FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-542 / 89-220

STATE OF IOWA,

Appellant,

vs.

354

JONATHAN WARD ELLIS,

Appellee.

Appeal from the Iowa District Court for Wright County, Newt Draheim, Judge.

The State appeals a ruling from the district court dismissing charges of operating a motor vehicle while intoxicated, third offense, filed against the defendant. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; Lee Poppen, Wright County Attorney; and Mary A. Schlicher, Assistant County Attorney; for appellant.

Robert W. Brinton of Brinton & Bordwell, Clarion, for appellee.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J. 355

Jonathan Ellis was arrested and charged with operating a motor vehicle while intoxicated, third offense, in September 1987. Trial information was filed on October 19, 1987, and arraignment was held on October 26, 1987. Ellis pled not guilty. On November 12, 1987, Ellis filed a motion to suppress, and the State filed its resistance on November 17. After a hearing, the court sustained Ellis's motion on December 21, suppressing evidence obtained as a result of the stop of his car.

On December 23, 1987, the State filed an application for discretionary review of the suppression ruling. Ellis filed his resistance on December 28, 1987. The Iowa Supreme Court granted the application for discretionary review on February 12, 1988, and stayed the district court proceedings pending interlocutory appeal.

The appeal was docketed in March 1988. Although the State's brief was originally due on May 12, it was granted an extension until June 13. The State filed its final brief and appendix on July 22, 1988.

Ellis's trial was scheduled for November 8, 1988. On November 1 Ellis filed a motion to dismiss for failure to provide a speedy trial. Hearing on the motion was held on November 9, 1988, at which time evidence was heard against Ellis.

The court of appeals ruled in October 1988 the district court erred in granting the suppression motion. Therefore, on November 17 procedendo was issued upon the reversal of the suppression ruling, returning the case to the district court. Ellis subsequently filed a motion to dismiss the trial information on the grounds the district court lacked jurisdiction to decide the case. The district court, on January 10, 1989, granted Ellis's original motion to dismiss for lack of speedy trial. The State has appealed.

The State contends the district court erred in its calculation of the number of days that had passed with regard to the ninety-day speedy trial requirement of Iowa Rule of Criminal Procedure 27(2)(b). The State maintains the district court erroneously concluded the State had not filed timely briefs in its interlocutory appeal. This erroneous conclusion added on thirty-nine extra days, pushing the total from sixty-five to one hundred four, exceeding the ninety-day speedy trial requirement. The State further asserts any delay would be attributable to Ellis, since he did not file a timely responsive brief.

This court concludes the State complied with Iowa Rule of Appellate Procedure 15(c) and filed a timely brief. Therefore, the ninety-day speedy trial requirement was not violated. We reverse and remand in order for the trial court to rule on defendant's motion to dismiss based on rule 27(2)(c) and the State's request for an extension.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. We are not bound by the trial court's determination of law and are free to decide whether the court's findings were the result of legal error. Rouse v. State, 369 N.W.2d 811, 813 (Iowa 1985).

I. Rule 27(2)(b). Iowa Rule of Appellate Procedure 13(a) provides appellant shall file a brief within fifty days after the date the appeal is docketed. The appellee has thirty days after the service of appellant's brief to file their brief. Id. The appellant's reply brief must be filed within fourteen days after service of the appellee's brief. Id.

Iowa Rule of Appellate Procedure 102, which delineates procedure in criminal appeals, requires the deferred appendix method of rule 15(c) to be applied in criminal cases unless the parties request otherwise.

The deferred appendix method allows each party to file page proof copies of the briefs within the time required by Iowa Rule of Appellate Procedure 13(a). Iowa R. App. P. 15(c). Within twenty-one days after service or expiration of the time for service of the initial copy of appellee's brief, appellant shall file the appendix. Id. After the appendix is served , each party has fourteen days within which to file their final briefs. Id.

The appeal of the district court's suppression order was docketed on March 23, 1988, at which time appellant's

fifty days began to run. On May 11, the State was granted an extension until June 13. The proof copies of the State's brief were filed on May 25, several weeks prior to the extended deadline.

The State's next deadline was twenty-one days after Ellis either filed a brief or the time expired. The State would then be required to file the appendix and, fourteen days later, the final brief.

The docket card from the clerk of the supreme court indicates Ellis called on July 21 to inform the clerk he would not be filing a brief. The next day, on July 22, the State submitted an appendix and its final brief.

The State was well within the time frames required by the Iowa Rules of Appellate Procedure. Therefore, the speedy trial clock was not running during the appellate process. United States v. Loud Hawk, 474 U.S. 302, 314, 106 S. Ct. 648, 655, 88 L. Ed. 2d 640, 653 (1986); State v. Albertsen, 228 N.W.2d 94, 97 (Iowa 1975); State v. Mary, 401 N.W.2d 240, 242 (Iowa App. 1986).

II. Rule 27(2)(c). In its motion to dismiss, Ellis raised the issue of failure to bring the case to trial within one year from the date of arraignment. Iowa R. Crim. P. 27(2)(c). The trial court stated in its order it need not consider this claim because it was dismissing the case based on rule 27(2)(b).

Rule 27(2)(c) states all criminal cases must be brought to trial within one year after the defendant's initial arraignment, pursuant to Iowa Rule of Criminal Procedure 8 unless an extension is granted by the court, upon a showing of good cause.

The State requested an extension of time based on good cause on November 7, 1988, in its resistance to defendant's motion to dismiss and request for extension. The supreme court has held a trial court may grant an extension after the one-year period of rule 27(2)(c) has expired. State v. Miller, 311 N.W.2d 81, 84 (Iowa 1981). Therefore, the State's request was timely filed.

We remand this case for the trial court to rule on the State's request for an extension of time and the defendant's motion to dismiss based on the State's failure to bring defendant to trial within one year, and proceed accordingly.

REVERSED AND REMANDED.