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CLERK SUPREME COURT, THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

vs.

FRANCIS LUTGEN,

Appellant.

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Filed October 19, 1978

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Appeal from Black Hawk District Court - Eric M. Knoernschild, Magistrate.

Defendant appeals the overruling of motion to dismiss for failure to comply with speedy trial provisions, § 795.2, The Code 1977. Affirmed.

Jerald W. Kinnamon and Mark C. Meyer, of Kinnamon, Kinnamon, Russo & Meyer, of Cedar Rapids, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General, and David H. Correll, Black Hawk County Attorney, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Francis Lutgen was convicted by a jury of operating a motor vehicle while under the influence of an alcoholic beverage in violation of § 321.281, The Code 1975. Lutgen asserts that the trial court erred in overruling his motion to dismiss made pursuant to § 795.2, The Code, because he was not tried within 60 days from the filing of the information, and no good cause existed to justify delay beyond that period.

Where a speedy trial challenge is made, the burden is on the State to establish good cause at the trial court level. *State v. Moehlis*, 250 N.W.2d 42, 46 (Iowa 1977); *State v. LaPlant*, 244 N.W.2d 240, 242 (Iowa 1976). Our review of a determination of good cause is not *de novo*, *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976); to secure a reversal defendant must show the trial court abused its limited discretion in determining whether good cause for the delay existed. *State v. Potts*, 240 N.W.2d 654, 656 (Iowa 1976); *State v. Albertsen*, 228 N.W.2d 94, 98 (Iowa 1975). Acts or omissions of the defendant or his counsel which contribute to delay, or delay attributable to defendant, may constitute good cause. *State v. Brandt*, 253 N.W.2d 253, 256 (Iowa 1977); *State v. Moehlis*, *supra* at 46. *State v. Donnell*, *supra* at 579.

From the date the county attorney's information was filed on February 17, 1977 to trial held May 24, 1977, 96 days ensued. At defendant's arraignment on March 30, 1977, the trial court found that good cause existed for delay of trial beyond the 60-day period because of defendant's voluntary commitment to a mental health institution for a period of four weeks. The record reflects further delays in proceedings were caused by defendant's request for continuance to file financial statements for a court-appointed attorney, and defense counsel's failure to appear at the first pre-trial conference. We hold that the trial court did not abuse its limited discretion in overruling the motion to dismiss. *State v. Grady*, 231 N.W.2d 869, 872-873 (Iowa 1975).

Affirmed.