

[Cite as *State v. Prince*, 2015-Ohio-1913.]

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

|                      |   |                         |
|----------------------|---|-------------------------|
| STATE OF OHIO,       | : | APPEAL NOS. C-140496    |
|                      |   | C-140497                |
| Plaintiff-Appellee,  | : | C-140498                |
|                      |   | TRIAL NOS. 14TRC-14725A |
| vs.                  | : | 14TRC-14725B            |
|                      |   | 14TRC-14725C            |
| GABRIELLA PRINCE,    | : |                         |
|                      |   | <i>OPINION.</i>         |
| Defendant-Appellant. | : |                         |

Criminal Appeals From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: May 20, 2015

*Paula Boggs Muething*, City Soliciter, *Heidi Rosales*, City Prosecutor, and *Jonathan Rengering*, Assistant City Prosecutor, for Plaintiff-Appellee,

*Raymond T. Faller*, Hamilton County Public Defender, and *Josh Thompson*, Assistant Public Defender, for Defendant-Appellant.

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

**DEWINE, Judge.**

{¶1} In this case we consider whether a criminal defendant's speedy-trial rights were violated. The trial court began a bench trial just before the clock ran out under Ohio's speedy-trial statute. But after asking its first witness a few questions, the state obtained a continuance to secure a necessary witness. The defendant argues that all this was a sham to circumvent her speedy-trial rights. She contends that on these facts the spirit, if not the letter, of the speedy-trial statute was violated, and she should be discharged from further prosecution. We are not convinced.

**I. Background**

{¶2} Gabriella Prince was arrested and cited to court following a hit-skip accident on April 5, 2014. She was charged with operating a vehicle under the influence, a marked-lanes violation, violating the assured-clear-distance statute, and failing to stop after an accident.

{¶3} Her case was set for a bench trial on June 20. When Prince failed to show up for trial, the trial court issued a capias for her arrest. She was taken into custody on July 9, and the case was set for trial on July 31. The matter was subsequently continued at the state's request until August 7, because the arresting officer, David Moore, was unavailable.

{¶4} Apparently Officer Moore was still unavailable on August 7. Both parties waived opening statements. Before any witnesses were called, defense counsel registered an objection to starting the trial when the arresting officer was unavailable. Representing that it was the last day for starting a trial under Ohio's speedy-trial statute, defense counsel protested, "[T]his is basically an attempt to circumvent my client's speedy-trial time." Unpersuaded, the court directed the state to call its first witness.

Officer Ron Shultz, whose partner collected Prince's urine sample after her arrest, was called to the stand. The state asked Officer Schultz 16 questions: he identified the defendant, acknowledged that he had been present when the defendant was notified of her administrative-license suspension, and affirmed that he had witnessed his partner take the defendant to obtain a urine sample. Following Officer Shultz's direct examination and a brief cross-examination, the state was granted a continuance in progress to August 13 to secure the availability of Officer Moore. The court ultimately found Prince guilty of OVI and the marked-lanes violation.

## II. Speedy-Trial Time

{¶5} A criminal defendant is guaranteed the right to a speedy trial under the Sixth and Fourteenth Amendments. *State v. Ladd*, 56 Ohio St.2d 197, 383 N.E.2d 579 (1978). Ohio has quantified the right in statute. R.C. 2945.71 through 2945.73. In a case such as this one, where the defendant is charged with a first- or second-degree misdemeanor, the defendant must be brought to trial within 90 days. R.C. 2945.71(B). Importantly, however, each day the defendant is held solely on one pending case counts as three days. R.C. 2945.71(E); *see State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, 853 N.E.2d 283, ¶ 8. The defendant's failure to appear causes the speedy-trial clock to restart. *See State v. Meyer*, 1st Dist. Hamilton No. C-090802, 2011-Ohio-1357, ¶ 11. Ms. Prince was rearrested on July 9, following her failure to appear. So, assuming she is entitled to the triple-count provision,<sup>1</sup> the state was required to bring her to trial by August 9. The trial began on August 7, but then was continued in progress to August 13.

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<sup>1</sup> We say "assuming" because there is some suggestion in the record that Prince might also have been held on a probation violation. The record is unclear on this point, and while we could remand the case to resolve the issue, we choose not to do so. The state did not raise the issue below, and as explained herein, we conclude that even if the three-for-one provision applies, Prince's rights were not violated.

{¶6} Both parties agree that the trial started on August 7, within the statutory time frame. But even though the trial started within the statutory time frame, our inquiry is not finished. While the statute does not require a trial to be completed within the speedy-trial time, “[t]rial courts must not circumvent the speedy trial statute by failing to conclude them within a reasonable period of time.” *State v. Waldron*, 4th Dist. Ross No. 93CA1978, 1994 Ohio App. LEXIS 4227, \*7 (Sept. 16, 1994); *State v. Holbert*, 4th Dist. Ross No. 93CA1972, 1995 Ohio App. LEXIS 285, \*6-7 (Jan. 23, 1995). Further, the Ohio Supreme Court has warned against construing too broadly the provisions of R.C. 2945.72, which provide for extensions of speedy-trial time, so as to “render meaningless and thwart the purpose of the speedy trial statute.” *Aurora v. Patrick*, 61 Ohio St.2d 107, 108, 399 N.E.2d 1220 (1980).

{¶7} Thus, it has been held that even though a jury trial commences when voir dire begins, a trial court may not circumvent the statute’s underlying intent by finishing voir dire within the appropriate time limit and then “ordering a prolonged recess with an intent to pay mere ‘lip service’ to the [speedy-trial statute’s] requirements.” *State v. Knight*, 2d Dist. Greene No. 2003CA14, 2004-Ohio-1941, ¶ 10, citing *United States v. Scaife*, 749 F.2d 338, 343, (6th Cir.1984).

{¶8} But here, we do not find that the court’s actions in allowing the trial to begin on August 7 and then granting a six-day continuance served to circumvent the defendant’s speedy-trial rights. Indeed, we are of the opinion that the court need not have started the trial on August 7 at all, and could have simply granted a continuance until August 13 without violating Prince’s speedy-trial rights.

{¶9} The speedy-trial time is tolled by a “reasonable continuance granted other than upon the accused’s own motion.” R.C. 2945.72(H). To determine whether a continuance beyond the speedy-trial date is reasonable, a court must consider the

purpose and length of the continuance. *State v. Lee*, 48 Ohio St.2d 208, 209-210, 357 N.E.2d 1095 (1976). The continuance granted in this case was only six days, including a weekend, in order to secure the arresting officer's presence. This case is similar to *State v. Saffell*, 35 Ohio St.3d 90, 518 N.E.2d 934 (1988). There, a continuance was granted three days beyond the speedy-trial deadline because the arresting officer in an OVI case had a vacation scheduled on the trial date. Based on those facts, the court concluded that the record "affirmatively indicate[d]" that the "continuance was reasonable under the circumstances," and thus there was no violation of the defendant's speedy-trial rights. *Id.* at 92. Other courts have reached similar results. See *State v. Smith*, 4th Dist. Ross No. 10CA3148, 2011-Ohio-602 (finding a 45-day continuance and subsequent 78-day continuance, both granted because of the unavailability of the same key witness, to be reasonable); *State v. Mitchell*, 7th Dist. Mahoning No. 06-MA-169, 2008-Ohio-645 (finding a continuance 21 days beyond the speedy-trial deadline in order to secure a witness's testimony and obtain additional discovery to be reasonable).

{¶10} On the facts before us, we conclude that the continuance was reasonable under the circumstances. There was no violation of Prince's speedy-trial rights.

### III. Conclusion

{¶11} We overrule Prince's assignment of error, and we affirm the trial court's judgment.

Judgment affirmed.

**HENDON, P.J., and STAUTBERG, J., concur.**

Please note:

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