

*This opinion is nonprecedential except as provided by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
A23-0157**

State of Minnesota,
Respondent,

vs.

Marice Darnell King,
Appellant.

**Filed March 11, 2024
Affirmed
Larson, Judge**

St. Louis County District Court
File No. 69DU-CR-19-4569

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Larson, Judge; and John Smith, Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Following a jury trial, appellant Marice Darnell King challenges his conviction of aiding and abetting the sale of a controlled substance pursuant to Minn. Stat. §§ 152.022, subd. 1(1),¹ 609.05, subd. 1 (2018). King argues respondent State of Minnesota presented insufficient evidence to sustain the guilty verdict, and, in the alternative, that the district court abused its discretion when it admitted a report and testimony from a Minnesota Bureau of Criminal Apprehension (BCA) scientist without adequately verifying the chain of custody for the evidence the scientist tested. We affirm.

FACTS

In December 2019, the state charged King with aiding and abetting the sale of ten grams or more of a narcotic other than heroin under Minn. Stat. §§ 152.022, subd. 1(1), 609.05, subd. 1. We derive the following facts from the evidence presented at trial. Earlier in December 2019, the Lake Superior Violent Offender Task Force executed a search warrant for an apartment in Duluth, Minnesota. The primary target for the search warrant was R.W., however, King and another person were also listed on the warrant.

¹ Although this case involves the alleged sale of both heroin and fentanyl, the state premised its charges only on the alleged sale of fentanyl. At the time of the offense, Minn. Stat. § 152.022, subd. 1(1), criminalized unlawful sale of “one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than heroin.” In 2023, the legislature amended the statute to extend the exception to both “heroin [and] fentanyl,” but that law did not take effect until August 1, 2023, after King allegedly committed the offense in this case. 2023 Minn. Laws ch. 52, art. 15, § 10, at 1049-50.

At trial, multiple task-force investigators testified about executing the search warrant. One investigator (first investigator) testified that he helped arrest R.W. in the apartment-building hallway and found two plastic bags containing an off-white powdery substance and over \$3,000 in cash on R.W.'s person. The first investigator stated that, based on his training and experience, R.W. had "an amount of drugs that would be possessed by somebody" who sells them, not someone who simply uses them.

After officers detained R.W., they searched the apartment and found King and four other individuals. King was laying on an air-mattress. A second investigator testified that officers instructed King "to show his hands," at which point King threw "two clear Ziploc bindles with what appeared to be silver packets in the side." A third investigator stated that he handcuffed King while he was on the ground, and once King stood up, officers "observed small bindles containing what appeared to be a controlled substance." Inside the two bindles were 19 tinfoil wrappers. The second investigator testified that a photograph exhibit taken inside the apartment showed the bindles King threw. Based on his experience and training, the first investigator testified that dealers often package controlled substances in tinfoil to sell small portions for single use.

A fourth investigator described additional evidence found in the apartment, including jewelry bags with no jewelry, plastic sandwich bags, two digital scales, and ammunition. The fourth investigator testified that dealers commonly use digital scales to weigh controlled substances. The state presented testimony from multiple officers that plastic sandwich bags are a common way dealers package heroin and fentanyl.

Regarding the chain of custody for the substances seized from R.W. and King, the state elicited the following testimony. The first investigator testified regarding normal chain-of-custody protocol. The protocol begins when investigators hand evidence from the scene to a collection officer who maintains custody of the evidence at the police station. The collection officer weighs, tests, and initials the evidence before locking it in an evidence room with a specific case number.

The first and second investigators testified that, in accordance with normal protocol, the substances seized from R.W. and King went to a collection officer. The second investigator testified that the collection officer was a special agent from the U.S. Border Patrol.² The state then presented photographs, one depicting two plastic bags weighing 26.6 grams with an “off-white powdery substance,” and two others depicting bindles on a scale with 19 tinfoil wrappers that weighed 1.5 grams. The first and second investigators testified that the photographs depicted the substances confiscated from R.W. and King. But both investigators conceded that they were not present when the photographs were taken. However, the first investigator testified that the assigned case number on the photograph depicting the two plastic bags weighing 26.6 grams matched the search warrant. The photographs depicting the tinfoil wrappers share the same case number.

The state then called the BCA scientist who tested the substances seized from R.W. and King. The scientist testified regarding BCA’s chain-of-custody protocol, including that all evidence received at the lab has a seal that prevents tampering in transit to BCA,

² The prosecutor stated during trial that the collection officer could not testify because he had been deployed to Texas.

and, after receipt, BCA tracks every location of the evidence and every person who interacts with it. The scientist testified that when they received the evidence relevant to this case, there were no signs of tampering. The scientist then indicated that they tested the items and wrote a report articulating their findings.

The state then offered into evidence the scientist's report. King objected on the ground that the state presented insufficient evidence to prove chain of custody, and the parties further examined the scientist. In response to King's questions, the scientist admitted that they did not know how the evidence had been handled at the police station before it was sent to BCA. The scientist also admitted that they did not initially receive the evidence when it arrived at BCA through the mail. However, when the state resumed its questioning, the scientist stated that when they received the evidence all seals remained intact and there were no signs of tampering. The district court admitted the report.

The scientist testified that they tested two samples. The first sample was a tan material from one of two plastic bags. The second sample was tan material from a small tinfoil wrapper, one of 19 tinfoil wrappers the scientist received. Both the sample from the plastic bag and the tinfoil wrapper tested positive for heroin and fentanyl. In compliance with BCA policy, the scientist did not test every item received, but only tested and weighed enough of the substances "to reach a particular charging level or threshold." The samples weighed 16.032 grams and 0.068 grams, respectively.

The jury found King guilty of aiding and abetting R.W.'s sale of ten grams or more of a narcotic other than heroin, Minn. Stat. §§ 152.022, subd. 1(1), 609.05, subd. 1. The district court convicted King and sentenced him to 58 months in prison.

This appeal follows.

DECISION

On appeal, King first argues that the state presented insufficient evidence to sustain a guilty verdict for aiding and abetting the sale of a controlled substance under Minn. Stat. §§ 152.022, subd. 1(1), 609.05, subd. 1. Second, King argues the district court abused its discretion when it admitted the scientist's report and allowed the scientist to testify regarding the report. We address each argument in turn.

I.

King first argues that the state presented insufficient evidence to sustain a guilty verdict for aiding and abetting R.W. in the sale of over ten grams of a mixture containing fentanyl. “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 jury 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). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.*

The parties assert that the state relied on circumstantial evidence to prove King aided and abetted R.W., and we agree. *See State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017)

(noting that circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist” (quotation omitted)). Accordingly, we apply the heightened two-step circumstantial-evidence test. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, we identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In this step, we defer to “the jury’s acceptance of the proof of these circumstances” and “assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotations omitted). Second, we determine if the circumstances, when viewed “as a whole” 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.” *Id.* at 599 (quotation omitted). During this step, we do not defer to the factfinder’s “choice between reasonable inferences.” *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010) (quotation omitted). The circumstantial evidence presented by the state “must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

King argues the state presented insufficient evidence to prove he aided and abetted R.W.’s second-degree sale of a controlled substance. Under Minn. Stat. § 609.05, subd. 1, a defendant “is 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.” Thus, to sustain a conviction, the state must prove King (1) knew R.W. “was going to commit a crime” and (2) “intended his presence or actions to further

the commission of that crime.” *State v. Huber*, 877 N.W.2d 519, 523 (Minn. 2016). The alleged crime R.W. committed is second-degree sale of a controlled substance under Minn. Stat. § 152.022, subd. 1(1), meaning R.W. “unlawfully s[old] one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than heroin.” To “sell” means “to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture.” Minn. Stat. § 152.01, subd 15a(1) (2018). Selling also includes offering, agreeing, or possessing a controlled substance with an intent, to perform any of the listed acts. *Id.*, subd. 15(a)(2)-(3) (2018).

Applying the first step in the circumstantial-evidence test and construing “conflicting evidence in the light most favorable to the verdict,” *see Silvernail*, 831 N.W.2d at 598-99 (quotation omitted), we identify the circumstances proved: (1) the task force obtained a search warrant for the apartment, naming both R.W. and King; (2) when executing the search warrant, the task force detained R.W. in the apartment-building hallway; (3) upon searching R.W., the task force discovered two plastic bags with an off-white powdery substance believed to contain a controlled substance and over \$3,000 in cash; (4) the amount of the substance in R.W.’s possession was consistent with someone selling, and not simply using a controlled substance; (5) at the police station, the substance in R.W.’s possession weighed more than ten grams; (6) during the search, when the task force entered the apartment, they observed King lying on an air mattress; (7) King possessed two bindles containing 19 tinfoil wrappers; (8) dealers often package fentanyl in tinfoil wrappers to sell small portions for single use; (9) after searching the apartment, the task force also found numerous items commonly used to package and prepare controlled

substances for sale; (10) the task force gave the substances seized from R.W. and King to a collection officer who was responsible for documenting the evidence; (11) BCA received the substances seized from R.W. and King, with both “containing an apparent tan material”; (12) at BCA, the substance seized from R.W. weighed over ten grams; (13) samples of the substances seized from both R.W. and King tested positive for fentanyl.

Moving to the second step in the circumstantial-evidence test, we review whether “as a whole” these circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted). King asserts that the circumstances proved are inconsistent with guilt because, even if he received the fentanyl from R.W., the state failed to prove the two were working together to sell the fentanyl in R.W.’s possession.³ King asserts that this case is similar to our nonprecedential decision in *State v. Gasta*, No. C3-00-1728, 2001 WL 641590 (Minn. App. June 12, 2001). There, law enforcement located the defendant in a nonresidential area of a complex where he resided with a person suspected of selling controlled substances. *Id.* at *1. Upon searching the defendant, law enforcement did not find any controlled substances or money. *Id.* In the residence, law enforcement found methamphetamine, marijuana, pill bottles, a scale, rolling papers, and packing material. *Id.* In a dresser that contained the defendant’s clothing, law enforcement also found methamphetamine and \$3,000 in cash. *Id.* We concluded the state presented insufficient

³ As part of this argument, King asserts that, at most, the state should have charged him with possession with intent to the sell the 19 tinfoil wrappers found in his possession or aiding and abetting R.W. in selling them.

evidence to support the aiding-and-abetting verdict because there was no evidence the defendant was present during controlled-substance sales, and the record did not include strong evidence that the defendant was involved. *See id.* at *4.

This case is distinguishable from *Gasta*. Here, the task force obtained a search warrant because they had probable cause to believe both R.W. and King were selling controlled substances. The task force discovered a substance testing positive for fentanyl on both individuals. The two men possessed the fentanyl in an amount or manner consistent with selling, not using, fentanyl. At the time the task force executed the search warrant, R.W. and King were near one another and either in, or just outside, an apartment that contained packaging materials for controlled substances. Even though the state did not present direct evidence that King sold fentanyl, the circumstances proved are consistent with King's guilt for aiding and abetting R.W. in the sale of fentanyl.

King also contends that, even if the circumstances proved are consistent with guilt, the circumstances also support the rational hypothesis that King did not receive the controlled substance in the tinfoil wrappers from R.W. To make this argument, King does not rely on the circumstances proved; instead, he highlights the *absence* of evidence in the record. But to show a rational hypothesis other than guilt, King "must point to evidence in the record" that is consistent with his theory. *See State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995). Because King's proposed reasonable inference is based on mere conjecture and speculation, not evidence presented at trial, we are unpersuaded. *See Al-Naseer*, 788 N.W.2d at 480 ("[W]e do not set aside verdicts based on speculation. . . . [The defendant

must point] to evidence in the record that is consistent with a rational theory other than guilt.” (quotation omitted)).

For these reasons, we conclude the state presented sufficient evidence to support the jury’s guilty verdict that King aided and abetted R.W. in the sale of ten grams or more of a mixture containing fentanyl.

II.

In the alternative, King argues that the district court erred when it admitted the scientist’s report and their testimony about the report. King argues that, before admitting the report, the district court needed to establish a stronger chain of custody for the substances the scientist tested. We review this issue for an abuse of discretion. *State v. Farah*, 855 N.W.2d 317, 321 (Minn. App. 2014), *rev. denied* (Minn. Dec. 30, 2014). A district court “abuses its discretion when its decision is based on an erroneous view of the law or is against the logic and the facts in the record.” *Riley v. State*, 792 N.W. 831, 833 (Minn. 2011).

When the state presents evidence that “is unique, and thus identifiable in court on the basis of its distinctive appearance, evidence that the object is the same object, and is in substantially the same condition, can usually be offered through the testimony of one or more witnesses who each possess personal knowledge.” *State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (quoting M. Graham, *Evidence and Trial Advocacy Workshop: Relevance and Exclusion of Relevant Evidence—Real Evidence*, 18 Crim. L. Bull. 241, 243-46, 247 (1982)); *see also* Minn. R. Evid. 901(a) (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to

support a finding that the matter in question is what its proponent claims.”). But when real evidence “is not unique and thus not readily identifiable, such as when narcotics are involved, the object must be authenticated by means of a chain of custody.” *Hager*, 325 N.W.2d at 44 (quoting *Graham*, *supra*). The chain-of-custody rule “requires testimony of continuous possession by each individual having possession, together with testimony by each that the object remained in substantially the same condition during its presence in his [or her] possession.” *Id.*; *see also State v. Johnson*, 239 N.W.2d 239, 242 (Minn. 1976) (explaining “the ‘chain of custody’ rule” requires the state “to account for the whereabouts of physical evidence connected with a crime from the time of seizure to its offer at trial”). The chain-of-custody rule ensures “that (1) the evidence offered is the same as that seized, and (2) it is in substantially the same condition.” *Johnson*, 239 N.W.32d at 242.

Relying on *State v. Bellikka*, 490 N.W.2d 660 (Minn. App. 1992), *rev. denied* (Minn. Nov. 25, 1992), the state argues it did not need to establish chain-of-custody because the substances were found in unique packaging. In *Bellikka*, the state admitted a unique piece of glass. *Id.* at 663-64. We concluded that, because the glass “was unusual enough” for witnesses to recognize it, the chain-of-custody rule did not apply. *Id.* at 664. But we cautioned that the chain-of-custody rule is essential for “common items,” like “drugs, blood and urine.” *Id.* at 663.

Here, the substance inside the packaging, not the packaging itself, incriminates King. Thus, unlike the unique piece of glass in *Bellikka*, the relevant evidence is a “common item”—the substance—not its packaging. *See id.* Because someone could conceivably contaminate or alter a common item, like the “tan material” in this case, but

preserve the unique nature of the packaging, the evidence does not fall into the exception articulated in *Bellikka*, and the chain-of-custody rule applies.

King argues the district court abused its discretion when it admitted the scientist's report and allowed the scientist to testify regarding the report. To support his argument, King points to a gap in the chain of custody between when the collection officer took possession of the substances seized from R.W. and King, and their delivery to BCA. We are not persuaded.

The chain-of-custody rule does not require a "rigid formulation of what showing is necessary in order for a particular item of evidence to be admissible." *Johnson*, 239 N.W.2d at 242. Instead, the district court "must be satisfied that, in all reasonable probability, the item offered is the same as the item seized and is substantially unchanged in condition." *Id.* Admissibility does "not depend on the prosecution negating all possibility of tampering or substitution, but rather only that it is reasonably probable that tampering or substitution did not occur." *Id.* Although speculation about tampering might impact the weight a factfinder accords the evidence; mere speculation does not impact admissibility. *Id.*

Here, the state first established the normal chain-of-custody protocol when officers deliver evidence to a collection officer. The first and second investigators then testified about seizing the substances from R.W. and King and stated that a collection officer received the evidence. The state then offered photographic exhibits into evidence, unchallenged on appeal, that depict the substances the task force seized from R.W. and

King—consistent with chain-of-custody protocol. These photographs are marked with a case number consistent with the search warrant.

The scientist also testified regarding the normal chain-of-custody protocol used at BCA. The scientist testified that they received the package containing the substances seized from R.W. and King with the seals consistent with the collection officer having followed proper protocol. The scientist indicated that, at the time the evidence was obtained, there were no signs of tampering. And the scientist's description of the evidence received was consistent with the investigators' description of the evidence they seized from R.W. and King.

We conclude the district court did not abuse its discretion when it allowed the state to admit the scientist's report and when it allowed the scientist to testify regarding the report. Although it would have been preferable for the state to call the collection officer to testify regarding the chain of custody, the admissibility of the evidence does "not depend on the prosecution negating all possibility of tampering or substitution, but rather only that it is reasonably probable that tampering or substitution did not occur." *Johnson*, 239 N.W.2d at 242. Thus, "the fact that everyone who handled the evidence did not testify is not fatal to establishment of a chain of custody." *Belikka*, 490 N.W.2d at 664. Further, King did not present any evidence that tampering occurred and speculation about tampering, at best, goes to the weight of the evidence, not its admissibility. *See Johnson*, 239 N.W.2d at 242. Therefore, the district court did not abuse its discretion when it admitted the scientist's report and allowed the scientist to testify regarding the report.

Affirmed.