STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1104

State of Minnesota,
Respondent,

vs.

Raelynn Marie King,
Appellant.

Filed May 7, 2012
Reversed
Cleary, Judge

Hennepin County District Court
File No. 27-CR-10-55052

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

Susan L. Segal, Minneapolis City Attorney, Judd E. Gushwa, Paula Kruchowski, Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

William M. Ward, Chief Hennepin County Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Cleary, Judge.

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

CLEARY, Judge

Appellant was found guilty of violating the open-bottle law under Minn. Stat. § 169A.35, subd. 3 (2008). Appellant challenges her conviction, arguing that there was

not sufficient evidence to support the guilty verdict. She argues that respondent did not prove that the bottle found in her car contained alcohol or that she possessed the bottle. Because we hold that the evidence was insufficient to support appellant's conviction, we reverse.

FACTS

On April 24, 2010, appellant Raelynn King was pulled over by two Minneapolis police officers after they witnessed her driving at a high rate of speed on Nicollet Avenue. During the stop, one of the officers noticed that appellant's eyes were "a little bloodshot and kind of glossed over." Appellant admitted that she had consumed four drinks earlier, so the officer conducted a field sobriety test to determine whether she was intoxicated. Based on the results of the field sobriety test and a portable breath test, which showed signs that appellant had been drinking, the officers arrested her and transported her to the chemical testing unit. Appellant submitted to a blood test and the results showed that her alcohol concentration was .07.

The second officer conducted a search of appellant's vehicle before it was impounded. During his search of the vehicle, the officer found a bottle underneath the passenger seat. At trial, the officer did not recall specifically what the bottle looked like, but testified that it was a bottle of brandy. The officer also could not remember whether the bottle had been opened or the seal was broken, but testified that "if we mentioned open bottle it probably would have been open." The officer then referred to the report he wrote for the violation and said, "in my report I stated it was a partially consumed bottle of brandy." The bottle itself was not presented at trial because the court granted

appellant's motion to exclude it for lack of sufficient foundation regarding the chain of custody.

Appellant was charged with third-degree driving while impaired in violation of Minn. Stat. § 169A.26, subd. 1(a) (Supp. 2009), and possessing an open bottle in a motor vehicle in violation of Minn. Stat. § 169A.35, subd. 3. The open-bottle law states:

> It is a crime for a person to have in possession, while in a private motor vehicle upon a street or highway, any bottle or receptacle containing an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor that has been opened, or the seal broken, or the contents of which have been partially removed.

Minn. Stat. § 169A.35, subd 3. The jury found appellant guilty of possession of an open bottle in a motor vehicle and not guilty of third-degree driving while impaired. This appeal followed.

D E C I S I O N

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

"While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain which, 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 that of guilt. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). A jury, however, is normally in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430. In assessing the inferences to be drawn from the "circumstances proved," the court examines whether there are "no other reasonable, rational inferences that are inconsistent with guilt." *Id.* at 330.

Appellant argues that there was not sufficient evidence to support her conviction under Minn. Stat. § 169A.35, subd. 3. Appellant argues that respondent did not present sufficient evidence that the bottle found in her car actually contained alcohol. The only evidence relating to the contents of the bottle that was presented at trial was the testimony of the officer who conducted the search of appellant's car. The officer remembered very few details about the bottle that he found in the car. He remembered finding it under the passenger seat, but did not remember what it looked like, whether it had been opened or if the seal was broken. He testified that his report on the incident stated that the bottle was a "partially consumed bottle of brandy." The officer did not give any reason why he thought it was brandy. He did not testify that he smelled the bottle or its contents. He did not say whether the bottle had a label that indicated it was brandy.

In cases where an officer must present a sufficient basis for determining whether an item possessed by an individual is illegal, the Supreme Court of Minnesota has depended on more than just a suspicion by an officer, and has noted specific facts supporting an officer's belief that an illegal substance is present. *See State v. Alesso*, 328 N.W.2d 685, 687 (Minn. 1982) ("[The officer] felt that the substance in the cups was liquor. He apparently based this on his experience, on the appearance of the liquid, and on the time and place of his observations."); *State v. Buchwald*, 293 Minn. 74, 81–82, 196 N.W.2d 445, 450 (1972) ("The experienced police officer's observation of hand-rolled cigarettes, which today so often contain unlawful marijuana and so seldom contain lawful tobacco, fortified by his actual knowledge that others among defendant's close associates contemporaneously possessed and used marijuana on the same premises, gave a degree of probability transcending mere suspicion."). Although *Alesso* and *Buchwald* addressed whether an officer had probable cause to conduct a search or seizure under the Fourth Amendment, they are comparable to the present case because the evidence presented in each case was more than a mere assertion by the officer that an item was illegal.

Here, respondent needed to present evidence sufficient to prove beyond a reasonable doubt that the bottle contained an alcoholic beverage, distilled spirit, or 3.2% malt liquor. Minn. Stat. § 169.35, subd. 3. The only evidence to support a guilty verdict was the statement from the police officer that the bottle contained brandy, read from the police report at trial. The officer did not explain how he reached that conclusion at the time of the traffic stop, and apparently had no independent recollection of the bottle

whatsoever when he testified. There was no testimony about the contents of the bottle other than the recitation from the police report that it was a "partially consumed bottle of brandy."

Appellant relies on *Plaster v. Comm'r of Pub. Safety*, in which the defendant's driver's license was cancelled when he allegedly violated an agreement that required his "total abstinence" from alcohol and controlled substances. 490 N.W.2d 904 (Minn. App. 1992). The defendant admitted to drinking Sharp's, which was labeled as "nonalcoholic beer." *Id.* at 905. No evidence was presented to prove that Sharp's contained either alcohol or a controlled substance. *Id.* at 906. The evidence presented consisted of the officer's observation of cans of alcoholic beer in the defendant's apartment, the officer's statement that he smelled alcohol on the defendant, and the officer's suspicion that the defendant had consumed alcohol. *Id.* at 906–07. The court noted that there was "*no proof* in this case that [the defendant] drank any intoxicating beverage. There is proof that the nonalcoholic beer he drank looks and tastes like beer. The Commissioner simply did not have any hard evidence that [the defendant] drank any intoxicant." *Id.* at 907. As a result, the court held that "[t]he Commissioner did not establish it had good cause to believe [the defendant] violated the condition of total abstinence . . . ." *Id.* at 908.

Plaster involved the alleged consumption of alcohol. Here the issue is the alleged possession of alcohol in an open bottle in a motor vehicle. To that extent, the cases are distinguishable. However, the facts here are similar to *Plaster* because of the *lack* of evidence presented.

Respondent relies on *State v. Gibbs*, in which the Minnesota Supreme Court upheld the defendant's conviction for selling liquor without a license. 109 Minn. 247, 123 N.W. 810 (1909). In *Gibbs*, the defendant argued there was not sufficient evidence because "the state offered proof only that the substance sold was beer, without more." *Id.* at 248, 123 N.W. at 810 (quotation marks omitted). However, the court found that there was "an abundance of testimony that the witnesses were familiar with the taste of beer, and knew beer, and that the liquor sold by defendant was beer." *Id.* at 248, 123 N.W. at 811. Here, that foundation is lacking. *Gibbs* is distinguishable because in this case there was no testimony from the officer about why he thought the bottle contained brandy at the time he wrote the police report. There was no evidence that he smelled brandy or read a label that identified the liquid as brandy, nor was there any other evidence or testimony to support the officer's statement. By the time he testified at trial he had no independent recollection of the bottle, and the bottle itself was excluded from evidence.

Based on the foregoing, we hold that a jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could not reasonably conclude that the bottle contained brandy. Because we reverse on this basis, we need not reach the issue of the sufficiency of the evidence to prove possession.

Reversed.