

[Cite as *State v. Ball*, 2009-Ohio-2500.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID BALL II

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 08-CA-97

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas Case No. 08CR00328

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 26, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant David Ball appeals his conviction and sentence in the Licking County Court of Common Pleas for felony driving under the influence and driving under suspension. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On November 11, 2005, Appellant was arrested for speeding, driving under the influence, driving under suspension and failing to wear a seatbelt. However, upon his arrest, Appellant informed the investigating officer his name was Donald J. Knight, receiving the traffic citation under said name. The record before this Court does not demonstrate that traffic citation was filed in the Licking County Municipal Court. On November 13, 2005, the State discovered Appellant had given a false name.

{¶3} On July 26, 2006, Appellant was charged in the Licking County Municipal Court with falsification arising out of the November 11, 2005 incident. On August 4, 2006, Appellant entered a plea of guilty to the charge, and was sentenced accordingly.

{¶4} On May 23, 2008, the Licking County Grand Jury indicted Appellant on one count of felony driving under the influence and one count of driving under suspension.

{¶5} On June 30, 2008, Appellant filed a motion to suppress/motion to dismiss the misdemeanor offense of driving under suspension. The trial court denied the motion.

{¶6} On July 24, 2008, Appellant filed a second motion to dismiss for speedy trial violation. The trial court denied the motion, and the matter proceeded to jury trial.

The jury found Appellant guilty on all charges, and the trial court sentenced Appellant to thirty months in prison.

{¶7} Appellant now appeals, assigning as sole error:

{¶8} "I. THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT'S MOTION TO DISMISS."

{¶9} An accused is guaranteed the right to a speedy trial by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. To determine whether an accused's right to a speedy trial has been violated, the United States Supreme Court has devised a balancing test that requires courts to balance and weigh the conduct of the prosecution and that of the accused by examining four factors: the length of the delay, the reason for the delay, whether the accused has asserted his speedy trial rights, and any resulting prejudice to the accused. *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101.

{¶10} In Ohio, the right to a speedy trial has been implemented by statute imposing a duty on the State to bring a defendant, who has not waived his rights to a speedy trial, to trial within the time specified by statute. R.C. 2945.71 *et seq.* applies to defendants generally. *State v. Lowry*, 2009-Ohio-803. The statute reads:

{¶11} "(C) A person against whom a charge of felony is pending:

{¶12} "****

{¶13} "(2) Shall be brought to trial within two hundred seventy days after the person's arrest."

{¶14} The provisions of R.C. 2945.71 are mandatory and must be strictly complied with by the trial court. *State v. Cloud* (1997), 122 Ohio App.3d 626, 702

N.E.2d 500; *State v. Pudlock* (1975), 44 Ohio St.2d 104, 338 N.E.2d 524. This "strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial." *State v. Pachay* (1980), 64 Ohio St.2d 218, 221, 416 N.E.2d 589, 591.

{¶15} A speedy-trial claim involves a mixed question of law and fact. *State v. Larkin*, Richland App. No.2004-CA-103, 2005-Ohio-3122. As an appellate court, we must accept as true any facts found by the trial court and supported by competent, credible evidence. With regard to the legal issues, we apply a de novo standard of review and thus freely review the trial court's application of the law to the facts. *Id.*

{¶16} Appellant cites *State v. Wood* (1992), 81 Ohio App.3d 489, in support of his argument. In *Wood*, the Second District Court of Appeals held:

{¶17} "When an accused waives the right to a speedy trial as to an initial charge, the waiver is not applicable to additional charges arising from the same set of circumstances that are brought subsequent to execution of the waiver. *State v. Adams* (1989), 43 Ohio St.3d 67, 538 N.E.2d 1025.

{¶18} "In the alternative, the state argues the time requirements of R.C. 2945.71 should not apply because the state did not think they could charge the appellant with the felonious assault charge until the Ohio Supreme Court decided *State v. Green* (1991), 58 Ohio St.3d 239, 569 N.E.2d 1038.

{¶19} ****

{¶20} "We agree with the holding in *State v. Clay, supra*, that when new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to

begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge. Any other interpretation would clearly frustrate the purposes of the speedy trial statute.”

{¶21} In response, Appellee relies upon *State v. Baker* (1997), 78 Ohio St.3d 108; wherein the Ohio Supreme Court held:

{¶22} “For the following reasons, we hold that in issuing a subsequent indictment, the state is not subject to the speedy-trial timetable of the initial indictment, when additional criminal charges arise from facts different from the original charges, or the state did not know of these facts at the time of the initial indictment. (Emphasis added).

{¶23} “***

{¶24} “In prior cases, we have dealt with the problem of multiple indictments in relation to Ohio's speedy-trial statute. Specifically, we have held that subsequent charges made against an accused would be subject to the same speedy-trial constraints as the original charges, if additional charges arose from the same facts as the first indictment. *State v. Adams* (1989), 43 Ohio St.3d 67, 68, 538 N.E.2d 1025, 1027.

{¶25} “Applying this standard to the instant case, we find that in issuing a second indictment against the defendant, the state was not subject to the speedy-trial time limits of the original indictment, since the subsequent charges were based on new and additional facts which the state had no knowledge of at the time of the original indictment. Additional crimes based on different facts should not be considered as

arising from the same sequence of events for the purposes of speedy-trial computation. See, e.g., *State v. Singleton* (C.P.1987), 38 Ohio Misc.2d 13, 526 N.E.2d 121.

{¶26} “The original charges against Baker resulted from an investigation by law enforcement agents using informants to illegally purchase prescription drugs from Baker's pharmacies. These original charges were based on the controlled buys that occurred before Baker's arrest on June 10, 1993, and the search of Baker's two pharmacies. After executing search warrants at Baker's two pharmacies, the state began investigating Baker's pharmaceutical records to determine if additional violations had occurred. As a result of its analysis of the records seized on June 10, 1993, the state filed additional charges of drug trafficking and Medicaid fraud, which the state could not have known of until both audits of Baker's records were completed.

{¶27} “To require the state to bring additional charges within the time period of the original indictment, when the state could not have had any knowledge of the additional charges until investigating later-seized evidence, would undermine the state's ability to prosecute elaborate or complex crimes. In so holding, we recognize that in construing the speedy-trial statutes, we must balance the rights of an accused with the public's interest in “obtaining convictions of persons who have committed criminal offenses against the state.” *State v. Bonarrigo* (1980), 62 Ohio St.2d 7, 11, 16 O.O.3d 4, 6-7, 402 N.E.2d 530, 534.

{¶28} “Since the charges in the second indictment stem from additional facts which the state did not know of before the audits, the state should be accorded a new 270-day period beginning from the time when the second indictment was returned on June 1, 1994. When additional criminal charges arise from facts distinct from those

supporting an original charge, or the state was unaware of such facts at that time, the state is not required to bring the accused to trial within the same statutory period as the original charge under R.C. 2945.71 *et seq.*”

{¶29} *Baker*, at 885-886.

{¶30} The situation presented herein is factually distinguishable from *Baker*. In *Baker*, the new charges arose from facts discovered after those giving rise to the original charges. In the case sub judice, the DUI and DUS charges arose from facts known at the time of the filing of the falsification charge. However, the new charges arose from facts different than the original falsification charge.

{¶31} Appellant was arrested for driving under the influence and suspended license on November 11, 2005, but a complaint was not filed charging Appellant due to his giving a false name. The first charge filed in this matter was the charge of falsification on July 26, 2006. The additional criminal charges of felony driving under the influence, and driving under suspension arose from facts different than the original filed charge of falsification. While Appellee knew of the facts supporting the driving under the influence and driving under suspension violations at the time the falsification charge was filed, those facts are still different than the facts supporting the original falsification charge. While Appellant may have been arrested on November 11, 2005, for driving under the influence and driving under suspension, he was not “charged” with those offenses by the filing of a complaint at that time.

{¶32} Accordingly, we find no speedy trial violation occurred.

{¶33} Appellant's sole assignment of error is overruled, and his conviction and sentence in the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

