

**IN THE COURT OF APPEALS OF IOWA**

No. 0-509 / 09-1726  
Filed September 9, 2010

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

**vs.**

**CASEY LEE BARNHART,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

The State appeals the district court order dismissing charges against  
defendant for possession of a controlled substance based on violation of the  
speedy indictment rule. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Joseph Crisp, Assistant County  
Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,  
Assistant Appellate Defender, for appellee.

Considered by Eisenhauer, P.J., Danilson, J., and Huitink, S.J.\* Tabor, J.,  
takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

On April 15, 2009, officer Ronald Griggs of the Altoona Police Department, stopped a vehicle driven by Casey Barnhart which had been traveling forty-one miles per hour in a twenty-five-mile-per-hour zone. The vehicle was impounded and searched. Deputy Keith Romp of the Polk County Sheriff's office found four syringes in the car. One of the syringes contained a brown liquid substance. Also, forty-six tablets of alprazolam, a prescription medication, were found. Barnhart was arrested. A preliminary complaint was filed against him for violating an Altoona city ordinance concerning possession of drug paraphernalia, possession of prescription drugs, and traffic-related offenses.

On May 21, 2009, the State charged Barnhart by trial information with possession of a controlled substance (alprazolam) and failure to possess a drug tax stamp. Those charges were dismissed on August 6, 2009, after the State learned someone else with access to the vehicle had a valid prescription for alprazolam.

A laboratory report from the Iowa Division of Criminal Investigation (DCI) dated August 5, 2009, showed the liquid substance in one of the syringes was methamphetamine. A preliminary complaint was filed on August 11, accusing Barnhart of possession of a controlled substance (methamphetamine). At a preliminary hearing on August 21, Officer Griggs testified:

His vehicle was impounded, and during the impound inventory there was a bottle of tablets found, as well as four syringes, which were empty. One had a brownish liquid type substance in it, which later field tested positive for methamphetamine.

On cross-examination Officer Griggs was questioned as to where the field-tested syringe had been found, but he did not know the answer to that question. A trial information was filed on September 10, 2009, charging Barnhart with possession of a controlled substance (methamphetamine), third offense.

Barnhart filed a motion to dismiss, claiming the criminal charges against him should be dismissed under Iowa Rule of Criminal Procedure 2.33(2)(a) because the trial information had been filed more than forty-five days after he had been arrested on April 15, 2009. Barnhart argued that because the substance in the syringe had been determined to be methamphetamine by a field test, the State had all the information it needed to charge him with possession of methamphetamine at the time of his arrest.

At the hearing on the motion to dismiss, Officer Griggs testified his statement at the preliminary hearing that the substance in the syringe had been field tested was inaccurate. He stated he had based his answer on what he understood to be the procedure for field testing substances at that time, which was that detectives would field test the substance. He stated he learned he would have had to specifically request a field test prior to the syringe being sent to the DCI, and he had not requested a field test. Officer Griggs stated he had not personally field tested the substance.

The district court granted the motion to dismiss. The court found, "All the drug-related charges in this case are anchored in the events surrounding the seizure of Defendant on April 15, 2009." The court concluded the charge of possession of methamphetamine was not a new unrelated crime. The court was

very skeptical of Officer Griggs's testimony that he had been mistaken about procedure at the time of the preliminary hearing. The court stated, "Given the equivocal testimony of this officer, the State has failed to meet its burden of showing good cause for the late filing of the second trial information." The court also determined the second trial information was fundamentally unfair under the Iowa Constitution. The State appeals the district court order dismissing the criminal charge against Barnhart.

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

We review a district court's decision on a motion to dismiss under the speedy indictment rule for the correction of errors at law. *State v. Dennison*, 571 N.W.2d 492, 494 (Iowa 1997). "[W]e are bound by findings of fact supported by substantial evidence unless we determine that the court was wrong as a matter of law." *State v. Lyrek*, 385 N.W.2d 248, 250 (Iowa 1986). On constitutional issues our review is de novo. *State v. Shanahan*, 712 N.W.2d 204, 210 (Iowa 2006).

## **III. Merits.**

### **A. Iowa Rule of Criminal Procedure 2.33(2)(a) 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.

The term "indictment" in this rule includes a trial information. *State v. Lies*, 566 N.W.2d 507, 508 (Iowa 1997).

The district court found, "All the drug-related charges in this case are anchored in the events surrounding the seizure of Defendant on April 15, 2009."

The court concluded the methamphetamine charge was not a new unrelated crime, and therefore the time period began to run when Barnhart was arrested on April 15, 2009.

The forty-five-day time period applies only to the public offense for which a defendant is charged. *State v. Sunclades*, 305 N.W.2d 491, 494 (Iowa 1981); *State v. Beeks*, 428 N.W.2d 307, 309 (Iowa Ct. App. 1988). The time limit does not apply to all charges that may arise from the same episode. *State v. Burton*, 231 N.W.2d 577, 578 (Iowa 1975). “There is nothing to suggest it extends to the commission of an offense which has not resulted in an arrest.” *State v. Edwards*, 571 N.W.2d 497, 499-500 (Iowa Ct. App. 1997).

We believe the district court incorrectly framed the issue to be determined. The law is clear that the time period in rule 2.33(2)(a) does not apply to all criminal charges that may arise from a single incident. *See Burton*, 231 N.W.2d at 578. Therefore, it is not dispositive that the drug-related offenses were anchored in the same incident.

The proper issue is: When was Barnhart arrested for the crime of possession of methamphetamine? The forty-five-day time period begins to run when a defendant is arrested for the offense being charged. *Sunclades*, 305 N.W.2d at 494. Even if officers have probable cause to arrest a defendant for a different crime at the time of the arrest, the time period applies only to the crimes for which a defendant is arrested. *Edwards*, 571 N.W.2d at 500 (“Although police may have had probable cause to arrest Edwards at the time, he was only arrested for jaywalking and the related offense involving the flight and resistance.”). Thus, the issue here is not whether the officers had probable

cause to arrest Barnhart for possession of methamphetamine on April 15, 2009, but whether they in fact did so.

The preliminary complaint by the City of Altoona that was filed at the time of Barnhart's arrest lists these offenses: (1) failure to maintain or use safety belts; (2) possession of drug paraphernalia; (3) violation—financial liability coverage; (4) driving while license denied, suspended, cancelled or revoked; (5) speeding 55 or less; and (6) unlawful possession of prescription drugs. None of these offenses is the same as a charge for the possession of methamphetamine, in violation of Iowa Code section 124.401(5) (2009).<sup>1</sup> We conclude there is no evidence in the record to show Barnhart was arrested for possession of methamphetamine on April 15, 2009.

When a defendant is already under arrest on different charges, the time period for a new charge under rule 2.33(2)(a) begins when the new charge is filed. *Lyrek*, 385 N.W.2d at 250; *State v. Eichorn*, 325 N.W.2d 95, 96-97 (Iowa 1982). The preliminary complaint against Barnhart for possession of methamphetamine was filed on August 11, 2009. The trial information for that charge was filed on September 10, 2009, less than forty-five days later. We conclude the trial information was not untimely under rule 2.33(2)(a), and the district court erred by dismissing the charge of possession of methamphetamine based on that rule.<sup>2</sup>

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<sup>1</sup> Barnhart was charged with possession of drug paraphernalia under a city ordinance. The charge of possession of prescription drugs clearly refers to the aprazolam, and not methamphetamine. The other charges against Barnhart were traffic-related offenses.

<sup>2</sup> Based on our conclusions on this issue we do not address the State's claims that rule 2.33(2)(a) does not apply to non-indictable offenses, or that the rule is

**B.** The district court also found the criminal charges should be dismissed based on Article I, section 9 of the Iowa Constitution, which provides “no person shall be deprived of life, liberty, or property, without due process of law.”<sup>3</sup> The speedy trial rights afforded by the Iowa Rules of Criminal Procedure are narrower and more restrictive than the constitutional rights afforded by due process. See *State v. Harriman*, 513 N.W.2d 725, 727 (Iowa 1994).

A defendant has a due process right to be free from prejudicial pre-accusatorial delay. See *State v. Davis*, 259 N.W.2d 843, 845 (Iowa 1977). A defendant must show the State’s delay in bringing criminal charges was unreasonable and the defendant was actually prejudiced by the delay. *State v. Isaac*, 537 N.W.2d 786, 788 (Iowa 1995). We do not presume impropriety or bad faith on the part of the State, and the defendant must show the State delayed in order to gain a tactical advantage in the case. *Id.*

Barnhart presented no evidence to show he was prejudiced by the delay. The State received the laboratory report from the DCI showing the substance in the syringe was methamphetamine on August 5, 2009. The trial information was filed on September 10, 2009. This short delay was not sufficient to deny defendant of his due process rights.

We reverse the decision of the district court and remand.

**REVERSED AND REMANDED.**

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inapplicable where the defendant is charged by two different sovereigns, here the City of Altoona and the State of Iowa.

<sup>3</sup> We note defense counsel stated at the hearing on the motion to dismiss, “I’m not making a due process argument, Judge, in this case.”