

IN THE COURT OF APPEALS OF IOWA

No. 0-982 / 10-0829
Filed February 9, 2011

STATE OF IOWA,
Plaintiff-Appellant,

vs.

AHKINEA DEON COX,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell (competency and trial setting hearing) and Marsha A. Bergan (speedy trial dismissals), Judges.

The State appeals district court rulings dismissing pending criminal prosecutions against Ahkinea Deon Cox on speedy trial grounds. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

The State appeals the district court's rulings dismissing three pending criminal prosecutions against Ahkinea Deon Cox on speedy trial grounds. Under Iowa Code section 812.4(1) (2009), the defendant's rights to a speedy indictment and speedy trial "shall be tolled until the court finds the defendant competent to stand trial." We must determine whether the district court correctly found that our law does not permit the extension of the one-year speedy trial right for each day during which the time was tolled under section 812.4. We reverse and remand.

I. Background Facts and Proceedings.

Before we more fully set out the pertinent facts, we note that in each of his three cases at issue here, Ahkinea Cox waived his ninety-day speedy trial right pursuant to Iowa Rule of Criminal Procedure 2.33(2)(b),¹ but did not waive his right to speedy trial within one year under rule 2.33(2)(c) ("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."). In each case, the one-year limit expired during the time in which the one year speedy trial deadlines were tolled as a result of Cox's competency evaluation under Iowa Code section 812.4. After the experts and the court concluded that Cox was competent to stand trial, a trial date for each

¹ Iowa Rule of Criminal Procedure 2.33(2) provides in pertinent part:

It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. . . .

. . . .
 b. If a defendant indicted for a public offense has not waived the defendant's right to a speedy trial the defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

case was scheduled approximately three months later. The court set the trial dates on the basis of its understanding that the speedy trial limits were extended, a day for each day that the competency examinations tolled the speedy trial time periods. Cox remained in jail in lieu of bail in each case since his arrest on the first charge.

Ahkinea Deon Cox filed his written arraignment on December 4, 2008, on one count of first-degree robbery and one count of OWI stemming from events occurring on November 9, 2008 (FECR085293—the “Gasby case”). The trial date was originally set for January 26, 2009. On January 22, 2009—on defendant’s motion—trial was continued to April 13, 2009.

On January 7, 2009, Cox filed his written arraignment on one count of first-degree robbery and one count of second-degree theft stemming from events occurring on August 4, 2008 (FECR085678—the “HyVee case”). Trial was set for March 2, 2009. On February 19, 2009—again on defendant’s motion—trial was continued to May 26, 2009.

On January 15, 2009, Cox filed his written arraignment on two counts of first-degree robbery and one count of second-degree theft stemming from events occurring on August 17, 2008 (FECR085653—the “Deli-Mart case”). Trial was originally set for March 9, 2009, but—on defendant’s motion—trial was continued to June 1, 2009.

In each case, Cox was initially represented by a public defender. Cox, pro se, filed written requests for new counsel three separate times. A hearing was held on each request. Following an April 2, 2009 hearing, the district court

allowed the public defender to withdraw and appointed Mark Meyer to represent Cox in all three cases.

Trial of the Gasby case, then set to begin on April 13, 2009, was continued to July 27, 2009. On Attorney Meyer's May 12, 2009 motion, trials in the Deli-Mart and HyVee cases were rescheduled for September 8, 2009.

On July 13, 2009, in the Gasby case, Attorney Meyer filed a notice of expert witness and a notice of intent to rely on a diminished capacity or temporary insanity defense. The notice of expert witness stated that in August 2008 David Johnson, Ph.D., "diagnosed Mr. Cox with serious psychological ailments, which led to Mr. Cox being granted an entitlement to receive social security disability compensation."

Following a July 22, 2009 hearing, the Gasby case was continued to September 8, 2009 on Cox's motion.

On August 20, 2009, Attorney Meyer filed a Request for Competency Evaluation in all three cases, citing Iowa and federal due process and Iowa Code section 812.3 (allowing defendant to raise issue of mental incompetency "at any stage of criminal proceedings"), which the State resisted. A hearing on the request was held on September 3, 2009.

On September 4, 2009, the district court filed its order finding, "pursuant to Iowa Code Section 812.3 probable cause exists to support the allegations that the Defendant is suffering from a mental disorder" The court wrote: "All proceedings, including trial, are suspended in each of these three cases. The court advised counsel that staying the proceedings has the effect of tolling the statute of limitations, including the one year speedy trial provision." Attorney

Meyer was to advise the court of efforts to locate a person qualified to conduct the evaluation.

Attorney Meyer filed a status report on October 1, stating the “final part of the evaluation is scheduled for October 13, 2009. A report will follow.” The court scheduled a competency hearing for November 17, 2009.

At the November 17, 2009 hearing, Attorney Meyer reported Frank S. Gersh, Ph.D., found the defendant had “some mental problems,” but was “unable to determine whether Mr. Cox is competent or incompetent to stand trial for reasons reflected in his report.” Attorney Meyer moved to continue the hearing under chapter 812 to allow for a second evaluation. The court granted the defendant’s request and ordered all proceedings continued to be stayed “as provided for in Chapter 812.”

One year from the dates of Cox’s arraignments passed in December 2009 and early January 2010 while the proceedings were stayed under Chapter 812.

In a January 25, 2010 status report, Attorney Meyer noted an evaluation had been conducted by Luis Rosell, Ph.D., on January 15, 2010, and requested a hearing to establish trial dates.

A hearing took place before Judge Russell on February 11, 2010. After receiving the report of Dr. Rosell that Cox was competent to proceed to trial, the district court accepted the expert’s recommendation and rescinded the earlier “Stay Order.” The court stated that the speedy trial deadlines had been extended by the period of time during which proceedings had been tolled under Chapter 812, and noted that in the Gasby case, 274 days of the one-year speedy trial period had expired by the September 4, 2009 ruling staying the proceedings for a

competency examination; in the HyVee case, 239 days had expired; and in the Deli-Mart case, 231 days had expired.² By written order filed on February 16, 2010, Judge Russell set the Gasby case for trial on May 3, 2010; the Deli-Mart case for trial on May 24, 2010; and the HyVee case for trial on June 7, 2010. The three trials were set for dates about three months after the stay order had been rescinded on February 11, 2010—not on the request of either the State or the defendant, but because the court extended the one-year speedy trial deadline day for each day tolled.

On March 31, 2010, Attorney Meyer moved to dismiss all three cases, asserting violations of defendant's rule 2.33(2)(c) one-year speedy trial right. The defendant asserted the court's rationale for setting the trial dates—that the one-year speedy trial deadline was extended for each day the proceedings were stayed for the competency determination—was incorrect. He further argued that determining whether the defendant's speedy trial right had been violated was not dependent on how long the proceedings were stayed. Rather, because the one-year periods had passed before the defendant was found competent, the question was whether there was good cause for the delay after lifting the stay. The State resisted and a hearing was held before Judge Bergan.

In separate orders dated April 19 (the Gasby case), 20 (the HyVee case), and 21 (the Deli-Mart case), the district court dismissed all three cases. The court's analysis was identical in each case:

² By our calculation, the district court was shy one day in the HyVee and Deli-Mart cases: from the filing of written arraignment to the September 4, 2009 order of probable cause, 232 days had elapsed in the HyVee case and 240 days of the one-year speedy trial period had elapsed in the Deli-Mart case.

The one-year speedy trial rule in Iowa, however, does not automatically exclude from computation of the time limits any period of delay resulting from a proceeding to determine the mental competency of a defendant. Instead, any delays in meeting speedy trial rules are examined by focusing on one question: What was the good cause, the reason, for the delay? *State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980) [concerning ninety-day speedy trial right under now-numbered rule 2.33(b)]. Certainly in most cases, when a competency proceeding is on-going and a one-year speedy trial period expires during the competency proceeding, good cause will be found to permit a defendant to be tried beyond one year—at a reasonable time after the competency proceedings are concluded. The law in Iowa, however, recognizes no automatic day-for-day reduction for time that proceedings are stayed for competency evaluations.

.....
 The Court is convinced that, given that the one-year speedy trial deadline passed while proceedings were suspended, dismissal is warranted when—after proceedings were reinstated—Defendant was not brought to trial within a reasonable time and no good cause has been established for delay after February 11, 2010. The record fails to establish good cause for the delay, now 67 days after Defendant was found to be competent to stand trial.

The State moved to reconsider asserting trial was set within the speedy trial limits and citing section 812.4 tolling. In the alternative, the State asserted there was good cause for the delay. The district court denied the motion to reconsider, writing:

This Court previously gave due consideration to Iowa Code section 812.4(1) and the meaning of the word “tolled,” as used in Iowa Code section 812.4(1). The Iowa Supreme Court’s ruling in *Harrington v. Toshiba Machine Company*, 562 N.W.2d 190 (Iowa 1997), wherein the word “tolled” was analyzed in the civil context is instructive. . . .

Unlike Iowa Code section 614.6, neither Iowa Code section 812.4 nor Iowa Rule of Criminal Procedure 2.33(2) expressly provide for the day-for-day omission or exclusion of time.

On appeal, the State claims the court erred in dismissing the cases because (1) Cox’s right to a speedy trial was tolled until the court found him competent to stand trial pursuant to Iowa Code section 812.4, which extended

the one-year time period, and (2) even if the one-year limit had run, the delay was attributable to Cox and was excused for good cause.

II. Scope and Standards of Review.

We review a trial court's ruling on the motion to dismiss based on speedy-trial grounds for an abuse of discretion. *State v. Campbell*, 714 N.W.2d 622, 627 (Iowa 2006); *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). However, the court's discretion is narrow, as it relates to good cause for delay of the trial. *State v. Winters*, 690 N.W.2d 903, 907–08 (Iowa 2005).

III. Discussion.

Iowa Rule of Criminal Procedure 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. *Winters*, 690 N.W.2d at 908; see also *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001) ("The burden of proving an exception to the rule's deadline rests squarely with the State.").

Considering a claimed violation of the ninety-day speedy trial deadline, our supreme court disapproved of calculating speedy trial deadlines in "a mechanical fashion," by attributing a period of delay to the defendant or the state and extending the deadline by the days of delay attributed to the defendant. *Campbell*, 714 N.W.2d at 628.

The decisive inquiry in these matters 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 initial ninety-day period required by the rule.

Id.

The Supreme Court recognized in *Campbell* that pre-trial procedural and substantive motions should not automatically extend speedy trial deadlines, since to do so incorrectly assumes that pretrial events force a delay of a comparable amount of time beyond the speedy trial deadline. See *id.* (“Evaluation of the delay may not 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.”).

However, that rationale does not apply to a competency evaluation of the defendant. Where there has been a probable cause finding that the defendant suffers from a mental disorder that prevents the defendant from appreciating the charge, understanding the proceedings, or assisting in the defense, we believe it *is* accurate to assume the time required to determine the defendant’s competency likely could force a delay in trial. In that qualitatively different situation, where a defendant may be incompetent, the legislature has specifically provided that proceedings are to be suspended and the speedy trial deadlines tolled. Iowa Code § 812.4. The *Campbell* case has no discussion of chapter 812.

Cox asked for a psychiatric evaluation under Iowa Code section 812.3 to determine if he was competent to stand trial. That section states:

1. If at any stage of a criminal proceeding the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations. . . .

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense.

Iowa Code § 812.3(1), (2). Once defendant's application for a competency evaluation has been granted, section 812.4(1) requires that a hearing be held following the evaluation and that "[p]ending the hearing, *no further proceedings shall be taken under the complaint or indictment and the defendant's right to a speedy indictment and speedy trial shall be tolled until the court finds the defendant competent to stand trial.*" (Emphasis added.)³

Pursuant to section 812.4(1) Cox's speedy trial deadlines were tolled between September 4, 2009, when the probable cause determination was made and proceedings were suspended, and February 11, 2010, when the court found Cox to be competent. The State argues Judge Russell properly interpreted the tolling provision to extend the running of the one-year period after tolling was no longer in effect by the number of days during which the proceedings were suspended. We agree.

³ Section 812.4 was rewritten by the legislature, effective 2004, to include the provision that defendant's right to a speedy trial be tolled until the court finds the defendant competent to stand trial. See 2004 Iowa Acts, ch. 1084, § 6.

The term “tolled” is not statutorily defined and it is thus our task to determine legislative intent. See *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006). When confronted with the task of statutory interpretation, it has been stated:

The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute.

Id. (citation omitted).

The court has often referred to the speedy indictment and speedy trial time limits in terms of a clock that starts and stops. See, e.g., *State v. Wing*, 781 N.W.2d 243, 252 n.16 (Iowa 2010); *State v. Van Beek*, 443 N.W.2d 704, 706 (Iowa 1989), *overruled on other grounds by State v. Davis*, 525 N.W.2d 837, 841 (Iowa 1994). “Tolling” means the clock stops ticking. Black’s Law Dictionary 1525 (8th ed. 2004) (“Of a time period, esp. a statutory one) to stop the running of; to abate.”); Webster’s Third New Int’l Dictionary of the English Language Unabridged at 2405 (2002) (“to take away: make null: REMOVE (~the statute of limitations)”). The definition of tolling as a “stopping the clock” is consistent with, and gives meaning to, Iowa Code section 812.5(1), which provides: “If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.”

It is also consistent with the definition adopted by our supreme court in *Harrington v. Toshiba Machine Co.*, 562 N.W.2d 190, 191 (Iowa 1997). See

Cubit v. Mahaska Co., 677 N.W.2d 777, 783 (Iowa 2004) (noting that where term is not defined by statute, “we may refer to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage’ to determine its meaning” (quoting *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996))). In *Harrington*, our supreme court was required to interpret Iowa Code section 613.18(3), which provides:

An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, *tolls* the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer.

(Emphasis added.) The *Harrington* court stated, “The key to interpreting section 613.18(3) is the meaning of ‘tolls.’” *Harrington*, 562 N.W.2d at 191. The *Harrington* court determined tolling stops the limitations clock: “In other words, the two-year clock of Iowa Code section 614.1(2) stops ticking on the plaintiffs’ section 613.18(3) certificate; when the manufacturer is identified, the clock begins to tick again.” *Id.* (concluding the time elapsing between certification that manufacturer is unknown and the date the manufacturer is identified is to be deducted from the total elapsed time in determining whether plaintiff filed suit within limitations period). Thus, the *Harrington* court defined tolling to require a deduction from the limitations period of the tolled days, and a restarting of the clock following the tolled period. *Id.* at 192. The clock does not start anew, it resumes from the point when it stopped. *Id.* (recognizing that when statute of limitations was tolled by plaintiffs; filing of certification that manufacturer was unknown, the plaintiffs were left with only two days on the two-year limitations clock to file suit).

Cox argues that *Harrington's* interpretation of "tolling" is distinguishable because the limitations period in *Harrington* was included in a statutory scheme for calculating a statute of limitations. We disagree. The language of chapter 614, which governs the computation of civil period of limitations, was referenced by the Iowa Supreme Court to inform its interpretation of tolling in *Harrington*. See *id.* at 191 (noting that in section 614.6, the legislature provided that the relevant period of limitation "shall be computed omitting any time when" the defendant is a nonresident or the identity of the defendant unknown"). But the court did not rely solely on the language of section 614.6. Rather, the court noted the interpretation was "consistent with tolling under other circumstances." *Id.* The Federal Speedy Trial Act uses similar phrasing to toll the speedy trial deadlines during a competency evaluation. See 18 U.S.C. § 3161(h)(1)(A) ("The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence . . . [a]ny period of delay resulting from other proceedings concerning the defendant, including but not limited to . . . delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant[.]"). We are not convinced there is any compelling reason to interpret "tolled" differently in the speedy trial context because there is no statutory language specifically providing for excluding of time in the calculation. As the supreme court observed in *Harrington*, "[T]he tolling of a statute of limitations is purely statutory, and we are not free to expand the concept to avoid hardships." 562 N.W.2d at 192. Because the conviction of an accused person while that person is legally

incompetent violates due process, *Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 838, 15 L. Ed. 2d 815, 818 (1966), the legislature's amendment of section 812.4 recognizes that the hardship on an incarcerated defendant resulting from the delay of a competency evaluation is outweighed by the need to ensure that a defendant is competent to stand trial and to assist in his or her defense.

Thus, under section 812.3(2), the speedy trial clock stops ticking when proceedings are suspended to determine a defendant's competency to stand trial and does not resume "until the court finds the defendant competent to stand trial." Iowa Code § 812.4(1); see *State v. McCullough*, No. 10-0165 (Iowa Ct. App. Sept. 22, 2010) (stating "tolling period ends and the time begins to run again for speedy trial purposes . . . when the court finds the defendant competent").

Here, the one-year speedy trial clock stopped on September 4, 2009, and did not start again until the district court found Cox competent to stand trial started on February 11, 2010. On February 11, in the Gasby case, ninety-one days remained on the one-year speedy trial clock,⁴ which would expire on May 13, 2010. See Iowa Code § 4.1(34) ("In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday."). Trial was scheduled to begin on May 3, within the one-year period.

⁴ Written arraignment filed December 4, 2008. On September 4, 2009, 274 days had elapsed (365 - 274 = 91).

In the HyVee case, 125 days remained on the one-year clock,⁵ which would expire on June 16, 2010. Trial was scheduled to begin on June 7, within the one-year period.

In the Deli-Mart case, 133 days remained on the one-year clock,⁶ which would expire on June 24, 2010. Trial was scheduled to begin on May 24, which also was within the one-year period.

However, in each case, the district court dismissed, concluding the one-year period had expired and finding no good cause for delay. Because the one-year period had not expired in any of the cases, the district court's dismissal was in error. We reverse and remand.

IV. Conclusion.

Pursuant to Iowa Code section 812.4(1), the defendant's speedy trial rights are tolled until the court finds the defendant competent to stand trial. The one-year clock stopped here on September 4, 2009, and started again on February 11, 2010, when the court found the defendant competent to stand trial. The district court abused its discretion in granting Cox's motion to dismiss based on a violation of his speedy trial rights.

REVERSED AND REMANDED.

⁵ Written arraignment filed on January 7, 2009. On September 4, 2009, 240 days had elapsed (365 – 240 = 125).

⁶ Written arraignment filed on January 15, 2009. On September 4, 2009, 232 days had elapsed (365 – 232 = 133).