

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-160391
		C-160392
Plaintiff-Appellant,	:	TRIAL NOS. 15CRB-28066A
		15CRB-28066B
vs.	:	
GALE THOMPKINS,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellee.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

The state of Ohio appeals the trial court’s dismissal of misdemeanor charges against defendant-appellee Gale Thompkins on speedy-trial grounds. In two assignments of error, the state argues that the trial court erred by finding that the offenses were misdemeanors of the fourth degree, and by miscalculating the speedy-trial time.

The complaints against Thompkins alleged that she failed to keep “vicious” dogs confined or under reasonable control, in violation of R.C. 955.22(D)(1). The complaints listed the offenses as misdemeanors of the first degree.

In her motion to dismiss, Thompkins alleged that, contrary to what was stated in the complaint, the offenses were misdemeanors of the fourth degree, subject to the

45-day speedy-trial time in R.C. 2945.71(B)(1). In its initial response to Thompkins' motion, the state argued that the charges were first-degree misdemeanors, and that therefore, it had 90 days to try Thompkins pursuant to R.C. 2945.71(B)(2).

Then, at the hearing on the motion, the state explicitly reversed its position and informed the court that the offenses were fourth-degree misdemeanors that had to be tried within 45 days. In addition, the state noted that the complaints had incorrectly referred to the dogs as "vicious," rather than "dangerous," and that "when you look at the penalty for dangerous dogs, it is in fact [a fourth-degree misdemeanor]." The state's remarks were significant because the classification of a dog as "dangerous" rather than "vicious" affects the degree of seriousness of a violation of R.C. 955.22. The trial court, relying on the state's representation, determined the offenses to be fourth-degree misdemeanors.

On appeal, the state now argues that the trial court erred in determining the offenses to be fourth-degree misdemeanors. However, because the state elected to proceed on fourth-degree misdemeanor "dangerous" dog charges, we cannot say that the trial court erred by accepting the state's position. We overrule the first assignment of error.

Next, the state contends that only 28 days of speedy-trial time had elapsed, so even if the offenses were fourth-degree misdemeanors, the charges should not have been dismissed. The parties agree that the 28-day period between service of the summons on October 2, 2015, and the initial court appearance on October 30, 2015, was chargeable against the state, and that Thompkins had waived time from that appearance to the first trial setting on December 7, 2015.

The state contends that a *capias* had been issued for Thompkins on December 7, and that the 22-day period between December 28, 2015, and January 19, 2016,

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should be counted against Thompkins for speedy-trial purposes. *See* R.C. 2945.72(D). However, the record reflects that no *capias* had been issued on December 7, and that the matter had been continued at Thompkins' request for pretrial to December 28. The court's December 28 entry reflected that the case was continued for trial to January 19, at neither party's request, so that 22-day period was chargeable to the state. *See State v. Singer*, 50 Ohio St.2d 103, 109, 362 N.E.2d 1216 (1977). Therefore, because more than 45 days of speedy-trial time had elapsed, the trial court properly dismissed the complaints. Accordingly, we overrule the second assignment of error and affirm the judgments of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 18, 2016

per order of the court _____.
Presiding Judge