

**IN THE COURT OF APPEALS OF IOWA**

No. 9-276 / 08-1191  
Filed June 17, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**GERALD CLAYTON MULLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Tama County, Patrick R. Grady,  
Judge.

Appellant appeals his conviction for operating while intoxicated (OWI), and asserts that he was denied his right to a speedy trial. **REVERSED AND REMANDED.**

D. Raymond Walton, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ. Potterfield, J. takes no part.

**VOGEL, J.**

After a trial on the minutes of testimony, Gerald Muller appeals his conviction for operating while intoxicated (OWI), in violation of Iowa Code section 321J.2 (2007). He asserts the district court should have granted his motion to dismiss, as he was denied his right to a speedy trial. We agree and reverse.

**I. Background Facts and Proceedings**

On June 9, 2007, Muller was arrested for OWI. The trial information was filed on June 28, starting the ninety-day time period during which he was entitled to be brought to trial. Iowa R. Crim. P. 2.33(2)(b). An order following arraignment set the pretrial conference for August 23 and the trial for September 4.

On August 17, 2007, Muller filed a motion to suppress all evidence obtained from the stop of his vehicle. On August 20, while preserving his right to a speedy trial, Muller filed a motion to continue both the pretrial conference and the trial, indicating his counsel had a scheduling conflict with both days. At the scheduled pretrial conference on August 23, Muller's counsel appeared via telephone conference call with the court and the assistant county attorney. The court noted, "[D]efendant has demanded speedy trial, and a review of the court file reflects that the last date available within the 90-day speedy trial demand period is September 24, 2007." The court then set the motion to suppress for September 7, and reset the pretrial for September 13, and the trial for September 24.

The motion to suppress was heard by the district court, as scheduled on September 7, 2007. On September 13, another district court judge reset the

pretrial conference for September 20 and the trial date of September 24 was confirmed. At the September 20 pretrial conference, while still awaiting a ruling on the motion to suppress, the court found that the “[D]efendant does not wish to proceed to trial without a ruling on his motion to suppress, but asks that trial be re-set as soon as possible.” The order reset the pretrial for October 4 and the trial for October 15, outside the speedy trial deadline. The ruling on the motion to suppress was eventually filed on September 26.

On October 3, 2007, Muller filed a motion to dismiss, asserting a denial of his speedy trial rights. His motion was overruled on October 12, and following a trial on the minutes of testimony, which resulted in a conviction and sentence for OWI, Muller appeals.

## **II. Scope of Review**

We review a district court’s ruling on a motion to dismiss based on speedy-trial grounds for an abuse of discretion. *State v. Winters*, 690 N.W.2d 903, 907 (Iowa 2005). However, in ruling on such motions, that discretion is narrow. *Id.*

## **III. Speedy Trial**

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.

Under this rule, good cause focuses on only one factor: the reason for the delay.

*State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980). It is the State’s burden to demonstrate good cause in order to be excused from the ninety-day trial

requirement. *Id.* at 334. The surrounding circumstances bear on that inquiry only to the extent they relate to the sufficiency of the reason itself. *State v. Campbell*, 714 N.W.2d 622, 627 (Iowa 2006).

The State argues Muller is partly to fault for the delay, because on August 23, 2007, his attorney requested the trial be continued from its scheduled September 4 date, due to scheduling conflicts. We reject that argument, as from that August 23 hearing, more than a month still remained on the speedy trial deadline to the rescheduled trial date of September 24. In denying Muller's motion to dismiss, the district court focused on whether the nineteen days from hearing to ruling (September 7 to September 26), was an unnecessary delay on a relatively routine motion to suppress. The court concluded, "[G]iven that there is no record on what else [the judge] had on her docket during that time frame, I do not find that delay to be unreasonable in the normal course of judicial events."<sup>1</sup>

Generally, a defendant must accept the passage of time that is reasonably necessary for a court to hear and rule on dispositive pretrial motions. *Winters*, 690 N.W.2d at 908 (citing *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999)). However, defendants do not waive their right to be tried within the speedy-trial deadline by filing timely pretrial motions. *Id.* The pretrial process is set up to normally dispose of pretrial motions within the speedy-trial deadline. *Id.* at 908-09.

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<sup>1</sup> The court also found the three-week delay did not cause Muller any prejudice. Such rationale was rejected in *State v. Miller*, 637 N.W.2d 201, 206 (Iowa 2001), as "[t]he burden was on the State in the first instance, to prove 'good cause' for missing the deadline."

In this case, Muller filed his motion to suppress thirty-seven days after arraignment. See Iowa R. Crim. P. 2.11(4) (stating motions generally must be filed no later than forty days after arraignment). From the filing of the motion to suppress to the hearing on the motion, twenty-one days elapsed. After the hearing, another nineteen days passed before the ruling was filed. See Iowa Rule of Criminal Procedure 2.11(8) (requiring pretrial motions “be determined without unreasonable delay”). While the written ruling was factually detailed and well reasoned, a summary decision, with a more expansive ruling to follow, would have sufficed to keep the trial on schedule. Without a ruling just four days before the scheduled trial, Muller declared he did not want to go forward with the trial until he had a ruling on his motion. Consequently, the trial was rescheduled, pushing it beyond the ninety-day limit. In all, from the time Muller filed his motion to suppress to when it was ruled on, forty days elapsed.

Although there appear to be no lengthy gaps in the pretrial progression of the case, our supreme court has repeatedly emphasized a defendant’s right to be brought to trial under the ninety-day speedy trial rule. See, e.g., *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001) (stating that a defendant *must* be brought to trial within ninety days after indictment is found, and unless good cause is shown, the indictment must be dismissed). Any delay causing a violation of a defendant’s right to speedy trial cannot be excused even in light of busy court dockets. *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983) (noting the distinction between “chronic court congestion and specific circumstances arising out of unique, non-recurring events which create a particular scheduling problem,” that

may support the State's burden to show good cause for the delay not attributable to the defendant).

Muller timely filed the motion to suppress, yet the motion was not ruled on for another forty days, therefore the delay was not attributable to Muller. The State did not carry its burden to prove good cause for the delay. *Campbell*, 714 N.W.2d at 628 ("The decisive inquiry in these matters should be whether events that impeded the progress of the case and were attributable to the defendant or to some other good cause for delay served as a matter of practical necessity to move the trial date beyond the initial ninety-day period required by the rule."). Therefore, the district court abused its narrow discretion in overruling Muller's motion to dismiss. *See Winters*, 690 N.W.2d at 907-09.

We reverse the judgment entered upon Muller's conviction and remand to the district court for dismissal of the trial information.

**REVERSED AND REMANDED.**