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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-443**

State of Minnesota,
Respondent,

vs.

Jaime Edward McClellan
a/k/a Goldie Armani Callaway,
Appellant.

**Filed August 17, 2010
Reversed and remanded
Johnson, Judge**

Ramsey County District Court
File No. 62-K8-07-3249

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Ira W. Whitlock, Whitlock Law Office, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Ramsey County jury found Jaime Edward McClellan guilty of first-degree possession of a controlled substance. On appeal, McClellan makes four arguments for

reversal, including the argument that the district court erred by denying his pre-trial motion to sever the drug charge of which he was convicted from an assault charge of which he was acquitted. The state concedes that the district court erred by denying the motion to sever and also concedes that evidence of the alleged assault would have been inadmissible in a separate trial on the drug charge. In light of the state's concessions and the applicable caselaw, we conclude that the error was prejudicial and, therefore, reverse and remand for a new trial.

FACTS

The drug-related offense of which McClellan was convicted arose out of an investigation into a report that McClellan assaulted a woman on August 30, 2007. During the investigation of the assault, St. Paul police officers obtained a warrant to search an apartment where the assault allegedly occurred. When searching the apartment, which was rented by McClellan, officers found cocaine in one of the bedrooms.

In September 2007, the state charged McClellan with two counts of second-degree assault in violation of Minn. Stat. § 609.221, subd. 1 (2006); one count of terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2006); and one count of false imprisonment, in violation of Minn. Stat. § 609.255, subd. 2 (2006). In April 2008, the state amended the complaint to add charges of first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(1) (2006), and first-degree intent to sell a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2006).

In May 2008, McClellan moved to sever the two new drug-related charges from the four original charges. The district court denied the motion. The case went to trial in

October 2008. After the jury was sworn, the state dismissed one of the assault charges, the terroristic threats charge, and the charge of false imprisonment. After five days of trial, the jury found McClellan guilty of possession of a controlled substance but acquitted him of intent to sell a controlled substance and of the remaining assault charge. The district court sentenced McClellan to 120 months of imprisonment. McClellan appeals.

DECISION

McClellan argues that (1) the district court erred by denying his pre-trial motion to sever the original charges of assault, terroristic threats, and false imprisonment from the drug-related charges that were alleged in the amended complaint; (2) the prosecutor engaged in misconduct during trial and closing argument; (3) the district court erred in certain evidentiary rulings; and (4) he should not be required to register as a predatory offender because the district court did not order registration at sentencing. We need not analyze McClellan's second, third, and fourth arguments because we conclude that his first argument requires the reversal of his conviction and a remand for a new trial.

A.

On a motion filed by either party, a district court must sever joined offenses if the offenses are not related. Minn. R. Crim. P. 17.03, subd. 3(1)(a) (2009).¹ Offenses are related if they are "part of a single behavioral incident or course of conduct." *State v. Profit*, 591 N.W.2d 451, 458 (Minn. 1999) (citing Minn. Stat. § 609.035 (1998)). Even if joined offenses are related, a district court must sever joined offenses if the district court

¹After the district court's ruling, Minn. R. Crim. P. 17.03 was amended for style, effective January 1, 2010.

“determines severance is appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense.” Minn. R. Crim. P. 17.03, subd. 3(1)(b) (2009). We apply an abuse-of-discretion standard of review to a district court’s denial of a motion to sever under rule 17.03. *State v. Jackson*, 770 N.W.2d 470, 485 (Minn. 2009). If a district court errs by denying a motion to sever, the error requires reversal if the error was prejudicial to the defendant. *State v. Kates*, 610 N.W.2d 629, 631 (Minn. 2000); *Profit*, 591 N.W.2d at 460-61.

In this case, the state concedes that the district court erred by denying McClellan’s motion to sever because the original charges are unrelated to the drug charges. In light of that concession, the only remaining question is whether the district court’s erroneous denial of the motion to sever was prejudicial to McClellan. *See Kates*, 610 N.W.2d at 631 (analyzing prejudice after state conceded error).

B.

McClellan contends that he was prejudiced because the evidence supporting the assault charges could not have been introduced at a trial on the drug charges, and vice versa. McClellan’s argument is based on caselaw in which the supreme court has applied the well-known *Spreigl* test to determine whether a defendant was prejudiced by an erroneous joinder of charges. *See State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). In *Profit*, the supreme court stated,

Because our purpose on the appeal of both *Spreigl* and joinder issues is to determine whether the introduction of evidence of other crimes at trial was prejudicial, the analysis we have developed for *Spreigl* evidence serves as a useful framework for evaluating the possible prejudicial effect of improperly joining offenses.

591 N.W.2d at 461; *see also State v. Ross*, 732 N.W.2d 274, 280 (Minn. 2007); *Kates*, 610 N.W.2d at 631.

In response, the state contends that the *Spreigl* test is not the exclusive means of determining whether a defendant was prejudiced by an erroneous joinder of charges. The state suggests that we instead apply a conventional harmless-error test to determine whether McClellan was prejudiced. *See* Minn. R. Crim. P. 31.01. The state asserts that the *Spreigl* test applies if erroneously joined charges are *related*. The state contends, however, that the *Spreigl* test does not apply to this case because there is “no Minnesota caselaw” concerning “how to determine whether joinder of completely unrelated, dissimilar offenses was prejudicial.” The state concedes that evidence of McClellan’s alleged assault would not have been properly admitted as *Spreigl* evidence in a separate trial on the drug charges. Thus, the state relies entirely on its purely legal argument that the *Spreigl* test is not the only proper way to determine whether a defendant was prejudiced by an erroneous joinder of charges.

The state’s argument overlooks the fact that the supreme court has applied the *Spreigl* test in three cases involving the erroneous joinder of *unrelated* charges. First, in *Profit*, the defendant was charged with three counts of murder related to the death of R.B. in May 1996 and two counts of criminal sexual conduct related to an assault against P.J. in August 1996. 591 N.W.2d at 455-57. The supreme court stated that the two charges “were not part of a single behavioral incident.” *Id.* at 459. The supreme court applied the *Spreigl* test to determine whether the erroneous joinder of the charges was prejudicial. *Id.* at 460-61.

Second, in *Kates*, the defendant was charged with multiple counts of criminal sexual conduct and one count of indecent exposure. 610 N.W.2d at 630. The charges arose from incidents on three separate days involving four victims. *Id.* This court conducted a *Spreigl* analysis, which led to the conclusion that evidence of the erroneously joined charges may have been inadmissible in separate trials. *State v. Kates*, 598 N.W.2d 693, 696-97 (Minn. App. 1999), *rev'd*, 610 N.W.2d 629 (Minn. 2000). But we also conducted a harmless-error test, which led to the conclusion that the erroneous joinder of charges was not prejudicial. *Id.* at 697-98. The supreme court “assume[d] without deciding, that the district court’s denial of the motion to sever the *unrelated* charges was error.” 610 N.W.2d at 631 (emphasis added). The supreme court then considered “whether the district court’s erroneous decision not to sever requires reversal.” *Id.* The supreme court expressly rejected this court’s approach without extensive discussion, stating, “The court of appeals[’] use of the *Juarez* harmless error analysis in place of the *Spreigl* balancing test we prescribed in *Profit* was error.” *Id.*

Third, in *Ross*, the defendant was charged with one count of identity theft and three counts of theft by swindle. 732 N.W.2d at 276-77. The theft-by-swindle charges were unrelated to each other, although each was related to the identify-theft charge. *Id.* at 280. The supreme court conducted a *Spreigl* analysis to determine whether evidence of the theft-by-swindle charges would have been admissible in separate trials on each of those charges. *Id.* at 280-83. Because the evidence would have been admissible under *Spreigl*, the supreme court concluded “that the improper joinder of the [three unrelated

charges] was not prejudicial to Ross regarding determination of his guilt or innocence.”
Id. at 283.

Thus, the supreme court *has* applied the *Spreigl* test to *unrelated* charges that were erroneously joined. The supreme court’s opinion in *Kates* most directly contradicts the state’s argument that we should apply a harmless-error test in this case in lieu of the *Spreigl* test. When this court performed a harmless-error analysis in *Kates*, the supreme court firmly stated that it was error to do so. Furthermore, the supreme court never has made a distinction between similar and dissimilar unrelated charges. The caselaw clearly requires us to apply the *Spreigl* test and *only* the *Spreigl* test. In light of the state’s concession that it cannot satisfy the *Spreigl* test, we are compelled to conclude that the district court’s erroneous joinder of the assault charges and the drug charges was prejudicial to McClellan.

In sum, we reverse McClellan’s conviction and remand the matter to the district court for a new trial.

Reversed and remanded.