

**FILED**  
ATHENS COUNTY, OHIO

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

MAR 20 1986

*Marjorie Mitchell*  
CLERK COURT OF APPEALS

State of Ohio,

Plaintiff-Appellant,

No. 1259

vs.

Joe Lucas,

DECISION & JUDGMENT ENTRY

Defendant-Appellee

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COUNSEL FOR APPELLANT: Edward J. Lynch, Assistant Attorney General, Fountain Square, Bldg. C-4, Columbus, Ohio 43224

COUNSEL FOR APPELLEE: L. Alan Goldsberry, 8 North Court Street, Athens, Ohio 45701 (This court granted Goldsberry's motion to withdraw as counsel and he did not appear nor file a brief.)

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GREY, J.:

This is an appeal of a judgment of the Athens County Municipal Court, dismissing proceedings against appellee Lucas on speedy trial grounds. We reverse.

Lucas was charged with disposing of waste in a stream in violation of R.C. 1531.29, a third degree misdemeanor. He was served with a copy of the summons by regular mail August 11, 1982. On September 8, 1982 Lucas appeared before the Municipal Court, entered a plea of not guilty, made a request for a jury trial and made a motion to suppress the state's evidence which had been seized by the state's investigators. A hearing on the motion to suppress was held on September 29, 1982 at which time the Athens County Municipal Court ordered the parties to file any applicable memoranda by October 12, 1982. On December 17, 1982 a journal entry was made granting a continuance and waiving speedy trial requirements. Lucas' motion to suppress was granted on January 7, 1983 from which the state filed a timely appeal on

July 21, 1983 pursuant to R.C. 2945.67. This Court, on August 15, 1984, reversed the Municipal Court's order suppressing the evidence and remanded the case for trial. Upon remand, a mutually agreed upon trial date was set. Lucas filed a motion for discharge pursuant to R.C. 2945.71 et seq on September 21, 1984. A hearing was held on October 5, 1984 and a decision and journal entry dismissing the charges for lack of a speedy trial was filed on December 26, 1984. It is from this order of dismissal that the state appeals and raises the following two assignments of error, which we will consider together.

"I. Ohio Revised Code Section 2945.72(E) and (I) tolled the applicable time limitation of Ohio Revised Code Section 2945.71.

II. The trial court erred (sic) in not finding the 'waiver of speedy trial' contained on the December 17, 1982 journal entry a complete waiver of speedy trial requirements."

Lucas was charged with a third degree misdemeanor under R.C. 1531.29 which, in accordance with R.C. 2945.71(B)(i), requires that a trial be held in such matter within forty-five days of the service of summons. Lucas was served with his summons on August 11, 1982, making September 25, 1982 the last possible date that a trial could have been held and still been within the parameters of R.C. 2945.71(B)(1) unless Lucas waived his right to a speedy trial or the time was tolled by statute.

On September 8, 1982 when Lucas entered his plea of not guilty, filed a jury demand and moved for suppression of the state's evidence based on a violation of his Fourteenth Amendment rights. The time in which Lucas had to be tried was automatically extended from September 8, 1982 until after this court de-

cided the state's appeal on August 15, 1984. R.C. 2945.72 states in pertinent part:

"The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

\* \* \* (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;

\* \* \* (I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending."

The statutory language above clearly tolls the time required for trial as set forth in R.C. 2945.71 allowing appropriate time whenever the accused files a relevant motion or the state files an appeal from a court's adverse ruling on a motion. A careful reading of the above statute should put any accused and his attorney on notice that when a motion is filed it will be followed to its logical and final conclusion. This conclusion includes all appeals resulting from said motion.

The state has cited the case of State v. Walker (1974), 42 Ohio App.2d 41 for the proposition pursuant to R.C. 2945.72(E) if an accused has a motion pending before a court the time in which he must be brought to trial is extended until the pending motion has been considered. We agree with the reasoning of the Seventh District Court of Appeals.

Lucas asserts that a journal entry must be entered each and every time there is a delay of the trial date stating said reason for delay citing, State v. Mincy (1982), 2 Ohio St.3d 6, State v. Siles (1976), 57 Ohio St.2d 1 and State v. Lee (1976), 48 Ohio

St.2d 208 for such assertion. These cases are clearly not applicable to the case sub judice. The cases cited by Lucas require journal entries when the court grants a continuance sua sponte under R.C. 2945.72(H). Here, evidence in the record, is the fact that the continuance beyond the statutory 45 days is as a result of R.C. 2945.72(E) and (I).

The statutory section cited by Lucas in Mincy, Siler and Lee supra, R.C. 2945.72(H) allows the court to grant a continuance for cause. An entry must be filed in such a case in order for a reviewing court to determine if the cause was reasonable. Such is not the case here. A continuance under R.C. 2945.72(E) and (I) is statutory in nature and the delay was a result of the court's careful and thorough consideration of the motion to suppress.

It is important to remember that although the trial court did take about four months to reach a decision, the court's written opinion was lengthy and well researched. Some motions can be routinely disposed of, but others require a thoughtful analysis of the issues raised. Where a busy trial court takes the time needed to give a defendant's motion serious study, and where the record demonstrates the seriousness of the court's inquiry, it is anomalous to hold that such a careful consideration of an accused's rights is, because it takes time, thus a violation of his rights. We hold that the purpose of R.C. 2945.72(E) is to allow a trial court a reasonable time to consider any motion filed by the defendant. Implicit in that statute is the duty of the court to treat such motions seriously, to take a reasonable amount of

time to consider them fully, and that the reasonable time taken extends the speedy trial deadline.

Further, a defendant may waive his statutory right under R.C. 2945.71 to a speedy trial. The First District Court of Appeals upheld such a waiver in State v. Kidd (1978), 60 Ohio App.2d 374 and the Ohio Supreme Court approved of such a waiver of time whether executed by the accused or his counsel in State v. McBreen (1978), 54 Ohio St.2d 315. See also, State v. Bickerstaff (1984), 10 Ohio St.3d 62.

In the case before this court, the entry of December 17, 1982 containing Lucas' waiver must be considered as waiving all statutory time requirements until the Fourth Amendment issue raised by Lucas was resolved. During the hearing on the motion to dismiss Lucas' attorney stipulated that the entry of December 17, 1982 waiving Lucas' right to a speedy trial might have been agreed to by the defense although counsel for Lucas could not specifically remember such. He further stipulated that such waiver would only be until the next event in the case. (tr. pg. 4). It is evident that Lucas questions only the length of the waiver and not the waiver itself. By raising the Fourth Amendment issue here Lucas waived his speedy trial rights until there was a full, fair and final resolution of the Fourth Amendment issue. The next event, unfortunately, two years in coming, was a final ruling on the motion to suppress.

It is clear to this court from the record that the state has exercised due diligence in the prosecution of this case and in the protection of the accused's right to a speedy trial. The

length of time taken to bring this case to this point has been time statutorily authorized under R.C. 2945.72(E) and (I) and by strictly adhering to the above statutory sections the state has not caused any unreasonable or unnecessary delay in this matter. Had Lucas not filed his motion to dismiss he would have been brought to trial within the statutory time limit as mandated by Kidd and McBreen, supra and R.C. 2945.71. We therefore overrule the trial court's dismissal of the complaint against the accused pursuant to R.C. 2945.73 and remand this case for further proceedings in accordance with this opinion.

It is ordered that (~~appellant-appellee~~) recover of (~~appellant-appellee~~) its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

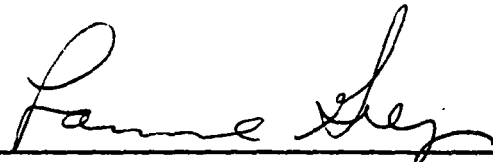
It is ordered that a special mandate issue out of this Court directing the Athens County Municipal Court to carry this judgment into execution.

Any Stay previously granted by this Court is hereby terminated as of the date of filing of this Entry.

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

STEPHENSON, P.J. & ABELE, J.  
CONCUR IN JUDGMENT & OPINION

JUDGMENT REVERSED & REMANDED

  
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Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 9, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.