[Cite as *State v. Davis*, 2026-Ohio-4399.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	C.A. No. 2025-CA-42
Appellee	:	
	:	Trial Court Case No. 23-CR-424
v.	:	
	:	(Criminal Appeal from Common Pleas
ROBERT JAMES DAVIS III	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

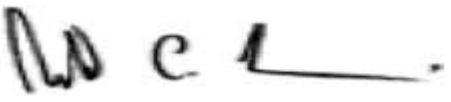
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Pursuant to the opinion of this court rendered on November 6, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



RONALD C. LEWIS, PRESIDING JUDGE

HUFFMAN, J., and HANSEMAN, J., concur.

OPINION
CLARK C.A. No. 2025-CA-42

JACOB S. SEIDL, Attorney for Appellant
JOHN M. LINTZ, Attorney for Appellee

LEWIS, P.J.

{¶ 1} Defendant-appellant Robert James Davis III appeals from his domestic violence conviction in the Clark County Common Pleas Court following a jury trial. For the following reasons, the judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 2} On June 15, 2023, Davis was arrested for domestic violence and charged in the Clark County Municipal Court. On June 26, 2023, the State dismissed the case.

{¶ 3} On July 7, 2023, Davis was indicted by a Clark County grand jury and issued a summons on indictment for one count of strangulation in violation of R.C. 2903.18(B)(3), a fourth-degree felony, and one count of domestic violence in violation of R.C. 2919.25(A), a third-degree felony. The indictment was based on the same facts and circumstances that were involved in the previously dismissed municipal court case. A summons on indictment was issued to Davis's last known address in Clark County.

{¶ 4} On July 14, 2023, Davis failed to appear for his arraignment. The returned summons reflected that Davis had not been served, and a warrant was issued for his arrest.

{¶ 5} On March 19, 2024, at the State's request, the trial court ordered that Davis be conveyed from the Trumbull Correctional Institution, where he was serving a prison sentence on an unrelated felony out of Cuyahoga County, to the Clark County Jail to be arraigned on the July 7, 2023 indictment. Davis was conveyed on March 27, 2024.

{¶ 6} On March 28, 2024, Davis appeared with counsel for his arraignment and was granted an own recognizance bond. Davis was ordered to return to prison and advised to contact his attorney upon his release, which was anticipated to occur in April 2024.

{¶ 7} On March 29, 2024, Davis's attorney filed a demand for a jury trial, pretrial, and speedy trial, and a request for discovery, bill of particulars, and notice of intent to use evidence. A pretrial hearing was scheduled for May 15, 2024, and a jury trial for July 16, 2024.

{¶ 8} On May 15, 2024, Davis failed to appear at the pretrial hearing, which was then continued to May 22, 2024. Davis again failed to appear on May 22, 2024. Accordingly, on May 24, 2024, the trial court revoked Davis's bond and issued a capias for his arrest.

{¶ 9} On December 12, 2024, Davis was arrested on the capias and booked into the Clark County Jail. On December 19, 2024, Davis appeared in court with counsel and bond was set at $25,000. A pretrial hearing was scheduled for January 16, 2025.

{¶ 10} At the January 16, 2025 pretrial hearing, Davis orally requested a modification of his bond. The trial court denied the motion and Davis remained in custody.

{¶ 11} On January 28, 2025, a notice was issued scheduling a jury trial for February 4, 2025. However, on February 4, 2025, the jury trial was rescheduled for February 18, 2025.

{¶ 12} On February 14, 2025, the State filed a motion to continue the jury trial due to the victim being scheduled to undergo a C-section. The trial court granted the State's motion and rescheduled the trial date to March 5, 2025.

{¶ 13} On February 18, 2025, a hearing was held at which Davis orally requested a modification of his bond. The trial court denied his motion and Davis remained in custody.

{¶ 14} On February 28, 2025, Davis's counsel filed a motion to continue the March 5, 2025 jury trial to obtain additional evidence and to timely serve out-of-county witnesses with subpoenas. This motion was granted.

{¶ 15} On March 6, 2025, Davis's counsel filed a motion asking the trial court to order the Ohio Department of Rehabilitation and Correction ("ODRC") to release certain phone records. The court granted the motion the following day.

{¶ 16} On April 21, 2025, a review hearing was held to determine whether defense counsel had received the requested ODRC records. Counsel indicated that the request had been complied with and the records had been received. The State requested a copy of the records as part of discovery.

{¶ 17} On April 23, 2025, Davis filed a motion to dismiss on speedy trial grounds pursuant to R.C. 2945.71. The State filed a response on April 25, 2025. On that same date, the trial court scheduled a jury trial for May 27, 2025.

{¶ 18} On April 29, 2025, the trial court overruled Davis's motion to dismiss on statutory speedy trial grounds. In its decision, the court recounted the history of the case and found that speedy trial had not yet expired due to various tolling events. It further noted that the time from March 5, 2025, to May 27, 2025, was tolled against Davis due to his request for a continuance of the trial to obtain records from ODRC.

{¶ 19} On May 13, 2025, Davis's counsel filed a motion to reconsider the trial court's denial of his motion to dismiss on statutory speedy trial grounds. On May 23, 2025, Davis filed another motion asking the court to release him from custody and to dismiss the charges against him with prejudice due to a violation of his statutory speedy trial rights.

{¶ 20} On May 23, 2025, the trial court overruled Davis's May 13 and 23, 2025 motions. Relying upon *State v. Bauer*, 61 Ohio St.2d 83 (1980), and *State v. Counts*, 2007-

Ohio-117 (5th Dist.), the court found that Davis had waived all time prior to December 12, 2024, and the speedy trial clock started anew at that time. The trial court explained that Davis's original trial date was set for July 16, 2024, within the speedy trial time frame. However, Davis failed to appear for his pretrial and a capias was issued. Davis was not arrested on the capias until December 12, 2024. Then, calculating the time after December 12, 2024, the court found that several tolling events occurred, which meant that Davis's statutory speedy trial rights had not been violated.

{¶ 21} A jury trial began on May 27, 2025. Prior to the start of trial, Davis raised the statutory speedy trial issue again and personally addressed the court. The trial court overruled Davis's oral motion and proceeded with the scheduled jury trial. The following is a summary of evidence that was presented at trial.

{¶ 22} The victim, B.S., testified that on June 15, 2023, she and her husband, Davis, along with their infant son and B.S.'s mother, lived in South Charleston, Ohio in B.S.'s mother's home. Shortly after B.S. arrived home from work around 8:00 p.m., B.S. and Davis got into an argument about her taking their son to Tennessee. B.S. stated that Davis got mad and screamed in her face. Davis then got onto the couch on top of B.S. and strangled her using both of his hands. B.S. testified that Davis cut off her oxygen supply to the point that she could not breathe in and her neck hurt. When B.S. was able to get up, she went outside and called 911 stating that her husband strangled her. A copy of the 911 call was admitted into evidence.

{¶ 23} B.S. also testified to two recorded phone calls she had with Davis and a third party during which they discussed a civil protection order that B.S. had obtained against Davis following the June 15, 2023 incident. During the phone calls, B.S. and Davis discussed dropping the protection order, which B.S. claimed she was forced to get because

of her mother. B.S. admitted that she repeatedly violated the order by continuing to have contact with Davis and lied to her mom about her continued contact with Davis. On one of the phone calls, Davis and the third party suggested that B.S. could drop the criminal charges by saying that B.S. was "manic" and "lied" or that B.S.'s mother manipulated her. B.S. denied that either of those things were true and reasserted that Davis strangled her during the June 15, 2023 incident.

{¶ 24} Officer Diviak of the South Charleston police department, who responded to B.S.'s 911 call, spoke to both B.S. and Davis upon his arrival. He obtained written statements and took photographs of B.S.'s neck area. Officer Diviak's body worn camera video that reflected his investigation of the incident was admitted at trial along with Davis's written statement and the photographs. Officer Diviak also testified to two certified copies of Davis's prior convictions for domestic violence.

{¶ 25} Davis did not testify at trial or present any evidence. The jury found Davis guilty as charged. His bond was revoked and the trial court ordered a presentence investigation report.

{¶ 26} At sentencing, on June 18, 2025, the trial court merged the two offenses and the State elected sentencing on the charge of domestic violence. The trial court imposed a sentence of three years in prison. Davis timely appealed.

II. Speedy Trial

{¶ 27} Davis's first assignment of error states:

> THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO DISMISS AND MOTION FOR DISCHARGE BECAUSE APPELLANT WAS NOT BROUGHT TO TRIAL WITHIN THE TIME REQUIRED BY R.C. 2945.71–

.73 AND THE SIXTH AMENDMENT / ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

{¶ 28} In his first assignment of error, Davis challenges the trial court's denial of his motions to dismiss based on alleged violations of his statutory speedy trial rights. In the alternative, he asserts that he was entitled to dismissal under his constitutional right to a speedy trial. Davis also argues that his trial counsel was ineffective for failing to adequately develop the record to obtain a dismissal on speedy trial grounds. We address these arguments in turn.

A. Statutory and Constitutional Speedy Trial Rights Generally

{¶ 29} "Criminal defendants are guaranteed the right to a speedy trial under state and federal law." *State v. Martin*, 2019-Ohio-2010, ¶ 15. Ohio's speedy trial statute, R.C. 2945.71, "was implemented to incorporate the constitutional protection of the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article I of the Ohio Constitution." *Brecksville v. Cook*, 1996-Ohio-171, ¶ 6. "Thus, for purposes of bringing an accused to trial, the statutory speedy trial provisions of R.C. 2945.71 et seq. and the constitutional guarantees found in the United States and Ohio Constitutions are coextensive." (Emphasis omitted.) *State v. O'Brien*, 34 Ohio St.3d 7, 9 (1987).

{¶ 30} "[A]lthough the statutory and constitutional speedy trial provisions are coextensive, the constitutional guarantees may be found to be broader than speedy trial statutes in some circumstances." *Id*. Therefore, a reviewing court analyzes a constitutional right to a speedy trial "separately from a statutory speedy trial right." *State v. Frazier*, 2023-Ohio-4222, ¶ 6 (9th Dist.), citing *State v. Williams*, 1994 WL 135309, *2 (9th Dist. Apr. 20, 1994).

B. Statutory Speedy Trial Rights

{¶ 31} Under Ohio's statutory scheme, a person against whom a felony charge is pending "shall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(C)(2). "[A] charge is not pending until the accused has been formally charged by a criminal complaint or indictment, is held pending the filing of charges, or is released on bail or recognizance." *State v. Azbell*, 2006-Ohio-6552, ¶ 21. "When computing speedy trial time, the day of arrest is not counted." *State v. Springs*, 2022-Ohio-3761, ¶ 20 (2d Dist.), citing *State v. Stewart*, 2006-Ohio-4164, ¶ 16 (2d Dist.). Each day during which the defendant is held in jail in lieu of bail solely on the pending charge is counted as three days. R.C. 2945.71(E). Therefore, if a felony defendant is incarcerated the entire time preceding trial solely on the underlying charges, then the time limit for bringing the defendant to trial is reduced to 90 days. *State v. Dankworth*, 2007-Ohio-2588, ¶ 31 (2d Dist.). But the triple-count provision does not apply when a defendant is also held in custody pursuant to other charges. *State v. Sanchez*, 2006-Ohio-4478, ¶ 7.

{¶ 32} The time within which a defendant must be brought to trial may be extended only for reasons specifically enumerated in R.C. 2945.72. *State v. Palmer*, 1998-Ohio-507, ¶ 4. Those reasons include "[a]ny period of delay occasioned by the neglect or improper act of the accused." R.C. 2945.72(D). It also includes any 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). To qualify as a tolling event under R.C. 2945.72(E), "all that the statute requires is that the delay be necessitated by the defendant's action." *State v. Belville*, 2022-Ohio-3879, ¶ 31. This includes a defendant's motion to dismiss on speedy trial grounds, which will toll speedy trial time during the time that elapses while the motion is pending. *State v. Bickerstaff*, 10 Ohio St.3d 62, 67 (1984).

{¶ 33} Pursuant to R.C. 2945.72(H), speedy-trial time is also tolled for "[t]he period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion." While continuances granted upon a defendant's request toll time, continuances that are granted at the State's request or that are ordered sua sponte by the trial court must be reasonable to toll speedy-trial time. R.C. 2945.75(H); *State v. Lee*, 48 Ohio St.2d 208, 209-210 (1976). "[T]he reasonableness of a continuance is analyzed on a case-by-case basis and is determined by examining its purpose and length." *State v. Knott*, 2024-Ohio-2289, ¶ 30 (2d Dist.), citing *State v. Gavin*, 2011-Ohio-4665, ¶ 34 (2d Dist.); *State v. Saffell*, 35 Ohio St.3d 90, 91 (1988). Furthermore, "[w]hen sua sponte granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance and the reasons therefor by journal entry prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial." *State v. Mincy*, 2 Ohio St.3d 6 (1982), syllabus.

{¶ 34} "Upon review of a speedy-trial issue, a court is required to count the days of delay chargeable to either side and determine whether the case was tried within applicable time limits." *Sanchez*, 2006-Ohio-4478, at ¶ 8. The speedy trial statutes must be strictly construed against the State. *Brecksville*, 1996-Ohio-171, at ¶ 7. "A defendant can establish a prima facie case for a speedy trial violation by demonstrating that the trial was held past the time limit set by statute for the crime with which the defendant is charged." *State v. Lovett*, 2022-Ohio-1693, ¶ 20 (2d Dist.), citing *State v. Gray*, 2007-Ohio-4549, ¶ 15 (2d Dist.). "If the defendant can make this showing, the burden shifts to the State to establish that some exception[s] applied to toll the time and to make the trial timely." *Gray* at ¶ 15, citing *State v. Price*, 122 Ohio App.3d 65, 68 (10th Dist. 1997). In the event a felony defendant is not brought to trial within the statutory speedy trial time, R.C. 2945.73(C)(1)

provides that the defendant is eligible for release from detention pending trial. If the expiration of speedy trial time was timely raised by motion, the defendant must be tried within 14 days after the motion was filed and served on the prosecutor. R.C. 2945.73(C)(2). If no motion was filed, the defendant must be brought to trial within 14 days after the trial court determines that the statutory speedy trial time limit has expired. *Id*. Absent an authorized extension, charges must be dismissed with prejudice if the case is not tried within the 14-day grace period. *Id*.

{¶ 35} "Review of a speedy-trial claim involves a mixed question of law and fact." *State v. Long*, 2020-Ohio-5363, ¶ 15. "Therefore, we defer to the trial court's factual findings if they are supported by competent, credible evidence, but we review the application of the law to those facts de novo." *Id*.

i. Calculation of Statutory Speedy Trial Time Prior to Davis Absconding

{¶ 36} Davis was initially arrested on June 15, 2023, and his jury trial commenced on May 27, 2025. Because this amount of time is beyond the 270-day limitation provided for in R.C. 2945.71, Davis contends that his statutory speedy trial rights were violated. The State counters that several tolling events occurred pursuant to R.C. 2945.72, such that Davis's statutory speedy trial rights were not violated.

{¶ 37} Davis was arrested and charged with domestic violence on June 15, 2023, in the Clark County Municipal Court. Davis was held on the charge until the municipal court case was dismissed on June 26, 2023. There is no evidence in the record to suggest that there were any additional facts not known to the State at the time of Davis's initial arrest that could have triggered a new speedy trial clock upon his indictment. Therefore, this time counts against the State. Davis spent 11 days in custody on the misdemeanor charge as

the day of arrest does not count towards speedy trial time. With the triple count provision, 33 days of speedy trial time elapsed.

{¶ 38} On June 29, 2023, Davis was sentenced to a 12-month prison term by the Cuyahoga County Common Pleas Court. There is no evidence in the record that Davis was held on a detainer from Cuyahoga County while at the Clark County Jail or was released to the custody of another agency upon the dismissal of Davis's misdemeanor case.

{¶ 39} On July 3, 2023, Davis was indicted in Clark County based on the same facts and circumstances as the dismissed misdemeanor case. "[W]here a prosecutor obtains a felony indictment, based upon the same conduct as was a previously nolled, lesser-included misdemeanor charge, the time within which the accused shall be brought to trial pursuant to R.C. 2945.71 et seq. consists of whatever residue remains from the 270-day period set forth in R.C. 2945.71(C) after deducting the speedy trial time expended prior to the nolle prosequi." *State v. Bonarrigo*, 62 Ohio St.2d 7, 11 (1980). Accordingly, as of July 3, 2023, the State had 237 days to bring Davis to trial.

{¶ 40} A summons on indictment was issued to Davis's last known address in South Charleston, Ohio. Davis, however, had been sentenced to prison by the Cuyahoga County Common Pleas Court, was not served with the summons, and did not appear for the arraignment. Therefore, a warrant was issued for Davis's arrest.

{¶ 41} Over eight months later, on March 19, 2024, the trial court issued an entry ordering the Clark County Sheriff to transport Davis to court from the Trumbull Correctional Institution, where Davis remained incarcerated on his Cuyahoga County case, for an arraignment on March 28, 2024. On March 27, 2024, Davis was conveyed from prison to the Clark County Jail to face prosecution in Clark County.

{¶ 42} Davis argues that between July 3, 2023, until March 28, 2024, he was held in custody by the State while his indictment was pending. Because the State made no effort to secure his appearance from prison, Davis believes the entirety of this time should be included in his speedy trial calculations. We do not agree.

{¶ 43} As noted above, R.C. 2945.71(C)(2) states that a person charged with a felony must be brought to trial within 270 days of arrest. However, Ohio has a second speedy trial statute that provides for a different speedy trial mechanism when a defendant is serving an Ohio prison sentence in another case: R.C. 2941.401. R.C. 2941.401 states, in pertinent part:

> When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, the prisoner shall be brought to trial within one hundred eighty days after the prisoner causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of the prisoner's imprisonment and a request for a final disposition to be made of the matter . . . .

{¶ 44} "When a defendant is incarcerated in this state on other charges, R.C. 2941.401, a specific statute, prevails over the general speedy trial statutes of R.C. 2945.71 et seq., and governs the time within which the state must bring him or her to trial." *Stewart*, 2006-Ohio-4164, at ¶ 21 (2d Dist.). Importantly, "[w]hen the defendant is imprisoned on a previous conviction, R.C. 2945.71 ceases to govern and the two hundred and seventy day speedy trial deadline is tolled." *Id*.

{¶ 45} Contrary to Davis's contentions, there is no duty imposed upon the State to exercise reasonable diligence to locate a defendant in a state penal institution. In *State v. Hairston*, 2004-Ohio-969, the Ohio Supreme Court reviewed R.C. 2941.401 and found that "[f]ar from requiring the state to exercise reasonable diligence to locate an incarcerated defendant, R.C. 2941.401 places the initial duty on the defendant to cause written notice to be delivered to the prosecuting attorney and the appropriate court advising of the place of his imprisonment and requesting final disposition; the statute imposes no duty on the state until such time as the incarcerated defendant provides the statutory notice." *Id*. at ¶ 20. The court in *Hairston* concluded "[i]n its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term. It does not, however, allow a defendant to avoid prosecution simply because the state failed to locate him." *Id*. at ¶ 25.

{¶ 46} Davis never caused the requisite notice of imprisonment and request for final disposition to be delivered to either the prosecuting attorney or the court; therefore, he never triggered the 180-day speedy trial requirement under R.C. 2941.401. Accordingly, the time Davis spent in prison for his unrelated felony conviction between July 3, 2023, until March 28, 2024, does not count toward his speedy trial time in this case.

{¶ 47} On March 28, 2024, Davis appeared for his arraignment with appointed counsel. Davis waived the reading of the indictment, any defect in the service of the indictment, and entered a not guilty plea. Davis was granted an own recognizance bond acknowledging his address and that he would inform the court if his residence were to change. Davis was ordered to return to prison and advised to contact his attorney upon his release, which was anticipated to occur sometime in April 2024.

{¶ 48} Davis alleged that he was released from prison on April 16, 2024. However, the record reflects that between his arraignment and his trial date, several tolling events occurred pursuant to R.C. 2945.72. On March 29, 2024, Davis's attorney filed a notice of appearance along with a demand for a jury trial, pretrial, and speedy trial, and a request for discovery, a bill of particulars, and notice of intent to use evidence. A pretrial hearing was then scheduled for May 15, 2024, and a jury trial for July 16, 2024. It is well known that "[a] demand for discovery or a bill of particulars is a tolling event pursuant to R.C. 2945.72(E)." *State v. Brown*, 2002-Ohio-7040, syllabus. Additionally, "[w]hile requests for pretrial conferences do not automatically extend the statutory time requirements in R.C. 2945.71, the time between a request and pretrial conference will be tolled where the record shows that the pretrial was granted at the defendant's own request and there is nothing facially unreasonable about the time taken to provide the pretrial." *State v. Cruea*, 2005-Ohio-4731, ¶ 10 (2d Dist.).

{¶ 49} The record reflects that a pretrial hearing was scheduled at the request of the defendant and there is nothing facially unreasonable about the time taken to provide the pretrial hearing, which was scheduled for a time after which Davis was expected to be released from prison. Further, although the specific date is unknown, the parties confirmed that discovery had been completed by the time of the May 15, 2024 pretrial hearing. Therefore, we conclude that any speedy trial time would be tolled from March 29, 2024, until May 15, 2024.

{¶ 50} On May 15, 2024, Davis failed to appear at the pretrial hearing, which was then continued to May 22, 2024. Davis's failure to appear constitutes a tolling event. R.C. 2945.72(D) (speedy trial time is extended for "[a]ny period of delay occasioned by the neglect or improper act of the accused."). Davis again failed to appear on May 22, 2024.

Accordingly, on May 24, 2024, the trial court revoked Davis's bond and issued a capias for his arrest. Thus, the time between May 15, 2024, and May 24, 2024, was tolled.

{¶ 51} Davis was not arrested on the capias until December 12, 2024. Because of Davis's failure to appear at the May 2024 pretrial hearings, the trial court found that Davis waived any speedy trial time prior to December 12, 2024, and the trial clock started anew at that time. As noted above, the trial court relied on *State v. Bauer*, 61 Ohio St.2d 83 (1980), and *State v. Counts*, 2007-Ohio-117 (5th Dist.), to support its position. Davis argues that applying *Bauer* was inappropriate because he failed to appear for a pretrial hearing, not a trial date. Davis contends that *Bauer* should be limited to only those cases where a defendant fails to appear for trial.

{¶ 52} *Bauer* involved a defendant who failed to appear for his trial that was scheduled for a date within the statutory time period set forth in R.C. 2945.71. *Bauer* at 83. The trial court issued a bench warrant for his arrest for failing to appear. *Id*. After the defendant's subsequent apprehension on the warrant, the trial court rescheduled the trial. *Id*. Prior to trial, the defendant filed a motion to discharge under the provisions of R.C. 2945.71, et seq., which the trial court denied. *Id*. The defendant entered a no contest plea and was sentenced to prison. *Id*. The Supreme Court upheld the judgment of the trial court and held that "a defendant who fails to appear at a scheduled trial, and whose trial must therefore be rescheduled for a later date, waives his right to assert the provisions of R.C. 2945.71 through 2945.73 for that period of time which elapses from his initial arrest to the date he is subsequently rearrested." *Id*. at 85.

{¶ 53} In reaching its conclusion, the *Bauer* Court noted, "the proper focus of a court in circumstances such as these is upon the underlying source of the delay." *Id*. at 84. The Court explained that the defendant had been afforded his statutory right to a speedy trial

initially, "but through his own design he chose to shun this right and impede the prompt administration of this cause. [He] will not be permitted to enjoy the protection of these statutes, as to a time period prior to his failure to appear, when by his actions he has waived their benefits." *Id*. Notably, the court explicitly rejected Bauer's contention that the period of time between the capias and his rearrest should be tolled rather than start his speedy trial clock anew. The court stated that tolling was "unworkable and inconsistent with the efficient administration of justice." *Id*. at 85.

{¶ 54} Although *Bauer* was specifically applied to a situation in which the defendant failed to appear for trial, other appellate districts have expanded the rationale in *Bauer* to other situations. For example, in *State v. Boyd*, 2024-Ohio-1517 (4th Dist.), the court applied *Bauer* in a situation where the defendant failed to appear for a final pre-trial hearing and a capias was issued for his arrest. The Fourth District concluded that Boyd's failure to appear for the final pretrial hearing waived his right to assert the provisions of R.C. 2945.71 through 2945.73 from his initial arrest date until such time as he was rearrested on the capias. *Id*. at ¶ 30; *accord State v. Kirk*, 2007-Ohio-1228, ¶ 48 (3d Dist.) (defendant's failure to appear at a scheduling conference resulted in defendant's waiver of his right to assert the applicable speedy trial statutes for the time that elapsed between the date of his initial arrest and the date of his subsequent arrest); *State v. Fultz*, 2007-Ohio-3619, ¶ 11 (4th Dist.) ("this Court, relying upon precedent from other appellate districts, has extended the reasoning in *Bauer* to apply to situations where the appellant fails to appear at other scheduled court appearances, such as scheduling conferences, change of plea hearings and arraignments."); *Counts*, 2007-Ohio-117, at ¶ 48-53 (5th Dist.) (applying *Bauer* to defendant's failure to appear for his pretrial status conference); *State v. Whaley*, 2010-Ohio-

4853, ¶ 35 (7th Dist.) (applying *Bauer* where defendant failed to appear for a scheduled hearing).

{¶ 55} While the *Bauer* decision was predicated on a defendant's failure to appear at trial, we find that the same rationale applies in this case in which Davis failed to appear for his pretrial hearing when he had a trial date scheduled. Notably, a trial date had initially been set in a time frame consistent with the mandate of the speedy trial statute. But for Davis's own actions, he could have been brought to trial on July 16, 2024. Davis had appointed counsel and had been advised to contact his attorney upon his release from prison. Davis admitted that when he was released from prison, he did not contact his attorney or make any effort to resolve his pending case. Instead, Davis absconded from court until he was arrested approximately seven months later. Consequently, the trial court did not err in applying *Bauer* to its calculation of Davis's speedy trial time. *Compare Gavin*, 2011-Ohio-4665 (2d Dist.) (*Bauer* did not apply to reset speedy trial clock where defendant failed to appear for a pretrial hearing and a capias was issued but the capias was withdrawn only five days later and did not result in any delay of defendant's scheduled trial date). In light of the foregoing, Davis's speedy trial computation reset when he was rearrested on December 12, 2024.

ii. Calculation of Statutory Speedy Trial After Davis is Rearrested

{¶ 56} Following his rearrest, Davis remained in jail throughout the remainder of the trial court proceedings. Therefore, the triple count provision of R.C. 2945.71(E) applied, and the State was required to bring him to trial on or before March 12, 2025, absent any tolling events. Davis's jury trial started on May 27, 2025, more than the permitted 90 days. However, certain portions of this time were tolled.

{¶ 57} Following his December arrest, Davis was ordered held on a $25,000 bond and a pretrial hearing was scheduled for January 16, 2025. Thereafter, a jury trial was scheduled for February 4, 2025. On February 4, 2025, the trial court issued a journal entry that rescheduled the trial to February 18, 2025. It is not clear from the record whether either party requested this continuance such that we construe it as a sua sponte continuance by the trial court. "When *sua sponte* granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance and the reasons therefor by journal entry prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial." *Mincy*, 2 Ohio St.3d 6, at syllabus. Additionally, in order for a sua sponte continuance to toll time, the continuance must be reasonable under the circumstances, which can be determined by looking at the purpose and length of the continuance. *State v. Knight*, 2005-Ohio-3179, ¶ 30 (2d Dist.), citing *Lee*, 78 Ohio St.2d at 210.

{¶ 58} Applying the triple count provision, between December 13, 2024, the day after Davis was rearrested, and February 4, 2025, 54 days of speedy trial time elapsed. The entry continuing the trial date was filed by the trial court on February 4, 2025, prior to the expiration of Davis's speedy trial time. According to the entry, neither party had received notice of the February 4, 2025 trial date, which necessitated the two-week continuance. We conclude that both the purpose and the length of this continuance were reasonable under the circumstances. Consequently, this continuance tolled time.

{¶ 59} On February 14, 2025, the State filed a motion to continue the trial, which the trial court granted. The reason for the State's request was based on the victim, a material witness, being scheduled to undergo a C-section delivery on February 18, 2025, the day of the scheduled trial. Davis did not object to the State's request for a continuance. The trial court granted the requested continuance "for good cause shown" and rescheduled Davis's

trial to March 5, 2025. For purposes of the speedy trial statute, the Supreme Court of Ohio has held that the unavailability of a material witness because of a planned vacation is a reasonable ground for granting a continuance that tolled speedy trial. *Saffell*, 35 Ohio St.3d at 91-92. Thus, the unavailability of a material witness for a planned medical procedure is likewise a reasonable ground for granting a continuance pursuant to R.C. 2945.72(H). Moreover, the requested continuance was for a period of only two weeks. Accordingly, we find the purpose and length for the State's continuance in this case was more than reasonable and tolled speedy trial time. Consequently, the total number of speedy trial days that had elapsed remained at 54, and the State had 36 days remaining of speedy trial as of March 5, 2025.

{¶ 60} On February 28, 2025, Davis filed a motion to continue the March 5, 2025 jury trial. The basis of the continuance was to obtain phone records from the ODRC and to retrieve information from Davis's cell phones, which were in the possession of the Clark County Sheriff's Office. Additionally, Davis had two witnesses located in Cleveland, Ohio and needed additional time to have them timely served with trial subpoenas. Davis's motion for a continuance did not include any limitation on the amount of time sought to obtain the records or for a continuance of the trial date. On March 6, 2025, Davis filed a motion asking the trial court to order the ODRC to provide Davis's phone calls and text messages to defense counsel.

{¶ 61} Davis's March 6, 2025 motion to order the release of records was granted by the trial court the following day. Davis's motion to continue the jury trial was belatedly granted in an entry filed on April 25, 2025. The entry granted Davis's motion to continue the March 5, 2025 jury trial and rescheduled it for May 27, 2025. The court's reason for the extended period of time to reschedule the trial date was based on Davis's March 6, 2025

request to obtain ODRC records and then verifying on April 21, 2025 that defense counsel had in fact received the records before scheduling a new trial date. "Where a trial court must reschedule a trial because of a motion of the defendant, the entire time between the motion and the rescheduled trial date is a delay attributable to a motion filed by the defendant." *State v. Konicki*, 2025-Ohio-296, ¶ 35 (2d Dist.), citing *State v. Smith*, 2017-Ohio-7864, ¶ 29 (4th Dist.). Because the motion to continue the trial was filed on Davis's behalf, the speedy trial time was tolled from March 5, 2025, through May 27, 2025, when Davis was brought to trial.

{¶ 62} Though not necessary to the speedy trial calculations because time was already tolled, Davis filed a motion to dismiss on statutory speedy trial grounds on April 23, 2025, another tolling event. *Bickerstaff*, 10 Ohio St.3d at 67 (a defendant's motion to dismiss on speedy trial grounds tolls speedy trial time pursuant to R.C. 2945.72(E) during the time that elapsed while the motion was pending). Following the State's response, the trial court overruled Davis's motion on April 29, 2025. Davis then filed a motion on May 13, 2025, seeking reconsideration of the trial court's April 29, 2025 decision, and a subsequent motion for dismissal on speedy trial grounds on May 23, 2025. These motions were all overruled on May 23, 2025.

{¶ 63} As a result of the multiple tolling events, only 54 days of speedy trial time were used prior to Davis's May 27, 2025 jury trial. Accordingly, the trial court did not err in overruling Davis's multiple motions to dismiss based on statutory speedy trial time.

C. Constitutional Speedy Trial

{¶ 64} Davis argues that even if his statutory speedy trial rights were not violated, his constitutional right to a speedy trial was violated. Davis failed to lay out the constitutional speedy-trial factors or present any argument in support of such a constitutional speedy-trial

claim in any of his speedy trial motions. Moreover, the trial court based its holding solely on statutory grounds, rather than constitutional grounds under *Barker v. Wingo*, 407 U.S. 514 (1972). Because Davis failed to raise a violation of his constitutional speedy-trial rights in the trial court, he is precluded from raising that issue on appeal. *State v. Jacks*, 2025-Ohio-2541, ¶ 11 (2d Dist.); *accord State v. Kirks*, 2021-Ohio-2027, ¶ 32 (5th Dist.). Although this court has discretion to consider a waived constitutional challenge for plain error, we decline to do so in this case. *State v. Cheek*, 2022-Ohio-4736, ¶ 13 (2d Dist.).

D. Davis's Trial Counsel Was Not Ineffective

{¶ 65} Davis tangentially argues that his trial counsel was ineffective for failing to adequately develop the evidentiary record in support of his motion to dismiss on speedy trial grounds. Specifically, Davis contends that counsel should have put forth documentary evidence to establish his custodial status and whereabouts during the pendency of the case.

{¶ 66} "In order to prevail on an ineffective-assistance-of-counsel claim, a defendant must prove that counsel's performance was deficient and that the defendant was prejudiced by counsel's deficient performance." *State v. Davis*, 2020-Ohio-309, ¶ 10, citing *State v. Bradley*, 42 Ohio St.3d 136, 141-142 (1989); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Thus, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that there exists a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id*. "'A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Bradley* at 142, quoting *Strickland* at 694. "The failure to make a showing of either deficient performance or prejudice defeats a claim of ineffective assistance of counsel." *State v. Slaughter*, 2026-Ohio-2637, ¶ 17 (2d Dist.), citing *Strickland* at 697.

{¶ 67} Davis's claim of ineffective assistance of counsel lacks merit because there was no speedy trial violation. The information Davis contends should have been included into the record would not have changed the outcome because (1) his custodial status was sufficiently known to determine speedy trial; (2) there is no requirement that the State exercise reasonable diligence to advise him of his outstanding warrant while he was imprisoned; and (3) none of the purported documents regarding his whereabouts would have changed the tolling events, which were adequately identified in the record. Therefore, his motions to dismiss would have been unsuccessful even with the additional information Davis believes should have been provided to the trial court. On this record, we cannot conclude that Davis's counsel was deficient or that Davis was prejudiced as a result.

{¶ 68} Davis's first assignment of error is overruled.

III. Admission of Other-Acts Evidence

{¶ 69} Davis's second assignment of error states:

> APPELLANT WAS DENIED A FAIR TRIAL WHERE OTHER-ACTS EVIDENCE AND OTHER-ACTS ARGUMENT CONCERNING A TEMPORARY PROTECTION ORDER, ALLEGED VIOLATIONS, AND "DROPPING CHARGES" WAS PRESENTED AND EXPLOITED IN VIOLATION OF EVID.R. 404(B) AND EVID.R. 403(A), THE PROSECUTOR ENGAGED IN IMPROPER ARGUMENT, AND TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY ELICITING AND FAILING TO LIMIT THIS OTHER-ACTS NARRATIVE.

{¶ 70} In his second assignment of error, Davis asserts that he was denied a fair trial after certain testimony relating to a civil protection order was admitted at trial during B.S.'s cross-examination. Evidence involving the civil protection order initially arose during B.S.'s

direct examination in relation to statements she made on recorded jail calls. Davis did not object to any testimony relating to the civil protection order during direct examination or to the admission of the recorded jail calls; nor does he challenge them here. During cross-examination, defense counsel questioned B.S. about the civil protection order and elicited testimony that the protection order was a court order, that B.S. had told Davis she believed the protection order was null and void because she continued to have contact with him, and that B.S. intended to get the protection order dropped. It is this testimony from B.S.'s cross-examination that Davis now challenges.

{¶ 71} Davis maintains that B.S.'s testimony on cross-examination constituted other acts evidence that did not fall within the exceptions set forth in Evid.R. 404(B) and was unduly prejudicial under Evid.R. 403(A). Davis further asserts that the prosecutor engaged in prosecutorial misconduct for including the prohibited testimony in its closing argument and that his own trial counsel was ineffective for failing to object to the admission of this evidence. We address each of these separate issues in turn.

A. Evid.R. 404(B)

{¶ 72} "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Evid.R. 404(B). "This type of evidence is commonly referred to as 'propensity evidence' because its purpose is to demonstrate that the accused has a propensity or proclivity to commit the crime in question." *State v. Hartman*, 2020-Ohio-4440, ¶ 21. "Evid.R. 404(B) categorically bars the use of other-acts evidence to show propensity." *Id*. However, this type of evidence may be admissible for other purposes, such as to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid.R. 404(B). Yet, even if other acts evidence has been improperly admitted, the court's error may be

disregarded as harmless if the defendant has not suffered resulting prejudice. *State v. Morris*, 2014-Ohio-5052, ¶ 25.

{¶ 73} Davis did not object at the time the other-acts evidence was admitted during B.S.'s cross-examination, so he has waived all but plain error. *State v. Hare*, 2018-Ohio-765, ¶ 41 (2d Dist.). Crim.R. 52(B) states that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." It is likely the evidence was not objected to because Davis's counsel is the one who elicited the alleged other-acts evidence during B.S.'s cross-examination. As Davis rightfully observes, "*Defense counsel* elicited the TPO foundation" and "then developed alleged violations and the 'drop the charges' theme." (Emphasis added.) Appellant's Brief, p. 18. Thus, if it was error to admit B.S.'s testimony on cross-examination regarding the civil protection order, it was invited error because the testimony was elicited by defense counsel on cross-examination. *State v. Lenoir*, 2008-Ohio-1984, ¶ 24 (2d Dist.). "Under the doctrine of 'invited error,' an appellant is barred from attacking a judgment because of an error for which the appellant was responsible." *Id*., citing *State ex rel. The V. Cos. v. Marshall*, 1998-Ohio-329. Under these circumstances, we cannot conclude that the admission of B.S.'s testimony on cross-examination relating to the civil protection order was plain error as it was elicited by defense counsel.

B. Prosecutorial Misconduct

{¶ 74} "The test for prosecutorial misconduct is whether the remarks were improper and, if so, whether they prejudicially affected the accused's substantial rights." *State v. Dean*, 2015-Ohio-4347, ¶ 238, citing *State v. Smith*, 14 Ohio St.3d 13, 14 (1984). "The touchstone of this analysis 'is the fairness of the trial, not the culpability of the prosecutor.'" *State v. LaMar*, 2002-Ohio-2128, ¶ 121, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982).

{¶ 75} "Prosecutors are entitled to latitude as to what the evidence has shown and what inferences can be drawn from the evidence." *State v. Diar*, 2008-Ohio-6266, ¶ 213. The prosecutor may comment on "'what the evidence has shown and what reasonable inferences may be drawn therefrom.'" *State v. Lott*, 51 Ohio St.3d 160, 165 (1990), quoting *State v. Stephens*, 24 Ohio St.2d 76, 82 (1970).

{¶ 76} Davis did not object to the prosecutor's closing argument and has waived all but plain error. Under the plain error standard, the burden is on the defendant to demonstrate that "but for a plain or obvious error, the outcome of the proceeding would have been otherwise, and reversal must be necessary to correct a manifest miscarriage of justice." *State v. Quarterman*, 2014-Ohio-4034, ¶ 16. Notice of plain error "is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶ 77} Having reviewed the transcript, we also see no error, plain or otherwise, during the prosecutor's rebuttal closing argument. Davis contends that during rebuttal closing argument the prosecutor explained that "victims still love the people that abuse them" and then "exploited" the use of the recorded phone calls where Davis and a third party suggested how B.S. could get the charges dropped. Davis claims that the prosecutor's argument "encouraged improper propensity reasoning, depriving Appellant of a fair trial." Appellant's Brief, p. 18-19.

{¶ 78} The prosecutor did not commit prosecutorial misconduct by referring to evidence that was admitted at trial without objection. *State v. Perez*, 2009-Ohio-6179, ¶ 187. Notably, the State did not mention the civil protection order in its first closing argument. Only after defense counsel brought up the civil protection order in his closing

argument did the State address it in rebuttal closing argument. "Both parties have latitude in responding to arguments of opposing counsel." *State v. Neyland*, 2014-Ohio-1914, ¶ 200. The protection order was mentioned by the State in its rebuttal closing argument only to refute specific claims made by the defense during closing argument. Thus, defense counsel opened the door to the prosecutor's rebuttal argument, which was narrowly tailored to respond to defense counsel's closing argument.

{¶ 79} Moreover, the evidence relied on by the prosecutor was evidence admitted at trial. The prosecutor argued that Davis never denied committing the assault but rather suggested to B.S. how she could drop the charge. During the recorded phone calls, Davis and a third party suggested that B.S. tell the authorities that she was "manic" and "lied" or that B.S.'s mother manipulated her. Tr. 212; State's Ex. 9. Because the prosecutor's statements were based upon the evidence in the record, it was not improper argument and did not constitute prosecutorial misconduct. Accordingly, no plain error is found.

C. Ineffective Assistance of Counsel

{¶ 80} Finally, in conjunction with Davis's argument about the improper admission of evidence, Davis argues that counsel provided ineffective assistance by "opening the door and failing to confine the other-acts use through available limitation tools." Appellant's Brief, p. 19. This included failing to object to the allegedly improper testimony and failing to request a limiting instruction. The State responds that trial counsel was not deficient as counsel's decisions not to object or request a limiting instruction were trial strategy.

{¶ 81} As explained above, the evidence that Davis argues should not have been admitted arose during B.S.'s cross examination. Notably, "[t]he extent and scope of cross-examination clearly fall within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel." *State v. Leonard*, 2004-Ohio-6235, ¶ 146.

Here, B.S. testified that the protection order was a court order that Davis could not have contact with her, but also that she could not have contact with him. Tr. 229-230. B.S. admitted that she had multiple phone calls with Davis and defense counsel got B.S. to agree that she herself was in violation of the court order. B.S. also told Davis on the phone call that she believed the protection order was null and void because she continued to have contact with him. B.S. stated in one of the phone calls that she intended to get the protection order dropped because her mother forced her to get it. Defense counsel then questioned B.S. about her mother's threats to kick her out of the house and take her son away if B.S. did not obtain the protection order against Davis. Counsel also got B.S. to admit that she was lying on the recorded phone call when she told her mother she was not talking to Davis. B.S. further admitted that Davis and her mother sometimes did not get along and that her mother was controlling. The testimony defense counsel elicited was clearly intended to portray B.S. as a liar who was manipulated by her mother. Apparently, defense counsel's strategy was to attack the credibility of B.S. in the hopes that the jury would not find her testimony credible relating to Davis's crimes. Despite Davis now not agreeing with how counsel proceeded at trial, "[h]indsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective assistance of counsel." *State v. Mitchell*, 2008-Ohio-493, ¶ 31 (2d Dist.), citing *State v. Cook*, 65 Ohio St.3d 516, 524-525 (1992).

{¶ 82} Moreover, "a defendant may decide, as a matter of trial strategy, not to request a limiting instruction because of concerns that it will only emphasize in the juror's minds the evidence of other criminal acts committed by defendant to which the instruction applies, thereby reinforcing the prejudice." *State v. Tisdale*, 2003-Ohio-4209, ¶ 48 (2d Dist.), citing

State v. McDaniel, 1992 WL 206759 (2d Dist. Aug. 19, 1992). The emphasis during cross-examination was on how B.S. had violated the protection order, not on Davis violating the protection order. Had counsel requested a limiting instruction, it may have emphasized that Davis had also violated the civil protection order. It was therefore reasonable for defense counsel to not request a limiting instruction. Because trial counsel's actions were reasonable trial strategy, Davis has not established ineffective assistance of trial counsel.

{¶ 83} Davis's second assignment of error is overruled.

IV. Manifest Weight and Sufficiency of the Evidence

{¶ 84} Davis's third assignment of error states:

> THE CONVICTIONS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHERE THE STATE'S "IMPEDED BREATHING" THEORY WAS MATERIALLY UNDERMINED BY THE COMPLAINANT'S TESTIMONY THAT SHE WAS HOLDING HER BREATH AND COULD BREATHE OUT, CREATING REASONABLE DOUBT ON THE CAUSATION AND "BY MEANS OF STRANGULATION OR SUFFOCATION" ELEMENTS.

{¶ 85} Davis argues that his conviction for strangulation is not supported by legally sufficient evidence and is against the manifest weight of the evidence because the State failed to prove that B.S.'s breathing was impeded. Davis's assignment of error focuses only on the element of "strangulation or suffocation" in his conviction for strangulation. However, the trial court merged the strangulation offense with the domestic violence offense and the State elected to proceed to sentencing on the domestic violence offense. Davis does not challenge his conviction for domestic violence, for which strangulation is not an element of the offense. "'When a trial court dispatches with a count through merger, any error in the

jury's verdict on the merged count is rendered harmless beyond a reasonable doubt.'" *State v. Stargell*, 2016-Ohio-5653, ¶ 57 (2d Dist.), quoting *State v. Wolff*, 2009-Ohio-2897, ¶ 70 (7th Dist.), citing *State v. Powell*, 49 Ohio St.3d 255, 263 (1990). Thus, we need not address Davis's sufficiency and manifest weight arguments.

{¶ 86} Davis's third assignment of error is overruled.

V. Conclusion

{¶ 87} Having overruled the assignments of error, the judgment of the trial court is affirmed.

. . . . . .

HUFFMAN, J., and HANSEMAN, J., concur.