

2016 IL App (2d) 140866-U
No. 2-14-0866
Order filed February 25, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 13-CF-3328
)	
DERIK T. FORT,)	Honorable
)	Fernando L. Engelsma,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited claim that his statutory right to a speedy-trial was violated where defense counsel did not object when the trial court initially attributed disputed period of time to defendant. Thus, the trial court abused its discretion when it subsequently granted defendant's motion to dismiss the charges against him on speedy-trial grounds. Accordingly, the judgment of the circuit court would be reversed and the cause remanded for further proceedings.

¶ 2 Defendant, Derik T. Fort, was charged by superseding indictment with fourteen counts of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)), one count of intent to deliver cannabis (720 ILCS 550/5(d) (West 2012)), and one count of possession of cannabis (720 ILCS 550/4(d) (West 2012)). Defendant subsequently moved to

dismiss the charges against him, alleging a statutory speedy-trial violation. See 725 ILCS 5/103-5(a) (West 2014). Following a hearing, the circuit court of Winnebago County granted defendant's motion. The State filed a timely notice of appeal and a certificate of impairment. For the reasons set forth below, we reverse the judgment of the circuit court and remand this matter for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 As a result of a parole check conducted on December 9, 2013, the Rockford police department arrested defendant. On December 11, 2013, defendant was charged by information with two counts of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)), one count of unlawful possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2012)), and one count of possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)). At his arraignment, the trial court appointed a public defender to represent defendant, set defendant's bond at \$100,000, and remanded defendant to custody. A bill of indictment was filed on December 18, 2013, and the State sought forfeiture proceedings related to \$280 in United States currency found in defendant's possession at the time of his arrest.

¶ 5 On December 20, 2013, the parties appeared before Judge Ronald J. White. Judge White arraigned defendant on the charges set forth in the bill of indictment and found probable cause for the forfeiture. At the conclusion of the hearing, the matter was continued to January 16, 2014, before Judge Rosemary Collins. Defendant subsequently retained a private attorney, Kunal Kulkarni, and the public defender was granted leave to withdraw. On December 26, 2013, defendant moved for a substitution of judge pursuant to section 114-5(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-5 (West 2012)).

¶ 6 On January 8, 2014, the State charged defendant by superseding bill of indictment with fourteen counts of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)), one count of possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2012)), and one count of possession of cannabis (720 ILCS 550/4(d) (West 2012)). On January 16, 2014, Judge Collins arraigned defendant on the superseding bill of indictment. She then continued the matter until February 4, 2014, before Judge Joseph McGraw for reassignment. The written order entered by Judge Collins tolled the speedy-trial clock. On February 4, 2014, Judge McGraw assigned the case to Judge Fernando Engelsma and continued the matter to February 18, 2014. Judge McGraw's written order also provides that the speedy-trial clock was tolled.

¶ 7 The parties appeared before Judge Engelsma on February 18, 2014, and defendant moved for supplementary discovery of active complaints against one of the police officers involved with the parole search which led to his arrest. When the State questioned the relevance of the requested material, the trial court asked defendant to supply supporting case law and continued the matter to March 3, 2014, on defendant's motion. On March 3, defendant failed to present any authority, so the court denied his motion for supplemental discovery. The following discussion occurred at the March 3 hearing:

“MR. KULKARNI [defense counsel]: Judge, at this stage I believe we'd like to get a potential trial date—

THE COURT: Uh-huh.

MR. KULKARNI: —regarding these matters.

THE COURT: Uh-huh.

MR. KULKARNI: We will be filing certain motions in limine particularly—

THE COURT: Okay.

MR. KULKARNI: —regarding my client’s record.

THE COURT: All right.

MR. KULKARNI: I think if we get an April setting, we can make sure all—
everything we need to file will be on file.

THE COURT: Attorney Kulkarni, is April 28th acceptable to you?

MR. KULKARNI: That would be acceptable.

THE COURT: All right. On defense motion—

MS. LARSON [assistant state’s attorney]: Judge, if we do it after the 22nd, I will
have to have the first May setting. Otherwise, I expect to be on medical leave.

THE COURT: Yeah.

MR. KULKARNI: That’s—

THE COURT: Can you do that, Attorney Larson? Or, I guess, what is it that
you’re—are you asking any particular—anything in particular of the Court in terms of
setting?

MS. LARSON: I could try and get somebody else to cover this.

THE COURT: All right. Is it—So, Mr. Kulkarni, You’re asking for May 28th?

MR. KULKARNI: For April.

THE COURT: I’m sorry, April 28th?

MR. KULKARNI: I would.

THE COURT: All right. April 28th at 9:00 o’clock. And that’s on 13 CF 3328.
And final pretrial for that then will be the Thursday before, April 24th, also at 9:00

o'clock. And any motions in limine to be filed before that date as they'll be argued on that date.

MR. KULKARNI: Thank you.

THE COURT: So the trial date accepted and made on motion of defendant."

At the conclusion of the hearing, the trial court entered a written order continuing the case to April 24, 2014, to address pretrial matters, and April 28 for trial. The court checked a box on the written order providing that the case was continued to the next court date "[o]n defendant's motion," and wrote on an adjoining line "120 tolled set by [defendant's] request."

¶ 8 During the pretrial hearing on April 24, defendant elected to waive a jury trial and proceed to a bench trial on May 20, 2014. The written order entered on that date provides that the case was continued on defendant's motion with the "120 tolled." On May 20, the State moved to continue the case based, in part, on defendant's disclosure of additional witnesses on May 19, and the discovery of internal police reports related to defendant's arrest. When the trial court stated that one option for the late answer to discovery was to bar the testimony, defendant indicated he wanted to present his case "fully" and therefore was "not opposed" to the State's motion. Ultimately, the trial court granted the State's motion to continue. The written order entered on May 20 provides that the case was continued on defendant's motion with the "time tolled" and that the trial was set for June 13, 2014, "by agreement."

¶ 9 Late in May, the State sought to obtain a DNA sample from defendant. At a hearing on June 2, 2014, the trial court granted the State's request but declined to continue the trial. The written order entered on June 2 provides that the case was continued on defendant's motion to June 13 for a bench trial. On June 13, the State moved to continue because the assistant state's attorney assigned to the matter was unavailable due to a medical emergency. When the trial

court asked if defendant was objecting, defense counsel responded, “Judge, I’m ready to proceed. We’ll leave it at that.” The court responded, “[o]ver [defendant’s] objection, time continues running,” and trial was set for June 19.

¶ 10 On June 19, the State moved to continue again because the assistant state’s attorney was still ill. At the hearing on the State’s motion, defendant voiced his frustration over the repeated delays. Nevertheless, the court granted the State’s motion over defendant’s objection. The parties and the court then discussed the next court date. Ultimately, the court continued the matter to July 11, 2014. On July 11, the State moved to continue again because the prosecuting attorney was involved with a bench trial before a different judge. Defense counsel responded, “Judge, we object. I have spoken to my client about it. We have witnesses. We are prepared to go. I think we’ve answered ready since the setting of the bench trial.” Defense counsel added that “[w]hatever date the Court next gives us, we intend to file a motion regarding that issue.” Over defendant’s objection, the trial court set the trial for July 24.

¶ 11 When the parties appeared for trial on July 24, defendant filed a motion *instanter* to dismiss on statutory speedy-trial grounds. In his written motion, defendant calculated that 37 days had elapsed between December 9, 2013 (the date of his arrest) and January 16, 2014 (the date his motion for substitution of judge was granted). Defendant asserted that the speedy-trial term remained tolled at 37 days until April 24, 2014, when he executed the jury trial waiver and requested the setting of a bench trial. According to defendant, from April 24 onward, “all motions for continuances have been on the State and [he] has been ready at each setting.” By defendant’s calculation, as of July 24, 2014, 128 days had elapsed since his arrest for speedy-trial purposes.

¶ 12 At the hearing on defendant's motion, the State argued that the speedy-trial clock remained tolled at 37 days through June 19, 2014, "because of *** defendant's actions." The State asserted that on March 3, 2014, defendant asked for a trial date on April 28 with a final pretrial hearing on April 24. According to the assistant state's attorney, her notes indicated that the continuance on March 3 was "on motion of defendant because he wasn't available at an earlier trial date because the Court would have had two trial settings before 4/28." The State further asserted that even if the court charges it with the time beginning March 3, on April 24, 2014, defendant elected to waive a jury trial, and a bench trial was set for May 20, 2014. Then, on May 19, 2014, just one day prior to the trial date, defendant disclosed additional witnesses, so the matter was continued by agreement through June 19, 2014. The State indicated that it agreed the time from June 19 to July 24 was attributable to it, but claimed that it was still "well within *** 120." In response, defendant stated that he did not "necessarily believe [he] tolled the time between March 3 and the April setting," but agreed that he was "definitely *** responsible for stopping the time" between the April setting and the date of the May bench trial "because [he] asked it be removed from the trial call and set it on the bench trial date." Defendant did not believe that any delay from the May bench trial setting onward was attributable to him because he consistently answered ready for trial. The trial court ordered transcripts to review the report of proceedings and continued the matter to August 8, 2014.

¶ 13 When the parties reconvened, the trial court calculated that a period of 38 days had elapsed from December 9, 2013 (defendant's date of arrest), through January 16, 2014 (the date defendant's substitution motion was granted). The court determined that the speedy-trial clock remained tolled at 38 days until March 3, 2014, when the case was set for trial. The court calculated that the scheduled trial date, April 28, was the 94th day of the 120-day speedy-trial

term. Citing to *People v. Maxey*, 2013 IL App (2d) 120283-U, the court concluded that because April 28 was “still within term,” defendant’s acquiescence to that date did not toll the speedy-trial clock. The court then noted that on April 24, the 90th day of the speedy-trial term, the parties appeared for the final pretrial hearing. At that time, defendant elected to waive a jury trial and the cause was continued for a bench trial on May 20, 2014. The court attributed the waiver of jury trial to defendant. On May 20, the case was continued to June 13 by agreement. The trial court found that defendant accepted the delay on May 20, so the speedy-trial clock remained tolled at 90 days through June 13, 2014. On June 13, the trial was continued to June 19 due to the illness of the assistant state’s attorney, bringing the speedy-trial term to 96 days. On June 19, the trial was continued until July 11, 2014, bringing the speedy-trial term to 118 days. On July 11, 2014, the trial was continued on the State’s motion and over defendant’s objection until July 24, 2014. The court noted that July 24 was the 131st day of the speedy-trial term. Since July 24 fell outside of the 120-day speed-trial term applicable to in-custody defendants (see 725 ILCS 5/103-5(a) (West 2014)) and defendant objected to a trial setting on that date, the trial court reasoned that defendant was not brought to trial within the statutory time frame. Hence, the trial court granted defendant’s motion to dismiss. The State then filed a motion to reconsider, which the trial court denied on August 19, 2014. On August 29, 2014, the State filed a notice of appeal and certificate of impairment.

¶ 14

II. ANALYSIS

¶ 15 On appeal, the State asserts that the trial court erred in granting defendant’s motion to dismiss for a speedy-trial violation. The State focuses on the 52-day period between March 3, 2014 (the date trial was set for April 28), and April 24, 2014 (the date of the final pretrial hearing, at which defendant elected to waive a jury trial and proceed to a bench trial). The State

argues that it was improper to charge this 52-day period against it because (1) defendant failed to make a speedy-trial demand at the time trial was set and (2) the court order entered on March 3 explicitly indicated that the time was tolled. Excluding this 52-day period (and the other times attributable to defendant), the State calculates that only 79 days elapsed between the date of defendant's arrest and the date the parties appeared for trial on July 24, 2014. Thus, the State reasons, the trial court erred in granting defendant's motion to dismiss on speedy-trial grounds. Defendant responds that because the trial date scheduled at the March 3 hearing fell within the speedy-trial term, no "delay" attributable to him occurred. Thus, defendant reasons, the trial court properly attributed the time between March 3 and April 24 to the State.

¶ 16 An accused has both a constitutional and a statutory right to a speedy trial. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5 (West 2012); *People v. Woodrum*, 223 Ill. 2d 286, 298 (2006). Although the constitutional and statutory speedy-trial provisions address similar concerns, the rights they establish are not coextensive. *Woodrum*, 223 Ill. 2d at 298. Here, in his motion to dismiss, defendant asserted only a violation of his statutory right to a speedy trial and did not raise a constitutional issue. Accordingly, our analysis is limited to whether defendant's statutory right to a speedy trial was violated.

¶ 17 An accused's statutory right to a speedy trial is governed by section 103-5 of the Code (725 ILCS 5/103-5 (West 2014)). Section 103-5 contains two distinct statutory periods. The 120-day period set forth in subsection (a) (725 ILCS 5/103-5 (a) (West 2014)) applies when a defendant is in custody, whereas the 160-day period set forth in subsection (b) (725 ILCS 5/103-5(b) (West 2014)) applies when a defendant has been released on bail or recognizance. In this case, defendant remained in custody during the pendency of these proceedings, so the 120-day speedy-trial term set forth in subsection (a) applies.

¶ 18 Section 103-5(a) provides in relevant part as follows:

“Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant ***. 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 2014).

Under section 103-5(a), the statutory period begins to run automatically from the day the defendant is taken into custody and a formal demand for trial is not required. *People v. Mayo*, 198 Ill. 2d 530, 536 (2002). As the statute provides, however, any “delay occasioned by the defendant” must be excluded from the speedy-trial term. 725 ILCS 5/103-5(a) (West 2014). A delay is occasioned by the defendant when his acts caused or contributed to a delay resulting in the postponement of trial. *People v. Hall*, 194 Ill. 2d 305, 326-27 (2000). Our supreme court has stated that “delay” includes any action by the parties or the court that moves the trial date outside of the speedy-trial term. *People v. Cordell*, 223 Ill. 2d at 390. Any period of delay found to be occasioned by the defendant tolls the applicable statutory speedy-trial period. 725 ILCS 5/103-5(f) (West 2014) (noting that any delay occasioned by the defendant “shall temporarily suspend for the time of the delay the period within which a person shall be tried”); *Hall*, 194 Ill. 2d at 327.

¶ 19 Although it is the State’s duty to ensure that a defendant is tried within the statutory period (*Mayo*, 198 Ill. 2d at 536), the defendant bears the burden of affirmatively establishing a speedy-trial violation (*People v. Kliner*, 185 Ill. 2d 81, 114 (1998)). If a defendant is not brought to trial within the statutory time frame, he must be discharged from custody, and the charges against him must be dismissed. 725 ILCS 5/103-5(d) (West 2014); *Woodrum*, 223 Ill. 2d at 299.

The trial court's determination regarding the party responsible for a particular delay is entitled to deference and will not be overturned on appeal absent an abuse of discretion. *Mayo*, 198 Ill. 2d at 535. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take that view. *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 20 In finding a violation of the statutory speedy-trial provision, the trial court relied principally upon our decision in *Maxey*, 2013 IL App (2d) 120283-U. *Maxey* is an unpublished order, and, therefore, not precedential. Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). However, several of the cases discussed in *Maxey*, including *Cordell*, 223 Ill. 2d 380, *People v. LaFaire*, 374 Ill. App. 3d 461 (2007), and *People v. Zeleny*, 396 Ill. App. 3d 917 (2009), are instructive to the issue before us. Accordingly, we examine these cases beginning with *Cordell*.

¶ 21 At issue in *Cordell* was whether the defendant's trial attorney was ineffective for failing to file for dismissal based on a violation of the statutory speedy-trial provision applicable to in-custody defendants. In addressing that issue, the supreme court construed the term "delay" as used in section 103-5(a) of the Code. The court stated:

"There is nothing in the section to indicate that [a] 'delay' must be of a set trial date. Rather, the section provides only a starting point—the date custody begins, and an ending point—120 days later. *Any action by either party or the trial court that moves the trial date outside of that 120-day window qualifies as a delay for purposes of the section.* To hold otherwise would contravene the purpose of the 120-day period of the section, which is 'to guarantee a speedy trial and not "to open a new procedural loophole which defense counsel could unconscionably use to obstruct the ends of justice." ' " (Emphasis added.)

Cordell, 223 Ill. 2d 380, 390 (2006) (quoting *People v. Gooden*, 189 Ill. 2d 209, 221 (2000) (quoting *People v. George*, 71 Ill. App. 3d 932, 934 (1979))).

The *Cordell* court also reasoned that a contrary ruling would hamper the flexibility of the trial court to propose trial dates that fall outside the statutory 120-day period. *Cordell*, 223 Ill. 2d at 390. As the court explained, while a defendant is free to use section 103-5(a) “as a shield” by preserving his right to a speedy trial by objecting to a proposed trial date outside of the statutory period, he may not use the statute “as a sword after the fact” to defeat a conviction by agreeing to a date outside of the statutory period and later obtaining a dismissal on speedy-trial grounds. *Cordell*, 223 Ill. 2d at 390.

¶ 22 Applying this reasoning to the facts before it, the *Cordell* court noted that the trial court set a trial date falling outside of the 120-day speedy-trial term set forth in section 103-5(a) of the Code. *Cordell*, 223 Ill. 2d at 390-91. Thus, the defendant was obligated to object in order to prevent the speedy-trial clock from tolling. *Cordell*, 223 Ill. 2d at 391. The court acknowledged that the defendant did demand trial at his arraignment and at a subsequent status hearing, but noted that these demands were made prior to the trial court proposing any trial dates. *Cordell*, 223 Ill. 2d at 391. Under these circumstances, the *Cordell* court found the defendant’s demands insufficient to constitute an objection within the meaning of section 103-5(a), explaining that “[a] simple request for trial, before any ‘delay’ is proposed, is not equivalent to an objection for purposes of section 103-5(a).” *Cordell*, 223 Ill. 2d at 391. Because the defendant did not object to any of the “delays” in his trial, the *Cordell* court concluded that they would be considered “agreed to” by the defendant, and he therefore failed to establish a speedy-trial violation. *Cordell*, 223 Ill. 2d at 392-93.

¶ 23 In *People v. LaFaire*, 374 Ill. App. 3d 461 (2007), the defendant was arrested on February 24, 2004. He posted bond and was released the same day. On March 19, 2004, defense counsel filed his appearance and made a written demand for a speedy trial. On April 11, 2005, the defendant moved to dismiss the charges against him based on a violation of section 103-5(b) of the Code, which requires every person on bail or recognizance to be tried within 160 days from the date he or she demands trial unless delay is occasioned by the defendant. *LaFaire*, 374 Ill. App. 3d at 463 (citing 725 ILCS 5/103-5(b) (West 2002)). The determinative time frame in *LaFaire* was the period between November 17, 2004, and April 11, 2005. On November 17, a trial was scheduled for January 10, 2005, by agreement of the parties. However, on December 8, 2004, the State moved to continue trial due to the unavailability of a witness. Over the defendant's objection, the trial date was reset for April 11, 2005. When the parties appeared for trial on April 11, 2005, the defendant moved to dismiss on the basis of a speedy-trial violation. The trial court granted the defendant's motion, concluding that 169 days of the speedy-trial term had elapsed, including the 145-day period between November 17, 2004, and April 11, 2005.

¶ 24 On appeal, the State argued that the defendant should be charged with the period beginning on November 17, 2004, which was the date the case was continued to January 10, 2005, by agreement of the parties. The *LaFaire* court acknowledged that by November 17, 2004, more than 160 days had passed since the defendant had demanded trial. *LaFaire*, 374 Ill. App. 3d at 464 n.1. However, the court determined that the speedy-trial term had not expired by that time because most of the days were attributable to the defendant. *LaFaire*, 374 Ill. App. 3d at 464 n.1. The court then rejected the State's position, explaining:

“[T]he record does not show that defendant agreed to a mere continuance on November 17, 2004. Instead, he participated in scheduling a mutually agreeable trial date that fell

within the 160-day speedy trial period. This action is different from agreeing to a mere continuance or agreeing to a trial date that falls beyond the speedy trial period. See, e.g., *People v. Workman*, 368 Ill. App. 3d 778 (2006) (although the defendant's speedy trial right was not violated, the court also held that defense counsel's agreement to a trial date within the speedy trial period did not toll the speedy trial clock). Under such circumstances, we cannot say that the circuit court abused its discretion in declining to toll the speedy-trial period for defendant's action on November 17, 2004." (Footnote omitted.) *LaFaire*, 374 Ill. App. 3d at 464.

The *LaFaire* court further determined that the delay between the State's request for a continuance on December 8, 2004, and the trial date of April 11, 2005, was not attributable to the defendant because he objected. *LaFaire*, 374 Ill. App. 3d at 465. Hence, the *LaFaire* court affirmed the dismissal of the charges against the defendant. *LaFaire*, 374 Ill. App. 3d at 466.

¶ 25 *Zeleny* also addressed a defendant's claim that he was not brought to trial within 160 days as required by section 103-5(b) of the Code. In *Zeleny*, the defendant was arrested on August 25, 2005. He remained in custody until October 27, 2005, at which time he made a written demand for a speedy trial. There were numerous agreed delays until March 22, 2007, when defense counsel stated that she was ready to set the case for trial. At that time, trial was set for July 9, 2007, by agreement of the parties. However, on June 12, 2007, the State filed a motion to continue the trial. A hearing on the State's motion was held on June 19. At the hearing, defense counsel stated that she had "no objection" to the continuance and, after discussing several possible dates, the parties settled on September 24, 2007. Defense counsel later reiterated that she agreed with the trial date, she had "no objection" to the State's motion for a continuance, and

that she was not “demanding.” At a pretrial hearing on September 20, 2007, however, the defendant moved to dismiss on speedy-trial grounds. The trial court denied the motion.

¶ 26 On appeal, the principal issue involved the effect of the defendant’s agreement to the July 9 and September 24, 2007, trial dates. The parties agreed that as of July 9, 2007, 154 days were attributable to the State. *Zeleny*, 396 Ill. App. 3d at 922. The reviewing court determined that since only 154 days of the speedy-trial term had elapsed as of July 9, 2007, the trial date fell within the 160-day statutory period applicable to defendants on bail or recognizance. *Zeleny*, 396 Ill. App. 3d at 922. Citing *LaFaire*, the court then held that the period from March 22, 2007 (when the July trial date was set) through June 19, 2007 (when the State’s motion to continue was heard and granted), was not attributable to the defendant because there was no “actual delay” for purposes of the speedy-trial statute. *Zeleny*, 396 Ill. App. 3d at 922. Next, the court addressed the period from June 19, 2007, through September 24, 2007. *Zeleny*, 396 Ill. App. 3d at 922. The court noted that on June 19, 2007, a hearing was held on the State’s motion to continue the trial date. *Zeleny*, 396 Ill. App. 3d at 922. At that hearing, the trial was rescheduled for September 24, 2007, which the court calculated as the 231st day of the speedy-trial term. *Zeleny*, 396 Ill. App. 3d at 923 n.1. The court further noted that at the hearing on the State’s motion to continue, defense counsel “actively participated in a discussion about setting a new trial date, expressly stated that there was no objection, and expressly stated her agreement to the trial date.” *Zeleny*, 396 Ill. App. 3d at 922. The court held that the period from June 19, 2007, through September 24, 2007, was attributable to defendant because he “expressly agreed to a continuance and to a date that delayed trial beyond the 160-day term.”

¶ 27 After reviewing *Cordell*, *LaFaire*, and *Zeleny*, we glean the following principles applicable to calculating the speedy-trial term in the context of an agreed trial setting. If the

parties set a mutually agreeable trial date within the speedy-trial term, there is no “delay” for purposes of the speedy-trial statute, and the time *is not* attributable to the defendant. If the parties set a mutually agreeable trial date outside the speedy-trial term, there is a “delay” within the meaning of the speedy-trial statute, and the time *is* attributable to the defendant. With these principles in mind, we turn to the State’s claim that the trial court improperly charged the 52-day period beginning on March 3 against it, and therefore erred in granting defendant’s motion to dismiss on speedy-trial grounds.

¶ 28 On March 3, 2014, the parties agreed to schedule defendant’s trial on April 28, 2014, with a final pretrial hearing on April 24, 2014. In this appeal, the parties do not dispute that as of March 3, 2014, the speedy-trial clock stood at 38 days attributable to the State. Thus, as the trial court found, the scheduled trial date of April 28, 2014, was the 94th day of the speedy-trial term. Since the parties set a mutually agreeable trial date within the speedy-trial term, there was no “delay” within the meaning of the speedy-trial statute and, contrary to the State’s position, the time between March 3, 2014, and April 24, 2014 (when defendant waived jury trial and requested a bench trial), should have been attributed to the State. See *Cordell*, 223 Ill. 2d at 390 (“Any action by either party or the trial court that moves the trial date *outside* of [the speedy-trial term] qualifies as a delay for purposes of *** section [103-5(a)].” (Emphasis added.)); *Zeleny*, 396 Ill. App. 3d at 922 (holding that because no “actual delay” occurred when trial was set within the speedy-trial term, time was not attributable to the defendant); *LaFaire*, 374 Ill. App. 3d at 464 (declining to charge time to the defendant where the parties set a mutually agreeable trial date within the speedy-trial term).

¶ 29 Although the 52-day period between March 3 and April 24, 2014, should have been attributed to the State, the trial court originally attributed it to defendant. At the conclusion of

the March 3 hearing, the trial court announced that the trial date had been “accepted and made on motion of defendant.” The written order entered that day also reflects that the case was continued “[o]n defendant’s motion” and that the speedy-trial term was “tolled” at “defendant’s request.” Under the authority discussed above, the trial court erred in charging this time to defendant. However, defense counsel did not object in any way or question the trial court’s decision when the court attributed this delay to defendant. Defendant was bound by his attorney’s actions. *Mayo*, 198 Ill. 2d at 537. As a result, we find that defendant forfeited any claim that the 52-day period commencing on March 3 should be charged to the State.¹

¶ 30 A holding to the contrary would allow a defendant to sit idly by, wait until the speedy-trial term has expired, and then protest that his right to a speedy-trial had been violated. If a defendant is considered to have agreed to a delay unless he objects to the delay by making a demand for trial (725 ILCS 305/103-5(a) (West 2014)), it is also reasonable to require a defendant to timely object when the trial court erroneously charges a period of time against him. A contrary ruling would also contravene the *Cordell* court’s admonition that the speedy-trial statute not be used “ ‘ “to open a new procedural loophole which defense counsel could unconscionably use to obstruct the ends of justice.” ’ ” *Cordell*, 223 Ill. 2d at 390 (quoting *Gooden*, 189 Ill. 2d at 221 (quoting *George*, 71 Ill. App. 3d at 934)). Stated differently, under

¹ Of course, depending on the facts and circumstances presented, the forfeiture might extend only until the date the defendant objects to the improper attribution. Here, for instance, a different result may have ensued had defendant raised the issue of the improper attribution at an earlier time. However, we leave that decision to another day as the facts in this case establish that defendant did not raise the issue of the improper attribution in any manner until the date of the scheduled trial.

the factual scenario present here, defendant was not using section 103-5(a) “as a shield” to preserve his right to a speedy trial, but rather “as a sword after the fact” to seek dismissal of the charges against him on speedy-trial grounds after he tacitly agreed that the time period in dispute was attributable to him.

¶ 31 In short, defendant failed to object and remained silent when the trial court announced on March 3 that it was tolling the speedy-trial term on his motion. As such, defendant forfeited any claim that the 52-day period between March 3 and April 24, 2014, was properly attributable to the State. Excluding this time, only 79 days passed between the date of defendant’s arrest and the scheduled trial date of July 24, 2014. Because the scheduled trial date was well within the 120-day statutory limit, the trial court abused its discretion in granting defendant’s motion to dismiss on speedy-trial grounds.

¶ 32

III. CONCLUSION

¶ 33 For the reasons set forth above, we reverse the judgment of the circuit court granting defendant’s motion to dismiss the charges against him on speedy-trial grounds. This cause is remanded for further proceedings consistent with this order.

¶ 34 Reversed and remanded for further proceedings.