

**IN THE COURT OF APPEALS OF IOWA**

No. 7-469 / 06-0962  
Filed August 8, 2007

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

**vs.**

**RODERICK REIFENSTAHL,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Artis Reis (continuance)  
and D.J. Stovall (trial), Judges.

Defendant Roderick Reifensahl appeals from his conviction of two counts of  
false imprisonment, second-degree burglary, and assault while participating in a  
felony. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha Lucey, Assistant State  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General,  
John P. Sarcone, County Attorney, and Jaki Lyn Livingston, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**SACKETT, C.J.**

Defendant Roderick Reifensahl appeals from his conviction of two counts of false imprisonment, second-degree burglary, and assault while participating in a felony in violation of Iowa Code sections 701.7, 713.5, and 708.3 (2005). Defendant contends (1) his right to a speedy trial was violated when the district court found good cause for a ten-day continuance of his trial because of a death in the family of Wanda Wiegand, a witness who was an alleged victim, and (2) his trial counsel was ineffective. We affirm.

**BACKGROUND.** From the evidence, a jury could have found the following facts. On January 8, 2006, defendant entered the Des Moines apartment of Kathleen Schrodt where Wiegand was visiting. Defendant had a knife in his hand and made various threats to the women. While holding the knife on them, he forced them to leave the apartment and go to his car. Wiegand drove the car with Schrodt in the front passenger seat and defendant in the back seat holding a knife to Schrodt's neck. The women ultimately were released.

On January 26, 2006, defendant was charged by trial information with two counts of kidnapping in the second degree, burglary in the first degree, assault while participating in a felony, and going armed with intent—all for acts alleged to have happened on January 8, 2006.

Defendant was arraigned on February 7, 2006. On March 20, 2006, he agreed that his trial could be postponed until May 1, 2006, and he executed a written limited waiver of speedy trial. Defendant's attorney was not available for an earlier trial date. On April 4, 2006, the district court entered an order rescheduling trial for 9:00 a.m. on May 1, 2006. On April 12, 2006 the State filed a Notice of

Perpetuation Deposition of Wiegand, because Wiegand would be out of the country and not be available to testify at a May 1 trial. The deposition was not taken.

On April 24, 2006, the State filed a motion for continuance, contending Wiegand's sister had died unexpectedly on April 23, 2006, and Wiegand needed time to take care of her sister's burial and other family matters. A hearing was held on April 26. Defendant's attorney resisted the continuance, contending good cause was not shown, Wiegand was a reluctant witness, and if trial were continued to a date beyond May 1st there was a speedy trial issue. The State admitted the woman was a reluctant witness but argued she was a victim and she was very upset by the death of her sister. The district court ruled "The Court finds that the State has presented good cause for continuance of trial. Trial in this matter is continued to May 10, 2006." The case went to trial on May 10 and defendant was convicted.

**SPEEDY TRIAL.** Defendant contends the district court abused its discretion in granting the State's motion because it violated his right to a speedy trial. He further contends that if error on this issue is not preserved because his defense counsel failed to file a motion to dismiss because he was not brought to trial within the speedy trial deadline, then we should find his defense counsel ineffective. The speedy trial issue was addressed by the parties in arguing the motion to continue and the district court's ruling indicates the court considered the speedy trial issue. Consequently, we find the issue adequately preserved.

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and article I, section 10 of the Iowa Constitution. It is also guaranteed by Iowa Rule of Criminal Procedure 2.33(2)(b). Rule 2.33(2)(b) states that a defendant must be brought to trial within ninety days after indictment is found

or the court must order the indictment to be dismissed unless good cause to the contrary be shown. The ninety-day period by rule is more stringent than constitutional requirements. *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001). The ninety-day period begins to run upon filing of the trial information. *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984). When a trial is not commenced within the ninety-day period, the district court must dismiss the case unless (1) the defendant has waived his right to a speedy trial, (2) the delay is attributable to the defendant, or (3) good cause exists for the delay. *Miller*, 637 N.W.2d at 204; *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983); *State v. Hamilton*, 309 N.W.2d 471, 475 (Iowa 1981).

A motion for continuance for trial may be granted only “upon a showing of good and compelling cause.” Iowa R. Crim. P. 2.9(2). Otherwise, the date assigned for trial is considered firm. *Id.* The decision to grant or deny a motion for continuance rests in the sound discretion of the trial judge. *State v. Artzer*, 609 N.W.2d 526, 530 (Iowa 2000). It will not be disturbed on appeal unless an injustice has resulted. *Id.* This standard recognizes the interest of both the State and the defendant in a speedy and fair trial. *Id.* To the extent defendant claims a constitutional violation, our review of the evidence is de novo. *State v. Leutfaimany*, 585 N.W.2d 200, 209 (Iowa 1998); *State v. Jefferson*, 574 N.W.2d 268, 271 (Iowa 1997). Our deference in speedy trial rulings is not, however, weakened by the manner in which we review the facts unless that review produces a different factual scenario from that reflected in the trial court’s ruling. *See Leutfaimany*, 585 N.W.2d at 203.

Where speedy trial grounds are at issue, the discretion of the district court is narrowed. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999); *State v. Todd*, 468

N.W.2d 462, 470 (Iowa 1991); see *Bond*, 340 N.W.2d at 279. The discretion of the district court to grant a trial continuance for good cause shown under Iowa R. Crim. P. 2.33(2)(b) is narrower than is the discretion in civil cases under Iowa R. Civ. P. 1.911. *Bond*, 340 N.W.2d at 279. The discretion to avoid dismissal in a criminal case is limited to the exceptional circumstance where the State carries its burden of showing good cause for the delay. This is the circumscribed discretion in review on appeal. *State v. Winters*, 690 N.W.2d 903, 907-08 (Iowa 2005) (citing 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”)). The burden of proving an exception to the rules deadline rests squarely with the State. *Miller*, 637 N.W.2d at 204 (citing *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995)).

Good cause focuses on only one factor, the reason for the delay. *Winters*, 690 N.W.2d at 908. The attending circumstances bear on the inquiry only to the extent they relate directly to the sufficiency of the reason itself. *Id.* Surrounding circumstances include: (1) the length of the delay, (2) whether the defendant asserted his or her right to a speedy trial, and (3) whether prejudice resulted from the delay. *Id.* However, if the reason for the delay is insufficient, the other factors will not avail to avoid dismissal. *Id.*

In considering whether a delay of trial beyond the ninety-day period provided in Iowa Rule of Criminal Procedure 2.33(2)(b) warrants dismissal of the prosecution, it is not appropriate to identify a certain number of days related to events that are believed to have impeded the progress of the case, attribute those events to the defendant or to other good cause, and then extend the speedy-trial deadline by a

like number of days. *State v. Campbell*, 714 N.W.2d 622, 628 (Iowa 2006). The decisive inquiry should be whether events that impeded the progress of the case and were attributable to the defendant or to some other good cause for delay served as a matter of practical necessity to move the trial date beyond the initial ninety-day period required by the rule. *Id.*

We need first focus on the reason for delay. The prosecutor said of Wiegand:

When I talked to Ms. Wiegand and I talked to a friend of Ms. Wiegand, she's a mess. There is no other way to describe it. She has some health issues that preparation for this trial and now the death of her sister has exasperated (sic), which is not the reason that I'm asking for a continuance. The reason that I'm asking for a continuance is because Ms. Wiegand expressed to me that—I think her words were: I just can't do this.

. . . .

And I feel, frankly, some obligation to the victim in this case.

I appreciate the fact that Mr. Reifenstahl has the right to go forward with trial. I am prepared to do that. I'm just asking the Court to give me a couple weeks' continuance. I asked her if she thought a couple weeks would be sufficient for her to get everything together, and she said she would appreciate that time.

Wiegand was an alleged victim and her testimony was important to the State's case. While it is not entirely clear what Wiegand's "being a mess" means, we can understand and respect the difficulty one faces in the mourning period immediately following the death of a close relative. We agree with the district court this is an exceptional circumstance that justified the trial being continued beyond the speedy trial deadline. Having so found we need next consider the surrounding circumstances. *Winter*, 690 N.W.2d at 908. The delay of only ten days was reasonable. Defendant had asserted his right to a speedy trial but had agreed to a partial waiver to assure availability of his attorney. There is no showing that defendant was prejudiced. He was incarcerated on another charge, so he would

not have been released even if this case had been dismissed on May 2. We affirm on this issue.

**INEFFECTIVE ASSISTANCE OF COUNSEL.** Defendant also contends his trial attorney was ineffective in a number of ways (1) by failing to object to hearsay in the form of testimony of the telephone number listed on Wiegand's cellular telephone and of phone records and testimony of a police officer that defendant threatened to kill them or have them killed, (2) by failing to object to the admission of a knife as irrelevant evidence, and (3) by failing to move for a mistrial after a juror noted, "Someone is being shackled tonight." The State asserts that trial counsel was competent in all respects.

We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). Ordinarily we preserve such claims raised on direct appeal for possible postconviction relief proceedings to allow full development of the facts surrounding counsel's conduct. See *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). Only in rare cases will the trial record alone be sufficient to resolve the claim. *Id.* A lawyer is entitled to his or her day in court, especially when his or her professional reputation is impugned. See *State v. Kirchner*, 600 N.W.2d 330, 335 (Iowa Ct. App. 1999). We preserve these claims for possible postconviction procedures.

**AFFIRMED.**