

FILED

JUL 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

870

vs.)

JAMES EARL WARREN,)

9-208
88-789

Defendant-Appellant.)

Appeal from the Iowa District Court for Scott County
(132208-01), James R. Havercamp and John A. Nahra, Judges.

Defendant appeals his conviction, following a jury
trial, of second-degree sexual abuse. **AFFIRMED.**

William L. Wegman, State Public Defender, and James F.
Whalen, Assistant State Public Defender, for defendant-
appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie
A. Halligan, Assistant Attorney General, for plaintiff-
appellee.

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

HAYDEN, J.

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The defendant appeals his conviction, following a jury trial, of second-degree sexual abuse. We affirm.

On December 9, 1987, the State filed a trial information charging James Warren with sexual abuse in the first degree. Warren filed notice of his intention to rely upon the defense of insanity or alibi and twice applied for a psychiatric examination at the Oakdale security medical facility to determine whether he was competent to stand trial and sane at the time of the offense. Although the trial court eventually ordered such an evaluation, it never took place. Apparently Oakdale refused to accept Warren due to a dispute regarding the language in the order. The order provided the evaluation would be done at State expense. The trial, originally scheduled for February 15, 1988, was reset for March 7 and again for April 11, apparently on the trial court's own motion. Warren then filed a motion to dismiss, claiming a violation of his right to a speedy trial under Iowa Rule of Criminal Procedure 27(2)(b). The motion was denied, and a jury found Warren guilty of sexual abuse in the second degree.

On appeal Warren contends the trial court erred by overruling his motion to dismiss after finding the delay in bringing the case to trial was due to Warren's request for psychiatric evaluation. He argues he did not forfeit his right to a speedy trial by requesting psychiatric

evaluation. He claims the delay was caused by Oakdale's refusal to comply with a court order. He also claims the deadline for a speedy trial under rule 27(2)(b) expired on March 8, 1988, ninety days after the filing of the trial information on December 9, 1989.

The sole issue before us is whether the trial court abused its discretion in determining the State had shown "good cause" for delay of the defendant's trial beyond the ninety-day speedy trial limit as provided for in Iowa Rule of Criminal Procedure 27(2)(b). This rule requires a prosecution be dismissed if the State fails to bring the case to trial within ninety days after the indictment is found unless one of three things have occurred: "(1) the defendant has waived his right to speedy trial, (2) the delay is attributable to defendant; or (3) there is 'good cause' for the delay." State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983).

We note the trial court's findings of fact are binding upon us so long as they are supported by substantial evidence. Id. To prevail here the defendant must show the trial court abused its limited discretion. State v. Ege, 274 N.W.2d 350, 354 (Iowa 1979).

The burden is upon the State at the trial court level to demonstrate good cause for any delay beyond the time prescribed by the rule. Bond, 340 N.W.2d at 279.

Under the rule we determine whether good cause exists by looking at the reason for the delay. State v. Peterson, 288 N.W.2d 332, 335 (Iowa 1980). "Surrounding circumstances bear on the focal point of the inquiry but only to the extent that they relate directly to the sufficiency of the reason itself. Such circumstances as a relatively short period or delay, failure of the defendant to demand speedy trial, and the absence of prejudice may allow a weaker reason to constitute good cause" State v. Bond, 340 N.W.2d 276, at 279.

We agree with the district court, and determine the State has shown good cause for the delay. Under ordinary circumstances mere administrative delay would not constitute good cause under the rule, see State v. Lyberger, 263 N.W.2d 545 (Iowa 1978), State v. Leonard, 240 N.W.2d 690 (Iowa 1976). Here, the confusion between Oakdale and the county which caused the delay was more than mere administrative delay. The record shows the reason for the delays were clearly out of the prosecution's hands.

The record reveals the prosecutor did everything within his power to have defendant admitted at Oakdale for evaluation. Even defendant's counsel acknowledged at the hearing on defendant's motion to dismiss the prosecution was not responsible for the delay. In addition, we note the delay was relatively brief and, as the trial court determined, necessary in order for the defendant to obtain

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a meaningful evaluation at Oakdale. Consequently, for the reasons set out above, we affirm the decision of the trial court.

AFFIRMED.