

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Curtis Baker,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 17, 2023

Court of Appeals Case No.  
22A-CR-2226

Appeal from the  
Marion Superior Court

The Honorable  
Cynthia Oetjen, Judge

Trial Court Cause No.  
49D30-1911-MR-42470

**Memorandum Decision by Judge Vaidik**  
Judges Mathias and Pyle concur.

**Vaidik, Judge.**

## Case Summary

- [1] Following a shooting at an Indianapolis bar, the State charged Curtis Baker with murder. Less than a week before trial, the State added a habitual-offender charge. Baker was convicted of murder and found to be a habitual offender, and the trial court sentenced him to sixty years for murder enhanced by twenty years for being a habitual offender. Baker now appeals his habitual-offender finding, arguing the trial court erred in allowing the State to add the charge so close to trial. Because Baker did not object to the late filing or request a continuance, he has waived review of this issue. We therefore affirm the trial court.

## Facts and Procedural History

- [2] In the early morning hours of October 3, 2019, a fight broke out between some patrons and staff at Connor’s Pub in Broad Ripple. Alfred Hayes, an off-duty employee of the bar, tried to get the disruptive patrons to leave. The argument escalated, and Baker shot Hayes in the chest, killing him. Baker was arrested and charged with murder.
- [3] After multiple continuances, on April 21, 2022, the trial court scheduled a jury trial for August 8 and said there would be “no further continuances.” Appellant’s App. Vol. II p. 128. Although there was no formal written plea offer, Baker and the State engaged in plea negotiations less than a week before

the jury trial was scheduled to begin. Tr. Vol. II p. 108. Baker, however, told his attorney that he was not going to enter into an agreement under the State’s proposed terms. *Id.*

[4] On August 3, five days before trial, the State filed a habitual-offender charge. Before trial started on August 8, the trial court held an initial hearing on the habitual-offender charge. Baker did not object to the late addition of the charge or request a continuance. Baker’s attorney explained that the State had reached out to him before filing the charge and said that it had “held off” on filing the charge in hopes of resolving the case by a plea agreement. Baker’s attorney told the court that “we’ve kinda known where this was gonna go[.]” *Id.*

[5] The jury found Baker guilty of murder. Baker waived his right to a jury trial on the habitual-offender charge, and the trial court found him to be a habitual offender. The court sentenced Baker to sixty years for murder enhanced by twenty years for being a habitual offender, for a total sentence of eighty years.

[6] Baker now appeals.

## Discussion and Decision

[7] Baker contends the trial court erred in allowing the State to file the habitual-offender charge less than thirty days before trial. The State responds that Baker has waived review of this issue for failing to object and request a continuance.

[8] Indiana Code section 35-34-1-5(e) addresses when a charging information can be amended to add a habitual-offender charge:

(e) An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8 must be made at least thirty (30) days before the commencement of trial.

**However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial if the amendment does not prejudice the substantial rights of the defendant.** If the court permits the filing of a habitual offender charge less than thirty (30) days before the commencement of trial, the court shall grant a continuance at the request of the:

(1) state, for good cause shown; or

(2) defendant, for any reason.

(Emphasis added). To preserve a challenge to the filing of a habitual-offender charge less than thirty days before trial, a defendant must object to the filing and, if the court overrules the objection and allows the filing, request a continuance. *See White v. State*, 963 N.E.2d 511, 518 (Ind. 2012). Here, Baker did neither.

[9] Baker argues that because the trial court had earlier said there would be no more continuances, he “was precluded from requesting a continuance of his trial in order to preserve the habitual information issue for review.” Appellant’s Br. p. 7. There are two problems with this argument. First, by focusing on the continuance, Baker ignores the fact that he didn’t object to the late filing. In fact, Baker’s attorney told the court that they were expecting the habitual-offender charge since plea negotiations had recently fallen apart. That failure to object, by itself, waived any argument about the filing. Second, the notion that

Baker was precluded from asking for a continuance is simply not true. According to the clear language of Section 35-34-1-5(e), once the court allowed the late filing, Baker was entitled to a continuance, notwithstanding the court's prior statement that no more continuances would be granted. But Baker's failure to request a continuance makes it impossible to know how the court would have ruled. Baker has thus waived review of this issue.

[10] Affirmed.

Mathias, J., and Pyle, J., concur.