IN THE COURT OF APPEALS OF IOWA

No. 7-684 / 97-0139

000401

STATE OF IOWA,

Plaintiff-Appellee,

vs.

VINCENT GUY BEIN,

Defendant-Appellant.

FILED
FEB 25 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Muscatine County, James A. Weaver, District Associate Judge.

Defendant appeals his conviction and sentence for operating a motor vehicle while intoxicated, second offense. **AFFIRMED.**

David L. Scieszinski, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Richard R. Phillips, County Attorney, and Christine Daltan, Assistant County Attorney, for appellee.

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

PER CURIAM.

Defendant Vincent Bein appeals following his conviction of driving while intoxicated, second offense. He contends the trial court erred in failing to grant his motion to dismiss for failure to file the indictment (trial information) within forty-five days of his arrest. We affirm.

On May 18, 1996, defendant was in a one-car accident. While being treated for injuries in the hospital, he took a preliminary breath test at the request of an investigating deputy sheriff. Based on the results of the breath test, the deputy invoked the implied consent procedures and requested a blood sample. Defendant agreed to take the test. In the course of completing the implied consent form, the deputy checked the box indicating defendant "was placed under arrest for violation of Iowa Code section 321J.2." In addition, the deputy checked boxes indicating defendant had a preliminary blood test result of ten hundredths or more and was involved in a personal injury accident. Either of these additionally checked boxes provide a sufficient basis for requesting and obtaining a blood test under the implied consent statute. Iowa Code § 321J.6(1)(b) and (d).

The deputy observed the blood sample being taken, then took possession of the sample and left the hospital. The deputy did not treat defendant as though he was under arrest. Defendant was not restrained. The deputy did not ask that defendant be confined in the hospital. The results of the blood test were received on June 11,

1996. After attempting to contact defendant, the deputy issued a citation in lieu of arrest on June 27, 1996. The county filed a trial information on July 31, 1996.

On appeal, defendant asserts he was arrested on May 18, 1996 and the trial information, as an indictment, was untimely when filed on July 31, 1996. The State responds defendant was not arrested until June 27, 1996, and the trial information, therefore, was timely.

We review for errors at law. *State v. Davis*, 525 N.W.2d 837, 838 (Iowa 1994). Iowa's speedy trial rule, Iowa Rule of Criminal Procedure 27(2), is to protect the rights of an accused. *State v. Gebhart*, 257 N.W.2d 843, 847 (1965). The speedy indictment rule is not intended to be used to trap state officials. *State v. Deases*, 476 N.W.2d 91, 95 (Iowa App. 1991). We find the supreme court's reasoning in *State v. Dennison*, ____ N.W.2d ____ (November 26, 1997), dispositive in this case. In *Dennison*, the defendant was detained for investigative purposes and OWI testing for a relatively short time. The court found this did not constitute arrest. In the case at bar, the defendant was not detained at all. Without more to indicate restraint or custody, the deputy's mistake in checking the box on the implied consent form is insufficient to demonstrate an arrest. Defendant was not "arrested" until the citation in lieu of arrest was issued on June 27, 1997. Consequently, the trial court correctly overruled his motion to dismiss.

AFFIRMED.