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

STATE OF OHIO,	:	APPEAL NO. C-250657 TRIAL NO. 25/CRB/19032
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY*
RAUQUELLE SMITH,	:	
Defendant-Appellee.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/2/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hensley
Administrative Judge

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STATE OF OHIO,	:	APPEAL NO. C-250657 TRIAL NO. 25/CRB/19032
Plaintiff-Appellant,	:	
vs.	:	*O P I N I O N*
RAUQUELLE SMITH,	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 2, 2026

Emily Smart Woerner, City Solicitor, *Susan M. Zurface*, Chief Prosecuting Attorney, and *Sean A. Witt*, Assistant Prosecuting Attorney, for Plaintiff-Appellant,

Angela W. Chang, Hamilton County Public Defender, and *Lora Peters*, Assistant Public Defender, for Defendant-Appellee.

NESTOR, Judge.

{¶1} After the trial court dismissed two charges for want of prosecution, defendant-appellee Rauquelle Smith argued that the State was out of time to bring him to trial on a third charge. The trial court agreed and dismissed his final charge.

{¶2} The State now appeals the dismissal, claiming error regarding the procedure used by trial court and the merits of the speedy trial calculation. Because the trial court has discretion to entertain oral motions, we disagree with the State on its argument under the first assignment of error. We do, however, agree that the State was still within its statutory time to bring Smith to trial. We therefore reverse the trial court's judgment and remand the cause for further proceedings.

I. Factual and Procedural History

{¶3} Plaintiff-appellant the State of Ohio appeals the trial court's grant of Smith's motion to dismiss for violation of his speedy trial rights. The underlying facts of the charges are not relevant to this appeal. The procedural history, however, is relevant.

{¶4} On October 8, 2025, the State charged Smith with two offenses: one count of domestic violence and one count of aggravated menacing.

{¶5} On October 28, the State filed an additional charge for assault. This charge was based on the same facts and circumstances as the domestic violence and aggravated menacing charges.

{¶6} On October 29, the trial court dismissed the domestic violence and aggravated menacing charges, as the State had indicated that the prosecuting witness did not intend to testify.

{¶7} On October 30, Smith filed a discovery demand on the "new" assault charge. Smith had previously filed for and received some discovery on the domestic

violence and aggravated menacing charges. Thus, because the assault charge was based on the same underlying facts, Smith argues that this discovery demand was "merely a formality." The State responded to this discovery demand on November 16.

{¶8} The case was set for trial on November 17. At that hearing, Smith orally moved to dismiss the assault charge, arguing that the State had violated his speedy trial rights.

{¶9} The State objected to the motion to dismiss. The State argued that an oral motion did not give it adequate notice, and that "there should be a formal one written and filed, so the State can respond properly."

{¶10} In response, defense counsel argued that the State bears the burden of ensuring a defendant is brought to trial within the speedy trial time. Therefore, defense counsel contended, "[T]he argument that [the prosecutor is] not prepared because he didn't receive a written motion is not persuasive, because he needs to be prepared in every single case to ensure the Court that they're within time."

{¶11} The trial court then, sua sponte, called the assignment commissioner to testify about the number of days chargeable to the State. Both defense counsel and the prosecutor participated in questioning the assignment commissioner. The parties discussed multiple speedy trial calculations but never agreed upon a definitive count.

{¶12} The State, in closing, renewed its objection to the oral motion. Defense counsel countered by reiterating the argument that the speedy trial clock had run out.

{¶13} The trial court granted the motion to dismiss, stating, "I'll tell you what. Motion to dismiss is granted. If it's out of time, it's out of time. If it's not out of time, you can refile it." The trial court did not make a specific finding as to how many days counted against the speedy trial clock.

{¶14} The State now appeals.

II. Analysis

{¶15} The State presents two assignments of error for our review. First, the State argues that the trial court erred in granting Smith's oral motion to dismiss, when the State was not given an opportunity to respond in writing. Second, the State argues that the trial court erred in dismissing the charge because the statutory speedy trial time had not expired.

A. First Assignment of Error

{¶16} The State's first assignment of error argues that the trial court erred by ruling on Smith's oral motion to dismiss. The State contends that because Smith did not file a written motion, the State did not have an adequate opportunity to prepare for and respond to the motion.

{¶17} Crim.R. 47 governs motions in criminal proceedings. Under this rule, "application[s] to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally."

{¶18} Crim.R. 12(F) provides further guidance. "The court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means."

{¶19} The plain language of Crim.R. 47 and 12 make it clear that trial courts may, at their discretion, hear motions orally without written briefing. *See State v. Baker*, 92 Ohio App.3d 516, 531 (8th Dist. 1993) ("It is well settled that a trial court may permit a motion to be made orally."). Our review then, of the manner of how a trial court may hear a motion to dismiss, is for an abuse of discretion.

{¶20} A trial court abuses its discretion by ruling on a motion to dismiss without providing the nonmoving party any opportunity to respond. *See Hillabrand*

v. Drypers Corp., 87 Ohio St.3d 517, 519 (2000); *State v. Palivoda*, 2006-Ohio-6494, ¶ 14 (11th Dist.); *State v. Corrao*, 2015-Ohio-5052, ¶ 13 (3d Dist.).

{¶21} The State cites *Palivoda* for the proposition that Crim.R. 47 and 12 "require (expressly and impliedly) the opportunity for both parties to submit their positions." *Palivoda* at ¶ 13. The State argues that here, the trial court did not provide the State with a reasonable opportunity to respond to the motion to dismiss.

{¶22} *Palivoda* is not analogous to the facts at hand. In *Palivoda*, the trial court did not provide the appellant the opportunity to submit *any* response to the motion to dismiss. *Id.* at ¶ 14. Here, the State had the opportunity to participate in the hearing, question the assignment commissioner, and present an argument as to why the speedy trial clock was tolled. "[D]ue process is satisfied when the court provides a party with a fair opportunity to be heard." *In re Guardianship of Burrows*, 2007-Ohio-4764, ¶ 32 (11th Dist.).

{¶23} While the State might have preferred the trial court to adjudicate the motion to dismiss in a different way, the trial court did not abuse its discretion in permitting an oral motion to dismiss.

{¶24} We overrule the first assignment of error.

B. Second Assignment of Error

{¶25} The State's second assignment of error contends that the trial court erred in granting Smith's motion to dismiss because the speedy trial time had not yet expired.

{¶26} Our review of a speedy trial claim presents a mixed question of law and fact. *State v. King*, 2026-Ohio-2393, ¶ 16 (1st Dist.), citing *State v. Brown*, 2026-Ohio-1541, ¶ 22 (1st Dist.). "We defer to the trial court's factual findings if some competent, credible evidence supports them, but we review de novo the court's

application of the law to those facts." *Id.*, citing *Brown* at ¶ 22.

{¶27} Here, the trial court did not make a specific determination of how many days counted towards the speedy trial clock. But by granting Smith's motion to dismiss, the trial court made a finding that Smith's speedy trial rights had been violated.

{¶28} R.C. 2945.71 requires the State to bring a defendant charged with a first- or second-degree misdemeanor to trial within 90 days of arrest. *Id.* at ¶ 18, citing *Brown* at ¶ 23. If a defendant remains in jail in lieu of bond, each day counts as three days for purposes of computing speedy trial time. *Id.* at ¶ 20, citing R.C. 2945.71(E). Thus, as Smith was in jail here, the State had 30 days to bring him to trial. *Id.*

{¶29} "'[W]hen new and additional charges arise from the same facts as did the additional charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge.'" *State v. Adams*, 43 Ohio St.3d 67, 68 (1989), quoting *State v. Clay*, 9 Ohio App.3d 216, 216 (11th Dist. 1983). Smith was arrested and charged on October 8 for aggravated menacing and domestic violence. But the trial court dismissed those two charges on October 29. On October 28, the State filed a new charge for assault, based on the same facts and circumstances that gave rise to the two original charges.

{¶30} Because Smith's later assault charge was based on the same facts as the original domestic violence and aggravated menacing charges, the speedy trial clock began to run on October 9, the day after his arrest. *See King*, 2026-Ohio-2393, at ¶ 19 (1st Dist.), citing *State v. Gage*, 2017-Ohio-8897, ¶ 9 (1st Dist.) (speedy trial clock begins to run the day after arrest).

{¶31} R.C. 2945.72 outlines circumstances which toll the speedy trial clock.

Id. at ¶ 18, citing *Gage* at ¶ 8. One such circumstance is when a defendant files a discovery demand. R.C. 2945.72(E).

{¶32} Smith filed a discovery demand on the assault charge on October 30. Smith had already filed for and received discovery on the initial charges, which, as noted, pertained to the same facts and circumstances as the assault charge. Thus, defense counsel argues, in this court and in the trial court, that the October 30 discovery demand was "merely a formality" and should not toll the speedy trial clock.

{¶33} We cannot find any case law that states a discovery demand is "merely a formality," and Smith does not offer any authority in support of that point. Accordingly, the October 30 discovery demand tolled the speedy trial clock from the filing of the demand until the State responded to the demand.

{¶34} The parties raise additional arguments pertaining to discovery demands that Smith filed in the aggravated menacing and domestic violence cases. As the trial court dismissed those charges, these demands are not in the record before us. We therefore decline to address those arguments.

{¶35} But even if, assuming without deciding, the October 30 demand was the only tolling event, the clock still did not exceed 30 days. The speedy trial clock stopped on October 30. The defense received responsive discovery on November 16. The case was set for trial on November 17. Under any reasonable calculation on the record before us, the State was within its statutory time to bring Smith to trial. Therefore, the trial court erred in granting Smith's motion to dismiss.

{¶36} The second assignment of error is sustained.

III. Conclusion

{¶37} The first assignment of error is overruled. The trial court was within its discretion to entertain an oral motion to dismiss.

{¶38} The second assignment of error, however, is sustained. Because Smith's right to a speedy trial has not been violated, the trial court erred in granting Smith's motion to dismiss. Accordingly, we reverse the trial court's judgment and remand the matter for further proceedings.

Judgment reversed and cause remanded.

BOCK, P.J., and **MOORE, J.,** concur.