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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0608**

State of Minnesota,
Respondent,

vs.

Jason Ronald Stauffer,
Appellant.

**Filed April 1, 2019
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

St. Louis County District Court
File No. 69HI-CR-17-835

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges two assault convictions, arguing that the district court abused its discretion by admitting evidence of a prior assault conviction and methamphetamine

use, and clearly erred by permitting police officers to testify regarding their prior contacts with him. Appellant also contends that the district court erred in convicting him of both offenses. Because the two offenses arose from a single behavioral incident, we reverse and remand to the district court to vacate one of the convictions, but otherwise affirm.

FACTS

On the evening of November 5, 2017, D.G. was watching television in L.S.'s apartment living room in Hibbing. W.G. stopped by the apartment with another man, whom D.G. did not know. The man sat in a chair near the couch where D.G. was sitting. D.G. continued to watch television, but “felt really odd” because the man was fidgety, rocked back and forth, and kept looking at D.G. Based on his own history of methamphetamine use, D.G. suspected the man had been using methamphetamine. After about 20 minutes, D.G. turned around to say something and the man suddenly stabbed him in the left side of his abdomen.¹ The man tried lunging at D.G. a second time, but D.G. leaped over the couch and ran down the stairs to the garage. The man and W.G. followed D.G. into the garage, but left after D.G. approached them with “a stick or bar or something.”

A neighbor called 911. D.G. told the responding officers from the Hibbing Police Department that a man named “Jason” stabbed him. D.G. described “Jason” as a white male in his early 30s, approximately 5’6” to 5’7” tall, with a shaved or bald head and facial hair. D.G. stated that the man appeared to be on methamphetamine and was wearing jeans

¹ Initially, D.G. was unsure whether he was punched or stabbed as he could not see what the man appeared to have cupped in his hand. It was later determined that the man stabbed D.G. in his left abdomen near his lung, causing an approximately two-inch-deep puncture wound.

with blood on them. Based on the name and physical description, Sergeant Arola immediately thought of appellant Jason Ronald Stauffer, whom he had seen earlier that day. Stauffer is a bald 31-year-old white male, who is 5'7" tall, and has a short goatee.

D.G. reported that the man left the apartment on foot, and the officers began searching the area for him. Two hours later, a homeowner called 911 reporting that "an unknown male by the name of Jason" had knocked on her back door. The caller lived within ten blocks of where the stabbing took place. Officer Dycus quickly responded and located Stauffer about one block from the caller's residence. Stauffer was wearing jeans and a Carhartt jacket, as the caller reported, and matched D.G.'s description of the man who stabbed him.

Officer Dycus arrested Stauffer and transported him to the police station. After directing Stauffer to wait on a bench, Officer Dycus observed that Stauffer "could not sit still" and was "sweating a lot," despite having just been outside. Officer Dycus also observed that Stauffer "kept saying that somebody was standing next to him" even though no one was there. D.G. later viewed a six-person photographic lineup and positively identified Stauffer as the person who stabbed him.²

² The photographic lineup consisted of six color photographs, which D.G. viewed one at a time. When D.G. got to Stauffer's photo, he stopped, "pointed at it[,] and said[,] 'That's it, That's him.'"

Stauffer was charged with two counts of second-degree assault pursuant to Minn. Stat. § 609.222, subds. 1, 2 (2016).³ Prior to trial, the state moved the district court to admit evidence of Stauffer’s 2010 assault conviction as relevant to establish “motive, intent, plan, and identity.” At trial, the primary issue was the identity of D.G.’s assailant. The state offered testimony of D.G., L.S., and the investigating officers. D.G. was the only witness who saw the man who stabbed him. When asked if his assailant was in the courtroom, D.G. initially responded that he was not. But he later identified Stauffer and explained his confusion. At the close of the state’s case, over Stauffer’s objection, the district court granted the state’s motion to admit evidence of the 2010 assault conviction. The jury found Stauffer guilty of both charged offenses. The district court entered two convictions and imposed a 68-month prison sentence. Stauffer appeals.

D E C I S I O N

I. The district court did not abuse its discretion by admitting evidence of Stauffer’s 2010 assault conviction.

Evidence of a defendant’s prior crimes or bad acts is not admissible to prove the defendant’s character to show he acted in conformity with it on a particular occasion. Minn. R. Evid. 404(b)⁴; *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). But *Spreigl* evidence may be admissible for other limited purposes. Minn. R. Evid. 404(b); *State v.*

³ Count I alleged assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1. Count II alleged assault with a dangerous weapon and infliction of substantial bodily harm under Minn. Stat. § 609.222, subd. 2.

⁴ Minn. R. Evid. 404(b) was amended after Stauffer’s trial, but the amendment does not affect our decision here.

Clark, 738 N.W.2d 316, 345 (Minn. 2007). We review the admission of *Spreigl* evidence for an abuse of discretion. *State v. Welle*, 870 N.W.2d 360, 365 (Minn. 2015). To garner reversal, the appellant must show both abuse of discretion and resulting prejudice. *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014).

A five-part test governs the admissibility of other-acts 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.

State v. Ness, 707 N.W.2d 676, 685-86 (Minn. 2006). Stauffer contends that evidence of the prior assault is not relevant to the issue of identity and that its potential for unfair prejudice outweighs its probative value.⁵ We address each argument in turn.

A. Relevance and Materiality

“*Spreigl* evidence may be relevant and material to show the identity of the perpetrator if identity is at issue and if there is a sufficient time, place, or modus operandi nexus between the charged offense and the *Spreigl* offense.” *State v. Wright*, 719 N.W.2d 910, 917 (Minn. 2006) (quotation omitted). The past crime does not need to be a signature crime, but should be sufficiently similar to the incident at issue before the jury. *Id.* “If the prior crime is simply of the same generic type as the charged offense, it ordinarily should

⁵ The *Spreigl* evidence was admitted through a redacted plea-hearing transcript, to which the parties stipulated. Although the manner in which the evidence was presented is not at issue, we note the transcript does not include many of the details showing similarities between the two incidents.

be excluded.” *Id.* at 917-18 (quotation omitted). “[T]he 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.” *Ness*, 707 N.W.2d at 689 (quotation omitted).

Identity was the primary issue before the jury. The 2010 stabbing was relevant in several important respects. First, it occurred at or near the same intersection in Hibbing. Second, both offenses occurred during evening hours. Third, Stauffer also committed the 2010 offense against a stranger, stabbing him in the torso, then fleeing the scene as in the present case. And the assailant in both instances appeared to be under the influence of methamphetamine. In short, the 2010 offense is not a generic assault; it is markedly similar to the charged offense both in place and modus operandi. As such, it is highly probative on the disputed issue of identity.

B. Probative Value Versus Potential Unfair Prejudice

The probative value of *Spreigl* evidence must outweigh “its potential to unfairly prejudice.” *Clark*, 738 N.W.2d at 347. Evidence may give rise to “unfair prejudice” if it “lure[s] the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *State v. L.S.*, 749 N.W.2d 88, 95 (Minn. App. 2008) (quotation omitted). In determining whether the probative value of *Spreigl* evidence outweighs its prejudicial impact, courts balance the relevance of the evidence and the state’s “need to strengthen weak or inadequate proof” against the risk that the evidence will be used as propensity evidence. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

Stauffer asserts that the probative value of the *Spreigl* evidence is outweighed by its potential for unfair prejudice. We are not persuaded. As noted above, evidence of the

2010 offense was highly relevant. And the state's need for the evidence was high. D.G. was the only witness who saw his assailant. Although D.G. identified Stauffer in the photo lineup without hesitation, he initially did not see his assailant in the courtroom. Only during cross- and redirect-examination did D.G. identify Stauffer. Accordingly, the *Spreigl* evidence was critical to the state's ability to demonstrate D.G.'s credibility. And the district court gave a limiting instruction to the jury to reduce the risk that the 2010 conviction would be used as propensity evidence. See *Zornes v. State*, 880 N.W.2d 363, 373 (Minn. 2016) (noting that appellate courts "presume that jurors follow the court's instructions"). The state also cautioned against improper use of the evidence in its closing statement.

On this record, we conclude the district court did not abuse its discretion by granting the state's motion to admit the *Spreigl* evidence.

II. The district court did not abuse its discretion by admitting police officer testimony regarding characteristics associated with methamphetamine use and their observations of Stauffer.

Evidence is relevant and admissible if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401, 402.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Minn. R. Evid. 701. “Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

The challenged testimony came from two officers with specialized training in the indicia of controlled-substance use. Sergeant Arola testified that signs of methamphetamine use include shakiness, eye and body tremors, and exaggerated, shaky speech. He identified auditory and visual hallucinations as “a pretty common thing to see in a habitual methamphetamine user.” He also testified that people under the influence of methamphetamine are “very unpredictable,” “sometimes violent,” and “they can take on a very aggressive demeanor.” Stauffer displayed body tremors, exaggerated speech, and auditory hallucinations.

Officer Dycus testified that signs of methamphetamine use include dilated pupils, restlessness, lack of sleep, increased blood pressure, paranoia, hallucinations, abnormal sweating, and inability to sit still. He observed that Stauffer sweated abnormally, reported “seeing somebody” who was not there, and was unable to sit still at the police station.

Stauffer first argues that evidence of methamphetamine use is irrelevant. We disagree. Such evidence is relevant to explain Stauffer’s motivation to stab a stranger without provocation. *See Ness*, 707 N.W.2d at 687 (recognizing that evidence of a defendant’s motivation “explains the reason for an act”). More importantly, the *Spreigl* evidence makes it more probable that Stauffer was the man who stabbed D.G. because D.G. reported that his assailant appeared to have been using methamphetamine.

Stauffer next asserts that Sergeant Arola's testimony that people who use methamphetamine are unpredictable and "sometimes violent" is inadmissible character evidence. Citing *State v. Williams*, 525 N.W.2d 538, 547-48 (Minn. 1994), and *State v. Litzau*, 650 N.W.2d 177, 185 (Minn. 2002), Stauffer contends that a police officer "cannot testify about typical behaviors of criminals and claim that a defendant's behavior meets that criteria to imply his guilt of the offense." This argument is unavailing for two reasons.

First, both cases involve the admissibility of drug-courier profile evidence. "A drug courier profile is an informally compiled abstract of characteristics thought typical of persons carrying illicit drugs." *Williams*, 525 N.W.2d at 545 (quotation omitted). Law enforcement officers rely on these profiles at airports, train depots, and bus terminals to identify and detain passengers who may be transporting drugs. *Id.* The problem with using drug-courier profiles as evidence of guilt is that they are so general, nonscientific, and inconsistent that *any* traveler could fit into some profile. *See id.* at 545-47 (noting that drug-courier profile factors include walking slowly or quickly, traveling alone or in a group, and appearing nervous or calm). This concern is not implicated here. The officers did not offer anecdotal generalizations to suggest Stauffer was selling or transporting drugs. They testified he appeared to be under the influence of methamphetamine.

Second, the state presented this testimony to prove identity. D.G. testified that the person who stabbed him appeared to have used methamphetamine. And methamphetamine use was relevant to the *Spreigl* offense. We note Sergeant Arola's testimony regarding the conduct of methamphetamine users—as opposed to signs of methamphetamine use—was limited. And the state did not directly present evidence that Stauffer acted violently or

unpredictably on the evening in question. To the extent that the limited testimony went beyond what was relevant to identify Stauffer or prove motive, we conclude that any error was harmless.

III. The district court did not plainly err by admitting unobjected-to police testimony regarding prior contacts with Stauffer.

Stauffer asserts that the district court erred by allowing three police officers to testify that they were familiar with Stauffer from prior contacts. Because Stauffer did not object to this testimony at trial, we review its admission for plain error, considering whether Stauffer has demonstrated “(1) an error; (2) that is plain; and (3) the error affected substantial rights.” *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). If all three conditions are satisfied, we determine whether it is necessary to address the error to ensure the fairness and integrity of the judicial proceedings. *Id.* “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). “Eliciting an officer’s testimony that he knows the defendant from prior contacts is error if the defendant’s identity is *not* an issue in the case.” *State v. Valentine*, 787 N.W.2d 630, 641 (Minn. App. 2010) (emphasis added), *review denied* (Minn. Nov. 16, 2010).

Three officers testified that they were familiar with Stauffer. Sergeant Arola identified Stauffer in the courtroom, stating that he was familiar with Stauffer and his physical description. Sergeant Arola also testified that an off-duty officer reported having contact with Stauffer the night before his arrest. Officer Loewen testified that Stauffer

“matched the description from prior contacts with him having a shaved head with some facial hair.” Officer Dycus recognized Stauffer “from prior incidents,” and testified that earlier in the day “there was a subject stop at which it involved a Jason Stauffer that matched the description.” None of the officers stated that Stauffer had been arrested or charged with a crime in the past.

Stauffer argues that because none of the officers saw Stauffer at the scene of the crime, their testimony was not relevant to his identity. We disagree. Their testimony generally established that Stauffer matched the description of the suspect given to the police by D.G. and the homeowner who later called 911 to report a man named Jason at her house. Because the testimony of these officers was limited and offered on the disputed issue of identity, the admission of the testimony was not error, let alone plain error.⁶

V. The district court erred by convicting Stauffer on count I.

The jury returned guilty verdicts on both assault charges. The warrant of commitment reveals that a judgment of conviction was entered on both counts. A defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2018). The supreme court has “consistently held that section 609.04 bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Chavarria-Cruz*, 839 N.W.2d

⁶ Stauffer argues that the cumulative effect of the alleged evidentiary errors deprived him of a fair trial. In rare cases, “the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant’s prejudice by producing a biased jury.” *State v. Davis*, 820 N.W.2d 525, 538-39 (Minn. 2012) (quotation omitted). As we have found no prejudicial error, there is no cumulative effect to review.

515, 522-23 (Minn. 2013); *see State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) (stating that when a defendant is found guilty on multiple charges for the same act, the district court should formally adjudicate and impose sentence on only one count).

The parties agree that the district court erred by entering a conviction on count I. We also agree. Second-degree assault with a dangerous weapon (count I) is a lesser-included offense of second-degree assault with a dangerous weapon resulting in substantial bodily harm (count II). *See* Minn. Stat. §§ 609.04, subd. 1(4) (including within the definition of lesser-included offense “a crime necessarily proved if the crime charged were proved”), .222, subds. 1, 2. Because both assault offenses arose from the same behavioral incident, the district court erred by convicting Stauffer on count I. We reverse and remand to the district court to vacate Stauffer’s conviction for count I, while leaving the finding of guilt intact. *See State v. Walker*, 913 N.W.2d 463, 469 (Minn. 2018) (reversing and remanding appellant’s conviction for a lesser-included charge, but “leaving the finding of guilt intact”).

Affirmed in part, reversed in part, and remanded.