



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellant,	)	
vs.	)	Filed December 30, 1981
MABEL DENTON,	)	
Defendant-Appellee.	)	<u>1-381</u> 66205

Appeal from Black Hawk District Court, C. W. Antes, Judge.

The State appeals as of right pursuant to section 814.5(1)(a), The Code, from the trial court's dismissal of the charges against defendant for failure to provide a speedy trial. REVERSED AND REMANDED FOR A TRIAL.

Thomas J. Miller, Attorney General, and Merle Wilna Fleming, Assistant Attorney General, for plaintiff-appellant.

Alvin R. Davidson, Public Defender's Office, Waterloo, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The State appeals as of right pursuant to section 814.5(1)(a), the Code, from the trial court's dismissal of the charges against defendant for failure to provide a speedy trial. We reverse and remand for a trial.

The trial court dismissed the charge against the defendant because the State brought the matter to trial 131 days after indictment, which is forty-one days beyond the ninety-day statutory period. The issue in this case is whether the forty-one day delay is attributable to the defendant. We find that it is.

The defendant was charged with voluntary manslaughter, a violation of section 707.4, The Code, in a grand jury indictment handed down on August 29, 1980. Trial was set for November 4, 1980. On October 2, 1980, defendant filed a motion for preparation of a transcript of the grand jury testimony at state expense. The motion was sustained on October 29, 1980. On November 4, 1980, the court on its motion continued the matter. The court said, "Defendant's attorney will have the responsibility of notifying the Court Administrator's Office when the transcript has been received and when he will be prepared to proceed with trial."

The transcript was delivered to defense counsel on December 15, 1980, and he notified the court on December 17, 1980. The court reporter had telephoned defense counsel and had expressed concern about meeting the speedy trial requirement. Defense counsel told him it was not his (the court reporter's) problem. This statement led the court reporter to process routinely the transcript, instead of attempting to comply with the speedy trial requirement. The court reporter is a state agent. When the defendant advises the State not to worry about processing its work within the statutory speedy trial period, the time required to perform that work is chargeable to the defendant.

Whether we compute the time for preparing the transcript from October 29, 1980, or November 4, 1980, the time period is more than forty-one days until the transcript was completed.

We are not deciding whether in the ordinary instance the defendant is responsible for the time needed to prepare such a transcript. In this case, however, we find the delay is attributable to defendant.

REVERSED AND REMANDED FOR TRIAL.

All judges concur except Carter and Johnson, JJ., who concur specially.

CARTER, J. (concurring specially)

I concur in the result based upon a somewhat different analysis of the issues involved.

At the outset, I reject any notion that periods of delay resulting from pretrial motions or requests by defendant for production of grand jury transcripts should automatically be excluded in computing time for purposes of the statutory speedy trial requirement. Support for this contention is found in State v. Donnell, 239 N.W.2d 575, 579 (Iowa 1976), where the court declared that such a concept should not be "inflexibly applied." I submit that while delays of this type are factors to be considered in determining whether defendant has been denied a speedy trial, they are determinative of the issue only if in fact they make it impossible or not reasonably practicable to accord the defendant a trial within the statutorily prescribed time.

In the present case there are two questions which must be answered in order to pass upon the State's claim of "good cause" under Iowa R. Crim. P. 27(2)(b). These are (1) whether the motion and favorable order relating to production of grand jury transcripts made it impossible or not reasonably practicable to bring the defendant to trial within the 90-day period mandated by the rule; and (2) if the answer to the first question is in the affirmative, whether there is good cause to delay the trial until a date which was 41 days beyond the 90-day period. Given the timing of defendant's motion for production of the transcript and the length of time required by the State to oblige him as to that request, the answer to the first question is clearly yes. As to the second question, I submit that the period of additional delay from the time the transcript became available (here, December 15, 1980) and the trial date of January 7, 1981 was not unreasonable and therefore not without good cause. Where, as here, the court has acted to accord the defendant a trial date well within the 90-day period and the trial was thereafter necessarily delayed as a result of matters initiated by the defendant, the court is not required to reschedule the trial immediately on completion of said activities by defendant. While the record reflects in the present case that it would have been possible to hold the trial at an earlier time, this was not required under a reasonable interpretation of rule 27(2)(b).

Johnson, J., joins in this special concurrence.