

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1735**

State of Minnesota,
Respondent,

vs.

Russell Edward Brown,
Appellant.

**Filed January 6, 2020
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-18-12792

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

Erik Nilsson, Acting Minneapolis City Attorney, Zenaida Chico, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Reilly, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of loitering with intent to solicit the illegal sale, distribution, purchase, or possession of narcotics, arguing that his conduct did not amount to loitering within the meaning of a Minneapolis ordinance. We affirm.

FACTS

In the early evening of April 11, 2018, Minneapolis police were remotely monitoring a surveillance camera located at the intersection of 10th Street North and Currie Avenue, an area well-known for crack cocaine sales. Officer Craig Williams observed appellant Russell Edward Brown standing in front of an abandoned building and engaging in two encounters that he believed were hand-to-hand narcotics transactions. On both occasions, individuals approached Brown and placed money in his hand. Brown then removed a small item from his mouth and gave it to the individual. Officer Williams believed the items were baggies containing crack cocaine. Sergeant Darcy Klund also monitored the camera and saw Brown “conduct at least two hand-to-hand” narcotics transactions.

At trial, the two officers testified about their observations. And portions of the surveillance video were admitted into evidence. The first video clip, which according to its time stamp, begins at 5:44:14 p.m. and ends at 5:46:42 p.m., shows Brown leaning against the building when a man approaches and hands him what appears to be crumpled papers. Brown then takes a small item out of his mouth and passes it into the hands of the man, who turns and walks away. In the second clip, which runs from 6:02:23 p.m. to

6:02:52 p.m., a different man approaches Brown, who is standing in the same place. The man makes an open-hand gesture to Brown, and removes what appears to be paper currency from his pocket and places it in Brown's pocket. Brown then turns toward the man, spits something into the man's hand, and the man walks away. Sergeant Klund testified that he and Officer Williams "continued to monitor the area for . . . roughly 20 minutes or so" before patrol officers moved in to arrest Brown. The arresting officers found multiple denominations of currency, some crumpled up, on Brown's person. But they did not find any narcotics.

Brown testified on his own behalf. He stated that he knew police were monitoring the area and described his conduct as a ploy to fool them. He denied being involved in a controlled-substance transaction. He also testified that there was a "long gap" between the two video clips.

The jury found Brown guilty. Brown appeals.

D E C I S I O N

The Minneapolis ordinance at issue prohibits individuals from "loiter[ing] on the streets or in a public place or in a place open to the public with intent to solicit for the purposes of . . . illegal narcotic sale, distribution, purchase or possession." Minneapolis, Minn., Code of Ordinances (MCO) § 385.50(a) (2016).¹ If the language of a statute or ordinance is unambiguous, the plain meaning of the language controls. *State v. Boecker*,

¹ Various acts, such as transferring small objects or currency "in a furtive fashion" and carrying "small objects or packages in one's mouth" may demonstrate "inten[t] to loiter for the purpose of engaging in distributing illegal narcotics." MCO § 385.50(d)(4), (5) (2016). Brown does not challenge the intent element of his conviction.

893 N.W.2d 348, 351 (Minn. 2017); *Yeh v. County of Cass*, 696 N.W.2d 115, 128 (Minn. App. 2005) (stating that rules governing statutory interpretation also apply to the interpretation of ordinances), *review denied* (Minn. Aug. 16, 2005). We review the interpretation of an ordinance de novo. *Eagle Lake of Becker Cty. Lake Ass’n v. Becker Cty. Bd. of Comm’rs*, 738 N.W.2d 788, 792 (Minn. App. 2007).

The ordinance does not define “loitering.” But our supreme court considers it “a term of common usage with a meaning reasonably understood by persons of common intelligence.” *State v. Armstrong*, 162 N.W.2d 357, 360 (Minn. 1968). We may apply dictionary definitions to analyze the term’s plain and ordinary meaning. *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). *Black’s Law Dictionary* defines “loitering” as “remaining in a certain place (such as a public street) for no apparent reason.” *Black’s Law Dictionary* 1084 (10th ed. 2014). Consistent with the patterned criminal jury instructions, the district court told the jury that “[l]oitering means to be slow in moving, delaying, lingering, sauntering or lagging behind.” See 10 *Minnesota Practice*, CRIMJIG 12.73 (2015) (defining “loitering” for purposes of the offense of loitering with intent to commit prostitution as “to be slow in moving, delaying, lingering, sauntering, or lagging behind”).

Brown’s sole argument is that the evidence did not establish the loitering element of the offense.² He does not contend the word “loitering” is ambiguous or challenge the jury instruction. Rather, he asserts that “the videos capturing [his] conduct were, in total,

² Brown does not deny the observed hand-to-hand transfer of narcotics.

three minutes long,” which is an insufficient period of time to constitute loitering as a matter of law. We are not persuaded.

First, Brown’s argument mischaracterizes the evidence. The first of the two video clips begins at 5:44 p.m. and the second clip ends at 6:02 p.m. In both clips, Brown is standing in the same location and wearing the same clothes. Officer Williams observed Brown standing there prior to and during the two transactions, and up until his arrest, a period that exceeds the 18 minutes captured in the two video clips. Brown himself testified that there was a “long gap” between the two video clips.

Second, the caselaw does not support Brown’s argument that the state failed to prove he was loitering. In *State v. Hawkins*, the defendant was arrested for violating the same ordinance after he was observed riding a bike in an area for about 15 minutes, hailing motorists, and engaging in hand-to-hand exchanges an officer deemed consistent with a drug transaction. 622 N.W.2d 576, 578 (Minn. App. 2001). This court concluded that these circumstances were sufficient to permit the reasonable belief that Hawkins engaged in drug sales. *Id.* at 581. Likewise, in *State v. Smith*, the supreme court held that police had probable cause to arrest the defendant for violating the ordinance when they observed him for 30 minutes, and “the location and defendant’s conduct were consistent with crack dealing.” 476 N.W.2d 511, 517 (Minn. 1991).

Citing an unpublished decision of this court, Brown asserts that his mere presence in a high-crime area does not support the conclusion that he was loitering. *See State v. Braziel*, No. A11-748, 2012 WL 1813281, at *3 (Minn. App. May 21, 2012). We agree. But this general proposition is not implicated here because Brown was not merely present

in a high-crime area. He stood against an abandoned building located in a high-crime area for over 18 minutes. And police saw him conduct two hand-to-hand transactions that were consistent with narcotics sales. On this record, we are satisfied that Brown's conduct constitutes loitering under the plain language of the ordinance.

Affirmed.