

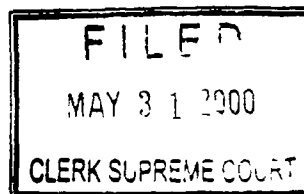
IN THE COURT OF APPEALS OF IOWA

No. 0-249 / 99-978
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID WILLIAM JAKEMAN,
Defendant-Appellant.



Appeal from the Iowa District Court for Webster County, Fredrick E. Breen, District Associate Judge.

Defendant appeals following his conviction of operating while intoxicated.

AFFIRMED.

James A. Sinclair and Brian J. Nelson of Sinclair & Associates, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Ron Robertsen, County Attorney, and Timothy N. Schott, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

000447

ZIMMER, J.

David William Jakeman appeals his conviction for operating while intoxicated. We affirm.

On June 12, 1998, Jakeman was arrested for operating while intoxicated (OWI). The State filed its trial information on July 17, 1998. On July 28, defendant filed a written arraignment, entering a plea of not guilty and demanding a speedy trial. Trial was set for September 1, 1998. At that time, Jakeman was represented by attorney Kevin Fors.

For reasons not revealed by the record, Jakeman decided to change attorneys and trial was not held on September 1. On September 4, 1998, attorney James Sinclair entered an appearance on defendant's behalf and filed two motions, one to obtain a large number of documents and another to suppress evidence. On September 16, the trial court entered an order noting Fors was still Jakeman's attorney of record. It ordered Fors and Sinclair to comply with the local rule regarding withdrawal and substitution of counsel. The trial court also set the discovery motion for hearing on September 25 and the suppression motion for October 5. Fors filed his motion to withdraw on September 21.

At the discovery hearing on September 25, the trial court granted only part of the defendant's extensive discovery motion. At that time, the State expressed concern about the speedy trial deadline. The district court indicated the delay caused by the defendant's motions would not be assessed against the State. At the time set for the suppression hearing on October 5, defendant requested additional time to review documents the State had not yet been able to produce.

Compliance with part of the discovery motion was difficult because it involved a request for old officer training manuals that were no longer readily accessible to the State or the officers who arrested Jakeman. Due to the State's inability to produce the evidence and the defendant's request for more time, the court continued the suppression hearing to October 22. On October 22, the trial court found the State had produced all it was able. Jakeman again requested more time to review newly-produced materials and to attempt to obtain other materials that were not available to the State. The State resisted this request for continuance. The trial court continued the hearing until November 20.

On October 26, 1998, Jakeman moved to dismiss on speedy trial grounds. Hearing on that motion was held on November 20. The district court denied the motion, finding only a few days of the delay attributable to the State's inability to get law enforcement witnesses to produce documents. It assessed the remainder of the delay to the defendant's acts of changing counsel immediately before trial, pursuing significant discovery, and requesting a continuance of the suppression hearing. The court also continued the suppression hearing to December 18, 1998, due to the unavailability of the State's key witness. On December 18, the court heard and overruled the motion to suppress and reset trial for February 2, 1999. On February 4, 1999, the case proceeded to a bench trial on the minutes of testimony. On April 30, 1999, the district court entered its order finding Jakeman guilty of OWI in violation of Iowa Code section 321J.2.

Jakeman appeals contending the district court erred in denying his motion to dismiss on speedy trial grounds.

000450

I. Scope of Review. On appeal, Jakeman does not argue his constitutional right to a speedy trial was violated. We review nonconstitutional speedy trial issues for correction of errors at law. *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997); *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). The trial court has discretion to refuse to dismiss criminal prosecutions within the limits of the exceptions to the speedy trial mandate; thus, we ultimately look to whether the trial court abused its discretion in so refusing. *State v. Orte*, 541 N.W.2d 895 (Iowa App. 1995).

II. The Merits. The trial information was filed on July 17, 1998. Jakeman pleaded not guilty and demanded speedy trial. The ninety-day speedy trial deadline expired on October 15, 1998. The case proceeded to a bench trial on February 4, 1999, 112 days after the deadline. When a trial is not commenced within ninety days of indictment pursuant to Iowa Rule of Criminal Procedure 27(2)(b), the trial court must dismiss the charge unless: (1) the defendant has waived his right to a speedy trial, (2) the delay is attributable to the defendant, or (3) "good cause" exists for the delay. *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999) (citations omitted) (finding good cause did not exist where four-month delay was solely attributable to trial court's delay in ruling on motion to suppress).

Much of the pre-trial delay was due to Jakeman's extensive discovery requests, his change of counsel, the filing of the motion to suppress, and his requests for continuances. None of Jakeman's motions were filed before his original trial date. When motions are filed, a hearing must be scheduled and the trial court must have time to rule. A defendant must accept the passage of time

reasonably necessary for careful deliberation and ruling on dispositive motions. *Nelson*, 600 N.W.2d at 601; see also *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976) (“the period of delay resulting from other proceedings concerning the defendant, including hearings on pre-trial motions, should be excluded in computing time for trial.”). A defendant may not actively or passively participate in the events which delay his or her trial and then expect to take advantage of that delay to terminate the prosecution. *Orte*, 541 N.W.2d at 898 (citation omitted).

Approximately seventeen days between October 5, 1998, and October 22, 1998, were attributable to the State’s delay in obtaining the requested materials. At the October 22 hearing, the district court found the State had complied with the discovery order as much as it was able. The trial court noted the remainder of the continuances resulted from defense requests which the State resisted, expressing its concerns about the speedy trial deadline. The trial court’s assessment of time against the defendant was correct. See *State v. LaPlant*, 244 N.W.2d 240, 242 (Iowa 1976) (finding failure to bring defendant to trial within statutory time period was reasonably necessary to comply with defendant’s discovery request for a deposition); see also *State v. Shockey*, 214 N.W.2d 146, 151 (Iowa 1974) (attributing pre-trial delay to defendant where repeated, consensual withdrawal of defense counsel resulted in continuances).

One other unresisted continuance resulted from the unavailability of a prosecution witness in November 1998. Generally, such delays are not assessed against the State. See *State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980) (finding absence of witness was good cause for delay of trial); *State v.*

Searcy, 470 N.W.2d 46, 47 (Iowa App. 1991) (finding State's unresisted motion for continuance due to hospitalization of witness constituted good cause for delay). We find no abuse of discretion in the trial court's denial of the motion to dismiss.

AFFIRMED.

000453