STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1206

State of Minnesota,
Respondent,

vs.

Nathaniel James Hasher,
Appellant.

Filed June 20, 2011
Affirmed
Toussaint, Judge

Olmsted County District Court
File No. 55-CR-09-6948

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and Connolly, Judge.

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

TOUSSAINT, Judge

Appellant Nathaniel James Hasher was convicted of violating a restraining order under Minn. Stat. § 609.748, subd. 6(d)(1) (2008), and sentenced to 27 months in prison.

On appeal, he argues that the district court erred by admitting evidence of prior bad acts as *Spreigl* evidence under Minn. R. Evid. 404(b). Because this evidence was either properly admitted or its admission constituted harmless error, we affirm.

D E C I S I O N

The district court admitted evidence of appellant's prior bad acts against a former girlfriend, S.W., as relationship evidence under Minn. Stat. § 634.20 (2008) and as *Spreigl* evidence under Minn. R. Evid. 404(b).[1] Appellant argues that the decision to admit the evidence, particularly the November 23, 2002 offense in which he broke into S.W.'s house and contacted her via her cell phone, went beyond permissible *Spreigl* evidence and constituted improper character evidence.

In July 2009, appellant was personally served with a harassment restraining order prohibiting him from having direct or indirect contact with his former girlfriend, G.B. On September 9, 2009, a mutual friend left at G.B.'s door a letter written by appellant and three photos he had taken of G.B. The mutual friend testified that she encouraged appellant to write the letter and that he knew she intended to deliver it to G.B.; appellant claimed that he wrote the letter to another female friend from church and that he was unaware that it would be delivered to G.B.

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[1] Minn. Stat. § 634.20 refers to the definition of "domestic abuse" under Minn. Stat. § 518B.01, subd. 2 (2008). But appellant's attempt to contact G.B. through a friend did not involve domestic abuse. *See State v. Barnslater*, 786 N.W.2d 646, 652 n.1 (Minn. App. 2010) (concluding that domestic abuse, as defined by Minn. Stat. § 518B.01, does not include attempting to contact a person through a friend), *review denied* (Minn. Oct. 27, 2010). The state thus concedes that the district court erred in admitting evidence under section 634.20.

The district court allowed the state to call S.W., who testified about obtaining a domestic-abuse protection order against appellant in September 2002 and a harassment restraining order against him in February 2006. Appellant violated both orders. In November 2002, S.W. called police after she heard someone inside her home; when police arrived, they arrested appellant and found S.W.'s cell phone inside his pocket. In March 2006, S.W. received two postcards and a letter in the mail from appellant, and in April 2006, appellant gave her three photos and contacted her at the courthouse before a hearing on the restraining order.

To admit *Spreigl* evidence at trial, the state must (1) give notice of its intent to use such evidence; (2) clearly indicate what the evidence will be offered to prove; (3) prove by clear and convincing evidence that the defendant participated in the prior act; (4) show that the evidence is relevant and material to its case; and (5) demonstrate that the probative value of the evidence is not outweighed by its potential prejudice to the defendant. Minn. R. Evid. 404(b); *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006).

The parties in this case focus on the fourth and fifth *Ness* factors. Appellant agrees that some of the evidence was relevant and admissible as *Spreigl* evidence to show a common scheme or plan or lack of mistake. In particular, evidence that appellant had written letters to S.W. in March 2006 and gave her photos in April 2006 was relevant to the current offense. This type of "marked similarity" is important to the *Spreigl* common scheme or plan exception. *Ness*, 707 N.W.2d at 688. But appellant argues that other parts of the evidence admitted under *Spreigl*, including evidence that he broke into S.W.'s apartment and took her cell phone, were substantially different from the offense in

the present case and not relevant to show a common scheme or lack of mistake.

Spreigl evidence need not be identical to the charged offense, and when evaluating the relevancy factor, a district court should consider "the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place or modus operandi." *State v. Asfeld*, 662 N.W.2d 534, 543 (Minn. 2003). The evidence in this case was not offered to show identity, where similarity might be important; rather, the evidence was offered to show lack of mistake or common scheme. Thus, the evidence is relevant to show the similarity between the offenses and to refute any claim by appellant that he intended the letter to be delivered to someone else, or possibly that he did not know this type of contact was prohibited, a defense that he asserted at trial.

With respect to the fifth *Ness* factor, appellant argues that the district court did not properly consider whether the probative value of appellant's various offenses, particularly the burglary offense, outweighed the potential of prejudice to appellant. Appellant asserts that the court incorrectly ruled that the November 2002 breaking-and-entering offense was admissible. Appellant also argues that because the court incorrectly found the evidence admissible as relationship evidence, it did not do a thorough analysis to evaluate the prejudice and probative value. While the district court conducted a thorough analysis and considered whether the prior offenses were admissible as relationship evidence and as *Spreigl* evidence, appellant may be correct in his claim that the November 2002 offense was not properly admitted as *Spreigl* evidence.

Nonetheless, we conclude that any erroneous admission of that evidence is harmless in this case. Reversal is warranted only if there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *Ness*, 707 N.W.2d at 691. Appellant asserts that this case was necessarily decided on whether the jury found the testimony of appellant or the mutual friend credible. Several facts weighed in favor of accepting appellant's testimony, including that the letter was unaddressed and that the mutual friend appeared to contradict herself at one point by answering in the affirmative when asked whether appellant intended the letters and pictures for another female friend from church. But this contradiction was apparently caused by the mutual friend's confusion, and her testimony was clarified during redirect and recross.

Appellant also insists that his credibility was ruined because the jury was told that he broke into S.W.'s apartment and stole her cell phone. But a reading of the trial transcript shows that this was a minor part of S.W.'s testimony and that it was unlikely to have influenced the jury to convict appellant. The mutual friend's version of events was easily more credible than the version asserted by appellant given the other evidence presented, including the rebuttal testimony of the female friend from church who largely contradicted appellant's claim of their familiarity, the language of the letter itself suggesting that it was directed at someone with whom appellant had been very close, and the properly admitted *Spreigl* evidence that appellant had written postcards and given pictures to S.W. in violation of a no-contact order in the past. Appellant's testimony that he did not write the letter to G.B. and that he intended the mutual friend to deliver it to another female friend from church simply was not believable to the jury. Thus, any

improperly admitted *Spreigl* evidence likely had no effect on the jury's guilty verdict.

Finally, appellant filed a pro se supplemental brief that is handwritten and 59 pages in length. It includes no table of contents, statements of the issues, or headings. *See* Minn. R. Crim. P. 28.02, subd. 5(17) (allowing criminal defendant to file a supplemental brief); Minn. R. Civ. App. P. 128.02, subd. 1 (requiring briefs to contain a "concise statement" of issues and arguments that include party's contentions with respect to the issues presented); *see also Gruenhagen v. Larson*, 310 Minn. 454, 460, 246 N.W.2d 565, 569 (1976) (stating that a court will not modify ordinary rules and procedures because a pro se party lacks the skills and knowledge as an attorney). Given the pro se supplemental brief's lack of focus and organization, it is difficult to construe any of appellant's statements as argument and impossible to discuss any of his statements on the merits. We therefore decline to do so.

Affirmed.