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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2480**

State of Minnesota,
Respondent,

vs.

Roger James Norris,
Appellant.

**Filed April 1, 2008
Affirmed
Stoneburner, Judge**

Douglas County District Court
File No. K305939

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his conviction of second-degree controlled-substance crime—sale of methamphetamine, arguing that the district court abused its discretion by

admitting evidence regarding an uncharged sale that occurred three days before the charged sale. Appellant argues that the prejudicial effect of the evidence requires that his conviction be reversed. We disagree and affirm.

FACTS

To avoid going to prison for violating probation for drug-related offenses, Nicole LaVallie agreed to cooperate with police and buy methamphetamine from appellant Roger James Norris. LaVallie knew Norris as a friend of her husband, and she told police officers that she had been at Norris's house many times to buy and use methamphetamine.

The first transaction occurred on July 17, 2005. LaVallie arranged to buy three and one-half grams of methamphetamine from Norris for \$300, but she arrived at his house without the money and without being wired by the police to record the transaction. Norris gave LaVallie two grams of methamphetamine and told her to come back with the money and he would give her the remaining one and one-half grams. LaVallie met with drug-task-force agents and gave them the drugs. The agents wired her, gave her \$300, and sent her back to Norris to obtain the remaining methamphetamine. Norris took the money but only gave LaVallie one-half of a gram of methamphetamine and told her he would give her the remaining gram at the "next deal." LaVallie gave the methamphetamine to the agents and told them what had transpired. LaVallie's husband's voice could be heard on the tape recording of the transaction but other voices on the tape were indiscernible.

LaVallie arranged to buy more methamphetamine from Norris and to pick up the gram of methamphetamine that he owed her from the first transaction. On July 20, 2006, law enforcement officers gave LaVallie \$600. LaVallie was to get the gram of drugs she had previously purchased and buy as much methamphetamine as she could with the \$600. She was wired before this transaction. After the transaction, LaVallie gave the substance she had obtained from Norris to drug-task-force agents. The substance tested positive for methamphetamine and weighed 5.2 grams. LaVallie's voice and her husband's voice were the only voices that could be heard on the tape recording of this transaction.

Norris was charged with second-degree controlled-substance crime for the transaction on July 20. He was not charged for the first transaction. Prior to trial, the state disclosed that, at trial, it would present evidence of the July 17 sale. Before opening statements, Norris moved in limine to exclude any evidence related to the first transaction. The district court concluded that evidence of a sale on July 17 was clear and convincing and admissible as part of the *res gestae*¹ because it “would show a causal relationship or connection between the two acts [on July 17 and July 20].” The district court also noted that although the evidence was not “technically” *Spreigl* evidence, it was “relevant on the issue of preparation and plan, knowledge of the defendant . . . [and i]dentity to a certain degree,” and admissible under Minn. R. Evid. 404(b).

¹ “Res gestae” is a somewhat outdated term generally defined as “the events at issue or others contemporaneous with them” and “[i]n the law of evidence . . . may be . . . a rule of relevance that makes testimony about the events forming part of the *res gestae* admissible” Bryan A. Garner, *A Dictionary of Modern Legal Usage* 761 (2d ed. 1995).

The district court gave a standard cautionary instruction to the jury when evidence of the July 17 sale was admitted and in the final jury instructions. The prosecutor told the jury in closing argument that it could only convict Norris if the state proved, beyond a reasonable doubt, that Norris sold over three grams of methamphetamine on July 20 and that it could not find him guilty if the state only proved that he sold drugs in the first transaction on July 17. The jury found Norris guilty. Norris was sentenced, and this appeal followed.

D E C I S I O N

A reviewing court will not reverse the district court's admission of evidence of other crimes or bad acts absent a clear abuse of discretion. *State v. Scruggs*, 421 N.W.2d 707, 715 (Minn. 1988). "On appeal, the defendant has the burden of proving both that the trial court abused its discretion in admitting the evidence and that the defendant was thereby prejudiced." *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997).

As a general rule, evidence showing that a criminal defendant has committed another crime, unrelated to the crime for which he is on trial, is inadmissible because one crime may not be proved by proof of another. *Id.* (citing *State v. Wofford*, 262 Minn. 112, 117, 114 N.W.2d 267, 271 (1962), and *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965)). But "the general rule against admitting other crime evidence should not necessarily preclude the state from making out its whole case against the accused based on evidence that may be relevant to the accused's guilt of the crime charged." *Id.* (quotation omitted).

[W]here two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other, or where evidence of other crimes constitutes part of the *res gestae*, it is admissible. . . . Such evidence, however, must show a causal relation or connection between the two acts so that they may reasonably be said to be part of one transaction.

Id. (quoting *Wofford*, 262 Minn. at 118, 114 N.W.2d at 271-72).

In this case, the July 17 transaction explained, in part, why LaVallie arranged the July 20 transaction with Norris. Although there is merit in Norris's argument that proof of the July 20 offense was not dependent on evidence of the July 17 sale, the causal connection between the two transactions supports admissibility. We conclude that the district court did not abuse its discretion by concluding that evidence of the first transaction was admissible as evidence of ongoing transactions between Norris and LaVallie. Because we conclude that the evidence was admissible under *Wofford*, we do not reach the district court's alternative ruling that the evidence was admissible as *Spreigl* evidence.

Even otherwise admissible evidence of other crimes, whether part of the *res gestae* or *Spreigl* evidence, is not admissible unless the evidence is relevant and the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant. *Nunn*, 561 N.W. 2d at 908. Norris argues that evidence of the July 17 sale is not relevant to the state's case, and that the potential for unfair prejudice outweighed any probative value the evidence may have had. The district court found that the July 20 transaction could not be fully explained without evidence of the July 17 sale. We conclude that the July 17 transaction is relevant because it provided the context for the

charged transaction. The evidence was admitted to place the July 20 sale in context and illuminate the relationship between LaVallie and Norris. *See State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998) (holding that district court acted within its discretion when it determined that other-crimes evidence was more probative than prejudicial where the evidence illuminated the relationship between the defendant and his victim and placed the incident with which defendant was charged in proper context). In this case, the district court read two cautionary instructions to the jury, one at the time the evidence was admitted and one at the close of the entire case. *See id.* (noting that similar cautionary instructions lessened the probability of undue weight being given to the evidence by the jury). Additionally, in this case, the prosecutor clearly told the jury in closing that it could not convict Norris if it only found that the state had proved the July 17 transaction beyond a reasonable doubt. Under these circumstances, any potential prejudice to Norris from admission of evidence of the first transaction was eliminated and the district court did not abuse its discretion in admitting the evidence.

Affirmed.