



MINNESOTA JUDICIAL TRAINING UPDATE

ADMISIBILITY OF DEFENDANT'S PRIOR BAD ACTS INCLUDING RELATIONSHIP EVIDENCE

QUESTION: To Be Admissible, Evidence of Prior Bad Acts of Defendant, Including Defendant's Relationship with the Victim, Must Fit within 1 of 4 Exceptions to the General Rule Prohibiting Evidence of Bad Character.

WHAT ARE THOSE 4 EXCEPTIONS?

ANSWER:

- 1. SPREIGL EVIDENCE (Established By Rule Of Evidence 404(B);**
- 2. IMMEDIATE-EPISODE EVIDENCE (Established By Case-Law);**
- 3. DOMESTIC ABUSE EVIDENCE (Established By M.S. 634.20);**
- 4. RELATIONSHIP EVIDENCE (Established By Case-Law).**

***** A SUMMARY OF EACH EXCEPTION IS PROVIDED BELOW *****

State v. Hormann, 805 N.W.2d 883 (Minn App 2012)

GENERAL RULE PROHIBITING EVIDENCE OF BAD CHARACTER: Although other bad acts evidence is often probative, it also carries a great likelihood of inflaming passions and unfair prejudice to the defendant. Rule of Evidence 404(b) prohibition against use of other crimes, wrongs or acts is consistent with the common-law rule excluding evidence of prior bad acts to prove that an individual acted in conformity with his character except where the evidence fits within a specific exception. Exceptions to this general doctrine are contained in Rule 404(b), MS 624.20, and as established by appellate court decisions.

1. Spreigl Evidence: (Established by Rule of Evidence 404(b))

Evidence of prior bad acts generally “is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). This is also known as Spreigl evidence. But Spreigl evidence may be admissible to prove other things, such as: motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident, provided the state complies with various procedural safeguards. Minn. R. Evid. 404(b);

FIVE STEP PROCESS: The Supreme Court has developed a five-step process to determine whether to admit Spreigl evidence: 1) State must give notice of intent to admit Spreigl evidence; 2) State must clearly indicate what the evidence will be offered to prove; 3) There must be clear and convincing evidence that defendant participated in the prior act; 4) Evidence must be relevant and material to state’s case; 5) Probative value of evidence must not be outweighed by its potential for unfair prejudice. *State v. Ness*, 707 N.W.2d 676 (Minn. 2006); **See Minnesota Judicial Training Update 12-4.**

NOTE: RELATIONSHIP EVIDENCE IS NOT SPREIGL EVIDENCE. See *State v. Kanninen*, 367 N.W.2d 104, 106 (Minn.App.1985) (rejecting Spreigl argument when evidence “bore directly on the history of the relationship existing between the two parties”). See #4 below.

2. Immediate-Episode Evidence (Established By Case-Law);

- a) Immediate-episode evidence is a narrow exception to the general character evidence rule. *State v. Riddley*, 776 N.W.2d 419, 425 (Minn.2009).
- b) In order for offenses to be part of the same “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, or where evidence of other crimes constitutes part of the *res gestae*.” *Riddley* at 425–26. [“*Res gestae*” means “the events at issue, or other events contemporaneous with them.” Black's Law Dictionary.]
- c) **EXAMPLES:** the following case examples illustrate the type of close causal and temporal connection required to satisfy the narrow immediate-episode exception:

EXAMPLES OF WHAT DOES QUALIFY AS IMMEDIATE-EPISODE EVIDENCE:

- i. *State v. Martin*, 197 N.W.2d 219, 226-27 (1972) the district court properly admitted testimony regarding earlier robberies committed by the defendant because the defendant's desire to conceal the earlier robberies motivated the charged murder;
- ii. *State v. Leecy*, 294 N.S.2d 280, 282 (Minn. 1980) testimony about earlier threats constituted immediate-episode evidence because the earlier threats escalated into the charged assault;
- iii. *State v. Nunn*, 561 N.W.2d 902, 907-08 (Minn. 1997) testimony regarding an earlier kidnapping was immediate-episode evidence because the defendant obtained information during the earlier kidnapping that motivated the charged murder;
- iv. *State v. Kendell*, 723 N.W.2d 597, 608 (Minn.2006) testimony regarding a murder committed in unit 303 constituted immediate-episode evidence because the unit 303 murder was committed to avoid apprehension for the murders committed next door in unit 304;

d) EXAMPLES OF WHAT DOES NOT QUALIFY AS IMMEDIATE-EPISODE EVIDENCE:

- i. *State v. Fardan*, 773 N.W.2d 303, 316 (2009) in first degree murder case, although the other offenses and the murder "were all committed as part of the same broad plan to commit robbery," the other offenses were not immediate-episode evidence because the "murder was not committed to facilitate the other offenses, and the other offenses were not committed to facilitate the murder." *Id.* at 317.
- ii. *State v. Riddley*, 776 N.W.2d 419, 425 (Minn.2009). Although there was a close connection in terms of time and location between the murder and other offense (robbery), there was **NOT** a close causal connection. The murder was not motivated by the robbery and it was not committed to conceal the robbery. Testimony of robbery was not admissible as immediate-episode evidence.

3. DOMESTIC ABUSE EVIDENCE (Established By M.S. 634.20)

- a) Minn.Stat. § 634.20, provides for the admission of "evidence of similar conduct by the accused against the victim of domestic abuse," subject to certain procedural safeguards. To trigger admissibility under section 634.20, the currently charged offense must constitute domestic abuse. See *State v. McCurry*, 770 N.W.2d 553, 561 (Minn.App.2009) ("when the state cannot charge a crime constituting domestic abuse, it may not use Minn. Stat. 634.20 to circumvent rules of admissibility for prior bad acts").
- b) 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. The state is not required to prove 634.20 evidence to a clear and convincing level. *State v. Word*, 755 N.W.2d 776 (Minn. App. 2008).

- c) Accordingly, it is easier to exclude Spreigl evidence than M.S. 634.20 evidence.
- d) 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, misleading the jury, 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.

4. RELATIONSHIP EVIDENCE (Established By Case Law)

- a) Minnesota case law has established a basis for the introduction of relationship evidence independent of Minn.Stat. § 634.20, the Spreigl / rule 404(b) process, or the immediate-episode doctrine;
- b) "Relationship evidence is character evidence that may be offered to show the strained relationship between the accused and the victim ... [and] such evidence has further probative value when it serves to place the incident for which appellant was charged into proper context." *State v. Loving*, 775 N.W.2d 872, 880 (Minn.2009);
- c) Minnesota precedent requires neither an underlying domestic-abuse charge nor Spreigl /rule 404(b) notice prior to the introduction of relationship evidence. *State v. Boyce*, 170 N.W.2d 104, 115 (1969);
- d) Courts typically apply parts of the Spreigl /rule 404(b) analysis to relationship evidence. See *State v. Bauer*, 598 N.W.2d 352, 364 (Minn.1999) (applying Spreigl analysis to relationship evidence by requiring the district court to find by clear and convincing evidence that defendant committed the prior act and that the probative value of the evidence outweighs any unfair prejudice). *State v. Hormann*, 805 N.W.2d 883 (Minn App 2012).

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