

*This opinion is nonprecedential except as provided by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
A23-1567**

State of Minnesota,
Respondent,

vs.

Eric Duane Mitchell,
Appellant.

**Filed August 26, 2024
Affirmed
Schmidt, Judge**

Benton County District Court
File No. 05-CR-20-876

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Kathleen L. Reuter, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Worke, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal from appellant's judgment of conviction for third-degree murder, appellant Eric Duane Mitchell argues that his conviction should be reversed because the evidence was insufficient to establish that he sold the victim the heroin that

resulted in her death. Because there is sufficient evidence to support Mitchell's conviction, we affirm.

FACTS

J.S. was found unresponsive in her bed and shortly thereafter pronounced deceased. The medical examiner performed an autopsy and determined her cause of death to be from "toxic effects of heroin." At the scene, police recovered a piece of aluminum foil with "some white powdery-type residue" in J.S.'s bathroom garbage can. Police also recovered prescription medication and nonprescription medication in the residence.

J.S.'s stepfather retrieved J.S.'s personal items after her death. On J.S.'s cell phone, her stepfather saw a text exchange between J.S. and "Eric" from the day before her death that included a reference to fentanyl. J.S.'s stepfather gave police J.S.'s cellphone. Police later identified "Eric" as appellant Eric Duane Mitchell.

Police executed a search warrant for Mitchell's home. Police did not recover fentanyl, heroin, or any nonprescribed opioids in Mitchell's home. Police took a statement from Mitchell, who claimed he had not seen or heard from J.S. for approximately three weeks prior to her death. When police asked Mitchell about the text message exchange between him and J.S. the previous weekend, Mitchell stated that his brother—who was also friends with J.S.—would occasionally message J.S. from Mitchell's phone. Mitchell further stated that he had been prescribed oxycodone and fentanyl following a surgery, but his prescriptions had run out and he had been using methadone to deal with ongoing pain.

Respondent State of Minnesota charged Mitchell with third-degree murder and third-degree controlled-substance sale.

At trial, several witnesses testified. In relevant part, a friend of J.S. testified that she suspected J.S. was using illegal drugs based upon “how she was acting,” but that J.S. “never admitted it” to her. The medical examiner testified that she found both morphine and monoacetylmorphine present in J.S.’s system, which the examiner opined are consistent with heroin metabolizing. Mitchell’s brother testified that he had not used Mitchell’s cell phone to text J.S. Finally, the state introduced evidence of J.S.’s cellphone, showing that, on the day before her death, she received two phone calls from Mitchell. The cellphone also showed the following text exchange between J.S. and Mitchell:

J.S.:	When do you think you will have it
Mitchell:	Just got it
J.S.:	Ok. Are you wanting me to stop on the way home?
Mitchell:	Soon would be nice
J.S.:	Ok yea I be there within 15 min
Mitchell:	Kk
J.S.:	Will you run it out
Mitchell:	Yes I will
J.S.:	Ty awick!!!!
Mitchell:	Welcome ribbit ribbit
J.S.:	Here
Mitchell:	Kk be right out
Mitchell:	Hey don’t say how much you gave me ok??

J.S.: I won't

J.S.: Thank you!!!!!!

....

J.S.: I feel great!

J.S.: Question

Mitchell: Huh

J.S.: How soon can I do the second one

Mitchell: You can do it right now if you want and your gonna need more cause your gonna so sicker than a dog in the morning I feel it through the methadone this is carb fentanyl jendawg mixed with that fine fine China¹

J.S.: Really?

J.S.: I don't feel sick

Mitchell: F-ck yyyeaah jendawg she's been hitting me up cause she's gone be gone tomorrow and you don't

Mitchell: Sick now wait for tomorrow you'll feel it

J.S.: F-ck

J.S.: She already said that

Mitchell: Yup she's my homie\ma in away so she lets me know what's up

J.S.: That's good

J.S.: So what should I do tomorrow

¹ The investigator testified that, in his experience, "fine China" is the street name for heroin.

Mitchell: Gets some more tonight otherwise your gonna be laying in bed all day shacking and withdrawing sweating and sh-ttin your brains out jendawg

J.S.: I can't get no more

J.S.: I have one left. Should I do that tomorrow?

Mitchell: No do it tonight and ok hope you have a happy Easter ttyt

J.S.: I did two tonight

The jury found appellant guilty of third-degree murder and third-degree controlled-substance sale. Mitchell filed a motion for a downward dispositional departure or, alternatively, for a downward durational departure. The district court denied Mitchell's motion and sentenced him to 86 months in prison on the murder conviction. The court did not adjudicate the lesser-included offense of third-degree controlled-substance sale.

This appeal follows.

DECISION

Mitchell argues the evidence is insufficient to establish that he sold J.S. the heroin that killed her. To prove that Mitchell was guilty of third-degree murder and third-degree sale of a controlled substance, the state had to prove that Mitchell sold J.S. the heroin that killed her. *See* Minn. Stat. § 609.195(b) (2020) (defining third-degree murder); Minn. Stat. § 152.023, subd. 1(1) (2020) (defining third-degree controlled-substance sale).

The state presented no direct evidence that Mitchell sold J.S. heroin and, as such, the circumstantial-evidence standard of review applies to Mitchell's sufficiency argument.

See State v. Harris, 895 N.W.2d 592, 598–99 (Minn. 2017). Even in cases involving circumstantial evidence, the fact-finder is “in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony.” *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011) (quotation omitted).

A. The circumstances proved

The first step of our review to a challenge of the sufficiency of circumstantial evidence is to identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In doing so, we must defer to “the jury’s acceptance of the proof of these circumstances” and “assume that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.* at 598–99 (quotations omitted). Accordingly, we “consider only those circumstances that are consistent with the verdict.” *Id.* at 599.

The circumstances proved here are that J.S. and Mitchell exchanged text messages about fentanyl and heroin the day before her death and Mitchell’s brother testified that he did not use Mitchell’s phone to text J.S. The substance of the text message exchanges established that Mitchell had something and that he would “run it out” to J.S. Later that night, J.S. texted Mitchell to say she felt great and asked how soon she could do “the second one.” Mitchell responded and urged J.S. to do “the second one,” stating that “this is carb fentanyl jendawg mixed with that fine fine China.” The investigating officer testified that “fine China” is slang for heroin. The next morning, J.S. was found dead. The medical examiner determined that the toxic effects of heroin caused J.S.’s death.

B. The circumstances proved exclude a reasonable inference other than guilt.

The second step of our review to a challenge of the sufficiency of circumstantial evidence is to determine if the circumstances, when viewed “as a whole,” are “consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Harris*, 895 N.W.2d at 601. 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).

Mitchell argues that the circumstances proved leaves room for the reasonable hypothesis that the word “it” in the text message exchange meant money and not heroin. Specifically, Mitchell points to the following text messages:

J.S.: When do you think you will have *it*

Mitchell: Just got *it*

. . . .

J.S.: Will you run *it* out

(emphasis added). Mitchell contends that this exchange allows for a reasonable hypothesis that J.S. was selling heroin to Mitchell because the word “it” referred to the money J.S. expected to be paid from Mitchell in exchange for heroin. But Mitchell’s argument looks to only three discrete text messages rather than analyzing—as we are required to do—the circumstances as a whole. *Harris*, 895 N.W.2d at 601.

The circumstances, as a whole, include texts from Mitchell to J.S. referencing how the carb fentanyl was “mixed with . . . fine China” (also known as heroin). The text exchange further reveals that J.S. asked Mitchell about when to take more drugs and Mitchell’s instruction to “do it tonight.” The circumstances, viewed as a whole, are consistent with the jury’s finding that Mitchell sold J.S. the drugs that killed her and are inconsistent with any rational hypothesis except that of guilt.

Affirmed.