Reverse and Remand; Opinion Filed June 14, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00577-CR

DAVID WAYNE CAHILL, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-81088-2012

OPINION

Before Justices Francis, Lang-Miers, and Myers
Opinion by Justice Myers

Appellant David Wayne Cahill was convicted of aggravated robbery and sentenced by the court to twenty-four years in prison. In two issues, he argues the court abused its discretion by denying his motion for new trial that was based on the Interstate Agreement on Detainers Act (IADA), *see* TEX. CODE CRIM. PROC. ANN. art. 51.14 (West 2006), and that the judgment of conviction and sentence are invalid because the trial court lacked subject matter jurisdiction due to the alleged IADA violation. We reverse and remand.

BACKGROUND AND PROCEDURAL HISTORY

The record shows that on March 13, 2014, a detainer[1] was placed on appellant and faxed

[1] A detainer is a request by a criminal justice agency that is filed with the institution in which a prisoner is incarcerated asking that the prisoner be held for the agency or that the agency be advised when the prisoner's release is imminent. *State v. Votta*, 299 S.W.3d 130, 135 n.5 (Tex. Crim. App. 2009) (citing *Fex v. Michigan*, 507 U.S. 43, 44 (1993)).

from the Collin County District Attorney (D.A.)'s Office to the Lexington, Oklahoma prison facility where appellant was being incarcerated. On April 24, 2014, appellant signed the IADA form II, "Offender's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations, or Complaints." Officials at the Lexington correctional facility then completed IADA form III, "Certificate of Offender Status," and form IV, "Offer to Deliver Temporary Custody," both of which were signed by the warden. On May 2, 2014, the Collin County District Clerk received and filed three IADA documents concerning appellant—forms II, III, and IV—from the Lexington Correctional Records Office by certified mail. The certified mail envelope, which was postmarked April 29, 2014, was addressed to the "380th District Court Clerk, Attn: Laura Green," had the return address of the Lexington Correctional Center Records Office, P.O. Box 260, Lexington, KY 73051, and had the certified mail, return receipt number 7004 0750 0002 3017 9913.

On November 17, 2014, appellant filed a pro se request to dismiss his case, relying on the 180-day deadline under the IADA. Appellant filed a pro se request for a hearing on his motion to dismiss on January 12, 2015. He was brought to Texas on January 21, 2015, appointed counsel on January 23, 2015, and his initial appearance with his attorney was on February 6, 2015. On that same day, the case was set for a jury trial to begin on April 6, 2015. A pretrial hearing was held on April 1, 2015, according to the court's docket sheet, and trial took place on April 14, 15, and 16, 2015. The trial court denied appellant's IADA motion to dismiss following a hearing held on April 14, prior to jury selection. Appellant was subsequently convicted by the jury and sentenced by the trial court to twenty-four years in prison. Appellant filed a motion for new trial alleging in part that he had made a proper request for dismissal under the IADA, and that the court should set aside the judgment of conviction. The hearing on the motion for new trial was held on April 29, 2015, and the motion was overruled by operation of law. The court

did not file findings of fact and conclusions of law.

DISCUSSION

In his first issue, appellant contends the trial court abused its discretion when it denied appellant's motion for new trial because (1) a State's witness testified that the Collin County D.A.'s office received appellant's request for final disposition of his case under the IADA, *see* TEX. CODE CRIM. PROC. ANN. art. 51.14, which invoked the 180-day deadline under the IADA, and (2) the 180-day deadline passed without trial.

The trial court's ruling on a motion for new trial is reviewed under an abuse of discretion standard. *Salazar v. State*, 38 S.W.3d 141, 148 (Tex. Crim. App. 2001). This is true whether the trial court denied the motion or, as in this case, allowed it to be overruled by operation of law. *See Mallet v. State*, 9 S.W.3d 856, 868 (Tex. App.—Fort Worth 2000, no pet.); *Hardemon v. State*, No. 05–02–01342–CR, 2003 WL 1753318, at *5 (Tex. App.—Dallas April 3, 2003, no pet.) (not designated for publication). We do not substitute our judgment for that of the trial court, but simply determine whether the court's decision was arbitrary or unreasonable. *Salazar*, 38 S.W.3d at 148; *Lewis v. State*, 911 S.W.2d 1, 7 (Tex. Crim. App. 1995).

We conduct a de novo review of the legal question of whether there has been compliance with the requirements of the IADA, and any factual findings underlying the trial court's decision are reviewed under a clearly erroneous standard. *Celestine v. State*, 356 S.W.3d 502, 506 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *Walker v. State*, 201 S.W.3d 841, 845 (Tex. App.—Waco 2006, pet. ref'd); *State v. Miles*, 101 S.W.3d 180, 183 (Tex. App.—Dallas 2003, no pet.). Had the trial court made findings of fact concerning its IADA ruling, we would review those findings under the clearly erroneous standard. *Kirvin v. State*, 394 S.W.3d 550, 555 n.8 (Tex. App.—Dallas 2011, no pet.); *Miles*, 101 S.W.3d at 183; *State v. Sephus*, 32 S.W.3d 369, 372 (Tex. App.—Waco 2000, pet. ref'd). But the court did not make any findings in this case. *See*

Kirvin, 394 S.W.3d at 555 n.8 (declining to apply clearly erroneous standard because trial court made no findings of fact regarding its IADA ruling). Nevertheless, we will imply findings of fact that support the court's ruling so long as the evidence supports those implied findings. *Frangias v. State*, 413 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Charles v. State*, 146 S.W.3d 204, 208 (Tex. Crim. App. 2004), *superseded in part on other grounds as recognized in State v. Herndon*, 215 S.W.3d 901, 905 n.5 (Tex. Crim. App. 2007)).

The IADA is an agreement between a number of states, the United States, and the District of Columbia that outlines the cooperative procedures to be used between states when one state seeks to try a defendant who is imprisoned in the penal or correctional institution of another state. *Alabama v. Bozeman*, 533 U.S. 146, 148 (2001); *State v. Votta*, 299 S.W.3d 130, 134–35 (Tex. Crim. App. 2009); *see* TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. I. Article IX of the IADA provides that the agreement "shall be liberally construed so as to effectuate its purposes," which, according to Article I, include "the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, information or complaints." *See* TEX. CODE CRIM. PROC. ANN. art. 51.14, Arts. I, IX(a).

The prosecuting authority seeking to try an individual who is incarcerated in another state's institution must file a detainer with the institution in the state where the individual is being held. *Id*. art. 51.14, Art. III(a); *Votta*, 299 S.W.3d at 135. Once the detainer is filed, the warden or other official who has custody of the prisoner must "promptly" inform the prisoner that a detainer has been filed against him and that he has the right to request a final disposition of the pending charges upon which the detainer is based. TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(c); *Votta*, 299 S.W.3d at 135. To request a final and speedy disposition, the prisoner must give or send the warden or other official with custody over him a "written notice of the

place of his imprisonment and his request for final disposition." TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(a), (b); *Votta*, 299 S.W.3d at 135. The prisoner must include with his request "a certificate" containing specific information about his current incarceration, e.g., term of commitment, time served, time remaining to be served, good time earned, date of parole eligibility, and any decision of the state parole agency. TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(a); *Votta*, 299 S.W.3d at 135. The warden or other official with custody over the prisoner must "promptly forward" the notice, request, and certificate to the proper prosecuting authority and the court by registered or certified mail, return receipt requested. TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(b); *Votta*, 299 S.W.3d at 135. Alternatively, the defendant can notify the prosecutor and the court of the other state directly; if he does so, he is responsible for seeing that the notice is sent in the form required by the IADA, i.e., the form must be sent by registered or certified mail, return receipt requested. *Walker*, 201 S.W.3d at 846; *Powell v. State*, 971 S.W.2d 577, 580 (Tex. App.—Dallas 1998, no pet.); *Burton v. State*, 805 S.W.2d 564, 575 (Tex. App.—Dallas 1991, pet. ref'd).

If the prisoner complies with all the requirements in article 51.14, he must be brought to trial in the state where charges are pending "within 180 days from the date on which the prosecuting officer and the appropriate court receive" the written request, unless a continuance is granted. *Votta*, 299 S.W.3d at 135 (citing TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(a)); *see Kirvin*, 394 S.W.3d at 555–56 (grant of reasonable or necessary continuance tolls time limits set out in IADA). The 180–day period does not begin until the request for final disposition of the charges is actually received by the court and the prosecutor of the jurisdiction where the charges are pending. *Fex v. Michigan*, 507 U.S. 43, 52 (1993); *Powell*, 971 S.W.2d at 580. The inmate bears the burden of demonstrating compliance with the procedural requirements of Article III. *Walker*, 201 S.W.3d at 846; *Lindley v. State*, 33 S.W.3d 926, 930 (Tex. App.—

Amarillo 2000, pet. ref'd). The court of criminal appeals has held that a motion to dismiss the charges does not constitute proper notice under the IADA so as to trigger the 180-day deadline under Article III. *See Votta*, 299 S.W.3d at 137. If the prisoner has complied with the statutory requirements and is not brought to trial within 180 days, the trial court must dismiss the pending charges with prejudice. TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(d); *Votta*, 299 S.W.3d at 135.

There is no dispute in this case that the district court received and filed appellant's request for disposition under the IADA. The question is whether the Collin County D.A.'s Office, the prosecuting authority, received appellant's IADA forms requesting disposition of his case. The State argues that the first notice the D.A.'s Office had regarding appellant's request for disposition under the IADA was the November 17, 2014 motion to dismiss. At a pretrial hearing held on April 14, 2015, prior to selection and seating of the jury, the trial court heard appellant's motion to dismiss the indictment for violation of the IADA. Appellant testified that while he was incarcerated in Oklahoma in March of 2014, he learned from Barbara Pratt, a caseworker with the Oklahoma Department of Corrections, that there was a Collin County indictment and retainer pending against him. Pratt provided appellant with a form that, as appellant understood it, would waive his right to extradition and initiate the 180-day deadline for him to be tried in Collin County. Appellant testified that he signed the form and returned it to personnel at the prison facility, who informed him they would complete the remaining paperwork and send it to the proper parties. Appellant testified that he did not address the certified mail envelope or decide where the IADA forms should be sent, and he did not personally mail the forms. As appellant recalled, "The prison was handling all that." Valerie Miller, a legal secretary with the Collin County D.A.'s Office, testified that, as the legal secretary responsible for handling the 380th and the 401st Judicial District Courts, any IADA paperwork

concerning appellant would have been sent to her. She testified that she did not receive appellant's May 2, 2014 IADA paperwork and that the first notice the D.A.'s Office had regarding appellant's IADA request was the November 17, 2014 motion to dismiss. The trial court denied the motion to dismiss, concluding the IADA statute explicitly required notice to both the prosecuting official and the court and that there was no evidence before the court that the Collin County D.A.'s Office had received any notice of appellant's IADA request prior to the motion to dismiss.

At the June 29, 2015 hearing on appellant's motion for new trial, appellant introduced three affidavits from Lauren Bogert, the custodian of records at Cimmaron Correctional Facility, Oklahoma Department of Corrections, Cimmaron, Oklahoma. Attached to her third affidavit were four pages of records that, as she stated in the affidavit, had been retrieved from appellant's file at the Oklahoma Department of Corrections. The third affidavit reads in part:

> Inmate files follow the inmate, therefore this file contains information from David Wayne Cahill's time at Lexington Correctional Center, Lexington Oklahoma. Within David Wayne Cahill's file was the attached Offender's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations, or Complaints (Form II), Certificate of Offender Status (Form III), Offer to Deliver Temporary Custody (Form IV), Mail Receipt of when these forms were sent and received by Certified Mail.

The attached records are as follows:

> * appellant's executed IADA forms II, III, and IV;
>
> * a certified mail receipt showing postage was paid in Lexington, Oklahoma on April 29, 2014, on a return receipt for a package sent to A.D.A. Ashley Keil at 2100 Bloomdale Rd., McKinney, TX 75071, tracking number 7004 0750 0002 3017 9937;
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> * a certified mail, return receipt, i.e., a "green card," that was addressed to A.D.A. Ashley Keil, 2100 Bloomdate Rd., McKinney, Texas 75071, signed for by "B.

Sommers," and had the tracking number 7004 0750 0002 3017 9937.[2]

Appellant also introduced United States Postal Service (USPS) tracking information showing that a package bearing the same tracking number, 7004 0750 0002 3017 9937, was accepted for outbound delivery in Lexington, Oklahoma on April 29, 2014, at 2:51 p.m., departed a USPS facility in Oklahoma City, Oklahoma, at 11:10 a.m. that same day, and was delivered to McKinney, Texas on May 2, 2014, at 7:12 a.m.

The evidence presented by the State included a similar USPS tracking print-out showing that another package unrelated to this case, tracking number 7004 0750 0002 3017 9944, was accepted for outbound delivery in Lexington at the same time—April 29, 2014, at 2:51 p.m.—but delivered to Oklahoma City, Oklahoma. Like the certified mail envelope that was delivered to the clerk's office, this package shared the first 18 digits of its tracking number with the above green card's tracking number. The State also called David Dobecka, the Collin County support services supervisor, who testified that part of his job was to pick up the mail for the Collin County offices from the U.S. post office in McKinney, Texas. Mail for all county offices except the tax office, i.e., mail addressed to 2100 and 2300 Bloomdale Road, was collected by a Collin County mailroom employee, and mailroom personnel signed for delivery of all certified mail sent to these offices. Dobecka was familiar with and identified the signature on the green card addressed to Ashley Keil—the one that bore the tracking number 7004 0750 0002 3017 9937—as Bill Sommers, a former mailroom employee. He has since retired. Sommers was the employee responsible for picking up the mail for county departments at the McKinney post office on May 2, 2014, and he was responsible for signing the certified mail green cards. Dobecka testified that the postal employees would bring the green cards in a stack for the

[2] The copy of the "green card" that is found in the exhibit volume of the reporter's record is difficult to read, but a clearer copy of the same green card is appended to appellant's original motion for new trial. That copy of the green card shows there is a date stamp for May 2, 2014 just underneath B. Sommers's signature.

mailroom employee to sign, and the employee would go through each card and sign it using a signatory stamp. There could be as many as 200 green cards to sign on a given day. The employee would then deliver the mail to the county offices. Although he was not employed by the Collin County D.A.'s Office, Sommers was a county employee. Dobecka testified that his department acted on behalf of the D.A.'s Office in collecting their mail and that he and Sommers were agents of the D.A.'s Office for the purpose of picking up the mail. The State also offered the affidavit of Ashley Keil, the felony prosecutor assigned to the 380th District Court from July of 2013 to October of 2014. Keil stated that she was aware of what the IADA required of a D.A.'s office and had never received an IADA request from appellant: "I never received notice of an Interstate Agreement on Detainers request regarding defendant David Wayne Cahill, including via email, phone or postal service."

Appellant's argument is that the State violated the IADA by not trying him within 180 days of the receipt by the Collin County D.A.'s Office of his demand for a speedy trial. Appellant argues that the 180-day time clock began running on May 2, 2014, the day the required forms were received by the trial court and the Collin County D.A.'s office. Appellant further argues that, under the IADA, he had to be brought to trial no later than October 29, 2014, but he was not brought to trial until April 14, 2015, 347 days after the required paperwork had been, as stated in the IADA, "caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction." *See* TEX. CODE CRIM. PROC. ANN. art. 51.14, Art. III(a).

The State, however, argues that the signed green card is insufficient to prove delivery in the face of the affidavits and testimony from the D.A.'s Office employees, Valerie Miller and Ashley Keil, that they never received appellant's IADA paperwork. The State contends the package could have been lost in the mail and that there is little evidence of what it actually

contained. It was, the State argues, the trial court's prerogative to determine the facts, and in viewing the record in the light most favorable to the trial court's finding, the trial court could have concluded appellant's request for disposition was not delivered to the prosecuting attorney.[3]

The evidence shows that appellant was being held at the Lexington Correctional facility in March of 2014 when Collin County officials placed the detainer on him for the instant offense. Officials at the Oklahoma prison facility notified appellant of the detainer, as required by Article III(c). Appellant waived his rights regarding extradition by completing IADA form II, which notified Collin County officials of his place of imprisonment and of his request for final disposition of the case against him under the IADA. Appellant returned form II to the officials at the facility, who completed forms III and IV. There is no dispute in this case that the completed IADA forms included all of the statutorily required information. Officials at the Oklahoma correctional facility then sent copies of forms II, III, and IV to the prosecuting official and to the court via certified mail, return receipt requested, as required under the statute. Receipt by each party has been shown. The court's receipt is evidenced by its May 2, 2014 file-stamp on the forms II, III, and IV in the clerk's record, and the certified mail envelope in the clerk's record. Receipt by the Collin County D.A.'s Office is evidenced by B. Sommers's May 2, 2014 file-stamped signature on the return receipt green card addressed to Ashley Keil. Although there is no green card in the record other than the one addressed to the prosecutor—the record does not contain a green card addressed to the court—the certified mail envelope in the clerk's record that is addressed to the 380th district court clerk bears a different certified mail tracking number than the one on the green card with the prosecutor's name on it, which is evidence that copies of appellant's IADA paperwork were sent to *both* the court and the prosecutor. The State also

[3] The State also argues we should apply the clearly erroneous standard of review, e.g., it was not *clearly erroneous* for the trial court to have concluded the IADA request was not delivered to the prosecuting attorney. As we previously noted, however, the trial court did not make any findings of fact in this case. *See Kirvin*, 394 S.W.3d at 555 n.8.

argues that appellant offered no evidence from the Lexington prison officials about the contents of any envelope addressed to the D.A.'s Office, nor is such an envelope in the record. But the Cimmaron records custodian, Bogert, attached appellant's executed IADA forms II, III, and IV to her third affidavit, along with a receipt from the purchase of a return receipt green card sent to "A.D.A. Askley Keil, 2100 Bloomdale Rd., McKinney, TX 75071," and the returned green card addressed to Keil at the same 2100 Bloomdale Road address. Both the receipt and the green card bear the same tracking number. In her affidavit, Bogert lists these attached items as follows: "(Form II), . . . (Form III), . . . (Form IV), Mail Receipt of when *these* forms were *sent and received* by Certified Mail (emphasis added)." Bogert's affidavit supports the conclusion that the attached IADA forms II, III, and IV were sent to the addressee Ashley Keil by certified mail, return receipt requested.

As for the green card addressed to Ashley Keil, Sommers was the person specifically designated on May 2, 2014 to retrieve all mail, including all certified mail, sent to county offices other than the tax office. As Dobecka testified, his office acted on behalf of the Collin County D.A.'s Office in collecting their mail and both he and Sommers were *agents* of the D.A.'s Office for the purpose of picking up the mail. Based on this testimony and the other evidence in the record, the trial court could not have reasonably concluded appellant's IADA request was not delivered to the prosecuting attorney's designated agent on May 2, 2014. *See, e.g.*, TEX. R. CIV. P. 21a (allowing service to a duly authorized agent); *Ex parte Combs*, 638 S.W.2d 540, 541 (Tex. App.—Houston [1st Dist.] 1982, no writ) ("Moreover, the record shows that the notice was sent to the relator by certified mail at an address in Oklahoma, and the return receipt was signed by Marie Combs, who was not shown to be the relator's duly authorized agent or attorney of record for service, as required by Tex[as] Rules Civil Procedure 21a.").

Nor are we persuaded by the State's reliance on *Fex v. Michigan*, 507 U.S. 43, which

concerned the application of the prison mailbox rule in the context of the IADA. *See, e.g.*, *Longenette v. Krusing*, 322 F.3d 758, 762 (3d Cir. 2003) (discussing *Fex*). In *Fex*, the prosecuting state brought the prisoner to trial 196 days after he delivered his request to prison authorities, but only 177 days after the prosecutor received the request. *Fex*, 507 U.S. at 46. The defendant argued that fairness required the burden of compliance with the IADA to be placed entirely on the law enforcement officials because the prisoner had little ability to enforce compliance. *Id*. at 52. The Supreme Court focused on the IADA's specific language: "[The detainee] shall be brought to trial within one hundred and eighty days after he *shall have caused to be delivered* to the prosecuting officer . . . written notice of the place of his imprisonment and his request for final disposition . . . ." *Id*. at 45 n.1 (emphasis added). The Court concluded this language meant that the 180-day period could not begin to run "until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him." *Id*. at 52. *Fex* does not resolve the instant case, however, where the evidence shows appellant did everything he was required to do under Article III and that delivery was in fact made upon both the court and the prosecuting attorney.[4]

We conclude appellant satisfied his burden of proving compliance with the requirements of Article III. The evidence in this case, even when viewed in the light most favorable to the trial court's ruling, shows appellant complied with his obligations under the IADA and that the prosecuting office, through its designated agent, received notice of appellant's request for final disposition along with all of the required documentation. Hence, because appellant was not tried in Texas before the expiration of the 180-day deadline, the trial court abused its discretion by

[4] We likewise distinguish *Bowling v. State*, 918 N.E.2d 701 (Ind. Ct. App. 2009), which is also cited by the State. In *Bowling*, the Indiana court of appeals upheld a trial court's refusal to dismiss under the IADA despite a certified mail receipt that was signed for by an employee of the prosecutor's office. *Id*. at 705-06. As the court stated in the opinion, however, there was no evidence as to what was sent to the prosecutor's office *and* no evidence any notice was sent to the trial court. *Id*. at 706 (citing *Fex*, 507 U.S. at 47).

overruling appellant's motion for new trial. We reverse the trial court's judgment and remand this case to the trial court for dismissal of the charges. We do not address appellant's second issue.

/Lana Myers/
LANA MYERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DAVID WAYNE CAHILL, Appellant

No. 05-15-00577-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 380th Judicial District Court, Collin County, Texas
Trial Court Cause No. 380-81088-2012.
Opinion delivered by Justice Myers. Justices Francis and Lang-Miers participating.

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 14th day of June, 2016.