MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Jennifer A. Joas
Joas Law, LLC
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tina L. Mann
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Eli Ramey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 29, 2021

Court of Appeals Case No. 20A-CR-1113

Appeal from the Dearborn Superior Court

The Honorable Sally A. McLaughlin, Judge

Trial Court Cause No. 15D02-1911-F6-536

Kirsch, Judge.

[1] Eli Ramey ("Ramey") appeals his conviction for conspiracy to commit obstruction of justice[1] as a Level 6 felony. He raises one issue, which we restate as whether the trial court abused its discretion when it denied his motions for a mistrial.

[2] We affirm.

Facts and Procedural History

[3] Ramey, Rickey Oldfield ("Oldfield"), and Chelsea Tyler ("Tyler"), had been friends since childhood. *Tr. Vol. 2* at 129. Oldfield and Tyler were dating at the time period relevant to this case while Ramey and Oldfield had been friends since they were each about fourteen years old. *Tr. Vol. 3* at 5-7. Ramey and Oldfield were incarcerated together from March until September of 2019. *Tr. Vol. 2* at 130; *Tr. Vol. 3* at 13-14. Ramey was incarcerated on a pending criminal matter in cause number 15C01-1805-F2-27 ("Cause No. 27"). *Appellant's App. Vol. 2* at 13.

[4] Over the period of their mutual incarceration, Ramey and Oldfield were in the same pod and shared the same cell for approximately two weeks in August of 2019. *Tr. Vol. 2* at 132; *Tr. Vol. 3* at 13-14. Ramey and Oldfield were "hanging out every day playing cards" and were "able to catch up" while they were incarcerated together. *Tr. Vol. 3* at 13. They also discussed the witnesses who

[1] *See* Ind. Code § 35-44.1-2-2(a)(1); Ind. Code § 35-41-5-2.

were involved in Ramey's pending criminal case under Cause No. 27, specifically, J.G. *Id.* at 26. The conversations between the two revolved around J.G. not testifying in Cause No. 27. *Id.* Ramey knew that Oldfield was going to be released before he was, and Ramey asked Oldfield if he would talk to J.G. to keep him from attending the upcoming deposition in Cause No. 27. *Id.* at 27. Ramey wanted Oldfield to use "any means necessary" to make sure that J.G. did not provide any testimony. *Id.* After Oldfield was released, Ramey remained incarcerated but continued to speak with Oldfield and with Tyler about the upcoming deposition in Cause No. 27. *Id.*; *State's Exs. 7A, 7B, 7D, 8-13*.

[5] On October 11, 2019, J.G. was issued a subpoena to appear at an October 25, 2019 deposition in Cause No. 27, but the subpoena was never served on J.G., and he did not appear at the deposition. *Tr. Vol. 3* at 154, 157; *State's Ex. 1.* A second subpoena was issued on November 19, 2019 for J.G. to appear at a November 22, 2019 deposition in Cause No. 27, and Detective Carl Pieczonka ("Detective Pieczonka") personally served the subpoena. *Tr. Vol. 2* at 58-60; *Tr. Vol. 3* at 155; *State's Ex. 2*.

[6] In the days leading up to the November 22, 2019 deposition, Detective Pieczonka began listening to phone calls that Ramey made from jail to Oldfield, in which Ramey told Oldfield that J.G. needed to be located to stop him from testifying at the deposition or to get him to change his testimony; Tyler was also involved in some of the phone calls. *Tr. Vo1. 2* at 62-63, 125, *Tr. Vol. 3* at 28-34, 41, 50-51, 58-59; *State's Exs. 7A, 7B, 7D, 8-13*. After listening to the phone calls,

Detective Pieczonka was concerned that J.G. might not appear at the November 22, 2019 deposition and called J.G. on November 21, 2019 to check on him and to see if he had been contacted by anyone. *Tr. Vol. 2* at 64-65; *Tr. Vol. 3* at 156-57.

[7] On November 21, 2019, J.G.'s younger brother, J.L.G., started receiving telephone calls and text messages from Oldfield. *Tr. Vol. 2* at 209. J.L.G. also received messages from Oldfield via Facebook Messenger in which Oldfield pretended to be good friends of J.G. and wanted to get in touch with him. *Tr. Vol. 2* at 209-10; *State's Ex. 15*. Oldfield asked for J.G's phone number, which J.L.G. provided to Oldfield. *Tr. Vol. 2* at 213; *State's Ex. 15.* On that same day, Tyler used Facebook Messenger to contact J.G.'s fiancée to learn more about J.G. to intimidate him so that he would not testify in Cause No. 27. *Tr. Vol. 3* at 152, 207-09. Tyler also called J.G. seeking information regarding where J.G. lived, but J.G. did not tell her because he found it suspicious. *Id.* at 160, 211. Shortly after Tyler spoke to J.G., Oldfield called J.G. *Id.* at 217. Oldfield threatened J.G. that he would "cut off his patch," that his fiancée would have her unborn child cut out of her body, and that he knew J.G. had family. *Id.* at 165, 218-19.

[8] After receiving these phone calls, J.G. was upset and worried about his family and called Detective Pieczonka, who arranged for J.G. to be driven to the deposition the next day by law enforcement, so he would be safe. *Tr. Vol. 2* at 65-66, 68, 71; *Tr. Vol. 3* at 184-85. J.G. attended and testified at the deposition, at the conclusion of which he was arrested and charged with perjury for

providing testimony that was different from the information he had previously provided. *Tr. Vol. 3* at 185-87. After J.G.'s deposition, Ramey told Oldfield during a phone conversation that J.G. had "thugged," which meant that he had looked out for Ramey by changing his statement. *Id.* at 63, 186; *State's Ex. 11*. Oldfield told Ramey that J.G. had thugged because he "talked to [J.G.] and we figured everything out." *Tr. Vol. 3* at 65.

[9] On November 27, 2019, the State charged Ramey with count 1, conspiracy to commit obstruction of justice as a Level 6 felony; and count 2, conspiracy to commit intimidation as a Level 6 felony. *Appellant's App. Vol. 2* at 10-12. On December 6, 2019, the State filed a habitual offender enhancement, which it withdrew on January 17, 2020. *Id.* at 35-36, 38-39. The State also sought to amend the charging information to modify the time period during which the charged offenses were committed, which the trial court granted on January 24, 2020. *Id.* at 55-59. Ramey filed two motions in limine on January 29, 2020. *Id.* at 70-73. Ramey's first motion in limine requested that the trial court prohibit the State from introducing, mentioning, or referring to Ramey's pending criminal case in Cause No. 27 in which J.G. was a witness. *Id.* at 70-71. Ramey's second motion in limine requested that the trial court prohibit the State from introducing any evidence of his criminal history or other bad acts in violation of Indiana Rule of Evidence 404(b). *Id.* at 72-73.

[10] On February 4, 2020, the trial court began a three-day jury trial. *Id.* at 7. On the morning of trial, the trial court addressed Ramey's motions in limine. *Tr. Vol. 2* at 4-22. After hearing the arguments of Ramey's counsel and the

prosecutor on Ramey's first motion in limine, the trial court determined that the parties could refer to Ramey's pending criminal case in Cause No. 27 as "a criminal case pending in Circuit Court in which [Ramey] is a party." *Id.* at 22. The trial court granted Ramey's second motion in limine. *Id.* at 12. Ramey moved for a mistrial on two occasions during the trial, and on both occasions, the trial court denied Ramey's motion. *Tr. Vol. 3* at 21, 179.

[11] During Oldfield's direct testimony, he testified that he and Ramey were incarcerated together. *Id.* at 13-14. Ramey's counsel did not object to this testimony. *Id.* The following exchange then occurred:

> [Prosecutor:] Okay. And I know the jail has a law library.
>
> [Oldfield:] Law library. That's correct.
>
> [Prosecutor:] Did you utilize that?
>
> [Oldfield:] Yeah, absolutely.
>
> [Prosecutor:] Okay.
>
> [Oldfield:] We'd go in there.
>
> [Prosecutor:] When you say we, who's we?
>
> [Oldfield:] Me and [Ramey], we'd go in there. And we're both pretty smart guys, especially when we're sober. And in the jail, when it comes to law and things we've been involved in in the

> past. So, we could go in there and figure out cases, figure out a little --
>
> [Ramey's counsel:] Judge, may I approach?

Id. at 14-15. In a sidebar, the trial court told both Ramey's counsel and the prosecutor that it would admonish the jury and told the prosecutor to instruct Oldfield not to mention Ramey's criminal history or prior bad acts. *Id.* at 15-16. The trial court admonished the jury "to strike the last answer" and to "treat it as if it was not said and should not be considered in any evidence." *Id.* at 16.

[12] After the admonishment the prosecutor continued questioning Oldfield, immediately stating: "And we are not going to talk about the details of the -- as well as there's another pending criminal matter that [Ramey's] a party to in Circuit Court" to which Oldfield replied, "I'm aware." *Id.* at 16-17. The following exchange then occurred:

> [Prosecutor:] Okay. How did you -- and again, don't talk about what that case is about, because --
>
> [Oldfield:] Understood.
>
> [Prosecutor:] -- that's not why we're here --
>
> [Oldfield:] Got you.
>
> [Prosecutor:] -- right this minute, okay?
>
> [Oldfield:] Right.

[Prosecutor:] So how did you become aware of that case?

[Oldfield:] Through, I would say close fri -- the other case, correct? How did I become aware of the other case?

[Prosecutor:] That there was another matter. And I guess I'll go a little further --

[Oldfield:] Am I allowed to say F2 instead --

[Prosecutor:] No. No.

[Oldfield:] Sorry. No.

[Ramey's counsel:] Judge, I think we need to approach.

THE COURT: All right.

[Oldfield:] I'm trying to figure out what I (indiscernible)

Id. at 17.

[13] Outside the presence of the jury, Ramey moved for a mistrial because of the reference to F2, and after hearing the parties' arguments, the trial court denied Ramey's motion for a mistrial, stating:

> At this point, what the Court has admonished the jury for before is the witness making a statement regarding he and [Ramey's] involvement in some prior arrests. I've admonished the jury about that. F2, I didn't even exactly hear it from where I am sitting next to him. I wasn't clear what he said. F2, I don't think has a general enough meaning to the jury for us to determine a

> mistrial. I'm going to admonish the jury that they're to disregard that.

Id. at 21. When the jury returned, the trial court proceeded to admonish the jury that Oldfield's "last statement . . .is to be struck from testimony" was "not to be considered, valuated or thought about in any way" and was to be treated "as if it was never said." *Id.* at 22.

[14] During Oldfield's redirect testimony, the following exchange occurred:

> [Prosecutor:] Let me ask if you remember this -- this answer. You said, Yeah, I mean, you'll probably see in the phone calls that you guys have --
>
> [Oldfield:] Uh-huh.
>
> [Prosecutor:] -- very many phone calls, especially right before he goes, he wants something done --
>
> [Oldfield:] Right.
>
> [Prosecutor:] -- physically. I mean, indirectly. Any way possible to stop J.G. from coming here and giving testimony on him as far as the rob [sic] -- as far as whatever.
>
> [Ramey's counsel:] Judge, may I approach?

Id. at 144. In a sidebar, Ramey again moved for a mistrial based on the prosecutor's beginning to say the word robbery, which was the nature of the charge against Ramey in Cause No. 27. *Id.* at 145. The trial court did not

make an immediate ruling on Ramey's motion, stating it was going to "relisten to the tape" and take the issue up later. *Id.* The trial court heard the recross of Oldfield and the testimony of J.G., and it addressed Ramey's motion outside the presence of the jury and after lunch. *Id.* at 146, 173-177.

[15] After listening to the parties' arguments, the trial court denied Ramey's motion for a mistrial, stating as follows:

> The Court is finding it is unlikely, without having the deposition in front of them that the jury would have knowledge that what he said was going to be the full word of "robbery." The Court is finding that there was a [m]otion in [l]imine that there was not to be any discussion of what the charge for which [Ramey] was in jail for, or the matter that was pending, where the deposition was coming up in Circuit Court that that matter was not to be provided.
>
> There was [one] other instance where this occurred during the trial, and that was when it came from [Oldfield], and he . . . blurted out "F2." Again, at that time the Court did not grant the mistrial, . . . the Court did admonish the jury at that time. This last statement that came from [the prosecutor] in the process of a question, Court did not hear or understand what he said when he said it. Immediately we approached the bench and a mistrial was requested. The Court said they would review that at the next break.
>
> I did not give an admonishment to the jury at that time, and the Court is going to include in the final instructions, number 14, there has been evidence that's been allowed, and the Court has considered it lawful to have included evidence that there was a pending criminal matter in Circuit Court that was pending.

. . . .

> The evidence that [Ramey] has a pending criminal matter in another Court is received solely on the issue of [Ramey's] motive, intent, plan or knowledge. The evidence should be considered by you, and I'm going to underline only for that limited purpose.
>
> When we go over instruction I may include more, but the Court is finding that it is unlikely from the Court's hearing of what was said at the time it was said, and the inclusion of [the prosecutor] to say shortly after that, as far as whatever, that the jury even made out what he was in the process of saying, and if he did so the Court is going to find that with this instruction at the end it is not, at this point, the jury by evidence that the Court has in, knows that [Ramey] has been in jail, and that it is for a case that is pending. And I do not believe that it rises to the level of a mistrial, and that he cannot be given a fair trial.

Id. at 178-79.[2]

[16] At the conclusion of Ramey's trial, the jury found Ramey guilty of both counts as charged. *Appellant's App. Vol. 2* at 137-38. The trial court held the sentencing hearing on April 29, 2020, and on May 5, 2020, it merged the two convictions and sentenced Ramey only on the conviction for Level 6 felony conspiracy to commit obstruction of justice, imposing a sentence of 910 days executed in the

[2] Although the trial court did not give an admonishment, opting instead to address the issues in the final instructions, Ramey did not refuse an offer of admonishment. *Tr. Vol. 3* at 179, 181-82.

Indiana Department of Correction. *Id.* at 163-66; *Tr. Vol. 4* at 93-94. Ramey now appeals.

Discussion and Decision

[17] Ramey contends that the trial court abused its discretion in denying his motions 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.* "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).

[18] Citing *Lucio v. State*, 907 N.E.2d 1008 (Ind. 2009), Ramey contends that the trial court's denial of his two motions for a mistrial based on the three violations of the trial court's orders in limine, which occurred during Oldfield's testimony, was an abuse of discretion because the cumulative effect of the violations prejudiced him.

[19] In *Lucio*, a witness was asked how long the defendant and a co-conspirator had known each other, and she responded that they had met in jail. 907 N.E.2d at 1009. Lucio's counsel moved for a mistrial, arguing that the testimony was highly prejudicial and created the "bad person" inference, *i.e.*, once a criminal always a criminal. *Id.* The trial court denied the mistrial motion but instructed the jury that the witness's statement was stricken from the record and was to be treated as though the jury never heard it. *Id.* at 1010. On appeal, we determined that the trial court did not err in denying the mistrial motion, observing that the witness's comment about Lucio having been in jail was the sole reference to his criminal record, no other witness provided evidence regarding a criminal record, and the State made no reference to the witness's statement during trial. We concluded, "[b]y all accounts the statement was fleeting, inadvertent, and only a minor part of the evidence against the defendant." *Id.* at 1011.

[20] We disagree with Ramey that the trial court abused its discretion when it denied his two motions for a mistrial. When Ramey made his first motion for a mistrial, the trial court denied the motion stating:

> At this point, what the Court has admonished the jury for before is the witness making a statement regarding he and [Ramey's] involvement in some prior arrests. I've admonished the jury about that. F2, I didn't even exactly hear it from where I am sitting next to him. I wasn't clear what he said. *F2, I don't think has a general enough meaning to the jury for us to determine a mistrial.* I'm going to admonish the jury that they're to disregard that.

Id. at 21 (emphasis added). The trial court then admonished the jury and struck the F2 testimony. *Id.* at 22. In both instances – the fleeting reference to Ramey's criminal history and the phrase "F2," the trial court properly admonished the jury to disregard Oldfield's testimony, and Ramey concedes that the violations were inadvertent and does not specifically argue that either admonishment was insufficient to cure the error. *Id.* at 15, 17; *Appellant's Br.* at 17. It is well settled that, "where the trial court adequately admonishes the jury, such admonishment is presumed to cure any error that may have occurred." *Johnson v. State*, 901 N.E.2d 1168, 1173 (Ind. Ct. App. 2009). Thus, we cannot say that the trial court abused its discretion in denying Ramey's first motion for a mistrial. *See Pittman*, 885 N.E.2d at 1255 (affirming the trial court's denial of defendant's motion for a mistrial despite a witness's testimony inadvertently disclosing that knew the defendant from prison and observing that an "[i]nnocent violation of a motion in limine does not automatically warrant a mistrial.")

[21] As to the denial of Ramey's second motion for a mistrial, which occurred while the prosecutor read a portion of the deposition to Oldfield during redirect of Oldfield, the prosecutor said: "Any way possible to stop J.G. from coming here and giving testimony on him as far as the "*rob* [sic] -- *as far as whatever*." *Id.* at 144 (emphasis added). In arguing that the partially formed word was not grounds for a mistrial, the prosecutor orally cited *Lucio* to the trial court for the proposition that a mistrial was an extreme remedy that should be used only when there is no other remedy available. *Id.* at 176. In denying Ramey's

motion for a mistrial, the trial court listened to the audio of the exchange and determined that without having the text of the deposition in front of it, it was unlikely that the jury could have inferred that the word "rob," even if the jury heard it, was going to be the word "robbery" and made no mention of *Lucio* in making its ruling. *Id.* at 178-79. The trial court noted that the prosecutor said "rob" while "in the process of a question," that it "did not hear or understand what [the prosecutor] said when [the prosecutor] said it," and that it found it unlikely "the jury even made out what [the prosecutor] was in the process of saying." *Id.*

[22] A mistrial is "an extreme remedy that is *only justified when other remedial measures are insufficient to rectify the situation*." *Isom v. State*, 31 N.E.3d 469, 481 (Ind. 2015) (quoting *Mickens*, 742 N.E.2d at 929)) (emphasis added). The trial court decided to address any possible prejudice by giving a final jury instruction that instructed the jury to consider evidence that Ramey has a pending criminal matter in another court only as to "the issue of defendant's motive, intent, plan or knowledge. This evidence should be considered by you only for that limited purpose." *Appellant's App. Vol. 2* at 122 (emphasis in original); *Tr. Vol. 3* at 179. Unlike in *Lucio* and the two earlier instances in this case where the trial court provided an admonishment, the trial court did not provide an admonishment in this instance; however, both Ramey and the prosecutor agreed that the prosecutor did not say the full word "robbery" when reading from the deposition. *Tr. Vol. 3* at 145. While Ramey did not refuse an offer to admonish the jury as to the prosecutor's partially stating the word "robbery," he did not

object when the trial court issued its curative, final instruction to the jury as to Ramey's pending criminal matter in Cause No. 27. *Id.* at 179, 181-82; *Tr. Vol. 4* at 32-33. In fact, Ramey conceded that the prosecutor's partially stating the word was inadvertent, and there is nothing to suggest that the prosecutor's statement was an improper attempt to place "inadmissible evidence before the jury for the deliberate purpose of prejudicing the jurors against the defendant and his defense." *Evans v. State*, 643 N.E.2d 877, 879 (Ind. 1994); *Appellant's Br.* at 17; *Tr. Vol. 3* at 145, 174-75. *See also Stevens v. State*, 691 N.E.2d 412, 421-22 (Ind. 1997) (affirming the denial of the defendant's motion for a mistrial because the prosecutor's violation of an order in limine by referring to a videotape containing items that were inadmissible was not a deliberate attempt to prejudice the defendant rising to the level of misconduct.) Under these circumstances, we cannot say the trial court abused its discretion in denying Ramey's second motion for a mistrial.

[23] As to Ramey's contention that the cumulative effect of the violations prejudiced him because they increased the gravity of peril to which he was subjected, there was strong evidence of his guilt such that Oldfield's fleeting reference to Ramey's criminal history, Oldfield's use of the phrase F2, and the prosecutor's partial utterance of the word "robbery" were unlikely to have had a persuasive effect on the jury. *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). As we have determined

above that the trial court did not abuse its discretion by denying each of Ramey's motions for mistrial, we fail to see how the cumulative effect of these two actions could result in the gravity of peril or prejudice needed to justify the granting of the extreme sanction of a mistrial. Indeed, the State presented substantial evidence, including audio and video evidence, against Ramey of his role in the conspiracy to obstruct justice by intimidating J.G to not appear at the deposition or to change his testimony. *State's Exs. 6*, *7A-B*, *7D-14B*. The jury knew the audio of the phone calls were from the jail, that Ramey was in jail when he made the calls, that other witness testimony established Ramey conspired to threaten J.G. and that J.G. changed his testimony because of the threats. *Tr. Vo1. 2* at 62-63, 124-25; *Tr. Vol. 3* at 28-34, 63, 65-66, 179, 185-87. The jury considered all of this evidence and was admonished to disregard the fleeting reference to Ramey's criminal history and the phrase "F2," and, as to the prosecutor's partial utterance of the word "robbery," was given a curative final instruction, to which Ramey did not object. *Tr. Vol. 3* at 16, 21-22, 178-79; *Tr. Vol. 4* at 32-33. In addition to the admonishments and curative instruction concerning the prosecutor's partial utterance of the word robbery, the jury was also instructed to judge the credibility of witnesses, to disregard as evidence anything that was stricken, and that the statements of the attorneys are not evidence. *Tr. Vol. 4* at 78-80; *Appellant's App. Vol. 2* at 122, 124, 127. *See Isom*, 31 N.E.3d at 481 (noting that juries are presumed to follow the court's instructions when reaching a verdict). The trial court did not abuse its discretion in denying Ramey's motions for a mistrial.

[24] Affirmed.

Bradford, C.J., and May, J., concur.