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FILED
January 7, 2016
Court of Appeals
Division I
State of Washington

NO. 73252-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CRYSTAL HUNTER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Was the defendant denied the right to a fair trial when the trial court struck a statement about the defendant having a warrant but denied the defendant's motion for a mistrial based on the stricken statement?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Crystal Hunter was charged with one count of taking a motor vehicle without permission in the second degree. CP 1. A motion in limine was made to exclude evidence of prior bad acts under Evidence Rule 609. 2/3/15 RP 26-27.

During the State's case in chief, Hunter objected when Deputy Copeland testified that he tried to confirm an unrelated warrant for Hunter. 2/4/15 RP 79. The trial court sustained the objection, and Copeland's testimony continued. 2/4/15 RP 80.

After the State rested its case, Hunter moved to strike Deputy Copeland's prior statement about the warrant and the State did not object. 2/4/15 RP 89-90. The trial court granted Hunter's motion. 2/4/15 RP 90. Hunter then moved for a mistrial. 2/4/15 RP 90. The trial court denied Hunter's motion for a mistrial. 2/4/15 RP

91. The trial court found that introduction of Deputy Copeland's statement was inadvertent and did not find that it was grounds for a mistrial. 2/4/15 RP 91.

The trial court gave the jury a limiting instruction to disregard Deputy Copeland's statement about Hunter having an outstanding warrant when they were deciding the case. CP 31. The jury found Hunter guilty of taking a motor vehicle without permission in the second degree as charged. CP 21.

2. SUBSTANTIVE FACTS

Jesus Ochoa's 1992 Honda Accord was stolen from his home and was missing for approximately 2 weeks until police located it. 2/4/15 RP 12, 16-17.

During the time that Ochoa's car was missing, Captain Brian Howard conducted a traffic stop of a Honda Accord that was speeding at night and did not have headlights or taillights on. 2/4/15 RP 33. At the time of the stop, Cpt. Howard came into contact with the male driver and Crystal Hunter, who was seated in the passenger's seat.

Cpt. Howard instructed the driver to turn the car off, and the driver did so by grabbing a screwdriver from the car floor and sticking it into the ignition. 2/4/15 RP 35. As the driver turned the car off, Cpt. Howard was informed by dispatch that the Honda Accord was stolen and the true registered owner of the car was Jesus Ochoa. 2/4/15 RP 36, 78.

Deputy Samuel Copeland responded as backup to Cpt. Howard and both men noted that the housing where the ignition sits in Ochoa's car was visibly damaged and dismantled. 2/4/15 RP 41, 63. Furthermore, when Ochoa retrieved his car from the police he noticed the ignition was broken and no longer functioned with his original car key as it used to. 2/4/15 RP 14-17.

At trial, Deputy Copeland testified about his specific involvement with Hunter and overall duties at the scene. 2/4/15 RP 69-87. At one point, the prosecutor was eliciting testimony from Deputy Copeland about his contact with Hunter and asked:

Q: And, so in -- once you had contact with the defendant, what did you do after that?

A: Um, after I had contacted her? I tried to confirm a- a unrelated warrant she had out of Renton.

Mr. Robinson: I would object.

The Court: Sustained.

2/4/15 RP 79-80. After the court sustained the objection, the prosecutor continued to ask Deputy Copeland questions. 2/4/15 RP 80. No motions regarding Deputy Copeland's statement were made until after the State rested its case. 2/4/15 RP 89-90.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE DEFENDANT'S MOTION FOR A MISTRIAL.

- a. The Trial Irregularity Did Not Deny Hunter A Fair Trial.

Hunter contends that the trial court violated her right to a fair trial by denying her motion for a mistrial after Deputy Copeland mentioned her warrant. This claim should be rejected. The court did not abuse its discretion by denying the motion, and the trial irregularity did not prejudice Hunter.

The trial court properly denied Hunter's motion for a mistrial. A mistrial is required only when a defendant has been so prejudiced by trial irregularity that only a new trial can ensure that

the defendant will be tried fairly. *State v. Johnson*, 124 Wn.2d 57, 76, 873 P.2d 514 (1994). A trial court's decision to deny a motion for mistrial is reviewed for an abuse of discretion. *State v. Jackson*, 150 Wn.2d 251, 276, 76 P.3d 217 (2003).

A trial court abuses its discretion in denying a motion for a mistrial only if its decision is manifestly unreasonable or based on untenable grounds. *State v. Allen*, 159 Wn.2d 1, 10, 147 P.3d 581 (2006). To determine whether a trial irregularity warrants a new trial, three factors will be considered: (1) the seriousness of the irregularity, (2) whether the testimony was cumulative of other evidence properly admitted, and (3) whether the irregularity could be cured by an instruction to the jury to disregard the remark or the testimony. *State v. Escalona*, 49 Wn. App. 251, 254, 742 P.2d 190 (1987) (citing *State v. Weber*, 99 Wn.2d 158, 165-66, 659 P.2d 1102 (1983)).

Hunter relies on *State v. Escalona*, 49 Wn. App. 251, 742 P.2d 190 (1987), to argue that the trial irregularity in this case was not cured by the court's instruction. But *Escalona* is distinguishable here.

In *Escalona*, the defendant was on trial for second degree assault with a deadly weapon, a knife. *Escalona*, 49 Wn. App at 252. Prior to trial, the court granted a defense motion in limine to exclude any discussion or reference to Escalona's prior conviction for the same crime. *Id.* However, during cross examination witness Phillipe Vela testified that he was scared of Escalona because "he has a record and has stabbed someone." *Id.* at 253. The defense immediately moved to strike the statement and then moved for a mistrial. *Id.* The trial court denied the motion for a mistrial.

On appeal, the court considered whether Vela's statement, when viewed against all the other evidence presented, prejudiced the jury so much that it denied Escalona his right to a fair trial.

In analyzing the issue, the appellate court found the statement to be extremely serious when considering the credible evidence against Escalona. *Escalona*, at 255. First, the irregularity of Vela's statement was serious because his testimony was a majority of the State's case and the testimony contained many inconsistencies. *Id.* Second, the court stated that Vela's statement was not cumulative of other properly admitted evidence. *Id.* Lastly,

the court determined Vela's statement was inherently prejudicial because the information it presented would likely stick in jurors' minds, since Escalona's prior conduct appears logically relevant even if it was not legally relevant. *Id.* at 256. The court also stated it would be extremely difficult for jurors to forget Vela's statement, and they would undoubtedly use the statement to improperly conclude that Escalona acted in conformity with his past. *Id.* For all of these reasons, the appellate court held that the trial court abused its discretion in denying Escalona a mistrial.

Here, the analysis under the first and third factors can be distinguished from *Escalona*. First, unlike Vela's reference to a specific crime committed by Escalona, Deputy Copeland did not reference any specific acts or crimes committed by Hunter. Rather, Deputy Copeland stated that he was trying to confirm an unrelated warrant, a statement which was vague at best. Deputy Copeland's statement did not go into detail about what the warrant was for, the status of a case, or if any charges were associated with the warrant.

The statement of Hunter's warrant could not be used by the jury to conclude that Hunter acted in conformity with prior acts. Unlike *Escalona*, Deputy Copeland's inadvertent mention of a warrant had no relation to the offense Hunter was on trial for. Vela's statement that Escalona had a record and stabbed someone was far more prejudicial in a case where the defendant was on trial for assaulting someone with a knife.

Most importantly, the trial court did not permit the testimony to which an objection was made. The court instead promptly sustained Hunter's objection and instructed the jury to disregard the testimony. "A trial court has wide discretion to cure trial irregularities resulting from improper witness statements." *State v. Gamble*, 168 Wn.2d 161, 177, 225 P.3d 973 (2010). One manner in which a trial court can address such an issue is to direct the jury as to the manner in which they are to consider or not consider such a statement, and juries are presumed to have followed the trial court's instructions. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007).

The trial court cured the trial irregularity in Hunter's case by giving the jury a limiting instruction to disregard Copeland's statement. The jury is presumed to follow the trial court's instruction and, therefore, is presumed to have disregarded Copeland's mention of the warrant when finding Hunter guilty in this case.

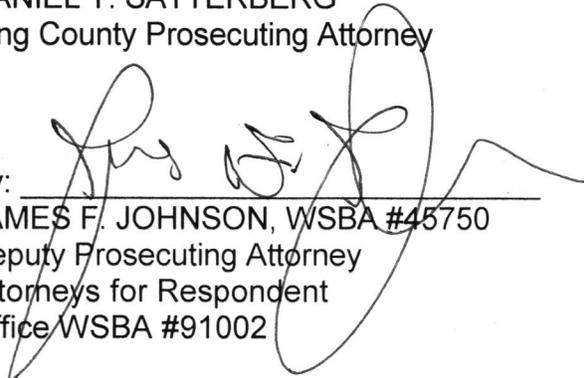
D. CONCLUSION

This is not a case in which nothing short of a new trial could ensure that Hunter was tried fairly. The trial court, therefore, properly denied Hunter's motion for a mistrial.

DATED this 6 day of January, 2016.

Respectfully submitted,

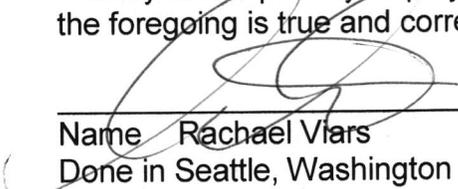
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kathleen A. Shea, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. CRYSTAL HUNTER, Cause No. 73252-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Rachael Viars
Done in Seattle, Washington

1/7/16

Date 1/7/16