STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1890

State of Minnesota,
Respondent,

vs.

Joseph Collin Baggett,
Appellant.

Filed December 23, 2013
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-11-20726

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stan Keillor, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Johnson, Judge; and Rodenberg, Judge.

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

JOHNSON, Judge

A Hennepin County jury found Joseph Collin Baggett guilty of third-degree possession of a controlled substance based on evidence that a police officer found crack cocaine in the center console of a vehicle Baggett was driving. On appeal, Baggett challenges his conviction on multiple grounds. We affirm.

FACTS

On July 8, 2011, Sergeant Michael Harvey Young was on patrol in north Minneapolis. At 7:51 p.m., he received a dispatch call stating that a 911 caller had reported two vehicles making U-turns and chasing each other while brandishing firearms in the area of North 47th Avenue and Humboldt Avenue North. The caller described one vehicle as a Pontiac Grand Am and the other as a large beige SUV, either a Chevrolet Suburban or Tahoe, with large after-market rims. The vehicles were reportedly traveling southbound. The caller said that three or four African Americans were inside the SUV.

Sergeant Young drove north toward the location described in the dispatch call. After about 15 minutes, he observed a beige-colored SUV with large after-market rims traveling eastbound through the intersection of North 42nd Avenue and Lyndale Avenue North, which is approximately one mile southeast of the area described in the 911 call. Sergeant Young could not discern how many people were in the car or their races. He followed the vehicle and called for back-up. The SUV made a left turn shortly thereafter, which allowed Sergeant Young to observe several African-American occupants inside.

Sergeant Young stopped the SUV at 8:11 p.m. He instructed the occupants to raise their hands and ordered the driver, Baggett, to turn off the engine. He then ordered Baggett out of the vehicle and handcuffed him. Other officers arrived and removed two men, one woman, and a child from the vehicle. All occupants of the SUV were African Americans. Sergeant Young performed a protective sweep of the vehicle. He did not find a firearm but found two baggies containing a substance he believed to be crack cocaine in the vehicle's center console.

In July 2011, the state charged Baggett with one count of third-degree possession of a controlled substance, in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2012). Before trial, Baggett moved to suppress evidence on the ground that Sergeant Young did not have a lawful reason to make the stop. The district court denied his motion.

The case went to trial in July 2012. The jury found Baggett guilty. The district court sentenced him to 33 months of imprisonment. Baggett appeals.

D E C I S I O N

I. Motion to Suppress

Baggett first argues that the district court erred by denying his motion to suppress evidence. He contends that Sergeant Young did not have reasonable suspicion to stop his vehicle because there was not a sufficient likelihood that his SUV was the vehicle described by the 911 caller. If the relevant facts are undisputed, as they are in this case, this court applies a *de novo* standard of review to a district court's order on a motion to suppress. *State v. Yang*, 774 N.W.2d 539, 551 (Minn. 2009).

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The Fourth Amendment also protects the right of the people to be secure in their motor vehicles. *See State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

As a general rule, a law enforcement officer may not seize and search a person or a person's vehicle without probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). A law enforcement officer may, however, "consistent with the Fourth Amendment, conduct a brief, investigatory stop" of a motor vehicle if "'the officer has a reasonable, articulable suspicion that criminal activity is afoot.'" *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968))). A reasonable, articulable suspicion exists if, "in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. The reasonable-suspicion standard is not high, but the suspicion must be more than an "inchoate and unparticularized suspicion," *Timberlake*, 744 N.W.2d at 393 (quotation omitted), and "something more than an unarticulated hunch," *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). An officer "must be able to point to something that objectively supports the suspicion at issue." *Id*. (quotation omitted); *see also Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880.

When considering whether reasonable suspicion supports a stop conducted near a recently reported crime, a court should consider the totality of the circumstances, including the following factors:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Appelgate v. Commissioner of Pub. Safety, 402 N.W.2d 106, 108 (Minn. 1987) (citing 3 Wayne R. LaFave, *Search and Seizure* § 9.3(d) (2d ed. 1987)). The relative strength of one of these factors may outweigh other weaker factors. *See State v. Saffeels*, 484 N.W.2d 429, 430 (Minn. App. 1992), *review denied* (Minn. June 1, 1992).

Our analysis of the six *Appelgate* factors supports the district court's decision to deny Baggett's motion to suppress. The first factor strongly weighs in favor of the reasonableness of the stop because the 911 caller's report was very detailed. The caller described the color of the vehicle (beige), the type of vehicle (a large SUV), two possible specific models (Chevrolet Tahoe or Suburban), a distinctive feature of the vehicle (that it was equipped with large after-market rims), and the number and race of the occupants (three or four African Americans). Sergeant Young stopped Baggett only after he determined that both the vehicle and occupants matched the caller's description. In addition, the fourth factor weighs in favor of the reasonableness of the stop because the caller stated that the vehicle was traveling southbound, and Sergeant Young saw

Baggett's vehicle approximately one mile southeast of the location where the 911 caller had reported it. These two factors strongly support the conclusion that reasonable suspicion existed for Sergeant Young's stop. *See Appelgate*, 402 N.W.2d at 108.

Baggett contends that the second and third factors weigh against the reasonableness of the stop because of the large size of the area surrounding the stop and the presence of numerous vehicles there. Baggett is correct that a vehicle reported to be at a particular location in north Minneapolis could travel a substantial distance in 15 minutes. But the reported SUV was driving on city streets, and the size of the area in which it might be located was constricted somewhat by the report that it was southbound. Baggett also is correct that a large number of vehicles likely were in the area at that time. But not many vehicles were likely to match the specific description provided by the 911 caller.

Given the totality of the circumstances, Sergeant Young had reasonable suspicion to stop Baggett's vehicle after he determined that it matched the 911 caller's detailed description. Thus, the district court did not err by denying Baggett's motion to suppress.

II. Stipulation to Prior Conviction

Baggett next argues that the district court erred by accepting his stipulation to a prior conviction for possession of a controlled substance without first obtaining a waiver of his right to a jury determination on that issue.

In response to Baggett's argument, the state contends that a waiver of the right to a jury trial was unnecessary because Baggett's prior conviction is not an element of third-degree possession. *See State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011) (holding

that right to jury trial includes right to jury determination on each element of charged offense). The statute under which he was charged states, in relevant part, that a "person is guilty of controlled substance crime in the third degree if . . . the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine." Minn. Stat. § 152.023, subd. 2(a)(1). In light of this statute, whether Baggett is guilty or not guilty of the offense charged does not depend on whether he has a prior conviction for possession of a controlled substance; rather, it depends on whether he possessed three or more grams of a mixture containing cocaine.

Baggett stipulated to a prior conviction because the statute under which he was charged mandates a minimum sentence for offenders with a prior conviction. The statute provides, "If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years nor more than 30 years . . . ." *Id.*, subd. 3(b). But Baggett does not have a constitutional right to a jury trial with respect to the prior conviction because the fact of a prior conviction does not need to be submitted to a jury for purposes of sentencing. *See State v. Conger*, 687 N.W.2d 639, 643 (Minn. 2004) (citing *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct 2531, 2536 (2004)).

Thus, the district court did not err by accepting Baggett's stipulation to a prior conviction for possession of a controlled substance.

III. Testimony Containing Legal Conclusion

Baggett next argues that the district court erred by admitting Sergeant Young's testimony that Baggett was in "constructive possession" of the crack cocaine that was

found in his SUV. He contends that this testimony is inadmissible because it was in the form of a legal conclusion. This court applies an abuse-of-discretion standard of review to a district court's evidentiary rulings. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Testimony that "embraces legal conclusions or terms of art" is not helpful to the jury and, thus, is inadmissible. *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990); *see also State v. Moore*, 699 N.W.2d 733, 740 (Minn. 2005); *State v. Saldana*, 324 N.W.2d 227, 230-31 (Minn. 1982). A witness sometimes may provide an explanation of a legal definition, but a witness may not testify that a legal definition has been satisfied. *Moore*, 699 N.W.2d at 740.

"Constructive possession" is a legal doctrine by which a jury or other factfinder may infer that a defendant possessed something even if there is no evidence that the item actually was in his physical possession. *See State v. Florine*, 303 Minn. 103, 104-05, 226 N.W.2d 609, 610-11 (1975). The relevant part of Sergeant Young's testimony is as follows:

> Q. Did you ask anyone else in the SUV questions about the narcotics?
>
> A. No.
>
> Q. Why not?
>
> A. The driver had -- the Defendant had already said that they were his narcotics. *He had constructive possession of them*. He was driving the vehicle.

[DEFENSE COUNSEL]: Objection, legal conclusion.

THE COURT: Overruled.

(Emphasis added.) Sergeant Young essentially testified to a legal conclusion. His testimony was not an explanation of a legal concept; it was a statement that the legal definition of constructive possession had been satisfied. Thus, the district court erred by overruling Baggett's objection to this testimony.

The state contends that, even if the district court erred, the error is not reversible error. The rules of criminal procedure provide, "Any error that does not affect substantial rights must be disregarded." Minn. R. Crim. P. 31.01. This rule is known as the harmless-error rule. *State v. Bouwman*, 354 N.W.2d 1, 8 n.7 (Minn. 1984); *State v. Porte*, 832 N.W.2d 303, 312 (Minn. App. 2013). Under the harmless-error rule, we will reverse and remand for a new trial only if the admission of inadmissible evidence "substantially influence[d] the jury's decision." *State v. Vang*, 774 N.W.2d. 566, 576 (Minn. 2009) (alteration in original) (quotation omitted). "The error and its impact are to be examined within the context of the record as a whole, considering the strength of the state's evidence and the weaknesses of any defense evidence." *State v. VanWagner*, 504 N.W.2d 746, 749 (Minn. 1993). Generally, an error is less likely to be prejudicial if the evidence of guilt is strong. *State v. Dillon*, 532 N.W.2d 558, 558 (Minn. 1995); *see also State v. Swinger*, 800 N.W.2d 833, 838 (Minn. App. 2011), *review denied* (Minn. Sept. 28, 2011).

In this case, the state's evidence was strong. The record includes evidence of two incriminating statements made by Baggett. First, Sergeant Young testified that Baggett

made the following comment upon being arrested: "Nobody else in the vehicle knew that the drugs were there, they're mine. Nobody else even knew that they were there." Second, Sergeant Matthew St. George testified that Baggett said that he intended to use the crack cocaine in the SUV "to party." In addition, the district court had not yet given the jury an instruction on constructive possession when Sergeant Young testified, which tends to limit the impact of the testimony. Furthermore, Sergeant Young's reference to constructive possession was immediately preceded by his clear testimony that Baggett admitted that the crack cocaine belonged to him. For all these reasons, we conclude that the inadmissible evidence likely did not "substantially influence[] the jury's decision." *See Vang*, 774 N.W.2d. at 576.

Thus, the erroneous admission of Sergeant Young's testimony containing a legal conclusion does not require a new trial.

IV. Instruction on Constructive Possession

Baggett next argues that the district court erred by instructing the jury that constructive possession may be either joint or exclusive.

A district court must instruct the jury in a way that "fairly and adequately explain[s] the law of the case" and does not "materially misstate[] the applicable law." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). A district court has "considerable latitude" in selecting language for jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted). But a party is entitled to a jury instruction only if the evidence supports it. *Vang*, 774 N.W.2d at 580. This court applies an abuse-of-

discretion standard of review to a district court's jury instructions. *Koppi*, 798 N.W.2d at 361.

"Joint possession" is defined as "possession that is shared by two or more persons." *Black's Law Dictionary* 1282 (9th ed. 2009); *see also State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009); *State v. Lorenz*, 368 N.W.2d 284, 287-88 (Minn. 1985). The mere fact that more than one person has access to the area where contraband is discovered does not always justify a finding of joint possession. *See Lorenz*, 368 N.W.2d at 288. But non-exclusive access supplemented by additional evidence may allow a jury to conclude that a defendant jointly possessed contraband. *Id.*

Baggett contends that the instruction given in this case has not previously been approved by the supreme court. But the supreme court has stated, "A person may constructively possess contraband jointly with another person." *Ortega*, 770 N.W.2d at 150. Thus, the instruction does not "materially misstate[] the applicable law," *see Koppi*, 798 N.W.2d at 362, and the district court was within its "considerable latitude" in selecting language for jury instructions, *see Gatson*, 801 N.W.2d at 147.

Baggett also contends that the evidence does not justify a constructive-possession instruction in this case. But the state introduced evidence that there were multiple people in Baggett's SUV, that the crack cocaine was found in a location where several people could have accessed it (the center console), and that Baggett stated that he was going to use the crack cocaine to "party." This evidence could allow a jury to conclude that two or more persons jointly had constructive possession of the cocaine.

Thus, the district court did not err by instructing the jury that constructive possession may be either joint or exclusive.

V. Prosecutorial Misconduct

Baggett next argues that the prosecutor committed misconduct in her closing argument when she stated, "No one is suggesting that the drugs are anybody but the Defendant's." Baggett contends that the prosecutor's statement suggested that the defense had a burden to present evidence.

The full context of the prosecutor's statement is as follows:

> The Defendant's girlfriend we heard might have driven the van sometimes. That's really a non-issue. *No one is suggesting that the drugs are anybody but the Defendant's.* The fact is, even if they were shared by more than one person, that is still considered possession under the law. And as the judge instructed you, a person can share possession. Here, however, all we're dealing with is the Defendant and whether that 3.3 grams was in his possession.

(Emphasis added.) Baggett did not object. Accordingly, we apply a "modified plain error test." *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

It is improper for a prosecutor to attempt to shift the burden of proof to a defendant during closing argument. *State v. Nissalke*, 801 N.W.2d 82, 106 (Minn. 2011). A prosecutor improperly shifts the burden of proof if she implies "that a defendant has the burden of proving his innocence." *Id.* (quotation omitted). But "a prosecutor's comment on the lack of evidence supporting a defense theory does not improperly shift the burden." *Id.*

As an initial matter, we question whether the jury actually interpreted the prosecutor's statement in the way that Baggett suggests. The jury may have understood the prosecutor's statement to mean that the state was not attempting to prove that Baggett's girlfriend or anyone else possessed the crack cocaine. But even if we assume that the prosecutor's statement means what Baggett says it means, the statement was a permissible comment on his defense theory that the crack cocaine belonged to someone else and that he merely was covering for them. In *Nissalke*, the supreme court held that a prosecutor did not commit misconduct by commenting on the lack of evidence supporting a defendant-appellant's alibi theory. *Id.* at 106-07. Baggett contends that *Nissalke* is distinguishable because his defense theory, that one of the other occupants of the SUV possessed the crack cocaine, is a possibility that the state was required to disprove. Baggett mischaracterizes the state's burden of proof. The state was required to prove beyond a reasonable doubt that Baggett possessed the cocaine. Because possession may be constructive, and may be either joint or exclusive, the state did not need to eliminate the possibility that someone else in the car also possessed the cocaine. Baggett's defense theory is similar to the alibi theory in *Nissalke* because an alibi theory simply negates proof of identity, which is an element of nearly all crimes.

Thus, we conclude that the prosecutor did not engage in misconduct in her closing argument.

VI. Cumulative Error

Baggett last argues that he did not receive a fair trial because of the cumulative effect of multiple errors. If an appellant establishes that a district court committed two or

more procedural errors, none of which individually require a new trial, the appellant nonetheless may be entitled to a new trial "if the errors, when taken cumulatively, had the effect of denying appellant a fair trial." *State v. Jackson*, 714 N.W.2d 681, 698 (Minn. 2006) (quotation omitted). This argument fails because we have not identified more than one error.

Affirmed.