

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellant,	:	No. 112153
	:	
v.	:	
	:	
RIZQ WALKER,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: July 6, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-667495-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Frank Romeo Zeleznikar, and Lisa J. Turoso, Assistant Prosecuting Attorneys, *for appellant*.

Cullen Sweeney, Cuyahoga County Public Defender, and Aaron T. Baker, Assistant Public Defender, *for appellee*.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Plaintiff-appellant, the state of Ohio (the “state”), appeals from the trial court’s judgment granting the motion of defendant-appellee, Risq Walker

(“Walker”), to dismiss the indictment. For the reasons that follow, we reverse the trial court’s judgment and remand for further proceedings.

I. Background

{¶ 2} On August 9, 2019, Walker was observed by police passed out at the wheel of his car. After the police knocked on the driver’s side window, Walker rolled down the window and the police saw a black latex glove and a small baggie of suspected heroin in the vehicle in plain view.

{¶ 3} The police arrested Walker but transferred him to the authority of the Adult Parole Authority (“APA”) the same day pursuant to an APA hold.¹ The APA held a hearing on September 9, 2019, and upon finding that Walker had violated his parole, imposed a sanction of 148 days’ incarceration in a state correctional institution. Walker was released in February 2020.

{¶ 4} On January 21, 2022, a complaint and affidavit were filed in Garfield Heights Municipal Court charging Walker with several offenses related to the circumstances of August 9, 2019. The case was bound over to the common pleas court, and on February 8, 2022, a Cuyahoga County Grand Jury indicted Walker in this case on 14 felony trafficking, drug possession, and weapons charges arising out of the facts and circumstances of his arrest on August 9, 2019. The indictment also included one misdemeanor charge of using weapons while intoxicated and two misdemeanor charges of driving while under the influence.

¹ Walker had been released to postrelease control of the APA on August 25, 2018, upon his release from prison.

{¶ 5} Walker filed a motion to dismiss, arguing that the state’s indictment more than 900 days after his arrest on August 9, 2019, violated his constitutional and statutory rights to a speedy trial. He did not raise a preindictment delay argument. The state opposed Walker’s motion, asserting that the speedy trial clock began to run on January 21, 2022, when Walker was charged in Garfield Heights Municipal Court. Later, the state submitted supplemental documents that included a Sanction Receipt and Prison Term Order from the Ohio Department of Rehabilitation and Correction showing that the APA hold on Walker was entered on August 9, 2019.

{¶ 6} The trial court subsequently granted Walker’s motion to dismiss, ruling that “Defendant is entitled to a speedy trial pursuant to ORC 2945.71. Defendant must be brought to trial within 270 days. Court finds such time has elapsed. Case dismissed for lack of speedy trial.” The trial court did not rule whether Walker’s constitutional speedy trial rights had been violated. This appeal followed.

II. Law and Analysis

{¶ 7} In its single assignment of error, the state contends that the trial court erred in granting Walker’s motion to dismiss on speedy-trial grounds because the statutory speedy trial time did not begin running until January 21, 2022, when Walker was charged in Garfield Heights Municipal Court, and only 181 of the statutorily-allowed 270 days to bring a defendant to trial had accrued as of June 2, 2022, when Walker filed his motion to dismiss. In response, Walker does not challenge the state’s assertion that he was not formally charged prior to January 21,

2022, nor its 181-day speedy-trial calculation. Instead, he argues that because he was not immediately released after his August 9, 2019 arrest, his arrest triggered the speedy-trial clock and, thus, the state’s indictment some 30 months later was in violation of his statutory speedy trial rights.²

A. Standard of Review

{¶ 8} “Review of a speedy-trial claim involves a mixed question of law and fact. Therefore, we defer to the trial court’s factual findings if they are supported by competent credible evidence, but we review the application of the law to those facts de novo.” *State v. Long*, 163 Ohio St.3d 179, 2020-Ohio-5363, 168 N.E.3d 1163, ¶ 5. The trial court granted Walker’s motion to dismiss for violation of speedy trial rights without making any factual findings.

B. Ohio’s Statutory Speedy-Trial Right

{¶ 9} R.C. 2945.71 codifies a defendant’s constitutional right to a speedy trial and provides the time within which a hearing or trial must be held for specific offenses. Generally, subsection (A) addresses minor misdemeanors, subsection (B) addresses misdemeanors other than minor misdemeanors, subsection (C) addresses

² Although Walker argued in his motion to dismiss that he was denied his constitutional right to a speedy trial under both the United States and Ohio Constitutions, he makes no such argument on appeal. Instead, his only argument is that the trial court properly granted the motion to dismiss because his statutory right to a speedy trial under R.C. 2745.21 was violated. Accordingly, Walker has waived any argument regarding violation of his constitutional speedy-trial right and we need not consider whether any constitutional violation occurred. *See State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, ¶ 88, 45 N.E.3d 127 (setting out the four factors a court must consider in determining whether an accused has been denied his or her constitutional right to a speedy trial).

felonies, and subsection (D) addresses cases involving both misdemeanors and felonies. Under subsection (D), a person charged with offenses of different degrees, all of which arose out of the same act or transaction, shall be brought to trial within the time period required for the highest degree of offense charged. Because the indictment charged Walker with both felonies and misdemeanors relating to the August 9, 2019 incident, we look to subsection (C), regarding felonies, which provides that “A person against whom a charge of felony is pending * * * shall be brought to trial within two hundred seventy days after the person’s arrest.”

{¶ 10} In *State v. Azbell*, 112 Ohio St.3d 300, 2006-Ohio-6552, 859 N.E.2d 532, the Ohio Supreme Court determined when a charge is considered “pending” for purposes of calculating speedy-trial time pursuant to R.C. 2945.71(C). The Supreme Court held that “for purposes of calculating speedy-trial time pursuant to R.C. 2945.71(C), a charge is not pending until the accused has been formally charged by a criminal complaint or indictment, is held pending the filing of charges, or is released on bail or recognizance.” *Id.* at ¶ 21.

{¶ 11} It is apparent that, although Walker remained in jail for several days after his arrest before he was transferred to a state correctional institution, he was not held pending the filing of charges in this case — he was held under the authority of the APA pursuant to the APA hold issued the day of his arrest. Accordingly, because he was not held pending the filing of charges, the speedy-trial clock did not begin to run on the day of Walker’s arrest.

{¶ 12} In *Azbell*, the Ohio Supreme Court found that the defendant was immediately released upon being photographed and fingerprinted at the police station after her arrest. *Id.* at ¶ 20. Thus, the Supreme Court found that because no charge was outstanding and she was not held pending the filing of charges or released on bail or recognizance, she did not become a “person against whom a charge of felony is pending” until she was arrested on the indictment over a year later. *Id.* Walker contends that *Azbell* is not applicable to this case, however, because he was not immediately released after his arrest. He further contends that his case is more analogous to *State v. Taylor*, 4th Dist. Adams No. 14CA993, 2015-Ohio-2929; *State v. Thomas*, 4th Dist. Adams No. 06CA825, 2007-Ohio-5340; and *State v. Horsley*, 4th Dist. Ross No. 1-CA3152, 2011-Ohio-1355, in which the Fourth District calculated speedy-trial time from the date of arrest because the defendants were held in jail for several days after their arrests. Walker’s arguments are not persuasive.

{¶ 13} In *Taylor*, the defendant was jailed for five days after a traffic stop in which he was cited for failure-to-yield and arrested for drug possession. *Taylor* at ¶ 18. He pleaded guilty to the traffic violation, paid his fine, and was released without any criminal charges being filed. More than a year later, a grand jury indicted him on aggravated possession of drugs, a fifth-degree felony, relating to the traffic stop. The trial court granted his motion to dismiss on speedy-trial grounds, and the appellate court affirmed, finding that *Azbell* did not apply because the defendant in that case was immediately released after her arrest, unlike Taylor, who

was held for five days. *Id.* at ¶ 14. Accordingly, the appellate court found that Taylor's arrest triggered the speedy-trial clock.

{¶ 14} In *Horsley* the defendant was arrested for several offenses, including vandalism. *Horsley* at ¶ 3. He was jailed for nine days but not charged with vandalism. Four months later, he was indicted on a vandalism charge, a fourth-degree felony; arrested; and remained in jail until his conviction. The Fourth District found that Thomas's original arrest date, not his arrest on the indictment, triggered the speedy-trial clock and, accordingly, reversed the trial court's judgment denying his motion to dismiss. *Id.* at ¶ 21.

{¶ 15} In *Thomas*, the defendant was arrested for possession of marijuana and having weapons while under disability. *Thomas*, 4th Dist. Adams No. 06CA825, 2007-Ohio-5340, at ¶ 3. He was jailed for three days, then pleaded guilty to the marijuana charge, and was released. *Id.* He was indicted over a year later with respect to the allegations of having weapons while under disability. *Id.* at ¶ 4. The Fourth District affirmed the trial court's judgment granting the defendant's motion to dismiss on speedy-trial grounds, finding that the speedy-trial clock started to run upon Thomas's arrest. *Id.* at ¶ 13.

{¶ 16} Walker's reliance on these cases is misplaced. Although the defendants in *Taylor*, *Thomas*, and *Horsley* were jailed upon their arrests, as was Walker, none of the cases involved detention after arrest due to an APA hold. Thus, the cases are easily distinguishable from this case and, accordingly, not persuasive authority.

{¶ 17} Moreover, although the facts of this case and *Azbell* differ because the defendant in *Azbell* was immediately released after her arrest, unlike Walker, we cannot ignore the Supreme Court’s holding in *Azbell* that for purposes of calculating speedy-trial time under R.C. 2945.71(C), a charge is not pending until the accused has been formally charged by a criminal complaint or indictment, is held pending the filing of charges, or is released on bail or recognizance. Although Walker was held after his arrest, he was not held pending the filing of charges; he was held pursuant to the APA holder that became effective on the day of his arrest. Because Walker’s detention was not related to the charges on which he was subsequently indicted, his arrest did not trigger his speedy trial right. *Azbell*, 112 Ohio St.3d 300, 2006-Ohio-6552, 859 N.E.2d 532, at ¶ 19, quoting *United States v. Stead*, 745 F.2d 1170, 1172 (8th Cir. 1984) (“[A]rrest triggers the speedy trial right only where it is the beginning of continuing restraints on defendant’s liberty imposed in connection with the formal charge on which the defendant is eventually tried.”) As argued by the state, the speedy-trial clock started on January 21, 2022, when a complaint was filed in Garfield Heights Municipal Court charging Walker with offenses related to his August 9, 2019 arrest, thereby making him “a person against whom a charge is pending.”

{¶ 18} Because the statutory speedy-trial clock did not begin to run until Walker was formally charged on January 21, 2022, and for speedy-trial calculation, only 181 days of the 270 allowed days had elapsed from that date until June 2, 2022,

when Walker filed his motion to dismiss, the trial court erred in granting the motion to dismiss on statutory speedy-trial grounds.

{¶ 19} The assignment of error is sustained. The trial court's judgment is reversed, and the matter is remanded to the trial court for further proceedings.

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 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR

