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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-802**

State of Minnesota,
Respondent,

vs.

Chad Michael Storey,
Appellant.

**Filed April 19, 2011
Reversed
Lansing, Judge**

Clay County District Court
File No. 14-CR-09-944

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

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

Earl P. Gray, Mark D. Nyvold, St. Paul, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Wright, Judge; and
Connolly, Judge.

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

LANSING, Judge

Chad Storey appeals his conviction of conspiracy to commit a first-degree controlled-substance crime. Because the circumstantial evidence of Storey's connection to a sale of methamphetamine is insufficient to prove beyond a reasonable doubt that Storey entered into an agreement with another to sell methamphetamine and that an overt act occurred in furtherance of a conspiratorial agreement, we reverse his conviction.

F A C T S

Acting on an informant's tip that a car in a Moorhead church parking lot contained narcotics, Moorhead police detained the driver, Jessica Condon, and the passenger, Chad Storey. While waiting for a K-9 officer to arrive, a Moorhead detective questioned Condon and Storey individually and asked if there were any narcotics in the car. According to the detective's trial testimony, Storey said "it was not his vehicle, he wasn't sure if there was any, or didn't know of any—had no information that there was any narcotics in the vehicle." Condon told the detective that "she was the owner of the vehicle, and she eventually told [him] there was methamphetamine in the vehicle" and where the methamphetamine was located. After the K-9 unit arrived and examined the car, the police "pull[ed] the [passenger-side] vent out of the dash and reach[ed] in behind the vent" where they found a black vinyl case containing approximately twenty-three grams of methamphetamine, a marijuana pipe, and a methamphetamine pipe.

Storey was transported to the law-enforcement center and questioned by a narcotics detective who had assisted in the detention at the church. In the interview,

which was recorded and played at trial, Storey told the officer that he lived in St. Paul in a house with Condon's father, Condon's cousin, and Condon. He said that he shared a large room—two bedrooms made into one—with Condon and that they were friends but did not have a romantic relationship. He explained that Condon had told him that she was driving to Moorhead to visit friends and that he decided to go with her. He denied that he knew that there was methamphetamine in the car or that he knew that Condon intended to sell methamphetamine in Moorhead. He admitted that they had smoked marijuana in the car on the way to Moorhead. He also admitted that he, Condon, and Condon's friend KD had smoked methamphetamine in the hotel room where he and Condon were staying, and that afterwards, Condon and KD left the hotel for more than an hour. Storey said that Condon returned to the hotel "all upset."

When the officer asked Storey the point at which he found out that Condon was coming to Moorhead to sell drugs, Storey responded, "Um, probably when she was dealing with her girlfriend[] last night. I, I thought she was coming up here to visit but I don't know. . . . But I mean obviously you know, the obvious is the obvious, I guess . . . when she disappears and goes with [KD] somewhere for an hour or whatever." Although Condon did not tell Storey why she was upset when she returned, Storey said he thought that she was upset because "the deal went bad or something like that." Storey said that the next morning he wanted to go to St. Paul directly, but Condon wanted to go to the church parking lot to meet KD so Condon could talk with her about "the bad deal" the previous evening.

The narcotics detective also asked Storey about the pipes that were discovered with the methamphetamine in Condon's car and whether he knew where the drugs were hidden in the car. In responding to the question about the pipes, Storey said, "I guess you could say [they were] hers. . . . I didn't buy [th]em so. . . . I mean I'd use [th]em." He also said that he thought that Condon had hidden the drugs "in a, a vent, air vent thing," because "in the past, she showed [him] that was a stash place that she had."

The state charged Storey with conspiracy to commit first-degree controlled-substance crime in violation of Minnesota Statutes sections 152.021, subdivision 1(1), and 152.096. At trial, in addition to playing the audio recording of Storey's interview, the state presented testimony from the officer who had detained Condon and Storey in the church parking lot, the detective who questioned them in the parking lot, the K-9 officer, the detective who questioned Storey during the recorded interview, and a Bureau of Criminal Apprehension analyst who testified that the substance removed from the car vent was methamphetamine. The Moorhead officers testified about their procedures, the value of the drugs in Moorhead compared to the Twin Cities, and that female drug dealers were often accompanied by males who acted as enforcers.

Storey moved for judgment of acquittal after the state's case-in-chief. The district court denied Storey's motion, concluding that there was enough evidence to submit the case to the jury. After the district court denied his motion for judgment of acquittal, Storey testified in his defense.

Storey's testimony was generally consistent with his earlier statement to police. He testified that he did not know Condon was transporting drugs to Moorhead when he

decided to accompany her. He said Condon had told him she was going to Moorhead to visit friends and her mother. He also said he did not know that she had methamphetamine in the car and only began to suspect that Condon was selling methamphetamine when they were at the hotel and Condon left with KD for about an hour and returned upset. Storey acknowledged that it seemed odd that Condon wanted to talk to KD before they headed back to the Twin Cities. He admitted to smoking methamphetamine in the hotel and smoking a marijuana joint with Condon in the car on their way to Moorhead. Storey testified that he had no discussions with Condon or KD about drug transactions.

The jury convicted Storey of conspiracy to commit a first-degree controlled-substance crime. Storey appeals, arguing that the district court erred by denying his motion for judgment of acquittal, the evidence was insufficient to convict him of conspiracy to sell a controlled substance, and the district court committed plain error when it instructed the jury on the elements of a conspiracy. Because we conclude that the circumstantial evidence was insufficient to convict Storey of conspiracy to sell a controlled substance, we do not address his alternative grounds for reversal.

D E C I S I O N

To support a conviction for the crime of conspiracy to sell a controlled substance, the state must prove beyond a reasonable doubt (1) an agreement between two or more people to commit a crime and (2) an overt act in furtherance of the conspiracy. *See* Minn. Stat. § 152.096 (2008) (prohibiting conspiracy to commit controlled-substance crime); § 609.175 (2008) (identifying elements of conspiracy crime); *see also State v.*

Kuhnau, 622 N.W.2d 552, 556 (Minn. 2001) (discussing essential elements of controlled-substance conspiracy crime). Storey maintains that the evidence is insufficient to prove that he agreed with Condon to sell methamphetamine or that there was an overt act in furtherance of a conspiracy to sell methamphetamine. We analyze a claim of insufficient evidence by determining “whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude [beyond a reasonable doubt] that the defendant was guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004) (quotation omitted).

The state’s evidence must “objectively indicate[] an agreement.” *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002). But the nature of the offense of conspiracy entails secrecy, and the evidence to prove the conspiracy and the agreement may be direct or circumstantial. *State v. Burns*, 215 Minn. 182, 189, 9 N.W.2d 518, 521 (1943). A reasonable inference of an agreement may arise when evidence demonstrates “a common plan, concerted conduct, or prior involvement among the conspirators.” *Hatfield*, 639 N.W.2d at 377 (rejecting reasonableness of inference of agreement when record lacked evidence of common plan, concerted conduct, or prior involvement). The state acknowledges that there was no direct evidence of an agreement between Storey and Condon to sell the methamphetamine and, therefore, the objective indication of an agreement is based on circumstantial evidence.

Although circumstantial evidence merits the same weight as direct evidence, we must apply a stricter degree of scrutiny on review of convictions that depend on circumstantial evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). In

circumstantial-evidence cases, the evidence “must form a complete chain that, 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 guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). This test applies even when a single element, including the required mens rea, depends on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). We look both at “whether the inferences leading to guilt are reasonable” and whether “there are no other . . . rational inferences that are inconsistent with guilt.” *State v. Anderson*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted). The caselaw also requires that we give “no deference to the fact finder’s choice between reasonable inferences.” *Id.* at 329-30 (quotation omitted).

The state argues that the circumstantial evidence establishes that Storey and Condon had formed an agreement to sell methamphetamine in Moorhead and that the overt act in furtherance of the conspiracy was “the delivery of the [methamphetamine] to [KD].” In evaluating the sufficiency of the evidence, we assume that “the jury believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

The circumstantial evidence that the state produced to prove beyond a reasonable doubt that Storey agreed with Condon to sell methamphetamine in Moorhead could be summarized as: (1) background evidence focusing on the connection between Storey and Condon; (2) evidence of their mutual use of drugs; and (3) evidence of Storey’s awareness that Condon was selling methamphetamine to KD.

The state presented evidence that Storey and Condon lived in the same house and that both Storey and Condon were unemployed. Storey accompanied Condon on the trip to Moorhead and Moorhead police estimated that selling methamphetamine in Moorhead would be twice as profitable as selling it in the Twin Cities. Evidence of the friendship between Storey and Condon makes it equally likely that Storey would have accompanied Condon only on a social trip to visit her friends and her mother or that he could have shared in her drug-dealing enterprise. The selling price in Moorhead, although making it more likely that it was a “business” rather than a social trip for Condon, does not tend to show she would have shared this purpose with Storey. And Storey’s status as being only intermittently employed adds only marginally to the inference of guilt by increasing his financial motivation.

The state also presented evidence that Storey told the interviewing officer that he smoked marijuana with Condon in the car on the way to Moorhead; that Storey said that he did not buy the marijuana or methamphetamine pipes found in the search of the car, but admitted that he used them; that Storey said that Condon had previously told him where she hid drugs in her car; and that Storey was sitting in the passenger seat, which was the side of the car where the drugs were hidden. This evidence merely proved that Storey was a joint user of drugs—both marijuana and methamphetamine—with Condon. But even though a drug user may be more likely to sell drugs than a non-user, we do not find persuasive the inference that a drug user accompanying a drug dealer is necessarily involved in the dealer’s sale(s), particularly when the dealer is selling to a friend.

Finally, the state presented evidence that Storey smoked methamphetamine with Condon and KD at the hotel, that Storey told police and testified that he suspected Condon was selling the drugs after she left the hotel with KD for about an hour, and that Storey was a passenger in Condon's car the next morning when police detained them. This evidence establishes Storey's proximity to Condon's buyer, KD. But proximity to a buyer, and to the drug transaction, does not establish an agreement on Storey's part. The evidence demonstrates that Storey was in an unfamiliar city, dependent on his friend Condon for his social activities and transportation, and would likely have remained close to Condon regardless of whether she was dealing drugs.

Thus, on the whole, the evidence established that Storey was a friend of Condon's, a joint user of drugs with her, and essentially her guest on a trip to another city in which she sold drugs to one of her friends.

The prosecutor suggested in closing argument, that the jury should discredit Storey's testimony because he arguably minimized his knowledge and recollection of events. But even if we assume that the jury believed that Storey knew or should have been able to figure out more about Condon's actions than he readily admitted, this additional knowledge does not stand as a substitute for evidence establishing an agreement to sell methamphetamine. *See Kuhnau*, 622 N.W.2d at 556 (recognizing that criminal liability for conspiracy must be predicated on personal guilt). Association with a person who is engaged in an illegal activity does not suffice for proof of a conspiracy. *United States v. Moss*, 591 F.2d 428, 435 (8th Cir. 1979). The state does not identify a time or place at which the alleged agreement was formed, relying instead on the general

commonality of time and place. But the evidence that Storey accompanied Condon on the trip and used drugs with her does not establish that Storey knowingly conspired to sell methamphetamine.

The state had to prove a “sufficient link” between Condon’s drug dealing and Storey to establish an agreement. *Cf. State v. Jones*, 516 N.W.2d 545, 546-47, 549 (Minn. 1994) (noting that state had to prove “sufficient link between [the defendant] and his brother’s actions” in shooting the victim to prove defendant aided and abetted the assault). The same circumstantial evidence that the state argues in support of an agreement to conspire also supports the reasonable inference that Storey was a guest on a social trip, and although increasingly aware of what Condon was doing, did not agree with Condon to sell methamphetamine.

Storey was in the parked car with Condon when they were arrested while Condon was waiting for KD. But the state failed to introduce any evidence of statements or actions indicating that Storey was present in the car as a conspirator rather than as a passenger. Although a male’s presence may have served as a protective device for Condon, this inference is much weaker given that KD was Condon’s friend. Because the circumstantial evidence of Storey’s connection to Condon’s sale of methamphetamine to KD is insufficient to prove beyond a reasonable doubt that Storey is guilty of conspiracy to sell a controlled substance, we reverse.

Reversed.