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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1994**

State of Minnesota,
Respondent,

vs.

Keith Haakon Lewis,
Appellant.

**Filed August 26, 2013
Affirmed
Chutich, Judge**

Clay County District Court
File No. 14-CR-11-3917

Lori Swanson, Attorney General, Kirsi Poupore, Assistant Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Keith Haakon Lewis challenges his conviction of two counts of financial exploitation of a vulnerable adult. Lewis argues that he was denied a fair trial

when the state introduced *Spreigl* evidence without complying with the procedural requirements for introducing this evidence. Because the challenged evidence was not *Spreigl* evidence and because any error in admitting relationship evidence was harmless, we affirm.

FACTS

The charges against Lewis involve two victims, J.J. and her roommate S.J., who both suffer from mental-health issues. J.J. met Lewis in 2006, and they became close friends. Lewis often gave J.J. rides around town and on out-of-town trips.

J.J.'s mother passed away in December 2010, and she received an inheritance check for approximately \$8,900. Because J.J. did not have a bank account, Lewis cashed the check for her, put the money into his bank account, and told her that he would withdraw the money and give it to her after the check cleared. He only gave J.J. about \$3,000 of the money, however, and told her that he was going to keep the rest in his account because he was concerned that she would gamble the money away. J.J. did not ask him to keep the money in his account, but she "just figured it would be safe because we were [such] close friends." J.J. testified that she did not owe Lewis any money and that the money was not a gift.

When J.J. asked Lewis for more of her money out of his account, he told her that he and his girlfriend, S.T., had gone to Las Vegas and that someone at their motel stole his identity and took the rest of J.J.'s money. Lewis told J.J. that the money was gone and she was not getting it back.

S.J. met Lewis through J.J. As he did for J.J., Lewis also helped S.J. and gave her rides around town or on out-of-town trips. In December 2010, S.J. was approved for Social Security disability benefits and received a check for \$12,000 in back pay. After putting about \$1,000 into a bank account, S.J. gave Lewis a cashier's check for the remaining \$11,000. S.J. testified that Lewis told her that she could be disqualified for health-insurance benefits if she had too much cash in her own bank account. S.J. entrusted the money to Lewis because J.J. had done the same thing and S.J. "felt like if [J.J.] could do it . . . [S.J. could] do it, too."

When she allowed Lewis to deposit the cashier's check in his account, S.J. testified that she did not owe him any money, that it was not a gift, and she believed that it was still her money. S.J. later discovered that Lewis had gambled her money away in Las Vegas. S.J. told a friend about the money that Lewis had stolen and the friend reported the theft to the authorities.

County investigators set up an interview with S.J. Before the interview, Lewis told S.J. that she was "getting it for . . . fraud" and that she should not tell anyone what had happened to the money. Lewis wrote out a letter for S.J. stating "I [S.J.] paid Keith Lewis \$11,000.00 for money borrowed and for rides and other duties paid by a cashier's check."

S.J. initially gave the investigators the note that Lewis had written and told them that Lewis was her friend and that she gave him the money freely. A few days later, however, S.J. confessed to the investigators that Lewis had wrongfully taken her money.

J.J. also reported Lewis's theft of her inheritance money and told the investigators about her relationship with Lewis.

A police detective interviewed Lewis, who claimed that J.J. and S.J. gave him the money as gifts and as repayment for rides and other services he provided them over the years. He denied wrongfully taking the money.

The state charged Lewis with two counts of financial exploitation of a vulnerable adult. J.J. and S.J. testified at trial about their relationship with Lewis. J.J. testified that Lewis worked as a personal-care assistant for his long-term girlfriend, S.T., and that a couple years before he had helped J.J. become a personal-care assistant for S.T. as well. J.J. testified that Lewis told her to "fudge hours" and to give either him or S.T. every other paycheck she received for the work. She was uncomfortable with this situation but did not feel she could confront Lewis.

The county adult-protection worker who investigated the case also testified and told the jury about her conversations with J.J. and S.J. during the investigation. The worker testified that J.J.

talked about being in a situation with Mr. Lewis where she had also been providing some PCA services, personal care assistance, and was not reporting her hours accurately. [She a]cknowledged this was wrong, she knew it was wrong, but she could not get back out of it, did not know how to confront him to get back out.

Lewis testified in his own defense. On direct examination, Lewis stated that he lives with S.T.'s parents and had done so for the past twelve years, but that he spends time at S.T.'s house as well. On cross-examination, the prosecutor asked Lewis several

questions suggesting that Lewis actually lives with S.T. and only claims to live with her parents because S.T. would be disqualified for certain housing benefits if he lived with her full time. Lewis denied this suggestion and further testified that J.J. and S.J. had voluntarily given him their money for him to keep.

The jury found Lewis guilty of both counts and the district court sentenced him to 30 months in prison. Lewis appealed.

D E C I S I O N

Lewis contends that it was plain error for the state to introduce evidence that he had engaged in fraud in the past concerning matters unrelated to the current charges. Specifically, Lewis claims that it was error to elicit testimony from J.J. and from the adult-protection worker about his telling J.J. to “fudge” her hours when she worked for S.T. and to give every other paycheck to Lewis. Lewis also argues that it was plain error for the state to elicit testimony about his living situation and suggest that he did not live with S.T.’s parents, but merely listed their residence as his address so his girlfriend would not receive reduced housing benefits.

Because Lewis did not object to this testimony during trial, we review for plain error. *State v. Vick*, 632 N.W.2d 676, 684–85 (Minn. 2001). We may consider the issue “if there is (1) error, (2) that is plain, and (3) the error affects the defendant’s substantial rights.” *Id.* at 685. Only after these three prongs are met will we “decide whether [we] should address the issue in order to ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted).

Under the rules of evidence, “[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). Such evidence, referred to as *Spreigl* evidence, may nonetheless be admissible for other purposes, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*; see also *State v. Spreigl*, 272 Minn. 488, 491, 139 N.W.2d 167, 169 (1965). *Spreigl* evidence may not be admitted, however, unless certain procedural safeguards are followed. Minn. R. Evid. 404(b); see also Minn. R. Crim. P. 7.02.

We conclude that the district court did not abuse its discretion by admitting evidence about Lewis’s living situation. Because the evidence was not offered in the state’s case in chief, it is not *Spreigl* evidence. See *State v. Fulford*, 290 Minn. 236, 239, 187 N.W.2d 270, 273 (1971) (stating that *Spreigl* requirements only apply when there is “an intent by the state to introduce evidence of collateral crimes in its case in chief”). Rather, the prosecutor elicited testimony from Lewis concerning his living situation on cross-examination, in response to his direct testimony that he had lived with S.T.’s parents and only spent time at S.T.’s house. The questions were therefore proper to impeach Lewis’s credibility. See Minn. R. Evid. 611(b) (“An accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.”).

Further, the testimony concerning the employment arrangement between J.J. and Lewis was not *Spreigl* evidence, but instead illuminated the past relationship between Lewis and J.J. See *State v. Bauer*, 598 N.W.2d 352, 364 (Minn. 1999) (“[I]t is within the

trial court's discretion to admit evidence of a defendant's prior acts for the purpose of illuminating the relationship of defendant and complainant and placing the incident with which defendant was charged in proper context."). Unlike *Spreigl* evidence, the state need not give the defendant prior notice when it intends to introduce relationship evidence. *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009). Caselaw suggests, however, that courts must still apply parts of a *Spreigl* analysis to relationship evidence. *See Bauer*, 598 N.W.2d at 364 (stating that before admitting relationship evidence, the district court still "must determine that there is clear and convincing evidence that the defendant committed the prior bad act and that the probative value of the evidence outweighs any potential for unfair prejudice"); *State v. Hormann*, 805 N.W.2d 883, 890 (Minn. App. 2011) ("Courts typically apply parts of the *Spreigl*/rule 404(b) analysis to relationship evidence."), *review denied* (Minn. Jan. 17, 2012).

We need not decide whether the district court's admission of the relationship evidence without applying a *Spreigl* analysis was plain error, however, because Lewis has not demonstrated that the testimony affected his substantial rights. To establish that his substantial rights were prejudiced, Lewis bears the heavy burden of demonstrating that "there is a reasonable likelihood that the error had a significant effect on the jury's verdict." *State v. Borg*, 806 N.W.2d 535, 552 (Minn. 2011) (quotation omitted); *see State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998) (stating that the "defendant bears the burden of persuasion on this third prong" and that appellate courts "consider this to be a heavy burden").

To prove financial exploitation of a vulnerable adult, the state had to show that Lewis, “in the absence of legal authority” acquired possession or control of J.J.’s and S.J.’s money “through the use of undue influence, harassment, or distress,” and that J.J. and S.J. were vulnerable adults. Minn. Stat. § 609.2335, subd. 1(2)(i) (2012). Lewis does not dispute that the women are vulnerable adults under the statute. *See* Minn. Stat. § 609.232, subd. 11 (2012).

The state presented the jury with ample testimony and evidence proving that Lewis financially exploited J.J. and S.J. The women both testified that they did not give Lewis their money as gifts, the money was not meant to repay him for any services, and they believed he was safeguarding the money for them. Further, they testified that Lewis had been a friend to them and they mistakenly trusted him to have their best interests at heart. J.J. and S.J. also testified that Lewis made statements to induce them to give him their money: he told J.J. that he was concerned she would gamble her money away and he told S.J. that she could lose her health benefits if she had too much money in her bank account. Lewis also tried to convince the women to lie to the investigators about the money. The evidence overwhelmingly demonstrates that Lewis exploited the trust that J.J. and S.J. placed in him and used undue influence, harassment, or distress to steal their money.

The testimony about J.J.’s employment arrangement with Lewis was brief and insignificant in the context of the entire trial. The prosecutor asked J.J. only one question concerning the employment issue after J.J. brought it up, and the testimony of the adult-protection worker concerning the employment arrangement was one short statement after

she was asked about J.J.'s suggestibility. Further, the prosecutor made no mention of the employment arrangement in her closing argument. *See Vick*, 632 N.W.2d at 686 (suggesting that “[t]he potential for prejudice” from the admission of alleged *Spreigl* evidence is reduced when the state does not rely on the testimony during its closing argument).

We conclude that no plain error occurred in admitting impeachment evidence concerning Lewis's living situation and that any error in the admission of relationship evidence was harmless because no reasonable likelihood exists that the relationship evidence had a substantial effect on the jury's verdict.

Affirmed.