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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0194**

State of Minnesota,
Respondent,

vs.

Jonathan David Janssen,
Appellant.

**Filed April 2, 2018
Affirmed
Reyes, Judge**

Olmsted County District Court
File No. 55-CR-15-5122

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the district court abused its discretion by refusing to strike a
juror for cause and by admitting prior bad-act evidence pursuant to Minn. R. Evid. 404(b)

and Minn. Stat. § 634.20. Appellant also argues in his pro se supplemental brief that the evidence was insufficient to support the jury's verdict. We affirm.

FACTS

Appellant Jonathan David Janssen moved in with his girlfriend J.J. and her four children, including A.S. and B.S., in 2011. They married in 2014. Appellant sexually abused A.S. five times from March to December 2013. A.S. was 12 years old when appellant first sexually abused her. Each incident involved digital penetration and the touching of A.S.'s breast while she was sleeping on the bottom bunk of a bunk bed and her sister B.S. was sleeping on the top bunk. After the fifth incident, A.S. switched beds with B.S., and appellant stopped sexually assaulting A.S. A.S. did not accuse appellant of sexual assault until July 2015, when she and B.S. visited their grandmother in Wisconsin. Shortly before they left, B.S. urged A.S. to tell their grandmother that appellant had sexually abused A.S. Their grandmother promptly notified law enforcement after A.S. told her about appellant's sexual abuse.

Shortly thereafter, respondent State of Minnesota charged appellant with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subds. 1(b), 1(g) (2014). During pretrial, B.S. came forward with new testimony that appellant also sexually abused her after she and A.S. had switched beds. Over the objection of defense counsel, the district court told the state that it may admit B.S.'s testimony during trial pursuant to Minn. Stat. § 634.20 and Minn. R. Evid. 404(b).

On June 28, 2016, during voir dire, one prospective juror told the court that both of his two ex-wives were sexual-assault victims and that their traumatic experience had

affected their marriages. Although the juror described himself as an impartial and fair person, he said that he “can’t say for sure that these situation’s[sic] wouldn’t affect” him. When the district court asked him whether he could put aside those experiences and be unbiased, he said that he was a very emotional person, and it may be difficult for him. He also said that he is overprotective of his two daughters and couldn’t “imagine if something like that happened to them.” The district court asked him again if he could be unbiased, and the juror replied that he would put aside his experiences and emotion. The district court asked him a third time if he could be fair and unbiased, to which the juror replied, “I’d like to think I can.”

Defense counsel then asked the juror leading questions as to whether the juror’s “emotional desire” to protect his daughters would come into play if there was reasonable doubt of appellant’s guilt. The juror responded, “[i]t could I suppose[,]” acknowledging that doing so would be contrary to the district court’s instruction, and stated, “I would hope it wouldn’t. I don’t know.” The juror stated that it had never crossed his mind that his ex-wives were wrong in making their allegations and said, “I’d hope so” after defense counsel asked him if he would be able to be impartial without letting his emotions sway him.

The state told the juror that the district court would provide the jury instructions about reasonable doubt, the presumption of innocence, and the law and rules that the jury must follow. The state then asked the juror if he would be able to follow the rules and instructions. The juror answered “yes” and said that he thought following the rules was more important than following any emotions.

During reexamination, defense counsel asked the juror again whether he thought emotion would affect his ability to follow the rules. The juror answered, “I think emotion affects all of our decision-making as we try to follow the rules. I don’t know that mine would be any more so than anybody else sitting in this room.” Defense counsel motioned to strike the juror for cause, which the district court denied.

Both A.S. and B.S. testified at trial. The jury found appellant guilty of first-degree sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g). This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying appellant’s motion to strike the juror for cause.

Appellant argues that the district court abused its discretion when it denied appellant’s motion to strike the juror for cause because the juror’s bias precluded him from being impartial. We disagree.

We review the district court’s denial of a challenge for cause for an abuse of discretion. *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013). Our review of the district court’s findings of juror impartiality is especially deferential because “the question of whether a juror is impartial is a credibility determination.” *State v. Prtine*, 784 N.W.2d 303, 310 (Minn. 2010) (citing *State v. Logan*, 535 N.W.2d 320, 303 (Minn. 1995)). The United States Supreme Court has described the deference due to the district court’s determination of juror impartiality as being “at its pinnacle.” *Skilling v. United States*, 561 U.S. 358, 396, 130 S. Ct. 2896, 2924 (2010).

Both the United States and Minnesota Constitutions guarantee a criminal defendant the right to a fair trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A party may strike a prospective juror for cause if the party can demonstrate a “state of mind” showing that the juror expressed “actual bias.” *Munt*, 831 N.W.2d at 577 (citation omitted). See Minn. R. Crim. P. 26.02, subd. 5. If a juror has actual bias, we must then decide whether the juror was properly rehabilitated. *Logan*, 535 N.W.2d at 323.

A juror is rehabilitated if he or she “states unequivocally that he or she will follow the district court’s instructions and will set aside any preconceived notions and fairly evaluate the evidence.” *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (quoting *Prtine*, 784 N.W.2d at 310). In contrast, a juror is not rehabilitated if he or she is equivocal when given the opportunity to express his or her sentiments in his or her own words. *Id.* at 625. If a juror is actually biased, is not adequately rehabilitated, and sits in judgment, a structural error has occurred that requires a new trial. *State v. Geleneau*, 873 N.W.2d 373, 380 n.1 (Minn. App. 2015), *review denied* (Minn. Mar. 29, 2016).

Here, we need not decide whether the juror expressed actual bias because he was properly rehabilitated. After defense counsel questioned the juror, the state asked him whether he would be able to follow the district court’s instructions. The juror unequivocally said, “Yes.” And to the state’s follow-up question of whether he would be overcome by emotion that would make it difficult for him to follow the rules of law, the juror answered, “I think following the rules would be more important than the emotion.”

Based on these answers, the district court found that he could be fair and impartial. The district court may consider that a prospective juror may have never experienced the

leading questions and cross-examination tactics employed during voir dire, and the district court is in the best position to evaluate this in conjunction with the juror's answers. *Logan*, 535 N.W.2d at 323-24 (citing *Patton v. Yount*, 467 U.S. 1025, 1039, 104 S. Ct. 2885, 2893 (1984)). The district court found the juror's unequivocal statement given to the state to be credible. Because we defer to the district court's juror-credibility determinations, the district court did not abuse its discretion in denying the defense's motion to strike the juror for cause.

II. The district court did not abuse its discretion in admitting B.S.'s testimony as evidence of appellant's prior-bad-acts evidence pursuant to Minn. R. Evid. 404(b).

Appellant argues that the district court erred in admitting B.S.'s testimony as *Spreigl* common-scheme-or-plan evidence. We are not persuaded.

Appellate courts review the district court's evidentiary rulings under Minn. R. Evid. 404(b) for an abuse of discretion. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). Generally, evidence of a defendant's other crimes, wrongs or acts, referred to as *Spreigl*¹ evidence, is inadmissible as character evidence, but is admissible for other purposes, such as "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and common plan or scheme." Minn. R. Evid. 404(b); *State v. Bartylla*, 755 N.W.2d 8, 20 (Minn. 2008) (quotation omitted). Before admitting *Spreigl* evidence, district courts should apply a following five-step analysis:

- (1) The state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence

¹ *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965) (permitting the use of evidence of a defendant's prior bad acts for limited purposes).

will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must be outweighed by its potential prejudice to the defendant.

Ness, 707 N.W.2d at 686. Appellant does not dispute that the first two steps were satisfied. His challenge focuses on the last three steps of the process, and our analysis therefore examines only these three steps.

A. Clear-and-convincing evidence

“The clear and convincing standard requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Miller*, 754 N.W.2d 686, 701 (Minn. 2008) (quotation omitted). A victim's *Spriegl* testimony may be considered clear and convincing when it is highly probable that the testimony is truthful, even absent corroboration. *State v. Kennedy*, 585 N.W.2d 385, 389-90 (Minn. 1998).

Here, the district court found B.S.'s recorded testimony to be credible and consistent. We generally defer to a district court's credibility determinations, *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), which the record supports here. The district court did not abuse its discretion in determining that there was clear-and-convincing evidence that appellant committed the other bad act.

B. Relevance and materiality

For *Spriegl* evidence admitted to show common plan or scheme, it must have a “marked similarity in modus operandi” to the charged offense. *Ness*, 707 N.W.2d at 688. “[T]he closer the relationship between the other acts and the charged offense, in terms of time, place, or modus operandi, the greater the relevance and probative value of the other-

acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose.” *Id.*

Here, the district court determined that B.S.’s testimony tended to establish that the conduct on which appellant’s charge was based actually occurred and that it was indicative of a common plan or scheme. The record supports the district court’s determination because B.S.’s testimony and the charged offense had a marked similarity in modus operandi. Both incidents occurred in the same room, in the same bed, and within a year. The victims are sisters and the stepdaughters of appellant. Additionally, the conduct in both incidents involved sexual touching that occurred at night when the girls were in bed.

Appellant argues that, because he touched different body parts of the sisters, the two incidents are not markedly similar. Appellant further argues that his actions were not unusual and distinctive and therefore did not constitute a signature way of behaving. However, we have repeatedly held that the other bad act does not need to be identical to the charged crime, *see State v. Rucker*, 752 N.W.2d 538, 549 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008), and does not need to be a signature crime, *see State v. Jackson*, 615 N.W.2d 391, 395, (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000).

C. Probative value versus prejudicial effect

Finally, in determining 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.” *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

Here, the state's case relies entirely on A.S.'s statement because there were no eyewitnesses to the crime or physical evidence. In a similar circumstance, when the state's evidence consisted solely of the statements of two girls without any physical evidence of an assault, we concluded that the *Spreigl* evidence was not unfairly prejudicial, and was properly admitted. *State v. Duncan*, 608 N.W.2d 551, 557 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). Also, the district court properly gave limiting instructions to the jury before B.S. testified and in its final jury instructions, which significantly lessened any danger of unfair prejudice to appellant. Therefore, the district court properly admitted B.S.'s testimony as *Spreigl* evidence pursuant to Minn. R. Evid. 404(b).

III. The district court did not abuse its discretion by admitting relationship evidence pursuant to Minn. Stat. § 634.20.

Appellant also argues that the district court abused its discretion by admitting B.S.'s testimony as relationship evidence pursuant to Minn. Stat. § 634.20 because the danger of unfair prejudice outweighed its probative value. We disagree.

We review the district court's decision to admit relationship evidence for an abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). Section 634.20 allows the district court to admit prior domestic conduct, including evidence of the accused's sexual assault of the victim's family or household members, if the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Fraga*, 864 N.W.2d at 627. "[E]vidence showing how a defendant treats his family or household members . . . sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact

with the victim.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Appellant cites *State v. McCoy*, 682 N.W.2d 153 (Minn. 2004), and argues that his conduct does not constitute relationship evidence and has no probative value because he did not assert any control over A.S., and A.S. was willing to testify. However, *McCoy* lists the abuser’s assertion of control and the victim’s unwillingness to testify as reasons why domestic-abuse cases may be difficult to prosecute, not as factors to consider when determining its probative value. 682 N.W.2d at 161. As the district court noted, B.S.’s testimony had probative value because it could shed light on how appellant interacted with A.S. Moreover, the district court’s limiting instructions lessened the danger of unfair prejudice. *Lindsey*, 755 N.W.2d at 757 (noting that limiting instructions minimize potential for unfair prejudice.) The district court did not abuse its discretion in admitting B.S.’s testimony as relationship evidence pursuant to Minn. Stat. § 634.20.

IV. Appellant’s pro se arguments lack merit.

In his pro se supplemental brief, appellant argues that the jury’s verdict was supported by insufficient evidence. We disagree.

We view the evidence in the light most favorable to the jury’s verdict, assuming that the jury believed the state’s witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). “The weight and credibility of the testimony of individual witnesses is for the jury to determine.” *Id.*

Here, the jury heard the witness testimony, evaluated its credibility, and found appellant guilty. Viewing the evidence in the light most favorable to the verdict, the jury’s

verdict is supported by sufficient evidence that appellant committed the crime of first-degree criminal sexual conduct.²

Affirmed.

² The latter half of appellant's pro se supplemental brief raises the same evidentiary issue that we have already addressed and need not address again.