



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

THOMAS LEE GRADY,)

Defendant-Appellant.

Filed December 30, 1981

1-359
65607

Appeal from Webster District Court, Edward J. Flattery, Judge.

Defendant appeals from his conviction of kidnapping in the third degree in violation of § 710.3, The Code. AFFIRMED.

Patrick Grady, Appellate Defender's Office, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The defendant appeals from his conviction of kidnapping in the third degree in violation of § 710.3, The Code. We affirm.

The defendant was charged by county attorney's information filed on May 8, 1980. On July 28 the defendant and his counsel were served with additional minutes of testimony. On August 4 further amended minutes of testimony were served on the defendant and his counsel. The trial began on August 6. Defendant's counsel objected to the amended minutes of testimony on the ground they had been served nine days prior to trial, in violation of Iowa R. Crim. P. 18(4). The trial judge offered the defendant a one-day continuance, which was refused. Defense counsel stated he was refusing the offer because the defendant would have had to have waived his right to speedy trial in order to accept the continuance because August 6 was the 90th day following the filing of the information. The jury trial began, and the defendant was convicted.

The defendant argues that the trial court erred in admitting into evidence the testimony of witnesses whose identities and minutes of testimony were served on the defendant nine days before trial, where the minutes inadequately informed the defendant of the testimony to be given. The record is clear that the minutes were served on the defendant on July 28, and that trial began August 6. It is also clear that Iowa R. Crim. P. 18(4) requires such minutes to be served at least ten days prior to trial. When defense counsel moved to have the testimony of the witnesses excluded, the trial judge offered him a one-day continuance. Defense counsel refused the continuance on the ground it would prejudice his client's right to a speedy trial. Rule 18(5) states the procedure to be followed if the required ten-day notice has not been given. The rule provides that the prosecutor may move the court for leave to introduce the testimony. Then if the court sustains the motion, the defendant is to elect whether to continue the case or to allow the witness to testify. Although the court in this case skipped a step by not having the prosecutor move to introduce the testimony, he offered the defendant a continuance. The defendant refused it. Therefore, he has waived any error. State v. Sevick, 239 N.W.2d 571, 572 (Iowa 1976).

The defendant also argues the trial court erred by not restricting the witnesses' testimony to that set out in the minutes. He made no objection to the testimony on those grounds at the trial. He has therefore failed to preserve any error and cannot raise it for the first time on appeal. Linge v. Ralston Purina, 293 N.W.2d 191 (Iowa 1980).

The defendant asserts that in order to accept the continuance offered, he would have to have waived his right to speedy trial, and he cannot be forced to relinquish one right in order to assert another. The right to trial within ninety days after the filing of the information is not absolute. If there is good cause for delay, it does not violate the defendant's rights. State v. Petersen, 288 N.W.2d 332 (Iowa 1980). Allowing the defendant additional time to prepare for trial when he has not been served minutes at least ten days before such trial is good cause for the delay. Therefore, even if the defendant had accepted the continuance offered by the trial judge, he has not proven that his speedy trial right would have been violated.

We therefore affirm the conviction and sentencing.

AFFIRMED.