

IN THE COURT OF APPEALS OF IOWA

No. 1-092 / 90-292

FILED

MAY 29 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

WILLIAM ALLEN FARRAND,

Appellant.

401

Appeal from the Iowa District Court for Webster County,
Mark S. Cady, Allan L. Goode, and Louie F. Beisser, Judges.

Farrand appeals his convictions, following a jury
trial, for first-degree arson and simple assault.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Brian K.
Sissel, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Tom Tauber and
Ann E. Brenden, Assistant Attorneys General; James J. Koll,
County Attorney; and James Fitzgerald, Assistant County
Attorney, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

William Farrand was accused of throwing a lighted "Molotov cocktail" at the home of his former stepmother, Mary Farrand. A jury found him guilty of first-degree arson and simple assault. He has appealed the resulting convictions. Farrand contends he was denied his right to a speedy trial. He also contends the district court erred by denying his motion to compel the disclosure of a confidential informant. Finally, he challenges the admission of evidence which was allegedly irrelevant and prejudicial. We now affirm.

I. Speedy Trial. Iowa Rule of Criminal Procedure 27(2)(b) requires that the defendant be brought to trial within ninety days after indictment unless good cause to the contrary is shown. Farrand contends he was denied his right to speedy trial under rule 27(2)(b) because his trial did not begin until more than ninety days after indictment.¹ The district court found there was good cause for the short delay because the court was still researching pending motions, there were unresolved pretrial matters, and the court's schedule did not allow an earlier trial date.

Appellate review of the trial court's determination of good cause is not de novo. State v. Bond, 340 N.W.2d 276,

1. Defendant contends there was a five-day delay in bringing him to trial. The prosecutor calculated that the delay was seven days. We do not believe the difference in the calculations is of any import.

279 (Iowa 1983). In order to secure a reversal, defendant must show the district court abused its limited discretion. Id. Here, the district court's findings are supported by substantial evidence (see id.) and defendant has failed to establish the district court abused its discretion. The district court did not err in refusing to dismiss the indictment.

II. Motion to Compel. Farrand next contends the district court erred by denying his motion to compel the disclosure of a confidential informant. This issue arose in the following manner: The evidence against Farrand at trial included the testimony of a friend, Tresha Buel. Buel testified that during a telephone conversation with her some months before the crime, Farrand made a statement that could be interpreted as a threat against Mary Farrand. During discovery, the State claimed to have learned of Buel's information from a confidential informant. Farrand filed a motion to compel disclosure of the confidential informant. After an in camera review of confidential information, the district court overruled this motion. Farrand now contends the district court thereby erred. In arguing that disclosure of the confidential informant was necessary to a fair trial, Farrand insinuates the confidential informant does not really exist and the police learned of the Buel telephone conversation from an illegal wiretap. Defendant asks this court to make an in camera inspection of the police officers' sealed affidavits

to determine whether an informant does, in fact, exist. If no informant exists, defendant seeks a reversal for the State's abuse of the discovery process. If an informant does exist, defendant asks this court to make a determination whether the district court erred in refusing to compel the disclosure of the confidential informant's identity.

This court has made an in camera inspection of the confidential information and we reject defendant's contention that no informant actually exists. We must therefore determine whether the informant's identity should have been disclosed.

Our review is on assigned error. Cf. State v. Luter, 346 N.W.2d 802, 809 (Iowa 1984).

If an informant does not simply provide officers with information but personally observes or participates in the incident which is the basis of the charge on which the defendant is tried, fairness dictates that the defendant ordinarily be apprised of the identity of the informant so that he can ascertain what the informant knows about the incident and perhaps use the informant as his own witness. In this context the individual in question is not merely an informant, he is a witness to the event.

Id. at 810 (citations omitted) (emphasis in original). On the other hand, as a general rule the prosecution cannot ordinarily be required to divulge the identity of an informant who is not a witness, but rather a mere tipster. See id.

Here, the confidential informant merely told police officers that Buelt might have information concerning

statements made by defendant about Mary Farrand. The tip was based on the informant's relationship with Buelt. The informant was not a witness to any threats, nor was the informant a witness to the commission of the offense. The district court was right in refusing to require the State to divulge the informant's identity.

III. Admissibility of Evidence. Finally, Farrand contends the district court abused its discretion by admitting allegedly-prejudicial evidence. The challenged evidence concerned the fact that when he was arrested, Farrand was found to be in possession of credit cards belonging to James Duhn. Duhn was Farrand's companion on the night of the crime and was the only witness who could testify that he actually saw Farrand throw the "Molotov cocktail." Farrand contends the evidence regarding his possession of Duhn's credit cards was completely irrelevant to the arson and assault charges and was highly prejudicial. The State responds the credit card evidence was relevant because it corroborated Duhn's testimony by showing Farrand and Duhn had been together on the night of the crime.

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). The determination of whether the probative value of relevant evidence is substantially outweighed by the danger

of unfair prejudice also rests within the discretion of the district court. See State v. Walsh, 318 N.W.2d 184, 187, (Iowa 1982).

The district court allowed the evidence because the court found it had corroborative value to Duhn's testimony (the evidence corroborates Duhn's version of the time at which he and defendant were together which consequently contradicts defendant's version of events and defendant's alibi). The district court also determined the probative value was not outweighed by the danger of unfair prejudice. However, as a precaution, the district court gave the jury a limiting instruction that the evidence was offered only as corroborative evidence of the commission of the crimes charged. Under these circumstances, we cannot conclude the trial court abused its discretion.

For all the reasons stated, defendant's convictions are affirmed.

AFFIRMED.