STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2009

State of Minnesota,
Respondent,

vs.

Juan Cerna,
Appellant.

Filed September 21, 2010
Affirmed
Kalitowski, Judge

Clay County District Court
File No. 14-CR-09-159

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

Brian J. Melton, Clay County Attorney, Matthew D. Greenley, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, 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

KALITOWSKI, Judge

Appellant Juan Cerna challenges his conviction of third-degree controlled-substance crime, arguing that (1) the evidence is insufficient to support the conviction

and (2) the district court erred by admitting testimony that a police database listed appellant as a common user of a cell phone number. We affirm.

D E C I S I O N

I.

Appellant argues that the evidence is insufficient to support his conviction of third-degree controlled-substance crime. We disagree.

In considering a claim of insufficient evidence, this court's 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 beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Minn. Stat. § 152.023, subd. 1(1) (2008), provides, "A person is guilty of controlled substance crime in the third degree if . . . the person unlawfully sells one or more mixtures containing a narcotic drug." Appellant was convicted under section 152.023 following a controlled purchase of cocaine by a confidential police informant working with law enforcement in order to receive a reduced sentence for a pending charge. Appellant argues that the evidence is insufficient to support his conviction because controlled-buy safeguards commonly used by law enforcement to corroborate an

informant's testimony were missing and that the informant's testimony alone was insufficient to convict appellant.

The record indicates that the informant testified that: (1) on the morning of June 9, 2008, appellant agreed to sell cocaine to him later that day; (2) through a series of phone calls, appellant and the informant agreed to meet in a parking lot to make the transaction; and (3) appellant gave the informant four baggies of cocaine in exchange for $250 in appellant's car in the parking lot. Assuming that the jury found the informant's testimony to be credible, as required by our standard of review, this testimony alone is sufficient to support the conviction. *See State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) ("[A] conviction can rest upon the testimony of a single credible witness."); *State v. Hadgu*, 681 N.W.2d 30, 34-35 (Minn. App. 2004) (determining that there was sufficient evidence to support defendant's conviction where the only evidence was informant's testimony regarding controlled buy of marijuana from defendant), *review denied* (Minn. Sept. 21, 2004).

And significantly, the informant's testimony that he purchased cocaine from appellant in the car in the parking lot is corroborated by the following evidence: (1) recordings of four telephone conversations between the informant and appellant making plans to meet in the parking lot and an officer's testimony that he identified appellant's voice in the conversations; (2) appellant's recorded statement that he was in Horace, North Dakota, at 6:57 p.m. and an officer's testimony that a silver Impala registered to appellant's relative was parked outside a house believed to be appellant's residence in Horace at about that time; (3) officers' testimony that they searched the

informant's person and car prior to and following the controlled purchase and found nothing; (4) an officer's testimony regarding his observations of the controlled purchase at 100 yards away, including identification of the Impala; and (5) a second officer's testimony that, using binoculars, he saw appellant get into the informant's car prior to the controlled purchase. We conclude that the evidence, viewed in the light most favorable to the conviction, is sufficient to support appellant's conviction of third-degree controlled-substance crime.

II.

Appellant argues that the district court erred by admitting an officer's testimony that a police database listed appellant as a common user of the phone number obtained by the informant. Specifically, appellant argues that the testimony was inadmissible hearsay and violated appellant's rights under the Confrontation Clause. We disagree.

Generally, a district court's evidentiary rulings will not be reversed absent a clear abuse of discretion. *State v. Flores*, 595 N.W.2d 860, 865 (Minn. 1999) (reviewing hearsay ruling). Whether the admission of evidence violates a defendant's rights under the Confrontation Clause is a question of law that we review de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). But when a defendant fails to object to the admission of evidence, we review under the plain-error standard. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

At trial, the state asked an officer how he was familiar with the phone number the informant used to contact appellant. Appellant objected on the basis of "foundation," and also on the basis of "some pretrial motions." Appellant's motion in limine, granted by

the district court prior to trial, provided that the district court was to hold a hearing to determine the admissibility of any out-of-court statements the state intended to offer. Following a conference off the record, the district court overruled appellant's objection, and the officer testified that he "ran a check through our city database and that number came back assigned to—or indicating that it was assigned to [appellant]."

Appellant argues that because of his pretrial objection this court should review the admission of the officer's statement for abuse of discretion. Respondent counters that because appellant failed to properly object on the grounds of hearsay, we should review for plain error. *See State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993) (stating that "an objection must be specific as to the grounds for challenge"), *review denied* (Minn. Oct. 19, 1993). We conclude that regardless of whether appellant's objection was properly preserved, appellant's claims fail on the merits.

Hearsay

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Appellant argues that the out-of-court statement at issue is the assertion that appellant was the common user of the cell phone, and that it was offered to prove that appellant was the person who sold cocaine to the informant. But the record shows that the officer was not offering the statement to prove the truth of the matter asserted; he was offering it to explain how he was familiar with the phone number. The officer was describing the investigation leading up to the controlled purchase and was testifying from personal knowledge. *See State v. Litzau*, 650 N.W.2d 177, 183 n.4 (Minn. 2002) (noting

that police officers can reconstruct steps taken in an investigation and testify about events leading up to an arrest). We conclude, therefore, that the district court did not err by admitting the statement on hearsay grounds.

Confrontation Clause

The Sixth Amendment to the United States Constitution provides, "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" Under the Confrontation Clause, all evidence of out-of-court, "testimonial" statements is inadmissible in a criminal trial when the accused did not have "'a prior opportunity to cross-examine' the declarant." *State v. Bobadilla*, 709 N.W.2d 243, 249 (Minn. 2006) (quoting *Crawford v. Washington*, 541 U.S. 36, 61, 124 S. Ct. 1354, 1370 (2004)). In *Crawford*, the Supreme Court set forth three general categories of testimonial statements: (1) ex parte in-court testimony; (2) extrajudicial statements contained in formalized testimonial materials, such as affidavits; and (3) statements made under circumstances that would lead an objective witness to reasonably believe that the statement would be available for use at a later trial. 541 U.S. at 51-52, 124 S. Ct. at 1364. "[T]he critical determinative factor in assessing whether a statement is testimonial is whether it was prepared for litigation." *Caulfield*, 722 N.W.2d at 309.

Here, the record indicates that the purpose of the police database is to assist law enforcement officers in carrying out their duties in the normal course of business, not to generate reports to be used in litigation. *See State v. Jackson*, 764 N.W.2d 612, 617 (Minn. App. 2009) (determining that a firearm-trace report was not created for litigation purposes but instead was a record maintained in the normal course of business at the

Bureau of Alcohol, Tobacco & Firearms). Furthermore, the information in the database existed prior to the investigation. *See id*. at 618 (concluding that "because the information existed notwithstanding the police officer's request for a printed report, the officer's request did not amount to a request to create a report to serve as evidence in a criminal case"). We conclude that because appellant fails to show that the information is testimonial, admission of the statement without an opportunity to cross-examine the declarant did not violate appellant's rights under the Confrontation Clause.

Affirmed.