

*This opinion is nonprecedential except as provided by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
A22-0770**

State of Minnesota,
Respondent,

vs.

Jose Alejandro Mejia-Bonilla,
Appellant.

**Filed March 6, 2023
Affirmed
Cleary, Judge***

Stearns County District Court
File No. 73-CR-21-539

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Cleary, Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this direct appeal from the final judgment of conviction for first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by (1) admitting evidence of two incidents of sexual contact involving the same victim and (2) denying his motion for a downward dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jose Alejandro Mejia-Bonilla with one count of first-degree criminal sexual conduct—penetration or contact with person under 13, under Minn. Stat. § 609.342, subd. 1 (2020). The complaint alleged that Mejia-Bonilla digitally penetrated H.B.-M., his niece, while they were driving with family to St. Cloud. Mejia-Bonilla pleaded not guilty to the charge, and the matter was set for jury trial.

The state filed a pretrial motion to admit evidence about two other incidents of sexual contact between Mejia-Bonilla and H.B.-M., arguing that evidence was admissible as *Spreigl* evidence under Minn. R. Evid. 404(b) to establish Mejia-Bonilla’s intent or absence of mistake. *See State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). Mejia-Bonilla opposed the state’s motion, arguing that the evidence was more prejudicial than probative. The district court granted the state’s motion and admitted the evidence to prove intent and absence of mistake, explaining that although the incidents “may perhaps be damaging evidence, it is not based on an illegitimate means.”

At trial, H.B.-M. testified that she was sexually assaulted by Mejia-Bonilla while driving to St. Cloud. H.B.-M. was sitting in the backseat, with Mejia-Bonilla on her left

and her brother on her right. H.B.-M.'s father was driving, and her mother was in the passenger seat. H.B.-M. explained that Mejia-Bonilla began rubbing her thigh and then he put his hand down her pants and put one finger inside her vagina for 15 to 20 seconds. She said that she did not try to get anyone else's attention because she was in shock.

About 15 minutes later, the family stopped at a Casey's General Store in Richmond, and her father and Mejia-Bonilla went to the bathroom. Mejia-Bonilla then came out of the bathroom and asked her, "Can I be pisarte?" H.B.-M. testified she did not know what "pisarte" meant, but her sister later testified that "pisarte" is slang for "I want to f-ck you." H.B.-M. also stated Mejia-Bonilla "was rubbing on" her and his "private part was touching [her] butt."

H.B.-M. then testified about the two incidents that the district court had admitted as *Spreigl* evidence. The first incident involved Mejia-Bonilla forcibly kissing H.B.-M. and the second incident involved Mejia-Bonilla forcibly hugging H.B.-M. and grabbing her butt. The state also presented H.B.-M.'s taped interview with a police investigator, in which H.B.-M. described Mejia-Bonilla's conduct during the drive to St. Cloud and the two *Spreigl* incidents.

The jury returned a guilty verdict for first-degree criminal sexual conduct. After the guilty verdict, the district court ordered a presentence investigation, including a psychosexual evaluation.

At the sentencing hearing, Mejia-Bonilla moved for a downward dispositional departure, citing his low risk per the psychosexual evaluation and the presentence investigation's recommendation for a dispositional departure. The state opposed that

motion, focusing on Mejia-Bonilla's failure to accept responsibility. Mejia-Bonilla then spoke on his own behalf, stating he was a good person and "everybody knows that it's just a lie that the girl told." The district court then denied the dispositional departure and sentenced Mejia-Bonilla to the presumptive sentence of 144 months in prison.

Mejia-Bonilla appeals.

DECISION

I. The disputed evidence of other incidents of sexual contact between Mejia-Bonilla and the victim was admissible under Minn. Stat. § 634.20 (2022).

Mejia-Bonilla argues that the district court abused its discretion by admitting evidence of other incidents of sexual contact with H.B.-M. as *Spreigl* evidence. The state contends that the evidence was properly admitted as *Spreigl* evidence, and, even if it were not, the district court's ruling should be affirmed because the evidence is relationship evidence admissible under Minn. Stat. § 634.20. Although we generally do not decide issues that were not raised to the district court, the state may defend the district court's ruling that the evidence was admissible on alternative grounds on appeal so long as there are sufficient facts in the record, legal support for the arguments, and "the alternative grounds would not expand the relief previously granted." *See State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

Following the state's pretrial motion, the district court ruled that the evidence about the other incidents was admissible as *Spreigl* evidence for the state's asserted purposes of establishing intent or absence of mistake. The state presented evidence about the two disputed incidents at trial. The first incident occurred in the living room of H.B.-M.'s home,

a couple of weeks after the drive to St. Cloud. When other members of H.B.-M.'s family were home, Mejia-Bonilla called her over to him and then grabbed her face and kissed her. The second incident occurred in the front yard of H.B.-M.'s home a couple of weeks later. Mejia-Bonilla, H.B.-M.'s parents, and her mother's friend were outside, and H.B.-M.'s mother told her to say hello to Mejia-Bonilla. When H.B.-M. tried to give him a handshake, he instead hugged her and grabbed her butt. H.B.-M. testified that she had not told anyone about either incident.

Generally, “[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,” though it may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). Such evidence of other acts or crimes is known as *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *Spreigl*, 139 N.W.2d at 167). A district court must follow a five-step procedure to properly 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.

State v. Tomlinson, 938 N.W.2d 279, 286 (Minn. App. 2019), *rev. denied* (Minn. Feb. 26, 2020); *see also* Minn. R. Evid. 404(b)(2).

We agree with Mejia-Bonilla that the district court erred in admitting the disputed evidence as *Spreigl* evidence because the state's asserted purposes were improper. Under *Spreigl*, the district court must "isolate[e] the consequential fact for which the evidence is offered, and then determin[e] the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006).

Here, neither Mejia-Bonilla's intent nor the absence of mistake were at issue because the consequential fact was whether Mejia-Bonilla digitally penetrated H.B.-M., and his sole defense was that H.B.-M. fabricated that contact. The supreme court has explained that, in circumstances like this, sexual or aggressive intent would be readily inferred from that contact. *Id.* at 687. Furthermore, when the defendant denies touching the victim, rather than claiming that the victim was mistaken about the contact, such other-acts evidence is not admissible to show absence of mistake. *See id.* As a result, the district court erred by admitting the evidence to prove intent or absence of mistake.

Nonetheless, because the record contains sufficient factual information, the argument has legal support, and the application of Minn. Stat. § 634.20 would not expand the relief previously granted to the state, we will consider the state's alternative argument that the evidence is admissible under Minn. Stat. § 634.20.

Under Minn. Stat. § 634.20, the state may be allowed to present "[e]vidence of domestic conduct by the accused against the victim of domestic conduct." Such evidence, often called "relationship evidence," is intended to "illuminate the history of the relationship" and "put the crime charged in the context of the relationship between the

two.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Such evidence is admissible “unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury.” Minn. Stat. § 634.20; *McCoy*, 682 N.W.2d at 156 n.1. And unlike evidence admitted as *Spreigl* evidence, there is no notice requirement because the “defendant is aware that his prior relationship with the victim, particularly in so far as it involves ill will or quarrels, may be presented against him.” *Id.* at 159-160 (quotation and alteration omitted).

We conclude that the two other incidents of sexual contact are admissible under Minn. Stat. § 634.20. “Domestic conduct” includes “domestic abuse,” which is defined as physical harm, bodily injury, or assault, as well as “criminal sexual conduct[] within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451” when such conduct is “committed against a family or household member by a family or household member.” Minn. Stat. § 518B.01, subd. 2(a) (2022). At the time of the incidents, H.B.-M. was younger than 14 and Mejia-Bonilla was more than 36 months older. As a result, his sexual contacts with H.B.-M. are consistent with second-degree criminal sexual conduct. *See* Minn. Stat. § 609.343 (2022). Because H.B.-M. is Mejia-Bonilla’s niece, evidence about those incidents falls within the scope of section 634.20.

Next, we consider whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. “When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn.

2006) (quotation omitted). Persuasion by illegitimate means includes “leading the jury to improperly conclude that [the defendant] has a propensity to behave criminally and should now be convicted, and punished, for the charged offenses.” *State v. Hormann*, 805 N.W.2d 883, 891 (Minn. App. 2011), *rev. denied* (Minn. Jan. 17, 2012).

Here, the evidence about the other incidents, which occurred in close temporal proximity to the charged conduct, demonstrated that Mejia-Bonilla’s relationship to his niece included opportunistic sexual contact in semi-public settings despite the risk of discovery by others in the family. As a result, that evidence “is relevant to ‘illuminate the history of the relationship’ so as to put the charged crime in context.” *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017) (quoting *McCoy*, 682 N.W.2d at 159). Furthermore, the potential for unfair prejudice was diminished because the other incidents involved less severe sexual contact and the district court’s cautionary instruction properly limited the jury’s use of the evidence in determining whether the charged conduct occurred. We conclude that the danger of unfair prejudice from this disputed evidence does not substantially outweigh the evidence’s significant probative value.

We agree with the state that the disputed evidence is otherwise admissible under Minn. Stat. § 634.20. Despite the district court’s error in admitting the evidence under *Spreigl*, that error is harmless because an appellate court’s “holding that, despite the procedural error, the evidence would have been admissible is implicitly a holding that the procedural error was harmless.” *Bell*, 719 N.W.2d at 642.

II. The district court did not abuse its discretion by denying Mejia-Bonilla's departure motion.

This court reviews the district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). "The district court must order the presumptive sentence provided in the sentencing guidelines unless substantial and compelling circumstances warrant a departure." *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). We will affirm a presumptive sentence if "the record shows that the sentencing court carefully evaluated all the testimony and information presented," even if reasons for a departure exist. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). "[A]n explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Only in a "rare case" will this court "reverse the imposition of a presumptive sentence." *Pegel*, 795 N.W.2d at 253.

A dispositional departure is generally based on the characteristics of the defendant that show that the defendant is particularly amenable to probation. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016); *see State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (explaining that "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family" are all factors relevant to whether a dispositional departure is justified). Mejia-Bonilla contends he is particularly amenable to probation and, therefore, the district court abused its discretion by denying a downward dispositional departure. We disagree.

In denying Mejia-Bonilla's motion for a dispositional departure, the district court acknowledged the completed psychosexual evaluation and that the presentence investigation recommended departure. However, the district court explained that "the [d]efendant has not taken responsibility and has continued to say that the victim in this case is lying," before stating that "there are not substantial and compelling reasons to grant the departure" and imposing the presumptive sentence of 144 months.

The record demonstrates that the district court properly considered the reasons for and against departure, but determined that Mejia-Bonilla failed to establish substantial and compelling circumstances that would allow a dispositional departure, which is well within its discretion. *See Pegel*, 795 N.W.2d at 253-54 ("[T]he mere fact that a mitigating factor is present in a particular case does not obligate the court to place the defendant on probation or impose a shorter term than the presumptive term." (quotation omitted)). We discern no abuse of discretion in its imposition of the guidelines sentence.

Affirmed.