

IN THE SUPREME COURT OF OHIO
Case No. 2014-0228

STATE OF OHIO	:	
Appellee	:	
-vs-	:	On Appeal from the
MARLON CLEMONS	:	Cuyahoga County Court
Appellant	:	of Appeals, Eighth
		Appellate District Court
		of Appeals
		CA: 99754

REPLY BRIEF OF APPELLANT MARLON CLEMONS

ROBERT L. TOBIK, ESQ.
Cuyahoga County Public Defender
BY: CULLEN SWEENEY (COUNSEL OF RECORD)
#0077187
Assistant Public Defender
310 Lakeside Avenue
Suite 200
Cleveland, OH 44113
(216) 443-7583
(216) 443-3632 FAX

COUNSEL FOR APPELLANT MARLON CLEMONS

TIMOTHY J. MCGINTY, ESQ.
Cuyahoga County Prosecutor
BY: ANTHONY MIRANDA
T. ALLAN REGAS
Assistant Prosecuting Attorneys
The Justice Center – 9th Floor
1200 Ontario Street
Cleveland, OH 44113
(216) 443-7800
COUNSEL FOR APPELLEE, THE STATE OF OHIO

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INTRODUCTION

The trial court dismissed Marlon Clemons' indictment because his constitutional right to a speedy trial had been violated. Despite charging Clemons by criminal complaint on August 6, 2009, the State made no further attempt to prosecute this case for *more than 18 months* even though Clemons was in custody for much of that time. The Eighth District Court of Appeals reversed the trial court's decision, however, on the basis that Clemons' constitutional speedy trial rights were not implicated by the filing of criminal complaint and did not attach until he was indicted on March 21, 2011. *State v. Clemons*, 8th Dist. No. 99754, 2013-Ohio-5131, ¶ 11 ("In this case, Clemons was not prosecuted for, or accused of, the crimes now under review prior to his indictment on March 21, 2011.")

The narrow issue presented by this Court is whether a criminal complaint constitutes an "official accusation" such that it implicates the defendant's state and/or federal constitutional speedy trial right. This Court has already held that a defendant's constitutional speedy trial rights begin to run with the filing of a criminal complaint. *State v. Selvage* (1997), 80 Ohio St. 3d 465, 468. And Clemons maintains that the State has presented no good reason to overrule a rule that has been in existence for 17 years.

In its response brief, the State urges this Court to ignore *Selvage's* holding as dicta and argues that a criminal complaint does not constitute an "official accusation." Both arguments lack merit. This Court's determination that the criminal complaint triggered the constitutional speedy analysis in *Selvage* was critical to its resolution of the case and was therefore not dicta. However, even if it were, the State's argument that a criminal complaint is not an official accusation defies both common sense and the law. There is simply no question that Marlon Clemons stood accused of a crime on August 6, 2009 when the criminal complaint was filed.

Indeed, the General Assembly has made clear that a criminal prosecution is commenced by the return of an indictment, the filing of an information, an arrest without a warrant, *or* the issuance of “a warrant, summons, citation, or other process.” R.C. 2901.13(E). And this Court has already held that the filing of a criminal complaint in a felony case means that a felony charge “is pending” for purpose of the statutory speedy trial clock. See *State v. Azbell*, 112 Ohio St. 3d 300, 859 N.E.2d 532, 2006-Ohio-6552, syllabus. Thus, a criminal complaint clearly constitutes an official accusation for speedy trial purposes.

LAW AND ARGUMENT

Proposition of Law I: A criminal complaint constitutes a “formal” accusation for purposes of triggering a criminal defendant’s state and federal constitutional right to a speedy trial (State v. Selvage (1997), 80 Ohio St. 3d 465 applied).

With this reply brief, Mr. Clemons addresses each of the State’s arguments in turn.

A. Clemons’ constitutional speedy trial argument is properly before this Court because it was the basis for his trial court motion to dismiss and was addressed by both lower courts.

The State initially argues that Clemons’ appeal should be dismissed as improvidently allowed because Clemons’ forfeited his constitutional speedy trial argument by not raising it below. The State could hardly be more wrong.

The State contends that Clemons asked the lower courts “to address an issue of pre-indictment” delay and only now has recast his claim as based on constitutional speedy trial. (State’s Br. at 4). The State further contends that Clemons never asked the trial court to apply the constitutional speedy trial standard and never argued that prejudice should be presumed given the delay. (State’s Br. at 4). The State’s claims are wholly unsupported by the trial court pleadings.

Marlon Clemons did *not* seek dismissal of his indictment on the basis of due process pre-indictment delay. Indeed, Clemons’ motion does not cite or refer to the Due Process Clause or even

utter the phrase “pre-indictment delay.” On the contrary, Clemons’ motion to dismiss was based *exclusively* on a constitutional speedy trial claim. That basis was set forth clearly in the second sentence of his Memorandum in Support of his trial court motion: “As such, this Honorable Court should dismiss this case pursuant to the Sixth Amendment to the United States Constitution as his right to speedy trial has been violated.” Mot. To Dismiss for Want of Prosecution (filed 3/15/13). In the argument section of the trial court motion, Clemons principally relied on the two seminal constitutional speedy trial cases from the United States Supreme Court: *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), and *Doggett v. United States* 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). *Id.* at 5-8. And, Clemons specifically argued, among other things, that prejudice is presumed in constitutional speedy trial claims when the delay exceeds a year. *Id.* at 6-7. The State’s claim that Clemons has somehow forfeited his constitutional speedy trial claim—the only claim he raised in the trial court—is incomprehensible.

Ironically, it was the *State of Ohio* who confused the issue in its appeal to the Eighth District. After acknowledging that the basis for Clemons’ trial court motion to dismiss was constitutional speedy trial, the State made the following assertion in its appellant’s brief:

In the Motion the Defendant appeared to confuse the Constitutional right to speedy trial, the Statutory right to speedy trial, the 180 day requirement under § 2941.401 and pre-indictment delay. Since the crux of the Defendant’s argument was that the State should have known where the Defendant was prior to indicting him, *it appears that he is arguing pre-indictment delay.*

State’s Appellant’s Br. at 2 (emphasis added). The State then proceeded to argue that the trial court should not have dismissed Clemons’ indictment because there was no statutory speedy trial violation, no constitutional speedy trial violation, and no pre-indictment delay. The State’s argument about pre-indictment delay was entirely superfluous because Clemons did not seek dismissal on that basis and the trial court did not therefore dismiss the case on that basis.

Because of the confusion injected into the case by the State of Ohio, the Court of Appeals followed suit and addressed *both* constitutional speedy trial and pre-indictment delay. The Court of Appeals' gratuitous discussion of pre-indictment delay (which was not the basis of the trial court's dismissal and was addressed only at the urging of the State of Ohio) cannot reasonably be construed as a forfeiture of Clemons' constitutional speedy trial claim. It is hard to conceive how Clemons could have forfeited his constitutional speedy trial claim when: (1) It was the sole basis of his motion to dismiss in the trial court; (2) It was necessarily the basis of the trial court's dismissal; and (3) Clemons addressed the constitutional speedy trial issue in response to the State's appeal. Because Clemons' sole claim in the trial court involved constitutional speedy trial, the sole issue that he raised in his appeal to this Court related to the Eighth District's erroneous analysis of his constitutional speedy trial claim. And that non-forfeited constitutional issue is properly before this Court.

The State also emphasizes the inartful statement of Clemons' trial counsel in his "Statement of Facts and Procedural Background" that Clemons "was not charged and/or prosecuted for the instant matter until March 11, 2011, more than a full year and one half after the arrest warrant was issued." (State's Br. at 3). Although Clemons' trial counsel could have been clearer about the procedural history of the case, there is no reason to believe that the trial court was unaware of the legal significance of the pending criminal complaint. Indeed, given that a criminal complaint is necessary to secure an arrest warrant in a criminal case and was in fact filed in this case, one could not seriously contend that the trial court judge, the prosecutor, and the Eighth District Court of Appeals were all ignorant of that fact. The State's emphasis on this isolated statement from Clemons' trial court motion to dismiss is ultimately irrelevant. The State has not cited and, counsel is unaware of any case law or legal principle, that precludes appellate counsel from emphasizing

different aspects of the case on appeal. Indeed, this Court has even held that a correct judgment should not be reversed merely because the court “erred in its specific rationale.” *See e.g. Agee v. Russell* (2001), 92 Ohio St. 3d 540, 544.

Moreover, the significance of the criminal complaint only became apparent after the Eighth District issued its decision and deviated from this Court’s decision in *Selvage*. When the Eighth District made that mistake, Clemons filed a motion to reconsider giving the Eighth District an opportunity to correct its decision—and one of the panel judges did indeed reconsider.

In sum, the State’s forfeiture argument is based on its fundamentally erroneous assertion that Clemons did not seek dismissal of his indictment on the basis of constitutional speedy trial. Because Clemons *only* sought dismissal of his indictment on that basis, the State’s forfeiture argument is entirely meritless. Accordingly, this Court should decline the State’s request to dismiss Clemons’ appeal as improvidently allowed.

B. A criminal complaint constitutes an official or formal accusation of a criminal charge that triggers State and Federal Constitutional Speedy Trial rights.

The United States Supreme Court has held that a defendant’s Sixth Amendment right to a speedy trial is “triggered by arrest, indictment, *or other official accusation.*” *Doggett v. United States* (1992), 505 U.S. 647, 655 (emphasis added). The question presented by this case is whether a criminal complaint accompanied by an arrest warrant constitutes an official accusation. This Court has already answered the question in the affirmative. And, even if it had not, a criminal complaint clearly constitutes an official accusation of a crime under Ohio law.

1. *State v. Selvage* (1997), 80 Ohio St. 3d 465 controls the outcome of this case.

In *Selvage*, this Court addressed the meaning of “official” or “formal” accusation for constitutional speedy trial claims and held that it includes the filing of a criminal complaint. 80 Ohio St. 3d at 468. The defendant in *Selvage* was charged by criminal complaint with drug

trafficking on June 7, 1994, but “[i]n an effort to preserve the anonymity of the officers involved in the investigation, the state did not pursue the complaint at that time, and [the defendant] was never served.” 80 Ohio St. 3d at 465. The State then indicted the defendant in April 1995 for those same felony drug offenses. *Id.* The defendant filed a motion to dismiss based on a violation of her constitutional speedy trial rights. *Id.* The trial court granted the motion. *Id.* In upholding the trial court’s ruling, this Court explained that the speedy trial clock began to run when the defendant was charged by the criminal complaint ten months before the indictment, that the State failed to demonstrate reasonable diligence in pursuing the prosecution, and that the defendant was prejudiced based on the delay. *Id.* at 469-70.

In its response, the State does not argue that *Selvage* was wrongly decided or should be overruled. Rather, it maintains that this Court’s conclusion that “the filing of the criminal complaint triggered the speedy trial inquiry under *Barker*,” *Selvage*, 80 Ohio St. 3d at 468-69, was merely dicta. The State is wrong.

Dicta is generally been defined by courts as “statements made by a court in an opinion that are not necessary for the resolution of the issues.” *State v. Lewis*, 4th Dist. No. 10CA24, 2011-Ohio-911, ¶ 19. Because dicta, by its nature, goes beyond the issues actually decided by the court, it does not constitute binding legal authority. *Heisler v. Mallard Mechanical Co. L.L.C.*, 10th Dist. No. 09-AP1143, 2010-Ohio-5549, ¶ 13.

This Court’s holding, in *Selvage*, that the filing of a criminal complaint triggered the speedy trial inquiry under *Barker*, was clearly necessary to the resolution of the issues presented in that case. In *Selvage*, the State argued that a criminal defendant could *never* prevail on a constitutional speedy trial claim when the prosecution was commenced within the statute of limitations. *Id.* at 467-68. In particular, the State maintained that there could be no presumption

of prejudice “until after the six-year statute of limitations.” *Id.* at 468. After rejecting the State’s argument, this Court established that the presumption of prejudice arises as “postaccusation delay” approaches one year, and determined that the formal accusation in that case occurred with the filing of the criminal complaint. *Id.* at 468. And having concluded that the defendant’s constitutional speedy trial rights were triggered by the filing of a criminal complaint, this Court then held that the defendant was prejudiced by the ten month delay between the complaint and the filing of the indictment and that “the trial court did not abuse its discretion in determining that appellee was deprived of her Sixth Amendment right to a speedy trial.” *Id.* at 469-70.

The State is misguided in its attempt to characterize as dicta this Court’s conclusion that the filing of a criminal complaint triggers a defendant’s constitutional speedy trial rights. In reviewing the propriety of the trial court’s dismissal of the indictment on speedy trial grounds, it was *necessary* for this Court to resolve the question of when the defendant’s speedy trial rights first became implicated. This Court clearly held that a criminal complaint triggers a defendant’s right to speedy trial and analyzed the delay with that as the starting point. Even the State admits that this Court used that legal determination as a “reference point for when a court should begin to inquire into speedy trial delay.” (State’s Br. at 9).

Because it was necessary for this Court to determine whether a criminal complaint constituted an official accusation to resolve the legal issues presented in *Selvage*, that legal determination does not constitute dicta but binding precedent. And, this Court should adhere to that precedent because it remains correct, logical and workable and because the State has made no attempt to present any justification, let alone a compelling or special justification, to overrule it.

2. *Selvage* is consistent with United States Supreme Court precedent.

Despite the fact that this Court decided *Selvage* in 1997, the State suggests that it is somehow inconsistent with a United States Supreme Court decision issued in 1971, 26 years earlier, *United States v. Marion*, 404 U.S. 307, 92 S.Ct. 455 (1971). The State's suggestion that this Court somehow ignored or misapplied *Marion* lacks merit.

In *Marion*, a criminal defendant argued that he was denied his federal constitutional speedy trial rights when the State did not indict him until three years after the alleged criminal acts. 404 U.S. at 308-309. The United States Supreme Court rejected that argument, concluding that “the Sixth Amendment speedy trial provision has no application until the putative defendant in some way becomes an ‘accused.’” *Id.* at 313. In *Marion*, the defendant was not subjected to an official accusation of criminal wrongdoing until he was indicted. *Id.* He had not previously been charged by criminal complaint or any other charging mechanism. *Marion* therefore does not conflict with this Court's decision in *Selvage* where the defendant, prior to being indicted, became an “accused” when he was charged by criminal complaint.¹

Although the State's brief is written to suggest that the United States Supreme Court has concluded that a criminal complaint, unlike an indictment, does not trigger a constitutional speedy trial inquiry, the United States Supreme Court has never addressed that issue. Thus, the State's suggestion that this Court's decision in *Selvage* is out of step with United States Supreme Court precedent is simply incorrect.

¹ Indeed, *Selvage*'s consistency with *Marion* is hardly surprising given that the *Selvage* Court referenced *Marion* in its decision. See *Selvage*, 80 Ohio St. 3d at 469, n.2.

3. A criminal complaint commences a criminal prosecution and thus triggers a defendant’s constitutional speedy trial rights.

The State’s claim, that a *criminal* complaint does not accuse a *criminal* defendant of a crime, strains credulity. (State’s Br. at 8). A criminal complaint contains a “written statement of the essential facts constituting the offense charged” along with a citation to the specific statute or ordinance that the defendant is alleged to have violated. Crim. R. 3. A criminal complaint is a necessary prerequisite for the issuance of an arrest warrant or a summons in lieu of a warrant. Crim. R. 4(a). This Court has already held that the filing of a criminal complaint in a felony case means that a felony charge “is pending” for purpose of the *statutory* speedy trial clock. *See State v. Azbell*, 112 Ohio St. 3d 300, 859 N.E.2d 532, 2006-Ohio-6552, syllabus (“For purposes of calculating speedy-trial time pursuant to R.C. 2945.71(C), 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.”) (emphasis added). Moreover, a criminal complaint along with a summons or arrest warrant is sufficient to commence a criminal prosecution under Ohio law. R.C. 2901.13(E) (“A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, *whichever occurs first.*”) (emphasis added). Once a criminal complaint has been filed against a defendant, he not only stands accused, but also, as a matter of Ohio law, the criminal prosecution against him has been commenced—as long as the State exercises reasonable diligence.

While it is of course true that a criminal defendant enjoys a state constitutional right to grand jury indictment for a felony case, *see* ART. I, SEC. 10 OF THE OHIO CONST., his or her constitutional right to an indictment does *not* mean that only an indictment can constitute an “official accusation” of a crime. Indeed, this Court has already made clear that both a criminal

complaint and a criminal information “formally accuse[]” a defendant of a crime. *See Selvage, supra* and *State v. Meeker*, 26 Ohio St.2d 9, 268 N.E.2d 589 (1971). Although a complaint, information, and indictment may require different procedures and are utilized at different times, they share one fundamental common feature—each serve as a formal mechanism to accuse an individual of a crime. Thus, each triggers a criminal prosecution under R.C. 2901.13(E), and each triggers a defendant’s constitutional right to a speedy trial.²

C. The trial court did not abuse its discretion in concluding that Clemons’ speedy trial rights had been violated.

The State also argues that, even if a criminal complaint triggers a defendant’s constitutional right to a speedy trial, the trial court erred in finding a constitutional violation in this case.

As an initial matter, if this Court finds the Eighth District applied the wrong legal standard in reviewing the State’s appeal of the trial court’s ruling, it should merely reverse the Eighth District’s decision and remand the case for consideration under the correct legal standard. Nonetheless, if this Court elects to review the underlying merits of the speedy trial claim, it should affirm the trial court’s ruling.

In reviewing a trial court’s dismissal of an indictment, this Court applies an “abuse of discretion” standard of review. *Selvage*, 80 Ohio St. 3d at 470. An abuse of discretion is “more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *State v. Kalish* (2008), 120 Ohio St.3d 23, 27.

² While the State claims that only an arrest or an indictment provides “clear *notice to the defendant* that he is being accused of a crime,” (emphasis in original), it offers no explanation as to why that is so. For notice purposes, there is no functional difference between the two. Both accuse an individual of committing a specific crime.

In analyzing the merits of a constitutional speedy trial claim, courts apply the well-established *Barker* test. In *Barker v. Wingo*, the United States Supreme Court adopted a “balancing test” in which four factors are considered: 1) the length of the delay; 2) the reason for the delay; 3) defendant’s assertion of his or her right; and 4) prejudice to the defendant. 407 U.S. at 530. “[E]xcessive delay presumptively compromises the reliability of the trial in ways that neither party can prove, or for that matter, identify.” *Doggett v. United States* (1992), 505 U.S. 647, 655. Proof of particularized prejudice is therefore not essential to a speedy trial claim. *Id.* Indeed, courts generally find “postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.” *Selvage*, 80 Ohio St. 3d at 468 (citing *Doggett*, 505 U.S. at 652, n.1).

In *Selvage*, this Court concluded that the trial court properly presumed prejudice when “there was a ten-month delay from the filing of the criminal complaint until [indictment] and a one-year delay from the filing of the criminal complaint until [arraignment].” 80 Ohio St. 3d at 468-69. The delay in this case was much longer. Here, there was an 18-month delay between the filing of the criminal complaint in August 2009 and Clemons’ indictment, and there is a 43-month (3½ year) delay from the filing of the complaint and the dismissal of the indictment in March 2013. Thus, the lengthy delay in this clearly implicates the presumption of prejudice contemplated by *Doggett* and *Selvage*.

The State has offered no reasonable explanation for this lengthy delay. In particular, the State offers no justification for failing to act on the criminal complaint and arrest warrant when it was filed in August 2009. There is no indication in the record that the State even took the very basic step of sending a summons to Clemons last known address. It simply did nothing. And then, when Clemons was arrested in March 2010, it *still* did nothing with respect to this case. The State continued to do nothing for the next year while Clemons was in the *State’s* custody

both in the Cuyahoga County Jail and in prison. The State did nothing until it indicted Clemons in March 2011. The State's complete failure to take any action on the criminal complaint during the year Clemons was in custody was unreasonable and constituted, at best, persistent neglect. In short, the State lacks any justification for the 18-month delay between Clemons' complaint and indictment.³

Finally, Clemons *did* assert his right to a speedy trial after he finally received notice that the instant case was pending against him. He can hardly be blamed for failing to request a disposition of his case prior to his indictment because the State never served him with a complaint, summons, or other process to inform him that he had a pending case. Mr. Clemons did ultimately file a motion to dismiss his indictment on constitutional speedy trial grounds.

In sum, the trial court did not act unreasonably or unconscionably when it dismissed a case, on constitutional speedy trial grounds, where the length of delay from criminal complaint to indictment was 18 months (almost 3 1/2 years until final disposition), when a presumption of prejudice arose, when the State has offered no reasonable justification for the delay, and when the defendant properly raised the issue in the trial court. "The Government, indeed, can hardly complain too loudly" about the dismissal in this case because its "persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an

³ The State argued that Clemons "eluded police," "repeatedly evaded the police" and "fled" after he was indicted and that accounts for some of the delay in this case. (State's Br. at 1-2 and 15). Such arguments are not supported by the record. The record simply indicates that Clemons service upon Clemons of his indictment was unsuccessful and that he did not appear for his arraignment. Whether Clemons failure to appear was purposeful or instead a result of lack of notice is not clear from the record. There is simply no indication, however, that Clemons evaded the police or fled. Ultimately it is irrelevant because the 18-month delay between the filing of the criminal complaint and the return of an indictment is by itself a more than adequate basis for finding a violation of Clemons' constitutional speedy trial rights.

accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.” *Doggett*, 505 U.S. at 657.

D. Clemons’ statutory speedy trial clock started when he was arrested in March 2010.

This Court could, in the alternative, affirm the dismissal of his indictment on statutory speedy trial grounds. As explained in his original brief, the statutory speedy trial clock began running on March 12, 2010 when he had a pending criminal complaint and was arrested. From the date, the State had 270 days to bring Mr. Clemons to trial and that time expired on December 7, 2010. R.C. 2945.71(C)(2).

In its response, the State argues that Clemons’ statutory speedy trial rights were not violated for two reasons: 1) His statutory speedy trial rights only begin to run when the police explicitly arrest him on that particular case; and 2) His statutory speedy trial rights under R.C. 2945.71 began to toll on April 5, 2010 when he was sent to prison. The State’s first argument is inconsistent with the plain language and purpose of the speedy trial statute and should be rejected by this Court. For a felony case, the speedy trial statute requires that the defendant “against whom a charge of felony is pending” be tried “within two hundred seventy days after the person’s arrest.” R.C. 2945.71(C)(2). All that is required to start the speedy trial clock is a pending felony and an arrest—both occurred here by March 12, 2010. It is with good reason that the statute does *not* require that the arrest explicitly occur in any particular case. If that were the case, then the State could essentially nullify a defendant’s statutory speedy trial rights in one case by simply claiming he was arrested in another case. Moreover, this Court’s decision in *Azbell*, 112 Ohio St. 3d 300 does not, as suggested by the State, compel a different result. *Azbell* only addressed what was required to have a pending felony charge. It did not resolve whether, when a

defendant has multiple pending cases, the State could arrest on just one case and thereby avoid the speedy trial clock on the other cases.

The State also argues, in the alternative, that Clemons' statutory speedy trial rights, under R.C. 2945.71(C), tolled when he was sent to prison on April 5, 2010 in a different case. The State's tolling argument lacks merit. R.C. 2945.72 provides a complete list of all tolling events for the statutory speedy trial clock. Subsection (A) of R.C. 2945.72 addresses the circumstances when other pending cases or sentences can be tolling events. Specifically, it provides that the following can be tolling events for any "period during which the accused is unavailable for hearing or trial:"

- "[O]ther criminal proceedings against him, within or outside the state;"
- "[H]is confinement *in another state*;" (emphasis added);
- The "pendency of extradition proceedings."

And each of those events only toll the speedy trial clock if "the prosecution exercises reasonable diligence to secure his availability."

The State's tolling argument thus fails for two reasons. First, although confinement "in another state" is a tolling event, R.C. 2945.72 does not include confinement in Ohio as a tolling event. If the General Assembly had wanted to include in-state confinement as a tolling event, it obviously knows how to do so. The general rule of statutory construction *expressio unius est exclusio alterius* ("the expression of one or more items of a class implies that those not identified are to be excluded"), *State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620, 1998-Ohio-182, compels the conclusion that the General Assembly's inclusion of out-of-state confinement as a tolling event evinces an intent to exclude in-state confinement as a basis for tolling of the statutory speedy trial clock.

Second, even if in-state confinement could be a tolling event under some circumstances, it would not toll the speedy trial clock in this case because the State clearly did not exercise reasonable diligence to secure Clemons availability *in this case*. There is little question that the State could have secured his availability in this case after he had been sent to prison because it in fact did so in another case, returning Clemons to Cuyahoga County Jail in May 2010 to stand trial in another case. Accordingly, Clemons' confinement in state prison did not toll the statutory speedy trial clock.⁴

CONCLUSION

For the reasons set forth above and in appellant's initial brief, Defendant-Appellant Marlon Clemons respectfully asks this Court adopt his proposition of law and reverse the decision of the Eighth District Court of Appeals.

Respectfully Submitted,

/s/ Cullen Sweeney
CULLEN SWEENEY, ESQ.
Assistant Public Defender

⁴ The State's argument that Marlon Clemons did not request the final disposition of his complaint pursuant to R.C. 2941.401 misses the mark. Clemons is not arguing that his speedy trial rights were violated under R.C. 2941.401. Although the State seems to suggest that R.C. 2941.401 and R.C. 2945.71 are somehow mutually exclusive speedy trial remedies, these statutes actually work in concert. R.C. 2945.71 sets the general rule that a defendant has a right to be tried in 270 days (or 90 days if held in pre-trial custody on that case). R.C. 2941.401 offers additional protection for individuals serving a sentence in a state prison. Pursuant to R.C. 2941.401, incarcerated individuals can request a disposition of untried indictments or complaints and thereby start a *shorter* 180-day speedy trial clock. However, even if the inmate does not request disposition of the charges pursuant to R.C. 2941.401, the State remains bound by the speedy trial provisions in R.C. 2945.71.

SERVICE

A copy of the foregoing Appellant's Reply Brief was served upon Assistant County Prosecutor T. Allan Regas by email at aregas@prosecutor.cuyahogacounty.us on this 29th day of October 2014.

/s/ Cullen Sweeney
CULLEN SWEENEY, ESQ.
Assistant Public Defender