

A05-1519

STATE OF MINNESOTA

IN SUPREME COURT

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State of Minnesota,

Respondent,

vs.

Leonard Goodloe,

Appellant.

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**APPELLANT'S PRO SE SUPPLEMENTAL BRIEF**

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APPELLANT

**CASE NO. A05-1519**  
**STATE OF MINNESOTA**  
**IN SUPREME COURT**

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**APPEAL FROM THE HENNEPIN COUNTY DISTRICT COURT  
FOR THE SUPREME COURT OF MINNESOTA**

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**APPELLANT'S PRO SE BRIEF**

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**LEONARD GOODLOE  
PRO SE BRIEF**



## ARGUMENT

**THE PREJUDICIAL EFFECT FAR OUT WEIGHS A HARMLESS ERROR WHERE TRIAL COURT “NEVER” MADE A DETERMINATION WHETHER THE SPREIGL EVIDENCE WAS TO BE ACCEPTED OR DENIED. TRIAL COURT ERRONEOUSLY ACCEPTED THE EVIDENCE, COUPLED WITH THE TRIAL COURTS FAILURE TO GIVE A LIMITED INSTRUCTION WHEN EVIDENCE WAS OFFERED OR CONCLUSIVE INSTRUCTION SUFFICIENT TO HAVE DENIED APPELLANT A FAIR TRIAL?**

Testimony and evidence concerning defendant’s alleged bad act of October 11,2004 constituted plain error, In prosecution for Murder; Testimony and evidence reflected badly on defendants character, Which was not at issue, Testimony has strong potential likelihood to confuse and mislead the jury where as the second count of the indictment reads “ unlawful possession of firearm” Absent cautionary instruction one can only infer that the jury misused the evidence thus denying appellant a fair trial, It likely affected the verdict. Therefore the lower courts decision must be reversed and conviction should not stand. M. S. A §§ 609.17(1),609.24,50 M. S. A Rules of Evidence 401,403.

It is obvious in light of the entire transcript that the trial judge “never” made a determination as to accept or deny the Spreigl evidence. This is “plain” “error” warranting reversal.

When it is not clear whether the evidence is admissible as a exception to the general rule ,the doubts should be resolved in the defendants favor and the evidence excluded.

State v. Spreigl, 272 Minn. 488,139 N. W .2d167 (1965), State v Bolte, 530 N.W.2d 191(1995) State v. Lynch 590 N.W.2d 75,80 (Minn. 1999); State v. Johnson 568 n.w 2d 426,443 (Minn. 1997).

“If the trial judge does not “clearly perceive” that the evidence falls properly within a specific exception, the accused is to be given the benefit of the doubt, and the evidence rejected.”

(T.139,140,141).

Trial court abused its discretion and demonstrated bias by allowing the trial to continue where “error” “plainly” prejudiced the defendants “substantial rights.”

Trial Judge clearly demonstrated bias by acknowledging that a “error” occurred but “prejudiced” the defendant by allowing counsel to determine how to deal with the error. (T.631) “ The other issue the court asked us to address was the state elicited testimony concerning the crash that Mr. Goodloe is involved in, and the fact immediately upon the police arriving, he was observed with a gun in his hand. I think rightly, was concerned that without the jury getting an instruction on how to deal with that, there might be error in trial.

A Judge shall perform judicial duties without bias or prejudice. 52 M. S. A Code of judicial conduct, Cannon 3.

Even in absence of objection at the time the Spreigl is to be received, Cautionary instruction must be given when Spreigl evidence of bad act is received and when trial concludes. Minn. Rules of Evidence 404(b) and as part of final instructions. State v. Wermerskirchen 483 N.W 2.d, 725 (Minn. App 1992). See State v. Pearson, 633 N.W.2d,19 (Minn. App 2001).

When the judge is a referee to ensure fairness, In the functionaries of Justice. Johnson v United States, 333 U.S. 46,54,68 S. CT. 391, 396, 92 L. ed 468(1948) Frankfurter. J

Even in absence of objection at the time the Spreigl is to be received, Cautionary instruction must be given when Spreigl evidence of bad act is received and when trial concludes. Minn. Rules of Evidence 404(b) and as part of final instructions. State v. Wermerskirchen 483 N.W 2.d, 725 (Minn. App 1992). See State v. Pearson, 633 N.W.2d,19 (Minn. App 2001).

§ 32.18 The rule excluding other misconduct:

The general rule is strait forward.....

“Thus, In a case posing a stark example, The Minnesota Supreme Court has held that reference earlier homicides and other possible misconduct in robbery prosecution constituted plain and prejudicial error, not alleviated by a limited instruction, requiring reversal despite the lack of objection . State v. Strommen, 648 N.W. 2d 681 (Minn. 2002).

An error is “plain” warranting reversal, if it was clear or obvious.

An error “affects substantial rights” and thus warrants reversal under plain-error standard, if the error is prejudicial, that is, if there is a reasonable likelihood that error substantially affected the verdict.

In the interest of justice it is clear that the only way to right this error is to reverse the conviction, due to the fact that the error is clearly prejudicial and has the strong potential to be harmful beyond a reasonable doubt, especially absent cautionary instruction.

Prejudicial effect far outweighs the harmless effect. Prosecutor’s misconduct is clearly intentional; trial judge clearly (T139, 140, 141) stated, “The whole idea behind Spreigl is to go to other crimes, which generally would not come in unless the defendant chose to testify.”

“In order for you to put this in your case in-chief, in terms of what he’s been charged and convicted of, the Spreigl standard has to be met for that type of evidence to come in.” Since the prosecutor did not meet the Spreigl criteria, any such evidence is inadmissible. Acceptance of Spreigl evidence is “extremely prejudicial” and confusing. Therefore, this conviction shall be reversed.

A prosecutor's duty is not to seek a conviction at any price but, rather is to act as a "minister of justice" State v. Salitros 499 N.W. 2d 815, 817 (Minn. 1993)

Trial judge ensured appellant a fair trial (T.9) Goodloe: "So I just ask that I get a fair trial."

Judge: Assured the defendant if she would not be surprised, prosecutor presented spreigl evidence absent instruction. (T.9) "I can assure you, Mr. Goodloe, I wasn't told about that, and unless I'm told, it's not going to happen."

Spreigl testimony was prejudicial, and confusing. All of the Spreigl testimony was harmful due to the fact that the witnesses testified that on October 11, 2004, appellant constructively/blatantly possessed a firearm. Therefore, the "error" has "plainly" denied the appellant a fair trial.

Trial judge is not a passive moderator at a free-for-all; trial judge is administrator of justice and has an affirmative obligation to keep counsel within bounds and to ensure the case is decided on basis of relevant evidence and proper inferences there from, not on basis of irrelevant or prejudicial matters. State v. Salitros 499 N.W. 2d 815 (1993)

The Supreme Court has the supervisory powers over trial court, to grant relief for plain error, if error is of prejudicial nature; and in interests of justice, appellant asks that the Supreme Court exercise its supervisory powers and overturn the lower court's previous decision. Due to the "plain" errors that occurred in admitting Spreigl evidence of October 11, 2004 incident which had the propensity to mislead and arouse prejudice, error is transparent where the trial court acknowledged that an error occurred (T631,632). But the trial court abused its discretion which affected the "substantial rights of appellant" due to the fact the error had already occurred and potentially affected the outcome of the entire trial, where the jury may have misused the evidence absent cautionary instruction. By allowing counsel to make a determination not to call anymore attention to the matter it is clearly prejudicial where the error has already occurred.

Allowing Spreigl testimony without a cautionary instruction, the trial courts “error” affected fundamental law, causing substantial prejudice whereby the Spreigl burden was not met. State v. Wahlberg 296 N.W. 2d 408

Trial courts instruction to the jury is also misleading and prejudicial (T.711) “And after you have weighed, analyzed, and considered **all the evidence and testimony** in this case on the part of both the state and defendant, if you then have an abiding conviction amounting to a moral certainty of guilt of the defendant.”

I ask that this case be reversed due to the fact that that jury may feel as if the appellant was guilty of possession of a firearm on October 11, 2004, but not the murder of July 22, 2004. The jury was forced to convict the appellant due to the erroneous instruction by the trial judge, who stated, “consider all the evidence and testimony in this case.”

Where the standard is the vote must be unanimous, this instruction can and will easily persuade the jury, or any prudent person, to infer that they must find the defendant guilty. For these reasons above, I ask that you overturn the previous decision made by the lower courts.

## ARGUMENT

### **Did the trial court abuse its discretion in allowing the Spreigl evidence of the alleged bad act to be received at trial?**

Admission of Spreigl Evidence:

Evidence of a defendant's prior misconduct is not admissible to prove the character of a person in order to show action in conformity there with. Minn. R. Evid. 404(b).

In other words, the prosecution may not offer evidence of prior acts for the purpose of having the jury infer that the defendant was predisposed to commit the act for which he now stands trial.

The trial court has discretion, however, to admit such evidence "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); see also *State v. Spreigl*, 272 Minn. 488, 491, 139 N.W. 2d 167, 169 (1965)

Spreigl evidence is admissible only when the following requirements are met:

1. The prosecution notifies the defense that the state intends to introduce the evidence;
2. The prosecution states the evidentiary basis for admission.
3. When the evidence is offered to prove identity there must be a connection in time, place or modus operandi;
4. The trial court finds that the Spreigl evidence is necessary to the state's burden of proof;
5. The evidence of the Spreigl conduct is clear and convincing;
6. The trial court gives appropriate instruction as to the limited purpose of the Spreigl evidence.

State v. Hannuksela, 452 N.W. 2d 668, 678 (Minn. 1990). The decision whether to admit Spreigl evidence ordinarily lies within the discretion of the trial court.

State v. Dewals, 464 N.W. 2d 500, 503 (Minn. 1991) The trial court must find that its probative value is not outweighed by its prejudicial effect. Id. Where admissibility is questionable, the court must not admit the evidence. Id.

Because of the danger Spreigl evidence will be misused by the jury, it is incumbent upon the trial court to carefully monitor the introduction and use of this evidence. Id. The trial court must give appropriate instructions as to the limited purpose for which the Spreigl evidence is offered  
Hannuksela 452 N.W. 2d at 678

State v. Wermerskirchen 483 N.W. 2d (Minn. App. 1992) “To ensure that the jury does not misuse the evidence, the court must give a cautionary instruction both at the time the evidence is received and at the conclusion of the trial.”

State v. Billstrom 276 Minn. 174, 179, 149 N.W. 2d 281, 285 (1967) See also 10 Minnesota Practice, Crim. JIG, 2.01 The trial court failed to instruct the jury at all prior to testimony of the Spreigl witnesses. Because of this, there was a danger that by the time the court gave a instruction, the jury had already misused the evidence. The jury “never” received any type of instruction, Spreigl evidence is in admissible and “plainly” prejudicial absent cautionary instruction the appellant is entitled to a new trial.

## ARGUMENT

**APPELLANT WAS ARRESTED WITHOUT A WARRANT , WAS NOT TAKEN BEFORE A JUDGE UNTIL NOVEMBER 4,2004 THUS, MAKING THE SUBSEQUENT ARREST ILLEGAL . VIOLATED APPELLANTS DUE PROCESS RIGHT.**

I was arrested on October 21, 2004 without a warrant. Subsequently on October 25, 2004, Assistant Hennepin County Attorney, Mr. Robert Streitz issued a complaint charging me, Leonard L. Goodloe, with one count of Murder in the Second Degree, and one count of prohibited person in possession of a firearm. Bail was requested at \$2 million. The complaint was reviewed and signed by Minneapolis Police Department Sgt. Richard Edinger and presented to the honorable Judge Markert who signed it. The complaint was then filed with the clerk of courts. I was already in custody at the time of filing.

This is a violation of the rules of criminal procedure which constitutes a due process violation. Rule 4.02 **Arrest with out a warrant subd.5** *appearance before a judge or judicial officer(1)*

An arrested person who is not released pursuant to this or rule 6, shall be brought before the nearest available judge of the district court of the county where the alleged offence occurred or judicial officer of such court. The defendant shall be brought before such judge or judicial officer without unnecessary delay, **and in any event not more than 36 hours after the arrest.** This is further supported by 303.02 Time2: According to the Minnesota judges criminal bench book.

Arrest without a warrant a judicial determination of probable cause for the detention of the defendant **must** be made within 48 hours of a warrant less arrest. The time is continuous and runs from the moment of arrest. Riverside v. Mclaughlin, 500 U.S,44 (1991). Even if a judge has wade a determination that there was probable cause for the arrest and for the continued detention

of the defendant, the prosecutor must still act within the time period provided by the rules. Minn.R.Crim.P.4.0.2 subd.5 prescribes the procedure to follow upon arrest without a warrant. 302.02 (5) Delay presumed illegal. If a person is held for more than 36 hours, the delay will be presumptively illegal. State v. Bradley supra. The remedy for failure to comply with Minn.R.Crim.P 4.02, subd 5 (1) 302. subd 2 is to obtain a writ of habeas corpus, to afford the citizen a speedy and effective method of securing release when illegally restrained of liberty. State exrel Bassett v. Tahash 263 Minn.447, 116 N.W 2d 564(1964), has been replaced by the post-conviction remedy act Minn. Stat chapter 5.90. The act allows a convicted defendant to challenge the procedures leading to the conviction and sentence. Rule 4.03 is based on the constitutional requirement set forth in County of Riverside v. McLaughlin, 500 U.S.44, 111 S.Ct.1661, 114 L.ed.2d, 49(1991) for a prompt judicial determination of probable cause following a warrantless arrest pursuant to that case and rule 4.03 subd.(1) the determination must occur without unreasonable delay and **in no event later than 48 hours after the arrest.** Even a probable determination within 48 hours will be too late if there has been unreasonable delay in obtaining the determination “examples of unreasonable delay are delays for the purpose of **gathering additional evidence to justify the arrest,** a delay motivated by ill will against the arrested individual or delay for delay’s sake.” Rule 4.03 still applies and, even if not requested by the defendant there must be a judicial determination or the arrested person **must** be released whether the offense involved a felony.

# STATEMENT OF FACTS

Appellant was arrested on October 21, 2004 without a warrant. Subsequently on October 25, 2004, Assistant Hennepin County Attorney, Mr. Robert Streitz issued a complaint charging the Appellant Leonard Goodloe, with one count of Murder in the Second degree, and one count of Prohibited person in possession of a firearm. Bail was requested at \$2 Million. The complaint was reviewed and signed by Minneapolis Police Sgt. Richard Edinger and presented to the honorable Judge Markert who signed it. The complaint was filed with the clerk of Courts. I was already in custody at the time of filing.

# ARGUMENT

CONVICTION CAN NOT STAND DUE TO THE FACT THE HONORABLE "RETIRED" JUDGE ALLAN R. MARKERT LACKED JURISDICTION TO MAKE THE PROBABLE CAUSE DETERMINATION, HE WAS NOT ASSIGNED TO HEAR THE CAUSE IN ACCORDANCE WITH MINNESOTA FEDERAL LAW, AND CONSTITUTIONAL PROVISIONS. THUS MAKING THE PROBABLE CAUSE DETERMINATION, SUBSEQUENT SEARCH WARRANTS AND ANY SUBSEQUENT PROCEEDINGS VOID.

MINNESOTA CONSTITUTION ARTICLE 6 SECTION 10, STATES: RETIRED JUDGES. "AS PROVIDED BY LAW A RETIRED JUDGE MAY BE ASSIGNED TO HEAR AND DECIDE ANY CAUSE OVER WHICH THE COURT TO WHICH HE IS ASSIGNED HAS JURISDICTION."

THE CHIEF JUSTICE OF THE SUPREME COURT MAY ASSIGN A RETIRED JUDGE TO HEAR AND DECIDE ANY CAUSE OVER WHICH THE DISTRICT COURT HAS JURISDICTION. MINN. CONST. ART 6, §10; MINN. STAT §§ 2.724, SUBD(3), 484.61.

The order totally conflicts with Law.

Failed to state what court or district the Judge was being appointed to. 28 USC § 295 Condition upon designation and assignment.

"All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made".

According to the order, Judge Markert is not assigned to any particular county or court. This is vital due to the fact that no retired judge can return to active duty without the consent of the chief judge of the court he is to be appointed.

28 USC § 295.

28 USC § 294.(c) Assignment of Retired Justices or Judges to active duty. § 294(d) "Any such retired judge of the United States may be designated and assigned by the chief justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit". Such designation and assignment to the district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice.

DUE TO THE FACT THAT THERE ARE NO FILES OR OTHER RECORDS IT IS CLEAR THAT NO CERTIFICATE OF NECESSITY WAS PRESENTED IN THIS CASE.

THIS CONVICTION CAN NOT STAND BECAUSE THE ORDER IS NOT VALID, IT IS SIGNED BY AN ASSOCIATE JUSTICE ALAN C. PAGE, NOT THE CHIEF JUSTICE. THEREFOR THIS CONVICTION MUST BE REVERSED DUE TO THE FACT THIS IS A VIOLATION OF THE MINNESOTA CONSTITUTION ARTICLE 6, SECTION 10 AND MINN. STAT 2.724.

THE FOURTH AND THE SECOND DISTRICT COURT'S HAVE NO RECORD OF THE ALLEGED ORDER. OR ANY RECORDS THAT HE SERVED ON THE DISTRICT COURT BENCH IN RECENT YEARS WHERE AS HE RETIRED IN 1996.

DUE TO THE ABOVE INFERENCES AND ERRORS THAT WERE PREJUDICIAL AND CLEARLY INVALID I ASK RESPECTFULLY THAT THE SUPREME COURT REVERSE AND OVERTURN, THE LAW IS CLEAR AND THESE LAW'S SHALL NOT BE TAKEN LIGHTLY.

SINCERELY  
Leonard Goodlol