

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
February 14, 2003

No. 235551
Monroe Circuit Court
LC No. 00-030867-FH

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for third-degree fleeing and eluding a police officer, MCL 750.479a(3), two counts of assault with a dangerous weapon, MCL 750.82, and carjacking, MCL 750.529a. We affirm.

Defendant first argues that the trial court erroneously admitted his confession because it was not voluntarily given since he had been shot in the head and was under the influence of alcohol and cocaine at the time he confessed. We disagree. We review a *Walker*¹ hearing de novo but due deference is afforded the trial court's factual findings which will not be disturbed unless they are clearly erroneous. *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997); *People v Spinks*, 184 Mich App 559, 563; 458 NW2d 899 (1990).

Defendant confessed to robbing a bank in Ohio and fleeing to Michigan where he was involved in a traffic accident while being pursued by police officers, after which he pulled a woman from her vehicle and, while attempting to flee the scene, was involved in a second traffic accident. Subsequently, defendant was apprehended by the police and transported to a local hospital because of an obvious head wound. Detective Vandercook testified that he spoke to defendant at the hospital, advised him of his *Miranda*² rights, and that defendant conversed normally and did not appear to be under the influence of intoxicants. Detective Vandercook further testified that defendant "was very adamant" that he wanted to advise the police that he did not use a weapon in the bank robbery and that he did not intend to harm the woman whose vehicle he took. Detective Vandercook indicated that he did not know that gunshots had been

¹ *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

fired at defendant until after the x-rays taken at the hospital revealed that defendant sustained a gunshot wound to the head. He had assumed that defendant sustained a head injury during one of the automobile accidents, but defendant did not complain of pain while he was in police custody at the hospital.

Similarly, Detective Sergeant Bogucki testified that he was present when Detective Vandercook and defendant were speaking and defendant did not appear to be under the influence of intoxicants or incoherent. The emergency room physician, Dr. Gregory Reinhold, testified that defendant presented with a possible gunshot wound to the head but that defendant was alert, oriented to person, place, and time, was pleasant and cooperative. Dr. Reinhold testified that defendant was at the hospital about an hour-and-a-half to two hours before being transferred to a hospital in Ohio and that, while under his care, "I felt he [defendant] had no problem with comprehension whatsoever." Contrary to defendant's arguments on appeal, it does not appear that "his will was overborne and his statements were involuntary." Rather, considering the totality of the circumstances, defendant's confession was "the product of an essentially free and unconstrained choice by its maker." See *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988), quoting *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961). According due deference to the trial court's superior ability to assess the credibility of the witnesses, including defendant's testimony, we conclude that the trial court properly admitted defendant's confession. See *People v Bender*, 208 Mich App 221, 227; 527 NW2d 66 (1994).

Defendant also contends that his right to a speedy trial was violated by a thirty-month delay between the issuance of the complaint and his trial on the charges. We disagree. Whether a defendant was denied a speedy trial is a mixed question of fact and law. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). We review de novo the constitutional issue and the factual findings for clear error. *Id.*

The right to a speedy trial is guaranteed to criminal defendants by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20. In determining whether a defendant has been denied a speedy trial, the following four factors are considered and balanced: (1) length of delay, (2) reasons for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) resulting prejudice to the defendant. See *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000), quoting *People v Levandoski*, 237 Mich App 612, 620, n 4; 603 NW2d 831 (1999). However, a pretrial delay of eighteen months or more is presumed prejudicial, requiring the prosecutor to rebut the presumption. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999).

Here, defendant was arrested in Michigan on November 23, 1998, but was taken into federal custody pending resolution of federal bank robbery charges. On December 3, 1998, the Monroe County Prosecutor issued a complaint against defendant and on December 7, 1998, a warrant for his arrest was issued. On November 1, 1999, defendant was sentenced following conviction on federal charges. On or about September 22, 2000, defendant was arraigned in district court on the state charges. On October 3, 2000, a preliminary examination was conducted and defendant was bound over for trial. A delay in scheduling a trial between November of 2000 and at least May of 2001 arose as a consequence of defendant's pretrial motions, including substitution of counsel, suppression, and dismissal motions. On June 4, 2001, defendant's trial commenced.

The delay of significance that could be attributed to the prosecutor occurred from December of 1998 to September of 2000, a period of approximately twenty-one months. See *People v Ross*, 145 Mich App 483, 491; 378 NW2d 517 (1985). However, for approximately twelve of those months defendant was in federal custody awaiting resolution of federal charges. Thereafter, defendant was incarcerated in federal prison, serving a seventy-month sentence following conviction on the federal charges. Although the reason for the delay in prosecuting the state charges is unclear, defendant did not assert his right to a speedy trial until July of 2000. Defendant was arraigned within two months of asserting his right and subsequent delays were primarily attributable to defendant's pretrial actions. See *Gilmore, supra* at 461. Further, the prosecutor rebutted the presumption of prejudice arising from the delay in that defendant was already in federal custody—not subjected to a lengthy pretrial incarceration—and there was overwhelming evidence of defendant's guilt, i.e., we cannot conclude that his defense was prejudiced. See *Cain, supra* at 114; *People v Ovegian*, 106 Mich App 279, 284-285; 307 NW2d 472 (1981). Therefore, we agree with the trial court that defendant was not denied his right to a speedy trial.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff