

## MEMORANDUM DECISION

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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Richard Kobielnik,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 1, 2021

Court of Appeals Case No.  
21A-CR-376

Appeal from the Morgan Superior  
Court

The Honorable Brian H. Williams,  
Judge

Trial Court Cause No.  
55D02-1802-F4-459

**Najam, Judge.**

## Statement of the Case

- [1] Richard Kobielnik appeals his convictions for child molesting, as a Class C felony; child molesting, as a Level 4 felony; sexual misconduct with a minor, as a Level 4 felony; child seduction, as a Level 5 felony; child seduction, as a Level 6 felony; display of matter harmful to minors, a Class D felony; and display of matter harmful to minors, a Level 6 felony, following a jury trial. Kobielnik presents a single issue for our review, namely, whether the trial court abused its discretion when it restricted his questioning of prospective jurors during voir dire.
- [2] We affirm.

## Facts and Procedural History

- [3] From 2009 until 2016, Kobielnik molested his fiancée’s minor children, E.B. and J.S., on multiple occasions. Kobielnik also showed J.S. pornography, both online and in a magazine. In March 2018, the State charged Kobielnik with nine felonies. In October 2020, the State filed amended charges as follows: child molesting, as a Class C felony; child molesting, as a Level 4 felony; sexual misconduct with a minor, as a Level 4 felony; child seduction, as a Level 5 felony; child seduction, as a Level 6 felony; display of matter harmful to minors, a Class D felony; and display of matter harmful to minors, a Level 6 felony.
- [4] On the first day of Kobielnik’s jury trial in October 2020, before voir dire, the trial court advised counsel that it would implement a “process” it had used

previously to minimize the time that the entire jury pool would spend together in the courtroom. Tr. at 5. In particular, rather than question each prospective juror in the entire pool, counsel would review the written questionnaires and strike the prospective jurors who were obviously not fit to serve. The court stated,

under the circumstances of the COVID situation, I think erring on the side of just dismissing people who have got stuff in their background that indicate that they may have trouble being fair, rather than getting in here and really tussling around about it, is fair, reasonable, and allows us to dispense justice today without putting an entire panel in the situation of being exposed in a situation where they can't necessarily social distance as much as they'd like to.

*Id.* at 7.

[5] Defense counsel objected, stating that Kobielnik had a constitutional right to ask the prospective jurors questions about their answers on the questionnaire. The trial court overruled that objection, and the court explained that

[y]ou can ask them whatever you want to in the open Court voir dire. I'm not limiting you from that. If you think there's something that you can dance around and deal with, because you got an unsatisfactory result on getting them out of the panel up here, which I doubt we will have, to be honest. If you want to get into that. It's your time.

*Id.* at 7-8. Later, the trial court struck five jurors based solely on their answers in the questionnaires. And before the court brought the remaining prospective jurors into the courtroom for voir dire, the court asked counsel whether they

had “any objection to proceeding with the panel as we have?” *Id.* at 29.

Counsel for both the State and Kobielnik stated that they had no objection.

Defense counsel then conducted voir dire.

[6] At the conclusion of trial, the jury convicted Kobielnik as charged. After trial, counsel for the State and defense counsel were questioning the jurors when one of the jurors

approached [the prosecutor], in the presence of [the trial judge] and counsel for Defendant, and stated something to the effect of, it was an honor to be able to do this, that this hit close to home and was personal because he has experience with these things and personal experience within his family with this.

Appellant’s App. Vol. 2 at 138. The trial court entered judgment of conviction on all seven counts.

[7] Prior to sentencing, Kobielnik filed a motion to correct error alleging that the juror’s comments to the prosecutor “and his failure to disclose such experiences in his questionnaire is clear misconduct that compromised his appearance of neutrality and denied Defendant his Constitutional right to an impartial jury and Defendant is entitled to a new trial.” *Id.* at 140. Following a hearing, the trial court denied Kobielnik’s motion and found and concluded as follows:

1. The juror at issue is concluded to be Juror Number 48. His questionnaire discloses no personal sexual abuse experience but does go on to relate that his wife has claimed some history of being molested, as did a cousin. This was discussed along with the rest of the questionnaires provided from his panel. The court found (and finds) that this was second or even third hand hearsay

type information and was not a personal experience or an experience that occurred to a close family member when he had a relationship with them. He indicated that despite this he could be fair, and endorsed the idea the law should deal with these matters. This was discussed with counsel, and any motion to excuse was overruled in light of the immediately following assertion that the potential juror felt he could be fair and impartial.

2. During open discussion the court also asked, in addition to counsel's later opportunity to directly examine, if there was any reason the juror could not be fair or impartial. The juror never made a statement counter to his assertion he could despite several later opportunities. The Juror was, with his panel, directed to speak out about any reasons he felt he could not be fair. He was advised he could still bring it up privately. He was advised to raise his hand and speak up if he felt there was anything important we needed to know. He along with the panel was asked if there was any reason they felt they could not serve, after being advised of issues at trial the need for fair and impartial jurors.

3. The court finds there were no false statements provided or made by the juror during the voir dire process. Therefore, Defendant's assertions that *Fuquay v. State*, 583 N.E.2d 154, 157 (Ind. Ct. App. 1991); *Dickenson v. State*, 732 N.E.2d 238, 241 (Ind. Ct. App. 2000) are somehow implicated are rejected.

4. The court finds the juror did feel as though he could be fair and impartial before and during the trial process. The court finds that there is no evidence that the juror was biased or lied during voir dire as would call for relief pursuant to *State v. Dye*, 784 N.E.2d 469 (Ind. 2003) or *Loehrlein v. State*, 142 N.E.3d 966 (Ind. Ct. App. 2020) as asserted by the Defendant.

Additionally the Defendant has also asserted that the court inappropriately curtailed voir dire on issues covered by the questionnaire. The record reflects the pertinent discussion on the issue. . . [including the court's statement that counsel could ask any question at all during voir dire in open court].

[Defense counsel] later asked the Panel containing Juror 48:

. . . Just to the jury en masse, is there anyone here that thinks I'm not sure that I could actually sit on the jury knowing that we are going to talk about allegations of child molest, child abuse?

Juror 48 did not respond affirmatively, although others did.

Through the Defendant's other portions of voir dire, [defense counsel] did not significantly question Juror 48 on any issue.

After questioning and before pre-emptory striking, the issue of removing juror 48 was not brought forth by counsel in any way. The issue of striking for cause was addressed for a different juror, and then counsel were both asked about any other possible strikes for cause.

The court finds:

1. The Court did not limit either counsel's opportunity to discuss any relevant issues with any Juror and in particular Juror 48 in any way.
2. Defendant's counsel did not choose to discuss the questionnaire issues with that juror.
3. There is no basis for error or mistrial based on the court's conduct of voir dire.

The court is also mindful that the conduct and statements complained of by the Defendant were made by the Juror after the

conclusion of the process and after he had been discharged from his oath as a juror. He was no longer under any obligation to act or be impartial at that time. He had, along with 11 other jurors, come to a quick and unanimous verdict that the Defendant was guilty after hearing all the evidence. The juror statements could and can easily be harmonized with him taking his obligation seriously and only having the feelings and attitude he expressed as his mindset after deliberations and a decision was made.

*Id.* at 142-45 (citations and emphases removed). Following a sentencing hearing, the trial court sentenced Kobielnik to an aggregate term of thirty-two and one-half years executed. This appeal ensued.

## **Discussion and Decision**

[8] Kobielnik contends that the trial court abused its discretion when it restricted his access to prospective jurors during voir dire. “Trial courts have broad discretionary power in regulating the form and substance of voir dire.” *Gibson v. State*, 43 N.E.3d 231, 237 (Ind. 2015) (quoting *Logan v. State*, 729 N.E.2d 125, 133 (Ind. 2000)). “We thus review a trial court’s management of voir dire for ‘manifest abuse of discretion,’ requiring a showing of prejudice to warrant reversal.” *Id.* at 237-38 (quoting *Logan*, 729 N.E.2d at 133).

[9] On appeal, Kobielnik contends that he “was not afforded the opportunity to procure a fair and impartial jury as result of the Court’s limitation on voir dire.” Appellant’s Br. at 6. In particular, Kobielnik cites the comments Juror No. 48 made to the prosecutor after the trial had concluded, and he asserts that those comments “certainly raise an air of impartiality that likely could have been

fleshed out had the court allowed the parties to make adequate voir dire inquiry.” *Id.* at 10. However, Kobielnik ignores the trial court’s findings that Juror No. 48 had disclosed on his questionnaire that two family members had had experiences with child molestation and that defense counsel was unhindered in his ability to question Juror No. 48 about that disclosure during voir dire in open court. Kobielnik does not direct us to any part of the transcript showing that his questioning of Juror No. 48 was restricted in any way. And Kobielnik does not otherwise challenge the trial court’s findings and conclusions.

[10] In sum, Kobielnik has not shown that he was prejudiced by the trial court’s decision to restrict counsel’s access to the entire jury pool during the initial phase of voir dire. Kobielnik had ample opportunity to question Juror No. 48 about his answers on the questionnaire during voir dire in open court but declined to do so. Accordingly, we hold that the trial court did not abuse its discretion in its management of voir dire.

[11] Affirmed.

Riley, J., and Brown, J., concur.