STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0984

State of Minnesota,
Respondent,

vs.

Penny Lane Arredondo,
Appellant.

Filed June 20, 2023
Affirmed in part, reversed in part, and remanded
Wheelock, Judge

Redwood County District Court
File Nos. 64-CR-21-267, 64-CR-21-268

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

Jenna Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, William C. Lundy, Special Assistant County Attorneys, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges her conviction for causing contraband to be introduced into a jail and her sentences for the contraband conviction and two fifth-degree drug possession convictions. We affirm the contraband conviction because the state provided sufficient evidence to prove that appellant caused controlled substances to be introduced into the Redwood County Jail. Because the contraband conviction and both drug-possession convictions arose from the same behavioral incident, we reverse the sentences for the contraband conviction and one of the possession convictions and remand to the district court to amend the warrant of commitment.

FACTS

On April 22, 2021, a Redwood County Sheriff's sergeant pulled appellant Penny Lane Arredondo over for driving with a cancelled license.[1] The following facts are taken from testimony and exhibits admitted at trial.

After verifying that Arredondo's license was cancelled, Sergeant K.T. asked her to call someone to get the car, intending to arrest Arredondo and impound the car's license plates. A second police officer soon arrived and assisted in the arrest.

After she was seated in the back of the police car, Arredondo attempted to get the attention of her daughter, who had been a passenger in her car. When officers asked what

[1] The state charged Arredondo in a separate complaint with two additional offenses related to the same incident—obstruction of legal process in violation of Minn. Stat. § 609.50, subd. 1(2) (2020), and driving with a cancelled license in violation of Minn. Stat. § 171.24, subd. 5 (2020). Neither of these charges are at issue on appeal.

she needed, Arredondo responded that she needed her medication, and the medication was in her purse. One of the officers said, "OK, I will have [your daughter] grab your whole purse and you can bring it with. Does that work?" Arredondo responded, "I just want to take my dose." Sergeant K.T. placed the purse in the front seat of the squad car. Arredondo asked why her purse was in the front seat, and the sergeant replied, "I can't have it with you. You're under arrest. Just for safety purposes. You can't have it."

Arredondo then complained of a headache, and the officers observed that she was bleeding from her mouth. Sergeant K.T. took Arredondo to Redwood Hospital before driving her to the jail; they remained at the hospital for less than 30 minutes, and hospital staff did not prescribe Arredondo any medication. Sergeant K.T. then drove Arredondo to the jail and, at the jail entrance, asked Arredondo if she had any items that would "cause an issue in the jail, such as drugs, or any other kind of contraband." Arredondo replied that she did not, and Sergeant K.T. turned Arredondo and her personal property, including her purse, over to Officer B.K., the corrections officer at the jail, to complete the booking process.

During the inventory process, which occurred in the booking area of the jail, Officer B.K. found a prescription bottle with a label that identified its contents as alprazolam (Xanax) in Arredondo's purse; it contained four pills that did not match the prescription. The Minnesota Bureau of Criminal Apprehension tested the pills and identified two of the pills as methylphenidate hydrochloride (Ritalin), a Schedule II drug, and the other two as

lorazepam (Ativan), a Schedule IV drug.[2] These medications are available only by prescription, and Arredondo did not have a prescription for either of them.

At trial, Arredondo testified that she did not touch the purse from before she entered the police car to the time the jail staff inventoried the purse's contents, and Officer B.K. testified that Arredondo would not have had access to her purse while she was at the jail. Arredondo also testified that she did not ask Sergeant K.T. to take her medicine out of her purse or give her purse back to her family.

The jury found Arredondo guilty of both counts of fifth-degree possession of a controlled substance for possessing the Ativan and Ritalin pills and the single count of introduction of contraband into a jail for bringing the four pills into the Redwood County Jail. On May 9, 2022, the district court sentenced Arredondo to stays of imposition of felony sentences on the possession convictions and 365 days in jail on the contraband conviction, with 335 days stayed for two years.

Arredondo appeals.

[2] Minnesota established five schedules of controlled substances based on the 1970 federal Uniform Controlled Substances Act. Minn. Stat. § 152.02, subd. 1-6 (2020); *State v. Vail*, 274 N.W.2d 127, 135 (Minn. 1979). Both Schedule II and Schedule IV controlled substances have an accepted medical use, but Schedule II drugs have a high potential for abuse and a risk of severe dependence, while Schedule IV drugs have a low potential for abuse and a risk of limited dependence. 21 U.S.C. § 812(b)(2), (4) (2018).

DECISION

I. The evidence is sufficient to support Arredondo's conviction for causing contraband to be introduced into a jail.

Arredondo argues that the state did not provide sufficient evidence to support her conviction for causing controlled substances to be brought into the Redwood County Jail. Although Arredondo does not contest that the four pills the jail staff found in her purse were controlled substances or that she did not have permission to bring those pills into the jail, she disputes whether the pills were brought "into" the jail. Arredondo specifically argues that, as a matter of statutory interpretation, the evidence is insufficient to prove beyond a reasonable doubt that she introduced contraband into a jail, lockup, or correctional facility in violation of Minn. Stat. § 641.165 (2020) because she did not introduce controlled substances into the "residential portion" of the jail.

A challenge to the sufficiency of evidence requires appellate courts to conduct a close examination of the record. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). "The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.* This court applies this "traditional" standard of review when there is direct evidence to support the jury's verdict. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

"Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017); *see also State v. Degroot*, 946 N.W.2d 354, 360 (Minn. 2020). If a sufficiency-of-the-evidence claim requires statutory interpretation, the appellate court reviews the issue de novo. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). Thus, we first review de novo the statute's meaning on the element of whether Arredondo caused contraband to be introduced "into the jail,"[3] followed by a review of the record to determine if the state provided sufficient evidence to prove Arredondo violated Minn. Stat. § 641.165.

A. Statutory Interpretation

The first step in statutory interpretation is to determine whether the statute's language is unambiguous. *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). "A statute is ambiguous only if it is subject to more than one reasonable interpretation." *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017) (quotation omitted). But when the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous, and we apply its plain meaning. *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020).

[3] This court has not addressed the question of whether the statute refers to specific areas of a jail. The supreme court determined police may conduct an inventory search of a person's property after they are arrested and before they are incarcerated, but it does not specify which areas of the building are implicated by the phrase "into" the jail. *State v. Rodewald*, 376 N.W.2d 416, 420 (Minn. 1985).

"In determining whether the language of a statute is subject to more than one reasonable interpretation, we consider the canons of interpretation listed in Minn. Stat. § 645.08." *Degroot*, 946 N.W.2d at 360 (quotation omitted); *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). One of the canons provides that "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2022). And "in the absence of statutory definitions, we may consider dictionary definitions to determine the meaning of a statutory term." *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019). Both parties assert that the statute's language is unambiguous and supports their reading of it.

The statute under which the jury found Arredondo guilty provides, in relevant part:

> Whoever introduces or in any manner causes the introduction of contraband . . . into any jail, lockup, or correctional facility . . . without the consent of the person in charge, or is found in possession of contraband while within the facility or upon the grounds thereof, is guilty of a gross misdemeanor.

Minn. Stat. § 641.165, subd. 2(a). This portion of the statute contains four elements: (1) the property in question is categorized as contraband by law; (2) the contraband was introduced into a jail, lockup, or correctional facility; (3) the defendant was responsible for that introduction; and (4) the defendant did not have consent to introduce the property. The parties offer competing interpretations of the second element.

Arredondo argues that the plain language of the statute forbids the introduction of contraband "into any jail, lockup, or correctional facility" but does not specify an area of the jail, lockup, or correctional facility, and thus, the state must prove that she introduced contraband into the residential portion of the jail and not only the booking area.

Arredondo's argument refers to language in two separate statutes. First, she relies on the definition of "correctional facility" in the statute that concerns licensing and supervision of facilities and defines a correctional facility as "any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency." Minn. Stat. § 241.021, subd. 1 (2020). Using this definition, Arredondo reasons that "a correctional facility has two parts: it must have a residential component and its primary purpose must be to serve persons placed in facilities by certain adjudicatory authorities."

Arredondo further argues that, because the statute that permits counties to construct and maintain a jail mentions the jail and the residential area in separate clauses, "into" as used in section 641.165, subdivision 2(a), refers to the residential area. Minn. Stat. § 641.01 (2020) (stating that a county is authorized to maintain a jail with a residence "adjoining and connected" to that jail). She asserts that the language of section 641.165, subdivision 2(a), regarding the introduction of contraband refers to the residential part of the jail because that clause uses the preposition "into," as compared with the clause that forbids possession of contraband, which uses the prepositions "within" and "upon." This, Arredondo argues, suggests that the use of "into" implies a narrower definition of a jail than "within" or "upon."

The state argues that the plain language of the statute prohibits the introduction, or causing the introduction, of contraband to the inside or interior of one of the listed facilities, including the jail, and that Arredondo's interpretation violates the canon against surplusage by adding the word "residential" to the statute. The state further asserts that the legislature

has provided a comprehensive statutory scheme to ensure that contraband does not make its way into jails.

Section 641.165 does not define the term "into," and thus we turn to dictionary definitions to determine the plain meaning of the term. *See Alarcon*, 932 N.W.2d at 646. *Merriam-Webster's Collegiate Dictionary* defines "into" as "a function word to indicate entry, introduction, insertion, superposition, or inclusion." *Merriam-Webster's Collegiate Dictionary* 656 (11th ed. 2020). "Within" is defined as "in or into the interior." *Id.* at 1439. Neither preposition suggests a specific place inside a building or other enclosure. The statute limits the introduction of contraband "into" the facility and separates possession "within the facility" and "upon the grounds thereof." Minn. Stat. § 641.165, subd. 2(a). However, it does not follow that "into" or "within" refers specifically to a residential section of the jail that is not mentioned in the statute as a whole or that these prepositions refer to two different areas of the jail.

Applying the common and approved usage of the word "into," we conclude that the only reasonable interpretation of the phrase "into the jail" is that a person violates Minn. Stat. § 641.165 if they directly or indirectly cause contraband to enter any part of a jail. The purpose of the statute is to keep contraband out of the jail, not to subdivide the jail. And appellate courts "are not permitted to rewrite a statute or add additional statutory language." *State v. Holl*, 966 N.W.2d 803, 812 (Minn. 2021) (quotation omitted). We decline to read the term "residential portion" into the statute where it does not exist. Therefore, the state is required to prove only that Arredondo caused the contraband pills to be introduced into the jail, not into a specific area of the jail.

B. Sufficiency of the Evidence

This court evaluates the sufficiency of evidence through a careful review of the record. *Griffin*, 887 N.W.2d at 263. Appellate courts must consider the facts and "legitimate inferences" drawn from those facts and determine if "a jury could reasonably conclude that the defendant was guilty of the offense charged." *State v. Race*, 383 N.W.2d 656, 661 (Minn. 1986) (quotation omitted). This court must review the evidence "in the light most favorable to the prosecution." *Id.* (quotation omitted).

Here, the evidence the state presented at trial shows that, during her arrest, Arredondo asked for her medications in her purse and saw the officer place her purse in the front seat of the squad car. When asked if she had contraband that would cause an issue at the jail, Arredondo stated she did not have any such contraband. The evidence shows that Arredondo's actions caused controlled substances to enter the Redwood County Jail. It shows that Arredondo and her property were brought into the booking area of the jail. The corrections officer found the four pills while taking inventory of Arredondo's possessions in the booking area of the jail, and Arredondo did not have permission to bring the pills into the jail.

We conclude that the state provided sufficient evidence to sustain Arredondo's conviction for causing contraband to be introduced into a jail, in violation of Minn. Stat. § 641.165, subd. 2(a), and the jury could reasonably find that Arredondo was guilty of this charge.

II. The district court erred by imposing multiple sentences for the contraband conviction and both fifth-degree-possession convictions because all three offenses arose from the same behavioral incident.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2020). The district court may issue multiple convictions from a single behavioral incident but may not impose multiple sentences. *State v. Papadakis*, 643 N.W.2d 349, 358 (Minn. App. 2002). Although Arredondo did not object to the imposition of multiple sentences at sentencing, courts may make corrections to unlawful sentences "at any time," and "an appellant does not waive claims of multiple convictions or sentences by failing to raise the issue at the time of sentencing." Minn. R. Crim. P. 27.03, subd. 9; *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

Whether two or more offenses arise from a single behavioral incident is "a mixed question of law and fact." *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). This analysis "is not a mechanical test, but involves an examination of all the facts and circumstances." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997) (quotation omitted); *see also Degroot*, 946 N.W.2d at 365 ("Whether a defendant's multiple offenses were part of a single behavioral incident depends on the facts and circumstances of the case . . . ."). It is the state's burden to prove that the offenses in question were not part of a single behavioral incident. *Degroot*, 946 N.W.2d at 365.

First, the state concedes that one of Arredondo's two sentences for possession should be reversed. We agree. "Possession of two controlled substances at the same time and place, for personal use, constitutes a single behavioral incident." *State v. Barnes*,

618 N.W.2d 805, 813 (Minn. App. 2000) (quotation omitted), *rev. denied* (Minn. Jan. 16, 2001). The Minnesota Supreme Court instructs that an offender will be punished for the most serious of the offenses arising out of a single behavioral incident because the punishment for the most serious offense includes punishment for all offenses. *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006). The Minnesota Sentencing Guidelines do not provide different presumptive sentence ranges for fifth-degree possession of Schedule II drugs and Schedule IV drugs, *see* Minn. Sent'g Guidelines 4.C (2020), and the district court imposed an identical sentence for each count. The primary distinction between the offenses here is that Ritalin is a Schedule II drug and Ativan is a Schedule IV drug. Minn. Stat. § 152.02, subds. 3, 5. We therefore reverse the sentence for possession of the Schedule IV substance—Ativan.

Second, the parties disagree as to whether the contraband offense and the drug-possession offenses were part of a single behavioral incident. To determine whether multiple offenses are part of a single behavioral incident, we consider (1) whether the offenses occurred at substantially the same time and place and (2) whether the conduct was motivated by an effort to obtain a single criminal objective. *Degroot*, 946 N.W.2d at 365; *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). The state argues that Arredondo's introduction of contraband into a jail occurred at a different time and place than her possession of the substances and that the offenses did not have the same criminal objective.

We start by considering the time and place of the offenses. According to the state, the possession offenses were complete before Arredondo entered the jail because "she no longer possessed them once [Sergeant K.T.] took custody of her purse" at the traffic stop,

but the contraband offense occurred when the pills, which she no longer possessed, entered the jail, and thus the offenses were separated in terms of time and place. However, the state also acknowledges that at the scene of the traffic stop, Arredondo, with knowledge that the purse contained controlled substances, asked Sergeant K.T. for her purse during her arrest and was aware that her purse was in the front seat of the police vehicle and was transported to the hospital and jail with her. In its brief, the state asserts that Arredondo, "by asking for her purse and by lying to [Sergeant K.T.] about its contents, caused the pills to be brought into the jail" and that "the pills would not have entered the jail *but for* her conduct."

The state's understanding about Arredondo's conduct—that it was the act of asking for her purse that caused the pills to come into the jail—undercuts its position on the time and place of the contraband offense. Arredondo asked for her purse at the scene of the traffic stop, not when she was entering the jail. Indeed, Arredondo's request for her purse was the same act that deprived her of possession of the pills. Any difference in time and place between the offenses was not substantial. *But cf. State v. Bauer*, 792 N.W.2d 825, 826 (Minn. 2011) (holding that two different crimes relating to the same controlled substance were not part of the same behavioral incident). Thus, the state failed to establish that the offenses occurred at a substantially different time and place.

Next, we consider whether the state established that Arredondo's conduct was not motivated by an effort to obtain a single criminal objective. In doing so, we "examine the relationship of the offenses to one another [and] consider whether all of the acts performed were necessary to or incidental to the commission of a single crime and motived by an

intent to commit that crime." *Bakken*, 883 N.W.2d at 270 (quotation omitted); *Bauer*, 792 N.W.2d at 829. The parties agree that Arredondo's decision to ask for the purse—and thereby cause the contraband pills to be introduced into the jail—was an attempt to retain possession of the pills, either to conceal them from law enforcement or to ingest them. Thus, both offenses were motivated by Arredondo's intent to maintain possession of the pills. The offenses share a single criminal objective, and therefore, the state did not meet its burden to prove that these offenses arose from separate behavioral incidents.

We conclude that the offenses in question were part of a single behavioral incident. Because a person may be punished for only one of the offenses from a single behavioral incident, the district court may not impose multiple sentences. Minn. Stat. § 609.035, subd. 1. Arredondo's fifth-degree-possession convictions are felonies, and the contraband conviction is a gross misdemeanor. We therefore reverse the sentence for the contraband conviction. *See Kebaso*, 713 N.W.2d at 322 (instructing that punishment for the most serious offense includes punishment for all offenses).

In sum, because the state provided sufficient evidence to show that Arredondo caused contraband to be introduced into a jail, we affirm that conviction. But because the contraband offense and the possession offenses arose from the same behavioral incident, and the district court may sentence Arredondo on only one of these three convictions, we reverse Arredondo's sentence for fifth-degree possession of Ativan and her sentence for introduction of contraband into a jail. Finally, we remand to the district court to amend the warrant of commitment consistent with this opinion.

Affirmed in part, reversed in part, and remanded.