**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1022**

State of Minnesota,
Respondent,

vs.

Louis Jerome Mason, Sr.,
Appellant.

**Filed June 29, 2010**
**Affirmed**
**Connolly, Judge**

Meeker County District Court
File No. 47-CR-08-479

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

Stephanie Beckman, Meeker County Attorney, Litchfield, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

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

**CONNOLLY**, Judge

Appellant argues that the district court abused its discretion in admitting *Spreigl* evidence during his trial on charges of criminal sexual conduct because the evidence was not markedly similar to the charged offenses and was unduly prejudicial. Because we conclude that the *Spreigl* evidence was markedly similar and its probative value was not outweighed by the danger of unfair prejudice and because we find no merit in appellant's pro se arguments, we affirm.

## FACTS

Mother J.K. and father P.K. were married approximately ten years before their marriage ended in divorce around 2001. Father was granted custody of the couple's two children, daughter C.K. and son T.K. Mother had visitation rights during the summer and on alternate holidays. In the summer of 2004, when C.K. was 12 years old, she and her brother visited their mother. At the time, mother was living in a motel in Litchfield with her boyfriend, appellant Louis Jerome Mason, Sr. When they visited the motel, the children would either sleep on the bed between their mother and appellant or on a mat made up of blankets on the floor.

One night, C.K. slept on the bed between appellant and her mother. She woke up in pain in the early morning to discover that appellant had his finger inside her vagina. She could feel his fingers moving around inside of her. As she lay facing away from appellant, C.K. pretended to be asleep because she was not sure what was going on. The assault lasted approximately five to ten minutes. Mother did not wake up. Later that day,

appellant told C.K. not to tell her mother, saying "I'm just getting you ready for when you're older."

C.K. did not tell anyone about what happened because she was afraid of appellant. Previously, an altercation occurred when appellant called C.K.'s mother "stupid" and C.K. stuck up for her. C.K. told appellant not to call her mother stupid and appellant picked her up by the throat and threw her. Mother subsequently attacked appellant. Afterwards, the children called their father wanting to come home. They later told their father that appellant had been "physical" with C.K. Father called and had words with appellant, threatening him. Appellant admitted both to father and at trial that he had been physical with C.K.

Approximately a week after C.K. woke up with appellant's finger in her vagina, a similar incident occurred.[1] Appellant told C.K.'s brother that a friend had called and wanted to meet him at the park,[2] leaving appellant and C.K. alone in the motel room. C.K. was on the bed watching T.V. when appellant "came over and pulled down [her] pants and underwear" and again put his fingers inside C.K.'s vagina. Appellant also performed cunnilingus on C.K. This incident lasted five to ten minutes and C.K. "froze," not knowing what to do. C.K. was scared and did not say anything to appellant because she felt he would not stop even if she did say something.

Mother and appellant subsequently had a child together, and mother, appellant, and the baby moved into a townhouse. C.K. went to visit her mother at the townhouse

[1] It is not clear from the record when, during the intervening week, the children returned to the Litchfield motel.

[2] C.K. testified that the friend was not at the park.

for Christmas in 2005. Because her mother had to go to work early in the morning and the baby was not sleeping well, C.K. shared a room with her mother while appellant slept in another room. One morning, mother woke C.K. up to say goodbye just before she went to work, and C.K. fell back asleep on her side. C.K. woke up again, this time in pain, to find she was now on her back with appellant straddling her and sticking his fingers inside her vagina. Appellant was supporting himself with one hand and touching C.K. with the other. C.K.'s pants and underwear had been removed. This incident also lasted five to ten minutes. After appellant stopped and left the room, C.K. put her pants back on, grabbed the cat, and ran downstairs to the kitchen. When appellant came downstairs, she ran back upstairs and locked herself in the bathroom for half an hour. When she came out, appellant told C.K. that "he would never do this to [her] again." C.K. did not tell anyone about these incidents until the following summer.

In the summer of 2006, when appellant tried to stop a fight between C.K. and her brother, C.K. "freaked out" on appellant and told him that she hated him and to "get out of here." When C.K.'s mother asked why C.K. was saying that, C.K. told her "something about touch," but not any specific details. Mother confronted appellant about the abuse, but he denied it. Mother was "confused" and "didn't know who to believe or what to believe." Mother told C.K. that the same thing happened to her and that she would "get over it." Mother never told anyone else about the abuse, and told C.K. not to tell father.[3] C.K. hoped her mother would "yell at [appellant], kick him out, call the police" and was

[3] Mother testified that she "never told [C.K.] not to tell her dad," but that she "told her if she told her dad, you know, if this isn't true that it's not going to look good."

mad "[b]ecause she's supposed to protect me, and she didn't do anything." C.K. was also afraid that if appellant kept staying there, "something would happen to [her] sister or [her] mom when [she] wasn't there."

C.K.'s grades began to slip and she was angry, sad, and "kind of depressed." One night in March 2007, C.K. broke down and, with some prodding, told her father that appellant had "touched her in her privates." Father called his neighbor, Jeffrey Madsen, who was the Hill City Chief of Police. C.K. subsequently spoke with Chief Madsen. In speaking with Chief Madsen, C.K. was "a little withheld" and "it was hard for her to get into some of this stuff." During her interview, C.K. told Chief Madsen of the three different instances when appellant sexually assaulted her. Of the approximately six other child-abuse or sexual-abuse cases that Chief Madsen had investigated, in only one of the cases was the abuse reported immediately after it occurred and all of the other cases involved delayed reports, in which reporting occurred "normally a couple of years" after the incident. In the delayed-report cases, Chief Madsen was not able to obtain any forensic evidence and he was unable to do so in this case.

Subsequent investigation was conducted by the Litchfield police department. Mother told the investigator that "she did not know what to do once she received the complaint from her daughter"; "she was confused and didn't know who to believe"; and appellant was "the father of her child, and she just did not know what would happen or what—what to think of it." Appellant voluntarily spoke with the investigator,[4] and

[4] It appears that the investigator asked mother not to let appellant know that the investigator wanted to speak with him or for mother and appellant to discuss the case.

asserted that C.K. was making up the allegations because she did not want appellant coming between her and her mother and that she did not like him. Appellant denied touching C.K. Appellant could not recall if the children slept in the same bed as him. Appellant described C.K. as "troubled" and an "evil girl."

Appellant was charged with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (complainant is under 13 years of age and actor is more than 36 months older than complainant), (g) (actor has a significant relationship to the complainant and complainant is under 16 years old at the time of penetration) (2002), and one count of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(b) (2004) (complainant is at least 13 but under 16 years old and the actor is more than 24 months older than complainant).

At trial, the state sought to introduce M.M. as a *Spreigl* witness. M.M. knew appellant because he was a foster parent to a few of her siblings and appellant had a daughter with one of M.M.'s sisters. In 2002, M.M. was living with her sister and appellant in a trailer in St. Cloud. On March 2, 2002, M.M. went with some of her sisters and some relatives to a relative's party. At the party, M.M. "smoked a lot of pot" and drank a little bit. After returning home around 2:00 a.m., M.M. fell asleep on the couch while watching a movie. Later that night, M.M. woke up because she was hot and sweaty. She had been moved to the other side of the couch and her underwear and pants had been removed. Appellant was on top of her, penetrating her vagina with his penis.

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Mother agreed to "do [her] best," but ultimately broke down and told appellant after he kept asking her." Appellant told the investigator that mother talked to him the night before.

M.M. tried to push appellant off, but at first he resisted. Appellant kept saying he was sorry and that he "shouldn't have done this." Appellant finally stopped and M.M. grabbed the phone to call the police. Appellant asked her what she was doing and M.M. became scared and put the phone back because appellant "had told us, you know, over the past few years how he was in the service and he could kill people and get away with it."

M.M. subsequently went to the police station to file a report. Appellant asserted the sex was consensual and that he and M.M. agreed it was a bad idea and then stopped. Appellant was never charged. It was M.M.'s understanding that the case did not go forward because her brother, who was sleeping in a different room of the trailer at the time of the assault, refused to testify. Because there was a warrant for her arrest, M.M. was in jail after she reported the assault. A sexual assault exam was never performed. M.M. was approximately 22 years old at the time.

Under the state's theory, the *Spreigl* evidence and the charged offenses shared a common scheme or plan, described by the state as appellant "chooses females much younger than himself. He primarily waits until they're asleep and vulnerable. They are usually with him in the home he is staying, and then he preys upon them while they're asleep." The state also sought to introduce the *Spreigl* evidence because the only other evidence of the offenses was C.K.'s account of what happened. Appellant opposed introduction of the evidence based on the difference in age of the complainants and that, while the evidence might have "significant probative value" to the state's case, it was "extremely prejudicial" to appellant. Acknowledging the weakness of the state's case in

that it was based solely on testimony and there was no physical evidence, the district court allowed the state to introduce the 2002 incident as

> [t]he modus operandi is similar in this case. The alleged conduct occurred in the residence of the Defendant and they were with younger women. The women were sleeping, and penetration was accomplished, and the Defendant had a relationship with each of the alleged victim[s], and they—it occurred when no one else was watching.

The district court gave the jury a cautionary instruction both prior to M.M.'s testimony, and in its final charge to the jury.

Appellant took the stand in his own defense. While admitting he had gotten physical with C.K. once, appellant denied ever sticking his finger in her vagina and, when asked why she would claim that he did, testified that C.K. did not like him. Appellant also testified that he had problems with C.K. "all the time" and she was often causing trouble for him. Additionally, appellant stated that he suffered from post-traumatic stress disorder, which affected his interactions with C.K. Appellant also denied sexually assaulting M.M. The jury found appellant guilty of three counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct.[5] Appellant was sentenced to 158 months in prison. This appeal follows.

[5] It appears that an additional count of first-degree criminal sexual conduct was added after the complaint was filed, but it is not clear from the record when this occurred. The third-degree offense was subsequently dismissed by the district court after the jury returned the verdicts.

## D E C I S I O N

### I. The district court did not abuse its discretion by permitting the state to introduce the *Spreigl* testimony.

Generally, evidence of past crimes or other misconduct, often referred to as *Spreigl* evidence, "is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b); *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965)). This exclusion stems from a concern that such evidence might improperly suggest that a defendant has a propensity to commit the crime charged or that the defendant in some way deserves punishment for past acts. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). Evidence of other crimes, wrongs, or acts may be admissible, however, for other purposes, including proof of a common scheme or plan. *See* Minn. R. Evid. 404(b); *Kennedy*, 585 N.W.2d at 389. Nonetheless, such evidence is not admissible if "its probative value is substantially outweighed by the danger of unfair prejudice" to the defendant. Minn. R. Evid. 403. The district court's admission of *Spreigl* evidence is reviewed for an abuse of discretion. *Ness*, 707 N.W.2d at 685. However, "[i]f the admission of evidence of other crimes or misconduct is a close call, it should be excluded." *Id.*

In determining the admissibility of *Spreigl* evidence, five steps must be satisfied:

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the

> state's case; and (5) the probative value of the evidence must not be outweighed by its potential to prejudice the defendant.

*Id.* at 686; *see* Minn. R. Evid. 404(b). Appellant appears only to dispute the fourth and fifth steps, namely, that the *Spreigl* evidence was irrelevant because it was not markedly similar in modus operandi to the charged offenses, and that it had little probative value and "great potential to unfairly prejudice appellant."

### A. Relevancy, Probative Value & the Marked Similarity Between the Current Charges & the *Spreigl* Evidence

"To properly assess the relevancy and probative value of the evidence, the district court must first identify the precise disputed fact to which the *Spreigl* evidence would be relevant." *State v. Fardan*, 773 N.W.2d 303, 317 (Minn. 2009) (quotation omitted). Under the common-scheme-or-plan exception, *Spreigl* evidence may be introduced to show whether the conduct on which the charges were based actually occurred or was instead "a fabrication or mistake in perception by the victim." *State v. Wemerskirchen*, 497 N.W.2d 235, 241-42 (Minn. 1993). Notably, in *Ness*, the Minnesota Supreme Court opined that "[t]he common scheme or plan exception may have been applied more broadly than it should be." 707 N.W.2d at 688. The court went on to state that "the closer the relationship between the others acts and the charged offense, in terms of time, place, or modus operandi, the greater the relevance and probative value of the other-acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose." *Id.* The court then "t[ook] [the] opportunity to clarify that in determining whether a bad act is admissible under the common scheme or plan exception, it must

have a *marked similarity* in modus operandi to the charged offense." *Id.* (emphasis added).

At trial, the state proffered that the *Spreigl* evidence was relevant to appellant's current charges because the 2002 incident occurred just two years prior to the allegations made by C.K. and also took place in appellant's residence. The state went on to assert that the acts were similar in modus operandi in that (1) appellant chose women much younger than himself, i.e., 40-50 years younger; (2) the women were vulnerable, either by age or through intoxication; (3) the women were asleep when the acts occurred;[6] and (4) appellant has some type of relationship with the women and takes advantage of that relationship. The district court agreed that both the 2002 incident and the charged acts were "fairly close in time" and that the modus operandi was similar: "The alleged conduct occurred in the residence of the defendant and they were with younger women. The women were sleeping, and penetration was accomplished, and the defendant had a relationship with each of the alleged victim[s], and they—it occurred when no one else was watching."

Citing only *Ness*, appellant contends the *Spreigl* evidence was not markedly similar. Appellant points to the difference in age of C.K. and M.M. and that, in at least one instance, C.K. was awake during the offense. Appellant asserts M.M.'s intoxication "certainly clouded her memory of what happened" and notes that appellant was never charged in the 2002 incident.

[6] Notably, for one of the assaults, C.K. was awake and had been watching T.V.

First, in a pretrial order, the district court found by clear and convincing evidence that appellant committed third-degree criminal sexual conduct against M.M. Appellant does not appear to be challenging that determination on appeal. Second, *Ness* is factually distinguishable. *Ness* involved sexual abuse of an 11-year-old boy by an art instructor, who touched the boy's penis several times during an art class. 707 N.W.2d at 680-82. An adult eyewitness, also taking the class, observed multiple instances in which Ness would have his hand on the boy in some fashion and then his hand would move out of sight at or near the boy's groin area. *Id.* at 680-81. *Approximately 35 years prior to the charged offense*, Ness had been a school principal. *Id.* at 682, 689. The district court allowed the state to present *Spreigl* testimony of a witness who stated that Ness had touched him inappropriately twice while he was in fifth grade and Ness was principal. *Id.* at 682. During the first incident, Ness stood in front of the witness, groped himself, and then sat next to the witness in an empty chair, grabbing the witness's inner thigh and sliding his hand up the witness's thigh to the groin area. *Id.* In the second incident, "Ness sat down next to [the witness] and began groping himself while holding [the witness's] inner thigh in a way that [the witness] described as uncomfortable." *Id.* The Minnesota Supreme Court observed that the only "legitimate reason" for the *Spreigl* testimony was under the common-scheme-or-plan exception to bolster the boy's credibility regarding what happened. *Id.* at 688. Although ultimately affirming Ness's conviction, the supreme court concluded that the district court abused its discretion in admitting the *Spreigl* testimony based on the strength of the state's case, particularly the

eyewitness's testimony; the length of time between the charged offense and the *Spreigl* incidents; and the lack of marked similarity with the charged offense. *Id.* at 688-91.

As the state points out, *Spreigl* evidence need not be identical in every way to the charged crime, only markedly similar to the current offense. *Id.* at 688. Thus, although one of the assaults charged occurred while C.K. was awake, this does not make the *Spreigl* evidence "distinctly dissimilar," as appellant asserts, in light of the other similarities including closeness in time, vulnerability of the complainants, and appellant's abuse of a pre-existing relationship with the complainants.

Furthermore, the difference in C.K.'s age and M.M's age at the time of their respective assaults does not remove the 2002 incident out of the realm of marked similarity. The parties have not provided, and we have not been able to locate, any cases dealing with a similar age difference between the complainants in the charged offenses and those in the *Spreigl* offenses. *But cf. State v. Vargas*, No. A08-0376, 2009 WL 1684021, at *5 (Minn. App. June 16, 2009) (rejecting appellant's argument that *Spreigl* evidence was not relevant and failed to demonstrate a common scheme or plan on basis that prior incident involved exposure to an adult, although child was also present in room, and current charge was sexual abuse of child as prior incident (1) involved appellant walking into bedroom child shared with his parents and slept in nightly; (2) took place in same room from which appellant removed child from his bed and carried him to another room to assault him; and (3) occurred during the same time frame as the abuse). Notably, *Spreigl* evidence cannot be evidence of the same generic type of crime. *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007). In *Clark*, the defendant was convicted of, among

other things, attempted murder of a woman "while committing or attempting to commit aggravated robbery, kidnapping, and criminal sexual conduct." *Id.* at 321. At trial, the state introduced *Spreigl* evidence related to the defendant's prior conviction for attempted first-degree criminal sexual conduct. *Id.* at 331, 345. The Minnesota Supreme Court concluded that

> the only apparent similarities between Clark's past misconduct as presented to the jury and the alleged rape [of the woman] are (1) both acts involved the use of a gun to threaten the victims; (2) both acts occurred in the victims' bedrooms; and (3) both acts involved vaginal penetration or attempted vaginal penetration.

*Id.* at 346 (emphasis omitted). The *Spreigl* offense, however, occurred approximately nine years prior to the charged offense. *Id.* (noting that while misconduct occurred 12 years before the alleged rape, defendant was incarcerated for 3 of those years and 9 years was a more "appropriate characterization of the time span"). Observing that whether to admit the prior conviction was a "close call," the supreme court concluded that the district court abused its discretion in admitting the *Spreigl* evidence. *Id.* at 347. Here, while both appellant's charged offenses and the *Spreigl* incident generally involved vaginal penetration, the additional similarities of the acts being directed towards young women, who are vulnerable either through age or impairment and who have a pre-existing relationship with appellant, and most often occurring when the women are sleeping in appellant's residence make the present offenses more specific to, and consequently more probative of, the charged conduct than the general commission of a "generic" criminal-sexual-conduct offense. Additionally, the fact that the charged

offenses and the *Spreigl* incident occurred approximately two years apart weighs in favor of admitting the *Spreigl* evidence. *See id.* at 346 ("Generally, as the time span increases between the past misconduct and the crime charged, the similarity between the acts in terms of modus operandi must likewise increase in order for the past misconduct to be relevant.").

**B. Probative Value vs. Prejudicial Effect**

Although the *Spreigl* evidence may be relevant, the district court must then consider whether its probative value is outweighed by its potential for unfair prejudice. *Fardan*, 773 N.W.2d at 319. In *Ness*, the Minnesota Supreme Court moved away from "need as an *independent* requirement of admissibility." 707 N.W.2d at 690 (emphasis added).

> The prosecution's need for other-acts evidence should be addressed in balancing probative value against potential prejudice, not as an independent necessity requirement, which has become a shibboleth. Henceforth, courts should address the need for *Spreigl* evidence in the context of balancing the probative value of the evidence against its potential for unfair prejudice.

*Id.* Thus, when examining whether the probative value is outweighed by the potential prejudicial effect, we consider the relevancy of the *Spreigl* evidence, the risk of the evidence being used as propensity evidence, and the state's need to strengthen weak or inadequate proof in its case. *Fardan*, 773 N.W.2d at 319. Having already considered the probative value of M.M.'s testimony, we turn to the strength of the state's case and the potential prejudicial effect on appellant.

The district court considered the strength of the state's case, observing that it was weak since it was "based solely on testimony and there is no physical evidence of the—of the crime itself." The district court described the lack of physical evidence as "a natural consequence of late—late reporting in this type of offense, you wouldn't expect physical evidence." The district court subsequently concluded:

> I've looked at the prejudicial effect of the—allowing this witness against the defendant. Obviously, it is prejudicial to the defendant, but it is—there is a significant probative value to the evidence in this. I believe the state needs this evidence in order to put on its case for the reason—I think it's clear that we're looking at the modus operandi as an exception to the admission of prior bad acts. . . . The—so I conclude that the probative value to the state substantially outweighs the prejudicial effect against the defendant . . . ."

We agree with the district court's assessment. In *Ness*, the supreme court concluded that the *Spreigl* evidence's probative value as to whether Ness had in fact touched the boy was low given the strength of the eyewitness's testimony. 707 N.W.2d at 690-91; *see id.* at 691 (concluding "where the probative value of the other-acts evidence was low and the potential for the evidence to persuade by improper means was high," *Spreigl* evidence was erroneously admitted). Conversely, in this case, no one witnessed appellant's offenses and there was no physical evidence due to C.K.'s delayed reporting. Besides C.K.'s own account of what happened, the jury heard testimony from C.K.'s parents and Chief Madsen regarding what C.K. had told them. Appellant denied ever sexually abusing C.K. and suggested that C.K. was making up allegations because she did not like him. While the jury heard from a number of witnesses, it does not appear that the state's case was particularly strong regarding appellant's defense that C.K. was

lying because she disliked appellant. *See State v. Rucker*, 752 N.W.2d 538, 550 (Minn. App. 2008) (stating "although the state's case included a number of witnesses and exhibits, there is no indication that the state's case was 'especially' strong regarding appellant's primary defense that the victims' testimony was fabricated"), *review denied* (Minn. Sept. 23, 2008).

As for the prejudicial effect, appellant asserts that "[t]he evidence portrayed appellant as a sexual predator who attacked his victims while they slept." In *Rucker*, we observed that "[a]lthough the portrayal of [Rucker] as a predator of teenage girls was likely prejudicial to [him], our analysis of the admissibility of *Spreigl* evidence focuses on the potential for unfair prejudice, the capacity of the evidence to persuade by illegitimate means." *Id.* at 550 (quotation omitted). We went on to point out that Rucker received "substantial safeguards against illegitimate persuasion," including presenting the prior bad act through a copy of the sentencing documents and the victim's statement in lieu of live testimony; informing the jury that the conviction was expunged from Rucker's record; and instructing the jury as to the limited purpose for which the *Spreigl* evidence could be used. *Id.* at 550-51. Here, the jury was instructed both prior to hearing M.M.'s testimony and as part of the final jury instructions as to the limited purpose for which this evidence was introduced. The district court's instructions were nearly identical to the model jury instructions on evidence regarding other crimes or prior acts. *See* 10 *Minnesota Practice*, CRIMJIG 2.01, 3.16 (2006) (cautionary instructions on receipt and consideration of testimony regarding other crimes or occurrences); *see also Kennedy*, 585 N.W.2d at 392 (stating fact that jury heard two cautionary instructions, one

prior to the *Spreigl* testimony and one at the close of the entire case, "lessened the probability of undue weight being given by the jury to the evidence"). The jury also heard that M.M. did not have a physical exam after the incident; appellant was never charged; and M.M.'s brother was not willing to testify. Additionally, the jury heard about M.M.'s level of intoxication on the night of the incident and M.M.'s controlled-substance convictions. Appellant also testified as to his version of what occurred that night.

Appellant similarly contends that the *Spreigl* evidence was an "attempt[] to attack appellant's character for having a baby with his former foster child and for being a potential murderer." We disagree. During initial questioning of M.M., the prosecutor asked M.M. how she knew appellant and the following exchange took place:

> M.M.: He was the foster parent to a few of my siblings, and he had a daughter with one of my sisters.
> PROSECUTOR: Was he ever your foster parent?
> M.M.: No.
> PROSECUTOR: So these would be younger siblings?
> M.M.: Yes.

There was no additional discussion concerning the relationship M.M.'s sister had with appellant during M.M.'s testimony.

During appellant's direct testimony, appellant stated that he knew M.M. through her sister; M.M. was never one of his foster children; and M.M.'s sister was the mother of one of his children, a daughter who was seven years old at the time of trial. On cross-examination, the following exchange took place between appellant and the prosecutor:

> PROSECUTOR: And is [M.M.'s sister] older or younger than M.M.?

DEFENDANT: She's younger than [M.M.]
PROSECUTOR: How old was [M.M.'s sister] when she was living with you?
DEFENDANT: Eighteen.
PROSECUTOR: Was she your prior foster child?
DEFENDANT: She had been.
PROSECUTOR: And you have a child with her?
DEFENDANT: Yes.
PROSECUTOR: How old was she when she had your child?
DEFENDANT: Eighteen—well, she was 19 when she had the child.
PROSECUTOR: Eighteen when the child was conceived?
DEFENDANT: Possibly. Minnesota's—Minnesota law says—it says—
PROSECUTOR: That's all I asked.
DISTRICT COURT: You—
DEFENDANT: In this country, 18—
PROSECUTOR: That's all I asked.
DISTRICT COURT: You don't have—
DEFENDANT: —Eighteen and up—
PROSECUTOR: Sir, you need to stop talking. Thank you.

At no time during this exchange did defense counsel[7] object to the testimony. M.M. did testify that she was afraid of appellant because he had previously told her that his prior military service gave him the ability to "kill people and get away with it." Appellant appears to be arguing that this testimony exceeded the scope of the *Spreigl* evidence.

In *State v. Washington*, the Minnesota Supreme Court observed that "the task of the district court to weigh probative value against prejudicial effect does not end with the preliminary decision to admit some *Spreigl* evidence." 693 N.W.2d 195, 204 (Minn. 2005) (noting the district court should take "great care" as to minimize unfair prejudice). In *Washington*, the defendant was charged with ten counts of criminal sexual conduct with a person younger than 18 years old. *Id.* at 198. The district court permitted *Spreigl*

[7] We note that trial counsel was different than appellate counsel.

evidence involving Washington's convictions for third-degree criminal sexual conduct with a 15-year old girl and witness-tampering arising out of a single incident. *Id.* at 198-99. On appeal, Washington conceded "some similarities" between the prior and charged acts, but "argue[d] that the district court should have excluded testimony of extraneous facts," including that the girl "was forced to work as a prostitute, that Washington cut her throat, that she contracted a pelvic disease, and that Washington's actions were responsible for her infertility." *Id.* at 204.

The supreme court noted that "the defendant bears the burden of challenging the scope of the *Spreigl* evidence," and that failing to object to *Spreigl* testimony constituted waiver on appeal unless the testimony amounted to plain error. *Id*. Although agreeing that the "testimony should have been limited to exclude elements not needed or relevant to prove modus operandi," the court observed that Washington "failed to take the initiative to seek such limits." *Id*. Washington had only responded with a generalized objection to the state's *Spreigl* notice and did not seek to limit these "extraneous facts." *Id*. Washington did not submit a motion in limine to challenge the scope of the testimony although he could have "right up to the moment [the witness] testified." *Id*. Washington did not generally object when the witness testified to these facts at trial,[8] and did not request a curative instruction or that the testimony be stricken. *Id*. The court also noted that "if Washington believed the testimony was so fundamentally prejudicial, his remedy would be to request a mistrial," which he did not do. *Id.* The court ultimately concluded

[8] Washington *did* object to "unprompted testimony" that Washington had destroyed the witness's life and made her infertile, and that she just wanted to have "one son." *Washington*, 693 N.W.2d at 205. This objection was sustained. *Id.*

that the *Spreigl* evidence was relevant and admissible; the district court did not abuse its discretion when it determined the evidence was more probative than prejudicial; and the district court was not obligated to sua sponte limit the scope of the witness's testimony. *Id.* at 203, 205.

Appellant's circumstances are nearly identical. In addition to the details of the 2002 incident, M.M. also testified at the pretrial hearing that appellant was a foster parent to her siblings; M.M. was the oldest; appellant had a baby with her sister; and the baby was four months old at the time of the incident. M.M. also testified about appellant's apparent ability to kill people. No objection was raised by counsel to this testimony. Appellant also testified at the hearing. He acknowledged that he had a child with his former foster daughter when she was 18 and he was approximately 56 years old. Defense counsel's closing arguments at the hearing only pertained to the admissibility of the incident involving M.M. and did not address any "extraneous" information. The district court's pretrial order referred only to the incident with M.M., but did not in any way limit the information that had been presented at the hearing. Like the defendant in *Washington*, appellant did not object to these details at trial, did not move to strike the testimony, and did not seek a curative instruction. Appellant did not request a mistrial. None of these details came as a surprise to appellant. *See State v. Vick*, 632 N.W.2d 676, 686 (Minn. 2001) (noting potential for unfair prejudice was minimized when the defendant "could anticipate the state's impending other-crimes evidence" and "the broader theme of the other-crimes evidence came as no surprise to [the defendant]").

Like the defendant in *Washington*, appellant failed to take any initiative to limit the scope of M.M.'s testimony.

Accordingly, we conclude the district court did not abuse its discretion in permitting the state to use M.M.'s testimony considering the strong probative value of the *Spreigl* evidence coupled with proper instructions to the jury.

## II. The arguments raised in appellant's pro se supplemental brief are without merit.

Along with a number of factual assertions concerning his relationship with C.K., his opinions of C.K., and the personal effects he experiences from post-traumatic stress disorder, appellant appears to raise two pro se arguments challenging his convictions on the basis of ineffective assistance of counsel and sufficiency of the evidence. While some latitude is accorded to pro se litigants, they are generally held to the same standards as attorneys. *Liptak v. State*, 340 N.W.2d 366, 367 (Minn. App. 1983).

With respect to appellant's ineffective-assistance-of-counsel claim, appellant argues he was convicted "because [he] really did not have any help from [his] lawyer." However, appellant merely makes a conclusory allegation that defense counsel was deficient and has provided this court with no authority or citation to the record supporting his claim. As the state correctly asserts, without argument or citation to legal authority in support of the allegations, appellant's allegation is deemed waived and will not be considered by this court. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002).

Appellant also appears to be attacking the sufficiency of the evidence underlying his convictions by calling into question C.K.'s credibility while maintaining his

innocence. Again, appellant provides no authority in support of his contention that C.K. fabricated her testimony, although we note that C.K. testified that she once stole money from her mother and then lied about it. In reviewing a challenge to the sufficiency of the evidence, appellate courts "view[] the evidence in the light most favorable to the jury's verdict, assuming the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "The weight and credibility of the testimony of individual witnesses is for the jury to determine." *Id.* Both appellant and C.K. took the stand at trial. It was up to the jury to evaluate their credibility. Accordingly, we find no merit to any of appellant's pro se arguments.

**Affirmed.**