

*This opinion is nonprecedential except as provided by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
A22-1044**

State of Minnesota,
Respondent,

vs.

Steven Douglas Nelson,
Appellant.

**Filed June 26, 2023
Affirmed
Johnson, Judge**

Isanti County District Court
File No. 30-CR-21-253

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

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

An Isanti County jury found Steven Douglas Nelson guilty of second-degree arson.
We conclude that the evidence is sufficient to support the conviction, that the district court
did not err by admitting evidence of location data derived from Nelson's ankle monitor,

and that the district court did not commit reversible error by admitting evidence of Nelson's prior conviction of arson. Therefore, we affirm.

FACTS

In November 2020, a fire destroyed a rural house on a 47-acre lot near the city of Cambridge. The house was owned by D.M., who was living elsewhere while remodeling the house with the assistance of two employees, one of whom was Nelson.

In April 2021, after a five-month-long investigation, the state charged Nelson with second-degree arson, in violation of Minn. Stat. § 609.562 (2020). The case was tried to a jury on three days in November 2021. The state called 11 witnesses and introduced 28 exhibits. The evidence introduced at trial may be summarized as follows.

At approximately 2:00 a.m. on November 20, 2020, two persons placed calls to 911 to report the fire. When a deputy sheriff and the fire chief arrived on the scene a few minutes later, the house was engulfed in flames, and the fire had progressed to the point that the house could not be saved. The fire chief estimated that the house was "90 percent consumed" when he arrived at 2:09 a.m. Two diesel fuel containers and a gasoline container were found on the concrete floor of the garage. The fire chief interviewed D.M. later that day. D.M. expressed concern that Nelson may have set the fire. D.M. said that he did not have any suspicions concerning his other employee.

D.M. testified at trial that, a few days before the fire, Nelson said that he could "get away with burning people's houses for them and making money." D.M. also testified that, while they worked together, Nelson said that he was "hearing voices." On the day after the fire, when Nelson visited D.M. in his office to pick up a paycheck, Nelson said that he

was hearing noises that D.M. knew did not exist. D.M., Nelson, and Nelson's mother agreed that he needed help, so D.M. drove him to a hospital. Because of Nelson's strange behavior and statements, D.M. "had a feeling" that Nelson had set the fire and "felt pretty confident that it was him."

The sheriff's office's investigator—who had 26 years of experience as a volunteer firefighter and was a member of a statewide arson task force—testified at trial that, in his estimation, the fire started approximately one to two hours before the first deputy arrived on the scene and took photographs. Because the house was completely destroyed, it was impossible to determine the fire's place of origin. The investigator made a preliminary determination that the cause of the fire was suspicious.

The investigator was familiar with Nelson because of a prior investigation of an arson in Pine County, for which Nelson was convicted. The investigator interviewed Nelson later on the same day as the fire. Nelson told the investigator that he was not present at D.M.'s house during the night of the fire and that he saw the burned-down house when he showed up for work the following morning. The investigator described Nelson as "nervous" and "fidgety" during the interview.

The investigator contacted Nelson's probation agent to request information generated by an ankle monitor that Nelson was required to wear as a condition of his probation. The probation agent reviewed the ankle monitor's location data and informed the investigator that Nelson was present at the scene of the fire during the middle of the night, shortly before the fire was first reported. The probation agent testified at trial about the ankle monitor that Nelson wears, the data that it generates, and the software that allows

him to determine a probationer's location, either in real time or at a prior time. The probation agent testified that, based on the data received from Nelson's ankle monitor, Nelson was at D.M.'s house and the property surrounding the house from 10:26 p.m. to 12:18 a.m. on the night of the fire. During the probation agent's testimony, the state introduced exhibits consisting of aerial photographs with green dots marking Nelson's specific location on or near D.M.'s property at particular times during the relevant time frame.

Nelson did not testify at trial and did not call any witnesses or introduce any exhibits. The jury found him guilty. The district court imposed a sentence of 51 months of imprisonment.

Nelson appeals. The state has not filed a responsive brief. Nonetheless, we will resolve the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

DECISION

I. Sufficiency of the Evidence

Nelson first argues that the evidence is insufficient to support the conviction.

A person is guilty of second-degree arson if he or she “unlawfully by means of fire or explosives, intentionally destroys or damages any building” that is not being used as a dwelling. Minn. Stat. § 609.562 (2020); *see also* Minn. Stat. § 609.561 (2020). Nelson argues that the evidence is insufficient for two reasons: first, the state did not prove that he—as opposed to some other person—set fire to the house, and, second, if the state proved that he started the fire, the state did not prove that he did so intentionally.

In analyzing an argument that the evidence is insufficient to support a conviction, this court ordinarily undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will not overturn a verdict if the jury, “acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

The above-described standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is “[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (alteration in original) (quotation omitted). Circumstantial evidence, on the other hand, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). A conviction depends on circumstantial evidence if proof of the offense, “or a single element of the criminal offense, is based solely on circumstantial evidence.” *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014).

If a conviction depends on circumstantial evidence, we apply a heightened standard of review with a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). “The first step is to identify the circumstances proved.” *Id.* “In identifying the circumstances proved, we assume that the jury resolved any factual disputes in a manner that is consistent

with the . . . verdict.” *Id.* The second step is to “examine independently the reasonableness of [the] inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (alteration in original) (quotations omitted). At the second step, we do not give deference to the jury’s verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Nelson’s conviction is supported by circumstantial evidence. In his appellate brief, Nelson identifies the following circumstances proved:

(1) before the fire, Nelson told [D.M.] he was hearing voices and believed he could make money by burning people’s houses for them; (2) Nelson was at [D.M.]’s property from about 10:30 p.m. to 12:15 a.m.; (3) the fire started sometime between midnight and 1:00 a.m.; [and] (4) Nelson lied about being at [D.M.]’s house the night of the fire^[1]

We adopt Nelson’s identification of these four circumstances proved and add a few more: Nelson was familiar with the house because he had worked there on a remodeling project. On the day before the fire, the house was mostly empty, with only a few electronic appliances that might have spontaneously caused a fire. Firefighters and sheriff’s deputies found gasoline and diesel fuel containers on the floor of the garage.

¹Nelson also purports to identify another circumstance proved: that “investigators were unable to determine the origin or cause of the fire.” The record shows that, because the house was completely destroyed, it was impossible for investigators to determine the place of origin of the fire. On the day of the fire, the investigator did not make a conclusive determination about the cause of the fire; he made only a preliminary determination that the cause of the fire was suspicious.

At the second step of the circumstantial-evidence analysis, we initially seek to “determine whether the circumstances proved are consistent with guilt.” *See Moore*, 846 N.W.2d at 88 (quotations omitted). Several circumstances proved strongly suggest that Nelson is guilty. He was familiar with the house. He had made statements about burning down other people’s houses. The data derived from his ankle monitor shows that he was present at the house late at night when the fire likely started. In addition, the presence of gasoline and diesel fuel containers in the garage indicates that two different types of fuel were available for use as an accelerant. Furthermore, there were very few electrical appliances in the house that could have spontaneously caused a fire. Thus, one reasonable inference from the circumstances proved is that Nelson intentionally set fire to D.M.’s house.

At the second step of the circumstantial-evidence analysis, we also seek to determine whether the circumstances proved are “inconsistent with any rational hypothesis except that of guilt.” *See id.* Nelson contends that the circumstances proved are consistent with the hypothesis that he “went to [D.M.]’s property not to set fire to [D.M.]’s house but for some other purpose, *i.e.*, to pilfer equipment or materials, and that the fire started sometime after he left the property.” He also contends that the circumstances proved “do not exclude the possibility that the fire, whether it started while Nelson was there or after he left, was accidental.” The circumstances proved, however, conflict with both of these contentions. Only a few days before the fire, Nelson had talked about burning down other people’s houses. In addition, it is mere speculation that any other person also was present at the house at approximately the same time on the night of the fire. Furthermore, Nelson

does not explain how he could have started the fire unintentionally. Consequently, it would not be rational for the jury to adopt any of Nelson's alternative hypotheses.

Thus, the evidence is sufficient to support the conviction.

II. Ankle-Monitor Location Evidence

Nelson also argues that the district court erred by admitting the state's evidence of location data derived from his ankle monitor. Specifically, Nelson argues that the district court erred by admitting the exhibits produced by Nelson's probation agent and by admitting the probation agent's testimony about the exhibits. He contends that "the state failed to establish that the . . . monitor and associated software were operating properly and accurately reporting Nelson's location."

A.

This issue first arose during a pre-trial conference one day before trial began. Nelson's attorney expressed concerns about a lack of foundation for the probation agent's testimony concerning the ankle monitor's location data. The district court reserved ruling on the issue until the probation agent's testimony.

The issue arose again during a recess on the second day of trial, shortly before the probation agent's testimony. After the prosecutor explained the nature of the evidence, the district court stated that the admissibility of the evidence should be determined by rule 901(b)(9) of the rules of evidence. Nelson's attorney did not dispute the applicability of that rule. Rather, Nelson's attorney stated that he had concerns about the "calibration" and "accuracy" of the monitoring system used by the probation agent and questioned whether

the probation agent “is equipped to testify to” that subject. The district court reserved ruling on Nelson’s objection until the probation agent testified.

The state then called the probation agent, who is employed by the state department of corrections. He testified about his work experience, his caseload, and his means of ensuring probationers’ compliance with the conditions of their probation, which includes location monitoring. At the time of trial, he was supervising four probationers who were required to wear ankle monitors. He testified that the state contracts with a company known as BI Monitoring, which owns the ankle monitors and provides software that allows probation agents to monitor the location of a probationer. He testified that, once an ankle monitor is installed, he typically checks on a probationer every morning and every afternoon by using his computer to access a website, which is updated every 15 minutes. If a probationer’s ankle monitor loses contact with a cell tower, the ankle monitor continues to track the individual’s location and later can be “backtrack[ed]” so that all location data is available. The probation agent can access information about a probationer’s prior locations, as far back as the date on which the ankle monitor was installed. The ankle-monitor software allows the probation agent to view an aerial map with green dots indicating the probationer’s location at a particular time. The probation agent can click on each green dot to see the address, speed, and direction of the probationer’s movement at a particular date and time. Nelson’s probation agent testified that, in his experience, the ankle-monitor system is “extremely accurate.”

When the prosecutor offered exhibits 14 through 20, which reflected location data derived from Nelson’s ankle monitor during the time period when the fire likely started,

Nelson's attorney asserted an objection based on lack of foundation. The district court initially said "overruled" and then said "noted and reserved." Nelson's attorney did not renew the objection, and the district court did not make any additional ruling with respect to exhibits 14 through 20. The district court's exhibit log states that exhibits 14 through 20 were "received over objection." The exhibits show that Nelson approached D.M.'s property in a southerly direction at 10:26 p.m. at a speed of nine miles per hour, was at or very close to D.M.'s house shortly after arriving and at numerous other times, and departed D.M.'s property in a northerly direction at 12:17 a.m. at a speed of 14 miles per hour.

B.

Nelson contends that the ankle-monitor location evidence is inadmissible under rule 901 of the rules of evidence. That rule provides that "authentication or identification" is a "condition precedent to admissibility." Minn. R. Evid. 901(a). The requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(a). The requirement may be satisfied in multiple ways, ten of which are illustrated by the rule itself. *See* Minn. R. Evid. 901(b).

One way to satisfy the authentication or identification requirement is to introduce "[e]vidence describing a process or system used to produce a result and showing that the process or system produces an accurate result." Minn. R. Evid. 901(b)(9); *see also In re Welfare of S.A.M.*, 570 N.W.2d 162, 164-67 (Minn. App. 1997) (affirming admission of surveillance video-recording). This court applies an abuse-of-discretion standard of review to a district court's ruling that the requirement of rule 901(b)(9) is satisfied. *Id.* at 164.

As described above, the probation agent provided detailed testimony concerning the ankle-monitor system and the process by which he extracts information from it. The probation agent testified unequivocally that the information produced by the system is “extremely accurate.” The probation agent’s testimony is sufficient to “describ[e] a process or system used to produce a result and show[] that the process or system produces an accurate result.” *See* Minn. R. Evid. 901(b)(9).

Nelson challenges the district court’s ruling by making a single, narrow argument: that the state did not ask the probation agent “whether the monitors needed calibration and regular maintenance to produce accurate information and, if so, whether the required calibration and maintenance had been performed on Nelson’s monitor.” Nelson’s trial attorney questioned the probation agent about those issues during cross-examination. When asked whether he “calibrates” ankle monitors, the probation agent stated, “No, I’m not sure if it needs calibration.” When asked whether he performs maintenance on ankle monitors, the probation agent testified that BI Monitoring does so, unless a probationer needs a replacement battery or charger, which the probation agent can provide. When asked whether he fixes damaged ankle monitors, the probation agent testified that if an ankle monitor is damaged, he calls BI Monitoring, which will fix or replace it.

The probation agent’s testimony is a sufficient foundation with respect to the repair and maintenance of BI Monitoring’s ankle-monitor system. Nelson does not explain why an ankle-monitor system requires “calibration” or why foundational testimony on that topic should be required. We are aware that radar speed-meters require calibration to ensure their accuracy. *See State v. McDonough*, 225 N.W.2d 259, 260 (Minn. 1975); *State v.*

Gerdes, 191 N.W.2d 428, 431-33 (Minn. 1971); *State v. Dow*, 352 N.W.2d 125, 127 (Minn. App. 1984). That requirement was imposed by caselaw decades ago because calibration was required by a manufacturer of radar speed-meters. *See Gerdes*, 191 N.W.2d at 429 & n.1, 431, 432-33. But there is neither legal authority nor record evidence that “calibration” is required to ensure the accuracy of BI Monitoring’s ankle monitors. Accordingly, the foundation laid by the probation agent is not inadequate for lack of testimony about calibration.

Thus, the district court did not err by overruling Nelson’s objection to the state’s evidence of location data derived from his ankle monitor.

III. Evidence of Prior Arson Conviction

Nelson last argues that the district court erred by allowing the state to introduce evidence that he had a prior arson conviction.

A.

One week before trial, the state gave notice of its intent to offer *Spreigl* evidence of Nelson’s prior arson conviction for “proof of intent, preparation and plan, proof of knowledge, proof of absence of mistake or accident.” The matter was discussed at a pre-trial conference on the day before trial began. Nelson’s trial attorney objected to the state’s *Spreigl* evidence.

After listening to the arguments of counsel, the district court stated that “the evidence of a prior arson conviction is, by its nature, highly prejudicial.” But the district court also stated that the evidence is relevant to the extent that “the prior offense led to the investigation in this case.” The district court concluded that, if the evidence was limited to

the purpose for which the district court deemed it relevant, the probative value of the evidence would outweigh the potential for unfair prejudice. Specifically, the district court ruled that the investigator could “testify that he knew that [Nelson] was on probation for arson in Pine County,” that he conducted his investigation with that information in mind, and that he learned that there was “GPS information,” which the state intended to introduce at trial. The district court reasoned that such evidence was relevant to “explain why the investigation in this case went the way it did.” But the district court ruled that the state’s witnesses could not testify about the details of the prior arson case or any statements made by Nelson about the prior arson case.

During trial, the investigator testified on direct examination that he was familiar with Nelson. When asked why, the investigator stated, “I’m familiar with his previous contacts with law enforcement.” In response to the prosecutor’s additional questions, the investigator testified that he “was aware of a conviction out of Pine County that was very similar to this investigation” and, on follow-up, that Nelson “was convicted of arson in Pine County.” The investigator later testified that he contacted the probation agent who supervises Nelson, who shared information derived from Nelson’s ankle monitor, which showed that Nelson was at D.M.’s property during the time frame that the fire likely started.

B.

Nelson’s argument is based on a rule of evidence that provides, “Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith,” though it may be 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)(1). Evidence of other crimes or bad acts is known in Minnesota as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). Such evidence generally is inadmissible unless

- (a) the proffered evidence is relevant to an identified material issue other than conduct conforming with a character trait;
- (b) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence;
- and (c) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b)(2). This court applies an abuse-of-discretion standard of review to a district court’s admission of *Spreigl* evidence. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

Nelson acknowledges that, as a general matter, background information about an investigation by law enforcement is relevant and admissible. *See, e.g., State v. Griller*, 583 N.W.2d 736, 742-43 (Minn. 1998). But he contends that the evidence of his prior arson conviction should not have been admitted because its probative value was outweighed by its potential for unfair prejudice. *See* Minn. R. Evid. 404(b)(2). He asserts that the investigator could have testified about the course of his investigation without any reference to the prior arson conviction.

The district court’s ruling appropriately recognized the state’s interest in introducing evidence of location data derived from Nelson’s ankle monitor. To introduce evidence about the location data naturally would raise questions in juror’s minds about why Nelson was wearing an ankle monitor. But the state’s witnesses could have explained their

discovery of the ankle monitor and its location data without specifically referring to a prior conviction, let alone a prior conviction of arson—the same offense with which Nelson was charged in this case. The district court could have—and should have—limited the state’s evidence to what was minimally necessary to present its evidence of location data derived from Nelson’s ankle monitor. To inform the jury that Nelson previously had been convicted of arson allowed the jury to consider that fact as evidence of his propensity to commit arson. *See State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006); *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993); *State v. Ford*, 322 N.W.2d 611, 614-15 (Minn. 1982). The district court noted at the pre-trial conference that “the evidence of a prior arson conviction is, by its nature, highly prejudicial.” In the circumstances of this case, the unfairly prejudicial nature of the evidence of Nelson’s prior arson conviction outweighed its probative value.

Thus, the district court erred by allowing the state to introduce evidence that Nelson had a prior arson conviction.

C.

“When the district court has erroneously admitted other-acts evidence, this court must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Ness*, 707 N.W.2d at 691. “A defendant who claims the trial court erred in admitting evidence bears the burden of showing an error occurred and any resulting prejudice.” *Griffin*, 887 N.W.2d at 261.

To determine whether there is a reasonable possibility that inadmissible evidence of a prior conviction significantly affected a verdict, it is appropriate to consider three factors:

“whether the district court instructed the jury to limit the use of the other crime evidence,” “whether the State dwelled on the evidence in closing argument,” and “whether the evidence of guilt was overwhelming.” *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016) (quotation omitted).

In this case, the third factor identified in *Thao*—whether there is overwhelming evidence of guilt—is the most significant factor relevant to whether the inadmissible evidence significantly affected the verdict. The state’s evidence in this case was overwhelming. Nelson worked on D.M.’s house and, thus, was familiar with the house. Only a couple days before the fire, Nelson had said aloud that he could burn down other people’s houses. Most importantly, the state’s ankle-monitor evidence shows that Nelson was at D.M.’s house in the middle of the night during the time frame when the fire likely started. Nelson denied being present at the site at the critical time, in an interview in which he was visibly nervous and fidgety. The state’s evidence was unusually strong, which indicates that the jury would have found Nelson guilty with or without the inadmissible evidence of his prior arson conviction.

The second factor identified in *Thao*—whether the prosecutor dwelt on the evidence in closing argument—also supports the conclusion that there is not a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. Nelson does not contend that the prosecutor dwelt on the inadmissible evidence in closing argument; rather, Nelson contends merely that there was “no need for the prosecutor to dwell on” his prior conviction. It is notable that the district court proactively limited the prosecutor’s reference to Nelson’s prior arson conviction in his closing argument. During a recess shortly before

closing arguments, the district court warned the prosecutor that he could mention the prior arson conviction only to describe the course of the investigation, and the prosecutor complied with that limitation. Accordingly, the second factor does not support reversal.

The first factor identified in *Thao*—whether the district court gave the jury a cautionary instruction—further supports the conclusion that there is not a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. The district court gave the jury a cautionary instruction concerning Nelson’s prior conviction, both before the investigator testified about Nelson’s prior arson conviction and again during its final jury instructions. The district court’s cautionary instruction has been approved by supreme court caselaw and is recommended by well-accepted model jury instructions. *See Thao*, 875 N.W.2d at 839-40; *State v. Broulik*, 606 N.W.2d 64, 68-72 (Minn. 2000); *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998); Minn. Dist. Judges Ass’n, *Minnesota Practice: Jury Instruction Guides—Criminal*, § 2.01, at 18-21 (2015). The supreme court repeatedly has held that this cautionary instruction tends to reduce the probability of undue prejudice arising from inadmissible *Spreigl* evidence. *Thao*, 875 N.W.2d at 840; *Griffin*, 887 N.W.2d at 262; *State v. Campbell*, 861 N.W.2d 95, 103 (Minn. 2015); *State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008). Accordingly, the first factor also does not support reversal.

Thus, although the district court erred by allowing the state to introduce evidence that Nelson had a prior arson conviction, Nelson has not satisfied his burden of showing

that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.

Affirmed.