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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1979**

State of Minnesota,
Respondent,

vs.

Stephen Thomas Conlin,
Appellant.

**Filed September 24, 2018
Affirmed
Hooten, Judge**

Winona County District Court
File No. 85-CR-17-623

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

Karin L. Sonneman, Winona County Attorney, Christina M. Davenport, Assistant County Attorney, Winona, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks , Presiding Judge; Hooten , Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his conviction for unlawfully selling marijuana, arguing that the district court improperly admitted evidence of two prior marijuana-related convictions as *Spreigl* evidence. We affirm.

FACTS

In March 2017, a confidential informant (CI) who often worked for the Winona Police Department told Investigator Tony Gagnon that he could purchase marijuana at a business called The Buzz in St. Charles, Minnesota. The CI mentioned its owner, appellant Stephen Conlin, and explained that it was a place where people bought and smoked marijuana. Investigator Gagnon and the CI began setting up a controlled buy. The initial plan was for the CI to purchase marijuana from K.H. at The Buzz.

On March 22, the CI arrived at The Buzz with buy money and concealed audio and video recording equipment. But K.H. had left an hour or two earlier, and only Conlin was there. The CI asked Conlin if he could leave some money with him to pass on for half an ounce of marijuana that the CI could then come back and pick up from Conlin. Conlin agreed. The CI later returned to The Buzz, picked up the marijuana from Conlin, and set up a future buy with Conlin for one ounce of marijuana.

On March 24, the informant returned to The Buzz, again with buy money and concealed audio and video recording equipment, met Conlin in the store, and exchanged the buy money for a clear plastic sandwich bag of marijuana that he brought back to Investigator Gagnon.

Winona County charged Conlin with fifth-degree controlled substance crime under Minn. Stat. § 152.025, subd. 1(1) (2016) for selling marijuana on March 24, 2017. Conlin was also charged for the March 22 buy. He had a separate trial for the March 22 buy and was acquitted. The next week Conlin had a jury trial for the March 24 buy with the same judge who presided over the first trial. The state gave notice of its intent to introduce prior bad acts evidence at trial from a 2010 conviction for possession of marijuana, a 2012 conviction for selling marijuana, and the March 22 events. Conlin objected to the admission of the 2010 and 2012 convictions. The district court admitted evidence of the convictions at trial.

Investigator Gagnon testified at trial about the prior convictions. In 2010, the investigator assisted in executing a search warrant of Conlin’s residence. Police found multiple marijuana plants in the basement and in an unattached garage. They also found marijuana plants that were cut and being dried in the garage. Police also executed a second search warrant at a barbershop that Conlin and his wife worked at or owned. At the barbershop, police found additional marijuana and a handgun. In 2012, Investigator Gagnon was again involved with executing a search warrant related to Conlin, this time at The Buzz. Police found marijuana and marijuana paraphernalia—things associated “with the use and sale of marijuana.”

After a two-day trial, the jury found Conlin guilty. This appeals follows.

D E C I S I O N

“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). In

Minnesota we refer to this as *Spreigl* evidence. See *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). While *Spreigl* evidence is not admissible to prove that a defendant acted in conformity with his character, it may be admissible “as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). We review the decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

District courts must follow a five-step test when deciding whether to admit *Spreigl* evidence. *State v. Ness*, 707 N.W.2d 676, 685–86 (Minn. 2006).

The steps are: (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) 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 not be outweighed by its potential prejudice to the defendant.

Id. at 686. In this case: (1) the state gave notice of its intent to admit the evidence; (2) the state clearly indicated that the evidence would prove that Conlin’s intent was not just to be “a nice guy . . . facilitating between two other people” like the defense was planning to argue, but rather to actively engage in selling marijuana; and (3) because Conlin was convicted of the two crimes, there was more than clear and convincing evidence that he had participated in the prior acts. Accordingly, the first three parts of the test are satisfied.

With regard to factors four and five, the district court specifically found that in the context of the defense’s alternative perpetrator defense, wherein Conlin was just an innocent middleman, the evidence of Conlin’s prior marijuana enterprises was relevant. And the district court contemplated the potential prejudice to Conlin, emphasizing the

importance of a curative instruction, but ultimately found that the prejudice did not outweigh the evidence's relevance. Factors four and five are satisfied by the district court's reasoning. We conclude that the district court did not abuse its discretion in its application of the five-step test.

The district court is also required to “identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” *Ness*, 707 N.W.2d at 686. We review whether the “rationale *cited by the district court* provides a proper basis upon which to admit the evidence” as opposed to reviewing a rationale suggested by the state. *State v. Rossberg*, 851 N.W.2d 609, 615–16 (Minn. 2014) (quotation omitted). The district court judge in this case presided over Conlin's trial on the March 22 charge and was aware of Conlin's defense that he was a mere middleman rather than actually selling the drugs himself. Prior to the trial on the March 24 events, the judge specifically warned Conlin's trial counsel not to misrepresent the law, as had been done in the first trial, on what constitutes a sale in order to further the alternative perpetrator defense. In admitting the *Spreigl* evidence, the district court explained that having presided over the previous trial and “understanding what the argument is” from the defense, the prior convictions were relevant. Though the district court did not say so in as many words, it is easily inferred that the district court had found the *Spreigl* evidence to be relevant to the disputed fact of whether Conlin intended to be a mere middleman or an active drug dealer. We conclude that the district court did not abuse its discretion in identifying the fact for which the *Spreigl* evidence was relevant.

Though we hold that the district court did not err in admitting the *Spreigl* evidence, we also note that even if it had, the evidence was not prejudicial. Unless a district court's

error in admitting evidence implicates a constitutional right, we will only award a new trial if the admission of the evidence “substantially influenced the jury’s verdict.” *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). Conlin does not allege that the admission of *Spreigl* evidence implicated his constitutional rights, and there was ample evidence to convict him at trial, including a video recording of the CI buying the marijuana from Conlin. We conclude that the admission of *Spreigl* evidence did not substantially influence the jury’s verdict.

Affirmed.