



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
)
Plaintiff-Appellant,)
)
vs.)
)
DEAN RICHARD HUSE,)
)
Defendant-Appellee.)

Filed August 9, 1979

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Appeal from Cerro Gordo District Court - Hon. J. W. Frye, Judge.

The state appeals from dismissal of information in OMVUI prosecution for failure to accord defendant a speedy trial. AFFIRMED.

Thomas J. Miller, Attorney General of Iowa, and Richard N. Tompkins, Jr., Cerro Gordo Assistant County Attorney, for appellant.

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

PER CURIAM

The state appeals from dismissal of the information in an OMVUI prosecution based on the failure of the state to accord defendant a speedy trial. We affirm the trial court.

The trial court based its ruling on the defendant's federal constitutional right of speedy trial under the sixth amendment and also upon section 735.2, The Code 1977. The relevant chronology upon which the motion to dismiss and resulting ruling were based is as follows:

January 25, 1977	information filed
January 31, 1977	defendant failed to appear for arraignment and warrant for arrest issued
July 19, 1977	defendant arrested and released on bond
July 28, 1977	defendant appeared for arraignment without counsel, entered plea of not guilty, and stated that he waived speedy trial
April 26, 1978	motion to dismiss filed
May 1, 1978	motion to dismiss sustained

On this appeal the state's only theory for avoiding the consequences of the rather extended delay in bringing defendant to trial is that it was entitled to rely upon defendant's statement at arraignment that he waived speedy trial. Defendant was not represented by counsel at arraignment, but apparently had consulted a lawyer. The relevant portion of the colloquy which conspired at that time is as follows:

THE COURT: Do you waive your right to speedy trial?

THE DEFENDANT: Yeah. I don't want a speedy trial.

THE COURT: All right. You get ahold of your attorney. It will be set for trial one of these days.

THE DEFENDANT: Uh-huh. I just talked to him now, just a few minutes ago, and he said we'll waive that speedy trial.

THE COURT: All right. That's all.

From the record before it, the trial court found that the state failed to establish that defendant intelligently and understandably waived his constitutional and statutory right to a speedy trial.

Our review of the trial court's determination in granting a motion to dismiss for lack of speedy trial is not de novo. State v. Brandt, 253 N.W.2d 233, 256 (Iowa 1977). If there is evidence to support the determination, we must affirm. While the issue as to the legal effect of defendant's articulation of waiver at his arraignment is a close one on the present record, we do not choose to disturb the trial court's ruling. The fact that a defendant is willing to tolerate some delay because he finds it reasonable and helpful in preparing his own case is not necessarily indicative of an intent to tolerate an unreasonable delay or a waiver of his right to complain about such delay. In making this determination, we have considered, as the state suggests, only the period of time following defendant's arrest. We have not considered the time intervening between the filing of the information and such arrest.

AFFIRMED.