2015 IL App (3d) 120912-U

Order filed July 17, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0912 Circuit No. 10-CF-81
STEVEN LONDON,	)	Honorable Timothy M. Lucas,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Presiding Justice McDade dissented.

ORDER

¶ 1 *Held*: (1) Defendant's statutory right to a speedy trial was not violated. (2) Defendant received effective assistance of counsel. (3) Defendant's sentence was not excessive. (4) Defendant's DNA analysis fee is vacated, and the cause is remanded for calculation and application of defendant's $5-per-day presentence incarceration credit.

¶ 2 A jury found defendant, Steven London, guilty of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2010)) and criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2010)). The trial court sentenced defendant to 30 years' imprisonment. On appeal, defendant

argues that: (1) his right to a speedy trial was violated; (2) he received ineffective assistance of counsel; (3) his sentence was excessive; and (4) the court improperly imposed a DNA analysis fee and did not apply his $5-per-day presentence incarceration credit to several fees that are actually fines. We affirm in part, vacate in part, and remand with direction.

¶ 3 FACTS

¶ 4 On January 25, 2010, defendant was arrested and taken into custody. The State charged defendant by indictment with aggravated criminal sexual assault and criminal sexual assault. The aggravated criminal sexual assault charge alleged that defendant:

> "[K]nowingly committed an act of sexual penetration upon [B.T.] by the use of force or threat of force and during the commission of the offense caused bodily harm to [B.T.] by striking her."

The trial court appointed the public defender to represent defendant.

¶ 5 On April 12, 2010, the case was called for a pretrial hearing. Defense counsel indicated that defendant was not ready for trial and requested a continuance. The court granted the continuance and set the case for a jury trial on June 28, 2010.

¶ 6 On June 28, 2010, the public defender expressed concern regarding defendant's fitness to stand trial, and the court continued the case for a fitness evaluation.

¶ 7 On July 26, 2010, the case was called for a fitness review hearing. The public defender stated that defendant's fitness examination was scheduled for that afternoon and asked for a two-week continuance. The State did not object, but defendant asserted that his right to a speedy trial had been violated because he had been in custody for more than 120 days. Defense counsel told the court that some of the earlier continuances were made on defendant's motion. The court did not rule on defendant's motion and directed defendant to cooperate with his fitness evaluator.

The court continued the matter for a fitness review hearing.

¶ 8 On August 16, 2010, the public defender stated that he no longer had questions about defendant's fitness and asked that the case be set for trial. The court scheduled the case for November 15, 2010, jury trial. Defendant asked to excuse the public defender, and the following exchange occurred:

> "[Defendant]: Then my paper, 120, I've been violated my speedy trial. Ain't no, ain't no–haven't worked on my case or nothing.
>
> THE COURT: All right.
>
> [Defendant]: I ask for speedy trial.
>
> THE COURT: We're done.
>
> [Defendant]: That's what I mean.
>
> THE COURT: We're done.
>
> [Defendant]: Speedy trial, 120.
>
> THE COURT: All right."

Following the court's statement, the transcript ended.

¶ 9 At the November 5, 2010, scheduling conference, the public defender made an oral motion to dismiss the case for a violation of defendant's right to a speedy trial. Counsel argued that more than 120 days had transpired since defendant's arrest. The State argued that defendant's speedy trial right had not been violated because the only continuance dates attributable to the State were from January 25 to April 12, 2010, "a total of 78 days." After reviewing the history of the case, the court denied defendant's motion. Afterward, defendant had a profane outburst. The court held defendant in direct criminal contempt and sentenced

defendant to 120 days' incarceration. On November 15, 2010, the trial court found a *bona fide* question as to defendant's fitness to stand trial and ordered a second fitness hearing.

¶ 10 On December 13, 2010, the case was called for a fitness review hearing. On that date, the parties stipulated to a fitness evaluation report, and the court found defendant fit to stand trial. The court set the case for a jury trial on February 7, 2011.

¶ 11 On December 17, 2010, the State made a motion to advance the trial date to January 18, 2011, because the February 7, 2011, date exceeded the 120-day speedy trial period. Defense counsel agreed to the date, and defendant demanded a new public defender. The court granted the State's motion.

¶ 12 After several additional continuances, the case was called for a jury trial on August 27, 2012. Nurse Kim Wynkoop testified that on January 17, 2010, she was working in the St. Francis hospital emergency room when B.T. was admitted. During the examination, Wynkoop noticed that B.T. was bruised and had swelling and abrasions. Wynkoop used a sexual assault kit to obtain samples from B.T.'s vagina, anus, and mouth. The specimens were turned over to the police. Wynkoop did not notice any marks or bruising on the exterior of B.T.'s genitals, and there were no abnormal indications in B.T.'s vaginal wall, pelvic area, or cervix.

¶ 13 The State introduced into evidence several photographs of B.T. that were taken at the hospital. The photographs showed numerous contusions, and abrasions to B.T.'s face, neck, and torso.

¶ 14 B.T. testified that on the date of the incident she shared an apartment with her two children and her father, Jessie H. B.T. had known defendant for several years and said they were in a dating relationship until September 2009.

¶ 15 On the evening of January 16, 2010, B.T. returned to the apartment after doing laundry and found Jessie and defendant drinking. Jessie asked to leave, and B.T. escorted Jessie to a friend's house. When B.T. returned to the apartment, the children were asleep in their bedrooms, and she and defendant got into an argument. The argument escalated into a physical altercation that lasted several hours. During the altercation, defendant hit B.T. so hard that she "flew into the closet." Defendant then picked up B.T., ripped off her shirt, and broke her cell phone.

¶ 16 When the altercation ended, defendant made B.T. wash the blood off of herself and forced B.T. to have oral and vaginal sex. B.T. was unable to resist because defendant held a knife to her throat. Afterward, B.T. and defendant got into another argument. Defendant hit B.T. several more times and dragged her around the apartment by her hair while he searched for money and liquor. Between 2 and 4 a.m., defendant attempted to force B.T. out of the apartment. When a police car pulled up in front of the apartment building, defendant pulled B.T. inside. B.T. told defendant that she would not report the incident and she intended to tell Jessie that she was "jumped" in the alley and woke up bleeding and went to the hospital. Defendant told B.T. if she spoke of the incident, he would "hurt [her] family." Defendant left the apartment around 7 a.m. on the morning of January 17, 2010.

¶ 17 On cross-examination, B.T. acknowledged that she had said "I know sometimes I do off-the-wall shit to get back at [defendant] for all the shit that [defendant] did to me." B.T. denied telling Patricia Lane, the mother of defendant's son, that she had sex with defendant to "calm him down." B.T. told Lane that defendant had "raped [her]."

¶ 18 Illinois State Police forensic scientist Debra Minton testified that she analyzed the DNA collected from B.T. during the sexual assault examination. DNA obtained from a sperm cell recovered from B.T. matched defendant.

¶ 19 Peoria County court reporter Tana Hess testified that she was the stenographer who recorded the March 23, 2012, arraignment. During the arraignment, defendant said "[y]ou all ain't got no evidence. I didn't rape nobody. That's my–that bitch is my bitch." At the conclusion of Hess's testimony, the State rested.

¶ 20 The defense called Lane as its first witness. Lane testified that she spoke with B.T. in January of 2010. While discussing the incident, B.T. said defendant had hit her and she "slept with [defendant] to calm him down." On cross-examination, Lane stated that defendant was the father of her 15-year-old son.

¶ 21 Defendant testified that on January 16, 2010, he lived in an apartment located at 2815 Northeast Adams Street, Peoria. Defendant had rented the apartment since May 2009. In November 2009, defendant temporarily relocated to Chicago to take care of his ailing grandmother. In December 2009, Jessie moved into the apartment while defendant was away.

¶ 22 Defendant stated that he had known B.T. for 17 years and the two began dating in May 2009. From May 2009 until the date of the incident, defendant and B.T. had sex "continuously," including the day before the incident.

¶ 23 On January 16, 2010, defendant shared some drinks with Jessie at the apartment. Around 10 p.m., B.T. came to the apartment, gave defendant a kiss, and told defendant to put the children to sleep because she had "something for [defendant]." B.T. left the apartment to finish washing clothes, and when she returned, the children were asleep in their bedrooms and Jessie was in the living room. Defendant and B.T. went into another room where they had consensual sex. Afterward, defendant and B.T. got into an argument. In response, Jessie hid a bottle of liquor, for which defendant searched the house. Around 11:40 p.m., Jessie asked to leave, and B.T. escorted Jessie to a friend's house. When B.T. returned, she reprimanded defendant for his poor

treatment of her father. B.T. also "talk[ed] trash about [defendant's] cousin," and defendant hit B.T. "a couple of times."

¶ 24 Later that night, a person carrying a gun knocked on the door to the apartment. Defendant called the police, who came to the apartment building around 3 a.m., and the armed individual left. Defendant lay in bed with B.T. until 5 a.m. When he got up, he told B.T. he did not want to see her anymore, and left the apartment with his belongings.

¶ 25 Defendant denied sexually assaulting B.T., but acknowledged that he had consensual sex with B.T. prior to their physical altercation. Defendant also denied threatening B.T. with a knife.

¶ 26 On cross-examination, defendant stated that he did not go downstairs when the police arrived because he had been in a fight. At the time, B.T. had a black eye, but was not bleeding. Defendant also did not remember telling the police in a later interview that B.T. was "bleeding real bad." Defendant explained that his lapse of memory may have been due to the fact that he had been drinking and had blacked out during the interview. Defendant admitted that he punched B.T. a couple of times and the fight was "just a regular fight like any other fight."

¶ 27 Defendant was impeached with his 2002 conviction for criminal damage to government supported property and his 2006 conviction for unlawful possession of a weapon by a felon.

¶ 28 During closing arguments, defense counsel argued that "[t]he only physical evidence we have is of a domestic battery" and "my client owned up to it." Counsel stated:

> "[I]ts pretty clear [defendant] felt bad about that he slapped [B.T.] around and [B.T.] got hurt. But she didn't get raped. She didn't get sexually assaulted. It was an incident of domestic violence among two people who have dated on and off since May of 2009, up until the date of the incident, January 17 of 2010."

Counsel argued that "[j]ust because she got roughed up does not mean that that act was not in any way nonconsensual." Defense counsel contended that defendant's testimony was consistent with the theory that defendant was dating B.T. and had a "quickie" on the night of the incident and "then one thing lead [*sic*] to another and [B.T.] got slapped and popped a few times."

¶ 29 The jury found defendant guilty of aggravated criminal sexual assault and criminal sexual assault.

¶ 30 During the sentencing hearing, the State did not present any factors in aggravation, and defendant did not present any factors in mitigation. Defendant apologized for his outburst in the courtroom and stated that B.T. had testified falsely. Defendant maintained that he had not sexually assaulted B.T.

¶ 31 The trial court noted in aggravation that defendant had 2 felony aggravated battery convictions, 16 misdemeanor convictions, 8 of which were related to battery or domestic battery, and a juvenile adjudication for battery. The court stated that it appreciated defendant's apology, but noted that it was insufficient to diminish defendant's history of criminal violence. Further, defendant's conduct caused serious harm to B.T. and an appropriate sentence was necessary to deter others from engaging in similar behavior. The court merged the criminal sexual assault conviction into the greater conviction for aggravated criminal sexual assault and sentenced defendant to 30 years' imprisonment. The court ordered defendant to pay the cost of the proceeding, a sexual assault fee of $200, and provide a DNA standard if it was not already submitted. The sentence order awarded defendant presentence custody credit from January 25, 2010 to October 19, 2012. Defendant appeals.

¶ 32 ANALYSIS

¶ 33 I. Speedy Trial

¶ 34 Defendant argues that his statutory right to a speedy trial was violated when he was not brought to trial within 120 days of his arrest. In response, the State argues that the delay at issue, August 16 to November 5, 2010, was attributable to defendant because *defense counsel* did not object to the continuance, and *defendant's* objection was based on the mistaken belief that the speedy trial period had expired on August 16, 2010. We agree with the State.

¶ 35 A defendant in Illinois has both a constitutional and statutory right to a speedy trial. Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5(a) (West 2010); *People v. Crane,* 195 Ill. 2d 42, 48 (2001). Under section 103-5(a) of the Code of Criminal Procedure of 1963 (Code), a defendant in custody must be tried within 120 days from the date he was taken into custody unless a delay is occasioned by: (1) defendant; (2) an examination for fitness pursuant to section 104-13 of the Code; (3) a fitness hearing; or (4) an adjudication of unfitness to stand trial. 725 ILCS 5/103-5(a) (West 2010). Additionally, a delay is considered agreed to by defendant unless he "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) (West 2010). Defendant bears the burden of affirmatively showing that a speedy trial violation occurred by demonstrating that the delays in the record were not attributable to him. *People v. Wade,* 2013 IL App (1st) 112547, ¶ 16. A defendant that is not tried in accordance with the statutory speedy trial provisions "shall be discharged from custody." 725 ILCS 5/103-5(d) (West 2010).

¶ 36 The parties dispute whether the delay between August 16 and November 5, 2010, was attributable to the State. At the August 16, 2010, hearing, defense counsel motioned the court to set the case for trial. Thereafter, defendant said, "120, I've been violated my speedy trial." Defendant's statements were an assertion that his statutory right to a speedy trial had been violated prior to counsel's motion to set the case for trial. As of August 16, 2010, however, only

76 days of delay were attributable to the State.[1] The remainder of the delays were either agreed to by defendant or attributable to defendant's fitness proceedings, which stopped the speedy trial count.

¶ 37 This interpretation of defendant's statements is consistent with defendant's July 26, 2010, speedy trial objection. On that date, defendant asserted that his speedy trial rights had been violated. Defense counsel informed the court that some of the earlier continuances were attributable to defendant, and the court directed defendant to work with the fitness evaluator.

¶ 38 To construe defendant's August 16 statement as an objection to the continuance to set the case for trial would be contrary to defense counsel's request. During the hearing in question, defense counsel did not request a further continuance, but asked that the court set the case for trial. In response, the court set the matter for a trial date in November 2010. Significantly, defendant did not object to this course of action. Therefore, we hold that the delay from August 16 to November 5, 2010, was not attributable to defendant and his right to a speedy trial was not violated.

¶ 39 II. Ineffective Assistance

¶ 40 Defendant argues that he was denied his right to effective assistance of counsel because defense counsel: (1) failed to request a jury instruction on the lesser-included offense of battery;

[1] The parties agree that the January 25 to April 12, 2010, delay was attributable to the State but disagree as to the number of days. Prior to trial, the State said the period was 78 days. On appeal, the State argues that the period was only 76 days. After reviewing the record, we agree with the State's calculation on appeal. Even if we accept the 78-day calculation, it does not change the outcome of this issue because the statutory speedy trial time had not expired when defendant asserted that his right to a speedy trial had been violated.

and (2) counsel elicited testimony from Lane that B.T. had sex with defendant to "calm him down."

¶ 41 To prevail on a claim of ineffective assistance of trial counsel, defendant must establish that: (1) counsel's performance was so deficient that it fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Manning*, 241 Ill. 2d 319 (2011); *Strickland v. Washington*, 466 U.S. 668 (1984). Where the ineffective assistance claim can be disposed of on the ground that defendant did not suffer prejudice, the court need not decide whether counsel's errors were serious enough to constitute deficient performance. *People v. Eddmonds*, 143 Ill. 2d 501, 512 (1991). Defendant must overcome the strong presumption that the challenged action was the product of trial strategy. *People v. Evans*, 186 Ill. 2d 83, 93 (1999).

¶ 42 A. Lesser-Included Offense Instruction

¶ 43 Defendant argues that defense counsel provided ineffective assistance because he did not request a lesser-included offense instruction after he referred to defendant's acts in closing as a battery. We disagree.

¶ 44 Generally, a defendant may not be convicted of an offense he has not been charged with committing. *People v. Kolton*, 219 Ill. 2d 353, 359 (2006). However, in some cases, a defendant may be entitled to a jury instruction on an uncharged, lesser-included offense. *People v. Ceja*, 204 Ill. 2d 332, 359 (2003). An included offense is "established by proof of the same or less than all of the facts or a less culpable mental state (or both), than that which is required to establish the commission of the offense charged[.]" 720 ILCS 5/2-9(a) (West 2010). The identification of a lesser-included offense does not mean that defendant has the right to have the

jury instructed on the lesser offense. *People v. Baldwin*, 199 Ill. 2d 1, 13 (2002). A defendant is entitled to a lesser-included offense instruction only if the evidence at trial is such that a jury could rationally find defendant guilty of the lesser offense, and acquit him of the greater. *People v. Medina*, 221 Ill. 2d 394, 405 (2006). The decision to offer a lesser-included offense instruction is generally viewed as one of trial strategy with no bearing on the competency of counsel. *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006).

¶ 45 To determine if a battery instruction was warranted, we must first determine if battery is a lesser-included offense of aggravated criminal sexual assault as charged in this case. To be found guilty of battery, the evidence must establish that defendant "knowingly without legal justification by any means (1) causes bodily harm to an individual." 720 ILCS 5/12-3(a) (West 2010). Therefore, the State must prove defendant's specific intent or knowledge to cause bodily harm. In contrast, such intent or knowledge is not an element of aggravated criminal sexual assault as charged in this case. *People v. Casey*, 179 Ill. App. 3d 737, 741-42 (1989); *People v. Leonard*, 171 Ill. App. 3d 380, 390 (1988).

¶ 46 Here, the State charged defendant with aggravated criminal sexual assault in that he "knowingly committed an act of sexual penetration upon [B.T.] by the use of force or threat of force and during the commission of the offense caused bodily harm to [B.T.] by striking her." The State was not required to prove defendant's specific intent to cause bodily harm to B.T. in order to convict defendant of aggravated criminal sexual assault. Because defendant could be convicted of aggravated criminal sexual assault without proof of one of the necessary elements of battery, battery was not a lesser-included offense, and defense counsel's failure to request a jury instruction on battery did not constitute error.

¶ 47 B. Lane Testimony

¶ 48 Defendant also argues that defense counsel provided ineffective assistance when he elicited testimony from Lane that B.T. had sex with defendant to "calm him down," which contradicted defendant's testimony. We disagree.

¶ 49 Defendant has not demonstrated that he suffered prejudice as a result of Lane's testimony. Where an ineffective assistance claim can be disposed of on the ground that defendant did not suffer prejudice, we need not determine whether counsel's actions constituted deficient performance. *Eddmonds*, 143 Ill. 2d at 512.

¶ 50 The evidence in the instant case, apart from Lane's testimony, readily established defendant's guilt of the charged offenses. B.T. testified that she was involved in a physical altercation with defendant. Thereafter, defendant held a knife to B.T.'s throat and forced her to have oral and vaginal sex. Afterward, defendant hit B.T. several more times and dragged her around the apartment by her hair. Photographs of B.T.'s injuries showed numerous contusions and abrasions that were consistent with B.T.'s description of the incident. Minton confirmed that DNA taken from a sperm cell that was recovered in the sexual assault examination matched defendant's DNA. Hess's testimony established that defendant considered B.T. to be his property. Defendant admitted that he was involved in a physical altercation with B.T., but stated that the sex was consensual. Defendant's testimony, however, was inconsistent and impeached by his prior convictions.

¶ 51 Defendant has not established that the exclusion of Lane's testimony would have changed the outcome of the proceeding. To the contrary, Lane's testimony was likely beneficial to defendant's case as she refuted B.T.'s testimony that she told Lane that defendant had sexually assaulted her, and raised questions about B.T.'s credibility. Therefore, defendant has not established that he received ineffective assistance of counsel.

¶ 52 III. Sentence

¶ 53 Defendant argues that his 30-year sentence was excessive in light of his expressed remorse, history of mental illness and addiction, and lack of a history of significant felony convictions. We disagree.

¶ 54 The defendant's sentence may not be altered on review absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). "A sentence which falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense." *People v. McFadden*, 2014 IL App (1st) 102939, ¶ 51. We give great deference to the trial court's sentencing decision as the trial court is in a better position to determine the appropriate sentence. *People v. Reed*, 376 Ill. App. 3d 121, 127 (2007). We presume that the trial court considered all mitigating evidence absent some indication, other than the sentence itself, to the contrary. *People v. Marlow*, 303 Ill. App. 3d 568, 572 (1999).

¶ 55 The sentencing range for aggravated criminal sexual assault, a Class X felony, is 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant's 30-year sentence was at the top of the sentencing range; however, defendant has not established that his sentence was manifestly disproportionate to the nature of the offense. Defendant's presentence investigation report stated that defendant had numerous prior felony and misdemeanor convictions, which included a variety of battery-related convictions. Additionally, the trial court noted that defendant's acts caused serious harm to B.T., an appropriate sentence was necessary to deter others, and defendant's apology was insufficient in light of his extensive criminal history. Although the trial court did not specifically consider defendant's history of mental illness on the record, defendant did not establish that the court failed to consider this potentially mitigating

factor, which was part of defendant's presentence investigation report. See *Marlow*, 303 Ill. App. 3d at 572. The trial court considered all the relevant factors and fashioned a sentence that was proportionate to the offense and justified in light of defendant's criminal history. Therefore, we affirm defendant's 30-year prison sentence.

¶ 56 IV. Fines and Fees

¶ 57 Defendant argues that his fines and fees must be reduced because the State Police Operations Assistance Fund fee, State Police Services Fund fee, drug court fee, and court fund fee are subject to offset by the $5-per-day presentence custody credit, and the trial court improperly imposed a $250 DNA fee because he had already submitted a DNA sample. We agree.

¶ 58 A. DNA Fee

¶ 59 Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2012)) authorizes the trial court to order the taking, analysis and indexing of a defendant's DNA, and the payment of a $250 analysis fee, only where a defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). When a defendant is already registered in the database as a result of a prior felony conviction, the trial court is without authority to order a subsequent DNA analysis and fee. *Id.*

¶ 60 Here, the presentence investigation report states that defendant's DNA was registered prior to sentencing. This information was confirmed by a facsimile from the Illinois State Police in the appendix of defendant's brief that states defendant's DNA analysis was completed in March 2003. Based on this record, we vacate defendant's duplicate DNA analysis fee.

¶ 61 B. $5-Per-Day Presentence Custody Credit

¶ 62 Section 110-14 of the Code allows a "person incarcerated on a bailable offense who does

not supply bail and against whom a fine is levied on conviction of such offense *** a credit of $5 for each day so incarcerated." 725 ILCS 5/110-14(a) (West 2012). The credit is applicable only to a defendant's fines. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006).

¶ 63 After reviewing the record, we conclude that defendant is entitled to presentence incarceration credit. Therefore, we remand the cause to the trial court with direction to calculate the amount of defendant's presentence custody credit and apply it to defendant's fines.

¶ 64 CONCLUSION

¶ 65 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in part, vacated in part and this cause is remanded with direction.

¶ 66 Affirmed in part, vacated in part; cause remanded with direction.

¶ 67 PRESIDING JUSTICE MARY McDADE, dissenting.

¶ 68 The majority finds that there was no violation of defendant's statutory and constitutional right to a speedy trial. For the reasons that follow, I do not agree with that conclusion and, therefore, respectfully dissent.

¶ 69 The basis for the majority's decision is its agreement with the State's argument that "*defense counsel* did not object to the continuance and *defendant's* objection was based on a mistaken belief that the speedy trial period had expired on August 16, 2010." *Supra*, ¶ 34. (Emphasis in original.)

¶ 70 When I look at the language in ¶ 7 quoted from the August 16, 2010, transcript, I see:

"[Defendant]: I ask for speedy trial.

***

"[Defendant]: Speedy trial, 120"

It is an interesting sort of interpretation that does not recognize that plain language as "an oral demand for trial on the record." 725 ILCS 5/103-5(a)(5)(West 2010) It is certainly true that defendant believed, as did his attorney, that his speedy trial rights had already been violated. It is equally true that defendant made a plain and unequivocal demand for a speedy trial on the record and that demand was totally ignored by the trial judge. See ¶ 7, *supra.*

¶ 71 The exercise of a defendant's right to a speedy trial ought not be a game of "got'cha." The right of an Illinois defendant to be tried speedily is recognized and guaranteed by the Illinois Constitution (Ill. Const. 1970, art I, § 8) and by statutory enactment (725 ILCS 5-103-5(a)(West 2010). It should not be thwarted by judicial word-smithing.

¶ 72 Because I believe defendant's conviction should be reversed on speedy trial grounds, I do not reach the additional issues raised by the defendant and analyzed by the majority.