

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1536**

State of Minnesota,
Respondent,

vs.

Dorell Monte Young,
Appellant.

**Filed December 12, 2022
Affirmed
Reilly, Judge**

Washington County District Court
File No. 82-CR-19-476

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kevin Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant
County Attorney, Stillwater, Minnesota (for respondent)

Karen V. Bryan, KB Law P.L.L.C., Minnetonka, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal from the final judgments of conviction for two counts of first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by (1) admitting evidence of an uncharged offense involving the same victim and

(2) imposing consecutive sentences of 172 months for an aggregate sentence of 344 months' imprisonment. We affirm.

FACTS

Respondent State of Minnesota charged appellant Dorell Monte Young with two counts of first-degree criminal sexual conduct. The state alleged that Young sexually assaulted 12-year-old Z.S. two times within the course of one month. Young pleaded not guilty to the charges and the district court scheduled a jury trial.

The state filed a pretrial motion to introduce evidence of an attempted third sexual assault on Z.S. by Young which occurred after the first two sexual assaults and two weeks before his arrest, arguing that it was relationship evidence under Minn. Stat. § 634.20 (2020) or otherwise relevant evidence to establish a continuing course of conduct. The defense objected to the introduction of relationship evidence, arguing that the evidence would be more prejudicial than probative. The district court granted the state's motion to introduce the evidence of an attempted sexual assault, finding that the evidence was "generally relevant evidence about what was going on between these two people at the time." The district court also determined that the attempted sexual assault would be admissible under Minn. Stat. § 634.20 because Z.S. and Young were in a domestic relationship, the sexual conduct involved domestic abuse, and the evidence was more probative than prejudicial in "understanding what was happening at the time."

At the jury trial, the state presented testimony and evidence that established that Young and Z.S. lived in the same apartment complex and that Young was in a romantic relationship with Z.S.'s mother. Z.S. lived in an apartment unit with her mother and

siblings, while Young lived in the same building in a separate unit with his son. Z.S. testified that on December 29, 2018, Z.S. and Young were alone in her apartment when Young started massaging her. Young then pulled down Z.S.'s shorts and underwear, "put his mouth on [her] vagina," and put his fingers inside her vagina. Afterward, Young told Z.S. to go take a shower and to not tell her mom what happened. A week later on January 5, 2019, Young took Z.S. to the pet store and when they returned to Z.S.'s apartment they were alone. Young again performed oral sex on Z.S. for about ten minutes. Z.S. also testified about a third attempted sexual assault which was the subject of the state's pretrial evidentiary motion. Z.S. testified that she was at Young's apartment asleep when Young started rubbing her legs and tried to take the covers off of her. Z.S. testified that she said "no," and left the apartment.

Following the close of the case and deliberations, the jury reached a verdict. When Young learned that the jury verdict would be read, he left the courthouse. The district court proceeded without Young, finding that Young was in direct contempt of the district court's authority and that, if he failed to appear by the end of the day, the district court would issue an arrest warrant, regardless of the verdict. The district court brought the jury into the courtroom and they announced a guilty verdict on both counts of first-degree criminal sexual conduct. The jury also found the following aggravating factors: (1) the assault involved multiple penetrations and multiple types of penetration, (2) Young was in a position of trust with the victim, (3) the assault occurred in the victim's zone of privacy, and (4) Young coerced the victim into not disclosing the sexual assault. Young did not appear for the reading of the verdict.

Almost two years after the jury returned its guilty verdict, law enforcement arrested Young and transferred him to Washington County. Based on the presentence investigation, Washington County Community Corrections recommended a sentence at the upper range of the sentencing guidelines of 172 months' imprisonment.¹ The state requested that the district court grant an upward departure and sentence Young to 215 months on each count, to be served consecutively for a total of 430 months' imprisonment. Young, through his counsel, requested a total aggregate sentence of 172 months. The district court noted that aggravating factors were present in the case but imposed the presumptive guidelines sentence of 172 months' imprisonment on each count, to be served consecutively for an aggregate sentence of 344 months. Young appeals.

DECISION

I. The district court did not abuse its discretion by admitting evidence of the third attempted sexual assault.

Young argues that the district court abused its discretion in admitting additional evidence of Young's attempted sexual assault against Z.S. which occurred shortly after Young had previously sexually assaulted Z.S. two times. He requests that this court grant him a new trial because there is a reasonable probability that the testimony unfairly influenced the jury's determinations.

Generally, “[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith,” though it may

¹ The presumptive sentence following a conviction for first-degree criminal sexual conduct for an individual with a criminal-history score of zero is between 144 and 172-months' imprisonment. Minn. Sent'g Guidelines 4.B (Supp. 2020).

be admissible “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). Evidence of other crimes or bad acts is known in Minnesota as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). When analyzing whether to admit *Spreigl* evidence, the district court considers: (1) whether the state has given “notice of its intent to admit the evidence”; (2) whether the state has “clearly indicate[d] what the evidence will be offered to prove”; (3) whether there is “clear and convincing evidence that the defendant participated in the prior act”; (4) whether the evidence is “relevant and material to the state’s case”; and (5) whether the probative value of the evidence is “outweighed by its potential prejudice to the defendant.” *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). An individual claiming that the district court abused its discretion in admitting the evidence has the burden of showing the error and any resulting prejudice. *Id.* at 685.

Evidence of prior conduct may also be admitted as “relationship evidence” when it shows “conduct by the accused against the victim of domestic conduct, or against other family or household members . . . unless the probative value is substantially outweighed by the danger of unfair prejudice.” Minn. Stat. § 634.20. We review the district court’s decision to admit evidence under Minn. R. 404(b) or Minn. Stat. § 634.20 for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016) (*Spreigl* evidence); *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008) (relationship evidence), *rev. denied* (Minn. Oct. 29, 2008).

Z.S. testified about the contested evidence by describing Young’s attempted sexual assault. In her testimony, Z.S. stated that about one week after the second sexual assault, she fell asleep in Young’s apartment. Z.S. awoke to find Young rubbing her legs and trying to take the covers off her so that he could “do it again.” Z.S. testified that she told Young “no” and left his apartment. Young argues this testimony was highly prejudicial because it made Young seem like a repeat offender and the conduct was not similar to the conduct he was charged with because it was an attempted—not completed—sexual assault. We do not agree.

During the pretrial motions, the district court ruled that the evidence of the third attempted sexual assault against Z.S. was generally relevant evidence and met the requirements of Minn. Stat. § 634.20 to be admissible as relationship evidence. We note that the district court abused its discretion in finding that this evidence constituted relationship evidence because Minn. Stat. § 634.20 “requires that the evidence address similar conduct by the accused against ‘the victim of domestic abuse.’” *State v. Barnslater*, 786 N.W.2d 646, 651 (Minn. App. 2010). The term “domestic abuse” under the statute includes physical harm, fear of harm, or threats where such conduct is “committed against a family or household member by a family or household member.” Minn. Stat. § 518B.01, subd. 2(a) (2020). “Family or household member” is defined as:

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
- (7) persons involved in a significant romantic or sexual relationship.

Id., subd. 2(b) (2020). Z.S. and Young do not have a familial relationship as defined by the statute. They do not live together and the “sexual relationship” in this case involved sexual assault of a minor and therefore does not constitute a “significant sexual relationship.” Thus, admitting evidence of a third attempted sexual assault by Young was not permissible under Minn. Stat. § 634.20.

That said, we conclude that the evidence is admissible under Minn. R. Evid. 404(b) as *Spreigl* evidence because it helped establish a common scheme or plan—that Young sexually assaulted Z.S on the two earlier occasions. *See State v. Wermerskirchen*, 497 N.W.2d 235 (Minn. 1993) (other-crime evidence was admissible to prove the contested issue of whether defendant sexually touched his pre-adolescent daughter); *State v. Anderson*, 275 N.W.2d 554, 555-56 (Minn. 1978) (evidence that the defendant sexually abused complainant’s half-sister was admissible to establish that the defendant sexually abused his 14-year-old stepdaughter). Common scheme or plan evidence may be admissible to refute the defendant’s assertion that the victim fabricated their testimony or is mistaken. *Ness*, 707 N.W.2d at 688. In *Ness*, the supreme court clarified that common scheme or plan evidence must show a “marked similarity in modus operandi to the charge offense.” *Id.*

Young denied ever sexually assaulting Z.S, and whether the two sexual assaults occurred was the primary issue at trial. The evidence of the attempted sexual assault

occurred within one week after Young sexually assaulted Z.S. the second time and involved markedly similar conduct for which Young was standing trial. Young was charged with two counts of first-degree criminal sexual conduct arising from two separate incidents in which Young, when alone with Z.S., massaged her leg, pulled down her clothing, and touched her vagina with his fingers and mouth. Z.S. testified that a week later when Young and Z.S. were alone in his apartment, Young started massaging her leg and tried to take covers away from her body before she told him no and left. We conclude that the evidence of the attempted sexual assault was admissible as common scheme or plan evidence because it had a “marked similarity in modus operandi to the charged offense[s],” and was not offered for the improper purpose of showing that Young was a bad person. *Id.* Instead, the evidence was highly relevant to whether the charged sexual assaults had occurred. *Id.* at 687-88.

The prosecutor also followed the correct procedures by providing notice of the state’s intent to present the evidence and describing the purposes for which the evidence would be used. The district court found that in cases involving adults and minor children, there are “often a whole series of events that occur before, during, and after specific criminal acts that are then charged out.” Thus, the district court found the evidence of the attempted assault to be relevant to show “what was happening between these two people” before the charges were brought. The district court noted that if any question came up during Z.S.’s testimony about the attempted assault, the parties and the district court would address them then. At trial, Z.S. testified in detail about both the sexual assaults and attempted sexual assault. During her testimony about the attempted assault, no questions

were raised. And on appeal, Young challenges only whether the probative value of the evidence outweighed its prejudicial effect. We determine that the probative value of the evidence outweighed any danger of prejudice because the attempted assault evidence showed an ongoing pattern of abuse by Young which helped disprove his defense that Z.S. was fabricating the sexual contact. Thus, the district court did not abuse its discretion when it admitted the testimonial evidence of an attempted sexual assault under Minn. R. Evid. 404(b).

II. The district court did not abuse its discretion by imposing consecutive sentences.

Young also argues that the 344-month sentence imposed is excessive and exaggerates the criminality of his conduct. Young claims there were no aggravating circumstances to make his offense substantially different than other cases involving first-degree criminal sexual conduct.

Generally, a district court's decision to impose consecutive sentences falls within its "broad discretion." *State v. Perleberg*, 736 N.W.2d 703, 705 (Minn. App. 2007), *rev. denied* (Minn. Oct. 16, 2007). When a person is convicted of multiple current offenses, "concurrent sentencing is presumptive." Minn. Sent'g Guidelines 2.F (Supp. 2020). But when the district court sentences multiple felonies, consecutive sentences are permissive, meaning that they can be sentenced without departing from the guidelines if "the presumptive disposition for the current offense(s) is commitment" and the felonies being sentenced are on the list of offenses eligible for permissive consecutive sentencing. *Id.* at 2.F.2.a.1(ii). Young's felony convictions for first-degree criminal sexual conduct carry

presumptive sentences of commitment to the commissioner of corrections. *Id.* at 4.B (showing first-degree criminal sexual conduct carries a presumptive prison commitment, even for an offender with no criminal-history points). And first-degree criminal sexual conduct is on the list of offenses eligible for permissive consecutive sentences. *Id.* at 6.A.

On appeal, we do not interfere with a district court’s discretion in sentencing “unless the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant’s conduct.” *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014). We review a district court’s sentencing decision for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

Here, the district court imposed a sentence of 172 months for each count of first-degree criminal sexual conduct to be served consecutively, an aggregate sentence of 344 months’ imprisonment. Young’s sentencing worksheet showed he had a criminal-history score of zero and thus a sentence of 172 months fell within the presumptive sentencing guidelines of 144 to 172 months’ imprisonment. Young does not dispute that the consecutive sentences imposed on him are permissive under the sentencing guidelines but argues that the maximum statutory sentence was not appropriate “because there were no aggravating circumstances” to impose the sentence of 172 months on each count. And he contends that the sentence is excessive when compared to similar cases involving first-degree criminal sexual conduct. We disagree.

Although aggravating factors were found by the jury to support an upward departure in this case, the district court did not use the aggravating factors to grant an upward departure. The district court did not depart from the sentencing guidelines. And this court

does not interfere with a sentence in the presumptive range. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

This case does not present rare or compelling circumstances to warrant reversal of Young's sentence. *See id.* For example, in *Perleberg*, appellant was charged with and convicted of six counts of first-degree criminal sexual conduct after engaging in sexual conduct with his daughter over several years. 736 N.W.2d at 704. The district court sentenced appellant to three consecutive terms of 144 months' imprisonment based on the six counts of first-degree criminal sexual conduct for an aggregate sentence of 432 months. *Id.* at 704-705. This court determined that the 432-month sentence did not unduly exaggerate the criminality of appellant's conduct because "[c]onsecutive sentences are permissive for multiple offenses, even when the offenses involve a single victim." *Id.* at 705. And this court determined that, in the context of a first-degree criminal sexual conduct charge, "consecutive sentencing is not a departure from the sentencing guidelines." *Id.* at 705-06.

Young was charged with two counts of first-degree criminal sexual conduct for sexually assaulting 12-year-old Z.S. two times while they were alone in Z.S.'s apartment. On these facts, Young's permissive consecutive sentences do not unduly exaggerate the criminality of his conduct. Thus, the district court did not abuse its discretion in sentencing Young to an aggregate sentence of 344 months' imprisonment.

Affirmed.