[Cite as *State v. McQueen*, 2009-Ohio-6272.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 09AP-195
v.	:	(C.P.C. No. 08CR05-3349)
John W. McQueen,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 1, 2009

Ron O'Brien, Prosecuting Attorney, and *Richard A. Termuhlen*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, John W. McQueen ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas convicting him of one count of domestic violence, a third-degree felony. For the reasons that follow, we affirm.

{¶2} Appellant was charged with domestic violence for an incident that occurred on April 22, 2008. On that date, appellant was living in an apartment with Sharon Robinson. Robinson testified that she and appellant were in a relationship, and when asked if appellant was her boyfriend, Robinson stated, "More or less, yeah." (Tr. 135.)

{¶3} According to the testimony at trial, appellant and Robinson were smoking crack cocaine. Appellant had Robinson go to an upstairs apartment to get a friend of hers named Toni to come to their apartment. Toni came down to the apartment at one point, but then left. Robinson then went upstairs to the apartment where Toni was visiting for about 20 minutes. When Robinson came back downstairs, she and appellant began arguing. Appellant held Robinson down with a metal bar across her shoulders, and punched her in the forehead. Robinson left the apartment to go upstairs to use a telephone, and a neighbor saw her and called for the police. Police arrested appellant, and he was charged with domestic violence.

{¶4} Prior to trial, appellant's counsel raised the issue of appellant's competency to stand trial pursuant to R.C. 2945.37. The trial court ordered appellant to submit to a competency evaluation by NetCare's Forensic Psychiatry Center. By letter dated September 18, 2008, Dr. Pamela Chapman, a psychologist with NetCare, reported that an attempt had been made to conduct the evaluation as ordered on September 15, but that appellant had refused to participate. The letter stated, "As a result of Mr. McQueen's lack of participation in the interview, I am unable to render an opinion regarding his ability to understand the nature and objective of the legal proceedings against him and of assisting counsel in his defense." The letter also stated, "During our brief discussion, Mr. McQueen's thinking contained signs of suspicious, paranoid and persecutory thoughts."

{¶5} On October 1, 2008, the trial court held a hearing to consider the letter from NetCare, as well as appellant's request to act as his own attorney during trial. During that hearing the following discussion occurred:

> THE COURT: We're here set for trial today, and Mr. McQueen, on August the 13th, you asked to be your own attorney.
>
> THE DEFENDANT: Yes, judge. You want to do a competency hearing. I want you to explain that.
>
> THE COURT: I want to make sure you are competent to represent yourself.
>
> THE DEFENDANT: What would make you think I am not?
>
> THE COURT: There was some indication –
>
> THE DEFENDANT: Did I not tell you that I already represented myself back in 1999 * * * ?
>
> THE COURT: You know, that's a long time ago, and when I let somebody represent themselves, just so I know they are absolutely positive that they know – that they understand what I am about to explain to them. It's only for your protection. It's nothing against you.
>
> THE DEFENDANT: We have a right under the constitution to represent ourselves.
>
> THE COURT: I agree, and I was just trying to protect you and I apologize –
>
> THE DEFENDANT: I look at it as benefiting the prosecution –
>
> THE COURT: I apologize if you take offense at it. You say you are competent.
>
> THE DEFENDANT: I have given you no reason to think otherwise, your Honor.

> THE COURT: That's fine, that you think that you are competent. The NetCare evaluation was that you felt you were and didn't want to answer any of their questions.
>
> THE DEFENDANT: I obtained a paper from the lady, right here.
>
> MR. BASNETT: If I may approach, your Honor.
>
> THE COURT: It says here you met with –
>
> THE DEFENDANT: As far he [sic] and I was concerned, the competency hearing was completed after I stopped her and said, What do you assess? Am I crazy to you? She said, No.
>
> THE COURT: I don't think you are crazy at all. I don't think you are crazy at all. I do it with anybody, that you shouldn't take it personal. I want to make sure –
>
> THE DEFENDANT: I have 15 years' paralegal.
>
> THE COURT: Okay. I am going to find that you are competent and we're going to proceed, and the next thing I have to tell you – and we'll make this part of the record once you file that.

(Oct. 1, 2008 Tr. 2-4.)

{¶6} After further colloquy between the court and appellant, the trial court determined that appellant would be allowed to represent himself at trial, but directed attorney Jeffrey Basnett, who had been appellant's counsel, to serve as standby counsel during the trial. During this colloquy, the court made a number of statements regarding some of the difficulties of proceeding pro se:

> THE COURT: * * * Now, do you want to represent yourself[?]
>
> THE DEFENDANT: Most certainly.
>
> THE COURT: Now, let me tell you, if you represent yourself, there is [sic] some things I got [sic] to tell you about. The first thing we are going to do is we will have to impanel a jury.

THE DEFENDANT: I have picked a jury before.

THE COURT: Have you done voir dire before?

THE DEFENDANT: Yes, I have. It usually takes about five, six hours to do that.

THE COURT: No. I am going to allow both sides one hour.

THE DEFENDANT: How many challenges are you going to get?

THE COURT: You get four challenges.

THE DEFENDANT: Okay.

THE COURT: Then the State has to put evidence on and you have a right to cross-examine the witnesses. If I – if either side, whether you object or the other side objects on the matter of law and evidence, I rule on it, and, of course, you are required to make your record. But then once I have ruled, you have to accept the ruling and go forward with the next question or go forward with the trial.

THE DEFENDANT: Well, certainly.

THE COURT: The Court doesn't permit a continued argument over the ruling. You are not an attorney. You understand that. You seem to know the rules of evidence well. I can tell you, I have been a judge for 16 years –

THE DEFENDANT: You have been a judge of 16 years. You are running for the Court of Appeal [sic] right now.

THE COURT: And the rules are very difficult to interpret even for a lawyer. You are going to have to do that by yourself. I will ask Mr. Basnett.

THE DEFENDANT: That won't be necessary.

THE COURT: I am going to ask him to stand by just in case.

THE DEFENDANT: That will not be necessary.

> THE COURT: He is going to sit there in case you have a question. He will be here in case you do. You don't have to use him at all. I always have a lawyer stand by in the case. Once the State puts on their evidence, you are entitled to cross-examine the witnesses. When you cross-examine the State's witnesses, you can ask just about anything you want that's relevant to the case. When you recross, you can only ask about what the prosecutor asked on redirect. You can't go beyond the prosecutor's redirect, and it gets limited in terms of what you can ask.
>
> THE DEFENDANT: I will be careful not to go beyond the scope.
>
> THE COURT: Okay. It sounds like you understand that. The closing arguments, I will limit those to an hour also. The prosecutor she gets to go first and last.
>
> THE DEFENDANT: The burden of proof is on her; it's not on me.
>
> THE COURT: She gets up to an hour. She has to reserve time for rebuttal, and you get an hour for closing argument, and those are limited by the rules that I will enforce; and if you go beyond what's the limit in closing argument, of course, I will have to make a ruling only if there is an objection -

(Oct. 1, 2008 Tr. 7-9)

{¶7} A number of other issues were also discussed during the October 1, 2008 hearing, including appellant's argument that his speedy trial rights had been violated by the state's failure to bring him to trial within 90 days, and whether appellant was entitled to obtain Robinson's statement to the police.

{¶8} At the commencement of trial, appellant actively participated in jury selection, questioning prospective jurors, and exercising peremptory challenges. During trial, appellant was able to make relevant evidentiary objections. Appellant was disruptive

throughout the course of the trial. Ultimately, during the prosecuting attorney's rebuttal in closing arguments, appellant became so disruptive he was removed from the courtroom.

{¶9} The jury found appellant guilty on the charge of domestic violence. The trial court sentenced appellant to a term of five years of imprisonment. Appellant filed this appeal, asserting five assignments of error:

> ASSIGNMENT OF ERROR NUMBER ONE
>
> THE TRIAL [COURT] ERRED WHEN IT FAILED TO HOLD A HEARING, AS REQUIRED BY R.C. 2945.37(B), TO DETERMINE WHETHER THE DEFENDANT WAS COMPETENT TO STAND TRIAL WHEN THE ISSUE OF THE DEFENDANT'S COMPETENCY HAD BEEN PROPERLY RAISED BEFORE TRIAL.
>
> ASSIGNMENT OF ERROR NUMBER TWO
>
> THE TRIAL COURT ERRED WHEN IT ALLOWED THE DEFENDANT TO REPRESENT HIMSELF WHEN THERE WERE UNRESOLVED ISSUES CONCERNING THE DEFENDANT'S ABILITY AND COMPETENCE TO ACT AS HIS OWN LAWYER.
>
> ASSIGNMENT OF ERROR NUMBER THREE
>
> THE TRIAL COURT ERRED WHEN IT ENTERED A JUDGMENT OF CONVICTION AGAINST THE DEFENDANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE CONVICTION AND THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PRESENTED.
>
> ASSIGNMENT OF ERROR NUMBER FOUR
>
> THE DEFENDANT WAS DEPRIVED OF HIS RIGHT TO HAVE THE JURORS APPLY THE CORRECT STANDARD OF LAW TO HIS CASE WHEN THE COURT FAILED TO PROVIDE THE DEFINITION OF WHAT OHIO LAW MEANS, IN A DOMESTIC VIOLENCE CASE, WHEN IT REFERS TO "A PERSON LIVING AS A SPOUSE." THIS FAILURE ELIMINATED THE STATE'S NEED TO PROVE BEYOND A

REASONABLE DOUBT THAT THE DEFENDANT AND THE COMPLAINANT HAD COHABITED AS REQUIRED BY LAW.

ASSIGNMENT OF ERROR NUMBER FIVE

THE TRIAL COURT ERRED WHEN IT OVERRULED THE DEFENDANT'S MOTION TO DISMISS FOR SPEEDY TRIAL VIOLATIONS.

{¶10} In his first assignment of error, appellant argues that the trial court erred when it failed to hold a hearing on appellant's competency to stand trial as required by R.C. 2945.37(B). A defendant is competent to stand trial if the defendant has sufficient present ability to consult with counsel with a reasonable degree of understanding and has a rational as well as a factual understanding of the proceedings against him. *State v. Were*, 94 Ohio St.3d 173, 2002-Ohio-481. A defendant who lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist with preparation of a defense may not be subjected to a trial. *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624.

{¶11} Pursuant to R.C. 2945.37(G), a defendant is presumed to be competent to stand trial unless, after holding a hearing, the court finds by a preponderance of the evidence that the defendant is incapable of understanding the nature of the proceedings or of assisting with the defense. R.C. 2945.37(B) provides that, if the issue of a defendant's competency to stand trial is raised before the commencement of trial, the court "shall" hold a hearing. However, the failure to hold a hearing may be harmless error where the record fails to reveal sufficient indicia of incompetency. *State v. Bock* (1986), 28 Ohio St.3d 108. A trial court's finding that a defendant is competent to stand trial must be upheld where there is reliable and credible evidence to support that finding, because

deference must be given to the trial court's ability to see and hear what goes on in its courtroom. *Were.* See also *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193; *State v. Cowans*, 87 Ohio St.3d 68, 1999-Ohio-250.

{¶12} Appellant argues that *Were* controls the outcome of this case. In *Were*, the defendant's counsel raised the issue of the defendant's competency to stand trial prior to the trial's commencement. However, the defendant refused to cooperate with the competency evaluation, resulting in the submission to the trial court of an examiners' report concluding that the defendant was competent. The examiners' report concluded that the defendant's failure to cooperate with the evaluation was based on intransigence. The trial court accepted the report, and found the defendant competent without holding a hearing.

{¶13} The Supreme Court of Ohio reversed the defendant's subsequent conviction, finding that the failure to hold a hearing in that case violated the defendant's constitutional right to a hearing on competency. *Were* at 175. The court based its conclusion on the finding that the record was "replete with suggestions of [defendant's] incompetency." Id. Specifically, the defendant's counsel had repeatedly raised the issue of the defendant's incompetency, and the defendant had filed a number of pro se motions with the court seeking to have his attorneys dismissed. Id.

{¶14} Initially, we note that it appears that in this case the October 1, 2008 hearing was for the purpose of considering appellant's competency both to stand trial and to represent himself in this case. Although the trial court did not hold a full evidentiary hearing, the court did consider the report submitted by NetCare, and held a colloquy with appellant regarding his understanding of the proceedings. Ohio courts since *Were* have

recognized that a full evidentiary hearing on the issue of competency is not necessary where the trial court engages in a colloquy with the defendant, and the record shows a lack of indicia of incompetency. *Woodley v. Bradshaw* (May 12, 2008), N.D.Ohio No. 1:05 CV 0028, 2008 U.S. Dist. LEXIS 39313, citing *State v. Ortiz*, 9th Dist. No. 06CA009011, 2007-Ohio-4350; *State v. Robinson*, 8th Dist. No. 89136, 2007-Ohio-6831. Indicia of incompetency, or the lack thereof, may be gleaned from the entire record, including statements made by the defendant during the course of the trial. *Were* (indicia of incompetency included repeated allegations of incompetency made by defense counsel throughout the course of the trial); *Bock* (no indicia of incompetency based on defendant's demeanor while testifying during trial).

{¶15} We find that in this case, the trial court's colloquy with appellant was sufficient to allow the trial court to conclude that appellant was competent to stand trial. Unlike in *Were*, the record is not replete with indicia of incompetence. Appellant's statements during the October 1, 2008 hearing showed that he understood the nature of the proceedings against him, as appellant was able to make arguments regarding his assertion that his speedy trial rights had been violated, and showed an understanding of the procedure to be used in jury selection and at trial. In addition, appellant was able to testify on his own behalf during trial, and nothing in this testimony provides any indication that appellant did not understand the nature and object of the proceedings against him. Although appellant's behavior during the trial was sometimes disruptive, and may have caused the jury to view him negatively, this behavior does not equate to a conclusion that appellant did not understand the nature of the proceedings against him. Based on the record, appellant did understand the nature of the proceedings against him. Therefore,

the trial court did not err in finding appellant competent to stand trial without holding a full evidentiary hearing.

{¶16} Accordingly, appellant's first assignment of error is overruled.

{¶17} In his second assignment of error, appellant argues that the trial court erred when it found appellant competent to represent himself at trial. Specifically, appellant relies on the decision by the United States Supreme Court in *Indiana v. Edwards* (2008), ___ U.S. ___, 128 S.Ct. 2379, to argue that the trial court should have refused to allow appellant to act as his own counsel based on residual questions regarding appellant's competency.

{¶18} In *Edwards*, the Supreme Court recognized that in some cases there is a distinction between a defendant's competency to stand trial and a defendant's competency to waive the right to counsel and self-represent. The issue in *Edwards* was whether a state can insist that a defendant who has been found competent to stand trial proceed to trial with counsel based on concerns about the defendant's competency to represent himself, thus denying the defendant's constitutional right to proceed without counsel. The court concluded that the constitution does permit a state to insist that a defendant not be allowed to represent himself in those circumstances. Id. at 2386.

{¶19} Appellant argues that *Edwards* stands for the proposition that a state must insist that a defendant who has been found competent to stand trial be prevented from waiving the right to counsel where there are remaining questions regarding that defendant's competency to waive the right to counsel and represent himself at trial. Appellant therefore argues that in this case, it was error for the trial court to allow appellant to represent himself. However, *Edwards* does not stand for the proposition that

the state *must* insist that a defendant not be allowed to represent himself based on questions regarding competency; rather, the case stands only for the proposition that the state *may* insist that a defendant proceed to trial with counsel based on concerns regarding competency without violating the constitution. Thus, appellant's reliance on *Edwards* is misplaced.

{¶20} Therefore, appellant's second assignment of error is overruled.

{¶21} In his third assignment of error, appellant argues that his conviction was based on insufficient evidence, and was against the manifest weight of the evidence. When reviewing the sufficiency of the evidence supporting a criminal conviction, an appellate court must examine the evidence submitted at trial to determine whether such evidence, if believed, would convince an average person of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259. The relevant inquiry 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 proven beyond a reasonable doubt. Id. at paragraph two of the syllabus. See also *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789.

{¶22} This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172. Rather, the sufficiency of the evidence test "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson* at 319. Accordingly, the reviewing court does not substitute its judgment for that of the fact finder. *Jenks* at 279.

{¶23} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." Under this standard of review, the appellate court weighs the evidence in order to determine whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. However, in engaging in this weighing, the appellate court must bear in mind the fact finder's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶24} Appellant was charged with domestic violence in violation of R.C. 2919.25, which prohibits a person from "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member." R.C. 2919.25(A). "Family or household member" is defined, in relevant part, as "Any of the following who is residing or has resided with the offender: (i) A spouse, a person living as a spouse, or a former spouse of the offender." R.C. 2919.25(F)(1)(a). As set forth in R.C. 2919.25(F)(2), a "person living as a spouse" is "a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question." As relevant to this case, the issue is whether appellant and Robinson were cohabiting.

{¶25} Generally, whether two people are cohabiting is a question of fact to be resolved by the jury. *State v. Miller* (1995), 105 Ohio App.3d 679. The Supreme Court of Ohio has stated that "[t]he essential elements of 'cohabitation' are (1) sharing of familial or financial responsibilities and (2) consortium." *State v. Williams*, 79 Ohio St.3d 459, 1997-Ohio-79, paragraph two of the syllabus. The court further stated:

> Possible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets. Factors that might establish consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations.

Id. at 465.

{¶26} At trial, Robinson testified that appellant lived at her apartment, that appellant was her boyfriend "more or less," and that the two had been in a relationship for about a year. (Tr. 134-35.) In response to questioning on cross-examination by appellant, Robinson testified that she and appellant both cleaned the apartment, and both cooked meals. (Tr. 165.) During his testimony, appellant stated that, "I cared so much for this person that I went and brought her coffee in bed and cooked her meals in the morning." (Tr. 219.) Appellant also testified that "When we didn't have anything to eat, I went out and got some food and brought it in the house." (Tr. 220.)

{¶27} Viewed in a light most favorable to the state, this evidence was sufficient to establish familial responsibilities and consortium, and thus was sufficient to establish that appellant and Robinson were cohabiting. Therefore, the conviction was supported by sufficient evidence. Nor can we say that this is one of those rare cases in which the jury

clearly lost its way and created a miscarriage of justice such that the conviction must be reversed on manifest weight grounds.

{¶28} Therefore, appellant's third assignment of error is overruled.

{¶29} In his fourth assignment of error, appellant argues that the trial court erred in its instruction to the jury on the elements necessary to establish the offense of domestic violence. Specifically, appellant argues that the trial court correctly instructed the jury on the definition of family or household member set forth in R.C. 2919.25(F)(1), but did not instruct the jury on the definition of a person living as a spouse as set forth in R.C. 2919.25(F). Appellant argues that the failure to give such an instruction had the effect of relieving the state of its burden of proving a necessary element of the offense of domestic violence.

{¶30} Appellant did not raise any objection to the jury instructions at trial, nor did appellant make any specific request for an instruction on the definition of a person living as a spouse. Generally, the failure to object at trial or to request a specific instruction waives all but plain error with respect to the jury instructions given. *State v. Johnson*, 10th Dist. No. 08AP-652, 2009-Ohio-3383.

{¶31} In order to constitute plain error, the error must be an obvious defect in the trial proceedings, and the error must have affected substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68. Plain error exists only when it can be said that "but for the error, the outcome of the trial would clearly have been otherwise." *State v. Biros*, 78 Ohio St.3d 426, 431, 1997-Ohio-204.

{¶32} In this case, we have already determined that the jury was presented with sufficient evidence that appellant and Robinson were cohabiting, and thus were living as

spouses. As a result, we cannot say that the outcome of the trial would clearly have been otherwise if the jury had been instructed on the definition of living as a spouse.

{¶33} Therefore, appellant's fourth assignment of error is overruled.

{¶34} In his fifth assignment of error, appellant argues that the trial court erred when it denied his motion to dismiss on speedy trial grounds. R.C. 2945.71(C) provides that a person against whom a felony charge is pending must be brought to trial within 270 days of the person's arrest. R.C. 2945.71(E) provides that each day for which the accused is held in jail in lieu of bond on the pending charge counts as three days. R.C. 2945.72 sets forth a number of reasons for which the statutory time period for bringing an accused to trial may be extended.

{¶35} Since appellant was held in lieu of bond pending trial, the state effectively had 90 days in which to bring appellant to trial. Appellant was arrested on April 22, 2008, and trial commenced on December 15, 2008, more than 90 days after appellant's arrest. Thus, the burden shifted to the state to show that the speedy trial time had been extended for any of the reasons set forth in R.C. 2945.72.

{¶36} Appellant was arrested on April 22, 2008, and indicted by the Franklin County Grand Jury on May 5, 2008. The initial trial date was set for June 17, 2008. On May 15, 2008, appellant's counsel filed a motion seeking discovery from the state, which the state provided on June 16, 2008. A defendant's motion for discovery tolls the statutory speedy trial period pursuant to R.C. 2945.72(E). *State v. Freeman*, 7th Dist. No. 08 MA 81, 2009-Ohio-3052. Thus, at the time of appellant's initial trial date, 23 days had passed, which under the triple count provision counted as 69 days.

{¶37} On June 17, 2008, the court continued the trial date until July 9, 2008 at the request of both parties. The continuance entry states that the reason for the continuance was to allow counsel to prepare for trial. Appellant's counsel at the time signed the entry, but appellant refused to sign. R.C. 2945.72(H) provides that the speedy trial time is expanded for "[t]he 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." Although appellant refused to consent to the continuance, it is well established that a defendant is bound by the actions of counsel waiving the speedy trial right. *State v. McBreen* (1978), 54 Ohio St.2d 315. Thus, the speedy trial time was tolled during the time period between June 17, 2008 and July 9, 2008.

{¶38} On July 9, 2008, the trial court signed a second entry continuing the trial date to July 14, 2008. The stated reason was that appellant's counsel was sick. Appellant did sign that entry. Thus, the speedy trial time was tolled during the period of the second continuance.

{¶39} On July 14, 2008, the trial court signed another entry continuing the case until August 11, 2008. This entry was signed by appellant's counsel at the time, although appellant refused to sign. Thus, the speedy trial time was tolled during the period of the third continuance.

{¶40} On July 16, 2008, appellant's counsel was allowed to withdraw, and Jeffrey Basnett was appointed to represent appellant. Attorney Basnett filed a second motion for discovery on July 18, 2008, which also had the effect of tolling the speedy trial period.

{¶41} On August 11, 2008, the court signed another entry continuing the trial date until August 14, 2008. The stated purpose was to evaluate appellant's competency to

stand trial. On August 14, 2008, the trial court journalized its order directing that a psychiatric evaluation be performed. The court also signed an entry continuing the trial until October 1, 2008, again for the stated purpose of completing the psychiatric evaluation. R.C. 2945.72(B) provides for the extension of the speedy trial time for any period "during which [the accused's] mental competence to stand trial is being determined." Thus, the speedy trial time was tolled during the period between August 11, 2008 and October 1, 2008.

{¶42} During the October 1, 2008 hearing, the trial court stated that trial would be set for October 14, 2008. Although no entry appears in the record, it is clear from the transcript of the October 1, 2008 hearing that appellant objected to the further continuance of the case. Thus, the speedy trial time period for that continuance can only be tolled if the continuance was reasonable. We cannot say that a two-week continuance was unreasonable. Therefore, the speedy time period was tolled during that period.

{¶43} On October 14, 2008, the trial court signed an entry continuing the trial until October 28, 2008. The stated reason was that the court was in trial on another case, although the entry also states that the continuance was being granted on motion of both parties. The entry was signed by attorney Basnett, with the blank for his signature having written underneath it the words "Legal Advisor," reflecting that appellant was acting as his own attorney with Basnett acting as standby counsel. Appellant refused to sign the entry. Since Basnett was not acting as appellant's counsel at that time, his signature on the entry could not bind appellant. However, once again, we cannot say that a two-week continuance was unreasonable. Therefore, the speedy time period was tolled during the period of that continuance.

{¶44} On October 28, 2008, the trial court signed a final entry continuing the trial until December 8, 2008. This entry also states that the continuance was being granted on the motion of both parties, with the stated reason being that the court was unavailable. This entry was also signed by attorney Basnett in his capacity as appellant's standby counsel, with appellant refusing to sign the entry. Thus, although the entry states that it was being made on the motion of the parties, it is clear that it was instead either made sua sponte by the court or on the state's motion.

{¶45} A sua sponte continuance must affirmatively demonstrate that the continuance was reasonable in light of its necessity or purpose. *State v. Bounds*, 5th Dist. No. 2009-CA-0063, 2009-Ohio-4767. The issue of whether a continuance is reasonable must be established on a case by case basis, and is not subject to any per se rule. *State v. Saffell* (1988), 35 Ohio St.3d 90. A continuance based on the trial court's engagement in another trial is generally viewed as reasonable. *Bounds*. However, in such cases, a continuance may be rendered unreasonable based on the length of the continuance. Id.

{¶46} In this case, the October 28, 2008 continuance entry does not state that the court was engaged in another trial, but simply states that the court was unavailable. Although the trial court should have more specifically stated the reason for its unavailability, we accept the court's assertion that it was unavailable for trial between October 28 and December 8. Nor can we say that the length of the continuance was so unreasonable as to require that we find the speedy trial period was not tolled during that time period.

{¶47} Finally, the trial court continued the December 8, 2008 trial date until December 15, 2008. The entry states that it was being granted on the state's motion, and the reason given was that one of the state's witnesses was unavailable. We cannot say that a one-week continuance on the state's motion was unreasonable such that the speedy trial time was not tolled during the period of that continuance. As such, appellant was brought to trial within the time required by R.C. 2945.71.

{¶48} Accordingly, appellant's fifth assignment of error is overruled.

{¶49} Having overruled all of appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH, P.J., and KLATT, J., concur.

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