STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0354

State of Minnesota,
Respondent,

vs.

Adam Eldon Switala,
Appellant.

Filed January 21, 2025
Affirmed
Worke, Judge

Wright County District Court
File No. 86-CR-22-3691

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Brian Lutes, Wright County Attorney, Buffalo, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Reilly, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction of first-degree controlled-substance crime, arguing that the district court erred by denying his motion to suppress evidence seized during his Challenge Incarceration Program (CIP) agent's search, and by admitting police-officer testimony. We affirm.

FACTS

In 2021, appellant Adam Eldon Switala was convicted of first-degree controlled-substance sale. Switala's sentence was to expire on July 31, 2026, and he was eligible for supervised release in January 2024. But Switala participated in CIP, governed by Minn. Stat. §§ 244.17-.173 (2022 & Supp. 2023), which allows prisoners to serve a greater portion of their sentences outside of prison. Switala was released into the community on June 13, 2022.

A prisoner who voluntarily participates in CIP must "sign[] a written contract . . . agreeing to comply with the program's requirements." Minn. Stat. § 244.17, subd. 1(a). Switala was required to provide agents with a schedule of activities, inform agents of his daily whereabouts, refrain from the use and possession of mood-altering substances, submit to "unannounced visits or searches" by an agent, and comply with "all drug or alcohol testing as directed by [an] agent."

Based on Switala's schedule, he should have been home (his mother's residence) at 1:25 p.m. on August 1, 2022, but a CIP agent observed Switala drive away from the residence at this time. Switala soon returned and parked his car next to a truck in the

driveway. The agent watched Switala as he did something at the rear of his car, between his car and the truck. The agent asked Switala what he was doing. Switala told the agent that he was having problems with his car and wanted to see how it handled. The agent asked Switala if he would take a urinalysis (UA). Switala provided a urine sample, which field tested positive for methamphetamine and amphetamine.

The agent then searched Switala's car and residence. The agent did not find anything concerning. Switala consented to a search of his phone and the agent found text messages that indicated "[y]ou can pick up a bag outside of my work," and "I either have to wait until I go to work or I have to wait until Mom goes to bed." Switala told the agent that he was "selling magnesium powder or pellets." Based on his experience, though, the agent believed that the messages indicated a transfer of drugs. The agent then saw a plastic bag tucked under the rear wheel of the truck parked next to Switala's car. Inside the bag, the agent found a white crystal substance that weighed approximately four pounds and tested positive for methamphetamine.

Respondent State of Minnesota charged Switala with first-degree controlled-substance sale and first-degree controlled-substance possession, in violation of Minn. Stat. § 152.021, subds. 1(1), 2(a)(1) (2022). Switala moved to suppress the evidence, claiming that the agent did not have reasonable suspicion to conduct a search.

At a contested omnibus hearing, the CIP agent testified about Switala's participation in CIP and his encounter with Switala on August 1, 2022, leading to the discovery of the controlled substance. The district court denied Switala's suppression motion, determining that, if CIP affords the same expectation of privacy as for a parolee, the agent needed only

reasonable articulable suspicion to search, which—based on the totality of the circumstances—he had.

Among his pretrial motions, Switala requested that the district court prohibit the state from eliciting opinion testimony from law enforcement because the state had not qualified any member of law enforcement as an expert. The district court stated: "[I]t is a . . . question-by-question analysis. . . . [A ruling is] reserved based on each individual objection as it arises."

At Switala's jury trial, the CIP agent testified about his discovery of the bag holding the controlled substance. Switala's DNA was on the bag. The bag contained five baggies. Four of the baggies held nearly one pound each (approximately 440 grams) of methamphetamine. The fifth baggie held 164.21 grams of methamphetamine. Switala's DNA was on the baggies.

The bag the agent found also contained a butane lighter commonly used for methamphetamine, butane lighter fluid, a baggie with a syringe and white residue, and a scale. The prosecutor asked a responding deputy, "[B]ased upon your training and experience, was there any significance to the scale?" The deputy replied: "[W]ith that amount . . . of [a] crystal-like substance and a scale, typically, I . . . would believe that [he is] possibly selling." The deputy contacted the Special Investigations Unit (SIU), which specializes in drug cases and will take over an investigation when a "large quantity" is discovered. The prosecutor questioned a sergeant who had worked in the SIU:

> Q. Was the weights in which these controlled substances were packaged in, were they significant to you?
> A. Yes, they were.

Q. In what way?
A. The weights that they are packaged in is generally an indicator of controlled substance sales.
Q. What do you mean by that?
A. Each baggie was approximately a pound, which is a consistent weight that controlled substance would be sold in.
Q. And that's based upon your training and experience?
A. Correct.
Q. Amounts such as this, are they consistent with personal use?
A. No, they are not.
Q. How does the presence of the scale speak to this topic we're on, about [the] sale of [a] controlled substance?

Switala objected. The district court overruled the objection. The prosecutor questioned another SIU investigator:

Q. Were the amounts found in this case consistent with personal use?
A. No.
. . . .
Q. [You worked on] approximately 400-plus [drug] cases?
A. Yes.
Q. Have you seen an instance where someone has abandoned this significant amount of methamphetamine?

Switala objected. The district court overruled the objection.

The jury found Switala guilty as charged. The district court sentenced Switala to 128 months in prison for the first-degree controlled-substance-sale conviction. The district court did not enter an adjudication or impose a sentence for the possession offense. This appeal followed.

DECISION

Search and seizure

Switala first argues that the district court erred by denying his suppression motion because the CIP agent did not have reasonable, articulable suspicion to search. In considering a district court's pretrial-suppression ruling, this court reviews factual findings for clear error and reviews the legal determination that an officer had reasonable, articulable suspicion de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

"Reasonable suspicion must be based on specific, articulable facts" allowing the officer to articulate an objective basis for suspecting criminal activity. *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011) (quotation omitted). Reasonable suspicion is analyzed from the point of view of an objective officer, in light of the totality of the circumstances. *State v. Lugo*, 887 N.W.2d 476, 486-87 (Minn. 2016).

"The reasonable-suspicion standard is not high." *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted). An officer need only "articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer's suspicion." *Lugo*, 887 N.W.2d at 486. A trained officer may draw "inferences and deductions that might well elude an untrained person." *Morse*, 878 N.W.2d at 502 (quotation omitted). When viewing the totality of the circumstances, each fact supporting reasonable suspicion, even if independently weak, is sufficient when considered in the aggregate. *State v. Garding*, 12 N.W.3d 697, 703 (Minn. 2024).

The district court determined that the agent articulated several facts to support reasonable suspicion[1]—Switala was driving at an unscheduled time, the agent observed Switala where the bag of methamphetamine was found, Switala's UA was positive, and the text messages indicated possible drug transfers. We agree with the district court's determination.

The totality of the circumstances shows that Switala, as part of the voluntary early-release program, signed a contract agreeing with the requirements that he submit to unannounced searches and drug testing. The CIP agent could request the UA at any time. The positive UA combined with Switala deviating from his schedule and driving away from his residence led the agent to search Switala's phone and discover the text messages. While the text messages may seem innocuous, to the trained agent they indicated a possible transfer of drugs because individuals involved in drug transfers frequently communicate in code. *See Morse*, 878 N.W.2d at 502 (stating trained officer may draw "inferences and deductions that might well elude an untrained person" (quotation omitted)). The totality of the circumstances—Switala diving at an unscheduled time, the agent observing Switala doing something in the area where the bag was found, Switala having a positive UA, and the text messages—support reasonable suspicion, more than a mere hunch of suspected criminal activity. *See Garding*, 12 N.W.3d at 703 (stating each fact supporting reasonable

[1] The parties disagree about whether Switala had an expectation of privacy because of his participation in CIP. Switala asserts that his status was like a parolee, which includes an expectation of privacy and reasonable suspicion to search. The state asserts that Switala's status was like an incarcerated person because he had not yet reached a release date. We do not need to determine Switala's status because we conclude that the agent had reasonable suspicion to search.

suspicion, even if independently weak, is sufficient when considered in the aggregate). The district court did not err by denying Switala's suppression motion.

Evidentiary rulings

Switala next argues that the state impermissibly elicited opinion testimony from officers about the intent element of the sale offense. Switala sought to exclude officer expert testimony. The district court reserved a pretrial ruling, stating that it required a "question-by-question analysis."

This court reviews evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). But when a party fails to object to the admission of evidence at trial, this court reviews for plain error. *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). Plain error requires showing (1) an error; (2) that was plain; and (3) that affected the defendant's substantial rights. *Id.* An error is "plain" if it is "clear or obvious," *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted), meaning it "contravenes case law, a rule, or a standard of conduct." *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010). A new trial is not warranted unless the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted).

Opinion testimony of a witness who is not testifying as an expert is "limited to those opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within . . . Rule 702." Minn. R. Evid. 701. Opinion testimony "may help the jury by illustrating

the witness's perception in a way that the mere recitation of objective observations cannot." *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010).

Here, Switala objected after the prosecutor asked a sergeant: "How does the presence of the scale speak to this topic we're on, about [the] sale of [a] controlled substance?" The district court overruled the objection. Switala then objected after the prosecutor asked another sergeant: "Have you seen an instance where someone has abandoned this significant amount of methamphetamine?" The district court again overruled the objection. The district court did not abuse its discretion by admitting this testimony as to the significance of a scale in a controlled-substance-sale case and whether the sergeant had prior experience with the abandonment of a large quantity of methamphetamine. This testimony was limited to the sergeants' perceptions and was helpful to the jury in determining a fact in issue by explaining the evidence.

And if we review the admission of the entirety of the sergeants' testimony related to the quantity of controlled substance discovered and the significance of the scale under the plain-error standard, we conclude that Switala fails to show plain error. The sergeants testified about the evidence and inferences based on the evidence. Switala has not established prejudice because the jury saw photographs of the methamphetamine bagged in separate baggies with a scale. A deputy also testified, without objection, that the scale and the quantity of the crystal-like substance typically indicated that the person in possession was "possibly selling." He also testified that because of the "large quantity" of the crystal-like substance, he contacted the SIU, which is what is done when a large

quantity is discovered. Switala fails to establish plain error in the admission of the officers' testimony.

Affirmed.