

IN THE COURT OF APPEALS OF IOWA

No. 1999-3 (9-043) 98-1219

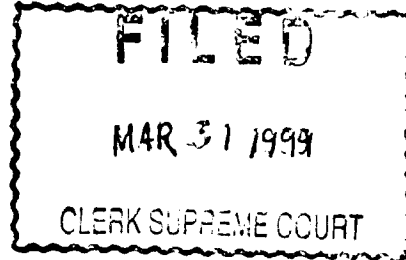
STATE OF IOWA,

Appellee,

vs.

DAVID CHARLES ENGBRETSON,

Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

David Engbretson appeals from his convictions for operating a motor vehicle while intoxicated, first offense, and driving while under suspension. **AFFIRMED.**

Brian D. Miller, Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Paul O. Martin, County Attorney, and Denise Timmins, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Defendant David Charles Engebretson appeals from his convictions and sentences for operating a motor vehicle while intoxicated, first offense, in violation of Iowa Code section 321J.2 (1997) and driving while under suspension in violation of Iowa Code section 321.218 (1997). He contends the district court erred in denying his motion to dismiss based on a violation of his right to speedy trial and in denying his motion to suppress the results of his blood test. We affirm.

On November 21, 1997, Defendant was involved in a single motor vehicle accident and was seriously injured. At the hospital, a deputy sheriff requested, and defendant agreed to give, a sample of defendant's blood for testing. Before the blood was drawn, the deputy obtained defendant's signature of consent. Defendant's blood alcohol content was determined to be .146, which is more than .100, the "legal test threshold" for intoxication in Iowa.

As a result of the blood test results and the accident, on January 23, 1998, defendant was charged by trial information with operating under the influence, first offense, and driving under suspension. Defendant filed a written arraignment on February 4, pleading not guilty and specifically demanding a speedy trial under Iowa Rule of Criminal Procedure 27(2)(b). Trial was set for April 9.

On March 16, the defendant filed a motion to suppress, arguing that following his accident he lacked capacity to consent to the blood test. On March 18 the court scheduled the motion for hearing on April 29. The order noted that the motion had been filed on the last day within the forty-day period for filing pretrial motions under

Iowa Rule of Criminal Procedure 10(4). The court specified that all delay between the date of its March 18 order and its eventual ruling on the motion to suppress would be attributable to the defendant for the purpose of speedy trial calculations.

On April 8, 1998, the day before his trial was to commence, defendant filed a motion to continue. In the motion, he noted a hearing on his motion to suppress was scheduled for April 29 and a ruling would need to be issued on the motion prior to trial. Defendant requested the court to continue trial "to a date in the future." The district court granted the motion by order entered the same day the motion to continue was filed.

Hearing on defendant's motion to suppress was held as scheduled on April 29, 1998. Immediately following the hearing, defendant filed a motion to dismiss alleging his right to a speedy trial had been violated. The court denied the motion to dismiss on May 12.

The trial court denied the motion to suppress on May 15. It found that at the time the deputy requested the blood sample the defendant was not unconscious or in a condition rendering him incapable of consent or refusal.

By stipulation of the parties, this case was submitted to the court for nonjury trial on May 29, 1998. The state and defendant jointly agreed this matter would be submitted to the trial court on the record established by the file and minutes of evidence. No witnesses were called. Defendant was found guilty of operating under the influence and driving while under suspension by ruling of the trial court filed June 3, 1998.

Defendant now appeals. He claims the district court erred as a matter of law when it attributed the trial delay to him and that it should have granted his motion to dismiss. He also claims the court erred in finding he could consent to the blood test and that it should have granted his motion to suppress.

I. Speedy Trial. We review speedy trial issues for correction of errors at law. See Iowa R. App. P. 4; *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). We are bound by the district court's findings of fact if supported by substantial evidence. *Id.* We recognize the trial court's discretion to refuse to dismiss within the limits of the exceptions to the speedy trial mandate. See *State v. Orte*, 541 N.W.2d 895, 898 (Iowa App. 1995) (citing *State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991)). Whether the trial court abused its discretion is, therefore, our ultimate consideration. *Id.*

The right to a speedy trial is guaranteed by the Sixth Amendment of the United States Constitution, as well as Article I, section ten of our Iowa Constitution. See *State v. Olson*, 528 N.W.2d 651, 653 (Iowa App. 1995). The elements of this guarantee have been explicitly delineated in our rules of criminal procedure, which provide:

If a defendant indicted for a public offense has not waived his or her right to a speedy trial he or she must be brought to trial within ninety days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

Iowa R. Crim. P. 27(2)(b). This rule is applicable to charges brought by trial information as well. See Iowa R. Crim. P. 5(5); *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997); *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984). Thus, a case not

brought to trial within ninety days after indictment or filing of the trial information must be dismissed unless: (1) the defendant waived his right to a speedy trial; (2) the delay is attributable to the defendant; or (3) there is good cause for the delay. *See State v. Finn*, 469 N.W.2d at 694.¹

It is the state's duty to effectuate the ninety-day trial rule. *See State v. Hines*, 225 N.W.2d 156, 158 (Iowa 1975). It is a long-standing rule, however, that a defendant's actions may constitute good cause for delay. *See State v. Moehlis*, 250 N.W.2d 42, 46 (Iowa 1977). Specifically, a defendant may not actively or passively participate in events which delay his trial and then later take advantage of such delay to terminate prosecution on the basis of a speedy trial violation. *See State v. Keys*, 535 N.W.2d 783, 787 (Iowa App. 1995); *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa App. 1992). For example, a defendant must accept the passage of time reasonably necessary for action on his or her own motions: "[T]he period of delay resulting from other proceedings concerning the defendant, including hearings on pre-trial motions, should be excluded in computing time for trial." *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976). *See also State v. Smith*, 573 N.W.2d at 18 (finding no error by the district court with regard to defendant's speedy trial claim where, among several factors, the trial court had to schedule a hearing on and then consider and rule on several pre-trial motions filed by defendant).

¹ Defendant specifically demanded a speedy trial when he submitted his written arraignment. The issue of waiver is not before us.

According to the order fixing the suppression hearing date, the court had been advised by defense counsel the hearing could last longer than one hour. Defendant's motion raised a serious issue regarding admissibility of evidence critical to the State's case which could not be resolved without an evidentiary hearing. In order to accommodate defendant and fully address the suppression issues, the court apparently found it necessary to schedule a significant block of time for the hearing. Under the circumstances, the district court was justified in allowing sufficient time to address these issues, even if doing so would delay trial. Because there is no evidence to the contrary, we assume the first available date to conduct such a hearing was April 29.

We do not believe the trial court acted improperly in scheduling the suppression hearing after the time window for speedy trial would expire, particularly considering that in doing so the court was accommodating the defendant's wishes for an extended hearing. Rule 27(2)(b) does not provide defendants with a weapon to trap state officials and terminate prosecutions. *See State v. Hamilton*, 309 N.W.2d 471, 475 (Iowa 1981). The delay of which defendant complains must be accepted as reasonably necessary to rule on his motion. He cannot make motions that delay trial and then later take advantage of that delay to terminate prosecution. Furthermore, there is no indication defendant was prejudiced by this delay. *See State v. Moritz*, 293 N.W.2d 235, 241 (Iowa 1980).

Defendant was in compliance with our criminal procedure rules when he filed his motion to suppress. He was not, however, entitled to an immediate ruling. Iowa Rule of Criminal Procedure 10(8) requires only that motions be determined without

unreasonable delay. Absent a showing of unreasonable delay, defendant was obligated to accept the time table set by the court to address his motion. *See State v. Donnell*, 239 N.W.2d at 579.

Prompt disposition of motions is clearly contemplated by our rules of criminal procedure and we are reluctant to abrogate the defendant's right to a speedy trial where there has been an inordinate, unexplained delay in the issuance of a ruling. *State v. Orte*, 541 N.W.2d 895, 899 (Iowa App. 1995). However, we find no evidence of such a delay in this case.

Though 126 days passed from the filing of the trial information to the beginning of the trial, we determine defendant's right to a speedy trial has not been violated. We conclude there was good cause for the delay between the filing of the trial information and trial in light of the time required to deal with the issues presented by defendant's motion to suppress. Defendant's motion went to the heart of the State's case. The time taken by the trial court to hear, properly study, and rule on the motion was reasonable and should be attributed to the defendant. The trial court did not err in denying defendant's motion to dismiss raised on speedy trial grounds.

II. Consent to the Blood Test. Before trial defendant moved to suppress the results of the blood test on the ground that he was incapable of giving knowing and voluntary consent. He implies that because he was incapable of consenting or refusing to a blood sample, the police should have used the testing procedure described in Iowa Code section 321J.7, involving certification by a licensed physician. He

contends because the state failed to do so, the results of the blood test should have been suppressed. He argues the district erred in denying his motion to suppress.

Ordinarily, our review of a district court's ruling on admission of evidence is for abuse of discretion. *See State v. Kjos*, 524 N.W.2d 195, 196 (Iowa 1994). In the present case, however, in ruling on the motion to suppress, the trial court was required to find the facts upon which the admissibility of the evidence was to depend. *See State v. Laughridge*, 437 N.W.2d 570, 572 (Iowa 1989); *see also* Iowa R. Evid. 104(b). Such determinations are based on a preponderance of the evidence. *Id.* Thus,

we will uphold the trial court's ruling on the motion to suppress if there is substantial evidence in the record to support the finding of fact that it was more likely than not that [the defendant] was incapable of consenting or refusing a blood test. We will not reverse the trial court's ruling on the basis that the evidence is disputed, or that the trial court could have reached the opposite conclusion. The trial court's ruling will only be set aside if there is no substantial evidence to support its finding.

State v. Laughridge, 437 N.W.2d 570, 572 (Iowa 1989). Therefore, in considering defendant's claim, we will uphold the trial court's ruling if there is substantial evidence to support the finding of fact it was more likely than not defendant was capable of consenting to or refusing a blood test.

It is a basic principle of our law that "a driver impliedly agrees to submit to a test in return for the privilege of using the public highways." *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980). This presumption does not dissipate simply because an individual is incapacitated and unable to withdraw consent. The Code specifically provides for the testing of people who are "dead, unconscious, or otherwise in a

condition rendering that person incapable of consent or refusal.” Iowa Code § 321J.7. In such cases, testing is permitted if a licensed physician certifies in advance of the test the person is incapacitated. *See* Iowa Code § 321J.7. However, “only when the person is in such a condition that the person is incapable of manifesting a choice” to take the test will the statute be applied. *Mary v. Department of Transportation*, 382 N.W.2d 128, 132 (Iowa 1986).

The trial court found defendant was not dead, unconscious or otherwise in a condition rendering him incapable of consent or refusal. It determined section 321J.7 was therefore not applicable. After determining the procedural requirements of 321J.6 had been satisfied, it overruled defendant’s motion and admitted the evidence.

Our review of the record demonstrates substantial evidence to support the trial court’s ruling on the admissibility of the results of the blood test. Following the car accident, defendant spoke with the investigating deputy in an appropriate and coherent manner. Defendant explained he had been in an accident, that he had injured his arm, and that he did not believe he had any other injuries. While defendant was at a hospital receiving treatment for his injuries, the deputy identified himself and requested a blood sample. After consenting to the test, defendant was read an Implied Consent Advisory and asked whether he had any questions. The defendant indicated he understood the advisory. The deputy once again asked defendant if he would consent to a blood test. The defendant agreed he would and signed the advisory consent form.

Several witnesses testified the defendant appeared to be in shock and/or nonresponsive. However, these observations were made several hours after the deputy spoke with the defendant. The record indicates defendant was coherent when questioned by the police and that only thereafter did his mental capacities deteriorate.

We do not believe defendant was so incapacitated at the time the deputy confronted him as to have been unable to consent to or refuse a blood test. That some evidence points to a contrary conclusion does not warrant reversal of the trial court. *See Waukon Auto v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989) (evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings); *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988) (evidence is not insubstantial merely because it could support contrary inferences).

The criteria for invoking section 321J.7 having not been met, that section is inapplicable. Furthermore, we are satisfied the police met the procedural requirements of section 321J.6. We find defendant was capable of consenting to the blood test, and therefore that test and its results obtained pursuant to and in conformity with Iowa Code section 321J.6 were properly admitted by the district court.

AFFIRMED.