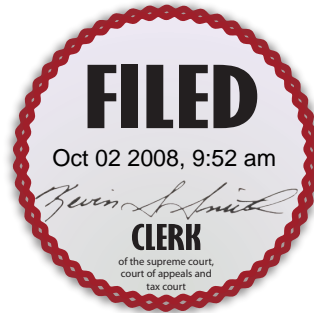


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

VICTOR JACKSON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0803-CR-140
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0710-FB-204711

October 2, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Victor Jackson appeals his conviction for Unlawful Possession of a Firearm by a Serious Violent Felon,¹ a class B felony. Specifically, Jackson argues that the trial court abused its discretion when it published a document to the jury; namely, a letter that the police seized from Jackson's vehicle after his arrest. Finding no error, we affirm the decision of the trial court.

FACTS

On September 28, 2007, Indianapolis Metropolitan Police Department Officer Chris Cavanaugh noticed a man wearing a football jersey with yellow numbering driving a blue Chevrolet minivan. As the man drove by Officer Cavanaugh's patrol vehicle, he gave the officer a hard stare and was not wearing a seat belt. Officer Cavanaugh checked the license plate number and learned that the license plate was expired and belonged to another vehicle.

Officer Cavanaugh circled the block to catch up to the man and found the vehicle parked on the curb. The man was walking down an alley away from the vehicle. Officer Cavanaugh exited his vehicle and yelled "come here for a second." Tr. p. 34. The man turned, made eye contact, and then started running away. Officer Cavanaugh yelled, "Stop, Police," and then chased after him. Id.

As the man was running, Officer Cavanaugh saw him throw a silver and black gun on the ground. For safety reasons, Officer Cavanaugh picked up the gun and relayed the man's movements to other police officers by radio. Officer Tanya Eastwood saw the

¹ Ind. Code § 35-47-4-5.

man running and then walking once he saw the officer. Officer Cavanaugh later identified Jackson as the man he had chased and who had thrown down the gun.

After Jackson was in custody, Officer Cavanaugh searched Jackson's vehicle. In a pocket inside the driver's side door, he found a letter addressed to the same address that Jackson had provided when questioned at the scene. The letter, which was from the probation department, revealed that Jackson was on probation.

On October 2, 2007, Jackson was charged with unlawful possession of a firearm by a serious violent felon. The parties stipulated to Jackson's previous conviction for criminal confinement, which is a qualifying felony under the charged offense.

On December 14, 2007, Jackson filed a motion in limine to exclude the letter and any reference to his probationary status. The trial court ruled that the letter could be admitted to show that Jackson was the driver of the blue vehicle, but that the letter did not open the door to discussing the underlying offense for which Jackson was on probation.

At Jackson's jury trial that commenced on January 30, 2008, the letter was admitted without objection, but published to the jury over Jackson's objection. After a sidebar conference, the trial court refused to answer a question from the jury regarding the type of document found. The trial court informed the jury that "the Court has ruled that the document speaks for itself." Tr. p. 49-50.

The jury found Jackson guilty as charged. On February 12, 2008, the trial court sentenced Jackson to twenty years of incarceration. Jackson now appeals.

DISCUSSION AND DECISION

The State first maintains that Jackson waived his allegation of error because he failed to object to the admission of the letter at trial. A defendant must make a timely objection to the admission of evidence at trial, or the alleged error is waived. Bayes v. State, 779 N.E.2d 77, 81 (Ind. Ct. App. 2002). A timely objection allows the trial court to make a final ruling in the context in which the evidence is offered. Id.

At trial, Jackson did not object to the admission of the letter; however, he did object to the publication of the letter to the jury. Our Supreme Court has reached the merits of an alleged error even though the defendant did not object to the admission of the evidence, instead, objecting to the publication of the evidence. See Roby v. State, 742 N.E.2d 505, 508 (Ind. 2001) (concluding that the admission and publication of a transcript of a videotaped statement was harmless error where the defendant only objected to the publication of the transcript to the jury). Thus, in light of Roby, Jackson's timely objection to the publication of the letter to the jury was sufficient to preserve the issue on appeal.

In addressing Jackson's contention that the trial court abused its discretion in publishing the letter to the jury, we note that a trial court has broad discretion in ruling on the admissibility of evidence, and an abuse of discretion occurs only when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Sublett v. State, 815 N.E.2d 1031, 1034 (Ind. Ct. App. 2004). In addition, even if the trial court errs in admitting evidence, an appellate court will not

overturn the conviction if the error is harmless. Appleton v. State, 740 N.E.2d 122, 124 (Ind. 2001).

Jackson argues that publishing the letter to the jury was impermissible under Indiana Evidence Rule 404(b). This rule provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Ind. R. Evid. 404(b). However, the rule further states that evidence may “be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Id. Courts must conduct a two-step analysis when admitting evidence of other crimes. First, the evidence must be relevant to an issue other than the defendant’s propensity to commit crime, and second, the court must balance the probative value of the evidence against its prejudicial effect pursuant to Indiana Evidence Rule 403. Hicks v. State, 690 N.E.2d 215, 221 (Ind. 1997).

Here, the letter was not admitted to show Jackson’s propensity to commit crime, but to establish Jackson’s identity as the man Officer Cavanaugh saw in the blue vehicle and later pursued. Officer Cavanaugh briefly lost sight of Jackson during the chase after Jackson threw down the gun. This fact became an issue when Jackson cross-examined Officer Cavanaugh on the nature of the identifiers that the officer had broadcast over the police radio. Therefore, Jackson’s identity was relevant.

Furthermore, Jackson has failed to show that publishing the letter to the jury unfairly prejudiced him. Unfair prejudice “looks to the capacity of the evidence to persuade by illegitimate means, or the tendency of the evidence to suggest decision on an

improper basis.” Ingram v. State, 715 N.E.2d 405, 407 (Ind. 1999) (internal quotations omitted). Here, the trial court took measures to limit the use of the letter by instructing counsel that admission of the letter did not open the door to discussing Jackson’s probationary status or the underlying crime. Moreover, the trial court refused to ask Officer Cavanaugh a question from the jury regarding the type of document found in Jackson’s vehicle and informed the jury that the document “speaks for itself.” Tr. p. 49-50. Thus, publication of the letter did not unfairly prejudice Jackson.

Finally, even assuming solely for the sake of argument that publishing the letter was error, it was harmless error. An error in admitting evidence is harmless unless it affects the substantial rights of a party. Buchanan v. State, 767 N.E.2d 967, 970 (Ind. 2002). Here, Jackson had already stipulated that he “had previously been convicted of criminal Confinement [sic], as a class D Felony [sic], on July 31, 2002.” Tr. p. 70. The stipulation was read to the jury and was an essential element of the crime for which Jackson was charged. Any risk that the jury was prejudiced by Jackson’s status as a convicted felon already existed because of the stipulation. Therefore, even assuming that publishing the letter was error, Jackson’s claim nonetheless fails.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.