FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )

Plaintiff-Appellee, ) Filed May 30, 1980

vs. )

STEVEN WAYNE WHITESIDE, )

Defendant-Appellant. 0-103
62941

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Appeal from Scott District Court - A. L. Keck, Judge.

Defendant appeals conviction for second degree robbery, in violation of section 711.3 supplement to the Code 1977. - AFFIRMED.

Thomas J. Levis, of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, John P. Messina, Assistant Attorney General, and William E. Davis, Scott County Attorney, for plaintiff-appellee.

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

Defendant, Steven Wayne Whiteside, appeals conviction for second degree robbery, in violation of section 711.3. supplement to the Code 1977. We affirm.

Whiteside was charged with second degree robbery by information filed on May 24, 1978. After trial on August 24, 1978, the jury returned a guilty verdict and Whiteside was sentenced to a ten-year prison term. On appeal, Whiteside asserts he was denied his statutory right to a speedy trial and challenges the guilty verdict on sufficiency of the evidence grounds. We review his claims on errors assigned. Iowa R. App. P 4.

I. Speedy trial.

Iowa R. Crim. P. 27(2)(d) imposes a ninety-day trial requirement on the State. This statutory speedy trial right goes beyond the constitutional protections delineated in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 100 (1972), and provides, "If trial is not commenced within the 90-day period the case must be dismissed unless one of three things have occurred: (1) the defendant has waived his right to a speedy trial, (2) the delay is attributable to the defendant, or (3) there is 'good cause' for the delay." State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980)(citing State v. Ege, 274 N.W.2d 350, 354 (Iowa 1979)).

In this case, trial commenced ninety-two days after filing of the information. Whiteside preserved his speedy trial right by orally moving for dismissal at the beginning of the trial. Thus, his motion to dismiss was correctly overruled only if the delay in trial was attributable to him or if "good cause" for the delay was present. Under the circumstances of the case, we think the State had good cause for delay because it was attributable to Whiteside. See Ege, 274 N.W.2d at 355. Four days prior to the scheduled trial date, on August 3, 1978, Whiteside moved for a continuance to allow for location of a witness. On the day scheduled for trial, Whiteside filed an untimely notice of alibi witnesses. Trial was then reset for August 24, 1978, although the record is silent on the reason for rescheduling.

When the trial court ruled on Whiteside's motion to dismiss, however, it found the reason for delay was due to Whiteside's earlier motions and therefore, attributable to him. We think the record supports that conclusion. See id. Further, in reviewing reasons for delay, we look at the surrounding circumstances of the case. Petersen, 288

N.W.2d at 332. The shortness of the period of delay, two days, and the absence of prejudice to Whiteside are important here. As stated in Petersen, "These matters show a less serious reason will suffice to constitute good cause. Under these circumstances we think there was good cause." Id. Delay in trial here was attributable to Whiteside and the trial court correctly denied the motion to dismiss on speedy trial grounds.

II. Sufficiency of the evidence.

Whiteside claims the trial court erred in overruling his motion for directed verdict and motion for new trial because the evidence at trial was insufficient to support a conviction for second degree robbery. His challenge primarily is focused on the testimony of the State's only witness, the victim of the robbery, and her identification of him as the person who robbed her. Whiteside claims her identification was insufficient to support the conviction, especially in light of the testimony of his alibi witnesses.

In reviewing a challenge to a jury verdict, we are bound by it if it is supported by substantial evidence in the record. State v. Cuevas, 281 N.W.2d 627, 631 (Iowa 1979). We review the evidence in the light most favorable to the State, State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), to determine whether the trier of fact could reasonably conclude the defendant is guilty beyond a reasonable doubt. See State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). Although counsel for the State in oral argument indicated the Robinson rule requiring consideration be given to all evidence in the record applies here, we think the Robinson rule is inapplicable since Whiteside has failed to raise any issue regarding scope of the evidence to be reviewed. Id. at 340.

Our review of the record, leads us to conclude the jury verdict is supported by substantial evidence. The robbery victim's testimony recalled the incident, discussed the line-up identification made of Whiteside, and included an in-court identification of Whiteside. Although Whiteside presented evidence to contradict this testimony, the jury had sufficient evidence on which it could reach a guilty verdict. Thus, the trial court correctly denied Whiteside's directed verdict and new trial motions.

Since the delay in trial was for good cause attributable to Whiteside, and because the jury verdict is supported by sufficient evidence, the judgment of the trial court is affirmed.

AFFIRMED.