No. 130207

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-22-0982
Plaintiff-Appellee,	)	
	)	There on Appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 20 CF 212
v.	)	
JATTERIUS YANKAWAY,	)	The Honorable Kevin Lyons,
Defendant-Appellant.	)	Judge Presiding.

**BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS**

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NATURE OF THE ACTION

A jury found defendant guilty of attempted murder, aggravated battery, and unlawful possession of a weapon by a felon ("UPWF"). R948-49.[1] The trial court sentenced defendant to consecutive prison terms for the attempted-murder and aggravated-battery convictions but did not impose sentence on the UPWF conviction. C574. The appellate court affirmed in part, concluding that (1) counsel was not ineffective for failing to file a speedy-trial demand under the intrastate-detainers statute, and (2) the trial court did not plainly err in its choice of sentence for defendant's attempted-murder conviction. A18. The appellate court vacated defendant's aggravated-battery conviction pursuant to the one-act, one-crime doctrine and remanded for sentencing on his UPWF conviction. *Id.* Defendant now appeals. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Where a defendant is "simultaneously in custody upon more than one charge pending against him in the same county," and where the first charge results in a conviction, the speedy-trial statute requires that the defendant be tried on the remaining charges within 160 untolled days from the "judgment" in the first case; no speedy-trial demand is necessary. Here,

[1] "C," "R," and "A" refer to the common law record, report of proceedings, and defendant's appendix, respectively.

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defendant was in simultaneous custody in Peoria County on two unrelated cases and pleaded guilty in the first case. Trial in the second case began well within 160 untolled days from that judgment. Is defendant entitled to vacatur of his convictions on the ground that his counsel provided ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), by not filing a speedy-trial demand under the intrastate-detainers statute given that defendant reported to prison in the first case?

2. During sentencing for his attempted-murder conviction, the trial court remarked that defendant's sentencing range was 26 to 50 years, when in fact it was 21 to 45 years. The trial court then sentenced defendant to 44 years. Did the court's misstatement constitute second-prong plain error, such that defendant may excuse his forfeiture of his claim that the trial court erred?

3. A defendant may not be convicted twice for the same physical act. Defendant's sentence for attempted murder included an enhancement for being armed with a firearm. His UPWF conviction was likewise predicated on possession of a firearm during that attempted murder. Did the appellate court err when it remanded for sentencing on the UPWF conviction?

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JURISDICTION

On March 29, 2023, this Court allowed defendant's petition for leave to appeal. Accordingly, the Court has jurisdiction under Supreme Court Rules 315, 602, and 612.

STATUTES INVOLVED

725 ILCS 5/103-5 (Speedy Trial)

730 ILCS 5/3-8-10 (Intrastate Detainers)[2]

STATEMENT OF FACTS

A. Defendant is Charged and in Custody in Two Cases in Peoria County.

In July 2019, Robert Hunter — defendant's cousin — was shot several times in a Peoria alley. Hunter survived and eventually identified defendant as one of the two men who shot him. R747. Defendant was arrested on April 7, 2020, and charged in Peoria County (Case No. 20-CF-212) with attempted first degree murder, 720 ILCS 5/8-4(a); aggravated battery, 720 ILCS 5/12-3.05(e)(1); and UPWF, 720 ILCS 5/24-1.1(a). C32-34; R141.

That same month, defendant was charged in a second Peoria County case (Case No. 20-CF-238) with a weapons offense unrelated to Hunter's shooting. R19-20.[3] The People elected to prosecute that later case first. R154-55. Defendant pleaded guilty to, and received a seven-year sentence

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[2] The appendix to this brief contains the full text of these statutes.

[3] The second case also involved a UPWF charge, but this brief refers to the "separate weapons charge" to distinguish it from the UPWF charge relevant to this appeal.

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for, the separate weapons charge on September 28, 2020. R197-98. Defendant reported to the Pinckneyville Correctional Center on October 15, 2020, having been in continuous custody at the Peoria County Jail since his arrest on April 7, 2020. *See* R203-05; C461.

B. After Several Pretrial Continuances, the Trial Court Finds that Defendant was Timely Tried Under the Speedy-Trial Statute.

From the time of defendant's arrest until October 1, 2021, all statutory speedy-trial terms, 725 ILCS 5/103-5, were tolled pursuant to a series of administrative orders entered in the wake of the COVID-19 pandemic. *See People v. Mayfield*, 2023 IL 128092, ¶¶ 5-10, 15 n.1 (detailing history of those orders). Defendant's trial for Hunter's shooting began on September 19, 2022, after several continuances — four of which are relevant here.

1. August 19, 2021 continuance and related proceedings

On August 19, 2021, with trial set to begin in 11 days, the People moved for a continuance because Hunter — who was in prison at the Robinson Correctional Center — was unavailable to serve as a witness because of a COVID-19 lockdown. R234-35. The trial court continued the trial to November 15, 2021, over defendant's objection that he "was planning to go to trial." R236; C185 (order stating that "the People move(s) for a continuance" and granting continuance). The court set a November 4 scheduling conference. R235.

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At that scheduling conference, trial counsel moved to withdraw. R239. Defendant complained that trial counsel "ain't got enough time for" him, as they had only met three times that year. R239-40. But the court noted that this was due to defendant's incarceration and denied the motion as "disingenuous" and "for purposes of delay." R241. And because defendant would remain at the Peoria County Jail until the November 15 trial date, he could "talk to [counsel] all [he would] like." *Id.*

2. November 15, 2021 continuance and related proceedings

On November 15, 2021, the trial court granted a continuance "by agreement of the parties due to the court's trial calendar." C222. The court observed that it had three trials all involving defendant's attorney set to begin imminently — with defendant's trial being the last of the three. R245. And the court said that although it could set defendant's trial "on the bubble for tomorrow," so that it could start if the first two cases concluded, that plan might be "just a little too ambitious." *Id.*

The court initially suggested continuing the case to January or February 2022, *id.*, but acknowledged that "we're picking back up with the speedy trial counts," and accordingly offered to "cram" defendant's trial onto its December docket, even though "it would be very tough" to do so. R247. Trial counsel replied that he preferred a "January or February" trial date because his own "December calendar [was] pretty crowded" and thus he could not "even begin getting ready for trial." *Id.* The court then addressed

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defendant personally and explained that it "could remand [defendant] back to Pinckneyville" and set trial for "late January or February" on "your motion to continue." R248. The court then confirmed with counsel that "[he]'d move to continue" trial until January or February, and counsel replied that defendant wanted to "return[] to Pinckneyville, so that would be agreeable." R249. Defendant, too, confirmed that he was "okay" with that approach. *Id.*

Trial counsel then said that he was "fine" with either a February 17 or February 28 trial date. R250. The court chose the latter date and ordered that defendant could return to the jail from prison on February 17 — giving defendant "a week and a half or so" to consult with trial counsel. R252.

3. February 24, 2022 continuance and related proceedings

On February 23, 2022, the People moved for a continuance under 725 ILCS 5/114-4(d) and Supreme Court Rule 413(a)(vii), seeking to conduct buccal swabbing of defendant. C257-58. The court continued the case the next day, but it did so for reasons unrelated to People's motion. R260; C262.

At the February 24 hearing, the court reiterated that Hunter was "either in the Department of Corrections or very closely about to be paroled" and that defendant himself was in prison. R256-57. The court remarked that the case had "been around forever," although it was "nobody's fault." R256. Rather, the court explained, defendant's and Hunter's incarceration made the case "complicated" given that the prosecutor, trial counsel, and the trial court were all in Peoria (i.e., far from their respective prisons). R256-57.

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And though the court noted that it would not bring Hunter and defendant back to the Peoria County Jail indefinitely to await trial just so the parties could consult with them in person, it was "willing to accommodate" the parties "if it looks like we're getting toward a meaningful goal." R257.

The court further noted that it had learned from the prosecutor that Hunter was apparently under another COVID-19 lockdown. *Id.* Thus, for "those issues that [the court] tried to describe on the record," the court concluded that it was "not practical" to think that trial would begin as scheduled. R257-58.

The court hoped to pick a date that was both "logical" for "conclud[ing the case] by some disposition, by trial, or plea" and would also "allow lawyers to have an opportunity to talk with whoever they need to talk to more than just a day ahead of time." R258. Accordingly, the court proposed setting a June 2022 trial and separate scheduling conferences for April 2022 so that the prosecutor and trial counsel could meet with Hunter and defendant, respectively, in person. R258-59.

Trial counsel replied that defendant wanted to stay in the Peoria County Jail "until the trial is over." R259. But the court said it would "probably" deny that request, and continued, "why don't you pick, I suggest, a scheduling conference day in April." *Id.* That way, the court explained, the parties could each "assess where [their] case[s] [were] and get done what needs to be done between April and June." *Id.* After further discussion, the

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prosecutor proposed a July 11 trial date, to which trial counsel responded, "that's fine." R260. The court's order found that "[t]he Parties move(s) for a continuance" and set trial for July 11, 2022. C262. The court also ordered that defendant be returned to court on April 14, 2022, and delayed ruling on the People's motion to obtain a buccal swab from defendant. *Id.*

About two weeks later, defendant moved to proceed pro se in a written motion. C269-70. Defendant alleged that trial counsel had infrequently consulted with him since April 2020, and that counsel "did not honor" his request that he "want[ed] a speedy trial." *Id.* Defendant emphasized that he did not want any continuances that "did not come out of [his] mouth." R272. Two weeks later, defendant again reiterated in a written motion that he wanted to discharge his counsel and "also want[ed] to put on record [that he wanted] a speedy trial." C283.

Defendant appeared with counsel at the April scheduling conference. R264. After the court granted the People's motion for a buccal swab, the court asked whether there was "[a]nything else we need to do." R265. When trial counsel replied that he "need[ed] to have access to my client," the court urged counsel to "drive down there" (to Pinckneyville) or to consult with defendant by phone. R265-66. The court said it would permit defendant to return a "little bit" before trial, advising counsel to "go visit him in the meantime." R266.

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Defendant did not address his motion to proceed pro se or demand speedy trial at the hearing. But, through counsel, he objected to the trial court's finding that the parties mutually agreed to the February 24 continuance and argued that the continuance did not toll the speedy-trial clock. C277.

4. June 30, 2022 continuance and related proceedings

The People moved to continue the July 11, 2022 trial because two detectives that they planned to call at trial were unavailable, C291, and the court granted the motion over trial counsel's objection that defendant "want[ed] his speedy trial rights," R270.

When the prosecutor argued that 53 days had elapsed on what he assumed was "the 120-day [speedy-trial] term,"[4] the court expressed concern about the possibility that the trial might be untimely if continued until September. R271. And the court noted that it did not "have time to put this in July or August," lest other trials "get bumped." R273. The court thus continued the trial until September 19, 2022, but scheduled a status hearing on August 10, so the parties could "review the case so that he can have his trial within 120 days, if needed." R273-74. Following the hearing, defendant — through counsel — filed a "Notice of Speedy Trial" that "invoke[d] his rights to a speedy trial in compliance with 725 ILCS 5/103-5." C299.

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[4] The prosecutor later said this was mistaken and clarified that only 46 untolled days had passed at that point. *See* R286-87.

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At the August 10 status hearing, the court reaffirmed that trial would begin on September 19. R279-80. And on September 8, the court announced that it would not permit any further continuances. R958. Trial counsel asked that defendant remain at the Peoria County Jail until trial, prompting the court to ask whether counsel had ever "been down to see him in Pinckneyville." R958-59. Counsel responded that he had not "on this case." R959. The court granted the request and reiterated that the September 19 date was firm because it was not "interested . . . in having [defendant] here, there, here, there, and [the case] never gets anywhere." *Id.*

5. Motion to dismiss

In the days before trial commenced, defendant moved to dismiss the charges under 725 ILCS 5/103-5(a) because he was not tried within 120 untolled days. C331-33. Defendant conceded that the November 15, 2021 continuance was "on both parties' motion" but argued that the remaining continuances were attributable to the People. C331-32. For the February 24, 2022 continuance, defendant alleged that the People had prepared the court's order and falsely stated that defendant had agreed to the continuance. C332.

The prosecutor responded that defendant's allegation was itself "false." R287. More fundamentally, the prosecutor continued, trial counsel overlooked that "defendant had another case" — the separate weapons charge — which the People had elected to prosecute first. R288. Thus, the prosecutor argued, the People in fact had "160 days to try this case" from the

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September 28, 2020 judgment on the guilty plea in that prior case. *Id.* And defendant's trial was timely, the prosecutor continued, because only 128 untolled days had elapsed since that prior judgment. R288-89.

The court denied defendant's motion to dismiss, recalling that defendant had a "separate case" that the People "had elected on" and agreed that he needed to be tried within 160 untolled days from the conclusion of that first case. R290-92. And it reiterated that the February 24 continuance was "by agreement" and not "lodged against the State" because the court had found that "it was unrealistic to think that the parties were going to be ready." R291. Specifically, the court recalled that it would ask trial counsel,

> From time to time, have you talked to Mr. Yankaway? Have you gone to visit with Mr. Yankaway? Is Mr. Yankaway here[?] He wasn't doing anything wrong. It's just that [trial counsel] was taking advantage of circumstances that would help everybody which was rather than go see Mr. Yankaway, come back, go see him, come back, that on occasions that Mr. Yankaway would be writted back here, [trial counsel] would see him.

R292.

C. Defendant is Convicted of All Charges.

Trial commenced on September 19, 2022. Hunter testified that on the night of shooting, he was driving with defendant, Jafari Robinson, and two other men. R737-38, 771. After getting out of the car with defendant and Robinson, Hunter looked toward them, and they "just started shooting" at him. R738-39, 742. Hunter saw muzzle flashes from guns in the hands of both defendant and Robinson. R741. The shooting left Hunter paralyzed and unable to have children. R744.

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Police officers found "five rounds of .40-caliber casings" within 50 feet of Hunter. R464-65, 484. Forensic testing later revealed that two of the casings were fired from a handgun that the police seized from defendant during a traffic stop 10 days after Hunter's shooting. R554-56, 566-67, 684-90. And based on defendant's buccal swabs, there was "very strong support" that he was among the four contributors to DNA found on the handgun's grip — specifically, it was 31 billion times more likely that the DNA came from defendant "and three other individuals than if it came from four unknown unrelated individuals." R707, 713, 715. There was also "limited support" that defendant had contributed to DNA on the trigger but not to the DNA on the magazine. R716-17.

At the jury instruction conference, the People sought a special interrogatory on whether defendant was armed with a firearm during the shooting, R804, which finding was necessary to the imposition of a 15-year enhancement to the attempted murder charge, *see* 720 ILCS 5/8-4(c)(1)(B). The People opted not to seek a 20-year enhancement for personal discharge of a firearm, *see* 720 ILCS 5/8-4(c)(1)(C), reasoning that the jury could find defendant guilty of attempted murder under an accountability theory, R803-04.

The jury found defendant guilty of all charges, C362-65, and found under the special interrogatory that defendant was armed with a firearm during the commission of the attempted murder, C366.

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D. The Trial Court Again Finds that Defendant Was Timely Tried in Denying His Post-Trial Motion.

In a motion for judgment notwithstanding the verdict, defendant renewed his claim that his trial was untimely because he was not tried within 120 untolled days. C508-11. Defendant claimed for the first time that the February 24, 2022 continuance was not attributable to him because the People had "falsely stated" that Hunter was under a COVID-19 lockdown, when in fact Hunter had been released from prison on February 15, 2022, and could not be located. R966-67; C510.[5]

The court denied the motion because it was "clear that the Defendant was tried within a timely fashion," rejecting defendant's claims to the contrary as "legal gymnastics." R976. The court again highlighted the challenges presented by COVID-19 lockdowns and defendant's incarceration while his "lawyer in Peoria . . . was doing his best to represent him." R973-74. And the court observed that

> [I]t was the Defendant — in the Court's view, the Defendant who primarily hobbled this case along in a somewhat slow fashion. Nevertheless, because sometimes we would have him on the docket with ten other cases, [trial counsel], understandably, would say when I bring [defendant] here, [trial counsel would] want him to come a week early or two weeks early so that he could hang out in the Peoria County Jail and be easier to talk to. Well, good for him, but that's not conducive or compatible with justice or safety. So I suggested [trial counsel] go visit [defendant], but still on occasion, I had [defendant] come

[5] On information and belief, Hunter was released from prison on February 15, 2022. But defendant has not argued on appeal that there is any merit to the claim that the People had intentionally misrepresented Hunter's status.

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> and [trial counsel] would talk with him here or we'd set new court dates from here.

R974-75. In short, the court concluded, "it was the Defendant who continuously wanted another court date, and we'd give it to him," remarking that the case "got so lengthy" that perhaps defendant "wanted to make a claim if things didn't go well I have a speedy trial issue." R975-76.

E. The Trial Court Sentences Defendant for Attempted Murder and Aggravated Battery but not for UPWF.

At sentencing, the People argued — as relevant here — that the sentencing range for attempted murder, "with the 20-year add-on," was "26 to 50 years." R984-85. As to the UPWF conviction, the People asked the trial court to enter a "finding without a judgment" because of "the convictions on the two more serious cases." R985-86. Defendant did not dispute the People's description of the applicable sentencing ranges.

The court sentenced defendant to 44 years for attempted murder — "44 years being a 26-year minimum because it's a 20-year tack-on with a six year minimum" — and 26 years for aggravated battery; the court declined to enter sentence on the UPWF verdict. R1003. The court noted that defendant was "overwhelmingly guilty" and that his crimes were "stunning" because he and Hunter were cousins and friends. R994-95. And, after reviewing the aggravating factors and limited mitigation, the court found that defendant is "the person that the community needed to be afraid of" and was "the reason prisons are built." R1000.

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Defendant's motion to reconsider sentence only argued that his sentence was excessive and did not claim that the trial court misunderstood the sentencing range for attempted murder. *See* C542-43.

F. The Illinois Appellate Court Affirms in Part and Remands for Sentencing on Defendant's UPWF Conviction.

On appeal, defendant acknowledged for the first time that the relevant speedy-trial term was 160 days under 725 ILCS 5/103-5(e), which governs when a defendant is "in custody on more than one charge." Br. Def.-Appellant 12, 14, *People v. Yankaway*, 2023 IL App (4th) 220982-U.[6] But he claimed that the 160-day clock never started — and thus that he received ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) — because counsel had not filed a speedy-trial demand under the intrastate-detainers statute, 730 ILCS 5/3-8-10, when he was incarcerated. Br. Def.-Appellant 14-15, *Yankaway*, 2023 IL App (4th) 220982-U. That failure prejudiced him, defendant claimed, because his trial was untimely by 193 days. *Id.* at 28. That calculation depended on defendant's theory that the court abused its discretion in finding that the November 15, 2021 and February 24, 2022 continuances were attributable to him. *Id.* at 21, 23. In the alternative, defendant challenged his aggravated-battery conviction on one-act, one-crime grounds. *Id.* at 38.

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[6] Pursuant to Supreme Court Rule 318(c), the People will submit "e-filed, stamped copies of the pertinent Appellate Court briefs" to this Court.

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Defendant also claimed that the trial court plainly erred in the sentence it imposed for attempted murder given that the court stated that the conviction was subject to a 20-year enhancement. *Id.* at 41. Although defendant acknowledged that he had forfeited this claim, he argued that the sentencing error was reviewable as second-prong plain error. *Id.*

In response, the People agreed with the premise that defendant needed to file a speedy-trial demand under the intrastate-detainers statute to start the 160-day clock. Br. Pl.-Appellee 2, *People v. Yankaway*, 2023 IL App (4th) 220982-U. But the People argued that defendant could not establish prejudice because his claim rested solely on speculation about what would have happened had counsel filed such a demand. *Id.* And in any event, the People argued, defendant was tried within 160 untolled days. *Id.* at 3. If the appellate court vacated defendant's aggravated-battery conviction, the People asked the court to remand for sentencing on his UPWF conviction. *Id.* at 32. Defendant's reply brief did not respond to the People's request for remand.

The appellate court affirmed in part, reversed in part, and remanded. First, although agreeing that counsel had performed deficiently by failing to file a speedy-trial demand under the intrastate-detainers statute, the court concluded that defendant could not show prejudice. A30 ¶ 42. That was so, the court explained, because his claim required speculation on whether his trial would have been timely had counsel filed a demand. Second, the court concluded that the trial court did not plainly err in sentencing defendant for

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attempted murder, because the court's misunderstanding did not "arguably influenc[e]" the sentence — as required by *People v. Eddington*, 77 Ill. 2d 41 (1979). A19-20 ¶ 60. Finally, the court vacated defendant's aggravated-battery conviction and remanded for sentencing on the UPWF conviction. A34 ¶¶ 51, 54. In doing so, the court noted that "[d]efendant d[id] not challenge" the People's request for a remand and opined that entering judgment on the conviction would not raise one-act, one-crime concerns. A35 ¶ 55.

STANDARDS OF REVIEW

This Court reviews de novo a claim of ineffective assistance of counsel, *People v. Moore*, 207 Ill. 2d 68, 75 (2003), as well as questions of statutory interpretation, *People v. Cordell*, 223 Ill. 2d 380, 389 (2006). In a statutory speedy-trial case, a "trial court's determination as to whether a period of delay is attributable to the defendant and how much delay to attribute is entitled to great deference" and must be affirmed "absent a clear showing that the trial court abused its discretion," *People v. Cross*, 2022 IL 127907, ¶ 24, which "occurs only where the trial court's ruling is arbitrary, fanciful, or so unreasonable that no reasonable person could take the trial court's view," *id.*

This Court reviews a forfeited sentencing claim for plain error. *People v. Fort*, 2017 IL 118966, ¶ 18. And this Court reviews de novo the questions of law whether a court plainly erred, *People v. Marcum*, 2024 IL 128687, ¶ 28,

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and whether a one-act, one-crime error has occurred, *People v. Coats*, 2018 IL 121926, ¶¶ 11-12.

ARGUMENT

I. Trial Counsel's Failure to File a Speedy-Trial Demand Under the Intrastate-Detainers Statute Did Not Constitute Ineffective Assistance of Counsel.

Defendant cannot succeed on his *Strickland* claim because his underlying statutory speedy-trial claim is meritless. *See People v. Phipps*, 238 Ill. 2d 54, 65 (2010) ("Counsel's failure to assert a speedy-trial violation cannot establish either prong of an ineffective assistance claim if there is no lawful basis for raising a speedy-trial objection.").

The speedy-trial statute, 725 ILCS 5/103-5, "specifies time periods within which an accused must be brought to trial." *Mayfield*, 2023 IL 128092, ¶ 19. If a defendant is in custody on a single offense, section 103-5(a) automatically provides the "starting point, the date custody begins, and an ending point, 120 days later." *Id.* ¶ 20. No speedy-trial demand is necessary under section 103-5(a), for it is "assumed by statute" that persons in custody want "expeditious resolution" of their pending charges. *See People v. Garrett*, 136 Ill. 2d 318, 329 (1990); *see also People v. Wooddell*, 219 Ill. 2d 166, 174 (2006) (an in-custody defendant "suffer[s] the loss of their liberty" while awaiting trial and thus "has no burden to invoke the right to a speedy trial") (quotation marks omitted).

But "the legislature has seen fit to provide different time periods and demand requirements for offenders who are differently situated." *People v.*

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Sandoval, 236 Ill. 2d 57, 65 (2010). Defendants on pretrial release, 725 ILCS 5/103-5(b), or in prison, 730 ILCS 5/3-8-10, are subject to a longer, 160-day speedy-trial term that runs only upon the filing of a speedy-trial demand. *Wooddell*, 219 Ill. 2d at 175. The longer term and the demand requirement are in recognition of the fact that these defendants do not have a comparable interest in expeditious resolution of their cases, as "they do not suffer a loss of liberty while awaiting trial on the pending charges." *Id.*

And a distinct provision governs when — as here — a defendant "is simultaneously in custody upon more than one charge pending against him in the same county." 725 ILCS 5/103-5(e). In that scenario, the People must try the defendant "upon at least one such charge" within the pertinent time limit (i.e., within 120 days if in pretrial custody). *Id.* Then, the People must try the defendant "upon all of the remaining charges thus pending within 160 days from" the "judgment" imposing sentence in the first case. *Id.*; *see People v. Davis*, 95 Ill. 2d 1, 23 (1983) ("The term 'judgment,' as used in section 103-5(e), refers to the date upon which defendant was first sentenced."). Section 103-5(e) tolls the speedy-trial period for the second case until the defendant is sentenced in the first, *People v. Kliner*, 185 Ill. 2d 81, 123 (1998), to lessen "the State's burden of preparing more than one charge for trial," *People v. Quigley*, 183 Ill. 2d 1, 14 (1998).

The speedy-trial statute "operates to prevent the constitutional [speedy trial] issue from arising except in cases involving prolonged delay, or novel

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issues." *Wooddell*, 219 Ill. 2d at 179 (cleaned up). If trial does not begin within the statutory period, the defendant "is entitled to discharge from custody and to the dismissal of the charges." *Mayfield*, 2023 IL 128092, ¶ 19. But as this Court has stressed, the purpose of the speedy-trial statute is to "guarantee a speedy trial," not "to open a new procedural loophole" that would allow defendants to "obstruct the ends of justice." *Cordell*, 223 Ill. 2d at 390 (quotations omitted). Said differently, the statutory speedy-trial right is a "shield" against untimely trials, not a "sword after the fact, to defeat a conviction." *Id.*

Here, trial counsel attempted to use the statutory speedy-trial right as a "shield" against trial, arguing that the applicable time period was 120 days and that more than 120 untolled days had elapsed. C331-33. The trial court rejected that claim upon concluding that the speedy-trial term was 160 days, and that defendant's trial began well under that limit. R290-92. Defendant now agrees that section 103-5(e) provides the correct, 160-day speedy-trial term. *See* Def. Br. 15. But he claims that the speedy-trial clock never started because counsel never filed a speedy-trial demand compliant with the intrastate-detainers statute, 730 ILCS 5/3-8-10, and that the trial court would have dismissed the charges had counsel done so on or before October 1, 2021 — upon the expiration of the COVID-19 tolling orders. *Id.* at 15-16.

Defendant's claim fails because he cannot show deficient performance or prejudice. As to performance, counsel need not have filed *any* speedy-trial

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demand, much less one that complied with the intrastate-detainers statute, because the 160-day clock automatically started under section 103-5(e) on the date defendant was sentenced in his first case. Nor can defendant show a reasonable probability that the trial court would have dismissed the charges. His theory rests on undue speculation that a motion to dismiss would have been successful had his counsel filed an intrastate-detainers demand. In any event, the court correctly calculated that fewer than 160 untolled days had elapsed since the date of judgment on defendant's separate weapons charge.

A. Counsel did not perform deficiently because he was not required to file a speedy-trial demand to start the 160-day clock.

Defendant cannot rebut the "strong presumption" that his counsel's performance was objectively reasonable, *People v. Manning*, 241 Ill. 2d 319, 326 (2011), based on the failure to file a speedy-trial demand under the intrastate-detainers statute. The 160-day clock had begun to run automatically under section 103-5(e), which specifies that the starting point was entry of judgment in defendant's first case (and not the date of any speedy-trial demand). The failure to file such a demand thus cannot be deficient performance. *See Cordell*, 223 Ill. 2d at 393 (failure to file "futile" motion not deficient performance).[7]

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[7] Although the People agreed with defendant in the appellate court that he needed to file an intrastate-detainers demand, the People — as the appellee — "may make any argument to sustain the circuit court judgment." *People v. Fassler*, 153 Ill. 2d 49, 58 (1992). And parties cannot waive or forfeit the

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Defendant's claim requires that this Court construe the speedy-trial statute. "The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent." *Wooddell*, 219 Ill. 2d at 170-71. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning," considering the "statute as a whole," and "construing words and phrases in light of other relevant statutory provisions and not in isolation." *Evans v. Cook Cnty. State's Att'y*, 2021 IL 125513, ¶ 27. Courts should consider the "subject [the statute] addresses and the legislature's apparent objective in enacting it." *Cordell*, 223 Ill. 2d at 389. To that end, courts should avoid a "literal reading of a statute [that] leads to absurd results or results that the legislature could not have intended." *Evans*, 2021 IL 125513, ¶ 27.

The plain language of section 103-5(e) makes clear that defendant need not have filed a speedy-trial demand. As explained, section 103-5(e) provides that where a defendant "is simultaneously in custody upon more than one charge pending against him in the same county," and where the first case

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correct meaning of a statute, which does not vary from one case to the next. *See JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010) ("To hold that canons of statutory construction are subject to forfeiture would mean that this court's construction of a particular statute could change from case to case depending on whether a party cited a particular [canon]."). Regardless, this Court should consider the People's theory in the interest of maintaining a "sound and uniform body of precedent" on the proper interpretation of the speedy-trial statute. *People v. Jackson*, 2020 IL 124112, ¶ 118.

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results in a conviction, the People must try the defendant "upon all of the remaining charges thus pending within 160 days from" the "judgment" — i.e., sentencing — in the first case. 725 ILCS 5/103-5(e). Critically, section 103-5(e) — by its plain terms — does not require the defendant to file a speedy-trial demand to start the 160-day clock for the second set of charges. Rather, section 103-5(e) operates similarly to section 103-5(a), in that it *automatically* requires that trial begin within 160 untolled days from the date of judgment on the first set of charges. *See Kliner*, 185 Ill. 2d at 123 ("Where a defendant is simultaneously in custody for more than one charge, the State *must* bring him to trial on one of those charges within 120 days of his arrest and *must* try him on the remaining charge within 160 days from the rendering of judgment on the first charge[.]") (emphasis added); *People v. Brown*, 92 Ill. 2d 248, 255 (1982) (under section 103-5(e), "the 160-day limitations period [for the second charge] first commenced running" upon the guilty plea for the first charge). Thus, a speedy-trial demand under section 103-5(e) would not just be unnecessary, but a nullity. *See Wooddell*, 219 Ill. 2d at 177 (speedy-trial demand for defendant subject to section 103-5(a) was "ineffective" because "the speedy-trial act makes no provision for a speedy-trial demand under those circumstances").

Defendant does not dispute that he was "simultaneously in custody" in Peoria County awaiting trial for the separate weapons charge and for the charges related to Hunter's shooting. R154-55. The People elected to

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prosecute the former first, *see* R155, thus tolling the speedy-trial term for the latter, *Kliner*, 185 Ill. 2d at 123. The September 28, 2020 judgment for defendant's weapons charge then automatically triggered the People's obligation to bring defendant to trial for Hunter's shooting within 160 untolled days. 725 ILCS 5/103-5(e). Indeed, despite some initial confusion about which speedy-trial classification applied, the trial court understood section 103-5(e) that way. R290-92 (recalling that the People "had elected on" defendant's "separate case," and that when that case "concluded," defendant needed to be tried for Hunter's shooting within 160 untolled days). The court then denied defendant's motion to dismiss because he was tried within those 160 days, and not because no demand had been filed.

Defendant's claim that the 160-day clock never began to run rests on a misunderstanding of the intrastate-detainers statute, which generally applies to defendants who are charged with new offenses while already incarcerated. *Wooddell*, 219 Ill. 2d at 172 (intrastate detainers statute applies where defendant was in prison when People first filed charges). The statute provides that "[s]ubsection (b), (c) and (e)" of the speedy-trial statute "shall also apply to persons committed to any institution or facility or program of the Illinois Department of Corrections who have untried complaints, charges or indictments pending in any county of this State." 730 ILCS 5/3-8-10.

The intrastate-detainers statute incorporates section 103-5(b)'s formal demand requirement to put the People on notice that the incarcerated

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defendant wants a speedy trial. *See Wooddell*, 219 Ill. 2d at 172; 730 ILCS 5/3-8-10. And that "demand under subsection (b)" must include a "statement of the place of present commitment, the term, and length of the remaining term, the charges pending against him or her to be tried and the county of the charges." 730 ILCS 5/3-8-10; *see also People v. Staten*, 159 Ill.2d 419, 428-29 (1994) (compliant speedy-trial demand is a "precondition to the running of the 160-day period" under the intrastate-detainers statute).

However, defendant did not need to file a "demand under subsection (b)" to start the 160-day clock because he was not "committed to any institution or facility or program of the Illinois Department of Corrections," 730 ILCS 5/3-8-10, when he was charged with Hunter's shooting. Rather, he remained in the Peoria County Jail from April 7, 2020, until he reported to prison on October 15, 2020, to serve his sentence for his weapons charge. *See* R203-04; C461. That defendant later became a person "committed" to an Illinois Department of Corrections facility with pending charges against him does not mean he was then required to file a "demand under [section] 103-5 (b)" to start the 160-day clock. A defendant's initial speedy-trial classification does not change unless the speedy-trial statute provides otherwise. *See Wooddell*, 219 Ill. 2d at 173 (defendant's intrastate-detainers demand "survived her release from prison," when she became a "person on 'bail or recognizance,'" such that defendant did not need to file a new demand); *see also id.* at 177 (rejecting argument that "every time a defendant moves from

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one speedy-trial classification to another, a new speedy-trial demand must be filed"; rather, "defendant is subject to whatever speedy-trial statute applies at the time he or she makes a speedy-trial demand").[8]

And here, the plain language of section 103-5(e) does not suggest that defendant's change in status required that he file a demand. Where, as here, a defendant's first case results in a conviction, the 160-day clock runs from the "judgment," not — as defendant would have it — from any formal demand after the defendant reports to prison under that "judgment." *See Kliner*, 185 Ill. 2d at 124 (speedy-trial period tolled "until judgment was rendered" on the first set of charges, but "[o]nce judgment was rendered," "the State was required to bring defendant to trial [in second case] within 160 days"); *Brown*, 92 Ill. 2d at 255 ("160-day limitations period first commenced

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[8] To be sure, *Wooddell* cited two appellate court decisions that held that in-custody defendants initially subject to a 120-day clock are subject to the intrastate-detainers statute if they return to prison for violating a mandatory supervised release term on a prior conviction. 219 Ill. 2d at 176 (citing *People v. Lykes*, 124 Ill. App. 3d 604 (3d. Dist. 1984), and *People v. Freeland*, 103 Ill. App. 3d 94 (2d Dist. 1981)). But *Lyke*s and *Freeland* do not support defendant's rule, for two reasons. First, defendant's rule would raise constitutional issues not present in *Lykes* and *Freeland*. *See infra* p. 27-28 & n.8. Second, the speedy-trial statute has since been amended to provide that section 103-5(a) does "not apply to a person on pretrial release 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." 725 ILCS 5/103-5(a). One court has observed that the amendment "suggests that subsection (a) *does* apply to someone who remains in custody for a pending offense but who is also simultaneously 'in custody' for a parole violation in another case." *People v. Hayes*, 2022 IL App (4th) 210095-U, ¶ 30 (emphasis in original). Thus, the question whether *Lykes* and *Freeland* are still correct statements of law is unsettled.

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running" when defendant sentenced on first charges under guilty plea); *People v. Montoya*, 2022 IL App (3d) 190470-U, ¶ 23 ("State had 160 days to bring defendant to trial" from the date defendant was sentenced on first charge).[9]

Indeed, *Wooddell* illustrates why defendant's contrary reading would lead to results that the legislature could not have intended. Suppose that instead of two weeks, there was a 159-day delay between defendant's sentencing on his weapons charge and the date he reported to prison. Under defendant's theory, the speedy-trial clock would revert to zero when he reported to prison — giving the People an *additional* 160 days from the date of an eventual formal demand. *See Wooddell*, 219 Ill. 2d at 180 (addressing a similar scenario). But, as *Wooddell* explains, there is strong evidence that the legislature did not intend to permit such "stack[ing]" of speedy-trial terms. *Id.* at 179. For one thing, a de facto "320-day speedy-trial period" would raise constitutional questions. *Id.* ("delay approaching one year is presumptively prejudicial and necessitates a comprehensive constitutional examination under the four-part analysis set forth in *Barker v. Wingo,* 407 U.S. 514 (1972)") (cleaned up). Such a rule would thus defeat the purpose of the statute, which is to *avoid* constitutional concerns. *Id.* at 179-80 (it is "doubtful that, in crafting a statutory scheme designed to prevent the

[9] Unpublished orders may be found at https://www.illinoiscourts.gov/top-level-opinions/.

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constitutional issue from arising, the General Assembly allowed for a speedy-trial period that triggers the constitutional issue as a matter of law," and "[n]othing in the text of either the intrastate detainers statute or the speedy-trial act suggests that such an anomalous outcome was intended").[10]

Moreover, where the speedy-trial statute *does* permit a switch in speedy-trial classification when an in-custody defendant goes on pretrial release, subsection (b) of the statute gives the defendant credit against the 160-day clock for time spent in custody. 725 ILCS 5/103-5(b); *see also Wooddell*, 219 Ill. 2d at 181 (subsection (b) is "strong evidence that the General Assembly never intended for statutory speedy-trial periods to be stacked"). That provision prevents the harsh result of turning the speedy-trial clock back to zero. Neither section 103-5(e) nor the intrastate-detainers statute contains a similar credit provision preventing such a result.

In short, trial counsel was not deficient for failing to file a speedy-trial demand under the intrastate-detainers statute.

B. Defendant cannot show that he was prejudiced by his counsel's failure to file a speedy-trial demand under the intrastate-detainers statute.

Nor can defendant show a reasonable probability of a different outcome but for counsel's failure to file an intrastate-detainers demand. *See People v. Johnson*, 2021 IL 126291, ¶ 55 ("*Strickland* requires a defendant to

[10] *Lykes* or *Freeland* — even if good law — would not present the same constitutional concerns, given that at most, only 120- and 160-day terms would be "stacked."

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affirmatively prove that prejudice resulted from counsel's errors.") (quotation marks omitted).

Defendant's prejudice theory rests on two necessary premises: (1) that the 160-day clock never started because counsel failed to file a compliant demand, and (2) if it had started, his charges would have been dismissed because he was tried "89 days beyond the 160-day term." Def. Br. 16. But even if defendant is right that his counsel should have filed an intrastate-detainers demand, counsel's failure did not prejudice him. First, defendant's prejudice theory rests on pure speculation that his charges would have been dismissed, as he assumes that pretrial proceedings would have played out exactly as they occurred. Second, as the trial court's rulings make clear, defendant's trial began well within 160 untolled days of when any intrastate-detainers demand allegedly should have been filed.

1. Defendant cannot establish prejudice through speculation that pretrial proceedings would not have changed.

Defendant cannot "affirmatively prove[]" prejudice through conjecture about how pretrial proceedings would not have changed had his counsel filed a speedy-trial demand under the intrastate-detainers statute on or before October 1, 2021. *Johnson*, 2021 IL 126291, ¶ 55 ("Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply speculation that defendant may have been prejudiced.").

Where a defendant claims that trial counsel should have filed a meritorious pretrial motion, defendant cannot succeed in proving prejudice

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where the likelihood of a different outcome depends on several other contingent events. *See United States v. Miller*, 953 F.3d 804, 812 (D.C. Cir. 2020) (a "defendant cannot rest on a parade of hypotheticals to establish *Strickland* prejudice"). This Court has recognized, for instance, that predicting what the People would have done differently had counsel filed a motion to suppress is fraught with uncertainty. *See People v. Bew*, 228 Ill. 2d 122, 135 (2008) (rejecting as "entirely speculative" theory that defendant "lost bargaining leverage in plea negotiations" because defendant was not then "in active or serious plea negotiations" and record did not show that People would have offered favorable plea deal, much less that defendant would have accepted hypothetical deal).

Defendant's prejudice theory is too speculative for the same reason. He would have this Court assume that if counsel had filed a speedy-trial demand compliant with the intrastate-detainers statute on or before October 1, 2021, proceedings leading up to his trial nearly a year later would have played out *exactly* as they occurred. But that counterfactual assumption ignores the possible ripple effects that such a demand would have had on the rest of the pretrial proceedings.

Indeed, several contingencies would have needed to go defendant's way before he could have his charges dismissed on speedy-trial grounds. To start, defendant cannot credibly claim that the People would not have changed its pretrial strategy if defendant had filed a speedy-trial demand — thereby

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bringing speedy-trial issues to the fore earlier in the case. The People could have, for instance, accelerated preparation for trial or expedited forensic testing. And the People could have moved to add an additional 60 days to the speedy-trial term each time a new witness became unavailable for trial — i.e., when Hunter was under a COVID-19 lockdown in August 2021, R234-35, and when two detectives were unavailable in July 2022, C291. *See* 725 ILCS 5/103-5(c) (requiring that "the court determine[ ] that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day"); *see also People v. Lacy*, 2013 IL 113216, ¶ 18 (section 103-5(c) permits multiple 60-day continuances for "different items of material evidence"). The People also could have sought an additional 120 days to complete defendant's buccal-swab testing. 725 ILCS 5/103-5(c) (additional 120 days permitted for material DNA evidence on same basis). That alone undercuts defendant's claim that had counsel filed an intrastate-detainers demand, his trial would have been untimely by 89 days.

Defendant's theory also requires that this Court take on faith that *if* counsel had filed an intrastate-detainers demand at the earliest opportunity, and *if* the People had not responded differently, then the trial court would not have changed its approach, either. But that assumption is likewise unwarranted. As early as November 2021, the court demonstrated its awareness of, and intent to avoid, any speedy-trial concerns. R274 (offering

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to start defendant's trial in December 2021 "because we're picking back up with the speedy trial counts"). And during the June 30, 2022 hearing, the court raised the possibility of "bump[ing] other trials" to ensure that defendant's trial was timely. R273. And it set a status hearing for August so the parties could reassess whether defendant needed to be tried sooner than mid-September. R273-74. In short, the record makes clear that, even had defendant made a demand at the earliest possible date, the trial court would not have sat idly by and let the 160-day clock run out.

Finally, defendant's prejudice theory entails speculation about when trial counsel would have been ready for trial. As of November 2021, counsel acknowledged that he had not yet begun to prepare for trial and could not yet do so because of his busy calendar. R247. And as late as April 2022, counsel noted that he needed "access" to his client for trial preparation while he was in the Peoria County Jail, *see* R265-66, which is not surprising given that he had never visited him in prison, *see* R959. In short, defendant's prejudice rests on a "parade of hypotheticals," *Miller*, 953 F.3d at 812, about how the prosecutor, the trial court, and trial counsel himself would have behaved.

Defendant maintains that *Staten* — an intrastate-detainers case where the 160-day clock never started because of a deficient demand — endorsed his counterfactual theory, by assessing prejudice "by looking to the date when the motion to dismiss was or should have been argued" if a demand had been filed. Def. Br. 34 (citing *Staten*, 159 Ill. 2d at 432). But he reads *Staten* out

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of context. True, this Court said in passing that it "must assess the circumstances as they existed" as of the date of trial to determine if the defendant would have obtained the dismissal of the charges if counsel had filed a demand. *Staten*, 159 Ill. 2d at 432-33. But the Court then held that the defendant *could not* have been prejudiced, since he was nevertheless tried within 160 untolled days. *Id*. at 433. *Staten* did not — by entertaining but rejecting defendant's prejudice theory — prescribe a generally applicable rule, let alone abandon the rule that prejudice cannot be based on conjecture.

Accordingly, defendant has not met his burden of "affirmatively prov[ing]" prejudice." *Johnson*, 2021 IL 126291, ¶ 55.

2. Regardless, trial began within 160 untolled days.

Even if this Court were to entertain defendant's counterfactual theory, his trial began well within 160 untolled days of the date he claims trial counsel should have filed an intrastate-detainers demand.

Delays "occasioned by the defendant" toll the speedy-trial clock. 725 ILCS 5/103-5(e), (f); *see also Mayfield*, 2023 IL 128092, ¶ 19 (speedy-trial term "tolled during any time when the defendant causes, contributes to, or otherwise agrees to a delay"). Defendant's claim that his trial was untimely by 89 days necessarily presumes that the trial court abused its discretion in finding that several continuances were "occasioned by" him. But he fails to overcome the hurdle of showing that the court's findings were "arbitrary, fanciful, or so unreasonable that no reasonable person could take" the court's view. *Cross*, 2022 IL 127907, ¶ 24

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a. A delay is occasioned by the defendant unless he affirmatively objects to a continuance and requests a speedy trial.

The speedy-trial statute defines when a delay is "occasioned by" the defendant: a "[d]elay 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." 725 ILCS 5/103-5(a). In other words, "a mere objection to delay does not suffice to invoke the statutory speedy-trial right." *People v. Hartfield*, 2022 IL 126729, ¶ 35. "Rather, the defendant must make an objection specifically by demanding trial" — i.e., "some affirmative statement in the record requesting a *speedy* trial." *Id.* ¶¶ 35-36 (quotations omitted) (emphasis in original).

Defendant seeks to flip this rule on its head, claiming that only those continuances that he affirmatively sought or agreed to are attributable to him. *See* Def. Br. 26. That is so, defendant maintains, because the language providing that "delays shall be considered to be agreed to" unless he affirmatively objects is confined to section 103-5(a), and not incorporated elsewhere in the speedy-trial statute. *Id*. at 25-26. Thus, defendant argues, the rule of *People v. Healy* — that a "mere acquiescence to a date suggested by the court is not an affirmative act attributable to the defendant," 293 Ill. App. 3d 684, 690 (1st Dist. 1997) — governs for other speedy-trial classifications. Def. Br. 25.

Defendant's interpretation of the speedy-trial statute withers under scrutiny. First, section 103-5's plain language — read as a whole, *Evans*,

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2021 IL 1225513, ¶ 27 — refutes defendant's claim. It is a cardinal rule of statutory interpretation that where a term is contained "in different sections of the same statute," the term presumptively has the same meaning throughout the statute, "unless a contrary legislative intent is expressed." *In re Det. of Stanbridge*, 2012 IL 112337, ¶ 60 (quotation marks omitted). Critically, each of the speedy-trial classifications provides that a "delay . . . occasioned by the defendant" will not count toward the speedy-trial clock. 725 ILCS 5/103-5(a), (b), (e). More generally, the speedy-trial classifications are substantively *identical* regarding the events that toll each respective clock. *See* 725 ILCS 5/103-5(a), (b), (e) (each providing that clock is tolled for a "delay . . . occasioned by the defendant," "an examination for fitness ordered pursuant to Section 104-13 of this Act," "a fitness hearing," "an adjudication of unfitness" for trial, "a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial," or "an interlocutory appeal."). Subsections (a), (b), and (e) therefore presumptively share (a)'s definition of *when* a "delay is occasioned by defendant."

Defendant cannot rebut that presumption merely because subsections (b) and (e) do not expressly reproduce or incorporate (a)'s definition. In essence, defendant invokes the negative-implication canon, *expressio unius est exclusio alterius* — that "the expression of one thing is the exclusion of another." *People v. Roberts*, 214 Ill. 2d 106, 117 (2005). But that canon "must

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be applied with great caution," depends "on context," and often gives way to "common sense." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (sign that says "[n]o dogs allowed" "cannot be thought to mean that no other creatures are excluded — as if pet monkeys, potbellied pigs, and baby elephants might be quite welcome"). And both "context" and "common sense" belie defendant's claim. To illustrate why, imagine a statute with two relevant subsections. Subsection (a) provides, "Domestic animals are allowed in public parks. A domestic animal is a dog or a cat," whereas subsection (b) simply says, "Domestic animals are allowed in public gardens." Although (b) does not define "domestic animal," common sense suggests that only dogs and cats — and not domestic horses — are allowed in public gardens. So too here; section 103-5 *implicitly* incorporates subsection (a)'s definition of when a defendant agrees to the delay throughout the statute.

Textual indications aside, defendant's literal reading of section 103-5 would lead to absurd results that the legislature could not have intended. *See Evans*, 2021 IL 125513, ¶ 27 (courts should avoid literal reading that leads to absurd results). Indeed, defendant's invocation of *Healy* is fatal to his argument. In *Healy*, the defendant responded to the People's request for a continuance by stating that he had "'no problem with any date,'" "'any day will be fine,'" and that the trial court could reschedule trial on "whatever date is convenient to [the court]." *Cordell*, 223 Ill. 2d at 387 (quoting *Healy,* 293

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Ill. App. 3d at 687-88). Yet the appellate court held that the defendant had not agreed to the continuance and vacated defendant's murder conviction. *Healy,* 293 Ill. App. 3d at 692 (defendant's statements were not "personal concurrences" to delay, but rather "reactions by defense counsel . . . to accept the trial court's decision to offer a continuance to the prosecution").

The General Assembly swiftly disavowed *Healy* by adding subsection (a)'s definition of when a defendant agrees to the delay. *Cordell*, 223 Ill. 2d at 387-88 (explaining that legislature amended statute "in the wake of *Healy*"). Through that amendment, the legislature preserved a court's discretion to set its own docket where the defendant does not object. *Id.* at 390 (speedy-trial statute "allows courts the opportunity to *propose* such a date in the interest of efficiency and convenience to both parties and the court, and gives defendants the option of accepting or rejecting the proposed date") (emphasis in original). More fundamentally, the legislature further ensured that the speedy-trial right remains a "shield," not "a sword." *Id.*

Defendant fails to explain why the legislature would have seen fit to preserve the rule in *Healy* for other speedy-trial classifications — thereby preserving a defendant's ability to use silence as a "sword." Nor can he, for the legislative history unambiguously shows that the amendment was a wholesale repudiation of *Healy*. For instance, a House sponsor explained that the amendment aimed to "counter" "a very disturbing opinion" in *Healy* and close "one of the most ridiculous loopholes" in the Criminal Code. 90th

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Ill. Gen. Assem., House Proceedings, April 1, 1998, at 30-31 (statement of Rep. Durkin). Moreover, one Senator noted that the amendment removes any ambiguity as to whether a defendant agrees to a continuance and "avoid[s] any more cases like . . . *Healy*." 90th Ill. Gen. Assem., Senate Proceedings, May 13, 1998, at 68 (statement of Sen. Hawkinson).

The anomalous results flowing from defendant's construction do not end there. Recall that under section 103-5(a), no speedy-trial demand is necessary because the statute "assume[s]" that in-custody defendants want trials as soon as possible. *Garrett*, 136 Ill. 2d at 329. In contrast, section 103-5(b) puts the onus on defendants on pretrial release to formally demand a speedy trial, as they "do not suffer a loss of liberty while awaiting trial on the pending charges." *Wooddell*, 219 Ill. 2d at 175. Yet under defendant's reading, in-custody defendants face a more onerous burden than out-of-custody defendants in preventing continuances from tolling the speedy-trial clock, despite the former's stronger interest in a speedy trial. That cannot have been what the legislature intended.

Contrary to defendant's argument, Def. Br. 26, *Cordell* did not resolve this issue — much less in his favor. In reversing the decision below, this Court noted that the appellate court had cited *People v. Vasquez,* 311 Ill. App. 3d 291 (2d Dist. 2000), for the proposition that "while an express agreement to a continuance is an affirmative act that results in delay attributable to a defendant, mere silence or failure to object to a delay is not." *Cordell*, 223 Ill.

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2d at 392. Such reliance on *Vasquez* was "misplaced," the Court explained, because *Vasquez* was a section 103-5(b) case, and, moreover, because "it never addressed the amended statute, in that it espoused the very rules relied on by *Healy* that led the General Assembly to amend section 103-5(a) to add the final sentence requiring a defendant to object to any delay by written or oral demand for trial." *Id.*

That this Court distinguished *Vasquez* because it concerned section 103-5(b) did not resolve the statutory question whether the amendment is confined to subsection (a); indeed, the Court's commentary on subsection 103-5(b) was unnecessary to the holding. *See People v. Reed*, 2020 IL 124940, ¶ 23 (declining to defer to "scant analysis and resulting obiter dicta" on point not essential to holding); *see also People v. LaFaire*, 374 Ill. App. 3d 461, 468 (3d Dist. 2007) (Carter, J., dissenting) ("whether the strong language of subsection (a) applies to a demand under subsection (b)" cannot "be resolved without a very detailed statutory analysis"). But if anything, *Cordell* cuts against defendant's reading given that this Court also found *Vasquez*'s reliance on *Healy* "unavailing" given the amendment to the statute. At best for defendant, *Cordell* leaves open the statutory question. And at worst, it recognizes that *Healy* is no longer good law.

The upshot is that the speedy-trial statute provides that defendant agreed to any continuance unless he affirmatively objected to the delay and demanded a speedy trial.

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b. Defendant's trial began well within 160 untolled days.

"Each delay must be reviewed individually and attributed to the party who causes it." *People v. Mayo*, 198 Ill. 2d 530, 537 (2002). This Court heavily defers to the trial court's familiarity with the parties and its understanding of the case. *See Cross*, 2022 IL 127907, ¶ 24 ("the trial court is responsible for considering the particular facts and circumstances of each case" in determining source of delay).

All agree that the earliest day from which the speedy-trial term *could* have run untolled was October 1, 2021, given the COVID-19 tolling orders. *See* Def. Br. 16. Defendant's trial began 353 days later, on September 19, 2022. *See* 5 ILCS 70/1.11 (time calculations provided by statute "shall be computed by excluding the first day and including the last"). Thus, if at least 193 days of continuances were "occasioned by defendant" or otherwise tolled, the trial court properly denied defendant's motion to dismiss.

The trial court did not abuse its discretion in concluding that defendant agreed to the November 2021 and February 2022 continuances — together totaling 238 days. Defendant's trial was therefore timely.

To begin, defendant does not challenge the trial court's finding that he agreed to the November 15, 2021 continuance, which totaled 105 days. For good reason: he appropriately conceded in his motion to dismiss that this continuance was on "both parties' motion," C332, and trial counsel declined the court's invitation to "squeeze" in the trial in December 2021 given

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counsel's busy schedule, R244-47. And both counsel and defendant personally confirmed that the continuance would be on defendant's motion. *See* R249.

Defendant's claim that his trial was untimely thus rises or falls on his challenge to the February 24, 2022 continuance of 133 days. But the trial court repeatedly found that defendant agreed to that continuance as well. C262 (written order); R293 (in denying the motion to dismiss); R976 (in denying defendant's post-trial motion). Its finding was not arbitrary, fanciful, or clearly unreasonable.

Defendant did not object to the delay and demand a speedy trial, and thus the "delay shall be considered to be agreed to by the defendant." 725 ILCS 5/103-5(a). But even if the foregoing provision did not apply to subsection (e), the court's finding would not be arbitrary, fanciful, or clearly unreasonable. Even under the pre-amendment statute, a defendant's acquiescence to a continuance — even one initially proposed by the court — was attributable to him and tolled the speedy-trial clock. *Staten*, 159 Ill. 2d at 432 ("trial court's decision to reschedule defendant's trial with the express acknowledgment and acquiescence of the defense" tolled clock). In *Staten*, the court continued trial during voir dire because of a juror shortage. *Id.* at 433. When the court asked "if the rescheduling was acceptable," trial counsel responded, "thank you, your honor," and then, "okay, your honor" when the court said it would continue to the next available trial date. *Id.* "By this

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reply," this Court held, "defense counsel acquiesced in the . . . continuance of trial," thus tolling the clock. *Id.* at 433-34.

Here, trial counsel likewise acquiesced to the continuance. Aside from Hunter's availability, the court found that neither side would be ready for trial to begin on February 28, 2022 — in part because of the challenges posed by defendant's incarceration far from Peoria. *See* R256-58. Thus, the court proposed the April scheduling conference — with trial to follow in June — to give defendant additional time to consult with counsel in person. R259. Rather than reply that defendant *was* ready for trial, counsel merely responded that defendant "wanted to stay in the Peoria County Jail" "until the trial is over," and when the court denied that request, counsel said he was "fine" with a July 11 trial date. *Id.* The court reasonably interpreted counsel's response to signal agreement to the delay.

The court's familiarity with the parties underscores why its finding was reasonable. Counsel acknowledged in November 2021 that he had not yet begun preparing for trial. R247. The court could properly surmise that counsel would not have made significant headway in preparing for trial — particularly given that he had not met with defendant in prison. *See* R291-92 (trial court recalling that it was "unrealistic to think that the parties were going to be ready" for trial in February 2022 because trial counsel had not visited defendant in prison and only consulted with him when he was in Peoria for pretrial proceedings). Indeed, the court found that the defense

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"primarily hobbled this case along in a somewhat slow fashion," and questioned whether defendant deliberately did so to create speedy-trial issue, R975-76 — the sort of gamesmanship the speedy-trial statute is designed to prevent. *See People v. Ingram*, 357 Ill. App. 3d 228, 234 (5th Dist. 2005) (speedy-trial statute designed to promote expeditious trial "without promoting gamesmanship").

Defendant claims that he merely acquiesced to the trial court's choice of new trial date, not to the decision to continue trial in the first place. *See* Def. Br. 25. But even if that were a meaningful distinction, he has not shown that it was arbitrary, fanciful, or unreasonable for the trial court to conclude otherwise. And defendant's reliance on *People v. Beyah*, 67 Ill. 2d 423 (1977), is unavailing. There, the trial court "*ordered* [defendant] to 'pick a date'" because "the trial judge and counsel for the parties were then engaged in another criminal trial." *Id.* at 428 (emphasis added). And it "directed the setting of . . . the trial date, even though defendant personally requested an earlier date." *Id.*; *see also People v. Turner*, 128 Ill. 2d 540, 554 (1989) (explaining that in *Beyah,* "the defendant was forced to accept a date the court chose"). Here, in contrast, the trial court did not "force" defendant into agreeing to the continuance, much less to its proposal to hold a scheduling conference in April 2022 to provide additional time for defendant to consult with counsel. Rather, the court merely "suggest[ed]" that arrangement, R259, and defendant acquiesced to it.

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Defendant offers two fallback arguments for why the continuance is not attributable to him. Neither has merit. First, defendant claims that he disavowed counsel's acquiescence by declaring in a pro se motion that he did not want any more continuances. *See* C272. But defendant is presumptively bound by his attorney's actions. *Mayo*, 198 Ill. 2d at 537 ("When a defense attorney requests a continuance on behalf of a defendant, any delay caused by that continuance will be attributed to the defendant."). To avoid being bound by his attorney's actions, defendant needed to "clearly and convincingly attempt[ ] to assert his right to discharge his attorney and proceed to an immediate trial." *Id.* He failed to do so, for he appeared with counsel at the next court date in April 2022 and did not so much as mention that he wished to discharge counsel or have an immediate trial. *See* R263-66. And it is unclear from the record whether defendant's pro se motion was ever brought to the court's attention.

Second, defendant argues that even if trial counsel agreed to the continuance, such agreement itself constitutes ineffective assistance of counsel. Def. Br. 27-28. But he forfeited that claim by never raising it in the appellate court. *People v. Salamon*, 2022 IL 125722, ¶ 70 (party forfeits argument not raised in the appellate court). Regardless, defendant cannot rebut the presumption of reasonable performance, for it was sound strategy to agree to a lengthy continuance to give counsel additional time to consult with defendant — particularly given defendant's incarceration at a distant

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facility. *People v. Perry*, 224 Ill. 2d 312, 344 (2007) ("We have also made it clear that a reviewing court will be highly deferential to trial counsel on matters of trial strategy."). Indeed, as of April 2022, counsel noted that he still "need[ed] to have access to" defendant for trial preparation — evidencing that counsel was not yet ready for trial. R265. And defendant cannot show prejudice; even if counsel had objected to the continuance or its length, the People could and presumably would have then responded — for instance — by seeking additional time under section 103-5(c) or declining to seek any future continuances. *See supra* Part I.B.1.

More fundamentally, defendant's claim that his counsel was ineffective in acquiescing to the continuance is a naked attempt to transform the speedy trial-right from a shield against untimely trials into a "sword." *Cordell*, 223 Ill. 2d at 390. As defendant sees it, he has two bites at the apple in attempting to challenge his conviction: by (1) claiming that he did not agree to a continuance, and (2) if that fails, by claiming that his attorney was ineffective in agreeing to the continuance. That is not what the speedy-trial statute was designed to do.

II. The Trial Court Did Not Plainly Err in Sentencing Defendant on the Attempted Murder Charge.

As defendant concedes, Def. Br. 40, he has forfeited his claim that the trial court misunderstood the sentencing range for attempted murder. *See People v. Reese*, 2017 IL 120011, ¶ 60 ("To preserve an issue for review, a defendant must object at trial and raise the alleged error in a written

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posttrial motion."). And he cannot excuse his forfeiture under the plain-error doctrine.

The plain-error doctrine is a "narrow exception to forfeiture principles" that "does not call for the review of all forfeited errors." *People v. Jackson*, 2022 IL 127256, ¶¶ 18, 19; *see also People v. Allen*, 222 Ill. 2d 340, 353 (2006) ("The plain-error doctrine is not a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.") (cleaned up). Defendant must first show that the trial court committed a "clear or obvious error." *Jackson*, 2022 IL 127256, ¶ 21. And even if defendant clears that hurdle, the reviewing court may remedy the clear or obvious error only where "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *Fort*, 2017 IL 118966, ¶ 17 (applying the two-prong framework in the sentencing context) (quotation marks omitted). Only the second prong is relevant here; defendant does not invoke the first prong and thus has forfeited any argument on that score. *See* Def. Br. 40; *Jackson*, 2022 IL 127256, ¶ 25 (reviewing only for second-prong plain error where defendant does not invoke first-prong plain error).

The trial court did not clearly or obviously err, and regardless, did not commit second-prong plain error.

A. The trial court did not clearly or obviously err.

Defendant cannot show that the trial court clearly or obviously erred in sentencing defendant to 44 years for attempted murder.

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To be sure, the court misstated the sentencing range when it stated that defendant was subject to a 20-year enhancement and that his sentencing range was therefore 26 to 50 years. Def. Br. 43. Although the evidence overwhelmingly showed that defendant personally shot Hunter, the People sought only the 15-year enhancement for being armed with a firearm, 720 ILCS 5/8-4(c)(1)(B). *See* C366 (special interrogatory). Thus, the applicable sentencing range was 21 to 45 years. *See* 720 ILCS 5/8-4(c)(1)(B) (attempted murder while armed with a firearm "is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court"); 730 ILCS 5/5-4.5-25 (Class X felonies generally subject to 6- to 30-year range).

Nevertheless, the court's misstatement did not result in a clear or obvious error. Where a defendant has *preserved* the issue, a "misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision." *Eddington*, 77 Ill. 2d at 48. But on plain-error review — where it is the defendant's burden to establish clear or obvious error, *Jackson* 2022, IL 127256, ¶ 21 — the defendant must show that the misunderstanding *clearly or obviously* influenced the sentence.

Defendant cannot meet that burden. After the trial court announced its sentence, it merely remarked, "44 years being a 26-year minimum because it's a 20-year tack-on with a six-year minimum." R1002-03. The record is

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silent on whether that misunderstanding influenced the court's choice of sentence. The record shows that the court found significant factors in aggravation and deemed a sentence far above the statutory minimum appropriate; it does not explain why the court settled on 44 years. Because defendant cannot demonstrate that he would have received a lower sentence but for the court's misunderstanding, he fails to satisfy his burden of showing a clear or obvious error. *See Eddington*, 77 Ill. 2d at 48 (concluding that misunderstanding of sentencing range was "harmless" where "there is no evidence that the trial judge used [the wrong mandatory minimum] as a reference point").

B. The trial court did not commit second-prong plain error.

Even if the trial court clearly or obviously used the wrong mandatory minimum as a reference point in imposing sentence, the court did not commit second-prong plain error.

To show that the trial court committed second-prong plain error, defendant must show that the court committed structural error, *Jackson*, 2022 IL 127256, ¶ 26, meaning a constitutional error that "def[ies] analysis by 'harmless-error' standards," *id.* ¶ 49 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)). Said differently, "[a]n error that is amenable to harmless error analysis is not a structural error." *People v. Logan*, 2024 IL 129054, ¶¶ 79-80; *see also People v. Stoecker*, 2020 IL 124807, ¶ 25 ("serious" error was not second-prong plain error because the "impact . . . can be quantified"). And errors are presumptively amenable to harmless error

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analysis, and hence presumptively not second-prong plain error. *Id.* ¶ 23; *see also Fulminante*, 499 U.S. at 306 ("most constitutional errors can be harmless").

As previously established, the error here — a mistaken view of the sentencing range — is amenable to harmless-error analysis. *See Eddington*, 77 Ill. 2d at 48 (court's "mistaken belief" on the sentencing range was harmless because it did not influence the sentence). Thus, the trial court could not have committed second-prong plain error. *See Logan*, 2024 IL 129054, ¶ 80.

This conclusion is further supported by case law on sentencing decisions that rely on improper enhancements in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny. Such claims are also predicated on an error that affects the sentencing court's misapprehension of the appropriate sentencing range. Yet, as this Court has long recognized, *Apprendi* errors are not structural. *People v. Crespo*, 203 Ill. 2d 335, 347 (2001) ("*Apprendi* violations are not structural error, but rather are susceptible to harmless-error analysis.").

Therefore, the error here cannot be second-prong plain error. *Logan*, 2024 IL 129054, ¶¶ 79-80.

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III. Defendant is Correct that the Appellate Court Should Not Have Remanded for Sentencing on the UPWF Conviction Because One-Act, One-Crime Principles Preclude a Separate Sentence on That Count.

The People agree that the appellate court erred by remanding this case for imposition of sentence on the UPWF count.[11] The People correctly advised the circuit court not to enter judgment on that count. Thus, contrary to defendant's framing of this issue, Def. Br. 45, the People did not "invite error" in doing so because this was the correct result.

Under the one-act, one-crime rule, a "defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Under the unique circumstances of this case, were defendant sentenced for both attempted murder and UPWF, he would be punished twice for the same physical act. The punishment that he received for attempted murder would be, in part, for the physical act of possessing a firearm because the jury found in response to the special interrogatory that he possessed a firearm, C366, such that 15 years of any sentence he received for attempted murder would be specifically punishing that physical act. *See* 720 ILCS 5/8-4(c)(1)(B). That same physical act is the act for which defendant would be punished were he

[11] In a single conclusory sentence in their appellate brief, the People asked for this result. Pl.-Appellee 32, *People v. Yankaway*, 2023 IL App (4th) 220982-U. Defendant did not object to the request in his reply brief. The appellate court relied on this forfeiture in granting the People's request. The People now concede, however, that this request was made in error.

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sentenced for UPWF. Because, in this case, the sentences that defendant would receive for attempted murder and UPWF would both punish the same physical act of possessing a firearm, the trial court correctly declined to sentence defendant for UPWF. *See Johnson*, 237 Ill. 2d at 97 (defendant's UPWF and aggravated unlawful use of weapon convictions were "clearly premised on the same physical act of possessing the handgun on or about his person").

Therefore, if the trial court were to impose a sentence on the UPWF conviction, it would violate the one-act, one-crime rule. To avoid that error, this Court should vacate the portion of the appellate court's judgment remanding for entry of sentence on the UPWF conviction.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court but modify the judgment to preclude remand for sentencing on the UPWF conviction.

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APPENDIX

STATUTES INVOLVED

Section 103-5. Speedy Trial

(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, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. 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. . . .

(b) Every person on pretrial release 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, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. . . .

(c) If the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days. If the court determines that the State has exercised without success due diligence to obtain results of DNA testing that is material to the case and that there are reasonable grounds to believe that such results may be obtained at a later day, the court may continue the cause on application of the State for not more than an additional 120 days.

(d) Every person not tried in accordance with subsections (a), (b) and (c) of this Section shall be discharged from custody or released from the obligations of his pretrial release or recognizance.

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> (e) If a person is simultaneously in custody upon more than one charge pending against him in the same county, or simultaneously demands trial upon more than one charge pending against him in the same county, he shall be tried, or adjudged guilty after waiver of trial, upon at least one such charge before expiration relative to any of such pending charges of the period prescribed by subsections (a) and (b) of this Section. Such person shall be tried upon all of the remaining charges thus pending within 160 days from the date on which judgment relative to the first charge thus prosecuted is rendered pursuant to the Unified Code of Correction or, if such trial upon such first charge is terminated without judgment and there is no subsequent trial of, or adjudication of guilt after waiver of trial of, such first charge within a reasonable time, the person shall be tried upon all of the remaining charges thus pending within 160 days from the date on which such trial is terminated; if either such period of 160 days expires without the commencement of trial of, or adjudication of guilt after waiver of trial of, any of such remaining charges thus pending, such charge or charges shall be dismissed and barred for want of prosecution unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness for trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal; provided, however, that if the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.
>
> (f) Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsections (a), (b), or (e) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended. . . .

725 ILCS 5/103-5.

Section 3-8-10. Intrastate Detainers.

> Subsection (b), (c) and (e) of Section 103-5 of the Code of Criminal Procedure of 1963 shall also apply to persons committed to any

institution or facility or program of the Illinois Department of Corrections who have untried complaints, charges or indictments pending in any county of this State, and such person shall include in the demand under subsection (b), a statement of the place of present commitment, the term, and length of the remaining term, the charges pending against him or her to be tried and the county of the charges, and the demand shall be addressed to the state's attorney of the county where he or she is charged with a copy to the clerk of that court and a copy to the chief administrative officer of the Department of Corrections institution or facility to which he or she is committed. The state's attorney shall then procure the presence of the defendant for trial in his county by habeas corpus. Additional time may be granted by the court for the process of bringing and serving an order of habeas corpus ad prosequendum. In the event that the person is not brought to trial within the allotted time, then the charge for which he or she has requested a speedy trial shall be dismissed. The provisions of this Section do not apply to persons no longer committed to a facility or program of the Illinois Department of Corrections. A person serving a period of parole or mandatory supervised release under the supervision of the Department of Corrections, for the purpose of this Section, shall not be deemed to be committed to the Department.

730 ILCS 5/3-8-10

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13,776 words.

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 22, 2024, the foregoing **Brief and Appendix of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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