STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1494

State of Minnesota,
Respondent,

vs.

Cody Richard Pitkin,
Appellant.

Filed October 2, 2023
Affirmed
Bryan, Judge

Pine County District Court
File No. 58-CR-21-1144

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from his convictions for first-degree burglary, attempted first-degree burglary, receiving stolen property, obstructing legal process, and possessing hypodermic needles, appellant argues that the district court abused its discretion by

admitting evidence of his prior bad acts. Because we conclude that any error in the admission of the evidence was harmless, we affirm.

FACTS

Respondent State of Minnesota charged appellant Cody Richard Pitkin with six offenses arising from events during the overnight and early morning hours of November 23, 2021. The complaint alleged that Pitkin drove a stolen Hyundai Tucson SUV, led law enforcement officers on a high-speed car chase, broke into one house, and attempted to break into a second house nearby. Law enforcement located Pitkin near the second house and arrested him following a brief struggle. According to the complaint, the officers found hypodermic needles in a backpack that Pitkin was carrying. The state charged Pitkin with one count of first-degree burglary for his actions at the first house, one count of attempted first-degree burglary for his actions at the second house, two counts of receiving stolen property, one count of obstructing legal process stemming from his arrest, and one count of possessing hypodermic needles.

The case proceeded to a jury trial. The state called ten witnesses, including several law enforcement officers involved in pursuing and investigating Pitkin, the residents of the targeted homes, and two officers who testified about Pitkin's previous criminal conduct. Pitkin did not testify, call any witnesses, or introduce any exhibits. The following factual summary is taken from the testimony and exhibits admitted at trial.

On November 22, 2021, a white Hyundai Tucson SUV was stolen from a dealership in Inver Grove Heights, Minnesota. Later that night, a patrol officer from St. Croix Falls, Wisconsin, testified that he was on duty when, at 11:53 p.m., he saw a white Hyundai

Tucson SUV with "some kind of temporary dealer plate" drive past him at 106 miles per hour in an area with a posted speed limit of 45 miles per hour. The officer pursued the vehicle for almost 50 miles through several towns in Wisconsin; other officers joined in the pursuit, and some attempted to stop the vehicle with spike strips. The officer explained that he terminated his pursuit around 12:20 or 12:30 a.m. on November 23 as the vehicle approached the Minnesota border between Grantsburg, Wisconsin and Pine City, Minnesota. After being shown a picture of the stolen Tucson at trial, the officer identified the vehicle he pursued as the same Tucson. During the pursuit, the officer got a "clear look" at the driver of the Tucson, and at trial he identified the driver as Pitkin.

At the time of these events, S.G. and R.G. lived together in a rural area south of Pine City, Minnesota. S.G. went to bed around 12:30 or 12:45 a.m. on November 23. About twenty to thirty minutes after she went to bed, S.G. heard a car drive by their house towards some sheds on the property. She began to hear "banging" noises outside, followed by noises and footsteps inside the house. S.G. woke up R.G., who went to lock the bedroom door while S.G. called 911. As R.G. locked the bedroom door, he could feel somebody trying to open the door on the other side.

Two Pine County sheriff's deputies arrived at the house several minutes after S.G. called 911. Upon arrival, one deputy found a credit card with Pitkin's name on it stuck in the front door of the house as though it had been used in an attempt to defeat the door's lock. The other deputy heard what "sounded like something was running through the woods," and found a red hat near the source of the sound. An investigator testified that he later found a Facebook picture of Pitkin wearing the same hat. The deputies, S.G., and

R.G. also noticed that a door to the garage had been recently damaged and a hammer belonging to R.G. was on the ground next to it. A screen had also been removed from a window of the house and another screen had been "kind of pulled away but was still there." Finally, S.G. noticed that a patio door had been unlocked.

S.G. and R.G. also noticed that some of their belongings had been moved from their prior locations within the house. S.G. noticed that a bottle of liquor was missing from the refrigerator, and deputies found a brown purse and S.G.'s and R.G.'s clothing—which had previously been inside the house—outside underneath a pallet. S.G. and R.G. observed a white SUV that was not theirs parked nearby, partially covered by a tarp. One of the deputies checked the vehicle's identification number using a law enforcement database and found that it was the stolen Tucson.

At the time of these events, C.K. also lived nearby. She testified that around 6:30 or 7:00 a.m. on November 23, 2021, she was awakened by an unknown sound, as though "something had fallen off a wall." She got up about 10 or 15 minutes later and found a person—whom she identified at trial as Pitkin—crouched in between "the storm door and the big door" of her house. C.K. "opened the door to see what he was doing or what he wanted or who he was." Pitkin told C.K. that he was "so cold," walked into the house, and thanked her. C.K. asked Pitkin whether he had knocked on the door, and he said he had, but C.K. did not believe him because her dog had not barked. C.K. asked Pitkin if she could call anybody for him, but he responded that he had a phone and had not used it because his hands were too cold. Pitkin also claimed that a friend had ditched him. He

offered C.K. an Oreo cookie from a backpack, which she declined. C.K. recounted that they "both just stood there a while" and that Pitkin complimented her horses.

Eventually, C.K. told Pitkin that she had to leave for work and that she would call her husband to see when he would be home. Shortly after that, Pitkin said, "Oh, I guess I'll get going," and left. After Pitkin left, C.K. locked the door and called 911. She noticed that a screen had been removed from her house—which she believed to be the sound that woke her up. C.K. also discovered that someone had gone through the contents of one of her cars and strewn items around inside.

Shortly afterward, just before 8:00 a.m., the sheriff of Pine County responded to the area. From his car, he saw "a lone male" wearing bright green pants and a backpack walking south on highway 61 near Hickory Lane (the street that S.G. and R.G. lived on). The sheriff got out of the car and approached the person, who identified himself as Pitkin. The sheriff asked Pitkin to take his hand out of his pocket and he would not do so, so the sheriff grabbed Pitkin's hand, pinned Pitkin to the front of his car and attempted to arrest him. According to the sheriff, Pitkin kept turning away and spinning around, so the sheriff eventually "took him to the ground." An investigator with the Pine County sheriff's office arrived and the two of them were able to place Pitkin in handcuffs. The sheriff quickly searched Pitkin's backpack and found "a handful of syringes." The investigator who later inventoried the backpack also testified and confirmed the presence of the syringes as well as a package of Oreos. The sheriff identified Pitkin at trial.

At the end of the trial, the state called two witnesses to present evidence of Pitkin's prior offenses. Before the witnesses testified, the district court gave the jury a cautionary

instruction that the evidence was "for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged" and was "not to be used as proof of the character of the defendant, or that the defendant acted in conformity with such character." The district court subsequently repeated the same caution during its closing instructions.

A police officer formerly employed by the city of Arlington, Minnesota testified that, on May 26, 2019, police responded to a report of a burglary and a stolen vehicle in the early hours of the morning. Police discovered that a window screen on the first floor of the home had been cut with a knife and that someone—later identified as Pitkin—had crawled in and left muddy footprints throughout the house. Pitkin stole two laptops and a vehicle from the house. The homeowners had been inside for several hours, but they did not notice what had happened until their children arrived home at 1:15 a.m. and noticed that the garage door was open. Shortly afterward, Pitkin was involved in a high-speed pursuit with the stolen vehicle, which ended when he crashed and was thrown from the vehicle. A McLeod County sheriff's deputy testified about the pursuit, explaining that Pitkin drove at more than 100 miles per hour and fled through multiple towns. Both the officer and the deputy identified Pitkin at trial, and the deputy confirmed that Pitkin was convicted of the conduct described.

The jury found Pitkin guilty of all six charged offenses. The district court sentenced Pitkin to 68 months in prison for the first-degree burglary, 30 months in prison for the attempted burglary, 21 months in prison for one count of receiving stolen property, 90 days

in jail for obstructing legal process, and 90 days in jail for possessing hypodermic needles, all to be served concurrently.[1] Pitkin appeals from the judgment of conviction.

DECISION

I. *Spreigl* Evidence

Pitkin argues that the district court abused its discretion when it admitted evidence related to Pitkin's prior convictions because the evidence was not relevant and unfairly prejudicial. Because we conclude that any error in the admission of the challenged evidence was harmless, we affirm the convictions.

Evidence of other crimes, commonly known as *Spreigl* evidence, cannot be admitted "to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b); *see generally State v. Spreigl*, 139 N.W.2d 167 (1965). The "overarching concern" with *Spreigl* evidence is that it may be used for an improper purpose, such as suggesting that the defendant "has a propensity to commit the present bad acts . . . or that the defendant is a proper candidate for punishment" because of the prior bad acts. *State v. Washington*, 693 N.W.2d 195, 200-01 (Minn. 2005) (quotation omitted). *Spreigl* evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b). In order to admit *Spreigl* evidence, five steps must be satisfied:

> (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

[1] The district court did not enter a conviction on one of the receiving stolen property offenses because it was an included offense.

> 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, 686 (Minn. 2006). These "procedural safeguards are designed to ensure that all *Spreigl* evidence . . . is subjected to an exacting review." *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998).

Appellate courts 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). If an appellate court determines that the district court abused its discretion by admitting *Spreigl* evidence, it must then consider whether there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.*; *see also State v. Bolte*, 530 N.W.2d 191, 198 (Minn. 1995). In determining whether the admission of *Spreigl* evidence was harmless, reviewing courts consider factors such as whether the district court gave the jury a cautionary instruction regarding the evidence, whether the state relied on the evidence in its closing argument, the strength of the state's other evidence, and the strength of any evidence offered by the defense. *Bolte*, 530 N.W.2d at 198 (emphasizing the strength of the state's evidence); *see also Griffin*, 887 N.W.2d at 262 (noting the "considerable" evidence of defendant's guilt as part of harmless error analysis); *State v. Crocker*, 409 N.W.2d 840, 844 (Minn. 1987) (noting that the state's evidence was "very strong"). The appellant bears the burden of showing error and any resulting prejudice. *Griffin*, 887 N.W.2d at 261.

On appeal, Pitkin argues that the evidence was not relevant and that its probative value was outweighed by potential prejudice. We need not decide whether the district court

erred in admitting the challenged evidence, however, because there is no reasonable possibility that the evidence significantly affected the verdict.

The district court twice cautioned the jury that the challenged evidence was "not to be used as proof of the character of the defendant, or that the defendant acted in conformity with such character." We presume that the jury followed these instructions. *Griffin*, 887 N.W.2d at 262; *see also Kennedy*, 585 N.W.2d at 392 (explaining that use of cautionary instructions regarding *Spreigl* evidence "lessen[s] the probability of undue weight being given by the jury to the evidence"). The state also did not mention Pitkin's prior offenses in its closing argument. *See Bolte*, 530 N.W.2d at 198 (noting that "the fact that the [state] did not rely on the evidence in question in [its] closing argument" supported a conclusion that the asserted error affected the verdict). More substantively, our review of the record persuades us that the state's non-*Spreigl* evidence connecting Pitkin to the charged crimes was quite strong. In particular, the state presented evidence of identity, including the recovery of Pitkin's credit card and hat, the proximity of the stolen Tucson—which Pitkin had been seen driving less than an hour previously—to the two residences, and C.K.'s encounter with Pitkin. For these reasons, we conclude that there is no reasonable possibility that that the challenged evidence significantly affected the verdict.

II. Pitkin's Supplemental Arguments

Pitkin also filed a supplemental brief raising the following three arguments: (1) his constitutional right to a speedy trial was violated; (2) he was forced to undergo a rule 20 evaluation that he "did not want to do"; and (3) he was "[w]as not given resources such as

law books so [he] was fully prepared to represent [him]self." We need not address these arguments because they are forfeited.

"Claims in a . . . supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited," and "will not be considered unless prejudicial error is obvious on mere inspection." *State v. Montano*, 956 N.W.2d 643, 650-51 (Minn. 2021) (quotation omitted); *see also Brooks v. State*, 897 N.W.2d 811, 818 (Minn. App. 2017) (declining to consider arguments "based on mere assertion"). Pitkin's supplemental brief provides no citations to legal authority or to the record in support of his arguments. Moreover, we discern no obvious prejudicial error from our review of the record. Although Pitkin's trial began 84 days after his first proper speedy trial demand, he does not assert that he was prejudiced by the delay. *See State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (stating that when deciding whether a defendant's speedy trial right was violated, reviewing courts consider the length of the delay and prejudice). In addition, nothing in the record before us supports Pitkin's assertions that he did not want to undergo the rule 20 evaluation or that he lacked access to resources to represent himself. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (stating that "[i]t is well settled that an appellate court may not base its decision on matters outside the record on appeal"). We therefore deem Pitkin's pro se arguments forfeited and decline to address them further.

Affirmed.