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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1069

State of Minnesota,
Respondent,

vs.

Dennis Lloyd Hudson,
Appellant.

Filed April 22, 2013
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-11-26167

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of terroristic threats, arguing that the district court abused its discretion by admitting (1) *Spreigl* evidence of appellant's alleged threat

to punch his sister earlier the same day on which he made terroristic threats to the victim and (2) evidence that appellant allegedly threatened the victim outside the jury's presence during a trial break. We affirm.

FACTS

Respondent State of Minnesota charged appellant Dennis Hudson for making terroristic threats against J.C. in violation of Minn. Stat. § 609.713, subd. 1 (2010). The state listed Hudson's sister on its witness list. Hudson's sister lived in the same apartment building as J.C. Earlier in the day that Hudson threatened J.C., Hudson's sister reported to the police that Hudson "made terroristic threats to her, basically saying I'm going to punch you in the face." Before trial, Hudson sought to exclude his sister's testimony about his threat to her. Although Hudson acknowledged that the police "trespassed"[1] him from his sister's apartment building earlier in the day on which he allegedly committed terroristic threats against J.C., he argued, among other things, that his sister's testimony about the incident would be irrelevant under Minn. R. Evid. 401 and more prejudicial than probative under Minn. R. Evid. 403. The district court ruled that Hudson's sister's testimony about the threat incident was inadmissible under rule 403 but permitted admission of law-enforcement statements that they responded to an incident and that they trespassed Hudson from the property.

On the first day of trial, during the state's direct examination, J.C. identified Hudson as the individual who entered his apartment, grabbed him, and threatened to

[1] Appearing throughout the record, this term means that the police instructed Hudson not to return to his sister's apartment building.

shoot and kill him if he did not give Hudson $100 or his television. J.C. testified that, immediately after the incident, he ran outside and called 911. The district court admitted the recorded 911 call and permitted the state to play it for the jury. J.C. told the 911 operator that Hudson "was going to steal [J.C.'s] TV"; that Hudson told J.C. that he "better have a hundred dollar, [or] I'm gonna blow your head off" and that J.C. was either "gonna die or . . . give [Hudson] everything [J.C.] own[ed]"; and Hudson threatened to "put a gun in [J.C.'s] head." J.C. told the 911 operator that he felt scared that Hudson would return and kill him.

During a trial break, the prosecutor informed the district court that

> one of the deputies informed the parties that he saw [Hudson] show something on a tablet of paper to . . . [J.C.] . . . while they were listening to [Hudson's attorney] read the statement. . . . The deputy came back; attempted to look at the notepad that . . . Hudson had at his table. [Hudson's attorney] would not allow him to do that. [J.C.] jumped in and said that, yes, when . . . Hudson was leaning over and laughing, that [Hudson] did show something to [J.C.] on the notepad and that [J.C.] felt threatened and I asked to be able to see what was on the notepad and it's been refused and I don't know what the other deputies saw. But, quite frankly, [J.C.] is very upset. He feels very intimated.

Additionally, J.C. informed the court that Hudson made a gesture to him that "was a teardrop" and "means you're going to kill somebody." J.C. asked to suspend his testimony until the following Monday because he was "very upset." The district court granted J.C.'s request.

Before the trial resumed with J.C.'s cross-examination, the prosecutor sought the district court's permission to elicit testimony from J.C. about Hudson's threat to J.C.,

arguing that the evidence was probative of Hudson's criminal intent as to the charged offense, because, "at the next opportunity . . . , [Hudson] threatened [J.C.] again." Over Hudson's objection that the evidence was irrelevant, highly prejudicial, and "tantamount to . . . *Spreigl* conduct evidence," the district court allowed admission of the evidence. The court concluded that the threat evidence was relevant to intent or knowledge of guilt, noting, "Even if [the alleged threat evidence] does fall under 404(b) or *Spreigl*, which I'm convinced that it does, it's conduct during the court proceeding rather than a prior bad act or crime." The state elicited the threat-evidence testimony from J.C. during its redirect examination.

Richfield Police Department Officer Aric Gallatin testified that, after responding to J.C.'s 911 call, J.C. relayed to him that Hudson told J.C. to give Hudson $100; told J.C. that Hudson would take J.C.'s television after J.C. told him that he did not have $100; and J.C. felt scared when Hudson then told him, "You're going to die tonight." As to Hudson's conflict with his sister, which occurred earlier the same day that he threatened J.C., Officer Gallatin's only testimony was:

> Before shift started on that particular day, we'd been told by the off-going shift that they had dealt with . . . Hudson earlier in the day in that same building and that they had kicked him out of the apartment and issued him a no trespass notice for that building.

When Hudson testified after Officer Gallatin, he made numerous references to the trespass incident, testifying that his sister was "being rude to" him for a reason unknown to him, he loves and spoils his sister, he is "not a bad person," and he declined to leave the vicinity of his sister's apartment building after their dispute because he wanted to

"resolve the situation . . . and try to . . . be the bigger person about it and make it better." The prosecutor then argued, outside the jury's presence, that Hudson had "opened the door" to the state admitting the testimony of Hudson's sister, as a rebuttal witness, about "the argument he had with his sister." The district court agreed but declined to permit the state to call Hudson's sister as a rebuttal witness. Instead, the court allowed the state to cross-examine Hudson regarding the argument. The prosecutor therefore asked Hudson: whether, on August 21, 2011, his sister wanted him to leave her apartment "because [he] had threatened to beat her"; whether he "threatened [his] sister"; whether he told his sister "that [he] would punch her in the face repeatedly"; and whether he "threatened to punch" his sister. Hudson denied threatening his sister.

The jury found Hudson guilty of making terroristic threats against J.C.

This appeal follows.

D E C I S I O N

Hudson challenges the district court's evidentiary rulings about his threats against J.C. during trial and his threats against his sister on August 21, 2011.

"A district court has broad discretion in evidentiary matters," *State v. Scruggs*, 822 N.W.2d 631, 643 (Minn. 2012) (quotation omitted), and, when ruling on those evidentiary matters, "will not be reversed absent a clear abuse of discretion," *State v. Hokanson*, 821 N.W.2d 340, 350 (Minn. 2012). Likewise, an appellate court "review[s] a court's decision to admit evidence of another crime, wrong, or act (*Spreigl* evidence) for an abuse of discretion." *Scruggs*, 822 N.W.2d at 643 (quotation omitted). "To obtain a reversal of [a] district court's evidentiary ruling, [the defendant] must prove that the

ruling was erroneous and prejudicial." *State v. Davis*, 820 N.W.2d 525, 536 (Minn. 2012) (quotation omitted). Likewise, "to prevail on a claim that a trial court improperly admitted [*Spreigl*] evidence under [Minn. R. Evid.] 404(b), the defendant has the burden to show the admission was both erroneous and prejudicial." *State v. Brown*, 815 N.W.2d 609, 619 (Minn. 2012) (quotation omitted).

Hudson's Threats against J.C. During Trial

Hudson argues that the district court abused its discretion by admitting J.C.'s testimony that Hudson twice threatened J.C. during the trial break because the district court prejudicially failed to comply with *Spreigl* requirements (3)–(5). We disagree. *Spreigl* evidence "is governed by [Minn. R. Evid.] 404(b)," *State v. Bell*, 719 N.W.2d 635, 639 n.6 (Minn. 2006) (quotation omitted), which renders "[e]vidence of another crime, wrong, or act . . . not admissible to prove the character of a person in order to show action in conformity therewith," Minn. R. Evid. 404(b). "*Spreigl* evidence . . . may be admitted for limited, specific purposes," *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009), when the evidence satisfies a "five-step process":

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 685−86 (Minn. 2006). The district court permitted the prosecutor to elicit testimony from J.C. regarding Hudson's two alleged threats against J.C. during trial without expressly considering *Spreigl* requirements (3)–(5).

The district court noted that J.C.'s testimony regarding Hudson's two alleged threats during trial was possibly relevant to Hudson's knowledge of guilt. "Evidence of threats to witnesses may be relevant in showing consciousness of guilt," *Holt v. State*, 772 N.W.2d 470, 481 (Minn. 2009) (quotation omitted), and, generally, "[a]ll relevant evidence is admissible," Minn. R. Evid. 402.

The district court was not required to conduct a *Spreigl* analysis to determine the admissibility of J.C.'s testimony about Hudson's threats during the trial because the testimony was evidence of Hudson's consciousness of guilt related to the terroristic-threats charge. *See State v. Atkinson*, 774 N.W.2d 584, 593–94 (Minn. 2009) (not applying a *Spreigl* analysis, and concluding that rap lyrics threatening two "snitches" showed "consciousness of guilt and are sufficiently relevant to be admissible"); *State v. Redding*, 422 N.W.2d 260, 263 (Minn. 1988) (not applying a *Spreigl* analysis, rejecting defendant's argument that district court erroneously admitted evidence that the defendant "beat his sister after she called him a 'punk' and accused him of murdering" the victim, holding that "the evidence was admissible as relevant evidence tending to show a consciousness of guilt"); *State v. Martin*, 293 Minn. 116, 128–29, 197 N.W.2d 219, 227 (1972) (holding that district court did not err by not providing *Spreigl* notice to defendant for reasons including the fact that "[t]he evidence relating to other crimes was necessarily, but incidentally, a part of the substantive proof of the offense since defendant's fear that decedent would disclose such crimes to the police was his expressed reason for the murder" that was the trial's subject matter); *State v. Roy*, 408 N.W.2d 168, 171–72 (Minn. App. 1987) (rejecting defendant's argument that district court

"improperly admitted [*Spreigl* evidence] in derogation of *Spreigl* procedural safeguards," reasoning that evidence "is not considered *Spreigl* evidence" when the evidence "relat[es] to other crimes which may have been committed by the accused" and "is necessarily, but incidentally, part of the substantive proof of the offense," concluding that district court did not abuse discretion by admitting evidence of defendant's "efforts to destroy the crime scene" "within one week of [victim]'s death," and noting that evidence was "probative as circumstantial evidence of [the defendant]'s consciousness of guilt"), *review denied* (Minn. July 22, 1987); *see also Holt*, 772 N.W.2d at 481–82 (concluding in case in which district court did not conduct *Spreigl* analysis that district court did not abuse its discretion by admitting threat evidence against witnesses); *State v. Mayhorn*, 720 N.W.2d 776, 783 (Minn. 2006) (concluding in case in which district court did not conduct *Spreigl* analysis that district court did not abuse its discretion by admitting voicemail threat evidence against witness).

Here, Hudson threatened J.C. twice during the first day of trial—the same day and after J.C. provided incriminating testimony against Hudson, including testimony that Hudson threatened to rob and kill J.C. on August 21. The two threats consisted of Hudson making a tear-drop gesture to J.C. and showing J.C. a piece of paper containing the words "Dont [sic] worry" beneath a picture of a heart. J.C. testified that Hudson's tear-drop gesture made J.C. feel threatened because "anyone [J.C. has] ever asked who has a teardrop, someone's either died or they've tooken a life." And J.C. testified that he felt threatened when he saw the "Dont [sic] worry" note and remained upset when testifying three days later. *See Mayhorn*, 720 N.W.2d at 783 (concluding that district court did not

abuse its discretion by admitting voicemail evidence that could be "interpret[ed] . . . as a threat against a witness"); *cf. State v. Schweppe*, 306 Minn. 395, 401, 237 N.W.2d 609, 614 (1975) ("[T]he victim's reaction to the threat was circumstantial evidence relevant to the element of intent of the defendant in making the threat.").

After J.C.'s testimony, Hudson testified that he made the tear-drop gesture because he had "started crying" and was "try[ing] to get the water out of eye, from my left eye." Hudson also testified that he showed J.C. the "Dont [sic] worry" note

> because [J.C.] was lying on the stand right in front of my face, so I wanted him to know that if I come home that he don't have to worry about my doing anything to him, because I never did none of the stuff he trying to say I did. That's why I wrote down on . . . a piece of paper like, I forgive you; don't worry.

Hudson argues that the probative value of the threats evidence is "outweighed by its potential for prejudice" because "Hudson was on trial for allegedly threatening" J.C. We are not persuaded. "Even when relevant, . . . evidence regarding threats will be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *State v. Vance*, 714 N.W.2d 428, 441 (Minn. 2006) (quotation omitted); *accord* Minn. R. Evid. 403. "Unfair prejudice results from evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Mahkuk*, 736 N.W.2d 675, 687 (Minn. 2007) (quotation omitted). Here, although the district court did not expressly balance the probative value and prejudice of the threats evidence, we construe the court's admission of that evidence as an implicit finding that the evidence was not unduly prejudicial. *See Mayhorn*, 720

N.W.2d at 783 (deferring to district court's "implicit finding" that voicemail-threat evidence "was not unduly prejudicial").

Hudson argues that the district court erred by not giving the jury a cautionary instruction not to use the threats evidence "as propensity or character evidence." Although Hudson did not request such an instruction, we agree that the court erred by not providing any safeguards to prevent the jury from misusing the threat evidence. A district court "should ensure that evidence of fears of or threats by the defendant or others is not used to improperly attack the defendant's character." *State v. McArthur*, 730 N.W.2d 44, 52 (Minn. 2007) (emphasis omitted). "Because the assessment of the admissibility of witnesses' fears is a highly fact-specific determination, we leave it to the district court's discretion to fashion appropriate safeguards, such as a cautionary instruction to the jury, when such evidence is admitted." *State v. Hayes*, 826 N.W.2d 799, 807 (Minn. 2013) (quotations omitted). Here, the district court erred by failing to provide any safeguards to prevent the jury from misusing the threat evidence as character evidence against Hudson.

Nevertheless, we firmly conclude that the district court's failure to provide such safeguards does not require reversal because no reasonable possibility exists that the absence of such safeguards significantly affected the jury's verdict that Hudson threatened to rob J.C. on August 21, 2011. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded."); *State v. Hull*, 788 N.W.2d 91, 104 (Minn. 2010) ("Where the district court has erred in admitting evidence, and the error does not have constitutional dimensions, we consider whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict."

(quotation omitted)). J.C.'s testimony, corroborated by his 911 call and Officer Gallatin's testimony, provides sufficient evidence to support J.C.'s terroristic-threats conviction. And the prosecutor's closing argument, read as a whole, raised Hudson's tear-drop gesture and "Dont [sic] worry" note only to argue that those threats showed the jury "what [Hudson's] intent was on . . . August 21" and that J.C.'s testimony was credible.

We conclude that the district court did not abuse its discretion by admitting the evidence of Hudson's threats against Hudson during trial without complying with *Spreigl* requirements (3)–(5). The threat evidence was not *Spreigl* evidence but, rather, was consciousness-of-guilt evidence that was incidentally necessary for the state to substantively prove that Hudson committed the charged offense—making terroristic threats to rob J.C. on August 21, 2011.

Hudson's Threats against his Sister

The district court ruled that the state could not call Hudson's sister as a rebuttal witness to testify about Hudson's alleged threats to her on the same day as he allegedly made terroristic threats to J.C. Hudson argues that the district court abused its discretion by concluding that he "'opened the door' to cross-examination [of Hudson] about whether he had threatened to beat his sister the day he allegedly threatened" J.C. We disagree. Through his testimony, Hudson did open the door to the prosecutor's cross-examination.

> Opening the door occurs when one party by introducing certain material creates in the opponent a right to respond with material that would otherwise have been inadmissible. The doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an

> unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality.

State v. Bailey, 732 N.W.2d 612, 622 (Minn. 2007) (quotations and citation omitted). We conclude that the district court did not abuse its discretion by allowing the prosecutor to cross-examine Hudson about the threats against his sister. "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).

Affirmed.