

EXAMINERS' ANALYSIS OF QUESTION NO. 13

The right to a speedy trial is guaranteed by the U.S. Constitution's Sixth Amendment and in Article 1, section 20 of the Michigan Constitution. *People v Williams*, 475 Mich 245, 261 (2006). This right is enforced by statute and court rule. MCL 768.1(1) states in part that "[t]he people of this state and persons charged with crime are entitled to and shall have a speedy trial. . . ." Michigan Court Rule 6.004(A) provides that:

The defendant and the people are entitled to a speedy trial and to a speedy resolution of all matters before the court. Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.

A defendant's right to a speedy trial is not violated after the passing of a fixed number of days. *People v McLaughlin*, 258 Mich App 635, 644 (2003). The issuance of a complaint and warrant by the prosecution does not trigger a criminal prosecution for speedy trial purposes. *Williams*, 475 Mich at 261.

In Michigan, the right to a speedy trial is not triggered until the institution of formal proceedings or defendant's arrest followed by formal charges. The right to a speedy trial does not apply before a defendant is indicted, arrested or formally accused. *US v MacDonald*, 456 US 1, 6 (1982). *People v Rosengren*, 159 Mich App 492, 506, n16 (1987); *Williams*, 475 Mich at 261 citing *United States v Marion*, 404 US 307, 312 (1971). In this case, the starting date for calculating the length of delay is not December 2015, the date of the accident, or the date of the issuance of the complaint or warrant in July 2016, but the institution of formal charges against the defendant in January 2019.

Michigan has adopted the four factor test of *Barker v Wingo*, 407 US 514, 530-532 (1972): 1. The length of the delay, 2. The reason for the delay, 3. The defendant's assertion of the right, and 4. The prejudice to the defendant. *Williams*, 475 Mich at 261-262; *People v Chism*, 390 Mich 104, 111 (1973).

If the delay is eighteen months or more, prejudice is presumed and the burden shifts to the prosecutor to show there is no prejudice to the defendant. *People v Collins*, 388 Mich 680, 695

(1972). The establishment of the presumption triggers an inquiry into the other factors to be considered in balancing the competing interests to determine whether the defendant has been deprived of the right to a speedy trial. *People v Wickham*, 200 Mich App 106, 109-110 (1993). If the delay is less than eighteen months, there is no need to inquire into the other balancing factors. *Chism*, 390 Mich at 112. Defendant has the burden to show prejudice was caused by the prosecution. *McLaughlin*, 258 Mich App at 644.

Applying the *Barker* factors to these facts, no presumption is established because the time from arrest (January 2019) to trial (September 2019) is nine months, not eighteen months. The burden is on defendant to show prejudice. This will be difficult for Dwayne to do.

The defendant has not asserted (demanded) his right but can still assert it. *People v Harris*, 110 Mich App 636, 647 (1981).

Dwayne has not established any specific prejudice to either the person or defense. *Chism*, 390 Mich at 114. Prejudice to the person is usually in the form of incarceration or anxiety. Dwayne was not incarcerated during the time between the accident and his arrest. *People v Rowan*, 76 Mich App 124, 129 (1977). The prejudice is minimal.

Prejudice can also be to the defense. Defendant must demonstrate the delay prejudiced the defense of his case. *Williams*, 475 Mich at 265. Defendant must demand a speedy trial and identify the prejudice with specificity, not general or potential prejudice, which is insufficient. Lost evidence and unavailable witnesses can be prejudice. *People v Harris*, 110 Mich App 636, 648 (1981); *Collins*, 388 Mich at 694. However, Dwayne has not shown how the lost testimony of Al or Tom would be helpful to the defense. *People v Patton*, 285 Mich App 229, 237 (2009); *Collins*, 388 Mich at 695. Moreover, none of this loss of evidence was the result of any delay by the state. *People v Anderson*, 88 Mich App 513, 516 (1979).

Dwayne's right to a speedy trial was not violated.