MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa Johnson
Brownsburg, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Amy R. Ravellette,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 18, 2023

Court of Appeals Case No. 23A-CR-469

Appeal from the Vigo Superior Court

The Honorable Sarah K. Mullican, Judge

Trial Court Cause No. 84D05-2209-F2-3448

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

[1] Amy Ravellette appeals the trial court's denial of her motion for discharge. In this interlocutory appeal, she argues her right to a speedy trial was violated when the court continued the trial due to court congestion to a date more than seventy days after she moved for a speedy trial. Detecting no error in the trial court's continuance of Ravellette's trial, we affirm.

Facts and Procedural History

[2] The State charged Ravellette with Level 2 felony dealing methamphetamine, Level 4 felony possession of methamphetamine, and Level 5 felony burglary in Division One of Vigo County Superior Court. The State also requested a habitual offender enhancement.

[3] On October 25, 2022, Ravellette requested a speedy trial, and the court set a jury trial for January 3, 2023, which was seventy days from the date of the request. At the end of November, the trial court transferred the case from Division One to Division Three because the newly elected judge starting in Division One on January 1, 2023, had a conflict of interest. The Division Three court held a hearing in the beginning of December. The court noted it already had a different speedy trial set for January 3. Ravellette requested her jury trial remain set for that date, but the trial court reset it for January 18.

[4] On January 4, Ravellette moved for discharge, and the court held a hearing on January 9. Ravellette asked the trial court to take judicial notice that the court's docket showed no jury trials were set for January 3. Before taking notice, the

court stated it was closed for a state holiday on January 2 and needed January 3 to catch up. The court moved the originally scheduled trial to January 4 so it would have a day to prepare for trial. Ravellette also asked the court to take judicial notice that as of December 5, the date the court continued the trial, no jurors had been summoned for the week of January 3. The court stated it did not typically summon jurors until two weeks before trial. The trial court denied Ravellette's motion for discharge.

[5] Ravellette now appeals.

Criminal Rule 4(B)

[6] The right to a speedy trial arises under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 12 of the Indiana Constitution. If the defendant requests an early trial, Indiana Criminal Rule 4(B)(1) requires the accused to be discharged if a trial is not held within seventy calendar days, except under certain circumstances. A defendant who is not tried within seventy days will not be discharged if the defendant requests a continuance, if the defendant otherwise delays proceedings, or if there is not sufficient time to try the defendant within seventy calendar days because of court calendar congestion. Crim. R. 4(B)(1).

[7] Rule 4(B) "places an affirmative duty on the State to bring the defendant to trial, but at the same time is not intended to be a mechanism for providing defendants a technical means to escape prosecution." *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013). A continuance for court congestion usually

requires a motion by the State, but "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." Ind. Crim. Rule 4(B)(1). "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." *Id.* If the trial court orders a continuance, "it still must keep sight of the defendant's constitutional right to a speedy trial—and Rule 4(B) therefore permits the continuance only to the extent that the defendant proceeds to trial within a reasonable time after the close of the seventy-day window." *Austin*, 997 N.E.2d at 1038.

No Error in Trial Court's Finding of Congestion

[8] We review a trial court's finding of congestion for clear error. *S.L v. State*, 16 N.E.3d 953, 959 (Ind. 2014). "In doing so, '[w]e neither reweigh the evidence nor determine the credibility of witnesses'" and consider only the probative evidence and reasonable inferences supporting the judgment. *Id.* (quoting *Austin*, 997 N.E.2d at 1040). A trial court's finding of congestion is presumed valid, but a defendant may challenge the finding by demonstrating "*at the time the trial court made its decision to postpone trial*, the finding of congestion was factually or legally inaccurate." *Clark v. State*, 659 N.E.2d 548, 552 (Ind. 1995) (emphasis added). "Such proof would be prima facie adequate for discharge, absent further trial court findings explaining the congestion and justifying the continuance." *Id.*

[9] Ravellette argues the trial court's finding of congestion was clearly erroneous because it was factually and legally inaccurate. Ravellette points out no speedy trial occurred on January 3, no jurors were summoned for that date, and no trial was held on that date. Yet the date relevant to our analysis of the trial court's finding of congestion is the date the court postponed Ravellette's trial: December 5. As of that date, there was already another case set for speedy trial on January 3. Although a defendant seeking speedy trial is usually "entitled to a trial setting ahead of any criminal defendant who had not filed a Rule 4 motion," *Austin*, 997 N.E.2d at 1041, a defendant seeking speedy trial is not entitled to a trial setting ahead of another defendant seeking speedy trial. And the court set Ravellette's trial within a reasonable time after the close of the seventy-day window. The trial court therefore did not err by determining it could not try Ravellette's case on January 3 and resetting the trial for January 18.

Conclusion

[10] Concluding the trial court did not err in finding congestion and postponing Ravellette's trial, we affirm.

[11] Affirmed.

Bailey, J., and Tavitas, J., concur.