IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-1423

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIANNA SUE WATSON,
Defendant-Appellant.

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

APPELLEE'S BRIEF

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ROUTING STATEMENT

This Court need not retain this case. Brianna Sue Watson's speedy indictment challenge calls for an application of *State v. Williams*, 895 N.W.2d 856 (Iowa 2017), and *State v. Smith*, 957 N.W.2d 669 (Iowa 2021), which recognized that an appearance before a magistrate is necessary to commence the speedy indictment period. And while this Court has not yet decided whether delays attributable to the Covid-19 pandemic constitute good cause, it need not do so in this case because the trial information was timely filed. In any event, the Court of Appeals can apply those well-established legal standards. Because this case can be decided based on existing legal principles, transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is an interlocutory appeal from the denial of Brianna Sue Watson's motion to dismiss charges of operating while intoxicated and possession of a controlled substance.

Course of Proceedings

The State accepts the course of proceedings as set forth in Watson's brief as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Watson was stopped by a Chickasaw County deputy on July 5, 2020. Order 10/27/20; App. 38-40. She was cited for operating while intoxicated. Order 10/27/20; App. 38-40. Due to limited court services and the availability of in-person initial appearances as a result of the Covid-19 pandemic, her initial appearance was scheduled for September 21, 2020. Order 10/27/20; App. 38-40. The State filed a trial information on October 6, 2020. Trial Information; App. 10-12.

ARGUMENT

I. The District Court Did Not Err When It Denied Watson's Motion to Dismiss.

Preservation of Error

Watson preserved her rule-based speedy indictment challenge when she moved to dismiss the information and received an adverse ruling. Amended Motion to Dismiss 10/14/20; App. 16-17; Order 10/27/20; App. 38-40. To the extent that Watson relies on the speedy trial guarantees of the state or federal constitutions, error is not

preserved. *See* Appellant's Br. P.15. Watson did not raise any constitutional challenge in the district court. She cannot do so for the first time on appeal. *See State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.").

Standard of Review

The district court's interpretation of the speedy indictment rule is reviewed for errors at law. *Williams*, 895 N.W.2d at 860. This Court is bound by the district court's findings of fact if they are supported by substantial evidence. *Id.* The district court's good cause ruling is reviewed for abuse of discretion. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). Watson argues that this Court should review her speedy indictment challenge de novo. Appellant's Br. P.14-15. But because Watson has not preserved one, no constitutional question is properly presented for review.

Merits

The Covid-19 pandemic caused significant disruption and delay in Iowa's court system throughout 2020 and the beginning of this year. While speedy resolution of criminal cases is an important

interest in the justice system, it must yield to some extent to necessary measures for the protection of the public and court participants from the uncontrolled spread of a deadly virus. Watson, like many other offenders, was cited and released rather than arrested and booked into the jail during the pandemic. Her "arrest" for purposes of the speedy indictment period was completed, and the period commenced, by her initial appearance before a magistrate in September of 2020. This Court's ongoing efforts to mitigate the coronavirus provided good cause to delay the proceedings in Watson's case. The district court did not err when it denied the motion to dismiss.

A. An initial appearance is an essential component of an "arrest" and the speedy indictment period does not commence until after it takes place.

Watson's speedy-indictment challenge depends on whether and when an "arrest" occurred. The speedy-indictment rule provides,

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

Iowa R. Crim. P. 2.33(2)(a). Thus, an "arrest" is the event that starts the speedy-indictment clock.

But an "arrest" has a special meaning in the context of the speedy indictment rule. The Court traced the history in *State v. Williams*, 895 N.W.2d 856 (Iowa 2017). Before 1978, the speedy indictment statute was triggered once the defendant was "held to answer" for a charge, meaning "the speedy indictment time period was tied to the fundamental probable-cause determination required under our law for the state to prosecute a person arrested and accused of a crime." *Id.* at 860. In 1978, the triggering language was changed to "arrest," but the principal authors of the Iowa Code revisions "wrote that the speedy trial provisions did not express substantive changes…" *Id.* at 862 (quoting 4 John L. Yeager & Ronald L. Carlson, *Iowa Practice: Criminal Law and Procedure* § 1242, at 298–99 (1979)).

However, in an early case following the 1978 revisions, the Court redefined the speedy-indictment provision "by using the moment a person is taken into custody as the only triggering event, even if the arrested person is not subsequently brought into the court process to answer to a criminal charge pursuant to the rules of

criminal procedure." *Id.* (citing *State v. Schmitt*, 290 N.W.2d 24, 27 (Iowa 1980)). Over the next three decades, the Court dealt with the "various collateral circumstances that can accompany an arrest," but it "never looked back to confront the obvious shortcoming in our analysis used in deciding to take the path followed in *Schmitt*." *Id.* at 863–65. *Schmitt*'s ill-fated analysis culminated with *Wing*, which found the speedy-indictment period was triggered when "a reasonable person of the defendant's position would have believed an arrest occurred…" *State v. Wing*, 791 N.W.2d 243, 249 (Iowa 2010), *overruled by Williams*, 895 N.W.2d at 867.

Williams returned clarity to determining whether an "arrest" triggered the speedy-indictment period. *Schmitt*'s "shortcoming" was its failure to recognize that "making an arrest under Iowa law does not end with the on-the-scene requirements…" *Williams*, 895 N.W.2d at 865. Instead, a "vital part of the arrest" is taking the person before a magistrate—"Once the arrested person is before the magistrate, the arrest is complete…" *Id.* "A speedy indictment is only needed when a defendant is arrested and subsequently held to answer by the magistrate following the arrest." *Id.* Thus, an "arrest" that triggers the

speedy-indictment period has two necessary components: a physical arrest *and* an appearance before the magistrate.

Significantly, *Williams* recognized that the speedy indictment rule is not triggered unless the arrest coincides with an appearance before the magistrate. "'Normally, the date of an arrest and the date of prosecution follow hand in hand,' but they can 'become detached.'" *Id.* at 866 (quoting *State v. Penn-Kennedy*, 862 N.W.2d 384, 387, 388 (Iowa 2015)).

> If they become detached, the operation of the rule becomes detached from its purpose and remedy. There is no prosecution to dismiss, no defendant to release, and no bail money to return. Instead, it operates only to accelerate the statute of limitations.

Id. Therefore, this Court concluded, "The rule is triggered from the time a person is taken into custody, but only when the arrest is completed by taking the person before a magistrate for an initial appearance." *Id.* at 867.

This Court's most recent speedy-indictment decision confirms the necessity of an initial appearance. In *State v. Smith*, 957 N.W.2d 669, (Iowa 2021), a police officer filed a complaint in August 2018 and an arrest warrant was issued, but the trial information was not filed until more than a year later in September 2019. During that

time, the defendant was imprisoned in Iowa for another conviction and had filed motions asserting his speedy-trial rights. *Id.* at 673. This Court, applying *Williams*, concluded the criminal complaint and arrest warrant issued in August 2018 did not constitute an "arrest" because "it was not served on Smith at that time, and he did not make an initial appearance on that charge." *Id.* at 676. Thus, *Smith* confirms that a criminal complaint alone is not sufficient to start the speedy-indictment clock. Instead, the defendant must also submit to the court's authority by making an initial appearance before the magistrate.

Like a case initiated by arrest, a case initiated by a citation requires an appearance before a magistrate to trigger the speedy-indictment period. Watson takes the view that the citation alone triggered the speedy-indictment period. Appellant's Br. P.17. She cites Iowa Code section 805.1(4), which provides, "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), Iowa court rules." But mere issuance of the citation does not end the process—the cited person must also appear before the magistrate. *See* Iowa Code § 805.5 (outlining the procedure for failure

to appear). Just like *Williams*'s recognition that an arrest must be completed with an appearance, so too must a citation be completed with an appearance before triggering the speedy-indictment period.

This Court should not treat citation-initiated charges differently than arrest-initiated charges. Watson cites three pre-*Williams* cases to support the contention that "the date of 'arrest' for purposes of the speedy-indictment requirement is the day when the citation was served on the person." Appellant's Br. P.17-18 (citing *State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011); *State v. Schuessler*, 561 N.W.2d 40, 41 (Iowa 1997); *State v. O'Bryan*, 522 N.W.2d 103, 104–05 (Iowa Ct. App. 1994)). However, *Utter*, *Schuessler*, and *O'Bryan* were all decided in the *Schmitt* era when a mere *de* facto arrest triggered the speedy indictment rule, so it made sense to treat a mere citation similarly.

But *Williams* makes clear that an arrest is not "complete" until it is ratified by an initial appearance before the magistrate. *See Williams*, 895 N.W.2d at 858 ("We conclude the speedy indictment rule is properly interpreted to commence upon arrest only when the arrest is completed by making an initial appearance."). In light of *Williams*, this Court should recognize the disavowal of *Utter*,

Schuessler, and *O'Bryan* by finding that in all cases—whether initiated by arrest or by citation—the speedy- indictment period is not triggered until an appearance before the magistrate.

The circumstances of Watson's case highlight the inequity of treating citation-initiated cases differently from arrest-initiated cases. *Williams* concluded the speedy-indictment period did not commence when the defendant was handcuffed, patted down, detained, transported in the back seat of a patrol car, taken to the police station, read *Miranda* rights, interrogated, and his penis swabbed for DNA evidence. *Williams*, 895 N.W.2d at 858. In contrast, Watson was told she was not under arrest and was never handcuffed or Mirandized. Watson Aff.; App. 18. This Court should not conclude that Watson's interaction with law enforcement commenced the speedy indictment period while the more invasive interaction in *Williams* did not.

Watson's appearance before the magistrate was a necessary event to trigger the speedy indictment period. Watson argues that such a rule would "render the second sentence of Iowa Code section 805.1(4) null and void." Appellant's Br. P.23. But it does no such thing. A citation serves as an arrest for speedy indictment purposes, as the statute explains, but that "arrest" is not complete until the cited

person appears before the magistrate, as this Court explained in *Williams* and *Smith*. Watson did not appear before the magistrate until September 21, 2020, so the trial information filed on October 6 was timely.

B. Court closures necessitated by the Covid-19 pandemic constituted good cause for delay.

Even if this Court concludes that *Williams* and *Smith* do not apply to citation-initiated cases, the district court in this case concluded that "the provisions taken to limit in person appearances is good cause for the delay of the filing of a trial information in this matter." Order 10/27/20; App. 38-40. The need to safely deliver justice prevails over the interest in a quick outcome. Covid-19 has killed nearly 600,000 Americans and has sickened millions more. CDC, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/ (last visited June 9, 2021). The highly contagious virus necessitated closing Iowa's courts, which delayed the normal processing of cases and created an extraordinary backlog. These unprecedented challenges of the pandemic justified a short delay of Watson's right to a prompt initial appearance and a speedy indictment.

The delay in Watson's case reflects the pandemic's disruption of Iowa's court system. Rather than booking arrestees into the close

confines of the county jail, law enforcement was encouraged to issue citations for low-level offenders.[1] At the time of Watson's offense, criminal jury trials were not slated to resume until September 14, and non-jury proceedings could only resume on July 13 in "specific counties if the county courthouse is open to the public and the court operations in that county meet recommended COVID19 safety protocols…" *See* COVID-19 Supervisory Order (May 22, 2020) at ¶¶ 6, 10, *available at* https://www.iowacourts.gov/collections/499/files/1093/embedDocument/ (last visited June 9, 2021).

In particular, judicial districts were instructed to "schedule in-person hearings and trials so as to comply with safety protocols established by state court administration," which "may necessitate limits on the number of hearings scheduled in a given time period…" *Id.* ¶ 12. Consequently, it was reasonable to schedule Watson's initial appearance for September 21—a date when it was hoped infection

[1] *See* Tyler J. Davis, *'Prisons and Jails Are Literally Petri Dishes': Inmates Released, Arrests Relaxed Across Iowa Amid Fears of Coronavirus*, Des Moines Register, Mar. 23, 2020, https://www.desmoinesregister.com/story/news/crime-and-courts/2020/03/23/coronavirus-iowa-jail-prison-inmates-released-amid-fears-covid-19-virus-polk-county-des-moines/2891117001/ (noting that "police have been given extra discretion to cite cooperative misdemeanor suspects instead of handcuffing them").

rates would be reduced and court business would be returning to more normal operations.

The district court's finding of good cause for delay due to Covid-19 is not defeated by the patchwork availability of virtual hearings. This Court's supervisory order provided that magistrates "*may* conduct initial appearances by videoconference or telephone." *Id.* ¶ 15 (emphasis added). This permissive alternative was convenient for accommodating in-custody appearances by setting up a videoconference link to the jail, and it could even serve attorneys who are familiar with the local courts. But the feasibility of arranging videoconference appearances drops with unrepresented defendants like Watson who may have trouble connecting with the court. Iowa's uniform citation form does not have spaces to fill in the defendant's email address or to provide the defendant a link to the magistrate court's Go-To-Meeting account. Therefore, it remained reasonable to schedule cited defendants like Watson for in-person hearings, even if those hearings were spaced out and delayed to mitigate the spread of coronavirus.

Additionally, this Court should apply the speedy indictment protection in conjunction with the speedy trial rule. Under normal

circumstances, the requirement to file the indictment within 45 days serves as the jumping-off point for speedy trial because "the defendant must be brought to trial within 90 days after indictment is found…" Iowa R. Crim. P. 2.33(2)(b). But the 90-day speedy trial rule was not operating normally at the time of Watson's citation. Instead of the 90-day period commencing upon her indictment, it had been "expanded to 120 days, and shall be restarted with September 14, 2020 as Day 1." *See* COVID-19 Supervisory Order (3/22/2020) at ¶ 13. It made no practical difference when Watson was indicted between her July 5 citation and September 14, because even if the information had been filed prior to September 14, the speedy trial period would have reset to that date. Because substantial delay was unavoidable for Watson's speedy trial right, it made little sense to rush her initial appearance.

Watson argues that the supervisory order's extension "preempts the use of the pandemic as any further reason for the delay…" Appellant's Br. P.25. But it does not. The order extended the speedy indictment deadline from 45 days to 60 days. *See* COVID-19 Supervisory Order (May 22, 2020) at ¶ 17. That extension reflected the Court's judgment that *at least* fifteen additional days would be

justified in every case. But by recognizing the pandemic's impact on court services would inherently justify delay in all cases, this Court did not intend to place a firm 60-day limit regardless of the circumstances of any individual case. Thus, the extension did not restrict the district court's authority to find good cause for the delay of Watson's indictment.

In addition, the prosecutor's ability to direct-file a trial information did not preclude a finding of good cause. Watson argues that "nothing prevents the State" from filing a trial information prior to an initial appearance. Appellant's Br. P.20. Although the rules permit a prosecutor to direct-file a trial information, the rules do not compel the prosecutor to follow that path rather than the typical process of arrest, initial appearance, and preliminary hearing. And under that typical process, "the necessity for a speedy indictment following an arrest is derived only from a finding of probable cause or the defendant's waiver of a probable- cause hearing." *Williams*, 895 N.W.2d at 865.

Indeed, Watson's argument would swallow up the speedy indictment rule's "good cause" exception. If prosecutors were always required to avoid speedy-indictment issues by direct-filing a trial

information, then there would be no need for Rule 2.33(2)(a) to extend the speedy indictment period for "good cause." The Court should give effect to the rule's plain language rather than interpreting it in a manner that effectively eliminates the good cause exception.

Overall, the circumstances resulting from the pandemic provided good cause for the short delay in Watson's case.

> 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.

State v. Deases, 476 N.W.2d 91, 95 (Iowa Ct. App. 1991) (citation omitted). The Covid-19 pandemic has created significant disruption that has delayed nearly every criminal case, including Watson's. The delay in her case was short. And even if she could have been indicted sooner, she was not prejudiced because her case would not have proceeded any quicker given the suspension of jury trials and the reset speedy trial period. The circumstances support the district court's finding of good cause and this Court should not conclude that it abused its discretion.

CONCLUSION

For the foregoing reasons, the district court's denial of Watson's motion to dismiss should be affirmed.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

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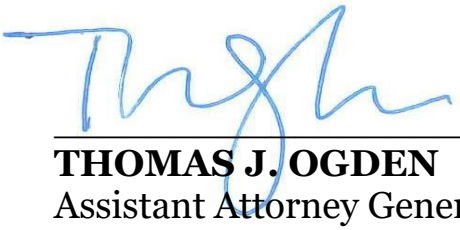

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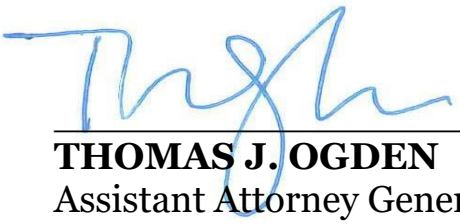

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