Reverse-Spreigl Evidence: Challenging Defendants' Obligation to Exceed Prosecutorial Standards to Admit Evidence of Third Party Guilt

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After midnight on July 27, 1994, William Gumtow shot and killed Todd Goodwin. The two men, tenants in the same Duluth, Minnesota, apartment building, had argued over Goodwin's role in an alleged theft of rent money. Gumtow testified that Goodwin approached him with a raised hunting knife and
that he shot Goodwin in self-defense. To strengthen his case, Gumtow sought to use Minnesota Rule of Evidence 404(b) to introduce evidence of Goodwin’s prior arrests. Under the rule, defendants seeking to introduce such evidence must connect it to the charged crime and prove by clear and convincing evidence the third party’s involvement in the prior bad act. Courts purport to determine the admissibility of this “reverse-Spreigl evidence” by the same standard they use for “Spreigl evidence,” proof of the defendant’s prior bad acts introduced by the prosecution.

In practice, however, courts tend to reach different results in Spreigl and reverse-Spreigl cases. Contrary to a Spreigl scenario, when defendants attempt to introduce reverse-Spreigl evidence, trial courts frequently exclude it. Appellate courts, which review these determinations for abuse of discretion, generally uphold the decisions. One such
case. The trial court determined that Goodwin's prior arrests for property damage, disorderly conduct, and assault did not meet the reverse-Spreigl standard, and therefore were inadmissible to support the defendant's self-defense claim. In a special concurrence, Judge Randall argued that his work on "a few hundred" reverse-Spreigl cases leaves him certain that if the state had offered similar incidents against the defendant, the evidence "likely would have been admitted."

This Note will demonstrate that Minnesota's reverse-Spreigl standard restricts defendants' Sixth Amendment right to introduce potentially exculpatory evidence. Part I exam-
ines the historical development of the Spreigl and reverse-Spreigl standard and the ways that courts currently implement it. Part II compares the application of the test in these situations and discusses the constitutional problems posed by the standard in reverse-Spreigl cases. Part III proposes amending Minnesota Rule of Evidence 404(b) to include a separate standard for reverse-Spreigl evidence. This Note concludes that the reverse-Spreigl standard, particularly as most Minnesota courts apply it, limits the ability of defendants to present their cases and must be lowered to avoid continued infringement upon their Sixth Amendment rights.

I. Spreigl and Reverse-Spreigl Evidence: Development and Implementation of the Prior Bad Acts Admissibility Standard

Spreigl and reverse-Spreigl evidence serve very different purposes. They are rooted in two distinct lines of cases that begin with separate sources. The standard for admitting these two types of evidence, however, purports to be the same. The following introduction to the development of Spreigl and reverse-Spreigl evidence facilitates a comparison of the ways courts treat these cases. This comparison demonstrates the inadequacy of using a single standard for both Spreigl and reverse-Spreigl cases.

A. Spreigl Evidence in Its Historical Context

When prosecutors introduce evidence of a defendant's prior bad acts, they suggest that the Spreigl incidents make it more likely than it would be without the evidence that the defendant committed the charged crime. Prosecutors frequently attempt to introduce Spreigl evidence against criminal defendants. Since 1999, the Minnesota Court of Appeals and the Minnesota Supreme Court have heard more than one hundred cases in which defendants appealed trial courts' admissions of Spreigl evidence. The prevalence of these cases emphasizes the need to examine Spreigl evidence and the role it plays in Minnesota states as well as the corresponding federal rule.

15. See discussion supra note 1.

16. See discussion supra note 1.

17. The Author determined this figure by counting the applicable cases. This total combines the cases heard by the Minnesota Supreme Court and the Minnesota Court of Appeals.
jurisprudence.

In State v. Fichette, \(^{18}\) an early twentieth century case, the Minnesota Supreme Court considered the admissibility of prior bad acts evidence.\(^ {19}\) The case involved a Minneapolis police officer appealing his bribery conviction.\(^ {20}\) The Minnesota Supreme Court concluded that the prior bad act, which involved the defendant taking another bribe under similar circumstances, unfairly prejudiced the defendant.\(^ {21}\) The court noted that "the general rule forbids the introduction of evidence which will show, or tend to show, that the accused has committed any crime wholly independent of the offense for which he is on trial."\(^ {22}\) Courts may only admit prior bad acts evidence that fits within one of several exceptions to this general rule.\(^ {23}\) The court reversed the defendant's conviction because the prior bad acts evidence should not have been admitted, as it did not fit within any exception.\(^ {24}\)

18. 92 N.W. 527 (Minn. 1902).
19. Id. at 528-29. This Note refers to the evidence in Fichette as "prior bad acts evidence" rather than as "Spreigl evidence" because Fichette predates the Spreigl decision.
20. Fichette, 92 N.W. at 527-28. The bribery charge in this case arose from assertions that the defendant accepted cash in exchange for helping another police officer be reappointed. Id.
21. Id. In the prior incident, the defendant allegedly accepted money to help an applicant gain a position as a police officer. Id. at 528.
22. Id. at 528 (citing H.C. Underhill, Criminal Evidence, § 87 (1898).
23. Id.; see also Chad M. Oldfather, Other Bad Acts and the Failure of Precedent, 28 WM. MITCHELL L. REV. 151, 154-55 (2001) (discussing Fichette). The Fichette court stated that courts admit prior bad acts evidence under the following circumstances:
as where facts tend to show a distinct hostility, jealousy, or erotic passion indicated by a previous criminal act; or where the transaction depends upon the specific intent with which it is committed, when the claim can be made that the investigated act was the result of a mistake; or where the identity of the accused or of the instrumentality to perpetrate the crime is so connected or involved in some other act of guilt that one relates to the other; or, again, where the previous offense is a part of a scheme or conspiracy incidental to or involved in the one on trial.
Fichette, 92 N.W. at 528.
24. Fichette, 92 N.W. at 529. While Fichette is a solid example of an early prior bad acts evidence case, not all decisions followed its model. See Oldfather, supra note 23, at 156-57. In State v. Ames, a case factually similar to Fichette, the court admitted Spreigl evidence of a bribe previously accepted by a police officer. 96 N.W. 330, 333 (Minn. 1903), noted in Oldfather, supra note 23, at 155-56. The Ames court created a new rule in which "evidence of the commission of other crimes is admissible when it tends corroboratively or directly to establish the defendant's guilt of the crime charged in the indictment on trial, or some essential ingredient of such offense." Id.
More than sixty years later, the Minnesota Supreme Court decided the case most commonly associated with prior bad acts evidence. In *State v. Spreigl*, the defendant appealed his conviction for raping his eleven-year-old stepdaughter. The trial court admitted evidence that the defendant had previously forced the alleged victim to engage in sexual activities as well as evidence that the defendant similarly abused other children in the family. The Minnesota Supreme Court ordered a new trial because the defendant received insufficient notice of the state's intention to introduce other instances of sexual abuse. Although the decision rested on procedural grounds, the *Spreigl* opinion provides insight into the factors courts should consider when determining whether to admit *Spreigl* evidence.

The *Spreigl* court reiterated that evidence of prior bad acts should not be admitted unless it fits within an exception to the general exclusionary rule. Such evidence is only admissible "to show motive, to negative mistake, to establish identity," or to demonstrate that the prior bad act is part of a scheme or conspiracy connected to the one being charged. The court stated that in close cases, evidence of prior bad acts should be excluded pursuant to the accused's right "to be given the benefit of the doubt."

*Spreigl* also discussed the relevance of prior bad acts evidence. The *Spreigl* court stated, "The assumption of *Spreigl* evidence's] probative value is made throughout the judicial opinions on this subject." Since *Spreigl* evidence generally is relevant to the charged crime, the more important inquiry is whether the evidence will inappropriately bias the judge and

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25. 139 N.W.2d 167 (Minn. 1965).
26. Id. at 168.
27. Id.
28. Id. at 172-73.
29. Id. at 171-72.
30. Id. at 169.
31. Id. Comparing the two sets of exceptions indicates that the court in *Spreigl* accurately paraphrased the list established in *Fichette*. See *supra* note 23.
32. *Spreigl*, 139 N.W.2d at 172 (quoting State v. *Fichette*, 92 N.W. 527, 528 (Minn. 1902)).
33. Id.
34. Id. (quoting 1 JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW §§ 193-94 (3d ed. 1940).
the jury against the defendant:35

The natural and inevitable tendency of the tribunal . . . is to give ex-
cessive weight to the vicious record of crime thus exhibited, and ei-
ther to allow it to bear too strongly on the present charge, or to take
the proof of it as justifying a condemnation irrespective of guilt of the
present charge.36

After Spreigl, courts added standards that the prosecution
must meet before admitting evidence of defendants’ prior bad
acts.37 These requirements include proving by clear and con-
vincing evidence the defendant’s involvement in the Spreigl in-
cident and introducing evidence of a connection in time, place,
or modus operandi between the charged crime and the Spreigl
events.38

In 1977, the state adopted Minnesota Rule of Evidence
404(b), a rule regulating the admission of Spreigl evidence.39
The rule states,

Other Crimes, Wrongs or Acts. Evidence of another crime, wrong, or
act is not admissible to prove the character of a person in order to
show action in conformity therewith. It may, however, be admissible
for other purposes, such as proof of motive, opportunity, intent,
preparation, plan, knowledge, identity, or absence of mistake or acci-
dent. In a criminal prosecution, such evidence shall not be admitted
unless the other crime, wrong, or act and the participation in it by a
relevant person are proven by clear and convincing evidence.40

35. See id.

36. Id. (quoting 1 JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-
AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW §§ 193-94 (3d ed.
1940)). If the evidence’s probative value outweighs its potential for prejudice,
courts should admit it. Id. In this context, prejudice refers to “the unfair ad-
vantage that results from the capacity of the evidence to persuade by illegiti-
mate means.” State v. Bolte, 530 N.W.2d 191, 197 n.3 (Minn. 1995) (quoting
State v. Cermak, 365 N.W.2d 243, 247 n.2 (Minn. 1985) quoting 22 CHARLES
WRIGHT & KENNETH GRAHAM, FEDERAL PRACTICE AND PROCEDURE—
EVIDENCE § 5215, at 275 (1978)). As part of the prejudice inquiry, courts con-
sider the need for the proffered evidence. See id. at 197 n.2. This need can be
established both when the evidence is necessary to convict the defendant and
when “it is not clear that the jury will believe the state’s other evidence bear-
ing on the disputed issue.” Id.

37. Oldfather, supra note 23, at 165.

38. State v. Billstrom, 149 N.W.2d 281, 284-85 (Minn. 1967). That case
includes additional procedural requirements that the state must satisfy. The
prosecution must provide notice to the defendant of its intention to introduce
Spreigl evidence. It also must state which exception to the general exclusion-
ary rule is being invoked. Id.


40. MINN. R. EVID. 404(b). The Minnesota Rule also states that
“[e]vidence of past sexual conduct of the victim in prosecutions under Minn.
Stats. § 609.342 to 609.346 is governed by Minn. R. Evid. 412.” The Federal
At the time of its adoption, courts and commentators widely classified the rule as a codification of existing case law, rather than a new approach to determining the admissibility of Spreigl evidence. Therefore, the process of determining the admissibility of Spreigl evidence probably changed very little as a result of Minnesota's adoption of the evidentiary rule.

B. REVERSE-SPREIGL EVIDENCE IN ITS HISTORICAL CONTEXT

Reverse-Spreigl rules limit defendants' ability to introduce evidence that a third party committed the charged crime.

Rule of Evidence does not include this provision:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

FED. R. EVID. 404(b) (emphasis added).

The italicized portion of the Federal Rule does not appear in the Minnesota Rule. Following Spreigl and Billstrom, similar notice provisions apply in Minnesota even though the text of Minnesota Rule 404(b) does not require them. The Federal Rule codified the deciding principle in State v. Spreigl—that the prosecution must provide reasonable notice of its intent to introduce evidence of the defendant's prior bad acts. See Oldfather, supra note 23, at 165-66.

The most significant difference between the Minnesota Rule and the Federal Rule involves the standard the prosecution must meet before introducing evidence of prior bad acts. Federal courts may admit this evidence if the proof shows by a preponderance of the evidence that the defendant committed the prior act. United States v. Ebens, 800 F.2d 1422, 1432 (6th Cir. 1986). In Minnesota, the state must introduce clear and convincing evidence linking the defendant to the Spreigl event. See State v. Johnson, 568 N.W.2d 426, 433 (Minn. 1997) (en banc). That the Minnesota standard is higher than the federal standard helps defendants in a Spreigl context; it holds the prosecution to a heightened evidentiary standard for admitting evidence of a defendant's involvement in a prior bad act. However, when a defendant attempts to suggest that a third party committed the charged crime, the Federal Rule requires that defendant to demonstrate by a preponderance of the evidence that the third party committed a prior bad act. Fed. R. Evid. 404(b); Ebens, 800 F.2d at 1432. The Minnesota Rule requires that proof to meet a clear and convincing standard. Minn. R. Evid. 404(b); Johnson, 568 N.W.2d at 433. Therefore, in a reverse-Spreigl context, the Minnesota Rule is harder on defendants than the corresponding Federal Rule. Accordingly, the Minnesota Rule creates a greater infringement upon the defendant's Sixth Amendment rights than does Federal Rule 404(b). See discussion infra Part II.

41. See Oldfather, supra note 23, at 166-67.

42. See State v. Whittaker, 568 N.W.2d 440, 449 (Minn. 1997) (describing the requirements that defendants must meet to introduce reverse-Spreigl evid-
When courts admit the evidence, defendants use it to help create reasonable doubt about their guilt by suggesting that a third party committed the charged crime. This type of evidence has a long tradition in United States jurisprudence and most states have a version of reverse-Spreigl evidence.

State v. Lilja represents Minnesota's early approach to third party evidence cases. In Lilja, a jury found the defendant guilty of murdering a man in the victim's rural home. The trial court excluded from evidence a letter inviting the victim to purchase grain alcohol and testimony that the police found empty alcohol bottles near the murder scene. Despite the defendant's arguments, the Minnesota Supreme Court defended the exclusion of the evidence. That court found "[t]here was nothing tending to connect the letter, these bottles or the writer of the letter with anything that occurred in connection with the evidence)."

43. State v. Hawkins, 260 N.W.2d 150, 159 (Minn. 1977). In criminal cases, the state must prove beyond a reasonable doubt every element of the charged crime. State v. Ewing, 84 N.W.2d 904, 909 (Minn. 1957). Some scholars question whether the state can constitutionally place limits on defendants' ability to introduce evidence for this purpose. See discussion infra Part II.

44. See State v. Bock, 39 N.W.2d 887, 891 (Minn. 1949) (citing 2 JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW § 304 (3d ed. 1940)). The court in Bock quoted Wigmore's description of third party evidence:

It should be noted that this kind of evidence may be also available to negative the accused's guilt. E.g. if A is charged with forgery, and denies it, and if B can be shown to have done a series of similar forgeries connected by a plan, this plan of B is some evidence that B and not A committed the forgery charged.

Id.


46. 193 N.W. 178 (Minn. 1923).
47. Id. at 178.
48. Id. at 180.
49. Id. The "third party" evidence in this case likely served two functions. First, it suggested that someone else committed the crime. Second, the evidence implied that the victim was involved with alcohol, which is significant since the case was decided during prohibition. See MINNESOTA DEPARTMENT OF PUBLIC SAFETY, A BRIEF HISTORY OF 63 YEARS OF MINNESOTA ALCOHOL BEVERAGE REGULATION, at http://www.dps.state.mn.us/alcgamb/alcenf/lchist.html (2001). The inference, therefore, would have reflected negatively on the victim's character.
murder nor with any one [sic] concerned in its commission."^{50} Noting that the facts could have caused the jury to believe that someone other than the defendant (likely a "bootlegger") committed the murder, the court excluded the evidence.^{51} The *Lilja* court found that these facts alone could not justify such an inference.^{52} 

In 1949, the Minnesota Supreme Court decided the state's seminal third party evidence case, *State v. Bock*.^{53} Bock faced forgery charges.^{54} He allegedly stole a check-printing machine, created fake checks, and attempted to cash them.^{55} The trial court excluded the defendant's evidence that another person had passed checks identical to those in the charged crime.^{56} In its decision, the Minnesota Supreme Court noted that the defendant should also have the right to show that crimes of a similar nature have been committed by some other person when the acts of such other person are so closely connected in point of time and method of operation as to cast doubt upon the identification of defendant as the person who committed the crime charged against him.^{57} The court considered the similarity between the charged crimes and the third party's conduct and concluded that the trial court erred by excluding the defendant's evidence.^{58} The Minnesota Supreme Court's next major reverse-*Spreigl* decision came more than twenty-five years later. In *State v. Hawkins*,^{59} a murder case, the court reviewed a trial court's exclusion of evidence that the state's primary witness killed the victim.^{60} It stated that because the third party was a

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51. Id.
52. Id. The *Lilja* court required a connection in time, place, or *modus operandi* between the charged crime and the third party evidence. Id. Courts frequently exclude third party evidence because it lacks such a connection. See, e.g., *State v. Porter*, 411 N.W.2d 187, 191 (Minn. Ct. App. 1987) (holding that because the defendant made no showing connecting the third party to the crime, "his proffered evidence had little or no probative value and was largely irrelevant to the facts of this case").
53. 39 N.W.2d 887 (Minn. 1949).
54. Id. at 888.
55. Id. The prosecution claimed that the defendant made three attempts to cash forged checks. Id. at 888-89.
56. Id. at 892.
57. Id.
58. Id.
59. 260 N.W.2d 150 (Minn. 1977).
60. Id. at 159. The defendant sought to introduce evidence that the state's witness and the victim spoke about stolen guns and that the witness
witness for the prosecution, "with a possible motive to convict the defendant to save himself," the reverse-Spreigl evidence was "especially applicable." The court held that the trial court should have permitted the defendant to introduce the evidence.

C. THE MODERN CASES

For purposes of comparison, this Note discusses two cases, *State v. Berry* 63, a Spreigl case, and *State v. Profit*, 64 a reverse-Spreigl case. These cases provide a framework for examining the ways that modern courts treat Spreigl and reverse-Spreigl evidence.

1. A Spreigl Case: *State v. Berry*

In *State v. Berry*, a jury found the defendant guilty of first-degree murder for the act of inducing his friend to kill one of their acquaintances. 66 During a party held at his home, the defendant allegedly indicated to several individuals that he wanted the victim to die. 67 The state introduced evidence that the victim owed the defendant twelve hundred dollars and also that the defendant believed the victim was "a snitch." 68 The state presented evidence that the defendant asked his friend, the state's principal witness, to kill the victim, but the witness refused. 69 The defendant then allegedly asked another individual to murder the victim. 70 The prosecution argued that the person who ultimately agreed to perform the act drove away tended to become violent while intoxicated. *Id.* at 158.

61. *Id.*
62. *Id.* at 160.
63. 484 N.W.2d 14 (Minn. 1992) (en banc).
64. 591 N.W.2d 451 (Minn. 1999) (en banc).
65. These particular cases provide examples of the typical decisions courts currently issue. Both are Minnesota Supreme Court decisions that include significant discussion of admissibility issues.

66. 484 N.W.2d at 15. Under Minnesota law, one is "criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." MINN. STAT. § 609.05, subd. 1 (1990). The defendant was charged with violating this statute. *Berry*, 484 N.W.2d at 15.

67. *See Berry*, 484 N.W.2d at 15. The defendant acknowledged threatening to kill the victim, but denied soliciting anyone to kill her. *Id.* at 16.
68. *Id.* at 15.
69. *Id.* at 16.
70. *Id.*
with the victim.\textsuperscript{71} Between thirty and forty-five minutes later, the suspected murderer returned to the party by himself.\textsuperscript{72}

The trial court admitted \textit{Spreigl} evidence of three prior acts the defendant committed.\textsuperscript{73} The first act took place eight years before the act being prosecuted in this trial.\textsuperscript{74} In this first incident, the defendant went to the home of a man he wanted to punish for "snitching."\textsuperscript{75} A witness who accompanied the defendant to the house "testified that he heard things being broken inside the house and a loud bang or report which sounded like a gun-shot."\textsuperscript{76} In the second \textit{Spreigl} incident, the defendant told a woman's roommates that "he wanted to beat up [the woman] and to kill her because she had snitched on him."\textsuperscript{77} In the last instance, approximately one month before the conduct at issue, the defendant pointed a gun at a man's head and threatened to "beat his ass" if the man did not do as commanded;\textsuperscript{78} the man complied with the defendant's order and the defendant took no further action against him.\textsuperscript{79}

The trial court found that the evidence satisfied each element of the \textit{Spreigl} test.\textsuperscript{80} The defendant argued that none of the three incidents was sufficiently similar to the charged crime.\textsuperscript{81} In response, the Minnesota Supreme Court noted that "absolute similarity between the charged offense and the \textit{Spreigl} incident is not required to establish relevancy"\textsuperscript{82} and that "[e]ach of the three incidents [was] relevant because of the similarity of the way [the defendant] behaved when trying to maintain control of the people with whom he worked."\textsuperscript{83} Accordingly, the evidence demonstrated that the defendant used

\begin{itemize}
\item \textsuperscript{71} \textit{Id.} The defendant remained at the party while the suspected murderer was gone. \textit{Id.}
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} \textit{Id.}
\item \textsuperscript{74} \textit{Id.}
\item \textsuperscript{75} \textit{Id.}
\item \textsuperscript{76} \textit{Id.}
\item \textsuperscript{77} \textit{Id.}
\item \textsuperscript{78} \textit{Id. at 17.}
\item \textsuperscript{79} \textit{Id.}
\item \textsuperscript{80} \textit{See id. at 16.} The Minnesota Supreme Court's list of \textit{Spreigl} elements is nearly identical to the elements it lists in the reverse-\textit{Spreigl} case discussed in Part I.C.2. \textit{See infra} text accompanying note 98. The court also noted that the defendant held the burden of showing that the trial court erred in admitting evidence of each \textit{Spreigl} incident. \textit{See Berry}, 484 N.W.2d at 17.
\item \textsuperscript{81} \textit{See Berry}, 484 N.W.2d at 17.
\item \textsuperscript{82} \textit{Id.} (citing \textit{State v. Landin}, 472 N.W.2d 854, 860 (Minn. 1991)).
\item \textsuperscript{83} \textit{Id.}
threats and violent acts against people who had "snitched" on him.\textsuperscript{84} The court found that the state needed the evidence to show that the defendant "carried out his threats."\textsuperscript{85} Furthermore, it determined that "[t]he probative value of the Spreigl evidence outweighed any potential for unfair prejudice" because there was "no danger that the jury would punish [the defendant] for his past acts."\textsuperscript{86} The Minnesota Supreme Court concluded that the Spreigl evidence "complete[d] the picture" of the defendant, but did not "paint another picture."\textsuperscript{87} Thus, the trial court did not abuse its discretion by admitting the Spreigl evidence.\textsuperscript{88}

In dissent, Justice Gardebring argued that the admission of the Spreigl evidence constituted an abuse of discretion.\textsuperscript{89} Disputing the majority's finding that the Spreigl events established the defendant's \textit{modus operandi},\textsuperscript{90} Gardebring noted that the concept of \textit{modus operandi} would be expanded "so far . . . that any history of threats or violence becomes proof that a defendant was merely committing a crime in his or her usual manner."\textsuperscript{91} Justice Gardebring therefore reasoned that the Spreigl incidents suggest that the defendant "talk[s] tough" and "damag[es] property" but do not establish that the defendant followed a \textit{modus operandi} in the victim's murder.\textsuperscript{92}

2. A Reverse-Spreigl Case: State v. Profit

In \textit{State v. Profit},\textsuperscript{93} a jury found the defendant guilty of the May 1996 murder of a prostitute.\textsuperscript{94} The prosecution successfully admitted evidence of two rapes and a sexual assault com-

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\textsuperscript{84} Id. \\
\textsuperscript{85} Id. \\
\textsuperscript{86} Id. at 18. The court stated that the evidence was probative of his intent to kill the victim and of his \textit{modus operandi} in making and carrying out threats. \textit{Id.} \\
\textsuperscript{87} Id. \\
\textsuperscript{88} Id. "[A]dmission of Spreigl evidence rests within the sound discretion of the trial court." \textit{Id.} at 17 (citing State v. DeWald, 464 N.W.2d 500, 503 (Minn. 1991)). \\
\textsuperscript{89} Id. at 20 (Gardebring, J., dissenting). \\
\textsuperscript{90} Id. at 21 (Gardebring, J., dissenting). \\
\textsuperscript{91} Id. at 20 (Gardebring, J., dissenting). \\
\textsuperscript{92} Id. (Gardebring, J., dissenting). The dissenting opinion noted that the defendant faced charges of requesting that another man murder the victim, whereas the Spreigl events suggested a "hot tempered" impulsivity inconsistent with this method of killing. \textit{Id.} at 21 (Gardebring, J., dissenting). \\
\textsuperscript{93} 591 N.W.2d 451 (Minn. 1999). \\
\textsuperscript{94} Id. at 455.
mitted by the defendant before the charged incident. The defendant attempted to introduce reverse-Spreigl evidence showing that the murder at issue was part of a series and that he had identified the serial killer. The district court excluded this evidence, which included proof that linked the third party to a handwritten letter confessing to one of the murders. The Minnesota Supreme Court stated that before it would admit reverse-Spreigl evidence, the defendant must show (1) "clear and convincing evidence" of the third party's involvement in the reverse-Spreigl incident; (2) that the reverse-Spreigl incident is relevant and material to the charged crime; and (3) that the "probative value" of the reverse-Spreigl incident exceeds the "potential for unfair prejudice" created by its admission into evidence.

To be relevant, a "reverse[-]Spreigl incident must be similar to the charged offense either in time, location, or modus operandi." The court acknowledged numerous similarities between the charged murder and the series of killings. Despite creating an inference that the same perpetrator committed all

95. Id. at 457. All three prior crimes took place in north Minneapolis, Minnesota, during early September 1981, approximately fifteen years before the charged crime. Id.
96. Id. at 463.
97. Id. at 462. Prior to trial, the trial court excluded this evidence in response to the prosecution's motion in limine. Id. at 463. The Minnesota Supreme Court found that the trial court did not abuse its discretion by excluding the evidence. Id. In its discussion of the issue, the court noted that the "circumstances surrounding" the letter "do little to ensure its validity." Id. at 465. The court stated that the police affidavits about the letter "indicate[d] that the police suspected [the defendant], not [the third party], had committed the killings." Id. at 466. According to the court, the police believed the third party's argument that the defendant had ordered the third party to write the letter. Id.

The court also noted that the defense failed to call the third party to testify at trial. Id. at 463. Without such testimony, the letter was hearsay. Id. at 466. In dissent, Justice Russell Anderson noted that by granting the state's motion in limine, the trial court prevented the defendant from questioning the third party about the letter at trial. Id. at 471 (R. Anderson, J., dissenting). The defendant claimed "there was no longer any purpose" in calling the third party because the court's ruling on the prosecution's motion barred the defense from eliciting the third party's testimony about the letter. Id. at 463.

98. Id. at 463-64 (quoting State v. Johnson, 568 N.W.2d 426, 428 (Minn. 1997) (en banc)).
99. Id. at 464 (quoting State v. Whittaker, 568 N.W.2d 440, 449 (Minn. 1997) (en banc)).
100. Id. The court noted that the police investigated the charged murder as one of the serial killings, as the defendant argued. Id.
of the murders, the court concluded that “this inference was of little value to [the defendant] unless he also provided clear and convincing evidence that someone other than he... committed the killings.” The Profit court also emphasized that appellate courts should grant great deference to trial courts in evidence matters. Thus, “taken as a whole,” the court concluded, “the record does more to suggest that [the defendant] committed all of the purported serial killings than to show clear and convincing evidence that [the third party] participated in any of them.” As a result, the court found no abuse of discretion in the lower court’s exclusion of the defendant’s reverse-Spreigl evidence.

Justice Russell Anderson, who dissented on the reverse-Spreigl issue, disagreed with the majority’s characterization of the defendant’s evidence. He noted that the third party could access the defendant’s car, which contained “[t]he only direct evidence” implicating the defendant. Justice Anderson called the reverse-Spreigl evidence “all the more compelling” because the state used Spreigl evidence against the defendant. He concluded that the court committed prejudicial error when it excluded the defendant’s reverse-Spreigl evidence.

101. Id.
102. Id. The court defined clear and convincing evidence as “more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” Id. (quoting Weber v. Anderson, 269 N.W.2d 892, 895 (Minn. 1978)). The court used examples of clear and convincing evidence from a Spreigl context, explaining that a conviction, a confession, or a victim’s clear identification of the defendant as the perpetrator of a prior crime would establish the defendant’s participation in the crime by clear and convincing evidence. Id.
103. Id.
104. Id. at 466.
105. Id.
106. See id. at 469-70.
107. Id. at 469 (R. Anderson, J., dissenting). The car contained some fibers similar to those used to strangle the murder victim. Id. The defendant’s wallet also was found near the site where the victim’s body was discovered. Id. The defendant provided testimony that he stored his wallet in his car. Id. This evidence and the letter led Justice Russell Anderson to conclude that the majority deprived the defendant of his right “to present a defense in a criminal trial” under both the United States and Minnesota Constitutions. Id. at 470-71.
108. Id. at 470 (R. Anderson, J., dissenting).
109. Id. at 471 (R. Anderson, J., dissenting). See supra note 95 and accompanying text for a description of the Spreigl incidents admitted.
II. THE HEIGHTENED ADMISSIBILITY STANDARD FOR REVERSE-SPREIGL EVIDENCE: CONSTITUTIONAL IMPLICATIONS AND PRACTICAL CONSIDERATIONS

A. THE SPREIGL AND REVERSE-SPREIGL STANDARDS: IDENTICAL LANGUAGE, DIVERGENT APPLICATIONS

The cases previously outlined for comparison, Berry and Profit, help illustrate the differences in treatment that courts give to Spreigl and reverse-Spreigl evidence. To be admitted, reverse-Spreigl incidents must be nearly identical to the crime being charged. Even though the police originally investigated the murder in Profit as one of a series, the court prevented the defendant from introducing evidence showing a connection between a third party and one of the previous killings. The Spreigl incidents admitted in Berry have less in common with the charged crime than the reverse-Spreigl events excluded in Profit. In Berry, the defendant verbally threatened individuals in two separate instances and used a gun to threaten a man in the third. However, he did deny asking another man to murder the victim. The majority overlooked this difference in modus operandi and found that

111. See, e.g., State v. Johnson, 568 N.W.2d 426, 434 (Minn. 1997) (en banc). The Johnson court concluded the trial court properly excluded the reverse-Spreigl evidence. Id. The trial and appellate courts agreed the evidence lacked similarity with the charged incident, id., even though the two incidents occurred within sixteen months of one another, twenty blocks apart, and both involved a group of juveniles shooting a .22 caliber handgun into a car with Asian American passengers. Id. The court based its holding in part on the fact that one was a random shooting while the other involved retaliatory motives. Id.

112. Profit, 591 N.W.2d at 456.

113. Id. at 466. The defendant's best reverse-Spreigl evidence was a letter in which the third party confessed to committing a similar murder. Id. at 465. That murder took place "under nearly identical circumstances," a few weeks later, and less than two blocks away from the site where the victim in the charged crime was found. Id. at 470-71 (R. Anderson, J., dissenting). The third party later repudiated that confession. Id. at 466.

114. For a description of the Spreigl incidents admitted in Berry, see supra notes 73-79 and accompanying text.

115. State v. Berry, 484 N.W.2d 14, 16-17 (Minn. 1992) (en banc).

116. Id. at 16.

117. Id.
the trial court “properly admitted”\textsuperscript{118} the threats as \textit{Spreigl} evidence that the defendant ordered the victim’s murder.\textsuperscript{119} Had a defendant introduced that evidence in a reverse-\textit{Spreigl} context, it probably would not have been admitted.

Minnesota courts also require a tighter connection in time between the \textit{Spreigl} incident and the crime charged when a defendant, rather than the state, seeks to introduce the evidence. The first \textit{Spreigl} incident admitted in \textit{Berry} took place eight years before the charged crime.\textsuperscript{120} In contrast, courts frequently conclude that reverse-\textit{Spreigl} incidents are too old to be admitted. In his \textit{Gumtow} special concurrence, Judge Randall compared the way that courts treat the age of \textit{Spreigl} and reverse-\textit{Spreigl} evidence.\textsuperscript{121} He noted that trial courts admit \textit{Spreigl} evidence of events up to twenty years old, but rarely provide reverse-\textit{Spreigl} incidents with such lenient treatment.\textsuperscript{122}

The \textit{Spreigl} and reverse-\textit{Spreigl} tests also differ in the way courts approach prejudice issues. In \textit{Spreigl} and reverse-\textit{Spreigl} cases, courts determine if the probative value of the extraneous incident exceeds its potential for prejudice.\textsuperscript{123} In \textit{Berry}, the court found the \textit{Spreigl} evidence to be probative on the issue of whether the defendant ordered the victim’s murder.\textsuperscript{124} The majority, however, overstated the evidence’s power. The court found that the \textit{Spreigl} evidence reflected upon the defendant’s \textit{modus operandi} of carrying out the threats he made.\textsuperscript{125} Yet, none of the \textit{Spreigl} incidents involved the defen-

\begin{itemize}
\item \textsuperscript{118} \textit{Id.} at 18.
\item \textsuperscript{119} \textit{Id.} The dissent argued that the \textit{Spreigl} incidents were so dissimilar that they made the defendant’s participation in the charged crime seem \textit{less} likely. \textit{Id.} at 21 (Gardebring, J., dissenting).
\item \textsuperscript{120} \textit{Id.} at 16. In \textit{Profit}, the \textit{Spreigl} crimes took place fifteen years before the defendant’s trial. \textit{State v. Profit}, 591 N.W.2d 451, 457 (Minn. 1999) (en banc). \textit{Berry} and \textit{Profit} are not comparable on this point, however, because in \textit{Profit} the defendant spent the majority of the ensuing fifteen years in prison. \textit{Id.}
\item \textsuperscript{121} \textit{State v. Gumtow}, No. C4-96-663, 1997 WL 161858, at *7 (Minn. Ct. App. Apr. 8, 1997) (Randall, J., concurring).
\item \textsuperscript{122} \textit{Id.}
\item \textsuperscript{123} \textit{State v. Whittaker}, 568 N.W.2d 440, 449 (Minn. 1997) (en banc) (stating that admitting reverse-\textit{Spreigl} evidence requires “a showing that the probative value of the reverse[-]\textit{Spreigl} evidence outweighs its potential for unfair prejudice”).
\item \textsuperscript{124} \textit{Berry}, 484 N.W.2d at 18.
\item \textsuperscript{125} \textit{Id.}
\end{itemize}
dant acting on his threats.\textsuperscript{126} Further, the court dismissed the evidence's potential for prejudice.\textsuperscript{127} It simply stated that the jury would not punish the defendant for the \textit{Spreigl} incidents,\textsuperscript{128} largely ignoring the human tendency to allow uncharged bad acts to weigh into decisions about defendants' guilt and punishment.\textsuperscript{129} The court's perfunctory review of prejudice issues was insufficient to establish that the \textit{Spreigl} evidence would not inappropriately bias the jury against the defendant, a key inquiry in determining the evidence's admissibility.\textsuperscript{130}

The \textit{Profit} court seemed particularly confused when it applied prejudice concerns in the reverse-\textit{Spreigl} context. In that case, the majority and dissent expressed different conclusions about the probative value of the defendant's reverse-\textit{Spreigl} evidence.\textsuperscript{131} Yet neither opinion addressed whether the exclusion of the evidence resulted in prejudice.\textsuperscript{132} This omission could result from uncertainty about the way prejudice functions in reverse-\textit{Spreigl} cases. In \textit{Spreigl} cases, the rules seek to prevent juries from using prior misconduct to conclude that the defendant conformed with his poor character in committing the charged crime.\textsuperscript{133} In reverse-\textit{Spreigl} cases, the extraneous incidents involve third parties, not defendants.\textsuperscript{134} They, therefore, will not prejudice defendants as they might in \textit{Spreigl} cases.\textsuperscript{135}

\textsuperscript{126} Id. at 16-17.
\textsuperscript{127} Id. at 18.
\textsuperscript{128} Id.
\textsuperscript{129} See State v. \textit{Spreigl}, 139 N.W.2d 167, 172 (Minn. 1965); \textit{supra} note 36 and accompanying text.
\textsuperscript{130} See \textit{Spreigl}, 139 N.W.2d at 172.
\textsuperscript{131} See \textit{supra} text accompanying notes 105 and 107-08. \textit{Compare} State v. \textit{Profit}, 591 N.W.2d 451, 466 (Minn. 1999) (en banc) (majority opinion), with \textit{Profit}, 591 N.W.2d at 469-70 (dissenting opinion).
\textsuperscript{132} See generally \textit{Profit}, 591 N.W.2d 451.
\textsuperscript{133} See Joan L. Larsen, \textit{Of Propensity, Prejudice, and Plain Meaning: The Accused's Use of Exculpatory Specific Acts Evidence and the Need to Amend Rule 404(b)}, 87 NW. U. L. REV. 651, 658 (1993) (noting that the standards of Federal Rule of Evidence 404(b) are designed to protect defendants).
\textsuperscript{134} See \textit{id.} at 657-60 (discussing the greater risk of prejudice in admitting prior bad acts evidence committed by defendants than when committed by third parties).
\textsuperscript{135} See United States v. Aboumoussallem, 726 F.2d 906, 911 (2d Cir. 1984). In \textit{Aboumoussallem}, the Second Circuit recognized that admissibility considerations may require adaptation when defendants use them to introduce potentially exculpatory evidence. \textit{Id.} The \textit{Aboumoussallem} court stated that "the standard of admissibility when a criminal defendant offers similar acts evidence as a shield need not be as restrictive as when a prosecutor uses such evidence as a sword." \textit{Id.}
Only the omission of this evidence negatively affects defendants.\textsuperscript{136}

Two other considerations assist the state in introducing \textit{Spreigl} incidents but work against defendants seeking to admit reverse-\textit{Spreigl} evidence. First, \textit{Spreigl} evidence carries a presumption of probativeness.\textsuperscript{137} Although reverse-\textit{Spreigl} evidence permits the trier of fact to identify the person who committed the charged crime, the evidence, unlike \textit{Spreigl} evidence, has no such presumption.\textsuperscript{138} Courts frequently exclude reverse-\textit{Spreigl} evidence for lacking probative value.\textsuperscript{139} Second, courts exclude \textit{Spreigl} evidence in close cases to give defendants the benefit of the doubt.\textsuperscript{140} As the courts currently interpret the rule, no comparable presumption exists in favor of admitting reverse-\textit{Spreigl} evidence when the defendant nearly satisfies every element of the test.\textsuperscript{141}

These differences in applicable presumptions may appear sensible when one considers that \textit{Spreigl} rules are designed to protect defendants. Defendant protections, however, should not be limited to \textit{Spreigl} cases. Reverse-\textit{Spreigl} cases should involve similar considerations based on defendants' constitutional right to present exculpatory evidence.\textsuperscript{142} The lack of these protections in reverse-\textit{Spreigl} cases makes it more difficult for defendants to introduce exculpatory evidence than it is for the prosecution to admit evidence of defendants' previous misdeeds. This discrepancy is particularly egregious because reverse-\textit{Spreigl} evidence relates directly to the incident being charged. Hence, it is highly relevant and merits consideration by the fact-finder. In contrast, \textit{Spreigl} evidence has a more in-

\begin{itemize}
  \item \textsuperscript{136} The omission of credible reverse-\textit{Spreigl} evidence harms defendants because it denies them the opportunity to create reasonable doubt by suggesting that another person committed the charged crime. This negative effect, however, does not constitute prejudice. Prejudice involves persuasion through illegitimate means, such as the anger a jury might feel toward a defendant who committed prior acts of violence. \textit{See} sources cited supra note 36 and accompanying text.
  \item \textsuperscript{137} \textit{See} State v. \textit{Spreigl}, 139 N.W.2d 167, 172 (Minn. 1965).
  \item \textsuperscript{138} The Author has never encountered an opinion that asserts that reverse-\textit{Spreigl} evidence carries a presumption of probativeness.
  \item \textsuperscript{139} \textit{See}, e.g., State v. \textit{Porter}, 411 N.W.2d 187, 191 (1987) (upholding the exclusion of the defendant's reverse-\textit{Spreigl} evidence because it had "little or no probative value").
  \item \textsuperscript{140} \textit{See} \textit{Spreigl}, 139 N.W.2d at 172.
  \item \textsuperscript{141} The Author has not discovered any judicial opinions stating that courts should admit reverse-\textit{Spreigl} evidence in close cases.
  \item \textsuperscript{142} \textit{See} discussion \textit{infra} Part II.B.1.
\end{itemize}
direct relationship to the charged crime. While its admission can be probative, it does not bear directly on the guilt of the accused for the crime presently charged.

B. THE REVERSE-SPREIGL STANDARD: IMPOSING LIMITATIONS ON DEFENDANTS' ABILITY TO EXERCISE THEIR SIXTH AMENDMENT RIGHTS

The preceding analysis compares reverse-Spreigl with Spreigl evidence to illustrate the actual standard that defendants must meet before they are permitted to introduce reverse-Spreigl evidence. The following section analyzes how the standard implicates defendants' Sixth Amendment right to put on a defense.

1. Classifying the Evidence for Constitutional Analysis

This Note asserts that Minnesota's reverse-Spreigl standard interferes with defendants' rights under the Sixth Amendment. Since the 1960s, courts have interpreted the Sixth Amendment to include the right to put on a meaningful defense. The Supreme Court has construed the Sixth Amendment to include the right to introduce exculpatory evidence. Reverse-Spreigl evidence can be classified as potentially exculpatory evidence. This Note argues, therefore, that rules that make it difficult for the defendant to present reverse-Spreigl evidence should be struck down as violating the Sixth Amendment.

Limitations on the admissibility of reverse-Spreigl evidence would not pose the same constitutional problems if de-

143. See State v. Profit, 591 N.W.2d 451, 471 (Minn. 1999) (R. Anderson, J., dissenting) (stating that the court’s exclusion of the defendant’s reverse-Spreigl evidence “denied [the defendant] his constitutional right to present a defense”); see also Everhart, supra note 14, at 298 (stating that “the accused in a criminal case has a constitutional right to admit third-party guilt evidence”).


145. Washington v. Texas, 388 U.S. 14, 23 (1967) (upholding a defendant’s right to present witnesses to establish a defense under the compulsory process clause and applying it to the states under the Due Process Clause).


147. See Everhart, supra note 14, at 285.
fendants used the evidence to establish an affirmative defense.\textsuperscript{148} States may require that the burden of production shift to defendants with regard to affirmative defenses.\textsuperscript{149} When the burden shifts to the proponent of an affirmative defense, that proponent generally must provide evidentiary support for his affirmative defenses before moving forward with the claim.\textsuperscript{150}

Reverse-Spreigl evidence, however, is not used in the context of affirmative defenses.\textsuperscript{151} Instead, the defendant uses it to cast reasonable doubt on the prosecution's claim.\textsuperscript{152} Reverse-Spreigl evidence negates a crucial element of the state's case: that the defendant committed the charged crime.\textsuperscript{153} In Profit, for example, the defense attempted to introduce reverse-Spreigl evidence to establish that the third party, rather than the defendant, committed the murder at issue.\textsuperscript{154}

Since reverse-Spreigl evidence is not an affirmative defense and merits Sixth Amendment protection, the state arguably may not place any restrictions on its admission.\textsuperscript{155} Under this view, all limits on reverse-Spreigl evidence violate the

\textsuperscript{148} Id. at 285.

\textsuperscript{149} Patterson v. New York, 432 U.S. 197, 205 (1977). In Patterson, the Supreme Court held that requiring a defendant to prove he committed manslaughter, not murder, did not violate due process. Id. A New York statute essentially made manslaughter an affirmative defense for defendants charged with first-degree murder. Id. at 206.

\textsuperscript{150} See Everhart, supra note 14, at 288-89.

\textsuperscript{151} Id. at 290. Affirmative defenses typically fit into one of two categories. Id. The first type involves excusing or justifying the commission of the charged crime. Id. A second type of affirmative defense falls "peculiarly within the knowledge of the accused," as does a claim of insanity. Id. at 291 (quoting MODEL PENAL CODE § 1.12(3) (1985) (defining "affirmative defenses")). Reverse-Spreigl evidence does not fit into either of those classifications. See id. at 290. Technically, reverse-Spreigl evidence does not introduce a new issue in the case. See id. at 293. In the types of cases in which the defendant would attempt to introduce reverse-Spreigl evidence, the court must determine whether the defendant perpetrated the charged crime. See id. The identity of the defendant, therefore, is an element of the prosecution's case and not a separate issue that the defendant may decide to introduce. Id.

\textsuperscript{152} State v. Whittaker, 568 N.W.2d 440, 449 (Minn. 1997) (en banc).

\textsuperscript{153} Reverse-Spreigl evidence more closely resembles an alibi defense than an affirmative defense. See Everhart, supra note 14, at 292. The defendant who claims to have an alibi uses that evidence to demonstrate that he or she was unavailable to commit the charged crime. The proponent of reverse-Spreigl evidence uses it to show that he or she is not guilty by asserting that a third party committed the charged crime. Id. at 293.

\textsuperscript{154} See State v. Profit, 591 N.W.2d 451, 463 (Minn. 1999) (en banc).

\textsuperscript{155} See Everhart, supra note 14, at 290; see also supra note 151 and accompanying text.
Although this argument is logically consistent with the aforementioned principles, compelling interests suggest flaws in the position. First, defendants do not have an absolute right to bring forth exculpatory evidence. Defendants do not have, for example, the power to introduce evidence that lacks all credibility. Imagine that a defendant claimed that he was unavailable to commit the charged crime because he was vacationing on Mars. Theoretically, he has a right to introduce that testimony. The court, however, would not permit the defendant to present this testimony because it would be deemed irrelevant.

Second, the court similarly would restrict the defendant from presenting numerous collateral issues. Consider, for example, the case of a defendant who won a motion to suppress evidence that the police illegally seized. In this situation, the issue of the illegal seizure is collateral to the charged crime. The court previously dealt with the police misconduct by excluding the evidence in question. Therefore, the court would probably prevent the defendant from testifying about the seizure issue. Defendants, therefore, likely do not have an absolute right to introduce reverse-Spreigl evidence.

Requiring defendants to establish the materiality of third party evidence is an ingrained feature of the U.S. criminal justice system. In Minnesota, courts have restricted the admissibility of reverse-Spreigl evidence for at least seventy-five years. Most states have adopted an evidentiary rule similar

156. Everhart, supra note 14, at 275.
158. Id. (noting that "[a] defendant is not at liberty to present unsupported theories . . . and invite the jury to speculate as to some cause other than one supported by the evidence").
159. Id. In this type of situation, the court would likely base its exclusion on Minnesota’s relevancy rule. MINN. R. EVID. 401.
160. See MINN. R. EVID. 403 (permitting courts to exclude relevant evidence if “its probative value is substantially outweighed by the danger of . . . undue delay, waste of time, or needless presentation of cumulative evidence”).
161. See Alexander v. United States, 138 U.S. 350, 356 (1891) (recognizing that trial judges have the discretion to exclude third party evidence that has “no legitimate tendency” to show that a third party committed the charged crime).
162. In the 1923 case State v. Lilja, the court excluded the defendant’s third party evidence. 193 N.W. 178, 180 (Minn. 1923). For a discussion of this
to Federal Rule of Evidence 404(b). These rules, like Minnesota Rule of Evidence 404(b), often require some connection between the third party and the charged crime. By arguing that all such restrictions are unconstitutional, a defendant essentially asks a court to reject this long-accepted principle.

The U.S. Supreme Court has not decided a case in which a defendant argues that restrictions on third party evidence limit his Sixth Amendment right to put on a defense. However, the Supreme Court has stated that third party evidence should have a "legitimate tendency" to establish that the third party committed the charged crime. The Supreme Court has also found that defendants have a constitutional right to present evidence that a third party committed the charged crime. Therefore, when the Court does hear the issue, it will be more likely to find that a standard for admitting third party evidence violates the Sixth Amendment because it is too high than it would be to find the mere existence of a limitation unconstitutional.

The Minnesota Supreme Court also would be unlikely to find that all limitations on the admissibility of reverse-Spreigl evidence violate the Sixth Amendment. The court rarely comments on this issue and has not cited constitutional concerns when overturning lower courts' exclusions of reverse-Spreigl evidence. An appropriate challenge, therefore, should attack the rigor of particular restrictions rather than the existence of any such limit.

exclusion, see supra notes 46-52 and accompanying text.

163. See 2 WEINSTEIN & BERGER, supra note 45, at 404-132 to 404-162 (discussing the evidentiary rules of thirty-five states and Puerto Rico and noting that each has adopted a rule similar to Federal Rule of Evidence 404(b)).


165. See Everhart, supra note 14, at 294. The Author of this Note confirmed that the Supreme Court has not taken such a case since the 1997 publication of the Everhart article.


168. See, e.g., State v. Robinson, 536 N.W.2d 1, 3 (Minn. 1995).
2. Exploring the Rights and Principles Challenged by Minnesota's Reverse-Spreigl Standard

When determining the admissibility of reverse-Spreigl evidence, courts should narrowly apply the rules restricting defendants' ability to present this evidence. Allowing its admission furthers the public policies of both avoiding false convictions and determining what actually occurred in a charged incident.  

By preventing some defendants from introducing reliable reverse-Spreigl evidence, Minnesota Rule of Evidence 404(b) does not provide sufficient protection against false convictions. Defendants who cannot meet each element of Minnesota's restrictive reverse-Spreigl standard may not introduce evidence that another party committed the charged crime. Without this information about the third party, courts and juries probably convict innocent defendants at a higher rate than they would if they could consider the defendant's reverse-Spreigl evidence.

The conviction of innocent defendants violates a central principle of the U.S. criminal justice system. As Justice Harlan stated, it is a "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." Blackstone communicated a similar conclusion when he stated, "[T]he law holds that it is better that ten guilty persons escape than that one innocent suffer." The level of proof required by Minnesota's reverse-Spreigl test, however, suggests that the system places more value on principles other than avoiding false convictions.

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169. See Brook K. Baker, Traditional Issues of Professional Responsibility and a Transformative Ethic of Client Empowerment for Legal Disclosure, 34 NEW ENG. L. REV. 809, 849 (2000) (noting that the Rules of Professional Conduct "are designed to preserve the truth finding and justice dispensing goals of the legal system").

170. See, e.g., State v. Williams, 593 N.W.2d 227, 233-34 (Minn. 1999) (en banc) (upholding the exclusion of reverse-Spreigl evidence because the defendant failed to connect the third party to the charged crime).


172. 4 WILLIAM BLACKSTONE, COMMENTARIES *358.

173. Considerations weighing in favor of excluding reverse-Spreigl evidence include preventing jury confusion, saving time and money by excluding new issues, and avoiding surprise. See David P. Bryden & Roger C. Park, "Other Crimes" Evidence in Sex Offense Cases, 78 MINN. L. REV. 529, 537, 582-83 (1994) (discussing these issues in the context of sexual assault crimes). Another frequently cited consideration involves protecting innocent third parties from accusations by defendants. See State v. Hawkins, 260 N.W.2d 150,
Blackstone suggest, guarding against the conviction and punishment of innocent defendants should be among the system's highest priorities.

The reverse-Spreigl standard also fails to advance truth-finding. The current standard prevents some defendants from providing the tribunal with the information necessary to implicate a guilty party. If the proper authorities use this information to charge and convict a third party, the reverse-Spreigl evidence helps courts arrive at the truth.

The Supreme Court has twice noted that restricting the admission of potentially exculpatory evidence makes courts less capable of discovering the truth. In those cases, the Court held that a court may exclude relevant exculpatory evidence without violating the Constitution when the exclusion helps the judicial process operate more rationally. These cases support excluding reverse-Spreigl evidence when it may confuse the jury or prejudice the defendant, thereby impeding the rationality of the proceeding. The Supreme Court's exclusion of evidence in the two applicable cases, however, functioned to punish and deter serious procedural errors by the defense. The reverse-Spreigl evidence contemplated by this Note does not perform this function. Rather, the evidence helps the defense establish its claim that the prosecution charged the wrong person with the crime. The grounds the Supreme Court has previously used to exclude defendants' evidence, therefore, do not apply in the reverse-Spreigl cases under consideration.

Defendants often face substantial obstacles when trying to

159 (Minn. 1977). The Hawkins court suggested that requiring proof of a connection between the third party and the charged crime "safeguards the third [party] from indiscriminate use of past differences with the [crime victim]." Id.


175. In Taylor, the Court upheld the exclusion of testimony by a witness whom the defense had not identified in discovery. 484 U.S. at 401-02. Lucas also involved the exclusion of evidence due to the defense's failure to notify the prosecution of its intention to introduce that evidence. 500 U.S. at 146. The Lucas Court reversed an appellate court holding that determined the Sixth Amendment gave rape defendants an absolute right to introduce evidence of prior consensual sex with the complainant. Id. at 152-53. In this context, rationality means "finding the facts according to evidence" rather than according to other considerations, such as emotion. Dripps, supra note 174, at 1397.

176. See Dripps, supra note 174, at 1397.

177. See Lucas, 500 U.S. at 146; Taylor, 484 U.S. at 402.
assemble third party evidence that meets the reverse-Spreigl standard. First are the hurdles presented by police attempts to build a case against the defendant. After a suspect has been identified, “police have little incentive to investigate further, especially if that investigation may weaken the case already built.” Police officers face considerable pressure to “clear” cases, particularly those that are notorious or violent. These demands make it “easy to believe that investigation tends to focus on building a case against a suspect rather than on exploring leads and preserving evidence that might suggest the suspect’s innocence.” Following the identification of a suspect, the police generally will gather evidence “with an eye to convicting [that] suspect.” Even if the evidence suggests another perpetrator committed the crime, investigating police departments do not have a constitutional duty to preserve evidence that might exculpate defendants.

Secondly, most defendants face financial challenges when they attempt to investigate a third party’s involvement in the charged crime. To reduce their legal expenses, defendants with private attorneys may have to restrict the number of hours spent on investigation. For the growing number of individuals represented by public defenders, excessive caseloads inhibit the defendants’ ability to gather evidence about the third parties who may have committed the charged crimes. Overwhelming caseloads and inadequate resources typify public defense systems. A study conducted for the State Board of Public De-

178. See Dripps, supra note 174, at 1416-17.
179. See Suni, supra note 157, at 1690.
180. See id.
181. See Dripps, supra note 174, at 1416-17 (footnote omitted).
182. Id. at 1417.
183. Arizona v. Youngblood, 488 U.S. 51, 58-59 (1988). In Youngblood, the defendant faced charges of molesting and sodomizing a ten-year-old boy. Id. at 53. Following the assault, the victim received treatment at a hospital. Id. His doctor collected evidence with a sexual assault kit. Id. at 52. The police department did not perform tests on either the samples assembled for the sexual assault kit or the victim’s clothing. Id. at 53. The defendant claimed that the evidence would have exculpated him and that the police department violated his constitutional rights by not performing the tests. See id. at 54. The U.S. Supreme Court concluded that the failure to perform the tests can “at worst be described as negligent” and therefore did not involve a constitutional violation. Id. at 58.
fense revealed that "public defenders in Minnesota, with few exceptions, are working substantially above capacity with insufficient time to devote to their cases and clients.... And things are getting worse in this regard."\textsuperscript{185}

Following the rejection of a request for more funds, the Chief Public Defender of Hennepin County\textsuperscript{186} sued a host of Minnesota politicians.\textsuperscript{187} The suit sought to establish that insufficient budgets prevented the County Public Defender's Office from providing sufficient services to its clients.\textsuperscript{188} The Public Defender's Office argued that this lack of funds violated the constitutional right to the effective assistance of counsel of indigent criminal defendants.\textsuperscript{189} While the Supreme Court of Minnesota rejected this claim,\textsuperscript{190} the case is indicative of the funding problems in the Minnesota's Public Defenders' Office. Defendants who cannot properly investigate the third party's involvement in the charged crime have little hope of meeting Minnesota's strict standard for admitting reverse-Spreigl evidence.

States may place reasonable restrictions on defendants' ability to introduce third party evidence.\textsuperscript{191} Minnesota's standard, however, requires defendants to meet an unreasonably high standard before introducing reverse-Spreigl evidence, thereby infringing on defendants' Sixth Amendment rights. Reverse-Spreigl evidence helps courts further the public policies of avoiding false convictions and arriving at the truth. In addition, cost and excessive attorney caseloads hamper defen-

\begin{footnotes}
185. Wilson, \textit{supra} note 184, at 1140-41 (quoting \textit{The Spangenberg Group, Weighted Caseload Study for the State of Minnesota Board of Public Defense—Draft Report} 20 (1991)). Across Minnesota, public defenders have unionized in an attempt to improve these conditions. Tony Kennedy, \textit{Public Defenders Outside Hennepin, Ramsey Counties Vote to Join Union}, \textit{Minneapolis Star Tribune}, May 14, 1999, at D3. "An attorney has an ethical duty to investigate a client's claims thoroughly so he or she may give sound legal advice." Wilson, \textit{supra} note 184, at 1139. In many cases, public defenders cannot conduct "any worthwhile investigation" because of inadequate funding. \textit{Id.} at 1140.
186. Hennepin County includes the City of Minneapolis.
188. \textit{Id.} at 3.
189. \textit{Id.}
190. \textit{Id.} at 8.
191. \textit{See supra} notes 157-64 and accompanying text.
\end{footnotes}
dants’ efforts to conduct sufficient investigations. For these reasons, defendants should not be required to meet the current reverse-Spreigl standard before introducing evidence suggesting that a third party committed the charged crime.

III. AMENDING MINNESOTA RULE OF EVIDENCE 404(B): A PROPOSAL TO CREATE A SEPARATE ADMISSIBILITY STANDARD FOR REVERSE-SPREIGL EVIDENCE

Part II.A of this Note argued that courts apply Minnesota Rule of Evidence 404(b) more strictly when defendants, rather than prosecutors, use the rule to introduce evidence. Even if courts applied the standard identically, however, reverse-Spreigl rules may still infringe on defendants’ Sixth Amendment rights. In the manner that courts currently apply those rules, the constitutional violation is even more egregious. Accordingly, Minnesota should amend the applicable evidentiary rule to include a separate standard for defendants attempting to introduce reverse-Spreigl evidence.

The proposed rule retains the text of Minnesota’s current standard for admitting Spreigl evidence. To differentiate it from the defendants’ standard, “Spreigl Evidence Admissibility Standard” should be added to the current title of Minnesota Rule of Evidence 404(b). The rule should be amended to include a second standard, numbered 404(c) and titled “Reverse-Spreigl Admissibility Standard.” The text of the

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192. See supra notes 184-85 and accompanying text.
193. This comparison suggests that in practice the standard for admitting reverse-Spreigl evidence actually is higher than the standard established by Minnesota Rule of Evidence 404(b). See supra notes 111-42 and accompanying text.
194. See supra note 40 and accompanying text for Minnesota Rule of Evidence 404(b).
195. Its current title is “Other Crimes, Wrongs, or Acts.” MINN. R. EVID. 404(b). The addition to the title should be inserted following the existing title and preceded by a semicolon. The title change reflects the language used in Minnesota case law to describe this rule. The amended title also provides a context for the reverse-Spreigl admissibility standard.
196. Minnesota Rule of Evidence 404 formerly included a provision labeled 404(c), which dealt with defendants’ past sexual conduct with victims. MINN. R. EVID. 404. In 1990, the provision was renumbered Minnesota Rule of Evidence 412. Id.; see supra note 40. Twelve years have passed since that change became effective. The renumbering brought the Minnesota Rules into conformity with the Federal Rules of Evidence. See FED. R. EVID. 412. Therefore, numbering the reverse-Spreigl admissibility standard as Minnesota Rule of Evidence 404(c) is unlikely to create confusion.
amended rule should appear as follows:\textsuperscript{197}

Reverse-Spreigl Admissibility Standard. Any person charged with a crime may introduce evidence which suggests that a third party, rather than the defendant, committed the crime. Courts shall admit such evidence if it is relevant pursuant to Minnesota Rule of Evidence 401.\textsuperscript{198} Courts, however, may exclude reverse-Spreigl evidence pursuant to Minnesota Rule of Evidence 403\textsuperscript{199} if its probative value is substantially outweighed by the danger of confusing the issues, misleading the jury, or creating undue delay.\textsuperscript{200} If appealed, any exclusion of reverse-Spreigl evidence shall receive de novo review.

This amended standard facilitates the introduction of reliable reverse-Spreigl evidence. The high standard developed in State v. Spreigl functions to protect defendants from prejudice. However, reverse-Spreigl evidence cannot prejudice defendants because the evidence involves the conduct of third parties. By lowering the standard for reverse-Spreigl evidence, the proposed rule reflects the fact that prejudice is not an issue in reverse-Spreigl cases. The amended rule safeguards defendants' Sixth Amendment rights by providing them with a viable means of introducing evidence showing that a third party committed the crime at issue.

Even with the implementation of proposed Minnesota Rule of Evidence 404(c), the relevancy requirement of Minnesota Rule of Evidence 401 still ensures that defendants may only introduce evidence with some bearing on the charged crime.\textsuperscript{201} If a defendant cannot produce evidence that makes it somewhat more likely that the third party committed the charged crime than it would be without the evidence, the trial judge should exclude the reverse-Spreigl evidence. Under the proposed rule, courts may exclude reverse-Spreigl evidence if the danger of confusing the issues, misleading the jury, or creating undue de-

\textsuperscript{197} The Author generated this text based in part on a proposal for redrafting Federal Rule of Evidence 404(b) to include a separate standard for defendants. See Larsen, supra note 133, at 692-94.

\textsuperscript{198} "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MINN. R. EVID. 401.

\textsuperscript{199} "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MINN. R. EVID. 403.

\textsuperscript{200} This text omits the prejudice language from Minnesota Rule of Evidence 403 because third parties are not prejudiced by reverse-Spreigl evidence. See supra notes 133-36 and accompanying text.

\textsuperscript{201} See supra note 198.
lay substantially outweighs the probative value of the evidence. This provision prevents defendants from hampering the proceeding by creating a smokescreen of useless and misleading information. The de novo standard of review protects defendants from aggressive judicial use of the confusion and delay exceptions. A judge who misconstrues reverse-Spreigl evidence as duplicative, useless, or misleading is more likely to be overruled on appeal under a de novo standard of review.

CONCLUSION

Allowing defendants to introduce credible reverse-Spreigl evidence improves Minnesota's criminal justice system. The admission of such evidence allows the state to avoid false convictions and determine what actually occurred in charged crimes. When courts admit reverse-Spreigl evidence, they avoid punishing defendants for their inability to conduct an intensive investigation. Similarly, the state rejects the hypocrisy of a system in which the prosecution, but not the defense, can admit evidence of prior bad acts. Most importantly, when courts admit such evidence, they uphold defendants' constitutional rights. Minnesota Rule of Evidence 404(b) should be amended to ensure that defendants receive a fair opportunity to admit reverse-Spreigl evidence. With such a change, Minnesota's criminal justice system may motivate other states, and even the federal government, to evaluate the effect of their respective third party evidence rules on defendants' Sixth Amendment rights.