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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed October 19, 1978
vs.	)	
TOBY LEE SWAIM,	)	666/61521
Appellant.	)	

Appeal from Wapello District Court - Ira F. Morrison, Judge.

Defendant appeals conviction of arson in violation of § 707.2, The Code 1977, asserting violation of right to speedy trial. Affirmed.

Richard R. Schlegel, of Barnes & Walter, of Ottumwa, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General, and Samuel O. Erhardt, Wapello County Attorney, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

PER CURIAM

The defendant Toby Lee Swaim was convicted of arson in violation of § 702.7, The Code 1977, for setting fire to the Eldon Grain Elevator in Eldon, Iowa. He contends that the trial court erred in sustaining the State's motion for a continuance so as to extend the date of trial past sixty days from the filing of the county attorney's information in violation of his right to a speedy trial, § 795.2, The Code. We affirm.

The county attorney's information was filed August 15, 1977, and defendant requested a speedy trial at his arraignment on August 22, 1977. On October 11, 1977, the date originally scheduled for trial, the State moved for a continuance because one of its witnesses had suffered a heart attack. Defendant resisted this motion on the grounds that a defense discovery deposition of the witness was available. Trial court granted the motion for continuance, stating that the "State has shown good cause for at least a delay for determination whether or not an evidentiary deposition could solve this problem." On October 25, 1977 trial commenced, nine days beyond the 60-day limit.

It is not necessary for us to consider whether the trial court abused its discretion in determining that good cause existed for the delay. State v. Moehlis, 250 N.W.2d 42, 46 (Iowa 1977); Foster v. Brewer, 197 N.W.2d 366, 367 (Iowa 1972). We find no indication in the record that Swaim moved for a dismissal at any time before or during trial on the grounds that he was denied his speedy trial rights under § 795.2. While Swaim resisted the State's motion for continuance, he did not preserve error on the basis of denial of speedy trial. State v. Meyers, 215 N.W.2d 262 (Iowa 1974); Foster v. Brewer, 197 N.W.2d 366, 367 (Iowa 1972); State v. Allnutt, 261 Iowa 897, 905, 156 N.W.2d 266, 270 (1968). The State points out that nowhere in the record before us does Swaim ever object to the setting of trial date beyond the sixty days required by § 795.2. We hold Swaim wavied his statutory right to a speedy trial.

Affirmed.

Carter, J. concurs; Oxberger and Snell, JJ. concur specially.

OXBERGER, J. (specially concurring)

I would affirm the trial court's finding of good cause to extend the 60 day rule as provided in § 795.2, The Code. However, I disagree with the majority's holding that the defendant did not preserve error on the basis of denial of speedy trial. The defendant's attorney objected to the continuance being granted. He said the defendant would not waive the 60 day rule. He informed the court that the continuance would extend the trial date beyond the 60 days.

I would hold the defendant did not waive his right to a speedy trial under § 795.2 by failing to object.

Snell, J., joins in this special concurrence.