[Cite as *State v. Meyer*, 2011-Ohio-1357.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO, VILLAGE OF FAIRFAX	:	APPEAL NO. C-090802 TRIAL NO. M-09TRD-49713
Plaintiff-Appellee,	:	*DECISION ON RECONSIDERATION.*
vs.	:	
JOHN MEYER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 25, 2011

Village of Fairfax Prosecuting Attorney, *Dinsmore & Shohl LLP, Alan H. Abes,* and *Jocelyn C. DeMars*, for Plaintiff-Appellee,

John Meyer, pro se.

Please note: This case has been removed from the accelerated calendar.

HILDEBRANDT, Presiding Judge.

{¶1} Following a bench trial, defendant-appellant, John Meyer, was found guilty for having an expired vehicle registration in violation of Fairfax Municipal Code ("FMC") 70.09 and for improper change of course at an intersection in violation of FMC 70.89. On appeal, he presents two assignments of error. Finding no merit to the challenges advanced there, we overrule the assignments of error and affirm the trial court's judgment.

{¶2} Meyer was convicted in 2009. He appealed, and on March 2, 2011, we reversed Meyer's convictions, holding that his rights under Ohio's speedy-trial statutes, R.C. 2945.71 et seq., had been violated. In response, the village of Fairfax filed a motion to reconsider our decision, citing *State v. Bauer*[1] and *State v. Russo*[2] and arguing that, based on those decisions, we had misstated the law and calculated the time for Meyer to be brought to trial incorrectly under Ohio's speedy-trial statutes. After reviewing the cited cases, we agree that we misstated the law, which resulted in an erroneous calculation of the speedy-trial time period. Because Meyer was brought to trial within the appropriate time under R.C. 2945.71, we, accordingly, grant the motion for reconsideration, vacate our March 2, 2011, decision, and substitute this decision for the vacated decision.

{¶3} On April 22, 2009, Meyer was issued a citation for an expired vehicle registration and for improper change of course at an intersection. The citation instructed and summoned Meyer to personally appear at Fairfax Mayor's Court

[1] (1980), 61 Ohio St.2d 83, 399 N.E.2d 555.
[2] (Nov. 15, 1995), 1st Dist. No. C-941052.

("mayor's court") on May 19, 2009. Meyer did not appear on that date, and the journal entry of the mayor's court indicates that a capias was issued and that the case was continued to June 16, 2009. On that date, Meyer appeared, entered a plea of not guilty, and requested a trial. Thus, the case was continued at Meyer's request to July 14, 2009. On that date, the mayor's court journal indicates that another continuance was granted, on behalf of the state, to August 11, 2009. Meyer failed to appear for trial on August 11, 2009, so another capias was issued, and the case was continued to September 8, 2009. On that date, a bench trial was held at which Meyer was found guilty of the charged offenses. Meyer asserts that, prior to trial, he moved to dismiss the charges against him because his right to a speedy trial had been violated. Meyer states that this motion was overruled. Immediately following the trial, on September 8, 2009, Meyer filed a notice of appeal, requesting that his case be heard before the Hamilton County Municipal Court and "waiv[ing] [his] right to a speedy trial pending the process of the appeal."

{¶4} Prior to the beginning of the bench trial in municipal court, Meyer again moved to dismiss the charges against him, arguing that the state had violated Ohio's speedy-trial statutes in mayor's court. The trial court overruled the motion, conducted a de novo bench trial, and found Meyer guilty of the charged offenses.

{¶5} In this appeal, Meyer now sets forth two assignments of error, which we address out of order for purposes of this decision.

{¶6} In his second assignment of error, Meyer contends that the trial court erred by denying his motion to dismiss the charges against him because the state had violated Ohio's speedy-trial statutes in mayor's court. We are unpersuaded.

{¶7} R.C. 2945.71(A) provides that "a person against whom a charge is pending in a court not of record, or against whom a charge of a minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons," unless that time is extended as provided for in R.C. 2945.72.

{¶8} Because a mayor's court is not a court of record,[3] Meyer had to be brought to trial within 30 days of receiving his citation, which included a summons. Meyer was issued his citation on April 22, 2009. But he was not brought to trial until September 8, 2009, well beyond the 30-day statutory period.

{¶9} When, as here, the statutory period for bringing an accused to trial has expired, the state bears the burden of showing that time was properly extended under R.C. 2945.72, or that the accused waived his statutory rights to a speedy trial.[4] Extensions of time under R.C. 2945.72 are to be strictly construed against the state.[5]

{¶10} We analyze all the time periods from the date Meyer was issued a citation to his trial, resolving the relevant legal issues posed by this process. Speedy-trial time begins with the service of summons on the accused. Because the day that Meyer received the citation, which included a summons, did not count against the state, the speedy-trial clock began to run on April 23, 2009.[6] Meyer was scheduled to appear for trial on May 19, 2009, but he failed to appear. R.C. 2945.72(D) provides that the statutory speedy-trial period may be extended by the "neglect or improper act of the accused." In considering R.C. 2945.72(D), the Ohio Supreme Court has held that "a defendant who fails to appear at a scheduled trial, and whose trial must

[3] *Blue Ash v. Madden* (1982), 8 Ohio App.3d 312, 313, 456 N.E.2d 1277.
[4] See *State v. Sheffield* (Oct. 11, 1995), 1st Dist. No. C-950223, citing *State v. Butcher* (1986), 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368.
[5] *State v. Singer* (1977), 50 Ohio St.2d 103, 362 N.E.2d 1216.
[6] See Crim.R. 45(A).

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."[7] Thus, the failure to appear on a trial date causes the speedy-trial time to begin running anew from the date of the accused's rearrest, or in this case, from the date of Meyer's reappearance; the time is not merely tolled.[8] The reason for this seemingly harsh rule is to "prevent a 'mockery of justice' by discharging defendants if in fact the delay was occasioned by their acts."[9]

{¶11} Because Meyer failed to appear on the initial trial date, this improper act caused the speedy-trial clock to restart on his reappearance in court on June 16, 2009.[10] On this date, Meyer entered a plea of not guilty, and requested a trial and a continuance. Because R.C. 2945.72(H) extends or tolls the speedy-trial time period when an accused requests a continuance, zero days remained all that was chargeable to the state until the next court date of July 14, 2009.

{¶12} On July 14, 2009, a continuance was granted to the state, and the trial was rescheduled for August 11, 2009. R.C. 2945.72(H) also extends the time in which an accused must be brought to trial for "the period of any reasonable continuance granted other than upon the accused's own motion." Thus, if the state requests a continuance, as happened here, that continuance will be charged against the state unless the court records the continuance in its journal entry before the expiration of the time limit set forth in R.C. 2945.71, identifying the party to whom

[7] *Bauer*, supra, at 85.
[8] *Russo*, supra.
[9] *Bauer*, supra, at 84.
[10] Because the record does not indicate if or when the capias resulted in Meyer's arrest, the only date we have to restart the speedy-trial time is the date that Meyer reappeared in court.

the continuance is chargeable and stating the reasons for the continuance.[11] The requirement that the court state the reasons for the continuance exists so that an appellate court may determine if the reasons for the continuance were "reasonable."[12]

{¶13} Unfortunately, the magistrate in mayor's court did not indicate the reason for granting the continuance to the state in the court's journal. Because extensions of time are to be construed strictly against the state, the 29 days from July 14, 2009, to August 11, 2009, were chargeable to the state.

{¶14} On August 11, 2009, Meyer failed to appear for his trial. The court issued another capias and rescheduled the trial to September 8, 2009. Because of Meyer's improper act, the speedy-trial time restarted once again on September 8, 2009, when Meyer reappeared. Thus, the trial held on that date was within the 30-day statutory period. Accordingly, the trial court did not err in overruling Meyer's motion to dismiss the charges against him; his speedy-trial rights had not been violated. The second assignment of error is overruled.

{¶15} In his first assignment of error, Meyer challenges the sufficiency and weight of the evidence underlying his conviction for improper change of course at an intersection. The relevant inquiry for a challenge to the sufficiency of the evidence supporting a conviction "is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[13] To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record,

[11] *State v. Veid* (Sept. 25, 1996), 1st Dist. No. C-950495; *State v. Stamps* (1998), 127 Ohio App.3d 219, 224, 712 N.E.2d 762.
[12] *Stamps*, supra, at 224.
[13] *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty.[14]

{¶16} FMC 70.89(A)(2) provides that "[a]t any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection."

{¶17} At trial, Sergeant Bronson testified that Meyer was in the far right lane of travel on Red Bank Road and that he went across two lanes of traffic and into the intersection while turning left. From this testimony, it is apparent that Meyer did not begin his left turn in the "right half of the roadway nearest the center line" as required by FMC 70.89. Instead, Meyer crossed over two lanes of traffic in the intersection to make the left turn. Based on the officer's testimony, we hold that there was sufficient evidence to convict Meyer of improper change of course at an intersection. Further, although Meyer testified that he turned from the left-turn lane, we hold that the trial court did not create a manifest miscarriage of justice by finding Meyer guilty of the charged offense. The first assignment of error is overruled.

[14] *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

{¶18} Accordingly, the judgment of the trial court is affirmed.

Judgment affirmed.

SUNDERMANN and **FISCHER**, **JJ.,** concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.