

[Cite as *State v. Matthews*, 2009-Ohio-6694.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23051
vs.	:	T.C. CASE NO. 08CR137
CURTIS LAMONT MATTHEWS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 18<sup>th</sup> day of December, 2009.

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GRADY, J.:

{¶1} This is an appeal brought by the State from an order  
 dismissing an indictment on a finding that the defendant's speedy  
 trial rights were violated.

{¶2} On February 22, 2008, an indictment issued in Common  
 Pleas Court Case No. 2008CR00137, charging "Curtis Lamont Matthews,

a.k.a.: Curtis Lawrey," with tampering with records in violation of R.C. 2913.42(A)(1), arising from his conduct in obtaining a falsified driver's license. (Dkt. 1). Defendant, identifying himself as Curtis Lamont Matthews, entered a not guilty plea to the charge. (Dkt. 7).

{¶3} Defendant filed a motion to dismiss the indictment on April 22, 2008. (Dkt. 13). Defendant alleged a violation of his speedy trial rights in Case No. 2008CR00137 based on his prior prosecution and conviction for theft by deception, under the name Curtis Lawrey, in Common Pleas Case No. 2006CR4674. That theft charge involved Defendant's use of his own driver's license and a falsified license issued to "Curtis Lawrey" to obtain food stamps.

Because the 2006 theft charge involved the same falsified license involved in the 2008 falsification charge, and more than 270 days had passed since the 2006 charge was filed when Defendant was arrested on the 2008 charge, Defendant argued that his speedy trial rights were violated.

{¶4} The State filed a Motion to Overrule Defendant's motion to dismiss (Dkt. 14) and, following Defendant's response, the State also filed a Supplemental Response. (Dkt. 20). The State conceded that when the 2006 theft charge was filed it "was aware that the Defendant was using his two driver's licenses to effectuate the theft." (Dkt. 14, p. 7). The State argued, however, that

the 2006 and 2008 charges had been investigated by different agencies, and that because the investigation of the 2008 charges was not complete when the 2006 charge was filed, new facts had been presented that did not relate back to start Defendant's speedy trial time on the 2008 charge to begin to run in 2006. The State also requested a hearing on Defendant's motion to dismiss. (Dkt. 19).

{¶5} The court did not hold a hearing, and instead granted Defendant's motion to dismiss on the representations in the memoranda the parties had filed. Relying on the State's concession, *Id.*, the trial court reasoned: "It is difficult for the Court to imagine how the original indictment for theft might have been returned without determining that the Defendant had tampered with government records to 'facilitate or effectuate' the theft." (Dkt. 21, p. 2). The court found that, with respect to the two driver's licenses Defendant used to commit the 2006 theft offense, "the State had knowledge that these 'different persons' were one and the same person, which knowledge formed the basis for its 2006 indictment." (*Id.*, p. 4). The State filed a notice of appeal from the order dismissing the indictment.

ASSIGNMENT OF ERROR

{¶6} "THE TRIAL COURT ERRED BY DISMISSING THE INDICTMENT FOR TAMPERING WITH RECORDS."

{¶ 7} The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution. Ohio's speedy trial statutes, R.C. 2945.71 et seq., constitute a rational effort to implement the constitutional right to a speedy trial and will be strictly enforced. *State v. Pachay* (1980), 64 Ohio St.2d 218. Pursuant to R.C. 2945.71(C)(2), a person against whom a charge of felony is pending must be brought to trial within two hundred seventy days after his arrest.

{¶ 8} When charges filed in separate earlier and later criminal actions arise from the same facts and the State knew of those facts when the earlier action was filed, the statute of limitations applicable to the charges in the later action commences to run when the limitation period commenced to run on the charges in the earlier action. *State v. Adams* (1989), 43 Ohio St.3d 67; *State v. Bonarrigo* (1980), 62 Ohio St.2d 80. The rule does not apply when the charges in the later action arise from different facts or the State did not know of those facts when the earlier action was filed. *State v. Baker*, 78 Ohio St.3d 108, 1997-Ohio-229. Additional crimes based on different facts should not be considered as arising from the same sequence of events for the purpose of speedy trial computation. *Id.*

{¶ 9} It is undisputed that more than two hundred and seventy

days had expired when Defendant was indicted in Case No. 2008CR0137 since he had been indicted in Case No. 2006CR4674. The State conceded in its memorandum contra Defendant's motion to dismiss that at the time the theft charges in Case No. 2006CR0137 were filed the State was aware that Defendant "was using his two driver's licenses to effectuate the theft." (Dkt. 14, p. 7). The State argues that the *Baker* exception nevertheless applies because the crime charged in Case No. 2008CR0137 involves criminal conduct different from the criminal conduct charged in Case No. 2006CA4674.

We do not agree. The *Baker* exceptions are not concerned with whether the charges in the prior and subsequent actions allege different grounds for criminal liability. The question is whether in order to prove the charges in both cases the State must prove a set of facts common to both charges, and whether the State knew of those facts when the earlier action was filed.

{¶ 10} To prevail on his speedy trial motion, Defendant was required to show that the State was aware in 2006 that Defendant had obtained a falsified driver's license, not merely that he used a falsified license to commit a theft. The trial court might reasonably make that finding from the circumstances on which it relied. However, and in relation to our review of the error assigned, and the rule of *Baker*, we believe the procedure the court followed was inadequate to its finding.

{¶ 11} Defendant's motion to dismiss the indictment was a pretrial motion for discharge authorized by R.C. 2945.73(B) and Crim. 12(C). Crim. 12(F) provides that "[t]he court may adjudicate a motion based on briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means," and that "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record." Where the Crim. 12(C) motion raises claims that would justify relief which are supported by factual allegations, an evidentiary hearing is necessary to the findings that Crim.R. 12(F) requires, and is also necessary to permit the appellate court to review any error assigned regarding the basis for any findings of fact the court makes.

{¶ 12} The State requested an evidentiary hearing, but the court instead proceeded to make findings of fact from the memoranda the parties filed. The trial court erred in failing to conduct an evidentiary hearing on Defendant's motion, and that failure prevents our review of the error assigned. The assignment of error is sustained. The case will be remanded for further proceedings consistent with our Opinion.

DONOVAN, P.J. And FAIN, J., concur.

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