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MAR 0 9 1988
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 9, 1988
vs.	)	
RICK LANGSTRAAT,	)	7-594 87-313
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Mahaska County (No. 5144-CR9-319), James P. Rielly, Judge.

Defendant appeals from judgment and sentence, following a bench trial, for the crime of delivery of marijuana in violation of Iowa Code section 204.401(1)(b). **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark J. Zbieroski, Assistant Attorney General; and Charles A. Stream, Mahaska County Attorney, for plaintiff-appellee.

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

HABHAB, J. 113

After a bench trial, the defendant Rick Langstraat was found guilty of the crime of delivery of schedule I controlled substance, namely marijuana, in an amount in excess of one ounce, in violation of Iowa Code section 204.401(1), a class D felony. Defendant appeals, contending that: (1) the trial court erred in overruling the defendant's motion to dismiss under Iowa Rule of Criminal Procedure 27(2)(c) when the defendant's trial did not commence within one year of arraignment and (2) the State failed to prove beyond a reasonable doubt that the defendant aided and abetted a delivery of marijuana. We affirm.

I.

We first address whether the trial court correctly overruled the defendant's motion to dismiss when the defendant's trial did not commence within one year of arraignment. As it relates to this part of the defendant's claim, the significant facts are not in dispute.

On November 15, 1985, the defendant was charged by trial information with delivery of a schedule I controlled substance (marijuana) in an amount in excess of one ounce. At his arraignment on December 9, 1985, defendant pled not guilty and waived his Iowa Rule of Criminal Procedure 27(2)(b) ninety-day speedy trial right.

The court first set trial for January 21, 1986. At a January 6 pretrial conference, defendant declared he was not prepared to proceed to trial, for he had not yet completed discovery. At that hearing he requested his case be continued and that a later trial date be scheduled. The court granted this request and fixed February 14, 1986, as the date when discovery was to be completed.

The defendant did not complete discovery by that date. He was still deposing State's witnesses as late as March 31, 1986. In addition and during this interim, he had filed a notice of entrapment defense and a motion in limine.

The court, on May 7, 1986, fixed a second trial date for June 3, 1986. The case was not reached for trial, for other matters were tried in the order prescribed by the court administrator.

On July 31, 1986, for the third time, trial date was set for September 23, 1986. This scheduled date was determined at a pretrial conference held September 8, 1986. At this pretrial conference, a deadline of September 15 was set for the filing of all pretrial motions, amendments, and supplements to pleadings.

One week prior to trial date (September 16, 1986), the defendant again asked that his trial be continued. He withdrew his entrapment defense and, even though his December 9, 1985, speedy trial waiver had not been withdrawn, he reaffirmed this waiver. In addition, on that date he waived his right to a jury and consented to bench trial.

The reason advanced by the defendant in support of his September 16, 1986, motion for continuance was that "attorney for defendant is scheduled to be out of the country on the date of the scheduled trial." Again, the court accommodated the defendant by granting the continuance. On October 17, his case was rescheduled for the fourth time for November 11, 1986, but it was not reached for trial on that date for other matters were tried in the order fixed by the court administrator.

On December 10, 1986 (the defendant was arraigned December 9, 1985), trial date was fixed for January 21, 1987. November 11, 1986, was the last criminal assignment for the year. There the matter rested until January 12, 1987, when the defendant filed his motion to dismiss complaining that he had

not been brought to trial within one year of arraignment. He also asserted that good cause for extension beyond one year did not exist.

The State, on January 20, 1987, filed its application for an extension of time and generally resisted defendant's dismissal motion. On the same date and after hearing, the trial judge overruled defendant's motion and granted the State's request for an extension of time. The next day, January 21, the trial began and concluded in the defendant's conviction.

Iowa Rule of Criminal Procedure 27(2) states:

> It is public policy of the State of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties.

In this respect, Iowa Rule of Criminal Procedure 27(2)(c) provides that:

> All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to R.Cr.P. 8 unless an extension is granted by the court, upon a showing of good cause.

We first note that the State's motion for extension of time was made after the one-year period from the date of arraignment had expired. Subsection c of section 27(2) is not an automatic dismissal rule. State v. Miller, 311 N.W.2d 81, 83 (Iowa 1981). Rather, delay beyond the one-year period may be excused by (1) defendant's waiver, (2) a delay attributable to the defendant, or (3) a showing of other good cause for the delay. State v. Magnuson, 308 N.W.2d 83 (Iowa 1981); State v. Bond, 340 N.W.2d 276 (Iowa 1983).

In State v. Magnuson, the court determined that the right to a speedy trial is personal and one which a defendant may forego at his election. State v. Magnuson, 308 N.W.2d 83, 85 (Iowa 1981). Thus if a defendant is the cause of or a contributing factor in the delay, he should not be entitled to a dismissal. State v. Miller, 311 N.W.2d 81, 83-84 (Iowa 1981).

The supreme court in Bond interpreted rule 27(2)(b) as being "narrower and more restrictive than the constitutional right to a speedy trial." State

v. Bond, 340 N.W.2d 276, 278 (Iowa 1983). In this vein, the court in Bond stated:

> Under the more general constitutional protection delineated in Barker v. Wingo, 407 U.S. 514, 530-33, 92 S. Ct. 2182, 2192-93, 33 L. Ed. 2d 101, 116-119 (1972), the court must weigh all factors surrounding the claimed unfair delay, including the length of and reason for the delay, defendant's specific assertion of his right to a speedy trial, and the prejudice resulting from the claimed delay.

Bond at 278.

It goes without saying that it is the State's duty to insure timely prosecution of cases. State v. Lybarger, 263 N.W.2d 545, 546 (Iowa 1978). In addition, at the trial court level the burden to demonstrate either good cause for the extension or waiver rests with the State. See State v. Miller, 311 N.W.2d 81, 84 (Iowa 1981) ("the State has the burden to demonstrate good cause for an extension and its burden is a heavy one"). When determining whether good cause exists, only one factor is considered: "the reason for the delay." Id. at 84.

We turn now to the question of whether the State has established good cause for the extension of time. A review of the trial court's determination that good cause existed under Iowa Rule of Criminal Procedure 27(2)(c) is not de novo. State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983). Even where the evidence is conflicting, we are bound by the trial court's findings of fact as long as they are supported by substantial evidence. State v. LaPlant, 244 N.W.2d 240, 242 (Iowa 1976).

It is clear to us that the defendant actively contributed to the circumstances which delayed his trial. It is undisputed that four separate trial dates were fixed within the one-year period and that on two of those occasions trial was continued at defendant's request. On the other two occasions, each of which was fixed after the defendant's scheduled trial date was continued, his case was not reached because cases prior in the assignment were tried. We now focus our attention on the fourth trial date.

September 23, 1986, was the fourth trial date. The defendant's initial arraignment was held December 9, 1985. Even though time was running short, the defendant asked that his case be continued. At the time he asked for this continuance, he did for a second time reaffirm his waiver of the ninety-day speedy trial rule.

The court again obliged the defendant by placing his case in the November 11 trial assignment. But other cases were assigned prior to his. As a result, his case was not reached for trial. Since it was not, it could not be tried within the one-year period, November 11 being the last criminal trial date before the expiration of the one-year period.

We find that the acts of the defendant contributed to the delay. There were other circumstances not controlled by the defendant that caused delay, but it is not necessary that the delay be exclusively attributable to the defendant. State v. Moehlis, 250 N.W.2d 42, 46 (Iowa 1977). As the court stated in the Moehlis case:

> Delay attributable to the defendant may constitute good cause; a defendant must accept passage of time as is reasonably necessary for actions upon his own motions and applications.

Id. at 46. Accordingly, the defendant must accept some passage of time as is reasonably necessary to bring his case for trial after he asks that his case be removed from a scheduled trial date. When we couple the method employed by the court of assigning cases with the defendant's request that his trial be removed from the September 23 assignment, we believe that the time that passed from that date to trial date was reasonably necessary. The defendant should not now be permitted to take advantage of that delay by termination of these proceedings. State v. Zaehringer, 306 N.W.2d 792, 796 (Iowa 1981).

We affirm the trial court in overruling defendant's motion to dismiss. In doing so, we determine that the trial court did not abuse its narrow discretion.

Having determined that the defendant's act contributed to the delay, we need not decide whether his action constituted a waiver.

II.

We next address whether the State proved beyond a reasonable doubt that defendant aided and abetted a delivery of marijuana. When all of the evidence presented at trial is viewed in the light most favorable to the State, the record in this case contains substantial evidence showing the defendant's guilt beyond a reasonable doubt.

For the defendant's conviction to stand on appeal, we must find that upon the recorded evidence adduced at trial a rational trier of fact could have found proof of guilt beyond a reasonable doubt that the defendant committed each and every element of the offense charged. Jackson v. Virginia, 443 U.S. 307, 317-19, 99 S. Ct. 2781, 2788-89, 61 L. Ed. 2d 560, 572-73 (1979). In applying this standard, we consider the evidence in the light most favorable to the State. In doing so, all of the evidence presented at trial is considered, not just the evidence which supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Further, once a defendant has been found guilty of the crime charged, the fact finder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all the evidence is to be considered in the light most favorable to the prosecutor. Jackson, 443 U.S. at 317-19, 99 S. Ct. at 2788-89, 61 L. Ed. 2d at 573. We now turn to the offense charged.

The State charged the defendant with delivery of a controlled substance. It is admitted that the defendant is not the person who delivered the marijuana, but the State contends that he is the person who made the arrangements for the purchase and delivery and thus is an aider and abetter.

In 1985 drug investigations were conducted by the Oskaloosa Police Department. Police Detective Fred Crawford contacted Debbie Cusack and asked if she would work as an undercover agent. She consented.

Cusack was a drug user and had been hospitalized for substance abuse treatment. She had known defendant for a few years and at one time they were romantically involved. In addition, she had used and received drugs from the defendant and attended a number of parties with him.

During the morning of June 11, 1985, Cusack called defendant and asked if he could get her a quarter pound of marijuana. The defendant was not certain that he could, but stated he would "check around." Later that same day, defendant called Cusack and told her he could get the marijuana. From this it is reasonable for a factfinder to infer that the defendant had talked with the seller and made the arrangements for Cusack to purchase the marijuana. He instructed her to pick him up at his mother's home in Oskaloosa.

After receiving the call from the defendant, Cusack called Detective Crawford and informed him of her conversation with the defendant. Crawford in turn went to the Cusack home and gave her $180, the amount he approximated as the cost of the marijuana.

After receiving the $180, Cusack drove to where defendant was staying and picked him up, along with his girlfriend. The defendant then directed Cusack to the mobile home where the drug transaction took place. Upon arrival, the three of them went inside. Cusack did not know who owned the mobile home. She later learned it was owned by Terry Fowler and his wife. She had never been there before, nor had she met or seen Fowler prior to this time. She was introduced to Fowler by the defendant.

Cusack saw the defendant talking to Terry Fowler. The defendant had been a friend of Fowler's for six or seven years. He had been to Fowler's home on many occasions and knew that Fowler and his wife used marijuana.

Cusack gave Fowler $180 for the purchase of the marijuana. Fowler left the premises and later returned with the marijuana. While Fowler was gone, the remaining group of people, including the defendant, stayed behind and smoked pot. After Fowler returned, the same group smoked some of the marijuana involved in this transaction. Before she left, Cusack left part of the marijuana on the tray for the seller.

During the time the defendant was driven back to his quarters, he asked Cusack if he could have some of the marijuana. Cusack declined, stating it was not hers to give. Cusack dropped the defendant and his girlfriend off at his farm, proceeded to her home, and then called Detective Crawford who in turn came to Cusack's home and secured the marijuana.

Although the defendant claims there is no evidence that he shared in any of the proceeds, it is clear that he and his girlfriend did take part in smoking the marijuana while at Fowler's home. A rational trier of fact could infer that the defendant did benefit to this extent from having arranged the purchase for the seller. (We do not mean to infer that benefit is a necessary element of the offense charged.)

The defense relies heavily on United States v. Moses, 220 F.2d 166 (3d Cir. 1955), but this case is more akin to State v. Lott, 255 N.W.2d 105, 107 (Iowa 1977). It is stated in Lott:

> One cannot be convicted of a crime upon a theory of aiding and abetting unless there is substantial evidence to show he assented to or lent countenance and approval to the criminal act, either by active participation in it or by some manner encouraging it prior to or at the time of its commission. Guilt may be established by circumstantial evidence. Knowledge is essential, but neither know-

ledge nor presence at the scene of the crime is sufficient to prove aiding and abetting.

The court in Lott compared the factual setting there with those in United States v. Moses and at page 108, stated:

> In Moses the defendant was a drug addict. Two undercover agents approached her and inquired about the possibility of purchasing drugs. She said she did not have any, but would introduce the agents to a supplier who would soon be there. When he arrived she introduced the agents to him and said they were "all right." Negotiations occurred in her presence, but she did not participate in them, and she did not take part in the remainder of the transaction which occurred elsewhere. The court held the evidence was insufficient to show she aided and abetted the seller, saying, "Although appellant's conduct was preparatory to the sale, it was not collaborative with the seller." 220 F.2d at 168.
>
> Moses is distinguishable from the present case. Here the defendant acknowledged his ability and willingness to supply illicit drugs. He agreed to arrange a transaction. He made the initial contact with Dains (the transferor), called him later to confirm the arrangement, accompanied Timko and Moore (the transferees) to the apartment building, made two trips alone to Dains' apartment to check on his readiness, introduced the men to Dains, remained through the transaction, and vouched to Timko for the quality of the cocaine. He expressed willingness to arrange future sales and stayed with Dains when the transaction was completed. We believe this constitutes substantial evidence from which the jury could find defendant abetted Dains in the delivery.

Lott at 108.

There is substantial evidence to support a finding that the defendant acknowledged his ability and willingness to supply marijuana, that he agreed to arrange the transaction, made the initial contact with Fowler, directed Cusack to Fowler's home and introduced her to him, benefited from having arranged the purchase, and remained at Fowler's home throughout the entire transaction. From the direct and circumstantial evidence in the record, it is clear that the trial judge could reasonably have found beyond a reasonable doubt that the defendant did aid and abet Fowler in the delivery of the marijuana.

After reviewing all the evidence in the light most favorable to the prosecution, we conclude the record contains substantial evidence to support the guilty verdict. We affirm.

AFFIRMED.