

IN THE COURT OF APPEALS OF IOWA

No. 7-185 / 05-2079
Filed April 25, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL JAY LEWIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Fremont County, G.C. Abel (setting trial date), James S. Heckerman (motion to dismiss), and Jeffrey L. Larson (judgment and sentencing), Judges.

Daniel Jay Lewis appeals from judgments entered on convictions claiming, inter alia, violation of his speedy trial rights. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.**

James R. Cook of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble & Cook, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, and Vicki R. Danley, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Daniel Jay Lewis appeals his convictions in three separate criminal cases arguing the district court erred by denying his motions to dismiss for speedy trial violations. He also claims the district court should have dismissed the pending criminal charges because of prosecutorial misconduct.

I. Facts and Prior Proceedings

On July 20, 2004, the State filed a trial information in case number FECR005801 charging Lewis with the crimes of first-degree kidnapping, first-degree burglary, willful injury, stalking, and violation of a no-contact order. On the same day, in a separate information identified as case number SRCR005800, Lewis was charged with assault causing bodily injury. All charges stemmed from his conduct towards his former girlfriend, Tonya.

One attorney was appointed to represent Lewis for both cases. His trial counsel scheduled a deposition of Tonya for September 16, 2004. On September 14, the county attorney filed a motion with the district court arguing Lewis's defense counsel had a conflict of interest that would not allow her to represent Lewis. In this same motion, the county attorney made a professional statement to the court that defense counsel was seriously ill and in the hospital. The county attorney then cancelled the scheduled deposition.

On September 20 the court held a hearing on the State's motions pertaining to case number FECR005801. Lewis appeared without counsel. After listening to the State's argument and professional statement about defense counsel's illness, the court concluded alternative counsel was necessary. The court then identified an attorney, James Burger, sitting in the courtroom and

asked whether he would be available to represent Lewis. Burger agreed that he “could do it pretty fast.” The court then appointed Burger as substitute counsel for case number FECR005801.

On September 27, 2004, the court entered an order continuing trial on case number FECR005801 until October 26, 2004. The next day, the State filed an additional trial information, labeled FECR005841, charging Lewis with two counts of stalking in violation of a protective order and two counts of tampering with a witness. Burger was also appointed as counsel for this case.

At the October 4 pretrial conference concerning cases SRCR005800 and FECR005801, Burger told the court Lewis did not wish to waive speedy trial. He told the court the ninety-day-speedy-trial deadline would lapse on October 18 and the assigned trial date was improper because it was eight days past the deadline. Burger went on to explain that Lewis “understands the complications that [his former counsel] had but he doesn’t believe that the change in attorneys should cost him his right to trial within 90 days.” The court noted October 26 was the “regular court date for this month,” then, after a brief statement by the county attorney describing previous defense counsel’s maladies, the court found there was good cause to keep the October 26 trial date. In support of its decision, the court noted the “potential conflict or the actual conflict that [prior counsel] had with respect to the representation of Mr. Lewis,” the prior counsel’s illness, and the judicial employee furlough scheduled for October 11, 2004.

Tonya was deposed on October 8, 2004. However, the deposition was not completed because Tonya abruptly ended the deposition and ran out of the building. On October 14 Burger filed a motion to strike Tonya as a witness under

case number FECR005801. The court did not rule on this motion. On October 21 Burger filed a motion to dismiss under case number FECR005801, arguing his right to a speedy trial had been violated.

On October 25, 2004, one day before the scheduled trial, the court held a hearing on cases SRCR005800 and FECR005801. Burger repeated his motion to dismiss for failure to comply with the speedy trial deadline. The court denied this motion, reciting the same "good cause" identified in its October 4 ruling. The court then informed Lewis it was prepared to pick a jury and start trial the next day. The court went on to tell Lewis the following:

you and your attorney need to decide whether or not you are prepared to present and respond to the case in chief as presented by the state and submit your own evidence in response thereto by tomorrow. If you're not, I'll be glad to consider whatever appropriate motions you and Mr. Burger wish to make. But in trying to be consistent with respect to your desires to get this matter resolved one way or another, I intend to pick a jury tomorrow morning.

Speaking directly to the court, Lewis told the court it was not his fault Tonya fled the deposition. He also asked the court how he could go to trial if he did not have all the evidence against him. The court responded:

Because it's my understanding based upon the representation Mr. Burger has made to me that you want this trial to be concluded this week as soon as possible. If you're asking for this – for after we get the jury selected to have the jury come back at some time in the future in order for you to complete discovery, I'll be glad to entertain that. That is not before me at this time.

After a recess, Lewis informed the court that he would now waive his right to a speedy trial. The court responded:

All right. So with respect to the matters we've talked about *that you're waiving any error with respect to the Court's finding of good cause before requesting this matter be continued* and effectively by

virtue of that you're waiving your right to a speedy trial, asking this matter be rescheduled for December 7th; is that correct sir?

(Emphasis added.) Lewis agreed. In response, the court reduced his bond by more than eighty-five percent and ended the hearing. Lewis posted bond and was released from custody that same day.

More than a year later, the parties stipulated to a "trial on the minutes" on specific counts in the three trial informations. The court found Lewis guilty of each of the offenses submitted to the court: first-degree burglary (case FECR005801), stalking (case FECR005841), and assault causing injury (case SRCR005800). Per the agreement, all remaining charges were dismissed.

II. Merits

Lewis argues the court erred when it found there was good cause to delay his trial. We review a trial court's ruling on a motion to dismiss based on speedy trial grounds for abuse of discretion. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). "The discretion to avoid dismissal in a criminal case is limited to the exceptional circumstance where the State carries its burden of showing good cause for the delay." *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983); *see also State v. Winters*, 690 N.W.2d 903, 908 (Iowa 2005) (citing 21A Am. Jur. 2d *Criminal Law* § 1031, at 295 (1998) (stating that statutes and rules implementing the right to a speedy trial should be "strictly construed in favor of the liberty of the citizen, and all doubts are to be resolved in favor of the accused"))).

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

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.

Pursuant to this rule, a criminal charge must be dismissed if trial does not commence within ninety days from the filing of the charging instrument “unless the State proves (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. In *Winters*, Justice Cady indicated our “good cause” analysis focuses on only one factor: the reason for the delay. *Id.* If the reason for the delay is insufficient, other factors such as the length of the delay and prejudice to the defendant “will not avail to avoid dismissal.” *Id.* (internal quotations omitted).

Even though Lewis repeatedly demanded his right to a speedy trial, the State argued the change in defense counsel was adequate justification for delay. The court agreed, finding there was good cause for delay because of a scheduled judicial branch furlough and because substitute defense counsel needed time to get prepared for trial. Upon our review of the record, we find the court erred because neither reason constitutes good cause for delay.

The record does not support the court’s conclusion that substitute defense counsel needed additional time to prepare for trial. Prior to the lapse of the ninety-day deadline, Lewis told the court the change in counsel did not necessitate a delay in his trial. Also, his substitute counsel specifically requested a trial date within the ninety-day time frame. At the time he made this request his substitute trial counsel had already worked on the case for two weeks and there were still two weeks left until the end of the ninety-day period. The evidence

does not support a finding that substitute counsel needed additional time to prepare for trial.

We also find no basis in the argument that a judicial furlough on October 11 precluded an October 18 trial date. As noted by our supreme court, “[w]hen the State contends ‘court congestion’ is the reason for delay, the trial court must distinguish between chronic court congestion and specific circumstances arising out of unique, non-recurring events which create a particular scheduling problem.” *Bond*, 340 N.W.2d at 279. The State never contended court congestion was a reason for delay. The court mentioned the furlough in its ruling, but it did not distinguish the furlough as a unique event that created a particular scheduling problem in this case. Accordingly, we find this also did not constitute “good cause” for delay.

III. Waiver

The State sets forth several arguments contending Lewis waived his right to challenge the good cause finding. We will address each in turn.

Alford Plea. The State contends Lewis waived any claim that the district court erred in denying his motion to dismiss because he entered an *Alford* plea. See *State v. Burgess*, 639 N.W.2d 564, 567 (Iowa 2001) (holding defendant waived challenge based on the speedy indictment rule when she entered an *Alford* plea to the charges against her).

After a thorough review of the transcript of the disputed proceeding, we conclude this was a trial on the minutes, not an *Alford* plea. See *State v. Sayre*, 566 N.W.2d 193, 195-96 (Iowa 1997) (analyzing entire record to determine whether the underlying proceeding was a trial on the minutes or a guilty plea).

The prosecuting attorney identified it as a “trial on the minutes” on several occasions. The court stated it would “review the minutes of testimony attached to the trial informations and rely on those minutes of testimony in determining . . . guilt or innocence on [the] charges.” The court then found Lewis guilty *based only on the minutes of testimony*. Upon our review of the relevant proceeding, we conclude Lewis was convicted pursuant to a trial on the minutes, not an *Alford* plea; therefore he did not waive his right to appeal the denial of his motion to dismiss.

Subsequent Waiver. The State also contends Lewis cannot claim error because, after the court denied his motion to dismiss for speedy trial violations, he waived his right to a speedy trial and specifically waived any further challenge of the court’s speedy trial determination. We find this purported waiver was not voluntary and did not preclude Lewis’s right to appeal the court’s decision. Once the court overruled his motion to dismiss, the court gave Lewis two disagreeable options: (1) begin trial the next morning even though the State’s primary witness refused to be deposed¹ or (2) waive his right to speedy trial *and waive any right he had to challenging the court’s previous “good cause” finding*. The court’s erroneous ruling put Lewis in this situation; we will not deny Lewis’s right to challenge the court’s ruling simply because he chose to continue his trial date so that he could make another attempt to depose the State’s chief witness.

Separate Cases. The State also contends Lewis did not preserve error on each case because he did not file a motion to dismiss in two of the three cases. The State argues these three cases followed “somewhat different paths”

¹ The court had not yet ruled on his motion to strike Tonya as witness.

and implies the court's ruling did not cover all three cases because Burger only filed a written motion to dismiss in case number FECR005801.

We reject the State's attempt to bifurcate the court's "good cause" finding between case numbers SRCR005800 and FECR005801. This argument fails because the court made its "good cause" ruling after considering Burger's oral motion to dismiss for both cases. On the other hand, the charges pertaining to case number FECR005841 were distinct from the two previous cases. The trial information in FECR005841 was filed two months after the trial informations in the aforementioned cases. This case followed a distinct path and was not discussed during the pretrial conference for the other two cases. Because Lewis made no motion to dismiss for a speedy trial violation related to this case, and he applied for several continuances prior to trial, we find no reason to reverse his conviction in case number FECR005841.

IV. Conclusion

Because the State failed to carry its burden to prove good cause, Lewis's motion to dismiss the charges against him on speedy trial grounds should have been granted. See *Nelson*, 600 N.W.2d at 602. Accordingly, we reverse the judgment on his convictions in case numbers SRCR005800 and FECR005801 and remand to the district court to dismiss the corresponding trial informations. *Id.* However, we find no speedy trial violation or prosecutorial misconduct for the charges related to case number FECR005841 and therefore affirm the conviction in that case.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.