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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0513**

State of Minnesota,
Respondent,

vs.

Maurice Londell McClendon,
Appellant.

**Filed April 4, 2022
Affirmed
Kirk, Judge***

Ramsey County District Court
File No. 62-CR-19-9095

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

John Choi, Ramsey County Attorney, Thomas Ragatz, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Public Defender, Abigail Hunt Rankin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this direct appeal from a final judgment of conviction for first-degree and third-degree criminal sexual conduct, appellant claims the district court and prosecuting attorney

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

committed prejudicial errors that entitle him to a new trial. Appellant raises four challenges: (1) the district court abused its discretion by admitting *Spreigl* evidence; (2) prosecutorial misconduct affected the jury verdict; (3) the district court violated his right to a public trial by closing the courtroom to the public; and (4) the cumulative effect of the errors deprived him of a fair trial. We affirm.

FACTS

Respondent State of Minnesota charged appellant Maurice Londell McClendon with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2018), and third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(c) (2018). The victim, T.W., was a homeless woman.

Prior to trial, the state moved to admit evidence of two incidents of other similar conduct under Minn. R. Evid. 404(b), also known as *Spreigl* evidence, to prove common scheme or plan, modus operandi, identity, and intent: (1) a May 2018 incident involving a homeless woman with the initials J.P. and (2) a September 2019 incident involving a homeless woman with the initials C.S. McClendon opposed the admission of the *Spreigl* evidence. The district court held a *Spreigl* hearing and admitted the evidence of the May 2018 assault against J.P. to show common scheme or plan or similar modus operandi, but not identity or intent, and denied the state's request to present evidence relating to the September 2019 assault against C.S.

A jury trial commenced in August 2020. The record indicates that the district court did not permit the public into the courtroom due to social-distancing concerns stemming from the COVID-19 pandemic. The district court livestreamed the trial proceedings via

two-way video into an adjacent courtroom that was open to the public. McClendon did not object to these restrictions on in-person presence during the proceedings.

The state called 21 witnesses to testify at trial. The jury heard from T.W., law enforcement officers, security officers, medical personnel, and McClendon's roommate at the time of the charged offenses. The state introduced surveillance videos, photos of the crime scene, body-worn video footage, diagrams of T.W.'s face, body, and injuries, and photographs of T.W.'s injuries.

T.W. described the assault and identified McClendon as her assailant. She explained that McClendon approached her on August 15, 2019, near Higher Ground in downtown St. Paul. T.W. did not know McClendon, but she assumed he was homeless because she had seen him near the homeless shelters. McClendon asked her to smoke marijuana, and she agreed. The pair went to a utility shed behind the Minnesota History Center. While T.W. was sitting down, McClendon began masturbating near her face. T.W. pushed him away and McClendon hit her in the face with his fist, causing her to bleed. He then forced T.W. onto her stomach and sexually penetrated her from behind. She cried and repeatedly told him to stop. McClendon said something to the effect that "it didn't have to be like this" and that T.W. "could have been his bitch." After a few minutes, McClendon finished, got up, and ran off. T.W. ran in the opposite direction looking for help. She went to a hospital by ambulance and submitted to a sexual-assault examination. The forensic nurse who examined T.W. testified about her conversation with T.W. describing the assault, which was consistent with T.W.'s testimony. She also testified that the injuries T.W. sustained were consistent with recent sexual activity. The investigating officer on

T.W.'s case testified about his conversation with T.W. at the hospital after the incident, and the state introduced footage from the offer's body-worn camera depicting the conversation.

The state also presented *Spreigl* evidence in the form of testimony from J.P., the nurse who performed J.P.'s sexual-assault examination, the investigating officer, and the BCA agents who worked on J.P.'s rape kit. Before each of the *Spreigl* witnesses testified, the district court provided the pattern cautionary instruction concerning the admission of *Spreigl* evidence.

J.P. testified that she met her assailant on May 24, 2018, in downtown St. Paul. She was homeless at that time. The man approached her and asked her to smoke methamphetamine. J.P. agreed and the pair went to a more private location. Once they reached their destination, the man pulled out a knife and vaginally penetrated her. The man told J.P. that she "shouldn't be out here" and that this was what white women "like you get," and asked her to call him master. The man told her not to look at him and he sexually assaulted her for a second time when she disobeyed him. J.P. was not able to identify McClendon as her assailant at trial and testified that she identified a different man with 80% certainty in a lineup. The investigating officer and forensic nurse involved in J.P.'s case both testified consistent with J.P.'s testimony. The BCA agents that worked on J.P.'s rape kit, which came back with a DNA profile similar to McClendon's, also testified.

McClendon testified in his defense. He explained that he frequently went to the Higher Ground area seeking companionship and that on August 15, 2019, he approached T.W. and struck up a conversation and the two decided to smoke marijuana together.

McClendon testified that he arranged a sex-for-money transaction with T.W., where he agreed to pay her 20 dollars for oral sex. When they were in the private area behind the Minnesota History Center, T.W. performed oral sex on him. McClendon then asked T.W. if the two could have vaginal sex instead, to which T.W. agreed. McClendon testified that after he ejaculated, T.W. turned around, grabbed his penis, and asked him to pay her. He pushed T.W., causing them both to fall, and T.W. hit her head on the ground. He then ran off. McClendon also testified regarding the *Spreigl* incident involving J.P. He explained that the two agreed he would pay J.P. \$40 for sex and that they engaged in consensual sex. McClendon testified that he did not pay J.P. and did not injure her.

Following a five-day trial, the jury found McClendon guilty, and the district court imposed a 144-month sentence as to the first-degree offense with a lifetime conditional-release period. McClendon appeals.

DECISION

I. The district court did not abuse its discretion by admitting the state's *Spreigl* evidence.

McClendon argues he is entitled to a new trial because the district court erred by admitting *Spreigl* evidence of J.P.'s assault. 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). The appellant must show both erroneous admission and unfair prejudice to receive a new trial. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Evidence of a person's character is generally inadmissible to prove that the person acted in conformity with that character. Minn. R. Evid. 404(a). However, "[e]vidence of another crime, wrong, or act . . . 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.* at 404(b)(1). Such evidence is known as *Spreigl* evidence. *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). The state must satisfy procedural safeguards before *Spreigl* evidence will be admitted: (1) the state must give proper notice of the intent to admit the evidence; (2) the state must indicate the purpose of the evidence by specifying what the evidence will prove; (3) the state must provide clear and convincing evidence of the prior bad act that involved the defendant; (4) the state must indicate how the evidence is relevant and material to the current case; and (5) the probative value must outweigh the risk of unfair prejudice to the defendant. *See Ness*, 707 N.W.2d at 685-86; Minn. R. Evid. 404(b)(2). McClendon concedes that the state gave proper notice but asserts that it failed to satisfy the remaining four factors.

First, McClendon argues that the district court abused its discretion by failing to examine the state's true purpose of the *Spreigl* evidence. In seeking to admit *Spreigl* evidence, the state must identify a permissible purpose of the evidence and make "some showing or determination that the evidence reasonably and genuinely fits that purpose. It is not sufficient simply to recite a [rule] 404(b) purpose without also demonstrating at least an arguable legitimacy of that purpose." *State v. Montgomery*, 707 N.W.2d 392, 398 (Minn. App. 2005).

The consequential issue at trial was whether T.W. consented to a sex-for-money transaction or whether McClendon engaged in nonconsensual sexual intercourse using force. The evidence of J.P.'s assault was offered to show that McClendon engaged in a similar act and refute his consent defense. Because the *Spreigl* evidence “reasonably and genuinely fit[.]” with the purpose of proving common scheme or plan or similar modus operandi, the district court did not abuse its discretion in finding that the evidence was offered for a legitimate purpose. *Id.* at 398.

Second, McClendon argues that the state failed to meet the clear-and-convincing evidence standard because J.P. did not identify McClendon as her assailant and the state did not provide other evidence that demonstrated his participation in the *Spreigl* incident.¹ “[A] *Spreigl* incident may be considered clear and convincing when it is highly probable that the facts sought to be admitted are truthful.” *Ness*, 707 N.W.2d at 686. The clear-and-convincing threshold “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt” that the prior act occurred. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (quotation omitted).

¹ McClendon also argues that the district court abused its discretion by failing to hold an evidentiary hearing to determine whether the clear-and-convincing threshold was satisfied. While the use of additional procedural precautions is recommended, it is not mandated. *See State v. DeWald*, 464 N.W.2d 500, 505 (Minn. 1991) (recommending that district courts hold evidentiary hearings in close cases but recognizing that “A full hearing may not always be feasible or necessary and the trial court has broad discretion in determining whether or not to require a hearing.”). Further, McClendon has not given this court any reason to doubt the district court’s reliance on the proffer made by the state that summarized the same facts that J.P. later testified to at trial.

J.P.'s testimony at trial provided a detailed description of the incident that was consistent with the original police reports. And, in addition to her testimony, the record shows that the DNA profile obtained from J.P.'s rape kit matched McClendon's DNA profile. Therefore, the state met its burden of providing clear and convincing evidence that McClendon participated in the *Spreigl* incident.

Next, McClendon argues that the *Spreigl* evidence is not relevant to a disputed fact issue and is insufficiently similar to the charged offense to be admissible. "The use of *Spreigl* evidence to show a common scheme or plan has been endorsed repeatedly, despite the particular risk it poses for unfair prejudice." *Ness*, 707 N.W.2d at 687. Such evidence may be admissible "to refute the defendant's contention that the victim's testimony was a fabrication or a mistake in perception." *Id.* at 688. But for *Spreigl* evidence to be admitted under the common scheme or plan exception, it must have a marked similarity in modus operandi to the charged offense. *Id.* Courts evaluate whether another act tends to show a common scheme or plan based on similarities of time, place, and modus operandi. *Id.*

McClendon asserts that the location, approach, and method of penetration are neither significant nor markedly similar. He further distinguishes the incidents by the type of drug and weapon involved, emphasizing that J.P. offered to sell her assailant methamphetamine and her assailant used a knife, whereas T.W. was offered marijuana and her assailant used his fist. The state contends that the two assaults are markedly similar because in both instances, McClendon (1) targeted a homeless woman; (2) in broad daylight; (3) lured her into the same remote location in downtown St. Paul; (4) promised to share drugs with her; (5) used force; (6) raped her from behind; (7) injured her face; and

(8) used the word “bitch.” We agree with the state. Although the two incidents are not identical, “[a]bsolute similarity between the charged offense and the *Spreigl* incident is not required to establish relevancy,” *State v. Berry*, 484 N.W.2d 14, 17 (Minn. 1992). These two assaults were sufficiently similar to fall under the common scheme or plan exception. Notably, both women were homeless, brought to the same location under the ruse of doing drugs, and were assaulted in similar manners with the use of some force. Thus, the modus operandi of the prior offense was markedly similar to the charged offense for the district court to conclude that the prior offense was admissible as *Spreigl* evidence.

Lastly, McClendon argues that the potential for unfair prejudice outweighed the probative value of the *Spreigl* evidence. Relevant and material *Spreigl* evidence is nevertheless inadmissible if its probative value is substantially outweighed by the potential for unfair prejudice. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). This determination requires courts to balance the relevance of the *Spreigl* evidence, the risk of the evidence being used as propensity evidence, and the state’s need to strengthen weak or inadequate proof. *Id.* In concluding that the probative value of the *Spreigl* evidence was not outweighed by its potential prejudice, the district court stated:

If at trial, [McClendon abandons] the theory that [McClendon] and [T.W.] engaged in consensual sex and takes up a different defense, the court must review this element. However, if [McClendon’s] defense is as he stated during his police interview, the evidence regarding [J.P.] is relevant to the defense and does not create unfair prejudice to [McClendon].

The district court did not articulate a thorough explanation for its decision, but the logical inference to be drawn from the record is that the district court concluded the

balancing test favored admission because (1) the probative value of the evidence was strong and (2) the evidence was important to the state's case as it tended to discredit McClendon's consent defense. The *Spreigl* evidence was particularly probative here because of McClendon's defense that T.W. consented to the penetration. See *State v. Debaere*, 356 N.W.2d 301, 305 (Minn. 1984) (stating that where a defendant asserts a consent defense in a sexual-assault case, "other-crime evidence show[ing] a pattern of similar aggressive sexual behavior by defendant against other women in the community . . . [is] highly relevant to the issue of consent"). And the risk of unfair prejudice was lessened by the district court's limiting instructions to the jury. See *State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000) (stating that the prejudicial effect of evidence of similar prior conduct was mitigated by the district court's instruction to the jury). Thus, the district court did not abuse its discretion in concluding that the probative value of the *Spreigl* evidence was not outweighed by its potential unfair prejudice.

Because the district court's decision to admit the evidence was not error, we need not consider whether the evidence affected the verdict. We therefore hold that appellant is not entitled to a new trial based on the admission of the *Spreigl* evidence.

II. McClendon is not entitled to a new trial based on alleged prosecutorial misconduct.

McClendon claims he is entitled to a new trial because the prosecutor committed misconduct during cross-examination and closing argument. McClendon alleges both objected-to and unobjected-to misconduct, which are subject to different standards of review.

Objected-to Misconduct

When an objection is made at trial, this court has utilized a “two-tiered harmless-error test under which the standard of review varies based on the seriousness of the misconduct.” *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016); *see State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974) (articulating the two-tiered standard). Under this test, “unusually serious” misconduct is reviewed to determine whether the misconduct was harmless beyond a reasonable doubt and less-serious misconduct is reviewed to determine “whether the misconduct likely played a substantial part in influencing the jury to convict.” *Id.* Though the *Caron* test has been called into question, *see State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006), if the alleged prosecutorial misconduct was harmless beyond a reasonable doubt, then there is no need to address the standard for less serious misconduct. *Whitson*, 876 N.W.2d at 304 n.2.

McClendon’s defense counsel made three objections during the prosecutor’s cross-examination of McClendon. First, he objected to the prosecutor’s statement, “That’s not what you told us here today.” Second, he objected after the prosecutor said: “All right. So, what happened here exactly? I’m very confused. You’re adding all sorts of details here.” Third, defense counsel objected after the following exchange:

- Q. Would it refresh your recollection to take a look at the transcript?
- A. I’m just not sure how accurate that transcript is.
- Q. Okay. Well, I’m assuming this won’t help you then.

The district court properly addressed the objections at the time they were made and instructed the prosecutor to avoid the commentary. On appeal, McClendon argues that the

prosecutor's comments improperly conveyed his personal disbelief in McClendon's testimony. But even under the most stringent standard of review, the alleged misconduct was harmless beyond a reasonable doubt. The prosecutor's editorial comments were brief and innocuous and there was substantial evidence presented at trial in support of McClendon's guilt. As such, McClendon is not entitled to a new trial based on his allegations of objected-to misconduct.²

Unobjected-to Misconduct

This court uses a modified plain-error standard of review for allegations of prosecutorial misconduct that were not objected to during trial. *Ramey*, 721 N.W.2d at 302. Under this test, the defendant has the burden of proving (1) that an error was made and (2) that it was plain. *Id.* The burden then shifts to the state to prove that the error did not affect the defendant's substantial rights. *Id.* Even where misconduct occurs, this court will reverse only when the misconduct affects a defendant's substantial rights. *State v. Hill*, 801 N.W.2d 646, 654 (Minn. 2011).

Although McClendon alleges numerous instances of unobjected-to prosecutorial misconduct, the only allegation with merit involves the prosecutor's use of *Spreigl* evidence to make a propensity argument.³ A prosecutor may not use *Spreigl* evidence "as

² Because we conclude that the prosecutorial misconduct alleged here is harmless beyond a reasonable doubt, we need not address whether the prosecutor committed any misconduct.

³ McClendon also alleged that the prosecutor committed prejudicial misconduct by expressing and implying his opinion on the credibility of the witnesses, aligning himself with the jury, inflaming the passions of the jury by using a predator/prey analogy, and disparaging McClendon and his theory of defense.

a means to attack the defendant's character or to establish a criminal propensity." *State v. Duncan*, 608 N.W.2d 551, 555 (Minn. App. 2000), *rev. denied* (May 16, 2000). During the prosecutor's closing, he argued that McClendon "knew he had done this before too and gotten away with it, or so he thought." Although "there is nothing inappropriate . . . about referring to properly admitted *Spreigl* evidence in a closing argument," *id.*, the prosecutor's statement here clearly implied that the *Spreigl* evidence of J.P.'s assault showed McClendon's propensity to engage in criminal sexual conduct and urged the jury to convict McClendon to punish him for the other offense that he had "gotten away with." This argument was inappropriate.

Assuming that the prosecutor's argument constituted plain-error misconduct, we would reverse only if the misconduct affected McClendon's substantial rights. *Hill*, 801 N.W.2d at 654. Here, we consider "(1) the strength of the evidence against the defendant; (2) the pervasiveness of the improper misconduct; and (3) whether the defendant had an opportunity (or made efforts) to rebut the prosecutor's improper suggestions." *Id.* at 654-55.

First, the evidence against McClendon was substantial and compelling. T.W. provided a detailed account of the assault during her testimony—which was consistent with the injuries she sustained—the DNA evidence, the video surveillance, and the testimony of the examining nurse and investigating officer. Second, the prosecutor's propensity argument was not pervasive, covering less than one of the 26 pages of the transcript containing his closing argument. Further, it was rectified by the court's instructions to the jury regarding the proper use of *Spreigl* evidence. Lastly, defense counsel had ample

opportunity to address the prosecutor's alleged misconduct. During his closing, defense counsel specifically countered the state's propensity argument, stating:

The state is trying to use this other scenario [of the assault against J.P.] to try to say that there is no way Mr. McClendon's version could be true. Look, some other woman, who happens to be homeless, who would probably need money and probably is a prostitute potentially, also is claiming a similar situation.⁴

Based on our thorough review of the record, we conclude that the alleged misconduct did not have a significant effect on the jury's verdict and thus did not affect McClendon's substantial rights. Accordingly, a new trial on the basis of prosecutorial misconduct is not warranted.

III. The district court did not violate McClendon's right to a public trial.

McClendon next argues that the district court violated his right to a public trial by closing the courtroom to in-person observation. Whether the district court violated a defendant's right to a public trial is a constitutional question this court reviews de novo. *See State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I § 6. But the right to a public trial is not absolute. *State v. Taylor*, 869 N.W.2d 1, 10 (Minn. 2015). Some restrictions on access to the courtroom are so insignificant that they do not amount to a true closure. *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019). And, even where a

⁴ Defense counsel also directly addressed the prosecutor's remark about McClendon's improved memory, and indirectly addressed the prosecutor's other comments that allegedly indicated his disbelief of McClendon's testimony.

true closure occurs, it may be justified if: (1) the party seeking to close the courtroom advances “an overriding interest that is likely to be prejudiced,” (2) “the closure is no broader than necessary to protect that interest,” (3) “the district court considers reasonable alternatives to closing the proceeding,” and (4) “the district court makes findings adequate to support the closure.” *Id.* at 550 (quotations omitted); *see also Waller v. Georgia*, 467 U.S. 39, 48 (1984). These four factors are known as the *Waller* factors.

While the unconstitutional closure of a courtroom is generally considered to be a structural error that requires automatic reversal, *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009), the state argues that a plain-error standard of review applies here because McClendon did not object to the courtroom limitations at trial. It appears the standard of review for an unobjected-to public-trial violation is an unsettled issue in Minnesota. *See State v. Modtland*, __ N.W.2d __, __ at n.4, 2022 WL 433245, at *10 (Minn. App. Feb. 14, 2022). The state also argues that no closure occurred because McClendon’s trial was livestreamed via two-way video into an adjacent courtroom that was open to the public. However, we need not decide either issue here because, even assuming a true closure occurred here, it was justified under the *Waller* factors, and the district court did not violate McClendon’s right to a public trial.

The district court did not expressly address the *Waller* factors, but this court may review the record to determine whether the *Waller* factors were nevertheless satisfied. *See State v. Mahkuk*, 736 N.W.2d 675, 684-85 (Minn. 2007) (conducting de novo review of the record to determine whether the *Waller* standard was met). Here, the district court explained the COVID-19-related procedures:

Now, as you can see, we are in a modified courtroom and that is because this case is being tried during the COVID-19 pandemic. First, you will notice that there is a screen behind me and there is an empty courtroom being shown on the screen. This case will be broadcast to this courtroom because there is a right to have an open jury process or a public jury. The public may not come into this room. We will not have the proper spacing if they do. You should know that each chair in this room is at least 6 feet apart from any other chair; and between every court session or between any time someone sits in any of the chairs, that my team will take anti-bacterial wipes and wipe down that space.

Under the first *Waller* factor, a courtroom closure is justified when the party seeking closure advances an overriding interest. *Waller*, 467 U.S. at 48. The district court's comments clearly expressed that it was implementing precautionary measures to protect from COVID-19 exposure and spread, which is an overriding interest. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (stating "[s]temming the spread of COVID-19 is unquestionably a compelling interest").

The second and third *Waller* factors require the district court to implement a closure no broader than necessary and to consider reasonable alternatives to the closure. *Waller*, 467 U.S. at 48. In arguing that the district court implemented a closure broader than necessary and failed to consider reasonable alternatives, McClendon cites to the trial of Derek Chauvin in Hennepin County where the district court imposed COVID-19 distancing requirements but allowed some public spectators and the parties' family members in the courtroom. However, this comparison is unpersuasive. While other courtrooms with different layouts and additional resources have the potential to safely accommodate additional spectators, the precautionary measures implemented here were specific to the

Ramsey County courthouse and its limited space. Here, the district court expressly stated that it did not have the “proper spacing” to safely accommodate spectators in the courtroom, which indicates that the court considered the options available to it at the time and concluded the livestream was the most reasonable way to maintain public access while protecting against the spread of COVID-19.

The fourth and final *Waller* factor requires the district court to make sufficient factual findings in support of the closure. *Waller*, 467 U.S. at 48. While it is better practice for a district court to make express *Waller* findings on the record when limiting courtroom access, the record here permits review of the district court’s decision based on its implicit *Waller* findings. *See id.* at 45 (noting that findings must be “specific enough that a reviewing court can determine whether the closure order was properly entered”). The district court’s statements on the record are sufficient to satisfy the fourth *Waller* factor.

IV. McClendon received a fair trial.

An appellant may be entitled to a new trial if “errors, when taken cumulatively, had the effect of denying [the] appellant a fair trial.” *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009). Cumulative error is generally reserved for “very close factual case[s]” in which multiple errors rendered the appellant’s trial fundamentally unfair. *State v. Erickson*, 610 N.W.2d 335, 340 (Minn. 2000). In weighing a cumulative-error argument, we consider the egregiousness of the errors and the strength of the prosecution’s case. *State v. Cermak*, 350 N.W.2d 328, 333-34 (Minn. 1984). McClendon argues that the cumulative effect of the errors at trial deprived him of a fair trial, but a thorough review of the record shows that the errors alleged, even when combined, were not dispositive to the verdict. And trial

errors that do not affect the outcome of a proceeding are not sufficient. *Erickson*, 610 NW.2d at 341.

Affirmed.