

IN THE COURT OF APPEALS OF IOWA

No. 8-866 / 07-1784
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM LAWRENCE FILIPPO, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, John S. Mackey,
Judge.

Filippo appeals following his convictions of assault on a peace officer,
eluding, and operating while intoxicated, second offense. **AFFIRMED.**

Judith O'Donohoe, Charles City, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Jesse Marzen, County Attorney, and David Kuehner, Assistant County
Attorney, for appellee.

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

VOGEL, P.J.

William Filippo appeals from his convictions of assault on a peace officer while using or displaying a dangerous weapon in violation of Iowa Code section 708.3A (2007), eluding in violation of Iowa Code section 321.279(1), and operating while intoxicated, second offense in violation of Iowa Code section 321J.2(2).

I. Speedy Trial**A. Iowa Rule of Criminal Procedure 2.33(2)(b).**

Filippo first asserts that the district court should have granted his motion to dismiss because his right to a speedy trial under Iowa rules of criminal procedure was violated. Pursuant to Iowa Rule of Criminal Procedure 2.33(2)(b), a criminal charge must be dismissed if a defendant is not brought to trial within ninety days of his indictment, unless good cause for the delay is shown. We review a trial court's ruling on a motion to dismiss based on speedy trial grounds for abuse of discretion. *State v. Campbell*, 714 N.W.2d 622, 627 (Iowa 2006); *State v. Winters*, 690 N.W.2d 903, 907 (Iowa 2005). "However, that discretion is a narrow one, as it relates to circumstances that provide good cause for delay of the trial." *Campbell*, 714 N.W.2d at 627.

On February 23, 2007, the State filed a criminal complaint against Filippo and a motion to require Filippo's counsel to withdraw, as she had previously represented the trooper-victim. Following a hearing, the State's motion was denied. During subsequent proceedings, additional information came forth regarding defense counsel's conflict of interest that supported the State's motion. On May 22, 2007, the State filed a renewed motion seeking the withdrawal of

Filippo's counsel. On May 29, following a second hearing, the district court recognized the impropriety of defense counsel's representation of Filippo, the prejudice that could befall the State, and granted the State's motion.¹ Because trial was scheduled for the following day, May 30, the trial date was rescheduled beyond the ninety days, which would run on June 3, in order to afford Filippo time to secure and prepare with new counsel. On approximately June 17, 2007, Filippo filed a request with our supreme court for an interlocutory appeal, which was denied on August 14, 2007. On August 21, 2007, the case was tried to the court on the minutes of evidence. The district court found Filippo guilty of assault on a peace officer while using or displaying a dangerous weapon, eluding, and operating while intoxicated, second offense.

In denying Filippo's motion to dismiss on speedy trial grounds, the district court reasoned that the "consideration of the second motion to recuse and ruling thereon during the only possible time frame allotted immediately prior to trial constitutes good cause for delay." We agree. This was not a last-minute attempt by the State to gain additional time prior to trial, but was an ongoing effort to secure unbiased proceedings. Once Filippo's counsel was disqualified, it was necessary to allow additional time for Filippo to acquire new counsel and prepare for trial. See *Campbell*, 714 N.W.2d at 628 ("In determining whether there is good cause for a delay, we focus only on one factor, the reason for the delay."). Thus Filippo's right to a speedy trial was not violated under rule 2.33(2)(b).

¹ Filippo's trial counsel who was ordered to withdraw is now Filippo's appellate counsel.

B. The Constitutional Claim.

Additionally, Filippo contends that his right to a speedy trial was violated under a constitutional analysis. See U.S. Const. amend. VI; *State v. Petersen*, 288 N.W.2d 332, 334 (Iowa 1980) (stating that when determining whether a defendant's constitutional right to a speed trial was violated, we balance four factors: (1) length of delay; (2) reason for delay; (3) defendant's assertion of his right to a speedy trial; and (4) prejudice resulting from the delay); see also Iowa Const. Article 1, § 10; *State v. Hamilton*, 309 N.W.2d 471, 475 (Iowa 1981) (stating that the Article I, section 10 of the Iowa Constitution is implemented in the Iowa rules of criminal procedure); *State v. Orte*, 541 N.W.2d 895, 898 (Iowa Ct. App. 1995) (stating that Article I, section ten of the Iowa Constitution is solidified by the Iowa rules of criminal procedure). However, we conclude that “[n]o serious constitutional speedy trial challenge emerges from the record here” and find this argument without merit. *Petersen*, 288 N.W.2d at 344; See *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999) (“We have observed that [rule 2.33(2)(b)] is more stringent than the constitutional protection delineated in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).”). Thus, there was no constitutional violation of Filippo's right to a speedy trial and his motion to dismiss was properly denied.

II. Sufficiency of the Evidence

Finally, Filippo challenges the sufficiency of the evidence as to his conviction for assault on a peace officer while using or displaying a dangerous weapon. We review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 6.4; *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000);

State v. Chang, 587 N.W.2d 459, 461-62 (Iowa 1998). In order to prove Filippo committed an assault on a peace officer while using or displaying a dangerous weapon, the State was required to prove that (1) Filippo committed an assault as defined in Iowa Code section 708.1; (2) that the person Filippo assaulted was a peace officer and Filippo knew he was a peace officer; and (3) Filippo used or displayed a dangerous weapon in connection with the assault. Iowa Code § 708.3A(2); see Iowa Code § 702.7 (defining a dangerous weapon).

The evidence revealed the following: At approximately 7:30 a.m. on February 16, 2007, numerous 911 calls began reporting a vehicle being driven erratically and at a high rate of speed. Subsequently, Filippo led Iowa State Patrol Trooper Mark Domino, who was in a marked patrol car, on a high speed chase. Trooper Domino pursued Filippo for approximately three miles with his emergency flashers and siren activated.

After witnessing Filippo's extremely erratic driving, Trooper Domino used his patrol car to knock Filippo's vehicle into the median; Filippo then drove his car across both lanes of traffic and into a snowy ditch. Trooper Domino, who was in uniform, ran to the driver's door of Filippo's vehicle, ordered Filippo to turn off the engine and get out of the vehicle, and attempted to open the driver's door to remove Filippo from the vehicle. The door was locked and Trooper Domino returned to the roadway where he pointed his weapon at Filippo and yelled at Filippo multiple times to turn off the vehicle's engine and get out of the car. Trooper Domino stated that Filippo was looking straight at him.

Filippo began rocking his vehicle to free it from the snow and then drove his vehicle straight at Trooper Domino. See *State v. Greene*, 709 N.W.2d 535,

537 (Iowa 2006) (stating an automobile may be a dangerous weapon). Several citizen witnesses stated that Filippo's vehicle came out of the ditch directly at Trooper Domino and that they believed Trooper Domino was going to get hit by the vehicle. Trooper Domino, in fear of his life, shot and wounded Filippo.

We note that the district court found there was an "overwhelming amount of corroborative evidence from numerous motorist eyewitnesses and physical evidence secured from the scene." Upon our review of the record, we agree with the district court that the State proved all the elements of assault on a peace officer while using or displaying a dangerous weapon. We have considered all issues presented and conclude that sufficient evidence supports Filippo's conviction. Thus, we affirm.

AFFIRMED.