STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1707

State of Minnesota,
Respondent,

vs.

Joseph Laverne Pisano,
Appellant.

Filed April 22, 2008
Affirmed
Kalitowski, Judge

Aitkin County District Court
File No. KX-02-969

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Jim Ratz, Aitkin County Attorney, Aitkin County Courthouse, 217 Second Street Northwest, Aitkin, MN 56431 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Paul J. Maravigli, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

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

KALITOWSKI, Judge

Appellant Joseph Laverne Pisano challenges his conviction of conspiracy to manufacture methamphetamine, arguing that (1) the evidence was insufficient to support his conviction; and (2) it was an abuse of the district court's discretion to deny appellant's motion to admit reverse-*Spreigl* evidence relating to alleged alternative perpetrators. We affirm.

D E C I S I O N

I.

Appellant argues that the state did not prove beyond a reasonable doubt that he entered into an agreement with another to manufacture methamphetamine and, therefore, the evidence was insufficient to support his conviction. We disagree.

In considering a claim of insufficient evidence, this court's review "is limited to 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). Factual inconsistencies or the *possibility* of innocence is not enough to overturn a guilty verdict, as long as the evidence makes those theories seem unreasonable. *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995). We assume that the evidence supporting the conviction was believed and the contrary evidence disbelieved. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). But a conviction "based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516

N.W.2d 545, 549 (Minn. 1994). The circumstantial evidence must form a complete chain that, in view of 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 guilty. *Id.* Because the jury is in the best position to evaluate circumstantial evidence, its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

To sustain appellant's conviction of conspiracy to manufacture methamphetamine, the state must have proved beyond a reasonable doubt at trial (1) that there was an agreement to commit this controlled-substance crime; and (2) that one of the parties to that agreement committed an overt act in furtherance of that conspiracy. Minn. Stat. § 609.175 (2002). Appellant does not dispute that the overt-act element was proved. And we conclude that there is sufficient circumstantial evidence here to support the jury's finding that appellant entered into an agreement to manufacture methamphetamine.

Proof of a formal agreement to manufacture methamphetamine is not required. *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002). "Conspiracy need not be established by direct evidence, but may be inferred from the circumstances." *State v. Watson*, 433 N.W.2d 110, 114-15 (Minn. App. 1988) (citation omitted), *review denied* (Minn. Feb. 10, 1989). "[P]resence of drug paraphernalia and methamphetamine . . . goes to [the defendant's] knowledge and perhaps an overt act, but says nothing about an agreement with another to manufacture methamphetamine." *Hatfield*, 639 N.W.2d at 377. The existence of an agreement "must be shown by evidence that objectively indicates an agreement." *Id.* at 376.

At trial, an agent with the Minnesota Bureau of Criminal Apprehension testified for the state that "because detection is an issue," methamphetamine manufacture is typically the result of an agreement among several individuals. And viewed in the light most favorable to the verdict, the state presented sufficient circumstantial evidence that an agreement existed here.

Aitkin police arrested appellant after receiving a call reporting that garbage bags outside of appellant's motel room contained methamphetamine-lab components. The officers discovered items that could be used to manufacture methamphetamine in the three bags; later they identified appellant's fingerprints on two of the items inside the bags. Inside appellant's room, the officers found traces of methamphetamine and other meth-related items. Although this evidence alone would not have been sufficient to indicate that an agreement existed, additional circumstances permitted the jury to infer its presence.

Appellant checked into the motel four days prior to his arrest. At check-in, appellant paid for his room and the room next door. Several individuals who had checked in earlier that day occupied the other room. The individuals next door had informed the motel owner that a friend would be coming to pay for their room. Although appellant claimed he paid for their room because they were friends of his stepsons who needed help, viewed in the light most favorable to the verdict, we must assume that the jury was not convinced by this explanation.

Moreover, it was undisputed at trial that the individuals from the room next door spent some time inside appellant's room. Appellant testified that these individuals did

not have permission to be in his room and suggested they had obtained a key from the front desk. But this suggestion was not confirmed by the motel owners. Again, viewed in the light most favorable to the verdict, we must assume the jury believed that appellant had permitted these individuals to be in his room.

Finally, appellant's own testimony provided probative evidence that an agreement existed. When appellant was impeached on cross-examination, a prior statement he gave Aitkin police after his arrest was read into the record:

> And [the occupants of the room next door] brought these bags [into my room] with f-cking Xylene and alcohol sh-t, and they had glassware and ephedrine pills and all the sh-t. They said, 'Well, if you don't mind if I cook up some.' I said 'no.' I said 'f-ck no. And you guys go – you guys not going to cook sh-t.' I threw the bags in my truck and said, 'You guys get out of here.' In fact, I said, 'Get out of the motel.' [. . .] So [then] they brought a bag of stuff into [my] hotel room; they brought three bags and all these chemical precursors to cook meth, right? That's what they said they were going to do is cook up some meth . . . . So I figure the best way to do it was to get rid of it myself . . . so what they did was took the bags and threw them in front of the motel room outside and hauled a-s in my truck.

Although appellant claimed that his statement was false because he was "trying to talk [himself] out of a bad situation," we must view the evidence in the light most favorable to the verdict. Thus, we must assume that the jury credited the part of appellant's statement that connected the occupants of the room next door to the meth materials and discredited the part when he claimed he refused to be involved. With deference to the jury's judgment, we conclude that the state met its evidentiary burden.

II.

Appellant argues that the district court abused its discretion in denying his motion to admit reverse-*Spreigl* evidence and that this error was not harmless beyond a reasonable doubt. We disagree.

Proposed alternative perpetrator and reverse-*Spreigl* exculpatory evidence, although related to a defendant's constitutional right to present a complete defense, are evaluated under ordinary evidentiary rules by a district court. *State v. Jones*, 678 N.W.2d 1, 15-16 (Minn. 2004). Absent an erroneous interpretation of the law, the question of whether to admit evidence is within the district court's discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). When reviewing evidentiary rulings, "our duty is to look to the record as a whole to determine whether, in light of the evidence therein, the district court acted arbitrarily, capriciously, or contrary to legal usage." *State v. Profit*, 591 N.W.2d 451, 464 n.3 (Minn. 1999) (quotation omitted). In the criminal context, the erroneous exclusion of evidence is prejudicial and a new trial is warranted unless it was "harmless beyond a reasonable doubt." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (quotation omitted). We must be convinced "beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (i.e. a reasonable jury) would have reached the same verdict." *Id.*

Alternative-perpetrator evidence, evidence that another party committed the crime, is admissible "if it has an inherent tendency to connect the alternative party with the commission of the crime." *Jones*, 678 N.W.2d at 16. Reverse-*Spreigl* evidence, evidence of the alternative perpetrator's other bad acts, "must first meet the threshold

requirement of connecting the alternative perpetrator to the commission of the crime with which the defendant is charged." *Id.* To safeguard the third party from "indiscriminate use of past differences" a "bare suspicion" is insufficient; there must be a direct connection between the third party and the charged crime. *State v. Richardson*, 670 N.W.2d 267, 280 (Minn. 2003) (quotation omitted); *see also* David McCord, *"But Perry Mason Made it Look So Easy!": The Admissibility of Evidence Offered by a Criminal Defendant to Suggest that Someone Else is Guilty*, 63 Tenn. L. Rev. 917, 921 (1996) (explaining that the "direct connection doctrine" provides that alternative-perpetrator evidence is not admissible "unless the defendant establishes, as a matter of preliminary fact, a direct connection between the [alleged alternative perpetrator] and the crime so as to raise more than a mere suspicion that the [alleged alternative perpetrator], not the defendant, was the perpetrator."). This prevents defendants from "throw[ing] strands of speculation on the wall [to] see if any of them will stick." *Richardson*, 670 N.W.2d at 280 (quotation omitted).

Here, the district court allowed appellant to testify that his stepsons threatened him and that they set him up. But the district court did not allow appellant to present reverse-*Spreigl* evidence regarding the stepsons. Appellant argues that the district court abused its discretion in not allowing reverse-*Spreigl* evidence. We disagree. Based on the evidence presented to the district court, we conclude that appellant did not meet the threshold *Jones* standard. *See* 678 N.W.2d at 16. Appellant's claims that his stepsons (1) had a motive to set him up; and (2) would have had access to items from appellant's house found in the garbage bags were insufficient to directly connect the stepsons to the

charged crime. Thus, on these facts, the exclusion of reverse-*Spreigl* evidence was within the district court's discretion. Moreover, even if the district court abused its discretion in excluding this evidence, because appellant failed to establish a direct connection between the alleged alternative perpetrators and the crime, we are convinced that a reasonable jury would have convicted appellant had the reverse-*Spreigl* evidence been admitted. Thus, we conclude that any error was harmless beyond a reasonable doubt.

Affirmed.