

# State v. Beitel

**Case Number**

S-16-0098

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October 5, 2016

**Court Number**

Scotts Bluff

**Case Summary**

S-16-0098 State v. Roger Beitel (Appellant)

Scotts Bluff County, Judge Leo Dobrovolny and Judge Randall Lippstreu

Attorneys: Robert O. Hippe, Kyle J. Long (Robert Pahlke Law Group PCLLO for Appellant) --- Stacy M. Foust (Attorney General's Office)

Criminal: Conspiracy to commit theft; speedy trial

Proceedings below: Appellant and a co-defendant were charged with theft and conspiracy. A joint trial was set for February 1, 2016, over objection of Appellant. Appellant then filed a motion for discharge on statutory speedy trial grounds alleging the speedy trial clock would expire for him on January 24, 2016, which was overruled. The district court based the decision on Neb. Rev. Stat. '29-1207(4)(e), the co-defendant clause of the Nebraska speedy trial statute, and held that the co-defendant's speedy trial would not expire until March 11, 2016. Therefore, the court excluded the time between January 24 and start of trial on February 1, 2016. The State filed a Petition to Bypass the Court of Appeals which was granted by the Nebraska Supreme Court.

Issues: A. Both the trial court and prosecutor mistakenly construed Neb. Rev. Stat. '29-1207(4)(e) in a way that requires a defendant to file a motion to sever a joint trial in order to preserve his or her right to speedy trial and thereby shift the State's responsibility to bring an accused person to trial within the time limits provided by Nebraska speedy trial rules; by misconstruing the statute to mean the longer of two persons' speedy trial calculation is to be used when the statute says the shorter of the two is to be used; and by misconstruing the statute to mean that a failure to file a motion to sever is a valid waiver of rights secured by Nebraska speedy trial rules. B. It was clear error to apply the exclusion period by finding the period of delay occasioned by the joinder of the two cases was reasonable when January 21 and 25, 2016 were both available to bring the defendant to trial and they were within his deadline and when the joinder of the two cases occasioned no delay at all in beginning trial within speedy trial limits. C. It was clear error to find no good cause would exist for severance when severance was unnecessary to hold a speedy trial, when defendant specifically objected to the late trial and asked the court to consider a separate January date, when the uncontradicted evidence shows there was no reason to bring defendant to trial after his deadline expired, and without any explanation of the reasons for applying the exclusion.

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