

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
LOGAN COUNTY**

---

**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 8-14-28**

**v.**

**RAYMOND A. SHAFER, II,**

**O P I N I O N**

**DEFENDANT-APPELLANT.**

---

**Appeal from Bellefontaine Municipal Court  
Trial Court No. 14CRB00765**

**Judgment Affirmed**

**Date of Decision: June 22, 2015**

---

**APPEARANCES:**

***Bridget D. Hawkins* for Appellant**

**ROGERS, P.J.**

{¶1} Defendant-Appellant, Raymond Shafer, appeals the judgment of the Bellefontaine Municipal Court, finding him guilty of one count of assault, one count of resisting arrest, and one count of obstructing official business, and sentencing him to 30 days in jail. On appeal, Shafer argues that the trial court erred by: (1) denying him the right to counsel; and (2) violating his speedy trial rights. For the reasons that follow, we affirm the trial court's judgment.

{¶2} On June 26, 2014, a complaint was filed in the Bellefontaine Municipal Court, charging Shafer with one count of assault in violation of R.C. 2903.13(A), a misdemeanor of the first degree; one count of resisting arrest in violation of R.C. 2921.33(A), a misdemeanor of the second degree; and one count of obstructing official business in violation of R.C. 2921.31, a misdemeanor of the second degree.

{¶3} On July 2, 2014, Shafer's counsel filed a request for discovery, along with a motion to reduce bond and a request for a pre-trial conference. The pre-trial conference was held on August 18, 2014. On August 22, 2014, upon oral motion of Shafer, the trial court continued the matter for a final pretrial conference on September 30, 2014, and the trial was rescheduled to be held on October 3, 2014.

{¶4} Shafer, in a pro se capacity, filed a request for a new attorney on September 26, 2014, which the trial court denied on September 30, 2014.

{¶5} On October 13, 2014, the trial court granted the State a continuance and scheduled the trial for December 5, 2014.

{¶6} Shafer filed a motion to dismiss on November 14, 2014, claiming that his speedy trial rights had been violated. Specifically, he alleged that he had been in custody from June 25, 2014 until July 3, 2014. Further, while he requested a pre-trial conference on July 2, 2014, which tolled the speedy trial time period, he argued that the time restarted on August 18, 2014 and had not been tolled since. The State did not respond to Shafer's motion to dismiss, and on December 1, 2014, the trial court denied Shafer's motion.

{¶7} The next day, on December 2, 2014, Shafer's trial counsel filed a motion to withdraw as attorney of record. The motion stated that there had been a severe breakdown in communication between the attorney and Shafer and that the attorney could not effectively represent the Defendant any further. (Docket No. 39, p. 1). The motion also indicated that Shafer wanted to represent himself at trial. (*Id.*). A hearing on this motion was scheduled for December 4, 2014, one day before Shafer's scheduled trial. On December 4, 2014, the court granted the motion to withdraw as attorney.

{¶8} On December 5, 2014, this matter proceeded to a jury trial. At the trial, Shafer represented himself, pro se. At the conclusion of the trial, the jury found Shafer guilty of all three counts alleged in the complaint, and Shafer was sentenced to 30 days in jail.

{¶9} Shafer filed this timely appeal, presenting the following assignments of error for our review.

*Assignment of Error No. I*

**THE TRIAL COURT ERRED IN FAILING TO APPOINT THE DEFENDANT COUNSEL TO REPRESENT HIM AT THE JURY TRIAL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10, ARTICLE 1 OF THE OHIO CONSTITUTION.**

*Assignment of Error No. II*

**THE TRIAL COURT ERRER [SIC] IN FAILING TO DISMISS THE CASE DUE TO SPEEDY TRIAL VIOLATIONS IN VIOLATION OF OHIO REVISED CODE 2945.71(A)(2).**

{¶10} Due to the nature of the assignments of error, we elect to address them out of order.

*Assignment of Error No. II*

{¶11} In his second assignment of error, Shafer argues that the trial court violated his right to a speedy trial. We disagree.

{¶12} Our standard of review upon an appeal raising a speedy trial issue is to count the expired days as directed by R.C. 2945.71, et seq. *State v. DePue*, 96

Ohio App.3d 513, 516 (4th Dist.1994); *see also State v. King*, 3d Dist. Marion No. 9–06–18, 2007–Ohio–335, ¶ 30; *State v. West*, 3d Dist. Auglaize No. 2–06–04, 2006–Ohio–5834, ¶ 24. If any ambiguity exists, we construe the record in favor of the accused. *See State v. Singer*, 50 Ohio St.2d 103, 109 (1977); *State v. Mays*, 108 Ohio App.3d 598, 609 (8th Dist.1996). The computation of time for criminal statutes is governed by Crim.R. 45, which provides, “In computing any period of time prescribed \* \* \* by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included \* \* \*.” The date of the arrest is not included for the purpose of calculating time under the statutes for a speedy trial. *State v. Huston*, 3d Dist. Wyandot Nos. 16–05–23, 16–05–24, 2006–Ohio–6857, ¶ 7.

{¶13} Under the applicable statutory speedy trial provision, R.C. 2945.71(B)(2), a person charged with a misdemeanor of the first or second degree shall be brought to trial within 90 days after the person’s arrest. R.C. 2945.71(E) counts each day a defendant is held in jail in lieu of bail as three. Upon a motion made prior to or at the 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). However, R.C. 2945.72 allows for an extension of the time that the accused must be brought to trial under certain

circumstances. This includes “[a]ny period of delay necessitated by reason of a \*  
\* \* motion, proceeding, or action made or instituted by the accused.” R.C.  
2945.72(E).

{¶14} Shafer was arrested on June 25, 2014. (Docket No. 3, p. 1). Therefore, the speedy trial time began to run on June 26, 2014. *See* Crim.R. 45(A). It ran for six days until Shafer filed a motion for discovery on July 2, 2014.<sup>1</sup> (Docket No. 10, p. 1). However, since Shafer was in jail for this period, the three day provision of R.C. 2945.71(E) applies. As a result, Shafer is credited with 18 days. On July 15, 2014, Shafer filed a motion to continue, which was granted. (Docket Nos. 15, 16). Shafer’s pretrial was continued to August 18, 2014. (Docket No. 16). The speedy trial time ran for four days from August 18, 2014 until August 22, 2014, when Shafer filed another motion to continue, which was granted. (Docket No. 19). The trial court continued the trial until October 3, 2014. (*Id.*). Therefore, the days from August 22, 2014 to October 3, 2014 do not count for speedy trial purposes. *See* R.C. 2945.72(H).

{¶15} The clock began to run again on October 3, 2014. On October 13, 2014, the State filed a motion to continue, which was granted. (Docket No. 31).

---

<sup>1</sup> Normally, a defendant’s request for discovery will toll the speedy trial clock until the State files its response. Although the State is not given a specific time requirement to respond, the amount of time still must be reasonable. *See State v. Taylor*, 3d Dist. Allen No. 1-13-46, 2014-Ohio-1793, ¶ 29 (“For the statutory time period to be tolled, the State must respond to the motion in a reasonable amount of time.”), citing *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, ¶ 23, 26. Here, the State filed its response approximately three months after the request was made. Given the facts of this case, we find that this was an unreasonable amount of time. Nonetheless, there were other tolling events that occurred between Shafer’s arrest and the date of his trial.

However, because the trial court failed to provide its reasoning for granting the motion or the State's reason for the motion, this time is charged against the State. *See State v. Hohenberger*, 189 Ohio App.3d 346, 2010-Ohio-4053, ¶ 47 (6th Dist.). The clock continued to run until Shafer filed his motion to dismiss on November 14, 2014. (Docket No. 32). During this period, 42 days had passed. The clock remained tolled until the trial court ruled on Shafer's motion on December 1, 2014. *See* R.C. 2945.72(E); *State v. Broughton*, 62 Ohio St.3d 253, 262 (1991). It continued to run until the date of Shafer's trial on December 5, 2014, for an additional five days. After calculating all the days that count towards speedy trial requirements, the amount equals 69 days, which is well below the maximum permitted by statute. Therefore, Shafer's speedy trial rights were not violated.

{¶16} Accordingly, we overrule Shafer's second assignment of error.

*Assignment of Error No. I*

{¶17} In his first assignment of error, Shafer contends that the trial court denied him the right to counsel. We disagree.

{¶18} An appellant has a duty to ensure that the record necessary to evaluate the assignment of error is filed with the appellate court. *State v. Williams*, 73 Ohio St.3d 153, 160-161 (1995); App.R. 9(B). Where an appellant fails to include a necessary portion of the record, we must presume regularity in

the trial court's proceedings. *State v. West*, 3d Dist. Auglaize No. 2-06-04, 2006-Ohio-5834, ¶ 53.

{¶19} On appeal, Shafer argues that there is no indication that Shafer “voluntarily and intelligently waived his right to counsel or that the trial court informed the defendant of the dangers of self representation.” (Appellant’s Br., p. 6). However, the trial court scheduled a hearing to discuss the motion to withdraw on December 4, 2014. *See* (Docket Nos. 41, 42). Shafer did not provide us with a transcript of this hearing. In the absence of this transcript, we must presume that the trial court advised Shafer of the dangers of self-representation and complied with Crim.R. 44.

{¶20} Accordingly, we overrule Shafer’s first assignment of error.

{¶21} Having found no error prejudicial to Shafer in the particulars assigned and argued, we affirm the trial court’s judgment.

***Judgment Affirmed***

**SHAW and PRESTON, J.J., concur.**

/jlr