STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2005
v	No. 256561 Muskegon Circuit Court
STERLING BROADEN, Defendant-Appellant.	LC No. 02-048280-FH

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Defendant Sterling Broaden appeals as of right from his bench trial conviction of being a prisoner in possession of contraband.[1] We affirm.

I. Basic Facts And Procedural History

Broaden was observed fidgeting with his hands down his pants in the correctional facility's visiting room. Corrections Officer John Wilbur strip-searched Broaden in the "shake down" room and observed a gray foreign object in Broaden's rectal area. A second corrections officer, Lieutenant Ricky Wilson, was called into the shake down room. Lieutenant Wilson did not observe the object in Broaden's rectal area. As Lieutenant Wilson and Broaden were leaving the shake down room, Officer Wilbur discovered a gray object in the trashcan located in the room. The object was later determined to be a bag of marijuana wrapped in duct tape. Broaden was charged with and convicted of one count of being a prisoner in possession of contraband.

II. Request To Withdraw Waiver Of Jury Trial

A. Standard of Review

Broaden argues that the trial court erred in denying his request to withdraw his waiver of a jury trial. We review a trial court's denial of a motion to withdraw a jury waiver for an abuse of discretion.[2] A trial court has the discretion to withdraw a defendant's waiver of a jury trial.[3]

[1] MCL 800.281(4).

[2] *People v Wagner*, 114 Mich App 541, 559; 320 NW2d 251 (1982).

[3] *Id.*

However, a defendant's request to withdraw his waiver must be timely made and not made with the purpose of delay.[4]

B. Applying The Law

When Broaden requested to withdraw his waiver, Broaden's trial had already been adjourned four times and almost 11 months had passed since the first scheduled trial date. Following such a delay, it was certainly reasonable for the trial court to decline delaying Broaden's trial any longer.

Furthermore, Broaden argued that the trial court should have withdrawn his waiver because, following his waiver, the trial judge became aware of threatening remarks that Broaden had made toward him. Broaden was found guilty of making the threatening remarks on October 10, 2003. If Broaden was concerned about the effect of these remarks on the trial judge, then he could have requested the trial court to withdraw his jury waiver anytime thereafter. Instead, Broaden chose not to request a withdrawal of his waiver until a week before his trial.

Additionally, we find no indication that the trial judge harbored any bias toward Broaden.

We conclude that the trial court did not abuse its discretion in denying Broaden's request to withdraw his waiver of a jury trial.

III. Right To A Speedy Trial

A. Standard of Review

Broaden argues that his right to a speedy trial was violated. We review a claim of a speedy trial violation de novo.[5]

B. Legal Standards

A criminal defendant has a constitutional and statutory right to a speedy trial.[6] We use a four factor balancing test to determine whether a defendant's right to a speedy trial has been violated.[7] The test requires that we consider: 1) the length of the delay; 2) the reasons for the delay; 3) defendant's assertion of this right; and 4) prejudice to the defendant.[8]

[4] *Id*. at 558-559; *People v Haddad*, 306 Mich 556, 559; 11 NW2d 240 (1943).

[5] *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999).

[6] US Const, Ams VI and XIV; Const 1963, art I, § 20; MCL 768.1.

[7] *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *Cain, supra* at 112.

[8] *Cain, supra* at 112.

C. Applying The Standards

The length of the delay is not determinative in a speedy trial claim.[9] Rather, the length of delay merely determines which party has the burden to prove prejudice. Any delay is measured from the date Broaden was charged, November 14, 2002.[10] Defendant's trial commenced on January 27, 2004. The length of delay was, therefore, approximately 14½ months.[11] Thus, Broaden bears the burden to show actual prejudice.[12]

This Court examines the reasons for delay and then assigns each individual delay to either the prosecutor or the defendant.[13] The trial court originally scheduled Broaden's trial to begin on March 4, 2003. The trial court adjourned the trial date to June 10, 2003, after Broaden's request for DNA testing. This 14-week delay for DNA testing is attributable to Broaden.[14] The trial court then adjourned Broaden's trial from June 10, 2003, to July 24, 2003, for appointment of a new public defender. Delays due to the substitution of counsel are attributable to the defendant.[15] This six-week delay for substitution of counsel is also attributable to Broaden. The trial court then adjourned Broaden's trial from July 24, 2003, to September 30, 2003, because of docket congestion. This 9½-week delay for docket congestion is minimally attributable to the prosecution.[16] The trial court then adjourned Broaden's trial from September 30, 2003, to January 27, 2004, so that Broaden could seek an interlocutory appeal of the trial court's decision not to dismiss his public defender. This four-month delay is attributable to Broaden.[17] Of the 14½ month delay from when Broaden was charged to the start of his trial, only 9½ weeks are minimally attributable to the prosecution. This factor weighs heavily against Broaden.

Broaden asserted his right to a speedy trial in February 2004, one month after his trial began but three months before his trial recommenced in May 2004. This factor weighs in Broaden's favor.

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[9] *Id.*

[10] *United States v Marion*, 404 US 307; 92 S Ct 455; 30 L Ed 2d 468 (1971); *People v Rosengren*, 159 Mich App 492, 506 n 16; 407 NW2d 391 (1987) (stating that the right to a speedy trial arises when there has been a formal charge brought against the defendant).

[11] The right to a speedy trial requires that the trial *commence* within a reasonable time under the given circumstances. *People v Hess*, 39 Mich App 28, 31; 197 NW2d 118 (1972); *People v Spalding*, 17 Mich App 73, 75; 169 NW2d 163 (1969).

[12] *People v Holtzer*, 255 Mich App 478, 492; 660 NW2d 405 (2003).

[13] *People v Ross*, 145 Mich App 483, 491; 378 NW2d 517 (1985).

[14] *People v Gilmore*, 222 Mich App 442, 461; 564 NW2d 158 (1997).

[15] *People v Taylor*, 110 Mich App 823, 829; 314 NW2d 498 (1981).

[16] *Gilmore*, *supra* at 460.

[17] *People v Hammond*, 84 Mich App 60, 67; 269 NW2d 488 (1978).

Broaden asserts that his defense was prejudiced because the two corrections officers who searched him were unable to recall potentially exculpatory facts—namely, that he was ever in a position to drop the marijuana plug into the trashcan. General allegations of unspecified memory loss are insufficient to establish that defendant suffered any prejudice.[18] Broaden has not pointed to any evidence that was lost or forgotten that would have rebutted the reasonable inference that he possessed the marijuana plug. This factor weighs against Broaden.

Based on application of the four factor balancing test, we conclude that the trial court did not err in denying Broaden's motion to dismiss for a speedy trial violation.

IV. Request To Discover Work Records

A. Standard of Review

Broaden argues that the trial court erred in denying his request to discover Officer Wilbur's work records. We review a trial court's decision regarding a discovery request for abuse of discretion.[19]

B. Freedom Of Information Act (FOIA)

We disagree with both parties' assertion Officer Wilbur's work records are protected from discovery by FOIA. Law enforcement personnel records are exempted from disclosure under FOIA.[20] However, the FOIA only exempts law enforcement personnel records when the public is requesting information about the affairs of government. FOIA does not govern what is discoverable in a criminal action.

C. Discovery Of Work Records

A trial court should grant discovery when the information sought "is necessary to a fair trial and a proper preparation of a defense."[21] But a criminal defendant does not have a general right to discovery.[22] Broaden argues that Officer Wilbur's work records would show that he had previously been laid off for carrying "green money," which is money that is used to furnish drugs in the prison. Broaden stated that his defense would be that Officer Wilbur planted the marijuana plug in the trashcan in the shake down room because Officer Wilbur needed to demonstrate that he was in fact an effective officer. Because Broaden's argument is based on mere speculation that Officer Wilbur had a motive to prove he was a good officer after he was allegedly caught with green money, he has not shown that the information he sought "is

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[18] *Gilmore*, *supra* at 462.

[19] *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003).

[20] MCL 15.243(1)(s)(ix).

[21] *People v Laws*, 218 Mich App 447, 455; 554 NW2d 586 (1996).

[22] *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994).

necessary to a fair trial and a proper preparation of a defense." Therefore, the trial court did not abuse its discretion in denying defendant's request to discover Officer Wilbur's work records.

Broaden also argues that the trial court's denial of his request to discover Officer Wilbur's work records violated his right of confrontation. But because Broaden failed to properly address the merits of this assertion, he has abandoned the issue.[23]

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey

[23] *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).