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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0581**

State of Minnesota,
Respondent,

vs.

Tyler Manfred Lukat,
Appellant.

**Filed February 12, 2018
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-CR-16-6279

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from convictions of possession of a firearm by an ineligible person and motor-vehicle theft, appellant argues that he is entitled to a new trial because the district

court erred in allowing the state to introduce evidence of his prior convictions of motor-vehicle theft. We affirm.

FACTS

Appellant Tyler Manfred Lukat was charged by complaint with one count each of possession of a firearm by an ineligible person and motor-vehicle theft. The case was tried to a jury.

At trial, S.A. testified that, at 1:00 or 2:00 a.m., she parked her 2000 Honda Civic on the street in front of her apartment. She locked the doors and took the keys with her. When she awoke at 6:30 or 7:00 a.m. to move the car due to a snow emergency, the car was gone. Thinking that her car may have been towed, she called the Minneapolis and St. Paul impound lots, but neither lot had her car. S.A. then called the St. Paul Police Department to report her car stolen.

St. Paul Police Officer Avery Yager testified that, while on patrol, he saw a Honda Civic slide through an intersection without stopping. Yager activated his squad-car lights and camera and stopped the Civic. When Yager ran the Civic's license plate, it was listed as stolen. The passenger, later identified as Xoua Yang, got out of the vehicle, and Yager ordered him to stop and put his hands in the air. The passenger complied.

After another squad car arrived, both the passenger and the driver, who was identified as Lukat, were arrested. Yager then searched the car. In the center console, he found a key chain with multiple shaved keys. Yager testified that shaved keys are commonly used to steal vehicles, including Honda Civics, and that someone who uses a shaved key will shove it or punch it into the ignition. The shaved keys did not belong to

S.A. St. Paul Police Officer Andy Betsinger searched Lukat and the passenger. He found shaved keys on the passenger but not on Lukat.

In the trunk, Yager found a backpack containing more shaved keys and tools that are used in burglaries, including a crowbar, a screwdriver, and wrenches. The backpack and its contents did not belong to S.A. Yager also found a handgun in a holster under the passenger seat. Yager testified that the gun “was tucked under the seat pretty good,” and officers had to pull the seat back for Yager to reach in and grab the gun. The gun did not belong to S.A.

The gun was sent to the St. Paul Police Department’s forensic services unit to be swabbed for DNA and examined for fingerprints. The hand grip contained a mixture of DNA from four or more people with a major DNA profile that matched Lukat. A forensic analyst testified that “the frequency or probability . . . of obtaining a DNA profile from other individuals that matches that DNA profile, major DNA profile, is about one in 85 billion.” Yang’s DNA could not be excluded from the minor profiles. The magazine-release slide contained a DNA mixture from three or more individuals and had an unidentified major DNA profile that did not match either Lukat or Yang. The mixture of minor profiles could not be interpreted. Lukat’s right thumbprint was on the ejection-port area of the gun.

When Yager tried to turn off the Civic’s engine and remove the key, the key would not come out of the ignition. There were shave marks along the base of the key where it met with the ignition. S.A. testified on cross-examination that she was able to start the car with the shaved key in the ignition.

St. Paul Police Sergeant David Peterson interviewed Lukat after the arrest. Lukat told Peterson that he had just gotten off work, had gotten paid, had \$300 on him, and wanted to buy a car. Lukat said that he talked to his friend Yang by phone and told Yang that he had \$300 and wanted to buy a car. Lukat claimed that Yang said that he was at a friend's house and the friend had a car he would sell Lukat for \$300. Lukat claimed that Yang came out of his friend's house, handed the key to him, and they were taking the car for a test drive when they were pulled over shortly after leaving Yang's friend's house. Lukat denied knowing that the car was stolen or that there was a gun in the car. Peterson estimated that the value of a 2000 Honda Civic was between \$1,200 and \$1,500, depending on its condition.

At the beginning of trial, the state moved to admit evidence of Lukat's 2012, 2013, and 2015 convictions of motor-vehicle theft. The state argued that the convictions were relevant to prove knowledge and absence of mistake, specifically that Lukat knew or had reason to know that he did not have consent to drive the Civic. The district court ruled that the convictions were admissible, and Peterson testified that Lukat was convicted of motor-vehicle theft in August 2012, March 2013, and May 2015. The district court then instructed the jury that the prior convictions were "being offered for the limited purpose of assisting you in determining whether [Lukat] committed those acts with which [he] is charged in this complaint" and that he could not be convicted of any offenses other than those charged in this case. In final instructions, the court repeated the substance of that instruction and also instructed the jury that the prior convictions were "not to be used as proof of the character of [Lukat] or that [he] acted in conformity with such character."

Lukat did not testify or present any evidence, and defense counsel maintained during closing argument that Lukat did not know that the car was stolen or that there was a gun in the car. Defense counsel argued that the evidence did not show whether the key was in the ignition when Lukat got into the car and that S.A. testified on cross-examination that she was able to start her car with the shaved key in the ignition. Defense counsel argued that Lukat could have inadvertently touched the gun handle when moving the seat back for Yang to get in the car because the handle was located near the seat control, that Lukat's DNA could have been deposited on the gun at an earlier time, or that his DNA could have been transferred to the gun.

The jury found Lukat guilty as charged. This appeal followed sentencing.

D E C I S I O N

This court reviews a district court's evidentiary rulings for abuse of discretion. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn.1998); *see State v. DeWald*, 464 N.W.2d 500, 503 (Minn. 1991) ("Admission of *Spreigl* evidence rests within the sound discretion of the [district] court. . . ."). "A defendant appealing the admission of evidence has the burden to show the admission was both erroneous and prejudicial." *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009).

"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). Such evidence, commonly known as *Spreigl* evidence, may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," but only if, among other things, "the prosecutor clearly

indicates what the evidence will be offered to prove” and “the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.” *Id.*; see *State v. Ness*, 707 N.W.2d 676, 685–86 (Minn. 2006).

Lukat argues that the probative value of the prior-convictions evidence was outweighed by its potential for unfair prejudice. Unfair prejudice “is not merely damaging evidence, even severely damaging evidence; rather unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). When determining whether the potential for unfair prejudice outweighs the probative value of *Spreigl* evidence, the district court balances “the relevance of the [prior convictions], 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. Scruggs*, 822 N.W.2d 631, 644 (Minn. 2012) (quotation omitted).

The state argues that the prior convictions were needed to refute Lukat’s claim that he did not know that the Civic was stolen. But when the state offered the prior-convictions evidence, it specifically moved to introduce just the fact that Lukat had three prior convictions without any of the underlying facts about the individual prior offenses. The state does not explain how the mere fact that Lukat had previously been convicted of motor-vehicle theft would show that Lukat knew that the Civic was stolen. If the circumstances of the prior offenses were similar to the current offense, it is arguable that evidence about those circumstances would prove that Lukat knew that the Civic was stolen. But, without evidence of the earlier circumstances, it is not apparent how the prior convictions would support any inference other than that Lukat knew that the Civic was stolen because he

previously stole cars. Although *Spreigl* evidence may be admitted to show knowledge or absence of mistake, the district court abused its discretion in admitting the prior-convictions evidence because the fact that Lukat had the prior convictions, by itself, showed neither knowledge nor absence of mistake. Thus, the probative value of the evidence was outweighed by its potential for unfair prejudice to Lukat.

When the district court errs in admitting *Spreigl* evidence, an appellate “court must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Ness*, 707 N.W.2d at 631. The evidence supporting Lukat’s convictions included that (1) Lukat was driving a stolen Honda Civic; (2) Lukat told Peterson that Yang’s friend was going to sell the Civic to him for \$300; (3) the Civic’s estimated value was between \$1,200 and \$1,500; (4) shaved keys are commonly used to steal cars, including Honda Civics, and there was a shaved key in the ignition; (5) someone who uses a shaved key will shove it or punch it into the ignition; (6) additional shaved keys were found in the car’s center console, and more shaved keys and tools used in burglaries were found in the trunk; (7) the shaved keys did not belong to S.A.; (8) Lukat told Peterson that Yang came out of the house, handed him the key, and they went for a test drive; (9) the major DNA profile on the gun’s hand grip matched Lukat’s DNA; (10) Lukat’s thumbprint was on the gun’s ejection port; and (11) the gun “was tucked under the seat pretty good.”

Lukat’s statement to Peterson that Yang handed him the key for the Civic and they went on a test drive is refuted by Yager’s testimony. Yager testified that, when he stopped the Civic, a shaved key was stuck in the ignition and that someone who uses a shaved key shoves or punches the key into the ignition. Either the shaved key was already in the

ignition when Lukat got into the driver's seat or Lukat was in the driver's seat when the shaved key was shoved or punched into the ignition. If the key was already in the ignition, Lukat's statement that Yang handed him the key was not true, and if Lukat was in the driver's seat when the shaved key was shoved or punched into the ignition, he either shoved or punched the key into the ignition or watched as someone else did so, which would also show that his statement that Yang handed him the key and they went for a test drive was not true.

The evidence that refuted Lukat's description of events, together with the DNA evidence and thumbprint evidence that showed that Lukat had touched the ejection-port area of the gun, provided a strong basis for the jury to reject defense counsel's arguments that the evidence did not show whether the key was in the ignition when Lukat got into the car and that Lukat could have inadvertently touched the gun handle when moving the seat back for Yang. In light of this strong evidence contradicting counsel's arguments, there is not a reasonable possibility that the wrongfully admitted *Spreigl* evidence significantly affected the verdict.

Affirmed.