IN THE COURT OF APPEALS OF IOWA

No. 8-520 / 97-1031
Filed November 30, 1998

STATE OF IOWA,
Appellee,

vs.

ROBERT CAMPBELL,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge (pretrial rulings), and L.D. Lybbert, Judge (trial).

On his appeal from his conviction for rioting, defendant argues the charge should be dismissed due to pre-accusatorial delay. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Raymond Walton and Anthony Janney, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., Huitink, J., and Perkins, S.J.*, but decided by Sackett, C.J., and Huitink, Streit, and Vogel, JJ. Mahan, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, J.

Robert Campbell appeals from his conviction for rioting in violation of Iowa Code section 723.1 (1995). We affirm.

I. Background Facts and Proceedings.

On October 29, 1994, a car owned by Ahmiko Washington was damaged as a result of a fight in Waterloo, Iowa. The State suspected Robert Campbell, then age sixteen, was involved but could not locate him.

Campbell was not located by the investigating officer until April 30, 1996, when he learned defendant, then age eighteen, was arrested on unrelated charges. On July 11, 1996, the State charged Campbell by a four-count trial information for his alleged participation in the 1994 offense. Of the four counts, Campbell stands convicted only of rioting.

Campbell moved to dismiss the charges, citing the pre-accusatorial delay. The State argued Campbell was not charged earlier because he could not be located prior to April 30, 1996. It submitted an affidavit of the primary investigating officer indicating his attempts to locate Campbell. The court denied the motion based upon the officer's affidavit, finding the delay was not unreasonable and without justification. The jury returned a guilty verdict on the rioting charge on May 23, 1997. Campbell was sentenced to an indeterminate two-year period of incarceration.

Campbell appeals. He argues the State's delay of over twenty months before charging him violated his due process rights pursuant to the Fourteenth Amendment.

Pointing to his several arrests by the Waterloo Police Department during the twenty month delay, Campbell argues the State knew or should have known where he was.

II. Standard of Review.

We review constitutional issues de novo. *State v. Trompeter*, 555 N.W.2d 468, 470 (Iowa 1996).

III. The Merits.

There is no constitutional right to be arrested and charged at the precise moment probable cause comes into existence. *Id.* But if the government delays filing charges to intentionally gain a tactical advantage over the accused, the defendant's due process rights are implicated. *Id.* (citing *United States v. Marion*, 404 U.S. 307, 324, 92 S. Ct. 455, 465, 30 L. Ed.2d 468, 481 (1971)).

To prove pre-accusatorial delay violated his due process rights, Campbell must prove: (1) the delay was unreasonable; and (2) his defense was thereby prejudiced. *State v. Isaac*, 537 N.W.2d 786, 788 (Iowa 1995). Campbell must prove both elements to prevail. *State v. Wagner*, 410 N.W.2d 207, 210 (Iowa 1987). Prejudice to Campbell must be actual; he cannot rely on mere general claims of prejudice. *Trompeter*, 555 N.W.2d at 470. The length of the delay, and any valid reason for it must be balanced against the resulting prejudice to Campbell. *Id.*

The first prong of the two-part *Isaac* test requires an unreasonable delay in filing charges. This involves a consideration of both the length of the delay and the

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State's reason for it. *Id.* As the delay becomes longer, better reasons are needed to justify it. *Id.*

No Iowa case has addressed inability of law enforcement to locate a suspect as a reason for pre-accusatorial delay. Turning to the supreme court's reasoning in *Trompeter* for guidance, we find the motivations of the State to be a key component in the reasonableness inquiry. *See Trompeter*, 555 N.W.2d at 468. In *Trompeter*, the supreme court ruled the delay unreasonable, finding the State had improperly and purposefully waited almost three years to charge the defendant for sexual abuse in order to gain a tactical advantage. We find no such improper motive in this case.

Kevin Nobis, the investigating officer in charge of Campbell's case, made periodic attempts to locate and apprehend Campbell during the twenty-month delay. His attempts are properly documented in the investigation reports he filed with the Waterloo Police Department. Additionally, he testified, via sworn affidavit, that he had no improper motive in waiting to find Campbell in order to gain a tactical advantage over him.

We will not presume the State's delay in bringing charges is due to impropriety or bad faith. *State v. DeAlegandro*, 492 N.W.2d 450, 452 (Iowa App. 1992). Although the record indicates the police work done on this case could use improvement, we decline to equate sloppy police work with bad faith. The record does not demonstrate Officer Nobis acted in bad faith. Further, there is insufficient

evidence from which we can infer the State sought to use this delay for its tactical advantage.

Because we find the delay in charging Campbell was not unreasonable, we do not address whether he was prejudiced by the delay.

AFFIRMED.