

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT DERRELL RUCKER,

Defendant-Appellant.

UNPUBLISHED
November 9, 2010

No. 294493
Saginaw Circuit Court
LC No. 08-030784-FC

Before: CAVANAGH, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(1)(b), possession of a firearm during the commission of a felony, MCL 750.227b, unlawful distribution of an imitation controlled substance, MCL 333.7341(3), and unlawful possession with intent to distribute an imitation controlled substance, MCL 333.7341(3). Defendant was sentenced to life in prison without the possibility of parole for the murder conviction, which is to be served concurrently to his sentences of 16 to 24 months' imprisonment for the controlled substance convictions and consecutively to his two year sentence for the felony-firearm conviction. Defendant appeals as of right. Because defendant was not denied his right to a speedy trial, we affirm.

On appeal, defendant argues that he was denied his constitutional right to a speedy trial. We disagree. Whether a defendant was denied his right to a speedy trial is a mixed question of fact and law. *People v Waclawski*, 286 Mich App 634, 664; 780 NW2d 321 (2009). Findings of fact are reviewed for clear error, and constitutional issues are reviewed de novo. *Id.*

A criminal defendant has the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20. To determine whether a defendant's right to a speedy trial was violated, we weigh the following four factors: "(1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant." *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006).

The first factor is the length of delay. The delay period begins on the date the defendant is arrested. *Id.* at 262. Here, defendant was arrested for the murder of Stanley Kelsey on March 26, 2008. His trial commenced on July 28, 2009, and he was convicted on August 3, 2009. Thus, the length of delay was 16 months. Because the length of the delay was less than 18

months, defendant has the burden to show that he was prejudiced by the delay. *Waclawski*, 286 Mich App at 665.

The second factor is the reason for the delay. “In assessing the reasons for delay, the court must examine whether each period of delay is attributable to the prosecutor or to the defendant.” *People v Walker*, 276 Mich App 528, 541-542; 741 NW2d 843 (2007), vacated in part on other grounds 480 Mich 1059 (2008). Delays caused by the court system, such as docket congestion, are attributable to the prosecution, but “are given a neutral tint and are assigned only minimal weight[.]” *Williams*, 475 Mich at 263 (quotation omitted).

Defendant’s trial was adjourned four times. The first adjournment, from July 29, 2008, to October 14, 2008, occurred because the medical examiner was to be out of the country on July 29, 2008. The medical examiner was a “necessary witness” for the prosecution; therefore, this delay is attributable to the prosecution. The second adjournment, to January 6, 2009, occurred because defense counsel was scheduled to be out of the country on October 14, 2008, and because the preliminary examination transcripts had not yet been received and pretrial motions had not yet been made. This adjournment is attributable to both parties. Defendant’s trial was adjourned for the third time, to May 19, 2009, because the trial court had two trials scheduled for January 6, 2009, and the other case was older and no other judge was available to preside over defendant’s trial. While this delay is attributable to the prosecution, it is only assigned minimal weight. *Williams*, 475 Mich at 263. The last adjournment occurred because the prosecutor was scheduled to be on vacation on May 19, 2009. This delay is also attributable to the prosecution. Even if we were to ignore the fact that defendant stipulated to the first two adjournments, only two of the four adjournments are directly attributable to the prosecution and given significant weight, while the other two adjournments are either attributable to defendant or to the prosecution with minimal weight.

The third factor is the defendant’s assertion of his right to a speedy trial. If a defendant fails to promptly assert his right to a speedy trial, that fact weighs against a subsequent claim that his right was violated. *People v Rosengren*, 159 Mich App 492, 508; 407 NW2d 391 (1987). Defendant waited until March 2009—twelve months after he had been arrested—to object to any adjournment. Therefore, this factor weighs against a finding that defendant’s right to a speedy trial was violated.

The fourth factor is prejudice to the defendant. A defendant may experience prejudice to his person and prejudice to his defense while awaiting trial. *Williams*, 475 Mich at 264. Prejudice to the person results when there is “oppressive pretrial incarceration leading to anxiety and concern.” *People v Collins*, 388 Mich 680, 694; 202 NW2d 769 (1972). Prejudice to the defense results when the defense is prejudiced by delay, usually occurring when key witnesses become unavailable or cannot accurately recall events of the distant past. *Barker v Wingo*, 407 US 514, 532; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *Collins*, 388 Mich at 694. “Prejudice to the defense is the more serious concern, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Williams*, 475 Mich at 264 (internal quotations omitted). “General allegations of prejudice are insufficient to establish that a defendant was denied the right to a speedy trial.” *Walker*, 276 Mich App at 544-545.

Defendant does not argue that he suffered prejudice to his person; rather, he only argues that there was prejudice to his defense. He asserts that he suffered prejudice “through the

passage of time with witnesses changing their stories and being unable to support [his] defense of accident.” Defendant also asserts that he suffered prejudice because the jury did not “hear[] credible testimony that the firing of the pistol was unintended and accidental[.]” However, defendant does not specifically state which witnesses changed their stories or why their testimony was not credible. Moreover, all witnesses present during the shooting testified at trial; thus, defense counsel had the opportunity to cross-examine each witness and impeach their testimony if necessary. Defendant has failed to establish that he was prejudiced by the delay. Accordingly, defendant’s right to a speedy trial was not violated.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Elizabeth Gleicher