STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1320

State of Minnesota,
Respondent,

vs.

John Edgerson,
Appellant.

Filed September 30, 2008
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 05068785

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lee R. Wolfgram, Katherine J. Clark, The Wolfgram Law Firm, 100 North Sixth Street, Suite 445A, Minneapolis, MN 55403 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Collins, Judge.

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

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

COLLINS, Judge

On appeal from his conviction of fourth-degree criminal sexual conduct, appellant argues that (1) his right to a speedy trial was violated; (2) the district court abused its discretion in admitting *Spreigl* evidence; and (3) the district court erred in refusing to summon the sheriff's department to assist in securing the appearance of one of appellant's subpoenaed witnesses. We affirm.

FACTS

Appellant John Edgerson was a volunteer pastor and counselor at the Hennepin County Home School (HCHS), a state-licensed residential treatment center for juveniles. On September 25, 2005, Edgerson provided one-on-one counseling to residents at HCHS. During a session with A.J. (the victim), a 17-year-old female resident, Edgerson allegedly made sexual advances toward her and touched her inner thigh and breast over her clothing. Edgerson was subsequently charged with fourth-degree criminal sexual conduct.

On September 20, 2006, Edgerson made a demand for a speedy trial. On November 6, 2006, the scheduled trial date, the prosecutor informed the district court that she was unavailable to proceed with trial because she was scheduled to represent the state in a remanded sentencing trial on the same day. The district court found good cause for a continuance and rescheduled the trial for January 22, 2007. In concluding that a continuance was appropriate, the court stated, "I see no dawdling on anybody's part. In

fact, every effort has been made to get this case to trial, because of the nature of it. I think everybody's eager to get the case tried."

On January 22, due to court calendar congestion, the district court continued the trial to March 19, 2007. Edgerson immediately moved to dismiss the charges for violation of his right to a speedy trial. At the motion hearing, defense counsel: (1) noted that more than 60 days had passed since the speedy trial demand was filed; (2) argued that calendar congestion does not constitute good cause for failing to accommodate the demand; and (3) claimed that Edgerson suffered prejudice as a result of the delay. The district court denied the motion. Although the district court "acknowledged . . . that the number[ ] of continuances on this case [is] unacceptable, in terms of how the Court does business," it declined to grant relief because there was no evidence of bad faith or prejudice to Edgerson.

The jury trial began on March 19, 2007. Over Edgerson's objection, the district court allowed the state to elicit *Spreigl* testimony from A.C. and M.T., female residents at HCHS who claimed that Edgerson made inappropriate comments and violated HCHS policy by touching them during one-on-one counseling sessions. Edgerson attempted to rebut this testimony by calling the HCHS chaplain and a county correctional officer to testify that he acted appropriately in counseling the residents. Edgerson also planned to call K.F., another female resident at HCHS, who would testify that she received counseling from Edgerson without incident. But, although K.F. had been served with a subpoena, defense counsel informed the district court that she was unable to locate K.F. and requested the court's assistance to compel K.F. to appear. The district court

proposed the issuance of a bench warrant but explained that locating K.F. was beyond the court's purview because it did not "have any investigators to go find anybody." Defense counsel did not request a bench warrant, and K.F. did not appear.

At the close of trial, Edgerson was found guilty of fourth-degree criminal sexual conduct. This appeal followed.

D E C I S I O N

I.

Edgerson argues that the district court denied his right to a speedy trial by twice continuing his trial date. Determining whether a defendant has been denied the constitutional right to a speedy trial is a question of law, which we review de novo. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

The United States and Minnesota constitutions establish that, in all criminal prosecutions, "the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI; Minn. Const. art. I, § 6. To determine whether a delay deprived the accused of the right to a speedy trial, Minnesota courts apply the United States Supreme Court's four-factor balancing test announced in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972), in which a district court weighs the pretrial conduct of both the state and the defendant. *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). The four factors are (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the delay prejudiced the defendant. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). No one factor is necessary to or dispositive of finding that the defendant was denied the right to a speedy trial; the factors

must be considered together in light of the relevant circumstances. *Id*. These factors are each analyzed in turn.

A. Length of the delay

Length of delay functions as a "triggering mechanism" in the speedy-trial analysis in that, until some delay is evident, "the other factors need not be considered." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). A criminal defendant is entitled to a trial within 60 days after a demand in writing or orally on the record. Minn. R. Crim. P. 6.06, 11.10. A delay beyond 60 days after the date a defendant demands a speedy trial is presumptively prejudicial and will trigger consideration of the remaining *Barker* factors to determine whether good cause exists for the delay. *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989).

Both parties agree that the presumption of prejudice attached in this case as a result of the nearly six-month delay between the demand for a speedy trial on September 20, 2006, and the start of trial on March 19, 2007. But it is important to note that delay alone, even for a period as long as 15 months, is insufficient to demonstrate that an accused's constitutional right to a speedy trial was denied. *See e.g. State v. Givens*, 356 N.W.2d 58, 61-62 (Minn. App. 1984) (concluding that 15-month delay was "sufficient to trigger further inquiry"), *review denied* (Minn. Jan. 2, 1985).

B. Reason for the delay

The weight given to this factor depends on the reason for the delay. *Cham*, 680 N.W.2d at 125. The state's deliberate attempt to delay the trial to hamper the defense would weigh heavily against the state, while negligent or administrative delays are given

less weight. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192; *State v. Huddock*, 408 N.W.2d 218, 220 (Minn. App. 1987).

The parties agree that the length of the delay is attributable to both the prosecutor's scheduling conflict and court calendar congestion. Edgerson argues that neither circumstance constitutes good cause for delay. Good cause generally does not include calendar congestion unless exceptional circumstances exist. *McIntosh v. Davis*, 441 N.W.2d 115, 119-20 (Minn. 1989). But delay resulting from calendar congestion, which is beyond the control of the state, "weighs less heavily against the state than would deliberate attempts to delay trial." *Friberg*, 435 N.W.2d at 513. In fact, our supreme court has "found that calendar congestion or other circumstances over which the prosecutor has no control are good cause for delays up to fourteen months where the defendants suffered no unfair prejudice." *Id*. (listing cases).

Here, both court calendar congestion and a scheduling conflict imposed upon the prosecutor were beyond the control of the state. Because the state had no control over these circumstances, and because Edgerson experienced a delay of only six months, his speedy-trial rights were not violated unless he suffered unfair prejudice as a result of the delay. *See id.*

C. Whether defendant asserted right to speedy trial

Both parties agree that this factor weighs in favor of Edgerson because he unequivocally asserted his right in writing on September 20, 2006, and continued to raise this issue in pretrial hearings on November 6, 2006, and February 23, 2007.

D. Whether delay prejudiced defendant

The final factor of prejudice is measured in light of the interests that the speedy-trial right was designed to protect. *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. In considering prejudice to a defendant, the supreme court has considered three interests protected by the right to a speedy trial: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired. *Windish*, 590 N.W.2d at 318 (citing *Barker*, 407 U.S. at 532, 92 S. Ct. at 2192). The defendant does not have to prove prejudice; it can be "suggested by likely harm to a defendant's case." *Id.*

Edgerson claims that the first prejudice factor weighs in his favor because he was subject to specific conditions of release pending trial that prohibited his contact with minors and attendance at school functions. But these restrictions on his freedom do not rise to the level of oppressive pretrial incarceration against which the *Barker* court intended to protect. *State v. Reese*, 446 N.W.2d 173, 179 (Minn. App. 1989) (finding appellant did not show prejudice as a result of delay where appellant was not incarcerated during delay), *review denied* (Minn. Nov. 15, 1989); *cf. State v. Traylor*, 641 N.W.2d 335, 343 (Minn. App. 2002) (noting that "the harshest effects of the delay were mitigated by the fact that [appellant] was on conditional release during much of the delay"), *rev'd in part on other grounds*, 656 N.W.2d 885 (Minn. 2003).

Edgerson next contends that the delay caused him to experience significant anxiety. Specifically, he claims that the delay caused his marriage to fail and forced him to endure the stigma of criminal charges and the anxiety of awaiting trial. But the district

court discredited Edgerson's assertion that the trial delay resulted in his divorce; and the stigma of criminal charges and the anxiety of awaiting trial, which are both commonly experienced by criminal defendants, are insufficient to establish prejudice. *Friberg*, 435 N.W.2d at 515 (noting that prejudice is not shown when an appellant has failed to show evidence of greater stress, anxiety, or inconvenience than that experienced by anyone who is involved in a trial).

Finally, Edgerson contends that his defense was impaired as a result of the delay because he was forced to relocate and resubpoena witnesses each time the trial was continued. Despite being inconvenienced, Edgerson fails to explain how his case was prejudiced as a result of having to serve new subpoenas. The only defense witness who did not appear at trial was K.F. who would have served as a rebuttal witness. Edgerson was successful in resubpoenaing K.F. but unsuccessful in compelling her to appear. Nothing in the record suggests that the delay caused K.F. to disobey the subpoena.

In sum, we conclude that Edgerson's constitutional right to a speedy trial was not violated. Certain factors, such as the length of the delay and his assertion of the right to a speedy trial, favor him. But because the trial date was continued for reasons beyond the control of the state and because Edgerson was not prejudiced by the delay, he is not entitled to relief. *See Friberg*, 435 N.W.2d at 513.

II.

The admission of *Spreigl* evidence lies within the sound discretion of the district court and will not be reversed absent a clear abuse of that discretion. *State v. Spaeth*, 552

N.W.2d 187, 193 (Minn. 1996). To prevail, an appellant must show error and prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Evidence of past crimes or bad acts, also known as *Spreigl* evidence, is not admissible to prove the character of a person or that the person acted in conformity with that character in committing an offense. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998); Minn. R. Evid. 404(b). However, *Spreigl* evidence may be admissible to prove factors such as motive, intent, identity, knowledge, and common scheme or plan. *Kennedy*, 585 N.W.2d at 389.

Edgerson also argues that the district court abused its discretion when it allowed the state to introduce *Spreigl* testimony from A.C. and M.T. Edgerson contends that this evidence was irrelevant and that its probative value was outweighed by the potential for unfair prejudice.[1] The district court allowed the evidence to establish intent and to prove common scheme or plan.

A. Relevance

Edgerson contends that this evidence was irrelevant for purposes of establishing intent or common scheme or plan. First, he claims that this evidence was inadmissible to prove intent because he unequivocally denied committing the charged offense. "[T]he admission of [*Spreigl*] evidence under [the "intent"] exception requires an analysis of the

[1] By addressing only these factors, Edgerson concedes that the remaining requirements for the admission of *Spreigl* evidence have been met. *See State v. Clark*, 738 N.W.2d 316, 345 (Minn. 2007) (listing requirements for admission of *Spreigl* evidence).

kind of intent required and the extent to which it is a disputed issue in the case." *State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006).

In admitting the evidence, the district court noted that "sexual or aggressive intent cannot simply be inferred from the described conduct" because the alleged sexual contact between Edgerson and the victim consisted of "touching outside of the clothing." The court then admitted the evidence for this purpose, because "lack of intent is an arguable defense." We agree with the district court's rationale. Here, the victim alleged that Edgerson touched her thigh and breast over her clothing in a dark library during a power failure. Due to these circumstances, Edgerson's state of mind in touching the victim became a material issue and a potential defense. Moreover, we decline to adopt Edgerson's argument because to do so would bar the state from introducing *Spreigl* evidence to prove intent in all cases where the defendant generally denies committing the offense. *See United States v. Thomas*, 58 F.3d 1318, 1322 (8th Cir. 1995) ("When a defendant raises the issue of mental state . . . by means of a general denial that forces the government to prove every element of its case, prior bad acts evidence is admissible because mental state is a material issue.").

Furthermore, this evidence was relevant for the purpose of demonstrating a common scheme or plan. In a criminal-sexual-conduct case, "*Spreigl* evidence may be introduced to establish, by showing a common scheme or plan[,] that a sexual act occurred." *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007). More specifically, *Spreigl* evidence is admissible to establish that the conduct on which the charged offense was based actually occurred or to refute the defendant's contention that the victim's

testimony was a fabrication or a mistake in perception. *State v. Wermerskirchen*, 497 N.W.2d 235, 241-42 (Minn. 1993). "When determining whether past misconduct is admissible under the common scheme or plan exception, the misconduct must have a marked similarity in modus operandi to the charged offense." *Clark*, 738 N.W.2d at 346 (quotations omitted).

Edgerson argues that A.C.'s and M.T.'s testimony is not admissible as evidence of common scheme or plan because the misconduct they complained of is "general in nature" and, therefore, fails to establish true similarity in the modus operandi of the acts.

However, the *Spreigl* witnesses' testimony reveals a marked similarity in Edgerson's actions toward and relationships with the victim and the *Spreigl* witnesses. Both A.C. and M.T. were teenage female residents committed to HCHS who received one-on-one counseling from Edgerson during the same time period as the victim. Like the victim, they claimed that Edgerson made comments about their physical appearance, touched them inappropriately, and acted unprofessionally by telling them stories of his sordid past.

Based on this evidence, there is a sufficiently close relationship between the charged crime and the *Spreigl* offenses. The misconduct (1) was of a similar nature, (2) occurred at the same location, (3) occurred within a short period of time after the assault of the victim, (4) involved victims of the same or similar age, and (5) arose in the context of counseling sessions conducted by Edgerson, (6) who attempted to gain their trust by discussing his past indiscretions.

B. Probative value versus unfair prejudice

Edgerson also argues that the probative value of this evidence was outweighed by the risk of unfair prejudice. Before admitting *Spreigl* evidence, the district must conclude that its probative value outweighs the risk of unfair prejudice. Minn. R. Evid. 404(b). When balancing the probative value of *Spreigl* testimony against the prejudicial effect, the district court "must consider how necessary the *Spreigl* evidence is to the state's case. Only if the other evidence is weak or inadequate, and the *Spreigl* evidence is needed as support for the state's burden of proof, should the [district] court admit the *Spreigl* evidence." *State v. Berry*, 484 N.W.2d 14, 17 (Minn. 1992) (citations omitted).

In admitting the evidence, the district court found that the state's case was weak and the probative value of the witnesses' testimony was "substantial" because the alleged crime constituted "an unwitnessed event with no other corroboration."

Edgerson contends that this evidence was improperly admitted because it was introduced mainly to establish his propensity for being "inappropriate around teenagers."[2] But in light of the absence of other witnesses to the alleged misconduct, as well as the striking similarities between the testimony of the victim and the *Spreigl* witnesses, this evidence held significant probative value. And the district court mitigated the risk for unfair prejudice by instructing the jury that Edgerson could not be convicted based on prior bad acts. *See State v. Waukazo*, 374 N.W.2d 563, 565 (Minn. App. 1985) (noting

[2] Edgerson also contends that this evidence holds no probative value because the misconduct complained of by A.C. and M.T. does not constitute a crime. However, for purposes of *Spreigl*, "the prior bad act need not constitute a crime." *State v. McLeod*, 705 N.W.2d 776, 788 (Minn. 2005).

that the district court guarded against undue prejudice by giving jury instructions), *review denied* (Minn. Nov. 1, 1985). Thus, the district court did not err in admitting the *Spreigl* evidence.

III.

Lastly, Edgerson argues that the district court violated his Sixth Amendment right to compulsory process by failing to assist him in securing the appearance of a subpoenaed witness. We review constitutional issues de novo. *In re Welfare of J.C.P.*, 716 N.W.2d 664, 666 (Minn. App. 2006), *review denied* (Minn. Oct. 17, 2006) .

The federal and state constitutions provide a criminal defendant with the right to subpoena favorable witnesses. U.S. Const. amend. VI.; Minn. Const. art. I, § 6. This fundamental right bestows upon criminal defendants "the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S. Ct. 989, 1000 (1987).

Edgerson claims that his right to compulsory process was violated when the district court "refused to summon the sheriff's department" to compel K.F. to appear as a rebuttal witness for the defense. We disagree. Although Edgerson blames the district court for his inability to secure K.F.'s appearance, he overlooks the fact that he failed to request a continuance and ignored the district court's proposal to issue a bench warrant for K.F.'s arrest. Moreover, with testimony from the HCHS chaplain and the county correctional officer that Edgerson acted appropriately in counseling the residents already in the record, K.F. would have provided only cumulative testimony. *See United States v.*

Valenzuela-Bernal, 458 U.S. 858, 867, 102 S. Ct. 3440, 3446 (1982) (explaining that, in order to establish a violation of the right to compulsory process, a defendant must demonstrate that the testimony sought is material to the defense).

In sum, Edgerson fails to demonstrate any error that entitles him to relief from his conviction of fourth-degree criminal sexual conduct.

Affirmed.