



IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

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STATE OF IOWA,

)

Petitioner-Appellee,

)

Filed February 25, 1987

vs.

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DOUGLAS D. GRADIN,

)

6-505  
86-671

Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County (120630-01)

- C.H. Pelton and James R. Havercamp, Judges.

Defendant appeals from his conviction by a jury of operating a motor vehicle while intoxicated, third offense. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Bradley V. Black, Assistant Attorney General; and Mary Howes-Davis, Assistant Scott County Attorney; for plaintiff-appellee.

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

**HAYDEN, J.**

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The defendant appeals from his conviction, by a jury, of operating a motor vehicle while intoxicated, third offense, in violation of section 321.281, Iowa Code (1985). He contends the trial court erred in overruling his motion to dismiss on the ground the State failed to obtain an indictment or file an information within forty-five days, as required by Iowa Rule of Criminal Procedure 27(2)(a). We disagree and affirm the trial court.

On June 22, 1985, defendant was involved in an accident during which his vehicle left the road, defendant was thrown from the truck and seriously injured. From the site of the accident defendant was taken to the hospital. A warrant was issued for defendant's arrest on June 25, 1985. Defendant was arrested on October 11, 1985, pursuant to the warrant, and taken to the Scott County jail. Also on October 11, 1985, defendant made his initial appearance, at which time he was: advised of his constitutional rights, counsel was appointed, and the case was continued. Who requested this continuance, the court or defendant's counsel, is a contested issue.

On October 13, 1985, the day before his bond reduction hearing, defendant requested and received release from Scott County jail. This release was to allow defendant to report to Iowa City Hospital for treatment of injuries previously sustained and was specifically conditioned upon defendant's reporting back to the Scott County Detention Center after his release from the hospital. No further proceedings were set pending defendant's return to the detention center. Upon defendant's release from the hospital he did not return to custody as had been ordered, and disappeared.

On December 23, 1985, defendant filed a motion to dismiss based upon the State's failure to obtain an indictment or file an information within forty-five days as required by Iowa Rule of Criminal Procedure 27(2)(a). The State filed

an information charging the defendant with OWI on December 27, 1985. Hearing on the motion to dismiss was held January 30, 1986. The trial court found defendant's actions in initially requesting the continuance and then absconding from the jurisdiction, in violation of the Court's release order, were enough to establish good cause for the delay and thereby dismissed the motion. The Iowa Supreme Court denied defendant's application for discretionary review.

On March 25, 1986, the jury found the defendant guilty as charged, and defendant admitted it was his third OWI conviction. On May 5, 1986, the trial court overruled defendant's motion in arrest of judgment and sentenced him to an indeterminate prison term not to exceed five years.

Our review of criminal proceedings is at law for correction of errors only.

Iowa R. App. P. 4.

Iowa Rule of Criminal Procedure 27(2)(a) provides:

When an adult is arrested for the commission of a public offense . . . and an indictment is not found against him within forty-five 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.

In State v. Hunziker, 311 N.W.2d 692 (Iowa Ct. App. 1981), this court concluded the "good cause" requirements of speedy trial were similar enough to "good cause" for delay in speedy indictment to allow us to consider such factors. The court further provided as follows:

It is the State's burden to show good cause. Whether there is good cause depends on the reason for the delay. The surrounding circumstances affect the strength of the reason for the delay. If the delay has been short, and the defendant was not prejudiced by it, and the defendant has not demanded a speedy trial, a weaker reason will constitute good cause. Nonetheless, if the reason for the delay is insufficient, these other factors will not avoid dismissal.

Id. at 694.

"Delay that is attributable to the defendant is 'good cause' under the speedy indictment rule." State v. Crooks, 378 N.W.2d 722, 727 (Iowa Ct. App. 1985). The following have been held good cause for delay: (1) the defendant's refusal to waive extradition to Iowa, State v. Crooks, 378 N.W.2d 722 (Iowa Ct. App. 1985); (2) the defendant's own motions, including a continuance granted at the defendant's request, and the involvement of the prosecutor in a separate but related case, State v. Moritz, 293 N.W.2d 235 (Iowa 1980); and (3) the defendant's hospitalization with serious injury and his request to delay all criminal proceedings against him while in the hospital, State v. VanRees, 246 N.W.2d 339 (Iowa 1976).

In the present case the delay in filing the information is attributable to defendant. At the initial appearance defendant either requested the continuance or acquiesced in the decision allowing one. Defendant requested and received from the court a conditional release from jail to seek medical help. Upon release from the hospital defendant broke the agreement with the court and disappeared. Although, as compared with VanRees, defendant did not specifically request no action be taken against him in his absence, we find that in fact all proceedings against defendant were delayed because of his actions. Considering the facts of this case and the established precedent, we believe defendant's request or acquiescence in the initial continuance and his blatant disregard of the court's conditional release constitutes good cause for the delay. We affirm the trial court's finding of good cause.

**AFFIRMED.**