STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0047

State of Minnesota,
Respondent,

vs.

Chadwick Alan McCorquodale,
Appellant.

Filed November 22, 2021
Reversed and remanded
Johnson, Judge

Olmsted County District Court
File No. 55-CR-19-3434

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

An Olmsted County District Court judge found Chadwick Alan McCorquodale guilty of first-degree controlled substance crime. The conviction is based on evidence that McCorquodale possessed methamphetamine with intent to sell it and that he sold it to an

acquaintance during a controlled buy. We conclude that the evidence introduced by the state at trial is sufficient to support the conviction. But we also conclude that the district court deprived McCorquodale of his right to an impartial fact-finder by relying on facts that were not introduced into evidence at trial but were otherwise known by the district court judge. Therefore, we reverse and remand for a new trial.

FACTS

On June 5, 2018, Investigator Ryan of the Rochester Police Department asked S.M. to participate in a controlled buy of methamphetamine. At the time, S.M. was charged with first-degree controlled substance crime. Investigator Ryan suggested that S.M.'s cooperation with another investigation might result in leniency with respect to his pending charge. S.M. agreed. Investigator Ryan and S.M. decided that the target of the controlled buy would be McCorquodale, whom S.M. had known for two years.

S.M. called McCorquodale to arrange for a purchase of methamphetamine. The conversation was brief. S.M. asked McCorquodale whether he was "good," and McCorquodale responded in the affirmative. Before S.M. met McCorquodale, Investigator Ryan searched S.M. and his car for methamphetamine and found none. Investigator Ryan provided S.M. with $2,500 in cash, a GPS location tracker, and a video-recording device. S.M. drove directly to a residential property, which S.M. had led Investigator Ryan to believe was McCorquodale's home. In reality, the property was owned by McCorquodale's father, and S.M. was residing there temporarily.

After S.M. arrived at the residential property, he and McCorquodale began a conversation that lasted approximately 45 minutes. The conversation was audio-recorded

by the recording device that S.M. carried, but very little video was captured, apparently because the camera lens was inadvertently covered or blocked. S.M. testified at trial that, during his conversation with McCorquodale, he gave McCorquodale "some money and then got four ounces to go." S.M. drove directly back to a pre-arranged meeting place, where he delivered to Investigator Ryan and another law-enforcement officer four plastic bags containing a crystalline substance. The substance was tested and determined to be 112.3 grams of methamphetamine.

Nearly a year later, in May 2019, the state charged McCorquodale with first-degree controlled substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2018). The case was tried to the district court on one day in August 2020. The state called five witnesses: S.M., Investigator Ryan, two other police officers, and a forensic scientist who had tested the methamphetamine. McCorquodale did not testify and did not present any other evidence.

S.M. testified about his interactions with McCorquodale on June 5, 2018, at the property owned by McCorquodale's father. S.M. testified that McCorquodale gave him four ounces of methamphetamine, which he later provided to law enforcement, and that S.M. gave McCorquodale $2,500 in cash. The state also introduced the recording of S.M.'s conversation with McCorquodale, which was played in open court. On the recording, S.M. can be heard saying "25 right there." S.M. testified at trial that he was referring to the $2,500 in cash that he had brought to the meeting. In addition, McCorquodale can be heard saying that he charges S.M. "exactly what" he pays, which is "eight thousand a pound," and that, as a consequence, he receives less money when he sells "it" to S.M. than when he

sells "it" to someone else. S.M. testified at trial that McCorquodale was referring to methamphetamine in that exchange. During another part of the conversation, S.M. asked McCorquodale "what kinda dope" a third party had, and McCorquodale responded that "mine's better than his right now."

After the trial, the district court filed an order in which it found McCorquodale guilty. In its findings of fact, the district court determined that S.M. was not credible because he did not tell Investigator Ryan that he was residing at the property where the controlled buy occurred and because S.M. was under the influence of methamphetamine at the time of the controlled buy. Consequently, the district court found that McCorquodale "could not be convicted on [S.M.'s] trial testimony alone." But the district court found that S.M.'s testimony was corroborated by the recording in various ways, including McCorquodale's discussion of "several people known to the court to be users of methamphetamine." The district court found that McCorquodale "was involved in the sale of drugs generally" and that he sold 112 grams of methamphetamine to S.M. on June 5, 2018. The district court also found that McCorquodale "constructively possessed the 112 grams of methamphetamine with intent to sell it."

The district court conducted a sentencing hearing in October 2020. After McCorquodale spoke in allocution, the district court explained to him the reasons for its sentence, including the following statement:

> [I]t was clear to me by the audio that you were right in it with [S.M.], that you were, in fact, selling methamphetamine. The way you were talking about selling, and how your stuff is better than his stuff, and *talking about all of these people that are*

> *very well known to the Court*, I knew that you were in the thick of this operation. (Emphasis added.)

The district court sentenced McCorquodale to 128 months of imprisonment. McCorquodale appeals.

DECISION

I. Sufficiency of the Evidence

McCorquodale first argues that the evidence is insufficient to support his conviction. Specifically, he argues that the state did not prove beyond a reasonable doubt that he either possessed methamphetamine or sold it to S.M. on June 5, 2018.

McCorquodale was convicted of violating a statute that makes it unlawful to "sell[] one or more mixtures of a total weight of 17 grams or more containing cocaine or methamphetamine." Minn. Stat. § 152.021, subd. 1(1). The word "sell" is defined by statute to mean "to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture" or "to possess with intent to perform" one of the listed acts. Minn. Stat. § 152.01, subd. 15a(1), (3) (2018). The district court found that McCorquodale sold 112 grams of methamphetamine to S.M. and, in addition, found that McCorquodale "constructively possessed the 112 grams of methamphetamine with intent to sell it." Either finding is sufficient to satisfy the statutory requirements. The question before the court is whether the evidence presented at trial supports the district court's findings and conclusions.

In analyzing an argument that the evidence is insufficient to support a conviction, this court ordinarily undertakes "a painstaking analysis of the record to determine whether

the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the" fact-finder to reach its verdict. *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted). We assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *Id.* (quotation omitted). This standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

Circumstantial evidence, on the other hand, is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). A conviction necessarily depends on circumstantial evidence if proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. *See State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014). If a conviction necessarily depends on circumstantial evidence, we apply a heightened standard of review, which consists of two steps. *Harris*, 895 N.W.2d at 601. First, we identify the circumstances proved, disregarding evidence that is inconsistent with the verdict. *Id.* Second, we consider the reasonable inferences that can be drawn from the circumstances proved. *Id.* "To sustain the conviction, the circumstances proved, when reviewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted). At the second step of the analysis, we give no deference to the fact-finder's verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). In assessing the circumstances proved and the inferences that may be drawn

from them, we consider the evidence as a whole rather than examining each piece of evidence in isolation. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). We apply the heightened standard of review in the same manner after a court trial as after a jury trial. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

The parties disagree as to whether McCorquodale's conviction is based on direct evidence or circumstantial evidence. S.M. testified that McCorquodale sold him methamphetamine. His testimony is direct evidence of a crime. *See Harris*, 895 N.W.2d at 599. But the district court found that S.M. was not credible and that his testimony, by itself, was not capable of proving the charge. The recording, by itself, does not clearly reflect a sale of methamphetamine. Thus, there is no direct evidence that McCorquodale possessed or sold methamphetamine. Accordingly, we will analyze the sufficiency of the circumstantial evidence.

In identifying the circumstances proved, we must respect the district court's credibility determinations. *State v. Hawes*, 801 N.W.2d 659, 670 (Minn. 2011). Because the district court found that S.M. was not credible and that his testimony alone was not capable of satisfying the state's burden of proof, we do not find any circumstance to be proved if the circumstance was evidenced solely by S.M.'s testimony. But the district court relied on S.M.'s testimony to the extent that it was corroborated by the recording. Accordingly, we may find a circumstance to be proved if the circumstance was evidenced by S.M.'s testimony and the recording.

McCorquodale contends that the district court improperly relied on the recording as propensity evidence. McCorquodale focuses on the district court's finding that

McCorquodale "was involved in the sale of drugs generally." At trial, McCorquodale did not object to the admissibility of the recording, and it was admitted without any limitations on its purpose. Consequently, the district court was free to draw any reasonable inferences from the recording. During the recorded conversation, McCorquodale made statements that referred to conversations he had had with other persons concerning drugs that McCorquodale had sold to them, and McCorquodale also compared the quality of drugs he had sold to the quality of drugs sold by other persons. The district court was not foreclosed from using such evidence to find that McCorquodale "was involved in the sale of drugs generally."

The relevant circumstances proved are as follows: On June 5, 2018, S.M. called McCorquodale and confirmed that he was "good." S.M. then drove to a residential property and met and spoke with McCorquodale for approximately 45 minutes. Before S.M. drove to the residential property, Investigator Ryan provided S.M. with $2,500 in cash and searched his car and person but did not find any methamphetamine. During S.M.'s recorded conversation with McCorquodale, S.M. referred to "25," which S.M. testified was a reference to the $2,500 in cash. During the recorded conversation, McCorquodale said that he had bought something at the price of $8,000 per pound and had sold it to S.M. at cost. McCorquodale also talked about whether other persons have good "dope" and proceeded to compare the quality of his to that of others. After meeting with McCorquodale, S.M. drove directly to a meeting with Investigator Ryan and provided law-enforcement officers with four plastic bags containing a total of 112.3 grams (or 3.96 ounces) of methamphetamine.

At the second step of the analysis, we must consider whether there are reasonable inferences that can be drawn from the circumstances proved that are consistent with guilt. *Harris*, 895 N.W.2d at 601. The state's theory is that McCorquodale sold S.M. four bags of methamphetamine in exchange for a payment of $2,500. We agree that this is a reasonable inference in light of the circumstances proved.

At the second step of the analysis, we also must determine whether there are reasonable inferences that are inconsistent with guilt. *Id.* McCorquodale contends that the circumstantial evidence is consistent with three such inferences: first, that S.M. "himself provided the methamphetamine that he later gave to police"; second, that S.M. "obtained the drugs from his vehicle, his person, the shed or other nearby location to which he had access during the time that he was outside visual surveillance"; or, third, that S.M. "stashed the buy money that police gave him in the shed or other nearby area that he had access to and while police were not watching him."

McCorquodale's first proposed inference is not a reasonable inference because it does not account for the fact that Investigator Ryan searched S.M. and his vehicle immediately before S.M. drove directly to the residential property where he met McCorquodale. The second proposed inference is unreasonable for the same reason: the circumstances proved do not allow for a reasonable inference that S.M. had 112 grams of methamphetamine hidden on his person or in his vehicle. The proposed inference that S.M. obtained methamphetamine from a shed or "other nearby location to which he had access" on the residential property is inconsistent with the statements made by McCorquodale on the recording, in which he referred to drugs as his, stated that he has sold something to

S.M. at cost, and acknowledged receiving money from S.M. during their conversation. The third inference is not necessarily inconsistent with guilt because the disposition of the money is not relevant to an essential element of the offense. The question is whether McCorquodale sold methamphetamine to S.M. or possessed methamphetamine with intent to sell it. McCorquodale would not be entitled to a not-guilty verdict simply because S.M. hid the controlled-buy money. In short, none of the inferences proposed by McCorquodale is a reasonable inference in light of the circumstances proved.

Thus, the circumstantial evidence is sufficient to support McCorquodale's conviction.

II. Impartial Fact-Finder

McCorquodale also argues that the district court violated his right to an impartial fact-finder by relying on facts that were not in evidence.

The Sixth Amendment to the United States Constitution confers on criminal defendants the right to be tried by an impartial jury. U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. Likewise, a criminal defendant being tried in a court trial has a right to an impartial judge. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). The right to an impartial judge "requires that conclusions reached by the trier of fact be based upon the facts in evidence . . . and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." *Id.* at 249-50 (citing *Johnson v. Hillstrom*, 33 N.W. 547, 548 (Minn. 1887), and *Spinner v. McDermott*, 251 N.W. 908, 908 (Minn. 1933)). These principles are reiterated in the code of judicial conduct, which provides that a judge "shall consider only the evidence presented and any facts that may

properly be judicially noticed." Minn. Code Jud. Conduct Rule 2.9(C). We apply a *de novo* standard of review to the question whether a district court denied a criminal defendant the right to an impartial fact-finder. *Dorsey*, 701 N.W.2d at 249.

McCorquodale contends that the district court made an important finding of fact that is not based on any evidence introduced at trial but, rather, is based on facts otherwise known or believed by the district court judge. Specifically, McCorquodale refers to the district court's finding that, during the recorded conversation, McCorquodale "discuss[ed] several people known to the court to be users of methamphetamine." McCorquodale contends that no evidence was introduced at trial concerning the drug habits of any of the persons referenced by McCorquodale during the recorded conversation. The state does not dispute McCorquodale's assertion that no such evidence was introduced at trial.

McCorquodale's argument is similar to the appellant's argument in *Dorsey*, in which the supreme court held that the district court denied the appellant his right to an impartial fact-finder at a criminal court trial. 701 N.W.2d at 253. In *Dorsey*, the district court judge doubted the testimony of a defense witness and shared her concerns with counsel. *Id.* at 243. The district court judge asked a law clerk to investigate the fact that had caused her to doubt the witness, which was determined to be different from what the witness had stated in her testimony. *Id.* The district court judge noted the discrepancy on the record and in a written order. *Id.* at 243-45. The district court found Dorsey guilty, based in part on the defense witness's lack of credibility. *Id.* at 245. On appeal, Dorsey argued that the district court judge was not an impartial fact-finder because she had openly questioned a defense witness's testimony, independently investigated a fact to which the

witness had testified, and revealed the results of her investigation in open court. *Id.* at 249. The supreme court found error and reversed the conviction, concluding that, "when a judge possesses extra-record knowledge that is prejudicial to a defendant in a criminal trial, the judge may not disclose that knowledge" but, rather, "must either disqualify herself or set the knowledge aside and consider only the evidence adduced in deciding the case." *Id.* at 252.

In this case, the district court judge committed an error of the same type as the error in *Dorsey*. The district court judge possessed extra-record knowledge that was prejudicial to McCorquodale but did not "set the knowledge aside and consider only the evidence adduced in deciding the case." *See id.* The extra-record facts were incorporated into the district court's findings of fact. The extra-record facts were prejudicial to McCorquodale because they were relied on to support the district court's finding that McCorquodale sold methamphetamine to S.M. The significance of the extra-record facts is reinforced by the district court's comment to McCorquodale at the sentencing hearing that, because he was "talking about all of these people that are very well known to the Court," the district court judge "knew that [he was] in the thick of this operation."

The state attempts to distinguish *Dorsey* on the ground that the district court judge in this case did not obtain the extra-record facts by conducting an independent investigation, as in *Dorsey*. Indeed, there is no indication in this case that the district court judge independently sought out information as to whether the persons mentioned by McCorquodale during the recorded conversation were drug users. But the absence of an independent investigation does not allow a district court judge to consider or rely on extra-

record facts. The relevant provision of the code of judicial conduct contains two independent prohibitions: first, a judge "shall not investigate facts in a matter independently" and, second, a judge "shall consider only the evidence presented and any facts that may properly be judicially noticed." Minn. Code Jud. Conduct Rule 2.9(C). More importantly, the supreme court stated in *Dorsey* that the right to an impartial judge "requires that conclusions reached by the trier of fact be based upon the facts in evidence . . . and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." 701 N.W.2d at 249-50. The district court in this case did not comply with *Dorsey*.

Thus, the district court denied McCorquodale his right to an impartial fact-finder. The district court's error is a structural error, which is not subject to harmless-error analysis but, rather, requires automatic reversal of the conviction and a new trial. *See id.* at 252-53. Accordingly, we reverse and remand for a new trial before a different district court judge.

Reversed and remanded.