IN THE COURT OF APPEALS OF IOWA

No. 2-202 / 11-0963
Filed May 9, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAVONTEZ DERREL ROBINSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith and Paul L. Macek, Judges.

Javontez Robinson appeals the denial of his motion to dismiss pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a). **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, David Arthur Adams, Assistant Appellate Defender, and Leslie C. Behaunek, Student Legal Intern for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly G. Cunningham, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

In challenging his conviction for possession of cocaine with intent to deliver, Javontez Robinson appeals the district court's denial of his motion to dismiss. He contends the State violated his right to a speedy indictment pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a) when it filed a trial information more than two years after he was arrested. We reverse and remand.

***I. Background Facts and Proceedings*.**

On October 31, 2008, the Davenport Police Department received a citizen complaint describing two men involved in possible narcotic transactions at a local bar. Undercover officers responded and observed three men, including two dressed as described, leaving the bar. After the men drove away, an undercover officer followed their car. Soon after, the undercover officer reported the car had failed to make a complete stop at an intersection. A uniformed officer in a marked squad car stopped the car for the traffic violation. Two more police cars, a marked squad car and a "slick top," converged on the scene.[1] Other unmarked police cars parked nearby. The record is not crystal clear, but it appears that as many as six uniformed and plain-clothed officers were involved at the scene after the stop.

Javontez Robinson was identified as the driver; the car belonged to his sister. Robinson was ordered out of the car and then patted down. He was read his *Miranda* rights and placed in the backseat of a squad car. The rear passenger compartments of Davenport squad cars are automatically locked, and an occupant cannot freely exit the car. At no time while he was in the car was he

[1] A "slick top" is an unmarked, all black Crown Victoria without a light bar.

free to leave. Robinson was not handcuffed. He consented to a search of his sister's car, and the officers found 14.1 grams of cocaine underneath the steering wheel. Small plastic bags were also found in the backseat. Robinson denied having knowledge of the cocaine. After about forty minutes, he was transported to the police station. Robinson had no option as to whether he went to the station or not. He was not told he was under arrest, nor was he told he was not under arrest.

Robinson was placed in an interrogation room and was video recorded. The room was located in a secure area of the police station. The door to the room is automatically locked, and one cannot leave the room without a pass key or card. Robinson was not free to leave.

About five or six minutes after being placed in the room, an officer came in to obtain general information from Robinson. The officer asked Robinson what he needed, and Robinson stated, "[i]t's not what I need, it's like what do you need. Because I want to go home." The officer advised Robinson that his boss was going to come in and talk with him. After obtaining the general information, the officer left the room. Fifteen minutes later, an officer told Robinson it was going to be a few more minutes. While he waited, Robinson went to the door of the room several times, checking the doorknob.

About an hour and twenty minutes later (an hour and forty-five minutes after being locked in the room), Sergeant Smull, a member of the Davenport Police Department Narcotics Unit, entered the room. Smull again read Robinson his *Miranda* rights and then began questioning Robinson about drug dealing in the Davenport area. Robinson responded by providing Smull with the requested

information. About ten or eleven minutes into the interview Smull told Robinson, "You are walking out [tonight]." Later, at various times during the course of the interview, Robinson was told he probably was going to be let go that night: "you're gonna walk out tonight," "[you will] probably walk out the door," and "[you'll be] let go tonight." Robinson agreed he would continue to cooperate with the police, including agreeing to meet Smull on a specific day to provide more information. Robinson was advised they would talk further about what he needed to do. He programmed Smull's phone number into his cell phone and was told to call Smull the next day. Smull did not have Robinson sign a confidential informant agreement.

Robinson was in the interview room for a total of four hours and thirty-nine minutes. He was never told he was arrested, nor was he told he was not under arrest. He was released when the interview was completed in the early hours of November 1, 2008. The details of what transpired between Robinson and the Davenport Police Department after that point is not in the record before us.

On February 17, 2011, over two years later, the State filed its trial information charging Robinson with possession with intent to deliver cocaine, drug tax stamp violation, and conspiracy to commit a non-forcible felony, based on the events of the evening Robinson was stopped by police. Thereafter, Robinson file a motion to dismiss the charges for lack of speedy indictment pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a), asserting he was under arrest for purposes of the rule when he was told to get out of his car and then

during his interview that evening.[2] The court denied his motion, and he was ultimately found guilty of possession with intent to deliver cocaine by the court and sentenced.

Robinson now appeals.

II. Scope and Standards of Review.

"We review a district court's decision regarding a motion to dismiss for lack of speedy indictment for correction of errors at law." *State v. Wing*, 791 N.W.2d 243, 246 (Iowa 2010). "We are bound by the findings of fact of the district court if they are supported by substantial evidence." *Id*.

III. Discussion.

Iowa's speedy indictment rule, Iowa Rule of Criminal Procedure 2.33(2)(a), "ensures the enforcement of the United States and Iowa Constitutions' speedy trial guarantees, which assure the prompt administration of justice while allowing an accused to timely prepare and present his or her defense." *State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011). Rule 2.33(2)(a) provides:

> When an adult is arrested for the commission of a public offense . . . and an indictment is not found against the defendant within [forty-five] days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives the defendant's right thereto.

Rule 2.33(2) reflects the State's public policy that "criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties," and it "assure[s] the prompt administration of justice while allowing an accused to

[2] At the time of the encounter, the speedy indictment rule was numbered 27(2)(a). Since that time, it has been renumbered as rule 2.33(2)(a).

timely prepare and present his or her defense." *Utter*, 803 N.W.2d at 652 (citations omitted).

Although absent the formalities of an arrest, an "arrest" may nevertheless occur for purposes of applying the speedy indictment rule. So, lacking a formal arrest here, the question we must answer is whether, for speedy indictment purposes, the police "arrested" Robinson on October 31 or November 1, 2008. Our supreme court has established that whether a person is arrested for speedy indictment purposes must be determined on a case-by-case basis without the assistance of any bright-line rule or test. *Wing*, 791 N.W.2d at 248 (citing *State v. Dennison*, 571 N.W.2d 492, 495 (Iowa 1997)).

The word "arrest" is derived from the French "arreter," meaning to stop or stay, as signifies the restraint of a person. *State v. Barker*, 372 N.E.2d 1324, 1328 (Ohio 1978). The Iowa Code defines arrest as "the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody." Iowa Code § 804.5 (2007). "It has been said that an assertion of authority and purpose to arrest followed by submission of the arrestee constitutes an arrest." *State v. Johnson-Hugi*, 484 N.W.2d 599, 601 (Iowa 1992) (citations and internal quotation marks omitted). The code also provides:

> The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so . . . .

Iowa Code § 804.14. In accordance with this provision, what police tell a suspect about his or her arrest status is an important factor in determining whether an arrest occurred. *Wing*, 791 N.W .2d at 248. The purpose of our analysis of the arresting officer's communication is not to assess the officer's subjective intent; rather, it is determine if the suspect received notice that he or she was being arrested. *Id*. at 248-49.

But section 804.14 does not require an arresting officer to use formal words communicating an arrest, and the court has recognized that "not all seizures by law enforcement officers must meet such strict conditions to constitute an arrest." *Id*. at 248.

> When an arresting officer does not follow the protocol for arrest outlined in section 804.14 and does not provide any explicit statements indicating that he or she is or is not attempting to effect an arrest, we think the soundest approach is to determine whether a reasonable person in the defendant's position would have believed an arrest occurred, including whether the arresting officer manifested a purpose to arrest.

Id. at 249. The court compared this reasonable person analysis to the way courts analyze whether a person has been seized for Fourth Amendment purposes. *Id*.

In instances when we must employ a reasonable person test to determine if an arrest has taken place, we consider whether a person has been handcuffed. *Dennison*, 571 N.W.2d at 495. In addition, the "mere submission to authority" does not result in an arrest. *Id*. at 494-95. Finally, the question of whether an arrest has occurred does not turn solely on whether a reasonable person would have felt free to leave during the encounter. *Johnson-Hugi*, 484 N.W.2d at 601. As stated previously, no one factor is determinative. *Wing*, 791 N.W.2d at 248.

The Iowa Supreme Court applied these principles in *Wing*, deciding a reasonable person in Wing's position would have believed an arrest occurred when the car in which he was riding was stopped for a routine traffic violation, police found a large brick of marijuana, and after he admitted ownership, he was patted down, handcuffed, and placed in a patrol car. *Id*. at 252. At that point, a detective asked for and received permission to search Wing's house. *Id*. at 245. Officers removed Wing's handcuffs before transporting him to his house. *Id*. During the search of his house, Wing agreed to cooperate with law enforcement in other drug investigations. *Id*. The encounter with police ended when the detective provided Wing with an inventory of seized items and a business card. *Id*. Wing was never taken to the police station.

The *Wing* court noted evidence that the detective involved in the drug investigation only planned to arrest Wing if police could not secure his cooperation in other investigations. *Id*. at 252. The detective did not articulate this plan to Wing. *Id*. The supreme court held that an officer's subjective intent is not controlling in determining whether a reasonable person in the defendant's position would have believed he was under arrest. *Id*. at 248.

In *State v. Delockroy*, 559 N.W.2d 43, 46 (Iowa Ct. App. 1996), this court concluded Delockroy was arrested during an encounter with police. There,

> [o]fficers removed Delockroy from her house late at night with handcuffs, placed her in the back seat of a police vehicle with a cage separating the front seat, and transported her to the sheriff's office where they placed her in a room, alone, for a considerable period of time. She knew officers had found drugs in her residence and further knew she was facing drug charges. She was given *Miranda* rights.

Delockroy, 559 N.W.2d at 46. The court found that a reasonable person under these circumstances would believe an arrest had taken place. *Id*.

We find the traffic stop here is similar to that in *Wing,* and the circumstances taken all together substantially similar to those in *Delockroy*. The car Robinson was driving was subjected to a traffic stop. Robinson cooperated with the officer conducting the stop, providing identification and submitting to a pat-down search. He was Mirandized and placed in the back of a squad car. He consented to a search of the car he was driving. After cocaine was found under the steering wheel, Robinson denied it was his. There was no discussion up to that point, as there was in *Johnson-Hugi*, as to the prospect of his cooperation in other drug investigations, and Robinson had not been given a choice between being arrested and cooperating with law enforcement. 484 N.W.2d at 600. He was then transported to the police station and secured in an interrogation room. We do not believe substantial evidence supports a finding that Robinson's trip to the police station was incidental to a cooperation agreement.

After being locked in the interrogation room, Robinson indicated to the first officer who entered that he was willing to cooperate, but there was no meaningful response to Robinson's overtures until he had been in custody for nearly two and a half hours. It was not until Robinson encountered Sergeant Smull that the possibility of avoiding arrest by cooperation first arose. He then admitted to Smull the cocaine was his, and he repeatedly expressed during his interview he was willing to provide information to Smull. It is not clear from Robinson's statements whether his cooperation was to avoid arrest, an attempt to seek reduction of the charges or sentence he potentially faced, or an attempt to avoid

federal charges. Nevertheless, we believe by this time Robinson had been arrested for the purposes of the speedy indictment rule.

Although Robinson was not told he was under arrest, neither was he specifically told he was not under arrest, and he was not told until after being in police custody for about three hours that he might be able to walk out of the police station that evening. To be sure, Robinson was not handcuffed, but that is not the be-all end-all factor determining whether an arrest has occurred; it is only one factor to consider. At no time after being locked in the back of the squad car would a person in Robinson's position feel free to leave, and in fact he was not free to leave. Nor would he have felt free to leave the locked interrogation room, nor was he free to leave. It does not appear Robinson merely submitted to authority.

Viewing all the facts and circumstances surrounding Robinson's encounter with the Davenport police, and employing all of the above-stated factors, we find a reasonable person in Robinson's position would believe they were under arrest, at the traffic stop scene or in the interview room, at least prior to his discussion of cooperation with Smull. Once Robinson was "arrested," the officers did not have the ability to "unarrest" him based on his later cooperation discussion with Smull. *See State v. Davis*, 525 N.W.2d 837, 839 (Iowa 1994).

We conclude Robinson was arrested during his encounter with Davenport police officers on October 31 and November 1, 2008, for speedy indictment purposes, and the trial information filed more than two years later on February 17, 2011, was untimely. The district court erred by denying Robinson's

motion to dismiss. Accordingly, we reverse the conviction and remand for entry of dismissal.

REVERSED AND REMANDED.