

IN THE
INDIANA SUPREME COURT

No. 20A-CR-121

JOHN YEAGER,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Jefferson Circuit Court,

No. 39C01-1911-F3-1322,

The Honorable
Donald J. Mote, Judge.

STATE'S PETITION TO TRANSFER

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QUESTIONS PRESENTED ON TRANSFER

This petition squarely presents emerging questions necessitating this Court's review regarding the proper administration of pretrial bail as trial courts begin applying Criminal Rule 26:

- I. May trial courts consider evidence of the crime(s) charged when determining if bail or bond should be set or altered?
- II. Does a defendant's potentially lengthy sentence evidence an increased risk of nonappearance for trial?

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This case is the appropriate vehicle to decide whether and how Criminal Rule 26 changes the discretion afforded to trial judges in making pretrial release decisions. Yeager is charged with four Level 3 felonies for the physical abuse and neglect of his girlfriend's two-year-old son resulting in extensive head, neck, and body injuries. The trial court set bail, and denied a subsequent request for a bail reduction, citing the lengthy sentence faced by Yeager and his risk to the safety of the victim and community. The Court of Appeals reversed, judging the trial court to have abused its discretion when it considered the child victim's injuries and Yeager's alleged conduct, and because the panel believed other factors weighed in Yeager's favor. *Yeager v. State*, __ N.E.3d __, No. 20A-CR-121, slip op. at __ (Ind. Ct. App. May 5, 2020). Notwithstanding the misapplication of the standard of review, this Court should grant transfer for at least four other reasons.

First, the Court of Appeals stripped courts of any ability to make the statutorily required finding that a defendant does not pose a danger to the safety of others or the community when it held that courts are constitutionally prohibited from considering evidence of untried criminal acts because doing so would undermine the presumption of innocence. *Id.*, slip op. at 7–8. Second, the decision below defies common sense—and ignores binding precedent of this Court and other Court of Appeals' decisions—by ruling that a potentially lengthy sentence does not increase the risk of a defendant's nonappearance for trial. *Id.*, slip op. at 7. Third, the decision fundamentally misunderstands Criminal Rule 26 and the proper application of the Indiana Risk Assessment System (IRAS) in reviewing a trial

court's bail decision. *Id.*, slip op. at 8–10. Finally, the Court ordered Yeager immediately released on electronic monitoring instead of remanding to the trial court to reconsider bail in light of these novel views of the law. *Id.*, slip op. at 8.

Granting transfer allows this Court to remedy the conundrum each prosecutor and trial judge now faces when addressing bail determinations by providing accurate guidance on the proper application of Criminal Rule 26.

BACKGROUND AND PRIOR TREATMENT OF ISSUE

On November 14, 2019, the State charged John Yeager with four Level 3 felonies: aggravated battery, battery on a child under 14 years of age resulting in serious bodily injury, domestic battery, and neglect of a dependent (App. Vol. II 10–18). The charges all related to the alleged abuse of two-year-old J.G., the son of Yeager's girlfriend (App. 10–18). While in Yeager's sole care, J.G. suffered extensive injuries described as

multiple sites on the head manifested by bruising and significant extensive subgaleal hemorrhage with resultant visible ecchymosis, the bilateral ears, the bilateral jawline, patterned linear parallel bruising on the left facial cheek, and numerous clusters of bruises over multiple soft tissue areas of the abdomen, flank and extremities. Additionally, a brain MRI demonstrated nuchal ligament edema/contusion that would represent additional injury to the ligaments of the neck

(App. Vol. II 14–18; Tr. Vol. II 19; St. Ex. 1).

The probable cause affidavit documents several attempts by Yeager to explain J.G.'s injuries, but those explanations are refuted by J.G.'s doctors. Yeager first stated that J.G. obtained the injuries by "throwing himself on the floor," but then stated that J.G. fell "from a chair onto a concrete floor" (App. 15–17). Yet,

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multiple doctors concluded that the injuries were the result of “inflicted child abuse,” and that “[n]o single fall would account for the severity or extent of the child’s bruising” (App. 17).

After an initial hearing, the trial court set Yeager’s bail at \$250,000 cash only (App. Vol. II 4, 46, 55–56, 98). Yeager moved to reduce his bail, and a hearing was conducted on December 30, 2019 (App. Vol. II 7, 63–64). Yeager presented evidence about his connection to the community through his own testimony, as well as the testimony of his mother (Tr. Vol. II 4–16). Both stated that Yeager could afford a \$4,000.00 bond (Tr. Vol. II 8, 15). The State presented testimony from Detective Yancy Denning, the primary investigator on the case (App. Vol. II 7; Tr. Vol. II 2, 17). Detective Denning testified that J.G. was in Yeager’s custody when the two-year-old sustained his injuries, and that the medical staff who treated J.G. concluded the child’s injuries were “non-accidental” (Tr. Vol. II 17–18). The State also presented photographs of J.G.’s injuries (St. Ex. 1).

On January 9, 2020, the trial court denied Yeager’s motion to reduce bail and stated that “public safety” could not be reasonably assured if the motion were granted, and that “[t]he allegations are so serious that, if true, gives [sic] this Court significant concern for the safety of the community if not the alleged victim here” (App. 98–101). It also stated that although several factors under Indiana Code section 35-33-8-4(b) “tend to establish [Yeager] may not be a flight risk,” the serious nature and gravity of the offenses charged, as well as the potential penalties faced by Yeager “weigh substantially against the Defendant in terms of reducing bail”

(App. 99–100). In particular, the trial court noted the photographs of J.G.’s injuries and Yeager’s “attempts to explain the injuries in a manner contradicted by an opinion from a forensic pediatrician” (App. 100).

Yeager appealed the denial of his motion to reduce bail (App. Vol. II 102–09). In a published opinion, a Court of Appeals panel held that the trial court abused its discretion by denying Yeager’s motion because it believed the trial court improperly relied on evidence of the crimes charged, reasoning that such reliance violated a defendant’s presumption of innocence. *Yeager*, slip op. at 7–10. The panel also concluded that a potentially lengthy sentence does not mean the defendant is a flight risk. *Id.* at 7. It then ordered immediate release of Yeager on electronic monitoring. *Id.*, slip op. at 8, 10. The Court of Appeals concluded by stating that its judgment is supported by Criminal Rule 26 and its requirement that trial court use the IRAS Pretrial Assessment Tool in bail decision making; the implication being that the Court of Appeals reads Rule 26 as requiring deference to the IRAS-PAT without consideration of the Tool’s express limitations and the Rule’s plain language. *Id.* at 8–10.

ARGUMENT

The Court of Appeals fundamentally altered the administration and review of bail by improperly rewriting law relating to dangerousness and flight risk and miscast Criminal Rule 26 as justification.

The Court of Appeals’ decision shifted the landscape of pre-trial release in contravention of both the Indiana Code and Criminal Rule 26. Those sources, when properly understood, permit—if not expect—trial courts to consider evidence of the

charged offense when determining if bail or bond should be set or altered. Yet, the opinion below improperly applied the presumption of innocence to prohibit trial courts from doing so. Ind. Appellate Rule 57(H)(6). The opinion also proclaims that a potentially lengthy sentence does not present a risk of nonappearance: a conclusion at odds with precedent of this Court and the Court of Appeals. App. R. 57(H)(1)–(2). Moreover, the Court of Appeals invoked a misinformed view of Criminal Rule 26 and the IRAS Pretrial Assessment Tool as justification for its judgment. App. R. 57(H)(4).

This Court must explain how bail determinations and review should be handled and rectify the discrepancy between the Court of Appeals’ opinion and the written law. Our courts face these issues daily, and they heavily impact victims, the community, and defendants. This Court should not countenance a decision that so misleads trial courts into such significant error and misdirected policy.

A. The decision significantly departs from statutes, rules, and caselaw.

Until this decision, a trial court could rely on evidence about the underlying offense and other untried conduct when determining whether a defendant poses a risk to the safety of himself, others, or the community, and courts understood that the penalties faced by a defendant will likely influence many defendants’ decisions whether to appear for trial. The point of bail is twofold: to assure the defendant’s appearance in court, and “to assure the physical safety of another person or the community.” I.C. § 35-33-8-4(b); Ind. Crim. Rule 26(A) (“If an arrestee does not present a substantial risk of flight or danger to self or others, the court should

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release the arrestee without money bail or surety.”). The latter goal is triggered when “the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community.” I.C. § 35-33-8-4(b). Mindful of these two goals, a trial court is directed to “consider the results of the Indiana pretrial risk assessment system (if available) and “other relevant factors” when setting or altering bail. I.C. §§ 35-33-8-3.8(b), 35-33-8-5; Crim. R. 26(B) (“In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment ... and such other information as the court finds relevant.”). Evidence is relevant when it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action. Ind. Evidence Rule 401. It is a low bar. *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017).

When considering a modification of bail, a trial court has discretion to alter or revoke bail if the defendant presents additional evidence that he is not a flight risk. I.C. §§ 35-33-8-4(b), -5(c). But if the State presents clear and convincing evidence that the “defendant otherwise poses a risk to the physical safety of another person or the community,” the trial court “may not reduce bail,” but has the discretion to increase the bail amount. I.C. § 35-33-8-5(b)(2), -5(c).

Evidence that can be used to support a criminal conviction may also be relevant to whether a defendant poses a risk to the safety of himself, others, or the community. If such evidence is relevant, a trial court may consider it when

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determining whether bail or bond is available or should be modified. *See* I.C. §§ 35-33-8-3.8(b), 35-33-8-5; Crim. R. 26(B). Indeed, trial courts are “encouraged to use other relevant and collateral information such as the probable cause affidavit, victim statement(s), domestic violence screeners, substance abuse screeners, mental health screeners and criminal history to assist in making release decisions.” *FAQ: Criminal Rule 26*, Indiana Court Times, (Feb. 28, 2017), *available at* <http://indianacourts.us/times/2017/02/faq-criminal-rule-26/> (last visited June 17, 2020) (hereafter *FAQ: Criminal Rule 26*).

The decision here contravenes the legal mandate to consider relevant evidence during bail determinations and effectively prevents courts from making the statutorily required dangerousness inquiry. The Court of Appeals held that the trial court abused its discretion by denying Yeager’s motion to reduce bail in large part because it found that the trial court could not rely on “the accusations themselves” or evidence of the victim’s injuries. *Yeager*, slip op. at 7–8. But that is exactly what the law requires—consideration of the relevant evidence. *See* I.C. §§ 35-33-8-3.8(b), 35-33-8-5; Crim. R. 26(B). Certainly the most relevant evidence about whether a defendant poses a risk to the victim’s safety is evidence of prior violence to the victim. Since at least 2017, trial courts have been encouraged to consider “probable cause affidavit[s] [and] victim statement(s)” when exercising their discretion under Criminal Rule 26. *FAQ: Criminal Rule 26*. In fact, the law specifically states that relevancy includes consideration of the crimes charged. Indiana Code section 35-33-8-4(b), lists “facts relevant to the risk of nonappearance,

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including ... the nature and gravity of the offense and the potential penalty faced.”

Though the legislature did not provide a similar list of facts to consider when addressing safety concerns, there is no reason to bifurcate the information available for consideration. The trial court must consider the crime(s) charged when analyzing a defendant’s risk of nonappearance, and may consider the crimes charged if relevant to safety concerns.

The trial court did both. In its written order denying Yeager’s bail-reduction request, it stated that although several factors under Indiana Code section 35-33-8-4(b) “tend to establish [Yeager] may not be a flight risk,” the serious nature and gravity of the offenses charged, as well as the potential penalties faced by Yeager “weigh substantially against the Defendant in terms of reducing bail” (App. 99–100). It also stated that “public safety” could not be reasonably assured if the motion were granted, and that “[t]he allegations are so serious that, if true, gives [sic] this Court significant concern for the safety of the community if not the alleged victim here” (App. Vol. II 98–101).

The trial court did exactly what Indiana Code sections 35-33-8-4 and -5 instruct courts to do. The trial court considered Yeager’s evidence that he is not a flight risk, but ultimately gave more weight to the State’s evidence that Yeager did pose a flight risk and posed a safety risk. This conclusion was not an abuse of discretion because it was supported by ample evidence in the record. While in Yeager’s sole care, the child suffered extensive physical injuries, including swelling and bruising of the face and body (App. Vol. II 15, 17; Tr. Vol. II 19; St. Ex. 1).

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Yeager initially stated that the child's injuries were a result of "throwing himself on the floor all day," but later reported that the injuries were sustained when J.G. fell "from a chair onto a concrete floor" (App. Vol. II 15, 17). These explanations were rebutted by multiple doctors who concluded that J.G.'s injuries were intentionally inflicted, and that "[n]o single fall would account for the severity or extent of the child's bruising" (App. Vol. II 16–17; Tr. Vol. II 17–18). Therefore, the trial court's decision to deny Yeager's bail-reduction request was not an abuse of discretion. An abuse of discretion would have occurred if the trial court granted a bail reduction. See I.C. §§ 35-33-8-5(b)(2), -5(c) (stating that when the evidence clearly and convincingly establishes that the defendant is a risk to the safety of others, a trial court "may not" reduce or revoke bail).

The Court of Appeals panel reasoned that consideration of evidence which may also be used to convict the defendant violates the presumption of innocence. *Yeager*, slip op. at 8. This is incorrect. The presumption of innocence, rightly present during bail determinations, is but one factor to consider against "the likelihood that the accused will be present to stand trial and ... any potential danger to the community." *Fry v. State*, 990 N.E.2d 429, 440 (Ind. 2013). The presumption does not preclude review of evidence relevant to the purposes of bail. It is true "that in an even weighing between the purpose[s] of bail and the presumption of innocence, the presumption of innocence must trump." *Id.* But a clear and convincing showing is not "an even weighing" that requires the presumption of innocence to control. See *Bud Wolf Chevrolet, Inc. v. Robertson*, 519 N.E.2d 135, 138 (Ind. 1988) ("Clear and

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convincing evidence may be defined as an intermediate standard of proof greater than a preponderance of the evidence and less than proof beyond a reasonable doubt and requires the existence of a fact be highly probable.”); *see also M.L.H. v. State*, 799 N.E.2d 1, 3 (Ind. Ct. App. 2003) (citing *K.J.P. v. State*, 724 N.E.2d 612, 614 (Ind. Ct. App. 2000)), *trans. denied*. And while the Court of Appeals cited *Samms v. State*, 893 N.E.2d 761, 766 (Ind. Ct. App. 2008), as authority for its assertion, that case says nothing about how the presumption of innocence has any effect on what evidence of dangerousness a trial court may consider in making bail decisions.

The implications of this aspect of the holding below are even broader at what appears at first blush. To hold that the presumption of innocence prevents consideration of particular evidence of the underlying offense necessarily means that any evidence of crimes that have not been reduced to a conviction are constitutionally off limits for bail determinations. In a domestic violence situation, the opinion below would prevent trial courts from protecting victims from future violence at the hands of the victim unless the abuser has been previously convicted of the alleged conduct. That rule cannot be squared with our bail statutes, which require consideration of such evidence. *See* I.C. §§ 35-33-8-5(b)(2)(A), 35-40-6-6(1)(A), (B) (together prohibiting modification of bail when a defendant clearly and convincingly committed or threatened violence or intimidation against a victim). Moreover, Indiana Constitution Article 1, Section 17 envisions courts considering the evidence of underlying charges, at least in cases of murder and treason. Because the trial court found that the evidence clearly and convincingly established that

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Yeager posed “a significant concern for the safety of the community if not the alleged victim here,” it did not violate Yeager’s presumption of innocence (App. Vol. II 98–101).

The panel also placed excessive emphasis on the importance of the IRAS Pretrial Assessment Tool. *Yeager*, slip op. at 7–9. But the IRAS is not determinative, and must be considered in conjunction with other relevant evidence. It is not even a prerequisite to bail setting or alteration. I.C. § 35-33-8-3.8(a) (“A court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting or modifying bail for an arrestee.”); Crim. R. 26(B) (“The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee’s release.”). This Court’s Office of Court Services agrees with the State on this understanding:

Is the court required to administer a risk assessment prior to releasing an arrestee from jail?

No. The court is not required to delay an arrestee’s release from jail to administer the IRAS-PAT. Each court has the flexibility to develop its pretrial release practices within the guidelines of the Rule.

FAQ: Criminal Rule 26.

Nor does the IRAS have the benefit of evidence presented at a bail-reduction hearing. The trial court is situated to consider the IRAS report *and* the evidence presented at a hearing. Equally important, the trial court is uniquely qualified to make credibility determinations regarding the witnesses at a hearing. The trial court here questioned Yeager’s credibility by noting Yeager’s “attempts to explain the injuries [were] ... contradicted” by a forensic pediatrician (App. 100).

Neither the presumption of innocence nor the IRAS preclude consideration of evidence which may also support a conviction for the crime(s) charged. This Court must uphold a trial court's obligation to consider all evidence relevant to a defendant's risk of nonappearance and the risk posed to the safety of other persons and the community.

B. The decision conflicts with precedent of this Court and the Court of Appeals on an important issue.

This Court should also grant transfer to address the decision's conflict with precedent of this Court and the Court of Appeals. In *Hobbs v. Lindsey*, this Court discussed factors a trial court should consider when determining the amount of bail that will reduce the risk of nonappearance. 162 N.E.2d 85, 88 (Ind. 1959). This Court stated that “[a]part from the fact of the accused's financial position, the primary fact to be considered in determining an amount which would assure the accused's presence in court is the possible penalty which might be imposed by reason of the offense charged.” 162 N.E.2d at 88. In *Sneed v. State*, the Court of Appeals cited to *Hobbs* and concluded that the fact that a defendant faces a lengthy sentence “tends to increase the risk [he] will fail to appear for trial and thereby cuts substantially against [his] argument that the trial court abused its discretion” by not reducing bail. 946 N.E.2d 1255, 1258–59 (Ind. Ct. App. 2011) (citing *Hobbs*, 162 N.E.2d at 88). The decision here conflicts with this precedent.

The Court of Appeals concluded that “[a]lthough Yeager faces four Level 3 felony charges for allegedly battering a two-year-old (and a potentially lengthy sentence if he is convicted), this does not mean that Yeager presents a risk of not

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appearing.” *Yeager*, slip op. at 7. But that is precisely what the Court of Appeals previously concluded a potentially lengthy sentence did mean. *See Sneed*, 946 N.E.2d at 1258–59 (citing *Hobbs*, 162 N.E.2d at 88). Likewise, the statement seems to acknowledge, but disregard the most important fact to be considered when addressing the risk of nonappearance outside of a defendant’s financial position. *See Hobbs*, 162 N.E.2d at 88. This Court should grant transfer to address the conflict.

Even if this Court disagrees with the State’s position that the trial court did not abuse its discretion in denying *Yeager*’s motion to reduce bail, transfer should be granted. The law as written and the decision in this case create an unnavigable quagmire. Indiana prosecutors and trial courts would greatly benefit if the Court addressed this issue.

CONCLUSION

This Court should grant transfer and affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that this Petition to Transfer contains no more than 4,200 words.

/s/ Sierra A. Murray
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CERTIFICATE OF SERVICE

I certify that on June 19, 2020, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on June 19, 2020, the foregoing document was electronically served upon the following person(s) via IEFS:

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