

## 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

Wesley L. Lee,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 22, 2022

Court of Appeals Case No.  
21A-CR-2844

Appeal from the  
Marion Superior Court

The Honorable  
Anne Flannelly, Magistrate

Trial Court Cause No.  
49D30-2107-F5-22691

**Molter, Judge.**

- [1] After repeatedly punching and choking his girlfriend over a roughly twelve-hour span, Wesley L. Lee was charged with two counts of battery and one count of

confinement. Lee moved for a speedy trial under Indiana Criminal Rule 4(B), and his trial was scheduled for seventy days later. But the day before trial, the trial court learned that Lee had been placed in quarantine in the Marion County Jail for COVID-19 exposure. The next day, the trial court found that an emergency existed, continued the trial, and later rejected Lee's request to be discharged and released from incarceration. On appeal, Lee argues the trial court committed clear error because it could have released him from incarceration despite his exposure to COVID-19. Finding no error, we affirm.

### **Facts and Procedural History**

[2] Y.K. started dating Lee in 2000. On June 24, 2021, she went to Lee's apartment around dinner time. Y.K. told Lee about the birth of her new grandchild, but Lee soon became hostile and accused Y.K. of cheating on him. Lee then pinned Y.K. down and choked her. Tr. Vol. II at 152–53. He also punched her in the head five or six times. *Id.* at 154. Later that evening, Lee again choked Y.K. and punched her, striking her head and stomach several times. *Id.* at 156. Y.K. suffered injuries, including a swollen hand, bruises on her stomach, neck, and head, and a swollen face. Y.K. planned to go to work the next morning, but Lee told her, “you're not going to go looking like that.” Tr. Vol. II at 159. They laid back down on the bed, and when Lee fell asleep, Y.K. fled Lee's apartment.

[3] The State charged Lee with Level 5 felony domestic battery resulting in serious bodily injury, Level 6 felony criminal confinement, and Class A misdemeanor domestic battery. Lee was incarcerated in a medically segregated unit of the

Marion County Jail because his right foot had been amputated, and he wears a prosthetic.

[4] On August 11, 2021, Lee filed a motion for early trial under Criminal Rule 4(B). Appellant’s App. Vol. II at 16, 54–55. Because the State filed several requests for production of evidence from third parties, it requested a continuance. Over Lee’s objection, the trial court continued the trial to October 20, 2021, the seventieth day after Lee had filed his Criminal Rule 4(B) motion.

[5] On October 19, 2021—the day before Lee’s trial—the Marion County Sheriff’s Office notified the trial court that since October 15, 2021, Lee had been quarantined and that he would be released from quarantine on October 29, 2021. *Id.* at 86. The next day, the trial court held a hearing with the parties’ attorneys. Lee’s attorney told the trial court she knew as early as September 29, 2021, that Lee was quarantined, but she assumed Lee would be released from quarantine by the trial date. *Tr.* Vol. II at 26. She admitted she failed to tell the trial court about Lee’s quarantined status. *Id.* at 27. Lee’s attorney also said Lee told her that he was fully vaccinated, had not been tested for COVID-19, and did not have any COVID-19 symptoms. He also claimed no one in his cell block had tested positive for COVID-19 or displayed COVID-19 symptoms. The State was ready to proceed to trial and had no intention to seek a continuance.

[6] The trial court found that these circumstances created an emergency that required continuing Lee’s trial:

All that the Court knew yesterday was [Lee] went into quarantine on October 15<sup>th</sup>. I was never informed of that on October 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>. As a matter of fact, we prepared our instructions and we were ready for jury today. And then we were told the out date would be around October 29<sup>th</sup>.

[T]here's too many risks involved here. We wouldn't want to expose anyone to the potential infection . . . . If I had been informed about this yesterday morning, [I] . . . could have looked into whether he could have been tested for COVID-19 yesterday umm, and then looked at if there was any risk whatsoever with proceeding today.

[B]ased on the information from the . . . the Marion County Sheriff's Office, . . . the Court finds that an emergency exists and it does require the Court to order a continuance of the jury trial.

*Id.* at 29–30.

- [7] Lee filed a motion for discharge under Criminal Rule 4(B), and the trial court denied the motion. Appellant's App. Vol. II at 88–103, 113. At Lee's trial, the jury found Lee guilty of the two battery charges and not guilty of the confinement charge. The trial court entered judgment only on the conviction for Level 5 felony domestic battery resulting in serious bodily injury and sentenced Lee to six years executed. Lee now appeals.

## **Discussion and Decision**

- [8] Lee contends the trial court erroneously denied his motion for discharge under Criminal Rule 4(B). That rule 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.” Crim. R. 4(B)(1). Exceptions to this requirement include that a trial court “may take note of . . . an emergency without the necessity of a motion, and upon so finding may order a continuance.” *Id.* A trial court has “inherent authority” under Criminal Rule 4 to continue any criminal trial upon the finding of an emergency. *In re Admin. Rule 17 Emergency Relief for Ind. Trial Cts. Relating to 2019 Novel Coronavirus (COVID-19)*, 155 N.E.3d 1191 (Ind. 2020).

[9] A trial court’s findings on the reasons for a continuance are presumed valid, and a defendant bears the “responsibility to [show] that the finding[s] [were] factually or legally inaccurate.” *Austin v. State*, 997 N.E.2d 1027, 1038–40, 1042 (Ind. 2013). We will grant relief only on a showing of clear error. *Id.* at 1038–40. Under this standard, we reverse only if we are left “with a definite and firm conviction that a mistake has been made.” *Id.* at 1040 (internal quotation marks omitted). We only consider “the probative evidence and reasonable inferences supporting” the trial court’s decision, without reweighing evidence or choosing between reasonable inferences. *Id.*

[10] It is undisputed that Lee was quarantined, and as he explains in his appellant’s brief, the quarantine was for exposure to Covid-19. *See* Appellant’s Br. at 18–20 (discussing CDC guidelines related to quarantines for Covid-19 exposure). Based on that exposure, the trial found that an emergency existed, explaining: “[T]here’s too many risks involved here. We wouldn’t want to expose anyone to the potential infection . . . .” *Id.* This finding was consistent with the trial court’s “obligation to help protect [its] communit[y] by taking proactive,

responsible steps to minimize the potential for exposure and infection . . . .” *In re Admin. Rule 17*, 155 N.E.3d at 1191; *see also Blake v. State*, 176 N.E.3d 989, 994 (Ind. Ct. App. 2021) (holding that the Indiana Supreme Court imposed duties on trial courts to protect their community by taking steps to reduce potential exposure and infection in their courtrooms). And our court has recognized that trial courts have reasonably exercised their discretion in finding an emergency under Criminal Rule 4(B)(1) due to circumstances stemming from the Covid-19 pandemic. *See Smith v. State*, 188 N.E.3d 63, 68 (Ind. Ct. App. 2022) (“Here, the trial court’s finding that both an emergency and court congestion existed was reasonable in light of the circumstances relating to the COVID-19 pandemic that raged at the time the trial court continued Smith’s trial.”); *Blake v. State*, 176 N.E.3d 989, 995 (Ind. Ct. App. 2021) (“The trial court’s finding that an emergency existed was reasonable in light of the circumstances relating to the COVID-19 pandemic that existed at the time. The trial court did not err by continuing Blake’s jury trial and denying his motion for discharge.”).

[11] Lee’s only argument that the trial court clearly erred by finding that his quarantine status presented an emergency is that the trial court could have released him from jail pending trial notwithstanding the quarantine. But that conflates two issues. While it is true that a trial court can avoid a Criminal Rule 4(B) violation by releasing a defendant from jail, that has nothing to do with whether there is an emergency in the first place. Here, because the trial court reasonably concluded that Lee’s quarantine status precluded him from

participating in his jury trial—and Lee does not argue he could have participated in the trial notwithstanding the quarantine—it was reasonable to find that there was an emergency. Having properly found there was an emergency, the trial court was permitted to continue the trial. Crim. R. 4(B)(1). *See Lowrimore v. State*, 728 N.E.2d 860, 865 (Ind. 2000) (explaining that “Criminal Rule 4(B)(1) allows trial courts to order a continuance upon a finding of an emergency” (quotations omitted)).

[12] Because the trial court did not clearly err in denying Lee’s motion for discharge, we affirm.

[13] Affirmed.

Mathias, J., and Brown, J., concur.