



STATE OF IOWA, Plaintiff-Appellee, vs. TYREE DONTE COOPER, Defendant-Appellant.

2010 | Cited 0 times | Court of Appeals of Iowa | October 6, 2010

IN THE COURT OF APPEALS OF IOWA

No. 0-681 / 10-0171 Filed October 6, 2010

STATE OF IOWA, Plaintiff-Appellee,

vs.

TYREE DONTE COOPER, Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Denver D. Dillard

(motion to dismiss) and Douglas S. Russell (trial), Judges.

Defendant appeals his conviction for delivery of a controlled substance, crack cocaine, claiming a speedy indictment violation. AFFIRMED.

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

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, Janet M. Lyness, County Attorney, and Meredith L. Rich-Chappell, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Doyle, J., and Huitink, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009). HUITINK, S.J.



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I. Background Facts & Proceedings

The record in this case shows the evidence as follows: On July 2, 2008, a confidential informant purchased crack cocaine from Tyree Cooper in Johnson County. On September 3, 2008, Cooper was convicted in Linn County on separate charges of domestic abuse assault, failure to register as a sex offender, and possession of a controlled substance. He was sentenced on the Linn County charges and placed in the Newton Correctional Facility.

A complaint was filed against Cooper in Johnson County on November 20, 2008, for delivery of a controlled substance (cocaine base) based on the July event. An arrest warrant was issued. Johnson County caused a detainer to be filed against Cooper on February 11, 2009. The arrest warrant was personally served on Cooper at the Newton facility on March 23, 2009. Cooper was transported to Johnson County for his initial appearance on March 24, 2009. The trial information was filed on May 5, 2009.

Cooper filed a motion to dismiss, claiming a violation of his right to speedy indictment under Iowa Rule of Criminal Procedure 2.33(2)(a). He claimed the forty-five day time limit in that rule should begin running on February 11, 2009, when Johnson County filed a detainer because the detainer constituted a request to hold him. He stated it was more than forty-five days from the date the detainer was filed until the trial information was filed on May 5, 2009.

The district court denied the motion to dismiss. The court found the



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detainer did not res held in custody at the Newton facility. The court concluded Cooper was not arrested on the present charges on February 11, 2009. Instead, he was arrested

on March 23, 2009, when the arrest warrant was personally served on him at the

Newton facility. The court found the trial information was filed forty-three days

later. The court determined there had not been any violation of rule 2.33(2)(a).

Cooper waived his right to a jury trial. He stipulated to a bench trial based

on the minutes of testimony. The court found Cooper guilty of delivery of a

controlled substance, crack cocaine, in violation of Iowa Code section

124.401(1)(c)(3) (2007). He was sentenced to a term of imprisonment not to

exceed dismiss.

II. Standard of Review

speedy indictment rule for the correction of errors at law. *State v. Dennison*, 571

substantial evidence unless we determine that the court was wrong as a matter

State v. Lyrek, 385 N.W.2d 248, 250 (Iowa 1986).

III. Merits

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

When an adult is arrested for the commission of a public offense . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the

State v. Lies, 566

N.W.2d 507, 508 (Iowa 1997). Cooper claims he was arrested by Johnson County authorities when they

caused the detainer to be filed against him on February 11, 2009. The detainer



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provided:

A detainer has been filed against this subject in your favor for: FECR085429 Delivery of a Schedule II Controlled Substance; Cocaine. Bond \$10,000 cash or full surety. Expiration is tentatively scheduled for July 19, 2009, however, a release date could be determined by the Parole Board at any time prior to that date. We will notify you approximately 30

Cooper claims he was being held under the detainer because he would have had to file a \$10,000 bond to be released. Cooper asserts that under rule 2.33(2)(a), the State had forty-five days from the date the detainer was filed to file the trial information.

Under rule 2.33(2)(a), an indictment must be filed within forty-five days of

Thus, the

time period begins to run when a person is arrested. See *State v. Edwards*, 571

N.W.2d 497, 499 (Iowa Ct. App. 1997). For this rule, we use the definition of

arrest found in section 804.5. *State v. Beeks*, 428 N.W.2d 307, 309 (Iowa Ct.

Arrest is the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the

Iowa Code § 804.5.

When a person is already incarcerated on other charges, an issue arises

on new charges for purposes of applying the

forty-five day time limit. In *State v. Waters*, 515 N.W.2d 562, 565 (Iowa Ct. App.

1994), the defendant was in jail in Mahaska County. He was served with a Wapello County arrest warrant on October 25, 1991. *Waters*, 515 N.W.2d at

565. He remained in the Mahaska County jail until November 9, 1991, when he



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was submitted to Wapello County officials based on the Wapello County arrest warrant. Id. until he was in the custody of Wapello County officials, which was on November Id. Therefore, the forty-five day time limit began to run on November 9, 1991. Id.

Also, in Beeks, 428 N.W.2d at 308, the defendant was a pretrial detainee in Webster County on October 21, 1986, when the Story County Sheriff asked Webster County to place a hold on defendant, stating there was a warrant and bond was \$28,750. Beeks, 428 N.W.2d at 309. The Story County sheriff took custody of defendant on March 4, 1987. Id. arrested on the Story County charges until he submitted to the custody of the

Id. We noted the defendant was being held on other charges the entire time he was at the Webster County jail. Id. The speedy indictment time began to run on March 4, 1987. Id.

Waters, 515 N.W.2d at 566 (citing Beeks, 428 N.W.2d at 309). We conclude 2.33(2)(a), at the time the detainer was filed. It is clear he was being held at the Newton facility due to the convictions against him in Linn County. He was not at that time under the authority of Johnson County. See Beeks, 428 N.W.2d at 309 We note that in Beeks, a bond amount was set in the document

requesting a hold be placed on the defendant. Id. at 308. This was not a factor the time. Id. at 309. Here, Cooper was not being held due to failure to post bond, as noted above he was in custody at the Newton facility based on the Linn County convictions.



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We conclude the forty-five day time limit for rule 2.33(2)(a) did not begin to run at the time the detainer was filed. At that time Cooper was not in the custody of Johnson County officials. We conclude Cooper has not shown a violation of the speedy indictment rule. We affirm the decision of the district court denying his motion to dismiss.

AFFIRMED.

