

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

v. :

DENNIS D. JACKSON :

Defendant-Appellant :

C.A. CASE NO. 24430

T.C. NO. 10CR1126

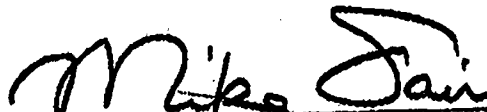
FINAL ENTRY


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Pursuant to the opinion of this court rendered on the 25<sup>th</sup> day of May, 2012,  
the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery  
County Court of Appeals shall immediately serve notice of this judgment upon all parties and  
make a note in the docket of the mailing.

  
MIKE FAIN, Judge

  
MARY E. DONOVAN, Judge

  
JEFFREY E. FROELICH, Judge

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO

Plaintiff-Appellee

v.

DENNIS D. JACKSON

Defendant-Appellant

C.A. CASE NO. 24430

T.C. NO. 10CR1126

(Criminal appeal from  
Common Pleas Court)

.....  
**OPINION**

Rendered on the 25th day of May, 2012.  
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ANDREW T. FRENCH, Atty. Reg. No. 0069384, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

JAMES S. ARMSTRONG, Atty. Reg. No. 0020638, 131 North Ludlow Street, Suite 386 Talbott Tower, Dayton, Ohio 45402  
Attorney for Defendant-Appellant  
.....

FROELICH, J.

{¶ 1} Dennis Devone Jackson was found guilty by a jury of three counts of murder, two counts of aggravated burglary, two counts of aggravated robbery, and two counts of

felonious assault, each with a firearm specification. The trial court merged several counts, and Jackson was sentenced to an aggregate term of twenty-eight years to life in prison. Jackson appeals from his conviction, raising numerous assignments of error. For the following reasons, we will affirm the judgment of the trial court.

{¶ 2} On the night of March 19, 2010, someone entered Unit 4716 in the Deer Creek apartment complex, shot Antoine West, and robbed him. Two other people who were in the apartment at the time, Thomas Horn and Kimberly Carl, were unharmed. Carl was unable to identify the shooter, and Horn later gave conflicting statements about whether he could identify the shooter.

{¶ 3} An investigation by the Trotwood Police Department led the detectives to believe that Jackson had been the assailant, that Jackson shot West with a gun Jackson had borrowed from an acquaintance, Dion Sims, and that Jackson had taken a large sum of money from West.

{¶ 4} Jackson was indicted on the following offenses: murder (as a proximate result of aggravated burglary); aggravated burglary (deadly weapon); murder (as a proximate result of aggravated robbery); aggravated robbery (deadly weapon); murder (as a proximate result of a felonious assault); felonious assault (deadly weapon); felonious assault (serious harm); aggravated burglary (physical harm); and aggravated robbery (serious harm). The indictment also contained a firearm specification on each count.

{¶ 5} Before trial, Jackson filed a motion to suppress photo identification evidence and statements he made to the police during the investigation. After a hearing, his motion to suppress was overruled.

{¶ 6} The case was set for trial on August 30, 2010. On that date, however, the

State informed the court that it had been unable to locate Horn, who was a key witness. The State requested a continuance and asked the court to issue a material witness warrant for Horn. The trial court granted the State's request for a continuance, issued a material witness warrant for Horn, and reset the trial for three weeks later.

{¶ 7} The first trial began on September 20, 2010. At that time, the State still had not located Horn. Jackson requested a mistrial, however, when one of the State's witnesses, Dion Sims – who, in Jackson's estimation, was an alternate suspect – revealed during his testimony that he had taken a lie detector test. Jackson's motion for a mistrial was granted.

{¶ 8} Thereafter, Jackson argued to the court that his right not to be placed in double jeopardy and his right to a speedy trial had been violated, and he asked that the charges against him be dismissed. The trial court overruled the motion to dismiss, and a second trial was scheduled for December 2010. Meanwhile, Thomas Horn was located in October 2010 and was arrested pursuant to the material witness warrant. Horn's deposition was taken, in accordance with Crim.R. 15, before he was released from custody; he was also served with a subpoena for trial before he was released.

{¶ 9} Jackson's second trial was held on December 3 and December 6-10, 2010. Horn did not appear at trial and could not be located by the police. The trial court declared Horn unavailable, and his deposition was played for the jury. In his deposition testimony, Horn claimed not to recall the identity of the shooter, but he admitted and was cross-examined by the State about prior statements in which he identified Jackson as the shooter.

{¶ 10} The State also presented evidence at trial that Sims had loaned a gun to

Jackson on the day of the shooting and that forensic evidence linked that gun to the shooting. The State offered testimony from a neighbor of the victim that a man running from the building after the shooting had worn a multi-colored jacket, testimony and surveillance video showing that Jackson had worn a similar jacket earlier in the day, and testimony that the victim had been in possession of a large sum of cash at the time of the shooting. No cash was found on the victim's body, and his pants' pockets had been turned inside out. The State also offered evidence to discredit Jackson's statements to the police about where he had been at the time of the shooting, including cell phone records and testimony from the people with whom he claimed to have been.

{¶ 11} The defense did not call any witnesses.

{¶ 12} The jury found Jackson guilty on all counts.

{¶ 13} The trial court merged the counts of murder and felonious assault into one count of murder, and sentenced Jackson to fifteen years to life for that offense. The trial court also merged the two counts of aggravated burglary and the two counts of aggravated robbery; the court sentenced Jackson to ten years for aggravated burglary and ten years for aggravated robbery, to be served concurrently to one another, but consecutively to the sentence for murder. All of the firearm specifications were also merged, and Jackson was sentenced to three additional years of actual incarceration on the firearm specification.

{¶ 14} Jackson raises eleven assignments of error on appeal. We will address these assignments in an order that facilitates our discussion. We begin with the second and seventh assignments of error, which are related.

**THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO DISMISS  
ON THE GROUNDS OF DOUBLE JEOPARDY, AFTER THE FIRST TRIAL**

**ENDED IN A MISTRIAL.**

**THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO DISMISS ON THE GROUND OF SPEEDY TRIAL VIOLATION AFTER APPELLANT'S FIRST TRIAL ENDED IN MISTRIAL.**

**{¶ 15}** Jackson contends that he should not have been retried after the mistrial and that the charges against him should have been dismissed, because his right not to be placed in double jeopardy and his right to a speedy trial were violated by his retrial.

**{¶ 16}** As discussed above, the case was originally set for trial on August 30, 2010. At that time, the State informed the court that it had been unable to locate one of its key witnesses, Thomas Horn, who was present at the time of the shooting. The State asked the court to continue the trial date and to issue a material witness warrant for Horn. The court inquired of the prosecutor how the State would proceed if Horn were not located, and the State indicated that it would proceed without him.<sup>1</sup> The court granted the motion for a continuance and issued a material witness warrant the same day. The trial was rescheduled for September 20, 2010.

**{¶ 17}** Jackson had not waived his right to a speedy trial. According to Jackson's motion to dismiss, "the speedy trial time for commencing the trial \* \* \* ended the week of September 20, 2010." Our own calculations support this assertion.

**{¶ 18}** A second jury trial began on September 20, 2010. The fifth witness called by the State was Dion Sims, the registered owner of the gun used in the shooting. (The

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<sup>1</sup> The record does not include a transcript of the court proceedings on August 30, 2010, which resulted in the continuance. However, these facts are not in dispute.

defense viewed Sims as a potential suspect in the shooting.)

{¶ 19} Sims testified that Jackson had asked to borrow Sims's gun at 9:00 or 9:30 p.m. on March 19, 2010. Sims agreed to loan the gun to Jackson, and the men met at Sims's house shortly after 10:00 p.m. Sims gave Jackson the gun at that time.

{¶ 20} Sims further testified that, in the early morning hours of March 20, 2010, he received a phone call from a friend that caused him to be "a little worried, a little scared" that he might be "blamed for something [he] didn't do" at the Deer Creek apartment complex. Sims drove to the vicinity of the apartment complex twice during the early morning hours of March 20 to "see if anything had happened" and to "see if [he] could find [his] gun," but he was deterred from these tasks when he saw "[a] lot of police" there. Sims testified that Jackson never returned the gun.

{¶ 21} Sims further testified that, at a family gathering on March 20, he learned that his gun had been used in a shooting; in response to receiving this information, Sims "left [his] house and went to a hotel" and contacted an attorney. Sims's testimony on direct examination continued:

Q: \* \* \* At what point did you contact an attorney?

A: It was either Sunday night or Monday morning. I think Monday morning. \* \* \*

Q: Okay. And who was that attorney that you contacted?

A: Cynthia Thompson.

\* \* \*

Q: Okay. And how did you have that name?

A: It's my cousin.

Q: \* \* \* And what was the reason that you chose to contact an attorney rather than contacting the police?

A: Because if my gun was used, I didn't want to go talk to the police by myself.

Q: Why not?

A: It was my gun and if they had it, they would have tried to say I did it.

Q: Okay. And did you ask your attorney or do you know whether your attorney contacted the police on your behalf?

A: I believe she did and set up an appointment.

Q: She set up an appointment?

A: Yes.

Q: Okay. Now, at some point, did you switch attorneys?

A: Yes.

Q: Okay. And why did you do that?

A: Because I had taken a lie detector test.

DEFENSE COUNSEL: Objection.

COURT: Sustained.

DEFENSE COUNSEL: Can we approach the bench?

COURT: Yes, yes.

(At sidebar)

DEFENSE COUNSEL: Judge, I'm moving for a mistrial right now. I mean it's pretty darn obvious that the only way he would get his story to be believed is to say, "I took a lie detector test." The Jury is going to believe he



passed it. And, you know, there's no way -- I can't cross-examine him on that.

PROSECUTOR: Judge, I do want the record to be clear that I have met with this witness. We have gone over that we can't talk about that. And I have even --

COURT: Oh, I'm not blaming. No, I --

PROSECUTOR: I just want the record to be clear that I in no way intended to elicit that information.

DEFENSE COUNSEL: Well, he just couldn't resist, I guess, but he did it and it was voluntary.

COURT: Yeah, I think it -- I mean, well, I'm going to send the Jury back to the Jury room for a moment and I'm going to think about this for a few minutes, but this seems pretty serious to me, this is not good.

{¶ 22} The trial court declared a mistrial the next day, concluding that Sims's "credibility [was] certainly going to be a key issue for the jury to decide" and that no curative instruction "would be sufficient to undo that unfair and prejudicial taint" caused by Sims's reference to having taken a lie detector test and the jurors' likely assumption that he had passed it.

{¶ 23} Jackson filed a motion to dismiss with prejudice. He argued that the mistrial was caused by prosecutorial misconduct. He also argued that the State was "the fortuitous beneficiary of its own actions," because the trial had begun as the speedy trial time expired, the State had gone to trial without locating its material witness, and an "acquittal at trial [was] an inevitable result." Jackson claimed that, through "prosecutorial impropriety"

and "overreaching," the State had "poison[ed] the well" against Jackson" while improving its own situation regarding the missing witness and the time within which it needed to bring Jackson to trial.

{¶ 24} The State opposed the motion to dismiss, arguing that Sims's comment about the lie detector test "was not induced by the State and was in no way responsive to the question that was asked of him." The State also pointed out that, during pretrial conferences, the State informed the court and defense counsel that it had cautioned Sims not to mention the polygraph and that Sims had not indicated "any refusal to comply with that request."

{¶ 25} The trial court overruled the motion to dismiss. It found no prosecutorial misconduct, and therefore no double jeopardy, and no violation of Jackson's right to a speedy trial.

{¶ 26} We review the denial of a motion to dismiss on double jeopardy grounds or on speedy trial grounds for an abuse of discretion. *United States v. Jom*, 400 U.S. 470, 486, 91 S.Ct. 547, 267 L.Ed.2d 543 (1974); *State v. Cassell*, 2d Dist. Clark No. 09CA0064, 2011-Ohio-23, ¶ 12; *State v. Ross*, 9th Dist Summit No. 20980, 2002-Ohio-7317, ¶ 25.

{¶ 27} "The double jeopardy clause of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment, protects a criminal defendant from repeated prosecutions for the same offense.' *State v. Draughon*, 10th Dist. Franklin No. 97APA11-1536 (Sept. 1, 1998), citation omitted. 'When a trial court grants a criminal defendant's request for a mistrial, the double jeopardy clause does not bar a retrial.' *Id.* 'A narrow exception lies where the request for a mistrial is precipitated by prosecutorial misconduct that was intentionally calculated to cause or invite a mistrial.' *Id.*, citing *State*

*v. Doherty*, 20 Ohio App.3d 275, 485 N.E.2d 783 (1st Dist.1984). 'Only where the prosecutorial conduct in question is intended to "goad" the defendant into moving for a mistrial may the defendant raise the bar of double jeopardy to a second trial after having succeeded in ending the first on his own motion.' *Id.*, citation omitted."

*State v. Simons*, 2d Dist. Champaign No. 99CA5, 2000 WL 1726904, \* 6 (Nov. 22, 2000).

{¶ 28} With respect to prosecutorial misconduct, the trial court concluded that none of the prosecutor's conduct prior to Sims's statement about the lie detector test "would establish, even remotely \*\*\* any prosecutorial misconduct" and that the comment was "not even remotely responsive to the question that had been posed." The court also observed that Sims chose to mention the polygraph test notwithstanding the prosecutor's instructions to Sims that he should not do so. Although the court acknowledged that the course of events resulting in a mistrial arguably benefitted the State,<sup>2</sup> the court found "absolutely no prosecutorial misconduct" and no basis to conclude that the State had intentionally caused a mistrial. The court overruled the motion to dismiss on double jeopardy grounds.

{¶ 29} The trial court reasonably concluded that no prosecutorial misconduct was involved in Sims's disclosure at trial that he had taken a lie detector test. In the absence of prosecutorial misconduct, double jeopardy did not bar Jackson's retrial, and the trial court properly overruled his motion to dismiss on double jeopardy grounds.

{¶ 30} The trial court also overruled Jackson's motion to dismiss on speedy trial grounds. R.C. 2945.71, which sets forth the time in which a trial must be held, "does not

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<sup>2</sup> Horn had been arrested pursuant to the material witness warrant on October 8, 2010, before the second trial began, and his deposition was taken before he was released from custody.

include any reference whatever to retrials" or mistrials and, therefore, the standard to be applied "is basically reasonableness under the federal and state constitutions." *State v. Fanning*, 1 Ohio St.3d 19, 21, 437 N.E.2d 583 (1982). The holding in *Fanning* "is in accord with the view that the requirements of R.C. 2945.71, et seq. apply only until trial on the charges involved is commenced, and that when the trial terminates in a mistrial the second trial is but a continuation of the same trial proceeding. Therefore, and even though charges remain pending in the interval between the two phases of the same trial proceedings, that interval does not count against a defendant's statutory speedy trial time, so long as the period of time is reasonable." *State v. Morris*, 2d Dist. Montgomery No. 19283, 2003-Ohio-1049, ¶ 17, citing *State v. Roughton*, 132 Ohio App.3d 268, 724 N.E.2d 1193 (6th Dist.1999). Whether the period is reasonable is determined based on the circumstances of the case, including the length of the delay, the reason for the delay, the defendant's assertion of his right to a speedy trial, and prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

{¶ 31} In this case, the trial court correctly observed that Jackson's trial had begun within the time required for a speedy trial, i.e, within 90 days from his arrest, because he was incarcerated. The court also noted that, after a mistrial was declared, the State was allowed "a reasonable time" to bring the defendant to trial again.

{¶ 32} The mistrial was declared on September 23, 2010. Jackson filed a motion to dismiss on October 8, 2010, and the court overruled the motion on November 10, 2010. The second trial began no later than December 3, 2010.<sup>3</sup> The court concluded that the

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<sup>3</sup> On the afternoon of December 3, 2010, a jury view was conducted and the court gave preliminary instructions to the jury. These are the first transcribed

schedule in this case "was certainly well within any reasonable period to retry [Jackson]." We agree that this delay was reasonable under the circumstances, and the record does not suggest that the State protracted the delay in hopes of finding its witness or for any other improper purpose. The trial court did not abuse its discretion in overruling Jackson's motion to dismiss on speedy trial grounds.

{¶ 33} Jackson's second and seventh assignments of error are overruled.

{¶ 34} Jackson's first assignment of error states:

THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO SUPPRESS THE PHOTO-SPREAD IDENTIFICATION BY THOMAS HORN AS SAID IDENTIFICATION WAS UNDULY SUGGESTIVE AND UNRELIABLE.

{¶ 35} Jackson claims that the trial court erred in admitting evidence that, using photo arrays presented by Trotwood detectives, Thomas Horn had identified Jackson as the shooter and Dion Sims had identified Jackson as the person to whom Sims loaned the murder weapon. Jackson claims that the detective who presented the photo arrays to these witnesses had indicated that a suspect was part of each photo array, which rendered the identification procedure unduly suggestive.

{¶ 36} "Due process requires suppression of pre-trial identification of a suspect only if the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification." *State v. Marshall*, 2d Dist. Montgomery No. 19920, 2004-Ohio-778, ¶ 11, citing *Nell v. Biggers*, 409 U.S. 188, 196-97, 93 S.Ct. 375,

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proceedings from the second trial; voir dire of the jury was not transcribed. We infer that the jury was selected and sworn on the morning of December 3.

FILED  
2011 JAN 10 PM 3:52

CLERK OF COURTS  
MONTGOMERY CO. OHIO  
6

I hereby certify this to be a true  
and correct copy.

Witness my hand and seal this 11  
day of Jan 2011.

[Signature], Clerk  
Clerk of Common Pleas  
Court of Montgomery County, Ohio  
By [Signature] Deputy

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CRIMINAL DIVISION**

STATE OF OHIO

CASE NO. 2010 CR 01126

Plaintiff

JUDGE MICHAEL L. TUCKER

vs.

DENNIS DEVONE JACKSON

TERMINATION ENTRY

DOB: [REDACTED] SSN: [REDACTED]-7524

Defendant

The defendant herein having been found Guilty after a jury trial of the offenses:

COUNT 1, MURDER (PROXIMATE RESULT) – 2903.02(B) – UNCLASSIFIED, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145.

COUNT 2, AGGRAVATED BURGLARY (deadly weapon) – 2911.11(A)(2) – F1, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145.

COUNT 3, MURDER (PROXIMATE RESULT) – 2903.02(B) – UNCLASSIFIED, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145. For purposes of sentencing, Count 3 is merged into Count 1.

COUNT 4, AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) - F1, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145.

COUNT 5, MURDER (PROXIMATE RESULT) - 2903.02(B) – UNCLASSIFIED, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145. For purposes of sentencing Count 5 is merged into Count 1.

COUNT 6, FELONIOUS ASSAULT (deadly weapon) - 2903.11(A)(2) - F2, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145. For purposes of sentencing, the Court hereby merges Count 6 into Count 1.

COUNT 7, FELONIOUS ASSAULT (serious harm) – 2903.11(A)(1) - F2, with a THREE-YEAR FIRARM SPECIFICATION – 2929.14/2941.145. For purposes of sentencing, the Court hereby merges Count 7 into Count 6.

APPX. B  
[REDACTED]

PAGE: 2  
CASE NO. 2010 CR 01126  
STATE VS. DENNIS DEVONE JACKSON

COUNT 8, AGGRAVATED BURGLARY (physical harm) - 2911.11(A)(1) - F1, with a THREE-YEAR FIREARM SPECIFICATION - 2929.14/2941.145. For purposes of sentencing, the Court hereby merges Count 8 into Count 2.

COUNT 9, AGGRAVATED ROBBERY (serious harm) - 2911.01(A)(3) - F1, with a THREE-YEAR FIREARM SPECIFICATION - 2929.14/2941.145. For purposes of sentencing the Court hereby merges Count 9 into Count 4.

was on January 5, 2011 brought before the Court,

WHEREFORE, it is the JUDGMENT and SENTENCE of the Court that the defendant herein be delivered to the CORRECTIONAL RECEPTION CENTER there to be imprisoned and confined for a term of:

COUNT 1: FIFTEEN (15) YEARS TO LIFE  
COUNT 2: TEN (10) YEARS  
COUNT 4: TEN (10) YEARS

COUNTS 2 AND 4 ARE TO BE SERVED CONCURRENTLY WITH EACH OTHER AND CONSECUTIVELY TO COUNT 1.

THE COURT HEREBY MERGES ALL FIREARM SPECIFICATIONS INTO ONE FIREARM SPECIFICATION AND IMPOSES AN ADDITIONAL TERM OF THREE (3) YEARS ACTUAL INCARCERATION ON THE FIREARM SPECIFICATION, WHICH SHALL BE SERVED CONSECUTIVELY TO AND PRIOR TO THE DEFINITE TERM OF IMPRISONMENT.

TOTAL SENTENCE: TWENTY-EIGHT (28) YEARS TO LIFE.

Court costs to be paid in full in the amount determined by the Montgomery County Clerk of Courts.

The number of days for which the defendant should receive jail time credit is indicated in the entry and warrant to transport filed in this case.

The Court notifies the defendant that, as a part of this sentence, on Count 1: MURDER (proximate result) - 2903.02(B) UNCLASSIFIED FELONY, the defendant is NOT ELIGIBLE for Post-Release Control. While the Court is including language concerning Post-Release Control in order to comply with the statute, under the circumstance in this case, due to his sentence of life. THE DEFENDANT WILL BE SUPERVISED BY THE PAROLE BOARD FOR LIFE.

The Court notifies the defendant that, as a part of this sentence, on Count 2: AGGRAVATED BURGLARY (deadly weapon) - 2911.11(A)(2) F1, the defendant WILL be supervised by the Parole Board for a period of FIVE (5) years Post-Release Control after the defendant's release from imprisonment.

PAGE: 3  
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STATE VS. DENNIS DEVONE JACKSON

The Court notifies the defendant that, as a part of this sentence, on **Count 4: AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) - F1**, the defendant **WILL** be supervised by the Parole Board for a period of **FIVE (5) years** Post-Release Control after the defendant's release from imprisonment.

Should the defendant violate any post-release control sanction or any law, the adult parole board may impose a more restrictive sanction. The parole board may increase the length of the post-release control. The parole board also could impose up to an additional nine (9) months prison term for each violation for a total of up to fifty percent (50%) of the original sentence imposed by the court. If the violation of the sanction is a felony, in addition to being prosecuted and sentenced for the new felony, the defendant may receive from the court a prison term for the violation of the post-release control itself.

Pursuant to R.C. 2929.19(B)(3)(f), the defendant is ordered not to ingest or be injected with a drug of abuse. The defendant is ordered to submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code. The results of the drug test administered shall indicate that the defendant did not ingest and was not injected with a drug of abuse.

The Court did fully explain to the defendant his appellate rights and the defendant informed the Court that said rights were understood.

**BOND IS RELEASED.**

**HON. MICHAEL L. TUCKER**

**JUDGE MICHAEL L. TUCKER**

MATHIAS H. HECK, JR.  
PROSECUTING ATTORNEY

By: *Sandra K. Hobson*  
**SANDRA K. HOBSON, #0030745**  
Assistant Prosecuting Attorney

By: *Jennifer M. Denslow*  
**JENNIFER M. DENSLow, #0075426**  
Assistant Prosecuting Attorney

Defense Counsel: **MICHAEL L. MONTA, 3625 OLD SALEM ROAD, DAYTON, OH 45415**  
Montgomery County Sheriff's Office, Attn: Jail Records  
Montgomery County Clerk of Courts – Bookkeeping Dept.

PJW - 1/6/2011



The Supreme Court of Ohio

FILED

JUN -6 2018

CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio, ex. rel. Dennis D. Jackson

v.

Neil Turner, Warden

Case No. 2018-0577

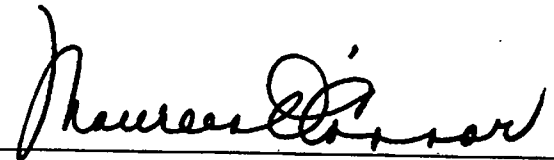
IN HABEAS CORPUS

ENTRY

This cause originated in this court on the filing of a petition for a writ of habeas corpus and was considered in a manner prescribed by law.

Upon consideration thereof, it is ordered by the court, sua sponte, that this cause is dismissed.

It is further ordered that petitioner's motion to invoke this court's original jurisdiction pursuant to Article IV, Section 2(B)(1)(f) and expand/create default record and motion for evidentiary hearing are denied.



Maureen O'Connor  
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

APPX. C

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Deborah S. Hunt  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

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[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: December 10, 2018

Dennis D. Jackson  
Southeastern Correctional Institution  
5900 B.I.S. Road  
Lancaster, OH 43130

Mr. William H. Lamb  
Office of the Attorney General  
of Ohio  
441 Vine Street  
Suite 1600  
Cincinnati, OH 45202

Re: Case No. 18-3688, *In re: Dennis Jackson*  
Originating Case No. : 3:13-cv-00347

Dear Mr. Jackson and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Michelle M. Davis  
Case Manager  
Direct Dial No. 513-564-7025

cc: Mr. Richard W. Nagel

Enclosure

APPX. D

No. 18-3688

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Dec 10, 2018  
DEBORAH S. HUNT, Clerk

In re: DENNIS D. JACKSON,

Movant.

ORDER

Before: GRIFFIN and KETHLEDGE, Circuit Judges; HOOD, District Judge.\*

Dennis D. Jackson, a pro se Ohio prisoner, moves for an order authorizing the district court to consider a second or successive habeas corpus petition. *See* 28 U.S.C. §§ 2244(b), 2254.

In 2008, a jury convicted Jackson of three counts of murder, two counts of aggravated robbery, and two counts each of aggravated burglary and felonious assault with firearm specifications. After several counts were merged, he was sentenced to twenty-eight years to life imprisonment. His convictions and sentence were affirmed on direct appeal, and the Ohio Supreme Court denied further review. *State v. Jackson*, No. 24430, 2012 WL 1900373 (Ohio Ct. App. May 25, 2012), *perm. denied*, 975 N.E.2d 1030 (Ohio 2012) (table). Jackson moved to reopen his appeal to raise ineffective-assistance-of-appellate-counsel claims, pursuant to Rule 26(B) of the Ohio Rules of Appellate Procedure. The state appellate courts denied relief. *See State v. Jackson*, 982 N.E.2d 729 (Ohio 2013) (table). He moved for leave to file a delayed motion for a new trial, which was denied.

In his first § 2254 petition, filed in October 2013, Jackson listed eleven grounds for relief. The district court construed his claims as falling into the following categories: (1) his

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\*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

identification should have been suppressed; (2) his retrial after an initial mistrial violated the protection against double jeopardy; (3) the prosecutor engaged in misconduct; (4) insufficient evidence supported his convictions; (5) his right to speedy trial was violated; (6) the trial court's admission of evidence violated Ohio evidentiary law; and (7) trial counsel performed ineffectively. *Jackson v. Moore*, No. 3:13-cv-347 (S.D. Ohio). The court later granted leave to supplement the record with "new" evidence, but ultimately denied relief, concluding that Jackson's claims were barred by an unexcused procedural default or failed on the merits.

This court denied a COA, rejecting Jackson's assertions that he was actually innocent and that the evidence was insufficient to support his convictions. *Jackson v. Moore*, No. 15-3153 (6th Cir. Aug. 6, 2015).

In support of his motion for authorization, Jackson argues that that he was denied a speedy trial under Ohio law. He also seeks to raise claims of prosecutorial misconduct, ineffective assistance of counsel, and actual innocence.

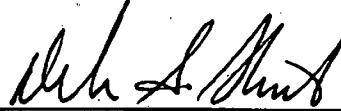
The filing of a second or successive habeas corpus petition is authorized only if the petition makes a prima facie showing that it contains a claim premised on: (1) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable"; or (2) facts that "could not have been discovered previously through the exercise of due diligence" and which, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. §§ 2244(b)(2)(A)-(B), (b)(3)(C).

The arguments regarding a speedy trial, prosecutorial misconduct, and ineffective assistance of counsel that Jackson raised in his prior § 2254 petition are subject to dismissal under 28 U.S.C. § 2244(b)(1). And his new actual-innocence claim is not based on a new rule of constitutional law or on evidence and facts that could not have been discovered previously through due diligence. *See* 28 U.S.C. § 2244(b)(2)(B)(i). Jackson admits that he had access to the state court records as early as 2013 when he filed his post-conviction petition in state court

and also had this information when he filed his previous habeas petition. He presents no new evidence to support his claims.

Accordingly, we DENY Jackson's motion for an order authorizing a second or successive § 2254 petition.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Deborah S. Hunt  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: July 24, 2018

Dennis D. Jackson  
Southeastern Correctional Institution  
5900 B.I.S. Road  
Lancaster, OH 43130

Ms. Stephanie Lynn Watson  
Office of the Attorney General  
of Ohio  
150 E. Gay Street  
16th Floor  
Columbus, OH 43215

Re: Case No. 18-3688, *In re: Dennis Jackson*  
Originating Case No. : 3:13-cv-00347

Dear Movant and Counsel,

The Movant's application under 28 U.S.C. § 2244 for permission to file a second or successive habeas petition has been docketed as case number **18-3688**. The case number must appear on all filings.

Counsel for the respondent is expected to file a response electronically with the Clerk's office by **August 7, 2018**. If the respondent chooses not to file a response, a letter saying so and why must be filed by the deadline.

When the court issues its decision in this matter, the Clerk's office will send a copy to all parties. Pursuant to § 2244(b)(3)(E), that decision is final and not subject to a petition for rehearing or rehearing en banc.

Sincerely yours,

s/Michelle M. Davis  
Case Manager  
Direct Dial No. 513-564-7025

**Montgomery County Ohio**  
**Clerk Of Courts**  
**Gregory A. Brush**  
**Public Records Online System Version II**  
**2010 CR 01126 - STATE OF OHIO Vs DENNIS DEVONE JACKSON**

Case Summary Criminal

<b>Prelim Case #:</b>		<b>Defendant:</b> DENNIS DEVONE JACKSON
<b>DOB:</b> 08-MAR-75		<b>Capture Status:</b> AT LARGE
<b>Arrest Date:</b> 05-APR-10		<b>Prosecutor:</b> SANDRA K HOBSON
<b>Judge:</b> MICHAEL L. TUCKER		<b>SSN:</b> Not Displayed
<b>Jurisdiction:</b> D1		

Case Information

File Date: 08-APR-10  
 Status: CLOSED

Additional Information

Court of Appeals Case Number: CA 24430 CA25478

Case Comments












CHARGE	ORIG CHR	INDICTED CHR	AMENDED CHR	DISPOSITION	DISP DATE	COUNTS
1		MURDER (Proximate Result)		CONVICTED	05-JAN-11	3
2		AGGRAVATED BURGLARY (Deadly Weapon)		CONVICTED	05-JAN-11	1
4		AGGRAVATED ROBBERY (Deadly Weapon)		CONVICTED	05-JAN-11	1
6		FELONIOUS ASSAULT (Deadly Weapon)		CONVICTED	05-JAN-11	1
7		FELONIOUS ASSAULT (Serious Harm)		CONVICTED	05-JAN-11	1
8		AGGRAVATED BURGLARY (Physical Harm)		CONVICTED	05-JAN-11	1
9		AGGRAVATED ROBBERY (Serious Harm)		CONVICTED	05-JAN-11	1

DISPOSITION COMMENT

15Y-LIFE CONFINEMENT; 3Y ACTUAL ON CT 1, CT 2 MERGED INTO COUNT 1, CT. 3 MERGED INTO CT. 1

2010 CR 01126- STATE OF OHIO vs DENNIS DEVONE JACKSON

IMAGE DATE ENTRY

	08/28/2013	ALL ORIGINAL PAPERS RETURNED FROM COURT OF APPEALS.
	05/20/2013	DECISION AND ENTRY FILED; OVERRULING DEFENDANT'S MOTION FOR A NEW TRIAL
	05/17/2013	MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR A NEW TRIAL FILED BY DEFENDANT.
	04/01/2013	DECISION AND ENTRY FILED; OVERRULING DEFENDANT'S MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE
	12/10/2012	DECISION AND ENTRY FILED, OVERRULING MOTION FOR APPOINTMENT OF COUNSEL. TUCKER
	11/16/2012	AFFIDAVIT OF INDIGENCY FILED
	11/16/2012	MOTION OF DEFENDANT FOR APPOINTMENT OF COUNSEL FILED BY DEFT. Attorney: PRO SE (PR00000E)
	11/16/2012	MOTION OF DEFENDANT FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE FILED BY DEFT. Attorney: PRO SE (PR00000E)
	11/16/2012	PRAECIPE TO THE CLERK AND COURT REPORTER FILED BY DEFT.
	11/16/2012	NOTICE OF APPEAL FILED BY DEFT. (CA 25478)
	10/19/2012	ENTRY AND ORDER FILED, OVERRULING DEFT'S MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF THE DEPOSITION OF CHRISTOPHER MONTOURO AT STATE'S EXPENSE. TUCKER
	10/11/2012	MOTION OF DEFENDANT FOR PREPARATION OF COMPLETE TRANSCRIPT OF THE DEPOSITION OF CHRISTOPHER MONTOURO. Attorney: PRO SE (0000000E)



FILED  
COURT OF COMMON PLEAS  
2010 APR 28 AM 11:52

GRUBBS, M. CRUSH  
CLERK OF COURTS  
MONTGOMERY CO. OHIO  
5

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

THE STATE OF OHIO,

CASE NO. 10-CR-1126

Plaintiff,

-vs-

MOTION FOR CONTINUANCE

Dennis Jackson

Defendant.

Now comes the Prosecuting Attorney  Defense Attorney  (check one) and moves the Court for a continuance in the within matter for the following reasons:

*Counsel not available for  
5/5/10 Scheduling Conference*

Michael J. Rosta  
~~Prosecuting Attorney~~  
Defendant's Attorney

ENTRY

This matter came before the Court on the Motion of:

Prosecuting Attorney  Defendant's Attorney  (check one) for a continuance, and upon due consideration of good cause, the Court hereby does grant said continuance.

It is the further order of the Court that this matter be re-set from 4/28/10  
to 5/19/10

[Signature]  
Judge

COPIES: Defendant's Attorney  
Prosecutor  
Caseload Services  
9/8/90

APPX. F





IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,

CASE NO. 2010 CR 01126

Plaintiff,

-vs-

DENNIS DEVONE JACKSON

Defendant.

ORDER OF APPEARANCE

You are hereby **ORDERED** to appear for a:

	<u>DATE</u>	<u>TIME</u>
Scheduling Conference:		
Motion to Suppress:	7/7/10	1:30
Final Pre-Trial:		
Trial:		
Probation Report:		
I.L.C. Report:		
Probation Revocation:		
Other (Specify):		

**DEFENDANT IS REQUIRED TO BE PRESENT AT ALL ABOVE DATES AND TIMES**

*Michael L. Tucker*  
\_\_\_\_\_  
Judge Michael L. Tucker

Defense Attorney: MICHAEL L MONTA

Prosecuting Attorney: S HOBSON/J DENSLow

APPX. G



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,  
Plaintiff,

CASE NO. 10-CR-1126  
CA NO. 24430

-vs-

DENNIS D. JACKSON,

TRANSCRIPT OF PROCEEDINGS  
MOTION TO SUPPRESS, DECISION,  
HEARING ON MOTION TO DISMISS,  
JURY TRIAL (EXCERPTED), VERDICT  
and SENTENCING

Defendant.

VOLUME I of VI  
Pages 1 - 152

PRESIDING:

Hon. Michael L. Tucker

APPEARANCES:

ON BEHALF OF THE STATE

Sandra K. Hobson, Esq.  
Jennifer M. Denslow, Esq.  
Montgomery County Prosecutor's Office  
Fifth Floor  
301 West Third Street  
Dayton, Ohio 45422-0972

ON BEHALF OF THE DEFENDANT

Michael L. Monta, Esq.  
Monta and Monta  
3625 Old Salem Road  
Dayton, Ohio 45415-1427

DATES:

July 7, 28, 2010  
November 10, 2010  
December 3, 6, 7, 8, 9, 10, 2010  
January 5, 2011

ELECTRONICALLY

RECORDED BY:

Jennifer Hackney

TRANSCRIBED BY:

Linda Rapier

FILED  
COURT OF COMMON PLEAS  
2011 MAR 30 AM 10:17  
CLERK OF COURTS  
MONTGOMERY CO. OHIO  
17  
2011 MAR 30 AM 10:17  
CLERK OF COURTS  
MONTGOMERY CO. OHIO  
17

Appx. H

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Decision on Motion to Dismiss..... Pg 133  
Preliminary Instructions by the Court..... Pg 138  
Testimony..... Pg 168  
Hearing on State's Motion to present deposition testimony.... Pg 757  
Decision on State's Motion to present deposition testimony... Pg 770  
Rule 29 Motion..... Pg 1020  
Renewed Rule 29 Motion..... Pg 1036  
Closing Argument by the State..... Pg 1067  
Closing Argument by the Defense..... Pg 1083  
Rebuttal Closing Argument by the State..... Pg 1108  
Verdict..... Pg 1130  
Decision on Defendant's Motion for new trial-CR 33(A) (5)..... Pg 1140  
Decision on Defendant's Motion for new trial CR 33(A) (4)..... Pg 1141  
Decision on Defendant's Motion for verdict of acquittal..... Pg 1142  
Sentencing..... Pg 1150

\* \* \*

1 THE COURT: You can step down. Thank you.  
2 You're done.

3 (Witness stepped down.)

4 THE COURT: Any further witnesses on behalf of the --  
5 any further witnesses on behalf of the State?

6 MS. HOBSON: No, Your Honor.

7 THE COURT: And I assume you're asking for the  
8 admission, I believe, it's Exhibits 1 through 5; is that  
9 correct?

10 MS. HOBSON: One through 6, Your Honor.

11 THE COURT: One through 6. Any objections to  
12 Exhibits 1 --

13 MR. MONTA: I don't, Judge.

14 THE COURT: So without objection, for purposes of this  
15 hearing, Exhibits 1 through 6 will be admitted.

16 (State's Exhibits 1 through 6 admitted.)

17 MS. HOBSON: Thank you, Your Honor.

18 With that, the State would rest, Your Honor.

19 THE COURT: Okay. Any witnesses?

20 MR. MONTA: We will not present --

21 THE COURT: All right.

22 Before I announce how I'm going to proceed in making this  
23 decision, I'd like to talk to the attorneys just for a moment  
24 in my office.

25 (Recess taken.)

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(In open court.)

THE COURT: All right. Here's what we're going to do. We're going to place this matter back on the docket for me to announce my decision. I'm going to do that on Wednesday, July 28<sup>th</sup> at 11 o'clock.

And we also talked about any written argument that either side wishes to make. I would request that that be submitted to me on or before July 21 by the end of business on that date.

UNIDENTIFIED SPEAKER: What you say -- 7/24?

THE COURT: Seven-21. One week before the --

MR. MONTA: Judge, may I ask you a question? And this is the technicalities of the filing. Are we doing these by electronic filing now?

THE COURT: No, not criminal yet.

MR. MONTA: Okay.

THE COURT: Not criminal yet. We're moving in that direction.

MR. MONTA: So I don't have to learn how to do that yet.

THE COURT: Not yet.

MR. MONTA: Okay.

THE COURT: Not yet.

All right. So just file it on before the end of business on the 21<sup>st</sup> and then I'll announce my decision on the 28<sup>th</sup>.

And I really don't think these motions are trial

1 dispositive so I think we probably should go -- we can go ahead  
2 and at least announce what our tentative trial date that we  
3 talked about is and that would be the week of August 30<sup>th</sup>.

4 Anything further from the State?

5 MS. HOBSON: No, Your Honor. Thank you.

6 THE COURT: Michael, anything further?

7 MR. MONTA: No, I don't. Thank you, Judge.

8 THE COURT: All right, very well.

9 THE COURT:












10 Thank you, all. And we'll talk to you soon.

11 (Proceedings concluded at 5:17 p.m.)

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**Montgomery County Ohio  
Clerk Of Courts  
Gregory A. Brush  
Public Records Online System Version II  
2010 CR 01126- STATE OF OHIO Vs DENNIS DEVONE JACKSON**

IMAGE DATE ENTRY

	07/20/2011	TRANSCRIPT FILED - 1 VOL (MATERIAL WITNESS HEARING)
	07/20/2011	CD FILED (TESTIMONY & MOTION/ MOTION & DISCUSSION)
	07/08/2011	TRANSCRIPT FILED - 1 VOL (JURY TRIAL)
	07/06/2011	PRAECIPE TO THE COURT REPORTER FILED. Attorney: ARMSTRONG, JAMES S (0020638)
	03/30/2011	TRANSCRIPTS FILED - 6 VOLS (MOTION TO SUPPRESS, DECISION, HEARING ON MOTION TO DISMISS, JURY TRIAL (EXCERPTED), VERDICT & SENTENCING)
	03/30/2011	8 CD'S FILED (MOTION TO SUPPRESS, MOTION TO SUPPRESS DECISION, HEARING, JURY TRIAL & SENTENCING)
	03/28/2011	ALERT CANCELED WARRANT canceled on: 03/24/2011 For: HORN , THOMAS
	03/09/2011	ENTRY FILED, ORDERING AUDITOR TO PAY ATTY MICHAEL L. MONTA \$14,977.75 FOR SERVICES. TUCKER
	03/09/2011	ORDER FILED, FOR PAYMENT OF EXTRAORDINARY FEES TO COURT APPOINTED COUNSEL. TUCKER
X 	02/11/2011	ENTRY FILED AUTHORIZING ADDITIONAL EXPENSE FOR INVESTIGATOR. TUCKER
	02/07/2011	EXHIBITS FILED IN THE COURT'S PROPERTY ROOM
	01/19/2011	WARRANT TO CONVEY RETURNED ENDORSED 01-13-2011 BY DEPUTY SHERIFF
	01/19/2011	PROSECUTOR CERTIFICATION OF COST
X 	01/14/2011	ORDER OF APPOINTMENT FILED ATTORNEY JAMES ARMSTRONG IS APPOINTED TO REPRESENT THE DEFENDANT. TUCKER
X 	01/13/2011	CRIMINAL DOCKET STATEMENT FILED BY ATTY MICHAEL MONTA.
X 	01/13/2011	NOTICE OF APPEAL FILED BY ATTY MICHAEL MONTA. (CA 24430)
	01/13/2011	WARRANT TO CONVEY ISSUED TO SHERIFF

APPX. I

01/11/2011 COST BILL SENT JACKSON, DENNIS DEVONE was sent bill for \$4,818.00. Printed on 01/11/2011 10:32:36.

01/11/2011 REPARATION FEE- FELONY

X  01/10/2011 TERMINATION ENTRY FILED SENTENCED 1/05/11 TO CONFINEMENT AT THE CRC FOR A TOTAL TERM OF 28 YRS TO LIFE TUCKER

X  01/06/2011 DECISION AND ENTRY FILED, OVERRULING DEFENDANTS MOTION FOR A NEW TRIAL AND/OR MOTION FOR AQUITTAL. TUCKER

 01/05/2011 CRIMINAL SHERIFF TRANSPORTATION FEE

X  01/04/2011 STATE OF OHIO'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL AND/OR MOTION FOR AQUITTAL Attorney: HOBSON, SANDRA K (0030745)

X  12/23/2010 MOTION OF DEFENDANT FOR NEW TRIAL AND/ OR MOTION FOR ACQUITTAL FILED. Attorney: MONTA, MICHAEL L (0032777)

12/20/2010 JURY LIST FILED

 12/16/2010 CRIMINAL SHERIFF TRANSPORTATION FEE

12/15/2010 STATE'S SENTENCING MEMORANDUM FILED Attorney: HOBSON, SANDRA K (0030745) Attorney: DENSLOW, JENNIFER M (0075426)

12/13/2010 VERDICT AND ENTRY FILED, JURY FINDS DEFT GUILTY OF MURDER AS CHARGED IN COUNT 1; AGG. BURGLARY AS CHARGED IN COUNT 2; MURDER AS CHARGED IN COUNT 3; AGG. ROBBERY AS CHARGED IN COUNT 4; MURDER AS CHARGED IN COUNT 5; FELONIOUS ASSAULT AS CHARGED IN COUNTS 6 AND 7; AGG. BURGLARY AS CHARGED IN COUNT 8; AGG. ROBBERY AS CHARGED IN COUNT 9. DEFT DID HAVE A FIREARM ON OR ABOUT HIS PERSON OR UNDER HIS CONTROL IN EACH AND EVERY COUNT. TUCKER

12/13/2010 JURY EMPANELED AND SWORN. TUCKER

X  12/13/2010 BOND SET 12-10-10 AT NO BOND. TUCKER

X  12/13/2010 ORDER OF APPEARANCE FILED, PROBATION REPORT 12-16-10. TUCKER



 12/09/2010 CRIMINAL SHERIFF TRANSPORTATION FEE



X  12/08/2010 MOTION OF AND MEMORANDUM TO DECLARE WITNESS UNAVAILABLE AND TO PRESENT DEPOSITION TESTIMONY Attorney: DENSLOW, JENNIFER M (0075426)














 12/08/2010 CRIMINAL SHERIFF TRANSPORTATION FEE

 12/06/2010 CRIMINAL SHERIFF TRANSPORTATION FEE











X		12/03/2010	ALERT ISSUED WARRANT issued on: 12/03/2010 For: HORN, THOMAS TUCKER
		12/03/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
		11/29/2010	SUBPOENA SERVED STATE OFF. NORMAN SCOTT (F)
		11/29/2010	SUBPOENA SERVED STATE OFF. MALIA HUNLEY (F)
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE ANDY SELFRING (R) 11/10/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE OFF. THOMAS QUIGLEY OFF. MICHAEL RICHARDSON OFF. JERRY JACKSON (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE OFF. WILLIAM MOORE OFF. JEFFREY DERRINGER (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE OFF. JOSEPH MCCRARY OFF. R. SMITH OFF. MALIA HUNLEY (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE DET. PATRICK CRAUN OFF. L.M. FOURNIER WICK (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE DET. JEREMY KINDER (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE OFF. TIMOTHY DAVIS OFF. BRIAN DOUGLAS OFF. NORMAN SCOTT (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE SGT. TROY DEXTER (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE DET. MICHAEL PIGMAN OFF. HENRY CRIST OFF. AKSHAY GYAN OFF. MELISSA BROTHERS (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE HERBERT GROSS THOMAS STUBBLEFIELD PATRICK CAYLOR (R) 11/12/10
		11/15/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
		11/15/2010	SUBPOENA SERVED STATE MICHAEL BABCOCK STEPHEN MILLIKEN JAMES FANNIN MATHEW BAKAN (R) 11/12/10

X		11/10/2010	DECISION AND ENTRY FILED, OVERRULING DEFENDANTS MOTION TO DISMISS. TUCKER
		11/10/2010	SUBPOENA FILED AND ISSUED TO SGT. TROY DEXTER BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO MICHAEL BABCOCK, STEPHEN MILLIKEN, JAMES FANNIN & MATHEW BAKAN BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO HERBERT GROSS, THOMAS STUBBLEFIELD & PATRICK CAYLOR BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO ANDY SELFRING BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO OFF. THOMAS QUI GLEY, OFF. MICHAEL RICHARDSON & OFF. JERRY JACKSON BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO DET. MICHAEL PIGMAN, OFF. HENRY CRIST, OFF. AKSHAY GYAN & OFF. MELISSA BROTHERS BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO OFF. TIMOTHY DAVIS, OFF. BRIAN DOUGLAS & OFF. NORMAN SCOTT BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO DET. JEREMY KINDER BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO DET. PATRICK CRAUN & OFC. L.M. FOURNIER-WICK BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO OFC. JOSEPH McCRARY, OFC. R. SMITH & OFC. MALIA HUNLEY BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO OFC. WILLIAM MOORE & OFC. JEFFREY DERRINGER BY THE STATE.
		11/10/2010	SUBPOENA FILED AND ISSUED TO GOVINA ULOHO BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO DION SIMS BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO ALAN BAKER BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO BRANDON HARRIS BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO NISHELLE HARRIS BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO ANJALEIGH STINSON BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO ALAN WEBB BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO TAHIRA ELAMIA BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO JANICE HEARD BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO INDIA HEARD BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO JAZMINE BUCHANON BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO LAKESHA GRAY BY THE STATE
		11/10/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
		11/10/2010	SUBPOENA FILED AND ISSUED TO BRENDA TATE-HARRIS BY THE STATE
		11/10/2010	SUBPOENA FILED AND ISSUED TO JEREMY WHITE BY THE STATE


	11/10/2010	SUBPOENA FILED AND ISSUED TO BRANDON HENDERSON BY THE STATE
	11/10/2010	SUBPOENA FILED AND ISSUED TO KIMBERLY CARL BY THE STATE
	11/10/2010	SUBPOENA FILED AND ISSUED TO LAKIANNA HARRIS BY THE STATE
	11/10/2010	SUBPOENA FILED AND ISSUED TO CARMELITA MUHAMMAD BY THE STATE
	11/10/2010	SUBPOENA FILED AND ISSUED TO CASEY JONES BY THE STATE
	11/10/2010	SUBPOENA FILED AND ISSUED TO SHAVONDA LESLIE BY THE STATE
X	 11/08/2010	MOTION TO DISMISS; DOUBLE JEOPARDY; REPLY TO STATE'S MEMO Attorney: MONTA, MICHAEL L (0032777)
X	 11/04/2010	MOTION OF DEFENDANT TO DISMISS. Attorney: PRO SE (PR00000E)
	10/27/2010	SUBPOENA FILED AND ISSUED TO, THOMAS HORN, BY THE STATE
	 10/27/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
	 10/27/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
X	 10/25/2010	MOTION OF PLAINTIFF IN OPPOSITION TO DEFT'S MOTION TO DISMISS, WITH PREJUDICE FILED. Attorney: HOBSON, SANDRA K (0030745)
X	 10/13/2010	MOTION OF DEFENDANT TO TESTIFY BY DEPOSITION FILED.
X	 10/13/2010	ORDER OF APPEARANCE FILED, FINAL PRE-TRIAL: 12/01/10; TRIAL: 12/03/10; REPO: 10/27/10 TUCKER
	 10/12/2010	CRIMINAL SHERIFF RECEIVING DISCHARGING PRISONER
	 10/12/2010	ALERT SERVED WARRANT served on: 10/08/2010 For: HORN, THOMAS
X	 10/08/2010	MOTION TO DISMISS DOUBLE JEOPARDY FOLLOWING MISTRAL FILED Attorney: MONTA, MICHAEL L (0032777)
	09/24/2010	JURY LIST FILED
	09/23/2010	ENTRY FILED, JURY EMPANELED AND SWORN. TUCKER
X	 09/23/2010	ENTRY AND ORDER DECALRING A MISTRAL AND SETTING DATES FOR A BRIEFING SCHEDULE FILED. TUCKER
	 09/22/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
	 09/21/2010	CRIMINAL SHERIFF TRANSPORTATION FEE

	09/20/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
X	09/17/2010	MOTION OF PLAINTIFF AND MEMORANDUM TO DECLARE WITNESS UNAVAILABLE AND TO PRESENT FORMER TESTIMONY Attorney: HOBSON, SANDRA K (0030745)
	09/15/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
	09/10/2010	SUBPOENA SERVED 1 WITNESS (F)
	09/07/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/07/2010	SUBPOENA SERVED STATE 1 WITNESS (F)
	09/02/2010	SUBPOENA SERVED STATE CUST. OF RECORDS/ CRICKET WIRELESS (P) 8/23/10
X	09/02/2010	NOTICE OF DEPOSITION Attorney: HOBSON, SANDRA K (0030745)
Y	09/02/2010	ENTRY AND ORDER GRANTING STATE'S VIDEO DEPOSITION TUCKER
X	09/02/2010	MOTION OF PROSECUTING ATTY TO DEPOSE A MATERIAL WITNESS Attorney: HOBSON, SANDRA K (0030745)
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE SGT. TROY DEXTER (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 4 WITNESSES (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 4 WITNESSES (R) 8/31/10
	09/01/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 2 WITNESSES (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 1 WITNESS (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/31/10
	09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	09/01/2010	SUBPOENA SERVED STATE 2 WITNESSES (R) 8/31/10














09/01/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
09/01/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/31/10
08/30/2010	SUBPOENA FILED AND ISSUED TO 1 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 1 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 3 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 2 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 3 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 1 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 2 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 3 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 4 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 4 WITNESSES BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO 3 WITNESSES BY THE STATE
 08/30/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
08/30/2010	SUBPOENA FILED AND ISSUED TO, GOVINA ULOHO, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, DION SIMMS, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, THOMAS HORN, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, ALAN BARKER, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, BRANDON HARRIS, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, NISHELLE HARRIS, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, AMJALIEGH STINSON, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, ALAN WEBB, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, TAHIRA ELAMIA, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, JANICE HEARD, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, INDIA HEARD, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, JAZMINE BUCHANON, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, LAKESHA GREY, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, BRENDA TATE-HARRIS, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, JEREMY WHITE, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, BRANDON HENERSON, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, KIMBERLY CARL, BY THE STATE
08/30/2010	SUBPOENA FILED AND ISSUED TO, LAKIANNA HARRIS, BY THE STATE




	08/30/2010	SUBPOENA FILED AND ISSUED TO, CARMELITA MOHAMMED, BY THE STATE
	08/30/2010	SUBPOENA FILED AND ISSUED TO, CASEY JONES, BY THE STATE
	08/30/2010	SUBPOENA FILED AND ISSUED TO, SHAVONDA LESLIE, BY THE STATE
X	 08/30/2010	ORDER OF APPEARANCE FILED, FINAL PRE-TRIAL: 9/15/10; TRIAL: 9/20/10 TUCKER
X	 08/30/2010	MOTION OF PLAINTIFF FOR MATERIAL WITNESS TO BE TAKEN INTO CUSTODY Attorney: HOBSON, SANDRA K (0030745)
X	 08/30/2010	ALERT ISSUED WARRANT issued on: 08/30/2010 For: HORN, THOMAS
X		08/30/2010 ENTRY AND ORDER FOR MATERIAL WITNESS WARRANT TUCKER
		08/26/2010 CRIMINAL SUBPEONA SERVED BY SHERIFF
	08/26/2010	SUBPOENA SERVED STATE MICHAEL BABCOCK STEPHEN MILLIKEN JAMES FANNIN MATHEW BAKAN (R) 8/25/10
		08/26/2010 CRIMINAL SUBPEONA SERVED BY SHERIFF
	08/26/2010	SUBPOENA SERVED STATE HERBERT GROSS THOMAS STUBBLEFIELD PATRICK CAYLOR (R) 8/25/10
	 08/25/2010	ENTRY FILED, PAYMENT OF FOREIGN SHERIFF OF HAMILTON COUNTY IN THE AMOUNT OF \$15.00. MCGEE
	 08/25/2010	CRIMINAL SHERIFF TRANSPORTATION FEE
	08/23/2010	SUBPOENA FILED AND ISSUED TO HERBERT GROSS, THOMAS STUBBLEFIELD & PATRICK CAYLOR BY THE STATE.
	08/23/2010	SUBPOENA FILED AND ISSUED TO MICHAEL BABCOCK, STEPHEN MILLIKEN, JAMES FANNIN & MATHEW BAKAN BY THE STATE.
X	 08/23/2010	MOTION FOR JURY VIEW FILED Attorney: HOBSON, SANDRA K (0030745)
	08/23/2010	STATE'S WITNESS LIST FILED Attorney: DENSLow, JENNIFER M (0075426)
	08/23/2010	CRIMINAL COUNTY FEE
	08/23/2010	SUBPOENA SERVED STATE CUST. OF RECORDS (R) 8/19/10
	 08/23/2010	EXHIBITS FILED IN THE COURT'S PROPERTY ROOM
	08/17/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
	08/17/2010	SUBPOENA SERVED STATE S COTT DONELLEY (R) 8/16/10
	08/12/2010	SUBPOENA FILED AND ISSUED TO, CUSTODIAN OF RECORDS, CRICKET WIRELESS, BY THE STATE
	08/12/2010	SUBPOENA FILED AND ISSUED TO, CUSTODIAN OF RECORDS, CINCINNATI BELL WIRELESS, BY THE STATE

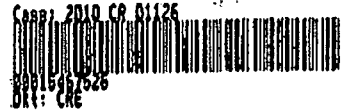
08/12/2010	SUBPOENA FILED AND ISSUED TO, SCOTT DONELLEY, BY THE STATE
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (P) 8/3/10
08/06/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/06/2010	SUBPOENA SERVED STATE 1 WITNESS (R) 8/5/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE SGT. TROY DEXTER (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE 4 WITNESSES (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE 3 WITNESSES (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE DET. PATRICK CRAUN OFF. L.M. FOURNIER WICK (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE OFF. WILLIAM MOORE OFF. JEFFREY DERRINGER (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE 1 WITNESS (R) 8/4/10
08/05/2010	CRIMINAL SUBPEONA SERVED BY SHERIFF
08/05/2010	SUBPOENA SERVED STATE 2 WITNESSES (R) 1 WITNESS (F) 8/4/10
08/02/2010	SUBPOENA FILED AND ISSUED TO SGT. TROY DEXTER BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO DET. MICHAEL PIGMAN, OFF. HENRY CRIST, OFF. AKSHAY GYAN AND OFF. MELISSA BROTHERS BY THE STATE.

08/02/2010	SUBPOENA FILED AND ISSUED TO OFF. TIMOTH DAVIS, OFF. BRIAN DOUGLAS AND OFF. NORMAN SCOTT BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO DET. JEREMY KINDER BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO DET. PATRICK CRAUN AND OFF. L.M. FOURNIER-WICK BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO OFF. JOSEPH MCCRARY, OFF. R. SMITH AND OFF. MALIA HUNLEY BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO OFF. WILLIAM MOORE AND OFF. JEFFREY DERRINGER BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO OFF. THOMAS QUI GLEY, OFF. MICHAEL RICHARDSON AND OFF JERRY JACKSON BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO ANDY SELFRING BY THE STATE.
08/02/2010	SUBPOENA FILED AND ISSUED TO, GOVINA ULOHO, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, DION SIMS, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, THOMAS HORN, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, ALAN BARKER, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, BRANDON HARRIS, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, NISHELLE HARRIS, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, ANJALEIGH STINSON, BY THE STATE
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08/02/2010	SUBPOENA FILED AND ISSUED TO, JANICE HEARD, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, INDIA HEARD, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, JAZMINE BUCHANON, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, LAKESHA GRAY, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, BRENDA TATE-HARRIS, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, JEREMY WHITE, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, BRANDON HENDERSON, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, KIMBERLY CARL, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, LAKIANNA HARRIS, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, CARMELITA MUHAMMAD, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, CASEY JONES, BY THE STATE
08/02/2010	SUBPOENA FILED AND ISSUED TO, SHAVONDA LESLIE, BY THE STATE
 07/30/2010	DECISION ENTRY AND ORDER OVERRULING DEFENDANT'S MOTION TO SUPPRESS TUCKER



X		07/28/2010	ORDER OF APPEARANCE FILED, FINAL PRE-TRIAL 8/25/10 AND TRIAL 8/30/10. TUCKER
		07/28/2010	SHERIFF TRANSPORTATION FEE FILED.
X		07/08/2010	ORDER OF APPEARANCE FILED, WRITTEN SUPP 7/21/10 AND DECISION ON MOTION 7/28/10. TUCKER
		07/07/2010	SHERIFF TRANSPORTATION FEE FILED.
		07/07/2010	SHERIFF TRANSPORTATION FEE FILED.
		07/06/2010	MONTGOMERY COUNTY SHERIFF FEE
		07/06/2010	SUBPOENA SERVED STATE DET. MICHAEL PIGMAM DET. TROY DEXTER (R) 6/23/10
		07/06/2010	MONTGOMERY COUNTY SHERIFF FEE
		07/06/2010	SUBPOENA SERVED STATE DION SIMS 6/29/10
		06/21/2010	SUBPOENA FILED AND ISSUED TO, DET MICHAEL PIGMAN, DET TROY DEXTER, BY THE STATE
		06/21/2010	SUBPOENA FILED AND ISSUED TO DION SIMS BY STATE
		06/21/2010	SUBPOENA FILED AND ISSUED TO THOMAS HORN BY STATE
X		05/19/2010	ORDER OF APPEARANCE FILED, MOTION TO SUPPRESS: 7/07/10 TUCKER
X		05/19/2010	MOTION TO SUPPRESS FILED Attorney: MONTA, MICHAEL L (0032777)
		05/19/2010	SHERIFF TRANSPORTATION FEE FILED.
X		04/28/2010	MOTION OF DEFENDANT, NOTARIZED STATEMENT FROM DEFT THAT HIS RIGHTS HAVE BEEN VIOLATED. Attorney: PRO SE (PR00000E)
X		04/28/2010	MOTION FOR CONTINUANCE AND ENTRY FILED GRANTED TO 05-19-2010. TUCKER
		04/23/2010	RECEIPT OF DISCOVERY PACKET FILED
		04/22/2010	APPOINTED COUNSEL PROCESSING FEE (INDIGENT APPLICATION FEE RC120.36)
		04/21/2010	ORDER OF APPOINTMENT FILED, MICHAEL L. MONTA AS COUNSEL L. WISEMAN
		04/21/2010	NOTICE SETTING APPEARANCE DATES FILED.
		04/20/2010	SHERIFF TRANSPORTATION FEE FILED.

	04/20/2010	ENTRY FILED, 4/15/10 SETTING BOND AT 1,000,000 CASH. WITHDRAW WARRANT TUCKER
	04/20/2010	ENTRY FILED, DEFT STOOD MUTE CRIMINAL - ENTRY OF PLEA NOT GUILTY (MUTE) Sent on: 04/20/2010 10:13:49
	04/16/2010	ALERT SERVED WARRANT ON INDICTMENT (FLAGGED) served on: 04/15/2010 For: JACKSON, DENNIS DEVONE
	04/15/2010	ALERT ISSUED WARRANT ON INDICTMENT (FLAGGED) issued on: 04/15/2010 For: JACKSON, DENNIS DEVONE
	04/15/2010	INDICTMENT FOR MURDER(PROXIMATE RESULT) WITH 3 YEAR FIREARM SPECIFICATION, AGGRAVATED BURGLARY(DW) WITH 3 YEAR FIREARM SPECIFICATION, MURDER(PROXIMATE RESULT) WITH 3 YEAR FIREARM SPECIFICATION, AGGRAVATED ROBBERY(DW) WITH 3 YEAR FIREARM SPECIFICATION, MURDER(PROXIMATE RESULT) WITH 3 YEAR FIREARM SPECIFICATION, FELONIOUS ASSAULT(DW) WITH 3 YEAR FIREARM SPECIFICATION, FELONIOUS ASSAULT(SPH) WITH 3 YEAR FIREARM SPECIFICATION, AGGRAGATED BURGLARY(PH) WITH 3 YEAR FIREARM SPECIFICATION AND AGGRAGATED ROBBERY(SH) WITH 3 YEAR FIREARM SPECIFICATION FILED
	04/12/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED.
	04/09/2010	GRAND JURY SUBPOENA ISSUED. Result: CD TRANSCRIPT DELIV. BY JUDICIAL ASST. TO RM 103 Result: CD TRANSCRIPT DELIV. BY JUDICIAL ASST. TO RM 103 Result: CD TRANSCRIPT DELIV. BY JUDICIAL ASST. TO RM 103 Result: COUNSEL NOTIFIED/EMAILED PDF Result: CD TRANSCRIPT DELIV. BY JUDICIAL ASST. TO RM 103



FILED  
COURT OF COMMON PLEAS  
2010 SEP 23 A 9:26

MONTGOMERY COUNTY  
COURTS

Montgomery County Common Pleas Court  
General Division

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,

CASE NO. 2010 CR 01126

Plaintiff,

JUDGE MICHAEL L. TUCKER

v.

**ENTRY AND ORDER DECLARING A  
MISTRIAL AND SETTING DATES FOR  
A BRIEFING SCHEDULE**

DENNIS D. JACKSON

Defendant.

Pursuant to the oral Motion for a Mistrial made by the Defendant on September 22, 2010, the Court, based upon the reasoning stated on the record, sustains the motion and declared a Mistrial. The empanelled jury was dismissed from further service.

Further, the Defendant made an oral Motion to Dismiss and has until **October 8, 2010** to file a written Motion. The State will then have until **October 22, 2010** to file a response to the motion. The Defendant will have until **October 29, 2010** to file any reply. The Court will then file a written decision after reviewing.

SO ORDERED:

  
JUDGE MICHAEL L. TUCKER

Copies of the above were sent to all parties listed below by ordinary mail this date of filing.

SANDRA HOBSON  
JENNIFER DENSLOW  
ASSISTANT PROSECUTING ATTORNEY  
301 W. THIRD STREET  
P. O. BOX 972  
DAYTON, OHIO 45422  
(937) 225-5757  
Attorney for State of Ohio

Appx. J





FILED IN THE COMMON PLEAS COURT OF  
COURT OF COMMON PLEAS

2010 NOV -4 A 9:12 MONTGOMERY COUNTY, OHIO  
CRIMINAL DIVISION

GREGORY A. DRUHL  
CLERK OF COURTS  
MONTGOMERY CO, OHIO  
37

STATE OF OHIO

CASE NO. 2010 CR 1126

PLAINTIFF

JUDGE: MICHAEL L. TUCKER

Vs.

DENNIS D. JACKSON

MOTION TO DISMISS

DEFENDANT

NOW COME THE DEFENDANT, DENNIS D. JACKSON,  
PRO SE LITIGANT, RESPECTFULLY MOVES THE COURT PURSUANT  
TO:

1. CRIMINAL RULE 12 (b) MOTION TO DISMISS DUE TO  
VIOLATION OF 90 DAY FAST AND SPEEDY TRIAL.

2. VIOLATION OF FIFTH AMENDMENT, DISCHARGE DUE TO DOUBLE  
JEOPARDY. ALL THE REASONS THAT THIS HONORABLE COURT  
SHOULD GRANT THESE MOTIONS ARE BETTER ARTICULATED  
IN ATTACHED MEMORANDUM IS SUPPORT.



RESPECTFULLY SUBMITTED,

Dennis D. Jackson

DENNIS D. JACKSON

330 W. SECOND ST.

HOUSING UNIT E-3-N

DAYTON, OHIO 45422


## MEMORANDUM

### 90 DAY FAST AND SPEEDY TRIAL:

A MOTION STATING THE DEFENDANT WAS NOT BROUGHT TO TRIAL WITHIN HIS 90 DAY FAST AND SPEEDY PERIOD WHICH WOULD FURTHER LEAVE THE COURT IN VIOLATION OF DEFENDANTS CONSTITUTIONAL RIGHTS. STATING DEFENDANTS 90 DAYS STARTS THE DATE AND TIME STAMPED IN INCIDENT REPORT AGAINST HIM AND DAY OF ARREST, SEE STATE V. AZBELL, 112 OHIO ST. 3d 300, 859 N.E.2d 532 (2006)

### DOUBLE JEOPARDY:

A MOTION TO DISMISS DUE TO DOUBLE JEOPARDY. PROSECUTION HAS NOT PRESENTED NEW EVIDENCE IN CASE AGAINST DEFENDANT TO WHICH, WOULD



BE A VIOLATION OF DEFENDANTS FIFTH AMENDMENT  
CONSTITUTIONAL RIGHT, TO FURTHER CONTINUE ANY  
PROCEEDINGS IN THIS MATTER. SEE  
STATE V. LUCK, 15 OHIO ST. 3d 150

Respectfully Submitted,

Dennis D. Jackson

DENNIS D. JACKSON

330 W. SECOND ST.

HOUSING UNIT E-3-N

DAYTON, OHIO 45422

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THIS MOTION TO  
DISMISS WAS SERVED TO THE MONTGOMERY COUNTY  
PROSECUTORS OFFICE, AT: P.O. BOX 972, 5<sup>th</sup> FLOOR  
COURTS BLDG., 301 W. THIRD ST., DAYTON, OH 45402  
ON THIS \_\_\_ DAY OF NOVEMBER 2010

Respectfully Submitted

Dennis D. Jackson

DENNIS D. JACKSON

330 W. THIRD ST.

HOUSING UNIT E-3-N  
DAYTON, OHIO 45422





FILED  
COURT OF COMMON PLEAS  
2010 OCT -8 A 10:45

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CRIMINAL DIVISION

STATE OF OHIO	*	Case No. 2010 CR 1126
Plaintiff	*	Judge Michael L. Tucker
Vs.	*	
DENNIS D. JACKSON	*	<b><u>MOTION TO DISMISS</u></b>
Defendant	*	<b><u>DOUBLE JEOPARDY</u></b>
	*	<b><u>FOLLOWING MISTRIAL</u></b>

\*\*\*\*\*

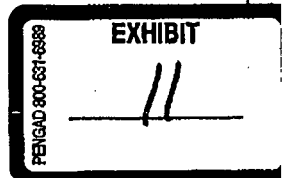
Defendant, **DENNIS D. JACKSON** moves the Court for an Order dismissing the case against following a Mistrial granted in the Trial held on September 20, 2010, *et seq*, before Judge Michael L. Tucker, in violation of the Double Jeopardy Clause of the Fifth and Fourteenth Amendment to the United States Constitution and the Ohio Constitution Article One Section Ten.

Respectfully submitted,

MICHAEL L. MONTA [0032777]  
3625 Old Salem Road  
Dayton, Ohio 45415-1427  
Ph: (937) 890-6921  
FAX: (937) 890-6922  
E-Mail: Zbeard7@Aol.com  
Attorney for Dennis D. Jackson

MONTA AND MONTA  
ATTORNEYS AT LAW  
3625 OLD SALEM ROAD  
DAYTON, OHIO 45415  
(937) 890-6921

APPX. L



## MEMORANDUM

### **FACTS:**

This case was tried before a duly impaneled Jury starting on September 20, 2010. It ended when the Judge declared a Mistrial on Defense Counsel's Motion September 22, 2010. The cause for the Mistrial occurred when States Witness, Dion Sims, on direct examination by the Prosecutor testified that he had taken [inferring that he had passed] a polygraph test.

The Court felt that the testimony given by the Detective was egregious enough to justify a mistrial in the case. *See Trial Transcript.*

A Re-trial of the matter is pending on the determination of this Motion to Dismiss.

### **ARGUMENT:**

In general, where a Mistrial is granted in response to a Defendant's Motion requesting such, the rule has been that the constitutional guaranty against double jeopardy does not preclude retrial of the Defendant. *See generally, United States vs. Tateo*, (1964) 377 US 463, *United State vs. Jorn*, (1971) 400 US 470, *United States vs. Dinitz*, (1970) 424 US 60.

However, the rule is subject to the exception where the Motion for Mistrial has resulted from prosecutorial impropriety or overreaching designed to avoid an acquittal. *See e.g., U.S.C.A. Const. Amend V. U.S. v. Martin*, 27 Fed Appx. 43 (2d Cir, 2001), *U.S. v. Rivera*, 802 F.2d 593 (1986, CA2NY), *Marshall v. Ohio*, 443 F. 2d 911 (N.D. Ohio 2006), *Walck v. Edmondson*, 472 F.3d 1227 (10<sup>th</sup> Cir. 2007).

In determining what constitutes such prosecutorial overreaching that will bar a Defendant's retrial after his motion for Mistrial has been granted, definitions include "gross negligence" as well as intentional misconduct. *See e.g., United States v. Kessler*, 530 F.2d 1246 (1976, CA5 La), *United States v. Beasley*, 479 F.2d 1124 (1973, CA5 Fla.), *United States v. Kennedy*, 548 F.2d 608 (1977, CA5 Ga.), *United States v. Weaver*, 565 F.2d 129 (1977, CA8 Ark.), *United States v. Clayborne*, 584 F.2d 346 (1978) CA10 Colo.), *United States v. Davis*, 589 F.2d 904 (1979, CA5 Fla.), *United States v. Broderick*, 425 F.Supp. 93 (1977, SD Fla.), *United States v. Venable*, 453 F.Supp. 25 (1978 ED Pa.).

Crucial events in the case preceding the Mistrial on the third day of trial include:

(1) the State of Ohio requesting a continuance of the trial originally set for August 30, 2010 when, at the precipice of jury selection, it announced to the Court that the prosecution could not proceed due to the absence of a "so-called" material witness. The trial was rescheduled for September 20, 2010;

(2) the speedy trial time for commencing the trial, ended the week of September 20, 2010. If the matter was not tried by that time, the case against the Defendant would have had to have been discharged. The so-called "material witness" had not yet been located by



the State of Ohio when the jury was empanelled and the trial began. When the State of Ohio requested its continuance on August 30, 2010, it averred to the court that it could not go forward without its "material witness";

(3) State's witness Dion Sims, whose hand gun was purportedly used in the murder, and whose allegation was that he "lent" said gun to the Defendant, was told by the prosecuting attorney, during pretrial witness preparation, to avoid testifying about a polygraph test. (See, comments of Prosecutor Hobson to the Court at Mistrial hearing on Sep. 22, 2010.) Following that pre-trial admonition, Sims ignored that "suggestion" early in the direct examination blurting out his supposed "credibility enhancing" information, thus goading Defense counsel to call for the Mistrial.

The effect of the action was that the State of Ohio avoided a direct acquittal by the Court or jury, avoided a speedy trial dismissal and obtained valuable time to once again, find its own lost "material witness". With acquittal at trial an inevitable result, the State of Ohio has become the fortuitous beneficiary of its own actions.


From a review of the case history and trial testimony, there can be no other inference drawn that the Mistrial has resulted from prosecutorial impropriety gross negligence and/or overreaching designed to avoid an acquittal. [See, cases *infra*]

Although it seems that the Prosecutor in the case did not intentionally elicit the testimony that led to the Mistrial, Defendant nonetheless contends that the witness, Dion Sims, either intentionally or by gross negligence took the opportunity with his non-responsive testimony to enhance the credibility of his dubious testimony, and thus "poison the well" against Mr. Jackson.

His statements were the product of his own particular purpose to goad the Defense into calling for a Mistrial.

Defense contends that his actions are directly attributable to the Prosecution and the State of Ohio. The Double Jeopardy Clause of the 5<sup>th</sup> Amendment should prohibit retrial of Mr. Jackson.

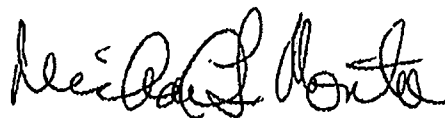
For the foregoing reasons, Defendant, Dennis D. Jackson, through undersigned Counsel, moves the Court to dismiss all charges.



MICHAEL L. MONTA  
Attorney for Dennis D. Jackson

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Dismiss was served on the Assistant Prosecuting Attorney, Sandra Hobson, at her office at 301 W. Third Street, Dayton, Ohio 45402 on the same date of filing with the court, to wit: October 8, 2010.



---

MICHAEL L. MONTA  
Attorney for Dennis D. Jackson

Document: Johnson v. Overberg, 639 F.2d 326

**Johnson v. Overberg, 639 F.2d 326**

United States Court of Appeals for the Sixth Circuit  
October 21, 1980, Argued ; January 27, 1981, Decided  
No. 80-3223

**Reporter**

639 F.2d 326 \* | 1981 U.S. App. LEXIS 20670 \*\* | 22 Ohio Op. 3d 326

RONALD LEE JOHNSON, Petitioner-Appellant, v. ROGER T. OVERBERG, Respondent-Appellee .

**Prior History:**

[\*\*1] ON APPEAL from the United States District Court for the Southern District of Ohio.

**Core Terms**

continuance, notice, indictment, arrest, days, opportunity to object, liberty interest, grand jury, opportunity to be heard, federal habeas corpus, granting continuance, preliminary hearing, pending charges, running time, speedy trial, due process, ninety days, trial court, own motion, short time, accused's, sentenced, alleges, jail

Case Summary

**Procedural Posture**

Petitioner inmate challenged a judgment of the United States District Court for the Southern District of Ohio denying his request for a writ of habeas corpus pursuant to 28 U.S.C.S. § 2254. Inmate alleged a due process violation in his state court conviction for the state's failure to abide by its speedy trial act.

**Overview**

An indictment was filed against inmate on December 17, 1975. He was arraigned and trial was scheduled for December 30, 1975. At that time the inmate's motion to discharge the indictment on grounds that he had been in custody for 98 days was overruled, and a continuance was granted. Then, the trial court again overruled the motion to discharge the indictment, stating that the request to continue the grand jury proceedings also acted to continue the time for trial. Inmate was found guilty, and the judgment was affirmed. On appeal from the denial of his habeas petition, inmate asserted that he was not given notice and an opportunity to object to the continuance. The court held that in this instance, inmate was provided with notice and an opportunity to be heard within a short time after running of the time for trial. The court found that there was no bad faith or abuse of discretion shown

Appx. M

in the granting of the continuance. Thus, the court concluded that no federal due process

violation occurred when inmate was given notice and an opportunity to object to a

continuance within a short time following expiration of the time for trial.

### Outcome

The judgment was affirmed.

### LexisNexis® Headnotes

• Criminal Law & Procedure > Preliminary Proceedings > Bail > General Overview

• Criminal Law & Procedure > Preliminary Proceedings > General Overview

• Criminal Law & Procedure > Preliminary Proceedings > Preliminary

Hearings > General Overview

• Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > General

Overview

• Criminal Law & Procedure > ... > Speedy Trial > Statutory Right > Excludable Time

Periods

• Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > Statutory

Right

*HNI* Preliminary Proceedings, Bail

Ohio Rev. Code Ann. § 2945.71-.73 states that a person accused of a felony shall be

brought to trial within 270 days of his arrest. Each day he is held in jail in lieu of bail on the

pending charge shall be counted as three days, so that if a defendant is held in jail on the

pending charge he must be tried within 90 days. The time for a preliminary hearing or trial

may be extended by 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. Ohio Rev.

Code Ann. § 2945.72(H) The remedy for a violation of this speedy trial provision is

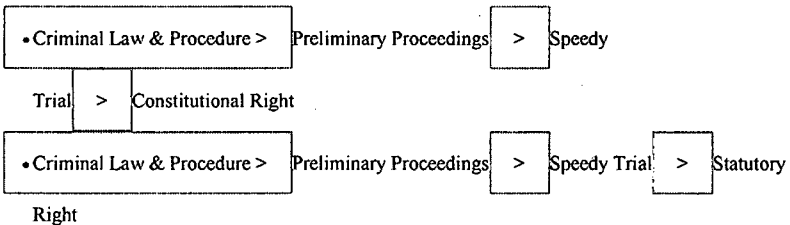
discharge.

More like this Headnote

*Shepardize* - Narrow by this Headnote (1)

• Constitutional Law > ... > Fundamental Rights > Procedural Due

Process > General Overview



**HN2**  **Fundamental Rights, Procedural Due Process**

Ohio Rev. Code Ann. § 2945.71-73 grants a person accused of a felony a liberty interest

by requiring that he be tried within 90 days of his arrest. This liberty interest cannot be denied without due process of law. It is apparent that the process which is due in this situation need not come in the form of notice and a hearing before a continuance is granted. Notice and hearing before a continuance would allow the defendant to challenge the length and purpose of the continuance and to allege prejudice. A hearing after the continuance, however, does not take away the state-granted liberty interest of the defendant. The defendant can still challenge the length and purpose of the continuance and still allege prejudice. When the hearing is held shortly after the running of the time for trial, dismissal provides an adequate remedy to an improper continuance.

More like this Headnote

*Shepardize* - Narrow by this Headnote (1)

**Counsel:** Thomas Mc Guire, Frederick Gittes, Spater, Gittes & Terzian, Columbus, Ohio, for

petitioner-appellant.

William J. Brown, Richard David Drake, Asst. Atty. Gen., Columbus, Ohio, for respondent-appellee.

**Judges:** Before ENGEL, KEITH and MERRITT, Circuit Judges.

**Opinion by:** PER CURIAM

**Opinion**

[\*326] Pursuant to 28 U.S.C. § 2254, petitioner alleges a due process violation in his state court conviction because the State allegedly failed to abide by its speedy trial act.

**HN1** Ohio law, R.C. 2945.71-73, states that a person accused of a felony shall be brought to trial within 270 days of his arrest. Each day he is held in jail in lieu of bail on the pending charge shall be counted as three days, so that if a defendant is held in jail on the pending charge he must be tried within ninety days. The time for a preliminary hearing or trial may be extended by "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." R.C. 2945.72(H). The remedy for a violation of this speedy trial provision is discharge.

Petitioner [\*\*2] was arrested in Columbus, Ohio, on September 23, 1975, and charged with aggravated robbery. He was unable to post bond at the preliminary hearing and [\*327] remained incarcerated until sentencing, thus invoking the three-for-one provision of the Ohio Speedy Trial Act. The order binding petitioner over to the grand jury was filed on October 3, 1975. On December 2, 1975 seventy days after arrest the prosecuting attorney requested a thirty-day continuance to indict the petitioner. The extension was requested because of the congested grand jury docket. No notice was given to the petitioner or his counsel, and the continuance was granted without receipt of evidence.

An indictment was filed against petitioner on December 17, 1975. He was arraigned, pleaded not guilty, and trial was scheduled for December 30, 1975. At that time the petitioner's motion to discharge the indictment on grounds that he had been in custody for ninety-eight days was overruled, and a continuance was granted. Petitioner specifically reserved the right to challenge the timeliness of the December 30, 1975 trial date. In November, 1976, the trial court again overruled the motion to discharge the indictment, [\*\*3] stating that the request to continue the grand jury proceedings also acted to continue the time for trial. The petitioner withdrew his guilty plea and entered a plea of no contest. Petitioner was found guilty and sentenced to five to

APPX. M

§ 2945.72 Extension of time for hearing or trial.

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:

- (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.

History

134 v H 511 (Eff 1-1-74); 136 v H 164 (Eff 1-13-76); 136 v S 368 (Eff 9-27-76);

137 v H 1168. Eff 11-1-78.

§ 2945.73 Discharge for delay in trial.

(A) A charge of felony shall be dismissed if the accused is not accorded a preliminary hearing within the time required by sections 2945.71 and 2945.72 of the Revised Code.

(B) Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code.

(C) Regardless of whether a longer time limit may be provided by sections 2945.71 and 2945.72 of the Revised Code, a person charged with misdemeanor shall be discharged if he is held in jail in lieu of bond awaiting trial on the pending charge:

(1) For a total period equal to the maximum term of imprisonment which may be imposed for the most serious misdemeanor charged;

(2) For a total period equal to the term of imprisonment allowed in lieu of payment of the maximum fine which may be imposed for the most serious misdemeanor charged, when the offense or offenses charged constitute minor misdemeanors.

(D) When a charge of felony is dismissed pursuant to division (A) of this section, such dismissal has the same effect as a nolle prosequi. When an accused is discharged pursuant to division (B) or (C) of this section, such discharge is a bar to any further criminal proceedings against him based on the same conduct.

#### History

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134 v H 511. Eff 1-1-74.

**State v. Mincy, 2 Ohio St. 3d 6**

Supreme Court of Ohio

November 10, 1982

81-1750

**Reporter**

2 Ohio St. 3d 6 \* | 441 N.E.2d 571 \*\* | 1982 Ohio LEXIS 744 \*\*\* | 2 Ohio B. Rep. 282

THE STATE OF OHIO, APPELLANT, v. MINCY, APPELLEE.

**Prior History:**

[\*\*\*1] APPEAL from the Court of Appeals for Montgomery County.

**Disposition:**

*Judgment affirmed.*

**Core Terms**

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continuance, trial court, expiration, journal entry, scheduled, statutory time limit, sua sponte, speedy, days

Case Summary

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**Procedural Posture**



The State of Ohio sought review of a decision of the Court of Appeals for Montgomery County (Ohio),

which reversed defendant's conviction for aggravated robbery on the ground that he had not been brought

to trial within the time limit prescribed by Ohio Rev. Code Ann. § 2945.71 .

## Overview

Eighty-seven days after defendant was arrested for armed robbery and began a continuous period of

incarceration, his scheduled trial was delayed. No journal entry was filed setting forth the reason.

Defendant was not tried until he had been incarcerated for 100 days; his motion to dismiss based on the

speedy trial statute, Ohio Rev. Code Ann. § 2945.71 , was denied. The court of appeals reversed his

conviction, and the State appealed. Under Ohio Rev. Code Ann. § 2945.72 , the court determined

that a continuance could extend the time within which defendant could be brought to trial, whether it was

on defendant's motion or was otherwise reasonable. However, the 90-day period within which defendant

had to be brought to trial expired before the trial court filed a journal entry continuing the case. The trial

court had ample time to file a journal entry explaining to defendant why his trial date was extended

beyond the statutory time period. The court concluded that the trial court's failure to do so required

reversal of defendant's conviction.

**Outcome**

The court affirmed the appellate court's judgment reversing defendant's conviction.

**LexisNexis® Headnotes**

- Criminal Law & Procedure > Preliminary Proceedings > Bail > Delays in Granting of Bail
- Criminal Law & Procedure > Preliminary Proceedings > Bail > General Overview
- Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > Statutory Right
- Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial
- Governments > Legislation > Statute of Limitations > Time Limitations

***HNI***  **Bail, Delays in Granting of Bail**

Ohio Rev. Code Ann. § 2945.71(C)(2) provides that a person against whom a felony charge is pending

shall be brought to trial within 270 days after his arrest. Ohio Rev. Code Ann. § 2945.71(E) states

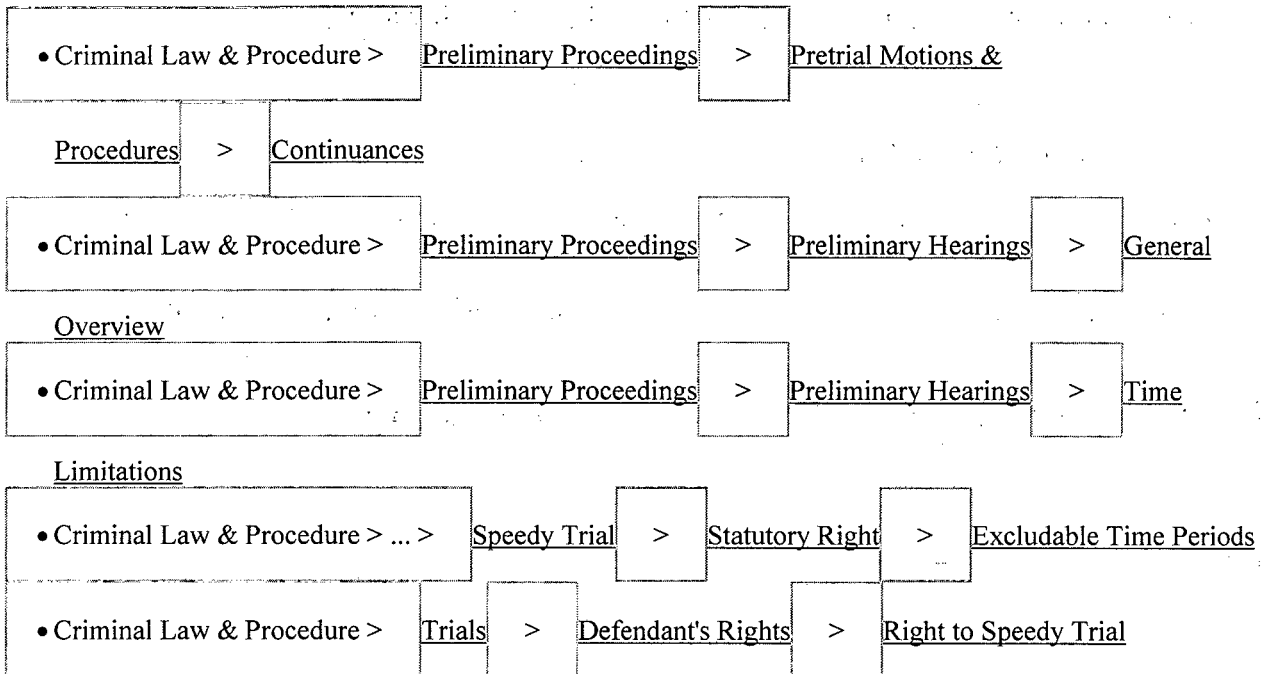
that for purposes of computing time under Ohio Rev. Code Ann. § 2945.71(C)(2), each day during

which the accused is held in jail in lieu of bail on the pending charge is counted as three days.

[More](#)

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**HN2**  **Pretrial Motions & Procedures, Continuances**

Ohio Rev. Code Ann. § 2945.72(H) states that the time within which an accused must be brought to trial,

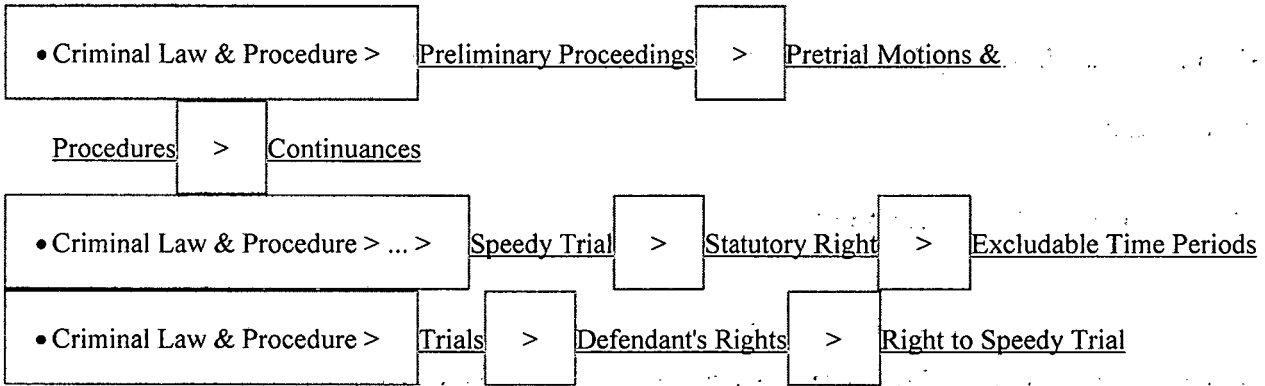
or, in the case of felony, to preliminary hearing and trial, may be extended by the following: the period of

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.

[More like this Headnote](#)

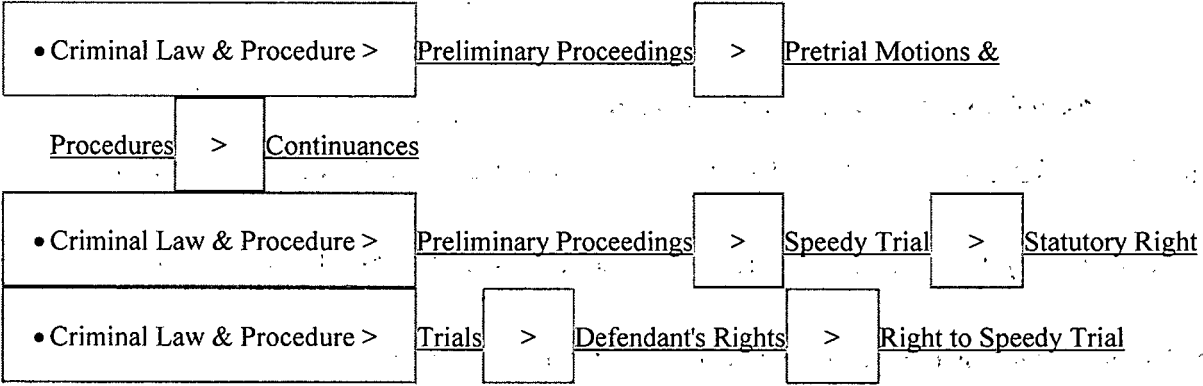
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**HN3** Pretrial Motions & Procedures, Continuances

A trial court which chooses to exercise its discretion under Ohio Rev. Code Ann. § 2945.72(H) to sua sponte continue a defendant's cause should do so prior to the expiration of the statutory period prescribed by Ohio Rev. Code Ann. § 2945.71 . More like this Headnote

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**HN4** Pretrial Motions & Procedures, Continuances

Prior to the expiration of the statutory time limit under Ohio Rev. Code Ann. § 2945.71 , defendant is entitled to one of the following: (1) a trial on the charges or, (2) if his case is being continued by the

court or prosecutor, the reason he is not being tried. Since a court may only speak through its journal, it is

necessary that such an entry be spread upon its journal prior to the expiration of the statutory time

limit.

[More like this Headnote](#)

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7

• Criminal Law & Procedure >

[Preliminary Proceedings](#) >

[Pretrial Motions &](#)

[Procedures](#) >

[Continuances](#)

• Criminal Law & Procedure > ... >

[Speedy Trial](#) >

[Statutory Right](#) >

[Excludable Time Periods](#)

• Criminal Law & Procedure >

[Trials](#) >

[Defendant's Rights](#) >

[Right to Speedy Trial](#)

**HNS**

[Pretrial Motions & Procedures, Continuances](#)

When sua sponte granting a continuance under

[Ohio Rev. Code Ann. § 2945.72\(H\)](#),

a trial court

must enter the order of continuance and the reasons therefor by journal entry prior to the expiration of the

time limits prescribed in

[Ohio Rev. Code Ann. § 2945.71](#)

for bringing a defendant to trial.

[More like this Headnote](#)

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29

• Criminal Law & Procedure >

[Trials](#) >

[Defendant's Rights](#) >

[Right to Speedy Trial](#)

• Criminal Law & Procedure >

[Preliminary Proceedings](#) >

[Speedy Trial](#) >

[General Overview](#)

• Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > Statutory Right

**HN6** Defendant's Rights, Right to Speedy Trial

The speedy trial statutes are mandatory and must be strictly enforced.

[More like this Headnote](#)

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## Headnotes/Summary

### Headnotes

*Criminal law -- Speedy trial -- Sua Sponte continuance entered after expiration of time limit -- Order must be entered prior to expiration of time limit -- R.C. 2945.75(H).*

### Syllabus

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[\*6] O.Jur 3d Criminal Law § 1104.

When *sua sponte* granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance and the reasons therefor by journal entry prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial.

On July 28, 1980, appellee, Charles Mincy, was arrested and charged with aggravated robbery. Appellee was thereafter continuously incarcerated. Trial was scheduled for October 23, 1980, which would have been appellee's eighty-seventh day of incarceration.

Appellee's trial counsel was contacted by court personnel on October 23, [\*7] 1980, the trial date, and informed that the trial would not begin that day. No journal entry was filed at that time setting forth the reasons

for the continuance. A scheduling conference was held on October 30, 1980, appellee's ninety-fourth day of confinement. Trial was then reset for November 5, 1980, the one-hundredth day of appellee's confinement.

On the day of trial, appellee moved to dismiss the charges under R.C. 2945.71. The trial court overruled the motion and the case proceeded to trial. The jury found appellee guilty on November 7, 1980. By entry dated November 14, 1980 appellee was sentenced to serve seven to twenty-five years in the Columbus Correctional Facility. On November 18, 1980, the trial court filed a journal entry overruling appellee's motion to dismiss.

[\*\*2] The court of appeals reversed appellee's conviction and ordered him discharged on the ground that appellee had not been brought to trial within the time limit prescribed by R.C. 2945.71.

The cause is now before this court upon allowance of a motion for leave to appeal.

**Counsel:** *Mr. Lee C. Falke*, prosecuting attorney, and *Mr. Ted E. Millspaugh*, for appellant.

*Mr. Jack H. Berger*, for appellee.

**Judges:** CELEBREZZE, C.J., W. BROWN, SWEENEY and KRUPANSKY, JJ., concur. LOCHER, HOLMES and C. BROWN, JJ., dissent.

**Opinion by:** CELEBREZZE, C.J.

## Opinion

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[\*\*572] The sole issue to be determined in this appeal is whether a trial court may wait until after the expiration of [\*\*3] the statutory time within which a criminal defendant must be brought to trial to file its journal entry continuing the case and setting forth the reasons for granting the continuance.

**HNI** R.C. 2945.71(C)(2) provides that a person against whom a felony charge is pending shall be brought to trial within two hundred seventy days after his arrest. R.C. 2945.71(E) states that for purposes of computing time under R.C. 2945.71(C)(2), each day during which the accused is held in jail in lieu of bail on the pending charge is counted as three days. Appellee was arrested on July 28, 1980 and was immediately placed in custody and remained in jail. As a consequence, appellee should have been brought to trial on or before October 27, 1980.

However, **HN2** R.C. 2945.72 states:

"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:

"\* \* \*

"(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."

Thus, the time limit provisions in R.C. 2945.71 are flexible to a degree. In fact, this [\*\*\*4] court has on several occasions determined that *sua sponte* extensions beyond the time prescribed in R.C. 2945.71 were reasonable. See, e.g., *State v. Lee* (1976), 48 Ohio St. 2d 208 [2 O.O.3d 392], and *Aurora v. Patrick* [\*8] (1980), 61 Ohio St. 2d 107 [15 O.O.3d 150]. A close inspection of these cases reveals that the continuances were made by journal entry *prior* to the expiration of the time limit in R.C. 2945.71.

In *State v. Montgomery* (1980), 61 Ohio St. 2d 78 [15 O.O.3d 119], where we upheld the discharge of the defendant, it was stated:

**HN3** " \* \* \* [A] trial court which chooses to exercise its discretion under R.C. 2945.72(H) to *sua sponte* continue a defendant's cause should do so prior to the expiration of the statutory period prescribed by R.C. 2945.71. In the instant cause, it is uncontroverted that the court's action under the authority of R.C. 2945.72(H) occurred after the expiration of the statutory period within which appellee should have been brought to trial." *Id.* at 8].

[\*\*573] In the case *sub judice*, the state argues that because the trial was set within the ninety day period and the continuance was reasonable, [\*\*\*5] no violation of R.C. 2945.71 occurred even though no entry had been

made prior to the expiration of the ninetieth day. [1] We cannot agree. This court has previously condemned after-the-fact extension and does not find it to be a meaningful distinction that appellee's trial was initially scheduled within the statutory time limit. The General Assembly has placed a burden upon the prosecution and the courts to try criminal defendants within a specified time after arrest. If we were to follow the state's reasoning, the only burden upon the prosecution and the courts would be to assure that a trial is scheduled within the appropriate time limit as long as it could subsequently be explained why the defendant was not brought to trial within the statutory time frame. It is obvious such reasoning does not comport with the purposes of the speedy trial statutes. See *State v. Pudlock* (1975), 44 Ohio St. 2d 104 [73 O.O.2d 357]; *State v. Siler* (1979), 57 Ohio St. 2d 1 [11 O.O.3d 1].

[\*\*\*6] It is undisputed that in the case *sub judice* the ninety day period within which appellee was to be brought to trial expired before the trial court filed a journal entry continuing the case. Consequently, we find

that appellee, **HN4** prior to the expiration of the statutory time limit, was entitled to one of the following: (1) a trial on the charges or, (2) if his case was being continued by the court or prosecutor, the reason he was not being tried. Since a court may only speak through its journal, it is necessary that such an entry be spread upon its journal prior to the expiration of the statutory time limit. See, e.g., *Andrews v. Bd. of Liquor*



*Control* (1955), 164 Ohio St. 275 [58 O.O. 51]; *Schenley v. Kauth* (1953), 160 Ohio St. 109 [51 O.O. 30]. [2]

[\*\*7] [9] We therefore hold that, *HNS* when *sua sponte* granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance and the reasons therefor by journal entry prior to the expiration of the time limits prescribed in R.C. 2945.71 for bringing a defendant to trial. Accordingly, the judgment of the court of appeals is affirmed. [3]

**Dissent by:** HOLMES, J., dissenting.

## Dissent

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The judgment of the court of appeals should be reversed. The intent of the General Assembly in enacting, and the public purpose served by the enactment of, the so-called "speedy trial" statute, R.C. 2945.71, [\*\*8] was to bring a criminally accused person to trial within a reasonable time frame. As to the computation of time, the section provides that an incarcerated person must be brought to trial within ninety days from [\*\*574] date of arrest. R.C. 2945.72(H) provides that the time within which an accused may be brought to trial may be extended for certain specific reasons set forth therein. One of such reasons contained in subsection (H) is:

"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.* " (Emphasis added.)

It is clear that this court has stated that where a trial court has failed to set a trial date for one criminally accused prior to the running of the statutory time, a continuance thereafter will be held to be unreasonable. *State v. Montgomery* (1980), 61 Ohio St.2d 78 [15 O.O.3d 119]; *State v. Siler* (1979), 57 Ohio St. 2d 1 [11 O.O.3d 1]; *State v. Pudlock* (1975), 44 Ohio St. 2d 104 [73 O.O.2d 357].

Conversely, this court has held that when the trial date is set within the statutory time set forth in R.C. 2945.71, and an entry [\*\*9] is made by the trial court prior to the running of that time, the continuance will be held to be reasonable where there are crowded docket conditions. *State v. Lee* (1976), 48 Ohio St. 2d 208 [\*10] [2 O.O.3d 392]; see, also, *Aurora v. Patrick* (1980), 61 Ohio St. 2d 107 [15 O.O.3d 150](continuance proper for legal holiday).

The facts of the instant case should reasonably bring this court to the same conclusion as did the latter group of cases in that, unlike the facts in *Siler*, *Pudlock* and *Montgomery*, the record here affirmatively demonstrates that the defendant's case was set for trial within the time limitation of the statute and, equally important, this record contains sufficient evidence to demonstrate both the *necessity* and *reasonableness* of the continuance.

The record specifically shows that the trial judge became aware on the date originally set for trial that he would still be engaged in a criminal trial which had been commenced a number of days earlier. Such information was conveyed to counsel for the defendant on the date set for trial, and counsel was at such time given a scheduling conference date.

Thus, the instant case [\*\*\*10] is clearly not one involving any attempt or ploy by either the prosecution or the trial court to undercut the provisions of the "speedy trial" statute, or the legislative intent behind such law. The mere mechanical failure of the trial court to record its continuance prior to the expiration of the statutory time limits should not invalidate such good faith continuance which was, in my view, within the spirit and intent of the statute.

The invalidation of the *sua sponte* continuance in this case by the court of appeals and the majority of this court, merely because such entry was not recorded until after the expiration of the ninety-day period constitutes a disregard for the recognized principle that R.C. 2945.72 was enacted by the General Assembly because strict time limits for trials could not be imposed in all instances. The unreasonably strict interpretation of this section of law as evidenced by the opinion of the majority unfortunately allows a convicted criminal to again roam the streets and offer a potential threat to society. Such a determination renders the speedy trial law a sword against, rather than a shield for, the best societal interest.

Therefore, I would [\*\*\*11] reverse the court of appeals.

LOCHER and C. BROWN, JJ., concur in the foregoing dissenting opinion.

**Footnotes**

- 1  
Today's decision should in no way be construed as passing on the reasonableness of the grounds for the *sua sponte* continuance in the case at bar. That issue is clearly not before us.

- 2  
  
This provision does not place an undue burden on the trial court. The statute mandates a trial within a specified time. If it should develop that the trial cannot go forward as scheduled, it necessarily follows that the events which would force postponement of the trial would come to the attention of the trial court on or before the scheduled trial date. Thus, it is reasonable to conclude that a trial court should be able to prepare and file a journal entry before the statutory time limit expires.

In the case at bar, the trial court knew on the eighty-seventh day of appellee's confinement that the trial would not be held as scheduled. As a result, the trial court had three days to prepare and file a journal entry continuing appellee's case before the ninety-day period elapsed. We believe the trial court had ample time to file a journal entry explaining to the appellee why his trial date was extended beyond the statutory time period.

- 3

We are reluctantly aware that our decision requires that appellee, convicted by a jury of a serious offense, be discharged and that another prosecution on this charge is barred. R.C. 2945.73(D).

However, we are equally mindful that we have consistently held that HN6 the speedy trial statutes are mandatory and must be strictly enforced. *State v. Pachay* (1980), 64 Ohio St. 2d 218, 221 [18 O.O.3d 427].



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COUNTY OF COMMON PLEAS  
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MONTGOMERY CO, OHIO  
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Montgomery County Common Pleas Court  
General Division

H

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CRIMINAL DIVISION

STATE OF OHIO,  
  
Plaintiff,

CASE NO. 2010 CR 01126

JUDGE MICHAEL L. TUCKER

v.

DECISION, ENTRY AND ORDER  
OVERRULING DEFENDANT'S MOTION  
TO SUPPRESS

DENNIS D. JACKSON,  
  
Defendant.

This matter is before the Court on the Defendant's Motion to Suppress filed on May 19, 2010. For the reasons set forth on the record on July 28, 2010, the court overrules Defendant's Motion to Suppress. This case is scheduled for a Final PreTrial on August 25, 2010 at 8:45 a.m.

SO ORDERED  
  
JUDGE MICHAEL L. TUCKER

SANDRA HOBSON  
JENNY DENSLOW  
ASSISTANT PROSECUTING ATTORNEY  
301 W SECOND STREET, 5<sup>TH</sup> FLOOR  
P. O. BOX 972  
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MICHAEL MONTA  
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(937) 890-6921  
Attorney for Defendant

ANN M SCOTT, Bailiff (937) 225-4448

APPX. P



IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.

:

DENNIS D. JACKSON

:

2018-0577

CASE NUMBER

Relator,

:

vs.

:

NEIL TURNER

:

WRIT OF HABEAS CORPUS

Respondent.

:

:

---

PETITION

---

DENNIS D. JACKSON #645-759  
North Central Correctional Complex  
P.O. BOX 1812  
Marion, OH 43301

**PRO SE**

NEIL TURNER - WARDEN  
670 Marion Williamsport Rd.  
Marion, OH 43301

**RESPONDENT**

APPX. Q

TO: THE SUPREME COURT OF OHIO, COUNTY OF FRANKLIN

The Petition of DENNIS D. JACKSON, for a Writ of Habeas Corpus, respectfully shows to this Court and alleges:

1. I AM illegally imprisoned, held in custody, confined, and restrained of my liberty at the North Central Complex, private prison of Marion County, and the officer or person by whom my body is so restrained is the Defendant above-named, the warden of North Central Correctional Complex.

2. I have not been committed and detained by virtue of any valid final judgment or decree, or any final order, mandate or process, by a Court having Subject-Matter Jurisdiction.

3. The course or pretense of such imprisonment or restraint, according to my best knowledge and belief, is a commitment issued by Montgomery County Court of Common Pleas, County of Montgomery, based upon an indictment in which I continues to assert my innocence, charging me with the crime of murder, aggravated robbery, aggravated burglary, felonious assault, and firearm specifications, a copy of which commitment is annexed hereto, marked "Exhibit A", and made part hereof.

4. Petitioner herein sets forth before this Honorable Court (2) claims of Subject-Matter Jurisdiction, and also INVOKES pursuant Article IV., Section 2(B)(1)(f), this Court's original jurisdiction vested to it by the Ohio Constitution to calculate and make a complete determination of the exact number of days tolled against the State of Ohio leading up to his September 20, 2010, trial date as if it were the Montgomery County Court of Common Pleas, which pursuant Article IV., Section 2(B)(3) no law nor rule SHALL prevent invocation.

I. PETITIONER IS IN CUSTODY, IN VIOLATION OF HIS RIGHT TO LIBERTY PURSUANT THE 1ST AND 14TH AMENDMENT OF THE U.S. CONST., AND ARTICLE I., SECTIONS 2 AND 16 OF THE OHIO CONST., DUE TO LACK OF SUBJECT-MATTER JURISDICTION OF THE MONTGOMERY COUNTY, COURT OF COMMON PLEAS IN ITS CASE NO. 2010-CR-1126, REQUIRING HIS IMMEDIATE RELEASE AND DISCHARGE PURSUANT ORC 2725.06 AND 2725.07.

LAW:

ORC 2725.01 provides: "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a Writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation."

ORC 2725.06 provides: "When a petition for a Writ of habeas corpus is presented, if it appears that the writ ought to issue, a court or judge authorized to grant to grant the writ must grant it forthwith."

ORC 2725.07 provides: "When a Writ of habeas corpus is granted, the clerk shall forthwith issue said Writ under seal of such court. In case of an emergency, the judge who allowed the Writ may issue it under his own hand, and dupte any officer or other person to serve it."

ARGUMENT:

Petitioner asserts he has a clear legal right to challenge the subject-mater jurisdiction of the Montgomery County, Court of Common Pleas in Case No. 2010-CR-1126 at any time. See e.g., U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed. 2d 860 ("Subject-matter jurisdiction, because it involve a Court's power to hear a case, can never be forfeited or waived. Consequently defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district Court.") Id. at [\*\*\*LedHR3].

He also asserts because subject-matter jurisdiction cannot be waived, that all acts of a Court which have followed thereafter are void, see e.g., Miller v. Miller, 132 Ohio St. 3d 381, 2012 Ohio 2845, 972 N.E. 2d 568, Id. at [\*P12], (Citing Cochran's Heir' Lessee v. Loring, 17 Ohio 409, 423(1848); holding "The distinction is between the lack of power. In the first instance all acts of the Court not having jurisdiction or power are void.") Id at.

432; also State v. Wilson, 73 Ohio St. 3d 40, 46, 652 N.E. 2d 196 ("A party's failure to challenge a Court's subject-matter jurisdiction cannot be used in effect to bestow jurisdiction where there is none").

Petitioner was arrested and charged on April 5th, 2010. A scheduling conference was set for 5/5/10, which counsel by way of filed motion, on 4/28/10, requested said conference be continued until 5/19/10, which was granted. On May 19th, 2010, a motion to suppress was filed and set for 7/7/10. On 7/7/10 a oral hearing for motion to suppress was held, and by request of the Trial Court sua sponte was continued until 7/28/10, awaiting decision.

On August 30, 2010, trial was set to begin, and proceed with jury selection, which over objections of defendant and defense counsel was continued at the request of the state until September 20th, 2010.

Before start of the September 20, 2010, trial date, the Montgomery County Court of Common Pleas, having lost prior to the 20th, subject-matter jurisdiction over information, complaint, indictment, and body of Petitioner, the state of Ohio brought Petitioner before the Trial Court, and knowingly with malicious intent proceeded with trial, judgment, sentencing, and incarceration, acting where it failed to retain power or authority. Now leaving all acts thereof and thereafter the oral hearing on November 10, 2010, concerning Petitioner's motion to dismiss for the state's failure to bring him to trial within his 90 day statutory time period as established pursuant ORC 2945.71 - 2945.73.

Petitioner now incorporates his argument as set forth in his "Motion To Invoke Original Jurisdiction Pursuant Article IV., Section 2(B)(1)(f)/and Expand Record", and again herein INVOKES this Court's Original Jurisdiction pursuant Article IV., Section 2(B)(1)(f), for a necessary and complete



determination of the number of days which were chargeable to the state of Ohio up until the 20th of September, 2010, as ruling on the merits of this Claim I., requires such. As it is clear and well established law that a void order can be challenged in any Court. See e.g., Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907), ("Jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceeding in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings, 'and the rule prevails whether the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of the nation, the practice of chancery, or the municipal laws of the state'").

Petitioner next asserts that the trial judge after being notified of the jurisdictional issue by way of motion had a continual duty to inspect the record in respect to Petitioners 90 day trial violation before start of his Sept. 20, 2010 trial date, and at any point which subject-matter jurisdiction no longer appeared from the record of the case, the judge had a duty to dismiss the case as lacking subject-matter jurisdiction.

He continues that a judge acting in a case which he does not have subject-matter jurisdiction, he is acting unlawfully. See e.g., U.S. v. Will, 449 U.S. 200, 216 101 S.Ct. 471, 66 L.Ed. 2d 392, 406 (1980); also see Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed. 257 (1821).

Petitioner goes on to assert, that where the validity of subject-matter jurisdiction is challenged, the trial judge has a duty to settle and resolve any dispute completely, within the law, and/or statutes which are said to offend, limit, or extinguish completely subject-matter jurisdiction of the Court being challenged.

Furthermore, the judge and Trial Court which did not have subject-matter jurisdiction, has not only violated the law, but is also a trespasser of the law. See e.g., Elliott v. Peirsol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ("Without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to recovery sought, even prior to reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences, are considered, in law as trespassers. This distinction runs through all cases on the subject; and it proves that the jurisdiction of any court exercising authority over a subject, may be inquired into in every court..."); also see In re TIP-PA-HANS Enterprises, INC., 27 B.R. 780, 783 (1983), (when a judge acts "outside the limits of his jurisdiction, he becomes a trespasser.")

**Trespasser:** is defined in Black's Law Dictionary (6th Edition) as "one who has committed an unlawful interference with one's person, property or rights.

Petitioner has in respectfully requesting this Court to exercise its original jurisdiction pursuant Article IV., Section 2(B)(1)(f), of the Ohio Const., see e.g., DeRolph v. State, 747 N.E.2d 823, Id. at [\*\*\*2] ("Section 2(B)(1)(f), Article IV provides:

"The Supreme Court shall have original jurisdiction in the following:  
"(f) In any cause on review as may be necessary to its complete determination" has asked for a complete factual determination and application of law, in making a full resolution in which the Trial Court upon presentation of the present issue failed to fully address, and the Court of Appeals presented with the same issue also failed to fully address such, in which this Court denied to accept jurisdiction. Being the last and only adequate remedy, without continued economical judicial loss, able to avoid potential future

litigation, as considering the factual question as to the amount of days which expired, as chargeable to the state of Ohio, up until Sept. 20, 2010, has never been calculated as fact by the record. This is an fact which must be settled by this Court before review of this claim can fairly be attended.

Petitioner now asks this Honorable Court to grant this WRIT as it is for a prima facie showing that the Montgomery County Court of Common Pleas, lacked subject-matter jurisdiction in its Case No. 2010-CR-1126.

litigation, as considering the factual question to the amount of days which

b1 M: eimwl

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CASE INFORMATION

GENERAL INFORMATION

Case: GEN-2018-0577 Habeas Corpus Case

Filed: 04/25/2018

Case is open

State of Ohio, ex. rel. Dennis D. Jackson

v.

Neil Turner, Warden

PARTIES and ATTORNEYS

Dennis D. Jackson; Petitioner, Appearing Pro Se

Neil Turner; Respondent (Warden)

Represented by: Richard DeWine, Counsel of Record

DOCKET ITEMS

- 04/25/18 Petition for writ of habeas corpus of Dennis D. Jackson  
*Filed by: Dennis D. Jackson*
- 04/25/18 Motion to invoke this court's original jurisdiction pursuant to Article IV, Section 2(B)(1)(f) and expand/create default record  
*Filed by: Dennis D. Jackson*
- 04/25/18 Affidavit of indigence  
*Filed by: Dennis D. Jackson*
- 04/25/18 And motion to proceed in forma pauperis with request for leave  
*Filed by: Dennis D. Jackson*
- 05/01/18 Motion for evidentiary hearing  
*Filed by: Dennis D. Jackson*

\*\*\*\*\* End of case information \*\*\*\*\*

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(Wednesday, November 10, 2010, 11:41 a.m.)

THE COURT: We're going to do Mr. Jackson first only because it's going to be -- not because the motion is any less serious but just based upon the nature of the motion, it's going to take less time to articulate my decision.

THE PROSECUTOR: Certainly, Your Honor. That's Case No. 2010-CR-1126. That's State of Ohio versus Dennis Jackson; Mike Monta on his behalf

MR. MONTA: Over here, Judge, or up at the?

THE COURT: Up -- at the podium is fine, Mike.

MR. MONTA: Okay.

THE COURT: We are, of course, here based upon the motion to dismiss filed on Mr. Jackson's behalf by his attorney, Mr. Monta. That's based upon the concept of double jeopardy.

It's the contention of Mr. Jackson, through Mr. Monta, that double jeopardy was -- that jeopardy was triggered by the mistrial in this case and based upon the particular circumstances leading to this Court declaring a mistrial in the trial previously.

Also, Mr. Jackson, on his own behalf, has filed a motion to dismiss, really, on two bases. First, upon the issue of double jeopardy -- which I'm going to talk about in a moment -- and also based upon the fact that his speedy trial rights have been violated. I'll talk about that separately in just a

APPX. R

1 few moments.

2           Going first then to the motion to dismiss upon the basis  
3 that jeopardy has attached and a second trial would violate the  
4 constitutional prohibition against double jeopardy. I  
5 initially note that it is axiomatic that a mistrial that occurs  
6 at a defendant's request -- which is what happened here --  
7 usually does not trigger application of the concept of double  
8 jeopardy and that in most cases when there has been a mistrial  
9 declared at a defendant's request that is not an event that  
10 precludes a retrial of the defendant or the recommencement of  
11 the trial of the defendant.

12           There is an exception to that and that is when the State,  
13 through misconduct of the prosecutor -- and such conduct must  
14 be calculated to cause a mistrial -- does, in fact, cause a  
15 mistrial.

16           And, Mr. Jackson, I went back and I reviewed the testimony  
17 that caused this mistrial to occur. And, of course, that's the  
18 testimony from Mr. Sims where he thought it appropriate to  
19 allow the jury to know that he had taken a polygraph and that  
20 is, obviously, what triggered Mr. Monta, on your behalf, to  
21 request a mistrial. And, of course, at that point, I decided  
22 that a mistrial was appropriate and so declared one.

23           I went back and looked at that testimony and there is  
24 nothing in that testimony or nothing in the record leading up  
25 to that testimony that would establish, even remotely -- even

1 remotely -- any prosecutorial misconduct.

2 Mr. Sims' comment about the fact that he took a polygraph  
3 was not even remotely responsive to the question that had been  
4 posed. Mr. Sims, in a completely gratuitous manner, simply  
5 offered up this information, I'm sure, with the thought that it  
6 would somehow bolster his credibility.

7 Further, the record reflects -- and this is unrebutted,  
8 this is unrebutted -- that Mr. Jackson -- excuse me -- that Ms.  
9 Denslow addressed the issue of the polygraph with Mr. Sims and  
10 told him that he could not mention the polygraph but  
11 nonetheless he chose to do so.

12 Mr. Sims' decision to ignore this admonition cannot be  
13 placed upon the State. This is not a situation where the State  
14 did anything to cause this mistrial. There is absolutely no  
15 prosecutorial misconduct involved and there was no activity  
16 engaged in by the State in an effort to intentionally cause a  
17 mistrial.

18 I understand the thought that this sequence of events  
19 might have ended up being beneficial to the State, arguably.  
20 But that's not the analysis, the constitutional analysis, that  
21 is required and -- nor the factual analysis required.

22 And, based upon the analysis that I've just gone through,  
23 I will overrule the motion to dismiss based upon the fact that  
24 jeopardy has not attached and the double jeopardy clause does  
25 not preclude the trial against Mr. Jackson being recommenced



1 and, let's hope, finished one way or another.

2 Mr. Jackson, on the motion you filed on the basis that  
3 your speedy time has expired, I note a couple of things.  
4 Number one, the statute that you have referred to does state,  
5 essentially, that if you are incarcerated -- which, obviously,  
6 you are -- the State has 90 days from your arrest to bring you  
7 to trial.

8 However, that time can be stopped, tolled, for certain  
9 reasons including the motion to suppress that was filed and was  
10 considered by this Court and decided by this Court. And when  
11 we commenced your trial, you were within the speedy trial time  
12 frame.

13 And once a mistrial has been declared, then the State has  
14 a reasonable time to bring you to trial once again. And the  
15 schedule that we have put together here, especially in light of  
16 the motion to dismiss which had to be considered and decided,  
17 is certainly well within any reasonable period to retry you.

18 And so I'm going to overrule that motion, as well.

19 THE DEFENDANT: (Nodding head.)

20 THE COURT: Anything further, Michael?

21 MR. MONTA: No.

22 THE COURT: All right.

23 MR. MONTA: Thank you, Judge.

24 THE COURT: Anything from the State?

25 THE PROSECUTOR: (Indiscernible - background noise.)



IN THE COMMON PLEAS COURT OF MONTGOMERY

FILED COURT OF COMMON PLEAS CASE NO. 2010 CR 01126

2010 JUL -8 A 10:55

GREGORY A. BRUSH CLERK OF COURTS MONTGOMERY CO. OHIO 37

STATE OF OHIO,

Plaintiff,

-vs-

DENNIS DEVONE JACKSON

Defendant.

ORDER OF APPEARANCE

You are hereby ORDERED to appear for a:

	<u>DATE</u>	<u>TIME</u>
Scheduling Conference:	_____	_____
Motion to Suppress:	_____	_____
Final Pre-Trial:	_____	_____
Trial:	_____	_____
Probation Report:	_____	_____
I.L.C. Report:	_____	_____
Probation Revocation:	_____	_____
Other (Specify): <i>Written Supp</i>	<i>7/21/10</i>	
<i>Decision on motion</i>	<i>7/28/10</i>	<i>11:00</i>

DEFENDANT IS REQUIRED TO BE PRESENT AT ALL ABOVE DATES AND TIMES

*Michael L. Tucker*  
Judge Michael L. Tucker

Defense Attorney: MICHAEL L MONTA

Prosecuting Attorney: SANDRA HOBSON

APPX. 5



FILED  
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2010 NOV 10 P 2:22  
GREGORY A. BRUSH  
CLERK OF COURTS

Montgomery County Common Pleas Court  
General Division

H

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CRIMINAL DIVISION

STATE OF OHIO,

CASE NO. 2010 CR 01126

Plaintiff,

JUDGE MICHAEL L. TUCKER

v.

DECISION, ENTRY AND ORDER  
OVERRULING DEFENDANT'S  
MOTIONS TO DISMISS

DENNIS D. JACKSON,

Defendant.

This matter is before the Court on the Defendant's Motion to Dismiss filed on November 4, 2010, Pro Se and October 8, 2010, by Counsel. For the reasons set forth on the record on November 10, 2010, the court overrules both Motions to Dismiss.

SO ORDERED:

\_\_\_\_\_  
JUDGE MICHAEL L. TUCKER

SANDRA HOBSON  
JENNIFER DENSLOW  
ASSISTANT PROSECUTING ATTORNEY  
301 W SECOND STREET, 5<sup>TH</sup> FLOOR  
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Attorney for Defendant

ANN M SCOTT, Bailiff (937) 225-4448

APPX. T

PENGAD 800-837-6888  
EXHIBIT  
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