MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kelly Starling
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Corey Anderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 16, 2024

Court of Appeals Case No. 23A-CR-1718

Appeal from the Marion Superior Court

The Honorable Marc Rothenberg, Judge

The Honorable Matthew Symons, Magistrate

Trial Court Cause No. 49D29-2204-F3-11421

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Corey Anderson (Anderson), appeals his conviction for criminal confinement, as a Level 3 felony, Ind. Code § 35-42-3-3(a); criminal confinement, as a Level 5 felony, I.C. § 35-42-3-3(a); domestic battery resulting in bodily injury to a pregnant woman, as a Level 5 felony, I.C. § 35-42-2-1.3(a)(1); strangulation, as a Level 5 felony, I.C. § 35-42-2-9(c); and carrying a handgun without a license, as a class A misdemeanor, I.C. § 35-47-2-1.

[2] We affirm.

ISSUE

[3] Anderson presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by denying Anderson's request for a mistrial after admonishing the jury to disregard the statement made by the victim in violation of the motion in limine.

FACTS AND PROCEDURAL HISTORY

[4] The facts most favorable to the verdict are as follows. In August 2021, Anderson and Monisha Elzy (Elzy) were involved in a romantic relationship, in which Anderson resided in Elzy's house and financially provided for her, as he did not want her working full-time. By April 2022, when they realized that their relationship "wasn't working anymore[,]" Elzy discovered that she was pregnant. (Transcript Vol. II, p. 218). Because they had decided to end their

involvement, Anderson suggested that Elzy pursue an abortion and gave her $700 toward the procedure. Elzy scheduled the initial consultation.

[5] On April 26, 2022, while getting ready for the appointment, Anderson questioned her as to where she was going. When she informed him that she was going to the clinic, Anderson replied, "You're going to kill my baby?" (Tr. Vol. II, p. 227). She reminded him that they both had agreed to the procedure, but Anderson became upset. In order to de-escalate the situation, Elzy went to the bathroom and called her cousin. When she returned to the living room, Anderson was pacing back and forth, "fussing" and upset. (Tr. Vol. II, p. 228). He had a gun pointed to his head and told Elzy, "You['re] going to kill my baby, so I'm just going to kill myself." (Tr. Vol. II, p. 229). Elzy reached for her shoes in an attempt to leave, but Anderson prevented her and started to push her several times. Eventually, he pushed her onto the couch, climbed on top of her, and choked her with both hands around her neck. Elzy could not breathe. Anderson jumped off Elzy, knelt, and started crying. Realizing Anderson was pre-occupied, Elzy walked to the garage, got into her car, and pushed the button on the garage door opener in her car. Anderson had followed Elzy into the garage and held down the button on the garage door opener on the wall to prevent the garage door from opening. Approaching the car with the gun in his hand, he ordered Elzy to move into the front passenger's seat. She refused. Elzy called her mother, screaming into the phone, "Momma, help me . . . [Anderson] [is] trying to kill me. He's choking me. He won't let go. He's pulling on me." (Tr. Vol. II, p. 242). Anderson grabbed

Elzy's phone and put his hand around her throat, preventing her from breathing. Elzy put her foot on the gas, trying to ram through the garage door, but Anderson pressed the brakes and smacked Elzy in the face. Elzy finally moved into the passenger's seat.

[6] Anderson started driving the car with the gun in his lap. When Anderson approached a stop sign, Elzy attempted to exit the car, but Anderson pulled her back by her hair and continued driving. Because Elzy's left foot was still holding the car door open, Anderson stopped and walked around the car to put Elzy back in the vehicle. While he was walking around the car, Elzy jumped out and ran to a house on the corner. She held onto the gate and yelled for help. Anderson motioned to passing cars that she was "okay, there's nothing wrong with her, I'm trying to get her to the hospital." (Tr. Vol. II, p. 248). Elzy continued to scream that she needed help because Anderson was "trying to kill [her]." (Tr. Vol. II, p. 248). The police arrived and the officers ordered Anderson to walk toward them; however, he insisted on walking to the side of the car, where he placed his gun. Anderson was eventually handcuffed. Paramedics treated Elzy, who was visibly upset and crying. Her lip was cut, her finger was bleeding, and her throat was sore when she tried to swallow. There were red marks on her neck, and she was coughing.

[7] On April 28, 2022, the State filed an Information, charging Anderson with Level 3 felony criminal confinement, Level 5 felony criminal confinement, Level 5 felony domestic battery resulting in bodily injury to a pregnant woman, Level 5 felony battery resulting in bodily injury to a pregnant woman, Level 5

felony strangulation, and Class A misdemeanor carrying a handgun without a license. The State later dismissed the Level 5 felony battery resulting in bodily injury to a pregnant woman charge. On May 25, 2023, the trial court conducted a jury trial. While testifying during the trial, Elzy recounted Anderson pushing her onto the couch and strangling her. When the State asked her, "What was going through your mind when that was happening[,]" Elzy replied, "Oh, my god. He's doing it again. He's probably--." (Tr. Vol. II, p. 231). Anderson's counsel objected and requested a mistrial, arguing that Elzy had violated the motion in limine which excluded all references to prior misconduct from evidence. The State advised the trial court that it had informed Elzy of the motion in limine at a prior meeting and again on the day of trial. After receiving argument, the trial court concluded that a prompt admonishment would cure a "brief mention of a—other potential criminal acts, [and] a mistrial isn't warranted." (Tr. Vol. II, p. 237). After instructing Elzy not to mention prior bad acts again, the trial court admonished the jury, "[Y]ou are to disregard the last question and answer. It must not be considered as evidence by you. And you are not to rely on it or consider it in any way when making decisions in regards to this case." (Tr. Vol. II, pp. 238-39). The trial court also included the admonishment in the jury instructions. At the close of the evidence, the jury found Anderson guilty as charged.

[8] On June 30, 2023, the trial court conducted a sentencing hearing. Due to double jeopardy concerns, the trial court vacated the verdict for Level 5 felony

criminal confinement. The trial court sentenced Anderon to an aggregate sentence of ten years at the Department of Correction.

[9] Anderson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Anderson contends that the trial court abused its discretion in denying his motion for a mistrial. "We review a trial court's denial of a mistrial for [an] abuse of discretion because the trial court is in 'the best position to gauge the surrounding circumstances of an event and its impact on the jury.'" *Pittman v. State*, 885 N.E.2d 1246, 1255 (Ind. 2008) (quoting *McManus v. State*, 814 N.E.2d 253, 260 (Ind. 2004), *cert. denied*, 546 U.S. 831 (2005)). "A mistrial is appropriate only when the questioned conduct is 'so prejudicial and inflammatory that [the defendant] was placed in a position of grave peril to which he should not have been subjected.'" *Pittman*, 885 N.E.2d at 1255 (quoting *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001)). The gravity of the peril is measured by the conduct's probable persuasive effect on the jury. *Id.*

[11] The contention before us is not about the propriety of Elzy's testimony, which Anderson and the State both concede was improper, but rather about the trial court's failure to grant a mistrial. "The remedy of mistrial is 'extreme,' strong medicine that should be prescribed only when 'no other action can be expected to remedy the situation' at the trial level." *Lucio v. State,* 907 N.E.2d 1008, 1010-11 (Ind. 2009) (citations omitted). Pursuant to the motion in limine, the trial court had ordered the exclusion of any "[e]vidence, including testimony, of

any alleged prior bad acts" committed by Anderson, including "previous alleged incidents of violence and/or abuse." (Appellant's App. Vol. II, p. 123). Elzy testified on direct examination that while Anderson was choking her, she was thinking "[o]h, my god. He's doing it again. He's probably--" (Tr. Vol. II, p. 231). Anderson contends that this testimony was a blatant violation of the motion in limine and more importantly, this comment was so prejudicial and inflammatory that it likely had a significant impact on the jury.

[12] In support of his argument, Anderson relies on *Lehman v. State*, 777 N.E.2d 69 (Ind. Ct. App. 2002). During a trial for child molesting, the investigating detective testified, in violation of the motion of limine, about the defendant's "nine other victims." *Id.* at 73. Prior to testifying, the investigating detective was specifically advised as to the motion in limine. *Id.* During his direct examination, the trial court asked the detective to approach the bench, where it advised him again about the motion in limine, prohibiting any reference to polygraphs and prior incidences of molestation involving Lehman. *Id.* In spite of this advisement, in referring to his investigation of Lehman, the detective violated the motion in limine by referencing the previous victims. *Id.* The trial court denied Lehman's motion for mistrial and admonished the jury to disregard the response. *Id.* On appeal, we concluded that the reference to the other victims was so prejudicial and inflammatory that its effect on the jury was "very likely to have been significant." *Id.* The court also found that the admonishment did not cure the defect under these circumstances. *Id.*

[13] We find *Lehman* unavailing to the case at hand. Although in both instances the motion in limine was violated after the witness was cautioned prior to testifying, in *Lehman*, the violation occurred through the testimony of the investigating detective, who was not a novice in testifying and who was not personally involved in the situation; whereas here, Elzy, the victim, was recounting the domestic battery perpetuated on her by Anderson. In the middle of this testimony, and without being intentionally elicited by the State, Elzy inadvertently mentioned that Anderson was "doing it again." (Tr. Vol. II, p. 231). *See Greenlee v. State*, 655 N.E.2d 488, 490 (Ind. 1995) (observing that whether the evidence was intentionally injected or came in inadvertently is a relevant circumstance to analyze whether testimony of prior acts warrants a mistrial). The improper testimony amounted to a single, brief, unintentional occurrence and was not emphasized or relied upon by the State. *See Frentz v. State*, 875 N.E.2d 453, 466-67 (Ind. Ct. App. 2007) (a mistrial is not warranted when the jury's exposure to an inappropriate statement was accidental and brief), *trans. denied*.

[14] Furthermore, the trial court's admonishment immediately following the violation of the motion in limine effectively neutralized any prejudicial effect. Concluding that "at this point in time I think that an admonishment would be enough," the trial court admonished the jury that Elzy's statement was stricken and was not to be considered for any purpose. (Tr. Vol. II, p. 237). The trial court advised the jury, "[Y]ou are to disregard the last question and answer. It must not be considered as evidence by you. And you are not to rely on it or

consider it in any way when making decisions in regards to this case." (Tr. Vol. II, pp. 238-39). The trial court also included the admonishment in the jury instructions. This clear instruction, together with the strong presumption that juries follow courts' instructions and that an admonition cures any error, severely undercuts Anderson's position. *Beer v. State*, 885 N.E.2d 33, 47-49 (Ind. Ct. App. 2008). As such, the trial court determined that the admonishment cured any potential prejudice and that Elzy's statement did not place Anderson in grave peril. *See Lucio*, 907 N.E.2d at 1008, 1011 (holding that the trial court properly denied a motion for mistrial after the jury heard testimony that the defendant had been incarcerated because the admonition was presumed to cure any error and the statement was "fleeting, inadvertent, and only a minor part of the evidence against the defendant").

[15] Moreover, the improper statement was harmless, as there was other independent evidence of Anderson's guilt. *Leach v. State*, 699 N.E.2d 641, 644 (Ind. 1998) (observing that improper evidence is harmless where the verdict is supported by independent evidence of guilt). Here, Elzy testified extensively about Anderson's conduct, her testimony was corroborated by her injuries, Elzy's mother's testimony, and the officers' testimony. Consequently, as Elzy's statement was unintentional, brief, and isolated, and the trial court's

admonishment cured the violation of the motion in limine, Anderson was not placed in grave peril, and a mistrial was not warranted.[1]

CONCLUSION

[16] Based on the foregoing, we hold that the trial court did not abuse its discretion by denying Anderson's request for a mistrial after admonishing the jury.

[17] Affirmed.

[18] Crone, J. and Mathias, J. concur

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[1] Anderson also points to Elzy's testimony where she stated on direct examination that "[Anderson] didn't want me working a full-time job" as a violation of the motion in limine because it implied a reference to past financial abuse. (Tr. Vol. II, p. 219). However, the trial court denied that the statement constituted a violation of the motion in limine because "[t]here can be, certainly, plenty of reasons why someone doesn't – or doesn't want a significant other to work." (Tr. Vol. II, p. 222). Anderson now asserts that the cumulative effect of both contested statements impacted the jury's decision by implying they had an unhealthy and abusive relationship. However, even if we disagree with the trial court, which we do not, and find that this second statement violated the motion in limine, we conclude that no mistrial is warranted as the effect of both statements on the jury was minimal. *See Jackson v. State*, 518 N.E.2d 787, 788-89 (Ind. 1988) (noting that fragmentary and inadvertent statements are insufficient to support a mistrial where the State's evidence against the defendant is strong such that the probable persuasive effect on the jury is minimal).