



MINNESOTA JUDICIAL TRAINING UPDATE



SPRIEGL EVIDENCE – 5 STEP PROCESS

QUESTION: STATE FILES A MOTION-IN-LIMINE SEEKING ADMISSION OF SPRIEGL EVIDENCE. WHAT 5 STEP PROCESS MUST THE COURT FOLLOW IN REACHING A DECISION?

DEFINITION OF SPRIEGL EVIDENCE: Minnesota Rule of Evidence 404(b) states that “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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

RATIONALE: The concern behind excluding such evidence is that it might “be used for an improper purpose, such as suggesting that defendant has a propensity to commit the crime or is a proper candidate for punishment for past acts. But evidence of other crimes, wrongs, or bad acts, also called Spreigl evidence, may be admitted for limited, specific purposes.

FIVE STEP PROCESS: The Supreme Court Has Developed A Five-Step Process To Determine Whether To Admit Spreigl Evidence:

State v. Ness, 707 N.W.2d 676 (Minn. 2006):

1) The State Must Give Notice Of Its Intent To Admit The Evidence:

- a) The notice requirement has been incorporated into Minn. R. Crim. P. 7.02;
- b) No notice is required for offenses already prosecuted, offenses offered to rebut the defendant’s character evidence, or offenses arising out of the same occurrence or episode as the charged offense. Rule 7.02;
- c) Evidence of other crimes may not be received unless there has been adequate notice, and the prosecutor must specify the exception to the general exclusionary rule under which it is admissible. *State v. Billstrom*, 149 N.W.2d 281 (Minn. 1967).

2) State Must Clearly Indicate What The Evidence Will Be Offered To Prove:

- a) RULE 404(b): Proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident;
- i) **MOTIVE**: Motive concerns external facts that create a desire in someone to do something, whereas intent is a state of mind in which an act is done consciously, with purpose. Minn Stat. §609.02, subd. 9(3) (2004) (defining criminal intent). Often times the state will conflate the issue of motive, which is not an element of the crime, with intent, which clearly is an element;
- ii) **INTENT**: Other-acts evidence may help to prove the element of intent, *State v. Hennuksela*, 452 N.W.2d 668, 679 (Minn. 1990), but the admission of such evidence under this exception requires an analysis of the kind of intent required and the extent to which it is a disputed issue.
- iii) **COMMON SCHEME OR PLAN**: In determining whether a bad act is admissible under the common scheme or plan exception, it must have a marked similarity in modus operandi to the charged offense. *State v. Ness* at 688.
- For example: Defendant charged with Robbery; he has a prior conviction for a similar robbery 3 years earlier; both involved elderly female victims; occurred in senior citizen complexes and involved the use of a knife and verbal threats.

3) There Must Be Clear And Convincing Evidence That The Defendant Participated In The Prior Act:

- a) A defendant's participation in a Spreigl incident may be considered clear and convincing when it is highly probable that the facts sought to be admitted are truthful. *Ness*, 707 N.W.2d at 686;
- b) Charges on which a defendant has been acquitted cannot, under any circumstances, be used as Spreigl evidence. *State v. Kates*, 616 N.W.2d 296, 300 (Minn. Ct. App. 2000), overruled on other grounds by *State v. Ross*, 732 N.W.2d 274 (Minn. 2007);
- c) Common methods of proving Spreigl evidence: (1) Live testimony; (2) Factual admissions in a guilty plea; (3) Certified copy of conviction and court records (complaint and transcripts); (4) Stipulation of the parties; See Minnesota Judges Criminal Benchbook, 2011, page 14-7, IV.

4) The Evidence Must Be Relevant And Material To The State's Case:

- a) The district court must identify the precise disputed fact to which the Spreigl evidence would be relevant. *See Ness*, 707 N.W.2d at 686;
- b) REMOTENESS: Although the Mn Supreme Court has not adopted a bright-line rule for determining when a prior act is too remote to be relevant, it has held: "The Court, should employ a balancing process as to time, place, and modus operandi: the more distant the Spreigl act is in time, the greater the similarities as to place and modus operandi must be to retain relevance." *State v. Washington*, 693 N.W.2d, 195 (2005).

5) The Probative Value Of The Evidence Must Not Be Outweighed By Its Potential For Unfair Prejudice;

- a) Courts should address the need for *Spreigl* evidence by balancing the probative value of the evidence against its potential for unfair prejudice. There used to be an independent "necessity" requirement for the admission of *Spreigl* evidence, focusing on the relative strength of the state's case. In *State v. Ness*, at 685-86 the Court eliminated this as a separate requirement and instead adopted the overall balancing test. After *Ness* many courts now decide the admissibility of *Spreigl* evidence before trial

FOUR ADDITIONAL FACTORS THE COURT SHOULD CONSIDER

- 1) **SUPREME COURT CAUTION:** The Court should not simply take the prosecution's stated purposes for the admission of other-acts evidence at face value. Instead, the Court "should follow the clear wording of Rule 404(b) and look to the real purpose for which the evidence is offered," and ensure that the purpose is one of the permitted exceptions to the rule's general exclusion of other-acts evidence. *State v. Ness* at 686;
- 2) **CLOSE CALL CASES:** If admission is a close call, it should be excluded. *Ness* at 686;
- 3) **CAUTIONARY INSTRUCTION:** The court should give a cautionary instruction upon receipt of the *Spreigl* evidence (see CrimJig 2.01) and as part of the final instructions (see CrimJig 3.16). *State v. Frisinger*, 484 N.W.2d 27 (Minn. 1992).

- 4) **COMMON SCHEME OR PLAN:** The Sup Court in *Ness* was skeptical of the repeated use of “common scheme or plan” as a reason for the relevancy of Spreigl evidence, stating: “the common scheme or plan exception includes evidence only of offenses that have a marked similarity in modus operandi to the charged offense.” *Ness*, at 688.

THERE ARE THREE EXCEPTIONS TO THE SPREIGL RULE:

- 1) **IMMEDIATE EPISODE EXCEPTION:** The Spreigl five-step process does NOT apply if the other-crimes evidence was part of the same “immediate episode” as the charged offense. To be part of the ‘immediate episode’ the offenses must be “linked together in point of time or circumstances so that one cannot be fully shown without proving the other. For example, if the timing and close proximity of the crimes indicate they were “part of one transaction” then the “immediate episode exception” would apply. *State v. Fardan*, 773 N.W.2d 303 (Minn 2009);
- 2) **THE DOMESTIC ABUSE EXCEPTION, MS 634.20:** The Spreigl five-step process does NOT apply in cases involving domestic abuse if the other-crimes-evidence would otherwise be admissible under M.S. 634.20:
- a) M.S. 634.20 states: Evidence of similar conduct by the accused against the victim of domestic abuse, 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. "Similar conduct" includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subd 2.
 - b) Thus it is easier to exclude Spreigl evidence than 634.20 evidence.
- 3) **RELATIONSHIP EVIDENCE:** Evidence of the prior relationship between a defendant and victim of the crime is admissible to demonstrate the history of the relationship between the accused and victim and to place the offense in proper context. Admissibility is analyzed pursuant to the same balancing test found in Rule 403 and MS 634.20; namely, is the probative value of the relationship evidence substantially outweighed by the danger of unfair prejudice. The state is not required to prove relationship evidence to a clear and convincing level. *State v. Word*, 755 N.W.2d 776 (Minn. App. 2008). Thus it is easier to exclude Spreigl evidence than relationship or 634.20 evidence.

PROFESSOR SIMON'S ADMMISSIBILITY FLOW CHART

