

*This opinion is nonprecedential except as provided by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
A25-0836**

State of Minnesota,
Respondent,

vs.

Michael Brian Bailey,
Appellant.

**Filed March 30, 2026
Affirmed
Smith, John, Judge ***

St. Louis County District Court
File No. 69DU-CR-23-2157

Keith Ellison, Attorney General, Tara Reese Duginske, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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Considered and decided by Frisch, Chief Judge; Bentley, Judge; and Smith, John,
Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm appellant's convictions for first-degree criminal sexual conduct because the district court did not err when it admitted *Spreigl*¹ evidence related to a 2019 charge involving A.B.; nor did the district court abuse its discretion when it determined Bailey's testimony opened the door to *Spreigl* evidence or when it limited Bailey's testimony about his plea deal from detailing the specific terms.

FACTS

Underlying Charges

Respondent State of Minnesota charged appellant Michael Brian Bailey with multiple counts of first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(a) (2014) (Count I, Count II, Count III) and one count of first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(h)(iii) (2014) (Count IV). These charges relate to allegations that Bailey sexually assaulted his daughter, E.B. The matter proceeded to a jury trial. The following summary of facts relevant to this appeal and consistent with the jury's verdict stems from the trial record.

¹ *Spreigl* evidence refers to evidence of other crimes, wrongs, or acts. *State v. Spreigl*, 139 N.W.2d 167, 173 (Minn. 1965). *Spreigl* evidence is governed by Minnesota Rule of Evidence 404(b) which 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).

The incidents underlying the charges occurred when E.B. was 7 to 10 years old and lived with Bailey in Saint Louis County. Bailey “touch[ed] [her] in places he shouldn’t be touching,” “graze[d] [her genitals] with his penis,” and put his penis in E.B.’s mouth several times. He would also “have [E.B.] kneel by the bathroom door . . . and he would be sitting at the edge of the bed and kind of use [E.B.] and the wall as—[E.B.] d[idn’t] know if [she’d] say a target thing, but then he would masturbate and try aiming for [E.B.]” This also happened multiple times.

Pretrial motions and orders

Before trial, the state moved to admit *Spreigl* evidence of two prior bad acts, “not to show conduct in conformity with character, but rather to show [Bailey’s] motive, intent, plan, absence of mistake or accident.” The two prior bad acts involved a half-sibling of E.B.—T.B., and a sibling, A.B.

The T.B. *Spreigl* incident (the T.B. incident) involved alleged abuse in 2016. The case was referred to the St. Louis County Attorney’s Office for prosecution in October 2016 but was ultimately closed without charges at that time. Bailey opposed the motion and argued that the T.B. incident is “simply the same generic type of misconduct as the charged offense,” that the incident lacks clear and convincing evidence, and that the probative value of the incident is substantially outweighed by the danger of unfair prejudice.

In 2019, Bailey was charged with sexually assaulting A.B., and in 2020 Bailey pleaded guilty to first-degree criminal sexual conduct. At the plea hearing, Bailey admitted that he placed his penis in A.B.’s mouth several times. The state also sought to introduce

Bailey's 2020 conviction for sexually abusing A.B. (the 2020 conviction). Bailey conceded that the state satisfied the clear and convincing evidence prong and the relevancy prong but opposed the motion because the probative value of the evidence was outweighed by its potential for unfair prejudice.

The district court issued a written order denying the motion as to the T.B. incident, determining that "an accusation of a father sexually assaulting his daughter attempts to persuade by illegitimate means, and as such, provides a potential for unfair prejudice." As detailed below, the district court later determined that some evidence related to the T.B. incident could be admitted because Bailey opened the door to it during his testimony.

The court then considered whether the 2020 conviction could be admitted and analyzed its relevance, its potential for unfair prejudice, and whether the evidence showed modus operandi and common plan or scheme. The court determined that "the [2020 conviction] could go to establishing a modus operandi in the current case." Further, "[t]he evidentiary value is higher given that [Bailey] pled guilty and was convicted for that crime, which stands in contrast to the 2016 incident, which was not charged." The court also reasoned that "the [2020 conviction] and the action's probative value are not substantially outweighed by the potential for unfair prejudice." The court allowed the state to introduce evidence related to A.B. and the 2020 conviction.

Jury trial

The state presented the testimony of six witnesses: E.B., A.B., E.B.'s mother, an investigator, a forensic interviewer, and the current homeowner of where the abuse

occurred. The district court admitted four forensic interviews of E.B., which were played for the jury.

E.B.'s testified about the abuse that led to appellant's 2020 conviction.

A.B. testified about the abuse she reported and that she did not see Bailey after she disclosed the abuse to an interviewer in April 2019. She also testified about a "specific day" when she was nine years old, in 2016, that "[Bailey] said 'Did you tell them?' And [she] didn't know what he was talking about, and [she] said, 'Tell them what?' And he said, 'Things that we do.' And then he told [her] not to tell." In A.B.'s initial testimony, she did not clarify that this conversation occurred on the same day that T.B. brought forward allegations of abuse. The court issued a cautionary instruction after she testified and once more in its final instructions.

Bailey testified after confirming on the record that he understood his rights and the risks. During Bailey's direct testimony, he stated that he was "very surprised" that A.B. accused him of sexual abuse because she "always wanted to be around [him]." And when Bailey was asked about A.B.'s prior testimony, that on a specific day he had told A.B. not to say anything to the police, he denied the conversation. He explained that when he learned about the abuse allegations, he was not with A.B. because he was "in the Cities" and afterward "never got to see [his] children ever again."

The parties discussed whether Bailey's testimony opened the door regarding the timing of T.B.'s 2016 allegations and the conversation with A.B. "not to tell." The state argued that Bailey misrepresented the 2016 incident and 2020 charge and that because of this misrepresentation, the T.B. incident must be admitted. The district court ruled that

through Bailey's testimony, he had made the other acts more relevant and "that it balance[d] . . . out more."

On rebuttal, the state called A.B. and asked her to clarify why she remembered a specific day in 2016 when her dad took her aside. She explained she remembered that day specifically because it was the day T.B. "came forward" and T.B. was then disowned. A.B. testified she was afraid to come forward about the abuse because "[she] was going to get disowned by [her] dad's side of the family." E.B.'s mother also testified that after T.B. made the allegations, T.B. was no longer part of the family. When Bailey re-took the stand, he denied telling the girls to "be quiet about anything."

Additionally, in Bailey's testimony, he acknowledged that he pleaded guilty to sexually assaulting A.B. and that he admitted under oath that A.B. had performed oral sex on him "multiple times." Defense counsel asked Bailey if he was guilty, and Bailey responded, "[he] was not." He then sought to explain his guilty plea and why he would lie in front of the court. He explained that he did not choose a jury trial because he "didn't trust 12 strangers that know nothing about [him] and how much [he's] helped people, how much [he] love[s] [his] family, to hold [his] future in their hands." And he also stated that "[he] was facing 12 years" and "[i]t was a coin flip. It was 50/50. Either they believe [him] or they don't, and [he] was offered multiple deals to plead it."

The state objected and the district court sustained the objection because "what the actual plea agreement ended up being . . . that's been excluded." And the district court explained that Bailey could say that "[he] took the plea deal because [he] thought it was

better than the alternative of going to trial” but that Bailey cannot get into “the particular numbers and the whys and wherefores.”

The state did not mention the *Spreigl* incidents in closing arguments. The defense’s closing argument, when addressing E.B.’s testimony, focused largely on her lack of credibility stating that “the evidence shows [E.B.’s] convinced herself that she’s a sexual abuse victim” and that her testimony does not make sense “because [the abuse] didn’t happen.”

A jury found Bailey guilty on all four counts of first-degree criminal sexual conduct and the court sentenced him to 680 months.

Bailey appeals.

DECISION

Bailey argues (1) that the district court used the incorrect standard when it admitted A.B.’s *Spreigl* evidence related to the 2020 conviction; (2) that the district court abused its discretion when it determined Bailey’s testimony opened the door to *Spreigl* evidence related to T.B.; (3) that the district court abused its discretion when it limited Bailey’s testimony about his plea deal from detailing the specific terms; and (4) that the cumulative errors require a retrial.

I. The district court did not abuse its discretion in admitting *Spreigl* evidence of Bailey’s 2020 conviction.

Bailey argues that the district court analyzed the admissibility of *Spreigl* evidence of the prior conviction involving A.B. using the “incorrect substantially outweighed standard” rather than the less stringent “outweighed standard.”

Appellate courts review a district court’s decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). And the appellant bears the burden of showing that the district court abused its discretion in admitting the evidence and that such evidentiary error resulted in prejudice. *Id.*

While the Minnesota Rule of Evidence 404(b)(1) prohibits “[e]vidence of another crime, wrong, or act . . . to prove the character of a person in order to show action in conformity therewith[.]” *Spreigl* evidence is admissible to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1); *see also State v. McLeod*, 705 N.W.2d 776, 780 n.1 (Minn. 2005). “To qualify for rule 404(b) admissibility, other-acts evidence must legitimately serve a relevant purpose other than to show propensity or character.” *State v. Smith*, 749 N.W.2d 88, 92 (Minn. App. 2008). In other words, “rule 404(b) permits only strictly non-character uses of evidence.” *Id.* at 93. The state must satisfy five requirements to establish the admissibility of *Spreigl* evidence:

(1) provide notice of its intent to use the evidence; (2) clearly state what the evidence is being offered to prove; (3) present clear and convincing evidence that the defendant participated in the prior act; (4) establish that the evidence is relevant and material to the State’s case; and (5) demonstrate that the probative value of the evidence is not outweighed by its potential prejudice to the defendant.

State v. Smith, 9 N.W.3d 543, 561 (Minn. 2024).

Bailey argues that, instead of applying the “outweighed” standard described in *Smith* and in the text of rule 404(b), the district court made a legal error in applying the

“substantially outweighed” standard articulated in rule 403. We conclude that the district court applied the correct standard and that, even if it did not, any error was harmless.

The district court determined that “the 2019 case could go to establishing a modus operandi in the current case,” and properly considered that “[t]he evidentiary value is higher, given that [Bailey] pled guilty and was convicted for that crime.” Then, comparing the 2020 conviction with the 2016 incident that was not charged, the court determined that the 2020 conviction “stands in contrast” and “the action’s probative value are not substantially outweighed by the potential for unfair prejudice.” The district court used the incorrect words, but in application it is clear that the court applied the correct standard.

That said, even if the district court applied the incorrect “substantially outweighed” standard, any error was harmless. *State v. Campbell*, 861 N.W.2d 95, 102 (Minn. 2015) (“The erroneous admission of *Spreigl* evidence is harmless unless it substantially influenced the verdict.”). “In determining whether the erroneous admission of *Spreigl* evidence substantially influenced the verdict, [appellate courts] consider several factors, including whether the trial court provided the jurors a cautionary instruction and whether the evidence was central to the State’s case.” *Id.* (concluding that the allegedly erroneous evidentiary ruling did not substantially affect or influence the jury’s verdict where the district court gave cautionary instructions, where the state never mentioned the *Spreigl* evidence in closing arguments, and where there was overwhelming evidence of the defendant’s guilt).

The district court issued a cautionary instruction after A.B. testified and in its final closing instructions. The 2020 conviction was not central to the state’s case because it did

not mention the *Spreigl* evidence in closing arguments. There is also overwhelming evidence of Bailey’s guilt. As discussed above, E.B. testified about the abuse and her testimony was consistent with her prior forensic interviews. The forensic interviewer also consistently testified about the four forensic interviews. Given the record before us, we conclude that any erroneous admission of the 2020 conviction did not substantially influence the verdict.

II. The district court acted within its discretion when it determined that Bailey’s testimony opened the door to allow the state to correct Bailey’s misrepresentation.

Bailey argues that the district court abused its discretion when it ruled that the defense had opened the door to testimony about the alleged abuse of T.B.

“District court evidentiary rulings are subject to an abuse of discretion standard on review.” *State v. Gilleylen*, 993 N.W.2d 266, 278 (Minn. 2023). “Opening the door occurs when one party, by introducing certain material, creates in the opponent a right to respond with material that would otherwise have been inadmissible.” *State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007) (quotation omitted). “The doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the fact[-]finder should not be presented with a misleading or distorted representation of reality.” *Id.* (quoting *State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006)).

In *Bailey*, the supreme court considered whether the defendant’s questioning gave him an unfair advantage or allowed him to present a misleading or distorted representation

of reality. *Id.* The court considered defense counsel’s questioning and allowed the state to correct the misrepresentation, and the supreme court affirmed. *Id.*

Similarly, Bailey’s testimony did not fully represent the relevant circumstances. Because T.B.’s reported abuse had been excluded, the state was precluded from asking why A.B. vividly recalled the day that her dad took her aside and told her not to say anything to the police. But when Bailey took the stand, he suggested that A.B. had lied, conflated the day he learned about T.B.’s allegations (in 2016) with the day he learned about A.B.’s allegations (in 2019), and denied the conversation occurred because he was not in town.

The court considered the *Spreigl* balancing test and determined that Bailey’s testimony had now made information about T.B. “more relevant” and “that [the] door ha[d] been opened.”

On rebuttal, the state then solicited testimony from E.B., A.B., and their mother but only to rebut Bailey’s testimony that he never told A.B. not to tell the police. There were no specific details about T.B.’s abuse disclosed, and the state did not discuss the testimony related to T.B. in its closing arguments. The district court did not abuse its discretion when it concluded that Bailey’s testimony opened the door and when it allowed limited rebuttal testimony about T.B.

Even if the district court abused its discretion, this error was harmless beyond a reasonable doubt. *See Gilleylen*, 993 N.W.2d at 278. For an error to be harmless beyond a reasonable doubt, “the jury’s verdict must be surely unattributable to the error.” *Id.* (quotation omitted). The jury’s verdict was unattributable to the error because the state did

not reference the testimony relating to T.B. in closing arguments and out of 700 total pages of trial transcript, the state spent 11 pages soliciting testimony about T.B. and never about the specific details of T.B.'s alleged abuse. The state's case was strong without testimony relating to T.B. Therefore, even if the court abused its discretion in deciding that Bailey opened the door to testimony relating to T.B., we conclude the error was harmless.

III. The district court did not abuse its discretion when it prohibited Bailey from detailing the specific terms of his plea agreement.

Bailey argues that the district court abused its discretion when it excluded testimony on Bailey's plea agreement and deprived him of the right to present a complete defense.

A defendant has a constitutional right to present a complete defense. U.S. Const. amend. XIV; Minn. Const. art. I § 6. While a defendant has the right to present a defense, that right "is not absolute." *State v. Foster*, 20 N.W.3d 6, 19 (Minn. 2025). "[T]he right to present a complete defense may bow to accommodate other legitimate interests in the criminal trial process." *Id.* (quotation omitted). "[C]ourts may limit the defendant's evidence to ensure that the defendant does not confuse or mislead the jury." *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010); see Minn. R. Evid. 403 (permitting exclusion of relevant evidence to avoid confusion). "District court evidentiary rulings are subject to an abuse of discretion standard on review." *Gilleylen*, 993 N.W.2d at 278.

In *State v. Greer*, the district court prevented the defendant from "testify[ing] about the totality of the circumstances surrounding his pretrial statements to police," and the Minnesota Supreme Court determined that this was not an abuse of discretion. 635 N.W.2d 82, 91-92 (Minn. 2001). Carefully reviewing the record, the court concluded that the

defendant “was not deprived of his constitutional right to present a meaningful defense” because the defendant “was able to directly attack the credibility of his pretrial statements” and the portions of the defendant’s testimony that were excluded were “only marginally relevant to [the] issue.” *Id.* at 92.

Carefully reviewing the record here, we are not persuaded that Bailey was unconstitutionally limited from explaining his conduct to the jury, and we conclude that he was not deprived of his constitutional right to present a meaningful defense. Bailey’s testimony about his 2020 plea deal covers about three pages of trial transcript. He testified about concerns “trust[ing] 12 strangers that know nothing of [him],” and that he was facing a potential sentence of 12 years. He explained that from “the minute [he] was accused, it was . . . the assumption [he] was guilty.” Bailey stated that “[he] had the cops personally tell [him] they were coming for [him],” and that “[he] was in a no-win situation.” Continuing to explain his rationale behind lying under oath, Bailey explained that “[e]verybody was just trying to look for . . . something that says he did it,” and that those involved in the investigation “formed their . . . conclusions” without ever speaking to Bailey. And Bailey’s testimony about the specific terms of his plea agreement was only marginally relevant to the issue.

The district court did not abuse its discretion when it limited Bailey’s testimony. Because we conclude the district court did not err, we need not address Bailey’s assertion of cumulative error.

Affirmed.