FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed January 26, 1982 **101**

vs.)

LONNIE JOE BAER,) 1-432
66134

Defendant-Appellant.)

Appeal from Polk District Court - Norman E. Elliott, Associate Judge.

Defendant appeals from his conviction of operating a motor vehicle while under the influence of an alcoholic beverage in violation of section 321.281, The Code 1979. REVERSED AND REMANDED WITH DIRECTIONS.

Judd Golden, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Submitted to Donielson, A.C.J., and Snell, Carter and Johnson, JJ. Oxberger, C.J., takes no part.

PER CURIAM

Defendant, Lonnie Joe Baer, appeals from his conviction of operating a motor vehicle while under the influence of an alcoholic beverage in violation of section 321.281, The Code 1979. He asserts that trial court abused its discretion in finding that his failure to appear for his initial appearance constituted good cause for the State's failure to file a trial information within 45 days pursuant to Iowa R. Crim. P. 27(2)(a). We reverse and remand this case for dismissal of the charge against defendant.

Defendant was arrested on March 23, 1980, and charged with the crime of operating a motor vehicle while under the influence of an alcoholic beverage (OMVUI) in violation of section 321.281, The Code 1979. Defendant's parents posted his bond shortly after the arrest, and signed an acceptance of responsibility form. The bond agreement and the bond receipt listed the defendant's appearance date as 9:00 a.m. April 4, 1980. That date, however, was a legal holiday and pursuant to section 617.8, The Code, the court was closed. Defendant did not appear on that date and did not appear in court until his lawyer filed a motion to dismiss the charge on July 22, 1980, due to the State's failure to file a trial information within 45 days of defendant's arrest. The State resisted on August 6, 1980, asserting that defendant's failure to appear for his initial appearance, when he had notice of the hearing date, constituted good cause for delay in filing the trial information. Hearing on defendant's motion was held on August 28, 1980, and on September 5, 1980, trial court denied the motion on the grounds that cause for delay was attributable to the defendant's failure to appear and that such constituted good cause for delay. A trial information was then filed on September 11, 1980, and on September 18, 1980, defendant was arraigned and entered a plea of not guilty. Following trial to the court on December 12, 1980, defendant was found guilty and sentenced that same day. Defendant appeals from this conviction.

I. Scope of Review. Since this is an action at law, our review is for correction of errors only. Iowa R. App. P. 4.

II. Delay in Charging. Defendant asserts the State's failure to file an information within 45 days constitutes grounds for dismissal of the prosecution. He argues that his arrest triggered the statute, and asserts that his subsequent failure to appear for arraignment has no bearing on the issue of good cause for delay. The State argues that the right to a speedy indictment involves the right to a speedy trial and is governed by the same principles, including good cause for delay because of defendant's actions. The State further argues that because subsequent procedures after the initial appearance require defendant's presence, defendant's failure to appear tolls the criminal process, including filing of the indictment or information. We find no merit in the State's analysis.

Iowa R. Crim. P. 27.2(a) states in pertinent part: "When an adult is arrested ... and an indictment is not found against him within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto." (emphasis added). The rule makes it abundantly clear that arrest, not an initial appearance, triggers the time from which an indictment must be filed within 45 days. See State v. Schmitt, 280 N.W.2d 24, 27 (Iowa 1980). We note that the predecessor statute to rule 27(2)(a) triggered filing of a trial information on the time defendant was "held to answer" [preliminary examination or waiver of the same]. See § 795.1, The Code 1962 (as amended by 60th G.A. ch. 332, § 1); see also Schmitt, 280 N.W.2d at 27; State v. Satterfield, 257 Iowa 1193, 1195, 136 N.W.2d 257, 258 (1965). Rule 27(2)(a) is significantly different. Under that rule, defendant's failure to appear for his initial appearance has no relevance to the State's duty to file an information with 45 days because those procedures have no bearing on the State's duty and ability to charge the defendant. We thus find no good cause for delay on the basis of defendant's failure to appear for his initial appearance and conclude that trial

court abused its discretion in determining otherwise. We, therefore, reverse trial court's judgment and remand this case with directions that trial court dismiss the charges against defendant.

REVERSED AND REMANDED WITH DIRECTIONS.