STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0285

State of Minnesota,
Respondent,

vs.

Ian Anderson,
Appellant.

Filed June 2, 2009
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. CR-07-030217

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, C-2000 Government Center, 80 South Eighth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Theodora K. Gaïtas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Gerardo Alcazar, Special Assistant State Public Defender, Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appealing from his conviction of possession of a firearm by an ineligible person, appellant argues that the district court erred by denying appellant's motion to suppress evidence that was discovered in the execution of a no-knock search warrant and abused its discretion by denying appellant's motion for a mistrial. Finding no error or abuse of discretion on the part of the district court, we affirm.

FACTS

In May 2007, Wright County Sheriff's Deputy Kevin Olson applied for a warrant to search a home located in Minneapolis and its occupants, including appellant Ian Anderson, for controlled substances and drug paraphernalia. Deputy Olson's affidavit supporting the application described the March 2006 warranted search of Anderson's previous residence in which officers detained Anderson and another person, and discovered marijuana and marijuana-growing equipment. The affidavit also provided information that (1) Anderson was recently at the courthouse smelling of fresh marijuana; (2) driver's license records listed Anderson's address as the same as the home to be searched; (3) utility records indicated that recent power consumption at the home was greater than in previous years; and (4) a search of the garbage at the home produced plant material that field-tested positive for marijuana.

The warrant application sought authorization for an unannounced entry. In support of this request, Deputy Olson's affidavit stated:

> On 3-3-2006 Agents executed a Search Warrant at the residence of Ian Anderson and located loaded firearms in proximity to individuals who were at the residence. Your affiant knows that Ian Anderson is a convicted felon and is ineligible to possess or own any firearms. Your affiant requests a no-knock warrant to protect the safety of approaching officers so that individuals inside of the residence are unable to plan a defense or arm themselves.

The district court granted the no-knock search warrant, and it was immediately executed. After securing Anderson and his brother, officers found (1) a loaded handgun on the shelf and mail addressed to Anderson on top of a coffee table in the living room; (2) a file box with Anderson's tax records and mail addressed to him in one of the bedrooms; (3) shotgun shells, a "banana-style magazine" for a rifle, and rifle ammunition in the same bedroom; and (4) a shotgun, a pistol, a rifle, and magazines for each weapon in the hallway closet.

Anderson was charged with possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(b) (2006), and fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2006).[1] The district court denied Anderson's pretrial motion to suppress the fruits of the search, finding that (1) the search warrant was issued upon probable cause, and (2) the no-knock provision was justified because Anderson was known to have possessed firearms and to have them accessible to occupants of his residence, thus presenting a legitimate threat to officer safety.

[1] The state dismissed the controlled-substance charge prior to trial because the plant material found during the search had not been sent to a laboratory for testing.

A jury trial was held in October 2007. The state had noticed its intent to introduce evidence underlying Anderson's previous conviction as *Spriegl* evidence,[2] but near the conclusion of the state's case-in-chief, the district court ruled it out. An improvident reference to Anderson's possession of firearms during a previous encounter with police occurred during Deputy Olson's testimony. The district court sustained the immediate objection, directed the jury to disregard the statement, and denied Anderson's subsequent motion for a mistrial. The jury found Anderson guilty of possession of a firearm by an ineligible person, and Anderson was sentenced to 60 months in prison. This appeal followed.

D E C I S I O N

I.

When the material facts are not in dispute, this court independently reviews whether a no-knock entry was justified. *State v. Barnes*, 618 N.W.2d 805, 810 (Minn. App. 2000). The showing required for a no-knock entry "is not high." *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997). "In order to justify a 'no-knock' entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *State v. Martinez*, 579 N.W.2d 144, 146 (Minn. App. 1998) (quoting *Richards*, 520 U.S. at 394, 117 S. Ct. at 1421), *review denied* (Minn. July 16, 1998). Establishment of reasonable suspicion does not require an airtight case that

[2] *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965).

knocking and announcing would be dangerous or would inhibit effective investigation. *State v. Wasson*, 615 N.W.2d 316, 322 (Minn. 2000). Rather, it requires something "more than an unarticulated hunch" but less than an "objectively reasonable belief." *Id.* at 320-21. This court "may accept evidence of a threat to officer safety of a less persuasive character when the officer presents the request for a no-knock warrant to a magistrate." *Id.* at 321.

Anderson argues that (1) the prior incident was too far removed to bear a relation to whether Anderson would be armed when this warrant was executed; (2) the district court relied on non-particular facts in issuing the no-knock warrant; and (3) Deputy Olson failed to present particularized facts that Anderson was likely to use a weapon based on a history or propensity for violence.

Age of prior incident

Anderson cites an Ohio Court of Appeals opinion holding that an individual's possession of a firearm in 1996 bore little connection to whether the individual would be armed during execution of a 1998 warrant. *State v. King*, 736 N.E.2d 921, 925 (Ohio App. 1999). But there, the search warrant did not contain a no-knock provision, and the appellate court determined that the unauthorized entry was not supported by reasonable suspicion because the warrant application made no reference to the two-year-old search and stated no cause for concern about officer safety. *Id.* at 923 n.2, 925. Here, in applying for the search warrant, Deputy Olson explicitly sought no-knock authority and put forth evidence supporting a reasonable suspicion of danger.

In *Wasson*, the Minnesota Supreme Court held that there was a sufficient basis for a no-knock provision when weapons and drugs had been found at the suspect's residence during the execution of a search warrant three months earlier and there was evidence that the owner of the residence continued to sell drugs. 615 N.W.2d at 319-21. Here too, drugs and weapons were found in a previous search involving Anderson, who was named in the warrant, and evidence from a search of the garbage and utility records indicate that drugs were being used and possibly grown at the residence. Although the time lapse here is longer than the three months in *Wasson*, the showing required for a no-knock entry "is not high," *Richards*, 520 U.S. at 394, 117 S. Ct. at 1421, and this court "may accept evidence of a threat to officer safety of a less persuasive character when the officer presents the request for a no-knock warrant to a magistrate." *Wasson*, 615 N.W.2d at 321. Here, the prior incident was less than two years old and, given the similarity of the circumstances to those reasonably anticipated in the execution of the current warrant, was not too far removed to support the no-knock authorization.

Particularized facts

The information included in the warrant application here is sufficient to justify the issuance of a no-knock warrant. In the application, Deputy Olson does not rely on "general terms . . . with no factual nexus to particularized facts . . . ." *See Garza v. State*, 632 N.W.2d 633, 638 (Minn. 2001) (requiring a particularized showing of "dangerousness, futility, or destruction of evidence" and holding that a general statement is insufficient). Nor does the affidavit depend on "boilerplate language," which has been found to be insufficient to satisfy the reasonable suspicion standard. *State v. Bourke*, 718

N.W.2d 922, 928 (Minn. 2006) (citing *Richards*, 520 U.S. at 394, 117 S. Ct. at 1421-22). Rather, Deputy Olson sets forth extensive details regarding the 2006 encounter with Anderson, including the drugs found, the presence of Anderson, and the specific location of various firearms that were discovered during the execution of the warrant.

The district court relied on the information detailed in the affidavit that Anderson was known to have possessed firearms and had kept them close at hand at the time of the previous search involving drugs. The affidavit also included information supporting the presence of drugs and drug-production activities. This evidence is specific to the circumstances of this particular case and demonstrates a link between Anderson's involvement with drugs and the presence of weapons. The previous circumstances were similar to those likely to be faced by officers in the execution of the current search warrant, as both searches involve suspected drug use or production. Thus, we are satisfied that the warrant application contained particularized facts supporting a reasonable suspicion that knocking and announcing would jeopardize officer safety.

History or propensity for violence

Anderson contends that Deputy Olson was required to present particularized facts that he was likely to use weapons based on a history or propensity for violence, citing *In re D.A.G.*, 474 N.W.2d 419, 421-22 (Minn. App. 1991) (stating that "there was no prior evidence that the suspect, or anyone in the house, even possessed a weapon, let alone that they were likely to use it against the police"), *aff'd*, 484 N.W.2d 787 (Minn. 1992). However, Anderson's contention is without merit.

In *D.A.G.*, we held that there is no blanket exception for drug cases, and a good-faith belief that knocking and announcing would increase danger or result in destruction of evidence "cannot be justified by a general assumption that certain classes of persons subject to arrest are more likely than others to resist arrest, attempt to escape, or destroy evidence." *Id*. at 421. But *D.A.G.* does not stand for the proposition that the affidavit *must* include information showing that the suspect is likely to use a weapon. Instead, *D.A.G.* simply illustrates that there must be evidence to support a reasonable suspicion of danger beyond the mere presence of drugs.

Similar to *Wasson*, Deputy Olson described specific facts about a specific person—that weapons had been found in a prior search involving Anderson and that the search was linked to drug activity—leading the deputy to be concerned about officer safety. *See* 615 N.W.2d at 321 (finding that "the officer could point to a particular fact about this residence—that coupled with ongoing drug activity numerous weapons were found there three months previously—that led him to suspect that officer safety might be jeopardized"). Because there is no requirement that the warrant application present particularized facts regarding a history or propensity for violence, the application here does not fail.

The warrant application upon which the district court relied in issuing a no-knock warrant puts forth particularized facts that support a reasonable suspicion that knocking and announcing would endanger officers. Thus, we affirm the district court's denial of Anderson's motion to suppress evidence discovered in the execution of the search warrant.

II.

At trial, Deputy Olson was asked, "Why did you contact the Minneapolis police?" To which he replied, "Due to the fact that—our previous contacts with Mr. Anderson, we had located firearms." Anderson's attorney immediately objected and, after a discussion at the bench, the district court instructed the jury: "There was an objection to the last statement. That objection is sustained and the remark will be stricken. That means you can't consider that." During the next recess, Anderson moved for a mistrial based on the deputy's testimony. The district court responded:

> The deputy's statement was very brief and did not really go to the level of an investigation and certainly did not rise to the level of being a Spreigl introduction or statement of prior bad acts.
>
> The deputy really only indicated . . . very briefly, that he knew something about Mr. Anderson possessing a weapon, did not go any further into the issue of possession, did not indicate that prior possession constituted a bad act [n]or that there was in fact anything illegal about it. The prompt objection by defendants and quick agreement by the State stopped the deputy's testimony before anything damaging could come in.
>
> I did sustain the objection to the testimony. The jury was informed that the testimony was stricken and that they could not consider that testimony.

Anderson argues that Deputy Olson's statement was highly prejudicial and that the district court abused its discretion by denying Anderson's motion for a mistrial. This court reviews a district court's denial of a motion for a mistrial for an abuse of discretion. *State v. Spann*, 574 N.W.2d 47, 52 (Minn. 1998). "[A] mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different" if

the event that prompted the motion had not occurred. *Id.* at 53 (citing *State v. Clobes*, 422 N.W.2d 252, 255 (Minn. 1998)). "[T]he district court is in the best position to evaluate whether prejudice, if any, warrants a mistrial." *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001). A district court does not abuse its discretion by denying a defendant's motion for a mistrial when the parties and the district court took steps to minimize any prejudicial effect of a prospective juror's remark. *Id.* at 729; *see also State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1991) (finding that no error existed when defense counsel immediately objected, district court sustained objection, and district court instructed jury to disregard witness's remark). We presume that a jury follows the district court's instructions. *Miller*, 573 N.W.2d at 675.

Here, the district court correctly noted that Deputy Olson's remark was brief and mentioned only that Anderson possessed a weapon at some point and that law enforcement had had previous contact with him. Firearm ownership or possession is not of itself a bad act, and there was no information given to the jury that the possession referred to was illegal. Moreover, other evidence was presented that Anderson had purchased a firearm in 2001, thus the jury was informed of Anderson's previous firearm possession independent of the challenged testimony.

Although the revelation that Anderson had previous encounters with law enforcement is more problematic, the comment was cursory. *See State v. Morgan*, 358 N.W.2d 448, 450 (Minn. App. 1984) (holding that testimony by officer that he told defendant he "was not investigating the reason he [appellant] was currently held in the Hennepin County jail" was a "slight error" and "was not sufficient to warrant a mistrial

and was harmless"). Moreover, Anderson's attorney immediately objected, and the district court sustained the objection. Without emphasizing the testimony, the district court gave an immediate curative instruction that the statement was not to be considered. The Minnesota Supreme Court has held that prejudice that may be created by inadmissible testimony may be effectively mitigated by the district court's instructions that the jury disregard the comment, as long as those instructions are not such that they draw attention to the witness's statement. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006); *see also State v. Muhkuk*, 736 N.W.2d 675, 689 (Minn. 2007) (holding that outcome of trial would not have been different without officer's comment because officer's "comment was brief (two words in nearly 1,000 pages of transcript), that the court sustained defense counsel's objection, and that the court gave a curative instruction that did not draw attention to the inadmissible statement").

Following our careful review of the entire record, we conclude that the testimony at issue was not likely to have changed the outcome of the trial because it was cursory, general, and mitigated effectively by the district court sustaining the immediate objection and giving a curative instruction that did not emphasize the testimony. Thus, the district court did not abuse its discretion by denying Anderson's motion for a mistrial.

Affirmed.