2016 IL App (5th) 130066-U

NO. 5-13-0066

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 10-CF-2640
	)	
HENRY O. CHAMBERS,	)	Honorable
	)	Ann Callis,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's right to a speedy trial was not violated where the State's charge against defendant was not barred by the compulsory joinder statute. Trial counsel was not ineffective for failing to file a futile motion.

¶ 2 This appeal stems from a final judgment of conviction for armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)), attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2010)), and aggravated fleeing or eluding a police officer (625 ILCS 5/11-204.1(a)(1) (West 2012)), following a jury trial. Defendant, Henry Owen Chambers, was sentenced to concurrent sentences of 27 years, 15 years, and 3 years in the Department of Corrections. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant's convictions arise from a robbery that occurred outside a Granite City apartment on November 21, 2010. The apartment's resident, Aaron Huffman, asked his friend, David DeForest, to help him remove a box from his silver Dodge Charger and take it to his apartment to make room so he could give two friends, Jason and Sara, a ride home. At the time of the incident, Huffman was approaching his vehicle, Jason and Sara were waiting inside Huffman's vehicle, and DeForest was taking the box from Huffman's car to Huffman's apartment. Huffman had also asked DeForest to ride with him to give Jason and Sara a ride home.

¶ 5 As Huffman approached his vehicle, a red Chevy Cobalt parked nearby. Four people occupied the Chevy Cobalt: defendant, Langston Jones, Damond Jones, and Montrell Brownlee. Defendant and Langston exited the Chevy Cobalt and approached Huffman's vehicle, while Damond and Brownlee remained inside the Chevy Cobalt.

¶ 6 After Langston approached Huffman's vehicle, Langston pointed a gun at Huffman as Huffman was opening his driver's side door, and demanded that he give him his wallet and cell phone. Langston also instructed Jason and Sara to exit Huffman's vehicle. At this time, defendant stood on the passenger side of Huffman's vehicle and, according to Brownlee, made "sure no one was going anywhere."

¶ 7 DeForest testified that after he took the box inside Huffman's apartment and was walking toward Huffman's vehicle, he saw a man pointing a gun at Huffman and money being thrown out of the window of Huffman's vehicle. DeForest testified that after he attempted to "back up," he heard someone say "don't move" and "don't turn around."

When DeForest turned around, he testified defendant was pointing a gun at his face. DeForest further testified that after defendant unsuccessfully searched his pockets for a wallet, defendant "ran off to a red Cobalt" and drove away. Just prior to defendant driving away in the Chevy Cobalt, Langston had driven away in Huffman's Dodge Charger.

¶ 8 Defendant crashed the Chevy Cobalt on a highway ramp after a police chase, and was apprehended by police a short time later after he exited the vehicle and attempted to flee on foot. He was arrested that night. Two days later, defendant was charged with three counts: armed robbery of Huffman (720 ILCS 5/18-2(a)(2) (West 2012)), possession of the stolen or converted Chevy Cobalt (625 ILCS 5/4-103(a)(1) (West 2012)), and aggravated fleeing or attempting to elude a police officer (625 ILCS 5/11-204.1(a)(1) (West 2012)). On December 16, 2010, a grand jury indicted defendant on all three charges.

¶ 9 The case was continued several times, with delay attributed to defendant. On September 27, 2012, 652 days after the initial indictment, the State presented the case to a second grand jury, this time requesting an amended indictment which included the charge of attempted armed robbery of DeForest (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2010)). A jury trial proceeded October 1-2, 2012.

¶ 10 At trial, the State argued defendant helped Langston commit the armed robbery of Huffman by "doing crowd control" and pointing a gun at DeForest to prevent "him from making a phone call or for calling for help." The State further argued that defendant committed attempted armed robbery of DeForest by pointing a gun at DeForest and

"patting him down trying to find either money or something to take from him." The jury convicted defendant of the armed robbery of Huffman based on an accountability theory, attempted armed robbery of DeForest, and aggravated fleeing or attempting to elude a police officer. Defendant was subsequently sentenced to 27 years for the Class X armed robbery of Huffman, 15 years for the Class 1 attempted armed robbery of DeForest, and 3 years for the Class 4 aggravated fleeing or attempting to elude a police officer, with all sentences to run concurrent. Defendant timely filed a notice of appeal.

¶ 11 ANALYSIS

¶ 12 As we indicated above, defendant was charged by information with the armed robbery of Huffman on November 23, 2010, and was indicted for that crime on December 16, 2010. On September 27, 2012, after multiple continuances in the case were attributed to defendant, the State filed an amended indictment which added the charge of attempted armed robbery of DeForest. Defendant remained in custody from the date of his arrest on November 21, 2010, until he was sentenced on November 2, 2012, after a jury found him guilty of the two offenses above and one additional count of aggravated fleeing or attempting to elude a police officer.

¶ 13 On appeal, defendant alleges the attempted armed robbery charge, which was undisputedly filed more than one year after the armed robbery charge, was barred by the speedy trial statute since it was not joined within 120 days of the armed robbery charge. Defendant further alleges trial counsel was ineffective for failing to file a motion to dismiss the attempted armed robbery charge because his speedy trial rights were violated.

¶ 14 Whether a defendant's statutory right to a speedy trial has been violated is a question of law reviewed *de novo*. *People v. McGee*, 2015 IL App (1st) 130636, ¶ 25, 44 N.E.3d 510. Similarly, whether charges are subject to compulsory joinder is an issue of law reviewed *de novo*. *McGee*, 2015 IL App (1st) 130636, ¶ 25, 44 N.E.3d 510.

¶ 15 Regarding an individual's right to a speedy trial, section 103-5(a) of the Code of Criminal Procedure of 1963 provides, in relevant part:

> "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 ***. 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 2012).

People v. Phipps, 238 Ill. 2d 54, 66, 933 N.E.2d 1186, 1193 (2010).

¶ 16 Section 3-3 of the Criminal Code of 1961, also referred to as the compulsory joinder statute, requires joinder if (1) the multiple charges are known to the prosecutor at the time of commencing the prosecution, (2) the charges are within the jurisdiction of a single court, and (3) the charges are based upon the same act. 720 ILCS 5/3-3 (West 2010); *People v. Baker*, 2015 IL App (5th) 110492, ¶ 81, 28 N.E.3d 836. The "same act" requirement generally applies to two situations: (1) where several persons are affected by one act and (2) where several different statutes are violated by one act. *People v. Quigley*, 183 Ill. 2d 1, 10, 697 N.E.2d 735, 740 (1998). Joinder is not required where multiple offenses arise from a series of related acts in the course of a single incident.

Baker, 2015 IL App (5th) 110492, ¶ 81, 28 N.E.3d 836. The compulsory joinder provision is not intended to cover situations in which several offenses arise from a series of distinct but closely related acts in the course of a single incident. *Baker*, 2015 IL App (5th) 110492, ¶ 81, 28 N.E.3d 836.

¶ 17 Our supreme court has discussed the interplay between the speedy trial and compulsory joinder statutes:

> " 'Compulsory joinder requires the State to bring multiple charges in a single prosecution. The charges are tried together unless the circuit court determines that a separate trial is required in the interest of justice. [Citation.] Once a speedy-trial demand is filed, the multiple charges are subject to the same speedy-trial period. If the charges are required to be brought in a single prosecution, the speedy-trial period begins to run when the speedy-trial demand is filed, even if the State brings some of the charges at a later date. "Where new and additional charges arise from the same facts as did the original charges and the State had knowledge of these facts at the commencement of the prosecution, the time within which trial is to begin on the new and additional charges is subject to the same statutory limitation that is applied to the original charges." [Citation.]' " People *v. Hunter*, 2013 IL 114100, ¶ 10, 986 N.E.2d 1185 (quoting *Quigley*, 183 Ill. 2d at 13, 697 N.E.2d at 741).

¶ 18 It is well settled that this rule applies only when the original and subsequent charges are subject to compulsory joinder. *Hunter*, 2013 IL 114100, ¶ 10, 986 N.E.2d 1185. Therefore, only when compulsory joinder applies are subsequent charges subject

to the speedy trial period of the original charge. *Hunter*, 2013 IL 114100, ¶ 25, 986 N.E.2d 1185.

¶ 19 In this case, the parties do not dispute that the State was aware of the armed robbery and attempted armed robbery charges from the outset of the prosecution or that the charges were within the jurisdiction of a single court. The parties dispute whether the armed robbery and attempted armed robbery charges were based on the same act within the meaning of the compulsory joinder statute. Defendant alleges the two offenses are based on a single act, while the State contends the charges were not based on the same act. Thus, defendant argues the attempted armed robbery charge was required to be joined within 120 days of the armed robbery charge, while the State asserts the attempted armed robbery charge was not barred by the compulsory joinder statute.

¶ 20 After careful review, we find the armed robbery of Huffman and the attempted armed robbery of DeForest were not based on the same act within the meaning of the compulsory joinder statute. The record indicates Langston robbed Huffman while armed with a handgun on the driver's side of Huffman's vehicle. Defendant contributed to Langston's armed robbery by preventing the passengers of Huffman's vehicle, including DeForest, from calling for help, and was subsequently found guilty of the armed robbery of Huffman under an accountability theory. Regarding the attempted armed robbery of DeForest, defendant brandished a gun while patting DeForest's pockets in search of a wallet. These are two separate acts committed by defendant on two separate people who have no necessary connection to one another. Because defendant's armed robbery and attempted armed robbery charges were not based on the same act within the meaning of

the compulsory joinder statute, the attempted armed robbery charge was not required to be joined within 120 days of the armed robbery charge.

¶ 21 Defendant relies on our supreme court's decision in *People v. Quigley*, 183 Ill. 2d 1, 697 N.E.2d 735 (1998), which held that misdemeanor and felony driving under the influence charges should have been brought in one proceeding pursuant to the compulsory joinder statute because the charges were based on the same continuous and uninterrupted act of the defendant driving under the influence. Specifically, our supreme court in *Quigley* stated:

> "[T]he appellate court erred in failing to recognize that the misdemeanor DUI is a continuing offense that does not just occur when an individual starts driving his vehicle. The misdemeanor DUI offense continues while a defendant is driving and proximately causes the accident. Defendant was allegedly engaged in only one continuous and uninterrupted act of driving while under the influence. In this instance, the phrase 'based on the same act' cannot be given a hypertechnical interpretation to create multiple acts based on discrete moments in time." *Quigley*, 183 Ill. 2d at 10-11, 697 N.E.2d at 740.

¶ 22 Relying on *Quigley*, defendant argues he committed a single, continuous, and uninterrupted act of "crowd control" during the incident in question, including defendant's pat down of DeForest in search of a wallet while armed with a gun, which required the State to join the charges of armed robbery and attempted armed robbery. We disagree, and find *Quigley* distinguishable from the case at bar. Unlike *Quigley* which involved only one continuous and uninterrupted act of driving under the influence,

defendant here committed two separate offenses which were clearly distinct and required different elements of proof. *Hunter*, 2013 IL 114100, ¶ 23, 986 N.E.2d 1185.

¶ 23 Defendant was initially charged and ultimately found guilty of the armed robbery of Huffman under an accountability theory in that he employed "crowd control" while armed with a gun that prevented the passengers of Huffman's vehicle from calling for help. In short, defendant helped Langston commit the armed robbery of Huffman. More than a year after the initial indictment, defendant was charged and found guilty of the attempted armed robbery of DeForest in that he attempted to take DeForest's wallet while armed with a gun. After careful consideration, we find these are two separate acts, not a single continuous and uninterrupted act. Defendant's act of attempting to rob DeForest while armed with a gun did not contribute to Langston's armed robbery of Huffman. These offenses required defendant to commit two separate acts, namely assisting Langston's armed robbery via "crowd control," for which defendant was found guilty of armed robbery, and unsuccessfully searching DeForest's pockets for a wallet while armed with a gun, for which defendant was found guilty of attempted armed robbery.

¶ 24 Although we acknowledge the offenses occurred almost simultaneously and arose from a series of closely related acts, the two acts are unrelated and require different elements of proof. As we previously indicate, the compulsory joinder provision is not intended to cover situations in which several offenses arise from a series of distinct but closely related acts in the course of a single incident. For these reasons, we distinguish *Quigley* and reject defendant's argument.

¶ 25 Defendant also cites to several other decisions which required joinder of multiple charges: *People v. Williams*, 204 Ill. 2d 191, 788 N.E.2d 1126 (2003); *People v. Mitsakopoulos*, 171 Ill. App. 3d 198, 524 N.E.2d 1183 (1988); *People v. Mullenhoff*, 33 Ill. 2d 445, 211 N.E.2d 744 (1965). After careful review, we again distinguish these cases from the case at bar. Unlike the instant case where defendant committed two separate acts requiring different elements of proof on two separate victims, the defendants in the above cases committed offenses which were based on the same acts or based on the identical conduct of the defendant. Consequently, those cases fell within the protection provided by the compulsory joinder statute. *Mitsakopoulos*, 171 Ill. App. 3d at 201, 524 N.E.2d at 1185. As we discussed above, the offenses committed by defendant in this case involved separate acts. Accordingly, we are not persuaded by defendant's reliance on the above cases.

¶ 26 Finally, defendant argues his trial counsel was ineffective for failing to file a motion to dismiss his attempted armed robbery charge based on his assertion that the charge was barred under the speedy trial statute. Defendant argues that if counsel had filed a motion to dismiss the attempted armed robbery charge after the second indictment was filed, the trial court would have been required to grant the motion because the statutory limit of 120 days had passed. 725 ILCS 5/103-5(a) (West 2010). We disagree.

¶ 27 Ineffective assistance of counsel claims are judged under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Coleman*, 183 Ill. 2d 366, 397, 701 N.E.2d 1063, 1079 (1998). In order to establish ineffective assistance of counsel, a defendant must demonstrate (1) counsel's

performance was so deficient that counsel was not functioning as the counsel guaranteed by the sixth amendment and (2) but for counsel's deficient performance, there is a reasonable probability the result would have been different. *Strickland*, 466 U.S. at 694; *Coleman*, 183 Ill. 2d at 397, 701 N.E.2d at 1079. A defendant must satisfy both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. *Coleman*, 183 Ill. 2d at 397, 701 N.E.2d at 1079. Further, a defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence. *Coleman*, 183 Ill. 2d at 397, 701 N.E.2d at 1079.

¶ 28 In light of our finding the attempted armed robbery charge was not subject to compulsory joinder, and, thus, not subject to the speedy trial period of the armed robbery charge, we reject defendant's argument. There was no reasonable probability that a motion to dismiss the attempted armed robbery charge would have succeeded, and, therefore, no reasonable probability the result of the proceeding would have been different. Defense counsel's performance will not be deemed deficient for failure to file a futile motion. *People v. Holmes*, 397 Ill. App. 3d 737, 744, 922 N.E.2d 1179, 1186 (2010). Consequently, we are not persuaded it was ineffective assistance of counsel for defendant's attorney to choose not to file a motion to dismiss defendant's attempted armed robbery charge, as based on the record, this would have been futile. Accordingly, we reject defendant's argument.

¶ 29 CONCLUSION

¶ 30 For the reasons stated herein, the judgment of the circuit court of Madison County is affirmed.

¶ 31 Affirmed.