STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1216

State of Minnesota,
Respondent,

vs.

Henry Leon Hutchinson,
Appellant.

Filed May 18, 2010
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR0860021

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

STAUBER, Judge

On appeal from his conviction of attempted second-degree controlled substance crime following a stipulated-facts trial, appellant argues that the evidence was insufficient

to sustain this conviction because the state failed to provide an unbroken link between the drugs found on the street and the items thrown from appellant's car. Because the evidence in the record was sufficient to sustain appellant's conviction, we affirm.

FACTS

In December 2008, appellant was arrested and charged with second-degree controlled substance crime and fleeing a peace officer in a motor vehicle. In return for an agreement to reduce the charge to an attempted controlled substance crime and to dismiss the fleeing charge, appellant agreed to submit the case for trial on stipulated facts. The stipulated facts consisted of the police reports, the complaint, and the chemical analysis of the drugs recovered on the day of appellant's arrest.

At the stipulated-facts trial, evidence was presented that on December 2, 2008, at 9:00 p.m., a confidential informant reported to Officer Tim Costello that a large amount of ecstasy was scheduled to be sold around 9:30 p.m. in the area of 41st Avenue North and Girard Avenue North in Minneapolis. Four unmarked patrol cars and one marked squad were sent to the area to conduct surveillance. Officer Costello and Officer Jason King picked up the informant and patrolled the area. Officer Costello alerted the other officers when the informant identified a vehicle, driven by appellant and carrying one passenger, as the one involved in the drug sale.

Officers Geoffrey Toscano and Mark Johnson, driving a marked squad, identified the vehicle driven by appellant and attempted to stop it by turning on their emergency lights as unmarked patrol cars attempted to block the vehicle. After the emergency lights

were activated, Officers Johnson and Toscano observed appellant's hand drop something onto the road from the driver's side window.

Sergeant David Pleoger witnessed the passenger exit the passenger side of the vehicle and exited his own unmarked vehicle to pursue him. Sergeant Pleoger had a clear line of sight to the passenger when he exited the vehicle and did not observe him discard anything. He then observed appellant drive his vehicle onto the curb, circumventing the blocking vehicles. A chase ensued. Sergeant Pleoger immediately noticed three "large baggies" lying in the middle of the street where appellant's vehicle had been.

Appellant was eventually apprehended. Officers Johnson and Toscano informed Officer Costello that they had observed appellant drop something from the driver's side window of his vehicle in the middle of the street on the 4200 block of Girard Avenue North, where the police blockade was initiated. Sergeant Pleoger then informed Officer Costello that he had collected three bags of suspected ecstasy that he found in the middle of the street on Girard Avenue North, exactly where the pursuit was initiated. He further stated that the bags were not by the curb and therefore could not have been dropped by the passenger.

The district court found appellant guilty of attempted second-degree controlled substance crime. This appeal follows.

D E C I S I O N

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 [fact-finder] to reach

the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Where the evidence is circumstantial it must "form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. DeZeler*, 230 Minn. 39, 52, 41 N.W.2d 313, 322 (1950). The possibility of innocence or a scenario in which the accused may not have committed the crime, are not reason enough for reversal "so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995); *see also State v. Anderson*, 379 N.W.2d 70, 78 (Minn. 1985) ("The evidence as a whole need not exclude all possibility that [another outcome was possible]. It must, however, make that theory seem unreasonable."). "Thus, to succeed in a challenge to a verdict based on circumstantial evidence, a convicted person must point to evidence in the record that is consistent with a rational theory other than guilt." *Ostrem*, 535 N.W.2d at 923.

Appellant argues that a link is missing in the chain of evidence presented by the state. Specifically, appellant argues that no one can be certain that what Officers Johnson and Toscano witnessed him dropping in the street were the bags of ecstasy. Thus,

appellant argues that because it is possible that the drugs were not his, there was not sufficient evidence to find him guilty beyond a reasonable doubt.

We disagree. The record reflects that Officers Johnson and Toscano witnessed appellant dropping something from the window of his car. The officers described the location where that item would be located to Officer Costello, and Sergeant Pleoger independently reported finding three bags containing suspected ecstasy in the same spot that Officers Johnson and Toscano had described. The area was heavily patrolled by police officers, none of whom reported any other activity that could have explained the presence of the drugs. Moreover, the passenger in the car was observed exiting the passenger side of the car and did not drop anything. And, as reported by Sergeant Pleoger, the passenger could not have dropped the ecstasy in the location where it was found because the passenger side of the vehicle was not in that location. There is nothing in the record to support a reasonable alternative explanation for the ecstasy being found in the middle of the street. Therefore, we conclude that the evidence is sufficient to sustain appellant's conviction of attempted second-degree controlled substance crime.

Affirmed.