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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM DARNELL SPATES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A05-0703-CR-138

APPEAL FROM THE LAKE SUPERIOR COURT
CRIMINAL DIVISION
The Honorable Natalie Bokota, Magistrate
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0407-FA-36

November 14, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant, Defendant, William Darnell Spates (Spates), appeals his conviction for possession of cocaine, a Class D felony, Ind. Code § 35-48-4-6.

We affirm.

ISSUE

Spates raises one issue for our review, which we restate as follows: Whether the trial court abused its discretion by admitting the evidence that Spates tested positive for marijuana.

FACTS AND PROCEDURAL HISTORY

On June 7, 2004, Lake County Police Department Deputy Commander Shaw Spurlock (Detective Spurlock) was informed by an inmate at the Lake County Jail that his cellmate, identified as Spates, had cocaine. Detective Spurlock contacted Officer Michael Laster (Officer Laster), a Lake County Sheriff's Department Classification Officer, and relayed the information to him. Officer Laster, together with Officer Julian Brown (Officer Brown), met Spates while he was escorted back from a court hearing and informed him that a pat down search was required because it had been reported that he was in possession of contraband. Spates slumped to the floor and clutched his stomach while claiming stomach pain, and remained in this position during the search. The officers started searching his cell, but could not find any contraband.

Spates was removed to a day room. Officer Brown suspected Spates had swallowed the cocaine and started questioning him. Eventually, Spates asked Officer Brown to speak in

private. During this conversation, Spates handed Officer Brown a plastic bag that he retrieved from the waistband of his pants. The plastic bag had thirty to forty twisted baggies inside of it. Later, laboratory testing of the substance inside one of the thirty-four baggies revealed it contained a cocaine base. After Spates gave up the cocaine, he was taken to the hospital for an examination of his stomach pain. His urine screen tested positive for marijuana.

On July 22, 2004, the State filed an Information, charging Spates with knowingly or intentionally possessing, with intent to deliver, cocaine, in excess of three grams, a Class A felony, I.C. § 35-48-4-1(2)(C)(b)(1). On November 9, 2005, the State amended the charges to knowingly or intentionally possessing, with intent to deliver, cocaine, a Class B felony. On December 4 through 7, 2006, a jury trial was held. At the trial, Spates objected to the admission of the marijuana screen test results as evidence, claiming that it prejudiced him by showing evidence of an uncharged and irrelevant offense. The trial court overruled his objection. At the close of the jury trial, Spates was found guilty of a lesser included charge, possession of cocaine, a Class D felony. On February 2, 2007, the trial court sentenced Spates to three years imprisonment.

Spates now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Spates argues that the admission of the evidence that he had tested positive for marijuana was an abuse of discretion because the test results constituted evidence of other

crimes, wrongs or acts that was irrelevant and any probative value of that evidence was outweighed by the danger of unfair prejudice.

The admission or exclusion of evidence is a determination entrusted to the discretion of the trial court. *Edwards v. State*, 862 N.E.2d 1254, 1259 (Ind. Ct. App. 2007), *trans. denied*. We will reverse the trial courts' decision only for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before it. *Id.* The improper admission of evidence is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court that there is no substantial likelihood and challenged evidence contributed to the conviction. *Id.*

Indiana Evidence Rule 404(b) states that "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, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" *Id.* In assessing the admissibility of evidence under Ind. Evidence Rule 404(b), the trial court must: (1) determine whether the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Evid. R. 403. *Edwards*, 862 N.E.2d at 1261.

At the trial, the State presented a certified copy of medical records from Spates' emergency room visit. Spates objected to its admission, claiming that the medical records

contained a record of his positive test for marijuana and that the State was trying to introduce evidence of a prior bad act. Initially, the trial court agreed to redact the positive test for marijuana from Spates' medical records. However, later, the trial court overruled Spates' objection, and admitted the evidence of Spates' urine test results without redacting the positive test for marijuana, holding that:

[his] condition is relevant for the jurors to be able to assess whether or not the stomach pains he complained about were genuine, or not, goes to his state of mind, [and arguably] bears some relevance to culpability. Now, the prejudice. We are talking about THC in the climate and culture we live in. I don't think the prejudice for the use of marijuana, quite frankly, is a substantial prejudice. It also can inure to his benefit to prove that that's why he had a stomachache, quite frankly.

(Tr. pp. 315-16).

To determine whether the trial court abused its discretion we apply Evid. R. 404(b). The first prong of this rule is to determine whether the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act. "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. Evid. R. 401. The marijuana screen test does not make the State's charge of possession of cocaine with intent to deliver, more or less probable than it would be without it, primarily because Spates' stomach pains are not of consequence to the determination of whether he had possession of cocaine. As such, we find Spates' marijuana screen test not relevant to a matter at issue other than Spates' propensity to commit the charged act.

According to the second prong of the test, we need to weigh the probative value of the evidence against its prejudicial effect. *See* Evid. R. 404(b). Spates' marijuana screen test is highly prejudicial as it might indicate a propensity of Spates to commit the charged act. The jury may infer from the evidence of the marijuana screen test that Spates was engaged in prior crimes, and, therefore, be misled on its verdict. When balancing the relevance of the marijuana screen test and its danger of prejudicial effect, we find the latter outweighs the former. Consequently, we find that the trial court erred in admitting the evidence that Spates tested positive for marijuana.

Nevertheless, we agree with the State that even if the trial court erred in admitting the marijuana screen test, any such error was harmless. "[A]n error will be found harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties." *Fleener v. State*, 656 N.E.2d 1140, 1142 (Ind. 1995). In the instant case, there is substantial independent evidence to support Spates' conviction: his own testimony and the testimony of the Officers. Spates testified that he had a bag of drugs in his waistline and that he gave the bag to Officer Brown. Officer Brown also state that Spates handed him a plastic bag with cocaine after asking whether he was going to charge him. Furthermore, neither the prosecutor, nor the defense counsel referred to the marijuana screen in the presence of the jury during the trial.

We are satisfied that probable impact of the marijuana screen test on the jury, in the light of all of the evidence in the case, is sufficiently minor so as not to affect Spates'

substantial rights. Consequently, we find the admission of a positive marijuana screen test by the trial court to be a harmless error.

CONCLUSION

Based on the foregoing, we find that the admission of the evidence of marijuana screen test was harmless error.

Affirmed.

BAKER, C.J., and SHARPNACK, J., concur.