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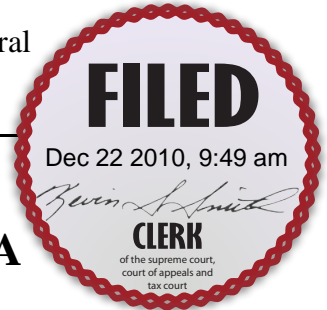
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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS M. BLAIR,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 45A04-1005-CR-295

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0904-FB-36

December 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Thomas Blair appeals his conviction, following a jury trial, of burglary as a Class B felony. The sole issue presented for our review is whether the trial court abused its discretion by denying Blair's motion for a mistrial. Concluding Blair was not placed in grave peril, we affirm.

Facts and Procedural History

On March 11, 2009, a man whom Gail Nicolini identified at trial as Blair came to Nicolini's house and asked her "again and again" whether a certain girl lived at the house. Transcript at 54. Blair also appeared to Nicolini to be "looking around" the outside of the house. Id. The encounter struck Nicolini as "strange." Id.

On the morning of March 13, 2009, Nicolini's house was broken into. Police and Nicolini responded to the burglary alarm from the residence, and found the back window of the family room had been smashed in and the screen cut open and removed. Nicolini also discovered her laptop computer was missing but no other items were taken. The computer was later recovered from a pawn shop called Pawn King.

Merrillville Police Lieutenant Jeffrey Snemis spoke with Volletta Larson, Nicolini's neighbor across the street. On the morning of March 13, 2009, Larson noticed a man standing on the front porch of the Nicolini house and then running to the side of the house. Later that morning, Larson saw the same person run from the backyard of the Nicolini house and scale a fence. In a police photo array, Larson identified a photograph of Blair as that person.

Lieutenant Snemis also interviewed Blair, who admitted he possessed a computer which he gave to a third person, who then pawned it at Pawn King. Previously, Blair tried to sell the laptop computer to Lisa Hopson, who lived in an apartment upstairs from Blair's. Blair told Hopson he broke into a woman's house and stole the laptop computer, and that he did not take anything else from the house because the alarm sounded.

The State charged Blair with burglary, a Class B felony. The trial court held a jury trial at which Nicolini, Larson, Lieutenant Snemis, and Hopson testified. During a bench conference on the first day of trial, counsel for the State informed the trial court that according to a report of court security guards, Larson had come to the court building intoxicated. The trial court responded that Larson would not be allowed in the courtroom that day, the State should call its next witness, and it was "not [the trial court's] call" whether Larson should be arrested. Id. at 102. On the second day of trial, Larson returned to testify. During cross examination, defense counsel inquired of Larson whether she had anything alcoholic to drink on the morning of March 13, 2009. Larson answered, "No." Id. at 261. Defense counsel then asked, "Do you have a drinking problem?"; Larson replied "No," and the State objected on grounds of relevance. Id. The trial court sustained the State's objection. Defense counsel asked permission to question Larson whether she showed up intoxicated on the first day of trial and whether she was allowed to leave at the direction of the prosecutor without being arrested. Defense counsel stated Larson "was allowed to go home by a prosecutor's investigator car" and that fact was relevant to show an inference of bias. Id. at 262. The trial court reaffirmed

its ruling excluding any questioning relating to Larson's intoxication the previous day. Defense counsel then moved for a mistrial, which the trial court denied.

The jury found Blair guilty as charged of burglary and a lesser-included count of receiving stolen property. The trial court entered judgment as to burglary only and sentenced Blair to twelve years of imprisonment. He now appeals.

Discussion and Decision

I. Standard of Review

The grant or denial of a motion for mistrial rests within the sound discretion of the trial court and is reviewed for an abuse of discretion. Booher v. State, 773 N.E.2d 814, 820-21 (Ind. 2002). To prevail on appeal from the denial of a motion for mistrial, the defendant must show he was placed in a position of grave peril to which he should not have been subjected. Stokes v. State, 922 N.E.2d 758, 762-63 (Ind. Ct. App. 2010), trans. denied. The gravity of peril is measured by its probable persuasive effect on the jury's verdict. Id. at 763. "A mistrial is an extreme remedy that is warranted only when less severe remedies will not satisfactorily correct the error." Warren v. State, 725 N.E.2d 828, 833 (Ind. 2000).

II. Motion for Mistrial

Blair argues that evidence of Larson's alleged drinking problem in general, and of her intoxication on the first day of trial in particular, was relevant to impeach her credibility as an eyewitness who identified Blair. Blair also argues he should have been allowed to impeach Larson by asking whether she received a ride home in a prosecution investigator's car instead of being arrested, as such a favorable exercise of prosecutorial

discretion raised a probability of Larson's bias in favor of the State. Therefore, Blair argues, the trial court should have granted his motion for mistrial after its erroneous decision to exclude evidence of Larson's intoxication, alleged drinking problem, and receipt of a ride home from officers of the State.

Leaving aside the question of whether the evidence was properly excluded, we cannot conclude in the context of the whole trial that the ruling placed Blair in grave peril. Apart from Larson's identification of Blair as the person outside Nicolini's house near the time of the burglary, other evidence was more than sufficient to identify Blair as the burglar. Blair admitted to his neighbor Hopson that he broke into a woman's house, stole only a laptop computer, and left because the alarm sounded – striking facts that match the burglary of Nicolini's residence. Blair admitted to Lieutenant Snemis that he possessed a laptop computer subsequently pawned at Pawn King – further facts that match what happened to Nicolini's computer as a result of the burglary. In addition, Nicolini identified Blair at trial and observed him come to and look around her house two days before the burglary, which the jury could reasonably have interpreted as casing in preparation for the crime. Thus, even if Blair had been able to fully impeach Larson and the jury had discounted her testimony, we can perceive no probable persuasive effect on the jury's verdict as a result. Therefore, the trial court did not abuse its discretion by denying Blair's motion for mistrial.

Conclusion

Blair was not placed in grave peril, and the trial court did not abuse its discretion

by denying his motion for mistrial.

Affirmed.

RILEY, J., and BROWN, J., concur.