

IN THE COURT OF APPEALS OF IOWA

No. 9-385 / 88-1058

FILED

OCT 05 1989

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MELVIN LeROY LONG,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County (CR 36300), Theodore H. Miller, Rodney J. Ryan, and Anthony M. Critelli, Judges.

Defendant appeals his conviction, following a jury trial, of second-degree sexual abuse and fourth-degree theft, contending the trial information should have been dismissed because it was not filed within forty-five days of his arrest. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and James F. Whalen, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie A. Halligan, Assistant Attorney General; James Smith, County Attorney, and Nan Horvat, Assistant County Attorney, for appellee.

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

PER CURIAM

Defendant-appellant Melvin LeRoy Long appeals his conviction, following a jury trial, of second-degree sexual abuse and fourth-degree theft. Defendant contends the trial court erred in failing to dismiss the trial information, based on the fact that it was not filed within forty-five days of his arrest.

Our review of criminal proceedings is at law for correction of errors. State v. Cuevas, 322 N.W.2d 910, 911 (Iowa 1982). We affirm the trial court.

On August 2, 1987, during the course of an investigation for the Polk County Sheriff's Department, Detective Donald Turck contacted defendant at his place of employment, a restaurant. Though the employee break room at the restaurant was empty at the time, Turck decided there would not be enough privacy there. At Turck's request, defendant willingly accompanied him to the sheriff's office for questioning.

At the sheriff's office, Detective Turck read the defendant his Miranda rights, which defendant waived. Turck then questioned defendant for about half an hour, and afterwards drove him back to the restaurant. The entire episode lasted approximately one hour. An arrest warrant was served on defendant on August 13, 1987.

Defendant contends he was "arrested" on August 2 for purposes of Iowa Rule of Criminal Procedure 27(2)(a). That

rule requires an indictment to be found against a defendant within forty-five days of arrest. The trial information against defendant here was filed more than forty-five days after August 2, 1987. Therefore, defendant argues, the charges against him should be dismissed, and the trial court erred in holding otherwise. We disagree.

In State v. Van Beek, ____ N.W.2d ____, No. 88-742 (Iowa July 19, 1989), the supreme court held that when a person is unconditionally released after being arrested, before charges are filed or a preliminary hearing is held, that release "stops the speedy trial clock." Id. at _____. Thus, even if we were to find that defendant was arrested by Detective Turck, the forty-five-day limitation ceased running upon Turck's unconditional release of defendant one hour later.

The trial court properly overruled defendant's motion to dismiss.

AFFIRMED.