

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

2020 MAR 23 P 3:44 CASE NO. 2017 CR 555

STATE OF OHIO

vs.

*Joshua D. Yurto*

TAMMIFENTLK )  
CLERK OF COURTS )  
COMMON PLEAS COURT )  
ASHTABULA CO OH )

**JUDGE MARIANNE SEZON**

**JUDGMENT ENTRY**  
**SUSPENDING CRIMINAL JURY**  
**TRIALS AND CRIMINAL**  
**HEARINGS DUE TO PUBLIC**  
**HEALTH EMERGENCY**

This came before the Court upon its own motion to Suspend Criminal Jury Trials and in person Criminal Hearings in this case, **with the following guidelines and parameters**, in an effort to explore potential plea negotiations, facilitate disposition and pretrial issues, while at the same time following health and safety orders, as a precaution in the prevention of the spread of the Coronavirus and to maintain social distancing.

The Court makes the following findings of fact:

1. Effective March 9, 2020, Ohio Governor Mike DeWine declared a State of Emergency in response to the COVID-19 public health crisis and issued Executive Order 2020-01(D). Effective March 23, 2020, Amy Acton, Director of the Ohio Department of Health, issued a "Stay at Home Order", pursuant to Ohio Revised Code Section 3701.13.
2. The World Health Organization declared, on March 11, 2020, COVID-19 to be a global health pandemic and recommended "urgent and aggressive action" to control the spread of illness.
3. On March 14, 2020, the President of the United States of America declared the public health crisis surrounding COVID-19 to be a "national emergency."
4. Executive Orders as of this writing have closed all schools in Ohio for a period of at least 3 weeks, closed many businesses and facilities, limited the scope of many other businesses and organizations, suspended gatherings of more than fifty (50) people, and recommended the limitation of gatherings where possible to no more

than ten persons.

5. On March 17, 2020, the General Division of the Ashtabula County Court of Common Pleas issued an Emergency Temporary Court Attendance Policy and Order limiting the number of people permitted to attend Court hearings and to conduct business in the courthouse.
6. Although courts and court functions are categorically exempt from the “Stay at Home Order”, this action by the Director of the Ohio Department of Health, and the sequence of actions leading up to it underscore the seriousness of the health threat facing Ohio and the nation. The Supreme Court of Ohio has further provided recommendations to the judiciary in the midst of this pandemic.

“The right to a speedy trial is a fundamental right of a criminal defendant that is guaranteed by the United States and Ohio Constitutions, Sixth Amendment to the U.S. Constitution; Ohio Constitution, Article I, Section 10.” *State v. Ramey*, 132 Ohio St.3d 309, 2012-Ohio-2904, 971 N.E.2d 937, at ¶ 14.

Ohio codifies a criminal defendant’s speedy trial rights in R.C. 2945.71, which provides that a criminal defendant charged with a felony must be brought to trial within 270 days. However, R.C. 2945.72(H) allows the time to be extended during “[t]he period of any reasonable continuance granted other than upon the accused’s own motion[.]” These extensions are to be strictly construed, and not liberalized in favor of the state. *Ramey*, at ¶ 24.

The Ohio Supreme Court has held that it permits courts to *sua sponte* grant such continuances as well, though “only when reasonable and only when the continuances are made by journal entry prior to the expiration of the time limit.” *State v. King*, 70 Ohio St.3d 158, 1994-Ohio-412, 637 N.E.2d 903 (1994)

The U.S. Supreme Court has identified four factors that courts should consider when determining whether a trial delay violates the Sixth Amendment’s speedy trial guarantee. They include: (1) Length of delay, (2) the reason for the delay, (3) the defendant’s assertion of his right, and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The Ohio Supreme Court has applied the same set of factors under the Ohio Constitution. See *State v. Selvage*, 80 Ohio St.3d 465, 1997-Ohio-287, 687 N.E.2d 433 (1997). “A delay becomes presumptively prejudicial as it approaches one year in length.” *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 90 (2015).

At this time, it appears unlikely that the cumulative delay will approach one year. Further, owing to the high risk of contagion and the danger presented by the novel coronavirus, the Ohio Department of Health has recently banned gatherings of

50 or more people in a single room, as well as prohibiting any gathering of more than 10 persons, unless exempted by the Director's Stay at Home Order. The practicalities of jury service make it difficult, if not impossible, to adhere to these recommendations. That means going forward with a trial would endanger jurors, and thus anyone else with whom the jurors might interact. Likewise, continuing jury trials and extending Ohio's speedy trial requirements will help address those threats by reducing the number of people to whom incarcerated defendants might be exposed. That, in turn, will reduce the risk that defendants might infect other jailed or incarcerated individuals while awaiting trial or upon being convicted.

Based upon the foregoing and for good cause, the Court finds and concludes that suspending criminal jury trials, through April 7th, 2020, the day after the anticipated duration of the Director of the Ohio Department of Health's Stay at Home Order, and suspending in person criminal hearings through April 10<sup>th</sup>, 2020, is a continued precaution as it relates to contact/distancing (unless standards are relieved or changed prior to April 10<sup>th</sup>, 2020), because of the current pandemic emergency and is "reasonable" under both R.C. 2945.72(H) and the Sixth Amendment. This case will proceed in the following manner, to minimize in person contact:

**All emails sent to the Court shall be sent to Bailiff Diana Perry [dmperry@ashtabulacounty.us](mailto:dmperry@ashtabulacounty.us) and Court Reporter Amy Nettles at [ajnettles@ashtabulacounty.us](mailto:ajnettles@ashtabulacounty.us) and all counsel. In the subject line of the email, the following shall be stated: Case No., Defendant's Name, and Type of Hearing, i.e. "Case No. 123, Name of Defendant, Plea Deadline".** If a Defendant has multiple cases, a separate email shall be sent to the Court for each case. If the Prosecuting Attorney's attempts to contact the Attorney of Record for the Defendant are left unanswered or have not been successful, this should be provided by email to the Court as well.

**The Court further orders the following for any hearings set in this case between and including March 23<sup>rd</sup>, 2020 and April 10<sup>th</sup>, 2020:**

For any **Pretrial(s)** set in this case, the Ashtabula County Prosecuting Attorney, Chief Assistant Prosecuting Attorney or Assistant Prosecutor shall have telephone or email contact with the Attorney of Record for the Defendant, before the time of the scheduled Pretrial, and shall report to the Court by email the following information **by the end of the day in which the Pretrial was scheduled:**

- 1) Status of Discovery, whether it is complete or not complete, time frame for completion, and whether a formal discovery response was filed. If a victim is involved, whether or not the State has made contact with the victim.
- 2) Any Plea Offer made by either side, if accepted, not accepted and any counteroffer; i.e. status of plea negotiations.
- 3) Any Motions that may be filed by either side, or have already been filed

and are pending, with the filed date, and whether a response has been or will be filed. If none, state so, as well as name any Motions intended to be filed or pending, including a Motion for Transcript, Suppression, IILC, and any application for a specialized docket.

- 4) Whether or not a Time Waiver was filed and if not, shall state the final allowable trial date, as the continuing responsibility of the Prosecutor.
- 5) Estimated length of Jury Trial, and number of witnesses per side.

**For any Plea Deadline(s) set in this case, the Ashtabula County Prosecutor, Chief Assistant Prosecutor, or Assistant Prosecutor shall have telephone or email contact with the Attorney of Record for the Defendant before the time of the scheduled Plea Deadline, and shall report to the Court by email the following information by the end of the day in which the Plea Deadline was scheduled:**

- 1) Whether there is a negotiated plea to be placed on the record or not.
- 2) If there is a Plea Agreement to be placed on the record, a copy of the plea agreement shall be attached to the email.
- 3) The matter shall then be set for plea hearing at a time that comports with the safety guidelines, as set forth to protect our Community in the orders of the Governor and the Director of the Department of Health.

**For any Status Conference/Hearing set, the Ashtabula County Prosecutor, Chief Assistant Prosecutor, or Assistant Prosecutor, shall have telephone or email contact with the Attorney of Record for the Defendant before the time of the scheduled Status, and shall report to the Court by email the following information, by the end of the day in which the Status was scheduled:**

- 1) If a Plea Agreement has been reached, a copy of the Plea Agreement shall be attached to the email. The matter shall then be set for a plea hearing at a time that comports with the safety guidelines, as set forth to protect our Community in the orders of the Governor and the Director of the Department of Health.
- 2) If a Plea Agreement has not been reached, all counsel shall provide by email attachment, a copy of their list of witnesses with identifying information, and list of exhibits with description, as well as a copy of all exhibits, as described in the trial management order, specifically paragraph 12 for Status Conferences.

Other hearings, to include Sentencings and Community Control Violation Hearings, shall be rescheduled after April 10<sup>th</sup>, 2020, unless otherwise determined by the Court, and if guidelines have not been changed in regard to contact and social distancing, such hearings shall be rescheduled at a time before the Court to minimize

time spent in contact with others and in compliance with social distancing. The Court, while mindful of constitutional protections, will do its best to comply with the Governor and Director of the Ohio Department of Health's orders to prevent the spread of the Coronavirus and to do our part to protect our community, staff and families, as well as criminal Defendants, in an effort to keep all safe and healthy during this global health pandemic.

In any case set for **Community Control Violation** Hearing, the Court will consider any stipulated and joint proposal in writing, signed by both counsel as well as the Defendant, for the Defendant's release, after time served, and the Community Control Violation Proceeding dismissed. Proper paperwork must be provided to the Court, as well as a proposed judgment entry for dismissal of the violation.

For any **Sentencing** Hearing set, the Court may be in need of additional information, as it relates to the Pre-Sentence Investigation report, which must be reviewed before going forward with the hearing. Although the Court is operating, and employees are working, some remotely, modifications have been made to limit in-person hearings during this critical time. **Suppression** Hearings will be rescheduled after April 10, 2020, due to in-person witness testimony, and in an effort to minimize contact at this critical time. Further, the Court is working on a procedure for court hearings which will involve less personal contact, while at the same time following the law, as it relates to criminal hearings.

**IT IS, THEREFORE, ORDERED** that the Criminal Jury Trial and Criminal Proceedings in this case are **HEREBY SUSPENDED, with the parameters and guidelines as ordered above.** The goal of this order is to move this matter forward procedurally, respectful of all parties rights, while at the same time protecting our community.

Any trial delays that are caused by this pandemic emergency are attributable to neither the State nor the defendant. Any tolling of time due to the current public health emergency shall be limited by the actual duration of this emergency, including such time as is reasonably necessary to summons the jury.

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this judgment and its date of entry in the journal upon: **all parties, or if represented by counsel, all counsel of record.**

  
JUDGE MARIANNE SEZON