MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rahim A. Pittman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 29, 2023

Court of Appeals Case No. 22A-CR-1404

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No. 02D05-2003-F4-28

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

[1] During Rahim Pittman's child molestation trial, the trial court admitted, over Pittman's objection, a police officer's testimony suggesting that child victims can be re-traumatized by describing the abuse they have endured. Later in the trial, the trial court denied Pittman's motion for mistrial based on a juror's belated revelations that, years earlier, she worked in the same agency as a State's witness who had investigated the alleged abuse. The jury later convicted Pittman of three child sex crimes.

[2] Pittman appeals, contending he is entitled to a new trial based on the court's alleged errors in admitting the officer's testimony about re-traumatization and denying the mistrial. We affirm, finding the officer's testimony cumulative, and therefore harmless, and that no juror misconduct occurred.

Facts

[3] Pittman lived in the same home as Victim 1 and her older sister, Victim 2. When Victim 2 was about 13 years old, Pittman, who appeared to be drunk, touched her breasts over her clothes. At the time, Victim 2 was in the bed she shared with Victim 1, who was then about 11 years old. Four or five months later, Pittman again touched Victim 2's breasts while she was in bed, although this time the touching occurred under her clothes.

[4] Around the same time, Pittman began kissing Victim 1 on the mouth. And one night, when Victim 2 was away at a friend's home, Pittman, under the pretense

of tucking Victim 1 into bed, touched her breasts with both hands. A similar incident occurred a month later.

[5] When Victim 1 hurt her hip during this period, Pittman told her that he could make her feel better. Pittman instructed Victim 1 to bend over; he then placed himself behind Victim 1 so that she could feel his genitals against her buttocks. Each time Victim 1 tried to scoot away, Pittman pushed his body back against hers. On another occasion, Pittman removed his penis from his pants and tried to force Victim 1 to touch or suck it. He instructed Victim 1 to not reveal the abuse because he could get in trouble.

[6] Eventually, Victim 1 and Victim 2 revealed Pittman's conduct to their adult sister, who also alleged she had been sexually touched by Pittman when she was 16 or 17 years old. After the adult sister contacted the police, the State charged Pittman with three crimes: Level 4 felony child molesting of Victim 1; Level 4 felony child molesting of Victim 2; and Level 5 felony sexual misconduct with a minor as to Victim 2.

[7] During Pittman's jury trial, Fort Wayne Police Officer Keirsh Cochran, who initially investigated the allegations against Pittman, testified about child sex offense investigation protocols. Over Pittman's objection, Officer Cochran testified that police limit the number of times they interview child victims because children can be re-traumatized by retelling their molestations. After resting its case-in-chief, the State informed the trial court that a State's witness who worked for the Indiana Department of Child Services (DCS) had

recognized a juror from graduate school, although the witness was unsure whether the juror recognized her.

[8] The court then questioned the juror—ultimately identified as Juror #4—outside the presence of the other jurors. Juror #4 stated she had never gone to school with any of the witnesses who had testified. But when asked whether she knew any of the witnesses, Juror #4 advised that she recognized State's Witness Adam Blakely. Juror #4 revealed she had seen Blakely when she was working at DCS in Noble County from 2014 to 2015 and Blakely was working for DCS in Allen County. Noting that she had never shared a case or socialized with Blakely, Juror #4 assured the trial court that her recognition of Blakely would not prevent her from being fair and impartial to both sides.

[9] After the defense rested, Pittman requested a mistrial based on Juror #4's alleged dishonesty. After the trial court denied the mistrial, the jury found Pittman guilty as charged. The court sentenced him to 24 years imprisonment, with 9 years suspended to probation. Pittman appeals only his convictions.

Discussion and Decision

[10] Pittman raises two claims on appeal. First, he challenges the trial court's denial of a mistrial based on Juror #4's belated disclosure. Second, he argues that the trial court erroneously admitted expert testimony from Officer Cochran. We conclude that the record shows no juror misconduct or bias by Juror #4 because she simply failed to reveal a tangential connection to a State's witness. We also

conclude that Pittman has not established any prejudicial error in the admission of Officer Cochran's testimony because it was cumulative to other evidence.

I. Mistrial

[11] We review the denial of a motion for mistrial for an abuse of discretion. *Ramirez v. State*, 7 N.E.3d 933, 935 (Ind. 2014). This is because a trial court is in the best position to evaluate whether a mistrial is warranted in that it can assess first-hand all relevant facts and their impact on the jury. *Id.* Reversal is required—that is, an abuse of discretion occurs—only if the defendant shows that he was so prejudiced that he was placed in a position of grave peril. *Inman v. State*, 4 N.E.3d 190, 198 (Ind. 2014). "The gravity of the peril turns on the probable persuasive effect of the misconduct on the jury's decision, not on the degree of impropriety of the conduct." *Id.* A mistrial is an "extreme" remedy warranted when no other curative can remedy the "perilous situation." *Warren v. State*, 757 N.E.2d 995, 998-99 (Ind. 2001) (quoting Bradley v. State, 649 N.E.2d 100, 107 (Ind. 1995)).

[12] Pittman claims a mistrial was required because Juror #4 should have revealed that she once worked for DCS and that she was familiar with State's witness Adam Blakely. A juror commits misconduct by making false statements in response to questions during voir dire. *Dickenson v. State*, 732 N.E.2d 238, 241 (Ind. Ct. App. 2000). Generally, proof that a juror was biased against the defendant or lied on voir dire entitles the defendant to a new trial. *Id.*

[13] Pittman appears to assert that Juror #4 was dishonest by failing to answer questions during voir dire in a way that revealed her connection to DCS. Pittman also appears to argue that Juror #4 was impliedly biased due to her prior connection to DCS, where Blakely and another State's witness worked. But the record does not support Pittman's claim of juror misconduct.

[14] Pittman seems to focus on these questions from the trial court during voir dire:

> Do any of you know any of the witnesses that they listed, or do you want a clarification as to who any of these people are[?] The last thing we want is for Thursday afternoon for a witness to take the stand and someone say[,] "Oh, I went to high school with him.["] Does anybody think they might know any of the witnesses they listed?

Tr. Vol. I, pp. 100-01. The witness list to which the trial court referred included "Adam Blakely who is with the Dr. Bill Lewis Center for Children." *Id.* at 93.

[15] Pittman claims that, in response to those questions, Juror #4 should have revealed that she knew Adam Blakely through her prior work for DCS. But Juror #4 never admitted to "knowing" Blakely. When the trial court later questioned her knowledge, Juror #4 stated: "Adam I know from – not know, but I've seen him around." Tr. Vol. II, p. 100. She denied ever having any "personal interactions" or "dealings" with Blakely. *Id.* at 100-101. And she reiterated: "Adam I know from—not know, but I've seen him with DCS." *Id.* at 101. She noted that Blakely and she did not work in the same DCS office and that she left DCS seven years before Pittman's trial. Juror #4 further stated that

Blakely "worked Allen County DCS, but we've never been on any cases [together]." *Id.*

[16] Pittman has not shown that Juror #4's responses were dishonest. Juror #4 merely knew Blakely's name and had seen him at some undisclosed DCS event(s) at least seven years earlier when she worked for DCS. Juror #4 did not "know" Blakely, as the trial court used that term, because she had had no "interactions" or "dealings" with Blakely. *Id.* She merely knew "of him." *Id.* In other words, she recognized him and knew where he worked in 2015. Although the better course would have been to disclose that she recognized Blakely's name, Juror #4 was not dishonest by failing to respond when the trial court asked the jurors if they knew any of the listed witnesses.

[17] Nor was Juror #4 dishonest in failing to disclose that she worked for DCS for a year or two ending in 2015. Pittman seems to suggest that Juror #4 was required to reveal this information in response to the trial court's question: "Have any of you, a member of your immediate family, or a close personal friend ever served as a law enforcement officer, police officer, cop?" Tr. Vol. I, p. 101. Pittman offers no basis for finding Juror #4 served as a law enforcement officer while working for DCS. We note that Ind. Code § 35-31.5-2-185, which defines "law enforcement officer," does not expressly include DCS workers.

[18] We also reject Pittman's claim that Juror #4's former DCS employment rendered her biased. As the State notes, Indiana courts have repeatedly rejected claims of implied bias based on casual working relationships between a juror

and a witness. *See, e.g.*, *McCants v. State,* 686 N.E.2d 1281, 1284-85 (Ind. 1997) (rejecting claim of bias based on employment of juror and State's witness at same university); *Creek v. State*, 523 N.E.2d 425, 427 (Ind. 1988) (rejecting claim of bias when juror and State's witnesses worked at same place but had only "casual contact" and never discussed Creek's prosecution); *Alvies v. State*, 795 N.E.2d 493, 501-02 (Ind. Ct. App. 2003) (rejecting claim of bias when juror and witness worked on different work crews for same company and another juror had carpet installed in her home by one of the witnesses). Juror #4 is not impliedly biased simply because she worked for DCS years earlier and knew that Blakely worked for DCS in another county at the same time.

[19] Given the lack of juror misconduct or bias, the trial court did not abuse its discretion in denying Pittman's motion for mistrial.

II. Specialized Knowledge

[20] Pittman asserts that the investigating police officer, Officer Cochran, improperly testified as an expert on child sexual abuse trauma. Trial courts have broad discretion in admitting evidence. *Hines v. State,* 981 N.E.2d 150, 153 (Ind. Ct. App. 2013). We review a trial court's decision to admit evidence for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

[21] Both Pittman and the State analyze this issue under Indiana Evidence Rule 702, which specifies:

> (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
>
> (b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.

We conclude that Pittman has established no violation of Evidence Rule 702.

[22] After testifying to the "specialized protocol" for child sexual assault cases, Officer Cochran stated that the reporting officer does not conduct an in-depth interview of the child victim because "every time a sexual assault victim tells that story, there's a sense of re-traumatization that happens for that victim." Tr. Vol. I, p. 247. Pittman objected, arguing that the State had failed to establish a proper foundation for this testimony because Officer Cochran lacked specialized knowledge or expertise. *Id.* at 248. Officer Cochran then testified he was a Ph.D. candidate in criminal justice leadership and a forensic science professor. *Id.*

[23] Pittman renewed his objection, and the trial court implicitly overruled it by directing Officer Cochran to answer. *Id.* Officer Cochran responded that the goal is "to limit the amount of times that victim has to retell their story" and to allow the interview to occur in a comfortable setting with recording equipment. *Id.*

[24] On appeal, Pittman does not contend that Officer Cochran lacked the "specialized knowledge" required by Indiana Evidence Rule 702 when he testified. Instead, Pittman alleges only Officer Cochran lacked "specialized knowledge" at the time of the initial investigation. But Pittman cites no authority suggesting that Evidence Rule 702 requires a witness to have had "specialized knowledge" at the time of an investigation rather than at the time of trial.

[25] In any event, Pittman does not establish that he was prejudiced by the challenged testimony. Even erroneously admitted evidence does not require reversal unless it prejudices the defendant's substantial rights. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). Officer Cochran's testimony was cumulative of testimony from Blakely that the number of interviews of a child sex abuse victim is limited to minimize potential re-traumatizing the child. Tr. Vol. II, pp. 36-37. Also, Detective Ken Johnson testified that the Fort Wayne Police Department has specialized protocols for child sex abuse victim investigations: the responding officer must collect only the bare facts, and the forensic interview is usually the only interview conducted even if multiple entities are investigating. *Id.* at 75-76.

[26] Evidence that is cumulative of other unchallenged evidence generally amounts to harmless error because its admission does not affect a party's substantial rights. *Richardson v. State*, 189 N.E.3d 629, 636 (Ind. Ct. App. 2022); *see also Edmond v. State*, 790 N.E.2d 141, 144 (Ind. Ct. App. 2003) (ruling an error is harmless if the probable impact of the evidence upon the jury is minor enough

to keep from affecting the defendant's substantial rights). As Pittman has failed to establish either that error occurred or that the alleged error was prejudicial, we find the trial court did not abuse its discretion by admitting Officer Cochran's testimony.

[27] We affirm the trial court's judgment.

May, J., and Crone, J., concur.