

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 15-1630

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

JOHNNIE RAY STEIGER,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
THE HONORABLE DOUGLAS MCDONALD, JUDGE

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**APPELLEE'S BRIEF**

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**STATEMENT OF THE ISSUES PRESENTED FOR  
REVIEW**

**I. The District Court Properly Accepted the Defendant's Stipulation to Prior Convictions Under Iowa Rule of Criminal Procedure 2.19(9).**

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*State v. McBride*, 625 N.W.2d 372 (Iowa Ct. App. 2001)  
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Iowa Code § 901A.2(2)  
Iowa R. Crim. P. 2.19(9)  
Iowa R. Crim. P. 2.8(2)(b)

**II. The State Acknowledges the District Court Did Not Substantially Comply With Iowa Rule of Criminal Procedure 2.8 for the Defendant's Guilty Plea to Indecent Exposure.**

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*State v. Meron*, 675 N.W.2d 537 (Iowa 2004)  
Iowa R. Crim. P. 2.24(3)(a)  
Iowa R. Crim. P. 2.8(2)(b)

## **ROUTING STATEMENT**

Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Defendant Johnnie Ray Steiger appeals his stipulation to his prior convictions for an enhanced sentence in SRCR369368. He argues the district court did not follow proper procedure when it accepted his stipulation through his counsel.

The defendant also appeals his guilty plea to indecent exposure in a separate case, SRCR369403. He argues that his guilty plea colloquy was insufficient.

### **Course of Proceedings**

On July 10, 2015, the district court took three separate actions in two separate cases involving the defendant. First, the district court found the defendant guilty of one count of indecent exposure under Iowa Code section 709.9 after a bench trial. Trial Tr. 77, lines 20-25; 78, lines 1-25; 79, lines 1-11. Second, the district court accepted the defendant's stipulation through defense counsel to prior convictions for an enhanced sentence on this conviction. Trial Tr. 79, lines 12-25;

80, lines 1-18. Third, the district court accepted the defendant's guilty plea to a second charge of indecent exposure. Trial Tr. 85, lines 21-23. The State accepts the remainder of the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

### **Facts**

The underlying facts of the defendant's convictions are not relevant to this appeal.

## **ARGUMENT**

### **I. The District Court Properly Accepted the Defendant's Stipulation to Prior Convictions Under Iowa Rule of Criminal Procedure 2.19(9).**

#### **Preservation of Error**

The defendant has not preserved error on this claim when he did not challenge his prior convictions at or before his habitual offender hearing. Unlike many sentencing claims, a challenge to the convictions upon which a habitual offender enhancement is based must be raised prior to or at the hearing. *See* Iowa R. Crim. P. 2.19(9); *see also State v. Spoonmore*, 323 N.W.2d 202, 203 (Iowa 1982) (finding the defendant waived his claim when he failed to make timely objection prior to his trial on the underlying charge); *State v. Long*, 814 N.W.2d 572, 580 (Iowa 2012) (implying the defendant may

have waived his objection, but declining to review the issue when the State did not appeal on the waiver issue). *But see State v. Kukowski*, 704 N.W.2d 687, 690 (Iowa 2005) (permitting a defendant to use a motion in arrest of judgment to challenge the district court's interpretation of the rule).

The defendant argues this proceeding is substantially similar to a guilty plea; thus the defendant may avoid his duty to preserve error because the district court failed to inform him of the consequences of failing to file a motion in arrest of judgment. But a stipulation to prior convictions is not a guilty plea. *See State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). Further, the rule governing the defendant's admission of prior convictions does not mention a requirement to file a motion in arrest of judgment. Instead, it recognizes that the defendant must make some objections prior to or at the time of trial. *See Iowa R. Crim. P. 2.19(9)*.

The defendant had the opportunity to challenge the convictions before or at the time of the habitual offender hearing. He chose not to do so. He has waived error on this claim.

## **Standard of Review**

The State agrees that the standard of review is correction of errors at law, but disagrees on the defendant's reasoning. The defendant challenges the procedure the district court used under Iowa Rule of Criminal Procedure 2.19(9), which explains what is required for a colloquy for sentencing enhancements. Iowa R. Crim. P. 2.19(9). An appellate court reviews interpretation of a rule for correction of errors at law. *See Kukowski*, 704 N.W.2d at 690.

## **Merits**

The defendant argues his stipulation to his prior convictions for a sentencing enhancement under Iowa Code section 901A.2 was not knowing or voluntary. The district court's colloquy was proper when the defendant had his attorney act on his behalf to stipulate to the prior convictions.

The sentencing enhancement at issue is Iowa Code section 901A.2(2). This portion of the statute provides

A person convicted of a sexually predatory offense which is a serious or aggravated misdemeanor, who has two or more prior convictions for sexually predatory offenses, shall be sentenced to and shall serve a period of incarceration of ten years, notwithstanding any other provision of the Code to the contrary.



Iowa Code § 901A.2(2).

The defendant's stipulation to prior convictions is not a guilty plea. A habitual offender sentencing enhancement is not a separate offense. *Woody*, 613 N.W.2d at 217. This is because habitual-offender statutes provide only for enhanced punishment on the charged offense. *Id.* The defendant does not plead guilty to a habitual offender "charge." *Id.* Instead, the defendant admits the prior convictions. *Id.*

Rule of Criminal Procedure 2.19(9) controls the procedure for accepting a defendant's stipulation for purposes of sentencing enhancements. Under Iowa Rule of Criminal Procedure 2.19(9), an offender must receive the opportunity to admit or deny in open court prior convictions that may increase a sentence. Iowa R. Crim. P. 2.19(9). The offender may deny the prior convictions and receive another hearing. If a defendant admits to the prior convictions, trial courts have a duty to ensure that this stipulation is knowing and voluntarily. *State v. McBride*, 625 N.W.2d 372, 374-75 (Iowa Ct. App. 2001). "In order to knowingly stipulate, a defendant should have an adequate grasp of the implications of his or her stipulation." *Id.* at 375.

The defendant may stipulate to his prior convictions through his attorney. The defendant is not required to personally address the court. *Kukowski*, 704 N.W.2d at 693. In fact, in *Kukowski* the defendant defended his ability to choose not to speak directly to the court; the Iowa Supreme Court then held that the attorney can provide the information sought in the rule on behalf of the defendant. *See id.* (“As in an arraignment, an attorney can provide the information sought by a rule on behalf of the defendant.”).

Here, the district court properly accepted the defendant’s stipulation when the defendant spoke through his attorney to stipulate to the prior convictions. The following colloquy occurred:

[PROSECUTOR]: Yes. At this point, I do think because I charged prior offenses on the trial information, that it is my obligation to prove some of the priors that would be used for sentencing. I do have three certified copies of three of Mr. Steiger’s prior convictions. I do not know if we – I think we maybe should have a hearing unless you want to stipulate.

[DEFENSE COUNSEL]: We’ll stipulate.

Trial Tr. 79, lines 12-19. Defense counsel then clarified that the stipulation was to two prior convictions from Scott County. Trial Tr. 79, lines 20-25; 80, lines 1-18.

The defendant chose to speak through his attorney to stipulate to his prior convictions. Under *Kukowski*, he had that right. When the district court gave him the opportunity to speak, the defendant did not deny being the person previously convicted and he did not assert that he lacked counsel for the prior convictions. There is nothing in this record to show that the defendant failed to understand the nature of the stipulation. See *State v. Oetken*, 613 N.W.2d 679, 688 (Iowa 2000) (“There is nothing in the record to indicate Oetken failed to understand the nature of an habitual offender decree, or the significance of his admission.”).

The defendant improperly equates the stipulation colloquy with a rule 2.8 colloquy. The district court is not required under any authority to conduct a full rule 2.8(2)(b) colloquy whenever a defendant stipulates to his prior convictions. Rule 2.8(2)(b) is “a useful analytical tool”, nothing more, in this context. *McBride*, 625 N.W.2d at 374 (“[T]o reiterate, no authority requires a full rule 8(2)(b) colloquy when such stipulations are made.”).

The district court acted properly under the rule when it gave the defendant the opportunity to admit or deny the prior convictions, and

the defendant chose to speak through his attorney to stipulate. The State asks this Court to affirm the sentencing enhancement.

**II. The State Acknowledges the District Court Did Not Substantially Comply With Iowa Rule of Criminal Procedure 2.8 for the Defendant's Guilty Plea to Indecent Exposure.**

**Preservation of Error**

The State admits the defendant may raise this argument because the district court's colloquy was insufficient. *See* Iowa R. Crim. P. 2.24(3)(a) (requiring a motion in arrest of judgment to challenge the guilty plea); *see also State v. Loye*, 670 N.W.2d 141, 150 (Iowa 2003) (recognizing an exception when the district court does not convey that the defendant's failure to file the motion will cause the defendant to lose his right to appeal).

The only discussion of a motion in arrest of judgment was as follows:

THE COURT: You want to explain to him his right to file a motion in arrest of judgment?

[DEFENSE COUNSEL]: I will

(an off-the-record discussion was held between the Defendant and his Attorney.)

THE COURT: Have you explained his right to file the motion?

[DEFENSE COUNSEL]: I did, Your Honor.

THE COURT: Do you think he understands that?

[DEFENSE COUNSEL]: He does.

THE COURT: I think that will conclude it for this afternoon then.

Trial Tr. 87, lines 13-24.

The State admits this colloquy was insufficient because it did not explain either that the defendant had 45 days to challenge the guilty plea, or that the failure to file a motion in arrest of judgment would forfeit his right to challenge the appeal. Therefore the State acknowledges that the defendant did not need to file a motion in arrest of judgment to raise this claim on appeal.

### **Standard of Review**

The defendant argues the district court did not comply with guilty plea procedures. An appellate court reviews this claim for correction of errors at law. *See State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004).

### **Merits**

Rule of Criminal Procedure 2.8(2)(b) requires the district court to address the defendant in open court on the following matters:

- (1) The nature of the charge to which the plea is offered.

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That a criminal conviction, deferred judgment, or deferred sentence may affect a defendant's status under federal immigration laws.

(4) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

(5) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

Iowa R. Crim. P. 2.8. The rule permits the defendant to waive these procedures in a plea to a serious or aggravated misdemeanor. Iowa R. Crim. P. 2.8. Generally absent a written guilty plea, noncompliance with the oral requirements of rule 2.8 constitutes reversible error. *Meron*, 675 N.W.2d at 542.

The State acknowledges that the district court did not substantially comply with Rule 2.8. In six pages of transcript, nearly four pages address the factual basis. See Trial Tr. 82, lines 11-25; 83,

lines 1-25; 84, lines 1-25; 85, lines 1-16. After concluding a factual basis existed, the following occurred:

THE COURT: All right. Any reason why I shouldn't accept his plea of guilty to the charge? Mr. Sims, are you satisfied?

[DEFENSE COUNSEL]: Yes

THE COURT: How do you plead then to the charge of indecent exposure, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Have there been any threats or promises made to get you to plead guilty to this?

THE DEFENDANT: No, Your Honor.

THE COURT: You said no?

THE DEFENDANT: Yes, Your Honor.  
No.

Trial Tr. 85, lines 17-25; 86, lines 1-3. The district court accepted the guilty plea and the last two pages of transcript discuss setting a sentencing date. Trial Tr. 86, lines 4-25; 87, lines 1-25.

This record does not show that the district court mentioned maximum or minimum punishments or the defendant's trial rights. *See generally* Trial Transcript pages 82-87. The State therefore acknowledges that the district court did not substantially comply with

rule 2.8. The proper remedy is to remand for a new guilty plea hearing. *Meron*, 675 N.W.2d at 544.

### **CONCLUSION**

The defendant stipulated to his prior convictions through his defense attorney, as he was permitted to do. The district court did not err when it accepted the stipulation. The State admits the plea colloquy for the defendant's second indecent exposure conviction was insufficient under rule 2.8. The State requests this Court affirm on the stipulation issue and reverse and remand for a new guilty plea hearing on the plea colloquy issue.



## REQUEST FOR NONORAL SUBMISSION

The State believes oral argument is unnecessary to decide this case and will not "be of assistance to the Court." See Iowa R. App. P. 6.908.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
  - This brief contains **2,191** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:
  - This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Georgia font, size 14.

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