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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0794**

State of Minnesota,  
Respondent,

vs.

Edgar Noe Lopez-Monter,  
Appellant.

**Filed May 4, 2020  
Affirmed  
Florey, Judge**

Ramsey County District Court  
File No. 62-CR-17-9076

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey,  
Judge.

**UNPUBLISHED OPINION**

**FLOREY**, Judge

Appealing directly from his conviction for first and second-degree criminal sexual  
conduct, appellant Edgar Noe Lopez-Monter argues (1) that the district court erred in

admitting *Spreigl* evidence that appellant had committed fifth-degree criminal sexual assault against another child and (2) that a remand is required to permit the district court to determine whether the state failed to disclose material and exculpatory evidence. We affirm.

## **FACTS**

J.M. opened a licensed in-home daycare in Roseville in 2006. In 2009, J.E.P. began attending the daycare as an infant. Later, L.C.P., the younger sister of J.E.P., also began attending the daycare. In 2014, appellant Edgar Lopez-Monter began assisting his wife, J.M., with her licensed in-home daycare by driving a school bus and helping with the daycare when more than 12 children were present.

In August 2017, the Roseville Police Department received a report of inappropriate conduct concerning Lopez-Monter. Six-year-old L.C.P. asked J.M. to tell Lopez-Monter to stop kissing her. Both L.C.P. and J.E.P., now nine, told their mother that Lopez-Monter had been kissing them on the lips for the past several years. The girls stated that the kisses occurred outside the presence of J.M. During Midwest Children's Resource Center interviews and exams that August, the girls disclosed only kissing. In early November 2017, another female child, A.P., reported at school that Lopez-Monter had exposed himself to her and masturbated in front of her while she attended the daycare between 2011 and 2013. Around Thanksgiving of 2017, J.E.P. told her cousin that Lopez-Monter had touched her privates. A few days later, J.E.P. left a note on her mother's nightstand that stated she was sorry for not telling the truth, but that Lopez-Monter "was touching me."

J.E.P. had a follow-up interview at the Midwest Children's Resource Center, during which she disclosed that Montez-Lopez touched her "front private" and "back private" beginning when she was six, that it happened many times and in many places in the home, and that Lopez-Monter told her not to tell anyone. The nurse recommended that J.E.P. attend individual therapy. During two therapy sessions in early 2018, J.E.P. again disclosed that Lopez-Monter touched her underneath her clothes, and penetrated both her vagina and anus with his finger.

Lopez-Monter was arrested in December 2017, but declined to participate in a custodial interview. He was charged with one count of second-degree criminal sexual conduct involving J.E.P. In April 2018, the complaint was amended to include one count of first-degree criminal sexual conduct.

A four-day jury trial was held in December 2018. The state sought to admit *Spreigl* evidence that Lopez-Monter had kissed A.P., had exposed himself, and masturbated in front of her. The district court ruled that the evidence was admissible to prove motive, opportunity, intent, absence of mistake or accident, and common scheme or plan. L.C.P. and J.E.P. testified for the state. A.P.'s testimony was also admitted as *Spreigl* evidence. J.M. and Lopez-Monter testified for the defense. The jury found Lopez-Monter guilty on both counts. Lopez-Monter was sentenced to the presumptive 172 months for the first-degree criminal sexual conduct, executed, and ten years of conditional release. Lopez-Monter appeals.

## DECISION

Lopez-Monter contends that the district court erred by admitting *Spreigl* evidence, namely A.P.'s testimony that Lopez-Monter had previously kissed her, exposed himself to her, and masturbated in front of her. The admissibility of evidence of other crimes or acts is governed by Minn. R. Evid. 404(b). Such evidence is commonly referred to as "*Spreigl* evidence." *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); *see State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). Rule 404(b) prohibits the admission of other-acts evidence to prove "the character of a person in order to show action in conformity therewith." But *Spreigl* evidence is "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b).

A district court's decision to admit *Spreigl* evidence is reviewed for an abuse of discretion. A defendant who claims the trial court erred in admitting evidence bears the burden of showing an error occurred and any resulting prejudice. If an appellate court determines that the district court erroneously admitted *Spreigl* evidence, the court must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.

*State v. Griffin*, 887 N.W.2d 257, 261-62 (Minn. 2016) (citations omitted).

In *State v. Ness*, the Minnesota Supreme Court laid out a five-step process to determine whether a district court may admit 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.

707 N.W.2d 676, 685-86 (Minn. 2006). Lopez-Monter challenges the district court's determinations on steps four and five, arguing that the evidence was not relevant or material, and that the probative value was outweighed by its potential for unfair prejudice. The district court concluded that the extrinsic conduct is "relevant and material to the defendant's intent, absence of mistake or accident, and common scheme or plan related to the underlying charges." The district court noted that the "location of where these acts occurred . . . who the victims were . . . [and] when the conduct occurred is relevant and material to establish intent, absence of mistake or accident, and common scheme or plan" because each of the acts occurred in the daycare, with daycare children, and during daycare hours, just like the conduct being charged. "*Spreigl* evidence need not be identical in every way to the charged crime, but must instead be sufficiently or substantially similar to the charged offense—determined by time, place and modus operandi." *Id.* at 688 (citation and emphasis omitted).

Here, as the state argues, there are numerous similarities between A.P.'s *Spreigl* testimony and the charged acts: both girls were around six years old, Lopez-Monter began by kissing them on the mouth, and the acts all occurred while J.M. was busy with other activities in the daycare. The district court did not abuse its discretion by concluding that this testimony is relevant and material because the similarities between A.P.'s testimony and the charged conduct tends to show opportunity and the absence of a mistake or accident.

Lopez-Monter argues that the *Spreigl* evidence was unfairly prejudicial due to both the dissimilarity between A.P.'s testimony and the charged conduct, and the fact that the statute of limitations had already run on the offense against A.P. But unfairly prejudicial evidence is not evidence that is merely damaging, but evidence that persuades by illegitimate means. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). The district court concluded that A.P.'s testimony was highly probative, but not “*unfairly* prejudicial.” Here, the jury was cautioned when A.P.'s testimony was introduced, and again during final jury instructions. Jurors are presumed to have followed instructions. *Griffin*, 887 N.W.2d at 262. In addition, the prosecutor reminded the jury during closing argument that the conduct at issue was not related to A.P.

The record reflects that the district court properly weighed the decision to admit *Spreigl* evidence, and Lopez-Monter has not met his burden of demonstrating error. We therefore conclude that the district court did not abuse its discretion by admitting A.P.'s testimony.

Finally, Lopez-Monter contends that a potential Brady violation occurred. During the defense's direct examination of J.M., J.M. stated that J.E.P. once told her “she was touched by a boy at school.” J.M. testified that this occurred during 2015 and that she had not previously given this information to defense counsel or to the police. The state objected and argued this testimony should be stricken as hearsay and because it had not been disclosed by the defense. The defense agreed, and the jury was instructed to disregard this statement. Based on this incident, Lopez-Monter asks this court to remand to the district court to determine whether a Brady violation occurred. Lopez-Monter requests that this

court instruct the district court to perform an in camera review of J.E.P.'s school records to determine whether they contain exculpatory information. Lopez-Monter concedes that the "record is unclear as to the exact nature" of the "prior accusation."

The state argues that we should not rule or remand on this issue because it did not come before this court on appeal from an order or ruling. *Roby v. State*, 547 N.W.2d 354 (Minn. 1996). We agree. To the extent that there was a ruling on this issue, it was that J.M.'s statement should be struck from the record. Defense counsel agreed. Lopez-Monter<sup>1</sup> could have sought postconviction review of this issue instead of raising it as part of his direct appeal. Having concluded that this issue is not properly before us, we decline to reach it.

**Affirmed.**

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<sup>1</sup> Lopez-Monter raises several additional issues in his pro-se supplemental brief, including a jury issue, sufficiency of the evidence, delay in trial, judge biased because he presided over a family law matter, and ineffective assistance of counsel. However, Lopez-Monter does not provide any legal authority or argument beyond a mere assertion that these issues affected his trial. Inadequately briefed issues are not properly before an appellate court. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (criminal), *review denied* (Minn. Aug. 5, 1997).