

FOURTH DIVISION
June 30, 2016

No. 1-15-0129

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 35876361
)	
SAMUEL AMIRANTE,)	Honorable
)	Marc Martin,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The circuit court did not abuse its discretion in finding, for speedy-trial purposes, that the delay following a general court order closing Cook County courts for one day due to weather and until the next date set by the court was not attributable to defendant.
- ¶ 2 This proceeding is now before this court a second time. In 2014, this court remanded this case to the circuit court to determine whether various delays in the trial of defendant Samuel

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Amirante were attributable to defendant or to the State and, accordingly, whether the charges against defendant should have been dismissed because he was not brought to trial within 160 days of his trial demand pursuant to section 103-5(b) of the Code of Criminal Procedure (the Speedy Trial Act) (725 ILCS 5/103-5(b) (West 2008)). On remand, the circuit court granted defendant's motion to dismiss the charges against him with prejudice after determining that delays on three dates were not caused by defendant and the State therefore was accountable for more than 160 days of delay. On appeal, the State contends the circuit court abused its discretion in apportioning those delays and in finding that a speedy-trial violation occurred.

¶ 3 Defendant was arrested in September 2009 for driving under the influence (DUI), following too closely, failure to possess a driver's license, and operating an uninsured vehicle. Defendant was released from custody after posting bond.

¶ 4 Defendant appeared in court on October 1, 2009, and filed a petition to rescind the statutory summary suspension of his driver's license. The case was continued to November 4, 2009, when defendant's counsel filed a written demand for trial. Defense counsel agreed to a continuance to December 15, 2009, when defendant appeared *pro se* and filed a motion to quash his arrest and suppress evidence. After a hearing in April 2010, the court denied that motion.

¶ 5 Defendant filed a motion on May 27, 2010, seeking reconsideration of the denial of his motion to quash his arrest and suppress evidence. In 2010 and 2011, the case was continued at least 10 times to allow defendant to file an amended motion to reconsider and for the circuit court to hold a hearing on that motion. This appeal involves three court dates between December 2010 and March 2011 that are discussed in detail, with relevant colloquy provided, later in this order.

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¶ 6 On June 23, 2011, after hearing argument, the circuit court denied defendant's amended motion to reconsider its ruling on the motion to quash arrest and suppress evidence. Because a State witness was not present in court, the circuit court set the case for trial in September.

¶ 7 A bench trial took place on November 29, 2011, before Judge Kevin Horan. Defendant was convicted of DUI and following too closely. The case was continued to January 17, 2012, for sentencing.

¶ 8 On December 29, 2011, defendant filed three *pro se* motions. Defendant filed a motion "for arrest of judgment" based on a violation of the Speedy Trial Act. In addition, defendant filed a motion for a new trial, asserting he was prevented from testifying at his trial and also raising several claims of the ineffectiveness of his trial counsel, including counsel's failure to file a motion to dismiss the charges with prejudice under the Speedy Trial Act. Defendant also filed a motion asking the court to reconsider its guilty finding, arguing the evidence was insufficient to prove his guilt.

¶ 9 On January 5, 2012, defendant appeared in court, stating he had "motioned this case up *pro se* today" and would be handling posttrial matters himself. Defendant said he filed his *pro se* posttrial motion to "fill a 30-day deadline" and planned to file additional motions.

¶ 10 On April 26, 2012, new counsel for defendant filed an amended motion for a new trial, asserting, *inter alia*, that trial counsel was ineffective for failing to seek dismissal of the charges based on a Speedy Trial Act violation because more than 160 days passed between his trial demand and trial. The motion asserted that defendant was in custody for one day before posting bond and that day should "count retro-actively towards the 160-day speedy-trial term."

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¶ 11 On September 25, 2012, Judge Horan vacated his finding of guilty as to defendant and granted defendant's motion for a new trial. The judge gave no specific basis for that ruling, stating:

"I have reviewed the trial transcript, relevant case law provided by both the assistant State's attorney and the defendant. I think based on the totality of the circumstances and review of all of the information I have received I have no – I should say I have decided to vacate the finding of guilty and grant the defendant a new trial. All other motions are entered and continued for the next trier of fact, whomever that may be so at this point I guess you need to set a status or trial."

¶ 12 The court set a status date for October 2012. The case was then continued twice to December 2012.

¶ 13 Meanwhile, on November 15, 2012, defendant filed, *inter alia*, a motion to dismiss the charges pursuant to the Speedy Trial Act, contending that he had not been tried within 160 days of his trial demand. Defendant acknowledged in the motion that he had been granted a new trial, but maintained that he was entitled to dismissal of the charges against him on speedy-trial grounds. He asserted his trial counsel was ineffective for failing to file a motion for dismissal of the charges on that basis within a year of his trial.

¶ 14 On December 7, 2012, the case was called before Judge Sandra Ramos, who stated she would set a new trial date. As to defendant's speedy-trial claim, Judge Ramos remarked:

"You're granted a new trial without any basis which that's unfortunate [*sic*] because we don't have Judge Horan and the lengthy file to clear that up."

¶ 15 After a hearing on December 18, 2012, Judge Ramos granted defendant's motion to dismiss, finding that defendant was not brought to trial within 160 days of his trial demand due to delays that he did not contribute to or cause. The court found that defendant demanded a speedy trial on November 4, 2009, and that the delays in trial after that date were attributable to the State. The State filed a motion to reconsider that ruling, which was denied.

¶ 16 INITIAL APPEAL

¶ 17 The State filed its initial appeal to this court in 2013. In that appeal, the State conceded that the period from June 23, 2011, to the trial date of November 29, 2011, was entirely attributable to it for speedy-trial purposes.¹ The State asserted, however, that the defense did not file an effective trial demand prior to June 23, 2011. Defendant responded that his counsel served the State with a written trial demand on November 4, 2009, and that the speedy-trial limit was exceeded by delays attributable to the State between that date and June 23, 2011. The State replied that the majority of the continuances during that period were requested by the defense or were attributable to motions filed by defendant.

¶ 18 This court reversed the circuit court's order dismissing the charges and remanded the case to the circuit court. *People v. Amirante*, 2014 IL App (1st) 131719-U, ¶ 16. This court held that defense counsel requested a speedy trial both orally and in writing on November 4, 2009, and those requests by defense counsel "began the speedy trial clock." *Id.* ¶¶ 24, 27. However, this court further held the speedy-trial period was then immediately tolled when defense counsel

¹ Though the State conceded a 160-day delay, this court calculated that period as totaling 159 days. See *People v. LaFaire*, 374 Ill. App. 3d 461, 463 (2007) (trial delay is calculated by excluding the date of the trial demand and including the last day of the period). *Amirante*, 2014 IL App (1st) 131719-U, ¶ 12 n.1.

agreed during that court appearance to continue the case to December 15, 2009. *Id.* ¶¶ 24-26.

This court found the circuit court abused its discretion in concluding the delay between November 4 and December 15, 2009, was occasioned by the State. *Id.*

¶ 19 This court further found that the period from June 23, 2011, to November 29, 2011, represented a 159-day delay entirely attributable to the State because, on each date during that period, the State answered that it was not ready for trial and obtained a continuance. *Id.* ¶¶ 12 n.1, 22. Therefore, this court concluded that any additional delay beyond that period that was chargeable to the State would exceed the 160-day limit and result in a speedy-trial violation. *Id.*

¶ 22. Accordingly, this court remanded the case to the circuit court to specifically consider whether the delays in the court proceedings between November 4, 2009, and June 23, 2011, were attributable to defendant or to the State. *Id.* ¶ 29.

¶ 20

REMAND

¶ 21 On remand, defendant filed a motion in the circuit court seeking dismissal of this case, asserting that the additional delays were not attributable to him. Specifically, defendant argued that the closure of the courts on February 3, 2011, was not agreed to or occasioned by him and therefore did not toll his speedy-trial demand filed on November 4, 2009. He further asserted that he should not be charged with delays caused by the unavailability of judges on dates including December 28, 2010, and March 16, 2011. In response, the State asserted, *inter alia*, that no trial demand was pending until June 23, 2011.

¶ 22 The circuit court held a hearing on defendant's motion to dismiss. On October 27, 2014, the circuit court issued a 26-page memorandum opinion and order granting defendant's motion to dismiss the case.

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¶ 23 Citing this court's decision remanding the case, the circuit court stated that December 15, 2009, was the first date to be considered upon remand because the appellate court had held that defense counsel made a valid oral and written trial demand on November 4, 2009. The circuit court further noted the appellate court found the delay from that date to December 15, 2009, was attributable to defendant. The circuit court noted the State's concession on remand that the appellate court had found the November 4, 2009, trial demand to be effective throughout the proceedings.

¶ 24 The circuit court then addressed the court dates between December 15, 2009, and June 23, 2011. Based upon its review of the half-sheets and reports of proceedings from those dates, the circuit court found that the delays on 11 of the 14 dates between December 15, 2009, and June 23, 2011, were attributable to defendant.

¶ 25 As to December 15, 2009, the circuit court found that defendant's motion to quash his arrest and suppress evidence and his motion for sanctions "prevented the case from going to trial, and caused the delay." The court stated that defendant "also contributed to the delay by agreeing to the next court date."

¶ 26 The circuit court then considered the next eight court dates, totaling 12 months of delay, and found the delay on each of those dates was entirely attributable to defendant. During that period, defendant admitted he was not prepared for his motions (January 25, 2010), requested a continuance (March 15, 2010), and agreed to a continuance for filing a *pro se* motion to reconsider after Judge Kyriakopoulous held an evidentiary hearing and denied the motion to quash (April 27, 2010). Defendant filed his motion to reconsider the denial of the motion to quash on May 27, 2010. Defendant then requested a continuance for an attorney (July 12, 2010),

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and counsel adopted defendant's *pro se* motion. Defense counsel also asked that the case follow Judge Kyriakopoulos (August 17, 2010).

¶ 27 On the next court date of September 23, 2010, the case was continued by agreement after the judge and the State sought time to review defendant's amended motion for reconsideration. That delay was found attributable to defendant because defense counsel "consented to the date by agreeing to give the State time to examine the amended reconsideration motion [and] not affirmatively demanding a speedy trial," though the circuit court noted that defense counsel had asked "for the matter to be set for trial." The court also noted that defense counsel did "not affirmatively correct[] the judge" when the judge stated the continuance was "by agreement."

¶ 28 On the next two dates (October 21 and November 1, 2010), the case was continued on defendant's motion because his counsel had heart surgery. The circuit court found the delay was chargeable to defendant and noted that defendant's motion for reconsideration remained pending.

¶ 29 As to December 13, 2010, the circuit court found the delay on that date was occasioned by defendant. Initially, defense counsel withdrew his motion to reconsider but then asked that the case be recalled and said he sought a hearing on the motion before Judge Kyriakopoulos. The case was recalled before that judge. When the court asked how defense counsel could be ready for trial when a motion to reconsider was pending, defense counsel acknowledged that he could not demand trial while he had a pending motion.

¶ 30 The circuit court found that delay was occasioned by defendant because the case was continued for a ruling on a defense motion. The court noted that defendant agreed to continue the case after asking that it be transferred to Judge Kyriakopoulos. The case was set by agreement

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for December 28, 2010, for a hearing on the motion to reconsider the denial of his motion to quash his arrest and suppress evidence.

¶ 31 The circuit court next found the delays on three of the next four dates were not occasioned by defendant. On December 28, 2010, the case was set for defendant's motion to reconsider and was continued to January 13, 2011. The circuit court held that continuance was "due to judicial unavailability" because Judge Kyriakopoulos was not present. The court noted that although defense counsel suggested the case be continued and the half-sheet reflected that the case was continued by agreement, the record did not "support the proposition that the defendant affirmatively agreed to the continuance." The court concluded defendant did not occasion the delay on that date because counsel had "expressed a willingness to go to trial on the next court date[.]"

¶ 32 In contrast, the circuit court found the next delay, on January 13, 2011, was occasioned by defendant. The court determined that defendant contributed to the delay because counsel agreed to a continuance by stating "fine" and because defense counsel expressly stated, as summarized by the court in its order, that "he could not be demanding trial when the defendant had a pending motion." The case was continued to February 3, 2011.

¶ 33 As to February 3, 2011, the circuit court determined from the record, the parties' filings and the half-sheet notation of "O/C 3-16-11" that the case was continued by order of court to March 16, 2011, due to a heavy snowstorm that prevented any regular business from being conducted in the Cook County court system that day. At the hearing on remand before the circuit court, the State and the defense agreed that the courts were closed that day, and the court concluded in its memorandum order that no transcript exists for that date. Defense counsel

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conceded that neither he nor defendant appeared in court. In calculating the days of delay not attributable to defendant, the circuit court found that February 3, 2011, did not "count as one of the days in the speedy trial term" due to the court's closure.

¶ 34 The circuit court then determined that the ensuing delay from February 4, 2011, to March 16, 2011, was not occasioned by defendant. The circuit court noted the prosecutor's concession that "order of court" continuances generally "do not count against the defendant." The court noted that even though the State did not cause the continuance, "the Speedy Trial Act focuses on whether *the defendant* caused the delay." (Emphasis in original.) The court further noted that although the case had not been set for trial on February 3, 2011, that fact was not determinative because had the court been in session, the court could have set the case for trial after ruling on defendant's motion to reconsider. The court concluded that because the case was continued on the court's motion on February 3, 2011, "the delay until the next court date cannot be attributed to the defendant."

¶ 35 The circuit court also found the delay on March 16, 2011, was not occasioned by defendant. On that date, the case was called for Judge Kyriakopoulos to rule on defendant's motion to reconsider. The case was continued to May 17, 2011, for "motion to reconsider and bench" trial. The court concluded that even though the half-sheet included a "B/A" symbol in indicating a continuance to May 17, 2011, the transcript "does not demonstrate that the defendant affirmatively agreed to a continuance." The court noted it would not presume from a silent record that defendant contributed to the delay, stating that defense counsel again voiced a "willingness to go to trial on the next court date."

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¶ 36 In conclusion, the circuit court found the continuances on the three dates of December 28, 2010, February 3, 2011, and March 16, 2011, were not attributable to defendant and that those continuances delayed defendant's trial for an additional 118 days. Thus, the circuit court held that given the conceded 159-day period of delay already attributable to the State, defendant had not been brought to trial within 160 days of his November 4, 2009, trial demand, and that a violation of the Speedy Trial Act therefore occurred. The circuit court granted defendant's motion to dismiss the charges with prejudice.

¶ 37 MOTION TO RECONSIDER DECISION ON REMAND

¶ 38 The State filed a motion to reconsider that ruling. First, the State disagreed with the circuit court's conclusion that it was precluded from considering on remand whether the November 4, 2009, written trial demand began the speedy-trial clock or if that demand was later withdrawn and the June 23, 2011, written trial demand began the running of the 160-day speedy-trial calendar.

¶ 39 Second, the State argued defendant was not ready for trial on any of the three court dates in question. As to December 28, 2010, the State argued the case was continued by agreement for the hearing on the motion to reconsider, as opposed being set for trial, and that the next court date of January 13, 2011, was offered "unilaterally" by defense counsel. The State asserted that contrary to the court's determination that defendant was required to accept that date because Judge Kyriakopoulos was not available, the "record does not indicate any force or coercion on the part of the court for defendant to accept a continuance date."

¶ 40 As to the period beginning February 3, 2011, the State acknowledged the Speedy Trial Act does not address a party's failure to appear due to a weather-related delay. However, the

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State asserted defendant failed to appear on that date and thereby waived his speedy-trial demand, thus starting the 160-day clock anew. The State further pointed out that defendant did not appear in court on February 4, 2011, or on any day after the weather-related court closure to seek a hearing on his motion, but rather, defendant stood idle until the March 16 court date. Thus, the State asserted the ensuing delay to March 16, 2011, was "a continuation of the delay that began on January 13, 2011."

¶ 41 As to March 16, 2011, the State contended that defense counsel was not ready for trial because counsel chose to proceed on defendant's motion and to have the motion follow Judge Kyriakopoulos. The State pointed out that defense counsel agreed that the case be continued to May 17, 2011.

¶ 42 In a written order, the circuit court denied the State's motion to reconsider. The court noted that defendant did not file a written response to the State's motion. As to the State's contention that it could consider the validity of defendant's November 2009 written trial demand, the circuit court responded that it "did not perceive the scope of the appellate court's mandate to permit such reassessment." The court also noted that it had "independently found the written November 4, 2009 demand for trial not withdrawn by subsequent statements of defense counsel."

¶ 43 The circuit court then addressed the three specific court dates that it found were not occasioned by defendant. The court noted that on December 28, 2010, the case had been set for trial and was continued for trial to the next court date (January 13, 2011). The court asserted the State's position was that defense counsel must demand trial and answer "ready" for trial on one court date before the case could be set for trial on the next court date. The court found that theory

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was not supported by the "text of the Speedy Trial Act" and that it would allow the prosecution "at least one 'free' continuance under the Speedy Trial Act."

¶ 44 As to February 3, 2011, the circuit court stated that even though the case was continued by order of court due to a snowstorm, that date was later stricken by a general order of the circuit court of Cook County, which closed all the circuit courts on that day. Therefore, the circuit court concluded, that date "turned out not to be a date set by the court." The court acknowledged the Speedy Trial Act does not address "delays caused by Mother Nature" but noted that the speedy-trial clock begins to run from the filing of a written demand, unless a delay is then occasioned by the defendant, and that defendant did not cause the continuance on February 3, 2011. The court further stated:

"If the State believes that a defendant should be charged with causing delay for continuances because of natural disasters, or that the speedy-trial term should be tolled when courts are unexpectedly closed and a case is continued by 'order of court,' then it must seek a change in the law. Until then, a circuit court can only apply the Speedy Trial Act as written."

¶ 45 The circuit court rejected the State's argument that defendant should have appeared in court after the single-day closure to advance his case. The court determined that defendant "had previously voiced his intentions to get the case to trial" and found that it "would have been equally plausible for the State to have advanced the case to seek a change in the 'order of court' nature of the continuance," though the court went on to find the "prosecutor was not professionally negligent in the unusual circumstances of this case." Still, the court observed, the

February 3, 2011, continuance by order of court "should have raised a red flag when the State originally calculated the speedy trial term."

¶ 46 The State filed a timely notice of appeal from the denial of its motion to reconsider.

¶ 47 THE INSTANT APPEAL

¶ 48 On appeal, the State contends that defense counsel did not "unequivocally demand trial until June 23, 2011" and thus, only the 159-day delay attributable to the State between June and November 2011 occurred for speedy-trial purposes. The State argues that defense counsel's oral and written speedy-trial demands on November 4, 2009, were negated by counsel's subsequent agreement on that date to continue the case until December 15, 2009. Therefore, the State contends, no trial demand was pending prior to June 2011, and thus no demand was in effect at the time of the court dates in December 2010 through March 2011. The State further argues that the circuit court abused its discretion in finding that the delays on the three dates were not attributable to defendant. Defendant responds that this court ruled on the validity of the November 4, 2009, trial demand in the State's prior appeal and that he did not occasion the delays in question.

¶ 49 At the outset, we address the State's position in this appeal that defendant's first effective trial demand was filed on June 23, 2011. That position is contradicted by this court's prior holding that defendant made a valid oral and written speedy-trial request on November 4, 2009. *Amirante*, 2014 IL App (1st) 131719-U, ¶¶ 24-25.

¶ 50 Under the doctrine of the law of the case, a party is generally barred from relitigating an issue that was previously decided in the same case. *People v. Hopkins*, 235 Ill. 2d 453, 470 (2009). "Rulings on points of law made by a court of review are binding in that case upon

remand to the trial court and on subsequent appeals to that same reviewing court unless a higher court has changed the law." *Petre v. Kucich*, 356 Ill. App. 3d 57, 63 (2005); see also *People v. Oaks*, 2012 IL App (3d) 110381, ¶ 18. Along with this court's express finding in the 2014 order that a trial demand was made on November 4, 2009, this court remanded with directions for the trial court to consider whether delays between November 4, 2009, to June 23, 2011, were "attributable to defendant or the State" and "to determine whether defendant's Speedy Trial Act rights were in fact violated." *Amirante*, 2014 IL App (1st) 131719-U, ¶¶ 29, 32. Thus, this court both expressly and implicitly held that defendant's speedy-trial clock began on November 4, 2009, because this court remanded the case to the circuit court for calculations of the speedy-trial period starting from November 4, 2009, and continuing forward.

¶ 51 Still, the State argues that defense counsel effectively withdrew that trial demand by agreeing to a continuance from November 4, 2009, to December 15, 2009. A review of our 2014 decision does not support that position. The State focuses on this court's finding that defense counsel's oral agreement to a continuance "in effect negated the demand for a speedy trial so that the clock on defendant's Speedy Trial Act claim was tolled." *Amirante*, 2014 IL App (1st) 131719-U, ¶ 25. The conclusion that the speedy-trial clock was "tolled" did not mean defendant's demand was withdrawn. In fact, this court's 2014 order went on to state that defense counsel filed a speedy-trial demand at the November 4, 2009, hearing and "never withdrew it." *Id.* Under the law-of-the-case doctrine, the operative written speedy-trial demand in this case was filed on November 4, 2009. *Id.*

¶ 52 We therefore turn to the substantive speedy-trial arguments raised by the parties. The parties have conceded 159 days of delay attributable to the State starting on June 23, 2011, and

ending on November 29, 2011. That period is one day short of the 160 days in which the State must bring defendant to trial not counting delays occasioned by defendant. See 725 ILCS 5/103-5(b) (West 2008). Therefore, if we conclude that the circuit court acted within its discretion in finding that a delay on any one of the three dates in question was not attributable to defendant and that the speedy-trial clock continued to run during any of those dates, then more than 160 days of delay occurred in bringing defendant to trial, resulting in a speedy-trial violation.

¶ 53 A defendant possesses a right to a speedy trial both under constitutional law and pursuant to Illinois statute. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5 (West 2008). The constitutional and statutory provisions address similar concerns; however, "the rights established by each are not necessarily coextensive." *People v. Hall*, 194 Ill. 2d 305, 326 (2000), citing *People v. Kliner*, 185 Ill. 2d 81, 114 (1998). In the case at bar, defendant has asserted only a violation of his statutory right to a speedy trial.

¶ 54 Under the Speedy Trial Act, it is the duty of the State to bring the defendant to trial within the applicable statutory period. *People v. Mayo*, 198 Ill. 2d 530, 536 (2002). Section 103-5(b), which applies to defendant in this case, states, in pertinent part:

"(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 144-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. The defendant's failure to appear for any court date set by

the court operates to waive the defendant's demand for trial made under this subsection.

**** Any demand for trial made under this subsection (b) shall be in writing ***."*

(Emphasis added.) 725 ILCS 5/103-5(b) (West 2008).

¶ 55 Thus, the 160-day speedy-trial period for a person released on bail or recognizance begins to run when the defendant files a written speedy-trial demand. 725 ILCS 5/103-5(b) (West 2008). A defendant who raises a speedy-trial violation bears the burden of affirmatively establishing that violation by showing the delay was not attributable to his own conduct. *People v. Coners*, 374 Ill. App. 3d 425, 426 (2007); *People v. Reimolds*, 92 Ill. 2d 101, 106 (1982).

¶ 56 When calculating the 160-day period, any delay occasioned by defendant will temporarily suspend the running of the period until the expiration of the delay, at which point the statute shall recommence. 725 ILCS 5/103-5(f) (West 2008). 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. *People v. McDonald*, 168 Ill. 2d 420, 438 (1995), abrogated on other grounds by *People v. Clemons*, 2012 IL 107821.

¶ 57 Delay caused by a defendant's filing of motions, along with the time naturally associated with processing the motion, is ordinarily chargeable to the defendant for speedy-trial purposes. *McDonald*, 168 Ill. 2d at 440. Additionally, delay is occasioned by the defendant when a defendant requests or agrees to a continuance or when his actions "otherwise cause or contribute to the delay" or create the necessity for postponement. *People v. Wigman*, 2012 IL App (2d) 100736, ¶ 59; *People v. Bonds*, 401 Ill. App. 3d 668, 676 (2010) (quoting *People v. Hatch*, 110 Ill. App. 3d 531, 537 (1982)).

¶ 58 A trial court's determination as to whether a delay is attributable to the defendant is entitled to much deference and should be sustained absent a clear showing that the trial court abused its discretion. *Hall*, 194 Ill. 2d at 327. An abuse of discretion occurs only where the circuit court's decision is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Lerma*, 2016 IL 118496, ¶ 23.

¶ 59 In reviewing speedy-trial claims, this court is "duty-bound to examine *both* the transcript of proceedings and the common-law record so as to do complete justice to both the State and defendant" and that analysis also extends to the half-sheets contained in the record. (Emphasis in original.) *People v. Andrade*, 279 Ill. App. 3d 292, 296-97 (1996). The Speedy Trial Act is to be construed liberally so as to give effect to the constitutional right to a speedy trial, and each case is to be decided on its own facts. *People v. Hawkins*, 212 Ill. App. 3d 973, 980 (1991).

¶ 60 Here, the circuit court's analysis on remand involved the period from December 15, 2009, when defendant filed a motion to quash his arrest and suppress evidence, to June 23, 2011 when Judge Kyriakopoulos denied defendant's amended motion to reconsider its denial of the motion to quash arrest and suppress evidence. The circuit court found the delays on three court dates during that period (December 28, 2010, February 3, 2011, and March 16, 2011) were not attributable to defendant. This court has reviewed the report of proceedings and the common-law record, including the half-sheets, as well as the circuit court's written order of October 27, 2014, and the court's denial of the State's motion to reconsider that order.

¶ 61 On appeal, the parties present arguments as to the three court dates that the circuit court found were not attributable to defendant. We address the period from February 3, 2011, to March 16, 2011, and conclude that the circuit court was within its discretion to conclude that delay

during that period was not occasioned by defendant. That conclusion is determinative of this appeal, because given that finding, a total of more than 160 days elapsed in these proceedings due to delays not attributable to defendant.

¶ 62 On February 3, 2011, the case was continued due to a heavy snowstorm in the Chicago area. The half-sheet entry for that date indicates: "O/C 3-16-11."

¶ 63 In determining that delay was not occasioned by defendant, the circuit court on remand noted the parties' concession that the courts were closed that day due to weather and that neither defendant nor his counsel were present. The court held that the half-sheet notation of "O/C" indicated that the delay to March 16 was due to an order of court and could not be attributed to defendant.

¶ 64 The circuit court denied the State's motion to reconsider that ruling, specifying that the single day of February 3, 2011, itself would "not count as one of the days in the speedy-trial term." The court stated the continuance entered on the half-sheet for February 3, 2011 was due to a general order of the circuit court of Cook County closing all circuit courts on that day. The court again concluded that delay was not occasioned by defendant and that the speedy-trial period continued, noting that the Speedy Trial Act does not address unexpected court closures.

¶ 65 The court acknowledged that the case had not been set for trial on February 3, 2011, but reasoned that if the reconsideration motion had been resolved on that date, the case "could have been set for trial, and the defendant could have implemented a trial demand, just as he did once the reconsideration motion was resolved." The court went on to state that "a case does not *ipso facto* have to be set for trial for a defendant not to cause Speedy Trial Act delay."

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¶ 66 In this appeal, the State points out that defendant's case had not been set for trial prior to February 3, 2011, and that defendant's motion for reconsideration was still pending. The State further contends it "did nothing to occasion the delay" that began on that date and argues the speedy-trial clock did not run between February 3 and March 16, 2011.

¶ 67 Defendant concedes "it is clear the delay was not attributable to any of the parties here" but maintains the delay did not "stop the clock." He argues he did not waive his speedy-trial rights by "failing to appear on a date where the [c]ourts were all closed."

¶ 68 We find that the circuit court correctly ruled that February 3, 2011 did not count as a day in the speedy-trial term because the court was closed by a general order of the circuit court of Cook County due to a weather emergency. See generally *People v. Sheehan*, 962 N.Y.S. 886 (2013) (defendant's motion to dismiss charges on speedy-trial grounds denied; seven-day period when New York courthouse closed following Hurricane Sandy was excludable from statutory speedy-trial period). When the Cook County courts were closed on February 3, 2010, no proceedings could occur on this case, and that was not the fault of the State or of defendant. Accordingly, the one-day delay on February 3, 2011, was not attributable to defendant.

¶ 69 The Illinois case most closely analogous to these facts is *People v. Clarke*, 231 Ill. App. 3d 504 (1992), on which the State partially relies. There, the defendant was taken into custody on November 30, 1990, and a preliminary hearing was scheduled for December 28, 1990. *Id.* at 505. A snowstorm occurred on that date, and the hearing was continued to January 8, 1991. *Id.* On January 7, 1991, the defendant moved to dismiss the charges against him because the hearing was not held within 30 days of the date he was taken into custody. *Id.* at 506. The circuit court

denied that motion, finding that the defendant's hearing had been scheduled within the 30-day period. *Id.*

¶ 70 On appeal, this court affirmed the circuit court's refusal to dismiss the charges, noting that "neither the State nor the defendant was responsible for the delay of 10 days in the holding of defendant's preliminary examination." *Id.* at 508. The court in *Clarke* disagreed with the defendant's reliance on cases involving the running of the speedy-trial period, noting the Speedy-Trial Act requires mandatory discharge after a violation, as opposed to the statute at issue in *Clarke*, which indicated the court "may" dismiss the case based on a failure to comply with the preliminary hearing statute. *Id.* at 507-08. However, that distinction does not affect our ability to rely upon the conclusion in *Clarke* that a weather-related delay is not chargeable to the State or to the defendant. Accordingly, the one-day of delay caused by the court closure on February 3, 2011, was not attributable to either party in this case.

¶ 71 We next consider the period that followed that closure. The circuit court concluded that the delay from February 4, 2011, to March 16, 2011, was not attributable to defendant for speedy-trial purposes and that defendant "did not waive his speedy trial claim as a result of the non-proceedings on February 3, 2011.

¶ 72 In finding the delay until March 16, 2011 should not be attributed to defendant, the circuit court stated in its order that the case had been continued by order of the court. The circuit court noted the State's concession that "order of court" continuances typically are not charged to the defendant. The circuit court further rejected the State's argument, made in its motion for reconsideration, that defendant should have appeared in court at some point after February 3, 2011, to advance his case. The circuit court found it "would have been equally plausible for the

State to have advanced the case to seek a change in the 'order of court' nature of the continuance[.]"

¶ 73 The circuit court did not abuse its discretion in determining that the period of delay from February 4, 2011, to March 16, 2011, should not be charged to defendant. Whether a delay should be attributed to the defense depends on whether the defendant's actions in fact caused or contributed to a delay. *People v. Ladd*, 185 Ill. 2d 602, 608 (1999). A continuance on the court's motion does not represent delay attributable to the defendant. *Village of Mundelein v. Bogachev*, 2011 IL App (2d) 110346, ¶ 35. It was not defendant's burden to appear in court at some point after February 3, 2011, and before March 16, 2011, to enter a motion to have the case heard. In its order on remand, the circuit court acknowledged that the State did not cause the delay during that period. However, the court concluded, "the Speedy Trial Act focuses on whether *the defendant* caused the delay." (Emphasis in original.) The circuit court reasoned that when a delay is not caused by a defendant, the State's lack of culpability for the delay does not somehow shift the cause of the delay back to the defendant.

¶ 74 Furthermore, the State's argument regarding that period of delay relies on the efficacy of defendant's November 4, 2009, trial demand. The State contends that the November 4, 2009, trial demand had been negated and because no trial demand was in place, the 160-day period was not running in February and March 2011. Those positions are clearly contradicted by our conclusion that the November 4, 2009, trial demand was the operative speedy-trial demand in this case. As stated earlier, the speedy-trial clock in this case began with defendant's written demand on November 4, 2009. *Amirante*, 2014 IL App (1st) 131719-U, ¶ 25. Therefore, a valid speedy-trial demand was in place during the period in question.

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¶ 75 In conclusion, although the single day of delay on February 3, 2011, was excludable from the speedy-trial calendar, the ensuing period of delay in these proceedings from February 4, 2011, to March 16, 2011, was not attributable to defendant. With that period of delay added to the 159 days of conceded delay, the State in this case did not bring defendant to trial within 160 days of his trial demand. Therefore, a violation of the Speedy Trial Act occurred.

¶ 76 For all of the reasons set out above, the circuit court did not abuse its discretion in concluding that defendant's speedy-trial rights were violated. Accordingly, the October 27, 2014, order of the circuit court granting defendant's motion to dismiss the charges against him with prejudice is affirmed.

¶ 77 Affirmed.