

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUBEN JORDAN,

Defendant-Appellant.

UNPUBLISHED

July 22, 2003

No. 237015

Wayne Circuit Court

LC No. 00-012764

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, MCL 750.316, possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of life imprisonment for the murder conviction and two to five years' imprisonment for the felon-in-possession conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that he was denied a fair trial because although the trial court gave a proper instruction on the use of prior inconsistent statements, it erred in applying the instruction solely to Marcus Hurd's testimony, while failing to give the instruction in connection with LaTonya McGhee's testimony. We disagree.

Because defendant failed to object to the jury instructions on this basis, this issue is unpreserved.¹ *People v Sabin (On Second Remand)*, 242 Mich App 656, 657; 620 NW2d 19 (2000). Unpreserved allegations of error concerning jury instructions are reviewed for plain error affecting defendant's substantial rights, i.e., the error must be outcome-determinative. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Knapp*, 244 Mich App 361, 375; 624 NW2d 227 (2001). Further, reversal is warranted only when plain error

¹ Contrary to the prosecution's assertion, defense counsel did not express satisfaction with the jury instructions; hence, this issue is not waived. See *People v Carter*, 462 Mich 206, 214-219; 612 NW2d 144 (2000).

results in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Carines, supra*.

Jury instructions are reviewed in their entirety to determine if error requiring reversal exists. *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997). “Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant’s rights.” *Id.* at 412-413.

Having reviewed the jury instructions in the present case in their entirety, we conclude that defendant failed to demonstrate outcome-determinative plain error. The instruction concerning prior inconsistent statements that the trial court gave concerning Hurd’s testimony arguably should have been given in regard to McGhee’s testimony where her testimony revealed that she lied to the police on three occasions. However, there is no indication that the instructions as a whole did not fairly present the issues to be tried or sufficiently protect defendant’s rights. The trial court instructed the jury regarding the credibility of witnesses. The trial court also instructed the jury regarding McGhee’s status as an accomplice, and cautioned the jury about accepting accomplice testimony: “You should examine an accomplice’s testimony closely. Be very careful about accepting it.” Further, there was strong evidence of defendant’s guilt, including his own statement to the police. Defendant has failed to demonstrate outcome-determinative plain error, and thus reversal is not warranted. *Carines, supra* at 761-764.

Next, defendant argues that the trial court erred in failing to instruct the jury on involuntary manslaughter. Defendant is entitled to no relief because even if the failure to instruct on manslaughter were error, it was harmless because the jury convicted defendant of first-degree murder despite having been given the option to convict him of second-degree murder. “Where the trial court instructs on a lesser included offense which is intermediate between the greater offense and a second lesser included offense, for which instructions were requested by the defendant and refused by the trial court, and the jury convicts on the greater offense, the failure to instruct on that requested lesser included offense is harmless if the jury’s verdict reflects an unwillingness to have convicted on the offense for which instructions were not given.” *People v Zak*, 184 Mich App 1, 16; 457 NW2d 59 (1990).

Finally, defendant argues, in propria persona, that he was denied his constitutional right to a speedy trial.² We disagree. “Whether a defendant was denied his constitutional right to 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 the trial court’s factual findings for clear error, but review constitutional questions of law de novo. *Id.*

² Although defendant has referenced the 180-day rule, MCL 780.131, this rule is inapplicable to the instant case, as it was designed to dispose of untried charges against prison inmates so that sentences may run concurrently, *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999), and there is no indication that defendant was so affected. Furthermore, defendant has framed his analysis in terms of a violation of his right to a speedy trial. Accordingly, our analysis of this issue will follow that of defendant’s, despite his reliance on MCL 780.131.

“A criminal defendant has a constitutional and statutory right to a speedy trial.” *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000), citing US Const, Ams VI and XIV; Const 1963, art 1, § 20; MCL 768.1. This Court applies a four-part balancing test in determining whether a defendant has been denied the right to a speedy trial, considering (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 caused by the delay. *Mackle, supra; People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). “A delay of six months is necessary to trigger further investigation when a defendant raises a speedy trial issue.” *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). If the delay is under eighteen months, the defendant must prove that he or she suffered prejudice. *Cain, supra* at 112; *Daniel, supra*. Further, “where a case against the defendant is complex or involves numerous defendants, more delay is tolerated.” *People v Cooper*, 166 Mich App 638, 655; 421 NW2d 177 (1987). The length of the delay, in and of itself, is not determinative of a speedy trial claim. *Cain, supra*.

In the present case, there was a delay of more than six months but less than eighteen months; hence, further investigation of the speedy trial issue has been triggered, but defendant must prove that he suffered prejudice. *Cain, supra*. Here, defendant has failed to demonstrate prejudice as a result of the delay. “There are two types of prejudice: prejudice to the person and prejudice to the defense.” *Gilmore, supra* at 461-462. In the context of an allegation of a speedy trial violation, prejudice to the latter is more crucial. *People v Ovegian*, 106 Mich App 279, 284-285; 307 NW2d 472 (1981). In his in propria persona brief, defendant argues that the prosecution must demonstrate that it made a good faith effort to bring the case to trial. Defendant seems to argue that the delay caused the “aggressive incarceration” and unlawful detention of defendant. Defendant also seems to contend that the prosecution has timely given other criminal defendants their day in court, but that defendant did not receive similar treatment. These claims appear to relate to the prejudice of defendant as a person rather than to any prejudice to the defense. However, general allegations of prejudice are insufficient to establish that a defendant was denied the right to a speedy trial. *Gilmore, supra* at 462. Further, there was not significant delay in this case, and, given the fact that there were multiple defendants, such delay permits greater tolerance. *Cooper, supra*. Accordingly, we find that defendant has failed to demonstrate the prejudice necessary to establish that he was deprived of his constitutional right to a speedy trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White