IN THE COURT OF APPEALS OF IOWA

No. 0-141 / 98-1740
May 10, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY A. RICE,
Defendant-Appellant.

FILED
MAY 10 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Artis Reis and Robert D. Wilson, Judges.

The defendant appeals from his conviction for domestic abuse assault causing bodily injury. **AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

The defendant appeals from his conviction for domestic abuse assault causing bodily injury. He claims he was denied his right to a speedy trial and the trial court erred in denying his motion to dismiss. He also argues he was denied his Sixth Amendment right to counsel because the trial court allowed him to proceed pro se without obtaining a knowing, intelligent, and voluntary waiver of his right to counsel. We affirm the speedy trial issue and reverse and remand for new trial on the valid waiver of right to counsel issue.

Terry Rice was charged with domestic abuse assault causing bodily injury by preliminary complaint on April 26, 1998 and by trial information from the Polk County Attorney's office on June 2,1998 for acts occurring on April 25, 1998. On May 9 and May 28, 1998, Rice filed motions seeking to represent himself on this charge. Rice filed a request for speedy trial on May 28, 1998. On June 6, 1998, Rice filed a written arraignment and plea of not guilty and was formally arraigned three days later on June 9.

In addition to the above-mentioned filings by Rice, at least seven other motions, including one asserting the defense of entrapment, were filed by him between May 9, 1998 and August 1, 1998. On August 1, the State requested a competency hearing to determine whether Rice was competent to stand trial. The State was concerned about Rice's competency based on his desire to assert an entrapment defense to the charge of domestic abuse assault causing bodily injury and the numerous filings he made.

The original trial date had been set for August 12, 1998. On August 10, a hearing was held to determine whether to grant the State's request for the competency hearing and an order requiring a competency evaluation on the defendant was entered on August 11. A petition for writ of certiorari was filed by Rice on August 15, and he again asserted his right to a speedy trial. On August 25, the State obtained a copy of the competency evaluation. Rice was deemed competent to stand trial. On August 25, a new trial was set for September 8.

On September 9, Rice requested a dismissal of the charge due to a violation of his rights to speedy trial. The court heard arguments from both Rice and the State and ruled his speedy trial rights had not been violated and denied Rice's motion to dismiss. Rice appeals.

I. Valid Waiver of Right to Counsel. Our review for constitutional issues is de novo. *State v. Shortridge*, 589 N.W.2d 76, 82 (Iowa App. 1998). We must look to the totality of the circumstances as shown by the entire record. *Burgess v. State*, 585 N.W.2d 846, 847 (Iowa App. 1998).

At the commencement of oral arguments, the State conceded the case would have to be reversed and remanded for new trial based upon the recent decisions of our supreme court in *State v. Cooley*, __ N.W.2d __ (Iowa 2000), *State v. Martin*, __ N.W.2d __ (Iowa 2000), and *State v. Stephenson*, __ N.W.2d __ (Iowa 2000). We agree the case must be reversed on this issue. The only issue remaining is Rice's contention his speedy trial rights were violated. The disposition of this issue will dictate whether the case is dismissed or remanded for new trial.

III. Speedy Trial. We review speedy trial issues under Iowa Rule of Criminal Procedure 27(2)(b) for corrections of errors at law. *State v. Orte*, 541 N.W.2d 895, 899 (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. *Id.* (citing *State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991)). Thus, we ultimately look to whether the trial court abused its discretion. *Id.* To the extent the defendant raises a constitutional claim of a speedy trial violation, our review is de novo. *State v. Keys*, 535 N.W.2d 783, 786 (Iowa App. 1995).

Rice contends he relentlessly pursued his right to a speedy trial. He claims the State's continuance in order to determine his competency violated his right to a speedy trial. The right to a speedy trial is guaranteed by the Sixth Amendment of the United States Constitution, as well as Article I, section ten of our Iowa Constitution, and is now solidified by our rules of criminal procedure. *Id.* Iowa Rule of Criminal Procedure 27(2)(b) states:

> If a defendant indicted for a public offense has not waived his or her right to a speedy trial he or she 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 be shown.

Iowa R. Crim. P. 27(2)(b). Under this rule, if trial does not commence within ninety days from the indictment, dismissal is mandated unless the State proves one of the following: (1) defendant's waiver of speedy trial, (2) delay attributed to the defendant, or (3) "good cause" for the delay. *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999). Once the ninety-day period expires, the burden remains

on the State to establish an exception to the ninety-day rule. *Orte*, 541 N.W.2d at 898.

The trial information was filed on June 2, 1998. Under the ninety-day speedy trial rule, trial was mandated by August 31, 1998. However, trial commenced September 8, 1998. The State concedes Rice did not waive speedy trial and in fact he continually asserted his right thereto. The delay of trial also could not be attributed to him. However, the State asserts "good cause" existed for the delay because an evaluation was needed in order to determine the defendant's competency to stand trial. The State further contends sixteen of the ninety days were attributable to the determination of defendant's competency. Good cause, under our rule, focuses on only one factor: the reason for the delay. *Nelson*, 600 N.W.2d at 601 (citing *State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980)). Our supreme court stated in *Nelson*:

> Surrounding circumstances bear on the inquiry only to the extent they relate directly to the sufficiency of the reason itself. Thus a short period of delay or the absence of prejudice may be legitimate considerations but only insofar as they affect the strength of the reason for delay. In other words, if the reason for the delay is sufficient the other factors are not needed. If the reason for the delay is insufficient the other factors will not avail to avoid dismissal.

Id. (citations omitted).

The State had concerns as to Rice's competency to stand trial and requested an evaluation. Iowa Code section 812.3 (1999) suspends further proceedings:

> If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge,

> understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing held upon that question.

Iowa Code § 812.3. The State's request for a competency evaluation was legitimate and not done for the purpose of delaying the proceedings. The court based its ruling ordering a competency evaluation on the information presented at hearing as well as its observations. In addition, the district court and the State were cognizant of Rice's right to speedy trial and took appropriate measure to keep any delay to a minimum.

We have carefully reviewed this case and conclude the district court order directing a competency hearing was "good cause" for the eight-day delay in this case. We affirm the district court's ruling on the speedy trial issue and reverse and remand for a new trial based on an invalid waiver of right to counsel.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.