

[Cite as *State v. Cartier*, 2010-Ohio-2332.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEPHAN A. CARTIER

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 10CAA010001

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No 09CRI050288

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 26, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, J.

{¶1} On December 31, 2008, appellant, Stephan Cartier, was charged with robbery in Delaware County Municipal Court Case No. 08CRA03361. He was served at the Franklin County Corrections Center II on January 5, 2009, and a detainer was placed on him on February 25, 2009.

{¶2} On May 29, 2009, the Delaware County Grand Jury indicted appellant on one count of robbery in violation of R.C. 2911.02 and one count of theft in violation of R.C. 2913.02. The municipal court complaint was dismissed on June 2, 2009.

{¶3} On July 10, 2009, appellant was transferred to the Delaware County Jail. He was served with the indictment on July 11, 2009.

{¶4} On September 28, 2009, appellant filed a motion to dismiss on speedy trial grounds. Hearings were held on October 13, and November 16, 2009. By judgment entry filed November 30, 2009, the trial court denied the motion.

{¶5} On December 7, 2009, appellant pled no contest to the theft count; the robbery count was dismissed. By judgment entry filed December 12, 2009, the trial court found appellant guilty and sentenced him to nine months in prison.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶7} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS FOR VIOLATION OF OHIO'S SPEEDY TRIAL STATUTE AS SET FORTH IN OHIO REVISED CODE §§2945.71-73."

I

{¶8} Appellant claims the trial court erred in denying his motion to dismiss for speedy trial violations pursuant to R.C. 2945.71. We disagree.

{¶9} Appellant argues the trial court erred in denying the motion based on R.C. 2941.401 when R.C. 2945.71 was the applicable statute.

{¶10} R.C. 2945.71 governs time within which hearing or trial must be held. Subsection (C)(2) states, "A person against whom a charge of felony is pending: [s]hall be brought to trial within two hundred seventy days after the person's arrest." In his September 28, 2009 motion to dismiss, appellant argued two hundred and seventy days had lapsed on August 6, 2009:

{¶11} "A felony indictment for the exact same offenses was filed on or about May 24th, 2009 on case 09-CR-I-05-0288. As of the time of Mr. Cartier being transported on the new warrant on July 10th, his speedy trial time at 3-for-one had already run out on March 30, 2009 or even for sake of argument, the 270 day time period was at 194 days at the time of his transport to Delaware County, leaving 76 days at 3-for-one, or 26 days. The statutory time to bring Mr. Cartier to trial therefore expired on August 6th, 2009."

{¶12} Essentially the dates as set forth in the trial court's November 30, 2009 judgment entry are not in dispute:

{¶13} "10/26/08 Date of alleged offense.

{¶14} "10/30/08 Defendant was in Franklin County workhouse on another charge. Officers questioned Defendant about this offense.

{¶15} "12/31/08 Defendant was charged with Robbery in Delaware County Municipal Court Case Number 08CRA 03361.

{¶16} "01/05/09 Westerville Detective French delivered a copy of Municipal Court complaint to the Franklin County workhouse.

{¶17} "02/24/09 Defendant transfers to CRC to serve sentence on other charges.

{¶18} "02/25/09 Holder was place (sic) on Defendant on the Delaware Municipal Court warrant.

{¶19} "04/13/09 Defendant filed a 180-day letter with Municipal Court and same forwarded to Delaware County Prosecutor's office.

{¶20} "05/29/09 Delaware County Indictment returned by Grand Jury and a Warrant was issued.

{¶21} "06/02/09 Delaware Municipal Court warrant had not been served on the Defendant and the Municipal Court complaint was dismissed.

{¶22} "09/28/09 Motion to Dismiss for violation of Section 2941.401 of the Ohio Revised Code was filed."

{¶23} Regarding speedy trial violations, we have consistently held that defendants serving an independent term of imprisonment are governed by R.C. 2941.401 which states the following:

{¶24} "When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty

days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance.***

{¶25} ****

{¶26} "If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice."

{¶27} In *State v. Munns*, Richland App. No. 2005-CA-0065, 2006-Ohio-1852, ¶16, this court held the following:

{¶28} "Revised Code 2941.401 is specific statute which prevails over the general speedy trial statutes, i.e., R.C. 2945.71 et seq. See, R.C. 2945.71(F). If a defendant is incarcerated, R.C. 2941.401 governs the time within which the state must bring him or her to trial. *State v. Fowler* (Sept. 4, 1987), Tuscarawas App. No. 87AP010009, 1987 WL 16874; *State v. Butcher* (Dec. 12, 1985), Cuyahoga App. No. 49879, affirmed on other grounds (1986), 27 Ohio St.3d 28, 500 N.E.2d 1368. Once the defendant substantially complies with R.C. 2941.401, the state must bring him or her to trial within one hundred eighty days. *Id.*"

{¶29} Appellant's 180-day letter was filed on April 13, 2009 and his trial date was scheduled for September 29, 2009. Pursuant to our decision in *Munns*, R.C. 2941.401

was the applicable statute. The fact that appellant was returned and held for trial did not reset the clock for the three-for-one count under R.C. 2945.71.

{¶30} Upon review, we concur with the trial court that appellant's constitutional right to a speedy trial was not violated because he was set for trial within the 180-day limit of R.C. 2941.401.

{¶31} The sole assignment of error is denied.

{¶32} The judgment of the Court of Common Pleas of Delaware County, Ohio is hereby affirmed.

By Farmer, J.

Edwards, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STEPHAN A. CARTIER	:	
	:	
Defendant-Appellant	:	CASE NO. 10CAA010001

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer_____

s/ Julie A. Edwards_____

s/ Patricia A. Delaney_____

JUDGES