FILED
SEP 6 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
LESTER HANSEL,)
Defendant-Appellant.)

Filed September 6, 1984

309

4-257
83-1325

Appeal from the Iowa District Court for Clayton County - Peter Van Metre, Judge.

Defendant appeals from his conviction of assault, as defined in Iowa Code sections 708.1 and 708.2, asserting that he was denied his Iowa Rule of Criminal Procedure 27(2)(c) right to a speedy trial. VACATED; CASE DISMISSED.

John J. Goen of Jenk, Jenk, Goen & McClean, Dyersville, for defendant-appellant.

Thomas J. Miller, Attorney General, and Richard D. Cleland, Assistant Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

SNELL, P.J.

The defendant, Lester Hansel, appeals from his conviction of assault. Hansel was charged with assault on April 27, 1982. On May 4, 1982, he was arraigned. He entered a plea of not guilty and filed a written "Waiver of Right to Speedy Trial." A trial date was set for July 8, 1982. This trial was not held. On December 7, 1982, a trial date of February 2, 1983, was set. Trial was cancelled on that date because of bad weather. On April 6, 1983, the State moved for an extension of time for trial beyond the one-year limit of Iowa Rule of Criminal Procedure 27(2)(c). The State asserted the above facts as good cause for the extension. The trial court granted an extension. The trial was held on June 15, 1983, and Hansel was convicted.

On appeal, Hansel argues that the trial court erred in granting the State relief from Rule 27(2)(c). Iowa Rule of Criminal Procedure 27(2)(c) provides:

> All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to R. Cr. P. 8 unless an extension is granted by the court, upon a showing of good cause.

Iowa R. Crim. P. 27(2)(c) (1983).

After he was arraigned, Hansel signed a written "Waiver of Right to Speedy Trial" in which he waived his "right to speedy trial" and his "right to be tried within ninety (90) days of this date." The State argues that this written waiver constituted a waiver of his rights under 27(2)(c).

A defendant may waive his right to a trial within one year under 27(2)(c). State v. Magnuson, 308 N.W.2d 82, 85 (Iowa 1981). In Magnuson, the State found that the defendant had waived his rights under 27(2)(c) by seeking continuances and employing delaying tactics. Id. The State urges us to expand Magnuson's definition to include the written waiver that Hansel signed. We choose not to do so. By seeking continuances and using delaying tactics, a defendant is actively preventing the trial from being brought within the one-year period. In signing the

waiver, the defendant expressly waived his "right to be tried within (90) days." There was no reference to the one-year limit in the waiver.

This case was set for trial two times. It is unclear from the record why the trial was not held in July of 1982. The second trial was set for February and was delayed because of bad weather. If the defendant contributes to or consents to the delay, the State should not be prohibited from obtaining an extension by showing good cause for the delay. State v. Miller, 311 N.W.2d 81, 83 (Iowa 1981). Under 27(2)(c), the trial court must make a determination that good cause exists for granting the State an extension. The determination of whether good cause has been shown rests largely in the discretion of the trial court. Davison v. Garfield, 219 Iowa 1258, 1262, 257 N.W. 432, 433 (1934). Our review of the trial court's determination granting the extension is not de novo and that determination must stand unless an abuse of discretion is shown. State v. Brandt, 253 N.W.2d 253, 256 (Iowa 1977).

In its Motion for Relief from Iowa Rule of Criminal Procedure 27(2)(c), the State cites as the sole factor to support the claim of good cause, the fact that the trial was cancelled once by the trial judge because of inclement weather. No claim is made that any delay was attributable or consented to by the defendant. In the order granting the motion, the trial court made no finding good cause was established.

We find that the trial court abused its discretion in granting the extension. The judgment of the trial court is vacated and the case is dismissed.

VACATED; CASE DISMISSED.