STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0644

State of Minnesota,
Respondent,

vs.

Troy Donald Emmons,
Appellant.

Filed March 20, 2017
Affirmed
Kirk, Judge

Isanti County District Court
File No. 30-CR-15-584

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

KIRK, Judge

Appellant Troy Donald Emmons challenges his conviction of fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014).

Appellant asserts that the district court erred when it admitted a lab report into evidence over his chain-of-custody objection, and the evidence was insufficient to support his conviction. Because the district court did not abuse its discretion when it concluded the lab report was admissible evidence and the record evidence supports appellant's conviction, we affirm.

FACTS

Testimony at appellant's two-day court trial established that, on August 18, 2015, at approximately 6:00 p.m., Officer Chad Meyer with the Isanti County Sheriff's Department observed a car parked at the Dalbo Wildlife Management Area. Officer Meyer testified that it seemed "peculiar" that the car was in the parking lot because it was not hunting season. Officer Meyer approached the car and saw a male, who appeared to be sleeping in the driver's seat. After waking the driver and speaking with him, Officer Meyer identified him as appellant. During their interaction, Officer Meyer noted that Emmons was missing teeth, had sunken cheeks, pinpoint pupils, and a nervous demeanor. Officer Meyer believed appellant's physical appearance and demeanor indicated methamphetamine use.

Officer Meyer asked appellant if he had ever used methamphetamine. Appellant responded that he had used methamphetamine in the past. Officer Meyer asked appellant if he could search the car, and Emmons stated that he could. During the search, Officer Meyer found a light bulb and a glass pipe wrapped in a paper towel in the glove box. Both items had a residue on them that field-tested positive for methamphetamine. Appellant was

arrested and charged with fifth-degree controlled-substance crime and driving after suspension.[1]

Officer Meyer testified that after he dropped appellant off for booking at the county jail, he brought the light bulb and pipe to the Isanti County Sheriff's Department and conducted a second field test on them "to make sure I wasn't getting any false positives." Officer Meyer then placed the evidence into evidence bags, "sealed them," placed the bags inside evidence locker number five, shut and locked the locker door, and put the key into the locker through the vent. Officer Meyer also filled out an evidence sheet that is given to an investigator.

The next day, Isanti County Investigator Robert Bowker, who is the custodian of the evidence room, received the evidence sheet left in his mailbox by Officer Meyer. He took the evidence from locker five and moved it to property room B, where he placed both items into file cabinet drawer four.

On August 24, Isanti County Deputy Sheriff Sean Hartneck asked Investigator Bowker to remove the items from the evidence room so he could perform additional testing on them. Investigator Bowker retrieved the items and watched Deputy Hartneck perform the tests. Investigator Bowker did not make any notations or logs for this event on the chain of custody report because the evidence "did not leave the building."

[1] The driving-after-suspension charge was dismissed by directed verdict after a court trial and is not relevant to this appeal.

During the first week of October, Investigator Bowker placed both items, which were separately packaged, into an envelope and mailed them to the Minnesota Bureau of Criminal Apprehension (BCA) for further testing. The BCA received the items on October 7. Michele Stachowiak, a BCA lab technician, testified that she received the items, removed them from the envelope, initialed each piece of evidence, and put them in the central drug vault. She also made a chain-of-custody report and a laboratory-analysis request.

According to the notations on the evidence and the BCA chain-of-custody report, on October 9, Julie Dornseif, a BCA employee who works in evidence intake, removed the items from the central drug vault and took them to the third-floor vault for testing. According to the evidence logs, the evidence was in her possession for seven minutes. Later that same day, BCA forensic scientist Rebecca Willis removed the items from the vault for testing. Willis testified that, in accordance with BCA policy, she tested only the glass pipe because it had the most visible residue on it. Willis performed a "confirmatory analysis" on the residue, which revealed the presence of methamphetamine. Willis did not scrape the residue to measure its weight. On October 21, Stachowiak placed the items back into a sealed envelope and mailed the items, along with an evidence-release form, back to the Isanti County Sheriff's Department.

The district court admitted the following items into evidence: the Isanti County Sheriff's Department custody report; the BCA laboratory-analysis request, custody report, and evidence-release form; and the envelope used to mail the evidence to the BCA and back to Isanti County. Deputy Meyer testified that he opened the sealed envelope

containing the evidence from the BCA. Deputy Hartneck and Dornseif did not testify at trial.

Appellant objected to the admission of the BCA laboratory report, asserting lack of foundation and authentication. Appellant argued that the state provided insufficient chain-of-custody evidence and he requested a not-guilty directed verdict. The district court noted its concerns on the record with the chain of custody and the lack of testimony regarding the procedure used by Deputy Hartneck to test the evidence for residue. But the district court concluded that "given the totality of the circumstances . . . the chain of evidence was appropriate, was not adulterated." It denied appellant's suppression motion and his request for a not-guilty directed verdict. The district court found appellant guilty of fifth-degree controlled-substance crime and sentenced him to 21 months in prison, with credit for 157 days in jail. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in admitting the BCA lab report.

A determination as to foundation or the chain of custody is an evidentiary ruling. *State v. Farah*, 855 N.W.2d 317, 321 (Minn. App. 2014), *review denied* (Minn. Dec. 30, 2014). "Evidentiary rulings are within the discretion of the district court and will not be overturned absent an abuse of that discretion." *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010); *see also McDonald v. State*, 351 N.W.2d 658, 660 (Minn. App. 1984) (holding that chain-of-custody issues are within the sound discretion of the district court), *review denied* (Minn. Oct. 16, 1984).

The chain-of-custody rule requires "the prosecution to account for the whereabouts of physical evidence connected with a crime from the time of its seizure to its offer at trial." *State v. Johnson*, 307 Minn. 501, 504, 239 N.W.2d 239, 242 (1976). "All possibility of alteration, substitution, or change of condition need not be eliminated in laying a chain-of-custody foundation." *State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (quotations omitted). The rule requires the district court to "be satisfied that, in all reasonable probability, the item offered is the same as the item seized and is substantially unchanged in condition." *Johnson*, 307 Minn. at 505, 239 N.W.2d at 242; *see also* Minn. R. Evid. 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."). If evidence is admitted at trial, any contrary speculation as to the evidence is weighed by the factfinder, but it does not affect its admissibility. *Id*.

Appellant argues that the district erred by admitting the BCA lab results in evidence because there were two gaps in the chain of custody that "raise a substantial concern" that the evidence could have been tampered with. Appellant points to the notation on the evidence bag dated August 24, 2015, but the state offered no evidence of who made the notation and there is no corresponding entry on the chain-of-custody sheet. Second, the BCA chain-of-custody report noted that Dornseif handled the evidence before it was tested, but she did not testify regarding this event or the procedures she used to handle the evidence.

The district court expressed concerns about the absence of testimony regarding the additional testing procedures used by Deputy Hartneck. Specifically, the district court was concerned about cross-contamination from the tool or tools that Deputy Hartneck used to conduct the additional test. The district court, however, ruled that the BCA lab report was admissible, concluding that the evidence had not been adulterated and that the chain of custody was appropriate.

State v. Bellikka is instructive. 490 N.W.2d 660 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992). In *Bellikka*, the appellant objected to the testimony of the forensic scientist who determined that glass fragments found on the appellant's clothes and those from a burglarized store were consistent because the state failed to establish a chain of custody when "two individuals who handled the evidence failed to testify in court." *Id*. at 663. The district court determined the evidence was admissible. *Id*. at 664. This court affirmed, first concluding that the glass was unusual enough that "a chain of custody was not required to authenticate the evidence." *Id*. This court also noted that even if the glass had not been identifiable because of its distinctive appearance, "the fact that everyone who handled the evidence did not testify is not fatal to establishment of a chain of custody." *Id*. This court reasoned that the items of evidence were sealed and labeled in separate containers and sent to the BCA together; further, the seals were unbroken when received by the BCA. *Id*. Moreover, the appellant offered no evidence of tampering. *Id*. This court concluded that the record established a chain of custody, and the district court did not abuse its discretion in admitting the evidence. *Id*.

Similarly to *Bellikka*, the items collected here were sealed in separate evidence bags and placed in the evidence room by Investigator Bowker. The record establishes that Investigator Bowker watched Deputy Hartneck perform tests on the evidence on August 24, 2015, which corresponds to the notation made on the evidence bags. The record further shows that Investigator Bowker placed the separately sealed pieces of evidence into an envelope and mailed them to the BCA, where Stachowiak received the still-sealed evidence envelopes. Willis testified that the envelopes were still sealed when she retrieved them for testing.

Appellant argues that *Bellikka* is inapplicable because he offered evidence of tampering, but appellant only speculates that tampering could have occurred when the evidence was in Deputy Hartneck's or Dornseif's possession.[2] We understand appellant's concern, and we note that trace amounts of evidence may be more easily altered, which makes this issue a close call. In the future, the state would be well-advised to make all parties who handle evidence in such cases available for testimony. But taking into account that not "all possibility of alteration" must be eliminated, and that the evidence, "including issues of credibility," must be viewed in the light most favorable to the proponent, the district court did not abuse its discretion in admitting the BCA lab report into evidence. *Hager*, 325 N.W.2d at 44–45.

[2] Appellant does not argue, for example, that there were anomalies in the procedure used by Hartneck or Dornseif. Rather, he asserts we do not know what procedures they used. The record evidence, however, establishes otherwise.

II. There was sufficient evidence to convict appellant of fifth-degree controlled-substance crime.

When considering a claim of insufficient evidence, this court conducts a thorough analysis of the record and determines if the evidence, viewed in the light most favorable to the conviction, was sufficient to convict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A verdict will be upheld where the evidence shows the factfinder, acting with due regard for the presumption of innocence and the necessity of the state providing proof of guilt beyond a reasonable doubt, could reasonably find the defendant guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). We assume the factfinder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We apply the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Appellant next argues that the state presented insufficient evidence to support his conviction for possession of methamphetamine because a test result from a substance that cannot be "collected or weighed" is not an "amount" under Minn. Stat. § 152.025, subd. 2(a)(1). The state asserts that appellate courts have previously rejected this argument.

This issue turns on the interpretation of Minn. Stat. § 152.025, subd. 2(a)(1). Statutory interpretation is an issue that this court reviews de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013). When a statute is unambiguous, the plain language of a statute will be enforced, and this court will not look into its spirit or purpose. *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013). When a person possesses "one or more

mixtures *containing* a controlled substance" classified as either a schedule I, II, III, or IV, they are guilty of a fifth-degree controlled-substance crime. Minn. Stat. § 152.025, subd. 2(a)(1) (emphasis added). Methamphetamine is a schedule II drug. Minn. Stat. § 152.02, subd. 3(d)(2) (2014). A mixture is "a preparation, compound, mixture, or substance containing a controlled substance." Minn. Stat. § 152.01, subd. 9a (2014). The state need not prove that an individual possessed a weighable amount of a controlled substance in order to prove guilt under Minn. Stat. § 152.025, subd. 2(a)(1). *State v. Traxler*, 583 N.W.2d 556, 562 (Minn. 1998).

The statute does not require an individual to possess a specific amount of a controlled substance. Minn. Stat. § 152.025, subd. 2(a)(1). Rather, it requires only that an individual possess a substance *containing* methamphetamine. *Id*. (emphasis added). Caselaw also establishes that a specific or weighable amount of a substance need not be present to uphold a conviction under Minn. Stat. § 152.025, subd. 2(a)(1). *Traxler*, 583 N.W.2d at 562. Here, appellant possessed a glass pipe containing a residue that tested positive for methamphetamine in the BCA laboratory analysis. In order to test a substance, it is axiomatic that an amount of that substance be present for testing. Thus, because the state provided evidence that appellant possessed a substance that tested positive for methamphetamine, appellant's argument fails.

Affirmed.