

ORIGINAL

IN THE SUPREME COURT OF OHIO

14-2243
Supreme Court Case No.:

STATE OF OHIO,
Appellee,
v.
SHANNON N. ARLEDGE,
Appellant,

On Appeal from the
Fairfield County Court
of Appeals, Fifth
Appellate District
Court of Appeals
Case No.: 14 CA 14

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT, SHANNON N. ARLEDGE**

Scott P. Wood (0063217)
DAGGER, JOHNSTON, MILLER,
OGILVIE & HAMPSON
144 East Main Street
P.O. Box 667
Lancaster, Ohio 43130-0667
(740) 653-6464
spwood@daggerlaw.com

Gregg Marx (0008068)
FAIRFIELD COUNTY PROSECUTOR'S OFFICE
239 West Main Street
Lancaster, Ohio 43130
(740) 652-7560

COUNSEL FOR APPELLEE,
STATE OF OHIO

COUNSEL FOR APPELLANT,
SHANNON N. ARLEDGE

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SUPREME COURT OF OHIO

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Proposition of Law:

A *sua sponte* continuance of a trial, necessitated by late discovery disclosure by the State, cannot be attributed to a defendant such that statutory speedy trial time is tolled, pursuant to R.C. §2945.72(E). However, such a continuance can toll speedy trial time pursuant to R.C. §2945.72(H) if properly and timely journalized by the trial court. (*State v. Mincy* (1982), 2 Ohio St. 3d 6, followed and applied.)

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APPENDIX

- Exhibit 1 Trial Court's Journal Entry - Motion to Dismiss
- Exhibit 2 Trial Court's Journal Entry - Findings of Fact and Conclusions of Law
- Exhibit 3 Trial Court's Judgment Entry of Sentence
- Exhibit 4 Fifth District Court of Appeals - Judgment Entry and Opinion

**EXPLANATION OF WHY THIS FELONY CASE IS A
CASE OF PUBLIC AND GREAT GENERAL INTEREST**

Less than one week prior to a felony jury trial, the State disclosed a tremendous amount of discovery information, including new witnesses and hours of recorded jail calls. Appellant moved to exclude this evidence at trial due to its late disclosure by the State. Without ruling on Appellant's motion to exclude, the trial court *sua sponte* continued the jury trial. However, the trial court did not journalize the continuance or the reasons supporting the continuance.

As a result of the trial court's *sua sponte* continuance, the jury trial was delayed 43 calendar days. Using the triple count provisions in R.C. §2945.71(E), because Appellant was being held in jail pending trial, 129 speedy trial days elapsed during that period, which if not tolled would have delayed trial beyond the statutory speedy trial requirements.

When Appellant moved to dismiss the charges based on a violation of her statutory speedy trial rights, the trial court overruled the motion.

When Appellant appealed to the Fifth District Court of Appeals, the appellate court found that the continuance was not a *sua sponte* continuance by the trial court pursuant to R.C. §2945.72(H), which would have required a proper and timely journal entry by the trial court. Instead, the appellate court found that the continuance was chargeable to Appellant and, therefore, was a speedy trial tolling event pursuant to R.C. §2945.72(E).

Appellant is asking this Court to accept this appeal not only to correct what Appellant submits to be an incorrect application of law by the appellate court below but, more importantly, to set forth a rule of law that avoids the potential for abuse by the State. The decision below creates an opportunity for the State to strategically disclose discovery late and, as a result, force a continuance on a defendant which, at the same time, tolls the defendant's statutory right to a speedy trial.

Appellant's Proposition of Law clarifies that if such a continuance is ordered by the trial court, it must be properly and timely journalized pursuant to this Court's long-standing rule of law as set forth in *State v. Mincy* (1982), 2 Ohio St. 3d 6.

STATEMENT OF THE CASE AND FACTS

On May 3, 2013, Appellant was indicted for the illegal manufacture of drugs, a felony of the second degree, in violation of R.C. §2925.04, and for the illegal assembly or possession of chemicals for the manufacture of drugs, a felony of the third degree, in violation of R.C. §2925.041, for conduct which allegedly occurred on April 25, 2013. This case was assigned Case Number 2013-CR-244. A jury trial was scheduled for July 30, 2013. Appellant was held in jail in lieu of bond, however, Appellant was also being held on an unrelated case.

On May 6, 2013, Appellant requested discovery from the State in Case Number 2013-CR-244.

On June 3, 2013, the State responded to Appellant's discovery request in Case Number 2013-CR-244.

On July 22, 2013, Appellant entered a plea in the unrelated case and was released from custody on that unrelated case. Therefore, as of July 22, 2013, Appellant was being held in jail only on Case Number 2013-CR-244.

On July 30, 2013, the date scheduled for jury trial, an oral hearing was held, wherein Appellant requested that voluminous evidence disclosed late by the State be excluded from trial. Instead of excluding the evidence, the jury trial was continued on the trial court's own motion. However, no Journal Entry was filed by the trial court regarding this continuance. A new jury trial date was scheduled for September 10, 2013.

On September 4, 2013, the State moved for a continuance of the jury trial in Case Number 2013-CR-244.

On September 6, 2013, while the State's motion to continue was still pending, the State indicted Appellant again for the same two offenses of illegal manufacturing of drugs and the

illegal assembly or possession of chemicals for the manufacture of drugs for the same conduct that occurred on April 25, 2013, and also for the additional charge of tampering with evidence for conduct that also allegedly occurred on April 25, 2013. This case was assigned Case Number 2013-CR-429, the underlying case in this appeal. A jury trial was scheduled for November 12, 2013.

On September 11, 2013, Appellant requested discovery in Case Number 2013-CR-429.

On September 12, 2013, the first indicted case, Case Number 2013-CR-244, was dismissed by the trial court upon the motion of the State.

On September 24, 2013, the State responded to Appellant's request for discovery in Case Number 2013-CR-429.

On November 8, 2013, Appellant filed a motion to dismiss based on a violation of Appellant's statutory right to a speedy trial.

On November 12, 2013, an oral hearing was held on Defendant's motion to dismiss. However, the State requested a continuance, which was granted by the trial court. A new hearing was scheduled for December 2, 2013.

On November 27, 2013, the State again requested a continuance of the oral hearing on Defendant's motion to dismiss which was, again, granted by the trial court. A new hearing was scheduled for December 13, 2013.

On December 13, 2013, an oral hearing was held on Defendant's motion to dismiss. After the hearing, the trial court took the matter under advisement.

On December 17, 2013, the trial court overruled Defendant's motion to dismiss, but did not specifically address how, when or why time was tolled. Attached and marked Exhibit 1 is the trial court's Journal Entry – Motion to Dismiss. A jury trial was scheduled for February 4, 2014.

On December 24, 2013, Appellant filed a request for findings of fact and conclusions of law with regard to the trial court's ruling on Defendant's motion to dismiss.

On February 4, 2014, the trial court filed its Findings of Fact and Conclusions of Law, wherein the trial court simply adopted wholesale the speedy trial calculations of the State. Attached and marked Exhibit 2 is the trial court's Journal Entry – Findings of Fact and Conclusions of Law.

On February 5, 2014, Appellant entered a no contest plea to all three charges in the indictment and was sentenced by the trial court to a prison sentence. Attached and marked Exhibit 3 is the Judgment Entry of Sentence.

On February 18, 2014, Appellant timely filed her Notice of Appeal with the Fifth District Court of Appeals.

On November 12, 2014, the Fifth District Court of Appeals affirmed the trial court. However, the reasoning of the appellate court was different than that set forth by the trial court and even different than that argued by the State. Attached and marked Exhibit 4 is the Opinion and Judgment Entry filed November 12, 2014.

In its decision, the Fifth District Court of Appeals found that there was no speedy trial violation because the trial court's continuance, although necessitated by the late discovery disclosure by the State, was somehow chargeable to Appellant and, therefore, tolled the statutory speedy trial time pursuant to R.C. §2945.72(E). In doing so, the appellate court below side stepped the well-settled law that a continuance by a trial court must be properly and timely journalized prior to the expiration of the speedy trial time.

On December 29, 2014, Appellant timely filed her Notice of Appeal in this Court, supported by her Memorandum in Support of Jurisdiction.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law:

A *sua sponte* continuance of a trial, necessitated by late discovery disclosure by the State, cannot be attributed to a defendant such that statutory speedy trial time is tolled, pursuant to R.C. §2945.72(E). However, such a continuance can toll speedy trial time pursuant to R.C. §2945.72(H) if properly and timely journalized by the trial court. (*State v. Mincy* (1982), 2 Ohio St. 3d 6, followed and applied.)

R.C. §2945.71(C)(2) requires that a person against whom a felony charge is pending must be brought to trial within 270 days after the person's arrest. Pursuant to R.C. §2945.71(E), each day a person is held in jail in lieu of bail on the pending charge shall be counted as three days. The time calculated for speedy trial purposes may be tolled by certain events delineated in R.C. §2945.72, including continuances granted as a result of defense motions and any reasonable continuance granted other than upon the request of the accused. Although R.C. §2945.72 does provide for situations wherein the time requirements for R.C. §2945.71 are extended, the time requirements of R.C. §2945.71 are mandatory and must be strictly construed against the State. *State v. Mays* (1996), 108 Ohio App 3d 598; *State v. Singer* (1977), 50 Ohio St. 2d 103. A failure to bring a person to trial within the statutory time limits requires a dismissal of the charge pursuant to R.C. §2945.73(B).

This Court has held that when new and additional charges arise from the same facts as the original charge, and the State knew of such facts at the time of the initial charge, the time within which a trial is to begin on the additional charges is subject to the same statutory limitations as applied to the original charge. *State v. Adams* (1989), 43 Ohio St. 3d 67; *State v. Broughton* (1991), 62 Ohio St. 3d 253; *State v. Baker* (1997), 78 Ohio St. 3d 108.

An accused presents a prima facie case for discharge based on speedy trial grounds by demonstrating that his case was pending for a time exceeding the statutory time limits provided

in R.C. §2945.71. *State v. Butcher* (1986), 27 Ohio St. 3d 28. The burden then shifts to the State to show that the time was extended or tolled under R.C. §2945.72. *Butcher, supra*.

Therefore, applying the test as set forth by this Court, the time that the charges were pending against Appellant from the first indictment in Case Number 2013-CR-244, must be added to the time that the charges were pending against Appellant from the second indictment in Case Number 2013-CR-429, in order to determine if the State failed to bring Appellant to trial within the statutory time period of 270 days.

For purposes of this appeal, Appellant breaks down the relevant time period into three chronological sections:

May 3, 2013 (date of indictment in Case Number 2013-CR-244) to July 30, 2013 (jury trial date for Case Number 2013-CR-244).

July 30, 2013 to September 24, 2013 (date State provided discovery in Case Number 2013-CR-429).

September 24, 2013 to November 8, 2013 (date Appellant filed Motion to Dismiss based on speedy trial).

With regard to the first time period referenced above, May 3, 2013 through July 30, 2013, the parties essentially agree on the speedy trial calculation. The State claims that 70 speedy trial days elapsed during this time period and Appellant submits that 76 speedy trial days passed during this first time period.

With regard to the third time period referenced above, September 24, 2013 through November 8, 2013, the parties agree on the speedy trial calculation, with both parties agreeing that 135 speedy trial days passed during this time period.

Therefore, the time period at issue in this case is the second time period referenced above, July 30, 2013 through September 24, 2013.

The lower courts below ruled that this entire time period (with the exception of one calendar day) was tolled due mostly to the continuance of the jury trial in Case Number 2013-CR-244 on July 30, 2013. Appellant submits that time was not tolled from July 30, 2013 through September 11, 2013 (the date Appellant filed for discovery in Case Number 2013-CR-429), and, therefore, 43 calendar days passed. Using the triple count provisions of R.C. §2945.71(E), Appellant submits that 129 speedy trial days should be charged to the State during this time period.

As a result, Appellant submits that 334 speedy trial days elapsed between May 3, 2013, the date of Appellant's initial indictment, and November 8, 2013, the date Appellant filed her motion to dismiss.

So the gravamen of this appeal is whether the continuance of the jury trial granted *sua sponte* by the trial court on July 30, 2013, in Case Number 2013-CR-244, is a tolling event for speedy trial purposes.

As set forth by the trial court in its Findings of Fact and Conclusions of Law, attached and marked Exhibit 2, at ¶¶17 and 18:

“17. Based on the representations and arguments of counsel for the State and Defendant at the time of the office conference on July 29, 2013 and the oral hearing on July 30, 2013, the court decided, and stated on the record, that the court believed it to be in the “best interests of justice” not to exclude evidence, but rather continue the trial in the case before it, Case Number 2013-CR-244;

18. There was no journal entry filed.”

The trial court, *sua sponte*, continued the jury trial on July 30, 2013, in lieu of excluding evidence that was disclosed late by the State. Appellant concedes that the continuance was, in almost every respect, reasonable. However, Appellant submits that because there was no entry journalizing the trial court's decision, the continuance was not a tolling event for speedy trial purposes.

This Court, on two distinct occasions, has set forth what the trial court should have done below. *State v. Mincy* (1982), 2 Ohio St. 3d 6; *State v. King* (1994), 70 Ohio St. 3d 158.

In *Mincy*, this Court stated in its syllabus that when a trial court *sua sponte* grants a continuance under R.C. §2945.72(H), the trial court must enter the order of continuance and the reasons therefore by journal entry prior to the expiration of the time limit prescribed in R.C. §2945.71 for bringing a defendant to trial. *Mincy, supra* at syllabus.

In *King*, this Court stated that a trial court may grant a continuance upon its own initiative pursuant to R.C. §2945.72(H) as long as it is reasonable and only when the continuance is made by journal entry prior to the expiration of the time limit. *King, supra* at 162.

Since the trial court did not file an entry journalizing the reasons for the *sua sponte* continuance of the July 30, 2013 jury trial date, the time that elapsed from that date should not have tolled for speedy trial purposes. As a result, on November 8, 2013, when Appellant filed her motion to dismiss, at least 334 speedy trial days had elapsed.

Although the trial court continued the jury trial on its own accord, without any request or input by Appellant and without journalizing the reasons for the continuance as required by *Mincy* and *King, supra*, the Fifth District Court of Appeals charged the continuance to Appellant pursuant to R.C. §2945.72(E), apparently due to the fact that Appellant requested that any late discovery disclosures by the State be excluded at trial. Even though the late discovery disclosures by the State was what created the situation and prompted Defendant's motion to exclude, the appellate court below did not charge the continuance to the State and did not hold that the continuance was a *sua sponte* continuance by the trial court, which would have required the filing of a journal entry.

As set forth above, Appellant submits that the appellate court below misapplied the law and creates a potentially abusive situation for prosecutors to delay trials and toll a defendant's right to a speedy trial by simply disclosing discovery on the eve of trial.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests this Court to accept this case to vacate the misapplication of law by the Fifth District Court of Appeals below and avoid precedent which creates a situation for potential abuse by the State.

Respectfully submitted,



Scott P. Wood (0063217)
DAGGER, JOHNSTON, MILLER,
OGILVIE & HAMPSON, LLP
144 East Main Street
P.O. Box 667
Lancaster, Ohio 43130
spwood@daggerlaw.com
Counsel for Appellant,
Shannon N. Arledge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum In Support of Jurisdiction has been served by ordinary U.S. mail service, postage prepaid, on Gregg Marx, Fairfield County Prosecutor's, 239 West Main Street, Suite 101, Lancaster, Ohio 43130, on this 29th day of December, 2014.



Scott P. Wood (0063217)
Counsel for Appellant,
Shannon N. Arledge

APPENDIX

- Exhibit 1 Trial Court's Journal Entry - Motion to Dismiss
- Exhibit 2 Trial Court's Journal Entry - Findings of Fact and Conclusions of Law
- Exhibit 3 Trial Court's Judgment Entry of Sentence
- Exhibit 4 Fifth District Court of Appeals - Judgment Entry and Opinion

IN THE COURT OF COMMON PLEAS
FAIRFIELD COUNTY, OHIO

FILED

2013 DEC 17 PM 1:50

State of Ohio,

:

Plaintiff,

v.

:

Case No.: 2013-CR-429

Shannon N. Arledge,

Judge Chris A. Martin

Defendant.

:

JOURNAL ENTRY-MOTION TO DISMISS

This matter came on for consideration on the Defendant's Motion to Dismiss filed Friday, November 8, 2013 at 2:41 p.m.

This motion came on for oral hearing on November 12, 2013. The hearing was continued at the request of the State. The Defendant did not oppose the continuance. The hearing was reset for December 2, 2013. That hearing was continued as a result of the State's motion. The hearing was reset for December 13, 2013 at 8:00 a.m.

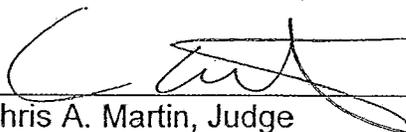
The State filed a Memorandum Regarding the Calculation of Speedy Trial Time on December 13, 2013 at 8:00 a.m.

At the conclusion of the hearing, the court took the motion under advisement.

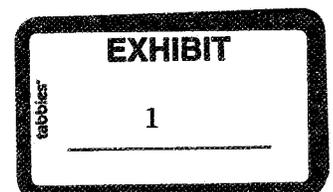
After reviewing the pleadings, the testimonial evidence presented at the oral hearing, and the applicable law, the court overrules the Defendant's Motion to Dismiss.

The case is ordered set for trial.

It is so Ordered.


Chris A. Martin, Judge

Copy:
↳ Scott P. Wood, Attorney for Defendant
Gregg Marx, Fairfield County Prosecuting Attorney



IN THE COURT OF COMMON PLEAS
FAIRFIELD COUNTY, OHIO

FILED

2014 FEB -4 PM 2:36

CLERK OF COURTS
FAIRFIELD CO. OHIO

State of Ohio,

:

Plaintiff,

v.

:

Case No.: 2013-CR-429

Shannon N. Arledge,

Judge Chris A. Martin

Defendant.

:

JOURNAL ENTRY-MOTION TO DISMISS
CRIMINAL RULE 12(F) FINDINGS OF FACT
CONCLUSIONS OF LAW AND DECISION

This matter is before the court as a result of the Defendant's Request for Findings of Fact and Conclusions of Law filed December 24, 2013.

FINDINGS OF FACT

1. The Defendant was arrested on April 25, 2013 on an outstanding warrant on a case unrelated to any of the proceedings at issue;
2. At the time of her arrest, the Defendant was believed to be participating in the Illegal Manufacture of Drugs and the Illegal Assembly or Possession of Chemicals for the Manufacture of Methamphetamine;
3. On April 25, 2013, the arresting officers, members of the Fairfield County Street Crimes Reduction and Apprehension Program (SCRAP) Unit of the Fairfield County Sheriff's Office and the Fairfield-Hocking Major Crimes Unit (MCU), had no knowledge or suspicion that the Defendant had committed an offense of Tampering with Evidence;
4. On May 3, 2013, the Defendant was indicted for Illegal Manufacture of Drugs and Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs;
5. This Indictment was assigned Case No. 2013-CR-244;
6. This case was set for trial to begin Tuesday, July 30, 2013;

EXHIBIT

2

tabbiter

7. Discovery issues arose and days before the trial, Defendant's Counsel, Scott P. Wood, requested an office conference with Counsel for the State and the court;
8. The conference was held on Monday, July 29, 2013;
9. The Defendant not being present, no record was made of the office conference;
10. The court, directed that an oral hearing be held to make a record of the proceedings and to allow the Defendant to be present;
11. The oral hearing was held on July 30, 2013;
12. Assistant Prosecuting Attorneys Jocelyn Kelly and Darcy Cook were present. Also present were the Defendant and her Counsel, Scott Wood;
13. The State represented to the court that jail calls had been made by the Defendant over the weekend of July 26, 2013;
14. The State also alleged that during the telephone calls the Defendant made statements which would give rise to a new charge or Tampering with Evidence;
15. The Defendant, through Counsel, limited her request for exclusion of evidence to evidence provided within seven days of trial;
16. There were also statements made by Counsel for the State regarding the reasons for the lateness of the furnishing of some of the discovery, and what the State planned to do , in short order, to expedite the completion of full disclosure of evidence to the Defendant;
17. Based on the representations and arguments of Counsel for the State and Defendant at the time of the office conference on July 29, 2013 and the oral hearing on July 30, 2013, the court decided, and stated on the record, that the court believed it to be in the "best interests of justice" not to exclude evidence, but rather continue the trial in the case before it, Case No. 2013-CR-244;
18. There was no journal entry filed;

19. On August 7, 2013, a Notice was filed resetting the case for trial to begin September 10, 2013;

20. On September 4, 2013, Assistant Prosecuting Attorney, Jocelyn Kelly, filed a Motion for Continuance of the trial "...for the reason that additional charges will be presented to the grand jury on Friday, September 6, 2013."

21. The Assistant Prosecuting Attorney also furnished the court with a Memorandum Regarding the Calculation of Speedy Trial Time;

22. The next pleading filed was on September 9, 2013, Defendant's Motion to Withdraw as Counsel of Record due to conflict of interests for the reason that Defense counsel was notified by the State that it intended to file a charge of Failure to Appear against the Defendant as a result of an unrelated case, Fairfield County Common Pleas Court Case No.: 2011-CR-495;

23. The Motion to Withdraw as Counsel of Record was approved and a Journal Entry was filed September 10, 2013;

24. On September 12, 2013, a Nolle Prosequi was filed in Case No. 2013-CR-244 for the reason that "...the Defendant was reindicted in Case Number 2013-CR-429";

25. The Indictment in Case No.: 2013-CR-429 was filed September 6, 2013 and included the two original charges filed in Case No. 2013-CR-244, and an additional charge of Tampering with Evidence;

26. On September 11, 2013, Scott Wood entered an appearance as Counsel for the Defendant and a Demand for Discovery;

27. An arraignment was held on September 11, 2013;

28. A pretrial was held October 14, 2013;

29. A jury trial was set for November 12, 2013;

30. A Request for Jury Instructions was filed by the State on November 6, 2013;

31. A Bill of Particulars was filed by the State on November 6, 2013;
32. On November 8, 2013, the Defendant filed Defendant's Motion to Dismiss;
33. An oral hearing on the Motion to Dismiss was set for November 12, 2013;
34. At the oral hearing, the Prosecuting Attorney represented to the court that this was a complicated matter and evidence would be presented. It was estimated that the hearing would take two hours;
35. The court was preparing to begin a jury trial;
36. The hearing was continued at the request of the State with no opposition from the Defendant;
37. The reasons for the continuance are on the record and a Journal Entry was filed November 20, 2013;
38. The hearing was reset to December 2, 2013;
39. Due to unavailability of witnesses, the State filed a Motion for Continuance on November 27, 2013;
40. The Entry of Continuance was filed December 3, 2013;
41. The hearing was reset to December 13, 2013;
42. At the time of the scheduled hearing, 8:00 a.m., the State filed a Memorandum Regarding the Calculation of Speedy Trial Time;
43. The court did not have time to review the State's Memorandum since it was filed minutes before the hearing started;
44. The hearing was held on December 13, 2013 and was completed in less than twenty-nine minutes;
45. Three witnesses testified for the State: Detective Lyle Campbell; Investigator Scott Hargrove; and Assistant Fairfield County Prosecuting Attorney. The following evidence was produced:

- A. Detective Lyle Campbell, Fairfield Hocking Major Crimes Unit and Street Crimes and Apprehension Program Officer arrested the Defendant on April 25, 2013 on an outstanding warrant from Case No. 2011-CR-495;
- B. Detective Lyle Campbell was not aware of any evidence of a potential Tampering with Evidence offense until late the summer of 2013;
- C. The Defendant's first arrest and detention on the issues before the court was as a result of the Indictment issued May 3, 2013;
- D. Investigator Scott Hargrove of the Fairfield County Prosecutor's Office pulled jail calls related to a co-defendant, Bruce Byers and the Defendant, Shannon Arledge;
- E. The calls made by Shannon Arledge were made in late July, 2013;
- F. Investigator Hargrove did not review the calls so he could not say what was on the calls;
- G. Assistant Prosecuting Attorney Jocelyn Kelly was assigned to the Bruce Byers and Shannon Arledge cases;
- H. Prosecutor Kelly was not aware of the Tampering with Evidence information until the calls were made by Shannon Arledge and reviewed, both in late July, 2013;
- I. In one of the calls, Shannon Arledge stated that she had poured cleaning solution on the material in a shed when she saw law enforcement come onto the property (in late April, 2013);
- J. The State and defense engaged in efforts to resolve the case (2013-CR-244) between late July and September, 2013;
- K. No additional evidence of Illegal Manufacturing of Drugs or Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs were derived from the phone calls;
- L. Assistant Prosecutor Kelly acknowledged and explained the discrepancy between the State's two calculations of speedy trial submitted to the court;
- M. Except for evidence produced on cross examination, the Defendant rested on the Motion to Dismiss.

46. At the conclusion of the hearing, the court took the matter under advisement;

47. Neither the State nor the Defendant requested that the court issue Findings of Fact and Conclusions of Law in any pleading or at any time during the oral hearing conducted on December 13, 2013;

48. The court issued its decision on December 17, 2013. See Journal Entry-Motion to Dismiss stating: "After reviewing the pleadings, the testimonial evidence presented at the oral hearing, and the applicable law, the court overrules the Defendant's Motion to Dismiss.";

49. The court ordered the case set for trial. See Journal Entry-Motion to Dismiss filed December 17, 2013;

50. By Notice filed December 23, the trial was set for February 4, 2014;

51. The Defendant filed Defendant's Request for Findings of Fact and Conclusions of Law on December 24, 2013.

CONCLUSIONS OF LAW

1. The law cited by the Defendant in her Memorandum filed November 8, 2013, is an accurate representation of the law;

2. The law cited by the State in its Memorandum filed December 13, 2013, is an accurate representation of the law;

3. The court applied a preponderance of the evidence standard to the witnesses' testimony during the hearing held December 13, 2013;

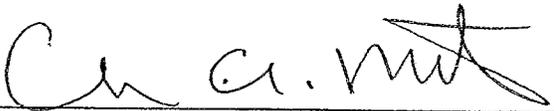
4. The court applied the tests of credibility when judging evidence which this court has read to jurors (OJI) well over one hundred fifty times;

DECISION

After reviewing the written records in Case Nos.: 2013-CR-244 and 2013-CR-429 (pleadings, including Exhibits), the testimonial evidence presented at the oral hearing held in Case No.: 2013-CR-429 and the arguments presented at the oral hearing in Case No.: 2013-CR-244, and the applicable law, the court adopts the timetable as outlined in the

State's Memorandum filed December 13, 2013, and overrules the Defendant's Motion to Dismiss filed November 8, 2013.

It is so Ordered.


Chris A. Martin, Judge

Copy:

✓ Scott P. Wood, Attorney for Defendant
Gregg Marx, Fairfield County Prosecuting Attorney

FILED
IN THE COURT OF COMMON PLEAS OF FAIRFIELD COUNTY, OHIO

The State of Ohio, 2014 FEB -7 AM 8: 15

Case No. 2013-CR-0429
Judge Chris A. Martin

-vs-

CLERK OF COURTS
FAIRFIELD CO. OHIO

Shannon N. Arledge,

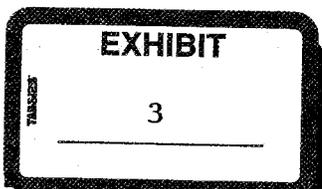
Defendant.

JUDGMENT
ENTRY OF SENTENCE

Date of Plea:	February 5, 2014
Offense and Degree:	Illegal Manufacture of Drugs, F2 Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, F3 Tampering with Evidence, F3
Date of Sentencing: Sentence:	February 5, 2014 ORW 24 months as to Count Two (Counts One and Two merged for sentencing) 30 months as to Count Three, sentences consecutive to each other and consecutive to any other sentence imposed, including, but not limited to, Case No. 2011-CR-495, costs, 36 months community control as to Count Three to begin upon release from prison as to Count Two.
Fine:	None
Jail Credit:	197 Days as to Count Two

On February 5, 2014, Darcy T. Cook, Assistant Prosecuting Attorney of Fairfield County, Ohio, appeared on behalf of the State of Ohio, and the Defendant, Shannon N. Arledge, appeared with her counsel, Scott P. Wood.

On September 6, 2013, the Defendant was indicted by the Grand Jury of Fairfield County, Ohio, during the Third Part of the 2013 Term, for one count of Illegal Manufacture of Drugs, in violation of §2925.04(A) and (C)(3)(a) of the Ohio Revised Code, one count of Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, in violation of §2925.041 of the Ohio Revised Code, and one count of Tampering with Evidence, in violation of §2921.12(A)(1) of the Ohio Revised Code.



On September 11, 2013, the Defendant was arraigned on this Indictment and entered a plea of not guilty to the counts as charged in the Indictment.

On the date first mentioned, the Defendant appeared with her counsel and withdrew her previously entered plea of not guilty to Counts One, Two and Three charged in the Indictment, and entered a plea of no contest as to Counts One, Two and Three charged in the Indictment. Prior to the court's acceptance of the Defendant's change of plea, the Court personally addressed the Defendant and advised the Defendant of all the information and rights as required by Rule 11 of the Ohio Rules of Criminal Procedure. The Defendant indicated to the Court that she understood these rights and waived them orally and in writing. The Defendant further stated on the record that she is a citizen of the United States. The Defendant stipulated to the existence of facts sufficient for a finding of guilt. The Court then found the Defendant guilty on all counts. The Court then determined that the Defendant's pleas of no contest to Counts One, Two and Three charged in the Indictment was made knowingly, voluntarily, and intelligently.

The Court accepted the Defendant's plea and found that the Defendant is guilty of one count of Illegal Manufacture of Drugs, in violation of §2925.04(A) and (C)(3)(a) of the Ohio Revised Code, a felony of the second degree, one count of Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, in violation of §2925.041 of the Ohio Revised Code, a felony of the third degree, and one count of Tampering with Evidence, in violation of §2921.12(A)(1) of the Ohio Revised, a felony of the third degree.

On the date first mentioned, the Defendant waived his right to a separate hearing for purposes of sentencing. The Court accepted the Defendant's waiver of separate

GREGG MARX
PROSECUTING
ATTORNEY
FAIRFIELD COUNTY, OHIO

CRIMINAL, JUVENILE, and
CIVIL DIVISIONS
239 West Main Street
Suite 101
Lancaster, Ohio 43130
(740) 652-7560
(614) 322-5265
FAX (740) 653-4708

sentencing as made knowingly, voluntarily, and intelligently. The Defendant's sentencing was held pursuant to Ohio Revised Code §2929.19. Darcy T. Cook, Assistant Prosecuting Attorney, and Scott P. Wood, counsel for the Defendant, were present, as was the Defendant, Shannon N. Arledge, who was afforded all rights, pursuant to Criminal Rule 32. The Court has considered the record, oral statements, any victim impact statement, and presentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11.

The Court further notified the Defendant that post-release control is optional in this case for a period of 3 years, as well as the consequences for violating conditions of post-release control imposed by the Parole Board. The Court further notified the Defendant of all the items contained in Ohio Revised Code §2929.19(B)(3)(c), (d), (e), and (f). The Court further notified the Defendant that if a period of supervision by the Parole Board is imposed following the Defendant's release from prison and if the Defendant violates that supervision, or conditions of post-release control, that the Parole Board may impose a prison term as part of the sentence of up to one-half of the stated prison term originally imposed upon the Defendant. The Defendant is ordered to serve as part of her sentence any term of post-release control imposed by the Parole Board and any prison term for violation of that post-release control.

The Court further advised the Defendant that if she were on post release control and if she were convicted of a new felony while on post release control, the sentencing judge in the new felony case could, in addition to the sentence for the new case, order her to serve the balance of her post-release control time and that said sentences could be

GREGG MARX
PROSECUTING
ATTORNEY
FAIRFIELD COUNTY, OHIO

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(740) 652-7560
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consecutive to the time ordered in the new felony.

For the reasons stated on the record, the Court finds that the sentence imposed is consistent with the principles and purposes of sentencing pursuant to Ohio Revised Code §2929.11.

The Court found that Count One and Count Two are allied offenses of similar import and merge for the purposes of sentencing. The State elected to have the Defendant sentenced as to Count Two.

It is therefore ORDERED that the Defendant serve a stated prison term in the Ohio Reformatory for Women, Marysville, Ohio, of 24 months as to Count Two, serve a stated prison term of 30 months as to Count Three, and pay the costs of prosecution. The Court ordered that said sentences are to be served consecutively to each other and to all other sentences imposed, including, but not limited to Case No. 2011-CR-495, pursuant to §2929.14(C)(4)(a) of the Ohio Revised Code.

The Court waived the \$25.00 application fee.

On considering the principles and purposes of the sentencing statute, the Court, using its discretion, finds for the reasons stated on the record that as to Count Three:

1. A community control sanction will adequately punish the Defendant and protect the public.

It is therefore ORDERED that as to Count Three the Defendant be sentenced to thirty-six (36) months of community control subject to the general supervision of the Adult Community Control Department under any terms and conditions that they deem appropriate, including that the Defendant shall be prohibited from leaving the State of

GREGG MARX
PROSECUTING
ATTORNEY
FAIRFIELD COUNTY, OHIO

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Ohio without permission of the Court or the Adult Community Control Department. The Defendant shall abide by all laws including, but not limited to, the laws related to firearms and dangerous ordnance. The Court further ORDERS specific sanctions and conditions upon the Defendant, a copy of which is attached hereto and made a part of this Entry as fully as if written herein. Further, the Court ordered as additional terms of the Defendant's community control: (1) Defendant be evaluated for substance abuse and follow through and successfully complete any recommendations; (2) Defendant to be evaluated for anger management and follow through and successfully complete any recommendation; (3) Defendant to have no contact, either directly or indirectly, with her co-defendant B.B. and/or State's witnesses S.V. and/or L.B. The Court further retained the right to impose the original sentence if the Defendant violates her conditions of community control. Said term of community control shall begin upon her release from prison as to Count Two. Defendant to report back to this Court upon 48-hours of her release from prison.

The Court further ORDERS the Defendant to report to the Adult Community Control Department, and be responsible for any supervision fees permitted, pursuant to Ohio Revised Code §2929.18(A)(4). Judgment is hereby granted for the State of Ohio against the Defendant for those costs.

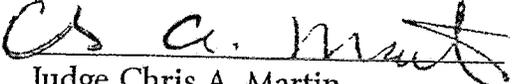
Defendant to be given credit for 197 days previously served in this matter as of February 5, 2014, and all additional days served while awaiting transportation to the state penal institution, to be applied to Count Two.

The Court further ordered, all drugs and drug paraphernalia seized from the Defendant by the Fairfield-Hocking Major Crimes Unit shall be forfeited, and it is the ORDER of this Court that said contraband shall be destroyed. The Fairfield-Hocking

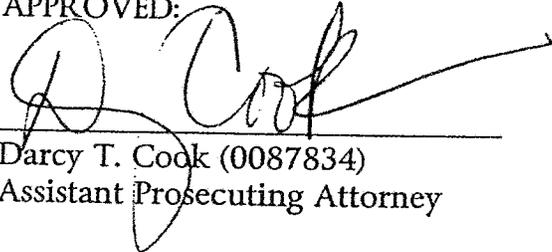
Major Crimes Unit shall provide a receipt to the Court once said property has been destroyed.

Any property which is in the possession of the investigating agency shall be returned to its rightful owner, or disposed of pursuant to the investigating agency's Internal Control Policy.

Defendant is to pay the costs of prosecution of this case as determined by the Fairfield County Clerk of Courts. Judgment is hereby granted for the State of Ohio against the Defendant for those costs.


Judge Chris A. Martin

APPROVED:


Darcy T. Cook (0087834)
Assistant Prosecuting Attorney

YOU ARE HEREBY NOTIFIED THAT YOU HAVE BEEN CONVICTED OF A FELONY DRUG ABUSE OFFENSE AND PURSUANT TO §2923.13 OF THE OHIO REVISED CODE YOU ARE PROHIBITED FROM ACQUIRING, HAVING, CARRYING, OR USING ANY FIREARM OR DANGEROUS ORDNANCE.

GREGG MARX
PROSECUTING
ATTORNEY
AIRFIELD COUNTY, OHIO

**CRIMINAL, JUVENILE, and
CIVIL DIVISIONS**
239 West Main Street
Suite 101
Lancaster, Ohio 43130
(740) 652-7560
(614) 322-5265
FAX (740) 653-4708

S. Wood

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED

2014 NOV 12 PM 12:54

BRANDEN C. MEYER
CLERK OF COURTS
FAIRFIELD CO. OHIO

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHANNON N. ARLEDGE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 14 CA 14

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 13 CR 429

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

GREGG MARX
PROSECUTING ATTORNEY
JAMES A. DAVEY
ASSISTANT PROSECUTOR
239 West Main Street, Suite 101
Lancaster, Ohio 43130

For Defendant-Appellant

SCOTT P. WOOD
DAGGER, JOHNSTON, MILLER
OGILVIE & HAMPSON
144 East Main Street
Post Office Box 667
Lancaster, Ohio 43130

Wise, J.

{¶1} Appellant Shannon N. Arledge appeals her conviction and sentence entered in the Fairfield County Court of Common Pleas on one count of illegal manufacture of drugs, one count of illegal assembly or possession of chemicals for the manufacture of drugs and one count of tampering with evidence, following a plea of no contest.

{¶2} Appellee is State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On May 3, 2013, Appellant Shannon N. Arledge was indicted by the Fairfield County Grand Jury on one count of illegal manufacture of drugs, a felony of the second degree, in violation of R.C. §2925.04, one count of illegal assembly or possession of chemicals for the manufacture of drugs, a felony of the third degree, in violation of R.C. §2925.041, for conduct which allegedly occurred on April 25, 2013. This case was assigned Case Number 2013-CR-244. A jury trial was scheduled for July 30, 2013.

{¶4} Appellant was held in jail in lieu of bond. However, Appellant was also being held on an unrelated case.

{¶5} On May 6, 2013, Appellant requested discovery from the State in Case Number 2013-CR-244.

{¶6} On June 3, 2013, the State responded to Appellant's discovery request in case Number 2013-CR-244.

{¶17} On July 22, 2013, Appellant entered a plea in the unrelated case and was released from custody on that unrelated case. Therefore, as of July 22, 2013, Appellant was being held in jail only on Case Number 2013-CR-244.

{¶18} On July 30, 2013, the date scheduled for jury trial, an oral hearing was held, wherein Appellant requested that evidence disclosed late by the State be excluded from trial. Instead of excluding the evidence, the trial court *sua sponte* continued the jury trial. No Journal Entry was filed by the trial court regarding this continuance. A new jury trial date was scheduled for September 10, 2013.

{¶19} On September 4, 2013, the State moved for a continuance of the jury trial in Case Number 2013-CR-244.

{¶110} On September 6, 2013, while the State's Motion to Continue was still pending, the State indicted Appellant again for the same two offenses of illegal manufacturing of drugs and illegal assembly or possession of chemicals for the manufacture of drugs for the same conduct that occurred on April 25, 2013, and also for an additional charge of tampering with evidence for conduct that also allegedly occurred on April 25, 2013. This case was assigned Case Number 2013-CR-429, the underlying case in this appeal. A jury trial was scheduled for November 12, 2013.

{¶111} On September 11, 2013, Appellant requested discovery in Case Number 2013-CR-429.

{¶112} On September 12, 2013, the first indicted case, Case Number 2013-CR-244, was dismissed by the trial court upon motion of the State.

{¶113} On September 24, 2013, the State responded to Appellant's request for discovery in Case Number 2013-CR-429.

{¶14} On November 8, 2013, Appellant filed a Motion to Dismiss based on a violation of Appellant's statutory right to a speedy trial.

{¶15} On November 12, 2013, an oral hearing was held on Defendant's Motion to Dismiss. However, the State requested a continuance, which was granted by the trial court. A new hearing was scheduled for December 2, 2013.

{¶16} On November 27, 2013, the State again requested a continuance of the oral hearing on Defendant's Motion to Dismiss which was, again, granted by the trial court. A new hearing was scheduled for December 13, 2013.

{¶17} On December 13, 2013, an oral hearing was held on Defendant's Motion to Dismiss. After the hearing, the trial court took the matter under advisement.

{¶18} On December 17, 2013, the trial court overruled Defendant's Motion to Dismiss. A jury trial was scheduled for February 4, 2014.

{¶19} On December 24, 2013, Appellant filed a Request for Findings of Fact and Conclusions of Law with regard to the trial court's ruling on Defendant's Motion to Dismiss.

{¶20} On February 4, 2014, the trial court filed its Findings of Fact and Conclusions of law.

{¶21} On February 5, 2014, Appellant entered a no-contest plea to all three charges in the indictment and was sentenced by the trial court to a prison sentence.

{¶22} Appellant now appeals to this Court, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶23} "I. THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO DISMISS BASED ON A VIOLATION OF HER RIGHT TO A STATUTORY SPEEDY TRIAL."

I.

{¶24} In her sole Assignment of Error, Appellant argues that the trial court erred in denying her motion to dismiss. We disagree.

{¶25} Appellant's motion was based on a violation of her right to a speedy trial.

{¶26} The right to a speedy trial is a fundamental right of a criminal defendant that is guaranteed by the United States and Ohio Constitutions. Sixth Amendment to the U.S. Constitution; Ohio Constitution, Article I, Section 10; *State v. Ramey*, 132 Ohio St.3d 309, 2012–Ohio–2904, ¶ 14. In Ohio, an accused has a statutory right to a speedy trial. *State v. Jackson*, 9th Dist. Lorain No. 11CA010012, 2012–Ohio–3524, ¶ 8. Speedy trial statutes "constitute a rational effort to enforce the constitutional right to a public speedy trial of an accused charged with the commission of a felony or a misdemeanor." *State v. Pachay*, 64 Ohio St.2d 218 (1980), syllabus. Accordingly, "[t]he prosecution and the trial courts have a mandatory duty to try an accused within the time frame provided by the statute" and "[s]trict compliance with the statute is required." *Ramey* at ¶ 14. A person charged with a felony must be brought to trial within 270 days of his or her arrest and each day the accused is held in jail in lieu of bail will be counted as three days. R.C. 2945.71(C)(2); R.C. 2945.71(E). The accused's speedy trial clock begins to run on the day after arrest or service of summons. *State v. Szorady*, 9th Dist. Lorain No. 02CA008159, 2003–Ohio–2716, ¶ 12. "However, R.C. 2945.72 lists various events that

will toll the running of the speedy-trial clock.” *State v. Stevens*, 9th Dist. Lorain No. 11CA009995, 2012–Ohio–4095, ¶ 5. “In addition to meticulously delineating the tolling events, the General Assembly jealously guarded its judgment as to the reasonableness of delay by providing that time in which to bring an accused to trial ‘may be extended only by’ the events enumerated in R.C. 2945.72(A) through (I).” *Ramey* at ¶ 24, quoting R.C. 2945.72. Thus, the “ ‘extensions are to be strictly construed, and not liberalized in favor of the state.’ ” *Ramey* at ¶ 24, quoting *State v. Singer*, 50 Ohio St.2d 103, 109 (1977).

{¶27} As stated above, under R.C. §2945.72, speedy-trial time may be tolled by several events, including the following:

{¶28} (D) Any period of delay occasioned by the neglect or improper act of the accused;

{¶29} (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;

{¶30} * * *

{¶31} (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[.]

{¶32} In the instant case, the relevant time periods for speedy trial calculations are:

{¶33} May 3, 2013 – July 30, 2013 (date of indictment to jury trial date in Case No. 2013-CR-244);

{¶34} July 30, 2013 – September 24, 2013 (date discovery provided by State in Case No. 2013-CR-429); and

{¶35} September 24, 2013 – November 8, 2013 (date Appellant filed Motion to Dismiss);

{¶36} As to the first time period, May 3 - July 30, the parties claim 70 days elapsed and Appellant claims 76 days elapsed.

{¶37} As to the third time period, Sept. 24 - Nov. 8, the parties agree 135 days elapsed.

{¶38} The relevant time period at issue is therefore the second time period from July 30 – Sept. 24. The State claims that all but one calendar day was tolled due to the continuance of the jury trial in Case No. 2013-CR-244 on July 30, 2013. Appellant argues that the time between July 30 – Sept. 11, when it requested discovery, was not tolled and therefore 43 calendar days had elapsed. Using the triple count provisions, Appellant submits that 129 speedy trial days should be charged against the State during this time period. During the entire pendency of the case, Appellant remained in jail and was thus entitled to the benefit of the triple-count provision in R.C. §2945.71(E), requiring that the case be tried within 90 days.

{¶39} The focus of this appeal is whether the continuance of the jury trial on July 30, 2013, in Case No. 2013-CR-244, tolled the time in this case for speedy trial purposes. Upon review, we find that it did.

{¶40} Appellant argues that the continuance in this matter was granted *sua sponte*. *Sua sponte* continuances are continuances “granted other than upon the accused's own motion.” Pursuant to R.C. §2945.72(H) a court may grant a continuance

upon its own initiative as long as it is reasonable. This provision has been interpreted to permit courts to *sua sponte* continue an accused's trial beyond the time limit prescribed by R.C. §2945.71, but only when reasonable and only when the continuances are made by journal entry prior to the expiration of the time limit. *State v. Mincy* (1982), 2 Ohio St.3d 6, 9, 2 OBR 282, 441 N.E.2d 571.

{¶41} Upon review of the transcript from the July 30, 2013, oral hearing, we find the continuance in this matter was actually necessitated by Appellant's motion to exclude evidence.

{¶42} The trial court had a conference with counsel in chambers the day before the scheduled trial in this matter. The following day, July 30, 2013, the day scheduled for the jury trial to begin, the trial court held an oral hearing on the discovery issues raised during the "in chambers" conference. The transcript of the oral hearing contains the following exchange:

MR. WOOD: Thank you, Your Honor. I did ask for a meeting yesterday to discuss some discovery issues. As indicated yesterday in chambers...We got the original discovery response June 3rd and the first supplement June 17th.

"Then in the last 13 days, we have received a tremendous amount of discovery. Beginning with July 17th, we got the NPLEX records, six days ago, July 24th, two more witnesses were disclosed. July 25th, five days ago, five witnesses were disclosed without names...

So over the last 13 days, the Defense has received a tremendous amount of discovery, specifically the last six days. And so yesterday, I

asked the Court to exclude all evidence from trial that was disclosed within the last seven days, the last week. And that was the issue I brought before the Court.

THE COURT: When did you receive the NPLEX records?

MR. WOOD: The NPLEX records were 13 days ago, July 17th.

THE COURT: Okay. So you're not asking that those be - - -

MR. WOOD: I think two weeks before trial is reasonable. I put the cut-off at - - a week before trial is where I'm asking the Court to draw the line.

THE COURT: Okay. Thank you, Mr. Wood. (T. at 4-6).

...

MR. KELLY: ...We think that the Court, as it stated yesterday, followed the requirement that the least restrictive sanction be imposed and granted the Defendant a continuance to have time to hear the jail calls. ...

And so we agree with the Court that a continuance is the least restrictive sanction and ask that we be allowed to introduce that evidence when this case is reset, ...

THE COURT: In the interest of justice, the Court is going to continue the jury trial in this case to a later date. (T. at 7- 8).

{¶43} Based on the foregoing, we find that the delay caused by Appellant's request for exclusion of evidence is addressed by R.C. §2945.72(E), while a trial court's *sua sponte* continuance is the subject of R.C. 2945.72(H). *Mincy* applies to *sua sponte* continuances under R.C. §2945.72(H), not to delays caused by a defendant's own motion under R.C. §2945.72(E). The time requirement that *Mincy* imposes prevents

attempts to revive the statutory speedy-trial time after it has expired. The journalization of reasons is necessary to permit the appellate court to determine whether, on the accused's claim that his statutory speedy-trial rights were violated, the period of delay resulting from the sua sponte continuance was nevertheless "reasonable." R.C. §2945.72(H). That reasonableness requirement distinguishes R.C. 2945.72(H) from R.C. §2945.72(E), which instead requires that the period of delay be "necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused."

{¶144} "When a period of delay resulting from a continuance follows and has an apparent connection with a motion or other action of the accused, the presumption of regularity creates a corresponding presumption that the period of delay was "necessitated" for purposes of R.C. 2945.72(E). In that circumstance, the court is not required to also journalize an order making that finding. An accused who claims that his speedy-trial rights were nevertheless violated bears the burden to rebut the presumption by demonstrating that the period of delay was not necessitated by his own motion or action. It is not sufficient merely to point out that his statutory speedy-trial time otherwise expired." *State v. Marbury*, 192 Ohio App.3d 210, 2011-Ohio-879.

{¶145} "The distinction appears to be based upon the greater opacity of *sua sponte* continuances, which descend upon a defendant out of the blue. When an action taken by a defendant makes it reasonably necessary for a delay, that necessity should be apparent, although a trial court must still find the delay to have been reasonably necessary if the defendant moves to dismiss upon speedy-trial grounds." *Id.*

{¶46} In the present case, Appellant's request for exclusion of evidence based on discovery issues made the day before the scheduled trial necessitated the period of delay in this matter, thereby tolling his statutory speedy-trial time pursuant to R.C. §2945.72(E).

{¶47} Based on the foregoing, we find that the trial court did not err in denying Appellant's motion to dismiss in this matter.

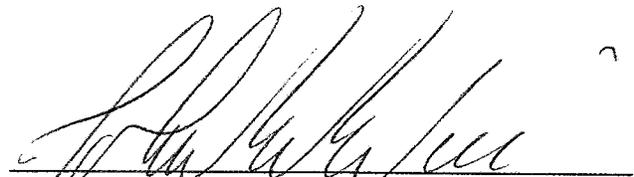
{¶48} Appellant's sole Assignment of Error is overruled

{¶49} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed.

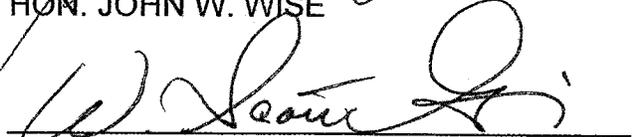
By: Wise, J.

Gwin, P. J., and

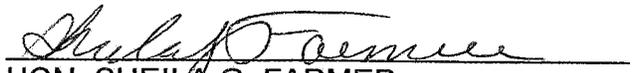
Farmer, J., concur.



HON. JOHN W. WISE



HON. W. SCOTT GWIN



HON. SHEILA G. FARMER