

IN THE COURT OF APPEALS OF IOWA

No. 0-567 / 10-0040
Filed September 9, 2010

STATE OF IOWA,
Plaintiff-Appellant,

vs.

JESUS LEYJA JR.,
Defendant-Appellee.

Appeal from the Iowa District Court for Wright County, Colleen D. Weiland,
Judge.

The State appeals a district court ruling dismissing its pending criminal
prosecution against Jesus Leyja Jr. on speedy trial grounds. **REVERSED AND
REMANDED.**

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, and Eric R. Simonson, County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant
Appellate Defender, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes
no part.

DOYLE, J.

Jesus Leyja Jr. was arraigned on charges of first-degree burglary and domestic abuse assault causing bodily injury. More than one year later, he filed a motion requesting those charges be dismissed on speedy trial grounds under Iowa Rule of Criminal Procedure 2.33(2)(c). The district court granted the motion, and the State appeals. We reverse and remand for further proceedings.

I. Prior Proceedings.

On June 23, 2008, the State filed a trial information charging Leyja with first-degree burglary and domestic abuse assault causing bodily injury. On June 26, Leyja filed a written arraignment, entered a plea of not guilty, and waived his ninety-day speedy trial right. See Iowa R. Crim. P. 2.33(2)(b). An arraignment order scheduled a trial for September 16.

The day before trial, Leyja, who was out on bail, was arrested on new charges. The trial was apparently continued, though no motion or order for continuance appears in the record. Over the following months, the State and Leyja engaged in discovery and plea negotiations. A trial was evidently scheduled for June 9, 2009, but again, no order to that effect can be found in the court file. Sometime prior to that trial date, Leyja's attorney asked the county attorney for a continuance because he had lost contact with Leyja. Once more, though no motion or order for continuance was entered, the trial was not held as scheduled. The one-year speedy trial deadline expired on June 26, 2009.

Leyja was arrested on new charges on July 14, 2009. The State and Leyja continued their plea negotiations in hopes of resolving all of the charges against Leyja. Leyja contends the plea negotiations were delayed through no

fault of his own; rather, the county attorney kept saying he needed to talk to the officer who had arrested Leyja on the new charges, and evidently the officer never got back to the county attorney. On October 16, more than one year after his arraignment, Leyja filed a motion to dismiss the burglary and domestic abuse assault charges under rule 2.33(2)(c).¹ The State filed a resistance, asserting defense counsel had waived Leyja's one-year speedy trial right when he requested a continuance of the trial scheduled in June.

A hearing was held, at which defense counsel acknowledged having requested a continuance, but denied waiving speedy trial for Leyja. He contended that after Leyja was arrested in July 2009, the case "was on the trial schedule for July, August, September, October yet . . . the State failed to bring the case to trial." There is no indication in the record as to why those trial dates were continued or who requested the continuances. Following the hearing, the district court entered an order summarily dismissing the charges against Leyja. This appeal by the State followed.

II. Scope and Standards of Review.

In deciding speedy trial questions under rule 2.33(2)(c), our scope of review is for correction of errors at law. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). In order to obtain a reversal, the State must show the district court abused its limited discretion in sustaining Leyja's motion to dismiss. *State v. Zaehring*, 306 N.W.2d 792, 795 (Iowa 1981); see also *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001) (stating the court's discretion to avoid dismissal

¹ Leyja also sought dismissal of the other charges he accumulated during the course of this case on speedy trial grounds. The State did not resist the dismissal of those charges, and they are not before us on appeal.

under rule 2.33(2)(c) is circumscribed by the limited exceptions to the rule's mandate).

III. Discussion.

Rule 2.33(2)(c) provides: "All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause." Under this rule, a criminal charge must be dismissed if the trial does not commence within one year after arraignment unless the State proves either (1) defendant's waiver of speedy trial, (2) delay attributable to the defendant, or (3) good cause for the delay. *State v. Winters*, 690 N.W.2d 903, 908 (Iowa 2005); see also *Miller*, 637 N.W.2d at 204 ("The burden of proving an exception to the rule's deadline rests squarely with the State."). The State claims all three of these exceptions are present here. We will examine each in turn,² though the exceptions at times overlap.

A. Waiver.

Waiver is not specifically mentioned in the one-year speedy trial right in rule 2.33(2)(c), as it is in the ninety-day speedy trial right in rule 2.33(2)(b). But because the right to a speedy trial is personal, it is one which a defendant may forego at his or her election. *State v. Mary*, 401 N.W.2d 239, 241 (Iowa Ct. App. 1986); see also *State v. Magnuson*, 308 N.W.2d 83, 84 (Iowa 1981) ("Even though waiver is not mentioned in the rule, we find that a defendant may waive

² It is unclear which exception the district court relied on in granting Leyja's motion to dismiss, as its ruling is absent any findings of fact or conclusions of law. Cf. *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983) ("The trial court's findings of fact upon conflicting evidence are binding upon us if supported by substantial evidence.").

the requirement of trial within one year of arraignment.”). Defense counsel may waive this right on the defendant’s behalf without the defendant’s express consent. *State v. LeFlore*, 308 N.W.2d 39, 41 (Iowa 1981) (reasoning an attorney is an agent of limited authority and generally a defendant is bound by the attorney’s actions within the scope of that authority); *accord Mary*, 401 N.W.2d at 241.

On appeal, the State does not claim defense counsel expressly waived speedy trial on Leyja’s behalf. *Cf. LeFlore*, 308 N.W.2d at 41. Instead, the State asserts defense counsel impliedly waived the right by requesting a continuance of the trial date in June 2009, which had been set within the one-year speedy trial deadline. We agree.

In *State v. O’Connell*, our supreme court held the legislature intended that speedy trial rights could be waived by continuance motions made by defense counsel. 275 N.W.2d 197, 200 (Iowa 1979). The holding of *O’Connell* was reaffirmed by the court in *LeFlore*, 308 N.W.2d at 41, which found both an express speedy-trial waiver by defense counsel and a waiver “by the succession of continuance motions” made by counsel. *See also Zaehring*, 306 N.W.2d at 795 (stating a defendant’s acquiescence in the setting of a trial date beyond the speedy trial period is a factor that can be considered in determining whether a defendant has waived speedy trial).

We accordingly believe defense counsel waived Leyja’s speedy trial right by requesting a continuance of the trial set in June 2009. *See, e.g., LeFlore*, 308 N.W.2d at 41; *O’Connell*, 275 N.W.2d at 200; *see also Magnuson*, 308 N.W.2d at 85 (finding waiver of one-year speedy trial right where defendant waived his

ninety-day speedy trial right, obtained continuances of trial on two occasions, and a stay of trial on another occasion).

B. Delay Attributable to Defendant.

“Ordinarily the absence of defendant may constitute ‘good cause’ for delay.” *State v. Brandt*, 253 N.W.2d 253, 258 (Iowa 1977). This is because a defendant “may not actively, or passively, participate in the events which delay his trial and then later take advantage of that delay to terminate the prosecution.” *Finn*, 469 N.W.2d at 694. Thus, although the State, not the defendant, is obligated to bring a defendant to trial, delay caused by the defendant may be good cause preventing the State from carrying out its obligation. See *State v. Lyles*, 225 N.W.2d 124, 126 (Iowa 1975) (“The State’s duty to provide a defendant a speedy trial does not require that it play a game of hide-an-go-seek with him.”).

As the State points out, the trial scheduled on June 9, 2009, could not have occurred in Leyja’s absence. See Iowa R. Crim. P. 2.27(1) (“In felony cases the defendant . . . shall be personally present at every stage of the trial. . .”).

At the hearing on Leyja’s motion to dismiss, defense counsel stated the continuance in June 2009

was due to the fact that I did not have contact with my client for about a week or two. His phone was disconnected, he hadn’t called me to get ready for trial if we would have had it on June 9th, but communication was reestablished on July 14th, so we’re looking at about a 45-day delay due to the defendant. Anything beyond that 45 days, I believe the State has the burden to prove that there was a good cause to delay further than that.

Thus, Leyja concedes that his absence constituted good cause for delaying his trial past the one-year deadline, but he claims it only provided forty-five days' worth of good cause. However, our supreme court has rejected the idea that we should

identify a certain number of days related to events that are believed to have impeded the progress of the case, attribute those events to the defendant or to other good cause, and then extend the speedy-trial deadline by a like number of days.

State v. Campbell, 714 N.W.2d 622, 628 (Iowa 2006). Evaluation of the delay cannot be made "in such a mechanical fashion because it is not accurate to assume that pretrial events consuming a measurable amount of time will force a delay in the trial of a like amount of time." *Id.* Instead, the decisive inquiry "should be whether events that impeded the progress of the case and were attributable to the defendant or to some other good cause for delay served as a matter of practical necessity to move the trial date beyond" the speedy trial deadline. *Id.*

C. Good Cause.

Good cause focuses on only one factor: the reason for the delay. *Winters*, 690 N.W.2d at 908. The attending circumstances, which include the length of the delay, whether the defendant demanded speedy trial, and whether prejudice resulted from the delay, bear on the inquiry only to the extent they relate to the sufficiency of the reason itself. *Id.*

This means that, to whatever extent the delay has been a short one, or the defendant has not demanded a speedy trial, or is not prejudiced, a weaker reason will constitute good cause. On the other hand, if the delay has been a long one, or if the defendant has demanded a speedy trial, or is prejudiced, a stronger reason is necessary to constitute good cause.

State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980). If the reason for the delay is not sufficient, the other factors will not avail to avoid dismissal. *Id.*

Plea negotiations may constitute good cause for delaying trial. See *State v. LaMar*, 224 N.W.2d 252, 254 (Iowa 1974). At the hearing on Leyja's motion, the county attorney informed the district court:

[W]e have been in a pretty lengthy process of trying to negotiate out his variety of charges, but that has not resulted in a successful negotiation to date. And so from State's perspective, we've been trying to pursue that negotiation at least.

Defense counsel agreed the case was continued by the parties "to see if we could work out a plea agreement. And no such agreement was reached." We do not think Leyja may now take advantage of the lengthy plea negotiation process he participated in by obtaining a dismissal on speedy trial grounds.

Although the State cannot be dilatory in its duty to provide a speedy trial, see *State v. Miller*, 311 N.W.2d 81, 84 (Iowa 1981), the speedy trial 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." *Finn*, 469 N.W.2d at 694. There is no indication in the record that Leyja demanded his right to a speedy trial at any point during this case. For most of these proceedings he was out on bail, at least until his July 14, 2009 arrest on new charges. Even after this arrest, he did not assert his right to a speedy trial but instead took part in the delay by continuing to engage in plea negotiations with the State.

Although Leyja argues he could have been brought to trial in July, August, September or October 2009, following his rearrest, and blames the State for

procrastinating in the plea negotiations that occurred during that time, these assertions are insufficient to sustain the district court's ruling. The facts remain that Leyja was free on bail and was scheduled to go to trial within the one-year deadline, but then disappeared, forcing his attorney to seek an indefinite continuance. After Leyja was arrested on new charges in July 2009, he never demanded a speedy trial, but continued to engage in plea negotiations before suddenly filing a motion to dismiss on speedy trial grounds only three months thereafter. Especially given the supreme court's warning against applying the speedy trial deadline in a "mechanical fashion," we conclude the sum total of these facts clearly constitute good cause for extension of the one-year deadline.

We find no basis in the record for the district court's ruling dismissing the charges against Leyja on speedy trial grounds. See *State v. Albertsen*, 228 N.W.2d 94, 98 (Iowa 1975) (stating when "good cause is established as a matter of law, we will reverse a trial court finding that it was not shown"). The State met its heavy burden in showing good cause existed for the delay.

IV. Conclusion.

The district court abused its discretion in dismissing the charges against Leyja on speedy trial grounds. We accordingly reverse its decision and remand the case for trial on those charges.

REVERSED AND REMANDED.