STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1228

State of Minnesota,
Respondent,

vs.

Daniel Adam Oltz,
Appellant.

Filed May 30, 2017
Affirmed
Ross, Judge

Benton County District Court
File No. 05-CR-15-2167

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Stauber, Judge.

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

ROSS, Judge

Police arrested appellant Daniel Oltz for fifth-degree drug possession after an officer pulled him over and saw methamphetamine and a pipe in his car. The district court allowed the state to present *Spreigl* testimony that Oltz possessed a similar methamphetamine pipe

previously. The jury found Oltz guilty, and on appeal he argues that the district court improperly admitted the *Spreigl* testimony. We affirm because the district court did not abuse its discretion and because, even if it did, there is no reasonable possibility that the alleged error significantly affected the verdict.

FACTS

A Sauk Rapids police officer arrested Oltz after stopping Oltz's car and seeing a pipe and a substance the officer suspected was methamphetamine inside the car. The state charged Oltz with a fifth-degree controlled substance crime in violation of Minnesota Statutes section 152.025, subdivision 2(a)(1) (2014). The prosecutor notified Oltz of the state's intent to produce *Spreigl* evidence that, in April 2014, a state trooper discovered a methamphetamine pipe in Oltz's backpack. The prosecutor said that the state would offer the evidence "to aid the jury in determining whether the defendant knew the substance he possessed on November 10, 2015, was methamphetamine." The district court conducted a jury trial in February 2016.

Testimony About the Fifth-Degree Controlled Substance Crime

Sauk Rapids police officer Matthew Bosma testified that he stopped Oltz's Jeep for running a stop sign and failing to signal a turn. Officer Bosma saw a "small baggy with crystalline material and a glass pipe" on the floor below the driver's seat. The officer believed that the pipe was used for methamphetamine. He arrested Oltz and searched the Jeep, finding a glass bong, a butane torch, other glass pipes, and marijuana. The crystalline substance field-tested positive as methamphetamine.

Amy Granlund, a forensic scientist with the Minnesota Bureau of Criminal Apprehension, tested the substance and confirmed that it contained methamphetamine.

Cody Severtson, Oltz's friend since childhood, testified in Oltz's defense. Severtson said that he used Oltz's Jeep occasionally in November 2015. He claimed that in early November, he was "heavily using methamphetamine" and "had a little bit of methamphetamine . . . and a pipe" on his person. He asserted that he left "a little baggy of methamphetamine" and his pipe in Oltz's Jeep. He said he had attempted to contact Oltz, but he was arrested before he could reach Oltz. On cross-examination, Severtson admitted he had been convicted of first-degree burglary in November 2015 and was still serving his prison sentence. And he admitted that he learned that Oltz had been arrested when he encountered Oltz in jail. When the prosecutor challenged Severtson's testimony by emphasizing that his prison term could not be extended if he were sentenced for the drug crime instead of Oltz, Severtson claimed to have been unaware of that fact. Severtson's probation officer testified, confirming that if the state charged Severtson with the controlled substance crime, he would face no additional time in prison.

Spreigl *Testimony*

The prosecutor reiterated that the state would offer the *Spreigl* testimony to prove that Oltz knew the substance that he possessed was methamphetamine. Oltz objected, arguing that "the presence of pipes without the presence of methamphetamine or methamphetamine residue is not probative of whether he knew there was methamphetamine in the vehicle in this case." The district court ruled, "I am going to allow the [*Spreigl*] evidence solely for the purpose of establishing knowledge of the

methamphetamine. So given [the state's evidence] so far, . . . there is at least an argument that [Oltz] did not know that the methamphetamine was present." It concluded that the potential prejudice did not outweigh the probative value of the evidence.

The district court gave a cautionary instruction before admitting the *Spreigl* testimony. State Patrol Sergeant Aaron Dix testified that he stopped a Chrysler Sebring in Sauk Rapids on April 8, 2014. The Chrysler had three occupants, including Oltz. Sergeant Dix found two pipes in Oltz's backpack: one that "appeared to be used for marijuana, and the other . . . that appeared to be used for methamphetamine." The second pipe was clean. Sergeant Dix also identified the pipe discovered by Officer Bosma as a methamphetamine pipe similar to the pipe he discovered in Oltz's backpack in 2014. Sergeant Dix said that he had known the style of pipe to be used only for smoking methamphetamine. The district court included a final cautionary instruction limiting the jury's use of the *Spreigl* evidence.

The jury found Oltz guilty. The district court sentenced him to 25 months in prison. Oltz appeals.

D E C I S I O N

Oltz asks us to reverse his conviction and remand for a new trial because the district court erroneously admitted the *Spreigl* testimony. We review a district court's decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). The appellant bears the burden "of showing an error occurred and any resulting prejudice." *Id.* If the district court erred, we ask whether there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* at 262.

I

We consider first whether the district court abused its discretion. *Id.* at 261. Evidence of a defendant's prior "crime, wrong, or act," otherwise known as "*Spreigl*" evidence, is inadmissible to demonstrate the defendant's propensity to act, but it can be admissible for legitimate purposes. Minn. R. Evid. 404(b); *see State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). *Spreigl* evidence generally faces a five-step admission process: (1) the state gives notice of its intent to admit the evidence; (2) the state indicates what the *Spreigl* evidence will be offered to prove; (3) clear and convincing evidence must prove the act and the person's participation; (4) the evidence must be relevant to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential for unfair prejudice. Minn. R. Evid. 404(b); *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). Oltz argues that the *Spreigl* evidence was improperly admitted as propensity evidence and that its potential for unfair prejudice outweighed its probative value.

A. *Purpose*

"A person is guilty of [a] controlled substance crime in the fifth degree . . . if . . . the person unlawfully possesses one or more mixtures containing [certain controlled substances.]" Minn. Stat. § 152.025, subd. 2(a)(1). To convict Oltz, the state had to prove that: (1) Oltz actually or constructively possessed the methamphetamine; (2) Oltz knew or believed that the substance was methamphetamine; (3) Oltz's possession was unlawful; and (4) Oltz's act took place on November 10, 2015, in Benton County. *See id.*; *see also State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) ("Actual possession, also referred to as physical possession, involves direct physical control." (quotation omitted)); *State v.*

Florine, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) ("[I]n order to prove constructive possession the state should have to show (a) that the police found the substance in a place under defendant's exclusive control to which other people did not normally have access, or (b) that, if police found it in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it."). *Spreigl* evidence can be offered to prove "knowledge." Minn. R. Evid. 404(b). The parties here address two types of knowledge: one specific to possession and one specific to knowledge that the substance possessed was methamphetamine.

The state clearly indicated that the *Spreigl* testimony would be offered to prove Oltz's knowledge that the substance was methamphetamine. It contends that the "prior possession of paraphernalia that has such an exclusive function" of smoking methamphetamine demonstrated that Oltz was familiar with methamphetamine. And by extension, if Oltz "was aware of the presence of the substance found in his vehicle, [Sergeant] Dix's testimony tended to prove that [Oltz] was also aware that it was methamphetamine."

Oltz claims that the district court admitted the evidence for a different purpose: to prove that he knew the methamphetamine *was in his vehicle*. The record is somewhat ambiguous as to what the district court understood the *Spreigl* testimony's purpose to be. The district court admitted the evidence "solely for the purpose of establishing knowledge of the methamphetamine," and observed that there was "at least an argument that [Oltz] did not know that the methamphetamine was present." Oltz believes that this shows that

the district court admitted the evidence to prove only Oltz's knowledge that the substance was in the car (not that the substance was methamphetamine).

Oltz essentially asks us to conclude that the district court admitted the evidence for a purpose other than the state's proffered purpose, reflected in the state's written notice and also in two on-the-record clarifications. A more plausible understanding of the district court's assessment is that after the district court heard the state declare one purpose and Oltz address a different purpose, it recognized that Oltz's defense was directed at a different element of the offense. And Oltz's argument is contradicted, in part, by the district court's immediate determination that the probative value was not outweighed by any potential for unfair prejudice. Oltz is correct on appeal, just as he argued to the district court, that the *Spreigl* testimony is not relevant to whether he knew there was methamphetamine on the floor of his vehicle. Because we know that the district court determined that the probative value outweighed the potential for unfair prejudice, we must infer that the district court accepted the *Spreigl* testimony to prove the relevant fact of the substance's nature as methamphetamine, consistent with the state's clarification of the testimony's legitimate use. This resolves any ambiguity in the district court's statements. The *Spreigl* evidence was not admitted as improper propensity evidence, and it therefore does not reflect an abuse of discretion.

B. ***Potential for Unfair Prejudice***

Oltz argues that the district court erroneously determined that the *Spreigl* testimony's probative value outweighed any potential prejudice. He failed to raise this argument to the district court. We generally do not reach issues that were not raised in the

district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). We briefly address the issue in the interests of efficiency.

Oltz bases his argument on the notion that the "real" issue was not whether he knew the substance was methamphetamine but whether he knowingly possessed the substance because "whether Oltz was familiar with meth was not a disputed fact." The argument ignores the fact that state must prove every element of the offense, including that Oltz knew that the substance was methamphetamine, and it also overlooks that the state may generally prove its case using whatever legitimate evidence it chooses. As the supreme court has explained, "[P]rejudice does not mean the damage to the opponent's case that results from the legitimate probative force of the evidence; rather, it refers to the *unfair* advantage that results from the capacity of the evidence to persuade by illegitimate means." *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015) (quotation omitted and emphasis added). Oltz suggested at oral argument that the probative value was at least diminished because the jury could have inferred Oltz's familiarity with methamphetamine by his association with Severtson. But Oltz's general familiarity with methamphetamine is not the same as his knowing that the substance on his floor was methamphetamine. Oltz's prejudice argument fails.

II

We add that, even if the district court abused its discretion, Oltz would still not be entitled to a new trial. If we assume that the *Spreigl* evidence was erroneously admitted, we then ask "whether there is a reasonable possibility that the wrongfully admitted

evidence significantly affected the verdict." *See id.* at 366 (quotation omitted). The answer is no.

To answer the question, we may consider how the evidence was presented, the strength of the state's other evidence, whether the state relied on the evidence in closing, whether the district court gave a cautionary instruction, and the strength of the defense. *See State v. Clark*, 738 N.W.2d 316, 347–48 (Minn. 2007); *State v. Bolte*, 530 N.W.2d 191, 198–99 (Minn. 1995). Oltz argues that Severtson's testimony refuted his possession, that the untidiness of his vehicle casts doubts on his possession, that the state relied on the evidence in its closing argument, and that there is a substantial risk that the jurors convicted Oltz because the *Spreigl* evidence was used to demonstrate propensity. The argument fails.

The state's case was strong. Officer Bosma testified that the methamphetamine and pipe were in plain sight when he stopped Oltz. And Oltz's defense was weak. Its centerpiece was the self-incriminating testimony of Severtson, whose long friendship with Oltz and acceptance of blame resulting in no additional punishment were facts that might reasonably leave the jury skeptical. The guilty verdict demonstrates how the jury weighed Severtson's credibility.

And the district court's two cautionary instructions on the use of the *Spreigl* evidence undermine Oltz's argument. The district court forbade the jury from convicting Oltz based on the 2014 incident; and we presume jurors follow the court's instructions, minimizing any prejudicial effect of *Spreigl* evidence. *See State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008). The prosecutor's closing argument likewise reminded the jury, "You shouldn't find [Oltz] guilty because of what happened in 2014, but you can consider how

that affects whether he knowingly possessed methamphetamine in this case." And in context, this statement related to Oltz's knowledge that the substance was methamphetamine, consistent with the state's offered purpose.

In sum, the district court did not erroneously admit the *Spreigl* testimony and there also is no reasonable possibility that this evidence significantly affected the verdict.

Affirmed.