

*This opinion is nonprecedential except as provided by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
A24-0104**

State of Minnesota,
Respondent,

vs.

Carrie Lynn Sennie,
Appellant.

**Filed December 23, 2024
Affirmed
Ross, Judge**

Stearns County District Court
File No. 73-CR-23-1683

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

Renee N. Courtney, St. Cloud City Attorney, See Lee-Sanders, Assistant City Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A Walmart theft-prevention employee caught Carrie Sennie stealing merchandise using stealthy barcode-scanning techniques at the self-checkout register. The employee searched the store's records associated with Sennie's credit-card data and reviewed surveillance footage to discover that Sennie had also stolen from the store twice the

previous month. The employee testified at Sennie’s trial for the earlier thefts by referencing the theft method Sennie used in the later thefts. In this appeal from her conviction for the earlier thefts, Sennie argues that the district court improperly admitted into evidence the employee’s testimony about the later thefts because it constituted untimely noticed and unfairly prejudicial *Spreigl* evidence. Because neither the state’s late notice nor the substance of the testimony unfairly prejudiced Sennie’s defense, we affirm.

FACTS

A theft-prevention employee at the Walmart store in Sartell suspected that customer Carrie Sennie had stolen goods in December 2022 and January 2023. He first saw Sennie in January 2023 pilfering merchandise at the store’s self-checkout register using two surreptitious techniques: “under-ringing,” which is intentionally failing to scan merchandise barcodes, and “ticket-switching,” which is scanning the barcodes of relatively inexpensive items in place of the barcodes of more expensive items. The employee summoned Sartell police officers, who stopped Sennie outside the store. The employee obtained Sennie’s credit-card information and from it identified purchases Sennie previously made on two days in December 2022. He checked surveillance-video recordings of Sennie’s December purchases at self-checkout registers and saw that she had used the same techniques to steal merchandise on those occasions also. The state charged Sennie for the December thefts in a single criminal complaint and charged her separately for the January thefts.

Six days before trial on the December thefts, the state filed a *Spreigl* notice of its intent to offer evidence of the later January thefts and attached the Walmart employee’s

statement describing them. The notice was on a form indicating that the state intended to use the evidence to show intent, knowledge, absence of mistake or accident, identity, motive, common scheme or plan, or “one of the other reasons listed in Rule 404.” The prosecutor participated in a motion hearing the day before trial, asking the district court to admit evidence of the January incident for the purposes of proving identity, lack of mistake, and *modus operandi*. Sennie objected on three grounds: the *Spreigl* notice had been untimely; the notice did not sufficiently specify the state’s intended use of the evidence; and the potential for unfair prejudice substantially outweighed the evidence’s probative value. The district court issued an order that same day admitting the *Spreigl* evidence “for the permissible purposes set forth in Minn. R. Evid. 404(b),” observing that the notice was untimely but reasoning that neither the untimeliness nor the substance of the evidence prejudiced Sennie. Sennie renewed her objection on the day of trial, and the district court again overruled it, this time indicating that the evidence was admissible to prove identity, lack of mistake, and *modus operandi*.

Sennie’s opening statement asserted that the evidence would show that she had been distracted when she processed her items for purchase: “Ms. Sennie was so distracted and so overwhelmed that she simply left the store without realizing that she failed to pay for some merchandise.” Testifying during the state’s case in chief, the Walmart employee said that he learned Sennie’s identity after police stopped her outside the store in January 2023. He described how he used Sennie’s credit-card information obtained during that encounter to seek the surveillance-video footage of her December under-ringing and ticket-switching activity at the self-checkout registers. The district court cautioned the jury not to apply the

employee's testimony about the January incident as evidence of Sennie's propensity to commit theft. The employee then testified that he had interacted with Sennie in January: "It was determined that [Sennie] had taken merchandise without paying for it, so police were called to assist with apprehending her." He recounted how he had noticed Sennie under-ringing and ticket-switching items that day. The district court prohibited the employee from testifying about the value of the merchandise Sennie improperly scanned in January, and it also prohibited the police officer who cited Sennie from testifying about the January thefts.

Sennie testified in her own defense. She asserted that she had been "stressed" and therefore "distracted" at the time of the alleged thefts at issue in the trial. The prosecutor twice mentioned the January incident during her closing argument. She first stated, "You heard about the January 5, 2023 incident. You heard about that. The December 5th and December 14th [incidents] were not an accident. They were not a mistake. Ms. Sennie knew what she was doing." Shortly afterwards, the prosecutor urged, "This, again, was not a mistake, ladies and gentlemen. . . . Not on multiple occasions, December 5th, December 14th, and the January 5th occasion. It is not a mistake." Sennie's attorney countered in closing argument, "Ms. Sennie's mind was elsewhere as she scanned her merchandise. No one alerted her to the fact that some of her items didn't scan. She didn't receive any error messages from the self-checkout system. No one stepped in to assist her."

The district court's jury instructions again cautioned against using the testimony about the January incident as propensity evidence to find Sennie guilty of the December

incidents. The jury found Sennie guilty. The district court sentenced her to serve 90 days in jail but stayed execution conditioned on her completing one year of probation.

Sennie appeals.

DECISION

Sennie appeals from her conviction, contending that the district court improperly admitted bad-acts evidence, also known as *Spreigl* evidence. Sennie focuses on the evidence about her thefts in January 2023 while she was instead on trial for the alleged thefts occurring a month earlier. Sennie is correct that this evidence would not be admissible to imply that she has the character of a thief, because evidence of another crime or wrong is categorically inadmissible “to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b)(1). Bad-acts evidence “may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* Sennie forwards two theories to argue that the district court erroneously admitted the evidence of her January conduct: first, the state did not timely notify her of its intent to seek its admission, and second, the probative value of the *Spreigl* evidence was outweighed by its potential for unfair prejudice. We review a district court’s decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). For the following reasons, we are not persuaded that the district court abused its discretion by admitting the evidence.

I

Sennie unconvincingly maintains that we should reverse her conviction based on the state's improper notice of its intent to ask the district court to admit the *Spreigl* evidence. The state generally must provide the defendant with written notice of *Spreigl* evidence that the state may offer at trial. Minn. R. Crim. P. 7.02, subd. 1. In misdemeanor cases where the proceedings include a pretrial conference, the prosecutor must give the notice at or before the conference or as soon after the conference as the prosecutor learns of the evidence. *Id.*, subd. 4(b). Sennie argues, and the state appropriately agrees, that the *Spreigl* notice here was untimely. The state did not provide notice of its intent to rely on the January 2023 *Spreigl*-evidence incident before or during the pretrial conferences in August and November 2023, and the prosecutor did not notify Sennie until six days before trial. We conclude that the parties are correct in characterizing the state's notice as untimely.

But the untimely nature of a notice does not mandate reversing, and Sennie does not show that reversal should occur here. A district court's decision to admit untimely noticed *Spreigl* evidence warrants reversing a conviction only if the untimeliness prejudiced the defendant. *State v. Woodard*, 256 N.W.2d 478, 479 (Minn. 1977). Sennie had about six days remaining to prepare for trial after she received the notice, and she does not adequately explain how this was too short a period for her to adjust her defense. By comparison, the supreme court in *Woodard* held that a *Spreigl* notice received just three days before trial did not prejudice the defendant because the defendant failed to show that he did not have adequate time to prepare to address the evidence. *Id.* at 479. Sennie's familiarity with the

evidence and her pretrial conduct also weigh against reversing. A district court does not abuse its discretion by admitting untimely noticed evidence of bad acts when the defendant was familiar with the evidence and had sufficient opportunity to rebut the evidence at trial. *Wanglie v. State*, 398 N.W.2d 54, 57–58 (Minn. App. 1986). Sennie acknowledges on appeal that she knew of the January incident and its relationship to the December incidents, and she demonstrated her readiness to confront the evidence by choosing not to seek a continuance. We bear in mind the purpose of the notice requirement, which “is to prevent a defendant from being taken by surprise by the introduction” of the bad-acts evidence. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Although the prosecutor should have provided the notice promptly, the record does not suggest that the untimeliness left Sennie surprised at trial or otherwise unable to respond to the evidence. Because the untimeliness caused Sennie no unfair prejudice, we will not reverse on this ground.

II

Sennie also argues that the district court abused its discretion because the potential for unfair prejudice in admitting the *Spreigl* evidence outweighed its probative value. The district court may not admit *Spreigl* evidence unless its probative value is not outweighed by its potential prejudice to the defendant. *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). The district court makes this balancing assessment by considering the extent to which the state needs the *Spreigl* evidence as part of its case. *Id.* at 690. When the state’s case is weak on a particular issue, the probative value of *Spreigl* evidence increases. *See id.* at 690–91. But if the state’s case is “not weak on the real issue for which the evidence

was offered,” admitting the evidence may constitute error. *Id.* Applying these standards, we see no error by the district court.

We begin by rejecting Sennie’s assertion that the district court admitted the *Spreigl* evidence only to prove identity. The record informs us that the prosecutor stated during the December 18 pretrial hearing that she intended to use the evidence for three purposes, to prove identity, lack of mistake, and *modus operandi*. Just before trial the next morning, the district court judge confirmed that she was admitting the evidence for those purposes:

So [the evidence] does go to prove identity also absence of mistake. . . . It wasn’t a mistake or accident that this is apparently the *modus operandi* of the particular thefts at issue. . . . [T]he prosecutor did indicate yesterday as well as today what the evidence is being offered to prove.

It is true, as Sennie emphasizes, that the district court later said that “[o]ne of the elements” the state would have to prove at trial “is the identity of the [defendant]” and stated that “[t]hey figured out the identity based upon the January 5th incident, so I believe the [relevance] prong of the test is met.” But while this statement certainly supports the view that the evidence was admitted to prove identity, it does not contradict the fact that it was also admitted expressly for the other specified purposes.

Although Sennie’s identity was not disputed at trial, the reason for her conduct at the register took center stage. Sennie attempted to convince the jury that she was distracted when she used the self-checkout register, mistakenly under-scanning some items and mistakenly missing others. She previewed this strategy during her opening statement, presented it during her testimony, and made it her last act at closing. Her consistent story was that she was “so distracted and so overwhelmed that she simply left the store without

realizing that she failed to pay for some merchandise.” The Walmart employee’s testimony that Sennie engaged in under-ringing and ticket-switching at the register in January—as she did in December—directly contradicted Sennie’s I-was-stressed-and-confused trial narrative. And without this comparison testimony, the state’s counter to Sennie’s proffered explanation would have been significantly weaker. The employee’s testimony about Sennie’s January conduct was therefore particularly probative on the most disputed fact at trial.

Admitting this probative testimony had little risk of unfairly prejudicing Sennie’s defense. The district court narrowed the scope of the evidence by preventing the employee from testifying about the value of the items stolen in January and by preventing the police officer who testified at trial from discussing the incident at all. And the district court twice instructed the jury not to use evidence of Sennie’s January conduct to infer that she had a propensity to commit theft. We are satisfied that the evidence was not unfairly prejudicial to Sennie’s defense and that the district court therefore did not abuse its discretion by admitting it.

Affirmed.