IN THE SUPREME COURT OF IOWA

STATE OF IOWA,	)	
	)	
Plaintiff–Appellant,	)	
	)	
v.	)	S.CT. NO. 19–2011
	)	
DEAONSY SMITH, JR.,	)	
	)	
Defendant–Appellee.	)	

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

APPELLEE'S BRIEF AND ARGUMENT
AND
ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

MARY K. CONROY
Assistant Appellate Defender
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

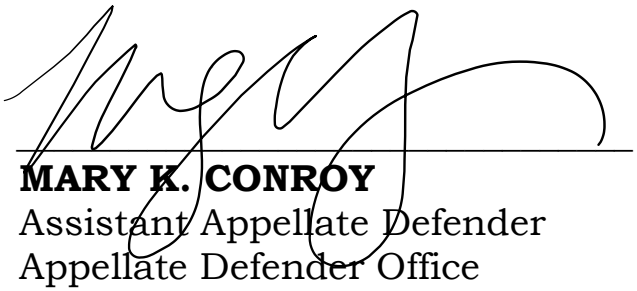
STATE APPELLATE DEFENDER
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT–APPELLEE FINAL

CERTIFICATE OF SERVICE

On the 5th day of August, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant–Appellee by placing one copy thereof in the United States mail, proper postage attached, addressed to Deaonsy Smith, Jr., 724 Lincoln Ave., Dubuque, IA 52001.

STATE APPELLATE DEFENDER



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

MKC/lr/7/20
MKC/sm/8/20

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case because the issues raised involve a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(d) & 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of the Case: The State appeals the district court's grant of the Defendant–Appellee's motion to dismiss in Dubuque County District Court Case No. FECR129964.

Course of Proceedings: The State filed a criminal complaint against Defendant–Appellee Deaonsy Smith, Jr. on August 7, 2018. (Criminal Complaint) (Conf. App. pp. 5–7). On that same date, the district court issued an arrest warrant. (Order Arrest Warrant; Arrest Warrant) (App. pp. 6–8).

On February 8, 2019, Smith filed a written arraignment and plea of not guilty. (Written Arraignment) (App. pp. 9–10). In the filing, Smith listed his current mailing address as the Fort Dodge Correctional Facility. (Written Arraignment) (App. p. 9). Smith also checked a box indicating he demanded a speedy trial pursuant to Iowa Rule of Criminal Procedure

2.33(2)(b). (Written Arraignment) (App. p. 9). On February 13, the district court entered an order finding the arraignment "premature" because "the State has not filed a Trial Information." (Order 02/13/2019) (App. pp. 11–12). The order further stated that the court would take "no action at this time" and would "address Defendant when he has appeared on the warrant." (Order 02/13/2019) (App. pp. 11–12).

On February 21, 2019, Smith filed a document asking that counsel be appointed to represent him. (Application Appointment Counsel) (App. pp. 13–14). The application stated that Smith was incarcerated in the Fort Dodge Correctional Facility. (Application Appointment Counsel) (App. pp. 13–14). Smith stated his "knowledge of the law is very limited, the issues presented are very complex and the resources in the prison law library [are] limited". (Application Appointment Counsel) (App. p. 13). The district court entered an order on March 5, 2019, stating that the court would "address the application and appoint the Defendant counsel

when he appears on the warrant." (Order 03/05/2019) (App. pp. 15–16).

On March 27, 2019, Smith wrote a letter addressed to the court. In the letter, he stated that he had been told he would not receive counsel until he was present in court, but he wrote that "as of the date of this letter I have not been notified of when or if I'll be transported to court." (Letter) (App. p. 17). Smith demanded his right to a speedy trial, citing Iowa Rule of Criminal Procedure 2.33(2)(b) and the Fifth Amendment to the U.S. Constitution. (Letter) (App. p. 17). Smith ended the letter again asking for an attorney to be appointed to represent him "and that he'll be transported to the Dubuqe [sic] County Court as soon as possible so this matter may be cleared up." (Letter) (App. p. 17). That same day, the district court entered an order stating:

> Defendant is again requesting counsel. As previously ordered, the Court will address the request when Defendant appears before the Court on the outstanding warrant.
>
> From the filing, it appears Defendant is in custody in the Fort Dodge Correctional Facility. Accordingly,

> the State is aware of his whereabouts and is free to seek an order for transport. The Court takes no other action at this time.

(Order 03/27/2019) (App. pp. 19–20).

On April 5, 2019, Smith filed a motion to dismiss for lack of due process. (Mot. Dismiss Lack Due Process) (App. p. 21). Smith again asked for a speedy trial and to be transported to Dubuque County immediately. (Mot. Dismiss Lack Due Process) (App. p. 21). On April 23, 2019, the district court denied the motion, stating there was an outstanding warrant. (Order 04/23/2019) (App. pp. 22–23). It also stated: "As the Court has previously noted, once the Defendant is brought before the Court to appear on the warrant, proper action will be taken." (Order 04/23/2019) (App. pp. 22–23).

On August 12, 2019, Smith filed a motion to dismiss the detainer and requested a hearing. (Mot. Dismiss Detainer) (App. pp. 24–26). The motion stated that the State had "[e]ffectively denied this Defendant his right to an immediate trial." (Mot. Dismiss Detainer) (App. p. 24). The motion had a copy of the detainer action letter attached to it, showing the

Dubuque police department filed a detainer against Smith for Case No. FECR129964. (Mot. Dismiss Detainer) (App. p. 26). The letter was dated January 25, 2019. (Mot. Dismiss Detainer) (App. p. 26). The district court appointed counsel and set a hearing. (Order 08/22/2019) (App. pp. 27–28).

On August 28, 2019, Smith's appointed counsel filed a motion to dismiss for violations of speedy trial and speedy indictment, pursuant to Iowa Rule of Criminal Procedure 2.33(2). (Mot. Dismiss) (App. pp. 30–31). Counsel also asked and received an order from the district court ordering the Dubuque County sheriff to transport Smith from the Fort Dodge Correctional Facility to the hearing. (Mot. Transport.; Order Transport.) (App. pp. 32–35).

The State filed a response to Smith's request to dismiss the detainer, agreeing that the parole board could disregard the detainer. (Response) (App. pp. 36–37). In the response, the State recognized Smith was being transported, and it proposed "that the Defendant now be served the arrest

warrant in this case, and stay in the Dubuque County Jail until his case is resolved." (Response) (App. p. 37).

On September 12, 2019, law enforcement served the arrest warrant. (Return Service) (App. p. 38). Later that same day, the district court heard the parties on the motions to dismiss the case and the motion to dismiss the detainer. (Mots. Tr. p.3 L.1–p.13 L.3). At the end of the hearing on the motions, the district court also conducted Smith's initial appearance. (Mots. Tr. p.12 L.1–p.13 L.3). The district court entered an order releasing the detainer issued against Smith on September 14, 2019. (Order 09/14/2019) (App. pp. 39–40).

On September 17, 2019, the State filed a trial information charging Smith with robbery in the second degree, as a habitual offender. (Trial Information) (App. pp. 44–45). Smith was arraigned in open court on October 9, 2019 and again demanded a speedy trial. (Arraignment Tr. p.3 L.1–p.4 L.11).

On October 31, 2019, the district court entered a written order dismissing the case. (Order Dismissal) (App. pp. 46–49). The district court found that the State violated Smith's due process rights, Fifth Amendment rights, and his speedy trial rights by its delay in filing the criminal complaint and failing to serve the arrest warrant when Smith was in the custody of the Department of Corrections. (Order Dismissal) (App. p. 48). The State filed a notice of appeal of the district court's dismissal order on November 2, 2019. (Notice) (App. p. 50).

Facts: All relevant facts are discussed below.

ARGUMENT

THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DISMISSAL OF THE CASE.

A. Preservation of Error: In its brief, the State argues that the district court erred in dismissing the case pursuant to the Fifth Amendment of the United States Constitution and Iowa Rule of Criminal Procedure 2.33(2). (State's Br. pp. 14–25). Smith agrees error was preserved on those claims.

However, the State's brief does not discuss the other bases for the district court's ruling, including the due process of the Iowa Constitution, both the federal and state speedy trial provisions, and Iowa Rule of Criminal Procedure 2.33(1).

The motion to dismiss for lack of due process establishes Smith was trying to protect his constitutional speedy trial rights and that he believed those rights were violated if he was not brought into court and tried; additionally, while Smith alleges his due process rights are being violated by the failure of the State to move forward with the case, he did not cite any constitutional provisions. (Mot. Dismiss Lack Due Process) (App. p. 21). Smith also noted the State's failure to pursue the case against him "effectively denied this Defendant his right to an immediate and/or speedy trial." (Mot. Dismiss Detainer) (App. p. 24). Again, Smith did not cite any constitutional provisions. (Mot. Dismiss Detainer) (App. p. 24). "Where there are parallel constitutional provisions in the federal and state constitutionals and a party does not indicate the specific constitutional basis, . . . both federal and state constitutional

claims are preserved. State v. Harrington, 805 N.W.2d 391, 393 n.3 (Iowa 2011) (citing King v. State, 797 N.W.2d 565, 571 (Iowa 2011)). Such is the case here.

Moreover, while the district court's ruling does not specifically name the Sixth Amendment to the U.S. Constitution or article I, sections 9 and 10 of the Iowa Constitution, the ruling establishes the district court considered these provisions and found the State violated Smith's rights under them. (Order Dismissal) (App. pp. 46–49). The ruling specifically addresses the purpose of the speedy trial criminal procedure rule and *the constitutional provisions*. (Order Dismissal) (App. p. 46–49). It also concluded the State violated Smith's due process *rights* and speedy trial *rights*; it used plural language. (Order Dismissal) (App. pp. 46–49). This use of plural language indicates the district court considered more than just the Fifth Amendment for the due process violation and Rule 2.33(2) for the speedy trial violation.

However, even if error was not adequately preserved on these arguments, this Court should still consider them on appeal. The Iowa Supreme Court has "been willing to relax ordinary rules of issue preservation based on notions of judicial economy and efficiency." Feld v. Borkowski, 790 N.W.2d 72, 84 (Iowa 2010) (Appel, J., concurring in part & dissenting in part); see also DeVoss v. State, 648 N.W.2d 56, 60–63 (Iowa 2002) (noting that the appellate court may affirm an evidentiary ruling where the record reveals an alternate ground for admission of evidence). In addition, the Court has addressed "issues that are 'incident' to a determination of other issues properly presented." Feld, 790 N.W.2d at 84 (citing Presbytery of Se. Iowa v. Harris, 226 N.W.2d 232, 234 (Iowa 1975)). Here, the legal questions of whether the State violated Smith's constitutional rights are necessarily intertwined with the issue of whether the district court properly dismissed the case. As such, the Court should consider and address all of possible bases for affirmance of the district court's dismissal on appeal.

Furthermore, it makes little sense to require Smith to go through yet another hearing on another motion to dismiss when this Court can resolve the argument in this case and on this record. This is not the case where the State would have presented different evidence if counsel made this particular argument in trial court. Cf. State v. Gaskins, 866 N.W.2d 1, 43 n.20 (Iowa 2015) (Waterman, J., dissenting) (noting the State argued that if the defendant had raised the abandonment of the automobile exception in district court, the State could have developed a record at the suppression hearing on that issue); Feld, 790 N.W.2d at 85 ("Nor is this a case where the factual record developed below is inadequate, thereby preventing meaningful appellate review."). Nor is this a case where the State will not be given the opportunity to advocate for its position. Rather, it had the chance to address the district court's bases for its dismissal order in its brief and it will be able to file a reply brief. Accordingly, the general principles behind the error preservation doctrine do not support the notion that this argument cannot be addressed.

Moreover, the interests of judicial economy and efficiency are served if the Court addresses the arguments to Smith's case in this appeal.

B. Standard of Review: Generally, as far as the arguments involve constitutional rights, the Court reviews such claims de novo. State v. Wells, 738 N.W.2d 214 (Iowa 2007) (citation omitted).

The Court reviews a district court's ruling on a motion to dismiss based on speedy-trial grounds for an abuse of discretion. See State v. Winters, 690 N.W.2d 903, 907 (Iowa 2005) (citation omitted).

It reviews interpretations of the speedy indictment rule for errors at law. State v. Williams, 895 N.W.2d 856, 860 (Iowa 2017) (citation omitted). The Court is bound by the district court's factual findings so long as "they are supported by substantial evidence." Id.

In reviewing a claim under Iowa Rule of Criminal Procedure 2.33(1), the Court first reviews whether the statement of reasons for dismissal complied with the rule as a

matter of law. State v. Taeger, 781 N.W.2d 560, 564 (Iowa 2010) (citations omitted). It then considers whether the dismissal was "in the furtherance of justice", which it reviews the district court's decision for an abuse of discretion. See id. (citing State v. Brumage, 435 N.W.2d 337, 441 (Iowa 1989)).

C. Discussion: In this case, the district court correctly found that Smith's due process rights, constitutional speedy trial rights, and statutory speedy trial rights were violated, as well as that the dismissal was in the furtherance of justice. This Court should affirm the district court's decision.

1. Smith's due process rights were violated.

In this case, the district court correctly found that Smith's due process rights were violated, both under the Fifth Amendment to the U.S. Constitution and under article I, section 9 of the Iowa Constitution.

a. Fifth Amendment to the U.S. Constitution

In part, the Fifth Amendment to the United States Constitution states: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." U.S.

Const. amend. V. The due process clause and the statute of limitations serve to protect the defendant against the prejudice that results from the passage of time. See United States v. MacDonald, 456 U.S. 1, 8 (1982). Smith's case was filed within the applicable statute of limitations. Iowa Code § 802.3 (2017) (stating the statute of limitations is three years after the crime's commission).

Under the Fifth Amendment, a defendant can prove a pre-accusatorial delay violated his due process rights by establishing: "(1) the delay was unreasonable; and (2) the defendant's defense was prejudiced by the delay." State v. Trompeter, 555 N.W.2d 468, 470 (Iowa 1996) (citations omitted). Under this test, the defendant does need to show prejudice, and the court balances the length of the delay and any valid reason for it against the resulting prejudice to the defendant. Id.

Here both the pre-accusatorial delay—before the State filed the criminal complaint—and the post-accusatorial delay—after the State filed the complaint—violated Smith's

due process rights under the Fifth Amendment. The district court correctly found that both the State's failure to timely file the criminal complaint and to serve the warrant on Smith were unreasonable. The State knew where Smith was for a substantial period prior to filing the criminal complaint and/or arresting him on the warrant. Dubuque law enforcement took Smith into custody on December 21, 2017. See (Criminal Complaint; Order Dismissal) (Conf. App. pp. 5–7; App. pp. 46-49). The district court found its records showed that law enforcement, asked for, received, and executed a search warrant based on this case's allegations on December 27, 2017.[1] (Order Dismissal) (App. p. 47). The application for the search warrant shows the county attorney's office was involved with and signed off on the application. The district court

[1] In doing so, it appears the district court judicially noticed the information contained in the court's own records. See Iowa R. Evid. 5.201(f) (2019) (allowing a court to take judicial notice of facts that can "be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); Smith asks this Court to take judicial notice of the case and filings in Dubuque Co. SWCR128617, which contain the information referred to by the district court.

noted the application and search warrant inexplicably were not filed with the Clerk of Court until May 15, 2018, several months after the warrant's execution; nor was the criminal complaint filed until three months after that, in August of 2018. (Order Dismissal) (App. p. 47).

Additionally, the district court correctly noted that this was not a case where additional investigation delayed the filing of criminal charges. See State v. Trompeter, 555 N.W.2d 468, 470 (Iowa 1996) (citation omitted). Nor did the State claim such was the case or give any other explanation for the delay. (Order Dismissal) (App. pp. 47–48); see id. (listing other legitimate reasons that could justify a delay in bring criminal charges). Rather, the record establishes that the investigation was complete in December of 2017. See (Criminal Complaint; Order Dismissal) (Conf. App. pp. 5–7; App. pp. 47–48) (noting the officers had interviewed the victim, obtained video footage, interviewed the defendant, and executed a search warrant); (Mins. Test.) (Conf. App. pp. 8–12).

Moreover, it appears Smith remained incarcerated since December 21, 2017, eventually going to prison because of offenses in Dubuque County. See also Offender Information, Iowa Department of Corrections, https://doc.iowa.gov/offender/view/6261836 (last visited July 2, 2020) (showing Smith's probation in Dubuque County ending on March 4, 2018 and he was serving a prison sentence stemming from charges out of Dubuque County until paroled on them on September 12, 2019). Thus, at the time the criminal complaint was filed and the arrest warrant issued, the State—both the police department and the county attorney's office—should have known where Smith was located because they were the ones to prosecute his cases. Even if somehow this knowledge could be excused, the record affirmatively establishes both the police department and the County Attorney's office knew Smith was incarcerated at the Fort Dodge Penitentiary on or before January 25, 2018 and on February 8, 2019, respectively. See (Written Arraignment; Mot. Dismiss Detainer) (App. pp. 9–10, 24–26); see also (Order

Dismissal) (App. p. 47) (noting copies of the filings were sent to both the County Attorney's office and to law enforcement).

Based on these circumstances, the district court did not err in finding that the delay of nearly eight months until the filing of the criminal complaint was unreasonable. Moreover, it correctly also considered the amount of the time it took to serve the warrant on Smith—more than thirteen months—after the filing of the criminal complaint, in finding that delay was also unreasonable.

Iowa courts have acknowledged that a defendant suffers prejudice when the delay in the State's pursuit of the charge effectively denies the defendant the ability to receive concurrent sentences. See, e.g., State v. Bass, 320 N.W.2d 824, 831 (Iowa 1982); Trompeter, 555 N.W.2d at 471. Accordingly, Smith was prejudiced by the delay of twenty-one months from the date of the offense until the arrest date because the delay prevented him the opportunity of having almost two years of the new charge run concurrently to the Dubuque County charges that sent him to prison.

Additionally, Smith was prejudiced because the detainer filed by the State prevented him from being paroled on the offense for which he was incarcerated. See State v. Widmer–Baum, 653 N.W.2d 351, 355 n.3 (Iowa 2002) (citation omitted) (noting prisoners with detainers are "serious disadvantaged", often in close custody and ineligible for work assignments). The Iowa Department of Corrections paroled Smith on September 12, 2019, the same day he was finally arrested on the Dubuque County warrant. See (Return Service) (App. p. 38); Offender Information, Iowa Department of Corrections, https://doc.iowa.gov/offender/view/6261836 (last visited July 2, 2020).

The State also suggests that Smith was not prejudiced because he could have started preparing his defense by contacting potential witnesses. (State's Br. p. 19). However, this argument ignores the Iowa Supreme Court's recognition that an incarcerated individual awaiting trial is "hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." Krogmann v. State, 914 N.W.2d 293,

309 (Iowa 2018) (citation omitted) ("It is well-established that pretrial release can impact the ability of an accused to defendant in a criminal proceeding. As was noted long ago, [t]he detainee is more apt to be convicted than if he were free on bail; and, if convicted, he is more apt to receive a tougher sentence." (internal quotation marks omitted)); Widmer-Baum, 653 N.W. at 355 n.3 (citation omitted) ("He is in custody and therefore in no position to seek witnesses or to preserve his defense."). Prisoner phone calls cost money, and Smith is indigent. See Peter Wagner & Alexi Jones, State of Phone Justice: Local jails, state prisons and private phone providers, https://www.prisonpolicy.org/phones/state_of_phone_justice.html (Feb. 2019) (noting that while prison phone costs have decreased in the last decade, some county jails still cost nearly $1 per minute, and that even though the cost has decreased many people living in poverty are subjected to unconscionable fees because they do not have bank accounts). Tracking down witnesses often takes a skilled investigator making face-to-face contact with an individual at his/her

home or place of employment; something an incarcerated person cannot do. Here, Smith tried to get an attorney, who could begin to contact witnesses and preserve evidence for him, but the district court would not appoint one to represent him. Nor would the State serve him with the arrest warrant, which would have prompted the appointment of counsel and allowed counsel to start preparing his defense. As an incarcerated individual, with limited financial means and legal knowledge, it cannot be fairly said that he could preserve evidence and adequately prepare his defense from prison. See Krogmann, 914 N.W.2d at 309; Widmer-Baum, 653 N.W. at 355 n.3.

The district court considered the lengths of the delays in the State's filing of the criminal complaint and serving the arrest warrant on Smith despite knowledge of his whereabouts. (Dismissal Order) (App. pp. 46-49). It also considered the total failure of the State to provide any legitimate reason for either delay. (Dismissal Order) (App. pp. 46–48). In weighing those against the resulting prejudice to

Smith, the district court correctly found that the State violated Smith's Fifth Amendment rights, and dismissal was warranted. See Trompeter, 555 N.W.2d at 470.

b. Article I, section 9

Even if this Court finds that the district court erred in granting Smith's motion to dismiss under the federal constitution, it should affirm the district court's ruling under the Iowa Constitution. Article I, section 9 of the Iowa Constitution provides:

> The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

Iowa Const. art. I, § 9. The Iowa Supreme Court has the discretion to construe the Iowa Constitution to provide "greater protection for [its] citizens' rights." Schmidt v. State, 909 N.W.2d 778, 793 (Iowa 2018) (citing Nguyen v. State, 878 N.W.2d 744, 755 (Iowa 2016)).

As Justice Cady once noted, "Our Iowa Constitution . . . was designed to be the primary defense for individual rights,

with the United States Constitution Bill of Rights serving only as a second layer of protection . . . ." Mark S. Cady, A Pioneer's Constitution: How Iowa's Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Liberties, 60 Drake L. Rev. 1133, 1145 (2012). "Historically the Iowa Constitution has been, and continues to be, a vital check on government encroachment of individual rights." Schmidt, 909 N.W.2d at 881 (Mansfield, J., dissenting). Accordingly, the Court has "found the due process clause of article I, section 9 enforceable in a wide variety of settings.'" Godfrey v. State, 898 N.W.2d 844, 879 (Iowa 2017); see, e.g., Schmidt, 909 N.W.2d at 790–95 (recognizing the right of a post-conviction application to assert a freestanding claim of actual innocence under article I, section 9 despite the applicant's guilty plea); State v. Cox, 781 N.W.2d 757, 769 (Iowa 2010) (finding a statute permitting the admissions of prior bad against an individual other than the victim violated a defendant's due process rights under the Iowa Constitution). "Iowa courts have ensured . . . that 'the

right given may be enjoyed and protected.'" Godfrey, 898 N.W.2d at 879 (citation omitted). "The Iowa constitutional provision regarding due process of law is thus not a mere hortatory command, but it has been implemented, day in and day out, for many, many years." Id.

Article I, section 9 protects a defendant's right to fundamental fairness in judicial proceedings. See State v. Young, 863 N.W.2d 249, 256 (Iowa 2015); State v. Becker, 818 N.W.2d 135, 149 (citation omitted), overruled on other grounds by Alcala v. Marriott Int'l. Inc., 880 N.W.2d 699 (Iowa 2016). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). To provide the protections of the clause, the Court "must adjust and incorporate what we know to best facilitate a system that is fair and seeks justice." State v. Booth-Harris, 942 N.W.2d 562, 600 (Iowa 2020) (Appel, J., dissenting).

This Court should find that a defendant need not prove actual prejudice in order to establish a due process violation

under the Iowa Constitution. First, as discussed below in the speedy trial sections, in many cases the prejudice arising from delay is extremely hard to identify and prove. See State v. Olson, 528 N.W.2d 651, 654 (Iowa Ct. App. 1995) (citing Doggett v. United States, 505 U.S. 647, 655 (1992)). Moreover, the kind of prejudice that stems from the delay is frequently "diminished memories and loss of exculpatory evidence", which can skew the fairness of the criminal justice system and puts the parties on unequal footing. Id. Because the federal test requires a showing of actual prejudice, it is nearly impossible to prove a due process violation. See United States v. Huntley, 976 F.2d 1287, 1290 (9th Cir. 1992); United States v. Mays, 549 F.2d 670, 682 (9th Cir. 1977) (Ely, J., dissenting) ("My Brothers strain to the uttermost limits in arguing that the death or dimmed memories of potential defense witnesses does not actually prejudice a defendant unless he can demonstrate the extent to which these witnesses would have testified, respectively, had they lived or had their memories remained unobscured. The obvious

question . . . is in what manner can a defendant show that particular witnesses, no longer available or laboring under stale memories, could enhance his defense if the government had proceeded through the indictment judiciously? The obvious answer, in the overwhelming number of cases is, I should think, that the summoning affidavits from buried bodies or dimmed minds will be insurmountable.").

Rather than requiring actual prejudice, the Court should apply an approach more similar to a totality-of-the-circumstances test. Such a method would recognize the deficiencies in the federal test and provide more protection under the Iowa Constitution, which is consistent with the history and implementation of article I, section 9. See Godfrey, 898 N.W.2d at 879. The district court should be allowed to examine all relevant factors, such as the reasonableness of the delay, the State's reasons for why the delay occurred, and any bad faith, reckless disregard for the defendant's rights, or negligence on the part of the State in pursuing the case. This approach would more adequately

ensure fundamental fairness to defendants and facilitate justice. See Young, 863 N.W.2d at 256; Booth-Harris, 942 N.W.2d at 600.

Examining all the relevant factors in this case, the Court should conclude that the State violated Smith's state constitutional due process rights. As discussed above, in total the State delayed arresting Smith for twenty-one months, eight of which occurred from offense to the filing of the criminal complaint, with an additional thirteen months from the criminal complaint until arrest. (Order Dismissal) (App. pp. 46–48). The State offered no explanation or reason for either delay. (Order Dismissal) (App. pp. 46–48). The State's lack of action in this case show an utter disregard for Smith's rights. See Atwood v. Vilsack, 725 N.W.2d 641, 647 (Iowa 2006) (citation omitted) ("[D]ue process principles preclude the government "from engaging in conduct that 'shocks the conscience,' or interferes with rights 'implicit in the concept of ordered liberty.'"). It is unconscionable that the State would refuse to serve an arrest warrant on someone who is already

incarcerated in Iowa and attempting to resolve the pending case against him and effectuate his constitutional rights; this is particularly true of the county attorney's office, which owes a duty to the defendant, is supposed to protect society's interest in bringing swift prosecutions, and has a duty to do justice. See State v. Plain, 898 N.W.2d 801, 818 (Iowa 2017) (citations omitted); State v. Gorham, 206 N.W.2d 908, 911 (Iowa 1973); Misek v. State, 450 P.2d 856, 857 (Okla. Crim. App. 1969) ("Where criminal charges have been filed . . . the district attorney has a constitutional duty to make a diligent, good faith effort to bring the accused before the court for trial."). The State's actions in this case violated Smith's right to due process. See State v. Musser, 721 N.W.2d 734 (Iowa 2006) (noting due process is violated when the prosecutor's conduct deprives the defendant of a fair trial); Plain, 898 N.W.2d at 819 (citation omitted) (noting prosecutorial error or misconduct can violate a defendant's right to due process); B. John Burns, Due Process, 4 Iowa Practice Series Criminal Procedure § 38:5 (2020) (noting prosecutorial delay in certain

matters can deny due process when there is prosecutorial bad faith). The State can "hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice . . . ." Doggett, 505 U.S. at 657. Accordingly, the Court should affirm the district court's dismissal order.

Additionally, the district court in this case failed to remedy the State's delay in bringing Smith into court. The district court could have done two different things to secure Smith's due process rights—both of which Smith specifically asked it to do. First, the district court could have set an initial appearance order and entered a transport order, thus forcing the State to serve the arrest warrant on Smith. Alternatively, the district court could have appointed counsel for Smith, who then could have moved for an initial appearance and transport order, which again, would have forced the State to serve the arrest warrant. See State v. Newsom, 414 N.W.2d 354 (Iowa 1987) (citations omitted) ("[The right to counsel] constitutional

guarantee is designed to provide for the fair administration of our adversarial system of criminal justice by equalizing the imbalance between the government's power and the average defendant's lack of professional skills."). The district court's statements at the dismissal hearing indicate her concerns that the court also contributed to the delay in this case. (Dismissal Tr. p.10 L.17–p.11 L.6). The Court should also find that the due process clause of the Iowa Constitution allows a dismissal when the court has also failed to effectuate the defendant's rights, as it did in this case.

2. Smith's speedy trial rights were violated.

This Court should affirm the district court's dismissal of this case because Smith's rights to a speedy trial under both the federal and state constitutions, as well as Iowa Rule of Criminal Procedure 2.33, were violated.

a. Sixth Amendment to the U.S. Constitution

The Sixth Amendment to the U.S. Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." U.S. Const. amend. VI. This amendment applies to state prosecutions through the Fourteenth Amendment. Klopfer v. North Carolina, 386 U.S. 213, 221–26 (1967) (citations omitted). In Iowa, a criminal prosecution may be commenced by the filing of "a complaint before a magistrate. Iowa Code § 804.1(1) (2017); see also id. § 804.1(13) ("'Prosecution'" means the commencement, including the filing of a complaint, and continuance of a criminal proceeding, and pursuit of that proceeding to final judgment on behalf of the state or other political subdivision."). Accordingly, Iowa courts have found that the protections of the Sixth Amendments apply once a criminal complaint has been filed. State v. Green, 896 N.W.2d 770, 776–77 (Iowa 2017) (citations omitted) ("[I]n applying the Sixth Amendment . . . we have held that the criminal prosecution

required by the text of the clause applies once a complaint has been filed and an arrest warrant has been issued.").

The U.S. Supreme Court has noted the right to a speedy trial ensures that "all accused person be treated according to decent and fair procedures." Barker, 407 U.S. at 519. It has also recognized that delay can "appreciably harm[] the defendant's ability to defend himself", and it affects the defendant by causing anxiety and "community suspicion". Id. at 526–27. It was also "designed to minimize the possibility of lengthy incarceration prior to trial . . . and to shorten the disruption of life . . . ." MacDonald, 102 U.S. at 8. The Iowa Supreme Court has recognized that, with respect to an incarcerated individual,

> a prolonged delay may subject the accused to an emotional stress that can be presumed to result in the ordinary person from uncertainties in the prospect of facing public trial or of receiving a sentence longer than, or consecutive to, the one he is presently serving—uncertainties that a prompt trial removed.

State v. Johnson, 217 N.W.2d 609, 612 (Iowa 1974) (citation omitted).

Recognizing these interests, the U.S. Supreme Court, in Barker v. Wingo, 407 U.S. 514, 529–30 (1972), set forth a balancing test, in which the conduct of both the prosecution and the defendant are weighed, to determine whether there is a Sixth Amendment violation of the right to a speedy trial. Barker v. Wingo, 407 U.S. 514, 529–30 (1972). The Court listed several factors for the court to consider when assessing whether a defendant's speedy trial rights were violated: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; (4) prejudice to the defendant. Id. at 530. The Court stated this rule "places the primary burden on the courts and the prosecutors to assure that the cases are brought to trial." Id. at 529. No one factor is a "necessary or sufficient condition to the finding of a deprivation of the right of speedy trial", but all factors "must be considered with such other circumstances as may be relevant." Id. at 533. Lastly, the Court noted that "because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the

accused's interest in a speedy trial is specifically affirmed in the Constitution." Id.

The Supreme Court noted that the length of the delay that was a nebulous factor, which largely depended on the individual circumstances of a particular case. The Court noted: "We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate." Baker, 470 U.S. at 521. However, notably, the U.S. Supreme Court recognized that the First Circuit found there was a presumptive prejudice after a delay of nine months when the prosecution did not give a good reason for the delay. See Barker, 407 U.S. at 530 n.31 (citing United States v. Butler, 426 F.2d 1275, 1277 (1970)). In this case, there was a delay of more than thirteen months until the State served the arrest warrant after filing the criminal complaint. (Criminal Complaint; Return Service) (Conf. App. pp. 5–7; App. p. 38). In the end, the district court dismissed the case after roughly fifteen months had passed since the filing of the criminal complaint. (Criminal Complaint; Order Dismissal) (Conf. App.

pp. 5–7; App. pp. 46-49). The State did not attempt to bring Smith to trial in a timely matter, so prejudice may be presumed.

Additionally, in applying this factor, Iowa courts have examined "whether the government or the criminal defendant is more to blame for the delay." State v. Anderson, No. 11–1991, 2012 WL 5356105, at *5 (Iowa Ct. App. Oct. 31, 2012) (unpublished table decision). Here, the government is entirely to blame for the delay in this case. Smith's status as an incarcerated individual does not relieve the State of its burden to provide him a speedy trial. See State v. Taylor, 881 N.W.2d 72, 78 (Iowa 2016) (noting the majority of states and federal courts find that a State cannot deny an accused of a speedy trial even if the accused is incarcerated in the State for a prior conviction and sentence); Hottle v. Dist. Ct. for Clinton Cnty., 11 N.W.2d 30, 32 (Iowa 1943) ("One serving a sentence in the penitentiary is entitled to a speedy trial of other crimes with which he is charged.").

As discussed above, both law enforcement and the county attorney's office should have known Smith's location prior to even filing the criminal complaint, as he was incarcerated on charges that Dubuque County arrested him for and prosecuted him. (Order Dismissal) (App. pp. 47–48); see also Offender Information, Iowa Department of Corrections, https://doc.iowa.gov/offender/view/6261836 (last visited July 2, 2020). Additionally, the record affirmatively establishes that the State knew where Smith was for a substantial period of time before executing the search warrant. The police department knew where Smith was incarcerated in Fort Dodge at least as early as January 25, 2019—the date of the letter informing Smith that the police department placed a detainer on him. (Mot. Dismiss Detainer) (App. p. 26). Smith himself informed the court that he was a prisoner at the Fort Dodge Correctional Facility in early February 2019, and both the county attorney's office and the police department received a copy of the filing through EDMS. (Order Dismissal) (App. p. 47). By Smith's court filings, the

State was put on actual notice of not only of Smith's whereabouts of Smith's whereabouts but also the fact that he was trying to effectuate his right to a speedy trial. (Written Arraignment; Order Dismissal) (App. pp. 9, 47–48). Yet, the State delayed arresting Smith and bringing him into court for a speedy trial. (Return Service) (App. p. 38). Accordingly, this factor should be heavily weighed against the State and for a finding that Smith's right to a speedy trial was violated. See Zimmerman v. Super. Ct., 56 Cal. Rptr. 226, 231 (Cal Ct. App. 1967) (finding the State deprived the defendant of his constitutional right to a speedy trial after it neglected to bring him to trial within a reasonable time after receiving the prisoner's request for a trial on the charges); see also Daughterty v. Solicitor for Highland Cnty., 267 N.E.2d 431 (Ohio 1971) (per curiam) ("Where an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities . . . that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The

failure of the authorities to do so constitutes the denial of a speedy trial.").

The U.S. Supreme Court also noted that the second factor—the reason for the delay—is closely related to the length of the delay. Barker, 407 U.S. at 531. The Court noted that a "deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government" while "a more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered." Id. In this case, the district court correctly noted that the State gave no reason for why it had delayed filing the criminal complaint, nor did the State give any explanation why it refused to serve the arrest warrant on Smith. See Olson, 528 N.W.2d at 654 ("[T]he reason for the delay dealt solely with the failure of the State to execute the arrest warrant. The circumstances surrounding the failure to execute the warrant are not favorable to the State in the analysis."). Moreover, as discussed above, this was not a case where the prosecution was delayed because the

State was still investigating the crime. See Barker, 407 U.S. at 531 (noting the State may be able to justify a long delay for a complex case more readily than a an "ordinary street crime").

In a case such as this, where the State fails to give any explanation for the delay, the Court should presume a deliberate attempt to hamper the defense. It is extremely unlikely that the State would ever admit to delaying the prosecution in an attempt to hamper the defense, so the fact that the State remained silent is telling. Moreover, the record indicates more than mere negligence on the part of the State. First, Smith was in the custody of the State of Iowa at the time the criminal complaint was filed. Not only was he in the State of Iowa's custody, he was incarcerated due to charges *prosecuted by Dubuque County*. The police department knew where Smith was and put a detainer on him. (Mot. Dismiss Detainer) (App. p. 26). The county attorney's office was also specifically reminded of Smith's whereabouts when it received a copy of his filings on EDMS. (Order Dismissal) (App. p. 47). The State should have checked to see if Smith was in custody

when the arrest warrant issued. The failure to do so may be mere negligence. However, the State's inaction in this case, despite clearly knowing where Smith was and his attempts to effectuate his rights, and the State's failure to even weakly defend its actions, should be heavily weighed against the State and for a finding that Smith's right to a speedy trial was violated.

The third factor—the defendant's assertion of his speedy trial rights—also heavily weighs in favor of finding a violation of the Sixth Amendment. The Supreme Court has identified that the framers were trying to protect three separate interests of criminal defendants with the right to a speedy trial: (1) "to prevent oppressive pretrial incarceration;" (2) "to minimize anxiety and concern of the accused; and" (3) "to limit the possibility that the defense will be impaired." Id. at 532. Here, Smith adamantly and repeatedly invoked his right to a speedy trial. (Written Arraignment; Letter; Mot. Dismiss Lack Due Process; Mot. Dismiss Detainer) (App. pp. 9, 17, 21, 24); see Hottle, 11 N.W.2d at 32 (noting a person that has not been

arrested may demand his constitutional right to a speedy trial). The courts give this factor particular weight in their analysis; it is the most important consideration of the test. See, e.g., Barker, 404 N.W.2d at 534 (noting that the fact that the defendant did not want a speedy trial was "[m]ore important than the absence of serious prejudice"); Doggett, 505 U.S. at 653–54 (noting if the defendant knew of the indictment and did not invoke his speedy trial right it would weigh heavily against him but noting the government's concession that the defendant was not aware of the indictment prior to his arrest).

The last factor the Court examines is prejudice to the defendant. "Affirmative proof of a particular type of prejudice is not required . . . ." Olson, 528 N.W.2d at 654 (citing Doggett, 505 U.S. at 655). This principle is in recognition that the prejudice that "results from an impaired defense is the most difficult type of speedy trial prejudice to prove because the harm associated with the passage of time can scarcely be shown." Id. Accordingly, the Court recognizes that an

extensive delay "'presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.'" Doggett, 505 U.S. 647 at 655. Here, Smith was prejudiced by the impairment of his defense "due to diminished memories and loss of exculpatory evidence." Olson, 528 N.W.2d at 654 (citation omitted). "This form of prejudice is actually considered the most serious since the inability of an accused to adequately prepare his or her case 'skews the fairness of the entire system.'" Id. Additionally, Smith was prejudiced to the extent he lost the possibility of receiving concurrent sentences and was delayed in being paroled, as discussed above. The Iowa Supreme Court has noted:

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from "undue and oppressive incarceration prior to trial." But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is

> serving may be forever lost if trial of the pending charge is postponed.

Bass, 320 N.W.2d at 831 (quoting Smith v. Hooey, 393 U.S. 374, 378 (1969)). The impact of prejudice "grows with the length of the delay involved in the case, and the reason for the delay." Olson, 528 N.W.2d at 664 (citation omitted). Here, the State gave no justification for the substantial delay in this case.

The record establishes there was a substantial delay, the State did not even attempt to put forth any reason for the delay, Smith asserted his right to a speedy trial, and Smith was prejudiced. See Barker, 407 U.S. at 530. In weighing the conduct of the State and Smith, the district court correctly found that the State violated Smith's right to a speedy trial under the Sixth Amendment.

b. Article I, section 10 of the Iowa Constitution

Article I, section 10 of the Iowa Constitution provides:

> In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation

> against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

Iowa Const. art. I, § 10. This provision's purpose is "to correct the imbalance between the position of the accused and the powerful forces of the State in a criminal prosecution." State v. Newsom, 414 N.W.2d 354, 359 (Iowa 1987). "Two of [Iowa's] earliest cases noted that the framers intended article I, section 10 to provide rights to criminal defendants who are at risk of incarceration." State v. Senn, 882 N.W.2d 1, 10–11 (Iowa 2016). In order to effectuate this purpose, the Iowa Supreme Court has broadly construed section 10. Newsom, 414 N.W.2d at 359; Green, 896 N.W.2d at 775 n.1 (noting that the textual difference and the inclusion of the "cases portion" of section 10 supports the proposition it provides broader rights than the Sixth Amendment).

Even if the Sixth Amendment's protections did not apply to Smith, the protections of article I, section 10 would because Smith was accused at the time of the filing of the criminal

complaint. "Plainly and indisputably, the language of article I, section 10 is more expansive than the "all criminal prosecutions" language of the Sixth Amendment." Allison v. State, 914 N.W.2d 866, 884 (Iowa 2018). The broader "cases" language, along with "accused", of the Iowa constitutional provision establish the provision applies to Smith under these circumstances. See Green, 896 N.W.2d 770 ("Furthermore, we recognize that the "cases" language of article I, section 10 reflects that the right[s contained within] can exist even without the filing of formal or informal charges."). Other states have determined that a defendant is entitled to the protections of the state's constitutional speedy trial provision after a criminal complaint is filed. See, e.g., Jacobson v. Winter, 415 P.2d 297 (Idaho 1966); Commonwealth v. Butler, 985 N.E.2d 377, 712 (Mass. 2013); see also Turner v. United States, 885 F.3d 949, 958–59 (6th Cir. 2018) (Bush, J., concurring dubitante) (noting that founding-era dictionaries support the conclusion that framers understood "accused" to have a broader meaning than indicted).

In considering a similar fact pattern to this case, the Idaho Supreme Court found the incarcerated individual was denied a speedy trial under the Idaho Constitution. Jacobson, 415 P.2d at 297–300. Criminal complaints against the individual were filed on March 6, 1964, approximately a week after the crimes' commission in Elmore County. Id. at 298. Meanwhile, a different county in Idaho arrested the individual on a probation violation, and he went to prison on that violation. Id. On July 24, 1964, Elmore County officials filed a "hold" order[2] on the individual. Id. While in prison, the man wrote two letters to the State requesting that he be given a speedy trial on September 24, 1964 and December 18, 1964. Id. The individual was only arrested on February 24, 1965 after the district court authorized the transport of the prisoner to Elmore County. Id. The Idaho Supreme Court stated:

> Our constitutional provision makes no distinctions as to type of cases in which the right to speedy trial is guaranteed, but provides it for 'all criminal prosecutions.' It further provides that the 'party accused' is granted this right. A party is accused

[2] A "hold order" appears to be the equivalent of the detainer filed against Smith in this case.

> when a criminal complaint is filed against him. Under the constitutional provisions no logical conclusion can be reached other than that the time within which an accused is to be secured in his right to a speedy trial must be computed from the time the complaint is filed against him.

Id. at 300 (internal citations omitted). The Court then went on to find that when the State knows the whereabouts of the defendant, that time should be considered in determining whether the defendant was afforded a speedy trial. Id. The Court affirmed the district court's dismissal of the defendant's charges, noting that there was nothing in the record that explained why there was almost an entire year between the filing of the criminal complaints and the defendant's arrest. Id.

Smith's case is indistinguishable to the case considered by the Idaho Supreme Court. The Iowa Supreme Court has stated:

> The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly exposed. If the case for the prosecution calls on the accused to meet charges rather than rest on the infirmities of the prosecution's case, as is the defendant's right, the

> time to meet them is when the case is fresh. Stale claims have never been favored by the law, and far less so in criminal cases. Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial.

Gorham, 206 N.W.2d at 910 (citation omitted). In this case, Smith attempted to meet the prosecution's case once he discovered a criminal complaint accused him of a crime. It was his right to do so, and it was the duty of the State to provide him with a prompt trial; a duty it disregarded. See id. The State should bear the burden of its failure to pursue the charges, not a defendant who actively attempted to resolve the charges. If the purpose of section 10 is to correct the imbalance between Smith and the State, it must be applied in order to allow for Smith to invoke its protections, including the right to a speedy trial, once the State has filed a criminal complaint against him, thus accusing him of a crime and beginning the criminal prosecution. See Newsom, 414 N.W.2d at 359. Thus, this Court should affirm the district court's

dismissal because the State violated Smith's right to a speedy trial under article I, section 10.

c. Iowa Rule of Criminal Procedure 2.33(2)

Iowa Rule of Criminal Procedure 2.33(2) "implements the speedy trial guarantees found in both the State and Federal Constitutions." Ennenga v. State, 812 N.W.2d 696, 698 (Iowa 2012). In part, it provides:

> 2.33(2) *Speedy trial.* It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this rule may be made by the prosecuting attorney or the defendant or by the court on its own motion.
>
> a. 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 defendant waives the defendant's right thereto.
>
> 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.
>
> c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause.

Iowa R. Crim. P. 2.33(1), (2) (2017). "Since 1851, the legislature has implemented this guarantee by requiring a court to dismiss a criminal prosecution when the State fails to indict [and try] an accused in a timely manner, unless the State can show good cause for that failure." Ennenga v. State, 812 N.W.2d at 701. "The legislature reaffirmed its commitment to this principle in 1976, which was the same year the legislature authorized [the Supreme Court] to promulgate changes to the rules of procedure." Id. (citations omitted). The language of the rule has not been altered since 1978. Compare Iowa R. Crim. P. 2.33 (2017), with Iowa R. Crim. P. 27 (1979).

The Iowa Supreme Court has repeatedly stated that the criminal rule of procedure is "more stringent than its constitutional counterpart recognized in Barker v. Wingo . . . ." State v. Miller, 637 N.W.2d 201, 204 (Iowa 2001) (citations omitted). As such, the Court does not analyze a rule 2.33 violation under Barker's balancing test. Id. Rather, rule 2.33

requires dismissal unless "the defendant has waived speedy trial, the delay is attributable to the defendant, or other 'good cause' exists for the delay." Miller, 637 N.W.2d at 204 (citation omitted). "The burden of proving an exception to the rule's deadline rests squarely with the State." Id.

Applying this test, the Court should find the district court also correctly dismissed the case, finding a rule 2.33 violation. Smith clearly and vigorously asserted his right to a speedy trial several times. Nor was there is any delay attributable to the defendant. See Taylor, 881 N.W.2d at 78–79 (noting that incarceration in the same state is not good cause to avoid the speedy trial deadlines of rule 2.33). Rather, the opposite: Smith did everything he could think of to advance the criminal proceedings. He filed a written arraignment and plea of not guilty. (Written Arraignment) (App. pp. 9–10). He filed an application for counsel, asking the court appoint him an attorney to assist him in resolving his case. (Application Appointment Counsel) (App. pp. 13–14). He wrote a letter to the Clerk of Court asking for an attorney and

demanding a speedy trial and indictment pursuant to rule 2.33. (Letter) (App. pp. 17–18). He filed a motion asking that he be transported to have a speedy trial and to "settle this case speedily." (Mot. Dismiss Lack Due Process) (App. p. 21).

"From 1851 to 1978, the statutory window of time to file an indictment under Iowa law commenced from the time the defendant was 'held to answer.'" See State v. Williams, 895 N.W.2d 856, 860 (Iowa 2017) (citation omitted). A defendant was "held to answer" in one of two ways: (1) appearing in front of a magistrate who bound the charges over by determining probable cause existed or (2) by the defendant's waiver of the preliminary hearing. See id. Being "held to answer" triggered the protections of what is now Rule 2.33. In Williams, the Court determined that a defendant must be "held to answer" in order to invoke the protections of Rule 2.33. See id. at 865.

In this case, the Court should find the defendant was "held to answer". See State v. McNeal, 897 N.W.2d 697, 703 (Iowa 2017) (citation omitted) (internal quotation marks omitted) ("Statutes and rules implementing the right to a

speedy trial receive a liberal construction deigned to effectuate [their] purpose of protecting citizens' liberty."). Smith appeared in the case by filing documents in the court case. See (Dismissal Tr. p.5 L.17–19). In particular, he filed a written arraignment and plea of not guilty on February 8, 2019. (Written Arraignment) (App. pp. 9–10). In doing so, he accepted that probable cause for the charge existed and waived his right to a preliminary hearing. As such, he was "held to answer" as required under Rule 2.33. See id. at 865. Additionally, a district associate judge already determined that there was probable cause to believe that the offense had been committed by Smith. (Order Arrest Warrant) (App. pp. 6–7). The Court should also find Smith triggered the protections of rule 2.33 by his filings under these circumstances in the "sound administration of justice" in order to protect the interests of defendants in this situation and to prevent the State's abuse of its power to bring (or fail to bring) incarcerated defendants into court. See Young, 863 N.W.2d at 256 (noting the court has considerable discretion in

supervising the operation of the judicial branch); State v. Tyler, 873 N.W.2d 741 (Iowa 2016) (reversing a general verdict when a possible basis of conviction was unsupported by sufficient evidence as a matter of sound judicial administration).

Furthermore, as discussed above, the State gave no reason for its delay in effectuating Smith's arrest. The record also establishes that the State knew or should have known where Smith was the entire time of the criminal proceeding. Dubuque law enforcement took Smith into custody on a different case on December 21, 2017. (Criminal Complaint; Order Dismissal) (Conf. App. pp. 5–7; App. pp. 46-49). The local police department clearly knew where Smith was on or before January 25, 2019, as the Department of Corrections sent Smith a notification letter that Dubuque had placed a detainer on him. (Mot. Dismiss Detainer) (App. p. 26). See Butler, 985 N.E.2d at 715 ("The Commonwealth, in the performance of its public trust . . . [has] some 'duty to coordinate the efforts of its various criminal divisions.

Therefore, the Commonwealth cannot elude accountability for the delay in this case even though the prosecution was not responsible for the issuance of the complaint or the lodging of the warrant against the defendant while he was incarcerated."). The County Attorney's Office itself was on notice of his incarceration at the Fort Dodge Correctional Facility at the absolute latest on February 8, 2019, when Smith filed a written arraignment and plea of not guilty in the case. (Written Arraignment; Order Dismissal) (App. pp. 9, 47–48).

The State did not file a trial information until September 18, 2019. (Trial Information) (App. pp. 44–45). It did not offer any excuse or good cause for the delay in filing the information. Nor did it offer any good cause for failing to bring Smith to trial within ninety days. As such, the district court correctly dismissed the case pursuant to rule 2.33(2). See Miller, 637 N.W.2d at 204.

3. The district court dismissed the case within its discretion pursuant to Iowa Rule of Criminal Procedure 2.33(1).

Another basis for the court's dismissal is provided in Iowa Rule of Criminal Procedure 2.33(1). The rule states:

> 2.33(1) *Dismissal generally; effect.* 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. . . .

Iowa R. Crim. P. 2.33(1) (2017). Accordingly, the rules vests the trial court "with the discretion to dismiss, upon its own motion, any pending criminal prosecution in the furtherance of justice." State v. Lundeen, 297 N.W.2d 232, 235 (Iowa 1980). While this power should only be used sparingly, the rule specifically authorizes the district court to dismiss sua sponte "in the furtherance of justice". Iowa R. Crim. P. 2.33(1) (2017); see also Brumage, 435 N.W.2d at 340.

Courts have dismissed cases under rule 2.33(1) as a remedy for the State's misdeeds. See State v. Swartz, 541

N.W.2d 533, 540 (Iowa Ct. App. 1995) (noting trial courts have the discretion to dismiss the case in response to prosecutorial misconduct); State v. Spurgin, 2016 WL 6902822, at *1–3 (Iowa Ct. App. Nov. 23, 2016) (unpublished table decision) (affirming the district court's dismissal with prejudice after a disqualified county attorney filed the trial information). The district court's ruling shows it was troubled by first by the failure of the State to timely file the complaint, but also by the State's utter disregard of Smith's wishes to resolve the case and refusal to serve the arrest warrant on Smith. The district court's dismissal reflects its concerns that the State circumvented Smith's fundamental "right to a prompt inquiry" into his criminal charges and violated its "duty . . . to provide a prompt trial." See State v. Gorham, 206 N.W.2d at 910; see also Barker, 407 U.S. at 527 (stating that "society's representatives are the ones that should protect" the interest in bringing swift prosecutions"). A review of the court's decision establishes that the court examined several factors it should have when determining whether the case should be

dismissed in the interests of justice. See Brumage, 435 N.W.2d at 340 (listing factors). The district court examined that the prosecution's case was built on eyewitness testimony, and that its failure to act effectively stripped Smith of the opportunity to challenge such testimony or provide an alibi, depriving him of being able to get additional evidence for the trial. (Order Dismissal) (App. p. 48). See id. The district court also considered the fact that Smith was already incarcerated. (Order Dismissal) (App. pp. 48). See id.

Moreover, the district court's dismissal may have been a remedy for its earlier improper refusal to appoint counsel who could have facilitated Smith being arrested and promptly tried and started an investigation into the case, thus preserving helpful evidence to Smith's defense. See Green, 896 N.W.2d at 776 (internal citations omitted) (alteration in original) ("In short, the constitutional right to counsel provides 'an aid to the understanding and protection of [other] constitutional rights,' and is 'indispensable to the fair administration of our adversary system of justice.'"); see also Barker, 407 U.S. at

529 (noting the courts, along with the prosecutors, have a duty to effectuate a defendant's speedy trial rights); State v. Nelson, 600 N.W.2d 598, 601–02 (Iowa 1999) (finding the district court's actions violated the defendant's right to a speedy trial). Notably, the judge that dismissed the case was the judge that appointed counsel and set a hearing for Smith. (Order 08/22/2019) (App. pp. 27–28). This same judge and one other failed to appoint counsel or bring Smith into court in Dubuque County, which would have forced the State to serve the warrant, despite Smith's requests to the court. (Order 2/13/2019; Order 03/05/2019; Order 03/27/2019; Order 04/23/2019) (App. pp. 11–12, 15–16, 19–20, 22–23). At the dismissal hearing, the district court noted that her initial just followed the prior order stating the court would wait until Smith was arrested to take any action; she stated that "we have had it as a disagreement amongst the three District Court judges about how to handle this." (Dismissal Tr. p.10 L.17–p.11 L.6). Thus, the judge's statements and actions indicate she believed the court also played a role in failing to

do justice by Smith and she furthering the interests of justice by dismissing the case.

The district court's order sets forth her reasoning and rationale for the dismissal, and it leans heavily on the State's abuse of the system to delay arresting Smith, despite Smith being in the State's custody already and attempting to diligently pursue the case. This Court should find the district court's dismissal under these circumstances is in the furtherance of justice and was not an abuse of discretion. See Taeger, 781 N.W.2d at 564. Accordingly, the Court affirm the order dismissing the case. Alternatively, if the Court believes the record is not adequate to determine whether the trial court properly exercised its discretion in dismissing the case pursuant to Rule 2.33(1), it should remand for further development. See Lundeen, 297 N.W.2d at 235–36.

CONCLUSION

For the reasons discuss above, Defendant–Appellee Deaonsy Smith, Jr. respectfully requests this Court affirm the ruling of the district court.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $5.43, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us