

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 14, 2026

FILED

05/29/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ROY GENE NICHOLSON, III

**Appeal from the Circuit Court for Williamson County
No. N-CR240020 Deanna B. Johnson, Judge**

No. M2024-01852-CCA-R3-CD

The Defendant, Roy Gene Nicholson, III, appeals from his Williamson County Circuit Court convictions of reckless aggravated assault, evading arrest, possession of marijuana with the intent to sell or deliver, and unlawful possession of a firearm during the commission of a dangerous felony, for which he received an effective sentence of five years' incarceration. On appeal, the Defendant argues that his arresting officer did not have reasonable suspicion to initiate a traffic stop pursuant to Tennessee Code Annotated section 55-8-204 and that his Sixth Amendment right to a speedy trial was violated by the trial court's granting the State's motion to continue his trial, during which time the State procured a superseding indictment. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgments of the Circuit Court Affirmed**

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TOM GREENHOLTZ, JJ., joined.

David Christensen, Columbia, Tennessee, (on appeal); and E. Kendall White, IV, Franklin, Tennessee, (at trial), for the appellant, Roy Gene Nicholson, III.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Stacey B. Edmonson, District Attorney General; and Carlin C. Hess, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This case arises from offenses committed following an April 24, 2022 traffic stop. On October 10, 2022, a Williamson County grand jury returned a three-count indictment charging the Defendant with two counts of aggravated assault against a first responder and one count of evading arrest.

On March 10, 2023, the Defendant filed a motion to suppress evidence obtained following the April 24, 2022 traffic stop. In his motion, the Defendant argued that he was stopped “for illegal window tint” and for violating Tennessee Code Annotated section 55-8-204, the Tennessee “Slow Poke Law.”¹ He argued that his windows were tinted within two percent of the legal limit and were “not discernibly illegal by the naked eye” and that the Slow Poke Law did not apply “when there are access ramps” where the arresting officer “purported to see a violation.” The Defendant also argued that the arresting officer conducted a warrantless search of his vehicle by “shoving his face” into the Defendant’s window during the traffic stop and by patting him down after he exited his vehicle.

On March 22, 2023, the State filed a response in opposition to the Defendant’s motion to suppress. The State noted that the Defendant did not specify what evidence he sought to have suppressed and instead focused his arguments on alleged Fourth Amendment violations occurring prior to “his fleeing from the police” before his arrest. The Defendant filed an amended motion to suppress that same day, arguing that the arresting officer was not qualified to initiate a traffic stop on suspicion that the Defendant’s windows were tinted beyond the legal limit because he was not a “full-time, salaried police officer.”²

¹ Tennessee Code Annotated section 55-8-204 provides, as relevant here, that “[o]n interstate and multilane divided highways that are two (2) or more lanes in each direction, a person shall not operate a vehicle in the passing lane, except when overtaking or passing a vehicle that is in a nonpassing lane.” Tenn. Code Ann. § 55-8-204(a). As relevant to this appeal, “passing lane” refers to “[t]he furthestmost left lane.” *Id.* § 55-8-204(e)(2)(A).

² At the time of the Defendant’s traffic stop, Tennessee Code Annotated section 55-9-107 provided, as relevant here, that “[i]t is unlawful for any person to operate, upon a public highway, street or road, any motor vehicle in which any window . . . [h]as a visible light transmittance of less than thirty-five percent[.]” Tenn. Code Ann. § 55-9-107(a)(1) (2016) (subsequently amended). Code section 55-9-107 further provided

It is probable cause for a full-time, salaried police officer of this state to detain a motor vehicle being operated on the public roads, streets or highways of this state when the officer has a reasonable belief that the motor vehicle is in violation of subdivision (a)(1), for the purpose of conducting a field comparison test.

Id. § 55-9-107(c) (2016) (subsequently amended).

The trial court held a hearing on the Defendant's motion to suppress on April 14, 2023. At the hearing, Franklin Police Department (FPD) Officer Dustyn Stevens testified that he was trained in drug identification and had previously worked in narcotics investigations. He testified that he worked the day shift on April 24, 2022, and that at approximately 10:00 a.m., he sat in his parked patrol vehicle on an "emergency truck pull-off area" near mile marker 63 on Interstate 65. He described this location as being between two exits, one located at mile marker 61 and the other at mile marker 65. He stated that this section of the interstate had four lanes of traffic.

Officer Stevens recalled that while he was sitting in his patrol vehicle, he saw a white Infiniti sedan driving in the far-left lane. He stated that the vehicle was not passing any other vehicles and that the nearest other vehicle on the interstate was approximately one-half of a mile south of the vehicle. Officer Stevens testified that he was unable to see into the vehicle as it passed him and that he believed that the windows were tinted beyond the legal limit. He also averred that the driver, whom he later identified as the Defendant, was in violation of the Slow Poke Law by operating his vehicle in a passing lane while not passing another vehicle. Accordingly, Officer Stevens drove his patrol vehicle onto the interstate and began following the Defendant's vehicle.

Officer Stevens testified that he caught up to the Defendant's vehicle near mile marker 65 and activated his patrol vehicle's siren and blue lights. At this time, the Defendant was driving in "lane two," adjacent to the far-left passing lane. The Defendant stopped the vehicle on the shoulder of the interstate. Officer Stevens recalled that as he exited his patrol vehicle and approached the Defendant's vehicle, he saw the Defendant "making rapid movements around the cab, particularly around the middle console area and the immediate area of the back seat." He stated that he found this behavior suspicious and that he was concerned that the Defendant may have been attempting to hide contraband or a weapon. He also noted that the Defendant was the only person inside the vehicle.

Officer Stevens testified that he noted a strong odor of "raw cannabis" emanating from the Defendant's vehicle as he approached it and before he leaned down to speak with the Defendant. After asking for the Defendant's driver's license, vehicle registration, and proof of insurance, Officer Stevens explained the reason for the traffic stop and measured the tint on the passenger-side window. He stated that the window tint measured at thirty-three percent visible light, less than the legal minimum of thirty-five percent. During his conversation with the Defendant, Officer Stevens noticed a handgun in the passenger seat covered by a plastic bag. He also saw a firearm magazine within the open middle console. Officer Stevens was unsure whether the Defendant's firearm or the magazine was loaded. Officer Stevens called for backup and asked the Defendant to step out of his vehicle.

Officer Stevens stated that he shook the Defendant's hand and introduced himself after the Defendant exited his vehicle. He described the Defendant as about as tall as himself but heavier. Officer Stevens testified that he patted down the Defendant to determine whether he had any additional weapons on his person. After determining that the Defendant was unarmed, Officer Stevens asked him to step towards his patrol vehicle to move away from traffic. Officer Stevens recalled that the Defendant then began asking why he was being asked to exit his vehicle and why he had been patted down. Officer Stevens explained that he had smelled marijuana emanating from the Defendant's vehicle and had seen a firearm inside the vehicle. The Defendant responded that he did not smoke marijuana and that he had a handgun carry permit. Officer Stevens testified that the Defendant then positioned himself in a "bladed stance," as though he was preparing to either fight or flee, and began taking steps away from him and towards the interstate.

Officer Stevens testified that he approached the Defendant and attempted to place him in handcuffs to prevent him from entering the lane of traffic or returning to his vehicle to retrieve his firearm. He stated that a scuffle ensued and lasted for approximately thirty seconds. During the fight, Officer Stevens again attempted to place the Defendant in handcuffs and ultimately lost his handcuffs. Officer Stevens stated that the fight concluded when the Defendant grabbed the front of his patrol vehicle and said he "gave up." Officer Stevens placed the Defendant's hands behind his back and held them there while he waited for backup to arrive. When a backup officer arrived, the Defendant "broke away" from Officer Stevens and ran towards his vehicle. Officer Stevens stated that he ran after the Defendant, grabbed him, and attempted to pull him back towards the shoulder of the road. In the ensuing struggle, Officer Stevens collided with the back of the Defendant's vehicle, and the Defendant "lowered his bodyweight and center of gravity," causing Officer Stevens to lose part of his grip on the Defendant. Officer Stevens was pulled along behind the Defendant as the Defendant entered his vehicle and drove away. Officer Stevens testified that the Defendant's vehicle ran over both of Officer Stevens' legs and the lower part of his left arm as the Defendant drove away.

Video recordings taken from Officer Stevens' dashboard camera and body camera were introduced as exhibits to the hearing and played in court. The dashboard camera recording depicted Officer Stevens following a white Infiniti sedan in the second lane of traffic, adjacent to the far-left passing lane. Officer Stevens initiated his emergency lights; the vehicle stopped, and he exited his patrol vehicle and approached the Infiniti. Officer Stevens spoke with the Defendant through the passenger-side window for several minutes, and then the Defendant exited the vehicle. The two shook hands and walked towards Officer Stevens' patrol vehicle. Officer Stevens then patted down the Defendant. When Officer Stevens withdrew his handcuffs, the Defendant moved away from Officer Stevens and towards the road. Officer Stevens attempted to place the Defendant in handcuffs, and a struggle ensued in front of the patrol vehicle. The Defendant ultimately touched the front

of the patrol vehicle and permitted Officer Stevens to place his hands behind his back. A backup officer arrived shortly thereafter, and the Defendant ran towards his vehicle, dragging Officer Stevens along. The other officer chased the Defendant as he entered his vehicle, and the two officers attempted to pull the Defendant from it. The officers were unsuccessful, and the Defendant drove away. Officer Stevens was pulled partially underneath the Defendant's vehicle in the struggle, and the Defendant's vehicle ran over the lower portion of Officer Stevens' body as the Defendant drove away. The dashboard camera video did not include audio of the interaction between Officer Stevens and the Defendant.

Officer Stevens' body camera recording depicted him exiting his patrol vehicle and approaching the Defendant's vehicle. Officer Stevens spoke to the Defendant through his passenger-side window and explained that he had stopped him because the Defendant had been driving slowly in the far-left lane and because he believed the vehicle's windows were tinted beyond the legal limit. Officer Stevens tested the window tint and informed the Defendant that the windows were tinted beyond the legal limit. Officer Stevens then asked the Defendant for his driver's license, vehicle registration, and proof of insurance, and called for backup over his radio. He also told the Defendant that it was difficult to hear him and asked the Defendant to step out of his vehicle to speak. The Defendant did so, and the two shook hands. Officer Stevens asked the Defendant if he could pat him down, noting that he had seen the firearm inside the Defendant's vehicle. The Defendant responded that he had a "gun license," and Officer Stevens patted down the Defendant. Officer Stevens asked the Defendant if he had "anything illegal" on his person; the Defendant responded that he did not and that he was running late for work. Officer Stevens informed the Defendant that he had smelled "the odor of marijuana" near the Defendant's vehicle; the Defendant responded that he did not smoke. Officer Stevens then asked the Defendant to place his hands behind his back, and the Defendant resisted. Officer Stevens' body camera fell off in the ensuing struggle.

On cross-examination, Officer Stevens testified that he worked for the FPD as an hourly employee and averred that only lieutenants and higher-ranking officers were salaried. He estimated he had initiated between fifty and one hundred traffic stops for window tint violations. He agreed that an officer was required to be a "full-time salaried police officer" to execute a "probable cause arrest based on window tint." He denied initiating the stop at a dangerous area of the interstate.

Officer Stevens testified that he was concerned for his safety after seeing the Defendant's firearm. He agreed that he nevertheless remained near the Defendant's vehicle during their conversation and explained that he stood near the back of the passenger-side door because it would have been difficult to shoot through that area of the vehicle. He further agreed that he patted down the Defendant because he suspected the Defendant

might be armed. He explained that this suspicion was based upon his seeing the Defendant's firearm, smelling marijuana emanating from the Defendant's vehicle, and his previous experience in narcotics investigations.

Prior to closing arguments, the Defendant informed the trial court that he sought the suppression of any reference to the odor of marijuana emanating from the Defendant's vehicle and to the firearm Officer Stevens observed within the vehicle. The State responded that it did not intend to introduce the firearm as an exhibit at trial. The Defendant also stated that he sought the suppression of the results of Officer Stevens' window tint measurement, but he conceded that he did not specifically include that request in his motion to suppress.

In closing, the State argued that Officer Stevens had reasonable suspicion to initiate the traffic stop based upon his observations and belief that the Defendant's vehicle's windows were tinted beyond the legal limit and that the Defendant was violating the Slow Poke Law. The State contended that adopting the Defendant's argument that Officer Stevens was not entitled to initiate the traffic stop because he was an hourly employee would "lead to an absurd result." The State argued that Officer Stevens did not search the Defendant's vehicle by smelling marijuana through the passenger-side window because he testified that he smelled it before leaning down to speak with the Defendant through the window. The State contended that, regardless, Officer Stevens' smelling marijuana as he approached the Defendant's vehicle would have provided a sufficient basis for a search.

The Defendant responded that Officer Stevens was not permitted to initiate a traffic stop on suspicion that the Defendant's windows were tinted beyond the legal limit because he was not a full-time, salaried police officer. He also argued that the Slow Poke Law was "highly subjective" and included several exceptions, including an exception for vehicles "avoiding traffic moving onto the highway from an acceleration or merging lane" and for "authorized emergency vehicles engaged in official duties." *See* Tenn. Code Ann. § 55-8-204(b)(4), (6). The Defendant argued that there was an "on-ramp" approximately one mile up the road from the area where he was stopped and that Officer Stevens was parked in a "known hazard area facing the road." He also noted that his dashboard camera recording showed the Defendant driving within the speed limit and in the lane adjacent to the far-left passing lane. He contended that Officer Stevens was unable to make the legal conclusion that the Defendant possessed illegal marijuana because of the similarities in its smell to legal cannabis products. He also argued that Officer Stevens performed a warrantless search of the Defendant's vehicle by "stick[ing] his face right in the window."

Following arguments, the trial court denied the Defendant's motion to suppress. The trial court accredited Officer Stevens' testimony, reasoning that his observations that the Defendant's windows were darkly tinted and that he was driving in the far-left passing

lane provided specific and articulable facts upon which he could validly initiate a traffic stop. The trial court disagreed with the Defendant's argument that Officer Stevens was not qualified to initiate a traffic stop because he was not a full-time, salaried police officer. The trial court further concluded that Officer Stevens' smelling marijuana emanating from the Defendant's vehicle was a valid basis for probable cause to support a search. The trial court entered an order denying the Defendant's motion to suppress and incorporating its bench ruling on April 19, 2023.

On November 29, 2023, the Defendant filed three motions in limine. As relevant to this appeal, the first of these motions requested that the trial court find that the Defendant's arrest was unlawful and that Officer Stevens was an unreliable witness. The Defendant alleged that Officer Stevens committed "flagrant violations" of the United States Constitution, reiterating his claims that Officer Stevens was not entitled to initiate a traffic stop on suspicion that the Defendant's windows were tinted beyond the legal limit; that Officer Stevens searched the Defendant's vehicle by "insert[ing] his nose into the vehicle"; that Officer Stevens did not have reasonable suspicion, based upon his actions and his smelling marijuana emanating from the Defendant's vehicle, to conduct a *Terry* search; and that Officer Stevens was unable to justify the Defendant's detention based upon his smelling marijuana because he was unable to distinguish between illegal marijuana and legal cannabis products. He characterized the distinction between illegal marijuana and legal cannabis products as a legal conclusion Officer Stevens was not qualified to make.

On December 4, 2023, the State filed a motion to dismiss the Defendant's first motion in limine, arguing that the trial court had already considered and denied the Defendant's arguments. On December 6, 2023, the trial court granted the State's motion to dismiss, finding that the Defendant's first motion in limine was "a thinly veiled attempt to relitigate the grounds presented in his [m]otion to [s]uppress," which the trial court had already considered and denied.

On December 7, 2023, the Defendant filed another motion to suppress. In this motion, the Defendant reiterated his argument that Officer Stevens was unable to establish probable cause based upon his smelling marijuana because he was unable and unqualified to distinguish between illegal marijuana and legal cannabis products. He also argued that the "time, manner, and scope" of his detention "exceeded the proper parameters" and violated both the Fourth Amendment to the United States Constitution and Article I, section 7 of the Tennessee Constitution. The Defendant also contended that his claims had not been decided by the previous trial judge prior to his retirement.³

³ The Honorable Michael W. Binkley presided over the initial pretrial matters in this case until his retirement in September 2023. The Honorable Erin W. Nations thereafter presided over the case until her recusal on March 14, 2024. The case was then reassigned to the Honorable Deanna B. Johnson.

On December 8, 2023, the State filed a motion to continue the Defendant's trial. The State averred that the Defendant's trial was, at that time, scheduled to commence on December 18, 2023, and that the Defendant had also been charged in federal court with possession of a controlled substance with the intent to sell or deliver and with possession of a firearm while possessing a controlled substance with the intent to sell or deliver. The State further averred that during a pretrial conference, defense counsel informed the trial court that the Defendant intended to testify at his trial. The State argued that the Defendant's testimony would open the door to discussion of his federal charges and that the State would "necessarily have to try the federal charges during rebuttal." The State contended that it would be "impossible to avoid eliciting testimony concerning the suspected drugs and the gun." Accordingly, the State requested that the trial court continue the Defendant's trial to permit the State to seek a superseding indictment that included charges mirroring the Defendant's federal charges.

The record does not include a transcript of the pretrial conference referenced in the State's motion to continue or of any hearing on the State's motion for a continuance. It also does not include a copy of any order granting the State's motion. Nevertheless, it is apparent from our review of the record that the State's motion was granted, as the State obtained a superseding indictment on January 2, 2024, and the Defendant's trial commenced on August 7, 2024.

On December 11, 2023, the Defendant filed both a motion for a speedy trial and a brief in support of his December 7, 2023 motion to suppress. In the latter filing, the Defendant reiterated his arguments that Officer Stevens did not have reasonable suspicion to conduct a *Terry* search and that Officer Stevens could not have established probable cause based upon his smelling marijuana because he was unable and unqualified to distinguish between illegal marijuana and legal cannabis products. That same day, the State filed a response in opposition to the Defendant's December 7, 2023 motion to suppress, arguing that the Defendant's claims had been previously determined. The record does not reflect whether the trial court held a hearing on either of the Defendant's motions and the record does not contain an order resolving them.

On January 2, 2024, a Williamson County grand jury returned a four-count superseding indictment charging the Defendant with aggravated assault on a first responder, evading arrest, possession of marijuana with the intent to sell or deliver, and unlawful possession of a firearm during the commission of a dangerous felony. On February 29, 2024, the Defendant filed a motion to dismiss his charges of possession of marijuana with the intent to sell or deliver and unlawful possession of a firearm during the commission of a dangerous felony (hereafter referred to as "counts three and four"), arguing his right to a speedy trial had been violated. Specifically, the Defendant argued

that the State had been aware of the conduct giving rise to those charges since April 24, 2022, and had nevertheless previously chose not to charge them. He argued that this delay in prosecution was the product of both bad faith and bureaucratic negligence. He also contended that he was prejudiced by the delay and that there was “no reason to delay this prosecution for nearly two years.”

The Defendant also filed another motion to suppress and an “amended” memorandum of law in support thereof on February 29, 2024. In this motion, the Defendant reiterated his arguments that Officer Stevens did not have reasonable suspicion to conduct a *Terry* search and that Officer Stevens could not have established probable cause based upon his smelling marijuana because he was unable and unqualified to distinguish between illegal marijuana and legal cannabis products.

On April 24, 2024, the State filed a motion to dismiss the Defendant’s motion to suppress and a response in opposition to his motion to dismiss counts three and four. In its motion to dismiss the Defendant’s motion to suppress, the State argued that the trial court had already considered and denied the Defendant’s arguments. In its response to the Defendant’s motion to dismiss counts three and four, the State argued that the twenty-seven-month delay between the Defendant’s April 24, 2022 arrest and his scheduled August 7, 2024 trial was reasonable given the case’s procedural history. The State noted that the Defendant first asserted his right to a speedy trial on December 11, 2023, and that the approximate nine-month delay between then and his scheduled trial was not prejudicial. The State also noted that the Defendant’s case had been reassigned to multiple trial judges during its pendency and that the Defendant faced charges in both state and federal court. The State argued that the delay caused by seeking a superseding indictment was not unreasonable because the Defendant indicated that he would testify at trial, necessitating the State to “seek a superseding indictment encompassing all of the charges so that the state and federal governments wouldn't need to ‘piecemeal’ prosecution based upon the defendant's anticipated testimony.” The State further contended that the Defendant would not be prejudiced by the delay because he had been released on bond throughout the pendency of his case and had not alleged that any witnesses or evidence had been or would be lost as a result of the delay.

On April 25, 2024, the trial court held a hearing on both the Defendant’s February 29, 2024 motions to suppress and to dismiss counts three and four. The Defendant reiterated his argument that Officer Stevens could not have established probable cause based upon his smelling marijuana because he was unable and unqualified to distinguish between illegal marijuana and legal cannabis products. He also contended that the issuance of the superseding indictment had created a “whole new case” and that there was no longer a record of the trial court’s April 19, 2023 denial of his motion to suppress. He argued that the trial court had failed to analyze his arguments that “the stop was lawful in its initiation

and became unreasonable by the actions of the officer” and that the trial court’s previous ruling was “based on the charges” in the preceding indictment, which had since been superseded. The Defendant also argued that he was presumptively prejudiced by the length of the delay between the commission of the offenses on April 24, 2022, and the issuance of the January 2, 2024 superseding indictment.

The State responded that the trial court had already considered and denied the Defendant’s suppression arguments. Regarding the Defendant’s motion to dismiss counts three and four, the State argued that the Defendant’s federal charges had always been pending, that the Defendant knew of those charges, and that its request to supersede the indictment after learning that the Defendant intended to testify was reasonable and necessary for the efficient prosecution of the Defendant’s case. The State characterized the Defendant’s August 7, 2024 trial date as “the quickest trial date he’s afforded based upon the facts and circumstances of this case.”

The trial court took the matters under advisement. On May 10, 2024, the trial court entered an order denying the Defendant’s February 29, 2024 motion to suppress. The trial court relied upon the transcript from the Defendant’s April 14, 2023 evidentiary hearing and summarized Officer Stevens’ testimony. The trial court accredited Officer Stevens’ testimony and concluded that he had reasonable suspicion to initiate the traffic stop because he observed the Defendant violate two traffic laws. The trial court further concluded that Officer Stevens had reasonable suspicion to conduct a *Terry* search after smelling cannabis emanating from the Defendant’s vehicle and seeing a firearm on the passenger seat. Finally, the trial court held that Officer Stevens did not perform a warrantless search of the Defendant’s vehicle by leaning his head into the passenger-side window because Officer Stevens testified he could smell cannabis “while he was still an arm’s length [away from] the vehicle.” The trial court also found that Officer Stevens’ purpose in leaning his head into the passenger-side window was to better hear the Defendant rather than to search his vehicle. Although the trial court heard arguments at the April 25, 2024 hearing regarding the Defendant’s motion to dismiss counts three and four, the record does not include any order resolving that motion. Nevertheless, it is apparent from our review of the record that this motion was denied, as the Defendant ultimately proceeded to trial on those charges.

On July 17, 2024, the Defendant filed another motion to suppress, seeking the exclusion of “any evidence derived from the search of [the] Defendant’s person on April 24, 2022.” In this motion, the Defendant argued that the trial court had “not made complete findings to justify the search” and that there were no facts to support the search. That same day, the Defendant also filed another motion to dismiss counts three and four, arguing they were the product of a vindictive prosecution. The record does not reflect whether the trial court held an evidentiary hearing on these motions and does not contain orders resolving them.

On August 2, 2024, the Defendant filed another motion to suppress. In this motion, the Defendant requested, “pursuant to [*State v.*] *McElrath*,” 569 S.W.3d 565 (Tenn. 2019), that the trial court suppress “the arrest and all of the evidence gleaned” therefrom based upon Officer Stevens’ “reckless and violent disregard” for the Defendant’s constitutional rights. In support of this motion, the Defendant contended that Officer Stevens had shown a pattern of Fourth Amendment violations based upon his actions in the Defendant’s case and in another case. He characterized these actions as similar. The trial court held a hearing on August 5, 2024, found *McElrath* inapplicable to the Defendant’s claim, and denied his motion to suppress.

The Defendant proceeded to a jury trial on August 7, 2024. Following the presentation of evidence, the jury convicted the Defendant of reckless aggravated assault as a lesser included offense of aggravated assault on a first responder. The jury otherwise convicted the Defendant as charged. Following a sentencing hearing, the trial court imposed an effective sentence of five years’ incarceration. The Defendant filed a timely, but unsuccessful, motion for a new trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Defendant raises two claims. First, he argues that the trial court erred in denying his motion to suppress because Officer Stevens did not have reasonable suspicion to initiate a traffic stop pursuant to the Slow Poke Law; and, second, he argues that the trial court violated his Sixth Amendment right to a speedy trial by granting the State’s motion to continue his trial to allow the State to procure a superseding indictment. The State responds that both arguments are waived and do not merit plain error relief. We agree with the State.

A. REASONABLE SUSPICION

The Defendant argues that Officer Stevens did not have reasonable suspicion to initiate a traffic stop pursuant to the Slow Poke Law. He contends that the statute’s legislative history indicates the General Assembly’s intent for it to apply for “the protection of professional drivers.” He further argues that because his driving in the far-left passing lane did not “threaten the safety of any commercial drivers” and because there was no other allegation that he was driving dangerously, the statute cannot serve as a basis for Officer Stevens’ reasonable suspicion to justify a traffic stop. He also asserts that the statute provides a list of exceptions that should be interpreted as illustrative rather than exhaustive, and because “there was no traffic,” “the reason for the law did not exist.” The State responds that these arguments are waived because the Defendant did not present them first to the trial court and do not merit plain error relief.

Our basic rules of appellate procedure require that issues be presented to the trial court first to preserve them for appellate review. *See* Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.”); *see also State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (“It has long been the general rule that questions not raised in the trial court will not be entertained on appeal.”); *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017) (“Generally, issues raised for the first time on appeal are waived.”). This rule of issue preservation “ensure[s] that the defense and the prosecution are afforded an opportunity to develop fully their opposing positions on an issue.” *State v. Minor*, 546 S.W.3d 59, 65 (Tenn. 2018) (citing *Puckett v. United States*, 556 U.S. 129, 134 (2009)). By requiring the parties to preserve their claims by fully litigating them below, the rule “may obviate altogether the need for appellate review.” *Minor*, 546 S.W.3d at 65 (citing *State v. Jordan*, 325 S.W.3d 1, 57-58 (Tenn. 2010)).

The record reflects that the Defendant challenged the legality of his April 24, 2022 traffic stop on six occasions: in his March 10, 2023 motion to suppress; in his November 29, 2023 motion in limine; and in four subsequent motions to suppress filed on December 7, 2023; February 29, 2024; July 17, 2024; and August 2, 2024. Throughout these motions, and in the three evidentiary hearings held thereupon, the Defendant argued that his behavior was covered by exceptions to the Slow Poke Law; that Officer Stevens was not statutorily authorized to initiate a traffic stop on suspicion that his windows were too darkly tinted; that Officer Stevens did not have reasonable suspicion to conduct a *Terry* stop; that Officer Stevens conducted a warrantless search of his vehicle by leaning his head through the open passenger-side window; and that Officer Stevens was unable to establish probable cause based upon his smelling marijuana because he was unable to distinguish between illegal marijuana and legal cannabis products. He did not, however, raise his current challenges to the Slow Poke Law’s statutory interpretation at any point in his myriad filings. Accordingly, plenary review of these arguments is waived.

“When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time” under plain error review. Tenn. R. App. P. 36(b). Plain error review, however, is discretionary and should be sparingly exercised. *State v. Banks*, 271 S.W.3d 90, 119 (Tenn. 2008); *State v. Bledsoe*, 226 S.W.3d 349, 354 (Tenn. 2007). Importantly, an appellant requesting relief of an unrepresented or unpreserved issue has the burden of persuading the appellate court that plain error relief is warranted to correct the trial court’s obvious error. *Bledsoe*, 226 S.W.3d at 355; *State v. Maddin*, 192 S.W.3d 558, 562 (Tenn. 2005). In light of this burden of persuasion, an appellant’s failure to request plain error review weighs against consideration of an unrepresented or unpreserved issue. *State v. Thompson*, No. W2022-01535-CCA-R3-

CD, 2023 WL 4552193, at *5 (Tenn. Crim. App. July 14, 2023) (“[A] defendant’s failure to request [plain error] relief weighs against any such consideration on our own.”), *no perm. app. filed*. This is especially true where, as here, a defendant requests relief on an unrepresented or unpreserved issue, the State responds that such a claim is waived but, regardless, does not merit plain error relief, and the defendant nevertheless neglects to respond to the State’s waiver argument via a responsive filing. *See id.* at *5 (“Where a defendant fails to respond to a waiver argument, only particularly compelling or egregious circumstances could typically justify our *sua sponte* consideration of plain error relief.”).

No such compelling or egregious circumstances exist in this case. Moreover, we note that the Defendant does not cite to the record in support of his argument. He makes assertions regarding what Officer Stevens’ testimony demonstrated and presents claims regarding the Defendant’s actions without providing a basis for these contentions in the record. Similarly, although our review of the record reveals that no such portion exists, he does not direct our attention to any point in the proceedings below at which he raised these claims and the trial court ruled upon them. Thus, even if these issues were properly presented, they would be waived for inadequate briefing. *See* Tenn. R. App. P. 27(a)(7) (requiring that the appellant present a brief which sets forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on.”); Tenn. R. Ct. Crim. App. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”). The Defendant is not entitled to relief.

B. SPEEDY TRIAL

The Defendant also argues that his Sixth Amendment right to a speedy trial was violated by the trial court’s granting the State’s December 8, 2023 motion to continue his trial. He contends that the State admittedly sought a continuance in order to obtain a superseding indictment after defense counsel informed the trial court that the Defendant intended to testify. He argues that the State’s seeking a superseding indictment “amount[ed] to harassment and intimidation.” He further asserts that the trial court’s granting the State’s motion prolonged the delay in his trial. The State responds that this argument is waived because the Defendant has failed to provide an adequate record for appellate review and does not merit plain error relief.

As a preliminary matter, we note that although the Defendant presents his claim as arising under his Sixth Amendment right to a speedy trial, the crux of his argument appears to be that the trial court erred by granting the State’s December 8, 2023 motion for a continuance. The Defendant asserts, without explanation, that the delay caused by the trial

court's granting the State's motion for a continuance violated his right to a speedy trial. Our determination of this claim is obfuscated by the absence of any speedy trial analysis in the Defendant's brief.

In analyzing whether a defendant's right to a speedy trial has been violated, we consider (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right to a speedy trial; and (4) the prejudice to the defendant because of the delay. *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *State v. Bishop*, 493 S.W.2d 81, 83-85 (Tenn. 1973). The Defendant's brief succinctly states that criminal defendants have the right to a speedy trial under both the United States Constitution and the Constitution of Tennessee, and provides a statement of the standard of review applicable to rulings on speedy-trial violations. He does not, however, identify the relevant factors or legal framework for a speedy trial analysis. He also does not explain how, under that framework, his right to a speedy trial was violated in this case. Accordingly, appellate review of this claim is waived. *See* Tenn. R. App. P. 27(a)(7); Tenn. R. Ct. Crim. App. 10(b); *see also Sneed v. Bd. of Prof'l Responsibility*, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

Our review of the Defendant's claim is further obfuscated by the state of the record in this case. As noted above, the crux of the Defendant's argument regarding his right to a speedy trial is the trial court's granting the State's December 8, 2023 motion for a continuance. Although a copy of the State's motion is included in the record and the record indicates by implication that the motion was granted, the record does not contain any order granting the motion or reflect any hearing thereupon. The record also does not include any transcript of the pretrial conference in which defense counsel informed the trial court that the Defendant intended to testify. The parties also addressed the merits of the Defendant's motion to dismiss counts three and four on a speedy trial basis at the April 25, 2024 evidentiary hearing, but the record does not include any ruling from the trial court on that motion.

On appeal, the appellant bears the burden of compiling, preparing, and submitting a record adequate for review, such as is "necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." Tenn. R. App. P. 24(b). This burden includes the obligation to submit a transcript of any proceeding that is the subject of the appellant's assignment of error or, if no transcript is available, a statement of the evidence. Tenn. R. App. P. 24(b), (c); *see also State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993). "In the absence of an adequate record on appeal, this court must presume that the trial court's rulings were supported by sufficient evidence." *State v. Brown*, 373 S.W.3d 565, 571 (Tenn. Crim. App. 2011) (quoting *State v. Oody*, 823

S.W.2d 554, 559 (Tenn. Crim. App. 1991)) (internal quotation marks omitted). Without any indication as to the trial court’s reasoning in granting the State’s motion for a continuance, we must presume the trial court’s ruling was correct in all particulars. *See State v. Stack*, 682 S.W.3d 866, 876 (Tenn. Crim. App. 2023). Because the Defendant failed to prepare an adequate record, appellate review of his claim is waived on that basis, as well.

The Defendant further claims that the State’s seeking a superseding indictment “amount[ed] to harassment and intimidation.” He characterizes the superseding indictment as being procured because he indicated his intent to exercise his constitutional right to testify at trial. He presents these arguments without further explanation. Accordingly, they, too, are waived for inadequate briefing. *See* Tenn. R. App. P. 27(a)(7); Tenn. R. Ct. Crim. App. 10(b); *Sneed*, 301 S.W.3d at 615. Because the Defendant has not requested plain error review and because no compelling or egregious circumstances warrant our *sua sponte* consideration of these arguments, he is not entitled to relief. *See* Tenn. R. App. P. 36(b); *Thompson*, 2023 WL 4552193, at *5.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the judgments of the trial court.

s/ Steven W. Sword

STEVEN W. SWORD, JUDGE