STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1490

State of Minnesota,
Respondent,

vs.

Clifton Lamonze Terry,
Appellant.

Filed September 22, 2009
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-07-025321

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 80 South Eighth Street, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Melissa Sheridan, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and

Collins, Judge.

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

COLLINS, Judge

Disputing the admissibility of his inculpatory statement and contending that the evidence is insufficient to prove that he knew the substance he possessed was cocaine, appellant challenges his conviction of second-degree possession of cocaine, Minn. Stat. § 152.022, subd. 2(1) (2006) (six or more grams). We affirm.

D E C I S I O N

Appellant Clifton Terry moved to suppress the statement he made to police following his arrest. As summarized by the district court, the sole issue raised by the motion was "whether the police did anything or conducted any activity that would elicit an incriminating response." Following a hearing, the district court denied the motion, stating: "It appears that nothing was said and nothing was done to do that."

Whether a district court erred in denying an accused's motion to suppress an allegedly involuntary inculpatory statement presents a mixed question of law and fact. Unless clearly erroneous, we defer to the district court's factual findings as to the circumstances surrounding the statement. *State v. Wilkens*, 671 N.W.2d 752, 756 (Minn. App. 2003). But we independently review the district court's conclusion as to whether those circumstances rendered the inculpatory statement involuntary. *Id.*

"No person . . . shall be *compelled* in any criminal case to be a witness against himself . . . ." U.S. Const. amend. V (emphasis added). By its plain language, the Fifth Amendment prohibits admitting only statements precipitated by "some form of compulsion." *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998) (citing *Hoffa v. United*

States, 385 U.S. 293, 303-04, 87 S. Ct. 408, 414 (1966)). And unless a suspect is first given the *Miranda* warnings, statements made during custodial interrogation are generally construed as the product of police compulsion. *Id.* Here, it is undisputed that Terry made the inculpatory statement at issue while in custody and before being given the *Miranda* warnings. Thus, whether the district court erred by not suppressing the statement turns entirely on whether it was the product of "interrogation."

In Fifth Amendment jurisprudence, the concept of interrogation reflects "a measure of compulsion above and beyond that inherent in custody itself." *Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S. Ct. 1682, 1689 (1980). Obviously, expressly questioning a suspect constitutes interrogation. *Id.* at 300-01, 100 S. Ct. at 1689. But interrogation also includes the "functional equivalent" of express questioning—that is, any "words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301, 100 S. Ct. at 1689-90 (footnote omitted). Whether words or actions are "reasonably likely to elicit an incriminating response" is viewed from the suspect's perspective. *Id.*

Here, Terry was the named "target" of a "narcotics search warrant" for a Minneapolis apartment. When the police arrived to execute the warrant they were informed that Terry had just left the apartment. Terry was arrested several miles away and was returned to the apartment in custody.[1] After they were unable to unlock the

[1] Terry does not challenge the legality of his arrest on this appeal.

apartment door with the key produced by Terry, the police resorted to a battering ram to gain entry.

Once inside, Terry was seated on a couch in the living room while the police searched the apartment. Officer Scott Creighton, who was in charge of inventory, stationed himself in the same room. After another officer reported that he had found crack cocaine in the kitchen, Officer Creighton went there to photograph and collect it. When Officer Creighton returned to the living room with the bag of crack cocaine, Terry stated: "That's mine, it's fake, I bought it for $400, and I'm keeping it until I get the money for it." But subsequent testing proved that the bag contained 17.84 grams of crack cocaine.

Terry contends that he was subjected to the functional equivalent of interrogation when Officer Creighton "confronted" him with the cocaine that was found in the kitchen. We disagree. In our view of the record, on returning to the living room from the kitchen, Officer Creighton said nothing to Terry, nor is there evidence that he gestured in any way that might have indicated to Terry that he was expected to respond. Rather, Officer Creighton simply brought evidence collected in another room to the place where he had stationed himself to record the inventory of the items to be seized, which happened to be near where Terry was seated. Whatever "subtle compulsion" Terry may have felt to respond at the sight of the crack cocaine falls far short of interrogation. *Cf. id.* at 303, 100 S. Ct. at 1691 (rejecting argument that officers interrogated murder suspect by discussing in front of him their concern that a child might find the shotgun used).

Terry's argument that the surrounding circumstances created a coercive environment designed to elicit an incriminating response is also without merit. While Terry claims that the battering ram obviated the need for his key, the police understandably opted to avoid doing damage first and could not know that Terry's key would not work until they tried it. Terry also contends that "[t]here was no reason for [him] to be present while the officers searched someone else's apartment, rather than [being] on his way to jail, other than to elicit some sort of response." But it was not until later that the police learned that Terry, who claimed to have a key to the apartment, did not actually reside there.

Terry next challenges the sufficiency of the evidence that he knew the substance found was crack cocaine. When reviewing a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record to determine whether the fact-finder reasonably could find the defendant guilty of the offenses charged based on the facts in the record and the legitimate inferences that can be drawn from them. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the fact-finder believed the evidence supporting the verdict and disbelieved any contrary evidence. *Id.* We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

To convict a defendant of possessing a controlled substance, the state must prove that the defendant had actual knowledge of the substance's nature. *State v. Papadakis*, 643 N.W.2d 349, 354 (Minn. App. 2002). As a subjective mental state, knowledge must typically be inferred from the relevant surrounding circumstances. *State v. Mattson*, 359 N.W.2d 616, 617 (Minn. 1984). And knowledge can be easily inferred from the defendant's conscious possession of the substance in conjunction with its actual nature. *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975).

Terry expressly admitted that the bag was his, establishing that he consciously possessed the substance contained within it. And while Terry stated that it was "fake," subsequent testing established that the substance he consciously possessed was, in fact, crack cocaine. Therefore, notwithstanding his self-serving denial, the jury reasonably could have inferred Terry's actual knowledge from these relevant surrounding facts of the incident.

Affirmed.