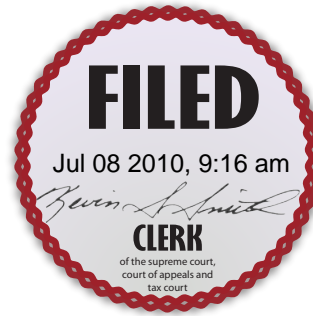


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DORIAN LEE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 27A04-1001-CR-41
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Warren Haas, Judge
Cause No. 27D03-0909-CM-747

July 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Dorian Lee (“Lee”) appeals his conviction following a bench trial for invasion of privacy,¹ a Class A misdemeanor. Lee raises the following restated issue on appeal: whether the trial court committed reversible error by allowing a witness to view, for identification purposes, a photograph that contained the individual’s name.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of September 23, 2009, two Jonesboro police officers were on a routine patrol when they witnessed Lee driving his moped and carrying two passengers. Lee turned the moped into a convenience store parking lot and one of the passengers, recognized by the officers as Heather Barrett, got off the moped and entered the store. One of the officers was aware of a no-contact order restricting Lee from having contact with Barrett. The officers radioed dispatch to determine whether the order was still in effect. In the meantime, the passenger identified as Barrett returned to the moped and departed with Lee. The officers followed and saw one of the passengers, apparently Barrett, get off the moped and walk away. Once the officers received confirmation that the no contact order was still in effect, they pulled Lee over and arrested him. He was charged with invasion of privacy.

At trial, each officer testified to recognizing Barrett on September 23 based on their previous contact with her. The picture, which the State used to confirm Barrett’s identity in court, had her name on it. Defense counsel objected to the admission of the photo, but the trial court allowed it and each officer, after already testifying that they saw

¹ See Ind. Code § 35-46-1-15.1.

Barrett with Lee on the night in question, confirmed that the individual in the picture was Barrett. At the conclusion of the trial, Lee was convicted as charged. He now appeals.

DISCUSSION AND DECISION

Lee contends that the trial court committed reversible error by allowing witnesses to view a photograph of Barrett for the purpose of identifying her in court when the photo contained her name. We review the trial court's ruling on the admission of evidence for an abuse of discretion and reverse only when "the decision is clearly against the logic and effect of the facts and circumstances." *Pitts v. State*, 904 N.E.2d 313, 318 (Ind. Ct. App. 2009). However, "The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt such that there is no substantial likelihood that the questioned evidence contributed to the conviction." *Brown v. State*, 911 N.E.2d 668, 673 (Ind. Ct. App. 2009).

Assuming without deciding that the trial court abused its discretion in allowing the photograph to be admitted into evidence, any potential error was harmless. Both officers testified that they recognized Barrett on the night in question based on their previous contact with her. At trial, Lee's attorney realized that although admission of the photograph may be improper, it would not affect the outcome. When objecting he said "I'm not exactly sure what the purpose of it [the picture] is other than to say that's [sic] it's Heather Barrett. The officers have already testified that they recognized her without the benefit of that picture." *Tr.* at 30. The instant case turned on the credibility of the testimony offered by two police officers who each claimed to have seen Barrett with Lee on the night in question. The identification of Barrett in the photograph at trial had no

bearing on the factfinder's determination regarding witness credibility. We conclude that, given the independent testimony of both officers who each identified Barrett as one of the passengers with Lee on the night in question, any error in admitting the photograph was harmless.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.