STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1504

State of Minnesota,
Respondent,

vs.

Felix Antonio Rayford,
Appellant.

Filed August 26, 2019
Affirmed
Schellhas, Judge

St. Louis County District Court
File No. 69DU-CR-17-3128

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and Peterson, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

SCHELLHAS, Judge

Appellant challenges his convictions of aiding and abetting first-degree sale of cocaine and second-degree possession of cocaine, arguing that (1) the district court erred by denying his suppression motion and (2) the evidence was insufficient to support his conviction of aiding and abetting first-degree sale of cocaine. We affirm.

FACTS

On August 15, 2017, law enforcement obtained a no-knock warrant to search apartment #8 of an apartment complex in Duluth. The search-warrant affidavit alleged that investigators with the Lake Superior Drug and Violent Crime Task Force had received information during the past month from "several confidential reliable sources (CRI's)" that D.S. was selling heroin out of apartment #8. The affidavit also alleged that an unannounced entry was necessary because a CRI had notified investigators that D.S. "was traveling around the Duluth area with an unknown black male that was in possession of a semi-automatic hand gun."

During execution of the search warrant, law-enforcement officers found appellant Felix Rayford asleep in an apartment bedroom. Approximately 18 inches from Rayford's head was a substantial amount of packaged heroine. Officers arrested Rayford and found a large quantity of crack cocaine inside his back pants pocket and a large amount of U.S. currency in his front pants pockets.

Respondent State of Minnesota charged Rayford with aiding-and-abetting first-degree sale of cocaine; aiding-and-abetting first-degree sale of heroin; aiding-and-abetting

first-degree sale of cocaine while possessing a firearm; second-degree possession of heroin; fifth-degree possession of heroin; third-degree sale of heroin; and second-degree possession of cocaine. Rayford challenged the no-knock aspect of the search warrant and moved to suppress all evidence seized during execution of the warrant.

Investigators Rebecca Kopp and Richard DeRosier testified at Rayford's omnibus hearing. Investigator Kopp testified that she obtained the keys to apartment #8 from the apartment manager and that "[d]ue to the fact that we had obtained a no-knock search warrant because we had received information about there being guns involved, we wanted to use the key so we would not do a lot of damage to the doors by making entry." Investigator Kopp also testified that as they approached the apartment door, she "could hear many voices coming from the end of the hallway where Apartment 8 is." Investigator Kopp testified that she knew that Rayford was still in the apartment and that in light of the "many voices," she "assumed that there . . . could possibly be many people inside that apartment and then we had the information about the guns." Investigator Kopp testified that as a result, "for [their] safety," the officers made "a threshold assessment" about the no-knock warrant that they "wanted to continue as a no-knock." But Investigator Kopp acknowledged that D.S. was the person whom they were initially investigating for drug dealing, and Investigator DeRosier acknowledged that while he "was getting the search warrant signed, officers had detained [a] vehicle" at a gas station and that D.S., along with two other individuals, were in that vehicle.

The district court found that "law enforcement had legitimate safety concerns due to information regarding the presence of firearms in the apartment, [D.S.]'s violent criminal

history, and the significant narcotics distribution linked to the apartment." The court also found that this "information coupled with the fact that law enforcement could not be certain how many individuals remained in the apartment makes the no-knock execution of the warrant justifiable." The court therefore denied Rayford's motion to suppress.

The parties stipulated at trial that (1) approximately one month prior to August 15, 2017, law enforcement began investigating D.S. for drug dealing; (2) during this time, three people informed law enforcement about D.S.'s drug activity; (3) law enforcement "conducted surveillance on [D.S.] and arranged for people to purchase drugs from him during the month prior to August 15, 2017," but did not see Rayford near apartment #8 during this time; (4) law enforcement observed D.S. and "several other people coming and going from Apartment 8"; and (5) several residents "at the apartment complex had complained about [D.S.] and the foot traffic going into and coming out of Apartment 8 prior to August 15, 2017."

The state presented testimony that law enforcement observed Rayford twice on August 15, 2017, exiting apartment #8 and engaging in "hand-to-hand exchange[s]," which, according to police investigators, is consistent with "a drug transaction between two individuals." The state also presented evidence that when the search warrant was executed, officers discovered Rayford asleep in one of the bedrooms with a "bag of individually packaged heroin . . . just a couple of inches from his head, as well as a cell phone"; that when officers arrested Rayford, they discovered 38 grams of cocaine and approximately $1,500 in cash in his pants pockets; that officers discovered a lime-green backpack next to Rayford, which contained "a box of cellophane sandwich bags"; and that in the kitchen,

officers discovered "a plate with an off-white substance, . . . a digital scale next to it with the same residue on top of the scale, and a firearm."

After the state rested, Rayford moved for judgment of acquittal on all counts. The district court granted Rayford's motion on the charge of aiding-and-abetting first-degree sale of cocaine while possessing a firearm but not on the remaining counts. Rayford then testified that he came to Duluth on August 12, 2017, to visit a friend who had back surgery; that the night before his arrest, he "partied all night," using alcohol, marijuana, and cocaine, and then "crashed" in the "only room where there was some comforters"; that he did not notice the heroin on the floor next to him but admitted that the lime-green backpack and cocaine in his pants pocket were his; and that his mother had given him the large amount of cash that he possessed. Rayford's mother testified that she had given her son $2,800 in early August 2017, to help him relocate to Minnesota.

The jury found Rayford guilty of aiding-and-abetting first-degree sale of cocaine and second-degree possession of cocaine and acquitted him of the remaining counts. The district court then sentenced Rayford to 75 months in prison.

This appeal follows.

D E C I S I O N

I. Denial of motion to suppress

Rayford challenges the district court's denial of his suppression motion, arguing that the unannounced execution of the search warrant violated his constitutional right to be free from unreasonable searches. When, as here, the material facts are not in dispute, we independently review whether a no-knock entry was justified. *See State v. Wasson*, 615

N.W.2d 316, 320 (Minn. 2000) (reviewing de novo whether circumstances warranted no-knock entry when material facts were not in dispute).

The United States Supreme Court has rejected a blanket exception to the knock-and-announce rule instituted in Wisconsin for all felony drug cases. *Richards v. Wisconsin*, 520 U.S. 385, 392, 394, 117 S. Ct. 1416, 1420, 1421 (1997). The Supreme Court stated that "the fact that felony drug investigations may frequently present circumstances warranting a no-knock entry cannot remove from the neutral scrutiny of a reviewing court the reasonableness of the police decision not to knock and announce in a particular case." *Id*. at 394, 117 S. Ct. at 1421.

In *Wasson*, the Minnesota Supreme Court acknowledged the holding in *Richards* and held that a reasonableness inquiry under the Fourth Amendment includes consideration of the necessity of an unannounced entry. 615 N.W.2d at 320. The supreme court stated that "[t]o substantiate the need for a no-knock warrant an officer must establish more than that drugs are involved." *Id*. The "police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Id*. (quoting *Richards*, 520 U.S. at 394, 117 S. Ct. at 1421). Reasonable suspicion is "something more than an unarticulated hunch"; an "officer must be able to point to something that objectively supports the suspicion at issue." *Id*. If the circumstances do not warrant a no-knock entry, evidence seized during the search should be suppressed. *Id*.

Here, Rayford argues that evidence obtained during the search should have been suppressed because (1) the search warrant affidavit failed to establish the need for a no-knock search and (2) "even if reasonable suspicion existed within the four corners of the warrant application, this suspicion no longer existed" when the warrant was executed.

A. Reasonable suspicion contained in the search-warrant affidavit

The state contends that Rayford's "claim that the search warrant application failed to establish an exception to the knock-and-announce requirement" is not properly before this court because it was not raised below. But assuming, without deciding, that the issue is properly before us, we conclude Rayford's argument fails on the merits.

The search warrant affidavit stated that an unannounced entry was necessary because (1) a CRI had notified law enforcement that within the previous 24 hours, D.S. "was traveling around the Duluth area with an unknown black male that was in possession of a semi-automatic hand gun"; (2) investigators conducting surveillance witnessed "several unknown black males come and go" from apartment #8 and conduct "suspected . . . drug transactions"; and (3) D.S. has a violent criminal history.

Rayford argues that the warrant application "did not establish that there were weapons inside the apartment or that there was a demonstrable threat to officer safety inside the apartment" because the allegations do not establish that a firearm was ever seen inside the apartment or that D.S. had any weapons-related prior convictions. Rayford contends that the no-knock aspect of the search warrant therefore was not supported by the requisite reasonable articulable suspicion.

To justify an unannounced entry, the "police must have a reasonable suspicion that knocking and announcing their presence, *under the particular circumstances*, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Garza v. State*, 632 N.W.2d 633, 638 (Minn. 2001) (alteration in original) (quotation omitted). But the showing required for a no-knock entry "is not high." *Richards*, 520 U.S. at 394, 117 S. Ct. at 1422. And the supreme court has cautioned that a reviewing court "may accept evidence of a threat to officer safety of less persuasive character when the officer presents the request for a no-knock warrant to a magistrate." *Wasson*, 615 N.W.2d at 321. Consequently, when an officer complies with established procedure and obtains pre-approval for an unannounced entry, this "weighs against excluding the evidence seized." *Id.*

In *Wasson*, the supreme court found that a reasonable suspicion of a threat to officer safety existed because (1) "numerous weapons were seized from the exact location just three months previously" and (2) drugs were being sold at the residence "to at least [an informant] and perhaps others." *Id.* at 320–21. Similarly, in *State v. Barnes*, this court concluded that an unannounced entry was justified because evidence of drug dealing and gang affiliation existed, and because the defendant "had a prior criminal record and that the level of drug trafficking was very high." 618 N.W.2d 805, 812 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Conversely, in *State v. Botelho*, this court concluded that an allegation, without more, that otherwise unidentified individuals with drugs, dangerous weapons, and obstructing legal process criminal histories periodically

frequenting a residence was not sufficient to justify an unannounced entry. 638 N.W.2d 770, 781 (Minn. App. 2002).

We conclude that this case is more like *Wasson* and *Barnes* than *Botelho*. Unlike the vague assertions in *Botelho*, the warrant application here specifically identified D.S. as being associated with the apartment and stated that he had a criminal record that included aggravated robbery and vehicle hijacking. The warrant application also referred to a specific "unknown black male" who traveled with D.S. in the area and was known to possess "a semi-automatic hand gun." Moreover, the warrant application stated that multiple controlled buys had been conducted from D.S. in the vicinity of the apartment, and that while conducting surveillance of apartment #8, law enforcement had observed "several unknown black males come and go from the residence" and participate in suspected drug transactions. The number of people law enforcement observed coming and going from the apartment demonstrated that police could not be certain about how many individuals were in the apartment at any particular time. This fact, coupled with allegations in the warrant application of a high level of suspected drug trafficking, D.S.'s criminal record, and a gun being associated with the drug trafficking, presented sufficiently particularized circumstances that supported a reasonable suspicion of a threat to officer safety or a threat of destruction of evidence. We conclude that the unannounced entry was supported by the requisite reasonable suspicion.

B. Reasonable suspicion at the time the warrant was executed

Rayford argues that "[e]ven if reasonable suspicion existed within the four corners of the warrant application, this suspicion no longer existed at the time law enforcement

made its unannounced entry into the apartment." To support his claim, Rayford asserts that the need for a no-knock entry was based on two factors: (1) D.S.'s violent criminal history and (2) D.S.'s association with an armed, unidentified black male. Rayford contends that because these factors dissipated when D.S., along with two other individuals, were detained prior to the execution of the search warrant, the justification for the no-knock entry also dissipated prior to the search. We disagree.

The supreme court has stated that although officers should reassess the situation before executing an unannounced entry, the court has "not announced a hard and fast rule that the reappraisal is required in every case." *Wasson*, 615 N.W.2d at 322; *see also Barnes*, 618 N.W.2d at 812 ("Police should reassess the need for a no-knock entry at the scene, and may even execute a no-knock entry based on an assessment at the scene when a no-knock request has been rejected by a [judge]."). And if officers reassess the need for an unannounced entry, the standard is whether the circumstances have changed since they requested and obtained permission for an unannounced, nighttime entry. *See Botelho*, 638 N.W.2d at 782 ("If there is no affirmative change in circumstances to suggest that officers need not conduct an unannounced entry, *Wasson* mandates that officers need not abandon their original plan for an unannounced entry.").

Here, the record reflects that the circumstances had changed since law enforcement obtained permission for an unannounced entry because D.S. was arrested prior to the execution of the search warrant. But D.S.'s criminal history was not the sole basis for the request for an unannounced entry. Rather, law enforcement was concerned about guns being present in the apartment due to information that D.S. was "travelling around the

Duluth area with an unknown black male that was in the possession of a semi-automatic hand gun." And no circumstance indicated that either of the individuals detained with D.S. was the individual with whom law enforcement was concerned.

Moreover, Investigator Kopp testified that law enforcement made a threshold assessment prior to executing the no-knock warrant and decided, for their "safety," to proceed with an unannounced entry because (1) they knew Rayford was inside the apartment; (2) they heard "many voices" coming from inside the apartment, indicating that several other people were still in the apartment; and (3) they had information about "there being guns involved." These factors, in conjunction with the fact that law enforcement was investigating significant narcotics distribution in connection with the apartment provided the officers with reasonable suspicion to proceed with an unannounced entry. And the fact that the officers had a key to the apartment further validates the decision to proceed with an unannounced entry because officers could enter the apartment without damaging the door, a factor which "forms a part of the Fourth Amendment reasonableness inquiry." *See Wilson v. Arkansas*, 514 U.S. 927, 930–35, 115 S. Ct. 1914, 1916–18 (1995) (stating that the purpose of knock-and-announce requirement under common law, which "forms a part of the Fourth Amendment reasonableness inquiry," was primarily to prevent property damage by giving occupants opportunity to comply with search warrant and to allow executing officers to enter without breaking down door). Finally, no law required the officers to reassess the situation prior to executing the warrant because the supreme court has not announced such a "hard and fast" requirement. *Wasson*, 615 N.W.2d at 322 (stating that supreme court has "not announced a hard and fast rule that the reappraisal is required

in every case"). We conclude therefore that the district court did not err by denying Rayford's motion to suppress.

II. Sufficiency of the evidence

Rayford challenges the sufficiency of the evidence supporting his conviction of aiding-and-abetting first-degree sale of cocaine. When reviewing the sufficiency of the evidence, this court ordinarily conducts "a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *Lapenotiere v. State*, 916 N.W.2d 351, 360–61 (Minn. 2018) (quotation omitted). The reviewing court assumes that the jury "believed the state's witnesses and disbelieved any contradictory evidence." *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017) (quotation omitted). We 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." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

A jury found Rayford guilty of aiding and abetting first-degree sale of cocaine. To be convicted of this offense, the state had to prove that "on one or more occasions within a 90-day period," Rayford sold "one or more mixtures of a total weight of 17 grams or more containing cocaine." Minn. Stat. § 152.021, subd. 1(1) (2016). Accomplice liability for a crime attaches when an individual "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05 (2016).

"To impose liability under the aiding and abetting statute, the state must show some knowing role in the commission of the crime by a defendant who takes no steps to thwart its completion." *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995) (quotation omitted). "Mere presence at the scene of a crime does not alone prove that a person aided or abetted." *Id*. But "active participation in the overt act which constitutes the substantive offense is not required." *Id*. "A jury may infer the requisite state of mind from a variety of facts, including presence at the scene of the crime, [and] a close association with the principal offender before and after the crime." *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). Additionally, "[e]vidence tending to show an intent to sell or distribute includes evidence as to the large quantity of drugs possessed." *State v. Hanson*, 800 N.W.2d 618, 623 (Minn. 2011) (quotation omitted).

Rayford argues that the state "failed to prove that an accomplice sold 17 grams or more of cocaine, that [he] knew an accomplice was selling cocaine, or that [he] intentionally aided another in selling cocaine." But the term "sell" includes the meaning "to possess with intent to perform an act." *Id*. at 622–23 (quotation omitted). The state therefore was not required to prove that the accomplice actually sold 17 grams or more of cocaine; rather the state had to prove that Rayford aided another in possessing the cocaine with intent to sell.

"The [s]tate ordinarily proves a criminal defendant's mental state by circumstantial evidence." *Bahtuoh*, 840 N.W.2d at 809. When, as here, a conviction is based on circumstantial evidence, appellate courts apply a two-step analysis when reviewing the conviction. *State v. Harris*, 895 N.W.2d 592, 598–601 (Minn. 2017). The first step is to

identify the circumstances proved "by resolving all questions of fact in favor of the jury's verdict," and in deference to the jury's credibility determinations. *Id*. at 600. Second, we independently consider the reasonable inferences that can be drawn from the circumstances proved. *Id*. at 600–01. "To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id*. at 601.

Here, the state proved the following circumstances: (1) law enforcement began investigating D.S. for dealing drugs approximately one month prior to August 15, 2017, during which three different people told law enforcement about D.S.'s drug activity; (2) law enforcement arranged for people to purchase drugs from D.S. during the month prior to August 15; (3) law enforcement conducted surveillance near apartment #8 and observed D.S. and several other people coming and going from the apartment; (4) other residents complained about D.S. and the foot traffic going into and coming out of apartment #8; (5) on the morning of August 15, Investigator Kopp observed Rayford, on two occasions, exit the apartment and make a "hand-to-hand" exchange with an individual, which, based on her training and experience, Kopp believed to be a drug transaction; (6) during the execution of the search warrant, Rayford was found asleep in a bedroom with a bag of heroin, that was packaged into individual baggies, next to his head; and (7) after Rayford was arrested, 38 grams of cocaine and over $1,500 in cash was found in his pockets, and a box of unused plastic sandwich baggies was found in a backpack that Rayford admitted was his.

The only reasonable inference from the circumstances proved is that Rayford possessed over 17 grams of cocaine and that he intended to sell the cocaine. *See Hanson*, 800 N.W.2d at 623 (stating that "the only reasonable inference to be drawn from [the defendant]'s possession of the approximately 100 small, unused plastic bags of a type used for the packaging of methamphetamine for distribution and sale is that [the defendant] possessed methamphetamine with an intent to sell"). Indeed, Rayford does not challenge this inference. Instead, he argues that the record lacks any evidence that an accomplice possessed or sold cocaine, which he claims was required to convict him of aiding and abetting first-degree possession with intent to sell.

The state argues that the supreme court rejected a similar argument in *State v. Lorenz*, 368 N.W.2d 284 (Minn. 1985). In that case, the defendant challenged his conviction of aiding and abetting possession of cocaine. *Id*. at 287. The defendant acknowledged that the evidence was sufficient to convict him of possessing the cocaine but argued that the evidence was insufficient to prove that he aided and abetted his codefendant in possessing the cocaine. *Id*. The supreme court recognized that the "complaint charged that aiding and abetting and being aided and abetted by each other [the defendant and his co-defendant] did wrongfully and unlawfully possess cocaine." *Id*. (quotation omitted). The court then held that the complaint "was adequate to allow conviction either on the theory of independent possession, joint possession, or aiding and abetting the possession of cocaine." *Id*.

The state is correct that under *Lorenz*, it was not required to prove that Rayford aided and abetted another in the sale of cocaine; the state was required only to prove that

Raymond possessed 17 or more grams of cocaine with the intent to sell. *See id*. As stated above, the evidence was sufficient to support the jury's finding of guilt on this charge.

Moreover, despite Rayford's claim to the contrary, the jury heard testimony that Rayford aided and abetted another in the sale of cocaine. The jury also heard testimony that law enforcement was investigating D.S. "for dealing drugs"; that law enforcement "arranged for people to purchase drugs from [D.S.]"; and that law enforcement "observed [D.S.] and several other people coming and going from Apartment 8," which is consistent with drug dealing. The jury also heard testimony that shortly before the law-enforcement officers executed the warrant, they observed Rayford twice leaving apartment #8 to engage in suspected drug transactions. And the jury heard testimony that when Rayford was arrested, he had 38 grams of cocaine and a substantial amount of cash on his person. From this evidence, the jury could reasonably infer that Rayford was aiding and abetting D.S. in the sale of cocaine. *See State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996) (stating that "the jury is free to make reasonable inferences from evidence, including inferences based on their experiences or common sense"). Accordingly, the evidence was sufficient to support Rayford's conviction of aiding-and-abetting first-degree sale of cocaine.

Affirmed.