

IN THE COURT OF APPEALS OF IOWA

No. 8-977 / 08-0103
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ARNOLD DORAN GRICE,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr.,
Judge.

Defendant appeals his judgment and sentence following his conviction for
three counts of third-degree sexual abuse and one count of delivery of cocaine to
a minor, claiming violation of his right to a speedy trial. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Michael J. Walton, County Attorney, and James Kivi, Assistant County
Attorney, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

Arnold Grice appeals his judgment and sentence following his conviction for three counts of third-degree sexual abuse and one count of delivery of cocaine to a minor. He contends the district court erred in denying his motion to dismiss based on a claimed violation of his right to a speedy trial.

I. Background Facts and Proceedings

The Davenport Police Department learned that a fourteen-year-old girl was possibly being held against her will at a local motel. After police found the girl, they determined that she had ingested cocaine. The girl claimed she engaged in sex acts with two adult men.

The State subsequently charged thirty-three-year old Grice with one count of third-degree sexual abuse, one count of second-degree sexual abuse, and one count of distributing cocaine to a person under the age of eighteen. Three days before the case was scheduled for trial and approximately three weeks before the speedy trial deadline,¹ the State moved to dismiss the trial information “in furtherance of justice.” The district court granted the motion for the reasons stated in the motion.

The State filed a second trial information which contained the original charges as well as two additional counts of third-degree sexual abuse and one

¹ 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.

count of first-degree kidnapping.² Grice moved to dismiss these charges on the ground that the court “had insufficient grounds to grant the dismissal [of the first trial information] and thus defeat [his] right to a speedy trial.” The district court denied the motion.

After the court issued its ruling, Grice agreed to a bench trial. The district court found Grice guilty of three counts of third-degree sexual abuse and the count of distributing cocaine to a minor, but found him not guilty on the remaining counts. Grice appealed following imposition of his sentence.

II. Analysis

Iowa Rule of Criminal Procedure 2.33(1) authorizes the dismissal of a trial information on the court’s own motion or the motion of the State, as follows:

The court, upon its own motion or the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor.

Pertinently, the rule requires the dismissal to be “in the furtherance of justice.” That term includes “facilitating the State in gathering evidence, procuring witnesses, or plea bargaining.” *State v. Fisher*, 351 N.W.2d 798, 801 (Iowa 1984) (quoting *State v. Johnson*, 217 N.W.2d 609, 612 (Iowa 1974)). If the charges are dismissed in the “furtherance of justice,” the rule allows for the “refiling of any charges stemming from felonies or aggravated misdemeanors.”

² This trial information was actually filed two days before the State moved to dismiss the first trial information. Grice does not argue there was error with respect to the timing of this filing.

Id. However, if the charges are dismissed simply to avoid a speedy trial deadline, the charges cannot later be refiled. *Id.*

Grice argues that the district court should have granted his motion to dismiss the second trial information because, in his view, the dismissal of the first trial information “was not in the furtherance of justice or for good cause.”³ Our focus, therefore, is on the reasons for the dismissal of the first trial information.

Our review of that dismissal order is for an abuse of discretion. *State v. Brummage*, 435 N.W.2d 337, 341 (Iowa 1989). Our review of the district court’s denial of Grice’s motion to dismiss is for errors of law. *See State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001).

As noted, the district court’s order dismissing the first trial information simply referred to the reasons set forth in the State’s motion to dismiss. That motion stated the following grounds for dismissal:

- 1) Depositions of the State’s witnesses, including the 15-year-old victim, K.W., were taken the afternoon of June 19, 2007. Deposition testimony of these witnesses, especially victim K.W., supports the filing of additional charges including the wholly new and separate charge of kidnapping in the 1st degree, a class A felony.
- 2) Defendant’s attorney was made aware, on June 19, 2007 and prior to depositions of the potential for additional charges in this case. Defendant’s attorney was, after depositions, specifically informed of the State’s intent to file a new trial information to

³ Rule 2.33(1) does not make reference to “good cause.” That standard is set forth in Rule 2.33(2)(b) which does not directly bear on the question of whether the district court abused its discretion in dismissing the first trial information. However, the Iowa Supreme Court has incorporated a “cause” standard into its analysis under Rule 2.33(1), stating:

[I]f it could be demonstrated that the prior dismissal, regardless of its stated purpose, was *without adequate cause* and that it impacted unfavorably upon a defendant’s speedy trial rights, the resulting delay in prosecution would warrant a dismissal on speedy trial grounds.

State v. Gansz, 403 N.W.2d 778, 780 (Iowa 1987) (emphasis added).

include the charge of kidnapping in the 1st degree and dismiss the present case.

- 3) In addition, another defendant also charged in this incident, Michael Jefferson, entered a plea agreement on June 19, 2007 in which he agreed to testify in proceedings involving this incident and defendant Arnold Grice.
- 4) It would also be in the furtherance of justice to dismiss this cause and proceed pursuant to a new trial information rather than amend the present information. This dismissal is therefore made in good faith. Dismissal of this cause would allow the defendant and the State to gather evidence, procure witnesses or plea bargain. Considering those goals and the severity of penalty for the Class A felony the State has filed, the defendant would not be unduly prejudiced by dismissing this cause.

The district court's subsequent order on Grice's motion to dismiss contained a detailed analysis of these reasons. The court rejected the first reason proffered by the State, writing, "[T]he State's assertion that the deposition of [the minor] provided 'additional facts' supporting the new charge of First Degree Kidnapping is fairly debatable." We find no error or abuse of discretion in the court's analysis. It was clear from the minutes of testimony filed with the first trial information that the State was aware of the possibility that Grice was confining the minor against her will and engaging in sex acts with her, both key elements of first-degree kidnapping. See Iowa Code § 710.1, .2 (2007). Therefore, the State could have charged Grice with kidnapping on the basis of information it had prior to its filing of the first trial information. It did not require the information gleaned from the cited depositions to conclude that such a count was viable.

For the same reason, the second reason cited by the State must fail. The fact that defense counsel was informed the day of the depositions that the State

might add a kidnapping charge is immaterial given the fact that the State could have filed that count earlier.

The State also relied on the fact that co-defendant Michael Jefferson pled guilty and agreed to testify against Grice. In its ruling on Grice's motion to dismiss, the district court found this reason to be in the furtherance of justice. The court stated, "[T]he fact that Jefferson may now testify for the State could have facilitated renewed plea bargaining." The court continued, "[T]he addition of Jefferson as a possible State witness supports the dismissal and re-filing of the *original* charges under Rule 2.33(1)." Again, we discern no error or abuse of discretion in the court's analysis. If Jefferson was willing to testify against Grice, that fact could have affected plea negotiations with Grice.

We recognize that Jefferson was not listed as a witness in the minutes of testimony accompanying the second trial information and did not testify at Grice's trial, and his plea agreement, if it existed, was not made a part of the record. We are not convinced, however, that these omissions required the district court to reject this ground for dismissal of the first trial information. As the Iowa Supreme Court stated, "The fact that a subsequent investigation fails to discover new evidence does not necessarily establish that the prior dismissal was without merit." *State v. Knox*, 464 N.W.2d 445, 446 (Iowa 1990). We believe this language applies equally to the fact that Jefferson's purported plea did not result in a plea by Grice.

The State's fourth proffered reason was essentially a catch-all summary of the reasons approved by our Iowa Supreme Court for a dismissal in the furtherance of justice. See *State v. Hamrick*, 595 N.W.2d 492, 494 (Iowa 1999).

Having discussed the specific grounds raised by the State, we find it unnecessary to address this ground.

We conclude the district court did not err in denying Grice's motion to dismiss the second trial information and did not abuse its discretion in granting the State's motion to dismiss the first trial information.

AFFIRMED.