STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2045

State of Minnesota,
Respondent,

vs.

Earlneal Rondell Rayford,
Appellant.

Filed September 7, 2010
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CR-08-7705

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, MN 55102 (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

BJORKMAN, Judge

Appellant challenges the district court's admission of other-crimes evidence, arguing that the state did not clearly indicate what it offered the evidence to prove, that the evidence was not relevant, and that admission of the evidence was more prejudicial than probative. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

Appellant Earlneal Rondell Rayford was convicted of aiding and abetting the sale of heroin in connection with events that occurred on June 18, 2008. That afternoon, an undercover St. Paul police officer asked J.R., a known drug user, to help him purchase drugs. J.R. called his dealer, who arranged a meeting at a gas station in downtown St. Paul.

J.R. and the officer were waiting at the station when appellant pulled a silver Ford Taurus in between the gas pumps. Appellant was driving with two passengers: G.B. was in the front seat and A.P. was in the back seat behind appellant. J.R. entered the back seat of the vehicle and handed his own money to G.B. Appellant then drove the car closer to the officer, who was waiting at a bus stop next to the station. J.R. exited the car at the bus stop and obtained the buy money from the officer. J.R. then returned to the car and gave the money to G.B. in exchange for two small bags. J.R. left the car and appellant drove away. J.R. gave the baggies to the officer. The baggies were later determined to contain heroin.

During the transaction, the officer observed appellant and A.P. looking around and over their shoulders, observing the surroundings attentively, as if they were lookouts. The officer also saw appellant look directly at the exchange between J.R. and G.B. and look directly at a sandwich bag G.B. held in his lap, which contained many smaller bags.

Appellant was charged with aiding and abetting the sale of heroin in violation of Minn. Stat. §§ 152.023, subd. 1(1) (describing third-degree controlled-substance violations), 609.05, subd. 1 (aiding and abetting) (2006). Before trial, the state notified appellant and the court of its intent to introduce evidence of appellant's involvement in four other drug sales that occurred between March 26 and May 16, 2008 in St. Paul. The state sought to introduce evidence of these other sales to show identity, motive, and a common scheme or plan. Although the other sales involved cocaine, not heroin, all four instances involved a vehicle driven by appellant. In one case, he drove the same silver Ford Taurus. Over appellant's objection, the district court admitted testimony about the prior sales as evidence of intent and a common scheme or plan.

The jury found appellant guilty, and this appeal follows.

D E C I S I O N

Evidence of other crimes is not admissible to prove that a person acted in conformity with that act on the particular occasion at issue. Minn. R. Evid. 404(b). But evidence of prior bad acts may be admissible when offered for other purposes, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Id.*

This evidence, known as *Spreigl* evidence,[1] is admissible only if five conditions are met:

> (1) the prosecutor gives notice of its intent to admit the evidence consistent with the rules of criminal procedure; (2) the prosecutor clearly indicates what the evidence will be offered to prove; (3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; (4) the evidence is relevant to the prosecutor's case; and (5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Id.; *see also State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006) (citing this standard). "The touchstone of the inquiry is simply an evaluation of whether the evidence is material and relevant and whether the probative value of the evidence [outweighs] the potential for unfair prejudice." *State v. Burrell*, 772 N.W.2d 459, 466 (Minn. 2009). If the decision to admit the evidence is a "close call," it should be excluded. *Ness*, 707 N.W.2d at 685. We review the district court's admission of *Spreigl* evidence for abuse of discretion. *State v. Spaeth*, 552 N.W.2d 187, 193 (Minn. 1996).

Appellant argues that the state did not meet three of these five conditions. Appellant first asserts that the state did not clearly indicate what the evidence would be offered to prove but "listed virtually all of the exceptions in [rule] 404(b)." We disagree. The state sought to introduce the *Spreigl* evidence to show (1) motive or intent, (2) identity, and (3) a common scheme or plan. This list is specific enough to apprise appellant of the grounds for admission.

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[1] *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965).

Appellant next argues that the evidence of other drug sales was not relevant to the issues the state identified. Appellant correctly asserts that the court must look beyond the stated basis for admission and determine whether the proffered evidence relates to a disputed issue. This process entails "isolating the consequential fact for which the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *Ness*, 707 N.W.2d at 686.

The district court permitted the state to admit evidence of the other drug sales to prove appellant's intent. "[I]ntent is a state of mind in which an act is done consciously, with purpose." *Id.* at 687. To obtain an aiding-and-abetting conviction, the state had to prove that appellant "intentionally" aided, advised, hired, counseled, or conspired with another to commit the controlled-substance offense. *See* Minn. Stat. § 609.05 (aiding and abetting). Appellant asserts an innocent-bystander defense, claiming that he gave a ride to two people he did not know well and had no idea that they were going to sell narcotics. Because intent is a primary element of the charged crime and lack of intent was appellant's principal defense, evidence relating to his intent is relevant.

The *Spreigl* evidence—four incidents in which appellant sold narcotics to an undercover officer—supplies an evidentiary basis from which the jury could infer that appellant was aware of his passengers' activities and intended to assist them. The facts that the other sales all occurred within three months of the charged offense and that appellant was the driver in each case are relevant to his state of mind and to his claim that he innocently observed an exchange of money at a gas station.

Having concluded that the *Spreigl* evidence is relevant to appellant's intent, we need not decide whether it was admissible for some other purpose. Instead, we consider appellant's final argument that the probative value of the evidence is "outweighed by its potential for unfair prejudice to the [appellant]." Minn. R. Evid. 404(b). "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *State v. Smith*, 749 N.W.2d 88, 95 (Minn. App. 2008) (citing *Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 650 (1997)). The need for the evidence, or the purpose to which the evidence is to be put, is a factor to consider in balancing probative value against the risk of unfair prejudice. *Ness*, 707 N.W.2d at 690.

Appellant argues that the nature of the *Spreigl* evidence likely induced the jury to find him guilty because he was characterized as a drug dealer, not because he committed the offense for which he was being tried. We agree that this potential for prejudice existed. But the risk of unfair prejudice was tempered by the cautionary instruction, which told the jurors that they could not find appellant guilty based on the *Spreigl* evidence. *See State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998) (stating that cautionary instruction lessens any prejudice from introduction of *Spreigl* evidence). In addition, the evidence in this case was highly probative, outweighing the potential for prejudice. *See Pierson v. State*, 637 N.W.2d 571, 580-81 (Minn. 2002) (holding that prior-act evidence was more probative than prejudicial where defendant presented an innocent- or unknowing-mind defense); *State v. England*, 409 N.W.2d 262, 264-65

(Minn. App. 1987) (same). Because the *Spreigl* evidence was directly relevant to the state's case and to appellant's claimed defense and its probative value outweighed the potential for unfair prejudice, we conclude that the district court did not abuse its discretion in admitting the evidence.

Affirmed.