STATE OF MINNESOTA
IN COURT OF APPEALS
A09-430

State of Minnesota,
Respondent,

vs.

Timothy Allen Hanson,
Appellant.

Filed February 23, 2010
Affirmed
Wright, Judge

Wright County District Court
File No. 86-CR-07-6374

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Brian A. Lutes, Assistant County Attorney, Buffalo, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges his convictions of first-degree controlled-substance crime, a violation of Minn. Stat. §§ 152.021, subd. 2a(a), 152.096 (2006) (conspiracy to

manufacture methamphetamine); fleeing a police officer in a motor vehicle, a violation of Minn. Stat. § 609.487, subd. 3 (2006); and transporting anhydrous ammonia in a container not designed for transport, a violation of Minn. Stat. § 152.136, subd. 2(a)(3) (2006), arguing that the evidence is insufficient to support the convictions. We affirm.

FACTS

On August 3, 2007, members of the Wright County Sheriff's Office executed a search warrant at 8101 Oakwood Avenue Northeast in Otsego. The property was owned by Robert Hanson, and driver's license records listed the address as the residence of appellant Timothy Hanson and appellant's siblings, Teresa Hanson and James Hanson.

Deputies Rebecca Howell, Kevin Olson, and Ryan Ferguson entered the garage because they had received information that a methamphetamine laboratory was located there. When Deputy Howell detected a strong chemical odor associated with the manufacture of methamphetamine, she ordered all officers out of the garage. Deputies Howell and Olson, both of whom were trained in dismantling clandestine laboratories, reentered and conducted the search. The search of the garage produced evidence of items used in the manufacture of methamphetamine, including glassware, Mason jars, a bucket, funnels, a cooler, a heating plate, cookware, police scanners, a blister pack for pills, a fan, coffee filters, and a hydrogen-gas generator.

Deputies also searched the three-bedroom residence. One bedroom was identified as Teresa Hanson's based on the contents of the room and her presence there when the deputies entered the residence. The search of that room produced smoking pipes, a bucket containing a substance that tested positive for ephedrine, and a police scanner

programmed to monitor radio communications of the Wright County Sheriff's Office. Another bedroom was identified as that of Darlene Hanson, who was not a subject of the investigation. A brief search of that room did not produce any evidence of criminal activity. After concluding that a tent in the yard was being used as James Hanson's living quarters, deputies identified the third bedroom as appellant's. In appellant's bedroom, deputies found methamphetamine wrapped in a coffee filter; a plastic bag containing stained coffee filters used in the methamphetamine-production process; "toot straws," which are portions of plastic drinking straws used to ingest methamphetamine; a list of local pharmacies; appellant's Minnesota driver's license; a traffic citation issued to appellant listing the Oakwood Avenue address; and paperwork regarding a traffic accident involving appellant.

Four days later, on August 7, 2007, Wright County Deputy Sheriff Jeremy Wirkkula was on patrol in a marked squad car at approximately 12:30 a.m. when he observed a vehicle approach the intersection where he was waiting to make a left turn. The vehicle initially approached with its left turn signal on but then changed its signal and turned right from the left-hand lane. As the vehicle turned and passed the squad car, Deputy Wirkkula saw the driver, who had a goatee and was wearing a dark baseball cap and a dark tee shirt. The vehicle that Deputy Wirkkula observed was between 15 and 30 feet away, there were street lights at the intersection, and he was paying attention to the vehicle and its driver because of the traffic violation.

Deputy Wirkkula followed the vehicle because of the traffic violation and because it appeared that the driver was attempting to avoid the squad car. While doing so, he

observed the vehicle cross the center line and the fog line numerous times. Deputy Wirkkula called for assistance, and Deputy Richard Halverson soon pulled in behind Deputy Wirkkula. After locating a portion of the roadway that was wide enough to safely stop the vehicle he was following, Deputy Wirkkula activated his overhead emergency lights. The vehicle pulled over and stopped. Deputy Wirkkula turned on the squad car's spotlight, illuminating the passenger compartment of the vehicle. As Deputy Wirkkula approached the vehicle, the driver looked over his shoulder at the deputy.

The vehicle then pulled back onto the highway and drove away. The deputies pursued the vehicle. After approximately 500 yards, the driver stopped the vehicle and fled on foot into a cornfield. Deputy Wirkkula retrieved his K9 partner from the squad car and ordered it to track the driver. The dog pursued the driver but lost his scent at a nearby river.

Unable to find the driver, the deputies returned to the location of the abandoned vehicle, where other officers had since arrived. The deputies searched the trunk and found appellant's driver's license and a certificate of title indicating that appellant owned the vehicle and that his address was 8101 Oakwood Avenue. The deputies also found a rental agreement for a storage locker in the name of appellant's girlfriend, a pair of two-way radios, and several small zip-top bags. In the front passenger seat of the vehicle, the deputies found a propane tank. The tank's original valve stem had been removed and a rubber hose had been attached in its place. There was blue corrosion around the nozzle, and an on-off switch had been added. Based on the tank's condition, the deputies suspected that it contained anhydrous ammonia, a substance used in the production of

methamphetamine. Their suspicions were later verified by a field-testing device. The field-test results were confirmed when the tank was emptied with the assistance of the local fire department.

Deputy Olson contacted the storage-unit company listed on the rental agreement found in the vehicle's trunk and confirmed that appellant's girlfriend continued to rent the unit. Appellant was listed as an authorized user. On the morning after the traffic stop, Deputy Olson obtained and executed a search warrant on the storage unit and recovered mail addressed to appellant, blister packs for hose clamps and pseudoephedrine, and a printout of pharmacy listings dated August 2, 2007. In September 2007, Deputy Olson and other officers executed a search warrant at the residence of appellant's girlfriend and recovered several notes, including one that stated: "Tue. 8/7: dumped car early a.m." Tuesday, August 7, was the date of the traffic stop and subsequent abandonment of the vehicle described above.

Deputy Olson visited pharmacies in Sherburne, Anoka, and Hennepin counties where he reviewed purchase logs for pseudoephedrine products that pharmacies are required to maintain. The purchase logs indicated that, in July 2007, there were 15 purchases by James Hanson; 4 purchases by Teresa Hanson, 9 purchases by appellant's girlfriend, and 12 purchases by appellant.

Appellant was charged with seven offenses: first-degree controlled-substance crime, a violation of Minn. Stat. §§ 152.021, subd. 2a(a), 152.096 (conspiracy to manufacture methamphetamine); fleeing a police officer in a motor vehicle, a violation of Minn. Stat. § 609.487, subd. 3, transporting anhydrous ammonia in a container not

designed for transport, a violation of Minn. Stat. § 152.136, subd. 2(a)(3); manufacture of methamphetamine, a violation of Minn. Stat. § 152.021, subd. 2a(a); attempted manufacture of methamphetamine, a violation of Minn. Stat. §§ 152.021, subd. 2a(a), 609.17 (2006); fifth-degree controlled substance crime, a violation of Minn. Stat. § 152.025, subd. 2(1) (2006) (possession of methamphetamine); and unlawful possession of a firearm, a violation of Minn. Stat. § 609.165, subd. 1b(a) (2006). Following a jury trial, appellant was convicted of the first three offenses and acquitted of the last four. This appeal followed.

D E C I S I O N

Appellant argues that the evidence is insufficient to support his convictions of each of the three offenses. When reviewing a challenge to the sufficiency of the evidence, we conduct a careful analysis of the record to determine whether the jury reasonably could find the defendant guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the verdict and disbelieved any contrary evidence. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence, could conclude beyond a reasonable doubt that the defendant was guilty of the offense. *Alton*, 432 N.W.2d at 756.

Appellant argues that each of his convictions relies on the jury's determination that he was the person driving the vehicle in which the anhydrous ammonia was found and that there is inadequate corroborating evidence of the eyewitness identification. The

identity of the perpetrator of a crime presents a fact issue for the jury's determination. *State v. Yang*, 627 N.W.2d 666, 672 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). Evidence of identification "need not be positive and certain." *State v. Gluff*, 285 Minn. 148, 150-51, 172 N.W.2d 63, 64 (1969). And a conviction usually "can rest on the uncorroborated testimony of a single credible witness." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). Corroboration is not required unless there is a single witness's identification of the accused made after only limited or fleeting observation. *State v. Outlaw*, 748 N.W.2d 349, 357 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). The trustworthiness of a witness's identification is determined by the witness's opportunity for a deliberate and accurate observation of the accused. *Gluff*, 285 Minn. at 151, 172 N.W.2d at 65. Because the jury is able to observe each witness's demeanor during testimony, it is the province of the jury, not that of an appellate court, both to determine witness credibility and to weigh the evidence. *Yang*, 627 N.W.2d at 672.

Although appellant contends that Deputy Wirkkula's observation of the driver was only fleeting and limited, thereby requiring corroboration, *see Outlaw*, 748 N.W.2d at 357, the record establishes that the deputy had ample opportunity to observe the driver on two occasions—once from 15 to 30 feet away at the intersection when appellant's vehicle passed Deputy Wirkkula, and once as the deputy approached the vehicle on foot during the traffic stop.

Deputy Wirkkula testified at trial that, when he observed appellant in traffic, the streetlights and stoplights provided sufficient lighting for his observation, the driver was

looking at the deputy as the vehicle passed the squad car, and the driver had a goatee and was wearing a dark-colored baseball cap and a dark-colored tee shirt. These conditions in which Deputy Wirkkula's observations were made and the details contained in Deputy Wirkkula's description support our conclusion that the observation was more than "fleeting or limited," *Outlaw*, 748 N.W.2d at 357, and that the deputy had the opportunity to engage in the kind of "deliberate and accurate observation" required for a reliable identification. *See Gluff*, 285 Minn. at 151, 172 N.W.2d at 65 (addressing reliability of identification). Other factors that support the reliability of Deputy Wirkkula's identification of appellant include the deputy's training and his seven years of experience as a patrol deputy, his particular focus on the driver because of the traffic violation, and his keen awareness of the driver's apparent attempt to avoid the squad car. Finally, appellant's trial counsel took the opportunity to conduct a voir dire of Deputy Wirkkula as to his identification, thereby focusing the jury's attention at a critical juncture in the trial on the very factors of darkness, distance, and manner of observation that a jury should consider when determining whether the identity element had been proved. Thus, the jury had ample opportunity to weigh this evidence in determining the witness's credibility regarding the identification.

The circumstances of Deputy Wirkkula's second opportunity to observe appellant also support the reliability of the identification evidence. Deputy Wirkkula was approximately 20 feet from the driver when the driver looked over his shoulder at the deputy. The squad car's spotlight was focused on the driver's side of the back window when the driver looked at the deputy. The quality of this observation, particularly in light

of Deputy Wirkkula's experience as a patrol deputy, is sufficiently reliable for the jury to find his identification of appellant credible.

Because these two opportunities permitted deliberate and accurate observation, corroboration of the identification is unnecessary. But if such corroboration were required, it exists. The note found in appellant's girlfriend's residence that described "dump[ing]" a vehicle on the same date on which the vehicle here was abandoned by the driver, as well as the driver's license, certificate of title, and rental agreement found in the vehicle, corroborates Deputy Wirkkula's identification of appellant. Based on our thorough review of the record, we conclude that the jury, acting with due regard for the presumption of innocence, could reasonably determine that the identification of appellant as the perpetrator of the offenses of conviction was reliable.

Appellant next argues that there is insufficient evidence to support his conviction of conspiracy to manufacture methamphetamine. For the offense of conspiracy to manufacture methamphetamine, the state must prove beyond a reasonable doubt that (1) the defendant entered into an agreement with another to manufacture methamphetamine and (2) there was an overt act committed by the defendant or another party to the conspiracy with the purpose of furthering the conspiracy. Minn. Stat. §§ 152.096, subd. 1, 152.021, subd. 2a(a); *see State v. Olkon*, 299 N.W.2d 89, 104 (Minn. 1980) (setting forth elements of crime of conspiracy). Direct evidence is not necessary to establish a conspiracy offense; rather, it may be inferred from the circumstances. *State v. Watson*, 433 N.W.2d 110, 114-15 (Minn. App. 1988), *review denied* (Minn. Feb. 10, 1989). The evidence is sufficient for a conviction of conspiracy if a jury could infer from

that evidence that the defendant acted with another to accomplish the agreed-upon criminal objective. *See id*. at 114.

When a conviction is based on circumstantial evidence, the sufficiency of that evidence warrants particular scrutiny. *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). Circumstantial evidence is sufficient to support a conviction when the evidence as a whole excludes all reasonable inferences except the guilt of the accused. *State v. Olhausen*, 681 N.W.2d 21, 26 (Minn. 2004).

Appellant contends that it is evident from his acquittal of the charges of manufacture and attempted manufacture of methamphetamine that the jury rejected the state's evidence that he was engaged in a conspiracy to produce the drug. We disagree. It is not necessary to prove the underlying offense beyond a reasonable doubt in order to prove the conspiracy. *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987); *see State v. St. Christopher*, 305 Minn. 226, 236, 232 N.W.2d 798, 804 (1975) ("[E]very criminal conspiracy is not an attempt. One may become guilty of conspiracy long before [one's] act has come so dangerously near to completion as to make [one] criminally liable for the attempted crime." (Alteration in original.)). Rather than rejecting the allegation that appellant was conspiring to manufacture methamphetamine, the jury could have concluded that, because appellant was not present with his siblings at the residence where the methamphetamine laboratory was discovered, the evidence was insufficient to prove beyond a reasonable doubt that he was actually manufacturing or attempting to manufacture methamphetamine at that

location. Such a conclusion does not preclude a determination that there was ample evidence to support appellant's conviction of conspiracy.

A conviction of conspiracy to manufacture methamphetamine merely requires proof that the accused entered into an agreement to manufacture methamphetamine and that the accused or another party to the conspiracy committed an overt act to further the conspiracy. *See Olkon*, 299 N.W.2d at 104 (setting forth elements of crime of conspiracy). The criminal objective of the agreement need not be fulfilled. Here, when viewed in the light most favorable to the verdict, the evidence of the conspiracy includes (1) appellant's sister's testimony that anhydrous ammonia was brought to a location *near* Otsego, establishing the possibility that there was a methamphetamine laboratory somewhere other than at the Otsego residence; (2) appellant's transportation of anhydrous ammonia near Otsego; (3) appellant's prior involvement in the manufacture of methamphetamine with his sister, the alleged co-conspirator, *see State v. Hatfield*, 639 N.W.2d 372, 377 (Minn. 2002) (identifying prior involvement with alleged co-conspirator as relevant factor in reviewing a conspiracy conviction); (4) pharmacy listings and an empty blister pack found in a storage unit to which appellant had access; and (5) appellant's 12 purchases of products containing pseudoephedrine. Although the jury did not find this evidence sufficient to convict appellant of manufacturing or attempting to manufacture methamphetamine at the Otsego residence, it is more than sufficient to support the jury's determination that appellant entered into an agreement with his siblings to manufacture methamphetamine and that he committed overt acts in

furtherance of the conspiracy by transporting the anhydrous ammonia and purchasing pseudoephedrine.

Although appellant maintains that there are alternative explanations for the presence of the tank of anhydrous ammonia in his vehicle that are more consistent with the jury's acquittals than appellant's participation in a conspiracy to manufacture methamphetamine,[1] this argument is unavailing. Circumstantial evidence can support a conviction when the evidence as a whole excludes all *reasonable* inferences except the guilt of the accused. *Olhausen*, 681 N.W.2d at 26. Appellant admitted knowing that transporting anhydrous ammonia is inherently dangerous. The jury, therefore, may have rejected as unreasonable any inference that he would transport it to another location for disposal unless he was involved in the conspiracy. And because the tank was next to him in the front passenger seat of the vehicle, the jury could have easily disposed of as unreasonable the explanation that appellant did not realize the tank was there. Although the presence of the anhydrous ammonia tank in appellant's car, which he was driving, is indeed circumstantial, when the evidence is viewed in its entirety, it excludes all reasonable inferences except that of appellant's guilt. Accordingly, there is ample evidence to support appellant's convictions.

Affirmed.

[1] These proffered explanations include that appellant was merely trying to dispose of the tank or that appellant drove the vehicle *without* realizing that the tank was in the front passenger seat and panicked when Deputy Wirkkula initiated the traffic stop.