STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0358

State of Minnesota,
Respondent,

vs.

Sherman Lee Williams,
Appellant.

Filed January 14, 2013
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27-CR-10-45697

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, III, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, 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

STONEBURNER, Judge

Appellant challenges his conviction of sale of a controlled substance, arguing that the district court erred by denying his pretrial motion to suppress evidence, discovered in what appellant asserts was an unlawful seizure, and that the evidence adduced at trial is insufficient to support the conviction. We affirm.

FACTS

In September 2010, Minneapolis police officers Scott Creighton and Todd Babekuhl were assigned to a community-response team as street-level narcotics investigators. While working in plain clothes in an unmarked squad car, Officer Creighton was contacted by a confidential reliable informant (CRI) who told Officer Creighton that he had just observed a narcotics seller with a large amount of packaged crack cocaine in the area of a nearby McDonald's and that he had observed the person selling the crack cocaine to individuals in the area. The CRI described the seller as a dark-skinned black male, 35 to 40 years old, with a large build, braided hair, black clothing, and black sunglasses, and said the seller was carrying a McDonald's bag and had the crack cocaine in his pants pocket. As the officers drove to the McDonald's, the CRI called to say that the suspect had left McDonald's and was walking north.

Four blocks north of McDonald's, the officers observed a person who matched the CRI's description of the suspect. They called a marked squad car to stop the man. Minneapolis police officer Adrian Infante responded and ordered the man to stop. The

man asked "why?" and Officer Infante told the man that he was under arrest and attempted to handcuff him as they struggled on the porch of a house. During the struggle, the man reached into his pants, pulled out two baggies, and threw them over the porch railing. The man was identified as appellant Sherman Lee Williams, and the baggies that were thrown over the porch railing were determined to contain cocaine and marijuana. An additional three baggies of marijuana were found on Williams's person at the time of the arrest.

Williams was initially charged with one count of second-degree possession of a controlled substance. Williams moved to suppress evidence of the narcotics, arguing that the police lacked probable cause to arrest him. The district court denied the motion. The state amended the complaint to charge one count of second-degree sale of a controlled substance and one count of fifth-degree sale of a controlled substance. A jury found Williams guilty of both charges. He was sentenced according to the sentencing guidelines, and this appeal followed.

D E C I S I O N

I. Motion to Suppress

On appeal from a district court's denial of a pretrial motion to suppress evidence, this court reviews its factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). "Findings of fact are not clearly erroneous if there is reasonable evidence to support them." *State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002).

The United States and Minnesota Constitutions guarantee the right of the people to be secure in their persons against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless arrest is reasonable if it is supported by probable cause. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause to arrest exists "when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime." *Ortega*, 770 N.W.2d at 150. The collective knowledge of the entire police force is imputed to the arresting officer for the purpose of determining if the requisite probable cause exists for an arrest. *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982).

"Whether the information provided by a confidential informant is sufficient to establish probable cause is determined by examining the totality of the circumstances, particularly the credibility and veracity of the informant." *State v. Ross*, 676 N.W.2d 301, 303-04 (Minn. App. 2004) (quotation omitted). Courts consider six factors to determine the reliability of confidential, but not anonymous, informants:

> (1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, "controlled purchase" is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

Id.

"Recitation of facts establishing a CRI's reliability by his proven 'track record[]' . . . does not by itself establish probable cause." *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). "The information obtained from the CRI must still show a basis of knowledge." *Id.* The basis of knowledge "may be supplied directly, by first-hand information, such as when a CRI states that he purchased drugs from a suspect or saw a suspect selling drugs to another." *Id.*

Williams concedes that the testimony of Officer Creighton at the *Rasmussen* hearing established the CRI's reliability. But Williams challenges the basis of the CRI's knowledge to establish probable cause to arrest. He contends that Officer Creighton's testimony that the CRI said that Williams "was observed" selling drugs demonstrates that the CRI lacked personal knowledge that Williams was selling drugs.

The district court found that the basis of the CRI's knowledge was supplied directly, by "firsthand observation of [Williams] selling drugs." This finding is supported by Officer Creighton's testimony that the CRI personally observed the suspect selling cocaine to individuals in the area. Nowhere in the transcript of the *Rasmussen* hearing does Officer Creighton use, as Williams asserts in his brief, the passive phrase "Williams was observed" selling drugs. Williams's argument that Officer Creighton's testimony negated the CRI's personal basis of knowledge is without support in the record. Although Williams is correct in pointing out that the CRI did not claim to have purchased drugs from Williams, did not tell Officer Creighton that he saw Williams "take money" from another person, and did not know where Williams was going when he left McDonald's, these facts do not make the district court's factual finding that the CRI

personally observed Williams selling drugs clearly erroneous. Because the record supports the finding that the CRI's knowledge came from his personal observation of Williams selling drugs, and because that information is imputed to Officer Infante, the district court did not err by concluding that probable cause existed to arrest Williams and did not err by denying Williams's motion to suppress evidence of the drugs.

II. Sufficiency of the Evidence

Williams testified at trial that he did not throw anything over the porch railing and that he only possessed the three baggies of marijuana found on his person at the time of the arrest. In a pro se supplemental brief, Williams argues in this appeal that he could not have reached into his pants to throw a bag of cocaine over the porch railing because his hands were full with a McDonald's bag and cup when Officer Infante stopped him. We construe this argument as a challenge to the sufficiency of the evidence to support his conviction of second-degree sale of a controlled substance.

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 the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "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).

To convict Williams of second-degree sale of a controlled substance, the state needed to prove beyond a reasonable doubt that Williams intended to sell a mixture containing cocaine with a total weight of three grams or more. Minn. Stat. § 152.022, subd. 1(1) (2010). The definition of "sell" includes "to possess with intent to" sell, and this is the theory under which the case was tried to the jury. *See* Minn. Stat. § 152.01, subd. 15a(3) (2010). Williams challenges the "possession" element.

The jury obviously credited the testimony of Officer Infante that he observed Williams take two baggies of narcotics out of his pants and drop them over the porch railing. Officer Babekuhl, who assisted in the arrest, testified that he located a baggie of cocaine beside the porch, right underneath where the arrest occurred in the very spot where Officer Infante testified that Williams dropped the baggies. This testimony is sufficient to prove that Williams possessed the cocaine found next to the porch. *See State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (stating that actual possession occurs when the defendant has contraband on his person), *review denied* (Minn. Jan. 16, 2001). The jury did not find credible Williams's testimony that he was unable to retrieve or drop the baggies because his hands were full. *See State v. Mems*, 708 N.W.2d 526, 531-32 (Minn. 2006) (explaining that the jury is the exclusive judge of credibility and is free to reject a witness's testimony); *Moore*, 438 N.W.2d at 108 (stating that the credibility of

the witnesses is for the jury to determine). The evidence is sufficient to support the conviction.

Affirmed.