

ORIGINAL

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,)	Case No. 2011-597
)	
Plaintiff-Appellee,)	On Appeal from the Clark
-vs-)	County Court of Appeals,
)	Second Appellate District
KEITH RAMEY,)	
)	Clark County Court of Appeals
Defendant-Appellant.)	Case No. 2010CA19

BRIEF OF AMICUS CURIAE-OHIO PROSECUTING
ATTORNEY'S ASSOCIATION
IN SUPPORT OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Amicus Curiae, the OPAA adopts the statement of the case and facts as presented by the Appellee, the State of Ohio.

ARGUMENT

PROPOSITION OF LAW

THE FILING OF A MOTION TO SUPPRESS BY A CO-DEFENDANT TOLLS THE SPEEDY TRIAL TIME OF ANOTHER CO-DEFENDANT.

Appellant argues that the Second District Court of Appeals improperly tolled speedy trial time in his case when his co-defendant filed a motion to suppress. *Amicus Curriae*, the OPAA contends that the Second District Court of Appeals properly applied the speedy trial statute to appellant's case.

Both the United States Constitution, and Section 10, Article I of the Ohio Constitution guarantee a criminal defendant the right to a speedy trial. *State v. Pachay*, 64 Ohio St.2d 218, 219, 416 N.E.2d 589(1980). Ohio's statutory provision for a defendant's right to a speedy trial is codified at R.C. 2945.71, *et seq.* Pursuant to R.C. 2945.71(C)(2), a person charged with a felony "[s]hall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(E) further provides that for purposes of computing time under R.C. 2945.71(C)(2), "each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days."

The time within which a criminal defendant must be brought to trial can be tolled, however, by certain events delineated in R.C. 2945.72. Specifically, R.C. 2945.72(E) provides that speedy

trial time may be tolled for “[a]ny period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused[.]” R.C. 2945.72(H) further provides that speedy trial time may toll during “[t]he 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[.]”

Although R.C. 2945.72 does not specifically address the effects of a motion filed by a co-defendant, the Second District Court of Appeals found that R.C. 2945.72 operates to extend the speedy trial time of a defendant when a motion filed by a co-defendant tolls speedy trial time. *State v. Ramey*, 2nd Dist. No. 2010 CA 19 at ¶25, 2011-Ohio-1288. This finding was supported by the court’s previous decision in *State v. Smith*, 2nd Dist. No. 03-CA-93, 2004-Ohio-6062, in which the court 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.” *Id.* This interpretation of R.C. 2945.72(H) is consistent with the legislative intent of the statute.

R.C. 2945.72(H) was enacted as part of House Bill 511 in 1974. The relevant committee comment to House Bill 511 states:

This section specifies the reasons for which the limits stated in section 2945.71 for according an accused a hearing or trial may be extended. The reasons include: the accused’s unavailability; the accused’s mental incompetence or physical incapacity; the accused’s lack of counsel (provided the court is not dilatory in assigning him counsel as required by law); the neglect or improper act of the accused; *a stay necessitated by preliminary or collateral proceedings*; delay caused by removal or change of venue; a stay pursuant to the order of another court; a continuance granted on the accused’s own motion; and a reasonable continuance granted on other than the accused’s own motion. In each of the above cases, the applicable time limit is not tolled absolutely, but merely extended by the time necessary in light of the reason for the delay. (Emphasis

added).

The inclusion of the provision “a stay necessitated by preliminary or collateral proceedings” shows the intent of the legislature to include all pre-trial motions and proceedings as tolling events. Moreover, several Ohio courts have issued rulings consistent with this legislative intent, finding that a trial court is permitted to extend a defendant’s speedy trial time due to the filing of a co-defendant’s motion based upon the authority provided by R.C. 2945.72(H). See, *State v. Parker*, 11th Dist. No. 2004-A-0004, 2005-Ohio-6908; *State v. Jones*, 7th Dist. No. 79 C.A.62, 1981 WL 4844 (March 4, 1981); *State v. Smith*, 2nd Dist. No. 2003 CA 93, 2004-Ohio-6062; *State v. Davis*, 7th Dist. No. 08 MA 80, 2009-Ohio-4639; *State v. Morrison*, 2nd Dist. No. 15003, 1995 WL 723031 (Dec. 6, 1995); *State v. Deltoro*, 7th Dist. No. 07-MA-90, 2008-Ohio-4815.

In addition to being consistent with legislative intent, the ruling of the Second district Court of Appeals is also consistent with federal law. Under federal law “[w]here multiple defendants are charged on an indictment and no motion for severance has been granted, there is only one ‘Speedy Trial clock’ for all defendants. A delay attributable to one defendant is chargeable to all.” *United States v. Zoeller*, 6th Cir. No. 84-5847, 1985 WL 13444 (June 25, 1985) at *2. The federal speedy trial statute, 18 U.S.C. § 3161, specifically provides:

(h) the following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(6) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

The Second District Court of Appeals application of R.C. 2945.72(H) to appellant's case is consistent with both the intent of the state legislature and federal law. The court did not err in holding that appellant's speedy trial time was tolled due to the filing of a motion by his co-defendant.

Appellant argues that his co-defendant's motion to suppress should not have tolled his speedy trial time because the motion was irrelevant to him and would not have benefitted him in any way. Appellant further argues that there was no showing made by the prosecution as to why appellant's case needed to be delayed because of his co-defendant's motion to suppress.

Appellant clearly would have benefitted by the exclusion of any evidence that may have been used against him in trial regardless of where the evidence was seized from. It is also very clear that it was necessary to extend appellant's speedy trial time due to the filing of his co-defendant's motion. If a motion by a co-defendant did not operate to extend the speedy trial time of another defendant, then a defendant who chose not to participate in motion practice would be able to see the outcome of the motions and later claim that his right to a speedy trial was violated if the court rules adversely.

Any issues appellant had with his co-defendant's motion practice could have been easily resolved if appellant had filed a motion to sever pursuant to Crim. R. 14. Appellant then could have proceeded with his own speedy trial while his co-defendant continued to file motions. However, appellant chose not to take this course of action, which seems to diminish his claim of unfairness.

Appellant argues he should not have been required to file a motion to sever in order to preserve his speedy trial rights. According to appellant, the trial court had two options with respect to dealing with the effects his co-defendant's motion practice on speedy trial time: continue the case, or sever the trials.

"Joinder of defendants and the avoidance of multiple trials is favored in the law for many

reasons. Joinder conserves judicial and prosecutorial time, lessens the not inconsiderable expenses of multiple trial, diminishes inconvenience to witnesses, and minimizes the possibility of incongruous results in successive trials before different juries.” *State v. Thomas*, 61 Ohio St.2d 223, 225, 400 N.E.2d 401 (1980). ““If it appears that a defendant * * * is prejudiced by a joinder * * * of defendants in an indictment * * * the court shall * * * grant a severance of defendants, or provide such other relief as justice requires.”” *Id.* at 226 quoting Crim. R. 14.

In the present case, had the trial court found that appellant was prejudiced by his co-defendant’s motion practice the court would have severed the trials sua sponte. Appellant would not have had to file a motion resulting in the tolling of his speedy trial time. Clearly, the trial court did not find that appellant’s speedy trial rights were unfairly affected by his co-defendant’s motion practice. In fact, the trial court indicated that appellant’s trial date would have been set within ninety days if not for motions and *agreed upon hearing dates by counsel*. (Status Conference T.p. 7-8, emphasis added.) Accordingly, the trial court chose to grant a continuance of appellant’s trial pursuant to R.C. 2945.72(H), which was consistent with both legislative intent and federal law. Appellant’s Proposition of Law is without merit.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Ohio Prosecuting Attorneys Association, OPAA, is an association of county prosecutors in the 88 counties of the State of Ohio. In this matter, the OPAA supports Appellee's, the State of Ohio's Memorandum in Support of Jurisdiction and urges this Honorable Court to grant jurisdiction.

The Second District Court of Appeals properly applied the speedy trial statute to appellant's case. The court's ruling is consistent with both the intent of the Ohio Legislature and federal law. If this decision were overtured, it would create a situation where a defendant could choose not to participate in motion practice and be able to see the outcome of the motions then later claim that his right to a speedy trial was violated if the court rules adversely.

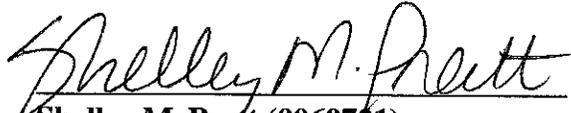
Consequently, the Ohio Prosecuting Attorney Association supports the position of the State of Ohio, Appellee in this matter.

CONCLUSION

The Second District Court of Appeals properly applied the speedy trial statute to appellant's case. The court's ruling is consistent with both the intent of the Ohio Legislature and federal law. The Ohio Prosecuting Attorney's Association agrees with Appellee-State of Ohio that this Court should affirm the decision of the Second District Court of Appeals.

Respectfully submitted,

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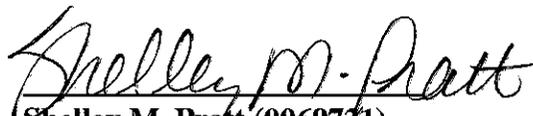
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Memorandum in Support of Jurisdiction has been served via ordinary U.S. Mail, postage prepaid, this ^{17th} day of January, 2012, upon DAVID ANDREW WILSON, Clark County Prosecutor and ANDREW R. PICEK, Assistant Prosecuting Attorney Clark County Prosecutor's Office, 50 E. Columbia Street Springfield, Ohio 45502; STEPHEN P. HARDWICK, Assistant Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.


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