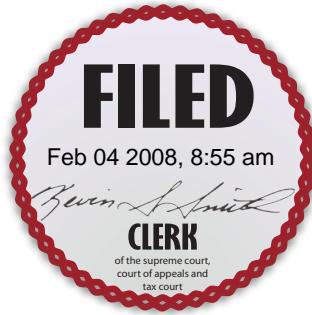


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GREGORY L. HENSON,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0706-CR-543
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 19
The Honorable Victoria Ransberger, Master Commissioner
The Honorable Rebekah F. Pierson-Treacy, Judge
Cause No. 49F19-0704-CM-56097

February 4, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Gregory Henson (Henson), appeals his conviction for possession of marijuana, as a Class A misdemeanor, Ind. Code § 35-48-4-11.

We affirm.

ISSUE

Henson raises a single issue on appeal, which we restate as follows: Whether the trial court erred in admitting the marijuana into evidence.

FACTS AND PROCEDURAL HISTORY

On April 2, 2007, Officer Olivia Bays of the Indianapolis Metropolitan Police Department (Officer Bays) initiated a traffic stop of Henson based on equipment violations, namely, a non-illuminated license plate and a loud muffler. Henson made a right turn from Post Road onto East 42nd Street and stopped his car on the 9200 block of East 42nd Street. A computer check revealed that Henson had a suspended driver's license, and Officer Bays issued him an infraction citation for driving while suspended. Officer Bays determined that the vehicle needed to be towed because there was no licensed driver on the scene. Before the vehicle was towed, Officer Bays conducted an inventory search and found a small quantity of marijuana in a bag. Officer Bays placed Henson under arrest.

On April 3, 2007, the State filed an Information charging Henson with possession of marijuana, as a Class A misdemeanor, I.C. § 35-48-4-11. On May 23, 2007, a bench trial was held. The marijuana was introduced as evidence at trial without objection. During his closing argument, however, Henson's counsel claimed that towing the car was unnecessary

and that the inventory search was therefore unlawful. The trial court rejected this argument and found Henson guilty as charged. The same day, the trial court ordered Henson to pay court costs of \$159.00, a fine of \$100.00, a drug interdiction fee of \$200.00, and to complete forty hours of community service.

Henson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Henson contends that if the trial court had ruled that the inventory search was illegal, the marijuana would not have been admitted into evidence, and the remaining evidence would have been insufficient to sustain his conviction. We conclude that Henson has waived this argument.

Before reaching Henson’s argument, we pause to address several noteworthy flaws in his appellate brief. We first note his “Statement of the Issue,” which provides,

Gregory L. Henson was found guilty of Possession of Marijuana, as a Class A Misdemeanor where a small amount of marijuana was found in his car. Gregory was stopped by a police officer for a traffic violation and the recovery of the marijuana was a result of the stop and subsequent inventory search.

(Appellant’s Br. p. 1). Indiana Appellate Rule 46(A)(4) requires that a statement of issues “concisely and particularly describe each issue presented for review.” Here, counsel’s statement does no such thing. Rather, it is a cursory summary of the facts underlying Henson’s arrest.

Second, while the argument section of Henson’s brief is focused on the admissibility of the marijuana evidence, *i.e.*, the legality of the inventory search, the heading (“Insufficiency of Evidence”) and the standard of review both relate to the sufficiency of the

evidence supporting his conviction. While we acknowledge Henson's ultimate contention that the evidence would have been insufficient to support a conviction *if the marijuana evidence had been kept out*, the admissibility of evidence is a different issue, with a different standard of review, than the sufficiency of evidence.

Furthermore, Henson argues that the inventory search in this case was invalid without even once mentioning, let alone citing, a statutory or constitutional provision that was allegedly violated. An argument that a search or seizure was illegal is usually based on either the Fourth Amendment to the U.S. Constitution or Article I, § 11 of the Indiana Constitution, or both. For example, in *Fair v. State*, 627 N.E.2d 427 (Ind. 1993), the case relied upon by Henson, the defendant alleged that an inventory search violated both of those provisions. Henson makes no such claim here.

As originally stated by our supreme court and recently reiterated by this court:

"[T]he great rule in drawing briefs consists in conciseness with perspicuity." *Gardner v. Stover*, (1873) 43 Ind. 356. A brief is not to be a document thrown together without either organized thought or intelligent editing on the part of the brief-writer. Inadequate briefing is not, as any thoughtful lawyer knows, helpful to either a lawyer's client or to the [c]ourt.

Keeney v. State, 873 N.E.2d 187, 189-90 (Ind. Ct. App. 2007) (quoting *Frith v. State*, 263 Ind. 100, 325 N.E.2d 186, 188-89 (1975)). We caution Henson's counsel to keep this sentiment in mind in future dealings with Indiana's appellate courts. See *Galvan v. State*, 877 N.E.2d 213 (Ind. Ct. App. 2007) (dismissing appeal and demanding return of attorney fees due to inadequate brief).

Turning now to Henson's claim, we note that when the State sought to introduce the marijuana into evidence, Henson's trial counsel did not make a contemporaneous objection. To preserve an argument regarding the admission of evidence for appeal, a contemporaneous objection is necessary at the time the evidence is offered. *Prewitt v. State*, 761 N.E.2d 862, 871 (Ind. Ct. App. 2002). A contemporaneous objection allows the trial court an opportunity to make a final ruling on the matter in the context in which the evidence is introduced. *Id.* Any unpreserved error is waived and need not be addressed by the reviewing court unless the error is fundamental. *Oldham v. State*, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002), *trans. denied*.

Here, not only did Henson's trial counsel not make a contemporaneous objection, he specifically stated, "No objection." (Tr. p. 17). He did not challenge the legality of the inventory search until his closing argument. Furthermore, Henson's appellate counsel does not claim that the trial court committed fundamental error. Henson has waived any error with regard to the admission of the marijuana into evidence.

In his plea to have us review the reasonableness of the inventory search notwithstanding trial counsel's failure to object, Henson stresses that there is little evidence in the trial court record that would justify the impoundment and subsequent search. He is correct. We know that the vehicle was parked on the street, but there is no evidence in the record, for example, that the vehicle was parked illegally or that it posed a danger to other motorists. However, we agree wholeheartedly with the State that, to the extent that there is limited evidence concerning the propriety of the impoundment and inventory search of

Henson's vehicle, this is due to Henson's trial counsel's failure to object at the time the State offered the marijuana into evidence. A contemporaneous objection to evidence allows the party seeking to introduce the evidence an opportunity to present foundational evidence. *Purifoy v. State*, 821 N.E.2d 409, 412-13 (Ind. Ct. App. 2005), *trans. denied*. Because Henson's trial counsel failed to object, the State had no opportunity, and really no reason, to present additional evidence. Under these circumstances, it would be senseless, and unfair to the State, for us to address the merits of Henson's claim.¹

CONCLUSION

Based on the foregoing, we conclude that Henson waived any challenge to the admission of the marijuana into evidence.

Affirmed.

KIRSCH, J., and MAY, J., concur.

¹ Henson notes that even though his trial counsel did not challenge the legality of the inventory search until his closing argument, the trial court considered the challenge on the merits. He expects us to do the same. Henson apparently believes that the challenge raised during closing argument was sufficient to satisfy the contemporaneous objection rule. However, Henson cites no authority in support of this proposition, and he has not otherwise persuaded us to reach such a conclusion. *See Lewis v. State*, 755 N.E.2d 1116, 1123 (Ind. Ct. App. 2001) (holding that defendant's failure to challenge constitutionality of search "until after the evidence had been admitted and after he had completed his initial cross-examination of Trooper Jack" results in waiver of appellate review).