

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY STEWART SHEPPARD,

Defendant-Appellant.

UNPUBLISHED

May 7, 2002

No. 226927

Huron Circuit Court

LC No. 99-004101-FH

Before: Cooper, P.J., and Hood and Kelly, JJ.

MEMORANDUM

Defendant appeals by leave granted the order denying his motion to dismiss based on a violation of his right to a speedy trial. We reverse.

Defendant was charged with arson in connection with a fire that occurred on February 22, 1991. Defendant left the state in 1991, and a complaint and warrant were issued against him on March 12, 1993. The police made minimal efforts to locate defendant and his mother, a codefendant, until the State Police Fugitive Bureau located them in 1999, using public records. The trial court denied defendant's motion to dismiss by concluding that the prosecutor and defendant were equally impaired by any delay. Since 1991, two key witnesses had suffered strokes that affected their memories, and key evidence, including insurance reports and the incendiary bottle with accelerant, were lost or destroyed due to the passage of time.

Whether a defendant was denied his constitutional right to a speedy trial presents a mixed question of fact and law. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). Factual findings are reviewed for clear error, while the constitutional question presents a question of law subject to de novo review. *Id.* To determine whether a defendant has been denied a speedy trial, we balance four factors: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to the defendant from the delay. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). A delay of more than eighteen months results in a presumption of prejudice, and the prosecutor has the burden of proving lack of prejudice to the defendant. *Gilmore, supra* at 459.

The trial court erred in concluding that defendant's right to a speedy trial was not violated. The length of the delay, in excess of six years, was substantial. The reason for the delay was the prosecution's failure to take reasonable steps to locate defendant. There was no indication that defendant knew of a potential warrant for his arrest prior to leaving this state.

Thus, defendant had no reason to assert his right to a speedy trial until he was apprehended. Defendant made a specific showing of prejudice. The memories of two key witnesses were impaired by health problems, and other key evidence was no longer available. The prosecution failed to meet its burden of showing lack of prejudice. Furthermore, any prejudice to the prosecution should not have been used to offset the prejudice to defendant. While the United States Supreme Court has recognized that delay may prejudice the prosecution, *Doggett v United States*, 505 US 647, 655-656; 112 S Ct 2686; 12 L Ed 2d 520 (1992), the appropriate rule to be applied must focus on prejudice to the defendant.

Reversed.

/s/ Jessica R. Cooper

/s/ Harold Hood

/s/ Kirsten Frank Kelly