IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. James Lawrence Hall, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080460-CA F I L E D (September 3, 2009) 2009 UT App 243

Second District, Ogden Department, 081900281
The Honorable Pamela G. Heffernan

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake City, for Appellee

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Before Judges Greenwood, Thorne, and McHugh.

THORNE, Associate Presiding Judge:

James Lawrence Hall appeals his conviction for unauthorized control of a vehicle, a third degree felony, see Utah Code Ann. § 41-1a-1314 (2005). We affirm.

On appeal, Hall argues that the district court erred in denying each of his three mistrial motions and that, cumulatively, these denials deprived him of a fair trial and require the reversal of his conviction. "The decision to grant or deny a mistrial . . . rests within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion." State v. Calliham, 2002 UT 86, ¶ 42, 55 P.3d 573 (omission in original). "Because a district judge is in an advantaged position to determine the impact of courtroom events on the total proceedings," State v. Allen, 2005 UT 11, ¶ 39, 108 P.3d 730, we will not disturb a ruling denying a mistrial unless it "'is plainly wrong in that the incident so likely influenced the jury that the defendant cannot be said to have had a fair trial,'" id. (quoting State v. Wach, 2001 UT 35, ¶ 45, 24 P.3d 948). Similarly, Hall's cumulative error argument also prevails only if he can establish a likelihood that he was denied a fair trial. See State v. Otterson, 2008 UT App 139, ¶ 25, 184 P.3d 604 ("[W]e will only reverse under the cumulative error doctrine

if the cumulative effect of the several errors undermines our confidence that [the defendant] had a fair trial." (internal quotation marks omitted)).

Hall moved for a mistrial after each of three separate incidents that occurred during his trial. First, the victim made multiple references to Hall having a "warrant." Second, one of the investigating detectives identified his duty assignment by stating that "currently I'm in the fraud division." Finally, another detective testified that she had heard that Hall "may be heading towards Missoula." Hall argues that, particularly when considered in combination, the warrant and fraud division comments led the jury to conclude that Hall had been involved in fraudulent activity. Hall also argues that the reference to Missoula, Montana, was inadmissable hearsay that unfairly undercut his defense theory--that he had the victim's permission to drive the vehicle to Pocatello, Idaho, where he was arrested. Looking at these events in the full context of how they occurred, we are not convinced that Hall was denied a fair trial.

The first incident involved the victim's six total references to Hall having a warrant. All of the references were made in a single line of questioning seeking to elicit the victim's efforts to retrieve her vehicle, including her contacts with police. Apparently mindful that two previous hearsay objections had been sustained, the witness responded to a question about police contact with her concerns that "I can't tell you what the officer told me" and "I don't know how to do this without--." However, the State continued its line of questioning, eliciting testimony that the witness had spoken to police on the day that Hall had taken her vehicle and received certain instructions from them. The State then asked, "[W]hat did you do the following morning to try to locate your car?" The witness responded, "We did call--well, the officer told me there was a warrant out." Hall immediately objected, and the district court sustained the objection without having Hall explain the grounds therefor.

The same scenario then played out again and again, with the district court sustaining Hall's bare objections to the witness's various warrant references, including "I found out that yes, there was [a warrant]" and "once I found out that there was a warrant." Finally, Hall's counsel sought a sidebar where, outside the presence of the jury, Hall moved for a mistrial. The district court denied Hall's motion but instructed the witness not to refer to the warrant at all in further questioning. Upon the jury's return, the district court instructed it,

> [T]here was some statement made about some kind of warrant and that's--I'm going to

> instruct you at this time that that--that any issue regarding that has not been proven, has not been substantiated, it's not evidence, it's not relevant. And it's just to be totally disregarded by you. Is everybody able to follow that instruction? Okay, great.

The State's questioning continued, and the witness did not mention the warrant again.

The next incident involved a detective's testimony that identified the detective as being assigned to his department's fraud unit. Responding to introductory questions about his occupational experience, the detective stated that he was "a detective with the major crimes unit," had been in law enforcement twenty-five years with nine years in the major crimes unit, and had "done a variety of jobs between misdemeanor crimes to burglaries to crimes against person and currently I'm in the fraud division." Hall objected and sought a sidebar, the jury was excused, and Hall moved for a mistrial. The district court denied the motion but admonished the State not to elicit testimony about fraud charges or investigations. The jury returned and questioning continued without further reference to the detective's fraud division assignment. No curative instruction was sought, and none was given.

In the final incident, another detective testified about her efforts to track down the missing vehicle. In response to the question "[W]hat did you do to try to track that vehicle?", the detective stated

> I started trying to find the location of [Hall] and the vehicle. Through the course of the investigation I learned that he may be heading towards Missoula. I notified Missoula police to look for the vehicle and put out an attempt to locate the vehicle and Mr. Hall. After I made contact there I learned that Mr. Hall and the vehicle were in Pocatello, Idaho.

Hall objected to this testimony, and the jury was removed from the courtroom again. Hall moved for a mistrial, and the district court denied Hall's motion. The district court and the parties agreed that the detective should make no further reference to Montana, and she did not do so. The State proposed a curative instruction, but Hall appeared to oppose that instruction on the ground that it would unduly emphasize the comment. In any event, no curative instruction was given.

Hall has not demonstrated that, singularly or in combination, the three incidents complained of influenced the jury such that Hall "cannot be said to have had a fair trial." See State v. Allen, 2005 UT 11, ¶ 39, 108 P.3d 730. We agree with the State that because the victim testified to learning of the warrant only after complaining that Hall had taken her car, the jury would most likely assume that the warrant was related to the crime charged rather than to other crimes. Further, the district court gave a curative instruction and Hall has failed to demonstrate that, taken in context, the warrant comments were so prejudicial as to defeat the mitigating effect of the curative instruction. Cf. Taylor v. State, 2007 UT 12, ¶ 115, 156 P.3d 739 (addressing curative instructions in the context of comments made during closing arguments).

We also disagree with Hall's contention that the victim intentionally repeated the warrant reference to prejudice Hall. Rather, it appears that the victim was confused by the continuing nonspecific objections to her testimony and was attempting to conform her testimony to prior hearsay rulings by avoiding stating that she had been told about the warrant by any particular person. Once she was instructed that any reference to the warrant was improper, she did not mention the warrant again.

As to the fraud division comment, the district court found "no insinuation" to the comment and additionally noted that "for all this jury knows auto theft could be considered fraud too." We agree with the district court and additionally note that the detective's testimony was that he was "currently" assigned to the fraud division. To the extent the jury saw anything anomalous to a fraud detective working on a vehicle theft case, it would be reasonable to assume that the detective had recently been assigned to the fraud division and had some other assignment at the time he investigated Hall's crime. Thus, even in light of the prior references to Hall's warrant, we are not convinced that the jury drew any unfair inferences from the detective's introductory comments.

Finally, as to the Missoula comment, Hall's argument largely relies on his characterization of the comment as inadmissible hearsay. See generally Utah R. Evid. 801 (defining hearsay); id. R. 802 (disallowing hearsay as evidence). We are not persuaded that the comment was indeed hearsay because it appears to have been offered to explain the detective's investigation strategy rather than for the "truth of the matter asserted"--i.e., that Hall may actually have been heading towards Missoula. See id. R. 801(c). But, in any event, we see no unfairness resulting from the isolated reference to Missoula.

We cannot conclude that these incidents, even in combination, led the jury to unfairly consider that Hall might have been involved in other criminal activities or that he may have intended to take the victim's vehicle to Montana. Because we conclude that the incidents complained of did not deprive Hall of a fair trial, the district court's mistrial rulings did not exceed the bounds of its discretion, and we affirm Hall's conviction.

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William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

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Pamela T. Greenwood,
Presiding Judge

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Carolyn B. McHugh, Judge