

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN GILBERT GOODLOE,

Defendant-Appellant.

UNPUBLISHED

October 5, 1999

No. 210534

Washtenaw Circuit Court

LC No. 96-005886 FH

Before: Talbot, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of false pretenses over \$100, MCL 750.218; MSA 28.415, and was sentenced to one year imprisonment. Defendant appeals as of right. We affirm.

This case arises from defendant's delivery of a TransAm to undercover FBI agents, knowing the vehicle's owner had reported it stolen in order to collect the insurance coverage. Defendant contends that he was entrapped by the combined conduct of the FBI agents, an FBI informant, and his parole officer. We disagree.

This Court reviews a trial court's finding concerning entrapment under the clearly erroneous standard. *People v Connolly*, 232 Mich App 425, 428-29; 591 NW2d 340 (1998). Entrapment occurs when: 1) the police engage in impermissible conduct that would induce a person similarly situated as the defendant, though otherwise law-abiding, to commit the crime, or 2) the police engage in impermissible conduct so reprehensible that it cannot be tolerated by this Court. *People v Juillet*, 439 Mich 34; 475 NW2d 786 (1991); *People v Fabiano*, 192 Mich App 523, 526; 482 NW2d 467 (1992).

The first prong of the entrapment test, on which defendant relies, requires the trial court to decide whether the police conduct would have induced a person similarly situated to the defendant to commit the crime, not whether it would have induced an average, law-abiding citizen to commit the offense. *Id.* Merely presenting the defendant with the opportunity to commit the crime of which he was convicted does not constitute entrapment. *People v Butler*, 444 Mich 965, 966; 512 NW2d 583 (1994).

During an evidentiary hearing, the witnesses gave completely different versions of the events leading up to defendant's delivery of the TransAm to the FBI. Defendant portrayed himself as an innocent bystander who was constantly pressured by police agents to provide stolen property and vehicles. In contrast, the FBI agent and informant testified that defendant offered to provide stolen vehicles and that he was ready and willing to commit criminal activities. They testified that defendant was never induced to provide stolen property and that he was not pressured in any way. According to their testimony, defendant was merely given the opportunity to engage in criminal activity he was already willing to commit. The trial court found this testimony more credible than that of defendant. We will not disturb the trial court's credibility determination because it is not clearly erroneous. MCR 2.613(C).

Defendant next contends that his constitutional right to a speedy trial was violated. While defendant was incarcerated in federal prison in Pennsylvania, he requested extradition to Michigan to stand trial on the instant charges. Plaintiff denied his request for extradition. Defendant claims this denial violated his constitutional right to a speedy trial because he did not stand trial on the state charges until after his release from federal prison and he was prejudiced by that delay because two potential witnesses died and the memories of other witnesses were not as fresh as they would have been earlier.

Whether a defendant was denied his constitutional right to a speedy trial is a mixed question of fact and law. This Court will review the trial court's factual findings under the clearly erroneous standard, and review constitutional questions de novo. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). A defendant's right to a speedy trial arises from US Const, Am VI and Const 1963, art 1, § 20. To decide whether a defendant's right to a speedy trial was violated, the trial court must consider the following factors: 1) the length of delay; 2) the reason for delay; 3) defendant's assertion of the right to a speedy trial; and 4) prejudice to the defendant. *People v Grimmer*, 388 Mich 590, 605-606; 202 NW2d 278 (1972); *Gilmore, supra* at 459. When the delay is less than eighteen months, the burden is on the defendant to prove resulting prejudice. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). A delay of more than eighteen months is presumed to be prejudicial and the burden is on the prosecution to prove lack of prejudice. Once prejudice is assumed, the trial court inquires into the other balancing factors to be considered. *Gilmore, supra* at 459; *People v Simpson*, 207 Mich App 560, 563-564; 526 NW2d 33 (1994).

In this case, the trial court found the delay was only seventeen months, measured from the date defendant notified plaintiff of his federal incarceration and requested extradition to the date defendant was arrested. Therefore, the burden remained with defendant to prove prejudice resulting from the delay. *Daniel, supra* at 51.

The second factor of the test is the reason for delay. The prosecution argues there was adequate reason for the delay because defendant was incarcerated in federal prison. However, plaintiff became aware of defendant's federal incarceration in October 1994 and denied his request for extradition in November 1994. In *People v Rodriguez*, 47 Mich App 483, 488; 209 NW2d 441 (1973), this Court held that a defendant's incarceration in federal prison in another jurisdiction is not a sufficient reason to justify delay in bringing a defendant to trial, absent an effort to extradite the defendant. "If the state makes a reasonably timely effort to extradite an out-of-state prisoner and is

unsuccessful, then the state has done what it can. However, where no effort is made, as in this case, the requirements of the law have not been met.” *Id.*

The third factor of the test is whether defendant asserted his right to a speedy trial. The defendant’s failure to assert his right does not necessarily constitute waiver. “However, a defendant’s claim that his right to a speedy trial was violated is heavily offset if he does not assert his right.” *People v Lowenstein*, 118 Mich App 475; 325 NW2d 462 (1982). In this case, defendant informally requested extradition, but there was no evidence that defendant asserted his right to a speedy trial between the November 1994 denial of his request for extradition and the May 1996 filing of his motion to dismiss based on speedy trial violation.

The fourth factor of the test is prejudice to defendant. Prejudice should be assessed in light of the interests which the right to a speedy trial was designed to protect: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. “Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Grimmett, supra* at 606.

Plaintiff argues that defendant was not prejudiced by the delay in bringing him to trial. Defendant submits that his mother and brother died in the fall of 1992 and that his father began to suffer from Alzheimer’s before trial. Defendant likewise argues that the memory of other witnesses was generally impaired by the delay in bringing his case to trial. However, defendant does not indicate how these witnesses would have helped his defense or indicate what they would have testified. Such general allegations of prejudice are insufficient to establish that a defendant was denied his constitutional right to a speedy trial. *Gilmore, supra* at 462.

In sum, because the delay of seventeen months is not presumed prejudicial to defendant, and because defendant has not demonstrated any prejudice resulting from the delay, we do not believe that dismissal is warranted in this case.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey