

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0583**

State of Minnesota,
Respondent,

vs.

Mitchell Dale Saltzman,
Appellant.

**Filed March 29, 2021
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69HI-CR-19-800

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

Mark S. Rubin, St. Louis County Attorney, Tyler J. Kenefick, Assistant County Attorney,
Hibbing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Mitchell Dale Saltzman directly appeals from a judgment of conviction for fleeing
an officer in a motor vehicle. Saltzman claims that, by using the incorrect legal standard,
the district court erred in denying him a new trial based upon juror misconduct. However,

the district court properly denied the new trial motion despite its use of the wrong standard because applying the correct standard reveals no reasonable probability the results of the proceedings would have been different. Therefore, we affirm.

FACTS

Respondent State of Minnesota charged appellant Mitchell Dale Saltzman with one count of fleeing an officer in a motor vehicle, in violation of Minn. Stat. § 609.487, subd. 3 (2018). The sole issue on appeal involves juror misconduct that occurred during a trial recess. The following evidence was presented to the jury prior to the misconduct. Two witnesses, sheriff's deputies D.D. and R.S., testified that they assisted with pursuing Saltzman's vehicle and the videos capturing the pursuit from their squad cars were viewed by the jury.

Following a tip deputy R.S. attempted to locate Saltzman, who had an active warrant for his arrest, at a residence in Iron Mountain. At the residence, R.S. observed Saltzman in the driver's seat of a vehicle coming down the driveway. R.S. ordered Saltzman out of the car and, in response, Saltzman "revved" the engine and "took off" at a high rate of speed, hitting a parked car. R.S. communicated by radio that "Saltzman was running [in the vehicle]." Deputy D.D. observed Saltzman's vehicle traveling at a high rate of speed and saw it illegally drive through an intersection. D.D. activated his squad car's emergency lights and siren and pursued Saltzman's vehicle. D.D. noted Saltzman's vehicle was traveling "in excess of 90 miles per hour." "Five or six" marked squad cars were in pursuit by the time R.S. joined the pursuit of Saltzman's vehicle.

After an officer laid “stop strips” across the road in an attempt to deflate the vehicle’s tires, Saltzman drove his vehicle into the ditch to avoid the strips. The officer remained next to the stop strips in a fully-marked squad car with its emergency lights flashing. Saltzman’s vehicle was eventually stopped after deputies executed a second pursuit intervention technique.¹ Law enforcement pursued Saltzman for 27 miles over approximately 19 minutes.

During a recess—after the jury heard this testimony and watched both squad car videos—the bailiff informed the judge that a juror reported “some of the jurors [were] discussing the case.” The judge directed the reporting juror (Juror M.) into the courtroom to be questioned. Juror M. informed the court that two jurors were discussing the case and the court questioned Juror M. as to what was said. Juror M. indicated that two jurors said it was “ridiculous” Saltzman did not pull over and that “it [] seems like a joke.” After Juror M. recounted the other jurors’ conversation, defense counsel moved for a mistrial. The district court denied the motion based upon the manifest-necessity standard. The court then recalled the jury into the courtroom and issued a curative instruction reminding the jurors not to discuss the case with each other before deliberation. The state rested and appellant presented no evidence.

The jury returned a guilty verdict and the district court sentenced Saltzman to 24 months’ imprisonment. This appeal follows.

¹ D.D. described a PIT maneuver as a “technique used to stop a vehicle’s motion. It is designed to spin a vehicle out and cause it to kind of stall out, to slow the vehicle down.” See *Sotona v. Gibbs*, No. A16-1384, 2017 WL 1842838, at *2 n.3 (Minn. App. May 18, 2017), *review denied* (Minn. July 18, 2017).

DECISION

“A mistrial should be granted only if there is a reasonable probability, in light of the entirety of the trial including the mitigating effects of a curative instruction, that the outcome of the trial would have been different had the incident resulting in the motion not occurred.”² *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). A “district court is in the best position to evaluate the prejudicial impact, if any, of an event occurring during the trial.” *State v. Bahtuoh*, 840 N.W.2d 804, 819 (Minn. 2013). As such, “[a district] court’s decision to deny a motion for a new trial on the basis of jury misconduct will not be overturned absent an abuse of discretion.” *State v. Kelley*, 517 N.W.2d 905, 910 (Minn. 1994).

The district court determined that the “standard for granting a mistrial is manifest necessity.” The parties agree that jury misconduct occurred as a result of the jurors disregarding the district court’s preliminary instructions, and that the use of the manifest-necessity standard to evaluate Saltzman’s subsequent mistrial motion was incorrect. We agree. *See State v. Jaros*, 932 N.W.2d 466, 474 n.5 (Minn. 2019) (“The manifest-necessity standard is used only when a mistrial is declared *without the defendant’s consent*.”) (quotation omitted) (emphasis in original). Like *Jaros*, Saltzman moved for a mistrial. However, “even if a district court applies the wrong legal standard, if the ruling was

² Saltzman argues on appeal that either the actual-bias standard or improper-outside-influence standard should apply. However, the actual-bias standard is generally applied during *voir dire*, and this jury was not exposed to outside information. The state argues, and we agree, that the proper standard under which to analyze Saltzman’s claim is the reasonable-probability standard articulated in *Griffin*.

warranted under the proper standard and no prejudice results, reversal is not required.” *Id.* Though the state agrees that misconduct occurred, it disagrees that Saltzman was prejudiced by the juror misconduct.

Juror M. reported that she overheard two other jurors discussing the facts of the case during a recess. She overheard these two jurors state that “there were several times for the defendant to pull over, and that it was ridiculous that he didn’t.” She next overheard that “it just seems like a joke.” After questioning of Juror M. by the district court, all jurors were ordered to return to the courtroom and the court provided a curative instruction which reminded the jurors not to discuss the matter with each other until the end of the case.

Based upon the record it is evident that, even absent the juror misconduct, there is no “reasonable probability” that the jury would have reached a different verdict. *Griffin*, 887 N.W.2d at 262. Therefore, though the district court applied the wrong standard in denying the mistrial motion, the district court did not abuse its discretion by denying Saltzman’s motion for a mistrial.

To find Saltzman guilty of fleeing an officer in a motor vehicle, the jury was required to find that he “fle[d] or attempt[ed] to flee a peace officer who [was] acting in the lawful discharge of an official duty,” that Saltzman did so in a motor vehicle, and that Saltzman knew or should reasonably have known that he was fleeing a peace officer. Minn. Stat. § 609.487, subd. 3.

Prior to the improper discussion about the facts of the case between two jurors, the jury learned that deputies were attempting to locate Saltzman on an arrest warrant and they watched two videos of the 19-minute, 27-mile pursuit during which at least five marked

squad cars attempted to stop Saltzman's vehicle. The jury heard substantial testimony from two deputies conducting the pursuit, including that Saltzman was pursued by at least five marked squad cars with sirens and lights flashing. No other witnesses testified at trial. Additionally, upon learning of the juror misconduct, the district court recalled the jury and immediately provided the curative instruction. Appellate courts "presume that juries follow instructions given by the [district] court." *State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010).

On this record, there is no reasonable probability that the result of the proceeding would have been different absent the juror misconduct. The district court did not abuse its discretion by denying the mistrial motion.

Affirmed.