

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY JAMES MOORE,

Defendant-Appellant.

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UNPUBLISHED

December 12, 2000

No. 219894

St. Clair Circuit Court

LC No. 98-002482-FH

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

Defendant was convicted by a jury of receiving and concealing stolen property with a value in excess of \$100, MCL 750.535(1); MSA 28.803(1). He was sentenced to four to fifteen years' imprisonment as a fourth habitual offender, MCL 769.10; MSA 28.1082. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court did not have jurisdiction over defendant's case. Specifically, defendant contends that the case should have been tried in Wayne County because the prosecution failed to show that defendant committed a crime in St. Clair County. This issue is really one of improper venue, not jurisdiction. Whether venue is proper before a particular trial court is a question of law that is reviewed de novo. *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996).

Testimony was presented both at the motion hearing and at trial that defendant possessed and controlled a stolen car in St. Clair County. Since there was evidence that defendant possessed the property in St. Clair County, we must determine whether possession or control of the stolen property is an element of receiving and concealing stolen property. Defendant claims that the only essential element of the crime of receiving and concealing stolen property is the receipt of the property. We disagree. MCL 750.535; MSA 28.803 states:

(1) A person who buys, receives, *possesses*, conceals, or aids in the concealment of *stolen*, embezzled, or converted money, goods, or property knowing the money, goods, or property to be stolen, embezzled, or converted, if the property purchased, received, *possessed*, or concealed exceeds the value of \$100.00, is guilty of a felony. [Emphasis added.]

Furthermore, this Court has previously specifically indicated that possession is one of the elements of receiving and concealing stolen property. *People v Harris*, 82 Mich App 135, 137; 266 NW2d 477 (1978), *overruled on other grds* 446 Mich 435 (1994). Therefore, it is apparent that defendant committed at least one of the elements of the charged offense in St. Clair County. When a felony occurs across county lines, MCL 762.8; MSA 28.851 governs. It states that:

Whenever a felony consists or is the culmination of 2 or more acts done in the perpetration thereof, said felony may be prosecuted in any county in which any 1 of the said acts was committed.

Under this statute, contrary to defendant's position on appeal, venue was proper in both Wayne and St. Clair Counties.

Defendant's next claim is that he was deprived his constitutional right to a speedy trial. We disagree. Speedy trial claims raise constitutional issues that are reviewed de novo. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000).

First, it appears as if defendant contends his right to a speedy trial is intertwined with MCR 6.004(C), which provides that defendants waiting longer than six months for trial are entitled to release from jail on personal recognizance. This argument is without merit. See *People v O'Quinn*, 185 Mich App 40, 45-48; 460 NW2d 264 (1990). Next, in determining if a defendant's right to a speedy trial has been violated, this Court considers (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999); *People v Williams*, 163 Mich App 744, 755; 415NW2d 301 (1987).

Defendant's speedy trial claim fails with respect to all four elements. Defendant was in jail, prior to trial, for approximately eight months. Prejudice is presumed only after eighteen months. *People v Grimmett*, 388 Mich 590, 606; 202 NW2d 278 (1972). Furthermore, this court upheld a delay of 293 days in *People v Grandberry*, 102 Mich App 769, 773; 302 NW2d 573 (1980), despite the fact that there was no explanation for the delay. In this case, the time of the delay is shorter than in *Grandberry*, and there is a rational explanation for the delay – defendant requested an adjournment in order to bring pretrial motions. Therefore, the length of delay between defendant's arrest and trial weighs in favor of the prosecution. The reason for the delay also weighs against defendant because initial delay was a result of defendant's request for adjournment. The third factor also weighs against defendant. Defendant asserted his right to a speedy trial on February 8, 1999. Defendant's trial came within six weeks of this assertion. *Cain, supra* at 114. The fourth factor to be considered is whether there was prejudice to defendant as a result of his trial delay. In this regard, both prejudice to his defense and to his person must be considered. *Cain, supra* at 114. Defendant is held accountable for the amount of delay he is responsible for and must show actual injury when the delay is less than eighteen months. *People v Collins*, 388 Mich 680, 696; 202 NW2d 769 (1972). Defendant has failed to show prejudice that would weigh in his favor. As stated above, defendant caused the delay in part, and even though incarceration is of itself prejudicial, it does not create enough prejudice to swing the balancing test in favor of defendant. *Id.* In addition, of the two forms of prejudice, prejudice to defendant's ability to defend is the most important consideration, *Grandberry, supra*

at 774, and defendant has failed to indicate any prejudice to his defense. Accordingly, defendant's right to a speedy trial was not infringed in the instant case.

Defendant's last argument on appeal is that the trial court erred in ruling that defendant's prior convictions could be used by the prosecution for impeachment purposes under MRE 609. This issue is not properly preserved for appellate review. Defendant chose not to testify at trial. In order to preserve a trial court's ruling regarding the admissibility of prior convictions for impeachment purposes a defendant must testify at trial. *People v Finley*, 431 Mich 506, 521; 431 NW2d 19 (1988). Accordingly, this Court may only review this issue for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). After reviewing this claim for plain error, we are satisfied that the trial court did not commit plain error that affected defendant's rights when it ruled that his prior convictions may be used to impeach him.

Affirmed.

/s/ Roman S. Gribbs  
/s/ Michael J. Kelly  
/s/ David H. Sawyer