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IN THE  
COURT OF APPEALS OF INDIANA

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Justin M. Blake,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 28, 2021

Court of Appeals Case No.  
21A-CR-405

Appeal from the Morgan Superior  
Court

The Honorable Peter R. Foley,  
Judge

Trial Court Cause No.  
55D01-2009-MR-1462

**Altice, Judge.**

### Case Summary

[1] In this interlocutory appeal, Justin Blake challenges the trial court's denial of his motion for discharge and suppression of evidence. Blake argues that his constitutional right to a fast and speedy trial was violated and that an

appropriate remedy is either discharge or suppression of any evidence accumulated by the State after the expiration of seventy days from his request for a speedy trial.

[2] We affirm.

### **Facts & Procedural History**

[3] On September 14, 2019, several officers were dispatched in response to a report that a decomposed body was found along North Mann Road in Morgan County. The deceased was later identified as Alexander Jackson. Based on statements given by the individuals who lived at or near that location, the officers deduced that Jackson was killed around 4:30 a.m. on September 9, 2019. During the ensuing investigation, officers learned that Britney Overton may have been involved in Jackson's death. Overton was interviewed on October 2, 2019. Officers then learned that Blake may also have been involved and eventually interviewed him on October 17, 2019. The investigation into Jackson's death continued over much of the next year.

[4] On September 28, 2020, the State charged Blake with murder, felony murder, and Level 2 felony robbery. Blake was arrested on October 1, 2020. The trial court held an initial hearing the following day and granted the State's request to hold Blake without bond. On October 5, 2020, Blake, pro se, filed a request for "a fast and speedy Jury Trial" and appointment of pauper counsel. *Appellant's Appendix Vol. 2* at 31. At a hearing on October 6, 2020, the trial court appointed counsel for Blake and took under advisement his speedy trial request pending

Blake's meeting with counsel. Later that day, Blake's counsel renewed Blake's request for a speedy trial pursuant to Ind. Crim. Rule 4(B)(1). On October 7, 2020, the trial court scheduled the matter for a jury trial to commence on December 8, 2020. The court subsequently scheduled voir dire to begin on December 4, 2020.

[5] On November 10, 2020, the Indiana Supreme Court issued an order addressing court operations in light of the continuing 2019 Novel Coronavirus (Covid-19) pandemic. *In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 155 N.E.3d 1191 (Ind. 2020) (Emergency Order). The Court ordered trial courts to “comply with, and enforce, local and statewide public health orders as they relate to court facilities, staff, and proceedings.” *Id.* On November 20, 2020, the trial court, on its own motion, determined that the ongoing Covid-19 pandemic in Indiana, and specifically in Morgan County, constituted an emergency under Crim. R. 4(B)(1).<sup>1</sup> Over Blake's objection, the trial court continued Blake's jury trial to March 5-12, 2021. The court also set a review hearing for January 5, 2020, to assess whether the trial date could be moved forward or whether it would again need to be continued. Regarding discovery, the court ordered that “[a]ll

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<sup>1</sup> The trial court noted that as of November 18, 2020, Morgan County was designated as an “orange” county and that the county's positivity rate was 9.23% with 452 weekly cases per 100,000 residents. *Appellant's Appendix Vol. 2* at 119. The trial court also noted concern that if the current trends persisted, Morgan County would be given a “red” designation by the time of the scheduled trial date and that such designation would hinder the court's ability to conduct a large, complicated jury trial as public gatherings would be limited to 25 persons. *Id.* at 120.

discovery, including depositions, shall be completed and exchanged by the parties **not less than seven (7) days prior to trial.**” *Id.* at 121 (emphasis in original).

[6] On December 14, 2020, the Indiana Supreme Court issued another order suspending all in-person jury trials until March 1, 2021, due to the COVID-19 pandemic. *In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19)*, 20S-CB-123 (Ind. 2020) (Order Suspending Jury Trials). This order specifically tolled early trial demands under Crim. R. 4(B) from December 14, 2020, through March 1, 2021. That same day, Blake filed a motion for discharge, arguing emergency continuance provisions of Crim. R. 4 “cannot be reasonably applied to a ten-month-old and ongoing public health crisis when adequate precautions can be made that both accommodate the constitutional rights of pretrial detainees and address public health concerns.” *Appellant’s Appendix Vol. 2* at 126. The trial court denied Blake’s motion on January 5, 2021.

[7] On January 27, 2021, Blake filed a Continued Motion for Discharge and Motion to Suppress Evidence.<sup>2</sup> Blake again asserted that the trial court’s emergency continuance of his jury trial violated his right to a speedy trial and

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<sup>2</sup> Specifically, Blake sought to suppress the testimony of Joel Romo, a jailhouse informant who would supposedly testify that Blake admitted to murdering Jackson, and Overton, Blake’s co-defendant, who in November 2020 was purportedly refusing to testify at the trial then scheduled for December 2020 but who was slated to testify during the March 2021 trial. Blake also asked that Facebook records procured by search warrants after the original December 2020 trial date be suppressed.

added that because of such continuance, he had been prejudiced in that the State was able to continue its investigation and identify additional witnesses against him. Blake argued that an alternative to discharge was suppression of the evidence accumulated by the State after his trial was delayed. On February 5, 2021, the trial court denied Blake's motion. With regard to suppression of evidence, the court found as follows:

In his Motion to Suppress Evidence, Defendant argues that any evidence produced by the State after December 4, 2020, which was the original trial setting in this matter, should be suppressed. Defendant argues that the Court unlawfully continued Defendant's trial prior to the issuance of the Supreme Court's order and because the trial would have concluded prior to the issuance of the Supreme Court's order on December 14, 2021, Defendant has been unfairly prejudiced and all evidence produced by the State after December 4, 2020, should be suppressed. Defendant cites no caselaw or authority in support [sic] his remedy of suppression. The clear remedy for a violation under Criminal Rule 4 is discharge (see CR 4(B)(1)). The Court concludes that the continuance of the trial was necessitated by the emergency conditions resulting from the COVID-19 pandemic and consistent with the emergency orders of the Supreme Court. There is no violation of CR 4 or Defendant's constitutional rights (U.S. or Indiana), so there is no merit to the remedy of suppression of evidence. The Court also notes that under the Court's November 20, 2020 order, the deadline for the exchange and completion of discovery is seven (7) days prior to the March 5, 2021 trial date. The evidence sought to be suppressed by Defendant has been produced by the State prior to the discovery cut-off ordered by the Court.

*Id.* at 232-33.

[8] On February 9, 2021, Blake filed a motion to certify the following question for interlocutory appeal: “Whether the denial of Defendant’s constitutional right to a fast and speedy trial requires suppression of any evidence accumulated by the State after the expiration of 70 days when the trial delay is not caused by the Defendant.” *Appellant’s Appendix Vol. 2* at 238. The trial court granted Blake’s motion the following day. This court accepted jurisdiction of Blake’s interlocutory appeal on April 5, 2021. Additional facts will be provided as necessary.

## Discussion & Decision

[9] We begin by noting that Blake conflates Crim. R. 4 with his rights under the Sixth Amendment. As our Supreme Court has clarified, “though Rule 4(B)’s intent is to effectuate the rights guaranteed by the Sixth Amendment to the U.S. Constitution and Article 1, Section 12 of the Indiana Constitution, . . . reviewing Rule 4(B) challenges is separate and distinct from reviewing claimed violations of those constitutional provisions.” *Austin v. State*, 997 N.E.2d 1027, 1037 n.7 (Ind. 2013); *see also Cundiff v. State*, 967 N.E.2d 1026, 1028 (Ind. 2012); *State v. Moles*, 337 N.E.2d 543, 552 (Ind. Ct. App. 1975) (“An accused . . . has two distinct but related rights to have the processes of justice move deliberately toward the end of obtaining a trial within a reasonable and agreeable time—one right is guaranteed by the Constitutions and one by the implementing of CR. 4”). Indeed, a speedy-trial claim under either the federal or state constitution “must be asserted separately and distinctly.” *Curtis v. State*, 948 N.E.2d 1143, 1147 n.3 (Ind. 2011). A claimed violation of a defendant’s constitutional right

to a speedy trial “presents a much more complex question” that involves “a balancing of multiple factors” whereas a violation of Crim. R. 4 involves simple, calculated deadlines. *See generally Danks v. State*, 733 N.E.2d 474, 490 (Ind. Ct. App. 2000), *trans. denied*.

[10] In his original motion for discharge and supporting memorandum, Blake argued that the Covid-19 pandemic did not constitute an emergency under Crim. R. 4. Although he mentioned constitutional rights, he did so in the context of Crim. R. 4 when he stated that “the suspension of Criminal Rule 4 is tantamount to a suspension of a constitutional provision.” *Appellant’s Appendix Vol. 2* at 128. Blake did not independently assert a separate and distinct constitutional argument. He maintained that he could not be tried beyond Crim. R. 4’s seventy-day time-period requirement.

[11] In his continued motion for discharge and motion to suppress, Blake argued that he was entitled to a speedy trial and added that he was prejudiced by the delay in that the State continued with its investigation and procured additional witnesses. Blake asserted that this amounted to a violation of his due process rights to a fair trial. He did not assert a violation of his constitutional rights to a speedy trial. Blake argued to the court that suppression of evidence was an alternative to discharge. As it did in ruling on his first motion for discharge, the trial court considered Blake’s continued request for discharge and motion to suppress as falling under Crim. R. 4. Thus, to the extent Blake now claims a violation of his constitutional rights in this regard, he has waived the issue for our review. *See Curtis*, 948 N.E.2d at 1148 (holding that “any specific questions

of law presented by the order [certifying an issue for interlocutory appeal] must have been, in the first place, properly raised by [the defendant] before the trial court” and “the trial court must have considered those issues in ruling on its interlocutory order.”) (internal quotations omitted).

[12] To the extent Blake claims he is entitled to discharge under Crim. R. 4(B)(1), we disagree. Crim. R. 4(B)(1) provides: “If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion.” Exceptions to this requirement include, among other things, “where there was no sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.” Crim. R. 4(B)(1). While court congestion generally requires a motion from the prosecutor, a trial court “may take note of congestion *or an emergency* without the necessity of a motion, and upon so finding may order a continuance.” *Id.* (emphasis added). Where the trial court’s finding of an emergency is based on undisputed facts, our standard of review—like for all questions of law—is *de novo*. *Austin*, 997 N.E.2d at 1039. The ultimate reasonableness of the trial court’s finding of an emergency depends very much upon the facts and circumstances of the particular case. *See id.* (citing *Wilkins v. State*, 901 N.E.2d 535, 537 (Ind. Ct. App. 2009), *trans. denied*).

[13] Blake “strongly asserts that the ten-month old COVID-19 pandemic d[id] not qualify as an emergency sufficient to violate his speedy trial rights.” *Appellant’s Brief* at 10. Blake was originally scheduled to be tried on December 4, 2020, a



date within the seventy-day time-period applicable to his request for an early trial pursuant to Crim. R. 4. On November 10, 2020, the Supreme Court issued the Emergency Order in which it noted “[l]arge outbreaks” and continued spread of Covid-19 infections within the judicial system, including judicial officers, courts staff, jurors, non-participants, and family members. *Id.* The Supreme Court reminded trial judges of their “obligation to help protect their communities by taking proactive, responsible steps to minimize the potential exposure and infection in—and from—their courtrooms by reducing in-person proceedings.” *Id.* Ten days later, the trial court continued Blake’s jury trial, noting the current conditions<sup>3</sup> within Morgan County with regard to Covid-19 infections and positivity rate coupled with the complexity of the case against Blake. The court explained that “at that point in time, the reality was it was just unable to meet the minimum requirement of public safety necessary to subpoena and summons a jury in to hear the case.” *Transcript* at 7. Despite the fact that the pandemic had been occurring for approximately ten months, it continued to present a very real danger. Indeed, less than a month later, the Supreme Court took the drastic measure of halting all jury trials in the State until March 1, 2021. In its order, the Court stated:

The public health emergency continues. The threat of exposure from any in-court proceeding during these conditions, even when

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<sup>3</sup> See footnote 1, *infra*.

conducted under strict protocols, is high. And any exposures from such proceedings contribute to prolonging the emergency.

*Order Suspending Jury Trials.* As noted above, the Court's order applied for purposes of Crim. R. 4 requests. The trial court's finding that an emergency existed was reasonable in light of the circumstances relating to the Covid-19 pandemic that existed at the time. The trial court did not err by continuing Blake's jury trial and denying his motion for discharge.

[14] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.