

IN THE COURT OF APPEALS OF IOWA

No. 7-615 / 96-2283

000379

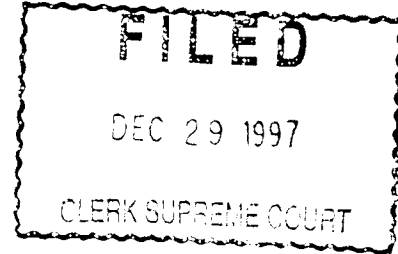
STATE OF IOWA,

Plaintiff-Appellee,

vs.

LESLIE PLAGMAN,

Defendant-Appellant.



Appeal from the Iowa District Court for Emmet County, W.B. MacDonald,
Judge.

Defendant appeals the judgment and sentence entered upon his convictions of
two counts of indecent exposure. **REVERSED AND REMANDED.**

John L. Sandy, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney
General, Lynn K. Fillenwarth, County Attorney, and Richard Meyer, Assistant
County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ. Sackett, J., takes no
part.

MAHAN, J.

Leslie Plagman appeals his conviction on two counts of indecent exposure, a serious misdemeanor, in violation of Iowa Code section 709.9 (1995). He contends the trial court erred when it refused his motion to dismiss for want of a speedy trial pursuant to Iowa Rule of Criminal Procedure 27(2)(c). We reverse and remand to the district court with directions to dismiss the charges.

Plagman filed his written arraignment on August 10, 1995. The district court set his trial for December 27, 1995. Plagman requested a continuance because his counsel had to be out of state. The district court reset the trial for January 23, 1996. Plagman filed several motions on January 17, including a motion to suppress. The second trial date had to be continued to hear the pretrial motions. Plagman filed a motion to strike on March 6, and all of the motions were set for hearing on March 18. The court entered a ruling on March 29, which reserved final ruling on the motion to suppress pending the filing of briefs by the State and Plagman. The court was asking for additional information on the issue of probable cause nexus. Plagman filed his brief on April 30 and the State filed its brief on May 1. A final ruling on the remaining issues was made on May 23. In this ruling, the district court suppressed the search warrants.

Plagman filed a motion in limine on May 31 and the district court ruled it would be held in abeyance until the time of trial on August 21. All parties agree that

nothing was filed by either party from May 31 until August 20, 1996, when Plagman filed the instant motion to dismiss.

I. SCOPE OF REVIEW. In deciding speedy trial questions under rule 27(2)(c), our scope of review is for corrections of errors at law. Iowa R. App. P. 4; *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). We recognize the trial court's discretion to refuse to dismiss within the limits of the exceptions to the speedy trial mandate. *State v. Orte*, 541 N.W.2d 895, 898 (Iowa App. 1995). Thus, we ultimately look to whether the trial court abused its discretion. *Id.* In order to show an abuse of discretion, one must generally show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

II. GOOD CAUSE. Both parties and the district court agree Plagman's trial was not held within one year after his initial arraignment and, therefore, did not meet the requirements of Iowa Rule of Criminal Procedure 27(2)(c). Therefore, both parties agree the only issue before this court is whether good cause existed for the delay. The principal question in determining whether good cause exists is the reason for the delay. *State v. Rodriguez*, 511 N.W.2d 382, 383 (Iowa 1994). A defendant's actions may constitute good cause for delay. *Orte*, 541 N.W.2d at 898. A defendant may not actively or passively participate in the events which delay his or her trial and

later take advantage of that delay to terminate the prosecution. *Id.* In making its ruling on Plagman's motion to dismiss, the trial court stated:

Some of the motions in this case . . . were filed later than forty days after the arraignment. . . . I think the record has been made to protect all of you. I do think that there's one thing that has not been mentioned and that is that one of the issues concerning this type of matter that appears before the court by case law is whether or not the defendant in any way participated in or could be a reason of mitigation of that fact. The trial was not held in one year and, based on the record in this case and since . . . the matters raised by the court on the record, the court is going to deny the defendant's Motion to Dismiss that was filed on August 21, 1996.

Plagman does not contend his motions did not delay the trial to some extent. However, he argues the rulings on his motions were completed well before the one-year period and had no bearing on the State's ability to bring the case to trial by August 10, 1996. We agree. The two continuances in this case requested by Plagman after his arraignment did not constitute good cause for the delay. The first continuance was from December 27, 1995, to January 23, 1996. The second continuance simply postponed the trial until a hearing could be held on all pretrial motions. That hearing was held on March 18, 1996. All discovery was completed in this case by March 1996. The delay which occurred from March 29 until May 23, 1996, was at the request of the court for additional information to be submitted on the issue of probable cause with regard to the search warrants. The final motion filed by Plagman was a motion in limine on May 31, 1996, and it was held in abeyance until the time of trial.

We conclude the trial of this case could easily have been held within the allotted one-year requirement of Iowa Rule of Criminal Procedure 27(2)(c). The State has failed to show good cause for the violation of the rule. *State v. Deases*, 476 N.W.2d 91, 95 (Iowa App. 1991); *State v. Mary*, 401 N.W.2d 239, 241 (Iowa App. 1986); *State v. Hunziker*, 311 N.W.2d 692, 694 (Iowa App. 1981).

For these reasons, we reverse and remand to the district court with directions to dismiss the charges and to assess costs to the State.

REVERSED AND REMANDED.