

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0413**

State of Minnesota,
Respondent,

vs.

Daniel Edward Nixon,
Appellant.

**Filed April 5, 2021
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-19-73

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Ramsey County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Police stopped Daniel Nixon driving a unique car matching the one seen leaving two of a string of burglaries. They arrested Nixon after searching the car and finding evidence implicating him in another burglary. The state charged him with second-degree

burglary and sought to introduce as *Spreigl* evidence testimony describing, and a surveillance video depicting, a different burglary during which the burglar wore distinctive clothing that matched what Nixon wore when police stopped him. The district court allowed the *Spreigl* evidence over Nixon's objection and also denied his motion to suppress evidence found after police impounded his car. Following his conviction after a bench trial, Nixon now argues on appeal that the district court improperly denied his motion to suppress and improperly admitted the *Spreigl* evidence. Because the officer had probable cause to seize Nixon's car, we reject his suppression argument. And because the challenged evidence clearly and convincingly shows that Nixon was involved in the other burglary and the *Spreigl* evidence is probative to show both identity and a common scheme, the district court did not abuse its discretion by admitting it. We therefore affirm.

FACTS

St. Paul police investigated a series of business burglaries in the spring of 2018, and the investigation would eventually settle on Daniel Nixon as the primary offender. One of the burglaries occurred at the liquor store World of Beers in the early morning hours of May 3, 2018. Surveillance video depicted a 2001 to 2006 white Chevy Impala with a black rubber strip, a rear spoiler, and unique rims stop and park at a nearby park. Two black men exited the Impala. One waited in the park. The other broke through one of the liquor store's windows and entered an interior office. He wore blue jeans, a black baseball cap without a logo, black boots, a white surgical mask, and red-and-black Hardy brand gloves. He carried a yellow or green bag with black handles. The man left the liquor store within minutes and reunited with the other man in the park. They left in the Impala.

Burglaries continued. Police believed that the burglar who broke into the World of Beers also committed burglaries at other establishments, including the Ha Tien market on May 9. A surveillance video of that burglary again depicted a black male wearing identical clothing and carrying an identical yellow or green bag break in through a window. The burglar again left in a Chevy Impala with characteristics identical to the one involved in the World of Beers burglary.

St. Paul police investigators alerted patrol officers to watch for the burglary vehicle:

The suspect [in question] has burglarized the Ha Tien Market . . . and possibly other businesses. Suspect usually has another person with him waiting in [the] area of the burglary [who] then picks [the] suspect up.

The suspect[’s] vehicle is a 2001 to 2006 White Chevrolet Impala with a distinctive rear spoiler.

If [the] possible vehicle is located create your own [probable cause] for a stop and ID driver and occupants.

The alert included a photograph of the Impala and of a black man wearing dark clothes, a dark baseball cap, a white surgical mask, and unique gloves.

Officer Michael Tschida spotted a 2003 white Chevy Impala that matched all the features of the one depicted in the alert photo. Its driver, Daniel Nixon, also matched the description of the burglary suspect, and, consistent with the burglaries, the Impala had a passenger—Nixon’s brother. Officer Tschida looked into the car at its backseat after he approached, seeing a black baseball cap and red-and-black Hardy brand gloves. Officer Tschida suspected that Nixon and his brother were the two burglars, and he arrested them.

Police impounded the Impala and secured a warrant to search it. They found a pair of walkie-talkies, a cordless drill, an extension cord, and a green or yellow bag with black handles in the car. The bag contained a sledgehammer, a screwdriver, pry bars, and several reciprocating-saw blades. Police forensically tested one of the gloves, finding Nixon's DNA on it.

The state charged Nixon with second-degree burglary for the World of Beers break-in. It also charged him for seven other burglaries under separate complaints. Nixon waived his right to counsel and moved to suppress evidence on the theory that the officer lacked probable cause to search his car. The district court denied the motion. And over Nixon's objection the district court allowed the state to introduce as *Spreigl* evidence testimony and a video recording of the Ha Tien burglary. The district court found Nixon guilty after a bench trial and sentenced him to serve 90 months in prison (in total for all burglary counts of his convictions). This appeal follows.

DECISION

Nixon challenges his burglary conviction on two theories. He argues first that the district court erroneously concluded that Officer Tschida had probable cause to seize his car. He argues second that the district court improperly admitted evidence that he was involved in the Ha Tien burglary. Neither argument prevails.

I

The district court did not erroneously deny Nixon's motion to suppress evidence found in his car. We review a district court's denial of a motion to suppress de novo, accepting the district court's factual findings unless they are clearly erroneous. *State*

v. Jordan, 742 N.W.2d 149, 152 (Minn. 2007). The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. A search or seizure without a warrant is presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Among various exceptions that appear to apply here, if police have probable cause to search a vehicle, they may impound it and search it later after obtaining a warrant. *State v. Jankowski*, 281 N.W.2d 717, 719 (Minn. 1979). Our probable-cause analysis is simple on these facts.

It is clear that police had probable cause to search Nixon's car. Probable cause exists when the circumstances would convince a reasonably prudent person that the car contains contraband. *State v. Gallagher*, 275 N.W.2d 803, 806 (Minn. 1979). The inquiry depends on circumstances known to police generally, not just to the officer making the constitutionally challenged decision. *See State v. Johnson*, 689 N.W.2d 247, 251 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005). Police knew that two black men had been burglarizing many St. Paul businesses and leaving the establishments in an approximately 15-year-old white Chevy Impala with a black strip, rear spoiler, and unique rims. They knew that the primary burglar wore a black baseball cap and red-and-black Hardy brand gloves. Officer Tschida encountered a unique car with occupants and contents matching all of this. That these circumstances established probable cause for the arrest, the impoundment, and the search is a proposition too obvious to warrant further discussion.

II

Regarding Nixon's other challenge, which repeats one he has raised to this court appealing other convictions, we simply repeat what we say in our opinion also released

today in *State v. Nixon*, No. A20-0423, 2021 WL ____ (Minn. App. Apr. 5, 2021), substituting the burglary at issue here—World of Beers—for the burglary at issue in that case:

Nixon . . . argu[es] that the district court erroneously admitted evidence that he was involved in the Ha Tien burglary. A district court may allow evidence of prior bad acts—known as *Spreigl* evidence—to show motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan. Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). We will affirm a district court’s decision to admit *Spreigl* evidence absent an abuse of discretion. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). The district court may admit *Spreigl* evidence if, among other things, the evidence clearly and convincingly proves that Nixon participated in the other bad act and the probative value of the evidence is not outweighed by its potential for unfair prejudice. *See* Minn. R. Evid. 404(b)(2)(b)–(c). For the following reasons, we have no difficulty concluding that the district court acted within its discretion by admitting the Ha Tien burglary evidence.

We reject as unpersuasive Nixon’s contention that the video and related evidence did not clearly and convincingly prove that he was involved in the Ha Tien burglary. To meet the clear-and-convincing standard, the state must show that the evidence makes the thing to be proved “highly probable,” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (quotation omitted), and it may do so with either direct or circumstantial evidence, *see State v DeWald*, 464 N.W.2d 500, 503–04 (Minn. 1991). The evidence here makes it highly probable that Nixon was involved in the Ha Tien burglary. Nixon was one of two black men occupying a 15-year-old white Chevy Impala with a black strip and a rear spoiler, and the Ha Tien burglary two weeks earlier in the same vicinity and time of night was the work of two black men occupying a 15-year-old white Chevy Impala with a black strip and a rear spoiler. Nixon was also carrying inside the Impala the same brand of gloves and type of hat as those worn by the Ha Tien burglar, and he had

the same uniquely colored bag. The evidence that Nixon participated in the Ha Tien burglary was clear and convincing.

That Nixon participated in the Ha Tien burglary also meets the *Spreigl* test as to purpose in at least two regards. First, it is circumstantially probative of the identity of the [World of Beers] burglar because the close [somewhat] temporal proximity between the two burglaries, the similar manner of entry, and the similarity of clothing and burglary tools all tend to show that the Ha Tien burglar and the [World of Beers] burglar were one and the same. Second, it is likewise circumstantially probative of a common scheme or plan—serial late-night business burglaries—for the same reasons. We add that the risk of unfair prejudice is particularly mitigated where, as here, the district court serves as the fact-finder. *See State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009). The probative value of this evidence for the legitimate purposes outlined in evidentiary rule 404(b) far outweighs any danger of unfair prejudice.

Nixon's challenge identifies no abuse of discretion.

Affirmed.