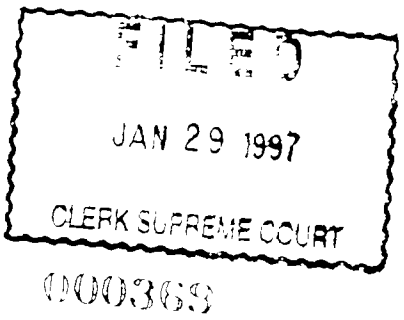
IN THE COURT OF APPEALS OF IOWA

No. 6-696 / 95-1775



STATE OF IOWA,
Appellee,

vs.

DAVID ALAN BRASSFIELD,
Appellant.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Senior Judge, and Gene L. Needles, Judge.

Defendant appeals his convictions on two counts of carrying a concealed weapon in violation of Iowa Code section 724.4(1) (1995), and two counts of possession of a weapon by a felon in violation of section 724.26. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Jeffrey K. Noble, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Background facts. A trial information was filed on May 1, 1995, charging defendant, David Alan Brassfield, with two counts of carrying concealed weapons and two counts of possession of a weapon by a felon. Trial on the charges was scheduled for July 26, 1995. Brassfield was subsequently charged with neglect of a dependent adult, and trial on that matter was also scheduled for July 26.

Brassfield filed a demand for speedy trial along with a motion to suppress on July 20, 1995. The ninety-day speedy trial deadline was July 30. On July 21, the State filed a motion to continue the trial. Brassfield filed a motion to dismiss on July 21 alleging a continuance of the trial would result in a denial of his right to a speedy trial.

On July 24, the trial court found good cause to continue the trial and denied the motion to dismiss. The court cited three reasons: 1) defendant had two actions (the weapons and neglect cases) scheduled for trial for the same day and time; 2) defendant had filed a motion to suppress six days before the trial date; and 3) a police officer expected to be a witness at the suppression hearing and at trial was scheduled to be on vacation on those dates. The trial was rescheduled for August 7.

On August 7, Brassfield filed a motion to reconsider the motion to dismiss. The court denied the motion to reconsider and the trial commenced. The jury found Brassfield guilty as charged. On appeal, Brassfield argues the district court abused

its discretion in failing to dismiss the charges against him based upon the violation of his right to a speedy trial. Iowa R. Crim. P. 27 (2)(b).

In response, the State argues the delay was, in part, attributable to Brassfield because of his belated filing of a motion to suppress. It also argues there was good cause for the delay, the delay was relatively short, and there was no prejudice to Brassfield.

I. Right to speedy trial. Our scope of review for speedy trial issues under Iowa Rule of Criminal Procedure 27(2)(b) is for correction of errors at law. *State v. Keys*, 525 N.W.2d 783, 786 (Iowa App. 1995). We recognize the trial court's discretion to refuse to dismiss within the limits of the exceptions to the speedy trial mandate. *See State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991). Thus, we ultimately look to whether the trial court abused its discretion. *Keys*, 535 N.W.2d at 786.

Rule 27(2) mandates that a defendant asserting his right to a speedy trial "must be brought to trial within ninety days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary is shown." Iowa R. Crim. P. 27(2)(b).

The trial court need not dismiss the case if it is not brought within the ninety-day speedy trial period if one of three factors exist: 1) the defendant has waived his right to a speedy trial; 2) the delay is attributable to the defendant; or 3) good cause exists for the delay. *State v. Finn*, 469 N.W.2d 692, 694 (Iowa 1991) (citing *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983)).

The State asserts the timing of Brassfield's motion to suppress is delay attributable to Brassfield. "Delay attributable to defendant may constitute statutory good cause preventing the State from carrying out its obligation to bring him to trial." *Keys*, 533 N.W.2d at 787 (quoting *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976)). Brassfield filed a motion to suppress on July 20th, six days before trial was scheduled to commence and well beyond the deadline for filing such motions. *See* Iowa R. Crim. P. 10(4). Because Brassfield filed this late motion, we conclude some of the delay was attributable to Brassfield.

The State further asserts the motion to continue was based in part on the unavailability of a key witness at the trial, and another witness for the newly scheduled suppression hearing. In determining whether good cause exists to extend the trial date beyond the ninety-day period, the critical factor is the reason for the delay. Olson, 528 N.W.2d at 654; *State v. Searcy*, 470 N.W.2d 46, 48 (Iowa App. 1991). The State bears the burden of demonstrating good cause. *State v. Todd*, 468 N.W.2d 462, 469 (Iowa 1991); *Olson*, 528 N.W.2d at 654. The trial court found the unavailability of key witnesses was an additional reason supporting a finding of good cause for the delay. We agree. *See Todd*, 468 N.W.2d at 470; *State v. Petersen*, 288 N.W.2d 332, 334-45 (Iowa 1980); *Searcy*, 470 N.W.2d at 47 (holding the availability of key witnesses is good cause for failure to comply with the speedy trial requirement).

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Additionally, Brassfield's trial was delayed only eight days beyond the speedy trial deadline. A delay of this length is not inherently unreasonable. *See State v. Bond*, 340 N.W.2d 276, 280 (Iowa 1983) (eight days); *Searcy*, 470 N.W.2d at 47 (eighteen days). Thus, while we do not favor extending trial dates beyond the ninety-day time period, we find that the district court did not abuse its discretion in allowing the continuance and denying Brassfield's motion to dismiss.

AFFIRMED.