

**IN THE SUPREME COURT OF OHIO  
2012**

STATE OF OHIO,

Case No. 2012-0291

Plaintiff-Appellee,

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

-vs-

TIMOTHY GLASS,

Court of Appeals

Defendant-Appellant.

Case No. 10AP-558

**MEMORANDUM OF PLAINTIFF-APPELLEE OPPOSING JURISDICTION**

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## EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION

Neither of defendant Timothy Glass's two propositions of law warrants this Court's review. Defendant's first proposition of law claims that his speedy-trial rights were violated. But defendant's attorney signed off on numerous continuances—all of which tolled the speedy trial time. It is immaterial that defendant himself objected to the continuances, because the decision whether to continue a trial date belongs to defense counsel alone. After factoring in the defense-requested continuances, defendant was timely brought to trial.

Defendant's second proposition of law—claiming that the trial court erred in allowing him to represent himself—is equally unworthy of further review. While Judge Klatt dissented on this issue below, the reason for the dissent was not that Judge Klatt disagreed with the majority on any *legal* principles. Rather, Judge Klatt simply disagreed on the proper *application* of well-settled law to the specific facts of this case. Specifically, Judge Klatt believed that the factors relied on by the majority “are insufficient by themselves to satisfy the standard articulated in *Martin and Johnson*.” Opinion, ¶ 61 (Klatt, J., dissenting). According to Judge Klatt, “the record does not indicate that appellant made [the decision to represent himself] with the information deemed essential in *Martin*.” *Id.* at ¶ 63.

In other words, Judge Klatt did not dissent because he disagreed with the majority on the proper standard for judging a trial court's inquiry into a defendant's self-representation decision or any other legal point. He dissented because he disagreed with the majority's conclusion that under the specific facts of this case the trial court's inquiry was sufficient. Thus, contrary to defendant's assertions, there are not “divided interpretations” of this Court's decisions, nor is there any “split on the standard.” (MSJ, p. 1) Any decision from this Court would have minimal application to future cases.

Moreover, relying on *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, defendant asks this Court to adopt a “strict compliance” standard for counsel waivers under Crim.R. 44(A). But this Court has already held that the “substantial compliance” test applies to Crim.R. 44(A), and that a trial court need only make “sufficient inquiry to determine whether the defendant fully understood and intelligently relinquished his or her right to counsel.” *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph two of the syllabus.

Also, in the guilty-plea context, Crim.R. 11 gives “detailed instruction to trial courts on the procedure to follow when accepting pleas.” *Veney* at ¶ 7. But for counsel waivers, trial courts need not follow any prescribed “formula or script,” and “[t]he information a defendant must possess in order to make an intelligent election \* \* \* will depend on a range of case-specific factors, including the defendant’s education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.” *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144, ¶ 101, quoting *Iowa v. Tovar*, 541 U.S. 77, 88, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004). Thus, a “strict compliance” standard would simply be unworkable in the counsel-waiver context.

In the end, this case presents no questions of such constitutional substance or of such great public interest as would warrant further review by this Court. For this reason, and because the Tenth District correctly affirmed the trial court’s judgment, the State respectfully submits that jurisdiction should be declined.

#### **STATEMENT OF THE CASE AND FACTS**

For purposes of this memorandum, the State adopts the statement of the facts and case contained in the Tenth District’s opinion at ¶¶ 2- 8.

## ARGUMENT

**Response to First Proposition of Law:** Under R.C. 2945.72(H), defense-requested continuances toll the speedy-trial time.

Defendant was originally indicted in case number 08CR-6775 on September 12, 2008, and the trial was scheduled for November 26, 2008. Thereafter, the trial was continued a total of seven times—for a total of 425 days—to January 25, 2010. Each of these continuances was at the request of the parties jointly or the defense alone. The reason given for each continuance was trial preparation, plea negotiations, or both. Defense counsel Norman Anderson signed each of these continuance entries. Defendant himself, however, did not sign any of the entries and on all but one expressly noted his objection. On the one entry that defendant did not note his objection (dated August 7, 2009), Anderson signed defendant's name and in parentheses wrote his (Anderson's) initials. Although not clear from the entry, the parties and the trial court appeared to assume that defendant objected to this continuance as well.

On January 27, 2010, a superseding indictment was filed and assigned case number 10CR-483. A nolle dismissing the indictment in 08CR-6775 was filed the next day. By this point, Anderson had withdrawn from the case due to defendant's failure to communicate with him. Attorney Joseph Scott was thereafter appointed as defense counsel. Trial was scheduled for March 10, 2010. Between January 29, 2010, and March 3, 2010, the defense filed several motions, including a motion to dismiss on speedy-trial grounds. Prior to trial, the trial court overruled each of these motions. The trial started March 10, 2010. After the trial, the trial court filed a written decision overruling the defense's speedy-trial motion.

Defendant's statutory speedy-trial argument is without merit. A defendant charged with a felony shall be brought to trial within 270 days after arrest. R.C. 2945.71(C)(2). (Defendant was never incarcerated prior to trial, so the triple-count provision in R.C. 2945.71(E) does not

apply.) Because the indictment in 10CR-483 arose from the same underlying facts as the indictment in 08CR-6775, the speedy-trial time relates back to the original indictment in 08CR-6775. *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, 887 N.E.2d 319, ¶ 11, citing *State v. Adams*, 43 Ohio St.3d 67, 68, 538 N.E.2d 1025 (1989).

Of course, the trial in 10CR-483 started beyond the 270-day time frame. But the speedy-trial time may be tolled for, among other reasons, “[t]he period of any continuance granted on the accused’s own motion.” R.C. 2945.72(H). Here, the seven defense-agreed continuances in 08CR-6775 tolled 425 days. Because the indictment in 10CR-483 arose from the same underlying facts as the indictment in 08CR-6775, these continuances tolled the speedy-trial time in 10CR-483. *Blackburn* at ¶ 23. After tolling the 425 days attributable to these continuances, defendant was brought to trial well within 270 days. A substantial amount of time was also tolled by the numerous defense motions filed in both 08CR-6775 and 10CR-483. R.C. 2945.72(E).

Defendant’s constitutional speedy-trial argument is also without merit. The United States Supreme Court has identified four factors in determining whether an accused has been constitutionally denied a speedy trial: “Length of the delay, the reason for the delay, the defendant’s assertion of his right, and the prejudice to the defendant.” *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

Although a delay in excess of one year is normally considered “presumptively prejudicial,” *Doggett v. United States*, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the vast majority of the delay in this case was caused the defense-requested continuances. Considering these continuances under the first *Barker* factor, *State v. Myers*, 97 Ohio St.3d 335,

2002-Ohio-6658, 780 N.E.2d 186, ¶¶ 65-66, the length delay is insufficient to trigger any constitutional analysis at all, *Doggett* at 651-52, citing *Barker* at 530-31.

The third *Barker* factor also weighs against defendant. Defendant did not assert his speedy-trial rights until January 25, 2010, when the defense filed a motion to dismiss on speedy-trial grounds in 08CR-6775.

Finally, defendant fails to show prejudice under the fourth *Barker* factor. Defendant was not incarcerated prior to trial, and he identified no witnesses who died or disappeared during the delay. *Barker* at 532. Nor can defendant legitimately claim that the delay caused him “anxiety and concern.” *Id.* To the contrary, defendant showed a lack of anxiety and concern in that he refused to communicate with Anderson, which is what caused the delay in the first place. Defendant also failed to identify with any specificity any witnesses whose memories were adversely affected by the delay. *Id.* at 534.

For the foregoing reasons, defendant’s first proposition of law warrants no further review.

**Response to Second Proposition of Law:** In order to establish an effective waiver of counsel, the trial court must make sufficient inquiry to determine whether defendant fully understood and intelligently relinquished his or her right to counsel.

A criminal defendant has the constitutional right to represent himself at trial. *Faretta v. California*, 422 U.S. 806, 819-820, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, the waiver of the right to counsel must be knowing, voluntary, and intelligent. *Tovar*, 541 U.S. at 87-88. In order to establish an effective waiver of counsel, the trial court must make “sufficient inquiry to determine whether defendant fully understood and intelligently relinquished his or her right to counsel.” *Martin*, 2004-Ohio-5471, ¶ 39, citing *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph two of the syllabus; *see also*, Crim.R. 44(A). A waiver of the right to counsel “must be made with an apprehension of the nature of the charges, the statutory offenses

included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.” *Gibson* at 377, quoting *Von Moltke v. Gillies*, 332 U.S. 708, 723, 68 S.Ct. 316, 92 L.Ed. 309 (1948).

The trial court first learned of defendant’s desire to waive counsel on January 25, 2010. On that date, Scott told the trial court that he had met with defendant on the previous day to discuss the case, and that during their meeting defendant had informed Scott that he wished to represent himself. The trial court addressed defendant personally, and defendant confirmed that it was his wish all along that he represent himself. The trial court warned defendant that it would be a “dire mistake” for him to represent himself. The trial court analogized the situation to a lawyer “attempt[ing] to perform surgery on himself.”

After some discussion regarding whether Scott would serve as “co-counsel” or “legal advisor,” the trial court cautioned defendant that if he represented himself he would be “bound by the same rules as a lawyer.” The trial court stated that it was concerned that defendant lacked the “background and knowledge to do that.” Defendant assured the trial court that he has “tried cases before.” The trial court, however, reminded defendant that “these are 18 counts of very serious allegations.” Defendant asked that he and Scott serve as “co-counsel,” and the trial court agreed. The case then proceeded to voir dire, which Scott handled on behalf of the defense.

The trial did not proceed to opening statements, however, because the next day the State filed the superseding indictment in 10CR-483 and dismissed the indictment in 08CR-6775. The trial court appointed Scott to represent defendant in 10CR-483. Trial was then scheduled for March 10, 2010.

When the case convened for trial on March 10, 2010, the trial court stated that the “co-counsel” arrangement was inappropriate and that “we are going to have one counsel.” A recess was taken for Scott and defendant to discuss who would serve as counsel, but before the recess, the trial court reminded defendant that it was in his “best interest that [he] permit the professional, Mr. Scott, to represent [him] in these matters.”

After the recess, defendant informed the trial court that he wished to represent himself. The trial court reiterated to defendant that he must follow “certain rules that every lawyer must abide by.” The trial court asked defendant why he wished to represent himself, and defendant answered, “I think that it’s a better choice.” Defendant acknowledged Scott’s qualifications, but adhered to his belief that “the case would be better for [him] if [he] were to try it for [himself].” The trial court observed that defendant was “making this decision knowingly, intelligently and voluntarily, and that this is a decision he wishes to make. And he’s consulted with Mr. Glass, and Mr. Scott has consulted with Mr. Glass on numerous occasions.” The trial court emphasized that it felt defendant was “making the wrong decision.”

Later, after explaining to defendant that he could speak with Scott only during recesses, the trial court yet again urged defendant to allow Scott to represent him. Defendant, however, assured the trial court, “I have made this decision of my own free will \* \* \*.”

Given these circumstances, defendant was “made aware of the dangers and disadvantages of self-representation,” and the record establishes that “he [knew] what he [was] doing and his choice [was] made with eyes open.” *Faretta*, 422 U.S. at 835, quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268 (1942). Importantly, the trial court—both before and after the superseding indictment—explained to defendant that he was subject to the same rules as the lawyers and that he lacked the education and training to comply

with these rules. The trial court also emphasized to defendant on multiple occasions that self-representation was not in his best interests.

Defendant argues that the trial court failed to review with defendant the nature of the charges, the possible penalties, possible defenses, and other aspects relevant to defendant's waiver of counsel. But trial courts need not follow any prescribed "formula or script," and "[t]he information a defendant must possess in order to make an intelligent election \* \* \* will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." *State v. Johnson*, 2006-Ohio-6404, ¶ 101, quoting *Tovar*, 541 U.S. at 88.

The record proves that defendant possessed all the information he needed to knowingly, voluntarily, and intelligently waive his right to counsel. As the trial court observed, Scott consulted with defendant "on numerous occasions." When Scott and defendant first met to discuss the case, they discussed the plea offer that was then available to defendant. Also during this meeting, defendant gave Scott a list of 35 potential defense witnesses and instructed Scott to file various motions. After the superseding indictment was filed, Scott told the trial court that he and defendant had discussed the previous indictment and that they understood the superseding indictment. Prior to the trial date on the superseding indictment, Scott filed yet more motions. Although defendant conducted the entire trial in 10CR-483, Scott conducted the voir dire in 08CR-6775 before the State dismissed the indictment in that case.

The trial court could therefore "presume that [Scott] had discussed all relevant aspects of the case with [defendant]." *Johnson* at ¶ 92, quoting *Maynard v. Meachum*, 545 F.2d 273, 279 (1st Cir.1976). It is also significant that defendant told the trial court that he "tried cases before," as this statement proves that "had experience in the courts \* \* \*." *Johnson* at ¶ 95.

Moreover, although there was some initial confusion regarding whether Scott would serve as “co-counsel” or “legal advisor,” the trial court ultimately—and properly—held that Scott could not serve as defendant’s “co-counsel.” *Martin*, 103 Ohio St.3d 385, paragraph one of the syllabus. By the time the trial started in 10CR-483, it was perfectly clear that defendant alone was responsible for handling the case. Thus, unlike the defendant in *Martin*, defendant “displayed no confusion about what he wanted or what self-representation meant.” *Johnson* at ¶ 97.

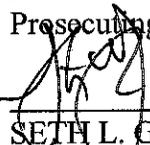
For the foregoing reasons, defendant’s second proposition of law warrants no further review.

### CONCLUSION

For the foregoing reasons, the State respectfully submits that jurisdiction should be declined.

Respectfully submitted,

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Prosecuting Attorney



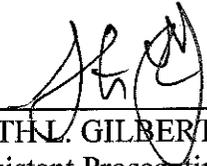
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was sent by regular U.S. Mail, this day, June 4, 2012, to Timothy Glass, #628-622, Chillicothe Correctional Institution, P.O. Box 5500, Chillicothe, Ohio 45601.

  
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