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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0638**

State of Minnesota,
Respondent,

vs.

Anthony Logrant Freeman,
Appellant

**Filed March 6, 2017
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62-CR-15-3038

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of failing to register as a predatory offender,
appellant argues that the district court committed reversible error by denying his motion

for a mistrial based on the introduction of inadmissible and highly prejudicial evidence that the investigating police officer worked “in the predatory offender unit under the Sex Crimes Unit” and checked on “offenders at their households” to ensure compliance. We affirm.

FACTS

Following his 2004 conviction of third-degree criminal sexual conduct, appellant Anthony Logrant Freeman was required to register as a predatory offender until 2028. In December 2014, appellant submitted a change-of-information form, changing his primary address to Stillwater Avenue, the home of his girlfriend’s mother. The change of information form listed no secondary address or vehicle registration information.

In April 2015, police developed information that appellant was living on Hawthorne Avenue. Consequently, St. Paul police officers with the predatory-offender-registration unit went to the Stillwater Avenue address to conduct an address-verification check on appellant. The officers spoke with T.W.-C., the mother of appellant’s girlfriend, who stated that appellant had not lived there for a year. Appellant was subsequently charged with violating Minn. Stat. § 243.166 (2014), for knowingly failing “to register an address or change of information as required, or fail[ing] to return an annual verification letter with the appropriate law enforcement authority as required, or intentionally provid[ing] false information on registration materials.”

Prior to trial, appellant stipulated that he was required to register and that the requirement to register had not elapsed at the time of the alleged offense. In conjunction with the stipulation, the district court ruled that witnesses were prohibited from mentioning

appellant's "status," as well as references to "'predatory offender' or 'sex offender registration requirements.'" The state then introduced evidence that appellant (1) "must register all changes of address at least five days prior to moving to that address" and (2) "must register changes of employment, vehicles, other residences, including any property [he] own[s], lease[s], or rent[s]." The state also introduced the change of information form signed by appellant in December 2014 that (1) changed his address to Stillwater Avenue and (2) reflected that there were no current alternate addresses or current vehicle information on file, and noted that no changes were made to this information.

A Department of Public Safety employee in the title and registration "unit" testified that in January 2014, appellant became the registered owner of a 1996 Plymouth. Appellant's girlfriend, K.W., corroborated this testimony when she admitted that her mother bought the vehicle for her, but it was registered in appellant's name because K.W. could not register the vehicle in her name. Nonetheless, K.W. claimed that the Plymouth was her vehicle, appellant did not have a key to it, and he never drove it.

T.W.-C. testified that she lives at the Stillwater Avenue with her husband, and that appellant stays with her "three or four nights a week." K.W. agreed that appellant lives with T.W.-C., and helps her with many household chores. K.W. also testified that she lives on Hawthorne Avenue with her three children and a foster daughter. Although K.W. claimed that appellant did not live with her, she admitted that appellant is the father of two of her children and that appellant stayed "overnight" with her at her "residence once or twice a month." And in a statement appellant made to police, appellant claimed that the Stillwater

Avenue address is his “home,” but he “just don’t stay there constant like I’m there every night.”

Officer Lynette Cherry testified that she was assigned “to handle people that are required by law to register their address,” and that she and another officer conducted a compliance check on appellant in April 2015 at the Stillwater Avenue address. But despite the district court’s pretrial ruling prohibiting references to predatory offender or sex-offender-registration requirements, Officer Cherry testified on cross-examination that she works “in the predatory offender unit under the Sex Crimes Unit, and in that capacity, [she] check[s] on offenders at their households, [to] make sure that they’re compliant.” Appellant objected to this testimony and moved for a mistrial.

The district court denied the mistrial motion, concluding that the state did not intentionally offer Officer Cherry’s testimony and that the testimony was, in fact, elicited “on cross-examination by the defense.” The district court also ruled that “when motions for mistrial are made, the manifest necessity standard controls,” but that the record in this case did “not establish the requisite high degree of necessity” because “alternative curative measures [were] available to mitigate the necessity for mistrial.” The district court further provided a duty-to-disregard instruction and a do-not-speculate-about-registration instruction to the jury, but honored appellant’s request to provide them during final instructions.

The jury found appellant guilty of the charged offense. The district court then sentenced appellant to 24 months in prison. This appeal followed.

DECISION

Appellant challenges the district court's denial of his motion for a mistrial. This court reviews a district court's decision to deny a mistrial for an abuse of discretion. *State v. Spann*, 574 N.W.2d 47, 52 (Minn. 1998).

"[T]he state has an obligation to caution its witnesses against making prejudicial testimony." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). Appellate courts are "much more likely to find prejudicial misconduct when the state intentionally elicits impermissible testimony." *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003). We will reverse, even if the prosecutor unintentionally elicited impermissible testimony, if the testimony prejudiced the defendant's case. *State v. Richmond*, 298 Minn. 561, 563, 214 N.W.2d 694, 695 (1974). But "unintended responses under unplanned circumstances ordinarily do not require a new trial." *State v. Hagen*, 361 N.W.2d 407, 413 (Minn. App. 1985), *review denied* (Minn. Apr. 18, 1985).

"The [district court] is in the best position to determine whether an outburst creates sufficient prejudice to deny the defendant a fair trial such that a mistrial should be granted." *Manthey*, 711 N.W.2d at 506. "[A] mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different." *State v. Chavez-Nelson*, 882 N.W.2d 579, 590 (Minn. 2016) (quotation omitted). When analyzing whether potentially prejudicial but inadvertent testimony has deprived a defendant of the right to a fair trial, the relevant factors this court considers include: "the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in

reducing the prejudice.” *State v. Hogetvedt*, 623 N.W.2d 909, 914 (Minn. App. 2001) (quoting *State v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982)), *review denied* (Minn. May 29, 2001).

Here, in denying appellant’s motion for a mistrial, the district court stated that the “manifest necessity standard controls.” Appellant argues that the application of this standard was erroneous because it was the “wrong legal standard.” Thus, appellant argues that the district court abused its discretion by denying his mistrial motion.

We agree that the district court incorrectly applied the “manifest necessity standard” to appellant’s mistrial motion. As our supreme court recently stated in *Chavez-Nelson*, the proper standard to be applied to a motion for a mistrial is whether there is a “reasonable probability that the outcome of the trial would be different” if the event that prompted the motion had not occurred. 882 N.W.2d at 590 (quotation omitted). But the district court’s application of the improper standard does not necessarily require a reversal. Rather, to prevail in this appeal, appellant must establish that, under the proper standard, the district court abused its discretion by denying his motion because there was a “reasonable probability that the outcome of the trial [would have] been different” if the improper testimony had not been elicited. *See id.* (quotation omitted).

The record reflects that Officer Cherry’s statement was an isolated incident that occurred over the course of a three-day trial. *See State v. Bahtuoh*, 840 N.W.2d 804, 819-20 (Minn. 2013) (stating that the district court did not abuse its discretion by denying a motion for a mistrial based on an isolated incident where the state introduced evidence that the defendant was present at the scene of another shooting that occurred the same

night as the murder with which he was charged); *State v. Mahkuk*, 736 N.W.2d 675, 689 (Minn. 2007) (stating that the district court did not abuse its discretion by denying a motion for a mistrial when the defendant was able to identify only one isolated incident comprised of two words in a 1,000–page transcript). Moreover, the statement was made in response to a question by appellant’s attorney, not the prosecutor. *See McNeil*, 658 N.W.2d at 232 (“A reviewing court is much more likely to find prejudicial misconduct when the state intentionally elicits impermissible testimony.”). In fact, the prosecutor stated that he “didn’t anticipate that it would come up on cross-examination” because he “specifically avoided asking the officer about her background or any unit that she may have been in,” and the officer was “aware” that she was supposed to avoid the topic. *See Hagen*, 361 N.W.2d at 413 (noting that unintended responses under unplanned circumstances ordinarily do not require a new trial). And, the statement was not stressed nor expounded upon by the prosecutor at any time.

Appellant argues that despite the relatively isolated nature of the statement, he should be granted a new trial because the district court’s “curative measures were not sufficient to correct the harm done by [the officer’s] highly prejudicial testimony.” We disagree. The record reflects that appellant made a strategic decision to decline an immediate cautionary instruction to disregard in order to avoid drawing attention to the matter. *See Ture v. State*, 353 N.W.2d 518, 524 (Minn. 1984) (holding that new trial was not warranted where defendant declined to have district court give curative instruction because it would only highlight the testimony); *see also Manthey*, 711 N.W.2d at 506 (noting that a curative instruction can have the effect of drawing further attention to an

allegedly prejudicial statement). Instead, appellant requested that the instruction be given in the final instructions. The district court provided a duty-to-disregard instruction and a do-not-speculate-about-registration instruction. In providing the curative measures, the district court acquiesced to appellant's wishes. Thus, under the circumstances, the district court's curative measures were sufficient to correct the harm done by the officer's testimony. *See State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998) (stating that jurors are presumed to follow the district court's instructions).

Finally, we note that the state's case against appellant was very strong. *See Bahtuoh*, 840 N.W.2d at 819-20 (considering the strength of the state's evidence when determining whether the district court abused its discretion by denying a motion for a mistrial). Appellant was charged with violating the predatory-offender-registration statute by failing to register (1) his primary address; (2) any and all secondary addresses where he stays overnight, or (3) his vehicle. "Primary address" is defined as "the mailing address of the person's dwelling." Minn. Stat. § 243.166, subd. 1a(g). "Secondary address" is defined as the "mailing address of any place where the person regularly or occasionally stays overnight when not staying at the persons' primary address." *Id.*, subd. 1a(i).

Here, appellant's girlfriend testified that she lived on Hawthorne Avenue and that appellant stayed "overnight" with her "once or twice" a month. Appellant never disputed that he stayed overnight at the Hawthorne Avenue address "once or twice" a month, nor did he dispute that he failed to register the Hawthorne Avenue address as a secondary address. In fact, appellant admitted during an interview with police that he "just don't

stay [at the Stillwater Avenue address] constant like I'm there every night." This evidence overwhelmingly establishes that appellant failed to register a secondary address. See Minn. Stat. § 243.166, subd. 1a(i) (defining a secondary address as a place where a "person . . . *occasionally stays overnight* when not staying at the person's primary address" (emphasis added)).

Moreover, the record reflects that in January 2014, appellant became the registered owner of a 1996 Plymouth. The record also reflects that, despite being required to register his vehicle with the BCA, appellant failed to notify the BCA that he was the registered owner of the 1996 Plymouth. And although K.W. claimed that the vehicle was hers and that appellant did not drive it, she admitted that the vehicle was registered in appellant's name. This evidence established that appellant failed to register his vehicle. Therefore, on this record, the district court did not abuse its discretion by denying appellant's motion for a mistrial.

Affirmed.