2023 IL App (4th) 230272-U

NO. 4-23-0272

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 7, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Knox County
MARCY L. OGLESBY,	)	No. 22CF491
Defendant-Appellee.	)	
	)	Honorable
	)	Andrew J. Doyle,
	)	Judge Presiding.

PRESIDING JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, reversed in part, and remanded, finding (1) the charges of attempt (first degree murder), first degree murder, and aggravated battery were not subject to compulsory joinder with the State's previous information charging defendant with concealment of a nonhomicidal death and (2) the charge of concealment of a homicidal death was subject to compulsory joinder with the originally filed charge.

¶ 2 In October 2022, the State charged defendant, Marcy L. Oglesby, with one count of concealment of a nonhomicidal death (720 ILCS 5/9-3.5(b) (West 2022)). In February 2023, the State added four more charges (collectively, counts I-IV). The new counts charged defendant with one count of attempt (first degree murder) (720 ILCS 5/8-4(a) (West 2022)), first degree murder (720 ILCS 5/9-1(a)(2) (West 2022)), aggravated battery (720 ILCS 5/12-3.05(g)(2) (West 2022)), and concealment of a homicidal death (720 ILCS 5/9-3.4(a) (West 2022)).

¶ 3 In March 2023, defendant filed a motion to dismiss the additional charges on speedy-trial grounds under section 103-5 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/103-5 (West 2022)) and section 3-3(b) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/3-3(b) (West 2022)). The circuit court ultimately granted defendant's motion, finding counts I-IV subject to compulsory joinder.

¶ 4 The State appeals, arguing the circuit court erred in granting defendant's motion to dismiss. Specifically, the State maintains it was not consciously aware of evidence to ensure a reasonable chance of defendant's conviction for counts I-IV at the outset of defendant's prosecution. Further, the State asserts counts I-IV were not based on the same act as the originally filed concealment charge and, therefore, are outside the scope of compulsory joinder. We affirm in part, reverse in part, and remand for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 On October 7, 2022, officers of the Knox County Sheriff's Office received a request to investigate a foul odor coming from a storage unit belonging to defendant. Defendant lived across the street from the storage facility and, after speaking with the police, agreed to unlock the unit. Upon being let inside, the officers observed a cardboard box covered by a blanket with cat litter poured around it. At first, defendant claimed the odor was caused by old clothes and a possum that had died in the unit. However, defendant eventually admitted there was a body in the box, and when she opened it, the officers discovered human remains dressed in a flannel shirt and wrapped partially in plastic.

¶ 7 On October 11, 2022, the State charged defendant by information with one count of concealing a nonhomicidal death (720 ILCS 5/9-3.5(b) (West 2022)), alleging defendant "knowingly concealed the death of John Doe, who died by other than homicidal means." At a

hearing on December 5, 2022, defense counsel requested to continue the case and the circuit court set a pretrial hearing for January 9, 2023. At that next hearing, defense counsel indicated readiness to proceed with defendant's jury trial. The State, however, moved for a continuance, informing the court it was "nowhere near ready to go." Without objection, the court granted the State's motion.

¶ 8 On February 6, 2023, the State charged defendant with four additional counts: first degree murder (count I) (720 ILCS 5/9-1(a)(2) (West 2022)), attempt (first degree murder) (count II) (720 ILCS 5/8-4(a) (West 2022)), aggravated battery (count III) (720 ILCS 5/12-3.05(g)(2) (West 2022)), and concealment of a homicidal death (count IV) (720 ILCS 5/9-3.4(a) (West 2022)). Count I alleged defendant knowingly caused the death of Richard Young by poisoning his food and beverages with eye drops and other substances. Count II alleged defendant took a substantial step toward the commission of first degree murder by placing eye drops in Young's food and beverages. Count III alleged defendant caused Young to consume "a poisonous or controlled substance, being eye drops and citalopram," without his consent. Count IV alleged defendant, "with knowledge that *** Young had died by homicidal means," knowingly concealed his death "by placing his body in a box and locking said box in a storage unit" between October 15, 2021, and December 31, 2021. Finally, the State amended its original concealment charge, alleging defendant "knowingly concealed the death of *** Young, a person who died by other than homicidal means, by placing his body in a box and locking said box in a storage unit" between October 15, 2021, and December 31, 2021.

¶ 9 On February 9, 2023, the State filed a motion for a continuance under section 103-5(c) of the Procedure Code (725 ILCS 5/103-5(c) (West 2022)), requesting an additional 30 days to obtain DNA evidence. Over defense counsel's objection, the circuit court granted the

State's motion. On March 2, 2023, the State again moved for an extension of the speedy-trial term under section 103-5(c), noting it was still waiting on DNA analysis results.

¶ 10 The following day, defendant filed a motion to dismiss counts I-IV under section 103-5(a) of the Procedure Code (725 ILCS 5/103-5(a) (West 2022)). Section 103-5(a) provides a person in custody for an alleged offense must be tried within 120 days from the date he or she was taken into custody. 725 ILCS 5/103-5(a) (West 2022). According to the motion, defendant had remained in custody since October 11, 2022, and even though the State filed the additional charges on February 6, 2023, defendant's trial "had to begin no later than February 8, 2023." The State responded, arguing section 103-5(c) of the Procedure Code allowed an additional 120 days for DNA evidence, and defendant's motion overlooked "that the State's motion for continuance was granted on this basis." The State further argued under section 3-3(b) of the Criminal Code (720 ILCS 5/3-3(b) (West 2022)), "for compulsory joinder to apply ***, the newly charged offenses must have been known to the State at the time of the original prosecution and *** arise from the same set of facts."

¶ 11 On March 16, 2023, the matter proceeded to an evidentiary hearing on defendant's motion to dismiss. Detective Gregory Jennings of the Knox County Sheriff's Office testified for the defense. After discovering the body in defendant's storage unit on October 7, 2022, Jennings testified defendant was handcuffed and taken to the Knox County jail before suffering "a medical event," which required officers to transport her to the hospital. Defendant was later interviewed at the hospital, and upon her release, Jennings and another officer transported her back to the jail.

¶ 12 Jennings also testified he spoke with Karen Doubet on October 7, 2022, who was "like a step-mom" to defendant. Although initially "deceptive in regards to knowing anything

about the body being in the storage unit," Doubet eventually identified the body as Young. According to Doubet, Young had been living with her and defendant, and defendant had poisoned Young's food and beverages "with eye drops and some crushed medication" within the last year. Doubet also said Young was wearing a flannel shirt when he died, and defendant "moved [the body] across the street by herself." Prior to interviewing Doubet, Jennings was unaware someone could be poisoned by eye drops. Jennings testified he attended the preliminary autopsy on October 10, 2022, which provided no conclusions as to the cause of death and found no antemortem fractures.

¶ 13 On cross-examination, the prosecutor asked what efforts were made to identify the body by way of DNA testing. Jennings responded he collected hair and tissue samples and called several times to the Illinois State Police (ISP) Forensic Laboratory in Springfield, Illinois, but was informed of a six-to-eight-month processing delay. He then submitted the samples to an independent laboratory in an effort to receive DNA results sooner. However, Jennings "received a call earlier in the week of November 18th that they were unsuccessful [in] being able to extract DNA from the items," so Jennings contacted the Knox County coroner about "sending the body *** to another lab." The coroner never retrieved the samples to be tested. Jennings testified the coroner eventually arranged to have the remains sent to the ISP laboratory in Springfield on February 7, 2023, after a DNA specialist indicated "that [he] was confident that he'd be able to extract the DNA." Jennings testified he delivered the DNA samples on February 13, 2023, but was still awaiting the completed DNA results.

¶ 14 Detective Jeremy Moore of the Knox County Sheriff's Office testified he interviewed defendant on October 8, 2022, "[a]t the emergency room at St. Mary's." While speaking with Moore, defendant identified the body as Young and stated he had "died at the

residence after being sick with COVID." Defendant claimed Young "had fallen in the bathroom, she had helped him from the bathroom out to his camper, *** and once she sat him down on the bed in the camper, she heard a loud pop and then he ceased to be breathing." Defendant "assumed that it was his neck." Defendant then said she hid the body in the storage unit because she could not fulfill Young's final wishes, which she described as wanting to be buried at an "Indian burial mound," and did not know what to do with it.

¶ 15 Moore further testified he received a toxicology report on December 20, 2022. The report detailed the results of testing performed on tissue samples collected from the body on October 10, 2022. By special request, the report found the presence of tetrahydrozoline, "one of the ingredients in most typical over-the-counter eye drops," and citalopram. Moore stated he believed this corroborated Doubet's initial statement that defendant had poisoned Young. He also recalled the pathologist telling him at the time of the preliminary autopsy that poisoning by eye drops was possible but "highly unlikely" because "the dosage would have to be very large."

¶ 16 After reviewing the toxicology results, Moore conducted a follow-up interview on December 29, 2022, with Doubet. While speaking with Moore, Doubet indicated "she was fully aware of *** [defendant's] plans to poison Mr. Young" and "would go to various locations of Dollar General and buy all of the eye drops that they had on the shelf." Doubet also told Moore "how the eye drops were administered both in food and drink and indicated that both [defendant] and [she] ultimately wanted [Young] out of the house and he had basically refused to leave." Moore then executed a search warrant at defendant's residence on January 13, 2023, which produced "a copious amount" of discarded eye drop bottles, a pill crusher, packaging for the pill crusher, and "a receipt that showed the purchase of some eye drops from a Dollar General in

Elmwood, Illinois." Moore testified he e-mailed the prosecutor on January 29, 2023, informing her of the results of the search.

¶ 17 Ultimately, the circuit court determined "the State did have sufficient evidence to give them a reasonable chance to secure a conviction" and found "that this is [an] issue of compulsory joinder." In doing so, the court made factual findings. Although it did not "think it really matter[ed] too much for the final outcome," the court found defendant "was placed in custody on that October 7th date" instead of October 11, 2022, because there was "zero chance" defendant was going to leave the hospital of her own volition. "The storage unit *** was known to have been rented by [defendant]," and the court considered both Doubet's and defendant's acknowledgments that the body was Young. The court also noted Doubet's "statement that she was aware that Mr. Young had been poisoned by [defendant]" and her "confirmation at a second interview *** that went more into detail concerning *** how it occurred."

¶ 18 Although there was "no doubt *** the officers were diligent in their investigation and there were some hiccups that were clearly out of their control," the circuit court noted "a great deal of circumstantial evidence as well as *** actual evidence of poisoning via the eye drops and other medication." The court added the State had an opportunity to request a continuance based on expected lab reports for both DNA and other toxicology reports but "that continuance was never requested prior to *** the February date." Because the court found the State's additional charges subject to compulsory joinder with the original charge of concealment of a nonhomicidal death, the court dismissed counts I-IV on speedy-trial grounds.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the State argues counts I-IV were not subject to compulsory joinder and therefore did not violate defendant's speedy-trial rights. Specifically, the State asserts (1) it was not consciously aware in October 2022 of evidence to ensure a reasonable chance to secure defendant's conviction for counts I-IV and (2) the additional charges were not based on the same act as the October 2022 concealment charge filed against defendant.

¶ 22 A. The Speedy Trial Statute and Compulsory Joinder

¶ 23 Under section 103-5(a) of the Procedure Code, "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." 725 ILCS 5/103-5(a) (West 2022). "The 120-day speedy-trial period begins to run automatically if a defendant remains in custody pending trial." *People v. Phipps*, 238 Ill. 2d 54, 66, 933 N.E.2d 1186, 1193 (2010). "If a defendant is not tried within the requisite period, such defendant 'shall be discharged from custody or released from the obligations of his bail or recognizance.' " *People v. McBride*, 2022 IL App (4th) 220301, ¶ 38 (quoting 725 ILCS 5/103-5(d) (West 2020)). The speedy-trial analysis "becomes more complicated when the defendant is charged with multiple, but factually related, offenses at different times." *People v. Williams*, 204 Ill. 2d 191, 198, 788 N.E.2d 1126, 1131 (2003). In those cases, "the speedy-trial guarantee is tempered by compulsory joinder principles." *Williams*, 204 Ill. 2d at 198. "If charges are subject to compulsory joinder with charges filed previously, 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." (Internal quotation marks omitted.) *McBride*, 2022 IL App (4th) 220301, ¶ 40.

¶ 24 "Compulsory joinder requires the State to bring multiple charges in a single prosecution." (Internal quotation marks omitted.) *Williams*, 204 Ill. 2d at 200. Under section

3-3(b) of the Criminal Code (720 ILCS 5/3-3(b) (West 2022)), joinder of criminal charges is compulsory when "(1) the several charges are known to the prosecution when the prosecution begins, (2) the charges are within the jurisdiction of a single court, and (3) the charges are based on the same act." *People v. Keys*, 2023 IL App (4th) 210630, ¶ 88. In the present case, there is no issue raised regarding the second element of compulsory joinder. Instead, the first and third elements of compulsory joinder are at issue. When reviewing a speedy-trial claim, "[w]e review the trial court's factual findings under the manifest-weight-of-the-evidence standard, but we review *de novo* the ultimate issue of whether the State violated defendant's right to a speedy trial." *McBride*, 2022 IL App (4th) 220301, ¶ 28. Therefore, before turning to the application of the facts to the law, we consider the circuit court's factual findings.

¶ 25 Here, the circuit court noted (1) "[t]he storage unit *** was known to have been rented by [defendant]," (2) Doubet's and defendant's identification of the body as Young, (3) Doubet's "statement that she was aware that Mr. Young had been poisoned by [defendant]," and (4) the "great deal of circumstantial evidence as well as *** actual evidence of poisoning via the eye drops and other medication." These findings are not against the manifest weight of the evidence. The prosecutor never denied contemporaneous knowledge of the details of the police investigation, and the state's attorney's office learned of the toxicology results by December 20, 2022. Further, the court found the State had an opportunity to request a continuance based on expected lab reports for both DNA and other toxicology reports but "that continuance was never requested prior to *** the February date." This finding is also not against the manifest weight of the evidence as the record shows the State did not seek a continuance in connection with the new charges until February 9, 2023—no less than 121 days after defendant had been taken into custody.

¶ 26 B. The State's Knowledge

¶ 27 The parties dispute whether counts I-IV were "known to the proper prosecuting officer at the time of commencing the prosecution." 720 ILCS 5/3-3(b) (West 2022). Under section 3-3(b) of the Criminal Code, " 'knowledge' or 'known to the proper prosecuting officer' means the conscious awareness of evidence that is sufficient to give the State a reasonable chance to secure a conviction." *People v. Luciano*, 2013 IL App (2d) 110792, ¶ 78, 988 N.E.2d 943. "The state's attorney's office is the proper prosecuting officer." *McBride*, 2022 IL App (4th) 220301, ¶ 41. "When the State has that awareness necessarily defies universal definition, and thus it must be determined on a case-by-case basis." *Luciano*, 2013 IL App (2d) 110792, ¶ 78. "[K]nowledge of the possibility of additional charges when a defendant is initially charged can be sufficient to require compulsory joinder." (Internal quotation marks omitted.) *People v. Thomas*, 2014 IL App (2d) 130660, ¶ 24, 11 N.E.3d 861.

¶ 28 In *Thomas*, the defendant was involved in a motor vehicle collision and was taken to the hospital. *Thomas*, 2014 IL App (2d) 130660, ¶ 3. The investigating officer, who interacted with the defendant at the scene and who was present at the hospital, believed the defendant was under the influence of alcohol. *Thomas*, 2014 IL App (2d) 130660, ¶ 4. After drawing the defendant's blood for treatment purposes, an emergency room nurse advised the officer the defendant's blood alcohol content (BAC) exceeded the legal limit. *Thomas*, 2014 IL App (2d) 130660, ¶ 4. Upon being released from the hospital that same night, the defendant was arrested and charged with driving under the influence (DUI) based on impairment but not based on his BAC. *Thomas*, 2014 IL App (2d) 130660, ¶ 3. Thirteen months later, the State sought to file a DUI charge based on the defendant's BAC level. *Thomas*, 2014 IL App (2d) 130660, ¶ 6. The

defendant filed a motion to dismiss the charge on speedy-trial grounds, which the trial court granted. *Thomas*, 2014 IL App (2d) 130660, ¶ 7.

¶ 29 On appeal, the Second District rejected the State's argument it was unable to file the BAC-based DUI charge until it received the hospital records and found compulsory joinder required the State to join the BAC-based charge with the initially filed impairment-based charge. *Thomas*, 2014 IL App (2d) 130660, ¶¶ 23-24. In so finding, the appellate court highlighted what the officer learned at the hospital, which hospital records later confirmed. *Thomas*, 2014 IL App (2d) 130660, ¶ 24. Because the State knew of the possibility of the additional charge at the time of the filing of the initial charges, the court held the State was not entitled to file a new charge 13 months later. *Thomas*, 2014 IL App (2d) 130660, ¶¶ 25, 29-30. Thus, the trial court properly dismissed the BAC-based charge. *Thomas*, 2014 IL App (2d) 130660, ¶ 30.

¶ 30 Here, at a minimum, the State knew of the possibility of counts I-IV at the time it filed the original concealment charge. The record shows that on October 11, 2022, the State knew (1) the body was found in a storage unit rented by defendant, (2) defendant admitted to concealing the body, (3) defendant and Doubet affirmatively identified the body as Young, (4) Doubet told Jennings that defendant had poisoned Young's food and beverages "with eye drops and some crushed medication," (5) Doubet alleged Young had been wearing a flannel shirt when he died, (6) defendant claimed Young had suffered a broken neck prior to his death, while the preliminary autopsy found no antemortem fractures, and (7) the pathologist indicated poisoning by eye drops was possible at the time of the preliminary autopsy.

¶ 31 Further, authorities evidently suspected poisoning because the samples taken from the body on October 10, 2022, were tested for the presence of tetrahydrozoline by special request. The State learned of the positive results by December 20, 2022, and Moore informed the

prosecutor of what the search of defendant's residence produced on January 29, 2023. Yet the State did not file its amended information charging defendant with counts I-IV until February 6, 2023—48 days after learning that laboratory testing corroborated what authorities had already been told. Clearly, the State may have wanted definitive evidence identifying the body as Young before proceeding to trial on the additional counts. But "the solution to the dilemma was not to ignore the speedy-trial statute" and fail to even invoke section 103-5(c) of the Procedure Code until after the expiration of the speedy-trial term, especially when the prosecutor was aware of the significant processing delays well in advance of the 120-day deadline. *People v. Dismuke*, 2013 IL App (2d) 120925, ¶ 23, 992 N.E.2d 136.

¶ 32 Accordingly, because the State knew of the possibility of the additional charges at the outset of defendant's prosecution, we agree with the circuit court that the allegations underlying counts I-IV were "known to the proper prosecuting officer" for purposes of the compulsory joinder rule. (Internal quotation marks omitted.) *Luciano*, 2013 IL App (2d) 110792, ¶ 78; see *Thomas*, 2014 IL App (2d) 130660, ¶ 24.

¶ 33 C. The Same Act

¶ 34 Because the record must establish all three elements are met in order for compulsory joinder to apply, we turn next to the State's argument counts I-IV are not based on the same act. "[T]he compulsory joinder statute 'was enacted to prevent the prosecution of multiple offenses in a piecemeal fashion and to forestall, in effect, abuse of the prosecutorial process.' " *People v. Hunter*, 2013 IL 114100, ¶ 18, 986 N.E.2d 1185 (quoting *People v. Quigley*, 183 Ill. 2d 1, 7, 697 N.E.2d 735, 738 (1998)). The phrase "based on the same act" has not been given a "hypertechnical interpretation to create multiple acts based on discrete moments in time," and our supreme court has found "[j]oinder is required where the defendant is engaged

'in only one continuous and uninterrupted act.' " *Hunter*, 2013 IL 114100, ¶ 18 (quoting *Quigley*, 183 Ill. 2d at 11). But "it is 'irrelevant' for purposes of compulsory joinder that multiple offenses arise from 'distinct, but related, acts in the course of a single incident.' " *Keys*, 2023 IL App (4th) 210630, ¶ 93 (quoting *People v. Gooden*, 189 Ill. 2d, 209, 220, 725 N.E.2d 1248, 1254 (2000)). For instance, if a defendant drove at an excessive rate of speed, ran through three successive red lights, and drove on the wrong side of the road, the defendant has committed offenses based on separate acts for purposes of compulsory joinder. *People v. Griffin*, 36 Ill. 2d 430, 433, 223 N.E.2d 158, 160 (1967). But if a charge of reckless driving is brought based upon the act of running a stop sign, a later charge of running the stop sign would be subject to compulsory joinder as the two charges are based on the same act. *Griffin*, 36 Ill. 2d at 433.

¶ 35 Relying on *People v. Mueller*, 109 Ill. 2d 378, 488 N.E.2d 523 (1985), the State argues "[a]ny action taken by defendant relative to poisoning [Young] occurred at a time clearly distinct from the actions taken by her to conceal the body." In response, defendant asserts the State's argument is forfeited because the State focused on the knowledge element and "did not argue whether the charges were based on the same act in [its] motion or address it at the [evidentiary] hearing." But as defendant also points out, "forfeiture is a limitation on the parties, not the court, and we may exercise our discretion to review otherwise forfeited issues." *People v. Rajner*, 2021 IL App (4th) 180505, ¶ 23. " 'This court may overlook forfeiture when necessary to obtain a just result.' " *People v. Raney*, 2014 IL App (4th) 130551, ¶ 33, 8 N.E.3d 633 (quoting *Curtis v. Lofy*, 394 Ill. App. 3d 170, 188, 914 N.E.2d 248, 263 (2009)). Consequently, we choose to address the merits of the State's argument.

¶ 36 In *Mueller*, the defendant shot and killed two people in Scott County. *Mueller*, 109 Ill. 2d at 381. After the shootings, the defendant loaded the bodies into the back of his

pickup truck and dumped them in a Cass County creek. *Mueller*, 109 Ill. 2d at 381. The State charged the defendant with two counts of murder and, on the defendant's motion, the trial was held in Sangamon County. *Mueller*, 109 Ill. 2d at 381. At trial, the defendant argued self-defense and was acquitted. *Mueller*, 109 Ill. 2d at 381. Ten days after his acquittal, the State charged him in Cass County with concealing a homicidal death. *Mueller*, 109 Ill. 2d at 381. The defendant was convicted, and he appealed, arguing his conviction was barred by double jeopardy because "he engaged in a single course of homicidal concealment for which he 'could have been convicted' in the Scott County murder prosecution." *Mueller*, 109 Ill. 2d at 382.

¶ 37 The supreme court disagreed. It initially determined the first clause of section 3-3 of the Criminal Code was inapplicable, as it codified double-jeopardy principles and the defendant was not in jeopardy of being convicted of concealing a homicidal death in the earlier prosecution. *Mueller*, 109 Ill. 2d at 383-84. Next, it considered the joinder provisions contained in section 3-3 of the Criminal Code. *Mueller*, 109 Ill. 2d at 385. The supreme court acknowledged the State was aware of both the murder and concealment offenses when it instituted the first prosecution of the defendant. *Mueller*, 109 Ill. 2d at 385. Hence, the issue turned on whether the two offenses arose from the same act. The supreme court determined they did not, finding, "The acts of shooting *** underlay the murder charges; the concealment offense was grounded in [the] defendant's acts secreting the victims' bodies subsequent to the shootings." *Mueller*, 109 Ill. 2d at 385. It continued:

> "The fact that the shootings and the acts of concealment were related is irrelevant. There is no requirement of joinder where multiple offenses arise from a series of related acts. [Citations.] 'Section 3-3 is not intended to cover the situation in which several

> offenses *** arise from a series of acts which are closely related with respect to the offender's single purpose or plan.' [Citation.]" *Mueller*, 109 Ill. 2d at 385.

¶ 38 We see no meaningful difference between the situation presented in *Mueller* and this case. Prosecution for concealing a death is restricted to situations where the body itself is hidden, such as performing some act other than merely withholding knowledge or failing to disclose information in order to prevent or delay the discovery of a death by nonhomicidal means. See 720 ILCS 5/9-3.5(a)-(c) (West 2022). This is substantively different from the crimes of attempt (first degree murder), first degree murder, and aggravated battery charged here, which require the administration of a poisonous or controlled substance, physical harm, death, and a substantial step toward the commission of the offense. See 720 ILCS 5/8-4(a), 9-1(a), 12-3.05(g)(2) (West 2022). Like in *Mueller*, defendant's discrete act of administering poisonous substances into Young's food and beverages underlies those charges; the October 2022 concealment offense was grounded in defendant's act of concealing the body after the poisoning. See *Mueller*, 109 Ill. 2d at 385.

¶ 39 Further, the record clearly establishes defendant engaged in more than "one continuous and uninterrupted act." *Hunter*, 2013 IL 114100, ¶ 18. To be certain, Doubet told officers defendant had poisoned Young's food and beverages within the last year. Sometime after the alleged poisoning, Young fell in the bathroom. Defendant helped him up and out to his camper where she sat him down on the bed. Defendant heard a "loud pop," which she "assumed" was Young's neck breaking, and he ceased breathing. She then moved the body to her storage unit, wrapped it in plastic, and hid it inside a box. Needless to say, defendant's alleged poisoning of Young was an entirely separate act from her hiding his remains in a box, and the fact that

multiple offenses arise from distinct, but related, acts over the course of a single incident is irrelevant for purposes of compulsory joinder. *Keys*, 2023 IL App (4th) 210630, ¶ 93. Thus, counts I-III are outside the scope of the compulsory joinder provisions of section 3-3 of the Criminal Code because they are not "based on the same act" as the original concealment charge. 720 ILCS 5/3-3(b) (West 2022).

¶ 40 However, the same cannot be said for count IV, concealment of a homicidal death, and we find our recent decision in *People v. Hawkins*, 2023 IL App (4th) 190882-U, instructive. In *Hawkins*, the State charged the defendant with three counts of predatory criminal sexual assault of a child, alleging the defendant "touched [the child's] sex organ and anus with his fingers 'in or about Spring or Summer of 2016.' " *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 16. The charges stemmed from allegations made by one of the defendant's girlfriend's children, who alleged the defendant (1) " 'made her touch his bad spot and kiss it' " and (2) "touched her 'butt' with his finger." *Hawkins*, 2023 IL App (4th) 190882-U, ¶¶ 10, 13. Two years after the State filed the initial charges, a jury was empaneled and sworn. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 20. However, one day after jury selection, the State indicated the child had newly disclosed that the defendant had her " 'kiss' his penis," for which the State intended to charge him. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 20. Defense counsel objected on the basis compulsory joinder "required the charges to be joined with the pending ones." *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 20. Ultimately, the trial court dismissed the charges with prejudice after the State moved to do so. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 21.

¶ 41 Shortly thereafter, the State charged the defendant with two additional counts of predatory criminal sexual assault of a child. The first count alleged the defendant had the child "lick" his sex organ sometime between July 2015 and July 2016. *Hawkins*, 2023 IL App (4th)

190882-U, ¶ 23. The second count "made the same allegation, and simply added 'at his house.' " *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 23. The defendant filed a motion to dismiss, arguing the additional charges were not new to the State and "such statements were known from the beginning of its investigation." *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 23. The trial court denied the defendant's motion. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 26. On the day of the defendant's trial, the State amended the second count of predatory criminal sexual assault to allege the defendant had the child "kiss his sex organ." *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 38. The defendant was convicted on both counts. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 51.

¶ 42 On appeal, this court found the second count of predatory criminal sexual assault of a child, "whether the original or amended version," was subject to compulsory joinder with the originally filed charges because it was part of the same act alleged in the prior prosecution. *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 67. In doing so, we considered the "qualitive similarity" of the offenses and noted our "conclusion avoid[ed] 'the 'hypertechnical interpretation,' whereby each moment in time constitutes a separate act, rejected by the supreme court." *Hawkins*, 2023 IL App (4th) 190882-U, ¶¶ 68-69. We also noted "the charged acts in both cases, as well as the uncharged acts, (1) are entirely intermingled with each other, (2) involve the same victim, (3) occurred during the same time frame, and (4) were allegedly committed by [the] defendant." *Hawkins*, 2023 IL App (4th) 190882-U, ¶ 67.

¶ 43 Here, too, we conclude the State's original charge of concealment encompassed count IV because defendant's act of hiding the body in her storage unit was known to the State at the time it filed the information in October 2022. As in *Hawkins*, both acts were committed by defendant, occurred within the same period of time, and involved the same victim. Further, count IV and the initial concealment charge are "entirely intermingled with each other," as both

charges are based on defendant's act of "placing [Young's] body in a box and locking said box in a storage unit." Accordingly, we find the circuit court properly granted defendant's motion to dismiss as to count IV because it was "based on the same act" as the original concealment charge. 720 ILCS 5/3-3(b) (West 2022); *Keys*, 2023 IL App (4th) 210630, ¶ 89.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the circuit court's dismissal as to count IV. We reverse the court's judgment and remand the cause for further proceedings as to counts I-III.

¶ 46 Affirmed in part and reversed in part; cause remanded.