

[Cite as *State v. Dix*, 2010-Ohio-378.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23176
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CRB-3008
v.	:	
	:	(Criminal Appeal from Dayton
SHAWNTA R. DIX	:	Municipal Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of February, 2010.

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JOHN J. DANISH, by STEPHANIE L. COOK, Atty. Reg. #0067101, and EDWARD C. UTACHT, II., Atty. Reg. #0022225, City of Dayton Prosecutor's Office, 335 West Third Street, Room 372, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

GLEN H. DEWAR, Atty. Reg. #0042077, Law Office of the Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Shawnta Dix appeals from her conviction of disorderly conduct. She contends her conviction should be set aside because she was denied a speedy trial pursuant to R.C. 2945.21.

{¶ 2} Dix was originally charged in Dayton Municipal Court with assault and

disorderly conduct. The complaint was served by summons on her on March 7, 2008. She was arraigned on March 18, 2008, and at a pretrial on April 23, 2008, trial was set for May 28, 2008. At the pretrial, the court consolidated Ms. Dix's case with that of Tony Dix in Case No. 2008-CRB-3009. Tony Dix had requested a jury trial in his case. On May 29, 2008, appellant requested a continuance of her trial and the matter was set for a pretrial on June 2, 2008. On that date, the trial court set appellant's trial for the next available jury date with Case No. 2008-CRB-3009. The court noted in its pretrial entry that appellant would be filing a jury trial demand within 48 hours and the time for trial was extended for good cause shown.

{¶ 3} On June 5, 2008, Ms. Dix filed a jury demand as she indicated she would. On June 11, 2008, the trial court set the matter for trial on July 17, 2008. On July 7, 2008, the trial court continued the trial for the next available jury trial date with the companion case. The court stated the trial was reset because of the crowded nature of the court's jury trial docket. On July 9, 2008, Ms. Dix filed a motion to dismiss asserting the State had failed to bring her to trial within the time mandated by R.C. 2945.71. The trial court overruled the motion on August 11, 2008.

{¶ 4} R.C. 2945.71 provides in pertinent part:

{¶ 5} "(B) * * * a person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record, shall be brought to trial as follows:

{¶ 6} " * * *

{¶ 7} "(2) Within ninety days after the person's arrest or the service of

summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.”

{¶ 8} The time of pendency may be tolled pursuant to R.C. 2945.72. As it pertains to this case, the time is tolled for: “(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.” R.C. 2945.72. However, “[i]n granting R.C. 2945.72(H) continuances ‘other than upon the accused’s own motion,’ in other words at the request of the State or sua sponte by the court, the reasons for the continuance must be included in the court’s journal entry.” *State v. Knight*, Greene App. No. 03-CA-014, 2005-Ohio-3179, at ¶ 30.

{¶ 9} In her appellate brief, Ms. Dix argues that the continuance granted her on March 29 tolled the time for trial by only two days since the court granted the State’s motion for a continuance made on June 2, 2008. Ms. Dix argues that 113 days expired from the date she was issued a summons on the complaint and her motion to dismiss.

{¶ 10} Eighty-two days elapsed before Ms. Dix filed her motion for a continuance for possible mediation of the case. There is no record of a continuance motion granted the State. Time is tolled by the period of any continuance granted upon the accused’s own motion. The court continued the matter for trial until July 17, 2008. The period from May 29, 2008 until July 17, 2008 was tolled pursuant to the statute. Before that time expired, Ms. Dix moved to dismiss the charges against her, but only 82 days had expired and the trial court appropriately overruled her

motion to dismiss.

{¶ 11} The appellant's assignment of error is Overruled. Judgment affirmed.

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FAIN and FROELICH, JJ., concur.

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