

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0334**

State of Minnesota,  
Respondent,

vs.

Devon Lamont Holt,  
Appellant.

**Filed February 18, 2014  
Affirmed  
Schellhas, Judge**

Hennepin County District Court  
File No. 27-CR-11-38961

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Charissa Perzel (certified student attorney), Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stephanie A. Karri, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and  
Stauber, Judge.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of third-degree sale of controlled substance, arguing that the evidence was insufficient to support his conviction. We affirm.

### FACTS

The Minneapolis Fifth Precinct Community Response Team (CRT) worked in the area of Fourth and Franklin Avenues to investigate narcotics dealing on the evening of October 24, 2011. The CRT included Minneapolis Police Officers Phillip Sosnowski and Sergeant Sara Metcalf in plain clothes. Minneapolis Police Officer Aimee Colegrove assisted the CRT in uniform.<sup>1</sup> All three officers testified at trial.

Officer Sosnowski testified that the CRT began the investigation at Third and Franklin Avenues. An elderly man met Officer Sosnowski, who told the man that he wanted to buy crack. The elderly man left and, eventually, reappeared with a group of four men. Three of the men wore dark clothes, and one wore a light jacket. One man wore a black jacket and black knit cap, had braids in his hair, was about 5'10" tall, and weighed about 175 pounds. That man approached Sosnowski and "asked what [Sosnowski] needed." Sosnowski asked for a "20," meaning \$20 worth of crack cocaine. The man and Sosnowski then moved to a nearby bus shelter, where the man produced multiple clear plastic bindles of drugs and gave Officer Sosnowski two of them. Officer Sosnowski paid the man with a pre-recorded \$20 bill.

---

<sup>1</sup> Officer Colegrove's name is sometimes spelled "Colgrove" in the record.

Officer Sosnowski alerted the other officers that a sale occurred and entered an officer's car located in a nearby alley. Following Officer Sosnowski's direction, Officer Colegrove and another officer stopped the group of men on the Franklin Bridge a bit east of Fourth Avenue South. At that time, no other persons were in the area. Officer Sosnowski did not see the actual stop of the men, but he and another officer approached the men by car after they were stopped. Officer Sosnowski pointed out the man who sold him the bindles of drugs. In the front, left pants pocket of the man who wore a black sweatshirt, white t-shirt, and black knit cap, Officer Colegrove found a pre-recorded \$20 bill. She knew that the money was pre-recorded because she had earlier written the serial number of the money on her hand. She did not find any drugs. Officer Colegrove identified the man as appellant Devon Holt. Later at the police station, Officer Sosnowski used a booking photograph to confirm that Holt was the man who sold him the bindles of drugs.

Sergeant Metcalf testified that, using binoculars from a distance of about a half block, she observed multiple interactions between Officer Sosnowski, an older gentleman, and a black male with braids. The black man with braids wore a bright white t-shirt, a black hoodie, and a knit cap. Sergeant Metcalf saw this man and Officer Sosnowski make motions like they were handing things to each other. She then heard Officer Sosnowski give the command to detain the suspects, heard Sosnowski's description of where the suspects were going, and watched the suspects move from the point of sale to the point of their stop by uniformed officers.

Holt testified that he was near Fourth and Franklin Avenues at approximately 9:00 p.m. on October 24, 2011. Holt admitted that he is 5'10" tall and had braided hair but stated that he did not have a black knit cap and did not talk with a person who wanted to buy drugs. He admitted that he was stopped by police the night of October 24, 2011, but denied that the officers found a \$20 bill. A forensic scientist with the Bureau of Criminal Apprehension testified that the drug bindles weighed 0.08 grams and that each bindle contained cocaine. The jury trial occurred in August 2012 and ended in a mistrial.

Following the mistrial, Holt proceeded pro se, waived his right to a jury trial, and agreed to a stipulated-facts trial. The stipulated facts were contained in a transcript and in agreed-upon exhibits from the jury mistrial. The parties also made closing arguments. The district court found Holt guilty of third-degree sale of controlled substance under Minn. Stat. § 152.023, subd. 1(1) (2010).

This appeal follows.

## **D E C I S I O N**

Holt argues that the evidence was insufficient to prove that he was the man who sold crack cocaine to Officer Sosnowski. “When reviewing the sufficiency of the evidence leading to a conviction, [appellate courts] will view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict.” *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). “Inconsistencies or conflicts between one state witness and another do not necessarily constitute false testimony or the basis for reversal.” *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). “The verdict will be upheld if the fact finder,

giving due regard to the presumption of innocence and to the state's burden of proof beyond a reasonable doubt, could reasonably have found the defendant guilty of the offense charged." *State v. Thomas*, 590 N.W.2d 755, 757–58 (Minn. 1999).

Officer Sosnowski testified that Holt sold him drugs and that he did not pay much attention to the other men present during the drug sale. Holt argues that Sosnowski's identifications of him were not reliable because Officer Colegrove found no drugs when she searched him, the officers gave inconsistent testimony about the clothing Holt wore, and reasonable doubt exists about Officer Sosnowski's identification of him because the officer interacted with Holt while Holt was with a group of similar men. Holt's arguments are unpersuasive.

Minnesota Statutes section 152.023, subdivision 1(1), provides that "[a] person is guilty of controlled substance crime in the third degree if . . . the person unlawfully sells one or more mixtures containing a narcotic drug." Cocaine is a narcotic drug. Minn. Stat. § 152.01, subds. 3a, 10 (2010). "Identification is a question of fact for the [fact-finder] to determine." *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998). "An identification need not be positive and certain to support a conviction—it is sufficient if a witness testifies that in his belief, opinion, and judgment the defendant is the one he saw commit the crime." *Landa*, 642 N.W.2d at 725. "[A] conviction may rest on the testimony of a single credible witness." *Miles*, 585 N.W.2d at 373. "The trustworthiness of an identification must necessarily be judged by the opportunity the witness has had for a deliberate and accurate observation of the accused while in his presence." *State v. Gluff*, 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969).

The district court found that the fact that Officer Colegrove did not find drugs on Holt's person did not create reasonable doubt because Colegrove's search was focused on finding the pre-recorded \$20 bill rather than drugs. We agree. As to the officers' inconsistent descriptions of Holt's clothing, appellate courts are not concerned with minor differences in descriptions of an appellant's clothing. *See State v. Yang*, 627 N.W.2d 666, 673 (Minn. App. 2001) (concluding that the evidence was sufficient while noting that witnesses "testified that they saw a short, stocky male of Asian descent at the scene, although their testimony regarding the man's clothing differed"), *review denied* (Minn. July 24, 2001). As to Holt's argument that he was with a group of similar men when Officer Sosnowski identified him as the drug seller, the evidence shows that, during the drug transaction, Sosnowski focused on the man selling drugs for approximately two minutes. And he later twice identified Holt—once at the scene of the stop and later at the police station with a booking photograph to confirm that Holt was the man who sold him the bindles of drugs.

We conclude that the record evidence, including, but not limited to, Officer Sosnowski's identification, was sufficient to support Holt's conviction.

**Affirmed.**