STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2481

State of Minnesota,
Respondent,

vs.

Antone Owens,
Appellant.

Filed May 6, 2008
Affirmed
Wright, Judge

Hennepin County District Court
File No. 06048383

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Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges his conviction of receiving stolen property, arguing that (1) the district court abused its discretion by admitting testimony of appellant's subsequent bad act under Minn. R. Evid. 404(b), and (2) there is insufficient evidence in the record to support his conviction. We affirm.

FACTS

At approximately 8:49 a.m. on July 17, 2006, Minneapolis Police Officer Eric Shogren was on patrol near the intersection of 31st Street and Clinton Avenue running license-plate numbers of occupied vehicles. Appellant Antone Owens was seated in the driver's seat of a 2005 Honda Odyssey minivan, which was parked on Clinton Avenue near 31st Street. As Officer Shogren drove by, he observed that the minivan was occupied and ran the license-plate number. Officer Shogren was approximately one-half block away when he received a report that the minivan had been stolen with its keys. As Officer Shogren was turning his car around to investigate, Officer Shogren saw Owens get out of the minivan and walk across the street. When Officer Shogren pulled up to tell Owens to stop, Owens "took off running."

Officer Shogren called for assistance and chased Owens through an alley to 4th Street, where Officer Shogren caught up to Owens and arrested him. While an assisting officer brought Owens back to Officer Shogren's vehicle, Officer Shogren retraced his steps to the minivan. He did not recover any keys from the ground, the minivan, or

Owens. But when he returned to the minivan, Officer Shogren observed that the stereo was on and that the steering column had not been damaged.

When Owens asked why he was arrested, Officer Shogren informed him that he was under arrest for being in a stolen vehicle. Owens responded, "I didn't steal that car."

Owens was charged with receiving stolen property worth more than $2,500, a violation of Minn. Stat. §§ 609.53, subd. 1, 609.52, subd. 3(2) (2004). The state gave notice that it intended to present *Spreigl*[1] evidence, under Minn. R. Evid. 404(b), that Owens was arrested for driving a stolen vehicle in the area of 31st Street and Nicollet Avenue on August 12, 2006.

At the jury trial, the state presented testimony from Officer Shogren and the owner of the minivan. The state then moved to admit the rule 404(b) evidence. Defense counsel objected, arguing that there was not clear and convincing evidence that Owens knew that the car he drove was stolen and, therefore, the August 12 incident was irrelevant to the charged offense and unfairly prejudicial. The district court granted the motion, finding clear and convincing evidence that Owens was caught driving a stolen vehicle and concluding that the evidence was relevant to the issue of Owens's knowledge in the instant case. The district court permitted the state to present the testimony of the police officer who had arrested Owens on August 12.

Owens was convicted of the charged offense, and this appeal followed.

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

D E C I S I O N

I.

Owens first argues that the district court abused its discretion by admitting testimony regarding his August 12 arrest. "Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted).

Evidence of other bad acts is "not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). Such evidence, however, may be admissible for other purposes, including to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* The district court may admit other-bad-act evidence under rule 404(b) when (1) the state gives notice of its intent to offer the evidence and identifies a permitted purpose for which the evidence is offered; (2) there is clear and convincing evidence that the defendant participated in the prior bad act; (3) the evidence is relevant and material to the state's case; and (4) the probative value of the evidence is not outweighed by the danger of unfair prejudice. *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). Since all rule 404(b) evidence must be "substantially similar to the charged offense" with respect to time, place, and modus operandi, such evidence may consist of either a prior or subsequent act. *State v. Kennedy*, 585 N.W.2d 385, 390-91 (Minn. 1998).

Notwithstanding the plain language of rule 404(b) and the *Kennedy* decision, Owens argues that admission of the subsequent-act evidence to demonstrate knowledge for the charged offense was an illogical application of the "doctrine of chances." The doctrine of chances has not been adopted by Minnesota appellate courts, but the principles underlying the doctrine are similar to those underlying Minnesota's other-bad-acts rule.

The doctrine of chances has been characterized as "the instinctive recognition of that logical process which eliminates the element of innocent intent by multiplying instances of the same result until it is perceived that this element cannot explain them all." 2 John Henry Wigmore, *Wigmore on Evidence*, § 302, at 241 (Chadbourn ed. 1979). It is, therefore, the similarity of the acts, their relative frequency, and their temporal proximity that make doctrine-of-chances evidence probative. Edward J. Imwinkelried, *The Use of Evidence of an Accused's Uncharged Misconduct to Prove Mens Rea: The Doctrines Which Threaten to Engulf the Character Evidence Prohibition*, 51 Ohio St. L.J. 575, 589-91, 594 (1990). Courts permitting other-bad-acts evidence on the basis of the doctrine of chances do so because the repetition of similar acts is itself logically relevant. *See, e.g.*, *People v. Crawford*, 582 N.W.2d 785, 794 (Mich. 1998) (observing that doctrine of chances "rests on the premise that the more often the defendant commits an actus reas, the less is the likelihood that the defendant acted accidentally or innocently" (quotation omitted)). To enhance the probative value of this evidence, it is limited to those other acts that "fall into the same general category" as the charged offense and, taken together with the charged offense, "exceed the frequency rate for the general

population." Imwinkelried, *supra*, at 590; *see also Crawford*, 582 N.W.2d at 795 (concluding that other-act evidence shared "insufficient factual nexus" with charged offense and, therefore, did not warrant admission under doctrine of chances).

Owens argues that other-bad-acts evidence offered under the doctrine of chances to establish knowledge logically must be limited to prior acts, since subsequent acts, he maintains, have "little, if any, relevance" to the question of knowledge at an earlier time. But the doctrine of chances focuses on the "objective improbability of the accused's innocent involvement in so many similar incidents." Imwinkelried, *supra*, at 594. Therefore, because it is the multiplicity of similar acts, rather than their sequence, that belies claims of accident, mistake, or lack of knowledge, such evidence is not limited to evidence of prior acts. In this way, the doctrine of chances is akin to Minnesota's *Spreigl* rule for admission of evidence under rule 404(b). *See Kennedy*, 585 N.W.2d at 390 (permitting *Spreigl* or rule 404(b) evidence of subsequent acts). Consequently, applying Minnesota law, evidence of Owens's subsequent act is permissible to establish knowledge—under *Spreigl* or rule 404(b)—if the subsequent act was sufficiently similar to the charged offense and the other requirements for admission are met. *Id.*

Owens was arrested on August 12 because he was found driving a stolen vehicle. Thus, less than one month after his July 17 arrest for the charged offense, Owens again was in possession of a stolen vehicle. Owens's August 12 arrest occurred in the area of 31st Street and Nicollet Avenue, which is only five blocks from the location of the charged offense. And because Owens possessed the stolen vehicle's keys on August 12, and the car he possessed in the charged offense was stolen with its keys, this similarity

suggests a consistent modus operandi and refutes a defense of mistake or lack of knowledge. When the evidence is viewed as a whole, there is more than a sufficient basis to justify admission of the August 12 evidence as probative of the issue of knowledge.

Owens also argues that, even if the evidence were otherwise admissible, it was unfairly prejudicial and, therefore, the district court abused its discretion by admitting it. The district court should not admit other-bad-acts evidence when its probative value is outweighed by the danger of unfair prejudice. *Ness*, 707 N.W.2d at 686. The probative value of such evidence is measured, in part, by the state's need for the evidence to strengthen otherwise weak proof of an element of the charged offense. *Id.* at 689.

Here, the state had circumstantial evidence from which the jury could infer knowledge. This evidence includes Owens's flight from a police officer and his response to Officer Shogren that he did not steal the car, rather than asserting that he did not know the car was stolen. *See State v. Harris*, 589 N.W.2d 782, 790 (Minn. 1999) (recognizing that evidence of flight can suggest consciousness of guilt). Although, with this evidence, the state's case may have been sufficient for submission to the jury, the evidence of the August 12 incident was reasonably necessary because, as a practical matter, it is not clear that the jury would have found the state's other evidence bearing on the disputed issue sufficiently probative. *Ness*, 707 N.W.2d at 690. Because the August 12 incident was so similar in nature, time, and place to the charged offense, the evidence possessed substantial probative value regarding Owen's knowledge, which outweighed any danger of using it for an improper purpose. *State v. Lynch*, 590 N.W.2d 75, 80-81 (Minn. 1999) (noting that *Spreigl* offense and charged offense occurred within one month of each other

and within approximately one mile). Accordingly, the district court did not abuse its discretion by admitting the evidence under rule 404(b).

II.

Owens also argues that there is insufficient evidence in the record to support his conviction. When reviewing a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the verdict and disbelieved any contrary evidence. *Id.* We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

To sustain a conviction of receiving stolen property, there must be sufficient evidence supporting each of the following elements of the offense: (1) the defendant received, possessed, transferred, bought, or concealed stolen property; (2) the defendant knew or had reason to know the property was stolen; and (3) the approximate value of the stolen property (for use in determining the appropriate sentence). Minn. Stat. §§ 609.53, subd. 1, 609.52, subd. 3(2) (2004). The parties agree that the critical question on appeal is whether there is sufficient record evidence to establish that Owens "possessed" the stolen minivan.

In order to prove that Owens possessed the stolen minivan, the state was required to demonstrate that Owens "exercised dominion and control" over the vehicle or had exclusive access to it. *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975); *State v. Zgodava*, 384 N.W.2d 522, 524 (Minn. App. 1986), *review denied* (Minn. May 16, 1986). The evidence is undisputed that Owens was in the driver's seat of the minivan in a different location from where the owner parked it. He also was the only person in the vehicle. Owens was, therefore, in a position of exclusive control over the vehicle. Moreover, the stereo was on when Officer Shogren returned to the minivan, which presents additional evidence that Owens, having turned on the stereo, exercised control over the minivan. On this record, there is more than ample evidence proving that Owens possessed the stolen vehicle.

Finally, we observe that "[a]n individual's 'unexplained possession of stolen property within a reasonable time after a . . . theft will in and of itself be sufficient to sustain a conviction.'" *State v. Hager*, 727 N.W.2d 668, 677-78 (Minn. App. 2007) (quoting *State v. Bagley*, 286 Minn. 180, 188, 175 N.W.2d 448, 454 (1970)). The record establishes that the minivan was stolen from 25th Street and Nicollet Avenue on July 16; Owens was found in possession of the minivan the next morning approximately one mile away. And Owens's only explanation when told he was under arrest for being in a stolen vehicle was that he "didn't steal that car." When viewed in the light most favorable to the conviction, the evidence, taken as a whole, is more than sufficient to support the guilty verdict.

Affirmed.