

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0697**

State of Minnesota,
Respondent,

vs.

Robert Alan Thunder,
Appellant.

**Filed February 25, 2019
Affirmed
Connolly, Judge**

Pennington County District Court
File No. 57-CR-17-468

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

Seamus P. Duffy, Pennington County Attorney, Kristin Hanson, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of third-degree controlled substance crime, arguing that the chain of custody of the methamphetamine sold by appellant to an undercover agent was defective. Because we see no abuse of discretion in the admission of the drug evidence, we affirm.

FACTS

In February 2017, following a series of telephone calls, appellant gave an undercover police officer (UPO) two small baggies, each containing a white crystalline substance, in exchange for \$340. The UPO testified that he and the surveillance team then “drove together to the Sheriff’s Department,” where:

I took the substance, I weighed it, photographed the weight, tested it, photographed the test with a field test, and then I put it in an evidence bag, labeled that, and put it in our evidence vault.

....

I got two baggies from [appellant] and I tested each of them with a field test for methamphetamine.

When asked, “[Y]ou then packaged the evidence and placed it where?” the UPO answered, “In our evidence vault. In my locker.” He was asked, “Was the evidence that was collected in this case kept in that locker until it was sent off to the [Bureau of Criminal Apprehension (BCA)] for testing?” and answered, “Yes.” When he was asked, “So . . . on November 22 you took the evidence for this case out of the vault and it was sent to the BCA?”, he again answered “Yes.” When asked to identify the methamphetamine allegedly sold by appellant, the UPO said:

This is what I got back from the BCA after the methamphetamine was sent there.

....

It's a bunch of envelopes. It included a paper release of evidence saying that they're done with it, we can have it back. It came in this envelope and then I opened this envelope, which at the time . . . was sealed and . . . taped. The seal was initialed. And there was another envelope and that seal was taped and initialed. [This was f]inally . . . the methamphetamine that was sent to the lab.

The UPO answered, "Yes," when asked, "And you stated that you opened this on January 30, 2018?". When asked, "Otherwise it had been sealed?" he again answered, "Yes," and added "[e]verything was sealed and . . . initialed. . . . [N]othing was tampered with. None of it was opened until I opened it."

The forensic scientist who handled the methamphetamine was shown it at trial and asked to explain it to the jury. She testified:

[T]here's a piece of paper that is . . . called our evidence release form and that has the BCA laboratory number for B17-15802, which is related to this particular case. And that's the barcode. That's the laboratory case number that is put on the barcode that goes on . . . each item of evidence related to that particular case.

So then this next padded Manila envelope . . . has that barcode. It has a "C", number, "A" and that means it's container A and that's that container that the evidence is placed into. Once it's received by the laboratory, it has my initials on that barcode and . . . there were seals initially up at the top. You can see my initials. The next envelope is a Manila envelope. It . . . also has that BCA barcode number on it and . . . a USPS tracking number, so U.S. mail. This is the Manila envelope that was submitted to the BCA [It] contained what we call BCA Item No. 1 which has the BCA barcode number for that case number. It says Item 1 and it has my initials on that barcode.

....

This is a small plastic bag that has the BCA barcode for Item No. 1. It also contains the material that I analyzed.

The forensic scientist was asked if the methamphetamine she was shown “accurately depict[ed] what it looked like when you received it into your custody?” and answered, “It does minus the seal that I placed at the bottom of the bag, correct.” She was asked if the methamphetamine “accurately depict[ed] what it looked like when it left your custody to be mailed out [to the UPO]” and answered, “It does.”

Appellant moved unsuccessfully to have the methamphetamine excluded from evidence. A jury found him guilty. He challenges his conviction, arguing that the district court abused its discretion in admitting the methamphetamine.¹

DECISION

A district court’s admission of physical evidence will be affirmed unless it constitutes an abuse of discretion. *State v. Daniels*, 361 N.W.2d 819, 827 (Minn. 1985).

After appellant’s attorney objected to the chain of custody of the methamphetamine, the district court said, “[T]his Court is satisfied enough with the chain of custody to admit it . . . [W]e don’t need to eliminate all possibility of alteration, substitution or change of condition to admit the item and so I am going to overrule

¹ Appellant also argues, pro se, that the record does not reflect that he was given a *Miranda* warning; that his rights under the First, Fourth, Fifth, Eighth, Ninth, and Tenth Amendments, as well as his rights under international laws and treaties, were violated; that he was not permitted to raise the defense of entrapment; that the district court failed to rule on his motion for a urinalysis of the UPO who testified at trial; and that the use of criminal-history points is unconstitutional. Because appellant does not provide legal support or analysis for any of these arguments, we do not address them. See *Campbell v. State*, 916 N.W.2d 502, 510 n.5 (Minn. 2018) (noting that this court declines to address allegations unsupported by legal analysis or citation).

[appellant's] objection and admit Exhibit 8 into evidence.” See *State v. Johnson*, 239 N.W.2d 239, 242 (Minn. 1976) (“Admissibility should not depend on the prosecution [negating] all possibility of tampering or substitution, but rather only that it is reasonably probable that tampering or substitution did not occur.”).²

The UPO, who purchased the methamphetamine, testified that he (1) tested it, (2) weighed it, (3) labeled it, (4) stored it in a locker in the evidence vault, (5) arranged for it to be sent to the BCA, and (6) opened and stored it when it was sent back from the BCA. The BCA forensic scientist, who received the methamphetamine, testified that she (1) labeled it, (2) tested it, (3) identified its content, and (4) sent it back to the UPO. Notwithstanding this testimony, appellant argues that the chain of custody was insufficient because the sheriff's department employee who mailed the methamphetamine did not testify. But there is no requirement that everyone who had any contact with the evidence be called to testify. See *id.*

² Appellant argues that “[w]hen a defendant objects to the admission of evidence at trial, the admission of that evidence is reviewed using a harmless error standard. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009).” But *Sanders* actually states that “[o]n appeal, a defendant has the burden of proving not only that the district court abused its discretion in admitting the evidence in question, but also that he was prejudiced by the admission of the evidence.” *Id.* Given that the jury heard not only the UPO's testimony concerning his negotiation with appellant to purchase methamphetamine from him, his actual purchase of methamphetamine from appellant, and his subsequent testing of the substance he purchased to reveal methamphetamines, but also the forensic scientist's testimony concerning her testing of the substance received by the BCA as methamphetamine and her recording of the transaction, there is no reasonable possibility that the jury's verdict would have been more favorable to appellant without the admission of the methamphetamine. See *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994) (holding that, if there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error in admitting it is prejudicial).

The district court did not abuse its discretion in admitting the methamphetamine after concluding that there had been sufficient evidence as to its chain of custody.

Affirmed.