NOTICE
Decision filed 01/17/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110046-U

NOS. 5-11-0046, 5-11-0047, & 5-11-0048 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Saline County.
	)	
v.	)	Nos. 10-CM-271, 09-CM-186,
	)	& 10-CM-294
CODY B. HAMBY, DONNITA K. SHAW,	)	
and RICHARD B. FITTS,	)	Honorable
	)	Walden E. Morris,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: In the absence of a clear denial of due process shown by an actual and substantial prejudice to the defendants, the trial court abused its discretion by dismissing the charges against three defendants when the prosecuting attorney had left the courtroom for five minutes.

¶ 2 The State appeals an order of the trial court dismissing three cases for want of prosecution. The State argues that the trial court abused its discretion in dismissing the case. We reverse.

¶ 3 This appeal involves three defendants charged with unrelated offenses: driving while under the influence of alcohol (Hamby), disorderly conduct (Shaw), and possession of drug paraphernalia and possession of cannabis (Fitts). The undisputed facts are that assistant State's Attorney Eva Walker appeared in criminal court at a hearing set at 1 p.m. on November 22, 2010. For approximately the next hour, Walker engaged in plea negotiations with defense counsel related to the Shaw and

Fitts cases. She also reached an agreement with defense counsel to continue the Hamby case. Walker then waited for the judge to arrive to enter the pleas.

¶ 4 At approximately 2 p.m., Walker left the courtroom to go to the restroom, but did not advise anyone of her whereabouts. Immediately after Walker left the courtroom, Judge Walden Morris appeared and called the cases assigned to Walker. Another assistant State's Attorney, Amanda Moore, advised Judge Morris that Walker had been there previously, stating "Eva's here." The bailiff was sent to look for Walker and returned without finding her. Moore also went to search for Walker and found her returning from the restroom. Walker entered the courtroom with Moore to find that the Hamby, Shaw, and Fitts cases had been dismissed for "want of prosecution". At the time the cases were dismissed, Walker had been gone from the courtroom for approximately five minutes.

¶ 5 Judge Morris denied the State's motion to reconsider by order of February 2, 2011, stating, "[T]he State's failure to appear and prosecute each of the above-referenced matters thwarted the effective administration of justice and the Court's ability to maintain the Court's calendar, as well as the fair and efficient prosecution of the criminally accused and prejudiced each of the defendants." This appeal follows.

¶ 6 The grounds for dismissal of criminal charges are prescribed by section 114-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1 (West 2008)). "Want of prosecution" is not one of the stated grounds. 725 ILCS 5/114-1 (West 2008). While typically dismissals are limited to the enumerated reasons, the supreme court has recognized the trial court's inherent authority to dismiss charges on other grounds. *People v. Lawson*, 67 Ill. 2d 449, 455, 367 N.E.2d 1244, 1246 (1977). The basis for dismissal, however, must be a "clear denial of due process" through a showing of

"actual and substantial prejudice". *Lawson*, 67 Ill. 2d at 456, 367 N.E.2d at 1247.

¶ 7 We do not believe that the undisputed fact of a five-minute delay in the court's affairs of business here demonstrates an actual and substantial prejudice to these defendants. The court did not state an actual prejudice, nor did the defense attorney argue any prejudice as the dismissals were *sua sponte*. The mere possibility of prejudice is not enough. *Lawson*, 67 Ill. 2d at 459, 367 N.E.2d at 1249.

¶ 8 We find that the trial court abused its discretion in dismissing the charges filed against the defendants. We reverse the judgment of the trial court.

¶ 9 Reversed.