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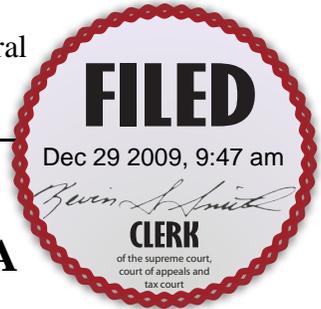
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**IN THE
COURT OF APPEALS OF INDIANA**

JERMAINE REAVES,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0902-CR-130

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable James B. Osborn, Judge
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0611-FA-216482

December 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jermaine Reaves brings this interlocutory appeal of the trial court's denial of his motion for discharge pursuant to Indiana Criminal Rule 4(C). Specifically, Reaves argues that he was not tried within one year of being arrested and that, in denying his motion for discharge, the trial court improperly charged him with delays.

We affirm and remand.

FACTS AND PROCEDURAL HISTORY

Reaves was charged with one count of battery¹ as a Class A felony and one count of neglect of a dependent² as a Class A felony on November 15, 2006. At his initial hearing on that date, Reaves, *pro se*, made an oral request for a speedy trial and notified the court that he intended to hire counsel. The trial court set a trial date of January 22, 2007. On January 9, 2007, Reaves, by counsel, filed a motion to continue and to withdraw his speedy trial request. The trial court held a hearing and granted the motion after asking Reaves if he understood that he was giving up his previous request for a speedy trial. Reaves indicated to the court that he understood.

On March 26, 2007, Reaves filed a motion for specific discovery, requesting “copies of any and all microscope slides prepared relative to the autopsy performed.” *Appellant's App.* at 86. After reviewing the State's response to Reaves's motion, the trial court granted the motion and ordered the Marion County Coroner's Office (“Coroner's Office”) to contact the trial court, the parties, and the defense expert to advise them of the amount of time it would take to comply with the trial court's order. Thereafter, many

¹ See Ind. Code § 35-42-2-1.

² See Ind. Code § 35-46-1-4(b)(3).

hearings were held during the course of which the issue of the difficulty in obtaining the evidence from the Coroner's Office was discussed.

Prior to the expiration of the period set by Indiana Criminal Rule 4(C), the trial court set the trial date outside the one-year period. Many continuances were requested by each of the parties, and trial dates were vacated and reset by the trial court. Reaves did not object to the continuances and never reasserted his speedy trial rights. On August 19, 2008, Reaves filed a motion for discharge pursuant to Criminal Rule 4(C). After holding an evidentiary hearing, the trial court orally issued its ruling denying Reaves's motion for discharge and later reduced that ruling to writing. Reaves now brings this interlocutory appeal.

DISCUSSION AND DECISION

Reaves contends that he should have been discharged because the State failed to bring him to trial within one year. He appeals the trial court's denial of his motion for discharge pursuant to Indiana Criminal Rule 4(C). Criminal Rule 4(C) provides, in relevant part:

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[.]

Under this rule, a defendant may seek and be granted a discharge if he is not brought to trial within the proper time period. *State v. Delph*, 875 N.E.2d 416, 419 (Ind. Ct. App. 2007), *trans. denied*. "The purpose of Criminal Rule 4(C), however, is to create

early trials and not to discharge defendants.” *Id.* “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.” *Id.* Furthermore, “when a trial court, acting within the one-year period of the rule, schedules trial to begin beyond the one-year limit, the defendant must make a timely objection to the trial date or waive his right to a speedy trial.” *Rivers v. State*, 777 N.E.2d 51, 54-55 (Ind. Ct. App. 2002). Thus, Reaves waived his right to a speedy trial by withdrawing his request and never reasserting his speedy trial request, and by acquiescing in the trial date set outside the time period provided by Criminal Rule 4. The trial court’s decision to deny Reaves’s motion for discharge was proper.

Reaves and the State devote a large portion of their briefs to a discussion of how the delay brought about by difficulties in obtaining evidence from the Coroner’s Office should be treated. In its order denying Reaves’s motion for discharge, the trial court charged that delay against Reaves for purposes of a Criminal Rule 4(C) analysis. Reaves claims that the delay should have been charged against the State, because the State was not aggressive enough in its attempts to prod the Coroner’s Office into producing the autopsy evidence. However, the issue here is best characterized as a discovery dispute.

Our Supreme Court has stated the following with regard to the treatment of discovery disputes:

A trial judge has the responsibility to direct the trial in a manner that facilitates the ascertainment of truth, ensures fairness, and obtains economy of time and effort commensurate with the rights of society and the criminal defendant. Where there has been a failure to comply with discovery procedures, the trial judge is usually in the best position to determine the

dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated. . . . The trial court must be given wide discretionary latitude in discovery matters since it has the duty to promote the discovery of truth and to guide and control the proceedings, and will be granted deference in assessing what constitutes substantial compliance with discovery orders. Absent clear error and resulting prejudice, the trial court's determinations as to violations and sanctions should not be overturned.

Lindsey v. State, 877 N.E.2d 190, 195 (Ind. Ct. App. 2007). “If a remedial measure is warranted, a continuance is usually the proper remedy.” *State v. Montgomery*, 901 N.E.2d 515, 523 (Ind. Ct. App. 2009). “Where the State's actions were deliberate and the conduct prevented a fair trial, a more extreme remedial measure--exclusion of evidence--may be employed.” *Id.* “Dismissal of charges is also a sanction within the arsenal of the trial judge in dealing with the failure of the prosecution to afford the defense access to evidentiary materials as ordered.” *Id.*

Here, both parties wanted access to the evidence from the Coroner's Office, with Reaves maintaining that it ultimately would be exculpatory. The record reflects that the State made efforts to track down the samples from the Coroner's Office and met with the Coroner to try to determine the location of the samples. The trial court issued an order to the Coroner's Office requiring expedited effort on the part of the Coroner's Office in supplying the evidence. The parties sought continuances for the purpose of procuring the evidence requested in the discovery process, and granting such continuances was one the remedies employed by the trial court. At one point, the Coroner's Office was reorganized and some of the autopsy evidence at issue was found. We find that the trial court made a

correct determination of the proper remedy for the discovery problems in the present case.

Affirmed and remanded for trial.

NAJAM, J., and BARNES, J., concur.