STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0149

State of Minnesota,
Respondent,

vs.

Shelly Sharon Watkins,
Appellant.

Filed January 11, 2021
Affirmed in part, reversed in part, and remanded
Klaphake, Judge[*]

Hennepin County District Court
File No. 27-CR-18-27709

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Bryan, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In this appeal from appellant Shelly Sharon Watkins's convictions for fifth-degree sale of a controlled substance and fifth-degree possession of a controlled substance, Watkins argues that the district court erred by admitting statements he made to the police before they provided a *Miranda* warning. Watkins also argues the district court erred by entering convictions for both the sale and possession offenses. Because all of Watkins's contested statements were either voluntary or any error in admitting them was harmless to Watkins, we affirm his convictions. Because all parties agree that the district court erred by entering convictions for both offenses, we remand for the district court to vacate the conviction for fifth-degree possession.

DECISION

I.

Watkins first contends that the district court committed prejudicial error by admitting statements he made while subject to custodial interrogation and before the police provided his Fifth Amendment *Miranda* warning. The Fifth Amendment to the United States Constitution and article I, section 7 of the Minnesota Constitution protect criminal suspects from compelled self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7; *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). *Miranda* established a procedural safeguard for this right by making a suspect's incriminating statements inadmissible at trial if the suspect made them during a custodial interrogation and the police

failed to provide a *Miranda* warning before the interrogation. *Id.* A custodial interrogation occurs when a suspect is in custody and the police conduct an interrogation. *State v. Heinonen*, 909 N.W.2d 584, 589 (Minn. 2018). A suspect's statements made prior to being read the *Miranda* warning are admissible so long as they were made outside of a custodial interrogation. *See id.* The parties do not dispute the facts, and both agree Watkins was in custody and was not given a *Miranda* warning. Watkins argues only that the district court erred when it concluded that he was not subject to interrogation when he made the statements, a legal conclusion we review de novo. *Id.* at 590.

An interrogation under *Miranda* includes both direct questioning by the police or the functional equivalent of questioning. *Id.* at 589. An officer's actions constitute a functional interrogation if the officer should have known that their actions were reasonably likely to elicit an incriminating response. *Id.* at 589-90. We consider this standard met when an objective person observing from the perspective of a suspect could conclude from the totality of the circumstances that the officer's actions subjected the suspect to compulsion "above and beyond that inherent in custody itself" to make incriminating statements. *Id.* at 589-90 (quotation omitted); *State v. Tibiatowski*, 590 N.W.2d 305, 310 (Minn. 1999). Our analysis does not consider the officer's subjective intent for their actions. *Heinonen*, 909 N.W.2d at 590. We consider a suspect's statements voluntary if an objective observer could not conclude that a suspect would feel extra compulsion. *See Tibiatowski*, 590 N.W.2d at 310.

Even if we conclude that Watkins was subject to interrogation, meaning the district court erred by admitting the statements, we will still affirm the district court's decision if

the admission did not harm the suspect's case. *State v. Farrah*, 735 N.W.2d 336, 343 (Minn. 2007). "When an error implicates a constitutional right, we will award a new trial unless the error is harmless beyond a reasonable doubt. An error is harmless beyond a reasonable doubt if the [fact-finder's] verdict was surely unattributable to the error." *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (quotation and citation omitted). We determine whether the verdict can be attributed to the error by considering "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defendant." *State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005). We conclude that all of Watkins's statements were either voluntary or their admission was harmless beyond a reasonable doubt.

Watkins argues that he made incriminating statements to the police while subject to interrogation, so those statements should have been excluded from trial. The police had received reliable information that Watkins was selling marijuana at a tavern. Officers arrested Watkins and held him in custody in a squad car and then inside his girlfriend's house, where he was staying long-term, while they searched it. The officers located nearly a kilogram of marijuana spread between his SUV and his girlfriend's house. Watkins made a series of incriminating statements in the squad car and then inside the house about having marijuana in the SUV; how he kept his diabetic medicine and two guns in the house; a suggestion that police should use the garage to enter the house; that the house belonged to his girlfriend; and that he was house-sitting for his girlfriend. He also had a key fob to deactivate the house alarm. Watkins moved to suppress these statements as obtained in

violation of his Fifth Amendment right against compelled self-incrimination. The district court concluded that Watkins made these statements voluntarily, so it admitted them. Watkins then agreed to a bench trial on stipulated evidence, including the receipts, inventories, and photos from the searches of his person, the SUV, and the house; all the police reports; the BCA lab report; the body camera video and transcript; and the testimony and evidence from the pretrial evidentiary hearing on the suppression motion. The district court convicted Watkins of fifth-degree sale of a controlled substance and fifth-degree possession of a controlled substance.

We agree with the district court that Watkins voluntarily made his statement about the garage. As the squad car pulled up to the house, Watkins offered a suggestion to the officers in the car that the police should use the garage to enter the house because the front door was broken. The officers in the car barely spoke to Watkins between the arrest and their arrival at the house, and they did not say or do anything leading up to that point that could have compelled him to make the statement. An objective observer would conclude that Watkins made the statement spontaneously and voluntarily upon seeing the police surrounding the house and realizing they were going to enter it.

We also agree that Watkins voluntarily made his first statements about the marijuana in the SUV and the diabetic medicine in the house. Watkins made those statements to a nearby officer after waiting five minutes in the squad car outside the house. He called the officer over to ask him to retrieve a diabetic syringe from the SUV, and during that conversation told the officer that there was marijuana in the SUV and his medicine was in a refrigerator in the house. The officers on the scene barely spoke to Watkins, and

did not say or do anything that could have compelled Watkins to speak at all. An objective observer would conclude that Watkins made the statements spontaneously and voluntarily. The district court did not err by admitting these voluntary incriminating statements.

Moving to the remaining contested statements, we conclude that the district court's errors in admitting them were harmless beyond a reasonable doubt. Watkins argues that the police functionally interrogated him by bringing him into the house where he could observe their search and the evidence they gathered, and by asking him several questions during the search about items they found and his activities. He argues that in the totality of the circumstances, the officers' actions compelled him to make the incriminating statements. We assume that the officers' actions were a functional interrogation, so the district court erred by admitting the remaining contested statements. But when we exclude those statements from the district court's findings of fact and conclusions of law, it leaves the following uncontested evidentiary findings:

> Mr. Watkins was in constructive possession of the marijuana located in the Gucci bag in the backseat of his vehicle. Officers observed Mr. Watkins place the bag in the back seat of his vehicle before the car was placed on the tow truck. . . . This demonstrates that Mr. Watkins was in constructive possession of the marijuana located in the vehicle.
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> Mr. Watkins was also in constructive possession of the marijuana located at [the house]. While the residence belonged to Mr. Watkins's girlfriend, Mr. Watkins was known to stay there and, through surveillance and GPS tracking, had been staying in the house every night since October 17, 2018. . . . No one else was seen at the residence during the time officers had Mr. Watkins under surveillance other than an unknown female that stayed for a short period of time. Further, the CRI observed Mr. Watkins in possession of narcotics previously and indicated that Mr. Watkins sold drugs. This

> allows for an inference that Mr. Watkins stored narcotics at this residence. Photos of Mr. Watkins were located in the bedroom and kitchen, and he stored his diabetic medication in the refrigerator. Additionally, Mr. Watkins kept two of his guns in the bedroom. . . . This allows for an inference that Mr. Watkins was also in constructive possession of the marijuana located in the residence. These facts establish that Mr. Watkins was in constructive possession of the marijuana recovered in the [house].
>
> Mr. Watkins was in possession of 2.83 pounds of marijuana, an amount that is indicative of sale. Approximately one pound of the marijuana recovered was packaged in smaller baggies, weighing approximately one ounce each, which is also indicative of an intent to sell. Further, Mr. Watkins had $5,000 cash (primarily in twenty dollar bills) on his person and $6,000 cash (primarily in twenty dollar bills) was found in the bedroom closet. Such large amounts of cash in twenty dollar denominations is also indicative of narcotics sales. Additionally, during their surveillance, officers witnessed Mr. Watkins conduct what appeared to be narcotics transactions and the CRI had provided information that he/she observed Mr. Watkins conducting drug sales. All these facts lead to a reasonable inference that Mr. Watkins sold or intended to sell marijuana.

The package of stipulated evidence directly supports these findings. Watkins did not contest these findings during the bench trial or on appeal. These uncontested findings therefore support the district court's conclusion beyond a reasonable doubt, so we cannot attribute that conclusion to the contested statements.

Watkins specifically argues that the admission of his repeated statements about the marijuana in the SUV prejudiced him because the district court relied on those statements to conclude that he knew he was selling a controlled substance. Watkins repeatedly told officers about the marijuana in the SUV during their search of the house, all of which we assume was a functional interrogation. But as we already indicated, he voluntarily and

spontaneously told an officer about the marijuana in the SUV while he was sitting in the squad car. The district court did not err by admitting and relying on that first voluntary statement. We attribute the district court's conclusion to this first voluntary statement, so the district court committed harmless error by admitting the others. We hold that all of Watkins's contested statements were either voluntary or harmless beyond a reasonable doubt, so we affirm his conviction.

II.

Watkins and the state agree that the district court erred when it convicted him for both the sale and possession offenses, because the possession of the marijuana was an included offense of the sale of that same marijuana. A defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2018). We grant the parties' request and remand for the district court to vacate Watkins's conviction for the lesser-included possession offense.

Affirmed in part, reversed in part, and remanded.