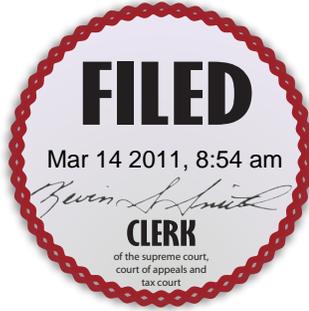


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY LEE KRZEMINSKI,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 76A03-1007-CR-390

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0906-FD-597

March 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Terry Lee Krzeminski appeals his conviction for possession of a firearm by a serious violent felon, a Class B felony. On appeal, Krzeminski contends the evidence of his previous conviction was not properly authenticated and admission of the evidence constituted fundamental error. Concluding the evidence was properly authenticated and admitted, we affirm.

Facts and Procedural History

As a result of a domestic dispute in which Krzeminski assaulted his wife by slapping her, strangling her, and threatening to kill her with a gun, the State charged Krzeminski with the following: Count I, strangulation, a Class D felony; Count II, intimidation, a Class D felony; Count III, intimidation, a Class A misdemeanor; Count IV, domestic battery, a Class A misdemeanor; Count V, habitual offender enhancement; and Count VI, possession of a firearm by a serious violent felon, a Class B felony.

A jury found Krzeminski not guilty of the two counts of intimidation but guilty of strangulation and domestic battery. During the second phase of the jury trial relating to the serious violent felon allegation, the State introduced Exhibit 13, purporting to prove Krzeminski's February 5, 1986 conviction for armed robbery and possession of a firearm in Monroe County, Michigan. Krzeminski initially objected to the exhibit on the grounds of authenticity, but after the trial court inquired whether the objection was based on authenticity or the weight to be given to the document, Krzeminski's counsel stated "it is a properly authenticated record that the clerk is the clerk and the judge is the judge from Monroe County Michigan identifying a Terry Lee Krzeminski that was convicted on

February 5, 1986.” Transcript at 217. The trial court admitted Exhibit 13 and the jury found Krzeminski guilty of unlawful possession of a firearm by a serious violent felon. The State then dismissed the habitual offender count prior to any evidence being presented to the jury. Krzeminski now appeals his conviction for unlawful possession of a firearm by a serious violent felon.

Discussion and Decision

I. Standard of Review

Generally, we review a trial court’s decision to admit evidence for an abuse of discretion. Collins v. State, 826 N.E.2d 671, 677 (Ind. Ct. App. 2005), trans. denied, cert. denied, 546 U.S. 1108 (2006). Krzeminski concedes, however, that although he initially made an objection to the authenticity of Exhibit 13, eventually he agreed Exhibit 13 was properly authenticated. To avoid waiver, Krzeminski therefore argues that admitting Exhibit 13 rose to the level of fundamental error.

“To constitute fundamental error, the error must constitute a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process.” Pittman v. State, 885 N.E.2d 1246, 1257 (Ind. 2008) (quotation omitted). “We have emphasized the narrow applicability of the fundamental error doctrine.” Taylor v. State, 717 N.E.2d 90, 93 (Ind. 1999). As such, the error must be so substantially prejudicial that a fair trial is impossible. Brown v. State, 799 N.E.2d 1064, 1067 (Ind. 2003).

II. Authentication of Exhibit 13

The rules concerning proof of official records are governed by the Rules of Evidence. Ind. Trial Rule 44. Before such evidence may be admitted, proof must be given that the matter in question is what its proponent claims. Ind. Evidence Rule 901(a). Evidence that establishes a reasonable probability that the document is what it is claimed to be constitutes sufficient authentication or identification. Dumes v. State, 718 N.E.2d 1171, 1176 (Ind. Ct. App. 1999), clarified on reh'g, 723 N.E.2d 460 (Ind. Ct. App. 2000). Once this reasonable probability is shown, any inconclusiveness of the exhibit's connection with the events at issue affects only the weight to be given to the exhibit. Id. Typically, evidence outside of the exhibit itself, such as authenticating witness testimony, creates an inference sufficient for authentication. Dumes, 723 N.E.2d at 463. However, Indiana Evidence Rule 902 is one exception to the general requirement that other evidence establish the authenticity of an exhibit. Id. Rule 902 states that certain evidence can be self-authenticating, and provides in pertinent part:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents.* The original or a duplicate of a domestic official record proved in the following manner: An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof . . . when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy. Such publication or copy need not be accompanied by proof that such officer has the custody. Proof that such officer does or does not have custody of the record may be made by the certificate of a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

Ind. Evid. R. 902(1). “To be authenticated under 902(1), the written attestation must be original.” Hightower v. State, 735 N.E.2d 1209, 1215 (Ind. Ct. App. 2000), trans. denied. However, copies of records are admitted as legal evidence in any court of Indiana “by the annexation by the custodian of the seal of office of the custodian.” Ind. Code § 34-37-1-8 (2)(A). Additionally, it is written into the Indiana Code that court documents from other states are admissible in Indiana courts when “authenticated by attestation or certificate of the clerk or prothonotary, with the seal of the court annexed, together with the seal of the chief justice.” Ind. Code § 34-39-4-3(a).

Krzeminski argues Exhibit 13 was not properly authenticated for several reasons. First, there was no Social Security Number on Exhibit 13 that identified Krzeminski. Additionally, Exhibit 13 lacked any photo I.D. or mug shot to connect Exhibit 13 to Krzeminski. Finally, there was no other testimony or evidence to prove Exhibit 13 pertained to the same Terry Lee Krzeminski on trial in this case.

As discussed by the trial court in admitting the exhibit, however, Krzeminski’s arguments go to the weight to be given to Exhibit 13 rather than its admissibility. Exhibit 13 contained an attestation bearing the seal and signatures of the clerk, deputy clerk, and chief judge of the court in which the proceedings took place in Michigan certifying the annexed writings were true copies of the originals. The attestation was an original. Despite there being no requirement that each separate page of the record be individually certified, each page of Exhibit 13 contained the signatures of both deputy clerks from the Monroe County Court in Michigan certifying the document was what it purported to be. See Hernandez v. State, 716 N.E.2d 948, 952 (Ind. 1999). Therefore, the attestation

attached to Exhibit 13 satisfied both Indiana Rule of Evidence 902 and Indiana Code section 34-39-4-3 as a self-authenticating document from another state.

Further, even assuming Exhibit 13 was not a self-authenticating document, the admission of a document as an exhibit is within the sound discretion of the trial court. Lahr v. State, 640 N.E.2d 756, 761 (Ind. Ct. App. 1994), trans. denied. Absolute proof of authenticity of a document is not required. Id. Rather, evidence that demonstrates “a reasonable probability that the exhibit is what it is claimed to be and that its condition is substantially unchanged as to any material feature is sufficient.” Id. The circumstantial evidence surrounding Exhibit 13 allowed the trial court to conclude it was an authentic criminal record pertaining to Krzeminski. Exhibit 13 was a conviction record for Terry Lee Krzeminski, the exact name of the Appellant in this case. Exhibit 13 contained the birthday of Terry Lee Krzeminski, May 5, 1959, the same birthday as the Appellant in this case. Finally, Krzeminski’s wife testified at trial that Krzeminski was from Monroe, Michigan, and that he had informed her in the past he had a conviction for armed robbery from Michigan.

Therefore, the trial court did not abuse its discretion, much less commit fundamental error, when it admitted Exhibit 13 into evidence.

Conclusion

The trial court did not commit fundamental error in admitting Exhibit 13 into evidence and we therefore affirm Krzeminski’s conviction for unlawful possession of a

firearm by a serious violent felon.

Affirmed.

RILEY, J., and BROWN, J., concur.