

*This opinion will be unpublished and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
A19-0920**

State of Minnesota,
Respondent,

vs.

Charles Edward Kennedy,
Appellant.

**Filed May 18, 2020
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-22417

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Charles Edward Kennedy challenges his conviction of aiding and abetting third-degree controlled-substance crime (sale), arguing the evidence was insufficient to

prove that he or his alleged accomplice sold a controlled substance.¹ Because the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis other than guilt, we affirm.

FACTS

In September 2018, police officers monitored a surveillance camera facing the Greyhound bus station in downtown Minneapolis following reports of drug activity at that location. Upon observations of Kennedy and his partner in the video, officers arrested Kennedy and he was charged with aiding and abetting third-degree controlled-substance crime (sale), in violation of Minn. Stat. § 152.023, subd. 1 (2018). Kennedy waived a jury trial and the case was tried to the court, during which the district court reviewed the surveillance video and photos of Kennedy and his partner, and heard testimony from three of the officers involved. The district court found that the video from the camera showed Kennedy and his partner selling crack cocaine and found Kennedy guilty of the charge. This appeal follows.

D E C I S I O N

Kennedy argues that the state’s circumstantial evidence was insufficient to prove that he or his partner sold crack cocaine because there is a reasonable hypothesis he was merely selling cigarettes.

¹ Kennedy also argues in a *pro se* supplemental brief that he never sold controlled substances and that the case was a “set up” such that he should not have been convicted and sentenced. He also argues that he did not receive a fair trial because he was not allowed to call witnesses. His arguments are conclusory and do not cite any cases or law and are, therefore, forfeited. See *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (holding that conclusory arguments that cite no applicable law are forfeited).

Whoever “unlawfully sells one or more mixtures containing a narcotic drug” is guilty of third-degree controlled-substance crime (sale). Minn. Stat. § 152.023, subd. 1(1). The state charged Kennedy pursuant to a theory of aiding and abetting, which holds a person criminally liable for a crime committed by another if the person “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2018). To impose criminal liability pursuant to this statute, the state must prove the defendant “knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime.” *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016) (quotation omitted). Knowledge and intent are states of mind generally proved by circumstantial evidence. *See, e.g., State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012), *review denied* (Minn. Mar. 19, 2013); *State v. Ali*, 775 N.W.2d 914, 919 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010).

“A conviction based on circumstantial evidence warrants particular scrutiny.” *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). Appellate courts apply a two-step analysis when reviewing the sufficiency of circumstantial evidence. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). The reviewing court first must identify the circumstances proved and construe the evidence in the light most favorable to the verdict. *See id.* at 598-99. Then, it must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). “The state’s evidence need not

exclude all inferences other than guilt, but it must exclude all *reasonable* inferences other than guilt.” *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008). This standard of review applies in both bench and jury trials. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). The appellate court must assume that the fact-finder “believed the state’s witnesses and disbelieved contrary evidence.” *See State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

Circumstances Proved Consistent With Guilt

The following circumstances were proved at trial and are consistent with guilt:

- Kennedy and his partner were seen in matching camouflage outfits on a surveillance video outside of the Greyhound bus station in downtown Minneapolis interacting with each other and walking back and forth between each other and other groups and individuals.
- Kennedy can be seen handing something to another person who, according to officer testimony, smoked the item in a glass pipe in a manner consistent with smoking crack cocaine because he re-lit the glass pipe before each puff;
- Kennedy is observed counting money.
- Kennedy subsequently approached another individual, and—in a manner, according to officer testimony, which is consistent with drug sales—stuck his fingers in his mouth for several seconds, took something from his mouth, and gave it to the person.
- A person appeared to show Kennedy’s partner something inside of a bag, which, according to officer testimony, is consistent with “merching,” the act of exchanging merchandise for controlled substances. Kennedy’s partner walked away after looking in the bag, which—according to officer testimony—meant that ultimately no transaction occurred.
- Kennedy was seen interacting with his partner throughout the length of the video in a manner, according to officer testimony, consistent with illegal controlled-substance sales because he turned his head around to observe who is around him before each alleged sale, and interacted with his partner between each alleged sale.
- After officers approached the Greyhound station, Kennedy’s partner dropped 0.062 grams of what was later confirmed by the Minnesota Bureau of Criminal Apprehension to be crack cocaine.²

² In its “Findings of Fact and Conclusions of Law Following Court Trial Verdict,” the district court identified the amount of crack cocaine as 0.16 grams. The report from the BCA examination states the amount of crack cocaine as 0.062 grams.

- Officers searched the individual seen smoking in the video, and found a glass pipe burnt on both ends and a push rod, which an officer testified is a tool used to load and manipulate controlled substances in pipes. An officer testified that both items are common pieces of crack cocaine paraphernalia.
- Officers searched appellant and found \$160 in cash.

The circumstances proved are consistent with Kennedy's guilt. Generally, aiding and abetting the sale of a controlled substance "requires some active participation to reach the requisite intent." *State v. Kessler*, 470 N.W.2d 536, 542 (Minn. App. 1991). These circumstances proved are consistent with controlled-substance sales and establish that Kennedy knew that his partner was attempting to sell crack cocaine. The circumstances proved establish that Kennedy also actively sold crack cocaine, thereby intending his presence to further the sale of crack cocaine. The circumstances proved includes testimony consistent with the verdict. *See State v. Stewart*, 923 N.W.2d 668, 674 (Minn. App. 2019), *review denied* (Minn. Apr. 16, 2019). The circumstances proved include officer testimony that the behavior of both Kennedy and his partner is consistent with the sale of controlled substances. When viewed in a light most favorable to the verdict, the circumstances proved are consistent with the district court's finding of Kennedy's guilt.

No Reasonable Hypothesis Other Than Guilt

Kennedy contends that his conviction must be reversed because the circumstances proved allow for a reasonable hypothesis other than guilt: that he was selling cigarettes rather than a controlled substance. However, the circumstances proved do not support this alternative hypothesis nor is such hypothesis reasonable. For this hypothesis to be reasonable, the district court would have been required to disregard the testimony of the officers, the behavior displayed in the video, and the evidence collected that all point to

Kennedy's guilt. If the district court had so disregarded this evidence, Kennedy would be found not guilty. As our caselaw for consideration of the circumstantial-evidence test mandates, we accept the findings consistent with the verdict as true. By accepting the findings as true, this necessarily means that Kennedy's explanation is not reasonable.

Kennedy also contends that the circumstances proved allow for a reasonable hypothesis of innocence because his partner was not involved in the sale of the controlled substances, and therefore he could not have aided and abetted her sales. We are not persuaded. Kennedy's partner was seen "merching" to conduct controlled-substance sales and interacting with Kennedy and others throughout the surveillance video in a manner consistent with such sales, and possessed 0.062 grams of crack cocaine. Kennedy argues that this relatively small amount of crack cocaine in her possession is consistent with an amount for personal use and not sales. But this is not a reasonable alternative hypothesis. The statute does not require a minimum amount of crack cocaine to find a defendant guilty and the circumstances proved, as described above, are otherwise indicative of controlled-substance sales. Taken together, these circumstances proved do not support a reasonable hypothesis that Kennedy was selling cigarettes or that his partner did not sell controlled substances. Sufficient evidence exists to support Kennedy's conviction for aiding and abetting third-degree controlled-substance crime (sale).

Affirmed.