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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0367**

State of Minnesota,
Respondent,

vs.

Odell NMN Branson,
Appellant.

**Filed January 13, 2020
Affirmed
Segal, Judge**

Hubbard County District Court
File No. 29-CR-18-450

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

Jonathan Frieden, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Christopher J. Perske, Bloomington, Minnesota; and

Robert Miller, Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal, Judge.

UNPUBLISHED OPINION

SEGAL, Judge

In this direct appeal from the judgment of conviction for third-degree controlled-substance sale, appellant Odell Branson argues (1) the evidence was insufficient to prove his guilt beyond a reasonable doubt and (2) he was denied his constitutional right to testify on his own behalf because the district court sustained “repeated” objections by the state during his testimony. We affirm.

FACTS

In the spring of 2017, a confidential informant (CI) contacted an investigator from the Hubbard County Sheriff’s Office and Paul Bunyan Drug Task Force (the task force). The task force investigates drug crimes with the intent to disrupt illegal drug organizations. The CI informed the investigator that he could buy four Vicodin pills from Branson for \$10 per pill and they set up a controlled buy. Prior to the controlled buy, the investigator and four other members of the task force met with the CI at a designated location. Members of the task force searched the CI’s vehicle and the CI’s person, and no drugs were found. The CI was given \$80 in pre-recorded buy money and a recording device to record the transaction.

The task force investigator followed the CI to Branson’s home, which was the buy location. The investigator and two other members of the task force observed the buy and saw the CI speaking with Branson on his deck. On the recording, the CI is heard asking Branson, “do you know if you’ll have any more later or anything?” To which Branson responded, “I might, I got to go into town.”

After the buy, the CI drove directly back to the meetup location and reconvened with the task force members. The CI told the investigator that he purchased four pills from Branson. The CI then handed over the purchased pills and the extra buy money that he did not use. The CI's person and car were again searched by the task force members and no drugs or controlled buy money was discovered.

On July 10, 2017, the CI approached the investigator about conducting a second controlled buy of Vicodin from Branson. Members of the task force again met with the CI prior to the controlled buy. They searched his person and his vehicle, removed a pocket knife from his person, but did not find any drugs on him or in his vehicle. The investigator provided the CI with pre-marked bills to complete the purchase.

During the second controlled buy, the investigator, using binoculars, observed Branson pull into the parking lot and saw the CI approach Branson's driver's side door. The CI was in the investigator's view during the entire transaction including leaving and reentering his car. Members of the task force reconvened with the CI immediately after the second buy. The CI was able to purchase 14 pills from Branson with the buy money, and he gave the investigator all of the pills. The task force conducted another search of the CI and his vehicle. Again, no drugs or additional buy money was found in the post-buy search. Although the CI had a recording device on him, due to interference from wind, the recording from the second buy contained extensive background noise and was hard to decipher.

Respondent State of Minnesota charged Branson with two counts of third-degree sale of a controlled substance under Minn. Stat. § 152.023, subd. 1(1) (2016).

At trial, the investigator and two other members of the task force testified to their roles in and the procedure used in the two controlled buys. The CI also testified about the two controlled buys involving Branson. The CI testified that the first buy on June 30, 2017, took place on Branson's deck. He said he purchased four pills and, when he asked Branson if he could purchase more Vicodin, Branson told him he would get back to him. The CI also testified to the details of the second controlled buy on July 10, 2017.

During trial, Branson testified on his own behalf. During his testimony, the state objected six times. Five of these objections were sustained. The state first made an objection that Branson was nonresponsive when asked how he knew the CI, and the district court sustained the objection. The state objected two more times that Branson was nonresponsive. At this point, the court suggested that defense counsel provide leading questions to help Branson with his testimony. The fourth time the state objected to Branson being nonresponsive, the court overruled it and let Branson finish speaking. The state objected a fifth time to Branson being nonresponsive, and the court again sustained the objection. The state's sixth objection during Branson's testimony occurred when he began testifying prior to a question being answered. The court sustained this objection. Branson's trial counsel did not challenge any of the state's objections, did not approach the bench, and did not raise any issues regarding Branson's ability to testify during the trial.

The jury found Branson guilty of both counts of third-degree sale of a controlled substance. Branson appeals.

DECISION

I. The jury's verdict is supported by sufficient evidence.

To convict Branson of both counts of third-degree sale in violation of Minn. Stat. § 152.023, subd. 1(1), the state needed to prove that he sold a narcotic to the CI on June 30, 2017 and July 10, 2017.

When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to 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 of the offense of which he was convicted. The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict. 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.

State v. Griffin, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted).

Branson claims it is insufficient to convict him based solely on the CI's testimony. However, it is sufficient for a conviction to be based upon the testimony of a single credible witness. *State v. Hadgu*, 681 N.W.2d 30, 34 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004). Credibility determinations are "the exclusive province of the jury," and are not reviewed on appeal. *State v. Outlaw*, 748 N.W.2d 349, 356-57 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

The CI testified to purchasing Vicodin pills on June 30 and July 10, 2017, from Branson. He also tape-recorded the transactions. During the trial, the jury heard about the CI's former drug use as well as the fact that he was paid for his services as a confidential

informant. Based upon the verdict, we assume that the jury found the CI's testimony credible. *Hadgu*, 681 N.W.2d at 34. Therefore, there was sufficient evidence to convict Branson based on the CI's testimony.

Even if the CI's testimony was not sufficient evidence to convict Branson, there is sufficient circumstantial evidence for a conviction. A two-step analysis is applied when reviewing a conviction based on circumstantial evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The first step is identifying circumstances proved, deferring to the fact-finder's "acceptance of the proof of these circumstances and rejection of evidence" that conflicted with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). Second, the reviewing court independently examines "the reasonableness of all inferences that might be drawn from the circumstances proved" to determine whether they are "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 599.

Branson argues that there is insufficient evidence to convict him because the members of the task force did not observe money exchanging hands between the CI and himself. While the members of the task force did not see money changing hands, they did witness the CI and Branson together during both buys. At trial, the state presented testimony from three members of the task force who were involved in the controlled buys between Branson and the CI. The officers testified to conducting searches of both the CI and his vehicle prior to and after each buy. They also recorded the funds used and collected the pills that were purchased immediately after the buy. The officers further testified that they saw the CI and Branson together during each buy, that the CI went directly to the buy

locations after being searched, and that the CI returned directly to the task force meet-up locations afterward. The CI's testimony regarding what occurred during each of the buys aligned with the officers' testimony of the buys. The only reasonable inference from this testimony is that Branson sold Vicodin to the CI on these two occasions.

Finally, Branson argues that the audio recordings of the controlled buys did not confirm that an exchange took place. It is true that most of the material on the recordings was inaudible. However, on the recording from June 30, the CI asks Branson, "do you know if you'll have any more later or anything?" To which Branson responded, "I might, I got to go into town." While the jury heard testimony from Branson that he was speaking to the CI about his cars, and not about selling him Vicodin, this court can assume that the jury accepted this as evidence in support of the verdict and rejected evidence to the contrary. *Silvernail*, 831 N.W.2d at 603.

Viewing the evidence in the light most favorable to the verdict, the evidence presented at the trial and the jury's verdict are sufficient to support Branson's conviction.

II. The district court did not plainly err when it sustained the state's objections during Branson's direct testimony.

Branson claims that the district court denied him his constitutional right to present his defense when it sustained the state's repeated objections during his direct testimony. During the trial, however, Branson did not challenge or raise any due-process concerns to the state's evidentiary objections. We must, therefore, apply the plain-error standard of review. *State v. Vasquez*, 912 N.W.2d 642, 649-50 (Minn. 2018). In order to review an unobjected-to error, there needs to be a clear error that affects substantial rights. *State v.*

Griller, 583 N.W.2d 736, 740 (Minn. 1998). If this is met, “the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Id.*

Although a defendant’s right to testify is protected under the Fourteenth Amendment, this right is not unlimited. *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S. Ct. 2704, 2711 (1987). The defendant must comply with evidentiary rules when testifying. *State v. Richards*, 495 N.W.2d 187, 192 (Minn. 1992). When the defendant’s right to testify conflicts with a rule of evidence, the constitution demands that restrictions imposed on that right “not be arbitrary or disproportionate to the purposes they are designed to serve.” *State v. Richardson*, 670 N.W.2d 267, 282 (Minn. 2003) (quoting *Rock*, 483 U.S. at 56, 107 S. Ct. at 2704).

Here, the state made six objections during Branson’s testimony. Five of these objections were due to Branson narrating and not answering the question that was before him. The objections also related to testimony on largely peripheral matters. After each objection, Branson’s attorney was allowed to reword the question and continue with his direct examination. At no point did the district court prevent Branson from presenting any evidence that he wished to present. The rules of evidence grant authority to the district court to avoid needless consumption of time and to exercise reasonable control of the court. Minn. R. Evid. 611(a). This includes the ability to “regulate the presentation and direct examination of the defense witnesses.” *Richards*, 495 N.W.2d at 195.

Branson also argues that the state’s objections were improper because they were “distracting to defense counsel and Appellant, and disrupted a rhythm and train of thought

for the participants.” Branson claims that, by sustaining these objections, the district court gave the jury the impression that Branson was doing something “wrong” or “incorrect” in testifying. He appears to be arguing that these objections were obstructing his right to testify. However, Branson cites no legal authority to support these assertions. “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (quotations omitted). Because the claimed error is not “obvious on mere inspection,” we will not consider this argument. *Id.*

The state was within its bounds to object to Branson’s testimony and the court was within its authority to sustain these objections. Because the district court did not plainly err in sustaining the state’s objections, Branson was not denied his right to testify.

Affirmed.