2013 IL App (2d) 121168-U
No. 2-12-1168
Order filed November 7, 2013
Modified Upon Denial of Rehearing December 17, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. WILLIAM D. LAW II, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Boone County. No. 12-CF-27 Honorable C. Robert Tobin, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed the charge on speedy-trial grounds: the period was not tolled by defendant's motion to reduce his bond, which did not delay the trial, and the State forfeited its contention that the period was tolled by defendant's motion to suppress evidence, as the State did not so argue in the trial court.

¶ 2 The State appeals the trial court's order dismissing a charge against defendant, William D. Law II, for violation of his speedy-trial right under section 103-5(a) of the speedy-trial statute (725 ILCS 5/103-5(a) (West 2012)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 12, 2012, defendant was charged with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2010)). He was arrested on February 24, 2012, and appeared for a video arraignment. Defendant told the court that he had counsel, and the matter was set on the criminal call for March 23, 2012. On that day, defendant told the court that he could not hire an attorney, and the trial court appointed the public defender. Defendant remained in custody throughout the proceedings.

¶ 5 On March 28, 2012, defense counsel filed a motion to reduce bond and set the matter for hearing on April 11, 2012. On March 30, 2012, defendant pleaded not guilty. At that hearing, defense counsel noted the previous motion to reduce bond and asked that the matter be continued until April 11. The trial court asked if "at this point" the time was attributable to the State, and the State replied that it was.

¶ 6 On April 11, 2012, the motion to reduce bond was denied. During the hearing, the State noted that the case was set for trial on June 4, 2012, and stated that defendant had demanded a speedy trial, although no formal demand appears in the record. The trial court also stated that defendant had demanded trial.

¶ 7 On May 18, 2012, defendant filed a motion to suppress statements, alleging that the officer who interrogated him following his arrest failed to inform him of his rights. At a May 25, 2012 status hearing, the State told the trial court the following: "this is set for a jury trial on June 4th. The defendant has demanded speedy trial. Earlier this week the defendant did file a motion to suppress statements so we did bring it in early hoping to set it before the jury trial on the 4th." Defense counsel indicated that he needed to determine if he would be presenting a witness, and the matter was set over to the afternoon. That afternoon, defense counsel informed the court that he would be

presenting a couple of witnesses and needed time to make arrangements. Counsel asked to continue trial, and the court stated that the speedy-trial time was tolled. The motion to suppress was denied on September 5, 2012.

¶ 8 Also on September 5, 2012, defendant moved for a furlough to visit an endocrinologist and to arrange for his children to receive medical care. He told the court that he sought a furlough for a few days. On September 7, 2012, the motion was denied.

¶ 9 On September 27, 2012, the State sought a continuance and said that the defense was standing on its speedy-trial request. The court granted the motion, removing an October 4, 2012, trial date from the call, with the time charged to the State.

¶ 10 On October 15, 2012, defendant moved to dismiss based on a violation of his speedy-trial right. A hearing was held the next day. The State argued that the delay for defendant to seek counsel and the delay caused by the bond motion were attributable to defendant. When asked if there was any disagreement that the period from April 11 to May 25, 2012, was attributable to the State, the State said "no," and no argument was made about those dates. The court found that the time between February 24 and March 30 was attributable to defendant and denied the motion.

¶ 11 On October 17, 2012, defendant moved to reconsider. At the hearing, the parties focused on defendant's request for counsel and the bond reduction motion. The State never suggested that the time between May 18 and May 25 was attributable to defendant. The trial court granted the motion and dismissed the charge. The State appeals.

¶ 12 II. ANALYSIS

¶ 13 The State challenges two time periods on appeal: (1) the period between March 23 and March 28, 2012, for the appointment of counsel and (2) the period between March 30 and April 11, 2012,

when defendant sought to reduce his bond. Defendant concedes that the period between March 23 and March 30, 2012, was attributable to him. However, defendant contends that the period based on the bond reduction motion should be charged to the State. Defendant also notes that he filed his motion to suppress on May 18, 2012, but argues that the time attributable to him did not begin to run until May 25, 2012, when he moved to continue the case. In its reply brief, the State argues for the first time that the period began to run on May 18. Defendant also contends that the motion for a furlough did not cause any periods attributable to him. The State does not address that contention at all.

¶ 14 "The right to a speedy trial is guaranteed by the Federal and Illinois Constitutions (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8)." *People v. Staten*, 159 Ill. 2d 419, 426 (1994). A criminal defendant in Illinois also has a statutory right to a speedy trial. 725 ILCS 5/103-5 (West 2012). The speedy-trial statute enforces the constitutional right to a speedy trial, and its protections are to be liberally construed in favor of the defendant. *People v. Buford*, 374 Ill. App. 3d 369, 372 (2007). The trial court's ultimate determination will be upheld on appeal absent an abuse of discretion. *Buford*, 374 Ill. App. 3d at 372. On a legal question, however, the standard of review is *de novo*. *People v. King*, 366 Ill. App. 3d 552, 554 (2006).

¶ 15 Section 103-5(a) of the speedy-trial statute states, "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 was taken into custody unless delay is occasioned by the defendant ***." 725 ILCS 5/103-5(a) (West 2012). Proof of a violation requires only that the defendant has not been tried within the period set by statute and that the defendant has not caused or contributed to delays. *People v. Castillo*, 372 Ill. App. 3d 11, 16 (2007). Any delay occasioned by the defendant tolls the speedy-trial

period until the expiration of the delay, at which point the statute begins to run again. See *id*. The duty is upon the State to bring the defendant to trial within the statutory period, but the defendant bears the burden of proof to establish that delays were not attributable to his or her conduct. *Id.*

¶ 16 The 120-day statutory period begins to run automatically from the day the defendant is taken into custody, and the defendant need not make a formal demand for trial. By contrast, a defendant who is on bail or recognizance must be tried within 160 days from the date the defendant demands trial. *Id*. The period in custody is calculated by excluding the day of the arrest but including the day the trial begins. *People v. McIntosh*, 305 Ill. App. 3d 462, 470 (1999). Likewise, when the period has been tolled for a delay occasioned by the defendant, any later periods of custody subject to the 120-day period are calculated by excluding the first day and including the last. See 5 ILCS 70/1.11 (West 2012); *People v. Solheim*, 54 Ill. App. 3d 379, 386 (1977).

¶ 17 Section 103-5(a) provides: "Delay shall be considered 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 2012). "Our supreme court has consistently held that a *delay* is occasioned by the defendant and charged to the defendant when the defendant's acts caused or contributed to a *delay resulting in the postponement of trial*." (Emphases in original.) *People v. Boyd*, 363 Ill. App. 3d 1027, 1037 (2006); see *People v. Hall*, 194 Ill. 2d 305, 326 (2000). Thus, unless the trial date is postponed, there is no delay to attribute to the defendant. *Boyd*, 363 Ill. App. 3d at 1037.

¶ 18 A. Motion to Reduce Bond

¶ 19 The State contends that the period from March 30 to April 11, 2012, is attributable to defendant because he moved to reduce his bond and the case was continued until April 11, 2012, to decide that issue.

¶ 20 When the matter of bail is collateral to the trial of the cause, involves no significant evidentiary questions, and does not appear to have been an obstacle to the prosecution, it is not a matter causing a delay. See *People v. Garcia*, 251 Ill. App. 3d 473, 481 (1993) (citing *People v. Frame*, 165 Ill. App. 3d 585, 591 (1988), *overruled on other grounds*, *People v. Garrett*, 136 Ill. 2d 318 (1990)). Normally, issues concerning bail are not an obstacle to prosecution. While motions to suppress can present evidentiary questions that would impede progress toward trial if not resolved, the same cannot be said of matters pertaining to bail. *Frame*, 165 Ill. App. 3d at 591.

¶ 21 Here, at the time of the motion, the State agreed that the time was not tolled, although it later argued otherwise. Regardless, nothing in the record shows that there was a delay of trial based on defendant's motion to reduce bond. At the April 11, 2012, hearing it was noted that trial was set for June 4. The issue of bail was set to be decided before June 4 and there was no delay of that trial date because of the motion. The State contends that, despite its earlier agreement that the time was on the State, a delay occurred because defendant set the hearing past the time when a bond motion would typically be heard and did not demand trial. But that is not the test. The test is whether the trial date was delayed by the motion, and there is no evidence here that it was. Accordingly, the speedy-trial period was not tolled.

¶ 22 B. Motion to Suppress

¶ 23 The State did not argue, in its initial brief, that defendant's filing of his motion to suppress on March 18, 2012 tolled the speedy-trial period. After defendant brought up the matter in his brief,

the State discussed the issue in its reply brief. But the State never raised the issue in the trial court. Instead, it specifically agreed that the period between April 11 and May 25, 2012, was attributable to the State and it maintained that position throughout the proceedings.

¶ 24 "It is an accepted principle of law that an issue not presented to or considered by the trial court cannot be raised by the appellant for the first time on review." *People v. McAdrian*, 52 Ill. 2d 250, 253 (1972). This principle applies to the State as well as the defendant in a criminal case. *People v. Holloway*, 86 Ill. 2d 78, 91 (1981). It has also been applied where issues concerning the applicability of the speedy-trial statute are urged for the first time on appeal and is particularly pertinent where the conduct of a party before the trial court induced the court to rule as it did. See *McAdrian*, 52 Ill. 2d at 254. As has been noted:

> "[T]he rule is founded on some rather basic considerations, which include the following: that litigation should not be presented piecemeal; and that all parties are entitled to have matters determined as quickly as possible and at one trial, if possible. The latter consideration is particularly true of a defendant in a criminal action. Also, the trial court should be given an opportunity to consider the issues or theories which the appellant, on review, assigns as error in its judgment. The failure to urge a particular theory before the trial court will often cause the opposing party to refrain from presenting available pertinent rebuttal evidence on such theory, which evidence could have a positive bearing on the disposition of the case in both the trial and reviewing courts." *Id*. at 253-54.

¶ 25 Likewise, the doctrine of invited error provides that a party may not request the court to proceed in one manner and then argue on appeal that the requested action was error. *People v. Liekis*, 2012 IL App (2d) 100774, ¶ 24. The rationale for the doctrine is that it would be unfair to

grant a party relief based on error that he or she introduced into the proceedings. *Id*. Thus, "the State is precluded from complaining about an error it invited." *People v. Collins*, 351 Ill. App. 3d 175, 180 (2004).

¶ 26 Here, the State specifically told the trial court that the period between April 11 and May 25, 2012, was attributable to the State. The State never presented an argument otherwise.[1] As a result, it forfeited its argument on the issue.

¶ 27 Defendant also noted in his brief that the two days between his request for a furlough and the denial of that request should be charged against the State. The State has never argued that this time is attributable to defendant either before the trial court or on appeal. Accordingly, we apply the two days against the State.

¶ 28 C. Calculation of Time

¶ 29 The State conceded that the time began running against it on February 24, 2012, and continued for 28 days until March 23, 2012. Defendant concedes that the time was then tolled until March 30 by his request for counsel. The time was not tolled during the 12 days from March 30 to April 11, 2012, when defendant's bond motion was pending. By the State's express agreement, the period then continued to run another 44 days until May 25, 2012, when it was tolled by defendant's motion to continue. The period began to run again on September 5, 2012, and ran for 40 days until

[1]As noted, the State also did not raise the matter in its initial brief on appeal. Instead, it raised the matter for the first time in its reply brief after defendant noted a concern about it. Normally, points not argued initially may not be raised in the reply brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). In any event, we need not address whether this presented an additional layer of forfeiture, as we determine that the State had already forfeited the matter by failing to raise it in the trial court.

defendant moved to dismiss. The result was that 124 days ran by the date of the motion to dismiss. Accordingly, defendant was not brought to trial within the statutory period, and the trial court properly dismissed the case.

¶ 30 On rehearing, the State argues that this court failed to address the issue actually raised by it, to wit, whether the trial court erred by attributing time to the State while defendant was in custody but before he asserted his statutory right to a speedy trial. In its brief, the state did claim that the trial court erred by not holding defendant to the requirements of the speedy trial statute. At the same time, the state agreed that certain time before defendant asserted his speedy trial rights was attributable to the state under the holding in *People v. Hampton*, 394 Ill. App. 3d 683, 686-87 (2009).

¶ 31 The law in this district is well settled that the speedy trial term starts automatically from the time a defendant is taken into custody regardless of if and when he makes any sort of demand. See *Hampton*, *People v. Murray*, 379 Ill. App. 3d 153, 158 (2008), *People v. Peco*, 345 Ill. App. 3d 724, 731 (2004). The state's argument is in direct conflict with our precedent and we see no reason to re-visit the issue.

¶ 32 III. CONCLUSION

¶ 33 Defendant was not brought to trial within 120 days. Accordingly, the judgment of the circuit court of Boone County is affirmed.

¶ 34 Affirmed.