STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1172

State of Minnesota,
Respondent,

vs.

Joshua John Blanchard,
Appellant

Filed December 31, 2018
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Polk County District Court
File No. 60-CR-16-75

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Bradford Colbert, Assistant Public Defender, Frances Bates (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

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

JOHNSON, Judge

A Polk County jury found Joshua John Blanchard guilty of multiple drug-related offenses. He challenges the sufficiency of the evidence and his sentences. We conclude

that the evidence is sufficient to prove that Blanchard knowingly possessed a controlled substance. We also conclude that the district court did not err by imposing a sentence at the top of the presumptive range. But we conclude that the district court erred by imposing two sentences for a single behavioral incident. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

Blanchard's convictions arise from an investigation into a drug-dealing network in northwestern Minnesota. On the evening of January 10, 2016, D.K. and an unnamed woman were arrested in Becker County for possession of methamphetamine. D.K. told a law-enforcement officer that he had purchased the methamphetamine from Brock Altringer, who lives in East Grand Forks, and that Altringer possessed more methamphetamine at his home. Law-enforcement officers obtained and executed a warrant authorizing a search of Altringer's apartment. During that search, officers found a substantial amount of methamphetamine, a scale, and a large amount of cash.

After being arrested, Altringer cooperated with law enforcement by identifying his supplier as Robert Delacruz, who at that time lived in North Mankato. Altringer said that he had purchased methamphetamine from Delacruz on multiple occasions in recent months. Altringer also said that Delacruz did not personally deliver the methamphetamine to Altringer but, rather, used a courier known as "Jake from State Farm." Altringer made recorded telephone calls to Delacruz in which he sought to purchase methamphetamine. Delacruz agreed to sell approximately one pound of methamphetamine to Altringer for $15,000.

At some time between 11:00 a.m. and 7:00 p.m. on January 11, 2016, Blanchard, who then was living in Madelia, departed from the Mankato area in Delacruz's car. Blanchard drove to New Ulm to sell marijuana to J.D. Blanchard asked J.D. to drive to St. Cloud with him to pick up money that he was owed, and J.D. agreed. J.D. fell asleep and did not awaken until Blanchard had driven past St. Cloud, at which time Blanchard told J.D. that he was driving to East Grand Forks, without explaining why he was doing so.

The next morning, a law-enforcement officer was waiting for a drug courier at Altringer's apartment building in East Grand Forks. At approximately 6:00 a.m., the officer saw Blanchard and J.D. arrive in Delacruz's car. The officer saw Blanchard knock on the door of Altringer's apartment. The officer then arrested Blanchard. Officers later executed a search warrant on the car that Blanchard had driven to Altringer's apartment building. Inside the car they found more than 600 grams (or 1.32 pounds) of methamphetamine, the majority of which was found inside a briefcase on the back seat. The officers also found marijuana, drug paraphernalia, and documents bearing Delacruz's name inside the car. In addition, officers found a tablet computer, which appeared to belong to Blanchard and had recently been used to search the internet for ways to evade law-enforcement surveillance and for information related to methamphetamine. Officers obtained a warrant authorizing the taking of a urine sample from Blanchard, and the sample tested positive for methamphetamine and amphetamine.

The state charged Blanchard with (1) conspiracy to commit a first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2014); (2) first-degree sale of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 1(1);

(3) first-degree possession of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014); (4) failure to affix a tax stamp to a controlled substance, in violation of Minn. Stat. § 297D.09, subd. 1a (2014); and (5) third-degree driving while impaired, in violation of Minn. Stat. § 169A.20, subd. 1(7) (2014).

The case was tried to a jury over four days in January and February of 2017. The state called 13 witnesses. Blanchard did not testify and did not present any other evidence. The jury found him guilty of all charges.

Before sentencing, Blanchard filed a motion in which he argued that he should not be sentenced on both count 1 and count 2 because the two charges arose from a single behavioral incident. The district court denied the motion. In May 2017, the district court imposed concurrent sentences of 103 months of imprisonment on count 1, 132 months of imprisonment on count 2, 54 months of imprisonment on count 4, and one year of local incarceration on count 5. The district court did not impose a sentence on count 3.

Blanchard timely filed a notice of appeal. In December 2017, he moved to stay the appeal so that he could seek post-conviction relief. This court granted the motion. *See* Minn. R. Crim. P. 28.02, subd. 4(4). Blanchard asked the post-conviction court to modify his sentences pursuant to the Drug Sentencing Reform Act of 2016 and *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017). In February 2018, the district court reduced Blanchard's sentence on count 1 to 78 months of imprisonment and reduced his sentence on count 2 to 102 months of imprisonment. In March 2018, this court dissolved the stay of the appeal.

D E C I S I O N

I. Sufficiency of the Evidence

Blanchard first argues that the evidence is insufficient to sustain his convictions on counts 1, 2, 3, and 4 on the ground that the state did not prove beyond a reasonable doubt that he knowingly possessed a controlled substance. He does not challenge the evidence that he possessed the briefcase that contained methamphetamine; rather, he contends that the evidence is insufficient to prove that he knew that the briefcase contained a controlled substance.

When reviewing the sufficiency of the evidence for a conviction, we undertake "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We do "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." *Ortega*, 813 N.W.2d at 100.

A person is guilty of conspiring to commit a crime if he "does some overt act in furtherance of such conspiracy." Minn. Stat. § 609.175, subd. 2 (2014). A person is guilty of first-degree controlled-substance crime if "the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing . . . methamphetamine." Minn. Stat. § 152.021, subd. 1(1). A person also is guilty of first-degree controlled-substance

crime if "the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing . . . methamphetamine." *Id*., subd. 2(a)(1). A person is guilty of a crime if he distributes or possesses a controlled substance without affixing the appropriate tax stamps. Minn. Stat. § 297D.09, subd. 1a.

In this case, Blanchard challenges the sufficiency of the evidence that he knew that he possessed a controlled substance. "Knowledge is customarily determined from circumstantial evidence." *State v. Ali*, 775 N.W.2d 914, 919 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). If the state's evidence on one or more elements of a charged offense consists solely of circumstantial evidence, we apply a heightened standard of review. *See State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016); *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004); *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). In such a case, we apply a two-step test to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we identify the circumstances proved. *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). "In identifying the circumstances proved, we assume that the jury resolved any factual disputes in a manner that is consistent with the jury's verdict." *Id.* (citing *Andersen*, 784 N.W.2d at 329). Second, we "examine independently the reasonableness of the inferences that might be drawn from the circumstances proved" and then "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). We must consider the evidence as a whole rather than examine each piece in isolation. *Andersen*, 784 N.W.2d at 332.

At the first step of the analysis, we note that the state proved the existence of the following circumstances: Delacruz, who lived in North Mankato, had previously sold controlled substances to Altringer. Delacruz uses a courier to deliver controlled substances to purchasers. Altringer called Delacruz seeking methamphetamine, and Delacruz agreed to sell him approximately one pound of methamphetamine. Blanchard drove Delacruz's car from the Mankato area to Altringer's apartment building in East Grand Forks. The car contained approximately one pound of methamphetamine inside a briefcase on the back seat. Law-enforcement officers found methamphetamine, marijuana, and drug paraphernalia in the passenger area of the car. Blanchard had recently used his tablet computer to search the internet for ways to evade law-enforcement surveillance and for information related to methamphetamine.

At the second step of the analysis, we must "determine whether the circumstances proved are consistent with guilt." *Moore*, 846 N.W.2d at 88 (quotations omitted). The state asked the jury to infer from the circumstantial evidence that Blanchard knew that there was a controlled substance in the briefcase. That is a reasonable inference. As a matter of law, "The presence of a controlled substance in a passenger automobile permits the fact finder to infer knowing possession of the controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile." Minn. Stat. § 152.028, subd. 2 (2014). In addition, the inference urged by the state simply is a common-sense inference in light of the state's strong evidence that Delacruz deployed Blanchard as a courier to deliver methamphetamine to Altringer's apartment. The supreme court and this court have upheld other convictions based on similar evidence. *See, e.g.*,

State v. Maldonado, 322 N.W.2d 349, 353 (Minn. 1982) (concluding that evidence was sufficient to prove that defendant knowingly possessed marijuana found under driver's seat of truck driven by him); *Porte*, 832 N.W.2d at 308 (concluding that evidence was sufficient to prove that defendant knowingly possessed crack cocaine found in center glove compartment of vehicle driven by him).

At the second step of the analysis, we also must "determine whether the circumstances proved are . . . inconsistent with any rational hypothesis except that of guilt." *Moore*, 846 N.W.2d at 88 (quotations omitted). Blanchard contends that the circumstances proved are consistent with a rational hypothesis that he did not know what was inside the suitcase. He contends that the briefcase was locked so that he was unable to see its contents, but the state introduced evidence that the briefcase was actually unlocked when it was searched. Blanchard also notes that J.D. was not aware that a controlled substance was in the car, but that fact has little relevance to Blanchard's knowledge because Blanchard could have simply refrained from telling J.D. about the methamphetamine. Blanchard does not attempt to provide any alternative reason why he would be present at Altringer's apartment in East Grand Forks in Delacruz's car. In short, Blanchard has not identified a rational hypothesis that is consistent with the circumstantial evidence and inconsistent with guilt.

Thus, the circumstantial evidence is sufficient to support the jury's verdicts on counts 1, 2, 3, and 4.

II. Multiple Punishments

Blanchard next argues that the district court erred by imposing sentences on both count 1 and count 2 on the ground that the offenses arose from a single behavioral incident.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2014). This statute "generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident." *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). If all offenses at issue are intentional crimes, "we determine whether the crimes were part of a single behavioral incident by considering (1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (citations and quotations omitted). In making this determination, we consider the relationship of the offenses to each other. *See State v. Bauer*, 792 N.W.2d 825, 829 (Minn. 2011). Determining whether multiple offenses are part of a single behavioral incident is not a mechanical test but requires an examination of all the facts and circumstances. *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997); *State v. Carr*, 692 N.W.2d 98, 101 (Minn. App. 2005). The state bears the burden of proving by a preponderance of the evidence that the conduct underlying multiple offenses was not part of a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000). This court applies a *de novo* standard of review to a district court's decision as to whether multiple offenses arose from a single behavioral incident. *Bakken*, 883 N.W.2d at 270.

In this case, the district court concluded that the conspiracy offense in count 1 and the sale offense in count 2 were not a single behavioral incident. The district court reasoned that the conspiracy offense consisted not only of Blanchard's intent to sell the methamphetamine but also his obtaining and transporting it. The district court further reasoned that "the final result of the sale [was] not relevant to the underlying conspiracy."

We begin by considering the first factor, "whether the offenses occurred at substantially the same time and place." *See Bakken*, 883 N.W.2d at 270 (citation and quotation omitted). Blanchard does not contend that the two offenses occurred at substantially the same place. Because North Mankato is approximately 350 miles from East Grand Forks, it is obvious that the two offenses did not occur at substantially the same place. Blanchard contends that the offenses occurred at substantially the same time because Altringer agreed to purchase methamphetamine from Delacruz on January 11, 2016, and the methamphetamine was delivered the next day. But those two events were separated by at least 11 hours. Such a gap in time precludes a determination that the two offenses occurred at substantially the same time. *See State v. Stevenson*, 286 N.W.2d 719, 720 (Minn. 1979) (concluding that multiple offenses separated by approximately five hours did not occur at substantially same time); *State v. Bishop*, 545 N.W.2d 689, 692 (Minn. App. 1996) (concluding that multiple offenses separated by three hours did not occur at substantially same time); *State v. Wurst*, 350 N.W.2d 482, 483 (Minn. App. 1984) (concluding that multiple offenses separated by approximately one hour did not occur at substantially same time).

We next consider the second factor, "whether the conduct was motivated by an effort to obtain a single criminal objective." *See Bakken*, 883 N.W.2d at 270 (quotation and citation omitted). Blanchard contends that "the two offenses were both motivated in an effort to obtain one single criminal objective—to deliver methamphetamine to Polk County." We agree. The purpose of the first offense, the conspiracy, was to deliver methamphetamine to Altringer, and that is the second offense. The relationship between the two offenses is so intertwined that the complaint alleged essentially the same conduct with respect to both charges. The nature of the two offenses compels a determination that the two offenses were motivated by a single criminal objective. *See Carr*, 692 N.W.2d at 102 (concluding that possession of methamphetamine and manufacturing of methamphetamine were motivated by same criminal objective).

In most cases applying the single-behavioral-incident principle, the two factors align to indicate the same conclusion. Either both factors indicate that multiple offenses arose from a single behavioral incident. *See, e.g, State v. Jones*, 848 N.W.2d 528, 533-34 (Minn. 2014); *State v. Infante*, 796 N.W.2d 349, 356-57 (Minn. App. 2011). Or both factors indicate that multiple offenses did *not* arise from a single behavioral incident. *See, e.g.*, *Bakken*, 883 N.W.2d at 270-71; *Bauer*, 792 N.W.2d at 828-31; *State v. Bookwalter*, 541 N.W.2d 290, 295-96 (Minn. 1995). This case is atypical because one factor points in one direction while the other factor points in the other direction. To resolve the issue, we observe that the supreme court has stated that the "essential ingredient" of the single-behavioral-incident test is whether a defendant's conduct was motivated by a single criminal objective. *See State v. Johnson*, 141 N.W.2d 517, 525 (Minn. 1966). By putting

more emphasis on the second factor than the first factor, we conclude that the two offenses arose from a single behavioral incident. *See State v. Huynh*, 504 N.W.2d 477, 483 (Minn. App. 1993) (concluding that multiple offenses occurring over several months arose from single behavioral incident for purposes of section 609.035 because defendant's "criminal objective was the same" throughout), *aff'd*, 519 N.W.2d 191 (Minn. 1994); *see also State v. Meland*, 616 N.W.2d 757, 760 (Minn. App. 2000) (concluding, on appeal from pre-trial ruling, that multiple offenses occurring at the same time and place but not motivated by single criminal objective did *not* arise from single behavioral incident).

Thus, the district court erred by imposing two sentences on counts 1 and 2.

III. Duration of Sentence

Blanchard last argues that the district court erred by imposing a sentence that is the longest presumptive sentence allowed by the sentencing guidelines without an upward durational departure. He contends that the district court should have imposed a shorter sentence within the presumptive range on the grounds that he had only a small role in the drug transaction and that Delacruz was the primary actor and the "drug kingpin."

The Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2015). For any particular offense, the presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent. Guidelines 1.B.13 (2015). The applicable cell in the applicable grid typically states a "presumptive range," which spans durations that are "15 percent lower and 20 percent higher than the fixed duration displayed in each cell." Minn. Sent. Guidelines 1.B.13.c (2015). "[A]ny sentence within the presumptive

range . . . constitutes a presumptive sentence." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). As a consequence, "This court will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range." *Id.*

The district court initially sentenced Blanchard to 103 months of imprisonment on count 1 and 132 months of imprisonment on count 2. Both sentences were at the top of the presumptive ranges prescribed by the 2015 guidelines. Minn. Sent. Guidelines 4.A (2015). After Blanchard moved to modify his sentences to take advantage of the reduced sentences arising from the Drug Sentencing Reform Act of 2016, the district court resentenced him to 78 months and 102 months respectively, sentences that are at the top of the presumptive ranges prescribed by the 2017 guidelines. Minn. Sent. Guidelines 4.C (2017). Blanchard contends that the district court erred on the ground that it "did not provide any rationale for sentencing" him as it did. But the district court was required to impose a sentence within the presumptive range "unless there exist identifiable, substantial, and compelling circumstances to support" a downward durational departure. Minn. Sent. Guidelines 2.D.1 (2015). Blanchard has not cited any caselaw stating that a district court must state a reason for imposing a particular sentence within the presumptive range instead of a lower sentence within the presumptive range, and we are not aware of any such caselaw. This court has held that a district court is not obligated to state a reason for imposing a presumptive sentence instead of departing from the presumptive range. *See State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013); *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). A natural corollary to that principle is that

a district court is not obligated to state a reason for imposing a particular sentence within the presumptive range instead of a lower sentence within the presumptive range.

Blanchard also contends that he should have received lesser sentences on the ground that Delacruz, whom Blanchard describes as "the acknowledged kingpin," "received only a slightly longer sentence." We have reviewed the case cited by Blanchard, *State v. Vazquez*, 330 N.W.2d 110 (Minn. 1983), and the cases cited therein, and we decline the invitation to reduce Blanchard's sentences to make them more proportional to Delacruz's sentence. *See id.* at 113.

Thus, the district court did not err by imposing sentences on count 1 and count 2 that are at the top of the presumptive ranges.

In sum, we affirm in part, reverse in part, and remand. On remand, the district court shall resentence Blanchard in a manner that is consistent with part II of this opinion.

Affirmed in part, reversed in part, and remanded.