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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **Five month delay in escape prosecution was not "presumptively prejudicial" in speedy trial analysis. [In the Matter of J.M.](05-3-35A)**

**On August 11, 2005, the Corpus Christi Court of Appeals concluded that a five month delay was not "presumptively prejudicial" and as a result respondent's constitutional right to a speedy trial was not abridged.**

05-3-35A. In the Matter of J.M., Memorandum, No. 13-04-226-CV, 2005 Tex.App.Lexis 6359 (Tex.App.— Corpus Christi, 8/11/05).

Background: A jury found that appellant J.M., III, a juvenile, engaged in delinquent conduct by committing the offense of escape. n1 *See TEX. PEN. CODE ANN. 38.06* (Vernon 2003). The trial court entered a judgment of adjudication and disposition, incorporating the jury verdict and committing him to the Texas Youth Commission. By four issues, J.M. argues (1) the evidence is legally and factually insufficient, and (2) the trial court should have dismissed the case on speedy trial and double jeopardy grounds.

Held: Affirmed.

Facts: The jury heard that J.M. ran to the perimeter fence of the Texas Youth Commission's Joe B. Evins Regional Juvenile Center, accompanied by three juvenile inmates, around 6:45 a.m. on September 29, 2003. Pursued by two correctional officers, the youths proceeded through a cut in the fence that was marked with a plastic container. J.M. and one of the other juveniles fled the scene in a white Suburban that was waiting for them. The other two juveniles were apprehended by the pursuing officers. The following day, J.M. was arrested and returned to the custody of the Texas Youth Commission.

Memorandum Opinion: Sufficiency Issues Omitted.

By his third issue, J.M. argues that the trial court erred by denying his motion to dismiss on speedy trial grounds. The State counters that the delay from arrest and both the charge and trial is not presumptively prejudicial and, thus, does not trigger the *Barker* factors. *See Barker v. Wingo*, 407 U.S. 514, 530, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972) (applying a four-part balancing test in speedy trial claims which reviews (1) length of delay, (2) reason for delay, (3) assertion of the right, and (4) prejudice).

#### A. Presumptive Prejudice

The length of the delay is a "triggering mechanism" for analysis of the remaining *Barker* factors. *State v. Munoz*, 991 S.W.2d 818, 821 (Tex. Crim. App. 1999) (en banc). Further analysis is required if the length

of the delay is "presumptively prejudicial." *Id.* at 821-22. Presumptive prejudice is determined from the circumstances of the case. *See Barker*, 407 U.S. at 530-31; *Schenekl v. State*, 996 S.W.2d 305, 312 (Tex. App.-Fort Worth 1999), *aff'd*, 30 S.W.3d 412 (Tex. Crim. App. 2000). The length of the delay is measured from the time of arrest until the time of trial. *Schenekl*, 996 S.W.2d at 312 (citing *Emery v. State*, 881 S.W.2d 702, 708 (Tex. Crim. App. 1994)). Most delays of eight months or longer are considered presumptively unreasonable and prejudicial. *Doggett v. United States*, 505 U.S. 647, 651, 120 L. Ed. 2d 520, 112 S. Ct. 2686 (1992); *see Schenekl*, 996 S.W.2d at 312; *Pierce v. State*, 921 S.W.2d 291, 294 (Tex. App.-Corpus Christi 1996, *no pet.*). "The delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker*, 407 U.S. at 531. The delay factor requires a two-prong inquiry. *Munoz*, 991 S.W.2d at 822. First, any speedy trial analysis depends on whether the delay is more than "ordinary." *Zamorano v. State*, 84 S.W.3d 643, 648 (Tex. Crim. App. 2002) (en banc). Second, the longer the delay extends beyond "ordinary," the more prejudicial that delay is to the accused. *Id.*

## B. The Record

J.M. was arrested on September 30, 2003 and formally charged on February 19, 2004 for the offense of escape. n8 J.M. did not request a speedy trial. The initial setting was set for February 23, 2004. The trial court granted the State's opposed motion for continuance on grounds of inability to locate a material witness. The case was reset for March 1, 2004. After a detention hearing and evidentiary pretrial hearings, trial on the merits commenced on March 4, 2004. Thus, the delay from the arrest to the formal charge is four months and nineteen days. The delay from the arrest to trial is five months. The delay from the formal charge to the trial is less than one month.

n8 A petition alleging burglary of a building and burglary of a habitation was filed on January 15, 2004. The petition was amended to include the escape charge and filed on February 19, 2004. The State proceeded to trial solely on the escape charge.

## C. Disposition

The time from J.M.'s arrest to trial is five months, the longer of the complained of delays. "It is our opinion that this short period of time could in no way be construed as 'presumptively prejudicial.'" *Pete v. State*, 501 S.W.2d 683, 687 (Tex. Crim. App. 1973) (finding the span of approximately four months between the bench warrant and trial not to be presumptively prejudicial). Thus, we conclude that J.M.'s constitutional right to a speedy trial was not abridged. *See id.* Further, J.M. made no request for a speedier determination of his case. *Id.* This fact alone would make it difficult for J.M. to prove that he was denied a speedy trial. *Id.*

Conclusion: We overrule J.M.'s third issue.

Double Jeopardy Issue Omitted.