

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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Pardeep Sidhu,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

January 18, 2022

Court of Appeals Case No.  
21A-CR-1232

Appeal from the Marion Superior  
Court

The Honorable Angela Dow  
Davis, Judge

Trial Court Cause No.  
49D27-2008-F5-024260

**Robb, Judge.**

## Case Summary and Issue

- [1] Following a jury trial, Pardeep Sidhu was found guilty of battery by means of a deadly weapon, a Level 5 felony. The trial court sentenced Sidhu to three years, with 423 days credit for time served and 672 days suspended to probation. Sidhu now appeals, raising one issue for our review, which we restate as whether the trial court abused its discretion by denying Sidhu's motion for a mistrial. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] In August 2020, Nakia Matthews lived at a Country Hearth Inn and Suites in Indianapolis. Matthews lived two doors down from Sidhu. On August 2, 2020, Sidhu stood in his doorway and began yelling racial slurs at the African American residents of Country Hearth. A crowd formed and Matthews called the police. The police arrived and instructed Sidhu to stay in his room; however, after the police left, Sidhu continued to yell racial slurs and spit in Matthews' face when she passed his room. Eventually, an unidentified man went into Sidhu's room and knocked Sidhu off his feet.
- [3] A few minutes after the altercation between Sidhu and the unidentified man, Matthews was walking past Sidhu's room when he swung his arm out and stabbed Matthews in her left breast. Matthews collapsed to the ground and Sidhu retreated into his room. Matthews was transported to the hospital and police arrived and arrested Sidhu.

[4] On August 4, 2020, the State charged Sidhu with battery by means of a deadly weapon, a Level 5 felony. Prior to trial, Sidhu filed a motion *in limine* requesting, in relevant part, that the State refrain from referencing the following:

Any character evidence in the form of other wrongs, prior bad acts, and uncharged conduct or criminal offenses not reduced to convictions and admissible pursuant to Indiana Rules of Evidence 404(b). Specifically, any testimony regarding alleged incidents of domestic violence between [] Sidhu and [his girlfriend] or an *alleged incident* with [] Matthews approximately one week prior to the incident giving rise to this case in which [] Sidhu was arrested but never charged[.]

Appellant’s Appendix, Volume II at 89 (emphasis added).

[5] The “alleged incident” refers to Sidhu allegedly kicking Matthews one week prior to the stabbing incident. Prior to trial, the trial court addressed Sidhu’s motion and determined that because “there was an incident between them, given the nature of how close in time it is . . . [it would] allow [the State] to talk about the incident without alleging that he got arrested[.]” Transcript, Volume 2 at 48-49.

[6] Matthews’ boyfriend Kim Torrence testified at Sidhu’s trial and was asked if he recalled the day something bad happened with Sidhu. Torrence responded:

I don’t recall which day it was. But on the first, on the first floor, when you (indiscernible) hit him, I didn’t nothing about that . . . until she told me.

*Id.* at 189. Sidhu’s counsel then interrupted the testimony and asked to approach the bench. After the side bar ended, the trial court instructed the jury “to disregard the last statement. You are ordered to not discuss or consider.” *Id.* at 190.

- [7] The State continued questioning Torrence about the events leading to the stabbing and when asked if he heard Sidhu say anything to Matthews, Torrence stated:

I told her, I said just don’t pay him no mind. Just go back in the room. . . . Because her prior incident, you know what I’m saying, I said just go back to the room.

*Id.* at 194-95. Sidhu objected and the trial court informed Torrence he “may not talk about any other incidents.” *Id.* at 195.

- [8] The State then finished questioning Torrence about the events on the day at issue. After the State passed the witness, Sidhu moved for a mistrial given Torrence’s testimony: “It’s been more than once now. The bell has been rung. It can’t be unrung at this point.” *Id.* at 199. The trial court denied the motion but removed the jury from the courtroom and instructed Torrence that he “may not talk about the incidents where either you were kicked, [or Matthews] was

kicked . . . . If you do it again, the trial is over.”<sup>1</sup> *Id.* at 201. Sidhu then proceeded to cross-examine Torrence without incident.

[9] The jury found Sidhu guilty of battery by means of a deadly weapon, a Level 5 felony. Sidhu now appeals.

## Discussion and Decision

### I. Standard of Review

[10] Whether to grant or deny a motion for a mistrial is a decision left to the sound discretion of the trial court. *Stokes v. State*, 919 N.E.2d 1240, 1243 (Ind. Ct. App. 2010), *trans. denied*. We will reverse the trial court’s ruling only upon an abuse of that discretion. *Id.* We afford the trial court such deference on appeal because the trial court is in the best position to evaluate the relevant circumstances of an event and its impact on the jury. *Id.* To prevail on appeal from the denial of a motion for a mistrial, the appellant must demonstrate that the statement or conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected. *Id.* We determine the gravity of the peril based upon the probable persuasive effect of the misconduct on the jury’s decision rather than upon the degree of

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<sup>1</sup> We note that this seemingly contradicts the trial court’s original ruling on the motion *in limine*.

impropriety of the conduct. *Id.* A mistrial is an extreme sanction warranted only when no other cure can be expected to rectify the situation. *Id.*

## II. Motion for Mistrial

[11] Sidhu argues that a “mistrial was warranted when a State’s witness violated the Court’s order *in limine* and referred, on two occasions, to prior bad acts allegedly committed by [] Sidhu.” Brief of Appellant at 10.

[12] Sidhu challenges the following two statements made by Torrence and argues their reference to prior bad acts warranted a mistrial:

I don’t recall which day it was. But on the first, on the first floor, when you (indiscernible) hit him, I didn’t know nothing about that . . . until she told me.

\* \* \*

I told her, I said just don’t pay him no mind. Just go back in the room. . . . Because her prior incident, you know what I’m saying, I said just go back to the room.

Tr., Vol. 2 at 189, 194-95.

[13] Following the first challenged statement by Torrence, the trial court admonished the jury and instructed it to “disregard the last statement” and ordered it not to “discuss or consider” the statement. *Id.* at 190. We presume the jury followed the trial court’s admonishment and that the excluded testimony played no part in the jury’s deliberations. *Duncanson v. State*, 509

N.E.2d 182, 186 (Ind. 1987); *see also Stokes*, 919 N.E.2d at 1243 (“[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.”).

[14] After Torrence’s second statement, Sidhu objected and the trial court informed Torrence that he “may not talk about any other incidents.” Tr., Vol. 2 at 195. The trial court did not admonish the jury after the statement nor include a specific admonishment in the final jury instructions. However, Torrence’s statement was extremely vague and therefore likely did not affect the jury’s verdict.

[15] In *Mote v. State*, the State played at trial a redacted videotape that contained twelve references to the defendant’s prior criminal history, including a conversation between the defendant and a police officer where the defendant mentions having been on probation, having been to jail and is told, among other things, that “it’s obvious that you got a problem here.” 775 N.E.2d 687, 689-90 (Ind. Ct. App. 2002), *trans. denied*. The trial court did not admonish the jury and when the defendant moved for a mistrial, the trial court determined that “the references were not to specific events, and the probation reference and general reference to [the defendant’s] past record . . . were relatively innocuous.” *Id.* at 691. However, on appeal, this court concluded that “[t]he references were simply too prejudicial” to the defendant and held that the trial court abused its discretion by denying the motion for a mistrial. *Id.* We differentiate the facts of *Mote* from this case.

[16] Here, Torrence vaguely referenced a “prior incident” but did not elaborate or indicate what occurred during the incident. Tr., Vol. 2 at 194-95. We conclude that the testimony at issue is not so prejudicial that it placed Sidhu in “a position of grave peril to which he should not have been subjected.” *Stokes*, 919 N.E.2d at 1243. Therefore, the trial court did not abuse its discretion in denying Sidhu’s motion for a mistrial.

## Conclusion

[17] We conclude that the trial court did not abuse its discretion by denying Sidhu’s motion for a mistrial. Accordingly, we affirm.

[18] Affirmed.

Riley, J., and Molter, J., concur.