2017 IL App (2d) 150034-U
No. 2-15-0034
Order filed July 24, 2017

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-1735
TERRENCE L. STEELE,	)	Honorable Robert G. Kleeman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justice Zenoff concurred in the judgment.
Justice Hutchinson dissented.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to discharge for a statutory speedy-trial violation: defendant caused the postponement of the original trial date by filing a motion to suppress, he agreed to several continuances thereafter, and, when he finally demanded trial with 17 days remaining in the speedy-trial period, the court set trial for the first available date.

¶ 2 Defendant, Terrence L. Steele, appeals from an order of the circuit court of Du Page County denying his motion for discharge for violation of the Speedy Trial Act (725 ILCS 5/103-5(a) (West 2012)). Because the trial court did not abuse its discretion in finding that the delay in setting a trial date beyond the speedy-trial period was attributable to defendant, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by a superseding information with one count of racketeering conspiracy involving the illegal distribution of heroin (720 ILCS 570/401(c)(1) (West 2012); 720 ILCS 5/33G-4(a)(3) (West 2012)), one count of racketeering involving the illegal distribution of heroin (720 ILCS 570/401(c)(1) (West 2012); 720 ILCS 5/33G-4(a)(1) (West 2012)), eight counts of the unlawful delivery of 1 or more, but less than 15, grams of heroin (720 ILCS 570/401(c)(1) (West 2012)), and one count of the unlawful delivery of 15 or more, but less than 100, grams of heroin (720 ILCS 570/401(a)(1)(A) (West 2012)).

¶ 5 On August 27, 2013, defendant was arrested and taken into custody. On October 31, 2013, defendant, who remained in custody, demanded a speedy trial. At that point, 35 days of delay were attributable to the State. The trial court set a trial date of January 7, 2014, and scheduled a December 16, 2013, hearing for any motions *in limine*.

¶ 6 Before December 16, 2013, the State filed several motions *in limine*, including one seeking admission of recorded telephone conversations as conspirator statements under Illinois Rule of Evidence 801(d)(A)(2)(c) (eff. Jan. 1, 2011). That motion sought admission of thousands of recorded conversations, many of which were purported to be in furtherance of the charged heroin-distribution conspiracy.

¶ 7 On December 16, 2013, the trial court ruled on all of the State's motions *in limine* except the one seeking admission of the conspirator statements. The court scheduled a hearing for December 23, 2013, to address that motion. The January 7, 2014, trial date remained.

¶ 8 On December 23, 2013, the State contended that defendant was involved in a heroin-distribution conspiracy involving numerous individuals and that all of the heroin-related telephone conversations were admissible as conspirator statements. The trial court ruled that,

although the State could show that defendant was involved in a conspiracy with the individuals he employed, to introduce other conspirator statements it needed to show that defendant was in a conspiracy with a distributor named Garcia and those individuals working with Garcia. The court continued the matter to December 30, 2013, to allow the State to make that showing. The January 7, 2014, trial date remained.

¶ 9 On December 24, 2013, the State filed a supplemental proffer related to defendant's involvement in the conspiracy. On December 30, 2013, the State moved to continue the trial date, and the trial court set the new trial date for January 14, 2014. Also, after the court indicated that it did not believe that the State could show a conspiracy between defendant and Garcia's employees, it gave the State more time to file another proffer.

¶ 10 On January 6, 2014, the State filed an amended motion to admit the conspirator statements and a second amended proffer. Also on January 6, 2014, defendant filed a motion *in limine* in which he raised several issues, including whether certain of his statements were inadmissible. The trial court ruled that, because defendant's motion to exclude his statements implicated *Miranda v. Arizona*, 384 U.S. 436 (1966), it was effectively a motion to suppress, the resolution of which would require an evidentiary hearing. Thus, the court noted that defendant's motion tolled the speedy-trial term. The court further expressed concern about reviewing thousands of telephone conversations to determine whether each one was in furtherance of the conspiracy. In that regard, the court pointed out that it had a transcript of the recorded statements, which was eight to nine inches thick. The court added that, because of the number of conversations and the coded language used, it would take weeks to resolve the State's motion. The parties agreed to continue the matter to February 4, 2014, to allow defendant to file a motion

to suppress his statements. The court struck the January 14, 2014, trial date and continued all pretrial matters to February 4, 2014. Defendant did not request a new trial date.

¶ 11 On January 24, 2014, defendant filed a response to the State's second amended proffer, contending that the State could not show that defendant was involved in any conspiracy. On February 4, 2014, defendant filed an amended motion *in limine* that separated his *Miranda*-related claim from the other issues raised in his original motion *in limine*.

¶ 12 At the February 4, 2014, hearing, the parties agreed to a March 3, 2014, hearing to resolve the *Miranda* claim. The State noted that the speedy-trial term was tolled at 103 days.

¶ 13 On March 3, 2014, the trial court denied defendant's motion to suppress his statements. The court also denied all remaining aspects of defendant's motion *in limine*, other than an issue related to a shotgun found when defendant was arrested and certain hearsay statements regarding defendant's sale of heroin. In addressing the State's motion to admit the conspirator statements, the court, due to the large number of statements, asked the parties if they would prefer to litigate that motion on another day. By agreement, the court continued the matter to April 17, 2014.

¶ 14 On April 17, 2014, the trial court heard arguments on the State's motion to admit the conspirator statements. The court took the matter under advisement and continued the case to April 22, 2014.

¶ 15 On April 22, 2014, the trial court ruled that the State could show a conspiracy between defendant, his employees, and Garcia, but not between defendant and Garcia's employees and other customers. The State then requested a few days to decide whether to file a motion to reconsider, and the court continued the matter to May 1, 2014. When the court characterized the continuance as agreed, defendant did not object.

¶ 16 On May 1, 2014, the State advised the trial court that it would not be filing a motion to reconsider. By agreement, the court continued the matter to May 16, 2014.

¶ 17 On May 16, 2014, in an effort to expedite the trial court's disposition of the motion to admit the conspirator statements, the State proposed that defendant review the statements to determine which ones he objected to. Defendant agreed to that procedure. The court then continued the matter to June 13, 2014, for a hearing to rule on the admissibility of those statements to which defendant objected. Defendant did not object when the court characterized the continuance as agreed.

¶ 18 On June 13, 2014, defendant advised the trial court that he had changed his position and would not agree to the admission of any of the conspirator statements, because of forfeiture and waiver concerns, and asserted a comprehensive objection to the admission of all of the statements. Defendant also withdrew the remaining issues in his motion *in limine*. He explained that he was doing so as part of a "chess game" or "strategy move" to attempt to force the State to pare down the number of conspirator statements it sought to admit. Defendant then reasserted his demand for a speedy trial.

¶ 19 The trial court stated that, because it had expected that defendant would review the proposed conspirator statements as he had agreed to do, it had not, since May 16, 2014, considered the State's motion to admit those statements. The court added that it would try to "move heaven and earth" to resolve the State's motion by the following week and suggested the possibility of setting a trial date that same week. After the State acknowledged that the speedy-trial term had 17 days remaining, it asserted that any delay from June 13, 2014, until trial was attributable to defendant. The State elaborated that, because defendant moved to continue the original trial date in January 2014 without seeking a new trial date, defendant was responsible

not only for the time it took to resolve his motion to suppress but whatever time it took to reschedule a new trial date thereafter.

¶ 20 After checking its calendar, the trial court stated that it could set the case for trial on July 22, 2014. When the State indicated that it was unavailable on July 22, the court set the trial for July 29, 2014. The court also set the matter for a hearing on June 20, 2014, to rule on the State's motion to admit the conspirator statements. In doing so, the court noted that it was doing so over defendant's objection. Defendant stated that he would file a motion to discharge once the 17 days remaining in the speedy-trial term expired.

¶ 21 On June 20, 2014, the trial court disposed of the State's motion regarding the conspirator statements. Defendant renewed his speedy-trial demand.

¶ 22 On July 14, 2014, defendant filed a motion to discharge, contending that more than 120 days had passed that were not attributable to him. The State responded that defendant caused the January 14, 2014, trial date to be delayed, which, combined with his failure to request a new trial date, made defendant responsible for the delay in scheduling the July 29, 2014, trial date.

¶ 23 In denying defendant's motion to discharge, the trial court agreed that defendant was responsible for all of the delay until the July 29, 2014, trial. The court explained that, although it was not accusing defendant of engaging in such tactics, its ruling was necessary to prevent a defendant from filing a motion to suppress on the last day of the speedy-trial period to postpone a trial and then waiting for an inconvenient time for the State and withdrawing the motion, forcing the State to scramble to be ready for trial within 24 hours.

¶ 24 Defendant filed with the Illinois Supreme Court a motion for a supervisory order, seeking to have his case discharged for a speedy-trial violation. On September 8, 2014, the supreme court, without explanation, denied the motion.

¶ 25 On September 25, 2014, defendant renewed his speedy-trial demand. The trial court granted the State's request to set the matter for trial on November 10, 2014. On the day of trial, defendant renewed his motion for discharge, which the court denied.

¶ 26 Following the jury trial, defendant was found guilty of racketeering, racketeering conspiracy, and eight of nine counts of heroin delivery. Defendant filed a posttrial motion, contending, among other things, that the trial court erred in denying his motion for discharge. After the court denied his posttrial motion, it sentenced defendant to 20 years' imprisonment on the conspiracy conviction. Defendant then filed a timely appeal.

¶ 27 II. ANALYSIS

¶ 28 On appeal, defendant contends that the trial court abused its discretion in ruling that the delay in setting the trial date beyond the speedy-trial period was attributable to him. The State responds that, among other things, the court did not abuse its discretion in attributing the delay to defendant, because he caused the postponement of the January 14, 2014, trial date and did not request a new trial date.

¶ 29 Although it is the State's duty to ensure that a defendant is tried within the statutory period (*People v. Mayo*, 198 Ill. 2d 530, 536 (2002)), the defendant bears the burden of affirmatively establishing a speedy-trial violation (*People v. Kliner*, 185 Ill. 2d 81, 114 (1998)). If a defendant is not brought to trial within the statutory time frame, he must be discharged from custody and the charges must be dismissed. 725 ILCS 5/103-5(d) (West 2012); *People v. Woodrum*, 223 Ill. 2d 286, 299 (2006). The trial court's decision regarding which party is responsible for a particular delay is entitled to deference and will not be overturned on appeal absent an abuse of discretion. *Mayo*, 198 Ill. 2d at 535. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would

take the trial court's view. *People v. Rivera*, 2013 IL 112467, ¶ 37. Although abuse of discretion is the most deferential standard of review, it is not a rubber stamp. *People v. Jacobs*, 2016 IL App (1st) 133881, ¶ 77.

¶ 30 A defendant who remains in custody must be tried within 120 days of being taken into custody, unless, among other things, a delay is occasioned by the defendant. 725 ILCS 5/103-5(a) (West 2012). Under section 103-5(a), the period begins to run automatically from the day that the defendant is taken into custody, and a formal demand for trial is not required. *Mayo*, 198 Ill. 2d at 536.

¶ 31 Any delay occasioned by the defendant must be excluded from the speedy-trial term. 725 ILCS 5/103-5(f) (West 2012). A delay is occasioned by the defendant when his acts caused or contributed to a delay resulting in postponement of the trial. *People v. Hall*, 194 Ill. 2d 305, 326-27 (2000). A delay shall be considered agreed to by the defendant unless he objects by demanding trial. 725 ILCS 5/103-5(a) (West 2012). Although a defendant is permitted to employ section 103-5(a) as a shield against any attempt to place his trial date outside of the 120-day period, he may not use it as a sword after the fact to defeat a conviction. *People v. Cordell*, 223 Ill. 2d 380, 390 (2006).

¶ 32 When a defendant causes a trial date to be continued without requesting a new trial date, the time between the continuance and the next trial setting is attributable to the defendant. *People v. Majors*, 308 Ill. App. 3d 1021, 1028 (1999). A defendant cannot obtain an open-ended continuance that unilaterally halts the tolling of the speedy-trial clock. *Majors*, 308 Ill. App. 3d at 1028. If a defendant had such a right, it would unduly instill in the defendant the ability to undermine and disrupt the presentation of the State's case. *Majors*, 308 Ill. App. 3d at 1028. Indeed, a defendant cannot seek an open-ended continuance, thereby tolling the speedy-trial

period, and then withdraw his acquiescence to that tolling and demand a trial within the remaining time. *Majors*, 308 Ill. App. 3d at 1029.

¶ 33 Here, the dispositive issue is whether the trial court abused its discretion in attributing to defendant the delay in setting the trial date. It did not.

¶ 34 We begin by noting that defendant caused the postponement of the original trial date when he filed his motion to suppress. Defendant contends that it was the State's motion to admit that caused the original trial date to be postponed. That contention lacks merit. Although the State's motion to admit was pending and was not likely to have been ruled upon before the January 14, 2014, trial date, on January 6, 2014, defendant filed his motion to suppress. Because defendant's motion required an evidentiary hearing, it necessitated postponing the trial date. Therefore, the postponement was caused, at least in part, by the need for the trial court to conduct an evidentiary hearing on the motion to suppress, which was not conducted until March 3, 2014. Thus, because defendant's motion to suppress contributed to the postponement of the trial date, the delay was attributable to defendant. See *Hall*, 194 Ill. 2d at 326-27.

¶ 35 More importantly, when defendant contributed to the delay of the trial date, he never sought a new trial date. Nor did he do so once his motion to suppress was resolved on March 3, 2014. Instead, he agreed to several continuances, including to June 13, 2014.

¶ 36 On June 13, 2014, defendant demanded a trial date within the remaining 17 days of the speedy-trial period. However, the trial court was not obligated to set the trial within that time period if its schedule would not permit it. See *Majors*, 308 Ill. App. 3d at 1028. Indeed, keeping in mind defendant's speedy-trial right, the court set the trial as soon as reasonably possible. It did so by checking its calendar and setting trial for the first available date.

¶ 37 Of course, the trial could not have begun until the State's motion to admit conspirator statements was resolved. It is apparent that, as of June 13, 2014, the State's motion had been pared down substantially. Although the matter had been set for decision on June 13, 2014, the court was not prepared to rule then, because defendant, who had agreed on May 16, 2014, to facilitate the court's decision by reviewing the various statements before June 13, had reneged on that agreement. Thus, the court needed more time to rule on the State's motion. That further delayed the setting of the trial date, which delay was also attributable to defendant.

¶ 38 Although defendant relies on several cases in arguing that the delay was not attributable to him, those cases do not support his position. In *People v. Kliner*, 185 Ill. 2d 81 (1998), the period at issue was a 21-day delay caused by the State's motion to continue. *Kliner*, 185 Ill. 2d at 119. Thus, the delay was attributed to the State. *Kliner*, 185 Ill. 2d at 119. The *Kliner* decision does not help defendant. Likewise, *People v. Tucker-El*, 123 Ill App. 3d 955 (1984), offers defendant no support, as there the court merely held that the delay caused by the defendant's motion for a change of venue was attributable to the defendant until the motion was withdrawn. *Tucker-El*, 123 Ill. App. 3d at 960. There was no issue in *Tucker-El*, similar to the one here, regarding the defendant's postponement of the trial date and his failure to seek a new trial date.

¶ 39 The dissent maintains that our reliance on *Majors* is unpersuasive (*infra* ¶ 55) and that the trial court abused its discretion when it attributed the delay from June 13 to July 14 to defendant. The dissent suggests that *People v. Cornwell*, 9 Ill. App. 3d 799 (1973) and *People v. Baker*, 273 Ill. App. 3d 327 (1995), *abr. on other grounds by People v. Dockery*, 313 Ill. App. 3d 684 (2000), "teach that the phrase 'next trial setting' as used in *Majors* means the date on which the defendant answers ready—*i.e.,* the day in court when he demands trial and seeks to *set* a trial

date—and not the trial date itself." (Emphasis in original, *infra* ¶ 55). We disagree. In *Baker* the appellate court reversed the trial court's dismissal on speedy trial grounds. The *Baker* court specifically held that the speedy trial period was tolled by defendant's motions "until the next date set for trial," not the date defendant seeks to set a trial date. *Baker*, 273 Ill. App. 3d at 331. Likewise, in *Cornwell*, the appellate court specifically held that the delay caused by the defendant ended with the case being called for trial and "the State's continuance, which was not agreed to by the defendants." *Cornwell*, 9 Ill. App. 3d at 802.

¶ 40 In ruling that the delay in setting the trial date was attributable to defendant, the court did not act arbitrarily, fancifully, or unreasonably, nor did it take a view that no reasonable person would take. Thus, it did not abuse its discretion in attributing to defendant the delay in setting the trial date.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the order of the circuit court of Du Page County denying defendant's motion for discharge. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 43 Affirmed.

¶ 44 JUSTICE HUTCHINSON, dissenting.

¶ 45 I disagree with the majority and, therefore, I dissent. In my view, the defendant's statutory right to a speedy trial was violated and he should have been discharged.

¶ 46 The speedy-trial statute is straightforward:

> "Every person in custody in this State for an alleged offense *shall* be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant ***. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay

> by making a written demand for trial or an oral demand for trial on the record." (Emphasis added.) 725 ILCS 5/103-5(a) (West 2012).

An in-custody defendant who is not tried in accordance with the foregoing provision "*shall* be discharged ***." (Emphasis added.) 725 ILCS 5/103-5(d) (West 2012). A trial court abuses its discretion when it charges a "delay" to the defendant under an incorrect legal standard. See *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 21.

¶ 47 As the majority notes, the State filed its motion *in limine* to admit the recorded conversation in December 2013, and defendant's case was originally set for trial on January 14, 2014. However, defendant filed his own motion *in limine* on January 6, 2014. The defendant's motion *in limine* was something of an omnibus motion. Part of it sought the suppression of defendant's statements to the police on *Miranda* grounds; other parts sought the exclusion of evidence or testimony at defendant's trial. When defendant's motion *in limine* was filed, the trial court struck the January trial date and the case was continued for the resolution of the State's and defendant's pending motions. The three months leading up to the defendant's pre-trial motion were all charged to the State for speedy-trial purposes, and the parties agree that, as of January 6, 2014, 103 days had elapsed and there were 17 days remaining in the speedy-trial term.

¶ 48 On March 3, 2014, the trial court disposed of suppression portion of defendant's motion, and from March 3, 2014, until June 13, 2014, defendant agreed to various continuances, most of which related to the State's motion to admit the conspirator statements. So, on June 13th, there were still 17 days remaining in the speedy-trial term; however, defendant was not brought to trial within 17 days, and on July 14, 2014, the trial court charged the 31-day delay from June 13th to July 14th to defendant. The parties and the majority agree that the question in this case is whether the trial court abused its discretion in treating the 31-day delay from June 13th to July 14th as a continuance on defendant's motion and, thus, as a delay attributable to the defendant.

¶ 49 On June 13, 2014, defense counsel noted that "this has been going by agreement because I have a motion [pending]. We're withdrawing [it]." Defense counsel then stated that defendant was demanding a trial and would not agree to any continuances. After some further discussion, the court suggested a trial date of July 22, 2014, saying "I'm just putting it out there because [July 22nd is] currently open" whereupon the court asked for the parties' input. Then, the State suggested the following:

> "MS. ANDERSON: (Assistant State's Attorney) [I]t [(*i.e.*, the continuance)] should be on the defendant's time. So we technically only had 17 days left in the speedy, but because it was the defendant's motion to continue trial [(back in January)], any date in the future is on the defendant's motion, because they're the one that continued the trial date."

Defense counsel objected and stated that this was not a situation where the State "is answering ready" and the defense was seeking to file a last minute motion; counsel agreed that any delay would be attributable to the defendant *if* the defense had a motion pending. However, counsel noted that all that remained was *the State's* motion *in limine*, and, accordingly, counsel argued that the continuance should *not* be attributed to the defendant. The trial court judge responded and ruled as follows:

> "THE COURT: I understand.
>
> I haven't looked at any case law, State. I'm going to, if you want me to look further, I'm inclined to agree with the State, but, obviously, if the Appellate Court disagrees, we all know the risks that are involved here.
>
> I'll give you a date next week for trial, if you want, but if you're telling me that you want to set it [for] that date, I am inclined to agree with the State that there was a trial date pending, the motions were filed [by defendant], and any time until the next trial date, I'm going to find is motion defendant.
>
> [Defense counsel] has made his position known. The Appellate Court, you know, theoretically, could disagree, but if you're asking for July 22nd, I'm going to find that it's going to be motion defendant until the next trial date because they filed those motions.

> If you want a different date sooner than that, State, tell me, and I'll move heaven and earth to accommodate you. So it's your call. You want July 22nd?
>
> MR. DIAMOND: (Assistant State's Attorney) I'm not here the 22nd, Judge.
>
> THE COURT: What date you want to suggest for trial?
>
> MR. DIAMOND: The following week is fine, Judge.
>
> THE COURT: All right. I'm going to find motion defendant, term tolled, 7/29, because the defense filed motions *in limine* before the last trial date causing us to continue the trial date.
>
> [* * *]
>
> So it's June 20th for ruling and further arguments on this [(referring to the State's pre-trial motion)], and July 29th for trial. And over the defense objection, it's motion defendant term tolled.
>
> Anything else we can address here today?
>
> Go ahead.
>
> MR. CAROLL: (Defense attorney) Judge, I would indicate to the court that after the next 17 days ***, we'll file a motion for term ***.
>
> THE COURT: I understand that. *** And I know the State understands that."

¶ 50 The trial court subsequently denied defendant's motion for discharge on the basis that the court charged the continuance from June 13 through July 14 to defendant. In my view, that attribution was a clear abuse of the court's discretion.

¶ 51 The State initially suggests that defendant's demand for trial on June 13 and his objection to the continuance was insufficient to avoid tolling under section 103-5(a). I disagree. As noted, a delay shall be considered agreed to by a defendant, unless he objects by making either a written demand or an oral demand on the record. See 725 ILCS 5/103-5(a) (West 2012). Of course, a bare request to proceed to trial before a delay is proposed is insufficient to constitute an objection

for speedy-trial purposes. See *People v. Cordell*, 223 Ill. 2d 380, 391 (2006). However, after a defendant "becomes aware that his trial is being delayed[,]" in order to avoid acquiescing in the delay, there must be "some affirmative statement [by defendant] requesting a *speedy* trial in the record." *Id.* (emphasis in original; internal quotation marks and citation omitted) As noted, the defense indicated that it was withdrawing the remaining portions of its motion *in limine* specifically to avoid acquiescing to any additional continuances. Then, after the continuance was proposed for the resolution of the State's motion *in limine*, and after the State suggested that any additional continuances should be charged to the defendant, defense counsel objected and further indicated that he would be filing a "motion for term"—*i.e.*, a motion for discharge on speedy-trial grounds—after the expiration of 17 days. Under those circumstances, defendant categorically did *not* agree to the delay in setting the trial date past the 17-day expiration of the term.

¶ 52 The State, the trial court, and now the majority suggest otherwise. According to them, once the defendant caused the initial trial date's delay, he necessarily acquiesced in or contributed to any and all subsequent continuances. Their collective position appears to be that once a defendant's pre-trial motion places his case on the State's "back burner," the case should remain there even after the defendant's pre-trial motion was resolved. I know of no authority that supports that position.

¶ 53 The general rule is that, "when a defendant files a pretrial motion, he is chargeable with the time associated with processing the motion, including the time that the State (or plaintiff) needs to respond and the court needs to rule." *People v. Erickson*, 266 Ill. App. 3d 273, 276 (1994)." *Village of Mundelein v. Bogachev*, 2011 IL App (2d) 100346, ¶ 31; see also *People v. Tucker-El*, 123 Ill. App. 3d 955, 960 (1984) ("The time required to hear and decide a

[defendant's pre-trial] motion *** is delay attributable to the defendant [citation]"). As these cases indicate, the resolution of the defendant's pre-trial motion ordinarily terminates the delay attributable to the defendant due to his motion. Were it otherwise, then there would be no need to examine whether a continuance was attributable to the defendant after his or her pre-trial motion was filed; any subsequent delay could be simply charged to the defendant, seemingly in perpetuity. *Cf. People v. Kliner*, 185 Ill. 2d 81, 119 (1998) (attributing several periods of delay to the State after the defendant's while defendant's pre-trial motions were pending and after they had been resolved).

¶ 54 When there are "two reasons for a delay, one attributable to the State and the other to the defendant, the fact that the delay was partially attributable to the defendant will be sufficient to toll the statutory term." *People v. Myers*, 352 Ill. App. 3d 684, 688 (2004). Here, however, I see nothing to indicate that any delay was partially attributable to the defendant *after* the remainder of defendant's pre-trial motion was withdrawn on June 13. At that time, all that remained was *the State's* motion *in limine*. In other words, once defendant withdrew the remaining portions of his motion on June 13th, the trial court and the State were in the same position as they were back in early January 2014—with defendant demanding trial, with 17 days remaining in the term, and with the State's motion *in limine* still unresolved. If anything, defendant's pre-trial motion, which tolled the speedy-trial period, benefitted the State by providing more time for the resolution of the State's motion. Not only that, but even after the suppression portion of defendant's motion was resolved, defendant agreed to several continuances over the course of several months, which provided the State even more time to obtain a ruling on its motion. Nonetheless, as of June 13, 2014, the State apparently believed that it needed more than 17 days to obtain a ruling and to start trial. While that might have been true, that was not because of any

action by defendant. Thus, the delay in starting the trial beyond the 17-day period was not attributable to defendant. There is simply no warrant for the majority's assertion that defendant's pre-trial motion contributed to—let alone "necessitated" (*People v. Sojak*, 273 Ill. App. 3d 579, 583 (1995))—any delay after the remaining portions of the motion were withdrawn.

¶ 55 I further disagree with the majority that when defendant demanded trial on June 13, 2014, "the court set the trial as soon as reasonably possible." *Supra*, ¶ 36. The report of proceedings, which I have quoted, show that the trial court acknowledged there was a risk of setting the trial date past the term. The court further told the State that it would resolve the motion to admit co-conspirator statements by the following week and "move heaven and earth" to set a trial date within the 17-day period. The State, however, *rejected* the court's offer and asked for a trial date *beyond* the speedy-trial period. Thus, it was the State and not defendant that caused the trial to be set beyond the speedy-trial term.

¶ 56 Finally, I find the majority's reliance on *Majors*, 308 Ill. App. 3d 1021, unpersuasive. *Majors* held that a defendant waives his speedy-trial demand by moving for an "open-ended *** continuance" of the trial date, and by "not request[ing] a continuance to a certain date, all of the time between the motion for continuance and *the next trial setting* is attributable to defendant. *People v. Baker*, 273 Ill. App. 3d 327, 330 (1995)." (Emphasis added.) *Majors*, 308 Ill. App. 3d at 1028. The majority here evidently reads *Majors* as saying that the defendant's demand was waived until his "next trial setting"—by which the majority means the next calendar date for which the defendant's trial is set to begin. But *Baker*, cited by *Majors*, makes a different point altogether. *Baker* states that "where a defendant has made an open-ended request for a continuance, the delay will not terminate and the speedy trial period will not begin to run again until the defendant appears, *ready for trial*. *People v. Cornwell*, 9 Ill. App. 3d 799, 801 (1973)."

(Emphasis added.) *Baker*, 273 Ill. App. 3d at 330, *abr. on other grounds by People v. Dockery*, 313 Ill. App. 3d 684 (2000). Moreover, *Cornwell*, cited by *Baker*, states: "the delay occasioned by agreement to the indefinite continuance definitely terminated when the defendants appeared *ready for trial* on July 6, 1971 ***." (Emphasis added.) *Cornwell*, 9 Ill. App. 3d at 802. Thus, *Cornwell* and *Baker* teach that the phrase "next trial setting" as used in *Majors* means the date on which the defendant answers ready—*i.e.*, the day in court when he demands trial and seeks to *set* a trial date—and not the trial date itself. In this case, the date on which defendant demanded trial was June 13, 2013, and defendant was not brought to trial within the 17 remaining days from that date.

¶ 57 For these reasons, the trial court abused its discretion by incorrectly attributing the continuance from June 13 to July 14 to defendant. Defendant's statutory right to a speedy trial was violated. This case should be reversed and the defendant should be discharged. Accordingly, I dissent.