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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0548**

State of Minnesota,
Respondent,

vs.

Shawn Clarke Spottswood,
Appellant.

**Filed January 21, 2020
Affirmed
Reyes, Judge**

Washington County District Court
File No. 82-CR-17-2353

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Stillwater, Minnesota
(for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

REYES, Judge

On appeal from his convictions of possession of burglary or theft tools, receiving
stolen property, aiding and abetting receiving stolen property, and fifth-degree controlled-

substance possession, appellant argues that the district court committed reversible error by (1) admitting irrelevant and prejudicial *Spreigl* evidence and (2) admitting expert testimony on a mixed question of law and fact. Appellant also asserts that the postconviction court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing. We affirm.

FACTS

According to officer testimony at trial, in the early morning hours of June 6, 2017, an Oakdale police officer saw a Jeep hook up to a trailer and drive away with it. He began to pursue the vehicle and sought to make contact with its driver because it was speeding and the trailer had no brake lights. Officers later determined that the vehicle, a 1995 Jeep Grand Cherokee, had been stolen from a dealership.

As the officer turned behind the vehicle, it pulled over and stopped, and its four occupants got out and walked toward a home. The officer pulled over behind it and instructed the occupants to get back into the vehicle. Everyone complied except appellant Shawn Clarke Spottswood, who argued that he did not have to comply.¹ While talking with appellant, the officer saw an electric drill in his front sweatshirt pocket and that he wore a black and red backpack. Appellant eventually got back into the vehicle. As he did so, the officer saw him hand something to the other backseat passenger, who quickly concealed the item.

¹ Appellant does not challenge the officer's stop or search of the vehicle or his person.

Upon searching the vehicle, the officer found a white crystal substance on the floorboard at appellant's feet that tested positive for methamphetamine. When the officer searched appellant, he found a key fob and a broken key for a Saturn vehicle in his pants pocket. Appellant stated that the drill in his sweatshirt pocket belonged to him. The officer determined that the drill matched other tools found in the vehicle, all of which had been stolen from a construction site a couple of weeks earlier. Appellant's backpack contained a bolt cutter, "jiggler" or "bump" keys,² tin snips, and a flathead screwdriver. Officers found that the vehicle's ignition had been tampered with and damaged and had a piece of a different key broken off in it. In that condition, one could turn the ignition without the Jeep's key.

Respondent State of Minnesota charged appellant with (1) possession of burglary or theft tools, in violation of Minn. Stat. § 609.59 (2016); (2) aiding and abetting the theft of a motor vehicle, in violation of Minn. Stat. § 609.52, subd. 2(a)(17) (2016); (3) aiding and abetting receiving stolen property, for the vehicle, in violation of Minn. Stat. § 609.53, subd. 1 (2016); (4) receiving stolen property, for the power tools, in violation of Minn. Stat. § 609.53, subd. 1; and (5) fifth-degree possession of a controlled substance, methamphetamine, in violation of Minn. Stat. § 152.025, subd. 1 (2016).

At trial, the district court granted the state's motion to introduce as *Spreigl* evidence³ appellant's 2005 conviction of motor-vehicle theft. As part of its case-in-chief, the state

² "Jiggler" or "bump" keys can make a lock work without its regular key.

³ *Spreigl* evidence is evidence of other crimes or acts under Minn. R. Evid. 404(b). See *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

questioned a detective about whether some of the tools found on appellant were burglary or theft tools. Appellant objected to this questioning, but the district court overruled the objection. The jury found appellant guilty of all charges except aiding and abetting the theft of a motor vehicle. Appellant filed a petition for postconviction relief, which the postconviction court summarily denied without an evidentiary hearing. This appeal follows.

D E C I S I O N

I. The district court properly exercised its discretion by admitting *Spreigl* evidence.

Appellant argues that the district court abused its discretion by admitting his 2005 felony conviction for theft of a motor vehicle as *Spreigl* evidence under Minn. R. Evid. 404(b). We disagree.

We review the district court’s evidentiary rulings for an abuse of discretion. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). “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). But other-crimes evidence, or *Spreigl* evidence, may be admissible to prove “motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan.” *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006); *see also id.* Before a district court can admit *Spreigl* evidence,

- (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.

Ness, 707 N.W.2d at 686. If it is not clear that the evidence should be admitted, it should be excluded. *State v. Campbell*, 861 N.W.2d 95, 102 (Minn. 2015). An appellant must prove that the district court abused its discretion by admitting the *Spreigl* evidence, resulting in prejudice. *State v. Blom*, 682 N.W.2d 578, 611 (Minn. 2004).

Here, the district court reviewed the *Spreigl* factors and found that appellant's 2005 conviction could be admitted under the "common scheme or plan" and intent exceptions.⁴ Appellant challenges the district court's conclusions on factors two, four, and five. We address each claim in turn.

A. The *Spreigl* evidence had a proper purpose.

Appellant first argues that the state did not clearly identify what the 2005 conviction would prove and that it did not fit within either purpose the district court articulated. In seeking to admit *Spreigl* evidence, the state must identify a permissible purpose of the evidence and make "some showing or determination that the evidence reasonably and genuinely fits that purpose." *State v. Montgomery*, 707 N.W.2d 392, 398 (Minn. App. 2005). "It is not sufficient simply to recite a [rule] 404(b) purpose without also demonstrating at least an arguable legitimacy of that purpose." *Id.* For *Spreigl* evidence

⁴ The district court stated "common intent or plan" in its order. The list of proper purposes in rule 404(b) for other-acts evidence is not exclusive. Minn. R. Evid. 404(b) 1989 comm. cmt. We interpret the district court's order as admitting the conviction under the "common scheme or plan" and intent exceptions, based on the context of the state's argument before it. Appellant states in his brief that the district court appeared to admit the evidence either for these purposes or just as a common scheme or plan, but disputes its admissibility.

to be admissible under the common scheme or plan exception, it must have “marked similarity” to the characteristic way, the *modus operandi*, in which the present offense occurred. *Ness*, 707 N.W.2d at 688. But, it “need not be identical in every way to the charged crime.” *State v. Lynch*, 590 N.W.2d 75, 81 (Minn. 1999).

While the state listed all of the rule 404(b) purposes, it focused on the common scheme or plan purpose by noting that the damaged or “punched” ignition in the stolen car in the 2005 conviction shows a similar *modus operandi* to the present offense, which involved a damaged ignition in the stolen car and a broken key on appellant’s person. The district court did not abuse its discretion in finding that the 2005 conviction shows a common scheme or plan.

B. The *Spreigl* evidence was relevant.

Appellant argues that the facts of the 2005 conviction are dissimilar to and too remote in time from the current charges, making them irrelevant. “[A] district court, when confronted with an arguably stale *Spreigl* incident, should employ a balancing process as to time, place, and *modus operandi*: the more distant the *Spreigl* act is in terms of time, the greater the similarities as to place and *modus operandi* must be to retain relevance.” *State v. Washington*, 693 N.W.2d 195, 202 (Minn. 2005). But, “concerns about acts that are remote in time are lessened where the defendant spent a significant part of that time incarcerated.” *Id.*

The Minnesota Supreme Court in *Washington* concluded that the prior acts were relevant despite the 16 years between the *Spreigl* incident and the charged offense because (1) the appellant had been *convicted* of the prior acts; (2) he had spent more than half of

the intervening 16 years incarcerated; and (3) the prior acts were “strikingly similar in modus operandi to the charged acts.” *Id.* at 203. Similarly, here, appellant had been convicted, spent all but seven years since the conviction incarcerated, and the vehicle ignition in his prior offense was in a similar condition to that in the present offense. These facts outweigh the length of time from the prior conduct to the present offense, making the prior conduct relevant.

C. The potential prejudice from the *Spreigl* evidence did not outweigh its probative value.

Appellant argues that the potential prejudice from the 2005 conviction outweighed its probative value. *Spreigl* evidence may not be admitted if the potential for unfair prejudice outweighs its probative value. See Minn. R. Evid. 404(b)(2). “Unfair prejudice” means “the capacity of the evidence to persuade by illegitimate means.” *Montgomery*, 707 N.W.2d at 399 (quoting *State v. Bolte*, 530 N.W.2d 191, 197 n.3 (Minn. 1995)). Illegitimate means include “giving one party an unfair advantage.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotations omitted).

The state presented primarily circumstantial evidence for the charges against appellant, making the condition of the ignition in the prior case highly probative. See *Ness*, 707 N.W.2d at 689-90. And the district court significantly limited the information the state could present about the 2005 conviction. The state introduced the evidence by asking a witness only if appellant had a 2005 conviction for motor-vehicle theft and if that vehicle had a punched or damaged ignition. The witness answered “yes” to both questions. In addition, the district court provided an instruction to the jury about the permissible use of

the evidence. These limitations prevented the state from using the prior conviction to gain an unfair advantage. While the evidence had the potential for unfair prejudice, any potential prejudice did not outweigh the evidence's probative value. Because we conclude that the district court did not abuse its discretion by admitting the *Spreigl* evidence, we need not address appellant's harmless-error argument.

II. The district court properly admitted the detective's testimony on the tools found in appellant's possession.

Appellant argues that the district court abused its discretion by allowing the detective's expert testimony about whether appellant possessed "burglary" or "theft" tools. We are not persuaded.

The district court has the discretion to admit expert testimony, and we review its decisions for clear error using a harmless-error analysis. *State v. Blanche*, 696 N.W.2d 351, 372 (Minn. 2005). We will reverse "only when the error substantially influences the jury's decision." *State v. DeShay*, 669 N.W.2d 878, 888 (Minn. 2003) (quoting *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997)). A district court may admit expert testimony under Minn. R. Evid. 702 if it will assist the jury in resolving factual questions. *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). But, testimony about a defendant's intent is inappropriate. *State v. Chambers*, 507 N.W.2d 237, 238 (Minn. 1993).

Appellant argues that the detective "effectively" testified about appellant's intent because the crime of possession of burglary tools requires possession "with intent to use or permit the use of [the tool] to commit burglary or theft." See Minn. Stat. § 609.59. He argues that this testimony prejudiced him because the state presented no other evidence of

his intent, leaving the jury to conclude that appellant possessed the tools for improper purposes.

We have differentiated in other cases between testimony about the legality of an action and testimony about a defendant's intent. For example, in *State v. Gruber*, we held that testimony that it is "obviously wrong" for anyone to take and duplicate a key to a locked depository box for unused pharmaceuticals was not testimony about the defendant officer's mental state. 864 N.W.2d 628, 632-33, 637-38 (Minn. App. 2015).

Here, the detective responded "yes" to the state's questions of "in your training and experience would you classify these bump keys as a theft tool or a burglary tool?" and "Would you call it a theft tool?" The detective testified that the tin snips and screwdriver *could* be used in a burglary or theft. And he provided the conditional responses that the bolt cutter "*can* be" and "*could* be" a burglary or theft tool. (Emphases added.) This testimony did not improperly implicate appellant's intent or conclude that the tools were burglary or theft tools in this particular case. Rather, it helped the jury understand how such tools may be used. Further, opinion or inference testimony may involve an ultimate issue for the jury to decide. Minn. R. Evid. 704. The district court properly admitted the testimony.

III. The postconviction court did not abuse its discretion by denying appellant's petition without an evidentiary hearing.

Appellant argues that the postconviction court abused its discretion by denying his petition for postconviction relief based on ineffective assistance of his trial counsel without an evidentiary hearing. We disagree.

We review a postconviction court’s denial of an evidentiary hearing for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). “A postconviction court ‘abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.’” *Id.* (quotation omitted). We review factual findings for clear error and legal conclusions de novo. *Id.* A petitioner is entitled to a postconviction evidentiary hearing unless the facts, viewed in the light most favorable to the petitioner, “conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018); see *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). A petition must contain factual support and allege “more than argumentative assertions.” *Nissalke v. State*, 861 N.W.2d 88, 91 (Minn. 2015) (quotation omitted).

To receive an evidentiary hearing on an ineffective-assistance-of-counsel claim, a petitioner must allege facts that (1) overcome the presumption that counsel’s performance fell within a wide range of reasonable representation and (2) show that the case outcome would have been different but for counsel’s deficiency. *Evans v. State*, 788 N.W.2d 38, 44-45 (2010); see also *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). Disputes over trial strategy generally do not qualify as deficiencies. *State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014). Trial counsel’s decision to “forgo investigation of leads not reasonably likely to produce favorable evidence” is part of trial strategy. *Gustafson v. State*, 477 N.W.2d 709, 713 (Minn. 1991). But failure to investigate due to inattention or neglect may constitute ineffective assistance. *Swaney*, 882 N.W.2d at 218.

The postconviction court denied appellant’s petition, finding no disputed facts and that his trial counsel’s decision not to investigate four witnesses went solely to matters of

trial strategy and tactics and did not constitute deficient performance. The postconviction court noted that the district court file did not contain the list of “alibi witnesses” appellant claimed to have filed before trial and that S.V., another passenger in the stolen vehicle, was the only proposed witness who had provided a statement to appellant’s postconviction investigator. It found that there were no disputed facts that had to be resolved before it could decide the issue on the merits.

Appellant first argues that “it is impossible to determine whether trial counsel’s decision was based on reasoned strategy or simple neglect” and there is “nothing in the current record supporting the conclusion that there was a valid strategic reason.”

Appellant mistakes the presumption and his burden. There is no presumption of unreasonable performance absent such evidence presented by appellant. *See Swaney*, 882 N.W.2d at 218. Further, the trial record and appellant’s petition show that his trial counsel had a valid strategic reason for not investigating S.V. or the other vehicle occupants. The state listed S.V. as a potential *state* witness in its witness list. The vehicle occupants’ statements to law enforcement directly incriminated appellant. These statements included S.V. telling the arresting officer that the methamphetamine in the vehicle belonged to appellant and the driver stating that appellant stole the vehicle and had been driving it earlier, until he started to fall asleep while doing so.

Appellant also argues that the postconviction court improperly considered S.V.’s credibility. But the postconviction court considered arguments the state could have raised about S.V.’s credibility had she testified for appellant at trial. These considerations relate to whether appellant’s trial counsel reasonably chose not to pursue S.V. as a witness, not

to whether her statements as described in appellant's petition were credible. The facts alleged in appellant's petition indicate that further investigation of S.V. and the other proposed witnesses was "not reasonably likely to produce favorable evidence," making appellant's trial counsel's decision to forgo such investigation a reasonable part of trial strategy. See *Gustafson*, 477 N.W.2d at 713. The postconviction court did not abuse its discretion in denying appellant's petition without an evidentiary hearing.

Affirmed.