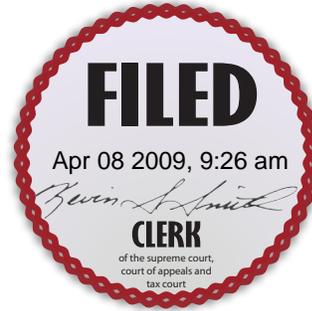


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILSON T. CISSNA,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 82A01-0808-CR-371

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0702-FD-211

April 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Wilson T. Cissna (“Cissna”) appeals his conviction for Battery, as a Class D felony.¹ We affirm.

Issue

Cissna presents a single issue for review: whether he was entitled to a mistrial after a witness indicated that Cissna had been in jail.

Facts and Procedural History

Cissna is the non-custodial father of H.C., who was born in 2005. On February 10, 2007, Kayla Rhodes-Powell (“Kayla”), H.C.’s half sister, dropped off H.C. at Cissna’s home to spend the night.

When Kayla returned for H.C. the next morning, H.C. had bruises on both sides of his forehead, around his right eye, on the right side of his torso, and on his buttocks. Cissna told Kayla that he had to “whip” H.C. because H.C. was “playing in the water in the bathroom.” (Tr. 19.) After Kayla took H.C. home, Kayla’s father-in-law summoned the police.

On February 20, 2007, the State charged Cissna with battery. A jury found him guilty as charged, and he was sentenced to three years imprisonment. Cissna now appeals.

Discussion and Decision

Cissna contends that he was entitled to a mistrial after Kayla was asked if she typically

¹ Ind. Code § 35-42-2-1(a)(2)(B).

visited Cissna, her former step-father, and responded: “Oh, we was [sic] living with them up until before he got put in jail.” (Tr. 15.) More specifically, Cissna claims that the trial court’s admonition to disregard the testimony did not cure the error because Kayla was the principal witness against him.

The trial court is in the best position to assess the impact of a particular event upon the jury. Myers v. State, 887 N.E.2d 170, 189 (Ind. Ct. App. 2008), trans. denied. Accordingly, 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. Id. 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. Id. The declaration of a mistrial is an extreme action and is warranted only when no other action can be expected to remedy the situation. Id. The burden on appeal is upon the defendant to show both that he was placed in grave peril by the denial of the mistrial motion and to show that no other action could have remedied the perilous situation into which he was placed. Id. In order to determine whether a mistrial is warranted, we consider the probable persuasive effect of the alleged error on the jury’s decision. Bouye v. State, 699 N.E.2d 620, 623 (Ind. 1998).

In general, evidence of a defendant’s prior crimes is “highly prejudicial.” Roche v. State, 596 N.E.2d 896, 901 (Ind. 1992). Cissna likens Kayla’s reference to the circumstances present in Mack v. State, 736 N.E.2d 801 (Ind. Ct. App. 2000), trans. denied. In that case, a

police officer who was the only witness to testify as to Mack's identity and participation in a "drug buy" also testified that Mack "was known to deal" drugs. Id. at 803-4. This Court found reversal was required, despite the trial court's admonition to the jury to disregard the officer's statement, because there was no evidence of guilt independent of the tainted testimony and it could have had a substantial influence on the jury in arriving at its verdict. Id. at 804.

Here, however, Cissna's conviction did not rest upon a single witness's uncorroborated testimony. DCS caseworker Kelli Eaton testified that she had interviewed Cissna and Cissna admitted to spanking H.C.'s "bare butt with his hand" after H.C. caused an overflow of water in the bathroom. (Tr. 43.) Evansville Police Officer Michael Bow also testified that Cissna admitted he had spanked H.C. after becoming "very upset." (Tr. 49.) Photographs of H.C.'s multiple injuries were admitted into evidence.

Moreover, Kayla did not specifically refer to incarceration for a particular crime, and her oblique reference was an isolated one. Thereafter, the trial court admonished the jury to disregard the reference "to where [Cissna] was." (Tr. 18.) It does not appear likely that Kayla's reference to jail had a probable persuasive effect on the jury's verdict, and thus we conclude that Cissna was not thereby placed in grave peril. The trial court did not err in denying his motion for a mistrial.

Affirmed.

DARDEN, J., and ROBB, J., concur.