

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

STATE OF OHIO,	:	
	:	Case No. 24CA1195
Plaintiff-Appellant,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
JACOB DEARTH,	:	
	:	
Defendant-Appellee.	:	RELEASED: 09/29/2025

APPEARANCES:

Aaron E. Haslem, Adams County Prosecuting Attorney, and Tyler E. Cantrell, Adams County Assistant Prosecuting Attorney, West Union, Ohio, for appellant.

Bruce K. Hust, Cincinnati, Ohio, for appellee.

Wilkin, J.

{¶1} Appellant, the State of Ohio (“State”) appeals a judgment of the Adams County Court that dismissed a domestic violence charge against appellee, Jacob Dearth (“Dearth”), for lack of a speedy trial. On appeal, the State asserts that various events had tolled Dearth’s speedy-trial time pertinent to the domestic violence charge.

{¶2} After reviewing the parties’ arguments, the law, and the record, we find that the trial court erred by failing to consider whether any events tolled Dearth’s speedy trial time. Therefore, we reverse the trial court’s judgment of dismissal and remand this cause to the trial court to recalculate Dearth’s speedy-trial time for the domestic violence charge consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

{¶3} On October 5, 2023, the State charged Dearth with assault in violation of R.C. 2903.13(A), a first-degree misdemeanor. On February 9, 2024, the State additionally charged Dearth with domestic violence in violation of R.C. 2919.25(A), also a first-degree misdemeanor. Both charges were based on the same incident, which occurred on September 6, 2023. Therefore, on February 14, 2024, the State filed a motion to consolidate the assault and domestic violence charges, which the court granted.

{¶4} On March 14, 2024, Dearth filed a motion to dismiss the domestic violence charge due to a speedy trial violation. Dearth argued that because both criminal charges (assault and domestic violence) stemmed from the same incident and the State was aware of sufficient facts when initially charging him with assault, it could have also simultaneously charged him with domestic violence. Consequently, Dearth claimed the 90-day speedy trial time that applied to the assault charge also applied to the domestic violence charge, and pursuant to *State v. Adams*, 43 Ohio St.3d 67 (1989), “any waiver of time caused by discovery or pretrial settings does not matter.” Beginning the running of the 90 days from the date of the initial assault charge, which was October 5, 2023, Dearth maintained that more than 90 days had passed before the State charged him with domestic violence on February 9, 2024. Therefore, he argued that the domestic violence charge had to be dismissed for lack of a speedy trial.¹

¹ The State never filed a brief in response. For unknown reasons, the State was unaware of the motion until the day of trial.

{¶5} On March 21, 2024, the parties convened for a bench trial. However, the court informed the parties that it would first address Dearth's motion to dismiss the domestic violence charge on speedy trial grounds. The State maintained that it had been served with Dearth's motion to dismiss only minutes before. After a brief recess to permit the State to prepare, the court reconvened to address Dearth's motion to dismiss.

{¶6} Dearth recalled that that the State charged him with assault on October 5, 2023 from which he claimed the 90-day speedy trial time began to run and all 90 days had elapsed before the State charged him with domestic violence on February 9, 2024. Thus, he claimed, the domestic violence charge must be dismissed. He maintained that based on the *Adams*, "any waiver of time caused by discovery or pretrial settings does not matter."

{¶7} In response, the State maintained that "tolling," not waiver, was the dispositive issue in this case. The State claimed that tolling events paused the speedy trial time for both the original assault charge and the subsequent domestic violence charge. The State asserted that Dearth filed several motions, such as his request for discovery, that tolled his speedy trial time for the domestic violence charge. After calculating the time that was tolled, the State maintained that the domestic violence charge filed on February 9, 2024, was within the 90-day speedy trial period. Therefore, the State argued that Dearth's motion to dismiss the domestic violence charge on speedy trial grounds should be overruled.

{¶8} After hearing the parties' arguments, the court indicated that it intended to grant Dearth's motion to dismiss and was ready to proceed to trial on the assault charge. The State asked for a continuance to file an interlocutory appeal of the court's judgment of dismissal of the domestic violence charge, which the court denied. Apparently, concerned with possible double jeopardy implications, the State indicated that it intended to dismiss the assault charge and appeal the trial court's dismissal of the domestic violence charge.

{¶9} On the same day as the hearing, the court issued a judgment entry. The trial court made the following findings of fact: (1) the assault charge was filed on October 5, 2023, (2) the domestic violence charge was filed on February 9, 2024, (3) both charges were based on an incident that occurred on September 6, 2023, and (4) the investigating officer and the State at the time the assault charge was filed, October 5, 2023, had the necessary facts and information regarding the household-member status between Dearth and the victim to file a domestic violence complaint on that same date. The court also found that on November 30, 2023, Dearth filed a waiver of his speedy trial time for the assault charge.

{¶10} The court then made the following legal determinations. Because both the assault and domestic violence charges were first degree misdemeanors, the court determined that the speedy trial time applicable to both was 90 days. Furthermore, the court concluded that because the initial assault charge and the subsequent domestic violence charge arose from the same facts, and the State was aware of these facts at the time of the initial indictment on October 5, 2023,

it could have charged Dearth with domestic violence on that same date.

Therefore, the speedy trial period for the domestic violence charge began on October 5, 2023, when Dearth was charged with assault. Finally, relying on *Adams*, 43 Ohio St.3d 67, the court determined that the speedy trial waiver Dearth signed on November 30, 2023, did not apply to the domestic violence charge.

{¶11} The court ultimately concluded that Dearth's 90-day speedy trial commenced on October 5, 2023, the date that the State charged Dearth with assault and that 90 days elapsed before the State filed the domestic violence charge on February 9, 2024. Therefore, the court granted Dearth's motion to dismiss the domestic violence charge for lack of a speedy trial.

{¶12} It is this judgment that the State appeals.

ASSIGNMENT OF ERROR

THE COURT ERRED IN DISMISSING THE DOMESTIC VIOLENCE CHARGE AGAINST THE DEFENDANT FOR LACK OF A SPEEDY TRIAL, AS SPEEDY TRIAL TIME HAD NOT LAPSED AND DEFENDANT HAD TOLLING EVENTS IN WHICH DELAYED THE EXPIRATION OF SPEEDY TRIAL.

{¶13} In its sole assignment of error, the State asserts that the trial court erred in dismissing the domestic violence charges against Dearth based on a violation of his speedy trial rights. The State acknowledges that a first-degree misdemeanor must be brought to trial within 90 days of the date of arrest or service of the complaint. However, the State maintains that R.C. 2945.72 provides numerous reasons for which extensions of the speedy trial time are proper.

{¶14} The State claims that while waiver and tolling both pause the running of speedy-trial time, they are two distinct mechanisms that are evaluated and applied independently. The State cites *State v. Blackburn*, in which the Supreme Court held that “in calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, periods of delay resulting from motions filed by the defendant in a previous case also apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.” 2008-Ohio-1823, ¶ 23.

{¶15} The State asserts that from October 5, 2023, when the speedy-trial period began, until the trial date of March 21, 2024, there were tolling events pursuant to R.C. 2945.72 that paused the speedy trial time for the domestic violence charge. These tolling events included Dearth’s motion for discovery, his motion for a continuance, and his request for a second pre-trial date. The State asserts these tolling events paused all but 11 of the 90 days, leaving the State 79 days to bring Dearth to trial on the domestic violence charge.

{¶16} The State claims that the trial court never considered any tolling events. The State maintains that if it had, the court would have denied Dearth’s motion to dismiss because it would have determined that his speedy trial time had not expired for the domestic violence charge. Accordingly, the State maintains this court should reverse the trial court’s dismissal of the domestic violence charge on speedy trial grounds.

{¶17} Relying on *Adams*, 43 Ohio St.3d 67, Dearth responds that when a defendant waives the right to a speedy trial filed pursuant to an initial charge, that waiver is not applicable to a subsequent charge arising from the same incident or set of facts that are brought after the waiver. Dearth also claims that “if the State knew of such facts at the time the original charge was brought, the new charge is subject to the same time limitations as the original charge.”

{¶18} Dearth asserts that the subsequent charge of domestic violence filed on February 9, 2024, was more than 90 days beyond October 5, 2023, the date the original assault charge was filed. Therefore, the domestic violence charge violated his speedy trial rights. He also claims that pursuant to *Adams* “the waiver of any time caused by discovery or the scheduling of pretrials does not matter.” And finally, Dearth claims that he does not need to demonstrate any prejudice caused in defending the subsequent domestic violence charge.

{¶19} Accordingly, Dearth maintains that we must affirm the trial court’s dismissal of the domestic violence charge because it violated Dearth’s speedy trial rights.

1. Law

a. Standard of Review

{¶20} “ ‘Appellate review of a trial court's decision on a motion to dismiss for a speedy-trial violation involves a mixed question of law and fact.’ ” *State v. Havens*, 2022-Ohio-1712, ¶ 11 (4th Dist.), quoting *State v. James*, 2014-Ohio-1702, ¶ 23 (4th Dist.). “ ‘Generally, an appellate court will defer to a trial court's factual findings if competent and credible evidence supports those findings.

However, an appellate court will review de novo a trial court's application of the law to those facts.' ” *Id.*, quoting *State v. Brown*, 2016-Ohio-1453, ¶ 5 (4th Dist.).

b. Speedy Trial Rights

{¶21} A defendant's right to a speedy trial arises from the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.” *State v. Myers*, 2023-Ohio-3413, ¶ 7 (4th Dist.). The right to a speedy trial is also codified in R.C. 2945.71 et seq. “The rationale supporting speedy-trial legislation is to prevent inexcusable delays caused by indolence within the judicial system.” *Id.*, citing *State v. Ladd*, 56 Ohio St.2d 197, 200 (1978).

{¶22} Like the charges herein, a first-degree misdemeanor must be brought to trial within 90 days of the date of the offender's arrest or the service of the summons. R.C. 2945.71(B)(2). “The running of the speedy-trial clock may be temporarily stopped, that is, tolled, only for reasons listed in R.C. 2945.72.” *State v. Sanchez*, 2006-Ohio-4478, ¶ 8. Therefore, “[u]pon 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.” *Id.* “If an accused is not brought to trial within the statutory time limit, the accused must be discharged. R.C. 2945.73(B).” *State v. Anderson*, 2016-Ohio-7252, ¶ 18 (4th Dist.).

{¶23} In *Adams* the Supreme Court held that “ ‘when new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to

begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge.’ ” 43 Ohio St. 3d at 68, quoting *State v. Clay*, 9 Ohio App.3d 216, 218 (11th Dist. 1983). In other words, when there are two first-degree misdemeanor offenses, “the ninety-day statutory time period in which the state had to bring [the defendant] to trial on the subsequently filed [criminal] charge began to run at the time [the defendant] received service of summons on the original [criminal] charge[.]” *State v. Radabaugh*, 2007-Ohio-153, ¶ 8 (4th Dist.).

{¶24} The second significant holding from *Adams* was that “when an accused waives the right to a speedy trial as to an initial charge, this waiver is not applicable to additional charges arising from the same set of circumstances that are brought subsequent to the execution of the waiver.” *Adams* at the syllabus.

{¶25} Approximately 15 years after *Adams* was decided, the Supreme Court in *Blackburn* considered “whether the periods of delay resulting from motions filed by a criminal defendant in a previous case also apply when calculating the time within which the defendant must be brought to trial in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.” 2008-Ohio-1823 at ¶ 1. In other words, *Blackburn* considered whether a tolling event applicable to an initial charge also tolls the speedy trial time for a subsequent charge where both charges arise from the same event.

{¶26} In *Blackburn*, the Court asserted that while both statutory tolling and waiver may temporarily pause the running of speedy-trial time, they are distinct

concepts. *Id.* at ¶ 16. *Blackburn* recognized that “ ‘[a] waiver is an intentional relinquishment of a known right.’ ” *Id.* at ¶ 17, quoting *State v. Sarkozy*, 2008-Ohio-509, ¶18. And “ ‘[a]s with other fundamental rights, a defendant can waive the right to a speedy trial.’ ” *Id.*, quoting *Adams*, 43 Ohio St.3d at 69. “On the other hand, R.C. 2945.72 provides circumstances that extend or toll the time within which an accused must be brought to trial but do not involve an intentional relinquishment of the fundamental right.” *Id.* Tolling is triggered by certain statutorily-defined events.

{¶27} The Court in *Blackburn* acknowledged that in *Adams*, it held that a defendant’s voluntary “waiver” of their speedy trial time “did not apply to new charges that arose out of the same underlying facts because the defendant lacked sufficient knowledge to voluntarily and intentionally relinquish the right as to the subsequent charge of which he had no knowledge.” *Blackburn* at ¶ 19. However, the Court determined that “this justification does not apply to the statutory tolling of speedy-trial time under R.C. 2945.72. Tolling occurs by operation of the statute.” *Id.* The Court noted that “a speedy-trial waiver and the tolling provisions in R.C. 2945.72 are separate concepts.” *Id.* at ¶ 21. The Court in *Blackburn* also determined that “[a] defendant’s express waiver of a right to a speedy trial allows additional time at that defendant’s request, whereas the automatic tolling of time, under circumstances described in R.C. 2945.72, operates to protect the state’s ability to adequately prosecute persons who have committed crimes.” *Id.*

{¶28} Therefore, the Court held “that in calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, periods of delay resulting from motions filed by the defendant in a previous case also apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.” *Id.* at 23.

Analysis

{¶29} In large part we find that the trial court properly analyzed the speedy trial issue herein. The court determined that the subsequent domestic violence charge arose from the same facts as did the original assault charge, which was an event that occurred on September 6, 2023. The court further found that the investigating officer and the State at the time the assault charge was filed, October 5, 2023, had the necessary facts and information regarding the household-member status between Dearth and the victim to file a domestic violence complaint on that same date. The court also found that on November 30, 2023, Dearth filed a waiver of his speedy trial time.

{¶30} The State does not challenge these findings, and we decline to disturb them because they are supported by competent and credible evidence. Therefore, pursuant to *Adams*, the trial court did not err in holding that the 90 day-speedy trial time for the domestic violence charge started to run on the date that the State charged Dearth with assault, which was October 5, 2023. Also consistent with *Adams*, we find that the trial court did not err in holding that the “waiver” of speedy trial time signed by Dearth on November 30, 2023 applied to only the assault charge.

{¶31} However, despite being urged at the hearing by the State to consider events that may have tolled the speedy trial time for the domestic violence charge, the court failed to do so. While *Adams* precludes a defendant's "waiver" of speedy trial rights applying to an initial charge from applying to a subsequent charge when both charges arise from the same incident, it did not address the applicability of tolling events to a subsequently filed charge. However, *Blackburn* held that when "calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, *periods of delay resulting from motions filed by the defendant* in a previous case also *apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.*" (Emphasis added.) *Id.* at ¶ 23. Thus, the trial court erred in failing to consider tolling events pursuant to R.C. 2945.72 that occurred after the initial charge when dismissing the subsequent domestic violence charge for lack of speedy trial.

{¶32} The State maintains that there were several motions filed by Dearth that tolled the running of his speedy trial time for the domestic violence charge, including for example a motion for discovery. Although the State may be correct, we do not rely solely on the representations of one party in making the speedy trial analysis. Furthermore, because the assault case was dismissed, its record was not transmitted to this court for the State's appeal. Yet, it is the record in the assault case that will reveal tolling events that would apply to the domestic violence charge.

{¶33} Therefore, while we find that the trial court erred in failing to consider whether there were any tolling events under R.C. 2945.72, consistent with the disposition in *Blackburn*, we will remand this cause to the trial court to recalculate the defendant's speedy-trial time consistent with our decision.

CONCLUSION

{¶34} Therefore, we sustain the State's assignment of error, reverse the trial court's judgment of dismissal, and remand this cause to the trial court to recalculate the defendant's speedy-trial time consistent with our decision.

JUDGMENT REVERSED AND REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED AND REMANDED and that appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

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

Smith, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, 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.