STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1981

State of Minnesota,
Respondent,

vs.

Devell Eshawn Warren,
Appellant.

Filed December 31, 2018
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-17-9746

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Appellate Public Defender, St. Paul, Minnesota, and

Lisa L. Beane, Special Assistant Public Defender, Robins Kaplan, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his conviction of prohibited person in possession of a firearm, arguing that the district court erred by (1) denying his suppression motion; (2) admitting *Spreigl* evidence of his prior conviction of prohibited person in possession of a firearm; and (3) prohibiting his trial counsel from inquiring about potential jurors' biases against individuals with mental illness. We affirm.

FACTS

In April 2017, while parked at an intersection, Metro Transit Police Officer Christopher Miles observed a Grand Marquis and a Dodge Durango drive by "at a high rate of speed." Officer Miles had stopped the Durango earlier in the night because an occupant was involved in an assault, and based on the manner in which the vehicles were traveling, Officer Miles believed that the Durango was pursuing the Marquis. Because the Marquis "was obviously fleeing from the Durango for some reason," Officer Miles decided to follow the Marquis without his lights or sirens on to "see if [the driver] was in any danger."

Officer Miles observed the Marquis turn into an alley and park. As Officer Miles drove in the alley, he observed a male get out of the backseat of the Marquis with a shotgun that was partially wrapped in a blanket. Officer Miles knew that under Minnesota law, a shotgun being transferred in a vehicle must be in an enclosed case. The individual then got into the front seat of the Marquis with the shotgun and proceeded to drive farther down the

alley. When the Marquis reached the dead end of the alley, the Marquis pulled into a parking spot and the driver "fled on foot" with the shotgun.

As the driver of the Marquis fled, Officer Miles exited his squad car and yelled for the individual to stop. Officer Miles chased the individual on foot but lost sight of him when he ran in front of a nearby house. After losing sight of the individual, Officer Miles "heard the shotgun rack," "[l]ike a round being loaded into it." Officer Miles then stopped at the backside of the house to avoid getting shot. There he observed the individual throw the blanket and shotgun over a fence and "heard a clank of metal" when the shotgun hit the ground. The individual then approached Officer Miles, who arrested him and identified him as appellant Devell Warren. Officer Miles later retrieved a blanket and a loaded Remington shotgun in the area where Warren discarded it. Officers searched the Marquis and found several shotgun shells "of the same type and brand" as the shell found in the shotgun that Warren discarded. Because the Marquis was blocking other vehicles in the alley, officers inventoried and then towed it from the scene.

Respondent State of Minnesota charged Warren with being a prohibited person in possession of a firearm. Warren moved to suppress all the evidence obtained by the officers, claiming that the officers seized him without reasonable suspicion of criminal activity. The district court denied the motion. Before trial, the state sought permission to introduce evidence of Warren's 2005 conviction for being an ineligible person in possession of a firearm. Over Warren's objection, the district court granted the state's request. Warren then stipulated to the fact that he was ineligible to possess a firearm.

During voir dire, Warren's counsel attempted to question prospective jurors about their biases pertaining to individuals with mental illness. The district court prohibited counsel from doing so after concluding that Warren's mental health would not be squarely before the jury. A jury found Warren guilty of the charged offense, and the district court sentenced Warren to 60 months in prison.

This appeal follows.

D E C I S I O N

Denial of Suppression Motion

Warren challenges the district court's denial of his suppression motion, arguing that his seizure was unconstitutional, his arrest was not supported by probable cause, and the warrantless search of his vehicle was unlawful. When considering the denial of such a motion, we review "the district court's factual findings for clear error and its legal conclusions de novo." *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018).

The United States and Minnesota Constitutions protect individuals from "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A search or seizure that is conducted without a warrant is presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). Evidence seized in violation of the United States or Minnesota Constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 13, 88 S. Ct. 1868, 1875 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Seizure

Warren argues that law enforcement improperly seized him when Officer Miles "blocked his vehicle in the dead end of the alley." We disagree. A seizure occurs only when an "officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry*, 392 U.S. at 19 n.16, 88 S. Ct. at 1879 n.16. "[A] person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). Circumstances that might indicate a seizure include the threatening presence of several officers, an officer's display of a weapon, an officer's physical touching of the person, or the officer's use of language or tone of voice indicating that compliance might be compelled. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). And an officer's directive that an individual stop constitutes a seizure. *Id.* at 783.

"Not every interaction between the police and a citizen amounts to a seizure." *State v. Klamar*, 823 N.W2d 687, 692 (Minn. App. 2012). "Generally, no seizure occurs when an officer merely walks up to and speaks with a driver sitting in an already-stopped vehicle." *Illi v. Comm't of Pub. Safety*, 873 N.W.2d 149, 152 (Minn. App. 2015). And a seizure does not occur when "a person, due to some moral or instinctive pressure to cooperate, complies with a request . . . because the other person to the encounter is a police officer." *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (quotation omitted).

Here, Warren was retrieving the shotgun from the backseat of his already-stopped vehicle when Officer Miles pulled into the alley. And, as the district court found, Officer

Miles pulled into the alley "without his lights, sirens, or horn indicating to [Warren] that he was being seized." Officer Miles did not display any outward show of authority while he pulled into the alley. Although Officer Miles's squad car blocked Warren's car, the district court found that he did so "incidentally." The blocking of a parked vehicle by police does not automatically amount to a seizure. *See Erickson v. Comm'r of Pub. Safety*, 415 N.W.2d 698, 701 (Minn. App. 1987) (holding that "actions by the officers in parking their vehicles, which may have incidentally blocked appellant's vehicle, did not constitute a seizure"). In fact, as the state points out, Warren "obviously felt free to leave because he got back into his car and drove off." Under the circumstances in this case, the district court properly concluded that Officer Miles did not seize Warren when he pulled into the alley behind Warren.

Warren also contends that even if Officer Miles did not seize him when his squad car blocked his vehicle in the alley, Officer Miles seized him when he identified himself as a police officer and ordered Warren to stop. Warren argues that this stop was not supported by the requisite reasonable, articulable suspicion and that the district court therefore erred by denying his suppression motion. Warren's argument is without merit.

Law enforcement may "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). "[T]he reasonable suspicion showing is 'not high.'" *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997)). "Reasonable suspicion must be based on specific, articulable facts that allow the

officer to be able to articulate that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted). "Police must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). We consider "the totality of the circumstances in determining whether the police had justification for a *Terry* stop." *State v. Hollins*, 789 N.W.2d 244, 248 (Minn. App. 2010), *review denied* (Minn. Dec. 22, 2010).

Here, when Officer Miles exited his squad car and yelled for Warren to stop, he seized Warren. *See E.D.J.*, 502 N.W.2d at 783 (stating that seizure occurs when police direct individual to stop). The district court found that Officer Miles observed Warren carrying an uncased shotgun. Under Minnesota law, carrying or transporting a shotgun in a public place is a gross misdemeanor unless the shotgun is "unloaded and in a gun case expressly made to contain a firearm, if the case fully encloses the firearm by being zipped, snapped, buckled, tied, or otherwise fastened, and no portion of the firearm is exposed." Minn. Stat. § 624.7181, subds. 1(b)(2), 2 (2016). Warren's actions violated Minnesota law. Moreover, the court found that based on his testimony, Officer Miles knew that the law prohibited a person from carrying an uncased shotgun in a public place. These circumstances provided Officer Miles with a reasonable basis to seize Warren. The court did not err by concluding that Officer Miles's seizure of Warren was constitutional.

Probable cause to arrest

Warren argues that his arrest was not supported by probable cause. "A warrantless arrest is reasonable if supported by probable cause." *State v. Williams*, 794 N.W.2d 867,

871 (Minn. 2011). "Probable cause exists when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime." *State v. Onyelobi*, 879 N.W.2d 334, 343 (Minn. 2016) (quotation omitted). "The quantum of proof required for a finding of probable cause is more than mere suspicion but less than the evidence necessary for conviction." *Id.* (quotation omitted). "The inquiry is objective, and the existence of probable cause depends on all of the facts of each individual case." *Williams*, 794 N.W.2d at 871.

As a general rule, an officer may make an arrest for most misdemeanors and gross misdemeanors if the offense occurs within the presence of the police officer. *See* Minn. Stat. § 629.34, subd. 1(c)(1) (2016) (stating that peace officer may make an arrest without a warrant . . . when a public offense has been committed or attempted in the officer's presence"). Here, Warren committed two offenses in Officer Miles's presence. First, Officer Miles observed Warren carrying a shotgun under a blanket, and Officer Miles knew that carrying an uncased shotgun in a public place was unlawful. *See* Minn. Stat. § 624.7181, subds. 1, 2. Second, Warren did not comply with Officer Miles's order to stop, instead fleeing the scene. Minnesota Statutes section 609.487, subdivision 6 (2016) provides that to attempt to evade or elude a peace officer acting in the lawful discharge of an official duty by any means other than fleeing in a motor vehicle is a misdemeanor. The circumstances, assessed objectively, supported a strong suspicion to believe that Warren committed two criminal offenses. The district court therefore did not err by concluding that Officer Miles had probable cause to arrest Warren.

Warrantless search of vehicle

Warren further argues that the warrantless search of his vehicle was unlawful and that the district court erred by not suppressing the ammunition discovered in the vehicle as a result of the search. A search conducted without a warrant is generally unreasonable. *Edstrom*, 916 N.W.2d at 517. But well-defined exceptions to the warrant requirement exist, and a search which qualifies for one of these exceptions is not unreasonable. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "One such exception is the automobile exception, under which the police may search a car without a warrant, including closed containers in that car, if there is probable cause to believe the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotations omitted). And another exception is an inventory search. *Gauster*, 752 N.W.2d at 502.

The district court found that the officers had probable cause to search Warren's vehicle based on Warren's "decision to abandon the vehicle and the shotgun," and because people who carry weapons often carry ammunition. The court also found that the vehicle was "not parked in a legal location" and that the vehicle was impounded by Metro Transit Police and inventoried under "standard procedure." The court determined that the search of the vehicle was a valid search under both the automobile exception and the inventory-search exception, and that the ammunition found in the vehicle therefore need not be suppressed. Warren argues that neither the automobile exception nor the inventory-search exception is applicable. We disagree.

A law-enforcement officer may, consistent with the Fourth Amendment, impound a vehicle and perform an inventory search of the vehicle without obtaining a warrant. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987); *State v. Rohde*, 852 N.W.2d 260, 263–64 (Minn. 2014). In determining the reasonableness of an inventory search, the threshold inquiry is whether the officers "had any authority or purpose that justified the impoundment." *Rohde*, 852 N.W.2d at 264. For an impoundment to be appropriate, the government "must have an interest in impoundment that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *Id*. (quotation omitted). The United States Supreme Court has stated that in the interests of public safety, police have the authority to "remove from the streets vehicles impeding traffic or threatening public safety and convenience." *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S. Ct. 3092, 3097 (1976). And impoundment of a motor vehicle must be "conducted pursuant to standardized criteria." *Gauster*, 752 N.W.2d at 503.

Here, Warren's challenge to the inventory search is limited to his claim that the search was invalid because Officer Miles lacked probable cause to arrest Warren. But as addressed above, Officer Miles's observations of Warren's unlawful conduct provided the officer with probable cause to arrest Warren. Moreover, Officer Miles had a reasonable basis to impound the Marquis because it was blocking other cars from exiting a driveway off the alley and was parked in an illegal location. And the district court credited Officer Miles's testimony that the inventory search of the vehicle was conducted under standard procedure of the Metro Transit Police. The court therefore properly determined that the ammunition need not be suppressed because it was discovered as the result of a valid

inventory search. And because the inventory search was valid, we need not address whether the search of the vehicle was lawful under the automobile exception.

Admission of *Spreigl* evidence

Prior to trial, Warren stipulated that he was ineligible to possess a firearm. But over Warren's objection, the district court allowed police to testify that as part of their investigation, they discovered that in 2005, Warren was convicted of ineligible person in possession of a firearm. Warren challenges the admission of this testimony.

This court reviews the district court's decision to admit "evidence of other crimes, wrongs, or acts for an abuse of discretion." *State v. Welle*, 870 N.W.2d 360, 365 (Minn. 2015). We will affirm the district court unless Warren meets his burden to "show that the district court abused its discretion by admitting the evidence and that the erroneous admission was prejudicial." *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014). An erroneous admission is prejudicial when there is "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Fardan*, 773 N.W.2d 303, 320 (Minn. 2009) (quotation omitted).

Evidence of other crimes, wrongs, or acts is not admissible to prove bad character or a propensity to commit the charged crime. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). But such evidence, also referred to as *Spreigl* evidence, may be admissible for other, limited purposes. *Fardan*, 773 N.W.2d at 315–16 (discussing *State v. Spreigl*, 139 N.W.2d 167, 171 (Minn. 1965)). These purposes include evidence offered as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* at 316 (quoting Minn. R. Evid. 404(b)). As our supreme court has stated:

"We believe that generally in a prosecution for being a felon in possession of a weapon the defendant should be permitted to remove the issue of whether he is a convicted felon by stipulating to that fact," but "the door should be left open so that in appropriate cases where the probative value of the evidence outweighs is potential for unfair prejudice, the evidence may be admitted." *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984).

In determining the admissibility of *Spreigl* evidence, the district court must ensure that (1) the state has given notice of its intent to admit the evidence; (2) the state has clearly indicated what the evidence will be offered to prove; (3) there exists clear and convincing evidence that the defendant participated in the prior act; (4) the evidence is relevant and material to the state's case; and (5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant. Minn. R. Evid. 404(b); *see also Ness*, 707 N.W.2d at 685–86. Warren challenges only the last two requirements.

Relevance and materiality

Warren argues that the prior conviction was neither relevant nor material to the current offense because he stipulated that he was ineligible to possess a firearm and the previous conviction had no bearing on his defense presented at trial. We disagree. To determine the relevance and materiality of *Spreigl* evidence, courts consider "the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place or modus operandi." *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998) (quotation omitted). Here, Warren made various statements to police suggesting that he believed that his possession of the shotgun was legal. Warren also testified at trial that he "Googled" whether or not he

could lawfully possess the shotgun. Evidence of Warren's prior conviction of prohibited person in possession of a firearm was relevant and material to Warren's knowledge that he was prohibited from possessing firearms, and to rebut his claim that he made a mistake.

Risk of unfair prejudice

Warren contends that the probative value of the *Spreigl* evidence was outweighed by its risk of unfair prejudice. But unfair prejudice "is not merely damaging evidence, even severely damaging evidence; rather unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). Although the evidence of Warren's prior conviction for prohibited person in possession of a firearm may have been particularly damaging in light of the similarity to the current offense, nothing in the record indicates that the evidence persuaded by illegitimate means. Moreover, the prosecutor mentioned the prior conviction only briefly. And the district court mitigated any potential for improper use of the evidence by providing two cautionary instructions to the jury, one before the state introduced the evidence, and one before the court submitted the case to the jury. *See State v. DeWald*, 464 N.W.2d 500, 505 (Minn. 1991) (stating that "the potential for prejudicial impact from the *Spreigl* evidence [is] arguably lessened by the [district] court's . . . cautionary instructions to the jury"). Accordingly, the district court did not abuse its discretion by concluding that the probative value of the *Spreigl* evidence is not outweighed by a risk of unfair prejudice, and in admitting evidence of Warren's prior conviction of ineligible person in possession of a firearm.

Prejudice

Finally, even if Warren were able to demonstrate that the district court abused its discretion by admitting the *Spreigl* evidence, he is unable to demonstrate that there is "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Fardan*, 773 N.W.2d at 320 (quotation omitted). Officer Miles testified at trial that (1) he observed Warren carrying the shotgun underneath the blanket; (2) after he lost sight of Warren during his chase of Warren, he heard the shotgun "rack," as if a round was "being loaded into it"; and (3) he subsequently spotted Warren as he was climbing over a fence, and heard the "shotgun hit the ground" when Warren threw it and the blanket over the fence. The state also presented evidence that police recovered a shotgun at the location where Warren climbed the fence and that the shotgun had Warren's fingerprints on it. Moreover, Officer Andrew Carlson testified that Warren admitted to him that the shotgun was his, and police discovered ammunition matching the type of shotgun at issue in this case in Warren's vehicle. And the district court provided the jury with two cautionary instructions, one before the state introduced the evidence, and one before the court submitted the case to the jury, which reduced the risk that the jury misused the evidence as propensity evidence. *See Welle*, 870 N.W.2d at 366 (explaining that appellate courts "presume that the jury followed these cautionary instructions"). Although Warren contends that the court's cautionary instruction lacked "any explanation . . . of the purpose for which the jury could consider the evidence of Warren's 2005 conviction," the record indicates that Warren did not request any specific language. Nor does Warren cite any caselaw to

support a proposition that the lack of any explanatory language in a cautionary instruction is prejudicial. We conclude that Warren is not entitled to a new trial.

Juror inquiry

Warren challenges the district court's ruling that prohibited him from inquiring about potential jurors' biases against individuals with mental illness. "[District] court decisions relating to the conduct of voir dire will not be overturned absent an abuse of discretion." *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001).

The United States and Minnesota Constitutions guarantee the right to a trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "This right includes the ability to conduct an adequate voir dire to identify unqualified jurors," *Greer*, 635 N.W.2d at 87 (quotation omitted), the purpose of which is "to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges," Minn. R. Crim. P. 26.02, subd. 4(1). But district courts may restrict or prohibit repetitious, irrelevant, or improper questions during voir dire. *Greer*, 635 N.W.2d at 87.

The district court disallowed Warren's voir dire pertaining to mental illness after finding that the questioning "moved well beyond any bias and was moving over into sympathy, something the jury will be instructed they are not to apply in their decisions." Warren concedes that he did not raise a mental-illness defense at trial. Because Warren did not raise a mental-illness defense, questions during voir dire regarding biases against people with mental illness could suggest that Warren had diminished culpability for his actions, a defense not recognized in Minnesota. *State v. Mills*, 562 N.W.2d 276, 285 (Minn. 1997) (stating that "Minnesota does not recognize the defense of diminished

responsibility"). Moreover, Warren provides no specific argument in his principal brief explaining why the district court's decision was an abuse of discretion. We conclude that the district court did not abuse its discretion by disallowing Warren's voir dire inquiry about mental illness.

Affirmed.