STATE OF MINNESOTA
IN COURT OF APPEALS
A10-682

State of Minnesota,
Respondent,

vs.

John Fitzgerald Aaron,
Appellant.

Filed April 19, 2011
Affirmed
Wright, Judge

Clay County District Court
File No. 14-CR-09-1480

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Renée Bergeron, Special Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Bjorkman, Judge; and Collins, Judge.*

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

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 second-degree sale of a controlled substance, a violation of Minn. Stat. § 152.022, subd. 1(1) (2008), and second-degree sale of a controlled substance within a park zone, a violation of Minn. Stat. §§ 152.022, subd. 1(6), 152.01, subd. 12a (2008). Appellant argues that the district court erred by failing to suppress evidence of his identity and that the evidence was insufficient to support the guilty verdicts. We affirm.

FACTS

On March 8, 2009, West Fargo, North Dakota Police Officer Allen Schmidt worked undercover with a confidential informant (CI) to conduct a controlled buy of cocaine from an individual known to the CI as "J." J was later identified as appellant John Fitzgerald Aaron. Officer Schmidt searched the CI and the CI's vehicle for money or contraband and found none. Officer Schmidt and the CI traveled to a Moorhead residence where Aaron agreed to meet them. Outfitted with a recording and transmitting device, Officer Schmidt and the CI went inside the residence while Moorhead Police Officer Adam Torgerson engaged in audio and visual surveillance outside. Inside the residence, Aaron gave both Officer Schmidt and the CI a plastic-wrapped item in exchange for $400. Subsequent testing established that the items together contained approximately 2.4 grams of crack cocaine.

Later that day, Officer Schmidt advised Officer Torgerson that he had arranged a second meeting with Aaron to purchase cocaine. Again, equipped with a recording and

transmitting device, Officer Schmidt met Aaron in a parking lot in Moorhead. Aaron arrived in a Chevrolet Trailblazer, which was owned and driven by T.T. Officer Schmidt entered the Trailblazer, and Aaron directed T.T. to drive around while he packaged the cocaine. Shortly thereafter, Aaron exchanged the cocaine with Officer Schmidt for $500, and Officer Schmidt departed. Police later determined that the package that Officer Schmidt purchased from Aaron on this occasion contained 2.7 grams of cocaine.

The police did not intend to arrest Aaron that day for two reasons—because the investigation was ongoing and there were no marked squad cars in the area immediately after this drug sale. But in an unmarked car, Officer Torgerson and two other officers followed the Trailblazer from the location of the controlled buy. Officer Torgerson observed a broken taillight on the Trailblazer, which is a traffic violation. Officer Schmidt advised Officer Torgerson that, if there was probable cause to pull over the Trailblazer, a traffic stop should be conducted to identify the occupants. When the Trailblazer entered North Dakota, Officer Torgerson contacted dispatch to obtain assistance.

Aware that the occupants of the Trailblazer had been involved in a possible narcotics transaction, Fargo police officers conducted a traffic stop of the Trailblazer. T.T. consented to a search of the vehicle, and Officer Matthew Niemeyer spoke to the passenger and identified him as Aaron. Officer Niemeyer conducted a pat-down search of Aaron for weapons, but he did not search Aaron's pockets, shoes, or underwear. Neither money nor narcotics were recovered from the vehicle or Aaron. Aaron and T.T. were released without a traffic citation.

On April 9, 2009, Aaron was charged by complaint with second-degree sale of a controlled substance and second-degree sale of a controlled substance within a park zone. Aaron moved to suppress the evidence of his identification, arguing that it was obtained during an unlawful search and seizure because Aaron was a passenger and police unlawfully expanded the scope of the stop. He also moved to dismiss the charges for lack of probable cause. The district court denied Aaron's motions, finding that police "could have stopped the vehicle immediately after the controlled buy and arrested [Aaron] for a felony drug charge." The district court also found that the police would have inevitably discovered Aaron's identity by lawful means during the investigation.

Following a bench trial, the district court found Aaron guilty of both offenses and issued written findings pursuant to Minn. R. Crim. P. 26.01, subd. 1. The district court subsequently imposed a sentence of 78 months' imprisonment on Count 2, sale of a controlled substance in a park zone. Because Count 1 was part of the same behavioral incident, the district court declined to impose a sentence for that offense. This appeal followed.

D E C I S I O N

I.

Aaron argues that the district court erred by declining to suppress the identification evidence and by finding that Aaron's identity would have been inevitably discovered by lawful means. Whether the district court erred by declining to suppress evidence presents a question of law, which we review de novo. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The United States and Minnesota constitutions prohibit unreasonable searches

and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained during an unlawful search or seizure is inadmissible to support a conviction, unless an exception to this exclusionary rule applies. *James v. Illinois*, 493 U.S. 307, 311, 110 S. Ct. 648, 651 (1990) (stating that Supreme Court has carved out exceptions to exclusionary rule); *Harris*, 590 N.W.2d at 97 (stating that evidence obtained after unlawful seizure must be suppressed); *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (citing *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963)) (stating that fruit of illegal conduct is inadmissible), *review denied* (Minn. Dec. 11, 2001).

Aaron contends that, because he was a passenger in the Trailblazer, the search and seizure of him extended beyond the scope of the traffic stop and any identification evidence seized during the stop must be suppressed. Law-enforcement officers are permitted to conduct a brief investigatory stop if, at the time of the stop, there are specific and articulable facts and inferences that support a reasonable, particularized, and objective basis to suspect that the person stopped is involved in criminal activity. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). Officer Torgerson observed two felony drug sales on the same day involving the occupants of the Trailblazer, one of which occurred in the Trailblazer immediately preceding the stop. Officer Torgerson maintained surveillance of the Trailblazer after the drug sales and provided this information to the officers who searched Aaron and the Trailblazer. This collective knowledge provided the officers with a reasonable, articulable suspicion that Aaron was engaged in criminal activity and evidence of that criminal activity would be found; independent probable cause was not required. *See State v. Askerooth*, 681 N.W.2d 353,

364 (Minn. 2004) (requiring independent probable cause or reasonableness when intrusion was not closely related to initial justification for search or seizure); *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 555-56 (Minn. 1985) (recognizing that officer and dispatcher's collective knowledge may provide reasonable, articulable suspicion); *see also State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982) ("Under the 'collective knowledge' approach, the *entire* knowledge of the police force is pooled and imputed to the arresting officer for the purpose of determining if sufficient probable cause exists for an arrest.").

Because Aaron's identity was obtained during a valid, limited investigatory search supported by a reasonable, articulable suspicion that Aaron was engaged in criminal activity, the district court did not err by declining to suppress the identification evidence.[1]

II.

Aaron also argues that the evidence is insufficient to support his convictions. When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis to determine whether the fact-finder reasonably could find the defendant guilty of the charged offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the fact-finder believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. *Id.* We will not disturb the verdict if the fact-finder, acting

[1] In light of our ruling as to Aaron's suppression motion, we need not address the district court's application of the inevitable-discovery doctrine.

with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

To support a conviction of second-degree sale of a controlled substance, in this case, cocaine, the state must prove beyond a reasonable doubt that the defendant sold one or more mixtures containing cocaine, with a total weight of three grams or more, within a 90-day period. Minn. Stat. § 152.022, subd. 1(1). To support a conviction of second-degree sale of a controlled substance within a park zone, the state must prove beyond a reasonable doubt that the defendant sold any amount of a Schedule I or II narcotic drug, in this case, cocaine, within 300 feet or one city block of an area designated as a public park. *Id.*, subd. 1(6); *see* Minn. Stat. §§ 152.02, subd. 3(1)(d) (defining Schedule II narcotic drugs), 152.01, subd. 12a (defining park zone) (2008).

Officer Schmidt testified that on two occasions on March 8, 2009, he purchased a substance purported to be cocaine from a man identified as J. In a subsequent traffic stop, Officer Niemeyer determined that J was Aaron. At trial, Officer Schmidt identified Aaron as the person who sold him cocaine, and Officer Niemeyer identified Aaron as the passenger of the Trailblazer during the traffic stop. Officer Torgerson testified that the substances purchased from Aaron totaled 5.1 grams of cocaine. A report from the Bureau of Criminal Apprehension (BCA) and testimony from a BCA forensic scientist corroborated Officer Torgerson's testimony. Officer Torgerson also testified that the first cocaine purchase took place within both 300 feet and one city block of a public park. This evidence is more than sufficient to support Aaron's convictions.

Aaron argues that Officer Schmidt was not a credible witness. But assessing witness credibility is the exclusive province of the fact-finder. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). The district court implicitly found the police officers' testimony credible and expressly rejected Aaron's testimony as lacking credibility. Moreover, direct and circumstantial evidence corroborates Officer Schmidt's testimony. The cocaine purchased from Aaron and the recordings of both controlled buys were admitted in evidence. Although the recordings do not contain an express reference to the cocaine, this can be reasonably explained by the illegal nature of the transaction. Officer Schmidt testified that, based on his experience as a narcotics investigator, during a drug transaction, there is "[h]ardly any" explicit conversation about drugs. The police officers did not recover money or narcotics during their search of Aaron and the Trailblazer following the traffic stop. But Officer Niemeyer testified that he conducted only a pat-down search for weapons, and Officer Schmidt testified that narcotics dealers can hide money and drugs in many places, including concealed vehicle compartments, shoes, and underwear, all of which were beyond the limited scope of the search conducted here.

Citing *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978), and *State v. Gluff*, 285 Minn. 148, 172 N.W.2d 63 (1969), Aaron argues that reversal is required because there is a dearth of credible evidence supporting the guilty verdicts. But each of these cases is readily distinguishable. In *Langteau*, aspects of the victim's testimony remained unexplained, and there was no evidence other than the victim's testimony that connected the defendant to the crime. 268 N.W.2d at 77. In *Gluff*, the defendant's conviction was based solely on an uncorroborated identification made by a single unreliable eyewitness.

285 Minn. at 149, 172 N.W.2d at 64. By contrast, Officer Schmidt's testimony was corroborated; and the evidence implicating Aaron contradicted Aaron's testimony, connected Aaron with the crime, and contained no unexplained aspects.

When viewed in totality and in the light most favorable to the guilty verdict, the evidence amply supports Aaron's convictions. Accordingly, Aaron is not entitled to relief on this ground.

Affirmed.