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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1486**

State of Minnesota,
Respondent,

vs.

Randell James Allen,
Appellant.

**Filed August 28, 2017
Affirmed
Reyes, Judge**

Clay County District Court
File No. 14-CR-16-625

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

Brian J. Melton, Clay County Attorney, Lori H. Conroy, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his conviction of failure to register as a predatory offender, arguing that the district court abused its discretion by admitting his two prior failure-to-register convictions as *Spreigl* evidence. We affirm.

FACTS

In 2008, appellant Randell James Allen was charged with first-degree burglary, domestic assault, and false imprisonment. Pursuant to a plea agreement, appellant pleaded guilty to burglary and assault, and the false-imprisonment charge was dismissed. Because the false-imprisonment charge arose out of the same set of circumstances as the offenses for which appellant was convicted, appellant was required to register as a predatory offender until 2018. See Minn. Stat. § 243.166, subd. 1b(2) (2014). Appellant was convicted of failure to register in 2011 and 2013. Following each conviction, appellant's required registration period was extended.

In February 2016, while investigating another matter, a sergeant with the Moorhead Police Department came into contact with appellant and learned that appellant was not in compliance with his registration requirement. On February 26, respondent State of Minnesota charged appellant with failure to register under Minn. Stat. § 243.166, subd. 5(a) (2014).

Prior to trial, the state moved to admit appellant's prior convictions for failure to register in 2011 and 2013 primarily as *Spreigl* evidence, probative of appellant's duty to register and his knowledge of this duty, and secondarily for impeachment purposes. Over

appellant's objection to the state's motion in limine, the district court admitted the prior convictions as *Spreigl* evidence. The district court did not rule on whether the prior convictions were admissible for impeachment purposes.

The jury found appellant guilty of failure to register, and the district court sentenced appellant to 24 months in prison. This appeal follows.

DECISION

"Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). However, such evidence, which is often referred to as *Spreigl* evidence, may be admissible for other purposes, including to prove knowledge. *Id.*; *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). The general concern over admitting *Spreigl* evidence is that the jury might use the evidence for an improper purpose, "such as suggesting that the defendant has a propensity to commit the [charged] crime." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Before the district court can admit *Spreigl* evidence, (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) the defendant's participation in the other act must be proved by clear and convincing evidence; (4) the evidence must be relevant to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential for unfair prejudice to the defendant. Minn. R. Evid. 404(b). We review a district court's decision to admit *Spreigl* evidence for an abuse of discretion. *Ness*, 707 N.W.2d at 685. Appellant bears the burden of showing any error and resulting prejudice. *Id.*

Appellant argues that the district court abused its discretion by admitting his 2011 and 2013 convictions for failure to register as a predatory offender as *Spreigl* evidence for three reasons: (1) the convictions were neither relevant nor material to the state's case; (2) even if the convictions were relevant or material, any probative value was substantially outweighed by the potential for unfair prejudice; and (3) the erroneous admission of the convictions was not harmless because it significantly affected the outcome of the trial. Appellant's arguments fail because, even if we were to assume without deciding that admitting appellant's prior convictions was erroneous, we conclude that any error was harmless.

We will reverse a conviction where the district court improperly admits *Spreigl* evidence if "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Ness*, 707 N.W.2d at 691.¹ The factors we consider are (1) whether other evidence was offered on the issue; (2) whether the district court read a limiting instruction to the jury; and (3) whether the state highlighted the evidence in its closing argument. *State v. Fardan*, 773 N.W.2d 303, 320 (Minn. 2009).

Here, the district court admitted appellant's prior convictions as *Spreigl* evidence relevant to the first and second elements of the charged crime: (1) appellant is required to register and (2) appellant knowingly violated that requirement. *See* Minn. Stat. § 243.166.

¹ Appellant did not renew his objection to the admission of the *Spreigl* evidence at trial; however, we do not subject his claim to plain-error review because the district court made a definitive ruling on the state's motion in limine that the prior convictions are admissible *Spreigl* evidence. *Cf. State v. Word*, 755 N.W.2d 776, 782-83 (Minn. App. 2008) ("[E]videntiary objections should be renewed at trial when an in limine or other evidentiary ruling is not definitive . . .").

In addition to offering certified copies of appellant's prior convictions as self-authenticated documents under Minn. R. Evid. 902, subd. 4, the state presented multiple documents that appellant signed, acknowledging his duty to register. Also, a Bureau of Criminal Apprehension agent testified that appellant was provided with information on his registration requirement after being released from prison following his prior convictions. And, significantly, appellant testified that he knew about his duty to register and that he attempted to register prior to the February 2016 charge.

The district court did not give a cautionary instruction to the jury about the *Spreigl* evidence. Appellant's trial attorney did not request a limiting instruction.

Finally, the trial transcript indicates that the state did not unduly highlight the *Spreigl* evidence during its closing argument and rebuttal. The state noted that "twice since 2008 [appellant] has been convicted of the offense[] . . . of failing to register," and served time in prison for the offenses. The state's mention of appellant's prior convictions consisted of approximately half of one transcribed page of the state's 24-page closing argument and rebuttal.

The district court should have read to the jury a limiting instruction regarding the use of the *Spreigl* evidence. See *State v. Bolte*, 530 N.W.2d 191, 197 (Minn. 1995) (noting that district court should give cautionary instruction upon admitting *Spreigl* evidence and during final instructions, even if defense counsel does not request it). But, on this record, we conclude that there is no reasonable possibility that admitting appellant's 2011 and 2013 convictions significantly affected the verdict because other evidence presented to establish appellant's duty to register and his knowing violation of that duty was strong. In

addition, the state's mention of appellant's prior convictions during closing argument and rebuttal was brief. See *Ness*, 707 N.W.2d at 691 (affirming conviction where supreme court could not conclude that admission of *Spreigl* evidence significantly affected verdict). Accordingly, any alleged error in admitting appellant's 2011 and 2013 failure-to-register convictions does not require reversal.

Affirmed.