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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2169**

State of Minnesota,
Respondent,

vs.

John Michael Rice, III,
Appellant.

**Filed March 18, 2008
Affirmed
Schellhas, Judge**

Mille Lacs County District Court
File No. 48-CR-05-1055

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Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant appeals his conviction of possession of marijuana. He argues that there was insufficient evidence to convict him of the offense and that irrelevant and unfairly prejudicial testimony was allowed by the district court. Because there is sufficient evidence on which a jury could have reasonably concluded that appellant is guilty and because the district court did not abuse its discretion in the challenged evidentiary rulings, we affirm.

FACTS

On April 12, 2005, after a third party contacted the police about appellant John Michael Rice, III, several officials of the Mille Lacs County Sheriff's Department went to appellant's property to conduct a welfare check. Appellant appeared to be nervous, paranoid, and excitable, and appeared to be under the influence of methamphetamine. Appellant explained a perceived conspiracy related to a former tenant of his property. The tenant had stayed briefly in an outbuilding on appellant's property that contains a bar or tavern area. Appellant evicted the tenant when appellant came to believe that the tenant was an informant for a drug task force and that the tenant intended to set up appellant for drug-related offenses. Appellant walked the officers around his property and asked them to search for and remove illegal items. When nothing was found, appellant pointed out a small amount of marijuana and paraphernalia in the tavern.

While the deputies were at appellant's property, they contacted an investigator with the drug task force, who joined the deputies at appellant's property. During the

visit, appellant told the investigator that he had used methamphetamine in the tavern two days ago and admitted recent methamphetamine use to a deputy. The welfare check ended that day without further incident.

On April 18, 2005, appellant left a recorded telephone message with the sheriff, seeking a meeting with him. The sheriff and appellant scheduled a meeting for the next day, April 19, 2005, but appellant failed to attend the meeting. Shortly thereafter, at appellant's request, his neighbor called and asked officers to visit appellant's address. After numerous requests, a deputy went to appellant's address. When the deputy arrived, appellant led him around his property, again asking that the deputy search for and remove illegal items. Finding none, the deputy encouraged appellant to show him where any illegal items were located. Appellant then led the deputy to his car and revealed a large amount of marijuana in a duffel bag in the trunk. Appellant was arrested and charged with fifth-degree controlled substance possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2004).

Appellant has consistently argued that he found the marijuana innocently and had contacted police to turn it over. Appellant claimed the marijuana was placed on his property by the former tenant. Appellant claimed that initially, his wife found the marijuana in coolers in the rafters of the tavern and showed it to him. Appellant claimed that he then moved it into the trunk of his car. At one point, appellant's wife reported that the police were contacted the same day the marijuana was found; at another point, appellant's wife suggested that the marijuana was found roughly a month before the police were contacted.

After his arrest, appellant admitted that the tenant had supplied him with methamphetamine and that he and his wife had used methamphetamine. Appellant also reported that he had used marijuana infrequently but regularly, in the amount of approximately one to two joints per year.

After a two-day trial, a jury found appellant guilty. Appellant now appeals, arguing that there was insufficient evidence to convict him. Focusing on his claim that he contacted the police to pick up innocently found drugs on his property, appellant argues that the evidence was insufficient to establish that he had dominion and control over the marijuana because his possession was only temporary and innocent. He also argues on appeal that testimony related to his methamphetamine use was improperly admitted.

D E C I S I O N

In a challenge to the sufficiency of the evidence, this court makes a “painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We look at the “facts in the record and the legitimate inferences that can be drawn from those facts,” to determine if a jury could have reasonably found the defendant guilty. *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978).

Appellant was charged under Minn. Stat. § 152.025, subd. 2(1) (2004), which states that a person is guilty of possession of a controlled substance in the fifth degree if “the person unlawfully possesses one or more” scheduled controlled substances, which include marijuana. “[I]n order to convict a defendant of unlawful possession of a

controlled substance, the state must prove that defendant consciously possessed . . . the substance and that defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975).

Appellant argues that the evidence shows that he had only “fleeting control” of the marijuana, that is, control that is temporary and for an innocent purpose. He argues that “fleeting control” cannot amount to the “dominion and control” required for criminal possession. A fleeting-control exception to possession has not been recognized in Minnesota. *State v. Houston*, 654 N.W.2d 727, 734 (Minn. App. 2003) (stating that Minnesota has not recognized a fleeting-control exception to possession of a weapon), *review denied* (Minn. Mar. 26, 2003). Because no exception for fleeting control has been recognized in Minnesota, appellant’s argument that his control was only fleeting is rejected. Moreover, consistent with *Houston*, appellant was permitted to argue, and did argue, to the jury that his control was less than the control required for criminal possession. *Houston*, 654 N.W.2d at 735. The nature of his control was considered by the jury and resolved against appellant.

Examining facts in the record and the legitimate inferences that could be drawn from those facts, we find that the jury’s conclusion that appellant exercised “dominion and control” over the marijuana was reasonable. *Merrill*, 274 N.W.2d at 111. The record shows that appellant moved the marijuana on his property, allowed and engaged in drug-related activity on his property, and used marijuana infrequently but regularly in the past. Based on these facts, the jury could have reasonably concluded that appellant was not

innocently unaware of the presence of marijuana on his property and that he exercised dominion and control over the marijuana, consistent with criminal possession.

Appellant also claims that the district court erroneously allowed testimony that was irrelevant and highly prejudicial. “Appellate courts largely defer to the trial court’s exercise of discretion in evidentiary matters and will not lightly overturn a trial court’s evidentiary ruling.” *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989). “Absent a clear abuse of discretion, the ruling will stand.” *Id.* If error is shown, reversal will not be warranted if the error was harmless. *Id.*

Appellant argues that it was error for the district court to allow testimony that the deputies believed him to be under the influence of methamphetamine during the April 12, 2006 visit. He argues that the testimony was irrelevant and unfairly prejudicial. At trial, appellant objected to numerous questions related to methamphetamine use. Some of the objections were sustained, but some testimony about appellant’s methamphetamine use was allowed.

Appellant argues that the testimony was not relevant to the nature of his possession of the marijuana. “Any evidence that logically tends to prove or disprove a material fact in issue is relevant.” *State v. Lee*, 282 N.W.2d 896, 901 (Minn. 1979). At trial, appellant’s state of mind and behavior during the visits by law-enforcement personnel were at issue. Methamphetamine use potentially helped to explain appellant’s behavior and state of mind during those visits.

Appellant argues that even if relevant, the testimony was unfairly prejudicial because it was presented multiple times and because evidence that appellant was a drug

user could have “tipped the balance” for the jury. To be excluded as unfairly prejudicial, the legitimate probative value of evidence must be “substantially outweighed” by the danger of unfair prejudice due to the presentation of the evidence. Minn. R. Evid. 403. Unfair prejudice refers to the ability of evidence to persuade by illegitimate means. *State v. Cermak*, 365 N.W.2d 243, 247 n.2 (Minn. 1985). The evidence in this case had legitimate probative value because it was relevant to a fact of consequence in the case. Appellant argues that the danger of the evidence was that it could have “tipped the balance” for the jury. This is not a persuasive argument that the danger of unfair prejudice “substantially outweighed” the evidence’s legitimate value. The evidence did not present a danger of persuasion by illegitimate means that “substantially outweighed” the legitimate probative value of the evidence. The district court did not abuse its discretion in allowing the testimony.

Affirmed.