

**IN THE COURT OF APPEALS OF IOWA**

No. 0-015 / 09-0953  
Filed February 24, 2010

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**PAUL EARL PAGEL,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Bremer County, Christopher C. Foy, Judge.

The State appeals a district court ruling granting a motion to dismiss for a speedy indictment violation. **AFFIRMED.**

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Kasey E. Wadding, County Attorney, and Jill S. Dashner, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Thomas J. Gaul, Assistant Appellate Defender, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.**

The State appeals a district court ruling dismissing a harassment charge on the grounds that it violated the speedy indictment rule. See Iowa R. Crim. P. 2.33(2)(a). We affirm.

**I. Background Facts and Proceedings.**

Around 10:00 a.m., on June 15, 2008, a thirteen-year-old girl was riding her bike home from her grandmother's house in Waverly when a vehicle pulled over and a man leaned out and made two extremely inappropriate sexual comments. When the girl rebuffed the man, he responded that he was just kidding and left. As the man drove away, the girl observed the truck's color, make, and license plate. The girl immediately went home, informed her parents of what had happened, and they called the police.

The license plate was registered to Paul Earl Pagel. The police made contact with Pagel at his home, and found that both he and his vehicle matched the descriptions provided by the girl. Pagel admitted that he had spoken with a little girl, but denied saying anything inappropriate. An officer then told Pagel that he "was under arrest" and would get "more details regarding charges when [they] got to the jail." At this time, Pagel was advised of his *Miranda* rights, placed into handcuffs, and put into the backseat of the police car. As Pagel sat in the police car, another officer drove the girl past the vehicle, and she positively identified Pagel.

Pagel was eventually taken to the Waverly Law Enforcement Center ("LEC"). Upon arriving at the LEC, Pagel's handcuffs were removed, and the officers began the booking process. The DVD recording of the booking process

shows that upon Pagel's arrival, an officer began scanning through an Iowa Code book to try to determine what offense they were going to charge Pagel with. The officer initially considered charging Pagel with indecent contact with a child under Iowa Code section 709.12(4). However, the officer spoke to someone over the telephone, and ultimately decided Pagel was going to be charged with "just harassment." Following the call, the officer told Pagel,

Alright, here's the deal bud, we're going to do a harassment charge for right now, and it's just a simple misdemeanor. Alright, it's just so we can hold you. Okay, to see a magistrate. We're going to complete our investigation with the people who have the complaints against you, and we'll take that to the county attorney and we'll see what his determination is as far as what the charges should be, and it's not going to stay as a harassment, it should go up, and I can guarantee that it will go up to something else.

This conversation occurred approximately twenty minutes after Pagel had initially been brought to the jail.

Following this conversation, the officer left the room, and another officer began to try to reach Pagel's wife on the telephone. During this time, Pagel asked, "Am I to feel like I'm under arrest yet or what? Am I under arrest right now?" The second officer responded, "Yes." The second officer then was able to get hold of Pagel's wife. During the ensuing conversation, Pagel told his wife, "Get a lawyer, they got me under arrest for harassment." Later in the conversation, Pagel again asked the second officer, "Harassment for right now, is that right?" The second officer nodded affirmatively. Eventually, Pagel handed the phone to the second officer, and in response to Pagel's wife's initial question to him the second officer answered, "Harassment."

After the phone call, the booking process continued with Pagel's photograph and fingerprinting. Some thirty minutes after Pagel had first been told he was being arrested for harassment, the first officer returned and informed Pagel, "We are going to charge you, we're going to skip the harassment thing, we're charging you with lascivious acts with a child, it's a class D felony." Booking was then completed, and Pagel was placed in jail.

Approximately thirty minutes after being told of the new charge, Pagel received a phone call from an attorney. At this time, Pagel was provided a copy of a complaint charging him with lascivious acts with a child. During the conversation with his attorney, Pagel initially stated, "They got me for a class D felony, sexual harassment or something." Pagel then handed the phone to the booking officer, who informed the attorney that "he's being charged with lascivious acts with a child."

On June 26, 2008, the State filed a trial information charging Pagel with lascivious acts with a child in violation of Iowa Code section 709.8(3) (2007). Following a bench trial on September 12, 2008, Pagel was acquitted of the charge.

On December 4, 2008, the State filed another trial information, but this time charging Pagel with harassment in the first degree in violation of Iowa Code section 708.7(b)(2) and enticing away a minor in violation of sections 710.10(3) and (4). Pagel filed a motion to dismiss the new charges on December 16, 2008. The motion was submitted to the court without argument, and on May 15, 2009, the district court granted the motion as to the harassment charge, while denying it as to the enticing charge. As to the harassment charge, the district court

reasoned that “the speedy indictment protections of rule 2.33(2)(a) were triggered by the arrest of [Pagel] on June 15, 2008.” Since the State failed to file the trial information charging harassment within forty-five days thereafter, the harassment charge was dismissed. The court elaborated:

The State suggests that Defendant cannot avail himself of the protections of Rule 2.33(2)(a) in this case because the arresting officer ultimately charged Defendant with a different crime in his booking papers. The Court views this fact as irrelevant to its analysis. Once the police officer took Defendant into custody, transported him to the jail, and informed Defendant that he was being charged with the crime of harassment, the officer had effected an arrest of Defendant for purposes of Rule 2.33(2)(a). Nothing that transpired later could undo what had already happened. See *State v. Davis*, 525 N.W.2d 837 (Iowa 1994) (once an arrest triggering the speedy indictment rule has been completed, State cannot “unarrest” defendant).

The State appeals.

## **II. Standard of Review.**

We review a district court’s interpretation of the speedy indictment rule for the correction of errors at law. *State v. Dennison*, 571 N.W.2d 492, 494 (Iowa 1997).

## **III. Analysis.**

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 State concedes that Pagel was arrested on June 15, 2008. However, the State contends that Pagel was arrested only on the charge of lascivious acts with a minor, and not harassment. The State argues that the officer’s “verbal

statement to the defendant” was superseded by his “final charging decision” as reflected in the complaint. Therefore, the State maintains the speedy indictment rule was never activated for the harassment charge. For substantially the same reasons as are set forth in the district court’s thorough and thoughtful opinion, we disagree with the State’s arguments.

The speedy indictment mandate is offense-specific. *State v. Edwards*, 571 N.W.2d 497, 499 (Iowa Ct. App. 1997). We determine whether a defendant is “arrested” on a case-by-case basis, and there is no bright-line rule or test. *Dennison*, 571 N.W.2d at 495.

To determine whether an arrest has occurred for the purposes of rule 2.33(2)(a), we first consider the statutes defining an arrest and the manner of making an arrest. See *State v. Schmitt*, 290 N.W.2d 24, 26 (Iowa 1980). Iowa Code section 804.5 defines an arrest as “the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person’s submission to custody.” Section 804.14 states the manner of making an arrest in pertinent part as:

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person’s custody . . . .

Prior cases are also helpful to further sculpt the definition of “arrest.” *State v. Rains*, 574 N.W.2d 904, 910 (Iowa 1998). “An arrest requires ‘an assertion of authority and purpose to arrest followed by submission of the arrestee.’” *Id.* (quoting *State v. Johnson-Hugi*, 484 N.W.2d 599, 600 (Iowa 1992)). Although the use of formal words of arrest is not required to effectuate an arrest, it is a

factor to consider. *Id.* Whether a defendant was handcuffed can also be considered in determining whether an arrest was made. *Dennison*, 571 N.W.2d at 495. Furthermore, “[t]he lack of booking or charges being filed does not necessarily mandate a finding of no arrest.” *Rains*, 574 N.W.2d at 910.

We conclude Pagel was arrested for harassment on June 15, 2008. He had been handcuffed, taken into custody, and transported to jail. At least four separate times, the officers stated either to Pagel or in his presence that he had been arrested for harassment.

The fact that thirty minutes later a decision was made to pursue different charges does not alter the analysis. If Pagel had been *released* at that point in time, we think it is clear based on *State v. Davis*, 525 N.W.2d 837 (Iowa 1994), that the speedy indictment rule still would have been triggered for a harassment charge. In *Davis*, the defendant was arrested for operating while intoxicated, was booked, but was then released pending the results of his blood test. 525 N.W.2d at 838. His total time in detention was approximately two hours. *Id.* A month later, a complaint was filed charging Davis with OWI. *Id.* Five weeks after that, a trial information was filed. *Id.* The supreme court held that the speedy indictment rule had been violated, ruling that once a defendant has been arrested, a peace officer cannot undo the effects of that arrest by “unarresting” him. *Id.* at 840. If a subsequent release cannot undo the effects of a prior arrest, we think it stands to reason that a decision to pursue different charges cannot have that effect, either.

As noted above, the supreme court has also made clear that whether a defendant has been “arrested” for speedy indictment purposes does not depend

on whether the defendant has been booked. *Rains*, 574 N.W.2d at 910; *Dennison*, 571 N.W.2d at 495; *Schmitt*, 290 N.W.2d at 26. Accordingly, we think it logically follows that Pagel's ultimate booking on a different charge does not help the State here. Pagel had already been arrested, had been told what he was being arrested for, and had been in custody at the jail for approximately fifty minutes, not counting his time in custody before arriving at the jail.

The State makes what is in essence a policy argument, urging that Pagel was not prejudiced by "the officer's premature statement about the charge." But judicial precedent, binding on us, indicates that lack of prejudice is not a ground for relaxing rule 2.33(2)(a). In *Davis*, the supreme court observed that the "arbitrary" forty-five day limit cannot be violated "even 'a little bit' without a showing of good cause." 525 N.W.2d at 840 (quoting *State v. O'Bryan*, 522 N.W.2d 103, 106 (Iowa Ct. App. 1994)). As it summed up, "An arrest of a citizen is a serious matter." *Id.* In any event, the decision to arrest Pagel for harassment was not made lightly. The officer combed the Iowa Code for some time, consulted another person over the phone, and then specifically told Pagel he was being arrested for harassment, with the prediction that after the investigation was completed a more serious charge would be brought. The officer's statements regarding the grounds for arrest were not a mere courtesy to Pagel. The officer had a legal duty to inform Pagel of the reason for arrest. See Iowa Code § 804.14. Nor were the statements an inadvertent misstatement; rather, they were the outcome of a deliberate process.



For the foregoing reasons, we affirm the district court ruling that sustained Pagel's motion to dismiss the harassment charge due to a speedy indictment violation.

**AFFIRMED.**