STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1124

State of Minnesota,
Respondent,

vs.

Joshua Joe Quast,
Appellant.

Filed June 23, 2014
Affirmed
Hooten, Judge

Rice County District Court
File No. 66-CR-12-1357

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

G. Paul Beaumaster, Rice County Attorney, Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

HOOTEN, Judge

Appellant challenges the district court's denial of his pretrial motion to suppress evidence, arguing that the stop of his car was not supported by a particularized and

objective basis and that the scope of the stop was unconstitutionally expanded. Appellant also contends that the district court erred by admitting *Spreigl* and hearsay evidence at trial. We affirm.

FACTS

On the evening of May 8, 2012, Officer Benjamin Johns was driving eastbound in his squad car when a westbound car with its high beams on drove past him. Officer Johns, believing this to be a traffic violation, stopped the car. The sole occupant of the car, appellant Joshua Quast, explained that the car belonged to his "homegirl" and that he had recently reinstated his driver's license. He offered to call someone to bring proof of insurance. During their conversation, Officer Johns observed that Quast "kept going for his cell phone wanting to use his cell phone." Officer Johns returned to his squad car to check Quast's license status.

In the meantime, Officer Josh Alexander arrived as back-up. He stood next to the rear passenger side of Quast's car and noticed that the rear passenger-side window was half-way down. Officer Alexander shined a flashlight inside of the car. In "plain view," Officer Alexander observed a water bong lying on the rear passenger-side floor. Officer Alexander seized the water bong.

After learning that Quast's driver's license had been revoked, Officer Johns returned to Quast's car and Officer Alexander showed him the water bong. Quast claimed that the water bong did not belong to him. The officers removed Quast from the car. Officer Alexander searched the car and found other contraband, including a scale and baggies. Quast also claimed that these items did not belong to him. Officer

Alexander also found a used plastic baggie that contained a crystal rock-like substance in the center console underneath an insert. The substance field tested positive for methamphetamine. The officers did not ask Quast whether the drugs belonged to him, and Quast did not volunteer that the drugs belonged to him or anyone else. The officers arrested Quast.

Quast was charged with several drug-possession and traffic offenses. Quast moved to suppress the evidence obtained during the stop. The district court denied Quast's motion.

The state noticed Quast of its intent to admit *Spreigl* evidence of six text messages from the cell phone used by Quast at the time of his arrest.[1] Quast objected, arguing that that the state failed to prove by clear and convincing evidence that Quast owned the cell phone and participated in the acts, that the messages were irrelevant, and that the messages would be more prejudicial than probative. The district court allowed three of the six text messages into evidence.

Quast's counsel outlined his theory of the case during opening arguments: "This is a case of Mr. Quast being in the wrong place at the wrong time in the wrong vehicle." He added that the state had to prove that Quast knowingly possessed controlled substances, noting that the police found no drugs on his person and Quast was not the owner of the stopped car.

[1] The officers searched the cell phone under a search warrant. Quast did not challenge this search before the district court, and does not do so on appeal.

Officers Johns and Alexander testified regarding the May 8 incident. Deputy Sheriff Scott Robinson, who has 20 years' experience investigating narcotics, testified on the terminology used in the text messages. The state also offered the text messages into evidence over Quast's objections on hearsay grounds. The district court overruled Quast's objections but gave a cautionary instruction prior to their admission.

The first text messages were transmitted on May 7 and 8 between "Tiff" and "Me" and include a command by Tiff for a "60." Deputy Robinson testified that "if somebody asked for . . . a 60, that would be $60.00 worth" of drugs. At one point, Tiff asked whether the drugs were "chunky or still the same." Me responded, "Its chunk," which Deputy Robinson testified could mean "a big shard of methamphetamine." The second set of text messages was transmitted on May 8 between "Kaiah" and Me. Me claimed, "i hav never ever cut my.sh-t." Kaiah responded that he or she told people that "q bags always Been good an always been on.point until the last week they haven't really been getting you high." Deputy Robinson explained that "cutting" refers to the chemical process of increasing the drugs' weight, thereby increasing sale revenue. The term "bags" refers to the containers for drugs and the phrase "on point" means that the drugs weight is accurate. The third set of text messages was also transmitted on May 8. In this exchange, "Shorty" asked Me for a "t" and assured Me that he could provide "colaterall." Me responded that he is unable to do so and reminds Shorty that he still needs "dat 550 asap" and that he did not "care wat ta gooda do to get it it jus got ta b here." Deputy Robinson explained that a "t" or a "teener" is 1.75 grams of methamphetamine or a 1/16 of an ounce.

The state did not reference the text messages in closing arguments, and the district court repeated cautionary instructions to the jury regarding the proper use of *Spreigl* evidence during its final instructions. The jury found Quast guilty of all charges. Quast was sentenced to 88 months' imprisonment. Quast appeals.

D E C I S I O N

I.

Quast challenges the constitutionality of the traffic stop under article I, section 10 of the Minnesota Constitution, which protects citizens against unreasonable searches or seizures.[2] "When reviewing pretrial orders on motions to suppress evidence, we review the facts to determine whether, as a matter of law, the [district] court erred when it failed to suppress the evidence." *State v. Flowers*, 734 N.W.2d 239, 247 (Minn. 2007). Because the facts are not in dispute, we review de novo whether the police articulated an adequate basis for the search or seizure at issue. *Id.* at 248. We apply the principles and framework of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) when evaluating the reasonableness of seizures during traffic stops. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). We ask whether (1) the stop was justified at its inception and (2) the actions of the police were reasonably related and justified by the circumstances that gave rise to the stop in the first place. *Id.* at 364.

[2] As a preliminary matter, the state asserts that Quast waived this issue. We disagree. Quast raised the issue in general terms in his motion to suppress and at the omnibus hearing, and the state addressed the issue in its posthearing memorandum.

A. The stop

"In general, the state and federal constitutions allow an officer to conduct a limited investigatory stop of a motorist if the state can show that the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Anderson*, 683 N.W.2d 818, 822–23 (Minn. 2004) (quotation omitted). "Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Officer Johns stopped Quast because he believed Quast had violated Minnesota Statutes section 169.61(b) (2010), which provides: "When the driver of a vehicle approaches a vehicle within 1,000 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver." In *Holm v. Comm'r of Pub. Safety*, a district court determined that the failure of a driver to dim his high beam lights for oncoming traffic was not a reasonable ground for a traffic stop. 416 N.W.2d 473, 474 (Minn. App. 1987). There was evidence that the driver also drifted to the side of the road, but the district court did not mention this fact in its order. *Id.* at 474–75. We reversed without considering the drifting, explaining that "[a] driver must dim his lights when approaching a vehicle and failure to do so is a violation of Minn. Stat. § 169.61 (1986)." *Id.* at 475.

Quast contends that Officer Johns was mistaken in his understanding of the statute, arguing that in order to violate the statute, there must be evidence that the offending car's high beams projected "glaring rays" into the eyes of an oncoming driver.

Quast maintains that Officer Johns did not have a particularized and objective basis to stop him because the state failed to produce any such evidence. We disagree.

While it is well settled that "an officer's mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop," *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004), the stop in this case was not the result of a police officer's mistaken interpretation of a statute. Quast relies on our recent decision in *Sarber v. Comm'r of Pub. Safety*, 819 N.W.2d 465 (Minn. App. 2012). In *Sarber*, a deputy observed a driver flashing his high beams twice and stopped him based on a violation of section 169.61(b). 819 N.W.2d at 467. But the officer did not testify that his vision was impaired by the flashing. *Id.* We determined that the deputy misinterpreted section 169.61(b), reasoning that "the legislature's inclusion of the term 'glaring' leads us to conclude that briefly flashing or flickering one's high beams at an oncoming vehicle is not a violation, unless another driver was at least temporarily blinded or impaired by the lights." *Id.* at 468.

Under the facts of this case, Officer Johns need not have experienced vision impairment for Quast to violate section 169.61(b). Quast did not merely flicker his high beams like the driver in *Sarber*. Instead, he never dimmed them, akin to the driver in *Holm*. Moreover, *Holm* was the leading case at the time of the stop. And *Sarber* did not overrule *Holm*. Rather, we distinguished the facts: "[I]n *Holm*, the [driver] failed to dim his high beams *at any time*. The court therefore did not need to address whether the 'glaring' requirement was satisfied." *Id.* at 470 (emphasis added). The stop, premised on Officer Johns' observance of a traffic violation, was justified at its inception.

B. Expansion of the stop

Quast contends that Officer Alexander's use of a flashlight during the traffic stop to illuminate the interior of his car was an incremental intrusion without additional justification. In the context of traffic stops, article 1, section 10, of the Minnesota Constitution affords individuals protection greater than that under the Fourth Amendment of the U.S. Constitution. *State v. Ortega*, 770 N.W.2d 145, 152 (Minn. 2009). "[T]he Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Flowers*, 734 N.W.2d at 251.

But the Minnesota Supreme Court has "upheld against fourth amendment challenge the practice of police officers routinely shining flashlights into automobiles, the only exception being when the officers unlawfully acquire their position vis-a-vis the vehicles, as when they unlawfully stop cars." *State v. Alesso*, 328 N.W.2d 685, 687 (Minn. 1982). "When the vehicle [is] parked or [is] lawfully stopped on the public way, the courts have consistently held that the officer's conduct in illuminating the interior of the automobile does not constitute a search." 1 Wayne R. LaFave, *Search and Seizure* § 2.2(b) (5th ed. 2012). "The fact that the contents of the vehicle may not have been visible without the use of artificial illumination does not preclude such observation from application of the 'plain view' doctrine." *Id.*

Because Officer Johns lawfully stopped Quast, Officer Alexander's conduct was not an unconstitutional intrusion under the Minnesota Constitution. Instead, the

warrantless use of flashlights to illuminate the interior of cars by police has been upheld on appeal in a number of cases. *See, e.g.*, *State v. Vohnoutka*, 292 N.W.2d 756 (Minn. 1980); *State v. Landon*, 256 N.W.2d 89 (Minn. 1977); *State v. Houff*, 309 Minn. 1, 243 N.W.2d 129 (Minn. 1976). And Officer Alexander testified that he observed the water bong in plain view after shining the flashlight into the car. The district court did not err by denying Quast's motion to suppress.

II.

Quast challenges the district court's admission of the text messages found on the cell phone that he possessed and was using during the stop. "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).

A. *Spreigl* evidence

Quast contends that the district court erred by admitting the text messages as *Spreigl* evidence. Evidence of other crimes or misconduct, also known as *Spreigl* evidence, is generally not admissible to prove the defendant's character for the purpose of showing that he or she acted in conformity with that character. Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). But this evidence may be admitted for the limited purposes of showing motive, intent, absence of mistake or accident, identity, or a common scheme or plan. Minn. R. Evid. 404(b). *Spreigl* evidence is admissible only if: (1) notice is given that the state intends to use the

evidence; (2) the state clearly indicates what the evidence is being offered to prove; (3) the evidence is clear and convincing that the defendant participated in the other offense; (4) the *Spreigl* evidence is relevant and material to the state's case; and (5) the probative value of the *Spreigl* evidence is not outweighed by its potential for unfair prejudice. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). Quast's appeal addresses the final three requirements.

Quast first claims that there was not clear and convincing evidence that he participated in the acts at issue or that he was "Me" in the text messages. "To determine whether there is clear and convincing evidence, we review the district court's findings, according great deference to the district court's discretion on evidentiary findings." *State v. McLeod*, 705 N.W.2d 776, 788 (Minn. 2005). We review the record to determine whether there is clear and convincing evidence of the wrong or act. *Id.* "The clear and convincing standard is met when the truth of the facts sought to be admitted is highly probable." *Kennedy*, 585 N.W.2d at 389 (quotation omitted).

The district court found that there was clear and convincing evidence that Quast participated in the text-message exchanges because Quast "was using the phone at the time that he was stopped." The district court's finding is supported by the record. Both Officers Johns and Alexander testified that Quast was using the cell phone containing the text messages during the traffic stop. Officer Johns added that Quast asked to use the cell phone to call someone to bring proof of insurance. Based on this record, the district court did not abuse its discretion in finding that there was clear and convincing evidence that

Quast owned the cell phone and was the person who participated as Me in the text messages.

Quast contends that the text messages are not relevant to prove that he knew about the methamphetamine that was found in the car. The district court found the evidence relevant to the issue of possession. Relevant evidence is broadly defined as evidence tending to make the existence of a consequential fact more or less probable than it would be without the evidence. Minn. R. Evid. 401. "In determining the relevance and materiality of *Spreigl* evidence, the [district] court should consider the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place or modus operandi." *Kennedy*, 585 N.W.2d at 390 (quotation omitted). "This court has been flexible in applying this test on appeal, upholding admission notwithstanding a lack of closeness in time or place if the relevance of the evidence was otherwise clear." *Id.* (quotation omitted).

The state's theory of the case is that Quast constructively possessed the methamphetamine in the car. The state asserts that the text messages were necessary to combat Quast's theory that the methamphetamine did not belong to him. We agree that the messages are relevant to these disputed issues when viewed in conjunction with Deputy Robinson's explanation of commonly used phrases and slang utilized in drug transactions. In the text messages with Tiff, Quast claims that he has a "chunk" of methamphetamine. The text messages with Kaiah establish Quast's contention that he does not cut his methamphetamine. The text messages between Shorty and Quast

establish that Shorty wanted methamphetamine from him, but Quast was unwilling to give Shorty drugs without payment. Moreover, there is a close relationship between the charged offense and the *Spreigl* offenses referenced in the text messages in terms of time. The text messages were exchanged on May 7 and 8. Quast was arrested on May 8. Given that the *Spreigl* offenses evidenced by the text messages were almost contemporaneous with Quast's arrest, they tend to show that it was more probable that Quast had knowledge of and possessed the methamphetamine found by police in his car.

Quast argues that the probative value of the text messages is substantially outweighed by their prejudicial effect because they are not connected to the drugs found in the car and unfairly paint him as the type of person likely to possess drugs. "When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). "The closer the relationship between the events, the greater the relevance or probative value of the evidence and the lesser the likelihood the evidence will be used for an improper purpose." *Kennedy*, 585 N.W.2d at 390 (quotation omitted).

In support of his claim that the text messages are inadmissible, Quast principally relies on *State v. Montgomery*, 707 N.W.2d 392 (Minn. App. 2005). Quast's reliance is misplaced. In *Montgomery*, we concluded that the district court erred by admitting *Spreigl* evidence of two prior convictions of drug possession at defendant's trial for selling drugs. 707 N.W.2d at 399. The convictions in *Montgomery* were "relatively

remote, especially the first which occurred nine years before the trial." *Id.* at 397. And the potential for unfair prejudice outweighed the probative value of the convictions because the jury "reasonably could conclude that [defendant] is the type of person likely to participate in a drug sale" if it "became aware that [defendant] had two prior felony convictions for being involved with drugs." *Id.* at 399. We explained, "[T]his would be impermissible character evidence and would unfairly prejudice [defendant]." *Id.* And we held that prior convictions for possession of drugs nine years earlier had no bearing on whether defendant sold drugs in his present case. *Id.*

Unlike *Montgomery*, Quast's prior acts of possessing methamphetamine on *the day before* and *the day of* his arrest are probative of whether he had knowledge of or possessed the methamphetamine found in the car when stopped by the police. Quast's prior acts of selling methamphetamine necessarily requires that he also possess methamphetamine, whereas in *Montgomery*, a prior act of possessing drugs was not probative of whether defendant was selling drugs nine years later.

The admission of these prior acts as *Spreigl* evidence, while prejudicial, is not *unfairly* prejudicial given the temporal relationship between the prior acts and the current charge. Moreover, the district court gave a cautionary instruction before their admission and during its final instructions. The district court did not abuse its discretion by finding

that the probative value of the *Spreigl* evidence outweighed its potential for prejudice and allowing the evidence to be admitted at trial.[3]

B. Hearsay

Quast contends that the district court erred by admitting the text messages because they contained inadmissible hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *State v. Litzau*, 650 N.W.2d 177, 182–83 (Minn. 2002). Hearsay is inadmissible unless it comes within a recognized exception. *State v. DeRosier*, 695 N.W.2d 97, 104 (Minn. 2005). The district court determined that the text messages are admissible under Minn. R. Evid. 803(3), the "then existing mental, emotional, or physical condition" hearsay exception.

The district court did not abuse its discretion by admitting the text messages over Quast's hearsay objections. Quast's statements are not hearsay because they are offered against him and they are his own statements. *See* Minn. R. Evid. 801(d)(1)(A) ("A statement is not hearsay if . . . [t]he statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity . . . ."). Tiff, Shorty, and Kaiah's statements give context to Quast's statements, and therefore are not

[3] Although not argued before the district court or this court on appeal, we note that one or more of the text messages may have been admitted as immediate-episode evidence. Immediate-episode evidence is a narrow exception to the general character-evidence rule that allows the state to prove all relevant facts and circumstances which tend to establish the elements of the charged offense, even though those facts and circumstances may prove that the defendant committed other offenses. *State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009). Such "evidence is admissible where 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 the evidence of other crimes constitutes part of the res gestae." *Id.* (quotation omitted).

hearsay because they were not offered to prove the truth of the matter asserted. *See State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000) (concluding that the district court did not err by admitting recorded statements because they provided context to defendant's statements). Moreover, Tiff does not make any "statements," but instead asks questions and issues commands, which are not hearsay. *See* Minn. R. Evid. 801(a) (defining a "statement" as an oral or written assertion or nonverbal conduct intended to be an assertion); *United States v. Thomas*, 451 F.3d 543, 548 (8th Cir. 2006) ("Questions and commands generally are not intended as assertions, and therefore cannot constitute hearsay."); *see also State v. Brown*, 455 N.W.2d 65, 68 (Minn. App. 1990) (concluding that the declarant's statement "do what you came to do" was "not assertive," could not be determined to be true or false, and, thus, was not excludable as hearsay), *review denied* (Minn. July 16, 1990).

Tiff and Shorty's statements fall within Minn. R. Evid. 803(3), which excludes from hearsay:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

To be admissible (1) the statement must be contemporaneous with the mental state sought to be proven; (2) there must be no suspicious circumstances suggesting a motive for the declarant to fabricate or misrepresent his or her thoughts; and (3) the declarant's state of mind must be relevant to an issue in the case. *DeRosier*, 695 N.W.2d at 104–05. Tiff

and Shorty's statements indicate their intent to purchase drugs from Quast. *See State v. Miller*, 754 N.W.2d 686, 704 (Minn. 2008) (statements describing intentions and plans are admissible under Minn. R. Evid. 803(3)). They are contemporaneous with the mental states sought to be proven, and there are no suspicious circumstances suggesting that Tiff and Shorty are being dishonest. And their mental states are relevant as to whether Quast possessed drugs on May 8, as they are probative as to whether Quast had drugs on or near him the day of his arrest.[4]

Even if the district court erred by admitting the text messages, we must examine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). We consider whether (1) the evidence of appellant's guilt was overwhelming; (2) the prosecutor relied on the evidence in closing arguments; (3) the defense's evidence was weak or of doubtful credibility; and (4) the district court gave a cautionary instruction when requested. *State v. Bolte*, 530 N.W.2d 191, 198–99 (Minn. 1995).

We conclude that any error in admitting the text messages was harmless. There was ample evidence supporting Quast's guilt, including evidence that Officer Alexander discovered a water bong, a scale, baggies, and a used plastic baggie containing

[4] We also note that neither the parties nor the district court analyzed the text-message conversations as statements between coconspirators, but that they may have qualified under this exception as well. *See* Minn. R. Evid. 801(d)(2)(E) ("A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . a statement by a coconspirator of the party."); *State v. Brist*, 812 N.W.2d 51, 55–57 (Minn. 2012) (stating that "[c]o-conspirators' statements, when made in the course and in furtherance of the conspiracy, have a long tradition of being outside the compass of the general hearsay exclusion" and concluding that the exception remains good law (quotation omitted)).

methamphetamine in the car. The water bong was in plain view, and the police was justified in searching the car's center console in discovering the methamphetamine. That Quast alone was in control of the car supports that he knew that the drugs were in the car. Moreover, at the time of admission and during final instructions, the district court gave cautionary instructions regarding the proper use of *Spreigl* evidence. The state did not dwell on the text messages during the trial and did not mention them during closing arguments. Accordingly, we conclude that there is no reasonable possibility that the verdict would have been more favorable to Quast in the absence of the text messages.

Affirmed.