

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Case No. 2011-597  
Plaintiff-Appellee : On Appeal from the Clark  
Clark County Court  
-vs- : of Appeals, Second  
Appellate District  
KEITH RAMEY :  
Defendant-Appellant : Court of Appeals  
Case No. 10-CA-0019

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MERIT BRIEF OF PLAINTIFF-APPELLEE STATE OF OHIO

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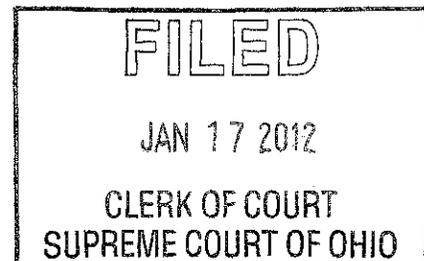
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## INTRODUCTION

The law favors joinder of criminal defendants when they commit crimes together. In fact, in Ohio, if defendants are jointly charged, the law requires that they be tried together absent a showing of good cause and prejudice to either the state of the defendant. R.C. 2945.13; Crim. R. 8(B), 14. At the same time, the State has enacted a speedy trial statute which requires criminal defendants to be brought to trial within 270 days (90 if incarcerated), subject to possible tolling events. R.C. 2945.71; R.C. 2945.72. Keith Ramey and his co-defendant, Jonathan Keeton were tried by a jury 93 days after Ramey's arrest, partly as a result of the delay caused by Keeton's filing of a motion to suppress.

The speedy trial tolling provision of R.C. 2945.72(H) permits the extension of the time within which a defendant must be brought to trial for "the period of any reasonable continuance granted other than upon the accused's own motion." The delay caused by a co-defendant filing a motion to suppress evidence tolls speedy trial time for all joint defendants. This is especially so where the defendant leaves the court to believe he will also be filing a motion to suppress and does not move to sever his case from the co-defendant.

The brief delay caused by a hearing on a co-defendant's suppression motion does not prejudice a defendant. In fact, it may in all likelihood benefit both defendants. If two defendants are to be jointly tried, the evidence against the two is mostly similar, involving much of the same physical evidence and witness testimony. Therefore, the result of any hearing regarding the admissibility of evidence is likely to benefit all jointly tried defendants.

The General Assembly clearly recognized that there are a myriad of possible reasons for which a trial court might need to grant a continuance that are not instituted by a defendant. Some examples include a motion by a co-defendant or the prosecution; courtroom availability; or

collateral proceedings that may affect the trial. Rather than try to enumerate every possible reason for delay in trial that would permit an extension of a defendant's speedy trial time, the General Assembly wisely chose to simply place the limitation of reasonableness upon the continuance. A continuance granted in order to facilitate the hearing of a motion to suppress filed by a co-defendant is reasonable.

### **STATEMENT OF FACTS**

On October 6, 2009, Keith Ramey and Jonathan Keeton beat and robbed Howard Fannon when he was walking along the sidewalk outside the Crowell-Collier building in Springfield, Clark County, Ohio. Earlier that evening, Ramey and Keeton had broken into a tattoo parlor in Springfield. During the robbery and assault, Ramey shocked Fannon multiple times with a stun gun, and Keeton struck him over the head with the butt of a handgun. Ramey and Keeton took Fannon's watch and two gold necklaces during the robbery.

Fannon was able to contact 911, and Ramey was apprehended that same night. The following day, Keeton was arrested by the U.S. Marshals. Property from the tattoo parlor, as well as Fannon's property and the weapons used to commit the robbery and assault were all recovered.

Keith Ramey and Jonathan Keeton were jointly indicted by the Clark County Grand Jury on October 13, 2009 for aggravated robbery R.C. 2911.01(A)(1) (deadly weapon); aggravated robbery R.C. 2911.01(A)(3) (serious physical harm); felonious assault R.C. 2903.11(A)(2) (deadly weapon); felonious assault R.C. 2903.11(A)(1) (serious physical harm); and breaking and entering. Ramey was arraigned on October 16, 2009, and his bond was set at \$50,000. Ramey did not post bond at any time during the proceedings. Keeton's bond was also set at \$50,000, which he posted and was released from jail on October 30, 2009, pending trial.

On October 16, Ramey's counsel filed a motion to withdraw due to a conflict of interest, which was granted October 20, 2009, and Ramey was appointed new counsel. On November 10, 2009, Judge Richard J. O'Neill, administrative judge for the Clark County Court of Common Pleas transferred the case to Judge Richard P. Carey of the Clark County Court of Common Pleas, Probate Division. Judge Carey held a pre-trial conference on December 9, 2009 with counsel for all parties in chambers to set a schedule for the case to proceed. Counsel for Keeton indicated that he would be filing a motion to suppress and a motion to sever that time. Ramey's counsel also indicated that he would also be filing a motion to suppress and a motion to sever. Based upon those representations, the trial court set a hearing for the motions on January 5, 2010.

On December 10, 2009, Keeton filed a motion to suppress physical evidence seized by the police and statements he had made. On December 21, 2009, the Clark County Grand Jury indicted both Ramey and Keeton for having weapons while under disability. On December 29, 2009, Keeton filed a supplemental motion to suppress the photo lineups used by the police with witnesses in the case. No motions were filed by Ramey.

On January 5, 2010, the trial court held a hearing on the motion to suppress and overruled that motion on January 6, 2010. The trial court set a trial date of February 1, 2010. On February 1, 2010, Ramey filed a motion to dismiss for violation of his speedy trial rights. The trial court overruled the motion, and continued the trial one day, to February 2, 2010, because the courtroom was being used by the Second District Court of Appeals for Oral Argument on February 1, 2010.

After a three day jury trial, Ramey and Keeton were both convicted on both counts of aggravated robbery with firearm specifications, one count of felonious assault (deadly weapon),

and one count of having weapons under disability. They were both acquitted on one count of felonious assault (serious physical harm) and breaking and entering. The two counts of aggravated robbery were merged and Ramey was sentenced to a total aggregate prison term of eleven years.

Ramey appealed to the Second District Court of Appeals, arguing that his speedy trial rights were violated, his sentence was contrary to law and abuse of discretion, he received ineffective assistance of counsel, there was insufficient evidence to support a conviction, and the verdicts were against the manifest weight of the evidence. The Second District agreed with Ramey on his speedy trial argument, only as it applied to the conviction for having weapons under disability, pursuant to *State v. Homan*, 89 Ohio St.3d 421, 732 N.E.2d 952 (2000) (overruled on other grounds). The rest of Ramey's assignments of error were overruled.

Ramey timely filed a pro se appeal to this Court arguing that his speedy trial rights were violated. This Court denied leave to appeal. On July 18, 2011, the Ohio Public Defender filed a motion for reconsideration on Ramey's behalf. On September 21, 2011, this Court accepted Ramey's appeal.

## **ARGUMENT**

### **RESPONSE TO PROPOSITION OF LAW**

I. A motion filed by a co-defendant should toll the other co-defendant's speedy trial time notwithstanding some positive action by the other co-defendant to assert his speedy trial rights.

Ohio Revised Code Section 2945.72(H) provides that "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" tolls speedy trial time for a defendant. Ramey argues that the language "the period of any reasonable continuance granted other than upon the accused's

own motion,” applies only to those motions captioned as a “motion to continue,” and no other motions. This is illogical and incorrect.

In the instant case, the trial date was essentially continued sua sponte by the trial court, when it set aside time to rule on the suppression motion filed by the co-defendant. It is irrelevant that it was not titled a “motion to continue” or treated as such. The effect was the same: the trial date was moved into the future as a result of something other than “the accused’s own motion.” The Second District Court of Appeals, in this case, and other cases, has consistently held that a co-defendant’s motion tolls the speedy trial time of the other defendant. *State v. Ramey*, 2nd Dist. No. 2010 CA 19, 2011-Ohio-1288 at ¶25; *State v. Smith*, 2nd Dist. No. 2003 CA 93, 2004-Ohio-6062. In *State v. Davis*, 7th Dist. No. 08 MA 80, 2009-Ohio-4639 at ¶25, the Seventh District Court of Appeals held that a co-defendant’s motion may toll speedy trial time for a defendant, depending on the circumstances of the case and motion filed. See also *State v. Deltoro*; 7th Dist. No. 07-MA-90, 2008-Ohio-4815 at ¶23.

Other examples of continuances on “other than upon the accused’s own motion,” that have been upheld in Ohio include the unavailability of a key witness, *State v. Green*, 11th Dist. No. 2003-A-0111, 2005-Ohio-6715 at ¶¶34-36, and a mandamus action pending before another court regarding media access to the trial; *Hutchinson v. Marshall*, 744 F.2d 44, 45 (6th Cir.1984). The Second District Court of Appeals applied this exception to a delay caused in a criminal case by a mandamus action pending before this Court regarding media access to the courtroom. *Id.* This Court declined to accept the appeal. *Id.* at 45-46. On a habeas appeal to the Sixth Circuit, the court affirmed the federal district court’s ruling that Hutchinson’s constitutional speedy trial rights were not violated. *Id.*

Ramey contends in his merit brief that the tolling provisions of R.C. 2945.72(H) only apply if a party files a document with the court captioned “Motion to Continue,” and that it does not encompass other motions or events that may result in the necessity to continue a trial date. Such a narrow reading of the statute is not consistent with the intent of the General Assembly.

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

This section specifies the reasons for which the limits stated in section 2945.71 for accordng 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 a 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).

It is clear from the committee comment that the General Assembly was aware that there are many different reasonable ways in which a court will need additional time in order to bring a defendant to trial, including other court proceedings related to the case or continuances granted on something other than the defendant’s motion to continue. To conclude that a motion to suppress filed by a co-defendant is not one of those reasons would frustrate the purposes behind joinder of criminal defendants, and hand the keys to deciding whether there should be a joint trial to the defendant, rather than the trial court.

“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 trials, 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). Jointly indicted defendants “shall” be tried together, absent good cause for severance and prejudice to any party. R.C. 2945.13; Crim. R. 14.

If a motion filed by a co-defendant does not toll speedy trial time for the other defendants, it does not require a stretch of the imagination to see such a holding would encourage gamesmanship on the part of defendants who wish to sever their case from their accomplice, but have no good cause to do so. All it would take is one defendant to file a motion that is not joined by the other, but will require the court additional time to consider. The court very likely then will be required to sever the two cases so that the defendant not joining in the motion is brought to trial within his speedy trial time, which would not be tolled. Such a result would be unjust, and would likely result in wasting of judicial and prosecutorial time, trials being more expensive, witnesses having to testify in multiple trials, and other things. All of the reasons for which the law favors joinder of defendants would become irrelevant, because the defendant could force a severance without any good cause or showing of prejudice.

Ramey never objected to the trial date set by the court nor the timing of the motion to suppress by the court. Furthermore, as he acknowledges in his merit brief, Ramey actually indicated to the court that he was intending to file a motion to suppress when the trial court scheduled the hearing for that motion. Ramey cannot claim any prejudice or harm to him as a result of his case being tried 93 days after being arrested, especially when he did not object to the scheduling by the court after he informed the court he would be filing a motion to suppress. Nor did Ramey attempt to sever his case from his co-defendant so that he could proceed to trial more timely. Such an attempt likely would have been fruitless, as recognized by the Second District of Appeals in rejected Ramey’s argument that his counsel was ineffective for moving to sever his case from his co-defendant. *Ramey*, supra at ¶¶51-63.

Ramey also contends that the issues in the suppression hearing pertained only to his co-defendant, Keeton, and not him. However, this is not true. Ramey and Keeton were accused of acting in concert and under the law of complicity in Ohio both are liable for the actions of the other in such a situation. *State v. Coleman*, 37 Ohio St. 3d 286, 290, 525 N.E.2d 792 (1988). Any evidence implicating Keeton, by very nature of the case, would also implicate Ramey. Therefore, its suppression could have benefitted Ramey. This includes the eyewitness identification of Keeton and any evidence seized from Keeton or in his father's home, as all of that evidence was used against both Ramey and Keeton at trial.

The Second District Court of Appeals correctly held that the speedy trial for both defendants, Ramey and Keeton, was tolled when Keeton filed a motion to suppress evidence. That holding is in accordance with Ohio's speedy trial statute and the legislative intent behind the tolling provisions of the speedy trial statute. To hold otherwise would eviscerate the joinder of criminal cases in Ohio, and give criminal defendants the ability to decide if they want to sit at counsel table next to their accomplices or go it alone. This Court should affirm the judgment of the Second District Court of Appeals and hold that the filing of a motion to suppress by one defendant tolls the speedy trial time for all defendants.

II. This Court may dispose of this appeal without ruling on Ramey's Proposition of Law, because his own actions led to the trial court continuing the time for trial beyond the required speedy trial time.

Furthermore, even if this Court concludes that one defendant's motion to suppress does not toll speedy trial for all co-defendants, this particular defendant's speedy trial was sufficiently tolled by his own actions. Ramey's counsel indicated at the pre-trial conference on December 9, 2009, that Ramey would be filing a motion to suppress and a motion to sever. Those motions were never filed. See *State v. Kasarda*, 82 Ohio App.3d 388, 612 N.E.2d 484 (3rd Dist. 1992)

(holding that when a defendant represents that he will file a motion to suppress, and the trial court scheduled a hearing on that motion, that time is tolled even where the defendant does not file the motion to suppress).

Ramey should not be rewarded for trying to game the system. On the one hand he goads the trial court into having to set aside time for a suppression hearing. On the other hand, he tries to claim the trial court denied him his speedy trial rights when it did exactly what he asked it to do. “A defendant may not take advantage of an error that he himself invited or induced.” *State v. Rohrbaugh*, 126 Ohio St. 3d 421, 2010-Ohio-3286, 934 N.E.2d 920, ¶10.

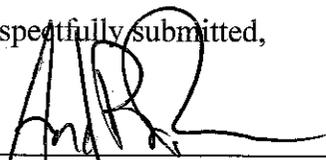
Therefore, regardless what this Court concludes as to Ramey’s Proposition of Law, it is of no avail to him. He is the reason his trial was held 93 days after his arrest. Once Ramey told the trial court he was going to file the motion to suppress, he assented to the continuance that was necessary to hear that motion to suppress. The result therefore is the same whether or not Ramey was being jointly tried. It is not necessary for this Court at this time to rule on Ramey’s Proposition of Law in order to decide his case. This Court should affirm the decision of the Second District Court of Appeals that Ramey’s statutory speedy trial rights were not violated.

### **CONCLUSION**

Keith Ramey’s speedy trial rights were not violated. He invited any error that occurred when he told the trial court he would be filing a suppression motion but did not do so. Furthermore, any period of continuance necessitated by the trial court hearing the co-defendant’s motion to suppress is a “period of any reasonable continuance granted other than upon the accused’s own motion,” and therefore a tolling event for the defendant’s speedy trial time.

Therefore, for all of the foregoing reasons, this Court should affirm the decision of the Second District Court of Appeals and hold that Ramey's statutory speedy trial rights were not violated when he was tried 93 days after his arrest.

Respectfully submitted,

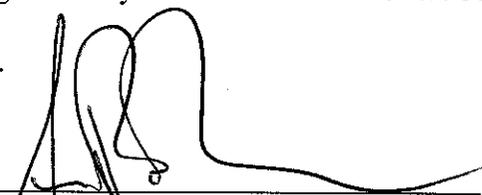


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#### **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Answer Brief of Appellee State of Ohio was served by regular mail upon Stephen P. Hardwick, counsel for Defendant-Appellant, Assistant Public Defender, at 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 and Shelley M. Pratt, counsel for Amicus Curiae, Ohio Prosecuting Attorney's Association at 25 W. Jefferson Street, Jefferson, Ohio 44047 on January 17th, 2012.



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\*\*\* Annotations current through December 5, 2011 \*\*\*

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

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2945.71 (2011)*

§ 2945.71. Time within which hearing or trial must be held

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

(B) Subject to division (D) of this section, a person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record, shall be brought to trial as follows:

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

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

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

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

(2) Shall be brought to trial within two hundred seventy days after the person's arrest.

(D) A person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged, as determined under divisions (A), (B), and (C) of this section.

(E) For purposes of computing time under divisions (A), (B), (C)(2), and (D) of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This division does not

apply for purposes of computing time under division (C)(1) of this section.

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

**HISTORY:**

134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 136 v S 83 (Eff 10-17-75); 138 v S 288 (Eff 10-22-80); 139 v S 119 (Eff 3-17-82); 148 v S 49. Eff 10-29-99.

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TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2945. TRIAL  
TRIAL PROCEEDINGS

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*ORC Ann. 2945.13 (2011)*

§ 2945.13. Joint trials in felony cases

When two or more persons are jointly indicted for a 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.

**HISTORY:**

GC § 13442-11; 113 v 123(181), ch 21, § 11; Bureau of Code Revision. Eff 10-1-53.

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\*\*\* Annotations current through August 29, 2011 \*\*\*

Ohio Rules Of Criminal Procedure

*Ohio Crim. R. 8 (2011)*

Review Court Orders which may amend this Rule.

**Rule 8. Joinder of Offenses and Defendants**

**(A) Joinder of offenses.**

Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

**(B) Joinder of defendants.**

Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

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Ohio Rules Of Criminal Procedure

*Ohio Crim. R. 14. (2011)*

Review Court Orders which may amend this Rule.

**Rule 14. Relief from Prejudicial Joinder**

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

When two or more persons are jointly indicted for a capital offense, each of such persons shall be tried separately, unless the court orders the defendants to be tried jointly, upon application by the prosecuting attorney or one or more of the defendants, and for good cause shown.

**HISTORY:** Amended 7-1-11.