

IN THE COURT OF APPEALS OF IOWA

No. 3-253 / 12-0948
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KELSEY NICOLE HARRIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Kelsey Harris appeals her conviction and sentence for operating a motor
vehicle while intoxicated under Iowa Code section 321J.2 (2011). **AFFIRMED.**

Angela Fritz Reyes, Davenport, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, Michael J. Walton, County Attorney, and William Ripley,
Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Kelsey Harris appeals her conviction and sentence for operating a motor vehicle while intoxicated under Iowa Code section 321J.2 (2011). Harris argues she was denied a speedy trial pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a), and was denied due process. Because we find that rule 2.33 does not apply in this case, and because Harris can show no prejudice from the alleged due process violation, we affirm.

I. Background Facts and Proceedings

On April 23, 2011, Kelsey Harris, then a minor, was involved in a motor vehicle accident during which she failed to obey a stop sign and collided with another driver. A Davenport police officer responded to the scene and observed that Harris had bloodshot eyes and her breath smelled of alcohol. He also observed Harris was wearing a wrist band consistent with having been at a drinking establishment. After an initial denial, Harris admitted to having consumed alcohol. The officer administered several field sobriety tests, each of which Harris failed. A preliminary breath test registered a blood alcohol concentration of .175, more than double the legal limit. Harris submitted to a further breath test after she was arrested, which registered a .156 blood alcohol concentration, also in excess of the legal limit.

Three days later Davenport police filed complaints alleging: (1) operating while intoxicated, (2) failure to obey a traffic control device, and (3) failure to maintain liability insurance. The operating while intoxicated complaint was

returned by the clerk of court, due to Harris' age, but the other two charges were filed. On May 10, 2011, Harris pleaded guilty to the two traffic violations.

On January 9, 2012, after Harris turned eighteen years old, the reporting officer filed a complaint in the district court for the offense of operating while intoxicated. Harris was subsequently charged by trial information on February 15, 2012. She filed a motion to dismiss and argued that her right to a speedy trial and due process rights had been violated under state law. The district court denied the motion, and Harris was convicted after a bench trial on the minutes of testimony. She appeals from the denial of the motion to dismiss.

II. Standard of Review

We normally review a district court's ruling on a motion to dismiss for abuse of discretion. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). Where, as here, the ruling is based upon an interpretation of the speedy trial rule, however, we review for errors at law. *State v. Dennison*, 571 N.W.2d 492, 494 (Iowa 1997).

The due process claim is reviewed de novo. *State v. Brown*, 656 N.W.2d 355, 362 (Iowa 2003).

III. Discussion

A. Rule 2.33

Harris argues the delay in prosecution for the operating while intoxicated charge violates rule 2.33 of our rules of criminal procedure.

Rule 2.33 provides that:

When an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order

waiving jurisdiction pursuant to Iowa Code section 232.45, and an indictment is not found against the defendant within 45 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.

Iowa R. Crim. P. 2.33(2)(a).

Our supreme court has determined that, by its plain language, this rule does not apply when a minor commits a public offense and is charged after reaching the age of majority, provided they are not arrested as an adult and the juvenile court does not waive jurisdiction. *State v. Harriman*, 513 N.W.2d 725, 726 (Iowa 1994). The situation is identical here. Harris was charged after becoming an adult, but was never arrested as an adult, and the juvenile court did not waive jurisdiction. The forty-five day period for indictment found in the rule never started to run, and the rule does not apply to the facts of this case.

B. Due Process

Harris also claims her right to due process was violated by the late filing of the operating-while-intoxicated charge.

The guarantee of a speedy trial under the due process clause seeks to avoid prosecutorial delay for the purpose of gaining an advantage over the accused. *State v. Isaac*, 537 N.W.2d 786, 788 (Iowa 1995). To succeed on her claim, Harris must show that she suffered actual prejudice due to the delay and that the delay was unreasonable. *Brown*, 656 N.W.2d at 363. The prejudice prong requires a showing that the defendant has lost evidence or has been meaningfully impaired in preparing a defense. *Id.*

Harris argues she was prejudiced because she pleaded guilty to two traffic citations, each of which established that she was operating a motor vehicle, which removed the possibility of defending the operating-while-intoxicated charge. This by itself is insufficient to show actual prejudice. There was other evidence Harris was operating a motor vehicle, and the alleged prejudice was caused by her guilty plea, not by the delay. There is no evidence Harris would have gone to trial on the operating charge had it been filed earlier. Having failed to show prejudice, the ruling of the district court is affirmed.

AFFIRMED.