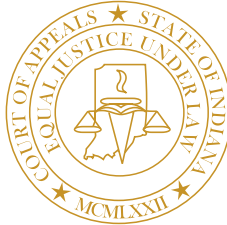


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Drew Carter, III,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

November 4, 2025

Court of Appeals Case No.
24A-CR-2733

Appeal from the Lake Superior Court
The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-2210-MR-43

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Drew Carter, III, appeals his conviction for murder and Level 3 felony kidnapping. On appeal, he raises two issues:

I. Whether he was entitled to discharge under Criminal Rule 4(C) because the State failed to bring him to trial within one year.

II. Whether the trial court abused its discretion when the court allowed a witness to testify that Carter admitted to killing another person on the day he committed the murder charged in this case.

[2] We affirm.

Facts and Procedural History

[3] On February 24, 2019, Jessica Flores and Melina Cottrell smoked crack throughout the day at various locations in and near Gary, Indiana. That night, they returned to a home in Gary where they had obtained drugs earlier in the day. There were several people in the home that night using drugs, including Carter. Flores had previously been involved in a relationship with Carter.

[4] After the trio smoked cocaine together in a bedroom, Flores and Cottrell began to argue. They continued arguing, and the owner of the residence told Carter that all three of them needed to leave. Carter was angry with Flores and Cottrell that he was also told to leave. They left the home in Flores's boyfriend's white Nissan, which Flores had borrowed earlier in the day.

- [5] The trio drove around the area while drinking vodka and stopping at multiple houses to attempt to buy more crack. Carter continued to express anger at Flores for various incidents throughout the night, including being unable to enter the home they were kicked out of earlier and Flores honking the horn of the car repeatedly while Carter was in his relative's house obtaining more crack. Flores was also angry with Carter because she felt that he did not get enough crack cocaine. Eventually, while Carter was driving the vehicle and Flores and Cottrell were seated in the back seat, he stopped the car. Carter asked Flores if he could have sex with Cottrell. Flores said no. Cottrell then saw a gloved hand between the front seats holding a gun, and Carter shot Flores.
- [6] Cottrell exited the car and ran, but Carter chased after her. After Carter caught Cottrell, they returned to the car, and he drove them to his relative's house. Flores and Carter entered the home and went into a bedroom. Carter and Cottrell laid down on the bed together, and he put his hand up her shirt. After Carter fell asleep, Cottrell left the house and walked to a gas station. Cottrell found a ride at the gas station, and that person took Cottrell to her friend's home.
- [7] Flores's boyfriend became concerned when Flores did not return home, and, on February 26, he called the police to report that Flores was missing. That same day, police officers found the boyfriend's white Nissan in an alley in Chicago. The rear seat of the vehicle had been intentionally set on fire and was burnt. Law enforcement officers also found blood under the rear seat, which was later identified as Flores's blood. Flores's boyfriend also discovered that Flores had

taken photographs with his cell phone on the night she was murdered, and Carter was in one of the photos. On March 8, Cottrell reported Flores's murder to the police and identified Carter as the shooter from a photo array.

[8] On March 12, the State charged Carter with murder, and he was arrested two days later. But the State dismissed those charges several months later. On April 20, 2020, Flores's remains were found in the woods at a park in Gary. A pathologist concluded that Flores had died from a gunshot wound to the head.

[9] On October 3, 2022, the State again charged Carter with murder along with Level 3 felony kidnapping, Level 3 felony criminal confinement, Level 5 felony criminal confinement, and firearm enhancements on three counts. The trial court set Carter's jury trial for April 10, 2023, without objection. But Carter later filed a continuance to the trial setting due to counsel's unavailability and both parties' continued discovery requests. The trial court granted Carter's motion for a continuance and reset his trial for December 4, 2023.

[10] As the trial date approached, the parties filed motions concerning the admissibility of certain cell phone records. Carter alleged that the State had failed to timely disclose evidence pertaining to those records. The State admitted to the delayed disclosure but asserted that it only intended to present evidence from one of the five seized cell phones. On November 14, Carter filed a motion to continue his trial citing the tardy disclosure of the cell phone records and defense counsel's workload. The trial court agreed to reset Carter's jury trial for his requested trial date, June 3, 2024.

- [11] On the eve of trial, Carter filed a Criminal Rule 4(C) motion for discharge. The trial court disagreed with Carter's assertion that certain delays should be attributed to the State and denied Carter's motion.
- [12] Cottrell's credibility was the central issue at trial. During his cross-examination of Cottrell, Carter asked her why she waited twelve days to report the murder to law enforcement. In response, the State asked the trial court to relieve it from the court's order on a motion in limine concerning Carter's statements to Cottrell that Flores was not the first person he had killed and that he had threatened a third party referred to as "Little Debbie," whom Cottrell and Carter had encountered on the night he murdered Flores. The State argued that Carter's cross-examination had left the jury with the false impression that Flores's murder was the only reason Cottrell feared Carter. The trial court agreed to allow Cottrell to testify that Carter told her that Flores was not the first person that he had killed on the day he shot Flores. On redirect examination, Cottrell testified consistently with the trial court's ruling and also stated that Carter had referred to Little Debbie as a "loose end." Tr. Vol. 5, p. 166.
- [13] The jury found Carter guilty as charged. Carter waived his right to a jury trial on the firearm enhancements, and the court found that three offenses were committed with a firearm. On October 9, the trial court entered judgment of conviction on murder and Level 3 felony kidnapping, imposed a firearm enhancement on the murder conviction, and ordered Carter to serve an aggregate 101-year sentence.

[14] Carter now appeals.

Carter Was Not Entitled to Discharge Pursuant to Criminal Rule 4(C)

[15] Carter claims he was entitled to discharge pursuant to Criminal Rule 4(C). Carter acknowledges that he requested continuances of his original trial date but argues that the ultimate delays in holding his trial should be attributed to the State because of its delayed discovery disclosure.

[16] Both the United States Constitution and Indiana Constitution guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Ind. Const. art. 1, § 12. Criminal Rule 4(C) protects this right and provides, in pertinent part,

No person can be held on recognizance or otherwise to answer a criminal charge for a period in aggregate exceeding one year from the date the criminal charge against such defendant is filed, or from the date of the arrest on such charge, whichever is later. Delays caused by a defendant, congestion of the court calendar, or an emergency are excluded from the time period. If a defendant is held beyond the time limit of this section and moves for dismissal, the criminal charge against the defendant must be dismissed.

[17] Therefore, a defendant may seek and be granted a dismissal if he is not brought to trial within the required time. *State v. Harper*, 135 N.E.3d 962, 972 (Ind. Ct. App. 2019), *trans. denied*. However, “criminal defendants extend the one-year period by seeking or acquiescing in delay resulting in a later trial date.” *Battering v. State*, 150 N.E.3d 597, 601 (Ind. 2020) (quotation marks omitted). “We

generally review a trial court’s ruling on a motion for discharge for an abuse of discretion.” *Id.* at 600 (citation omitted). However, if the issue concerns “‘a question of law applied to undisputed facts, the standard of review—like for all questions of law—is de novo,’ with the ‘ultimate reasonableness of the trial court’s findings’ dependent on ‘the facts and circumstances of the particular case.’” *Bradley v. State*, 248 N.E.3d 563, 567 (Ind. 2024) (quoting *Austin v. State*, 997 N.E.2d 1027, 1039 (Ind. 2013)).

[18] The following timeline of events is relevant to this issue. First, the parties agree that the 194 days that elapsed between Carter’s arrest when he was first charged with murder in case number 45G02-1903-MR-8 and the date of dismissal of that charge are attributable to the State. Therefore, when the State recharged and arrested Carter under this case number on October 4, 2022, it had 171 days remaining to bring Carter to trial absent any delays attributable to Carter, court congestion, or emergency. The State also does not disagree with Carter’s argument that the fifty-eight days that elapsed between October 4 and November 30, 2022, which was the date Carter filed a motion to continue, were attributable to the State. That left the State with 113 days to bring Carter to trial.¹ And the number of days that elapsed between Carter’s November 30,

¹One hundred and thirteen days after December 4, 2023 would have been March 26, 2024.

2022, motion to continue and the new trial date of December 4, 2023, were attributable to Carter.²

[19] On November 14, 2023, Carter filed a second motion to continue his trial because the State had belatedly disclosed cell phone records that counsel would not have had time to review sufficiently before the December 4 trial date. Appellant's App. Vol. 2, p. 62. In the motion, Carter also disclosed that he had recently hired private counsel. Over the State's objection, the trial court granted Carter's motion to continue and suggested a trial date of May 6, 2024. Defense counsel asked the court to set Carter's trial for June 3, and the court agreed to Carter's request. Tr. Vol. 2, pp. 10, 12.

[20] The central question is thus whether the delay of Carter's trial from December 4, 2023, to June 3, 2024, is attributable to the State or to Carter. In his motion for discharge and on appeal, Carter argued that the reason for his November 14, 2023, motion to continue, and thus the delay that resulted, should be attributed to the State under Rule 4(C)'s discovery exception. Our supreme court has held that, "[w]hen a trial court grants a defendant's motion for continuance because of the State's failure to comply with the defendant's discovery requests, the resulting delay is not chargeable to the defendant." *Carr v. State*, 934 N.E.2d 1096, 1101 (Ind. 2010). This exception seeks to avoid putting criminal

² We do not agree with Carter's claim that the days between his November 14, 2023, motion to continue and his December 4, 2023, trial date are attributable to the State. Because his first motion to continue resulted in the December 4, 2023, trial date without objection, all dates between his first motion and that trial date are attributable to Carter.

defendants in the “untenable situation” in which they “must either go to trial unprepared due to the State’s failure to respond to discovery requests or be prepared to waive their rights to a speedy trial[.]” *Wellman v. State*, 210 N.E.3d 811, 815 (Ind. Ct. App. 2023) (quoting *Biggs v. State*, 546 N.E.2d 1271, 1275 (Ind. Ct. App. 1989)).

[21] The State disagrees with Carter’s claim that the discovery exception applies but also argues that Carter acquiesced to the June 3, 2024, trial date, which put his trial beyond the one-year period. “[A] defendant whose trial is set outside the one-year period must object to the setting at the earliest opportunity or the right to discharge under the rule is waived.” *Brown v. State*, 725 N.E.2d 823, 825 (Ind. 2000). Requiring the defendant to make a timely objection comports with the purpose of Criminal Rule 4(C), which is to “move cases along and to provide the defendant with a timely trial, not to create a mechanism to avoid trial.” *Id.*; see also *Bradley*, 248 N.E.3d at 573 (explaining that, “[b]ecause the right to a speedy trial is ‘not a self-executing right,’ a defendant with a Criminal Rule 4 claim must . . . take affirmative action to avoid waiving that claim for review”) (citation omitted); *Crabb v. State*, 242 N.E.3d 539, 542 (Ind. Ct. App. 2024) (observing that a defendant waives his Criminal Rule 4(C) rights by failing to offer a timely objection to a trial date set outside the one-year limitation).

[22] We do not approve of the State’s belated discovery disclosures. Nonetheless, and assuming for the sake of argument that the December 4, 2023, to June 3, 2024, delay could be attributed to the State, Carter acquiesced in the June 3, 2024, trial date. He affirmatively requested that trial date after the State and the

court had sought an earlier trial setting. We conclude that Carter acquiesced to the June 3 trial date, and, therefore, he waived his Rule 4(C) rights to have the key portion of time attributed to the State.

The Trial Court Did Not Abuse Its Discretion When It Admitted Evidence of Prior Misconduct

[23] Carter next argues that the trial court abused its discretion by allowing Cottrell to testify that Carter had told her that he killed another person on the same day that he killed Flores. A trial court has broad discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court’s ruling was clearly against the logic and effect of the facts and circumstances before it and the errors affect a party’s substantial rights. *Id.*

[24] Indiana Evidence Rule 404(b) provides that, in general, “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” However, such “evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.*

[25] Carter attempted to cast doubt on Cottrell’s credibility, in part, by focusing on her delayed disclosure to law enforcement that she had witnessed Flores’s murder. The State claims that, in doing so, Carter opened the door to Cottrell’s challenged testimony because Carter elicited testimony from Cottrell on cross-

examination that left the jury with the false impression that Cottrell's only source of fear of reporting the murder to the police was Flores's murder.

[26] We agree with the State. "Otherwise inadmissible evidence may be admitted where the defendant opens the door to questioning on that evidence. The door may be opened when the trier of fact has been left with a false or misleading impression of the facts." *Clark v. State*, 915 N.E.2d 126, 130 (Ind. 2009) (internal citation omitted). "When that happens, the State may introduce otherwise inadmissible evidence if it 'is a fair response to evidence elicited by the defendant.'" *Wilder v. State*, 91 N.E.3d 1016, 1023 (Ind. Ct. App. 2018) (quoting *Cameron v. State*, 22 N.E.3d 588, 593 (Ind. Ct. App. 2014)). This includes evidence otherwise constitutionally prohibited or barred by the Rules of Evidence. *See Cameron*, 22 N.E.3d at 592-93.

[27] During his cross-examination of Cottrell, Carter asked her why she had waited twelve days to report the murder to law enforcement. Tr. Vol. 5, pp. 143-49. Carter elicited testimony from Cottrell that she was scared and that Carter had told her he did not "leave loose ends." *Id.* at 144. Carter also elicited testimony that Cottrell did not report Flores's murder "because [she] didn't want to get [her]self into something [she] wouldn't be able to get [her]self out of[.]" *Id.* at 149.

[28] Before its redirect examination of Cottrell, the State requested a bench conference and argued that Carter's cross-examination had opened the door to additional questioning about other reasons Cottrell feared Carter, specifically

Carter's statement to Cottrell that he had killed another person before killing Flores. *Id.* at 150. The trial court agreed, and Cottrell was allowed to testify that Carter told her that Flores was not the first person he had killed "that day." *Id.* at 166. Cottrell also stated that Carter was looking for Little Debbie on the day he shot Flores and that he called Little Debbie a "loose end." *Id.*

[29] Cottrell's testimony and credibility was a central issue in this case. In Carter's opening statement, Carter argued that the evidence would show that Cottrell lied to the police, that she did not ask for help after she fled from Carter after Flores's murder, that her claims that she was scared were not credible, and she waited twelve days before she spoke to the police. Tr. Vol. 3, pp. 77-78, 83, 84. Likewise, the bulk of Carter's closing argument was that Cottrell was not credible, and the State's other evidence did not corroborate her testimony. Tr. Vol. 8, pp. 92-115.

[30] Because Cottrell's credibility was critical to the case, the State argued that it was important to correct the misimpression that Cottrell's only source of fear was Flores's murder. Moreover, the trial court did not admit Cottrell's testimony for the purpose of establishing that Carter had killed another person the same day he killed Flores. The court admitted the testimony for two reasons: 1) the statement was an implicit admission that Carter had killed Flores, and 2) that Carter made the statement to Cottrell for the purpose of scaring her or threatening her to prevent her from going to the police. The trial court did not abuse its discretion when it admitted Cottrell's challenged testimony.

Conclusion

[31] For all of these reasons, we affirm Carter's convictions.

[32] Affirmed.

May, J., and Bradford, J., concur.

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