

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

STATE OF OHIO,	:	APPEAL NO. C-180585
	:	TRIAL NO. 17CRB-16366
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BRYAN KANU,	:	
Defendant-Appellant.	:	

We consider this appeal 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.

Following a bench trial, defendant-appellant Bryan Kanu was convicted of telecommunications harassment in violation of R.C. 2917.21 and sentenced to 180 days' imprisonment. He appeals his conviction, raising eight assignments of error for our review.

In his first assignment of error, Kanu argues that the trial court erred in failing to recuse itself after Kanu raised the question of the court's bias against him and its inability to remain impartial during the proceedings. Kanu argues that the trial court's bias was demonstrated in its denial of all his pretrial motions and in the hostile comments that the court directed at him. Because Kanu has alleged that the trial court's actions violated his due-process rights and prevented him from receiving a fair trial, we have jurisdiction to review his claim of judicial bias. *State v.*

Loudermilk, 2017-Ohio-7378, 96 N.E.3d 1037, ¶ 20 (1st Dist.). Following our review of the record, we cannot find that the trial court’s comments demonstrated any hostile feelings or ill will towards Kanu, or any favoritism towards the state. Rather, the record indicates that the trial court based its rulings on the facts of the case and the applicable law. *Id.* at ¶ 21. Because the record does not demonstrate that the trial court was biased or that its actions deprived Kanu of a fair trial, we overrule the first assignment of error.

In his second assignment of error, Kanu argues that the trial court erred in denying his request for a pretrial hearing on the calculation of time remaining to bring him to trial. In response to a motion filed by Kanu captioned “Request for Official Time to Bring to Trial Report Hearing,” the trial court heard arguments from both Kanu and the state regarding the amount of time that remained to bring Kanu to trial, and concluded that Kanu’s right to a speedy trial had not been violated.

Because Kanu was charged with a first-degree misdemeanor, he had to be brought to trial within 90 days. R.C. 2945.71(B)(2). As Kanu established that he was not brought to trial within 90 days of his arrest, a prima facie violation of the speedy-trial statutes was established. *See State v. Gage*, 2018-Ohio-480, 104 N.E.3d 994, ¶ 7 (1st Dist.). The state bore “the burden to show that actions or events chargeable to the defendant have tolled enough time so that the defendant was tried within the speedy-trial period.” *Id.* Following our review of the record, we find that, excluding all periods of time in which the time to bring Kanu to trial was tolled pursuant to R.C. 2945.72, including all motions filed by Kanu, Kanu’s requested continuances, a competency evaluation of Kanu, and reasonable continuances issued at the court’s request, Kanu was brought to trial within the speedy-trial period. The court sufficiently addressed this issue with the parties, correctly determined that Kanu’s

right to a speedy trial had not been violated, and did not err in failing to conduct an additional hearing on the time remaining to bring Kanu to trial. The second assignment of error is overruled.

In his third assignment of error, Kanu challenges the trial court's denial of his motion to suppress and argues that the court erred in failing to hold a separate hearing to address that motion. Kanu had sought to suppress emails that the victim in this case had given to the police, alleging that they were unlawfully obtained. But Kanu has no standing to assert a third party's constitutional rights. *See State v. Schooler*, 2d Dist. Montgomery No. 20143, 2004-Ohio-3569, ¶ 18. Kanu further sought to suppress statements that he had given to the investigating officer, arguing that he had not been properly read his *Miranda* rights before speaking with the officer. But Kanu was never subject to a custodial interrogation, and *Miranda* warnings were not required. *See Cleveland v. Oles*, 152 Ohio St.3d 1, 2017-Ohio-5834, 92 N.E.3d 810, ¶ 9. Following our review of the record, we find that the trial court did not err in denying Kanu's motion to suppress. *See State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. And because the suppression motion on its face was without merit, the trial court did not abuse its discretion in denying that motion without a separate hearing. *See State v. Brown*, 9th Dist. Summit No. 23637, 2008-Ohio-2670, ¶ 34. The third assignment of error is overruled.

In his fourth assignment of error, Kanu challenges the trial court's denial of various pretrial motions that he had filed. Following our review of the record, we find that the trial court did not err in denying Kanu's various motions. First, we hold that the court did not abuse its discretion in denying his motion to compel discovery. *See Univ. Hosp. v. Campbell*, 1st Dist. Hamilton No. C-110285, 2012-Ohio-1909, ¶ 8.

The record reflects that, while Kanu represented himself at trial, his previous defense counsel had requested and received discovery from the state. And the prosecutor personally delivered physical copies of the discovery materials to Kanu approximately one week prior to trial. Nor did the court abuse its discretion in granting a motion to quash a subpoena that Kanu had issued to a county prosecutor who was involved in the prosecution of Kanu in an unrelated matter. *See Sugarcreek Amish Tours, Inc. v. Martin*, 2017-Ohio-9364, 102 N.E.3d 1075, ¶ 14 (5th Dist.). While Kanu argued that the county prosecutor had information relevant to impeaching witnesses in the case at bar, it was within the trial court's discretion to determine that Kanu had failed to establish how the information he sought to obtain from the prosecutor would assist in his defense and that Kanu sought to discover information that was protected work product.

We further hold that Kanu suffered no prejudice from the trial court's denial of his request for a bill of particulars. *See State v. Chinn*, 85 Ohio St.3d 548, 568-569, 709 N.E.2d 1166 (1999). The trial court correctly determined that the affidavit filed along with the complaint sufficiently informed Kanu of the date and time of the offense, as well as his actions that constituted the offense. Kanu had sufficient knowledge of the offense charged to prepare a defense.

We hold that the trial court did not abuse its discretion by denying Kanu's request for a continuance so that a hearing could be held on his motion to reconsider the court's previous denial of his pretrial motions. *State v. Mauldin*, 1st Dist. Hamilton No. C-030158, 2003-Ohio-6505, ¶ 6. The record indicates that the court thoroughly considered Kanu's motions and did not err in denying them, and that no additional hearing was necessary.

We have reviewed all pretrial motions filed by Kanu, including the ones specifically discussed above, and find no error in the trial court's denial of those motions.

Kanu further argues in this assignment of error that the trial court erred in the imposition of sentence. Kanu was convicted of a first-degree misdemeanor and sentenced to 180 days' imprisonment. This sentence fell within the applicable statutory range, and the trial court did not abuse its discretion in imposing sentence. *State v. James*, 1st Dist. Hamilton No. C-040215, 2005-Ohio-1996, ¶ 14; *State v. Hensley*, 6th Dist. Lucas No. L-18-1205, 2019-Ohio-2050, ¶ 4. The fourth assignment of error is overruled.

In the fifth assignment of error, Kanu challenges the sufficiency and weight of the evidence supporting his conviction. Kanu was convicted of telecommunications harassment in violation of R.C. 2917.21(B)(1), which provides that “[n]o person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person’s control, with purpose to abuse, threaten, or harass another person.”

The evidence presented at trial established that in February of 2017, victim Stephanie Malof filed a police report after receiving multiple emails from Kanu that made her uncomfortable. After the report was filed, Cincinnati Police Investigator Todd Ploehs spoke to Kanu and told him that Malof was uncomfortable with Kanu contacting her and that she did not want him to contact her again. Malof herself emailed Kanu, writing, “This is the last time I’m going to say this. You need to leave me alone. For the hundredth time I’m serious with someone. Leave me alone.” On May 23, 2017, Kanu began emailing Malof again. He sent her multiple emails until he was charged with telecommunications harassment on June 15, 2017. The emails

referenced his desire to be with Malof. In one email, Kanu acknowledged that he might have said things that scared Malof, while indicating that he never wanted to scare her again. The last email referenced that he had been researching diamond rings.

Kanu's actions of repeatedly emailing Malof after being told by both her and a police officer to stop contacting her demonstrate that he acted with a purpose to harass. We find that a rational trier of fact could have found all the elements of telecommunications harassment proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). We further find that this was not the rare case in which the trier of fact lost its way and created such a manifest miscarriage of justice in convicting Kanu that his conviction must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Kanu's conviction was supported by both the sufficiency and the weight of the evidence. The fifth assignment of error is accordingly overruled.

In his sixth assignment of error, Kanu argues that the prosecutor committed misconduct throughout the case. Kanu had filed a motion to dismiss the charge against him on the basis of prosecutorial misconduct, and he asks this court to consider whether the prosecutor committed misconduct for the reasons asserted in the motion to dismiss. While the lengthy motion to dismiss raised many complaints regarding the prosecutor's behavior, the crux of the motion alleged that the prosecutor had "maliciously" requested that Kanu undergo a competency evaluation. But nothing in the record indicates that the prosecutor filed the motion in bad faith or to destroy Kanu's credibility, as alleged by Kanu. We have considered all allegations raised by Kanu and, following our review of the record, find that the prosecutor committed no improper actions that affected Kanu's substantial rights.

See State v. Lott, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990); *State v. Talbert*, 1st Dist. Hamilton No. C-170247, 2019-Ohio-3163, ¶ 14. The sixth assignment of error is overruled.

In his seventh assignment of error, Kanu argues that the trial court erred in refusing to allow him to introduce evidence at trial to impeach the character of a witness. The trial court prohibited Kanu from questioning Investigator Ploehs about the date that Kanu was served with a temporary protection order in an unrelated case. We cannot find that the trial court abused its discretion in determining that this evidence was not relevant to the case at hand. *See State v. Barnes*, 1st Dist. Hamilton Nos. C-170355 and C-170356, 2018-Ohio-3894, ¶ 4. The seventh assignment of error is overruled.

In his eighth assignment of error, Kanu argues that the cumulative effect of all errors deprived him of his right to a fair trial. Having found no error in the proceedings below, harmless or otherwise, we overrule this assignment of error.

The judgment of the trial court is, accordingly, affirmed.

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.

MOCK, P.J., MYERS and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on October 9, 2019,
per order of the court _____.
Presiding Judge