2016 IL App (4th) 160063-U

NO. 4-16-0063

Order filed December 22, 2016

Modified upon denial of rehearing February 6, 2017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
OCHEIL KEYS,	)	No. 14CF83
Defendant-Appellee.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Neither the 120-day period in section 103-5(a) (725 ILCS 5/103-5(a) (West 2014)) nor the 160-day period in section 103-5(b) (725 ILCS 5/103-5(b) (West 2014)) had expired when defendant filed his motion for dismissal on speedy-trial grounds.

¶ 2 The State appeals from a judgment in which the trial court dismissed the charges against defendant, Ocheil Keys, on the ground that the State had failed to grant him a speedy trial. We reverse the trial court's judgment, and we remand this case for further proceedings, because, in our *de novo* review, we conclude that neither the 120-day period in section 103-5(a) (725 ILCS 5/103-5(a) (West 2014)) nor the 160-day period in section 103-5(b) (725 ILCS 5/103-5(b) (West 2014)) had expired when defendant filed his motion for dismissal.

¶ 3 I. BACKGROUND

¶ 4 On February 27, 2014, defendant was arrested.

¶ 5 On February 28, 2014, the State charged him, by information, with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)), and aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). The State charged his codefendant, Jessica Keys, with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) and aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). They allegedly committed these offenses on February 25, 2014.

¶ 6 The same day the State filed the information, defendant was arraigned via video. He pleaded not guilty. The trial court "remanded [him] to the custody of [the] sheriff in lieu of $100,000 (10%)" and scheduled a preliminary hearing for March 13, 2014 (we quote the docket entry for February 28, 2014).

¶ 7 On March 13, 2014, the case was called for a preliminary hearing. The State moved to continue the preliminary hearing to March 27, 2014. Over defense counsel's objection, the trial court granted the motion.

¶ 8 On March 27, 2014, the case was called for a preliminary hearing. After hearing evidence, the trial court found probable cause. Defense counsel demanded a trial by jury. The court scheduled the jury trial for May 19, 2014.

¶ 9 The case was called for jury trial on May 19, August 4, October 27, and December 1, 2014, and on March 2, 2015. On each of those dates, without objection by the State, the trial court granted a motion by defense counsel to continue the trial. The court found each of those delays to be attributable to defendant.

¶ 10 On May 11, 2015, the case was called for a jury trial. By agreement, the trial was continued to August 3, 2015. The trial court found the delay to be attributable to defendant.

¶ 11 On July 22, 2014, defendant filed a motion for release on recognizance bond or for reduction of bail.

¶ 12 On July 31, 2014, the trial court held a hearing on defendant's motion for release on recognizance bond or for reduction of bail. He testified that his family "ha[d] been unable to raise the $10,000 currently required" but that his family could raise $3,500. Defense counsel asked him:

> "Q. Do you have any prior convictions of any type?
>
> A. Yes, I just came home from [the Department of Corrections] for burglary, residential burglary.
>
> Q. So you're on parole?
>
> A. Yes.
>
> Q. And have you had a chance to meet with your parole agent yet?
>
> A. Yes.
>
> Q. And did he tell you that he was putting a hold on you or anything like that at this point?
>
> A. Not that I know of.
>
> Q. Did he tell you that he would wait to see what the outcome of this case is?
>
> A. Before they violate me."

After cross-examining defendant, the prosecutor said: "Judge, he is looking at a minimum of 21

years on the armed robbery, nonprobationable, and we would object." The court denied the motion, saying: "I think the bond set is appropriate considering the nature of the offense, the potential penalties involving these offenses, the fact that he's eligible for a special penalty in this case, and, further, in light of the criminal history."

¶ 13 On August 3, 2015, the case was called for a jury trial. Defense counsel answered she was ready for trial, but the prosecutor moved to continue the trial to August 31, 2015. The trial court granted the motion, over defense counsel's objection, and found the delay was attributable to the State.

¶ 14 On September 3, 2015, the matter was called for a jury trial. The State moved to continue the trial. The prosecutor said:

> "MRS. LAWLYES: And, Judge, this is going to be our motion to continue.
>
> First wanted to indicate that Mercedes Campbell, one of the victims in this case is 17 years old. She does live in this area. We have not as of yet been able to locate her but we would anticipate doing that. She does actually have a first appearance on a traffic ticket set September 22nd so I can serve her at that date.
>
> Blake Watson, the other victim in this case we've made contact with although he lives across the State at this point, but he has indicated that he could, in fact, travel back here, but we would need both victims in the case.
>
> *** And because of the serious nature of the case we are asking for a continuance. And in consideration of that we would be agreeing to let [defendant] be released on recognizance bond.

THE COURT: But he'll still be held on a parole hold?

MRS. LAWLYES: He would, Judge, according to his—

THE COURT: Pardon me?

MRS. LAWLYES: According to his attorney. That's what she tells me.

THE COURT: Any comments, Ms. Bezner [(defense counsel)]?

MS. BEZNER: Yes, Your Honor. I would note that we are ready for trial. We answered ready for trial as the State noted August 3rd. We answered ready for trial on August 31st. Today by my calculation is day 115 of [defendant's] speedy [*sic*] and we're objecting to a continuance. We're objecting to him being released on an OR bond, and we're ready for trial today.

THE COURT: Well, I think informally yesterday I had indicated to both of you what I might do in this situation. However, based on the information that Ms. Lawlyes has now provided to the Court, the Court is going to grant the State's motion to continue over the objection of the Defendant. And I am gonna release the Defendant on this case on an OR bond.

How much, Mr. Lawlyes?

MRS. LAWLYES: 10 thousand, 10 percent should cover it.

THE COURT: $10,000 OR bond. But he's still being held on a parole hold.

And what date are we using?

MRS. LAWLYES: We could set it either November 16th or November 30th.

THE COURT: Okay. Matter's continued to November 16, 2015 ***."

The court found the delay was attributable to the State.

¶ 15 On September 10, 2015, defendant filed a demand for a speedy trial, serving a copy on the State's Attorney. The demand stated as follows:

"1. The defendant is currently incarcerated *** in the Northern Reception Center of the Stateville Correctional Center of the Illinois Department of Corrections, as inmate number M18001.

2. The Defendant is presently serving a parole violation.

3. The Defendant was admitted to the Illinois Department of Corrections on September 9, 2015, with a projected parole date to be determined.

* * *

6. Defendant wants there to be no question he demands trial within the 160-day statutory requirements whether he is in custody in the Illinois Department of Corrections or whether he has been released from custody."

¶ 16 On November 10, 2015, defendant filed a motion for dismissal on the ground that he had not received a speedy trial.

¶ 17 On November 16, 2015, the case was called for both a jury trial and a hearing on defendant's motion for dismissal. Because of the motion for dismissal, which had yet to be briefed, the trial court continued the case until November 30, 2015, and found the delay to be attributable to the defense.

¶ 18 On November 30, 2015, the case was called for a motion hearing and a jury trial. The State moved to continue the hearing on the motion for dismissal. The trial court granted the

continuance, rescheduled the motion hearing for December 14, 2015, and found the delay to be attributable to defendant.

¶ 19 On December 14, 2015, the case was called for a hearing on the motion for dismissal. The trial court heard arguments and took the matter under advisement.

¶ 20 On January 5, 2016, the trial court made the following docket entry:

> "Defendant's Motion to Dismiss is allowed for the following reasons: (1) The Court specifically finds that Defendant's demands prior to his release on an OR bond on 9/3/15, were sufficient to invoke the Speedy Trial Statute because at each setting, the Court made a specific finding as to whom the delay was attributable; and (2) upon being released on an OR bond in this case, the Defendant made appropriate demand pursuant to [section 3-8-10 of the Unified Code of Corrections (730 ILCS 5/3-8-10 (West 2014))] because, based on a parole violation, Defendant was a person incarcerated on an unrelated charge, not a person held in custody pending trial on the charged offense. The demand complied with the requirements of the statute and complied with People v. Wooddell. Accordingly, Defendant's Motion to Dismiss is allowed."

¶ 21 On January 22, 2016, the State filed a certificate of substantial impairment and filed a notice of appeal three days later.

¶ 22 II. ANALYSIS

¶ 23 A. The Two Speedy-Trial Periods

¶ 24 In Illinois statutory law, there are two speedy-trial periods, 120 days (see 725

ILCS 5/103-5(a) (West 2014)) and 160 days (725 ILCS 5/103-5(b) (West 2014)).

¶ 25 Section 103-5(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-5(a) (West 2014)) provides that every person held in custody on a pending charge shall be tried on that charge within 120 days after the date when the person was taken into custody, unless a delay was occasioned by that person, by fitness proceedings, or by an interlocutory appeal. A person held in custody on a pending charge need not file a demand for a speedy trial; the 120-day period begins running automatically on the date of arrest. *Id.* The supreme court has explained: "[U]nlike defendants who are released on bail, defendants who remain in custody before trial suffer the loss of their liberty before they are adjudicated guilty of a crime. Therefore, the legislature put the burden on the State to try the case within the time specified; the defendant has no burden to invoke the right to a speedy trial." (Internal quotation marks omitted.) *People v. Wooddell*, 219 Ill. 2d 166, 174 (2006).

¶ 26 Once a defendant is released on bond or recognizance, however, the speedy-trial period not only becomes longer, 160 days, but to commence the running of that period, the defendant has the burden of demanding a trial. 725 ILCS 5/103-5(b) (West 2014). Section 103-5(b) of the Code provides that every person released on bond or recognizance shall be tried within 160 days after the person files a demand for a speedy trial. The supreme court explains: "[A] defendant who is subject to this subsection retains his or her liberty during the interval between arrest and conviction; accordingly, the State is given a longer time in which to try the charges than would be available if the defendant were in custody awaiting trial. To invoke the 160-day period of this subsection, defendants who are on bail or recognizance must serve the State with a formal demand." (Internal quotation marks omitted.) *Wooddell*, 219 Ill. 2d at 174.

¶ 27 B. Did the 120-Day Period in Section 103-5(a) Continue To Run After the Trial Court "Released" Defendant on a Recognizance Bond?

¶ 28 Defendant contends that the State failed to try him within the 120-day period in section 103-5(a). (His motion for dismissal cited section 103-5(a) as well as section 103-5(b).) Section 103-5(a) provides as follows:

> "(a) 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. *The provisions of this subsection (a) do not apply to a person on bail or recognizance for an offense but who is in custody for a violation of his or her parole, aftercare release, or mandatory supervised release for another offense*." (Emphasis added.) 725 ILCS 5/103-5(a) (West 2014).

¶ 29 By defendant's own calculations in his brief, only 112 days of the 120-period had passed as of September 3, 2015, when the trial court "released" him on a recognizance bond. According to the emphasized sentence in the quotation above, section 103-5(a) ceased to apply to him on September 3, 2015, even though he continued to be confined, at the request of the Illinois Department of Corrections, for a violation of his parole (see 730 ILCS 5/3-3-9(b) (West 2014) ("issuance of a warrant of arrest for an alleged violation of the conditions of parole"); 20 Ill. Adm. Code §§ 470.90(a), (b) (2015)). Because section 103-5(a) ceased to apply to him on

September 3, 2015, the 120-day clock stopped on that date. Cases that might suggest the contrary, namely, *People v. Hillsman*, 329 Ill. App. 3d 1110 (2002), and *People v. Burchfield*, 62 Ill. App. 3d 754 (1978), predate Public Act 94-1094, § 5 (eff. Jan. 26, 2007), which added the emphasized sentence to section 103-5(a). Under section 103-5(a) as it currently reads, putting defendant on recognizance stopped the 120-day clock at day 112, regardless of the parole hold. Therefore, we conclude, in our *de novo* review, that defendant is not entitled to a discharge under section 103-5(a). See *People v. Stanitz*, 367 Ill. App. 3d 980, 983 (2006) (the application of the speedy-trial statute to undisputed facts presents questions of law, which we decide *de novo*).

¶ 30 Defendant argues that by so holding, we would condone a technical evasion of the speedy-trial statute. The supreme court "has held that the provisions of section 103-5 are to be liberally construed in favor of the defendant, and that the State cannot improperly manipulate criminal proceedings or purposefully evade the operation of the section's provisions." *People v. Van Schoyck*, 232 Ill. 2d 330, 335 (2009). The appellate court has implied that granting recognizance near the end of the 120-day period to alleviate a speedy-trial problem and to procure for the State 40 more days is an improper manipulation of criminal proceedings:

> "This opinion is not intended as an authorization for courts or prosecutors to institute a regular practice of retaining a defendant in custody for virtually the entire period of 120 days and then permitting him freedom on a personal recognizance to an additional delay of 40 days before trial. Tactics of this type cannot be reconciled with the requirement of due diligence by the State to insure that there will be no claim of violation of the basic right to a speedy trial. We have not hesitated to enforce this inviolable right in the past and we will continue to be

vigilant in this regard in the future." *People v. Sibley*, 41 Ill. App. 3d 616, 623 (1976).

¶ 31 Under section 103-5(c) (725 ILCS 5/103-5(c) (West 2014)), however, the State must show "due diligence" only if it seeks a continuance beyond the speedy-trial period. In requesting the trial court to release defendant on his own recognizance, the State sought to *terminate the 120-period before its expiration*, not to obtain a continuance beyond a speedy-trial period or to avoid the legal significance of an expired speedy-day period. *Cf. People v. Woolsey*, 139 Ill. 2d 157, 169-70 (1990) ("The State moved to nol-pros the charges only after the defendant made a preliminary showing that more than 160 days had elapsed since the date of his speedy-trial demand. *** Section 103-5 implements the constitutional right to a speedy trial and cannot be diminished through technical evasions. [Citation.] In the interests of judicial economy and fairness to the defendant, the trial court should have disposed of the defendant's speedy-trial motion before allowing the State to nol-pros the indictment.").

¶ 32 Regardless of how one characterizes the release of defendant on recognizance, on day 112, over his objection, we do not see how it "purposefully evade[d] the operation of" the speedy-trial statute. *Van Schoyck*, 232 Ill. 2d at 335. It is a violation of section 103-5(a) to keep a defendant in custody for 120 days without trying him, but it is not a violation of section 103-5(a) to keep him in custody for 112 days without trying him. If the defendant receives his liberty before the 120th day, section 103-5(a) is unoffended. By its plain terms, section 103-5(a) does not care about deprivations of liberty lasting less than 120 days.

¶ 33 It is true that because of the parole warrant, being "released" on his own recognizance did not restore to defendant his liberty. But his continued confinement was not

"custody *** for [the] alleged offense[s]" in *this* case. 725 ILCS 5/103-5(a) (West 2014). Rather, it was custody to serve the rest of his prison sentence in another case. See 730 ILCS 5/3-3-9(a)(3) (West 2014). Having found a violation of parole—a finding based no doubt on the trial court's probable-cause finding in the present case (see 730 ILCS 5/3-3-9(c) (West 2014))—the Prisoner Review Board could require defendant to serve the rest of his prison sentence from which he had been paroled (see 730 ILCS 5/3-3-9(a)(3) (West 2014)). For purposes of section 103-5(a), the 120 days have to be days of custody for the "alleged offense" in the present case, not prison time for a prior conviction. 725 ILCS 5/103-5(a) (West 2014). That defendant had other legal problems that resulted in his continued confinement has nothing to do with the question of whether he received a speedy trial in this case.

¶ 34 In short, unless defendant spent 120 days in custody for the alleged offenses in the present case—and it does not appear he did so—the manipulation of recognizance is logically irrelevant. Regardless of the *reason* why he was jailed only 112 days for these alleged offenses, and regardless of *how* his jail time was cut short, the salient fact is that he was jailed only 112 days for these alleged offenses. Thus, section 103-5(a) is unoffended.

¶ 35 C. Did the State Try Defendant Within the 160-Day Period in Section 103-5(b)?

¶ 36 Defendant argues, alternatively, that if we conclude that his release on his own recognizance on September 3, 2015, "did impact the speedy trial term" in section 103-5(a) (as we have explained, we do so conclude), the result would be not to return the clock to day 0 but, rather, to keep the clock ticking toward the longer, 160-day deadline in section 103-5(b). To understand this alternative argument, we must read subsections (a) and (b) of section 103-5

together, because subsection (b) dovetails with subsection (a):

> "(a) 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. The provisions of this subsection (a) do not apply to a person on bail or recognizance for an offense but who is in custody for a violation of his or her parole, aftercare release, or mandatory supervised release for another offense.
>
> The 120-day term must be one continuous period of incarceration. In computing the 120-day term, separate periods of incarceration may not be combined. If a defendant is taken into custody a second (or subsequent) time for the same offense, the term will begin again at day zero.
>
> (b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant ***. ***
>
> For purposes of computing the 160 day period under this subsection (b), every person who was in custody for an alleged offense and demanded trial and is subsequently released on bail or recognizance and demands trial, shall be given credit for time spent in custody following the making of the demand while in custody. Any demand for trial made under this subsection (b) shall be in writing; and in the case of a defendant not in custody, the demand for trial shall include

the date of any prior demand made under this provision while the defendant was in custody." 725 ILCS 5/103-5(a), (b) (West 2014).

¶ 37 Thus, once defendant was "released" and filed his written demand for a trial, he was entitled to credit for the time he spent in custody after his demand for a trial on March 27, 2014, except for delays attributable to him. When counting the days, we will exclude the first day and include the last day. *People v. Ladd*, 185 Ill. 2d 602, 607-08 (1999) (citing 5 ILCS 70/1.11 (West 1996)).

¶ 38 In the preliminary hearing, on March 27, 2014, in which defendant first demanded a trial, the trial court scheduled the trial for May 19, 2014. The 53 days that elapsed from March 27 to May 19, 2014, were attributable to the State, because this delay was not "occasioned by the defendant" (*id.*), that is, he did not request a continuance, agree to a continuance, or otherwise cause or contribute to the delay (see *People v. Mosley*, 2016 IL App (5th) 130223, ¶ 11).

¶ 39 As it turned out, the jury trial did not occur on May 19, 2014. Instead, from that date until August 3, 2015, the trial court granted continuances requested or agreed to by defendant. Consequently, that period left the total of 53 days unaltered. See *id.* (Defendant also filed motions during this period, but they caused no additional delay. See *Ladd*, 185 Ill. 2d at 609.)

¶ 40 On August 3, 2015, defendant announced he was ready for trial. The State, however, moved to continue the trial until August 31, 2015. The trial court said: "State motion to continue over the objection of both Defendants, who announce ready for trial. The delay will be attributable to the State. Matter is continued to August 31, 2015 ***."

¶ 41 Construing the response "Ready for trial" as an objection to a proposed

continuance could be problematic. Announcing one's own preparedness would seem to express no view, one way or the other, on the State's motion for a continuance, and the literal terms of section 103-5(a) require the objection to take the form of a demand for trial. See *People v. Murray*, 379 Ill. App. 3d 153, 161 (2008); *People v. Jenkins*, 65 Ill. App. 3d 305, 306 (1978). On the other hand, the appellate court has accepted the response "Ready for trial" as a demand for trial if, without objection by the State, the trial court said, at the time, that it was so construing the response. *People v. Moore*, 99 Ill. App. 3d 664, 667 (1981). Without taking a position on one side or the other of this question, we will assume, for the sake of argument, that because the trial court, on August 3, 2015, explicitly interpreted defense counsel's announcement of readiness for trial as an objection to the State's motion for a continuance, the delay on this occasion was attributable to the State. The delay of 28 days from August 3 to 31, 2015, increased the total to 81 days (53 days + 28 days). See *id.*

¶ 42 On August 31, 2015, both the State and defendant answered ready for trial. Accordingly, the trial court scheduled the trial for September 3, 2015. Because defendant neither requested nor agreed to this delay of 3 days, this delay counted against the State and increased the total to 84 days as of September 3, 2015 (53 days + 28 days + 3 days). See *id.*

¶ 43 On September 3, 2015, the State moved to continue the trial because the State was having difficulty locating some witnesses. "[I]n consideration of" this proposed continuance, the State moved that defendant "be released on recognizance bond." Over defendant's objection, the trial court "released" him on a recognizance bond. Because of the parole hold, however, he was not actually released but remained confined. As far as the court was concerned, he was released, but as far as a separate authority, the Department of Corrections, was concerned, he had to serve

the rest of his prison term for previous convictions.

¶ 44 On September 10, 2015, defendant filed a demand for a speedy trial, serving a copy on the State's Attorney. Because defendant remained in custody for a parole violation, his demand for a speedy trial did not have to "include the date of any prior demand." 725 ILCS 5/103-5(b) (West 2014).

¶ 45 On November 10, 2015, defendant filed a motion for dismissal on the ground that he had not received a speedy trial.

¶ 46 On November 16, 2015, the trial court said: "This is set today for a jury trial and also for a motion to dismiss, and I am going to deal with both of them at the same time." The previous hearing had been on September 3, 2015, when the State was granted a continuance over defendant's objection. The 74 days from September 3 to November 16, 2015, were attributable to the State (see *Mosley*, 2016 IL App (5th) 130223, ¶ 11), bringing the total to 158 days as of November 16, 2015 (53 days + 28 days + 3 days + 74 days). The court could not hold a jury trial with the motion for dismissal pending. The motion would require briefing on both sides, and this would take time—time attributable to defendant, as he admits in his brief. See *People v. McDonald*, 168 Ill. 2d 420, 440 (1995) ("[A]ny delay resulting from this defendant's filing of his motion is attributable to him."). Thus, the need to adjudicate defendant's motion for dismissal halted the 160-day clock with the hand pointing at day 158.

¶ 47 On December 14, 2015, the trial court held a hearing on defendant's motion for dismissal, and, on January 5, 2016, the court issued its decision on the motion. Again, as defendant admits, the period from November 16, 2015, to January 5, 2016, was attributable to him. See *id.* The court granted defendant's motion for dismissal, concluding that he had not been

brought to trial within 160 days, as section 103-5(b) of the Code required.

¶ 48 In our *de novo* review, we disagree with that ruling. See *Stanitz*, 367 Ill. App. 3d at 983. As of November 16, 2015, 158 days attributable to the State had passed since defendant demanded a jury trial, not 160 days. Two days were left.

¶ 49 As we have explained, we begin counting those 158 days from March 27, 2014, when defendant first demanded a trial. In his petition for rehearing, defendant argues that, instead, we should begin counting from the date of his arrest, February 27, 2014. He argues we should regard an "automatic demand" for trial as having been made on the date of arrest, because, otherwise, an entirely disregarded speedy-trial period under section 103-5(a) could be "stacked" on top of a speedy-trial period under section 103-5(b). *Wooddell*, 219 Ill. 2d at 181.

¶ 50 Suppose, for example, that a defendant is arrested and jailed on a charge of having committed a felony. Further suppose that, in the preliminary hearing, after a finding of probable cause, he decides he wants a bench trial and therefore makes no demand for a jury trial. Further suppose that, while he is in custody, it never occurs to him to demand a trial, considering that (1) the 120-day period automatically started running on the date of his arrest and (2) the State never moved for a continuance. See 725 ILCS 5/103-5(a) (West 2014). Finally, suppose that, on the 119th day of custody, the trial court releases the defendant on his own recognizance, whereupon he immediately files a demand for a speedy trial. Under our analysis, the State would be allowed to stack 119 days of delay (under section 103-5(a)) on top of 159 days of delay (under section 103-5(b)). To prevent such stacking, defendants would have to make a speedy-trial demand, as a prophylactic measure, while they are in custody. Since the speedy-trial statute is to be liberally construed (*People v. Lacy*, 2013 IL 113216, ¶ 32), defendant argues that such a pro-stacking

interpretation of the speedy-trial statute is implausible. Granted, the stacking in this case is on a more limited scale than in the hypothetical illustration—defendant is denied credit only for the 28 days attributable to the State from the date of his arrest (February 27, 2014) to the date of the preliminary hearing (March 27, 2014)—but those 28 days are the difference between a discharge and no discharge.

¶ 51 We acknowledge that some amount of stacking does occur in this case, but, to avoid it, we would have to rewrite section 103-5(b). We are supposed to apply the speedy-trial statute as it is written, giving the language its plain and ordinary meaning. *Wooddell*, 219 Ill. 2d at 170-71. Section 103-5(b) uses clear and unambiguous language:

> "(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant *demands trial* unless delay is occasioned by the defendant ***. ***
>
> For purposes of computing the 160 day period under this subsection (b), every person who was in custody for an alleged offense and *demanded trial* and is subsequently released on bail or recognizance and demands trial, shall be given credit for time spent in custody following *the making of the demand* while in custody." (Emphases added.) 725 ILCS 5/103-5(b) (West 2014).

The speedy-trial statute says nothing about an "automatic demand for trial," whatever that means. Rather, defendant must make the demand while he is in custody if, after being released on bail or recognizance, he wants to receive credit for the time in custody. So, it is true, by its plain terms, subsection (b) does appear to require a demand for trial as a prophylactic measure. Being powerless to rewrite the statute, we deny defendant's petition for rehearing.

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, we reverse the trial court's judgment, and we remand this case for further proceedings.

¶ 54 Reversed and remanded.