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IN THE COURT OF APPEALS OF INDIANA

Abram Lamar Glover,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 13, 2021

Court of Appeals Case No. 21A-CR-1422

Appeal from the Knox Superior Court

The Honorable Gara U. Lee, Judge

Trial Court Cause No. 42D01-2006-F6-113

Mathias, Judge.

[1] Abram Lamar Glover appeals his convictions for Level 6 felony strangulation and Level 6 felony domestic battery. Glover raises four issues for our review, but we address only the following three issues:[1]

I. Whether the State's questioning of prospective jurors was inappropriate jury conditioning.

II. Whether a witness's unprompted statement that Glover had previously been in jail, which the trial court immediately struck and admonished the jury not to consider, warranted a mistrial.

III. Whether the State committed prosecutorial misconduct when it stated during opening remarks that Glover's victim had paid for Glover's defense counsel.

[2] We affirm.

Facts and Procedural History

[3] In June of 2020, the State filed its information against Glover, which the State later amended to allege that Glover had committed Level 6 felony strangulation and Level 6 felony domestic battery against his girlfriend, E.A. In May of 2021, the trial court held jury selection for Glover's trial. At the commencement of the selection proceedings, the court informed the prospective jurors as follows:

[1] Given our disposition of these three issues, we need not consider Glover's additional argument regarding the cumulative effect of the three alleged errors.

> Jurors must be as free as humanly possible from bias, prejudice or sympathy and must not be influenced by pre-conceived ideas as to either the facts or the law. During the first step of selecting the jury, the Court and counsel will ask you questions concerning your competency and qualifications to serve as a juror in this case.
>
> * * *
>
> Under the law, lawyers are within their rights in asking questions to test the juror's state of mind and qualifications. . . .
>
> * * *
>
> You are to consider and decide this case only upon the evidence received during the course of the trial in the courtroom. . . .

Tr. Vol. 2 pp. 43–44, 47.

[4] The State informed the prospective jurors that it would do a "mini opening" and "tell you a little bit about the case." *Id.* at 53. Glover objected, stating that the mini opening would be "exposing the jury to . . . possible evidence during the jury selection" and doing so is "more than asking if they can be impartial . . . . This is . . . preconditioning them to what the evidence is going to

be." *Id.* at 53–55. The State responded that Indiana Jury Rule 14(b) allowed for such an opening statement.[2] The trial court overruled Glover's objection.

[5] The State provided the following mini opening to the prospective jurors:

> As the Judge told you, this Defendant is charged with two counts. Count I, strangulation[,] and Count II, domestic battery resulting in moderate bodily injury. What you're going to hear about this case is that you're going to meet E.A. And E.A. is going to tell you that she wanted the Defendant to leave her house.
>
> She called her brother to be there, kind of as back up. And at some point the Defendant gets into a fight with E.A.'s brother. Police are called. And in the process, the police end up noticing things and taking pictures of injuries, which E.A. told them happened about ten days before that. That's the basis of the charges. That's what this trial is about.
>
> Now . . . that we have a little bit of background and you know why we're here, we're going to discuss some of the issues. Just give you a roadmap here. First of all, we're going to talk about domestic violence for a little bit. Find out your thoughts and feelings and things you know about domestic violence. Then we're going to talk about things called elements, very, very briefly. Talk about evidence. Again, very briefly. What exactly is evidence. We're going to discuss something called beyond a reasonable doubt, which may of you have heard of.

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[2] Indiana Jury Rule 14(b) states: "To facilitate the jury panel's understanding of the case, with the court's consent the parties may present brief statements of the facts and issues (mini opening statements) to be determined by the jury."

> And finally I'm going to answer questions that you may have. And keep in mind, this is really the only time that you get to talk with me. So if you have any questions at all, that's the time we're going to take those up. If you have questions between now and then, feel free to just raise your hand or whatever.

Id. at 58–59.

[6] The State began asking questions of the prospective jurors:

> All right. By a show of hands, how many of you have read any articles about domestic violence? Okay. All right. How about TV shows? Seen domestic violence on TV shows? All the time, right?
>
> What about, have any of you got any kind of specialized like reading or seminars, or through your work or anything like that, about domestic violence?
>
> Okay. A few of you have. . . .

Id. at 59. The State called on Juror Number 10 to explain her background. Juror Number 10 stated:

> I have worked most of my life in the elementary school system. And as such, we are trained in handling, and noticing, and reporting abuse, domestic violence signs through children. I also have had firsthand knowledge of court cases where children in our school have gone along with the mother and that type of situation. So . . . I'm always very, very aware of that type of a situation. We actually have in-service training. We have things that we are required to do every year for the State of Indiana, as far as training in seeing and reporting, and noticing that type of a situation.

Id. at 60. Juror Number 10 continued:

> And . . . an avenue that also is always there is when you bond with a child, the first thing that they want to do is come in and tell you what dad did to mom last night, or what mom did to dad. And then we have steps that we follow. So that . . . has happened to me several times.
>
> [The State]: So sometimes it gets disclosed because of the kid . . . [and] not because anybody called the police.
>
> [Juror Number 10]: Absolutely. . . .
>
> [The State]: Why do you think a parent who is being abused might not call the police?

Id. at 61.

[7] At that point, Glover again objected on the ground that the State was using "this line of questioning" to turn the prospective juror into "an educational juror." *Id.* The State responded that it was "free to explore this juror's opinions about certain issues." *Id.* at 62. The court overruled Glover's objection. Juror Number 10 then responded to the State's question:

> Well, in the situations I've had firsthand knowledge of, I probably would say that the number one cause is . . . fear or the need to keep the family unit as a whole and not do anything to disrupt that. You know that dynamic. Possibly low self-esteem. They've—you know, the victim maybe thinks they won't be believed or there's going to be retribution perhaps. . . .

Id.

[8] The State continued:

> Okay. How many of you have known someone who was affected by domestic violence? Most everybody, right?
>
> Juror Number 1, what about you? Do you know of cases where somebody didn't report it, or didn't call the police?
>
> [Juror Number 1]: Yes.
>
> [The State]: Okay. And why do you think that happens?
>
> [Juror Number 1]: Well, like she was saying, I think the number one thing is fear.
>
> [The State]: Uh-huh.
>
> [Juror Number 1]: I have been a victim of domestic violence, so I know firsthand.
>
> [The State]: Did you call every time something happened?
>
> [Juror Number 1]: No.
>
> [The State]: And why not?
>
> [Juror Number 1]: I was scared.
>
> [The State]: Did you eventually get out of that?
>
> [Juror Number 1]: Yes.

[The State]: Good for you.

[Juror Number 1]: Yes.

[The State]: Do you have children?

[Juror Number 1]: Yes, I do.

[The State]: Was it affecting them?

[Juror Number 1]: He was about [one] year old at the time. The way I was able to get out before he was old enough to, you know, comprehend any of that. But I know that, you know, he's the reason why I did leave because I didn't want him growing up around that.

[The State]: Is that something you could do right away, or did you have to work up to it?

[Juror Number 1]: (inaudible).

Tr. at 63–64. The State went through a similar discussion with Juror Number 2, Juror Number 4, Juror Number 7, and Juror Number 11. The State also asked the prospective jurors about victim blaming and if they would be able to avoid blaming the victim in a domestic violence case.

[9] The State then returned to Juror Number 7:

[H]ave you, in your experiences, learned [that domestic violence is] more a crime of control?

> [Juror Number 7]: I think so, yes.
>
> [The State]: Okay. And that's what a lot of the literature says, isn't it?
>
> [Juror Number 7]: Uh-huh.
>
> [The State]: Okay. In your experiences, what types of things have you seen an abuser do to control their victim?

Id. at 75–76. At that point, Glover renewed his objection "to this form of questioning," which Glover argued was telling "what a jury should look for" and "trying to get information in front of the jury[] and then use that information to say if you apply this . . . here, then you can find him guilty." *Id.* at 76. The trial court overruled the objection but "admonish[ed] the jurors that this is not evidence in the trial." *Id.* at 77.

[10] The State then engaged the prospective jurors on how perpetrators of domestic violence might control their victims. Responses from the prospective jurors included "threaten[ing] . . . to take the kids," "threaten[ing] [their victims] with further harm," and not "let[ting the victims] go places without them." *Id.* at 77–79. The State added, "how many of you have heard of a case where somebody controls somebody by taking their phone away from them," and "[h]ow about isolating from friends and family?" *Id.* at 79-80.

[11] The State asked one prospective juror whether her experiences with domestic violence showed that "there [were] times . . . where [the perpetrator] would be

really, really nice" after an incident of domestic violence. *Id.* at 80. That prospective juror gave an equivocal response, and the State asked another prospective juror, Juror Number 12, whether "in your training, did you have any training about this cycle, where they're mean, and then they're sorry for it, and really nice, and then mean again?" *Id.* at 80–81. Juror Number 12 responded that "there's a term for it[,] . . . [t]he honeymoon phase." *Id.* at 81. The State then engaged Juror Number 12 as follows:

> [The State]: What did you say? It's the honeymoon phase? Any of the rest of you heard about that? You know, please stop me if—because it's interesting to be able to ask you this.
>
> [Juror Number 12]: Yes.
>
> [The State]: I mean[,] how come he was really bad to you.
>
> [Juror Number 12]: Uh-huh.
>
> [The State]: How did he react? Was he just bad all the time, or was he really sorry and—
>
> [Juror Number 12]: Not at first.
>
> [The State]: —there was the honeymoon phase.
>
> [Juror Number 12]: Yeah, I mean . . . it started out like that, you know. And then it was just constant. You know, there was the physical abuse, but there was also a lot of verbal abuse. And it . . . was just an everyday thing.

Id.

[12] After the parties selected the jurors, the State proceeded to its opening statement at trial. During that opening statement, the State said, "You're also going to hear, E.A. was even the one who signed the note to pay for [Glover's] attorney. That's right. The Defense presented today [is] paid for by E.A." *Id.* at 205. Glover objected to that statement for "relevance." *Id.* The State responded that "there's going to be evidence about control in this case and why E.A. did what she did. Part of that control is that she was forced to hire this attorney . . . ." *Id.* The court overruled Glover's objection.

[13] During trial, E.A. testified that Glover had committed acts of domestic violence against her. On at least one occasion, Glover "forced [E.A.] to have sex with him and he choked [her] during sex . . . [t]o the point where [she] almost passed out" when she tried to resist. Tr. Vol. 3 p. 50. E.A. testified that Glover had attempted to control her by isolating her from her family or taking away her cell phone. She testified that he had frequently threatened harm to E.A. or E.A.'s family members. When she threatened to end the relationship, he would apologize or promise to change. And she testified that her child had been the one who called 9-1-1 on the night that resulted in the charges being filed.

[14] The State asked E.A. if she ever called the police on Glover, and the following exchange occurred:

> A [by E.A.:] In 2006, 2007—

> [Glover's counsel]: Your Honor, we're going to object on grounds of relevance, 2006/2007, 2021.
>
> [E.A.]: He was in prison for—
>
> [The State]: Hey, hey. Hold on, hold on.
>
> [The Court]: Hold on just a second.

Id. at 32. Glover then asked to go off the record, which the court agreed to do, and Glover asked for a mistrial because "[s]he just told the jury that he was in prison. Any chance of him getting a fair trial now is pretty much out the window." *Id.* The State responded that "[a] curative instruction is certainly appropriate" but that, as the comment "wasn't even a response to a question," a mistrial "is not appropriate." *Id.* at 33. The court denied the request for a mistrial but struck E.A.'s statement and admonished the jury not to consider it.

[15] Finally, the State asked E.A. about Glover's reaction to the instant criminal charges having been filed against him. E.A. testified as follows:

> Q [by the State:] How soon after he moved back in did he start talking about these charges?
>
> A Immediately.
>
> Q Did he have the money to hire a lawyer?
>
> A No.

Q Did you?

A No. But I had credit, which is more than he had.

Q Did you take out a loan to hire a lawyer?

A Yes.

Q Whose idea was that?

A His.

Q Did you resist that?

A Yes.

Id. at 55.

[16] The jury found Glover guilty as charged. The court entered its judgment of conviction and sentenced Glover accordingly. This appeal ensued.

I. Alleged Jury Conditioning

[17] On appeal, Glover first asserts that the State used the jury selection process to improperly condition the prospective jurors to be receptive to the State's case.[3] Our trial courts "have broad discretionary power in regulating the form and

[3] We reject the State's argument on appeal that Glover failed to preserve this issue for our review with a timely objection in the trial court.

substance" of jury selection. *Gibson v. State*, 43 N.E.3d 231, 237 (Ind. 2015). A trial court abuses its discretion when its decision is "clearly against the logic and effect of the facts and circumstances" before the court. *Larkin v. State*, 173 N.E.3d 662, 667 (Ind. 2021).

[18] As our supreme court has explained:

> The purpose of [jury selection] is to ascertain whether prospective jurors can render an impartial verdict based upon the law and the evidence, *Von Almen v. State*, 496 N.E.2d 55, 59 (Ind. 1986), and "weed out" those who show they cannot be fair to either side. *Burris v. State*, 465 N.E.2d 171, 179 (Ind. 1984). Thus, the parties may "inquire into jurors' biases or tendencies to believe or disbelieve certain things about the nature of the crime itself or about a particular line of defense." *Hopkins v. State*, 429 N.E.2d 631, 634–35 (Ind. 1981) (finding no error where jurors were asked whether they would disbelieve a witness that entered into a plea bargain). . . .
>
> But, questions should be limited to "testing the capacity and competency of prospective jurors." *Skaggs v. State*, 438 N.E.2d 301, 304 (Ind. Ct. App. 1982). Those that "seek to shape the favorable jury by deliberate exposure to the substantive issues in the case" are not permitted. *Davis v. State*, 598 N.E.2d 1041, 1047 (Ind. 1992) (affirming trial court's disallowing defense counsel from essentially asking prospective jurors "how they would vote in the present case").

Gibson, 43 N.E.3d at 238.

[19] While questions that seek to shape a favorable jury by deliberate exposure to the substantive issues in the case are not permitted, we have routinely deferred

to the trial court's exercise of discretion in distinguishing between impermissible exposure to the substantive issues and permissible examination of the prospective jurors "to disclose [their] attitudes towards the offense charged and to uncover preconceived ideas about defenses the defendant intends to use." *Campbell v. State*, 3 N.E.3d 1034, 1039 (Ind. Ct. App.), *summarily aff'd on this issue*, 19 N.E.3d 271, 273 (Ind. 2014). Indeed, Indiana's appellate courts have interfered with the trial court's discretion only where the trial court permitted the parties to "suggest" to prospective jurors "the existence of prejudicial evidence that will not be introduced at trial." *Id.*

[20] For example, in *Robinson v. State,* the State charged the defendant with murdering his twenty-year-old daughter. During jury selection, the prosecutor repeatedly asked whether prospective jurors could vote for the death penalty if "a father killed his twenty[-]year[-]old daughter because she resisted his sexual advances." *Robinson v. State*, 260 Ind. 517, 519, 297 N.E.2d 409, 411 (1973). However, no evidence of any such sexual advances was presented during the trial aside from unsupported innuendo of incest. Our supreme court held that the prosecutor's questions during jury selection were reversible prosecutorial misconduct. *Id.*

[21] Similarly, in *Perryman v. State,* the prosecutor used jury selection to pose a hypothetical that was similar to the defendant's drug-possession case but that suggested drug dealing. Yet, the State presented no evidence of drug dealing at trial. Therefore, we reversed the defendant's conviction due to the improper

questioning during jury selection. *Perryman v. State*, 830 N.E.2d 1005, 1009–10 (Ind. Ct. App. 2005).

[22] In contrast, in *Campbell,* the defendant asserted that his own counsel's examination of prospective jurors improperly conditioned them to a defense he did not raise and, as such, was ineffective assistance of counsel. We rejected the defendant's arguments and held that trial counsel's hypotheticals to the prospective jurors bore "similarities to the actual case and the evidence adduced at trial" and "explored the jurors' understanding" of the elements of the alleged offenses. *Campbell*, 3 N.E.3d at 1040.

[23] Here, relying substantially on *Robinson* and *Perryman*, Glover contends that the State's mini opening and questions during jury selection sought only to shape a favorable jury by deliberate exposure to the substantive issues in the case. But we cannot agree. First, Indiana Jury Rule 14(b) expressly permitted the State to give a mini opening that was a "brief statement[] of the facts and issues . . . to be determined by the jury," which is how the State used its opening. Second, unlike *Robinson* and *Perryman*, nothing in the State's questioning of the prospective jurors suggested the existence of prejudicial evidence that was not introduced at trial. Rather, the State's questions inquired with the prospective jurors about their own experiences with and exposure to domestic violence. Like *Campbell*, the State's questions bore similarities to the actual case and explored the jurors' understanding of domestic violence, which was relevant to uncovering the jurors' attitudes toward the charges and any preconceived ideas they may have had about the charges and any defenses.

[24] Further, the trial court began jury selection by informing the prospective jurors that they were "to consider and decide this case only upon the evidence received during the course of the trial." Tr. Vol. 2 p. 47. And, when Glover objected to the State's lines of questioning during jury selection, the court again admonished the jurors that "this is not evidence in the trial." *Id.* at 77. "[A]n admonishment to the jury . . . is generally presumed to cure any error." *TRW Vehicle Safety Sys., Inc. v. Moore*, 936 N.E.2d 201, 221 (Ind. 2010). Glover does not argue that the trial court's admonishments here were insufficient. Accordingly, we cannot say that the trial court abused its discretion in how it regulated the form and substance of Glover's jury selection.

II. Denial of Mistrial Request

[25] Glover next asserts that the trial court erred when it denied his request for a mistrial after E.A. stated in front of the jury that Glover had been in jail on a prior occasion. We review the trial court's decision to grant or deny a motion for a mistrial for an abuse of discretion. *Isom v. State*, 31 N.E.3d 469, 480 (Ind. 2015). "A mistrial is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation." *Id.* at 481 (alteration and quotation marks omitted).

[26] Here, immediately after E.A. made her statement, the trial court struck her statement and admonished the jury not to consider it. Again, an admonishment is presumed to cure any error. *TRW Vehicle Safety Sys., Inc.*, 936 N.E.2d at 221. Glover's only argument on appeal as to why the admonishment here may have

been insufficient is that the jury might not have followed the court's instructions. This argument is speculative, and we are not persuaded by it. We cannot say that the trial court abused its discretion when it denied Glover's motion for a mistrial and instead admonished the jury not to consider E.A.'s statement.

III. Alleged Prosecutorial Misconduct

[27] Last, Glover contends that the State committed prosecutorial misconduct during its opening statement at trial when the State informed the jury that E.A. had paid for Glover's defense counsel. Specifically, Glover asserts that the State "misrepresent[ed] the evidence" and "falsely claim[ed] that E.A. was forced to pay for Glover's defense." Appellant's Br. pp. 28–30. At trial, Glover objected to the State's comment only on the basis of relevance.

[28] We agree with the State that Glover's argument on appeal is on a different ground than the basis for his objection at trial. At trial, Glover objected to the prosecutor's statements for relevance. On appeal, Glover instead argues that the statements were false and, therefore, misconduct. "A party may not object on one ground at trial and raise a different ground on appeal." *White v. State*, 772 N.E.2d 408, 411 (Ind. 2002). Thus, Glover's claim of prosecutorial misconduct has been procedurally defaulted, *id.*, and, to prevail on appeal:

> [he] must establish not only the grounds for prosecutorial misconduct but must also establish that the prosecutorial misconduct constituted fundamental error. Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged

> errors are so prejudicial to the defendant's rights as to make a fair trial impossible. In other words, to establish fundamental error, the defendant must show that, under the circumstances, the trial judge erred in not *sua sponte* raising the issue because alleged errors (a) constitute clearly blatant violations of basic and elementary principles of due process and (b) present an undeniable and substantial potential for harm. . . . In evaluating the issue of fundamental error, our task in this case is to look at the alleged misconduct in the context of all that happened and all relevant information given to the jury—including evidence admitted at trial, closing argument, and jury instructions—to determine whether the misconduct had such *an undeniable and substantial effect on the jury's decision* that a fair trial was impossible.
>
> We stress that a finding of fundamental error essentially means that the trial judge erred by not acting when he or she should have. Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error.

Ryan v. State, 9 N.E.3d 663, 667–68 (Ind. 2014) (emphasis in original) (cleaned up).

[29] In *Ryan*, the Indiana Supreme Court held:

> While "comments that demean opposing counsel, especially in front of a jury, are inappropriate," *Marcum v. State*, 725 N.E.2d 852, 859 (Ind. 2000), not all of the allegedly improper comments here are objection-able. "Prosecutors are entitled to respond to allegations and inferences raised by the defense even if the prosecutor's response would otherwise be objectionable." *Cooper[v. State]*, 854 N.E.2d [831, 836 (Ind. 2006)]. Here, the prosecutor used her rebuttal to respond to defense counsel's closing

> argument, in which he criticized the quality of the police investigation and then compared famous cases of false accusations such as "the Duke Lacrosse case," which "supposedly had a full and thorough investigation." Tr. at 142. Without question, the characterization of defense counsel's line of argumentation as "how guilty people walk" and a "trick," is inconsistent with the requirement that lawyers "demonstrate respect for the legal system and for those who serve it, including . . . other lawyers," see Preamble [5], Ind. Professional Conduct Rules. But the defendant has failed to establish that, under all of the circumstances, such improper comments placed him in a position of grave peril to which he would not have been subjected otherwise. *See Cooper*, 854 N.E.2d at 835; *Marcum*, 725 N.E.2d at 859–60. In *Marcum*, this Court held it could not conclude that comments such as "what this is, is a response to your nonsense," "Judge I guess we can move the jury out and we can do a quick evidence course here for [defense counsel]," and "He is trying to mislead this jury" affected the jury's verdict in light of the evidence as a whole. 725 N.E.2d at 858–60. Similarly, in *Brock v. State*, this Court found that the prosecutor's statement that defense counsel was "pulling the most low life tricks in this case," was improper but did not place the defendant in grave peril. 423 N.E.2d 302, 304–05 (Ind. 1981) (noting that defense counsel conceded it was a "rather insignificant" personal matter). This case is less egregious than *Marcum* and *Brock*; we find no prosecutorial misconduct.

Id. at 669–70 (last alteration in original).

[30] Glover has not met his burden of showing prosecutorial misconduct. Here, the State characterized the evidence in its opening statement as showing that E.A. had been "forced" to pay for Glover's defense counsel. Tr. Vol. 2 p. 205. During the trial, E.A. did not use the word "force" but testified that it was Glover's idea that she pay for his counsel, that she did pay for his counsel, and

that she "resist[ed]" doing so. Tr. Vol 3 p. 55. The State's comment in its opening statement was not prosecutorial misconduct. Further, the State's comment here was far less egregious than those in *Ryan*, *Marcum*, or *Brock*, none of which supported a claim of misconduct. Therefore, we conclude that the State's comment did not place Glover in "a position of grave peril to which he would not have been subjected otherwise," and there is no fundamental error on this issue. *Ryan*, 9 N.E.3d at 670.

Conclusion

[31] In sum, we affirm Glover's convictions for Level 6 felony strangulation and Level 6 felony domestic battery.

[32] Affirmed.

Tavitas, J., and Weissmann, J., concur.