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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1792**

State of Minnesota,
Respondent,

vs.

Purna Bahadur Bhujel,
Appellant.

**Filed November 25, 2024
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-21-6770

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant Ramsey County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction for fifth-degree criminal sexual conduct, arguing that the district court abused its discretion by admitting *Spreigl* evidence. We affirm.

FACTS

The state charged appellant Purna Bahadur Bhujel with fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451, subd. 1a(1) (Supp. 2021).¹ According to the complaint, in October 2021, Bhujel hugged a female coworker (first coworker) and groped her breast. Bhujel acknowledged hugging the coworker but said that he touched her breast by accident.

The state moved to introduce *Spreigl* evidence about a second incident where Bhujel touched another female coworker (second coworker). At a subsequent pretrial hearing, the state explained that in June 2017, Bhujel was working at a restaurant and commented upon the second “coworker’s body, and then hugged her and groped her breast.” According to the state, in 2018, the second coworker filed a civil lawsuit against the restaurant over the incident, and in 2022 filed a police report. The state intended to present testimony about the prior act to rebut Bhujel’s theory that touching the first coworker was a mistake or accident. After the hearing, the district court granted the state’s *Spreigl* motion, concluding that evidence about the prior act was clear and convincing, relevant and material to the state’s case, and its probative value was greater than the potential unfair prejudice to Bhujel.

¹ Section 609.3451, subdivision 1a(1), criminalizes “nonconsensual sexual contact.” Under the statute, “sexual contact” includes intentionally touching someone’s intimate parts, including “the clothing covering the immediate area of the intimate parts,” without consent, and “with sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(a)(i), (iv) (Supp. 2021); *see* Minn. Stat. § 3451, subd. 1a (incorporating definitions from section 609.341, subdivision 11(a)).

The case proceeded to a jury trial in June 2023. The first coworker testified that in the fall of 2021, when she was 19, a staffing agency placed her at a company in Arden Hills. One day, Bhujel approached her during a work-break. When she got up to wash her hands and throw away her trash, Bhujel followed her to a coffee area and commented on her body. Bhujel then asked for a hug, but she felt shocked and did not respond. Bhujel then hugged her. Initially, they were face-to-face for a first hug, but Bhujel then hugged her again from behind and placed his hand on her breast. The first coworker asserted that Bhujel did not touch her breast by accident. The two hugs happened quickly, and no one walked by while they happened. After Bhujel left, the first coworker returned to work.

Bhujel testified that on the day of the incident, he and the first coworker were talking in the break room and then went to the coffee area as “friends working in the same place.” He noticed that she was being “very friendly towards [him],” and he asked whether she wanted a hug, at which point, “she spread out her arms.” The hug seemed normal to him, and she “looked happy.” Afterward he returned to work. Bhujel testified that he did not know whether he touched the first coworker’s breast during the interaction.

Both the state and defense counsel presented images and clips from surveillance footage where the first coworker and Bhujel pace and brush up against each other in a hallway. However, the footage does not clearly show Bhujel hugging or touching the first coworker’s breast.

The second coworker testified about the separate incident from June 2017. Prior to her testimony, the district court instructed the jury that the state was offering her testimony “for the limited purpose of assisting [it] in determining whether the defendant committed

the act he's charged with in this case." Furthermore, the district court instructed the jury that it should not use the testimony "to prove the character of the defendant or that he acted in conformity with such character," and that he "is not being tried for and may not be convicted of any offense other than the charged offense in this case."

The second coworker testified that in June 2017 she was 19 years old and was working at a restaurant in St. Paul. Bhujel was also working at the restaurant and was eating in a booth during break when he told the second coworker to sit down with him. Bhujel "said some things" to the second coworker, and "then he got up and then out of nowhere he took his right hand . . . and put it on [her] left breast." The second coworker was "shocked" and went into "the bathroom to clean." Bhujel "came into the bathroom" and asked for a hug. She "just tried to get away from him and he was disappointed." Later that day, the second coworker was emptying the mops, and Bhujel approached her and again asked for a hug. The second coworker gave him a hug and then "just got out of there." The second coworker testified it was "[a]bsolutely not" an accident when Bhujel touched her breast. The second coworker contacted law enforcement about the incident in February 2022 after she looked up Bhujel's name online and discovered his arrest for the present offense.

The jury returned a guilty verdict for fifth-degree criminal sexual conduct. The district court convicted Bhujel and sentenced him to two years of probation. This appeal followed.

DECISION

On appeal, Bhujel argues that the district court abused its discretion by permitting the *Spreigl* evidence because the state did not provide clear and convincing evidence that the prior act occurred, the evidence was not relevant and material to the state's case, and the probative value of the evidence was substantially outweighed by its potential for unfair prejudice.

Under Minn. R. Evid. 404(b), “[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” However, such evidence may “be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* In Minnesota, evidence of “prior bad acts” is known as *Spreigl* evidence. *See State v. Washington*, 693 N.W.2d 195, 200 (Minn. 2005) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). For a district court to admit *Spreigl* evidence:

the state bears the burden for securing its admissibility by (1) providing notice that the state intends to use the evidence, (2) clearly indicating what the evidence is being offered to prove, (3) offering clear and convincing proof that the defendant participated in the other offense, (4) proving that the *Spreigl* evidence is relevant and material to the state's case, and (5) proving that the probative value of the *Spreigl* evidence is not substantially outweighed by its potential for unfair prejudice.

Washington, 693 N.W.2d at 201.

We review “the district court’s decision to admit *Spreigl* evidence for an abuse of discretion.” *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic

and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). However, even when the district court wrongly admits *Spreigl* evidence, we will still affirm unless the defendant establishes prejudice. *State v. Clark*, 738 N.W.2d 316, 347 (Minn. 2007). Prejudice occurs when “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.*

Clear and convincing evidence

Bhujel first argues that the second coworker’s allegations do “not rise to the level of clear and convincing evidence.” “Clear and convincing evidence is more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Profit*, 591 N.W.2d 451, 464 (Minn. 1999) (quotation omitted). The evidence must show that “the truth of the facts sought to be admitted is highly probable.” *Id.* (citation omitted). We grant the district court “great deference” in evaluating whether *Spreigl* evidence was clear and convincing. *State v. McLeod*, 705 N.W.2d 776, 788 (Minn. 2005).

Bhujel argues that the *Spreigl* evidence was not clear and convincing because the second coworker “waited almost five years to report [the incident] to the police.” However, evidence can be clear and convincing despite a delay in disclosure. In *Ness*, for instance, the *Spreigl* evidence consisted of a 43-year-old testifying about incidents from his childhood when the defendant inappropriately touched him. 707 N.W.2d at 682-83. Before the witness testified, his mother sent him an article about the defendant’s pending charges and contacted prosecution about the inappropriate touching from years earlier. *Id.* Without mentioning the decades-long timeframe between the witness’s allegations and the disclosure to prosecution, the supreme court upheld the district court’s conclusion that the

Spreigl evidence was clear and convincing, noting that other evidence in the record added veracity to the witnesses' allegations, the witness told others about the allegations earlier in his adulthood, and that "he drove over 1,500 miles to testify" with the risk "of losing his employment." *Id.* at 686.

Here, in its order granting the state's motion to admit *Spreigl* evidence, the district court determined that the 2022 police report and the 2018 civil action were clear and convincing evidence of the second coworker's allegations. The district court emphasized that the second coworker's earlier statements from depositions in her civil action were consistent with her later police report. We conclude that the second coworker's delay in reporting the earlier incident does not prevent the *Spreigl* evidence from being clear and convincing.

Bhujel also argues that the evidence was not clear and convincing because the prior incident never resulted in criminal charges against him. We are unpersuaded. First, *Spreigl* evidence may not only involve "another crime," but also another "wrong" or "act." Minn. R. Evid. 404(b); *see also Ness*, 707 N.W.2d at 685-86 n.2 (noting that although most "*Spreigl* cases use the term other-crime evidence, . . . [rule] 404(b) pertains to 'other crimes, wrongs, or acts'"). We also note that under Minnesota caselaw, the state's dismissal of criminal charges against a defendant does not prohibit the state from using evidence about the dismissed charges as *Spreigl* evidence of another crime. *State v. Lande*, 350 N.W.2d 355, 358 (Minn. 1984) (stating that "unless the defendant was acquitted of the other crime, evidence of the other crime may be admitted against the defendant" if clear and

convincing). Therefore, we conclude that the lack of criminal charges against Bhujel also does not prevent the *Spreigl* evidence from being clear and convincing.

The district court properly exercised its discretion by determining that the *Spreigl* evidence was clear and convincing.

Relevant and material

Bhujel also argues that the *Spreigl* evidence was not relevant and material to the state's case. Whether *Spreigl* evidence is relevant and material depends on a "balancing process as to time, place, and modus operandi." *State v. Rossberg*, 851 N.W.2d 609, 617 (Minn. 2014) (quotation omitted). There is no "bright-line rule for determining when a prior bad act has become too remote [in time] to be relevant." *Washington*, 693 N.W.2d at 201. However, when dealing with "an arguably stale *Spreigl* incident," a district court should continue to balance "time, place, and modus operandi," while keeping in mind that the more distant the incident "is in terms of time, the greater the similarities as to place and modus operandi must be to retain relevance." *Id.* at 202.

Here, the district court concluded that the *Spreigl* evidence was relevant and material because it was probative of Bhujel's "sexual intent in hugging and touching his younger female coworker in this case, and it undermines [his] statement [that] any sexual touching was accidental."

Bhujel first contends that the prior act lacks materiality and relevance because he never asserted a prior defense of mistake or accident against the second coworker's allegations. Bhujel relies on a supreme court case where the defendant's prior assertion of similar defenses against similar allegations of criminal conduct demonstrated a "pattern of

operation” without “mistake or accident.” *See State v. Robinson*, 427 N.W.2d 217, 227 (Minn. 1988). However, Bhujel never asserted a prior defense of mistake or accident against the second coworker’s allegations because she did not notify police about the incident until she heard about his present offense. And the lack of a prior defense does not negate the substantial similarities between the two incidents. *See State v. Elvin*, 481 N.W.2d 571, 575 (Minn. App. 1992) (determining, without reference to any prior defenses, that *Spreigl* evidence was material and relevant for showing the “absence of an accident”). Both acts took place in a work setting, involved young women who were 19 years old, involved Bhujel asking to hug and hugging the women, and concerned Bhujel putting his hand on their breasts.

Bhujel also points out that the prior act occurred almost five years earlier, but the substantial similarities between the incidents reduce concern about the time gap between them. *See Washington*, 693 N.W.2d at 202 (“[T]he more distant the *Spreigl* act is in terms of time, the greater the similarities . . . must be to retain relevance.”).² Bhujel also notes that one incident took place in St. Paul while the other took place in Arden Hills. But given the strong overlap between the two incidents, minor differences in location are not

² Bhujel also argues that because fifth-degree criminal sexual conduct is a specific intent crime, evidence about the absence of a mistake or accident cannot be material or relevant because it only shows a lack of general intent. However, Bhujel testified at trial that he “did not know” whether he touched the first coworker’s breast. Therefore, the second coworker’s testimony that Bhujel did in fact touch her breast in a similar circumstance, and that he did not do so by accident, is material and relevant to the question of whether he specifically intended to engage in “nonconsensual sexual contact.” *See* Minn. Stat. § 609.3451, subd. 1a(1); Minn. Stat. § 609.341, subd. 11(a)(i), (iv).

meaningful to our analysis. *See Robinson*, 427 N.W.2d at 227 (permitting *Spreigl* evidence about prior acts in separate states).

The district court did not abuse its discretion by determining that the *Spreigl* evidence was relevant and material to the first coworker's allegations against Bhujel.

Probative value and potential for unfair prejudice

Finally, Bhujel argues that the probative value of the second coworker's testimony was substantially outweighed by its potential for unfair prejudice. A district court should exclude *Spreigl* evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." *State v. Harris*, 560 N.W.2d 672, 678 (Minn. 1997). "Prejudice" refers to an "unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *Id.* (quotation omitted). To determine whether the probative value of *Spreigl* evidence is substantially outweighed by its potential for unfair prejudice, the district court should examine the "purposes for which *Spreigl* evidence is offered" against the need for the *Spreigl* evidence. *Ness*, 707 N.W.2d at 690. "Need" does not necessarily mean that the state lacks "sufficient other evidence to convict." *State v. Bolte*, 530 N.W.2d 191, 197 n.2 (Minn. 1995). Rather, it means, "as a practical matter, [that] it is not clear that the jury will believe the state's other evidence bearing on the disputed issue." *Id.*

Here, in its order granting the state's motion to admit *Spreigl* evidence, the district court noted that without testimony from the second coworker, the state would likely have to rely on witness statements and video evidence that "does not capture the precise incident alleged." Therefore, the district court determined that the second coworker's testimony had high probative value in corroborating the first coworker's assertion that Bhujel touched

her breast, and that he did not do so by accident. Furthermore, the district court concluded that while the second coworker's testimony would be prejudicial, such prejudice would be mitigated by the district court's cautionary instructions to the jury on its use of the *Spreigl* evidence and by Bhujel's opportunity to cross-examine the second coworker.

Later at trial, the only witnesses who provided firsthand accounts of the incident between the first coworker and Bhujel were the first coworker and Bhujel themselves, both of whom gave deeply contradictory descriptions of what happened. Moreover, as the district court stated, the surveillance footage did not clearly show the precise nature of their interaction. And, consistent with its order, the district court provided cautionary instructions directing the jury not to use the second coworker's testimony as evidence of Bhujel's character "or that he acted in conformity with such character." Finally, during the second coworker's testimony, Bhujel cross-examined her.

Bhujel argues that the state did not need the *Spreigl* evidence because the state presented detailed evidence about the first coworker's version of events and because Bhujel admitted to hugging her. But because her account conflicted with Bhujel's version of events, and because the surveillance footage of the interaction did not provide much support for her account, it was "not clear that the jury [would] believe the state's . . . evidence bearing" on whether Bhujel committed the offense. *See Bolte*, 530 N.W.2d at 197 n.2.

Bhujel also contends that the *Spreigl* evidence "suggested that he had a general propensity for groping female co-workers' breasts and it attacked his character." But the district court expressly instructed the jury not to use the evidence to determine that Bhujel

acted in conformity with a character trait, and “[j]urors are presumed to follow limiting instructions.” *See State v. Ali*, 855 N.W.2d 235, 249-50 (Minn. 2014).

The district court did not abuse its discretion by determining that the probative value of the *Spreigl* evidence was not substantially outweighed by its potential for unfair prejudice.³

Affirmed.

³ Because we conclude that the district court properly exercised its discretion by permitting the *Spreigl* evidence, we do not address Bhujel’s argument that he is entitled to a new trial because the *Spreigl* evidence had a prejudicial impact on the verdict.