

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24771

Appellee

v.

WILLIAM P. HENRICK

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 02 0412

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 10, 2010

Per Curiam.

{¶1} Appellant, William Henrick, appeals his conviction out of the Summit County Court of Common Pleas. This Court reverses.

I

{¶2} On February 2, 2008, Henrick was arrested. On February 14, 2008, Henrick was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(1), a felony of the second degree; and one count of domestic violence in violation of R.C. 2919.25(A), a felony of the third degree. Both charges arose out of an incident that allegedly occurred on February 2, 2008, involving Henrick's brother Thomas. Henrick entered a plea of not guilty at arraignment.

{¶3} The trial court issued an order upon Henrick's request, continuing the February 25, 2008 pretrial until March 10, 2008. The trial court continued the pretrial again upon Henrick's request until March 31, 2008. The trial court continued the pretrial a third time upon Henrick's request until April 14, 2008.

{¶4} In lieu of trial on May 29, 2008, Henrick pleaded guilty to an amended charge of assault in violation of R.C. 2903.13, a misdemeanor of the first degree; and the original charge of domestic violence, a felony of the third degree. The matter was referred for a pre-sentence investigation report and scheduled for sentencing on June 30, 2008. In lieu of sentencing on that date, however, the trial court allowed Henrick to withdraw his guilty plea. It does not appear that the State opposed the withdrawal of the plea.

{¶5} On September 9, 2008, Henrick, through new counsel, filed a motion for a bill of particulars, a request for notice of the State's evidence, and a request for discovery. On September 10, 2008, the trial court issued an order permitting Henrick's first attorney to withdraw, appointing alternate counsel, and continuing a status call until September 29, 2008, to allow time for Henrick to confer with new counsel.

{¶6} On September 29, 2008, Henrick filed a motion to suppress, motion in limine, and motion to dismiss or amend the indictment. These motions were brought relative to the third degree felony domestic violence charge. Henrick argued that one of his two prior convictions for domestic violence was uncounseled, requiring dismissal of the third degree felony domestic violence charge or its amendment to a fourth degree felony. Although there is no scheduling order in the record, Henrick filed a motion to continue the suppression hearing on September 31, 2008. The trial court continued it until October 27, 2008.

{¶7} Although unclear when the State made its request, on November 7, 2008, the trial court issued an order granting the State's motion to amend the charge of domestic violence from a felony of the third degree to a felony of the fourth degree. Henrick filed a motion to dismiss the amended charge for the reason that the change in the degree of the offense changed the identity of the offense in violation of Crim.R. 7(D). See *State v. Davis*, 121 Ohio St.3d 239,

2008-Ohio-4537, at syllabus. The State opposed the motion. On November 24, 2008, the trial court granted leave to the State to re-indict Henrick.

{¶8} On January 22, 2009, almost four months after it was appraised of the defect in Henrick’s prior domestic violence conviction, the State filed a supplemental indictment, charging Henrick with one count of domestic violence in violation of R.C. 2919.25(A), a felony of the fourth degree. The third degree felony charge of domestic violence remained pending as well. Henrick entered a plea of not guilty to the supplemental charge.

{¶9} On January 27, 2009, Henrick filed a motion to dismiss the supplemental indictment on speedy trial grounds which the State opposed. On February 18, 2009, the trial court denied Henrick’s motion to dismiss.

{¶10} Trial of the matter took place on April 14 and 15, 2009. Prior to trial, the State elected to dismiss the third degree felony charge of domestic violence. At the conclusion of trial, the jury found Henrick not guilty of felonious assault, but guilty of the fourth degree felony charge of domestic violence. The trial court sentenced him accordingly. Henrick filed a timely appeal, raising four assignments of error for review.

II.

ASSIGNMENT OF ERROR I

“THE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT REFUSED TO DISMISS THE DOMESTIC VIOLENCE COUNT PURSUANT TO THE SPEEDY TRIAL VIOLATIONS UNDER R.C. [§]2945.71, R.C. [§]2945.72, R.C. [§]2945.73, AND STATE V. OVERHOLD (sic), 9TH DIST. NO. 03CA0119-M, 2004-OHIO-4969.”

{¶11} Henrick argues that the trial court erred when in denied his motion to dismiss the supplemental charge of domestic violence on the grounds of speedy trial violation. This Court agrees.

{¶12} “When reviewing an appellant’s claim that he was denied his right to a speedy trial, this Court applies the de novo standard of review to questions of law and the clearly erroneous standard of review to questions of fact.” *State v. Downing*, 9th Dist. No. 22012, 2004-Ohio-5952, at ¶36. See, also, *State v. Hamlet*, 9th Dist. No. 04CA008527, 2005-Ohio-3110, at ¶15.

{¶13} The right to a speedy trial by the State is guaranteed to a criminal defendant by the Sixth and Fourteenth Amendments to the United States Constitution. *Klopfer v. North Carolina* (1967), 386 U.S. 213, 222-223. The same right is conferred to a criminal defendant by Section 10, Article I, Ohio Constitution. *State v. O’Brien* (1987), 34 Ohio St.3d 7, 8.

{¶14} R.C. 2945.71 et seq. is an enforcement mechanism to make sure the constitutional right to a speedy trial is upheld. *State v. Pachay* (1980), 64 Ohio St.2d 218, syllabus. R.C. 2945.71 dictates the time limits in which a defendant must be brought to trial. R.C. 2945.71(C)(2) provides that “[a] person against whom a charge of felony is pending *** [s]hall be brought to trial within two hundred seventy days after the person’s arrest.” R.C. 2945.72 sets out nine circumstances under which the time for speed trial may be extended, including “[a]ny period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused[.]” R.C. 2945.72(E).

{¶15} Preliminarily, we observe that the core problem in this case stems from the trial court’s ruling regarding the necessity of issuing a supplemental indictment rather than simply amending the original indictment. After becoming aware of the problem with the third degree felony domestic violence charge, the State initially sought to amend the charge. However, the trial court ruled that the State was required to supplement the indictment. The State apparently

disagreed with that ruling. However, the State has not challenged the trial court's rulings which led to the filing of the supplemental indictment.

{¶16} The trial court denied Henrick's motion to dismiss in reliance on the Ohio Supreme Court's decision in *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823. The *Blackburn* court held:

"In calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, periods of delay resulting from motions filed by the defendant in a previous case also apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case." *Blackburn* at syllabus.

{¶17} Henrick argues that *Blackburn* is inapplicable to his case because its narrow holding restricts its application to situations in which the State files new charges against a defendant in a subsequent case based on the same underlying facts and circumstances as in the prior case. Henrick argues that this case is on point with this Court's prior holding in *State v. Overholt*, 9th Dist. No. 03CA0119-M, 2004-Ohio-4969, which provides the applicable authority for the resolution of this matter.

{¶18} Although the State does not dispute that it filed a new charge within the same ongoing case based on the same underlying facts as the initial charges, it argues that *Blackburn* should nonetheless apply because the filing of the supplemental indictment after Henrick pleaded guilty and later withdrew his plea to the initial charges is analogous to the filing of new charges in a subsequent case. *Blackburn* involved three separately filed criminal actions, two of which were dismissed. We observe that the State did not provide any legal authority in support of its argument. Upon careful review of applicable precedent to this matter, this Court declines to expand the narrowly crafted holding in *Blackburn* to the instant circumstances. Instead, we rely

on established precedent of the Ohio Supreme Court and our prior precedent as enunciated in *Overholt*.

{¶19} *Overholt* involved a situation in which the defendant was initially indicted on one count of felonious assault as to only one of three victims. Ten months later, in the same case, the State issued a supplemental indictment, charging the defendant with three counts of aggravated menacing, one count as to each victim. *Overholt* moved to dismiss the supplemental indictment for failure to comply with R.C. 2945.71's speedy trial provisions. The trial court denied the motion, and this Court reversed. In reliance on the Ohio Supreme Court's holding in *State v. Homan* (2000), 89 Ohio St.3d 421, 428, this Court stated:

"R.C. 2945.72(E) does provide that a criminal defendant's filing of a pretrial motion may extend the time within which the defendant is to be brought to trial. However, this provision does not apply to extend the time in which the defendant is to be brought to trial on additional, related charges brought by the prosecution subsequent to the filing of the motion." *Overholt* at ¶10.

{¶20} *Homan* presented the question whether any periods of delay occasioned by the defendant's filing of a motion as to one charge should also apply to a subsequently filed charge, specifically "whether R.C. 2945.72(E) applies where the filing of the motion [by the defendant] precedes the filing of the [supplemental] criminal charge." *Homan*, 89 Ohio St.3d at 428. *Homan* was initially charged with a DUI and filed a motion to suppress in connection with that charge. She was subsequently charged with child endangering and the State sought to apply the period of delay resulting from the motion to suppress filed in connection with the first charge to the subsequent charge. Acknowledging that the extension of speedy trial time occasioned by 2945.72(E) is strictly construed in favor of the defendant, the *Homan* court held that "R.C. 2945.72(E) does not apply to charges filed by the state after the defendant's motion is filed." *Id.* In so holding, the *Homan* court expressed concerns regarding the potential overreaching of the

State. In considering the objective sought to be achieved by the legislature, the court reasoned that manifest prejudice inures to a criminal defendant who would otherwise be compelled to defend “piecemeal” charges. *Id.* The court further acknowledged that “[w]hen a defendant is unaware of the precise nature of the crimes charged, he or she cannot make informed and intelligent tactical decisions about motion filings and other matters.” *Id.*

{¶21} In *Overholt*, we also acknowledged the Ohio Supreme Court’s holding in *State v. Baker* (1997), 78 Ohio St.3d 108, 110, that “in issuing a subsequent indictment, the state is *not* subject to the speedy-trial timetable of the initial indictment, when additional criminal charges arise from facts *different* from the original charges, or the state did *not* know of these facts at the time of the initial indictment.” (Emphasis added.) *Overholt* at ¶11. In *Baker*, a pharmacist was indicted for drug trafficking. After the charges were brought, records that had been seized were audited and as a result of the audit, the State filed supplemental indictments for drug trafficking. The *Baker* court thus considered the issue whether “charges filed in a subsequent indictment run from the date of the defendant’s original arrest, with time tolled during the State’s audits of seized evidence, or whether the statute allows the state a new time period from the date of the subsequent indictment.” *Baker*, 78 Ohio St.3d at 110. In determining that the State would not be subject to the speedy trial timetable of the initial indictment under circumstances where the charges either arose from facts different than the original charge or the state did not know of facts at the time of the initial indictment, the *Baker* court balanced the right of the accused with the public’s interest in obtaining convictions of persons who have committed offenses against the State. It concluded that to require the State to bring additional charges within the time period of the initial indictment when the State could not have had any knowledge of the additional charges

until investigating the later-seized evidence, would undermine the State's ability to prosecute elaborate or complex crimes. *Id.* at 111.

{¶22} We then distinguished the situation in *Overholt* from the situation in *Baker*, noting that the additional charges arose from the *same* facts and circumstances as those relevant to the initial charge and that the State *was aware* of those facts and circumstances at the time of the initial indictment. *Overholt* at ¶11. Therefore, Overholt must have been brought to trial on any such supplemental charges within 270 days after his arrest irrespective of any time which had tolled with regard to the initial charge prior to the filing of the supplemental indictment. *Id.* at ¶12.

{¶23} In light of *Baker* and *Homan*, we concluded that the State could not take advantage of any time tolled by Overholt's filing of motions in regard to the initial charge to extend the time in which the defendant must be brought to trial on the supplemental charges. *Id.* at ¶9. Noting that more than 270 days had already elapsed since Overholt's arrest by the time the State filed its supplemental indictment, we reversed the trial court's dismissal of the defendant's motion to dismiss the supplemental indictment.

{¶24} In *Blackburn*, the Ohio Supreme Court was confronted with issues very distinct from *Baker*, *Homan* and *Overholt*. In *Blackburn*, the defendant was charged with illegal conveyance of weapons in violation of R.C. 2921.36. The State dismissed the charge. The State then charged Blackburn with a violation of R.C. 2921.36 as well as conspiracy. While the case was pending, Blackburn filed a request for discovery and also filed a motion for continuance, both of which were tolling events. The State again dismissed the charge and the case was dismissed. The State then brought a new case against Blackburn. This time Blackburn was charged with trafficking drugs in violation of R.C. 2925.03 and conspiracy. Blackburn moved to

dismiss the charge on speedy trial grounds. The State argued that the delay that resulted from Blackburn's motions in the second case should apply to the third case. It was undisputed that the 270-day speedy trial period began as of the date Blackburn was arrested.

{¶25} Unlike *Homan*, *Baker* and *Overholt*, which considered the effect of a subsequent indictment during the pendency of a single, on-going case, the *Blackburn* court was faced with considering the application of the speedy trial statute where the State had dismissed multiple cases against the defendant. The *Blackburn* court narrowly framed the question before it, stating that “the narrow issue before us is whether to include the delays resulting from defense motions filed in [the second case] in calculating speedy trial time.” *Blackburn* at ¶12. In answering that question, the *Blackburn* court issued an equally narrow holding in which it determined that “in calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, periods of delay resulting from motions filed by the defendant in a previous case also apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.” *Id.* at syllabus.

{¶26} In its analysis, the *Blackburn* court acknowledged its prior holding in *Homan*. It further declined to apply its prior holding in *Homan*, distinguishing that case, in part, on the basis of the disparate natures of the pretrial motions filed in each case. *Id.* at ¶20. However, the *Blackburn* court first noted that “[t]his case differs from [] *Homan* [], which involved multiple charges in one case.” *Id.* That the *Blackburn* court made that initial distinction cannot be insignificant, given the crafting of its issue, its reiteration of “[t]he narrow issue before us,” and its holding, all of which address the application of periods of delay in a “previous case” to a “subsequent case.” Had the *Blackburn* court wished to overrule *Homan* it could have done so. Moreover, the high court could have expanded its holding in *Blackburn* to recognize for statutory

speedy trial purposes the application of periods of delay resulting from the filing of a defendant's motions in either the same or any subsequent case, so long as the supplemental charges arose out of the same facts and circumstances as the initial charges. However, the *Blackburn* court declined to expand its holding to also address periods of delay within the context of an on-going case.

{¶27} We further note that in all of the aforementioned cases, the Ohio Supreme Court was confronted with weighing the competing policy concerns of protecting the speedy trial right of the accused and the public interest in obtaining convictions of persons who commit offenses against the State. In light of the circumstances of each case, the Supreme Court identified different policy concerns and ultimately balanced these interests differently.

{¶28} This Court is not free to expand the Supreme Court's holding, particularly where the high court has emphasized the narrowness of the issue before it. Accordingly, we conclude that the holding in *Blackburn* is inapplicable to the instant case.

{¶29} The instant case, however, is analogous to *Overholt* and *Homan*. Henrick was arrested on February 2, 2008 and was initially indicted on two felonies. Thus, the State had to bring him to trial within 270 days of his arrest. It is undisputed that some time was tolled as to the initial charges due to motions filed by Henrick. More than 270 days had elapsed when the State filed its supplemental indictment in the same case, charging Henrick with a crime arising out of the same facts and circumstances as the initial charges and of which the State was aware at the time of the initial indictment. The pretrial motions filed by Henrick prior to the State's issuance of the supplemental indictment did not extend the time within which Henrick was to be brought to trial on the supplemental charge. See *Overholt* at ¶12. Henrick was not brought to trial on the supplemental charge until well after the statutory 270-day period had elapsed.

Accordingly, the trial court erred by denying Henrick's motion to dismiss the charge of domestic violence as set forth in the supplemental indictment. See R.C. 2945.73(B). Henrick's first assignment of error is sustained.

ASSIGNMENT OF ERROR II

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN THE JOURNAL ENTRY OF DEFENDANT'S PRIOR CONVICTION WAS PUBLISHED TO THE JURY IN VIOLATION OF OLD CHIEF V. UNITED STATES (1997), 519 U.S. 172."

ASSIGNMENT OF ERROR III

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED THE INTRODUCTION OF INADMISSIBLE HEARSAY OF THE ALLEGED VICTIM IN VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESS[.]"

ASSIGNMENT OF ERROR IV

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DEFENDANT'S CRIM.R. 29 MOTION FOR ACQUITTAL ON THE DOMESTIC VIOLENCE CHARGE[.]"

{¶30} Because this Court's resolution of the first assignment of error is dispositive, we decline to address the remaining assignments of error as they have been rendered moot. See App.R. 12(A)(1)(c).

III.

{¶31} Henrick's first assignment of error is sustained. We decline to address his remaining assignments of error. The judgment of the Summit County Court of Common Pleas is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

CARLA MOORE
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

CARR, J.
DISSENTS, SAYING:

{¶32} I respectfully dissent.

{¶33} I do not agree that this Court is constrained to apply the holding in *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, as narrowly as the majority asserts, and I would apply it to the instant case. The *Blackburn* court set out to distinguish the concepts of waiver and statutory tolling within the context of a criminal defendant's right to speedy trial. The procedural history in *Blackburn* may have involved the State's filing of charges against the

defendant in multiple cases, but that had no discernable effect on the issue of waiver versus statutory tolling. Whether the State files different or supplemental charges against a defendant in the same case or in a subsequent case after dismissal of the first is a distinction without a difference.

{¶34} I read *Blackburn* as an attempt by the Ohio Supreme Court to clarify the issue of the waiver of speedy trial rights and statutory tolling. The high court reiterated that *State v. Adams* (1989), 43 Ohio St.3d 67, involved the defendant's execution of waivers by which he intentionally relinquished his right to speedy trial for specific periods of time. *Blackburn* at ¶8. The *Blackburn* court clarified that the *Adams* rationale should be limited to cases in which waiver, and not statutory tolling, was at issue. *Id.* at ¶19. The *Blackburn* court then addressed *State v. Homan* (2000), 89 Ohio St.3d 421, a case which did not involve the defendant's waiver of rights, but which was nevertheless decided under the reasoning applied in *Adams*. Accordingly, it distinguished *Homan* from *Blackburn* on that basis, indicating that it was no longer appropriate for lower courts to rely on the reasoning in *Adams* and its progeny in cases not involving a waiver of rights. *Id.* at ¶21. The high court declined to apply the reasoning developed for waiver cases to cases involving statutory tolling. That *Homan*, on which the majority relies, involved multiple charges in one case is not the distinguishing factor which controls whether to apply its reasoning or the reasoning in *Blackburn*. Rather, the distinguishing factor is whether the case involves waiver or statutory tolling. If it involves the latter, then any case determined upon the reasoning of *Adams* is no longer applicable. I agree that the *Blackburn* court did not overrule *Adams* or *Homan*, but it limited those holdings to cases involving waiver, not, as the majority asserts, to cases involving the filing of charges in separate cases.

{¶35} From a policy perspective, the *Blackburn* court recognized not only a criminal defendant's right to a speedy trial, but also the State's interest in its ability to adequately prosecute criminals, as well as the public's interest in safety resulting from the prompt resolution of criminal cases and the conviction of criminals. *Id.* at ¶21. Those interests are not obviated only because the State pursues additional charges in an on-going case instead of dismissing the case and initiating a subsequent one.

{¶36} As a practical matter, the issue in this case should never arise. The court is permitted to amend the charges at any time before, during, or after trial, if there is no change to the nature and identity of the crime, see Crim.R. 7(D). The State may file new charges at any time, so long as those charges are not barred by the statute of limitations and are filed within the time allowed for speedy trial. When a defendant is charged with an offense, he is necessarily also charged by operation of law with all lesser included offenses. See R.C. 2945.74. The supplemental count of domestic violence, a felony of the fourth degree, was a lesser included offense of the original count of domestic violence, a felony of the third degree. Accordingly, I do not believe that the State was obligated to seek a supplemental indictment to charge Henrick with the lesser included offense.

{¶37} Moreover, I am compelled in this case to emphasize the defendant's role in causing the delays which he subsequently attempted to use to his benefit. Henrick moved for multiple continuances of scheduled pre-trials. He pleaded guilty pursuant to a plea agreement, and then withdrew his guilty plea prior to sentencing in light of an unfavorable pre-sentence investigation report. After obtaining new counsel, he filed numerous pre-trial motions, including a motion for a bill of particulars, a request for discovery, and a motion to suppress, all of which tolled vast amounts of time in relation to the original charges. Henrick then moved to dismiss *or*

amend the indictment in regard to the domestic violence charge upon realizing that the State could not prove a felony of the third degree because it could only prove one of Henrick's two prior offenses. The State did not oppose the motion to amend the indictment. Henrick then refused to allow the amendment he had first proposed and insisted that the State seek a supplemental indictment.

{¶38} Under these circumstances, I see no violation of Henrick's right to a speedy trial, where he was always properly charged with the lesser included offense of domestic violence, a felony of the fourth degree, and he acted to continuously delay the criminal proceedings against him. The result reached by the majority, however, impugns the State's interest in its ability to adequately prosecute criminals, as well as the public's interest in the prompt resolution of criminal cases and the conviction of criminals.

{¶39} As an aside, I question whether Henrick's actions may have rendered the statutory speedy trial protections inapplicable to this case. The Ohio Supreme Court held that "R.C. 2945.71 does not apply to criminal convictions that have been overturned on appeal." *State v. Hull*, 110 Ohio St.3d 183, 2006-Ohio-4252, at paragraph one of the syllabus. Instead, the time limit for bringing a criminal defendant to trial under those circumstances is governed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. *Id.* at paragraph two of the syllabus. Accordingly, the defendant must merely be brought to trial within "a reasonable period." *Id.* at ¶20, quoting *Barker v. Wingo* (1972), 407 U.S. 514, 523. The high court reached its holding, in part, by noting that because the speedy trial statute does not contain any reference to retrials, the constitutional reasonableness standard necessarily applies. *Id.* at ¶21, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 21 (concerning

whether a defendant was denied a speedy trial after the trial court declared a mistrial because of a hung jury).

{¶40} Long before the Supreme Court issued its decision in *Hull*, the Eighth District Court of Appeals applied the same reasoning to conclude that the speedy trial statute did not apply after the defendant's withdrawal of a no contest plea. *State v. McAllister* (1977), 53 Ohio App.2d 176, 178 (holding that "[t]he provisions of Ohio's speedy trial statutes, R.C. 2945.71 et seq., are directed solely to an original trial following the arrest of a defendant, and have no application to the time within which a defendant must be tried following the vacation of a no contest plea on his own motion.").

{¶41} Subsequent to *Hull*, the Tenth District Court of Appeals concluded that the speedy trial statute is inapplicable to cases in which a finding of guilt has been entered, but where either the conviction was improper or there was some irregularity in the proceedings, so that a new trial was required. *Columbus v. Memon*, 10th Dist. No. 09AP-38, 2009-Ohio-5124, at ¶19. In this case, Henrick pleaded guilty to an amended assault charge and the original domestic violence charge, but was subsequently allowed to withdraw his guilty plea, thereby necessitating a new trial. Although he was not charged with the count of domestic violence at issue here until after he withdrew his guilty plea, I question, without deciding, whether these circumstances too render the speedy trial statutes inapplicable to this case.

{¶42} In conclusion, I would analyze the first assignment of error pursuant to *Blackburn* and conclude that the trial court did not err by denying Henrick's motion to dismiss the supplemental indictment. I would, therefore, address the remaining assignments of error.

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.