

*This opinion is nonprecedential except as provided by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**

A22-0583

A22-0586

State of Minnesota,
Respondent,

vs.

Malcolm Jacob Wilson,
Appellant.

Filed February 21, 2023
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge

Clay County District Court
File Nos. 14-CR-21-1600, 14-CR-21-161

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

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

Considered and decided by Segal, Chief Judge; Gäitas, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

These are consolidated appeals from judgments of conviction of appellant for first-degree controlled-substance crime and five unlawful-possession-of-firearm-or-ammunition crimes. Appellant argues that (1) the evidence is insufficient to support his first-degree controlled-substance-crime conviction, and that (2) four of his sentences for firearm or ammunition possession must be vacated because the acts of possession occurred during a single behavioral incident and the firearm exception to the prohibition against multiple sentences does not apply. We affirm in part, reverse in part, and remand.

FACTS

These cases arose out of two controlled buys arranged by a Moorhead Police Department (PD) detective using an informant, T.R., to purchase methamphetamine from appellant Malcolm Jacob Wilson. The two buys occurred in November 2020 and January 2021.

For each buy, the detective provided T.R. with \$500 to buy one-half ounce of methamphetamine from Wilson at Wilson's apartment. The detective conducted a pat-down search of T.R. both before and after the buys. T.R. was also provided with audio and video recording equipment. After the buys, T.R. delivered the substances purchased from Wilson to the detective and returned the recording devices. Moorhead PD compensated T.R. \$200 for each buy. Testing later determined that the substances purchased by T.R. during the two buys contained approximately 13.712 and 13.001 grams of methamphetamine, respectively.

After the second controlled buy, the detective applied for and obtained a search warrant for Wilson's apartment. Upon execution of the warrant, Moorhead PD found a \$50 bill with one of the serial numbers from the cash used during the January buy. Moorhead PD also found a large amount of cash; digital scales; a money-counting machine; a large quantity of small plastic baggies, including the two types used to package the substances obtained during the controlled buys; marijuana; two firearms; and several types of ammunition. During the search, the detective interviewed Wilson, and Wilson said he was selling drugs to support his child and that he obtained the methamphetamine from a source in St. Paul.

Respondent State of Minnesota charged Wilson with first-degree controlled-substance sale—specifically selling 17 grams or more of methamphetamine within a 90-day period (the controlled-substance case). Wilson was separately charged with five counts of possession of a firearm or ammunition by a person convicted of a crime of violence (the possession case). The complaint in the possession case was later amended to include charges for failure to affix a tax stamp, two counts of fifth-degree controlled-substance possession, and possession of a firearm or ammunition by a person who is an unlawful user of a controlled substance.

Wilson waived his right to a jury in the controlled-substance case, and the district court held a bench trial in September 2021. The court heard testimony from T.R., the detective, and the forensic scientist who analyzed the substances obtained in the controlled buys. The state's evidence included the recordings from the controlled buys, the methamphetamine obtained from the buys, and the recording from the interview with

Wilson during the search of Wilson's apartment. The district court issued detailed written findings of fact and conclusions of law, along with its verdict finding Wilson guilty of first-degree controlled-substance sale.

Wilson waived his right to a trial in the possession case and pleaded guilty to all nine counts of the complaint.

At the joint sentencing hearing for the two cases, the district court denied Wilson's motion for a downward dispositional departure in the controlled-substance case and imposed the presumptive sentence of 95 months in prison. In the possession case, the district court imposed various concurrent sentences of 60 months or less for each of the nine counts.

Shortly after sentencing, the district court, on its own initiative, scheduled a resentencing hearing in the possession case to address whether any of the sentences should be vacated because they arose out of a single behavioral incident. After receiving memoranda from the parties, the district court vacated the sentences on counts eight and nine of the complaint—fifth-degree controlled-substance possession and possession of a firearm or ammunition by a user of controlled substances—concluding that those two counts arose out of the same behavioral incident as two of the other counts. The district court concluded, however, that the remaining counts, including the five unlawful possession counts, did not arise out of the same behavioral incident and reaffirmed the sentences for those convictions.

Wilson separately appealed his conviction for first-degree controlled-substance sale and four of the five sentences for unlawful possession; we consolidated the appeals.

DECISION

Wilson raises two issues on appeal. First, he argues that his conviction of first-degree controlled-substance sale was not supported by sufficient evidence because T.R., the informant who purchased the methamphetamine during the controlled buys, was not a credible witness. Wilson maintains that the state thus had an obligation to provide corroboration of her testimony, which it failed to do. Second, he argues that the district court improperly sentenced him on four of his five convictions for unlawful possession of a firearm or ammunition because the five offenses all occurred during a single behavioral incident and none of the exceptions to the prohibition against multiple sentences apply.

I. The evidence was sufficient to prove beyond a reasonable doubt that Wilson committed first-degree controlled-substance crime.

Wilson argues that the district court erred in finding him guilty of first-degree controlled-substance crime because the evidence was insufficient to support his conviction. “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 [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted).

We view the evidence “in the light most favorable to the verdict,” and we must assume “that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* The verdict will not be disturbed if the fact-finder, “acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a

reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotations omitted). This standard of review applies to evaluation of the sufficiency of the evidence in both jury and bench trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

To prove that Wilson committed first-degree controlled-substance sale under Minn. Stat. § 152.021, subd. 1(1) (2020), the state had to establish that Wilson sold one or more mixtures containing methamphetamine that weighed at least 17 grams, without lawful authority, within a 90-day period. The district court concluded that the state satisfied its burden and proved beyond a reasonable doubt “that on . . . November 25, 2020, and January 4, 2021, . . . [Wilson violated the statute] by providing 26.713 grams of what he believed to be methamphetamine to [T.R.] for \$1,000 on two separate occasions within a 90-day period without lawful authority to do so.” The court also found, based on the testing, that the substance in the baggies Wilson sold to T.R. was methamphetamine, and that T.R.’s testimony was credible.

Wilson acknowledges “[i]t is well-settled that a conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969); *see also State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010). He argues, however, that the conviction here relied on T.R.’s testimony and T.R. was not a credible witness. He claims that T.R. was not credible because she was paid by law enforcement for the controlled buys and she “admitted that she was a user of methamphetamine, had previously been convicted of burglary, and was currently sitting in jail on a probation violation.” Wilson also argues that T.R.’s credibility is suspect because, during the first

buy, T.R. appeared to keep the video recording equipment in her pocket so that there was only an audio recording and no video; the video recording of the second buy only shows Wilson handing something to T.R., not that he handed her methamphetamine; and none of the audio recorded during either buy includes discussion of a purchase of methamphetamine. Wilson maintains that, consequently, T.R.'s testimony must be discounted as not credible despite the district court's finding to the contrary.

Wilson cites cases such as *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978), and *State v. Gluff*, 172 N.W.2d 63 (Minn. 1969), in support of his argument. In these cases, the supreme court noted problems with witness testimony, but both are distinguishable “because each involved additional reasons to question the victim’s credibility,” along with other errors that supported reversing and remanding for a new trial. *State v. Foreman*, 680 N.W.2d 536, 538-39 (Minn. 2004) (distinguishing *Langteau* and *Gluff* and affirming a second-degree-assault conviction despite the victim’s earlier recantation of her testimony).

In *Langteau*, the supreme court reversed a jury’s guilty verdict on the grounds that the conviction was based solely on the victim’s testimony with no physical or other corroborating evidence, the victim’s testimony was illogical, and the prosecutor argued without any basis that the defendant was under the influence of drugs. 268 N.W.2d at 77. The court also stated that there may have been an error in the jury instructions and thus, “under all the circumstances . . . in the interests of justice a new trial is required.” *Id.*

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. 172 N.W.2d at 65. In addition, the opinion notes that the jury was erroneously allowed to infer that the defendant had a prior police record. *Id.*

By contrast here, Wilson does not argue that the district court committed other evidentiary or procedural errors which would require reversing and remanding as in *Langteau* and *Gluff*. Further, even if corroboration was required here, T.R.'s testimony was corroborated by substantial additional evidence. For example, T.R.'s testimony was corroborated by Wilson's admission to the detective in the taped interview that Wilson sold methamphetamine and by the evidence discovered when the search warrant was executed, including the \$50 bill that had the same serial number as one of the bills provided by police to T.R. to make a buy; a digital scale with methamphetamine residue; a large amount of cash; and a large quantity of small baggies, including baggies of the two types used in the controlled buys. The evidence also includes the video recording of the second buy that shows T.R. was admitted to Wilson's apartment, Wilson handed something to T.R., T.R. then left the apartment, and she returned to where the detective was waiting.

Finally, the record includes the detective's testimony about the controlled-buy procedures where T.R. was searched both before and after each buy. Wilson suggests that, because the searches of T.R. before each buy involved only a pat search, T.R. may have concealed the drugs on her body in a manner that a more invasive search might have detected. The district court, however, found this to be based on "nothing other than speculation and innuendo" and rejected it. *Cf. State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (recognizing "that the trier of fact is in the best position to determine

credibility and weigh the evidence” and stating, “[w]e will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture” (quotation omitted)). We similarly reject this argument as grounds for reversing the district court’s finding that T.R. was a credible witness.

T.R.’s testimony is amply corroborated and we thus reject Wilson’s argument that the state failed to prove the elements of controlled-substance crime beyond a reasonable doubt. *See Griffin*, 887 N.W.2d at 263.

II. The district court erred by imposing multiple sentences for Wilson’s firearm- and ammunition-possession convictions.

We turn next to Wilson’s challenge to his five sentences for unlawful possession of firearms or ammunition. The five convictions of unlawful possession include separate counts for possessing a .22 caliber pistol, a .45 caliber pistol, 9 millimeter ammunition, shotgun shells, and .45 caliber ammunition. He received a sentence for each count. Wilson argues that four of the five sentences must be vacated under Minn. Stat. § 609.035, subd. 1 (2020). Wilson also maintains that the firearm exception set out in Minn. Stat. § 609.035, subd. 3 (2020), does not apply. The state agrees that four of Wilson’s sentences must be vacated under applicable precedent, but maintains that, for purposes of a possible appeal to the supreme court, the precedent was wrongly decided and should be overruled.

Despite the agreement of the parties, we are required to independently analyze the merits of Wilson’s challenge to his sentences because “it is the responsibility of appellate courts to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). Whether a sentence conforms to the requirements of a statute is a

question of law we review de novo, but whether “offenses occurred as part of a single course of conduct is a mixed question of law and fact. When considering mixed questions, we review factual findings for clear error and legal conclusions de novo.” *State v. Nowels*, 941 N.W.2d 430, 440 (Minn. App. 2020) (quotation omitted), *rev. denied* (Minn. June 16, 2020).

Subdivision 1 of Minn. Stat. § 609.035 provides that, “if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” This prohibition against multiple punishments applies only if the multiple offenses arose out of “a single behavioral incident.” *State v. Bookwalter*, 541 N.W.2d 290, 293 (Minn. 1995); *see* Minn. Sent’g Guidelines cmt. 2.B.107 (2020) (stating that if multiple offenses arose out of a single behavioral incident, the district court should impose only one sentence for the offense at the highest severity level). Whether offenses were committed during a single behavioral incident depends on whether the conduct shares a “unity of time and place” and “was motivated by an effort to obtain a single criminal objective.” *State v. Bauer*, 792 N.W.2d 825, 828-29 (Minn. 2011) (quotation omitted); *see Bookwalter*, 541 N.W.2d at 294.

The convictions in the possession case were the result of Wilson’s guilty plea. In his plea colloquy, Wilson only admitted that he possessed the firearms and ammunition at the time they were found by law enforcement in his apartment when law enforcement executed the search warrant. The facts thus demonstrate a unity of time and place and no evidence was presented of differing criminal objectives. Thus, we agree with the parties that the five offenses all arose out of a single behavioral incident.

This leaves the question of whether the firearm exception in Minn. Stat. § 609.035, subd. 3, is applicable. That exception provides that a “prosecution for or conviction of [unlawful firearm or ammunition possession] is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.” Minn. Stat. § 609.035, subd. 3.

This court recently interpreted the firearm exception in the context of a defendant who was convicted and sentenced for both possession of a firearm and possession of ammunition when he possessed a single loaded gun. *Nowels*, 941 N.W.2d at 439. Our court in that case focused on the phrase “any other crime” in the exception and concluded that the act of possessing a loaded gun could not be treated as both a firearm possession offense and an “other crime” because the two crimes relied on the same elements of proof and were merely “a different means to commit the crime.” *Id.* at 442. The court thus held that the firearm exception in Minn. Stat. § 609.035, subd. 3, was not applicable and that it was improper for the defendant to be sentenced for two offenses arising out of the possession of a single loaded gun.¹

Applying the interpretation in *Nowels* to this case, we reach a similar conclusion. Here, the five possession convictions relied on the very same elements of proof: that Wilson was ineligible to possess a firearm or ammunition based on a previous conviction for a crime of violence and that—based on Wilson’s guilty-plea colloquy—he possessed

¹ We also held in *Nowels* that it was improper to enter multiple convictions against the defendant for unlawful possession of a firearm and ammunition when the offense involved a single loaded gun. 941 N.W.2d at 442 n.8.

the firearm or ammunition at the same time and place. Minn. Stat. § 609.165, subd. 1b(a) (2020). The specific firearms and ammunition that Wilson possessed are not elements of the crime. We thus conclude that the five convictions did not involve “any other crime” and the firearm exception in Minn. Stat. § 609.035, subd. 3, does not apply.²

Therefore, because the firearm exception does not apply and the possession crimes arose out of the same behavioral incident, the district court erred by sentencing Wilson for all five offenses. We thus remand to the district court to vacate four of Wilson’s five sentences for unlawful possession of firearms or ammunition.

Affirmed in part, reversed in part, and remanded.

² We have reached this same conclusion in two recent nonprecedential opinions that we cite for their persuasive value. *See State v. Mindermann*, No. A20-0723, 2021 WL 1962494, at *7 (Minn. App. May 17, 2021) (concluding that the firearm exception did not apply where the defendant was charged with seven counts of unlawful possession of a firearm after law enforcement located seven different firearms during a search of the defendant’s home), *rev. denied* (Minn. Aug. 10, 2021); *State v. Nguyen*, No. A19-1034, 2020 WL 2517565, at *4 (Minn. App. May 18, 2020) (holding that the firearm exception did not apply where “the statutory elements for each [of 13] conviction[s] were identical—the state was required to show that Nguyen was ineligible to possess a firearm, and that he possessed a firearm”), *rev. denied* (Minn. Aug. 11, 2020).