

2014 IL App (2d) 120693-U  
No. 2-12-0693  
Order filed March 28, 2014

**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 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-4257
	)	
	)	Honorable
ANGERIO CURTIS,	)	George Bridges, and
	)	Daniel B. Shanes,
Defendant-Appellant.	)	Judges, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant does not object to a continuance, the delay from the continuance is attributable to defendant and does not count against the speedy trial term.

¶ 2 Following a jury trial, defendant, Angerio Curtis, was convicted of domestic battery (contact of an insulting or provoking nature; severity of the crime enhanced by a prior conviction) (720 ILCS 5/12-3.2(a)(2), 3.2(b) (West 2010)), and he was subsequently sentenced to a four-year term of imprisonment. Defendant appeals the judgment of the circuit court of Lake County denying his motion to dismiss due to a speedy-trial violation (725 ILCS 5/103-5(a)

(West 2010)), contending that the trial court improperly attributed an eight-day continuance between his arraignment and bond setting and the court-ordered bond review to him. We affirm.

¶ 1

## I. BACKGROUND

¶ 2 On December 22, 2011, defendant was arrested. On December 23, 2011, defendant had his initial appearance before the judge. At this hearing, the court appointed a public defender, set an initial bond, ordered a pretrial services bond report, and set another date for bond review for December 30, 2011. For the December 22 and December 30 hearings, it appears that no court reporter was present and no transcript of the proceedings was prepared. On January 18, 2012, the indictment was filed, and defendant was arraigned on January 26, with a jury trial scheduled to begin March 12, 2012. On March 8, over defendant's objection, the trial date was changed to April 23, 2012.

¶ 3 On April 23, 2012, defendant moved to dismiss the charges on the grounds that more than 120 days had elapsed since the date of his arrest in violation of his statutory right to a speedy trial. 725 ILCS 5/103-5(a) (West 2010). Defendant argued that April 23, 2012, is 123 days after his initial arrest on December 22, 2011, thus violating his statutory right to be tried within 120 days being arrested. 725 ILCS 5/103-5(a) (West 2010). The judge denied this motion, holding that the time between December 23 and December 30 did not count because the delay was attributable to defendant. The trial court reasoned that, because defendant did not object to the continuance for bond review, he was deemed to have consented to the delay and it was attributable to him. Therefore, only 115 days had elapsed between the arrest and the trial date.

¶ 4 The case was then transferred to another circuit judge who, on defendant's request, reviewed the previous judge's ruling on his motion to dismiss. This second judge, after

reviewing and interpreting the circuit's custom and usage of the half sheets included in the record, held that defendant had consented to the delay and the period between December 23 and December 30 did not count against the speedy trial term, so only 115 days had elapsed. On May 24, 2012, following a jury trial, defendant was convicted. Thereafter, defendant filed a motion for a new trial which was denied. On June 20, 2012, defendant was sentenced to a four-year term of imprisonment. That same day, defendant filed a motion to reconsider sentence, and on June 25, 2012, it was denied. Defendant timely appeals

¶ 5

## II. ANALYSIS

¶ 6 Defendant asserts that the time between December 23, 2011, and December 30, 2011, was improperly excluded from calculation of the speedy trial term. Excluding the contested period, only 115 days have elapsed. If those days are included, 123 days have elapsed. We reject defendant's argument and agree with the ruling of the trial court.

¶ 7 Illinois provides a defendant with a statutory right to face trial within 120 days of arrest if he or she is being held in custody. 725 ILCS 5/103-5(a) (West 2010). "Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." 725 ILCS 5/103-5(a) (West 2010). If the parties agree to a continuance, the delay is attributable to the defendant. *People v. Klinier*, 185 Ill. 2d 81, 115 (1998) (continuance on the defendant's motion to set bail constituted a delay attributable to defense). Although a defendant has both a constitutional and statutory right to a speedy trial, defendant only claims a violation of his statutory right, so the issue of defendant's constitutional right is not before us. U.S. Const., amend VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5(a) (West 2010). The determinative issue, then, is whether the time period between December 23, 2011, and December 30, 2011, was properly attributed to

defendant. When reviewing a speedy-trial issue, we give the trial court's decision much deference and will only disturb the ruling if there is a clear showing that the trial court abused its discretion. *Id.*

¶ 8 Under the statute, if a defendant makes no objections, any delay is attributed to the defendant. 725 ILCS 5/103-5(a) (West 2010). The first trial judge found that defendant made no objection at the time, and therefore deemed that defendant agreed to the continuance. When the second trial judge reviewed this decision, he did not disturb the original ruling because he agreed that the record showed defendant made no objection. Our review of the record confirms that there is no evidence demonstrating that defendant objected. Because, pursuant to section 103-5(a), defendant must make either a written or oral objection (see 725 ILCS 5/103-5(a) (West 2010)), silence in the record indicates that no objection was made, and, therefore, we deem that defendant consented to the continuance. *Kliner*, 185 Ill. 2d at 115-16. Although defendant asserts that he did object, he has neither provided us with any evidence nor indicated where in the record there is support for his assertion. Therefore, because the record is silent, and because defendant did not provide this court with any evidence indicating such an objection as made, we hold that the trial court did not abuse its discretion in attributing the time to defendant due to his consent to the continuance. *Id.*

¶ 9 Our conclusion is strengthened by examining the context in which defendant attempted to assert his speedy trial rights. As explained in *People v. Wade*, 2013 IL App (1st) 112547 ¶ 26, the right to a speedy trial has never been intended to be used to defeat a conviction; rather, it should be invoked to ensure that the State does not unduly delay prosecution. *Id.* In other words, the speedy trial provision is only to be used as a shield to protect defendant's speedy-trial rights, and not as a sword to defeat defendant's prosecution. *Id.* To allow defendant to "defeat

his conviction” here would sanction the offensive use of the speedy-trial provision, contrary to longstanding precedent. See, e.g., *id.*; *Kliner*, 185 Ill. 2d at 115. Here, defendant’s attempted offensive use of his statutory speedy-trial right represents an impermissible expansion on the scope of the right that flies in the face of the statute’s original purpose. Therefore, we reject defendant’s attempted offensive use of his speedy trial right

¶ 10 Finally, defendant argues that, because the trial was not delayed, there can be no tolling attributed to defendant. *People v. Boyd*, 363 Ill. App. 3d 1027, 1037 (2006) (“unless the trial date is postponed, there is no delay to attribute to defendant”). Defendant’s argument cannot stand. Where a statute allows for two possible constructions, the interpretation that renders the statute reasonable should be adopted over the one that leads to absurdity. *County of Cook v. Illinois Labor Relations Board Local Panel*, 347 Ill. App. 3d 538, 547 (2004). Defendant’s interpretation is untenable because, taken to its fullest extent, no continuance will ever be attributable to a defendant except one that occurs immediately before a trial. Under defendant’s reasoning, if a continuance occurs before a trial date is set, that trial date cannot be considered “postponed,” as such a determination implies that the trial date has changed from one date to another. This is an absurd result as any continuance granted before a trial date was set would be impossible to attribute to defendant (because it would not move the unset trial date from one specific date to another), and defendant could simply repeatedly move for continuances until the speedy-trial term expired. Instead, it is far more reasonable to adopt the interpretation that any continuance that defendant does not object to does not count against the speedy-trial term, regardless of whether the continuance has, in fact, moved the trial date. As it is proper to adopt a reasonable interpretation of a statute (as opposed to one which will lead to absurdity) (*id.*), we reject defendant’s argument and hold that a continuance is attributable to a defendant unless the

defendant makes an oral or written objection (725 ILCS 5/103-5(a) (West 2010)) regardless of whether the actual start date of the trial is affected by the continuance. See *Kliner*, 185 Ill. 2d at 115-16.

¶ 11 The record does not show that defendant made an objection to the continuance from the arraignment to the bond review hearing. The trial court's interpretation of the record in this regard (namely, the half sheets) is neither against the manifest weight of the evidence nor an abuse of discretion. By operation of the statute (and longstanding precedent) (see analysis, *supra*), defendant is thus deemed to have consented to the continuance, the time period is attributable to defendant, and it does not constitute delay under the speedy-trial provision. Accordingly, we cannot say that the trial court abused its discretion in attributing the time to defendant.

¶ 12

### III. CONCLUSION

¶ 13 For the reasons stated, we hold that the trial court properly excluded the time between the continuance from the arraignment to the bond review hearing from the calculation of the speedy-trial term, and we affirm the judgment of the circuit court of Lake County, denying defendant's motion to dismiss.

¶ 14 Affirmed.