

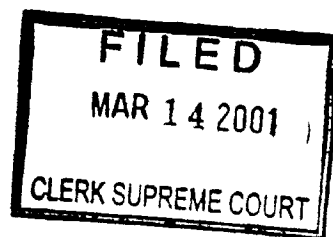
IN THE COURT OF APPEALS OF IOWA

No. 0-804 / 00-142
Filed March 14, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARK A. BARTZ,
Defendant-Appellant.



Appeal from the Iowa District Court for Worth County, Jon Scoles and Gilbert Bovard, Judges.

Mark A. Bartz appeals the district court's judgment and sentence, following a bench trial finding Bartz guilty of serious injury by vehicle in violation of Iowa Code section 707.6A(4) (1997). **AFFIRMED.**

Judith O'Donohoe and W. Patrick Wegman of Elwood, O'Donohoe, O'Connor & Stochl, Charles City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Chad Belville, County Attorney, and Brian Miller, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

The district court found Mark Bartz guilty of serious injury by vehicle after a car he was driving rolled into a ditch and ejected his passenger. On appeal, Bartz contends he was arrested more than forty-five days before the State charged him with the crime, in violation of our speedy indictment rule. Iowa R. Crim. P. 27(2)(a). We disagree and, accordingly, affirm the district court's refusal to dismiss the charge.

I. Background Facts and Proceedings

On July 11, 1997, Bartz's car sped out of control on U.S. Highway 65 and rolled into a ditch. Bartz's passenger was ejected from the car and severely injured. A police officer at the scene detected an odor of alcohol on Bartz's breath and administered a preliminary breath test, which Bartz failed. Bartz was handcuffed and read his *Miranda* rights.¹ After Bartz complained of neck pain, paramedics at the scene transported him to a local hospital, still in handcuffs.

At the hospital, officers removed Bartz's handcuffs so that x-rays could be taken and then re-cuffed him. Bartz consented to the withdrawal of a blood sample. While the blood sample was being obtained, a police officer called a dispatcher who made the following notation in the dispatch log:

Also has 10-95 Mark Bartz causing problems, needs to stay the night in Mercy, need reserves called there to stand guard all night at his room, he will take off.

"10-95" is a dispatch code which refers to a "prisoner/subject in custody." After the blood sample was taken, the officer with Bartz was advised by another officer

¹ See *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1601, 1612, 16 L. Ed. 2d 694, 706 (1966).

not to arrest Bartz until the results of the blood test came back. The officer removed Bartz's handcuffs and told him he was free to go.

On December 23, 1997, the State charged Bartz with one count of serious injury by vehicle. See Iowa Code § 707.6A(3)(1997).² Bartz moved to dismiss the charge, alleging the State failed to timely indict him following his "arrest" on July 11, 1997. The district court denied the motion. After the parties stipulated to trial on the minutes of testimony, the district court found Bartz guilty of serious injury by vehicle and sentenced him to an indeterminate term of five years. This appeal followed.

II. Speedy Indictment Rule

Bartz maintains the State violated our speedy indictment rule. Iowa R. Crim. P. 27(2)(a). Absent good cause, that rule requires a district court to dismiss a prosecution if an indictment is not filed within forty-five days of a defendant's arrest. *Id.* Bartz contends he was arrested on July 11, 1997, but the trial information was not filed until December 23, 1997, well outside the forty-five day time limit specified in the rule. The State responds: (A) Bartz did not timely file his motion to dismiss; (B) Bartz was not arrested on July 11, 1997; (C) even if Bartz was arrested on July 11, 1997, the confinement was a "de-facto" arrest which does not implicate rule 27(2)(a); (D) even if Bartz was arrested on July 11, 1997, he was not arrested for the crime with which he was ultimately charged; and (E) even if Bartz was arrested on July 11, 1997, there was good cause for the delay in filing the trial information.

² The charge was later amended to allege a violation of Iowa Code section 707.6A(4).

A. Timeliness of Motion to Dismiss. Iowa Rule of Criminal Procedure 10(4) requires a defendant to file most pretrial motions "no later than forty days after arraignment." Failure to do so will result in waiver of defenses or objections, absent a showing of good cause. Iowa R. Crim. P. 10(3). The State argues Bartz either should have filed his motion to dismiss within this time frame or should have requested an extension of time within this time frame.³ Bartz did neither. Instead, he filed a motion for extension of time almost a year after he was arraigned. The district court nevertheless granted the extension request and afforded Bartz additional time to file his motion to dismiss. We review this issue for abuse of discretion. *State v. Rains*, 574 N.W.2d 904, 909 (Iowa 1998).

We conclude the district court did not abuse its discretion in granting Bartz's request to extend the motion deadline. Although the request was filed late, Bartz established good cause for this delayed filing. Bartz's first attorney withdrew in 1999, after substantial involvement in the case. New counsel filed an appearance and, soon thereafter, filed a motion to extend the deadlines in "the interest of justice." Because new counsel acted quickly to file an appearance and a motion for an extension of time, the district court acted well within its discretion in granting the motion.

B. Was Bartz Arrested? The key question is whether Bartz was formally arrested on July 11, 1997. If he was, the speedy indictment rule was triggered as

³ In support of its contention that a motion for extension of a deadline must be filed within the period required for filing the motion, the State cites civil authority primarily addressing Iowa Rule of Civil Procedure 247, which deals with posttrial motions. See *State ex. rel. Miller v. Santa Rosa Sales and Mktg., Inc.*, 475 N.W.2d 210, 213-14 (Iowa 1991); *Rudolph v. Iowa Methodist Medical Center*, 293 N.W.2d 550, 554 (Iowa 1980); *Polk County v. Davis*, 525 N.W.2d 434, 436 (Iowa Ct. App. 1994). These citations are inapposite because Iowa Rule of Criminal Procedure 10(3) specifically addresses the standard we must use in deciding whether a belated motion will be considered.

of that date and the State would have been required to file its trial information within forty-five days. Our review of the speedy indictment issue is for correction of errors at law. Iowa R. App. P. 4; *Rains*, 574 N.W.2d at 909.

"Arrest" for purposes of rule 27(2)(a) is the same as defined in Iowa Code section 804.5. *State v. Johnson-Hugi*, 484 N.W.2d 599, 600 (Iowa 1992). It is "the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody." Iowa Code § 804.5. An arrest requires "an assertion of authority and purpose to arrest followed by submission of the arrestee." *Rains*, 574 N.W.2d at 910 (citation omitted). The manner of making an arrest is set forth in Iowa Code section 804.14.⁴ There is no bright-line rule for determining whether a defendant has been arrested. *State v. Dennison*, 571 N.W.2d 492, 495 (Iowa 1997). The determination is made on a case-by-case basis. *Id.*

Bartz maintains an officer told him on July 11, 1997, he was under arrest. One of the officers at the scene denied making such a statement, and the other testified if Bartz was under arrest, he was under arrest for a speeding violation.

⁴ **804.14. Manner of making arrest**

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, the law enforcement officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the person being arrested as soon as possible. If the officer does not have the warrant in the officer's possession at the time of arrest, the officer shall inform the person being arrested of the fact that a warrant has been issued.

The district court concluded Bartz was not arrested on July 11, 1997. The court reasoned:

The fact that Bartz was handcuffed is a factor to be considered, but is not determinative. The defendant was not told that he was under arrest and was not taken into custody at the scene. Bartz was transported by ambulance to the hospital and was not under the custody or control of a police officer. While the record is imprecise regarding the length of time that Bartz remained handcuffed, when he asked the officer if he was free to go, the officer responded affirmatively. There is no evidence that the amount of time that Bartz spent at the hospital was in any way delayed by the actions of police officers.

These fact findings are supported by substantial evidence. Additionally, we believe the district court correctly concluded from these facts that Bartz was not arrested. Our conclusion is based on precedent holding that detention for investigative purposes need not constitute an arrest. *See Rains*, 574 N.W.2d at 911; *Dennison*, 571 N.W.2d at 495.

In *Rains*, the court declined to find the defendant was arrested, despite his detention at a hospital for three days with an armed police officer posted in the hallway outside his room. *Rains*, 574 N.W.2d at 908. In *Dennison*, the court held the defendant was not arrested for OWI even though he was arrested for driving while his license was revoked and violating the open container law, was taken to the jail to meet with a drug recognition expert, voluntarily submitted to a battery of tests, and was booked on the charges for which he was arrested. *Dennison*, 571 N.W.2d at 495. The court stated,

We find it significant that the officers did not issue a citation or complaint charging Dennison with OWI on April 6, the detention was for OWI testing, Dennison was detained for investigative purposes for a relatively short period of time, and Dennison was lawfully arrested on other charges.

Id. at 497.

Here, Bartz was suspected of being intoxicated at the time of the accident, and the trip to the hospital was, in part, to further investigate this suspicion. Although Bartz was handcuffed and not free to immediately leave, he was released after a blood sample was taken. Therefore, his temporary detention is insufficient to rise to the level of an arrest. See *Rains*, 574 N.W.2d at 908; *Dennison*, 571 N.W.2d at 495.

Bartz nevertheless argues this case is more like *State v. Davis*, 525 N.W.2d 837 (Iowa 1994), than *Dennison*. We disagree. In *Davis*, officers placed the defendant in a patrol car and took him to the county jail. They read him the implied consent form and asked for a chemical sample. *Id.* at 838. Davis agreed to a blood test and was taken to a hospital to obtain the sample. *Id.* He was then returned to the jail, where an officer completed an OWI citation and booked him. *Id.* After consulting with a supervisor, the officers later decided to release Davis pending the results of the blood test. *Id.* The supreme court held Davis was arrested. *Id.* at 839.

This case is distinguishable from *Davis* because officers did not place Bartz in a police car, did not transport him to a jail, and did not issue a citation or complaint. Although the officers here asserted authority over him and restrained his freedom, a reasonable person would not have concluded they had a "purpose to arrest" as the officers did in *Davis*. See *Dennison*, 571 N.W.2d at 495; *Johnson-Hugi*, 484 N.W.2d at 601.

This case also is distinguishable from *State v. Delockroy*, 559 N.W.2d 43 (Iowa Ct. App. 1996), cited by Bartz. There, officers entered a home, placed the defendant and another person in handcuffs, told one of them he faced charges of

possession with intent to deliver and failure to possess a tax stamp, informed them they would be taken to the sheriff's office to discuss the matter, and transported them there in separate police cars, where they were placed in separate rooms and read their *Miranda* rights. *Delockroy*, 559 N.W.2d at 44. The court concluded Delockroy was arrested. *Id.* at 46.

Here, the district court found based on officers' testimony that Bartz was not advised he faced charges of any kind. This finding is supported by substantial evidence. Additionally, it is undisputed Bartz was not taken to a police station and was not interrogated. Therefore, we decline to follow *Delockroy*.

In light of our conclusion that Bartz was not arrested on July 11, 1997, the speedy indictment rule was not implicated and we affirm the district court's denial of Bartz's motion to dismiss. Given our ruling, we need not address the State's remaining arguments.

AFFIRMED.