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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1625**

State of Minnesota,
Respondent,

vs.

Walter Jukkar Clark, Jr.,
Appellant.

**Filed November 19, 2018
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-16-17325

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

Michael O. Freeman, Hennepin County Attorney General, Linda K. Jenny, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Ted Sampsell-Jones, Special
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant was convicted of first-degree aggravated robbery. He appeals his conviction, arguing that the district court abused its discretion by allowing inadmissible evidence at trial and denying his motion for a mistrial. We affirm.

FACTS

On the morning of June 7, 2016, in Minneapolis, D.T. left a store and walked to his car. As he went to enter the car, a man came running up behind him. D.T. turned around, and the man put a gun to D.T.'s chest and demanded that he give up the jewelry he was wearing. The assailant then ripped a gold necklace off of D.T.'s neck and commanded D.T. to give him the gold bracelet that he was wearing. After D.T. complied, the assailant took off running and turned down a street. D.T. jumped into his car, made a U-turn, and pursued the assailant. D.T. testified that he saw the assailant enter the driver side of a black Camaro and take off. D.T. followed the Camaro for a little while and called the police to report the robbery. D.T. eventually stopped his pursuit and returned to the store to speak with two police officers.

About a week later, D.T. spoke on the phone with a different policeman, Officer Adam McCann, the lead investigator on the case. D.T. described the assailant to officers as a black man, 20 to 23 years of age, with a thin build, wearing a black sweatshirt, and sporting a goatee. He identified the assailant's weapon as a 9-millimeter handgun.

Officer McCann obtained surveillance-video footage from the store, another business in the area, and a SafeZone camera. The footage from the store showed D.T.

leaving the store, walking to his car, and getting robbed. The SafeZone footage showed a man, who Officer McCann believed matched the description of the assailant, getting out of the passenger side of a black Camaro and walking toward the store. The Camaro then appeared to turn around the corner to pick up the suspect, according to Officer McCann. Police were unable to identify the license plate number of the Camaro from the videos.

Because he could not identify the license plate of the Camaro, Officer McCann had another officer search a license-plate-reader system to identify black Camaros that had been in the area. With the help of the license-plate-reader system, Officer McCann obtained a spreadsheet of about 30 potential suspects based on matching car descriptions. One of the suspects on the list was appellant Walter Jukkar Clark, Jr. Officer McCann also searched a statewide automated pawn system and learned that Clark had pawned a necklace in February of 2016—several months before the robbery. Officer McCann then put together a six-picture sequential photographic lineup that included Clark to show D.T. The lineup was conducted by an officer who had no knowledge about the case. After seeing the lineup once, D.T. identified Clark as his assailant.

Officer McCann then obtained search warrants for Clark's home and car. On June 28, 2016, police arrested Clark at the Anoka County Courthouse after learning that he had a court date in a separate criminal case. During an in-custody interview with Officer McCann, Clark denied robbing D.T. and indicated that he had a gold bracelet in his car but that it was his. The search of the car revealed a gold bracelet. The search of Clark's home turned up no evidence. Officer McCann sent D.T. a picture of the gold bracelet found in Clark's Camaro, and D.T. confirmed that it was his.

Hennepin County charged Clark with one count of first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2016). The case proceeded to a jury trial. D.T., Officer McCann, and the officer who conducted the lineup were the only witnesses at trial. Before the start of trial, the parties argued different evidentiary issues. Two in particular are relevant to this appeal. First, Clark made a motion in limine to exclude any reference to being arrested at the Anoka County Courthouse. Clark argued that specifying that he had an appointment at the courthouse could lead the jury to believe that he was engaging in criminal behavior and that it was more prejudicial than probative. The district court ruled that the prosecution could elicit testimony that Clark was arrested at the courthouse and that officers knew he had an appointment there that day but forbade the prosecution from eliciting testimony that Clark was present for a criminal matter. Second, Clark made a motion in limine to exclude any reference to his sales as documented in the automated pawn system. He argued that the evidence was irrelevant and that it would call for an innocent act “to take on the air of [an] illegal [act].” The district court ruled that the evidence of prior pawning activity could be admitted at trial.

The trial had some issues along the way. During his testimony, D.T. referenced a picture that had been sent to him by Officer McCann of the bracelet found in Clark’s Camaro. It appeared that the picture in question had not been disclosed to the defense in discovery, so Clark moved for a mistrial. The district court denied the motion.

During part of Officer McCann’s testimony, which took place on a Thursday, it was revealed that the information he had obtained from the license-plate-reader system was given to him in a spreadsheet. The defense had not received this spreadsheet in discovery

and considered it to be potentially exculpatory evidence since it included a list of potential alternative perpetrators. The district court instructed the prosecutor to obtain the spreadsheet and send it to the defense that night. Defense counsel initially moved for a mistrial but withdrew the motion the next morning. And defense counsel offered to spend the weekend looking over the list in order to determine whether there was any relevant evidence that she could use in her client's defense if the district court would grant a continuance. The prosecutor felt that delaying the trial that Friday (and not resuming until the following Monday) would unfairly prejudice the state, and she moved for a mistrial, preferring to start over. The district court gave the defense a continuance until Monday and denied the state's motion for a mistrial.

On that Monday, the state continued its direct examination of Officer McCann. In response to the prosecutor's question if he had discovered "any other information that supported a conclusion that Mr. Clark might be the suspect," Officer McCann responded, "Yes. He was involved in a prior case that - -." The defense objected, arguing that Officer McCann's statement violated the district court's pre-trial order that the prosecutor should instruct her witness to not reference any other criminal cases involving Clark. The defense then moved for a mistrial, which the district court denied. The jury ultimately convicted Clark. This appeal follows.

DECISION

Clark challenges his conviction. He argues that the district court should have excluded some of the state's evidence and granted his second motion for a mistrial.

I. Admissibility of Evidence

Clark argues that the district court erred by not excluding evidence of his arrest at the Anoka County courthouse and his prior pawning activity. We review a district court's evidentiary rulings for an abuse of discretion. *Miles v. State*, 840 N.W.2d 195, 204 (Minn. 2013).

Clark first argues that the district court erred by admitting the courthouse arrest and pawning activity evidence because it constitutes *Spreigl* evidence. "Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b); *see also State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). While *Spreigl* evidence is not admissible to prove that a defendant acted in conformity with his character, it may be admissible "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b).

The state disputes that this was *Spreigl* evidence. The courthouse arrest and the pawning activity were not argued by Clark as *Spreigl* evidence before the district court. Instead, Clark made a rule 403 argument about the courthouse arrest, claiming it would be more prejudicial than probative, and he made a rule 401 relevance argument about the pawning activity. Minn. R. Evid. 401, 403.

Our review of the record confirms that evidence of Clark's arrest at the courthouse and his pawning activity was not *Spreigl* evidence. With regard to the arrest, the district court limited the state to introducing evidence that Clark had a hearing at the courthouse, and it forbade any mention that the hearing was for a criminal matter. Based on this record,

the jurors did not know the nature of the hearing as it could have been for a civil or family law matter. And pawning jewelry is not a crime. The state only used the pawning activity to give context for how Officer McCann came to focus on Clark as a suspect. Accordingly, neither piece of evidence was of a crime, wrong, or act that would prove that Clark acted in conformity with his character. Minn. R. Evid. 404(b).

Clark's second argument is that his courthouse arrest and pawning activity were irrelevant under Minn. R. Evid. 401 and 402. Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. And the Minnesota Supreme Court explained "that evidence is generally admissible to give jurors the context for an investigation." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). The courthouse arrest was relevant to the context of the investigation because law enforcement recovered the gold bracelet—the only piece of physical evidence tying Clark to the crime—from Clark's car while arresting him at the courthouse. And the pawning activity was relevant to the context of the investigation because it helped to explain how Clark became a suspect.

Clark's third and final argument with respect to his courthouse arrest and pawning activity is that the evidence's probative value was outweighed by its danger of unfair prejudice under Minn. R. Evid. 403. Rule 403 explains that relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. The district court limited the state to introducing evidence that Clark had a hearing at the courthouse

without indicating what type of hearing was involved, and pawning jewelry is not an illegal activity. To the extent that the jury could draw negative inferences from this evidence, we fail to see how the danger of unfair prejudice *substantially outweighs* its probative value. This argument fails, and we conclude that the district court did not abuse its discretion in admitting evidence of Clark's courthouse arrest and prior pawning activity.

II. Motion for a Mistrial

Clark next argues that the district court erred by denying his motion for a mistrial following Officer McCann's comments about Clark's involvement in another case. Because a district court judge "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," we review the denial of a motion for a mistrial for an abuse of discretion. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006).

Both Clark and the state agree that the officer's comments that he was aware of Clark from a prior case violated the district court's pre-trial order. The question is whether the prejudice to Clark from this statement was so great that the district court abused its discretion by not declaring a mistrial. When assessing the prejudice from the denial of a motion for a mistrial, the question is whether the defendant was sufficiently prejudiced so as to deny him a fair trial. *Id.*

Clark frames his prejudice argument as being about the collective prejudice from the denial of his motion for a mistrial, the courthouse arrest evidence, and the prior pawning activity evidence. We have held that the courthouse arrest evidence and the prior pawning

activity evidence were properly admitted at trial, so we will not consider them in the prejudice analysis, though we note that the outcome would have been the same if we did.

Clark makes three prejudice arguments. He argues that the evidence against him was weak because D.T.'s eyewitness testimony was unreliable. He asserts that the lineup procedures used to identify him as the suspect were suggestive and tainted the identification. And he claims that the evidence against him was weak because there were inconsistencies and contradictions in D.T.'s testimony.

Clark argues that the evidence against him was weak because the state relied on D.T.'s inherently flawed testimony. To bolster his claim, he cites to social science evidence which shows that "high levels of stress significantly impair a witness's ability to recognize faces and encode details into memory" and that when it comes to identifications "certainty is not correlated with accuracy." But none of this social science evidence was presented to the jury. The jury based its decision upon evidence presented during the trial and found D.T.'s testimony to be credible. And determinations of witness credibility and the weight to be given to a witness's testimony lie solely with the jury. *State v. Skinner*, 450 N.W.2d 648, 652 (Minn. App. 1990), *review denied* (Minn. Feb. 28, 1990).

Clark's argument about the photographic lineup also fails. He argues that the photographic lineup was suggestive and tainted. If the jury had been presented with evidence and arguments suggesting that the identification was unreliable, then it could be reasonable to determine that the jury was swayed by the inadmissible evidence that came in. But there were no such arguments made at trial about the lineup. Moreover, nothing indicates that this lineup was suggestive. It was conducted sequentially, the officer

presenting the lineup had no knowledge of the case, and the other men in the lineup looked similar to Clark. While suggestive lineups are a threat to a fair criminal justice system, this lineup does not fall into that category.

Clark also argues that the evidence against him was weak because there were inconsistencies and contradictions in D.T.'s testimony compared to his initial statements to police. Clark points out that D.T. initially described his assailant as being 20 to 23 years old with a thin build and an afro (which contrasts with Clark being 26 at the time of the robbery and described by some as being of medium build). Clark also points out that D.T. failed to note that the assailant was wearing a baseball cap, and mistakenly testified that the assailant entered the driver side of the Camaro after robbing him. But D.T. was consistent in his description of the robbery and the assailant's getaway in a black Camaro, and he was able to identify Clark in a photographic lineup. In addition, the prosecution had evidence outside of D.T.'s eyewitness identification that supported a finding of guilt. This includes the fact that a gold bracelet was found in Clark's car which D.T. identified as being the bracelet that was stolen from him and the video footage that showed the assailant leaving the scene of the robbery in a black Camaro similar to that owned by Clark. In light of the evidence against Clark, we hold that Officer McCann's testimony did not deny Clark a fair trial. Accordingly, the district court did not abuse its discretion by denying Clark's motion for a mistrial.

Affirmed.