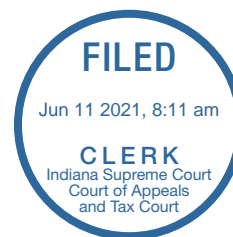


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Clarence Shearer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 11, 2021

Court of Appeals Case No.
20A-CR-2324

Appeal from the Marshall Superior
Court

The Honorable Robert O. Bowen,
Judge

Trial Court Cause No.
50D01-1907-F3-21

Weissmann, Judge.

[1] After taking a car at gunpoint and fleeing from police in a chase that spanned two counties and ended in a fiery crash, Clarence Shearer was taken into police custody. First facing a parole violation in one county and then charges for the police chase in another, Shearer was tried 15 months later in Marshall County for the carjacking. He claims the State tried him too late, and he is entitled to discharge under Indiana Criminal Rule 4. Finding no violation, we affirm the trial court.

Facts

[2] Shearer was arrested on July 10, 2019, following a carjacking in Marshall County that led to a police chase into Whitley County, where Shearer crashed the vehicle. He was charged in Whitley County for the police chase and in Marshall County for the carjacking.¹ The current appeal concerns the carjacking in Marshall County. App. Vol. II, p. 18. Though charges in Marshall County were filed on July 23, 2019, Shearer was not served with the arrest warrant until almost 14 months later on September 21, 2020. App. Vol. II, p. 73. He was then tried on October 19, 2020.

[3] After the crash, Shearer was briefly hospitalized and then jailed in Allen County on a parole violation. A few months later, in November of 2019,

¹ This Court takes judicial notice of Shearer's charges in Whitley County under cause number 92C01-1909-F4-000868, where he was charged with Level 4 felony unlawful possession of a firearm, Level 6 felony causing death of a law enforcement animal when operating a motor vehicle with a schedule I or II controlled substance in the blood, Level 6 felony resisting law enforcement, and Level 6 felony criminal recklessness stemming from the police chase.

Whitley County served him with an arrest warrant and took him into custody for charges related to the police pursuit and crash. He was finally moved to Marshall County on September 22, 2020 to face charges for the carjacking.

[4] During Shearer’s incarceration, the COVID-19 pandemic struck Indiana, forcing our courts to change how they operate. On May 29, 2020, our Supreme Court directed courts to treat speedy trial motions filed between April 2, 2020 and August 15, 2020, as though they were made on August 14, 2020. *In re Admin. R. 17 Emergency Relief for Ind. Trial Cts. Relating to the 2019 Novel Coronavirus (COVID-19)*, 145 N.E.3d 787 (Ind. 2020) [hereinafter *In re Admin. R. 17*].

[5] On April 15, 2020, Shearer filed *pro se* a motion requesting a trial in Marshall County within 70 days. App. Vol. II, p. 31. Due to court congestion, the first available setting was in October 2020. Tr. Vol. II, p. 12. Shearer then filed a motion for discharge, alleging that the court had violated his rights under Criminal Rule 4 by failing to try him within 70 days of his April 15th request. The trial court denied the motion and the judge explained, “[D]ue to the congestion of the Court calendar, I got it on the calendar as quickly as I could. . . .” Tr. Vol. II, p. 12.

[6] Shearer’s jury trial began on October 19, 2020, where he was found guilty of Level 3 felony armed robbery and Level 6 felony theft. Shearer now appeals.

Discussion and Decision

[7] Shearer argues that his rights under the Sixth Amendment of the United States Constitution and Article I, Section 12 of the Indiana Constitution, as implemented under Indiana Rule of Criminal Procedure 4, were violated when he was not brought to trial within 70 days of his speedy trial request. Appeals of Criminal Rule 4 motions are reviewed for clear error. *Austin v. State*, 997 N.E.2d 1027, 1038 n.8, 1040 (Ind. 2013). “Clear error is that which leaves us with a definite and firm conviction that a mistake has been made.” *Id.* (citing *State v. Oney*, 993 N.E.2d 157, 161 (Ind. 2013)). In making this determination, we will not reweigh evidence or determine the credibility of witnesses. *Id.*

I. Criminal Rule 4(B)

[8] Shearer argues that his rights were violated under Criminal Rule 4(B) when he was not brought to trial within 70 days of his April 15, 2020, speedy trial request. Per Rule 4(B), trial must be set within 70 days of a motion for an early trial, barring special circumstances, including calendar congestion. Ind. Crim. Rule 4(B)(1).

[9] Our traditional 4(B) analysis is complicated by a March 16, 2020 Indiana Supreme Court order that tolled until August 15, 2020 any speedy trial request filed after April 2 of that year. *In re Admin. R. 17*, 145 N.E.3d at 787. The order states:

Indiana Criminal Rule 4(B) early-trial motions filed *after April 2, 2020 and before August 15, 2020* . . . shall be deemed to have been

made on *August 14, 2020* and shall be *further subject to* congestion of the court calendar or locally existing emergency conditions for good cause shown.

Id. (emphasis in original).

Shearer does not challenge the validity of this order and concedes that applying the plain language of the order to his case “would essentially mean that Mr. Shearer’s rights under the Sixth Amendment and Indiana Constitution were not violated.” Appellant’s Br., p. 13. We agree. Pursuant to the emergency order, Shearer’s speedy trial motion was deemed to be filed on August 14, 2020. His trial occurred 66 days later on October 19, 2020. Accordingly, Shearer was tried within 70 days as required by Rule 4(B).

II. Criminal Rule 4(C)

[10] Because his October 2020 trial occurred more than one year after charges were filed, Shearer also claims his rights were violated under Criminal Rule 4(C). That rule 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[.]” Crim. R. 4(C). Arrest for the purposes of Rule 4(C) occurs when the defendant is served with the arrest warrant. *See State v. Harper*, 135 N.E.3d 962, 973 (Ind. Ct. App. 2019).

- [11] Shearer’s brief does not clarify exactly when his one-year period began. Based on his argument to the trial court, we discern Shearer means July 23, 2019, when charges were initially filed in Marshall County.
- [12] According to Shearer, his arrest for Criminal Rule 4(c) purposes occurred on July 23, 2019, when Marshall County filed the charges because the county had actual notice of his whereabouts, despite his incarceration in Allen County. Shearer cites *Sweeney v. State* for the proposition that Criminal Rule 4(C)’s “clock” starts ticking as soon as the defendant is under Indiana’s exclusive jurisdiction and control. 704 N.E.2d 86, n. 27 (Ind. 1998). But Shearer applies this language too broadly. In *Sweeney*, the defendant faced both federal and state charges. Sweeney’s clock did not start ticking until he was in Indiana’s exclusive jurisdiction and control because, prior to that point, he was in federal custody. *See also Heflin v. State*, 275 Ind. 197, 416 N.E.2d 121, 124 (Ind. 1981) (holding that “it is irrational to extend the application of Criminal Rule 4(B) to a defendant who is incarcerated in another jurisdiction”). It does not follow that an arrest in one Indiana county starts the 4(C) clock for charges against the same defendant in *any* Indiana county.
- [13] *Hawkins v. State* is a more relevant authority, stating that “[w]hen a defendant is incarcerated in another county on unrelated charges, ‘arrest’ for purposes of Ind. R. Crim. P. 4(A) and (C) does not occur until his return is ordered by the court wherein the second charges have been filed.” 794 N.E.2d 1158, 1161 (Ind. Ct. App. 2003) (quoting *Maxie v. State*, 481 N.E.2d 1307, 1409 (Ind. 1985)). In

other words, only Shearer's time in jail for *related* charges counts toward Rule 4(C)'s one-year time limit.

[14] According to the probable cause affidavit underlying Shearer's arrest warrant, he was transferred from Whitley County to Allen County pursuant to an active parole violation warrant in July 2019. Appellant's App. Vol. II, p. 25. Shearer provides no evidence that these charges are related to the Marshall County charges and would thus count toward the 4(C) time limit.

[15] Shearer was then transferred back to Whitley County in November 2019 to face charges for the police chase which ensued after the carjacking. Assuming Shearer's custody in Whitley County triggered the one-year clock for the related charges in Marshall County, his October 19, 2020 trial still beat the Rule 4(C) deadline, which did not expire until November 2020. Accordingly, we find no violation of Rule 4(C).²

[16] Because Shearer's trial date violated neither Indiana Criminal Rule 4(B) nor 4(C), the judgment of the trial court is affirmed.

Kirsch, J., and Altice, J., concur.

² Shearer's brief also repeatedly refers to Marshall County's knowledge of his whereabouts and its duty to prosecute. But beyond the language from *Sweeney*, which does not address either issue, he fails to cite any authority in support of this argument. We will not make his argument for him. See *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003); Ind. App. R. 46(A)(8)(a). Though actual notice and the State's duty to prosecute can be important factors to consider in speedy trial appeals, we do not know how Shearer intended to invoke these concepts here.