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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-1876
	)	
JAVIER F. RODRIGUEZ,	)	Honorable
	)	Timothy Q. Sheldon,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Bowman and Schostok concurred in the judgment.

**ORDER**

*Held:* Defendant was not denied his constitutional right to a speedy trial, as the delay of 112 days between mistrial and retrial was not presumptively prejudicial, and in any event there were sound reasons for the delay and defendant asserted no prejudice.

¶ 1 Defendant, Javier F. Rodriguez, appeals from his convictions of aggravated driving under the influence (625 ILCS 5/11-501(a)(2) (West 2008)) and aggravated driving while his license was revoked (625 ILCS 5/6-303 (a) (West 2008)). He contends that he was denied his constitutional right to a speedy trial when he was retried 112 days after a mistrial. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On June 28, 2009, defendant was arrested, and he remained in custody. On July 20, 2009, defendant filed a speedy-trial demand. On November 9, 2009, trial began. That same day, the court granted defendant's motion for a mistrial based on remarks made by the State in closing argument. Defendant renewed his speedy-trial demand. Retrial was ultimately set for March 1, 2010.

¶ 4 On February 25, 2010, defendant moved to dismiss, arguing that he was denied his constitutional right to a speedy trial. The court denied the motion, finding that the delay between the mistrial and retrial was reasonable. The court noted court congestion, that the mistrial occurred the day before Thanksgiving, and that an entire month of the docket was reserved for a death-penalty case, which later was delayed because a witness was seriously ill.

¶ 5 On March 1, 2010, defendant was retried and was convicted. He was sentenced to seven years' incarceration, his motion to reconsider sentence was denied, and he appeals.

¶ 6 II. ANALYSIS

¶ 7 Defendant argues that he was denied his constitutional right to a speedy trial. The State contends that the 112 days<sup>1</sup> between the mistrial and the retrial were not presumptively prejudicial, resulting in no speedy-trial violation.

¶ 8 When deciding whether a defendant has been denied a speedy trial after a mistrial has been declared, we are concerned with the constitutional right to a speedy trial (U.S. Const., amend. VI), rather than the statutorily prescribed time limitations set out in section 103-5 of the Code of Criminal

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<sup>1</sup>The State counts the days at 113, but it apparently counts both the first and the last day of the period, when the days should be counted by excluding the first day and including the last. 5 ILCS 70/1.11(West 2008); *People v. Solheim*, 54 Ill. App. 3d 379, 386 (1977).

Procedure of 1963 (725 ILCS 5/103-5 (West 2008)). *People v. Wills*, 153 Ill. App. 3d 328, 335 (1987).

¶9 “[T]he ultimate determination of whether a defendant’s constitutional speedy-trial right has been violated is subject to *de novo* review.’ ” *People v. Silver*, 376 Ill. App. 3d 780, 783 (2007) (quoting *People v. Crane*, 195 Ill. 2d 42, 52 (2001)). “However, we will uphold the trial court’s factual determinations unless they are against the manifest weight of the evidence.” *Id.*

¶10 Four factors are considered when determining whether a defendant’s constitutional right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant’s assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay. *Id.* The threshold question is whether the delay is presumptively prejudicial. *Id.* at 784 (citing *People v. Belcher*, 186 Ill. App. 3d 202, 205-06 (1989)). If the length of the delay is presumptively prejudicial, the court should balance the remaining three factors. *Id.* “Thus, the first factor has a triggering function, and unless a presumptively prejudicial period of delay occurs, a court need not conduct the remainder of the analysis.” *Id.*

¶11 In determining whether the delay was presumptively prejudicial, we look at the length of the time between the mistrial and the new trial. See *Wills*, 153 Ill. App. 3d at 336. “Although section 103-5 implements the constitutional right to a speedy trial, the two are not coextensive. However, even though a determination of whether the constitutional right to a speedy trial has been violated is a judicial question, the time limitation prescribed by the legislature may nevertheless be considered.” *Id.* at 335. Section 103-5(a) requires a defendant in custody to be brought to trial within 120 days, and delays close to that amount of time between the declaration of a mistrial and retrial have been viewed as too short to be presumptively prejudicial. *People, v. Daniels*, 76 Ill. App.

3d 646, 651 (1979) (112 days) (citing *People v. Bazzell*, 68 Ill. 2d 177, 181 (1977) (131 days), and *People v. Gilbert*, 24 Ill. 2d 201, 204 (1962) (121 days)). However, in *Wills*, we held that 152 days was sufficient to trigger review of the remaining factors. *Wills*, 153 Ill. App. 3d at 336.

¶ 12 Here, as in *Daniels*, the delay was 112 days, which was below both the statutory period that we may use as a guide and the delays that were too short to be presumptively prejudicial in *Bazzell* and *Gilbert*. Thus, there was no speedy-trial violation.

¶ 13 In any event, even if the remaining factors were considered, the result would remain the same. The court stated reasonable reasons for the delay. The mistrial occurred before a holiday, a death-penalty case was pending on the docket, and the death-penalty case was unexpectedly delayed due to illness. Although defendant asserted his right to a speedy trial, he has not articulated any specific prejudice from the delay other than that he remained incarcerated during that time. In particular, he has not asserted that his defense was impaired. Indeed, he concedes that the delay did not hamper the preparation of his case in any way. See *id.* at 336-37; see also *Daniels*, 76 Ill. App. 3d at 651 (defendant in custody did not articulate prejudice). Accordingly, even if all of the factors were considered, there was no speedy-trial violation.

¶ 14

### III. CONCLUSION

¶ 15 The delay of 112 days between the mistrial and retrial was not presumptively prejudicial. Accordingly, defendant was not denied his constitutional right to a speedy trial, and we affirm the judgment of the circuit court of Kane County.

¶ 16 Affirmed.