MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Shakira Lee,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

March 28, 2024

Court of Appeals Case No.
23A-CR-1358

Appeal from the Lake Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-2104-F5-205

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Shakira Lee (Lee), appeals the trial court's denial of her motion for discharge pursuant to Indiana Criminal Rule 4(C).

[2] We affirm.

ISSUE

[3] Lee presents this court with one issue on interlocutory appeal, which we restate as: Whether the trial court properly denied Lee's motion for discharge.

FACTS AND PROCEDURAL HISTORY

[4] On April 16, 2021, Lee was charged with possession of a machine gun, as a Level 5 felony, possession of a controlled substance, as a Level 6 felony, carrying a handgun without a license, as a Class A misdemeanor, and possession of marijuana, as a Class B misdemeanor. On May 22, 2021, the trial court granted Lee's motion to continue and rescheduled her pre-trial hearing to June 18, 2021. The day before the pre-trial hearing, on June 17, 2021, the State filed a motion, requesting a warrant for Lee's DNA. The following day, both parties appeared for the pre-trial hearing, at which the trial court granted the State's motion. At the hearing, Lee "[r]espectfully ask[ed] to come back on August 12, 2021," which was granted by the trial court. (Appellant's App. Vol. II, p. 94). On August 12, 2021, both parties appeared for the pre-trial hearing, after which the case was continued until October 7, 2021. From October 7,

2021, until August 17, 2022, the case was continued six times at Lee's request. On August 17, 2022, the trial court set the case for a jury trial on April 3, 2023.

[5] On March 27, 2023, the State disclosed two phone calls made by Lee from the Lake County Jail two years prior, on April 16, 2021. The next day, on March 28, 2023, Lee filed a motion to exclude the jail calls based on their late discovery. On March 30, 2023, the trial court conducted a hearing on Lee's motion. At the hearing, both parties agreed that the late discovery was based on an officer's neglect to tender his supplemental report containing the jail phone calls to the prosecutor, that the State disclosed the phone calls as soon as it became aware of their existence, and that there was no bad faith on the part of the State. Lee, in turn, argued that the disclosure of this evidence one week prior to her scheduled jury trial was prejudicial and moved to exclude the phone calls from the trial. In the alternative, Lee advised the trial court that it would request a continuance of the April 3, 2023 trial date. After hearing arguments, the trial court denied Lee's motion to exclude the jail calls but granted the motion to continue the trial.

[6] During this same hearing, Lee advised the trial court that the court's Chronological Case Summary (CCS) entries from June 18, 2021, and August 12, 2021, did not reflect which party had requested and had been granted continuances of the pre-trial hearings on those dates. Lee contended that "based upon the case law [and that] the [c]ourt speaks through its docket [] [b]oth of those continuances would not be attributable to the defense." (Transcript 03-30-23, p. 13). Lee argued that, when attributing those delays to

the State, the one-year time limitation to bring her to trial pursuant to Indiana Criminal Rule 4(C) would expire on April 17, 2023. As such, Lee advised the court that "at this point in time,[], I would object to any trial setting." (Tr. 03-30-23, p. 14). In response, the State asserted that the continuances for the June 18, 2021, and August 12, 2021 hearings had been requested by Lee and were therefore attributable to the defense. As a result, the State claimed to still have seventy-nine days to bring Lee to trial before the expiration of the Criminal Rule 4(C) time limit. Although the trial court offered to set Lee's trial within fifteen days so as to occur before April 17, 2023, Lee declined and objected to any new trial setting. Because of the "pretty wide gap in our math conclusions," the trial court suggested that it would listen to the court's recordings of the two hearings and continued the hearing to reconvene the following day. (Tr. 03-30-23, p. 16).

[7] The next day, the trial court informed the parties that the transcripts of the June 18, 2021, and August 12, 2021 hearings reflected that Lee had requested and been granted continuances on both dates. The trial court offered the parties an opportunity to review the relevant transcripts, which Lee declined. The trial court advised that:

> When I counted out the dates, and, of course, taking into consideration the fact that the transcripts indicate the defense did move for those continuances, we were showing from April 3rd there would be 75 days left. And we certainly can talk in more detail about those numbers if the parties wish to, but the [c]ourt's determination is that we would need to have trial no later than June 12th.

(Tr. 03-31-23, p. 4). Lee moved for a discharge pursuant to Indiana Criminal Rule 4(C), contending that "when a record is silent concerning the reason for the delay, it is not attributable to the [d]efendant." (Tr. 03-31-23, p. 5). Lee further claimed that the continued reason for the delay on those two dates was the State's request for a buccal swab and therefore, "even though, apparently through the transcripts, that it was the defense's request for a continuance, it was because, again, of discovery that we didn't have and results that we didn't have." (Tr. 03-31-23, p. 7). Lee opined that it was also error for the trial court to review the transcripts because it was the State's duty to procure the transcripts and request that the CCS be changed to reflect the correct information. In turn, the State responded that the transcripts were clear that Lee had requested the continuances on June 18, 2021, and August 12, 2021 and that such time was therefore not chargeable to the State. At the close of the evidence, the trial court denied Lee's motion for discharge and set her jury trial for June 12, 2023.

[8] On April 25, 2023, Lee filed a motion for interlocutory appeal, which was granted by the trial court. On July 19, 2023, this court accepted jurisdiction of Lee's interlocutory appeal.

[9] Lee now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] "The right to a speedy trial is one of this country's most basic, fundamental guarantees—one much older than the nation itself." *Watson v. State,* 155

N.E.3d 608, 614 (Ind. 2020) (citing *Klopfer v. North Carolina*, 386 U.S. 213, 223-24, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967)). "It protects against 'prolonged detention without trial' as well as unreasonable 'delay in trial.'" *Id*. (quoting *Klopfer*, 386 U.S. at 224, 87 S.Ct. 988). "To safeguard these protections, the State and the courts—together, the government—have an obligation to ensure the timely prosecution of criminal defendants." *Id.* When that obligation goes unfulfilled, Criminal Rule 4(C) provides defendants a "path to ensure the speedy administration of justice." *Id*. at 615.

[11] Criminal Rule 4(C) "places an affirmative duty on the State to bring a defendant to trial within one year of being charged or arrested, but allows for extensions of that time for various reasons." *Cook v. State,* 810 N.E.2d 1064, 1065 (Ind. 2004). The rule specifically states:

> 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[.]

Ind. Crim. Rule 4(C). "[I]f a delay is caused by the defendant's own motion or action, the one-year time limit is extended accordingly." *Cook*, 810 N.E.2d at 1066.

[12] Focusing on the pre-trial hearings of June 18, 2021, and August 12, 2021, Lee contends that because the CCS is the official record of the trial court, and the docket entries for June 18, 2021, and August 12, 2021, are silent as to the reason for the delay, the delay cannot be attributed to her. Whether a defendant has been brought to trial within one year is a factual determination to be made by the trial court. *State ex rel. Brumfield v. Perry Cir. Ct.*, 426 N.E.2d 692, 695 (Ind. 1981). Similarly, whether delays in the scheduling of the trial have occurred and to whom they are chargeable are also factual determinations for the trial court. *State v. Smith*, 495 N.E.2d 539, 542 (Ind. Ct. App. 1986).

[13] In *Morrison v. State*, 555 N.E.2d 458, 461 (Ind. 1990),overruled on other grounds by *Cook v. State, 810* N.E.2d 1064 (Ind. 2004), our supreme court explained that reviewing courts may not attribute any delays in proceeding to trial to the defendant where the record is void regarding the reason for the delay. While we recognize that the trial court's CCS is the court's official record, and that the trial court speaks through its docket, there is precedent for disregarding a CCS entry if it is shown to be factually inaccurate or incomplete. Ind. Trial Rule 77(B); *Henderson v. State*, 769 N.E.2d 172, 175 n. 4 (Ind. 2002); *Whatley v. State*, 685 N.E.2d 48, 50 (Ind. 1997); *Gibson v. State*, 910 N.E.2d 263, 267 (Ind. Ct. App. 2009); *Young v. State*, 765 N.E.2d 673, 678 (Ind. Ct. App. 2002). As such, we do not consider cases in their "factual vacuum" created by the absence of CCS entries, but we look to other information developed at the hearing or in the record concerning the reasons for the delay. *See* T.R. 77 (listing the official records required to be maintained by trial courts); *State v. Lindauer*, 105 N.E.3d

211, 215 (Ind. Ct. App. 2018) (considering the transcript to confirm defendant moved to reset six of the hearings); *State v. Powell*, 755 N.E.2d 222, 226 (Ind. Ct. App. 2001) (noting that even though the CCS was silent as to the reason for a continuance, the record reflected the defendant's prior request for an indefinite continuance to engage in plea negotiations), *trans. denied; State v. Smith*, 495 N.E.2d 539, 541 (Ind. Ct. App. 1986) (noting that the trial court's docket entries reflected no delay in the scheduling of the trial that can be attributed to defendant, and the record did not include any written documentation of the plea negotiations or their progress).

[14] We do not operate in a factual vacuum here. Despite the absence of CCS entries reflecting the party moving for a continuance, the transcript of the June 18, 2021 hearing supports that Lee "[r]espectfully ask[ed] to come back on August 12, 2021," which was granted by trial court. (Appellant's App. Vol. II, p. 94). Although no transcript of the August 12, 2021 pre-trial hearing was submitted before this court, the trial court, in its March 31, 2023 hearing, advised the parties that it had listened to the August 12, 2021 hearing transcript and concluded that Lee had requested and been granted a continuance on that date. Lee does not dispute this factual finding. Accordingly, the trial court properly attributed the delays to Lee.

[15] Although under Criminal Rule 4(C), a defendant generally is chargeable with a delay effected by his own motion for a continuance, our appellate courts have recognized a "discovery exception" to this general rule. *Wellman v. State*, 210 N.E.3d 811, 814-15 (Ind. Ct. App. 2023) (citing *Carr v. State*, 934 N.E.2d 1096,

1101 (Ind. 2010)). "When a trial court grants a defendant's motion for continuance because of the State's failure to comply with the defendant's discovery requests, the resulting delay is not chargeable to the defendant." *Carr*, 934 N.E.2d at 1101; *see also Stephenson v. State*, 742 N.E.2d 463, 488 (Ind. 2001).

[16] This exception seeks to avoid putting criminal defendants in the "untenable situation" in which they "must either go to trial unprepared due to the State's failure to respond to discovery requests or be prepared to waive their rights to a speedy trial[.]" *Wellman*, 210 N.E.3d at 815 (quoting *Biggs v. State*, 546 N.E.2d 1271, 1275 (Ind. Ct. App. 1989)). Cases applying the discovery exception often involve the State's "blatant and well-documented" failure to respond to discovery requests. *Cole v. State*, 780 N.E.2d 394, 397 (Ind. Ct. App. 2002), *trans. denied*; *see, e.g.*, *Wellman*, 210 N.E.3d at 815 (noting that although the defendant requested "labs" or "lab results" at least five times, the State failed to provide the results until after the expiration of the one-year period); *Biggs*, 546 N.E.2d at 1275 (noting that after the State had not complied with discovery requests, the trial court removed case from docket until discovery was complete); *Marshall v. State*, 759 N.E.2d 665, 670 (Ind. Ct. App. 2001) (noting that CCS entries and pleadings "consistently attribute . . . delays to the State's failure to provide discovery").

[17] Citing the discovery exception, Lee now claims that these continuances were not attributable to her because "[w]hile [Lee] did not specifically put on the record that said continuance was to allow for the State to obtain the DNA buccal swab, it is clear by the context of the hearing[s] that was [Lee's]

intention." (Appellant's Reply Br. p. 7). However, unlike the defendant in *Wellman*, who requested eight consecutive pretrial conferences, each time specifying that he was still awaiting blood test "labs" or "lab results" from the State, at no point did Lee cite to the State's outstanding results of the buccal swab as the basis for the two contested continuance requests. *See Wellman*, 210 N.E.3d at 813. Moreover, a continuance based on a discovery delay would have been impossible during the June 18, 2021 pre-trial hearing as the State's motion to obtain Lee's DNA was granted mere moments before Lee moved for a continuance. In addition, the record is devoid of any discovery requests or motions to compel discovery on the part of Lee prior to the August 12, 2021 hearing. *See Cole*, 780 N.E.2d at 397-98 (continuances were not attributable to the State where defendant never filed a motion to compel discovery).

[18] Lee was not put in the "untenable situation" the "discovery exception" is designed to assuage. *See Wellman*, 210 N.E.3d at 815. Rather, the facts here do not resemble the "blatant and well-documented" failure to respond to multiple discovery requests seen in other cases where this court applied the "discovery exception." *See, e.g.*, *Biggs*, 546 N.E.2d at 1275. Accordingly, we adhere to the general rule that a defendant generally is chargeable with a delay effected by his own motion for a continuance. Crim. Rule 4(C); *Cook*, 810 N.E.2d at 1066. Therefore, we affirm the trial court's decision that the delays caused by the continuances sought in the pre-trial hearings of June 18, 2021 and August 12, 2021 are attributable to Lee.

CONCLUSION

[19] Based on the foregoing, we conclude that the trial court properly denied Lee's motion for discharge.

[20] Affirmed.

Brown, J. and Foley, J. concur

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