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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1664**

State of Minnesota,
Respondent,

vs.

Andre Leon Franklin,
Appellant.

**Filed September 30, 2024
Affirmed
Segal, Chief Judge**

Olmsted County District Court
File No. 55-CR-21-5573

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from the judgment of conviction for the promotion of prostitution, appellant argues that the district court abused its discretion in granting

respondent's motion to admit statements made by appellant about prostituting other women and statements made in a jail call. He challenges the district court's determinations that the statements were admissible as *Spreigl* evidence,¹ and also argues that the jail-call statements were inadmissible hearsay. We affirm.

FACTS

In September 2021, appellant Andre Leon Franklin met A.M.S. outside of a homeless shelter near Franklin's apartment. A.M.S. had recently been discharged from a treatment program and was staying at the shelter. A.M.S. left the shelter and went to Franklin's apartment where the two consumed alcohol together. A few days later, Franklin called 911 and reported that there was a woman with a knife who was trying to stab him. When police officers arrived, Franklin met them outside and said that there was a woman, who he identified as "Justine," inside his apartment with a knife. Franklin stated that the woman, who was identified by the officers as A.M.S., had been staying with him for a few days and had just "flipped her wig" and threatened him with a knife after accusing him of "selling" her to an upstairs neighbor.

When the officers entered Franklin's apartment, A.M.S. was in the shower and there were knives in the bathroom. A.M.S. told the officers that Franklin "sold" her to "the man upstairs," J.S., and that she felt "disgusting." Franklin waited outside for the officers to

¹ The term "*Spreigl* evidence" refers to evidence of other crimes, wrongs, or acts that are admissible under Minn. R. Evid. 404(b). See *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

remove her from the house. Both A.M.S. and Franklin were intoxicated during their interactions with law enforcement.

Franklin spoke to the two officers who waited with him outside the house. The conversation was recorded by the officers' body cameras. One of the officers asked Franklin how the incident began. Franklin explained that A.M.S. "got mad because she went upstairs and sold some p-ssy" but that he did not tell her to go "up there" and do that. He made repeated statements, however, suggesting that he was involved in prostituting other women. He made statements such as: "I'm selling these hoes" and "I'm selling these b-tches." Franklin also showed the officers his cellphone to show that he was getting phone calls and texts from other women related to prostituting them. At one point the upstairs neighbor, J.S., walked by, and Franklin asked him, "Hey, you got my money?" A.M.S. eventually left Franklin's apartment and was taken to a crisis center, where she was interviewed about what happened. Franklin was arrested and transported to jail.

In an interview at the jail, Franklin denied that he had prostituted A.M.S., but he also continued to suggest that he was involved in prostituting other women. Franklin agreed to allow law enforcement to look through his phone. Franklin's phone had a text message sent from Franklin with a picture of A.M.S. along with the statement, "This what I be running into at night." As part of the investigation, law enforcement also interviewed J.S., who indicated that when he came home on the date of the incident, Franklin said something about wanting to make \$40-\$50, and J.S. assumed "it was for sex" because Franklin had "a lady that's been with him [for] a few days." Respondent State of Minnesota charged Franklin with one count of promoting prostitution.

At a pretrial hearing held in November 2022, the state moved for the admission of the statements Franklin made to police about prostituting other women. The state also moved to admit statements made during a jail call between Franklin and his brother. In the jail call, Franklin told his brother to call “Lisa” and that she would say she’s “gonna get [Franklin] up outta there.” The brother replied, “That old (indiscernible) have to sell a lot of p-ssy there.” And Franklin responded, “Sure will.”

Franklin opposed the admission of the evidence. Franklin argued that the state failed to provide the requisite notice for the introduction of *Spreigl* evidence and that the risk of unfair prejudice outweighed any probative value. Franklin also argued that the jail-call statements were inadmissible hearsay. Franklin’s counsel acknowledged that he had planned for the possibility that the statements would be admitted and thus was not claiming that his preparation was impaired by the state’s lack of notice.

The state argued that notice was not necessary because it was seeking to admit the evidence as immediate-episode evidence,² not as *Spreigl* evidence. The state further argued that the jail-call statements were admissible evidence because they were admissions by Franklin and the statements made by Franklin’s brother were not being offered for the truth of the matter asserted in the statements.

² Immediate-episode evidence, also referred to as “intrinsic evidence,” is admissible, even though such evidence may relate to another crime, when “two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other, or where evidence of other crimes constitutes part of the *res gestae*.” *State v. Wofford*, 114 N.W.2d 267, 271 (Minn. 1962).

The district court issued its ruling from the bench. The district court rejected the state's argument that the statements were admissible as immediate-episode evidence. As to the admissibility of the evidence under Minn. R. Evid. 404(b) as *Spreigl* evidence, the court agreed that the state failed to provide the requisite notice but found that Franklin was not prejudiced as a result. The district court, however, determined that the evidence was not admissible because the state failed to establish the "other acts" by clear and convincing evidence, and that the probative value of the evidence was outweighed by the potential prejudice to Franklin.

In December 2022, the state filed notice of its intent to offer Franklin's "admissions of selling other women" as *Spreigl* evidence. At around the same time, the state amended the complaint to include two additional charges: sex trafficking and solicitation of prostitution. In June 2023, the state asked the district court to reconsider its prior evidentiary rulings. The district court agreed to do so, reversed its earlier rulings in another on-the-record ruling, and determined that the evidence was admissible as *Spreigl* evidence. The district court reasoned that the evidence was "relevant for purposes of establishing intent, absence of mistake or plan, particularly as it pertains to" the charge for sex trafficking. The district court did not explicitly analyze whether the evidence met the clear-and-convincing standard but determined that Franklin's statements did not need to be corroborated.

The case proceeded to a jury trial, at which A.M.S., J.S., and the various members of law enforcement testified to the events as described above. The jury found Franklin guilty of promoting prostitution and soliciting prostitution but found him not guilty of sex

trafficking. The district court ordered the entry of a judgment of conviction of promoting prostitution and sentenced Franklin to 53 months in prison.

DECISION

Franklin argues that the district court abused its discretion when it granted the state's motion to admit the statements Franklin made about prostituting other women. Franklin contends that the district court abused its discretion in admitting the statements because the statements did not satisfy all of the necessary elements for admission as *Spreigl* evidence. He maintains that the district court also abused its discretion in admitting the jail-call statements because the contents of the call do not come within any of the exceptions to the hearsay rule. In a pro se brief, Franklin challenges the fact that he was arrested when he is the one who called 911 and was the victim of an assault by A.M.S. We address each argument in turn below.

I. The district court did not abuse its discretion in determining that Franklin's statements about prostituting other women were admissible as *Spreigl* evidence.

"A district court's decision to admit *Spreigl* evidence is reviewed for an abuse of discretion." *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). If the district court erred in admitting the *Spreigl* evidence, "the court must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* at 262. For *Spreigl* evidence to be admissible, five conditions must be met:

- (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.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006); *see also* Minn. R. Evid. 404(b). Franklin argues that this evidence does not satisfy the first, third, fourth and fifth conditions.

A. Notice

Pursuant to the Minnesota Rules of Criminal Procedure, the state generally “must notify the defendant or defense counsel in writing of any crime, wrong, or act that may be offered at the trial.” Minn. R. Crim. P. 7.02, subd. 1. In felony cases, “the notice must be given at or before the Omnibus Hearing under Rule 11” if the conduct is known to the state prior to the hearing. *Id.*, subd. 4(a). However, where the defense can reasonably infer that certain evidence may be introduced by the state, and where there is still reasonable notice given to the defendant, lack of strict compliance with notice requirements does not necessarily prejudice the defendant and does not require the exclusion of otherwise admissible evidence. *See State v. Bolte*, 530 N.W.2d 191, 199 (Minn. 1995).

Here, the state did not provide notice of its intent to admit *Spreigl* evidence prior to the November 2022 pretrial hearing, but the state did provide such notice in December 2022, six months before the June 2023 trial. Thus, the notice requirement was ultimately satisfied here. *See State v. Riddley*, 776 N.W.2d 419, 427 (Minn. 2009) (noting that “the underlying purpose of the *Spreigl* notice is to avoid surprise to the defendant by giving him time to prepare a defense to the charges” (quotation omitted)).

B. Clear and Convincing

Next, Franklin claims that the state failed to establish by clear and convincing evidence that the other acts occurred. Evidence is clear and convincing if there is a high probability that the facts asserted in the offered evidence are true. *Kennedy*, 585 N.W.2d at 389.

When the district court initially considered the admissibility of the evidence in November 2022, it determined that the evidence “doesn’t meet the clear and convincing standard.” When the district court reconsidered the admissibility of the evidence, it did not explicitly reconsider whether it met the clear-and-convincing standard but did determine that the statements did not require corroboration. The district court also observed that the *Spreigl* evidence consisted of “statements that were made by Mr. Franklin, at the time this matter was being investigated, directly to law enforcement.” It appears that the district court thus implicitly reversed its earlier ruling. Given that the statements were made by Franklin, himself, and were recorded on body-camera video, we discern no abuse of discretion in the determination that the state satisfied the clear-and-convincing-evidence standard.

C. Relevance and Materiality

The fourth requirement is that the evidence be “relevant and material to the state’s case.” *Angus v. State*, 695 N.W.2d 109, 119 (Minn. 2005) (quotation omitted). In admitting Franklin’s admissions to law enforcement as evidence, the district court stated it “want[ed] to make very, very clear about what the ruling . . . is specifically directed at.” The district court then explained that the jury was “going to be required to determine

whether or not [Franklin] engaged in sex trafficking,” read the definition of sex trafficking, and determined the evidence was “relevant for purposes of establishing intent, absence of mistake[,] or plan, particularly as it pertains to count two [sex trafficking].”

Franklin argues that “[t]he district court failed to find the evidence relevant and material to a precise disputed fact relating to the promotion and solicitation charges.” Franklin relies on *Ness* to assert that the district court was required to identify the precise disputed facts as to each of the charged offenses. In *Ness*, the supreme court observed that “[i]n assessing the probative value and need for the evidence, the district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” 707 N.W.2d at 686 (quotation omitted). But this quote is from the supreme court’s discussion of the fifth *Spreigl* condition—that the probative value of the evidence is not outweighed by the potential prejudice to the defendant—not the fourth condition—relevance and materiality. *Id.* And the record supports the district court’s determination that the evidence was relevant to establishing Franklin’s intent, the absence of mistake, or a common scheme or plan, particularly in light of Franklin’s defense that A.M.S. acted on her own and that he never sought or expected payment related to sex between A.M.S. and J.S.

D. Probative Value vs. Unfair Prejudice

The final requirement for the admission of *Spreigl* evidence is that “the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.” Minn. R. Evid. 404(b)(2)(c). The district court determined that the evidence was not “overly prejudicial” and that “[a]ny unfair prejudice, with respect to it being misconstrued as character evidence, can be addressed with an appropriate instruction as to

how it is that the evidence should be used.” Franklin argues that the district court only allowed the evidence because of its relevance to the trafficking charge and had earlier ruled that the probative value of the evidence was outweighed by prejudice as to the promotion charge. Yet at trial, the district court allowed the jury to consider the evidence not just in its deliberations on the sex-trafficking charge but also on the promotion and solicitation charges.

We are not persuaded that the district court abused its discretion when it determined that the probative value of the statements was not outweighed by unfair prejudice. Significantly, the jury acquitted Franklin of the sex-trafficking charge, apparently not persuaded by Franklin’s statements, while intoxicated, that he was engaged in trafficking women. Thus, the prejudicial impact of the statements must have been at least somewhat limited. In addition, the district court provided an instruction to the jury both before the evidence was presented and in its final instructions cautioning the jury about the proper use of the evidence. And we presume that juries follow instructions given by the district court. *State v. Segura*, 2 N.W.3d 142, 167 (Minn. 2024). We thus conclude that the district court acted within its discretion in admitting Franklin’s statements about prostituting other women as *Spreigl* evidence.³

³ The state also maintains on appeal that the evidence is admissible as immediate-episode evidence. See *Wofford*, 114 N.W.2d at 271 (recognizing the admissibility of immediate-episode evidence). Because we conclude that the evidence is admissible under rule 404(b) as *Spreigl* evidence, we need not address the state’s argument that the evidence qualifies as immediate-episode evidence.

II. The district court did not abuse its discretion in admitting the jail-call statements.

We next address Franklin’s challenges to the admission of the jail-call statements. As recounted above, during the phone call between Franklin and his brother, Franklin asked his brother to get ahold of “Lisa” and that she would bail him out of jail. Franklin then agreed with his brother’s statement that “Lisa” would “have to sell a lot of p-ssy there.” The district court initially excluded the phone call as hearsay, but later determined it was admissible as *Spreigl* evidence without addressing whether it contained hearsay.

Franklin argues that this remark is inadmissible hearsay. But even if the brother’s statement qualifies as hearsay, Franklin’s response—“Sure will”—is an admission, which takes it out of the hearsay context. Minn. R. Evid. 801(d)(2)(A); *State v. Lopez-Ramos*, 929 N.W.2d 414, 423 (Minn. 2019). In addition, Franklin fails to establish that he was prejudiced as a result. *See State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009) (“On appeal, a defendant has the burden of proving not only that the district court abused its discretion in admitting the evidence in question, but also that he was prejudiced by the admission of the evidence.”). Franklin’s brief generally asserts that “[t]he ‘Lisa’ remark was hearsay,” but does not contain separate argument or analysis on how he was prejudiced by the admission of the remark.

Moreover, the “Lisa” statement was brief, vague, made by another individual, and not discussed extensively at trial. And the state’s evidence was strong, including testimony by A.M.S., J.S., and law enforcement. On this record, we are satisfied that, even if the admission of the jail-call statements constituted an error, that the “jury’s verdict was surely

unattributable” to the admission of the jail-call statements and was thus a harmless error.
Id.

III. The arguments asserted in Franklin’s pro se brief do not entitle him to relief.

Franklin also submitted a pro se supplemental brief. In the brief, Franklin asserts that the legal issue is whether the district court erred “by allowing the prosecution to have a complaint document signed by the judge where before-hand there is a procedural misconduct” by law enforcement that led to his “unlawful arrest.”

It appears that Franklin is asserting that because he is the party that called 911, it was misconduct for police to arrest him. Franklin argues that “police should have remained in constitutional compliance and made an ‘on-scene’ arrest of A.M.S. because of exigent circumstance[s], and should not have arrested [Franklin] or interfere[d] with his freedom in any significant way.” Franklin notes that when law enforcement arrived, A.M.S. was in the shower and there were knives in the bathroom, and he suggests that it would not have been a violation of A.M.S.’s constitutional rights to arrest her immediately despite the fact that she was in the shower. Franklin also appears to suggest that the knives in the bathroom could have been seized without a warrant because they were in plain view of the officer.

We conclude that these arguments do not entitle Franklin to relief because it does not appear that law enforcement committed any misconduct in responding to the situation. When law enforcement entered Franklin’s home and informed A.M.S. that they were called to the scene because of the dispute between Franklin and A.M.S., she immediately responded that Franklin “sold” her to the upstairs neighbor and that she felt “disgusting.” She repeated the assertion that Franklin sold her multiple times and was visibly upset.

Franklin himself told one of the responding officers that A.M.S. became upset and threatened him after she accused him of “selling” her. He also stated to law enforcement that he was “selling” other women, and asked J.S. whether he had Franklin’s money. Under these circumstances, it was proper for law enforcement to further investigate A.M.S.’s assertion that Franklin prostituted her to J.S.

Affirmed.