

IN THE COURT OF APPEALS OF IOWA

No. 2-429 / 11-1206
Filed June 27, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NYAKAR GACH CHAWECH,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

A defendant appeals the district court's ruling denying her motion to
dismiss a trial information on speedy trial grounds. **REVERSED AND
REMANDED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, Jaki Livingston and Celene Gogerty,
Assistant County Attorneys, and Grant Wilson, Student Legal Intern, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

VAITHESWARAN, P.J.

We must decide whether the State violated a defendant's right to a speedy trial.

I. Background Facts and Proceedings

The State filed and dismissed a preliminary complaint charging Nyakar Chawech with second-degree burglary in connection with her entry into a neighbor's apartment. On November 10, 2010, the State filed a trial information charging Chawech with first-degree burglary in connection with the same incident. Chawech was not arrested until February 26, 2011. An initial trial date was scheduled for April 25, 2011.

Following her arrest, Chawech moved to dismiss the trial information for violation of the ninety-day speedy-trial rule. See Iowa R. Crim. P. 2.33(2)(b). The district court denied the motion. The State subsequently filed an amended and substituted trial information charging Chawech with third-degree burglary and assault causing bodily injury. Chawech proceeded with a bench trial on the minutes of testimony and was found guilty of these charges. Following imposition of sentence, Chawech sought discretionary review of the dismissal ruling. The Iowa Supreme Court granted the application and transferred the matter to this court for disposition.

II. Analysis

Iowa Rule of Criminal Procedure 2.33(2)(b) states:

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.

Our review of the court's application of this rule is for an abuse of discretion, but that discretion is narrow. *State v. Winters*, 690 N.W.2d 903, 907 (Iowa 2005).

Several facts are undisputed. First, the State agrees that Chawech did not waive her right to a speedy trial. Second, the State agrees that the ninety-day period began running with the filing of the trial information on November 10, 2010, and that the period expired on February 8, 2011. See *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995) ("The [speedy trial] rule applies with equal force to charges brought by trial information."). Third, the State does not dispute that Chawech was arrested more than two weeks after the ninety-day speedy trial deadline expired and that trial was originally scheduled for a date that was more than two-and-a-half months after the deadline expired. The only issue on appeal is whether there was good cause for the delay in bringing Chawech to trial.

"Good cause" for delay focuses solely on one factor: the reason for the delay. *State v. Miller*, 637 N.W.2d 201, 205 (Iowa 2001). The State has the burden to establish good cause. *Olson*, 528 N.W.2d at 653.

The State's reason for the delay was a bare assertion that Des Moines police officers charged with serving the arrest warrant did not "c[o]me into contact" with Chawech until February 26, 2011. This was a statement of the obvious. The State did not explain why the officers failed to make contact sooner and did not suggest that Chawech avoided service or moved. Notably, the State listed the same address on the original criminal complaint filed on November 1, 2010, as Chawech listed on a financial affidavit filed the same day. Additionally, the State listed that address in the minutes of testimony filed on November 10,

2010, and in an arrest warrant filed on November 17, 2010. The arrest warrant was served at that address. In short, Chawech was where she said she was and where the State knew she was.

We conclude the State's "reason" for the delay was not a "weak reason," as the district court found, but no reason at all. As the State failed to furnish a reason for serving Chawech after the speedy trial deadline expired, its attempt to avail itself of the good cause exception to dismissal necessarily fails.

The State attempts to save the trial information by citing other factors, including the absence of prejudice to Chawech. But, as the Iowa Supreme Court has stated, "If the reason for the delay is sufficient the other factors are not needed. If the reason for the delay is insufficient the other factors will not avail to avoid dismissal." *State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980). As the "reason" proffered by the State was insufficient, we need not address these factors.¹

We reverse the district court's ruling on Chawech's motion to dismiss and remand for dismissal of the trial information.

REVERSED AND REMANDED.

¹ In a slightly different context, the Iowa Supreme Court recently made the broad statement that Iowa Rule of Criminal Procedure 2.33 "does not" require a showing of prejudice. *Ennenga v. State*, 812 N.W.2d 696, 705 (Iowa 2012) (analyzing rule 2.33(2)(a), requiring dismissal where an indictment is not found within forty-five days of arrest). The court went on to say that an absence of prejudice might bear on the question of good cause, but reiterated that "if the reason for the delay is insufficient, other factors will not avoid dismissal." *Id.* at 706.