STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0576

State of Minnesota,
Respondent,

vs.

Matthew Roy Nelson,
Appellant.

Filed April 28, 2014
Affirmed in part, reversed in part, and remanded
Stauber, Judge

Ramsey County District Court
File No. 62CR127051

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from his convictions of attempted first-degree aggravated robbery and fifth-degree assault, appellant argues that the district court abused its discretion by admitting

Spreigl evidence in the form of a conviction of fourth-degree assault from 2010, and theft from a person from 2007. We affirm in part, reverse in part, and remand.

FACTS

On August 27, 2012, J.P. and her 16-year-old daughter C.P. stopped at a gas station so that J.P. could get a soda. As she left the store, J.P. was approached by appellant Matthew Nelson, who asked her if she had any change. Because she was "irritated" by appellant's question, J.P. replied "hell no," and told appellant to get a job. Appellant responded by saying "bitch, you don't have to talk to me that way," and then spit in J.P.'s face. In response, J.P. threw her soda in appellant's face, which prompted appellant to punch J.P. in the head, causing a laceration that would require three stitches. The physical altercation continued, and appellant dragged J.P. in the parking lot for a short distance. According to J.P., she felt appellant pulling on her purse, but she was able to maintain its possession because the purse "was caught [on her] elbow."

C.P. testified that she remained in the car while her mother went into the gas station store to purchase her soda. Because she was listening to music through her headphones, C.P. was not "paying attention" to her surroundings. But C.P. got out of the car when she noticed "a whole bunch of commotion," and saw her mother "fighting" with appellant. C.P. then attempted to intervene, and was "punched in the face and then dragged down" in the process. Although C.P. testified that she saw appellant "pulling" on her mother's purse, she admitted that she was unsure if she provided that information to police, and the responding officer's report did not indicate that C.P. saw appellant trying to steal J.P.'s purse.

After the brief altercation, appellant fled the scene on foot, and J.P. got into her car and pursued appellant while C.P. called 911. J.P. followed appellant to a parking lot near some apartments, where she engaged in another struggle with appellant. When a bystander yelled that he was "going to call 911," appellant "took off," and J.P. returned to the gas station where she reported the incident to police. Appellant was subsequently apprehended and identified as the perpetrator at a show-up identification.

Appellant was charged with one count of attempted first-degree aggravated robbery and two counts of fifth-degree assault. Prior to trial, the state gave notice of its intent to present three incidents of *Spreigl* evidence. Over defense objection, the district court allowed two of the incidents to be admitted—appellant's prior convictions of theft from a person from 2007, and fourth-degree assault from 2010. Appellant was then found guilty of attempted first-degree aggravated robbery and fifth-degree assault against J.P., but not guilty of fifth-degree assault of C.P. The district court sentenced appellant to 42 months in prison. This appeal followed.

D E C I S I O N

"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) (citations omitted).

The rules of evidence provide that "[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). To qualify for admissibility, the other-crimes evidence must legitimately show a relevant noncharacter purpose. *State v. Smith*, 749 N.W.2d 88, 92 (Minn. App. 2008).

The state must satisfy five procedural safeguards before other-crimes evidence will be admitted: (1) provide notice; (2) clearly indicate what the evidence will be offered to prove; (3) offer clear and convincing evidence that the defendant participated in the offense; (4) prove that the *Spreigl* evidence is relevant and material to the state's case; and (5) prove that the probative value of the evidence is not outweighed by its potential for unfair prejudice. Minn. R. Evid. 404(b); *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). If the evidence is erroneously admitted, this court must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Fardan*, 773 N.W.2d 303, 320 (Minn. 2009). If such possibility exists, then the error is prejudicial and a new trial is required. *State v. Rucker*, 752 N.W.2d 538, 549 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

Appellant challenges the admission of his prior convictions of (1) fourth-degree assault from 2010 and (2) theft from a person from 2007. Appellant argues that the district court erred by admitting this *Spreigl* evidence because "the facts surrounding the prior incidents were markedly different from those of the current offense thereby making the prior bad acts evidence irrelevant and immaterial to the current charges." Appellant

further argues that he is entitled to a new trial because there is a reasonable probability that the wrongfully admitted *Spreigl* evidence significantly affected the verdict.

I. 2010 conviction of fourth-degree assault

At trial, the state introduced evidence that in October 2010, police were dispatched to a bar in St. Paul following a report that three individuals "were going into the bar and . . . were stealing mints and were refusing to leave the bar." Police made contact with appellant, who was "yelling and acting disorderly." After police detained appellant and placed him in the squad car, appellant "started spitting all over [the] patrol car," which resulted in appellant being convicted of fourth-degree assault.

Appellant argues that the district court abused its discretion by admitting evidence of the 2010 conviction because it was irrelevant, immaterial, and unduly prejudicial. We agree. A district court should look to the real purpose for which *Spreigl* evidence is offered and ensure that that purpose is one of the permitted exceptions to the rule's general exclusion of other-acts evidence. *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). "This entails isolating the consequential fact for which the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *Id.* *Spreigl* evidence may be relevant and material to show a common scheme or plan when it has a "*marked similarity* in modus operandi to the charged offense." *Id.* at 688 (quotation omitted).

However, the danger in admitting *Spreigl* evidence is that a jury may convict because of the "other crimes or misconduct, not because the defendant's guilt of the

charged crime is proved." *Id.* at 685. As the supreme court has recognized, the "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." *Id.* (quotations omitted).

Here, as appellant points out, the "only real similarity between the two incidents was the spitting." But appellant was not charged with spitting on J.P., and generally did not dispute that he committed that act. Moreover, in seeking to have the 2010 fourth-degree assault conviction admitted, the state claimed that it was "being offered for the purposes of motive, intent, absence of mistake or accident, and common scheme or plan." The state, however, basically cited the rule, claimed that the facts surrounding the 2010 conviction were similar to the facts of the present case, and then offered no further explanation as to why the *Spreigl* evidence is admissible. In fact, the state conceded at oral argument that the state's arguments in support of admitting the *Spreigl* evidence were very "general." Likewise, in granting the state's motion to admit evidence of the 2010 conviction, the district court stated that "I do believe that it is evidence specifically of modus operandi and absence of mistake or accident, and, therefore, I'm going to allow it." But there was no explanation as to how the 2010 conviction is evidence of modus operandi and absence of mistake or accident.

Our supreme court has instructed that the "district court should not simply take the prosecution's stated purposes for the admission of other-acts evidence at face value." *Ness*, 707 N.W.2d at 686. Instead, the district court "should follow the clear wording of

Rule 404(b) and look to the real purpose for which the evidence is offered and ensure that that purpose is one of the permitted exceptions to the rule's general exclusion of other-acts evidence." *Id.* (quotation omitted). The record here reflects that the district court did not examine the real purpose for which the evidence was being offered. Therefore, we conclude that the district court abused its discretion by admitting evidence of appellant's 2010 conviction of fourth-degree assault because it was not relevant to this case.

II. 2007 conviction of theft from a person

In addition to evidence of the 2010 conviction, the state introduced evidence that appellant was convicted of theft from a person in 2007. Specifically, evidence was admitted demonstrating that in September 2007, appellant got off a bus in St. Paul, unloaded his bicycle from the bus, and then suddenly ran back onto the bus. Once back on the bus, appellant pushed a woman who had been sitting across the aisle from him, stole her purse and jacket, and then got off the bus and fled on his bicycle.

Appellant argues that the district court abused its discretion by admitting evidence of the 2007 conviction because it was irrelevant and was "markedly different" than the allegations in this case. We agree. The only similarities between the 2007 offense and the alleged offense in this case are that they both occurred on West Seventh Street in St. Paul, and both incidents involved an attempt to take a women's purse. Moreover, in moving to admit the evidence, the state alleged that the 2007 conviction was being "offered . . . under the same purposes" as the 2010 conviction. Again, however, no further explanation was provided by the state. And in admitting the evidence, the district court simply concluded that the 2007 conviction "does specifically address absence of

mistake or accident, motive, intent and common scheme or plan, and I'm going to allow it." As with the 2010 conviction, the district court failed to explain how the 2007 conviction addresses absence of mistake or accident, motive, intent and common scheme or plan. *See Ness*, 707 N.W.2d at 686. Because the 2007 conviction is not markedly similar to the alleged offense here, and because there is no explanation as to how the 2007 conviction is relevant to show absence of mistake or accident, motive, intent and common scheme or plan, we conclude that the district court abused its discretion by admitting evidence of the 2007 conviction.

III. Prejudice

Appellant argues that the admission of the *Spreigl* evidence was not harmless error. Generally, the erroneous admission of *Spreigl* evidence is harmless unless a defendant can establish that "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Bolte*, 530 N.W.2d 191, 198 (Minn. 1995) (quotation omitted). In making this determination, this court need not decide whether a jury would have convicted the defendant without the error, but rather whether the error reasonably could have affected the jury's decision. *State v. Shannon*, 583 N.W.2d 579, 586 (Minn. 1998).

Here, the record reflects that the evidence supporting appellant's conviction of fifth-degree assault was strong. J.P. testified that after she threw her soda on appellant in response to him spitting on her, appellant punched her in the head and then dragged her in the parking lot. And in addition to J.P.'s testimony, C.P. and two other witnesses testified that they observed the scuffle between appellant and J.P. Moreover, the state

introduced evidence of J.P.'s injuries, including photographs of the laceration near J.P.'s eye that required three stitches. Therefore, we conclude that appellant cannot demonstrate that the admission of the 2010 conviction likely affected the jury's decision to convict him of fifth-degree assault.

However, the evidence supporting appellant's conviction of attempted first-degree aggravated robbery was substantially weaker. In fact, the only evidence supporting the attempted aggravated robbery charge was J.P. and C.P.'s testimony that appellant pulled on J.P.'s purse during the scuffle. And C.P.'s credibility was damaged on cross-examination after C.P. admitted that she did not inform police that she saw appellant attempt to steal J.P.'s purse. In light of the lack of evidence supporting the attempted aggravated robbery charge, we conclude that there is a reasonable probability that admission of the 2007 conviction significantly affected the verdict. Accordingly, we reverse appellant's conviction of attempted first-degree aggravated robbery and remand for a new trial on that count.

Affirmed in part, reversed in part, and remanded.