IN THE COURT OF APPEALS OF IOWA

No. 3-596 / 92-2008

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

CLAYTON GENE WORLEY,

Appellant.

Appeal from the Iowa District Court for Polk County, Thomas A. Renda, Judge.

Defendant appeals the district court's denial of his motion to dismiss for lack of speedy indictment or speedy trial under Iowa Rules of Criminal Procedure 27(2). **REVERSED AND REMANDED FOR DISMISSAL.**

Michael D. Andrew, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; Ann E. Brenden, Assistant Attorney General; John P. Sarcone, County Attorney; and Jeffrey Noble, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

DONIELSON, J.

On June 13, 1992, the defendant, Clayton Worley, was stopped by a Des Moines police officer for a seatbelt violation. Worley initially identified himself as Ronnie Collins. However, when the police officer ran the name through the computer, the social security number came back as belonging to a different person. Worley then told the officer that he had lied about his identity because his driver's license had been suspended.

The officer subsequently issued Worley a citation which read "no drivers license (barred 12-29-89)." Worley's car was parked and locked, and he was transported to the jail by the officer. Worley's initial appearance was scheduled for July 20, 1992. At his appearance, Worley waived preliminary hearing, and his arraignment was scheduled for August 10, 1992. The State at that time formally charged Worley with driving while his license was barred, in violation of Iowa Code section 321.561 (1991).

The State filed its trial information on August 6, 1992. Worley failed to appear for his arraignment, and the district court issued a bench warrant for his arrest. Worley appeared for arraignment on August 21, 1992. The bench warrant was recalled, and the public defender was appointed to represent Worley.

The public defender withdrew her representation, and the court appointed new counsel. Worley had his first meeting with his new counsel on October 16, 1992, the date

of the pretrial conference. On November 9, 1992, Worley filed a motion to dismiss on the grounds that he was denied his right to speedy indictment under Iowa Rule of Criminal Procedure 27(2)(a) and his right to speedy trial pursuant to Iowa Rule of Criminal Procedure 27(2)(b). The district court overruled Worley's motion to dismiss.

Worley stipulated to the information contained in the State's trial information and offered no defense. The district court found Worley guilty as charged and fined him $1000. Worley has appealed.

Worley argues he was arrested on June 13, 1992, for the aggravated misdemeanor of driving while his license was barred. Worley argues the issuance of a citation in lieu of an arrest is deemed an arrest for purposes of the speedy indictment requirement of Iowa Rule of Criminal Procedure 27(2)(a). As such, Worley contends the State had an obligation to file an indictment against him within the forty-five-day rule. Worley argues that since the State did not file a trial information against him until August 6, 1992, the State did not meet the requirements of rule 27(2)(a).

Worley also maintains the State violated his right to a speedy trial. Worley maintains the eleven days which passed between the time of his initial arraignment date of August 10 and the date he appeared, August 21, were not attributable to any fault of his. Worley had been jailed in Dallas County at the time, and attempted to call the

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public defender's office regarding his unavailability to appear at the arraignment. Worley alleges the public defender did not return any of his numerous telephone calls and points out the assistant public defender assigned to represent him admitted that he may well have left numerous messages, but that she had filed a motion to withdraw and likely did not return his messages. Worley claims he informed the officials in Dallas County about his arraignment date, but they refused him an envelope to send a letter to his counsel. Worley additionally notes he did not meet with his substitute counsel until October 16, 1992, because his counsel had the wrong address and could not get in touch with him. Worley finally alleges there is no evidence in the record to show why the State did not seek a trial date earlier than November 4, 1992.

Our review of the district court's determination is not de novo; we will affirm the district court if its decision is supported by substantial evidence. State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983); State v. Brandt, 253 N.W.2d 253, 256 (Iowa 1977). If the State does not try the defendant within the ninety-day period, the district court must dismiss the charge unless the defendant has waived his right to a speedy trial, the defendant caused the delay, or there is good cause for the delay. Iowa Code 813.2 (1991); Iowa R. Crim. P. 27(2)(b); State v. Searcy, 470 N.W.2d 46, 47 (Iowa App. 1991) (citing State v. Mount, 422 N.W.2d 497, 498 (Iowa 1988)).

> In determining whether good cause has been shown, we focus solely on the reason for the delay; however, surrounding circumstances are relevant to the inquiry to the extent that a comparatively weak reason for delay may be sufficient to constitute good cause if the delay is relatively short and it does not prejudice the defendant.

Bond, 340 N.W.2d at 279. The State has the burden to show good cause. State v. Todd, 468 N.W.2d 462, 469 (Iowa 1991); Iowa Code § 813.2; Iowa R. Crim. P. 27(2)(b). The test on appeal is whether the trial court abused its discretion in refusing to dismiss. State v. Donnell, 239 N.W.2d 575, 579 (Iowa 1976).

The State argues appellant was a cause of the delay. We disagree. The State filed the trial information on August 6. Appellant did not appear at his arraignment on August 10 because he was jailed in Dallas County. He attempted to contact his public defender, who did not return his calls. He arranged for the court clerk to be notified he would be unable to appear at the arraignment because of his incarceration. His newly-appointed counsel was unable to contact him because the address provided was incorrect. We conclude appellant made a reasonable effort to give notice of his inability to appear for arraignment on August 10. The ninety-day period for a speedy trial ended November 4. Trial occurred November 9, five days after the ninety days allowed. Since appellant was not at fault for the delay, and the State has offered no other cause, we conclude the district court erred in not dismissing the case pursuant to Iowa Rule of Criminal

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Procedure 27(2)(b). We therefore reverse the decision of the district court and remand this case for dismissal.

Since our decision on the speedy trial issue is dispositive, we do not address the speedy indictment issue.

REVERSED AND REMANDED FOR DISMISSAL.

Oxberger, C.J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent to the majority opinion. I do not believe the trial court abused its discretion when it found "good cause" for not bringing this case to trial within the ninety days after indictment.

The trial information was filed on August 6. The defendant's arraignment date was scheduled for August 10. The defendant failed to appear. A bench warrant issued. The defendant did appear on August 21, 1992. He entered a plea of not guilty. The reason for his failure to appear at the first arraignment is that he was incarcerated in the Dallas County Jail.

Judge Fenton, who presided at the arraignment, accepted defendant's plea of not guilty and at that time and in the presence of the defendant fixed the trial date for November 9, 1992.

The ninety day period for speedy trial ended November 4, 1992. The defendant did not object to the fixing of the trial date beyond the ninety days until November 9, the day of trial. When I couple the failure of the defendant to appear for arraignment on August 10 with the fact that the defendant made no objections to the November 9 trial date (the defendant and his counsel, like the State, had to know the 90 days ended on November 4). I am able to find "good cause" for the delay.