

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0346**

State of Minnesota,
Respondent,

vs.

Curtis Lee Brame,
Appellant.

**Filed May 10, 2021
Affirmed
Florey, Judge**

Douglas County District Court
File No. 21-CR-18-1531

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jason R. Steffen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

This is a direct appeal from a final judgment of conviction that was stayed for postconviction proceedings. Appellant argues that the state failed to present sufficient evidence to sustain his conviction for third-degree sale of a controlled substance. Appellant

also argues that the district court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing. Because there was sufficient evidence to convict Brame of third-degree sale of a controlled substance and because Brame did not allege sufficient facts to support his ineffective-assistance-of-counsel claim to warrant an evidentiary hearing, we affirm.

FACTS

Appellant Curtis Lee Brame was found guilty by a jury of third-degree sale of a controlled substance, felony domestic assault, and fifth-degree possession of a controlled substance. Brame was sentenced to 39-months in prison on the controlled-substance-sale charge.

At trial, Brame's girlfriend, B.B., testified that Brame stayed at B.B.'s home in Alexandria for eight or nine days at the end of August 2018. B.B. explained that during that time, Brame began to threaten her and to "[slap her] in the face" and told her that if she said anything to the police, he would kill her and her grandchildren. B.B. testified that Brame was a member of the gang Vice Lords. B.B. also testified to telling two of her co-workers that she was concerned about Brame and that she had a "restraining order" against him.

B.B. testified that on August 28, Brame and another man and woman were in her garage "smoking pot, drinking, and doing drugs." The woman was "shooting [drugs] with a needle." B.B. testified that she did not use methamphetamine, cocaine, or heroin. Brame was talking to a pregnant woman who had "showed up and was buying drugs" from Brame.

As to the sale of drugs she testified:

[Prosecutor]: Did you observe any drugs in your house?

[B.B.]: Yes.

[Prosecutor]: Did you observe [Brame] sell any drugs in your house?

[B.B.]: Yes.

[Prosecutor]: Please describe what you saw.

[B.B.]: He had a little flat scale thing, and he was sitting at my dining room table and, like, breaking it up and putting it in little bags and stuff.

[Prosecutor]: Breaking what up?

[B.B.]: A chunk that he said was drugs. Heroin, I think, is what he said. I'm pretty sure he told me that it was heroin.

[Prosecutor]: Okay. And did you see him sell that substance to anybody?

[B.B.]: Yes, I seen him give it to the -- well, I seen him give it to the [pregnant woman] that was there. But I guess I didn't see him get money, but I assumed that that's what they were doing.

Later in his examination, the prosecutor asked B.B. if appellant used the scale “to measure out methamphetamine,” and she responded “Yes.”

B.B. testified that at some point that night Brame asked her “to hold the drugs in [her] bra” because “he didn’t trust” the woman who was in the garage. B.B. explained that after Brame went to sleep, she placed the drugs in the side pocket of a speaker and left to call 911. She testified that she was “terrified . . . [o]f what [Brame] would do.”

The two officers who arrested Brame testified that B.B. told them that she had to hold the drugs for Brame so he would not get caught with them, there was a bag of drugs in the speaker, and there was a scale on the dining-room table. One of the officers testified that he collected the digital scale from the dining-room table and a plastic baggie containing five smaller plastic baggies of suspected drugs from the speaker pocket.

The suspected drugs were sent to the Minnesota Bureau of Criminal Apprehension (BCA) for forensic analysis. A forensic scientist from the BCA testified that one of the baggies contained methamphetamine and the other four baggies contained a mixture of heroin and other substances. A second forensic scientist from the BCA testified that a DNA profile that matched Brame's DNA profile was found on two of the baggies containing the identified narcotic drugs.

Brame testified that on August 28 he was "smoking marijuana and drinking" with the man and the woman in B.B.'s garage. Brame denied that he sold methamphetamine and heroin and that the drugs found in the speaker were his.

The jury convicted Brame of third-degree sale of a controlled substance, felony domestic assault, and fifth-degree possession of a controlled substance, and acquitted him of one count of felony domestic assault. Brame filed a direct appeal, and then moved to stay the appeal to remand to the district court for postconviction proceedings. In September 2020, Brame filed a petition for postconviction relief, arguing ineffective assistance of trial counsel. The district court denied the motion without a hearing. In October 2020, this court issued an order dissolving the stay, and reinstating the appeal.

This appeal follows.

DECISION

I. The state proved beyond a reasonable doubt that Brame sold one or more mixtures containing a narcotic drug.

Brame argues the state failed to present sufficient evidence to sustain his conviction for third-degree sale of a controlled substance. He asserts that the only evidence that the substance was a narcotic drug was based on a non-expert witness's testimony and other circumstantial evidence and that the state offered only circumstantial evidence that the substance he was charged with selling was a controlled substance because the alleged drugs were not recovered.

In considering a claim of insufficient evidence, we analyze the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will not disturb the verdict when the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We review “the facts in evidence and the legitimate inferences which could be drawn from those facts” in reviewing the sufficiency of the evidence. *State v. Robinson*, 604 N.W.2d 355, 365-66 (Minn. 2000).

When a conviction is based on circumstantial evidence, however, we apply “heightened scrutiny.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). We first identify the circumstances proved in support of the conviction, giving deference to “the

jury's acceptance of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved by the state." *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). In making this determination, "we do not review each circumstance proved in isolation" but instead consider the circumstances as a whole. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010).

"A person is guilty of controlled substance crime in the third degree if . . . the person unlawfully sells one or more mixtures containing a narcotic drug." Minn. Stat. § 152.023, subd. 1(1) (2020). In this context, "sell" means:

- (1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or
- (2) to offer or agree to perform an act listed in clause (1); or
- (3) to possess with intent to perform an act listed in clause (1).

Minn. Stat. § 152.01 subd. 15a (2020).

Here, the following circumstances were proved: (1) Brame was staying in B.B.'s home and stored drugs in her home; (2) B.B. observed Brame selling drugs; (3) B.B. saw Brame break up "a chunk that he said was drugs" on her dining-room table, use a digital scale to measure out the substance, and divided it into "little bags;" Brame told B.B. that the substance was "drugs," specifically heroin; (4) B.B. saw Brame give those drugs to the

pregnant woman in her garage; (5) B.B. saw the other woman “shooting [drugs] with a needle in the garage; (6) Brame gave B.B. five baggies containing drugs to hide in her bra; (7) B.B. removed the baggies of drugs and hid them in the pocket of a speaker in her home; (8) the BCA forensic scientist testified that one of the baggies contained methamphetamine, and the other four baggies contained heroin. The BCA also confirmed that Brame’s DNA was present on two of the baggies; (9) Brame assaulted B.B. and threatened to kill her if she went to the police; (10) the police found the digital scale and the baggies of drugs in the locations described by B.B.; and (11) Brame initially admitted that the pregnant woman had been at B.B.’s house but denied this at trial.

Brame argues that the state did not meet its burden of proof “because the only evidence that Brame sold a narcotic drug on the date in question was the testimony of a single non-expert witness,” and no physical evidence was presented to corroborate B.B.’s testimony. We disagree.

Minnesota courts “have not prescribed minimum requirements in [drug] identification cases, preferring to examine the sufficiency of the evidence on a case-by-case basis.” *State v. Vail*, 274 N.W.2d 127, 134 (Minn. 1979); *see State v. Gruber*, 864 N.W.2d 628, 639 (Minn. App. 2015). Courts have recognized that the identity of a suspected controlled substance “may be proved directly with scientific evidence or, in certain situations, circumstantially with scientific or nonscientific evidence.” *Roberts v. State*, 856 N.W.2d 287, 292 (Minn. App. 2014), *review denied* (Minn. Jan. 28, 2015); *see State v. Olhausen*, 681 N.W.2d 21, 22, 28 (Minn. 2004) (holding that “non-scientific evidence presented at trial relating to the identity and weight of a controlled substance was

sufficient to sustain respondent's first-degree controlled substance crime conviction”); see also *In re J.R.M.*, 653 N.W.2d 207, 210-11 (Minn. App. 2002) (holding that circumstantial evidence that substance was marijuana was sufficient). “It is well established that a conviction can rest upon the testimony of a single credible witness.” *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990); see *State v. Hadgu*, 681 N.W.2d 30, 34 (Minn. App. 2004) (recognizing that a drug-sale conviction could be affirmed based solely on a lay witness’s uncorroborated testimony that the defendant sold him marijuana), review denied (Minn. Sept. 21, 2004).

Viewing the circumstances found by the jury as a whole, we conclude that they are “consistent with guilt and inconsistent with any other rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599. We therefore affirm Brame’s conviction of third-degree sale of a controlled substance.

II. The district court did not abuse its discretion by summarily denying Brame’s postconviction petition without an evidentiary hearing.

Brame argues that the district court abused its discretion by summarily denying relief for his claim of ineffective assistance of counsel without an evidentiary hearing. We review the district court’s factual findings for clear error, its legal conclusions de novo, and its denial of relief for an abuse of discretion. *Sanchez v. State*, 890 N.W.2d 716, 719-20 (Minn. 2017).

“To receive an evidentiary hearing on a claim of ineffective assistance of . . . counsel, a defendant is required to allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test announced” in *Strickland v. Washington*,

466 U.S. 668, 687 (1984). *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013) (quotation omitted). Specifically, the petitioner must prove both that (1) his counsel's representation fell below an objective standard of reasonableness and (2) the result would have been different but for his counsel's conduct. *Id.*, see *Strickland*, 466 U.S. at 687-88. In determining whether an evidentiary hearing is required, a district court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotations and citations omitted). An evidentiary hearing is not necessary if the petition, files, and record conclusively show that the petitioner is not entitled to relief. *Id.* at 422.

Brame argues that his trial counsel's performance was ineffective in three ways: (1) he failed to cross-examine B.B. regarding her prior convictions for felony crimes of dishonesty; (2) he failed to object to prejudicial testimony regarding Brame's gang affiliation and elicited more specific information regarding gang affiliation; and (3) he elicited testimony harmful to Brame during trial. The district court determined:

The record clearly indicates that [defense counsel] pursued a reasonable trial strategy, choosing at times unflattering evidence to bring to the jury in order to answer the charges. Any reasonably competent attorney under similar circumstances may have taken the same approach. The record is also clear that had an alternate strategy been chosen, and each and every point of contention in the *Petition* been addressed, the outcome of the trial likely would not have been different. The victim's testimony, while central to the State's case, was made in combination with physical evidence. The concern about [Brame's] image in light of testimony of animal mistreatment, for instance, or the victim's truthfulness in light of past convictions already disclosed to the jury, do not speak to the events for which [Brame] was on trial and are of ancillary concern.

Our thorough review of the record supports the district court's determination that defense counsel's performance at trial constituted reasonable trial strategy and did not fall below an objective standard of reasonableness. *See Nicks*, 831 N.W.2d at 506 (explaining that courts give trial counsel wide latitude to make decision regarding trial strategy); *see also Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) ("We have repeatedly stated that we generally will not review attacks on counsel's trial strategy."). Because Brame has not met the first prong of the *Strickland* test, we need not address the second prong.

Viewing the facts presented in the light most favorable to Brame, the record supports the district court's determination that Brame did not allege sufficient facts to warrant an evidentiary hearing on his alleged ineffective-assistance-of-counsel claim. Therefore, the district court did not abuse its discretion by denying an evidentiary hearing.

Affirmed.