

*This opinion is nonprecedential except as provided by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
A24-1425**

State of Minnesota,
Respondent,

vs.

James Garlen Wininngham,
Appellant.

**Filed August 4, 2025
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-23-7762

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that we should reverse his two convictions of possession of child pornography because the district court erroneously admitted *Spreigl* evidence of a prior

conviction for the same offense and there is a reasonable possibility that the evidence significantly affected the verdict. We affirm.

FACTS

At the end of January 2023, appellant James Garlen Wininngham¹ sought assistance with his laptop computer, which he acquired as previously used and refurbished from a loan from a program associated with the Department of Veterans Affairs, through a local nonprofit called Minnesota Tech for Success (MTS). The technician assisting appellant determined “that there was something wrong with the storage device or a system file damage” and attempted to recover files from the hard drive. Appellant told the technician that he was the only user of the laptop. While attempting to recover appellant’s files from the device, the technician discovered files depicting child pornography. The technician and his supervisor told appellant that they needed more time with the laptop to resolve the issue, then called the police. On April 12, 2023, respondent State of Minnesota charged appellant with two counts of possession of child pornography in violation of Minn. Stat. § 617.247, subd. 4(b)(1) (2022). The case proceeded to a jury trial.

Prior to the start of trial, the state notified appellant and the district court of its intention to admit *Spreigl* evidence of appellant’s 2011 conviction of possession of child pornography to show “intent, knowledge, absence of accident or mistake.” *See State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); *State v. Barthman*, 917 N.W.2d 119, 128 (Minn. App. 2018) (evidence of other crimes, wrongs, or acts, known as *Spreigl* evidence, is

¹ Appellant’s last name is spelled inconsistently throughout the record. We use the spelling that he stated is correct at trial and that is in the charging documents.

generally inadmissible, but may be admissible under Minn. R. Evid. 404(b) “as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”) The district court denied the state’s motion, describing its decision on the prejudice factor as “a very, very close call.” The district court expressed concern that the jury would use the *Spreigl* evidence for propensity purposes. However, the district court cautioned that, “[s]hould the defense open the door to any of the areas that the State has suggested such as intent, knowledge, absence of mistake, I am prepared to revisit that should the issue arise.” The district court stated:

[The *Spreigl* evidence] could be relevant to other arguments should the defense raise something like [appellant had] no idea what child pornography is or something along those lines. So I want to be clear. It’s a close call in my mind. I am going to keep it out as a *Spreigl* in the case in chief. But of course that door can be opened. And if the door is opened, I will allow it in.

At trial, the state presented testimony from the technician at MTS who assisted appellant and discovered the child pornography on appellant’s computer, a supervisor at MTS who saw the child pornography files on appellant’s computer and called the police, the police officer who retrieved the laptop from MTS, and the police officer who received and analyzed appellant’s hard drive. The state also submitted photographic evidence showing appellant’s laptop and hard drive, two videos depicting child pornography that were found on appellant’s laptop, and documents related to the police officer’s analysis of appellant’s hard drive. On cross-examination, appellant’s counsel asked the state’s witnesses if there were alternative explanations for how the child pornography came to be

on appellant's computer, such as another person downloading the content unbeknownst to appellant or by a computer virus.

Before resting its case, the state renewed its *Spreigl* motion. The state argued that appellant's counsel's cross-examination questions opened the door to the *Spreigl* evidence by asking whether the child pornography could have come to be on appellant's computer some other way. Appellant's counsel argued that its questions on cross-examination were intended to hold the state to its burden of proof, and that introducing appellant's prior conviction "is incredibly strong propensity evidence." The district court again described its decision as "a very close call" but this time granted the state's *Spreigl* motion, stating:

Throughout the course of the trial, through cross-examination and actually in opening statement, defense counsel noted -- that offered various views as to why this material was on [appellant]'s computer. Maybe it was a virus, malware. Others may have logged on to the computer, other users potentially. The laptop was obtained as a used laptop. There may have been multiple searches at one time possibly caused by a virus or someone else for that matter. The downloads were quite frequent in one area. Different passwords may have been used or similar passwords. Other users may have logged on. All of those items go to an issue in this case in which the State is moving to move this in to knowledge, absence of mistake or accident, possibly intent.

The state then submitted into evidence, over appellant's objection, a certified copy of appellant's 2011 conviction without additional testimony. The district court instructed the jury that the "evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts of which the defendant is charged in the complaint" and is "not to be used to prove the character of the defendant or that the

defendant acted in [conformance with] such character.” The state rested its case. Appellant did not present any evidence.

In its final jury instructions, the district court stated:

You have heard evidence of alleged conduct by the defendant on a separate occasion. As I told you at the time this evidence was offered, it was admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. This evidence is not to be used to prove the character of the defendant or that the defendant acted in conformity with such character. The defendant is not being tried for and may not be convicted of any offense other than the offense charged in this case. You are not to convict the defendant on the basis of any occurrence on a separate occasion.

The jury returned guilty verdicts on both counts. The district court sentenced appellant to 48 months on count I and 66 months on count II, to run concurrently. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion when it admitted *Spreigl* evidence of his 2011 conviction of possession of child pornography, that the evidence prejudiced him, and that he is entitled to a new trial. We disagree.

It is generally impermissible to introduce evidence of other crimes in a criminal case. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). “The danger in admitting such evidence is that the jury may convict because of those other crimes or misconduct, not because the defendant’s guilt of the charged crime is proved.” *Id.* However, under Minn. R. Evid. 404(b), evidence of other crimes, wrongs, or acts may be admissible for another

purpose, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Barthman*, 917 N.W.2d at 128.

District courts follow a five-step process to determine whether they should admit *Spreigl* evidence:

- (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.

Ness, 707 N.W.2d at 686 (the *Ness* factors). However, *Spreigl* evidence should be excluded if its admissibility is a “close call.” *Id.* at 685.

Appellate courts will not reverse a district court’s admission of *Spreigl* evidence unless it clearly abused its discretion by admitting the evidence. *State v. Smith*, 749 N.W.2d 88, 93 (Minn. App. 2008). “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). Even if the district court abused its discretion by admitting *Spreigl* evidence, an appellate court will not reverse unless the appellant can show prejudice, meaning that there is “a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Clark*, 738 N.W.2d 316, 347 (Minn. 2007); *see Barthman*, 917 N.W.2d at 128; *Smith*, 749 N.W.2d at 93 (“If there is a reasonable possibility that the verdict might have been favorable to the defendant had the evidence not been allowed, the evidence is prejudicial and its admission

is reversible error.”). The appellant has the burden of showing that the district court abused its discretion and any resulting prejudice. *Ness*, 707 N.W.2d at 685.

We conclude that the district court did not abuse its discretion when it admitted the *Spreigl* evidence. First, the district court thoroughly considered each of the *Ness* factors. It found that the state gave notice of its intent to admit the evidence, what the evidence would prove, and that the state presented clear and convincing evidence that appellant participated in the prior act. The district court found the *Spreigl* evidence to be highly relevant because knowledge is an element of the charged offense. Finally, the district court found that the potential prejudice to appellant from the *Spreigl* evidence did not outweigh its probative value.

Second, the district court made its decision to admit the *Spreigl* evidence after hearing all of the state’s evidence. *See State v. Dewald*, 464 N.W.2d 500, 504 (Minn. 1991). The district court initially denied the state’s motion to admit the *Spreigl* evidence because it was a “close call” whether the probative value of the evidence outweighed its prejudicial effect but stated that it could change its mind if appellant opened the door to the evidence. After the state presented its case, the district court considered the state’s renewed motion, reasoned that appellant’s counsel opened the door with questions on cross-examination and in their opening argument, and admitted the *Spreigl* evidence.

Third, the district court highlighted that the probative value of the *Spreigl* evidence outweighed the prejudice to appellant because appellant’s counsel’s questions on cross-examination attacked the knowledge element of the charged offense. For example, appellant’s counsel asked: “[I]s it possible to have an application running on your computer

that you don't even know about?"; "Is it possible for [computer viruses] . . . to actually download things that the user wouldn't even have any knowledge of?"; "[A]re you aware at all of programs . . . that are essentially running on a person's computer, but they didn't ask for them? They don't know they are running in many cases?"; and "[I]f a computer is open already, if it is unlocked, if it is available, anybody typically could walk up and do a Google search . . . [a]nd there would be no way to track who had done that?" The *Spreigl* evidence allowed the state to counter appellant's questions on cross-examination by demonstrating knowledge, intent, or lack of mistake, which is a permissible purpose. See *Barthman*, 917 N.W.2d at 128; Minn. R. Evid. 404(b).

Fourth, the district court provided a curative instruction after the state introduced the *Spreigl* evidence that it was not to be used for propensity purposes as well as a final jury instruction to the same effect, and we presume that jurors follow a district court's instruction. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016).

But here, even if we were to assume that the district court erred in admitting the *Spreigl* evidence, there is not a reasonable possibility that its admission significantly affected the jury's verdict. In making this determination, we consider (1) how the state presented the evidence; (2) whether the evidence was highly persuasive; (3) whether the state discussed the evidence in closing argument; and (4) whether the defense effectively countered the evidence. *Smith*, 940 N.W.2d at 505; see *State v. Courtney*, 696 N.W.2d 73, 84 (Minn. 2005). "Strong evidence of guilt undermines the persuasive value of wrongly admitted evidence." *Smith*, 940 N.W.2d at 505.

First, the state did not provide any live testimony relating to the *Spreigl* evidence. *See Clark*, 738 N.W.2d at 347. Second, the state’s case against appellant was strong. *Barthman*, 917 N.W.2d at 128. It consisted of testimony from four witnesses, including a detailed account of the activity taking place on appellant’s computer in the minutes before one of the child-pornography videos was downloaded; two videos of child pornography that were found on appellant’s computer; and a document created by the police officer who analyzed appellant’s laptop showing a breakdown of when and where certain files were accessed and downloaded. Appellant did not offer any witnesses or exhibits. Third, the state referred to the *Spreigl* evidence only once in its closing argument. Fourth, appellant’s counsel addressed the 2011 conviction during closing argument. Appellant’s counsel told the jury that the state introduced the prior conviction as a “shortcut” but that it could not “make assumptions” and could “not [] convict the [appellant] on the basis of any conduct on a separate occasion.” Moreover, the district court gave two curative instructions to the jury. *Courtney*, 696 N.W.2d at 84. We conclude that there is not a reasonable possibility that the district court’s admission of *Spreigl* evidence, even if erroneous, significantly affected the jury’s verdict.

Affirmed.