No. 2—09—0738
Order filed March 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—1254
ROBERT L. BENSON,	)	Honorable Joseph P. Condon,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: Any error as regarding barring defendant from introducing certain letters from the victim and her mother under the completeness doctrine or the theory of curative admissibility was harmless; in accordance with confession of error by the State, trial court erred in sentencing defendant to four years of mandatory supervised release.

Defendant, Robert L. Benson, was convicted of two counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1)(i) (West 2006)) and sentenced to four years' imprisonment plus four years' mandatory supervised release. He now appeals, alleging two errors. First, he contends that the trial court erred in refusing to permit him to introduce certain evidence. Second, he argues

that he should have been sentenced to only two years of mandatory supervised release. We disagree with defendant regarding the first issue, and the State confesses error regarding the second issue. Accordingly, we modify defendant's sentence to two years' mandatory supervised release and otherwise affirm.

Turning to defendant's first issue, we initially note that a trial court's decision regarding whether to admit evidence is reviewed using the abuse of discretion standard. *People v. Kliner*, 185 Ill. 2d 81, 146 (1998). Hence, we can only disturb such a decision if no reasonable person could agree with the position taken by the trial court. *People v. Walston*, 286 Ill. App. 3d 598, 601 (2008). Furthermore, it is defendant's burden, as the appellant, to affirmatively demonstrate error on appeal. *People v. Smith*, 253 Ill. App. 3d 443, 451 (1993). When an evidentiary ruling is at issue, this burden includes showing prejudice arising from the purported error. See *People v. Cortes*, 181 Ill. 2d 249, 285 (1998); *People v. Tennin*, 123 Ill. App. 3d 894, 899 (1984).

While defendant was in jail awaiting trial, he received a number of letters from the victim and the victim's mother (defendant's girlfriend with whom he had been living at the time of the offenses). In these letters, the victim's mother and the victim expressed sorrow that defendant was in jail and their desire to see him again. Defendant also wrote letters to the victim and her mother. In his letters, defendant expressed a desire to rebuild the family. They also contained statements that can be construed as incriminating. For example, one letter states "[T]here are lots of things that people need to go to prison for, I don't feel that this is one of them" and "Go to court-room 302 and talk to my [Attorney] and tell him that you made it up because you were really mad at me for making you do chores and yelling at you and making fun of your weight!" (Brackets in original.) The letter also states that defendant "really messed up good this time" and that he has been "crying [his] eyes

out" "from the things that [he had] done." Another letter states, "This means that I will go to prison for something that we could have worked out as a family in counseling sessions somewhere!" It continues, "I know every miss deed [*sic*] needs its punishment but this is a little harsh!"

The trial court ruled that the letters written by defendant were admissible as statements by a party opponent. It initially ruled that the letters authored by the victim and her mother were hearsay. Defendant argued that, absent the letters from the family, the letters he wrote would not be presented to the jury in their proper context. That is, the jury could view them as improper attempts to contact a witness rather than responses in an ongoing dialogue among family members. The trial court then found that only one of the letters could be read as an invitation to communication. The trial court ruled that letter was admissible but refused to allow any of the others into evidence.

Before this court, defendant argues that the barred letters from the victim and her mother should have been presented to the jury in accordance with the completeness doctrine or the theory of curative admissibility. The completeness doctrine, which applies when a portion of a statement is admitted into evidence, provides that "a party may introduce the balance of a writing or an oral statement that has been introduced by an opponent, for the purpose of explaining, qualifying, or otherwise shedding light on the statement." *People v. Boand*, 362 Ill. App. 3d 106, 132 (2005). It provides an exception to the hearsay rule. *People v. Brown*, 249 Ill. App. 3d 986, 990 (1993). It allows the admission of additional material that "was said on the same subject at the same time." *Brown*, 249 Ill. App. 3d at 990, quoting *People v. Hudson*, 198 Ill. App. 3d 915, 924-25 (1990), quoting *People v. Hosty*, 146 Ill. App. 3d 876, 884 (1986). Here, we note that we would be hard pressed to say that no reasonable person could agree that the letters were not statements made at the same time such that an abuse of discretion occurred.

Conversely, the theory of curative admissibility is not limited to statements. See *People v. v. Wilbert*, 15 Ill. App. 3d 974, 984-87 (1973). It allows the admission of otherwise inadmissible evidence where it is necessary to counter undue prejudice arising from evidence introduced by the opposing party. *People v. Manning*, 182 Ill. 2d 193, 216 (1998). The Supreme Court explained the theory as follows: "If *A* opens up an issue and *B* will be prejudiced unless *B* can introduce contradictory or explanatory evidence, then *B* will be permitted to introduce such evidence, even though it might otherwise be improper." *Manning*, 182 Ill. 2d at 216. It bears emphasizing that this doctrine does not permit the introduction of evidence simply because an opponent brought forth some evidence on the same issue. *Manning*, 182 Ill. 2d at 216. Rather, the theory allows evidence only to the extent it is necessary to purge the taint of *undue* prejudice. *Manning*, 216 Ill. 2d at 216-17. Defendant advances similar arguments regarding both doctrines. In the section of his brief related to the completeness doctrine, defendant asserts that, without being fully aware that the victim and her mother were engaged in an ongoing dialogue by letter, the jury could interpret his letters "as a last-ditch, one-sided plea, designed to affect the outcome by playing to their emotions." As for the theory of curative admissibility, defendant contends he suffered undue prejudice in that "it appeared [he] was engaging in unsolicited, (arguably inappropriate) contact with the key witnesses in the upcoming trial in the form of repeated pleas to reconcile." According to defendant, placing his letters in their proper context would have alleviated the unfair prejudice he purportedly suffered.

However, far from suffering undue prejudice, we see little prejudice accruing to defendant at all as a result of the trial court's decision to bar the letters from the victim and her mother. That is, any error by the trial court on this subject was harmless. Our supreme court has explained that, in assessing whether an error is harmless, "a reviewing court may (1) focus on the error to determine

whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence. *People v. Becker*, 239 Ill. 2d 215, ___, 940 N.E.2d 1131, 1145 (2010). Both the first and third methods of assessing harmless error are pertinent here.

Given the nature of the evidence and its relationship to other evidence in the record, it is clear to us that the trial court's decision to bar the evidence of which defendant complains did not contribute to his conviction. Quite simply, defendant's chief complaint is that the jury could have interpreted his letters as unsolicited attempts to influence key witnesses (which, presumably, would provide evidence of consciousness of guilt). We note that in one of his letters, defendant wrote, "Go to court-room 302 and talk to my [Attorney] and tell him that you made it up because you were really mad at me for making you do chores and yelling at you and making fun of your weight!" (Brackets in original.) Similarly, defendant wrote the following: "Someone said to me that if no one shows up at the trials or court dates that they throw it out. Let's Hope Huh!!" We fail to see how anything in the letters of the victim or her mother would place these statements in a context where they could be interpreted as anything other than an improper attempt to influence a witness. That the jury may have drawn a similar, albeit weaker, inference based on other statements in defendant's letters that might have been dispelled by the admission of the letters of the victim and her mother could not have added much relative to the statements set forth in this paragraph. Thus, any error did not contribute to defendant's conviction.

We further note that, to the extent that defendant claims that the letters from the victim and her mother were necessary to show that his letters were part of an ongoing dialogue, the evidence

is largely cumulative of other evidence. Specifically, when the victim's mother testified, she acknowledged that she wrote letters to defendant after he was charged in this case. She explained that she did so because she and her girls loved him and that she and defendant had planned to marry. She also acknowledged that her children wrote to defendant. Moreover, the trial court did allow one letter from the victim's mother to be admitted. In it, she wrote that she needed time but was not saying that defendant should not call or write, which, as the trial court observed, could be taken as an invitation to communicate. Thus, defendant's contentions that the jury was left with the impression that he engaged in unsolicited contact with key witnesses or that the jury could interpret his letters as a "one-sided plea" designed to affect the outcome of the trial are unfounded. Indeed, based on the victim's mother's testimony, defendant emphasized during closing argument that both the victim and her mother were corresponding with defendant. The letters that were excluded would not have permitted defendant to make any further argument along these lines, nor would they have permitted the jury to draw any further inferences regarding the nature of defendant's letters. That is, there was adequate information in the record to establish the proper context for defendant's letters and dispel the notion that he was engaging in unsolicited communications.

In his reply brief, defendant contends that only the contents of the letters could have dispelled such inferences. We disagree. Defendant implies that the evidence in the record only establishes the mere fact that the victim and her mother wrote to defendant. This, however, is not the case. Rather, in addition to testifying that she and her daughter had written to defendant, the victim's mother also testified that they did so because they had loved defendant. That the letters were motivated by love indicates that, whatever their exact contents, they were some sort of positive expression aimed at defendant. This establishes a context for defendant's letters. Further, we note

that the jury had one of the victim's mother's letters before it, so it had an example of the nature of the letters that the victim and her mother were writing. Thus, the jury had information regarding the content to these letters, including the actual contents of one of them. As such, we cannot see how providing more such content would have had an effect on the outcome of the proceedings.

We therefore conclude that the purported error of which defendant complains was harmless. Accordingly, having modified defendant's sentence to two years's mandatory supervised release, we affirm the judgment of the circuit court of McHenry County.

Affirmed as modified.