STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0971

State of Minnesota,
Respondent,

vs.

Joseph Hollins,
Appellant.

Filed August 11, 2009
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-CR-06-9472

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

Mark A. Ostrem, Olmsted County Attorney, 151 Southeast 4th Street, Rochester, MN 55904 (for respondent)

James McGeeney, Doda & McGeeney, P.A., 421 1st Avenue Southwest, Suite 301W, Rochester, MN 55902 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, 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 second-degree controlled-substance crime and second-degree conspiracy to commit controlled-substance crime on the grounds that the police officers lacked reasonable articulable suspicion to stop him and did not have probable cause to arrest him and that the district court abused its discretion by admitting *Spreigl* evidence of a prior conviction of a controlled-substance crime. We affirm.

FACTS

On October 24, 2006, Officers Jeffrey Sobczak and Steven Thompson of the Rochester Police Department were in a Shopko parking lot for an unrelated narcotics investigation. Officer Sobczak observed a white van enter the parking lot at a high speed, make a U-turn, stop behind an unoccupied black vehicle, and then park four spaces away from it. The two people in the white van were later identified as A.S., the driver, and appellant Joseph Vincent Hollins, the passenger. Another male, later determined to be J.G., was pacing back and forth in front of the Shopko while talking on his cell phone. About the same time that J.G. ended his call, A.S. got out of the van and started walking toward the Shopko. Officer Sobczak testified that A.S. then walked by J.G. and the two

> kinda went face to face, and as they got towards each other each of them reached out with their hand, made contact with their hands briefly. Both put their hands down. The white male, [J.G.] . . . kept walking past [A.S.]. [A.S.] turned around, was kinda behind him, and [J.G.] walked to that black car that they had been behind earlier.

Neither A.S. nor J.G. said anything during the brief encounter. Both looked straight ahead at all times. Based on their experience in law enforcement, and narcotics investigation specifically, both Officers Sobczak and Thompson believed that they had witnessed a drug deal. After A.S. returned to the white van and J.G. went to the black vehicle, Officer Sobczak stopped J.G. and Officer Thompson approached A.S. J.G. subsequently admitted to Officer Sobczak that he had just paid A.S. $100 for crack cocaine, that he had previously bought drugs from her, and that appellant had accompanied A.S. during prior drug transactions.

While Officer Sobczak was questioning J.G., Officer Thompson pulled his vehicle in front of the white van as it was beginning to leave. He identified himself as an officer as he approached A.S. and appellant. Officer Thompson recognized appellant from a previous drug investigation. Appellant was holding a total of $160 in cash. No other money was ultimately found in the white van or in A.S.'s possession. A third officer removed appellant from the van. After talking briefly with A.S., Officer Thompson conferred with Officer Sobczak, who told him what J.G. had said. Officer Thompson decided to arrest appellant based on the officers' observations, the information supplied by J.G., and the fact that appellant was holding the suspected proceeds from the sale of crack cocaine.

Appellant was charged with second-degree sale of a controlled substance, in violation of Minn. Stat. §§ 152.022, subd. 1(1), 609.05 (2006), and conspiracy to commit a second-degree controlled-substance crime, in violation of Minn. Stat. §§ 152.022, subd. 1(1), .096, subd. 1 (2006). He moved to suppress the evidence gathered as a result of the

stop. Following an omnibus hearing, the district court denied appellant's motion to suppress.

Before trial, respondent State of Minnesota gave appellant notice of its intent to admit evidence of his 2004 conviction of third-degree controlled-substance crime. The district court ruled that there was clear and convincing evidence that appellant had committed the prior crime, that the prior conviction was probative of intent and lack of mistake, and that the probative value of the prior conviction outweighed any prejudice. The district court gave the jury a curative instruction regarding the proper use of the evidence of appellant's prior conviction. The jury convicted appellant of both counts. This appeal follows.

D E C I S I O N

I.

Appellant contends that the officers did not have reasonable articulable suspicion to lawfully stop him. "In reviewing a district court's determinations of the legality of a limited investigatory stop, we review questions of reasonable suspicion de novo." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution "protect the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007) (quotation omitted). "[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v.*

Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85 (1968)). "Reasonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). The Minnesota Supreme Court has recognized that "the reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted).

Courts must consider "the totality of the circumstances when determining whether reasonable, articulable suspicion exists." *Flowers*, 734 N.W.2d at 251. When making a determination of reasonable articulable suspicion, an officer "draws inferences and makes deductions—inferences and deductions that might well elude an untrained person." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987) (quotation omitted). These may "include the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Id.*

Here, the officers had reasonable articulable suspicion to justify the stop of the white van in which appellant was a passenger. Officer Sobczak testified that he saw the white van enter the parking lot at a high speed, make a U-turn, stop briefly behind an unoccupied black vehicle, and then park four spaces away. Officer Sobczak observed A.S. get out of the van, walk toward J.G., touch hands with him without acknowledging him, and then walk back to her vehicle. Both officers, who had substantial narcotics

training, thought that a drug transaction had occurred when A.S. and J.G. touched hands. J.G. then went to the black vehicle that the white van had paused behind. Based on this undisputed record, we conclude that the district court did not err by concluding that the officers had a lawful basis to stop the white van.

II.

Appellant next argues that there was not probable cause to support his arrest.

> On appeal from a district court's finding that a police officer had probable cause to arrest, we make an independent review of the facts to determine the reasonableness of the police officer's actions. Absent clear error, the district court's finding that the officer had probable cause to arrest will not be disturbed.

State v. Prax, 686 N.W.2d 45, 48 (Minn. App. 2004), *review denied* (Minn. Dec. 14, 2004) (quotation and citation omitted).

"Probable cause to arrest exists where the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *State v. Laducer*, 676 N.W.2d 693, 697 (Minn. App. 2004) (quotation omitted). "In evaluating probable cause, a reviewing court must consider the totality of the circumstances." *Id.* "While probable cause to arrest requires more than mere suspicion, it requires less than the evidence necessary for conviction." *Id.*

Appellant contends that his case is analogous to *State v. Brazil*, in which the supreme court determined that there was insufficient evidence to establish probable cause to arrest the defendant. 269 N.W.2d 15, 19 (Minn. 1978). In *Brazil*, a police officer

received a tip that an individual who was driving a yellow Trans Am automobile would be selling heroin at a local restaurant. *Id.* at 16. The informant did not indicate if the individual would be alone or with someone. *Id.* Officers positioned themselves inside and outside the restaurant and waited. *Id.* at 16–17. After the drug sale occurred, officers went to the Trans Am, found the defendant sitting in the vehicle, observed a "furtive" movement, and arrested him. *Id.* at 17. The supreme court held that the district court properly found that there was no probable cause to arrest because the only thing connecting the defendant to the drug sale was his presence in the vehicle. *Id.* at 19.

But as the district court here noted, *Brazil* is distinguishable from this case. J.G. told an officer that he bought crack cocaine from A.S. not only on that day but also on prior occasions and that appellant always accompanied A.S. during the drug transactions. Appellant was holding $160 when the officer approached the van. There was no money found around A.S. A reasonable inference can be made that A.S. handed appellant the money that J.G. paid her after she reentered the van. We conclude that there is sufficient evidence in this record to support a probable-cause determination to arrest appellant.

III.

Finally, appellant contends that the district court abused its discretion by admitting evidence of his prior conviction of third-degree controlled-substance crime. Evidence of other crimes or bad acts is often referred to as "*Spreigl* evidence." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). Admission of *Spreigl* evidence lies within the sound discretion of the [district] court, and . . . will not be reversed absent a clear abuse of discretion." *State v. Spaeth*, 552 N.W.2d 187, 193 (Minn. 1996).

Under Minn. R. Evid. 404(b), *Spreigl* evidence is only admissible for such limited purposes as "motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). There is a five-step process to admit *Spreigl* evidence:

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

Id. at 685-86.

Appellant concedes the first three elements, but challenges the district court's analysis of elements four and five. "In assessing the probative value and need for the evidence, the district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant." *Id.* at 686 (quotation omitted). "This entails isolating the consequential fact for which the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *Id.*

The state sought to admit evidence of appellant's prior conviction of sale of a controlled substance to prove appellant's intent and lack of mistake on the day of this arrest. Appellant contends that the state failed to show and the district court failed to analyze how intent and lack of mistake were lacking. But as explained in *Ness*, a showing or analysis of the weakness of a particular part of the state's case is not required to admit *Spreigl* evidence. *Id.* at 689-90. Instead, a district court need only balance the

probative value of the evidence against the potential prejudice. *Id.* The district court here did that when it admitted the *Spreigl* evidence:

> And in reviewing the *Spreigl* case and other cases that have followed that, I am going to admit the evidence of this conviction and more specifically the probable cause portion of this Complaint with the appropriate cautionary instruction, both before it is received, after it is received, and then as part of the Court's final instructions. I believe that the information in that particular Complaint does go to the element of intent and, more specifically, shows that—or may show that [appellant's] conduct on the date for which he's standing trial here today was not a mistake or accident.
>
> In terms of the proof, clearly [appellant] has been convicted by proof beyond a reasonable doubt, so the element of proof of the *Spreigl* conduct by clear and convincing evidence has clearly been met, and I recognize . . . that there is always prejudicial effect when this type of evidence is admitted, but in looking at the State's case, and I'm not necessarily going to conclude that it is weak, I have certainly seen stronger cases in terms of some direct evidence, it is a circumstantial evidence case clearly, but in reflecting upon the conduct that occurred on December 4th of 2004, I believe that the probative value of this evidence outweighs any prejudicial effect and that the jury should have the benefit of this conduct in considering the elements of the offense for which [appellant] stands trial for today, so I am going to admit that.
>
> There is also an element of modus operandi as well in terms of some similarities in this conduct by virtue of [appellant] being in a location where drug transactions are going down and, therefore, his knowledge about drug dealing and in this case his potential involvement in the actual sale of cocaine.

The record supports the district court's decision to admit the *Spreigl* evidence to show appellant's intent and lack of mistake. Appellant did not testify. There was no direct evidence that appellant, as a passenger, participated in the exchange of drugs and

money between J.G. and A.S. Thus, the evidence of appellant's prior conviction of sale of a controlled substance is relevant to show that appellant was present due to his intent to sell drugs and that it was not a mistake of circumstances. Finally, the prejudicial effect of the prior-conviction evidence was limited by the cautionary instructions given by the district court. Therefore, we conclude that the district court did not abuse its discretion by admitting the *Spreigl* evidence.

Affirmed.