STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0776

State of Minnesota,
Respondent,

vs.

Alexander James Menne,
Appellant.

Filed January 13, 2020
Affirmed
Rodenberg, Judge

Chisago County District Court
File No. 13-CR-17-129

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

Janet Reiter, Chisago County Attorney, David Hemming, Aimee Cupelli, Assistant County Attorneys, Center City, Minnesota (for respondent)

Mark D. Kelly, Law Offices of Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant Alexander Menne appeals from a judgment of conviction for third-degree murder and from the district court's order denying postconviction relief after a stay and remand for postconviction proceedings. He argues that the evidence presented at his trial

is insufficient to prove beyond a reasonable doubt that the drugs appellant provided to C.J. were responsible for causing C.J.'s death. Appellant also argues that the postconviction court erred in denying his request for a new trial because overprescribed Ativan rendered him incompetent at trial. We affirm.

FACTS

On December 10, 2016, appellant sent C.J. a text message stating that appellant "found an amazing black market website like made for Xanax" and that he would "hook [C.J.] up with AMAZING prices on hash[1] and bars[2] and those green pills."

On December 12, 2016, appellant and C.J. exchanged text messages about trading pills for "bars." At 12:49 p.m., C.J. text messaged appellant: "You hit my [m]ail box that has to be the same as everyone's in the association so it is gunna cost me a lot more money I'm not tryna f--k you over or anything I'll literally give you one of my pills when I get those 11 if you do this for me or do u not want bars or do u want them separate."

Appellant and C.J. exchanged the following text messages beginning at 12:56 p.m. and ending at 1:56 p.m.:

> C.J.: I want you to either buy bars from me and give me the 4 or lemme trade you bars for it that's what I want but tell me what you can do
> Appellant: I don't have cash on me so I can trade the 4 pills for bars.
> Appellant: When can you call me
> Appellant: Do I leave the green pills in the mailbox ?? I don't want your mom to get the mail or something
> C.J.: Go wait somewhere quick I'm getting yur sh-t
> C.J.: Come get it

[1] "Hash" apparently refers to hashish.

[2] "Bars" apparently refers to Xanax pills that are bar-shaped.

> Appellant: Coming
> C.J.: And drop mine of course please I hooked you up jsha
> Appellant: Hahaha of course. [C.J.] your one of my friends and I wanna stay that way I wouldn't f--- it up!
> C.J.: Is it in there ?
> Appellant: Yes
> Appellant: It's in there
> Appellant: And [C.J.] I'm beyond sorry about the mailbox I really appreciate what ur doing and thanks for the bars to!

At 1:27 p.m., B.S., who was C.J.'s girlfriend, received a text message from C.J. stating:

> [Appellant]'s gunna drop off those super profitable green pills for hitting my mail box and I'm selling him xans but I'm putting it all in my mail box I'll snap chat you so I don't have to deal with him and I know you don't want me around him when your not around I love you[.]

Sometime in the afternoon that same day, C.J.'s brother-in-law received a Snapchat photo from C.J. depicting C.J.'s hand holding a small plastic bag containing four green pills.

At 1:55 p.m., C.J. text messaged a friend that he "[g]ot the best painkillers you can get the 80 mg so you tryna get f--ked up tonight or what[.]" At 2:32 p.m., C.J. text messaged the same friend: "I just snorted a tiny line and I'm f--ked up dude ur gonna be mind blown by this sh-t it's awesome and we can make so much g-damn money off of these[.]"

C.J. had stopped replying to text messages from B.S. around 2:30 p.m. B.S. became worried and drove to C.J.'s house. B.S. entered C.J.'s house, went down to the basement, and found C.J. lying on the bathroom floor. B.S. called 911 and performed CPR on C.J.

Around 3:30 p.m., a Wyoming Police Department sergeant arrived at C.J.'s house in response to a report of a possible overdose. The sergeant went to the basement of the

house and found C.J. on the bathroom floor. First responders were unable to resuscitate C.J. At 4:05 p.m., C.J. was pronounced dead.

Officers found three-and-one-half green pills on the counter in the bathroom where C.J. died. A knife and powder residue were found on the bathroom counter.

Two weeks after C.J.'s death, C.J.'s mother found some pills in a vanity drawer in the bathroom where C.J. had died. C.J.'s stepfather took photos of the pills in the vanity drawer and disposed of them. C.J.'s mother also found a rolled-up dollar bill, which she threw into a wood-burning stove.

Appellant was charged with third-degree murder under Minn. Stat. § 609.195(b) (2016). He remained in jail after violating the conditions of his pretrial release.

At a motion hearing, appellant's counsel informed the district court that appellant "has some anxiety medications that he would normally take." Appellant had a prescription for Ativan—an anti-anxiety medication—but was prohibited by jail authorities from using the medication while jailed. Appellant asked the district court to consider allowing him to take Ativan during the upcoming trial. Appellant's counsel told the district court that he did not think that the Ativan would impact appellant's "consciousness or awareness . . . and ability to focus."

The district court requested that the state ask the jail if it was possible for appellant to take Ativan during trial so that appellant could "participate fully with [counsel] in his defense." In response to the district court's request, the state provided the district court with a letter from a nurse at the Chisago County Jail, stating that she had reviewed the Ativan order and that "Ativan is not clinically indicated" because of "an increased risk of

abuse and dependency and certainly not prescribing up to 4mg a day as needed." Appellant had submitted a letter from his doctor which recommended that appellant be allowed to take Ativan—up to four milligrams per day—during trial. The letter from appellant's doctor also explained potential side effects of Ativan, including "sedation, lethargy, lightheadedness, dizziness." Appellant's doctor included a medication safety sheet, which listed additional side effects of Ativan, including possible memory impairment.

Considering that appellant's doctor believed the Ativan to be beneficial to appellant, that the jail would not allow appellant to take Ativan, and that appellant indicated that he did not suffer from side effects after taking Ativan, the district court modified appellant's conditions of release so that appellant could "receive the medications so that he can assist his counsel with his defense." Appellant was not jailed during trial and instead lived at his grandmother's house. Appellant took two milligrams of Ativan twice per day during trial.

On the first day of appellant's jury trial, the district court asked appellant's counsel if appellant suffered "any of the side effects indicated by [appellant's doctor], which include sedation, lethargy, lightheadedness and dizziness[.]" Appellant's counsel responded, "No." He told the district court that appellant "actually functions much better and is more alert when he's on [Ativan] because he's calmer and he can stay focused."

At trial, Dr. Strobl, the medical examiner, testified that the Midwest Medical Examiner's Office conducted an autopsy of C.J., including testing of his blood and urine. The blood and urine tests "showed the presence of furanyl fentanyl, diazepam, and alprazolam." The green pills found by police on the bathroom counter were also tested and found to contain furanyl fentanyl. The pills found in the vanity drawer by C.J.'s parents

after his death were never tested. Dr. Strobl concluded that the cause of C.J.'s death was furanyl fentanyl toxicity. Dr. Strobl testified that furanyl fentanyl is considered an analog of fentanyl. Dr. Isenschmid, a forensic toxicologist, testified that furanyl fentanyl is a schedule I drug.

The jury found appellant guilty of third-degree murder, and the district court sentenced him to 86 months in prison. Appellant filed a notice of appeal. We stayed that appeal to enable appellant to pursue postconviction relief.

Appellant filed a petition for postconviction relief on remand, arguing that the Ativan that he took during trial rendered him incompetent. The district court held an evidentiary hearing on the petition.

Appellant testified that, after the district court altered his conditions of release to allow him to take Ativan during trial, he received a prescription that directed him to take two milligrams of Ativan twice per day. Appellant had previously taken two milligrams of Ativan twice per day, but had not taken any Ativan in the approximately two months during which he was in jail. Appellant claimed to remember nothing about the trial after jury selection and until he woke up in jail after the verdict. Appellant conceded at the evidentiary hearing that he was conscious throughout the trial.

Appellant's trial attorney testified that appellant used a notepad to write down questions or comments during trial, and that the questions that appellant asked were relevant to the evidence and what was occurring at trial. Appellant's trial attorney testified that he spoke with appellant during breaks and that appellant would constantly ask him how things were going. At no point during the trial, at the taking of the verdict, or before

sentencing did appellant ever tell his trial attorney that he was having amnesia or trouble remembering what was happening. Appellant's trial attorney testified that he did not notice any behaviors that caused him to worry about appellant's competence.

Dr. Gratzer, a rule 20 evaluator who never evaluated appellant, testified that four milligrams of Ativan is on the high end of the therapeutic range. He also testified that a person taking four milligrams of Ativan might have memory loss, but that amnesia is not the most common side effect of Ativan.

The district court denied appellant's petition for postconviction relief, from which denial appellant also appealed. We reinstated appellant's direct appeal and permitted appellant to raise issues decided in the postconviction proceedings as well as direct-appeal issues.

D E C I S I O N

Sufficient evidence supports appellant's conviction for third-degree murder.

Appellant argues that the circumstantial evidence presented by the state is insufficient to prove that appellant provided the furanyl fentanyl that caused C.J.'s death.

"When evaluating the sufficiency of the evidence, we carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation and alternation omitted). We view the evidence "in the light most favorable to the verdict" and assume "that the fact-finder disbelieved any evidence that conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). "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.*

Direct or circumstantial evidence may be used to prove an offense. "Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted). 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, 598 (Minn. 2017) (quotation omitted).

We apply the circumstantial-evidence standard of review in cases where the state presents solely circumstantial evidence on one or more elements of an offense. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). The circumstantial-evidence standard requires a "review [of] the sufficiency of the evidence using a two-step analysis." *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). The first step is to "identify the circumstances proved, deferring to the factfinder's acceptance of the proof of these circumstances and rejection of the evidence in the record that conflicted with the circumstances proved by the State." *Id.* (quotation omitted). The second step is to "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted). "Circumstantial evidence 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. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

Appellant contends that the circumstantial evidence is insufficient to prove that the pills he provided to C.J. caused C.J.'s death. Appellant was convicted of third-degree murder under Minn. Stat. § 609.195(b). The state needed to prove beyond a reasonable doubt that (1) C.J. died, (2) appellant, directly or indirectly, without the intent to cause death, was the proximate cause of C.J.'s death by unlawfully selling, giving away, bartering, delivering, exchanging or distributing a schedule I controlled substance, and (3) appellant's acts happened on or about December 12, 2016, in Chisago County. 10 *Minnesota Practice*, CRIMJIG 11.40 (2015).

Appellant does not dispute that elements one and three were proved beyond a reasonable doubt. Appellant disputes the sufficiency of the evidence concerning element two.

Under the first step of the circumstantial-evidence test, we must identify the circumstances proved, giving deference to the fact-finder's determinations. *Barshaw*, 879 N.W.2d at 363. Those circumstances, deferring to the jury's verdict, are that, on December 12, 2016, appellant and C.J. exchanged multiple text messages about exchanging green pills for "bars" and as payment for fixing C.J.'s broken mailbox. By text message, appellant asked C.J. if he should leave four pills in C.J.'s mailbox, and, at 1:43 p.m., told C.J. that the pills were in the mailbox. That afternoon, C.J.'s brother-in-law received a photo of C.J. holding a small plastic bag containing four green pills. At 2:32 p.m., C.J. text messaged a friend that he "just snorted a tiny line" and that he was

"f--ked up." At some point thereafter, C.J. stopped responding to text messages from B.S., which prompted B.S. to drive to C.J.'s house. B.S. went to the basement of C.J.'s house and found C.J. on the bathroom floor. B.S. called 911 and performed CPR on C.J. At 4:05 p.m., C.J. was pronounced dead. A knife, powder residue, and three and one-half green pills near a small plastic bag were found on the counter in the bathroom where C.J. died. C.J.'s cause of death was determined to be furanyl fentanyl toxicity. The three and one-half green pills found on the bathroom counter contained furanyl fentanyl.

Under the second step of the circumstantial-evidence test, we must "independently consider the reasonableness" of the circumstances proved. *Id.* The circumstances above are consistent with guilt and are inconsistent with any other reasonable inference.

The jury reasonably inferred that appellant provided C.J. with four green pills containing furanyl fentanyl. From the text message sent by C.J. to a friend about snorting "a tiny line" and being "f--ked up," it is reasonable that the jury inferred that C.J. ingested some sort of drug. From the knife, powder residue, and three and one-half green pills found on the counter in the bathroom where C.J. died, it is reasonable to infer that C.J. cut one of the four green pills in half, crushed it, and snorted it. These inferences are consistent with appellant's guilt.

Appellant argues that C.J.'s parents having found some additional pills in the room where C.J. died gives rise to an alternative inference that is also reasonable—that the furanyl fentanyl that killed C.J. came from a source other than appellant. There are at least three problems with appellant's argument. First, the jury was not obligated to have accepted that the additional pills were found; it is not a circumstance necessarily proved by

the jury's verdict. Second, and assuming that additional pills were found, the jury was not obligated to have accepted that the pills contained fentanyl. Again, that the pills contained fentanyl is not a circumstance consistent with the jury's verdict. The additional pills were never tested, and there is no record evidence that they contained fentanyl. Third, that C.J. consumed any of the additional pills found by his parents is not a circumstance proved. Appellant argued this theory to the jury in summation and the jury's verdict establishes that the jury rejected the argument.

Taken as a whole, the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. The only reasonable inference that can be drawn from the evidence and circumstances proved is that C.J. died as a result of ingesting part of a green pill provided by appellant. There is no reasonable inference that can be drawn from the circumstances proved to support appellant's theory that C.J. died as a result of ingesting drugs other than the pills appellant provided.

The postconviction court did not abuse its discretion by denying appellant's petition for postconviction relief.

Appellant argues that the district court erred by denying his petition for postconviction relief, based on appellant's claim of incompetence during trial due to an alleged overprescription of Ativan.

Appellate courts review a district court's denial of a petition for postconviction relief for abuse of discretion. *Fort v. State*, 861 N.W.2d 674, 677 (Minn. 2015). "Under this standard of review, a matter will not be reversed unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an

erroneous view of the law, or made clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

"A defendant is incompetent and must not . . . be tried, or be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense." Minn. R. Crim. P. 20.01, subd. 2. The prosecutor, defense counsel, or the court can make a motion challenging the defendant's competency at any time if they doubt that the defendant is competent. Minn. R. Crim. P. 20.01, subd. 3.

The postconviction court held an evidentiary hearing on appellant's petition and found that "[a]t no point during the trial was the Court given reason to doubt [appellant]'s competency." The judge in the postconviction proceedings is the same judge who presided at trial. The postconviction court explained that appellant "demonstrated competency during the trial by participating during the trial, conversing coherently with both his attorney and the Court, and providing appropriate answers to the Court's inquiries." The postconviction court further found that appellant's assertion that he has no memory of his trial "lacks credibility" and that "the fact that [appellant] *now* has no recollection of the trial does not mean that [appellant] *at the time of the trial* was incompetent." The record supports the postconviction court's findings.

Appellant testified at the postconviction hearing that when he previously took Ativan, he did not have amnesia, but would have small moments of forgetfulness—like misplacing his keys. Appellant testified that he was awake during the trial. Appellant testified that during trial he could stand up, sit down, move his chair, and click his pen.

Appellant agreed that the district court told him to stop moving his chair during trial and to speak to his attorney more quietly.

The district court also credited the testimony of appellant's trial attorney who testified at the postconviction hearing that appellant reacted to the events that were taking place during trial, and often wrote questions or reactions on a pad of paper to show his attorney. Appellant's trial attorney testified that appellant's questions during trial were relevant and based on the evidence being presented. The trial attorney explained that he talked to appellant about the trial during breaks, and that appellant would constantly ask him how things were going. Appellant's trial attorney described appellant as calmer during trial than he had been before taking the Ativan, which he believed "was the intended effect of [appellant's] prescription drugs."

Dr. Gratzer, who testified about the potential side effects of Ativan, never treated or spoke with appellant, but instead testified in response to hypothetical questions about a patient similar to appellant. Dr. Gratzer opined that such a person taking four milligrams of Ativan daily "would be impaired," but he could not definitively say that a person would be impaired to the point of becoming incompetent.

We think the district court was best positioned to resolve this competency challenge, having presided at trial and having heard the evidence at the postconviction hearing. The record supports the district court's findings, which are not clearly erroneous. Accordingly, the district court acted within its discretion when it denied appellant's petition for postconviction relief.

Affirmed.