STATE OF MINNESOTA

IN SUPREME COURT

A22-0868

Hennepin County Hudson, J.

State of Minnesota,

Respondent,

vs. Filed: August 2, 2023
Office of Appellate Courts

Brent Douglas Buchan,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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

S Y L L A B U S

1. The admission of a dying declaration does not violate a defendant's Sixth Amendment right to confrontation.

2. The district court did not err by finding that defendant knowingly, intelligently, and voluntarily waived his previously invoked Fifth Amendment right to counsel.

3. There is no reasonable possibility that the admission of prior bad act evidence significantly affected the verdict.

Affirmed.

O P I N I O N

HUDSON, Justice.

A jury found appellant Brent Douglas Buchan guilty of first-degree premeditated murder for the murder of Josh Boyce. Buchan was sentenced to life in prison without the possibility of release. In this direct appeal, Buchan first argues that the district court violated his Sixth Amendment right to confrontation when it admitted Boyce's dying declarations into evidence at the jury trial. He maintains that our precedent providing an exception to the Confrontation Clause for dying declarations was wrongly decided and should be overruled. Buchan next argues that the district court violated his Fifth Amendment right to counsel when it admitted evidence of his statements to police officers. After invoking his right to an attorney under the Fifth Amendment, Buchan contends that he never validly waived his invoked right to counsel. Lastly, he argues that the district court committed reversible error when it admitted *Spreigl* evidence related to a prior assault charge into evidence at the jury trial. We affirm Buchan's conviction.

FACTS

At approximately 12:10 a.m. on October 26, 2020, two Minneapolis police officers received a dispatch reporting a shooting victim at a home on the 1700 block of Emerson Avenue North. The officers' body-worn cameras captured their response. The officers found the victim, Josh Boyce, lying in the entryway of his father's home. Boyce's father

was also present.[1] The officers moved Boyce to the front walkway of the home to render him aid. Boyce had several gunshot wounds to his chest and torso and had labored breathing.

Boyce repeatedly called out that "Brenty got me" or "Brenty shot me." Officers struggled to understand him and asked, "Who did?" Boyce replied, "Brenty Buchan." At some point, Boyce said something along the lines of "my last breath" and, "I don't wanna die." Boyce fell unconscious as he was placed in the ambulance. Despite receiving CPR and other lifesaving attempts, he never regained consciousness. Boyce died on the evening of October 26, 2020. His death was attributed to multiple gunshot wounds and ruled a homicide. An autopsy revealed that Boyce had THC, amphetamine, and methamphetamine in his system at the time of his death.

A neighbor who lived on the 1700 block of Emerson Avenue North testified that on the night of the murder, he heard gunshots and then someone saying, "I need help." He then looked out his window and saw someone trying to run away from a second person. The second person shot at the other at least three times. He saw the shooter follow the victim into the street and continue shooting. The shooter then ran back the way he came from an alley. A few seconds later, the neighbor heard a car start and saw lights come on.[2]

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[1] Because Boyce's father died before Buchan's trial, Boyce's father did not testify at trial.

[2] When responding officers asked about the shooter and the victim's race, the eyewitness initially identified them each as Black. He later told investigators that he had a hard time identifying their faces and that the shooter could have been wearing a mask. Buchan is white. The State relied on the eyewitness's testimony primarily to show premeditation and intent, as opposed to identity.

Another neighbor's home surveillance camera partially captured the shooting, although a garage and large tree obstructed much of the view. The footage showed that at about 11:55 p.m. on October 25, 2020, one person walked down an alley towards the street, and a few seconds later, another person followed closely behind. Multiple gunshots were fired. A person started yelling, and then several more shots were fired. One person then ran back down the alley in the direction the two came from. A video forensic specialist enhanced the video, and the person heard yelling was heard saying, "I swear it wasn't me. I swear it wasn't me, Brenty."

Forensic scientists found eight discharged bullet cartridge casings and three unfired casings in the alley. Each of the casings was a 9-millimeter. Minneapolis police investigated Boyce's murder and learned that Boyce was a suspect in the September 29, 2020 murder of another man, J.S. Buchan was childhood friends with J.S. Buchan spoke at J.S.'s memorial service, calling J.S. "his brother." Boyce and J.S. also knew each other and had a confrontation at Boyce's house in early September 2020, shortly before J.S.'s death. J.S. smacked Boyce across the face. Boyce then pointed a gun at J.S. and his girlfriend and fired it once. Neither J.S. nor his girlfriend were hit.

Buchan and Boyce communicated via cellphone and Facebook in the weeks before Boyce's death.[3] In some of the Facebook messages, Buchan discussed buying a "glock"[4] from Boyce about a week before J.S.'s murder. Boyce asked Buchan, "Can i ask u some

[3] Buchan's Facebook profile used the name "Prince Brent." Boyce's Facebook profile used the name "Drippy King Zaddy."

[4] A "glock" is a colloquial reference to a firearm.

thing, is this about the [J.S.] situation?" Buchan replied, "I really don't know about the [J.S.] situation I just lost mine."

On September 30, 2020, after J.S.'s death, Boyce tried to call Buchan through Facebook several times. Buchan messaged Boyce, "Bro we ant gone talk about [] you no what you did." Boyce replied, "I didnt do shit u tripping cuz. It wasnt me I promise u that." Buchan then messaged Boyce on October 3, "You no I been knowing you all my life bro you did some hole ass shit bro." Boyce replied, "On my kids that wasnt me." Buchan asked Boyce if he was staying at his dad's house and said, "I know your location bro."

In later Facebook messages, Buchan told Boyce, "So I guess imma be coming find you then." Boyce messaged Buchan, "I didn't kill [J.S.]." Buchan said, "Bro I got my kid I'll find out tho." Boyce then described the early September 2020 confrontation that he and J.S. had a few weeks earlier, when Boyce fired a gun in the direction of J.S. and his girlfriend. Together, law enforcement took these messages to mean that Buchan suspected Boyce of killing J.S.

On the night of his murder, Boyce messaged Buchan asking for a ride. Boyce had initially asked his sister for a ride that night. Around 11 p.m., as his sister prepared to leave to pick up Boyce, he told her that he no longer needed a ride because Buchan was going to pick him up. The last record of communication between Buchan and Boyce was a Facebook video call approximately 10 minutes before Boyce was shot.

After the shooting, officers obtained cellphone-tower-location data for Buchan's phone number. The data showed that Buchan's cellphone was in the area where Boyce

was killed shortly before and shortly after the shooting on October 25. Buchan cancelled his phone number and changed to a new number on October 26, the day after Boyce's murder.

Buchan was arrested and brought in for questioning on November 16, 2020. Buchan had two cellphones on him when he was arrested. Later searches of the cellphones revealed internet searches related to the October 25 shooting. Buchan searched phrases such as "Shooting in Minneapolis last night" the day after the shooting. A few weeks later, Buchan searched "Joshua Lee William Boyce," and "Man killed in North Minneapolis." He also viewed several articles reporting Boyce's murder.

Police executed a search warrant of Buchan's home. There, police found an empty gun magazine. The magazine was in a semiautomatic pistol found in a jacket pocket in a bedroom. The bedroom door had a plaque reading "Brent" on it.

The record contains a recording and partial transcript of Buchan's November 16, 2020 police station interrogation with two investigators: Sergeant Olson and Sergeant Metcalf. Sergeant Olson read Buchan his *Miranda* rights, and Buchan immediately requested his lawyer. Sergeant Olson replied, "that's fine," and "we'll leave it at that." The officers then had Buchan stand and took his picture to record his height.[5] Buchan continued to assert that he did nothing wrong and asked questions such as "What's going

[5] In taking Buchan's picture, recording his height, and answering his routine booking questions, the officer did *not* engage in continued interrogation for Fifth Amendment purposes. *See State v. Heinonen*, 909 N.W.2d 584, 591 (Minn. 2018); *State v. Greenleaf*, 591 N.W.2d 488, 497 (Minn. 1999); *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). Buchan does not raise concerns about these continued interactions and disputes only the later, formal questioning.

on?", "That means I'm being arrested?", "What am I booked for?", and "How long is this gonna wait?" The officers responded to Buchan's questions, telling him that he had been booked for probable cause murder and describing some of the procedures to him. Sergeant Olson eventually said, "We're not gonna do this where you fish for information after you say . . . you wanna talk to a lawyer." Buchan replied, "Y'all can sit down. I'll speak, but I ain't got nothing to say." Sergeant Olson told Buchan that he did not want him to feel "coerced." He went through each of the *Miranda* warnings individually, asking Buchan after each one, "Do you understand that?" Buchan responded, "yeah" after each inquiry. When Sergeant Olson asked, "Having these rights in mind do you want to talk to us right now?" Buchan replied, "I'll talk." Sergeant Olson also made sure that Buchan understood that at any point he could stop talking to the officers.

The officers questioned Buchan. Buchan said that Boyce and "K.J." might have been involved in J.S.'s murder. He said that he knew J.S. and Boyce, but he was closer to J.S. Buchan repeatedly denied communicating with Boyce after J.S.'s death. He said that he deactivated his Facebook account after Boyce's murder because he was caught cheating on his girlfriend. Sergeant Olson testified at trial that when they asked Buchan about the messages with Boyce, Buchan started sweating, stammering, and wiping his forehead.

In July 2021, a grand jury indicted Buchan for first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2022), and second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2022). Buchan moved to exclude Boyce's dying declaration,[6] to

[6] Under Minnesota Rule of Evidence 804(b)(2), an exception to the hearsay rule exists: "In a prosecution for homicide or in a civil action or proceeding, a statement made

suppress his interview with police, and to exclude evidence of a prior assault against I.Y. that occurred in April 2020. Buchan moved to exclude Boyce's dying declaration as unreliable hearsay because there was so much methamphetamine in Boyce's system that he could not perceive whether his death was imminent. He argued that given Boyce's toxicology report and Buchan's inability to cross-examine him, the statements were too unreliable to be admissible. The district court denied Buchan's motion to exclude the statements. It found that Boyce's statements were dying declarations because Boyce believed he was about to die, and the statements related to the circumstances of his death. The district court noted that Buchan's objections to the statements based on their reliability went to the weight of the evidence, not its admissibility.

Buchan also moved to suppress his statement to investigators, arguing that he did not knowingly and intelligently waive his right to counsel after invoking the right. The district court denied the motion. The district court found that the interrogation environment was not coercive because Buchan did not have to wait for an extensive period of time, and he had water and his phone. Although Buchan had properly invoked his right to counsel, the district court found that the officers scrupulously honored his request. The district court observed, however, that Buchan reinitiated the conversation when he asked the officers about his arrest and the process going forward. Further, because the officers told him that he was being booked for murder, the district court observed that Buchan was aware of what

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by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death." Buchan does not dispute that Boyce's statements were dying declarations before this court.

the substance of the interrogation would be. The district court found that the officers attempted to stop the conversation, but Buchan said he was willing to speak. The officer then reread Buchan's *Miranda* warnings line by line, asking if he understood each one. Buchan replied, "yeah" after each right and said, "I'll talk." The district court therefore found that Buchan had waived his right to counsel, and he did so knowingly, intelligently, and voluntarily.

Lastly, the State sought to introduce evidence of a prior act committed by Buchan as *Spreigl*[7] evidence—namely, evidence of an April 2020 assault in which Buchan was involved.[8] The State gave notice of its intent to offer the evidence to prove identity, motive, intent, and common scheme or plan. The *Spreigl* evidence included the following: Buchan's friend, K.W., was murdered about a year before Boyce's death. On April 12, 2020—about six months after K.W.'s murder and six months before Boyce's death—I.Y. reported a shooting that had occurred the day before and identified Buchan as the shooter. No one was injured in the shooting. Buchan allegedly shot at I.Y. because he believed I.Y.'s brother, D.Y., was involved in the murder of K.W. and was looking for him. I.Y. provided investigators evidence of a phone call between herself and Buchan, which was ultimately presented at trial. In the call, Buchan said, "I got artillery," and "I got a whole

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[7] This term comes from *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); *see also* Minn. R. Evid. 404(b) (providing the process for admitting evidence of prior acts).

[8] At the time of Buchan's first-degree murder trial, he was charged with second-degree assault with a dangerous weapon but had not yet been tried. The charge was dismissed after his first-degree murder conviction.

Taliban YNT behind me."[9] He also said, "if they want smoke," which was taken to mean "if they want a gun fight." Law enforcement confirmed that Buchan's phone was in the area of the shooting at the time based on cell tower data.

The district court ruled that the *Spreigl* evidence would be allowed. The district court considered the five *Spreigl* requirements.[10] The district court first determined that the evidence was relevant to Buchan's motive of retaliation against someone he thought was responsible for the death of a friend. It also found the evidence relevant to Buchan's intent and premeditation of shooting Boyce. The district court concluded that the evidence was probative of identity because Buchan used the same scheme or plan in the assault charge as the alleged murder. Clear and convincing evidence of the prior bad act was present based on the complaint in the assault charge that contained I.Y.'s report, ShotSpotter data confirming the time and location of the shooting, and police verification that Buchan was in the area at the time of the shooting. Lastly, the district court found that the probative value of the evidence was not outweighed by its unfair prejudice.

At trial, the State introduced evidence of Boyce's dying declaration identifying Buchan as his shooter, Buchan's statement to the investigators, and the April 2020 assault. The jury found Buchan guilty of first-degree premeditated murder and second-degree

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[9] "Taliban" and "YNT" are two gangs in North Minneapolis.

[10] These requirements are: "(1) the State must provide notice of its intent to use the evidence; (2) the State must clearly indicate what the evidence is being offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the other act; (4) the *Spreigl* evidence must be relevant and material; and (5) the probative value of the evidence must not be outweighed by the potential prejudice." *State v. Clark*, 755 N.W.2d 241, 260 (Minn. 2008).

intentional murder. The district court convicted Buchan of first-degree premeditated murder and imposed the mandatory sentence of life in prison without the possibility of release. The district court left the second-degree intentional murder charge unadjudicated.

Buchan now appeals to this court.

ANALYSIS

On appeal, Buchan contends that he is entitled to reversal of his convictions and a new trial. First, he asserts that the district court violated his Sixth Amendment right to confrontation when it admitted Boyce's dying declaration. Second, Buchan argues that the district court violated his Fifth Amendment right to counsel when it admitted evidence of his statement to investigators because he did not validly waive his invoked right to counsel. Third, Buchan argues that the admittance of *Spreigl* evidence significantly affected the verdict. We address each argument in turn.

I.

The Confrontation Clause, found in the United States and Minnesota Constitutions, provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."[11] U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see also Pointer v. Texas*, 380 U.S. 400, 406 (1965) (making the protections of the Confrontation Clause applicable to the states under the Due Process Clause of the Fourteenth Amendment). The Supreme Court held in *Crawford v.*

[11] The relevant language of the federal and state Confrontation Clauses is identical. Buchan does not argue for a more expansive reading of the Minnesota Constitution than the United States Constitution, so reliance on federal precedent is appropriate. *See State v. Tate*, 985 N.W.2d 291, 297 n.5 (Minn. 2023).

Washington that testimonial statements are inadmissible under the Confrontation Clause when the declarant is unavailable and the defendant did not have an opportunity to cross-examine the declarant. 541 U.S. 36, 68 (2004). The Court noted that the only exceptions to the right of confrontation are those that were established at the time of the nation's founding. *Id.* at 54.

Although the Supreme Court has not explicitly announced that dying declarations are an exception to the right to confrontation, it has suggested in dicta that there may be such an exception. In *Crawford*, the Court noted, "Although many dying declarations may not be testimonial, there is authority for admitting even those that clearly are." *Crawford*, 541 U.S. at 56 n.6. The Court declined to decide whether there was an exception for testimonial dying declarations, but observed that "[i]f this exception must be accepted on historical grounds, it is *sui generis*." *Id.*

A year after *Crawford*, we considered whether the admission of a dying declaration violates a defendant's right to confrontation in *State v. Martin*, 695 N.W.2d 578, 585 (Minn. 2005).[12] We first acknowledged that footnote six of the *Crawford* decision did not "squarely hold that an exception exists under *Crawford* for dying declarations." *Martin*, 695 N.W.2d at 585. But we reasoned that the *Crawford* Court's "statement that the Confrontation Clause 'is most naturally read as a reference to the right of confrontation at

[12] *Martin* was decided before *Davis v. Washington*, 547 U.S. 813, 822 (2006), where the Supreme Court clarified the meaning of testimonial statements. To the extent that *Martin* stated that the rule articulated in *Ohio v. Roberts*, 448 U.S. 56, 66 (1980), was still applicable after *Crawford*, this part of the opinion has been abrogated. *See State v. Her*, 750 N.W.2d 258, 265 n.5 (Minn. 2008), *cert. granted, judgment vacated,* 555 U.S. 1092 (2009).

common law, admitting only those exceptions established at the time of the founding' strongly suggests that because dying declarations were a recognized common-law exception at the time of the founding, there is no inherent conflict in continuing to recognize them today." *Id.* (quoting *Crawford*, 541 U.S. at 54). Put differently, we found the dicta in footnote six of *Crawford* to be persuasive authority for holding that the admission of a testimonial dying declaration does not violate a defendant's Sixth Amendment right to confrontation. *Id.* Buchan argues that *Martin* was wrongly decided and should be overruled.

We review whether the admission of evidence violates a defendant's rights under the Confrontation Clause de novo.[13] *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). Buchan first asks us to overrule *Martin*. Under the principle of *stare decisis*, we are reluctant to overrule our precedent unless there is a compelling reason to do so. *Wheeler v. State*, 909 N.W.2d 558, 565 (Minn. 2018). But *stare decisis* is not an "inflexible rule of law" that binds us to "unsound principles." *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000) (citation omitted) (internal quotation marks omitted).

Buchan argues that *Martin* was wrongly decided and should be overruled for three reasons: (1) the Supreme Court has not specifically announced that dying declarations are an exception to the Confrontation Clause; (2) an exception for dying declarations does not

[13] The State argues that our review should be limited to a plain error analysis because Buchan forfeited his Confrontation Clause argument when he failed to raise it in the district court. Having reviewed the record, we conclude that the arguments made by Buchan in the district court sufficiently raised his Confrontation Clause argument.

survive the rule announced in *Crawford*; and (3) the modern dying declaration exception is not a historical common-law exception to the Confrontation Clause.

First, Buchan contends that we should not create an exception to the Sixth Amendment until the Supreme Court announces that such an exception exists. The State argues that dying declarations as an exception to the Confrontation Clause being an "open question" does not undermine the reasoning in *Martin*.

The Supreme Court failing to announce a dying declaration exception does not make *Martin* bad law. As Buchan acknowledges, numerous state courts have interpreted *Crawford* to suggest that dying declarations are an exception to the Confrontation Clause.[14] And although Buchan points to numerous authorities holding that the Supreme Court is the final arbiter of the meaning of the United States Constitution, he fails to present any authority stating that the states are barred from constitutional interpretations that do not conflict with those of the Supreme Court. This argument therefore does not provide us with a compelling reason to overrule *Martin*.

Next, Buchan argues that *Crawford* requires that declarants of testimonial statements be subject to cross-examination. He asserts that *Crawford* directly rejected the argument that statements are admissible because of their reliability. The State contends

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[14] For example, the Supreme Court of New Jersey recently held that dying declarations are an exception to confrontation based on "[t]he historical record, the United States Supreme Court's pre-*Crawford* acceptance of dying declarations as an exception to the Confrontation Clause, footnote six of *Crawford*, and *Giles*'s tacit acceptance of the exception." *State v. Williamson*, 249 A.3d 478, 492 (N.J. 2021); *see also Commonwealth v. Nesbitt*, 892 N.E.2d 299, 311 (Mass. 2008); *State v. Lewis*, 235 S.W.3d 136, 148 (Tenn. 2007).

that the Supreme Court's holding in *Giles v. California*, 554 U.S. 353 (2008), undermines this argument. *Giles* held that unconfronted, out-of-court statements are admissible if they fall into an exception that was established at the time of the nation's founding. *Id.* at 358.

We analyzed the holding in *Crawford* in our *Martin* decision. *Martin*, 695 N.W.2d. at 584–85. We declined to decide whether the statements by the victim, who had been shot in the chest, were testimonial. *Id.* Instead, we determined that dying declarations were a specific exception to the *Crawford* rule. *Id.* at 585. We relied in part on the Supreme Court's statement that "[t]he existence of [the dying declaration] exception as a general rule of criminal hearsay law cannot be disputed. Although many dying declarations may not be testimonial, there is authority for admitting even those that clearly are." *Id.* (quoting *Crawford*, 541 U.S. at 56 n.6). We considered *Crawford* and its requirement of cross-examination for testimonial statements but determined that dying declarations are an exception to the rule. *Id.*

Giles also supports this conclusion. Three years after *Martin*, the Supreme Court observed in *Giles* that, under *Crawford*, "the Confrontation Clause requires that a defendant have the opportunity to confront the witnesses who give testimony against him, *except in cases where an exception to the confrontation right was recognized at the time of the founding*." 554 U.S. at 357 (emphasis added). The Court therefore noted that there will be some instances, even after *Crawford*, where unconfronted testimonial statements will be admissible. In fact, the Court specifically mentioned dying declarations as such an exception. *Id.* at 358–59.

Justice Scalia's concurrence in *Ohio v. Clark*, 576 U.S. 237, 253 (2015), which was joined by Justice Ginsberg, also supports our analysis in *Martin*. In his concurrence, Justice Scalia wrote:

> Defendants may invoke their Confrontation Clause rights once they have established that the state seeks to introduce testimonial evidence against them in a criminal case without unavailability of the witness and a previous opportunity to cross-examine. The burden is upon the prosecutor who seeks to introduce evidence *over* this bar to prove a long-established practice of introducing *specific* kinds of evidence, such as dying declarations, *see Crawford, supra,* at 56, n.6, for which cross-examination was not typically necessary.

Clark, 576 U.S. at 253 (Scalia, J., concurring). Based on these authorities, we decline Buchan's invitation to overrule *Martin* on this basis.

Lastly, Buchan argues that the modern theory and rationale for the admissibility of dying declarations today is at odds with the original rationale animating the exception. He argues that, in *Giles*, when considering whether the forfeiture-by-wrongdoing doctrine is an exception to the Confrontation Clause, the Supreme Court functionally required that the *theory* behind the modern exception must be identical to the *theory* behind the exception that existed at common law. *See Giles*, 554 U.S. at 358. He contends that the dying declaration exception was historically accepted based on religious beliefs that "divine judgment for lying" ensured that the dying person would speak the truth. But dying declarations today, according to Buchan, are admissible due to necessity and reliability. The State argues that although there may have been religious "motivations" behind the historical dying declaration exception, religious motivations are not a required element of the exception. We agree with the State.

In *Giles*, the Supreme Court had previously acknowledged two types of testimonial statements that were admitted at common law even if unconfronted: dying declarations and statements satisfying the doctrine of forfeiture by wrongdoing.[15] 554 U.S. at 358–59. The Court simply clarified that the forfeiture-by-wrongdoing doctrine is not applicable in every instance that a defendant causes a witness to be unavailable for cross-examination. *Id.* at 359–60. Rather, the exception applied at common law only when there was a showing that the defendant "intended to prevent a witness from testifying." *Id.* at 361.

We reject Buchan's argument based on the rationales of the dying declaration exception as well. The religious rationales for the dying declaration exception at common law are just that—rationales—not elements. And the religious rationales were themselves rooted in the idea that a person would not lie before death, making the statements reliable. *See Idaho v. Wright*, 497 U.S. 805, 820 (1990); *see also R. v. Osman* (1881) 15 Cox Crim. Cas. 1, 3 (Eng. N. Wales) ("[N]o person, who is immediately going into the presence of his Maker, will do so with a lie on his lips."). Modern dying declarations are likewise admissible due to their presumed reliability, so long as the declarant believed their death was imminent. Minn. R. of Evid. 804(b)(2).

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[15] Buchan cites two federal district court cases for the proposition that dying declarations are not an exception to the *Crawford* rule because they are not subject to cross-examination. Importantly, both cases were decided before *Giles*, where the Supreme Court made clear that some unconfronted statements are still admissible under the Sixth Amendment. *See United States v. Mayhew*, 380 F. Supp. 2d 961, 965 & n.5 (S.D. Ohio 2005); *United States v. Jordan*, No. CRIM. 04–CR–229–B, 2005 WL 513501, at *3–4 (D. Colo. Mar. 3, 2005). And one case rejected dying declarations as an exception to the Confrontation Clause based on their reliability. *Mayhew*, 380 F. Supp. 2d at 965 n.5.

Buchan has not articulated a compelling reason to overrule *Martin*. We uphold our decision in *Martin* and reaffirm that dying declarations are an exception to the Confrontation Clause. Buchan does not challenge the district court's finding that Boyce's statements were dying declarations. The district court therefore did not err by admitting evidence of Boyce's dying declarations.[16]

II.

Buchan next argues that the district court erred in denying his motion to suppress his statements to police because he did not validly waive his invoked right to counsel. We review factual determinations related to a suspect's invocation of his right to counsel for clear error. *State v. Ortega*, 798 N.W.2d 59, 70 (Minn. 2011). We conduct an "independent subjective determination" of whether the suspect voluntarily waived his right to counsel. *State v. Earl*, 702 N.W.2d 711, 719 (Minn. 2005).

"The United States and Minnesota Constitutions protect a defendant's right to be free from compelled self-incrimination." *Ortega*, 798 N.W.2d at 67; *see* U.S. Const. amend. V; Minn. Const. art. I, § 7 (both providing that no "person shall . . . be compelled in any criminal case to be a witness against himself"). In *Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966), the Supreme Court required procedural safeguards to protect suspects in custodial interrogation from compelled self-incrimination. Specifically, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used

[16] Because we hold that dying declarations are an exception to the Confrontation Clause, we do not address the parties' arguments regarding whether Boyce's statements were testimonial.

as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444. The suspect can waive these rights if his waiver is "made voluntarily, knowingly and intelligently." *Id.* But if the suspect invokes his right to counsel, "the interrogation must cease until an attorney is present." *Edwards v. Arizona*, 451 U.S. 477, 485 (1981) (quoting *Miranda*, 384 U.S. at 474).

Law enforcement can question a suspect after he invokes his right to counsel if the suspect reinitiates the conversation and properly waives his invoked right to counsel. *State v. Staats*, 658 N.W.2d 207, 213 (Minn. 2003). The relevant analysis involves a three-step inquiry: (1) whether the suspect invoked his right to counsel before questioning; (2) whether the suspect reinitiated conversation with the police; and (3) whether the suspect properly waived his invoked right to counsel. *Id.* Buchan challenges only the third step—whether he properly waived his invoked right to counsel.

The State bears the burden of proving that, "by a fair preponderance of the evidence based on a totality of the circumstances," the suspect's waiver of his previously invoked right to counsel was knowing, intelligent, and voluntary. *Earl*, 702 N.W.2d at 718. Factors relevant to the totality-of-the-circumstances inquiry include: "the defendant's age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of warnings, length and legality of detention, nature of the interrogation, physical deprivations, and access to counsel and friends." *State v. Miller*, 573 N.W.2d 661, 672 (Minn. 1998). We have held that a suspect continuing to answer questions after law enforcement officers reread the suspect his *Miranda* warnings was not a valid waiver when the officers did not specifically discuss the previously invoked right. *Staats*, 658 N.W.2d

at 214. In other words, a waiver of an invoked right to counsel cannot be inferred from the suspect's conduct alone.

Here, the totality of the circumstances shows that Buchan knowingly, intelligently, and voluntarily waived his previously invoked right to counsel. After ending the interrogation, Sergeant Olson specifically reminded Buchan that he had invoked his right to counsel in response to his questions, noting "you already asked to talk to a lawyer." When Buchan continued to inquire, Sergeant Olson said that they would not let Buchan "fish for information" and again reminded Buchan that he had asked to speak with a lawyer. Buchan stated, "Y'all can sit down. I'll speak." Sergeant Olson then reread Buchan his *Miranda* warnings and asked Buchan after each right if he understood it. Buchan replied "yeah" after each inquiry. After reading the warnings, Sergeant Olson asked, "Having these rights in mind do you want to talk to us right now?" Buchan replied, "I'll talk." Sergeant Olson also made sure that Buchan understood that at any point he could stop talking to the officers.

This exchange went far beyond the law enforcement officers merely rereading the suspect his *Miranda* warnings before continuing the interrogation. Sergeant Olson repeatedly reminded Buchan that he had invoked his right to counsel, to which Buchan *affirmatively responded* that he would talk. The officers then reread Buchan his *Miranda* warnings and sought affirmative, verbal confirmation that he understood each right. And all of this occurred just minutes after Buchan invoked his right and the officers unequivocally ceased the interrogation. No inference need be drawn that Buchan waived his invoked right based on his conduct or actions alone.

In sum, the investigators referenced that Buchan had invoked his right to counsel, reviewed his *Miranda* rights line by line, and informed him for what he was being booked. Buchan had been read his *Miranda* rights before and understood them, as evidenced by his almost immediate invocation of his right to counsel. The totality of the circumstances show that his subsequent waiver of the right to counsel was knowing, intelligent, and voluntary, and the district court therefore did not err in denying Buchan's motion to suppress his statement to police.

III.

Lastly, Buchan argues that the district court abused its discretion by allowing the State to introduce evidence of the April 2020 assault, including I.Y.'s phone call to police, as *Spreigl* evidence. We review a district court's decision to allow *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). The defendant "bears the burden of showing an error occurred and any resulting prejudice." *Id.* If a district court erroneously admitted *Spreigl* evidence, we must determine whether there is a reasonable possibility that the evidence significantly affected the verdict. *State v. Bolte*, 530 N.W.2d 191, 198 (Minn. 1995).

The admissibility of *Spreigl*, or prior act or crime, evidence is governed by Minnesota Rule of Evidence 404(b). *Spreigl* evidence is not admissible to show a person's character and that a person acted in conformity therewith. Minn. R. Evid. 404(b)(1). Such evidence may be admissible for some other permissible purpose, such as "motive,

opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* For *Spreigl* evidence to be admissible:

> (1) the State must provide notice of its intent to use the evidence; (2) the State must clearly indicate what the evidence is being offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the other act; (4) the *Spreigl* evidence must be relevant and material; and (5) the probative value of the evidence must not be outweighed by the potential prejudice.

State v. Clark, 755 N.W.2d 241, 260 (Minn. 2008).

We need not determine whether the district court abused its discretion in admitting the *Spreigl* evidence because there is no reasonable possibility that the evidence of Buchan's prior assault against I.Y. significantly affected the verdict. *See Griffin*, 887 N.W.2d at 262. The district court instructed the jury on the proper use of *Spreigl* evidence before the evidence of the assault was introduced.[17] *See Clark*, 755 N.W.2d at 261 (explaining that any concerns about the potential prejudice of *Spreigl* evidence was minimized by the district court's instruction about the permissible use of the evidence). The district court repeated this instruction before each witness testified and before closing arguments. *See State v. Rossberg*, 851 N.W.2d 609, 616 (Minn. 2014) (noting that the

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[17] The district court instructed:

> Members of the jury, the State is about to introduce evidence of an occurrence on April 11th, 2020. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed the acts that are charged on October 25th, 2020. The defendant is not being tried for and may not be convicted of any offense other than the charged offenses. You are not to convict the defendant on the basis of occurrences on April 11th, 2020. To do so might result in an unjust double punishment.

district court minimized the risk of prejudice when it repeatedly instructed the jury to not find the defendant guilty based on past conduct). The jury instructions also included an instruction on the proper use of the April 2020 assault evidence, and Buchan's trial counsel withdrew a request to amend this instruction.

In addition, the State presented ample evidence of Buchan's motive to kill Boyce apart from the *Spreigl* evidence. The Facebook messages between the two show that Buchan suspected Boyce of killing J.S. Evidence was presented that Buchan was close to J.S. Buchan concedes that intent was not at issue at his trial because the surveillance video of the killing clearly showed intent. Ample evidence of Buchan's identity also existed. Boyce's dying declaration identified Buchan as his shooter. Evidence was presented that Buchan picked Boyce up minutes before his murder. Cell tower data corroborated this fact and placed Buchan in the area at the time of the shooting. There is not a reasonable possibility that the *Spreigl* evidence, even if erroneously admitted, significantly affected the verdict. *See State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020) ("Strong evidence of guilt undermines the persuasive value of wrongly admitted evidence.").

CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction.

Affirmed.