MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Matthew R. Baker,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

March 13, 2024

Court of Appeals Case No.
23A-CR-1462

Appeal from the Whitley Circuit Court

The Honorable James R. Heuer, Senior Judge

Trial Court Cause No.
92C01-2208-F5-622

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

[1] Following a jury trial, Matthew Baker was convicted of Level 5 felony failure to register as a sex or violent offender.[1] Baker claims the trial court abused its discretion by denying his motion for mistrial during jury selection. We affirm.

Facts and Procedural History

[2] Baker was convicted of an offense that required him to register as a sex or violent offender. On May 16, 2022, Baker updated his registration information with the Whitley County Sheriff's Department to reflect he was residing at an address on Norris Court in Columbia City. A provision on the registration form advises registrants they must update their information with the Sheriff's Department within seventy-two hours of any change. Karianna Oppy owned the house on Norris Court and confirmed Baker lived there in May 2022. In mid-June Oppy asked Baker to move out and he did so immediately, leaving his belongings behind. After that, he returned to the Norris Court house a few times for less than an hour total.

[3] The Sheriff's Department validates registry information periodically. Validations can occur personally—by a deputy physically going to a registered address to confirm a person is living there—or by mail—by sending a "do not

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[1] Ind. Code § 11-8-8-17(a)(5), (b) (2020).

forward" letter to a registered address. *Tr. Vol. 2* at 89. The Sheriff's Department sends a standard letter to everyone on the registry a few times a year. "[I]f they're residing there, obviously they'll get the mail, if they're not then it will be returned" to the Sheriff's Department. *Id*. In July 2022, an employee of the Sheriff's Department sent validation letters to everyone on the registry, including Baker. Baker's letter was sent to the Norris Court address listed on the registry. The letter was returned as "not deliverable" with a handwritten note stating, "No longer at this address." *Ex. Vol. 3* at 16. A Sheriff's Deputy went to the Norris Court address on August 1 to personally validate residency but was unable to make contact with Baker. Oppy, her fiancé, and a third person staying at Oppy's house all testified Baker was not living at the house on August 1.

[4] The State charged Baker with failing to register as a sex or violent offender.[2] The State and Baker stipulated prior to trial that Baker had been convicted of an offense which required him to register as a sex or violent offender and he was still required to register as of August 1, 2022.

[5] Jury selection for Baker's trial began on June 7, 2023. All members of the jury pool were seated in the courtroom; twelve members were called to seats in the jury box. The State began its *voir dire* examination by asking the court reporter

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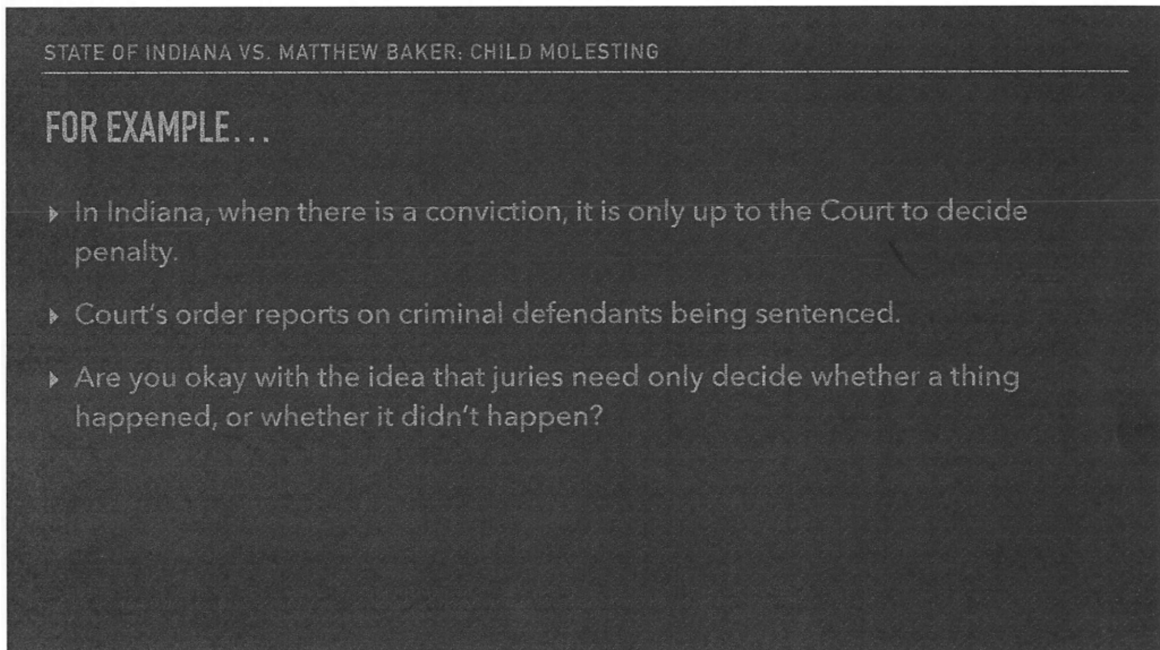
[2] The State charged Baker with Level 6 felony failure to register, I.C. § 11-8-8-17(a)(5), and also filed an enhancement of the charge to a Level 5 felony because of a prior conviction for failure to possess identification, I.C. §§ 11-8-8-15; 11-8-8-17(b)(2).

to "turn on the screen" where a PowerPoint presentation played while the State questioned potential jurors. *Tr. Vol. 2* at 6. After several minutes, Baker's counsel asked to approach the bench while this slide was displayed on the screen:



Appellant's App. Vol. 2 at 129.[3] The following colloquy ensued:

> [Defense Counsel]: On your (inaudible) (referring to power point on TV screen), it says Matthew Baker.
>
> State: Oh, yeah, that's incorrect. Yep, that was for an old case.

[3] The conviction requiring Baker to register was not child molesting.

Tr. Vol. 2 at 15–16. The trial court asked the State to take down the slide and the State did so. Baker's counsel said he would consult with his client about whether to request a mistrial and the State continued its *voir dire* examination for several more minutes.

[6] Before beginning his own examination of the jurors, Baker's counsel again asked to approach the bench. Counsel moved for a mistrial "based on the, where the child molesting was on the screen[.]" *Id.* at 23. The court said it would like to make a formal record on the motion without any potential jurors present and determined they would finish the current round of jury selection before discussing Baker's motion.

[7] After the first round of challenges were made and before a second panel of prospective jurors was seated, the court excused the potential jury and entertained Baker's motion. Baker's counsel acknowledged the error was likely an oversight, but argued:

> I just happened to be watching the prosecutor's power point during the jury selection, one of the slides I noticed, they all had a top line heading, State of Indiana versus Matthew Baker. The one I noticed that I believe the Court just took a picture of, had the words child molesting behind State of Indiana versus Matthew Baker. . . . I did not notice it if it was on any of the preceding slides or if that was the only slide. . . . [W]e have gone to great lengths and pains to excise any mention of Mr. Baker's prior . . . conviction from 2007 from the records in this case . . . . I can't tell you Judge, and I can't state for the record, if any or how many of the jurors saw that, but I . . . believe it . . . creates irreputable [sic] prejudice to Mr. Baker[.]

Id. at 43.

[8] The State apologized for the error and added, for additional context, that the slide was left over from an unrelated prosecution and was included inadvertently, the problematic heading appeared only on that slide, and the slide was displayed for three to four minutes. The State argued the "tone of the jury selection after that particular moment" demonstrated there was no irreparable harm and the "transgression was brief enough that it wouldn't of caused a widespread problem . . . with this jury." *Id.* at 44, 46.

[9] The court denied the motion for mistrial, explaining:

> [T]he seven jurors that have been selected had indicated that whatever happened in the past, they would not consider that in whether or not a crime was committed in this case. . . . [T]hey are aware, that he is required to register as a sex or violent offender. In my mind, sex or violent offender is obviously a prejudicial phrase like child molesting is a prejudicial phrase. But that's a part of the crime so I don't think there's any more prejudice by some juror inadvertently seeing the words child molesting on the screen for a few moments. I will note that as soon as you made your objection, I instructed [the State] to promptly take that screen down and he did.

Id. at 47.

[10] A jury was seated and ultimately found Baker guilty of failure to register as a Level 5 felony.

The trial court did not abuse its discretion by denying the motion for mistrial.

[11] We review a trial court's decision whether to grant or deny a mistrial for an abuse of discretion, because the trial court is in the best position to "evaluate[] first-hand the relevant facts and circumstances at issue and their impact on the jury[.]" *Weisheit v. State*, 26 N.E.3d 3, 15 (Ind. 2015), *cert. denied*. The overriding consideration is whether the questioned conduct was "so prejudicial and inflammatory that [the defendant] was placed in a position of grave peril to which he should not have been subjected." *Pittman v. State*, 885 N.E.2d 1246, 1255 (Ind. 2008) (citation omitted). The gravity of the peril is measured by the probable persuasive effect of the misconduct on the jury's decision, not by the degree of impropriety of the conduct. *Bradley v. State*, 649 N.E.2d 100, 107–08 (Ind. 1995). A mistrial is an extreme remedy that should be granted only when other remedies cannot satisfactorily rectify the error. *Knapp v. State*, 9 N.E.3d 1274, 1284 (Ind. 2014), *cert. denied*.

[12] Baker argues the display of a slide saying, "State of Indiana v. Matthew Baker: Child Molesting" to the jury pool was so prejudicial it deprived him of a fair trial. Baker cites *Lawrence v. State*, 286 N.E.2d 830 (Ind. 1972) as "particularly noteworthy in this matter[.]" *Appellant's Br.* at 9. Before *Lawrence*, the procedure employed in habitual criminal cases allowed the jury "to learn of a defendant's past convictions while deciding his guilt or innocence on the principal charge." 286 N.E.2d at 833 (quoting *Johnson v. State*, 245 N.E.2d 659, 662 (Ind. 1969)). The *Lawrence* Court adopted the procedure now used in

habitual offender cases to separate evidence of prior convictions for habitual offender purposes from evidence of the defendant's guilt of the crime charged, noting:

> The mental manipulation required by the present procedure would be difficult for one specially trained in the rules of evidence, and we would be less than realistic to expect evidence of prior convictions not to influence the jurors' determination of guilt or innocence on the principal offense.

Id. (quoting *Johnson*, 245 N.E.2d at 662). There is an important distinction between the habitual offender situation addressed by *Lawrence* and this case, however. In this case, by the very nature of the failure to register charge, the potential jurors already knew Baker had a previous conviction for a sex or violent crime. The potential prejudicial effect here is unavoidable and not as pronounced as in the habitual offender context.

[13] Baker also cites *Greenboam v. State*, 766 N.E.2d 1247 (Ind. Ct. App. 2002), *trans. denied*, in support of his position that a mistrial should have been granted. The defendant's convictions of child molesting in *Greenboam* were reversed because of the improper admission of testimony from three witnesses regarding the defendant's prior convictions of child molesting. *Id.* at 1256–57. But here, we do not face the admission of evidence during trial to a sworn jury. The reference here occurred during jury selection and was written, not spoken. There is no indication in the record the potential jurors' attention was drawn to the PowerPoint presentation in general or specifically to the slide in question. And because the inadvertent reference occurred during jury selection, the

parties had the opportunity to thoroughly examine the potential jurors' ability to be fair and impartial even knowing Baker had a prior conviction. *See Gibson v. State*, 43 N.E.3d 231, 237 (Ind. 2015) (holding mistrial was not warranted where some potential jurors were aware defendant had been accused of multiple murders because "we are not dealing with an empaneled jury, but *potential* jurors whose preconceived ideas and biases" were examined and those exposed to pretrial publicity were excluded), *cert. denied*.

[14] The trial judge—who was in the courtroom and in the best position to gauge the likely effect, if any, of the PowerPoint slide on the jury pool—determined Baker was not placed in grave peril by the slide. The reference on the State's slide was unfortunate, especially given the efforts the parties made to keep the underlying conviction out of evidence, but the potential jurors' exposure to the slide was brief. Further, the evidence that Baker was not residing at his registered address is such there is no substantial likelihood the reference had a probable persuasive effect on the jury's decision. *See Leach v. State*, 699 N.E.2d 641, 645 (Ind. 1998) (where the trial court improperly informed prospective jurors the defendant was charged with two offenses, including being a habitual criminal offender, and a prospective juror declared he was bothered by the habitual offender charge, the trial court did not err in denying a motion for mistrial because the comment was limited and the evidence against the defendant was overwhelming). The circumstances of this case do not warrant the extreme remedy of a mistrial.

Conclusion

[15] We conclude the trial court did not abuse its discretion by denying Baker's motion for mistrial.

[16] Affirmed.

Altice, C.J., and Weissmann, J., concur.

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