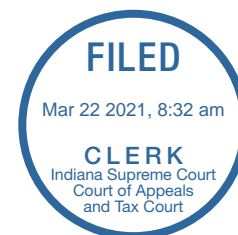


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEY FOR APPELLANT

Ronald K. Smith  
Muncie, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

George P. Sherman  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Scott D. Hartman,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 22, 2021

Court of Appeals Case No.  
20A-CR-422

Appeal from the Delaware Circuit  
Court

The Honorable Linda Ralu Wolf,  
Judge

Trial Court Cause No.  
18C03-1907-F4-29

**Najam, Judge.**

## Statement of the Case

[1] Scott D. Hartman appeals his convictions for unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and operating a motor vehicle while privileges are suspended, as a Class A misdemeanor, following a jury trial. He presents three issues for our review:

1. Whether the trial court erred when it granted the State's motion to continue his trial under Indiana Criminal Rule 4(D).
2. Whether the trial court abused its discretion when it admitted certain evidence at trial.
3. Whether the trial court abused its discretion when it limited his cross-examination of a witness.

[2] We affirm.

## Facts and Procedural History

[3] On June 28, 2019, Muncie Police Department Officer Jeremy Gibson conducted a traffic stop of a GMC Jimmy after observing a traffic violation regarding the license plate. Hartman, whose driver's license was suspended, was driving the vehicle, and Kerry Fritz was sitting in the front passenger seat. Other officers arrived, including a K-9 officer, who alerted to the presence of narcotics after sniffing the exterior of the vehicle. Officer Gibson arrested Hartman. Hartman told Officer Gibson that there was a rifle on the floor behind the driver's seat of the vehicle and that the rifle belonged to him. Officers then found marijuana located in between the driver's seat and the

center console of the vehicle. Officers also found an unlabeled bottle of pills in the center console.

[4] On July 3, the State charged Hartman with unlawful possession of a firearm by a serious violent felon, a Level 4 felony; possession or use of a legend drug, as a Level 6 felony; operating a motor vehicle while privileges are suspended, as a Class A misdemeanor; and possession of marijuana, as a Class B misdemeanor. Hartman moved for a speedy trial, and, on July 22, the trial court granted that motion and scheduled his trial for September 23.

[5] On August 27, the State moved to continue the trial date under Indiana Criminal Rule 4(D). In particular, the State alleged that “certain items of evidence” had been sent to the Indiana State Police Laboratory (“the Lab”) for testing, which was not yet complete. Appellant’s App. Vol. 2 at 52. The State also asserted that the testing was not likely to be completed in time for the September 23 trial. Accordingly, the State requested an additional ninety days to obtain the evidence. On August 28, the trial court granted the State’s motion to continue, over Hartman’s objection, and scheduled the trial for November 18.

[6] On September 2, Hartman filed a motion to suppress the evidence officers had obtained during the traffic stop. And on September 23, Hartman filed a motion for discharge under Criminal Rule 4(B)(1). The trial court denied both motions. Prior to trial, on the State’s motion, the trial court dismissed the charge for possession of a legend drug. A jury found Hartman guilty of unlawful

possession of a firearm by a serious violent felon, a Level 4 felony; and operating a motor vehicle while privileges are suspended, as a Class A misdemeanor; but acquitted Hartman of possession of marijuana. The trial court entered judgment of conviction accordingly and sentenced Hartman to an aggregate term of eight years executed. This appeal ensued.

## Discussion and Decision

### *Issue One: Speedy Trial*

[7] Hartman requested a speedy trial and asserts on appeal that the trial court granted the State's August 27, 2019, motion to continue in violation of his speedy-trial rights. The right of an accused to a speedy trial is guaranteed by the United States and Indiana Constitutions. U.S. Const. amend. VI; Ind. Const. art. 1, § 12. Indiana Criminal Rule 4 implements those rights and generally requires a criminal defendant who is in jail to be brought to trial within seventy days of his speedy-trial request. Ind. Criminal Rule 4(B)(1). However, among other reasons for extensions of that timeframe, Indiana Criminal Rule 4(D) provides as follows:

If when application is made for discharge of a defendant under this rule,<sup>[1]</sup> the court be satisfied that there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days, *the cause may be*

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<sup>1</sup> This Court has held that, despite this language, a trial court may “properly grant the State a continuance pursuant to Criminal Rule 4(D) even though [a defendant has] not yet filed a motion to discharge.” *Chambers v. State*, 848 N.E.2d 298, 303 (Ind. Ct. App. 2006), *trans. denied*.

*continued*, and the prisoner remanded or admitted to bail; and if he be not brought to trial by the state within such additional ninety (90) days, he shall then be discharged.

(Emphasis added).

- [8] In his brief on appeal, Hartman does not acknowledge Criminal Rule 4(D). He makes no contention, for instance, that the State had not made a reasonable effort to procure the evidence. Rather, Hartman asserts that, “due to [a] stipulation” that he submitted to the trial court on August 29 that the substances found in his vehicle were marijuana and a legend drug, “there was no reason for the trial court to grant a continuance under Criminal Rule 4(B).” Appellant’s Br. at 13. In support, Hartman cites Indiana Code Section 35-36-7-2(b) (2020), which provides in relevant part that a trial court “may not” postpone a trial on the State’s motion “because of the absence of written or documentary evidence [if] the defendant admits that the written or documentary evidence exists.”
- [9] Hartman’s contention on this issue fails for the following reasons. First, Hartman does not direct us to the page in his appendix where the alleged stipulation can be found, in violation of Indiana Appellate Rule 46(A)(8)(a). Second, according to Hartman, he did not submit his stipulation until after the trial court had continued the trial under Criminal Rule 4(D) on the State’s motion. Because the trial had already been postponed when Hartman submitted his stipulation, Hartman cannot show any violation of Indiana Code Section 35-36-7-2(b).

[10] Hartman’s reliance on *Hill v. State*, 773 N.E.2d 336 (Ind. Ct. App. 2002), is misplaced. In *Hill*, we held that, under Indiana Code Section 35-36-7-2(b), the trial court erred when it granted the State’s motion to continue the trial despite the defendant’s stipulation to certain evidence. *Id.* at 345. But unlike Hartman’s alleged stipulation here, which was submitted after the trial court had already granted the State’s motion to continue, the defendant’s stipulation in *Hill* was submitted before the court had ruled on the motion to continue.

[11] In sum, Hartman makes no contention that the trial court’s grant of the State’s motion to continue violated Criminal Rule 4(D). And Hartman has not shown that the trial court violated Indiana Code Section 35-36-7-2(b) when it granted the State’s motion to continue the trial. Thus, the trial court did not violate Hartman’s speedy-trial request when it granted the State’s motion to continue under Criminal Rule 4(D). *See, e.g., Kindred v. State*, 524 N.E.2d 279, 290 (Ind. Ct. App. 1988) (holding “[t]he absence of a key witness through no fault of the State is good cause for extending the time period requirements for an early trial” under Criminal Rule 4(D)).

### ***Issue Two: Admission of Evidence***

[12] Hartman next contends that the trial court abused its discretion when it admitted into evidence at trial “the fruits of the search of the vehicle” because the evidence was “illegally obtained.” Appellant’s Br. at 15, 18. Hartman initially challenged the admission of this evidence through a motion to suppress but now appeals following a completed trial. Thus, the issue is appropriately

framed as whether the trial court abused its discretion by admitting the evidence at trial. *Connor v. State*, 114 N.E.3d 901, 904 (Ind. Ct. App. 2018).

[13] It is well settled that “[a] pre-trial motion to suppress does not preserve an error for appellate review; the defendant must make a contemporaneous objection sufficient to preserve the issue for appeal.” *Scott v. State*, 924 N.E.2d 169, 174 (Ind. Ct. App. 2010), *trans. denied*. The failure to make such an objection waives any claim on appeal that the evidence was improperly admitted. *Id.* Here, the State contends that Hartman did not make contemporaneous objections to the challenged evidence at trial. Indeed, Hartman does not dispute that contention, and he does not cite any portions of the transcript to show that he made the necessary objections at trial. Accordingly, Hartman has waived this issue for our review. *Id.*

### ***Issue Three: Cross-Examination of Witness***

[14] Finally, Hartman contends that the trial court abused its discretion when it limited his cross-examination of Fritz, the passenger in his vehicle at the time of his arrest. In particular, the trial court granted the State’s pre-trial motion in limine which prohibited Hartman from cross-examining Fritz about any prior bad acts. However, as the State points out, Hartman did not preserve this issue for our review.

[15] It is well settled that “[o]nly trial objections, not motions in limine, are effective to preserve claims of error for appellate review.” *Raess v. Doescher*, 883 N.E.2d 790, 796-97 (Ind. 2008). “A trial court’s ruling on a motion in limine does not

determine the ultimate admissibility of the evidence; that determination is made by the trial court in the context of the trial itself.” *Walnut Creek Nursery, Inc. v. Banske*, 26 N.E.3d 648, 653 (Ind. Ct. App. 2015). “Absent either a ruling admitting evidence accompanied by a timely objection or a ruling excluding evidence accompanied by a proper offer of proof, there is no basis for a claim of error.” *Id.* (quoting *Hollowell v. State*, 753 N.E.2d 612, 615-16 (Ind. 2001)).

[16] Here, Hartman does not direct us to any part of the transcript to show that the trial court limited his cross-examination of Fritz during trial in any way. And while Hartman made an offer of proof during argument on the motion in limine, he did not make an offer of proof during his cross-examination of Fritz. Hartman has waived this issue for our review. *See id.*

[17] Affirmed.

Pyle, J., and Tavitas, J., concur.