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**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

2017 DEC 19 PM 3:29

BARBARA A. WIEDENBEIN  
CLERK OF COMMON PLEAS COURT  
CLERMONT COUNTY, OH

**STATE OF OHIO** :  
Plaintiff : **CASE NO. 2017 CR 000254**  
vs. : **Judge McBride**  
**AMY GILLES** : **DECISION/ENTRY**  
Defendant :

Darren D. Miller and Robert A. Herking, assistant prosecuting attorneys for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

Greg Hoffman, assistant public defender and counsel for the defendant Amy Gilles, 302 East Main Street, Batavia, Ohio 45103

This cause is before the court for consideration of the motion to dismiss filed by the defendant Amy Gilles on October 13, 2017. The court held a hearing on the motion on November 30, 2017. At the conclusion of the oral arguments of counsel, the court took the motion under advisement.

Upon consideration of the defendant's motion, the record of the proceedings, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

**FINDINGS OF FACT AND PROCEDURAL BACKGROUND**

On March 3, 2017, a complaint was filed against the defendant Amy Gilles in the Clermont County Municipal Court in Case No. 2017 CRA 00904 alleging that the defendant committed two counts of felonious assault, in violation of R.C. 2903.11(A)(2), felonies of the second degree. The state alleged that, on March 2, 2017, the defendant stabbed two individuals with a knife and that as a result, one victim received a cut on her arm causing a laceration, while the other received a laceration on her elbow.

On March 10th, Judge Jesse Kramig of the Municipal Court ordered the defendant to undergo psychiatric examinations to determine her present competency and her mental condition at the time of the charged offenses. Judge Kramig ordered the Community Diagnostic and Treatment Center (hereinafter referred to as "Court Clinic") to perform the evaluations.

On March 24<sup>th</sup>, based upon the opinion of the Court Clinic that the defendant was incompetent to stand trial, Judge Kramig ordered the defendant to attend up to one year of treatment at Summit Behavioral Healthcare ("Summit") in an effort to restore her competency. That same day, the defendant was transported from the Clermont County Jail to Summit.

Subsequently, on April 25<sup>th</sup>, the defendant was indicted by a grand jury in Clermont County on the same two counts of felonious assault in violation of R.C. 2903.11(A)(2). The defendant was not immediately arrested on the indictment. Instead, she remained at Summit, and on September 15<sup>th</sup>, Summit issued a report opining that the defendant was incompetent to stand trial and could not be restored to competency if she remained at Summit for the duration of her competency restoration period. That same day, Judge Kramig signed and filed an entry in the Municipal Court

dismissing the municipal court case, but included a hand written notation indicating that the entry was vacated.

The defendant was arrested on a warrant on the indictment in Common Pleas Court on September 18th. On September 19<sup>th</sup>, she was arraigned in the Clermont County Court of Common Pleas on the two felonious assault charges in the indictment. To that indictment, the defendant entered a plea of not guilty by reason of insanity. That same day, defense counsel filed a suggestion of incompetence and a motion to have a psychiatric evaluation of the defendant's present mental condition. On the same day, the court ordered Summit to evaluate the defendant's present mental condition. The examiner's opinion was that the defendant appeared to be a person with a major mental illness and an intellectual disability subject to institutionalization by court order.

On October 13th, the defendant filed a motion for dismissal, or in the alternative, for a hearing pursuant to R.C. 2945.38(H). The court ordered, on October 27th, that the defendant undergo a separate intellectual disability evaluation conducted by a psychologist.

The state filed a motion in opposition to the motion to dismiss on November 13th. The defendant filed her reply in support of the motion on November 27th. On November 30<sup>th</sup>, the court heard oral arguments as to the motion, and at the conclusion of the arguments, the court took the motion under advisement.

On December 13<sup>th</sup>, the court requested that Summit provide an additional opinion as to whether the defendant is a mentally ill person subject to court order, as defined in R.C. 5122.01(B) and/or whether she is a person with an intellectual disability subject to institutionalization by court order, as defined in R.C. 5123.01(O). As indicated in the

entry, upon receiving the examiner's report, the court will determine at a future hearing whether to retain jurisdiction under R.C. 2945.39(A)(2).

## STANDARD OF REVIEW

Courts are authorized to consider a criminal defendant's motion to dismiss pursuant to Crim.R. 12(C), which allows for pretrial motions.<sup>1</sup> More specifically, under Crim.R. 12(C), before trial "any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue."<sup>2</sup> Furthermore, Crim.R. 12(F) provides that "[t]he court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means."<sup>3</sup> Under Crim.R. 12(F), the court is charged with stating "its essential findings on the record" when a motion involves "factual issues" that must be determined.<sup>4</sup>

"Crim.R. 12(C) 'makes clear that a pretrial motion to dismiss can only raise matters that are capable of determination without a trial on the general issue.'"<sup>5</sup> Accordingly, a motion to dismiss under Crim.R. 12(C) "cannot reach the merits or substance of the allegations."<sup>6</sup> Moreover, when deciding a motion to dismiss, "a trial court is precluded from considering whether the prosecution could prove the elements

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<sup>1</sup> *State v. Gaines*, 193 Ohio App.3d 260, 2011-Ohio-1475, 951 N.E.2d 814, ¶¶ 15-16 (12th Dist.).

<sup>2</sup> Crim.R. 12(C).

<sup>3</sup> Crim.R. 12(F).

<sup>4</sup> Crim.R. 12(F).

<sup>5</sup> *Gaines*, 2011-Ohio-1475 at ¶ 16, quoting *State v. Riley*, 12th Dist. Butler No. CA2001-O4-095, 2002 WL 4484, \* 2.

<sup>6</sup> *Gaines*, 2011-Ohio-1475 at ¶ 16, citing *State v. Peters*, 8th Dist. Cuyahoga No. 92791, 2009-Ohio-5836, ¶ 7.

of the charged offense.”<sup>7</sup> Finally, “Crim.R. 12 permits a court to consider evidence beyond the face of the indictment when ruling on a pretrial motion to dismiss an indictment *if the matter is capable of determination without trial of the general issue.*”<sup>8</sup>

## LEGAL ANALYSIS

The court finds that it is not required to dismiss the defendant’s case due to the fact that she did not have a court hearing within 10 days from the date that Summit determined on September 15th, in response to a request of the Clermont County Municipal Court, that the defendant’s competency could not be restored.

To begin with, the Municipal Court did not have jurisdiction to continue proceedings after the defendant was indicted on April 25th. As such, this court is not required to follow a competency hearing timeline that the Municipal Court set in motion while it had no authority to continue presiding over the case. Second, even if this court was required to hold a hearing within 10 days from September 15th, but failed to do so, such failure does not divest this court of jurisdiction because the 10-day time frame in R.C. 2945.38(H) is directory, not mandatory.

As an initial matter, the Municipal Court was permitted by statute to have the defendant’s competency to stand trial evaluated and to thereafter commit the defendant for treatment to restore her competency for trial. Under R.C. 2945.37(H) and R.C. 2945.38(B)(1)(a), courts, including a Municipal Court, are permitted to commit a

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<sup>7</sup> *Gaines*, 2011-Ohio-1475 at ¶ 16, citing *State v. Palmer*, 1st Dist. Franklin Nos. 09AP-956, 09AP-957, 2010-Ohio-2421.

<sup>8</sup> (Emphasis original.) *Gaines*, 2011-Ohio-1475 at ¶ 17, quoting *Sate v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 3.

defendant for treatment when the defendant has been found incompetent to stand trial. R.C. 2945.37(H) provides: "If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 of the Revised Code." In turn, R.C. 2945.38(B)(1)(a) provides:

"If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment."<sup>9</sup>

Accordingly, the issue is not whether the Municipal Court was allowed initially to commit the defendant for treatment at Summit to restore her competency. As the above statutes illustrate, that was within the Municipal Court's powers. The problem is that the Municipal Court lost jurisdiction to continue to make such orders once the defendant was indicted.<sup>10</sup>

In examining jurisdiction, "[m]unicipal courts are created by statute, R.C. 1901.01, and their subject-matter jurisdiction is also set by statute."<sup>11</sup> Pursuant to R.C. 1901.20, a municipal court has jurisdiction to conduct proceedings in a felony case before the case is presented to a grand jury or the accused waives his or her right to

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<sup>9</sup> R.C. 2945.38(B)(1).

<sup>10</sup> This court has no information as to why the Municipal Court continued to make orders once its jurisdiction had been lost. It may be that the Municipal Court was unaware of the pendency of the indictment. Or alternatively the Court may have believed that it continued to have jurisdiction. The court further has no information as to why the Sheriff did not serve the indictment, which may have been because the defendant was at Summit, or why the prosecutor's office failed to proceed with the prosecution of the indictment in Common Pleas Court for some five months after the defendant was indicted.

<sup>11</sup> *State v. Davis*, 12th Dist. Butler No. CA2017-04-049, 2017-Ohio-8535, ¶ 13, quoting *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶ 11.

indictment. Specifically, R.C. 1901.20 provides: ""The municipal court has jurisdiction to hear felony cases committed within its territory. In felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant \* \* \*."12 In accordance with the statute, Ohio courts have found that, before the indictment, municipal courts have the authority to hear felony cases.13 Thus, "once a grand jury returns an indictment," the municipal court loses jurisdiction and "has no further authority over the determination of the case."14

Under R.C. 1901.20 and the above-cited case law, it is clear that the Municipal Court did not have the authority to further order the defendant's treatment at Summit once she was indicted by a grand jury on April 25th. However, despite the loss of the Municipal Court's jurisdiction, the defendant's treatment at Summit was continued. On September 19<sup>th</sup>, the Municipal Court dismissed the case following a report from Summit on September 15th concluding that the defendant could not be restored to competency to stand trial within the allotted time period.

This court has been unable to identify case law that precisely fits the facts of this case, and the parties have not submitted a case squarely on point either. There is no case, to the court's knowledge, indicating whether a court of common pleas is bound by competency proceedings held in a municipal court during which time the municipal court lacked jurisdiction to conduct the proceedings. Based upon the jurisdictional statute and related case law, the court concludes that the Municipal Court did not have the authority to further commit the defendant to Summit or to conduct additional

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<sup>12</sup> (Emphasis added.) R.C. 1902.20(B).

<sup>13</sup> *State v. Williams*, 6th Dist. No. WD-07-079, 2008-Ohio-2730, ¶ 11, citing R.C. 1901.20(B).

<sup>14</sup> *State v. Zima*, 8th Dist. Cuyahoga No. 80824, 2002-Ohio-6237, ¶ 43 (Kilbane, P.J., concurring in part and dissenting in part), citing R.C. 1901.20(B), Crim.R. 5(B)(4), and *State v. Chavez*, 10th Dist. Franklin No. 96APA04-508, 1996 WL 737583 (Dec. 26, 1996).

competency hearings, and as such, this court cannot be bound by the Municipal Court's unauthorized proceedings.

This court acknowledges that the defendant was held at Summit for treatment for several months during which time the municipal court had no further authority to hold her there. The court does not know what the defendant's recourse is under these circumstances for the time she was held. But it is evident that the recourse is not to bind this court to the municipal court's unauthorized decisions.

Setting the jurisdiction issue aside, the defense argues that, once the defendant was found non-restorable by Summit on September 15th, in municipal court, this court had a duty to hold a hearing under R.C. 2945.38(H) within 10 days. Because the court did not do so, the defense posits that the court has lost jurisdiction over this case and it must be dismissed.

As discussed, the court does not believe it was required to have competency hearings, including an R.C. 2945.38(H) hearing, based on the timeline the municipal court would have been required to follow had it maintained its jurisdiction over the defendant. However, even if the court assumed *arguendo* that the defendant was correct, and that this court was required to hold an R.C. 2945.38(H) hearing within 10 days from September 15th, the court finds that its failure to do so does not divest it of jurisdiction. R.C. 2945.38(H) provides, in relevant part:

"(H) If a defendant is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the

expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after a defendant's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the defendant is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial \* \*

\* <sup>16</sup>

As quoted above, a defendant is committed under R.C. 2945.38(B)(1) (which is required to trigger a Subsection (H) hearing) when a court has ordered the defendant to undergo treatment after finding the defendant incompetent to stand trial, but there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment.<sup>16</sup> Hence, under R.C. 2945.37(B)(1) and R.C. 2945.38(H), a court must hold a hearing to determine if the defendant is competent to stand trial once the examiner advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment.

The defendant posits that a failure to comply with the 10-day timeline to hold the hearing results in a loss of jurisdiction, providing grounds for the court to dismiss the defendant's charges. The state counters that the language in R.C. 2945.38(H), providing for a 10 day time frame to hold a hearing, is directory by the legislature, and does not constitute a mandate, and that as a result the court does not lose jurisdiction by failing to hold a timely hearing.

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<sup>15</sup> R.C. 2945.38(H).

<sup>16</sup> R.C. 2945.38(B)(1).

The Ohio Supreme Court has explained: "As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure."<sup>17</sup> A time provision is directory "unless the object or purpose of a statutory provision requiring some act to be performed within a specified period of time is discernable from the language employed."<sup>18</sup> As such, a statutory time requirement will be considered jurisdictional only where it " \* \* \* evinces an object or purpose to limit a court's authority \* \* \*."<sup>19</sup> To illustrate a jurisdictional time requirement, the time provision in R.C. 2941.401, involving speedy trial rights, states that if the action is not timely brought then "no court has jurisdiction thereof, the indictment \* \* \* is void, and the court shall enter an order dismissing the action with prejudice."<sup>20</sup>

Only a few cases have determined whether time limits in R.C. 2945.38 are directory or jurisdictional, but the few that have addressed the issue have concluded that they are directory. The Tenth District Court of Appeals addressed this issue in *State v. McClelland*, 10th Dist. Franklin No. 07AP-253, 2007-Ohio-2660. The defendant argued that the trial court committed reversible error when it failed to hold a hearing within the 10-day time frame mandated in R.C. 2945.38(H).<sup>21</sup> The court acknowledged that "[p]rompt actions in such situations such as that presented by [the defendant's] situation is important," however "the legislature's ten-day time limit does not deprive a

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<sup>17</sup> *State v. Bellman*, 86 Ohio St.3d 208, 210, 714 N.E.2d 381 (1999), quoting *State ex rel. Jones v. Farrar*, 146 Ohio St. 467, 66 N.E.2d 541 (1946), paragraph one of the syllabus.

<sup>18</sup> *Bellman*, 86 Ohio St.3d at 210, quoting *State ex rel. Jones*, 146 Ohio St. at paragraph one of the syllabus.

<sup>19</sup> *Bellman*, 86 Ohio St.3d at 210.

<sup>20</sup> *Id.*, quoting R.C. 2941.401.

<sup>21</sup> *State v. McClelland*, 10th Dist. Franklin No. 07AP-253, 2007-Ohio-2660, ¶ 2.

trial court of jurisdiction to act."<sup>22</sup> As such, the court overruled the defendant's appeal on that issue.<sup>23</sup>

The Second District Court of Appeals examined another subsection in R.C. 2945.38, that of (B)(1), in the case of *State v. Barker*, 2d Dist. Montgomery No. 20417, 2005-Ohio-298. In *Barker* the defendant argued that the trial court committed reversible error when it failed to hold a hearing within the required time period set forth in R.C. 2945.38(B)(1)(c).<sup>24</sup> That statutory provision requires that the court "shall hold a hearing on the petition [to medicate the defendant] \* \* \* within ten days of filing the petition \* \* \*," after which the court may authorize involuntary medication administration or may dismiss the petition.<sup>25</sup> The appellate court examined Ohio Supreme Court precedent, reflecting that, "[a]bsent an expression of intent in the statute to restrict the jurisdiction of the court when it is untimely, the failure to adhere to a time guideline in the statute does not divest the court of jurisdiction."<sup>26</sup> The court cited to a Ninth District Court of Appeals

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<sup>22</sup> *McClelland*, 2007-Ohio-2660 at ¶ 3, citing *State v. Barker*, 2d Dist. Montgomery No. 20417, 2005-Ohio-298, ¶¶ 26-27.

<sup>23</sup> *McClelland*, 2007-Ohio-2660 at ¶ 4. Of note, the defendant cites an additional case from the Tenth District Court of Appeals for the proposition that it is reversible error to fail to conduct an R.C. 2945.38(H) competency hearing when the record fails to reveal sufficient evidence of competency. That case, *State v. Thompson*, 10th Dist. Franklin Nos. 00AP-608, 00AP-609, 2001 WL 460859 (May 3, 2001), involved a defendant whose counsel moved for an examination of his competency to stand trial. Initially he was found incompetent, but after treatment, his treatment center reported to the trial court that his competency was restored. Thereafter the defendant was indicted and pled guilty to several counts of robbery without the trial court ever conducting an R.C. 2945.38(H) hearing. Although the court never conducted the hearing, the appellate court affirmed the defendant's guilty plea because the record showed elsewhere that the defendant had been restored to competency. This case is not instructive in the case at bar because the defendant is not being prevented from having a competency hearing. Instead the issue is whether the fact that it has not occurred within the 10-day timeline results in depriving the court of jurisdiction. By contrast, the *Thompson* case dealt with a situation in which the defendant did not receive any hearing, not simply an untimely one, before pleading guilty.

<sup>24</sup> *Barker*, 2005-Ohio-298 at ¶ 23.

<sup>25</sup> *Id.* at ¶ 25, quoting R.C. 2945.38(B)(1)(c).

<sup>26</sup> *Barker*, 2005-Ohio-298 at ¶ 25, citing *In re Davis*, 84 Ohio St.3d 520, 522-523, 705 N.E.2d 1219 (1999).

case involving an earlier version of R.C. 2945.38, which concluded that "the time guidelines in R.C. 2945.38 were directory, not mandatory."<sup>27</sup> The *Barker* Court found likewise, reasoning: "The statute does not demonstrate any intent on the part of the legislature to divest the court of jurisdiction if it fails to hold a timely hearing on the petition to medicate the defendant. As such we cannot say that the time provision was mandatory and divested the trial court of jurisdiction."<sup>28</sup>

The earlier case discussed in *Barker* was *State v. Ferguson*, 9th Dist. Medina No. 2380-M, 1999 WL 459325 (June 30, 1999). In *Ferguson* the defendant argued prior to trial, as the defendant does here, that the charges should be dismissed because the court failed to hold competency hearings within the statutorily established timeframes, which the trial court overruled.<sup>29</sup> One provision at issue was former R.C. 2945.38(F), which required the court to hold a competency hearing within 10 days upon receiving a report that the defendant was competent to stand trial or 14 days before the expiration of the maximum time in the court's order for restoration treatment should the defendant not be restored to competency.<sup>30</sup>

The defendant's treatment began on May 23, 1997, and the trial court received the competency evaluation on July 21, 1997.<sup>31</sup> The court did not hold a competency hearing until October 6, 1997.<sup>32</sup> The appellate court noted that the legislature could have provided for a loss of jurisdiction in the statute, yet it had not done so.<sup>33</sup> The court

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<sup>27</sup> *Barker*, 2005-Ohio-298 at ¶ 26, citing *State v. Ferguson*, 9th Dist. Medina No. 2380-M, 1999 WL 459325 (June 30, 1999).

<sup>28</sup> *Barker* at 2005-Ohio-298 at ¶ 27.

<sup>29</sup> *Ferguson*, 1999 WL 459325 at \*1.

<sup>30</sup> *Id.* at \*5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at \*7.

then highlighted that the Eighth District Court of Appeals has consistently found the time periods in R.C. 2945.37 and R.C. 2945.371(D) to be directory instead of mandatory.<sup>34</sup> Even though the word "shall" was employed in the statute, a time for performance of an official duty in a statute is construed as directory "unless the nature of the act to be performed or the phraseology of the statute or of other statutes relating to the same subject-matter is such that the designation of time must be considered a limitation upon the power of the officer."<sup>35</sup> The court concluded that R.C. 2945.27 and R.C. 2945.371 were analogous to the timelines set forth in R.C. 2945.38 and should be interpreted as not divesting the trial court of jurisdiction when violated.<sup>36</sup>

Notably, other time provisions in the competency and insanity statutes in R.C. 2945.37 through R.C. 2945.402, have been interpreted in the same way that R.C. 2945.38(H) was in *McClelland*, as directory. The Fourth District Court of Appeals reviewed a timeframe set forth in R.C. 2945.37 and R.C. 2945.371(G) in *State v. Hilyard*, 4th Dist. Vinton No. 05CA598, 2005-Ohio-4957. In *Hilyard* the defendant argued that the court did not comply with these two statutes by failing to hold a competency hearing within 10 days after a competency evaluation was filed, and by failing to have such evaluation filed with the court 30 days after it is ordered.<sup>37</sup> The state admitted that neither statutory timeframe was met.<sup>38</sup> In overruling this assignment of error, the appellate court highlighted that the Eighth and Ninth Districts had likewise reviewed the provisions and found them to be directory, not mandatory.<sup>39</sup> As such, the

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, quoting *State ex rel. Smith v. Barnell*, 109 Ohio St. 246, 255 (1924).

<sup>36</sup> *Ferguson*, 1999 WL 459325 at \*7.

<sup>37</sup> *State v. Hilyard*, 4th Dist. Vinton No. 05CA598, 2005-Ohio-4957, ¶ 24.

<sup>38</sup> *Id.* at ¶ 25.

<sup>39</sup> *Id.*

court concluded that "the Ohio General Assembly enacted those provisions to guide the procedure of competency evaluations, not to divest courts of jurisdiction if those time limits are not met."<sup>40</sup> Multiple other courts that have examined the competency and insanity statutes have consistently reached the same results.<sup>41</sup>

In turning back to R.C. 2945.38(H), its language does not establish that its time periods are for anything other than convenience and orderly procedure. It also fails to include any expression of intent to restrict the court's jurisdiction for untimeliness. The provision, then, is not jurisdictional. The court agrees with the reasoning set forth in *McClelland*, which specifically dealt with R.C. 2945.38(H), as well the other cases that have examined the competency statutes, in concluding that the 10-day time requirement to hold a hearing is directory. Accordingly, the charges against the defendant should not be dismissed.

## CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss is not well-taken and is hereby denied.

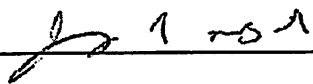
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<sup>40</sup> *Id.*

<sup>41</sup> See *State v. Polluck*, 2d Dist. Greene No. 2001-CA-32, 2002 WL 27489, \*3 (Jan. 11, 2002) (in examining R.C. 2945.40(B), which provides that a court must conduct a full hearing to determine whether an individual is mentally ill and subject to court-ordered hospitalization within 10-days after the court finds the defendant not guilty by reason of insanity, the court found the statute was not jurisdictional and the court had the ability to hold the hearing past the 10-day timeframe); *State v. Oliver*, 8th Dist. Cuyahoga No. 49613, 1985 WL 8138, \*4-5 (Oct. 17, 1985) (in examining former R.C. 2945.39, which required that a psychiatric examination be completed within 30-days and a hearing within 10-days, the court determined the time requirement was directory rather than mandatory); *State v. Foley*, 8th Dist. Cuyahoga No. 43843, 1982 WL 2418, \*2 (June 17, 1982) (in examining R.C. 2945.371(D) and R.C. 2945.37(A), discussed above, the court concluded that the 10-day requirement to hold a hearing after the filing of the report was directory rather than mandatory).

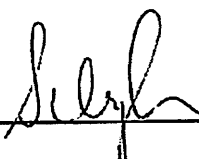
IT IS SO ORDERED.

DATED: 12-19-2017

  
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Judge Jerry R. McBride

**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the foregoing Decision/Entry were sent on this 19<sup>th</sup> day of December 2017 by e-mail to Darren Miller, at [dmiller@clermontcountyohio.gov](mailto:dmiller@clermontcountyohio.gov), and Robert A. Herking, at [rherking@clermontcountyohio.gov](mailto:rherking@clermontcountyohio.gov), Assistant Prosecuting Attorneys, and to Greg Hoffman, Attorney for the Defendant, at [ghoffman@clermontcountyohio.gov](mailto:ghoffman@clermontcountyohio.gov).

  
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Judicial Asst. to Judge McBride