MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Cory D. Brown,
Appellant-Defendant

v.

State of Indiana,
Appellant-Plaintiff

April 1, 2024

Court of Appeals Case No.
23A-CR-1833

Appeal from the Vanderburgh Circuit Court

The Honorable Ryan C. Reed, Magistrate

Trial Court Cause No.
82C01-2302-F3-000846

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] In February 2023, Cory Brown was arrested and charged for battering, intimidating, and criminally confining his on-again off-again girlfriend April Goodman. Brown filed a motion for early trial under Indiana Criminal Rule 4(B),[1] and trial was set within the requisite 70-day window. The morning Brown's jury trial was set to start, the State made a motion to continue the trial pursuant to C.R. 4(D) because Goodman was sick with the stomach flu. The trial court granted this motion over Brown's objection and denied Brown's contemporaneous motion for discharge. Before trial started a week later, Brown filed a second motion for discharge, which the trial court also denied. The jury convicted Brown of multiple charges related to the February 2023 incident, and the trial court sentenced him to a total of two years of incarceration. Brown now appeals and presents one issue for our review: Whether the trial court abused its discretion in granting the State's C.R. 4(D) motion.

[2] We affirm.

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[1] Indiana Criminal Rule 4 is hereinafter referred to as "C.R. 4."

Facts and Procedural History

On February 6, 2023, Brown entered Goodman's Evansville, Indiana home with her consent, despite Goodman having a protective order against Brown. After becoming angry with Goodman, Brown made her stand in a corner of the kitchen as he threw food and other items at her. Brown would not let Goodman leave and urinated on the floor. Brown later tore up Goodman's living room, hit Goodman, and broke her phone. Brown then told Goodman to go to her bedroom and remove her clothes. Out of fear, Goodman complied with Brown's request, and Brown proceeded to pour cold water on her, spit on her, extinguish cigarettes on her legs, and stab the mattress with a butcher knife next to her. Brown then turned off the bedroom lights, put a pillow over Goodman's face, and told her "to stop breathing." Tr. Vol. II at 210. Brown removed the pillow from Goodman's face, put his hands around her neck, and told her "to stop breathing bitch." *Id.* Brown would not allow Goodman to leave the bedroom, and they both eventually fell asleep.

[3] The next morning, Brown apologized to Goodman for his behavior and later allowed Goodman to leave her house by herself to buy cigarettes. When Goodman arrived at a nearby grocery store, she called 911. Brown was arrested later that day, and on February 9, 2023, the State charged Brown with (1) criminal confinement as a Level 3 felony,[2] (2) intimidation as a Level 5 felony,[3]

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[2] Ind. Code § 35-42-3-3(a), (b)(3)(A).

[3] *Id.* § 35-45-2-1(a)(1), (b)(2)(A).

(3) intimidation as a Level 6 felony,[4] (4) domestic battery as a level 6 felony,[5] (5) domestic battery as a Level 6 felony,[6] (6) criminal mischief as a Class A misdemeanor,[7] and (7) interference with reporting of a crime, a Class A misdemeanor[8].

[4] On March 30, 2023, Brown orally moved for an early trial. On April 3, 2023, Brown filed a written motion for an early trial. Brown's trial was set to begin on June 7, 2023. However, on the morning of June 7, Goodman notified the State that she had been to the hospital where she was diagnosed with viral gastroenteritis, commonly known as the stomach flu. Based on Goodman's unavailability, the State requested to continue the trial. In support, the State filed with the trial court photos of Goodman's hospital paperwork, including a doctor's note, an information sheet on viral gastroenteritis, and a discharge summary. The doctor's note stated Goodman could not return to work until June 9, 2023. The discharge summary stated Goodman was experiencing abdominal pain, diarrhea, nausea, and vomiting. The State also told the trial court that Goodman's children had been diagnosed with the stomach flu.

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[4] *Id.* § 35-45-2-1(a)(1), (b)(1)(B).

[5] *Id.* § 35-42-2-1.3(a)(1), (b)(7)(A).

[6] *Id.* § 35-42-2-1.3(a)(1), (b)(2).

[7] *Id.* § 35-43-1-2(a), (a)(1).

[8] *Id.* § 35-45-2-5(1).

[5] Brown objected to the State's motion and simultaneously made a motion for discharge pursuant to C.R. 4. The trial court granted the State's motion and denied Brown's motion, stating: "We'll show on the emergency basis, documentation having been filed, the Court grants State's motion for continuance. The Court denies Defendant's request for discharge. The Court finds that there is an emergency situation with a necessary witness that would be the cause." Tr. Vol. II at 6–7; *see also id.* at 8. The trial court then reset Brown's trial for the following week as a first-choice setting.

[6] On June 14, 2023, the first day of Brown's jury trial, Brown filed a second motion for discharge, which the trial court denied. The jury ultimately found Brown guilty of six of the seven charges.[9] The trial court sentenced Brown to a total aggregate sentence of two years executed at the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

The Trial Court Did Not Abuse Its Discretion by Granting the State's C.R. 4(D) Motion

[7] Brown challenges only the trial court's decision to grant the State's June 7, 2023, motion to continue the trial, which was essentially a C.R. 4(D) motion to continue. There is no dispute that Brown was incarcerated throughout the

[9] At the close of evidence, the trial court granted Brown's motion for a directed verdict on intimidation as a Level 6 felony. On the criminal confinement charge and remaining intimidation charge, the jury convicted Brown of the lesser-included Level 6 felonies.

duration of the trial proceedings nor is there any dispute that the June 14, 2023, trial date was outside of Brown's original C.R. 4(B) early trial period.

[8] C.R. 4 was adopted to implement a defendant's constitutional right to a speedy trial; it was not adopted to discharge defendants. *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013) (citing *Cundiff v. State*, 967 N.E.2d 1026, 1027 (Ind. 2012)). C.R. 4(B) in particular allows an incarcerated defendant to "move for an early trial" and then be "discharged if not brought to trial within seventy (70) days." Ind. Crim. Rule 4(B)(1) (repealed and replaced Jan. 1, 2024). However, there are several reasons this 70-day period may be extended, including when "there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days." C.R. 4(D) (repealed and replaced Jan. 1, 2024). Notably, "[t]he absence of a key witness through no fault of the State is good cause for extending the time period requirements." *Wooley v. State*, 716 N.E.2d 919, 925 (Ind. 1999) (quoting *Woodson v. State*, 466 N.E.2d 432, 433–34 (Ind. 1984)).

[9] As other panels of this court have explained,

> in order to grant a continuance as provided in Rule 4(D), the trial court must be satisfied that the State made a reasonable effort to procure the evidence. Whether the requested delay is reasonable should be judged according to the circumstances of the particular case. In addition, we evaluate the reasonableness of the State's request for a trial delay in light of the information known or available to it at the time of the request. As a general rule, a trial

> court's decision to grant a Rule 4(D) continuance is reviewed for an abuse of discretion.

McGhee v. State, 192 N.E.3d 1009, 1018 (Ind. Ct. App.) (quoting *Dilley v. State*, 134 N.E.3d 1046, 1049–50 (Ind. Ct. App. 2019)), *trans. denied*, 199 N.E.3d 781 (Ind. 2022). "A trial court abuses its discretion if it misinterprets the law or if its decision clearly contravenes the logic and effect of the facts and circumstances before it." *T.D. v. State*, 219 N.E.3d 719, 724 (Ind. 2023) (citing *Smith v. Franklin Twp. Cmty. Sch. Corp.*, 151 N.E.3d 271, 273 (Ind. 2020)).

[10] On appeal, Brown specifically contends only that the State did not present sufficient evidence to support its C.R. 4(D) motion. First, according to Brown, the State's representations to the trial court about Goodman's illness were only an offer of proof and not actual evidence upon which the trial court could base its decision. In support of this position, Brown argues that our Supreme Court's decision in *Ewing v. State*, 629 N.E.2d 1238, 1239–40 (Ind. 1994), "stands for the proposition that the State's mere representation that a witness is unavailable is insufficient for a continuance; rather, the State must present evidence to support its Rule 4(D) continuance request." Appellant's Br. at 13. We cannot agree with Brown's interpretation of *Ewing*.

[11] In *Ewing*, the defendant challenged the trial court's decisions to grant the State's C.R. 4(D) motion and deny his motion for discharge. 629 N.E.2d at 1239. The Indiana Supreme Court held that the record was insufficient to support the trial court's grant of the State's C.R. 4(D) motion because "[t]here is neither evidence of reasonable efforts by the State to procure the unavailable witness

nor any basis for just cause to believe that the witness could be produced within 90 days." *Id.* at 1239–40. In so holding, our Supreme Court explained that C.R. 4(D)'s satisfaction requirement may be met (1) if the trial court enters sufficient findings of fact and law concerning its denial of the defendant's motion for discharge or its grant of the State's C.R. 4(D) motion or (2) if, in the absence of such findings, "a factual basis for such a determination exists in the record." *Id.* We decline Brown's invitation to extend this holding to essentially require an evidentiary hearing on all C.R. 4(D) motions or otherwise require the State to support a C.R. 4(D) motion to continue with evidence that is admissible under the Indiana Rules of Evidence. This is not to say, however, that the State should not provide documentation or other evidence when such is available.

[12] The trial court here specifically found that there was an emergency situation necessitating a brief continuance based on Goodman's temporary unavailability as demonstrated by the statements of counsel and the documentation the State presented to the trial court. Tr. Vol. II at 6–7, 16–17. The record reveals the State attempted to procure the witness' attendance, which is demonstrated by the witness contacting the prosecutor and explaining why she could not be in attendance. Further, the record, including the documentation, reveals that Goodman had been diagnosed with the stomach flu less than 24 hours before trial, and medical professionals advised her not to return to work (that is, be around other people) for three days. The witness's availability in three days necessarily means there was just cause to believe that the witness could be

produced within 90 days. Therefore, we conclude the State sufficiently supported its C.R. 4(D) motion and C.R. 4(D)'s satisfaction requirement was met.

[13] Second, Brown asserts that the documentation the State filed with the trial court in support of its C.R. 4(D) motion does not support the State's representations to the trial court. However, as discussed above, the filed documentation alone supports the trial court's decision, and the trial court reviewed those documents before granting the C.R. 4(D) documentation. We presume that the trial court considered any differences between the State's representation and the documentation in making its ruling. *See T.D.*, 219 N.E.3d at 724 (citing *Smith*, 151 N.E.3d at 273). To the extent the trial court may have credited any of the State's allegedly erroneous representations, such consideration is harmless in light of all the evidence the State presented in support of its motion. *See* App. R. 66(A). Based on the foregoing, we cannot say the trial court abused its discretion by granting the State's C.R. 4(D) motion. We therefore affirm the trial court's decision.

[14] Affirmed.

Altice, C.J., and Bradford, J., concur.

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