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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160819-U

NO. 4-16-0819

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DENISE WOODRING, Defendant-Appellee.	)))))	Appeal from Circuit Court of Livingston County No. 16CF95 Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment and opinion.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's dismissal of new and additional charges that violated the speedy trial statute.

¶ 2 Defendant, Denise Woodring, caused a fatal traffic collision that claimed the life of Dr. Riyaz Nomani. On March 18, 2016, the State charged defendant with felony aggravated driving under the influence of drugs (625 ILCS 5/11-501(a)(4) (West 2014)), reckless homicide (720 ILCS 5/9-3(a) (West 2014)), and a misdemeanor charge of driving under the influence of drugs (625 ILCS 5/11-501(a)(4) (West 2014)) (collectively, counts I, II, and III). On September 30, 2016, just 17 days before defendant's trial, the State added two more charges (counts IV and V). The new counts charged defendant with another count of aggravated driving under the influence of drugs (625 ILCS 5/11-501(a)(6) (West 2014)) and another count of reckless homicide (720 ILCS 5/9-3(a) (West 2014)).

¶ 3 On October 4, 2016, defendant filed a motion to dismiss counts IV and V of the State's amended information on speedy trial grounds under section 103-5 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/103-5 (West 2014)) and section 3-3(b) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/3-3(b) (West 2014)). On October 24, 2016, after a hearing on defendant's motion to dismiss, the trial court dismissed counts IV and V, finding that they amounted to "new and additional" charges.

¶ 4 The State appeals, arguing that the trial court erred by dismissing counts IV and V because those counts were not “new and additional charges” for purposes of compulsory joinder (720 ILCS 5/3-3(b) (West 2014)) and therefore were not subject to the speedy trial timeline (725 ILCS 5/103-5 (West 2014)). We disagree and affirm the trial court's dismissal of counts IV and V.

¶ 5 I. BACKGROUND

¶ 6 On March 16, 2016, defendant was involved in a fatal traffic accident in Livingston County that killed Nomani. Defendant was driving west on Illinois Highway 17 when her vehicle began to leave its lane. Defendant overcorrected, crossed into the oncoming lane, forced a different driver, Charles Whitten, off the highway, and then collided with the eastbound vehicle driven by Nomani.

¶ 7 In the aftermath of the collision, defendant was taken to the hospital. Preliminary blood tests taken at the hospital yielded positive results for benzodiazepines, cocaine, and opiates. When interviewed by the Illinois State Police at the hospital, defendant stated that she had crossed from the right side of her lane and overcorrected into oncoming traffic. Defendant also stated that she had used cocaine three days earlier and had ingested the opiate pain pill Vicodin, as well as Prozac and Gabapentin, on the morning of the collision. On March 17, 2016, defend-

ant was placed into custody.

¶ 8 On March 18, 2016, defendant was charged by information with felony aggravated driving under the influence of drugs (625 ILCS 5/11-501(a)(4) (West 2014)), reckless homicide (720 ILCS 5/9-3(a) (West 2014)), and a misdemeanor charge of driving under the influence of drugs (625 ILCS 5/11-501(a)(4) (West 2014)). The charges alleged that defendant operated a motor vehicle while "under the influence of any drug or combination of drugs that rendered her incapable of safely driving." During an April 13, 2016, preliminary hearing, the trial court found probable cause to support these charges. Defendant remained in custody until her release on bond on May 11, 2016. On June 3, 2016, defendant was brought back into custody on the same three charges. On June 7, 2016, the State received a laboratory report confirming the presence of cocaine metabolites in defendant's system at the time of the accident.

¶ 9 On September 30, 2016, 17 days before trial, the State charged defendant by amended information with two additional counts (counts IV and V), aggravated driving under the influence of drugs (625 ILCS 5/11-501(a)(6) (West 2014)) and reckless homicide (720 ILCS 5/9-3(a) (West 2014)). The new charges alleged that defendant operated a motor vehicle while "there was any amount of a drug, substance, or compound in the defendant's breath, blood, or urine resulting from the unlawful use or consumption of a controlled substance listed in the Illinois Controlled Substances Act." On October 1, 2016, 120 days had passed since the State placed defendant back into custody.

¶ 10 In response to the State's new charges, defendant filed a motion to dismiss counts IV and V on October 4, 2016. Defendant filed this motion to dismiss, citing section 103-5 of the Procedure Code (725 ILCS 5/103-5 (West 2014)) and section 3-3(b) of the Criminal Code (720 ILCS 5/3-3(b) (West 2014)). Section 103-5 of the Procedure Code provides that a person taken

in custody for an alleged offense shall be tried within 120 days from the date that he or she was taken into custody. Section 3-3(b) of the Criminal Code, on the other hand, requires any later charges to be prosecuted with the original charges in a single prosecution if those charges are based on the defendant's same conduct.

¶ 11 After an October 24, 2016, hearing on defendant's motion to dismiss, the trial court dismissed counts IV and V. The court determined that because the State knew about the presence of cocaine in defendant's system since the preliminary hearing, the State could have filed the additional charges within the time frame provided by section 103-5 of the Procedure Code.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 The State argues that the trial court erred by dismissing counts IV and V because those counts were not “new and additional charges” for purposes of compulsory joinder (720 ILCS 5/3-3(b) (West 2014)) and therefore were not subject to the speedy trial time line (725 ILCS 5/103-5 (West 2014)). We disagree.

¶ 15 A. The Standard of Review

¶ 16 Whether charges are "new and additional" is a legal question that requires a "comparison of the original and subsequent charges." *People v. Phipps*, 238 Ill.2d 54, 67, 933 N.E.2d 1186, 1194 (2010). We review such a challenge *de novo*. *Id*.

¶ 17 B. The Speedy Trial Statute and Compulsory Joinder

¶ 18 Section 103-5(a) of the Procedure Code requires that every person in custody for an alleged offense shall be tried within 120 days from the date, he or she was taken into custody, unless the defendant causes a delay. 725 ILCS 5/103-5(a) (West 2014). If the State fails to com-

ply with the period provided by the statute, the charges against the defendant must be dismissed. 725 ILCS 5/103-5(d) (West 2014).

¶ 19 Section 3-3(a) of the Criminal Code provides that "[w]hen the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense." 720 ILCS 5/3-3(a) (West 2014). However, Illinois law also *requires* compulsory joinder in some situations: "If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution ***." 720 ILCS 5/3-3(b) (West 2014). In *People v. Williams*, 204 Ill. 2d 191, 201, 788 N.E.2d 1126, 1133 (2003), the supreme court explained that because of the requirement for compulsory joinder, "[w]here *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." (Emphasis added.) This "rule is applicable only when the initial and subsequent charges are subject to compulsory joinder." *Phipps*, 238 Ill. 2d at 67, 933 N.E.2d at 1193.

¶ 20 The purpose of the rule articulated in *Williams* is to prevent the State from subjecting defendants to a "trial by ambush." *Williams*, 204 Ill. 2d at 207, 788 N.E.2d at 1136. Such a situation occurs when "[t]he State could lull the defendant into acquiescing to pretrial delays on pending charges, while it prepared for a trial on more serious, not-yet-pending charges." *Id.* at 207, 788 N.E.2d at 1136-37. In a "trial by ambush" situation, courts "cannot presume that a defendant would have agreed to a continuance if he had faced both charges" because "[w]hen the State filed the more serious charges, the defendant would face a Hobson's choice between a trial without adequate preparation and further pretrial detention to prepare for trial." *Id.* at 207, 788

N.E.2d at 1137.

¶ 21 C. "New and Additional" Charges

¶ 22 Defendant argues that counts IV and V—the additional counts that the State charged by the amended information—constituted new and additional charges that violated defendant's right to a speedy trial, as articulated in *Williams*. Defendant essentially argues that the different methods of charging driving under the influence (DUI) constitute different offenses that must comply with compulsory joinder principles.

¶ 23 Specifically, defendant notes that a DUI charged under section 501(a)(4) (625 ILCS 5/11-501(a)(4) (West 2014)) requires the State to prove not only that she operated a motor vehicle "under the influence of any other drug or combination of drugs" but also that she was impaired to the point that she was rendered incapable of safely driving. On the other hand, section 501(a)(6) (625 ILCS 5/11-501(a)(6) (West 2014)) requires the State to prove merely that defendant had any amount of an unlawfully consumed drug, substance, or compound in her system. The more expansive subsection (a)(6) also covers the presence of “substance[s]” or “compounds,” in addition to drugs. These differences, according to defendant, make counts IV and V "new and additional charges," in violation of compulsory joinder principles. As a result, defendant claims that she was not tried on counts IV and V within 120 days; accordingly, the trial court correctly dismissed those charges on speedy trial grounds.

¶ 24 The State, on the other hand, argues that defendant was not subjected to "new and additional" charges because counts IV and V merely constituted "enhancing factors" of the same offense. See *People v. Van Shoyck*, 232 Ill.2d 330, 337, 904 N.E.2d 29, 33 (2009). According to the State, counts IV and V allege merely a different, aggravated form of the same offense and, thus, amount to a restatement of the original charges. Stated differently, the State maintains that

counts IV and V were alternative means of charging the same offenses charged in counts I through III.

¶ 25 To support its proposition, the State points to *People v. Mays*, 2012 IL App (4th) 090840, 980 N.E.2d 166. In *Mays* the State originally charged the defendant with first degree murder, but more than 120 days later, it also charged defendant with felony murder after defendant's attorney alerted the State via letter that the defendant had been improperly charged. *Id.* ¶ 10. This court held that there was only one offense of murder and that the differences between first degree murder and felony murder did not mean that felony murder was a "new and additional" charge that violated the speedy trial statute. *Id.* ¶ 53.

¶ 26 The State additionally relies on *Van Shoyck* for the proposition that, like murder, there is only one offense of DUI. In *Van Schoyck*, the defendant was charged by citation with DUI under subsections 501(a)(1) and 501(a)(2). *Van Schoyck*, 232 Ill. 2d at 333, 904 N.E.2d at 30 (citing 625 ILCS 5/11-501(a)(1), (2) (West 2004)). Additionally, the defendant was charged with driving on a revoked license—which was an enhancing factor for the DUI charges. After several months, the State dismissed the pending DUI charges and "recharged defendant, in an information, with driving with a blood alcohol content (BAC) over 0.08, noting in the charge the existence of the sentence-enhancing factor (driving on a revoked license), which elevated the DUI offense to a felony." *Id.* at 339, 904 N.E.2d at 33-34. According to the court, "the information did not charge anything new. The information merely elevated the misdemeanor DUI, initially charged by way of a traffic citation, to a felony." *Id.* at 339, 904 N.E.2d at 34. As a result, compulsory joinder principles did not apply. *Id.* Notably, in *Van Shoyck*, the State had to recharge the defendant because of a statutory requirement that felonies must be charged by information or indictment (725 ILCS 5/111-2(a) (West 2004)). *Van Schoyck*, 232 Ill. 2d at 338,

904 N.E.2d at 33.

¶ 27 The current case is less similar to *Van Schoyck* than it is to *People v. Thomas*, 2014 IL App (2d) 130660, 11 N.E. 3d 861. In *Thomas*, the State charged defendant under section 501(a)(2) for driving under the influence of alcohol. *Id.* ¶ 3 (citing 625 ILCS 5/11-501(a)(2) (West 2010)). More than 160 days later, the State charged defendant under subsection (a)(1) for driving with a BAC of 0.08 or more. *Thomas*, 2014 IL App (2d) 130660, ¶ 7, 11 N.E.3d 861. The Second District held that these later charges violated the speedy trial and compulsory joinder requirements. *Id*. The Second District compared the two charges and noted some significant differences: unlike the initial DUI charge under section 501(a)(2), "[t]he State need not prove impairment to prove a violation of subsection (a)(1); when the State proves that the defendant operated a vehicle and that his BAC was over the statutory limit, the violation has been proved." *Id.* ¶ 29.

¶ 28 We acknowledge, as did the Second District in *Thomas*, that the supreme court in *Van Schoyck* wrote that, "[u]nder the plain language of the statute, there is only one offense of driving under the influence." *Van Schoyck*, 232 Ill. 2d at 337, 904 N.E.2d at 32. However, we also agree with the Second District that the State takes this language out of context. The *Thomas* court explained as follows:

> "According to *Van Schoyck*, subsection (a) (625 ILCS 5/11-501(a) (West 2012)) sets forth the elements of the offense of DUI and classifies the offense as a Class A misdemeanor; the enhancing factors contained in subsection (c) (625 ILCS 5/11-501(c) (West 2012)) 'do not create a new offense, but rather serve only to enhance the punishment.' *Van Schoyck*, 232 Ill. 2d at 337[, 904 N.E.2d at 33]. The court noted that the felony information 'did not charge anything new'; it 'merely elevated the misdemeanor DUI, initially charged by way of a traffic cita-

tion, to a felony.' *Id*. at 339[, 904 N.E.2d at 34]. The court further determined:

> 'Although the information amounted to a new way of charging the DUI offense, it did not allege a different offense than did the previously dismissed ticket. Since the offenses alleged in both the ticket and the information were the same, compulsory joinder principles *** do not apply to this case.' *Id.*

Here, defendant was not subsequently charged with a felony-upgraded version of the original DUI charge, impairment pursuant to subsection (a)(2). He was subsequently charged with DUI with a BAC of 0.08 or more, under subsection (a)(1). The analysis of whether a charge is new and additional involves a comparison of the original and the subsequent charges. *Phipps*, 238 Ill. 2d at 67[, 933 N.E.2d at 1194]. The focus is on whether the original charging instrument gives the defendant sufficient notice of the subsequent charge to prepare adequately for trial on that charge." *Thomas*, 2014, IL App (2d) 130660, ¶¶ 27-28, 11 N.E.3d 861.

¶ 29 In the present case, the trial court's analysis echoes that in *Thomas*, which held that the need to prove different elements under different subsections of the DUI statute made the later charges "new and additional." We agree. Although each case involving an analysis of speedy trial and compulsory joinder principles will be fact-intensive, we find the analysis in *Thomas* applies to this case. Defendant here is not facing felony versions of already-charged misdemeanors, as in *Van Shoyck*. Instead, the State has alleged new and additional charges that involve substantially different elements of proof, and these new charges will affect how the defendant prepares her defense. Section 501(a)(4) requires the State to prove that the defendant was

impaired by a drug or combination of drugs in defendant's system. 625 ILCS 5/11-501(a)(4) (West 2014). But under the later section 501(a)(6) charges, the State merely has to prove the presence of a drug, substance, or compound and does not have to prove impairment. 625 ILCS 5/11-501(a)(6) (West 2014). The difference between the involved charges is significant enough to put a defendant in a "trial-by-ambush" situation.

¶ 30 We note that the State knew about the confirmed presence of cocaine metabolite in defendant's system as early as June 7, 2016—which, as the trial court noted, was well within the time frame for new charges allowed by section 103-5 of the Procedure Code (725 ILCS 5/103-5 (West 2014)). Rather than waiting until 17 days before trial, the State could have avoided speedy trial problems by earlier charging defendant with counts IV and V.

¶ 31 III. CONCLUSION

¶ 32 For the aforementioned reasons, we agree with defendant that counts IV and V constituted “new and additional" charges in violation of speedy trial and compulsory joinder requirements. We therefore affirm the trial court's dismissal of those charges.

¶ 33 Affirmed.