[Cite as *State v. Tisdale*, 2009-Ohio-4278.]

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 08 JE 10
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
KHBAIR A. TISDALE	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Jefferson County, Ohio Case No. 04 CR 35
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellee:	Atty. Thomas R. Straus Prosecuting Attorney Atty. Samuel A. Pate Assistant Prosecuting Attorney Jefferson County Justice Center 16001 State Route 7 Steubenville, Ohio 43952
For Defendant-Appellant:	Khbair A. Tisdale, Pro se #A490-812 Belmont Correctional Institution P.O. Box 540 St. Clairsville, Ohio 43950
JUDGES:	
Hon. Cheryl L. Waite Hon. Joseph J. Vukovich Hon. Mary DeGenaro	
	Dated: August 17, 2009

[Cite as *State v. Tisdale*, 2009-Ohio-4278.]
WAITE, J.

{¶1} Appellant, Khbair A. Tisdale, acting pro se, appeals the judgment entry of the Jefferson County Court of Common Pleas, filed on June 30, 2006, convicting him on possession of drugs, in violation of R.C. 2925.11(A) and (C)(6)(d), a felony of the second degree, with a forfeiture specification.

{¶2} Appellant contends that his rights under R.C. 2941.401 were violated because the trial court failed to bring his case to trial within the 180-day period required by the Intrastate Detainer Act. Because Appellant pleaded guilty to possession of drugs, and there is no indication on the record that he reserved the right to appeal the trial court's ruling on his motion to dismiss based on speedy trial grounds, he has waived the argument for purposes of appeal.

{¶3} Assuming that his argument in this appeal somehow could survive his guilty plea, it is apparent from the record that his argument must still fail. Appellant executed an open-ended general waiver of his right to a speedy trial on the possession charge (which was originally filed in municipal court and subsequently dismissed in lieu of the indictment in common pleas court) and this was never revoked. Even if the addition of the forfeiture specification in the indictment in common pleas court arguably converted the possession charge into a new and distinct charge, the record reflects that Appellant's speedy trial rights were not violated. Accordingly, the judgment of the trial court is affirmed.

{¶4} Appellant was arrested for driving under suspension as a result of a traffic stop on February 5, 2004. While he was being processed at the Jefferson County Justice Center, corrections officers discovered heroin concealed on his

person. On February 6, 2004, Appellant was served with a complaint charging him with drug possession in violation of R.C. 2925.11 in Steubenville Municipal Court. Appellant posted bond on February 9, 2004, and, on February 17, 2004, he executed a general speedy trial waiver.

{¶5} The municipal court charge was dismissed on March 3, 2004, because on that same date Appellant was indicted on one count of drug possession, with a forfeiture specification, and one count of trafficking in drugs, with a forfeiture specification, in the Jefferson County Court of Common Pleas. Appellant failed to appear in court on March 3, 2004, for his arraignment. As a consequence, a warrant was issued for his arrest on May 13, 2004.

{¶6} While the case was pending, Appellant spent the lion's share of his time in various jails and correctional facilities within and outside of Ohio. On March 17 and 18, 2004, Appellant was incarcerated in the Columbiana County jail. From March 23, 2004, to April 22, 2004, Appellant was incarcerated in the Beaver County jail in Pennsylvania. From April 22, to May 4, 2004, Appellant was again incarcerated in Columbiana County. On May 4, 2004, he was taken to Jefferson County on a contempt of court warrant in an unrelated case. Despite the fact that Appellant was in the custody of the sheriff of Jefferson County for eight days, the sheriff did not serve Appellant with the indictment in this case. On May 11, 2004, he was returned to Beaver County, Pennsylvania. The arrest warrant in this case was issued two days later.

{¶7} He remained in Beaver County until he was taken to Jefferson County on July 31, 2004 based upon the pending warrant in this matter. He was served with the indictment and arraigned on August 2, 2004. Atty. Costa D. Mastros was appointed to represent him, and trial was set for September 16, 2004. Appellant posted bond that same day.

{¶8} On August 11, 2004, Appellant filed a number of motions in this case, including a request for a bill of particulars and requests for evidence, discovery, and for testimony. From August 12 to August 31 2004, Appellant was incarcerated in the Columbiana County jail. From August 31 to October 12, 2004, he was incarcerated in the Belmont Correctional Institution.

{¶9} On September 14, 2004, a joint motion to continue the trial was filed premised upon Appellant's decision to retain Atty. Charles Curry as his counsel. The motion indicated that Curry had recently been retained to represent Appellant and he needed additional time to familiarize himself with the case and prepare for trial. Curry filed his notice of appearance on September 17, 2004. The trial court continued the trial to October 19, 2004.

{¶10} Trial did not go forward in October, and there is nothing in the record to indicate the reason for this delay. No concurrent entry appears on the docket. Then, in a November 4, 2004 order, the trial court continued the trial to November 23, 2004. No written motion to continue the trial was filed, and the order does not state a reason for the continuance.

{¶11} On November 16, 2004, the state moved to continue the trial based on scheduling conflicts, and because Appellant was incarcerated in the Lorain Correction Institution until February 12, 2005. The trial court granted the state's motion on December 6, 2004. According to a motion filed some time later, Appellant was released from Lorain Correctional Institution on October 12, 2004 (5/22/06 Motion, p. 12.)

{¶12} In its order, the trial court indicated that the previous continuance had been granted to provide additional time for Curry's trial preparation, however, prior to the November 23, 2004 trial date, Curry was disbarred. (12/6/04 Order, p. 1.) On December 2, 2004, the trial court reappointed Atty. Mastros as Appellant's counsel. The trial court continued the trial to February 10, 2005. In the order, the trial court charged, "[a]ll time from September 14, 2004 to February 10, 2005," against Appellant. (12/6/04 Order, p. 1.)

{¶13} Appellant did not appear in court on February 10, 2005. Atty. Mastros stated that he did not know why his client did not appear. As a consequence, the trial court issued a judgment entry revoking Appellant's bond and instructing the sheriff to seize and incarcerate Appellant. The judgment entry further indicated that the speedy trial time was tolled.

{¶14} According to Appellant's brief, he was incarcerated in the Lorain Correctional Institution on July 29, 2005, for a 15-month prison term imposed in a Columbiana County case, No. 04CR339. (Appellant's Brf., p. 1.) On September 16, 2005, the trial court issued an order of detainer to the Lorain Correctional Institution,

with instructions to contact the Jefferson County sheriff upon Appellant's impending release and to detain Appellant in order that the sheriff could collect and transport him back to Jefferson County.

{¶15} According to a document provided by the Belmont Correctional Institution, Appellant was served with a copy of the detainer on September 16, 2005. On April 12, 2006, Appellant filed a notice of availability with the trial court. On April 19, 2006, after Appellant refused to execute a speedy trial waiver, the trial was set for May 2, 2006.

{¶16} Appellant filed his motion to dismiss on speedy trial grounds on April 24, 2006, and a motion to continue the trial in order to allow his counsel to prepare for trial. In conjunction with the motion to continue, Appellant executed a prospective speedy trial waiver. As a result, the trial was continued to May 22, 2006. The state filed its response to the motion to dismiss on May 19, 2006. Following a hearing conducted on May 22, 2006, the trial court denied the motion to dismiss.

{¶17} On June 5, 2006 Appellant filed a motion to suppress evidence and a second prospective speedy trial waiver. On that same day, the trial court issued a nunc pro tunc order denying Appellant's motion to dismiss on speedy trial grounds.

{¶18} A hearing was held on the motion to suppress evidence on June 26, 2006. The trial court summarily denied the motion at the conclusion of the hearing, and indicated that the trial was scheduled to proceed the following day. However, following a discussion with his counsel, Appellant pleaded guilty to drug possession with the forfeiture specification, and the trial court nolled the trafficking charge as

being duplicative of the possession charge. Appellant was sentenced that same day to a four-year prison term in conformance with the plea agreement.

Assignment of Error:

{¶19} "The trial court erroneously exercised the jurisdiction to convict and punish when R.C. § 2941.401 clearly prohibited such, as 180-day statute of limitations had expired without any tolling effects."

{¶20} Subsequent to a plea of guilty, an appellant may only challenge the voluntary, knowing and intelligent nature of his plea. *State v. Spates* (1992), 64 Ohio St.3d 269, 272, 595 N.E.2d 351. A defendant's guilty plea waives most constitutional rights and most errors for purposes of appeal, because, "a guilty plea represents a break in the chain of events which has preceded it in the criminal process," and the defendant, "may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id.

{¶21} More specifically, a plea of guilty waives a defendant's right to challenge conviction on statutory speedy trial grounds pursuant to R.C. 2945.71(B)(2). *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658, syllabus, applying *Montpelier v. Greeno* (1986), 25 Ohio St.3d 170, 495 N.E.2d 581. Consequently, Appellant waived any speedy trial argument when he entered his guilty plea and the decision of the trial court must be affirmed on this basis.

{¶22} Even if Appellant had not waived his speedy trial argument, it is apparent that no speedy trial violation occurred in this case. In the supplemental motion to dismiss, Appellant argued that the speedy trial clock began to run on

February 5, 2004, the day he was arrested. However, Appellant was originally charged in municipal court, where he filed a speedy trial waiver with respect to the possession charge. The Ohio Supreme Court has held that following an express written waiver of unlimited duration, like the one in this case, a defendant is not entitled to a discharge due to any delay in bringing him to trial unless he files a written objection to further continuances and registers a formal demand for trial. *State v. O'Brien* (1987), 34 Ohio St.3d 7, 9, 516 N.E.2d 218.

{¶23} In his supplement to the motion to dismiss, Appellant argued that the speedy trial waiver does not apply to the common pleas case, because it involved new and distinct charges. See *State v. Adams* (1989), 43 Ohio St.3d 67, 538 N.E.2d 1025. While Appellant is correct that the speedy trial waiver did not apply to the drug trafficking charge, there is no question that the waiver applies to the possession charge.

{¶24} "When an accused waives the right to a speedy trial as to an initial charge, this waiver is not applicable to *additional* charges arising from the same set of circumstances that are brought subsequent to the execution of the waiver." (Emphasis added.) Id. at syllabus. Because Appellant executed an open-ended waiver of his speedy trial rights with respect to the possession charge, the only charge on which he was convicted, no speedy trial violation occurred in this case. Although a forfeiture provision was added in the common pleas court complaint, forfeiture is a criminal penalty, rather than an additional charge. In other words, the concern expressed in *Adams*, supra, that an accused's speedy trial waiver should not

be applied to distinct charges that involved different defenses, is not present in this case. Id. at 69.

{¶25} Even if it was possible for Appellant to argue that the forfeiture provision converts the possession charge into a distinct charge, Appellant's speedy trial rights were not violated. The Sixth Amendment to the United States Constitution provides that an, "accused shall enjoy the right to a speedy and public trial." Section 10, Article I of the Ohio Constitution provides a criminal defendant the right to a speedy public trial by an impartial jury.

{¶26} R.C. 2945.73(B) codifies a criminal defendant's right to a speedy trial and states: "Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code." A defendant charged with a felony must be brought to trial within 270 days of his or her arrest. R.C. 2945.71(C)(2). However, "each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days." R.C. 2945.71(E).

{¶27} Ohio's speedy trial statute must be strictly construed against the state. *State v. Singer* (1977), 50 Ohio St.2d 103, 109, 4 O.O.3d 237, 362 N.E.2d 1216. Further, a defendant establishes a prima facie case for dismissal once the statutory time limit has expired. *State v. Butcher* (1986), 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368. At that point, the state has the burden to demonstrate any extension of the time limit. Id. It is uncontroverted here that more than 270 days passed between the filing of the second indictment and the first day of trial.

{¶28} Statutory speedy trial issues present mixed questions of law and fact. *State v. Hiatt* (1997), 120 Ohio App.3d 247, 261, 697 N.E.2d 1025. Therefore, courts of review must, "accept the facts as found by the trial court on some competent, credible evidence, but freely review the application of the law to the facts." Id. On appeal, courts independently review whether an accused was deprived of his statutory right to a speedy trial, strictly construing the law against the state. *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 57, 661 N.E.2d 706.

{¶29} Appellate courts review speedy trial challenges under the abuse of discretion standard. *State v. Kuriger*, 175 Ohio App.3d 676, 2008-Ohio-1673, 888 N.E.2d 1134, ¶13. The phrase "abuse of discretion" connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. Furthermore, when applying the abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. *State v. Herring* (2002), 94 Ohio St.3d 246, 255, 762 N.E.2d 940.

{¶30} To review an alleged speedy trial violation, we must count the number of days that have passed and determine which party is responsible for any delay. *State v. DePue* (1994), 96 Ohio App.3d 513, 516, 645 N.E.2d 745. R.C. 2945.72 provides extensions of speedy trial time for hearings. Subsection (A) specifically extends the accused's speedy trial time by:

{¶31} "Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by

reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability."

{¶32} Subsection (H) specifically extends the accused's speedy trial time by, "[t]he period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion."

{¶33} The time for speedy trial begins to run when an accused is arrested; however, the actual day of the arrest is not counted. *State v. Cross*, 7th Dist. No. MA 74, 2008-Ohio-3240, ¶17. "[A] defendant who fails to appear at a scheduled trial, and whose trial must therefore be rescheduled for a later date, waives his right to assert the provisions of R. C. 2945.71 through 2945.73 for that period of time which elapses from his initial arrest to the date he is subsequently rearrested." *State v. Bauer* (1980), 61 Ohio St.2d 83, 85, 399 N.E.2d 555, 556.

{¶34} Moreover, the Intrastate Detainer Act mandates that when the accused is imprisoned in a correctional institution in this state, and when during the term of his imprisonment there is an untried indictment against him, he must be brought to trial within 180 days after he causes to be delivered to the prosecuting attorney and the appropriate court written notice of the place of his imprisonment and a request for a final disposition of the matter.

{¶35} Pursuant to R.C. 2941.401, the 180-day time limit does not begin to run until the incarcerated defendant sends a request to the prosecuting attorney and the

trial court requesting disposition of the untried indictment. *State v. Mavroudis*, 7th Dist. No. 02 CO 44, 2003-Ohio-3289, ¶27.

{¶36} Courts have interpreted R.C. 2945.401 as supplanting R.C. 2945.41 where the accused is incarcerated. The statutes and caselaw clearly create a duty on the part of the accused to provide the court and prosecution with written notice of imprisonment prior to asserting a speedy trial argument. See *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶22, (rejecting the argument that the state has "a duty of reasonable diligence" to locate an imprisoned offender before the offender's duty of notice arises); *State v. Stewart*, 2nd Dist. No. 21462, 2006-Ohio-4164, ¶22 ("the great weight of authority * * * support[s] * * * the proposition that once a person under indictment has begun serving a prison sentence in another case, the provisions of R.C. 2941.401 apply, to the exclusion of the provisions of R.C. 2945.71, et seq., so that the running of speedy trial time under the latter statute is tolled"); R.C. 2945.71(F) (stating that the provisions of this statute "shall not be construed to modify in any way section 2941.401").

{¶37} However, the duty does not arise until the warden or prison superintendent notifies the prisoner, " 'in writing of the source and contents of any untried indictment' and of his right 'to make a request for final disposition thereof.' " *State v. Dillon*, 114 Ohio St.3d 154, 2007-Ohio-3617, 870 N.E.2d 1149, syllabus. Two districts have concluded that personal service of the indictment upon the prisoner is sufficient written notice to trigger his duty to request final disposition of the charges. *State v. Schmuck*, 3rd Dist. No. 6-08-13, 2009-Ohio-546, ¶33; *State v.*

Cepec, 5th Dist. No 2006 CA 80, 2007-Ohio-5300. Both appellate courts relied upon the fact that the cases were being processed toward final disposition. *Schmuck* at ¶33, *Cepec* at ¶35.

{¶38} Although more than 270 days had passed between Appellant's arrest and his May 5, 2006, trial date, the state established that his speedy trial rights were not violated. The speedy trial clock was tolled based on his incarceration in Pennsylvania, as well as for good cause shown based on Curry's notice of appearance and his later disbarment. Moreover, the speedy trial clock was rolled back and restarted based on his failure to appear at trial, causing Appellant to forfeit the over 200 days that expired prior to February 10, 2005.

{¶39} Appellant was arrested on February 5, 2004 and he bonded out on February 9, 2004. Therefore, the speedy trial clock ran for 12 days (4 x 3). From February 10, 2004 to March 22, 2004, 41 additional days accrued, for a total of 53 days. The state argues that any period of incarceration tolls the speedy trial clock, however, it is clear from the plain wording of the statute that the clock stops only for Appellant's incarceration outside the state of Ohio. From March 23 to April 22, 2004, Appellant was in the Beaver County jail in Pennsylvania, which tolled the speedy trial clock. From April 23 to May 11, 2004, 19 additional days accrued, for a total of 72 days. From May 11 to July 31, 2004, Appellant was in the Beaver County jail, which tolled the speedy trial clock.

{¶40} From July 31 to August 2, 2004, Appellant was in the Jefferson County jail based upon the charges in this case. Therefore, the speedy trial clock ran for an additional 9 days (3 x 3), for a total of 81 days.

{¶41} From August 3 to September 13, 2004, 42 additional days accrued, for a total of 123 days. On September 14, 2004, Appellant requested a continuance of the trial until October 19, 2004, which tolled the speedy trial clock.

{¶42} The trial did not go forward on October 19, 2004. It is not clear from the record whether Appellant appeared for trial. On November 4, 2004, the trial court sua sponte and without explanation continued the trial to November 23, 2004.

{¶43} The trial did not go forward on November 23, 2004. Appellant was incarcerated in Lorain, it is not clear from the record whether Appellant appeared for trial. On December 6, 2004, the trial court granted the state's motion to continue the trial until February 10, 2005. In the judgment entry, the trial court explained that the previous continuance was entered in order to give Curry additional time to prepare for trial. Then, Curry was disbarred at some point before the November 23, 2004 trial date. As a consequence, the trial court reappointed Atty. Mastros. The trial court charged all of the time from September 14, 2004, to February 10, 2005 against Appellant. From the record it appears that the continuances may have been granted for good cause. However, since reasons were not given at the time of certain of these, we will assume for the sake of this appeal that they were not. From October 19, 2004, to February 10, 2005, we will assume that the speedy trial clock would run for an additional 115 days, for a total of 238 days.

{¶44} On February 10, 2005, it is clear from the record that Appellant did not appear for trial. Mastros stated that he did not know his client's whereabouts. As stated previously, "a defendant who fails to appear at a scheduled trial, and whose trial must therefore be rescheduled for a later date, waives his right to assert the provisions of R. C. 2945.71 through 2945.73 for that period of time which elapses from his initial arrest to the date is subsequently rearrested." *Bauer*, supra, at 85. Consequently, based upon Appellant's failure to appear for trial, he forfeited the 238 days that expired for speedy trial purposes prior to February 10, 2005, and his time clock started anew.

{¶45} According to the docket, on September 16, 2005, the trial court issued an order of detainer to the Lorain Correctional Institution. According to a document provided by Belmont Correctional Institution, Appellant was served with the detainer on September 16, 2005. (5/22/06 "Supplement to Motion to Dismiss," unnumbered exhibit.) "Case # 04CR35 F2 Poss. Dr. (See PSI)" is handwritten on the detainer. However, there is no evidence in the record to establish that Appellant was provided with notice of the pending charges or notified of his right to proceed to final disposition. Furthermore, unlike the facts in *Cepec* and *Schmuck*, supra, this case had been pending for approximately 20 months when Appellant was served with the detainer. Accordingly, we will assume the warden's failure to comply with the statutory notification procedure set forth in R.C. 2941.401 obviates Appellant's duty to request final disposition of the charges against him. Moreover, because R.C.

2941.401 was not triggered, the speedy trial provisions of R.C. 2945.75 would govern this case.

{¶46} Hence, the speedy trial clock began running anew on September 16, 2005, when the detainer was issued. Appellant contends that the approximately seven months that passed between his failure to appear for trial and the issuance of the detainer constitute a failure on the part of the prosecution to exercise reasonable diligence to secure his availability, but the record disproves this claim.

{¶47} According to Appellant's brief, he was incarcerated on July 29, 2005 in the Lorain Correctional Institution. His whereabouts from February 10, 2005, to July 29, 2005, are not a part of the record. Insofar as it appears that the prosecution determined that Appellant was incarcerated in the Lorain Correctional Institution less than two months after he was imprisoned, there is no evidence that the prosecution failed to exercise reasonable diligence to secure his availability.

{¶48} Appellant filed his motion to dismiss and prospective waiver of speedy trial on April 24, 2006. Only 220 days had elapsed between September 16, 2005 and the date of filing of the motion. Therefore, it is obvious that 270 days did not expire between the day the speedy trial clock began to run and the day that Appellant filed his prospective speedy trial waiver, and, therefore, Appellant's statutory speedy trial rights were not violated. Even assuming that the speedy trial clock began to run anew on July 29, 2005, the day that Appellant was incarcerated in Lorain Correctional Institution, there was no speedy trial violation.

{¶49} In *O'Brien*, supra, the Supreme Court of Ohio stated that statutory and constitutional speedy trial provisions are co-extensive, but that the constitutional guarantees may be broader than statutory provisions in some circumstances. Thus, a defendant's Sixth Amendment right to a speedy trial can be violated even though the state has complied with the statutory provisions implementing that right. Id. at 9, 516 N.E.2d 218.

{¶50} Because there is no statutory speedy trial violation in this case, Appellant must demonstrate that the trial court and prosecution violated his constitutional speedy trial rights. *State v. Gaines*, 9th Dist. No. 00CA008298, 2004-Ohio-3407, ¶16. In order to determine whether a defendant sustained constitutional speedy trial violations, four factors are considered: " 'Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.' " *O'Brien* at 10, 516 N.E.2d 218, quoting *Barker v. Wingo* (1972), 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101.

{¶51} The United States Supreme Court describes the "length of delay" as a double inquiry. *Doggett v. United States* (1992), 505 U.S. 647, 651, 112 S.Ct. 2686, 2690, 120 L.Ed.2d 520. First, the defendant must make a threshold showing of a "presumptively prejudicial" delay to trigger application of the *Barker* analysis. *Doggett*, at 650, citing *Barker*, at 530-531; *State v. Miller*, 10th Dist. No. 04AP-285, 2005-Ohio-518, ¶11. Second, after the initial threshold showing, the court must again consider the length of delay with the other *Barker* factors. *Doggett*, at 652, citing *Barker*, at 533-34; *Miller*, at ¶11.

{¶52} Courts have generally found that a delay approaching one year becomes "presumptively prejudicial." *Doggett*, at 652, fn. 1. Although the delay in this case was substantially longer than one year, any delay was solely the responsibility of Appellant. Simply stated, his failure to appear for trial and his periods of incarceration outside of the state of Ohio caused the delay.

{¶53} In summary, Appellant waived his speedy trial argument when he entered his guilty plea. Even assuming that his argument on appeal could have survived the guilty plea, he executed an open-ended general waiver of his right to a speedy trial on the possession charge in municipal court, which he never revoked. Finally, even if we can assume that the forfeiture charge converted the possession charge into a distinct or new charge, Appellant's speedy trial rights were not violated. As such, his sole assignment of error is overruled, and his conviction is affirmed.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.