IN THE COURT OF APPEALS OF IOWA

No. 9-103 / 98-0564
Filed March 31, 1999

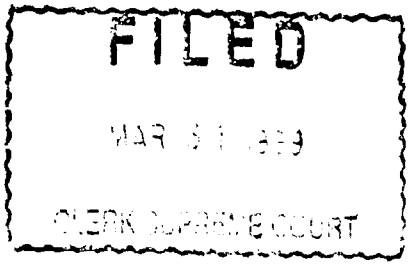
STATE OF IOWA,

Plaintiff-Appellee,

vs.

LOP BOUNMY,

Defendant-Appellant.



Appeal from the Iowa District Court for Hamilton County, Steven J. Oeth, District Associate Judge.

Defendant appeals from his conviction for operating a motor vehicle while intoxicated, second offense. **REVERSED.**

Douglas Cook of Brekken, Deppe, Wynia, Cook & Hyland P.C., Jewell, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Patrick Chambers, County Attorney, and Kyle Groves, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Lop Bounmy appeals from his conviction for operating a motor vehicle while intoxicated, second offense. Bounmy contends the trial court erred in finding the State had good cause for failing to bring him to trial within ninety days. We reverse.

Bounmy was charged with operating a motor vehicle while intoxicated, second offense, by trial information filed September 4, 1997. Bounmy's arraignment, dated September 17, 1997, indicates he demanded a speedy trial and the trial date was to be set later. There is no evidence in the record that a trial date was ever set within the ninety-day deadline for a speedy trial.

Bounmy filed a motion to suppress on October 22, 1997, arguing the police had no probable cause to stop him, had no reasonable grounds to conduct field sobriety tests, and that implied consent was improperly invoked because of Bounmy's language barrier. The motion was heard on November 26, 1997, and the district court denied the motion in a ruling filed December 8, 1997.

Trial was scheduled for the January indictable misdemeanor trial date for Hamilton County, specifically January 29, 1998.[1] The parties notified the district court Bounmy would be filing a motion to dismiss the prosecution due to the State's failure to try the case within the speedy trial deadline. The parties stipulated that any time accruing after January 28 would not be held against the State.

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[1] The only available December misdemeanor trial date for Hamilton County had been December 4, 1997.

The trial would have been 147 days after the trial information had been filed. Forty-seven days of the delay were attributed to Bounmy filing the motion to suppress. In finding the State had good cause for the remaining ten-day delay, the district court stated:

> The reason for the delay in this case is that the State did not request a special trial date. In this case the Defendant is not in custody. The Court is keenly aware that everyone in this case has busy schedules, including the defense attorney, the County Attorney, and the Court's schedule. In light of the Defendant not being in custody and in light of only a 10-day delay, the Court believes that good cause exists for not requesting a special trial date.

Bounmy's motion was denied. The jury trial commenced on February 25, 1998, and Bounmy was convicted.

I. STANDARD OF REVIEW. In deciding speedy trial questions under Iowa Rule of 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. We recognize the trial court's discretion to refuse to dismiss within the parameters of the exceptions to the speedy trial mandate. *See State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991). Thus, we ultimately look to whether the trial court abused its discretion. *Id.*

II. 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.*

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 December 3, 1997. The district court attributed forty-seven days of the delay to Bounmy filing the motion to suppress. 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 Todd*, 468 N.W.2d at 470; *State v. King*, 225 N.W.2d 337, 340 (Iowa 1975). 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).

Bounmy's speedy trial deadline clearly remained December 3, 1997. Thus, the issue in this case is whether the State established good cause for the entire delay. When examining the good cause exception to the trial-within-ninety-days rule, we focus on one factor: the reason for the delay. *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 there was good cause for the delay because forty-seven of the days are attributable to Bounmy's motion to suppress and the case was ready for the next scheduled indictable misdemeanor trial date, January 29, 1998. 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. *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.

First and foremost, we note the record indicates this case was never set for trial within the ninety-day deadline. Second, the forty-seven-day delay in hearing and

ruling on the straightforward issues presented in Bounmy's motion to suppress is, in part, attributable to court congestion and does not, in and of itself, constitute good cause for the delay. It was the State's duty, not defendant's, to bring Bounmy to trial within the speedy trial deadline. *See Hines,* 225 N.W.2d at 158. The district court's ruling on Bounmy's motion to suppress was filed on December 8, 1997. The State knew the ninety-day deadline had passed on December 3, 1997, and yet did not request a special trial date. Instead, the State chose to wait for the next scheduled indictable misdemeanor trial date which was fifty-seven days after the speedy trial deadline and *fifty-three days* after Bounmy's motion to suppress was denied.

In this case, Bounmy demanded his speedy trial rights. It is true that he was not incarcerated. This fact alone, however, does not mean Bounmy was not prejudiced. Affirmative proof of a particular type of prejudice is not required in every speedy trial claim. Prejudice which results from an impaired defense is the most difficult type of speedy trial prejudice to prove because the harm associated with the passage of time can scarcely be shown. *Olson*, 528 N.W.2d at 654. For that reason, it is recognized that extensive delay "presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Id.*

We find the State failed to show good cause for the length of the delay in this case. For that reason, we reverse.

REVERSED.