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**IN THE  
COURT OF APPEALS OF INDIANA**

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LEON HARRIS,	)	
	)	
Appellant-Defendant ,	)	
	)	
vs.	)	No. 49A02-0703-CR-280
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Amy Barbar, Magistrate  
Cause No. 49G02-0606-FB-109618

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**December 3, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Leon Harris (“Harris”) was convicted in Marion Superior Court of Class C felony robbery. Harris now appeals and claims that the trial court erred in the admission of certain evidence. We affirm.

### **Facts and Procedural History**

Shortly after midnight on May 23, 2006, Jeremy Huddleson (“Huddleson”) was upstairs in his bedroom in the apartment he shared with his mother in Indianapolis when he heard a banging sound at the front door. Huddleson, who is mildly mentally handicapped, went downstairs to investigate and discovered Harris trying to open the locked screen door. Huddleson was acquainted with Harris through a mutual friend, so he opened the door. Harris entered and asked Huddleson if he had an Xbox 360 video game system. Huddleson showed Harris to his bedroom where his Xbox 360 was located. Harris then pulled out a handgun and told Huddleson to pack up the Xbox 360 and a Sony Playstation 2 into grocery bags. When the items did not fit into the grocery bags, Harris took a duffle bag from Huddleson’s closet and put the items in the duffle bag. Harris then put his handgun into Huddleson’s mouth, told him to “[t]aste the steel,” and not to tell anyone what had happened. Tr. p. 37. Waving his gun around, Harris ordered Huddleson into the bathtub, and told Huddleson to wait five minutes. Huddleson complied and then went through his apartment to make sure that Harris had gone. When Huddleson’s mother came home, he did not immediately tell her about the robbery, but she could tell that something was upsetting her son. Huddleson’s mother telephoned the police, and Huddleson ultimately gave the police a detailed account of the robbery. The police later found Huddleson’s duffle bag and Playstation 2 in Harris’s bedroom.

On June 15, 2006, the State charged Harris with Class B felony robbery, Class B felony criminal confinement, and Class A misdemeanor carrying a handgun without a license. Prior to a jury trial held on February 8, 2007, Harris filed a motion in limine to exclude evidence of his prior misconduct. The trial court granted the motion in part, but denied it with regard to an earlier incident in which Huddleson had allegedly given Harris a DVD player in exchange for a bullet from Harris's handgun.

During trial, Huddleson testified without objection that he had taken his DVD player to a friend's house and that Harris had asked to buy the DVD player from him. Huddleson testified that when he refused, Harris became angry and removed a bullet from his handgun and gave it to Huddleson, in apparent exchange for the DVD player. Harris's trial counsel cross-examined Huddleson with regard to the DVD incident, eliciting further testimony that Huddleson had previously traded goods with Harris. One of the investigating police officers also testified without objection that Huddleson told him about this incident. Harris also cross-examined this witness regarding the DVD player found in Harris's residence. Harris did not object to the admission of the bullet allegedly "traded" for the DVD player, but did object to the admission of the DVD player itself.

At the conclusion of the trial, the jury was unable to reach a verdict upon the charges of criminal confinement and carrying a handgun without a license but found Harris guilty of class C felony robbery as a lesser-included offense of class B felony

robbery.<sup>1</sup> On February 23, 2007, the trial court sentenced Harris to the advisory sentence of four years. Harris now appeals.

### **Discussion and Decision**

Harris claims that the trial court erred in admitting evidence regarding the incident where he “traded” a bullet from his handgun for Huddleson’s DVD player. The State claims that Harris has failed to preserve this issue for review. We agree with the State. Although Harris made a motion in limine with regard to the DVD player incident, he failed to object to the testimony regarding this incident at trial. He has therefore failed to preserve this issue for purposes of appeal. See McCarthy v. State, 749 N.E.2d 528, 537 (Ind. 2001); Kirby v. State, 774 N.E.2d 523, 533 (Ind. Ct. App. 2002).

Moreover, Harris not only failed to object to this evidence, he brought up this incident during his cross-examination of the State’s witnesses. To this extent, any error would also be invited. Invited errors are not subject to appellate review. Oldham v. State, 779 N.E.2d 1162, 1171-72 (Ind. Ct. App. 2002), trans. denied. Indeed, it appears that Harris’s trial strategy with regard to the DVD player incident was to use it to support the notion that he and Huddleson had traded items in the past, which would explain the presence of some of Huddleson’s possessions at Harris’s residence.

We are also unpersuaded by Harris’s claim that the admission of the evidence at issue amounted to fundamental error. As a general rule, the erroneous admission of evidence of extrinsic acts does not constitute fundamental error. Williams v. State, 634

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<sup>1</sup> The State ultimately dismissed the charges on which the jury was unable to reach a verdict.

N.E.2d 849, 854 (Ind. Ct. App. 1994). The evidence at issue here could have helped Harris by showing that he and Huddleson had traded items in the past.

Lastly, we note that with Huddleson's eyewitness testimony that Harris robbed him at gunpoint and the discovery of Huddleson's property at Harris's residence, the admission of this evidence would at most be harmless error. In conclusion, the trial court did not commit reversible error in the admission of evidence.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.