[Cite as *State v. Overholt*, 2004-Ohio-4969.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO Appellee v. MARK OVERHOLT Appellant	C.A. No. 03CA0119-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 02-CR-0329

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Defendant-Appellant Mark Overholt has appealed from his conviction in the Medina County Court of Common Pleas for aggravated menacing. This Court reverses and remands.

I

{¶2} On or about July 24, 2002, Melanie Plues ("Plues"), Tyson Combs ("Combs"), and Waune Reinke ("Reinke") were at Appellant's machine shop using his welding machines. Plues, Combs, and Reinke claimed that Appellant's son had let them into the shop and had given them permission to use the welder to work on their demolition car. Appellant discovered Plues, Combs, and Reinke in

the shop, and, apparently unaware of the fact that his son had let them into the shop, ordered the three to leave. As they loaded the demolition car onto a trailer, Appellant became increasingly impatient. He ran to his nearby home for a handgun and returned to the shop. Appellant threatened Plues, Combs, and Reinke with the handgun and discharged three shots. Appellant was arrested the same day.

{¶3} Initially, a complaint was filed in the Medina Municipal Court charging Appellant with felonious assault with respect to Plues, Combs, and Reinke. Thereafter, the case was transferred to the Medina County Common Pleas Court. On August 28, 2002, the Medina County Grand Jury indicted Appellant on one count of felonious assault, in violation of R.C. 2903.11(A)(2), a second degree felony. The indictment referenced only one victim, Reinke. Appellant pled not guilty to the charge.

{¶4} On June 26, 2003, the State issued a supplemental indictment that charged Appellant with three counts of aggravated menacing, in violation of R.C. 2903.21(A), misdemeanors of the first degree. This indictment named all three victims: Plues, Combs, and Weinke. Appellant pled not guilty to these charges, as well.

{¶5} On July 11, 2003, Appellant filed a motion to dismiss the supplemental indictment, asserting that the State failed to comply with the speedy trial provisions of R.C. 2945.71. On July 28, 2003, the jury trial commenced.

During the trial, the court overruled Appellant's motion to dismiss the supplemental indictment. On August 4, 2003, a jury found Appellant guilty of one count of aggravated menacing, but acquitted him on the remaining aggravated menacing and felonious assault charges. The trial court sentenced Appellant accordingly. Appellant has timely appealed from his conviction of aggravated menacing, asserting five assignments of error for review.

II

Assignment of Error Number One

"[APPELLANT] WAS DENIED DUE PROCESS OF LAW WHEN THE COURT FAILED TO DISMISS ADDITIONAL MISDEMEANOR COUNTS OF THE INDICTMENT."

{¶6} In his first assignment of error, Appellant contends that he was denied due process of law when the trial court failed to dismiss the charges as contained in the supplemental indictment. This Court agrees.

{¶7} The courts must strictly enforce the statutory speedy trial provisions. *State v. Pachay* (1980), 64 Ohio St.2d 218, syllabus. This "strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial." *Pachay*, 64 Ohio St.2d at 221, citing *State v. Pudlock* (1975), 44 Ohio St.2d 104, 105. If a defendant is not brought to trial within the prescribed time, the trial court must discharge the defendant upon a motion for dismissal prior to or at the commencement of trial. R.C. 2945.73(B). When reviewing a defendant's claim that he was denied his

right to a speedy trial, an appellate court applies the de novo standard to questions of law and the clearly erroneous standard to questions of fact. *State v. Thomas* (Aug. 11 1999), 9th Dist. No. 98CA007058, at 4.

{¶8} In the supplemental indictment, Appellant was charged with three counts of aggravated menacing, misdemeanors of the first degree. R.C. 2945.71(B)(2) provides that a defendant charged with misdemeanors of the first degree shall be brought to trial within 90 days after his arrest. However, Appellant was also charged with felonious assault, a second degree felony. Pursuant to R.C. 2945.71(D),

> "A person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending *shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged*, as determined under [the] divisions *** of this section."

{¶9} R.C. 2945.71(C)(2) provides that a person charged with a felony must be brought to trial within 270 days after his arrest. Pursuant to R.C. 2945.71(D), the 270-day time period provided in R.C. 2945.71(C) also applies to the misdemeanor charges in the supplemental indictment. Thus, per R.C. 2945.71(C)-(D), Appellant had to be brought to trial on the charges in the original indictment *and* supplemental indictment within 270 days after his arrest on July 24, 2002.

{¶10} R.C. 2945.72(E) does provide that a criminal defendant's filing of a pretrial motion may extend the time within which the defendant is to be brought to

trial. However, this provision does not apply to extend the time in which the defendant is to be brought to trial on additional, related charges brought by the prosecution subsequent to the filing of the motion. *State v. Homan* (2000), 89 Ohio St.3d 421, 428.

{¶11} The Ohio Supreme Court has held that "in issuing a subsequent indictment, the state is not subject to the speedy-trial timetable of the initial indictment, when additional criminal charges arise from facts different from the original charges, or the state did not know of these facts at the time of the initial indictment." *State v. Baker* (1997), 78 Ohio St.3d 108, 110. See *State v. Adams* (1989), 43 Ohio St.3d 67, 68. In this case, the charges in the supplemental indictment stemmed from the original set of facts and circumstances that gave rise to the felonious assault charge in the original indictment. Furthermore, it is evident that the State was aware of the facts and circumstances giving rise to the supplemental indictment at the time that it initially charged Appellant on August 28, 2002. See *Baker*, 78 Ohio St.3d at 110; *Adams*, 43 Ohio St.3d at 68.

{¶12} In this case, the State did not issue its supplemental indictment until June 26, 2003, approximately 11 months after it filed the original indictment. We observe that at the time that the State issued the supplemental indictment, the 270-day period had already expired. Any pretrial motions filed by Appellant prior to the State's issuance of the supplemental indictment would not extend the time within which Appellant was to be brought to trial on the supplemental charges.

See *Homan*, 89 Ohio St.3d at 428. Appellant's trial did not commence until July 28, 2003. Thus, Appellant was not brought to trial until approximately one year, well over 270 days, after his arrest on July 24, 2002.

{¶13} Based upon the foregoing, we conclude that the trial court erred when it overruled Appellant's motion to dismiss the charges against him as set forth in the supplemental indictment. See R.C. 2945.73(B). As such, we sustain Appellant's first assignment of error, reverse his conviction and sentence, and remand this case to the trial court for further proceedings consistent with this decision.

Assignment of Error Number Two

"[APPELLANT] WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION TO SUPPRESS."

Assignment of Error Number Three

"[APPELLANT] WAS DENIED DUE PROCESS OF LAW WHEN THE COURT WOULD NOT GIVE THE ENTIRETY OF [APPELLANT'S] SPECIAL REQUESTED INSTRUCTION."

Assignment of Error Number Four

"[APPELLANT] WAS DENIED DUE PROCESS OF LAW AND HIS RIGHT TO PRESENT A DEFENSE WHEN THE COURT GRANTED [APPELLANT'S] MOTION FOR A VIEW AND THEN ARBITRARILY DENIED A JURY VIEW DURING TRIAL."

Assignment of Error Number Five

"[APPELLANT] WAS DENIED DUE PROCESS OF LAW WHEN THE COURT REFUSED TO DISMISS THE AGGRAVATED MENACING COUNT OF THE INDICTMENT AS THE VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶14} In his remaining assignments of error, Appellant raises challenges to the court's denial of a jury view, his request for a special jury instruction, and his motion to suppress. Appellant also challenges his conviction for aggravated menacing as being against the manifest weight of the evidence.

{¶15} However, we need not address Appellant's remaining assignments of error, as they have been rendered moot by our disposition of his first assignment of error. See App.R. 12(A)(1)(c).

III

{¶16} Appellant's first assignment of error is sustained. The remaining assignments of error are not addressed. Appellant's conviction in the Medina County Court of Common Pleas is reversed, and the cause is remanded for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into

execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

Exceptions.

BETH WHITMORE
FOR THE COURT

CARR, P.J.
BOYLE, J.
CONCUR

APPEARANCES:

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