

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Paul J. Podlejski
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

George P. Sherman
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jesse Clayton Courtney,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 29, 2023
Court of Appeals Case No.
23A-CR-258

Appeal from the Madison Circuit
Court

The Honorable Angela G. Warner
Sims, Judge

Trial Court Cause No.
48C01-2202-F3-382

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

- [1] Following a jury trial, Jesse C. Courtney was convicted of Level 3 felony attempted robbery, Level 6 felony battery, and Class A misdemeanor trespassing. Courtney claims that the trial court abused its discretion in denying his requests for a mistrial.
- [2] We affirm.

Facts & Procedural History

- [3] Before noon on February 7, 2022, Jimmy Rothell drove past a warehouse that he owned in Anderson and discovered signs of a break-in. Specifically, he observed a broken window and the front door ajar. Rothell parked nearby and then entered through the open door. It was dark because the warehouse did not have power, but he could hear someone moving around inside. Rothell quickly backed out of the warehouse and yelled, “I got a gun.” *Transcript Vol. 2* at 3. He also warned that he was calling the police.
- [4] Rothell did not actually have a firearm with him at the time. Instead, he held his phone ready and took a picture as soon as the individual – later identified as Courtney – walked through the doorway. Rothell told Courtney that he was calling the police and giving them the picture. Courtney then suddenly “jumped [Rothell]” and punched him in the nose. *Id.* at 5. Rothell fell to the ground as Courtney got on top of him and continued to hit him in the head and face while placing him in a headlock. Courtney demanded money and

Rothell's ring and threatened to "stick [him] with a shank," as Rothell screamed for help. *Id.* at 6. Rothell was bleeding, and he thought his nose was broken.

[5] Afraid he was going to die, Rothell eventually told Courtney that he had money in his truck and asked Courtney to let him up so that he could get it. When Courtney released him, Rothell ran to his truck and drove to the front of a Dollar General store that was next door. He then called 911.

[6] Minutes later, Anderson Police Department officers located Courtney going into a smoke shop about a block from the warehouse. Officer Christopher Burton took Courtney into custody inside the shop but did not give him Miranda warnings, leaving that for the lead investigator, Officer Brett Webb, who was with Rothell at the warehouse. Before transporting Courtney to the scene, Officer Burton asked Courtney multiple times about backpacks and a cardboard box that were sitting together directly outside of the shop. Courtney eventually identified the bags as his, and Officer Burton later found a Sawzall blade inside the cardboard box.

[7] Rothell identified Courtney at the scene. Courtney was wearing distinctive clothing, as reflected in the photograph taken by Rothell, and there was blood on Courtney's jeans, jacket, and gloves. Later DNA testing revealed that the blood was Rothell's.

[8] Courtney's three-day jury trial commenced on December 14, 2022, during which he twice requested a mistrial. The first mistrial request occurred during the State's direct examination of Officer Burton with the following exchange

after Officer Burton indicated that Courtney had been taken into custody inside the smoke shop:

Q What items were found either on his person or in his property?

A He had identified property sitting directly outside of the business as a, I believe there were two (2) backpacks and a cardboard box that had items in it. And he had identified those as his property.

[Defense objected based on lack of clarification regarding who “he” is, so the court asked for clarification of the pronoun.]

Q Did the suspect indicate he had property that he wanted you to collect as part of taking it with him?

A Yes, ma’am.

Transcript Vol. 2 at 56-57. Courtney requested a mistrial at this point.

[9] Outside the presence of the jury, Courtney argued in support of his request for a mistrial that: (1) the jury would be left wondering what else he told Officer Burton; (2) Courtney’s statement about the property¹ outside the shop had been

¹ There was no evidence presented to the jury regarding what was found inside the backpacks or cardboard box. The only reference the jury heard regarding a Sawzall blade was made during the State’s opening statement when discussing Courtney’s threat “to shank” Rothell. *Transcript Vol. 1 at 241.* In this regard, the State noted that a blade was found on Courtney’s person after the attack, but the State acknowledged that Courtney “never showed this knife” or “used it on [Rothell].” *Id.*

elicited while he was in custody and without Miranda warnings; and (3) the testimony violated an order in limine precluding any reference to the assertion of his right to remain silent. At Courtney's request, the trial court viewed the body cam footage from the interaction. The court then took the matter under advisement and adjourned for the evening.

[10] The next morning the trial court denied the request for a mistrial despite finding that the State's questioning of Officer Burton was improper. The court explained: "The State knew [Courtney] was in custody, knew he was detained, and knew he had not been mirandized at that point." *Id.* at 79. The court ruled that moving forward "there will be no more evidence permitted on the bags, the box or the blade that was found in the box" but that the testimony so far did not warrant a mistrial. *Id.* At Courtney's request, the court gave a general curative instruction to the jury before Officer's Burton's testimony resumed.

[11] The second request for a mistrial came during the testimony of Scott Grammer, a forensic biologist with the Indiana State Police Laboratory. Grammer testified regarding DNA evidence analyzed as part of the investigation. While establishing chain of custody, the following exchange occurred:

Q Upon receipt of those items, were they in the original packaging from a law enforcement agency or did someone at your laboratory unpackage them and provide them to you?

A I believe that I - - there's not really anyway for me to say for sure who packaged them. I can tell you the condition of the packaging that I received. Um, I can say though that I did not make any notes that would indicate that it looked like they were

repackaged by us. The only reason that anything would be repackaged by us and would not come in the original packaging would be if uh I'm trying to think, it's pretty rare. One (1) case I can think of that it happened unrelated, it wasn't this case, it was like a Sawzall with a blade sticking out of it and it poked through the packaging of the paper bag. So, our evidence technicians put it into like a box to better secure it and then they have a procedure to document that. I don't think that was the case. It appears to me these were the original packaging but I –

Id. at 110-111. Though acknowledging that Grammer's reference to a Sawzall blade was a coincidental "random example," Courtney requested a mistrial due to the trial court's prior ruling excluding evidence of the Sawzall blade found by Officer Burton. *Id.* at 112. The trial court denied the motion for a mistrial.²

[12] The jury found Courtney guilty as charged of Level 3 felony attempted robbery, Level 6 felony battery, and Class A misdemeanor trespassing. The trial court subsequently sentenced him to fully concurrent sentences resulting in an aggregate term of twelve years, with six years executed in the Indiana Department of Correction, three years on Continuum of Sanctions, and three years suspended to probation.

[13] Courtney now appeals. Additional information will be provided below as needed.

² Questioning outside the presence of the jury revealed that Grammer did not know that there was "a blade of any kind" involved in Courtney's case and that a Sawzall blade was not among the items sent to the laboratory for DNA testing. *Id.* at 119.

Discussion & Decision

- [14] We review a trial court’s decision whether to grant or deny a mistrial only for an abuse of discretion, as the trial court is in the best position to judge the surrounding circumstances of the event and its impact on the jury. *Knapp v. State*, 9 N.E.3d 1274, 1283-84 (Ind. 2014). A mistrial is an extreme remedy that should be granted only where other remedies cannot satisfactorily rectify the error. *Id.* at 1284. “To prevail on appeal from the denial of a motion for mistrial, the appellant must demonstrate the statement or conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected.” *Agilera v. State*, 862 N.E.2d 298, 307 (Ind. Ct. App. 2007), *trans. denied*. Gravity of peril is determined by the probable persuasive effect of the misconduct on the jury’s decision rather than the degree of impropriety of the conduct.” *Id.* at 307-08.
- [15] Courtney argues that through Officer Burton’s testimony, the State put before the jury evidence and statements obtained in violation of Courtney’s right to remain silent and right to counsel. Further, he asserts that the curative instruction given the day after the improper testimony was not sufficient to cure the error given “the gravity of the violation.” *Appellant’s Brief* at 11.
- [16] We agree with the trial court that Courtney was not subjected to grave peril by Officer Burton’s testimony that Courtney had indicated ownership of property sitting outside of the smoke shop, specifically two backpacks and a cardboard box that had items in it. Officer Burton did not testify as to what was found

inside the backpacks or box, and the only reference to the Sawzall blade was made during the State's opening statement, which included that such a blade was found on Courtney's person upon his arrest. Further, evidence of the Sawzall blade had not even been excluded by the trial court at the time it was referenced, without objection, during the State's opening statement or when Officer Burton testified about ownership of the property found outside the shop.

[17] Courtney suggests that after the trial court's exclusion ruling, Grammer "again mentioned the Sawzall blade in his expert testimony." *Appellant's Brief* at 12. But the record makes clear that Grammer's testimony had nothing to do with "the Sawzall blade" but was rather an example from another case in which original packaging of evidence was damaged requiring repackaging. Taken in context, the jury would have understood that Grammer's passing reference to a Sawzall blade had nothing to do with this case.

[18] Finally, even if the jury inferred that the Sawzall blade was found inside Courtney's backpacks or boxes, this would have had little to no probable persuasive effect on its decision. The evidence against Courtney was overwhelming and the convictions did not turn on whether he was armed with a blade of any kind. Indeed, it was undisputed at trial that Courtney did not display or use a weapon while beating Rothell.

[19] The extreme remedy of a mistrial would not have been appropriate under the circumstance of this case. Accordingly, the trial court did not abuse its discretion in denying Courtney's requests for a mistrial.

[20] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.