[Cite as *State v. Ferrell*, 2010-Ohio-2882.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93003

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RHIANNA FERRELL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-505707

BEFORE: Boyle, J., Kilbane, P.J., and McMonagle, J.

RELEASED: June 24, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Rhianna Ferrell, appeals her convictions. She raises the following two assignments of error for our review:

{¶ 2} "[1.] The defendant's right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution, and/or R.C. 2945.71 have been violated by the actions of the state.

{¶ 3} "[2.] Defendant-appellant's convictions were contrary to the sufficiency and manifest weight of the evidence to support the judge's verdict of guilty of felonious assault on a police officer."

{¶ 4} Finding no merit to her claims, we affirm.

Procedural History

{¶ 5} Ferrell was arrested on October 11, 2007 by the East Cleveland Police Department. The case was bound over to the common pleas court. On January17, 2008, the grand jury indicted Ferrell on eight counts: one count of failure to comply with order or signal of police officer, in violation of R.C. 2921.331(B); three counts of felonious assault, in violation of R.C. 2903.11(A)(2); three counts of assault on a peace officer, in violation of R.C. 2903.13(A); and one count of possession of criminal tools, in violation of R.C. 2923.24(A). All counts had a forfeiture specification attached. Ferrell waived her right to a jury trial, and the case proceeded to the bench where the following evidence was presented.

Bench Trial

{¶ 6} Sergeant Randy Hicks testified that he was investigating reports that Ferrell was selling drugs. He saw her vehicle parked in front of an apartment building on Elderwood Avenue and waited for her to come out. She got into her car and drove toward Euclid Avenue. Sergeant Hicks radioed dispatch that he was going to make a traffic stop because Ferrell had an outstanding warrant.

{¶ 7} Sergeant Hicks activated his lights. He said Ferrell stopped in an open lot, then "started to back out again," but Lieutenant Jeff Williams and Officer Delisle arrived and "stopped in front of her." Sergeant Hicks said he got out of his patrol car and told her to shut her car off, but Ferrell did not do that. Instead, she put her car in reverse and "went through the park — the open lot."

{¶ 8} Sergeant Hicks got back into his car and followed Ferrell. She turned onto Euclid and entered the gas station at the corner of Euclid and Shaw. He followed her into the gas station. Lieutenant Williams pulled onto Shaw. Sergeant Hicks saw Ferrell "hit the gas hard[,]" and accelerate her car toward Lieutenant Williams's police vehicle. Lieutenant Williams pulled away, and Ferrell came very close to it and drove north on Shaw. Sergeant Hicks stated that if Lieutenant Williams had not moved, Ferrell would have hit him.

{¶ 9} Sergeant Hicks stated they followed Ferrell into the city of Cleveland and obtained permission for a "pursuit intervention technique" ("PIT"). As Ferrell was making a turn, he "bumped" her rear passenger-side bumper with his driver-side bumper, "enough to spin her out which caused her to fishtail around the bush and into the gas station." Sergeant Hicks thought that would end the

chase, but Ferrell "pulled straight back out, headed back towards East Cleveland."

{¶ 10} The officers continued to follow Ferrell through East Cleveland, then back to Cleveland. Sergeant Hicks said he wanted to attempt another PIT, but the area was not safe to do it. Then, at "73rd and Superior," she slowed down. Sergeant Hicks stopped, "[s]at there for almost a little second, a second and a half," until Ferrell "guns it, comes towards me [Sergeant Hicks], hits my car, sends me up by the telephone pole."

{¶ 11} Ferrell continued to flee, chased by Lieutenant Williams now. Sergeant Hicks caught up with them until the chase finally ended at "107 and Miles." The chase lasted 37 minutes. Throughout the chase, Ferrell was "all over the road," had "no regard for anybody's safety," went through approximately 30 stop signs and street lights, and almost "clipped" a number of cars. At one point, Ferrell was travelling at 85 m.p.h., but most of the time was travelling around 60 to 65 m.p.h.

{¶ 12} Sergeant Hicks identified photos of his patrol car that was damaged on the front quarter-panel passenger side and bumper. He further identified a photograph of damage to Ferrell's vehicle, on the door and rear quarter panel.

{¶ 13} For the most part, Lieutenant Williams corroborated Sergeant Hicks's testimony. He added that at the gas station on the corner of Euclid and Shaw, when Ferrell was aiming her car at his vehicle, he had to "floor it" to avoid getting hit by her car. She was travelling at 35 to 40 m.p.h. when she almost hit

him. He also did not see Ferrell hit Sergeant Hicks's vehicle with her car, but later said that Ferrell "cut into" Sergeant Hicks. He also stated that the chase lasted approximately 15 to 20 minutes.

{¶ 14} Officer Mike Delisle also testified and corroborated the other two officers' version of events except for minor differences. It was his first day on the job, and he was riding with Lieutenant Williams. He saw Ferrell drive her car toward his and Lieutenant Williams's vehicle, and had they not moved, she would have hit them. He said that he did not see a PIT maneuver, but did see Ferrell "swerve to the left and strike the vehicle Officer Hicks was in. Caused him to veer off the road."

{¶ 15} The state rested, and Ferrell moved for a Crim.R. 29 acquittal. The trial court granted it as to all forfeiture specifications and possessing criminal tools.

{¶ 16} Ferrell testified on her own behalf. She admitted that she knew she was driving with a suspended license. She went to the gas station to get gas and was blocked by two police cars. She said that Sergeant Hicks screamed at her "bitch, get out of the car." She testified that she was afraid the officers were going to shoot her. She further stated that she thought the officers were trying to "put something in her car," and "frame her," so she fled. She did not know there was a warrant out for her arrest. She denied that she tried to run her car into Lieutenant Williams's vehicle. She said he was trying to block her exit from the gas station, but she beat him to it and continued to flee. She further explained

that her car spun into Sergeant Hicks's vehicle after he "swerved into" the left side of her car, but it was because she "almost lost control of [her] vehicle," not because she meant to hit him.

Verdict and Sentence

{¶ 17} The trial court found Ferrell guilty of failure to comply with order or signal of a police officer and felonious assault against Lieutenant Williams, but not guilty of the remaining counts. It sentenced her to one year in prison for failure to comply and three years in prison for felonious assault and ordered that they be served consecutively, for a total of four years in prison. It also informed her that she would be subject to five years of postrelease control upon her release.

Speedy Trial

{¶ 18} In her first assignment of error, Ferrell maintains that her constitutional and statutory speedy trial rights were violated.

{¶ 19} The right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Section 10, Article I, of the Ohio Constitution guarantees an accused this same right. *State v. MacDonald* (1976), 48 Ohio St.2d 66, 68, 357 N.E.2d 40. Although the United States Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. *Barker v. Wingo* (1972),

407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101. In response to this authority, Ohio enacted R.C. 2945.71, which designates specific time requirements for the state to bring an accused to trial.

A. *Ohio's Speedy Trial Statute*

{¶ 20} When reviewing a speedy trial question, the appellate court must count the number of delays chargeable to each side and then determine whether the number of days not tolled exceeded the time limits under R.C. 2945.71. *State v. Barnett*, 12th Dist. No. CA2002-06-011, 2003-Ohio-2014, ¶7. Furthermore, this court must construe the statutes strictly against the state when reviewing the legal issues in a speedy trial claim. *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 661 N.E.2d 706.

{¶ 21} R.C. 2945.71(C)(2) provides that a person against whom a felony charge is pending shall be brought to trial within 270 days after the person's arrest. For purposes of computing time under R.C. 2945.71(C)(2), each day the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. See R.C. 2945.71(E).

{¶ 22} Ferrell was arrested on October 11, 2007; 270 days from that date would have been July 7, 2008. But she was not brought to trial until November 17, 2008. There is no question that the state failed to try Ferrell within 270 days. Thus, she presented a prima facie case for discharge. *State v. Butcher* (1986), 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368. Therefore, the

burden shifted to the state to show that the R.C. 2945.71 limitations have not expired by demonstrating that R.C. 2945.72 extended the time limit. *Brecksville*, 75 Ohio St.3d at 55-56.

{¶ 23} Generally, when computing how much time has run against the state under R.C. 2945.71, we begin with the day *after* the accused was arrested. *State v. Broughton* (1991), 62 Ohio St.3d 253, 260, 581 N.E.2d 541; *State v. Lautenslager* (1996), 112 Ohio App.3d 108, 111-12, 677 N.E.2d 1263. Thus, Ferrell's speedy trial time began to run on October 12, 2007. She posted bond on October 25, 2007. She was in jail for 14 days; thus, 42 days counted against her speedy trial time (three-for-one applied).

{¶ 24} She was indicted on January 17, 2008. Her arraignment was set for February 1, 2008. From October 26, 2007 to February 1, another 98 days were charged to the state, for a total of 140 days toward her speedy trial time.

{¶ 25} On February 1, the docket indicates that Ferrell's case was continued to February 5, 2008, "at request of defendant." A defendant's continuance tolls speedy trial time pursuant to R.C. 2945.72(H). See *State v. Brelo*, 8th Dist. No. 79580, 2001-Ohio-4245. This provision provides that speedy trial time is tolled by "[t]he period of any continuance granted on the accused's own motion ***." Thus, defendant's speedy trial time was tolled by four days; 140 days were charged to the state as of February 5, 2008. From

that date until February 12, 2008, seven more days accumulated toward Ferrell's statutory speedy trial time, for a total of 147 days.

{¶ 26} The docket then indicates that a pretrial was held on February 12, 2008 and "continued to 3/13/08 *** at request of defendant." Thus, Ferrell's speedy trial time was further tolled during this time (for 30 days), and as of March 13, Ferrell's speedy trial time remained at 147 days.

{¶ 27} On March 13, the docket indicates that Ferrell filed a motion for bill of particulars and for discovery. While the speedy-trial clock is not tolled indefinitely by such a motion, it is tolled for a reasonable time. *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, 853 N.E.2d 283, ¶27. The state did not respond until June 27, 2008, some 106 days later. The discovery requested by Ferrell constituted routine requests that were readily discernable by the state. When the state finally responded, it amounted to a simple summary of Ferrell's oral statement to the police, evidence consisting of "U.S. Currency" and "3 pills," names of witnesses, and her criminal record. We therefore find the state's 106-day delay to be unreasonable. Thus, Ferrell's speedy trial time will only be tolled for the amount of time it would have been reasonable for the state to respond. This court has interpreted the reasonableness requirement of the rule to mean 30 days. See *State v. Barb*, 8th Dist. No. 90768, 2008-Ohio-5877. Thus, the time was tolled for 30 days

under *Barb*, to April 13, 2008, and as of that date, 147 days were charged to the state.

{¶ 28} Ferrell also requested pretrial continuances on April 9, 2008 (to May 2; we will only count from April 13 to May 2, since the time was concurrently being tolled to April 13; see previous paragraph), and May 2, 2008 (to May 20). These tolled the time for 35 more days. Thus, as of May 20, it was still only 147 days that had elapsed toward Ferrell's speedy trial time.

{¶ 29} On June 3, 2008, Ferrell moved to compel discovery. Because this motion to compel discovery was necessitated by the state's failure to fully comply with Ferrell's earlier discovery request, any delay caused by the motion was not chargeable to her and does not toll the speedy trial time. *State v. McDaniel* (July 13, 1994), 2d Dist. No. 93-CA-38. Thus, as of June 3, 2008, 161 days were charged to the state.

{¶ 30} The state moved for discovery on June 27, 2008. Ferrell never responded to the state's reciprocal discovery request. "The failure of a criminal defendant to respond within a reasonable time to a prosecution request for reciprocal discovery constitutes neglect that tolls the running of speedy-trial time pursuant to R.C. 2945.72(D)." *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, 860 N.E.2d 1011, paragraph one of the syllabus. What is a reasonable amount of time, however, is for the trial court to

determine. Id. at paragraph three of the syllabus. Nonetheless, it is not necessary for us to remand to the trial court to determine how much time should be reasonably charged to Ferrell, since we will not toll any time against her for this motion (if we would have found that her rights were violated unless time was tolled by this motion, we would have remanded).

{¶ 31} Ferrell requested two more continuances on July 15, 2008 (to July 24), and on July 24, 2008 (to July 29). Not counting any time that was tolled by the state's discovery request, as of July 29, 2008, 203 days (161 plus 42) were charged to the state.

{¶ 32} Then, according to the docket, on July 31, 2008, the trial court issued a capias for Ferrell — although no entry in the docket indicates that she failed to appear for a scheduled hearing. As stated above, the docket indicates that on July 24, "Pretrial held 07/24/2008. Pretrial continued to 07/29/2008 at 09:00 a.m. at the request of defendant. 07/24/2008." The next docket entry is July 31, 2008. This entry indicates, "Bond hearing to be held w/Judge Friedman after 08/18/2008. Capias to issue for defendant, Rhianna Ferrell." The following docket entry is on August 11, 2008, and states "Defendant in custody."

{¶ 33} The state argued below, and the trial court found, that Ferrell's speedy trial time began to run anew on August 11, 2008, pursuant to *State v. Bauer* (1980), 61 Ohio St.2d 83, 399 N.E.2d 555, the day she was back in

custody after a capias was issued. The state has abandoned this argument on appeal. And for good reason; the trial court erred in finding that Ferrell's capias began her speedy trial time anew.

{¶ 34} In *Bauer*, the Ohio Supreme Court held that an accused who fails to appear for a scheduled trial waives his right to a speedy trial. Id. at 84-85. Under *Bauer*, a defendant "will not be permitted to enjoy the protection of [the speedy trial statutes], as to a time period prior to his failure to appear, when by his actions he has waived their benefits." Id. at 84. The *Bauer* court further concluded that when a defendant has forfeited his appearance bond, speedy trial time is recalculated from the time of his rearrest on the capias issued for his arrest. Id. at 85.

{¶ 35} Here, there is no indication on the docket that the trial court revoked Ferrell's bond. It scheduled a bond hearing, but never held it. Thus, Ferrell's bond was not forfeited. Therefore, we find that *Bauer* does not apply to this case. Her speedy trial time tolled from July 31 to August 11, that is, for 11 days.

{¶ 36} Ferrell remained in custody until her trial in November, but not just for this case. Thus, her speedy trial time continued to run only one-for-one. "If the defendant is in jail on a separate unrelated case, the three-for-one provision does not apply, and the speedy trial time is counted on a one-for-one basis. See R.C. 2945.72." *State v. Pond*, 8th Dist. No. 91061, 2009-Ohio-849, ¶14.

{¶ 37} On September 2, 2008, with 225 days counted toward her speedy trial time, Ferrell moved to disqualify her counsel, and her counsel simultaneously moved to withdraw. She was appointed new counsel on September 5, 2008. This request tolled the speedy trial time for three days. Specifically, the time is tolled by any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law. R.C. 2945.72(C). As of September 5, 2008, 225 days were charged to the state.

{¶ 38} On September 8, 2008, her new counsel moved for discovery, bill of particulars, and notice of specific intent to use evidence. On September 8, her new counsel also requested a pretrial continuance and requested trial be set for October 15, 2008. These events all tolled Ferrell's speedy trial time. And on September 29, 2008, her new counsel moved to dismiss on speedy trial grounds, which the trial court heard immediately before her trial began on November 17. Under R.C. 2945.72(E), a defendant's motion to dismiss tolls his or her speedy trial time until the trial court rules on it, as long as that time is reasonable. Ohio courts have held that if a trial court rules on a defendant's motion within 120 days, pursuant to the Rules of Superintendence for Courts of Ohio (Sup.R. 40(a)(3)), then it is reasonable. See *State v. Sandera*, 12th Dist. No. CA2007-09-016, 2008-Ohio-6378, ¶17;

State v. Edwards, 5th Dist. No. 2002 AP 08 0065, 2003-Ohio-334.[1] Thus, Ferrell's motion tolled her remaining speedy trial time until her trial in November. Ferrell further moved for several pretrial continuances in October and also moved to continue her trial several times, that would have tolled her speedy trial time such that her rights were not violated — whether we counted the time against her for her motion to dismiss or not.

{¶ 39} Accordingly, we find that Ferrell's statutory speedy trial time was not violated.

B. *Constitutional Right to a Speedy Trial*

{¶ 40} Although Ferrell focuses on her constitutional speedy trial rights being violated in her brief to this court, she only argued that her statutory rights were violated below. Therefore, she waived her right to argue her constitutional speedy trial rights on appeal. See *State v. Bailey*, 2d Dist. No. 20764, 2005-Ohio-5506. Nonetheless, we have examined the factors set forth in *Barker* and find no violation of Ferrell's speedy trial rights due to the fact that Ferrell was responsible for much of the delay in bringing about her trial.

{¶ 41} Ferrell's first assignment of error is overruled.

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[1] Reviewing courts, however, have found more than 120 days to also be reasonable when deciding a defendant's motion to dismiss. *State v. Sherrod*, 11th Dist. No. 2009-L-086, 2010-Ohio-1273, ¶48 (Trapp, J., concurring), citing *State v. Price*, 9th Dist. No. 07CA0003-M, 2008-Ohio-2252, ¶48 (216 days tolled from the filing of the motion until the court's ruling); *State v. Driver*, 7th Dist. No. 03 MA 210, 2006-Ohio-494, ¶29, 36 (204 days tolled from the date of the hearing until the court's ruling); *State v. Ritter* (Dec. 17, 1999), 11th Dist. No. 98-A-0065 (180 days tolled from the filing of the motion until the court's ruling).

Sufficiency and Manifest Weight of the Evidence

{¶ 42} In her second assignment of error, Ferrell argues that the state did not present any evidence of felonious assault and that her felonious assault conviction was also against the manifest weight of the evidence.

{¶ 43} When an appellate court reviews a record upon a sufficiency challenge, "'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.'" *State v. Leonard*, 104 Ohio St.3d 54, 67, 2004-Ohio-6235, 818 N.E.2d 229, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 44} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether "there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." (Internal quotes and citations omitted.) *Leonard*, 104 Ohio St.3d at 68.

{¶ 45} Under R.C. 2903.11(A)(2), the state had to present sufficient evidence that Ferrell knowingly caused or attempted to cause physical harm to another by means of a deadly weapon or dangerous ordnance. A person acts knowingly when he is aware that his conduct will probably cause a certain result. R.C. 2901.22(B); it does not specifically require intent or purpose. An automobile may be a "deadly weapon" when it is used in a manner likely to produce great harm or death. *State v. Tate*, 8th Dist. No. 87008, 2006-Ohio-3722, ¶23.

{¶ 46} All three officers testified that they saw Ferrell drive directly at Lieutenant Williams's vehicle when she was attempting to leave the gas station. They further stated that had Lieutenant Williams not moved his vehicle, she would have hit him with her car. Lieutenant Williams also emphasized that he had to "floor it" to avoid being hit by her. Thus, we find the state presented sufficient evidence of felonious assault.

{¶ 47} Ferrell's remaining arguments focus solely on the credibility of the three officers who testified to the events. She claims "the trial court returned guilty verdicts against defendant-appellant for a felonious assault on evidence that was consistently contradicted, extremely uncertain, and conflicting" and that "[t]here was no logical pattern to the incredible picture painted by the state." We disagree.

{¶ 48} Although the officers' testimonies slightly conflicted, the trial court — as the fact finder — clearly weighed the conflicting testimonies and still found the officers to be more credible than Ferrell. Indeed, the trial court considered all of the evidence and concluded that Ferrell was not guilty of five of the charges (the trial court had already dismissed one of the counts pursuant to Ferrell's Crim.R. 29 motion).

{¶ 49} After reviewing the record, we find that this is not the "exceptional case in which the evidence weighs heavily against the conviction." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541.

{¶ 50} Accordingly, Ferrell's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR