IN THE COURT OF APPEALS OF IOWA

No. 0-408 / 89-1913

FILED
NOV 29 1990
CLERK SUPREME COURT

423

STATE OF IOWA,

Appellee,

vs.

DONALD SCHAKEL,

Appellant.

Appeal from the Iowa District Court for Mahaska County, Michael Stewart, Judge.

Donald Schakel appeals his convictions, following a bench trial, for possession of cocaine and possession of methamphetamine. **AFFIRMED.**

Lance A. Grotewold of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for appellant.

Thomas J. Miller, Attorney General, Mark Joel Zbieroski, Assistant Attorney General, and Charles A. Stream, County Attorney, for appellee.

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

OXBERGER, C.J.

On February 24, 1989, pursuant to a search warrant, police searched Donald Schakel's house and seized a sawed-off shotgun, some marijuana, and certain items showing a white powder residue. At that time Schakel was arrested for possession of controlled substances and possession of an offensive weapon. Schakel initially appeared before a magistrate on February 25, 1989. At the initial appearance, the magistrate read the complaints prepared by the Mahaska County Sheriff's Department, one for possession of marijuana and one for possession of an offensive weapon. Neither complaint made reference to the charges which are the basis for this appeal.

A subsequent laboratory examination showed the white powder residue seized on February 24, 1989, tested positive for the presence of cocaine and methamphetamine. Consequently, 93 days after his arrest, the State filed an information charging Schakel with possession of cocaine and possession of methamphetamine. Schakel moved to dismiss these charges on the ground his right to speedy indictment under Iowa Rule of Criminal Procedure 27(2)(a) had been violated. The district court overruled his motion to dismiss.

Schakel was tried to the court on the charges of possessing cocaine and methamphetamine. The court found him guilty of those charges, and he has appealed the resulting convictions.

Schakel contends the cocaine and methamphetamine charges violated his right to speedy indictment. He argues those charges should have been dismissed because they were not filed within forty-five days of his arrest. The State responds by noting Schakel was arrested on other charges, and therefore his arrest did not trigger the speedy indictment period for the cocaine and methamphetamine charges. We affirm.

Iowa R. Cr. P. 27(2)(a) provides in part:

> When an adult is arrested for the commission of a public offense, . . . and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown.

In State v. Sunclades, 305 N.W.2d 491 (1981), our supreme court concluded rule 27(2)(a), the speedy indictment rule, did not change the Iowa standard enunciated in State v. Burton, 231 N.W.2d 577 (Iowa 1975). There the supreme court rejected the contention that the indictment period prescribed by the since-repealed section 795.1 commenced for a second charge with the arrest of the defendant on a different charge "simply because both charges arose from the same episode." Id. at 578. In Sunclades, the supreme court noted that the 45-day period of time during which an indictment must be returned commences when the defendant is arrested. Id. at 494. However, "the time period applies only to the 'public offense' for which the defendant was arrested, rather than to all offenses arising from the same

incident or episode." Id.; see also State v. Jackson, 422 N.W.2d 475, 477-78 (Iowa 1988) (discussing collateral estoppel, episodic immunity, and rule 27(2)(a)).

Defendant contends that when the police arrested him for possession of controlled substance, the State was barred from prosecuting all charges involving any controlled substances because no indictment or trial information was filed within 45 days of the arrest. We reject defendant's argument. Schakel was arrested without a warrant following a search of his premises. At the initial appearance, the magistrate established probable cause existed to believe defendant had committed the offenses of possession of a marijuana and possession of an offensive weapon. See Iowa R. Cr. P. 2(1).

At no time was Schakel arrested for possession of cocaine or possession of methamphetamine. Therefore, no event "triggered" the speedy indictment rule. State v. Schmitt, 290 N.W.2d 24, 27 (Iowa 1980); c.f. State v. Van Beek, 443 N.W.2d 704 (Iowa 1989) (even though defendants initially arrested under rule 27(2)(a), rule inapplicable under circumstances). We conclude rule 27(2)(a) is not applicable where defendant was not arrested for possession of cocaine and possession of methamphetamine and therefore nothing triggered the rule's speedy indictment mandate.

The purposes of rule 27(2)(a) were discussed recently by our supreme court in State v. Van Beek, 443 N.W.2d at

706-07. There, the court found the purposes of the rule were not implicated where the defendants were unconditionally released following their arrests.

> The only on-going aspect of this incident was the analysis of the evidence seized. This placed defendants in the same situation as any citizen similarly under investigation but not charged with a crime. Unless or until formal criminal charges were filed against them, neither the defendants, nor the public in general, could have a legitimate interest in the prompt processing of a nonexistent case."

State v. Van Beek, 443 N.W.2d at 707. Similarly, Schakel had no legitimate interest in the prompt processing of charges of possession of cocaine and methamphetamine where no such charges had been filed against him.

The trial court did not err in concluding there was no violation of the speedy indictment rule. The defendant's convictions are affirmed.

AFFIRMED.