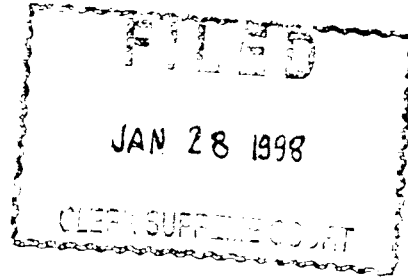


IN THE COURT OF APPEALS OF IOWA

No. 7-640 / 97-614

000229

IN THE INTEREST OF M.J., Minor Child,
M.J., Minor Child,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge, and Stephen C. Clarke, Associate Juvenile Judge.

A juvenile appeals a district court ruling granting the State's motion for continuance and denying his motion to dismiss on the ground the State failed to bring him to speedy trial within sixty days after the delinquency petition was filed.
AFFIRMED.

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, and Andrew Thalacker, Public Defender, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Jack Lammers, Assistant County Attorney, for appellee State.

Heard by Cady, C.J., and Sackett and Streit, JJ.

CADY, C.J.

M.J. appeals the district court's adjudication of delinquency. The juvenile court adjudicated him delinquent based on two counts of interference with official acts and possession of a controlled substance with intent to deliver. He claims the district court erred by granting the State's motion to continue and by denying his motion to dismiss. We affirm.

Officer Taylor came into contact with M.J. when he was conducting drug surveillance. After Taylor witnessed and videotaped what he believed to be a drug sale, he radioed for backup. As he called for assistance, he described the individuals involved. Two additional police officers then arrived who assisted in chasing the fleeing juveniles. During the chase, one officer observed M.J. take something from his mouth and throw it on the ground. The object was eventually determined to be crack cocaine. Although Taylor later established no one was with him at the time of surveillance, he stated in a deposition a National Guard soldier was with him.

Trial was scheduled for January 3, 1997. The State had subpoenaed Taylor and the other officers to testify. The State did not, however, subpoena the National Guard soldier. The day before the scheduled trial, the county attorney was informed Taylor would be unavailable to testify at trial due to the funeral of his brother-in-law.

On January 3, 1997, the county attorney moved for a continuance because of Taylor's unavailability. The trial court granted the State's motion, finding Taylor's

unavailability provided good cause for a continuance. The district court then set trial for January 9, 1997.

On January 9, 1997, M.J. moved to dismiss the case, claiming his right to a speedy hearing within sixty days after the filing of the petition had been violated. *See* Iowa R. Juv. P. 4.2. January 3 was the last day in the sixty-day time frame provided in Rule 4.2. By waiting until January 9, the trial took place six days after the expiration of the sixty days. The trial court overruled the motion to dismiss, finding good cause for the delay.

On appeal M.J. claims the trial court erred by granting the State's motion to continue and by denying his motion to dismiss.

I. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). We review juvenile proceedings de novo. *Id.*

M.J. asserts his constitutional and statutory rights to a speedy adjudication hearing have been violated. The State claims we should review M.J.'s statutory speedy adjudicatory claim for correction of errors at law because we are not reviewing the fact findings of the juvenile court.¹ The Iowa Supreme Court,

¹ The speedy trial right under Iowa Rule of Criminal Procedure 27(2)(b) is analogous to the speedy hearing right under Iowa Rule of Juvenile Procedure 4.2. We review the speedy

however, has applied the de novo standard of review to juvenile proceedings involving a speedy indictment claim. See *In re E.P.*, 478 N.W.2d 402, 403 (Iowa 1991). We therefore apply the de novo standard of review to M.J.'s constitutional and statutory claims.

II. Speedy Trial

Juveniles have a right to a speedy trial in delinquency proceedings under the due process clause of the Fourteenth Amendment and under Iowa Rule of Juvenile Procedure 4.2. See *In re C.T.F.*, 316 N.W.2d 865, 868 (Iowa 1982). Rule 4.2 provides a speedy adjudication hearing must be held within sixty days after the petition is filed unless good cause is shown. See Iowa R. Juv. P. 4.2.

To determine whether good cause existed or, in the alternative, a due process violation occurred, we consider the four-part test in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192, 33 L. Ed. 101, 116-17 (1972); see *In re C.T.F.*, 316 N.W.2d at 869. Under this test, we consider: (1) the length of the delay; (2) the reason for the delay; (3) whether the accused asserted the right; and (4) whether the accused was prejudiced by the delay. *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192, 33 L. Ed. at 116-17; *In re C.T.F.*, 316 N.W.2d at 869.

trial right under Rule 27(2)(b) for errors at law. See *State v. Orte*, 541 N.W.2d 895, 898 (Iowa App. 1995). Additionally, in reviewing a continuance in a juvenile proceeding, the Iowa Supreme Court observed, "we have nothing to review de novo other than whether the juvenile court judge abused discretion...." *In re Freund*, 216 N.W.2d 366, 368 (Iowa 1974).

We have consistently held the crucial factor in the “good cause” analysis is the reason for delay. *State v. Olson*, 528 N.W.2d 651, 654 (Iowa App. 1995). The other factors are only considered when the reason for delay is insufficient. *Id.* Consequently, a weak reason for the delay may become sufficient to avoid dismissal if the delay is relatively short and does not prejudice the defendant. *State v. Orte*, 541 N.W.2d 895, 898 (Iowa App. 1995).

A court may grant a motion to continue a hearing or trial if the cause for the motion does not result from the fault or negligence of the applicant and substantial justice will more nearly be obtained by granting the continuance. *State v. LaGrange*, 541 N.W.2d 562, 564 (Iowa App. 1995). In the case of a speedy trial claim, however, substantial justice requires compliance with the speedy trial rule unless the State can show good cause for delay. *State v. Hines*, 225 N.W.2d 156, 160-61 (Iowa 1975).

M.J. claims there was no good cause for violating the speedy hearing rule because the State made no effort to subpoena the National Guard soldier after Taylor became unavailable to determine if he could have provided the needed testimony. Notwithstanding, the State established at the hearing on January 9 that the soldier was not with Taylor when he videotaped M.J.

We find the State provided good cause for the delay. Officer Taylor could not testify the day of trial because he was attending a funeral. It was later established he was alone during the key portion of the surveillance. The officer’s testimony was necessary to authenticate the video tape, testify to the identification information he

broadcast over the police radio, and identify M.J. as an individual on the tape. Thus, the reason for the delay is not diminished because the State did not attempt to avoid the continuance of the January 3 hearing by finding a substitute for Taylor. Taylor was an essential witness for the State. In addition, we note the delay was for a short period of time and no prejudice resulted to M.J. We find no speedy trial violation occurred. The district court properly denied M.J.'s motion to dismiss.

AFFIRMED.