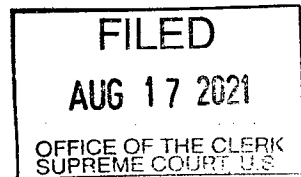


21-5482

ORIGINAL

No.



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL DESHON MATTHEWS #281752

Vs.

MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

MICHAEL DESHON MATTHEWS #281752
IONIA MAXIMUM CORRECTIONAL FACILITY
1576 W. BLUEWATER HIGHWAY
IONIA, MICHIGAN 48846

QUESTION PRESENTED FOR REVIEW

1. DID TRIAL COURT ERR IN DENYING DEFENDANTS MOTION FOR SUBSTITUTE COUNSEL IN VIOLATION OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS?
 2. WAS MR. MATTHEWS DEPRIVED OF HIS SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL WHERE HE WAS ARRESTED ON OR ABOUT NOVEMBER 22,2015 AND TRAIL BEGAN ON SEPTEMBER 28, 2016?
 3. DID THE TRIAL COURT ERR IN ASSESSING MR. MATTHEWS \$1,200 IN COURT COSTS?
 4. DID THE TRIAL COURT ABUSE ITS DISCRETION BY ORDERING \$7,005. IN RESTITIUTION?
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- D. Matthews v. Davids, 2021 U.S. App. LEXIS 20373 (unpublished)

List of Parties Involved Pursuant to USSC Rule 12.6

- 1. MICHAEL DESHON MATTHEWS #281752 The Petitioner.
- 2. Michigan Attorney General Dana Nessel the Respondent for the State.

TABLE OF AUTHORITIES

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CITATION OF OPINION BELOW

The Michigan Court of Appeals issued an order and opinion in *People v. Matthews*, 2020 Mich. App. LEXIS 207865 (unpublished). The Michigan Supreme Court issued order denying the Petitioner Leave to Appeal in *People v. Matthews*, 917 N.W. 2d 66 (September 18th, 2018) (unpublished). The United States District Court for the Southern District of Michigan Denied Petitioner's Writ of Habeas Corpus in *Matthews v. Davids*, 2020 U.S. Dist. LEXIS 207865, on May 1st, 2020. Subsequently the District Court denied petitioners objection on November 5th, 2020. Subsequently, the United States Court of Appeals for the Sixth Circuit denied the Petitioner's appeal in *Matthews v. Davids*, 2021 U.S. App LEXIS 20373, (# 20-2216) on July 8, 2021. See Appendix A-D.

JURISDICTION

A petition for a Writ of Certiorari to review a judgment in any civil or criminal case entered by a State Court of last resort or Federal Court of Appeals is timely when filed with the Clerk of the USSC within 90-days after entry of the judgment. See USSC R. 13.1. The United States Court of Appeals for the Sixth Circuit denied the Petitioner's Writ of Certiorari in *Matthews v. Davids*, 2021 U.S. App LEXIS 20373, on July 8, 2021. Petitioner is within the 90 days allowed. On October 6, 2016, Defendant-Appellant, Michael Deshon Matthews, was convicted of first degree murder (MCL 750.316) and felony firearm (MCL 750.227b(a)). On October 21, 2016, Mr. Matthews was sentenced to life without possibility of parole to be served consecutive to the 2 year felony firearm sentence.

MICHIGAN STATUTES INVOLVED

§ 769.1

Short title.

Sec. 1.

This act shall be known and may be cited as the “authority to impose court costs”.

§ 780.767

Short title.

Sec. 1.

This act shall be known and may be cited as the “general restitution statute”.

STATEMENT OF CASE

The People allege that on November 22, 2015, Defendant-Appellant Michael Deshon Matthews, went to a social club located at 10435 Joy Rd. in Detroit with some friends. After Mr. Matthews and co-defendant Joshua Simpson were kicked out of the club, they tried to re-enter, but were not allowed back in. Darrell Jeter was attending the door. The People allege that Mr. Matthews entered the vestibule and killed Mr. Jeter with a gunshot to the head.

June 10, 2016 Final Conference

During the June 10, 2016, Final Conference, Mr. Matthews requested that his case be dismissed on the grounds that his right to a speedy trial had been violated. He noted that he already had been incarcerated for 202 days. He also requested that new counsel be appointed. The motion for dismissal was denied.(6/10/16 TR at 4). With regard to the request for new counsel, the trial judge acknowledge that he had received letters from Mr. Matthews

requesting that he be provided with a new attorney and that his right to a speedy trial had been violated. The judge stated that his attorney, Clifford Woodards, had previously appeared in his court and has been very effective.

Attorney Woodards stated that he had shown Mr. Matthews a video of the incident on a couple of occasions. While the video showed that co-defendant Simpson was present, the identify of the shooter was not apparent. Attorney Woodards told the court that if Matthews contended that the other person was not him, he should tell him who it was and he would go to the prosecutor. Matthews stated that he could not identify a person he didn't know. The trial judge denied Matthews's motion to have new counsel appointed. (6/10/16 TR at 7)

Testimony of Pamela Hammonds

Pamela Hammonds testified that the Supersonic Palace, located at 10435 Joy Rd., was owned by her fiancé, Hubert Marshall. (TR 2 at 62 — 63). She testified that around 3.00 AM on November 22 that "I seen a tall guy with a red jogging suit on. He had just came in approximately about 20 feet from the door entrance. I spotted him. He was walking as if he was intoxicated." (TR 2 at 63). She was concerned because she saw what appeared to be a gun bulging from the back of the man's red jogging suit. She stated that Mr. Matthews was assisting the man in the red jogging suit, who appear to be very inebriated. As Matthews was holding the man's arm, she stated that "they was like walking like zigzag walking or whatever. That's when I seen gun bulging out." (TR 2 at 65-67). She alerted the Brandon, the security guard. She testified that "Brandon had him up, the tall guy in the jogging suit, up and escorted him out. Drew had Mr. Matthews in a full nelson, and a gun was in his waist like this in the front of him." (TR 2 at 68). At some point, her stepson, Darrell Jeter, had been

shot. She did observe the shooting. She agreed that she did not know how long Matthews and the other man had been in the club. She gave a statement to the police around 7:00 AM. She initially told the police that she did not see anybody with a gun. (TR 2 at 81). She agreed that at the preliminary examination she testified that she never saw Mr. Matthews with a gun. On redirect she stated that she did see a gun on Mr. Matthews. When she was asked why she didn't inform the police about it earlier, she testified "I don't know. I really can't answer that. I don't know." (TR 2 at 83).

Testimony of Shawndrea Williams

Shawndrea Williams was at the Supersonic Palace at the time of the incident performing security. She stated that there was chaos in the club and "then my brothers came out with a guy and had him in a full nelson." (TR 2 at 88). The person was wearing dark jeans and a hoodie. She identified that person as Mr. Matthews. She stated that Matthews had come into the club with 3 girls and about 4 guys. After he was escorted out of the club, he kept trying to get in, but security would not let him enter.

She testified that there was a "light-skinned boy with him" that was wearing an all red True Religion jogging suit. (TR 2 at 91). She stated that Matthews came back to the door at least three times. When Matthews initially entered the club he greeted her and Darrell. He shook Darrell's hand and gave her a hug. She testified that "the second time he came back to the door, it was some girls came in first, and he tried to like pull the door, and Little Stony [Darrell] yanked it, and he slammed it. Then I seen him run off." (TR 2 at 93). She told Darrell not to open the door anymore and that she was going to get "one of the older club

brothers to come back to the court doors." (TR 2 at 87). She stated that by the time she returned Mr. Jeter had been shot in the head.

On November 23 she was brought to the Detroit Detention Facility to view 2 live lineups. She identified Mr. Matthews and co-defendant Joshua Simpson as the men that came into the club together. She did not know who actually shot Mr. Jeter. She testified that she saw a weapon tucked in the front of Mr. Matthews's pants. She testified that "when they brought him out in the full nelson, the butt of the gun was hanging out the front of his pants."

She had seen Mr. Matthews at another social club in the past. She testified that she gave the police a description of the shooter even though she did not witness the shooting. She testified that she wasn't actually describing the shooter but rather the person she saw with a gun. She testified that she did not know Matthews when he first came in the club but after he kept telling her that he used to belong to another social club, she recalled who he was. (TR 2 at 109).

Testimony of Rolando Brunson

Rolando Brunson was at the club at the time of the incident. He witnessed a person being escorted out of the club who was wearing a blue jacket and blue jeans. He identified that person as Mr. Matthews. (TR 2 at 122). He stated that Matthews was with a tall lightskinned man who was dressed in red. After the men were escorted out of the club they came back three times and tried to reenter. He was asked to view a live lineup at the Detroit Detention Facility on November 23, 2015. He identified Mr. Matthews and the person in the red jumpsuit. He stated that Matthews was wearing a windbreaker jacket that did not have a

hoodie. (TR 2 at 126). He testified that he was crossing Joy Road at the time of the shooting. He was not able to see the actual shooting.

When he was questioned by the police he described the person who supposedly had a gun as a black male, dark skinned with a nappy Afro, 5 foot 6 and wearing a blue Nike jacket and blue jeans.

Testimony of Terrence Gardner

Terrence Gardner went to the club with Michael Matthews, JoJo, Keith Mathis and 3 women. (TR 3 at 5). They drove there in Keith's black Ford Escape. Gardner was shown surveillance video from the club and described what he saw. He identified Matthews in a still from a video. He was wearing a black jacket. He also identified JOJO, who was dressed in red. He identified himself and JOJO in the video going to his car and returning to the club. He stated that Matthews was wearing blue jeans with a blue jacket and white and blue shoes. He stated that Matthews took off his black jacket when they were in the club. He described Matthews going to the car and then returning to the club.

Terrence stated that he was holding up JOJO who was very inebriated. He testified that at 40:55 of the video "Michael just made contact to the car asking JOJO for the gun."

He stated that JOJO previously had the gun that he kept in the crotch of his red suit. At 41:20 he described Mr. Matthews with a gun in his right hand. At 41:48 he described Matthews returning to the car and stated that Matthews "said he just blew a nigger." (TR 3 at 17). Terrence Gardner testified that after Matthews got the gun from JOJO he said "I am about to shut this Bitch down. " (TR 3 at 17). He testified that Matthews was driving a white Ford Escape.

Gardner stated that the first time they tried to enter the club was at 315 on the video. He believed that Matthews was already in the club at that time. At 4:44 he stated that they were getting put out of the club. He testified that they were in the club for no longer than a minute before they were asked to leave. He also described Matthews going into the club after he got the gun. JOJO came back and told him that Matthews had shot somebody. He stayed in the car until Matthews and JOJO pulled up in the white Ford Escape. (TR 3 at 32).

After the white Ford Escape drove away, he walked to the front of the building and he saw that somebody had been shot. He went to the gas station about a block away because he did not want anything to do with the shooting. After he was at the gas station he saw Matthews drive by. He testified that "I dropped my jacket and just went to the store while he picked up the girls we came with. " (TR 3 of 34). While he was waiting at the gas station he heard a couple of shots because somebody else was shooting outside. The store clerk called the police. He also spoke with his mother and she told him that if he didn't have anything to do with the shooting, he should call the police. He spoke with the police shortly thereafter.

Testimony of Demireo Dixon

Demireo Dixon was working at Stoney's (Supersonic Palace) on the night of the incident. Darryl Jeter was working at the door and Mr. Dixon was assigned to search the men who entered the club. His girlfriend, Shawnrea, searched the women. Jeter's father owned the club and was known as "Stoney." (TR 3 at 55 — 56).

He stated that a lot of people were coming in and out of the club that night, but he noticed two men that kept on running in and out. One of the men was wearing all red. At some point Shawnrea came and got him while JOJO and Matthews were getting bounced out of the club. After they were put out, he saw them try to get back in while Mr. Jeter was

at the door. He observed Matthews shoot Jeter with a handgun. (TR 3 at 60). He was 8 to 10 feet away when the shooting occurred. When Matthews was trying to get back in the club he said that he knew Stoney. He stated that Jeter told him that he would have to talk to his father if he wanted to get into the club.

Testimony of Dr. Kilak Kesha

Dr. Kilak Kesha was qualified as an expert in forensic pathology. Dr. Kesha performed the autopsy on Darrell Jeter. He estimated that the shot was fired from within 1—2 feet. There was a single gunshot wound to the left side of Jeter's head. (TR 2 at 117). He concluded that the death was a homicide by a gunshot wound.

Testimony of Officer Christian Kerr

In the early morning of November 22, 2015, Officer Kerr was dispatched to a social club located at 10435 Joy Rd. with regard to a fatal shooting. (TR 2 at 33 — 34). Officer Kerr testified that a bullet casing was found between the sidewalk and the door of the club. (TR 2 at 59). The victim was found inside the vestibule.

Testimony of Corporal George Moore

Corporal George Moore responded to the incident around 330 AM. When he entered the building he discovered a black male lying on the ground with a carpet covering him. He removed the carpet and observed a gunshot to the man's head and notified emergency medical services. (TR 2 at 139) He was able to speak with one of the patrons who gave him an idea of what occurred. He received a description of an unknown black male 5'10", 180 pounds, dark skinned wearing a gray sweater with an Afro.

Testimony of Officer Trey Lyons

November 22, 2015 around 7:45 PM Officer Trey Lyons was dispatched to pick up Joshua Simpson who was wanted for murder. She conducted a traffic stop of a 2004 gray Cadillac Escalade. When she went to the rear driver side and illuminated the interior, she saw Mr. Simpson leaning away from her as if he was trying to hide. (TR 3 at 49). Simpson was wearing a red True Religion sweatshirt and jogging pants. (TR 3 at 50).

Testimony of Officer Ryan May

On November 23, 2015 around 1:20 PM Officer Ryan May was dispatched to arrest Michael Matthews who was wanted for homicide and a carjacking. (TR 3 at 53).

Testimony of Officer Johnell White

Detroit Police Officer Johnell White was the officer in charge of the case. Officer White conducted live lineups with Demireo Dixon and Rolando Bronson on November 23, 2015, at the Detroit Detention Center. Dixon identified Michael Matthews and Joshua Simpson. Rolando Brunson also observed a live lineup and identified Mr. Matthews and Joshua Simpson. (TR 3 at 87 — 88).

Officer White interviewed Michael Matthews on November 23. He testified that Mr. Matthews did not want anything reduced to a written statement. Matthews told Officer White that he did not recall being at the club on November 22. After White told him about the video from the club, Matthew still did recall being there.

Verdict

On October 6, 2016, Mr. Matthews, was convicted of first degree murder and felony firearm.

Sentence

On October 21, 2016, Mr. Matthews was sentenced to life without possibility of parole to be served consecutive to the 2 year felony firearm sentence. Restitution was ordered in the amount of \$7005, joint and several with co-defendant, Joshua Simpson. He was also ordered to pay \$136 in state costs, a \$130 crime victim assessment fee, court costs of \$1300 and attorney fees of \$400. During the sentencing hearing, Matthews reiterated that he requested a new lawyer at the beginning of the case.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully requests based upon the grounds hereafter, this Honorable Court **GRANT** the within writ and reverse the judgment of the court below. The petition for a Writ of Certiorari should be granted as Petitioner was denied his Federal Constitutional Rights.

GROUND ONE

DID TRIAL COURT ERR IN DENYING DEFENDANTS MOTION FOR SUBSTITUTE COUNSEL IN VIOLATION OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS?

Upon a showing of adequate cause for a change, an indigent defendant is entitled to have his appointed lawyer replaced. Appointment of a new lawyer is required when there are irreconcilable differences between counsel and the defendant over fundamental trial tactics or using a substantial defense. The need to protect the accused's right to counsel is paramount. *People v Charles O. Williams*, 386 Mich 565, 574-576; 194 NW2d 337 (1972). "Good cause exists where a legitimate difference of opinion develops ... " *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

For example, in *People v Charles O. Williams*, *supra*, the Supreme Court found that the trial judge abused his discretion by denying the defendant's good-faith request to substitute counsel when the defendant and his appointed lawyer reached " an irreconcilable difference of opinion."

The Supreme Court stated that "there is no evidence in the record before us that this was a delaying tactic, and a great deal of evidence that it was not for purposes of delay," at 577. "[T]he attorney and defendant reached an impasse ... They deemed the difference so fundamental that both advised the judge the attorney should be relieved of the duty to represent defendant." *Id.*, at 573', citations omitted. The Supreme Court quoted with approval from *People v Moss*, 253 Cal App 2d 248, 251; 61 Cal Rptr 107 (1967):

We believe the basic right to representation by counsel, made so clear by *Gideon v Wainwright* [372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963)] encompasses the right to appointment of different counsel when a legitimate difference of opinion develops between a defendant and his appointed counsel ... When this occurs, the defendant is entitled to a reasonable continuance in order to effectuate a change of attorneys and obtain the representation by counsel he is entitled to have under the Constitution [386 Mich at 574].

In *People v Wilson*, 43 Mich App 459', 204 NW2d 269(1972), the defendant complained that his communication with counsel had ceased and that he was afraid to disclose names of potential alibi witnesses because he believed his attorney was working with the prosecution against him. This Court disagreed with the trial judge, who had responded to the defendant's complaints by concluding that defense counsel was competent and that the defendant had no right to appointed counsel of his choice. The Court of Appeals reversed the conviction and remanded for a new trial, finding that the trial judge failed to investigate the defendant's claims or to exercise his discretion:

His conclusion that appointed counsel was competent was unresponsive to defendant's allegation regarding the inadequacy of counsel's performance and the destruction of communication and confidence between the parties ... The trial judge received timely notice of defendant's dissatisfaction with counsel and the judicial process would not have been subverted by the appointment of new counsel. *Id* at 462-463.

Similarly, in *Wilson v Mintzes*, 761 F2d 275 (CA 6, 1985), the Sixth Circuit found that the trial judge, after questioning defense counsel's competence and provoking counsel into acts inconsistent with his duty of loyalty to his client, acted unreasonably in failing to heed the defendant's expressions of dissatisfaction. The trial court asked the defendant twice if he was satisfied with his defense counsel, and he stated that he was not. Defense counsel also twice

attempted to withdraw from the case, including once in the middle of the trial in front of the jury, and the trial judge denied his request both times. The Sixth Circuit reversed the judgment of the lower court and remanded the case back to the District Court with instructions to grant a writ of habeas corpus.

In the present case, during the June 10, 2016, final conference, the trial judge acknowledged that he had received letters from Mr. Matthews requesting that he be provided with a new attorney. Mr. Matthews's letters are in the court file. In a letter sent

to the Honorable Timothy Kenny, dated February 18, 2016, and post-marked February 19, 2016, Mr. Matthews wrote to the judge asking that trial counsel be replaced. (Exhibit 1).

In other letters, Mr. Matthews alleges that:

1. his counsel has a personal relationship with the victim and was hired by the victim's family;
2. he had written to the Attorney Grievance Commission regarding his attorney;
3. his attorney does not have his best interests at heart;
4. he has been attempting to fire his attorney since late 2015.

In denying Mr. Matthews's request for new counsel, the following transpired:

THE COURT: I know that you have sent some letters, a couple of letters to me with regards to Mr. Woodards. Mr. Woodards has appeared in front of me any number of times. Has been highly effective in cases that he has been appearing in front of me.

But let me hear from Mr. Woodward.

MR. WOODARDS: Judge, I really don't have a problem with Michael. I showed him the video with respect to this case, and he. And, in fact, can we do one thing before I continue?

.. I went over, showed him the video that the People would probably introduce that shows two men coming from the club and then going back. One of them goes back into the club. One of those individuals I believe I told him that clearly is Mr. Simpson because he's identified by the People, by the People's witnesses as wearing a bright True Religion track suit in the video. So I told him that's pretty much where we were. He says that the other individual who the People believe is the shooter and is him is not him.

I've got a problem. I got a problem with that, but I think he got upset with me. I said, Okay, if it's not you, tell me who it is, and if I can go and talk to Mr. Beadle about this, we can do some investigating.

Well, I'm not going down for something I didn't do. I don't want him to do that either, but I talked to him again.

But if it should be in his interest that with the evidence that the People may show at trial, I would like for him to help himself. And if the person, if it's not him, because you can see this guy's, I thought it was a hoodie, and the video is not sharp enough to recognize who the individual is. So it could come down to he say, she say.

I really want him to tell me who he believes that it is so I can have my Investigator look into that.

DEFENDANT MATTHEWS: How can I tell you what I don't know?

MR. WOODARDS: I think we can work it out, Judge.

THE COURT: Mr. Matthews, there have been instances where I have had cases before me where if I believe that the attorney is not representing someone competently, that I will remove them. And I have gotten to know attorneys who appear and practice here in this building.

I do know that Mr. Woodards is going to be, as he has been in the past, thorough in the way he conducts his investigations. And I think you need to know that sometimes when attorneys are not over there every day visiting with you in the jail, it is because they are working on the case. That's their job.

And that Mr. Woodards at this point I think has not given me any reason to remove him, and I expect that you would continue to have discussions with him.

If there are problems, you can certainly let me know, and we can bring you and Mr. Woodards here together to work it out if there are further problems.

But I think you need to let Mr. Woodards do his job, work with his investigator to find out what is the best defense strategy for you in this case.

So, I am not going to discharge Mr. Woodards at this point. (6/10/16 at 7)

While the trial judge acknowledged that he had received Mr. Matthews's letters, he did nothing to determine whether or not there were irreconcilable differences between Mr. Matthews and his counsel. The need to protect the accused's right to counsel is paramount. Charles O. Williams, *supra*. Instead of exploring Mr. Matthews's grievances, the trial judge relied solely upon counsel's representations and his impression of counsel's performance in his courtroom. The record shows that Mr. Matthews began requesting substitute counsel early on in the case. It is clear that he was not engaging in any delay tactics. In denying his request, the trial judge did not ask any questions to establish whether Mr. Matthews had a valid basis for requesting new counsel. Instead, the inquiry was limited to Attorney Woodward's views. Forcing Mr. Matthews to continue with Woodward, an attorney that he did not trust, deprived him of the right to counsel.

An indigent defendant is entitled to have his appointed lawyer replaced upon a showing of adequate cause for a change. Mr. Matthews was not even provided with that opportunity. The judge's decision was made without any reference to the basis for Matthews's request and constitutes an abuse of discretion. For these reasons, due process requires a new trial. Const 1963, art I, § 17, 20; US const, Ams VI, XIV.

GROUND TWO

MR. MATTHEWS WAS DEPRIVED OF HIS SIXTH AMENDMENT TO A SPEEDY TRIAL YET--HERE HE WAS ARRESTED ON OR ABOUT NOVEMBER 22, 2015 AND TRIAL BEGAN ON SEPTEMBER 28, 2016.

A. Standard of Review and Preservation of Error.

Whether a defendant has been denied his right to a speedy trial presents a constitutional question this court reviews de novo. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860, 867 (2003).

Mr. Matthews was arrested on November 22, 2015 and trial commenced on September 28, 2016. During the June 10 2016 Final Conference, Mr. Matthews stated that he was asking for a speedy trial dismissal because he had been incarcerated and not brought to trial. In a letter to the trial judge dated April 20, 2016, Mr. Matthews wrote that he had been incarcerated 202 days and that he "wrote for a speedy trial release motion" but that the court "has not responded." ¹

B. Argument

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial..." US Const Am VI. Michigan offers a virtually identical protection in its constitution. See Mich Const 1963 art I § 20. This right is fundamental to our system of justice and "one of the most basic rights preserved by our Constitution." *Klopfer v North Carolina*, 386 US 213, 226; 87 S Ct 988, 995; 18 L Ed 2d 1 (1967). The provision prevents persons accused of crimes from "undue and oppressive incarceration prior to trial... anxiety and concern accompanying public accusation and ... impair[ed] ... ability ... to defend himself." *US v Marion*, 404 US 307, 320; 92 S Ct 455, 463; 30 L Ed 2d 468 (1971). As the Marion court observed, serious policy considerations drive the rule:

¹The letter dated April 20, 2016 was stamped "received" on June 9, 2016. In another letter in the court file dated May 25, 2016, Mr. Matthews writes that "I wrote to [Judge Kenny] on my speedy trial dismissal."

Inordinate delay between arrest, indictment and trial may impair a defendant's ability to present an effective defense. But the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy and create anxiety in him, his family and his friends. Id at 320; 92 S Ct at 463; 30 L Ed 2d 468.

In *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182, 2192; 33 L Ed 2d 101 (1972) the Supreme Court identified four factors for lower courts to consider in evaluating whether an accused has been denied a speedy trial. They include "[l]ength of delay, the reasons for the delay, the defendant's assertion of his right, and prejudice to the defendant." Id. While a court must consider each Barker factor individually, no factor alone is dispositive:

We regard none of the four factors identified ... as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must engage in a difficult and sensitive balancing process. But because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution. Id at 533; 92 S Ct at 2193; 33 L Ed 2d 101.

As set forth in the letters written to the trial court, Mr. Matthews repeatedly asserted his right to a speedy trial (Exhibit 1). As noted, he also repeatedly requested new counsel.

The US Supreme Court identified three kinds of delay in Barker: (1) deliberate delays, for example, where a prosecutor attempts to hamper a defense; (2) neutral delays, caused by things like prosecutorial negligence or overcrowded dockets; and (3) valid delays, as might occur when something like a necessary witness is missing. *Barker*, supra at 527.

The ultimate responsibility for "neutral" delays still rests with the government. Id at 529 (noting that the primary burden to assure cases are brought to trial rests with prosecutors, not defendants).

Under Barker, standard pre-trial delays are the responsibility of the prosecutor. It is well settled that delays caused by docket congestion cannot be weighed against the defendant. Unintentional or otherwise, they are more properly charged to the prosecution, since the State — not the accused — bears the duty of bringing a defendant to trial. *Strunk v US*, 412 US 434, 436-37; 93 S Ct 2260, 2262; 37 L Ed 2d 56 (1973). Moreover, focusing on whether the prosecutor caused a delay for a "legitimate" reason or because of bad faith is somewhat misplaced. Other than two short delays attributed to the defense, the delay in bring Mr. Matthews to trial must be attributed to the prosecution. The register of actions indicates that two adjournments of pre-trials were requested by Defendant's counsel. A February 18, 2016 conference was adjourned until March 11, 2016 and a May 16, 2016 conference was adjourned until May 25, 2016.

Since Mr. Matthews took every reasonable step in preserving his right to a speedy trial (without his attorney's assistance), Barker dictates that this factor weighs heavily in his favor.

Under Michigan law, if eighteen months pass between arrest and the start of trial, courts will presume prejudice to the defendant. *People v Grimm*, 388 Mich 590, 606; 202 NW2d 278, (1972) (overruled on other grounds, 390 Mich 245; 212 NW2d 222 (1972)).

Because the delay here did not exceed eighteen months, prejudice to is not presumed.

Mr. Matthews was incarcerated for approximately 10 months prior to the commencement of trial. As noted in *Marion*, "the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. . . . Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy and create anxiety in him, his family and his friends." *Marion* at 320; 92 S Ct at 463; 30 L Ed 2d 468. Mr. Matthews's repeated attempts to inform the trial court that he wanted to be brought to trial implicates the

GROUND THREE

THE COURT ERRED IN ASSESSING MR. MATTHEWS \$1,300 IN COURT COSTS.

A. Standard of Review and Preservation of Issue

Mr. Matthews was assessed \$1,300 in cost costs. Because Mr. Matthews's counsel did not object to the imposition of court costs at the trial court level this issue is unpreserved for appeal. This Court reviews an unpreserved challenge to a trial court's imposition of court costs for plain error affecting a defendant's substantial rights. *People v Johnson*, 315 Mich App 163, 197; NW2d (2016). "In order for a defendant to establish plain error, he must show that (1) an error occurred, (2) the error was plain, i.e. clear or obvious, and (3) the plain error affected substantial rights." *Id.*

B. Discussion

A trial court possesses the authority to order a defendant to pay reasonable court costs. *People v Konopka (On Remand)*, 309 Mich App 345, 358; 869 NW2d 651 (2015). While those costs do not need to be separately calculated, a trial court must "establish a factual basis" for the costs imposed. MCL 769.1k(1)(b)(iii); *Konopka*, 309 MichApp at 359. "[W]ithout a factual basis for the costs imposed, [this Court] cannot determine whether the costs imposed were reasonably related to the actual costs incurred by the trial court, as required by MCL 769.1k(1)(b)(iii)." *Id.* at 359-360. The trial court did not articulate its basis for the \$1,300 in court costs assessed to defendant at sentencing. In assessing Mr.

Matthews with \$1,300 in court costs, the trial court stated:

There is restitution in the amount of \$7,005.00 to Hurticene Harris. That is joint and several liability with co-defendant, Joshua Simpson. There is \$136.00 state cost, \$130.00 crime victim assessment fee, court costs of \$1,300.00 and attorney fees of \$400.00. (ST at 10-11).

There is also nothing in the lower court record providing a factual basis for the imposition of \$1,300 in court costs. Thus, the lower court record is unclear as to whether the

court costs "were reasonably related to the actual costs incurred by the trial court." *Konopka*,

309 Mich App at 359. Where "defendant specifically challenges the lack of reasoning for the costs imposed . . . [he] should be given the opportunity to challenge the reasonableness of the costs imposed." Id. at 360. The trial court erred in ordering defendant to pay court costs without establishing a factual basis for the costs imposed. The assessment of costs must be vacated.

GROUND FOUR

THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING \$7005 IN RESTITUTION.

A. Standard of Review and Preservation of Issue

This Court reviews a trial court's restitution order for an abuse of discretion. In re McEvoy, 267 Mich App 55, 59, 704 NW2d 78 (2005). The trial court's findings of fact are reviewed for clear error. People v Zahn, 234 Mich App 438, 445, 594 NW2d 120 (1999). Restitution was ordered in the amount of \$7005, joint and several with co-defendant, Joshua Simpson

B. Argument

"Crime victims have a constitutional right to restitution." People v Gubachy, 272 Mich App 706, 708, 728 NW2d 891 (2006), The prosecution bears the burden of establishing the proper amount" of restitution by a preponderance of the evidence. People v Gahan, 456 Mich 264, 276, 571 NW2d 503 (1997); MCL 780.767(4). "The amount of restitution to be paid by a defendant must be based on the actual loss suffered by the victim" People v Bell, 276 Mich App 342, 347, 741 NW2d 57 (2007).

The PSIR states that "the family spent \$7,500 in out-of-pocket funeral expenses. [The victim's mother] stated she will provide documentation when she appears in court for sentencing." (PSIR at 3). During the sentencing hearing, no reference was made with regard to the basis for restitution. The trial judge abused his discretion ordering \$7505 in restitution.

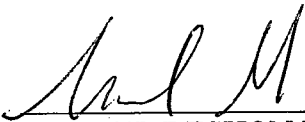
CONCLUSION

For the above reasons Mr. Matthews requests that this Honorable Court grant his Petition for a Writ of Certiorari reverse the Sixth Circuit's decision or allow the parties to submit briefs on the merits of the Sixth Circuit's decision.

DECLARATION OF SERVICE

The petitioner certify under 28 USC 1746 that a copy of this document was served to all parties by U.S. Mail.

SUBMITTED BY:



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