IN THE COURT OF APPEALS OF IOWA

FILED
MAR 16 1989
CLERK SUPREME COURT

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.) 8-634
88-381
FRED ALBERT DIETZ,)
Defendant-Appellant.) 287

Appeal from the Iowa District Court for Scott County (No. 130600-01), Jack F. Broderick, Judge.

The defendant appeals from his conviction by a jury of driving while intoxicated. **AFFIRMED.**

William J. Bribriesco of Bribriesco & Bribriesco, Bettendorf, for defendant-appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney General; and Marc Gellerman, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J. 288

Defendant Fred Albert Dietz appeals from his conviction by a jury of driving while intoxicated. Dietz contends that the trial court erred in denying his motion to dismiss based on the State's failure to file trial information within 45 days of his arrest under Iowa R. Crim. P. 27(2)(a). Our review is for the correction of errors at law. We affirm.

Dietz was arrested on June 25, 1987, for driving while intoxicated. On July 14 he filed a pleading styled "Written Arraignment and Plea of Not Guilty." The State then charged Dietz by trial information on October 7, 1987. After the district court denied Dietz's motion to dismiss, which alleged a violation of the speedy indictment provision of Iowa Rule of Criminal Procedure 27(2)(a), a jury found him guilty as charged.

Iowa Rule of Criminal Procedure 27(2)(a) provides:

> When an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to section 232.45, The Code, and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto.

Dietz contends that the trial court erred by denying his motion to dismiss because the period between his arrest on June 25 and the filing of trial information on October 7 exceeded the permissible 45 days. The State does not

allege good cause for this delay. While Dietz did not specifically waive his right to a speedy indictment, the State asserts that through his "Written Arraignment and Plea of Not Guilty," he made such a waiver.

In his written arraignment and plea of not guilty defendant acknowledged, among other things, that he had received a copy of the formal charge regarding operating while intoxicated and that he had read the charge (even though none had been filed). Dietz specifically waived his right to a speedy trial on his written arraignment and plea form.

The purpose of the rule which provides for dismissal of prosecution if an indictment is not found within a specific time is to insure speedy trial. State v. Gebhart, 257 Iowa 843, 847, 134 N.W.2d 906, 908 (1965); State v. Cennon, 201 N.W.2d 715, 718 (Iowa 1972) (statutes concerning failure to indict were promulgated to implement constitutional provisions of speedy trial); State v. Lindloff, 161 N.W.2d 741 (Iowa 1968) (statutes requiring certain time within which to indict are intended to provide the defendant a shield not a sword). The rule concerning speedy indictment, while meant to shield the defendant from unjust delays, is not intended to be a device by which, through technicalities, the defendant can obtain immunity from prosecution. Id. at 909-10.

Dietz has waived his right to speedy trial. As the purpose of a speedy indictment is to insure speedy trial, we find that Dietz, through his waiver of speedy trial, has also waived his right to speedy indictment. We affirm the trial court's denial of defendant's motion to dismiss.

AFFIRMED.