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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1095**

State of Minnesota,
Respondent,

vs.

Evan Dylan Davis,
Appellant.

**Filed July 7, 2025
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-23-12846

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal, appellant challenges the final judgment of conviction for third-degree criminal sexual conduct involving a physically helpless victim. Appellant argues that the district court abused its discretion by admitting evidence that he had

sexually assaulted a previous partner while she was asleep. We conclude that the district court did not abuse its discretion and therefore affirm.

FACTS

In June 2023, respondent State of Minnesota charged appellant Evan Dylan Davis with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(d) (2020), alleging that the victim, K.S., was mentally impaired, mentally incapacitated, or physically helpless when Davis sexually assaulted her in March 2021.

The district court held Davis’s jury trial in February 2024. The following summarizes the evidence received along with the relevant procedural history. K.S. testified that she met Davis in fall 2020. The two had a sexual relationship for “a few months” that ended in January 2021. Two months later, in March 2021, Davis texted K.S. In response, K.S. texted Davis, who is a plumber, about an “issue” with her bathroom sink.

“About a week or so later,” at 8:14 p.m. on March 21, 2021, Davis texted K.S. to follow up about her sink.¹ When K.S. told him that the sink was still not working, Davis offered to fix it, and they agreed he would “come over” the following morning. During the same text exchange, Davis stated that he “really miss[ed] pinball.” K.S. believed he was referring to a pinball-machine tattoo on her lower back. K.S. understood this text “as him trying to have sexual relations with [her] again or referring to them.” K.S. responded, “Please don’t help me if [sex is] the main reason.” K.S. testified that she “did not want to

¹ The district court received evidence in the form of screenshots of these and other text messages between Davis and K.S.

have any sexual contact with [Davis] if he was to come over to help.” Davis texted an apology for the “horrible joke” and said that he would be “professional.”

Later that same evening, Davis texted K.S., who responded that she was “drunk.” Davis offered to come over to her place. K.S. texted that she did not “want to get frisky” and that Davis could come over but she “might have [him] sleep away from” her.

Davis arrived at K.S.’s home around 11:11 p.m. that night. The two hugged and “caught up,” and Davis looked at the sink. K.S. and Davis were drinking alcohol, so they “decided” Davis “was going to stay” over. The two kissed, but K.S. “pushed him back and said, no, this is not what I want.” Sometime between 12:30 a.m. and 1:00 a.m., K.S. and Davis went to sleep in her bed. K.S. placed “a body pillow” between them. K.S. told Davis, “I am not having sex with you tonight or something in that nature.” K.S. also said that “cuddling is fine but keep your hands on the outside of my bra and panties.” K.S. “was very tired” and “fell asleep right away.”

K.S. testified that she “woke up to” Davis “putting his hand in [her] panties and fingering [her].” K.S. was “in shock” and “froze.” Davis then “put [K.S.’s] underwear down to [her] knees” and inserted his penis into her vagina. K.S. was “very scared,” “couldn’t move,” and did not respond when Davis “kept asking, is this okay?” When Davis finished, he pulled up K.S.’s underwear, rolled over, and went to sleep. K.S. then left her bedroom and went to the couch. K.S. testified that she told Davis the next morning that “he needed to leave now” and that “[w]hat happened last night wasn’t appropriate.” K.S. told Davis “not to contact [her] again.”

At 11:30 a.m. on March 22, 2021, Davis texted K.S. instructions to fix her sink and added, “I obviously misunderstood what you said. Was not expecting this.” K.S. responded, “I told you multiple times last night that [I] wasn’t interested. Please don’t contact me anymore.”

K.S. told her sisters and friends about the sexual assault. During the evening of March 23, 2021, K.S. went to the hospital and had a sexual-assault examination that included body swabs for possible analysis. K.S. did not report the sexual assault to law enforcement at that time. In October 2022, Davis texted K.S.; she “was very upset that he decided to contact [her] again after [she] thought it was over.” K.S. reported the sexual assault to law enforcement, who recorded K.S.’s statement.

The state offered testimony from K.S.’s friends and a forensic nurse to corroborate K.S.’s report of and statements about the sexual assault. The district court also received K.S.’s recorded statement to law enforcement into evidence. A forensic scientist testified that vaginal, perineal, and cervical swabs from K.S. contained a “major Y-chromosomal DNA profile that matches Evan Davis,” meaning that “neither Evan Davis nor any of his paternally related male relatives [could] be excluded as the contributor.” As discussed below, the state called M.S., Davis’s previous sexual partner, to testify about Davis sexually assaulting her while she was sleeping.

Davis did not present any evidence, and his attorney argued that the sexual contact was consensual. The jury found Davis guilty of third-degree criminal sexual conduct against a physically helpless victim. The district court imposed a sentence of 48 months in prison. Davis appeals.

DECISION

Davis argues that the “district court abused its discretion by admitting evidence of [his] prior bad acts [against M.S.] where that evidence did not establish a common scheme, was not relevant to the issue of consent, was not proven by clear and convincing evidence, and was more prejudicial than probative.” Davis contends that he is entitled to a new trial because “the error was not harmless.”

Appellate courts review the admission of *Spreigl* evidence for abuse of discretion.² *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). An appellant challenging the admission of *Spreigl* evidence “bears the burden of showing an error occurred and any resulting prejudice.” *State v. Buchan*, 993 N.W.2d 614, 626 (Minn. 2023) (quotation omitted).

A. The *Spreigl* Evidence

Before trial, the state moved to admit *Spreigl* evidence that Davis previously sexually assaulted two women while they were sleeping. Davis opposed the state’s motion. In November 2023, the district court issued a preliminary order admitting *Spreigl* evidence from one witness, M.S., to show a common scheme or plan.

In February 2024, Davis filed a notice stating that he would rely on a consent defense at trial.

² “*Spreigl* evidence is evidence of a defendant’s prior crimes, wrongs, or acts, which would otherwise be inadmissible, but which the state can seek to have admitted for the limited purpose of showing motive, intent, absence of mistake, identity, or a common scheme or plan.” *State v. Asfeld*, 662 N.W.2d 534, 542 (Minn. 2003); accord Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169-70 (Minn. 1965).

At an omnibus hearing a few days later, the state sought to introduce text messages that Davis sent M.S., arguing that the messages corroborated M.S.’s account of the *Spreigl* incidents. Davis objected, arguing that the text messages “would confuse the jury.” The district court allowed the state to introduce some of the text messages to corroborate M.S.’s testimony about the *Spreigl* incidents and stated that it would allow other text messages if Davis challenged M.S.’s credibility at trial.

On the first day of trial, Davis asked the district court to reconsider its *Spreigl* ruling, arguing that there was “no common scheme or plan regarding [M.S.] and [K.S.].” The district court denied Davis’s motion to reconsider, stating that there were “substantial similarities” in the assault allegations made by M.S. and K.S.

After K.S. concluded her testimony, Davis again moved for the district court to reconsider its *Spreigl* ruling. Davis argued that the *Spreigl* evidence was “significantly more prejudicial” than it was probative because K.S. had testified that she was “almost asleep” when the assault began.³ Davis also contended that the incidents with M.S. did not “show a common scheme or plan” because M.S. was fully asleep when Davis assaulted her and K.S. was not. The prosecuting attorney countered that K.S. “testified on direct that she . . . fell asleep and that the next thing she perceived was waking up to” Davis’s assault. The prosecuting attorney added that “when a person’s asleep it’s difficult for them to

³ On direct, K.S. testified as summarized above. During cross-examination, K.S. testified that she “was asleep” when Davis started to assault her. On redirect, K.S. testified that she recalled “trying to sleep, almost asleep, and waking up through it, not quite asleep.” K.S. also agreed that, in her condition, she did not believe she was “in a place where [she would be] able to say no.”

perceive their sleeping state” and that K.S. testified she was “in and out of sleep, unable to communicate, [and] in a vulnerable state.” The prosecuting attorney maintained that “nothing about that scenario [was] any different . . . than” the *Spreigl* incidents with M.S., arguing that the evidence was admissible to prove a “common scheme or plan.”

The district court denied Davis’s second motion to reconsider. The district court recognized that K.S.’s testimony about whether she was fully asleep at the time of the assault was inconsistent. The district court added that K.S. told the forensic nurse that she “had not slept for two days and that her memory of what happened” during the incident “was clouded by that fact.” The district court agreed “that there [was] a factual dispute,” but also concluded that there was “enough” testimony “for the admission of the *Spreigl* evidence here.” Before M.S. took the stand, the district court gave a cautionary *Spreigl* instruction.⁴

M.S. testified that she dated Davis from February to August 2018 and that Davis lived with M.S. during that time. In May 2018, M.S. came home “from a really long shift at work” and “laid down with [Davis] in bed and [the two] were cuddled up.” Davis “started to touch and rub on [M.S.’s] vagina.” M.S. told Davis, “No, I’m exhausted. I do not want to have sex.” M.S. fell asleep and later “woke up to him . . . penetrating [her] vagina with his penis.” M.S. “was very shocked.” When Davis was finished, he said “good night, roll[ed] over, and went to sleep.” M.S. “was more withdrawn” after the assault, but things went “back to normal after that.”

⁴ This instruction followed the pattern jury instruction. See 10 *Minnesota Practice*, CRIMJIG 2.03 (2023).

In July 2018, M.S. and Davis were in bed together and M.S. “had fallen asleep.” M.S. “woke up to him ejaculating inside of [her].” M.S. said, “What the f-ck,” and they argued. M.S. told Davis to “get out,” so “he slept on the couch that night.” Later, M.S. told Davis that she “felt very violated, that it wasn’t okay,” and that she “wasn’t comfortable with it.” Davis “was very calm and apologetic” and told M.S. that “it’s not going to happen again.”

In August 2018, M.S. returned home from a weeklong trip out-of-state. She and Davis went to bed and were “cuddling.” As M.S. was falling asleep, Davis began “to touch [her] vagina.” M.S. was “groggy” and “half asleep” when she told him, “No. I don’t want to tonight. I’m tired.” Davis responded, “We haven’t been together,” and said that he “really wanted to have sex.” Davis “got more on top of” M.S., “put his hand on [her] hip,” “held [her] into the bed,” and “had sex with [her].” M.S. was “very upset” and “ended [their] relationship a few days after that.”

M.S. agreed that Davis tried “to convince” her that she consented to the sexual assaults. Davis told her that she “was a liar” or “just taking things the wrong way.” Davis also “basically” told M.S. that she “consented no matter what because [they were] together.” M.S. did not report any of the assaults to law enforcement.

M.S. agreed that Davis sent her text messages after they broke up “about what happened on those three different occasions.” Davis texted M.S. the following statements: (1) “I f-cked you after you fell asleep”; (2) “You are right. I’m a liar. A rapist and not a good man”; (3) “After tomorrow I’m going to tell everyone what I’ve done to you to make

you hate me so much”; and (4) “I’m turning myself in tomorrow. I’m not going to wait for you two to do it. I’ve told everyone who matters.” Davis also texted the following to M.S.:

I never would have done it again if I knew how seriously you felt about it. Doesn’t make it right or ok or your fault. But I truly didn’t know you felt this way until way after the fact. I disrespected you and your personal boundaries. I never had any intention of hurting you at all. It was just sex but it was not ok . . . I’m sorry I’ve made this such an incredibly horrific time in our lives.

M.S. read all five text messages out loud during her testimony. Screenshots of the text messages were received into evidence and published to the jury.

After the parties rested, the district court gave the jury instructions, which included a limiting instruction about the *Spreigl* evidence.⁵

B. The *Spreigl* Analysis

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b)(1). Such evidence “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.* The supreme court has established a five-step test to determine the admissibility of *Spreigl* evidence:

(1) the State must provide notice of its intent to use the evidence; (2) the State must clearly indicate what the evidence is being offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the other act; (4) the *Spreigl* evidence must be relevant and

⁵ These instructions followed the pattern jury instruction. See 10 *Minnesota Practice*, CRIMJIG 3.05 (2023).

material; and (5) the probative value of the evidence must not be outweighed by the potential prejudice.

Buchan, 993 N.W.2d at 626 (quotation omitted).

Davis concedes that the state satisfied steps one and two. We therefore consider Davis's arguments about admissibility of the *Spreigl* evidence under steps three, four, and five.

Step 3: The state offered clear and convincing evidence that Davis assaulted M.S.

Under step three, "there must be clear and convincing evidence that the defendant participated in the other act." *Id.* (quotation omitted). "Clear and convincing evidence is more than a preponderance of the evidence but less than proof beyond a reasonable doubt." *State v. Profit*, 591 N.W.2d 451, 464 (Minn. 1999) (quotation omitted). Evidence that a defendant committed a prior act "may be considered clear and convincing when it is highly probable that the facts sought to be admitted are truthful." *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). Appellate courts generally give "great deference" to a district court's finding that evidence is clear and convincing. *State v. McLeod*, 705 N.W.2d 776, 788 (Minn. 2005).

The state supported its *Spreigl* motion with an offer of proof that described M.S.'s statements to a law-enforcement investigator. In its preliminary order, the district court found that the investigator asked M.S. "for more details regarding [the] sexual assaults that [M.S.] described in an order for protection [OFP] obtained against [Davis] in 2021." M.S. described the assaults to the investigator and explained "why she did not report any of the incidents to law enforcement originally." The district court concluded that M.S.'s

“statements to the police were sufficiently detailed to find the statements meet the clear and convincing standard.”

Davis argues that the state “did not establish by clear and convincing evidence prior to the admission of M.S.’s testimony that Davis sexually assaulted her on three occasions.” Davis contends that M.S.’s statements to the investigator and her statements included in the OFP against him lacked “guarantees of trustworthiness” because they were “not under oath.” Davis argues that “M.S. did not press criminal charges against [him], which undermines her claim” that the *Spreigl* incidents occurred. Davis also maintains that a criminal conviction “is the type of reliable evidence that the clear-and-convincing evidence standard requires.”

The state counters that “Minnesota law does not require that *Spreigl* evidence” be a prior conviction. The state argues that, “[e]ven if some sort of formal document was required” to meet the clear-and-convincing-evidence standard, M.S.’s OFP petition against Davis—which described the *Spreigl* incidents—“was signed and sworn under oath” by M.S. two years before Davis was charged with assaulting K.S. The state also points out that M.S.’s testimony was corroborated by text messages between M.S. and Davis and that the supreme court “has on numerous occasions admitted *Spreigl* evidence supported only by the testimony of the victim of the *Spreigl* offense.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

The state’s argument is persuasive. *Spreigl* evidence may include “another crime,” but also may be another “wrong” or “act.” Minn. R. Evid. 404(b); *see also Ness*, 707 N.W.2d at 686 n.2 (noting that, although most “*Spreigl* cases use the term other-crime

evidence, . . . [rule] 404(b) pertains to ‘other crimes, wrongs, or acts’” (quoting Minn. R. Evid. 404(b))). In his brief, Davis concedes that “appellate courts have found unsworn statements to satisfy the clear-and-convincing standard.” *See Kennedy*, 585 N.W.2d at 390 (upholding a district court’s conclusion that a *Spreigl* witness’s “videotaped statements to social workers regarding the incident” satisfied the clear-and-convincing standard).

M.S. gave a detailed report to a law-enforcement investigator about Davis’s assaults. M.S. told the investigator that she did not make a police report because she did not “feel that she would be believed because she was in a sexual relationship” with Davis. M.S. also stated that she “did not want to relive the [assaults] by having to talk about the details.” The report states that M.S. “obtained an [OFP]” against Davis in 2021, which referred to M.S.’s statements that Davis “raped her multiple times.”⁶ The state also offered text messages from Davis to M.S. that corroborated M.S.’s allegation that Davis sexually assaulted her while she was asleep.

In its preliminary order, the district court determined that M.S.’s statements were “sufficiently detailed” and concluded that Davis’s assaults of M.S. had been proved by clear and convincing evidence. Because a conviction or sworn statement is not required to admit *Spreigl* evidence, the district court acted within its discretion in determining that the *Spreigl* incidents were proved by clear and convincing evidence.

⁶ M.S.’s OFP against Davis is not included in the record.

Step 4: The *Spreigl* evidence was relevant and material.

Under step four, “the *Spreigl* evidence must be relevant and material” to the state’s case. *Buchan*, 993 N.W.2d at 626. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. To demonstrate the “common plan or scheme exception” under rule 404(b), *Spreigl* evidence must “have a marked similarity in modus operandi to the charged offense.” *Ness*, 707 N.W.2d at 688 (emphasis omitted) (quotation omitted) (considering appellant’s common plan or scheme to commit criminal sexual conduct). “[T]he closer the relationship between the other acts and the charged offense, in terms of time, place, or modus operandi, the greater the relevance and probative value of the other-acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose.” *Id.* We consider each of these three subfactors to assess the *Spreigl* evidence under step four.

a. Time

The district court stated in its pretrial order that “the alleged incidents between [M.S.] and [K.S.] are not remote in time, and therefore are relevant.” Davis argues that the “three-year time gap between the M.S. and K.S. incidents is too long to be relevant,” given “that these were short-lived relationships that lasted a matter of months.” The state counters that the supreme court “has consistently affirmed the admission of *Spreigl* evidence which was far older than three years.”

“In general, the prior acts become less relevant as time passes. Thus, the greater the time gap, the more similar the acts must be to lessen the likelihood that the *Spreigl* evidence

will be used for an improper purpose.” *State v. Washington*, 693 N.W.2d 195, 201 (Minn. 2005) (quotation omitted). But there is no “bright-line rule” for when *Spreigl* evidence becomes stale. *Ness*, 707 N.W.2d at 688. Three years is not too remote to render M.S.’s testimony irrelevant given the similarities between the incidents. *See Washington*, 693 N.W.2d at 201-02 (analyzing cases upholding the admission of *Spreigl* incidents that occurred up to 19 years before trial). Therefore, the district court acted within its discretion when it decided that this subfactor favored admission.

b. Location

The district court found that the locations of the incidents were “closely related” because they “took place within the [victims’] homes.” Davis argues that “these incidents occurred in different homes in different cities in different parts of the state, meaning they did not share a marked similarity for common-scheme purposes.” Davis points out that he lived with M.S. in the house where the *Spreigl* incidents occurred and that he did not live with K.S. where the alleged criminal sexual conduct occurred. Davis maintains that “[t]his difference fundamentally alters any similarity” between the two locations. The state argues that “there were marked similarities in the locations of both offenses” because M.S. and K.S. “were in their own beds in their own homes when [Davis] assaulted them.” We agree with the state. The assaults against M.S. and K.S. took place in the victims’ homes—specifically, in their beds after they fell asleep next to Davis. Because the locations of the assaults were markedly similar, the district court did not abuse its discretion by deciding that this subfactor favored admission.

c. Modus Operandi

As discussed, to be admissible, *Spreigl* evidence must “have a *marked similarity* in modus operandi to the charged offense.” *Ness*, 707 N.W.2d at 688 (quotation omitted). The district court found that the *Spreigl* evidence involving M.S. and the charged offense were markedly similar because “(1) the victim had been a romantic partner with [Davis]; (2) the acts took place in the home of the victim; and (3) the victims were sleeping at the time of the penetration.”

Davis argues that (1) “M.S. and K.S. were not in similar relationships with Davis when the incidents occurred”; (2) “the evidence did not clearly establish that K.S. was [fully] asleep” at the time of the charged offense, unlike M.S., who testified “that she had fallen asleep and was awoken during each episode”; and (3) the difference in living situations between M.S. and K.S. “shows that Davis did not act only at other people’s homes.” The state counters that Davis’s “modus operandi was exactly the same in each case; waiting for his victim to fall asleep and then sexually assaulting her.”

We conclude that Davis’s modus operandi for the *Spreigl* incidents and the charged offense had “a marked similarity.” *Id.* (emphasis omitted) (quotation omitted). The evidence showed Davis’s common plan or scheme of sexually assaulting sleeping women in their home after they rejected his sexual advances and then lying about the assaults afterward. K.S.’s inconsistent testimony about whether she was fully asleep does not diminish the similarity because any inconsistency relates to K.S.’s credibility, not Davis’s modus operandi.

Davis contends that “[w]hether M.S. consented did not impact whether a completely different person, K.S., consented.” But Minnesota caselaw recognizes the relevance of a defendant’s prior sexual conduct to criminal-sexual-conduct cases in which consent is disputed, as it was here. *See State v. Boehl*, 697 N.W.2d 215, 219 (Minn. App. 2005) (“In criminal sexual conduct cases . . . prior acts of sexual conduct are often relevant where the defendant disputes that the sexual conduct occurred or where the defendant asserts the victim is fabricating the allegations.”), *rev. denied* (Minn. Aug. 16, 2005).

Consent was a central issue in this trial. Davis argued that K.S. fabricated the sexual-assault allegations against him. During opening arguments, Davis’s attorney maintained that “[t]his was consensual, and at no point was [K.S.] asleep or sleeping.” Davis’s attorney began closing arguments: “Regret, shame, and lies. Evan Davis is falsely accused.” The *Spreigl* evidence was therefore relevant to determine whether K.S. consented to sexual contact and fabricated the sexual assault. *See State v. Wermerskirchen*, 497 N.W.2d 235, 242 (Minn. 1993) (concluding that *Spreigl* evidence was “highly relevant” when it “tended to disprove the defense that” the victim’s sexual-assault allegations were fabricated).

Because the time, place, and modus operandi support the district court’s conclusion that the *Spreigl* evidence was relevant, we conclude that the district court acted within its discretion in weighing this factor in favor of admission.

Step 5: The probative value of the *Spreigl* evidence was not outweighed by its potential for unfair prejudice.

Step five requires that the probative value of the *Spreigl* evidence not be outweighed by its potential for unfair prejudice. *Buchan*, 993 N.W.2d at 626. In applying step five, the district court must “balance the relevance of the [*Spreigl*] offenses, the risk of the evidence being used as propensity evidence, and the State’s need to strengthen weak or inadequate proof in the case.” *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). Although *Spreigl* evidence of other criminal sexual conduct likely prejudices a defendant, the issue is whether the *Spreigl* evidence *unfairly* prejudices a defendant and, if so, whether the potential for unfair prejudice outweighs the probative value of the evidence. *Id.* “[U]nfair 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).

In its pretrial order, the district court recognized that “the *Spreigl* acts and allegations are prejudicial to” Davis but determined that “the probative value of modus operandi outweighs such prejudice.” On appeal, Davis argues that the “prejudicial effect of the *Spreigl* evidence overwhelmed its probative value” for three reasons: (1) “the state did not need [*Spreigl*] evidence to prove K.S. did not consent” because other evidence rebutted this defense; (2) the *Spreigl* evidence “had the considerable potential to mislead and confuse the jury”; and (3) “the nature of the *Spreigl* evidence . . . would have stretched the abilities of even the fairest juror to not use [it] as character evidence.”

The state counters that “M.S.’s *Spreigl* evidence was properly admitted to rebut [Davis’s] repeated assertion to the jury that K.S. was a liar.” The state argues that K.S.’s testimony “that she was unsure if she was fully asleep” at the time of the assault did not render the *Spreigl* evidence more prejudicial than probative. Instead, it “created a credibility issue” that *increased* the probative value of the *Spreigl* evidence “because one of M.S.’s incidents also involved [Davis] sexually assaulting her when [she] was ‘very tired, very groggy and half asleep,’ exactly like K.S.”

The state’s arguments are persuasive. During trial, Davis contended that he had consensual sex with K.S. and that K.S. fabricated the sexual assault. During closing arguments, Davis’s attorney emphasized that K.S. was a liar. As discussed above, the *Spreigl* incidents were markedly similar to the sexual assault of K.S. Given Davis’s consent defense and the marked similarity between the *Spreigl* evidence and K.S.’s assault, the *Spreigl* evidence was “highly relevant” to establish a modus operandi and to help the jury determine whether K.S. lied about the sexual assault. *Wermerskirchen*, 497 N.W.2d at 242; *see also Ness*, 707 N.W.2d at 688 (stating that the “closer the relationship between the other acts and the charged offense, in terms of . . . modus operandi, the greater the . . . probative value of the other-acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose”).

We acknowledge that other evidence established that K.S. did not consent to sexual contact with Davis. K.S.’s inconsistent testimony about some details—whether she was fully asleep at the time of the assault—created a specific need for evidence probative of

her credibility.⁷ Evidence that Davis sexually assaulted someone else under nearly identical circumstances tends to prove that K.S.’s testimony was credible. *See Boehl*, 697 N.W.2d at 219-20 (concluding that evidence of an appellant’s previous sexual conduct was “sufficiently probative on the issue of whether the conduct [the victim] alleged actually occurred”).

The risk that the jury would improperly use the *Spreigl* evidence as propensity evidence was mitigated by the district court’s limiting instructions. The district court provided a cautionary instruction before M.S.’s testimony as well as limiting instructions after the presentation of the evidence and during final jury instructions. Thus, the prejudicial effect of the *Spreigl* evidence was limited. *See Kennedy*, 585 N.W.2d at 392 (concluding that “the fact that the trial court read two cautionary instructions,” one before the *Spreigl* witness’s testimony and one at the close of the entire case, “lessened the probability of undue weight being given by the jury to the evidence”); *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015) (stating that appellate courts presume that a jury followed cautionary instructions).

Davis finally argues that his text messages to M.S. were more prejudicial than probative because M.S.’s testimony “did not require corroboration.” Davis relies on *Kennedy*, in which the supreme court concluded that corroboration of a *Spreigl* witness’s

⁷ To be clear, the state did not need to prove that K.S. was fully asleep at the time of the assault. Caselaw establishes that evidence of even intermittent sleep sustains a conviction for the charged offense. *See State v. Williams*, 3 N.W.3d 68, 75-76 (Minn. App. 2024) (concluding that a victim’s testimony that “she was intermittently asleep or not conscious” was sufficient to sustain the jury’s finding that she was “physically helpless” under Minn. Stat. § 609.341, subd. 9 (2016)).

testimony in a criminal-sexual-conduct case is not “necessary as a matter of law to meet the clear and convincing standard” under step three of the *Spreigl* analysis. 585 N.W.2d at 390. Davis, however, cites no authority suggesting that a district court errs by admitting evidence corroborating a *Spreigl* incident.

Davis challenged M.S.’s credibility at trial. Davis cross-examined M.S. about her failure to report Davis’s sexual assaults to law enforcement. During closing arguments, Davis attacked M.S.’s credibility based on her failure to report the assaults. Thus, Davis’s text messages that admitted to assaulting M.S. were probative to show that Davis committed the *Spreigl* incidents, to demonstrate Davis’s modus operandi, and ultimately to bolster K.S.’s credibility in response to Davis’s claim that K.S.’s claim was fabricated. Davis’s text messages to M.S. showed he similarly claimed that M.S. consented to sexual contact.

For these reasons, we conclude that the district court acted within its discretion by determining that the probative value of M.S.’s testimony and Davis’s text messages to M.S. was not outweighed by their potential for unfair prejudice.

In summary, the district court did not abuse its discretion when it admitted the *Spreigl* evidence of Davis’s prior sexual assaults of M.S. Davis concedes that the *Spreigl* evidence satisfies steps one and two of the test for admission. We conclude that the district court was within its discretion in determining that the *Spreigl* evidence satisfies steps three, four, and five. Because the district court did not abuse its discretion by admitting the

Spreigl evidence, we need not consider Davis's argument that the erroneous admission of *Spreigl* evidence was not harmless.

Affirmed.