IN THE COURT OF APPEALS OF IOWA

No. 8-146 / 07-0307
Filed April 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEVIN DAMEL JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Defendant appeals his convictions for assault while participating in a felony and willful injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Kevin D. Johnson, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Patrick Jennings, County Attorney, and Jill Pitsenbarger, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.

A jury found Kevin Johnson guilty of assault while participating in a felony, in violation of section 708.3 (2005), and willful injury, in violation of section 708.4(2). The district court denied Johnson's motion for new trial and motion in arrest of judgment. Johnson appeals contending the State failed to bring him to trial within the time limit imposed by the Agreement on Detainers Compact, and that his motion for new trial based on insufficient evidence should have been granted. We find the district court was correct in its rulings on these issues, and affirm.

I. Background Facts & Proceedings

On August 30, 2005, Daniel and Abby Martin went for a walk near their apartment in Sioux City. Apparently attracted by an argument Daniel and Abby were having, five men—Kevin Johnson, Adrian Jones, Jeremiah Tillman, Kory McGrew, and Michael Smith—approached them. One of the men said, "Freeze, police." The men held Daniel's hands behind his back and leaned him over a retaining wall as they went through his pockets and removed his wallet and cell phone. The men then hit and kicked Daniel. After letting Daniel up, one of the men told Daniel to hug and kiss his wife, but while he did this the man slapped him across the face, knocking his head into Abby's. Daniel's items were returned to him. Daniel and Abby walked home and called the police.

The incident took place near Smith's house. Police officers arrived shortly after the incident and found Jones, Tillman, McGrew, and Smith on Smith's porch. The men were identified by Abby by their clothing. The four men

implicated Johnson as also being involved in the incident. A Sioux City police officer noticed a man running in the neighborhood at that time and recognized him as Johnson.

Johnson was taken to the police station, where he was questioned by officer Jay Fleckenstein. Johnson initially stated he was standing down the block, saw the incident, and ran away when the police arrived. Johnson then stated he knew Smith was involved and seven or eight other people. After that, Johnson stated he was one of the men in the group that confronted the Martins. He denied any involvement, however, in the physical assaults, and stated he just watched the incident. Finally, Johnson told officer Fleckenstein, "Basically we went over there, slapped up the boy and said, 'Hit us, mother-f***er.'"

Johnson was charged with robbery in the second degree, assault while participating in a felony, and willful injury. Johnson's trial was scheduled for January 10, 2006, but he failed to appear and a warrant was issued for his arrest.

On April 3, 2006, Johnson filed a pro se motion stating he was in custody in Arizona, and was seeking a speedy trial and transfer under the Agreement on Detainers Compact, Iowa Code chapter 821. On April 14, 2006, the Woodbury County Attorney received notice from the Arizona Department of Corrections that Johnson was requesting disposition of the untried charges against him in Iowa. Johnson was transported back to Iowa on June 2.

Johnson's attorney withdrew, and on June 15, 2006, a new attorney was appointed to represent him. On June 29, Johnson and the State agreed the trial should be continued until August 22. Johnson filed a written waiver of his right to

a speedy trial within one year of the initial arraignment. On August 16, Johnson and the State agreed the trial should be continued until October 17. The parties appeared for trial on October 17, but due to an administrative mistake a jury panel had not been called. Johnson, who by then was representing himself, agreed to commence the trial on October 19.

Johnson presented the testimony of Carvelle England, who testified he saw the incident from further down the block. He testified he saw Smith, McGrew, and two individuals he did not know. He said he saw Johnson standing behind Abby, but he was not part of the group punching or kicking Daniel. England admitted he had been smoking marijuana at the time.

After the jury returned its verdict of guilty of assault while participating in a felony and willful injury, the district court denied Johnson's motion in arrest of judgment and for new trial.

Johnson also filed a motion to dismiss, claiming the State had failed to bring him to trial within 180 days as required by section 821.1, the Agreement on Detainers Compact. The district court found the 180-day period began to run on April 14, 2006, and expired on October 11. The court, in a thorough and comprehensive ruling, found there was good cause for continuing the trial past the deadline, and that Johnson had agreed to the continuance. The court denied Johnson's motion to dismiss based on the Agreement on Detainers Compact.

Johnson was sentenced as a habitual offender. He was sentenced to a term of imprisonment not to exceed fifteen years on each count, to be served concurrently. Johnson appeals.

II. Motion to Dismiss

Johnson contends the district court should have granted his motion to dismiss because the State failed to try him in a timely manner under section 821.1. A claim of untimely prosecution under the Agreement on Detainers Compact may be brought at any time, even in a postconviction action. *State v. Ristau*, 305 N.W.2d 499, 500 (Iowa 1981). We review a district court's decision on a motion to dismiss under the statute for the corrections of errors at law. *State v. Webb*, 570 N.W.2d 913, 914 (Iowa 1997).

Iowa Code section 821.1, Article III(a) provides:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within one hundred eighty days after the prisoner shall have caused to be delivered to the prosecuting official and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of the prisoner's imprisonment and the prisoner's request for a final disposition to be made of the indictment, information or complaint: *Provided that for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.*

(Emphasis added).

When a prisoner seeks disposition of pending charges under Article III of section 821.1, "then the prisoner must be brought to trial within 180 days after written notice of the request has been delivered to the prosecutor in the appropriate court of the receiving state." *State v. Widmer-Baum*, 653 N.W.2d 351, 355 (Iowa 2002). In the absence of a continuance or waiver, the charges must be dismissed if the prisoner is not tried within this time period. *Id.* at 359.

The statute should be liberally construed in favor of the prisoner. *State v. Boss*, 320 N.W.2d 824, 827 (Iowa 1982).

The Woodbury County Attorney's office received Johnson's request for disposition of his case on April 14, 2006. The 180-day time period thus expired on October 11. Johnson's criminal trial began on October 19. The State claims Johnson's trial was not untimely under the statute because the district court granted a continuance on August 16, continuing the trial past the 180-day time period. A continuance for good cause suspends the running of the time period. *Ristau*, 305 N.W.2d at 500. Johnson contends that because good cause for the continuance does not appear on the face of the order it did not waive his speedy trial rights under the Agreement on Detainers Compact.

The case had been scheduled for trial on August 22, 2006, which would have been within the 180-day deadline. On August 16, the district court entered an order continuing the case past the deadline based on the agreement of the State and defendant that the case should be continued. At the post-trial hearing, defense counsel stated the defendant was not ready to go to trial on August 22. She also stated Johnson had given her permission to continue the trial, and Johnson agreed with this statement. The record also shows Johnson orally agreed to the continuance of the case from October 17 to October 19.

Section 821.1 does not specifically require that good cause be shown on the continuance order, just that good cause be shown.[1] The record in this case

[1] The district court found counsel for the parties had discussed the continuance in the courtroom at the pretrial conference, and then submitted the joint motion to continue to the judge in his chambers. The court concluded this met the requirement in section 821.1 of "good cause shown in open court." We find no abuse of discretion in the court's

indicates that there was good cause for the continuance. Johnson was not ready for trial on the scheduled trial date in August 2006, and agreed to the continuance.[2] We conclude the district court did not err in finding there was good cause on the record to support the continuance. The time period was suspended by the continuance for good cause. *Widmer-Baum*, 653 N.W.2d at 359. Johnson was not entitled to dismissal of the charges against him based on the Agreement on Detainers Compact.

III. Motion for New Trial

Johnson asserts the district court should have granted his motion for new trial because the jury's verdict was contrary to the weight of the evidence. He states he was convicted under a theory of aiding and abetting or joint criminal conduct. Johnson claims there is insufficient evidence of corroboration of the testimony of the accomplices.

In considering a motion for new trial, if the court concludes the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). A verdict is contrary to the weight of the evidence where a greater amount of credible evidence supports one side of an issue or cause than the other. *Id.* at 659. District courts have wide discretion in ruling on a motion for

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conclusion. *See United States v. Odom*, 674 F.2d 228, 231 (4th Cir. 1982) (finding a joint motion to continue presented in a judge's chambers met the "open court" requirement).

[2] Because the guarantees of the Agreement on Detainers Compact are statutory, rather than constitutional, a defendant does not need to know of the statute's guarantees in order to waive them. *Odom*, 674 F.2d at 230. Thus, even if Johnson did not know when the 180-day time period ended, his agreement to the continuance waived his rights under the statute. *See id.*

new trial, however, this discretion should be exercised with caution and "should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.*

Iowa Rule of Criminal Procedure 2.21(3) provides:

> A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

The corroboration requirement "arises, in part, from concerns about the trustworthiness of such evidence." *State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004). Corroborative evidence may be direct or circumstantial. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). The evidence need not support each element of the offense, but is considered sufficient if it supports some material part of the accomplice's testimony and tends to connect the accused to the crime. *State v. Yeo*, 659 N.W.2d 544, 548 (Iowa 2003).

Jones, Tillman, McGrew, and Smith all testified that Johnson was part of the group that confronted the Martins, held Daniel over a retaining wall, took his wallet, and then hit and kicked him. They testified Johnson was an active participant, and not merely someone who watched the others commit these acts. The accomplices' testimony is corroborated by Johnson's own statements. *See Douglas*, 675 N.W.2d at 572 (noting a defendant's admission may corroborate the testimony of an accomplice). Johnson told detective Fleckenstein that he was part of the group, and stated, "Basically we went over there, slapped up the boy and said, 'Hit us, mother-f***er.'" Furthermore, Johnson told the detective

several different versions of his level of participation in the crimes. A defendant's false story is in itself an indication of guilt. *See State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993).

We conclude the district court did not abuse its discretion by denying Johnson's motion for new trial. The testimony of the accomplices was corroborated by other evidence. Johnson did not show that the jury's verdict was contrary to the weight of the evidence.

IV. Pro Se Claims

Johnson has raised the following claims in a pro se appellate brief: (1) he did not waive his right to a speedy trial under the Agreement on Detainer Compact; (2) the continuance order of August 16, 2006, does not show that it was for "good cause shown in open court;" (3) his right to a speedy trial was protected by chapter 821; and (4) his attorney never agreed to a waiver of his right to a speedy trial.[3] We have already discussed these issues in this opinion, and concluded Johnson was not entitled to have the charges against him dismissed based on a violation of the 180-day deadline of section 821.1.

We affirm Johnson's convictions.

AFFIRMED.

[3] Johnson also filed an amended pro se supplemental brief. This brief was untimely under Iowa Rule of Appellate Procedure 6.13(2), and we will not consider it.