

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA,  
Plaintiff-Appellee,

v.

BRIANNA SUE WATSON,  
Defendant-Appellant.

Sup. Ct. No. 20-1423

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CHICKASAW COUNTY  
HONORABLE RICHARD D. STOCHL, JUDGE

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APPELLANT'S BRIEF AND ARGUMENT  
AND  
REQUEST FOR ORAL ARGUMENT

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FINAL

## **TABLE OF CONTENTS**

	<u>Page</u>
Table of Contents .....	2
Table of Authorities .....	4
Statement of the Issues Presented for Review .....	6
Routing Statement .....	8
Statement of the Case .....	8
Statement of the Facts .....	9
Argument .....	13
A. Preservation of Error .....	13
B. Scope of Review .....	14
C. Appellant’s Contentions .....	15
1. The speedy-indictment clock started to run from the date when Watson was served with citations for indictable offenses .....	17
2. COVID-19 alone cannot be good cause for district courts to excuse the State’s failure to comply with the speedy-indictment requirements of Iowa Rule of Criminal Procedure 2.33(2)(a) when the State itself never claimed COVID-19 was the cause of its failure and the Iowa Supreme Court already allowed for the COVID-19 pandemic and its impact on court services by extending the speedy-indictment deadline from 45 days to 60 days and, despite the COVID-19 pandemic, deliberately maintained a 60-day speedy-indictment deadline ...	22
Conclusion .....	26

Request for Oral Argument.....26

Certificate of Cost .....26

Certificate of Compliance with Typeface Requirements and  
Type-Volume Limitation .....26

Certificate of Service .....27

## TABLE OF AUTHORITIES

<b><u>Cases:</u></b>	<u>Page</u>
<i>Ennenga v. State</i> , 812 N.W.2d 696 (Iowa 2012) .....	16
<i>State v. O’Bryan</i> , 522 N.W.2d 103 (Iowa Ct. App. 1994) .....	17–20, 23
<i>Schmidt v. State</i> , 909 N.W.2d 778 (Iowa 2018) .....	16, 24
<i>State v. Schuessler</i> , 561 N.W.2d 40 (Iowa 1997) .....	16–17, 19
<i>State v. Utter</i> , 803 N.W.2d 647 (Iowa 2011) .....	15–19, 23–25
<i>Weizberg v. City of Des Moines</i> , 923 N.W.2d 200 (Iowa 2018) .....	14
<i>State v. Williams</i> , 895 N.W.2d 856, 860 (Iowa 2017) .....	14, 20–22
<i>State v. Wing</i> , 791 N.W.2d 243, 246–47 (Iowa 2010) .....	15
<i>State v. Wright</i> , 441 N.W.2d 364, 366 (Iowa 1989) .....	13
<b><u>Constitutional Provisions:</u></b>	
Iowa Const. Art. I § 9 .....	15
Iowa Const. Art. I § 10 .....	14–15
U.S. Const. amend VI.....	14–15
U.S. Const. amend XIV .....	15

**Statutes and Court Rules:**

Iowa Code Chapter 804 ..... 21–22

Iowa Code § 805.1(4) ..... 17–18

Iowa R. Crim. P. 2.33(2)(a) ..... 6–7, 15–17, 22

Iowa R. App. P. 6.901(1)(d) ..... 27

Iowa R. App. P. 6.903(1)(d) ..... 26

Iowa R. App. P. 6.903(1)(g)(1) ..... 26

Iowa R. App. P. 6.903(2)(d) ..... 8

Iowa R. App. P. 6.903(2)(j) ..... 26

Iowa R. App. P. 6.1101(2)(a) ..... 8

Iowa R. App. P. 6.1101(2)(d) ..... 8

**Other Authorities:**

Iowa Supreme Court Administrative Order re: Impact  
of COVID-19 on Court Services (March 17, 2020) ..... 16, 24

Iowa Supreme Court Administrative Order re: Impact  
of COVID-19 on Court Services (April 2, 2020) ..... 16, 24

Iowa Supreme Court Administrative Order re: Impact  
of COVID-19 on Court Services (May 22, 2020) ..... 16, 24

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- 1. For purpose of the speedy-indictment requirements of Iowa Rule of Criminal Procedure 2.33(2)(a) when a person is issued a citation in lieu of arrest for an indictable offense, is the date of “arrest” the date when the citation was served on the accused person?**

### Authorities

Iowa R. Crim. P. 2.33(2)(a)

*Ennenga v. State*, 812 N.W.2d 696 (Iowa 2012)

*State v. O’Bryan*, 522 N.W.2d 103 (Iowa Ct. App. 1994)

*State v. Schuessler*, 561 N.W.2d 40 (Iowa 1997)

*State v. Utter*, 803 N.W.2d 647 (Iowa 2011)

*State v. Williams*, 895 N.W.2d 856, 860 (Iowa 2017)

Iowa Code § 805.1(4)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (March 17, 2020)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (April 2, 2020)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (May 22, 2020)

- 2. Does the impact of COVID-19 on court services alone provide sufficient basis for district courts to excuse the State’s failure to comply with the speedy-indictment requirements of Iowa Rule of Criminal Procedure 2.33(2)(a) when the State itself never claimed COVID-19 was the cause of its failure and the Iowa Supreme Court**

**already allowed for the COVID-19 pandemic and its impact on court services by extending the speedy-indictment deadline from 45 days to 60 days and, despite the COVID-19 pandemic, deliberately maintained a 60-day speedy-indictment deadline?**

**Authorities**

Iowa R. Crim. P. 2.33(2)(a)

*State v. O’Bryan*, 522 N.W.2d 103 (Iowa Ct. App. 1994)

*State v. Utter*, 803 N.W.2d 647 (Iowa 2011)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (March 17, 2020)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (April 2, 2020)

Iowa Supreme Court Administrative Order re: Impact of COVID-19 on Court Services (May 22, 2020)

## **ROUTING STATEMENT**

This case should be retained by the Iowa Supreme Court because the case presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Iowa Supreme Court. Iowa Rs. App. P. 6.903(2)(d) and 6.1101(2)(d). This case does not present an isolated instance and a prompt decision of the issues will better serve the interests of judicial economy and promote only the prosecution of defendants who may properly and fairly be convicted.

Furthermore, this case should be retained by the Iowa Supreme Court because the constitutional and statutory guarantees of speedy indictment provide defendants with a substantial right, and this case presents substantial constitutional questions as to the interpretation of a statute, ordinance, or court or administrative rule. Iowa Rs. App. P. 6.903(2)(d) and 6.1101(2)(a).

## **STATEMENT OF THE CASE**

This is an interlocutory appeal by Defendant-Appellant Brianna Watson from the Chickasaw County District Court's



order denying Watson's motion to dismiss. The Honorable Richard D. Stochl presided over all relevant proceedings in the District Court.

### **STATEMENT OF THE FACTS**

On July 5, 2020, Chickasaw County Deputy Sheriff Adam Hanson stopped Defendant-Appellant Brianna Watson. (Complaint for OWI; Complaint for Possession of Marijuana; Minutes of Testimony; Affidavit in Support of Motion to Dismiss) (Conf. App. at 5–8, 12; App. at 18). In lieu of arrest, Hanson cited Watson for Operating While Under the Influence 1<sup>st</sup> Offense (Serious Misdemeanor), Possession of Controlled Substance – Marijuana 2<sup>nd</sup> Offense (Serious Misdemeanor), and Speeding, and then Hanson released Watson to go home with her family. (Minutes of Testimony; Affidavit in Support of Motion to Dismiss; Resistance to Motion to Dismiss; Order Denying Motion to Dismiss) (Conf. App. at 13; App. at 18, 38–40). The citations scheduled Watson's court date for September 21, 2020. (Complaint for OWI; Complaint for Possession of Marijuana; Minutes of Testimony) (Conf. App. at 5, 7, 13).

On September 17, 2020, Watson filed a motion to

dismiss the prosecution against her for the State's noncompliance with the speedy-indictment requirement. (Motion to Dismiss) (App. at 5). On September 21, 2020, Watson appeared at the initial appearance where the magistrate did not address Watson's motion to dismiss but simply scheduled a preliminary hearing for October 8, 2020. (Initial Appearance) (App. at 6–9).

On October 6, 2020, the State filed a trial information with the clerk of the District Court and the District Court filed an order wherein it approved the trial information and scheduled Watson's arraignment for October 20, 2020. (Trial Information; Order for Arraignment) (Conf. App. at 9–19; App. at 13–15).

On October 14, 2020, Watson filed an amended and substituted motion to dismiss. (Amended and Substituted Motion to Dismiss) (App. at 16–17). On October 15, 2020, the District Court scheduled a hearing on Watson's motion to dismiss for October 27, 2020. (Order Setting Hearing on Motion to Dismiss) (App. at 19–20). Also, on October 15, 2020, the State filed a resistance to Watson's motion to dismiss and Watson filed a reply to the State's resistance.

(Resistance to Motion to Dismiss; Reply to State’s Resistance)  
(App. at 21–24).

On October 16, 2020, the Court rescheduled Watson’s arraignment for October 27, 2020—the same day as the hearing on Watson’s motion to dismiss. (Order Rescheduling Arraignment) (App. at 25–27).

On October 27, 2020, the Court held a hearing on Watson’s motion to dismiss. (Transcript of 10/27/2020 Proceedings) (App. at 28–37). No testimony was taken at the hearing; only legal argument was made. (See Transcript of 10/27/2020 Proceedings) (App. at 28–37). The State did not urge the pandemic or any other reason for its delay in filing the trial information but argued only that the speedy-indictment clock did not begin to run until Watson’s initial appearance on September 21, 2020—78 days after the date when Watson was issued the citations. (See Transcript of 10/27/2020 Proceedings) (App. at 32–33).

On October 27, 2020, the Court entered an order wherein it denied Watson’s motion to dismiss on two grounds: (1) COVID-19 was good cause for the State’s delay in filing the trial information; (2) the speedy-indictment clock did not begin

until Watson appeared before the magistrate on September 21, 2020. (Order Denying Motion to Dismiss) (App. at 38–40).

On October 27, 2020, following the Court’s ruling on Watson’s motion to dismiss, Watson entered a plea of not-guilty by executing and filing a written arraignment wherein Watson demanded her right to speedy trial. (Written Arraignment) (App. at 41). On November 1, 2020, the District Court recognized Watson’s demand for speedy trial and set a trial date. (Arraignment Order) (App. at 42–43).

On November 3, 2020, Watson filed a timely application to the Iowa Supreme Court for permission to appeal the District Court’s interlocutory order denying Watson’s motion to dismiss. (Notice of Application for Interlocutory Appeal) (App. at 44).

On November 10, 2020, the District Court filed an order postponing Watson’s trial date and mistakenly stated that Watson filed a waiver of her right to speedy trial. (Order for Continuance) (App. at 45–47). The following day, on November 11, 2020, in response to the District Court’s error, Watson filed another demand for speedy trial wherein Watson stated that she has always asserted her right to speedy trial, she has

never waived her right to speedy trial, and she again asserts her right to speedy trial. (Demand for Speedy Trial) (App. at 48). On November 13, 2020, the State filed a motion wherein it recognized that Watson demanded her right to speedy trial. (State’s Motion to Reset Jury Trial Date) (App. at 49). On November 16, 2020, the District Court filed an order wherein it again recognized that Watson demanded her right to speedy trial. (Order Resetting Jury Trial Date) (App. at 50–51).

On December 2, 2020, the Iowa Supreme Court granted Watson’s application for interlocutory appeal and stayed proceedings in the District Court. (Supreme Court’s Order Granting Application for Interlocutory Appeal) (App. at 52–54).

## **ARGUMENT**

### **A. Preservation of Error**

An adverse ruling on a pretrial motion is sufficient to preserve error for appellate review. *State v. Wright*, 441 N.W.2d 364, 366 (Iowa 1989). The issues in this case were preserved for appellate review because Watson filed a timely pretrial motion to dismiss the prosecution on ground the trial information was not timely filed, (Motion to Dismiss; Amended

and Substituted Motion to Dismiss) (App. at 5, 16–17), and because the District Court ruled on Watson’s motion. (Order Denying Motion to Dismiss) (App. at 38–40). Also, Watson never waived her right to speedy trial but has continually asserted it throughout the proceedings. (Written Arraignment; Demand for Speedy Trial) (App. at 41, 48).

### **B. Scope of Review**

On a motion to dismiss, the Court’s review is for corrections of errors at law, unless the motion to dismiss is on a constitutional issue, in which case the Court’s review is de novo. *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 211 (Iowa 2018). On review for corrections of errors at law, the Court is bound by the district court’s findings of fact if supported by substantial evidence. *See State v. Williams*, 895 N.W.2d 856, 860 (Iowa 2017). It may be argued the District Court’s ruling on Watson’s motion to dismiss should be reviewed for corrections of errors at law. *See id.* (“We review interpretations of the speedy indictment rule for errors at law”). The Court’s review, however, should be de novo because the speedy-indictment requirement is a constitutional guarantee based on the Speedy Trial Clauses in Article I

Section 10 of the Iowa Constitution and the Sixth Amendment of the U.S. Constitution, and arguably is also based on the Due Process Clauses in Article I Section 9 of the Iowa Constitution and the Fourteenth Amendment of the U.S. Constitution. *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011) (“Iowa's speedy indictment rule ensures the enforcement of the United States and Iowa Constitutions' speedy trial guarantees, which assure the prompt administration of justice while allowing an accused to timely prepare and present his or her defense”); *see State v. Wing*, 791 N.W.2d 243, 246–47 (Iowa 2010) (“The speedy indictment and speedy trial rules also aim to prevent the harm that arises from the ‘possible impairment of the accused's defense due to diminished memories and loss of exculpatory evidence.’ This type of harm is the ‘most serious,’ because ‘the inability of a defendant adequately to prepare his case skews the fairness of the entire system’ ” (internal citations omitted)).

### **C. Appellant’s Contentions**

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

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.

"The term indictment includes trial information." *State v. Schuessler*, 561 N.W.2d 40, 41 (Iowa 1997). An information or indictment is "found" when it is both approved and filed with the clerk of court. *Id.* at 42; *Ennenga v. State*, 812 N.W.2d 696, 705 (Iowa 2012). Due to the pandemic created by the coronavirus and the impact of COVID-19 on court services, the Iowa Supreme Court issued administrative orders on March 17, April 2, and May 22, 2020 extending the 45-day speedy-indictment deadline 15 days so that the State has a 60-day speedy-indictment deadline during the COVID-19 pandemic.

The State's failure to comply with the speedy-indictment guarantee in Iowa Rule of Criminal Procedure 2.33(2)(a) requires absolute dismissal of the charge and prohibits the State from reindicting the defendant on the same offense. *Utter*, 803 N.W.2d at 653, overruled on other grounds by *Schmidt v. State*, 909 N.W.2d 778 (Iowa 2018). In *Schuessler*, the Iowa Supreme Court dismissed the indictment when the State filed the information with the clerk of court on the 46<sup>th</sup>



day after the citation was issued to the defendant. 561 N.W.2d at 42.

**1. The speedy-indictment clock started to run from the date when Watson was served with citations for indictable offenses.**

The factual situation in this case is governed by the second sentence of Iowa Code section 805.1(4): “The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of rule of criminal procedure 2.33(2)(a).”

When a person is cited in lieu of arrest for an indictable offense, the date of “arrest” for purpose of the speedy-indictment requirement is the day when the citation was served on the person. *See Utter*, 803 N.W.2d at 652 (“On April 10, 2009, the officer issued Utter a citation and complaint for supplying alcohol to a person under the legal age. Therefore, the forty-five-day window in which the State could indict Utter for this crime began to run on April 11”); *see Schuessler*, 561 N.W.2d at 41 (stated that the speedy-indictment clock began running on the day after the day when the defendant was issued a citation in lieu of arrest); *see State v. O’Bryan*, 522

N.W.2d 103, 104–05 (Iowa Ct. App. 1994) (calculated Day 1 of the speedy-indictment clock as the first day immediately after the date when the citation was issued, even when the defendant failed to appear in court at the scheduled time written on the citation).

The appropriate case for the Court to rely on in deciding this case is *State v. Utter*. Utter was issued a citation in lieu of arrest on April 10, 2009. 803 N.W.2d at 650. Utter had her first appearance 26 days later on May 6, 2009. *Id.* The State filed a trial information against Utter on June 12, 2009, 63 days after the citation was issued. *Id.* Pursuant to Iowa Code section 805.1(4), the Court held that the 45-day speedy-indictment clock began to run on April 11, 2009 (not May 7, 2009). *Id.* at 652–53. Since the trial information was filed 63 days after the citation was issued, the Court held that the prosecution must be dismissed and that the State was prohibited from reindicting Utter again on the same offense. *Id.* at 653.

When a citation in lieu of arrest is issued, the speedy-indictment deadline runs from the date when the citation was served on the defendant; this is true even when the

defendant's first appearance in court does not occur within the speedy-indictment period. *See O'Bryan*, 522 N.W.2d at 104–05. In *O'Bryan*, the defendant was issued a citation in lieu of arrest. *Id.* at 104. The defendant failed to appear at his first scheduled court date. *Id.* Subsequently, a warrant was issued for his arrest. *Id.* Several months later, the defendant was arrested. *See id.* Shortly after the defendant was arrested, the State filed a trial information. *See id.* The date of the filing of the trial information was 205 days after the day when the citation was issued. *Id.* at 104–05. When the defendant failed to appear for arraignment, a warrant was again issued for his arrest. *Id.* at 104. After the defendant was again arrested and the matter was called for trial, the defendant's attorney moved to dismiss the prosecution on the ground that the State failed to comply with the speedy-indictment requirement. *Id.* On appeal, the Iowa Court of Appeals calculated the speedy-indictment clock as running from the date of the issuance of the citation in lieu of arrest and held that “the filing of the trial information 205 days after the issuance of the citation in lieu of arrest mandates that this case be dismissed”. *Id.* at 105.

Like in *Utter*, *Schuessler*, and *O'Bryan*, Watson's “arrest”

for purpose of the speedy-indictment rule was completed on the day when Watson was issued the citations in lieu of arrest, which was July 5, 2020. Consequently, July 6, 2020 was Day 1 of the speedy-indictment clock; September 3, 2020 was Day 60; and Day 60 expired on September 4, 2020 at 12:00 AM. Where not even a defendant's failure to appear in court will toll the speedy-indictment clock or change the date when the speedy-indictment clock starts to run (as in *O'Bryan*), the State's scheduling Watson's first court date for 78 days later should not toll the speedy-indictment clock or change the date when the clock started to run. The State can file the trial information prior to a defendant's first appearance in court; nothing prevents the State from doing that. Police policy of issuing citations in lieu of arrest does not prevent the State from complying with the speedy-indictment requirements. Consequently, the State should not be relieved of filing the trial information within 60 days of the date when the citations were served on Watson.

*State v. Williams* is inapplicable to the facts in this case because Williams was arrested, but not criminally charged; whereas, in this case, Watson was not arrested, but was

criminally charged. *Williams* dealt with arrests pursuant to Iowa Code Chapter 804 (mentioned more than 15 times in *Williams*), not citations in lieu of arrest pursuant to Iowa Code Chapter 805 (never once mentioned in *Williams*). On June 12, 2012, Williams was taken into custody, read his Miranda rights, questioned, and then released from custody without a criminal complaint being filed and without a citation in lieu of arrest being issued. *Id.* at 858, 867. Williams was not even criminally charged until over a year later, after October 21, 2013 when police charged Williams with a crime and obtained a warrant for his arrest. *Id.* at 859. Seven days later, on October 28, 2013, Williams was taken into custody, a criminal complaint was filed, and Williams was brought before a magistrate for an initial appearance. *Id.* Four days later, on November 1, 2013, the State filed a trial information against Williams. *Id.* Williams argued that his speedy-indictment right was violated because over 45 days passed between when he was first taken into custody over a year earlier and when the State filed a trial information against him. The Iowa Supreme Court held that when there has been an actual arrest pursuant to Iowa Code Chapter 804, for purpose of the

speedy-indictment requirement, the arrest is not complete until the defendant has been taken before a magistrate, and therefore the speedy-indictment clock does not begin to run until the defendant's first appearance before the magistrate.

The Court could have decided *Williams* by holding that when there has actually been an arrest, for purpose of the speedy-indictment requirement, the arrest is complete when a criminal complaint has been served on the defendant. In hindsight, this would have rendered the holding in *Williams* governed by Iowa Code Chapter 804 consistent with citations in lieu of arrest governed by Iowa Code Chapter 805. At this point, however, to hold that the holding in *Williams* also applies in this case would render the second sentence of Iowa Code section 805.1(4) null and void because it could never be applied. And it requires considerable mental gymnastics to argue that application of the holding in *Williams* to this case is consistent with Iowa Code section 805.1(4).

**2. COVID-19 alone cannot be good cause for district courts to excuse the State's failure to comply with the speedy-indictment requirements of Iowa Rule of Criminal Procedure 2.33(2)(a) when the State itself never claimed COVID-19 was the cause of its failure and the Iowa Supreme Court already allowed for the**

**COVID-19 pandemic and its impact on court services by extending the speedy-indictment deadline from 45 days to 60 days and, despite the COVID-19 pandemic, deliberately maintained a 60-day speedy-indictment deadline.**

It is the State's burden to show good cause for noncompliance with the speedy-indictment requirement.

*O'Bryan*, 522 N.W.2d at 106.

Whether there is good cause depends on the reason for the delay. The surrounding circumstances affect the strength of the reason for the delay. If the delay has been short and the defendant was not prejudiced by it and the defendant has not demanded a speedy trial, a weaker reason will constitute good cause. Nonetheless, if the reason for the delay is insufficient, these other factors will not avoid dismissal. The arbitrary forty-five-day limit cannot be violated, even “a little bit” without a showing of good cause. In this situation, the State failed to show any reason for the delay in filing the trial information.

*Id.* (internal citations omitted). In *O'Bryan*, the Court of Appeals remanded to the district court to dismiss the case when “the State failed to show any reason for the delay in filing the trial information.” *Id.* In *Utter*, the Supreme Court held that the criminal charge against the defendant required absolute dismissal where the State did not claim it had good cause for its failure to file a timely trial information. 803

N.W.2d at 653, overruled on other grounds by *Schmidt*, 909 N.W.2d 778.

Pursuant to the Iowa Supreme Court's administrative orders, the COVID-19 pandemic alone cannot qualify as good cause for the State's failure to comply with the speedy-indictment requirement because the Iowa Supreme Court already allowed for the COVID-19 pandemic and its impact on court services by extending the speedy-indictment deadline from 45 days to 60 days and, despite the COVID-19 pandemic, deliberately maintained a 60-day speedy-indictment deadline. The administrative orders extending the time preempts use of the pandemic as a reason for further delay in filing the trial information. The State is free, however, to assert other good cause for the delay past the 60-day deadline, which is the new temporary rule.

COVID-19 has not prohibited attorneys from filing documents with the clerk of court on the Electronic Document Management System (EDMS). Filing documents with the clerk of court is very different today than it was 10 or 20 years ago. Today, attorneys may electronically file documents with the clerk of court without the need for in-person contact with



court-service staff. During the COVID-19 pandemic, EDMS has continued to operate successfully thereby allowing attorneys to quarantine, if necessary, and continue to work from their home or office.

The State did not present the District Court with any reason for the delay in filing the trial information. Like in *Utter*, the State never claimed good cause for its failure to file a timely information. The State only argued that the speedy-indictment deadline did not begin to run until the date of Watson's initial appearance on September 21, 2020—78 days after the citations were issued in lieu of arrest. The District Court, not the State, provided good cause for the State's noncompliance with the speedy-indictment requirement. But the District Court's finding that "Covid-19 and the precautions taken to limit in person appearances is good cause for the delay of the filing of a trial information" was not based on any evidence because no testimony was taken and Watson's counsel had no opportunity to confront and cross-examine witnesses.

Lastly, law enforcement's failure to schedule an initial appearance within the 60-day, speedy-indictment deadline

should not qualify as good cause for the State's noncompliance with the speedy-indictment requirement.

### **CONCLUSION**

Brianna Watson requests this Court to reverse the District Court's decision denying her motion to dismiss and remand with orders to dismiss the prosecution against her.

### **REQUEST FOR ORAL ARGUMENT**

Counsel requests to be heard in oral argument.

### **CERTIFICATE OF COST**

Pursuant to Iowa R. App. P. 6.903(2)(j), the undersigned attorney certifies that the actual cost paid for printing or duplicating paper copies of briefs in final form amounts to \$0.

### **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 this brief has been prepared in a proportionally spaced typeface Bookman Old Style with 14-point size font and contains 3,544 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

**CERTIFICATE OF SERVICE**

On July 12, 2021, the undersigned certifies that, pursuant to Iowa Rs. App. P. 6.901(1)(d), a true copy of this document was served upon the Defendant-Appellant, Brianna Sue Watson, by attaching a copy of this document to an email sent to her email address of [briannasue312@gmail.com](mailto:briannasue312@gmail.com).

Date: 7/12/2021



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