

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Torrece T. Milton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 2, 2023

Court of Appeals Case No.
22A-CR-1514

Appeal from the Marion Superior
Court

The Honorable Cynthia L. Oetjen,
Judge

The Honorable Anne M.
Flannelly, Magistrate

Trial Court Cause No.
49D30-2009-F5-28724

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] Prior to July of 2020, both Torrece Milton and Angel Mims had engaged in romantic relationships with, and had had children fathered by, Shawn Fox. In July of 2020, Angel was deposed in connection to a criminal case that had been filed against Shawn, in which Angel was alleged to have been the victim. In an apparent attempt to convince Angel to stop cooperating in the criminal case against Shawn, Milton sent threatening text and Facebook messages and made threatening telephone calls to Angel. On September 14, 2020, the State charged Milton with Level 5 felony attempted obstruction of justice and Level 6 felony intimidation in relation to her actions and the case eventually proceeded to trial.
- [2] During trial, a witness referenced uncharged criminal conduct that had allegedly been committed by Milton. Milton objected and requested a mistrial, which the trial court denied after admonishing the jury to disregard the statement. At the conclusion of trial, the jury found Milton guilty as charged. The trial court subsequently dismissed the intimidation conviction and sentenced Milton to a three-year term, with one year to be executed in the Department of Correction (“DOC”) and two years executed on community corrections. On appeal, Milton contends that the trial court abused its discretion by denying her request for a mistrial. Concluding otherwise, we affirm.

Facts and Procedural History

- [3] Starting in 2014, Angel engaged in a romantic relationship with Shawn, the father of her three children. While Angel was pregnant with one of hers and Shawn's children, she met Milton, who was also pregnant with Shawn's child. At first, Angel and Milton got along and even watched each other's children. However, that changed in July of 2020, after the State charged Shawn with six crimes involving Angel as the alleged victim. The 2020 charges involved allegations of rape, criminal confinement, strangulation, theft, and battery. After the 2020 charges were filed, Milton's demeanor toward Angel changed, with Milton acting as if she were "angry" with Angel. Tr. Vol. II p. 153.
- [4] Angel had found it "real[ly] difficult" to cooperate with the prosecution in the case against Shawn because persons, including Milton, had been "harassing [her], calling [her] phone, texting" her about the pending case. Tr. Vol. II p. 152. Angel had attempted to keep Milton out of her life by deleting her Facebook account, blocking Milton, and asking Milton to stop calling and texting her. Angel "had to actually relocate from the house that [she] was staying in ... [She] had to move [her] whole life around just to get these people to leave [her] alone." Tr. Vol. II p. 154.
- [5] Angel was deposed in relation to the criminal case against Shawn on September 11, 2020. Thirty minutes to an hour after the deposition concluded, Milton began calling and texting Angel. Angel put Milton on speakerphone, and Angel's mother, Crystal, heard the calls. Milton was "angry" and was "cussing [Angel] out." Tr. Vol. II p. 162. Milton called Angel an "evil b[****]," a "police-a[**] b[****]," and a "Facebook-a[**] b[****]." Tr. Vol. II pp. 162,

164. Milton told Angel that Angel's daughter would hate her because she "was getting [Shawn taken] away from his kids." Tr. Vol. II pp. 163–64.

[6] Milton also sent several threatening messages to Angel. Milton wrote, "You claim you love this man and etc but you just sent him under the jail[;]" "You better keep hiding cause you know yo a[**] is grass[;]" and "You not hurt now but you will be later, Facebook a[**] b[****][.]" State's Ex. 2. Milton continued, "nothing good is going to come to you evil a[**] b[****]!" State's Ex. 3. Milton further stated "own up to it and deal w[ith] the consequences. NOW YOU GOTTA DEAL W[ith] WHATEVER HAPPENS!" State's Ex. 5 (emphasis in original). Given the tone of Milton's messages, Angel became concerned that Milton "could physically harm" her. Tr. Vol. II p. 185. Angel eventually contacted law enforcement after she thought that she had seen Milton's "car ride past" Crystal's home. Tr. Vol. II p. 165.

[7] On September 14, 2020, the State charged Milton with Level 5 felony attempted obstruction of justice and Level 6 felony intimidation. A jury trial commenced on May 25, 2022. At trial, Angel testified, and the trial court admitted screenshots of the threatening messages that Milton had sent to Angel. Crystal also testified.

[8] At one point, the State asked Crystal whether she had overheard Angel speaking on the telephone after Angel had been deposed on September 11, 2020. After Crystal answered in the affirmative, the State asked her "do you recall the person [on the phone] making any comments about something that

Angel had done earlier that day?” Tr. Vol. II p. 215. Crystal replied, “I just know she was just calling her stupid and they were -- they were -- I heard something about some money, if -- if she was to drop the -- the rape thingy, if she would deny the -- the rape thing.” Tr. Vol. II pp. 215–16. Milton’s attorney objected to the statement and requested a mistrial. Milton’s counsel further indicated “[t]hat was never disclosed to me by the State.” Tr. Vol. II p. 216. For its part, the State indicated that it “did not know about the money – I – I did not know about the money in the rape case.” Tr. Vol. II p. 216. The trial court denied Milton’s request for a mistrial but sustained the objection, instructing the jury “to disregard any reference to money” and “not to discuss it at any point or consider it.” Tr. Vol. II p. 216. The trial court confirmed with the jury that it had heard the instruction. The State then noted for the record that Crystal’s comment had been “nonresponsive” to its question before continuing its questioning. Tr. Vol. II p. 217.

[9] Milton later renewed her request for a mistrial, claiming that Crystal’s statement regarding money had been “extremely prejudicial to [Milton], alleging that she was going to pay off a witness to drop charges.” Tr. Vol. III p. 12. The State asserted that the

statement about the money never came up as being part of the conversation on that day. So I – I don’t know what to say other than [Crystal had been made] aware that [she was] not allowed to talk about anything that happened on that day and it had not been previously disclosed to me that they – that [Milton] made that comment during the phone conversation.

Tr. Vol. III p. 12. Upon further questioning by the trial court, the State reiterated that it had not been aware that the statement had been made “over the speaker phone.” Tr. Vol. III p. 13. The trial court denied Milton’s request for a mistrial, stating that

[t]he Court rules as follows: the Court did order that answer stricken from the record. The Court told the jury and I felt the jury was watching me and making eye contact with me and I told them that it was stricken from the record, they could not consider it in any way in this case. The Court is going to be including in its final instructions an instruction about -- I did on the -- I believe on the preliminary, but definitely in the finals, about when testimony is stricken from the record they cannot consider it. The grant of a motion for mistrial is an extreme remedy and is warranted only when less severe remedies will not satisfactorily correct the error and I believe that under the circumstances, the Court will correct this error in its final instructions, which are in addition to what the Court has already said to the jury.

Tr. Vol. III pp. 13–14.

[10] At the conclusion of the presentation of evidence, the trial court instructed the jury as follows:

During the trial, the Court may have ruled that certain questions may not be answered and/or that certain exhibits may not be allowed into evidence. You must not concern yourselves with the reasons for the rulings. The Court’s rulings are strictly controlled by law.

The Court may have stricken evidence from the record after you already saw or heard it. You must not consider such evidence in making your decision.

Your verdict should be based only on the evidence admitted and the instructions on the law. Nothing that I say or do is intended to recommend what facts or what verdict you should find.

Appellant's App. Vol. II p. 158. Following deliberation, the jury found Milton guilty as charged. On June 8, 2022, the trial court dismissed the intimidation charge and sentenced Milton to a three-year term, with one year executed in the DOC and two years executed on Community Corrections.

Discussion and Decision

- [11] Milton contends that the trial court abused its discretion by denying her request for a mistrial. "Whether to grant or deny a motion for a mistrial lies within the sound discretion of the trial court." *Isom v. State*, 31 N.E.3d 469, 480 (Ind. 2015). "We afford great deference to the trial court's decision and review the decision solely for abuse of that discretion." *Id.* An abuse of discretion occurs when the trial court's decision "is clearly against the logic and effect of the facts and circumstances." *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).
- [12] "[A] mistrial is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation." *Isom*, 31 N.E.3d at 481 (quoting *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001)). "Reversible error is seldom found when the trial court has admonished the jury to disregard a statement made during the proceedings because a timely and accurate admonition to the jury is presumed to sufficiently protect a defendant's rights

and remove any error created by the objectionable statement.” *Alvies v. State*, 795 N.E.2d 493, 506 (Ind. Ct. App. 2003), *trans. denied*.

“On appeal, we must presume that the jury obeyed the court’s instructions in reaching its verdict.” *Tyson v. State*, 270 Ind. 458, 386 N.E.2d 1185, 1192 (1979). As we have noted a “clear instruction, together with strong presumptions that juries follow courts’ instructions and that an admonition cures any error, severely undercuts the defendant’s position.” *Lucio v. State*, 907 N.E.2d 1008, 1010–11 (Ind. 2009) (rejecting defense argument of trial court error in denying motion for mistrial where trial court admonished the jury to disregard witness’s improper statement).

Isom, 31 N.E.3d at 481.

[13] In this case, the trial court admonished the jury that it was not to consider the challenged statement immediately after the statement was made and instructed the jury that it could not consider the statement in its final jury instructions. Both the trial court’s admonition and instruction were clear. The trial court noted that when it gave the admonition, the jury had been watching and making eye contact with the court, which suggests that the jury clearly heard and was paying attention to the trial court’s admonition. In addition, the challenged comment was not elicited by the State and was nonresponsive to the question asked by the State. Nothing in the record suggests that the jury did not follow the trial court’s admonition and instruction. As such, we presume that the jury followed the trial court’s admonition and instruction. *See id.* We agree with the State that “[t]he trial court’s admonishment effectively neutralized any prejudice to Milton.” Appellee’s Br. p. 9. Consequently, Milton has failed to

convince us that the trial court abused its discretion by denying her request for a mistrial.

[14] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.