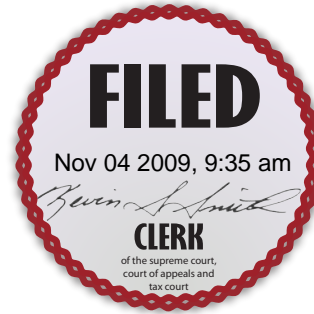


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL JACKSON, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. )  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

No. 27A05-0906-CR-302

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APPEAL FROM THE GRANT CIRCUIT COURT  
The Honorable Mark E. Spitzer, Judge  
Cause No. 27C01-0803-FB-39

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**November 4, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Michael Jackson appeals from his conviction for two counts of Dealing in Cocaine, as Class B felonies, following a jury trial. He presents two issues for our review:

1. Whether the trial court erred and violated Jackson's right to a fair trial when it ordered that Jackson was not permitted to take copies of the jurors' questionnaires with him to jail.
2. Whether the trial court erred when it required Jackson to show his neck to the jury in response to a juror's question.

In addition, we address an issue *sua sponte*, namely, whether the trial court erred when it ordered Jackson's sentences to run consecutively.

We affirm in part, reverse in part, and remand with instructions.

## **FACTS AND PROCEDURAL HISTORY**

On December 28 and 29, 2008, members of the Grant County Sheriff's Department conducted two separate undercover drug buys with Jackson. On December 28, Jackson sold 1.53 grams of cocaine to a confidential informant in the presence of an undercover officer. And on December 29, Jackson sold .98 gram of cocaine to the same undercover officer. The State charged Jackson with Pointing a Loaded Firearm, a Class D felony, and two counts of dealing in cocaine, as Class B felonies. The State dismissed the D felony charge prior to trial. A jury found Jackson guilty of the remaining charges, and the trial court entered judgment accordingly. The trial court sentenced Jackson to fourteen years, with two years suspended, on each conviction, and the court ordered the sentences to run consecutively. This appeal ensued.

## DISCUSSION AND DECISION

### Issue One: Juror Questionnaires

Jackson contends that the trial court erred when it did not permit him to have copies of the jurors' questionnaires prior to trial. Jackson makes three separate arguments in support of this contention. We address each argument in turn.

The trial court issued an order stating:

Pursuant to Jury Rule 10, it is the Court's policy to safeguard the personal information of prospective jurors. Attorneys are provided juror questionnaires to facilitate jury selection, but personal information such as address, telephone numbers, or place of employment contained on those questionnaires are [sic] not to be shared with or disclosed to defendants in criminal prosecutions, or individual parties in civil cases, prior to the day of trial. Under no circumstance should copies of questionnaires or summaries containing personal information be provided to such defendants or parties. At the close of voir dire, the parties shall tender the originals and all copies of juror questionnaires back to the court. Please direct any questions regarding this policy to the Court.

Appellant's App. at 60.

Jackson first contends that the trial court's order conflicts with Jury Rule 10, which provides:

Personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. The court shall maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties.

(Emphasis added.) Jackson's entire argument in support of this contention is as follows:

"Because the defendant is a party, this rule by its very terms[] exempts him from the restrictions placed upon him by [the trial court's order]." Brief of Appellant at 9.

Jackson ignores the fact that the trial court provided him with the questionnaires for use during voir dire to facilitate jury selection. And Jackson does not explain how he would

have used the information other than for that purpose. Jackson's brief argument on this issue does not convince us that the trial court's rule conflicts with Jury Rule 10.

Jackson next contends that the trial court's order violates his right to a fair trial under the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution. He maintains that while he was denied access to the jurors' questionnaires prior to trial, the State was given copies of the questionnaires prior to trial. Thus, Jackson asserts that the effect of the trial court's order was "to give a leg up" to the prosecutor by giving the State the "ability to vet the venire panel" ahead of time. Brief of Appellant at 10. But Jackson ignores the fact that the trial court gave his counsel copies of the questionnaires at the same time that the court gave copies to the prosecutor. Jackson's counsel was prohibited from providing those questionnaires to Jackson prior to trial, but Jackson's counsel was permitted to use them to prepare for voir dire. Jackson does not explain how he would have found the questionnaires useful to him, personally, prior to trial. Accordingly, Jackson has not shown that he was denied his right to a fair trial.

Finally, Jackson contends that the trial court's rule "violates the principal that discovery rules must be reciprocal." Brief of Appellant at 10. But Jackson does not explain how jurors' questionnaires would be considered "discovery" under the trial rules. Indiana Trial Rule 26(B)(1) provides in relevant part that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action[.]" (Emphasis added.) Juror questionnaires are not relevant to the

subject matter of a criminal case and are not subject to the rules of discovery. Jackson cannot prevail on this issue.

In sum, Jackson does not explain what use he would have made of the jurors' questionnaires had he had access to them prior to trial. He has not demonstrated that the trial court's order is in conflict with Jury Rule 10 or the discovery rules. And Jackson has not shown that he suffered any prejudice or was denied a fair trial as a result of the trial court's order.

### **Issue Two: Jury Question**

Jackson contends that the trial court erred when it required him to expose his neck to the jury in response to a juror question. First, Jackson maintains that the requirement "conflicts with Ind. Jury Rule 25[.]" Brief of Appellant at 11. Jury Rule 25 provides in relevant part:

When the court determines it is proper, the court may order the jury to view:

- (a) the real or personal property which is the subject of the case; or
- (b) the place in which a material fact occurred.

In essence, Jackson asserts that because the rule is silent regarding a jury's viewing of parts of a defendant's person, the trial court is not authorized to order such a "viewing." But that argument is not well-taken. There is nothing in the rule that would preclude the trial court from requiring that Jackson show the jury a tattoo located on his neck.

Jackson also contends that the trial court's order that he expose his tattoo "encourages unauthorized investigations" by the jury. But Jackson does not support that contention with cogent argument or citations to authority. As such, the argument is

waived. Simply put, Jackson has not demonstrated any error in the trial court's requirement that he show his tattoo to the jury.

### **Issue Three: Sentence**

Finally, we address, sua sponte, the legality of Jackson's sentence. Jackson's two convictions arose from two nearly identical, State-sponsored drug transactions over the course of two days. In each transaction, Jackson sold the same drug, cocaine, and the same undercover deputy was involved. While the two transactions do not constitute a single episode of criminal conduct, our courts have consistently held that consecutive sentences are improper where the State sponsors a series of offenses in a sting operation under circumstances like those present here. See Gregory v. State, 644 N.E.2d 543, 546 (Ind. 1994); Williams v. State, 891 N.E.2d 621, 635 (Ind. Ct. App. 2008).

Here, the trial court imposed consecutive fourteen-year sentences. Applying our Supreme Court's holding in Gregory and this court's holding in Williams, we revise Jackson's sentence and order that his sentences run concurrent with each other, for an aggregate term of fourteen years, with two years suspended. See Ind. Appellate Rule 7(B). On remand, the trial court shall not conduct another hearing, but shall enter an order and make any other record entries necessary to impose the revised sentence.

Affirmed in part, reversed in part, and remanded with instructions.

KIRSCH, J., concurs in result in Part I, without separate opinion, and concurs in Parts II and III.

BARNES, J., concurs.