

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

State of Ohio, : Case No. 23CA4022
Plaintiff-Appellee, :
v. : DECISION AND
 : JUDGMENT ENTRY
Amber R. Aeh, :
Defendant-Appellant. : **RELEASED 7/10/2024**

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Hess, J.

{¶1} Amber R. Aeh appeals from a judgment of the Scioto County Court of Common Pleas, following a jury trial, of one count of aggravated trafficking in drugs, two counts of aggravated possession of drugs, and one count of possessing criminal tools. Aeh presents one assignment of error asserting that the trial court erred in denying her motion to dismiss for a violation of her statutory speedy trial rights. Because her trial began before the statutory speedy trial deadline, as adjusted for all proper tolling events, we overrule the assignment of error and affirm the trial court’s judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶2} Aeh was arrested on May 13, 2021, released on bond on May 20, 2021, arrested on an indictment on June 30, 2021,¹ and released on bond on July 7, 2021. Thus, Aeh was in jail a total of 14 days through July 7, 2021. Aeh's brief states that she was in jail from August 6, 2021 to August 27, 2021, but she cites to nothing in the record in support. The State does not reference any additional jail time during August 2021 in its brief, but it also does not contest Aeh's representation that she was jailed for 21 days in August 2021. The trial court's judgment entry states that Aeh "is entitled to 35 days of local jail time credit * * * ." When 21 days of August jail time are added to the 14 days of jail time reflected in the record, Aeh's total jail time equals the 35 days the trial court awarded her.

{¶3} The parties dispute whether Aeh made a written demand for discovery. Aeh contends that the record does not contain any evidence that Aeh requested discovery. The State contends that Aeh filed a demand for discovery electronically on July 19, 2021 and the State made its initial response on August 2, 2021. Specifically the State contends, "Appellant's first appointed counsel submitted a Discovery Request to the State through the Matrix Electronic Case Management System on July 19, 2021 at 11:38 am from IP Address 10.145.96.230 according to the electronic records maintained in the State's Matrix CMS System." The record shows that the State filed a response to "Defendant's request for discovery under Crim.R. 16" on August 4, 2021, which reflects it was served electronically on Aeh on August 2, 2021. The record also shows the State subsequently supplemented its discovery responses to Aeh at least 16 times while the case was pending.

¹ The State's brief incorrectly states that Aeh was arrested on the indictment on June 28, 2021, which results in an incorrect calculation of the number of days Aeh was in jail prior to posting bond.

{¶4} The State made a demand for discovery on Aeh on August 3, 2021 and filed a copy with the court on August 4, 2021. Aeh responded to the discovery on October 6, 2021.²

{¶5} On October 22, 2021, Aeh filed a motion “to exclude and/or suppress any and all information seized from [Aeh’s] Apple i-phone * * *.” The trial court set a hearing on the suppression motion for January 6, 2022. However, Aeh’s attorney requested a continuance of the hearing because she had been exposed to COVID-19 and was required to quarantine. The trial court granted the continuance, and the suppression hearing was held on February 8, 2022. The trial court denied the motion to suppress on May 13, 2022.

{¶6} The trial court set a trial date of June 6, 2022, with a final pretrial hearing on June 3, 2022. On May 27, 2022, the State requested a continuance of the trial date because witnesses from the drug task force and the probation department were unavailable. The trial court granted the continuance and set a new trial date for September 26, 2022.

{¶7} However, on September 27, 2022, the trial court granted a continuance of the trial date on its own motion. The entry stated:

This matter came upon the Court’s own motion and by agreement of the parties and for good cause shown, the jury trial in the above captioned matter is hereby continued. Said jury trial shall be reset at the earliest possible date amendable to the parties.

Speedy trial provisions are hereby tolled pursuant to R.C. 2945.72(H) pending the new trial date.

² Aeh also made a motion for exculpatory evidence on October 6, 2021, but the parties agree that this motion had no tolling effect.

The entry was signed by the judge and the prosecutor and had an approval signature line for Aeh's attorney with the typewritten statement, "Phone Approval." A new trial date was set for January 9, 2023.

{¶18} On January 5, 2023, Aeh's attorney requested a trial continuance of the January 9th trial date because she had an out of state family emergency. The trial court granted the motion and set a new trial date for March 6, 2023. On March 3, 2023, Aeh filed a motion to dismiss the charges against her on the ground that her right to a speedy trial had been violated. The State opposed it and identified the events it argued tolled the statutory speedy trial date. The parties argued the motion prior to the start of the trial and the trial court denied the motion from the bench, "Based on the arguments here today I'm going to overrule * * * Ms. Aeh's motion to dismiss."

{¶19} The jury found Aeh guilty of aggravated trafficking in drugs, a first-degree felony, two counts of aggravated possession of drugs, one a first-degree felony and one a fifth-degree felony, and possessing criminal tools, a fifth-degree felony. The trial court sentenced Aeh to a total prison term of 11 to 16.5 years. Aeh appealed.

II. ASSIGNMENT OF ERROR

{¶10} Aeh presents one assignment of error:

The trial court erred in denying the Defendant-Appellant's motion to dismiss for a violation of her statutory speedy trial rights.

III. LEGAL ANALYSIS

{¶11} Aeh contends that she was not tried within the 270 days required by statute. She argues that the total number of days that lapsed since her arrest on May 13, 2021 until her motion to dismiss on speedy trial grounds on March 3, 2023 was 358 days. This

calculation includes tolling for Aeh's suppression motion and her two requested trial continuances. However, it does not include tolling for: (1) her discovery demand because she contends there is no record of it or (2) the trial continuance which states she gave "Phone approval" because she contends it fails to state a specific reason for the delay.

A. Speedy Trial Requirements

{¶12} "A defendant's right to a speedy trial arises from the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution." *State v. Myers*, 2023-Ohio-3413, ¶ 7 (4th Dist.). " "In Ohio, the right to a speedy trial is implemented by statutes that impose a duty on the state to bring the defendant to trial within a specified time." ' ' " *State v. Stansberry*, 2023-Ohio-3212, ¶ 11 (3d Dist.), quoting *State v. Irish*, 2019-Ohio-2765, ¶ 11 (3d Dist.), quoting *State v. Melampy*, 2008-Ohio-5838, ¶ 9 (12th Dist.). "[S]peedy trial statutes must be strictly construed against the state." *Myers* at ¶ 8, citing *Brecksville v. Cook*, 75 Ohio St.3d 53, 57 (1996). The prosecution and trial courts have a mandatory duty to try an accused within the statutorily prescribed time frame. *Id.* at ¶ 7, citing *State v. Singer*, 50 Ohio St.2d 103, 105 (1977). Once a defendant establishes a prima facie case for dismissal, the burden shifts to the State to prove that the time was sufficiently tolled to extend the period. *State v. Brooks*, 2018-Ohio-2210, ¶ 24 (4th Dist.).

{¶13} Aeh must be brought to trial within 270 days after her arrest. R.C. 2945.71(C)(2).³ Each day that Aeh was held in jail in lieu of bail is counted as three days. R.C. 2945.71(E). Certain events toll this period under R.C. 2945.72. Three tolling

³ R.C. 2945.71 and R.C. 2945.72 were amended in April 2023; the amended provisions are not applicable to Aeh. Our analysis references the statutory speedy trial provisions in existence prior to the 2023 amendments. See *State v. Boyd*, 2024-Ohio-1517, ¶ 22, fn. 2-4 (4th Dist.) (discussing the 2023 amendments).

provisions are relevant to this case: R.C. 2945.72(D) states, “Any period of delay occasioned by the neglect or improper act of the accused;” subsection (E) states, “Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;” and subsection (H) states, “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; * * *.”

B. Standard of Review

{¶14} Appellate review of a trial court's decision on a motion to dismiss for a violation of speedy trial requirements presents a mixed question of law and fact. *State v. Ervin*, 2021-Ohio-47, ¶ 11 (4th Dist.). Thus, appellate courts will defer to a trial court's findings of fact if competent, credible evidence supports them. *State v. Brown*, 131 Ohio App.3d 387, 391 (4th Dist. 1998). Appellate courts then independently determine whether the trial court properly applied the law to the facts. *Id.* “Furthermore, when reviewing the legal issues presented in a speedy trial claim, we must strictly construe the relevant statutes against the state.” *Id.*, citing *Brecksville v. Cook*, 75 Ohio St.3d 53, 57 (1996).

{¶15} Here, Aeh filed a motion to dismiss arguing that it had been over 270 days since her arrest and that the burden is upon the State to justify the delay. The State opposed the motion and set forth several items that tolled the speedy trial period, including Aeh’s discovery demand, her suppression motion, and the three trial continuances – one by the State, one agreed to by all parties, and one by Aeh. The trial court heard oral arguments and made a ruling the day of trial in which it overruled the motion “based on the arguments” and did not make any factual findings.

C. Tolling for Discovery

{¶16} Aeh contends that any purported discovery demand she allegedly made does not toll the speedy trial period because there is no record that she made any discovery demand. The State contends that Aeh's attorney made the demand electronically and it provided detailed information in its appellate brief concerning the request. The State argues that Aeh's discovery demand tolled the speedy trial period for 15 days.

{¶17} A defendant's discovery demand tolls the running of the speedy-trial period. *State v. Brown*, 2002-Ohio-7040, ¶ 23.

Discovery requests by a defendant divert the attention of prosecutors from preparing their case for trial, thus necessitating delay. If no tolling is permitted, a defendant could attempt to cause a speedy-trial violation by filing discovery requests just before trial. Courts could grant case-by-case exceptions but would then be in the unenviable position of deciding how close to trial is too close to request additional discovery. Further, prosecutors could be forced to make hurried responses to discovery requests to avoid violating the speedy-trial statute. We conclude that allowing a defendant's discovery requests to toll the running of the speedy-trial period is the most sensible interpretation of R.C. 2945.72(E).

Id. Aeh argues that "Crim.R. 16 states a defendant must file a motion in order to obligate a response" by the State and there is no record of any discovery motion on the court docket. Therefore, she argues that there should be no tolling period where the discovery demand is not filed and made part of the record. Her interpretation of Crim.R. 16 is incorrect. Crim.R. 16 does not require a motion. Crim.R. 16 only requires that defendant make "a written demand for discovery." Crim.R. 16(B). There is no requirement that it be made by motion or that it be filed with the clerk of courts.

{¶18} We find that there is competent, credible evidence in the record to support a finding that Aeh made a discovery demand. The record at the trial court level shows

that the State responded to “defendant’s request for discovery” and subsequently provided supplemental discovery throughout the case. Aeh’s argument that the State simply provided the discovery out of “goodwill” is unpersuasive. Crim.R. 16 governs criminal discovery and does not require the State to provide discovery unless the defendant requests it in writing. Crim.R. 16(B). Once discovery is initiated by the defendant, the State has a continuing duty to supplement its disclosures. Crim.R. 16(A). The State supplemented its discovery at least 16 times. Additionally, in her oral argument before the trial court, Aeh did not take exception to or refute the State’s representation that she made a discovery request.

{¶19} Because there was competent credible evidence in the record to support a finding that Aeh made a discovery demand, a tolling period for Aeh’s discovery demand may be appropriate. However, even though the State has provided detailed information in its appellate brief concerning Aeh’s discovery request, none of this appears in the trial court record. To the contrary, according to the State’s opposition memorandum filed in response to Aeh’s motion to dismiss, the State took less than a day to respond to Aeh’s discovery: “The State of Ohio responded to Defendant’s request for discovery on the same day it was filed and also filed a reciprocal demand for discovery, to which a generic response was received on 10/7/21.” Therefore the evidence before the trial court was that the State answered Aeh’s discovery the same day it received it. Thus, even though there was competent credible evidence that Aeh made a discovery demand, there was also competent credible evidence that no tolling period was necessitated by it.

{¶20} The State argues that a corresponding 65-day tolling period applies to the State’s discovery requests to Aeh. The State made a demand for discovery on Aeh on

August 3, 2021 and filed a copy with the court on August 4, 2021. Aeh responded to the discovery on October 6, 2021. However, we find that no tolling period is applicable to Aeh's response to the State's discovery requests.

{¶21} Under Crim.R. 16(H), Aeh had a reciprocal duty to provide discovery: "If the defendant serves a written demand for discovery * * * a reciprocal duty of disclosure by the defendant arises without further demand by the state." A tolling period may be applicable if the defendant fails to comply with its duty under Crim.R. 16 within a reasonable time. R.C. 2945.72(D) provides that a tolling period applies to "any period of delay occasioned by the neglect or improper act of the accused; * * * ." The Supreme Court of Ohio has held that "a defendant's failure to respond within a reasonable time to a prosecution request for reciprocal discovery constitutes neglect that tolls the running of speedy-trial time pursuant to R.C. 2945.72(D)." *State v. Palmer*, 2007-Ohio-374, ¶ 24.

{¶22} In *Palmer*, the defendant Palmer took 60 days to respond to the State's discovery requests. Palmer later moved to dismiss the charges against him due to a statutory speedy trial violation. In reviewing the various tolling events, the trial court gave 30 days of tolling for Palmer's delay in responding to the State's discovery. The trial court found that 30 days would have been a reasonable time for him to respond and the additional 30 days it took him was occasioned by Palmer's neglect and should be tolled under R.C. 2945.72(D). The Supreme Court of Ohio agreed and held that the State does not need to move for a motion to compel, nor does the State have to make a showing of prejudice before the tolling can imposed. *Id.* at ¶ 17, 21.

{¶23} Here, the State did not argue to the trial court that Aeh's discovery responses were delayed due to her neglect and that it was entitled to tolling for part of

that response time. To the contrary, the State conceded in its memorandum opposing the motion to dismiss that it was not calculating a tolling period for her delayed discovery response: “Accordingly, even **without** calculation due to delay in filing her response to discovery and other potential tolling events the Defendant has served at most 257 days which can be considered under Ohio’s speedy trial statute and legal procedure.” (Emphasis sic.) Where the State does not pursue the defendant’s failure to comply with discovery and the trial court does not address it, the appellate court will not delve into an analysis of any additional days that may have either passed or tolled as a result. See *State v. Ervin*, 2021-Ohio-47, ¶ 25 (4th Dist.).

{¶24} We find that no tolling periods apply to any of the discovery in this case.

D. Tolling for Aeh’s Motion to Suppress

{¶25} Aeh filed a motion to suppress evidence, which both parties concede tolled the speedy trial period. The motion was filed on October 22, 2021 and ruled on by the trial court on May 13, 2022, which is 204 tolling days.

E. Tolling for Trial Continuances

{¶26} There were a total of three trial continuances. One was requested by the State because several witnesses were unavailable for trial on the date set by the trial court. This request continued the June 6, 2022 trial date to September 26, 2022, a tolling event of 112 days. The parties do not dispute that this request was a reasonable continuance under R.C. 2945.72(H).

{¶27} The September 26, 2022 trial date was continued by agreement of the parties upon the trial court’s motion. The approval line for Aeh’s attorney stated, “Phone Approval.” A new trial date was set for January 9, 2023. Aeh contends that this extension

is not reasonable because it does not state a specific reason for the delay. The State argues that where the parties mutually agree to the extension, there is no need to explain the reasons on the record.

{¶28} The Supreme Court of Ohio has held that “an appellate court may affirm a conviction challenged on speedy-trial grounds even if the trial court did not expressly enumerate any reasons justifying the delay when the reasonableness of the continuance is otherwise affirmatively demonstrated by the record.” *State v. Ramey*, 2012-Ohio-2904, ¶ 33. Here the record affirmatively demonstrates that all the parties agreed to a continuance of the trial date. “ ‘When the parties agree to a continuance, even if it is not on the motion of the defendant, the continuance is presumptively reasonable and there is no need to explain the reason for the continuance on the record.’ ” *State v. Henderson*, 2018-Ohio-5124, ¶ 73 (7th Dist.), quoting *State v. Kozic*, 2014-Ohio-3788, ¶ 91 (7th Dist.). Although Aeh argues that neither her signature nor her attorney’s signature appears on the entry, there is a notation that her attorney gave her phone approval. There is nothing in the record indicating that Aeh’s attorney did not agree to the continuance, nor did she file anything in the record objecting to or denying that she had given her phone authorization for the continuance. We find that this continuance was reasonable under R.C. 2945.72(H).

{¶29} The third continuance was made by Aeh’s attorney. She requested a trial continuance of the January 9, 2023 trial date because she had an out of state family emergency and the trial was continued from January 9, 2023 to March 6, 2023. The parties do not dispute the reasonableness of this continuance under R.C. 2945.72(H). On

March 3, 2023, Aeh filed a motion to dismiss which was overruled the day the trial commenced on March 6, 2023.

F. Speedy Trial Calculations

{¶30} Aeh was arrested May 13, 2021 and spent 35 days in jail, each of which is counted as 3 days, for a total of 105 days. Excluding her 105 days of jail time (3 for 1 days), there were 124 non-jailed days (1 for 1 days) between the time she was arrested and the time she filed her motion to suppress. After the motion to suppress was denied, there were 23 days between the denial of the motion and the trial date of June 6, 2022. The June 6, 2022 trial date was continued twice until March 6, 2023, and Aeh also filed a motion to dismiss on March 3, 2023. Therefore, the total number of days that Aeh awaited trial, excluding those tolled, was 252 days, which is less than the 270 days required by the speedy trial statute.

May 13 – May 20, 2021	7x3 = 21 days	Jail Time
May 21 – June 29, 2021	40 days	Out on Bond
June 30 – July 7, 2021	7x3 = 21 days	Jail Time
July 8 – August 5, 2021	29 days	Out on Bond
August 6 – August 27, 2021	21x3 = 63	Jail Time
August 28 – October 21, 2021	55 days	Out on Bond
October 22, 2021 – May 13, 2022	Tolled	Motion to Suppress
May 14 – June 5, 2022	23 days	Out on Bond
June 6 – September 26, 2022	Tolled	Trial Continuance - State
September 26, 2022 – January 9, 2023	Tolled	Trial Continuance – Agreed to by Parties
January 9 – March 3, 2023	Tolled	Trial Continuance/Motion to Dismiss by Aeh
TOTAL UNTOLLED DAYS	252 days	252 days < 270 Speedy Trial Requirement

{¶31} Construing the relevant statutes against the State and based upon the factual record before the trial court, we independently find that the trial court properly applied the law to the facts when it denied Aeh's motion to dismiss for a statutory speedy trial violation. We overrule her sole assignment of error.

IV. CONCLUSION

{¶32} Having overruled the assignment of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.