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IN THE
COURT OF APPEALS OF INDIANA

JAMES W. OLDHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1009-CR-974
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kurt M. Eisgruber, Judge
Cause No. 49G01-1002-FB-8121

July 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

James W. Oldham appeals his convictions for two counts of class B felony robbery[1] and two counts of class B felony criminal confinement.[2]

We affirm.

ISSUES

1. Whether the trial court abused its discretion in denying Oldham's motion for mistrial and request for an admonishment.

2. Whether the trial court abused its discretion in admitting evidence.

FACTS

On the morning of January 18, 2010, Russell Boeldt arrived at the Indianapolis restaurant where he worked as an assistant manager and began getting the restaurant ready to open. As he began his routine, someone rang the door bell at the restaurant's main entrance, which was locked. Oldham was at the door and claimed that he had left his credit card in the restaurant. When Boeldt refused to let him in the restaurant, Oldham got "his foot in the door and kind of pushe[d] his way in . . . ." (Tr. 90).

Oldham then pointed a handgun at Boeldt and walked him into the kitchen. Oldham ordered Boeldt to lie down. After Boeldt did as ordered, Oldham tied Boeldt's hands behind his back and tied his feet together with rope that he had brought with him.

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[1] Ind. Code § 35-42-5-1.

[2] I.C. § 35-42-3-3.

Oldham told Boeldt that "he had a buddy outside and he didn't want him to come in because he would be, it wouldn't be as gentle[.]" (Tr. 92).

At approximately 9:00 a.m., Jose Aguilar Victoria arrived at the restaurant to start his shift. Victoria rang the bell at the main entrance to alert Boeldt that he needed to be let in the restaurant. Although Victoria rang the bell several more times over a period of approximately ten minutes, Boeldt never came to the door. After Victoria rang the bell one more time, Oldham opened the door from inside the restaurant. Victoria did not recognize Oldham but assumed he "was somebody from maintenance who was coming to clean the rugs or maybe another manager . . . ." (Tr. 41). Victoria walked past Oldham, through the vestibule and into the restaurant.

As Victoria proceeded to clock in for the day, Oldham "grabbed [him] by the jacket[.]" (Tr. 49). As Victoria turned around, he saw that Oldham "was already pointing a pistol at [him]." (Tr. 49). Oldham told Victoria to turn around; "grabbed [Victoria] again"; and took Victoria's cell phone from him. (Tr. 50). Oldham then made Victoria walk into the kitchen.

Once in the kitchen, Victoria saw Boeldt "l[]ying on the floor with his arms and his feet tied behind him and his face on the floor." (Tr. 52). Oldham tied up Victoria in the same manner and told him not to move.

Oldham asked Boeldt, "'where's the money?'" (Tr. 55). After Boeldt told Oldham that the money was in the office, Oldham dragged Boeldt by his feet toward the office. Oldham again asked Boeldt, "'Where's the money? Where's the security box

[sic] safety deposit box? Where's the safe deposit box?'" (Tr. 56). Boeldt gave Oldham the code to open the safe, which contained approximately $1,100.00. Oldham demanded more money from another safe and threatened to kill Boeldt.

When Boeldt told Oldham that he did not have the combination to the second safe, Oldham took Boeldt's wallet and car keys. After ransacking the office, Oldham returned to the kitchen and took $80.00 from Victoria's wallet. He told Victoria that if he moved, his friend would kill him. Oldham then left the kitchen "'to check the registers to see if there's more money'" before fleeing in Boeldt's car. (Tr. 58).

After "[s]ome time passed," Victoria and Boeldt managed to free themselves from their restraints. (Tr. 58). Boeldt immediately telephoned the police.

Shortly thereafter, Indianapolis Metropolitan Police Officers Marlon Minor, James Sparks, and Chris Craighill arrived at the restaurant. Boeldt and Victoria gave the officers a description of Oldham, and Boeldt gave them a description of his vehicle, a green Chevrolet Cavalier. Officers also reviewed surveillance footage from the restaurant's security system. Approximately one week after the robbery, officers located Boeldt's vehicle in a nearby motel parking lot.

Detective Craighill received two anonymous tips regarding two potential suspects: Oldham and Anthony Jackson. Detective Craighill, however, eliminated Jackson as a suspect after speaking with Boeldt and Victoria. Victoria subsequently identified Oldham from a photographic array. He was "97 percent sure it was him." (Tr. 88).

Boeldt also identified Oldham from a photographic array but was only "75 percent" sure of his identification because he did not get a good look at Oldham's face. (Tr. 103).

On February 3, 2010, officers went to Oldham's residence. While conducting an initial surveillance, within sight of the house, the officers observed Oldham exit the house through the front door; go to his truck; and then return to the house. As officers approached the house, Oldham fled through the back door. Officers apprehended Oldham in the back yard.

On February 3, 2010, the State charged Oldham with Count I, class B felony robbery; Count II, class B felony robbery; Count III, class B felony criminal confinement; and Count IV, class B felony criminal confinement. On March 3, 2010, the State filed an amended information, alleging Oldham to be an habitual offender.

On July 19, 2010, Oldham filed a motion in limine, seeking to exclude testimony regarding other wrongs, prior bad acts, and non-charged conduct or criminal offenses not reduced to convictions; specifically, Oldham sought to exclude any testimony regarding his prior conviction for conspiracy to commit robbery and his "warrant(s) for Traffic Court . . . and subsequent arrest for said warrant(s) that occurred" after the instant offense. (App. 71). The trial court granted Oldham's motion as to the conviction for conspiracy to commit robbery.

The trial court commenced a two-day jury trial on July 19, 2010. While describing the events of February 3, 2010, Officer Sparks testified as follows:

> Q How did you get involved in the case?
>
> A Well, I knew there was a warrant—

(Tr. 143).

Oldham's counsel objected and moved for a mistrial. When the trial court denied Oldham's motion, Oldham's counsel sought an admonishment. The trial court declined to give an admonishment, stating that an admonishment "will draw more attention to the issue." (Tr. 144).

Detective Craighill also testified. Over Oldham's objection, he testified that there were "[n]umerous" robberies in Indianapolis around the time of the instant offense. (Tr. 203). Regarding his interrogation of Oldham after Oldham's apprehension, Detective Craighill testified as follows:

> Q Detective Craighill, did you ask [Oldham] any questions about his conduct at the house where he was apprehended?
>
> . . . .
>
> A I asked him if he went out the front door of his residence.
>
> Q Okay. And what was [his] response to that?
>
> A he said he went out the front door but he went a different direction, he went around the side of the house.
>
> Q Did he ever give you a different answer in response to that question?
>
> A Yeah. He said he went out the back too.
>
> Q Did he give a reason for why he went out the front door?

> A Yes. He originally went out the front door to look for—well, he went out the back door to—because he wanted to grill out and he was looking for charcoal.
>
> Q And what reason did he give you for going out the front door?
>
> A Well, he thought it would be around the side of the house so he went out the front to go around to the side to check for charcoal.
>
> Q And at any point in your questioning of [Oldham], did he give you a different answer as to why he went out the front door?
>
> A Yeah. He thought it might have been to go to the store to get some supplies.
>
> Q Okay. And did he ever give you a different answer as to why he left the front of the house?
>
> A No.
>
> Q Okay. And based on your experience, what did the different answers that were provided by [Oldham] mean to you?

(Tr. 191-92).

Oldham objected, arguing that the question went "beyond the scope of the witness." (Tr. 192). The trial court overruled Oldham's objection, asserting that "based on [Detective Craighill's] experience," he could "testify as to what impression he had." (Tr. 192). Detective Craighill therefore testified as follows;

> Q Detective, what impression did you have based on your experience as a detective?
>
> A That Mr. Oldham was being evasive and not truthful.
>
> Q And, okay. What did you do after you received that response, or different responses?

> A We went back continued to, we talked about the, I guess discrepancy for quite awhile, and then I ended questioning.

(Tr. 192).

Both Victoria and Boeldt testified during trial. Although they testified that they had identified Oldham as the man who robbed the restaurant after viewing the photographic array, neither could identify him at trial.

The State played the surveillance video for the jury. The surveillance footage showed Oldham outside the restaurant, walking from the main entrance into the kitchen with both Boeldt and Victoria, taking money from the restaurant's safe, and dragging Boeldt to the office.

The jury found Oldham guilty on all counts. Oldham waived his right to a jury trial on the habitual offender charge, after which the trial court found him to be an habitual offender. Following a sentencing hearing on August 13, 2010, the trial court sentenced Oldham to an executed sentence of thirty-five years.

DECISION

1. Motion for Mistrial

Oldham asserts that the trial court abused its discretion when it denied his motion for a mistrial. Specifically, he asserts that the trial court should have granted a mistrial after Officer Sparks testified regarding a warrant. Oldham also asserts that the trial court erred in not admonishing the jury regarding the warrant.

"A mistrial is an extreme remedy warranted only when no other curative measure will rectify the situation." *Harris v. State*, 824 N.E.2d 432, 439 (Ind. Ct. App. 2005). Whether to grant a mistrial is within the trial court's discretion. *Id.* The trial court's decision is "afforded great deference on appeal because the trial court is in the best position to gauge the surrounding circumstances of the event and its impact on the jury." *Domangue v. State*, 654 N.E.2d 1, 3 (Ind. Ct. App. 1995).

"To prevail on appeal from the denial of a motion for mistrial, the defendant must establish that the questioned information or event was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected." *Harris*, 924 N.E.2d at 439. We determine the gravity of the peril by considering the misconduct's probable persuasive effect on the jury's decision. *Id.* "When a motion for mistrial has been denied, the defendant has the burden to demonstrate that he was placed in a position of grave peril to which he should not have been subjected and that no other remedy can cure the perilous situation in which he was placed." *Brooks v. State*, 934 N.E.2d 1234, 1243 (Ind. Ct. App. 2010), *trans. denied*.

"A timely and accurate admonishment is presumed to cure any error in the admission of evidence." *Id.* at 1244. "[E]ven where a witness violates a motion in limine, a trial court may determine that a mistrial is not warranted and, instead, admonish the jury to disregard the improper testimony." *Alvies v. State*, 795 N.E.2d 493, 507 (Ind. Ct. App. 2003).

"Trial court decisions regarding admonishments to the jury are reviewed only for an abuse of discretion." *Gibson v. State*, 702 N.E.2d 707, 710 (Ind. 1998). "An abuse of discretion exists only where the decision is clearly against the logic and effect of the facts and circumstances." *Id*.

Oldham has not demonstrated that he was placed in a position of grave peril as a result of Officer Spark's testimony. Although Officer Sparks testified as to a warrant, he did not testify as to the nature of the warrant or that the warrant was for Oldham; he also did not give any indication that Oldham had engaged in prior misconduct.

Furthermore, the jury heard testimony that both victims identified Oldham to Detective Craighill as the perpetrator and that Detective Craighill asked uniformed officers to bring in Oldham for questioning based on this information. The jury also viewed surveillance video of Oldham perpetrating the crime. Given this testimony and evidence, we cannot say that Officer Spark's single reference to a "warrant" in the midst of a two-day trial had a probable persuasive effect on the jury's decision. We therefore find no abuse of discretion in denying Oldham's motion for a mistrial.

In addition, applying the abuse of discretion standard to the facts in this case, the trial court's decision not to admonish the jury was not clearly against the logic and effect of the facts and circumstances. A contemporaneous admonishment to the jury concerning the evidence may have posed a danger of emphasizing, rather than minimizing, the fact that there may have been some kind of outstanding warrant. Given

the circumstances of this case, we perceive no abuse of discretion in refusing specifically to admonish the jury not to consider the testimony regarding the warrant.

2. Admission of Evidence

Oldham contends that the trial court abused its discretion with respect to two evidentiary issues. He asserts that the trial court improperly admitted Detective Craighill's opinion testimony that, in his experience, Oldham was being "evasive and not truthful" and improperly admitted Detective Craighill's testimony that there had been other robberies in Indianapolis in the winter of 2010. (Tr. 192).

"Generally, a trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion." *Hape v. State*, 903 N.E.2d 977, 991 (Ind. Ct. App. 2009), *trans. denied*. We will reverse a trial court's decision only if it clearly against the logic and effect of the facts and circumstances of the case. *Id.* "Even if the decision was an abuse of discretion, we will not reverse if the admission of evidence constituted harmless error." *Id.*

Here, we do not decide whether the trial court improperly admitted Detective Craighill's testimony because we conclude any error to be harmless.

> No error in the admission of evidence is grounds for setting aside a conviction unless such erroneous admission appears inconsistent with substantial justice or affects the substantial rights of the parties. The improper admission of evidence is harmless error when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.

Lafayette v. State, 917 N.E.2d 660, 668 (Ind. 2009) (internal citations omitted). "A reversal may be obtained only if the record as a whole discloses that the erroneously admitted evidence was likely to have had a prejudicial impact upon the mind of the average juror, thereby contributing to the verdict." *Wales v. State*, 768 N.E.2d 513, 521 (Ind. Ct. App. 2002).

We cannot say that the probable impact of the testimony affected Oldham's substantial rights or prejudiced him where two victims separately identified Oldham as the perpetrator from photographic arrays; the jury heard prior testimony regarding Oldham's attempt to flee his residence when the police arrived; the jury heard testimony regarding Oldham's conflicting answers during the interrogation; and the jury viewed the surveillance video. *See Jenkins v. State*, 909 N.E.2d 1080, 1083 (Ind. Ct. App. 2009) (stating that flight itself leads to a reasonable inference of guilt), *trans. denied*. Therefore, any error in admitting the evidence must be disregarded as harmless.

Affirmed.

RILEY, J., and BARNES, J., concur.