2011 IL App (2d) 100254-U
No. 2—10—0254
Order filed September 26, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 09—CF—188
ROSS ADAMS,	)	Honorable Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: Defendant was not denied a speedy trial on an amended information, as the original and amended charges were based on related acts but not the same acts and thus were not subject to mandatory joinder.

¶ 1 After a jury trial, defendant, Ross Adams, was convicted of theft based on deceptive practices (720 ILCS 5/16A—3(f) (West 2008)). Because of his prior convictions, he was sentenced as a Class 4 felon to 54 months' imprisonment. Defendant appeals, contending that the State violated his statutory right to a speedy trial (see 725 ILCS 5/103—5(b) (West 2008)). We affirm.

¶ 2 On January 14, 2009, the State filed an information charging defendant with retail theft, a Class 4 felony (720 ILCS5/16A—3(a) (West 2008)), in that, on or about December 15, 2008, he knowingly took possession of certain merchandise offered for sale at a Home Depot store in Waukegan, intending to deprive Home Depot permanently of the merchandise, without paying full retail value. The information also alleged that defendant had a prior conviction of retail theft.

¶ 3 On January 23, 2009, defendant was released on bond and filed a demand for a speedy trial, in accordance with section 103—5(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103—5(b) (West 2008)). The cause was continued several times. On January 26, 2010, the date scheduled for defendant's jury trial, the State requested leave to file an amended information that charged defendant with Class 4 retail theft but, instead of citing section 16A—3(a) of the Criminal Code of 1961 (Criminal Code), cited section 16A—3(f) (720 ILCS 5/16A—3(f) (West 2008)). The amended information alleged that, on or about December 15, 2008, defendant knowingly falsely represented to the Waukegan Home Depot that he or another was the lawful owner of certain property and conveyed or attempted to convey the property to the Home Depot in exchange for money, merchandise credit, or other property of the Home Depot.

¶ 4 Defendant objected to the amended information, contending that the new charge could have been filed with the original one more than a year earlier. Defendant contended that the amended information was actually "a brand new charge" that alleged "a completely different offense." He argued that proceeding on the new charge would violate his right to a speedy trial, because more than 160 days (see 725 ILCS 5/103—5(b) (West 2008)) had passed since his speedy-trial demand and none of that period could be attributed to him if the State proceeded on the new charge.

¶ 5 The trial judge observed that the case was "about an allegedly fraudulent return essentially. The defendant took merchandise and tried to return it having not paid for it." Defendant's attorney agreed with the judge's statement that "there [was] really no surprise here," and he said that he would not need a continuance. The judge ruled that, because the State did not seek to charge a new offense and defendant would suffer no prejudice, the amended information should be allowed. The State filed the amended information, the cause went to trial, and defendant was convicted.

¶ 6 Defendant moved for a new trial or a judgment *n. o. v.*, arguing in part that allowing the State to file and proceed on the amended information violated his right to a speedy trial. Relying on *People v. Williams*, 204 Ill. 2d 191 (2003), defendant contended that, because the charges in the original information and in the amended information were subject to mandatory joinder under section 3—3 of the Criminal Code (720 ILCS 5/3—3 (West 2008)), the 368-day period between defendant's speedy-trial demand and the filing of the amended information had to be charged entirely to the State. The trial court denied defendant's motion and later sentenced him to 4½ months' imprisonment. After the court denied his motion to reconsider the sentence, defendant timely appealed.

¶ 7 On appeal, defendant again relies on the interaction of the speedy-trial statute and the mandatory-joinder statute, contending that, because the charges in the original information and in the amended information were subject to mandatory joinder, the trial court violated his right to a speedy trial when it made him stand trial on the latter charge more than 160 days after he filed his speedy-trial demand. For the following reasons, we disagree.

¶ 8 Because this appeal raises purely legal questions about the operation of the speedy-trial and mandatory-joinder statutes, our review is *de novo*. See *People v. Cornelius*, 213 Ill. 2d 178, 188

(2004). Moreover, we may affirm the trial court on any basis called for by the record, regardless of the court's reasoning. *People v. Tripp*, 306 Ill. App. 3d 941, 952 (1999). Although we do not endorse the trial court's reason for allowing the State to file the amended information, we hold that the court did not err in doing so and in allowing defendant to be tried on the new charge.

¶ 9 The speedy-trial statute applicable here requires that a person on bail or recognizance be tried within 160 days of the date that he demands a speedy trial, unless delay is occasioned by him. 725 ILCS 5/103—5(b) (West 2008). As pertinent here, the mandatory-joinder statute provides:

> "(a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.
>
> (b) If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution *** *if they are based on the same act.*" (Emphasis added.) 720 ILCS 5/3—3(a), (b) (West 2008).

¶ 10 Defendant asserts that (1) the State was required to prosecute the two charged offenses in a single prosecution; (2) because the State did not do so, all of the delay between his speedy-trial demand and the filing of the amended information was chargeable to the State; and, therefore, (3) his right to be tried within 160 days after he demanded a speedy trial was violated.

¶ 11 Defendant relies primarily on *Williams*. There, on March 13, 1997, the defendant was charged by information with contributing to the criminal delinquency of a juvenile, in that, on January 30, 1997, he gave a gun to a juvenile, who used the gun to shoot and fatally wound a third person, Patterson. On August 27, 1997, the State filed an amended information charging the defendant under an accountability theory with the first-degree murder of Patterson. The defendant,

who had been in custody for 168 days, moved to dismiss the murder charge, invoking his statutory right to be tried within 120 days of being taken into custody (see 725 ILCS 5/103—5(a) (West 1996)). He contended that, because the delinquency charge and the murder charge were subject to mandatory joinder, all of the delay was attributable to the State. *Williams*, 204 Ill. 2d at 197-98.

¶ 12 The State conceded that the charges were subject to mandatory joinder, and the supreme court agreed. The court observed that the two charges were based on the "same act" (720 ILCS 5/3—3(b) (West 1996))—the defendant's giving the gun to Williams. Indeed, at the trial level, the prosecutor had conceded that the murder charge was " 'an alternative theory [based on] the same facts.' " *Williams,* 204 Ill. 2d at 201. The court then held that, because the charges were subject to mandatory joinder (both offenses having been known to the prosecutor all along), the delay attributable to the defendant on the initial charge could not be attributed to him on the later charge, and his murder conviction had to be reversed. *Id.* at 207-08.

¶ 13 In *People v. Izquierdo-Flores*, 367 Ill. App. 3d 377 (2006), on September 7, 2000, the defendant was indicted for second-degree murder, in that he had strangled his aunt the previous day. On January 17, 2001, the State filed a second indictment, charging the defendant with first-degree murder, also based on his strangulation of his aunt. The defendant moved to dismiss the second indictment as violating his statutory right to a speedy trial. The trial court granted the motion; this court reversed; and the defendant was tried for and convicted of first-degree murder. On appeal, this court held that, in light of *Williams*, our prior decision was erroneous and the first-degree murder conviction had to be vacated and the cause remanded for proceedings on the second-degree murder charge. *Id.* at 387. We explained, in part, that the two charges, like those in *Williams*, were subject to compulsory joinder "because they were alternative theories on the same facts." *Id.* at 385.

¶ 14 As these opinions suggest, the reach of the mandatory-joinder statute is limited. Essentially, the "same act" (720 ILCS 5/3—3(b) (West 2008)) is literally that. This conclusion is consistent with the rule that, if statutory language is unambiguous, a court may not depart from its plain meaning. See *Ries v. City of Chicago*, 242 Ill. 2d 205, 216 (2011). Thus, as the supreme court has held, joinder is not required merely because "multiple offenses arise from distinct, but related, acts in the course of a single incident" (*People v. Gooden*, 189 Ill. 2d 209, 219 (2000)) or because " 'several offenses *** arise from a series of acts which are closely related with respect to the offender's single purpose or plan' " (*Id.* (quoting Ill. Ann. Stat., ch. 38, par. 3—3, Committee Comments—1961 at 102 (Smith-Hurd 1972))).

¶ 15 Applying these principles, we conclude that defendant's argument rests on the erroneous premise that the original information and the amended information were based on the same act. They were not. Taking property is simply not the same as attempting to return property that one already has in one's possession. One can do the first without doing the second, and vice versa. The record does imply that defendant took the merchandise, intending not to pay for it, only minutes before he attempted to return it. But that does not make these two acts into the same one, however much it shows that they occurred during the course of a single incident and were closely related as part of defendant's single purpose or plan. The two charges were not alternative theories based on the same facts. Thus, defendant's speedy-trial claim does not hold up.

¶ 16 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 17 Affirmed.