STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0097

State of Minnesota,
Respondent,

vs.

Steve Albert Cooper,
Appellant.

Filed March 4, 2013
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-10-55468

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

A police officer searched Steve Cooper's car during a traffic stop after the officer smelled marijuana and observed Cooper attempting to conceal something while he

retrieved his insurance papers. The officer found marijuana and Ecstasy pills. Steve Cooper appeals from his conviction of fourth-degree possession of a controlled substance, contending that the district court did not receive any evidence sufficient to find that he possessed more than ten "dosage units" of Ecstasy. Because one pill is one dosage unit, we affirm.

FACTS

Steve Cooper squealed the tires of his car while leaving a parking lot in June 2010, getting the attention of Minneapolis police officer David Palmer. Other officers nearby stopped Cooper's car for careless driving. While approaching Cooper's car, Officer Palmer noticed that Cooper was "making quite a bit of movement to his right inside the vehicle." He also smelled marijuana and an alcoholic beverage while he spoke to Cooper through the window. When Cooper searched for his proof of insurance, Officer Palmer noticed that he opened and hastily shut the center console, leading the officer to believe that Cooper was trying to hide something. According to Officer Palmer, Cooper was "highly agitated," had "bloodshot, watery eyes," and "[h]is speech was slurred." Cooper had difficulty getting out of the car. The officer again smelled marijuana, both on Cooper and from his car. The officer searched the car, focusing on the area to the right of the driver's seat. He found a bag of marijuana in the center console and a bag containing 30 pills of the drug commonly known as "Ecstasy."

The state charged Cooper with fourth-degree possession of a controlled substance (possession of ten or more dosage units of Ecstasy), in violation of Minnesota Statutes section 152.024, subdivision 2(1) (2008). A forensic scientist from the Minnesota Bureau

of Criminal Apprehension testified at Cooper's trial that the 30 pills contained Ecstasy, but he could not state how much of the drug each pill contained or how many doses the bag contained. Cooper's counsel argued to the jury that it was impossible to determine how many dosage units are in the 30 pills. The district court instructed the jury that the elements of the charged crime included that "the defendant knowingly possessed ten or more dosage units of Ecstasy."

The jury found Cooper guilty, and the district court entered a judgment of conviction and sentenced him.

Cooper appeals from his conviction.

D E C I S I O N

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Cooper argues that we should reverse his conviction because the jury could not have reasonably found that he possessed ten or more dosage units of Ecstasy on the state's evidence. We analyze insufficient-evidence claims by determining whether the evidence and its reasonable inferences in a light most favorable to the guilty verdict support the verdict. *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quotation omitted). We will affirm if the jury, acting with due regard for the presumption of innocence and the requirement for proof beyond a reasonable doubt, could have concluded that the defendant was guilty. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Cooper argues that the jury could not have reasonably found that he possessed at least ten dosage units of Ecstasy because the jury received no evidence of what

constitutes a "dosage unit" under section 152.024. That section establishes that "[a] person is guilty of controlled substance crime in the fourth degree if . . . the person unlawfully possesses one or more mixtures containing . . . hallucinogen, it is packaged in dosage units, and equals ten or more dosage units." Minn. Stat. § 152.024, subd. 2(1) (2008). Whether the jury could have reasonably found Cooper guilty therefore depends on what constitutes a "dosage unit."

We review legal questions, like the interpretation of a statute, de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). We first determine whether the statutory language is unambiguous, allowing for only one reasonable interpretation. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

The only reasonable interpretation of section 152.024 is that one dosage unit equals one pill. Cooper argues that the state was required to provide expert testimony defining what constitutes a dosage unit because the statute does not expressly define the term. When a statute fails to expressly define a term, we use its "common and approved usage," including its usage in other statutes and cases. *State v. Hicks*, 583 N.W.2d 757, 759 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). The statute refers to packaging hallucinogenic mixtures into dosage units, implying that one packaged unit of the mixture, such as a pill, would constitute a dosage unit. And the fact that "dosage" modifies "unit" suggests that it is intended to designate a pill when the drug comes in pill form, since a pill is the smallest plausible unit. *See The American Heritage Dictionary* 1953 (3d ed. 1992) (defining "unit" as "[a]n individual, a group, a structure, or other entity regarded as an elementary structural or functional constituent of a whole"). This is

consistent with how the supreme court construed identical statutory language in section 152.023. *See State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011) ("Bauer committed the third-degree controlled substance crime when he sold 10 ecstasy pills to the CI."). And other Minnesota statutes include language that suggests that a pill is synonymous with a dosage unit. *See, e.g.*, Minn. Stat. § 152.02, subd. 6(d)(2) (2012) (limiting over-the-counter sales of "nonliquid" methamphetamine precursors sold in "blister packs" to "not more than two dosage units"); Minn. Stat. §§ 297D.01, subd. 3, 297D.07, 297D.08 (2012) (differentiating controlled substances sold in dosage units from those sold by weight).

Persuasive authority from other jurisdictions also weighs in favor of equating one pill with one dosage unit. Several states have expressly adopted this definition by statute. *See, e.g.*, Iowa Code Ann. § 453B.1(6) (West 2012); Fla. Stat. Ann. § 893.135(6) (West 2012); N.C. Gen. Stat. Ann. § 90-95(d)(2) (West 2012). None have defined a dosage unit differently. And the only state court we have found to have squarely faced the issue in the absence of a statutory definition held that "a dosage unit is one pill." *Zissi v. State Tax Comm'n*, 842 P.2d 848, 854 (Utah 1992).

We deem the statute clear and supported by other Minnesota statutes, and this conclusion is bolstered by analogous case law as well as the persuasive weight of authority from other jurisdictions. Against this, Cooper offers no alternative definition of a dosage unit. Instead, both at trial and on appeal, he raises the abstract contention that it *might* constitute something other than one pill. This conclusory approach is not persuasive. And he cites *State v. Palmer*, 507 N.W.2d 865 (Minn. App. 1993), *review denied* (Minn. Jan. 14, 1994), to argue that only expert testimony could establish the

meaning of dosage unit. This is also not persuasive. *Palmer* involved an idiosyncratic method for distributing LSD in sheets divided into eighth-inch squares. *Id*. The parties relied on the expert testimony in *Palmer* to differentiate a dosage unit from the entire sheet or from a given dosage strength. *Id.* at 868–69. Neither the holding nor reasoning of *Palmer* requires expert testimony to determine what constitutes a dosage unit when a controlled substance is distributed in pills. Cooper also relies on *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970), to support his argument that the state was required to prove by specific evidence that the 30 Ecstasy pills constitute at least ten dosage units beyond a reasonable doubt. But *Winship* addresses burdens of proof and says nothing of requiring specific evidence to define each element of an offense not specifically defined by statute. The district court instructed the jury that it had to find beyond a reasonable doubt that Cooper possessed more than ten dosage units of Ecstasy in order to find Cooper guilty. This satisfies *Winship*. In the absence of any alternative, or any requirement that an expert is needed in each case to establish one, we are satisfied that under section 152.024 one dosage unit is one pill.

Because the jury can rely on the plain meaning of the words in the statute to reasonably infer that one dosage unit equals one pill, we find that the jury did have sufficient evidence to find Cooper guilty of fourth-degree possession of a controlled substance.

Affirmed.