MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Tyrone A. Palmer,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 12, 2024

Court of Appeals Case No.
23A-CR-969

Appeal from the Marion Superior Court

The Honorable Anne Flannelly, Magistrate

Trial Court Cause No.
49D30-1908-F1-32423

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

[1] Tyrone A. Palmer appeals his convictions for child molesting and claims the trial court erred in denying his request to remove two prospective jurors for cause. We affirm.

Facts and Procedural History

[2] On August 16, 2019, the State charged Palmer with Count I, child molesting as a level 1 felony; and Count II, child molesting as a level 4 felony. The State later amended its charging information to add Count III, child molesting as a level 1 felony, and alleged that he was an habitual offender.

[3] In March 2023, the court held a jury trial. During voir dire, defense counsel asked a panel of prospective jurors "[a]nybody else up here have any prior experiences," and Prospective Juror 36 stated: "I don't have, like, experiences with child molesting, however, I do work with children and this topic is really, like - it just makes me think about the kids and it would be hard." Transcript Volume II at 169. Defense counsel asked "[w]hat do you do with children," and Prospective Juror 36 answered: "I lead them in different activities after school and I work with little kids, like, ages five to eight." *Id*. at 169-170. When asked "your experiences working with those children, that's something that would be on your mind if you were called to serve as a juror on this case, is that right," Prospective Juror 36 stated "[y]eah, it would be difficult." *Id*. at 170. Defense counsel asked "do you think that you would be unable to be fair

and impartial if called to serve on the jury," and Prospective Juror 36 stated: "In this situation, maybe. Yeah." *Id*. Defense counsel stated:

> So, does anybody here like Star Wars? So, the little green guy, Yoda, famous saying: "do or do not, there is no try." Right? Unfortunately, I got to push you on this because one of my responsibilities as a defense attorney is to guarantee that [Palmer's] right to a fair trial is upheld. So, basically, do or do not, there is no try. You know, with a question like this, "I'll try" is a no, so I have to ask you again, if you had to give a yes or no answer, do you think you could be fair and impartial in this case? Would it be yes or would it be no?

Id. Prospective Juror 36 replied "[n]o." *Id*. Prospective Juror 31 stated: "I have family members as young as little babies, up to, like, sixteen years old who have been abused and stuff, so I don't think I'd be --." *Id*. Defense counsel stated "same question," "[d]o or do not, there is no try," and "[y]es or no, do you think you could be fair and impartial," and Prospective Juror 31 replied: "No." *Id*. at 171.

[4] Following some discussion with other prospective jurors, the trial court stated:

> Let me make a few comments at this time to all of you. Of course, if you're pregnant the topic would weigh on your mind. You're carrying a child, we're talking child molestation; of course, you're young and you work with young children, you would think about the children; and of course, you know someone who has been a prior victim and you might think about that person during the trial. You're not expected to be robots. You are humans and you come into this court with your life experiences, and with your feelings, and what you've gone through, and what you're going through, and although

> something may be difficult, it may be trying, it may be hard - those are the kind of words I think I heard - this is important and you're right, this is important for [Palmer] and it's important for the alleged victim, and it's important that you not feel guilty because of what you've experienced and what you know and what you feel, but that you're coming into this court with no preconceived feeling that because someone is sitting here, they must be guilty or that they're not presumed innocent or whether you can have a fair and open mind and listen to the evidence that's presented and determine if you can make a fair and impartial decision based on the evidence presented, judging the evidence. So, let me ask you, and I'm not trying to convince you to change any answers you've given, I just want to make sure I understand. Let me ask juror 36, have you already made a decision regarding the guilt or innocence in this case?

Id. at 175. Prospective Juror 36 answered: "No." *Id*. The court asked "do you feel that you can render an impartial verdict based on the law and the evidence," and Prospective Juror 36 responded: "Yes." *Id*. at 175-176.

[5] After some discussion related to other prospective jurors, the court asked "[a]ny other ones you want to talk about," and defense counsel replied: "Yes. 31 and 36. I asked both of them flat-out 'could you be fair and impartial in this case,' they both said no. I think that meets the standard of being released for cause." *Id*. at 177. The court questioned Prospective Juror 31 as follows:

> THE COURT: Juror 31, are you the juror who talked about having a lot of relatives - children?
>
> PROSPECTIVE JUROR 31: I am.
>
> THE COURT: And not you personally but within your family?

PROSPECTIVE JUROR 31: That's right.

THE COURT: Have you made a decision already about guilt or innocence? And I need you to speak up because this is all being recorded.

PROSPECTIVE JUROR 31: No.

THE COURT: Do you feel that you can render an impartial verdict based upon the law and the evidence?

PROSPECTIVE JUROR 31: Yes.

THE COURT: Now, you heard me talk about, in general, about how we all have experiences. We know people who have been on one side or the other and - but that's how we come into this courtroom - the question - you're not expected to be robots, but the real issue is for the Court, can you be a fair person listening to all the evidence presented and render a fair and impartial verdict?

PROSPECTIVE JUROR 31: Yes.

THE COURT: Alright.

Id. at 178-179. The court denied defense counsel's request to strike Prospective Jurors 31 and 36 for cause. Defense counsel used two peremptory challenges to strike Prospective Jurors 31 and 36 and requested two additional peremptory challenges, and the court denied the request. Defense counsel later stated, "[f]ollowing the Court's denial of my challenge for cause, I did use two of my three remaining peremptory challenges to strike jurors 31 and 36" and "I would have struck [prospective jurors] 30 and 32, who have now made it on to the jury . . . [h]ad I had the peremptory challenges, which I used on removing 31 and

36." *Id*. at 182-183. The jury found Palmer guilty on Counts I and III and not guilty on Count II, and Palmer admitted to being an habitual offender.

Discussion

[6] Palmer asserts the trial court abused its discretion in denying his request to remove Prospective Jurors 31 and 36 for cause. He argues that "[b]oth prospective jurors volunteered that they interact with young children and exhibited emotional responses to sitting on a child molesting case" and "admitted they could not be fair and impartial." Appellant's Brief at 12. He argues that, "[a]fter openly acknowledging their bias, the trial court, however politely, challenged them" and, "[i]n response to judicial questioning, the prospective jurors changed their answers from no to yes." *Id*. at 13.

[7] A juror should be excused for cause if his "views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Gibson v. State*, 43 N.E.3d 231, 239 (Ind. 2015) (citations omitted). "Because such biases can be difficult to ascertain on a paper record, we pay considerable deference to the trial judge, who has the unique opportunity to 'assess the demeanor of prospective jurors as they answer the questions posed by counsel.'" *Id*. (citing *Oswalt v. State*, 19 N.E.3d 241, 245 (Ind. 2014), *reh'g denied*). We thus review the court's ruling on a for-cause challenge for an abuse of discretion. *Id.* "[O]n appeal, we afford substantial deference to the trial judge's decision . . . and will find error only if the decision is illogical or arbitrary." *Oswalt*, 19 N.E.3d at 245 (citation omitted).

[8] The record reveals that, upon questioning by defense counsel, Prospective Juror 36 stated "I don't have . . . experiences with child molesting" and "I do work with children and this topic . . . just makes me think about the kids and it would be hard." Transcript Volume II at 169. When defense counsel asked more pointedly "if you had to give a yes or no answer, do you think you could be fair and impartial in this case," Prospective Juror 36 replied "[n]o." *Id*. at 170. Prospective Juror 31 then offered "I have family members as young as little babies, up to . . . sixteen years old who have been abused and stuff," defense counsel asked "do you think you could be fair and impartial," and Prospective Juror 31 replied "[n]o." *Id*. at 170-171. The court explained to the panel of prospective jurors that, "although something may be difficult, it may be trying, it may be hard," what was important was that "you're coming into this court with no preconceived feeling that because someone is sitting here, they must be guilty or that they're not presumed innocent or whether you can have a fair and open mind and listen to the evidence that's presented and determine if you can make a fair and impartial decision based on the evidence presented, judging the evidence." *Id*. at 175. The court stated that it was not trying to convince the prospective jurors to change their answers. The court asked Prospective Juror 36 "have you already made a decision regarding the guilt or innocence in this case," Prospective Juror 36 responded "[n]o," the court asked "do you feel that you can render an impartial verdict based on the law and the evidence," and Prospective Juror 36 answered: "Yes." *Id*. at 175-176. Similarly, the court asked Prospective Juror 31 "[h]ave you made a decision already about guilt or innocence," Prospective Juror 31 responded "[n]o," the court asked "[d]o you

feel that you can render an impartial verdict based upon the law and the evidence," and Prospective Juror 31 answered: "Yes." *Id*. at 178-179. The court referred to its comments and asked "the real issue is . . . can you be a fair person listening to all the evidence presented and render a fair and impartial verdict," and Prospective Juror 31 answered: "Yes." *Id*. at 179.

[9] While defense counsel initially elicited responses from the prospective jurors indicating they did not think they could be fair and impartial and the case would be difficult, following the court's comments about the presumption of innocence, keeping an open mind, and making a decision based on the evidence presented, both Prospective Jurors 31 and 36 answered that they had not already made a decision regarding guilt or innocence and that they could render an impartial verdict based on the law and the evidence. The trial court was in the unique position to observe Prospective Jurors 31 and 36 and assess their demeanors. Based upon the record, and given our substantial deference to the court's decision on for-cause challenges, we cannot say that the court abused its discretion in denying Palmer's request to strike or that its decision was illogical or arbitrary. *See Oswalt*, 19 N.E.3d at 249-250 ("We recognize that Juror 28 expressed discomfort at the thought of trying a child-molestation case. He and defense counsel discussed that discomfort and its impact on his ability to perform his duties at length. Juror 28 elaborated that if he were on trial for Oswalt's charges, Juror 28 would not want a juror like himself adjudicating the case. But the trial court also questioned Juror 28 and rehabilitated him. Juror 28 told the court that he could follow the court's instructions, listen to the

evidence, and 'make a decision only upon the evidence and instructions that [he] hear[d] in court.' And when asked whether he felt that he could be fair toward Oswalt, Juror 28 only reiterated that he was uncomfortable. . . . Under those circumstances, denying Oswalt's motion was within the trial court's discretion. The record indicates that Juror 28 admitted only to discomfort, not bias or prejudice, at the thought of sitting as a juror in a child-molestation case.").

[10] For the foregoing reasons, we affirm.

[11] Affirmed.

Riley, J., and Foley, J., concur.

ATTORNEYS FOR APPELLANT

Talisha R. Griffin
Ellen M. O'Connor
Marion County Public Defender Agency
Appellate Division
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana