

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-12-1325

Appellee

Trial Court No. TRD 12-23264

v.

William F. Murray III

DECISION AND JUDGMENT

Appellant

Decided: October 25, 2013

* * * * *

David L. Toska, Chief Prosecutor, City of Toledo, and
Michelle Turvey, Assistant Prosecutor, for appellee.

Karin L. Coble, for appellant.

* * * * *

JENSEN, J.

I. Introduction

{¶ 1} This is an appeal from an October 25, 2012 judgment of the Toledo Municipal Court, which found appellant guilty of a traffic violation and ordered him to pay a \$50 fine, plus court costs. Appellant appeals the conviction on the ground that his right to a speedy trial was violated. For the foregoing reasons, we agree and reverse the judgment of the trial court.

II. Statement of Facts and Procedural Background

{¶ 2} On August 24, 2012, appellant William F. Murray III was stopped by the Toledo Police for speeding on a city street. Because there was an outstanding bench warrant against him from 2003, appellant was taken into custody. Appellant posted bail that same day and was ordered to appear in the Toledo Municipal Court.

{¶ 3} On August 28, 2012, appellant was arraigned on two charges: speeding, in violation of Toledo Municipal Code 333.03(b)(4) and “Towing Requirements,” in violation of Toledo Municipal Code 337.22 from 2003. Appellant pled “not guilty” to both counts, and a trial date was set for September 19, 2012.

{¶ 4} On September 19, 2012, the parties appeared in court. The journal entry from that date states, “On Court’s own motion, and pursuant to ORC 2945.72(H), case to be set out of time on first available date due to ct schedule.” The trial was then rescheduled for October 3, 2012.

{¶ 5} On October 2, 2012, appellant filed a motion to dismiss the charges against him on the basis that his right to a speedy trial was violated. The trial court denied the motion on October 22, 2012.

{¶ 6} On October 25, 2012, the parties reached a plea agreement whereby the city dismissed the 2003 towing charge and amended the 2012 charge from speeding to a brake equipment violation. In exchange, appellant pled no contest. The court accepted the plea, found appellant guilty, and assessed him a \$50 fine, plus court costs.

{¶ 7} Appellant filed a notice of appeal on November 13, 2012. Appellant raises one assignment of error for the court’s review:

Assignment of Error One: Appellant's right to a speedy trial was violated.

III. Analysis

{¶ 8} We apply a de novo standard of review when reviewing the denial of a motion to dismiss on speedy trial grounds. *State v. Browand*, 9th Dist. Lorain No. 06CA009053, 2007-Ohio-4342, ¶ 10.

{¶ 9} The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution both guarantee a criminal defendant the right to a speedy trial. That right has also been codified in Ohio law. R.C. 2945.71 prescribes specific time requirements within which the state must bring an accused to trial. The particular time limits are determined according to the classification and degree of the pending charge(s) against an accused.

{¶ 10} In this case, the charging instrument, i.e. the 2012 traffic citation, alleges that appellant was driving "54 MPH in 35 MPH zone" in a "business area" in violation of Toledo Municipal Code 333.03(b)(4), a misdemeanor. There is no indication of the degree of misdemeanor. However, an exchange between the prosecutor and the trial court during the hearing on October 22, 2012 indicates that the city intended to treat the speeding and the towing violations as minor misdemeanors. Therefore, pursuant to R.C. 2945.71(A), the city had 30 days within which to try appellant.¹

¹ While appellant's alleged speeding violation in a business district may have supported pursuing this case as a third degree misdemeanor, and thus a longer 45 day period within

{¶ 11} “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.” R.C. 2945.73(B). The provisions are mandatory, and strict compliance is required by the state. *State v. Hohenberger*, 189 Ohio App.3d 346, 2010-Ohio-4053, 938 N.E.2d 419, ¶ 35 (6th Dist.).

{¶ 12} In this case, the speedy trial clock began to run on August 25, 2012, the day after appellant was arrested. *State v. Masters*, 172 Ohio App.3d 666, 2007-Ohio-4229, 876 N.E.2d 1007, ¶ 12 (3d Dist.). Therefore, absent any tolling of the statute, the city had until Monday, September 24, 2012, to try him. Crim.R. 45(A). On September 19, 2012, the original trial date, the trial court continued the matter on its own motion. The matter was rescheduled for October 3, 2012, after the thirty day speedy trial deadline.

{¶ 13} “[W]hen a criminal defendant shows that he was not brought to trial within the proper period, the burden shifts to the State to demonstrate that sufficient time was tolled or extended under the statute.” *Hohenberger* at ¶ 35. R.C. 2945.72(H) provides that the speedy trial time limits may be “extended only by * * * [t]he period of any reasonable continuance granted other than upon the accused’s own motion.” When a trial court or prosecutor request a continuance pursuant to R.C. 2945.72(H), we require that,

- (1) the granting of a continuance must be recorded by the trial court in its journal entry;
- (2) the journal entry must identify the party to whom the

which to try him, the citation, as written, would not support the heightened charge. *See Toledo Municipal Code 303.99(a)(1)* and *State v. Wallick*, 6th Dist. Sandusky No. S-87-53, 1988 WL 39726 (Apr. 29, 1988).

continuance is chargeable; (3) if the trial court is acting sua sponte, the journal entry must so indicate and must set forth the reasons justifying the continuance, and (4) the trial court must enter the order of continuance “prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial.” *Hohenberger* at ¶ 47; *see also State v. Vansickle*, 6th Dist. Ottawa No. OT-11-001, 2011-Ohio-4692, ¶ 27.

{¶ 14} Here, the trial court’s sua sponte motion was timely, and the judgment entry clearly indicates that the continuance was chargeable to the city. Thus, the only issue is whether the basis for the continuance, i.e. “due to [court’s] schedule” is adequate to toll the statute under R.C. 2945.72(H).

{¶ 15} The city argues that the entry was sufficient. It offers without support that the trial court rescheduled the trial date because of a “crowded docket” and/or because the arresting officer was unavailable to testify on September 19, 2012. A court speaks through its journal entries, and in this case, the entry provides no explanation as to why the court’s schedule prevented the trial from going forward.

{¶ 16} This case is similar to our decision in *Toledo v. Pack*, 6th Dist. Lucas No. L-01-1019, 2002-Ohio-1517, ¶ 3. There, the defendant’s trial was continued twice by the court beyond the speedy trial timetable. Similar to the case at bar, the journal entries in *Pack* stated that the continuances were necessitated by the “judge’s schedule.” The court found,

[W]e find that setting the case for trial past the statutory time limit two times due to “judge’s schedule” without further explanation does not constitute a “reasonable continuance” pursuant to R.C. 2945.72(H). The law requires us to look at the particular facts of the case, but in this case the entry provides no explanation for us to consider. Accordingly, we find that the trial court erred in denying the motion to dismiss for violation of appellant’s right to a speedy trial * * *. *Id.*

{¶ 17} Likewise, we find that the journal entry in this case did not toll the statute. It is the affirmative duty of the state to insure that a defendant’s right to a speedy trial is respected, and the remedy for a violation of those rights is dismissal of the charge. *State v. Major*, 180 Ohio App.3d 29, 2008-Ohio-6534, 903 N.E.2d 1272, ¶ 21 (6th Dist.).

{¶ 18} Having found that the trial court did commit error prejudicial to appellant, the judgment of the Toledo Municipal Court is vacated, and a final judgment of acquittal is entered for appellant. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment vacated.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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