STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2142

State of Minnesota,
Respondent,

vs.

Peter Magutu Juma,
Appellant.

Filed October 15, 2012
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-10-28942

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant Peter Magutu Juma argues that his convictions for first- and second-degree criminal sexual conduct must be reversed because the district court judge lacked

authority to preside over his trial, the court violated his constitutional rights by closing the courtroom while instructing the jury, and the court erroneously admitted *Spreigl* evidence of his 2009 conviction for criminal abuse of a vulnerable adult. Because we find no error in the district court's rulings or actions that mandate reversal of appellant's convictions, we affirm.

FACTS

In April 2010, appellant was living in a Maple Grove apartment with his cousin's family, which included P.O., his cousin's five-year-old daughter. P.O.'s six-year-old friend, D.E., who lived in the same building, came to play with P.O. on April 17, a day on which appellant was present in the apartment.

On the morning of April 18, 2010, D.E. told her mother, N.E., that it hurt to urinate and that appellant "lick[ed] his finger and put it in her private part." D.E. made a similar statement to a nurse practitioner at Children's Hospital who examined her for suspected child abuse. The sexual assault examination revealed that D.E. had semen and amylase (saliva) on her perineal area; DNA in a sample taken from D.E. matched appellant's DNA.

Appellant was charged with one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. At appellant's jury trial, D.E. testified that appellant touched her on her "private and . . . butt" and that appellant touched her with "[h]is private." During cross-examination, D.E. stated that appellant first touched her with his hand when they were in P.O.'s room and then took her to the garage where he "touched [her] with his mouth."

Appellant testified at trial and denied that he sexually assaulted D.E. When asked to explain how his DNA could be found near the victim's vagina, appellant stated that he masturbated in the apartment bathroom, wiped himself with a towel, and D.E. could have gotten his DNA on herself from the towel or a toilet seat.

The state moved to admit *Spreigl* evidence of a 2009 gross misdemeanor criminal-abuse-of-a-vulnerable-adult offense in which appellant digitally penetrated a 40-year-old vulnerable adult woman. The district court ruled the evidence admissible, finding it probative of "opportunity, planning and the . . . lack of any accident or mistake in terms of how the semen was placed on the child." The court permitted the investigating officer to testify about the underlying facts of the 2009 sexual assault, including that appellant confessed to the offense. The district court also admitted documentary evidence of appellant's police interrogation, which included his confession, his plea petition, and his sentence. When appellant testified that he pleaded guilty to that offense only to avoid deportation, the prosecutor cross-examined appellant about inculpatory statements he made during his 2009 interrogation.

Before the district court instructed the jury, the court made the following statement: "I'm now going to instruct the jury and the door is going to be locked, so if anyone wants to leave, they should leave now." The jury found appellant guilty of both charged offenses, and the district court imposed a 156-month sentence on the first-degree offense.

D E C I S I O N

Authority of District Court Judge

The district court judge who presided over appellant's trial did not reside in her judicial district for three months during 2009, for which she was censured and suspended from judicial office for 90 days. *In re Conduct of Karasov*, 805 N.W.2d 255, 258 (Minn. 2011). Appellant asserts that his convictions must be overturned because that same judge lacked authority to preside over his 2011 trial. Specifically, appellant argues that under Minn. Stat. § 351.02(4) (2010), the judge's seat became vacant by operation of law when she "ceas[ed] to be an inhabitant . . . of the district . . . for which [she] was elected or appointed." *See id.* at 258 (noting that judge did not "reside within her judicial district from July 1, 2009, through September 30, 2009"). He also asserts that because only the governor has the authority to appoint a judge to a judicial vacancy under Minn. Const. art. VI, § 8, the judge was not reappointed to her position when her seat became vacant due to her non-resident status.

This issue was addressed recently in *State v. Irby*, 820 N.W.2d 30 (Minn. App. 2012). In *Irby*, this court rejected the exact argument raised in this appeal—that the same judge lacked authority to preside over a criminal trial that was held after her judicial appointment became invalid by operation of Minn. Stat. § 351.02(4), because she failed to reside within the judicial district in which she served. *Id*. at 36. This court distinguished between an irregularity in the status of a de jure judge, who has authority to act as a judge by virtue of a defective constitutional delegation of authority, and an irregularity in the status of a de facto judge, who acts under color of law but whose

delegation of authority has a procedural defect. *Id*. at 35. In the case of a de jure judge, this court held that the defect requires conviction reversal and a new trial because the judge's status depends on an "unconstitutional delegation of authority to [the] judicial officer." *Id*. at 34 (quoting *State v. Harris*, 667 N.W.2d 911, 921 (Minn. 2003)). By contrast, in the case of a de facto judge, the defect is "merely technical," and judicial actions taken by a de facto judge are "valid." *Id*. (quotations omitted).

This court concluded in *Irby* that neither the residency-requirement violation of the judge nor any related violation of section 351.02(4), affected the judge's status as a de facto judge. *Id*. at *36. Thus, the *Irby* court ruled that reversal of the appellant's conviction was not required. *Id*. Because we conclude that *Irby* applies squarely here and appellant has offered no reason to deviate from it, we find no error in the district court's decision on this issue.

Courtroom Closing

Appellant next asserts that the district court committed reversible error by closing the courtroom to the public during the time that the court instructed the jury. Appellant claims that in "this phase of the trial, the closure prevented members of the press, the general public and [appellant's] family, who had not yet entered the courtroom, from observing the trial." Appellant also argues that the district court failed to make findings supporting the necessity for closing the courtroom.

The United States and Minnesota constitutions mandate that in all criminal proceedings "the accused shall enjoy the right to a . . . public trial." U.S. Const. amend VI; Minn. Const. art. I, § 6. Requiring a public trial ensures that the defendant is "fairly

dealt with," ensures that the factfinder is aware of the importance of its role, encourages witnesses to testify, and discourages perjury. *Waller v. Georgia*, 467 U.S. 39, 46-48, 104 S.Ct. 2210, 2215-17 (1984) (quotations and citations omitted). Violation of the right to a public trial is a "structural error not subject to harmless error review," and an appellate court gives de novo review to the constitutional issue. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012).

The Minnesota Supreme Court recently took up this issue in *Brown*. In *Brown*, the district court locked the courtroom during jury instructions, but told those in the courtroom that they were welcome to remain. *Id*. at 614. The supreme court held that the district court's action did not violate the defendant's right to a public trial, stating:

> While the [district] court did lock the courtroom doors during jury instructions, the courtroom was never cleared of all spectators, and the judge in fact told the people in the courtroom that they were "welcome to s[t]ay." The trial remained open to the public and press already in the courtroom and the [district] court never ordered the removal of any member of the public, the press, or the defendant's family. In addition, the jury instructions did not comprise a proportionately large portion of the trial proceedings. All of these circumstances, taken together, convince us that the [district] court's conduct did not implicate [the defendant's] right to a public trial.

Id. at 617-18 (footnote omitted); *see Irby*, 820 N.W.2d at 39 (applying *Brown* to reject a claim of structural error after the district court locked the courtroom during jury instructions). In *Brown*, the supreme court advised the district courts to close courtrooms only sparingly and stated that "the better practice is for the [district] court to expressly state on the record why the court is locking the courtroom doors." 815 N.W.2d at 618.

This appeal was filed before issuance of *Brown*, which addresses courtroom closure on very similar facts. In *Brown*, the district court informed those in the courtroom that it would be locking the courtroom during final jury instructions but welcomed those inside the courtroom to stay. *Id*. at 614. While the district court here did not specifically invite the public to stay, the court indirectly did so by stating that "if" those in the courtroom wished to leave, they should do so before the doors were locked. Appellant's request for a remand to require the district court to make further findings was also made and rejected in *Brown*; because the act of locking the courtroom doors during jury instructions does not implicate the right to a public trial, the supreme court determined that there was no need to remand for findings. *Id*. at 616. We affirm the district court's decision on this issue.

Admission of Spreigl Evidence

Finally, appellant argues that the district court committed reversible error by admitting evidence of his 2009 offense. Other crimes evidence may not be admitted at trial to show character, but may be admitted to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b) (codifying *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965)); *see State v. Fardan*, 773 N.W.2d 303, 316 n.6 (Minn. 2009) (applying a five-factor test to determine admissibility of *Spreigl* evidence that includes consideration of notice of the state's intent to introduce the evidence, the proposed purpose of the evidence, whether there is clear-and-convincing evidence that the defendant participated in the *Spreigl* act, and whether the evidence is relevant and more probative than prejudicial). A district

court's evidentiary ruling on whether to admit *Spreigl* evidence is subject to the abuse-of-discretion standard of review. *State v. Clark*, 755 N.W.2d 241, 260 (Minn. 2008).

Appellant argues that the district court erroneously admitted the *Spreigl* evidence because it was not relevant and was highly prejudicial. The district court found, in part, that the evidence was relevant to show a common plan. The record supports this determination. The prior crime and the current offense each involved a vulnerable victim whom appellant sexually assaulted by digital penetration. Appellant attempts to argue that differences in the victims' ages and sizes means that their assaults did not show the "marked similarity" that is required for admissibility as evidence of common scheme or plan. *State v. Ness*, 707 N.W.2d 676, 688 (Minn. 2006) (quotation omitted). We disagree. These differences do not negate the striking similarity of the offenses.

As to the prejudicial nature of the evidence, the district court conducted the balancing test required by *Fardan* and concluded that the evidence was more probative than prejudicial. 773 N.W.2d at 316 n.6. The court noted that the evidence was prejudicial but also found it probative to show a common plan. The court further noted that appellant's testimony placed credibility in issue because he testified that he did not assault D.E. and that she may have gotten his DNA on her person through use of the same bathroom. The evidence was thus probative to counter appellant's testimony that his DNA was present on D.E. by accident or mistake. *See Ness*, 707 N.W.2d at 690 (noting that in conducting *Spreigl* analysis, the district court must "conduct a thoroughgoing examination of the purposes for which *Spreigl* evidence is offered, and to weigh the probative value of the evidence on *disputed* issues in the case against its

potential for unfair prejudice" (emphasis added)). Any concerns regarding the prejudicial effect of the *Spreigl* evidence were ameliorated by the district court's instruction to the jury regarding the limited purposes for which the evidence was admitted and the prohibition against using the evidence as proof of appellant's character or his actions in conformity with such character. *See State v. Hill*, 801 N.W.2d 646, 658 (Minn. 2011) (stating that juries are presumed to follow instructions provided by the district court). Further, even if the *Spreigl* evidence was mistakenly admitted at trial, appellant cannot satisfy the harmless-error test by showing that there was "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Ness*, 707 N.W.2d at 691. Evidence at trial included the consistent and detailed testimony of the victim, who, despite her youth, testified in a cohesive fashion about the sexual assault, as well as physical evidence that corroborated her description of it.

Affirmed.