FIRST DIVISION
January 30, 2017

No. 1-14-3802

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 2371
	)	
ROOSEVELT JACKSON,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant insisted on immediate trial before his trial counsel had received all discovery from the State, the trial court was not required to conduct a *Krankel* hearing on defendant's *pro se* posttrial claim that counsel was ineffective for demanding a speedy trial. Fines and fees order modified.

¶ 2 Following a bench trial, defendant Roosevelt Jackson was found guilty of attempted first-degree murder and sentenced to 31 years in prison. On appeal, defendant contends the trial court erred in failing to conduct an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984) to determine the factual basis of defendant's posttrial *pro se* claim of ineffective assistance of trial

counsel for proceeding to trial without adequate preparation. Defendant also challenges entries in the fines and fees order. For the reasons that follow, we affirm defendant's conviction and modify the fines and fees order.

¶ 3 When the case first appeared on the trial court's docket on February 13, 2013, the court appointed an assistant public defender to represent defendant. On the next court date, private attorney Shelby Prusak filed her appearance on behalf of defendant. The case was continued multiple times to May 28, 2013, when the State reported that discovery was still outstanding. Defense counsel Prusak advised the court that "we are seeking leave to file our demand for trial today." The court stated: "All right. You understand, and I want this clear, because I don't want to hear, you know, ineffective assistance of counsel, hold up, there is still outstanding discovery *** " A colloquy between the court and defendant followed:

> "Okay. Mr. Jackson, I'm not telling you to proceed or however you want to try your case. Do you understand your attorney does not have these things now? She may get them by the next court date. She will not have an opportunity – she's demanding, they're ready, we're going. Do you understand that?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: You can't then allege she's ineffective, because this is what you want. Do you understand that?
>
> THE DEFENDANT: Yes, ma'am, yes, ma'am.
>
> THE COURT: Okay, just making sure we're clear."

¶ 4 The bench trial, which commenced on the next court date, June 19, 2013, was heard piecemeal and was not concluded until August 20, 2014, when the court announced its findings. On the first day of trial, the court addressed defendant's counsel:

> "THE COURT: This matter is here for a motion State date for trial. The State tendered some photos, and *** Mr. Jackson was insistent on demanding. Ms. Prusak, how are we proceeding this morning?
>
> MS. PRUSAK: Today I ask leave to file my motion for leave of Court to withdraw as counsel of record based on basically what the Court has brought to light this morning. I am seeking to advance the legal interests of my client, but based on his continued desire to demand trial short of my being in receipt of all necessary documents, DNA, et cetera, it makes it very, very hard for me to conduct proper representation, and I know the State is answering ready today, and I am in a very impossible position to give adequate representation. I am asking for leave to withdraw since we have come to a juncture where we are not on the same page.
>
> THE COURT: Okay. I did apprise Mr. Roosevelt Jackson of that. He was insistent. Your request for leave to withdraw is denied. We are going to proceed."

¶ 5 The first trial witness, Clyde Dubose, testified that at about 6:20 p.m. on December 24, 2012, he drove to a BP gas station at 66th Street and Stony Island. Dubose, a paraplegic, was driving a rented Dodge Avenger with special hand controls. As he pulled into the gas station, he saw two men whom he had known for about 15 years. One of the men was defendant, whom he knew as Bob. At trial, Dubose identified defendant as Bob. The other man was Jevon Holmes, known to Dubose as Chops. The two men approached Dubose's car and Chops opened the front

passenger-side door. Defendant entered the passenger side, kneeling on the seat halfway in the car. He pulled a gun from his waist and told Dubose, "Give me your money, you bitch ass nigger." Then defendant struck Dubose on the forehead with the gun. Dubose worked the hand controls of the car and was attempting to drive off when defendant shot him in the stomach. Dubose pulled away and defendant fell out of the car. Dubose tried to drive to a hospital, but he blacked out and crashed his vehicle into a pole. Paramedics arrived and Dubose was taken to Northwestern Hospital, where he underwent eight hours of surgery.

¶ 6 While in the hospital, Dubose told Detective O'Brien that the man who shot him was Roosevelt Jackson. Subsequently, O'Brien showed Dubose a photo array. Dubose identified the photo of defendant as the man who had shot him and also identified a photo of Jevon Holmes.

¶ 7 Dubose testified that prior to driving to the gas station, he had not been in the vicinity of 66th and Blackstone or 66th and Dorchester. He denied having a telephone conversation with defendant, Jevon Holmes, Rashawn or Walton before the shooting incident. Dubose did not sell drugs and he never sold drugs to defendant. Dubose was not at the gas station to sell drugs to defendant and denied saying to him, "If you want the shit, where is the money at?"

¶ 8 The trial, having commenced, was continued multiple times to October 2, 2013. On that date the State could not arrange for the presence of certain witnesses and requested a further continuance of the trial. Defense counsel advised the court she had sent out several subpoenas. Counsel referenced an alleged video from the gas station and explained: "And, of course, Judge, I was put in a difficult position because of the defendant's demand *** that I was unable to adequately address this prior to trial." The State informed the court it did not have a video in inventory.

¶ 9 On the next court date, Detective O'Brien testified that on December 24, 2012, at about 6:50 p.m., he and his partner went to the area of 7400 South Stony Island where they observed up on the median a heavily damaged late-model black Dodge Avenger which had struck and knocked over a light pole. The vehicle had hand controls for accelerating and braking and the keys were still in the ignition. A fired shell casing was on the floor in front of the front passenger seat and a wheelchair was in the back seat. On that same evening, O'Brien went to the BP gas station at 66th and Stony Island and learned that video equipment was in place. However, because of the Christmas holiday, the video could not be obtained before it was over-written with subsequent taping. The gas station attendant told O'Brien he did not witness anything. O'Brien testified that he interviewed Dubose at the hospital and Dubose stated that Roosevelt Jackson had shot him. O'Brien returned to the hospital on December 31 with a photo array, and defendant identified defendant's photo as being that of the man who shot him.

¶ 10 A police evidence technician testified that he went to the crash site at 7400 South Stony Island on December 24, examined the Avenger, and recovered a spent shell casing from the floor of the front passenger seat and a fired bullet from the driver's side panel.

¶ 11 After a stipulation by the parties concerning the injuries sustained by the victim in the shooting and car crash and his subsequent medical treatment, the State rested. A motion for a directed finding on behalf of defendant was denied.

¶ 12 The trial was continued several more times to March 24, 2014, when defendant's counsel stated that two defense witnesses had been subpoenaed for that day but neither had appeared in court, and that the subpoenas would be re-issued.

¶ 13 On the next court date, the defense presented the testimony of Charles Starks, an employee of Amoco/BP maintenance and security. He was working at the BP station at 6600 South Stony Island between 6 and 11 p.m. on December 24, 2012, but he did not witness the shooting. A video camera at the gas station recorded most of the station's exterior and the gas pumps. Starks took the police to the video equipment in the office and watched the playing of the video with the police officers. The entire video showing the shooting lasted about 15 or 20 minutes, "if that long." Starks testified to what he saw on the videotape: "[Y]ou see somebody come around *** the side of the building, go up to the car, you don't see anything else, but you see them as they're backing back shooting (indicating)." Starks saw only one person inside the car and one person with a gun in his hand. He could not see the entire car in the video and did not know the make or model of the car, but it was a new model and on the video the color of the car was burgundy or maroon. Starks believed the video looped over, recording over itself. The next day, Christmas day, the gas station was open.

¶ 14 Mohamad Sidique Mohamad Ismis testified he also worked at the BP gas station on December 24, but there was no shooting there that day. He remembers the police coming to the station to get videotape of a shooting, but that incident concerned a young lady inside a car, not a man in a wheelchair. The gas station was open on December 25, 2012.

¶ 15 Prior to defendant's testimony, his counsel made a motion pursuant to *People v. Montgomery*, 47 Ill. 2d 510 (1971), to bar the State from using defendant's prior convictions for impeachment. The trial was continued for a hearing, after which the court granted the motion.

¶ 16 Defendant testified that he had known Clyde Dubose for 20 years; they grew up together. Dubose's nickname for defendant was Bob. Dubose was defendant's drug supplier; since

defendant was 15 years old, he had been buying crack cocaine from Dubose. Early in the afternoon of December 24, 2012, defendant called Dubose and said he had $1,844 with which to purchase two and a quarter ounces of cocaine which he planned to package in small amounts and resell. Dubose said he had only one ounce and wanted $1,200 for it. Defendant said he would pay $844 for the one ounce. The two men haggled over the price and finally defendant told Dubose to "just come over here and talked [sic] to me." Dubose phoned defendant 45 minutes later. Defendant was then outside on 66th Street between Blackstone and Dorchester; he was with Jevon Holmes, who was called Chops, and a little guy named Walt. Defendant had known Walt for 18 years but did not know his last name. Walt walked off toward 67th Street, so just defendant and Chops were present when Dubose pulled up at about 5:30 or 6 p.m. Dubose was driving a newer four-door blue Malibu. He was alone. Defendant tried to enter the car but could not get in the back seat because Dubose's wheelchair was there. Chops went to the passenger side but did not enter the car. Defendant gave the $844 to Chops and told him not to buy the cocaine from Dubose if the cocaine was bad. Defendant was walking back to the house when Walt returned with Flaka. Defendant had known Flaka for several years but did not know his real name. Flaka walked past defendant to the open passenger-side door of Dubose's car where Chops was standing. Flaka pulled out a gun and defendant heard him say, "bitch ass nigga give me my money." Flaka entered the car with one knee on the seat. Defendant walked up to Flaka and asked him what he was doing. Flaka began to reply when Dubose started to pull the car away. Defendant heard a shot and saw Flaka roll out of the car which drove toward Stony Island. Flaka took off running through the alley. The gas station was two blocks from where the shooting occurred.

¶ 17 After defendant testified, the defense rested. The trial was continued for closing arguments and continued again for the court's ruling. The court found defendant guilty of attempted first degree murder, aggravated battery, and attempted armed robbery, and not guilty of vehicular invasion and aggravated unlawful restraint.

¶ 18 The case was continued for posttrial motions and sentencing, and a written motion for new trial was filed. On October 29, 2014, Ms. Prusak stood on her written posttrial motion which the court denied. Then the court asked defendant if he wanted to present a statement in allocution. The following exchange took place between the court, defendant and defense counsel:

"THE DEFENDANT: Could you at least give me a continuance so my family could be here at least?

* * *

MS. PRUSAK: The family has not been in touch with me.

THE DEFENDANT: You never be in touch with us, period. It's a lot of things that –

THE COURT: Mr. Jackson, let me just say this, sir.

THE DEFENDANT; Yes, ma'am.

THE COURT: You indicated you were ready for trial. Hold up. You demanded. We set this. This was set in motion.

* * *

THE DEFENDNT: But it was for – okay. I can see when I went for a speedy trial and the trial was over with right then and there, okay. She still have 14 months. She

didn't even subpoena not one that I asked her to do. She didn't do anything that I asked her to do.

THE COURT: Sir, we're not going to interject any type of attorney. I asked you before, if you were ready to proceed. You indicated you were ready. Discovery had not been –

THE DEFENDANT: She said she was ready.

THE COURT: Wait a minute. Wait a minute.

THE DEFENDANT: She said she was ready, your Honor.

THE COURT: No attorney without – Mr. Jackson, let me say this. No attorney would say they were ready when all discovery had not been tendered in this case because you wanted to demand. Mr. Jackson, I can recall you standing right where you're at and indicating you were ready to go.

THE DEFENDANT: And I asked her. I said, Do you think we can go? And she said –

THE COURT: And we did. And we went. We did exactly what you wanted, Mr. Jackson.

THE DEFENDANT: If she my attorney, and she know, she shouldn't let me go then.

THE COURT: No. No. No. Wait a minute. Don't blame your attorney for what you wanted. You indicated you wanted this.

THE DEFENDANT: Let's go.

THE COURT: You indicated that you wanted to demand. That's what you wanted, not your attorney. You cannot blame this on your attorney. She followed your directions. You're the client and that's exactly what happened.

This is buyer's remorse. Now that this has happened and you're unhappy with the result, now you want to cast aspersions on Ms. Prusak when Ms. Prusak followed your orders as your attorney. She can't talk you out of everything. You have the ultimate right."

¶ 19 The court continued the case for defendant's family to be present for the sentencing of defendant. At the subsequent hearing, the court sentenced defendant to 31 years in prison for attempted first-degree murder.

¶ 20 On appeal, defendant contends that the trial court erred in failing to conduct a preliminary *Krankel* inquiry to determine the factual basis for his *pro se* allegation of ineffective assistance of counsel. Defendant claims that his trial counsel demanded trial before discovery was completed and before she was ready to try the case, and that she failed to subpoena defense trial witnesses. Defendant also maintains the trial court operated under the legal misapprehension that he had an absolute right to demand a speedy trial over the advice of his counsel.

¶ 21 We review *de novo* whether the trial court conducted an adequate inquiry into a defendant's *pro se* allegation of ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 75 (2003). When a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *Moore*, 207 Ill. 2d at 77-78. If the court determines the claim lacks merit or relates only to matters of trial strategy, the court need not appoint new counsel and may deny the *pro se* motion. *Id.* at 78;

People v. Bull, 185 Ill. 2d 179, 210 (1998). Where a trial court simply becomes aware that a defendant has criticized his counsel's performance, the court has no duty to investigate the claim if it is patently without merit or unsupported by specific facts. *People v. Pope*, 284 Ill. App. 3d 330, 334 (1996).

¶ 22 As a threshold matter, we address the State's argument, relying on *People v. Pecoraro*, 144 Ill. 2d 1 (1991), that *Krankel* does not apply to defendant here because he was represented by private counsel. Subsequent to *Pecoraro*, our supreme court has implicitly rejected the view that *Krankel* applies only to appointed counsel. See *People v. Taylor*, 237 Ill. 2d 68, 78 (2010) (Burke, J. specially concurring) ("[T]he majority assumes, without deciding, that *Krankel* applies to privately retained counsel since it addresses the merits of defendant's claim on a factual basis"). Consequently, we will address the merits of defendant's *Krankel* claim.

¶ 23 Defendant's ineffective-counsel claim arose on the date set for posttrial motions and sentencing when defendant asked the court for a continuance "so my family could be here." Defense counsel told the court that defendant's family had not been in touch with her. Defendant responded to his counsel: "You never be in touch with us, period." A moment later, defendant told the court: "I can see when I went for a speedy trial and the trial was over with right then and there, okay. She still have 14 months. She didn't even subpoena not one that I asked her to do. She didn't do anything that I asked her to do." Defendant now claims on appeal that his trial counsel was ineffective, in part, for failing to subpoena witnesses to testify at trial and that the trial court was obligated to develop the factual basis of his claim. This claim, however, did not constitute ineffective assistance of counsel so as to require a *Krankel* inquiry. The decisions of witnesses to call and what evidence to present generally are unassailable matters of trial strategy,

rather than incompetence, that cannot form the basis of a claim of ineffective assistance of counsel. *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007); *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Defense counsel's alleged failure to subpoena witnesses is a matter of trial strategy that does not form the basis of a claim for ineffective assistance of counsel. *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 68. Where defendant raises such a claim, the trial court may dismiss it without further inquiry. *Ward*, 371 Ill. App. 3d at 433.

¶ 24 A trial court may conduct a *Krankel* evaluation/inquiry by any of the following means. The court may ask defense counsel about the facts and circumstances related to the defendant's allegations; the court may ask the defendant for more specific information; or the court may rely on its knowledge of defense counsel's performance at trial coupled with the insufficiency of the defendant's allegations on their face. *Krankel*, 102 Ill. 2d at 78-79. We conclude that the trial court here was not required to conduct a *Krankel* inquiry based on defendant's statement about subpoenaing witnesses, which related only to trial strategy. Moreover, no inquiry was necessary because the court, having presided over the trial, had personal knowledge of defense counsel's performance at trial and knew that counsel had subpoenaed and presented witnesses for the defense at the trial. The insufficiency of defendant's claim was apparent on its face.

¶ 25 Defendant also contends on appeal that the trial court erred by not conducting an adequate *Krankel* inquiry to determine the factual basis of his claim that his trial counsel demanded trial before she was ready to try the case and before discovery was completed. Defendant asserts that the trial court erroneously ruled that the decision to demand a speedy trial lay exclusively with defendant, over the advice of his counsel.

¶ 26 After defendant charged that his counsel "didn't do anything" that he asked her to do, the court reminded defendant that he had demanded to go to trial before all discovery had been tendered. Defendant responded that his counsel had told him she was ready to go to trial. The court replied, "And we did. We did exactly what you wanted, Mr. Jackson." Defendant stated, "If she my attorney, and she know, she shouldn't let me go then." In response, the court noted: "You indicated that you wanted to demand. That's what you wanted, not your attorney. You cannot blame this on your attorney. She followed your direction."

¶ 27 The State contends that defendant's comments during his colloquy with the court did not constitute a legitimate claim asserting ineffectiveness of his trial counsel. However, defendant's comments included the statement, "If she my attorney, and she know, she shouldn't let me go then." This statement could be liberally construed as a claim by defendant that his trial counsel was ineffective for filing a speedy trial demand after telling him she was ready to try the case but before she was actually prepared to do so. Nevertheless, a preliminary *Krankel* hearing was not required to determine the nature of defendant's claim because defendant adequately voiced the basis of his claim (*People v. Phillips*, 392 Ill. App. 3d 243, 261 (2009)) and the court could rely on its own recollection of how defendant's speedy trial demand came about.

¶ 28 Under the doctrine of invited error, an accused may not request to proceed in one manner before the trial court, and then contend on appeal that the course of action was in error. *People v. Carter*, 208 Ill. 2d 309, 319 (2003); *People v. Lucas*, 231 Ill. 2d 169, 174 (2008). The doctrine of invited error is often considered as estoppel. *People v. Matthews*, 2016 IL 118114, ¶ 14. "Notions of fair play dictate that a litigant should not be allowed to relitigate a matter resolved against him based on his own error." *Id.* ¶ 23. Here, the trial court could rely on its personal

knowledge of what had transpired when the trial demand was made. The court was aware that the demand for trial, though filed by defendant's counsel, came from defendant himself despite being warned--and acknowledging--that he could not later raise an ineffective-assistance claim. The court also knew that the trial demand was contrary to the wishes of defense counsel, who sought to withdraw from the case because she felt it was not in defendant's interest to proceed to trial without complete discovery. Consequently, there was no need for a further inquiry under *Krankel*.

¶ 29 Defendant also asserts that the court actively frustrated his attempt to air his claim about his attorney demanding trial on the mistaken understanding that, as a matter of law, defendant had an absolute right to demand trial over his attorney's advice. In support of this claim, defendant seizes on the following words of the trial court: "Ms. Prusak followed your orders as your attorney. She can't talk you out of everything. *You have the ultimate right*." (Emphasis added.) Defendant contends the court's words must be interpreted as a mistaken belief by the court that only defendant could demand a speedy trial, and he argues that such a legal interpretation is error because whether to demand a speedy trial is a strategic decision left to counsel. In support of his contention, defendant cites *People v. Staten,* 159 Ill. 2d 419, 431 (1994) and *People v. Keys*, 195 Ill. App. 3d 370, 373 (1990). Those authorities are distinguishable, as in both cases the defendant argued on appeal that his trial counsel was ineffective for *failing* to move for discharge on speedy-trial grounds prior to trial. Other authorities recognize that the decision to demand a speedy trial may be determined by counsel over defendant's objections. In *People v. Carr*, 9 Ill. App. 3d 382, 384 (1972), where the trial court granted defense counsel a continuance over the strenuous objection of the defendant who

demanded a speedy trial, this court affirmed the defendant's conviction, holding that the four-term act was not violated and the trial court took proper action in granting counsel's continuance request. Likewise, in *People v. Ford*, 34 Ill. App. 3d 79, 83 (1975), this court held the trial court did not abuse its discretion in granting defense counsel's request for a continuance to prepare for trial notwithstanding defendant's speedy trial demand.

¶ 30 The State refers us to *People v. Webb*, 38 Ill. App. 3d 629 (1976), wherein the two defendants insisted on an immediate trial despite their counsel's request for a continuance she represented was needed for adequate trial preparation. On appeal, the defendants maintained that the trial court deprived them of effective assistance of counsel by failing to grant their counsel's request for additional time. In affirming the defendants' convictions, this court held that the defendants were not denied effective assistance of counsel because the court did not choose to postpone the trial. We held that where a defendant insists on trial without delay, the court may allow the continuance over the defendant's objection, or the court may comply with the defendant's demand. *Id.* 634.

¶ 31 In the instant case, the parties disagree about whether the decision to demand a speedy trial is a tactical decision resting with defense counsel or whether that decision may be overridden by a defendant. However, we find it unnecessary to address the question under the facts of this case, because ultimately it is unrelated to the *Krankel* issue at the heart of defendant's argument. Whether the trial court was correct in its legal conclusion regarding the right to demand a speedy trial, our *de novo* review forces us to conclude that the trial court's factual finding that no additional inquiry was required under the unique circumstances of this case was accurate. Moreover, the court's comment that defendant had the "ultimate right" to

demand a speedy trial over his attorney's objections was made after the trial court had already concluded that no additional *Krankel* inquiry was required. Accordingly, we conclude that even if some way erroneous, the trial court's belief did not cause it to frustrate defendant's attempt to raise the effectiveness of counsel. Therefore, there was no need for further inquiry by the trial court on the issue of counsel's effectiveness.

¶ 32 The final issue raised by defendant requires us to consider the correctness of the trial court's fines and fees order. Citing *People v. Robinson*, 2015 IL App (1st) 130877, ¶ 115, defendant contends that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) was improperly assessed against him because he was convicted of a felony offense. He argues that the $15 State Police Operations assessment (705 ILCS 105/27.3a) (West 2014)) was erroneously characterized as a fee, but as it is a fine it is subject to offset by defendant's $5-per-day presentence custody credit. Finally, defendant asserts that the court improperly imposed multiple Violent Crime Victims Assistance Fund fines, and that only the $100 fine for a felony was permissible. 725 ILCS 240/10(b)(1) (West 2014). The State agrees that the fines and fees order was incorrect as indicated by defendant, and we concur.

¶ 33 Under our authority pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we vacate the portion of the fines and fees order assessing a $5 Electronic Citation Fee; we re-designate the $15 State Police Operations fee as a fine, subject to offset by presentence credit; and we vacate the $25 Violent Crime Victims Assistance Fund fine. We order the clerk of the circuit court to correct the order and give a corrected total of $529. We affirm defendant's conviction in all other respects.

¶ 34 Affirmed; fines and fees order corrected.