STATE OF MINNESOTA

IN SUPREME COURT

A21-0205

Court of Appeals | Moore, III, J.

State of Minnesota,

Respondent,

vs.

Filed: November 9, 2022
Office of Appellate Courts

Morice Laroy Dixon,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Lisa M. Lopez, Acting Chief Hennepin County Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. A finding of probable cause can be based on an uncorroborated confession of a defendant, which, under Minn. Stat. § 634.03 (2020), would be insufficient to sustain a conviction at trial without evidence independent of the confession that reasonably tends to prove the specific crime charged in the complaint actually occurred.

2. The district court erred when it granted the criminal defendant's pretrial motion to dismiss the marijuana charge for lack of probable cause because his statement

that the substance he possessed was marijuana did not need to be corroborated at the pretrial stage of the proceedings.

Affirmed.

O P I N I O N

MOORE, III, Justice.

Appellant Morice Laroy Dixon was charged with fifth-degree marijuana possession after officers discovered a plant substance in his car during a traffic stop. A field test of the substance detected the presence of tetrahydrocannabinol (THC), but the State did not test the concentration of THC in the substance before charging the case. Dixon filed a pretrial motion to dismiss the marijuana charge for lack of probable cause, arguing that without a scientific test establishing that the THC concentration of the substance exceeded the statutory threshold distinguishing "legal hemp" from "illegal marijuana," the facts alleged in the complaint failed to establish probable cause to believe he possessed marijuana. Citing Minn. Stat. § 634.03 (2020), Dixon claimed his statement that the substance he possessed was marijuana could not be used to establish probable cause because his statement was "uncorroborated" by testing revealing that the threshold concentration of THC was present. The State disagreed, arguing that Dixon's admission that the substance was marijuana could be used, along with several other facts, to establish probable cause to believe Dixon possessed marijuana.

Persuaded by Dixon's argument, the district court granted Dixon's motion to dismiss the marijuana charge for lack of probable cause, determining that "without a test result illustrating at least the threshold concentration of THC is present, a person's belief

about the substance and its appearance do not provide for a probable cause finding." The court of appeals reversed, holding that chemical testing establishing the THC concentration of the substance is not required "if there is other sufficient evidence to support a finding of probable cause." *State v. Dixon*, 963 N.W.2d 724, 732 (Minn. App. 2021).

Because Dixon's admission that the substance he possessed was marijuana did not need to be corroborated at the pretrial stage of proceedings and is sufficient to survive a motion to dismiss for lack of probable cause, we affirm.

FACTS

On October 31, 2019, officers pulled Dixon over for a traffic violation in Plymouth, Minnesota.[1] When the officers approached Dixon, they smelled the odor of marijuana emanating from the car and noticed he was slurring his words. They also discovered that his driver's license was suspended. Dixon told the officers he had smoked marijuana earlier in the day and had a small amount in his car. The officers then searched the car and found a substance they believed to be marijuana weighing a total of 58.93 grams. A field test of the substance detected THC.[2] In a post-*Miranda* statement, Dixon admitted to possessing the suspected marijuana.

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[1] Dixon does not challenge the validity of the traffic stop. Although the police reports are not part of the record on appeal, the memorandum filed by the State in the district court describes the traffic stop as follows: "officers observed a vehicle drive through a stop sign. The officers caught up to the vehicle and observed that the car was now stopped at an intersection with no stop sign." Dixon did not challenge the State's description of the traffic stop in the district court or the court of appeals.

[2] The complaint does not mention that officers conducted a field test. In their district court memoranda, however, both parties note that the field test occurred.

The State charged Dixon with felony fifth-degree possession of a controlled substance. Specifically, the State alleged that Dixon unlawfully possessed one or more mixtures containing more than 42.5 grams of marijuana.[3] *See* Minn. Stat. § 152.025, subd. 2(1) (2020). The criminal record summary that was completed in March 2020 indicated that Dixon had two prior fifth-degree controlled substance convictions and that he was still on probation for the more recent conviction.

On December 18, 2020, Dixon moved to dismiss the complaint for lack of probable cause, arguing that there was insufficient evidence that the plant material he possessed was marijuana with a THC concentration equal to or greater than 0.3 percent and not hemp, which has a THC concentration below 0.3 percent.[4] In support of his motion, Dixon reasoned that chemical testing of the THC concentration of the plant substance was required to distinguish between hemp and marijuana. Because the field test used merely detected the presence of THC without quantifying its concentration, Dixon argued the facts alleged in the complaint failed to establish probable cause to believe he possessed marijuana.

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[3] A "small amount" of marijuana is considered 42.5 grams or less, and the possession of such a "small amount" is non-criminalized. Minn. Stat. § 152.025, subd. 2(1) (2020) (excluding a "small amount of marijuana" from fifth-degree possession of a controlled substance); Minn. Stat. § 152.01, subd. 16 (2020) (defining "small amount").

[4] *See* Minn. Stat. § 152.01, subd. 9 (2020) (defining "[m]arijuana" as "all parts of the plant of any species of the genus Cannabis" excluding "hemp"); *see also* Minn. Stat. § 152.22, subd. 5a (2020) (" 'Hemp' has the meaning given to industrial hemp in section 18K.02, subdivision 3."); Minn. Stat. § 18K.02, subd. 3 (2020) (defining "[i]ndustrial hemp" as "the plant Cannabis sativa L. . . . with a delta-9 tetrahydrocannabinol concentration of *not more than* 0.3 percent on a dry weight basis" (emphasis added)).

The State countered that the facts alleged in the complaint established probable cause to believe the seized substance was marijuana. The State emphasized the odor of marijuana coming from the car, the substance's resemblance to marijuana, the field test confirming the presence of THC in the substance, and Dixon's own admission that the substance was marijuana. Acknowledging that a test of the substance's THC concentration would arguably be required to satisfy the proof-beyond-a-reasonable-doubt standard if the case went to trial, the State argued such testing was not required to produce test results to survive a probable cause challenge.

The district court dismissed the marijuana charge for lack of probable cause. After making factual findings consistent with the facts above, the district court concluded as a matter of law that to survive a motion to dismiss for lack of probable cause, the State is required to conduct a chemical test establishing the THC concentration in plant material. The district court noted that because "the law distinguishes legal hemp from marijuana" based on THC concentration, "the mere presence of THC no longer is automatically criminal," and therefore "is insufficient for the purposes of probable cause." The district court reasoned that because "the legislature drew a line at which the concentration of THC goes from the legal hemp to the illegal marijuana," the State cannot establish probable cause in the absence of a chemical test showing the THC concentration is above the legal limit. To withstand a probable cause challenge, the district court concluded, "the suspected marijuana must be fully tested before charging," and Dixon's "statements, beliefs, and [the] appearance of the suspected marijuana do not change the conclusion that the charge is not currently supported by probable cause."

The State appealed, and the court of appeals reversed the district court's order. *Dixon*, 963 N.W.2d at 732. The court of appeals explained that " '[a] motion to dismiss for lack of probable cause should be denied where the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a [judgment] of acquittal if proved at trial.' " *Id.* at 729 (second alteration in original) (quoting *State v. Lopez*, 778 N.W.2d 700, 703–704 (Minn. 2010)).[5] Next, the court of appeals distinguished the standard of proof for conviction from the standard of proof for probable cause to charge, noting that the latter is a lower standard. *See id.* at 730–31. Combining the probable cause standard, the felony fifth-degree possession statute, and the statutory definition of "marijuana," the court of appeals described the applicable legal standard as follows:

> [W]hen a defendant is charged with felony fifth-degree possession of marijuana and brings a motion challenging probable cause, the district court should deny the motion if the facts in the record, when proved at trial, would permit the jury to reasonably conclude that the state had proved beyond a reasonable doubt that the defendant knowingly and unlawfully possessed more than 42.5 grams of plant material from any species of the Cannabis genus, excluding Cannabis sativa L. plant material with a THC concentration less than or equal to 0.3% on a dry weight basis . . . .

Id. at 730.

The court of appeals noted that this court has not set any minimum evidentiary requirements for identifying a substance but cited to our statement in *State v. Olhausen* that

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[5] In quoting *Lopez*, the court of appeals substituted the word "judgment" for "directed verdict." Consistent with Minnesota Rule of Criminal Procedure 26.03, subdivision 18, the proper term is now a motion for "a judgment of acquittal" rather than a motion for directed verdict. *See State v. Gurske*, 395 N.W.2d 353, 356 n.5 (Minn. 1986).

in the absence of scientific testing, " 'circumstantial evidence and officer testimony may be presented to the jury to attempt to prove the identity of the substance' at trial." *Dixon*, 963 N.W.2d at 730 (quoting *State v. Olhausen*, 681 N.W.2d 21, 28–29 (Minn. 2004)). If circumstantial evidence can be used at trial where the burden of proof is higher, the court of appeals reasoned, "it can certainly also be used at the pretrial stage to determine whether probable cause exists to believe that the plant material is marijuana." *Id.* The court of appeals noted that Minnesota's appellate courts "have repeatedly refused to adopt a bright-line rule requiring chemical testing in order to establish that a substance is a controlled substance." *Id.* Creating such a requirement for marijuana "would essentially require conclusive proof that the plant material is marijuana at the probable cause stage," effectively eliminating the difference between the standard of proof at trial versus on motions challenging probable cause. *Id.* at 731.

Having concluded that the bright-line rule created by the district court was not supported by existing case law, the court of appeals held that when a defendant files a motion to dismiss a marijuana charge for lack of probable cause, "chemical testing establishing that the plant material is marijuana rather than hemp is not required if there is other sufficient evidence to support a finding of probable cause." *Id.* Applying this rule to the facts of Dixon's case, the court of appeals concluded that the district court committed reversible error when it granted Dixon's motion to dismiss the marijuana charge for lack of probable cause because if the alleged facts—including Dixon's prior drug convictions, his admission to smoking marijuana earlier that day, his slurred words, and the traffic

violation leading to the stop—were proven at trial, Dixon would not be entitled to a judgment of acquittal. *Id.* at 732.

We granted Dixon's petition for review.

ANALYSIS

This case presents the question of whether the State must obtain a chemical test showing that the THC concentration of the substance exceeds the legal limit to survive a motion to dismiss a marijuana charge for lack of probable cause. We conclude that such a test is not required here because Dixon's admission that the material was marijuana did not need to be corroborated to survive a motion to dismiss at the probable cause stage.

The district court dismissed the marijuana charge for lack of probable cause based on the legal conclusion that, to establish probable cause to charge for fifth-degree marijuana possession, the State must establish through a chemical test that the THC concentration in the substance exceeds the legal limit. The parties agree that, following the 2019 amendment to the statutory definition of marijuana, the THC concentration of a substance believed to be marijuana became an essential element of the charge of fifth-degree marijuana possession. Although we have not had occasion to consider whether this understanding is an accurate reading of the law in light of the recent amendment, based on the parties' agreement, we assume without deciding that proof of a substance's THC concentration is an element of fifth-degree marijuana possession, Minn. Stat. § 152.025, subd. 2(1).[6]

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[6] In 2019, the Legislature amended the statutes governing marijuana and industrial hemp as follows. "Marijuana" is now defined as "all parts of the plant of any species of

When a district court dismisses a criminal complaint for lack of probable cause based on a legal determination, we review that decision de novo. *Lopez*, 778 N.W.2d at 703. *State v. Florence* is our seminal case on motions to dismiss charges for lack of probable cause. 239 N.W.2d 892 (Minn. 1976). In *Florence*, we discussed how a district court should handle a pretrial motion to dismiss the charges for lack of probable cause when, like here, the defendant does not produce witnesses subject to cross-examination or offer any evidence directed at the credibility of facts appearing in the record. *Id.* at 903. We stated that, under these circumstances, a district court should deny a motion to dismiss the charge for lack of probable cause if it is "satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a [judgment] of acquittal if proved at trial."[7] *Id.* Accordingly, we must determine whether there is enough

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the genus Cannabis" but does not include hemp. Minn. Stat. § 152.01, subd. 9; *see also* Minn. Stat. § 152.22, subd. 5a (" 'Hemp' has the meaning given to industrial hemp in section 18K.02, subdivision 3."). "Industrial hemp" is now defined as "the plant Cannabis sativa L. . . . with a delta-9 tetrahydrocannabinol concentration of *not more than* 0.3 percent on a dry weight basis." Minn. Stat. § 18K.02, subd. 3 (emphasis added). Substances that do *not* contain a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis fall within the statutory definition of "nonintoxicating cannabinoids." *See* Minn. Stat. § 151.72, subds. 3–4 (2020). Accordingly, the only thing now differentiating "industrial hemp" from "marijuana" in Minnesota is the tetrahydrocannabinol concentration present in the plant material.

[7] Dixon argues that the court of appeals incorrectly applied the lower standard used to determine probable cause to search when reviewing the district court's dismissal for lack of probable cause. This assertion rests solely on the court of appeals' two citations to *State v. Harris*, a case that considered whether a search warrant was supported by probable cause to believe the defendant committed the charged offense. *See Dixon*, 963 N.W.2d at 729, 731 (citing *State v. Harris*, 589 N.W.2d 782, 790–91 (Minn. 1999)). Dixon's argument ignores that, in the next sentence, the court of appeals immediately clarified that the relevant standard of probable cause in Dixon's case is whether "the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a [judgment]

evidence in the record, including reliable hearsay, to support denying a motion of acquittal on the issue of whether the plant material seized from Dixon is marijuana.

As part of our analysis in *Florence*, we observed that under Minnesota law, "a finding of probable cause could be based on testimony which would not support a conviction, i.e., the testimony of an uncorroborated accomplice." *Id.* at 897 (citing *State v. Jeffrey*, 300 N.W. 7, 8 (Minn. 1941)).[8] We see no reason why this principle should not be extended to uncorroborated confessions.

Under the codification of Minnesota's corpus delicti rule,[9] Minn. Stat. § 634.03, "[a] confession of the defendant shall not be sufficient to warrant *conviction* without evidence that the offense charged has been committed." (Emphasis added.) In *State v. Holl*, we held that the unambiguous language of this statute "requires the State to present evidence independent of a confession that reasonably tends to prove that the specific crime charged in the complaint actually occurred in order to sustain the defendant's conviction."

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of acquittal if proved at trial." *Id.* at 729 (alteration in original). It is apparent that the court of appeals in *Dixon* was merely citing *Harris* to the extent that it distinguishes the evidentiary burden for probable cause as "significantly less than that required to support a conviction"—an accurate statement of the law. *Harris*, 589 N.W.2d at 790. Given the court of appeals' citations to the correct standard from *Lopez* and *Florence*, there is no indication the court of appeals applied an erroneous standard of review.

[8] In *Jeffrey*, we held that "[t]he uncorroborated testimony of an accomplice is sufficient to establish probable cause for belief of guilt," notwithstanding the statute requiring corroboration of the testimony of an accomplice to sustain a *conviction* for a crime upon a trial in the district court. 300 N.W. at 7–8 (citing 2 Mason's Minn. St. 1927, § 9903, a predecessor but substantively identical statute to Minn. Stat. § 634.04 (2020)).

[9] We explained the historical backdrop of the corpus delicti rule at common law in *State v. Holl*, 966 N.W.2d 803, 809–10 (Minn. 2021).

966 N.W.2d 803, 814 (Minn. 2021). We have cited and applied section 634.03 to challenges of the sufficiency of evidence to support a *conviction* on appeal. *See, e.g.*, *id.* at 814–17; *State v. Koskela*, 536 N.W.2d 625, 629 (Minn. 1995). We have never applied section 634.03 to a *probable cause* challenge. *See State v. Lalli*, 338 N.W.2d 419, 420 (Minn. 1983) (explaining that we did not need to decide whether section 634.03 applied to a question regarding the sufficiency of evidence to indict under Minn. R. Crim. P. 18.06, subd. 2, a provision now appearing in Minn. R. Crim. P. 18.05, subd. 2, which requires an indictment to be based on "probable cause to believe an offense has been committed and the defendant committed it"); *see also In re Welfare of C.M.A.*, 671 N.W.2d 597, 602 (Minn. App. 2003) (holding that "[t]he district court thus erred in . . . refusing to consider [a juvenile defendant's] confession at the probable cause stage of these proceedings"). Based on the language of the section 634.03 and our existing caselaw, we conclude that a finding of probable cause can be based on an uncorroborated confession of a defendant, which would be insufficient to sustain a conviction at trial without evidence independent of the confession that reasonably tends to prove that the specific crime charged in the complaint actually occurred.[10]

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[10] We have previously addressed the probative value of an admission that material is in fact a controlled substance. In *State v. Vail*, the district court found that two laboratory tests of a substance were "only screening tests not adequately specific to identify marijuana." 274 N.W.2d 127, 130 (Minn. 1979). Nonetheless, the district court found the defendant guilty by relying on evidence of a nonscientific nature, from which it drew "inferences identifying the substance" as marijuana. *Id.* at 133. The nonscientific evidence included the defendant's own statements identifying the substance, the price and the amount of marijuana he was selling, and the commercial practice of testing the substance during a large-volume transaction. *Id.* at 133–34. We reversed the district court's determination of guilt, reasoning that "[t]he price charged and representations made by the

The record shows that Dixon admitted the material in the vehicle was marijuana—an admission that is direct evidence of guilt. *State v. Weber*, 137 N.W.2d 527, 535 (Minn. 1965). That admission, which alone would not sustain a conviction, is enough to survive a motion to dismiss the charge of fifth-degree marijuana possession.[11] As a result, the

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defendant are, at best, only assertions of his belief," and were "not sufficient" to prove identity. *Id.* at 134. As part of our analysis, we observed that the informant and the Bureau of Criminal Apprehension agent testified at trial that no part of the material in issue was ever burned or smoked. *Id.* We explained that the absence of such evidence distinguished *Vail* from *State v. Dick*, in which we affirmed the defendant's conviction when the defendant admitted the substance was marijuana, the undercover policemen lit the substance, which gave off the odor of burning marijuana, and a criminalist examined the leaves under a microscope. *Id.* at 134 n.11 (citing *State v. Dick*, 253 N.W.2d 277, 279 n.1 (Minn. 1977)).

In *Olhausen*, the defendant was convicted of three offenses relating to the possession and attempted sale of methamphetamine based solely on circumstantial evidence. 681 N.W.2d at 22–23, 25. The State was unable to conduct any scientific testing on the alleged methamphetamine because the defendant escaped from the scene of a controlled buy with the substance in his possession and the State was not able to recover it. *Id.* at 24–25. In that context, we determined that several factors—including the defendant's own statements identifying the substance as methamphetamine, as well as corroborating statements from a co-conspirator, the officer's experience identifying methamphetamine, and the defendant's flight from the scene of the crime—supported the jury's determination of guilt. *Id.* at 28–29. Most relevant here, we concluded that the defendant's own statements identifying the substance as methamphetamine was probative because, unlike the defendant's admission in *Vail*, the defendant's admission in *Olhausen* was corroborated by the statements of a co-conspirator, the officer's experience identifying methamphetamine, and the defendant's flight from the scene of the crime. *Id.* at 29.

Vail, *Dick*, and *Olhausen* illustrate the principle that to sustain a conviction at trial, a defendant's confession that a material is a controlled substance must be corroborated by evidence independent of the confession that reasonably tends to prove that the specific offense charged has been committed. None of these cases, however, address the situation presented to us here: whether a defendant's uncorroborated admission which constitutes direct evidence of guilt is sufficient to establish probable cause.

[11] The State and the court of appeals also point to other facts in the record to support the conclusion that probable cause existed for the charges: (1) Dixon's admission to smoking marijuana earlier in the day, (2) Dixon's slurred speech, (3) the odor of marijuana in the car, and (4) the resemblance of the seized substance to marijuana. We express no

district court erred when it granted Dixon's pretrial motion to dismiss the marijuana charge for lack of probable cause.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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opinion on whether those facts are sufficient to support probable cause for fifth-degree possession.