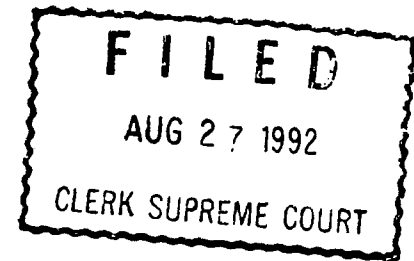


IN THE COURT OF APPEALS OF IOWA

No. 2-171 / 91-1086

**STATE OF IOWA,**

Appellee,

vs.

MARY ANN CRANDELL,

Appellant.

Appeal from the Iowa District Court for Chickasaw County, Peter Van Metre, Judge, and Joseph C. Keefe, Senior Judge.

Crandell appeals her conviction of third-degree theft.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Thomas G. Fisher, Jr., Assistant Attorney General; and Richard P. TeKippe, County Attorney, for appellee.

Heard by Schlegel, P.J., and Habhab, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, J.

FACTS

While employed as the director of Disaster Services for Chickasaw County, Mary Ann Crandell received a check for \$520 which was to be allocated to the Rescue Squad, a component of the City Disaster Services. Crandell cashed the check at the First National Motor Bank in New Hampton, Iowa. She deposited \$200 in the Rescue Squad account and took the remaining \$320 in cash to her office, located in her home. She testified she intended to deliver the cash to the County Treasurer's Office.

In January 1989, the Chickasaw County Board of Supervisors appointed Ken Rasing as the County Director for Chickasaw County. Soon after, he was appointed as the Director of Disaster Services. Rasing asked the sheriff to investigate the Rescue Squad bank account. The sheriff met with Crandell several times about the missing money. Rasing testified Crandell told him that no checking account ever existed. Crandell maintained she stated there was no money in the account. Then, Crandell indicated she misplaced the money which she intended to deliver to the county treasurer. Later, she indicated it was her intention to purchase additional pagers for the Rescue Squad. Ultimately, she delivered a brown bank money bag containing \$320 to the sheriff. Subsequently, the sheriff filed a complaint alleging Crandell had misappropriated the money.

On July 2, 1990, the State filed its first trial information charging Crandell with committing third-degree theft in violation of Iowa Code sections 714.1(2) and 714.2(3). On September 10, 1990, Crandell's counsel successfully moved for a continuance of the trial date to October 10, 1990, due to a scheduling conflict. On October 10, 1990, after the roll call for the jury had been taken, counsel advised the court the case had been resolved and the State would move to dismiss. The court informed the parties he would grant the motion only if the parties had reached a settlement of the charge filed against Crandell:

Counsel for both parties have just informed the Court that they believe they have resolved this matter; and if that is so, the State will move the Court to dismiss this criminal charge at the costs of the defendant. My response to that was that I would sustain or grant the Motion to Dismiss if I am assured that the matter has truly been resolved. But I have indicated I would not have this jury discharged and leave unless I am assured that it is resolved so that no one can change their minds later, and then we have to go back through the process of having the case reset and another panel called. **So I want both parties to understand that if I do grant the Motion to Dismiss this matter, that both parties will be bound then by whatever type of settlement you have arrived at as far as I'm concerned.**

(emphasis added). The court then asked Crandell's counsel, Michael Mollman, to state on the record what the agreement was. After the court's question, the following colloquy took place between Mr. Mollman and Richard TeKippe, the County Attorney:

MR. MOLLMAN: I will try, Judge. And again, Mr. County Attorney, if I misstate the agreement, please welcome jumping in and making changes.

It is my understanding that my client would formally resign in her position as dispatcher for the Chickasaw County Sheriff's Department. As part of that agreement, this case would be dismissed at the defendant's costs. Also as part of this agreement, the defendant will release any civil claim or labor dispute claim she would have against Chickasaw County or any of its agents or employees. It is further my understanding that due to her resignation, that Chickasaw County would not do anything that would affect or hinder her ability to find similar employment or to find other future job possibilities.

That's my understanding as to what we have agreed to. I would also indicate that I think it would be appropriate that neither Chickasaw County nor the defendant discuss this agreement with the news media.

MR. HUEGEL: Fine.

MR. TEKIPPE: I agree with your statement of what has been previously discussed between you and I. Just as an additional matter, the County would not take any other position vis-a-vis unemployment comp that would adversely affect Mary Ann Crandell.

MR. MOLLMAN: Okay.

MR. TEKIPPE: That's probably already built into what you have said.

MR. MOLLMAN: I would also assume as part of this agreement, Mr. County Attorney, that there won't be any other claim that the County would have against my client; and we would get a release from the County of any other sort of claim the County might have against her.

MR. TEKIPPE: That's correct.

MR. MOLLMAN: Okay.

(Emphasis added).

Based on this agreement, the court orally dismissed the case on the record at the costs of the defendant. No written dismissal was ever filed.

On October 12, 1990, a local newspaper quoted the sheriff commenting on the case. Feeling the County had broken its agreement, Crandell refused to release the

County from liability. Thus, on December 10, 1990, the State filed a second trial information charging Crandell with theft. Crandell filed a motion to dismiss, alleging the State violated an earlier agreement not to discuss the case with the news media and that she had been denied a speedy trial.

The court overruled Crandell's motion to dismiss the second trial information. The matter proceeded to trial. At trial and over Crandell's objection, the State introduced evidence Crandell had a long history of running overdrafts in her personal checking account.

The jury found Crandell guilty of third-degree theft. The court sentenced her to two years in prison, suspended, and twelve months of probation. Crandell appeals. We affirm.

SCOPE OF REVIEW

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must 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 State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

ANALYSIS

Crandell argues the district court abused its discretion in denying her motion to dismiss based upon the

failure of the State to comply with the plea agreement. She further argues the district court abused its discretion in overruling her motion to dismiss the trial information due to a denial of her right to a speedy trial. Finally, she argues the district court abused its discretion in admitting evidence of other acts which were irrelevant and highly prejudicial. We do not find these arguments to be persuasive.

I. Motion to Dismiss: Violation of a Plea Agreement.

Crandell argues the district court abused its discretion in denying her motion to dismiss based upon the failure of the State to comply with the plea agreement. We disagree.

Crandell admits she failed to comply with the terms of the agreement. However, she claims she was not required to comply because the State purportedly violated the terms of the agreement. Her refusal to comply was based on an article that appeared in the Waterloo Courier on October 12, 1990 which went into some detail about the crime and stated that Chickasaw County Sheriff Tom Bernatz told the reporter, "The \$300 Crandell was accused of stealing reappeared in the account at First National Bank of New Hampton before charges were filed, and that no money was missing." She maintains the Chickasaw County Sheriff discussed her case with a newspaper reporter in violation of the agreement. The district court rejected this

allegation of fact. It held there was "no competent evidence in the record to show that the State violated its agreement not to discuss this matter with the news media."

The district court's finding was based on the sheriff's testimony and denial that he ever made such a statement to the reporter. The reporter who wrote the article did not testify. Furthermore, the newspaper article triggering Crandell's allegation was based on public information. The court noted that five days later, the same newspaper contained an editorial condemning Chickasaw County officials for not discussing why Crandell's theft charge was dropped. Ultimately, the court concluded the State did not violate the plea agreement.

The district court's finding the State did not violate the agreement is controlling. See State v. Hovind, 431 N.W.2d 366, 368 (Iowa 1988). Once Crandell chose not to perform her obligations under the agreement, the State was no longer obligated to refrain from prosecuting her. Id. "When the defendant fails to uphold his end of a plea bargain, the State has no obligation to provide defendant the anticipated benefits of that bargain."

We agree with the district court's finding the State did not violate the agreement. Consequently, we are unable to conclude the district court abused its discretion in rejecting Crandell's motion to dismiss. We affirm the district court on this issue.

II. Motion to Dismiss: Denial of a Speedy Trial.

Crandell argues the district court abused its discretion in denying her motion to dismiss based on her contention she was denied a speedy trial because more than ninety days elapsed between the time the original trial information was filed and her actual trial. We disagree.

Crandell filed her motion to dismiss on January 27, 1991, less than two months after the State filed its information in case number 8-12-90. Thus, she cannot reasonably assert she was denied a speedy trial in this action. Rather, she must be asserting that case number 6-6-90 created a bar to the present case.

Case number 6-6-90 was dismissed on October 10, 1990. No speedy trial problem arose in 6-6-90 because on September 10, 1990, within ninety days of filing the information on July 2, 1990, Crandell moved for a continuance to October 10, 1990.

Crandell now argues, after agreeing on October 10, 1990, to a dismissal at her costs, that the case was not dismissed because the judge did not write the dismissal down on a piece of paper and file with the clerk.

We find any delay in this case is attributable to Crandell because she deliberately refused to comply with the terms of her plea agreement. Thus, there is no speedy trial violation because a delay attributable to the defendant is an exception to the speedy trial rule. State

v. Todd, 468 N.W.2d 462, 469 (Iowa 1991)(citing State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983)).

We do not find Crandell's argument that case number 6-6-90 was not dismissed because it was not actually written and filed to be persuasive. There is no question Judge Lybbert granted the State's motion to dismiss. In fact, the excerpts from the record demonstrate that Judge Lybbert regarded the terms of the plea agreement as final.

We agree with the district court's finding Crandell was not denied a speedy trial. Consequently, we are unable to conclude the district court abused its discretion in rejecting Crandell's motion to dismiss. We affirm the district court on this issue.

III. Evidentiary Rulings.

Crandell argues the district court abused its discretion in admitting the evidence of her personal banking records, specifically her long history of running overdrafts in her checking account, to demonstrate motive and intent. She contends this evidence was irrelevant and highly prejudicial and never should have been admitted. We disagree.

Determinations of relevance of evidence rests within the sound discretion of the trial court and will be reversed only upon a showing that such discretion has been abused. State v. Gordon, 354 N.W.2d 783, 784 (Iowa 1984) (citation omitted).

Evidence of prior acts is relevant if it demonstrates motive for committing or intent to commit the offense. State v. Sheppard, 325 N.W.2d 911, 916 (Iowa App. 1982); see generally State v. Storrs, 351 N.W.2d 520, 521 (Iowa 1984).

Crandell's prior overdrafts demonstrate motive because her activities are probative of a need for money. One possible reason for her not depositing the money in a county account was that she could have used the money to assist with her repeated overdraft problem. Furthermore, Crandell was allowed to introduce evidence tending to show the overdrafts were not a problem and that she was credit-worthy.

Crandell's pattern of writing overdraft checks at about the time of the misappropriation of funds rebuts her defense that she did not intend to take the money. The evidence is probative of a deliberate intent to take the money to assist with her financial problems.

We find the evidence of Crandell's prior overdraft problems was relevant to show motive and intent. We find the probative value of this evidence outweighed any potential unfair prejudice. We are unable to conclude the district court abused its discretion in admitting this evidence. We affirm the district court on this issue.

CONCLUSION

After considering all issues presented, we affirm the district court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.