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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0639**

State of Minnesota,
Respondent,

vs.

John Ray Williams,
Appellant.

**Filed March 30, 2020
Affirmed
Peterson, Judge***

Ramsey County District Court
File No. 62-CR-17-9004

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

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

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of third-degree controlled-substance murder by distributing heroin to the victim, appellant argues that the circumstantial evidence is insufficient to support his conviction because the evidence did not prove beyond a reasonable doubt that he is the person who sold heroin to the victim. We affirm.

FACTS

The victim, N.R., obtained heroin on March 2, 2016, injected the heroin, and died of an overdose that night. Police identified appellant John Ray Williams as the person who sold N.R. the heroin. The state charged Williams with third-degree murder for proximately causing N.R.'s death by selling or distributing a controlled substance in violation of Minn. Stat. § 609.195(b) (2014). N.R.'s boyfriend, A.B., who lived with N.R. and was with her on the night she died, agreed to testify at Williams's jury trial in exchange for the state's agreement that it could not later use his testimony against him.

At trial, A.B. testified that he and N.R. started dating in 2014 and began living together about one year later. A.B. had a long history of drug addiction. N.R. did not previously use drugs, but A.B. eventually introduced her to heroin. At the height of their drug use, they were using heroin on a daily basis.

A.B. and N.R. started buying heroin from Williams in December 2015. They did not know Williams's name and referred to him as "Cousin." During the same period, they were also buying drugs from Williams's cousin, whom they knew as "T." They bought drugs from Williams about half the time and from "T" the other half. Sometimes they

would contact both of them and then buy from the one who arrived first. When delivering heroin, Williams would drive into the parking lot outside their apartment, and then A.B. or N.R. (usually N.R.) would go out to the car and get the heroin.

A.B. and N.R. used N.R.'s cell phone to communicate with Williams by phone calls and text messages. Data extracted from N.R.'s cell phone revealed that, from December 23, 2015, through March 3, 2016, there were 195 phone calls and 509 text messages between N.R.'s phone and a phone number that an investigator learned was registered to Williams. The data included the content of text messages but not the content of conversations during phone calls or voicemail messages.

On the evening of March 2, 2016, N.R. told A.B. that she was getting heroin from "Cousin." Cell-phone data revealed several one-minute calls between N.R.'s phone and Williams's phone number starting at 6:36 p.m. Cell-phone data also showed that several times between 2:30 p.m. and 8:30 p.m. on March 2, 2016, N.R. made calls and sent text messages to a number other than Williams's. In the messages to that number, N.R. asked if the recipient could "front a half" and promised to "give you an even 200." N.R. initiated all of the calls and messages to that number, and there is no record of any return call or text to N.R. from the number.

At 8:47 p.m., N.R. sent a text message to Williams's number, asking, "Are you still cooking?" The reply was, "No letting my truck heat up leaving in 10 minutes[.]" At 9:31 p.m., a four-second call was made from Williams's number to N.R.'s phone. Cell-tower data showed that the call was made within range of two cell towers near A.B.'s and N.R.'s apartment. A.B. testified that, around 9:00 or 9:30 p.m., N.R. went outside to pick

up the drugs, and she returned two minutes later with heroin. A.B. was not involved in the communications with Williams, and he did not see a transaction between Williams and N.R.

After obtaining the heroin, A.B. and N.R. divided it between them. A.B. injected his dose and passed out; he did not see N.R. inject her dose. A.B. woke up a couple hours later and saw N.R. passed out on the floor. He attempted to revive her, and when he was unsuccessful, he called Williams, who told him to give her some milk. A.B. did so, and N.R. woke up several minutes later, disoriented. They went to bed shortly afterwards. When A.B. awoke in the early hours of the morning, N.R. was not breathing and did not have a pulse. A.B. was unable to revive her, and he called 911. Police officers who responded to the call tried to resuscitate N.R., but their efforts failed.

A.B. told officers at the scene that he and N.R. had gotten heroin the previous night from a person they called “Cousin.” Police then took A.B. to the police station for further questioning. A.B. told officers that “Cousin” was the only person from whom he had bought heroin in the previous few months, but, at trial, A.B. admitted that this statement was not true. Officers showed A.B. a photograph of Williams, and A.B. identified the person in the photograph as the person he knew as “Cousin.”

Officers then enlisted A.B. to use N.R.’s cell phone to make several recorded phone calls to the number registered to Williams, which was already in N.R.’s phone. A.B. recognized the number as the same number that he had always used to contact “Cousin,” and Williams had given the same number to his probation officer so that she could contact him.

In the first call, A.B. told Williams that N.R. “pulled through last night” and asked if he could “get another half.” Williams said that he needed more time to get awake, and the call ended. In the second call several minutes later, Williams asked about N.R. and said that he felt bad and had been worried about her the previous night. A.B. told Williams that N.R. was at work, and Williams said that he would call back later.

Police directed A.B. to call Williams again that afternoon to set up a controlled drug buy. A.B. made multiple calls to Williams asking if he could come over. Williams asked several times where N.R. was, but A.B. did not tell him what had happened and kept asking for more drugs. When A.B. asked Williams if he was going to bring over the same stuff as last night, Williams responded, “I don’t even know what you’re talkin’ about right now,” and hung up. A.B. told police, “He’s onto us.” A.B. called Williams’s number again two minutes later asking to get more drugs, and the person who answered said that he did not know what A.B. was talking about, that he just wanted to check on N.R., and that A.B. should not call him anymore. A.B. testified that he recognized the voice on the phone as Williams’s voice.

When a police officer called Williams’s number two hours later, he received an automated message saying that the cell phone was no longer in service. This was confirmed by the cell-phone provider’s records showing that Williams’s service was canceled that day. A few days later, Williams contacted his probation officer, told her that he had lost his cell phone, and gave her a new phone number. When an investigating officer called Williams at his new number several months later, Williams said that he did not know anybody with N.R.’s first name.

The jury found Williams guilty, and he was convicted of third-degree controlled-substance murder. He now appeals the conviction.

DECISION

To obtain a third-degree controlled-substance-murder conviction, the state needed to prove beyond a reasonable doubt that Williams proximately caused N.R.’s death by directly or indirectly selling, giving away, bartering, delivering, exchanging, distributing, or administering heroin. Minn. Stat. § 609.195(b). Williams does not dispute that N.R.’s death was caused by a heroin overdose. He argues only that the state’s circumstantial evidence¹ was insufficient to prove beyond a reasonable doubt that he is the person who sold N.R. the heroin.

When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict, . . . we apply a heightened two-step standard, which we have called the circumstantial-evidence standard of review. In the first step, we identify the circumstances proved by the State. We defer at this stage to the jury’s acceptance of the State’s evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved by the State. After identifying the circumstances proved, we move on to the second step, which requires us to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. We do not defer to the jury at this stage, but rather we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt. If a reasonable inference other than guilt exists, then we will reverse the conviction.

¹ “We have defined circumstantial evidence as evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist. In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted).

Loving v. State, 891 N.W.2d 638, 643 (Minn. 2017) (citations and quotations omitted).

The evidence that the state presented proved the following circumstances:

For more than two months before N.R.’s death, A.B. and N.R. bought heroin on a daily basis from two sources that they knew as “Cousin” and “T.” When police showed A.B. a photograph of Williams, A.B. identified Williams as the source he knew as “Cousin.”

On the night of N.R.’s death, several text messages and phone calls were exchanged between N.R.’s cell phone and a cell phone with a number that was registered to Williams. N.R. also made calls and sent text messages to a different number multiple times that day between 2:30 p.m. and 8:30 p.m. looking for drugs, but she never received a response from that number.

A text message from N.R. to Williams’s number at 8:47 p.m. asked whether the recipient was “still cooking” and received the response that the recipient would be leaving in 10 minutes. At 9:31 p.m. a four-second call to N.R.’s phone was made from Williams’s number, and cell-tower data showed that the phone with Williams’s number was near N.R.’s apartment. Around 9:00 or 9:30, N.R. left her apartment and returned about two minutes later with heroin.

A.B. and N.R. shared the heroin, and A.B. passed out after injecting his share. When A.B. awoke later that night and found N.R. passed out, he called Williams’s number at 11:17 p.m. and received advice about how to revive her.² Following N.R.’s death, A.B.

² Cell-phone records show a missed call from Williams’s phone to N.R.’s phone at 11:50 p.m., a one-minute-and-twenty-four-second call from Williams’s phone to N.R.’s phone at

used N.R.'s phone to call Williams's number. A.B. told the man who answered that N.R. had pulled through and asked if he could "get another half." The man responded that he needed more time to get awake, and, during a second call, the man asked about N.R. and said that he felt bad and had been worried about her. A.B. said that N.R. was at work, and the man said that he would call back later. A.B. recognized the voice of the man on the phone as Williams's voice.

At the direction of police, A.B. made multiple calls to Williams's number to set up a controlled drug buy. The man who answered asked several times where N.R. was, but A.B. did not tell him what had happened and kept asking for more drugs. When A.B. asked if the man was going to bring over the same stuff as last night, the man responded, "I don't even know what you're talkin' about right now," and hung up. A.B. called Williams's number again two minutes later, and the man who answered said that he did not know what A.B. was talking about when he asked to get more drugs, that he just wanted to check on N.R., and that A.B. should not call him anymore.

When a police officer called Williams's number two hours later, he received an automated message that said that the cell phone was no longer in service. Williams's cell-phone provider's records showed that his service was canceled on March 3, and, on March 7, Williams contacted his probation officer, told her that he had lost his cell phone, and gave her a new phone number.

11:53 p.m., and a fifty-five-second call from Williams's phone to N.R.'s phone at 12:52 a.m. A.B. did not remember these calls.

These circumstances are consistent with the hypothesis that N.R. contacted Williams on March 2 to arrange to purchase some heroin, and that Williams drove to N.R.'s apartment, made a four-second phone call to N.R. to tell her that he had arrived, and delivered heroin to N.R. when she met him outside her apartment. N.R. then shared the heroin with A.B., injected her share, and the heroin caused her death.

Williams argues that the circumstantial evidence “did not exclude the rational hypothesis that the drugs came from someone other than [him].” Williams contends:

Given that no one saw where and from whom NR got the drugs that caused her death, and given that NR had been in contact with another drug dealer that night, and given that [A.B.] admitted they often called more than one drug dealer and bought from whomever arrived first, the circumstances support the reasonable inference that someone other than Williams sold NR the drugs that killed her.

But this argument fails to recognize that, although data from N.R.'s cell phone showed that N.R. attempted to contact another dealer about obtaining drugs on March 2, there is no evidence that N.R. ever received a response from that dealer. Also, the data from N.R.'s cell phone showed that a four-second call was made from Williams's phone to N.R.'s phone at about the time that N.R. left her apartment and returned two minutes later with heroin, and cell-tower data showed that, when the four-second call was made, Williams's phone was in the vicinity of N.R.'s apartment. This cell-phone and cell-tower data support the inference that, even if N.R. contacted more than one dealer, Williams was the dealer who arrived at N.R.'s apartment, made a brief call to tell N.R. that he had arrived, and delivered heroin to N.R. when she left her apartment in response to his call. In light of this data, the inference that a dealer other than Williams delivered heroin to N.R. on

March 2 is purely speculative and is not reasonable. A conviction is not to be overturned based on “mere conjecture.” *State v. Boldman*, 813 N.W.2d 102, 107 (Minn. 2012).

The calls that A.B. made to Williams’s phone after N.R. died are additional circumstances that show that it is not reasonable to infer that someone other than Williams provided the heroin that caused N.R.’s death. A.B. recognized Williams’s voice during the calls, and, in the first call, A.B. said that N.R. “pulled through last night” and then asked if he could “get another half.” When A.B. made these statements, Williams did not say that he did not know what A.B. was talking about. Instead, a few minutes later, during the second call, Williams said that he had been worried about N.R. the night before, which supports an inference that Williams understood what A.B. was referring to when he said that N.R. had “pulled through.” Then, during later calls, when A.B. kept asking for more drugs, Williams still did not say that he did not know what A.B. was talking about.

It was only when A.B. asked Williams whether he was going to bring over the same stuff as last night that Williams said that he did not know what A.B. was talking about, abruptly ended the call by hanging up, and, when A.B. called again two minutes later, told him not to call anymore. Then, within two hours, Williams’s cell phone was not in service, and, a few days later, Williams told his probation officer that he lost his phone and gave her his new phone number.

Given the circumstances under which Williams hung up on A.B., it is not reasonable to infer that Williams got a new phone number because he lost his phone. When Williams hung up, A.B. and N.R. had known him only as “Cousin” and had contacted him only by using his cell-phone number, which gave Williams a reason to believe that A.B. and N.R.

could not contact him if that number was not in service. Under these circumstances, where A.B. and N.R. did not know Williams's real identity and Williams did not want A.B. to call him anymore, it is not reasonable to infer that Williams got a new phone number because he lost his phone, rather than that Williams got a new number because he canceled his phone service to prevent A.B. from calling, and then, to explain to his probation officer why he had a new phone number, falsely told her that he lost his phone. It is also not reasonable to infer that it was just a coincidence that Williams's phone service was canceled within two hours after Williams told A.B. not to call him.

In a pro se supplemental brief, Williams argues that A.B.'s testimony was not credible because A.B. agreed to testify only after the state granted him immunity and A.B. could not remember many of the details about the night when N.R. died. But, "[t]he weight and credibility of individual witnesses is for the jury to determine, and on review it is necessary to assume that the jury believed the state's witnesses and disbelieved any contrary evidence." *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) (citation and quotation omitted). Because we must assume that the jury believed A.B., his possible memory problem and potential incentive to lie are not a basis for reversal.

Williams also argues that A.B. was an accomplice whose testimony was not corroborated, and, under Minn. Stat. § 634.04 (2018), "[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." But an accomplice is a person who "could have been indicted and convicted for the crime with which the accused is charged." *State v. Palubicki*, 700 N.W.2d 476, 487 (Minn. 2005). "[M]ere presence at the

scene, inaction, knowledge and passive acquiescence” are insufficient to make a person an accomplice. *Id.* (quotation omitted).

A.B. could not be an accomplice because the evidence does not show that he played any role in obtaining heroin from Williams on March 2 or in administering the heroin to N.R. Although N.R. told A.B. that she was getting heroin from Williams, N.R. initiated the purchase, maintained contact with Williams leading up to the exchange, and picked up the heroin when Williams arrived. And after the heroin was delivered, A.B. injected some of it into his arm and passed out without helping N.R. use the remaining heroin. A.B.’s failure to respond more effectively when he later discovered that N.R. was not breathing did not make him an accomplice.

Affirmed.