This opinion is nonprecedential except as provided by Minn.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
A24-1579

State of Minnesota,
Respondent,

vs.

Kueth Pamier Ruae,
Appellant.

Filed July 14, 2025
Affirmed
Larkin, Judge

Blue Earth County District Court
File No. 07-CR-23-1178

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

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Larkin, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of third-degree controlled-substance sale, arguing that the evidence at his court trial was insufficient to sustain the district court's finding of guilt. We affirm.

FACTS

Respondent State of Minnesota charged appellant Kueth Pamier Ruae with one count of aiding and abetting third-degree murder, alleging that he provided, or aided in providing, fentanyl to EL, who overdosed and died from fentanyl toxicity. The state later added a charge of third-degree controlled-substance sale. Ruae waived his right to a jury trial.

After the ensuing court trial, the district court found Ruae not guilty of aiding and abetting third-degree murder, and guilty of third-degree controlled-substance sale. The court found that Ruae "sold one or more mixtures containing fentanyl," specifically, six "counterfeit fentanyl pills" in exchange for $90. The court found that Ruae "knew or believed that the substance sold was a controlled substance because he, in fact, used the substance" with EL and her roommate HR. The district court entered judgment of conviction for third-degree controlled-substance sale and imposed a stayed 21-month prison sentence.

Ruae appeals.

DECISION

Ruae challenges the sufficiency of the evidence to support the district court's guilty verdict and his resulting conviction, arguing that the state failed to prove that the pills he sold contained fentanyl.

A finding of guilt can be based on direct or circumstantial evidence. *See Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (stating that both forms of evidence are entitled to the same weight). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotations omitted).

When considering a sufficiency challenge, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the fact-finder's credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt*, 684 N.W.2d at 476-77.

However, if the state relied on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See Harris*, 895 N.W.2d at 601-03 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that "the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence"). Under the circumstantial-evidence standard of review, we first determine the circumstances proved, disregarding evidence that is inconsistent with the verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Next, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Id.* (quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will not reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

"[W]e do not set aside verdicts based on speculation." *Al-Naseer*, 788 N.W.2d at 480. "To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than guilt." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). A defendant may not rely on mere conjecture but must instead point to evidence in the record that is consistent with innocence. *Al-Naseer*, 788 N.W.2d at 480; *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

To establish that Ruae was guilty of third-degree controlled-substance sale, the state had to prove that he sold "one or more mixtures containing a narcotic drug." Minn. Stat. § 152.023, subd. 1(1) (2022). The state also had to prove that Ruae knew or believed that the substance he sold was a narcotic drug. *See State v. Kuhnau*, 622 N.W.2d 552, 557 (Minn. 2001) (concluding that "whether Kuhnau knew or believed that the substance sold was methamphetamine" was an essential element (quotation omitted)). Ruae does not dispute that fentanyl is a "narcotic drug."

As to the identification of a controlled substance, Minnesota law "requires proof of the actual identity of the substance," but the supreme court has "not prescribed minimum evidentiary requirements." *State v. Loveless*, 987 N.W.2d 224, 248 (Minn. 2023) (quotation omitted). The state may satisfy its burden of proof in several ways: (1) by laboratory tests of the substance; (2) with nonscientific or circumstantial evidence when the substance is unavailable for testing; and (3) with a combination of scientific, nonscientific, and circumstantial evidence. *Id.* Review of the sufficiency of the evidence of identity of a substance is conducted on a case-by-case basis. *Id.*

For example, in *State v. Olhausen*, the jury convicted the respondent of aiding and abetting the sale of methamphetamine even though the state was unable to scientifically test the alleged methamphetamine because the respondent disposed of it prior to his arrest. 681 N.W.2d 21, 22-23, 28 (Minn. 2004). The nonscientific evidence of identity and weight included the following:

> (1) respondent's agreement to sell 1 pound of methamphetamine, (2) respondent's phone calls to arrange the sale, (3) respondent's representation of a small sample to [the undercover agent], a sample that [the agent] believed to be authentic methamphetamine, (4) respondent's various statements, including an offer to sell "ten for one," or 1 pound of methamphetamine for $10,000, (5) respondent's various indications that the package he obtained from [another person] was 1 pound of methamphetamine, (6) [the other person's] representations to the police that he furnished respondent with 1 pound of methamphetamine, and (7) respondent's dramatic flight from the scene of the incident.

Id. at 26. In upholding the conviction in *Olhausen*, the supreme court noted that the jury found that the evidence of identity and weight was sufficient, and the reviewing court was bound to give deference to that finding; additionally, there was no evidence that the defendant had a history of attempting to sell placebos in place of controlled substances. *Id.* at 28-29.

Ruae argues that because none of the pills at issue were recovered and tested, "there was no direct evidence of the nature of the pills" and that the circumstantial-evidence standard of review applies. The state concedes that a circumstantial-evidence standard applies. We agree and apply that standard.

Here, the circumstances proved are as follows. On November 30, 2022, EL, her boyfriend CH, and her roommate HR, agreed to buy "fake percs" or "[b]lues," that is, blue pills that HR believed to contain fentanyl. HR contacted Ruae to purchase the pills. HR knew Ruae from high school. Ruae arrived at HR and EL's apartment around 7:44 p.m. and stayed for about 20 minutes. He sold HR and EL six pills for $90, and he smoked an additional one or two pills with them.

CH arrived at the apartment around 10:20 p.m., and he, HR, and EL began smoking the six pills from Ruae. CH had done "percs" with HR before. At trial, CH testified that after smoking the pills with HR and EL, his "memory pretty much stop[ped]." The group smoked all six pills before 12:54 a.m. The group wanted more pills, so HR contacted Ruae around 1:00 a.m. Ruae said that he had no more pills. HR then contacted another individual, KB. According to HR, KB was "the person [Ruae] gets it from." KB arrived at the apartment around 1:40 a.m. HR,EL, and CH each bought two pills from KB. The pills that KB sold the group looked the same as the pills that Ruae had sold to HR and EL.

HR woke up a couple times during the night because she felt extremely sick and was throwing up. At around 11:00 a.m. or 12:00 p.m. on December 1, HR found EL deceased and CH "almost beyond help." EL had died from fentanyl toxicity. Her blood had a fentanyl concentration of 11 nanograms per milliliter. It is unknown whether EL died as a result of the pills she ingested from Ruae or Bryant, or from a combination of the two.

These circumstances are consistent with Ruae's guilt, that is, they support a finding that Ruae knowingly sold fentanyl pills to KR and EL for $90. Ruae concedes that the circumstances proved "may arguably lead to an inference that the first set of pills contained fentanyl." However, he asserts that the circumstances also "support the alternative rational hypothesis that the pills did not, in fact, contain fentanyl." Ruae argues that the pills he sold could have contained a simulated controlled substance or a placebo.

A reasonable hypothesis of innocence must find support in the record. *See Al-Naseer*, 788 N.W.2d at 480. But the record does not support Ruae's hypothesis that the pills he sold were a placebo. The evidence shows that HR and CH were familiar with the effects of smoking "percs" because they had previously used such pills. HR contacted Ruae to obtain "fake percs," and Ruae smoked some of his "fake percs" with HR. After HR smoked some of Ruae's pills with him, and later consumed the pills that she purchased from him, HR attempted to purchase more pills from Ruae. Those circumstances are inconsistent with the hypothesis that Ruae sold HR and EL a placebo or simulated substance. If the pills were a placebo and did not have the desired effect, HR would not have sought additional pills from Ruae after using the pills he sold her.

In addition, CH testified that after smoking some of the pills purchased from Ruae, his "memory pretty much stop[ped]"and the next thing he remembered was "[w]aking up in the hospital." That evidence does not support Ruae's hypothesis that his pills were a placebo. In sum, our review of the record does not reveal evidence supporting Ruae's hypothesis that his pills were a placebo or simulated substance that did not contain fentanyl.

Ruae also argues that the state did not establish that he knew or believed that the six pills he sold contained a controlled substance. Again, the district court found that Ruae knew the pills contained a controlled substance because he used the pills with HR and EL as if they contained a controlled substance. In addition, Ruae represented the pills to be "fake percs" when he sold them to the group. Again, the record does not support Ruae's hypothesis of innocence.

Finally, Ruae challenges HR's testimony at trial, arguing that she was an unreliable witness. Ruae argues that the evidence connecting him to the first six pills bought by HR "came solely" from HR's testimony, and Ruae notes that the district court found her testimony unreliable.

At the beginning of her testimony, HR acknowledged that she had been ordered to testify, that she had "pending charges" for her role in EL's death, and that she would receive "some immunity for providing testimony." The district court recognized those circumstances and determined that some of HR's testimony was unreliable, for example, her claims of limited involvement in obtaining additional pills from KB. However, the district court implicitly found HR's testimony regarding Ruae's sale of six pills to HR and EL credible. The fact-finder is permitted "to accept part and reject part of a witness's testimony." *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002).

“[P]ossibilities of innocence do not require reversal of a [guilty] verdict so long as the evidence taken as a whole makes such theories seem unreasonable.” *Taylor*, 650 N.W.2d at 206 (quotation omitted). The record does not contain specific evidence that is consistent with Ruae’s theory of innocence, and his theory is unreasonable in light of the evidence as a whole. Because the district court, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved Ruae’s guilt, we will not disturb the verdict.

Affirmed.