

*This opinion is nonprecedential except as provided by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
A20-0423**

State of Minnesota,
Respondent,

vs.

Daniel Edward Nixon,
Appellant.

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

Ramsey County District Court
File No. 62-CR-19-74

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, 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NONPRECEDENTIAL OPINION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 description of the one seen in at least one of a string of nearby burglaries. They arrested Nixon after searching the car and finding evidence implicating him in at least one of the burglaries. The state

charged him and sought to introduce as evidence testimony describing, and a surveillance video depicting, a different, contemporaneous burglary during which the burglar wore distinctive clothing that matched Nixon's attire when police stopped him. Following his conviction after a bench trial, Nixon now argues on appeal that the district court improperly admitted that testimony and recording. Because the challenged evidence clearly and convincingly shows that Nixon was involved in the other burglary and the 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

This case involves a series of St. Paul burglaries occurring in the spring of 2018. One of them was of an Arby's restaurant shortly after midnight on May 9. Surveillance video showed a black male burglar sledge-hammering his way into the closed restaurant through its drive-through window. He was wearing blue jeans, a black baseball hat, black boots, a white surgical mask, and red-and-black Hardy brand gloves, and he carried a yellow or green bag with black handles. The burglar searched the restaurant and checked the registers for cash before trying to access the contents of a safe with a reciprocating saw that he powered using an extension cord. He soon left the restaurant.

Police believed that the Arby's burglar was the same man who burglarized the Ha Tien market that same night. A different video recording revealed that the Ha Tien burglar wore the same clothing and carried the same bag seen on the Arby's burglar, and he too accessed the building by breaking through a window. Another recording depicted the Ha Tien burglar leaving on foot and entering the passenger seat of a getaway car—a

white, 2001 to 2006 Chevrolet Impala driven by a different man. The Impala had unique features, including a black rubber strip, a rear spoiler, and particular rims.

St. Paul police officer Michael Tschida was patrolling the area near the Arby's and Ha Tien market in the late night hours about two weeks after the Arby's and Ha Tien burglaries when he saw a white, 2003 Chevy Impala with a rear spoiler and a black male driver. The officer stopped the Impala and encountered the driver, Daniel Nixon. Officer Tschida looked inside the Impala and saw a pair of Hardy brand gloves, black baseball caps, and walkie-talkies. Tschida arrested Nixon and his companion on suspicion of burglary and impounded the Impala. Police searched the Impala and found additional items implicating Nixon with the burglaries, including a green or yellow bag with black handles, a cordless drill, and an extension cord. Forensics testing revealed Nixon's DNA on the gloves.

The state charged Nixon with second-degree burglary for the Arby's break-in. It also charged him with seven additional counts for burglaries at other places, including Ha Tien. The charges for those other burglaries are not the subject of this appeal. Before the trial on the Arby's burglary, the state successfully sought to introduce as *Spreigl* evidence the video recording of and testimony about the Ha Tien burglary. The district court conducted a bench trial and found Nixon guilty. It sentenced him to serve 90 months in prison (in total for all burglary counts of his convictions). Nixon appeals.

DECISION

Nixon challenges his burglary conviction, arguing 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 Arby's burglar because the close 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 Arby's 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.