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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2063**

State of Minnesota,
Respondent,

vs.

Maurice Level Ward, Sr.,
Appellant.

**Filed November 21, 2011
Affirmed
Crippen, Judge***

Anoka County District Court
File No. 02-CR-10-1766

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

Marcy S. Crain, Anoka County Attorney's Office, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant challenges the admission of prior-misconduct evidence treated by the district court as evidence of the immediate episode. Although there is merit in appellant's argument that the evidence was insufficiently connected to the conduct immediately at issue, we affirm because appellant has failed to show that his conviction was attributable to the error.

FACTS

Blaine police arrested appellant Maurice Ward, Sr. for promoting prostitution of minors; the officers were involved in an undercover investigation of appellant's business, House of Geishas Ni. Appellant subsequently was convicted of two counts of promoting prostitution (under 18 years of age) for posting pictures and advertising the services of J.P. and B.B. Both girls were 16 when they began working as prostitutes for appellant in late 2009. Appellant was also convicted of one count of receiving profits derived from prostitution.

During appellant's trial, the prosecution presented testimony from many people who worked for appellant, including J.L., his former business partner. J.L. was no longer part of the business at the time B.B. and J.P. worked there, having left sometime before June 2008. J.L. testified about how she and appellant set up, advertised for, and ran the business, using her pre-existing massage therapy business as a front for prostitution.

Before his trial began, appellant moved the court to "restrain[] the state from attempting to introduce at trial any evidence that [appellant] has been guilty of additional

misconduct and crimes on other occasions.” After hearing the prosecution’s intent in having J.L. testify, the court denied appellant’s motion. The court stated that this evidence was probative of appellant’s knowledge that he was involved in prostitution through demonstration of an “overall criminal enterprise” and “same course of conduct.” This appeal followed appellant’s jury conviction.

D E C I S I O N

1. Immediate-episode Evidence

The record indicates that there was discussion of J.L.’s testimony as both *Spreigl* evidence and as immediate-episode evidence. The district court characterized the evidence as part of the episodes immediately at issue. We will affirm the admission of immediate-episode evidence in the absence of a showing that the court abused its discretion in admitting the evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). (“Absent a clear abuse of discretion, evidentiary rulings generally rest within the trial court's discretion”); *see State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009) (application of standard to immediate-episode evidence); *State v. Fardan*, 773 N.W.2d 303, 316 (Minn. 2009) (same).

To constitute immediate-episode evidence, “the offenses must be ‘linked together in point of time or circumstances so that one cannot be fully shown without proving the other.’” *Fardan*, 773 N.W.2d at 316 (quoting *State v. Kendell*, 723 N.W.2d 597, 608 n.9). Admission of the evidence requires “a close causal and temporal connection between the prior bad act and the charged crime.” *Riddley*, 776 N.W.2d at 425. Those connections were not present here. The testimony provided by J.L. related exclusively to

events that happened almost two years before the crimes for which appellant was charged, and the crimes described by J.L. were not so intertwined with the crimes appellant was charged with that respondent could not prove its case without her testimony. Under these circumstances, it was an abuse of discretion to admit the evidence as immediate-episode evidence.

Respondent emphasizes that J.L.'s testimony addresses a "continuing enterprise," but it offers no authority for its argument that this factor permits disregard of the *Riddley* demand for a close causal and temporal connection.

Harmless Error

Appellant bears the burden of proving the prejudicial nature of a district court error in admitting J.L.'s testimony. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "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)).

This court must determine what effect the error had on the jury's verdict, "and more specifically, whether the jury's verdict is 'surely unattributable' to [the error]." *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quoting *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997)). In doing so, we are to consider "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defendant." *State v. Caulfield*,

722 N.W.2d 304, 314 (Minn. 2006) (quoting *State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005)). “[O]verwhelming evidence of guilt is a factor, often a very important one, in determining whether, beyond a reasonable doubt, the error has no impact on the verdict[,]’ [b]ut the court cannot focus on the evidence of guilt alone.” *Id.*

J.L.’s testimony was only a small part of the state’s case. Her testimony also came in the middle of the trial, between evidence by another woman who worked as a prostitute for appellant and testimony by the undercover officer who posed as a client during the raid on appellant’s business. Respondent did not rely heavily on J.L.’s testimony in opening statements or closing argument, and appellant even concedes that “[respondent] did not need J.L.’s testimony for [the] purpose [of showing appellant’s knowledge], because it had ample other evidence—including the testimony of the three women appellant was charged with promoting and the evidence found in his home—of appellant’s knowledge and intent.” The record fails to show a basis for doubt of the evidence received independently of J.L.’s testimony or to otherwise show that admission of J.L.’s testimony was so prejudicial that he is entitled to any relief.

Appellant asserts that the risk of prejudice was enlarged by the district court’s instructions. Because the court did not view J.L.’s testimony as *Spreigl* evidence, it did not give the *Spreigl* limiting instruction. Appellant also contends that the district court instruction on accomplice testimony—the requirement for corroboration—tended to treat J.L. as an accomplice and thus give greater weight to her testimony.¹ There is no merit in

¹ Because appellant did not object to the omission of a *Spreigl* limiting instruction and did not request such an instruction, the omission did not constitute reversible error. *State*

these arguments. It is not evident that *Spreigl* other-crime evidence was admitted, and the omitted instruction did not enlarge prejudice that was insubstantial on this record. The corroboration instruction established a higher threshold for giving weight to J.L.'s testimony.

Spreigl Evidence

Respondent requests that we affirm the district court on the alternative theory of *Spreigl* evidence that is governed by Minn. R. Evid. 404(b). Because we have determined that the district court committed harmless error on the theory of evidence that it chose, we have no occasion to review the *Spreigl* topic. Moreover, the record does not permit such a review because the district court did not address the factors that must be analyzed for admission of testimony under rule 404(b).

2. Pro Se Arguments

Appellant makes three arguments in his pro se brief. First, he declares as unconstitutional the district court's refusal to allow him to present a defense of mistake of age, a defense which is specifically denied him by Minn. Stat. § 609.325, subd. 2. But appellant fails to identify a vulnerable group which would require a strict-scrutiny review of the statute, and he fails to cite any authority that supports his argument that a strict-liability crime is inherently unconstitutional.

Second, appellant argues that there was a *Blakely* violation when the court did not allow the jury to make a determination regarding his criminal history points to be used in

v. Forsman, 260 N.W.2d 160, 169 (Minn. 1977). Appellant asserts prejudice arising from the court's corroboration instruction but does not claim the instruction constituted error.

sentencing. *See Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004). Although the district court used evidence of prior convictions when sentencing appellant, the *Blakely* Court recognized a specific exception from the requirement of a jury determination for facts relating to a prior conviction. *Id.* at 301, 124 S. Ct. at 2536. This issue also was not raised to the district court, and is therefore waived on appeal. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. 1997).

Finally, appellant argues that the district court abused its discretion when it denied his motion for acquittal because there was insufficient evidence that B.B. was under 18 at the time she was working for appellant as a prostitute. Appellant presented no relevant evidence at trial, and the district court made the appropriate consideration of the evidence that was presented. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (stating that, when ruling on the motion, the district court must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.”). Because the evidence in the record is sufficient to support the conviction, the district court did not err in denying the motion for acquittal.

Affirmed.