## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

Eric Bohnet
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Supervising Deputy Attorney General
Indianapolis, Indiana

# IN THE COURT OF APPEALS OF INDIANA

Quinton Lee Jennings,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

May 24, 2022

Court of Appeals Case No. 21A-CR-2099

Appeal from the Posey Circuit Court

The Honorable Craig S. Goedde, Judge

Trial Court Cause No. 65C01-2104-F2-193

**Najam, Judge.**

## Statement of the Case

[1] Quinton Lee Jennings appeals his convictions for kidnapping and aggravated battery, both as Level 3 felonies, and his adjudication as a habitual offender following a jury trial.[1] Jennings presents four issues for our review:

1. Whether the trial court violated his rights to a speedy trial under either Indiana Criminal Rule 4(C) or the federal and state constitutions.

2. Whether the trial court abused its discretion when it found that a five-year-old witness was competent to testify at trial.

3. Whether the State presented sufficient evidence to support his convictions.

4. Whether the trial court abused its discretion when it denied his motion to correct error alleging juror misconduct.

[2] We affirm and remand with instructions.

## Facts and Procedural History

[3] Jennings and Kortlyn Bayer started dating in early June 2019, and their relationship was "sweet and sour." Tr. Vol. 3 at 181. During the evening of June 28, Bayer was home with three of her friends and her three-year-old

[1] As we explain below, while the trial court entered judgment of conviction on eight other counts, it purported to "merge" those convictions for sentencing. Because that was improper, we remand with instructions to the trial court to vacate those eight convictions.

daughter, J.H., who was asleep. At approximately 11:00 p.m., two of the friends left Bayer's house, and Bayer and the third friend, a man named Rudy, were standing outside her apartment and hugging goodbye when Jennings pulled into a parking spot outside the apartment driving "really fast." *Id.* at 187. Jennings and Bayer had been arguing for a few days at that point. As Rudy descended the stairs to the parking lot, Jennings ascended the stairs and, as the two men passed, Jennings "flinched at [Rudy] like he was going to hit him." *Id.* Jennings then walked past Bayer and into the apartment, uninvited.

[4] Bayer stayed outside for about five or ten minutes while she smoked a cigarette. When she went inside, she found Jennings going through her cell phone. Bayer tried to grab her phone from him, but he "pushed [her] all the way across the room." *Id.* at 188. Jennings then told Bayer to go to her bedroom, and she complied. Jennings told Bayer to go into a closet in the bedroom. Once inside the closet, Jennings hit Bayer in her chest and threatened to have her killed. Jennings continued to hit Bayer in her head and leg, and he threatened to penetrate her vagina with a wire hanger. At some point, Bayer left the closet, and Jennings poured a bottle of liquor over her head.

[5] Jennings told Bayer to get on the bed, which she did. Jennings then asked Bayer a series of questions and threatened to hit her if she did not answer truthfully. At some point, Bayer stood up, and Jennings "smacked" Bayer in the face. *Id.* at 198. Bayer and Jennings were then in the living room, and Jennings began looking through her phone again. Jennings "let" Bayer take a shower. *Id.* When she got out, Jennings would not let Bayer use a towel or get

dressed, and he made her stand or squat against a wall. Jennings continued to hit Bayer in the leg. At some point, Jennings and Bayer fell asleep.

[6] The next morning, Jennings apologized to Bayer. Jennings initiated sexual intercourse with Bayer, and she agreed because she "did not want to start anything else again, and [she] was wanting him to think that [she] wasn't mad at him." *Id.* at 201. Later, Jennings and Bayer took J.H. out for lunch and to a park. When they left the park, Bayer asked Jennings to stop at a gas station. Bayer went inside while Jennings stayed outside. Bayer asked the cashier for a pen and paper, and she wrote down her home address and a request that the cashier call the police after they left the station. Bayer then told the cashier that Jennings had held her "captive all night," and she showed him her bruised eye. *Id.* at 207. Finally, Bayer verbally asked the cashier to call the police after she left.

[7] Bayer had hoped that police officers would be waiting for them at her apartment, but when Bayer, Jennings, and J.H. arrived at Bayer's apartment a short time later, no one was there. Some time later, a friend named Kelsey came over to visit. While Jennings was not looking, Bayer inaudibly "mouthed" words to Kelsey, asking her to take J.H. and to call the police. *Id.* at 211-12. But Jennings "caught on that something wasn't right" and turned to face Bayer and Kelsey. *Id.* at 212. Jennings told Bayer that her ex-boyfriend's parents, Lori and Kevin, wanted them to come over for a visit. Bayer asked Kelsey to take J.H. with her, but Jennings insisted that J.H. come with them.

[8] Jennings, Bayer, and J.H. left together to go to visit Lori and Kevin, and Jennings was driving. It quickly became apparent that Jennings was not driving in the direction of Lori and Kevin's house, and Bayer asked Jennings where they were going. Jennings said, "What if I told you that we're not really going to . . . Lori and Kevin's and . . . that I heard you tell your little friend to call the police?" *Id.* at 214. They were heading towards Evansville, and Jennings told Bayer that "he has . . . family members out of state," that they were "going to their neck of the woods," and that he would "have someone watch [J.H.] while he handle[d Bayer]." *Id.* at 215. Jennings also told Bayer that he was taking them "somewhere where nobody[ would] be able to hear [Bayer] scream or yell." *Id.* at 216.

[9] At some point, they were driving slowly down a country road when Bayer saw an oncoming car, and she attempted to kick the steering wheel to cause a collision with the other car, but her effort failed. Jennings started hitting Bayer, and she stabbed him with a pen. Jennings then began to choke Bayer, and he stopped the car and they got out. Bayer grabbed J.H. and attempted to run from Jennings, but Jennings came after her with a crowbar. Jennings struck Bayer with the crowbar. Jennings then told Bayer and J.H. to get into the backseat of the car, which they did. Jennings began to beat Bayer all over her body with the crowbar, including her head and face.

[10] At some point, Jennings began driving again, and they eventually ended up at a campground, and Jennings began washing the blood off of Bayer, and he gave her different clothes to wear. Jennings drove Bayer and J.H. to a bar, left them

there, and drove off. Bayer asked some men at the bar to call an ambulance, and someone also called the police. Bayer was ultimately airlifted by helicopter to a hospital in Evansville to treat her injuries, and she underwent three surgeries before she was released a few days later.

[11] Following Jennings' arrest in Illinois, the State of Illinois filed charges against him on July 2. On July 18, the State filed fourteen charges against Jennings in Warrick County, including kidnapping, as a Level 3 felony, and aggravated battery, as a Level 3 felony. On September 27, Jennings was transferred from the jail in Illinois to the jail in Warrick County. The trial court scheduled Jennings' trial for April 6, 2020, but in March, Jennings moved to continue the trial. The trial court granted that motion and rescheduled the trial for June 22. That trial date was rescheduled to August 31 due to the Covid-19 emergency. Jennings again moved to continue that trial date, and the court rescheduled his trial for January 11, 2021. In December 2020, defense counsel moved to withdraw due to Jennings' "displeasure with counsel's representation of him" and Jennings' request that he be appointed a new attorney. Appellee's App. Vol. 2 at 2. The trial court granted that motion and, in order to give his new counsel time to get up to speed, on December 9, the court rescheduled his trial to April 12, 2021.

[12] On April 8, Jennings filed a motion for discharge under Criminal Rule 4(C) and the federal and state constitutions. Also on April 8, the State filed a motion to dismiss the charges in Warrick County, and it refiled the charges in Posey County. At an initial hearing in Posey County on April 9, the trial court

scheduled Jennings' trial for July 12. On June 2, Jennings filed a second motion for discharge under Criminal Rule 4(C) and the federal and state constitutions. The trial court denied that motion.

[13] During his jury trial, which commenced on July 12, then-five-year-old J.H. testified for the State after the trial court held a hearing to determine J.H.'s competency to testify. At the conclusion of trial, the jury found Jennings guilty of ten felony counts, including kidnapping, as a Level 3 felony, and aggravated battery, as a Level 3 felony, and the jury found that Jennings was a habitual offender. The trial court entered judgment of conviction on all ten counts. At sentencing, the trial court "merged" all of the counts into two counts, namely, kidnapping, as a Level 3 felony, and aggravated battery, as a Level 3 felony, due to double jeopardy concerns. And the court sentenced Jennings to an aggregate executed term of thirty-six years. Jennings filed a motion to correct error alleging juror misconduct. The trial court denied that motion. This appeal ensued.

## Discussion and Decision

### *"Merger"*

[14] Initially, we note that the trial court entered judgment of conviction on all ten counts on which the jury entered guilty verdicts. Then, at sentencing, the court "merged" eight of the convictions into two of the convictions due to double jeopardy concerns. However, as our Supreme Court has made clear, "[a] double jeopardy violation occurs when a court enters judgment twice for the

same offense 'and cannot be remedied by . . . merger after conviction has been entered.'" *Hines v. State*, 30 N.E.3d 1216, 1221 (Ind. 2015) (quoting *Jones v. State*, 807 N.E.2d 58, 67 (Ind. Ct. App. 2004), *trans. denied*). Thus, as this Court has stated time and time again, where two convictions violate double jeopardy and the trial court enters judgment of conviction on both, merger at sentencing is insufficient and one of the convictions must be vacated. *Kovats v. State*, 982 N.E.2d 409, 414-15 (Ind. Ct. App. 2013).

[15] Here, because the trial court entered judgment of conviction on all ten of the jury's guilty verdicts and simply "merged" eight of the convictions for purposes of sentencing, we remand with instructions for the trial court to vacate Jennings' convictions for criminal confinement, as a Level 3 felony; criminal confinement, as a Level 5 felony; kidnapping, a Level 5 felony; aggravated battery, a Level 3 felony; battery by means of a deadly weapon, a Level 5 felony; domestic battery by means of a deadly weapon, a Level 5 felony; domestic battery resulting in serious bodily injury, a Level 5 felony; and domestic battery, as a Level 6 felony. Accordingly, we address Jennings' appeal only with respect to his convictions for kidnapping, as a Level 3 felony, and aggravated battery, as a Level 3 felony.

### *Issue One: Criminal Rule 4(C) and Federal and State Constitutions*

[16] Jennings contends that the trial court erred when it denied his motion for discharge under Indiana Criminal Rule 4(C) and that the total delay between his arrest and his trial violated his constitutional rights to a speedy trial. We address each issue in turn.

*Criminal Rule 4(C)*

[17] Initially, we agree with the parties that, for purposes of Criminal Rule 4(C), "the Posey County case [is] effectively the continuation of the Warrick County case" because "largely the same charges were filed in Posey County" after the State dismissed the Warrick County charges. Appellee's Br. at 26 n.6. Accordingly, the Criminal Rule 4(C) "clock" did not restart when the Posey County charges were filed.

[18] "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*. Indiana 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, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under 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. Any defendant so held shall, on motion, be discharged.

(Emphases added).

[19] "The rule places an affirmative duty on the State to bring a defendant to trial within one year of being charged or arrested, but allows for extensions of that time for various reasons." *Cook v. State*, 810 N.E.2d 1064, 1065 (Ind. 2004). The determination of whether a particular delay in bringing a defendant to trial violates the speedy trial guarantee depends on the specific circumstances of the case. *Payton v. State*, 905 N.E.2d 508, 511 (Ind. Ct. App. 2009), *trans. denied*. If a defendant seeks or acquiesces in any delay that results in a later trial date, the time limitations set by Criminal Rule 4 are extended by the length of such delays. *State v. Delph*, 875 N.E.2d 416, 419 (Ind. Ct. App. 2007), *trans. denied*. Further, we note that the Covid-19 pandemic constituted an emergency for purposes of Criminal Rule 4(C) during all times relevant to the issues on appeal. *See, e.g.*, *Blake v. State*, 176 N.E.3d 989 (Ind. Ct. App. 2021) (holding that a trial court's finding that an emergency existed was reasonable in light of the circumstances relating to the Covid-19 pandemic).

[20] Jennings' argument on appeal includes references to only two calculations of time: (1) that 258 days passed between the time he was arrested in Illinois on June 30, 2019, and when defense counsel moved for a continuance in March 2020; and (2) that he had been held in "pretrial custody for over two years while having agreed to one continuance for discovery purposes in March of 2020." Appellant's Br. at 14. While Jennings mentions, in passing, delays caused by his own counsel's illness and withdrawal prior to trial, as well as the Covid-19 emergency, he does not calculate the time associated with those delays or the

delay caused by his own March 2020 motion to continue, all of which time does not count against the State. Given these glaring omissions in Jennings' brief, we conclude that he has waived his argument regarding Criminal Rule 4(C).

[21] Waiver notwithstanding, a defendant must object to a trial setting at the earliest opportunity if he learns within the period provided by the rule that the case is set for trial at a time beyond the date permitted. *Johnson v. State*, 708 N.E.2d 912, 915 (Ind. Ct. App. 1999), *trans denied*. If a defendant fails to object at the earliest opportunity to a trial set outside the prescribed one-year period, he is deemed to have acquiesced to the belated trial date. *Id.* An objection must be raised in time to permit the trial court to set the trial for a new date within the proper period. *Id.*

[22] Here, in his motion for discharge filed on April 8, 2021, Jennings alleged that the one-year period for Criminal Rule 4(C) purposes would run that same day, April 8, 2021. On December 9, 2020, the trial court had set the trial date for April 12, 2021, which, by Jennings' own calculations, was outside the one-year period. Accordingly, Jennings was required to object to that trial setting at the earliest opportunity, but he waited until April 8, or four days prior to trial, to object. *See id.* In the meantime, after Jennings' counsel withdrew his representation of Jennings in December, the court appointed new counsel for Jennings, and she filed multiple motions with the trial court between January 21 and April 8, 2021. Because Jennings had ample opportunity to object to the April 12, 2021, trial date prior to his first motion for discharge filed on April 8,

we hold that he did not object at his earliest opportunity, and he acquiesced to being tried outside of the one-year time limit under Criminal Rule 4(C).

[23] Likewise, after the State had filed the charges in Posey County, on April 13, the trial court scheduled Jennings' trial for July 12. But Jennings did not object to that trial date, which he alleges was outside the one-year time limit under Criminal Rule 4(C), until he filed his second motion for discharge on June 2. In any event, we agree with the State's calculation showing that, excluding the multiple delays attributable to Jennings and to the Covid-19 emergency, the State brought Jennings to trial within one year.

*Federal and State Constitutions*

[24] Jennings also contends that the total delay between his arrest and his trial violated his constitutional rights to a speedy trial. The Sixth Amendment to the United States Constitution guarantees to an accused in a criminal prosecution "the right to a speedy and public trial." Article 1, Section 12 of the Indiana Constitution likewise guarantees that justice "shall be administered . . . speedily, and without delay."

[25] As our Supreme Court has explained: "In evaluating both federal and Indiana constitutional speedy trial claims, courts balance the same four factors: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion of the right to a speedy trial; and (4) any resulting prejudice to the defendant." *Griffith v. State*, 59 N.E.3d 947, 955 (Ind. 2016) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *Sweeney v. State*, 704 N.E.2d 86, 102 (Ind. 1998)). Further, as

Jennings' argument alleges constitutional violations, "the proper standard of appellate review is de novo." *Ackerman v. State*, 51 N.E.3d 171, 177 (Ind. 2016).

[26] Applying those factors here, we conclude that Jennings has not been denied his constitutional rights to a speedy trial. First, the State arrested Jennings on September 27, 2019, and he was brought to trial on July 12, 2021.[2] The State concedes that the "654-day delay is sufficient to trigger an evaluation of the other *Barker* factors." Appellee's Br. at 35. As for the second factor, as noted above, Jennings' own motions and the Covid-19 emergency were the reasons for most of the delay. Third, Jennings did not move for a speedy trial until April 8, 2021, which was fifteen months after his arrest in Warrick County.

[27] Finally, Jennings alleges that he was prejudiced by the delay. As our Supreme Court has stated, "[w]e 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." *Watson v. State*, 155 N.E.3d 608, 619 (Ind. 2020). In *Watson*, the Court held that, in the "rare circumstances" presented in that case, the defendant had made a "showing of prejudice based on particularized anxiety[.]" *Id.* at 620. The Court noted that "the angst Watson experienced from the unnecessary delay is of a considerable magnitude. For over six years—nearly four of which are attributable to the

---

[2] Jennings' assertion that the time should run from his arrest in Illinois in June 2019 is entirely without merit.

government—Watson was left to wonder whether he would be released at age seventy-six or die in prison." *Id.* at 620-21.

[28] Here, Jennings maintains that he "suffered significant oppressive pretrial incarceration" that caused "significant anxiety." Appellant's Br. at 16. But he does not direct us to any evidence to support that bare assertion. He also contends that the delay resulted in defense counsel not "receiving complete discovery, thereby limiting her efforts to defend him at trial." *Id.* But Jennings does not explain with any specificity what discovery was not timely obtained or how his defense was limited. We hold that the trial court did not err under either the United States Constitution or the Indiana Constitution when it denied Jennings' motion for discharge.

### *Issue Two: J.H.'s Competency*

[29] Jennings contends that the trial court abused its discretion when it found that J.H., who was five years old at the time of trial, was competent to testify. However, while Jennings initially questioned J.H.'s competency, after the trial court conducted a competency hearing and found her competent, Jennings made no objection to her testimony.

[30] It is well settled that the failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal. *Gibson v. State*, 111 N.E.3d 247, 254 (Ind. Ct. App. 2018), *trans. denied*. A contemporaneous objection affords the trial court the opportunity to make a final ruling on the matter in the context in which the evidence is introduced. *Id.*

Jennings' failure here results in waiver of appellate review. *See id.*; *see also Kochersperger v. State*, 725 N.E.2d 918, 922 (Ind. Ct. App. 2000) (holding defendant waived issue of child witness' competency for failure to make contemporaneous objection). Waiver notwithstanding, Jennings has not shown that the trial court abused its discretion when it found J.H. competent to testify at trial.

### *Issue Three: Sufficiency of the Evidence*

[31] Jennings contends that the State presented insufficient evidence to support his convictions for kidnappingand aggravated battery, both as Level 3 felonies. Our standard of review on a claim of insufficient evidence is well settled:

> For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

*Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). To prove kidnapping, as a Level 3 felony, the State was required to show that Jennings knowingly or intentionally removed Bayer by fraud, enticement, force, or threat of force, from one place to another resulting in serious bodily injury to Bayer. Ind. Code § 35-42-3-2 (2021). To prove aggravated battery, as a Level 3 felony, as charged, the State was required to show that Jennings knowingly or intentionally inflicted injury

on Bayer that created a substantial risk of death. I.C. § 35-42-2-1.5. We address each conviction in turn.

*Kidnapping*

[32] Jennings contends that, because Bayer testified that she willingly got into his car at the time of the alleged kidnapping on June 29, the State did not prove that he removed her by fraud, enticement, force, or threat of force. However, Jennings ignores Bayer's testimony that, when she willingly got into Jennings' car that day, it was because Jennings had told her that he was driving Bayer and J.H. to visit friends. But Jennings did not drive them to visit friends. Instead, he drove Bayer and J.H. into Illinois against Bayer's will. That evidence shows that Jennings lied to Bayer to get her and J.H. into his car, which is sufficient to prove that Jennings removed Bayer by fraud. *See, e.g.*, Fraud, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/fraud (defining fraud as "deceit" or "trickery") (last visited May 6, 2022). And Jennings does not dispute the evidence that Bayer sustained serious bodily injuries. Accordingly, we hold that the State presented sufficient evidence to support Jennings' conviction for kidnapping, as a Level 3 felony.

*Aggravated Battery*

[33] Jennings contends that the State did not present evidence that Bayer's injuries posed a substantial risk of death. He maintains that "[t]his was not a case of a shooting or a stabbing, such that it was apparent from the nature of the injury that the victim would eventually die or suffer serious physical disfigurement or dysfunction." Appellant's Br. at 23. We cannot agree.

[34] In reviewing 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), *trans. denied*. Here, the State presented evidence that Jennings hit Bayer multiple times with a crowbar. As a result, Bayer bled profusely from lacerations all over her body. Bayer sustained multiple fractures in the bones of her face. Bayer described the blood as being "just everywhere" on her body and in her clothes. Tr. Vol. 3 at 235. Bayer testified that she felt like she was "going into shock" and that if she fell asleep she might not wake up. *Id.* at 237. When she finally received medical attention, she had to be airlifted to the hospital in Evansville, and she underwent multiple surgeries over the course of four days.

[35] In light of the evidence, the jury could have reasonably inferred that Bayer's injuries created a substantial risk of death. *See Oeth*, 775 N.E.2d at 702 (holding evidence sufficient to show substantial risk of death to victim where defendant struck her in the head with a hatchet, which caused the victim to bleed profusely and lose consciousness). We hold that the State presented sufficient evidence to prove aggravated battery, as a Level 3 felony. *See Mateo v. State*, 981 N.E.2d 59, 71-72 (Ind. Ct. App. 2012) (holding evidence sufficient to show substantial risk of death where defendant used a deadly weapon in a manner that was likely to cause death or serious bodily injury and victim's injuries necessitated his transfer to a hospital via helicopter), *trans. denied*.

### *Issue Four: Juror Misconduct*

[36] Finally, Jennings contends that the trial court abused its discretion when it denied his motion to correct error alleging juror misconduct. We review the grant or denial of a Trial Rule 59 motion to correct error under an abuse of discretion standard. *See Booher v. State*, 773 N.E.2d 814, 817 (Ind. 2002). On appeal, we will not find an abuse of discretion unless the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or is contrary to law. *See Bryant v. State*, 959 N.E.2d 315, 321 (Ind. Ct. App. 2011).

[37] In his motion to correct error, Jennings alleged that he was "denied his rights to due process and due course of law in that members of the jury were impaired and suffered discrimination as members of the community with disabilities." Appellant's App. Vol. 2 at 119. In particular, Jennings asserted that the "length of the deliberations," from approximately 5:00 p.m. until 12:30 or 1:00 a.m. the following morning, impaired the jurors' "ability to concentrate" and resulted in an unfair trial. *Id.* at 118. In support of his motion, Jennings attached an affidavit of one of the jurors, Nathanial Cicardi, who stated as follows:

> In my opinion, the length of time we were required to be present, listen to evidence and the reading of jury instructions followed by the lengthy deliberation into the night and early morning hours, influenced some of the opinions of the jurors, particularly the older jurors, making them change their opinions to agree so that a unanimous verdict could be reached so that we could be released.

*Id.* at 123.

[38] On appeal, Jennings acknowledges the trial court's discretion to manage a jury's deliberations, including the length of time for deliberations. But he maintains that Cicardi's affidavit "suggests that Mr. Jennings' convictions are not based on the State's evidence presented against him, but rather the result of an exhausted jury attempting to wrap up deliberations as quickly as possible." Appellant's Br. at 25.

[39] The State, however, points out that Cicardi's affidavit was impermissible evidence under Indiana Evidence Rule 606(b)(1), which provides that,

> [d]uring an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. *The court may not receive a juror's affidavit or evidence of a juror's statement on these matters*.

(Emphasis added). Indeed, in his reply brief, Jennings concedes that Cicardi's affidavit "is not proper" and is prohibited under Evidence Rule 606(b). Reply Br. at 14.

[40] Without any evidence that the "jurors' exhaustion and sleep deprivation resulted in a violation to Mr. Jennings's right to a fair trial," *id.*, we cannot say that the trial court abused its discretion when it denied Jennings' motion to correct error.

## *Conclusion*

[41] We remand and instruct the trial court to vacate Jennings' convictions for criminal confinement, as a Level 3 felony; criminal confinement, as a Level 5 felony; kidnapping, a Level 5 felony; aggravated battery, a Level 3 felony; battery by means of a deadly weapon, a Level 5 felony; domestic battery by means of a deadly weapon, a Level 5 felony; domestic battery resulting in serious bodily injury, a Level 5 felony; and domestic battery, as a Level 6 felony. We affirm the trial court's denial of Jennings' motion for discharge under Criminal Rule 4(C) and the federal and state constitutions. And we affirm Jennings' convictions for kidnapping, as a Level 3 felony, and aggravated battery, as a Level 3 felony, and his adjudication as a habitual offender.

[42] Affirmed and remanded with instructions.

Bradford, C.J., and Bailey, J., concur.