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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0846**

State of Minnesota,  
Respondent,

vs.

Robert A. Stewart,  
Appellant.

**Filed June 30, 2009  
Affirmed  
Shumaker, Judge**

Steele County District Court  
File No. 74-CR-07-1992

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and  
Halbrooks, Judge.

## UNPUBLISHED OPINION

**SHUMAKER**, Judge

In this appeal of his convictions of possession of controlled substances, appellant contends that the district court committed reversible error by allowing *Spreigl* evidence of his two prior drug-possession convictions during his jury trial. We affirm.

### FACTS

Drug task force agents and other law enforcement officers executed a search warrant on the morning of July 3, 2007, at a home in Blooming Prairie. Appellant Robert A. Stewart resided in the home with Julia Zvorak and her daughter. Anthony Diaz also temporarily resided there.

When the officers arrived, they knocked on the door and identified themselves. They saw Stewart move in front of a window and then out of sight. Neither he nor anyone else came to the door, and the officers forcibly entered the home. They found Stewart on the first floor and arrested him. Some officers then went to the second floor.

Zvorak was on the second floor, which consisted of a living room and a bedroom. In plain view on a table was a glass pipe that had traces of a white powder and burn marks. There was also a digital scale on the table. The powder was later determined to be methamphetamine. The officers also found on the table a hairspray can that had been converted into a container. It contained baggies of substances determined later to be 120 grams of methamphetamine and 53 grams of cocaine. The officers found two more glass pipes on the second floor, and downstairs they found three digital scales disguised as

common household items and a large number of Ziploc baggies of a type and size commonly used in drug sales.

In addition to the drugs and paraphernalia, the officers found men's clothing in an upstairs closet and checks, a prescription bottle, a motor vehicle title document, and a vehicle insurance card, all containing Stewart's name. The insurance card listed the searched home as Stewart's address, and the motor vehicle listed on the insurance card was parked outside the home.

The state charged Stewart with first-degree possession of methamphetamine and cocaine. After the case was set for jury trial, the state moved to introduce into evidence under Minn. R. Evid. 404(b) two prior drug-possession crimes to which Stewart pleaded guilty in 2006 for the purpose of showing that Stewart knowingly possessed methamphetamine. Stewart opposed the motion on the ground that the issue was that of constructive possession of drugs and that the state was not required to prove "any type of knowledge." The district court reserved its ruling until the conclusion of the state's case-in-chief and then granted the motion, stating that "the precise fact would be knowledge of the substance of methamphetamine, and that . . . [the] state is required to prove that Mr. Stewart knew—knows what methamphetamine is to be able to prove their case of possession."

The jury found Stewart guilty of controlled-substance crimes in the first degree, and he appealed, alleging as error the district court's allowance of the rule 404(b) evidence.

## DECISION

The admission of Minn. R. Evid. 404(b), or *Spreigl*, evidence is discretionary, and the district court's admission or exclusion of such evidence will not be reversed absent a clear abuse of discretion. *State v. Steinbuch*, 514 N.W.2d 793, 800 (Minn. 1994).

Evidence of other crimes or misconduct, also referred to as *Spreigl* evidence, is not admissible to show bad character or a propensity to behave criminally. *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). It may be allowed, however, if offered for a limited non-propensity purpose such as showing “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). In deciding the admissibility of *Spreigl* evidence, we consider, among other things, whether (1) the state has clearly indicated the non-propensity purpose the evidence will be offered to prove; (2) the *Spreigl* evidence is relevant to the state's case; and (3) the probative value of the *Spreigl* evidence is outweighed by its potential for unfair prejudice to the defendant. *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). The state argued, in support of its motion to admit Stewart's prior drug convictions, that knowledge that a substance was a controlled substance was essential to the proof of the state's case and that the prior convictions were relevant to the issue of such knowledge.

In considering the state's motion, the district court had to determine whether the state was required to prove that Stewart knew that the substances found at his residence were cocaine and methamphetamine. The standard jury instruction on this point—and the one the court gave at the end of the trial—provides the elements that the state must prove beyond a reasonable doubt in order to obtain a conviction, the very first of which is

knowledge: “The elements of a controlled substance crime in the first degree are: First, the defendant knowingly possessed [1] one or more mixtures of a total weight of twenty five grams or more containing (cocaine) (heroin) (methamphetamine).” 10A *Minnesota Practice*, CRIMJIG 20.04 (Supp. 2008).

Because “knowing” possession was an essential element of the crimes with which Stewart was charged, evidence of his knowledge would be relevant to that element. The *Spreigl* evidence consisted of two prior convictions for fifth-degree possession of a trace amount of methamphetamine found in a pipe. Stewart pleaded guilty and thereby necessarily acknowledged some degree of knowledge of what methamphetamine is. Stewart’s argument that the *Spreigl* evidence was not admissible because proof of knowledge was not required and therefore was not relevant is without merit.

Stewart also contends that he raised no affirmative defenses and “never denied that the substance found in the residence was methamphetamine . . . [and] agreed that the substance was in fact methamphetamine.” Rather, he argues, his defense was that “he did not have a possessory interest in the hairspray can that contained the controlled substances . . . .”

We note that Stewart has not challenged the sufficiency of the evidence to prove constructive possession of the drugs. Instead, he has limited his challenge to the admissibility of the *Spreigl* evidence. Thus, we limit our discussion to that issue as well. Stewart’s argument that he never disputed his knowledge of the controlled substances found at the home in Blooming Prairie is without merit. He did not testify at the trial. He conceded nothing; he stipulated to nothing. That left the state with the burden of proving

all essential elements of each charge, “knowing possession” being an essential element common to all charges.

Finally, Stewart argues that the admission of the *Spreigl* evidence was unfairly prejudicial to him. The basis of this argument is stated in his brief on appeal: “The State did not need to prove knowledge as an element of the crime; therefore, the *Spreigl* evidence had no probative value to the State’s case.” It is apparent that this argument, both in its premise and its content, is the same as that which we found to be without merit above. Stewart claims that, because the state did not need to prove knowledge, evidence of prior bad acts admitted for the purpose only of showing such knowledge could only be unfairly prejudicial. If his premise were not entirely faulty, his argument could have merit. But, as we have explained, knowledge had to be proved to support the convictions. Stewart makes no further showing or argument as to how, under the facts of his case, the *Spreigl* evidence unfairly prejudiced him. The district court did not err in allowing the *Spreigl* evidence.

**Affirmed.**