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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 25, 1979
vs.	)	
DANNY RAY KETCHUM,	)	<u>705</u>
Defendant-Appellant.	)	<u>61725</u>

Appeal from Wright District Court - Newt Draheim, Judge.

Defendant appeals from conviction for possession of a controlled substance in violation of § 204.401(3), The Code 1977. Reversed and Remanded.

Mark Soldat, of Algona, counsel for appellant.

Thomas J. Miller, Attorney General of Iowa, William R. Armstrong, Assistant Attorney General, and Lee Poppen, Wright County Attorney, counsel for appellee.

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

DONIELSON, J.

Defendant Danny Ray Ketchum appeals from his conviction for possession of a Schedule I controlled substance in violation of § 204.40(3), The Code. On appeal we consider only defendant's assertion that the trial court erred in overruling his motion to dismiss made pursuant to § 795.2, The Code, because he was not tried within 60 days of being informed against, and no good cause existed to justify delay beyond that period. Ketchum was charged by information on November 7, 1977 and convicted at trial held January 10, 1978, sixty-four days later.

Where a speedy trial challenge is made, the burden is on the State to establish good cause at the trial court level. *State v. Moehlis*, 250 N.W.2d 42, 46 (Iowa 1977); *State v. La Plant*, 244 N.W.2d 240, 242 (Iowa 1976); see generally *State v. Hathaway*, 257 N.W.2d 735, 736 (Iowa 1977). Our review of a determination of good cause is not de novo. *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976). To secure a reversal, defendant must show the trial court abused its limited discretion. *State v. Potts*, 240 N.W.2d 654, 656 (Iowa 1976); *State v. Albertsen*, 228 N.W.2d 94, 98 (Iowa 1975).

Here there is no claim defendant waived his right to speedy trial; we must consider whether good cause existed for the delay. In *State v. Moehlis*, supra at 46, the court held that delay attributable to the defendant may constitute "good cause" and "a defendant must accept such passage of time as is reasonably necessary for action upon his own motions and applications." See *State v. Donnell*, supra at 579; *State v. Collins*, 236 N.W.2d 376, 377-378 (Iowa 1975).

The State contends that good cause for the delay in bringing defendant to trial was provided by defendant's motion to suppress. However, the motion to suppress was the only pre-trial motion filed by defendant. It was filed on November 14, 1977, within seven days of the filing of the information, but was not scheduled for hearing until December 19, 1977, some 35 days later. The trial judge ruled on the motion to suppress on December 27, 1977, eight days after hearing, and a total of 43 days from the date of filing. We find that this delay is not attributable to defendant. See *State v. Goff*, 244 N.W.2d 579, 583 (Iowa 1976) (a 41 day delay by trial court in ruling on a defense motion held unreasonable.)

Further, on December 8, 1977, the judicial court administrator set defendant's trial for January 10, 1978, four days beyond the 60-day limit. This action was taken prior to and apparently without regard to the progress of proceedings on the motion to suppress. Finally, the ruling on the motion to suppress was issued ten days before the 60 day limit ran.

We find the State has failed to demonstrate good cause for the delay in bringing defendant to trial, and the trial court abused its discretion in ruling that good cause existed. *State v. Lybarger*, 263 N.W.2d 545 (Iowa 1978). Defendant's conviction is reversed and the cause is remanded to the trial court for dismissal of charges against defendant. *State v. Goff*, supra at 581; *State v. Hines*, 225 N.W.2d 156, 159 (Iowa 1975).

REVERSED AND REMANDED.