

IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-2011

STATE OF IOWA,
Plaintiff-Appellant,

vs.

DEAONSY SMITH, JR.,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DUBUQUE COUNTY
THE HONORABLE MONICA L. ZRINYI WITTIG, JUDGE

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Whether the district court erred in dismissing the State's prosecution.

Authorities

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ROUTING STATEMENT

The State does not seek retention. This appeal can be decided based on existing legal principles and transfer to the Iowa Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3); *State v. Trompeter*, 555 N.W.2d 468, 470 (Iowa 1996); *State v. Edwards*, 571 N.W.2d 497, 501 (Iowa 1997); *State v. Waters*, 515 N.W.2d 562, 565-566 (Iowa Ct. App. 1994); *State v. Beeks*, 428 N.W.2d 307, 309 (Iowa Ct. App. 1988).

STATEMENT OF THE CASE

Nature of the Case

The State appeals after the district court dismissed the State's prosecution against Deaonsy Smith. The Honorable Monica Zrinyi Wittig presided over the relevant proceedings.

Facts and Course of Proceedings

According to the minutes of testimony, on December 8, 2017, at approximately 11:30 p.m., Mary Baal stopped her automobile in front of her residence on West 17th Street in Dubuque, Iowa. 9/17/2019 Mins. of Test. p.1; Conf.App. 8. Outside her home, a man wearing a darkly colored skullcap, coat, and slacks was waving his arms to get her attention. *Id.* The man then approached her vehicle, and she rolled her driver and passenger side windows down to speak with

him. *Id.* The man opened the passenger side door, sat inside, and shut the door. *Id.* Inside the vehicle, the man asked for money to feed his grandchildren. *Id.* When Baal gave him \$20, he demanded more. *Id.* He told her he had a gun and would rape and shoot her. *Id.* He took her purse, emptied it, and then told Baal to drive to an ATM. *Id.* She did so, withdrawing \$200. *Id.* The man then ordered Baal to return to her apartment and show him where she lived. *Id.* He renewed his threats to rape or kill her if she called police, and ordered her to “pull down her pants so she couldn’t follow him out of the vehicle.” *Id.*

Surveillance footage from the banks was recovered. In the footage, an African-American man with a dark colored coat and skullcap can be seen. *Id.* at 2; Conf.App. 9. This individual can be seen wrenching what appeared to be a wallet from Baal’s hand. *Id.* Baal recalled that the individual was difficult to understand and had slanted teeth. *Id.* at 1; Conf.App. 8. She also recalled having a book lamp in the purse the man rifled through, or a different purse. *Id.* at 2; Conf.App. 9.

Earlier in the evening, a related disturbance occurred at 534 Lincoln Avenue in Dubuque. *Id.* at 3; Conf.App. 10. At that time, a stocky African American man had entered the residence attempting

to sell a video game system and insisting he had “kids to feed.” *Id.* Police obtained city traffic camera footage. This footage depicted the man entering and leaving the 534 Lincoln residence and traveling towards West 17th Street. *Id.* A reviewing police officer recognized the man in the footage as Deaonsy Smith, Jr. from a prior encounter. *Id.*

Smith was taken into custody on a different matter on December 22, 2017. *Id.* Police attempted to speak with Smith. They observed his mumbling speech pattern and teeth were consistent with Baal’s description. *Id.* DNA testing comparing Smith’s samples with Baal’s vehicle were inconclusive. *Id.* Baal was shown a photographic lineup but was uncertain. *Id.* A book lamp was in his possession at the time he was booked. *Id.*

On August 7, 2018, the State filed a criminal complaint alleging Smith had committed Robbery in the second degree in violation of Iowa Code section 711.3 (2019). 8/7/2018 Complaint; Conf.App. 5. The district court issued an order for an arrest warrant the same day. 8/7/2018 Order to Issue; 8/8/2018 Warrant; App. 6–8.

Although the August 2018 arrest warrant had not been served, Smith on his own volition filed a written arraignment and plea of not guilty. 2/8/2019 Written Arraignment; App. 9–10. In it, he stated he

was located at the Fort Dodge Correctional Facility. *Id.* The district court rebuffed the filing, observing the State had not filed a trial information and that arraignment was premature under the rules of criminal procedure. 2/13/2019 Order; App. 11–12; *see generally* Iowa Code § 804.21; Iowa Rs. Crim. P. 2.8(1), 2.8(2)(a); 2.33(2)(a).

On February 21, 2019, Smith filed an application for the appointment of counsel, again indicating he was incarcerated in the Fort Dodge Correctional Facility. 2/21/2019 Application; App. 13–14. This filing was also rejected. The district court held Smith’s application would be addressed and counsel appointed when he appeared before the court pursuant to the arrest warrant. 3/5/2019 Order; App. 15–16.

On March 27, Smith filed a letter asserting his rights to a speedy trial under Iowa Rule of Criminal Procedure 2.33 and requesting “that an attorney be appointed and that he’ll be transported to the Dubuque County Court as soon as possible so this matter may be cleared up.” 3/27/2019 Letter; App. 19–20. Again, the district court took no action, and noted that from the filing “the State is aware of his whereabouts and is free to seek an order for transport.” 3/27/2019 Order; App. 19–20.

Smith filed a motion to dismiss “for lack of due process” on April 5. 4/5/2019 Motion to Dismiss; App. 21. In it, he renewed his request for transport to Dubuque County and further suggested that were the court to “refuse[] the Defendant his Right to a speedy trial and to be heard in this case within 45 days of receiving this Motion . . . the Court will lose jurisdiction for violating the Defendant’s Rights.” *Id.* The district court denied the motion. 4/23/2019 Order; App. 22–23.

On August 12, Smith filed a motion to dismiss the detainer that had been placed upon him arising from the warrant’s existence. 8/12/2019 Motion to Dismiss Detainer p.1, 3; App. 24, 26. Smith requested the court to set a hearing and find the State had not complied with Iowa Code 906.14—a code section relating to detainers. *Id.* at 1; App. 24. Despite the fact that the warrant had still not been served, the district court appointed Smith counsel on August 22. 8/22/2019 Order; 8/26/2019 Appearance; App. 27–29.

Smith’s counsel filed a motion to dismiss on August 28. 8/28/2019 Motion to Dismiss; App. 30–31. Smith alleged that “the whereabouts of the Defendant have been known for over 6 months” and that the State had failed to indict Smith within the 45-day

limitation imposed by Iowa Rule of Criminal Procedure 2.33(2)(a).

Id. The matter was set for hearing on September 12 and Smith was transported to Dubuque County. 9/5/2019 Motion for Transport; 9/9/2019 Order for Transportation; App. 32–35.

On September 12, Smith appeared for the hearing on his motion to dismiss and was served the Dubuque County warrant. 9/12/2019 Warrant Service; App. 38. Smith was then brought before the district court where a joint initial appearance and hearing on his motions to dismiss were heard. *See generally* 9/12/2019 Hearing Tr. To support his claim of prosecutorial delay, Smith referred the district court to *State v. Trompeter*, 555 N.W.2d 468 (Iowa 1996) and *State v. Brown*, 656 N.W.2d 355 (Iowa 2003). Counsel acknowledged “that there is some burden on us to raise an issue” and then offered the following explication of the prejudice Smith suffered from the delay:

It’s also been a hardship to Mr. Smith, but I think under this circumstance when the Court points out in one of its orders that Mr. Smith is in the Fort Dodge Correctional Facility and that the State can have him transported, I believe that was almost six months ago, and nothing was done, I think those things do create hardship. And I think the delay has been purposeful. It’s been to his detriment. *Exactly what detriment, I don’t know at this point, because I’ve not been able to meet that much*

with Mr. Smith regarding any possible defense he may have.

...

And we believe that is what has happened here. The delay has been unreasonable, and because of that delay, Mr. Smith's defense has been prejudiced and perhaps could be compromised. And given those circumstances, the charge of Robbery in the Second Degree which he's facing should be dismissed.

...

And in the meantime, the case gets older and older and memories fade. That's one of the main reasons why we have the speedy trial rule, is because that is a tool to the State and the Defendant, so the Defendant is not prejudiced by an undue delay. We recognize the fact that the statute of limitations, the charge was filed over a year ago, but they have known his whereabouts, and the delay is completely unconscionable.

9/12/2019 Hearing Tr. p.6 line 23–p.10 line 16 (emphasis added).

The State filed a written resistance to Smith's motion to dismiss on September 14. 9/14/2019 Resistance; App. 41–43. In the resistance, the State argued that *Brown* and *Trompeter* each required Smith to establish actual prejudice and that generalized claims would not meet this burden. 9/14/2019 Resistance p.2; App. 42. The State filed its trial information and minutes of testimony on September 17,

five days after Smith was served the warrant and arrested. 9/17/2019
Trial Inf.; 9/17/2019 Mins. of Test; App. 44–45; Conf.App. 8–12.

On October 31, the district court dismissed the prosecution. In
the order dismissing the case, the district court found

There is spoliation of evidence now. Witnesses’
memories have faded now. His ability to assert
an alibi has been extinguished. His ability to
defend the allegations has been compromised
or even destroyed due to the delay.

...

The State offered no reason why the complaint
was not filed in December of 2017. It offered no
justification for waiting to file the complaint
eight (8) months later. It offered no excuse for
not having the warrant executed while the
Defendant was in the custody of the Director of
Adult Corrections.

...

[T]he complaint filed herein is dismissed and
the prosecution must cease as the Defendant’s
preaccusatorial delay violated the Defendant’s
due process rights. His fifth amendment rights
have been violated. His speedy trial rights have
also been violated. The delay was
unconscionable based on the facts recited
herein.

10/31/2019 Dismissal Order p.2–3; App. 47–48.

The State filed a timely notice of appeal on December 2, 2019.
12/2/2019 Notice; App. 50.

ARGUMENT

I. Smith presented no evidence of prejudice. The district court erred in dismissing this case pursuant to the Fifth Amendment to the United States Constitution and Iowa Rule of Criminal Procedure 2.33(2).

Preservation of Error

Smith moved for dismissal on the grounds that the State failed to have a trial within speedy trial deadline as well as that the State failed to indict Smith within the forty-five-day deadline created by Iowa Rule of Criminal Procedure 2.33(2). 8/28/2019 Motion to Dismiss p.1–2; App. 30–31. The district court concluded the “prosecution must cease” and dismissed the case on both due process and right to speedy trial rationales. 10/31/2019 Dismissal Order p.3; App. 46–49. Error was preserved.

Standard of Review

Review of the district court’s determination that Smith’s constitutional right to due process is reviewed de novo. *See Trompeter*, 555 N.W.2d at 470; *State v. Edwards*, 571 N.W.2d 497, 501 (Iowa 1997). Review of the district court’s determination the State violated Smith’s right to speedy indictment under Iowa Rule of Criminal Procedure 2.33(2) is for errors at law. *Edwards*, 571 N.W.2d at 499.

Merits

The district court concluded the State's delay in filing a trial information against Smith while he was incarcerated in another correctional facility violated the Fifth Amendment and Iowa Rule of Criminal Procedure 2.33. It was incorrect on both counts and the State addresses each in turn.

A. To establish a Fifth Amendment violation, Smith was required to establish “actual prejudice.” He did not meet this heavy burden and the district court erred in granting relief.

The district court found the delay in serving a warrant and filing the trial information violated Smith's due process rights under the Fifth Amendment. 10/31/2019 Dismissal Order p.2–3; App. 47–48. This is not so.

“There is no constitutional right to be arrested and charged at the precise moment probable cause comes into existence.”

Trompeter, 555 N.W.2d at 470 (citing *Hoffa v. United States*, 385 U.S. 293, 310, 87 S. Ct. 408, 417, 17 L. Ed. 2d 374, 386 (1966)).

“[P]rosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied that they will be able to establish the suspect's guilt beyond a reasonable doubt.” *United States v. Lovasco*, 431 U.S. 783, 791 (1977). The statute of limitations

is the primary protection against delayed indictment on state criminal charges. *State v. Sunclades*, 305 N.W.2d 491, 494 (Iowa 1981) overruled on other grounds by *State v. Williams*, 895 N.W.2d 856 (Iowa 2017) (citing *United States v. Marion*, 404 U.S. 307, 322-25 (1971)). A defendant's due process rights are violated where the government delays filing charges intentionally to create a tactical advantage over the accused. *Trompeter*, 555 N.W.2d at 470.

In alleging a delayed indictment due process violation, the “heavy burden” was on Smith to establish both that “(1) the defendant's defense suffered actual prejudice due to a delay in prosecution and (2) the delay causing such prejudice was unreasonable.” *See Brown*, 656 N.W.2d at 363, 363 n.6. The court examines whether the defendant has established prejudice, turning then to the reasons for the delay. *See Edwards*, 571 N.W.2d at 501 (citing *Trompeter*, 555 N.W.2d at 470). “If prejudice is not established, our inquiry ends.” *Id.*; *see also State v. Schneck*, No. 09–1493, 2011 WL 1136278, at *4–*5 (Iowa Ct. App. Mar. 30, 2011) (finding that although there was “some appeal” to defendant's argument that State's purpose in delaying charges was improper,

failure to satisfy burden of demonstrating actual prejudice meant further inquiry was unnecessary).

And Smith's burden is to establish *actual* prejudice. *Edwards*, 571 N.W.2d at 501. "The standard is stringent." *Id.* General claims of prejudice or speculation as to the detriment the delay may have caused is insufficient. *Id.* The reviewing court will not fill any void in the evidence by indulging in presumptions favorable to the defendant. *See State v. Isaac*, 537 N.W.2d 786, 788 (Iowa 1995). Establishing actual prejudice requires the defendant to prove a loss of evidence or testimony has meaningfully impaired his ability to present a defense. *Id.* Even expert testimony on the potential prejudice that results from lost evidence does not satisfy this standard. *See Brown*, 656 N.W.2d at 363. "If the defendant is asserting witnesses are missing as a result of the delay, he must show the witnesses would have provided material evidence for the defense." *State v. Hall*, 395 N.W.2d 640, 643 (Iowa 1986). And this prejudice must also be the result of the State's "intentional attempt to gain a tactical advantage by delaying the initiation of charges." *State v. Wagner*, 410 N.W.2d 207, 210 (Iowa 1987).

This well-established standard requires this Court to correct the district court's error. Dismissal was unwarranted because Smith proved neither element. Smith offered no evidence of prejudice. At all. 9/12/2019 Hearing Tr. p.4 line 1–20. The only assertions of prejudice Smith made at the hearing were the same sort of speculation the United States Supreme Court, the Iowa Supreme Court, and the Iowa Court of Appeals have each rejected. *Compare* 8/12/2019 Hearing Tr. p.5 line 7–15; p.8 line 8–13; p.10 line 4–13 *with Marion*, 404 U.S. at 323–26 (“Appellees rely solely on the real possibility of prejudice inherent in any extended delay: that memories will dim, witnesses become inaccessible, and evidence be lost. In light of the applicable statute of limitations, however, these possibilities are not in themselves enough to demonstrate that appellees cannot receive a fair trial and to therefore justify the dismissal of the indictment.”); *see also Edwards*, 571 N.W.2d at 501–02, 502 n.4 (finding that Edwards failed to meet burden to establish due process violation and specifically observing that the record did not support district court's conclusions); *Brown*, 656 N.W.2d at 363 (defense expert's generalized claims and belief Brown was prejudiced by delay were “too general to support a finding of actual prejudice”); *and State*

v. Barnhart, No. 09–1726, 2010 WL 3503415, at *3–*4 (Iowa Ct. App. Sept. 9, 2010) (reversing district court dismissal on due process grounds where defendant presented “no evidence to show he was prejudiced by the delay”).

Smith’s attorney acknowledged at the hearing he could not identify what prejudice the delay had produced: “I think the delay has been purposeful. It’s been to his detriment. Exactly what detriment, I don’t know at this point, because I’ve not been able to meet that much with Mr. Smith regarding any potential defenses he may have.”

8/12/2019 Hearing Tr. p.7 line 6–10. This was fatal to any preaccusation delay. And it bears noting that when Smith became aware of the existence of the State’s warrant, he took action.

2/8/2019 Arraignment; 2/21/2019 Application for Counsel; 3/27/2019 Motion for Counsel; 4/5/2019 Motion to Dismiss; App. 9–10, 13–14, 19–20, 21. Aware of the charge, Smith also could have started contacting potential witnesses, preparing his defense.

Given the non-existent record of actual prejudice, the district court’s ruling had no evidence to support its conclusions there was spoliation of evidence or that witnesses’ memories had faded.

Compare 9/12/2019 Hearing Tr. p.6 line 23–p.10 line 16 *with*

10/31/2019 Dismissal Order p.3; App. 48. There was nothing presented that would permit the court to conclude Smith could not assert an alibi or defend the State’s accusation. *Id.* Its grant of relief was erroneous. Because no actual prejudice has been shown, examination of the reason for the delay is unnecessary. *See Schneck*, 2011 WL 1136278, at *5. This Court should reverse and remand the matter for reinstatement and trial.

B. Until Smith was brought to Dubuque County, he was not “arrested” for purposes of the speedy indictment right conferred by Iowa Rule of Criminal Procedure 2.33.

The district court also dismissed the prosecution on belief the State violated Smith’s rights under Iowa Rule of Criminal Procedure 2.33. 10/31/2019 Dismissal Order p.3; App. 48. Again, the district court was mistaken. Smith was not arrested until the day the Dubuque County warrant was served—September 12. Accordingly, Rule 2.33 was not applicable prior to this time.

Iowa Rule of Criminal Procedure 2.33 creates a more “stringent” right to speedy indictment and trial than is provided for under the Federal and Iowa Constitutions. *See, e.g., Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). The text of rule 2.33(2)(a) controls speedy indictment and provides that

When an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45, 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 defendant waives the defendant's right thereto.

Iowa's speedy trial right subsequently attaches upon the filing of an indictment or information. Iowa R. Crim. P. 2.33(2)(b) ("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."). Whether the State denied Smith speedy indictment and trial under the rule requires resolving when he was "arrested."

Existing law provides that answer.

Arrest for the purposes of the speedy indictment rule requires the person to be taken into custody in the manner authorized by law. The manner of arrest includes taking the arrested person to a magistrate. The rule is triggered from the time a person is taken into custody, but only when the arrest is completed by taking the person before a magistrate for an initial appearance.

State v. Williams, 895 N.W.2d 856, 867 (Iowa 2017). The filing of a complaint or issuance of a warrant do not trigger the rule’s protections, rather, “[a]n arrest is the triggering event to commence the forty-five-day time period to file an indictment under the rule.” See *State v. Penn-Kennedy*, 862 N.W.2d 384, 387–89 (Iowa 2015) overruled on other grounds by *Williams*, 895 N.W.2d at 866. Smith was not so arrested until he was returned to Dubuque. His arrest on December 21, 2017, was unrelated to this case and would not act as a triggering event. 9/17/2019 Mins. of Test. p.3; Conf.App. 10; *Sunclades*, 305 N.W.2d at 494 (“[T]he time period applies only to the “public offense” for which the defendant was arrested, rather than to all offenses arising from the same incident or episode.”).

A related question then arises—when does a person becomes “arrested” on a new charge when they are already incarcerated in a different county on another charge? This issue too has already been well-litigated by Iowa courts. Under Iowa precedent, a person becomes “arrested” for the new charge when they are transferred to the physical custody of county authorities of the county issuing the arrest warrant. *State v. Waters*, 515 N.W.2d 562, 565-566 (Iowa Ct. App. 1994); *State v. Beeks*, 428 N.W.2d 307, 309 (Iowa Ct. App.

1988); *see also State v. Bartlett*, No. 17–1170, 2018 WL 3301830, at *3–*4 (Iowa Ct. App. July 5, 2018); *Cashen v. State*, No. 16–0038, 2016 WL 6637470, at *1–*2 (Iowa Ct. App. Nov. 9, 2016) (finding counsel did not breach essential duty for failing to raise speedy indictment claim where arrest warrant issued on April 25, 2007, was not served until April 14, 2008; Cashen was in custody of different county on unrelated charges); *State v. Cooper*, No. 10-0171, 2010 WL 3894481, at *1–*3 (Iowa Ct. App. Oct. 6, 2010). Where a defendant is in jail in one county, a “hold” or warrant does not start the forty-five-day indictment clock. *See Beeks*, 428 N.W.2d at 308-309. “A person not in the custody of county authorities is not arrested by the mere bringing of a charge in that county.” *Id.* (citing *State v. Boelman*, 330 N.W.2d 794 (Iowa 1983)).

For example, in *Beeks* the defendant was detained in Webster County on Hamilton County charges. *Beeks*, 428 N.W.2d at 308. On October 21, 1986, the Story County Sheriff asked Webster County to place a hold on defendant, stating there was a warrant for his arrest with a bond in the amount of \$28,750. *Id.* The State filed its trial information on January 21, 1987, and *Beeks* was subsequently transferred and incarcerated at the Anamosa Iowa Men’s

Reformatory in February 1987. Story County took custody of Beeks in March 1987. *Id.* Beeks urged that the State had failed to timely indict him. The Iowa Court of Appeals rejected his speedy indictment challenge; it held Beeks was not “arrested” on the Story County charges until the Story County Sheriff took custody of him. *Id.* at 309; *see also Waters*, 515 N.W.2d at 565–66; *Bartlett*, 2018 WL 3301830, at *1–*3 (although a complaint was filed and warrant issued on Cass County charges in August 2016, defendant held in different counties was not arrested on Cass County charges until personally served and defendant appeared before Cass County magistrate on January 10, 2017). Under the procedural facts of the case, the State had filed its trial information before Beeks was “arrested.” *Id.*

So too here, Smith was not “arrested” until he was served the Dubuque arrest warrant and brought to Dubuque County for an initial appearance. This occurred on September 12 when he was transferred to Dubuque. *See Cooper*, 2010 WL 3894481, at *2–*3 (complaint and detainer placed on individual within Newton Correctional Facility did not initiate speedy indictment clock); *Williams*, 895 N.W.2d at 867 (“Arrest for the purposes of the speedy indictment rule requires the person to be taken into custody in the

manner authorized by law. . . . The rule is triggered from the time a person is taken into custody, but only when the arrest is completed by taking the person before a magistrate for an initial appearance.”). The State’s trial information filed on September 17 was timely. The district court erred in concluding otherwise. Its characterization of the delay in serving the warrant as “unconscionable” does not alter the speedy indictment analysis. 10/31/2019 Dismissal Order p.3; App. 48. Iowa law is clear and this Court must correct the lower court’s error. The order dismissing the State’s prosecution for violating Smith’s speedy trial right should be vacated and the matter remanded.

CONCLUSION

The district court erred in when it concluded the State violated Smith’s due process and speedy trial rights. Smith failed to demonstrate he was prejudiced by the preindictment delay. The forty-five-day timeline Iowa Rule of Criminal Procedure 2.33 provides was not triggered until Smith was placed under “arrest” when he was brought to Dubuque County. This Court should reverse the district court and order this case reinstated.

REQUEST FOR NONORAL SUBMISSION

Given the existing caselaw and minimal record established below, the State does not believe oral argument will assist in the resolution of this case and does not request oral submission.

Respectfully submitted,

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Dated: July 31, 2020



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