

*This opinion is nonprecedential except as provided by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
A22-0241**

State of Minnesota,
Respondent,

vs.

Bobby Dawkins, Jr.,
Appellant.

**Filed February 27, 2023
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-21-225

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

Mary F. Moriarty, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Benjamin J. Butler, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reyes, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his robbery conviction, arguing that (1) a second warrant lacked probable cause; (2) the district court abused its discretion by denying his motion for

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

a mistrial after improper, prejudicial testimony had impacted the jury; and (3) a new trial should be granted because the prosecutor elicited hearsay evidence about appellant's admission of guilt. We affirm.

FACTS

At approximately 9:10 p.m. on December 27, 2020, a man walked up to the cash register at a Holiday gas station. He showed the cashier a silver gun, set the gun on the counter, and put his left pointer finger over his mouth. The cashier understood this to mean that he wanted her to remain quiet and give him money. She gave him the cash in the safety box, totaling approximately \$250. The man put the money in his pocket and left.

The cashier's coworker sounded the alarm and called the police. Bloomington police officers arrived at approximately 9:12 p.m. The cashier described the suspect as a Black male about 5'6" tall. A surveillance video showed that the suspect wore a black coat, black pants, black hoodie with a hat underneath, black shoes with white bottoms, black mask, and black gloves. Officers discovered footprints from a single individual in the fresh snow along where a surveillance video showed the suspect fleeing. An officer took a picture of one of the footprints showing a clear design that appeared to belong to a Reebok shoe. Officers and a K-9 dog tracked the footprints to the north door of a three-story apartment building nearby (the building), where the footprints ended. At approximately 9:22 p.m., two police officers guarded the north and south doors of the building. Neither officer saw anyone entering or leaving the building after they arrived.

When officer B came to the building, there were already multiple officers on site. A woman walking near the building stopped to ask officer B what was going on. Officer

B identified her as C.B., who stated that she lived alone in an apartment in the building and that nobody was in her apartment. Officer B obtained her phone number and let her go back inside.

Officers devised a plan to contact the occupants of each apartment. Dispatch informed officer B that C.B.'s apartment was associated with a man named Bobby Collins who potentially matched the suspect's description. Dispatch then called C.B. and asked her to come out to talk to the police. This time, C.B. told the officers that "her cousin" was inside her apartment. She requested to go in first to notify him and then allowed the officers to come in. The cousin provided an identification card bearing the name "Zuriel Gray." When officer R returned to the police department and ran a search under that name, he realized that the person on the identification card was not the man they met. Based on prior contacts, the police identified the man in C.B.'s apartment, who is not her cousin, as appellant Bobby Dawkins, Jr.¹

Later, when reviewing officer R's body-worn-camera video, officer G noticed a pile of clothes and shoes in the bedroom of C.B.'s apartment that resembled those worn by the suspect in the robbery. During the investigation, an agent from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF agent) contacted the Bloomington police with information that the building owner had reached out to him, claiming that appellant was staying in C.B.'s apartment again recently and that he thought appellant may be the robber. On December 29, 2020, the manager of the Holiday station told the police that a customer

¹ An officer testified that Bobby Collins is an alias used by appellant.

stopped in and said that the robber lives on the top floor in the building where C.B.'s apartment is located.

On December 30, 2020, the police obtained and executed a search warrant for the apartment and found a silver gun in the couch. During the search, the officers became aware that the apartment had an assigned storage locker in the same building. They obtained a second warrant for the storage locker, which they executed on the same day. In that storage locker, the police found a plastic bag containing multiple items of dark clothing, including pants, a long-sleeved shirt, a hooded sweater, and other dark-colored shirts and underwear. The bag also contained a pair of Reebok shoes with a pattern the same as or similar to the tread marks outside the Holiday.

Respondent State of Minnesota charged appellant with first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2020), and gross-misdemeanor giving a false name to a peace officer in violation of Minn. Stat. § 609.506, subd. 2 (2020).

During the trial, C.B. and officer G referenced appellant's history of domestic abuse and other crimes involving violence and firearms. Appellant moved for a mistrial based on the alleged negative cumulative effect of these inadmissible statements. Having given cautionary instructions both during the trial and in its closing jury instructions, the district court denied appellant's motion. In addition, officer G testified that C.B. told him that appellant had admitted to committing the robbery. The district court sustained appellant's objection on hearsay grounds.

The jury found appellant guilty of robbery and giving a false name to a peace officer. Following the guilty verdict, appellant filed a posttrial motion for a new trial, arguing that

the jury verdict resulted from prejudicial hearsay testimony about appellant's admission of guilt. The district court denied the motion and sentenced appellant to 68 months in prison for his robbery conviction. This appeal follows.

DECISION

Appellant makes three arguments on appeal: (1) the second warrant for the storage locker lacked probable cause; (2) the district court abused its discretion by denying his motion for a mistrial after improper, prejudicial testimony had affected the jury; and (3) a new trial should be granted because he was prejudiced by officer G's hearsay testimony about him admitting to the robbery to C.B. We address each issue in turn.

I. Probable cause supported the second search warrant.

Appellant argues that the second search warrant lacked probable cause because its supporting affidavit failed to establish a direct connection between the storage locker and the robbery. We disagree.

“When examining whether a search was supported by probable cause, the ultimate question is whether there is ‘a fair probability that contraband or evidence of a crime will be found in a particular place.’” *State v. Carter*, 697 N.W.2d 199, 204-05 (Minn. 2005) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). We will uphold a search warrant when specific facts contained in the affidavit establish a direct connection between the alleged crime and the place to be searched. *Id.* at 205 (Minn. 2005). Factors for determining probable cause include (1) the type of crime; (2) the nature of the items sought; (3) the extent of the suspect's opportunity for concealment; (4) information as to where the suspect would keep the items; (5) facts connecting the place to the crime; and (6) the

freshness of the information. *See State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984); *Carter*, 697 N.W.2d at 206. Although a district court's determination of whether probable cause existed to support a warrant is reviewed de novo, appellate courts give great deference to the issuing magistrate's determination of probable cause at the time of the warrant's issue. *State v. Rochefort*, 631 N.W.2d 802, 803-04 (Minn. 2001).

Here, the affidavit states that the surveillance video from Holiday showed that the suspect was a Black male in all-black clothing who used a silver handgun. The police discovered clear footprints in the snow leading to the building. Because the police arrived at the building approximately 12 minutes after the robbery and guarded both its south and north doors, there was a fair possibility that the suspect concealed evidence in the building. Importantly, the affidavit detailed the list of items obtained from the search of the apartment that appeared to be connected to the robbery, including three cellular devices, one tablet used for exterior CCTV, a silver-tone revolver-styled handgun, a government identification card and other personal items bearing appellant's name, an empty shell casing, a wallet with personal identification cards, and a black coat with fur trim believed to have been worn during the robbery. When the police learned that the apartment had an assigned storage locker in the same building, they sought a second, updated warrant for the storage locker instead of trying to rely on the first warrant for the apartment. Based on the proximity of the apartment, the storage locker, and where the robbery occurred, the magistrate judge properly determined that the facts in the affidavit established probable cause that more evidence would be found in the storage locker.

However, the basis upon which a judge finds probable cause in a drug-crime case is different from that in a robbery case. *See Pierce*, 358 N.W.2d at 673 (stating that type of crime is factor to be considered in determining probable cause). Appellant first cites *Carter*, in which our supreme court held that the warrant for a self-storage unit lacked probable cause. 697 N.W.2d at 212. *Carter* is distinguishable for two additional reasons. First, unlike the stand-alone self-storage facility in *Carter*, the storage locker here is in the same building as the searched apartment. *Id.* at 214. Second, whereas the *Carter* court reasoned that the officers' observation of suspicious behavior around the storage facility four weeks before the warrant application was too stale to establish probable cause for the search, *id.* at 206, the search of the apartment and its assigned locker in the present case took place only three days after the robbery. The freshness of the information here supports the issuing judge's finding of probable cause.

Appellant also cites *State v. Kahn*, in which we held that a defendant's possession of one ounce of cocaine upon his arrest did not provide probable cause to search his residence approximately 80 miles away. 555 N.W.2d 15 (Minn. App. 1996). In the present case, however, the storage locker was only several hundred feet away from the Holiday gas station where the robbery occurred, and the suspect's footprints led directly to the building where the storage locker is located.

Finally, appellant appears to argue that the probable cause supporting the search of the apartment should not extend to the assessment of probable cause to search the storage locker. However, our review must be guided by the totality of the circumstances rather than reviewing each component of the affidavit in isolation. *Massachusetts v. Upton*, 466

U.S. 727, 732-33 (1984). Applying that standard, and with the great deference we give to the issuing judge’s finding of probable cause, we conclude that probable cause supported the affidavit for the search of the storage locker.²

II. The district court did not abuse its discretion by denying appellant’s motion for a mistrial.

Appellant argues that the “cumulative effect” of C.B. and officer G’s prejudicial testimony about appellant’s history of domestic abuse painted him in “a bad light” that could not be cured. We are not convinced.

We review the district court’s denial of a motion for mistrial for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). A district court may grant a mistrial only if a person can establish a reasonable probability that the outcome of the trial would have been different had the incidents resulting in the motion not occurred. *Id.* On appeal, the reviewing court may consider (1) whether the introduction of the improper evidence was an isolated incident; (2) the strength of the state’s case; and (3) whether the district court gave the jury a cautionary instruction. *See State v. Bahtuoh*, 840 N.W.2d 804 (Minn. 2013); *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). The district court is “in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate. *Bahtuoh*, 840 N.W.2d at 819.

² The state raises a “standing” argument on appeal, arguing that an occasional guest such as appellant has no reasonable expectation of privacy in C.B.’s storage locker and cannot vicariously assert the Fourth Amendment rights of the homeowner. Because we already concluded that there was probable cause for the second search warrant, we need not address the standing argument.

During the trial, C.B. volunteered information about her relationship with appellant being “up and down” and that they had a history of arguments and domestic abuse. The district court sua sponte gave cautionary instructions both during trial and as part of the closing jury instructions, emphasizing that the jury may not convict the defendant based on any prior conduct other than the charged offense.

Subsequently, officer G testified that he identified appellant because Bobby Collins was “an alias name, or previously arrested name on his fingerprints,” and that after comparing the booking photos of Bobby Collins and the body-worn-camera video in the apartment, it was “very clearly the same person.” Appellant raised no objection. The officer further explained that they reviewed the occupants’ criminal histories involving violence and gun charges before executing the warrants for the apartment and the storage locker. Appellant objected, and the district court sustained the objection. At the end of officer G’s testimony, the district court instructed the jury to disregard the testimony about the prior arrest and criminal histories of the occupants in the apartment.

First, the record shows that the improper testimony came from two witnesses on three occasions, but each was brief. Second, physical evidence and testimony from witnesses established a strong case against appellant. Holiday’s surveillance video captured a suspect matching appellant’s description, and the footprints outside Holiday led to the building where police found appellant. A search of the apartment and its assigned locker revealed incriminating evidence including a silver gun, dark-colored clothing, and a pair of Reebok shoes with the same tread pattern as the footprints found outside Holiday. Appellant and C.B. attempted to conceal appellant’s identity during the investigation, and

C.B.'s inconsistent testimony at trial also supported an inference of guilt. To the extent that appellant argues that the state did not have a strong case because it relied on circumstantial evidence, our caselaw is clear that “[c]ircumstantial evidence is entitled to the same weight as any other evidence.” *State v. Vang*, 774 N.W.2d 566, 583 (Minn. 2009). Third, the district court gave multiple cautionary instructions, both right after the improper testimony and in its final jury instructions, which we presume that the jury followed. *See Griffin*, 887 N.W.2d at 262 (“When a court instructs a jury to disregard an improper question, [appellate courts] presume the jurors followed the instruction.”). Appellant fails to show that the outcome of trial would have been different had the improper testimony not occurred. We therefore conclude that the district court did not abuse its discretion by denying the motion for a mistrial.

III. The hearsay testimony does not warrant a new trial.

Appellant contends that officer G's testimony about appellant's admission to the robbery entitles him to a new trial because it is both prosecutorial misconduct and inadmissible hearsay. Minn. R. Crim. P. 26.04; Minn. R. Evid. 802. We are not persuaded.

“We review a district court's evidentiary rulings on hearsay for an abuse of discretion.” *State v. Vangrevenuehof*, 941, N.W.2d 730, 736 (Minn. 2020). An appellant claiming error bears the burden to show “both the error and the prejudice resulting from the error.” *Id.* (quotation omitted).

At trial, there were two occasions in which the witnesses testified about appellant's admission. When C.B. first denied telling the police that appellant made the admissions, the prosecutor properly impeached her with her prior inconsistent statement. Minn. R.

Evid. 613 (b). Appellant does not challenge this impeachment. Subsequently, the prosecutor asked officer G “did anyone during the investigation tell you that the defendant made any admissions?” Appellant objected to the question, but the district court overruled. Officer G answered, “Yes.” No hearsay had occurred so far. Minn. R. Evid. 801. The prosecutor next asked “what did [C.B.] say?” Officer G responded that “[C.B.] stated that [appellant] committed the robbery.” Appellant did not object until the prosecutor further asked “[w]hat did she tell you [appellant] said about the robbery.” The district court then paused the questioning and sustained the objection on hearsay grounds.³

As an initial matter, we note that appellant never raised the issue of prosecutorial misconduct with the district court. “Ordinarily, [a party’s] failure to object to an error at trial forfeits appellate review.” *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). We nevertheless may review the claim, in our discretion, under the modified plain-error standard. *Id.* at 302. However, appellant’s brief only mentions prosecutorial misconduct in passing and presents no substantive argument or analysis. Appellant has therefore forfeited this issue and we will not consider it. *See State v. Myhre*, 875 N.W.2d 799, 806-07 (Minn. 2016) (party mentioning alleged error in passing and providing no substantial argument or analysis forfeits issue and appellate courts need not consider it).⁴

³ Because appellant objected before officer G answered the question, no hearsay testimony occurred. Appellant does not appear to challenge the district court’s ruling sustaining his objection at trial.

⁴ Had appellant properly briefed the issue of unobjected-to prosecutorial misconduct on appeal, and assuming appellant carried his initial burden of showing plain error, it did not affect appellant’s substantial rights given that the statement was brief, the state presented a strong case, and the state did not mention the statement in closing argument.

Turning to appellant's hearsay argument, the only hearsay testimony from officer G was that "[C.B.] stated that [appellant] committed the robbery." At trial, appellant did not object to the prosecutor's question, did not make a motion to strike or seek a curative instruction. Nor did the district court make a ruling for our review. Appellant therefore has forfeited the issue on appeal unless plain error occurred when the district court failed to act sua sponte in response to the objectionable testimony. *State v. Manthey*, 711 N.W.2d, 498, 505 (Minn. 2006). Under the plain-error standard, an appellant must show (1) an error (2) that is plain and (3) affects their substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If the court finds that any prong is not satisfied, it need not address the others. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted). An error affects a defendant's substantial rights if "there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). Here, substantial evidence at trial supports appellant's guilty verdict, including the clothing items matching those worn by the suspect, the pair of Reebok shoes with the same tread pattern as the footprints found outside Holiday, and the silver gun found in C.B.'s apartment. Appellant thus fails to satisfy the third prong.

We therefore conclude that neither the alleged prosecutorial misconduct nor officer G's hearsay testimony warrants a new trial.

Affirmed.