



IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

STATE OF IOWA,	)	
	)	
Appellee,	)	Filed May 31, 1978
	)	
v.	)	
	)	
KERVIN M. HILPIPRE,	)	488
	)	<u>60972</u>
Appellant.	)	

Appeal from Wright District Court - David R. Hansen and R. K. Richardson, Judges.

Defendant appeals his conviction for violation of § 714.2, The Code, contending that he was denied speedy trial and that trial court erred in several evidentiary rulings. Affirmed.

William A. Long, Eagle Grove, for appellant.

Richard C. Turner, Attorney General, Thomas A. Evans, Jr., Assistant Attorney General, and Lee Poppen, Wright County Attorney, for appellee.

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

PER CURIAM

Kervin M. Hilipre appeals his conviction for terrorizing the inhabitants of a dwelling, in contravention of § 714.2, The Code. He complains that trial court erred in several evidentiary rulings and that he was denied a speedy retrial after the reversal of his prior conviction. See State v. Hilipre, 242 N.W.2d 306 (Iowa 1976). We deal with the issues in the order defendant has briefed them.

I. Trial court overruled defendant's motion to dismiss for failure to provide speedy trial on the ground that defendant had signed a waiver of his speedy trial right. We agree with trial court's disposition.

The general principles which govern this case are set out in State v. Lybarger, 263 N.W.2d 545 (Iowa 1978). Defendant's waiver, docketed on July 6, 1976, was effective to give up his speedy trial right. See United States v. Didier, 401 F. Supp. 4, 6-7 (S.D. N.Y. 1975), rev'd on other grounds, 542 F.2d 1182 (2d Cir. 1976); cf. Barker v. Wingo, 407 U.S. 514, 529, 92 S.Ct. 2182, 2191, 33 L.Ed.2d 101 (1972) ("[I]f delay is attributable to defendant, his waiver may be given effect under standard waiver doctrine, the demand rule aside.").

Defendant reserved his right to withdraw the waiver "upon written notice thereof to the Court and the State of Iowa." That waiver also provided "that trial is postponed until such dates as it may be scheduled for trial by the court." We cannot find that the letter of November 1, 1976 from defendant's counsel to Judge David R. Hansen was sufficient to put either the court or the State on notice that the earlier waiver was being withdrawn. Nor are we persuaded by the defendant's contention made in his brief that the language of the waiver ought to be construed as limiting that waiver's duration to the time when trial is first set. Rather, that language is a statement of acquiescence in whatever trial date the court should finally assign, absent a withdrawal of the waiver. Trial court did not abuse its discretion in holding defendant was not denied a speedy trial.

II. Defendant next contends that the .222 rifle which he gave to peace officers in response to their request should be suppressed. He appears to argue that the officers' failure to inform him of his right to refuse to produce the rifle fatally infected the weapon's acquisition.

We have doubts that any search occurred. We proceed, however, on the assumption there was a search. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) held that knowledge of the right to refuse to allow a search is a factor to consider in the totality of circumstances in determining whether a search is valid. It is not the decisive factor, however. 412 U.S. at 227. See also *United States v. Watson*, 423 U.S. 411, 424-25, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976).

The totality of circumstances surrounding the acquisition of the rifle make it clear that the State has met its burden, imposed by *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), to show that defendant's actions were free and voluntary. The rifle was properly admitted.

III. In the third division of his brief, defendant argues that trial court erred in allowing testimony regarding the description of his car derived from the automobile registration. He claims that that evidence was irrelevant and prejudicial because Margaret Nelson testified that the car she saw at the scene of the crime was the size of a Chevrolet or Plymouth and was metallic or light colored, while his car was a gold Pontiac.

Questions of relevancy rest largely in the discretion of trial court. *State v. Watts*, 244 N.W.2d 586, 589 (Iowa 1976). Here the fact that defendant owned a gold colored standard sized car tended to render the inference that he was at the scene of the crime more probable than that inference would be without such evidence.

Defendant's claim of prejudice is meritless. The fact that defendant owned a gold Pontiac would not excite or influence the jury. It created no tendency to cause the jury to decide the case on an improper basis. The fact that the evidence caused damage to defendant's case is not a basis for excluding it as prejudicial. See generally, E. Cleary, *McCormick on Evidence* § 185, p. 439, n. 31 (2d Ed. 1972); 22A C.J.S. Criminal Law § 600c (1961).

IV. Defendant also claims that admission of, and testimony about, the .222 rifle were irrelevant because it was only one of many weapons that could have fired the shots which touched off this prosecution. Much of what has been said in division III applies here as well. Moreover, *State v. Fuhrmann*, 257 N.W.2d 619, 623 (Iowa 1977) and *State v. Nowlin*, 244 N.W.2d 596, 602 (Iowa 1976) compel the conclusion that admission of the rifle was proper.

AFFIRMED.