ANSWER TO QUESTION NO. 6

How should the court rule on the motion to suppress Peter's statement?

The trial court should deny the motion to suppress Peter's statement to Officer Jones.

The right against self-incrimination is guaranteed by both the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, §17; *Dickerson v US,* 530 US 428, 433 (2000); *People v Cheatham,* 453 Mich 1, 9 (Boyle, J.), 44 (Weaver, J.) (1996); *People* v *Bassage,* 274 Mich App 321, 324 (2007).

Where a defendant decides to speak and waive his *Miranda* rights, anything he says, or does not say, is admissible until he invokes his right to silence. *People vMcReavy,* 436 Mich 197, 217-218 (1990). Here, the facts inform us that defendant was informed of his *Miranda* rights and that "Peter understood his *Miranda* rights." Further, there is insufficient evidence indicating that Peter invoked his *Miranda* right to remain silent. Although Peter did not say anything for a significant amount of time while in custody, he did not unambiguously or unequivocally invoke the *Miranda* right to remain silent. *Berghuis v Thompkins,* US ; 130 S Ct 2250, 2260; 176 L Ed 2d 1098, 1112-1113 (2010). At most, Peter only indicated that he was tired and that he wanted to go to bed. At no point did Peter state that he wanted to remain silent or that he did not want to talk to police. *Id.* Thus, Peter did not invoke his "right to cut off questioning." *Id.* citing *Michigan v Mosley,* 423 US 96, 103 (1975).

Notwithstanding a defendant's failure to invoke his *Miranda* right to remain silent, statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly and intelligently waives his Fifth Amendment rights. *Miranda v Arizona,* 384 US 436, 444 (1966); *People v Gipson,* 287 Mich App 261, 264 (2010). Waiver can be implied when a defendant who has been advised of his *Miranda* rights and has understood them makes an uncoerced statement. *Berghuis,* 130 S Ct 16 2261. The prosecutor must establish a valid waiver by a preponderance of the evidence. *People v Harris,* 261 Mich App 44, 55 (2004).

Again, the facts inform us that Peter was informed of his

Miranda rights and that "Peter understood his *Miranda* rights." From this, it follows that "he knew what he gave up when he spoke." *Berghuis,* 130 S Ct at 2262. Further, Peter's answer to Jones revealed his intent to mitigate his own culpability in the crime. Peter could have simply ignored Jones but he instead attempted to lessen his culpability, stating, "I was not drunk. I only had two beers. I was distracted by my cell phone and that is why I ran the red light. I am so sorry." Further, there is no evidence at all that Peter's statement was coerced. Although he had been interrogated the night before, Peter had only been asked the one question the next morning and was clearly rested when he made the statement.

For these reasons, the trial court should deny the motion to suppress Peter's statement to Officer Jones.

How **should the court rule on the motion to dismiss with prejudice the charges against Peter?**

The trial court should deny the motion to dismiss.

The right to a speedy trial is guaranteed to criminal defendants by the federal and Michigan constitutions as well as by statute and court rule. US Const, Am VI; Const 1963, art 1, §20; MCL 768.1; NCR 6.004(A); *People v Williams,* 475 Mich 245, 261 (2006). A formal charge or restraint of the defendant is necessary to invoke speedy trial guarantees, *People v Rosengren,* 159 Mich App 492, 506 n 16 (1987). The delay period commences at the arrest of the defendant. *Williams,* 475 Mich at 261.

The defendant must prove prejudice when the delay is less than 18 months. *People v Collins,* 388 Mich 680, 695 (1972); *People v Waclawski,* 286 Mich App 634, 665 (2009). A delay of more than 18 months is presumptively prejudicial to the defendant, and shifts the burden of proving lack of prejudice to the prosecutor. *Williams,* 475 Mich at 262. In determining whether a defendant has been denied a speedy trial, a court must weigh the conduct of the parties. Relevant factors include: (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. *Vermont v Brillon,* _____ US ____ ; 129 S Ct 1283, 1290; 173 L Ed 2d 231, 239-240 (2009); *Williams,* 475 Mich at 261. Prejudice to the defense occurs when there is a substantial chance that the defense to the charge is substantially impaired by the delay. *Williams,* 475 Mich at 264; *People v Gilmore,* 222 Mich App 442, 461-462 (1997); *People v Ovegian,* 106 Mich App 279, 285 (1981).

Here, the length of the delay is significant and weighs in favor of granting defendant's motion. If the court sticks to its most recent schedule, the trial will not commence until 21 months after the accident date. The reason for the delay is neglect by the court system. This type of delay cannot in any way be attributed to the defendant. To the contrary, scheduling delays and delays caused by the court system are attributed to the prosecution. However, such delay weighs only slightly in favor of granting the motion, as delays caused by the court system are generally given minimal weight. *Williams,* 475 Mich at 263. Moreover, defendant cannot be blamed for failing to assert his speedy trial rights in a more timely fashion. The trial court found that defendant was indigent and entitled to appointed counsel. The trial court also knew that the counsel originally appointed to represent defendant had died and that defendant was in need of new counsel. Once appointed, Lisa Lawyer acted with due diligence in bringing a motion to dismiss. Thus, this factor weighs in favor of granting defendant's motion. The final factor, however, weighs strongly in favor of denying defendant's motion. Because the delay exceeds 18 months, the burden rests on the prosecution to establish a lack of prejudice to defendant's case. Defendant will argue that his case is crippled without Wendy, who would have testified that he was not driving the car. However, this assertion flies in the face of defendant's statement that he ran the red light because he was distracted by his cell phone. Further, Wendy has no first-hand knowledge of who was driving Peter's car at the time of the accident. The prosecution will point out that nobody knows what Wendy would have testified to, since she never gave a statement to the police or the defense. However, reviewing the facts in a light most favorable to defendant, all Wendy could testify to was that Oscar drove the car when leaving the pub. Wendy did not witness the accident. Any inference drawn from Wendy's putative testimony would be defeated by Peter's statement to Officer Jones.

For these reasons, the court should deny Peter's motion to dismiss.