

MEMORANDUM DECISION

ON REHEARING

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Suzy St. John
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler G. Banks
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Stephen J. Michael,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2023

Court of Appeals Case No.
21A-CR-2485

Appeal from the Greene Circuit
Court

The Honorable Erik C. Allen, Judge

Trial Court Cause No.
28C01-2010-FA-1

Brown, Judge.

[1] Stephen J. Michael petitions for rehearing of this Court’s memorandum decision in which we affirmed his convictions for Counts I through V and VII through XIV, reversed his conviction for Count VI, and remanded to impose a conviction for Count VI as a level 4 felony and sentence him accordingly. *See Michael v. State*, No. 21A-CR-2485, slip op. at 16 (Ind. Ct. App. October 19, 2022). On rehearing, Michael asserts that this Court’s decision did not fully address his argument that he was entitled to severance of the charges to promote a fair determination of guilt or innocence. For the following reasons, we grant Michael’s petition for rehearing to clarify and affirm our prior decision.

[2] As noted in our initial decision, Ind. Code § 35-34-1-11 provides:

(a) Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to a severance of the offenses. In all other cases the court, upon motion of the defendant or the prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense considering:

- (1) the number of offenses charged;
- (2) the complexity of the evidence to be offered; and
- (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

[3] When severance is not a matter of right, a trial court’s refusal to sever charges is reviewed for an abuse of discretion. *Craig v. State*, 730 N.E.2d 1262, 1265 (Ind.

2000) (citing *Kahlenbeck v. State*, 719 N.E.2d 1213, 1216 (Ind. 1999)). On appeal, a defendant “must show [that] ‘in light of what actually occurred at trial, the denial of a separate trial subjected him to . . . prejudice.’” *Harvey v. State*, 719 N.E.2d 406, 409 (Ind. Ct. App. 1999) (quoting *Brown v. State*, 650 N.E.2d 304, 306 (Ind. 1995) (quoting *Hunt v. State*, 455 N.E.2d 307, 312 (Ind. 1983))).

[4] Although there were a number of charged offenses, the evidence presented was not overly complex and included each victim’s testimony. During closing argument, the prosecutor stated: “I’m going to spend a lot of time talking about these counts and differentiating these counts.” Transcript Volume III at 121. Further, the counts and the allegations pertaining to each victim were clearly set forth in Preliminary Jury Instruction 5 and Final Jury Instruction 4. Final Jury Instruction 6 stated: “In this case, the Defendant is charged with 14 counts of criminal offenses. Although all of the counts are contained within one charging document, you are to consider the law and the evidence as it may apply to each count individually and separately from the other counts.” Appellant’s Appendix Volume II at 193. We conclude that the trial court did not abuse its discretion when it denied Michael’s motion to sever the charges. *See Vasquez v. State*, 174 N.E.3d 623, 631 (Ind. Ct. App. 2021) (holding the trial court did not abuse its discretion in denying the defendant’s motion for severance of ten charges involving two victims where the evidence as to each victim was easily distinguishable), *trans. denied*. For the foregoing reasons, we grant Michael’s

petition for rehearing and affirm the trial court's denial of his motion to sever the charges.

Altice, C.J., and Tavitas, J., concur.