IN THE COURT OF APPEALS OF IOWA

No. 2-117 / 10-0296
Filed April 25, 2012

STATE OF IOWA,
Plaintiff-Appellant/Cross-Appellee,

vs.

BEVERLY LOUISE FLINCHUM and
WILLIAM RICHARD FLINCHUM,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve, Judge.

The State appeals rulings dismissing charges on one-year speedy trial grounds. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Kimberly Shepherd, Assistant County Attorney, for appellant.

Kent Simmons, Davenport, for appellees.

Heard by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

The State appeals the district court's dismissal, on speedy trial grounds, of first-degree arson charges against the defendants, Beverly Flinchum and William Flinchum. Because the defendants' one-year speedy trial rights were triggered by the September 2009 arraignment, the trial court erred in dismissing this action on speedy trial grounds. We therefore reverse the ruling granting the motion to dismiss on speedy trial grounds and remand for further proceedings.

I. Background Facts and Proceedings.

On August 18, 2007, a fire occurred at a wine shop operated by Beverly Flinchum.

On June 20, 2008, the State filed criminal complaints against Beverly Flinchum and her spouse, William Flinchum charging them each with arson in the first degree. Trial informations (FECR312328—Beverly; FECR312329—William) were filed on October 1, 2008.

A. October 2008 Trial Informations.

On October 1, 2008, trial informations charged the Flinchums with arson in the first degree. They were arraigned on October 2. The Flinchums subsequently filed on October 9, motions for discovery, to exclude evidence, for a bill of particulars, and to dismiss. The motion to dismiss was pursuant to Iowa Rule of Criminal Procedure 2.11(6)(*a*)[1] and asserted the trial information and

[1] Rule 2.11(6)(a) provides that if the particulars stated in the information and minutes "do not constitute the offense charged," the court "on the motion of defendant shall dismiss the indictment or information unless the prosecuting attorney shall furnish a bill of particulars which so states the particulars as to cure the defect."

minutes "provide no particulars that if unexplained would lead a rational juror to conclude beyond a reasonable doubt that a fire was intentionally set."

On November 13, 2008, the State filed a resistance to the Flinchums' motions for bill of particulars and to dismiss.

A motions hearing was held on November 19, 2008. The Court's order following that hearing, filed November 20, 2008, indicates the State "delivered numerous items the [Flinchums] had previously requested" and defense counsel had "determined the motions should be held in abeyance until the defense can review the discovery." The court ordered the defense motions "held in abeyance."

On December 12, 2008, the Flinchums filed a request that a single judge be assigned to the case due to the "complicated nature of the discovery requests that are still pending." The State did not object. And on January 16, 2009, Judge Greve was assigned to "preside over all motions, hearings, and applications concerning these files, as well as the trial on the merits."

On January 27, 2009, the court filed an order in which it noted the Flinchums had waived speedy trial and were free on bond; the parties were attempting to resolve several discovery issues; and judicial economy would not be served by having the pretrial conference as now scheduled. The pretrial conference was rescheduled for March 13, 2009. Due to a conflict in the judge's schedule, the pretrial conference was again moved to April 3, 2009.

On March 2, 2009, the Flinchums requested additional discovery, and also filed a motion in limine. On April 3, the State filed a response to the Flinchums' first, second, and third motions for discovery, indicating materials would be made

available or copies would be made for the defense. That same date, the pretrial conference was held, and trial was scheduled for August 10, 2009.

On May 20, 2009, the State filed notice of additional minutes of testimony for two witnesses.

On June 24, 2009, the State filed notice of additional minutes of testimony for thirty-one witnesses. The next day the State filed resistances to the Flinchums' first motion in limine and their motion to exclude evidence, as well as a supplemental resistance to the motions for a bill of particulars and to dismiss.

On June 29, 2009, the State again filed a notice of additional minutes of the proposed testimony for an insurance investigator.

On July 1 and July 23, 2009, a hearing on the pending motions was held. The parties asked the court to first consider the motion to exclude evidence. On August 6, 2009, the district court found the following facts:

> At approximately 9:00 p.m. on Saturday, August 18, 2007, Captain Craig Richard Black of the [Davenport Fire Department] DFD responded to a dispatch of a fire alarm to a business named "Wine Styles" located in a strip mall at 4855 Utica Ridge Road, Davenport, Iowa. A dispatch of a fire alarm occurs when smoke detectors or heat or water set off a fire detection system, which is either sent automatically to dispatch by the system itself or called in from a witness. . . .
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> [After smelling gas and evacuating a neighboring restaurant] Captain Black then donned his firefighting gear, which included a breathing device. After suiting up, he and another firefighter entered the building to investigate further. Wine Styles was closed, but there were still lights on and a couple of sprinkler heads flowing water. Captain Black said the smell of what he thought was natural gas seemed to be throughout the building, but the odor was not getting any worse.
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> In the office area, Captain Black located a 20-pound cylinder in the middle of the office area. That type of cylinder is commonly used for gas grills. This particular cylinder was not connected to anything. It was determined the set screw on this tank had been

turned approximately one and one-half turns, and the tanks was leaking gas. Captain Black acknowledged propane gas smells differently than natural gas and once he realized the propane tank was leaking, he recognized what he was smelling was propane gas and not natural gas.

. . . .

At some point during this evening, another firefighter removed a gas grill with an attached propane tank and hose from the hallway of the store to the outside of the rear of the building. . . .

Captain Black did not think he or any other firefighter should examine the gas grill and attached tank and hose while it was in the hallway because he did not feel it was a problem. He felt that when the lone cylinder from the office was removed, that the propane issue had been solved. . . .

. . . .

[Fire Chief] Michael Hayman was called to Wine Styles by District Chief Mike Ryan. Chief Hayman is routinely called to come to any structure fire. Chief Hayman arrived on the scene at approximately 10:30 p.m. or 11:00 p.m. . . .

. . . He observed water on the floor of the store. The rear of the business had some damage due to what appeared to be a flash fire or explosion. At that point, he could not make a determination as to what happened. Chief Hayman was shown some candles that were left burning in the retail portion of the store that the firefighters had extinguished. He was also shown a single propane cylinder in the back room near a stool with a candle on it. This candle was not lit when the firefighters entered the building. Chief Hayman noticed that the gas grill with the attached hose was outside at the rear of the building. There was no mention made to him of any dysfunction of the grill. The propane tank found in the office area near the stool with the candle on it was taken into evidence that evening by the DPD.

While standing outside at the rear of the building at some point in the evening, Chief Hayman and Firefighter Box thought they smelled propane. Chief Hayman asked Box to check the controls on the grill and the tank. Box found the grill controls were off, but the valve to the tank was open so he closed it. After he turned the tank, they no longer smelled propane gas. Chief Hayman does not know how far Box had to turn the valve on the tank to shut it off. It did not occur to Chief Hayman to further check the grill, tank and hose at that time. Mrs. Flinchum admitted she left the valve turned on the propane tank and claimed that was what she always did.

. . . .

Chief Hayman left the scene of the incident at approximately 2:00 a.m. on Sunday, August 19, 2007. The gas grill with attached propane tank and hose were left outside of the building in the rear

> on a sidewalk. . . . This area was completely open to the public and not secured in any way. . . .
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> In the afternoon of Monday, August 20, 2007, Keith Peterson, who is a claims management specialist with Selective Insurance, met with Beverly Flinchum at the Wine Styles location. Selective Insurance had insurance coverage on the business. Mr. Peterson took a recorded statement from Mrs. Flinchum, inspected the damages and also took several photographs both inside and outside of the store. . . .
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> Two photographs Mr. Peterson took on the afternoon of August 20, 2007, were admitted as Exhibits 13 and 14. Exhibit 13 is a close-up photograph of the propane tank and hose attached to the gas grill, which is shown sitting outside the rear of the business. Exhibit 14 is a photograph of the entire gas grill as it sat outside the rear of the business. At the time Mr. Peterson took these photographs, he did not see any breach in the hose which concerned him. . . .
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> [Fire investigator Mark] Hanson went to Wine Styles for the first time on either August 22 or August 23, 2007. . . . While there for the first time, Mr. Hanson met with Mrs. Flinchum. He also began looking at everything inside and outside the store that could have been an ignition source. When he examined the gas grill with attached propane tank and hose, which was still sitting outside the rear of the building, he found a breach in the hose. He called Chief Hayman who came to the business to view the hose. Mrs. Flinchum was also present. After Chief Hayman arrived and observed the hose, he and Mr. Hanson agreed the tank and hose should be taken as evidence. Mr. Hanson removed the tank and hose and shrink wrapped it to take with him for examination.
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> After seizing the propane tank and hose, Mr. Hanson had those examined by Duane A. Wulf, a mechanical engineer . . . . Mr. Wulf did not examine the tank and hose until September 6, 2007. . . . Mr. Wulf's report indicates there is a cut in the hose that was made by a sharp object or a knife. That cut is shown in Exhibit 10. Mr. Wulf's report also indicates the propane tank should have weighed about 34 pounds if filled with propane and that it weighed 30.5 pounds at the time of examination. Mr. Wulf concluded approximately 3.5 pounds of propane gas had either escaped or been used from the tank. No testing was done to determine how much or at what rate propane gas would escape from the cut in the hose.

The district court granted the Flinchums' motion to exclude the propane tank and hose based on their chain-of-custody objection. The court concluded:

> Evidence cannot be abandoned on the scene for days on end with free public access, then given to an insurance company's expert, and then be released to the State much later with the State claiming the chain-of-custody does not begin until it physically obtains the property. Here, the State effectively had possession and control of this propane tank and hose on the night of the fire through the fire department's investigation. Its failure to take control of this evidence and establish a proper chain-of-custody from that point on is fatal to establishing proper foundation for this evidence. Thus, because of the break in the chain-of-custody of this evidence, it is unreliable and not probative so it is inadmissible under both Iowa Rules of Evidence 5.403 and Iowa's chain-of-custody doctrine.

On August 19, 2009, ten months after the motion was filed, the district court ruled on the Flinchums' motion to dismiss the trial informations. The motion was based on the contention the evidence contained therein, if unexplained, would not warrant conviction and did not constitute the offense charged. *See* Iowa Rs. Crim. P. 2.4(3), 2.11(6)(*a*). The court observed it was to decide the matter based on a review of the pleadings, but due to its earlier ruling to exclude, the court did not "consider any evidence relating to the gas grill and propane tank which were left outside the business for several days after the fire."

The court stated "[t]he facts alleged in the minutes of testimony are vague and broad" and did not provide "any particulars or specifics of what evidence, if any, the State has regarding Defendants' intent." The district court found "the minutes of testimony do not provide any facts that a fire was intentionally set." The Flinchums' motion to dismiss was granted.

The State did not appeal from either the ruling excluding evidence or granting the motion to dismiss. *See* Iowa Code § 814.5 (providing appellate review to State)

B. September 2009 Trial Informations.

On September 2, 2009, the State filed new trial informations in new criminal cases numbered FECR323887 and FECR323888, and again charged each of the Flinchums with arson in the first degree relating to the August 18, 2007 fire occurring at Wine Styles.

On September 17, 2009, the Flinchums were arraigned on the newly filed informations. A pretrial conference was scheduled for October 2, and trial was set for October 12, 2009. They waived their ninety-day speedy-trial rights (but not their one-year speedy trial rights). The pretrial conference was rescheduled for October 9, at which time a hearing on motions challenging defects in the institution of the prosecution, defects in the informations, and admissibility of evidence was set for December 9, 2009, and a trial date was set for February 8, 2010.

On October 16, 2009, the Flinchums filed a "motion to reinstate evidentiary rulings" made in the prior proceedings.

On October 27, the Flinchums requested production of items they asserted had yet to be produced as agreed. On that same date, they also moved to dismiss the charges on grounds the September 2, 2009 trial information was not filed within forty-five days of their arrests in 2008, in violation of criminal procedure rule 2.33(2)(*a*); and they had not been brought to trial within one-year of initial arraignment on October 2, 2008, in violation of rule 2.33(2)(*c*).

The State resisted the motion to dismiss, contending rule 2.11(7) allows for the filing of a new trial information when the same is dismissed by the court, and under that rule, the time period for bringing the defendant to trial "shall

commence anew." The State also argued the authority to re-prosecute is "implicit in section 802.9 of The Code of Iowa, which extends for thirty days the time for filing a new indictment or information after dismissal for 'a defect or irregularity' in an indictment or information."

On January 25, 2010, the district court granted the motions to dismiss, finding a violation of the Flinchums' one-year speedy trial rights. Iowa R. Crim. P. 2.33(2)(*c*). The district court concluded it was required to use the Flinchums' October 2, 2008 arraignment date for purposes of calculating the one-year speedy-trial deadline. *See* Iowa Rs. Crim. P. 2.11(7), 2.33(2)(*c*). The court further found the State had failed to prove good cause for the delay.[2]

The State appeals and the Flinchums cross-appeal.[3] The cross-appeal alleges the State did not follow the proper procedures to re-file the trial information.

II. Scope and Standard of Review.

We review a trial court's ruling on a motion to dismiss based on speedy-trial grounds for an abuse of discretion. *State v. Winters*, 690 N.W.2d 903, 907-08 (Iowa 2005). However, in ruling on such motions, that discretion is narrow. *Id.* If there was a delay, "[t]he discretion to avoid dismissal in a criminal case is limited to the exceptional circumstances where the State carries its burden of

[2] The Flinchums contend the State did not raise and pursue the "good cause" exception below. However, a review of the district court's ruling reveals the court did in fact consider and reject any contention that there was good cause for the delay.

[3] The Flinchums filed a notice of cross appeal from the district court's January 25, 2010 dismissal of the State's actions. In their cross-appeal the Flinchums argue an alternative ground in support of dismissal–the lack of good cause, which they raised below, but which the district court denied. A successful party is not required to cross-appeal to preserve error on a ground urged but rejected by the district court. *See Garling Constr., Inc., v. City of Shellsburg,* 641 N.W.2d 522, 523 (Iowa 2002) ("This is because a party need not, in fact cannot, appeal from a favorable ruling.").

showing good cause for the delay." *State v. Bond,* 340 N.W.2d 276, 279 (Iowa 1983); *see also* 21A Am. Jur. 2d *Criminal Law* § 1031, at 295 (1998) (stating that statutes and rules implementing the right to a speedy trial should be "strictly construed in favor of the liberty of the citizen, and all doubts are to be resolved in favor of the accused").

III. Discussion.

We begin our discussion by setting forth some relevant statutes and rules. "All indictable offenses may be prosecuted by trial information." Iowa R. Crim. P. 2.5(1). If the county attorney proceeds by trial information, minutes of evidence must also be filed "at the time of filing such information." Iowa R. Crim. P. 2.5(3). "Prior to the filing of the information, it must be approved by" a judicial officer having jurisdiction of the offense, and if the "evidence contained in the information and the minutes of evidence, if unexplained, would warrant a conviction", the judicial officer "shall approve the information which shall be promptly filed." Iowa R. Crim. P. 2.5(4). "When the court approves the trial information, it determines whether there is probable cause to detain the defendant to answer the charge." *State v. Petersen*, 678 N.W.2d 611, 614 (Iowa 2004); *see State v. Shank,* 296 N.W.2d 791, 792 (Iowa 1980).

Dismissal of an indictment or trial information is governed by rule 2.11(6), which provides:

> a. *In general.* If it appears from the indictment or information and the minutes of evidence that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of the defendant shall dismiss the indictment or

> information unless the prosecuting attorney shall furnish a bill of particulars which so states the particulars as to cure the defect.
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> . . . .
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> c. *Information.* A motion to dismiss the information may be made on one or more of the following grounds:
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> (1) When the minutes of evidence have not been filed with the information.
>
> (2) When the information has not been filed in the manner required by law.
>
> (3) When the information has not been approved as required under rule 2.5(4).

"A violation in the complaint stage of the proceedings does not affect the merits of the charge, but only affects the legality of the detention of the accused to answer the charge prior to the filing of the information." *Peterson*, 678 N.W.2d at 614 (citing *State v. Dowell*, 297 N.W.2d 93, 97 (Iowa 1980)).

If the court dismisses a trial information at the complaint stage, the effect of that determination is governed by rule 2.11(7), which states:

> If the court grants a motion based on a defect in the . . . information, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. *The new information or indictment must be filed within 20 days of the dismissal of the original indictment or information. The 90-day period under rule 2.33(2)(b) for bringing a defendant to trial shall commence anew with the filing of the new indictment or information*

(Emphasis added.)

However, also pertinent is rule 2.33, which deals with dismissal of prosecutions. That rule provides, in part:

> (1) *Dismissal generally; effect.* The court, upon its own motion or the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal

> is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor.
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> (2) *Speedy trial.* It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this rule may be made by the prosecuting attorney or the defendant or by the court on its own motion.
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> a. When an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45, 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.
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> b. If a defendant indicted for a public offense has not waived the defendant's right to a speedy trial the defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.
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> c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause.
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> d. If the court directs the prosecution to be dismissed, the defendant, if in custody, must be discharged, or the defendant's bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to the defendant.

Iowa R. Crim. P. 2.33(1), (2).

Subsection one allows for dismissals "in the furtherance of justice," which includes "facilitating the State in gathering evidence, procuring witnesses, or plea bargaining." *State v. Johnson*, 217 N.W.2d 609, 612 (Iowa 1974). By the very terms of the subsection, "[s]uch a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor." Iowa R. Crim. P. 2.33(1).

> Two features of the rule are apparent: (1) it may only be invoked by the court on its own motion or by the prosecuting attorney; it is not

> available to a defendant; and (2) the only ground for dismissal under this rule is "furtherance of justice." Thus, on the face of rule [2.33(1)], it is obviously not a speedy-trial rule.

State v. Fisher, 351 N.W.2d 798, 801 (Iowa 1984);[4] *see State v. Lasley*, 705 N.W.2d 481, 492 (Iowa 2005) (rejecting the Tribe's attempted invocation of rule on behalf of defendant to bar reinstatement of charges; court notes only the court and the prosecutor may move to dismiss pursuant to rule 2.33(1); rule 2.33(1) is not available to a defendant).

Subsection two of rule 2.33 deals with a defendant's statutory speedy trial rights and subjects a case to dismissal if the stated deadlines are missed, "unless good cause" is shown. *See* Iowa R. Crim. P. 2.33(2)(*a*), (*b*), (*c*). The rule is "more stringent than constitutional protection delineated in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)." *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999). Such dismissals are an absolute bar to reinstatement or refiling of an information or indictment charging the same offense. *See State v. Abrahamson*, 746 N.W.2d 270, 273 (Iowa 2008) ("A dismissal for failure to provide a speedy trial is an 'absolute dismissal, a discharge with prejudice, prohibiting reinstatement or refiling of an information or indictment charging the same offense."); *State v. Johnson,* 217 N.W.2d 609, 612 (Iowa 1974) (stating that allowing the State to refile the same charges following a speedy trial violation would "drain [the speedy trial rule] of its effectiveness"). We note the first cases were not dismissed on speedy-trial grounds.

[4] We have stated the rules of criminal procedure throughout this opinion as currently numbered. Unless otherwise stated, substantively the rules remain as they were at the time a court addressed them.

The State relies upon rule 2.11(7) (stating a "new information or indictment must be filed within 20 days of the dismissal of the original indictment or information") to support its refiling of the arson charges against the Flinchums. The State argues it filed the new information within twenty days of the district court's August 19, 2009 dismissals. It contends the defendants' speedy-trial clock "commence[d] anew" at that time.

The district court rejected this argument, noting rule 2.11(7) by its terms only restarts the ninety-day clock and does not "start anew all of the speedy trial limitations." The court rejected the State's attempt to analogize to cases dismissed "in furtherance of justice" where re-filing of charges is specifically authorized by rule 2.33(1).

The district court stated:

> Here, the Defendants waived their 90-day speedy trial rights, but never waived their one-year rights. [Rule] 2.11(7) clearly sets out the 90-day period begins anew, but does not mention the one-year speedy trial right. Its silence on the one-year limitation is deafening. Further, one can only conclude when a case is dismissed under rule 2.11(6) and then refiled within 20 days pursuant to rule 2.11(7), it is the same case and the only period that starts anew is the 90 day-day period specifically set forth in Rule 2.11(7). Any other interpretation would not make sense given the language of rule 2.11(7) and would allow the State at its whim to violate a defendant's speedy trial rights. If the State were permitted to commence repeated prosecutions for the same offense following undue delay in going to trial, subject only to the running of the statue of limitations in Iowa Code 802, there would be nothing to deter delays at a prosecutions' convenience in pushing forward to trial, and the defendant's constitutional right to a speedy trial would be rendered largely meaningless. The Court finds Defendants' one-year speedy trial rights under rule 2.33(2)(b) have been violated since trial did not commence within one year of their initial arraignments on October 2, 2008.

The State argues the district court erred because our supreme court has clarified the meaning of "initial arraignment" for purposes of rule 2.33(2)(*c*)[5] in *Fisher*, 351 N.W.2d at 801. In *Fisher*, the State's motion to dismiss burglary charges against the defendant was granted "in the furtherance of justice," which did not preclude a refiling of charges. 351 N.W.2d at 801. The defendant argued that even though rule 2.33(1) allowed a re-setting of the ninety-day period, he was denied his speedy trial right because he was not tried within a year as required by subsection two of the rule. *Id.* The court rejected his claim, stating:

> The defendant argues in the alternative that, even if the State could properly refile the charges, he was denied a speedy trial because he was not tried within a year as required by rule [2.33(2)(c)]. That rule provides:
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> > All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to [rule 2.8] unless an extension is granted by the court, upon a showing of good cause.
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> The State does not rely upon a showing of good cause (although it suggests a remand to develop the record on that point if it is unsuccessful on its interpretation arguments).
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> This argument turns on the meaning of "initial arraignment"; if it means the arraignment under the first information, the charges must be dismissed (absent waiver or a finding of good cause); if it refers to the arraignment under the refiled charge, the trial was timely.
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> We conclude the one-year limitation in rule [2.33(2)(c)] is *triggered by the arraignment under the charge for which the defendant actually stood trial, not by his arraignment under the earlier charge, despite the fact they were based on the same facts and the same crimes were alleged. Dismissal of the original information concluded the proceedings in that case.*

Id. at 801-02 (emphasis added).[6]

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[5] Rule 2.33(2)(*c*) states: "All criminal cases must be brought to trial within one year after the defendant's *initial arraignment* pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause." (Emphasis added.)

[6] *But see State v. Hempton*, 310 N.W.2d 206, 207-08 (Iowa 1981):

While our supreme court has not previously addressed from what date the one-year speedy trial deadline runs in a new criminal case when the State's prior case was dismissed due to a rule 2.11(6)(*a*) defect in the trial information, the *Fisher* court's statement above appears to control. To reach a different conclusion, would result in a different definition of the term "initial arraignment" as used in rule 2.33(2)(*c*). In essence, "initial arraignment" would have two definitions based upon which rule resulted in the dismissal. Competing definitions of the same term would cause confusion. *See Deboom v. Raining Rose, Inc*., 772 N.W.2d 1, 14 (Iowa 2009) (concluding that adopting one meaning for substantially the same word would eliminate confusion).[7]

> We are thus required to decide what the term "initial arraignment" means in rule [2.33(2)(c)]. This question is answered in the rules. Iowa Rule of Criminal Procedure [2.8(1)] provides that an accused is to be arraigned in open court as soon as practicable after the filing of an indictment or trial information. The rule defines arraignment: "Arraignment shall consist of reading the indictment to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto." . . .
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> Defendant argues, however, that "initial arraignment" in rule [2.33(2)(*c*)] really means "initial appearance." He asserts that because a defendant is arraigned only once, the use of the word "initial" signifies that the rule actually refers to the accused's first appearance in court after his arrest, even if, as here, this appearance occurs in another state. We do not agree with defendant's premise. At least two situations may arise in which a defendant is arraigned more than once.
>
> One arises when a court sustains a motion to dismiss based on a defect in the institution of the prosecution or in the indictment or information. When a new or amended indictment or information is filed pursuant to [rule 2.11(7)], a new arraignment is held. *Yet this is not the "initial arraignment" because the defendant has previously been arraigned under* [*rule 2.8(1)*] *on the same charge. It is significant that rule [2.11(7)] provides the 90-day period for speedy trial commences anew with the new filing but does not provide similarly regarding the one-year limitation in rule* [*2.33(2)(c)*].

(Emphasis added.)

[7] We also observe the new charges against the Flinchums were filed in two new criminal cases, and thus there was only one arraignment in each of the new cases,

Moreover, applying the definition sought by Flinchums under these facts results in the one-year speedy trial rule being violated before the ninety-day speedy trial rule is violated. Because rule 2.11(7) provides that the "90-day period for speedy trial commences anew," it is illogical to conclude that a trial held within the ninety-day period granted by the rule would run afoul of the one-year speedy trial rule. It is more reasonable to conclude that rule 2.11(7) never referenced the one-year speedy trial rule or specifically stated that it also commences anew because the drafters did not imagine a factual scenario where a motion to dismiss is not ruled upon for ten months.[8] Accordingly, we conclude the definition of "initial arraignment" as used in rule 2.33(2)(*c*) refers to the arraignment for the charge for which the defendant actually stands trial as defined in Fisher, and the district court erred in ruling the one-year period began with the October 2, 2008 arraignment. We therefore reverse the dismissal on speedy trial grounds.

On cross-appeal, the Flinchums argue the State did not follow proper procedure for re-filing the trial information, contending rule 2.11(7) requires the State to be granted specific leave of court granted in the prior action.

The simple answer is that while rule 2.11(7) appears to contemplate the court's involvement in the filing of a new information or indictment, it does not require prior approval of the court. The only language specifically referencing a

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FECR323887 and FECR323888. As observed in *Fisher*, 351 N.W.2d at 801-02, "Dismissal of the original information concluded the proceedings in that case."

[8] The confusion caused by Flinchums' interpretation is aptly reflected in their "limited waiver of speedy trial right" wherein they attempt to waive the ninety-day speedy trial to the extent their trial commences by December 1, 2009, but preserve their right to speedy trial within one year of the initial arraignment. According to Flinchums' subsequent motion to dismiss filed on October 27, 2009, thirty-three days before their limited waiver deadline, the one-year speedy-trial timeframe expired.

court order is in the permissive form. Iowa R. Crim. P. 2.11(7) ("If the court grants a motion based on a defect in the . . . information, it *may* also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within 20 days of the dismissal of the original indictment or information." (emphasis added)).

In its ruling, the district court notes the State has "beefed up its minutes of testimony" and found the pleadings "adequate at this stage of the proceedings to indicate intent when considering all the facts and circumstances."

We reverse and remand for further proceedings.

REVERSED AND REMANDED.