STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1686

State of Minnesota,
Respondent,

vs.

Jacob Catlin Smith,
Appellant.

Filed September 24, 2012
Affirmed
Halbrooks, Judge

St. Louis County District Court
File No. 69DU-CR-10-2652

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

Mark S. Rubin, St. Louis County Attorney, Christopher J. Pinkert, Assistant County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Hudson, Judge.

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

HALBROOKS, Judge

Appellant challenges his convictions of two counts of deprivation of custodial rights and one count of gross misdemeanor obstructing legal process on two grounds:

(1) the district court abused its discretion by allowing the state to present irrelevant and highly prejudicial evidence and (2) there was insufficient evidence to support the convictions of deprivation of custodial rights. Because the district court acted within its discretion and because the evidence was sufficient to support the convictions of deprivation of custodial rights, we affirm.

FACTS

Seventeen-year-old K.L. and 15-year-old S.K. were detained in a secured unit at the St. Cloud Children's Home in the summer of 2010. On August 1, 2010, the girls escaped from the St. Cloud Children's Home without the permission of the staff or their parents. They hitchhiked to Duluth, which is S.K.'s hometown, and eventually ended up at the home of appellant Jacob Smith. Smith lived in the lower level of a duplex, and he let the girls stay in the basement for several nights. While the girls were there, Smith provided them with food, marijuana, alcohol, and cigarettes.

On August 6, 2010, S.K.'s older brother, J.K., saw his sister while he and two friends were on a city bus. They followed her to Smith's house and knocked on the back door. Smith answered, and J.K. told Smith that Smith had his sister, that she was a runaway, and that J.K. was there to get her. J.K. and his two friends went downstairs to get the girls. Shortly thereafter, the police arrived, after receiving an anonymous call that there were two runaways staying in the basement.

Officers John Barrett and Justin Brown of the Duluth Police Department responded to the anonymous call. Because Officer Barrett had dealt with Smith before, he ran a check on Smith and found that he had outstanding arrest warrants. When Officer

Brown knocked on the front door, there was no response. Officer Barrett went to the back, after trying to connect with the occupants for approximately 10-15 minutes, and encountered Smith's mother, who said that she did not know anything about possible runaways. While Officer Barrett talked with Smith's mother, he heard someone inside say, "Cops." A moment later, Officer Barrett saw Smith poke his head out of the opening of the storm door. Smith retreated, shut the interior door, and locked it.

Smith then went downstairs and told everyone to get into the basement closet. J.K. did not comply, but asked his two friends to stay with the girls. As a result, the four of them went into the closet, and Smith locked the door with a keyed padlock and told them not to make any noise. J.K. and Smith then went upstairs.

Smith reappeared at the back door. There was a space of approximately ten feet between the outer door and the door to Smith's unit. Smith unlocked the outer door, backed up to his door, stepped inside, and left the unit door open about a foot in order to watch the police. Officer Barrett walked with Smith's mother through the outer door and reached through the unit door to grab Smith and arrest him on the outstanding warrants. But Smith slammed Officer Barrett's arm in the unit door as he unsuccessfully tried to close it. Smith backed away into the kitchen and began to reach behind the radiator. Fearing that Smith was reaching for a weapon, Officer Barrett pulled his gun and told Smith to show him his hands. By now, a third officer, Officer Lepak, was assisting. Smith continued to resist until they handcuffed him. Once Smith was secured, a fourth officer looked behind the radiator and found a stick that was 1 1/2 to 2 feet long that had a Chinese throwing star taped to the end.

The police began to search Smith's apartment for the girls. Smith's bedroom closet contained a cedar chest that was large enough for someone to hide behind. When the police searched behind the chest, they found a baggie containing a green, leafy substance that a subsequent preliminary drug test showed to be positive for THC.

After the police cleared Smith's apartment, they asked him if there were runaways in his house. Smith initially stated that he did not know anything about them. But after continued questioning, Smith eventually acknowledged that the girls were in the basement, where the officers found them in the locked closet. The state charged Smith with three counts: two counts of deprivation of parental rights under Minn. Stat. § 609.26, subd. 1(8) (2010), and one count of obstructing legal process under Minn. Stat. § 609.50, subd. 1(2) (2010). Following a jury trial, Smith was found guilty on all three counts. This appeal follows.

D E C I S I O N

I.

Smith contends that the district court erred by admitting improper, irrelevant evidence. The district court has broad discretion to make evidentiary rulings, which this court reviews for a clear abuse of discretion. *State v. Schulz*, 691 N.W.2d 474, 477 (Minn. 2005).

Evidence is relevant when it has "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. Although relevant, evidence may be excluded if the danger of unfair prejudice substantially outweighs the

probative value. Minn. R. Evid. 403. "The rule favors admission of relevant evidence, as the probative value of the evidence must be 'substantially' outweighed by prejudice, confusion of the issues, and the other dangers listed in the rule." *Schulz*, 691 N.W.2d at 478; *see also* Minn. R. Evid. 403 1977 comm. cmt.

A. The marijuana

Smith argues that the evidence of the marijuana that was found in his bedroom was irrelevant and its admission prejudicial under rule 403 because he was never charged with a controlled-substance crime. The first step of the rule 403 analysis is to assess the probative value of the disputed evidence. *See Schulz*, 691 N.W.2d at 478. "Evidence is relevant and has probative value when it, in some degree, advances the inquiry." *Id.* If a fact taken alone or in connection with other facts warrants a jury to draw a logical inference that assists, even remotely, in the determination of the issue in question, then the fact is relevant. *Id.* Here, K.L. testified at trial that Smith provided herself, S.K., and other minors with marijuana, alcohol, and cigarettes. Smith denied that he did so. Even though Smith was not ultimately charged with possession of marijuana, the evidence served to corroborate K.L.'s testimony and likely assisted the jury in its credibility determination of a disputed matter. As a result, it was probative.

The second step of the analysis is to determine whether the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *See id.* Unfair prejudice under rule 403 is not merely damaging evidence, but rather evidence that persuades by illegitimate means that gives one party an unfair advantage. *Id.* Here, the danger of the unfair prejudice was that the jury might convict Smith on the charges of

deprivation of custodial rights based on the belief that he engaged in other illegal activity. But the district court gave the following cautionary instruction:

> [T]he State is about to introduce evidence that marijuana was found at the [appellant's] residence on August 6, 2010. This evidence is being offered for the limited purpose of assisting you in determining whether the [appellant] committed those facts with which the [appellant] is being charged in this complaint.
>
> This evidence is not to be used to prove the character of the [appellant] or that [appellant] acted in conformity with such character. The [appellant] is not to be tried for and may not be convicted of any offenses other than the charged offenses. You are not to convict the [appellant] on the basis of marijuana being found at his residence on August 6th, 2010. To do so might result in unjust double punishment.

A jury is presumed to follow a district court's instruction. *See State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002). Based on the testimony from K.L. and the limited use of the evidence by the state, this record does not support a conclusion of unfair prejudice. Because the probative value of the evidence was not outweighed by unfair prejudice, the district court did not abuse its discretion by admitting it.

Smith makes the alternative argument that the marijuana test result should have been excluded because the preliminary field test result was not sufficiently reliable. Smith contends that the district court should have granted his request for a *Frye-Mack* hearing before ruling on the admissibility of the evidence. Smith's attorney requested the hearing in the midst of trial. The *Frye-Mack* standard governs the admissibility of scientific evidence by requiring that the scientific evidence be generally accepted and considered reliable by the scientific community in order to be admissible. *State v.*

Edstrom, 792 N.W.2d 105, 109 (Minn. App. 2010). Generally a *Frye-Mack* hearing is only necessary when the evidence at issue was obtained using a technique that is both scientific and novel. *Id.* A hearing may still be conducted after a particular technique is no longer considered novel, but the focus of the inquiry then shifts to the reliability of the results in the case. *Id.*

The threshold question in the analysis of whether a *Frye-Mack* hearing is required is if the test results are relevant. *State v. Tanksley*, 809 N.W.2d 706, 709 (Minn. 2012). Here, the prosecutor argued, and the district court agreed, that the marijuana was not being offered to prove a controlled-substance charge. On this record, the district court did not abuse its discretion by denying a *Frye-Mack* hearing.

B. Prior contacts with police

Smith contends that the district court erred by allowing Officer Barrett to testify that he was familiar with Smith from his prior contact with him. If the defendant's identity is not an issue in the case, it is error for the prosecutor to elicit testimony that the police officer knew the defendant from prior contacts. *State v. Valentine*, 787 N.W.2d 630, 641 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Smith claims that the following exchange constitutes error:

> PROSECUTOR: Did you get identifying information from the [appellant]?
> OFFICER BARRETT: I would have later. I know Jacob and I—from previous occasions.

Smith did not object to this testimony. We therefore review this issue for plain error. *Id.* at 640. Plain error is when (1) there was error; (2) that was plain; and (3) the

error affected the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

We first note that the prosecutor did not elicit this testimony from the officer. The prosecutor asked a question that was answerable with a "yes" or "no." When Officer Barrett responded that he knew Smith "from previous occasions," the prosecutor did not inquire further as to how Officer Barrett knew Smith. Instead, the prosecutor continued with the line of questioning that dealt with the identifying information that Officer Barrett got from Smith on the day in question. Because the prosecutor did not elicit the information and did not expand on the answer, we conclude that this testimony did not constitute plain error. We therefore do not reach the other prongs of the *Griller* analysis.

C. Outstanding warrants

Smith contends that the district court erred by allowing Officer Barrett's testimony that Smith had outstanding arrest warrants. Because Smith did not object to this testimony, we again apply a plain-error standard of review. *See id.* at 740. Minn. Stat. § 609.50, subd. 1(2), provides, "Whoever intentionally . . . obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" is guilty of obstructing legal process.

When Officer Barrett arrived at the house, he first spoke to Smith's mother and explained to her that he had a warrant for Smith's arrest. Officer Barrett subsequently grabbed Smith in order to arrest him. Because Smith was charged with obstructing legal process as a result of resisting arrest, the state had to prove that Officer Barrett had a

basis for arresting Smith. The district court did not abuse its discretion by allowing this evidence.

II.

Smith contends that there was insufficient evidence to convict him of deprivation of custodial rights because he testified that he did not know that K.L. and S.K. were runaways. In considering a claim of insufficient evidence, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to allow the jurors to reach their verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court "must assume the jury believed the prosecution's witnesses and disbelieved any contrary evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). We will not disturb the verdict "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quotation omitted).

The statute provides, "Whoever intentionally . . . causes or contributes to a child being a runaway . . . and is at least 18 years old and more than 24 months older than the child" is guilty of a felony. Minn. Stat. § 609.26, subd. 1(8). A "runaway" child is someone who is unmarried and under the age of 18 "who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian." Minn. Stat. § 260C.007, subd. 28 (2010). The state must prove beyond a

reasonable doubt every fact necessary to constitute the charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970).

Smith argues that because he did not know that the girls were runaways, the state failed to prove intent. Intent is a state of mind that can be proved by inferences drawn by the finder of fact from the totality of the circumstances. *State v. Marsyla*, 269 N.W.2d 2, 5 (Minn. 1978). We use a heightened scrutiny in circumstantial-evidence cases to determine "whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). There must be a complete chain that, when this court views the evidence as a whole, "leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). But this court will not overturn a conviction based on mere conjecture, because it is not the state's burden to remove all doubt, but rather to remove all reasonable doubt. *Al-Naseer*, 788 N.W.2d at 473. To assess the sufficiency of the evidence, we identify the circumstances proved and then independently examine the reasonableness of all the inferences that might be drawn from those circumstances. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

The jury heard not only Smith's testimony on his lack of knowledge that the girls were runaways, but also heard from J.K. on this subject. J.K. testified that Smith looked surprised when he asked to see his sister and told Smith that S.K. and K.L. were runaways. But the jury also heard K.L.'s testimony in response to a question from the prosecutor:

> PROSECUTOR: Did you tell [Smith] about your escapade and escaping from St. Cloud?
> K.L.: Yes.

A conviction may rest on the testimony of a single witness. *State v. Bernardi*, 678 N.W.2d 465, 468 (Minn. App. 2004); *Caldwell v. State*, 347 N.W.2d 824, 828 (Minn. App. 1984). Therefore, there was sufficient evidence to establish that Smith knew the girls were runaways.

In addition, the jury heard evidence of Smith's actions in response to the officers' arrival and could assess whether they were consistent with his knowledge that the girls were runaways. While Smith denied that he locked the girls in the closet, both K.L. and J.K. testified that Smith told the girls to get in the closet and that Smith was the one who locked it. Smith claimed that he told the police that everyone was in the basement, but it wasn't until after Officers Barrett and Lepak asked Smith "several times in several different ways" that he finally told the officers that they were in the basement. Because these circumstances form a complete chain as to Smith's intent that leads directly to his guilt, there was sufficient evidence in this record to establish the requisite intent for the convictions of deprivation of parental rights.

Affirmed.