MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Russell G. Finnegan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023

Court of Appeals Case No. 22A-CR-1879

Appeal from the Pulaski Circuit Court

The Honorable Kim E. Hall, Special Judge

Trial Court Cause No. 66C01-1910-F3-14

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Russell Finnegan appeals his convictions for criminal confinement, a Level 3 felony, and intimidation, a Level 5 felony. Finnegan argues that the trial court erred by: (1) denying his motions for discharge; and (2) refusing to instruct the jury on a mistake of fact defense. We find that the trial court did not err and, accordingly, affirm.

Issues

[2] Finnegan raises two issues on appeal, which we restate as:

I. Whether the trial court erred by denying Finnegan's motions for discharge.

II. Whether the trial court erred by refusing to instruct the jury on a mistake of fact defense.

Factual Background

[3] Finnegan rented a house on farmland owned by Gerald Kruger in Pulaski County. Kruger lived in another house nearby. In the Spring of 2018, Kruger instructed Scott Thompson, a sharecropper, to assist him in "contour[ing]" the edge of a field approximately 200-300 feet from Finnegan's house by removing several posts and trees. Tr. Vol. III p. 107.

[4] Approximately eighteen months later, on the morning of October 18, 2019, Thompson was on Kruger's land retrieving farming equipment when Finnegan drove up next to him. Finnegan was armed with a loaded shotgun and a loaded

revolver and carried two sets of handcuffs. Finnegan told Thompson that he was placing him under a citizen's arrest for trespass and theft for contouring the field in the Spring of 2018. Finnegan ordered Thompson to lie on the ground and placed him in handcuffs. Finnegan also pointed the shotgun at Thompson and repeatedly threatened to shoot him.

[5] After Finnegan placed Thompson in handcuffs, Finnegan, still armed with the two firearms, walked to Kruger's house, where he ordered Kruger outside and attempted to arrest him. Finnegan then called the police. When the police arrived, they seized Finnegan's firearms, placed him under arrest, and took him to the Pulaski County Jail.

[6] On October 21, 2019, the State charged Finnegan with four counts: Count I, criminal confinement, a Level 3 felony; Count II, criminal confinement, a Level 3 felony; Count III, intimidation, a Level 5 felony; and Count IV, intimidation, a Level 5 felony.[1] This began the case's protracted procedural history.

Procedural History

[7] At a March 5, 2020 hearing, Finnegan made an oral pro se motion for a speedy trial, and the trial court set a trial date for April 6, 2020. On March 19, 2020, the Indiana Supreme Court declared, pursuant to Administrative Rule 17, "that an emergency exists in Pulaski County" due to the novel coronavirus (COVID-

[1] The State also charged Finnegan with Count V, failure to register a vehicle, a Class C infraction. The State moved to dismiss Count V on December 6, 2021, and the trial court granted that motion on May 19, 2022.

19) pandemic and "authorize[d] the tolling . . . of all laws, rules, and procedures setting time limits for speedy trials in criminal . . . proceedings" effective March 17, 2020, through May 4, 2020. Order, No. 20S-CB-160 (Ind. March 19, 2020). The Supreme Court subsequently extended this tolling through May 17, 2020, *see* Order, 20S-CB-123 (Ind. Apr. 24, 2020); May 30, 2020, *see* Order, 20S-CB-123 (Ind. May 13, 2020); and August 14, 2020, *see* Order, 20S-CB-123 (Ind. May 29, 2020). On December 14, 2020, the Indiana Supreme Court suspended all in-person jury trials until March 1, 2021. *See* Order, 20S-CB-123 (Ind. Dec. 14, 2020).

[8] Also on March 19, 2020, the sitting judge, the Honorable Mary Welker, recused herself.[2] The April 2020 trial date was subsequently vacated. On April 23, 2020, Special Judge Kim Hall was assigned to the case.

[9] On February 23, 2021, Finnegan filed a pro se motion for a speedy trial under Criminal Rule 4(B). The trial court held a pre-trial conference on April 28, 2021, and Finnegan requested a court-appointed attorney[3] and a continuance of his jury trial, which was set for May 4, 2021.[4] The trial court appointed

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[2] Judge Welker observed that Finnegan, baselessly, accused her of "coerc[ing] an agreement from him," despite Finnegan's representation by counsel at the time. Appellant's App. Vol. II p. 157. Finnegan had written a letter to Judge Welker on March 12, 2020, in which he accused her of being "a snake a despot and tyrant [sic]" for increasing his bond and acting, as Finnegan erroneously believed, without jurisdiction. *Id.* at 162. We take judicial notice that, on April 9, 2020, Finnegan sent a threatening letter to Judge Welker and was later charged with and convicted of intimidation of a judicial officer, a Level 5 felony. *Finnegan v. State*, ___N.E.3d___, 2023 WL 328436, *1, 3 (Ind. Ct. App. Jan. 20, 2023).

[3] At this point in time, Finnegan had fired his previous two attorneys.

[4] The record does not reveal when the trial court set the trial for May 4, 2021.

Attorney Ryan Beall and granted Finnegan's request to continue the trial. In its accompanying order, the trial court noted that "[t]he delay is charged to [Finnegan]" and admonished Finnegan that the trial court would "not accept any simultaneous [pro se] filings from [Finnegan] since he is represented by counsel." Appellant's App. Vol. III p. 119.

[10] On May 11, 2021, Finnegan, although represented by counsel, filed a pro se motion for discharge under Criminal Rule 4(C). Finnegan argued that the State "failed to prosecute the charges against [him] in a timely manner" and that "[n]o delay is attributable to [him] for [the] trial date being set after the one year rule period expired." Appellant's App. Vol. III p. 124. The State argued that Finnegan's pro se motion should be denied because he was represented by counsel, and, on June 8, 2021, the trial court denied Finnegan's motion.

[11] Finnegan continued to submit pro se filings, which contained profane and threatening tantrums replete with sexism, racism, necrophilic ideations, and conspiracy theories.[5] On August 3, 2021, Finnegan filed a second pro se motion for a speedy trial under Criminal Rule 4(B). Attorney Beall withdrew on August 12, 2021, and, on August 19, 2021, Attorney Paul Stanko entered his appearance.

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[5] Finnegan filed motions entitled, for example, "Hey Buttf****d"; "Butt F****d"; Motion to rape the corpse of [M.W.] and [S.M.] after the Lady of Justice guts these two nasty lying [sic] b*****s"; and "[K.] is a dumb n****r, don't be like her." Appellant's App. Vol. III pp. 134-156. We observe that, despite these harassing, vulgar, and abusive filings, the trial court treated Finnegan with remarkable patience and respect throughout the proceedings.

[12] On September 21, 2021, Finnegan filed a third pro se motion for a speedy trial pursuant to Criminal Rule 4(B). On September 28, 2021, the trial court issued an abusive pro se litigant order, which stated *inter alia* that the trial court would "not review any [pro se] pleadings or motions made by Russell Finnegan in a matter in which Russell Finnegan is represented by counsel" and that:

> [a]ll future pleadings in any matters in which Russell Finnegan is represented pro se must contain a short and plain statement of the claim showing that the pleader is entitled to relief and each averment of a pleading shall be simple, concise, and direct. Pleadings shall not be redundant, immaterial, impertinent, or scandalous. A failure to follow these requirements shall result in the pleadings being stricken from the record by the Court.

Id. at 193-94. On September 30, 2021, Attorney Stanko moved to withdraw "for the reason that [Finnegan] has invoked his right to self-representation," which the trial court granted.

[13] On October 6, 2021, the trial court denied Finnegan's September 21, 2021 motion for a speedy trial. In so doing, the trial court observed that "both Pulaski County and Starke County[6] are currently in the red category for Covid positivity, meaning the highest level of Covid is present in those counties in the State of Indiana" and that "[t]he direction given to Trial Courts from the Indiana Supreme Court is to avoid assembling members of the public to conduct jury trials when that county has the highest level of risk of contraction

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[6] Special Judge Kim Hall sat on both Pulaski and Starke County Circuit Court dockets.

of Covid-19." Appellant's App. Vol. III p. 204. The trial court concluded that "[t]he current Jury Trial date of December 13, 2021, represents the earliest possible trial date given the congestion of the calendars in the [Pulaski and Starke County Circuit] Courts."[7] *Id*.

[14] On October 25, 2021, Finnegan filed a second pro se motion for discharge under Criminal Rule 4(C). On December 10, 2021, the trial court continued the jury trial scheduled for December 13, 2021, due to the prevalence of Covid-19 in Pulaski County. On December 16, 2021, Finnegan filed a third pro se motion for discharge pursuant to Criminal Rule 4(C). On December 27, 2021, the trial court struck all pleadings filed by Finnegan between October 19, 2021, and December 20, 2021, due to Finnegan's noncompliance with the trial court's abusive pro se litigant order.

[15] On February 18, 2022, Finnegan filed a "Demand for Trial on March 8, 2022." *Id*. at 232. On March 2, 2022, Finnegan filed a fourth pro se motion for discharge pursuant to Criminal Rule 4(C). On May 5, 2022, Finnegan, now represented by Attorney Richard Ballard, filed a motion to continue the jury trial set for May 10, 2022, which the trial court denied.[8]

[16] The trial court held the May 2022 jury trial as scheduled. At the beginning of the trial, Finnegan, through counsel, orally moved for discharge under Criminal

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[7] The record does not reflect when the trial court set the jury trial for December 13, 2021.

[8] The record does not reflect when the trial was set for May 10, 2022.

Rule 4 based on his previous motions, several of which the trial court had already ruled on, and the trial court denied his motion.

[17] At the conclusion of the presentation of evidence, Finnegan requested that the trial court instruct the jury on a mistake of fact defense. Finnegan, through counsel, agreed that "there wasn't a fact [Finnegan] was mistaken about[.] [I]t was the law he was mistaken about," and the trial court, accordingly, refused to instruct the jury on a mistake of fact defense. Tr. Vol. III p. 156.

[18] The jury found Finnegan not guilty of Count I and guilty of Counts II, III, and IV. The trial court subsequently entered judgment of conviction on Counts II and III.[9] The trial court sentenced Finnegan to advisory sentences of nine years on Count II and three years on Count III, all executed in the Department of Correction, to be served consecutively, for an aggregate sentence of twelve years. Finnegan now appeals.

Discussion and Decision

I. Right to a Speedy Trial

[19] Finnegan argues that the trial court erred by denying his motions for discharge and that the delays in bringing him to trial violated his right to a speedy trial under Criminal Rules 4(B) and 4(C) and under both the Sixth Amendment to

[9] The trial court declined to enter judgment of conviction on Count IV due to double jeopardy concerns.

the United States Constitution and Article 1, Section 12 of the Indiana Constitution. We disagree.

[20] "Although 'Indiana Criminal Rule 4 generally implements the constitutional right of a criminal defendant to a speedy trial, thereby establishing time limits and providing for discharge in the event that limits are exceeded,'" *S.L. v. State*, 16 N.E.3d 953, 958 (Ind. 2014) (quoting *Bridwell v. State*, 659 N.E.2d 552, 553 (Ind. 1995)), "our review of Rule 4 challenges is 'separate and distinct' from our review of claimed violations of the speedy trial rights secured by the Sixth Amendment of the U.S. Constitution and Article 1, Section 12 of the Indiana Constitution." *Id*. (citing *Austin v. State*, 997 N.E.2d 1027, 1037 n. 7 (Ind. 2013)). Accordingly, we begin our analysis with Finnegan's arguments under Criminal Rule 4 and then proceed to his constitutional arguments. *See id*.

A. Criminal Rule 4

[21] Finnegan argues that the State failed to bring him to trial within the requisite time periods under Criminal Rules 4(B) and 4(C). Specifically, Finnegan argues that "Finnegan was entitled to discharge under Criminal Rule 4(B) and 4(C) and the trial court erred by denying his motions for discharge on October 25, 2021, December 16, 2021, March 2, 2022, and May 10, 2022." Appellant's Br. p. 15. We disagree.

[22] "Enacted 'to provide functionality to a criminal defendant's fundamental and constitutionally protected right to a speedy trial,' Ind. Crim. Rule 4 '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.'" *S.L.*, 16 N.E.3d at 959 (quoting *Austin*, 997 N.E.2d at 1037 (citations omitted)).

[23] Criminal Rule 4(B)(1) provides:

> If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar . . . 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. . . .

[24] Criminal Rule 4(C) provides:

> 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 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. . . .

[25] Starting with Finnegan's arguments under Criminal Rule 4(B), we find that they are waived for several reasons. First, none of the four motions for

discharge upon which Finnegan relies were filed pursuant to Criminal Rule 4(B); rather, they all rely on Criminal Rule 4(C). In addition, while Finnegan did file several motions for a speedy trial under Criminal Rule 4(B), he failed to move for discharge under those motions. *Young v. State*, 765 N.E.2d 673 (Ind. Ct. App. 2002) ("The right to a speedy trial under Criminal Rule 4 is not a self-executing right, and a defendant must therefore move for a discharge or the right will be waived." (citing *Roseborough v. State*, 625 N.E.2d 1223, 1224-25 (Ind. 1993))). Accordingly, Finnegan's arguments under Criminal Rule 4(B) are waived.

[26] Waiver notwithstanding, Finnegan concedes that he abandoned his March 5, 2020, and February 23, 2021 motions for a speedy trial under Criminal Rule 4(B) by moving to continue the May 2021 jury trial. *See* Crim. R. 4(B)(1); *see also Sholar v. State*, 626 N.E.2d 547, 549 (Ind. Ct. App. 1993) (holding that "when a defendant makes a motion for a speedy trial, he is required to maintain a position which is reasonably consistent with his request" and that defendant's "motion for a continuance was not consistent with a speedy trial request"). As for Finnegan's August 3, 2021, and September 21, 2021 motions under Criminal Rule 4(B), the trial court found that the December 13, 2021, trial date "represent[ed] the earliest possible trial date given the congestion of the calendars in the [Pulaski and Starke County Circuit] Courts," a finding that Finnegan does not contest on appeal. Appellant's App. Vol. III p. 204. Given the congestion in the trial court calendar, it was permissible to hold Finnegan longer than seventy days before trial. Crim. R. 4(B)(1); *see also Smith v. State*,

188 N.E.3d 63, 68 (Ind. Ct. App. 2022) (holding that delay due to congestion in the trial court calendar caused by the Covid-19 pandemic did not violate Criminal Rule 4(B)). Finnegan's rights under Criminal Rule 4(B), therefore, were not violated.

[27] Turning to Finnegan's arguments under Criminal Rule 4(C), we find that Finnegan was not entitled to discharge under this Rule. Criminal Rule 4(C) "places an affirmative duty on the State to bring a defendant to trial within one year from the later of two dates: (1) the filing of charges or (2) the arrest," subject to three exceptions: delay caused by the defendant, congestion in the trial court calendar, and emergencies. *Watson v. State*, 155 N.E.3d 608, 615 (Ind. 2020). In this case, the relevant starting point is October 21, 2019, the date that the State brought charges against Finnegan.

[28] Finnegan's trial was held 932 days after the State filed charges against him, but the majority of this delay was due to Finnegan's actions, congestion in the trial court calendar, and the Covid-19 emergency. The Indiana Supreme Court tolled the timelines under Criminal Rule 4(C) from March 17, 2020, through August 14, 2020, and again from December 14, 2020, through March 1, 2021. This tolling represents a delay of 229 days due to the Covid-19 emergency and is, therefore, excusable under Criminal Rule 4(C). On April 28, 2021, Finnegan requested a continuance of his May 2021 trial, and the trial court was unable to set a trial date until December 13, 2021, due to the congested calendars in the Pulaski and Starke County Circuit Courts. On December 10, 2021, the trial court continued the December 2021 trial to May 10, 2022, due to the

prevalence of Covid-19 in both Pulaski and Starke County. The trial was rescheduled to and held on May 10, 2022. This 377-day delay between April 28, 2021, and the May 10, 2022 trial[10] is, thus, attributable to a combination of Finnegan's request for a continuance, congestion in the trial court calendar, and the Covid-19 emergency and is also excusable under Criminal Rule 4(C).[11] In total, 606 days are excusable under Criminal Rule 4(C), and the 326-day delay that is not excusable under the rule totals less than one full year. Criminal Rule 4(C), therefore, was not violated.

B. Constitutional Rights

[29] We next address Finnegan's argument that the delay in bringing him to trial violated his right to a speedy trial under the Sixth Amendment to the United States Constitution and Article 1, Section 12 of the Indiana Constitution. We find that Finnegan's rights were not violated.

[30] The constitutional right to a speedy trial "primarily protects three interests of criminal defendants: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern; and (3) limiting the possibility that the defense will be impaired." *Watson*, 155 N.E.3d at 616 (citing *Barker v. Wingo*, 407 U.S. 514, 532 (1972)). "When evaluating whether a defendant's constitutional speedy trial right has been infringed, we use the balancing test announced by

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[10] Our calculation does not include the day Finnegan's trial was held.

[11] Finnegan does not challenge the trial court's findings regarding congestion in the trial court calendar or the necessity of delaying trial due to the Covid-19 emergency.

the Supreme Court of the United States in [*Barker*]." *Id*. at 614 (citing *S.L.*, 16 N.E.3d at 961). "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*. (citing *Barker*, 407 U.S. at 530). "Though this analysis is grounded in the Sixth Amendment, we have traditionally also applied it to claims brought under Article 1, Section 12 [of the Indiana constitution]." *Id*. (citing *Crawford v. State*, 669 N.E.2d 141, 145 (Ind. 1996)).

Length of Delay

[31] We consider the length of delay both "as the gateway to a fully speedy trial analysis" and as an independent factor in the balancing test. *Id*. (citing *Barker*, 407 U.S. at 530-31). "If the interval between accusation and trial is 'ordinary,' further inquiry into the other factors is unnecessary"; however, "if the defendant shows that the interval is 'presumptively prejudicial,' we then consider the extent to which the delay exceeds that triggering threshold." *Id*. (quoting *Doggett v. United States*, 505 U.S. 647, 652 (1992)). "Delays approaching one year generally satisfy the presumptively prejudicial threshold." *Id*. (citing *Dogget*, 505 U.S. at 652; *Vermillion v. State*, 719 N.E.2d 1201, 1206 (Ind. 1999)). "Under the federal Sixth Amendment constitutional analysis, when the arrest of the defendant precedes the filing of charges, the period of delay to be examined is between the arrest and the trial." *Davis v. State*, 819 N.E.2d 91, 96 (Ind. Ct. App. 2004) (citing *Sauerheber v. State*, 698 N.E.2d at 796, 805. (Ind. 1998)), *trans. denied*.

[32] Here, 935 days elapsed between Finnegan's arrest and the day of trial. We have previously declared that an approximately two-and-one-half-year delay was "unusually long, and weigh[ed] a small, but appreciable amount against the State." *See Ballentine v. State*, 480 N.E.2d 957, 959 (Ind. 1985). We find the same here. Further, because this delay exceeds one year, it triggers the analysis of the three remaining *Barker* factors.

Reason for Delay

[33] "When considering delays attributable to the government, we assess the reasons for those delays and assign them different weights." *Watson*, 155 N.E.3d at 617 (citing *Barker*, 407 U.S. at 531). "Reasons for delay generally fall into three categories: (1) justifiable, like a missing witness; (2) neutral, like negligence or court congestion; or (3) bad faith, like a purposeful attempt to hinder the defense." *Id*. (citing *Barker*, 407 U.S. at 531). "Only those reasons falling in the latter two categories weigh against the government, with one grounded in bad faith weighing most heavily." *Id*. (citing *Barker*, 407 U.S. at 531). "On the other side of the scale, any delay caused by the defense falls on the defendant." *Id*. (citing *Vermont v. Brillon*, 556 U.S. 81, 90 (2009)).

[34] Here, nothing suggests that any delay was due to bad faith on the part of the State. Rather, all of the delay stems from Finnegan's baseless accusations against Judge Welker, which caused her to recuse herself and vacate the trial scheduled for April 2021; Finnegan's request for a continuance of his May 2021 trial; congestion in the trial court calendar; and the Covid-19 emergency. We held in a related appeal involving Finnegan, in which he also asserted a speedy

trial violation, that "the Covid-19 pandemic justifiably delayed Finnegan's trial, and to the extent the government shoulders the blame for the delay in bringing Finnegan to trial because of court congestion, any such blame is minimal because the congestion arose in large part from pandemic-related shutdowns." *Finnegan v. State*, ___N.E.3d___, 2023 WL 328436, *1, *6 (Ind. Ct. App. Jan. 20, 2023).

[35] We further held that, because Finnegan affirmatively contributed to his delay in that case and because congestion in the trial court calendar weighed only minimally against the State, this factor weighed against Finnegan. *Id*. We find the same here.

Assertion of Right

[36] "The third *Barker* factor requires an examination of whether and how a defendant asserted the speedy trial right." *Watson*, 155 N.E.3d at 618 (citing *Barker*, 407 U.S. at 531). "While 'a defendant has some responsibility to assert a speedy trial claim,' we do not look solely for a 'pro forma objection'" but will "also consider 'the frequency and force' of other, less formal assertions of the right." *Id*. (quoting *Barker*, 407 U.S. at 529). "The ultimate inquiry is a fluid one: we determine whether the State and court were put on notice that a defendant has asserted their speedy trial right, while remaining mindful of any conduct by the defendant to the contrary." *Id*. (citing *United States v. Loud Hawk*, 474 U.S. 302, 314 (1986); *Strunk v. United States*, 412 U.S. 434, 436 (1973)). Even when the defendant has asserted his speedy trial right before the trial court, we will not find a violation of that right where the record "'strongly

indicates'" that the defendant did not, in reality, want a speedy trial. *See Taylor v. State*, 468 N.E.2d 1378, 1381 (Ind. 1984) (quoting *Webb v. State*, 437 N.E.2d 1330, 1333 (Ind. 1982) (quoting *Barker*, 407 U.S. at 536)).

[37] Here, Finnegan filed numerous motions requesting a speedy trial. Although these motions were in the nature of Criminal Rule 4 requests, they were sufficient to put the State and the trial court on notice of Finnegan's assertion of his constitutional speedy trial right. Despite filing these motions, however, Finnegan fired several attorneys; filed numerous pro se motions that served no purpose other than to harass the trial court, the prosecutor, and other participants in the proceedings; successfully moved to continue his May 2021 trial date; and attempted to continue his May 2022 trial date. We held in Finnegan's related appeal, in which he engaged in much of the same conduct before trial, that "while Finnegan said he wanted a speedy trial many times in his filings with the trial court, his overall litigation tactics were inconsistent with that desire." *See Finnegan*, ___N.E.3d___, 2023 WL 328436 at *6 (citing *Taylor*, 468 N.E.2d at 1381). We find the same here. Accordingly, we find that this factor does not support finding a speedy trial violation.

Prejudice

[38] "The final *Barker* factor considers the prejudice the defendant experienced from the delay." *Watson*, 155 N.E.3d at 619 (citing *Barker*, 407 U.S. at 532-33). "We assess prejudice in light of the three interests the speedy trial guarantee was designed 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." *Id*. (citing *Barker*, 407 U.S. at 532).

[39] Finnegan argues only that the delay prejudiced his ability to present a defense. Specifically, Finnegan argues that he was "disadvantaged in preparing a defense from within the jail" because he was "denied access to the body cam videos from his arrest," was unable to depose witnesses, and "filed for a transcript of one hearing in this case and that motion was not ruled upon by the trial court." Appellant's Br. p. 18. We are not persuaded.

[40] First, Finnegan's assertion that he was denied access to the body cam footage is unsupported by the record. Finnegan viewed the footage himself at the prosecutor's office on November 30, 2020. The State subsequently made the footage available to Finnegan at the Sheriff's Department, which Finnegan could access any business day upon advance request, and the State provided the footage on a thumb drive that Finnegan could access in the jail's law library. As for Finnegan's assertion that he was unable to depose witnesses and that he was unable to obtain a transcript of a hearing, these have nothing to do with trial delay. In fact, any delay afforded Finnegan more time to depose witnesses and obtain the transcript. Rather, these problems stem from Finnegan's firing of his attorneys and various attempts to carry out his defense without the assistance of a trained legal professional. Accordingly, we find that Finnegan's defense was not prejudiced by the delay in taking him to trial.

Summary

[41] In summary, the length of the delay favors finding a speedy trial violation; however, the remaining factors do not. We find that, on balance, the four *Barker* factors weigh against Finnegan and conclude that Finnegan's constitutional right to a speedy trial was not violated. *See also Finnegan*,___N.E.3d___, 2023 WL 328436 at *7 (finding the same).

B. Mistake of Fact Instruction

[42] Finnegan next argues that the trial court erred by refusing to instruct the jury on a mistake of fact defense. We review a trial court's refusal to give a requested jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). We consider: "'(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions which are given.'" *Id*. (quoting *Guyton v. State*, 771 N.E.2d 1141, 1144 (Ind. 2002)). "Reversal arises 'only if the appellant demonstrates that the instruction error prejudices his substantial rights.'" *Id*. (quoting *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010)).

[43] Indiana Code Section 35-41-3-7 provides: "[i]t is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense." Finnegan argues that he was entitled to a mistake of fact instruction because "Finnegan mistakenly believed that Mr. Kruger and Mr. Thompson

had committed a felony and he could lawfully effect a citizen's arrest" which "negated the required intent to prove confinement and intimidation." Appellant's Br. p. 21.

[44] We find that, under the invited error doctrine, Finnegan's argument is unavailable on appellate review. Our Supreme Court recently clarified the contours of this doctrine:

> [T]o establish invited error, there must be some evidence that the error resulted from the appellant's affirmative actions as part of a deliberate, "well-informed" trial strategy. A "passive lack of objection," standing alone, is simply not enough. And when there is no evidence of counsel's strategic maneuvering, we are reluctant to find invited error based on the appellant's neglect or mere acquiescence to an error introduced by the court or opposing counsel.

Batchelor v. State, 119 N.E.3d 550, 558 (Ind. 2019). "[W]hereas waiver generally leaves open an appellant's claim to fundamental-error review, invited error typically forecloses appellate review altogether." *Id*. at 556.

[45] If the trial court erred by refusing to instruct the jury on a mistake of fact defense, which we do not find, the error was invited by Finnegan. At trial, Finnegan conceded, through counsel, that "there wasn't a fact [Finnegan] was mistaken about[.] [I]t was the law he was mistaken about," and the trial court, accordingly, refused to instruct the jury on a mistake of fact defense. Tr. Vol. III p. 156. Having conceded that a mistake of fact instruction would have been

erroneous, Finnegan cannot now contend that the trial court erred by refusing to instruct the jury on that defense.

Conclusion

[46] The trial court did not err by denying Finnegan's motions for discharge, nor did it err by refusing Finnegan's mistake of fact instruction. Accordingly, we affirm.

[47] Affirmed.

Vaidik, J., and Foley, J., concur.