

[Cite as *State v. Byrns*, 2016-Ohio-7215.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO,)	
)	
PLAINTIFF-APPELLEE,)	
)	CASE NO. 14 MA 0179
V.)	
)	OPINION
JOHN BYRNS,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 12 CR 527
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JUDGMENT:	Reversed Appellant discharged
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APPEARANCES:	
For Plaintiff-Appellee	Paul Gains Prosecutor Ralph M. Rivera Assistant Prosecutor 21 W. Boardman St., 6 th Floor Youngstown, Ohio 44503

For Defendant-Appellant	Attorney Ryan D. Ingram 7330 Market Street Youngstown, Ohio 44512
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 28, 2016

{¶1} Defendant-appellant, John Byrns, appeals his convictions and sentences entered in the Mahoning County Common Pleas Court following his no contest plea to four counts of aggravated robbery, with four accompanying firearm specifications, and one count of robbery.

{¶2} Appellant was arrested on April 26, 2012. After his arrest, he was interrogated by the police. Shortly thereafter, he was transported to St. Elizabeth Hospital and admitted on April 27, 2012. He remained in the hospital until May 1, 2012.

{¶3} On May 1, 2012, Appellant was released from the hospital into the custody of the police. He was again interrogated by the police. He remained in police custody.

{¶4} On May 17, 2012, Appellant was indicted by a Mahoning County Grand Jury and charged with five counts of aggravated robbery in violation of R.C. 2911.01(A)(1)(C), felonies of the first degree, each with a firearm specification in violation of R.C. 2941.145(A); and five counts of robbery in violation of R.C. 2911.02(A)(3)(B), felonies of the third degree, each with a firearm specification in violation of R.C. 2941.141(A). Appellant was accused of robbing three banks and two stores between January 25, 2012, and April 25, 2012. Counsel was appointed as Appellant was indigent. Appellant entered a plea of not guilty.

{¶5} On June 11, 2012, Appellant filed a plea of not guilty by reason of insanity. A medical exam was ordered and a report secured opining that Appellant had no serious mental defect. The report is dated August 27, 2012.

{¶6} Appellant requested a second evaluation and on September 24, 2012, the trial court ordered a second evaluation. The medical report from the second evaluation stated that Appellant had a severe mental defect but concluded that at the time of the alleged crimes he understood that his acts were wrong. This report is dated October 31, 2012.

{¶7} On December 11, 2012, Appellant filed a motion to suppress the evidence obtained during his interrogation(s). The motion incorrectly stated that an interrogation occurred on April 1, 2012. The motion also implied that there was only

one interrogation.

{¶8} On June 4, 2013, a hearing was held on Appellant's motion to suppress. At the hearing, Plaintiff-appellee, State of Ohio, explained to the court that the motion to suppress related to the statements made by Appellant on April 26, 2012, and May 1, 2012. (Suppression Tr. 2). Rather than have an evidentiary hearing, the parties stipulated, *inter alia*, to the submission of video recordings of both interrogations. The motion was submitted to the trial court for consideration.

{¶9} On June 21, 2013, Appellant filed a request for the medical records resulting from his hospitalization between April 27, 2012, and May 1, 2012. The request was related to the pending motion to suppress. On June 24, 2013, the trial court ordered the release of the medical records. The medical records were secured but neither party commented upon them. On October 24, 2013, the State filed a memorandum in opposition to Appellant's motion to suppress.

{¶10} On July 25, 2014, Appellant filed a motion to dismiss the indictment on speedy trial grounds pursuant to R.C. 2945.71. Appellant asserted that the length of the delays in his case were unreasonable and violated the statute. The State filed a memorandum in opposition on August 13, 2014. The trial court overruled the motion on August 28, 2014.

{¶11} A plea hearing was conducted on October 17, 2014. At the hearing, Appellant pleaded no contest to four counts of aggravated robbery, with four accompanying firearm specifications, and one count of robbery. The State dismissed the balance of the charges. Appellant was sentenced to ten years in prison.

{¶12} On December 16, 2014, the trial court filed a judgment entry, *nunc pro tunc* May 1, 2014, overruling the motion to suppress. The entry indicated that the trial court reviewed the video-taped statements, the two medical reports relating to Appellant's insanity plea, and the hospital records prior to overruling the motion.

{¶13} Appellant filed his notice of appeal on December 17, 2014, stating he was appealing the May 1, 2014, decision overruling his motion to suppress, and the August 28, 2014, decision overruling his motion to dismiss. The trial court, however, did not file its judgment entry of sentence until January 13, 2015.

{¶14} Appellant's first assignment of error states:

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S
MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS.

{¶15} Appellant claims that the indictment should have been dismissed because he did not receive a speedy trial as guaranteed by both the Sixth Amendment to the U.S. Constitution and Article I, Section 10, of the Ohio Constitution. Appellant also asserts that the charges against him should have been dismissed because the State did not afford him a trial within the time limits set forth in R.C. 2945.71. While admitting that some delays were the result of actions taken by him, Appellant provides no analysis or calculation of days to support his argument.

{¶16} The State argues that Appellant's constitutional claims were never raised before the trial court. Thus, the State maintains, Appellant's constitutional arguments cannot be considered on appeal. The State further asserts that the R.C. 2945.71 time frame was met because any delays that exceed the time parameters of the statute were either the result of actions taken by Appellant or were otherwise reasonable under the language of the statute.

{¶17} Appellant's motion to dismiss filed with the trial court contains no reference to either the U.S. Constitution or the Ohio Constitution. Instead, while admitting that some delays are attributable to motions filed by Appellant, he complains that as of the day his motion was filed he had been waiting 820 days for trial in violation of R.C. 2945.71.

{¶18} Appellant's constitutional and statutory rights to a speedy trial are separate and distinct. *State v. Sweat*, 4th Dist. No. 14CA3439, 2015-Ohio-2689, ¶ 13, citing *State v. Hilyard*, 4th Dist. No. 05CA598, 2005-Ohio-4957, ¶ 7. Since Appellant did not raise his constitutional claims in the trial court, he has waived these rights and cannot raise them on appeal. *State v. Wilson*, 2nd Dist. Nos. 24461, 24496, 24501, 2012-Ohio-1660, ¶ 15; *State v. Turner*, 168 Ohio App.3d 176, 2006-Ohio-3786, 858 N.E.2d 1249, ¶ 21 (5th Dist.). The State did not respond to this part of Appellant's first assignment of error.

{¶19} R.C. 2945.71 sets forth a time frame separate from the constitutional requirements in which a defendant must be brought to trial. The time is based on the level of the offense. A person charged with a felony must be brought to trial within 270 days of his arrest. R.C.2945.71(C)(2). Each day the defendant spends in jail solely on the pending criminal charges counts as three days. R.C. 2945.71(E).

{¶20} If the State fails to bring a defendant to trial within these time limits, the trial court must discharge the defendant. *State v. Matland*, 7th Dist. No. 09 MA 0115, 2010-Ohio-6585, ¶ 19, 20. Here, the parties agree that the State had to bring Appellant to trial within 90 days of his arrest, subject to any extensions allowed by R.C. 2945.72. Compliance with the time limitations is mandatory. *State v. Singer*, 50 Ohio St.2d 103, 105, 362 N.E.2d 1216 (1977).

{¶21} Appellant was arrested on April 26, 2012. The time limit begins to expire when an accused is arrested. The day of arrest is not counted. *State v. Mitchell*, 7th Dist. No. 06 MA 0169, 2008-Ohio-645, ¶ 22, citing *State v. Brown*, 7th Dist. No. 03 MA 0032, 2005-Ohio-2939, at ¶ 14.

{¶22} On review, this court must count the days of delay chargeable to either side to determine whether or not the case was tried within the statutory time limit. *Matland* at ¶ 21, citing *State v. Hart*, 7th Dist. No. 06 CO 0062, 2007-Ohio-3404, ¶ 8-9; *Mitchell*, at ¶ 20. The relevant statutes are to be strictly construed against the State. *Mitchell* at ¶ 20. Due deference must be given to the trial court's findings of fact but this court must independently review whether the trial court properly applied the law to the facts. *Id.* Here, the trial court made no findings of fact.

{¶23} Appellant entered a plea of no contest on October 17, 2014. The total number of days from April 27, 2012, to October 17, 2014, is 878.

{¶24} Appellant argues that the only events which should have tolled the running of the statutory time are his June 11, 2012, not guilty by reason of insanity plea and his December 11, 2012, motion to suppress. The State, on the other hand, contends that there were multiple tolling events that were either the result of actions taken by Appellant or were otherwise reasonable under the statute. According to the State's calculation, only 51 days can be assessed against the time parameters of the

statute.

{¶25} The parties agree that the first tolling event occurred on June 11, 2012, when Appellant filed a plea of not guilty by reason of insanity. R.C. 2945.72(E) provides that the time period may be extended for any period of delay “necessitated by reason of a plea in bar or abatement, motion, proceeding or action made or instituted by the accused.” *State v. Perkins*, 2nd Dist. No. 2151, 2007-Ohio-136, ¶ 10. The State agrees that 46 days expired between Appellant’s arrest and the filing of his plea and that these days should be assessed against the 90 day limit.

{¶26} On June 29, 2012, as a result of Appellant’s insanity plea, the trial court ordered an evaluation by the Forensic Psychiatric Center of Northeast Ohio. Appellant was interviewed at the county jail on July 26, 2012. The Center provided a report dated August 27, 2012. The report concluded that Appellant had no serious mental defect.

{¶27} Sometime in September, 2012, Appellant orally requested a second evaluation with regard to his plea. On September 24, 2012, the trial court granted the request and ordered a second evaluation by Coleman Behavioral Health. The trial court ordered that the report be submitted in 30 days. All proceedings were stayed pending receipt of the report and a hearing on the same. Appellant was interviewed at the county jail on October 1, 2012. Coleman authored a report dated October 31, 2012. The Coleman report concluded that Appellant suffered from a severe mental illness but, at the time of the alleged crimes, knew the wrongfulness of his conduct.

{¶28} On November 21, 2012, the trial court filed an entry acknowledging receipt of the report on November 7, 2012, and setting a pretrial for December 4, 2012. In Appellant’s motion to dismiss, Appellant agrees that the issue regarding his plea “was finalized by the Court” on or about November 21, 2012. Appellant does not specifically contest that the period between June 11, 2012, and November 21, 2012, should be tolled.

{¶29} As a result of the insanity plea and examinations described above, the original trial date of July 9, 2012, set on May 30, 2012, was continued. The December 4, 2012, pretrial was held and at that time a new trial date was set for

January 7, 2013. The State argues that the entire time from June 11, 2012, through January 7, 2013, should be excluded from the statutory calculation because the delay was reasonable and necessary in light of Appellant's plea and request for a second evaluation. Appellant did not file a reply brief and otherwise offers no argument against this interpretation. Thus, it appears it is reasonable to conclude that the time between November 21, 2012, and the new trial date of January 7, 2013, was a reasonable delay caused by Appellant's not guilty by reason of insanity plea and his request for a second medical evaluation. *Perkins* at ¶ 10. *State v. Brooks*, 8th Dist. No. 57801, 1990 WL 212116, *3 (Dec. 27, 1990); R.C. 2945.72(E).

{¶30} On December 11, 2012, Appellant filed a motion to suppress. The parties agree that this filing began a new tolling period. R.C. 2945.72(E); *State v. Myers*, 97 Ohio St.3d 335, 2002-Ohio-6658, 780 N.E.2d 186, ¶ 44. The jury trial scheduled for January 7, 2013, was continued and the motion to suppress was scheduled for hearing on February 5, 2013.

{¶31} On February 5, 2013, the trial court continued the hearing on Appellant's motion to suppress until March 19, 2013. The trial court's judgment entry indicates that the reason for this continuance was because the court was in a jury trial in another matter. In *State v. Ramey*, 132 Ohio St.3d 309, 2012-Ohio-2904, 971 N.E.2d 937, ¶ 31, the Ohio Supreme Court explained that *sua sponte* continuances by the trial court could fall under the reasonable provision of R.C. 2945.72(H). Ideally, however, the trial court should enter an order before the expiration of the time limit for a speedy trial and state the reasons for the continuance in a journal entry. *Ramey* at ¶ 32, citing *State v. Mincy*, 2 Ohio St.3d 6, 441 N.E.2d 571 (1982), syllabus. The time can still be tolled, even where the trial court failed to make such a journal entry, if the reasonableness of the continuance "is otherwise affirmatively demonstrated by the record." *Id.* at ¶ 33. This extension, from February 3, 2013, to March 19, 2013, appears to meet this test and is a reasonable continuance under R.C. 2945.72(H).

{¶32} At the March 19, 2013, hearing on Appellant's motion to suppress, the State orally requested a continuance. A continuance was granted and the matter was reset for a hearing on the suppression motion on April 30, 2013.

{¶33} Continuances granted to the State must be reasonable. *State v. Garries*, 2nd Dist. Case No. 19852, 2003-Ohio-6895, ¶ 16-18. The interpretation of what is reasonable is to be strictly construed against the State. *Id.* If not reasonable, the time must be charged against the State for speedy trial purposes. *Id.* There must be an explanation. *Id.* The trial court should journalize the continuance before the expiration of the limitations in R.C. 2945.71 and, ideally, state the reason for the continuance. *Id.*; *Mincey*, at syllabus. Here, no reason is stated and thus it appears that the period from March 19, 2013, to April 30, 2013, a total of 43 days, must be charged to the State. At this point, there is a total of 89 days assessed against the State.

{¶34} On April 30, 2013, the suppression hearing was again continued until June 4, 2013. It appears that this continuance was jointly requested since the trial court's judgment entry states that the matter was "continued by the parties" and Appellant does not suggest that this is incorrect. Joint continuances toll the speedy trial provisions of the statute. *State v. Canty*, 7th Dist. No. 08 MA 0156, 2009-Ohio-6161, ¶ 83; *Brown*, at ¶ 44. Joint continuances do not need to be reasonable. *State v. Glass*, 10th Dist. No. 10AP-558, 2011-Ohio-6287, ¶ 16. Thus, it appears that the days between April 30, 2013, and June 4, 2013, can be excluded from the speedy trial calculation.

{¶35} At the June 4, 2013, suppression hearing, the parties agreed to submit two video-taped statements made by Appellant to the trial court for review rather than have a hearing. Also, the trial court filed a judgment entry on June 24, 2013 indicating that on June 4, 2013, Appellant suggested he was going to file a request for medical records and that the State would have seven days after receipt of the medical records in which to respond.

{¶36} On June 21, 2013, Appellant did, in fact, file a request for medical records from St. Elizabeth Hospital for the period from April 27, 2102, to May 2, 2012, "as a result of a request to suppress evidence." The trial court granted the request on June 24, 2013. The judgment entry indicated the trial court must receive the records by July 12, 2013. This request tolled the statutory time limits as of June 4, 2013. R.C.

2945.72(E); *Perkins* at ¶ 10. Thus, the speedy trial time was again tolled beginning on June 4, 2013. It is unclear when the hospital records were received.

{¶37} On September 11, 2013, the trial court filed a judgment entry indicating that the matter “came up for review” on September 6, 2013, and that the case was set for pretrial on October 22, 2013. The record contains no information as to whether or not the October 22, 2013, pretrial took place. The entry contains no information as to why the case was reviewed or why a pretrial was scheduled on October 22, 2013. It appears that, since there is no explanation, at least the days from September 11, 2013, to October 22, 2013, 42 days, should be charged to the State. This brings the total number of days charged to the State to 131.

{¶38} The State filed its memorandum in opposition to the motion to suppress on October 24, 2013. It appears, then, that two more days are chargeable to the State, bringing the total to 133 days.

{¶39} A judgment entry filed November 19, 2013, suggests that a pretrial was scheduled for that date. The judgment entry indicates that the pretrial was continued by the court. The judgment entry does not set forth a reason for the court’s continuance. The entry set a new pretrial hearing date for December 20, 2013. The record does not reflect a pretrial on December 20, 2013, or any continuance of the same.

{¶40} The next entry, filed February 3, 2014, continues a pretrial scheduled for January 28, 2014, until March 6, 2014, since the court was in a jury trial. Thus, it appears that the period from October 24, 2013, to January 28, 2014, is, also, chargeable to the State. *Ramey* at ¶ 32; *Mincy*, at syllabus. Some of this time arguably is for the trial court to consider the State’s memorandum in opposition to the motion to suppress and to rule on the motion, but this is not explained or reflected anywhere in the record. Thus, an additional 97 days should be assessed the State bringing the total time assessed to the State to 230 days.

{¶41} On March 6, 2014, the trial court again continued the case since it was in a jury trial. Another pretrial was set for April 3, 2014. It is reasonable to exclude the days between January 28, 2014, and April 3, 2014, from the statutory calculation. *Id.*

{¶42} On May 1, 2014, the trial court filed a judgment entry indicating that a pretrial was held on April 4, 2014, and that the motion to suppress was denied. The entry indicated that a pretrial was to be set on the next available date and that a final pretrial was scheduled for May 27, 2014. It appears that the setting of a final pretrial 26 days after the overruling of the Appellant's motion to suppress is a reasonable amount of time and should be excluded from the calculation under R.C. 2945.72(H). *Mitchell* at ¶ 30, 36.

{¶43} A pretrial was held on May 27, 2014, and the parties agreed to a trial date of July 28, 2014. Since the parties agreed to the setting of this trial date, the days between May 27, 2014, and July 27, 2014, can be excluded. *Canty* at ¶ 83; *Brown* at ¶ 44.

{¶44} On July 25, 2014, Appellant filed his motion to dismiss on speedy trial grounds pursuant to R.C. 2945.71. The State responded on August 13, 2014. The trial court denied the motion on August 28, 2014. Thus, the State argues, trial was delayed from July 25, 2014 to August 28, 2014, as the result of Appellant's motion. On August 28, 2014, the trial court scheduled a final pretrial for October 28, 2014. This period, the State argues, should not be counted against the time limitations in the statute since the delay was caused by Appellant's motion and resulted in a continuance of the trial date. This period should be excluded. *Mitchell* at ¶ 27, 30; R.C. 2945.72(H).

{¶45} A subsequent judgment entry indicates a pretrial was held on October 8, 2014, and a Crim.R.11 pretrial was scheduled for October 17, 2014. On October 20, 2014, Appellant entered a no contest plea.

{¶46} Based on the above, at minimum, 230 days of delay is assessed against the State. This is in excess of the 90 day limit prescribed by R.C. 2945.71.

{¶47} Appellant's first assignment of error is with merit and is sustained.

{¶48} Appellant's second and third assignments of error are as follows:

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S
MOTION TO SUPPRESS STATEMENTS HE MADE TO

YOUNGSTOWN POLICE DEPARTMENT OFFICERS ON APRIL 1, 2012.

DEFENSE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO RAISE THE ISSUE OF A VALID WAIVER OF HIS MIRANDA RIGHTS AS PART OF THE MOTION TO SUPPRESS AND HIS FAILURE TO CHALLENGE THE ADMISSIBILITY OF APPELLANT'S SECOND INTERVIEW. APPELLANT WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE SUCH THAT HE WAS DEPRIVED OF A FAIR TRIAL.

{¶49} Based on the resolution of the first assignment of error, appellant's second and third assignments of error are moot.

{¶50} For the reasons stated above, the judgment of the trial court is hereby reversed. Appellant's statutory right to a speedy trial was violated and, accordingly, appellant is hereby discharged.

Waite, J., concurs.

DeGenaro, J., concurs.