FLYNN, J., concurring. The right to a speedy trial is a civil liberty that is among the core fundamental rights protecting us as a free people. U.S. Const., amend. VI; Conn. Const., art. I, § 8; *Klopfer* v. *North Carolina*, 386 U.S. 213, 223, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967). Although gained through a revolution, this right needs to be honored and protected if it is to survive as something of substance rather than a hobbled, hollow promise.

Although the defendant, Rinaldo Fleury, was represented by counsel while incarcerated and awaiting trial, the defendant filed his own motion for speedy trial with the trial court on November 4, 2009, "[p]ursuant to [General Statutes] § 54-82m . . . article first, [§] 8, of the Connecticut constitution and, the sixth and fourteenth amendment[s] to the United States constitution." Jury selection then began both on his pending gun and narcotics charges. The court told the defendant that the reason he was receiving a speedy trial was because he "filed a motion with the court."

For the convenience of trial, the court permitted the joinder of the separate gun[1] and narcotics[2] offenses in one information. After the completion of jury selection, as trial was about to commence, however, the court, on its own motion, severed the charges, announcing that the current trial would be on only the gun charges. The defendant's counsel agreed to the severance, but the defendant did not agree, claiming on the record that the delay caused by a later, separate trial on the narcotics charges would result in his incarceration for a longer period of time while he awaited trial on the severed narcotics charges. Although the defendant did not use magic words citing the particular constitutional sections guaranteeing a speedy trial when he addressed the court and objected to severance of the charges, I have no trouble understanding his objection to the severance as his assertion of a right to a speedy trial, which he already had requested and which the court had recognized previously.

As of the date of argument of this appeal, trial still had not commenced on the severed narcotics charges. The majority holds that the defendant, while represented by a lawyer, could not object to the narcotics charges being severed. They reason that, once represented, this right to object was his counsel's, not his, and that his counsel could and did waive this right for tactical reasons, and, therefore, the defendant's objection to the court's severance of some charges could not serve to preserve the issue of the effect of that severance for appeal. I disagree.

The case of *State* v. *Berube*, 256 Conn. 742, 747–49,

775 A.2d 966 (2001), cited by the majority as authority for its position, is factually inapposite. In that case, there was a joint trial of two separate informations, no severance and no objection by counsel or the defendant to the joinder. Id., 744, 746–48. On the contrary, in this case, the defendant did object to severance, and the jury already had been selected to hear the joined charges. The court made no finding that a waiver of the right to a speedy trial had occurred.

I know of no decision by our Supreme Court or the United States Supreme Court holding that, when a jury has been picked and trial is about to begin because of a speedy trial motion on cases already joined for trial, a represented defendant has no right to object on the record to severance of one of two informations containing some of the charges, himself, despite his counsel's agreement to sever them. Nor am I pointed to any such authority holding that, under these circumstances, any claims arising out of the severance have been waived on a defendant's behalf by his counsel's actions, when the court fully was aware of the defendant's objection.

The circumstances of this case do not warrant deciding so for the first time. I therefore would review, not just one, but both of the defendant's claims on appeal.

Under the procedural history of this case, the severance of the pending charges, over the defendant's objection, or "bifurcation" as the parties inartfully call it in their briefs, leads to one functional result.[3] Trial was delayed on the narcotics charges that the jury heard about in voir dire for the gun case actually tried. I would regard the propriety of the severance and its effect on the gun counts actually tried as preserved. On appeal, the defendant is constrained because the case he did not want severed is not before us on appeal. We deal only with the case that was appealed. The defendant's claims on appeal are that there was insufficient evidence to show his identity as the perpetrator of the crimes and that the trial court abused its discretion and correspondingly violated his right to a fair trial when it untimely and improperly "bifurcated" the narcotics and gun charges after the jury already had been selected and told about the existence of the narcotics charges during the jury selection process.

As to the insufficiency claim, it really amounts to a claim that the evidence presented on identity was not credible. I would reject that argument. It was the jury's function to determine what evidence to credit and, if believed, the evidence presented sufficed to support the verdict. *State* v. *Feliciano*, 74 Conn. App. 391, 397, 812 A.2d 141 (2002), cert. denied, 262 Conn. 952, 817 A.2d 110 (2003). I agree with the majority's comprehensive analysis on this issue.

Finally, as to the charges on which the defendant

actually was tried, his claim is that, to his prejudice, during voir dire jury selection, the jury was apprised of narcotics charges that were subsequently severed and were not heard during this trial. I would reject this claim also. Whatever the wisdom of the severance of the narcotics charges, the defendant in the gun case was in no worse position than anyone charged with multiple counts when, after the state and the defendant have rested, a court "charges out" of the jury's consideration any counts on which there is no evidence as to some, one, or more essential elements of a crime. In such situations, we do not reverse the convictions that were obtained because the jury heard about criminal charges in voir dire that ultimately were charged out of the jury's consideration. Nor should we here.

As the state notes, it is also difficult to see how there was any overall prejudice to the defendant in the trial on the gun charges as a result of the severance of the narcotics charges, because the severance obviated the need to present actual evidence in the gun trial that the defendant was involved in numerous narcotics transactions.

Thus, after review of both claims on appeal, I would affirm the judgment of conviction. Accordingly, I concur.

[1] Illegal sale, delivery, or otherwise transfer of a pistol or revolver, General Statutes § 29-33, and carrying a pistol or revolver without a permit, General Statutes § 29-35 (a).

[2] Conspiracy to sell and conspiracy to possess hallucinogenic substances/narcotics, General Statutes §§ 53a-48, 21a-277 (a) and 21a-279 (a); violation of the Corrupt Organizations and Racketeering Activity Act, General Statutes § 53-395, by commission of predicate acts in violation of General Statutes §§ 21a-278 (b) and 21a-277 (a).

[3] The term "bifurcation" normally is used where one case is split into multiple parts. For example, a jury deliberates on liability and, after determining that liability exists, subsequently determines damages. Here, two separate cases were joined for trial, gun charges and narcotics charges, and severance is the appropriate term.