MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Charles Huntley,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 11, 2024

Court of Appeals Case No.
23A-CR-241

Appeal from the LaPorte Superior Court

The Honorable Richard R. Stalbrink, Jr., Judge

Trial Court Cause No.
46D02-1707-F3-000640

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Charles Huntley appeals his conviction of Level 3 felony aggravated battery resulting in the loss or impairment of a bodily function.[1] Huntley argues his conviction occurred in violation of Indiana Criminal Rule 4(C) and his federal and state constitutional right to a speedy trial because more than five years elapsed between his charging and his trial. In light of the specific facts and circumstances herein, we disagree and therefore affirm.

Facts and Procedural History

[2] On May 31, 2017, around 12:25 p.m., Officer Tyler Rodewig and two other officers conducted a "shakedown" of Huntley's cell at the Indiana State Prison in Michigan City. (Appellant's App. Vol. 2 at 22.) Twenty minutes later, Huntley assaulted Officer Rodewig, causing injuries to the officer's left eye, nose, lip, and right ear. Officer Rodewig was transported to a hospital where staff stitched his ear and his lip and placed a plate below his left eye to treat an orbital fracture. In the months following the incident, Officer Rodewig needed surgery to repair the broken nose that resulted in a deviated septum and he needed a "medial branch block" procedure "to kill the nerves in [his] neck to stop the headaches" that Officer Rodewig experienced for five months following the assault by Huntley. (Tr. Vol. 2 at 140.) Huntley reported having

[1] Ind. Code § 35-42-2-1.5(2).

no memory of the assault because he "blacked out" when he found his family pictures on the floor of his cell. (*Id*. at 185.)

[3] On July 13, 2017, the State charged Huntley with Level 3 felony aggravated battery. The trial court held an initial hearing on July 21, 2017. At that hearing, Huntley requested a fast and speedy trial and expressed desire to proceed pro se. The trial court did not address Huntley's request to proceed pro se but granted the State's motion to release Huntley on his own recognizance.[2] The court set a continued initial hearing for August 18, 2017, but later that same day reset the hearing for September 15, 2017, due to "Judicial Action." (Appellant's App. Vol. 2 at 3.) The court also appointed a public defender for Huntley, and Attorney James Cupp entered his appearance for Huntley on August 1, 2017.

[4] On September 15, 2017, the trial court held the continued initial hearing. Attorney Cupp was there to represent Huntley, and Huntley again indicated that he wished to proceed pro se. The trial court again did not address Huntley's request to proceed pro se. Huntley also requested to be transported to the LaPorte County Jail for the pendency of the action, but the trial court denied that request. The trial court entered a discovery order and a case

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[2] Huntley's "release" meant that he was returned to the custody of the Department of Correction ("DOC") to serve his prior sentence and that the State was not obligated to try Huntley within seventy days. *See* Ind. Criminal Rule 4(B) (defendant who requests early trial must receive trial within seventy days absent exceptions, which include release of defendant before expiration of seventy-day period).

management order, set pretrial hearing dates of December 1, 2017, and March 9, 2018, and scheduled trial to begin April 3, 2018.

[5] The trial court held the scheduled omnibus hearing on December 1, 2017. Only the attorneys attended, and the court's Hearing Journal Entry indicates: "No issues reported." (*Id*. at 4.) The pretrial hearing set for March 9, 2018, was not held because Huntley was not transported, and the court reset the hearing for one week later. On March 16, 2018, the trial court held the final pretrial hearing. The parties reported the possibility of a plea, (*id*. at 5) ("Poss. Plea"), and agreed to cancellation of the jury trial set for April 3, 2018. (*Id*.) ("Agreement of Parties."). No new trial date was set, but the court set a status conference for April 20, 2018. That hearing was later cancelled, with the court record indicating "Judicial Action" and "Status/Poss. Plea[.]" (*Id*. at 6.)

[6] The next status conference was held on June 1, 2018. Attorney Cupp indicted he would be seeking a competency evaluation on Huntley. The court set the next status conference for August 3, 2018. On June 5, 2018, Attorney Cupp filed notice of intent to assert an insanity defense. The trial court ordered psychiatric evaluations be conducted on Huntley. The court held a status conference on August 3, 2018. The evaluations were not complete, so the court scheduled another hearing for September 7, 2018.

[7] The court held the status conference on September 7, 2018, and then entered a case management order. The court scheduled the final pretrial conference for June 28, 2019, and the trial for August 6, 2019.

[8] The June 28, 2019, pretrial conference "[c]ommenced and concluded" as scheduled, (*id*. at 8), but that day the trial court cancelled the jury trial scheduled for August 6, 2019. The only explanation appearing in the record is "Reason: Other." (*Id*.) The court set a new final pretrial conference for January 31, 2020, and a new trial to begin March 10, 2020.

[9] The court held the hearing scheduled for January 31, 2020, and the following transpired:

> Counsel for defendant requests trial dates currently set for March 10, 2020-March 12, 2020 be vacated. State does not object. Defendant advises the court he objects and wishes to proceed pro se. Court advises the defendant of the perils of proceeding pro se. Defendant then requests the appointment of standby counsel and agrees to reset the current trial dates. Court releases Attorney Cupp from further representation in this cause and appoints standby counsel.

(*Id*. at 9) (formatting altered to remove italics). Pursuant to Huntley's agreement, the court cancelled the trial set for March, set a final pretrial conference for September 11, 2020, and a trial beginning October 6, 2020.

[10] On September 2, 2020, David Paul Jones ("Attorney Jones") entered his appearance as standby counsel for Huntley and moved for continuance of the trial set for October 6, 2020, because he had been unable "to meet and prepare with Mr. Huntley due to the ongoing COVID-19 Pandemic." (*Id*. at 42.) The trial court cancelled the trial dates and ordered the September 11, 2020, hearing be used to set new trial dates. However, the Department of Correction

("DOC") did not transport Huntley for the hearing and the September 2020 hearing had to be cancelled. The court set a hearing on a video conferencing platform for December 18, 2020.

[11] At that December 2020 hearing, Attorney Jones "request[ed the] matter be reset due to being unable to meet with clients in the DOC due to COVID." (*Id*. at 11.) The trial court granted that motion and set a hearing for May 7, 2021.

[12] Huntley moved to appear by videoconference for the May 7, 2021, hearing. The DOC was unable to accommodate Huntley's request on that date, so the hearing was reset for May 14, 2021. On May 14, however, "Defendant refused to appear" for the hearing. (*Id*. at 12.) The court set a final pretrial conference for February 4, 2022, and a trial to begin March 1, 2022.

[13] The February 4, 2022, final pretrial hearing was held by videoconference. The court's record indicates:

> Attorney Jones advised he had filed a motion to continue the trial currently set to commence March 1, 2022, due to inability to meet with defendant at the DOC facility due to covid. Defendant advised the court he wishes to proceed pro se. Court advised the defendant of the perils of proceedings [sic] pro se. Defendant confirmed his desire to proceed pro se. Attorney Jones moved to withdraw the motion to continue the trial, which was granted. Attorney Jones moved to withdraw from further representation. Granted. Trial set to commence March 1, 2022, is confirmed.

(*Id*. at 13) (formatting altered to remove italics). Then, on February 14, 2022, the trial court entered an order that cancelled Huntley's trial date because of the

"recent surge in coronavirus positivity rates" in LaPorte County. (*Id*. at 50.) At a March 2, 2022, videoconference hearing, the trial court reset Huntley's trial to begin September 27, 2022.

[14] The court held Huntley's trial on September 27 and 28, 2022. A jury found Huntley guilty as charged. The court entered the conviction and ordered preparation of a pre-sentence investigation report. The court then held a sentencing hearing on January 6, 2023, and imposed a ten-year sentence. At the end of the sentencing hearing, Huntley, who had proceeded pro se, asked the trial court how to "approach" the fact that he should have gone to trial within a year, but did not go to trial "until five years later." (Tr. Vol. 2 at 231.) The trial court informed Huntley that his appointed appellate attorney could help him with that.

Discussion and Decision

[15] The right to a speedy trial is older than our nation's founding and is "one of this country's most basic, fundamental guarantees[.]" *Watson v. State*, 155 N.E.3d 608, 614 (Ind. 2020). The right is intended to protect against both "'prolonged detention without trial'" and "unreasonable 'delay in trial.'" *Id*. (quoting *Klopfer v. North Carolina*, 386 U.S. 213, 224, 87 S. Ct. 988, 994 (1967)). To protect the right to a speedy trial, the government – which includes both prosecutors and the courts – has "an obligation to ensure the timely prosecution of criminal defendants." *Id*. If the government fails to meet that obligation, a

defendant may seek enforcement of the right through claims under either Criminal Rule 4 or our federal and state constitutions. *Id*.

[16] Huntley argues under both Criminal Rule 4 and the constitutions. Criminal Rule 4 provides narrower protections than the constitutions, *id*. at 615, so we address it first. As we consider each of Huntley's claims, "we review factual findings for clear error and questions of law de novo." *Id*. at 614.

1. Criminal Rule 4(C)

[17] Huntley first argues the trial court erred by entering a judgment of conviction against him rather than dismissing the charge under Criminal Rule 4(C). At the time of Huntley's trial, that Rule provided:

> No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that 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. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

Crim. R. 4(C) (1987).[3]

[18] The duty to bring a defendant to trial within one year rests on the State. *Battering v. State*, 150 N.E.3d 597, 601 (Ind. 2020), *reh'g denied*. Nevertheless, a defendant can extend that period by requesting a continuance or causing delay by some other act. *See* Crim. R. 4(C) (1987). Moreover, a defendant waives his right to be tried within one year "by failing to offer a timely objection to trial dates set outside the one-year limitation, unless the setting of that date occurs after the one-year period has expired." *Battering*, 150 N.E.3d at 601.

[19] At no point during his trial proceedings did Huntley file a motion for discharge or object to the setting of a trial date based on it being outside the one-year period. Huntley objected on February 4, 2022, to Attorney Jones's request to continue the trial and requested permission to proceed pro se, but Huntley did not request discharge or seek dismissal of his charges. Accordingly, he waived any argument under Criminal Rule 4(C). *See*, *e.g.*, *Howard v. State*, 32 N.E.3d 1187, 1195 (Ind. Ct. App. 2015) (holding defendant waived argument under Criminal Rule 4(C) by failing before the trial court to object on that basis or move for discharge).

[3] We note Criminal Rule 4 was amended June 23, 2023, and the new version became effective January 1, 2024. We rely on the version in effect when Huntley was charged and awaiting trial.

2. Constitutional Right to Speedy Trial

[20] Huntley next argues the delay in bringing him to trial violated his right to a speedy trial under both the federal and state constitutions. The Sixth Amendment to the United States Constitution guarantees the accused in all criminal prosecutions "the right to a speedy and public trial[.]" Likewise, Article 1, Section 12 of the Indiana Constitution provides: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." To determine whether these rights have been violated, we apply the four-factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972).[4] *Watson*, 155 N.E.3d at 614. "The test assesses both the government's and the defendant's conduct and takes into consideration (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the speedy trial right, and (4) any resulting prejudice." *Id*.

2.1 Length of Delay

[21] "The length of the delay acts as a triggering mechanism; a delay of more than a year post-accusation is 'presumptively prejudicial' and triggers the *Barker*

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[4] In *Watson*, our Indiana Supreme Court noted a linguistic distinction between the federal and state constitutions' clauses enshrining the right to speedy trial and suggested the distinction might indicate a different test would be more appropriate under the Indiana Constitution. 155 N.E.3d at 614 n.2. However, as neither Watson nor the State had asked the Indiana Supreme Court to consider a separate analysis for the Indiana Constitution, the *Watson* Court applied the *Barker* test to evaluate constitutionality under the federal and state provisions. *Id*. Huntley similarly has provided only one argument in reliance on *Barker*, so we presume that analysis is appropriate for both constitutions. *See id*. (analyzing both constitutions under *Barker* because defendant provided one argument).

analysis." *McClellan v. State*, 6 N.E.3d 1001, 1005 (Ind. Ct. App. 2014) (italics in original) (quoting *Vermillion v. State*, 719 N.E.2d 1201, 1206 (Ind. 1999)), *reh'g denied*. Herein, five years, two months, and two weeks passed between Huntley's charging and his trial. We thus continue to the remaining *Barker* factors.

2.2 Reason for Delay

[22] When considering the reasons for delay, "we look at 'whether the government or the criminal defendant is more to blame for that delay.'" *Johnson v. State*, 83 N.E.3d 81, 85 (Ind. Ct. App. 2017) (quoting *Doggett v. U.S.*, 505 U.S. 647, 651, 112 S. Ct. 2686, 2690 (1992)). In *Barker*, the United State Supreme Court explained

> different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded court should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

407 U.S. at 531, 92 S. Ct. at 2192.

[23] Herein, of the 1902 days that passed, 700 days of delay were caused by continuances that Huntley requested, caused, or agreed were necessary. Huntley's trial scheduled for April 2018 was delayed by agreement of the

parties because they believed a plea agreement was possible. At the next status conference, when the court was going to set a new trial date, Huntley's counsel, Attorney Cupp, indicated he intended to assert an insanity defense. A few days later, Attorney Cupp formally filed that notice and the court ordered psychiatric evaluations of Huntley. At the first status conference after the evaluations were complete, the court scheduled the next trial for August 2019. This set of delays chargeable to Huntley accounted for 490 days. Then, in 2020, Huntley agreed to delay his trial from March 10 to October 6, so that standby counsel could be appointed to assist him, and this delay accounts for 210 days of his delay.

[24] The COVID-19 public health emergency contributed 721 days to the delay in Huntley's trial. The trial date set in October 2020 was rescheduled because standby counsel had been unable to enter the DOC to meet with Huntley.[5] A delay of 511 days occurred between October 2020 and March 2022, when the next trial setting occurred, and then the March 2022 trial setting had to be canceled due to a resurgence of COVID-19 cases in LaPorte County. To the extent Huntley's trial was delayed due to the pandemic, the delay was justified. *See Blake v. State*, 176 N.E.3d 989, 994-95 (Ind. Ct. App. 2021) (holding trial

[5] Huntley complains that Attorney Jones should not have had authority to delay his trial, as Huntley was officially proceeding pro se at this point. However, Huntley had agreed to delay his trial for six months to accommodate the appointment of standby counsel because Huntley wanted standby counsel to assist him with filing motions (*e.g.*, to wear plain clothes during trial) that Huntley wanted to file prior to trial. We accordingly cannot find error in the trial court's grant of the motion filed by Attorney Jones when Attorney Jones was unable, during the unprecedented circumstances of the pandemic, to meet with Huntley. Nevertheless, out of an abundance of caution prompted by respect for Huntley's constitutional right to proceed pro se, we decline to assign the 511 days that occurred following Attorney Jones's motion to Huntley for purposes of this *Barker* analysis.

court did not err in continuing defendant's jury trial and denying his motion for discharge when court could not safely summon a jury due to the danger of potential spread of the COVID-19 virus).

[25] Finally, the State is responsible for the 264 days that passed between Huntley's 2017 charging and his first trial setting in April 2018. The State is also responsible for the 217 days that passed between the trial that was set for August 2019 and the next trial setting of March 10, 2020, because the record does not explain why this trial setting was cancelled. (*See* Appellant's App. Vol. 2 at 18) ("Reason: Other."). Thus, the non-COVID-19 days attributable to the State totals 481 days, which is less than the 700 days attributable to Huntley. Huntley does not suggest the State engaged in its delay as a deliberate attempt to prejudice his defense. These delays, rather, appear to have occurred for neutral reasons, but nevertheless remain the responsibility of the State.

2.3 Assertion of Speedy Trial Right

[26] As we assess Huntley's assertion of his speedy trial right, "we consider both the frequency and the force of the defendant's assertions of his right, and we keep in mind any conduct by the defendant which is contrary to his assertion of that right." *Hornsby v. State*, 202 N.E.3d 1135, 1146 (Ind. Ct. App. 2023), *trans. denied*.

[27] Huntley first requested a speedy trial at his initial hearing on July 21, 2017, and as a result, the State released Huntley from the present charge and returned him to the custody of the DOC. However, his first trial setting in April 2018 was

delayed by agreement of Huntley, who was negotiating a possible plea agreement.

[28] Then, on March 10, 2020, Huntley objected to a continuance requested by Attorney Cupp because Huntley "want[ed] to go to trial." (Tr. Vol. 2 at 9.) Huntley indicated he wished to proceed pro se to move his case forward, but he then moments later agreed to delay his trial until October so that he could have the assistance of standby counsel. (*Id*. at 17) ("Okay. I'm okay with October.").

[29] Huntley argues his trial thereafter was improperly delayed by his standby counsel, who was unable to meet with Huntley in the DOC because of COVID-19. Huntley did not, however, contact the trial court to complain about these delays during his proceedings. Instead, at a pre-trial conference on February 4, 2022, Huntley reminded the court that he was pro se and asked to proceed to trial without standby counsel.

[30] Thus, over a period of five years, Huntley thrice asserted his desire to proceed to trial. However, after the first two of those assertions, Huntley agreed to continue the proceedings, and the delay after his third assertion was prompted by the COVID-19 pandemic. We cannot say in these circumstances that Huntley was diligent or forceful in his request for a speedy trial.

2.4 Prejudice to Huntley

[31] The final factor of the *Barker* test is prejudice to the defendant from the delay. We assess the prejudice to a defendant based on the interests the speedy trial guarantee was intended to protect: "(1) preventing oppressive pretrial

incarceration; (2) minimizing the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired." *Watson*, 155 N.E.3d at 619 (citing *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193). "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. The burden to demonstrate actual prejudice due to the delay belongs to the defendant. *Johnson v. State*, 83 N.E.3d 81, 87 (Ind. Ct. App. 2017).

[32] Herein, oppressive pretrial incarceration was not an issue, because Huntley was already serving a sixty-year sentence for a prior conviction and his earliest possible release date, as of February 2, 2022, was "July 5, 2044." (Appellant's App. Vol 2 at 47); (Tr. Vol. 2 at 17) ("I'm already doing 60 years"). Nor was anxiety about the outcome of much concern when Huntley was already incarcerated. *See Watson*, 155 N.E.3d at 620 ("Under normal circumstances, the fact that a defendant is already incarcerated will mitigate any prejudice attributable to anxiety."). Finally, while a showing of prejudice is not required to obtain relief, *see id*. ("it is well settled that such a showing is not required), Huntley has not suggested his defense was prejudiced by the delay.

[33] In fact, Huntley's defense was never that he did not assault Officer Rodewig; nor could it have been when the State had video of the incident. Officer Rodewig was present to describe his injuries, which included a broken nose that required surgery, ear and lip damage requiring stitches, permanent nerve damage between his lip and eye on the left side of his face, and a headache that lasted five months until doctors permanently blocked nerves in his neck to stop

the headache. Huntley challenged only whether the injuries experienced by Officer Rodewig "created a substantial risk of death or cause[d] serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ[.]" (Appellant's App. at 75) (final instruction quoting charging instrument); *and see* (Tr. Vol. 2 at 210-11) ("They didn't prove that it was a substantial risk of death, they didn't prove that he lost a bodily function, and they didn't prove that he's permanently disfigured. He does have nerve damage, but that's not a permanent disfigurement."). Huntley did not present any testimony in support of his argument. Nor has he asserted any witnesses were unavailable due to the delay. Accordingly, the only possible prejudice to Huntley was the anxiety he claims he experienced about whether he would be convicted of the Level 5 felony or the Level 3 felony.[6]

2.5 Summation

[34] The five-year delay in bringing Huntley to trial was certainly not ideal; however, nearly two years of that delay were caused by the unusual circumstances prompted by the COVID-19 pandemic. Without those days, Huntley is responsible for more days of delay than the State is. Huntley mentioned his desire for a speedy trial, but he also agreed to continuances of his trial date when those continuances were to his advantage. Finally, Huntley, who was already serving a sixty-year sentence, claims he was prejudiced

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[6] We note a Level 3 felony has a sentencing range of three to sixteen years, Ind. Code § 35-50-2-5, while a Level 5 felony has a sentencing range of one to six years. Ind. Code § 35-50-2-6.

because the delay caused him anxiety, but given the video evidence of the assault and Huntley's forgoing of the insanity defense, the only real issue at trial was whether Huntley would be convicted of the Level 3 felony aggravated battery as charged or of a Level 5 felony included battery. In light of all these circumstances, we hold Huntley's right to a speedy trial was not violated by the delay that unfolded in his proceedings.

Conclusion

[35] Huntley waived his argument that his trial occurred in violation of Criminal Rule 4 when he failed to timely request dismissal of the charges in the trial court, and Huntley has not demonstrated his constitutional rights to a speedy trial were violated. We accordingly affirm his conviction of Level 3 felony aggravated battery.

[36] Affirmed.

Altice, C.J., and Foley, J., concur.

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