

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JUN 30 2022

IN RE: C.C.

:
:
:

No. 110651

A Minor Child

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: June 30, 2022

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL-20107915

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Ben O. McNair, Assistant Prosecuting
Attorney, *for appellant.*

Cullen Sweeney, Cuyahoga County Public Defender, Britta
Barthol and John Martin, Assistant Public Defenders, *for
appellee.*

EILEEN T. GALLAGHER, J.:

{¶ 1} Appellant, the state of Ohio (the "state"), appeals from the decision of the Cuyahoga County Court of Common Pleas, Juvenile Division, dismissing the indictment designating the juvenile-appellee, C.C., as a serious-youthful offender ("SYO"). The state raises the following assignment of error for review:



The juvenile court erred by dismissing the serious youthful offender component for a speedy trial violation.

{¶ 2} After careful review of the record and relevant case law, we reverse the juvenile court's judgment and remand the matter for the court to reinstate the indictment and the state's request for a SYO dispositional sentence.

I. Procedural and Factual History

{¶ 3} On September 17, 2020, the state filed a four-count complaint against C.C., charging him with aggravated murder in violation of R.C. 2903.01(A), with one- and three-year firearm specifications (Count 1); murder in violation of R.C. 2903.02(B), with one- and three-year firearm specifications (Count 2); felonious assault in violation of R.C. 2903.11(A)(1), with one- and three-year firearm specifications (Count 3); and having weapons while under disability in violation of R.C. 2923.13(A)(1) (Count 4). Counts 1 and 2 of the complaint sought a SYO dispositional sentence pursuant to R.C. 2152.11(B)(2). The complaint stemmed from allegations that C.C. shot and killed the victim, D.J., on August 29, 2020.

{¶ 4} On September 21, 2020, C.C. was arrested and admitted to the Cuyahoga County Juvenile Detention Center. On September 22, 2020, C.C. appeared before a magistrate with appointed counsel and entered a denial as to all charges. At the conclusion of the arraignment hearing, C.C. was remanded to a secure-detention facility pursuant to Juv.R. 7, where he remained during the pendency of this case.

{¶ 5} On October 2, 2020, C.C. filed a demand for discovery and bill of particulars. On October 13, 2020, the state responded to C.C.'s discovery motion

and made its own reciprocal demand for discovery. (Tr. 25-28.) It is undisputed that defense counsel did not respond to the state's discovery request prior to the dismissal of the SYO designation. (*Id.*)

{¶ 6} On October 15, 2020, C.C. filed a motion requesting the juvenile court appoint a guardian ad litem. On October 27, 2020, the juvenile court appointed Michael Telep, Esq., as the juvenile's guardian ad litem.

{¶ 7} On October 28, 2020, and November 16, 2020, the juvenile court held separate attorney conferences via telephonic communication. At the conclusion of the November 16, 2020 conference, the matter was continued for a pretrial hearing to commence on December 9, 2020.

{¶ 8} On December 9, 2020, the parties appeared before the juvenile court telephonically. At the conclusion of the proceeding, the matter was continued "upon the agreement of the parties" for trial to commence on February 18, 2021. In the interim, the court set the matter for an SYO arraignment hearing to be held on January 5, 2021.

{¶ 9} On January 5, 2021, the matter proceeded to an arraignment hearing on the SYO component of the juvenile complaint. At the hearing, a magistrate "explained the legal rights, procedures, and possible consequences of the hearing pursuant to Juv.R. 29 and Crim.R. 11." The magistrate also explained the possible consequences of the discretionary SYO specifications attached to Counts 1 and 2 of the complaint. Following the magistrate's advisements, C.C. denied the allegations of the complaint. C.C. further expressed that he did not wish to waive his right to a

jury trial or his right to a speedy trial. In the corresponding journal entry, the magistrate reiterated that trial was set to commence on February 18, 2021.

{¶ 10} Ultimately, however, trial did not commence on February 18, 2021, as scheduled “due to health concerns related to the ongoing COVID-19 pandemic.” The juvenile court’s decision to postpone the trial was made in accordance with a series of administrative orders entered by the juvenile court, including provisions within the applicable orders that suspended jury trials from November 23, 2020, through April 26, 2021. (Administrative orders filed November 23, 2020, November 30, 2020, January 19, 2021, and March 26, 2021.)

{¶ 11} On March 15, 2021, the parties appeared before the court for a pretrial hearing. At the conclusion of the hearing, the juvenile court issued an order, dated March 16, 2021, that continued the matter indefinitely for “a date and time that shall be set by this court when additional guidance from the General Trial Division of the Cuyahoga County Court of Common Pleas regarding the resumption of jury trials.” The court explained that the continuance was necessary “for the administration of justice,” stating:

Due to the continued risk of community spread of the coronavirus and the resulting COVID-19 disease, and in order to maintain the safety of the public, court employees, case parties, attorneys, and all others whose business takes place at the Cuyahoga County Juvenile Justice Center, this court is acting in accordance with the guidelines and procedures adopted by the Cuyahoga County Court of Common Pleas which, by Administrative Order dated November 18, 2020, has limited its operations and set parameters for the selection of cases for jury trial.

The Administrative Order is intended to allow the court to safely and reasonably continue operations. The court has considered reasonable alternatives to conducting jury trials in areas other than the Juvenile Justice

Center. However, the serious threat to the public health constitutes good cause to continue this jury trial. Cases of COVID-19 continue to remain at high levels, placing Cuyahoga County in the Public Alert Level of Red. This order considers both the alleged delinquent's right to a speedy jury trial, and determines that a continuance of trial which supersedes the right to a defendant's speedy trial right is hereby considered permissible by all judges of the General Division under the Ohio Constitution and R.C. 2945.72(H) as a "reasonable continuance granted other than upon the accused's own motion."

The court further clarified that "the time between the [March 15, 2021] pretrial * * * through the day before the next scheduled trial date will not be counted when calculating speedy trial time in this matter."

{¶ 12} In response to the resumption of jury trials in Cuyahoga County on April 26, 2021, the matter was set for trial to commence on June 28, 2021. Relevant to this appeal, the trial was scheduled to be held before a newly assigned judge, who took over the case after the March 16, 2021 order was journalized.

{¶ 13} On June 2, 2021, the visiting judge set the matter for a preliminary hearing to be held on June 16, 2021. In its journal entry, the visiting judge noted that C.C. had not been indicted or charged by way of information, and that a preliminary hearing was necessary "to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence [pursuant to] R.C. 2152.13(B)."

{¶ 14} On June 10, 2021, the visiting judge issued an additional journal entry, finding there was a prima facie violation of C.C.'s right to a speedy trial as to the request for a SYO dispositional sentence. Accordingly, the visiting judge advised the parties that the court would also address whether it was appropriate to dismiss the

SYO specification on speedy-trial grounds during the preliminary hearing scheduled for June 16, 2021.

{¶ 15} On June 15, 2021, a grand jury indicted C.C. as a SYO in the Cuyahoga County Court of Common Pleas, General Division. The indictment set forth the same charges and specifications contained in the original juvenile complaint. Once the criminal indictment was returned against C.C., the visiting judge determined that it was no longer necessary to proceed with a preliminary hearing contemplated under R.C. 2152.13(B). However, the visiting judge “directed [C.C.] to file a written motion for dismissal with a memorandum in support no later than June 21, 2021.”

{¶ 16} On June 21, 2021, C.C. filed a motion to dismiss on speedy-trial grounds, arguing that “a minimum [of] 272 days (one for one), or a maximum of 816 days (three for one), have passed between the filing of the initial complaint and the filing of the SYO indictment on June 15, 2021, establishing a prima facie case for the dismissal of the specification requesting a SYO dispositional sentence.”

{¶ 17} On June 25, 2021, the state opposed the motion to dismiss, arguing that “even based on a conservative analysis of potential tolling events, there has been no speedy trial violation.” The state noted that a substantial period of time was tolled as a result of the juvenile court’s indefinite continuance, which was entered in accordance with county-wide policies and the suspension of jury trials during the COVID-19 pandemic.

{¶ 18} While the competing motions were pending, the visiting judge held an arraignment hearing and accepted C.C.’s pleas of not guilty to the charges set forth

in the criminal indictment. At the hearing, the parties discussed the pending motion to dismiss, and the visiting judge expressed that it would consider the motion under advisement.

{¶ 19} On July 1, 2021, the visiting judge issued an order dismissing the criminal indictment and striking the request for a SYO dispositional sentence. In its written findings of fact and conclusions of law, the visiting judge concluded that the substantial delay in the proceedings violated C.C.'s statutory right to a speedy trial. Applying the triple-count provisions set forth under R.C. 2945.71(E), the visiting judge stated, in pertinent part:

The complaint was filed on September 17, 2020. The oral motion to dismiss was made on June 16, 2021. 272 days passed from the date of the complaint was filed to the date the motion to dismiss was made.

The juvenile was arrested on September 21, 2020. 3 days were tolled from the date of filing to the date of arrest. Time was tolled for 11 days by motion for discovery/bill of particulars, 11 days by the motion to appoint a GAL and another 72 days by way of counsel's agreements to rest the case to later dates. The total number of days tolled is 97 days (3+11+11+72). The state was required to try the juvenile within 187 days (90+97) from the date the complaint was filed.

The SYO specification and indictment should be dismissed. "Upon motion made at or prior to the commencement of 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). Except striking the SYO request, the delinquency complaint is unaffected.

{¶ 20} In rendering the judgment, the visiting judge rejected the state's contention that C.C.'s "speedy trial time was tolled by the suspension of jury trials * * * issued in response to the COVID pandemic." The visiting judge explained that because C.C.'s right to a jury trial did not arise until he was criminally indicted on

June 15, 2021, “no actual delay occurred due to the pandemic orders.” The visiting judge further concluded that “no speedy trial time is tolled due to the juvenile’s failure to respond to the state’s demand for discovery.” Relying on this court’s decision in *In re D.S.*, 8th Dist. Cuyahoga No. 97757, 2012-Ohio-2213, the visiting judge found that “there is no evidence the state was delayed in its preparation for trial or otherwise suffered any prejudice as a result of [C.C.]’s non-response.”

{¶ 21} The state now appeals from the juvenile court’s judgment.

II. Law and Analysis

{¶ 22} In its sole assignment of error, the state argues the juvenile court erred by dismissing the SYO indictment on speedy-trial grounds. The state contends that C.C.’s statutory right to a speedy trial was not violated because “the court unambiguously and repeatedly issued an ongoing succession of comprehensive continuances and prohibitions on jury trials, and explicitly stated that those continuances tolled the speedy trial time.” The state maintains that for the juvenile court “to then turn around and say that a case must be dismissed because there was a speedy-trial violation is a miscarriage of justice.” We agree.

{¶ 23} We review a juvenile court’s decision on a motion to dismiss an indictment under a de novo standard of review. *State v. Knox*, 8th Dist. Cuyahoga Nos. 103662 and 103664, 2016-Ohio-5519, ¶ 12, citing *State v. Gaines*, 193 Ohio App.3d 260, 2011-Ohio-1475, 951 N.E.2d 814 (12th Dist.). “De novo review requires an independent review of the trial court’s decision without any deference to the trial

court's determination." *State v. McCullough*, 8th Dist. Cuyahoga No. 105959, 2018-Ohio-1967, ¶ 6.

{¶ 24} In 2002, the Ohio General Assembly enacted R.C. Chapter 2152, Ohio's Serious Youthful Offender statute, which allows the juvenile court to impose more punitive, adult sanctions than those previously imposed on youthful offenders. R.C. 2152.11(A) establishes various dispositions for children adjudicated delinquent and states that a juvenile offender who commits certain acts is eligible for "a more restrictive disposition." The "more restrictive disposition," known as the SYO disposition, creates a blended sentence that combines a traditional juvenile disposition with a stayed adult sentence. R.C. 2152.13. Under this framework, the adult sentence remains stayed and is never invoked unless the juvenile fails to successfully complete his or her traditional juvenile disposition. R.C. 2152.13(D)(2)(a)(iii). Moreover, when SYO proceedings are initiated against a juvenile, the case is not automatically bound over to an adult court. Rather, the case remains in the juvenile court whose goals are rehabilitative rather than punitive. *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 18; *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 14.

{¶ 25} SYOs are both entitled and subject to a blend of juvenile and adult court processes and procedures. In order to impose a SYO dispositional sentence, a prosecuting attorney must comply with R.C. 2152.13(A) to initiate the process. R.C. 2152.13(A). Under R.C. 2152.13(A), a prosecutor may initiate the process in one of four ways:

- (1) Obtaining an indictment of the child as a serious youthful offender;
- (2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;
- (3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;
- (4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:
 - (a) The date of the child's first juvenile court hearing regarding the complaint;
 - (b) The date the juvenile court determines not to transfer the case under section 2152.12 of the Revised Code.

{¶ 26} In this case, it is undisputed that the state initiated the SYO process by requesting a SYO dispositional sentence in the original juvenile complaint alleging that C.C. is a delinquent child. R.C. 2152.13(A)(3).¹ When a SYO disposition is sought for a juvenile, the juvenile offender has the right to "a grand jury

¹ Pursuant to R.C. 2152.13(B):

If an alleged delinquent child is not indicted or charged by information as described in division (A)(1) or (2) of this section and if a notice or complaint as described in division (A)(3) or (4) of this section indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

In this case, the indictment was returned by the grand jury before the juvenile court had the opportunity to hold the probable cause hearing contemplated under R.C. 2152.13(B). On the date the preliminary hearing was scheduled to commence, the court concluded that a probable cause determination was unnecessary based on the findings of the grand jury. Neither the state nor C.C. challenge the court's failure to hold the preliminary hearing pursuant to division (B).

determination of probable cause that the child committed the act charged and that the child is eligible by age for a [SYO] dispositional sentence.” R.C. 2152.13(C)(1). Once the juvenile is indicted, charged by information, or the court determines that the juvenile is eligible for a SYO dispositional sentence, “the [juvenile] is entitled to an open and speedy trial by jury.” *Id.* In turn, the juvenile’s speedy-trial time is deemed to have “commenced” on whichever of the following dates is applicable:

(a) If the child is indicted or charged by information, on the date of the filing of the indictment or information.

(b) If the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint.

(c) If the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

R.C. 2152.13(C)(1).

{¶ 27} After careful review of the record and the applicable statutory provisions, we find C.C.’s speedy-trial time is deemed to have commenced on September 17, 2020, pursuant to R.C. 2152.13(C)(1)(b).² This is true even though

² In reaching this conclusion, we find the decision in *In re T.S.*, 8th Dist. Cuyahoga No. 106825, 2018-Ohio-3680, to be instructive. In that decision, this court was asked to consider whether the state is entitled to circumvent the time constraints for filing notice under R.C. 2152.13(A)(4) by obtaining a SYO indictment beyond the 20-day period referenced in the statute. In rejecting the state’s assertion that R.C. 2152.13(A)(1) permits it to obtain a SYO indictment “at any time” following the denial of a transfer under R.C. 2152.12, this court determined that the state’s interpretation of R.C. 2152.13(A) ignored the implications of R.C. 2152.13(C)(1) and the speedy trial provisions set forth under R.C. 2152.13(C)(1)(a)-(c). *Id.* at ¶ 7-8. Relevant to this appeal, the court in *In re T.S.* explained as follows:

C.C.'s right to a speedy trial did not arise until a grand jury returned an indictment against C.C. on June 15, 2021. With these facts in mind, we turn to the applicable provisions of Chapter 29 of the Ohio Revised Code. *See* R.C. 2152.13(C)(1)-(2).

{¶ 28} A defendant is guaranteed the constitutional right to a speedy trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 10, of the Ohio Constitution. *State v. Williams*,

Read in conjunction with [R.C. 2152.13(C)(1)] the meaning of the phrase “[u]ntil an indictment * * * is obtained” [under R.C. 2152.13(A)(3) and (A)(4)] is clear. Under either section (A)(3) or (A)(4) the state may provide notice to the alleged delinquent child of its intent to pursue a SYO disposition. However, the child is entitled to a grand jury determination of probable cause pursuant to division (C)(1). This is the indictment referenced by the language in question in divisions (A)(3) and (A)(4).

* * *

Pursuant to R.C. 2152.13(C)(1)(c), a juvenile's speedy trial right begins as of the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender disposition. In other words, when the state brings a complaint that does not initially include a SYO specification but instead later provides notice of its intent to seek an SYO disposition pursuant to R.C. 2152.13(A)(4) the child's speedy trial right attaches at the date the written notice is provided rather than the date that the prosecutor subsequently obtains an indictment. The state's proposed interpretation of the statute, whereby it would not be bound by the notice requirements of R.C. 2152.13(A)(4), would contradict the plain terminology of R.C. 2152.13(C)(1)(c) and create a loophole for circumventing the speedy trial right set forth therein. *See also In re D.S.*, 8th Dist. Cuyahoga No. 97757, 2012-Ohio-2213, ¶ 15 (noting, in dicta, that a juvenile's speedy trial right attached upon the state's filing of a notice of intent to seek an SYO disposition even when an indictment was subsequently obtained).

Id. at ¶ 9-11. Applying the foregoing analysis to the circumstances presented in this case, it follows that where, as here, an indictment is returned after the SYO process was previously initiated pursuant to R.C. 2152.13(A)(3), the juvenile's speedy trial right must be deemed to have commenced on the date the complaint requesting the SYO dispositional sentence is filed and not the date that the prosecutor subsequently obtains an indictment. A holding to the contrary could “circumvent” the juvenile's speedy trial rights. *Id.* at ¶ 11.

8th Dist. Cuyahoga No. 100898, 2014-Ohio-4475, ¶ 51, citing *State v. Taylor*, 98 Ohio St.3d 27, 2002-Ohio-7017, 781 N.E.2d 72, ¶ 32. 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*, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). 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.

{¶ 29} Pursuant to R.C. 2945.71(C)(2), the state must bring a defendant to trial on felony charges within 270 days of arrest. Once the statutory limit has expired, the defendant has established a prima facie case for dismissal. *State v. Butcher*, 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368 (1986). At that point, the burden shifts to the state to demonstrate that sufficient time was tolled pursuant to R.C. 2945.72. *Brecksville v. Cook*, 75 Ohio St.3d 53, 55-56, 661 N.E.2d 706 (1996).

{¶ 30} 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). Thus, under the “triple count provision” contained in R.C. 2945.71(E), a defendant held in jail without bail pending a felony charge must be tried within 90 days. However, the triple-count provision applies “only to those defendants held in jail in lieu of bail solely on the pending charge.” *State v. MacDonald*, 48 Ohio St.2d 66, 68, 357 N.E.2d 40 (1976), paragraph one of the syllabus.

{¶ 31} This case presents a unique set of circumstances where C.C.'s speedy-trial time is deemed to have retroactively commenced 271 days before his SYO indictment was returned by the grand jury. Given the significant delay between the filing of the juvenile complaint and the criminal indictment, there is no dispute that C.C. was not brought to trial within the time period prescribed under R.C. 2945.71(C)(2). Thus, consistent with the juvenile court's judgment, we find C.C. has presented a prima facie case for discharge based on the expiration of his statutory speedy-trial time.

{¶ 32} However, because "some degree of flexibility is necessary," the General Assembly has "allowed for extensions of the time limits for bringing an accused to trial in certain circumstances." *State v. Ramey*, 132 Ohio St.3d 309, 2012-Ohio-2904, 971 N.E.2d 937, ¶ 24. Accordingly, R.C. 2945.72 contains an exhaustive list of events and circumstances that extend the time within which a defendant must be brought to trial. *Id.* Such tolling events include "[a]ny period during which the accused is unavailable for hearing or trial," "[a]ny period of delay occasioned by the neglect or improper act of the accused," any period of delay "necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused, and any continuances granted upon the accused's own motion," and "the period of any reasonable continuance granted other than upon the accused's own motion." R.C. 2945.72(A), (D), (E), and (H).

{¶ 33} Extensions under R.C. 2945.72 "are to be strictly construed, and not liberalized in favor of the state." *Ramey* at ¶ 24, quoting *State v. Singer*, 50 Ohio

St.2d 103, 109, 362 N.E.2d 1216 (1977). If a defendant is not brought to trial within the time required under R.C. 2945.71 and 2945.72, then the defendant, “[u]pon motion made at or prior to the commencement of trial, * * * shall be discharged[.]” R.C. 2945.73(B).

{¶ 34} Assuming, without deciding, that C.C. was entitled to the triple-count provision under R.C. 2945.71(E), we find his statutory speedy-trial time had yet to expire at the time the juvenile court’s July 1, 2021 judgment was entered.³ In this case, the record reflects that following a number of continuances and status hearings, C.C.’s trial was scheduled to commence on June 28, 2021. A total of 284 days passed between the filing of the juvenile complaint and the date the matter was finally set for trial. Although this delay was significant, there were undisputed tolling events attributable to defense counsel that occurred before grand jury proceedings were initiated in June of 2021. Specifically, due to various continuances and motions not challenged in this appeal, the record reflects that between the filing of the juvenile complaint on September 17, 2020, and the indefinite continuance

³ Regarding the application of R.C. 2945.71(E), there is no dispute that C.C. remained in secure detention throughout the pendency of this case. Yet, as a juvenile-offender, C.C.’s right to bail did not arise until he was indicted on June 15, 2021. R.C. 2152.13(C)(2) (“If the child is detained awaiting adjudication, *upon indictment* * * * the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult.”) (Emphasis added.) Unlike the language set forth in R.C. 2152.13(C)(1)(a)-(c), there is no language contained in R.C. 2152.13(C)(2) to suggest that C.C.’s right to bail is deemed to have commenced retroactively. Thus, it is not clear that C.C. was detained “in lieu of bail” between September 17, 2020, and June 15, 2021. *But see In re D.S.*, 8th Dist. Cuyahoga No. 97757, 2012-Ohio-2213, at ¶ 18 (applying the triple-count provision to a juvenile offender whose speedy-trial time was deemed to have started retroactively at the time the state filed its notice of intent to seek a SYO dispositional sentence pursuant to R.C. 2152.13(C)(1)(c).).

filed on March 16, 2021, a total of 98 speedy-trial days were tolled pursuant to R.C. 2945.72. Stated another way, a total of 81 speedy-trial days had expired by the time the juvenile court ordered an indefinite continuance to commence on March 15, 2021.

{¶ 35} In pertinent part, the 98-tolling days referenced above derive from the following events: (1) the four-day period that C.C. was unavailable between the filing of the juvenile complaint and his arrest,⁴ (2) the 11-day period between defense counsel's demand for discovery and the state's response, (3) the 12-day period between defense counsel's request for the appointment of a guardian ad litem and the juvenile court's appointment of the guardian ad litem, and (4) the 71-day delay that arose following the parties' agreement to continue the trial from December 9, 2020, to February 18, 2021.

{¶ 36} Because the majority of C.C.'s speedy-trial time had expired by March 2021, the crux of the arguments posed on appeal relate to the visiting judge's interpretation of the continuance ordered on March 16, 2021, and its application to C.C.'s speedy-trial time. Consistent with the conclusions reached by the visiting judge, C.C. maintains that the suspension of jury trials in Cuyahoga County did not constitute a reasonable tolling event because he had yet to be indicted, and therefore, was not eligible to receive a jury trial until June 15, 2021. C.C. contends that the

⁴ This court recognizes that when computing how much time has run against the state under R.C. 2945.71, we generally begin with the day after the accused adult was arrested. *State v. Broughton*, 62 Ohio St.3d 253, 260, 581 N.E.2d 541 (1991). In this case, however, we find the language set forth in R.C. 2152.13(C)(1)(b) to be controlling.

continuance cannot be deemed to have delayed his jury trial until his right to a jury trial was actually invoked. In contrast, the state asserts that the March 16, 2021, order unambiguously states that the indefinite continuance was intended to toll C.C.'s speedy-trial time pursuant to R.C. 2945.72(H).

{¶ 37} After careful consideration, we find merit to the state's position and reject the visiting judge's determination that the indefinite continuance entered by the court on March 16, 2021, "did not toll any time." As discussed above, C.C.'s speedy-trial time commenced on September 17, 2020, and, absent tolling events, is deemed to have been running for the duration of the proceedings. While this court understands that the visiting judge took exception to the juvenile court's previous failures to expedite the SYO proceedings, we find the county-wide suspension of jury trials was necessary and applicable to the speedy-trial time implicated in this matter. Although the continuance prompted further inaction by the state in this case, we find no basis to ignore the application of clear tolling provisions during a time period where C.C. was receiving the statutory protections afforded to adults under R.C. 2945.71. If this court were to accept the visiting judge's interpretation of the law, we would be equally compelled to find that there could be no tolling events prior to filing of the criminal indictment against C.C., including the unchallenged delays attributed to defense counsel. We decline to adopt such a stringent approach under the unique facts of this case given the court's clear intention to toll C.C.'s speedy-trial time until jury trials resumed in Cuyahoga County and his trial could be scheduled.

{¶ 38} Furthermore, we find the R.C. 2945.72(H) continuance was reasonable and in accordance with the administrative orders entered by the juvenile division on November 23, 2020, November 30, 2020, January 19, 2021, and March 26, 2021. As recognized by the Ohio Supreme Court, “[t]he Ohio Attorney General has opined that courts may suspend jury trials to prevent the spread of the coronavirus and they may do so consistent with state and federal speedy-trial obligations.” *In re Disqualification of Paris*, 161 Ohio St.3d 1285, 2020-Ohio-6875, 164 N.E.3d 509, ¶ 5, quoting *In re Disqualification of Fleegle*, 161 Ohio St.3d 1263, 2020-Ohio-5636, 163 N.E.3d 609, ¶ 7, citing 2020 Ohio Atty.Gen.Ops. No. 2020-002. Thus, the Ohio Supreme Court explained that trial judges have the authority to continue trials for defendants on a case-by-case basis without violating speedy-trial requirements and continuing a trial because of a pandemic state of emergency is reasonable under R.C. 2945.72(H). *Fleegle* at *id.*

{¶ 39} In this case, the March 16, 2021 journal entry reflects that the juvenile court diligently considered all pertinent factors, including the severity of the ongoing public-health crisis and C.C.’s right to a speedy-jury trial. Ultimately, however, the court found the circumstances necessitating the extended continuance superseded C.C.’s right to a speedy trial, and therefore, constituted a “reasonable continuance granted other than upon the accused’s own motion” pursuant to R.C. 2945.72(H). On this record, it is clear the visiting judge’s judgment dismissing the SYO dispositional request is in direct contradiction of the language previously used by the court in its March 16, 2021 journal entry. As stated, the parties reasonably relied

on the unambiguous language of the juvenile court's order, and it is clear the court's order influenced case-management decisions moving forward, including the policies and procedures used to prioritize the backlog of juvenile and adult cases created by the unprecedented public-health outbreak. Under these unique circumstances, it would be impracticable to allow the court to disregard its own unambiguous order during its calculation of C.C.'s speedy-trial time.

{¶ 40} Based on the foregoing, we find the visiting judge erred by failing to toll the time period between the pretrial hearing held on March 15, 2021, "through the day before the next scheduled trial date [i.e., June 27, 2021]." Contrary to the arguments posed by C.C. on appeal, the indefinite continuance did not cease to be a valid tolling event upon the resumption of jury trials in Cuyahoga County on April 26, 2021. The language of the March 16, 2021 order was clear: the speedy-trial time would continue to toll until the day before the next scheduled trial date. The language was intentional and implicitly recognized the inherent delays prosecutors would face in scheduling pending matters for trial in Cuyahoga County given the magnitude of the delays created by the pandemic. Considering this 105-day tolling period together with the forgoing tolling events, as well as the time tolled pending C.C.'s motion to dismiss, we find the total number of days during which the speedy-trial time was tolled between the filing of the juvenile complaint on September 17,

2020, and the trial's dismissal of the SYO indictment on July 1, 2021, is 206 of 287 days. Consequently, C.C.'s statutory right to a speedy trial was not violated.⁵

{¶ 41} The state's sole assignment of error is sustained. The juvenile court erred by dismissing the SYO indictment on speedy-trial grounds. The matter is remanded for the juvenile court to reinstate the SYO dispositional request and indictment. The matter shall be set for trial to commence as soon as practical.

{¶ 42} Judgment reversed and remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee 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, juvenile division, to carry this judgment into execution.

⁵ Having found C.C.'s speedy-trial time was not violated, we decline to address the implications of defense counsel's failure to respond to the state's reciprocal request for discovery. *But see In re D.S.*, 8th Dist. Cuyahoga No. 97757, 2012-Ohio-2213, at ¶ 32, 36-37 (holding that defendant's failure to respond to state's discovery request did not toll speedy-trial time, distinguishing *Palmer* on the grounds that state's discovery request was made several months before speedy-trial rights started to run while the case was pending only as a juvenile case, the defendant never responded to the state's discovery request as opposed to simply responding in an untimely manner and there was no indication in the record that the state was delayed in its preparation for trial by the defendant's failure to respond to discovery).

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

Eileen T. Gallagher
EILEEN T. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
LISA B. FORBES, J., CONCUR

FILED AND JOURNALIZED
PER APPEAL 27701

JUN 30 2022

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By GREG HERCIK Deputy