

IN THE COURT OF APPEALS OF IOWA

FILED

JUL 27 1988

CLERK SUPREME COURT

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
EDMONDSON GILBERT,)
Defendant-Appellant.)

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87-490

Appeal from the Iowa District Court for Polk County (No. 33761) - A. M. Critelli, Judge.

The defendant appeals from his convictions, following a jury trial, for two counts of possession of a controlled substance. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Lona Hansen, Assistant Attorney General; and Joseph Weeg, Assistant County Attorney, for the plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

This is an appeal from defendant's convictions, following a jury trial, for two counts of possession of a controlled substance with intent to deliver in violation of Iowa Code section 204.401 (1985). Defendant assigns error to the trial court for denial of defendant's motion to dismiss on the basis that charges were not filed within forty-five (45) days of his arrest, as required by Iowa Rule of Criminal Procedure section 27(2)(a). We affirm.

Our scope of review is on errors assigned. The trial court's findings of fact are binding upon this court if supported by substantial evidence. Iowa R. App. P. 14(1); Laing v. State Farm Fire & Cas. Co., 236 N.W.2d 317 (Iowa 1975).

On April 18, 1986, Des Moines police executed a search warrant on a vacant house which was suspected of being a center for drug dealing. The police found various drugs and drug paraphernalia in the house; they also found the defendant on the third floor of the house. The police escorted the defendant at gunpoint to the first floor of the house where they gave him his Miranda warnings, questioned him about his presence in the house, and detained him for about an hour before releasing him.

On December 9, 1986 the defendant was charged by information with two counts of possession of a controlled substance with intent to deliver. These charges were based on the April 18 incident. During his March 1987 trial, the

defendant filed a motion to dismiss based on his Iowa Rule of Criminal Procedure 27(2)(a) claim.

This case presents two issues: First, whether defendant's untimely raised motion to dismiss was delayed for good cause under Iowa Rule of Criminal Procedure section 10(3); Secondly, whether the detention of the defendant during the April 18, 1986 search was sufficient to constitute an arrest and thus to trigger the speedy information time period of Iowa Rule of Criminal Procedure section 27(2)(a).

Iowa Rule of Criminal Procedure section 10(2)(a) requires that any defense of objection based on defects in the institution of the prosecutor be filed prior to trial. Defendant's motion was raised during trial. However, Iowa Rule of Criminal Procedure section 10(3) provides that upon a showing of good cause the court may grant relief from such waiver as a result of untimely filing.

The defendant argues that good cause exists for untimeliness because the defendant's attorney did not realize that the defendant's detention could be construed as an arrest until the police officer's testimony at trial. The trial court declined a finding of good cause. Defendant's failure to timely investigate potential defenses is not good cause for failure to file pretrial motions. See State v. Paulson, 265 N.W.2d 581, 587 (Iowa 1978).

We find substantial evidence to support the trial court's decision in failing to find good cause for the defendant's delay in filing a motion to dismiss.

The second issue is whether or not an arrest occurred during the search of April 18, 1986. Iowa Rule of Criminal Procedure 27(2)(a) provides that when an arrest occurs and an indictment is not found against the person for forty-five days, the court must order the prosecution to be dismissed.

The trial court failed to find that an arrest occurred on April 18, 1986. In Michigan v. Summers, 452 U.S. 692, 705 (1981), the United States Supreme Court held that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted."

The trial court found that a one-hour detention during a proper search was not unreasonable. Further evidence that the defendant was not arrested during the April 18 interrogation can be found in the fact that the defendant was released after one hour, he was not taken to jail, he was not booked, he was not caused to post bail, and he was free to leave without restrictions after the detention.

We affirm the trial court's denial of a motion to dismiss based on Iowa Rule of Criminal Procedure 27(2)(a) that the defendant was not indicted within forty-five days of the April 18 incident, as we find substantial evidence to support the finding that an arrest did not occur at that time.

AFFIRMED.