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MAY 3 1 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellant,	)	Filed May 31, 1988 261
vs.	)	
MICHELLE FEHRING,	)	8-180 87-1440
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Carroll County (No. CRI 28882), Ronald H. Schechtman, Judge.

The State appeals from a pretrial ruling dismissing two burglary charges on speedy trial grounds. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General; David L. Dorff, Assistant Attorney General; and Barry T. Bruner, Carroll County Attorney, for plaintiff-appellant.

Joseph E. Halbur, Carroll, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. Habhab, J., takes no part.

DONIELSON, J.

The State appeals from a pretrial ruling dismissing two burglary charges on speedy trial grounds. We reverse and remand.

In November and December 1984 two burglaries were committed in Carroll, Iowa. The defendant became a suspect the following February and was charged by police citation in April. Defendant failed to appear on April 30, but appeared for preliminary arraignment in May. The State filed a trial information later that month. In June, after the defendant had twice failed to appear for arraignment, a bench warrant was issued for her arrest.

The authorities then lost track of the defendant for nearly two years until defendant's sister was stopped by an officer, believing her to be defendant, and informed the officer of defendant's whereabouts. Defendant was arrested in Omaha in May 1987. She was returned to Iowa in August, and the State filed an amended and substituted trial information. The defendant moved to dismiss this trial information because the State had failed to bring her to trial within the ninety-day period prescribed by Iowa Rule of Criminal Procedure 27(2)(b). The trial court sustained her motion.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

On appeal, the State contends that the delay in bringing the defendant to a speedy trial was attributable to her several changes of address. She had five different addresses in Omaha after leaving Iowa. The State suggests that the defendant was deliberately avoiding efforts to bring her to trial and that her failure to keep authorities advised of her whereabouts directly contributed to the delay. A police officer testified he contacted defendant's father; he informed the officer that defendant was "of age," "on her own," and that "[h]e didn't want any part of it—anymore of it." He felt the police questioning "was

bordering on harassment." Defendant testified that neither she nor her parents ever called the magistrate's court to give them her new address.

In response, the defendant argues that the delay was attributable to inaction by the State. She alleges that she never sought to evade prosecution and that she easily could have been contacted through relatives in Iowa well known to the police.

Rule 27(2)(b) requires that the defendant be brought to trial within ninety days of indictment. State v. Clark, 351 N.W.2d 532, 534 (Iowa 1984). "Indictment" encompasses a trial information. Id. When trial is not commenced within the ninety-day period, the court may dismiss the information unless (1) the defendant has waived her right to a speedy trial; (2) the delay is attributable to the defendant; or (3) "good cause" exists for the delay. Id. Although the State, not the defendant, has the obligation to bring a defendant to trial, delay attributable to the defendant may constitute good cause preventing the State from carrying out its obligation. State v. Lyles, 225 N.W.2d 124, 126 (Iowa 1975). The State is not required to play a game of hide and seek with defendant. Id. Delays in processing a defendant's case caused by defendant's failure to keep authorities advised of her various addresses is attributable to defendant, not the State. Id. If acts or omissions of a defendant contribute to the delay or are otherwise attributable to the defendant, a motion to dismiss should be overruled. See State v. Brandt, 253 N.W.2d 253, 256 (Iowa 1977). Ordinarily the absence of defendant constitutes good cause for delay. Id. at 258.

We find that the State established good cause for failing to bring defendant to trial within the ninety-day period under rule 27(2)(b). Defendant twice failed to appear at her arraignment after being sent notice at her last known address. Defendant left no forwarding address. Defendant could have been arraigned and tried within the statutory period if she had not disappeared. The State

had a right to wait until arraignment to have a trial date set; until arraignment, the State does not know whether a defendant desires a trial or is ready for trial. Lyles, 225 N.W.2d at 126. Defendant was not arraigned in this case until September 1, 1987; it was not until that time defendant demanded speedy trial.

Defendant became a fugitive from justice when the bench warrant issued in 1985 for her failure to appear at her arraignment. Defendant argues she frequently visited her parents in her hometown. However, the police would have no way of knowing this. She was aware of the charges pending against her; she asked her parents the status of her case. However, she failed to keep authorities advised of her current whereabouts. Were we to accept defendant's argument that the State was not diligent in pursuing her whereabouts, our law enforcement authorities would undoubtedly be flooded with defendants fleeing from the area and putting the burden on the law enforcement authorities to seek them out, in hopes that the ninety-day period would run so that pending charges would be dismissed. Rule 27(2)(b) was not designed to provide a defendant with a weapon to trap state officials and terminate prosecutions. State v. Hamilton, 309 N.W.2d 471, 475 (Iowa 1981).

For the foregoing reasons, we reverse the district court's ruling dismissing the trial information and remand this case for reinstatement.

REVERSED AND REMANDED.