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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-192

State of Minnesota,
Respondent,

vs.

Thomas Allen Kleis,
Appellant.

Filed February 2, 2010
Affirmed
Huspeni, Judge[*]

Stearns County District Court
File No. 73-CR-08-5792

Lori Swanson, Attorney General, Paul R. Kempainen, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Marie Wolf, Interim Chief Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUSPENI, Judge

On appeal from his conviction of first-degree controlled substance crime, intent to sell methamphetamine, appellant argues that the circumstantial evidence is insufficient to prove that he intended to sell methamphetamine found during a search of his vehicle. Because the record does not reasonably support a theory that appellant possessed methamphetamine only for his personal use, we affirm.

FACTS

A police officer stopped a car driven by appellant Thomas Kleis in St. Joseph, Minnesota on suspicion that appellant's license had been cancelled as inimical to public safety. The officer had received a request from members of the Central Minnesota Drug and Gang Task Force, who were following appellant, to conduct the stop because appellant was a person of interest to them. The officer confirmed that appellant's license had been cancelled as inimical to public safety and arrested him for that offense. The officer and a Benton County Sheriff's deputy, acting as a task-force investigator, then searched appellant and his vehicle. They recovered from the vehicle: (1) an opened cigarette pack containing three packaged baggies of a substance, which later tested positive for methamphetamine; (2) a notebook with dollar amounts and phone numbers written in it; (3) a cup partly filled with soaked napkins, plastic baggies, and a liquid, which later tested positive for methamphetamine; (4) a cooler containing empty small baggies; (5) a fanny-pack pouch containing a digital scale; (6) a black leather pouch containing additional baggies; (7) a jacket on the passenger seat containing a plastic

baggy with what the deputy believed to be methamphetamine residue. Appellant was also carrying $1,660 cash on his person and $301 in his wallet.

The state charged appellant with one count of first-degree controlled-substance crime—possession of methamphetamine with intent to sell, in violation of Minn. Stat. § 152.021, subd. 1(1) (2006); one count of second-degree possession of methamphetamine, in violation of Minn. Stat. §152.022, subd. 2(1) (2006). The state dismissed an additional gross-misdemeanor count of driving after cancellation—inimical to public safety immediately before trial.

At trial, the deputy who searched appellant's vehicle testified that, based on his training and experience, small plastic baggies are typically used to divide and weigh controlled substances for sale, and a digital scale is commonly used for weighing and measuring controlled substances. He testified that the baggies found in the cigarette box, which contained methamphetamine, weighed over four grams apiece, just over the amount considered to be an "eight ball." He testified that the written dollar amounts in the notebook may represent amounts owed to a seller or distributor of drugs, and the written phone numbers were consistent with contacts who would purchase controlled substances. The deputy testified that some of the phone numbers, through further investigation, were determined to belong to known drug users.

The state introduced appellant's recorded statement to police. In that statement appellant told police that he paid approximately $1,200 per half an ounce of methamphetamine and that he had about $2,600 in his pocket when arrested. When asked how many "customers" he had, appellant replied, "[e]ight." The deputy testified

that he had not personally been to appellant's apartment and bought drugs. He testified that when another officer told appellant during the statement that the officer had "been there" and "done it," that officer was referring to a different investigation in which drugs were picked up at appellant's apartment complex and sold to a confidential, reliable informant. The deputy acknowledged that during the statement, appellant never admitted that he was in the business of selling methamphetamine.

Appellant testified on his own behalf that he knew there was methamphetamine in his car, that it belonged to him, and that it was for his personal use. He testified that he never intended to sell the drugs, and he had many small baggies because he could only buy them in large quantities. He testified that the money found on his person was from his own savings because he does not "deal with banks." He testified that the written amounts in the notebook did not relate to drugs, but showed debts that he owed from trips to the casino and owed to him for work he performed. He testified that when he told the officers that he had eight "customers", he was referring to customers for handyman jobs. He testified that he had the scale because he did not want to take all of the drugs with him at one time. He testified that he never sold drugs out of his apartment and he believed that police were lying to him during the statement about buying drugs at his apartment. He testified that he put the drugs in the cup to destroy them because he had quit using methamphetamine two days earlier. He did not dispute that the amount of methamphetamine found was 10.5 grams, as testified to by the forensic drug analyst.

The district court instructed the jury to disregard any statements made by the officers about any alleged drug purchases and that the officer's comments during their

questioning of appellant could not be used as evidence that appellant intended to sell drugs. During deliberations, the jury asked to hear appellant's recorded statement again. The court published the recording but reiterated its instruction to disregard comments made by the officers during the statement. The jury found appellant guilty of both counts, and the court sentenced him to 74 months, a presumptive guidelines sentence, on count one, first-degree controlled-substance crime. This appeal follows.

D E C I S I O N

On a claim of insufficient evidence, this court carefully reviews the record to determine whether a jury could reasonably reach a guilty verdict based on the record and the inferences drawn from the record, when viewed in a light most favorable to the verdict. *State v. Robinson*, 604 N.W.2d 355, 365-66 (Minn. 2000). Recognizing that the jury is in the best position to determine credibility, this court assumes that the jury believed testimony supporting the verdict and disbelieved evidence to the contrary. *State v. Henderson*, 620 N.W.2d 688, 705 (Minn. 2001); *see also State v. Doppler*, 590 N.W.2d 627, 635 (Minn. 1999) (stating that determining witness credibility is usually exclusively for the jury).

Appellant challenges his conviction of first-degree controlled-substance crime and sale of methamphetamine. In order to convict appellant of that offense, the state was required to prove beyond a reasonable doubt that appellant unlawfully sold a mixture of a total weight of ten grams or more containing methamphetamine. Minn. Stat. § 152.021, subd. 1(1) (2006). "'Sell' means . . . to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture." Minn. Stat. § 152.01, subd. 15a

(2006). To sell may also mean to offer, agree to perform, or "possess with intent to perform" these actions. *Id*.

Because the intent element of a crime involves a state of mind, it is generally proved circumstantially. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *review denied* (Minn. May 20, 2003). Circumstantial evidence is weighed the same as other kinds of evidence. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). But in reviewing a conviction based on circumstantial evidence, this "court also considers whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Stein*, ___ N.W.2d ___, ___, 2010 WL 26520, at *4 (Minn. Jan. 7, 2010). "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 guilt." *Id.* *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). When a court examines circumstantial evidence supporting a conviction, "possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008) (quotations omitted).

Appellant argues that the state did not prove beyond a reasonable doubt that he intended to sell methamphetamine because the circumstantial evidence is consistent with an alternative rational hypothesis that he possessed the methamphetamine only for his personal use. He stresses that he never admitted to police that he intended to sell drugs, and the deputy could not rule out the possibility that the drug paraphernalia could have

been for personal use. The record shows, however, that appellant possessed, in addition to 10.5 grams of methamphetamine: (1) a notebook with markings consistent with "pay and owe" sheets used by drug dealers, with phone numbers belonging to known drug users; (2) a digital scale, which the deputy testified is commonly used to weigh drugs for sale; (3) a large number of small plastic baggies, which the deputy testified are typically used to divide and weigh controlled substances for sale; and (4) a large amount of cash on his person, which is frequently found in the context of selling drugs. *See, e.g.*, *State v. Marshall*, 411 N.W.2d 276, 281 (Minn. App. 1987) (evidence of large amounts of cash supported findings that defendant was in "drug distribution hierarchy"), *review denied* (Minn. Oct. 26, 1987).

This court has held that "the record provid[ed] [a] sufficient factual basis to support [a] conviction" of first-degree possession with intent to sell methamphetamine when the state presented evidence that included a significant quantity of methamphetamine, packaging materials, a scale, and three cardboard bindles found on a co-conspirator's person. *State v. Heath*, 685 N.W.2d 48, 57 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). We concluded that the presence of "a number of [these] evidentiary items . . . would allow a juror to infer that the co-conspirators were dividing the methamphetamine for sale." *Id.* Here, because the state presented evidence that appellant possessed a large quantity of methamphetamine and various items relating to illegal drug sales, the jury could have rationally inferred that he was intending to divide and sell the methamphetamine. The circumstances proved do not support a reasonable inference that appellant did not intend to sell the drugs, but only possessed them for his

own use. The evidence taken as a whole makes appellant's alternative theory seem unreasonable, and the circumstantial evidence is sufficient to support his conviction.

Appellant argues in a pro se supplemental brief that the state presented no evidence that he was selling methamphetamine out of his apartment because police investigators had no specific knowledge that a purchase was made in that location. But the district court instructed the jury to disregard any evidence of a controlled buy allegedly made in appellant's apartment complex. We may presume that the jury followed this instruction. *State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002). Further, evidence of a controlled buy is not necessary to the jury's determination of guilt.

Affirmed.