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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0470**

State of Minnesota,
Respondent,

vs.

Jordan David Stuckey,
Appellant.

**Filed March 25, 2019
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-15-21869

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Eric J. Nelson, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of his motion to suppress, arguing that the plain-view exception did not justify the officer's search of his vehicle and that he

was subjected to an unlawful search incident to arrest. Appellant also challenges the district court's decision to deny his motion for a mistrial, arguing that the state committed prosecutorial misconduct when it elicited inadmissible testimony. Because the search of appellant and his vehicle was constitutional, and because the district court did not abuse its discretion when it denied the motion for a mistrial, we affirm.

FACTS

In August 2015, appellant Jordan David Stuckey was arrested and charged with second-degree sale of a controlled substance, second-degree possession of a controlled substance, and fifth-degree possession of a controlled substance. Prior to appellant's arrest, Minneapolis police obtained a no-knock day time search warrant for 3219 Girard Avenue North and Arsenio Arthur Wooten, whom police believed was selling narcotics out of the single family residence. The officers were shown a picture of Wooten and understood him to be a black male with a bald head, standing around six-feet tall and weighing 340 pounds.

The officers began to surveil the house when they arrived at the address. Shortly thereafter, the officers observed a large heavyset black male walking out of the house. The officers mistakenly believed that the individual leaving the house was Wooten, but it was appellant. The officers prevented appellant from driving away by pulling their squad cars up next to his vehicle. One officer observed appellant make strange movements and testified that it looked like the individual was throwing something into the back part of the vehicle.

The officers removed appellant from the vehicle, acting on their mistaken belief that he was Wooten. The officers immediately put appellant in handcuffs and conducted a pat-

search for weapons. At the same time, an officer observed torn-up plastic baggies resting on the back floor of the vehicle. The officer entered the car to remove the baggies. At the same time, the officer saw what he believed to be a digital scale. He lifted the lid to the digital scale and observed white residue.

Appellant's identification was quickly discovered and verified through a search in the police database, but only after the items from the vehicle had been removed. It was at this point that the officers were able to determine that appellant's name was different than the individual named in the search warrant. Regardless, the officers considered appellant under arrest for probable cause narcotics and brought him into the secured residence. Inside the house, appellant was taken into a bathroom where another officer was going to conduct a further search of appellant's person. The officer believed appellant was hiding narcotics under his clothes and requested that appellant remove his clothing. Appellant declined and a struggle ensued. Appellant subsequently fell to the ground, which caused his shirt to come up over his stomach. A plastic baggie containing a white substance was observed in appellant's navel. The substance in the baggie tested positive for crack-cocaine.

Appellant filed a motion to suppress the drug evidence arguing that the police officers conducted an illegal search of his person and vehicle. Following *Rasmussen* hearings, the district court denied appellant's motion to suppress the evidence and the case proceeded to a jury trial. During the trial, the state elicited testimony concerning appellant's alias and his prior custody status. Appellant moved for a mistrial, which the district court denied. This appeal follows.

DECISION

I. Motion to Suppress

Appellant challenges the district court's denial of his motion to suppress. In examining a district court's pretrial order denying a motion to suppress evidence, an appellate court reviews the district court's factual findings for clear error and applies a de novo standard of review to the district court's legal determinations. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011).

A. *The stop*

Appellant argues that the district court erred when it found that the police officers were justified in stopping and searching him pursuant to a search warrant for Wooten, whom they reasonably mistook for appellant. *See Hill v. California*, 401 U.S. 797, 802, 91 S. Ct. 1106, 1110 (1971) (holding that when police officers have probable cause to arrest a suspect, and reasonably mistake another for the suspect in good faith, the arrest is valid). Appellant argues that the district court erred by mischaracterizing the search warrant as one for arrest. Appellant is correct: the officers possessed a search warrant, not an arrest warrant, and the district court's order appeared to incorrectly mischaracterize the warrant. However, it is not dispositive that the district court incorrectly characterized the nature and scope of the warrant.

The Minnesota Supreme Court has held that police officers may stop a person they mistakenly believe is named in a warrant for identification purposes so long as "the officers have specific and articulable facts objectively establishing reasonable suspicion." *State v. Sanders*, 339 N.W.2d 557, 560 (Minn. 1983). Thus, the admissibility of the evidence in

this case turns on whether the police reasonably believed that appellant was the person identified in the search warrant. In *Sanders*, the supreme court held that officers were justified in stopping an individual they mistakenly believed was a suspect identified in a warrant because of similar facial features, stature, race, and because the individual was driving a vehicle consistent with a description given to police. *Id.*

Like the officer's mistake in *Sanders*, the officers' mistake in this case was reasonable. As the district court concluded, appellant and Wooten have similar facial features. Additionally, both are black males standing around six feet tall, and weighing over 300 pounds. Appellant was also found at the same place Wooten was expected to be. The officers' initial detention of appellant was therefore justified.

Once detained, the officers immediately secured appellant and conducted a pat-down frisk. Appellant concedes that if an officer believes that a suspect may be armed and dangerous, a protective pat-down for weapons is permissible if a "reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968) (noting that an officer does not have to be certain the individual is armed). Here, the officers testified that they were acting under the belief that appellant was Wooten when they pulled him from the vehicle. At that time, the officers had probable cause to believe that Wooten was selling drugs from the residence appellant exited, which is located in a high crime area. Moreover, Wooten was suspected of carrying weapons, and the officers observed appellant engage in atypical behavior prior to being removed from the vehicle. Consequently, the officers were justified in a protective pat-search for weapons.

B. Vehicle Search

At the same time appellant was being frisked for weapons, an officer observed torn plastic baggies lying on the back floorboard of appellant's vehicle. As the officer entered the vehicle to seize the torn baggies, he also observed what he believed to be a digital scale covered with a lid. The officer removed the lid to the scale and discovered that it was coated in a white residue. The district court found that the officer's retrieval of the torn-up baggies was justified under the plain-view exception to the warrant requirement. Appellant argues that the district court erred in its plain-view analysis and that the evidence found in the vehicle must be suppressed.

Under the "plain view" exception, the police may, without a warrant, seize an object they believe to be evidence of a crime, provided: "(1) [the] police are legitimately in the position from which they view the object; (2) they have a lawful right of access to the object; and (3) the object's incriminating nature is immediately apparent." *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995) (quoting *State v. Dickerson*, 481 N.W.2d 840, 844-45 (Minn. 1992)). Police, additionally, must have probable cause to seize items they discover in plain view. *Id.* "A reasonable suspicion on the part of police is insufficient to invoke the plain view exception." *Id.* Probable cause exists when the "totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime." *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (quotation omitted).

Appellant concedes that factor one, the police were legitimately in a position from which they could lawfully view the object, is satisfied. Appellant argues that factors two and three were not met. Therefore, whether the officers were justified in searching the car and seizing the items depends on whether the officers had a lawful right to access the interior of the vehicle and whether the incriminating nature of the torn-up plastic baggies was immediately apparent.

Under factor two of the plain-view exception, police officers may enter a vehicle and retrieve contraband or evidence of a crime without a warrant if they have probable cause to believe the vehicle contains contraband. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). Thus, the police had a “lawful right of access to the objects” as long as there was probable cause to enter the vehicle based on the incriminating nature of the items observed in plain view.

Under factor three, appellant argues that the district court erred when it found that the incriminating nature of the empty, torn-up plastic baggies was immediately apparent because the officers were not able to see any narcotics or narcotic residue on the torn baggies from outside the car, and empty baggies themselves are not drug paraphernalia.

Appellant is correct that torn-up, empty plastic baggies are not items that, by their mere presence, give the police probable cause to seize them when discovered in plain view. However, this court has held that an officer’s training and experience can lead him to believe that an item’s incriminating nature is immediately apparent. *State v. Lembke*, 509 N.W.2d 182, 184 (Minn. App. 1993) (holding that the plain-view doctrine supported an officer’s seizure of a plastic bag sticking out of the pocket of the defendant’s jacket—

despite the officer not being able to immediately determine the nature of the contents inside the bag).

As in *Lembke*, the issue is not whether torn plastic baggies are themselves contraband, because “[a] bag has many legitimate uses.” *Id.* But as was the case in *Lembke*, the circumstances surrounding the discovery of the torn baggies can provide probable cause to believe that their incriminating nature is immediately apparent, even if the item has innocent uses. Here, the officers did not believe that the baggies were incriminating based on their presence alone. The officer testified that, based on his training and experience, baggies, when used to store narcotics, are torn in just the same way as the baggies in appellant’s car. When one considers the fact that appellant was leaving a known drug house and that the officer believed he was Wooten, a suspected drug dealer, the items’ incriminating nature becomes immediately apparent. Consequently, the officer’s seizure of the torn plastic baggies was lawful.

A warrantless search of a vehicle is justified upon observing evidence in plain view. *State v. Munoz*, 385 N.W.2d 373, 376 (Minn. App. 1986) (citing *State v. Studdard*, 352 N.W.2d 413 (Minn. 1984)). Given the totality of the circumstances, it was reasonable for the officer to conclude that additional evidence of narcotics or items used in the drug trade would be present in the car. The district court did not err when it failed to suppress the torn plastic baggies and the digital scale that was covered with a white residue.

C. Arrest

Appellant’s identity was discovered after the vehicle was searched. At that time, the police officers could no longer justify their actions based on their reasonable but

mistaken belief that appellant was Wooten. The police officers, nonetheless, placed appellant under arrest for probable cause narcotics.

Probable cause to arrest exists where the “objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quotations omitted). Probable cause to arrest requires more than mere suspicion, but less than the evidence necessary to sustain a conviction. *State v. Laducer*, 676 N.W.2d 693, 697 (Minn. App. 2004).

The information available to the officers was sufficient to justify the arrest. Here, the police observed appellant walking out of a known drug house. The officers observed appellant make strange movements in his vehicle, which suggested to them that appellant was throwing something into the back part of the car. The officers then observed, based on their training and experience, narcotics-related items such as torn-up baggies and a digital scale. Moreover, the digital scale was covered in a white substance the officers believed to be drug residue. Given the totality of the circumstances, there was sufficient probable cause to arrest appellant for a narcotics-related offense.

D. *Search incident to arrest*

The Fourth Amendment permits police officers to search a person incident to a lawful arrest without a warrant. *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). Appellant acknowledges this exception to the warrant requirement but argues that the officers exceeded their scope when they brought him into the secured house to conduct a further search of his person when there was no justification for doing so. But contrary to

appellant's assertion, when an individual is under arrest, any warrantless search of the person during that custody is "proper even absent some independent justification." *State v. Riley*, 226 N.W.2d 907, 910 (Minn. 1975). Therefore, the officers did not need additional justification to bring appellant into the secured residence and search him incident to arrest.

Appellant further argues that the drugs were discovered as a result of an unlawful strip search. This argument mischaracterizes the record. Appellant did not submit to a search. The drugs were discovered as appellant began to struggle with the officer—prior to any clothing being removed—which resulted in him being brought to the ground. *See State v. Wick*, 331 N.W.2d 769, 771 (Minn. 1983) ("Minnesota law does not recognize [an] asserted right to resist an unlawful arrest or search."). Consequently, because appellant was never actually subjected to a search under his clothing and because appellant did not have a right to resist such a search, even if he thought that search would have violated his Fourth Amendment rights, the district court properly admitted any evidence discovered on his person.

II. Prosecutorial Misconduct

Appellant argues that his right to a fair trial was denied because the state elicited inadmissible and prejudicial testimony from one of the police officers that (1) appellant had previously been to jail, and (2) referred to appellant by his prior alias, in defiance of a pretrial order not to refer to appellant by the alias. *See State v. Huffstutler*, 130 N.W.2d 347, 348 (Minn. 1964) ("The fact that the prejudicial information was volunteered by the witness does not render it less harmful to [the] defendant. The prejudicial testimony came from the state's witness, a public official, and the prosecution is entirely responsible for its

presence in the record.”); *see also State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979) (stating that the state has a duty to prepare its witness). The district court judge gave curative instructions to the jury regarding both statements. Appellant moved for a mistrial, arguing that the curative instructions were inadequate.

This court reviews a trial court’s denial of a motion for a mistrial for abuse of discretion. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). The district court judge is in the best position to determine whether an improper statement creates sufficient prejudice to deny the defendant a fair trial, such that a mistrial should be granted. *State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985). A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred. *Manthey*, 711 N.W.2d at 506.

References to prior incarceration of a defendant can be unfairly prejudicial, warranting a mistrial. *State v. Hjerstrom*, 287 N.W.2d 625, 627-28 (Minn. 1979); *but see Ture v. State*, 353 N.W.2d 518, 524 (Minn. 1984) (concluding that testifying police officer’s reference to questioning defendant in another incident justified a curative instruction but not a mistrial). It can also be prejudicial to introduce evidence that has previously been ruled inadmissible through a pretrial order. *State v. Ray*, 659 N.W.2d 736, 744 (Minn. 2003). However, we have not enunciated a general rule that a mistrial must be granted after the jury has learned that a defendant was in the past incarcerated or heard a statement that had been ruled inadmissible through a pretrial order. *See Manthey*, 711 N.W.2d at 506. Curative instructions informing the jury to disregard testimony can also lessen the prejudicial impact of the illicit testimony. *State v. Miller*, 573 N.W.2d 661, 675

(Minn. 1998); *see State v. Forcier*, 420 N.W.2d 884, 885 n.1 (Minn. 1988) (courts presume jurors follow a judge's instruction.).

In denying appellant's motion for a mistrial, the district court acknowledged the seriousness of the officer's statements. It correctly and thoroughly reprimanded the officer, who had over 30 years' experience, for knowing better than to refer to a defendant's prior custody status. However, the district court also indicated that it could not find that the officer intentionally referred to appellant by his alias, that the reference to appellant's custody status was brief and in passing, and that the curative instructions lessened the prejudicial effect of the statements. We conclude that the district court did not abuse its discretion in denying the motion for a mistrial.

Affirmed.