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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0014**

State of Minnesota,
Respondent,

vs.

Dakota Daniel Thorstenson,
Appellant.

**Filed December 30, 2024
Affirmed
Cochran, Judge**

St. Louis County District Court
File No. 69DU-CR-22-2488

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

Kimberly Maki, St. Louis County Attorney, Duluth, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Jesson,
Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

On direct appeal from the final judgment of conviction of first-degree criminal sexual conduct and kidnapping, appellant argues that the district court abused its discretion by admitting evidence that appellant had previously physically and sexually assaulted another woman. Because the district court did not abuse its discretion, we affirm.

FACTS

In September 2022, respondent State of Minnesota filed a complaint alleging that appellant Dakota Daniel Thorstenson physically and sexually assaulted L.F. The state charged Thorstenson with two counts of first-degree criminal sexual conduct, second-degree criminal sexual conduct, kidnapping to facilitate felony sexual assault, and third-degree assault. *See* Minn. Stat. §§ 609.223, subd. 1, .25, subd. 1(2), .342, subd. 1(c)(ii), .343, subd. 1(c)(ii) (2022). Thorstenson pleaded not guilty, and the case proceeded to trial.

L.F.'s Trial Testimony

L.F. testified that she met Thorstenson through an online-dating app and learned they both lived in the Duluth area. The two met up a handful of times and had consensual sexual intercourse at Thorstenson's residence in Superior, Wisconsin. In August 2021, Thorstenson invited L.F. to go bowling with him and some of his friends. L.F. agreed to join them. Thorstenson picked her up at her residence and drove her to the bowling alley.

At the bowling alley, Thorstenson and his friends ordered shots of alcohol. Thorstenson, who had been drinking with his friends before picking up L.F., told L.F. that

he wanted her to take three shots “to match their energy,” but L.F. did not want to drink. Thorstenson and his friend implored L.F. to take the shots, and L.F. eventually yielded to their pressure. L.F. consumed more than five shots of alcohol at the bowling alley, enough to become intoxicated. Thorstenson was also intoxicated.

Around 11:00 p.m., Thorstenson and L.F. left the bowling alley. Once they were in his car, Thorstenson asked L.F. whether she wanted to go home or to his residence. L.F. told Thorstenson that she wanted to go home because she had to work in the morning. Thorstenson and L.F. talked while Thorstenson drove. At some point, Thorstenson “aggressive[ly]” grabbed L.F. by the back of her neck. Angered, L.F. told Thorstenson that he was making her feel uncomfortable and he should never touch her like that. In response, Thorstenson slapped L.F. in the face. L.F. started yelling and Thorstenson slapped her again. Soon after, Thorstenson’s car struck a fire hydrant on the side of the road.

Thorstenson pulled his car over, exited, opened the passenger-side door, and pulled L.F. out of the car, dragging her to the ground beside his car. There, Thorstenson started punching L.F. in the face and stated that it was her fault that he crashed his car. Thorstenson then strangled L.F. with both his hands. L.F. could not breathe and began to lose consciousness. After someone approached Thorstenson’s car with a spotlight, Thorstenson picked up L.F., placed her back in the vehicle, and drove away. At this point, L.F. was barely conscious.

As he drove away, Thorstenson unbuckled his pants, grabbed the back of L.F.’s head, and told her to “come here.” L.F. then unwillingly placed her mouth around

Thorstenson's penis. L.F. testified that she did not want to put Thorstenson's penis in her mouth, but she was scared and "was just doing what [she] had to do."

According to L.F., the next thing she remembers is waking up naked in Thorstenson's bed the following morning. Thorstenson was sitting on the edge of the bed with his hands in his face. He told L.F., "I don't even know why I did that to you. You're not even my girlfriend." According to L.F., Thorstenson was "freaking out" and panicking "like he [did not] know what [he was] going to do." L.F. asked Thorstenson if they had sex. Thorstenson replied yes. Thorstenson then repeatedly told L.F. to shower. L.F. declined, stating that she had to get to work. Thorstenson told L.F. that was impossible and that she needed to go to the hospital.

When she sat up, L.F. felt "instant pain" in her shoulder. L.F. looked at her reflection in a mirror and saw her hair was "ragged" with bald spots, and her "face was completely swollen" with one eye swollen shut. In addition, her shoulder "didn't look normal."

L.F. texted her sister that she had been "kidnapped and raped." L.F. told her sister that she was at Thorstenson's residence, but that she did not know where he lived. L.F. shared her location with her sister via an app on her phone. Her sister then contacted the police.

Law-enforcement officers located Thorstenson's residence in Superior, Wisconsin. When Thorstenson's roommate let the officers in the home, Thorstenson told L.F. to lock the door to his second-floor bedroom. Police knocked on Thorstenson's door and threatened to break the door down. L.F. unlocked the door, and police helped her

downstairs. After speaking with an officer, L.F. was transported to a hospital in an ambulance.

Healthcare-Professional Testimony

The jury also heard testimony from the doctor and nurse who treated L.F. in the emergency room. The doctor testified that, during his examination of L.F., he observed “contusions about both eyes,” “bruises on her body,” “tenderness in her clavicle,” and “bleeding under the whites of her eyes.” The doctor also testified that L.F. exhibited petechiae, which are “tiny hemorrhages from ruptured blood vessels” often seen in individuals who had been choked or hanged. On cross-examination, Thorstenson’s attorney asked whether petechiae can be observed in an individual involved in a car accident. The doctor testified that he had not observed such an injury resulting from a car accident, but he could not say “that it [is] not possible.”

The nurse testified that she performed a sexual-assault exam on L.F., during which she collected swabs from L.F.’s vagina for forensic testing. Thorstenson’s attorney asked the nurse on cross-examination whether petechiae can be caused by both “intentional acts or unintentional acts.” The nurse answered, “that is correct.”

Forensic-Scientist Testimony

A DNA forensic scientist with the Bureau of Criminal Apprehension examined samples collected from Thorstenson and L.F. The forensic scientist testified that her testing of L.F.’s vaginal swabs showed “genetic material that’s consistent with semen and . . . this DNA profile was interpreted as originating from one male individual, . . . [Thorstenson].”

M.C.'s Testimony

The state's final witness was Thorstenson's ex-girlfriend, M.C. Before trial, the state moved to admit M.C.'s testimony about Thorstenson's prior abuse against her under Minnesota Rule of Evidence 404(b). The state argued that M.C.'s testimony would rebut any assertion that L.F.'s injuries were caused by the car accident rather than by Thorstenson's assaults. The district court determined that M.C.'s testimony was admissible for that purpose.

At trial, M.C. testified about two occasions when Thorstenson assaulted her. The first incident occurred in December 2021, when M.C. and Thorstenson were having drinks at a bar in Superior. M.C. testified that they were arguing in the bar, they went outside to "get some fresh air," and they started "tussling" in the parking lot but ended up leaving together in Thorstenson's vehicle. Once in the vehicle, he started hitting, slapping, and choking M.C. Thorstenson then drove to an empty parking lot where he engaged in more hitting and punching of M.C. He then exited the car, opened the passenger door, and dragged M.C. out of the car onto the ground. Thorstenson continued to strike and kick M.C. while she was on the ground before putting M.C. back in the car. M.C. managed to get out of the car and fled on foot, but Thorstenson chased her down, pushed her to the ground, and "shoved [her] back into the car." After that, M.C. did not try to get out of the car again. Thorstenson then brought M.C. to his apartment in Superior, where they fell asleep.

The second incident occurred in July 2022. Thorstenson and M.C. were not on good terms at the time, but they decided to go to a bar in Duluth together. While at the bar,

Thorstenson saw M.C. dancing with another man and “was pretty upset.” Thorstenson and M.C. argued outside the bar before leaving together in Thorstenson’s vehicle. M.C. testified that Thorstenson drove her “all the way down to the dead end of [her] street and turned around.” M.C. got out of the car and tried to run home, but Thorstenson tackled her to the ground. M.C. blacked out after her head hit the curb. When M.C. regained consciousness, Thorstenson was dragging her toward the car, where he “stuffed” her back into the car. Thorstenson then took M.C. to his apartment in Superior. At his apartment, Thorstenson choked M.C. with sufficient force that she passed out. When M.C. regained consciousness, Thorstenson was carrying her up the stairs into his room. There, Thorstenson tied up M.C. and vaginally penetrated her with his penis. The following morning, Thorstenson took M.C. to the hospital for her injuries.

The district court gave the following instruction to the jury before M.C. testified:

This evidence is not to be used to prove the character of [Thorstenson] or that [he] acted in conformity with such character. [Thorstenson] is not being tried for and may not be convicted of any offenses, other than those which are charged in the Complaint that we are trying today. You are not to convict [Thorstenson] on the basis of occurrences on December 24, 2021, and July 27, 2022. To do so might result in unjust double punishment.

The district court provided a similar instruction to the jury before closing arguments.

Thorstenson’s Closing Argument

As part of Thorstenson’s closing argument, defense counsel argued that L.F.’s injuries fit those associated with a car accident and emphasized that L.F. did not know whether her injuries were from the car accident or from Thorstenson. Counsel also

highlighted the medical professionals' testimony that they could not rule out the car accident as the source of some of L.F.'s injuries. Counsel asserted that the jury therefore could not presume that Thorstenson caused L.F.'s injuries.

Verdict and Sentencing

The jury returned guilty verdicts on all five counts. The district court entered convictions on one of the first-degree criminal-sexual-conduct counts and the kidnapping count. The district court imposed concurrent executed sentences of 306 and 129 months.

Thorstenson appeals.

DECISION

The sole issue on appeal is whether the district court abused its discretion by admitting the testimony of M.C., who testified about Thorstenson's prior physical and sexual abuse against her.

Minnesota Rule of Evidence 404(b)(1) provides that "[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." But such evidence 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)(1). Evidence offered for one of these other purposes is called *Spreigl* evidence. *State v. McLeod*, 705 N.W.2d 776, 780 n.1 (Minn. 2005) (citing *State v. Spreigl*, 139 N.W.2d 167, 173 (Minn. 1965)). For *Spreigl* evidence to be admissible, the following five requirements must be met:

- (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 crime, wrong, or act; (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.

McLeod, 705 N.W.2d at 787 (quotation omitted). We review a district court's ruling on *Spreigl* evidence for an abuse of discretion. *Id.* "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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Thorstenson limits his argument on appeal to the fourth and fifth requirements for admission of *Spreigl* evidence. He argues that the district court abused its discretion by admitting M.C.'s testimony because it was not relevant and any probative value was outweighed by its risk of unfair prejudice. We are not persuaded.

Relevance

In determining whether the relevance requirement for admission is met, "the district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant." *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006) (quotation omitted). "This entails isolating the consequential fact for which the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *Id.* One common purpose for *Spreigl* evidence is to show the absence of accident or mistake. Minn. R. Evid. 404(b)(1).

The record reflects that the district court identified the precise disputed fact that M.C.'s testimony was relevant for—to rebut any suggestion that L.F.'s injuries were

caused by a car accident.¹ On appeal, Thorstenson challenges this determination by the district court, arguing that “whether Thorstenson mistakenly engaged in the alleged conduct was not the issue.” He asserts that the only issue at trial was one of credibility, “i.e., did Thorstenson, as L.F. claimed, physically and sexually assault her, or, as Thorstenson claimed, did he not.” The record belies this argument.

The trial record establishes that Thorstenson’s attorney argued, and suggested through cross-examination, that the source of L.F.’s injuries was the car accident. For instance, defense counsel cross-examined the doctor and nurse who treated L.F. on the source of L.F.’s injuries, specifically asking them both whether L.F.’s ruptured blood vessels could have resulted from an accident. Neither the doctor nor the nurse foreclosed that possibility. And during closing argument, defense counsel focused on the facts that (1) L.F. could not remember how she received many of her injuries, (2) L.F.’s fractured nose and shoulder were injuries consistent with a car accident, and (3) the medical professionals did not rule out the accident as a source of L.F.’s injuries. In sum, the record shows that one of Thorstenson’s defenses at trial was that L.F.’s injuries were caused by the car accident rather than by any purported assault.

¹ The state argues that M.C.’s testimony was also relevant to prove a common scheme or plan. Evidence of a prior bad act that bears a marked similarity in modus operandi to the charged conduct can be admissible as *Spreigl* evidence to prove that the charged conduct “actually occurred or to refute the defendant’s contention that the victim’s testimony was a fabrication or a mistake in perception.” *Ness*, 707 N.W.2d at 688. The state asserts that we should affirm the district court’s ruling on this alternate basis for the admissibility of M.C.’s testimony. Because we conclude that the district court properly admitted M.C.’s testimony to rebut Thorstenson’s accident defense, we need not address the state’s argument on whether M.C.’s testimony was alternatively admissible to prove a common scheme or plan.

Because there was a fact dispute as to whether L.F.’s injuries were caused by an accident, evidence tending to show her injuries were not caused by an accident was relevant to rebut Thorstenson’s defense. Our decision in *State v. Nelson*, 562 N.W.2d 324 (Minn. App. 1997), supports this conclusion. In *Nelson*, the defendant was on trial for assault after her seven-year-old daughter reluctantly told a teacher that a bruise under her right eye was caused by the defendant hitting her. 562 N.W.2d at 325. The defendant “claimed [the victim’s] injury was the result of [the victim] falling down, rather than her striking [the victim].” *Id.* at 327. We held that evidence of the defendant’s prior conviction of disorderly conduct arising from the defendant striking another daughter with a wooden spoon was admissible in the case involving the seven-year-old daughter “as evidence that the injury received by [the seven-year-old] did not occur as a result of an accident.” *Id.* at 325, 327.

Just as the defendant in *Nelson* maintained that something other than her alleged criminal conduct caused the victim’s injuries, Thorstenson contended that L.F.’s facial and shoulder injuries were caused by an accident—his car’s collision with a fire hydrant—rather than an assault. M.C. testified about instances of Thorstenson’s physical abuse that closely resembled L.F.’s testimony. M.C. described Thorstenson’s physical abuse of her both inside and around Thorstenson’s vehicle that ultimately resulted in her hospitalization for her injuries. The similarities between M.C.’s and L.F.’s testimony made Thorstenson’s accident defense less likely and was therefore relevant, like the prior conviction in *Nelson*. Thus, we conclude that the district court did not abuse its discretion when it identified the

relevant purpose for the admission of M.C.'s testimony as showing the absence of mistake or accident.

Balancing Test

To be admissible, *Spreigl* evidence must also meet the requirement that the probative value of the evidence is not outweighed by its potential for unfair prejudice. Minn. R. Evid. 404(b)(2). "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).

The district court determined that M.C.'s testimony was probative for the reasons discussed above and further determined that its probative value was not outweighed by its potential for unfair prejudice. In reaching this conclusion, the district court explained that the jury would be instructed on the proper use of M.C.'s testimony and "could only use it for that purpose during the course of th[e] trial." At trial, the district court did just that, instructing the jury that it could not punish Thorstenson for the acts described by M.C. nor use M.C.'s testimony to prove Thorstenson's propensity to act in a particular way.

Thorstenson argues that the district court abused its discretion in its weighing of the probative value of the evidence, arguing that probative value of M.C.'s testimony "was minimal because the state did not need it." Specifically, Thorstenson contends that the state did not need the *Spreigl* evidence because L.F. "promptly reported the alleged offense, was found by police in Thorstenson's bedroom, had well-documented physical injuries, made several reports to police and medical staff about the alleged offense, and testified at

trial generally consistently with her prior statements.” Courts may consider the state’s need for contested *Spreigl* evidence when balancing its probative value against its risk for unfair prejudice. *Ness*, 707 N.W.2d at 690. But while the state’s evidence of Thorstenson’s guilt was strong, L.F.’s intoxication and lapse in memory created a specific need for evidence probative of the source of her injuries given Thorstenson’s car-accident theory. As discussed earlier, M.C.’s testimony was relevant to this disputed fact, and the state consequently had a need for it. Contrary to Thorstenson’s position, the state’s need for the evidence therefore enhanced, rather than diminished, the probative value of M.C.’s testimony.

Regarding the potential for unfair prejudice, Thorstenson argues that M.C.’s testimony “was extremely graphic and thus had great potential for unfair prejudice.” While we recognize the testimony contained graphic details, we are satisfied that the district court considered the nature of M.C.’s allegations and took measures to limit the risk for unfair prejudice. For example, the district court ruled that the state could not introduce photos or medical records related to M.C.; only M.C.’s testimony would be admitted. And, at trial, the district court gave a limiting instruction just before M.C. testified, telling the jury that it could not use M.C.’s testimony to prove Thorstenson’s character for committing similar acts or punish Thorstenson for his conduct involving M.C. And the district court gave a similar limiting instruction before closing arguments.

Appellate courts have routinely upheld the admission of *Spreigl* evidence when accompanied by such a limiting instruction. *See, e.g., State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998) (determining that a limiting instruction “lessened the probability of

undue weight being given by the jury to the evidence”); *State v. Smith*, 932 N.W.2d 257, 268 (Minn. 2019) (noting that the district court’s limiting instruction supported the conclusion that the *Spreigl* evidence was not unfairly prejudicial). And we presume that the jury followed the district court’s instructions. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). For these reasons, Thorstenson has not persuaded us that the district court abused its discretion by determining that the probative value of M.C.’s testimony was not outweighed by its potential for unfair prejudice.

Conclusion

The district court identified the disputed fact to which M.C.’s testimony was relevant and properly determined that the testimony’s probative value on that disputed fact was not outweighed by its risk for unfair prejudice. We therefore conclude that the district court did not abuse its discretion by admitting M.C.’s testimony as *Spreigl* evidence.

Affirmed.