

STATE OF MINNESOTA

IN SUPREME COURT

A03-1075

Hennepin County

Page, J.

Dissenting, Anderson, Paul H., Anderson, Russell A., JJ.

Took no part, Anderson, G. Barry, J.

State of Minnesota,

Respondent,

vs.

Filed: October 13, 2005
Office of Appellate Courts

Charden Gomez,

Appellant.

S Y L L A B U S

1. The trial court did not abuse its discretion when it admitted evidence of appellant's past crimes because the evidence was relevant and material and its probative value outweighed its potential for unfair prejudice.

2. The trial court plainly erred in giving the no-adverse-inference instruction without placing appellant's consent on the record. The error did not, however, significantly affect the jury's verdict; therefore, appellant is not entitled to a new trial on that basis.

3. The trial court erred when it invaded the province of the parties by initiating the strike of a venireperson of color, eliciting the defense counsel's response, and then giving reasons justifying the strike before the state actually struck the

venireperson. These errors are of a type that undermine the “structural integrity of the criminal tribunal itself.” As a result, appellant is entitled to a new trial.

Affirmed in part, reversed in part, and remanded for a new trial.

Heard, considered, and decided by the court en banc.

OPINION

PAGE, Justice.

On April 24, 2001, appellant Charden Gomez was indicted for the March 17, 2001, murders of Abel and Esther Hillman in Minneapolis. After a jury trial in Hennepin County District Court, Gomez was found guilty of two counts of first-degree murder during the commission of a burglary, two counts of second-degree intentional murder, two counts of second-degree murder while committing a burglary of a dwelling, two counts of second-degree murder while committing a burglary with assault, two counts of second-degree murder during the commission of a burglary with a dangerous weapon, two counts of second-degree murder during the commission of an aggravated robbery involving bodily harm, and two counts of second-degree murder during the commission of an aggravated robbery using a dangerous weapon. The jury acquitted Gomez of two counts of first-degree premeditated murder. Gomez was sentenced to two consecutive life sentences for the two counts of first-degree murder during the commission of a burglary.

In this direct appeal, Gomez contends that his convictions must be reversed because the trial court: (1) improperly admitted other crimes evidence; (2) gave the jury a no-adverse-inference instruction with respect to his right not to testify without making a

record of his consent to give the instruction; and (3) denied him the right to a fair trial when it overruled *Batson* challenges to the state's peremptory strikes of two non-Caucasian jurors and failed to sua sponte raise a *Batson* objection to the strike of another non-Caucasian juror. We affirm in part, reverse in part, and remand for a new trial.

At the time of their deaths, the Hillmans were both 89 years old, had been married to each other for 60 years, and had lived for the previous 52 years in the house where they were murdered. The Hillmans had one child, Larry Hillman. Larry had three children, only one of whom, Lori Williamson, lived in Minnesota. Williamson was a crack addict and a prostitute. The Hillmans would, from time to time, give money to Larry's children. Because of Williamson's crack addiction, they would occasionally give her small amounts of cash, buy her groceries and bus passes, or pay her rent, but they would not give her large sums of money.

Sometime in early 2001, Williamson met Gomez, who had recently been released from prison. At some point, Williamson introduced Gomez to her grandparents as her landlord and, on at least two occasions, Esther Hillman wrote checks collectively totaling \$625 payable to Gomez for Williamson's rent. In fact, Gomez was not Williamson's landlord. Nonetheless, Gomez cashed the checks and gave the proceeds to Williamson, who used the money to purchase drugs.

On March 16, 2001, Williamson drove Esther Hillman to the bank, where she bought two certificates of deposit, one in the amount of \$100,000 payable on death to her son Larry and the other in the amount of \$25,000 payable on death to Williamson. After

their trip to the bank, Williamson dropped Esther Hillman off at home, called several friends, and bragged about money she was going to be receiving from the Hillmans. When Williamson told her sister Lisa that the Hillmans were giving her a large sum of money in the form of a certificate of deposit, Lisa explained that the only way Williamson could collect the proceeds from the certificate of deposit was if the Hillmans died.

Lisa Hillman talked with Esther Hillman on the evening of Friday, March 16. The following morning, at approximately 6:34 a.m., a 911 call was placed from the Hillmans' home. When the operator answered the call, no one was on the line. Police officers, following up on the 911 call, went to the Hillmans' home. They found a newspaper lying on the sidewalk, the front door locked, all the lights off, and the shades pulled down. After ringing the doorbell and getting no answer, they left.

When Lisa was unable to reach the Hillmans on Sunday, March 18, she called her father and asked him to check on them. When he arrived at his parents' home, Larry Hillman found that a light in the bedroom window was on and the front door was unlocked. Upon entering, he discovered his parents' bodies. Autopsies revealed that Abel Hillman died of blunt force injuries to his head and that Esther Hillman had been stabbed more than 70 times, four of which could have been fatal in and of themselves.

After further investigation linked Gomez to the crime, he was arrested, charged, indicted for, and ultimately convicted of the Hillmans' murders.

I.

First, we consider whether the trial court improperly admitted evidence of previous crimes committed by Gomez. We review a trial court's decision to admit evidence of other crimes for an abuse of discretion. *State v. Blom*, 682 N.W.2d 578, 611 (Minn. 2004) (citing *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998)). Evidence of past crimes, frequently referred to as *Spreigl* evidence, is generally not admissible to prove the defendant's character for committing crimes, but can be admitted to show motive, intent, absence of mistake, identity, or a common scheme or plan. Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). *Spreigl* evidence can be admitted only if:

- (1) notice is given that the state intends to use the evidence;
- (2) the state clearly indicates what the evidence is being offered to prove;
- (3) the evidence is clear and convincing that the defendant participated in the other offense;
- (4) the *Spreigl* evidence is relevant and material to the state's case;
- and (5) the probative value of the *Spreigl* evidence is not outweighed by its potential for unfair prejudice.

Kennedy, 585 N.W.2d at 389. If it is unclear whether *Spreigl* evidence is admissible, the benefit of the doubt should be given to the defendant and the evidence should be excluded. *Id.*

To prove identity, the state successfully sought to admit evidence related to the following four crimes committed by Gomez:

- (1) On August 12, 1989, at 4:55 p.m., Gomez forcibly entered into an elderly couple's home. He struck both, knocked one to the ground, demanded money, and fled with their purse and wallet.

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