

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Robert Lloyd Huss,  
*Appellant-Defendant*,  
  
v.

State of Indiana,  
*Appellee-Plaintiff*.

December 28, 2023

Court of Appeals Case No.  
23A-CR-709

Appeal from the Huntington  
Circuit Court

The Honorable Kathleen Lang,  
Senior Judge

Trial Court Cause No.  
35C01-2208-F4-252

**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Kenworthy  
concur.

**Bradford, Judge.**

# Case Summary<sup>1</sup>

[1] On August 4, 2022, Andrews Town Marshal Austin Bullock received a tip from a reliable confidential informant that Robert Lloyd Huss had been dealing drugs and was armed with a handgun. The next day, Marshal Bullock observed Huss make a right turn without signaling and stopped his scooter. Marshal Bullock called for a K9 unit, which arrived and performed an open-air sniff on the scooter, which was positive. A search of Huss's scooter revealed items that ultimately led to charges of Level 4 felony unlawful possession of a firearm by a serious violent felon ("SVF"), Level 6 felony cocaine possession, Class B misdemeanor marijuana possession, and Class C misdemeanor illegal possession of paraphernalia. The State also alleged that Huss was a habitual offender.

[2] On January 12, 2023, the trial court denied Huss's motion to suppress the evidence recovered from his scooter. On January 30, 2023, Huss moved for a continuance on the basis of newly-discovered evidence, which consisted of information that had been obtained from a fellow inmate of Huss's at the Huntington County Jail tending to show that Huss had not knowingly or intentionally possessed the firearm found in his scooter. The trial court denied Huss's motion. A jury found Huss guilty as charged, Huss admitted to being a habitual offender, and the trial court sentenced Huss to an aggregate sentence of

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<sup>1</sup> We held oral argument in this case on December 12, 2023, at Muncie Central High School in Muncie, Indiana. We would like to commend counsel on the quality of their oral presentation and thank the students, administration, faculty, and staff of Muncie Central for their hospitality and assistance.

fourteen years of incarceration. Huss contends that the trial court abused its discretion in admitting evidence of the items found in his scooter because (1) Marshal Bullock had lacked probable cause to stop him, (2) the K9 sniff of his scooter had occurred after the stated purpose of the stop had ceased, and (3) the totality of the circumstances of the stop had rendered it unreasonable pursuant to Article 1, Section 11, of the Indiana Constitution. Huss also contends that the trial court abused its discretion in denying his continuance motion. We affirm.

## Facts and Procedural History

- [3] On August 4, 2022, Marshal Bullock received a tip from a confidential informant that Huss had been using and selling illegal substances. The informant, someone with whom Marshal Bullock had worked in the past and who had previously provided him with accurate information, further indicated that Huss “carried a chrome-in-color 357 Magnum,” which he stored “under the seat of” his scooter. Tr. Vol. II p. 20.
- [4] The next day, Marshal Bullock parked his police car at the Andrews Fire Department to watch traffic along Main Street. Marshal Bullock saw Huss exit a nearby building and get on the back of a scooter parked outside. Marshal Bullock watched as Huss drove away and made a right turn without signaling. Marshal Bullock stopped Huss for the observed traffic violation shortly before 11:12 a.m. Marshal Bullock radioed dispatch, notified them of the location of the stop, and requested that a drug-detection K9 be dispatched to perform an open-air sniff of the vehicle. Marshal Bullock approached Huss and informed

him that he had been stopped due to his failure to signal. When Marshal Bullock asked Huss to provide the scooter's registration, he appeared hesitant. When Huss opened the storage compartment underneath the scooter's seat, the registration paperwork was lying on top of several items, alongside a black leather bag. Huss reached to cover up the black bag with his hand as he retrieved the registration. Marshal Bullock returned to his police car and provided Huss's information to dispatch. In Marshal Bullock's experience, responses from dispatch had no "typical time frame[.]" and dispatch would respond with information "anywhere from 5 to 15 minutes" after receiving a communication from an officer "if all systems [were] working correctly[.]" Tr. Vol. II p. 15.

[5] At approximately 11:23 a.m., Marshal Bullock began preparing a citation to issue to Huss for failing to signal a turn. While Marshal Bullock was still running Huss's information through dispatch, Huntington County Sheriff's Deputy Matthew Weicht arrived. After Deputy Weicht's arrival, Marshal Bullock exited his police car, and they informed Huss that a K9 sniff would be performed on his scooter.

[6] At approximately 11:25 a.m., Deputy Austin Smith arrived with his K9 partner, Kylo Ren. Kylo Ren performed an open-air sniff around the exterior of the scooter and gave a positive alert. Police conducted a search of the storage compartment underneath the scooter's seat. Inside the black leather bag, police found a .357 Magnum revolver wrapped in a green towel. Officers also located a glass pipe containing a residue that later tested positive for cocaine.

- [7] While officers were searching Huss's scooter, Huss asked Deputy Weicht if he could smoke a cigarette. Deputy Weicht retrieved a cigarette box from Marshal Bullock. While examining the contents of the box, Weicht smelled the odor of burnt marijuana and noticed what appeared to be half of a hand-rolled cigarette inside the box. Huss admitted to Deputy Weicht that the cigarette contained marijuana.
- [8] On August 8, 2022, the State charged Huss with Level 4 felony illegal possession of a firearm by an SVF, Level 5 felony unlawful possession of a firearm, Class B misdemeanor marijuana possession, and Class C felony illegal possession of paraphernalia and alleged that he was a habitual offender. In December of 2022, Huss moved to suppress the evidence seized by police during the search of his scooter on the grounds that officers had "exceeded the scope of the stop by detaining the Defendant for an unnecessary length of time" and had "violated Article 1, Section 11 of the Indiana Constitution[.]" Appellant's App. Vol. II p. 65. At the suppression hearing, the State argued that Huss's motion to suppress should be denied because "the traffic stop was not extended at all prior to the open-air sniff" and also because officers had possessed "reasonable suspicion for continuing an investigation of Mr. Huss" based on the confidential informant's tip and Marshal Bullock's observations about Huss's behavior at the time of the stop. The trial court denied the motion to suppress after concluding that "the search from the K-9 did not prolong the stop." Tr. Vol. II p. 44.

[9] The day before his jury trial was scheduled to begin, Huss moved to continue, in which motion he alleged that he had received newly-discovered evidence from a fellow inmate named Scott Miller. Huss attached a statement from Miller, in which Miller described how he had attempted to buy a Ruger Python .357 firearm from “a friend” at Kil-So-Qua Campground “[a]round August 3rd 2022[.]” Appellant’s App. Vol. II p. 74. Miller’s statement indicated that the woman had handed the gun to him in a black leather bag and that Miller had discovered that the gun was stored with drug paraphernalia. According to Miller’s statement, he had hidden the gun inside the storage compartment of a nearby scooter after he had seen a person who had appeared to be a conservation officer approaching. Miller claimed that when he had returned to the scene to retrieve the firearm, the scooter had been gone.

[10] At the hearing on Huss’s motion to continue, defense counsel claimed that Huss had learned of Miller’s account while reviewing photographic evidence prior to the start of his trial. As counsel described the situation, Miller had approached Huss at the jail and had informed him that he had “information about his case” and that he had knowledge based on the “photographs of [...] a moped, a black bag, and photographs of a revolver.” Tr. Vol. II p. 49. The trial court denied Huss’s request for a continuance, and the case proceeded to trial. Huss called Miller to testify on his behalf, and Miller testified that a woman named Cassie Williams had shown him a gun inside a black leather bag at Kil-So-Qua Campground in late July or early August of 2022. Miller indicated that Williams had hidden the weapon inside the seat of a scooter after they had seen

what they thought might be a conservation officer approaching. Miller asserted that the gun that he had received from Williams was the same type of gun that police had later found in Huss's possession. Huss testified that he had stopped at Kil-So-Qua Campground on August 2, 3, or 4, 2022, to use the restroom and had returned to his scooter to find that the seat was down even though he had left it up to retrieve toilet paper. The jury found Huss guilty as charged, and the trial court sentenced him to an aggregate sentence of fourteen years of incarceration.

## Discussion

### I. Standard of Review

[11] A constitutional challenge to the admission of the evidence obtained through a warrantless search at a criminal trial implicates the exclusionary rules of the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the [Indiana Constitution](#). *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). At the trial court level, issues regarding the admissibility of evidence are properly left to the discretion of the court. *Wilson v. State*, 765 N.E.2d 1265, 1272 (Ind. 2002). On appeal, we review admissibility rulings for an abuse of discretion. *Clark*, 994 N.E.2d at 259. Although the ultimate question of a search's constitutionality is a matter of law that courts review *de novo*, *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014), claims regarding the reasonableness of a search or seizure are fact-sensitive inquiries, and a trial court's determination of the facts is entitled to deference. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008). Reversal of a conviction is appropriate only if a defendant can show that the

admission of evidence was contrary to the logic and effect of the facts and circumstances presented by his case or based on a misinterpretation of the law. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).

## II. Justification for Traffic Stop

- [12] Huss contends that Marshal Bullock lacked probable cause to stop him as he drove his scooter and that, even if the stop was justified, it was pretextual and therefore improper. The State responds that an officer only needs reasonable suspicion that a traffic violation has occurred to stop a vehicle, that Marshal Bullock had the necessary reasonable suspicion, and that a traffic stop is not invalid, even if it was pretextual.
- [13] It is well-settled that traffic stops are similar in nature to *Terry*<sup>2</sup> stops and therefore require only that an officer possess reasonable suspicion that a traffic violation has occurred. *Marshall v. State*, 117 N.E.3d 1254, 1258–59 (Ind. 2019). As the United States Supreme Court has noted, “[r]easonable suspicion is a less demanding standard than probable cause.” *Alabama v. White*, 496 U.S. 325, 330 (1990). To satisfy this standard, an officer must “be able to articulate some facts that provide a particularized and objective basis for believing a traffic violation occurred.” *Id.* at 1259. In other words, “[a]n officer’s decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred.” *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009); *see*

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<sup>2</sup> *See Terry v. Ohio*, 392 U.S. 1 (1968).



also *Datzek v. State*, 838 N.E.2d 1149, 1156 (Ind. Ct. App. 2005) (holding that a “traffic stop was justified” based on a defendant’s failure to activate a turn signal), *trans. denied*.

[14] Moreover, even if a police officer has an ulterior motive in stopping a vehicle, the stop is nonetheless valid so long as it was justified by objective circumstances. The United States Supreme Court has held that “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” *Whren v. U.S.*, 517 U.S. 806, 813 (1996). Consequently, even if Marshal Bullock had been motivated to stop Huss for a reason that had nothing to do with his driving, it would not matter so long as he had had objective reasonable suspicion.

[15] Huss does not dispute that an ulterior motive does not, by itself, render a traffic stop illegal. Huss, however, argues instead that Marshal Bullock could not have observed the traffic violation as he testified. The trial court, however, was entitled to credit Marshal Bullock’s testimony and did. In arguing that Marshal Bullock could not have seen him commit a traffic violation, Huss is merely asking this court to reweigh the evidence, which we will not do. *See, e.g., Campos*, 885 N.E.2d at 596.

### III. Open-Air K9 Sniff

[16] Huss argues that the search of the scooter violated the Fourth Amendment as the search was conducted without a warrant and without any proper exception to the warrant requirement. Put another way, Huss argues that the traffic stop was extended beyond the scope of its purpose in order to conduct a K9 free-air

search of the scooter. Huss also argues that the search of the scooter violated Article 1, Section 11, of the Indiana Constitution. The State argues that the traffic stop was not illegally extended beyond its purpose, justified due to reasonable suspicion that Huss was committing other crimes in any event, and reasonable pursuant to Article I, Section 11.

## **A. Fourteenth Amendment**

[17] A “reasonable narcotics [K9] sweep is not a search for purposes of the Fourth Amendment.” *Hansbrough v. State*, 49 N.E.3d 1112, 1114–15 (Ind. Ct. App. 2016) (citing *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2015)), *trans. denied*. “However, such a sweep is an unreasonable investigatory detention if the motorist is held for longer than necessary to complete the officer’s work related to the traffic violation and the officer lacks reasonable suspicion that the motorist is engaged in criminal activity.” *Id.* at 1115. For a K9 sniff to render a seizure unconstitutional under the Fourth Amendment, then, two things must be true—(1) the search must first prolong a stop beyond the amount of time needed for its purpose to be fulfilled and (2) it must also occur without any reasonable suspicion of criminal activity outside of the traffic violation. *Austin*, 997 N.E.2d at 1034.

### **1. Length of the Stop**

[18] Where a K9 sniff is concerned, the “critical question” is “not whether the [K9] sniff occurs before or after the officer issues a ticket,” but is instead “whether conducting the sniff ‘prolongs’—*i.e.*, adds time to—‘the stop.’” *Rodriguez v. U.S.*, 575 U.S. 348, 357 (2015) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407

(2005)). Only when there is a delay that extends a traffic stop beyond “the amount of time reasonably required to complete the stop’s mission” does an investigatory stop become “unlawful.” *Id.* (cleaned up); *see also Tinker v. State*, 129 N.E.3d 251, 256 (Ind. Ct. App. 2019), *trans. denied*.

[19] The evidence at the suppression hearing indicates that Marshal Bullock had stopped Huss at 11:11 a.m., informed dispatch of the stop and requested a K9 unit, and informed him of the reason for the stop. Marshal Bullock testified that, while there is no typical timeframe for sending information to dispatch and receiving a response, it could take anywhere from five to fifteen minutes “depending on if all systems are working correctly that day.” Tr. Vol. II p. 15. Officer Smith arrived with Kylo Ren slightly before 11:24 a.m. as Marshal Bullock was working on a citation for Huss, which he had begun to prepare at 11:23. Marshal Bullock exited his vehicle and spoke with Huss for approximately one minute and fifteen seconds before Kylo Ren sniffed the scooter and gave a positive alert.

[20] The State argues that the K9 sniff did not extend the length of the stop beyond the amount of time that would have been required to complete its mission, which was to issue Huss a warning for turning without signaling, and we agree. Marshal Bullock testified that receiving a response from dispatch could take up to fifteen minutes, only after which could a citation or warning be prepared; Marshal Bullock was in the process of preparing a warning when this process was delayed by approximately one minute by preparations for the K9 sniff, which was positive for contraband. In the end, there is no evidence that the

slight delay caused by preparing for the K9 sniff prolonged the traffic stop beyond what it would have taken to deliver and explain the warning to Huss. Huss has failed to establish that the traffic stop was illegally prolonged.

## **2. Reasonable Suspicion to Continue Investigation**

[21] Even if we were to assume, *arguendo*, that the traffic stop was illegally extended, Huss must still establish a lack of reasonable suspicion to continue the investigation. *See Austin*, 997 N.E.2d at 1034. The State argues that, even if the stop of Huss had been illegally extended by the K9 sniff, Marshal Bullock had had reasonable suspicion to continue his investigation. There is no precise, mathematical formula dictating when facts rise to the level of reasonable suspicion. *U.S. v. Arvizu*, 534 U.S. 266, 274 (2002) (“Our cases have recognized that the concept of reasonable suspicion is somewhat abstract.”). Determining whether reasonable suspicion existed is a fact-sensitive inquiry that requires courts to assess the totality of the circumstances present in case. *Navarette v. California*, 572 U.S. 393, 397 (2014). Even where specific behaviors are insufficient on their own to establish reasonable suspicion, they may create enough suspicion to justify an investigatory stop when considered in combination with other factors. *U.S. v. Sokolow*, 490 U.S. 1, 8–11 (1989). For an officer’s suspicions to be reasonable, they must consist of more than a mere “hunch,” *id.* at 7, but an officer may still rely on his own personal experience and specialized training, *Arvizu*, 534 U.S. at 273, “commonsense judgments and inferences about human behavior,” *Illinois v. Wardlow*, 528 U.S. 119, 125

(2000), and “practical considerations of everyday life,” *Navarette*, 572 U.S. at 402, when making the decision to initiate an investigatory stop.

[22] The State argues that Marshal Bullock had had reasonable suspicion to extend the traffic stop of Huss based on the tip he had received the previous day and Huss’s behavior during the stop. We agree. A tip from a confidential informant is sufficient to provide reasonable suspicion of criminal activity when the record contains sufficient indicia of the informant’s reliability. *Johnson v. State*, 659 N.E.2d 116, 119 (Ind. 1995). “The trustworthiness of hearsay from an informant can be established in a number of ways,” including (1) by evidence that the informant has given correct information in the past; (2) by evidence that independent police investigation corroborates the informant’s statements; (3) when “some basis for the informant’s knowledge is shown;” or (4) by evidence that the informant has predicted “conduct or activities by the suspect that are not ordinarily easily predicted.” *Teague v. State*, 891 N.E.2d 1121, 1128 (Ind. Ct. App. 2008). Marshal Bullock testified that the confidential informant from whom he had received the tip was known to him and had provided reliable information in the past; this is sufficient to establish the trustworthiness of the tip.

[23] Moreover, the State argues that Huss’s behavior during the stop contributed to reasonable suspicion, and we agree. The State notes that when Marshal Bullock asked Huss to provide him with the scooter’s registration, Huss appeared to try to conceal items inside the vehicle’s storage compartment. Initially, Huss told Marshal Bullock that he did not have the registration. After

Marshal Bullock questioned him further, Huss opened the compartment under the seat and placed his hand over a black leather bag as if he were “guarding that item[.]” Tr. Vol. II p. 22. Evasive actions are evidence of a consciousness of guilt on the part of a suspect. *See Glasgow v. State*, 99 N.E.3d 251, 259–60 (Ind. Ct. App. 2018) (noting that appearance of hiding objects in a suspicious manner gave police a high degree of concern for violation). Even if the traffic stop was extended beyond the amount of time necessary for the issuance of a warning, Marshal Bullock had reasonable suspicion to continue his investigation. Huss has failed to establish that the police investigation that led to the discovery of incriminating evidence violated the Fourth Amendment.

## **B. Article 1, Section 11**

[24] Although the Indiana Constitution’s search-and-seizure provision is written almost identically to the Fourth Amendment, Article 1, Section 11, requires an independent analysis. *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006). The legality of a search is determined by evaluating “the reasonableness of the police conduct under the totality of the circumstances.” *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). “Reasonableness of a search depends on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities; and (3) the extent of law enforcement needs.” *Holloway v. State*, 69 N.E.3d 924, 931 (Ind. Ct. App. 2017) (citing *Litchfield*, 824 N.E.2d at 361), *trans. denied*.

- [25] The State argues that each of the three *Litchfield* factors points to the reasonableness of the officers' conduct at the time of Huss's traffic stop. We agree. First, police had a heightened degree of suspicion that Huss was engaged in criminal activity. Marshal Bullock observed Huss commit a traffic infraction by failing to signal a right-hand turn and had received a tip from a reliable informant indicating that Huss was in possession of both illegal drugs and a firearm.
- [26] Second, the degree of intrusion into Huss's ordinary activities was low. Brief investigatory stops, like traffic stops, are considered a "relatively minor" intrusion for Article 1, Section 11, purposes. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). Before officers escalated the stop to a full-blown search, they had used a drug-detection K9 to conduct an open-air sniff outside Huss's scooter to confirm their suspicions that Huss was in possession of contraband. Article 1, Section 11, like the Fourth Amendment, does not treat a K9 sniff as a constitutional search, and so the officers' decision to conduct an open-air sniff "consisted of a minimal intrusion on" Huss's "ordinary activities." *McKinney v. State*, 212 N.E.3d 697, 707 (Ind. Ct. App. 2023), *trans. denied*; *see also Crabtree v. State*, 199 N.E.3d 410, 416 (Ind. Ct. App. 2022).
- [27] Finally, we conclude that the needs of law enforcement were significant. A police officer's general duties include enforcement of traffic laws, and a brief, roadside traffic stop is an "appropriate" means of carrying out those duties. *State v. Washington*, 898 N.E.2d 1200, 1206 (Ind. 2008). Additionally, Marshal Bullock was aware of reliable information that Huss had recently been dealing

illegal drugs and was known to keep a firearm underneath the scooter's seat—the same area where Marshal Bullock saw Huss trying to conceal an object from his view. We have previously recognized that guns go hand in hand with drugs. *Patterson v. State*, 958 N.E.2d 478, 486 (Ind. Ct. App. 2011) (finding credible an officer's testimony that in her experience “guns go hand in hand with drugs”). Officer needs related to matters of drug trafficking are “obviously high.” *McKinney*, 212 N.E.3d at 708. This Court has reasoned that “the trafficking of illegal drugs [is] frequently associated with violence and no simpler method exists for detection of hidden drugs than a [K9] sniff.” *State v. Gibson*, 886 N.E.2d 639, 643 (Ind. Ct. App. 2008). Huss has failed to establish that the search of his scooter was unreasonable pursuant to Article 1, Section 11.

#### IV. Denial of Continuance Motion

[28] Continuances to allow more time for preparation are generally disfavored in criminal cases. *Olson v. State*, 563 N.E.2d 565, 569 (Ind. 1990). Unless otherwise provided by statute (which Huss does not argue), the decision to grant or deny a request for a continuance falls within the discretion of the trial court and will be reversed only for an abuse of discretion. *Id.* An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. *Jackson v. State*, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001), *trans. denied*. A defendant cannot establish an abuse of discretion without showing that he was prejudiced by the court's ruling. *Harris v. State*, 659 N.E.2d 522, 527 (Ind. 1995). A defendant must make a “specific showing”



as to how additional time would have aided his defense or how he was prejudiced by the trial court's denial of a continuance. *Jones v. State*, 701 N.E.2d 863, 871 (Ind. Ct. App. 1998). "No abuse of discretion will be found" in the denial of a continuance unless the defendant makes a specific showing that additional time "would have generated something specifically of benefit to the defense." *Lawson v. State*, 664 N.E.2d 773, 782 (Ind. Ct. App. 1996), *trans. denied*.

[29] Huss waited until the day before his trial was set to begin to request his continuance. According to Huss's motion, the purpose of his continuance was to give counsel "additional time to interview" Miller, who had disclosed potentially exculpatory evidence about the origins of the firearm found in Huss's scooter. The statement indicated that Miller had noticed the photographs of Huss's evidence three days before his trial was set to commence and had recognized the firearm as the weapon that he had hidden inside the storage compartment of a scooter. Given the timing of the allegedly newly-discovered evidence, the trial court could have reasonably concluded from the circumstances that Huss's disclosure of Miller's statement had been an eleventh-hour attempt to delay the start of trial, rather than a legitimate discovery of new evidence. *See Martin v. State*, 453 N.E.2d 1001, 1006 (Ind. 1983) (concluding that the trial court had not abused its discretion when it denied a continuance because the evidence sought was of "questionable evidentiary value").

[30] The State further argues that Huss has not made a showing that he was prejudiced by the court's denial of his request for a continuance, and we agree. Huss had already had access to Miller's written statement by the time he moved to continue, which had outlined Miller's version of events. While Huss's attorney had been unable to interview Miller prior to the start of trial, she informed the trial court that she had made plans for her partner to do so in her place. Moreover, Miller testified regarding his version of events, *i.e.*, that a woman named Cassie Williams had shown him a gun inside a black leather bag at a local campground and that he had hidden the weapon inside the seat of a scooter after a conservation officer had approached. Miller asserted that the gun he had received from Williams had been the same type of gun that police had found in Huss's possession. Huss also testified on his own behalf that he had stopped to use the restroom at Kil-So-Qua Campground on August 2, 3, or 4, 2022, and had returned to his scooter to find that the seat was down even though he had left it up to retrieve toilet paper. The trial court's denial of the continuance therefore did not prevent Huss from putting his alternative theory of the case before the jury.

[31] Huss argues that, with more time, he might have been able to contact Williams to ascertain whether she could have provided corroborating evidence for Miller's account. This evidence, however, would have been, at best, cumulative, and the Indiana Supreme Court has recognized that a trial court does not abuse its discretion in denying a motion for a continuance when newly-discovered evidence is merely cumulative of other evidence already

available. *Montano v. State*, 468 N.E.2d 1042, 1047 (Ind. 1984). Huss has failed to establish that the trial court abused its discretion in denying his eve-of-trial continuance motion.

[32] The judgment of the trial court is affirmed.

Altice, C.J., and Kenworthy, J., concur.