

*This opinion is nonprecedential except as provided by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
A23-1708**

State of Minnesota,
Respondent,

vs.

John Warren Harris,
Appellant.

**Filed December 2, 2024
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-20-414

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

John Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant John Warren Harris challenges his convictions for multiple counts of criminal sexual conduct, domestic assault, and domestic assault by strangulation, arguing that the charges in counts 5-6, should have been severed from counts 1-4, because they

were unrelated, and that the district court erred by including appellant's Florida convictions in his criminal history score. We affirm in part, reverse in part, and remand.

FACTS

Appellant met E.R. in Florida, where they both resided and worked in the moving industry. E.R. testified that they had been in a romantic relationship for "a few weeks to a month." In January 2020, E.R., appellant, and M.U. contracted to do a job in Minnesota, where E.R.'s parents lived.

On January 7, E.R. met appellant and M.U. around 10:30 p.m. at a bar and found them already drunk. The three of them took selfies and continued drinking until around 12:00 a.m. – 1:30 a.m. on January 8. Appellant had booked a room at a motel next door to the bar; he and E.R. planned to have a few drinks, spend the night there, and go straight to work the next day. M.U. excused himself to sleep in his 18-wheeler in the motel parking lot. E.R. testified that, as she and appellant left the bar, they got into an argument over appellant being "jealous about something."

In the hotel room, their argument escalated. Appellant started beating E.R., took her cellphone, and ripped the phone out of the hotel room so she could not call for help. Appellant continued to beat E.R. while telling her he was going to kill her. After he had choked her to the point where she passed out, she woke up in the shower with appellant slapping her face to revive her. Appellant then dragged E.R. to the bed and sexually penetrated her vagina with his penis. E.R. did not remember what stopped the abuse; she speculated that she fell asleep out of exhaustion or was knocked out.

When E.R. woke up later in the morning, all her clothing had been removed. She tried to act normally from fear of being beaten up again or killed, but when appellant woke, he tried to kiss E.R., got on top of her, and spread her legs open. She repeatedly closed her legs as she cried. Appellant vaginally penetrated E.R. for about a minute before releasing her and complaining that she had broken his thumb the previous night. E.R. testified that her whole body, including her vagina, was in serious pain during the morning assault.

Appellant eventually returned E.R.'s phone, and she recorded a conversation in which she asked him "[W]hy did you do that to me?" Appellant left the motel to check in with M.U. and go to the moving job; he excused E.R.'s absence due to illness. E.R. then called the police and her father, who came to pick her up. E.R. went straight to the hospital where she had several medical exams and was given numerous medications.

The state initially charged appellant with four counts related to his conduct towards E.R. in the early morning hours of January 8: (1) criminal sexual conduct in the first degree (penetration, injury, use force or coercion); (2) criminal sexual conduct in the third degree (force or coercion); (3) domestic assault (felony); and (4) domestic assault by strangulation. The state later amended its complaint to include two counts related to appellant's conduct later that morning: (5) criminal sexual conduct in the first degree (injury, use of force or coercion); and (6) criminal sexual conduct in the third degree (force or coercion).

Before trial, appellant moved the district court to sever counts 5 and 6. The district court denied the motion, stating:

I am going to deny the defense's motion, and I am relying upon Minnesota Rules of Criminal Procedure Rule 17.03 and *State v. Profit*, as the defense has indicated. The question with regard

to severing or joining charges is whether or not the charges are related . . . [and] it appears these are, from what the parties are telling me, the same two parties; the same location, Motel 6; the same day, January 8; and the time in between the allegations is less than 12 hours . . . and there is nothing intervening or anything to break up the first allegation and the second allegation.

The jury found appellant guilty on all six counts. The district court sentenced appellant to 216 months in prison on count 1, based on a criminal history score of three, and to 18 months in prison on count 3, based on a criminal history score of two. The sentences were concurrent. Each criminal history score included appellant's prior convictions in Florida. This appeal follows.

DECISION

I. Denial of the Motion to Sever

We review de novo a district court's denial of a motion to sever of offenses under Minn. R. Crim. P. 17.03. *State v. Kendell*, 723 N.W.2d 597, 607 (Minn. 2006). "On motion of the prosecutor or the defendant, the court must sever charges if: (a) the offenses or charges are not related, [or] (b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge. . . ." Minn. R. Crim. P. 17.03, subd. 3. "Therefore, when faced with a motion for severance of offenses, a district court must first decide whether the offenses are related and, if they are related, must determine whether joinder would prejudice the defendant." *Kendell*, 723 N.W.2d at 607. Appellant argues that (a) his offenses are not sufficiently related, (b) joinder prejudiced his right to a fair trial, and (c) he was not able to properly defend against all six counts.

A. Relationship of the Charges

Appellant argues that joinder was improper because counts 1-4 were not sufficiently related to counts 5-6. A district court shall sever offenses if they are not related. Minn. R. Crim. P. 17.03, subd 3(1)(a). In determining whether offenses are related, a district court considers whether they were “part of a single behavioral incident or course of conduct.” *State v. Profit*, 591 N.W.2d 451, 459 (Minn. 1999). To make that determination, a district court looks to (1) the “temporal and geographic proximity of the offenses” and (2) “whether the conduct was motivated by an effort to obtain a single criminal objective.” *Kendell*, 723 N.W.2d at 608. Whether multiple offenses arise from a single behavioral incident is dependent upon the particular facts and circumstances of each case. *State v. Gilbertson*, 323 N.W.2d 810, 812 (Minn. 1982).

Appellant argues that, while the offenses involved the same victim in the same hotel room, they were separated by time and thus were not part of a single behavioral incident, and that the two sets of counts, 1-4 and 5-6, lacked a single criminal objective because they were not part of a premediated plan or prearranged program of events because each set had its own independent foundation. See *State v. Bookwalter*, 541 N.W.2d 290, 296 (Minn. 1995). Appellant also notes that courts have rejected broad criminal objectives such as “abusive behavior” that might cover both counts 1-4 and counts 5-6, relying on *State v. Eaton*, 292 N.W.2d 260, 266-67 (Minn. 1980) and *State v. Secrest*, 437 N.W.2d 683, 685 (Minn. App. 1989), *rev. denied* (Minn. May 24, 1989).

But case law indicates that the charges against appellant constituted one behavioral incident. See, e.g., *State v. Dukes*, 544 N.W.2d 13, 20 (Minn. 1996) (concluding that two

robberies were related because they were separated by minutes in time and one block in distance and they shared the “objective of obtaining money through robbery”); *State v. Ivy*, 902 N.W.2d 652, 659 (Minn. App. 2017) (concluding that the motivation of a single criminal objective to traffic women in the sex trade, even when coupled with a broad interpretation of geographic and time relations, constituted one behavioral incident); *State v. Dick*, 638 N.W.2d 486, 491 (Minn. App. 2002) (concluding that two burglary charges were related because of the proximity of the burglarized cabins, the timing, and the shared criminal objective).

Here, counts 1-4 are closely related to counts 5-6 because the *only thing* separating them was a few hours of sleep. They occurred in the same motel room and with the same victim, who was still naked and in pain from the first assault during the second assault. Appellant even referred to his previous assault during his second assault when he complained that E.R. had broken his thumb.

Appellant’s offenses also had a single criminal objective. Appellant argues that his broad motivations did not satisfy the standard of relatedness. We disagree. The record indicates that all six counts arose from the argument between appellant and E.R. over “jealousy” and were motivated by appellant’s desire to assault E.R. both physically and sexually. Moreover, E.R. was still in pain from the first assault when appellant assaulted her after a few hours of sleep; the second assault was worse because she had not recovered from the first. In *Profit*, two offenses were considered unrelated in part because there was no indication that “either offense was *dependent on or incidental to the other.*” *Profit*, 591 N.W.2d at 459. (emphasis added).

Appellant also argues that counts 1-4 could have been proved independently of counts 5-6, and thus the two sets of counts are not part of a single behavioral incident. *Relying on, State v. Butcher*, 563 N.W.2d 776, 784 (Minn. App. 1997), *rev. denied* (Minn. Aug. 5, 1997). But “[a]ll the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.” Minn. Stat. § 609.035, subd 1 (2018). Appellant’s argument fails because the charges against him likely could not have been proved independently. *See State v. Knight*, 260 N.W.2d 186, 187 (Minn. 1977) (holding that two assaults against the same victim separated by a twelve hour “short period of apparent reconciliation” were held to be so closely related that trying them separately would have violated Minn. Stat. § 609.035). The same is true here, because a person who has committed more than one offense “may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them.” Minn. Stat. § 609.035, subd. 1.¹

B. Prejudice of Joinder

Even if offenses are related, the court must decide whether joinder would prejudice the defendant. *Kendell*, 723 N.W.2d at 607. “Joinder is not unfairly prejudicial if evidence of each offense would have been admissible at a trial of the other offenses had the offenses been tried separately.” *Id.* at 608. Appellant argues that the district court’s joinder of all counts prejudiced his right to a fair trial. However, the other-acts evidence would have

¹ The district court did not impose a sentence for the first-degree criminal sexual conduct in Count 5.

been admissible if the counts had been tried separately, as either immediate-episode, or relationship, or *Spreigl* evidence, and thus joinder was not prejudicial.

Evidence of the first sexual assault could have been admitted as relationship evidence for the second sexual assault. Relationship evidence is “any evidence of past conduct between the alleged victim and the accused that sheds light on the relationship between the two.” *State v. Bell*, 719 N.W.2d 635, 638, n.4 (Minn. 2006).

Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Minn. Stat. § 634.20 (2018). The assaults in counts 1-4 and those in counts 5-6 all illuminated the relationship between appellant and E.R. and could have been admissible as relationship evidence if the counts had been severed.

Evidence of all the counts could also have been admitted as immediate-episode evidence. “[E]vidence relating to offenses that were part of the immediate episode for which defendant is being tried may be admissible.” *Kendell*, 723 N.W.2d at 608 (quotations omitted). Immediate-episode evidence is separate from evidence of other prior bad acts. *Id.* Immediate-episode evidence offenses must be “linked together in point of time or circumstances so that one cannot be fully shown without proving the other.” *Id.*, n.9 (quotation omitted). Here, the two sets of counts were linked together by the same victim, the same motel room, and the fact that the acts occurred only a few hours apart. E.R. still felt fear and pain from the earlier offenses during the later offenses. Moreover,

evidence from all six counts was collected after the offenses occurred. Thus, evidence of each set of counts could have been admitted as immediate-episode evidence.

Finally, the evidence could have been admitted as *Spreigl* evidence. “[T]he analysis . . . for *Spreigl* evidence serves as a useful framework for evaluating the possible prejudicial effect of improperly joining offenses.” *Profit*, 591 N.W.2d at 461. And, while evidence of prior bad acts is not admissible to show character, 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). *Spreigl* evidence shall not be admitted in a criminal prosecution unless the court determines:

(1) that the evidence is clear and convincing that the defendant participated in the other offense; (2) that the *Spreigl* evidence is relevant and material to the state’s case; and (3) that the probative value of the *Spreigl* evidence is not outweighed by its potential for unfair prejudice.

State v. Shannon, 583 N.W.2d 579, 583 (Minn. 1998).

Appellant admits that *Spreigl* analysis is the correct framework for evaluating whether an erroneous failure to sever unrelated offenses is prejudicial, but argues that, although the district court stated, “this could be *Spreigl*,” a *Spreigl* analysis never took place, and also that the evidence would not have been admitted under *Spreigl* as “identity was certainly not in dispute and there is no identified common plan or scheme.” Appellant goes on to argue that the evidence would have been barred as unfairly prejudicial. See *State v. Ness*, 707 N.W.2d 676, 690 (Minn. 2006) (stating that courts should address the need for *Spreigl* evidence in the context of balancing the probative value of the evidence

against its potential for unfair prejudice). *Profit* points to *Spreigl* as a “useful framework” in severance circumstances, not as a required test. *Profit*, 591 N.W.2d at 461.

Here, the evidence of the other set of counts could have been admitted as *Spreigl* because (1) the evidence is clear that appellant participated in the other offenses, (2) the crimes were closely related, and (3) the close relationship of the crimes increased their relevance and thus their probative value. See *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998) (reasoning that close relationship between events increases the relevance or probative value of evidence). Each set of offenses was highly relevant and material to the other.

Overall, appellant’s argument that he was unfairly prejudiced and that “[b]ecause evidence of the second sexual assault could not be used for legitimate means in a separate trial on the first sexual assault” joinder was erroneous, is unconvincing. Counts 1-4 and counts 5-6 were closely related and highly relevant to the state’s case. And, as detailed above, the offenses would have been admitted as immediate-episode, relationship, or *Spreigl* evidence. See *Profit*, 591 N.W.2d at 461 (holding that joinder was justified “because, absent joinder, evidence of either crime could have been used for legitimate means in a separate trial on each charge.”).

C. Defense Against All Counts

Even related offenses must be severed if a district court “determines severance is appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense” Minn. R. Crim. P. 17.03, subd. 3(1)(b). Appellant argues that he was unable to defend against all counts at trial, relying on an American Bar Association (A.B.A.)

commentary that severance can be appropriate “if available defenses are inconsistent.” A.B.A. Standards for Criminal Justice, Joinder and Severance, chap. 13-2.1 (commentary) (1978). Appellant points out that his defense against the sexual assault (counts 1-2) was that he physically assaulted (counts 3-4), but did *not* sexually assault E.R. But appellant had no such defense for counts 5-6. *Id.* Additionally, appellant states that he “disagrees with appellate caselaw that indicates that the *Spreigl* test is the appropriate prejudice test when the defendant claims that he cannot defend against joined charges.”

Appellant’s argument that he was unable to fairly defend himself is not persuasive because the record demonstrates that he did provide a defense to the joined claims, arguing that (1) the state failed to prove nonconsensual sex occurred, (2) E.R.’s testimony and prior statements were inconsistent and, (3) E.R.’s testimony was not credible. Appellant also does not offer an alternative to the *Spreigl* prejudice test, but merely suggests it does not apply. We disagree. Thus, we conclude that, “[g]iven the close connection between the offenses, the probative value of the evidence of each offense would not have been substantially outweighed by the risk of unfair prejudice at a trial for the other offenses.” *Kendell*, 723 N.W.2d at 609.

II. Inclusion of Florida Convictions

Appellate courts “review a district court’s ruling with respect to a defendant’s criminal history score for an abuse of discretion.” *State v. Morgan*, 953 N.W.2d 729, 732 (Minn. App. 2020), *aff’d*, 968 N.W.2d 25 (Minn. 2021). A “sentence based on an incorrect criminal history score is an illegal sentence” that is “correctable ‘at any time.’” *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007) (quoting Minn. R. Crim. P. 27.03, subd. 9).

For an out-of-state conviction to be included as a felony, it must “both be defined as a felony in Minnesota, and the offender [must have] received a sentence that in Minnesota would be a felony-level sentence.” Minn. Sent. Guidelines 2.B.5.b. The state has the duty to prove out-of-state convictions by a preponderance of the evidence. *State v. Maley*, 714 N.W.2d 708, 712 (Minn. App. 2006).

Appellant did not object to his criminal history score at sentencing, and the parties agree that the state did not put into evidence any proof regarding appellant’s Florida convictions. Thus, the case should be remanded for resentencing to enable the state “to further develop the sentencing record so that the district court can appropriately make its determination.” *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008).

Affirmed in part, reversed in part, and remanded.