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The Obligation of Securing a Speedy Trial

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THE OBLIGATION OF SECURING A SPEEDY TRIAL

A speedy trial in criminal law,[1] as secured by constitutional guaranties, is a trial conducted according to fixed rules, regulations and proceedings of law, free from unreasonable delay.[2] The provision in the Constitution of the United States is found in the Sixth Amendment, and reads as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, . . . and to have the assistance of counsel for his defense." Most states have provisions in their constitutions relating to speedy trials. The Wyoming constitution, which is very similar to the federal constitution in this respect, provides that "In all criminal prosecutions the accused shall have the right . . . to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed."[3] Many states (including Wyoming) further provide by statute that if a person shall not be brought to trial before a certain term of court following the filing of the charge against him, he shall be entitled to discharge.[4]

The purpose of this note is to determine who has the burden or obligation of securing this speedy trial guaranteed in our federal constitution and in most state constitutions. Assuming that a person has been arrested for a felony and that an information has been filed against him, who has the burden of proceeding without undue delay to the trial in fulfillment of the constitutional and statutory provisions?

Some courts have for various reasons put the burden on the defendant. One reason for doing this is based on the proposition that the right is a privilege of the defendant, and if this right is not claimed by him it may be waived.[5] In the *McTague* case the defendant was indicted by the grand jury for murder, burglary, grand larcency, and for the possession of burglary tools. The defendant was arraigned and tried on the murder count and was convicted of murder in the third degree and sentenced to the state penitentiary. Five years after the indictment against the defendant the other three charges were placed on the calendar for trial. The defendant contended that he had been denied a speedy trial, but the court held that he must demand a speedy trial or it is waived.

Another rationale has been that legislatures have indicated that a demand by defendant was necessary to start the operation of the constitu-

1. 85 Am. St. Rep. 187 has a very good monographic treatment of the general subject.
2. Black's Law Dictionary, 4th Ed. (1951).
3. Wyo. Const. Art I, § 10 (1890).
4. E.g., Wyo. Comp. Stat. § 10-1312 (1945): "If any person indicted for any offense and committed to prison, shall not be brought to trial before the end of the second term of court having jurisdiction of the offense, which shall be held after such indictment is found, he shall be entitled to be discharged so far as relates to the offense for which he was committed, unless the delay shall happen on the application of the prisoner." This statute is typical of many statutory provisions. Wyo. Comp. Stat. § 10-1313 also provides that the accused if out on bail is entitled to discharge if not brought to trial before the third term of court.
5. State v. McTague, 173 Minn. 153, 216 N.W. 787 (1927).

tional guaranty.[6] Thus in the *Foster* case where the defendant was tried for criminal syndicalism and had been on bail for eight years because the jury disagreed, the defendant was held not to have been denied a speedy trial because no formal demand was made or filed in open court by the defendant.

That the accused is represented adequately by counsel and that counsel should protect his constitutional rights or the accused should ask that his rights be taken care of is another basis for putting the burden on the defendant.[7] The burden has also been placed on the defendant because of special circumstances. For example in one case[8] the court reasoned that with the defendant out on bail there was no valid reason for him to complain of the delay.

In general the underlying philosophy of placing the burden on the defendant is that the primary object is to serve the ends of public justice, and that this is more important than having one particular defendant in a particular case be discharged or relieved from trial because there was delay. This philosophy was well summarized in the dissenting opinion in the *Flanary* case,[9] "Constitutional and statutory provisions for a 'speedy trial' secure that right to a defendant, but they were never intended to defeat the demands of public justice. The prime consideration of such provisions is justice both to the accused and the public. They were intended to promote prompt trials, not to furnish an escape from trial through deceit or trickery."

The principal *method* of putting the burden on the accused has been the requirement that the defendant must demand trial or he has waived his right to a speedy trial; this proposition is the prevailing view among most jurisdictions.[10]

In some jurisdictions the burden has been placed on the prosecution or state. In a recent case[11] the New York Court of Appeals enumerated several reasons for placing the burden on the prosecution: First, since the state starts the action and must see that the defendant is promptly arraigned, the state should therefore have the duty of bringing the defendant to trial in a speedy manner.[12] Secondly, the New York statutes do not permit the defendant to bring the indictment on for trial, which is true of most statutory provisions. In the third place, the court reasoned, even though guilty parties may sometimes be discharged of a crime under statutes which

6. People v. Foster, 261 Mich. 247, 246 N.W. 60 (1933).
7. In re Van Garner, 134 Kan. 410, 5 P.2d 821 (1931).
8. Meadowcroft v. People, 163 Ill. 56, 45 N.E. 991 (1896).
9. Flanary v. Commonwealth, 184 Va. 204, 35 S.E.2d 135, 139 (1945).
10. People v. Foster, 261 Mich. 247, 246 N.W. 60 (1933); Head v. State, 9 Okla. Crim. 356, 131 Pac. 937 (1913); Fox v. State, 102 Ark. 393, 144 S.W. 516 (1912).
11. People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955).
12. As the Supreme Court of Arizona put it in State v. Carillo, 41 Ariz. 170, 16 P.2d 965 (1952), "The defendant wasn't the moving party . . . the state initiates the accusation and any delay . . . except for the most cogent reasons is not contemplated or justifiable."

require either trial or dismissal within a limited period, the right of *all* defendants to a speedy trial is more important than whether a *particular* defendant is guilty or innocent of a particular charge against him. The decision in the *Prosser* case definitely placed the burden on the prosecution of noticing defendant's case for trial. The court observed that the district attorney could at any time have placed the case on the calendar for trial, which would counter the danger of the defendant sitting in silence and then obtaining a discharge by claming that his speedy trial right has been violated.

In further support of the view that the burden is upon the prosecution, the Virginia court[13] reasoned that if the silence of the accused were intended to be a waiver of the right to a speedy trial the legislature could have expressed this by appropriate statutory language. Another approach is that the defendant is not required to make any demand because that demand is made *for* him by the "speedy trial" provisions of the constitution.[14] The Supreme Court of Oregon simply put it that the prosecutor has a duty in the absence of statute to speedily bring the accused to trial—a duty which is just as imperative as the duty to charge the person with the crime in the first place.[15] Similarly, because there was no statutory duty placed on the defendant to demand a trial, the burden was placed on the state in a West Virginia case.[16]

Three Wyoming cases[17] have dealt with the general subject at hand. None of the cases are directly in point, nor do they specifically place the burden of securing a speedy trial on either side, but there is some noteworthy language in the opinions relative to the issue. The first case[18] held that the defendant's conviction, sentence, and imprisonment on one indictment was not a sufficient excuse for not bringing him to trial on another indictment; that the right to a speedy trial is not suspended while one is serving a penitentiary sentence. Thus the defendant was discharged, under the statute, because the state delayed bringing him to trial on the second charge until he had served a four year penitentiary sentence resulting from the first charge. The court emphasized that the statutory provision[19] was enacted in order to make the constitutional guaranty of a speedy trial effective, and that the statute is a legislative declaration of what is a reasonable delay in bringing the accused to trial. Thus, because the statute does involve the important right to a speedy trial, it should be construed and applied liberally in favor of the defendant. In the second case[20] the court interpreted the delay permitted by the statute so as not to include the term at which the defendant was indicted. The

13. Flanary v. Commonwealth, 184 Va. 204, 35 S.E.2d 135 (1945).
14. Zehrlaut v. State, 230 Ind. 175, 102 N.E.2d 203 (1951).
15. State v. Chadwick, 150 Ore. 645, 47 P.2d 232 (1935).
16. Ex Parte Chalfant, 81 W.Va. 93, 93 S.E. 1032 (1917).
17. State v. Keefe, 17 Wyo. 227, 98 Pac. 122 (1908); State v. Levand, 37 Wyo. 372, 262 Pac. 24 (1927); City of Casper v. Wagner, 284 P.2d 409 (Wyo. 1955).
18. State v. Keefe, 17 Wyo. 227, 98 Pac. 122 (1908).
19. Wyo. Comp. Stat. § 10-1312 (1945).
20. State v. Levand, 37 Wyo. 372, 262 Pac. 24 (1927).

third case[21] involved a defendant convicted in the municipal court of driving a motor vehicle under the influence of intoxicating liquor which was in violation of a city ordinance. The defendant gave notice of appeal and then two years later filed a motion for dismissal on the grounds that the prosecution failed to diligently prosecute his appeal. The court held that the statutory provision for discharge of the defendant for undue delay in bringing him to trial, cannot be invoked by the defendant because he has had one speedy trial and was convicted thereat. The court said further that because the defendant did not diligently prosecute his appeal it should be dismissed.

Weighing the various considerations, it would seem preferable that the obligation for securing a speedy trial in Wyoming should be placed on the prosecution. The Wyoming statutes,[22] significantly use the language "if any person . . . shall not be brought to trial . . . he shall be entitled to be discharged." The words "be brought" would infer that the trial must be brought by the prosecution, thus placing the burden there. By putting the burden on the prosecution there is no undue hardship, since the state should desire to bring the defendant speedily to trial while its evidence is fresh. It comports more with the general spirit of our criminal system, as indicated by such doctrines as the presumption of innocence, to place the burden of securing a speedy trial on the prosecution.

The statutes of New York and Indiana[23] are somewhat similar to the Wyoming statutes on speedy trial. The decisions of the New York and Indiana courts[24] seem well reasoned, and should be followed.

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MOTOR VEHICLE CERTIFICATES OF TITLE IN WYOMING

Wyoming is one of the 35 states that has some form of certificate of title act. Although all of the 48 states require some sort of registration of motor vehicles, some 13 states have no certificate of title act of any kind. Of the states having such an act, many are inadequate and very few are similar, resulting in a lack of uniformity, in form and substance. Such

21. City of Casper v. Wagner, 284 P.2d 409 (Wyo. 1955).
22. Wyo. Comp. Stat. § 10-1312, § 10-1313 (1945).
23. N.Y. Code Cr. Proc. § 668 (1939): "If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown."

Ind. Stat. § 9-1403 (Burns' Replacement 1956): "No person shall be held by recognizance to answer an indictment or affidavit without trial for a period embracing more than three terms of court, not including the term at which a recognizance was first taken thereon, if taken in term time; but he shall be discharged unless a continuance be had upon his own motion, or the delay be caused by his act, or there be not sufficient time to try him at such third term; and, in the latter case, if he be not brought to trial at such third term, he shall be discharged, except as provided in the next section."
24. Zehrlaut v. State, 230 Ind. 175, 102 N.E.2d 203 (1951); People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955).