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IN THE COURT OF APPEALS OF INDIANA

Richard D. Talbott,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 9, 2023

Court of Appeals Case No. 21A-CR-2625

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 39C01-1910-F3-1289

Opinion by Judge May

Judges Crone and Weissmann concur.

May, Judge.

[1] Richard D. Talbott appeals his convictions of Level 3 felony criminal confinement,[1] Level 3 felony aggravated battery,[2] Level 6 felony strangulation,[3] and Class A misdemeanor domestic battery.[4] The trial court also adjudicated Talbott a habitual offender.[5] Talbott presents five issues for our consideration, which we consolidate, revise, and restate as:

> 1. Whether Talbott was entitled to discharge pursuant to Criminal Rule 4(B) when his request for new counsel resulted in the vacation of his initial trial date and caused him to be held more than seventy days prior to trial;
>
> 2. Whether Talbott's constitutional right to a speedy trial was violated when delays caused by Talbott's repeated changes of counsel, the COVID-19 public health emergency, Talbott's pursuit of an interlocutory appeal, and court congestion resulted in Talbott's trial occurring twenty-three months after he was charged;
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> 3. Whether the trial court erred when it denied Talbott's motion to dismiss the State's charge of Level 3 felony criminal confinement due to an inadequate charging information; and

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[1] Ind. Code § 35-42-3-3 (2019).

[2] Ind. Code § 35-42-2-1.5 (2014).

[3] Ind. Code § 35-42-2-9 (2019).

[4] Ind. Code § 35-42-2-1.3(a) (2019).

[5] Ind. Code § 35-50-2-8(b) (2017).

4. Whether the State presented sufficient evidence to prove Talbott committed Level 3 felony criminal confinement.

We affirm.

Facts and Procedural History

[2] Talbott and P.D. met online in July 2019 and began dating shortly thereafter. In the middle of October 2019, Talbott moved into P.D.'s mobile home in Hanover, Indiana. P.D. testified her relationship with Talbott "was okay for the first day or two" after he moved into her trailer. (Tr. Vol. V at 67.) However, P.D. soon became uncomfortable with Talbott living with her. Talbott was unemployed, and P.D. explained Talbott "would stay drunk every day" and call her degrading names. (*Id.*) In addition, Talbott would question P.D. about content on her phone, and he would tell P.D. "what [she] could and could not wear, who [she] could and could not speak to." (*Id.* at 69.)

[3] On October 28, 2019, P.D. and Talbott got into an argument while P.D. was driving her car. Talbott demanded to see P.D.'s phone, and P.D. explained she would give her phone to Talbott once the car stopped. Talbott became angry and pushed P.D.'s foot off the accelerator as he attempted to retrieve the phone from P.D.'s purse, which was on the driver's side floorboard. P.D. eventually gave Talbott her cell phone, and Talbott told P.D. he was moving back to New Albany. Talbott attempted to call his mother and his uncle, but when they did not answer, Talbott threw P.D.'s phone out of the vehicle. P.D. was able to

retrieve her broken phone, and she drove Talbott back to her mobile home so that Talbott could pack his possessions and move out.

[4] Inside the trailer, Talbott cornered P.D. in her bedroom. He grabbed P.D. by the throat and pushed her down to the floor. Talbott slapped P.D.'s face. He also smashed her head against the floor and against a nearby wooden box. While P.D. was on the floor, Talbott continued to choke her. P.D. thought Talbott was going to kill her. She saw "stars, and then it was like all black, and I was out." (*Id*. at 82.) When P.D. regained consciousness, she realized she had involuntarily urinated on herself.

[5] Talbott guided P.D. to the bathroom and then to the laundry room where she changed her clothes. Talbott's demeanor had changed, and he asked P.D. to drive him to the liquor store. P.D. agreed, and before Talbott went into the liquor store, Talbott said, "bitch, if you call the police and get me arrested, when I get out, I will kill you, and if I don't get out, I will send somebody to kill you, you understand me." (*Id*. at 86.) P.D. drove away while Talbott was inside the store and went to her sister's mobile home. P.D. contacted law enforcement the next morning and sought medical treatment at a hospital. The police arrested Talbott at P.D.'s trailer.

[6] On October 31, 2019, the State charged Talbott with Level 3 felony criminal confinement, Level 3 felony aggravated battery,[6] Level 6 felony domestic

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[6] Ind. Code § 35-42-2-1.5 (2014).

violence, Level 6 felony strangulation, and three counts of Level 6 felony intimidation.[7] At his initial hearing on November 1, 2019, Talbott requested a speedy trial pursuant to Indiana Criminal Rule 4(B). During that hearing, the trial court appointed attorney Devon Sharpe to represent Talbott and scheduled Talbott's jury trial for January 7, 2020.

[7] On December 2, 2019, the State amended the charging information to include a charge of Level 1 felony attempted murder.[8] On December 6, 2019, the State alleged Talbott was a habitual offender. On December 9, 2019, despite being represented by counsel, Talbott filed a pro se motion to dismiss the Level 3 felony criminal confinement and the Level 3 felony aggravated battery charges against him. On the same day, Talbott wrote a letter to the trial court lodging several complaints about Attorney Sharpe and asking the trial court to appoint him a new attorney.

[8] Attorney Sharpe filed a motion to withdraw on December 13, 2019, and on December 16, 2019, the trial court held a hearing on the motion. Talbott asked for a new attorney to be appointed to represent him, and the trial court explained to Talbott that if it granted his request, then his trial would have to be continued. The trial court granted the motion to withdraw and appointed attorney James Spencer to represent Talbott. The trial court explained:

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[7] Ind. Code § 35-45-2-1(b) (2019).

[8] Ind. Code § 35-41-5-1 (2014) & Ind. Code § 35-42-1-1 (2018).

> Mr. Spencer will be joining me for a jury trial tomorrow and throughout next—this week, and I'm not going to make him be ready on the 7th if he can't start right away on your case because he's probably working right now on another case. So because of your motion, and because the Court has granted that motion, the Court is going to continue the January 7 trial date.

(Tr. Vol. II at 8.)

[9] The trial court converted Talbott's trial setting to a status conference, but this status conference was continued to January 22, 2020, by agreement of the parties. At the January 22, 2020, status conference, Attorney Spencer asked the trial court to set a trial date, but he explained he was "still playing quite a bit of catch up in this case" and asked "for enough time to get adequately prepared so that I'm not ineffective." (*Id*. at 17-18.) Attorney Spencer suggested setting the matter for trial in May 2020 and stated: "We're not requesting a speedy today but Mr. Talbott is obviously anxious in getting this done as soon as we can, and I don't disagree." (*Id*. at 18.) The trial court then set the trial to begin on May 11, 2020.

[10] On March 6, 2020, Governor Eric Holcomb declared a public health emergency due to the spread of COVID-19. On March 16, 2020, our Indiana Supreme Court issued an order authorizing the suspension and rescheduling of all jury trials. On March 23, 2020, our Indiana Supreme Court amended that order and tolled "all laws, rules, and procedures setting time limits for speedy trials in criminal . . . proceedings." *In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123

(Ind. March 23, 2020). Over a series of other orders, our Indiana Supreme Court extended the expiration date for the tolling of laws, rules, and procedures regarding speedy trials to August 14, 2020. *In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123 (Ind. May 29, 2020).

[11] On June 15, 2020, Talbott filed a pro se motion for Attorney Spencer's removal as his appointed counsel. Shortly thereafter, Attorney Spencer filed a motion to withdraw his representation of Talbott. On July 6, 2020, the trial court granted the motions filed by Talbott and Attorney Spencer and appointed attorney Nick Karaffa to represent Talbott. The trial court also set Talbott's jury trial for September 1, 2020.

[12] At a status hearing on July 22, 2020, Attorney Karaffa requested the trial court continue the jury trial date because he needed extra time to prepare for trial and he was counsel in a separate trial involving the death penalty. The trial court granted the motion and rescheduled Talbott's jury trial for October 20, 2020. On October 6, 2020, the trial court vacated the October 20, 2020, trial date and reset the trial for November 9, 2020, due to court congestion.

[13] Talbott became dissatisfied with Attorney Karaffa's representation of him, and Attorney Karaffa filed a motion to withdraw. At a pre-trial conference on October 9, 2020, the trial court granted the motion to withdraw. After a colloquy between the trial court and Talbott regarding an attorney's authority over litigation strategy decisions and advising Talbott of the perils of self-

representation, Talbott indicated he wished to proceed pro se. The trial court allowed Talbott to represent himself and told him he had thirty days to file all motions he felt appropriate. The trial court also stated it would schedule a hearing on the motions once they were received. The trial court vacated the November 9, 2020, jury trial date, and Talbott did not challenge the vacation of the jury trial date.

[14] After Talbott began proceeding pro se, he filed a plethora of motions, including a motion to dismiss that challenged the adequacy of the charging information and various motions asserting he was entitled to discharge under Indiana Criminal Rule 4(B). On January 7, 2021, the trial court issued a fourteen-page order that outlined the timeline of the case and denied Talbott's motions for discharge. On January 11, 2021, Talbott filed a motion asking the trial court to certify for interlocutory appeal its January 7, 2021, denial of his motions for discharge. On January 15, 2021, the trial court certified the issue for interlocutory appeal and appointed Talbott appellate counsel for the limited purpose of preparing materials for Talbott's interlocutory appeal. The certification for interlocutory appeal stayed the proceedings, and the trial court accordingly vacated the January 29, 2021, trial date. On March 12, 2021, this court issued an order in which it denied Talbott's request for interlocutory appeal.

[15] On March 18, 2021, Talbott filed an additional motion to dismiss and argued the trial court violated his right to a speedy trial pursuant to the Sixth Amendment of the United States Constitution. On April 9, 2021, the trial court

held a status conference, and the State asked the trial court to set a trial date. The trial court asked Talbott if he wished to request a trial date, and Talbott responded: "Your Honor, I – with all these motions coming up, I really don't request one. Not at this time, because I don't know how the motions are going to go, to be honest with you." (Tr. Vol. III at 35.)

[16] Talbott continued to file motions and letters to the trial court, and the trial court set a hearing on all motions for April 30, 2021. However, on April 28, 2021, Talbott filed a motion for withdrawal of the case pursuant to Indiana Trial Rule 53.1. He argued "the matter should be withdrawn because the trial court has not issued a ruling on several of his motions." (App. Vol. VIII at 5.) In that motion, he asked our Indiana Supreme Court to appoint a special judge in the matter. Talbott's motion again stayed the proceedings. On June 2, 2021, the Chief Administrator of the Indiana Supreme Court issued an order that denied Talbott's request for a special judge.

[17] On June 11, 2021, the trial court set a jury trial for September 28, 2021. Talbott continued to file motions to dismiss, motions to reconsider, motions seeking recusal of the trial judge, motions seeking certification of orders denying his motions for interlocutory appeal, and various other motions. The trial court denied all of those motions. Talbott also filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Indiana in which he asserted he was being held by the Jefferson County Sheriff in violation of his right to a speedy trial. On August 24, 2021, the trial court rescheduled Talbott's jury trial to October 4, 2021, because the judge was

scheduled to be out of town on the earlier-scheduled September 28, 2021, trial date. On September 24, 2021, the federal court issued an order denying Talbott's petition for writ of habeas corpus.

[18] On October 4, 2021, Talbott's bifurcated trial commenced. Talbott acted pro se during his jury trial. During the first portion of the trial, the jury considered the pending charges against Talbott. The jury returned a guilty verdict as to Level 3 felony criminal confinement, Level 3 felony aggravated battery, Class A misdemeanor domestic battery, and Level 6 felony strangulation. The jury returned not guilty verdicts with respect to Level 1 felony attempted murder and the three counts of Level 6 felony intimidation. During the second portion of the trial, the jury found Talbott was a habitual offender.

[19] On November 12, 2021, the trial court held a sentencing hearing. During the hearing, the trial court vacated Talbott's convictions of Level 3 felony aggravated battery and Level 6 felony strangulation on double jeopardy grounds. The trial court sentenced Talbott to 14 years executed at the Department of Correction ("DOC") for Level 3 felony criminal confinement and 365 days executed at DOC for Class A misdemeanor domestic battery. Those sentences were to be served concurrent to one another. The trial court then enhanced the sentence associated with Talbott's Level 3 felony aggravated battery conviction by seventeen years based on his adjudication as a habitual offender, for an aggregate sentence of thirty-one years incarcerated.

Discussion and Decision

1. Criminal Rule 4

[20] Talbott initially contends the trial court erred in denying his motion for discharge pursuant to Indiana Criminal Rule 4(B). "In reviewing Criminal Rule 4 claims, we review questions of law de novo, and we review factual findings under the clearly erroneous standard." *State v. Harper*, 135 N.E.3d 962, 972 (Ind. Ct. App. 2019), *trans. denied*. "Clear error is that which leaves us with a definite and firm conviction that a mistake has been made." *State v. Oney*, 993 N.E.2d 157, 161 (Ind. 2013) (internal quotation marks omitted). Under the clearly erroneous standard, we do not reweigh the evidence or determine the credibility of witnesses, and we consider only the probative evidence and reasonable inferences supporting the judgment. *Id*.

[21] Criminal Rule 4 places an "affirmative duty" on the State to bring a defendant to trial. *Cundiff v. State*, 967 N.E.2d 1026, 1028 (Ind. 2012). However, "the purpose of Criminal Rule 4 is not to provide defendants with a technical means to avoid trial but rather to assure speedy trials." *Id*. Rule 4(B)(1) states:

> 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, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. 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. 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.

Thus, "in order for the meaning of the rule not to be eviscerated, it is essential that courts honor requests made for speedy trials by scheduling trial dates within the time prescribed by the rule." *McKay v. State*, 714 N.E.2d 1182, 1188 (Ind. Ct. App. 1999). Nonetheless, after a defendant has requested a speedy trial, he "must maintain a position which is reasonably consistent with the request that he has made." *Hahn v. State*, 67 N.E.3d 1071, 1080 (Ind. Ct. App. 2016), *trans. denied*. It is the defendant's obligation to object at the earliest opportunity when his trial date is set beyond the time limits prescribed by Indiana Criminal Rule 4(B). *Id*.

[22] Talbott argues the trial court's decision to vacate his January 7, 2020, trial date resulted in his detention in pretrial confinement for a period longer than that allowed by Criminal Rule 4(B). Specifically, Talbott challenges the trial court's January 7, 2021, order denying his motion for discharge pursuant to Indiana Criminal Rule 4(B). In that order, the trial court detailed the procedural history of Talbott's case and decreed:

> 58. The Court concludes that Mr. Talbott's actions in requesting a new attorney be appointed on December 16, 2019 resulted in a delay of the January 7, 2020 trial. He is therefore not entitled to discharge under C.R. 4(B).

* * * * *

68. By agreeing to continue the January 8, 2020 status hearing, Mr. Talbott waived his right to a trial under C.R. 4(B) on or before January 9, 2020.

* * * * *

69. At the rescheduled status hearing on January 22, 2020, the Court asked Mr. Talbott how much time he required to prepare for trial. Counsel responded, "Enough time that I can be effective." Counsel asked for a trial date in May 2020. The Court accommodated this request.

70. Counsel specifically stated at the January 22, 2020 status hearing that "we are not requesting a speedy trial."

71. Where a trial court sets a trial date outside the 70-day period and the defendant does not object, he has abandoned his request and the motion ceases to have legal validity. *James v. State*, 622 N.E.2d 1303, 1306 (Ind. Ct. App. 1993).

72. A defendant must object at the earliest opportunity when his trial is set beyond the time limitations of Crim. Rule 4. *Wright v. State*, 593 N.E.2d 1192, 1195 (Ind. 1992).

73. Not only did Mr. Talbott not object, he specifically requested the trial be held in May 2020. Thus any delay from January 7, 2020 to May 11, 2020 is attributable to him.

(App. Vol. VI at 25-27.)

[23] In his brief, Talbott asserts: "Upon its own motion, the trial court vacated the speedy trial without justification or explanation." (Appellant's Br. at 23.)

However, during the December 16, 2019, status hearing, the trial court explained to Talbott it was vacating the trial date because Talbott's request for new counsel was made close to his trial date, and the trial court was aware Attorney Spencer was already scheduled to try a different case before the trial court that was to begin the next day. The trial court vacated the January 7, 2020, trial date to give Attorney Spencer adequate time to familiarize himself with Talbott's case. Thus, the trial court's explanation for vacating Talbott's original trial date, memorialized in its January 7, 2021, order is not a "retrospective justification" as Talbott argues. (*Id*.)

[24] Talbott also contends his change of counsel was not a sufficient reason for the trial court to vacate his January 7, 2020, trial date. Talbott argues: "'Actual delay' is not speculative, the trial court may not 'delay setting the cause for trial on the assumption that the new counsel will require more preparation time.'" (*Id*. at 24 (quoting *Simpson v. State*, 332 N.E.2d 112, 115 (Ind. Ct. App. 1975)).) However, a change of counsel on the eve of a trial often necessitates a delay. *See Johnson v. State*, 83 N.E.3d 81, 85 (Ind. Ct. App. 2017) ("Johnson also concedes his two changes of counsel contributed to the delays."). In *O'Neil v. State*, we explained that "[d]elays caused by . . . requests to change attorneys are the responsibility of the defendant." 597 N.E.2d 379, 384 (Ind. Ct. App. 1992), *trans. denied*.

[25] While Talbott relies on *Simpson v. State*, that case is distinguishable from the instant case. In *Simpson*, the defendant filed a motion for an early trial, but the trial court failed to set a trial date. 332 N.E.2d at 113. Approximately four

weeks before expiration of the Criminal Rule 4(B) period, the defendant requested new counsel, and the trial court appointed a new attorney to represent the defendant. *Id*. at 114. However, the trial court did not set the case for trial until after the defendant had moved for discharge pursuant to Criminal Rule 4(B). *Id*. Therefore, we reasoned the trial court could not rely on the defendant's change of counsel to excuse its own failure to set a trial date because "it is sheer speculation whether a continuance to allow for more preparation time would have been requested." *Id*. at 116. In contrast, in the instant case, the trial court initially set the matter for trial within seventy days of when Talbott requested a speedy trial. The trial court only vacated the trial date after explaining to Talbott that his new counsel would need time to familiarize himself with the case.

[26] In *McGowan v. State*, our Indiana Supreme Court held McGowan was not entitled to discharge when he requested new counsel shortly before trial and, therefore, was tried more than seventy-days after his speedy trial request. 599 N.E.2d 589, 592 (Ind. 1992). The Court explained that "it was within the trial judge's prerogative to view the complexity of the case and to decide that seven days was not sufficient time for new counsel to adequately prepare." *Id*. Our Indiana Supreme Court concluded McGowan's trial court did not abuse its discretion "in resetting the trial date after appointment of new counsel, the necessity of which was brought about solely by the conduct of appellant." *Id*. Like the defendant in *McGowan*, Talbott was not entitled to discharge under Criminal Rule 4(B) because it was Talbott's act of requesting new counsel less

than a month prior to trial that necessitated vacation of his original trial date. *See Baumgartner v. State*, 891 N.E.2d 1131, 1135 (Ind. Ct. App. 2008) (holding delay that resulted from the withdrawal of defendant's counsel was attributable to defendant).

[27] In addition, Talbott asserts the trial court erroneously found he waived his right to a trial within the Criminal Rule 4(B) timeframe when Attorney Spencer agreed to postpone the January 8, 2020, status conference and failed to object to the trial court's setting of a May 2020 trial date. "However, if a defendant is represented by counsel, the defendant speaks to the trial court through that counsel." *Flowers v. State*, 154 N.E.3d 854, 867 (Ind. Ct. App. 2020). A defendant who seeks or acquiesces to the setting of a hearing beyond the time limitations of Criminal Rule 4(B) necessarily agrees to be tried beyond such date. *Goudy v. State*, 689 N.E.2d 686, 691 (Ind. 1997), *reh'g denied*. Therefore, the trial court did not err in crediting to Talbott both the acquiescence to the vacation and resetting of the January 8, 2020, status conference and the request for a May 2020 trial date. The trial court also did not err in concluding Talbott thus waived his earlier speedy trial request.[9] *See id*. ("defendant waived his

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[9] Talbott also asserts both Attorney Spencer and Attorney Karaffa were ineffective for failing to move to discharge him pursuant to Criminal Rule 4(B) when his initial speedy trial deadline passed in January 2020. "A defendant may raise a claim of ineffective assistance of counsel on direct appeal; however, the defendant is foreclosed from subsequently relitigating that claim." *Heyen v. State*, 936 N.E.2d 294, 303 (Ind. Ct. App. 2010), *trans. denied*. To succeed on an ineffective assistance of counsel claim, the defendant "must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance so prejudiced him that he was denied a fair trial." *Id*. Talbott filed a motion for discharge after he began representing himself, and as we explained above, he was not entitled to discharge pursuant to Criminal Rule 4(B). Therefore, his trial attorneys were not ineffective for failing to move to discharge him

earlier speedy trial request by acquiescing in the setting of an omnibus date, and by necessary implication, a trial date, beyond the seventy day limit permitted by Criminal Rule 4(B)(1)").

2. Constitutional Right to Speedy Trial

[28] The Sixth Amendment to the United States Constitution guarantees the accused in all criminal prosecutions "the right to a speedy and public trial[.]" Likewise, Article 1, Section 12 of the Indiana Constitution provides: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." We apply the four-factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2181 (1972), to determine whether a defendant's speedy trial right has been violated. *Watson v. State*, 155 N.E.3d 608, 614 (Ind. 2020). Even though the *Barker* test is grounded in the Sixth Amendment, we also apply the test to evaluate speedy trial challenges under Article 1, Section 12 of the Indiana Constitution. *Id*. "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*.

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pursuant to Criminal Rule 4(B) because any such motion would have been denied. *See Wine v. State*, 147 N.E.3d 409, 420-21 (Ind. Ct. App. 2020) (holding trial counsel was not ineffective for failing to raise an objection that would have been overruled), *trans. denied*.

2.1 Length of Delay

[29] "The length of the delay acts as a triggering mechanism; a delay of more than a year post-accusation is 'presumptively prejudicial' and triggers the *Barker* analysis." *McClellan v. State*, 6 N.E.3d 1001, 1005 (Ind. Ct. App. 2014) (italics in original) (quoting *Vermillion v. State*, 719 N.E.2d 1201, 1206 (Ind. 1999), *reh'g denied*). The delay between when the State charged Talbott and when his trial began was twenty-three months. Thus, we continue to the remaining *Barker* factors.

2.2 Reason for Delay

[30] "When considering the reason for delays, we look at 'whether the government or the criminal defendant is more to blame for that delay.'" *Johnson*, 83 N.E.3d at 85 (quoting *Doggett v. U.S.*, 505 U.S. 647, 651, 112 S. Ct. 2686, 2690 (1992)). In *Barker*, the United States Supreme Court explained

> different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded court should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.

407 U.S. at 531, 92 S. Ct. 2182.

[31] Here, the delay in bringing Talbott to trial was largely the result of his own actions. As Senior Judge Sarah Evans Barker of the United States District

Court for Southern District of Indiana explained in her order denying Talbott's petition for writ of habeas corpus,

> Mr. Talbott's actions are not those of a defendant who wants a speedy trial. He fired three attorneys, all shortly before a trial date. And when that well ran dry, he flooded the trial court with motions to dismiss, motions for discharge, motions for recusal, and motions for interlocutory appeals, all of which prevented a trial from happening.

Talbott v. Sheriff of Jefferson Cnty., Ind., No. 4:20-cv-00246-SEB-DML, 2021 WL 4355388 at *1 (S.D. Ind. Sept. 24, 2021).

[32] The COVID-19 public health emergency also contributed to the delay in bringing Talbott to trial. However, to the extent Talbott's trial was delayed because of the pandemic, such delay was justified. *See Blake v. State*, 176 N.E.3d 989, 994-95 (Ind. Ct. App. 2021) (holding trial court did not err in continuing defendant's jury trial and denying his motion for discharge when it could not safely summon a jury due to the danger of potential spread of the COVID-19 virus); *Smith v. State*, 188 N.E.3d 63, 68 (Ind. Ct. App. 2022) (holding trial court did not err in continuing defendant's trial because of a public health emergency and denying his motion for discharge). While there were minimal delays in bringing Talbott to trial because of court congestion and the unavailability of the trial judge, the State shoulders very little of the blame for the delay in bringing Talbott to trial. *See Bowman v. State*, 884 N.E.2d 917, 921 (Ind. Ct. App. 2008) (holding factor weighed against defendant when the

defendant's actions resulted in a delay in bringing him to trial), *reh'g denied*, *trans. denied*.

2.3 Assertion of Speedy Trial Right

[33] Talbott also asserts he "persistently pursued a speedy trial" and "was diligent in his effort to secure a jury trial." (Appellant's Br. at 28.) However, during the status conference held on April 9, 2021, the State requested that a trial date be set, and Talbott expressly asked the trial court not to set a trial date. Moreover, Talbott repeatedly sought to change his attorney close to the time of trial, which delayed his trial. He also further delayed his trial by pursuing an interlocutory appeal, requesting our Indiana Supreme Court appoint a special judge, and filing dozens of lengthy, repetitive motions. Thus, while Talbott asserts he wanted a speedy trial, his litigation tactics were inconsistent with such a desire. *See Taylor v. State*, 468 N.E.2d 1378, 1381 (Ind. 1984) (concluding from defendant's multiple changes of attorney and requests for a continuance that "[t]he record strongly indicates that the appellant did not want a speedy trial") (internal quotation marks omitted).

2.4 Prejudice to Talbott

[34] The *Barker* test's final factor, "prejudice, is assessed in light of the three interests which the right to a speedy trial was designed to protect: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Sweeny v. State*, 704 N.E.2d 86, 103 (Ind. 1998). The possibility of defense

impairment is the most important of these three concerns, and it is the defendant's burden to show actual prejudice because of the delay. *Johnson*, 83 N.E.3d at 87.

[35] Talbott asserts he was prejudiced by the delay because he "was incarcerated for nearly two (2) years in a county jail during a world-wide pandemic with limited access to his family, his relations, or his friends." (Appellant's Br. at 28.) However, "the passage of time alone is not enough to establish prejudice." *Ackerman v. State*, 51 N.E.3d 171, 189 (Ind. 2016), *cert. denied*, 137 S. Ct. 475 (2016). We have held defendants who were held in pretrial confinement longer than Talbot did not demonstrate prejudice. *See*, *e.g.*, *Rivers v. State*, 777 N.E.2d 51, 57 (Ind. Ct. App. 2002) (holding three-and-one-half-year delay did not result in prejudice to the defendant), *trans. denied*; *Lockert v. State*, 711 N.E.2d 88, 93 (Ind. Ct. App. 1999) (holding defendant failed to demonstrate actual prejudice despite forty-four-month delay attributable to the State in bringing defendant to trial).

[36] In addition, Talbot contends he suffered prejudice because P.D. "removed clothing, a computer, cameras, and bloody items from the home." (Appellant's Br. at 29.) Yet, in its January 7, 2021, order denying Talbott's motion for discharge pursuant to Indiana Criminal Rule 4(B), the trial court "found Mr. Talbott failed to show that, had the case gone to trial January 7, 2020, such alleged tampering with evidence might have been avoided." (App. Vol. VIII at 32.) Talbott does not contend this finding by the trial court was clearly erroneous, and we accept it as true. *See Haggarty v. Haggarty*, 176 N.E.3d 234,

246 (Ind. Ct. App. 2021) ("We accept unchallenged findings as true, and we will affirm if the unchallenged findings are sufficient to support the judgment.") (internal citation and quotation marks omitted). Moreover, Talbott fails to explain how these items were pertinent to his defense. Thus, Talbott has failed to show he suffered prejudice because of the delay. *See Johnson*, 83 N.E.3d at 88 (holding defendant failed to show he was prejudiced by the delay in bringing him to trial).

2.5 Summation

[37] Twenty-three months passed between the date the State charged Talbott and when the trial court tried him. However, Talbott bears primary responsibility for that delay. While Talbott initially asserted he wanted a speedy trial, he consistently pursued litigation tactics that delayed his trial. Moreover, Talbott has not demonstrated the delay prejudiced his defense. Therefore, Talbott's constitutional right to a speedy trial was not violated. *See McCarthy v. State*, 176 N.E.3d 562, 571 (Ind. Ct. App. 2021) (holding delay did not violate defendant's speedy trial right).

3. Motion to Dismiss Criminal Confinement Charge

[38] Talbott also argues the trial court should have dismissed the Level 3 felony criminal confinement charge against him because "the State failed to alleged [sic] facts sufficient to sustain each element of the offense and Talbott was denied his constitutional right to notice of the charges against him and an opportunity to prepare." (Appellant's Br. at 35.) Generally, "[w]e review a

ruling on a motion to dismiss a charging information for an abuse of discretion, which occurs only if a trial court's decision is clearly against the logic and effect of the facts and circumstances" before it. *State v. Katz*, 179 N.E.3d 431, 440 (Ind. 2022) (internal quotation marks omitted). "A trial court also abuses its discretion when it misinterprets the law." *Gutenstein v. State*, 59 N.E.3d 984, 994 (Ind. Ct. App. 2016), *trans. denied*. "However, when . . . the denial rests on the trial court's interpretation of a statute, we review the judgment de novo as a question of law." *B.S. v. State*, 966 N.E.2d 619, 625 (Ind. Ct. App. 2012), *trans. denied*, *overruled on other grounds by Fry v. State*, 990 N.E.2d 429, 451 (Ind. 2013).

[39] Indiana Code section 35-34-1-2 requires a criminal charging information to "be in writing and allege the commission of an offense by. . . stating the name of the offense in the words of the statute or any other words conveying the same meaning . . . [and] setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition[.]" If the charging information is inadequate, Indiana Code section 35-34-1-4 states, in relevant part:

> (a) The court may, upon motion of the defendant, dismiss the indictment or information upon any of the following grounds:
>
> * * * * *
>
> (4) The indictment or information does not state the offense with sufficient certainty.
>
> (5) The facts stated do not constitute an offense.

[40] The State charged Talbott with Level 3 felony criminal confinement, which occurs when one person "knowingly or intentionally confines another person without the other person's consent" and the act "results in serious bodily injury to a person other than the confining person[.]" Ind. Code § 35-42-3-3. Indiana Code section 35-31.5-2-292 explains:

> "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:
>
> (1) serious permanent disfigurement;
>
> (2) unconsciousness;
>
> (3) extreme pain;
>
> (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
>
> (5) loss of a fetus.

[41] "The purpose of a 'charging information is to provide a defendant with notice of the crime of which he is charged so that he is able to prepare a defense.'" *State v. Sturman*, 56 N.E.3d 1187, 1196 (Ind. Ct. App. 2016) (quoting *Lebo v. State*, 997 N.E.2d 1031, 1038 (Ind. Ct. App. 2012)). A charging information is generally considered sufficient if it includes "a statement of the essential facts constituting the offense charged, as well as the statutory citation, the time and place of the commission of the offense, the identity of the victim (if any), and the weapon used (if any)." *Pavlovich v. State*, 6 N.E.3d 9696, 975 (Ind. Ct. App.

2014) (internal quotation marks omitted). Here, the State alleged in the charging information:

> The undersigned says that on or about October 28, 2019 in Jefferson County, State of Indiana, Richard Dale Talbott did knowingly or intentionally confine [P.D.] without the consent of [P.D.], said act resulting in serious bodily injury, to wit applied pressure to the throat or neck of [P.D.] in a manner that impeded her normal breathing or blood circulation, which created a substantial risk of death; to [P.D.], a person other than the confining person, contrary to the form of the statutes in such cases made and provided by I.C. 35-42-3-3(a) and against the peace and dignity of the State of Indiana.

(App. Vol. II at 75.)

[42] Talbott contends the criminal confinement charging information "alleged as an element of the offense that Talbott had caused bodily injury," but the charging information did not allege "any facts in support of a bodily injury element." (Appellant's Br. at 35.) Talbott also asserts that while the charging information "alleged Talbott's acts created a substantial risk of death," the charging information failed to allege "that any injury [P.D.] suffered created a substantial risk of death." (*Id.*) However, "[t]he State is not required to include detailed factual allegations in a charging information." *Laney v. State*, 868 N.E.2d 561, 567 (Ind. Ct. App. 2007), *trans. denied*. The charging information alleged Talbott applied pressure to P.D.'s neck in a way that it impeded normal breathing or blood circulation and that this act created a substantial risk of death. Because it is axiomatic that prolonged strangulation creates a substantial

risk of death, the charging information sufficiently alleged facts necessary to put Talbott on notice of the crime charged.[10] *See Grimes v. State*, 84 N.E.3d 635, 641 (Ind. Ct. App. 2017) (holding charging information gave defendant sufficient notice of the nature of the charges against him), *trans. denied*.

4. Sufficiency of the Evidence

[43] Lastly, Talbott asserts the State did not present sufficient evidence to support his conviction of Level 3 felony criminal confinement. Our standard of review for claims challenging the sufficiency of the evidence is well-settled:

> Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

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[10] Talbott raises a similar argument challenging the Level 3 felony aggravated battery charging information. He asserts the charging information failed to sufficiently allege facts in support of the bodily injury element. The trial court vacated judgment of conviction on that count on double jeopardy grounds. Nonetheless, we note that the same reasoning we used to conclude the Level 3 felony criminal confinement charging information was adequate would also apply to the Level 3 felony aggravated battery charging information.

In addition, because we conclude the Level 3 felony criminal confinement charging information was not defective, we also reject Talbott's derivative argument that "[t]he error of the trial court in allowing the case to go to the jury on defective charging information was compounded when the trial court instructed the jury regarding the elements of the criminal confinement charge." (Appellant's Br. at 36.)

[44] Talbott asserts "[t]he State provided no evidence that the injuries sustained by [P.D.] created a substantial risk of death." (Appellant's Br. at 39.) When we review "a sufficiency claim concerning whether the injuries created a substantial risk of death, we look to the observable facts, including the nature and location of the injury, and the treatment provided." *Oeth v. State*, 775 N.E.2d 696, 702 (Ind. Ct. App. 2002), *reh'g denied*, *trans. denied*. Talbott analogizes his case to *Alexander v. State*, 13 N.E.3d 917 (Ind. Ct. App. 2014). In *Alexander*, we held the State failed to prove the victim suffered an injury creating a substantial risk of death when the only injury suffered by the victim was a graze gunshot wound on his back that did not require medical attention. *Id*. at 922.

[45] However, the instant case is easily distinguishable from *Alexander*. P.D. testified Talbott choked her so hard she had trouble breathing and believed Talbott was going to kill her, she saw "stars" and lost consciousness, and she involuntarily urinated while unconscious. (Tr. Vol. V at 82.) Dr. William Smock, an expert in forensic and emergency medicine, reviewed P.D.'s medical records, components of the Hanover Police Department's investigative file, and other materials documenting the incident. Dr. Smock testified at trial by means of a videotaped deposition, and Dr. Smock's expert report was admitted into evidence. In his report, Dr. Smock determined to a within a reasonable degree of medical and scientific certainty that P.D. "sustained a near-fatal strangulation with serious bodily injuries as a consequence of being assaulted, manually strangled and rendered unconscious on October 28th, 2019." (Conf.

Ex. Vol. I at 128.) Dr. Smock explained P.D.'s "loss of sphincter control was due to an anoxic brain injury." (*Id.*) He concluded:

> 7. [P.D.] had her trachea completely occluded and was unable to breathe during the near-fatal strangulation and assault. The inability to breathe created a serious bodily injury and grave risk of death.
>
> 8. The application of compressive pressure to the structures of the neck from near-fatal manual strangulation with the loss of consciousness created a serious bodily injury and grave risk of death.

(*Id.*) Therefore, a reasonable jury could conclude from P.D.'s testimony and Dr. Smock's report that Talbott choked P.D. in a manner that she suffered a substantial risk of death, and we affirm Talbott's criminal confinement conviction.[11] *See Oeth*, 775 N.E.2d at 702 (holding jury could reasonably infer the victim sustained injuries that created a substantial risk of death when the defendant hit her in the head with a hatchet, resulting in profuse bleeding and loss of consciousness).

Conclusion

[11] Talbott also asserts the State failed to prove the substantial bodily injury element with respect to Level 3 felony aggravated battery. The trial court vacated judgment of conviction on that count on double jeopardy grounds. Nevertheless, we note the same evidence and reasoning supports the bodily injury element necessary to support the jury's finding as to aggravated battery.

[46] The trial court did not err in denying Talbott's motion for discharge under Criminal Rule 4(B) because Talbott's change in counsel on the eve of trial resulted in the vacation of his original trial date, which had been scheduled within seventy days of Talbott's motion for a speedy trial. Moreover, even though Talbott's trial occurred twenty-three months after he was charged, his constitutional right to a speedy trial was not violated because most of that delay was attributable to Talbott and he did not demonstrate prejudice from the delay. The criminal information alleging Talbott committed criminal confinement adequately informed him of the charge, and the State presented sufficient evidence to demonstrate Talbott's act of strangling P.D. resulted in serious bodily injury that created a substantial risk of death. For all these reasons, we affirm the trial court.

[47] Affirmed.

Crone, J., and Weissmann, J., concur.