

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1791**

State of Minnesota,
Respondent,

vs.

Lance Martin Odegard,
Appellant.

**Filed February 25, 2019
Affirmed
Johnson, Judge**

Yellow Medicine County District Court
File No. 87-CR-17-121

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Keith Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Tracy M. Smith, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Yellow Medicine County jury found Lance Martin Odegard guilty of assaulting a correctional officer based on evidence that he stomped on her hand and pressed it against

the floor. At trial, the district court allowed the state to introduce evidence of four prior acts of aggression by Odegard toward police and correctional officers at the same jail. We conclude that the district court did not err by admitting the evidence of his prior acts on the ground that the probative value of the evidence was not outweighed by its potential for unfair prejudice. Therefore, we affirm.

FACTS

On March 9, 2017, Odegard was detained at the Yellow Medicine County jail. At approximately 10:25 a.m., Kathy Busack, a uniformed administrator who supervises jail staff and was working as a corrections officer that day, went to Odegard's cell to get him ready for a court appearance. She was accompanied by Deputy Sheriff Eric Diekmann, who was planning to escort Odegard to the courtroom. Odegard was lying on his bed and refused to get up, stating that he would not go to court and wished to be left alone. Officer Busack and Deputy Diekmann asked Odegard several times to get up and get ready, but he refused to do so each time. Additional deputies arrived to provide back-up assistance.

Because Odegard would not cooperate, Officer Busack attempted to put leg shackles on him. Odegard kicked at Officer Busack, which prompted Deputy Diekmann and three other deputies to assist Officer Busack by restraining Odegard. After a struggle lasting approximately 30 seconds, the deputies held Odegard in a standing position against the wall of his cell. When Officer Busack again attempted to put leg shackles on Odegard, he suddenly and forcefully stepped on her right hand with his right foot and continued to put his weight on her hand until the deputies lifted him up so that she could remove her hand. When asked why he stepped on Officer Busack's hand, Odegard said to the officers who

were present, “I’ve been going through f---ing years of this sh-t over that vindictive . . . b--ch over there. That’s why.” Officer Busack suffered severe bruising and swelling of her hand, which required medical attention.

The state charged Odegard with fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 4(b) (2016), and fourth-degree assault of a correctional employee with infliction of demonstrable bodily harm, in violation of Minn. Stat. § 609.2231, subd. 3(1) (2016). The fifth-degree assault charge was enhanced to a felony based on two prior convictions.

The case was scheduled for trial in May 2017. On May 3, 2017, one day before the pre-trial hearing, the state moved *in limine* for a ruling that it could introduce evidence of 14 prior incidents in which Odegard engaged in assaultive or physically aggressive conduct toward others. The state argued in its motion papers that the evidence of the prior incidents should be admitted to prove motive, intent, absence of mistake or accident, and common scheme or plan. At the pre-trial hearing on May 4, 2017, Odegard opposed the motion. On May 12, 2017, the district court filed an order granting the state’s motion in part and denying it in part. The district court ruled that the state could introduce evidence of only four prior acts of aggression by Odegard toward law-enforcement officers or correctional officers occurring at the Yellow Medicine County jail and only for the purpose of proving motive, intent, or absence of mistake or accident.

The case was tried to a jury on May 25, 2017. Included in the state’s evidence was a video-recording of the incident, which was captured by a surveillance camera in Odegard’s jail cell. The state called nine witnesses, four of whom testified about the four

prior incidents, as follows. A deputy sheriff testified that, in July 2016, at the Yellow Medicine County jail, Odegard kicked an officer who tried to put Odegard in a restraint chair. Another deputy sheriff testified that, in July 2014, at the Yellow Medicine County jail, Odegard was verbally aggressive and lunged at him while he administered an intoxication test. A Granite Falls assistant police chief testified that, in June 2013, at the Yellow Medicine County jail, Odegard threatened to throw his boot at him during the booking process. And a corrections officer testified that, in March 2011, at the Yellow Medicine County jail, Odegard spoke to her with profanities, pushed her against the wall, and attempted to punch her before two other inmates grabbed Odegard and pulled him away. The district court read a cautionary instruction to the jury before each of these four witnesses testified and also read a limiting instruction to the jury before its deliberations.

The jury found Odegard guilty of both charges. The district court sentenced him to one year and one day of imprisonment. Odegard appeals.

D E C I S I O N

Odegard argues that the district court erred by granting the state's motion *in limine* in part and admitting evidence of four prior acts of aggression against law-enforcement officers or correctional officers at the Yellow Medicine County jail.

Odegard's argument is governed by a rule of evidence that states, in relevant part:

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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. In a criminal prosecution, such evidence shall not be admitted unless . . . the probative value of the evidence is

not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b) (2017).¹ Evidence of other crimes or bad acts is known in Minnesota as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). A district court must apply a five-part test to determine whether *Spreigl* evidence is admissible. Minn. R. Evid. 404(b). Such evidence is admissible if:

1) the prosecutor gives notice of its intent to admit the evidence consistent with the rules of criminal procedure; 2) the prosecutor clearly indicates what the evidence will be offered to prove; 3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; 4) the evidence is relevant to the prosecutor’s case; and 5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Id.; see also *State v. Ness*, 707 N.W.2d 676, 685–86 (Minn. 2006). This court applies an abuse-of-discretion standard of review to a district court’s admission of *Spreigl* evidence. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

Odegard challenges the district court’s ruling only with respect to the fifth requirement of rule 404(b), the requirement that the probative value of the evidence not be outweighed by its potential for unfair prejudice. *Spreigl* evidence has probative value if it has a sufficiently close relationship to the charged offense. See *Kennedy*, 585 N.W.2d at

¹Rule 404(b) recently was amended, effective January 1, 2019. *Order Promulgating Amendments to Rules of Evidence*, No. ADM10-8047 (Minn. Nov. 16, 2018). We quote the prior version of the rule because that version was in effect at the time of the relevant district court proceedings.

390. In considering whether the fifth requirement is satisfied, a court should balance the relevance of the *Spreigl* evidence, “the State’s need to strengthen weak or inadequate proof,” and the risk that the evidence will be used as propensity evidence. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). *Spreigl* evidence may give rise to “unfair prejudice” if the evidence “lure[s] 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) (quotation omitted).

The district court carefully weighed the probative value of the *Spreigl* evidence proffered by the state against its potential for unfair prejudice and expressed its reasoning in a detailed order and memorandum.² The district court narrowed the state’s proposed justifications by reasoning that the proffered evidence is not admissible to prove a common scheme or plan but may be admissible to prove motive, intent, or absence of mistake or accident. The district court stated that the proffered evidence has less probative value to the extent that it concerns acts occurring outside a jail and to the extent that it concerns acts against persons who are not law-enforcement officers or correctional officers. The district court also stated that evidence of all 14 prior incidents “would be repetitive and

²Odegard did not include a copy of the district court’s order and memorandum in an addendum to his brief. A rule of appellate procedure states, “Appellant must prepare an addendum and file it with the opening brief or petition.” Minn. R. Civ. App. P. 130.02(a). The rule further states that the addendum “must include,” among other things, “a copy of any order, judgment, findings, or trial court memorandum in the action directly relating to or affecting the issues on appeal.” *Id.* In this case, the district court’s order and memorandum obviously are directly related to the sole issue on appeal. In fact, Odegard’s appellate brief cites the district court’s order and memorandum. For future purposes, we encourage all appellants to provide the court with a copy of any district court order that is being challenged on appeal.

cumulative.” The district court then stated, “The events which are most similar—aggressive behavior inside a jail facility—are the most similar to the current charges and therefore the most useful in evaluating the defendant’s motive and intent.” The district court found these incidents to have “high relevance” because the “circumstances are nearly identical” and they “are relatively recent.” The district court noted that the state’s case appeared to be “strong on the elements of identity, result, the act, and venue” but that “the issue of intent may be in dispute.” The district court further reasoned that the four most similar incidents were unlikely to cause the jury to convict for improper reasons. The district court concluded that “the potential for unfair prejudice by admitting the four prior acts does not outweigh the probative value.”

Odegard contends that the district court erred on the ground that the probative value of the *Spreigl* evidence was “far outweighed” by its potential for unfair prejudice. He asserts that the *Spreigl* evidence was unfairly prejudicial because the jury may have used it “for an improper purpose, such as determining [he] had a propensity to commit crimes against the police and jail staff” or “to conclude he was a bad person, worthy of punishment.”

We believe that the district court appropriately exercised its discretion when it determined that the probative value of the *Spreigl* evidence was not outweighed by its potential for unfair prejudice. The district court correctly foresaw that intent would be the dispositive issue at trial. Both parties focused their closing arguments on the question whether Odegard intended to assault Officer Busack. The prosecutor argued that Odegard acted intentionally, as demonstrated by the video-recording of the incident, the comment

he made immediately after the incident, and the four prior acts of aggression toward officers at the same county jail. Odegard's attorney argued that the state had not proved Odegard's intent beyond a reasonable doubt. Thus, the state's *Spreigl* evidence was relevant to Odegard's motive or intent and the absence of a mistake or accident on March 9, 2017. The potential for unfair prejudice was limited because each of the four prior incidents was closely related to the alleged offense in that each incident involved aggressive physical conduct by Odegard toward a law-enforcement or correctional officer at the Yellow Medicine County jail. The district court further reduced the risk of unfair prejudice by cautioning the jury about the *Spreigl* evidence immediately before the testimony of each witness and again in its final instructions, and we presume that the jury followed those cautionary instructions. See *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009). Thus, the district court did not abuse its discretion by reasoning that the probative value of the state's *Spreigl* evidence was not outweighed by its potential for unfair prejudice.

In sum, the district court did not err by granting the state's motion *in limine* in part and by allowing the state to introduce *Spreigl* evidence of four prior incidents in which Odegard was physically aggressive toward police or correctional officers at the Yellow Medicine County jail.

Affirmed.