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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1350**

State of Minnesota,
Respondent,

vs.

Darnell McDaniels,
Appellant.

**Filed May 29, 2018
Affirmed
Hooten, Judge**

Olmsted County District Court
File No. 55-CR-16-1614

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Assistant County Attorney,
Rochester, Minnesota (for respondent)

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Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his conviction of third-degree murder, arguing that the state
presented insufficient evidence to sustain the conviction. Appellant also argues that the

district court erred by admitting the victim's statement made almost immediately before his death, appellant's own statement that he believes was intentionally elicited from a police investigator, and evidence of appellant's other drug sales. In a pro se supplemental brief, appellant contends that the state lacked probable cause to charge him with third-degree murder and that the district court judge exhibited bias and prejudice against him in violation of his constitutional rights. We affirm.

FACTS

D.K. resided at the Reza House, a group residential home for adult males with chemical dependency or mental health issues, in January 2015. Despite the house's policies against consuming alcohol or drugs, D.K. and his roommate, D.M., regularly drank alcohol in their room. D.M. knew that D.K. was a recovering heroin addict but acknowledged that he had never seen D.K. use any controlled substances other than alcohol and prescription drugs.

In the afternoon on January 22, D.M. smoked a cigarette outside the Reza House. At 4:03 p.m., a van pulled up and an individual, later identified as appellant Darnell McDaniels, exited the van and asked for D.K. D.M. directed McDaniels to go inside the house. After finishing his cigarette, D.M. entered the house and observed D.K. chatting with McDaniels at the doorway to their room. The conversation paused and D.K. introduced McDaniels as his friend "Big." D.K. and D.M. then walked into their room as McDaniels went to the bathroom. McDaniels returned from the bathroom and continued talking with D.K. while D.M. sat on his bed and watched television. D.M. then went to use the bathroom, leaving McDaniels and D.K. alone in the room for less than a minute.

At some point during McDaniels's visit, D.M. observed McDaniels and D.K. shake hands and converse for another minute and a half. At 4:07 p.m., McDaniels exited the house after arriving less than four minutes earlier.

After McDaniels left the house, D.K. and D.M. remained in their room. D.M. laid on his bed watching television, which sat on top of a desk. D.K. sat at the desk with his back to D.M. Though D.M. was not paying much attention to D.K. and could not see exactly what D.K. was doing at the desk, he noticed that D.K. appeared to be writing something down.

According to D.M., D.K.'s demeanor became "strange" when he stood up from the desk a few moments later. D.M. described D.K. as acting "really aggressive, really loud," "amped," and "crazy." D.M. became concerned and asked D.K. if he was okay. According to D.M., D.K. replied that he felt really good, that he had just met with his drug dealer in their room, and that he had done heroin. D.K. then left the room briefly.¹

When D.K. returned to the room, he told D.M. that he was going to lay down for a while. D.M. continued watching a movie on the television and thought that D.K. had fallen asleep. Approximately 45 minutes later, D.M. noticed that D.K. had not made any

¹ D.M. testified that D.K. left the room and ran around the hallway while "stomping and yelling." McDaniels disputes much of this testimony, arguing that a surveillance video is inconsistent with D.M.'s description of D.K.'s conduct in the hallway. Nevertheless, the district court viewed the video and found D.M. credible because his testimony was substantially consistent with the video and the officers' testimony, and D.M. had no interest in the outcome of the case. *See State v. Bunce*, 669 N.W.2d 394, 399 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003) (noting that appellate courts defer to the district court on credibility determinations). The district court also noted that the video had no audio, making it impossible to determine if D.K. was yelling or was in an excited state.

movements or sounds and appeared blue in the face. D.M. tried to shake D.K. awake and started yelling at him but he was unresponsive. D.M. then called 911 and asked others in the house for help.

Police and emergency medical personnel arrived at the house and attempted life-saving measures to revive D.K. Their efforts to resuscitate D.K. were unsuccessful and he was pronounced dead at 6:07 p.m. Police then discovered a spoon with a small piece of cotton on the desk along with a tan, powdery substance. The powdery substance later tested positive as heroin. Police also found a used hypodermic needle on the floor near the desk. A small amount of blood appeared in the needle and police observed that D.K. had a small pinprick on his finger. Police also found a pharmacy bag with several unused hypodermic needles behind the desk on a closet shelf.

A forensic pathologist performed an autopsy on D.K. the next day. D.K.'s laboratory results revealed the presence of heroin in his system. The results also determined that D.K.'s blood alcohol concentration was three times the legal limit at the time of his death. The forensic pathologist opined that D.K.'s death was an accident and that the cause of death was "acute heroin and ethanol intoxication."

A police investigator interviewed McDaniels in April 2015. McDaniels admitted to the investigator that he had sold heroin to D.K. in the past. McDaniels explained to the investigator that he had gone to the Reza House on January 22 to speak with the residence

manager about residing in the house.²

In March 2016, the state charged McDaniels with third-degree murder, in violation of Minn. Stat. § 609.195(b) (2014). McDaniels moved to dismiss the complaint for lack of probable cause and later sought to remove the district court judge from the case. After both of these motions were denied, the case proceeded to a three-day bench trial in February 2017.

The district court received testimony from several individuals, including D.M., the investigator, and the forensic pathologist. The district court also admitted evidence that McDaniels had previously sold heroin to other individuals on two separate occasions in April 2015. In March 2017, the district court issued an order finding McDaniels guilty of third-degree murder. McDaniels moved for judgment of acquittal and for a new trial. The district court denied the motions in their entirety and sentenced McDaniels to 158 months in prison. This appeal followed.

D E C I S I O N

I.

McDaniels argues that the state's evidence was insufficient to prove that his conduct was the proximate cause of D.K.'s death. In evaluating a sufficiency of the evidence claim, we review the record in the light most favorable to the conviction and decide whether the evidence could have reasonably led the jury to convict the defendant. *State v. Henderson*,

² The residence manager later testified at trial that she did not meet with McDaniels on January 22 but rather had met him about a week before D.K.'s death. She also testified that she was not at the house after 4:00 p.m. on January 22.

620 N.W.2d 688, 704–05 (Minn. 2001); *see also State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (stating that appellate courts utilize same standard of review in bench trials and jury trials for evaluating sufficiency of evidence).

In order to establish that McDaniels committed third-degree murder, the state was obligated to prove beyond a reasonable doubt that he “proximately cause[d] the death of [D.K.] by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II.” *See* Minn. Stat. § 609.195(b). We recently interpreted the term “proximate cause” as used in this statute to mean “something that had a substantial part in bringing about the individual’s death either directly and immediately or through happenings that follow one after another.” *State v. Schnagl*, 907 N.W.2d 188, 196 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. Feb. 28, 2018). Heroin is classified as a schedule I controlled substance. Minn. Stat. § 152.02, subd. 2(c)(11) (2014).

McDaniels specifically contends that the state failed to present sufficient evidence that (1) he provided heroin to D.K., and (2) the heroin contributed to D.K.’s death. A conviction may be based on either direct or circumstantial evidence. *See State v. Olhausen*, 681 N.W.2d 21, 26 (Minn. 2004). Although circumstantial evidence carries the same weight as direct evidence, our review of circumstantial evidence warrants a heightened level of scrutiny. *Id.*; *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In light of this heightened scrutiny, “the circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any other rational hypothesis except that of guilt.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). Appellate courts consistently

implement this scrutiny using a two-step approach. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013).

A. Circumstances Proved

Our first step is to identify the circumstances proved. *Al-Naseer*, 788 N.W.2d at 473. When addressing the circumstances proved, we only consider the circumstances that are consistent with the verdict. *Silvernail*, 831 N.W.2d at 598–99. Viewed in the light most favorable to the conviction, the record demonstrates the following circumstances proved. D.K. was a recovering heroin addict living at a group residential home for males recovering from chemical dependency issues. McDaniels arrived at the Reza House at 4:03 p.m. on January 22, 2015, asking for D.K. He then conversed briefly with D.K., was introduced to D.M., used the bathroom, and left the residence at 4:07 p.m. His entire stay at the house lasted less than four minutes. D.K.’s demeanor eventually changed after McDaniels exited the house. D.M. described D.K.’s behavior as becoming “aggressive” and “amped” before D.K. briefly left the room. When he returned to the room, D.K. told D.M. that he was going to lay down while D.M. continued to watch a movie. Approximately 45 minutes later, D.M. noticed that D.K. had not made any movements or sounds and that his face had turned blue. D.M. contacted police, who along with emergency medical personnel, unsuccessfully attempted to resuscitate D.K. D.K. was pronounced dead at 6:07 p.m.

Police discovered heroin and a spoon with a cotton swab on the desk located in the room. On the floor near the desk, police found a used hypodermic needle containing blood in the syringe. A forensic pathologist conducted an autopsy on D.K. and found small focal

hemorrhages on his fingers. He also reviewed D.K.'s toxicological results and detected metabolites of heroin, morphine, codeine, and trazodone in his system as well as a high concentration of ethanol. Ruling out all other possibilities, the forensic pathologist opined that the cause of D.K.'s death was acute heroin and ethanol intoxication.

B. Reasonable Inferences

“The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). Unlike the deference given to the verdict in the first step of the analysis, we do not defer to the fact-finder's choice between reasonable inferences. *Id.* The circumstances in this case tend to indicate that McDaniels provided D.K. with heroin and that D.K. ingested heroin after McDaniels left the Reza House. McDaniels's stay at the house lasted less than four minutes and he lied to the investigator that he came to the house to meet with the residence manager. It is reasonable to infer that an exchange of heroin occurred within those few minutes. Moreover, D.K.'s behavior drastically changed within minutes of McDaniels leaving. Viewing the evidence as a whole, the relevant circumstances create a complete chain from when McDaniels arrived at the house at 4:03 p.m. to D.K.'s death at 6:07 p.m., leading directly to McDaniels's guilt to the exclusion beyond a reasonable doubt of any reasonable inferences other than his guilt. *See Al-Naseer*, 788 N.W.2d at 473.

McDaniels also argues that the state could not prove that heroin was the proximate cause of D.K.'s death because the evidence suggests that either heroin or alcohol could have caused his death. Our caselaw, however, illustrates that heroin need not be the sole

cause of death but rather need only play “a substantial part in bringing about the individual’s death.” See *Schnagl*, 907 N.W.2d at 196 (quotation omitted); see also *State v. King*, 367 N.W.2d 599, 602 (Minn. App. 1985) (“The fact that other causes contribute to the death does not relieve the actor of responsibility.” (quotation omitted)). In *Schnagl*, this court affirmed the appellant’s third-degree murder conviction after a jury found that he proximately caused the victim’s death by giving her cocaine. 907 N.W.2d at 198. A forensic pathologist in that case stated that the victim’s death could not be determined to any degree of medical certainty because cocaine toxicity, hypothermia, or drowning could have caused her death.³ *Id.* at 194. But despite the presence of a significant amount of alcohol in the victim’s system, the forensic pathologist opined that cocaine likely contributed to her death. *Id.* Here, the forensic pathologist ruled out all of the other causes of death besides heroin and alcohol, and he noted that in terms of overdoses, heroin is a more dangerous substance than alcohol. McDaniels’s implied alternative hypothesis that it was D.K.’s alcohol consumption that led to his death, not his use of heroin, is unreasonable in light of the circumstances proved.

We conclude that the evidence is sufficient for the district court to find that McDaniels’s providing of heroin to D.K. was the proximate cause of D.K.’s death.

II.

McDaniels next contends that the district court abused its discretion by admitting D.K.’s statement to D.M. that he had ingested heroin that McDaniels had provided him.

³ We note that a “reasonable degree of medical certainty” is not a requirement for criminal conviction. *State v. Rhodes*, 657 N.W.2d 823, 831 n.1 (Minn. 2003).

An evidentiary ruling rests within the district court's sound discretion and we will not reverse absent an abuse of that discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). McDaniels bears the burden to demonstrate that the district court abused its discretion and that he was prejudiced by this ruling. *See id.*

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c); *State v. Litzau*, 650 N.W.2d 177, 182–83 (Minn. 2002). Hearsay is typically not admissible at trial unless it falls within an enumerated exception to the hearsay rule. Minn. R. Evid. 802; *State v. DeRosier*, 695 N.W.2d 97, 104 (Minn. 2005). The district court in this case admitted D.K.'s statement under the residual hearsay exception. *See* Minn. R. Evid. 807. The residual hearsay exception provides that a statement, which has equivalent circumstantial guarantees of trustworthiness, is not excluded as hearsay if the district court determines that proper notice is given and

(A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Id.

A. Notice

McDaniels claims that the state failed to supply proper notice of its intent to offer the statement under the residual hearsay exception. Rule 807 further provides that:

[A] statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing, to provide the adverse party with a fair opportunity to prepare to meet it, the

proponent's intention to offer the statement and the particulars of it, including the name, address and present whereabouts of the declarant.

Id.

The prosecutor asked D.M. during trial whether D.K. said anything once he had returned to their room from the bathroom. D.M. answered that D.K. told him that “he had met with his drug dealer, that was his drug dealer who was in our room, and he had done heroin.” The prosecutor then explained to the district court that D.M. first told him about the statement a week before trial and that he immediately told McDaniels’s defense counsel. Although it is admittedly odd that D.M., who had multiple opportunities to notify police of the statement, disclosed it in the week prior to trial, we conclude that the state’s efforts to immediately inform McDaniels about the statement complied with rule 807’s notice requirement.

B. Circumstantial Guarantees of Trustworthiness

McDaniels argues that, even if the state provided adequate notice, the statement itself is inherently unreliable and the district court improperly focused on the reliability of D.M. as a witness rather than the reliability of the statement itself. *See State v. Ahmed*, 782 N.W.2d 253, 261 (Minn. App. 2010) (“The focus of rule 807 is the statement, not the testifying witness who heard the statement.”). In receiving evidence under the residual hearsay exception, the district court “should make findings explicitly on the record unless there is a waiver . . . or the basis of the ruling is obvious.” *DeRosier*, 695 N.W.2d at 105 (quotation omitted). Overruling McDaniels’s objection to the statement, the district court found “that there are significant indications that the evidence is trustworthy, so [D.M.] will

be allowed to testify as to the conversation with [D.K.].” And in denying McDaniels’s motion for a new trial, the district court further determined that D.K.’s statement “was based on the unavailability of the declarant, the indicia of reliability surrounding the declarant’s statement, and the [district court’s] finding that the hearsay statement[] fall[s] within several recognized exceptions to the hearsay rule.” The state concedes that the district court did not make explicit findings regarding the materiality or necessity of the statement and whether its admission serves the interests of justice. We also note that the district court did not precisely identify the indicia of trustworthiness or reliability. However, we agree with the district court that the evidence in the record does present strong indications that D.K.’s statement is inherently trustworthy.

Minnesota courts look at the totality of the circumstances in determining whether a hearsay statement has “circumstantial guarantees of trustworthiness.” *State v. Davis*, 864 N.W.2d 171, 181 (Minn. 2015) (quotation omitted). The relevant circumstances include “those circumstances actually surrounding the making of the statement[].” *Id.* (quotation omitted). As guidance, Minnesota courts may look to a nonexclusive list of factors including whether (1) a confrontation problem exists, (2) it is undisputed that the declarant made the statement, (3) the statement is against the declarant’s penal interest, and (4) the statement is consistent with the state’s other evidence presented at trial. *See State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985); *see also State v. Martinez*, 725 N.W.2d 733, 737–38 (Minn. 2007).

Though D.K. was deceased at the time of trial and was therefore unavailable, could not corroborate the statement under oath and was not subject to McDaniels’s cross-

examination, a review of the totality of the circumstances suggest sufficient guarantees of trustworthiness. *See State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013). In the context of other evidence presented, D.K. made the statement voluntarily and contemporaneously within moments of McDaniels' four-minute visit with him. When D.K.'s demeanor changed, so that he was acting uncharacteristically crazy, loud, and aggressive, D.M. asked him, "Are you okay?" D.K., who had an amicable yet relatively new friendship with D.M., was not compelled to answer and would have no motivation to lie to D.M., especially considering that they openly broke house rules by drinking alcohol together in their room. D.K. also would have had personal knowledge of whether he ingested the heroin that McDaniels gave him. McDaniels suggests that D.K. could not formulate any trustworthy statements because he was under the influence of heroin and alcohol and may have been experiencing a psychotic episode or extreme physical distress. But McDaniels does not cite any relevant authority that statements made by a person under the influence of drugs or alcohol are less reliable than statements made by a person who is not intoxicated. Rather, "the physical condition of the declarant" tends to be a relevant factor in determining whether the excited utterance exception to the hearsay rule applies. *State v. Hogetvedt*, 623 N.W.2d 909, 913 (Minn. App. 2001), *review denied* (Minn. May 29, 2001).

Based on the totality of the circumstances, we conclude that D.K.'s statement to D.M. has sufficient indicia of reliability and circumstantial guarantees of trustworthiness. Therefore, the district court did not abuse its discretion in admitting the statement. And, even assuming that the district court erred by failing to make explicit findings that articulated the requirements listed in rule 807, any such error is harmless. As detailed

previously, the relevant circumstances, even without D.K.'s statement, are inconsistent with any rational hypothesis other than McDaniels providing D.K. with heroin which he then ingested.

III.

McDaniels also argues that the district court plainly erred by admitting his statement to the police investigator that he had known D.K. and had sold heroin to him in the past because it failed to meet the criteria for admitting evidence of prior bad acts. He asserts that the investigator “intentionally elicited” the statement from him and that the statement was highly prejudicial. McDaniels’s failure to object to the admission of this statement at trial would typically result in forfeiting the right to appeal the issue. *See State v. Tscheu*, 758 N.W.2d 849, 863 (Minn. 2008). But we may review the issue for plain error, considering whether (1) there was an error, (2) the error was plain or obvious, and (3) the error affects McDaniels’s substantial right to a fair trial. *See id.* If McDaniels satisfies these three prongs, we may reverse to correct the error only if it had a detrimental effect on the “fairness and the integrity of the judicial proceedings.” *See id.* (quotation omitted).

McDaniels maintains that the state intended to introduce this statement as evidence of prior bad acts, also known as *Spreigl* evidence, and failed to supply notice of its intent. *See* Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). The state counters that McDaniels mischaracterizes the state’s offering of the statement as a prior bad act and that the state actually offered it as an opposing party statement under Minn. R. Evid. 801(d)(2).

As discussed previously, hearsay statements are generally not admissible. Minn. R. Evid. 802. But a statement may be admissible if it is exempt from the hearsay definition. Minn. R. Evid. 801(d); *State v. Robinson*, 699 N.W.2d 790, 794 (Minn. App. 2005), *aff'd*, 718 N.W.2d 400 (Minn. 2006). For instance, the district court may admit a statement as a non-hearsay admission of a party opponent. Minn. R. Evid. 801(d)(2). In other words, if the state offered a statement in its case against McDaniels, and McDaniels, himself, made the statement, it is not hearsay. *See id.*

McDaniels met with the investigator in April 2015, answering several of the investigator's questions regarding his relationship to D.K. The state introduced the pertinent evidence at trial in the following colloquy between the prosecutor and the investigator:

PROSECUTOR: And so did [McDaniels] acknowledge having contact with [D.K.] on January 22, 2015?

INVESTIGATOR: Yes.

PROSECUTOR: And he acknowledged to you that he had previously sold heroin to [D.K.]; is that right?

INVESTIGATOR: Yes.

We conclude that McDaniels's acknowledgement that he sold heroin to D.K. is a non-hearsay statement because it is an admission from a party opponent.

We recognize that non-hearsay evidence is still subject to the other rules of evidence. *See* Minn. R. Evid. 402 (providing that all relevant evidence is admissible except as otherwise provided); *see also State v. Jones*, 678 N.W.2d 1, 19 n.8 (Minn. 2004). And, because McDaniels's sale of heroin to D.K. would constitute a prior bad act, the district court could have also analyzed the statement as *Spreigl* evidence. *See State v. McLeod*,

705 N.W.2d 776, 787–88 (Minn. 2005); *see also State v. Ness*, 707 N.W.2d 676, 685–86 (Minn. 2006) (requiring district court to undertake five-step process in admitting *Spreigl* evidence). The supreme court, however, has established that the district court’s failure to sua sponte strike or redact *Spreigl* evidence is not ordinarily plain error. *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001). We therefore conclude that the district court did not commit plain error by admitting the statement that McDaniels previously sold heroin to D.K.

IV.

McDaniels next claims that the district court abused its discretion by admitting irrelevant and overly prejudicial *Spreigl* evidence regarding sales of heroin to other individuals. As with admission of hearsay statements, evidentiary rulings regarding *Spreigl* evidence will not be reversed unless the district court abused its discretion. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). McDaniels shoulders the burden of showing that the district court erred by admitting this *Spreigl* evidence and that he suffered prejudice as a result. *See id.*

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). *Spreigl* evidence may be admitted for the limited purpose of proving either motive, opportunity, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan. *Id.*; *Kennedy*, 585 N.W.2d at 389. The district court may admit *Spreigl* evidence only if the evidence meets five requirements: (1) the state must notify the defendant of its intent to admit the evidence; (2) the state must disclose what the evidence will be offered to prove; (3) clear and

convincing evidence must prove that the defendant participated in the prior act; (4) the evidence must be relevant; and (5) the risk of prejudice to the defendant must not exceed the evidence's probative value. *Ness*, 707 N.W.2d at 685–86.

The state offered evidence that McDaniels sold heroin to an individual on April 5, 2015 and to a police informant in a sober living facility on April 10, 2015.⁴ The district court received this evidence as part of a common scheme or plan, noting that the time and location of both incidents were similar to the charged offense in the instant case. McDaniels asserts that the investigator's testimony that McDaniels engaged in two sales of heroin in April 2015 was irrelevant and unfairly prejudicial, thereby failing the fourth and fifth *Ness* requirements.

A. Relevance and Materiality

“*Spreigl* evidence is relevant and material when there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in terms of time, place, or modus operandi.” *State v. Gomez*, 721 N.W.2d 871, 878 (Minn. 2006). To determine whether a prior bad act fits under the common scheme or plan exception, the act must have a “marked similarity” to the charged offense. *Ness*, 707 N.W.2d at 688. But if the evidence presents a “close call,” it should not be admitted because the use of evidence to show a common scheme or plan poses a particular risk of undue prejudice. *Id.* at 685, 687.

⁴ The fact that these two heroin sales occurred after the charged offense does not affect our analysis. See *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998) (noting that “evidence of other crimes, *including subsequent ones*, may be admitted for a proper purpose” (emphasis added) (quotation omitted)).

Both of these *Spreigl* incidents occurred in April 2015—less than three months after the charged offense in this case. Both sales also occurred in Rochester, Minnesota—the same city in which the charged offense occurred. And in each incident, McDaniels sold heroin, the same drug that substantially contributed to D.K.’s death. Indeed, one of these sales apparently occurred at a sober living facility, similar to the Reza House where D.K. resided. Contrary to McDaniels’s argument, the modus operandi of these two events is markedly similar to the charged offense. See *Kennedy*, 585 N.W.2d at 391 (“*Spreigl* evidence need not be identical in every way to the charged crime.”). We conclude that the *Spreigl* evidence was relevant and material to prove a common scheme or plan.

B. Unfair Prejudice

McDaniels asserts that the *Spreigl* evidence was unfairly prejudicial and significantly affected the verdict. See *State v. Fardan*, 773 N.W.2d 303, 320 (Minn. 2009) (“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.” (quotation omitted)). 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). In balancing the *Spreigl* evidence’s probative value against its prejudicial effect, Minnesota courts often consider the state’s need for the *Spreigl* evidence in its case against the defendant. *Kennedy*, 585 N.W.2d at 391–92.

The parties agree that much of the state’s case relied on circumstantial evidence established through witness testimony. As discussed previously, the state did not present

direct evidence showing that McDaniels provided D.K. with heroin and when D.K. ingested heroin. Due to the lack of direct proof that McDaniels gave D.K. the heroin, the state's need for this evidence to strengthen its case against McDaniels was much more significant. And McDaniels does not make any persuasive argument that this evidence resulted in *unfair* prejudice. We conclude that the probative value of the *Spreigl* evidence exceeds its prejudicial effect and does not result in an error that significantly impacted the verdict. The district court did not abuse its discretion by admitting the evidence of McDaniels's other sales of heroin. *See State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (noting that the risk of the fact finder improperly using evidence is less in court trials).

V.

Finally, McDaniels argues in his pro se supplemental brief that the district court erred by not dismissing the state's complaint for lack of probable cause and that, because the district court judge was biased and prejudiced against him, his constitutional rights were violated. His probable-cause challenge is not relevant on appeal because he had a trial and the district court found that, beyond a reasonable doubt, he was guilty of the charge. *See State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995) (stating that probable-cause argument after conviction is irrelevant because "[t]he standard for the sufficiency of the evidence to support a conviction is much higher than probable cause"), *review denied* (Minn. Mar. 21, 1995).

McDaniels sought to remove the district court judge prior to the bench trial under Minn. R. Crim. P. 26.03, subd. 14(3). The chief judge of the judicial district denied McDaniels's motion, determining that he failed to show that the judge acted impartially or

was biased against him. Judges must disqualify themselves in any proceeding in which their impartiality may be reasonably questioned. Minn. Code Jud. Conduct Rule 2.11(A). McDaniels asserts that the district court judge could not be impartial because she conducted several hearings, including the contested omnibus hearing, before his trial and would risk contradicting her probable-cause ruling if she acquitted him at trial. But, as stated above, the standard for probable cause is much lower than the standard necessary to convict a defendant at trial. *Holmberg*, 527 N.W.2d at 103. And, a judge's mere familiarity with a defendant does not mean that the judge is prejudiced against the defendant. *State v. Yeager*, 399 N.W.2d 648, 652 (Minn. App. 1987). McDaniels's pro se arguments are without merit.

Affirmed.