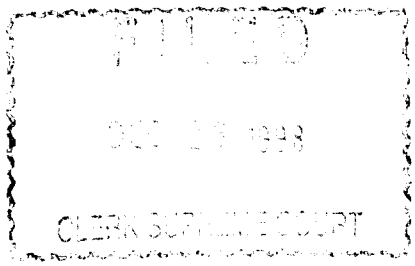
IN THE COURT OF APPEALS OF IOWA

No. 8-500 / 98-0011
Filed December 28, 1998



STATE OF IOWA,
Appellee,

vs.

LEO C. LODHOLZ,
Appellant.

Appeal from the Iowa District Court for Buchanan County, K.D. Briner (motion to dismiss), William G. Klotzbach (motion to suppress), J.G. Johnson (trial), Judges.

Leo Lodholz appeals from judgment and sentence entered for possession of marijuana. **REVERSED.**

David A. Morse of Garten & Wanek, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Allan W. Vanderhart, County Attorney, and Andrea Dryer, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Mahan, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

STREIT, P.J.

Leo Lodholz complains the State failed to give him a speedy trial when his case was continued on trial day because of another case set for the same time. Lodholz appeals from a judgment and sentence for the possession of marijuana. Lodholz claims his right to a speedy trial was violated, he was searched illegally, and inappropriate evidence was allowed at trial. Because Lodholz was denied his statutory right to a speedy trial without good cause, we reverse.

I. Background Facts.

On March 28, 1997, Lodholz was a passenger in a pickup truck that was lawfully stopped by an Independence police officer. During the administration of sobriety tests on Lodholz's driver, another officer arrived and asked Lodholz to get out of the truck. After the officer conducted a safety search and discovered a "pot pipe" in Lodholz's pocket, Lodholz was arrested.

II. Course of Proceedings.

On May 9, 1997, the State filed a trial information charging Lodholz with possession of a controlled substance—marijuana. Lodholz filed a written demand for speedy trial. Iowa R. Crim. P. 27(2)(b). On May 23, 1997, Lodholz was arraigned and jury trial was set for July 9, 1997. On June 23, 1997, Lodholz filed a motion to suppress evidence based on deposition testimony of the police officers. Four days later, the court set the motion for hearing to be held on July 18, 1997, and rescheduled the trial for August 6, 1997. Due to the lack of a ruling on the motion, trial was again

rescheduled to August 27, 1997.[1] In an order filed on August 19, 1997, the trial court denied the motion to suppress (order dated August 12, 1997).

Shortly before trial, defendant's attorney contacted the court administrator and was assured of the trial date. On August 27, Lodholz and trial counsel traveled from Des Moines and appeared for trial. That morning, *for the first time,* counsel was told there were two trials, including Lodholz's, scheduled to start that morning with the same prosecutor and judge. The State elected to proceed with the other trial.[2] The trial judge offered to empanel a jury later in the week for trial if the other case finished. Defense counsel's schedule did not permit such an arrangement. No certain trial time could be assured that week by the trial judge. Lodholz objected and moved for dismissal.

Lodholz filed a written motion to dismiss pursuant to Iowa R. Crim. P. 27 (2)(b). The court denied the motion to dismiss. Jury trial commenced on September 24, 1997. The jury found Lodholz guilty of possession of marijuana, in violation of Iowa Code section 124.401(b). After sentencing, Lodholz appealed.

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[1] There is no showing that this case was scheduled for trial in the week commencing August 27, 1997, i.e., this was not a case-assignment system in which the parties know in advance they have to be ready for their trial the entire time period designated. If such were the system here, defendant could not complain of a delay within the week.

[2] The defendant in the other case was incarcerated.

III. Speedy Trial.

Society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest. *State v. Hines,* 225 N.W.2d 156, 158 (Iowa 1975). It is the State's duty to effectuate the statute requiring trial within ninety days, absent good cause. *Id.* Our consideration must start from the premise defendant had no duty to bring himself to trial. *Id.* In deciding speedy trial questions under Iowa Rule Criminal Procedure 27(2), our scope of review is for correction of errors at law. We are bound by findings of fact supported by substantial evidence. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991); Iowa R. App. P. 4.

If the State fails in bringing the case to trial within the ninety-day period prescribed by Iowa Rule of Civil Procedure 27(2)(b), the case must be dismissed. *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983). The State can avoid dismissal by showing there is "good cause" for the delay, waiver, or delay attributable to the defendant. *Id.* The triggering event for the speedy trial time frame, under the plain language of the rule, is the filing of the indictment or information. *See State v. Swanson*, 452 N.W.2d 466, 468 (Iowa App. 1989). Once the time expires, the burden rests with the State, *in each instance*, to establish an exception to the ninety-day rule. *State v. Olson*, 528 N.W.2d 651, 653 (Iowa App. 1995); *State v. Ege*, 274 N.W.2d 350, 354 (Iowa 1979).

The speedy trial deadline in this case was August 7, 1997. There were two trial continuances which were beyond the ninety-day period. The first was the

continuance from August 6, 1997 to August 27, 1997, and the second from August 27, 1997 to September 24, 1997. We must examine each continuance to assess whether the State showed sufficient reason for not bringing the case to trial within the ninety-day period. *Id.*

The trial court attributed the first continuance past the 90-day deadline to Lodholz. Lodholz filed a motion to suppress which had not been ruled on by August 6th. Delay caused by defendant's filing of pretrial motions which cannot be heard and ruled on before the scheduled trial date may constitute a good cause exception to the speedy trial rule and cannot be relied upon to invoke dismissal under the rule. *See State v. Todd*, 468 N.W.2d 462 (Iowa 1991); *State v. King*, 225 N.W.2d 337 (Iowa 1975). Defendant does not contend this first continuance was a violation of his right to a speedy trial.

The trial court held, because the first delay was attributable to the defendant, his speedy trial deadline should be recalculated with specific days of delay being attributed to the defendant. This is not correct. The triggering event for the speedy trial time frame is the filing of an indictment or trial information. *State v. Olson*, 528 N.W.2d at 653. Delay attributable to defendant may constitute statutory good cause preventing the State from carrying out its obligation to bring him to trial, but it does not affect the speedy trial deadline. *See State v. Keys*, 535 N.W.2d 783, 787 (Iowa App. 1995). Lodholz's speedy trial deadline remained August 7, 1997, despite the fact the first continuance was, in part, attributable to him.

The fighting issue in this case is whether the State established good cause for the second continuance from August 27 to September 24. When examining the good cause exception to the trial within ninety days rule, we focus on one factor: the reason for the delay. *State v. Bond*, 340 N.W.2d at 279.

> Surrounding circumstances bear on the focal point of the inquiry but only to the extent that they relate directly to the sufficiency of the reason itself. Such circumstances as a relatively short period of delay, failure of the defendant to demand a speedy trial, and the absence of prejudice may allow a weaker reason to constitute good cause; a stronger reason may be necessary in the absence of such factors.

Id.

The State argues the congested court docket gave the trial court good cause for again delaying Lodholz's trial beyond the ninety-day time period. Another trial was scheduled to commence at the Buchanan County Courthouse at the same time as Lodholz's, with the same prosecutor, and the same judge. The court chose to proceed with the other case rather than Lodholz's case. Court congestion caused by "exceptional circumstances" may constitute good cause for delay. *State v. Goff*, 244 N.W.2d 579, 582 (Iowa 1976). Chronic court congestion, however, may not serve as good cause for delay past the ninety-day period. *State v. Bond*, 340 N.W.2d at 279. When determining whether the State has proven good cause because of court congestion we also look at these factors: (1) the length of the delay; (2) whether the defendant is incarcerated during the delay; and (3) whether the defendant is prejudiced by the delay. *Id.* at 280.

The court congestion in this case was not a result of exceptional circumstances that would not reoccur. We are mindful of the case juggling court administrators and county attorneys must master as they adroitly balance the pending case load while facing deadlines. We are also mindful of the "stacking" of cases scheduled for the same day, knowing most cases settle prior to trial. Such procedures have become common practice in our system. This system anticipates only one case will likely remain for trial and is an efficient use of the court's resources. This scheduling technique is not a unique circumstance caused by nonrecurring events. *Id.* These tactics, entirely acceptable, should not be so heedless as to insist on defendant's presence on the morning of trial when there was no trial time available.

This is not a case like *State v. Bond* where the double scheduling was caused by the exceptional circumstance that the preceding week of trials had been precluded by a judges' conference. *Id.* at 279. Here, the double scheduling was taken to the point of requiring defendant's presence when there was no trial time available. The State does not contend this problem was a mistake in scheduling.

The trial continuance caused Lodholz prejudice. Lodholz was told his case would be tried on August 27, 1997, at the Buchanan County Courthouse. He and his attorney traveled from Des Moines that day, ready to try the case, only to find when they arrived they would not try the case because of double scheduling. Lodholz incurred substantial legal fees, not only on the wasted trip from Des Moines to Buchanan County, but on the time defense counsel was required to spend on

Lodholz's motion to dismiss because of speedy trial considerations. The length of the delay was also substantial. The trial was delayed forty-eight days.

Double scheduling up to the morning of trial and the bumping of one of the cases on trial day does not constitute good cause for delaying the defendant's trial date beyond the ninety-day period. At the very least, the defendant could have been notified the day before trial his case was not going to be reached. In this way, the prejudice caused Lodholz would have been minimized.

For these reasons, we reverse the trial court. Because we reverse on the ground Lodholz was denied his statutory right to a speedy trial without good cause, we do not address the search and seizure issue.

REVERSED.