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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1335**

State of Minnesota,
Respondent,

vs.

Ronald Duane Rossetti,
Appellant.

**Filed July 16, 2018
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge**

Meeker County District Court
File No. 47-CR-16-519

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and Florey, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his convictions of first-degree controlled-substance sale and first-degree controlled-substance possession on the ground that the circumstantial evidence

is insufficient to support his convictions because it does not establish that he knowingly possessed methamphetamine. Appellant also argues that his sentence must be reversed and remanded for resentencing under the modified sentencing grid of the Minnesota Drug Sentencing Reform Act (DSRA). We affirm appellant's convictions but reverse his sentence and remand for resentencing.

FACTS

Detective Jeff Trevino is assigned to the Special Investigation Division, Narcotics, within the Airport Police Department. In that role, Detective Trevino works with UPS, FedEx, and the U.S. Postal Service to look for suspicious packages coming from "source locations for drugs" such as California, Washington, Colorado, and Arizona.

On June 29, 2016, Detective Trevino was inspecting UPS packages that were shipped via overnight air when he "observed a parcel coming down the conveyor belt that was wrapped in brown paper." The package "had all the seams taped and sealed, which are some of the indicators [the narcotics unit] look[s] for."

Detective Trevino also noted that the package originated in San Bernardino, California, which is "a common area for . . . hard narcotics, such as meth and cocaine." Detective Trevino determined that the sender's name, Karen Lin Kee, and the corresponding San Bernardino address did not exist and that the recipient's name, Ray Ross, did not match the address on the package.

Consistent with narcotics procedure, a drug dog sniffed the package. The drug dog indicated a presence of narcotics. Detective Trevino seized the package, took it to his office, and prepared a search-warrant application. The search warrant was granted.

Inside the package, the narcotics unit discovered four homemade candles. One candle was broken in half. Within the broken candle, the narcotics unit found a small plastic container concealing a crystal-like substance that later tested positive for a first-degree amount of methamphetamine. Using the x-ray machines at the TSA-screening checkpoint, the narcotics unit learned that there were anomalies inside the three unbroken candles that were consistent with the methamphetamine found inside the broken one.

The narcotics unit also found a note inside the package. The note read, “You know it would be so nice if the cops finally busted you with this sh-t so I can stop wasting my money sending it to you every week. The free dope won’t be forever you know[.]”

That same day, Detective Trevino, along with Meeker County drug task force agents, performed a controlled delivery. To do so, Detective Trevino resealed the package, dressed up as a UPS employee, and, using a UPS van, delivered the package to the address on the shipping label. When no one answered, Detective Trevino placed the package on the front steps. Meanwhile, police obtained an anticipatory search warrant to execute if anyone at the house retrieved the package.

After Detective Trevino completed the controlled delivery, a member of the Airport Police Department updated the online status of the package to “delivered.” Agents continued surveilling the house. Approximately ten minutes later, agents observed a vehicle pull up and park on the street. It was subsequently determined that the driver was J.H., the owner of the house.

Around the same time, agents observed appellant Ronald Rossetti exit the house, pick up the package, and walk up the driveway toward the house. Rossetti disappeared

from view for a short time but officers subsequently saw him walk outside of the house and into the open garage. Rossetti did not have the package at that time.

A few minutes later, the agents executed the search warrant and found Rossetti using his phone, sitting on a chair in the garage. Upon approaching the garage, agents saw another package sitting on top of a vehicle in the driveway. That package was sent from the same address in San Bernardino, California and was wrapped in the same way as the controlled-delivery package. Although the second package did not contain methamphetamine, the ship-to label was similar to the ship-to label on the controlled-delivery package, and inside the package, agents found a note similar to the one found in the controlled-delivery package that read, "I am really looking forward to the day this sh-t gets you arrested."

When agents asked Rossetti about the controlled-delivery package, he said that the package was not inside the house. Agents then entered the house. In Rossetti's bedroom, agents found residential documents listed to Rossetti and a San Bernardino public library card with his name on it. Agents also discovered a digital scale, a "very small" plastic baggie that field-tested positive for methamphetamine, a "bundle" sitting on a chair that tested positive for methamphetamine, and a drug ledger listing the price of "half a gram to a pound" and a name, "Sam S."

Just inside the door to Rossetti's bedroom, agents found the controlled-delivery package, unopened. Agents opened the package and confirmed it contained the same four candles and note that Detective Trevino discovered when he searched it at the airport. The

crime laboratory tested the crystal-like substance found inside and determined that it was methamphetamine that weighed at least 27.806 grams.

Agents obtained and executed a search warrant for the cell phone that Rossetti was using when the agents entered the garage. Agents discovered a text message sent by Rossetti that stated, “well got good news new york got their bill. and I haven’t opened my can of worms yet. a lot nervous.” Agents determined that Rossetti sent the text message on June 29, 2016, at 1:53 p.m., which was after Detective Trevino had delivered the controlled-delivery package but approximately seven minutes before agents executed the search warrant. Agents also discovered a picture of a receipt for an electronic money transfer to California in the amount of \$150 executed on June 28, 2016, the day before Detective Trevino intercepted the controlled-delivery package. And agents found a contact list that listed the owner of the cell phone as being named “sam stone.”

The state charged Rossetti with first-degree controlled-substance sale under Minn. Stat. § 152.021, subd. 1(1) (2014), and first-degree controlled-substance possession under Minn. Stat. § 152.021, subd. 2(a)(1) (2014).

Rossetti testified at a jury trial that, at the time of his arrest, he was “working on a car . . . in the back in the shed.” He explained that the reference in his text message to a “can of worms” meant that he was “jumping into a Cavalier that was messed up that [he] didn’t really wanna do anything with, but [he] had to ‘cause [he] needed some money.” Rossetti testified that he grabbed the controlled-delivery package off the front steps but stated that he did not put the package in his bedroom. He instead put the package on a “hutch” just inside the front doorway.

Rossetti further testified that he had a connection to San Bernardino, but he clarified that he had spent time there helping a friend who had recently undergone bypass surgery. He explained that he would often buy auto parts from a San Bernardino friend and that his friend's daughter would ship the auto parts to Rossetti in Litchfield. Rossetti testified that he did not know that there was methamphetamine inside the package.

The jury found Rossetti guilty of first-degree sale of methamphetamine and first-degree possession of methamphetamine. The district court adjudicated Rossetti guilty on both counts and sentenced Rossetti to 74 months' imprisonment on the first-degree sale conviction under the pre-revised drug sentencing guidelines. This appeal follows.

D E C I S I O N

I.

Rossetti challenges the sufficiency of the circumstantial evidence, arguing that the evidence did not disprove the rational hypothesis that Rossetti did not know the package contained methamphetamine. “We review the sufficiency of the state’s circumstantial evidence de novo.” *State v. Sam*, 859 N.W.2d 825, 830 (Minn. App. 2015). In doing so, we “thoroughly review the record to determine whether the evidence establishes guilt beyond a reasonable doubt.” *Id.* at 832. There is sufficient circumstantial evidence to sustain a conviction if “no other reasonable, rational inferences [exist] that are inconsistent with guilt.” *Id.* at 831 (alteration in original) (quotation omitted); see *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013); *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010).

To determine if the circumstantial evidence is consistent with an appellant's guilt, we apply a two-step analysis. *Sam*, 859 N.W.2d at 833 (citing *Silvernail*, 831 N.W.2d at 598). "First, we determine the circumstances proved, giving due deference to the fact-finder and construing the evidence in the light most favorable to the verdict." *Id.* Second, we determine if "the circumstances proved are consistent with guilt and inconsistent with any other rational or reasonable hypothesis." *Id.* We must look at the circumstances proved not as isolated facts but rather as a "complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). But we give "no deference to the fact finder's choice between reasonable inferences." *Silvernail*, 831 N.W.2d at 599 (quotation omitted).

A person is guilty of first-degree sale of methamphetamine if "the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing . . . methamphetamine." Minn. Stat. § 152.021, subd. 1(1); see Minn. Stat. § 152.01, subd. 15a (2014) (defining "sell" to include possession with intent to sell). A person is guilty of first-degree possession of methamphetamine if "the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing . . . methamphetamine." Minn. Stat. § 152.021, subd. 2(a)(1). Convictions of these two counts require proof that the defendant "had actual knowledge of the nature of the substance in his possession." *State v. Ali*, 775 N.W.2d 914, 918 (Minn. App. 2009) (quotation omitted), review denied (Minn. Feb. 16, 2010). Proof of knowledge may be established by circumstantial evidence. *Id.* at 919.

When taken in the light most favorable to the verdict, the circumstances proved are:

- Rossetti lived at the Litchfield house with J.H. and occupied the bedroom on the south side of the house.
- A package wrapped in brown paper was sent from a fake address in San Bernardino, California, to Rossetti's Litchfield residence.
- The package contained methamphetamine hidden inside four homemade candles, and a note stating, "You know it would be so nice if the cops finally busted you with this sh-t so I can stop wasting my money sending it to you every week," and was addressed to "Ray Ross." No one named Ray Ross resided at the house.
- Detective Trevino, wearing a UPS uniform, delivered the package to the house and left it on the front step.
- Airport police updated the status of the package on UPS's website to reflect that it had been delivered.
- Around ten minutes later, Rossetti picked up the package from the front steps and brought it inside the residence.
- Agents found the package inside the doorway to Rossetti's bedroom.
- The package contained a crystal substance that the Minnesota Bureau of Criminal Apprehension later determined to be methamphetamine that weighed at least 27.806 grams.
- Agents also found a digital scale, a small plastic baggie of methamphetamine, and a drug ledger in Rossetti's bedroom.
- The drug ledger listed weights and prices corresponding with the street value of methamphetamine.
- Minutes after bringing the package inside the house, Rossetti sent a text message stating that he had not "opened [his] can of worms yet" and that he was "a lot nervous."
- When officers executed the search warrant, Rossetti stated that the package was not inside the house.

- Officers found a similar-looking package with a San Bernardino return address sitting on top of a vehicle in the driveway. That package, addressed to “Ronnie Big Rays Delivery,” contained a note expressing hope that the recipient would be arrested.
- On Rossetti’s cell phone, there was a photograph of a receipt showing a \$150 electronic money transfer to California one day before Detective Trevino delivered the controlled-delivery package.
- Rossetti had a San Bernardino public library card.
- The drug ledger listed the name “Sam S” and Rossetti’s cell phone listed the phone’s owner as being “sam stone.”

Rossetti contends that there is a rational hypothesis that he did not know that the package contained methamphetamine. That hypothesis—that he thought the package contained only candles—is not reasonable or rational.

We do not view the circumstances in isolation but rather as a complete chain. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The circumstances proved here form a complete chain similar to that which the Minnesota Supreme Court determined sufficient for a first-degree methamphetamine-sale conviction in *Hanson*. *Id.* In *Hanson*, the state proved that the defendant possessed more than ten grams of methamphetamine inside his bedroom, that there was a white powdery substance on a dresser in the bedroom, that the defendant possessed approximately 100 unused plastic bags, that the defendant possessed a digital scale “of the type frequently used in narcotics transactions,” and that the defendant made contradictory statements about the white substance found on the dresser. *Id.* at 623.

Here, like *Hanson*, Rossetti possessed more than ten grams of methamphetamine in his bedroom, possessed a digital scale, and made contradictory statements about the whereabouts of the package. *See id.*; *see also State v. Andersen*, 784 N.W.2d 320, 332

(Minn. 2010) (reasoning that a defendant’s “false statements to police in an attempt to create an alibi” were part of a complete chain established by circumstantial evidence that defendant was the killer). Rossetti took calculated steps to conceal possession and distribution by using a pseudonym on his cell phone, on the drug ledger, and on the packages. *See Ali*, 775 N.W.2d at 919 (reasoning that the jury could have inferred knowledge from the defendant’s “surreptitious manner of . . . receipt and storage of the [controlled substance]”). And both packages found at the house contained notes expressing hope that the recipient of those packages would get busted by police.

When viewing the circumstances as a whole, Rossetti’s argument that he did not know the contents of the package is not a reasonable hypothesis. *See Hanson*, 800 N.W.2d at 622 (stating that the state does not carry the burden of removing all doubt, “but it must remove all reasonable doubt”). Therefore, we conclude that the circumstantial evidence is sufficient to support Rossetti’s convictions of first-degree possession of methamphetamine and first-degree sale of methamphetamine.

II.

Rossetti argues that this court should reverse his sentence and remand for resentencing under the new sentencing guidelines. The state agrees.

The Minnesota Sentencing Guidelines provide presumptive sentences for criminal offenders. Minn. Sent. Guidelines (Supp. 2015). The guidelines were amended by the Minnesota Drug Sentencing Reform Act (DSRA), signed into law on May 22, 2016. 2016 Minn. Laws ch. 160, § 22, at 592. Although the majority of the act’s provisions became effective on August 1, 2016, Section 18—amending the sentencing grids—went into effect

on May 23, 2016. 2016 Minn. Laws ch. 160, §§ 1-18, at 591; 22 at 592. Section 18 of the DSRA reduced the severity level of first-degree controlled-substance crimes from 9 to D8 on the newly created drug-offender grid. *Compare* Minn. Sent. Guidelines 4.A (Supp. 2015), *with* Minn. Sent. Guidelines 4.C (2016). Under the revised guidelines, the presumptive sentence for a first-degree controlled-substance crime when the offender has a criminal-history score of zero is 65 months, with a range of 56 to 78 months. Minn. Sent. Guidelines 4.C (2016).

Here, Rossetti's offense occurred after section 18 took effect. The district court imposed Rossetti's sentence on May 26, 2017. We therefore reverse Rossetti's sentence and remand for resentencing consistent with the DSRA-amended sentencing guidelines.

III.

In a pro se supplemental brief, Rossetti argues that (1) the evidence is insufficient to support his convictions and (2) his trial counsel was ineffective during closing argument. As discussed above, we have concluded that the circumstantial evidence is sufficient to support Rossetti's convictions. Rossetti's ineffective-assistance-of-counsel claim is described in one sentence: "The closing statements my public defender gave [were] about as bad as it gets and I hope[] it's in the transcripts."

Rossetti did not raise an ineffective-assistance-of-counsel claim to the district court or in his postconviction petition, and he does not support his claim with argument or citation to any relevant legal authority. Although we may address ineffective-assistance-of-counsel claims not raised in district court or in a postconviction petition if the appellate record is sufficiently developed, *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996), the

general rule is that a direct appeal from a conviction “is not the most appropriate way to raise issues of trial counsel’s ineffective representation . . . because [appellate courts] do not have the benefit of all the facts regarding why defense counsel acted as he did.” *State v. Cermak*, 350 N.W.2d 328, 332 n.5 (Minn. 1984). In addition, appellate courts do not consider issues raised on appeal that are unsupported by argument or citation to legal authority. *State v. Tomassoni*, 778 N.W.2d 327, 336 (Minn. 2010).

Because Rossetti’s ineffective-assistance-of-counsel claim is unsupported by argument or citation to legal authority, we decline to address it. See *State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010) (declining to address claim on merits where pro se appellant “d[id] not cite either the record or legal authority to support this claim”); *Roby*, 547 N.W.2d at 357 (stating that appellate courts “generally will not decide issues which were not raised before the district court”).

Affirmed in part, reversed in part, and remanded.