

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.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Jodi Kathryn Stein
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Charles Anthony Newman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 26, 2021

Court of Appeals Case No.
20A-CR-1468

Appeal from the Jackson Circuit
Court

The Honorable Chris Monroe,
Senior Judge

Trial Court Cause No.
36C01-1802-F5-15

Pyle, Judge.

Statement of the Case

[1] Charles Anthony Newman (“Newman”) appeals, following a jury trial, two of his four convictions, his habitual offender adjudication, and his twelve-year aggregate sentence. Specifically, Newman argues that: (1) there was insufficient evidence to support his convictions for Level 5 felony operating a motor vehicle after forfeiture of license for life¹ and Level 6 felony resisting law enforcement for fleeing in a vehicle;² (2) the trial court abused its discretion by denying his motion for mistrial relating to the habitual offender phase of his trial; and (3) his aggregate sentence is inappropriate. Concluding that: (1) there is sufficient evidence to support the challenged convictions; (2) the trial court did not abuse its discretion by denying Newman’s mistrial motion; and (3) Newman has failed to show that his sentence is inappropriate, we affirm his convictions, adjudication, and sentence. Although not raised by Newman, we note that the trial court imposed a one-year sentence on Newman’s Class C misdemeanor conviction. Accordingly, we reverse that sentence only and remand to the trial court to impose a sentence on Newman’s Class C misdemeanor conviction that complies with INDIANA CODE § 35-50-3-4.

[2] We affirm in part, reverse in part, and remand.

¹ IND. CODE § 9-30-10-17.

² IND. CODE § 35-44.1-3-1.

Issues

1. Whether the State presented sufficient evidence to support Newman's conviction for operating a motor vehicle after forfeiture of license for life and resisting law enforcement for fleeing in a vehicle.
2. Whether the trial court abused its discretion by denying Newman's mistrial motion.
3. Whether Newman's sentence is inappropriate.

Facts

[3] Around 4:00 a.m. on February 8, 2018, a gas station employee called the Seymour Police Department regarding "a suspicious vehicle in the back area of . . . the Marathon gas station[.]" (Tr. Vol. 2 at 102). Officer Christopher McCoy ("Officer McCoy") received the dispatch and then located a car, which had damage to the back end, driving on a nearby road. The officer saw that the car was occupied only by a male driver, who was later identified as Newman. Officer McCoy had dispatch contact the gas station employee to get a "further description" about the suspicious vehicle, and the employee "confirmed that there was extensive damage to the back end of the vehicle and [that] the vehicle was occupied with one (1) male." (Tr. Vol. 2 at 103).

[4] Officer McCoy followed the car and noticed that it went "completely into the oncoming lane of traffic" while on a county road. (Tr. Vol. 2 at 103). The officer then activated his emergency lights to initiate a traffic stop. Newman, however, did not stop his car. Officer McCoy activated his siren a couple of times, but Newman kept driving and led the officer on an eight-mile chase.

When Newman approached a four-way stop, he slowed down to around twenty miles per hour, disregarded the stop sign, and sped away. Newman then began driving “over eighty (80) miles an hour” in an area with a speed limit of forty-five mile per hour. (Tr. Vol. 2 at 107). Officer McCoy, who had his police lights flashing, gave chase behind Newman. Thereafter, Newman disregarded additional stop signs at various intersections and sped to over ninety miles per hour. Newman eventually lost control of his car and drove into a cornfield. Newman then drove through a ditch and back onto the county road before he spun out in the front yard of a residence and got stuck in another ditch. Officer McCoy “pinch[ed] [Newman] in so he couldn’t get out” by parking his police car by the “front passenger corner” of Newman’s car. (Tr. Vol. 2 at 112, 120).

- [5] Newman exited the driver’s side door and ran. Officer McCoy chased after Newman and yelled several times, “Stop. Police.” (Tr. Vol. 2 at 121). Newman did not stop. Eventually, after running another fifty yards, Newman stopped, put his hands up, and yelled, “What? What? What do you want to do now?” (Tr. Vol. 2 at 122). Officer McCoy told Newman to get on the ground, but Newman refused. The officer attempted to taser Newman, but the darts from the taser did not make contact with Newman’s skin. When Newman “kept coming at” Officer McCoy, the officer used his flashlight and punched Newman’s upper chest area. (Tr. Vol. 2 at 124). Newman fell face down onto the ground. Newman’s left hand was out to his side, but his right arm was still underneath him. Officer McCoy grabbed Newman’s left hand and ordered Newman to release his right hand, but Newman refused and “struggle[d]” with

the officer. (Tr. Vol. 2 at 125). After a continued struggle and Newman's persistent refusal to surrender his arm, Officer McCoy used his taser on Newman and then handcuffed him.

[6] At that time, additional officers arrived on the scene. Once Officer McCoy obtained Newman's identity, he called it into dispatch. The dispatcher told the officer that Newman was an "habitual traffic offender." (Tr. Vol. 2 at 131). In fact, at that time, Newman was on probation from his 2017 conviction for Level 5 felony operating a motor vehicle after forfeiture of license for life. One of the officers who had arrived at the scene, Officer Ryan Cherry ("Officer Cherry"), knew Newman from high school and was aware that Newman was an "habitual traffic violator" and was "not allowed to drive." (Tr. Vol. 2 at 142).

[7] The State charged Newman with Count 1, Level 5 felony operating a motor vehicle after forfeiture of license for life; Count 2, Level 6 felony resisting law enforcement (fleeing in a vehicle); Count 3, Class A misdemeanor resisting law enforcement (fleeing on foot); and Count 4, Class C misdemeanor reckless driving. The State also alleged that Newman was an habitual offender, alleging that he had two prior unrelated felony convictions for operating a motor vehicle after forfeiture of license for life (a 2015 conviction as a Class C felony and a 2017 conviction as a Level 5 felony).

[8] The trial court held a bifurcated jury trial in March 2020. Newman's defense was that he was a passenger of the car, not the driver. The State presented testimony from Officer McCoy and Officer Cherry who testified to the facts

above. Officer McCoy specifically testified that Newman had been the only person in the car and that there were no passengers.

[9] Following these officers' testimony, the State informed the trial court as follows:

Your Honor, prior to the Jury Trial in this case[,] I shared with [Newman's counsel] that the State was prepared to agree to a Stipulation that Mr. Newman was suspended or his driving privileges were forfeited for life under Indiana Code [§] 9-30-10-16([a])(1). My indication prior to this hearing was that he would not so stipulate. Accordingly, I am prepared to call Jacob Findley from the Probation Department to testify as to that prior case, 36C01-0912-FD-398. I understand it is a prior bad act, however it goes to an essential element of this crime [in Count 1,] and I just wanted to make sure that it is on the record that the State is willing to agree to the Stipulation however it is my understanding Mr. Newman is not.

(Tr. Vol. 2 at 146). The State explained that it would, therefore, introduce a certified copy of Newman's driving record and convictions to prove the element for Count 1. Newman's counsel confirmed that Newman did not intend to agree to the stipulation. The trial court then verified that Newman understood that a witness would be specifically testifying as to his prior convictions.

[10] Thereafter, probation officer Jacob Findley ("Probation Officer Findley") testified that he had supervised Newman's probation in a prior case. The State introduced Newman's charging information and sentencing order from cause 36C01-0912-FD-398, which showed that Newman had been charged with and convicted of Class D felony operating a vehicle as an habitual traffic violator

under INDIANA CODE § 9-30-10-16(a)(1) in 2010. The sentencing order also showed that the trial court had ordered Newman's driver's license to be suspended for life and that Newman had been present at the sentencing hearing when the trial court ordered that license suspension. Newman had no objection to the admission of these exhibits.

[11] The State also introduced into evidence a certified copy of Newman's driving record from the Indiana Bureau of Motor Vehicles and questioned Probation Officer Findley about it. The State specifically asked Probation Officer Findley about the portion of Newman's driving record that listed Newman's license status was "habitual traffic violator [for] life" and showed that Newman's license had been suspended in 2010 for operating a vehicle as an habitual traffic violator from cause 36C01-0912-FD-398. (State's Ex. 5 at 1). The driving record also showed that Newman's license had been suspended more than thirty times, but the State did not ask any questions about those suspensions. Newman had no objection to the admission of his driving record.

[12] When Newman testified on his own behalf, he denied that he had been driving the car that led Officer McCoy on a high-speed chase. Newman testified that he had been a passenger and that another person had been driving. Specifically, Newman testified that Nathan White ("White"), who was the father of Newman's girlfriend's child, had been driving. Newman also testified that when the car chase had ended, Newman had gotten out of the passenger side door and that White had gotten out of the driver's side door and had run off into a cornfield. Newman also denied that he had run away from Officer

McCoy. On cross examination, Newman admitted that his driving privileges had been forfeited for life in 2010 as a result of his conviction under INDIANA CODE § 9-30-10-16 and that his driving privileges continued to be suspended on the day of the alleged crimes.

[13] The jury convicted Newman of the four offenses as charged. When the jurors received the verdict forms for the four offenses, the jury also inadvertently received a verdict form for the habitual offender allegation. The jury deliberated on the allegation and returned the verdict form, finding that Newman was an habitual offender.

[14] When the trial court saw the premature habitual offender verdict form, it removed the jury from the courtroom and informed the parties about the verdict form. The trial court advised the parties that it would individually question each juror and “inquire as to what their understanding for signing this verdict form was when they did so[.]” (Tr. Vol. 2 at 212). The trial court then individually questioned each juror, starting with the jury foreperson and moving to the remaining jurors one by one, to understand how the jurors had arrived at signing and returning the verdict form. Newman did not object to the trial court’s questioning of the jurors. The jurors indicated that they had determined Newman to be an habitual offender based on the State’s exhibits that had been admitted into evidence, including Newman’s driving record and the documents relating to Newman’s prior habitual traffic violator conviction. The trial court also gave each party an opportunity to question each juror.

Aside from one question to one juror, Newman's counsel did not question the jurors.

- [15] After the trial court completed its questioning, Newman moved for a mistrial, arguing that “[t]he jurors have essentially already convicted [Newman] of being an habitual offender[.]” (Tr. Vol. 2 at 226). The State responded that the inadvertent verdict form did “not rise to the level of a mistrial.” (Tr. Vol. 2 at 226). The State pointed out that “one of the elements of Count [1] was that [Newman] was a[n] habitual traffic violator” and that it was “reasonable to believe” that the jury’s premature verdict had been based on the “habitual traffic offender evidence[.]” (Tr. Vol. 2 at 227). The trial court denied Newman’s motion for mistrial, explaining as follows:

Well, the previous conviction was for driving after having been adju[dica]ted an habitual traffic violator, which would indicate that there has been more than one (1) prior event. While this may [have] cause[d] significant problems had there not been the term “habitual” included in the evidence presented previously, I believe that it is harmless under the circumstances of this case with the language that has been in the previous documents and evidence presented, so the request for mistrial is denied.

(Tr. Vol. 2 at 227).

- [16] Thereafter, the trial court held the second phase of the trial on the habitual offender allegation, and the trial court gave preliminary instructions regarding the elements the State needed to prove beyond a reasonable doubt to show that Newman was an habitual offender. Newman did not ask the trial court to admonish the jury. During opening statements, the State explained that this

was a different phase from the other charges, and Newman’s counsel asked the jury to “make sure that the State meets its high burden of proof” on the habitual offender allegation at issue. (Tr. Vol. 2 at 231). The State introduced evidence that Newman had a 2015 conviction for Class C felony operating a motor vehicle after forfeiture of license for life and a 2017 conviction for Level 5 felony operating a motor vehicle after forfeiture of license for life. After the trial court gave the final instructions, it provided the jury with a “new blank copy of the verdict forms[.]” (Tr. Vol. 2 at 242). The jury determined that Newman was an habitual offender.

[17] At Newman’s sentencing hearing, the presentence investigation report (“PSI”) showed that from 2002 to 2017, Newman had accumulated eighteen convictions, which included ten felony convictions and eight misdemeanor convictions. Of those convictions, Newman had nine driving-related offenses. Specifically, Newman had four convictions for operating while intoxicated, one conviction for driving while suspended, two convictions for operating a vehicle as an habitual traffic violator, and two convictions for operating a motor vehicle after forfeiture of license for life. Newman’s other convictions included escape, theft, receiving stolen property, domestic battery, and possession of a controlled substance. Additionally, Newman was on probation for Level 5 felony operating a motor vehicle after forfeiture of license for life at the time he committed that very same offense plus the three additional offenses in this case.

[18] Newman asked the trial court to “give [him] a chance” and put him on either house arrest or probation. (Sent. Tr. Vol. 2 at 10). The trial court, however,

declined Newman's request. The trial court found that Newman's criminal history was an aggravating circumstance and that there were no mitigating circumstances. When sentencing Newman, the trial court stated that Newman had "[j]ust an absolute disregard for the laws of the state of Indiana with regard to driving" because he "clearly . . . knew [his] license was suspended on multiple occasions but [he] continued to drive." (Sent Tr. Vol. 2 at 23). The trial court noted that Newman's "driving behavior [wa]s very risky as [wa]s indicated by the charge itself and the specific facts in this case[,]" which included Newman "driv[ing] at a very high rate of speed for an extended period of time." (Sent Tr. Vol. 2 at 23, 25). Additionally, the trial court told Newman that "there was no credible evidence" of his "claim at trial that someone else was driving." (Sent. Tr. Vol. 2 at 23). Moreover, the trial court stated that the fact that Newman was "on probation for precisely the same crime, same behavior as this case . . . indicate[d] that [he] d[id]n't learn or d[id]n't change [his] behavior based upon a prior conviction." (Sent. Tr. Vol. 2 at 25).

- [19] The trial court imposed a five (5) year sentence for Newman's Level 5 felony operating a motor vehicle after forfeiture of license for life conviction and enhanced it by four (4) years for his habitual offender adjudication, resulting in a nine (9) year sentence for the Level 5 felony conviction. The trial court imposed a two (2) year sentence for Newman's Level 6 felony resisting law enforcement conviction. Additionally, the trial court imposed a one (1) year

sentence for each of Newman’s misdemeanor convictions.³ The trial court ordered Newman to serve his Level 5 felony sentence consecutively to his Level 6 felony sentence, and it ordered the two misdemeanor sentences to be served concurrently with each other but consecutively to the two felony sentences. Thus, the trial court imposed an aggregate twelve (12) year sentence for Newman’s four convictions.⁴ Newman now appeals.

Decision

[20] Newman argues that: (1) there was insufficient evidence to support his convictions for Level 5 felony operating a motor vehicle after forfeiture of license for life and Level 6 felony resisting law enforcement for fleeing in a vehicle; (2) the trial court abused its discretion by denying his motion for mistrial relating to the habitual offender phase of his trial; and (3) his aggregate sentence is inappropriate. We will address each argument in turn.

³ We note that Newman was convicted of a Class A misdemeanor and a Class C misdemeanor, and the trial court imposed a one (1) year sentence for both misdemeanor convictions. As pointed out by the State, the trial court erred by imposing a one-year sentence for Newman’s Class C misdemeanor conviction. *See* I.C. § 35-50-3-4 (providing that “[a] person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days”). Accordingly, we reverse the trial court’s sentence on Newman’s Class C misdemeanor conviction and remand to the trial court to impose a sentence that complies with INDIANA CODE § 35-50-3-4, issue an amended sentencing order and abstract of judgment, and correct the chronological case summary.

Additionally, we note that the abstract of judgment and chronological case summary incorrectly indicate that Newman’s four convictions were the result of a “Plea By Agreement[.]” (App. Vol. 2 at 12, 181, 185, 187, 189). Therefore, the trial court is also instructed to correct the abstract of judgment and chronological case summary to reflect that Newman’s convictions were the result of a jury verdict.

⁴ Because the trial court ordered the sentences on Newman’s misdemeanor convictions to be served concurrently with each other, Newman’s aggregate sentence remains unaffected.

1. Sufficiency

[21] We first address Newman’s argument that the State failed to present sufficient evidence to support his convictions for Level 5 felony operating a motor vehicle after forfeiture of license for life and Level 6 felony resisting law enforcement for fleeing in a vehicle.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (internal quotation marks and citations omitted) (emphasis in original).

[22] Pursuant to INDIANA CODE § 9-30-10-17(a)(1), “[a] person who . . . operates a motor vehicle after the person’s driving privileges are forfeited for life under section 16 of this chapter . . . commits a Level 5 felony.” Thus, to convict Newman of Level 5 felony operating a motor vehicle after forfeiture of license for life, the State was required to prove beyond a reasonable doubt that

Newman operated a motor vehicle after his driving privileges had been forfeited for life under INDIANA CODE § 9-30-10-16.

[23] A person commits Level 6 felony resisting law enforcement when he “knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself . . . and ordered the person to stop[,]” and “the person uses a vehicle to commit the offense[.]” I.C. §§ 35-44.1-3-1(a)(3), (c)(1)(A). Thus, to convict Newman as charged, the State was required to prove beyond a reasonable doubt that Newman, while using a vehicle, knowingly fled from Officer McCoy after the officer had identified himself by visible or audible means and had ordered him to stop.

[24] Newman’s sole challenge to these two convictions is one of witness credibility. Specifically, he argues that the State failed to present sufficient evidence to support his convictions for operating a motor vehicle after forfeiture of license for life and resisting law enforcement for fleeing in a vehicle because the State failed to prove that Newman had been the driver of the car.⁵ Newman refers to his own testimony that he had been a mere passenger in the car, and he questions Officer McCoy’s testimony that he saw one person driving and saw Newman exit the driver’s side car door.

⁵ Newman, however, does not challenge his reckless driving conviction.

[25] We refuse Newman’s invitation to reweigh the evidence and judge the credibility of the witnesses. *See Drane*, 867 N.E.2d at 146. Newman presented his testimony and defense to the jury, and they rejected it when they found him guilty of operating a motor vehicle after forfeiture of license for life and resisting law enforcement for fleeing in a vehicle. Because there was probative evidence from which the jury could have found that Newman was the driver of the car, we affirm his convictions for Level 5 felony operating a motor vehicle after forfeiture of license for life and Level 6 felony resisting law enforcement for fleeing in a vehicle.

2. Mistrial

[26] We next address Newman’s argument that the trial court abused its discretion by denying his motion for mistrial relating to the habitual offender phase of his trial.

[27] We review a trial court’s ruling on a mistrial motion for an abuse of discretion. *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001). A trial court’s decision to grant or deny a mistrial is “afforded great deference[] because the trial judge is in the best position to gauge the surrounding circumstances of an event and its impact on the jury.” *Id.* (internal quotation marks and citation omitted). “To prevail on appeal from the denial of a motion for mistrial, the appellant must establish that the questioned conduct “was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected.” *Id.* (internal quotation marks and citation omitted). “The gravity of

the peril is determined by considering the misconduct's probable persuasive effect on the jury's decision, not the impropriety of the conduct." *Id.* A mistrial is "an extreme remedy that is justified only when other remedial measures are insufficient to rectify the situation." *Id.*

[28] Newman challenges the trial court's denial of his mistrial motion, which was based on the jury's premature deliberation on the habitual offender allegation. He contends that he was "placed at substantial peril when the Jury was exposed to the habitual offender enhancement during the first phase deliberation and then entered into a second phase of trial with a predetermination of the issue." (Newman's Br. 10). We disagree.

[29] Here, the trial court held a bifurcated trial because the State had alleged that Newman was an habitual offender. The "'habitual offender statute seeks to provide a fair procedure by which an individual convicted of a felony may receive an enhanced sentence.'" *Shelton v. State*, 602 N.E.2d 1017, 1019 (Ind. 1992) (quoting *Turpin v. State*, 435 N.E.2d 1, 3 (Ind. 1982)). "'The bifurcated nature of the proceeding has been determined to be necessary by this Court in order to guarantee the accused's right to a fair trial on the underlying felony charge.'" *Shelton*, 602 N.E.2d at 1019 (quoting *Turpin*, 435 N.E.2d at 3).

[30] The underlying felony charge in this case was the charge in Count 1 for Level 5 felony operating a motor vehicle after forfeiture of license for life pursuant to INDIANA CODE § 9-30-10-17. To prove this charge, the State was required to prove beyond a reasonable doubt that Newman had "operate[d] a motor vehicle

after [his] driving privileges had been forfeited for life under [INDIANA CODE § 9-30-10-16.]” I.C. § 9-30-10-17(a)(1). Therefore, evidence of Newman’s 2010 habitual traffic violator conviction and resulting lifetime suspension of his driver’s license under INDIANA CODE § 9-30-10-16 was introduced to prove an essential element of Count 1. Newman did not and does not challenge the admission of the evidence used to prove Count 1.

[31] Additionally, Newman did not argue to the trial court, nor does he on appeal, that his right to a fair trial on the underlying felony charge was violated during phase one of the trial. Indeed, phase one of Newman’s bifurcated proceeding accomplished its critical and essential purpose, namely, to ensure that consideration of Newman’s two prior convictions (his 2015 conviction and 2017 conviction for operating a motor vehicle after forfeiture of license) that were to be used during phase two of the trial were removed from the jury’s determination on the predicate offense in Count 1. *See Shelton*, 602 N.E.2d at 1019.

[32] When the jury went to deliberate on the phase one charges, they inadvertently received a verdict form for the habitual offender allegation. The jury deliberated on the habitual offender allegation and determined that Newman was an habitual offender. Upon receiving the premature habitual offender verdict form, the trial court informed the parties about the verdict form and then individually questioned each juror to determine how the jurors had arrived at returning the verdict form. Newman did not object to the trial court’s questioning of the jurors. The jurors informed the trial court that they had

determined Newman to be an habitual offender based on the State's exhibits that had been admitted into evidence, including Newman's driving record and documents relating to Newman's 2010 habitual traffic violator conviction, which had been introduced to prove the charge in Count 1. The trial court gave each party an opportunity to question the jurors.

[33] Following the individual voir dire of the jurors and before the trial court moved to phase two of the trial, Newman moved for a mistrial, arguing that "[t]he jurors have essentially already convicted [Newman] of being an habitual offender[.]" (Tr. Vol. 2 at 226). The State pointed out that "one of the elements of Count [1] was that [Newman] was a[n] habitual traffic violator" and that it was "reasonable to believe" that the jury's premature verdict had been based on the "habitual traffic offender evidence[.]" (Tr. Vol. 2 at 227). The trial court denied Newman's motion for mistrial, explaining that the jury's premature deliberation was "harmless under the circumstances of this case with the language that has been in the previous documents and evidence presented[.]" (Tr. Vol. 2 at 227).

[34] Thereafter, the trial court held the second phase of the trial on the habitual offender allegation. Newman did not ask the trial court to admonish the jury. The trial court instructed the jury, in both preliminary and final instructions, regarding the elements the State needed to prove beyond a reasonable doubt to show that Newman was an habitual offender. The State then introduced its phase two evidence, which showed that Newman had a 2015 conviction for Class C felony operating a motor vehicle after forfeiture of license for life and a

2017 conviction for Level 5 felony operating a motor vehicle after forfeiture of license for life. The jury, who had been given a “new blank copy of the verdict forms[,]” determined that Newman was an habitual offender. (Tr. Vol. 2 at 242).

[35] It was error for the jury to have been given the habitual offender verdict form which caused it to engage in a premature deliberation of the habitual offender allegation. However, as explained by the trial court, the premature deliberation was harmless under the facts of this case. The jury, not having been instructed about the elements of the habitual offender enhancement, relied upon evidence that had already been properly admitted into evidence about Newman’s driving status. As a result, Newman’s habitual offender adjudication was not based on the premature verdict form. The trial court proceeded to phase two of the trial and instructed the jury as to the State’s burden of proof for the habitual offender allegation. After the State presented its phase two evidence, the jury determined that Newman was an habitual offender. Because Newman has not shown that he was placed in a position of grave peril, we conclude the trial court did not abuse its discretion by denying Newman’s mistrial motion. *See Mickens*, 742 N.E.2d at 929 (explaining that we afford great deference to a trial court’s ruling on a mistrial motion).⁶

⁶ We also reject Newman’s contention that the trial court erred by asking the jurors some “leading” questions during the individual voir dire and by failing to issue a *sua sponte* admonishment to the jury at the beginning of phase two of the trial. (Newman’s Br. 10). Newman has waived these arguments because he failed to object to the trial court’s questions and failed to request an admonishment. *See Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019) (“A party’s failure to object to, and thus preserve, an alleged trial error results in waiver

3. Inappropriate Sentence

- [36] Lastly, we address Newman’s argument that his aggregate twelve-year sentence for his four convictions and habitual offender adjudication is inappropriate.
- [37] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.
- [38] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081.

of that claim on appeal.”); *Valdez v. State*, 56 N.E.3d 1244, 1251-52 (Ind. Ct. App. 2016) (explaining that a trial court does not have an affirmative duty to issue admonishments or limiting instructions *sua sponte* and holding that a defendant had waived appellate review of the argument), *trans. denied*. Newman does not raise these arguments as fundamental error, nor will we address them as such.

Here, Newman was convicted of Level 5 felony operating a motor vehicle after forfeiture of license for life, Level 6 felony resisting law enforcement (fleeing in a vehicle), Class A misdemeanor resisting law enforcement (fleeing on foot), and Class C misdemeanor reckless driving. He was also adjudicated to be an habitual offender.

[39] A person who commits a Level 5 felony “shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” I.C. § 35-50-2-6(b). A person who commits a Level 6 felony “shall be imprisoned for a fixed term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year.” I.C. § 35-50-2-7(b). “A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year[.]” I.C. § 35-50-3-2. “A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days[.]” I.C. § 35-50-3-4. Additionally, the trial court “shall sentence a person found to be a[n] habitual offender to an additional fixed term that is between . . . two (2) years and six (6) years, for a person convicted of a Level 5” felony. I.C. § 35-50-2-8(i)(2).

[40] Here, the trial court imposed an aggregate twelve (12) year sentence for Newman’s four convictions and his habitual offender adjudication. Specifically, the trial court imposed a five (5) year sentence for Newman’s Level 5 felony operating a motor vehicle after forfeiture of license for life conviction and enhanced it by four (4) years for his habitual offender adjudication, resulting in a nine (9) year sentence for the Level 5 felony conviction. For

Newman's Level 6 felony resisting law enforcement conviction, the trial court imposed a two (2) year sentence and ordered it to be served consecutively to his Level 5 felony sentence. Additionally, the trial court imposed a one (1) year sentence for each of Newman's misdemeanor convictions and ordered them to be served concurrently with each other but consecutively to the two felony sentences.

[41] Turning first to the nature of Newman's four offenses, we note that Newman, who already had his driver's license forfeited for life, led Officer McCoy on a high-speed chase. During this eight-mile chase, Newman disregarded four stop signs and reached speeds of more than ninety miles per hour. Once Newman lost control of the car and landed in someone's yard, he exited his car and ran from Officer McCoy. Newman disregarded the officer's orders to stop and struggled with the officer when he attempted to arrest Newman.

[42] Turning to Newman's character, we note that Newman has an extensive criminal history. Newman, who was thirty-five at the time he committed the four offenses in this case, had accumulated ten felony convictions and eight misdemeanor convictions. Specifically, Newman had four convictions for operating while intoxicated, one conviction for driving while suspended, two convictions for operating a vehicle as a habitual traffic violator, and two convictions for operating a motor vehicle after forfeiture of license for life. Newman's other convictions included escape, theft, receiving stolen property, domestic battery, and possession of a controlled substance. Moreover, Newman's poor character and disregard for authority is reflected by the fact

that he was on probation for Level 5 felony operating a motor vehicle after forfeiture of license for life at the time he committed the very same offense plus three additional offenses.

[43] Newman has not persuaded us that his aggregate twelve-year sentence for his two felony convictions, two misdemeanor convictions, and his habitual offender adjudication is inappropriate. Therefore, we affirm the sentence imposed by the trial court.⁷

[44] Affirmed in part, reversed in part, and remanded.

Vaidik, J., and Brown, J., concur.

⁷ As noted above, we are remanding this case to the trial court to impose a sentence on Newman's Class C misdemeanor conviction that complies with INDIANA CODE § 35-50-3-4.