

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0246**

State of Minnesota,
Respondent,

vs.

Donald Dequai Crenshaw,
Appellant.

**Filed January 16, 2024
Affirmed
Hooten, Judge***

Becker County District Court
File No. 03-CR-21-2245

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Hooten, Judge.

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from the final judgment of conviction for conspiracy to commit aggravated first-degree controlled-substance possession, appellant argues that his conviction must be reversed because the state failed to meet its burden to prove each element of the offense beyond a reasonable doubt. We affirm.

FACTS

Respondent State of Minnesota charged appellant Donald Dequai Crenshaw by amended complaint with conspiracy to commit aggravated first-degree controlled-substance possession, in violation of Minn. Stat. §§ 152.021, subd. 2b(2), 152.096, subd. 1 (2020), and conspiracy to commit first-degree controlled-substance possession, in violation of Minn. Stat. §§ 152.021, subd. 2(a)(1), 152.096, subd. 1 (2020). The following factual summary is based on the evidence and testimony presented at trial.

On November 17, 2021, law enforcement officers were tracking a cellphone associated with Crenshaw.¹ The officers learned that the cellphone left the Detroit Lakes area in the evening hours, traveled to the Twin Cities, remained there for a short duration, and then headed back towards the Detroit Lakes area in the early morning hours of November 18, 2021. Officers identified the vehicle in which the phone was traveling.

¹ Law enforcement officers were investigating Crenshaw for drug-related activity and obtained a search warrant for his cell phone. In a pretrial ruling, the district court permitted officers to testify that they were monitoring Crenshaw's phone but not to testify to any details regarding why they were monitoring Crenshaw's phone.

Officers stopped the vehicle after it crossed into Becker County believing that Crenshaw would be in the vehicle and that the vehicle contained narcotics. Three people were in the vehicle: C.H. was the driver, Crenshaw was the front-seat passenger, and C.B. was the back-seat passenger.

The vehicle's occupants were arrested and taken to jail. Crenshaw told police that prior to being arrested, he had been in Wadena "shooting hoops." C.H. told police that he had just driven Crenshaw to a house in St. Paul so that Crenshaw could pick up methamphetamine. Police obtained a search warrant to search the vehicle and found C.H.'s backpack, which contained a digital scale and small plastic baggies. Also in the trunk, police found a blue pillowcase that contained plastic grocery bags which contained 219 grams of methamphetamine.

The state charged C.H. and Crenshaw with aggravated first-degree controlled-substance possession and first-degree controlled-substance possession. The state later amended the complaint and charged Crenshaw with conspiracy to commit those crimes. C.H. pleaded guilty to first-degree controlled-substance possession, received a probationary disposition and treatment through drug court, and testified against Crenshaw at his trial. The following excerpts are taken from C.H.'s testimony:

Q: And how did the plan of going to the Twin Cities on the 17th of November come to fruition?

A: Just kind of asked me if I would go, he offered me some money to go, money and drugs. I was a drug addict at the time so I took the offer.

...

Q: And at that time did you know why Mr. Crenshaw wanted to go to the cities?

A: Yeah.

Q. And why was that?

A. Well, I mean I knew that he had to pick some stuff up, but I also assumed that we had to pick up some drugs. We went to pick up drugs.

C.H. agreed he did not know “exactly, specifically” what was in the bag and that is why he “used the word assuming.” When asked how much Crenshaw paid him to drive, he testified, “I think it was about \$500 and then there was drugs too, so when we would’ve got back I’m sure I would’ve gotten some drugs out of it too.” C.H. testified that Crenshaw directed him to a house in St. Paul; without Crenshaw’s direction, C.H. would not “have known where to get those drugs or what house to go to.” According to C.H., he dropped off Crenshaw at the house then he and C.B. drove to Taco Bell. When they returned to the house, Crenshaw walked out with a bag, put the bag in the trunk, and got into the car. They then drove back towards Detroit Lakes and were stopped by police once they entered Becker County at approximately 2:00 a.m.

The state’s only other trial witnesses were law enforcement officers. Agent D.S. testified that he was tracking the cellphone that was associated with Crenshaw on November 17-18, 2021, and that tracking data showed that the phone “had left the Detroit Lakes area and it traveled to the Minneapolis-St. Paul area for a short time and then returned.” He also testified that he personally observed C.H.’s vehicle in an area consistent with the tracking information and that Crenshaw’s statement that he was “shooting hoops”

in Wadena that evening was inconsistent with what the tracking data showed and the officer's physical visual surveillance of the vehicle. Agent D.S. stated that when he arrested Crenshaw, he conducted a pat-frisk search and discovered "a glass smoking device" generally used for "smoking controlled substances" on Crenshaw's person. Agent D.S. relayed the information about the device to Deputy C.B. because D.S. did not have rubber gloves accessible. Deputy C.B. testified that he transported Crenshaw to the jail and that, when he searched Crenshaw, he found a glass pipe that tested positive for methamphetamine residue, a small baggie also containing methamphetamine residue, a few unidentified pills, and two \$100 bills in Crenshaw's pockets. Agent D.S. testified that a digital scale, commonly used for weighing out narcotics, and "some other packaging items like plastic baggies," commonly used for "[e]ither transporting or distributing—or distribution of the narcotics," were found in the vehicle Crenshaw was in.

Agent D.C. testified that Crenshaw was holding a cellphone when he was removed from the vehicle, and there was an ongoing call on the cellphone. He testified that, based on his training and experience, when people get stopped in vehicles they often "contact either the person they had just met with, such as a source, or other people that are involved." He also testified that C.H.'s statements to police after his arrest regarding the route he drove matched what the tracking data showed. He testified that while the typical methamphetamine user will possess between one and two grams of methamphetamine at any given time, 219 grams of methamphetamine was found in the larger of the two grocery bags found in the trunk of the vehicle. He noted that the average price for a gram of methamphetamine is "[u]sually \$100."

The jury found Crenshaw guilty of both charges. The district court adjudicated Crenshaw on count one and sentenced him to prison for 158 months. This appeal follows.

DECISION

Crenshaw argues that his conviction for conspiracy to commit aggravated first-degree controlled substance possession, in violation of Minn. Stat. §§ 152.021, subd. 2b(2), 152.096, subd. 1, must be reversed because the accomplice testimony was insufficiently corroborated. Alternatively, Crenshaw argues that his conviction must be reversed because the state failed to prove the requisite aggravating factor. In a pro se supplemental brief, Crenshaw argues that (1) the district court erred in denying his pretrial challenge to the search warrant, (2) he received ineffective assistance of counsel, and (3) the district court erred in instructing the jury.

When considering a claim of insufficient evidence, this court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in [the] light most favorable to the conviction, [is] sufficient" to sustain the verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court must "determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). This court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Appellate courts will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of

proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

I. Accomplice Testimony

Crenshaw argues that, because the only evidence presented that Crenshaw conspired with C.H. to possess the methamphetamine came from C.H.’s accomplice testimony, and because C.H.’s accomplice testimony was not sufficiently corroborated as required by Minn. Stat. § 634.04 (2020), the evidence is insufficient to support his conviction.

Accomplice testimony is considered untrustworthy due to concerns that the accomplice may testify against the defendant “in the hope of obtaining clemency.” *State v. Thoresen*, 921 N.W.2d 547, 551 (Minn. 2019). As such, Minnesota law provides that a “conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense.” Minn. Stat. § 634.04. Appellate courts review the sufficiency of evidence corroborating an accomplice’s testimony in the same way they review a sufficiency challenge: “in the light most favorable to the prosecution, and with all conflicts in the evidence resolved in favor of the verdict.” *State v. Nelson*, 632 N.W.2d 193, 202 (Minn. 2001).

“[C]orroborative evidence [of the accomplice testimony] does not need to be sufficient to establish a prima facie case of the defendant’s guilt or sustain a conviction,” but rather, the corroborative evidence “need only link the defendant to the crime in some substantial degree [that] tends to affirm the truth of [the accomplice’s] testimony and point to the guilt of the defendant.” *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quoting *State v. Clark*, 755 N.W.2d 241, 253-54 (Minn. 2008)). “The precise quantum of

corroborative evidence” that is required to support a guilty verdict “depends on the circumstances of each case.” *Clark*, 755 N.W.2d at 253 (quotation omitted). One such circumstance is whether “there is a significant danger that [the accomplice] has been induced to offer incriminating testimony [against the defendant] based on self-serving motives.” *Id.* at 256.

In this case, the evidence presented at trial sufficiently corroborates C.H.’s testimony. First, there was sufficient evidence that affirmed the truth of C.H.’s testimony. *Staunton*, 784 N.W.2d at 297. The state presented evidence that the cellphone police were tracking traveled on Interstate 94 to Sauk Centre, then came up Highway 71 to Wadena. When C.H. talked to police immediately after his arrest, he described the route he drove matching the tracking data and did so without knowing that a cellphone in the vehicle he was driving was being tracked. C.H.’s testimony also included his description of the route he drove that day—this testimony was consistent with the route shown via the cellphone tracking data. This evidence “tends in some reasonable degree to confirm the truth of the accomplice’s testimony as to [Crenshaw’s] guilt.” *State v. LaJambe*, 219 N.W.2d 917, 919 (Minn. 1974).

The state also presented evidence of drug paraphernalia found in C.H.’s backpack, within the car C.H. was driving, and in Crenshaw’s pockets. This evidence corroborated C.H.’s testimony that he was a methamphetamine addict in November 2021, and that he met Crenshaw “through mutual friends” who were also “drug users.” *See State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980) (claiming that the court can find corroborating evidence “from the defendant’s association with those involved in the crime in such a way

as to suggest joint participation, as well as from the defendant's opportunity and motive to commit the crime"). This evidence also supported the inference that Crenshaw, who was found with drug paraphernalia in his pockets, was connected to the crime. Evidence is sufficient to corroborate an accomplice's testimony if, from that evidence, "the connection of the accused with the crime may fairly be inferred." *Thoresen*, 921 N.W.2d at 552 (quotation omitted). Furthermore, C.H. testified that he was served a subpoena to testify and was not given a favorable disposition in his case in exchange for his testimony. Therefore, it is less likely that C.H. had "been induced to offer incriminating testimony [against the defendant] based on self-serving motives." *Clark*, 755 N.W.2d at 253 (quotation omitted).

Second, there was sufficient corroborating testimony pointing to Crenshaw's guilt. *Staunton*, 784 N.W.2d at 297. The defendant's "entire conduct may be looked to for corroborating circumstances." *Clark*, 755 N.W.2d at 254. A defendant may be linked to a crime through:

participation in the preparation for the criminal act; opportunity and motive; proximity of the defendant to the place where the crime was committed under unusual circumstances; association with persons involved in the crime in such a way as to suggest joint participation; possession of an instrument or instruments probably used to commit the offense; and unexplained affluence or possession of the fruits of criminal conduct.

Id. (quotation omitted).

Moreover, corroborating evidence may include "inadequacies and admissions in a defendant's testimony, and suspicious and unexplained conduct of an accused before or

after the crime.” *State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000) (citation omitted). In this case, the evidence presented establishes that, when asked about what he had been doing that night, Crenshaw told officers that he had been playing basketball in Wadena. The officers knew this to be false because the officers had been tracking Crenshaw through the cellphone data and had been physically tracking the vehicle Crenshaw was in. Crenshaw was holding a cellphone with an ongoing call when he was arrested. Agent D.C. testified this was suspicious and that, based on his training and experience, when people get stopped in vehicles they often “contact either the person they had just met with, such as like a source, or other people that are involved.” *Id.* (noting that corroborating evidence may also include “suspicious and unexplained conduct of an accused before or after the crime”). Crenshaw was also carrying a glass pipe when he was arrested. A field test on the pipe tested positive for methamphetamine. *See id.*

This evidence corroborates C.H.’s testimony, that Crenshaw was a methamphetamine user, while also indicating Crenshaw’s motive to commit the crime. The cellphone placed Crenshaw in immediate proximity to the crime under suspicious circumstances and suggested Crenshaw’s joint participation in the crime. While corroborating evidence must tend to point to the defendant’s guilt, it need not corroborate “every point or element of the crime.” *State v. Lemire*, 315 N.W.2d 606, 610 (Minn. 1982). When taken as a whole, and when viewed in a light most favorable to the verdict, the corroborating evidence was sufficient to confirm C.H.’s accomplice testimony. *Nelson*, 632 N.W.2d at 202.

II. Aggravating Factor

Crenshaw alternatively requests that his conviction be reversed because the state failed to prove the requisite aggravating factor. To convict Crenshaw of conspiracy to commit aggravated first-degree controlled-substance possession in violation of Minn. Stat. § 152.021, subdivision 2b(2), the state was required to prove two aggravating factors. Crenshaw stipulated to one of the alleged aggravating factors. The second aggravating factor alleged by the state, pursuant to Minn. Stat. § 152.01, subd. 24(10) (2020), was that:

the defendant or an accomplice possessed equipment, drug paraphernalia, documents, or money evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than the minimum threshold amount for the offense.

Crenshaw concedes that the digital scale and small baggies found in C.H.’s backpack were “equipment,” but asserts that there is nothing about the nature of the equipment itself evidencing that this offense involved the distribution of methamphetamine “in quantities substantially larger” than 100 grams. We are not persuaded.

The state presented evidence that a typical methamphetamine user will possess between one to two grams of methamphetamine at any given time. The state also presented evidence that a digital scale, commonly used for weighing out narcotics, and “some other packaging items like plastic baggies,” commonly used for “[e]ither transporting or distributing . . . narcotics,” were found in the vehicle. The jury also heard testimony that 219 grams of methamphetamine were found in the vehicle—more than twice as much as the minimum threshold amount of 100 grams. Based on the plain language of the statute and the evidence presented at trial, the jury could reasonably have found that the evidence

was sufficient to find that Crenshaw or an accomplice “possessed equipment, drug paraphernalia, documents, or money evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than [100 grams].” Minn. Stat. § 152.01, subd. 24(10); *see also* Minn Stat. § 152.021, subd. 2b. (2020).

III. Pro Se Arguments

Crenshaw also raises several arguments in a pro se supplemental brief. We address each argument in turn.

First, Crenshaw argues that the district court abused its discretion by concluding that the police had a basis to stop the vehicle Crenshaw was in. “To conduct a limited stop for investigatory purposes, a so-called *Terry* stop, the police must have reasonable articulable suspicion of criminal activity.” *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). The reasonable suspicion standard is not high and is less demanding than probable cause. *State v. Torgerson*, 995 N.W.2d 164, 173 (Minn. 2023). “To establish reasonable articulable suspicion, the police need only show that the stop was not the product of mere whim, caprice, or idle curiosity.” *Munson*, 594 N.W.2d at 136 (quotation omitted).

Here, the police had information that Crenshaw was involved in drug trafficking and that Crenshaw travels to the Twin Cities to meet with his supplier and then returns to that Detroit Lakes area. The police were tracking a cellphone associated with Crenshaw which showed that, just prior to the stop, Crenshaw had left the Detroit Lakes area and traveled to the Twin Cities for a short time and then returned. The police identified the

vehicle Crenshaw was in as it traveled using the cellphone tracking data. These facts provided police with reasonable articulable suspicion of criminal activity justifying the traffic stop.

Crenshaw also argues the district court erred in its jury instructions on conspiracy. *See* Minn. Stat. § 152.096, subd. 1. Specifically, Crenshaw argues that the district court erred in failing to specify for the jury what overt acts were alleged. Crenshaw did not object to the jury instructions at trial, so we review the issue for plain error. *See State v. Hayes*, 831 N.W.2d 546, 555 (Minn. 2013) (providing that unobjected-to jury instructions are reviewed for plain error). Under the plain error analysis, we must determine whether there was error, that was plain, and that affected the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If each of these prongs is met, we will address the error only if it seriously affects the fairness and integrity of the judicial proceedings. *Id.* Crenshaw makes no argument and cites no authority to support the conclusion that the district court's jury instructions amounted to plain error. "Claims in a pro se supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited. Such arguments will not be considered unless prejudicial error is obvious on mere inspection." *State v. Montano*, 956 N.W.2d 643, 650-51 (Minn. 2021) (quotations and citation omitted).

The district court instructed the jury that "whoever conspires with another to commit a crime is guilty of conspiracy if one or more of the parties to the conspiracy does some overt act in furtherance of the conspiracy," and that each element had to be proven beyond a reasonable doubt. But in describing the elements of conspiracy, the district court failed

to specify which overt acts were alleged. Nonetheless, in the state's closing argument, the prosecutor listed the alleged overt acts that occurred in Crenshaw's conspiracy with C.H.: paying C.H. to drive; giving C.H. directions; acquiring the methamphetamine; and putting it into the trunk of the vehicle. Although not explicitly stated in the jury instructions, these were the same overt acts alleged and repeatedly referenced throughout the trial. For these reasons, we decline to conclude the district court's jury instructions amounted to prejudicial error.

Crenshaw also asserts trial counsel was ineffective for failing to request a judgment of acquittal at the end of the state's case in chief.² To establish a claim of ineffective assistance of counsel, an appellant must show that: (1) "counsel's representation fell below an objective standard of reasonableness"; and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). "[M]atters of trial strategy . . . will not be reviewed later by an appellate court as long as the trial strategy was reasonable." *Ives v. State*, 655 N.W.2d 633, 636 (Minn. 2003).

² Crenshaw also asserts trial counsel was ineffective for failing to investigate and obtain certain evidence and failure to call certain "alibi witnesses." Because the record is not adequate for our review of these issues, we decline to address them. *See State v. Gustafson*, 610 N.W.2d 314, 320 (Minn. 2000) ("A postconviction hearing provides the court with additional facts to explain the attorney's decisions, so as to properly consider whether a defense counsel's performance was deficient") (quotation omitted). Crenshaw's right to pursue his ineffective assistance of counsel claims in a petition for postconviction relief is preserved.

When analyzing a motion for judgment of acquittal, a district court “does not consider the weight and credibility of the evidence.” *Allwine v. State*, 994 N.W.2d 528, 537 (Minn. 2023) (citing *State v. Slaughter*, 691 N.W.2d 70, 75 (Minn. 2005)). Whether an accomplice’s testimony has been sufficiently corroborated for purposes of section 634.04 “is a question of fact to be determined by the jury.” *Clark*, 755 N.W.2d at 251. Here, there was evidence to present a fact question to the jury regarding whether C.H.’s testimony was sufficiently corroborated and credible. Because trial counsel could reasonably conclude that there was sufficient evidence to present to the jury, Crenshaw’s assertion that trial counsel was ineffective for failing to move for judgment of acquittal fails. We have carefully reviewed Crenshaw’s remaining claims in light of the record, and conclude they are without merit or forfeited. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating appellate courts do not decide issues that were not raised in district court).

Affirmed.