

**IN THE COURT OF APPEALS OF IOWA**

No. 0-681 / 10-0171  
Filed October 6, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TYREE DONTE COOPER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County, Denver D. Dillard (motion to dismiss) and Douglas S. Russell (trial), Judges.

Defendant appeals his conviction for delivery of a controlled substance, crack cocaine, claiming a speedy indictment violation. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, Janet M. Lyness, County Attorney, and Meredith L. Rich-Chappell, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Doyle, 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**

The record in this case shows the evidence as follows: On July 2, 2008, a confidential informant purchased crack cocaine from Tyree Cooper in Johnson County. On September 3, 2008, Cooper was convicted in Linn County on separate charges of domestic abuse assault, failure to register as a sex offender, and possession of a controlled substance. He was sentenced on the Linn County charges and placed in the Newton Correctional Facility.

A complaint was filed against Cooper in Johnson County on November 20, 2008, for delivery of a controlled substance (cocaine base) based on the July event. An arrest warrant was issued. Johnson County caused a detainer to be filed against Cooper on February 11, 2009. The arrest warrant was personally served on Cooper at the Newton facility on March 23, 2009. Cooper was transported to Johnson County for his initial appearance on March 24, 2009. The trial information was filed on May 5, 2009.

Cooper filed a motion to dismiss, claiming a violation of his right to speedy indictment under Iowa Rule of Criminal Procedure 2.33(2)(a). He claimed the forty-five day time limit in that rule should begin running on February 11, 2009, when Johnson County filed a detainer because the detainer constituted a request to hold him. He stated it was more than forty-five days from the date the detainer was filed until the trial information was filed on May 5, 2009.

The district court denied the motion to dismiss. The court found the detainer did not restrict Cooper's liberty and was not the reason he was being held in custody at the Newton facility. The court concluded Cooper was not

arrested on the present charges on February 11, 2009. Instead, he was arrested on March 23, 2009, when the arrest warrant was personally served on him at the Newton facility. The court found the trial information was filed forty-three days later. The court determined there had not been any violation of rule 2.33(2)(a).

Cooper waived his right to a jury trial. He stipulated to a bench trial based on the minutes of testimony. The court found Cooper guilty of delivery of a controlled substance, crack cocaine, in violation of Iowa Code section 124.401(1)(c)(3) (2007). He was sentenced to a term of imprisonment not to exceed ten years. Cooper appeals the district court's ruling on his motion to dismiss.

## **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).

## **III. Merits**

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).

Cooper claims he was arrested by Johnson County authorities when they caused the detainer to be filed against him on February 11, 2009. The detainer provided:

A detainer has been filed against this subject in your favor for: FECR085429 – Delivery of a Schedule II Controlled Substance; Cocaine. Bond \$10,000 cash or full surety.

Expiration is tentatively scheduled for July 19, 2009, however, a release date could be determined by the Parole Board at any time prior to that date. We will notify you approximately 30 days prior to the offender's release.

Cooper claims he was being held under the detainer because he would have had to file a \$10,000 bond to be released. Cooper asserts that under rule 2.33(2)(a), the State had forty-five days from the date the detainer was filed to file the trial information.

Under rule 2.33(2)(a), an indictment must be filed within forty-five days of “[w]hen an adult is arrested for the commission of a public offense.” Thus, the time period begins to run when a person is arrested. See *State v. Edwards*, 571 N.W.2d 497, 499 (Iowa Ct. App. 1997). For this rule, we use the definition of arrest found in section 804.5. *State v. Beeks*, 428 N.W.2d 307, 309 (Iowa Ct. App. 1988). The term “arrest” is defined as follows:

Arrest is 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.

Iowa Code § 804.5.

When a person is already incarcerated on other charges, an issue arises as to when the person is “arrested” on new charges for purposes of applying the forty-five day time limit. In *State v. Waters*, 515 N.W.2d 562, 565 (Iowa Ct. App. 1994), the defendant was in jail in Mahaska County. He was served with a

Wapello County arrest warrant on October 25, 1991. *Waters*, 515 N.W.2d at 565. He remained in the Mahaska County jail until November 9, 1991, when he was submitted to Wapello County officials based on the Wapello County arrest warrant. *Id.* We determined “defendant was not under arrest in Wapello County until he was in the custody of Wapello County officials, which was on November 9, 1991.” *Id.* Therefore, the forty-five day time limit began to run on November 9, 1991. *Id.*

Also, in *Beeks*, 428 N.W.2d at 308, the defendant was a pretrial detainee in Webster County on October 21, 1986, when the Story County Sheriff asked Webster County to place a hold on defendant, stating there was a warrant and bond was \$28,750. *Beeks*, 428 N.W.2d at 309. The Story County sheriff took custody of defendant on March 4, 1987. *Id.* We held, “defendant was not arrested on the Story County charges until he submitted to the custody of the Story County Sheriff on March 4, 1987.” *Id.* We noted the defendant was being held on other charges the entire time he was at the Webster County jail. *Id.* The speedy indictment time began to run on March 4, 1987. *Id.*

“A person must be in the custody of county authorities of the county issuing the arrest warrant for a person to be under ‘arrest’ in that county.” *Waters*, 515 N.W.2d at 566 (citing *Beeks*, 428 N.W.2d at 309). We conclude Cooper was not under “arrest” on the present charge, as that term is used in rule 2.33(2)(a), at the time the detainer was filed. It is clear he was being held at the Newton facility due to the convictions against him in Linn County. He was not at that time under the authority of Johnson County. *See Beeks*, 428 N.W.2d at 309

("A person not in custody of county authorities is not arrested by the mere bringing of a charge in that county.").

We note that in *Beeks*, a bond amount was set in the document requesting a hold be placed on the defendant. *Id.* at 308. This was not a factor in the court's conclusion that the defendant was being held on other charges at the time. *Id.* at 309. Here, Cooper was not being held due to failure to post bond, as noted above he was in custody at the Newton facility based on the Linn County convictions.

We conclude the forty-five day time limit for rule 2.33(2)(a) did not begin to run at the time the detainer was filed. At that time Cooper was not in the custody of Johnson County officials. We conclude Cooper has not shown a violation of the speedy indictment rule. We affirm the decision of the district court denying his motion to dismiss.

**AFFIRMED.**