MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kevin Wild
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Erick Matheu,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 29, 2023

Court of Appeals Case No. 23A-CR-849

Appeal from the Marion Superior Court

The Honorable Jennifer Prinz Harrison, Judge

Trial Court Cause No. 49D20-2012-F1-37873

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] A jury found Erick Matheu guilty of level 1 felony child molesting. On appeal, he asserts that the trial court abused its discretion in denying his motion for mistrial and in admitting certain evidence. We affirm.

Facts and Procedural History

[2] A.R. was born in August 2008. In the summer of 2020, A.R. and her mother (Mother) went to a party that Matheu also attended. Matheu got A.R.'s phone number "from someone else" and began communicating with her "[v]ia text messages." Tr. Vol. 2 at 137. Matheu attended A.R.'s twelfth birthday party, and he knew "it was [her] 12th birthday[.]" *Id*. at 138. A.R. "spent time with [Matheu]" at the party. *Id*. Matheu and A.R. texted each other "each day" and talked "almost every day[.]" *Id*. Matheu had sexual intercourse with A.R. on multiple occasions. He told her that he was twenty-four years old.

[3] Mother found out about A.R.'s relationship with Matheu and "took [A.R.'s] phone from [her]." *Id*. at 144. Mother "found all the text messages that [A.R.] had been texting with [Matheu]." *Id*. at 105. Mother sent A.R. to stay with Mother's sister "[b]ecause [A.R.] felt calmer there." *Id*. at 106. Three days later, Mother's sister told Mother "that she couldn't find A.R." *Id*. Mother called Matheu using the number that she found on A.R.'s phone and told him that she knew that "he had [her] daughter, and to bring her back[.]" *Id*. at 107. Matheu admitted that A.R. was with him, "said that he wanted to fix the situation," and arranged to meet Mother at a restaurant a few days later. *Id*. Mother reported

A.R. as a runaway and met Matheu and A.R. at the restaurant on October 19, 2020. Police officers were called, and they told Mother to take A.R. to the hospital, which she did. Matheu presented what purported to be an identification card issued by the Republic of Honduras to Indianapolis Metropolitan Police Department (IMPD) Officer Jon Frantsi, but he was not taken into custody at that time.

[4] In December 2020, IMPD Detective Daniel Henson interviewed A.R., who stated that Matheu molested her. On December 22, 2020, the State charged Matheu with level 1 felony child molesting. A warrant was issued for Matheu's arrest. When Matheu was located in February 2021, he was with A.R., who had "been listed as a runaway from [DCS] custody[.]" *Id*. at 207.

[5] A jury trial was held in November 2022, and Matheu was found guilty as charged. The trial court sentenced him to twenty-five years executed. Matheu now appeals.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in denying Matheu's motion for mistrial.

[6] During the State's direct examination of Mother, the following exchange occurred:

> Q After [October 19, 2020], did the Department of Child Services get involved?
>
> A Yes.

> Q And did they put your daughter in therapy?

Id. at 108. Matheu's counsel requested a sidebar and objected, stating,

> Judge, I haven't dwelled on this in my preparation, because it's another perpetrator, another set of crimes. But I think the State's aware that their complaining witness may have been sexually abused by others [i.e., her stepfather]. And I'm unconcerned [sic] about confusing the jury about how the State's going to dissect anything DCS did that might be at the hands of my client from anything that another person did.

Id. at 109. The prosecutor replied, "I understand his concerns. The point is DCS puts the victim into a treatment center, and she runs from the treatment center." *Id*. Matheu's counsel requested a mistrial. The trial court denied the request, stating, "I don't see that there's been any error. I don't see that any bell's been rung that can't be un-rung." *Id*. at 110.

[7] After the sidebar concluded, the prosecutor asked Mother, "Did DCS place your daughter somewhere outside of your home?" *Id*. Mother replied, "Yeah, DCS took her." *Id*. at 111. Without objection, Mother further testified, "And that's when she tried to take some pills. And I called 911 because I didn't know how many pills she had taken." *Id*. Mother clarified that A.R. took the pills when she was in Mother's custody "[b]ut then DCS placed her outside" Mother's home. *Id*. Mother testified that she found out that A.R. "left the facility that DCS placed her at […] but that they found her afterwards." *Id*.

[8] On appeal, Matheu contends that the trial court erred in denying his motion for mistrial. "A mistrial is an extreme remedy warranted only when no other curative measure will rectify the situation." *Pugh v. State*, 52 N.E.3d 955, 971 (Ind. Ct. App. 2016), *trans. denied*. "To prevail on appeal from the denial of a motion for mistrial, the defendant must establish that he was placed in a position of grave peril to which he should not have been subjected." *Id*. "The gravity of the peril is determined by considering the misconduct's probable persuasive effect on the jury's decision." *Id*. "A trial court is in the best position to determine whether a mistrial is warranted because it evaluates first-hand all relevant facts and circumstances at issue and their impact on the jury." *Id*. "The decision to grant or deny a mistrial motion is left to the sound discretion of the trial court." *Vaughn v. State*, 971 N.E.2d 63, 67 (Ind. 2012). "We will reverse the trial court's determination on the issue only for an abuse of discretion." *Id*. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court." *Id*. at 68.

[9] Matheu contends,

> The State's question suggesting that DCS took [A.R.] and placed her in therapy put Matheu in a position of grave peril because it invited a direct conclusion by the jury that she must have been so "damaged" or distraught as to necessitate, first, removing her from her family and second, placing her in therapy. The probable persuasive effect of this information on the jury's decision was devastating. The only reasonable conclusion the jury could draw, in the context of a trial for child molestation, was that the defendant on trial must therefore be guilty of the molestation because he caused this damage and the need for therapy.

Appellant's Br. at 9.

[10] But Mother never testified that A.R. underwent therapy, so there was no bell to unring, as the trial court succinctly put it. Mother did testify that DCS took custody of A.R. after she ingested some pills and that A.R. absconded from the facility, but Matheu did not object to any of that testimony.[1] Based on the facts and circumstances before the trial court, we cannot conclude that Matheu was placed in a position of grave peril to which he should not have been subjected, and thus we cannot conclude that the court abused its discretion in denying his motion for mistrial.

Section 2 – Any error in the admission of Matheu's identification card and Detective Henson's testimony about it was harmless.

[11] At trial, Matheu objected on various grounds to the admission of the abovementioned Honduran identification card, which was printed in Spanish, as well as to Detective Henson's testimony about it, including that the card listed Matheu's birthdate as October 12, 1995. Matheu's age is a material element of the instant offense. *See* Ind. Code § 35-42-4-3(a)(1) (providing that child molesting is a level 1 felony if "it is committed by a person at least twenty-one (21) years of age"). The trial court overruled Matheu's objections.

[1] Matheu also did not object to Detective Henson's testimony that "A.R. was in [DCS] custody[,]" "had run away" from that custody, and ultimately was found with Matheu. Tr. Vol. 2 at 202, 207.

[12] On appeal, Matheu argues that the trial court erred. Any error must be considered harmless, however, because Matheu did not object to the admission of his IMPD booking sheet, which lists his birthdate as October 12, 1995. *See McCovens v. State*, 539 N.E.2d 26, 30 (Ind. 1989) ("Any error in the admission of evidence is not prejudicial, and therefore harmless, if the same or similar evidence has been admitted without objection or contradiction.").[2] Accordingly, we affirm Matheu's conviction.

[13] Affirmed.

Riley, J., and Mathias, J., concur.

[2] The prosecutor asked A.R. whether Matheu "ever [told her] how old he was[,]" and A.R. responded, "Yes." Tr. Vol. 2 at 142. Matheu made a hearsay objection, which the trial court overruled. The prosecutor then asked, "And how old did he tell you that he was?" *Id*. at 144. A.R. responded, "I remember he said he was 24." *Id*. Matheu did not object to either the question or the response.