STATE OF MINNESOTA
IN COURT OF APPEALS
A11-719

State of Minnesota,
Respondent,

vs.

William Anthony Moore, Sr.,
Appellant.

Filed May 7, 2012
Affirmed
Larkin, Judge

Stearns County District Court
File No. 73-K4-06-004736

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Collins, Judge.[*]

[*] 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

LARKIN, Judge

Appellant challenges his conviction of failing to register as a predatory offender, arguing that the district court erred in admitting appellant's cross-examination testimony regarding his failure to register during time periods outside of the charged offense dates. We affirm.

FACTS

In 1999, appellant William Anthony Moore, Sr., was convicted of kidnapping in Olmsted County. Because of this conviction, appellant is required to register as a predatory offender for ten years from the date of the initial registration. Appellant's registration period began in 2005, when he was released from prison.

In October 2006, appellant was charged with failing to register as a predatory offender under Minn. Stat. § 243.166, subd. 3(b) (Supp. 2005). The complaint alleged that he failed to register his St. Cloud address between April and July 2006. The case was tried to a jury, and the following evidence was presented at trial.

T.W. testified that appellant lived with her at her apartment in St. Cloud and agreed to pay her $500 per month for rent. T.W. testified that appellant moved into her apartment on April 27, 2006, moved out in July of 2006, received mail there, had "bags with clothes, shoes, [and] jewelry," ate the food in the apartment, and had friends visit during his time there. But T.W. also testified that appellant never paid rent.

Officer Anne Whitson of the St. Cloud Police Department testified that she went to T.W.'s apartment on June 29, 2006, to investigate an unrelated matter. Officer

Whitson interviewed appellant at T.W.'s apartment. Appellant told the officer that he was just visiting. Because the officer thought she might want to follow up with appellant at a later date, she asked appellant where she could find him. Appellant responded that he would possibly be in Rochester but did not provide an address, location, or phone number. At the time of the interview, the officer was not aware that appellant was required to register as a predatory offender. Several weeks later, Officer Whitson learned that appellant was required to register as a predatory offender. The officer contacted T.W., and T.W. informed the officer that appellant was no longer staying at her apartment.

The state offered several exhibits in support of its case. Exhibit one is a Minnesota predatory-offender-registration form that appellant signed on December 13, 2004. The form includes a series of statements that appellant was required to initial. Appellant initialed the form, indicating that he understood the following statements: "I understand that I must register for a period of 10 years from the date that I was initially registered . . ."; "I understand that I must register all changes of address at least five days prior to moving to that address, including moving to another state"; and "I understand I must register any changes of employment, vehicles, other residences, including all property I own, lease or rent in Minnesota." Appellant also signed the form signifying,

> I have been notified of my duty to register in accordance with Minnesota Statute § 243.166. I have read the requirements as indicated on this form. I understand that I am legally required to supply this information and that failure to comply or providing false information may be cause for revocation and/or further criminal prosecution.

Exhibit two is a predatory-offender-change-of-information form that appellant signed on August 9, 2005. The form states that appellant's residence had changed to "1010 Curey" in Minneapolis. Exhibits three and four are a letter to appellant from the Minnesota Bureau of Criminal Apprehension (BCA) and its mailing envelope. The letter and envelope are addressed to "1010 Currie Avenue" in Minneapolis, the correct address of the shelter that appellant listed on the predatory-offender-change-of-information form. The letter was returned to the BCA as "attempted – not known." The letter indicated appellant was required to register until February 16, 2015, and that he must sign the form even if there are no changes to the previous address verification.

Appellant testified that he initially refused to sign the Minnesota predatory-offender-registration form that the BCA provided to him while he was incarcerated in 2004. Appellant testified that he eventually signed the registration form on December 13, 2004, because he was ordered to do so by a prison sergeant. But appellant testified that he did not read the form.

On direct examination, defense counsel asked appellant, "Did you move here to St. Cloud in 2006?" Appellant responded, "No. I came up here visiting . . . ." Although appellant admitted that he had stayed at T.W.'s apartment, he denied that T.W. ever asked him to pay rent, that he ever paid rent, that he ever signed a lease or was added to the lease for T.W.'s apartment, that he signed a contract of any kind with T.W., or that he brought all of his possessions to T.W's apartment. Defense counsel concluded appellant's direct examination by asking him if he had ever changed his residence to St. Cloud. Appellant responded, "No. I did not."

During cross-examination, appellant testified that he never stayed at the Minneapolis address he listed on the predatory-offender-change-of-information form. The following exchange then occurred:

> THE STATE: Where did you stay then in December of 2005 if it wasn't [in Minneapolis]?
> THE DEFENDANT: I don't really remember, but I wasn't living in St. Cloud.
> THE STATE: Okay. Did you tell the BCA where you were living?
> DEFENSE COUNSEL: Objection. Relevance.
> THE COURT: Overruled.
> THE DEFENDANT: No. Because I was registered – because it was already brought to my attention then that I was a registered sex offender.
> THE STATE: So you didn't tell them where you lived?
> THE DEFENDANT: The BCA?
> THE STATE: Or the local law enforcement?
> THE DEFENDANT: No.
> THE STATE: Okay. Where did you live in January of 2006?
> DEFENSE COUNSEL: I'm going to object again on relevance. . . .
> THE COURT: Overruled.
> THE DEFENDANT: In January of 2006 I was visiting a friend . . . that lived in East St. Paul.
> . . . .
> THE STATE: Did you ever inform the BCA that you were living with this other friend in St. Cloud?
> THE DEFENDANT: No. I was visiting that friend.
> THE STATE: Okay. And how about did you have a residence then that you could go back to?
> THE DEFENDANT: Excuse me?
> THE STATE: If you were just visiting, where were you going to go to next?
> . . . .
> THE DEFENDANT: All my business was in Olmsted County.
> THE STATE: Where in Olmsted County?
> THE DEFENDANT: In a trailer on 75th Street right off Highway 52. I don't remember the exact address. As soon as

you come off the interstate on Highway 52 in a trailer on 75th Street.

. . . .

THE DEFENDANT: I came to St. Cloud visiting because I was preparing to go to the Mayo Clinic to this pain rehabilitation clinic that they have to deal with people with chronic pain, so I came up [to St. Cloud] visiting.

THE STATE: So then in February of 2006 where did you live?

THE DEFENDANT: In February of 2006 I was going back and forth from St. Paul to Rochester.

THE STATE: Staying at the Mayo Clinic?

THE DEFENDANT: No . . . I had different female friends that I was involved in with at Rochester.

THE STATE: Did you let the BCA or their local law enforcement agency know that you were in that area?

THE DEFENDANT: No.

THE STATE: And how about in March of 2006?

THE DEFENDANT: In March of 2006 I believe I was still going back from Rochester to St. Paul.

. . . .

THE STATE: Okay. And did you inform anybody, law enforcement, in March of 2006 where you were living?

THE DEFENDANT: No, I was not aware that I was supposed to inform anyone.

The jury found appellant guilty as charged, and this appeal follows.

D E C I S I O N

Appellant claims that the district court "erred in admitting evidence of time periods when appellant did not register where he was staying or living with the BCA or police when those incidents were outside the charged offense dates and constituted unduly prejudicial bad-act evidence." "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court

abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

Generally, evidence showing that the accused has committed another crime independent of the one for which he is on trial is inadmissible. *State v. Wofford*, 262 Minn. 112, 117, 114 N.W.2d 267, 271 (1962). Evidence of other crimes or misconduct is not admissible if introduced to prove a person's character to show that he acted in conformity with his character. Minn. R. Evid. 404(b). Such evidence is commonly referred to as *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965)). The admission of *Spreigl* evidence is governed by special procedural rules. *See State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006) (describing the process that a court must use to determine whether to admit evidence of prior bad acts); *see also* Minn. R. Evid. 404(b) (listing the requirements for admission of prior-bad-act evidence). "[T]he overarching concern over the admission of *Spreigl* evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts." *Ness*, 707 N.W.2d at 685 (quotation omitted).

Appellant asserts that his admission, during cross-examination, that he failed to notify the necessary authorities of his address or whereabouts between December 2005 and March 2006 was *Spreigl* evidence. Appellant argues that the state failed to comply with the procedural requirements for admission of *Spreigl* evidence because it "did not give notice of its intent to offer this evidence and gave no reason for its admission prior

to trial or when it was elicited." Appellant also argues that the district court failed to comply with *Spreigl* requirements by not providing a cautionary instruction when the admission was elicited or in its final instructions. *See State v. Billstrom*, 276 Minn. 174, 179, 149 N.W.2d 281, 285 (1967) (stating that the district court should give a cautionary instruction when other-crime evidence is received and as a part of the final instructions to the jury). The state argues, in part,[1] that appellant's admission was not *Spreigl* evidence because it was not offered by the prosecution in the state's case-in-chief. The state's argument has merit.

"Generally, the state may impeach a defendant's credibility by cross-examining him in relation to matters opened on direct even though such inquiry brings out collateral criminal conduct." *State v. Clark*, 296 N.W.2d 359, 367 (Minn. 1980). For example, the defendant in *Clark* was charged with murder. *Id.* at 365. At trial, the defendant testified on his own behalf regarding a vehicle that was associated with the murder. *Id.* at 367. On direct examination, defense counsel asked the defendant when he acquired the vehicle, the model year of the vehicle, and what modifications he had made to the vehicle. *Id.* On cross-examination, the prosecutor impeached defendant's testimony by eliciting his admission that he knew the vehicle was stolen and that it was a different

[1] The state also argues that the *Spreigl* issue is waived because appellant did not object on "*Spreigl* grounds" in district court. *See* Minn. R. Evid. 103(a) (stating "[e]rror may not be predicated upon a ruling which admits . . . evidence unless . . . a timely objection appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context"). Because we agree that appellant's testimony was not *Spreigl* evidence and therefore do not review the admission of this testimony for compliance with *Spreigl* requirements, appellant's failure to object on "*Spreigl* grounds" does not render his objections inadequate.

model year than the year that he testified to on direct examination. *Id.* The prosecutor also asked defendant whether he had participated in the theft of the vehicle. *Id.*

On appeal to the supreme court, the *Clark* defendant claimed that the cross-examination regarding the uncharged vehicle theft was improper. *Id.* The supreme court disagreed explaining, "Since defendant insisted on direct examination that the vehicle he was driving at the time of the murders and when arrested was a 1967 model Bronco he had owned since 1968, the state was free to impeach by eliciting an admission that the vehicle was in fact a stolen 1973 model." *Id.* at 367-68. As to the defendant's objection that no *Spreigl* notice had been provided, the supreme court stated *Spreigl* "notice is required only when the evidence of collateral crimes will be presented in the state's case in chief." *Id.* at 368 n.6. As to defendant's claim of error predicated on the district court's failure to instruct the jury that the evidence was admissible only for impeachment and not as substantive evidence, the supreme court explained that the *Spreigl* caselaw requiring notice and cautionary-instructions did not control because "the evidence . . . was used as impeachment." *Id.*, n.7.

State v. Fulford is another example of a case in which the state was allowed to cross-examine a defendant regarding collateral criminal conduct without compliance with *Spreigl* procedural requirements. 290 Minn. 236, 187 N.W.2d 270 (1971). The *Fulford* defendant was also tried for murder. *Id.* at 237, 187 N.W.2d at 272. The state's witness testified that defendant and his companion had been at her apartment twice on the day before the murder. *Id.* at 238, 187 N.W.2d at 272. The murder weapon was a knife, and the witness identified the knife as belonging to her. *Id.* The witness testified that the

defendant's companion removed the knife from her apartment during one of the visits on the day before the murder. *Id.* After the state rested, the defendant testified on his own behalf. *Id.* During his direct examination, defense counsel asked defendant about his visits to the witness's apartment. *Id.* at 238-39, 187 N.W.2d at 272. Defendant testified that he reasoned with the witness to recover money from her and that his companion had picked up the knife. *Id.* at 239, 187 N.W.2d at 272. During cross-examination, the state asked defendant whether he had made any threats or used a knife to coerce the witness to give him money. *Id.*

On appeal to the supreme court, the *Fulford* defendant argued that he was denied due process of law by the admission of evidence regarding the alleged knife-threat and that the state failed to properly notify him of its intent to introduce the evidence. *Id.* at 238, 187 N.W.2d at 272. The supreme court rejected both claims of error. *Id.* at 239, 187 N.W.2d at 273. The court stated, "It is clear that the state was entitled to cross-examine defendant in relation to matters opened up by direct examination even though such inquiry brought out, or referred to, collateral criminal conduct." *Id.* The court also stated that the *Spreigl* notice requirement only applies when the state intends to introduce evidence of collateral crimes in its case in chief. *Id.*

In summary, under *Fulford* and *Clark*, no error results when the state's cross-examination of a defendant brings out collateral criminal conduct so long as the defendant opened the door to the subject matter on direct examination. This principle controls here. Appellant was charged under Minn. Stat. § 243.166, subd. 3(b), which provides that

> at least five days before the person starts living at a new primary address, including living in another state, the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered.

"'Primary address' means the mailing address of the person's dwelling." Minn. Stat. § 243.166, subd. 1a(g) (Supp. 2005). "'Dwelling' means the building where the person lives under a formal or informal agreement to do so." *Id.*, subd. 1a(c) (Supp. 2005).

The state presented evidence, in its case-in-chief, that appellant resided at T.W.'s apartment in St. Cloud from approximately April to July of 2006 and that he failed to notify the appropriate authorities of that address. Appellant took the stand and testified that he did not reside in St. Cloud, thereby opening the door to cross-examination regarding his true primary address. In an attempt to establish that his primary address was in St. Cloud, the state asked a series of cross-examination questions to show that appellant's testimony was not credible. The state argues that appellant's testimony that he was only "visiting" St. Cloud implied that he lived elsewhere and that "[t]he prosecutor was entitled to challenge appellant's testimony by attempting to determine where he lived if, as he claimed, it was not in St. Cloud." We agree.

The state's questions directly related to appellant's testimony that he was just visiting St. Cloud and that he did not reside there—testimony that refuted an element of the charged offense. Questions regarding appellant's living arrangements during the months immediately preceding the date of the charged offense were appropriate to test the veracity of his testimony: if T.M.'s apartment in St. Cloud was not appellant's primary address, he should have been able to identify his primary address both during

and immediately before the time period associated with the charged offense. *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."). Appellant's inability to identify a primary address that was provided to the necessary authorities tends to show that he was not credible when he denied that he had lived at T.W.'s apartment in St. Cloud.

In conclusion, defendant's admission regarding collateral criminal conduct was not improper *Spreigl* evidence. His admission was proper impeachment evidence on a subject matter that he opened the door to during his direct testimony. The incidental elicitation of evidence regarding collateral criminal conduct was not in error. *See Clark*, 296 N.W.2d at 367-68; *Fulford*, 290 Minn. at 239, 187 N.W.2d at 273. Because appellant fails to establish that the district court erred in allowing his testimony regarding collateral criminal conduct, we affirm.

Affirmed.