

**NOTICE**

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2018 IL App (4th) 150873-U

NO. 4-15-0873

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 24, 2018

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
PAUL ALBERTSON,	)	No. 15CF178
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.  
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was not denied a fair trial when the trial court allowed the jury to see the video recording of a redacted portion of the traffic stop which showed what appeared to be a handgun falling out of the vehicle. The jury was properly admonished before viewing the video that the handgun was actually a BB gun and thus defendant cannot demonstrate prejudice and any potential error was harmless.

¶ 2 Defendant, Paul Albertson, appeals from his conviction of unlawful possession of methamphetamine manufacturing material (720 ILCS 646/30 (West 2014)). He claims the trial court erred in allowing the jury to view a video of an irrelevant and highly prejudicial portion of the traffic stop. He claims the jury’s viewing of this particular portion of the video denied him a fair trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2015, the State charged defendant with one count of unlawful possession of a methamphetamine precursor with the intent to manufacture less than 10 grams of methamphetamine, a Class 2 felony (720 ILCS 646/20(b)(1), (b)(2)(A) (West 2014)) (count I), and one count of unlawful possession of a methamphetamine manufacturing material with the intent that it be used to manufacture methamphetamine, a Class 2 felony (720 ILCS 646/30(a), (b) (West 2014)) (count II). The State filed an amended information, modifying count I to allege defendant unlawfully possessed less than 15 grams of a methamphetamine precursor with the intent that it be used to manufacture methamphetamine, a Class 2 felony (720 ILCS 646/20(a)(1), (a)(2)(A) (West 2014)). The charges stemmed from a traffic stop of a vehicle driven by Angela Metcalf. Metcalf was also named in the charging document. She pleaded guilty to count II in exchange for the State’s dismissal of count I and her truthful testimony against defendant.

¶ 5 Prior to trial, defendant filed a motion *in limine* to exclude the police officer Jeremy Dobkins’s body-camera video of the traffic stop on the grounds of (1) hearsay (Ill. R. Evid. 801 (eff. Jan. 1, 2011)), (2) inadmissible character evidence (Ill. R. Evid. 404(b) (eff. Jan. 1, 2011)), (3) the prejudicial impact outweighing the probative nature of the evidence (Ill. R. Evid. 403 (eff. Jan. 1, 2011)), (4) relevancy (Ill. R. Evid. 401 (eff. Jan. 1, 2011)), (5) the confrontation clause (Ill. Const. 1970, art. I, § 8), and (6) the admission of other-crimes evidence (Ill. R. Evid. 404(b) (eff. Jan. 1, 2011)). Defendant alleged the 90-minute video, which included both audio and video, would confuse the jury about the ultimate issue at trial. The portion of the video at issue depicted a handgun, which was later determined to be a BB gun, fall out of the vehicle from the passenger side door where defendant was seated.

¶ 6 At the hearing on defendant’s motion *in limine*, defense counsel argued first about the “extensive” hearsay on the recording. She indicated one could hear conversations primarily

among Metcalf, Dobkins, and unnamed individuals of the “methamphetamine response team.” Counsel also objected to the admission of the body-camera footage “because of the character evidence” relating to the BB gun. She alleged Dobkins had indicated during “various parts of the video that [defendant would] be charged with a UUW [(unlawful use of a weapon)].” She claimed the BB gun “has no relevance to this case” and was “more prejudicial than probative.” In response, the prosecutor argued that, although he believed the entire 90-minute video was relevant because it showed the entirety of the traffic stop, the State would agree to redact certain portions and mute the recording.

¶ 7 After considering the arguments of counsel, the trial court granted in part and denied in part defendant’s motion. The court agreed to have the video redacted in accordance with the State’s recommendation and ordered the parties to “come up with a stipulation to be read to the jury regarding the BB gun[.]”

¶ 8 On July 22, 2105, defendant’s jury trial began. Dobkins, a Rossville police officer, testified first for the State. He said on April 1, 2015, at approximately 8 p.m., he conducted a traffic stop of a vehicle driven by Metcalf for speeding. Defendant was the front seat passenger. Dobkins learned Metcalf was driving on a suspended driver’s license and defendant had an outstanding warrant. Dobkins approached defendant’s side of the vehicle and when he “opened the door an item that appeared to be a pistol fell from the vehicle and [defendant] was taken into custody after that.” Dobkins took defendant out of the vehicle and placed him in the squad car. Metcalf consented to a search of the vehicle. Beginning on defendant’s side of the vehicle, Dobkins found the door panel had been removed and, in its place, he found a can of Drano, which contained lye. Based on Dobkins’ training and experience, he knew these ingredients could be used in the production of methamphetamine. He contacted the Illinois State

Police Methamphetamine Response Team (MRT). Three MRT team members responded to the scene and conducted a further search of the vehicle.

¶ 9 The prosecutor handed Dobkins an evidence bag and asked him to describe the contents. Dobkins said the bag contained defendant's wallet and "the co2 firearm that was located at the time of the stop that fell out of the vehicle, as well as the white packaging that contains the Sudafed pills." Dobkins confirmed the firearm was determined to be a BB gun. The prosecutor played the redacted and muted video recording. Dobkins narrated the video from the witness stand.

¶ 10 The video was included in the record and can be summarized as follows. The recording begins with Dobkins sitting in his patrol car. A vehicle passes. Dobkins pursues the vehicle for a short distance and activates his overhead lights. Once the vehicle is stopped, Dobkins approaches the driver's side window and receives identification documents from Metcalf and defendant. Dobkins returns to his squad car and runs a computer check. Dobkins approaches defendant's side of the vehicle. Defendant opens the passenger door and a black handgun falls from the vehicle to the pavement. Dobkins takes defendant from the vehicle, puts him on the ground, and places handcuffs behind his back. Dobkins speaks with Metcalf as the MRT members are searching the vehicle in the background, placing the contents of the vehicle on the sidewalk. The video is approximately 10 minutes, 30 seconds in length.

¶ 11 After the jury viewed the video, the State asked that the parties' stipulation be read to the jury. The trial court agreed and the prosecutor stated: "[T]he gun that was recovered during the traffic stop was a BB gun. The defendant's possession of the BB gun during the traffic stop was not a crime in Illinois and as a result, the defendant was not charged with a crime due to having the BB gun."

¶ 12 Nathaniel Luster, an MRT team member, testified he searched the vehicle and found an (1) unopened package of pseudoephedrine tablets, (2) lithium batteries, (3) drain cleaner, (4) crystal lye, (5) salt, (6) cold packs, (7) rubbing alcohol, and (8) coffee filters—all ingredients used in the manufacturing of methamphetamine based upon his knowledge and experience.

¶ 13 Metcalf testified she was driving the vehicle with defendant as her only passenger. They were moving from Indiana to defendant's mother's home in Robertson, Illinois. She was arrested on the same methamphetamine-related charges as defendant but she entered into a plea agreement wherein she agreed to plead guilty to count II and testify truthfully against defendant in exchange for the dismissal of count I and a sentence of probation. She testified defendant directed her to purchase the items confiscated by MRT team members. They had planned to manufacture methamphetamine. The State rested.

¶ 14 Defendant moved for a directed verdict after the close of the State's case, but the trial court denied the same. Defendant presented no evidence. After deliberations, the jury found defendant not guilty of count I and guilty of count II (the unlawful possession of a methamphetamine manufacturing material with the intent that it be used to manufacture methamphetamine, a Class 2 felony (720 ILCS 646/30(a), (b) (West 2014))).

¶ 15 On July 29, 2015, defendant filed a motion for a new trial, alleging, *inter alia*, the trial court erred by denying defendant's motion *in limine* which allowed "evidence of a BB gun in the car with defendant, and the stipulation did not cure the error."

¶ 16 On September 17, 2015, the trial court conducted a hearing on defendant's motion for a new trial. Defense counsel did not present argument on the issue regarding the gun but stood "on [their] entire motion." The court denied the motion and proceeded to sentence

defendant to five years in prison. Defendant filed a motion to reconsider his sentence but the court denied the same.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant contends he was denied a fair trial when the jury watched the portion of the video of the traffic stop that depicted a gun falling from the vehicle, which, he claims, “caused a strong reaction from the officer, pulling [defendant] out of the vehicle, throwing him to the ground, and handcuffing him.” Defendant claims the video portrayed him as “a dangerous criminal that the police officer was afraid of, though the object was in fact a broken BB gun that posed no threat, was not a crime to possess, and was entirely irrelevant to the charges for which [defendant] was on trial.”

¶ 20 Initially, we note the State argues defendant has forfeited review of the issue related to how Dobkins reacted to the sight of the handgun falling from the vehicle. Indeed, a defendant must object at trial and raise the issue in a posttrial motion to preserve an issue for review. *People v. Hestand*, 362 Ill. App. 3d 272, 279 (2005). “Broad and general allegations in a post-trial motion are inadequate to advise the court of the challenge being raised, and are inadequate to preserve an issue for appellate review.” *People v. Johnson*, 250 Ill. App. 3d 887, 893 (1993). Here, defendant challenged the State’s use of the video in a motion *in limine* and a posttrial motion on the grounds of relevancy. In this appeal, defendant raises a challenge to the prejudicial nature of the contents of the video particularly in light of Dobkins’s reaction when he noticed the gun. While the arguments are framed slightly different, the argument remains the same. Defendant claims the prejudicial value of the video outweighed the probative value. We find the issue was preserved for our review.

¶ 21 “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Ill. R. Evid. 403 (eff. Jan. 1, 2011). A trial court’s decision on the admissibility of evidence is reviewed for an abuse of discretion. *People v. Reese*, 2017 IL 120011, ¶ 75. The test for the admissibility of evidence is whether it fairly tends to prove the particular offense charged; whether that which is offered as evidence will be admitted or excluded depends upon whether it tends to make the question of guilt more or less probable. See *People v. Ward*, 101 Ill. 2d 443 (1984). The BB gun was certainly not relevant to defendant’s guilt of the methamphetamine-related offense but we must determine whether the admission of the video depicting the gun constituted reversible or harmless error. *People v. Jackson*, 195 Ill. App. 3d 104, 113-14 (1990).

¶ 22 Error is deemed harmless where the evidence supporting a defendant’s conviction is so overwhelming that the defendant would have been convicted even if the error was eliminated. *Jackson*, 195 Ill. App. 3d at 114. Here, any prejudicial effect of the admission of evidence showing what appeared to be a handgun falling from the vehicle onto the pavement was, at least, significantly reduced and, at most, nonexistent. Before the jury watched the video, Dobkins testified the handgun was determined to be a BB gun, not a real gun. Therefore, any adverse reaction on Dobkins’s part on the video when he saw the gun was rationalized by his earlier testimony. When the gun fell out onto the pavement, he logically assumed the gun was real.

¶ 23 Further, after watching the video, the prosecutor informed the jury of the parties’ stipulation that (1) the gun was a BB gun, (2) having a BB gun was not a crime, and (3)

defendant was not charged with a crime for having the BB gun. We find any potential error relating to the admission of the BB gun into evidence, on video or otherwise, was harmless because any prejudice would have been cured by the testimony and admonishments to the jury. Defendant cannot reasonably claim the potential error contributed to his conviction when the evidence of his possession of methamphetamine manufacturing materials was so overwhelming. See *Jackson*, 195 Ill. App. 3d at 114.

¶ 24

### III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 26 Affirmed.