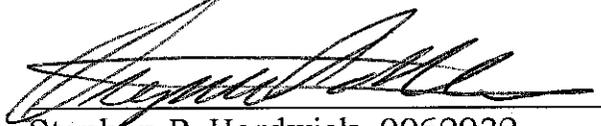
If a co-defendant's motion practice impedes a trial court's ability to try the other defendant's case, the court has two options: It can continue the case, or it can sever the trials. But unless the trial court affirmatively acts to continue time for a demonstrated reason, a co-defendant's motion to suppress, by itself, does not toll a defendant's speedy-trial time.

Conclusion

Because the court of appeals ruled against Mr. Ramey's speedy-trial claim solely because that court incorrectly found that a co-defendant's motion tolled Mr. Ramey's speedy-trial time, this Court should reverse the decision of the court of appeals and discharge Mr. Ramey.

Respectfully Submitted,

Office of the Ohio Public Defender,



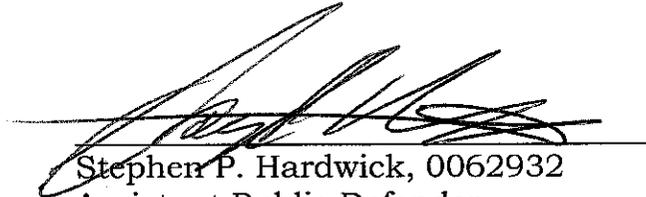
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served by regular U.S. Mail upon, Andrew R. Picek, Assistant Clark County Prosecuting Attorney, 50 E. Columbia Street, Springfield, Ohio 45502, on this 5th day of December, 2011.



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IN THE SUPREME COURT OF OHIO

State of Ohio,	:
	: Case No. 2011-597
Plaintiff-Appellee,	:
	:
v.	: On appeal from the Clark County
	: Court of Appeals, Second Appellate
Keith Ramey,	: District, Case No. 2010CA19
	:
Defendant-Appellant.	:

**Appendix to
Merit Brief of Appellant Keith Ramey**

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

Vs.

KEITH RAMEY,

Defendant-Appellant.

Case No. **11-0597**

On Appeal from the Clark
County Court of Appeals
Second Appellate District
Case No. 2010-CA-19

NOTICE OF APPEAL OF APPELLANT KEITH RAMEY

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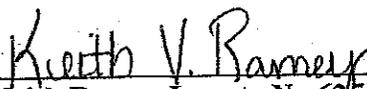
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FILED
APR 13 2011
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT Keith Ramey, Ohio from the Judgment of the Clark County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No.2010-CA-19, On March 18th,2011.

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



Keith Ramey Inmate No.626-604
London Correctional Inst.
P.O. BOX 69
London, Ohio 43140

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 2010 CA 19
v. : T.C. NO. 09CR1051
09CR869
KEITH RAMEY : (Criminal appeal from
Common Pleas Court)
Defendant-Appellant :
:

.....
OPINION

Rendered on the 18th day of March, 2011.
.....

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.....
DONOVAN, J.

Defendant-appellant Keith Ramey appeals his conviction and sentence for one count of aggravated robbery (deadly weapon), in violation of R.C. 2911.01(A)(1), a felony

of the first degree; one count of aggravated robbery (serious physical harm), in violation of R.C. 2911.01(A)(3), a felony of the first degree; one count of felonious assault (deadly weapon), in violation of R.C. 2903.11(A)(2), a felony of the second degree; and one count of having a weapon while under disability, in violation of R.C. 2923.13(A)(3). Both counts of aggravated robbery contained firearm specifications. After a jury trial held on February 2, 3, & 4, 2010, Ramey was found guilty of the above offenses and sentenced to an aggregate prison term of eleven years. Ramey filed a timely notice of appeal with this Court on February 16, 2010.

I

On October 13, 2009, Ramey was jointly indicted with co-defendant Jonathan Keeton in Case No. 09-CR-0869 for one count of aggravated robbery (deadly weapon), one count of aggravated robbery (serious physical harm), one count of felonious assault (deadly weapon), one count of felonious assault (serious physical harm), and one count of breaking and entering. The aggravated robbery and felonious assault charges each contained a firearm specification. Subsequently, on December 21, 2009, Ramey and Keeton were indicted on an additional charge in Case No. 09-CR-1051 for having a weapon while under disability.

All of the charges against Ramey and Keeton stem from incidents which occurred on October 6, 2009, wherein the defendants were accused of breaking and entering into and stealing from "Nasty N8's" tattoo parlor located at 805 East Main Street in Springfield, Ohio. The owner of the tattoo parlor reported that tattoo equipment, ink, a laptop computer, a printer, and cell phones were missing after the break-in.

Ramey and Keeton were also accused of beating and robbing an individual named

Howard Fannon. The robbery and assault of Fannon also occurred on October 6, 2009, shortly after Ramey and Keeton were alleged to have broken into the tattoo parlor. During the assault, Ramey allegedly shocked Fannon multiple times with a taser while Keeton hit him over the head with the butt of a handgun before they stole his watch and two gold necklaces. Fannon immediately called 911 to report the robbery, and Ramey was arrested a short time later at his home located at 106 N. Greenmount Avenue in Springfield, Ohio. Keeton was arrested the next day on October 7, 2009, at his father's house also located in Springfield. During the course of their investigations, Springfield police were able to recover almost all of the items alleged to have been stolen by Ramey and Keeton.

At his arraignment on October 16, 2009, Ramey pled not guilty to the charges in the indictment. Ramey's bond was set at \$50,000.00. Ramey did not post bond and, therefore, remained incarcerated pending trial. Keeton's bail was also set at \$50,000.00 by the trial court, but he posted that amount on October 30, 2009, and was released from jail until the trial.

Due to a conflict of interest, Ramey's appointed counsel filed a motion to withdraw on October 16, 2009. On October 20, 2009, the trial court granted the motion to withdraw, and Ramey was appointed new counsel. The case was also reassigned to Judge Richard P. Carey of the Clark County Court of Common Pleas, Probate Division, on November 10, 2009.

On December 10, 2009, co-defendant Keeton filed a motion to suppress physical evidence seized by police, as well as statements made by Keeton after his arrest. As previously stated, the State filed a second indictment on December 21, 2009, charging Ramey and Keeton with having a weapon while under disability. On December 29, 2009,

Keeton filed a supplemental motion to suppress in which he argued that the photo lineups used by the police to identify him were inherently suggestive. A hearing was held on Keeton's motion to suppress on January 5, 2010. On January 6, 2010, the trial court issued a decision and entry overruling the motion to suppress in its entirety. The court also set a date for Ramey and Keeton's trial on February 1, 2010.

On February 1, 2010, Ramey filed a motion to dismiss for violation of his right to a speedy trial. After a brief hearing during which the court heard arguments from both parties, the court overruled Ramey's motion. The trial court also moved the trial date to February 2, 2010, explaining that the courtroom was being used by the Second District Court of Appeals for oral arguments.

After a three-day jury trial, Ramey was found guilty of two counts of aggravated robbery with firearm specifications, one count of felonious assault (deadly weapon), and one count of having a weapon while under disability. The jury acquitted Ramey of felonious assault (serious physical harm) and breaking and entering. At the sentencing hearing on February 8, 2010, the court merged the two counts of aggravated robbery and sentenced Ramey to three years on the firearm specification, eight years for the aggravated robbery, five years for felonious assault, and one year for having a weapon while under disability. The court ordered that the three-year term for the firearm specification was to be served consecutively and prior to the other sentences, which were to be served concurrently to one another, for an aggregate prison sentence of eleven years.

It is from this judgment that Ramey now appeals.

II

Because it is partially dispositive of the instant appeal, Ramey's second assignment of error will be discussed out of order as follows:

"DEFENDANT WAS DENIED HIS CONSTITUTIONAL AND STATUTORY RIGHTS TO A SPEEDY TRIAL."

In his second assignment, Ramey argues that the trial court erred when it overruled his motion to dismiss the indictment against him in its entirety because he was denied his constitutional and statutory rights to a speedy trial.

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. Ohio's speedy trial statutes, R.C. 2945.71 et seq., constitute a rational effort to implement the constitutional right to a speedy trial and will be strictly enforced. *State v. Pachay* (1980), 64 Ohio St.2d 218.

R.C. 2945.71(C)(2) requires that a person against whom a charge of felony is pending be brought to trial within two hundred and seventy days after his arrest. Each day the accused is held in jail in lieu of bail on the pending charges shall be counted as three days. R.C. 2945.71(E). Pursuant to R.C. 2945.73, Defendant is entitled to a discharge if he is not brought to trial within the time required by R.C. 2945.71, subject to any extension authorized by R.C. 2945.72. That section provides, in relevant part:

"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:

* * *

"(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;

* * *

"(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;

* * *

"(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."

A. First Indictment - 2009-CR-0869

Ramey was arrested and jailed on October 7, 2009. On October 13, 2009, Ramey was jointly indicted with co-defendant Jonathan Keeton in Case No. 09-CR-0869 for one count of aggravated robbery (deadly weapon), one count of aggravated robbery (serious physical harm), one count of felonious assault (deadly weapon), one count of felonious assault (serious physical harm), and one count of breaking and entering. As previously noted, Ramey remained incarcerated on these charges pending trial. Thus, each day he remained in jail counted as three days, and the State had 90 days from the date of his arrest to bring him to trial.

On October 16, 2009, Ramey's appointed counsel filed a motion to withdraw based on a conflict of interest. The court granted counsel's motion and appointed new counsel on October 20, 2009. The pendency of the motion to withdraw tolled Ramey's speedy trial time pursuant to R.C. 2945.72. *State v. Wallace* (November 2, 1990), Greene App. No. 90-CA-02. Thus, nine days had passed from the date on which Ramey was arrested and jailed until the motion to withdraw was filed. Time began to run again on October 20, 2009, when the court granted the motion to withdraw and appointed new counsel.

Ramey's speedy trial time was tolled again on December 10, 2009, when his co-defendant Keeton filed a motion to suppress. In *State v. Smith*, Clark App. No. 03-CA-93, 2004-Ohio-6062, we held that pursuant to 2945.72(H), a co-defendant's motion for a continuance served as a tolling event and extended the speedy trial time of the other defendant. Between October 20, 2009, and December 10, 2009, 51 days had passed, for a total of 60 days to be credited to Ramey for speedy trial purposes. The court issued its decision overruling the motion to suppress on January 6, 2010, on which date time began to run again. When the trial began on February 2, 2010, only 27 additional days had passed, for a total of 87 days for speedy trial purposes. Thus, because of the tolling events which extended the time in which to bring Ramey to trial, his right to a speedy trial was not violated with respect to the charges in the first indictment filed on October 13, 2009.

B. Second Indictment - 2009-CR-1051

As previously noted, Ramey and Keeton were both charged with having a weapon while under disability in a second indictment filed on December 21, 2009. Because the new charge arose out of the same facts as the original charges in the first indictment, the time to bring Ramey to trial on the charge in the second indictment ran from the date of his initial arrest on October 7, 2009. *State v. Jones*, Montgomery App. No. 20862, 2006-Ohio-2640. Additionally, the State also points out that any speedy trial tolling event which occurred prior to the new indictment does not operate to extend the time to bring the defendant to trial on the new indictment. *Id.*; *State v. Homan*, 89 Ohio St.3d 421, 2000-Ohio-212 (overruled on other grounds).

Accordingly, in Case No. 09-CR-1051, Ramey's speedy trial time ran from October

7, 2009, until December 29, 2009, when his co-defendant Keeton filed a supplemental motion to suppress. At that point, 83 days had elapsed which counted towards Ramey's speedy trial time. Time began to run again on January 6, 2010, when the trial court overruled Keeton's motion to suppress. From January 6, 2010, until February 2, 2010, when the trial began, another 27 elapsed, for a total of 110 days, which is clearly in excess of the 90 days allowable under R.C. 2945.71.

The State argues that because Ramey's counsel "agreed" to the February 1, 2010, trial date when that date was set by the court in its January 6, 2010, entry, the time to bring Ramey to trial on the weapons under disability charge in Case No. 09-CR-1051 was tolled again and extended under R.C. 2945.72(H) until the trial date of February 2, 2010. Therefore, the State argues that Ramey's right to speedy trial in Case No. 09-CR-1051 was not violated.

The entry filed by the court on January 6, 2010, however, only refers to Case No. 09-CR-869. One day later, on January 7, 2010, the State filed a motion to consolidate Case No. 09-CR-869 with Case No. 09-CR-1051, and the trial court did not grant the State's motion until January 13, 2010. Since the entry filed on January 6, 2010, only refers to Case No. 09-CR-869, it could not act to toll the speedy trial time in Case No. 09-CR-1051 as the State claims, and the court erred when it overruled Ramey's motion to dismiss the weapons under disability charge against him in Case No. 09-CR-1051 because well over 90 days had passed before he was brought to trial in that case.

Ramey's second assignment of error is sustained as to the weapons while under disability charge but overruled as to all other counts.

III

Ramey's first assignment of error is as follows:

"THE TRIAL COURT ERRED AND VIOLATED DEFENDANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS AND ABUSED ITS DISCRETION WHEN IT SENTENCED DEFENDANT, AND DEFENDANT IS ENTITLED TO AN APPEAL AS OF RIGHT BECAUSE THE MAXIMUM WAS IMPOSED ON THE HIGHEST OFFENSE."

In his first assignment, Ramey contends that the counts of felonious assault and having a weapon while under disability should have been merged with the aggravated assault counts because they are allied offenses of similar import. Ramey also argues that the trial court erred when it sentenced him to the maximum term for the merged aggravated robbery count and the felonious assault count.

R.C. 2941.25, concerning allied offenses of similar import, provides:

"(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

"(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them."

"R.C. 2941.25 codifies the double jeopardy protections in the federal and Ohio constitutions, which prohibit courts from imposing cumulative or multiple punishments for the same criminal conduct unless the legislature has expressed an intent to impose them. R.C. 2941.25 expresses the legislature's intent to prohibit multiple convictions for offenses

which are allied offenses of similar import per paragraph (A) of that section, unless the conditions of paragraph (B) are also satisfied." *State v. Barker*, 183 Ohio App.3d 414, 2009-Ohio-3511, ¶22, citing *State v. Rance*, 85 Ohio St.3d 632, 1999-Ohio-291, overruled on other grounds by *State v. Johnson*, ___ Ohio St.3d ___, 2010-Ohio-6314.

In *Johnson*, the Ohio Supreme Court recently clarified the process by which courts determine whether offenses are allied offenses of similar import. *Johnson* overruled *Rance* "to the extent that it calls for a comparison of statutory elements solely in the abstract under R.C. 2941.25." *Johnson* at ¶44. Now, "[w]hen determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered." *Id.*

Johnson states that "the intent of the General Assembly is controlling." *Id.* at ¶46. "We determine the General Assembly's intent by applying R.C. 2941.25, which expressly instructs courts to consider the offenses at issue in light of the defendant's conduct." *Id.* The trial court must determine prior to sentencing whether the offenses were committed by the same conduct. The court no longer must perform any hypothetical or abstract comparison of the offenses at issue in order to conclude that the offenses are subject to merger. *Id.* at ¶47 "In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), the question is whether it is possible to commit one offense *and* commit the other with the same conduct, not whether it is possible to commit one *without* committing the other. If the offenses correspond to such a degree that the conduct of the defendant constituting commission of one offense constitutes commission of the other, then the offenses are of similar import." *Id.* at ¶48 (internal citation omitted).

"If the multiple offenses can be committed by the same conduct, then the court must

determine whether the offenses were committed by the same conduct, i.e., 'a single act, committed with a single state of mind.'" *Id.* at ¶49 (citation omitted). "If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged." *Id.* at ¶50. "Conversely, if the court determines that the commission of one offense will *never* result in the commission of the other, or if the offenses are committed separately, or if the defendant has separate animus for each offense, then, according to R.C. 2941.25(B), the offenses will not merge." *Id.* at ¶51.

We have recently held that felonious assault, pursuant to R.C. 2903.11, and aggravated robbery, pursuant to R.C. 2911.01, are not allied offenses of similar import. *State v. Smith*, Clark App. No. 08CA0060, 2009-Ohio-5048; citing *State v. Preston* (1986), 23 Ohio St.3d 64; *State v. Walker* (June 30, 2000), Montgomery App. No. 17678; *State v. Sherman* (May 7, 2001), Clermont App. No. CA99-11-106; *State v. Kelly* (Aug. 22, 2000), Franklin App. No. 99AP-1302; *State v. Gonzalez* (Mar. 15, 2001), Cuyahoga App.No. 77338. That line of cases, however, analyzed whether aggravated robbery and felonious assault were allied offenses pursuant to *Rance*. Nevertheless, aggravated robbery under R.C. 2911.01(A)(1) & (3) requires an individual in attempting or committing a theft offense shall have and brandish a deadly weapon and inflict or attempt to inflict serious physical harm on another. Felonious assault, pursuant to R.C. 2903.11(A)(2) merely requires an individual to cause or attempt to cause physical harm to another by means of a deadly weapon or dangerous ordnance.

According to *Johnson*, the question is whether it is possible to commit one offense *and* commit the other with the same conduct (not whether it is possible to commit one *without* committing the other). *State v. Moore*, Greene App. No. 2010-CA-13, 2010-Ohio

636. The conduct required for the commission of an aggravated robbery could also result in the commission of a felonious assault. In the instant case, however, the evidence adduced during the trial established that the aggravated robbery was committed with a separate animus from the felonious assault. Specifically, when Ramey and Keeton initially exited the vehicle and chased down Fannon, their intention was to assault him, i.e. Ramey shocked him repeatedly with the taser and Keeton hit him with the butt of the handgun. It was only after they had assaulted and subdued Fannon that Ramey and Keeton decided to rob him of his jewelry, as well. Thus, the trial court properly concluded that the offenses were not allied offenses of similar import and did not err when it refused to merge the aggravated robbery with the felonious assault for the purposes of sentencing.

Since the count for having a weapon while under disability should have been dismissed on speedy trial grounds, we need not address whether the charge was an allied offense of either aggravated robbery or felonious assault.

A trial court has broad discretion in sentencing a defendant and a reviewing court will not interfere with the sentence unless the trial court abused its discretion. *State v. Reese*, Mont. App. No. 21825, 2007-Ohio-6696; *State v. Durham*, Mont. App. No. 21589, 2007-Ohio-6262; *State v. Rose*, Mont. App. No. 21673, 2007-Ohio-4212; *State v. Stone*, Greene App. No. 2005 CA 79, 2007-Ohio-130. The term "abuse of discretion" implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 54. A court will not typically be found to have abused its discretion in sentencing if the sentence it imposes is within the statutory limits. *State v. Muhammad*, Cuyahoga App. No. 88834, 2007-Ohio-4303; *State v. Burge* (1992), 82 Ohio App.3d 244, 249.

Contrary to Ramey's assertion, the trial court did not abuse its discretion when it sentenced him to eight years for aggravated robbery and five years for felonious assault with both sentences to run concurrently. First, the trial court did not sentence Ramey to the maximum allowable term for aggravated robbery nor felonious assault. Aggravated robbery is a felony of the first degree, punishable by up to ten years in prison. R.C. 2911.01; 2929.14. Further, felonious assault is a felony of the second degree, punishable by up to eight years imprisonment. R.C. 2903.11; 2929.14. Clearly, Ramey's respective sentences were not the maximum allowable under Ohio law. Nor were the sentences ordered to be served consecutively, but rather concurrent to one another.

Lastly, Ramey argues that the court failed to consider any mitigating factors before sentencing him. Specifically, Ramey points out that the evidence established that Fannon brandished a knife during the robbery which "forced Ramey to defend himself." Ramey also asserts that he was somehow justified in his actions because Fannon was alleged to have stolen money or food stamps from him.

After *Foster*, trial courts are not required to make any findings or give reasons before imposing any sentence within the authorized statutory range, including maximum, consecutive, or more than minimum sentences, *Foster*, syllabus at ¶ 7. Courts, nevertheless, are still required to comply with the sentencing laws unaffected by *Foster*, such as R.C. 2929.11 and 2929.12 which require consideration of the purposes and principles of felony sentencing and the seriousness and recidivism factors. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855. However, a sentencing court does not have to make any specific findings to demonstrate its consideration of those general guidance statutes. *Foster* at ¶ 42; *State v. Lewis*, Greene App. No. 06 CA 119, 2007-Ohio-6607. And, where

the record is silent, a presumption exists that the trial court has considered the factors. *State v. Adams* (1988), 37 Ohio St.3d 295, 297. Further, where a criminal sentence is within statutory limits, an appellate court should accord the trial court the presumption that it considered the statutory mitigating factors. *State v. Taylor* (1992), 76 Ohio App.3d 835, 839; *State v. Crouse* (1987), 39 Ohio App.3d 18, 20. Consequently, the appellant has an affirmative duty to show otherwise.

In the instant case, based upon the record before us, we presume that the trial court considered the appropriate statutory factors. At the sentencing hearing, the court afforded both defense counsel and the prosecuting attorney the opportunity to speak prior to sentencing. The court then allowed Ramey to make a statement to the court. After this, the court, prior to imposing sentence, noted for the record that it considered the evidence in the case, as well as Ramey's voluminous criminal record. The court also noted that the attack on Fannon was unprovoked and questioned the extent of Ramey's remorse in that regard. In the judgment entry of conviction, the court stated that it had "considered the record, oral statements, any victim impact statements and pre-sentence report ***, as well as the principles and purpose of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors [under] Ohio Revised Code Section 2929.12."

In light of the foregoing, we find that the trial court did not abuse its discretion when it sentenced Ramey to eight years for aggravated robbery and five years for felonious assault, both sentences to run concurrently.

Ramey's first assignment of error is overruled.

IV

Ramey's third assignment of error is as follows:

"DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL."

In his third assignment, Ramey argues that he received ineffective assistance when his counsel failed to file a motion to sever his case from that of his co-defendant, Keeton. Ramey also asserts that his counsel was deficient for failing to object to his case being transferred to and heard by a trial judge in the probate division.

"When considering an allegation of ineffective assistance of counsel, a two-step process is usually employed. First, there must be a determination as to whether there has been a substantial violation of any of defense counsel's essential duties to his client. Next, and analytically separate from the question of whether defendant's Sixth Amendment rights were violated, there must be a determination as to whether the defense was prejudiced by counsel's ineffectiveness." *State v. Bradley* (1989), 42 Ohio St.3d 136, citing *State v. Lytle* (1976), 48 Ohio St.2d 391, 396-397, vacated in part on other grounds (1978), 438 U.S. 910, 98 S.Ct. 3135.

For a defendant to demonstrate that he has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, absent counsel's errors, the result of the trial would have been different. *Bradley*, at 143. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, at 694.

Initially, Ramey argues that defense counsel provided ineffective assistance of counsel for failing to file a motion to sever his case from his co-defendant's case. Specifically, Ramey asserts that he was prejudiced by the failure to file a motion to sever

because Keeton's motion to suppress extended the time in which the State had to bring him to trial.

Joinder is governed by R.C. 2945.13, which states in pertinent part:

"When two or more persons are jointly indicted for felony, except a capital offense, they shall be tried jointly unless the court, for good cause shown on application therefor by the prosecuting attorney or one or more of said defendants, orders one or more of said defendants to be tried separately."

The law favors joinder because a single trial will conserve time and expense and may minimize the potentially disparate outcomes that can result from successive trials before different juries. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 86-87; *State v. Torres* (1981), 66 Ohio St.2d 340, 343. However, the interest in joint trials is not unrestricted. A defendant requesting severance "has the burden of furnishing the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant's right to a fair trial." *Torres*, 66 Ohio St.2d at 343. Crim. R. 14 permits a defendant to sever his case from his co-defendant's if consolidation will result in prejudice. The rule states in pertinent part:

"If it appears that a defendant or the state is prejudiced by a joinder of *** defendants in an indictment, *** or by such joinder for trial together of indictments, ***, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires."

Upon review, Ramey has failed to establish that his counsel's failure to file a motion to sever would have changed the outcome of the trial. The charges in both indictments involved Ramey and Keeton acting in concert with each other. There is nothing in the

record which establishes that joinder of the defendants' case was prejudicial to either Ramey or Keeton. Accordingly, Ramey's counsel was not ineffective for failing to file a motion to sever.

Ramey also asserts that his counsel was ineffective for failing to object to the Common Pleas Court presiding judge's assignment of his case to a judge in the probate court, rather than to another judge in the general criminal division. In *State v. Bays* (1999), 87 Ohio St.3d 15, 28, the defendant argued that his counsel should have objected to the presence of a probate judge on the panel in a capital case. The Ohio Supreme Court in *Bays* held that "counsel had no duty to object to the presence of the probate judge, for "[i]t is not ineffective assistance for a trial lawyer to maneuver within the existing law, declining to present untested or rejected legal theories.'" *Id.*, citing *State v. McNeill* (1998), 83 Ohio St.3d 438, 449. It should also be noted that the presiding judge of a court of common pleas can assign a judge of one division of the same court to another division. *Knoop v. Knoop*, Montgomery App. No. 22037, 2007-Ohio-5178. Thus, we find that Ramey's counsel was not ineffective for failing to object to the appointment of the probate judge to preside over his case.

Ramey's third assignment is overruled.

V

Ramey's fourth and final assignment of error is as follows:

"IT WAS ERROR TO DENY THE DEFENDANT'S MOTION TO DISMISS THE WEAPONS UNDER DISABILITY CHARGE, AND THE OVERALL VERDICTS AND ESPECIALLY THE FIREARMS SPECIFICATION[S] WERE BASED UPON INSUFFICIENT EVIDENCE AND/OR WERE CONTRARY TO THE MANIFEST WEIGHT OF THE

EVIDENCE."

In his fourth and final assignment, Ramey contends that the trial court erred when it denied his motion to dismiss the weapons under disability charge in Case No. 09-CR-1051. Ramey also argues that his convictions for aggravated robbery, with the attendant firearm specification, as well as felonious assault were not supported by sufficient evidence and were against the manifest weight of the evidence. Since we have previously found that the court erred when it failed to dismiss the weapons under disability charge on speedy trial grounds, the issue is moot and need not be discussed in this assignment.

"A challenge to the sufficiency of the evidence differs from a challenge to the manifest weight of the evidence." *State v. McKnight*, 107 Ohio St.3d 101, 112, 2005-Ohio-6046. "In reviewing a claim of insufficient evidence, '[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' (Internal citations omitted). A claim that a jury verdict is against the manifest weight of the evidence involves a different test. 'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Id.* (Internal citations omitted).

The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHess* (1967), 10 Ohio St.2d 230, 231.

"Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288.

This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

After a thorough review of the record, we find that the State adduced sufficient evidence at trial to support Ramey's convictions for aggravated robbery and felonious assault. Daniel Miller and Amber Miller testified that they observed Ramey, along with Keeton, chase Fannon down. They also testified that Ramey was in possession of a taser, and Keeton had a handgun. Once Ramey caught up with Fannon, he stunned him repeatedly with a taser, and robbed him of his jewelry. Daniel Miller testified that during the assault he also observed Keeton strike Fannon with the butt of the handgun. An individual indicted for and convicted of violating R.C. 2911.01, aggravated robbery, and of a firearm specification under R.C. 2941.141, is subject to the sentencing enhancement regardless of whether he or she was the principal offender or the unarmed accomplice. *State v. Hanning*, 89 Ohio St.3d 86, 92, 2000-Ohio-436. Accordingly, there was sufficient evidence to find Ramey guilty of aggravated robbery with the firearm specification and felonious assault.

Lastly, Ramey's conviction is also not against the manifest weight of the evidence. The credibility of the witnesses and the weight to be given their testimony are matters for the jury to resolve. Ramey testified on his own behalf, and he simply maintained that he approached Fannon on the street to ask him about food stamps he had allegedly stolen from Ramey. Ramey testified that Fannon pulled out a knife and attacked him and Keeton. Ramey testified that he was simply defending himself from Fannon. The jury did not lose its way simply because it chose to believe the State's witnesses, namely Daniel Miller and Amber Miller, that Ramey and Keeton were the aggressors. Having reviewed the entire record, we cannot clearly find that the evidence weighs heavily against a conviction, or that a manifest miscarriage of justice has occurred.

Ramey's fourth assignment of error is overruled.

VI

In light of our disposition with respect to Ramey's second assignment of error, his conviction for having weapons while under disability is reversed and vacated. In all other respects, the judgment of the trial court is affirmed.

GRADY, P.J. and FAIN, J., concur.

Copies mailed to:

Andrew R. Picek
Dawn S. Garrett
Hon. Richard P. Carey

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO

Plaintiff-Appellee

v.

KEITH RAMEY

Defendant-Appellant

C.A. CASE NO. 2010 CA 19

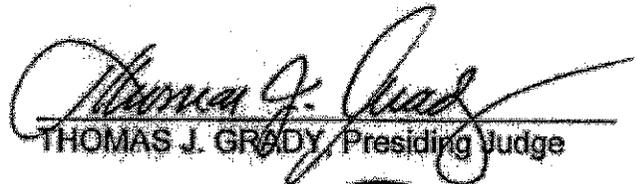
T.C. NO. 09CR1051
09CR869

FINAL ENTRY

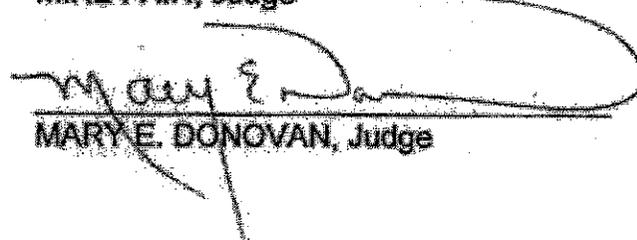
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Pursuant to the opinion of this court rendered on the 18th day of
March, 2011, the conviction for having weapons while under disability is reversed and
vacated. In all other respects, the judgment of the trial court is affirmed.

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


THOMAS J. GRODY, Presiding Judge


MIKE FAIN, Judge


MARY E. DONOVAN, Judge

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*** This section is current through 2011 released chapters ***
*** 1-54, 57-596 (except chapter 62, section 104, part A) ***

CRIMINAL PROCEDURE LAW
PART ONE. GENERAL PROVISIONS
TITLE C. GENERAL PRINCIPLES RELATING TO REQUIREMENTS FOR AND EXEMPTIONS FROM
CRIMINAL PROSECUTION
ARTICLE 30. TIMELINESS OF PROSECUTIONS AND SPEEDY TRIAL

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NY CLS CPL § 30.30 (2011)

THE CASE NOTES OF THIS DOCUMENT HAVE BEEN SPLIT INTO 2 DOCUMENTS.
THIS IS PART 2.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 30.30. Speedy trial; time limitations

1. Except as otherwise provided in subdivision three, a motion made pursuant to paragraph (e) of subdivision one of section 170.30 or paragraph (g) of subdivision one of section 210.20 must be granted where the people are not ready for trial within:

(a) six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony;

(b) ninety days of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony;

(c) sixty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three months and none of which is a crime punishable by a sentence of imprisonment of more than three months;

(d) thirty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime.

2. Except as provided in subdivision three, where a defendant has been committed to the custody of the sheriff in a criminal action he must be released on bail or on his own recognizance, upon such conditions as may be just and reasonable, if the people are not ready for trial in that criminal action within:

(a) ninety days from the commencement of his commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a felony;

NY CLS CPL § 30.30

(b) thirty days from the commencement of his commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony;

(c) fifteen days from the commencement of his commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three months and none of which is a crime punishable by a sentence of imprisonment of more than three months;

(d) five days from the commencement of his commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime.

3. (a) Subdivisions one and two do not apply to a criminal action wherein the defendant is accused of an offense defined in *sections 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.*

(b) A motion made pursuant to subdivisions one or two upon expiration of the specified period may be denied where the people are not ready for trial if the people were ready for trial prior to the expiration of the specified period and their present unreadiness is due to some exceptional fact or circumstance, including, but not limited to, the sudden unavailability of evidence material to the people's case, when the district attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period.

(c) A motion made pursuant to subdivision two shall not:

(i) apply to any defendant who is serving a term of imprisonment for another offense;

(ii) require the release from custody of any defendant who is also being held in custody pending trial of another criminal charge as to which the applicable period has not yet elapsed;

(iii) prevent the redetention of or otherwise apply to any defendant who, after being released from custody pursuant to this section or otherwise, is charged with another crime or violates the conditions on which he has been released, by failing to appear at a judicial proceeding at which his presence is required or otherwise.

4. In computing the time within which the people must be ready for trial pursuant to subdivisions one and two, the following periods must be excluded:

(a) a reasonable period of delay resulting from other proceedings concerning the defendant, including but not limited to: proceedings for the determination of competency and the period during which defendant is incompetent to stand trial; demand to produce; request for a bill of particulars; pre-trial motions; appeals; trial of other charges; and the period during which such matters are under consideration by the court; or

(b) the period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant or his counsel. The court must grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt dispositions of criminal charges. A defendant without counsel must not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent; or

(c)

(i) the period of delay resulting from the absence or unavailability of the defendant [fig 1]. A defendant must be considered absent whenever his location is unknown and he is attempting to avoid apprehension or prosecution, or his location cannot be determined by due diligence. A defendant must be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence; or

(ii) where the defendant has either escaped from custody or has failed to appear when required after having previously been released on bail or on his own recognizance, and provided the defendant is not in custody on another

matter, the period extending from the day the court issues a bench warrant pursuant to section 530.70 because of the defendant's failure to appear in court when required, to the day the defendant subsequently appears in the court pursuant to a bench warrant or voluntarily or otherwise; or

(d) a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial pursuant to this section has not run and good cause is not shown for granting a severance; or

(e) the period of delay resulting from detention of the defendant in another jurisdiction provided the district attorney is aware of such detention and has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial; or

(f) the period during which the defendant is without counsel through no fault of the court; except when the defendant is proceeding as his own attorney with the permission of the court; or

(g) other periods of delay occasioned by exceptional circumstances, including but not limited to, the period of delay resulting from a continuance granted at the request of a district attorney if (i) the continuance is granted because of the unavailability of evidence material to the people's case, when the district attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period; or (ii) the continuance is granted to allow the district attorney additional time to prepare the people's case and additional time is justified by the exceptional circumstances of the case.

(h) the period during which an action has been adjourned in contemplation of dismissal pursuant to sections 170.55, 170.56 and 215.10 of this chapter.

(i) The period prior to the defendant's actual appearance for arraignment in a situation in which the defendant has been directed to appear by the district attorney pursuant to subdivision three of section 120.20 or subdivision three of section 210.10.

(j) the period during which a family offense is before a family court until such time as an accusatory instrument or indictment is filed against the defendant alleging a crime constituting a family offense, as such term is defined in section 530.11 of this chapter.

5. For purposes of this section,

(a) where the defendant is to be tried following the withdrawal of the plea of guilty or is to be retried following a mistrial, an order for a new trial or an appeal or collateral attack, the criminal action and the commitment to the custody of the sheriff, if any, must be deemed to have commenced on the date the withdrawal of the plea of guilty or the date the order occasioning a retrial becomes final;

(b) where a defendant has been served with an appearance ticket, the criminal action must be deemed to have commenced on the date the defendant first appears in a local criminal court in response to the ticket;

(c) where a criminal action is commenced by the filing of a felony complaint, and thereafter, in the course of the same criminal action either the felony complaint is replaced with or converted to an information, prosecutor's information or misdemeanor complaint pursuant to article 180 or a prosecutor's information is filed pursuant to section 190.70, the period applicable for the purposes of subdivision one must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision four, already elapsed from the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds six months, the period applicable to the charges in the felony complaint must remain applicable and continue as if the new accusatory instrument had not been filed;

(d) where a criminal action is commenced by the filing of a felony complaint, and thereafter, in the course of the same criminal action either the felony complaint is replaced with or converted to an information, prosecutor's information or misdemeanor complaint pursuant to article 180 or a prosecutor's information is filed pursuant to section 190.70, the period applicable for the purposes of subdivision two must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision four, already elapsed from the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds ninety days, the period applicable to the charges in the felony complaint must remain applicable and continue as if the new accusatory instrument had not been filed.

(e) where a count of an indictment is reduced to charge only a misdemeanor or petty offense and a reduced indictment or a prosecutor's information is filed pursuant to subdivisions one-a and six of section 210.20, the period applicable for the purposes of subdivision one of this section must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision four of this section, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds six months, the period applicable to the charges in the indictment must remain applicable and continue as if the new accusatory instrument had not been filed;

(f) where a count of an indictment is reduced to charge only a misdemeanor or petty offense and a reduced indictment or a prosecutor's information is filed pursuant to subdivisions one-a and six of section 210.20, the period applicable for the purposes of subdivision two of this section must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision four of this section, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds ninety days, the period applicable to the charges in the indictment must remain applicable and continue as if the new accusatory instrument had not been filed.

6. The procedural rules prescribed in subdivisions one through seven of section 210.45 with respect to a motion to dismiss an indictment are also applicable to a motion made pursuant to subdivision two.

THE CASE NOTES OF THIS DOCUMENT HAS BEEN INTO 2 DOCUMENTS.
THIS IS PART 2.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through file 49
*** Annotations current through July 22, 2011 ***
The provisions of 2011 HB 194 are not yet in effect as they are subject
to a referendum upon verification of petition signatures

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2945. TRIAL
TIME FOR TRIAL

Go to the Ohio Code Archive Directory

ORC Ann. 2945.72 (2011)

§ 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.