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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0716**

State of Minnesota,
Respondent,

vs.

Timothy Funches,
Appellant.

**Filed May 30, 2017
Affirmed
Johnson, Judge**

Olmsted County District Court
File No. 55-CR-13-7277

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Timothy J. Droske, Emily E. Mawer, Special Assistant Public Defenders, Dorsey &
Whitney LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

An Olmsted County jury found Timothy Funches guilty of aiding and abetting the sale of a controlled substance. He argues that the evidence is insufficient to support the conviction. We affirm.

FACTS

On May 21, 2013, Officer Nepper of the Rochester Police Department arranged for a confidential informant to make a controlled buy of cocaine. The informant previously had told Officer Nepper that he knew a man, D.G., who would sell him cocaine. On the day of the controlled buy, Officer Nepper provided the informant with \$100 in cash and a recording device. Officer Nepper also arranged for officers in unmarked vehicles to make audio- and video-recordings of the controlled buy.

The informant approached D.G.'s residence on foot. After arriving, the informant waited on the front porch with D.G. while D.G. chatted with a friend and talked on his cell phone. When a Ford Explorer pulled up to the curb in front of D.G.'s house, D.G. asked the informant for money. D.G. walked to the Ford Explorer, opened the front passenger door, and sat in the front passenger seat for a few minutes. After exiting the vehicle, D.G. walked into his house with the informant and handed a small package to the informant. An unidentified man inside the house asked D.G., "Where you all get that from? From Tim?" The informant left D.G.'s house on foot and walked to Officer Nepper's squad car. The informant gave the officer a package containing approximately 0.3 grams of cocaine. The

informant was not in possession of the \$100 in cash that the officer had provided to him earlier.

Meanwhile, a police sergeant followed the Ford Explorer after it drove away from D.G.'s house. The sergeant visually identified the driver as Timothy Funches. Funches drove to an apartment building, where he parked on the street while a large group of people gathered around his vehicle and talked. Funches then drove back to D.G.'s house, parked, and entered the house.

In November 2013, the state charged Funches with one count of third-degree aiding and abetting the sale of a controlled substance, in violation of Minn. Stat. §§ 152.023, subd. 1(1), 609.05, subd. 1 (2012). The case was tried to a jury on two days in December 2015. The state called five witnesses: the informant, Officer Nepper, two other law-enforcement officers, and a forensic scientist. The informant testified that he saw D.G. hand money to Funches when D.G. and Funches were sitting in the Ford Explorer. Funches testified in his own defense. He explained that he went to D.G.'s house that day to ask for a refund on a defective television that he had purchased from D.G. Funches testified that he talked to D.G. about the television while D.G. was sitting in his Ford Explorer, but he could not recall whether D.G. gave him a refund.

The jury found Funches guilty. The district court sentenced him to 44 months of imprisonment. Funches appeals.

D E C I S I O N

Funches argues that the evidence introduced at trial is insufficient to support the conviction of third-degree aiding and abetting a sale of a controlled substance. A person

is guilty of aiding and abetting the sale of a controlled substance in the third degree if “the person intentionally aids, advises, hires, counsels, or conspires with” another to “unlawfully sell[] one or more mixtures containing a narcotic drug.” Minn. Stat. § 152.023, subd. 1(1).

When reviewing whether there is sufficient evidence to support a conviction, this court undertakes a “painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient” to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We “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 that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

The parties agree that the conviction rests on circumstantial evidence and that we should apply the standard of review that is appropriate for circumstantial evidence. When reviewing a conviction based on circumstantial evidence, this court applies a two-step analysis to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we “identify the circumstances proved.” *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). “In identifying the circumstances proved, we assume that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *Id.* (citing *Andersen*, 784 N.W.2d at 329). Second, we “examine independently

the reasonableness of the inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). We must consider the evidence as a whole and not examine each piece of evidence in isolation. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

At the first step of the analysis, we believe that the following circumstances are relevant to whether Funches aided and abetted a sale of a controlled substance: A confidential informant told a police officer that he knew a man who would sell him cocaine. The informant made arrangements by telephone to meet the man for that purpose. The police officer provided the informant with \$100 in cash to purchase cocaine. After the informant went to D.G.’s house, D.G. called someone by telephone. When a Ford Explorer arrived, D.G. asked the informant for money. An officer later identified Funches as the driver of the Ford Explorer. As D.G. got into the Ford Explorer, the informant saw D.G. hand money to Funches. Immediately after exiting the Ford Explorer, D.G. went inside his house and delivered a package of cocaine to the informant. While D.G. and the informant were inside the house, an unidentified person asked D.G. whether he received the cocaine from “Tim,” which is Funches’s first name. The informant met the police officer immediately after leaving D.G.’s house and provided the package of cocaine to the officer. Funches drove away from D.G.’s house but returned a short time later.

At the second step of the analysis, we “examine independently the reasonableness of the inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt.” *See Moore*, 846 N.W.2d at

88 (quotations omitted). The state contends that the circumstances proved support an inference that Funches delivered cocaine to D.G., who gave Funches the money that the informant had provided to D.G., and that D.G. gave the cocaine to the informant shortly thereafter. We agree that these are reasonable inferences given the circumstances proved and that the inferences support a finding of guilt.

At the second step of the analysis, we also must determine whether the circumstances proved are “inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). Funches contends that the circumstances proved are consistent with the scenario to which he testified: that he asked D.G. for a refund on a television that he had purchased from D.G. and that D.G. acquired cocaine from some other source. Funches’s hypothesis is simply not rational in light of the overwhelming circumstantial evidence that points to Funches as the person who supplied D.G. with the cocaine that was delivered to the informant. D.G. did not deliver cocaine to the informant immediately after the informant arrived at his house. Instead, D.G. and the informant stood outside, waiting. D.G. asked the informant for money when Funches arrived at D.G.’s house, and the informant gave D.G. the money immediately before D.G. sat in the front seat of Funches’s Ford Explorer. D.G. then gave the money to Funches. Immediately after that, D.G. went into his house and gave cocaine to the informant. A person inside D.G.’s home asked whether D.G. had received the cocaine from “Tim,” which is Funches’s first name. There is no rational way to interpret the circumstantial evidence other than to infer that Funches delivered to D.G. the cocaine that D.G. sold to the informant. Thus, the circumstances

proved are inconsistent with any rational hypothesis by which Funches might be found not guilty.

In sum, the circumstantial evidence is sufficient to support Funches's conviction of third-degree aiding and abetting the sale of a controlled substance.

Affirmed.