

IN THE COURT OF APPEALS OF IOWA

No. 6-637 / 06-0013
Filed October 11, 2006

STATE OF IOWA,
Plaintiff-Appellant,

vs.

JAMES CRAIG DAVIS,
Defendant-Appellee.

Appeal from the Iowa District Court for Wayne County, David L. Christensen, Judge.

The State appeals from the order dismissing its prosecution against James Davis. **AFFIRMED.**

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, and Alan M. Wilson, County Attorney, for appellant.

Allan C. Orsborn and Ryan J. Mitchell of Orsborn, Bauerle, Milani & Grothe, L.L.P., Ottumwa, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

In this appeal, the State argues the district court abused its discretion in dismissing the criminal charges against James Davis based on its violation of Iowa Rule of Criminal Procedure 2.33(2)(c) which requires that all criminal cases be brought to trial within one year of arraignment. We affirm.

Background Facts and Proceedings.

Because the facts of the underlying criminal case are irrelevant to the issues presented on appeal, we only concern ourselves with the relevant procedural history and timeframes. On July 12, 2002, the State filed a trial information charging Davis with two counts of criminal mischief and one count of ongoing criminal conduct. On July 29, Davis filed a written arraignment in which he pled not guilty, and on August 2 he waived his right to be brought to trial within ninety days under Iowa Rule of Criminal Procedure 2.33(2)(b).

Davis subsequently filed a motion to suppress certain evidence which was seized during a search of his farm pursuant to a warrant. The district court granted the motion on May 5, 2003. On June 2, the State sought discretionary review of this ruling and on July 3 the Iowa Supreme Court granted the request.¹ Following briefing and argument, on May 12, 2004 the supreme court issued a decision reversing the suppression ruling and on June 8 procedendo issued.

On June 11, 2004, the court entered a handwritten order setting a trial date of August 24, 2004. A series of continuances of the trial date ensued, both upon the motion of the State and of Davis. On December 2, 2005, Davis filed a motion to dismiss based on one-year speedy trial grounds. Following a hearing,

¹ This order stayed all district court proceedings “pending resolution of this appeal.”

the court granted Davis's motion and dismissed the charges against him. The State appeals from this order.

Scope of Review.

We review a trial court's ruling on a motion to dismiss based on speedy-trial grounds for an abuse of discretion. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999); *State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991). However, that discretion is a narrow one, as it relates to circumstances that provide good cause for delay of the trial. *State v. Winters*, 690 N.W.2d 903, 907-08 (Iowa 2005).

Speedy Trial.

Iowa Rule of Criminal Procedure 2.33(2)(c) provides that all criminal cases must be brought to trial within one year after the defendant's initial arraignment unless an extension is granted by the court for good cause. Under our rule, good cause focuses on only one factor, the reason for the delay. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). Delay attributable to a defendant may constitute good cause when it prevents the State from carrying out its obligations to bring him to trial. *State v. Keys*, 535 N.W.2d 783, 787 (Iowa Ct. App. 1995). A defendant may not actively or passively participate in the events that delay his or her trial and then later take advantage of that delay to terminate the prosecution. *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992).

"The State, not the defendant, must see that prosecution is timely and that a trial is afforded within the allowable period." *State v. Lybarger*, 263 N.W.2d 545, 546 (Iowa 1978). The speedy trial guarantee is designed, among other things, "to shorten the disruption of life caused by arrest and the presence of

unresolved criminal charges.” *United States v. MacDonald*, 456 U.S. 1, 8, 102 S. Ct. 1497, 1502, 71 L. Ed. 2d 696, 704 (1982).

As noted, Davis filed a written arraignment on July 29, 2002. Excising the amount of days during which this case was stayed by order of the supreme court, Davis’s one-year period would have expired on July 5, 2004. Thus, when the scheduled trial date of August 24, 2004 arrived—a date which was subsequently extended multiple times—the one-year speedy trial date had already passed.

Waiver. The State first argues that Davis waived the requirement that he be tried within one year of arraignment. It believes that Davis’s waiver of his ninety-day speedy trial rights in conjunction with his (1) acquiescence in the setting of the trial date of August 24, 2004, (2) seeking of at least two continuances, and (3) agreement to various resetting of trial dates, should constitute such a waiver. We disagree.

“[W]aiver is an intentional relinquishment of a known right.” *Huisman v. Miedema*, 644 N.W.2d 321, 324 (Iowa 2002). “It is largely a matter of intent which may be ascertained from a person’s conduct.” *Babb’s, Inc. v. Babb*, 169 N.W.2d 211, 213 (Iowa 1969). The party asserting waiver, here the State, bears the burden of proof. See *Grandon v. Ellingson*, 259 Iowa 514, 521, 144 N.W.2d 898, 903 (1966). The record is insufficient to conclude that Davis relinquished or abandoned such an important right as his speedy trial right.

First, we are unwilling to consider Davis’s waiver of his ninety-day speedy trial rights under rule 2.33(2)(b) to also constitute a waiver of his one-year rights under rule 2.33(2)(c). See *State v. Mary*, 401 N.W.2d 239, 241 (Iowa 1986). Moreover, we do not consider the order which set a trial date of August 24, 2004,

and thus beyond the one-year time frame to have been an acquiescence on the part of Davis. In *State v. Potts*, 240 N.W.2d 654, 656-57 (Iowa 1976), the supreme court considered the defendant's agreement to an untimely trial date to be an acquiescence. However, that court specifically noted that the defendant was present and with counsel when the court set that date. *Id.* at 656. Thus, acquiescence in the trial date could be reasonably inferred. Here, on the other hand, there is no indication that either Davis or his counsel was present when the order setting the trial date beyond the one-year timeframe was entered. Davis raised no objection to the date set.

Good Cause for Extension. The State next maintains good cause existed for the delay in trying Davis such that it should not be prohibited from still pursuing its prosecution. As we previously noted, good cause focuses on only one factor, the reason for the delay. *Nelson*, 600 N.W.2d at 601.

When the supreme court granted the State's application for discretionary review, 338 days on the one-year clock had expired, meaning that when procedendo issued and the stay was lifted, the State had only twenty-seven days remaining in which to try Davis and comply with rule 2.33(2)(c). After the case returned to the trial court, day twenty-seven fell on July 5, 2004. At that time trial had not yet been held; in fact, the trial was then set for August 24, 2004,² a date approximately one-and-a-half months following the expiration of the one-year deadline.

² This trial date was set in a June 11, 2004 hand-written order. As noted above, there is no indication either the defendant or his counsel were present when this date was set or otherwise agreed to it.

While Davis may indeed have agreed to or in fact sought various continuances after the expiration of the one-year timeframe, the significant point is that those continuances were *after* the one year requirement had passed. We thus agree with Davis and find them irrelevant to the main issue, that is, whether good cause existed for the State's failure to try Davis within one year of arraignment. Here, we agree with the district court that the State failed to fulfill its duty. After the February 28, 2003 hearing on Davis's motion to suppress, the State waited an additional forty-five days before filing its own suppression brief. No reason for the delay is apparent. Once the suppression ruling was received, the State filed its application for discretionary review twenty-nine days later. While this was within the time allowed by the rules, the one-year clock continued to run. Given that it is the State's burden to bring Davis to trial within the allowable period, *State v. Palimore*, 246 N.W.2d 295, 297 (Iowa 1976), we affirm the trial court's conclusion that the State failed in its burden to establish good cause for the delay in bringing Davis to trial.

AFFIRMED.