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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1729**

State of Minnesota,
Respondent,

vs.

Hanad Mohamed Mohamoud,
Appellant.

**Filed August 29, 2011
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-10-9075

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Melissa Sheridan, Assistant Appellate Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of first-degree assault, arguing that the district
court abused its discretion by admitting *Spreigl* evidence. We affirm.

FACTS

On February 23, 2010, the victim, M.Y., was smoking in the parking lot behind West Bank Grocery in the Cedar-Riverside area of Minneapolis, when a white limousine approached him. The front windows were open, and M.Y. saw two people in the car. M.Y. identified appellant Hanad Mohamoud as the passenger.

M.Y. recognized Mohamoud because two days earlier, M.Y. was at Cedar Coffee Shop when Mohamoud entered the shop with four others and argued with some men sitting near M.Y. While arguing with the men sitting near M.Y., Mohamoud said to M.Y., “Don’t look at me.”

M.Y. testified that the men in the limousine “call[ed] me” and “told me [to] come back to the car.” When M.Y. walked away, Mohamoud pointed a gun at him. When M.Y. saw the gun, he hid behind a van. Mohamoud got out of the limousine and moved toward M.Y. M.Y. began to run, and Mohamoud chased him and shot him in the back. Mohamoud then ran back toward the limousine.

M.Y. ran into Cedar Tobacco and told the woman working there to call an ambulance. The woman “looked lost and she was yelling,” so M.Y. went to West Bank Grocery. The cashier at West Bank Grocery called 911. The cashier asked M.Y. who shot him. M.Y. responded that he knew them, that they came from a local Somali mall, and that they were in a white Lincoln.

When the police arrived, M.Y. informed an officer that the shooter was a Somali male who was wearing a white shirt and seated in a white Lincoln Towncar. Paramedics

transported M.Y. by ambulance to Hennepin County Medical Center, where he was designated a level-1 trauma case.

Sergeant Bruce Kohn of the Minneapolis Police Department interviewed M.Y. several days later. M.Y. told Sergeant Kohn that Hanad shot him, but he did not know Hanad's last name. Sergeant Kohn showed M.Y. a photographic lineup, and M.Y. identified Mohamoud as the shooter.

On February 26, 2010, the police found a white Lincoln Towncar limousine parked on the street. The license plate number matched the license plate number of a Lincoln Towncar limousine reported stolen. The police believed that the vehicle was the same one used during the shooting and towed the vehicle to the Minneapolis forensic garage. Forensic tests revealed that a blood-like substance found on the outside of the front passenger door matched the DNA profile of a known sample from Abdirahman Hersi, an associate of Mohamoud.

Respondent State of Minnesota charged Mohamoud with first-degree assault in violation of Minn. Stat. § 609.221, subd. 1 (2008). Over Mohamoud's objection, the district court permitted the state to offer *Spreigl* evidence regarding two incidents. First, Minneapolis police officer Charles White testified that on July 18, 2006, he stopped a car that had been reported stolen. The car contained three people: a female in the back seat, Hersi in the passenger seat, and Mohamoud in the driver seat. Second, Minneapolis police officer David Menter testified that on February 18, 2010, he was working off-duty as a security guard at an apartment building when he saw Hersi, who was not supposed to be at the apartment building, force open the building's security door. Hersi was with

three or four other people, including appellant, who entered the building with Hersi. The jury convicted Mohamoud of first-degree assault.

This appeal follows.

DECISION

Mohamoud argues that the district court abused its discretion by admitting *Spreigl* evidence. Evidence of other crimes, wrongs, or acts, known as *Spreigl* evidence, “is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b); *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009); *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). The “general exclusionary rule is grounded in the defendant’s constitutional right to a fair trial.” *Fardan*, 773 N.W.2d at 315 (quotation omitted). “The overarching concern behind excluding such evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts.” *Id.* (quotations omitted).

But *Spreigl* evidence may be admissible to prove identity. Minn. R. Evid. 404(b). *Spreigl* evidence also may be admitted to show “whether the conduct on which the charge was based actually occurred or was . . . a fabrication or a mistake in perception by the victim.” *State v. Wermerskirchen*, 497 N.W.2d 235, 242 (Minn. 1993).

Spreigl evidence should not be admitted unless:

- (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.

Minn. R. Evid. 404(b). "If the admission of evidence of other crimes or misconduct is a close call, it should be excluded." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006); *see also Spreigl*, 272 Minn. at 495, 139 N.W.2d at 172 ("Where it is not clear to the court whether or not the evidence is admissible as an exception to the general exclusionary rule, the accused is to be given the benefit of the doubt, and the evidence rejected." (quotation omitted)).

This court reviews the district court's decision to admit *Spreigl* evidence for an abuse of discretion. *Fardan*, 773 N.W.2d at 315. "A defendant who claims the trial court erred in admitting evidence bears the burden of showing the error and any resulting prejudice." *Ness*, 707 N.W.2d at 685.

Mohamoud argues that two of the five requirements for admission of *Spreigl* evidence were not met: (1) that the evidence must be relevant to the state's case; and (2) that the probative value outweighs the potential for unfair prejudice. The state argues that the *Spreigl* evidence was relevant to prove identity and that the evidence was not unduly prejudicial.

Evidence must be relevant to be admissible. Minn. R. Evid. 402. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

“To properly assess the relevancy and probative value of the evidence, the district court must first identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” *Fardan*, 773 N.W.2d at 317 (quotation omitted). The district court found that appellant’s “involvement in the past offenses makes it more likely that [he] was in the car from which the assault was launched” because of “the ongoing association between [appellant] and . . . Hersi . . . in criminal activity.”

“*Spreigl* evidence may be relevant and material to show the identity of the perpetrator if identity is at issue and if there is a sufficient time, place, or modus operandi nexus between the charged offense and the *Spreigl* offense.” *State v. Wright*, 719 N.W.2d 910, 917 (Minn. 2006) (quotation omitted). “The past crime does not have to be a signature crime, as long as the crime was sufficiently similar to the incident at issue before the jury.” *Id.* (quotation omitted). “The closer the relationship between the events, the greater the relevance or probative value of the evidence and the lesser the likelihood that the evidence will be used for an improper purpose.” *State v. Lynch*, 590 N.W.2d 75, 80 (Minn. 1999) (quotation omitted). Appellate courts have “been flexible in applying this test on appeal, upholding admission notwithstanding a lack of closeness in time or place if the relevance of the evidence was otherwise clear.” *Id.* at 80–81 (quotation omitted).

Stolen-Car Incident

Identity was at issue in this case because M.Y. testified that Mohamoud was the shooter whereas in opening statement and closing argument, defense counsel stated that Mohamoud was not the shooter. The stolen-car incident has some relevance to the

identity of the shooter. Both incidents involve stolen vehicles and both involve Mohamoud and Hersi. In the prior incident, Mohamoud and Hersi were both in a stolen vehicle. In the current offense, the state claimed that Mohamoud was in a limousine that matched the description of a stolen limousine with Hersi's DNA on it. Though the acts are not close in time or similar in place, the relevance is otherwise clear. The stolen-car incident shows Mohamoud and Hersi in a stolen car, and both are separately linked to the stolen limousine. Because both were in a stolen car in the past and both are linked to the stolen limousine, it is more probable than it would be without the evidence that Mohamoud was the man who exited the limousine and shot M.Y.

To determine whether the potential for unfair prejudice outweighs the probative value of the evidence, courts must "balance the relevance of the [*Spreigl* evidence], the risk of the evidence being used as propensity evidence, and the State's need to strengthen weak or inadequate proof in the case." *Fardan*, 773 N.W.2d at 309. *Spreigl* evidence is prejudicial by nature, but the balancing analysis for unfair prejudice focuses on whether the evidence "persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

The potential for unfair prejudice does not outweigh the probative value because the testimony about this incident was a minor part of the state's case (six pages of transcript out of four volumes) and the court gave a limiting instruction both before the evidence was introduced and in its final instructions. *See State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998) (stating that cautionary instructions to the jury "lessened the probability of undue weight being given by the jury to the evidence").

And the state needed this evidence.

“Need” for other-crime evidence is not necessarily the absence of sufficient other evidence to convict, nor does exclusion necessarily follow from the conclusion that the case is sufficient to go to the jury. A case may be sufficient to go to the jury and yet the evidence of other offenses may be needed because, as a practical matter, it is not clear that the jury will believe the state’s other evidence bearing on the disputed issue.

Ness, 707 N.W.2d at 690 (quoting *State v. Bolte*, 530 N.W.2d 191, 197 n.2 (Minn. 1995)). “The trial court generally is in a better position than an appellate court to evaluate the reasonableness of and need for other-crime evidence in a particular case.” *Bolte*, 530 N.W.2d at 197 n.2. Other than M.Y., the state had no eyewitness who could identify the shooter. And the state had no physical evidence that identified the shooter. The defense argued that Mohamoud was not the shooter, highlighted that M.Y. did not provide a name until several days after the shooting, and highlighted inconsistencies in M.Y.’s statements to the police at the time of the shooting, his statements to police several days later, and his testimony about his previous interactions with Mohamoud, the shooter’s clothing, the shooter’s statements while M.Y. ran away, the number of shots fired, and the distance from which the shooter fired.

The potential for unfair prejudice does not outweigh the probative value of the evidence. The district court therefore did not abuse its discretion by admitting this *Spreigl* evidence.

Apartment-Building Incident

We conclude that the evidence about the apartment-building incident is irrelevant. Hersi forced open a security door at an apartment building at which his presence was prohibited and entered the building with Mohamoud. This incident is not similar to exiting a stolen limousine and shooting someone in the back. Instead, it merely shows that Mohamoud committed a bad act with Hersi. This evidence raises the “overarching concern. . . that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts.” *Fardan*, 773 N.W.2d at 315 (quotation omitted). The district court abused its discretion by admitting this *Spreigl* evidence.

Harmless Error

Because the district court abused its discretion in admitting one of the *Spreigl* incidents, an analysis of whether that error requires reversal is necessary. “To warrant a new trial, the erroneous admission of *Spreigl* evidence must create a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* at 320. “If such a possibility exists, the error in admitting the evidence was prejudicial error, warranting a new trial.” *Id.*

No reasonable possibility exists that the wrongfully admitted evidence significantly affected the verdict. The district court gave a limiting instruction before the *Spreigl* evidence was introduced and in its final instructions. The evidence was a limited part of the trial (11 pages of transcript out of four volumes). And despite the defense’s best efforts to discredit M.Y.’s identification of appellant as the shooter, M.Y. testified

that he saw Mohamoud two days before the shooting in a coffee shop, identified Mohamoud as the shooter by first name, provided a physical description of the shooter that matched Mohamoud, and identified Mohamoud as the shooter in a photographic lineup. Other witnesses corroborated M.Y.'s testimony that a white limousine with two males in the front seat pulled into the parking lot, that a shot was fired, and that the limousine sped away. Under these circumstances, we conclude that the wrongfully admitted evidence did not significantly affect the verdict.

Affirmed.