

IN THE COURT OF APPEALS OF IOWA

No. 5-277 / 94-991

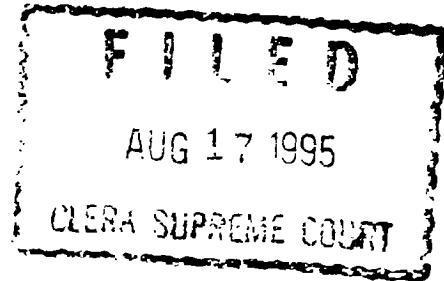
STATE OF IOWA,

Plaintiff-Appellee,

vs.

TIMOTHY LEE STEJSKAL,

Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, Michael Newmeister,
District Associate Judge.

Timothy Stejskal appeals from his conviction, following a bench trial, for
OWI, first offense, in violation of Iowa Code section 321J.2 (1993). He contends he
was denied his right to speedy trial. **AFFIRMED.**

Michael M. Lindeman of Dolezal, Lindeman & Davison, Cedar Rapids, for
appellant.

Thomas J. Miller, Attorney General. Ann E. Brenden, Assistant Attorney
General, Denver D. Dillard, County Attorney, and William Croghan, Assistant
County Attorney, for appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

On August 7, 1993, Timothy Stejskal was arrested for OWI. Stejskal made his initial appearance later that morning. As a result of the initial appearance, bond was placed on him and the Linn County Public Defender's Office was appointed to represent him. Stejskal posted bond and was released the same day.

Stejskal was placed in custody of the Department of Corrections at the Newton Correctional Facility on August 11. This occurred as a result of a parole revocation which was triggered by his August 7 arrest for OWI. Stejskal remained in the Newton facility throughout the proceedings.

A trial information was filed on August 26 and arraignment was set for September 14. Stejskal failed to appear on that date and was given until September 22 to either appear or file a written arraignment. He again failed to appear for arraignment. The court then issued an arrest warrant and began bond forfeiture proceedings.

Stejskal's bond was forfeited and the district court directed the sheriff to provide Stejskal and his surety the required ten-day written notice to appear and show cause. The surety resisted and a hearing was scheduled. Prior to the hearing, Stejskal's notice letter came back unserved and the court realized Stejskal was in the custody of the Department of Correctional Services as a result of a parole revocation proceeding. Based on this, the district court found there was good cause to set aside the forfeiture of the bond.

On December 15, 1993, Stejskal filed a motion to dismiss the case claiming he had been denied his right to speedy trial within ninety days after the trial information was filed. Following a hearing, Judge John F. Siebenmann denied the motion stating:

When the defendant is represented by counsel at the outset of a charge and no speedy request for trial has been made by the defendant or his counsel of record, a subsequent complaint of failure to go to trial under the speedy trial rule is without force and effect.¹

Stejskal was arraigned and a bench trial later followed. He was found guilty as charged and ordered to pay a \$500 fine and sentenced to serve two days in prison.

Stejskal appeals.

Our scope of review for speedy trial issues under Iowa Rule of Criminal Procedure 27(2)(b) is for corrections of errors at law. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). We recognize the trial court's discretion to refuse to dismiss is within the limits of the exceptions to the speedy trial mandate. *See State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991). Thus, we ultimately look to whether the trial court abused its discretion. *Id.*

¹ As noted in this opinion, the court's ruling in the State's favor was correct but for the wrong reason. The trial court was cited to the case of *State v. Lyles*, 225 N.W.2d 124 (Iowa 1975). That part of the *Lyles* case which requires a defendant to demand a speedy trial is now outdated law. While the failure to demand speedy trial is a factor to be considered in determining whether good cause exists for a delay, it does not determine whether the right attached at the outset. *State v. Goff*, 244 N.W.2d 579 (Iowa 1976). In addition, it is the State's burden to establish waiver, not the defendant's.

Rule 27(2)(b) requires that an accused be brought to trial within ninety days of indictment. The rule applies equally to charges brought by trial information. *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984). When a trial has not commenced within the ninety-day period set out in rule 27(2)(b), the case must be dismissed by the court unless (1) the defendant waived his right to a speedy trial; (2) the delay is attributable to the defendant; or (3) "good cause" exists for the delay. *Finn*, 469 N.W.2d at 694; *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983).

We will affirm on appeal where any proper basis appears for the district court's ruling, even though it is not the one upon which the district court based its ruling. *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991); *State v. Hawkins*, 356 N.W.2d 197, 199 (Iowa 1984); *State v. McCowen*, 297 N.W.2d 226, 227 (Iowa 1980).

We find the record supports the district court overruling Stejskal's motion to dismiss on grounds of delay attributable to the defendant.² Regarding this exception to rule 27(2)(b), our supreme court has stated:

The obvious purpose of the time periods contained in rule 27 is to implement the constitutional provisions that require a speedy trial. These rules were not intended to provide a defendant with a weapon to trap state officials and terminate prosecutions. Nor were they intended to be a device to give a defendant absolute immunity from prosecution. See *State v. Zaehring*, 306 N.W.2d 792, 796 (Iowa 1981). [The defendant] may not actively, or passively, participate in the events

² In footnote 1, we have directed to the trial court's attention that it is the State's burden to prove waiver. As it relates to defendant's contention that the trial court placed the burden on the defendant, we are not convinced that error was preserved on this issue.

which delay his trial and then later take advantage of that delay to terminate prosecution.

Finn, 469 N.W.2d at 694. We find Stejskal's inactions constitute passive participation in the events which caused the delay.

After being arrested, Stejskal's initial appearance resulted in a written "Enrolled Order Re: Initial Appearance of Defendant and Setting Release Conditions." A copy of this order was given to Stejskal. The order stated a public defender was appointed to represent Stejskal. It also stated in bold print, "Defendant shall keep his/her attorney informed of his/her whereabouts at all times to insure that he/she can appear in court upon not less than twenty-four (24) hours' notice." Stejskal failed to notify his attorney he had been placed in prison after he had posted bond and was released. In addition, it is clear from the record that the county attorney's office did not know of the defendant's whereabouts.

Stejskal's failure to notify his attorney of his whereabouts led to a slowdown in the arraignment process. Our supreme court has made the following comments regarding the role arraignment plays in the running of the speedy trial period:

Arraignment is a prerequisite to trial, unless waived. There is no basis for suggesting defendant waived arraignment by failing to appear for it. The State had a duty to proceed as required by statute. In doing so, it had a right to wait until arraignment to have a trial date set. Until arraignment the State did not know that defendant desired a trial and that he was ready for trial.

State v. Lyles, 225 N.W.2d 124, 126 (Iowa 1975)(citations omitted). It was Stejskal's failure to notify his attorney of his whereabouts and the consequential failure to appear for arraignment which caused the delay in his speedy trial.

Our supreme court has held that the speedy trial rule, "while meant to shield the defendant from unjust delays, is not intended to be a device by which, through technicalities, he can obtain absolute immunity from prosecution." *State v. Gebhart*, 257 Iowa 843, 850, 134 N.W.2d 906, 909 (1965). The rule "was not intended to be used to trap state officials. . . . [It] was intended to provide a shield for the defendant, not a sword." *State v. Cannon*, 201 N.W.2d 715, 718 (Iowa 1972).

We affirm,³ on different grounds, the district court's decision to overrule Stejskal's motion to dismiss.

AFFIRMED.

³ This ruling is limited to the facts as we have them before us. We hasten to point out that if the county attorney had actual knowledge of the defendant's whereabouts at any time during the essential time frame of this case, we believe a much different result would be obtained.