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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0159**

State of Minnesota,
Respondent,

vs.

Romeo Jaikissoon Singh,
Appellant.

**Filed January 21, 2014
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CR-10-8444

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

Anthony C. Palumbo, Anoka County Attorney, Donald LeBaron, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction of third-degree controlled substance crime, arguing that the district court erred by denying his motion to suppress evidence

discovered during a warrantless search of his car, admitting *Spreigl*-type evidence without notice, and denying his motion for a mistrial. Appellant also asserts that he was denied effective assistance of counsel. We affirm.

FACTS

In August 2010, J.W. was arrested for possession of drugs while on probation from an earlier drug charge. J.W. offered to assist Officer Zachary Johnson of the Lino Lakes Police Department by doing controlled purchases of drugs in exchange for avoiding prosecution. On October 22, 2010, J.W. called appellant Romeo Jaikissoon Singh on a speaker telephone while Johnson listened and recorded the telephone conversation. J.W. asked Singh if J.W. could buy 20 OxyContin 40 tablets at a cost of \$25 each. J.W. told Singh that he had the money to purchase the tablets and would pay Singh what he owed him from a previous transaction. J.W. elicited the following information: (1) Singh was willing to sell him 20 OxyContin 40 tablets; (2) Singh would leave immediately to meet him at the Subway store in Lino Lakes; and (3) Singh would be driving a green Ford Taurus. During the conversation, Singh told J.W. that the price per tablet had increased because the person from whom he acquired the tablets had raised his price. J.W. told Johnson that Singh would have the pills in a bottle on his person.

Johnson, who intended to attempt to stop Singh for a traffic violation to preserve J.W.'s anonymity, parked near the Subway in a marked squad. Another officer informed Johnson that the green Taurus was headed toward him. Johnson observed that the driver was Singh, whom he identified from a photograph, and that Singh was not wearing a seatbelt. Johnson stopped him and initially treated the situation as a routine traffic stop.

Johnson described Singh as “standoffish” and nervous, more so than the usual person stopped for a traffic violation. Because of this, Johnson asked him to get out of his car for reasons of officer safety. After checking Singh’s license and registration, Johnson asked Singh where the oxycodone pills were. Singh denied any knowledge of the pills; Johnson frisked him and searched the passenger part of the vehicle but did not find any pills. Johnson opened and searched the trunk and found 20 OxyContin 40 pills in a bag of garbage.

At trial, Singh’s wife, R.S., testified that the OxyContin 40 pills were hers, and she had discarded them in the trash before entering treatment on October 10, 2010. Singh did not testify. The jury found Singh guilty of one count each of third-, fourth-, and fifth-degree controlled substance crime. This appeal followed.

D E C I S I O N

Warrantless search

Singh challenges the district court’s pretrial order refusing to suppress evidence of oxycodone pills found in the trunk of his car. Because Singh has not challenged the district court’s findings, we review the district court’s legal conclusion that Johnson had probable cause to search Singh’s trunk de novo. *State v. Flowers*, 734 N.W.2d 239, 247-48 (Minn. 2007).

Warrantless searches are per se unreasonable under both the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. 1, § 10; *see State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). In *United States v. Ross*, the Supreme Court considered whether a warrantless search of an automobile was permissible if

supported by probable cause. 456 U.S. 798, 809, 102 S. Ct. 2157, 2164-65 (1982). The Court noted that “a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.” *Id.* The Court stated, “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *Id.* at 825, 102 S. Ct. at 2173. “[T]he probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime.” *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (quotation omitted).

The district court found the following facts: (1) Johnson received a tip from J.W., a confidential informant who on two prior occasions provided information that led to the arrest of multiple people; (2) Johnson listened to both sides of the conversation between J.W. and Singh; (3) Singh and J.W. specifically discussed a particular type of oxycodone, a quantity of pills, a price for the pills, a meeting site, and a description of the car Singh would be driving; (4) Johnson viewed a photo of Singh before leaving and J.W. identified the person in the photo as Singh; (5) Johnson and another officer saw Singh’s car in the area of the meeting place and Johnson recognized Singh as the driver; (6) Singh appeared “unusually upset and agitated about the stop;” and (7) when Singh denied knowledge of any pills, Johnson searched him and then the passenger part of the vehicle before opening the trunk.

Singh questions whether J.W. was a reliable informant who gave a reliable tip on which Johnson could base probable cause, but Johnson heard both sides of the

conversation in which the drug transaction was arranged. The details of the conversation were independently confirmed when Johnson viewed the identified suspect, in the identified car, approaching the transaction site, within a very short time after the telephone conversation. Under these circumstances, Johnson had an “honest and strong” suspicion that Singh would have oxycodone pills either on his person or in his car. *See United States v. Webster*, 625 F.3d 439, 445 (8th Cir. 2010) (under similar facts, sustaining search of a car based on the “automobile exception, which authorizes a search of any area of the vehicle in which the evidence might be found if probable cause exists”).

On these undisputed facts, Johnson had probable cause to believe that he would discover evidence of a crime in Singh’s car; therefore, the district court did not err by refusing to suppress evidence discovered during the warrantless search of Singh’s car.

Prior drug transaction testimony

Singh argues that the district court abused its discretion by permitting J.W. to testify about a previous drug sale by Singh. Before trial, the district court prohibited testimony about Singh’s prior incidents of drug dealing. But in her opening statement, defense counsel stated that the evidence would include testimony about “some money, hundreds of dollars as a matter of fact” that J.W. owed to Singh and suggested that Singh agreed to meet J.W. solely because he hoped to collect this money from J.W. She further stated that Singh would testify of other “plausible alternatives” to explain why he agreed to meet J.W. Immediately after this statement, the prosecutor asked in a sidebar conference that J.W. be permitted to state why he owed Singh money. The prosecutor

argued that defense counsel had “opened the door” by alluding to the large debt. Although defense counsel termed this a “back-door means of getting in *Spreigl* [evidence],” she made no objection. The district court agreed to permit the prosecutor to ask J.W. if he owed Singh money and what it was for.

We review the district court’s evidentiary rulings for an abuse of discretion. *State v. Valtierra*, 718 N.W.2d 425, 434 (Minn. 2006). Generally, evidence of another crime or prior bad act is not admissible to prove the character of a person, but may be admissible for certain limited purposes. Minn. R. Evid. 404(b). In order to use such evidence, a prosecutor must give notice of intent to use the evidence, indicate what evidence will be offered to prove the prior act with clear and convincing evidence, explain why the evidence is relevant, and demonstrate that the prejudicial effect of the evidence is outweighed by its probative value. *Id.* These procedures were not followed here. But “immediate-episode evidence” is an exception to rule 404(b) that permits the state to “prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes.” *State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009). The district court did not abuse its discretion by permitting J.W. to explain that the money owed was part of a continuing relationship with Singh.

The state may also respond when a defendant “opens the door” by “introducing certain material [that] creates in the opponent a right to respond with material that would otherwise have been inadmissible.” *Valtierra*, 718 N.W.2d at 436 (quotation omitted).

This doctrine is described as “one of fairness and common sense” that precludes one party from having an unfair advantage over another and prevents the factfinder from being “presented with a misleading or distorted representation of reality.” *Id.* (quotation omitted). The district court here concluded that defense counsel had “opened the door” by stating that J.W. owed Singh hundreds of dollars and arguing that Singh was merely trying to collect a debt. The district court, which limited the state to two questions and instructed that the state was not to raise the topic again, did not abuse its discretion by permitting this limited response.

Even if the district court abused its discretion by permitting the state to pose the two questions, defense counsel did not object and our review is under the plain-error standard. *See State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (stating that review of unobjected-to error is for plain error; defendant must show “(1) an error, (2) that is plain, and (3) affects substantial rights;” reviewing court must address the error if it affects the fairness and integrity of the judicial proceedings).

Singh has not demonstrated that the district court committed plain error or that his substantial rights were affected in light of other trial testimony. In the recorded telephone call that was played for the jury without objection, Singh refers obliquely to prior transactions by telling J.W. that he had to raise the price because his supplier raised the price of the pills. During cross-examination, defense counsel permitted J.W. to reply that he owed Singh money “for Oxys from a prior incident.” Defense counsel also cross-examined J.W. closely about his description of how Singh carried the pills, asking him if he said Singh “always” carried them in his pocket, suggesting that J.W. had knowledge

about Singh. Although defense counsel was trying to cast doubt on J.W.'s credibility, the effect was to suggest that J.W. and Singh had prior dealings. The district court's decision to permit the prosecutor to ask J.W. why he owed Singh money was not an abuse of discretion.

Ineffective assistance of counsel

Singh alleges that his right to a fair trial was compromised by his defense counsel's ineffective assistance. Singh points to defense counsel's remark in her opening statement:

Mr. Singh is also going to come before you and testify. I want you to remember that he has no obligation to do that and he doesn't have to prove his innocence to you. It is the State's burden to prove their case beyond a reasonable doubt. But I would ask you that as you listen to the evidence and testimony, think of the other plausible explanations, think of the other possibilities[.]

Singh argues that his defense counsel was ineffective when she told the jury that he would testify, despite the fact that ultimately he chose not to testify.

A defendant is guaranteed reasonably effective assistance of counsel by the Sixth Amendment to the United States Constitution. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). We review a claim of ineffective assistance of counsel de novo, as a mixed question of fact and law. *Id.* An appellate court determines, based on the totality of the evidence, whether (1) "counsel's performance fell below an objective standard of reasonableness;" and (2) there was a reasonable probability that the outcome of the trial would have been different but for counsel's errors. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). There is a "strong presumption . . . that counsel's performance fell within

a wide range of reasonable assistance.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). The defendant has the burden of proof on a claim of ineffective assistance of counsel. *Id.*

Counsel’s reference to Singh’s testimony was limited and quickly followed by the statement that he did not have to prove his innocence. The explanation that Singh only wanted to collect a past debt from J.W. was presented through cross-examination and an explanation for the presence of the pills in the car was made through the testimony of Singh’s wife. Thus, Singh’s defenses or alternative theories were presented to the jury. Singh has not sustained his burden of showing that he was prejudiced by defense counsel’s limited reference to his testimony.

Mistrial

We review a district court’s denial of a motion for a mistrial for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). The district court is in the best position to judge whether an event has occurred that “creates sufficient prejudice to deny the defendant a fair trial.” *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). The district court should not grant a mistrial “unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the [mistrial] motion had not occurred.” *Id.*

Singh argues that the district court abused its discretion by refusing to grant him a mistrial. On redirect, the prosecutor asked J.W. if he had seen drugs on Singh on the offense date and why he had not. J.W. responded that he hadn’t because he talked to Singh over the telephone and then stated, “And as far as my recollection is that he got

pulled over or something happened in the meantime where they intercepted him and the rest is history. Now, as far as I know that he got out of the car and put them in the trunk. So as to questions that [defense counsel's] asking me about, how I would - -." At this point, defense counsel objected and the district court instructed the jury to disregard J.W.'s statements as to what Singh did, remarking that "[J.W.] was not there at that time and has no personal knowledge of what happened at the stop."

J.W.'s remark was limited and offhand; the district court promptly instructed the jury to disregard it and reminded the jury that J.W. had no personal knowledge of the stop. There is no reasonable probability that the outcome of Singh's trial would have been different absent J.W.'s remarks and thus the district court did not abuse its discretion by denying Singh's mistrial motion.

Affirmed.