

*This opinion is nonprecedential except as provided by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
A20-0825**

State of Minnesota,
Respondent,

vs.

Latese Capree Hudson,
Appellant.

**Filed July 19, 2021
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-18-14127

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal, appellant Latese Capree Hudson argues that his conviction for third-degree murder must be reversed and remanded for a new trial because the district court erred by allowing respondent State of Minnesota to introduce three pieces of evidence

during trial. Because the district court did not abuse its discretion in admitting the evidence, we affirm.

FACTS

The following facts were established in the jury trial in this case. On March 19, 2017, Hudson and S.W. connected over the phone before ending up together in an alley in Minneapolis. While Hudson and S.W. were in the alley, a witness saw Hudson give S.W. drugs that S.W. immediately used. S.W. had an adverse reaction to the drugs and fell to the ground. Hudson fled. After someone called 911, officers arrived and found S.W. lying face down in the alley with mucus all over his nose and mouth. S.W. died in the hospital two days later due to what was determined to be an overdose of a mixture of cocaine and carfentanil.

The initial investigation into S.W.'s death went cold. Thirteen months after S.W.'s death, in April 2018, Hudson was pulled over by police in connection with a robbery investigation. As part of that investigation, police recovered three cell phones belonging to Hudson. The cell phones contained S.W.'s contact information. Pursuant to a search warrant, officers obtained Hudson's cell-phone records. The records showed calls from S.W. to Hudson on the day of S.W.'s death. The records also showed texts between Hudson and another man, A.H., discussing S.W.'s death a couple of weeks after S.W. died. The records also contained other, earlier texts between Hudson, A.H., and S.W., discussing Hudson's drug sales to A.H. and S.W. In April 2017, the month following S.W.'s death, A.H. also died of an overdose.

In May 2018, after reviewing the phone records, officers interviewed Hudson. During that interview, Hudson claimed that, on the day S.W. died, he and S.W. agreed to split the cost of a bag of heroin. Hudson claimed that they bought the heroin from a dealer at a nearby carwash and that they then used the heroin together in the alley. Hudson admitted that S.W. had an adverse reaction to the drugs and claimed that he offered to get S.W. help, but that S.W. refused. Hudson denied ever selling drugs in Minnesota.

The state ultimately charged Hudson with third-degree murder in violation of Minn. Stat. § 609.195(b) (2016).

Before trial, the state moved to admit *Spreigl* evidence in support of its case. This evidence included (1) testimony that, on a separate occasion three months before S.W.'s death, Hudson provided S.W. with drugs that led to S.W. overdosing and needing hospitalization; (2) testimony regarding the investigation into A.H.'s death; and (3) testimony that Hudson sold drugs to other individuals in addition to S.W. The district court ruled before trial that evidence of Hudson's role in S.W.'s overdose three months before S.W.'s death was admissible *Spreigl* evidence. With respect to the investigation into A.H.'s death, the district court excluded *Spreigl* evidence suggesting that Hudson sold narcotics to A.H. on the day of A.H.'s death, concluding that Hudson's identity as the seller of those drugs was not proved by clear and convincing evidence. However, the district court ruled that the state's witnesses could refer to "the investigation into A.H.'s death" when describing the source of cell-phone evidence derived from Hudson's phones. During trial, the district court allowed as *Spreigl* evidence witness testimony about Hudson's history of selling drugs to other persons.

Following a six-day trial, the jury found Hudson guilty, and the district court sentenced him to 99 months in prison.¹

Hudson appeals.

DECISION

The only issue on appeal is whether the district court erred by admitting the challenged evidence. Hudson argues each of the three pieces of evidence was inadmissible propensity evidence and unfairly prejudicial.

We review a district court's decision to admit evidence of other bad acts for an abuse of discretion. *See State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). "Evidentiary errors warrant reversal if there is any reasonable doubt the result would have been different had the evidence not been admitted." *State v. Grayson*, 546 N.W.2d 731, 736 (Minn. 1996) (quotation omitted). Hudson bears the burden of showing that an error occurred and that he was prejudiced as a result. *See Griffin*, 887 N.W.2d at 261.

Minnesota Rule of Evidence 404(b) governs the admissibility of evidence of other crimes or bad acts, commonly referred to as "*Spreigl* evidence." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167, 172 (Minn. 1965)). Evidence of other bad acts is not admissible to prove that a person acted in conformity with those acts. Minn. R. Evid. 404(b). But the evidence may be admissible for another purpose, including "showing motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan." *State v. Ness*, 707 N.W.2d 676, 685

¹ Hudson also pleaded guilty to a felon-in-possession-of-a-firearm charge for which the district court imposed a concurrent 60-month sentence.

(Minn. 2006). For the evidence to be admissible, the following conditions must be satisfied:

- (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.

Id. at 686. Hudson's arguments center on the fourth and fifth prongs—that the state used each piece of evidence for an improper purpose and that the risk that the evidence would cause unfair prejudice outweighed its probative value.

With this background, we address each contested piece of evidence in turn.

1. Evidence Regarding S.W.'s Previous Overdose

Hudson challenges the admission of evidence regarding S.W.'s previous overdose. About three months before his death, S.W. overdosed and was hospitalized. The night of the overdose, S.W. and Hudson had gone to a friend's apartment. Once there, Hudson sold S.W. drugs that S.W. injected into his arm. S.W. began acting erratically—taking off his clothes, spitting on the friend, and kicking the friend's furniture. The friend tried and failed to calm S.W. down and, according to his trial testimony, had never seen S.W. react to a drug this way. Hudson left the apartment after asking, "What's wrong with that fool[?]" The friend called Hudson and asked him to return to help with S.W. Hudson said that he would return but never did. The friend eventually called 911, and officers took S.W. to the hospital.

The state offered evidence of S.W.'s prior overdose through the friend's testimony. The district court admitted this testimony as *Spreigl* evidence, ruling that it constituted

evidence of a common scheme or plan. On appeal, Hudson argues that the two events were merely “generic” offenses that were not similar enough to indicate a common scheme or plan.

Evidence of other acts tending to show a common scheme or plan is relevant to show that the act in the charged offense actually occurred. *Id.* at 688. Courts evaluate whether another act tends to show a common scheme or plan based on similarities of time, place, and modus operandi. *Id.* While the charged offense and the other incident must be markedly similar, *id.*, “[a]bsolute similarity between the charged offense and the *Spreigl* incident is not required to establish relevancy,” *State v. Berry*, 484 N.W.2d 14, 17 (Minn. 1992).

The district court determined that the prior incident “share[d] numerous similarities with the charged offense.” The district court highlighted the facts that (1) Hudson provided S.W. the drugs leading to the overdose, (2) when S.W. began acting erratically after taking the drugs, Hudson abandoned him, and (3) S.W. was ultimately hospitalized. The district court concluded that, given these commonalities, the incidents were markedly similar.

Hudson advances two arguments why the two incidents were not sufficiently similar. First, Hudson argues that the first overdose was caused by heroin and the second was caused by a combination of cocaine and carfentanil, so the two acts are not similar. But there is nothing in the record establishing that S.W. took heroin the night of his first overdose; the testifying friend merely assumed that S.W. took heroin the night of S.W.’s first overdose because that was the only drug the friend ever saw S.W. use. Hudson’s first argument therefore fails.

Second, Hudson argues that the incidents differed in location because S.W.’s first overdose took place in a friend’s apartment while the second overdose took place in an alley. But *Spreigl* evidence “need not be identical in every way to the charged crime” and need only be substantially similar to be admissible as evidence of a common scheme or plan. *Ness*, 707 N.W.2d at 688 (quotation omitted). The specific place where S.W. ingested the drugs supplied by Hudson is not determinative of the similarity between the two incidents, especially given the similarities between the two.

Hudson also argues that the district court abused its discretion by admitting the evidence because the district court did not identify the specific disputed fact to which the evidence is relevant. “One of the requirements for admitting *Spreigl* evidence is that the district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014) (quotation omitted). The “precise disputed fact” in this case was the identity of the person who supplied the drugs to S.W. the day of his fatal overdose. The state presented evidence that Hudson provided the drugs that caused S.W.’s previous overdose for the purpose of proving that Hudson was the person who provided the drugs that caused S.W.’s fatal overdose. The district court order permitting the evidence appropriately identified the disputed fact of who provided the drugs to S.W. as the reason that the state wanted to introduce the *Spreigl* evidence.

Hudson next argues that the district court improperly determined that the probative value of S.W.’s earlier overdose was not outweighed by its potential unfair prejudice. Unfair prejudice “is not merely damaging evidence, even severely damaging evidence;

rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). In balancing the probative value of *Spreigl* evidence against its potential prejudicial effect, courts balance the relevance of the prior bad act and “the State’s need to strengthen weak or inadequate proof in the case” against the risk that the jury will use the evidence as propensity evidence. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

Hudson argues that the *Spreigl* evidence of S.W.’s initial overdose had little probative value because it was not relevant to the state’s case, and that the risk of unfair prejudice was strong because the jury would likely use the evidence as propensity evidence. But Hudson previously supplying drugs to S.W. is highly relevant to establish that Hudson was the one who gave S.W. the drugs that caused his death. This is especially so given that Hudson denied ever selling drugs in Minnesota. Further, the district court mitigated the evidence’s prejudicial impact by giving a cautionary instruction before the evidence’s introduction during trial.²

² Hudson argues that this cautionary instruction and the other limiting instructions that the district court gave regarding *Spreigl* evidence improperly highlighted the *Spreigl* evidence and made it more likely that the jury improperly relied on it during its deliberation. But, on appeal, we assume that jurors listened to and followed all instructions from the district court. See *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). In addition, the limiting instructions were not plainly erroneous. Because Hudson did not object to the instructions during trial, we review the instructions for plain error. See *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). The supreme court has affirmed the use of the pattern *Spreigl* limiting instructions used in this case. See *Ture v. State*, 681 N.W.2d 9, 18-19 (Minn. 2004). Thus, the district court’s use of the limiting instructions was not plain error.

2. Evidence Regarding the Investigation into A.H.'s Death

Hudson also argues that the district court erred by allowing the state's witnesses to refer to "the investigation into A.H.'s death" when discussing certain cell-phone evidence. He contends that the phrase implied that Hudson was involved in A.H.'s death and that it was inadmissible *Spreigl* evidence.

Hudson's argument is unpersuasive. *Spreigl* evidence is "[e]vidence of another crime, wrong, or act." Minn. R. Evid. 404(b)(1). Here, the evidence that Hudson challenges is the description of how police found evidence connecting Hudson to S.W.'s death; the district court excluded evidence purporting to link Hudson to A.H.'s death. The evidence explaining the source of the cell-phone records was not evidence of another bad act by Hudson. Moreover, the district court reasonably determined that introducing the fact that A.H. had died was necessary to explain to the jury why A.H. did not appear in court to testify about his text messages with Hudson. Even if the evidence were considered *Spreigl* evidence, the district court did not abuse its discretion in admitting it because the evidence was probative of Hudson as the source of drugs to S.W. and the district court's careful limitations on the evidence regarding A.H.'s death mitigated any unfairly prejudicial impact.

3. Evidence that Hudson Sold Drugs to Multiple People

Hudson contends that evidence that he sold drugs to multiple people was also improper propensity evidence. During trial, the state sought to introduce testimony from three persons to whom Hudson sold heroin around the time of S.W.'s death. The state also sought to introduce text messages between Hudson and A.H. arranging heroin sales to A.H.

by Hudson. The district court ruled that the witness testimony and the text messages with A.H. were admissible *Spreigl* evidence because the evidence tended to prove Hudson's identity as the supplier of drugs to S.W. on March 19, 2017.

Hudson argues that this *Spreigl* evidence was not probative of Hudson's identity as the person who supplied the drugs to S.W. because each witness testified that Hudson sold them heroin and not a mixture of cocaine and carfentanil, which is what killed S.W. This argument misconstrues how the state used the *Spreigl* evidence to prove Hudson's identity. The state argued that Hudson did not realize that he sold S.W. cocaine and carfentanil, and not heroin, the night that S.W. overdosed. Thus, the fact that Hudson sold cocaine and carfentanil to S.W. and heroin to the three testifying witnesses and to A.H. is not inconsistent with the state's case.

The probative value of this evidence was not outweighed by its potential for unfair prejudicial impact. Again, Hudson supplying drugs to S.W. and several others in Minnesota around the same time that S.W. died was highly relevant to proving the identity of S.W.'s supplier on March 19, 2017, especially because Hudson denied ever selling drugs in Minnesota. And the district court provided a cautionary instruction each time the evidence was admitted and again during its final jury instructions, reducing the risk of unfair prejudice.

In sum, the district court did not abuse its discretion by admitting the evidence challenged by Hudson. Because there was no error, we need not determine whether any prejudice resulted.

Affirmed.