

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO,

Appellee,

vs.

SHANNON N. ARLEDGE,

Appellant.

CASE NO. 14-2243

On Appeal from the Fairfield
County Court of Appeals,
Fifth Appellate District

Court of Appeals
Case No. 14-CA-14

MEMORANDUM IN RESPONSE

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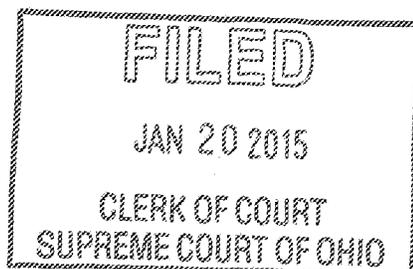
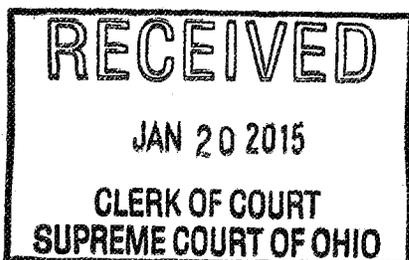


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EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND WHY LEAVE TO APPEAL SHOULD BE DENIED

This case presents this Court with an issue where the Appellant while represented by current counsel appeared in Court at an oral hearing to discuss an issue that Appellant had raised shortly before a jury trial was scheduled to begin. At the oral hearing the trial court stated on the record that “the trial was being continued in the interests of justice.”

A new jury trial was promptly scheduled, however the trial court did not prepare a formal entry of continuance. The issue that would be considered if this Court were to grant jurisdiction (which appellee is not arguing), is whether a trial court’s on the record order of continuance that was not immediately journalized violated Appellant’s due process rights.

Logic and fairness should illustrate to this Court why this case does not support leave to appeal. Appellant made several potentially incriminating telephone calls less than ten days before jury trial was scheduled to begin. The State promptly disclosed the calls to Appellant’s counsel.

Appellant’s response was to request an office conference with the court so that an oral motion in limine based on non-disclosure could be made. The trial court held an oral hearing with Appellant represented by counsel and continued the trial.

After Appellant was indicted for these charges and an additional felony that was not discovered until shortly before the first trial date, the State sought and received a new indictment. Appellant filed a motion to dismiss for violation of Appellant’s speedy trial rights.

After an oral hearing, the trial court denied Appellant’s motion and issued a written decision. Appellant requested findings of fact and conclusions of law and the trial court filed them. Appellant, then appealed to the Fifth Appellant District Court.

That court unanimously affirmed the trial court holding:

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).

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

Appellant's sole Assignment in Error is overruled. *State v Arledge*, 5th Dist. Fairfield No. 14 CA 14, 2014-Ohio-5054, ¶¶44-48.

This case only is relevant to the Appellant who created the issues by describing on her jail calls new felony crimes that she committed that were discovered shortly before her trial was to begin. Appellant has received many oral hearings on these issues and this case does not present issues that should convince this court to exercise jurisdiction.

STATEMENT OF THE CASE AND FACTS

Appellant was arrested on May 3, 2013, for felony charges when she was already incarcerated at the Fairfield County Jail on other felony charges. On May 6, 2013, Appellant requested discovery which was provided on June 3, 2013. A jury trial on the case relevant to this appeal was scheduled for July 30, 2013. On July 22, 2013, Appellant entered a plea on the unrelated case and was released from jail on that charge only.

On July 29, 2013, Appellant's counsel sought and received an "off the record" status conference to discuss an oral motion in limine related to the State's alleged failure to provide discovery. Appellant was not present at this status conference. On July 30, 2013, while Appellant was present and represented by current counsel, both parties were given an opportunity to address the issue raised by Appellant.

Appellant did not request that a copy of the transcript of that hearing be provided to the Fifth District Court of Appeals. However, the State was able to supplement the record so that the Appellate Court could review the transcript. At that oral hearing, the trial court continued the hearing on the record "in the best interest of justice." This entry was not journalized but on August 7, 2013, the trial court issued notice of a new jury trial scheduled for September 10, 2013.

On September 4, 2013, the State moved for a continuance of the trial and on September 6, 2013, Appellant was indicted for the charges that were part of this indictment along with an additional count of tampering with evidence. On September 10, 2013, current counsel filed a motion to withdraw. The very next day, Appellant was arraigned and current counsel filed a notice of appearance, motion for discovery and request for Bill of Particulars. A response to the Appellant's request for Bill of Particulars was filed on November 6, 2013.

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 Appellant'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. 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. 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. On November 12, 2014, the trial court's decision was affirmed in Case No. 14 CA 14. *State v Arledge*, 5th Dist. Fairfield No. 14 CA 14, 2014-Ohio-5054.

ARGUMENT

RESPONSE TO APPELLANT'S 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.)

The trial court issued a detailed journal entry when it overruled appellant's motion to dismiss. That entry included numerous relevant findings of fact and conclusions of law:

The Defendant was arrested on April 25, 2013, on an outstanding warrant on a case unrelated to any of the proceedings at issue;

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;

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;

This indictment was assigned Case No. 2013-CR-244;

This case was set for trial to begin Tuesday, July 30, 2013;

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;

The conference was held on Monday, July 29, 2013;

The Defendant was not present, no record was made of the office conference;

The court, directed that an oral hearing be held to make a record of proceedings and to allow the Defendant to be present;

The oral hearing was held July 30, 2013;

Assistant Prosecuting Attorneys Jocelyn Kelly and Darcy Cook were

present. Also present were the Defendant and her counsel, Scott Wood;

The State represented to the court that jail calls had been made by the Defendant over the weekend of July 26, 2013;

The State also alleged that during the telephone calls the Defendant made statements which would give rise to a new charge of Tampering with Evidence;

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;

There was no journal entry filed;

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

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

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;

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

A Bill of Particulars was filed by the State on November 6, 2013;

On November 8, 2013, the Defendant filed Defendant's Motion to Dismiss;

An oral hearing on the Motion to Dismiss was set for November 12, 2013;

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;

The court was preparing to begin a jury trial;

The hearing was continued at the request of the State with no opposition from the Defendant;

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.";

The trial announced its decision:

"After reviewing the written records in Case No.: 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."

The Fifth Appellate District Court affirmed the trial court. That decision stated:

"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-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.

"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*

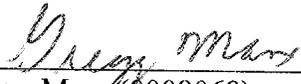
This case was not a sua sponte continuance because an on the record hearing was held. The record showed the lower court that the Defendant admitted to felony acts shortly before her initial trial was scheduled to begin.

Appellant received due process in this case and the Fifth District decision followed Ohio law. This case has very unique facts, affects one person, and does not support this court granting leave to appeal.

CONCLUSION

For the reasons discussed above, this felony case neither involves a matter of public or great general interest nor presents a substantial constitutional question. It is respectfully requested this Court deny leave to appeal.

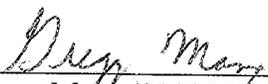
Respectfully submitted,
Gregg Marx (0008068)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum in Response was served upon Scott P. Wood, Counsel for Appellant, via U.S. ordinary mail to 144 East Main Street, P.O. Box 667, Lancaster, Ohio 43130, this 16th day of January, 2015.



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