[Cite as *State v. Belville*, 2021-Ohio-820.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellant,	:	Case No. 19CA27
	:	
vs.	:	
	:	DECISION AND
DAVID BELVILLE,	:	JUDGMENT ENTRY
	:	
Defendant-Appellee.	:	

APPEARANCES:

Matthew F. Loesch, Portsmouth, for Appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Assistant Prosecuting Attorney, Ironton, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, David Belville, appeals the trial court's judgment entry convicting him of one count of aggravated trafficking in drugs in the vicinity of a juvenile, a first-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(d). On appeal, Belville raises a single assignment of error contending that his statutory speedy trial rights under R.C. 2945.71 were violated as a matter of law and that his motion to dismiss should have been granted. However, because we have found Belville's sole assignment of error to be without merit, it is overruled. Accordingly, the judgment of the trial court is affirmed.

FACTS

{¶2} Belville was initially arrested on July 17, 2019, and was released on a medical O.R. bond on July 19, 2019. He was subsequently indicted on July 24, 2019, for four felony counts that included one count of aggravated trafficking in drugs in the vicinity of a juvenile, a first-degree felony in violation of R.C. 2923.03(A)(1)(C)(1)(d), one count of complicity to aggravated trafficking in drugs, a second-degree felony in violation of R.C. 2923.03(A)(1)(C)(1)(d), another count of complicity to aggravated trafficking in drugs, a first-degree felony in violation of R.C. 2923.03(A)(1)(C)(1)(d), and one count of engaging in a pattern of corrupt activity, a first-degree felony in violation of R.C. 2923.32(A)(1). Rather than issuing a summons, a warrant was issued and Belville was again arrested on September 3, 2019.

{¶3} Belville was arraigned on September 4, 2019, and remained in jail until the filing of his motion to dismiss based upon speedy trial grounds on November 19, 2019, which was filed the day before his scheduled jury trial. Belville at no point filed a waiver of speedy trial time and he requested no continuances of any pretrial hearings or of the jury trial. He did, however, file a demand for discovery on September 16, 2019. The State filed a response to the demand for discovery on September 17, 2019. According to the record, that response included 1200 pages

of discovery. However, in its response, the State indicated that it was in possession of video footage contained on an HD DVR system, which was still being reviewed.

{¶4} The video evidence contained on the HD DVR was discussed at each and every pretrial hearing that was held up until the time in which it was provided to the defense on October 29, 2019. The record indicates that the HD DVR contained months-worth of video footage obtained from cameras installed both outside and inside of Belville's residence. There appears to have been difficulty in reviewing all of the video due to the sheer volume of it, and a second DVR had to be purchased in order that all of the video could be transferred to it and given to the defense to review. Thereafter, the State filed additional updates to discovery on November 6, 2019, November 8, 2019, November 13, 2019, and November 18, 2019.

{¶5} Belville filed a motion to dismiss based upon speedy trial grounds on November 19, 2019, the day prior to his scheduled jury trial. The trial court held a hearing on the motion that day and after considering arguments by both sides, the trial court orally denied the motion. Belville thereafter entered into a plea agreement with the State whereby he agreed to plead guilty to one first-degree-felony count of aggravated trafficking in drugs in the vicinity of a juvenile, in exchange for the dismissal of the remaining counts of the indictment. The trial court sentenced him to serve ten to fifteen years in prison and a mandatory five-

year term of post-release control. It is from this judgment that Belville filed his timely appeal, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

I. APPELLANT'S SPEEDY TRIAL RIGHTS UNDER O.R.C. 2945.71 WERE VIOLATED AS A MATTER OF LAW AND AS SUCH HIS MOTION TO DISMISS SHOULD HAVE BEEN GRANTED.

{¶6} In his sole assignment of error, Belville contends that his statutory speedy trial rights under R.C. 2945.71 were violated as a matter of law and that, as such, his motion to dismiss should have been granted. More specifically, he questions whether speedy trial time should have been tolled where the State did not file a written request for discovery. He also questions whether the doctrine of invited error applies where the State attempts to toll speedy trial time for a defendant's failure to respond to discovery, when the State never actually filed a written demand for discovery. The State argues that after taking into consideration certain tolling events related to discovery requests by both Belville and the State, Belville's statutory right to a speedy trial had not been violated at the time he filed his motion to dismiss on November 19, 2019. We begin by considering the appropriate standard of review when confronted with an issue related to the statutory right to a speedy trial.

Standard of Review

{¶7} A review of the record below indicates Belville filed a motion to dismiss based upon statutory speedy trial grounds on November 19, 2019, which was ultimately denied by the trial court. Appellate review of a trial court's decision on a motion to dismiss for a violation of speedy trial requirements presents a mixed question of law and fact. *State v. James*, 4th Dist. Ross No. 13CA3393, 2014-Ohio-1702, ¶ 23; *State v. Brown*, 131 Ohio App.3d 387, 391, 722 N.E.2d 594 (4th Dist. 1998). Thus, appellate courts will defer to a trial court's findings of fact as long as competent, credible evidence supports them. *Brown* at 391. Appellate courts then independently determine whether the trial court properly applied the law to the facts. *Id.* As this Court has previously explained, " ' "upon review of a speedy-trial issue, a court is required to count the days of delay chargeable to either side and determine whether the case was tried within applicable time limits." ' " *State v. Anderson*, 4th Dist. Scioto No. 15CA3696, 2016-Ohio-7252, ¶ 15, quoting *State v. Bailey*, 4th Dist. Ross No. 14CA3461, 2015-Ohio-5483, ¶ 15, in turn quoting *State v. Bailey*, 4th Dist. Scioto No. 09CA3287, 2010-Ohio-2239, ¶ 56. "Furthermore, when reviewing the legal issues presented in a speedy trial claim, we must strictly construe the relevant statutes against the state." *Brown* at 391, citing *Brecksville v. Cook*, 75 Ohio St.3d 53, 57, 661 N.E.2d 706 (1996).

{¶8} Here, it appears that the trial court orally denied Belville's motion to dismiss in open court and on the record during a hearing that was held on the motion the day prior to the scheduled jury trial. After the trial court orally denied the motion, Belville entered into a plea agreement with the State and the jury trial was cancelled. A review of the record indicates there was no written order or entry filed by the trial court formally denying the motion or stating the reasons for the denial. However, the trial court stated on the record that the tolling events argued by the State during the hearing applied to extend Belville's speedy trial time.[1] The court also stated it believed that R.C. 2945.72(H) applied to extend the statutory speedy trial limits, in light of the length of time it took for the State to provide discovery related to the HD DVR footage, and also in light of the court's desire that all of the footage be provided to defense counsel, even if the State ultimately did not intend to introduce it at trial, based upon the court's concern that it may contain exculpatory evidence favorable to Belville.[2]

[1] The State primarily argued that speedy trial time was tolled as a result of the defendant's request for discovery and that time continued to toll until the HD DVR was provided to the defense. The State also argued that the defendant's failure to respond to discovery tolled the speedy trial clock indefinitely.

[2] As set forth below, R.C. 2945.72 governs extensions of time for hearings and trials and provides in section (H) that speedy trial time may be tolled during "the period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion[.]" However, there is no indication from our review of the record that the trial court ever issued an order tolling speedy trial time pursuant to R.C. 2945.72(H).

Legal Analysis

{¶9} The Sixth Amendment to the United States Constitution guarantees an accused the right to a speedy trial in all criminal prosecutions. That guarantee is applicable to the states through the Fourteenth Amendment Due Process Clause. *See Klopfer v. North Carolina*, 386 U.S. 213, 222-223, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967). Similar protection is afforded under Section 10, Article I of the Ohio Constitution. *See State v. Meeker*, 26 Ohio St.2d 9, 268 N.E.2d 589 (1971), paragraph one of the syllabus ("The provisions of Section 10, Article I of the Ohio Constitution and of the Sixth Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, guarantee to a defendant in a criminal case the right to a speedy trial."). Furthermore, Ohio law also includes a statutory speedy-trial right. *See* R.C. 2945.71 et seq. However, the statutory and constitutional rights are separate and distinct from one another. *State v. Hilyard*, 4th Dist. Vinton No. 05CA598, 2005-Ohio-4957, ¶ 7. Here, Belville simply alleges a statutory speedy trial violation and makes no argument that his constitutional right to a speedy trial was violated.

{¶10} R.C. 2945.71 governs speedy trial and provides in section (C)(2) that a criminal defendant charged with a felony shall be brought to trial within 270 days of his arrest. Also, applicable to the calculation of speedy trial time here, R.C. 2945.71 provides in section (E) that "[f]or purposes of computing time under

division * * * (C)(2) * * * of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This is commonly referred to as the triple count provision. Further, R.C. 2945.72 provides that the time within which an accused charged with a felony must be brought to trial may be extended by the following:

> (A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability;
>
> (B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;
>
> (C) 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;
>
> (D) *Any period of delay occasioned by the neglect or improper act of the accused*;
>
> (E) *Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;*
>
> (F) Any period of delay necessitated by a removal or change of venue pursuant to law;
>
> (G) Any period during which trial is stayed pursuant to an

> express statutory requirement, or pursuant to an order of another court competent to issue such order;
>
> (H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion;
>
> (I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending. (Emphasis added).

As will be discussed more fully below, we conclude speedy trial time was tolled in this matter under both R.C. 2945.71(D) and (E).

{¶11} In the case at bar, we begin counting the 270-day time period on July 18, 2019, the day after Belville's initial arrest, which is the date both parties agree started the speedy trial clock running. Two hundred seventy calendar days from that date would have been April 12, 2020; however, Belville was incarcerated and held solely on these pending charges for a large part of the time between his initial arrest and the day he filed his motion to dismiss. More specifically, he was initially arrested on July 17, 2019, was held in jail for two calendar days and then was released on bond until September 3, 2019, when he was arrested on the indictment. He remained in jail from the time of his arrest on September 3, 2019, until the filing of his motion to dismiss on November 19, 2019. Taking into consideration the triple count provision contained in R.C 2945.71(E), it appears 283 speedy trial days had passed as of November 19, 2019, when the motion to dismiss was filed. As such, we conclude Belville has established a prima facie

case for dismissal due to a R.C. 2945.72 speedy trial violation. "Once a defendant establishes a prima facie case for dismissal, the burden shifts to the state to prove that the time was sufficiently tolled to extend the period." *State v. Smith*, 4th Dist. Lawrence No. 16CA10, 2017-Ohio-7864, ¶ 21, citing *State v. Squillace*, 10th Dist. Franklin No. 15AP-958, 2016-Ohio-1038, ¶ 14 and *State v. Anderson*, *supra*, at ¶ 19.

{¶12} Belville conceded below and concedes on appeal that the filing of his request for discovery on September 16, 2019, was a tolling event under R.C. 2945.72(E). He contends that only one speedy trial day was tolled because the State filed an answer to his request for discovery the very next day, on September 17, 2019. Taking into consideration the triple count provision, Belville concedes that three days can be deducted, resulting in the passage of 280 days for purposes of speedy trial. As noted by the State, however, despite the initial discovery that was provided to the defense on September 17, 2019, the discovery response was only a partial response. Discovery remained ongoing, primarily with respect to the provision of the HD DVR video footage that was seized from Belville's residence. In fact, in its discovery response that was filed on September 17, 2019, the State represented as follows with respect to the HD DVR: "The State is in possession of evidence favorable to Defendant; State is in possession of a HD DVR that is still

currently being reviewed." As such, it is clear from the record that discovery was still ongoing at that time.

{¶13} Several pretrial hearings were held in the days and weeks that followed. For instance, pretrial hearings were held on September 18, 2019, October 2, 2019, October 9, 2019, October 23, 2019, and November 6, 2019. The main topics of discussion at each of these hearings were: 1) the State's progress in reviewing and processing the HD DVR video footage as well as when the State could provide that footage to the defense; and 2) scheduling a trial date within speedy trial limits in light of the fact that Bellville had not waived time. There were multiple discussions at these hearing regarding how defense counsel could review the footage, the sheer volume of the footage (which apparently contained months-worth of video), the logistics of purchasing a second DVR in order to transfer the original footage to another DVR so that defense counsel could have a copy without having to view it in the prosecutor's office, and the fact that if defense counsel were to try to review all the footage in the prosecutor's office he would need to bring a cot. Finally, it was stated during the October 23, 2019 pretrial hearing that all of the footage had been transferred to a second DVR and that it was ready to be given to defense counsel. The record indicates that a discovery update was filed by the State on October 29, 2019, which included the provision of the HD DVR video footage. In fact, four more discovery updates

were filed by the State that included substantive information, leading right up until the day prior to the filing of the motion to dismiss.

{¶14} At the hearing on the motion to dismiss, the State argued that although it initially provided an answer to discovery the day after it was requested, time continued to toll until at least October 29, 2019, which was the date when the HD DVR was provided to the defense. The State argued that the reason for tolling is rooted in the fact that the provision of discovery takes the State's attention and resources away from trial preparation and diverts them to the production of discovery. The State argued that in this particular case it had devoted substantial time and effort in reviewing the HD DVR footage and getting it transferred to another device that could be given to the defense for review. Belville argued, however, that the speedy trial time limits are to be strictly construed against the State and that speedy trial time did not continue to toll while the State continued to provide supplements to discovery.

{¶15} In *State v. Dankworth*, 172 Ohio App.3d 159, 2007-Ohio-2588, 873 N.E.2d 902, the Second District Court of Appeals was similarly confronted with the question of exactly how long speedy trial time is tolled by a defendant's request for discovery. In working its way through that question, the *Dankworth* court reasoned as follows with respect to the question of how long discovery requests toll speedy trial time:

> Pursuant to *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040 [781 N.E.2d 159], demands for discovery are tolling events. The question is, how long do they toll?
>
> This Court concludes that this answer must be determined on a case by case basis, and the State must respond to the discovery demand in a reasonably timely fashion. [*State*] *v. Staton* (Dec. 14, 2001), Miami App. No. 2001CA10 at pg. 4-5 [2001 WL 1598024], citing [*State*] v. *Benge* (Apr. 24, 2000), Butler App. No. CA99-05-095 [2000 WL 485524], etc., [*State*] *v. McDonald*, 153 Ohio App.3d 679, 686, 2003-Ohio-4342 [795 N.E.2d 701].
>
> * * *
>
> In the present case, it appears there are three separate alleged victims and four separate incident dates, involving three separate locations.
>
> Accordingly, development of the case could possibly take some time. To the Court's questioning, the parties noted *the last of the discovery was exchanged February 16, 2006*, the same day the motion to dismiss was filed, about one and one-half months after it was demanded.
>
> *The Court does not perceive any dilatory or bad faith action by the State in this regard.* By the time of the arraignment (January 3, 2006), both sides were already resolute in their positions on the speedy trial; the State thought that the multiple counts tolled the time until April, the Defendant thought the time had expired 90 days after July 20, 2005.
>
> This Court, of course has taken a slightly different approach in the ultimate analysis.
>
> Nevertheless, the Court will find the request for discovery, Court's Exhibit B, tolled the time in which the Defendant was to be brought to trial and the State responded reasonably by February 16, 2006 at which time Defendant's motion to dismiss further tolled the time.

Dankworth at ¶ 21-28 (Emphasis added).

{¶16} Thus, the *Dankworth* court took several things into consideration in reaching its decision. First, it determined that questions regarding the length of tolling related to discovery requests should be decided on a case-by-case basis. Second, it took into consideration the complexity of the case, including the fact that there were multiple victims, incident dates and locations and thus, it noted that "development of the case could take some time." *Dankworth* at ¶ 24-25. Third, it considered the overall length of time between the initial request for discovery and the date it was provided, which in that case was one and one-half months. Fourth, it considered whether there was any dilatory or bad faith action by the State. After taking those things into consideration, the *Dankworth* court held that speedy trial time was tolled from the date of the defendant's request for discovery, until the date that "the last of the discovery was exchanged." *Dankworth* at ¶ 25, 28.

{¶17} Here, looking to *Dankworth* as a guide on this particular issue, we note that there are unique facts and circumstances in the present case, especially with respect to the evidence contained on the HD DVR. The record clearly describes the voluminous nature of that evidence and the difficulty in getting it transferred to a different device that could be provided to the defense. Regarding the complexity of the case, especially in regards to discovery and very similar to *Dankworth*, this case involved several different co-defendants whose cases had not been consolidated with Belville's case, but who also needed the same HD DVR

evidence to be provided to them by the State. Apparently, the State's efforts to review, process and then transfer the HD DVR video footage was an issue not only in Belville's case, but also in the cases involving the co-defendants, which involved different defense counsel. Third, Belville requested discovery on September 16, 2019, and after providing a partial discovery response the very next day, the State provided its first discovery update (which included the HD DVR evidence) on October 29, 2019. This was a one-and-a-half-month delay, the same amount of time involved in *Dankworth*, which the court ultimately deemed reasonable. Finally, not only is there no evidence of dilatory or bad faith action by the State in failing to provide the HD DVR discovery sooner, the record actually indicates that the State went to great lengths to provide this discovery as quickly as possible, considering the volume of video footage and the difficulty in getting it transferred to a format that was reviewable by the defense.

{¶18} As argued by the State during the hearing on the motion to dismiss, the rationale for tolling speedy trial time as a result of a defendant's request for discovery is based, at least in part, on the fact that "[d]iscovery requests by a defendant divert the attention of prosecutors from preparing their case for trial." *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, 781 N.E.2d 159, ¶ 23. In light of the foregoing, we conclude that the tolling of speedy trial time in the present case was triggered on the date of Belville's request for discovery on

September 16, 2019, and that time continued to toll until at least October 29, 2019, when the HD DVR was provided, despite the fact that the State provided an initial, written response to discovery on September 17, 2019. Further, under the rationale of *Dankworth*, time was arguably tolled in the present case until November 18, 2019, when the last of the discovery was updated and exchanged. *See Dankworth* at ¶ 25, 28. Nonetheless, we will cap the tolling as of October 29, 2019, as argued by the State during the hearing on the motion to dismiss.

{¶19} Thus, counting Belville's written demand for discovery that was filed on September 16, 2019, as a tolling event that stopped the clock effective September 17, 2019, and that continued to toll time through October 29, 2019, when the State provided the HD DVR portion of the discovery, we must deduct 43 calendar days, instead of one calendar day, from the total number of speedy trial days. Further, it is important to note at this juncture that had the speedy trial clock been running during these 43 calendar days, the triple count provision would have also applied because Belville remained in jail during this time. Therefore, looking at this single tolling event, in isolation, only 154 speedy trial days had passed at the time Belville filed his motion to dismiss upon speedy trial grounds. Accordingly, the State was well within the speedy trial limits at that time and the trial court did not err in denying Belville's motion.

{¶20} Additionally, as argued by the State below and on appeal, there was another tolling event that occurred during these proceedings. As noted by the State, Crim.R. 16, which governs "Discovery and inspection," was amended effective September 1, 2016, to include in section (H) reciprocal discovery obligations that arise upon a criminal defendant's filing of a request for discovery. Of relevance, Crim.R. 16(A) governs "Purpose, Scope and Reciprocity" and provides, in pertinent part, as follows:

> All duties and remedies are subject to a standard of due diligence, apply to the defense and the prosecution equally, and are intended to be reciprocal. Once discovery is initiated by demand of the defendant, all parties have a continuing duty to supplement their disclosures.

Additionally, Crim.R. 16(H) provides, in pertinent part, as follows:

> If the defendant serves a written demand for discovery or any other pleading seeking disclosure of evidence on the prosecuting attorney, a reciprocal duty of disclosure by the defendant arises without further demand by the state.

{¶21} The State did not file a written demand for discovery in this case. In fact, during the hearing on the motion to dismiss the State argued that it no longer files written demands for discovery because it is no longer required to do so under Crim.R. 16. We agree with the State that, according to the plain language of Crim.R. 16(H), the State no longer has an obligation to file a written demand for discovery. Instead, a reciprocal duty arises by operation of the rule when a

defendant files a written demand for discovery. As stated clearly in the rule, "a reciprocal duty of disclosure by the defendant arises without further demand by the state." Crim.R. 16(H).

{¶22} Additionally, the Supreme Court of Ohio has opined as follows regarding a criminal defendant's duty with respect to providing discovery to the State and tolling of speedy trial time that occurs as a result of a criminal defendant's delay:

> The tolling of statutory speedy-trial time based on a defendant's neglect in failing to respond within a reasonable time to a prosecution request for discovery is not dependent upon the filing of a motion to compel discovery by the prosecution.

State v. Palmer, 112 Ohio St.3d 457, 2007-Ohio-374, 860 N.E.2d 1011, paragraph two of the syllabus.

{¶23} The *Palmer* Court also held as follows: "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)." *Id.* at paragraph one of syllabus.

{¶24} In the body of the opinion, the Court concluded and summarized its reasoning on these issues as follows:

> We conclude that a defendant's failure 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). Having so concluded, we answer the certified question in the affirmative by holding that the tolling of statutory speedy-trial time based on a defendant's neglect in failing to respond within a reasonable time to a prosecution request for discovery is not dependent upon the filing of a motion to compel discovery by the prosecution. In addition, we hold that a trial court shall determine the date by which the defendant should reasonably have responded to a reciprocal discovery request based on the totality of facts and circumstances of the case, including the time established for response by local rule, if applicable.

Palmer at ¶ 24.

{¶25} This Court has previously held that 30 days is a reasonable period of time for a criminal defendant to respond to a discovery request and that the time beyond that 30 days is tolled for purposes of speedy trial as a "period of delay occasioned by the neglect or improper act of the accused" as set forth in R.C. 2945.72(D). *See State v. McCallister*, 4th Dist. Scioto No. 13CA3558, 2014-Ohio-2041, ¶ 20-21. Applying the revised version of Crim.R. 16, as well as the reasoning contained in *Palmer* and *McCallister*, we conclude that Belville's filing of a demand for discovery on September 16, 2019, triggered a reciprocal duty to provide the State with discovery beginning that same day. Belville, however, never provided any discovery to the State. Belville would have been permitted a reasonable time period of 30 days to provide discovery to the State, which would have been until October 16, 2019. Speedy trial time then began to toll as a result of his delay in answering discovery.

{¶26} However, as already discussed above, we have determined that speedy trial time was already tolled from September 16, 2019, until October 29, 2019, based upon Belville's demand for discovery from the State. Thus, a portion of the time tolled based upon Belville's failure to provide the State with discovery was subsumed by the other tolling event that occurred based upon Belville's demand for discovery. In our analysis above, we stopped the tolling of speedy trial time on the date that the State provided the HD DVR to Belville on October 29, 2019. Factoring in this second tolling event, it appears that speedy trial time continued to toll beyond October 29, 2019, as a result of Belville's continued failure to answer discovery.

{¶27} In fact, because Belville never did provide discovery to the State, speedy trial time arguably continued to toll until the filing of the motion to dismiss on November 19, 2019. However, our review of the record indicates that during a pretrial hearing that was held on November 6, 2019, the State affirmatively represented to the trial court that discovery had been completed and that there were no discovery issues pending. Although *Palmer* provides that the State need not file a motion to compel discovery, it seems unfair to continue to toll speedy trial time based upon a defendant's neglect in providing discovery when the State has affirmatively represented to the court that all discovery has been completed. Thus, we conclude that the tolling of speedy trial time based upon Belville's neglect in

answering discovery stopped on November 6, 2019. As such, taking into account the triple count provision, an additional 24 speedy trial days were tolled, bringing the total elapsed speedy trial days to 130.

{¶28} Belville argues that because *Palmer* was released prior to the 2016 revision to Crim.R. 16, that *Palmer* is not applicable to a situation where the State does not actually file a written request for discovery. We find no merit to Belville's argument. *Palmer* remains valid case law and has not been overruled as of the present time.

{¶29} In summary, considering the above dates and tolling events, we believe the following is a correct reflection of the speedy trial dates and tolling periods:

> •7/18/19 (day after initial arrest) – 7/19/19 (arraigned and released on bond) = 6 days (applying the triple count provision)
>
> •7/20/19 (out on bond) – 9/3/19 (arrested on indictment) = 46 days
>
> •9/4/19 (day after second arrest) – 9/16/19 (discovery request filed by defendant) = 39 days (applying the triple count provision)
>
> •9/17/19 – 10/29/19 (tolling begins due to defendant's request for discovery and tolling continued until the State's provision of the HD DVR to the defense)
>
> •10/30/19 – 11/6/19 (tolling continues, based upon the defendant's failure to satisfy its reciprocal discovery obligations, until the State represented to the court that all discovery had been completed)

•11/7/19 (speedy trial clock resumes) – 11/19/19 (motion to dismiss filed by the defendant) = 39 days (applying the triple count provision) date)

•11/20/19 (tolling begins due to defendant's filing of the motion to dismiss)

•Total speedy trial days elapsed: 130 days

{¶30} Therefore, we conclude that Belville's sole assignment of error is without merit and that the trial court did not err in denying his motion to dismiss based upon statutory speedy trial grounds. Thus, the assignment of error is overruled. Accordingly, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.