

*This opinion is nonprecedential except as provided by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
A20-1060**

State of Minnesota,
Respondent,

vs.

Roland Ybarra,
Appellant.

**Filed June 28, 2021
Affirmed
Segal, Chief Judge**

Otter Tail County District Court
File No. 56-CR-18-3076

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

Michelle M. Eldien, Otter Tail County Attorney, Benjamin Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant argues in this direct appeal that his conviction of first-degree sale of a controlled substance must be reversed because the state's primary witness was not credible and therefore the evidence was insufficient to support the jury's guilty verdict. We affirm.

FACTS

Appellant Roland Ybarra was charged with the crime of first-degree sale of a controlled substance under Minn. Stat. § 152.021, subd. 1(1) (2016). The complaint alleged that Ybarra sold approximately one ounce of methamphetamine to a confidential informant (CI) in a “controlled buy” arranged by the West Central Minnesota Drug and Violent Crime Task Force (the task force). The CI had pending charges for second-degree sale of a controlled substance and had agreed to assist the task force in exchange for a less serious consequence.

The case was tried to a jury. At trial, the state presented testimony from the CI and the detective from the task force who organized the “buy.” The CI testified that in July 2018, while driving back from a trip with Ybarra to the Twin Cities, Ybarra gave the CI a small bag of methamphetamine and told the CI that he should “get a hold of [Ybarra] later for more.” The CI then contacted the detective, told him what had occurred, and agreed to try to purchase an ounce of methamphetamine from Ybarra. When the CI called Ybarra to arrange the transaction, Ybarra told the CI to come to Ybarra’s house and bring \$1,000 for the methamphetamine.

In accordance with the controlled-buy protocol for the task force, the detective met with the CI right before the purchase was to take place. At the meeting, the detective searched the CI and confiscated a small bag of what appeared to be methamphetamine and took possession of seven dollars in cash that the CI was carrying. The detective then gave the CI a GPS tracking device, an audio recording device, and \$1,000 in prerecorded “buy” money.

The CI testified that after his meeting with the detective he walked directly to Ybarra's house and, when Ybarra did not answer the door, the CI called Ybarra. Ybarra said he was on his way, so the CI waited on the back porch of the house. The detective testified that he told the CI to "remain in an open area" while waiting for Ybarra to arrive so that the CI would be in view of other observing officers until he entered Ybarra's house.

After several minutes, Ybarra and his girlfriend arrived, and all three entered the house. The CI testified that, once inside the house, he gave Ybarra the \$1,000 in prerecorded bills and Ybarra gave him a baggie of methamphetamine. The CI then walked directly to the meeting point, gave the drugs to the detective, and was searched again. The detective testified that an officer had a direct line of sight on the CI until the CI entered the house and also from the time the CI left Ybarra's house until he met up with the detective and gave the detective the drugs. The detective also testified that Ybarra was not arrested right away and the \$1,000 in buy money was never recovered.

The jury heard the CI's recording from the sale and viewed the baggie of methamphetamine. The recording was, however, largely inaudible, which was reflected in the transcript submitted to the jury. The transcript of the recording included the following exchange:

YBARRA: Want that one?
CI: Yeah, I'll (inaudible)
YBARRA: I'll just (inaudible)
CI: I'll hit you up okay?
YBARRA: Okay.

The jury was presented with evidence that the baggie with the drugs was tested for DNA and checked for fingerprints. There was not enough DNA for the lab to match it with

anyone and the lab found no match for the lone fingerprint that was found. The jury also heard evidence challenging the CI's credibility, including that he had a prior conviction for lying to police, and had pending second-degree drug charges and was cooperating with the task force because of those charges. And the jury was advised that the CI had a new first-degree drug charge involving an alleged sale of a controlled substance by the CI that occurred only a few months after the sale at issue in this case.

Ybarra argued to the jury that the CI had motive to lie because he "was facing a second degree drug sales charge," and had the opportunity to plant the methamphetamine on Ybarra's porch before the buy, retrieve the methamphetamine during the controlled buy, and then report that he bought the methamphetamine from Ybarra. On cross-examination, the CI acknowledged knowing where Ybarra's house was and that he would have had the "opportunity to store something" on the porch in the back of Ybarra's house before the day of the buy. The jury found Ybarra guilty of first-degree sale of a controlled substance. Ybarra now appeals.

DECISION

Ybarra argues that the CI's testimony was untrustworthy and, because his conviction primarily relied on the CI's testimony, the jury lacked sufficient evidence to find Ybarra guilty. When reviewing the sufficiency of the evidence, we undertake "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to support the jury's verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). "We will view the evidence in the light most favorable to the verdict and assume that the factfinder

disbelieved any testimony conflicting with that verdict.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). A verdict will not be overturned if 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.” *Ortega*, 813 N.W.2d at 100.

Here, Ybarra argues that the only direct evidence that Ybarra actually sold drugs to the CI is the testimony of the CI. Ybarra acknowledges that a conviction can rest on the testimony of a single uncorroborated witness, but points out that in such circumstances the witness must be credible. *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969). He argues that the CI lacked credibility and that the state presented insufficient corroborating evidence to sustain Ybarra’s conviction.

In challenging the CI’s credibility, Ybarra points to the fact that the CI was acting as an informant to lessen the consequences of his own pending drug charges. Ybarra emphasizes that the CI was himself convicted of first-degree sale of a controlled substance arising out of a drug sale that occurred only a couple of months after the alleged buy from Ybarra. Ybarra also notes that the CI had previously been convicted of giving false information to police by providing a false name because the CI knew that there was a warrant out for his arrest.

The state counters Ybarra’s argument by referencing the detective’s testimony about the protocol for controlled buys, including the fact that the CI was searched right before the buy and after, and that the CI was under continuous observation by officers, except for the period of time when he was inside Ybarra’s house. The state also makes note of the

detective's testimony that the CI had been involved in five previous controlled buys that had "positive outcomes for the sheriff's office." Finally, the state points out that the jury heard all of the evidence relied on by Ybarra to attack the CI's credibility and that the jury nevertheless reached a guilty verdict.

On this record, we are persuaded that there is sufficient evidence to support the jury's verdict. While Ybarra has articulated reasons to question the CI's credibility, the jury was provided that evidence and came to its own conclusion. Assessing credibility is the exclusive province of the jury, not the appellate courts. *State v. Poganski*, 257 N.W.2d 578, 580-81 (Minn. 1977) (holding a jury's credibility assessment may not be reversed even when the witness's testimony was inconsistent and the witness had previously been involved in fraud); *see also State v. Hadgu*, 681 N.W.2d 30, 34 (Minn. App. 2004) (affirming jury verdict for sale of controlled substances despite challenges to credibility of a confidential informant), *review denied* (Minn. Sept. 21, 2004). In addition, the testimony of the CI was buttressed by the consistent testimony of the detective.

Ybarra points to cases such as *State v. Huss*, 506 N.W.2d 290 (Minn. 1993); *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978); and *State v. Gluff*, 172 N.W.2d 63 (Minn. 1969), as providing support for his argument. All three cases are distinguishable "because each involved additional reasons to question the victim's credibility," along with other factors that undermined the sufficiency of the evidence.¹ *State v. Foreman*, 680 N.W.2d

¹ In *Huss*, the only direct evidence supporting a conviction for child sexual abuse was the inconsistent testimony of the three-year-old victim whose credibility was questioned by an expert witness because the victim had been exposed by the victim's mother and therapist to highly suggestive material for an extended period of time. 506 N.W.2d at 292-93. In

536, 539 (Minn. 2004) (distinguishing *Huss*, *Langteau*, and *Gluff* and affirming a second-degree-assault conviction despite the victim's earlier recantation of her testimony). By contrast here, there are no claims of prosecutorial misconduct or other error and the CI's testimony was consistent and was supported by other evidence in the record.

Affirmed.

Langteau, the court reversed a jury's guilty verdict on the grounds that the victim's testimony was illogical, the prosecutor argued without any basis that the defendant was under the influence of drugs, and the record lacked any corroborating evidence. 268 N.W.2d at 77. And, in *Gluff*, the jury verdict was reversed because of issues with the victim's eyewitness identification (including errors in the lineup process, a limited opportunity for the victim to observe the perpetrator of the crime, and the fact that the description given at the time of the offense did not match the defendant's actual appearance), and because the jury was erroneously allowed to infer that the defendant had a prior police record. 172 N.W.2d at 65.