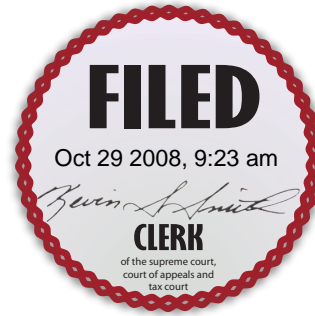


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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SANTOS R. C., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 19A05-0805-CR-269  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE DUBOIS CIRCUIT COURT  
The Honorable William E. Weikert, Judge  
Cause No. 19C01-0701-FC-14

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**October 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Santos R. C. ("S.R.C.") appeals his conviction for Incest, as a Class C felony.

S.R.C. raises two issues for our review, which we restate as follows:

1. Whether the trial court abused its discretion when it denied S.R.C.'s motion for a mistrial.
2. Whether the trial court provided S.R.C.'s jurors with a meaningful opportunity to question witnesses.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

At 1:00 a.m. on January 18, 2007, S.R.C. engaged his seventeen-year-old daughter, K.C., in sexual intercourse against her will. A few days later, K.C. became sick at school, and she told her school counselor that she thought she might be pregnant by her father. School officials notified local authorities, and the State arrested S.R.C.

S.R.C.'s jury trial began on January 23, 2008. However, before trial began, the court gave the jury the following preliminary instruction:

During the trial, you may have questions you want to ask a witness. Please do not address any questions directly to a witness, the lawyers[,] or your fellow jurors since there are rules as to what questions may be asked and the answers that witnesses are allowed to give. Instead, if you have questions, please raise your hand after the attorneys have asked all of their questions and before the witness has left the witness stand. You must put your questions in writing. I will review them with the attorneys and I will determine whether your questions are permitted by law.

Transcript at 29-30.

Shortly after trial began, S.R.C.'s counsel moved for a mistrial on the grounds that the jury may have seen and been prejudiced by a pamphlet discovered in the part of the courtroom occupied by members of the venire during jury selection. That pamphlet was

entitled, “What Every Parent Should Know About . . . Pedophilia and Child Sexual Molestation.” Appellant’s App. at 12 (capitalization removed). Among other things, that pamphlet stated that “[h]alf of child sexual abusers are the parents of the victims.” *Id.* at 13. In response to the motion of S.R.C.’s counsel, the trial court asked the jury members if any of them had seen the pamphlet. Each member of the jury stated that he or she had not seen the pamphlet. The court then denied S.R.C.’s motion for a mistrial.

At the conclusion of each witness’ testimony, the trial court dismissed the witness. At no point did any jury member indicate to the court that he or she had a question for a witness, and at no point did S.R.C.’s trial counsel object to the court’s dismissing of the witnesses. The jury found S.R.C. guilty of incest, and the trial court entered a judgment of conviction against S.R.C. accordingly. The court then sentenced S.R.C. to eight years, with two years suspended to probation. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Mistrial**

S.R.C. first argues that the trial court abused its discretion when it denied his motion for mistrial. Our standard of review here is well settled:

The trial court is in the best position to assess the impact of a particular event upon the jury. Thus, the decision of whether to grant or deny a motion for mistrial is committed to the sound discretion of the trial court and will be reversed only upon an abuse of that discretion. The denial of a motion for mistrial will be reversed only upon a showing that the defendant was placed in a position of grave peril to which he should not have been subjected. The declaration of a mistrial is an extreme action and is warranted only when no other action can be expected to remedy the situation. The burden on appeal is upon the defendant to show that he was placed in grave peril by the denial of the mistrial motion. The defendant on appeal also has the burden to show that no other action could have remedied the perilous situation into which he was placed.

Wilson v. State, 865 N.E.2d 1024, 1027 (Ind. Ct. App. 2007) (quoting Anderson v. State, 774 N.E.2d 906, 911 (Ind. Ct. App. 2002)).

Here, S.R.C. argues that the trial court should have declared a mistrial because of the “potentially extremely damaging” language contained in the pamphlet, and the presence of that pamphlet near the jurors. Appellant’s Brief at 4. But the trial court inquired with the jurors as to whether any of them had seen the pamphlet, and they each stated that they had not. As such, S.R.C.’s arguments to the contrary aside, the pamphlet could not have placed him in a position of grave peril. The trial court did not abuse its discretion in denying S.R.C.’s motion for a mistrial.

### **Issue Two: Opportunity for Juror Questions**

S.R.C. next asserts that the trial court denied the jurors a meaningful opportunity to question the witnesses at his trial. Jury Rule 20(a) states that “[t]he court shall instruct the jury before opening statements by reading the appropriate instructions[,] which shall include . . . (7) that jurors, including alternates, may seek to ask questions of the witnesses by submission of questions in writing.” “Jury Rule 20 does not specifically state the mechanical procedure to be used at trial in order to allow such jury questions.”

Ashba v. State, 816 N.E.2d 862, 865 (Ind. Ct. App. 2004). Indeed:

a trial court should explain to jurors what the questioning procedure will entail. A trial court can inform the jurors that it will be glancing at the jury to see if any questions exist after a witness’s testimony. Another mode of inquiry could be for the trial court to instruct jurors to verbally or physically indicate if they have any questions. The trial court may also choose to tell jurors that it will specifically ask for questions after each witness. In sum, the trial court may use a variety of methods to obtain jury questions but must ensure that jurors know when they will be given an opportunity to ask such questions.

Id. at 866.

Here, S.R.C. did not object to either the trial court's preliminary instruction on how it would field questions from the jury or the trial court's dismissal of the witnesses. Hence, S.R.C. has waived this issue for our review. Waiver notwithstanding, the trial court informed the jurors that, if they had a question for a witness, they were to physically indicate that to the court by raising their hands before the witnesses were dismissed. The trial court did not err either in its preliminary instruction or in the opportunity it presented to the jurors for questioning of witnesses. See id. at 865-66. As such, we affirm S.R.C.'s conviction for incest, as a Class C felony.

Affirmed.

ROBB, J., and MAY, J., concur.