STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1831

State of Minnesota,
Respondent,

vs.

Sabranino Altranino Thompson,
Appellant.

Filed September 29, 2009
Affirmed as modified
Worke, Judge

Wright County District Court
File No. 86-CR-06-5945

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

Thomas N. Kelly, Wright County Attorney, Brian A. Lutes, Assistant County Attorney, Wright County Government Center, 10 Northwest Second Street, Suite 400, Buffalo, MN 55313 (for respondent)

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

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

WORKE, Judge

Appellant challenges his controlled-substance-crime convictions, arguing that (1) the district court erred in denying his motion to suppress his statements following his arrest; and (2) his second-degree possession conviction was for a lesser-included offense and must be vacated. Appellant also raises several issues in a pro se supplemental brief. We affirm as modified.

FACTS

On August 9, 2006, Special Agent Bobbi Jo Pazdernik purchased 14 grams of crack cocaine for $700 from appellant Sabranino Altranino Thompson. On August 11, 2006, Pazdernik purchased 28 grams of crack cocaine for $1,200 from appellant. On August 31, 2006, Pazdernik attempted to purchase four ounces of crack cocaine from appellant, but Pazdernik became wary of the substance and told appellant that she thought it was "bunk"—a street term for bad drugs. Appellant told her that he watched it being made, but Pazdernik ordered him out of her vehicle and appellant was arrested.

Following his arrest, Special Agent Jake May advised appellant of his *Miranda* rights, and appellant stated that he understood his rights and agreed to speak with May. Appellant admitted selling drugs to Pazdernik on two occasions. He admitted that he received $700 for the first sale that occurred in the parking lot of a furniture store and that on the second occasion he sold Pazdernik one ounce for $1,400.[1] Appellant also admitted that he smoked marijuana a couple of hours prior to his arrest, but also stated that he was

[1] This was the agreed-upon price when the sale was arranged. The amount Pazdernik actually paid was $1,200.

not under the influence during the interview. Appellant was charged with two counts of first-degree controlled-substance crime—sale, and one count of first-degree controlled-substance crime—possession. The complaint was amended to one count of first-degree sale and one count of first-degree possession.

Appellant moved to suppress his post-*Miranda* statement. The district court denied appellant's motion, finding that under the totality of the circumstances appellant's *Miranda* waiver was knowing, voluntary, and intelligent. Appellant then moved to dismiss the charges, arguing that (1) there was an insufficient showing of probable cause, (2) his right to a speedy trial had been violated, and (3) the state failed to provide discovery to appellant. The district court denied the motion. On July 9, 2008, a jury found appellant guilty as charged in the amended complaint. The district court sentenced appellant to 122 months in prison. This appeal follows.

D E C I S I O N

Miranda Waiver

Appellant argues that the district court clearly erred in failing to suppress his statement following his arrest after finding that appellant waived his *Miranda* rights.

> On appeal, the district court's conclusion that a waiver was knowing, voluntary, and intelligent will normally not be reversed unless that finding is clearly erroneous. When an appellant contends that credible evidence supports a contrary finding, however, an appellate court will make a subjective factual inquiry to determine whether under the totality of the circumstances the waiver was valid. Despite this inquiry, the standard of review remains whether the district court's finding is clearly erroneous.

State v. Camacho, 561 N.W.2d 160, 168-69 (Minn. 1997) (citations omitted). "The state has the burden of proving that the defendant knowingly, intelligently, and voluntarily

waived his *Miranda* rights." *State v. Dominguez-Ramirez*, 563 N.W.2d 245, 252 (Minn. 1997). When evaluating the totality of the circumstances, a court may look to factors such as "age, maturity, intelligence, education, experience, and ability to comprehend." *Camacho*, 561 N.W.2d at 168. The court may also consider "the lack or adequacy of warnings; [] length and legality of the detention; the nature of the interrogation; physical deprivations; and limits on . . . access to counsel [and] friends." *Id.* Additionally, the court may consider the individual's familiarity with the criminal justice system. *Id.* An intoxicated suspect can validly waive his *Miranda* rights. *State v. Smith*, 374 N.W.2d 520, 524 (Minn. App. 1985), *review denied* (Minn. Nov. 26, 1985).

Appellant contends that his waiver was invalid because he was under the influence of marijuana and does not remember giving the statement. The record shows that appellant was 30 years old at the time of his statement. While appellant did not graduate from high school, he has an extensive criminal record and history with the criminal justice system. Further, appellant's interrogation following his arrest was brief—approximately 20 minutes—and there were no physical deprivations. Appellant was advised of his right to counsel, but chose to proceed without counsel. Finally, appellant understood the questions asked of him and responded coherently, providing such information as his date of birth, address, and phone number. Appellant also recalled his movements earlier that day, as well as the specific details of the two previous drug transactions on August 9 and 11 with Pazdernik. Despite his admission that he had smoked marijuana earlier that day, appellant denied being under the influence of mood altering substances at the time of his statement. Based on the totality of the

circumstances, the district court's finding that appellant's waiver was knowing, voluntary, and intelligent is not clearly erroneous.

Second-Degree Conviction

"Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2006). In this case, it is not disputed that the charge of second-degree controlled-substance crime arose from the same behavioral incident as the charge of first-degree controlled-substance crime and was a lesser-included offense of the more serious crime. The state does not object to vacating the conviction. Therefore, we vacate appellant's second-degree controlled-substance-crime conviction.

Pro Se Supplemental Issues

Sufficiency of the Evidence

Appellant argues that there is insufficient evidence to support his conviction.[2] In considering a claim of insufficient evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof

[2] Appellant actually argues that there is insufficient probable cause to believe that he committed the crime. The district court ruled that there was sufficient probable cause. Considering that appellant has been convicted, we will address the sufficiency of the evidence in support of the conviction.

beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The record shows that appellant sold crack cocaine to Pazdernik on two separate occasions. During her testimony, Pazdernik identified appellant as the person who sold her the crack cocaine. May also testified as to the surveillance of the controlled buys, as well as his arrest of appellant. There are recordings of the telephone calls made to appellant to arrange the buys, video and audio recordings of the actual buys, and appellant's admission during his statement that he sold crack cocaine to Pazdernik on two prior occasions. Based on the record, we conclude that there is sufficient evidence to support appellant's conviction.

Speedy Trial

Appellant also argues that his right to a speedy trial was violated. A speedy-trial challenge presents a constitutional question subject to de novo review. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). The right to a speedy trial is guaranteed by the United States and Minnesota Constitutions. U.S. Const. amend VI; Minn. Const. art. I, § 6. Minnesota courts apply a four-part test to determine whether a defendant's speedy-trial right has been violated: "(1) the length of the delay; (2) the reason for the delay; (3) whether and when the defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay." *Cham*, 680 N.W.2d at 124 (citing *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972)).

Appellant requested a speedy trial on January 9, 2007, and trial was scheduled for March 5, 2007. On February 8, 2007, appellant waived his right to a speedy trial in order to retain a private attorney; the jury-trial date was canceled. Appellant reasserted his right to a speedy trial on March 27, 2007. At that time, he waived his right to a jury trial and requested a court trial, which was scheduled for May 14, 2007. On May 9, 2007, appellant again waived his right to a speedy trial to retain a private attorney, which he had not yet done; the court-trial date was canceled.

Because appellant waived his right to a speedy trial—not just once but twice, there was no violation. Despite appellant's waiver, a review of the factors shows that no violation occurred. While the "length of the delay" was 17 months from the first request for a speedy trial and 15 months following the second request, the delay was the result of appellant's desire to retain a private attorney. Appellant has also failed to show how he was prejudiced by the delay. Based on the record, we conclude that appellant's right to a speedy trial was not violated.

Discovery

Appellant argues that the state failed to provide him with certain reports or other documents despite his request for them. There is nothing in the record to show that appellant failed to receive copies of the evidence generated by the state. Further, the district court found that no discovery violations occurred.

Affirmed as modified.