

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF WASHINGTON TENTH JUDICIAL DISTRICT

3 - - - - -

4 State of Minnesota **JURY TRIAL**

5 Plaintiff, **VOLUME IV**

6 vs. **Court File No 82-CR-17-242**

7 Stephen Carl Allwine,

8 Defendant.

9 - - - - -

10 The above-entitled matter came duly on for
11 hearing before the Honorable B. William Ekstrum, one
12 of the Judges of the above-named Court, on the 1st
13 day of December, 2017, at the Washington County
14 Judicial Center, City of Stillwater, County of
15 Washington, State of Minnesota.

16 * * *
17 A P P E A R A N C E S

18 Jamie Kreuser and Fred A. Fink, Jr.,
19 Assistant Washington County Attorneys, appeared as
20 counsel for and on behalf of the State.

21 Kevin DeVore, Esq., appeared as counsel
22 for and on behalf of the defendant, who was
23 personally present.

24
25

1 (Whereupon, the following proceedings were
2 duly had of record:)

3 THE COURT: This is the State of Minnesota
4 versus Stephen Carl Allwine. Let's have
5 appearances, please.

6 MS. KREUSER: Good morning, Your Honor. Jamie
7 Kreuser, Assistant Washington County Attorney.

8 MR. FINK: Fred A. Fink, Jr. for the State.

9 MR. DEVORE: Good morning, Kevin DeVore on
10 behalf of Steve Allwine who is with me, Your Honor.

11 THE COURT: Very well. There are several
12 things to cover today. This is a pretrial
13 conference, so we have a variety of issues.

14 Off the record, I received a request that
15 even though the trial is schedule, or jury selection
16 is scheduled to start on the 16th of January, the
17 jurors actually be summoned to come in to fill out
18 questionnaires on Friday, January 12th so that we
19 can actually proceed with questioning of jurors
20 starting in the morning on the 16th. That makes
21 sense to me. I believe it makes sense to the
22 attorneys that are here. I believe Katie is here.

23 JURY COORDINATOR: Hi, Judge.

24 THE COURT: Okay. In terms of how that would
25 work or weather there would be complications to

1 that, let me state for the record that it would be
2 my intent to call to have the jury show up. To have
3 the normal orientation which would include some
4 instruction. It would include a video. Then have,
5 at some point that morning, the jurors to come into
6 the courtroom and receive an instruction from me
7 that involves filling out a rather extensive
8 questionnaire, and also involves my instruction that
9 I do not want those jurors to have any electronic
10 device, whether it's an iPhone or anything else with
11 them, when they fill out that questionnaire.

12 Now, what complications or difficulties
13 can you see, if any?

14 JURY COORDINATOR: On Friday it would be
15 difficult to do it on Friday because we have already
16 allocated for jurors, and there is another trial. I
17 don't think that I would have enough jurors for what
18 you're asking for on the 12th. Everybody that has
19 been allocated for the 16th, their serve date starts
20 the 16th. So there would not be enough for you for
21 Friday. I'm afraid that there would not be enough
22 because of the trial that is already scheduled for
23 that week, and should there be any additional on
24 Monday.

25 THE COURT: The effect of what you have just

1 said, is in essence would delay -- really two
2 effects. It would delay the start of questioning
3 jurors likely until the 17th. And the second thing
4 is that it would give counsel for both sides less
5 time to review the questionnaires referenced by me.

6 And is it -- am I to understand that any
7 time earlier in the week ending January 12th you may
8 have the same problem. Part of that is because
9 another trial going that week. And part of that is
10 because of the service date for the new jury panel
11 starts on the 16th.

12 JURY COORDINATOR: Yes. Unfortunately, had I
13 known earlier, I could have allocated enough to
14 handle what the request was going to be, but we
15 summon six weeks in advance.

16 THE COURT: Okay. All right. Let's get
17 reaction before I make a final decision on exactly
18 what we are going to do.

19 Mr. DeVore.

20 MR. DEVORE: Well, it was a good idea. If it
21 can't be done, it can't be done. We will just have
22 to start on Tuesday the 16th, I guess.

23 THE COURT: We start on Tuesday the 16th, and
24 then the questioning of jurors would start
25 Wednesday, Wednesday morning.

1 THE COURT: Mr. Fink or Ms. Kreuser.

2 MR. FINK: I guess what concerns me, Your
3 Honor, we are still over a month out. And I am a
4 bit confused as to why court administration would
5 not be able to rally the troops, if you will, in
6 that amount of time.

7 THE COURT: That strikes me as well. Two
8 months is the normal time, if I am listening
9 correctly. I was perhaps wrongly under the
10 impression that anything up to six weeks was
11 appropriate to make those arrangements.

12 JURY COORDINATOR: Yes. Last Tuesday I
13 summoned for the week of the 8th. So the jurors
14 that I had allocated are for the trials that are
15 that week. Should there not -- we can't anticipate
16 how many jurors I am going to have because you can
17 have some that are excused, some that reschedule.

18 THE COURT: Of course.

19 JURY COORDINATOR: So I don't have a number of
20 confirmed jurors at this point.

21 THE COURT: All right. I am going to tell
22 counsel on both sides that I will have some further
23 conversation, and if it is possible to do something
24 in line with what we had discussed, I will do it.
25 If it is not, we will proceed as best we can. You

1 will hear from me in terms of how that is.

2 Now, there are a number of other issues
3 that I want to address. Let's start with jury
4 questionnaires.

5 It would be my intent -- I think you may
6 have heard me question jurors in other trials -- but
7 it would be my intent to have the questionnaire of
8 the jury include a lot of what we might call basic
9 questions. But also to include particular questions
10 that may be helpful for this case. And it would be
11 my desire to have proposed jury questionnaires by
12 the 15th of this month from both sides.

13 MR. FINK: That's fine. I think we are working
14 together to get one that we agree on that the court
15 could use.

16 THE COURT: Good. That would work the best.
17 Because if the questions that are going to be asked
18 are agreed by both sides, then that is a hurdle I
19 don't need to deal with.

20 I also am asking if there are particular
21 jury instructions that are going to be requested and
22 we haven't gotten to the Motion in Limine yet. But
23 if we have particular jury instructions that are
24 going to be requested, that both sides get those to
25 me also by the 15th of December.

1 I am also asking for witness lists and
2 exhibit lists to be submitted to me by the 15th of
3 December.

4 Now, having said that let's look at the
5 Motions in Limine that have been filed with the
6 court.

7 The defense has filed a motion asking for
8 an order prohibiting the state from referring to,
9 questioning about, or otherwise presenting to the
10 jury evidence regarding defendant's extra marital
11 affairs with two different women on the basis that
12 the evidence is irrelevant, and constitutes
13 impermissible character evidence. Then it goes on
14 beyond that.

15 Mr. DeVore, is there anything you wish to
16 say understanding I have read what you have
17 submitted?

18 MR. DEVORE: Your Honor, I also submitted a
19 reply brief that was submitted last night, or you
20 might have got it this morning. So there should be
21 that as well.

22 After I filed my Motion in Limine, then
23 the state then brought its motions in, I assume, in
24 response to my motion why they should be allowed to
25 have that information or evidence brought before the

1 jury.

2 THE COURT: They did. They just, for the
3 record, they brought a number of other motions.
4 Some of them are very standard, but some are not.
5 So go ahead.

6 MR. DEVORE: And then I filed a reply brief
7 last night. It might have come through this morning
8 but it was filed last night so there is an
9 additional response that I would like the court to
10 consider as well.

11 Mostly, Your Honor, I have done a thorough
12 job of briefing the issue regarding the why I
13 believe such evidence is inadmissible. It's not
14 relevant to the proof of guilt in this case. It is
15 highly prejudicial. And I don't believe, we submit
16 to the court, that the probative value for the state
17 does not outweigh the highly prejudicial effect
18 against the defendant.

19 In my opinion, I submit to the court that
20 it's merely a smear tactic to try to attack the
21 character of Mr. Allwine. And now receiving the
22 state's motions, they have asked, I assume in
23 response to my motion, they have given me this
24 notice of their intent to bring in such evidence.
25 And they have also filed a motion under the

1 relationship history to also allow that to try to
2 explain the history of the relationship between
3 Mr. Allwine and his wife.

4 To that, Your Honor, I would tell the
5 court that we are at a pretrial about a month out
6 from the trial, a month and a half. This is the
7 first notice that I have gotten of this intent by
8 the state to bring in this type of evidence. Under
9 Rule 7.02 of the Rules of Criminal Procedure, such a
10 notice should have been given prior to the Omnibus
11 Hearing. I think we had two Omnibus Hearings in
12 this case, but the last one we had was back in July.
13 We are like five months post Omnibus Hearing, and
14 this is the first time the state has given me notice
15 of their intent to bring this evidence in.

16 I think it's irrelevant. It's highly
17 prejudicial. It should be kept out on its own. But
18 also given the fact that there was lack of notice, I
19 believe that there is even more reason for this
20 court to exclude that type of evidence in this
21 particular case.

22 Then additionally, with respect to the
23 state's motion that they brought -- so they brought
24 two motions. One is under Spreigl and that is to
25 introduce the evidence of extramarital affairs with

1 three different women. They also brought a motion
2 to introduce history of relationship evidence. So
3 most of what I have talked about just now deals with
4 the Spreigl motion.

5 But the history of relationship evidence,
6 Your Honor, I will submit to you that there is
7 absolutely no evidence whatsoever that supports any
8 kind of negative relationship between Mr. Allwine
9 and his wife. The state has not one scintilla of
10 evidence to offer that kind of information to this
11 jury.

12 In fact, they have to the contrary. We
13 have report, after report, after report from
14 investigators that interviewed neighbors, family
15 members, even Amy Allwine was interviewed in the
16 summer of 2016 by FBI agents and they asked about
17 the relationship between Amy and Steve. And every
18 single time, every single person has said that they
19 had a great relationship. That there were no
20 problems. That there was never any incidents of
21 fighting, disagreement. Very calm demeanored
22 people. Nothing but good things to say about the
23 relationship.

24 So to bring a motion to try to introduce
25 evidence of the history of the relationship as the

1 state is intending to do is completely off base and
2 has no merit whatsoever. It's a shot in the dark.
3 What they are saying in their brief is that because
4 Amy is no longer with us, we don't get to ask her
5 about the relationship. Therefore, we can then
6 assume it was bad due to the fact that their attempt
7 to try to introduce evidence of extramarital
8 affairs. But there is absolutely no evidence to
9 support the fact that even if the affairs occurred,
10 that Amy had any idea of it, or her family had any
11 idea of it at all. So there is nothing to support
12 that there is any negative relationship history
13 between the two.

14 So on that alone, I believe the court
15 should just not allow that type of evidence or that
16 type of testimony to be offered in this particular
17 case.

18 Further, I would ask that if the court
19 agrees, that you instruct counsel for the state not
20 to insinuate that in any kind of opening statements,
21 or closing arguments, or ask any questions that
22 would solicit that type of information.

23 So Your Honor, in bringing it to a
24 conclusion, in addition to the papers that I have
25 submitted, number one, they are all untimely. So

1 the notices that I have got from the state are more
2 than five months, or four and a half months past
3 due, Your Honor. That could be enough for the court
4 to not allow that type of evidence.

5 Number two, it's not relevant. It's only
6 done in an attempt to smear the character of
7 Mr. Allwine. That's not been put in question yet.
8 I get it on a cross exam or to try to rebut
9 testimony that we would offer about his good
10 character or something like that, that's a totally
11 different type of analysis. They are trying to do
12 it in their direct -- or their case in chief. They
13 are trying to be able to offer information about
14 Steve Allwine in an attempt to attack his character
15 before his character has even been put into issue.
16 We believe it's highly prejudicial and that is not
17 overcome by the probative value to the state.

18 In our opinion, it's an easy call for the
19 court. We would ask the court to exclude that type
20 of testimony.

21 THE COURT: Let's hear from the prosecution.

22 MS. KREUSER: May I stand, Your Honor?

23 THE COURT: You may.

24 MS. KREUSER: Thank you. The state seeks to
25 admit evidence of the defendant's extramarital

1 affairs and relationships, Your Honor, based on the
2 Rules of Evidence, State v. Spreigl, and history of
3 the relationship per case law.

4 The state has prepared documentation as an
5 offer of proof to the court. We submit that at this
6 time. It is marked Exhibit 1, and I do have -- I
7 have provided Mr. DeVore a copy of it as well.

8 THE COURT: I will receive it still
9 understanding that Mr. DeVore is complaining about
10 the timeliness, and I am considering that argument
11 today as well. But with that understanding, I will
12 receive it.

13 MS. KREUSER: The state understands, Your
14 Honor. May I approach?

15 THE COURT: You may.

16 MS. KREUSER: Thank you.

17 THE COURT: Go ahead.

18 MS. KREUSER: Thank you. Your Honor, to
19 outline, to begin with, the state's Spreigl
20 argument, the state would like to just outline for
21 the court the three acts or incidences, or in this
22 case, women that the state seeks to enter into
23 evidence.

24 The first incident is Angela Richardson.
25 The defendant began communicating with

1 Ms. Richardson back in July of 2014. The defendant
2 responded to an ad for her escort services on
3 Backpage.com. They had a relationship which was
4 sexual in nature. It included overnight stays. A
5 dinner date out and a dinner in. The defendant
6 stayed with Ms. Richardson in Cedar Rapids on August
7 1, 2014 and November 7th, 2014. Ms. Richardson
8 spoke with law enforcement and confirmed these
9 events.

10 Next is Autumn Hamilton. We know from a
11 search warrant on the defendant's yahoo account,
12 that the defendant created a profile with Ashley
13 Madison. It is a dating website for married people
14 on October 9th, 2015. The defendant began
15 corresponding with Ms. Hamilton, and they went on a
16 date on October 2015, that ended in a kiss.
17 Ms. Hamilton also confirmed this with law
18 enforcement. She told law enforcement in mid
19 November 2016, which would be around the time of
20 the offense at hand, she accidentally called the
21 defendant and the defendant called her back saying
22 they should go out sometime.

23 The final person is Michelle Woodard. In
24 October of 2015, the defendant also began
25 corresponding with Ms. Woodard on Ashley Madison.

1 They entered into a sexual relationship from
2 October 2015 until February of 2016. They saw one
3 another on a weekly basis. She accompanied
4 Mr. Allwine on out of town work trips. She even
5 went to the defendant's residence. There are
6 photographs that she provided law enforcement of the
7 two of them hugging and kissing. And she stated
8 that the romance quote fizzled unquote in
9 February of 2016, but they continued to communicate.

10 They saw one another in March of 2016 and
11 they communicated as recently as October 26, 2016.
12 Just several weeks before Amy Allwine was killed.

13 In turning to the state's Spreigl
14 analysis, per Minnesota Rule of Evidence 404(b) and
15 a litany of Minnesota case law, the state may use
16 evidence of prior bad acts or crimes to show motive,
17 opportunity, intent, preparation, plan, knowledge,
18 identity, absence of mistake or accident, or common
19 scheme or plan. This court has wide discretion to
20 admit Spreigl evidence. I submit to the court that
21 the state meets all five factors of the Spreigl
22 test, and I will begin with notice.

23 The state submits that it did provide
24 notice to the defense. The defendant has had all of
25 the discovery in this case that the state is dealing

1 with as far as this content since last winter or
2 spring at the latest. I would also submit that the
3 basis of this content is contained in the criminal
4 complaint which was filed last January.

5 So another part of this is, in a way,
6 assumes this evidence would be part of the state's
7 case in chief, because it is so essentially a part
8 of the fact pattern, the overall fact pattern of
9 this case.

10 So in replying to the defendant's Motion
11 in Limine, the state now applies the Spreigl
12 analysis showing that it should come in under
13 Spreigl as well. We are still over a month and a
14 half from trial, and notice is required. The idea
15 of notice is required to prevent the element of
16 surprise. None of that is happening here by the
17 defenses' own Motion in Limine. They anticipated
18 it.

19 Furthermore, the defendant had not
20 technically waived omnibus. In a discussion with
21 Mr. Fink, it was our recollection that the defense
22 had stated that while they didn't anticipate filing
23 any suppression motions at the last hearing, they
24 were not prepared to waive all OH issues.

25 The state submits that this is sufficient

1 and adequate notice for the intent of what notice
2 is. I would note that the remedy is not suppression
3 of the evidence, it would be a continuance. But
4 given the complex nature of this trial, and all that
5 has gone into it so far, that would not be
6 appropriate now. So the state submits that we did
7 provide adequate notice for purposes of this.

8 The next test under Spreigl is that the
9 evidence -- that we indicate the purpose of the
10 evidence. And the state has indicated that we
11 intend to prove motive, identity, and absence of
12 mistake or accident because of this evidence. I
13 will get into that in a minute.

14 The next test is that the evidence is
15 clear and convincing. Per *State v. Jones*, 753 NW2d
16 667 at 698. This is a Minnesota Supreme Court case
17 from 2008. Clear and convincing is more than a
18 preponderance of the evidence, but less than proof
19 beyond a reasonable doubt. Such proof is shown when
20 the truth of the facts asserted is highly probable.
21 I submit to the court that the state has police
22 reports, message communications, information as to
23 the defendant's whereabouts and corroborating
24 evidence that prove by a clear and convincing
25 standard that these acts occurred.

1 Also per Ness, a high probability of
2 truthfulness exists when witnesses provide
3 sufficiently detailed testimony about a particular
4 incident. The state intends to call witnesses in
5 these three women and they will be able to tell what
6 happened. They will give -- they have given
7 detailed and credible statements about their
8 relationship with the defendant. We have picture
9 proof of one of those relationships. So I submit
10 that that burden has been met.

11 The next factor is whether the evidence is
12 relevant and material. Per Minnesota Rule of
13 Evidence 401, evidence is relevant so long as it has
14 any tendency to make the existence of any fact that
15 is a consequence to the determination of the action
16 more or less probable than it would be without the
17 evidence.

18 I submit to court the evidence is relevant
19 and material because it is offered for a valid
20 purpose and because it is sufficiently related in
21 time, location and motif operandi.

22 Looking to motive first. Evidence of
23 other acts is admissible to show the motive for the
24 crime charged. Again in Ness, the court states
25 motive is not an element of most crimes. We know

1 it's not. But the state is entitled to prove
2 motive, because quote, motive explains the reason
3 for an act, and can be important to require state of
4 mind. Motive concerns external facts and creates a
5 desire in someone to do something. Given the unique
6 and intricate facts of this case, the state submits
7 that motive is overarchingly critical to show here.

8 In State v. Rhodes 627 NW2d 74 2001
9 Supreme Court case. The facts of that case, the
10 defendant's extramarital affair was admitted in his
11 prosecution for murder of his wife. The individual
12 with whom he was having an affair admitted to having
13 a non-sexual relationship with the defendant for
14 approximately one year before the defendant's wife's
15 death. She testified that she and the defendant met
16 several times a month, hugged, kissed, talked,
17 played cards and drank champagne. The court
18 admitted that evidence in that murder prosecution
19 holding the state also sought to prove motive. The
20 state first introduced evidence of an alleged
21 extramarital affair in order to show that the Rhodes
22 marriage was unstable.

23 In State v. Langley 357 NW2d 389 at 397.
24 Again a Supreme Court case from 1984. The court
25 held that we have said that evidence that pertains

1 to the relationship between a defendant and a
2 homicide victim is admissible in criminal
3 prosecutions for the purpose of showing motive and
4 the history of the relationship of the victim. I
5 will address that as well, Your Honor.

6 Here the defendant's extramarital affairs
7 date back to July 2014 and continue in communication
8 just a few short weeks before Amy Allwine's death.
9 It is entirely probative in establishing motive,
10 Your Honor. According to the defense's Motion in
11 Limine, it attempts to distinguish the admissibility
12 of this evidence by characterizing it -- suggesting
13 that it shouldn't come in because a defendant who is
14 being prosecuted for this kind of murder must abuse
15 their wife physically first, or the wife has to know
16 about the affair first, or that the defendant has to
17 appear outwardly unhappy. That is a
18 mischaracterization. And moreover, Amy Allwine from
19 what we know from the discovery, was a quiet woman.
20 She kept to herself and she didn't share much.
21 Because she is deceased we don't know if she knew.
22 But in line with Rhodes and Langley, evidence of
23 extramarital affairs in prosecution such as this, is
24 highly relevant.

25 In Rhodes the admitted evidence about the

1 relationship had between the defendant and the
2 person he was having an affair with wasn't even
3 overtly sexual. We see that element in each of
4 these instances here.

5 So I would support -- I would contend that
6 the motive that the state seeks to prove through the
7 admission of this evidence is highly relevant to
8 show the status of the defendant and Amy Allwine's
9 marriage over the years and weeks leading up to her
10 death.

11 I will rest on my argument in terms of
12 identity and absence of mistake or accident, Your
13 Honor, for brevity purposes. That is outlined in my
14 brief, and there is really no change to that.

15 But instead, I will switch to the fact
16 that the evidence -- the next part of this relevant
17 argument, the evidence has to be sufficiently
18 related in time, location, and motif operandi. I
19 submit that it is.

20 In turning to time, in State vs.
21 Wermerskirchen that is 497 NW2d at 242. Minnesota
22 courts have held that there must be a close temporal
23 relationship between the charged offense and the
24 other crimes. The ultimate question is not temporal
25 relationship, but relevance. These acts that the

1 state is seeking to admit started about three years
2 before Amy Allwine's death and they continued kind
3 of markedly throughout those three years. We know
4 the defendant last communicated with Ms. Woodard on
5 October 26th, 2016. And last told Autumn Hamilton
6 that they should see one another again in mid
7 November of 2016. That is the month that Amy
8 Allwine was killed. So I submit that these
9 incidents are definitely sufficiently related in
10 time.

11 As to geographical proximity, there is no
12 firmly established rule as to what that means. We
13 have case law. There are Minnesota cases that I
14 have sited admitting Spreigl acts occurring in
15 different counties and a case that allowed admission
16 of acts that occurred in Iowa.

17 I submit that these incidents, because of
18 what they were, they took place in the Twin Cities
19 metro area, and down in Cedar Rapids, Iowa because
20 they are affairs. They are carried out with secrecy
21 and discredetness. We don't have affairs in a place
22 where people know us. So I think that given the
23 content of the evidence, this definitely fulfills
24 the geographical proximity requirement.

25 In terms of motif operandi, in State vs.

1 DeWald 464 NW2d 500 at 503. A Minnesota Supreme
2 Court in 1991. The courts have never required
3 absolute similarity between the facts of the Spreigl
4 incident and the charged offense to establish this
5 relevancy. Rather, the state submits, defendant's
6 participation in extramarital affairs and
7 communications show a common motif operandi in and
8 among themselves. That, in turn, supports a motive
9 for the defendant to have killed Amy Allwine.

10 The final test under Spreigl is that the
11 probative value substantially outweighs the danger
12 of unfair prejudice. Now, given the strong
13 probative value of this Spreigl evidence, and the
14 fact that any unfair prejudice would be mitigated by
15 proper judicial safeguards, we respectfully ask the
16 court admit the evidence.

17 I have already talked about how it is
18 highly probative of motive. In my brief I also
19 address identity and absence of mistake or accident.
20 The state submits that is highly probative.

21 But we also present that it is not
22 unfairly prejudicial to the defendant. According to
23 State v. Bolte, 530 NW2d 191. Minnesota 1995
24 Supreme Court case. All evidence offered against
25 defendant's in criminal trials is prejudicial to

1 some extent. In evaluating prejudice, prejudice
2 does not mean the damage to the opponents case that
3 results from the legitimate probative force of the
4 evidence, but rather it refers to the unfair
5 advantage that results from the capacity of the
6 evidence to persuade by illegitimate means. And the
7 state is not seeking this evidence to be admitted
8 for any illegitimate means.

9 According to State v. Berry, 484 NW2d 14
10 is a Minnesota Supreme Court case from 1992. It
11 goes on to say that the trial court must consider
12 how necessary the Spreigl evidence is to a state's
13 case. And given this, I submit to Your Honor that
14 it provides a necessary context as to what we are
15 dealing with with this case. It goes to motive.
16 The defendant's mind state, and the status of the
17 Allwine's marriage during this time.

18 There are safeguards that this court can
19 utilize. The state has supplied Your Honor with an
20 offer of proof. We have limiting instructions for
21 this reason. The state respectfully requests that
22 this court admit this evidence under a Spreigl
23 analysis.

24 Turning to the history of the relationship
25 that the state also seeks as a reason that the court

1 can admit this evidence. In State v. Loving, 775
2 NW2d 872. It's a Minnesota Supreme Court case from
3 2009. The court says that Minnesota courts have
4 long held that this type of evidence may be offered
5 to show the strained relationship of the accused and
6 the victim.

7 In State v. Flores, 418 NW2d 150.
8 Minnesota Supreme Court case from 1988. The court
9 held that character evidence which tends to show the
10 strained relationship between the accused and the
11 victim is relevant to establishing motive and intent
12 and is therefore admissible.

13 This history of the relationship argument,
14 Your Honor, is different than a Rule 404(b)
15 analysis. And it is different than a 634.20
16 analysis. The state concedes absolutely that this
17 is not regarding domestic abuse, which is what
18 634.20 is all about. That is why the state does not
19 site it in its motion.

20 There are two avenues that the state can
21 ask for history of the relationship evidence to be
22 introduced in at trial and we rely on case law.

23 Also, this established by case law history
24 of relationship argument does not require notice per
25 the courts. In State v. Boyce, 170 NW2d 104. It's

1 a Minnesota Supreme Court case from 1969. The court
2 held that there isn't a notice requirement when
3 admitting the exact kind of evidence the state seeks
4 to admit. Because the rationale for this is
5 different in that the purpose of the notice
6 requirement is to prevent a defendant from being
7 taken by surprise by the introduction of evidence of
8 collateral bad acts. However, a defendant is
9 inherently aware of his prior relationship with the
10 victim, and this evidence may be presented against
11 him.

12 The state submits that this applies to
13 extramarital relationships. For such evidence to be
14 admitted under history of the relationship pursuant
15 to case law, the trial court must only determine
16 that there is clear and convincing evidence. That
17 the defendant committed the prior bad acts. And
18 further, that the probative value of the evidence
19 outweighs any potential for unfair prejudice. That
20 is Your Honor's standard.

21 This is also affirmed in a long standing
22 case that deals with history of the relationship
23 evidence in State vs. McCoy, 682 NW2d 153. A
24 Minnesota Supreme Court case from 2004. In McCoy
25 the court said that relationship evidence is treated

1 differently than other evidence offered for Spreigl
2 purposes. So we have a different means of
3 admissibility here. They said such evidence has
4 probative value when it serves to place the incident
5 for which the defendant is charged into proper
6 context.

7 The state submits that this evidence that
8 we seek to admit is evidence of a strained
9 relationship. Strained because the defendant was
10 seeking relationships with women in a way that he
11 did not want, or did not have, with his own wife.
12 The testimony of these three women will provide the
13 jury with information that gives critical proper
14 context to the defendant and Amy Allwine's marriage
15 and relationship in the years, weeks, days before
16 her death.

17 Going back to State v. Loving. Just a
18 caviat on something that stood out to the state.
19 The defendant murdered his ex-girlfriend and her
20 lover in that case. There was evidence of a
21 strained relationship and that was all admitted into
22 the trial by the trial court. Mr. Loving denied
23 knowing her lover at trial. In his statements to
24 the police, the defendant here, Mr. Allwine, was
25 asked about his extramarital affairs by law

1 enforcement and he admitted to one. He was asked if
2 there were any others and he denied it. We know
3 there were more. I submit that that is exactly what
4 the court in Loving admitted, and that is what we
5 are asking the court to permit us to do as well.

6 It goes to the state's overall theory of
7 the case and what we purport to be at least part of
8 the defendant's motive to murder his wife.

9 In Loving, as well, the court gave a
10 limiting instruction. As such, we ask that the
11 evidence of the defendant's extramarital affairs,
12 relationships, and communications be admitted
13 because it is highly, highly relevant for our fact
14 finders, Your Honor. It is also highly probative.
15 And based on my previous arguments, we submit that
16 this outweighs any prejudice to the defendant.

17 Accordingly, the state respectfully
18 requests that this court admit this evidence under
19 Spreigl and as history of the relationship evidence.
20 Thank you.

21 THE COURT: Mr. DeVore, any further comments on
22 that subject?

23 MR. DEVORE: Just briefly. Your Honor,
24 assuming the court ignores the notice violations,
25 and assuming then the court agrees that the state

1 assumed correctly that we were supposed to have
2 knowledge of what their case was supposed to be
3 about, that's the only time you get to the question
4 of evaluating the balancing test of the evidence.
5 And to say it's not prejudicial, I mean, you can put
6 lipstick on a pig, but it's highly prejudicial to
7 the defendant. We all know that. Even if the state
8 can craft an argument to say why they think they
9 need it.

10 The question for the court should be the
11 probative value. Is it necessary for them to have
12 that information to the jury in order to prove the
13 elements of their offenses that they have brought
14 against Mr. Allwine. Once you've established
15 whether or not it's actually necessary for them to
16 prove their case, then you have to compare that to
17 whether or not that overcomes the highly prejudicial
18 effect to the defendant. So that's the analysis.

19 When you break it all down, it doesn't
20 matter if it's relationship history or if it's
21 Spreigl, however they want to describe it. That's
22 what the court has to look at. And to bring in
23 evidence of extramarital affairs, we all know that
24 that's going to put the defense in a position of
25 defending itself as a cheater, and getting over that

1 hurdle in the jury's mind that this guy is a bad guy
2 because of that, and therefore he must do bad
3 things. That's the elephant in the room. We all
4 know that.

5 But at the end of the day, if you get past
6 the notice violations, at the end of the day you
7 have to determine whether or not they need it in
8 their case, whether it's probative. And whether
9 it's probative enough to overcome the prejudicial
10 effect to the defendant. We submit that when you do
11 that analysis it does not overcome the prejudicial
12 effect of the defendant.

13 THE COURT: Understand. I understand your
14 position. I understand the state's position. I
15 believe one of the points of which is that the
16 extramarital affairs do speak directly to the
17 relationship of the parties, even though Mr. DeVore
18 you have correctly stated that there is no evidence,
19 evidently, other than that as to the relationship of
20 the parties. So that's one of the things, in
21 addition to what you have articulated, that I am
22 faced with as well.

23 I will get an order out on that. I will
24 get an order not very far in the future. I thank
25 you for your arguments.

1 Now, let me look at the state's Motions in
2 Limine. I hope you have them in front of you,
3 because let's start with numbers 2 through 12.

4 Mr. DeVore, are you going to object to any
5 of those?

6 MR. DEVORE: These are pretty basic Motions in
7 Limine that I see in most counties. Most of these I
8 would never do. I think they would clearly be in
9 violation of the rules.

10 THE COURT: And I understand that. They are
11 cautionary requests, and I take no inference that
12 you would do any of these things, Mr. DeVore. I
13 certainly will be instructing the jury appropriately
14 as to what is and is not evidence. Unless I hear a
15 specific objection, I am going to grant, and do
16 grant, 2 through 12 of the state's requests.

17 MR. DEVORE: Your Honor, I would just add this:
18 With respect to number 4, excluding evidence of
19 prior crimes, wrongs, bad acts of any witness called
20 by the state. I am not aware of any at this point
21 in time. But I guess I am at the liberty of the
22 state providing me with any known criminal
23 background of these witnesses. So if they were to
24 provide me with something, or if we were to learn of
25 something during the course of the trial, then I

1 think I probably would violate that stipulation.

2 But I think it would be approved under the rules.

3 THE COURT: And I will reserve that specific
4 issue.

5 MR. DEVORE: Then with respect to number 3
6 regarding any defenses not disclosed. Your Honor, I
7 did have occasion to speak with Mr. Fink about --
8 it's not -- I didn't file a notice of alibi, but we
9 both agree that Mr. Allwine has a timestamped
10 receipt of 5:37 p.m. at a gas station some distance
11 away from his house approximately 15 minutes away
12 from his house. And that his whereabouts are
13 accounted for thereafter, Your Honor. So both the
14 state and I agree that that's what the evidence
15 shows, so I didn't provide a notice of alibi, but we
16 discussed it, and I just wanted the court to be
17 aware of it.

18 THE COURT: Makes sense to me. Is that true?

19 MR. FINK: We did have that discussion, Your
20 Honor. And from 5:29 when Mr. Allwine places
21 himself outside the home, until 6:59 when the 911
22 call was originated, we would agree that that's the
23 timeframe for the alibi, yes.

24 THE COURT: All right. I will make that
25 exception to that request as well. Again, I am

1 ordering approval of all others 2 through 12.
2 Number 1 is an interesting one to me. Asking
3 defense counsel be prohibited from referring to or
4 questioning any witness regarding defendant's
5 statements unless the evidence has been introduced
6 by the state. I think I understand what that's
7 asking for, but it seems overly expansive to me.
8 Because questioning of witnesses is certainly within
9 the purview -- and I'm assuming this means once the
10 witnesses are on the stand. So my intent is to
11 reserve that issue for trial. And to deal with any
12 issues that may arise as they arise. But I am not
13 anticipating trouble with that. I am just reserving
14 that particular issue.

15 Then 13 asks for an order prohibiting
16 counsel from asking hypothetical questions, if they
17 would reveal a juror's decision regarding a
18 specified fact or set of facts or evidence. I am
19 aware that there is a paper identified as Shapiro
20 that talks about that. I am aware that there are
21 limitations. I am ordering that both sides, and
22 certainly the defense, adhere to that requirement.
23 But there are lines to be drawn. And Mr. DeVore, I
24 am not suggesting that you are going to cross any
25 lines, but the point made in number 13 is the

1 correct point.

2 Now, do you have any response to number
3 13?

4 MR. DEVORE: Your Honor, like I said, I see
5 these stipulations a lot. For the most part we just
6 agree to them. I can't predict what's going to
7 happen during the trial, how people are going to
8 respond, what they are going to say, and how the
9 questions are going to go. I am not going to
10 intentionally set out to do anything that is
11 prohibited in this particular stipulation, or any of
12 them for that matter. But like I said, I don't know
13 how things are going to come out during questioning,
14 so ...

15 THE COURT: I understand. Individual words,
16 individual sentences, individual approaches are so
17 different that I am going to reserve any ruling on
18 that until we are dealing with the subject.

19 Numbers 14 and 15 look pretty standard.
20 Mr. DeVore, any objection?

21 MR. DEVORE: No.

22 THE COURT: My intent is to reserve 16 through
23 19 for the same reasons I talked about in 13. That
24 individual approaches, individual wording changes so
25 much. Certainly, the defendant in expressing a

1 personal belief or opinion as to the defendant's
2 innocence, there are ways in which that is done that
3 are objectionable. And certainly, part of what you
4 do as a defense attorney, Mr. DeVore, is to ask the
5 jury to conclude that your client is innocent. So
6 again, I am reserving order on the specifics of
7 those until those issues arise.

8 It may be too soon to ask this question.
9 But in terms of opening statements before we get to
10 exhibits that will be in the trial, does either side
11 intend to use demonstrative exhibits.

12 MR. FINK: You know, Your Honor, we haven't
13 even talked about that yet.

14 THE COURT: Okay. Then it's a subject I want
15 to address. Obviously, both sides know that there
16 are proper and improper ways of doing that. I am
17 certainly not going to allow something to be talked
18 about in an opening statement which would constitute
19 an exhibit, or even approach an exhibit that is not
20 yet in evidence. So have that be part of your
21 thinking, and I would like to talk about that more
22 specifically before we get to trial.

23 By the way, it's my intent to have at
24 least three alternates. Does either side want to
25 weigh in on that?

1 MR. FINK: Sounds appropriate.

2 MR. DEVORE: Sounds fine to me.

3 THE COURT: We will follow the normal rules of
4 the defendant having 15 strikes and the state having
5 9 strikes. I will question the jurors individually.
6 We obviously have to go through the procedures in
7 the right way, which is to determine whether there
8 are any challenges for cause before we get to those.
9 But we will talk about that more specifically as we
10 get closer to that as well.

11 Would counsel approach, please?

12 (Whereupon, court and counsel had a
13 discussion off the record at the bench.)

14 THE COURT: Okay. I want to mention on the
15 record that I have a law clerk working for me, Ben
16 Lacy, who was a student intern for the county
17 attorney's office. Again, as a student. The reason
18 I asked the attorneys to approach, I wanted to know
19 how that information would be received and whether
20 we need to get into some more detail about that. He
21 now works for me. He has passed the bar. He is an
22 attorney. He is a law clerk working for a District
23 Court Judge.

24 Mr. DeVore, do you have any concerns or
25 objections regarding any of that?

1 MR. DEVORE: No, Your Honor. I find that to be
2 fairly common in my practice to see people work and
3 do internships in county attorney's offices and then
4 work for judges. We don't have any objection to
5 that.

6 THE COURT: All right.

7 MR. DEVORE: Your Honor, I do have one item,
8 too, I would like to bring up.

9 THE COURT: Go ahead.

10 MR. DEVORE: Prior to the hearing, Mr. Fink and
11 I discussed the testimony of one of the witnesses.
12 His name is Roland Heley, H-E-L-E-Y, and he was a
13 neighbor of the Allwines. He had contacted me and
14 said he was going to be out of town during the
15 trial, and he was a potential witness that we were
16 going to call. And he asked me the logistics of it.
17 So I talked to Mr. Fink about it and asked if we
18 could listen to his recorded statement that he gave
19 to the police a day or two after the incident. And
20 so Mr. Fink and I listened to the interview. It's
21 recorded. It's about five and a half minutes long.
22 We have agreed that through the testimony of
23 whatever investigator it was that took that
24 statement, that we could introduce that piece of
25 that recording to the jury, and then we can excuse

1 Mr. Heley from having to come back here from out of
2 state.

3 THE COURT: All right. Mr. Fink, is that
4 correct?

5 MR. FINK: It certainly is, Your Honor. One
6 other thing we have has some ongoing talks, in order
7 to condense the trial to the degree that it's
8 possible in terms of foundation for records, whether
9 the necessity of calling the records custodian is
10 required as well as various chains of evidence, we
11 have entered into a written stipulation to that
12 effect. Both Ms. Kreuser and I have signed and
13 counsel has seen it previously. I just presented it
14 to him for his signature.

15 THE COURT: We will give him just a moment to
16 see if it's exactly what you say it is.

17 MR. DEVORE: Yes. I'm signing it, Your Honor.
18 I've already reviewed this with my client.

19 MR. FINK: If I may approach and file with the
20 court.

21 THE COURT: You may. That stipulation is
22 received. I appreciate the efforts.

23 Anything else to discuss today from either
24 Ms. Kreuser or Mr. Fink?

25 MR. FINK: Nothing from me, Your Honor.

1 MS. KREUSER: Nothing from me.

2 THE COURT: Mr. DeVore, anything from you other
3 than what we have talked about?

4 MR. DEVORE: I don't think so, Your Honor.
5 Thank you.

6 THE COURT: Give me a moment, please. Court
7 administration is working on what we were talking
8 about in terms of the jurors coming in the previous
9 Friday. That's all I can tell you right now.

10 Thank you for your attention. The
11 pretrial is now concluded.

12 MS. KREUSER: Thank you, Your Honor.

13 (Proceedings concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF MINNESOTA)
) ss:
2 COUNTY OF WASHINGTON)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, DEBORAH L. FOSTER, do hereby certify that the above and foregoing transcript, consisting of the preceding pages, is a correct transcript of my stenographic notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated: October 27, 2018.

DEBORAH L. FOSTER
Official Reporter
Washington County District Court
(651) 430-6354

Z