

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13919
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEONON RICKY DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cr-00034-CEH-AAS-1

Before JORDAN, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

After a four-day trial, Leonon Davis was convicted of possessing a firearm as a convicted felon. He appeals his conviction, arguing the district court erred by not dismissing the indictment

against him, by denying his motion to suppress identification evidence, by admitting certain evidence at trial, and by denying his motion for a mistrial. After careful review, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The vehicle crash and Davis's arrest

Around 8:30 P.M. on December 1, 2022, Tampa police officers responded to a call about a nearby vehicle crash. On the way to the scene, they learned over the radio that someone involved in the crash was armed and firing a gun. The officers heard that the armed suspect was fleeing, and as they drove to the scene, they passed a man running toward them. After arriving on the scene and interviewing a witness, the officers retraced the path of the man they had driven past on the way to the scene and found a discarded gun. Meanwhile, another officer arrested Davis about a block away from the scene of the crash.

After Davis was arrested, the police asked the witness who had helped them find the gun if he could identify Davis as the man who had been carrying it. The witness told the officers that he could, and the officers asked him to make the identification on video so that they had a record of it. One officer explained to the witness that he should “walk over, just for the camera, [and] you say [if] it’s him or not.” Another officer explained that “then . . . it’s on camera, just positively say that was him.” The witness went with the officers to see Davis. Davis was on the ground in handcuffs and was “surrounded by multiple fire rescue paramedics.” An

24-13919

Opinion of the Court

3

officer shined a flashlight on Davis to “[m]ake it easier for the witness to see.” The witness identified Davis as the man who he’d seen holding the gun.

Pretrial proceedings

A federal grand jury indicted Davis for possessing a firearm as a convicted felon, in violation of 18 U.S.C. section 922(g)(1). Davis moved to dismiss the indictment, arguing that section 922(g) violated the Second Amendment, both facially and as applied to him. The district court denied the motion, citing our binding precedent holding that section 922(g) does not violate the Second Amendment. *See United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010).

Davis’s defense strategy was to argue that this was a case of mistaken identity. Before trial, Davis moved to suppress evidence of the witness’s identification of him, arguing that the identification procedure was unnecessarily suggestive, so the identification evidence it produced was unreliable. The district court held an evidentiary hearing on the motion. The witness who had identified Davis at the scene testified about hearing the crash, seeing Davis exit one of the vehicles with a gun, and later identifying him as the detained man. Davis cross-examined the witness who had identified him about the instructions from the police before the identification took place:

Q. Do you recall the officer telling you, just positively say it on the camera that that’s him?

A. Oh, to identify?

Q. Yeah.

A. That's correct.

On redirect examination, the government asked the witness if he could identify the man he had seen holding the gun. The witness identified Davis, who was present at the hearing. After the hearing, the district court denied Davis's motion to suppress the identification evidence, concluding that it was not unduly suggestive and was not otherwise unreliable.

Trial proceedings

At trial, Davis stipulated that he knew he was a convicted felon and focused on his mistaken-identity defense. He again objected to the identification evidence, but the district court admitted it.

The officer who had conducted the identification procedure testified at trial. He testified that he'd responded to a call about the crash, had talked to a witness at the scene and found a gun, and had conducted the recorded identification where the witness identified Davis as the man who'd been holding the gun.

On cross-examination, Davis asked the officer about a statement that another witness had given to another officer at the scene of the crash:

Q: Did you ever speak to other witnesses, one by the name of Kennethya Bellamy?

A: I don't know any female subject on scene, her name. I

24-13919

Opinion of the Court

5

may have spoken to her, I just do not know her name.

Q: Did you talk to Officer Kayla Perez regarding Kennethya Bellamy?

A: Yes, if it's a witness then.

Q: And Kennethya Bellamy's statement that you got from Officer Perez concerned you, didn't it?

A: I don't recall.

Q: You had zero concerns about Officer Perez and what she told you concerning Kennethya Bellamy?

At a bench conference during redirect examination, the government explained to the district court that, in light of Davis's line of questioning about the officer's lack of "concerns," it wanted to ask the officer "whether he felt like he arrested the wrong person." Davis argued the question would "infring[e] on the province of the jury," and the district court instructed the government to "rephrase the question." After getting approval from the district court, the government asked the officer the following:

Q: [I]s it fair to say that you only spoke to a single witness who identified Leonon Davis as the man who had the firearm?

A: Yes.

Q: With that in mind, did you have any concern that you had gotten the wrong man that evening?

A: No.

Q: Why do you say that?

A: Because of the location of the firearm that was found that [the witness] had directed me to and the three positive identifications and/or show-ups that he had confirmed, along with the path of travel that we had located him running towards us which was coincidental and convenient, and the items found in that direction.

Later in the trial, the officer who arrested Davis testified about the events leading up to the arrest. The officer testified that, after parking at the scene of the crash, she had pursued the armed suspect on foot, following directions she was receiving over the radio.

The government asked the officer whether she had “receive[d] any information from people on the street as [she was] arriving at the scene.” The officer responded that the people on the street had told her “that there was a male behind a residential building with a firearm.” She added that the onlookers had told her “it was a black male” and that he was “wearing a red shirt [and] was armed with a firearm [and] running behind the residential building.”

Davis objected to that testimony as hearsay, and the government argued the statements were offered “to explain [the officer’s] actions in the course of her investigation.” The district court overruled the hearsay objection.

24-13919

Opinion of the Court

7

Then, the government sought to introduce the video from the arresting officer's body camera, which included the audio of the bystanders' statements about the armed black man behind the residential building. Davis again objected that the statements were hearsay, and the district court overruled the objection and admitted the video on the same basis as the officer's testimony about the statements.

On cross-examination, Davis asked the arresting officer about some exculpatory statements Davis had made after his arrest. Specifically, Davis had said that he didn't have a gun, that he was scared and didn't know what was going on, that he hadn't been driving and had "just got a ride," and that he had "just got out of jail." At trial, Davis showed the officer an exhibit demonstrating that he had indeed been released from jail earlier on the day of the arrest. Davis asked the officer whether she had "investigate[d] whether [Davis] was being truthful to [her]" about having just gotten out of jail, and the officer responded that she "did not conduct the criminal history check."

On redirect examination, the government asked the arresting officer whether, in her experience, people who had been arrested often tried to distance themselves from the crime for which they were arrested. Davis objected based on relevance and speculation. After a sidebar, the district court allowed the government to ask the arresting officer whether, based on her training and experience, she had "believe[d] that [Davis] was being honest when

he was speaking to [her] after [she] arrested him.” The officer said she did not believe he was being honest.

On the last day of trial, an investigator testified that Davis’s girlfriend owned one of the vehicles involved in the crash. Cross-examining the investigator, Davis asked him what research he had done to determine that the vehicle’s owner was Davis’s girlfriend. The investigator said he knew it because Davis and the vehicle’s owner “ha[d] numerous cases together where they’[d] identified themselves as a couple.” Davis objected and moved for a mistrial, arguing the investigator’s statement about his “cases” was “highly prejudicial” to him and that he didn’t see how any curative instruction could “unring the bell.” The district court sustained the objection and instructed the jury to “disregard the witness’s last statement,” but it denied the motion for a mistrial. It explained that the prejudice from the comment wasn’t sufficient to require a mistrial, especially because Davis had already stipulated to being a convicted felon.

The jury found Davis guilty of possessing a firearm as a convicted felon. He appeals his conviction.

STANDARD OF REVIEW

We review for plain error a constitutional challenge to the indictment raised for the first time on appeal. *See United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). We review for clear error a district court’s finding that a pretrial identification procedure was not unduly suggestive. *United States v. Daniels*, 97 F.4th 800, 806 (11th Cir. 2024). We review for abuse of discretion a district

24-13919

Opinion of the Court

9

court’s evidentiary rulings at trial. *United States v. Martinez*, 156 F.4th 1185, 1201 (11th Cir. 2025). And we review for abuse of discretion a district court’s denial of a motion for a mistrial. *United States v. Ramirez*, 426 F.3d 1344, 1353 (11th Cir. 2005).

DISCUSSION

We divide our analysis in four parts. First, we address Davis’s argument that section 922(g) violates the Commerce Clause. Second, we review the district court’s admission of the pretrial identification evidence implicating Davis. Third, we consider whether the district court abused its discretion by overruling Davis’s evidentiary objections at trial. And fourth, we discuss whether the district court abused its discretion by denying Davis’s motion for a mistrial.

The district court did not plainly err by denying Davis’s motion to dismiss the indictment.

First, Davis argues that the district court erred by not dismissing the indictment because section 922(g) is unconstitutional—facially and as applied to him. He says Congress didn’t have the power under the Commerce Clause to regulate possession, a “non-economic activity” that does not “substantially affect[] interstate commerce.” *See United States v. Lopez*, 514 U.S. 549, 559 (1995). But, as Davis recognizes, our “precedent forecloses his Commerce Clause challenges.” *See Wright*, 607 F.3d at 715–16.

Thus, we reject Davis’s argument that section 922(g) is unconstitutional.¹

The district court did not clearly err by denying Davis’s motion to suppress the witness’s identification.

Next, Davis contends that the district court erred when it denied his motion to suppress the evidence of the witness’s identification. “When suggestive lineup procedures cause an eyewitness identification to be unreliable, the identification ‘is constitutionally inadmissible as a matter of law.’” *United States v. Smith*, 967 F.3d 1196, 1203 (11th Cir. 2020) (quoting *Caver v. Alabama*, 537 F.2d 1333, 1335 (5th Cir. 1976)). We use a two-part test to determine whether an identification is admissible.

First, a district court should determine whether the procedures used were “unduly suggestive.” *Smith*, 967 F.3d at 1203. If the procedures were unduly suggestive, then the district court asks “whether, under the totality of the circumstances, ‘the identification was nonetheless reliable.’” *Id.* (quoting *United States v. Perkins*, 787 F.3d 1329, 1344 (11th Cir. 2015)).

Factors relevant to the identification’s reliability include “the opportunity of the witness to view the suspect at the time of the crime, the witness’[s] degree of attention, the accuracy of his prior

¹ We review Davis’s Commerce Clause challenge on appeal for plain error because it is different from the Second Amendment challenge he raised in the district court. See *Wright*, 607 F.3d at 715.

description of the suspect, the level of certainty of the identification, and the time between the crime and the identification.” *United States v. Beale*, 921 F.2d 1412, 1433 (11th Cir. 1991) (citing *Neil v. Biggers*, 409 U.S. 188, 199 (1972)). Although we review for clear error the district court’s undue-suggestiveness finding, our review of its reliability finding is “plenary.” *Smith*, 967 F.3d at 1203.

Where a witness is shown a single suspect at the scene of the crime, as happened here, the identification procedure is known as a “show-up” identification. *See Passman v. Blackburn*, 652 F.2d 559, 573 (5th Cir. Unit A Aug. 1981). We’ve said that this procedure, though “widely condemned,” has advantages, too. *See Johnson v. Dugger*, 817 F.2d 726, 729 (11th Cir. 1987). For example, it “allow[s] identification before the suspect has altered his appearance and while the witness’[s] memory is fresh, and permit[s] the quick release of innocent persons.” *Id.* Thus, “unless the police aggravate the suggestiveness” of a show-up identification, it is not unduly suggestive. *Id.*

Here, the district court did not clearly err in finding that the identification was not unduly suggestive because the police did not aggravate its suggestiveness. After the witness had indicated to the officers that they had detained the man he saw holding the gun, the officers conducted “an official show-up on camera.” The officer who performed the identification procedure testified at the motion-to-suppress hearing that he followed “custom[] and [] policy” by showing Davis to the witness and illuminating Davis with his flashlight to make him visible. And the officer testified that he did

not instruct or pressure the witness that he needed to identify Davis. The witness, likewise, testified that the officer didn't "coach [him] on what . . . to say" or "suggest the answer [he] wanted."

In response, Davis points to several factors that he says aggravated the procedure's suggestiveness. But none of those things made the procedure unduly suggestive.

First, Davis argues the police aggravated the procedure by "[h]aving Davis surrounded by first responders . . . at a scene with a large police presence." But, as the evidence at the motion-to-suppress hearing showed, the "first responders" surrounding Davis were "paramedics tending to his medical condition." Davis offers no reason to think that being surrounded by paramedics would unduly suggest to the witness that he was the man who had been carrying the gun earlier. If anything, it made him look like a victim or an injured party in the crash. Nor does Davis explain why the number of police officers who responded to the scene of the crash would unduly suggest his identity to the witness.

Second, Davis contends that the show-up procedure was unduly suggestive because "Davis was the only person handcuffed." But that fact didn't aggravate the suggestiveness of the procedure, either. The nature of show-up identifications usually requires that the subject be detained in some way. Thus, we've routinely held that police have not aggravated a show-up procedure's suggestiveness when the defendant was handcuffed or otherwise in police custody during the procedure. *See, e.g., Blanco v. Singletary*, 943 F.2d 1477, 1480, 1509 (11th Cir. 1991) (concluding "police did not

aggravate the suggestiveness of the encounter” where eyewitness identified the defendant after “the officers handcuffed [him] and took him to the murder scene”); *Johnson*, 817 F.2d at 728–29 (concluding “police [] did not aggravate the suggestiveness” of procedure where “the suspects were in the back of a police car as [the witness] observed them from seven to ten feet away”).

Third, Davis asserts the police aggravated the suggestiveness by “[s]hining a flashlight in the dark of night[] onto Davis’[s] face for the show-up procedure.” But the crash occurred at night. The officer testified that the additional light was needed to help the witness see Davis, and that he followed police custom and policy for show-up procedures by illuminating Davis for the witness. Besides, the show-up procedure involves only one candidate for identification, so shining a light on the subject of the identification does not aggravate the procedure’s suggestiveness—unlike shining a light on one member of a lineup, for example. The witness was already focused exclusively on Davis. The extra light only helped the witness see Davis more clearly and give a more accurate and reliable identification.

Fourth, Davis contends that the officer’s instructions to the witness before the show-up identification aggravated the procedure’s suggestiveness. In support, he points to the body-camera video where an officer instructed the witness to “just positively say [that was] him.” But, with context, it’s clear that this statement didn’t aggravate the suggestiveness of the show-up procedure, either. The statement was part of an explanation to the witness of

how the recorded show-up identification would work. An officer first explained that the witness was to “walk over, just for the camera, [and] you say [if] it’s him or not.” Next, another officer clarified that he should “on camera, just positively say that was him.” Thus, read in context, the officer’s statement did not require the witness to identify someone he did not see at the scene, but instead explained what was required to make a positive identification of Davis. He had to audibly state his conclusion for the camera to record. That’s consistent with how the witness understood the instruction, too. He testified, both at the motion-to-suppress hearing and at trial, that the officers hadn’t coached him or suggested that he had to identify Davis. And when Davis asked him about the officer’s instruction to “just positively say [that was] him,” the witness responded “[o]h, to identify?” Likewise, the officer who made the statement testified that the statement was “[t]o clarify, to do a show-up, to positively identify or not identify.” Thus, the officer’s instruction simply helped explain how the show-up procedure worked; it did not aggravate its suggestiveness.

Finally, Davis argues that there was “no excuse” or “exigent circumstances” that justified doing a show-up rather than a “proper photo array” at the nearby police station. But the law does not require the police to show exigent circumstances before conducting a show-up identification. And as we explained above, at times, there are good reasons for law enforcement to use show-up identifications. “[U]nless the police aggravate the suggestiveness” of a show-up identification, it is not unduly suggestive and it does not

24-13919

Opinion of the Court

15

violate the defendant's due process rights. *See Johnson*, 817 F.2d at 729.

The district court did not clearly err by finding that the identification was obtained by a procedure that was not unduly suggestive. Thus, we need not reach the district court's alternative conclusion that the circumstances rendered the identification reliable in any case. *See Smith*, 967 F.3d at 1203 (explaining we consider reliability "only if we conclude that the [procedure] was unduly suggestive").

*The district court did not abuse its discretion
in its evidentiary rulings at trial.*

Davis next asserts the district court abused its discretion by admitting three pieces of evidence at trial: (1) the testimony from the officer who conducted the show-up procedure that he had "no concern" that Davis was not guilty; (2) the bystander comments to the arresting officer about the armed black man hiding behind a building; and (3) the testimony from the arresting officer that she had not believed Davis's exculpatory comments after his arrest.

1. The testimony of the officer who conducted the
show-up that he had no concern about Davis's arrest

First, Davis contends that the district court erred by allowing the government to ask the officer the following question: "Is it fair to say that you only spoke to a single witness who identified [Davis] as the man who had the firearm?" Davis argues that question impermissibly asked the officer "to testify that all the other officers on

scene told [him] that none of the witnesses they interviewed said that there was another man identified as the suspect in this case.” And Davis argues the officer’s affirmative answer to the question was hearsay because the word “you” in the question referred to the Tampa Police Department as a whole, so the officer’s testimony conveyed the content of discussions the officer had with other police officers at the scene.

But Davis has this wrong. Throughout the officer’s testimony, the government asked questions using “you” in the singular to inquire about what the officer himself had done. The question at issue here also used the word “you” to refer to the officer’s own experience that evening. The context makes clear that is how the officer understood the question, and there is no reason to think the officer meant anything else by his response.

Davis also asserts that the officer “inwad[ed] the jury’s province” when he testified that he didn’t have “any concern that [he] had gotten the wrong man that evening.” Davis argues that this was inappropriate because the officer was bolstering the credibility of the witness who had identified Davis. But the government’s line of questioning, and the officer’s response, did not go to the credibility of other witnesses; instead, they were a fair response to the cross-examination.

District courts enjoy especially broad discretion in admitting rehabilitative evidence after a witness’s credibility has been attacked. *See United States v. Barrentine*, 591 F.2d 1069, 1082 (5th Cir. 1979). Otherwise inadmissible evidence “is admissible on redirect

24-13919

Opinion of the Court

17

as rebuttal evidence, when defense counsel has opened the door to such evidence during cross-examination.” *United States v. Cooper*, 926 F.3d 718 (2019) (quoting *United States v. West*, 898 F.2d 1493, 1500 (11th Cir. 1990)).

Here, on direct examination, the officer testified about the process he used that night to identify Davis as the suspect. On cross-examination, Davis attacked the officer’s credibility by suggesting that the officer should’ve been concerned that another witness’s statement to another officer on scene seemed inconsistent with the show-up identification of Davis. Davis invoked the other witness’s statement and asked the officer if that gave him any concerns. The government, on redirect, sought to counter Davis’s line of questioning by allowing the officer to explain why he’d been confident in the witness’s show-up identification. So, the officer’s testimony did not provide an opinion about the identifying witness’s credibility. Instead, it rebutted Davis’s earlier line of questioning by clarifying that the officer had considered the available information and was not concerned by Davis’s arrest. The district court did not abuse its discretion by allowing the government to rehabilitate the officer’s credibility.

2. The bystander comments captured on the
arresting officer’s body camera

Second, Davis contends the district court erred by admitting the arresting officer’s testimony about information she heard “from people on the street.” The district court admitted that infor-

mation—that there was an armed black man running behind a residential building—both through the officer’s testimony and through the video from her body camera. Davis argues that the statements were “classic hearsay” offered for the truth, “to corroborate a description” of Davis.

But the district court did not abuse its discretion by admitting the statements. The statements were not hearsay because they were not offered for the truth. As the government explained when responding to Davis’s objection at trial, the statements were offered “[t]o explain [the arresting officer’s] actions in the course of her investigation.” When an out-of-court statement is not offered to prove the truth of the matter asserted, it is not hearsay. *See* Fed. R. Evid. 801(c)(2). As we’ve explained before, “statements by out[-]of[-]court witnesses to law enforcement officials” are admissible as non-hearsay if they help “explain the course of the officials’ subsequent investigative actions, and the probative value of the evidence’s non-hearsay purpose is not substantially outweighed by the danger of unfair prejudice caused by the impermissible hearsay use of the statement.” *See United States v. Jiminez*, 564 F.3d 1280, 1288 (11th Cir. 2009) (quoting *United States v. Baker*, 432 F.3d 1189, 1208 n.17 (11th Cir. 2005)).

Here, “it fell well within the ample discretion of the [district court] to weigh” the prejudice and the probative value of the statements. *Id.* The statements were offered in the course of the arresting officer’s testimony about the circumstances of her arrest of Davis. They helped explain to the jury why the officer conducted her

search in the way she did. When she first arrived on the scene, she headed in “the direction that was being updated over [her] radio.” Then, when she heard the information from the bystanders, she changed course to check behind the residential building for the man they had mentioned.

In contrast, there was no great danger of prejudice to Davis from the comments. For one thing, the government made clear—in the presence of the jury—that it was offering the statements for their effect on the officer, not for their truth. And even if the statements were taken for their truth—that there was an armed black man behind a residential building—they would not identify Davis as the man with the gun. Nor did the government attempt to use them for that purpose at trial. Any prejudice from the statements, then, didn’t “substantially outweigh[]” their probative value. *See id.*

3. The testimony of the arresting officer that she hadn’t believed Davis’s exculpatory comments

Third, Davis argues that the district court erred by admitting testimony from the arresting officer that she didn’t believe the exculpatory statements Davis made after his arrest. Davis argues that the officer “invaded the province of the jury” because she opined that Davis’s statements were not credible and that he was guilty

Once again, the district court did not abuse its discretion by admitting the officer’s testimony. That’s because the testimony was offered to rebut Davis’s attack on the officer’s credibility, and

not to prove Davis's guilt or his lack of credibility. On cross-examination, Davis challenged the officer about the thoroughness of her investigation. Davis told officers on the scene that he had just been released from jail that day, which was a true statement. On cross-examination, Davis asked the arresting officer, "[s]o you did not investigate whether [Davis] was being truthful to you about that; correct?" That opened the door for the government to ask the officer on redirect why she hadn't investigated the truth of Davis's statements. Her testimony was that she hadn't done so because, based on the circumstances, she didn't believe Davis was telling the truth. The testimony was not evidence of Davis's guilt, but of the officer's reasons for continuing to detain Davis without further investigating his exculpatory statements.

The district court did not abuse its discretion by denying Davis's motion for a mistrial.

Last, Davis argues that the district court abused its discretion by denying his motion for a mistrial after the investigator referenced his "numerous cases" with the owner of a vehicle involved in the crash. We "presume that a jury will follow an instruction to disregard inadmissible evidence inadvertently presented to it, unless there is an 'overwhelming probability' that the jury will be unable to follow the court's instructions." *Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987) (quoting *Richardson v. Marsh*, 481 U.S. 200, 208 (1987)); see also *United States v. Almanzar*, 634 F.3d 1214, 1222 (11th Cir. 2011). "An instruction to disregard evidence withdrawn from the jury is sufficient grounds for . . . denial of a motion for mistrial

unless the evidence is so highly prejudicial as to be incurable by the [district] court’s admonition.” *United States v. Nicholson*, 24 F.4th 1341, 1354 (11th Cir. 2022). To decide whether the prejudice from inadmissible evidence is incurable, we consider “the way the [district] court g[ave] a curative instruction and the existence of other evidence” supporting the conviction. *Id.* at 1354–55.

Here, the district court’s curative instruction and the other evidence shows that the investigator’s comment about Davis’s “numerous cases” wasn’t incurable. When Davis objected to the comment, the district court recognized that the comment was improper and had the potential to prejudice the jury. The district court had the jury removed and instructed the investigator not to refer to Davis’s past cases or criminal convictions. When the jury returned, the district court immediately—and without drawing inordinate attention to the improper remark—issued a curative instruction that the jury was to “disregard the witness’[s] last statement.” So, the district court gave an appropriate curative instruction.

And the jury had ample alternative evidence to support Davis’s conviction. Two witnesses testified that they had seen Davis holding a gun after the crash. Both witnesses identified Davis in court as the man they had seen holding the gun. Additionally, there was the show-up identification evidence from the night of the crash. And a third witness said that, although she couldn’t positively say Davis was the man with the gun, the gunman’s physical characteristics were consistent with Davis’s.

We see no reason to think the jury disregarded the district court’s curative instruction or relied on the statement from the investigator about “past cases” instead of the witnesses’ testimony and identifications of Davis as the man they had seen holding the gun. Thus, both “the way the [district] court g[ave] a curative instruction and the existence of other evidence” supporting the conviction show that any prejudice from the investigator’s statement wasn’t incurable. *Nicholson*, 24 F.4th at 1354–55.

An additional consideration supporting the district court’s denial of the motion for a mistrial is the fact that Davis, not the government, elicited the statement in question. When Davis asked “what research” the investigator had done to determine he was in a relationship with the vehicle’s owner, he invited the testimony that the investigator knew it from previous cases. Although Davis was “expecting an answer” that was different, the fact remains that, by asking the investigator that question, he opened the door to the answer. We’ve affirmed the denial of a mistrial before where “the inappropriate reference to the [d]efendant was all but invited by the cross examination, not instigated by the prosecution, and was promptly defused by an instruction from the court.” See *United States v. Chavez*, 584 F.3d 1354, 1362 (11th Cir. 2009). Because Davis invited the prejudicial remark here, he cannot show he is entitled to relief.

In response, Davis says that “extrinsic evidence of other crimes is inherently prejudicial.” Indeed, introducing evidence

24-13919

Opinion of the Court

23

about criminal history has the potential to be highly prejudicial, because it “may entice the jury to draw the prohibited inference that a defendant previously convicted of a crime likely committed the same crime again.” See *United States v. Sterling*, 738 F.3d 228, 238 (11th Cir. 2013). But here, Davis had already stipulated that he had been convicted of a felony. So, even without the district court’s instruction, any prejudice from the statement that Davis had other “cases” was minimal. Davis’s own stipulation told the jurors more than that; it told them he had been convicted of a felony in a previous case. There’s no reason to think that such marginal prejudice couldn’t be cured by an instruction from the district court. See, e.g., *United States v. Thomas*, 62 F.3d 1332, 1343 (11th Cir. 1995) (holding district court did not abuse its discretion by denying a motion for mistrial where its “instruction clearly informed the jury that it should not include [a codefendant’s] conviction in its considerations”); see also *United States v. Emmanuel*, 565 F.3d 1324, 1334–35 (11th Cir. 2009) (holding district court did not abuse its discretion by denying a motion for mistrial and by giving no curative instruction after a witness testified that he had seen the defendant before “as he was signing in as a condition of bail”).

CONCLUSION

Davis has not shown any error by the district court as to any of the issues on appeal.² Thus, we affirm his conviction.

² Davis argues that even if each alleged error was harmless on its own, together they amount to a prejudicial error. See *United States v. Azmat*, 805 F.3d 1018,

24

Opinion of the Court

24-13919

AFFIRMED.

1045 (11th Cir. 2015). But because Davis “failed to establish the existence of any errors during his trial, there are no errors to accumulate.” *See id.*