

**IN THE COURT OF APPEALS OF IOWA**

No. 9-324 / 08-0868  
Filed September 2, 2009

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

**vs.**

**JUAN HUMBERTO CASTILLO-ALVAREZ,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clay County, Don E. Courtney,  
Judge.

Defendant appeals the district court's ruling denying his motion to dismiss.

**REVERSED AND REMANDED.**

Patrick Thomas Parry of Forker and Parry, Sioux City, for appellant.

Juan Humberto Castillo-Alvarez, Newton, pro se.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, Charles N. Thoman, Assistant Attorney General, and Michael J.  
Houchins, County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Potterfield, JJ., and Huitink, S.J.\*

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

**SACKETT, C.J.**

Defendant, Juan Humberto Castillo-Alvarez, appeals from his convictions of murder in the second degree, kidnapping in the second degree, and conspiracy to commit a forcible felony following the kidnapping and death of Gregory “Sky” Erickson in June of 1997.<sup>1</sup> Defendant raises a number of challenges to his convictions including a claim that the district court erred in overruling his motion to dismiss based on the State’s failure to comply with its responsibility to guarantee his right to a speedy trial under the Sixth Amendment to the United States Constitution, Article one section ten of the Iowa Constitution, and provided for by the Iowa Rules of Criminal Procedure. We find that the State failed to meet its burden to show good cause for failing to comply with the speedy trial requirement. We reverse on this issue and remand to the district court to enter an order dismissing the case.

**SPEEDY TRIAL CHALLENGE.** The defendant contends that his speedy trial rights were violated by the lengthy time between the filing of the trial information and his arrest. The State contends that the district court exercised its discretion in finding the delay was attributable to defendant and there was a good cause for delaying his trial beyond the speedy trial requirement.

The following relevant facts are not disputed. A trial information charging defendant with the crimes for which he was convicted was filed in Clay County, Iowa on September 20, 2004, and defendant was arrested in Mexico on October 24, 2005, some 399 days after the filing of the information.

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<sup>1</sup> Several other individuals have also been convicted in connection with Erickson’s death. See *State v. Astello*, 602 N.W.2d 190 (Iowa Ct. App. 1999); *State v. Wedebrand*, 602 N.W.2d 186 (Iowa Ct. App. 1999).

Iowa Rule of Criminal Procedure 2.33(2)(b),<sup>2</sup> directs that the State has to bring a defendant to trial within ninety days after he or she has been indicted. The State is bound by this rule even if it files charges by trial information rather than by indictment, *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984), and even if the formal charges precede the arrest, as in this case. See *State v. Olson*, 528 N.W.2d 651, 654 (Iowa Ct. App. 1995). Failure to comply with the ninety-day rule requires dismissal unless, (1) the defendant has waived speedy trial, (2) the delay is attributable to the defendant, or (3) other good cause explains the delay. *State v. Campbell*, 714 N.W.2d 622, 627-28 (Iowa 2006); *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001); *State v. Orte*, 541 N.W.2d 895, 898 (Iowa Ct. App. 1995).

In addressing this narrow issue we only look to evidence of delay attributable to the defendant and of other good cause to explain the delay. We review a trial court's ruling on the motion to dismiss based on speedy-trial grounds for an abuse of discretion. *Campbell*, 714 N.W.2d at 627; *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999). This discretion is circumscribed though and the court may only refuse to dismiss the case when the State carries its burden of proving good cause for the delay. *State v. Winters*, 690 N.W.2d 903, 907-08 (Iowa 2005); *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983). The State's burden is a heavy one. *State v. Miller*, 311 N.W.2d 81, 84 (Iowa 1981). We will reverse a finding of good cause if no reasonable basis in the record

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<sup>2</sup> Iowa Rule of Criminal Procedure 2.33(2)(b) provides:

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.

supports the trial court's finding. *State v. Albertsen*, 228 N.W.2d 94, 98 (Iowa 1975).

Iowa's rule is more stringent than its constitutional counterpart recognized in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). *Miller*, 637 N.W.2d at 204-05; *Nelson*, 600 N.W.2d at 600; *Bond*, 340 N.W.2d at 278; *State v. Petersen*, 288 N.W.2d 332, 335 (Iowa 1980). We, in determining whether there is good cause for the delay, are directed to focus on one factor: the reason for the delay. *Miller*, 637 N.W.2d at 205. The surrounding circumstances are evaluated only to the extent that they relate to the sufficiency of the reason for delay. *Campbell*, 714 N.W.2d at 628. If the delay has been a long one, as it was here, a stronger reason is necessary to constitute good cause. *Miller*, 637 N.W.2d at 205. The decisive inquiry is 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. *Campbell*, 714 N.W.2d at 628. The rule is clear and recent cases reflect that Iowa appellate courts have enforced it where good cause or defendant's actions were not responsible for the delay. *Winters*, 690 N.W.2d at 908-09 (finding a six-week delay and that State provided no good cause for the delay); *Miller*, 637 N.W.2d at 204-06 (finding a one-day delay and that State provided no good cause for the delay); *Nelson*, 600 N.W.2d at 600 (finding a 137-day delay and that court congestion did not furnish good cause for the delay); *State v. Smith*, 573 N.W.2d 14, 18 (Iowa 1997) (finding a thirty-five day delay but determining that State supplied good cause when delay was due to the fact that defendant had trial on other related charges

within ninety-day period and had requested the charges be tried separately); *State v. Hart*, 703 N.W.2d 768, 772-73 (Iowa Ct. App. 2005) (finding a one-day delay and that court congestion did not furnish good cause).

The following history is relevant to understanding the district court's ruling. Erickson's body was found on June 14, 1997. Shortly thereafter a trial information, not at issue here, charging defendant and others with crimes connected with Erickson's death was filed in Clay County. Defendant was also indicted with others on federal charges and a federal warrant was issued for his arrest. The State charges were dismissed in July of 1997 without prejudice. Defendant, who is not a United States citizen, was at the time of Erickson's death living in Estherville, Iowa, under an assumed name. Defendant subsequently went to Mexico. He was located in Matamoros, Mexico, and arrested by Mexican police in November of 1997. At that time authorities learned that he was a Mexican citizen who had been living in the United States under an assumed name. The federal charges were ultimately dismissed after it was determined that defendant could not be extradited<sup>3</sup> and he was released in 1998 and continued to live in Mexico. Reports indicated he continued to generally stay in Matamoros and was frequently at his father's home.

On July 19, 2004, United States authorities requested that Mexican authorities arrest defendant on the dismissed federal charges and told them that State charges would be forthcoming. A provisional warrant for defendant's arrest was issued in Mexico on July 21, 2004. On September 20, 2004, the Clay

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<sup>3</sup> The federal charge included a possibility of a death penalty or life in prison without the possibility of parole and under the extradition treaty between Mexico and the United States, Mexico would not extradite a defendant to the United States for charges that included a potential sentence of death or life in prison without the possibility of parole.

County attorney filed a trial information charging defendant with the crimes for which he was convicted. It was not until October 24, 2005, that defendant was arrested on these charges in Mexico. The record is silent as to where or how he was arrested. Nor does the record reveal that Mexican authorities had difficulty locating him or whether U.S. authorities took any action to encourage an earlier arrest by Mexican authorities. He was extradited to this country on September 20, 2006.<sup>4</sup>

Defendant correctly argues that his speedy trial rights were violated unless the State can prove good cause exists for the delay. The State claims the delay is attributable to the defendant and for other good cause because (1) Castillo lived in Iowa under a false name and fled the state after learning of the investigation, and (2) the State acted diligently in seeking Castillo's arrest between September 20, 2004, and October 24, 2005, but arrest was delayed because the State was dependent on Mexican authorities to execute the arrest warrant. The district court concluded the State met its burden of proving good cause, finding

Although it was known, or at least strongly suspected, that Defendant was in Mexico, it cannot fairly be said that the State was ever privy to Defendant's exact location. In addition, Defendant was attempting to avoid apprehension or prosecution by seeking refuge in a foreign country precisely at the time when he became a suspect in Erickson's murder. Finally, there is little question that the State exercised due diligence in attempting to find Defendant. It remained in contact with federal authorities, as well as the U.S. Department of State, in order to discover Defendant's whereabouts and, ultimately, secure his release back to the United States. The length of time required by this endeavor does not reflect a lack of effort on the part of the State, but rather the combination of

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<sup>4</sup> Defendant challenged the extradition and this delayed his trial. He admits this delay was attributable to him.

Defendant's skill at evading arrest and the considerable procedural requirements that must be met for extradition to be granted.

"Ordinarily the absence of defendant may constitute 'good cause' for delay." *State v. Brandt*, 253 N.W.2d 253, 258 (Iowa 1977). Although the State, not the defendant, is obligated to bring a defendant to trial, delay caused by the defendant may constitute good cause preventing the State from carrying out its obligation. *State v. Lyles*, 225 N.W.2d 124, 126 (Iowa 1975). "[A] defendant may not actively, or passively, participate in the events which delay his or her trial and then later take advantage of that delay to terminate the prosecution." *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992). Nonetheless, delay solely due to the State's inaction in executing an arrest warrant falls far short of meeting the good cause exception. See *Olson*, 528 N.W.2d at 654 ("The reason for the delay, [the State's failure to execute the arrest warrant,] by itself, falls far short of establishing 'good cause.']"). The State cannot be dilatory or negligent in its duty to provide a speedy trial. *Miller*, 311 N.W.2d at 84.

In applying these principles to the facts before us, we detect several flaws in the State's argument and in the district court's findings. Both the State and the district court focus on the time period between Erickson's murder and the filing of the charges which were subsequently dismissed without prejudice. This is before the critical time period relevant to the good cause analysis on the issue before us. Under the good cause exception of rule 2.33(2)(b), the period of focus is the postponement that occurs more than ninety days after the filing of the trial information. Here, the trial information was filed on September 20, 2004, and

defendant was arrested on October 24, 2005.<sup>5</sup> Under rule 2.33(2)(b), the State has ninety days following the filing of the trial information to bring a defendant to trial. Thus we must focus on the period that begins at the expiration of the ninety-day period and ends at Castillo's arrest. This is the 309 days that transpired between December 20, 2004, and October 24, 2005.

Although the court identified the proper time period in its ruling, in its conclusions quoted above, it focused on the fact the defendant went home to Mexico after the initial investigation in 1997, was arrested there and released, and apparently stayed there until he was extradited and delivered to the United States in the fall of 2006. However at the time the information in question here was filed, the point when the speedy trial rule is triggered and the beginning of the period we must address, the State knew that defendant was in Mexico and to arrest him they needed to deal with Mexican authorities. The county attorney was well aware that defendant was a citizen of Mexico and that he was located there. The fact defendant went to Mexico in 1997 does not shed light on why there was delay between December 20, 2004, and October 24, 2005. It is but a surrounding circumstance that can only be considered in determining the *sufficiency* of the State's reason for the delay. See *Campbell*, 714 N.W.2d at 628. In our opinion, this circumstance weighs against a finding of good cause. Castillo was captured in Mexico in November of 1997. Due to this arrest, authorities learned of his true identity. The FBI agent testimony showed that most leads indicated Castillo remained in Mexico and was often located at his

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<sup>5</sup> The trial actually did not begin until September 18, 2007. Castillo concedes any delay subsequent to his arrest on October 24, 2005, was attributable to him.



father's house in Matamoros between his release in 1998 and his subsequent arrest in 2005.

Overall, this evidence shows authorities did know Castillo's identity and whereabouts for six years after the crime, and most importantly, during the period between the filing of the September 20, 2004 trial information and defendant's ultimate arrest. Despite having this information, Castillo was not arrested for more than a year after the trial information was filed. The record fails to explain this delay. There is no evidence that the Mexican authorities were uncooperative in securing Castillo's arrest. See *United States v. Corona-Verbera*, 509 F.3d 1105, 1114-16 (9th Cir. 2007) (finding the government exercised due diligence in apprehending fugitive in Mexico when it provided evidence showing it apprehended defendant without seeking extradition from Mexico because testimony showed that at the time, Mexico was not extraditing citizens accused of drug charges). There is no testimony or evidence that authorities even attempted to arrest Castillo within ninety days after the filing of the trial information. The State's contention that it was entirely dependent on Mexican authorities to apprehend Castillo is unavailing. Even if Mexican authorities had to execute the arrest, to meet its burden, the State still must show it used diligence in apprehending a defendant and providing a speedy trial. See, e.g., *Doggett v. United States*, 505 U.S. 647, 656, 112 S. Ct. 2686, 2693, 120 L. Ed. 2d 520, 531 (1992) (attributing eight and one-half year delay to the government despite the defendant's flight outside the jurisdiction because the government took no action to secure his arrest and stating, "[I]f the Government had pursued Doggett with reasonable diligence from his indictment to his arrest, his speedy trial claim

would fail”); *State v. Palimore*, 246 N.W.2d 295, 297 (Iowa 1976) (attributing delay to State when record showed defendant was fully available to be transferred from Pennsylvania to Iowa for a timely trial). While, “[a]llowing a defendant who is out of the jurisdiction to take advantage of its speedy trial rules may seem incongruous at first,” the public’s interest in prompt trials, and the interest in securing an absent defendant’s presence for trial demand the State prove diligent efforts have been made to justify the delay. See *United States v. Salzmann*, 548 F.2d 395, 403-04 (2d Cir. 1976) (Feinberg, J., concurring).

It is the State’s burden to prove defendant caused the delay or there was other good cause, despite diligent efforts by the State, that required delaying trial as a matter of practical necessity. See *Campbell*, 714 N.W.2d at 628. Even when the State does not intentionally cause the delay, inaction in pursuing a defendant weighs against a finding of good cause. See *State v. Jenkins*, 701 F.2d 850, 853, 856 (10th Cir. 1983) (finding the government’s negligence in failing to locate and arrest a defendant for sixteen months after an indictment was filed, when there was no credible evidence that defendant concealed himself or otherwise hampered officials’ efforts to locate him, weighed against the government in determining whether good cause existed for the delay of trial) (*overruled on other grounds by Batson v. Kentucky*, 476 U.S. 79, 92-93, 106 S. Ct. 1712, 1720-21, 90 L. Ed. 2d 69, 85 (1986)).

Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused’s defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun.

*Doggett*, 505 U.S. at 657, 112 S. Ct. at 2693, 120 L. Ed. 2d at 531-32. We do not find the State’s evidence supports a finding that the delay was due to

Castillo's skillful evasion or was inevitable despite the State's efforts. Instead, the evidence available in the record shows the delay was due to the State's inaction.

The district court also focuses on the delay in terms of the extensive procedures required for extradition. However, no extradition process was commenced between the filing of the trial information on September 20, 2004, and Castillo's arrest on October 24, 2005. A formal extradition request was not sent until December 15, 2005, *after* Castillo's arrest.

The State argues the trial information was filed in September of 2004 because Mexican authorities required very detailed documentation for Castillo to be extradited. This fact sheds little light on the reason for the delay that occurred *after* the ninety-day period allowed under rule 2.33(2)(b).

The Clay county attorney submitted an affidavit explaining his decision to file the trial information in September 2004, and testified at the speedy trial hearing. However his affidavit and testimony shed no light on the delay for the arrest. Rather he indicates he suspected Castillo's capture was imminent, and he therefore tried to file the most official and detailed documents to prevent any extradition problems. We respect counsel's efforts to be efficient by providing a formal charging instrument to accelerate the extradition process. However, this circumstance also weighs against a finding of good cause in our view. County attorneys should be well aware that the ninety-day period begins to run at the time the trial information is filed. A defendant's constitutional right to a speedy trial cannot be compromised due to an attorney's mistake in overlooking this rule. In previous cases, our courts have found county attorney mistakes and

miscalculations do not provide good cause for delayed indictment. See *State v. Nelson*, 222 N.W.2d 445, 449 (Iowa 1974) (finding a county attorney's mistake in failing to file charges because he was awaiting blood test results on defendant, he never followed up about the delayed test results, and results were not required to sustain the charge, furnished no grounds for good cause under the speedy indictment statute); *State v. Hunziker*, 311 N.W.2d 692, 694 (Iowa Ct. App. 1981) ("We hold that the county attorney's miscalculation [on his calendar by one day] was not good cause for the failure to timely file the information.").

We find the county attorney's timing in filing the trial information was a miscalculation in this situation. This error does not provide good cause to excuse the State from meeting its speedy trial obligations. We therefore reverse the district court's ruling and remand for the district court to dismiss the charges against Castillo.

**REVERSED AND REMANDED.**

Potterfield, J., and Huitink, S.J., concur. Vogel, J., dissents.

**VOGEL, J.** (dissents)

I respectfully dissent and would affirm the district court's denial of Castillo's motion to dismiss as substantial evidence supports its findings. See *State v. Searcy*, 470 N.W.2d 46, 47 (Iowa Ct. App. 1991) (stating the district court's factual findings are binding if they are supported by substantial evidence). Failure to comply with the ninety-day requirement of Iowa Rule of Criminal Procedure 2.33(2)(b) requires dismissal unless (1) the defendant waives speedy trial; (2) the delay is attributable to the defendant; or (3) other "good cause" explains the delay. *State v. Campbell*, 714 N.W.2d 622, 627-28 (Iowa 2006). The district court aptly concluded that the delay was attributable to Castillo because he fled the United States in order to avoid prosecution. Further, even if the delay was not attributed to Castillo, good cause supported the delay because the State "pursued [Castillo] with reasonable diligence." *Doggett v. United States*, 505 U.S. 647, 656, 112 S. Ct. 2686, 2693, 120 L. Ed. 2d 520, 531 (1992).

First, I would affirm the district court's finding that the delay was attributable to Castillo because he fled the United States in order to avoid prosecution. See *State v. Bass*, 320 N.W.2d 824, 830 (Iowa 1982) (discussing there was no violation of a defendant's speedy trial rights because the delay was due to the "defendant's flight from authorities or the simple inability of the State of Iowa to locate the defendant"). Although the majority states Castillo "went home to Mexico," the evidence demonstrates and supports the district court's finding that Castillo absconded to Mexico in order to avoid prosecution for Erickson's murder. At the time of the murder, Castillo was using a false name and false social security number. He lived in Estherville with his wife, who was pregnant,

and their child. He operated a restaurant, out of a building that he leased. During the murder investigation, on June 17, 1997, search warrants were executed on Castillo's home and restaurant, which specified that officers were looking for controlled substances and items related to drug sales. However, only a small amount of cocaine was found in Castillo's restaurant. Following the search, Castillo told one of his coconspirators that officers had searched his home and restaurant, but did not find anything because the gun used to murder Erickson was hidden in the ceiling of the restaurant. An officer testified that the restaurant was located in a very large building and they had not searched the ceiling areas.

After the searches were completed, officers were informed that the gun used in the shooting of Erickson was located in Castillo's restaurant. On June 18, 1997, officers obtained a second warrant to search Castillo's restaurant for handguns, ammunition, a red bandana, and green baseball cap, all of which would implicate Castillo in the murder of Erickson. Officers went to Castillo's home and informed Castillo of the search warrant and requested a key to the restaurant so that they would not have to forcibly enter the building. Castillo gave the officers a key. This was the last time Castillo was seen by officers. During the search, the officers located two guns, one of which was the gun used to kill Erickson. Subsequently, Castillo fled to Mexico. Castillo later told his cellmate that after he knew officers were going to search his restaurant for a second time, he discovered a way to flee. Castillo's wife took him to Albert Lea, Minnesota, where he contacted his brother-in-law, who took him to Mexico. Castillo left behind his pregnant wife and child and abandoned his business. On

June 19, 1997, an arrest warrant was issued for Castillo, but officers were unable to locate him and believed that he had fled the area. As the district court found, Castillo “was attempting to avoid apprehension or prosecution by seeking refuge in a foreign country precisely at the time when he became a suspect in Erickson’s murder.”

When examining whether a defendant’s right to a speedy trial has been violated, the “[d]efendant cannot complain of any delay attributable to his flight or unavailability.” *United States v. Cartano*, 420 F.2d 362, 364 (1st Cir. 1970), *cert. denied*, 397 U.S. 1054, 90 S. Ct. 1398, 25 L. Ed. 2d 671; *see also, e.g., Wilson v. Mitchell*, 250 F.3d 388, 395 (6th Cir. 2001) (finding a defendant was not entitled to relief on speedy trial grounds due to the defendant’s active evasion); *Shepherd v. United States*, 163 F.2d 974, 976 (8th Cir. 1947) (“[A]n accused who becomes a fugitive from justice can not demand discharge for delay when the delay is the result of his own conduct.”).

The majority opinion cites to *Doggett v. United States*, in which the defendant traveled to a foreign jurisdiction but then returned to the United States, and the State did not exercise reasonable diligence to apprehend the defendant within its own borders. *Doggett*, 505 U.S. at 649-50, 112 S. Ct. at 2689-90, 120 L. Ed. 2d at 526-27. However, in that case the United States conceded that the defendant had no knowledge of the indictment before he left the United States. *Id.* at 653, 112 S. Ct. at 2691, 120 L. Ed. 2d at 529. This is an important distinction—“whether the defendant fled the indictment or just fortuitously left the country is of critical importance.” *United States v. Escamilla*, 244 F. Supp. 2d 760, 763 (S.D. Tex. 2003). If the defendant knew of the indictment and fled the

jurisdiction, the delay is attributable to him regardless of whether the State's subsequent efforts to locate him were negligent. See *Wilson*, 250 F.3d at 395-96 (discussing that even if the state was passive in its pursuit of the defendant, the defendant was the primary cause for the delay because of the defendant's active evasion); *Escamilla*, 244 F. Supp. 2d at 765 (discussing that even if the government's efforts to locate the defendant were negligent, the defendant was the principal cause of the delay because he fled to Mexico in order to avoid prosecution and did not surrender to authorities upon his return to the United States).

Likewise, although the majority opinion discounts Castillo's flight because it occurred prior to the filing of the trial information, I do not believe this is a distinguishing factor. See *United States v. Corona-Verbera*, 509 F.3d 1105, 1114-15 (9th Cir. 2007), *cert. denied* 129 S. Ct. 149, 172 L. Ed. 2d 110 (discussing the reason for the delay included that the defendant was located in Mexico, which was followed by an indictment and eight years passed before the defendant's arrest). Regardless of whether Castillo fled to a foreign jurisdiction before or after the trial information was filed, his flight was still the principal reason for the delay because he remained a fugitive in a foreign jurisdiction at the time the trial information was filed. See *Wilson*, 250 F.3d at 395-96 (stating that the defendant was not entitled to relief because his flight was "more to blame for [the] delay" (quoting *Doggett*, 505 U.S. at 651, 112 S. Ct. 2686, 120 L. Ed. 2d at 528)); *Escamilla*, 244 F. Supp. 2d at 765 (same); compare *Doggett*, 505 U.S. at 653, 112 S. Ct. at 2691, 120 L. Ed. 2d at 529 (discussing that a defendant's travels to a foreign jurisdiction was not the principal reason for the delay because



the defendant had returned to and lived in the United States for nearly six years, but the government made no effort to test its assumption the defendant was living abroad and could have found the defendant within minutes).

Next, I would also affirm the district court's finding that good cause excused the delay because the record supports that the State pursued Castillo with reasonable diligence. *State v. Miller*, 637 N.W.2d 201, 205 (Iowa 2001) (stating that the concept of "good cause" focuses solely on the reason for the delay). If a defendant without knowledge of the prosecution fortuitously leaves the country, the government must pursue the defendant with reasonable diligence from indictment to arrest. *Doggett*, 505 U.S. at 656, 112 S. Ct. at 2693, 120 L. Ed. 2d at 531. In the present case, Robert Birnie, a Federal Bureau of Investigation agent, testified that from the time Castillo fled the United States until his arrest, United States law enforcement officials actively sought Castillo's arrest and extradition. He stated, "I never stopped looking for Mr. Castillo-Alvarez." At times he had information that Castillo was in the area of Matamoros, Mexico, but he had also been notified "several times . . . that [Castillo] may be at different addresses or in a different part of the country." Generally, FBI border agents communicated with the Mexican authorities. Through the border agents, Agent Birnie had given the Mexican authorities information regarding the suspected location of Castillo, which he continued to do after September 20, 2004. He explained that United States officials had no authority to enter Mexico and arrest a Mexican citizen. Instead, United States officials were completely dependent on Mexican authorities to arrest and extradite Castillo.

After fleeing to Mexico, Castillo was arrested by Mexican authorities so that he could be deported to the United States, but Mexican authorities released him once they determined that he was a Mexican citizen and could not be deported. Subsequently, United States authorities requested Castillo be extradited to the United States. The record indicates that after that, authorities may have had some difficulty finding him again. Castillo later stated that while United States authorities were looking for him, he stayed hidden in Matamoros, Mexico. In 2003, Mexican authorities informed United States authorities that Castillo had been arrested for extradition. However, United States authorities determined that the individual arrested was in fact not Castillo. On July 19, 2004, the Department of State formally renewed the request that Mexican authorities arrest Castillo, which resulted in a “provisional arrest” warrant being issued. However, at that time Mexico did not permit extradition for offenses that carry a penalty of death or life in prison without parole. On September 20, 2004, in an attempt to effectuate the arrest and extradition of Castillo, the Clay County Attorney filed a trial information charging Castillo with second-degree murder, second-degree kidnapping, and a conspiracy to commit a forcible felony, none of which would subject Castillo, if convicted, to either a penalty of death or life without parole. The Clay County Attorney testified as to the timing of the trial information, stating that the State Department informed the United States Attorney’s Office that Mexican officials required that “all the paperwork had to be prepared with the utmost degree of formality . . . [and the trial information] was the most formal method of charging.”

Following the filing of the information, United States officials maintained communications with Mexican authorities and according to Agent Birnie, followed the proper procedure to secure the arrest and extradition of Castillo. See *State v. Fryer*, 243 N.W.2d 1, 5 (Iowa 1976) (“[W]e are unwilling to criticize the Iowa officers for following the regular processes of the law, that is, getting an extradition waiver and then waiting for permanent transfer of defendant to Iowa until the expiration of the South Dakota sentence.”); see also *United States v. Aguirre*, 994 F.2d 1454, 1455-57 (9th Cir. 1993) (upholding district court’s finding that the government was diligent when the only action agents took was entering “stops” on defendant); compare *Doggett*, 505 U.S. at 649-53, 112 S. Ct. at 2689-91, 120 L. Ed. 2d at 526-29 (finding the Government did not exercise reasonable diligence where the defendant, who was unaware of an indictment, had returned to the United States and lived for nearly six years and the Government simply assumed the defendant was living abroad and did nothing to track the defendant’s whereabouts).

The majority focuses on the fact that during the relevant time period, United States officials knew Castillo’s identity and suspected his location, but there was no evidence they “even attempted to arrest Castillo within ninety days after filing the trial information.” Consequently, the majority finds the State failed to show “diligence” in apprehending Castillo. However, that conclusion assumes more than is in the record. Agent Birnie specifically testified that he gave Mexican authorities any information he had regarding Castillo’s whereabouts. Further, “[t]he United States has no right to enforce its laws in another country without that country’s consent or acquiescence.” *United States v. Blanco*, 861

F.2d 773, 779 (2d Cir. 1988). Even if United States officials knew Castillo's identity and his suspected location, they could not arrest Castillo within the sovereign jurisdiction of Mexico. *Compare State v. Palimore*, 246 N.W.2d 295, 297 (Iowa 1976) (attributing delay to State when record showed defendant was *fully available* to be transferred from Pennsylvania to Iowa for a timely trial and the defendant did nothing to delay his return to Iowa). Instead United States officials were totally dependent on Mexican authorities to effectuate the arrest. United States officials continued to communicate with Mexican authorities, but could do no more than that. As the district court concluded, the record supports that the State continued to pursue the arrest and extradition of Castillo through the Mexican authorities; therefore, it exercised reasonable diligence in apprehending him.

Finally, the intent and purpose of the speedy trial rule weighs in favor of finding good cause in the present case. "The obvious purpose of the time period contained in [Iowa Rule of Criminal Procedure 2.33(2)(b)] is to implement the constitutional provisions that require an expeditious trial." *State v. Hamilton*, 309 N.W.2d 471, 475 (Iowa 1981); *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995); see also *Miller*, 637 N.W.2d at 204 (observing that the rule of criminal procedure "is more stringent than its constitutional counterpart recognized in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 101 (1972)"). The Supreme Court has discussed that the speedy trial rule seeks to avoid the following harms: "'oppressive pretrial incarceration,' 'anxiety and concern of the accused,' and 'the possibility that the [accused's] defense will be impaired' by dimming memories and loss of exculpatory evidence." *Doggett*, 505

U.S. at 654, 112 S. Ct. at 2692, 120 L. Ed. 2d at 529-30 (quoting *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193, 33 L. Ed. 2d at 118); *Olson*, 528 N.W.2d at 653-54. In a case where a defendant flees from authorities and seeks refuge in a foreign jurisdiction, the first two harms are not applicable because the defendant is not subject to pretrial incarceration and his own actions cause any existing anxiety from possible apprehension and trial. See *Doggett*, 505 U.S. at 654, 112 S. Ct. at 2692, 120 L. Ed. 2d at 530; *Olson*, 528 N.W.2d at 654 (stating that the first two forms of prejudice present little threat until the arrest occurs). As to the third harm, “delay is a two-edged sword. It is the Government that bears the burden of proving its case beyond a reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden.” *Doggett*, 505 U.S. at 659, 112 S. Ct. at 2694, 120 L. Ed. 2d at 533 (O’Connor, J. dissenting) (quoting *United States v. Loud Hawk*, 474 U.S. 302, 315, 106 S. Ct. 648, 656, 88 L. Ed 2d 640, 654 (1986)). The speedy trial rule protects against certain harms, which are not at issue in a case such as this one, where a defendant flees to and remains in a foreign jurisdiction in order to avoid prosecution.

I agree with the district court’s finding that Castillo’s flight from prosecution caused the delay and as a result, any delay is attributable to Castillo. Additionally, substantial evidence supports the finding the State pursued Castillo with reasonable diligence, which supplies good cause for the delay. I would find no abuse of discretion by the district court in its conclusion that Castillo’s right to a speedy trial was not violated. Therefore, I would affirm the district court.