

*This opinion is nonprecedential except as provided by  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  
A20-1455**

State of Minnesota,  
Respondent,

vs.

Jason William Olson,  
Appellant.

**Filed March 28, 2022  
Reversed and remanded  
Jesson, Judge**

Steele County District Court  
File No. 74-CR-19-588

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

Daniel McIntosh, Steele County Attorney, Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Bryan, Judge; and Smith, John, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**JESSON**, Judge

Appellant Jason William Olson challenges his conviction of first-degree possession of methamphetamine. Respondent State of Minnesota charged Olson after police discovered a large green bag of methamphetamine concealed in a car occupied by Olson and two others. All three people denied ownership of the green bag. At Olson's trial, the state introduced evidence of eight former convictions for controlled-substance offenses and four photographs depicting Olson using methamphetamine. Olson argues that he is entitled to a new trial because the admission of these 12 prior bad acts was unfairly prejudicial. Because we agree that the introduction of the bad-acts evidence affected the fairness of Olson's trial, we reverse and remand for a new trial.

### **FACTS**

The events underlying the charge against Olson occurred on April 15, 2019. Testimony at trial established that, on that day, Olson pulled into a Target parking lot in Owatonna. Olson, his then-girlfriend, and another friend were on the way to Colorado where Olson had a court date. But after they stopped at a Target store to take a break, the girlfriend's car would not start. While Olson and the friend tried to get the car's hood open, the girlfriend went back into Target to look for someone to assist with jump-starting the car. This alerted the suspicions of a shopper, who called the police.

When the police arrived, they spoke with Olson and discovered that he had a felony warrant. The officers arrested Olson. When officers searched the car with the assistance of a drug-detecting dog, they discovered controlled substances in three places. The friend

later admitted to possessing a bag of methamphetamine found underneath the passenger's seat, and the girlfriend admitted to possessing ecstasy pills found in her purse. But police also found a green bag containing a large amount of methamphetamine that had been concealed in the engine compartment. No one admitted to possessing the contents of the green bag.

In the course of searching Olson and the car, police found several items linking Olson to the green bag and the methamphetamine inside. He had about \$10,000 cash in his pocket. A backpack in the backseat of the car contained several items of interest to police: a \$1,000 receipt for a wire transfer bearing Olson's name, a butane torch of a kind commonly used to smoke methamphetamine, vinyl tubing with methamphetamine residue, and two digital scales. Inside the green bag, officers also found a 50-gram calibration weight. The two scales in the backpack required a calibration weight.

The state charged Olson with first-degree possession of a controlled substance, alleging that he owned the green bag. The central issue at trial was whether Olson constructively possessed the contents of that bag. Before trial, the state noticed its intent to admit evidence of 12 prior bad acts by Olson: eight prior controlled-substance convictions and four photographs of Olson and the girlfriend smoking what appeared to be methamphetamine using a butane torch like the one in Olson's backpack. Over Olson's objection, the district court admitted all 12 prior bad acts into evidence.

At trial, the state argued that Olson constructively possessed the methamphetamine on the basis of his direct possession of \$10,000 cash and the items in the backpack. The state introduced the four photographs and the eight prior convictions: (1) fifth-degree

possession<sup>1</sup> in 1994, (2) fifth-degree possession in 2004, (3) third-degree possession in 2004, (4) first-degree attempt to manufacture in 2007, (5) fifth-degree possession in 2012, (6) fifth-degree possession in 2013, (7) fifth-degree possession in 2017, and (8) possession with intent to distribute in 2019, in Colorado.

Olson called his girlfriend to testify. Olson's girlfriend testified that she bought the car in which the green bag was discovered the day before Olson's arrest. She claimed that the large sum of cash was hers and that Olson carried it for her. She also testified that Olson was not involved in concealing the methamphetamine in the engine compartment of the car. The jury found Olson guilty of first-degree controlled-substance possession.

Olson appeals.

## DECISION

The central question before us is whether the district court abused its discretion by allowing the state to introduce 12 pieces of other-acts evidence including Olson's prior controlled-substance convictions and photographs of Olson and his girlfriend apparently smoking methamphetamine. Evidence of past crimes or prior uncharged conduct (that is, prior bad acts) is not admissible to show the defendant's bad character or suggest that the defendant's conduct conformed to that character in a given situation. Minn. R. Evid. 404(b). However, such evidence may be admissible for another purpose, such as to show motive, opportunity, intent, plan, knowledge, identity, or absence of mistake.<sup>2</sup> *Id.* The

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<sup>1</sup> The 1994 conviction was for possessing marijuana. All the other convictions involved methamphetamine, and all, save the last, occurred in Minnesota.

<sup>2</sup> This kind of evidence is commonly referred to as *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

danger of admitting this evidence is that the jury may convict the defendant on the basis of the past crimes or other bad acts or a perceived propensity to commit the crime, and not because the state proved the defendant's guilt of the charged crime beyond a reasonable doubt. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006); *State v. Spreigl*, 139 N.W.2d 167, 172 (Minn. 1965).

Here, Olson contends that the state used the evidence of his prior convictions and the photographs for an improper purpose: to show that he had the propensity to possess controlled substances. The state counters that the convictions and photographs both established that Olson knew what methamphetamine was and that it was illegal to possess and rebutted his alternative-perpetrator defense.<sup>3</sup>

To receive a new trial, Olson must show both that the district court abused its discretion by admitting the evidence and that he was thereby prejudiced. *State v. Campbell*, 861 N.W.2d 95, 102 (Minn. 2015). We begin our analysis by considering whether the district court abused its discretion by admitting the 12 pieces of bad-acts evidence and then turn to whether the admission of these prior bad acts prejudiced Olson.

#### *Admission of bad-acts evidence*

Before evidence of a prior crime or other bad act may be admitted at trial, five requirements must be satisfied:

1. the state must notice its intent to admit the evidence,
2. the state must specify what the evidence is offered to prove,
3. there must be clear and convincing evidence that the defendant committed the prior act,
4. the evidence must be relevant and material, and

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<sup>3</sup> At trial, Olson argued that his friend and girlfriend were alternative perpetrators.

5. the probative value of the evidence must not be outweighed by the potential for prejudice.

*Ness*, 707 N.W.2d at 685-86. In determining whether to admit the evidence, the district court must conduct a thorough examination of the purpose for which the evidence is offered. *Id.* at 686. After the district court is satisfied that the purpose for which the evidence is being offered is one of the exceptions to rule 404(b)'s general prohibition of prior bad-acts evidence, then the court must determine whether the probative value of the evidence is outweighed by its potential to be unfairly prejudicial. *Id.*

At trial, Olson challenged the admission of the prior bad-acts evidence under only the fourth and fifth prongs of the *Ness* test: the relevance prong and the balancing prong. Likewise, on appeal Olson argues that the district court abused its discretion in its application of these two prongs.

In concluding that the prior bad-acts evidence was admissible, the district court reasoned:

Inasmuch as [Olson] has expressed an intention to cross examine State's witnesses for the purpose of mounting an alternative perpetrator defense, evidence possessed by the State *tending to show that [Olson] had knowledge of*, and was not by accident or mistake in constructive possession of controlled substances, is evidence that is relevant and potentially helpful to the jury. . . . The photographs submitted by the State ostensibly establish that [Olson] is familiar with implements of illegal drug use (a torch is not required to ignite an e-cigarette), and knows that [the girlfriend] also had that familiarity with the same. Therefore this evidence may be *helpful to the jury in determining whether [Olson] knowingly possessed methamphetamine* individually or in concert with [the girlfriend] on the date of this offense.<sup>4</sup>

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<sup>4</sup> (Emphasis added.)

In reviewing the district court’s decision, we turn first to the fourth prong: whether the evidence is relevant and material to the state’s case. To convict Olson of first-degree possession of a controlled substance,<sup>5</sup> the state had to prove that he (1) knowingly possessed the methamphetamine, (2) knew the substance was a controlled substance, and (3) possessed the substance without lawful authority. Looking at each prior bad act in isolation, we conclude that all but one of the prior bad acts were relevant to the issue of knowledge.<sup>6</sup> While Olson did not directly contest whether he knew that methamphetamine was illegal to possess, he also did not stipulate to that fact. *Cf. Coleman*, 944 N.W.2d at 481 (noting defendant’s admission that he knew danger of driving while intoxicated did not undermine relevance of prior alcohol-related hit-and-run incident). As a result, the burden of proving Olson’s knowledge that methamphetamine was a controlled substance remained with the state.

Here, the prior convictions prove that Olson was aware that methamphetamine was illegal to possess. *See id.* (allowing evidence of prior convictions to prove knowledge). Likewise, the photographs are relevant to show Olson’s knowledge of methamphetamine.

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<sup>5</sup> Minn. Stat. § 152.021, subd. 2(a)(1) (2018).

<sup>6</sup> The 1994 possession-of-marijuana conviction does not meet the relevancy test. When considering whether to admit prior bad-act evidence, the district court must identify the “precise disputed fact” to which that evidence would be relevant. *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014) (quotation omitted). To determine whether the prior bad act is relevant to the disputed fact, the court should consider whether there is a sufficient nexus of time, place, or modus operandi between the charged offense and the prior bad act. *State v. Coleman*, 944 N.W.2d 469, 481 (Minn. 2020). The district court here did not explicitly address the nexus of time, place, or method between the instant offense and the convictions. And the first conviction, which was 25 years old at the time of the offense and did not involve methamphetamine, clearly does not meet this test.

Accordingly, most of the prior bad-acts evidence admitted by the district court was relevant.<sup>7</sup>

Having determined that the district court's relevancy determination regarding 11 of the 12 prior bad acts was not an abuse of discretion, we turn to the district court's assessment of the fifth *Ness* prong: whether the probative value of the evidence is outweighed by its potential for unfair prejudice. 707 N.W.2d at 686. Specifically, the district court must balance the relevance of the prior bad acts and the state's need to strengthen weak or inadequate proof against the risk of the evidence being used for propensity purposes. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). If the admission of bad-acts evidence under this test is a close call, the evidence should be excluded. *Ness*, 707 N.W.2d at 685. Similarly, prior bad-acts evidence should be excluded if it is cumulative. *State v. Ture*, 681 N.W.2d 9, 16 (Minn. 2004).

Here, the district court did not explicitly conduct the balancing test required by *Ness*. Olson argues that this failure alone constitutes an abuse of discretion. *See Ness*, 707 N.W.2d at 690 (requiring district court to "weigh the probative value of the evidence on disputed issues in the case against its potential for unfair prejudice"). The state argues that we can infer that the district court conducted this balancing test because the parties'

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<sup>7</sup> But the prior bad-acts evidence was not relevant to rebut Olson's alternative-perpetrator defense. Such evidence may be admissible if relevant to exculpate the alleged alternative perpetrators. *State v. Jones*, 753 N.W.2d 677, 687 (Minn. 2008) (noting that alternative-perpetrator defense opens the door to state presenting evidence tending to exculpate alleged alternate perpetrators). But Olson's prior convictions and the photographs do not exculpate the other occupants of the car except through the kind of propensity reasoning prohibited by rule 404(b).

briefs before the district court extensively discussed the *Ness* factors. *See State v. McDonnell*, 686 N.W.2d 841, 845 n.1 (Minn. App. 2004) (inferring findings from district court's conclusions), *rev. denied* (Minn. Nov. 16, 2004). Additionally, the state relies on the district court's decision to give a limiting instruction as evidence that it considered the risk of unfair prejudice. While our review would have benefited from explicit balancing by the district court on the record, we can infer that the court implicitly determined that the probative value of the prior bad acts was not outweighed by the danger of prejudice.

We disagree with that determination. The probative value of the prior bad acts was limited. The central issue at trial was whether Olson constructively possessed the methamphetamine—not whether he knew that methamphetamine was illegal. More fundamentally, the volume of the prior bad-acts evidence was disproportionate to its limited materiality. One prior conviction would have established Olson's knowledge that methamphetamine was illegal. One photograph would have shown Olson to be familiar with the consumption of methamphetamine.<sup>8</sup> Further, the state's need for the evidence was

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<sup>8</sup> While the state's primary relevancy argument regarding the photographs focused on evidence of Olson's knowledge, the state alternatively argues that the photographs linked Olson to the backpack, which contained methamphetamine paraphernalia, which in turn linked Olson to the green bag containing methamphetamine. The district court did not rely on this argument when assessing the relevancy of the photographs under the fourth *Ness* prong. But even if we consider the photographs relevant to link Olson to the green bag, when the balancing test is considered under the fifth *Ness* prong, the same result is reached. A single photograph would have served this purpose. *See Ture*, 681 N.W.2d at 16 (cautioning district courts against admitting cumulative prior bad-acts evidence). Further, the state's need for the photographs was low because documents in the backpack bearing Olson's name connected him to the backpack, and the torch, tubing, and scales in the backpack linked it—and therefore Olson—to the green bag containing the

slight. *Fardan*, 773 N.W.2d at 319; *Ness*, 707 N.W.2d at 690 (stating state's need for the evidence is major factor in balancing probative value and prejudice under this prong). In sum, the collective probative value of this evidence was low.

Conversely, the potential for unfair prejudice posed by the prior bad-acts evidence was high. In total, the prior convictions and photographs painted a picture of Olson as a person with a long history of involvement with the criminal-justice system for drug-related offenses. Given that history, it would be all too easy for the jury to infer that because Olson had committed drug offenses before, he must have been the one out of the three occupants of the car who possessed the green bag of methamphetamine this time. *See Ness*, 707 N.W.2d at 685 (stating evidence of defendant's bad acts is not admissible to show defendant had propensity to act similarly). Or the jury could have concluded that Olson was a proper candidate for punishment based on his prior convictions alone. *See id.* And the prejudicial potential of the bad-acts evidence increased with each piece admitted. Given the high risk of unfair prejudice, the district court abused its discretion by admitting 12 pieces of prior bad-acts evidence.

Still the state argues that the district court's admittance of the prior bad-acts evidence was justified under the supreme court's decisions in *State v. Rainer*, 411 N.W.2d 490 (Minn. 1987), and *Ture*, 681 N.W.2d at 15-16. We are not persuaded. In *Rainer*, when the defendant claimed that he accidentally shot his girlfriend, the district

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methamphetamine. The state's evidence connecting Olson to the backpack was not weak. *See Fardan*, 773 N.W.2d at 319 (noting district courts must balance state's need to bolster weak evidence against potential prejudice).

court allowed the state to present evidence of five prior assaults against the defendant's former wives. 411 N.W.2d at 493, 496. The supreme court affirmed Rainer's conviction because the incidents showed a "repeating pattern of very similar conduct." *Id.* at 497.

Here, the prior bad acts do not show a repeating pattern of similar conduct because they vary substantially in time, place, and modus operandi. The convictions span from 2004 to 2019, none of them occurred in Steele County (the location of the present offense), and none involved Olson concealing controlled substances within the engine compartment of a car. Further, none of the prior convictions involve Olson possessing an amount of methamphetamine similar to the amount he was convicted of possessing here.

And in *Ture*, the state presented copious evidence in a murder trial concerning a prior murder of a similar victim. 691 N.W.2d at 12-14. The supreme court agreed with *Ture* that the evidence of the prior murder was "highly prejudicial" and cautioned district courts to not allow the state, when presenting prior bad-acts evidence, "to present evidence that is unduly cumulative with the potential to fixate the jury on the defendant's guilt of the other crime." *Id.* at 16. But because the defendant failed to object at trial, the supreme court declined to second guess the district court's decision to admit the evidence. *Id.* Because *Ture* strongly acknowledges the danger of presenting cumulative prior bad-acts evidence, and, unlike the defendant in *Ture*, Olson objected here, *Ture* does not persuade us that the district court was within its discretion to admit the evidence.

Finally, the state contends that Olson forfeited his argument that the cumulative effect of the prior bad-acts evidence outweighed its probative value. Because Olson objected to the introduction of each and every one of the 12 pieces of prior bad-acts

evidence, we disagree. That Olson did not use the word “cumulative” in objecting does not amount to forfeiture.

In sum, the district court abused its discretion by admitting evidence of all 12 prior bad acts. While most of the bad acts, considered individually, were relevant, the probative value of those bad acts was low both because whether Olson knew methamphetamine was illegal was not directly contested at trial and because the state’s case concerning knowledge was not weak. The potential for unfair prejudice was high because the numerous convictions painted Olson as a repeat controlled-substance offender. And the amount of the prior bad-acts evidence admitted was disproportionate to its low probative value.

### *Prejudice*

Having determined that the district court erred by admitting the prior bad-acts evidence, we consider whether Olson demonstrated prejudice. To determine this, we consider “whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). In making this determination, “we consider whether the district court provided a cautionary instruction, whether the State dwelled on the evidence in closing argument, and whether the evidence of guilt was strong.” *State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017).

Here, it is reasonably possible that the prior bad-acts evidence significantly affected the jury’s verdict. We acknowledge that the district court provided cautionary instructions before the evidence was received and again before closing arguments. Though the court cautioned the jury that it could not convict Olson on the basis of the prior convictions, the court did not explain that the jury could use those prior convictions only to determine

whether Olson knew that the substance in the green bag was methamphetamine or knew methamphetamine was illegal. Accordingly, the court's instruction did not fully address the risk of the jury using the prior bad-acts evidence as propensity evidence.

Next we consider how central the prior bad-acts evidence was to the state's case. The risk of prejudice is lessened if the state does not rely heavily on the evidence. *Rossberg*, 851 N.W.2d at 616. Here, while the bad-acts evidence did not take central stage, neither was it in the wings. The prosecutor used the prior convictions as a theme to tie his opening and closing arguments together. He argued that the convictions would show that Olson understood the "significance and presence" of the methamphetamine in his opening argument. And in his closing argument, the prosecutor argued that the methamphetamine was concealed by someone with "savvy" or "skill." While he did not argue that Olson's prior convictions evinced just that sort of savvy or skill, the inference was there. Further, in his closing remarks the prosecutor argued:

And [Olson has] also attempted to manufacture methamphetamine. He is very familiar, and I think that's probably an understatement. He is knowledgeable about methamphetamine. And it tells you that he would have a reason to know and to appreciate and to value a large bag of methamphetamine that's in the car that he was driving.

And those prior cases also tell you he clearly knew that possession of methamphetamine was illegal.

Those other cases can also be helpful in the idea of whether someone else did it, and they can show you that Mr. Olson's presence here with this large quantity of methamphetamine, large quantity of cash, was not just by mistake or accident.

In sum, the state's reliance on the bad-acts evidence in its opening and closing arguments contributed to the risk of unfair prejudice.

Finally, we evaluate whether there was overwhelming evidence of guilt. *Griffin*, 887 N.W.2d at 262. In *Griffin*, the evidence was overwhelming because the victim's blood and DNA were found on Griffin's shoes and shorts. *Id.* In *Campbell*, the evidence was overwhelming because one eyewitness connected Campbell to the outfit worn by the shooter, and another testified to picking up Campbell fifteen minutes after the shooting without the distinctive jacket that he was wearing upon being dropped off. 861 N.W.2d at 103.

By contrast, here the state's circumstantial evidence was strong but not overwhelming. Of the three occupants of the car, only Olson had a significant amount of cash in his possession, methamphetamine paraphernalia, and the scales to which the calibration weight corresponded. But both of the other occupants of the car admitted to possessing controlled substances, and the girlfriend—and to a lesser extent the friend—had as much access to the engine compartment of the car as did Olson. The state's evidence was not so strong as to preclude the reasonable possibility that the prior bad-acts evidence significantly affected the jury's verdict.

In sum, admitting eight prior convictions and four photographs to prove a point that was not directly disputed created an unjustifiable risk that the jury would use the evidence as propensity evidence. Because he has shown that the district court abused its discretion

by admitting the evidence and that there is a reasonable possibility that the evidence significantly affected the jury's verdict, Olson is entitled to a new trial.<sup>9</sup>

**Reversed and remanded.**

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<sup>9</sup> Because we conclude that Olson is entitled to a new trial because of the introduction of the prior bad-acts evidence, we do not reach the other issues that he raised concerning the district court's polling of the jury, or his pro se arguments that were not supported by citations to legal authority. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (rejecting unsupported claims).