STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1192

State of Minnesota,
Respondent,

vs.

Vernon Lewis Mudgett,
Appellant.

Filed May 6, 2013
Affirmed
Crippen, Judge[*]

Ramsey County District Court
File No. 62-CR-12-609

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving 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

CRIPPEN, Judge

Appellant challenges his conviction of second-degree burglary, arguing that the district court erred in allowing evidence of a prior bad act and prior police contact. He also asserts the cumulative effect of the evidentiary errors deprived him of a fair trial. We affirm.

FACTS

On January 20, 2012, Saint Paul police responded to a report of a residential burglary. Neighbors saw two men burglarize a house, but the suspects left before the police arrived. An eyewitness was able to record the license plate number of the vehicle the suspects drove. Officers drove to the address of the registered owner and waited for the car to arrive. After approximately one minute, the car arrived, and officers arrested the driver, later identified as D.T. Officers spoke with the owner of the vehicle, L.C., and learned that earlier in the evening she loaned her car to D.T. and her ex-boyfriend, appellant Vernon Lewis Mudgett.

L.C. took officers to the residence of appellant's friend, A.A., where she believed appellant was staying. Officers found appellant at A.A.'s apartment less than an hour after the burglary. Officers also found several items belonging to the owner of the burglarized residence, including a toolbox, a white duffle bag, prescription medication, cuff links, a set of diamond earrings, a silver necklace, a silver ring, and a dog tag. Officers also found a state-issued photo identification card for a third party, J.S., in

appellant's pocket. Officers placed appellant under arrest and respondent State of Minnesota charged appellant with second-degree burglary.

Prior to trial, appellant moved the district court to exclude any testimony regarding the identification card found in his pocket. Appellant argued that possession of J.S.'s identification was not relevant to whether or not he committed the burglary and that it amounted to unnoticed and improper *Spreigl* evidence "meant to show the jury that [he] is a bad actor." The district court denied the motion, explaining that it was relevant because it showed "just what the defendant had on him at the time he was arrested." The district court also concluded that testimony regarding J.S.'s identification was not *Spreigl* evidence because the state was "not going to elicit any testimony as to these being stolen items or items from another criminal act." At trial, Saint Paul Police Officer Chad Slagter testified that he searched appellant and in "his right pocket was a black tri fold wallet, and it had a photo ID of another person. I believe his name was [J.S.]."

During the state's case, Officer Thomas Diaz, who had accompanied Officer Slagter to A.A.'s apartment, also testified. At one point Officer Diaz testified: "And having, I guess, some knowledge of Mr. Mudgett." The district court cut off Officer Diaz's testimony at that point and directed counsel to approach the bench. After an off-the-record discussion, the district court instructed the prosecutor to "redirect the questioning."

The jury found appellant guilty of second-degree burglary. Appellant waived a jury determination on whether he was a career offender and the district court sentenced him to serve 120 months in prison.

D E C I S I O N

1.

Appellant argues that police testimony about finding J.S.'s identification card in his pocket should have been excluded because it was evidence that he was "involved in another crime." The admission of evidence of other crimes or bad acts, so-called *Spreigl* evidence, is reviewed for an abuse of discretion. *State v. Clark*, 738 N.W.2d 316, 345 (Minn. 2007). If the evidence was 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 a possibility exists, then the error is prejudicial, and a new trial is required. *Id.*

Spreigl evidence is inadmissible to prove that a defendant acted in conformity with his character. Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). The evidence may be admissible for other purposes, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Minn. R. Evid. 404(b).

The supreme court has developed five requirements that limit admission of other-acts evidence. *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). The state does not contest that it failed to meet these formal requirements respecting the identification-card evidence. Rather, the state argues that the district court correctly concluded that evidence of J.S.'s identification card in appellant's pocket did not amount to *Spreigl* evidence because "there is nothing inherently wrong about simple possession of an identification card with a different name." A *Spreigl* act need not constitute a crime, but the supreme

court has "required that the prior act have been a 'bad' act." *State v. McLeod*, 705 N.W.2d 776, 787-88 (Minn. 2005).

The state relies on *Ture v. State*, where the supreme court endorsed the reasoning of the district court that the introduction of notebooks and address books containing the names, license plate numbers, addresses, and phone numbers of women was not evidence of bad acts without further evidence that the collecting of this information was wrongful. 681 N.W.2d 9, 16-17 (Minn. 2004). Unlike the notebooks at issue in *Ture*, the identification card in this case was effectively labeled as the property of J.S. Thus, the very nature of the object at issue suggested that appellant was in possession of something that did not belong to him. Although there may be nothing inherently wrong with simple possession of another's identification card, introduction of the evidence functioned to insinuate a theft or other wrongdoing. *See State v. Currie*, 267 Minn. 294, 301, 126 N.W.2d 389, 395 (1964) (stating that the state cannot "be permitted to deprive a defendant of a fair trial by means of insinuations and innuendoes which plant in the minds of the jury a prejudicial belief in the existence of evidence which is otherwise inadmissible").

The state also argues that evidence of J.S.'s identification was "admissible under the immediate-episode exception to bad-acts evidence." The immediate-episode exception allows the state to "prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes." *State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009)

(quotation omitted). "[I]mmediate episode 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 evidence of other crimes constitutes part of the res gestae." *Id*. (quotation omitted). A "close causal and temporal connection [is] required to satisfy the narrow immediate-episode exception to the general character evidence rule." *Id*. at 426.

Evidence of J.S.'s identification card in appellant's pocket does not constitute immediate-episode evidence. The card, which did not come from the burglarized residence, was not relevant to any of the elements necessary to prove the burglary. Thus, excluding testimony about the card would not "deprive the state of the right to make out its whole case." *Id*. Nothing on the record indicates that appellant's possession of J.S.'s card was linked in point of time or circumstance to the burglary, and no evidence suggests a close causal connection between appellant's possession of the card and the burglary. *See id*. at 427 (holding that the district court abused its discretion in concluding testimony regarding a robbery was immediate-episode evidence because there was "no evidence that the murders were motivated by the . . . robbery or that the murders were committed to conceal the . . . robbery," and the "police did not find evidence relating to the murders at the site of the . . . robbery").

Because the state insinuated that appellant committed a prior bad act by eliciting testimony regarding his possession of J.S.'s identification card, and the evidence was not admissible under the immediate-episode exception, the district court abused its discretion

by allowing the testimony without first determining whether it was admissible *Spreigl* evidence.

Still, the error warrants reversal only if there is "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Fardan*, 773 N.W.2d at 320 (quotation omitted). "The defendant bears the burden of demonstrating that he was prejudiced by the admission of the evidence." *Id*. (quotation omitted). Appellant has not met this burden.

Appellant argues that the error was not harmless because "the stolen identification card painted [him] as a criminal on a crime spree," and "informed the jury that [he] had been involved in other crimes, and possibly other burglaries." But appellant's argument does not suggest that the error "significantly affected the verdict." The police witness made a single isolated reference to the identification card. The state did not ask any follow-up questions, there was no testimony about where appellant got the card or why he had the card, and the prosecutor made no mention of the card in closing argument. Furthermore, there was compelling evidence of appellant's guilt based on the other evidence offered at trial, including evidence that he possessed the car that was used in the burglary and that he was found less than an hour after the burglary with several items stolen from the burglarized residence. *See id*. (considering the strength of the other evidence, any limiting instructions, and whether the state dwelled on the evidence during closing to determine whether erroneous *Spreigl* evidence significantly affected the jury's verdict). Appellant failed to demonstrate that the testimony regarding J.S.'s identification card significantly affected the verdict.

2.

Appellant next argues that it was error when a police officer testified that he had "some knowledge of Mr. Mudgett." After this testimony, the district court asked counsel to approach the bench, and a discussion was held off the record. The court instructed the prosecutor to "redirect the questioning." Appellant did not object to the testimony, and the district court did not make a record of its reason for redirecting the questioning.

Generally, an issue cannot be raised for the first time on appeal. *State v. Anderson*, 733 N.W.2d 128, 134 (Minn. 2007). Moreover, "[a]n objection must be specific as to the grounds for challenge." *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). Nevertheless, an appellate court may review an issue not raised in the district court if there was plain error affecting substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Under the plain error standard, we consider (1) whether there was an error, (2) whether such error was plain, and (3) whether it affected the defendant's substantial rights. *Id.* An error is plain if it is "clear" or "obvious," *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted). "Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the three plain-error factors are established, we then consider whether the error seriously affected the fairness and integrity of the judicial proceedings. *See Griller*, 583 N.W.2d at 740, 742 (explaining that a court may exercise its discretion to correct a plain error only if such error seriously affected fairness, integrity, or public reputation of judicial proceedings).

Appellant relies on *Strommen*, where the supreme court held that it was plain error for an officer to testify that he knew the defendant "on a first-name basis and from 'prior contacts and incidents.'" 648 N.W.2d at 687-88. The supreme court concluded that admission of the statement was erroneous because "the purpose in asking the offending questions was to illicit a response suggesting that Strommen was a person of bad character who had frequent contacts with the police," and the statement was therefore "highly prejudicial." *Id*. at 688.

Unlike the officer's testimony in *Strommen*, police testimony in this case lacked the specificity to suggest appellant was a person of bad character or had frequent contacts with the police. The witness testified merely that he had "some knowledge" of appellant without mentioning how well he knew him or how he knew him. On this record, the admission of this statement was not error. *See McLeod*, 705 N.W.2d at 787-88 ("We have required that the prior act have been a 'bad' act.").

3.

Appellant argues that the combination of erroneous identification-card evidence and police testimony about "some knowledge" of appellant denied him the right to a fair trial. "[W]hen the cumulative effect of numerous errors constitutes the denial of a fair trial, the defendant is entitled to a new trial." *State v. Duncan*, 608 N.W.2d 551, 558 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

Because the district court did not err in allowing testimony that an officer had some knowledge of appellant, appellant has identified only one error. The district court did not deny appellant a fair trial.

4.

Appellant's pro se supplemental brief contains a list of ten assertions without argument, legal citation, or statement of likely error. Thus, any issues raised in his brief are waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that claims in a pro se supplemental brief are waived if the brief contains no argument or citation to legal authority supporting the claims); *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd*, 728 N.W.2d 243 (Minn. 2007).

Affirmed.