STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0786

State of Minnesota,
Respondent,

vs.

Michael James Schwartz, Jr.,
Appellant.

Filed April 13, 2020
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-CR-17-6019

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Melissa Manderschied, Bloomington City Attorney, Maureen S. O'Brien, Assistant City Attorney, Bloomington, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

A criminal charge of operating a motor vehicle with "any amount of a controlled substance listed in Schedule I or II" in the operator's body under Minn. Stat. § 169A.20, subd. 1(7) (2016), does not require proof that the operator knew or had reason to know that the controlled substance was in his body.

O P I N I O N

RODENBERG, Judge

In this direct appeal from his conviction for gross-misdemeanor driving with a controlled substance listed in schedule I or II in his body, appellant Michael Schwartz, Jr., argues that his guilty plea is invalid because it was inaccurate. He contends that his plea was inaccurate because he did not admit that he knew or had reason to know that his body contained a schedule I or II controlled substance. The plain language of Minn. Stat. § 169A.20, subd. 1(7), does not include an element that the motor-vehicle operator knew or had reason to know that the controlled substance was in his body. We decline to read such an element into the statute where the legislature chose not to include it in the definition of the crime. We therefore affirm.

FACTS

On October 15, 2016, Bloomington police responded to a call concerning an unresponsive male in a car. The reporting party stated that the car's motor was running and that the male in the car eventually awoke, got out of the car, and urinated on the road and in the front driver's seat of the car.

The responding officers observed that the person, later identified as appellant, had difficulty balancing and standing. He smelled of alcohol. After failing a series of field sobriety tests, appellant admitted to having consumed alcohol. Officers arrested him. A search of appellant's person incident to arrest revealed a glass pipe in appellant's pocket. A search of the car revealed an open container of alcohol.

Appellant submitted to a preliminary breath test, which showed a 0.04 alcohol concentration. Suspecting that appellant was under the influence of a substance other than alcohol, officers obtained a search warrant authorizing seizure of a sample of appellant's blood. Testing of appellant's blood later revealed the presence of 0.03 mg/L of amphetamine, a schedule II controlled substance. Appellant had two prior alcohol-related driving offenses.

The state charged appellant with operating a motor vehicle with any amount of a schedule I or II controlled substance in his body[1] in violation of Minn. Stat. § 169A.20, subd. 1(7). The state also charged appellant with two additional counts of driving while impaired, two counts of possessing drug paraphernalia, and one count of possessing an open bottle of beverage alcohol. As part of a plea agreement, appellant pleaded guilty to gross-misdemeanor operating a motor vehicle with any amount of a schedule I or II controlled substance in his body. The remaining charges were dismissed. In his plea testimony, appellant admitted that amphetamine had been present in his body, but he said nothing about whether he was aware of that fact at the time he was operating the car. The district court accepted the plea.

The district court sentenced appellant to 365 days in jail, with 235 days stayed conditioned upon appellant's compliance with the terms of a six-year probation.

This appeal followed.

[1] The statute exempts marijuana or tetrahydrocannabinols from the prohibited scheduled substances, but this case does not concern those scheduled substances.

ISSUE

Is appellant's plea of guilty to the offense of operating a motor vehicle in violation of Minn. Stat. § 169A.20, subd. 1(7), invalid because he did not admit in his plea testimony that he knew or had reason to know that his body contained a controlled substance listed in schedule I or II at the time he operated the motor vehicle?

ANALYSIS

On appeal, appellant argues that his guilty plea is invalid. Appellant did not challenge the validity of his plea in district court. The validity of a guilty plea may be challenged on direct appeal. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

A person has no absolute right to withdraw a guilty plea after it has been accepted. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But if a guilty plea is not "accurate, voluntary, and intelligent," it is invalid. *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). An invalid guilty plea may be withdrawn. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is not accurate if the defendant does not admit to facts showing that his conduct meets all of the elements of the charge to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2005).

Under Minnesota law, it is a crime for a "person to drive, operate, or be in physical control of any motor vehicle . . . when . . . the person's body contains any amount" of a schedule I or II controlled substance or its metabolite. Minn. Stat. § 169A.20, subd. 1(7). The charge requires the state to prove beyond a reasonable doubt that (1) the person drove, operated or was in physical control of a motor vehicle; and (2) at the time the person drove,

operated, or was in physical control of the motor vehicle, the person's body contained any amount of a schedule I or II drug or its metabolite. Minn. Stat. § 169A.20, subd. 1(7); *see* 10A *Minnesota Practice*, CRIMJIG 29.06 (2016) (listing elements of DWI "Driving While Under The Influence—Presence Of Controlled Substance").

At his plea hearing and in his plea petition, appellant admitted that he had been in control of a motor vehicle, that officers found a glass pipe in his pocket, and that appellant's blood seized by police after his arrest tested positive for amphetamine. Appellant does not contest that he was arrested in Hennepin County or that amphetamine is a schedule II controlled substance. *See* Minn. Stat. § 152.02, subd. 3(d) (2016) (listing amphetamine as a schedule II controlled substance). And appellant admits the existence of aggravating factors sufficient to make his offense a gross misdemeanor. *See* Minn. Stat. § 169A.03, subd. 3(1) (2016) (defining "aggravating factor").

Nevertheless, appellant contends that his guilty plea in invalid because, he argues, we should interpret the statute to require proof that the operator knew or had reason to know that a prohibited substance was in his body. Appellant's guilty plea included no acknowledgement that he knew or had reason to know that his body contained amphetamine.[2]

[2] This case does not present a situation where there is any record evidence that appellant ingested the controlled substance by the subterfuge of another person—the spiked-drink scenario. Here, appellant had a glass pipe of the sort used to smoke illicit substances. Nothing in the record suggests that any person other than appellant was the cause of the amphetamine in appellant's body. Appellant only argues that he did not admit awareness of amphetamine in his body at the time he was located in the car.

"Determining the presence or absence of an intent, or mens rea, element in a criminal statute calls for statutory interpretation." *State v. Rohan*, 834 N.W.2d 223, 226 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). Statutory interpretation is a question of law, which appellate courts review de novo. *State v. Ndikum*, 815 N.W.2d 816, 818 (Minn. 2012). Criminal offenses typically require both a volitional act and mens rea—a guilty mind. *State v. Moser*, 884 N.W.2d 890, 895 (Minn. App. 2016). "Statutes that dispense with mens rea and do not require the defendant to know the facts that make his conduct illegal impose strict criminal liability." *Ndikum*, 815 N.W.2d at 818 (quotation omitted).

Strict-liability crimes are generally disfavored, and the Minnesota Supreme Court has held that, "guided by the public policy that if criminal liability, particularly gross misdemeanor or felony liability, is to be imposed for conduct unaccompanied by fault, the legislative intent to do so should be clear." *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987). As such, because strict liability is disfavored, courts generally interpret statues that are silent concerning intent to contain a mens rea requirement. *See, e.g.*, *In re Welfare of C.R.M.*, 611 N.W.2d 802, 808 (Minn. 2000) (highlighting the principle that "in common law crimes and in felony level offenses mens rea is required").

Appellant contends that, because the statute under which he was charged does not expressly dispense with a mens rea element, we should read the statute to include such an element. Appellant proposes a required mental state that the motor-vehicle operator knew or had reason to know of a prohibited substance in the operator's body.

This court has held that impaired driving is a general-intent crime, the requisite mental state being "only a general intent to do the act." *State v. Anderson*, 468 N.W.2d 345, 346 (Minn. App. 1991). Although section 169A.20, subdivision 1(7), is silent concerning any mens rea element, the legislature provided an affirmative defense to drivers such as appellant in specific cases:

> If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20 subdivision 1, clause (7) (presence of Schedule I or II controlled substance), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

Minn. Stat. § 169A.46, subd. 2 (2016). An affirmative defense relieves the defendant of criminal liability even though the elements of the crime are admitted or proved.

The legislature having provided for an affirmative defense concerning schedule I or II controlled substances in limited circumstances demonstrates to our satisfaction that the absence of any specified mens rea element in section 169A.20, subdivision 1(7), concerning controlled substances was not an inadvertent omission. And appellant did not assert the legislatively provided affirmative defense.

"There are certain areas . . . where strict liability is accepted: public welfare offenses and crimes where the circumstances make it reasonable to charge the defendant with knowledge of the facts that make the conduct illegal." *Moser*, 884 N.W.2d at 897. Such offenses are not subject to the presumption that the legislature intended a mens rea requirement. *C.R.M.*, 611 N.W.2d at 806.

Public-welfare offenses "are in the nature of neglect where the law requires care, or inaction where it imposes a duty." *Morissette v. United States*, 342 U.S. 246, 255, 72 S. Ct. 240, 246 (1952). Motor-vehicle laws are of this sort. We have held that the crimes concerning open bottles of alcohol in motor vehicles and failing to provide proof of motor-vehicle insurance are public-welfare offenses. *State v. Loge*, 608 N.W.2d 152, 157 (Minn. 2000); *State v. Mayard*, 573 N.W.2d 707, 710 (Minn. App. 1998), *review denied* (Minn. Mar. 19, 1998). As discussed, we have held that intent to drive is the only mens rea required to prove impaired-driving offenses. *Anderson*, 468 N.W.2d at 346.

The United States Supreme Court has determined that the sale of dangerous drugs and possession of hand grenades are public-welfare offenses. *See United States v. Freed*, 401 U.S. 601, 609, 91 S. Ct. 1112, 1118 (1971) (providing that the lack of a mens rea requirement under the National Firearms Act was valid because possessing a hand grenade "is not an innocent act"); *United States v. Dotterweich*, 320 U.S. 277, 284, 64 S. Ct. 134, 138 (1943) (holding that no mens rea was required to punish a person for selling mislabeled drugs, "though consciousness of wrongdoing be totally wanting"); *United States v. Balint*, 258 U.S. 250, 254, 42 S. Ct. 301, 303 (1922) (holding that regulating the sale of "dangerous drugs" under the Narcotic Act did not contain a mens rea requirement even if sold "in ignorance of its character"). This statute falls into the public-welfare category.

We are mindful that the United States Supreme Court has at times interpreted statutory silence to nevertheless require proof of intent. It has held that a conviction for possession of an unregistered firearm requires proof of intent, noting that there is a "common experience that owning a gun is usually licit and blameless conduct," and that

half of American citizens own firearms. *Staples v. United States*, 511 U.S. 600, 613, 114 S. Ct. 1793, 1801 (1994); *see Ndikum*, 815 N.W.2d at 818-19 (applying the *Staples* reasoning to a charge under Minn. Stat. § 624.714 (2010) for prohibited possession of a pistol). Similarly, the Minnesota Supreme Court has held that possessing a knife on school property requires proof of intent, providing that "great care is taken to avoid interpreting statutes as eliminating mens rea where doing so criminalizes a broad range of what would otherwise be innocent conduct." *C.R.M.*, 611 N.W.2d at 809. Moreover, it noted that "knives as common household utensils are clearly not inherently dangerous." *Id.* at 810.

Here, the conduct proscribed by Minn. Stat. § 169A.20, subd. 1(7), is of the kind that courts have determined to be public-welfare offenses. Crimes involving open containers of alcohol in motor vehicles are of this sort. *See Loge*, 608 N.W.2d at 155-57. Unlike firearm ownership, possession of schedule I or II controlled substances without a prescription is not a "common experience." And the state having strictly prohibited the operation of a motor vehicle with a schedule I or II controlled substance in the operator's body would not "criminalize[] a broad range of what would otherwise be innocent conduct." *C.R.M.*, 611 N.W.2d at 809. The use or possession of a schedule I or II controlled substance without a prescription is already a crime. Minn. Stat. § 152.025, subd. 2 (2016). And operating a motor vehicle with the presence of any schedule I or II controlled substance in appellant's body creates an obvious risk to public safety. *See Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983) (stating that "[a]s a matter of public policy, D.W.I. laws are to be liberally construed in the public's favor"); *see also United States v. Smith*, 452 F.2d 404, 406 (8th Cir. 1971) (explaining that

"Congress determined that the unsupervised use of specified drugs endangers the safety of those traveling on the highway").

Section 169A.20, subdivision 1(7), is similar to the per se rule against driving with an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.20, subd. 1(5) (2016). Appellant cites no authority for the notion that the 0.08-or-more prohibition requires the state to prove that the driver in such a case must have been subjectively aware of his own alcohol concentration in order to be guilty of the crime. That would be absurd.

Because Minn. Stat. § 169A.20, subd. 1(7), provides for criminal liability without proof of knowledge or intent, because the statute is a public-welfare offense, and because the legislature specifically provided for a limited affirmative defense for drivers with schedule I or II controlled substances in the driver's body, we decline to read into the statute an element not included by the legislature in the definition of the crime. The state is not required to prove that the motor-vehicle operator knew or had reason to know that a controlled substance was in his body to prove a charge under Minn. Stat. § 169A.20, subd. 1(7). Although appellant did not acknowledge in his plea testimony that he knew or had reason to know of the amphetamine in his body, that does not render his guilty plea invalid.

We conclude that appellant's guilty plea is supported by a sufficient factual basis.

D E C I S I O N

Because Minn. Stat. § 169A.20, subd. 1(7), does not require proof that the operator knew or had reason to know that a schedule I or II controlled substance is in the operator's

body, appellant's guilty plea is not rendered inaccurate and invalid by his not having acknowledged knowing or having reason to know of the controlled substance in his body.

Affirmed.