STATE OF MINNESOTA
IN COURT OF APPEALS
A11-713

State of Minnesota,
Respondent,

vs.

Jeremy Roy Kruger,
Appellant.

Filed June 11, 2012
Affirmed
Kalitowski, Judge
Concurring in part, dissenting in part, Randall, Judge*

Beltrami County District Court
File No. 04-CR-10-1665

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

Timothy R. Faver, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and Randall, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

Appellant Jeremy Roy Kruger challenges his convictions of second- and fifth-degree controlled substance crime and second-degree sale of methamphetamine, arguing that: (1) he was denied his right to present a complete defense when he was precluded from impeaching the state's key witness; (2) the evidence was insufficient to support a conviction of fifth-degree sale of clonazepam, because the state failed to identify the substance by chemical testing; and (3) the district court erred by sentencing him on both counts one and two because the two sales were part of the same behavioral incident. We affirm.

D E C I S I O N

In early 2010, S.G., acting as a paid informant for the Paul Bunyan Drug Task Force, set up a series of controlled narcotics buys from appellant. At approximately 12:00 p.m. on February 2, S.G. purchased $200 worth of pills that appellant represented as clonazepam and amphetamine salts at a home located within one city block of a school. S.G. completed another buy at approximately 5:30 p.m. that evening at a house approximately two blocks away from where the first purchase took place. This time, S.G. purchased a teener[1] of methamphetamine and prescription pills, including some appellant represented as clonazepam. S.G. made three additional purchases of methamphetamine from appellant on February 17, February 18, and March 2 in the amounts of 1.7 grams, 1.5 grams, and 2.1 grams, respectively.

[1] A "teener" is one-sixteenth of an ounce, or 1.75 grams.

Appellant was arrested and charged with second-degree controlled substance crime, sale of amphetamines in a school zone in violation of Minn. Stat. § 152.022, subd. 1(6)(ii) (2008), for the first sale on February 2 (count one); fifth-degree controlled substance crime, sale of clonazepam in violation of Minn. Stat. § 152.025, subd. 1(2) (2008), for the second sale on February 2 (count two); and second-degree sale of methamphetamine in violation of Minn. Stat. § 152.022, subds. 1(1), 3(b) (2008), for the remaining sales (count three).

A jury found appellant guilty of all three charges. The district court sentenced him to concurrent sentences of 58 months on count one, 13 months to be executed on count two, and 81 months on count three.

I.

Appellant first argues that the district court violated his constitutional right to present a complete defense when it precluded him from eliciting a statement from a witness concerning a prior inconsistent statement by S.G. for the purposes of impeaching S.G. We disagree.

"Under our system of jurisprudence, every criminal defendant has the right to be treated with fundamental fairness and afforded a meaningful opportunity to present a complete defense." *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992) (quotation omitted). This includes the "rights to confront and cross-examine witnesses and to call witnesses in one's own behalf." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 1045 (1973). This right is not without limitation, however, and "may, in

appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S. Ct. 2704, 2711 (1987).

We review a district court's evidentiary rulings under an abuse-of-discretion standard, even when the defendant claims that excluding the evidence deprived him of the constitutional right to present a complete defense. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). If exclusion of the evidence violated the defendant's constitutional right to present a defense, the decision still will not be reversed if it is found harmless beyond a reasonable doubt. *State v. Larson*, 389 N.W.2d 872, 875 (Minn. 1986) (citing *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 828 (1967)). A ruling is prejudicial and reversible if there is a reasonable possibility the error complained of may have contributed to the conviction. *Id.*

At trial, S.G. testified about each of the five purchases she made from appellant and narrated the hidden audio or video recordings taken of the purchases because the audio quality was poor. On direct examination, S.G. acknowledged that she had used a variety of drugs before becoming an informant for the task force, including methamphetamine and narcotics. She also admitted that she currently takes clonazepam and Zoloft for anxiety, and that she smokes marijuana. On cross-examination, S.G. stated she used drugs, including "pot and whatnot," during the time she worked as an informant for the task force. Under further questioning, she admitted that just before trial she sought help at the emergency room for a mental breakdown because she felt addicted to the painkillers she had been prescribed. That led to the following exchange with appellant's counsel:

> Q: Okay. And so it wasn't a street drug like meth or something like that? It was more the misuse of the prescription drugs?
>
> A: It wasn't misuse. It was years of them prescribing them for me because of all my surgeries and stuff. I started feeling that I was getting addicted.
>
> Q: Okay. And so you went to the ER?
>
> A: Yes, because my mental state of mind, I was so depressed that I have to do what I have to do for my health.

When the state rested, appellant called P.K., S.G.'s ex-boyfriend, to testify that the real reason S.G. sought medical help at the emergency room was because she was coming down from methamphetamine. The state objected several times on foundation and hearsay grounds, and appellant's counsel responded that the statement was being offered as a prior inconsistent statement under Minn. R. Evid. 801(d)(1)(A) for the purposes of impeaching S.G.'s credibility. The state countered that S.G.'s testimony was not inconsistent because "[s]he did not say she wasn't using methamphetamine. She simply said she went to the hospital because of prescription abuse." The district court sustained the state's objection and excluded P.K.'s testimony.

A witness's prior inconsistent statement is generally admissible for impeachment purposes, but is generally not admissible as substantive evidence. *State v. McDonough*, 631 N.W.2d 373, 388 (Minn. 2001). A prior inconsistent statement does not constitute hearsay if offered for impeachment purposes because its purpose is to attack the witness's credibility rather than to prove the truth of the matter asserted. *See* Minn. R. Evid. 801(c) (defining hearsay statements as those offered to prove the truth of the matter asserted).

The district court offered several rationales for excluding P.K.'s testimony. First, the court stated that S.G.'s trial testimony did not appear to be inconsistent with her statement in P.K.'s presence because S.G. never explicitly denied using methamphetamine at trial. Second, the court ruled that appellant had not laid sufficient foundation, stating, "I don't know where he was in the room. I don't know who she made the statements to." And third, the district court suggested that the statement might be protected by S.G.'s medical privilege.

We agree with appellant that these were not valid bases for excluding P.K.'s testimony. With respect to whether the prior statement was sufficiently inconsistent, the district court is technically correct that S.G. never explicitly denied that she sought medical help because of methamphetamine use in her testimony. Instead, she ignored defense counsel's question about methamphetamine use and responded to defense counsel's alternative suggestion that she had misused her prescription medication. But whether a statement is sufficiently inconsistent to be admitted as a prior inconsistent statement is to be "determined from the full testimony, not isolated portions." *Hunt v. Regents of Univ. of Minn.*, 460 N.W.2d 28, 34 (Minn. 1990); *see also O'Neill v. Minneapolis St. Ry. Co.*, 213 Minn. 514, 520, 7 N.W.2d 665, 669 (1942) (stating that a court should examine "the *whole impression or effect* of what has been said or done" (quotation omitted)). Taken as a whole, S.G.'s testimony gave the impression that her "breakdown" was solely the result of prescription painkillers rather than methamphetamine use, and is therefore sufficiently contradictory to her statement in P.K.'s presence to permit its introduction for impeachment purposes.

We also conclude that appellant laid sufficient foundation that P.K. had personal knowledge of S.G.'s statement to admit P.K.'s testimony. *See* Minn. R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). P.K. would have established that he knew S.G. was seeking treatment for methamphetamine use because he was present in the emergency room when S.G. explained the purpose of her visit to medical staff.

And finally, the district court's suggestion that medical privilege prevented P.K. from testifying is incorrect because P.K. is not a medical professional. *See* Minn. Stat. § 595.02, subd. 1(d) (2010) (prohibiting only "[a] licensed physician or surgeon, dentist, or chiropractor" from disclosing medical information); *State v. Heaney*, 689 N.W.2d 168, 173-74 (Minn. 2004) (noting that medical privilege applies to medical professionals).

Nevertheless, any error by the district court was harmless because the testimony was not admissible because appellant failed to follow the proper procedure for admitting it. "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible *unless the witness is afforded a prior opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon*, or the interests of justice otherwise require." Minn. R. Evid. 613(b) (emphasis added). P.K.'s testimony was extrinsic evidence of S.G.'s prior inconsistent statement. Appellant's counsel did not confront S.G. with her prior statement to afford her an opportunity to explain or deny it before appellant offered the statement through P.K.'s testimony. *See Richards*, 495 N.W.2d at 194 (holding that district court did not abuse its discretion by

excluding extrinsic evidence of a prior inconsistent statement by witnesses who had not first been confronted with the statements). And appellant has not demonstrated why the interests of justice require admission of the statement.

Moreover, any error was harmless beyond a reasonable doubt because the state's evidence against appellant was overwhelming and the reason S.G. sought medical treatment before the trial is not central either to appellant's guilt or to S.G.'s credibility. S.G.'s testimony regarding the drug purchases was corroborated by audio and video recordings, officer observations, and searches the officers conducted of S.G. before and after each buy to control the drugs and money involved in the buys. When she took the stand, S.G. admitted that she had used drugs, including methamphetamine. Any possible discrepancy in S.G.'s explanation for visiting the hospital after the drug purchases at issue here has minimal impeachment value. Thus, the exclusion of P.K.'s testimony did not contribute to the guilty verdict.

II.

Appellant argues that the evidence is insufficient to support his conviction of selling clonazepam under count two because the state failed to introduce sufficient evidence to positively identify the pills as clonazepam. We disagree.

In considering a claim of insufficient evidence, our review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court

> will not disturb the verdict if the jury, while acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense, given the facts in evidence and the legitimate inferences that could be drawn therefrom.

State v. Crow, 730 N.W.2d 272, 280 (Minn. 2007). The fact-finder has the exclusive function of judging witness credibility. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). We, therefore, assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Overturning a jury verdict is a heavy burden for a defendant. *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001).

A person is guilty of fifth-degree controlled substance crime if "the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV." Minn. Stat. § 152.025, subd. 1(2). Clonazepam is a schedule IV controlled substance. Minn. Stat. § 152.02, subd. 5 (2008). To convict appellant of count two, the state therefore had to prove that the pills appellant sold contained clonazepam. *See State v. Olhausen*, 681 N.W.2d 21, 28-29 (Minn. 2004) (discussing the state's burden to prove the identity of the substance). Although the state may introduce direct evidence as to the identity of a substance, identity may also be proven with circumstantial evidence. *See In re Welfare of J.R.M.*, 653 N.W.2d 207, 210-11 (Minn. App. 2002) (holding that circumstantial evidence that substance was marijuana was sufficient to support conviction of possession of a small amount of marijuana).

Circumstantial evidence is "entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). "Convictions based on circumstantial evidence alone may be upheld . . . . [But] convictions based on circumstantial evidence warrant particular scrutiny." *State v. Ferguson*, 581 N.W.2d 824, 836 (Minn. 1998). We apply a two-step process to evaluate the sufficiency of circumstantial evidence to support a conviction. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we identify the circumstances proved, and in doing so "we defer . . . to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Id.* Second, we independently examine "the reasonableness of all inferences that might be drawn from the circumstances proved[,]" including "inferences consistent with a hypothesis other than guilt." *Id.* "[A] conviction based on circumstantial evidence may stand only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted). "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 his guilt." *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010).

The Minnesota Supreme Court "ha[s] not prescribed minimum evidentiary requirements in identification cases." *State v. Vail*, 274 N.W.2d 127, 134 (Minn. 1979).

If "the identification of the drug is in question, the sufficiency of the evidence is examined on a case-by-case basis." *Olhausen*, 681 N.W.2d at 29.

Here, the state proved that around 5:30 p.m. on February 2, 2011, appellant sold S.G. pills that he represented were clonazepam, and that a Minnesota Bureau of Criminal Apprehension forensic scientist identified the pills as clonazepam by visually matching their markings to those in a pharmaceutical database. No confirmatory scientific test was performed. Thus, the state's evidence as to the drug's identity is entirely circumstantial and nonscientific.

Appellant concedes that the evidence supports a rational inference that the pills he sold S.G. do, in fact, contain clonazepam. But he argues that the evidence equally supports a rational inference that the pills were "manufactured to look like clonazepam but in fact" were placebos. And he contends that we must follow *State v. Robinson*, 517 N.W.2d 336, 337-39 (Minn. 1994), and *Vail*, 274 N.W.2d at 136, two cases in which the Minnesota Supreme Court reversed drug convictions because the state failed to offer conclusive scientific evidence of the drug's identity.

But since the supreme court decided *Vail* and *Robinson*, it has clarified that nonscientific evidence may be sufficient to establish proof of identity of a controlled substance. *See Olhausen*, 681 N.W.2d at 29. In *Olhausen*, the jury convicted the defendant of selling methamphetamine even though the state was unable to scientifically test the substance because the defendant disposed of it prior to his arrest. *Id.* at 28. The nonscientific evidence of identity and weight included visual observations of the

substance, the defendant's actions and representations in arranging the sale, and his later flight from arrest. *Id.* at 26, 29.

In upholding the conviction, the supreme court distinguished the facts of *Olhausen* from *Vail* and *Robinson* on several grounds. The court noted that unlike *Vail*, where the district court found the state's scientific evidence to be insufficient, the jury in *Olhausen* found that the evidence of identity and weight was sufficient, and the reviewing court was bound to give deference to that finding. *Id.* at 28. And whereas the evidence in *Robinson* established that the defendant had a history of attempting to sell placebos in place of controlled substances, there was no such evidence in the record in *Olhausen* from which the jury could reasonably infer that the substance at issue was a placebo. *Id.* at 29.

Here, the pills at issue were in the state's possession, and could have been identified using a confirmatory test. *See Robinson*, 517 N.W.2d at 339 ("'Protocol' notwithstanding, there seems to be no good reason why a sufficient quantity of the mixture should not be scientifically tested so as to establish beyond a reasonable doubt an essential element of the crime charged."); *cf. Olhausen*, 681 N.W.2d at 29 ("Unlike the situation in *Robinson*, where drugs held by the police were not properly tested, in the present matter there is a good reason that the alleged drugs could not be tested; namely, that respondent admittedly disposed of the package when he fled the police to avoid confiscation of the package.").

Nevertheless, applying *Olhausen*, we conclude that the evidence tending to show that the pills contained clonazepam is sufficient to support the conviction. The identity

evidence here, which includes appellant's representations that the pills were clonazepam, and visual observations of the substance by an expert, is similar in nature to the evidence held sufficient in *Olhausen*. 681 N.W.2d at 29. And there is no evidence in the record here to contradict the state's expert witness or to suggest that it would be improper for an expert witness to rely on pill markings rather than testing to determine the presence of a controlled substance. Appellant introduced no evidence or argument at trial that he or other dealers of prescription pills commonly substitute placebos for genuine narcotics. Therefore, there is no evidence in the record to support a plausible inference that the pills contained something other than clonazepam. *See State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (stating that we "will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture").

III.

Finally, appellant argues that the district court erred by sentencing him on count two, because the two drug sales on February 2, which comprise counts one and two, were so closely related in time, place, and criminal objective that they are part of the same behavioral incident. As a result, he contends that his sentence on count three, which was calculated using the additional criminal history points for count two, must also be recalculated. We disagree.

Because appellant failed to raise this issue at the sentencing hearing in district court, we do not have the benefit of a district court ruling to review. But the failure to raise a challenge in the district court to a sentence based on an incorrect criminal history score does not result in waiver or forfeiture of the issue. *See State v. Maurstad*, 733

N.W.2d 141, 147-48 (Minn. 2007) (holding that because, under Minn. R. Crim. P. 27.03, subd. 9, an illegal sentence is correctable "at any time," a defendant may not waive or forfeit review of his criminal history score calculation and a reviewing court will not apply plain-error review to such claims). We therefore address the merits of appellant's claim.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." Minn. Stat. § 609.035, subd. 1 (2010). The first step in determining whether a defendant's conduct constitutes more than one offense under section 609.035 is to determine whether the conduct constitutes a single behavioral incident. *Effinger v. State*, 380 N.W.2d 483, 488 (Minn. 1986). The state has the burden to establish by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000). "[T]he factors to be considered in determining whether multiple offenses constitute a single behavioral act are time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). "The determination of whether multiple offenses are part of a single behavioral act under section 609.035 is not a mechanical test, but it involves an examination of all the facts and circumstances." *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997). Whether multiple crimes are part of the same behavioral incident is subject to a clearly erroneous standard of review. *Effinger*, 380 N.W.2d at 489.

"Drug sales, even within a short period of time, may be considered separate behavioral incidents." *State v. Barnes*, 618 N.W.2d 805, 813 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001); *see also Gould*, 562 N.W.2d at 521 (holding that three sales to undercover officer, each on different days and at two different locations, were not the same behavioral incident).

Here, the sale of amphetamine and clonazepam that forms the basis of count one was completed on February 2, 2010, at approximately 12:00 p.m. After completing the purchase, S.G. is heard on an audio recording of the sale telling appellant "[a]ll right I'll be right back" as she was leaving the house. At trial, S.G. explained that she told appellant she would be right back because appellant needed to "reup" on methamphetamine, and that if the "friend" S.G. was purchasing for liked the pills he received, she would "be back to get the rest of them for him" so that appellant "could have the money for his guy for the drugs." After she left, S.G. and the task force officers directing the controlled buys returned to the police station and conducted a controlled buy targeting another dealer. Approximately four-and-a-half hours later, appellant arranged the purchase that comprises count two. Appellant and S.G. completed the transaction five-and-a-half hours after—and two blocks away from—the first purchase.

Like the sales at issue in *Gould*, the two sales here are separated by time and geography and constitute independent, self-contained sales. S.G.'s testimony established that the later sale was contingent on her "friend's" satisfaction with the quality of drugs obtained in the first sale, so the second sale did not necessarily follow from the first. With respect to criminal objective, the supreme court reasoned in *Gould* that selling drugs

to relieve financial hardship is too broad an objective to constitute a "single criminal objective." 562 N.W.2d at 521. Thus, we cannot consider appellant's intent to obtain money to purchase additional drugs as a single, unifying criminal objective. Rather, appellant's intent was to complete each individual sale as the opportunity arose. His criminal purpose with respect to each individual sale was, therefore, unique.

On this record, the conduct underlying counts one and two does not meet any of the factors under the single-behavioral-incident standard. Therefore, we cannot conclude that the district court clearly erred by sentencing appellant on both counts or by calculating his criminal history score on count three.

Affirmed.

RANDALL, Judge (concurring in part, dissenting in part)

I concur in the majority's decision as to the district court's evidentiary ruling. I respectfully dissent as to the conviction of fifth-degree controlled substance offense because the evidence was insufficient to prove beyond a reasonable doubt that the pills appellant sold were Clonazepam, and would reverse on that issue. Further, I conclude that a separate sentence should not have been given on count two as I find counts one and two were part of the same behavioral incident.

The BCA scientist identified the pills as Clonazepam, a controlled substance, based solely on their markings, without performing any tests. The state, however, must prove every element of the offense beyond a reasonable doubt. *See generally State v. Olhausen*, 681 N.W.2d 21, 25-26 (Minn. 2004). And, as the majority acknowledges, that burden applies to the state's proof that the pills appellant sold were a controlled substance.

I would concede that the BCA testimony that the pills were Clonazepam, based solely on their markings, would establish by a preponderance of the evidence that they contained a controlled substance. That testimony may even be enough to provide clear and convincing evidence on that element. But I would hold as a matter of law that the BCA testimony did not provide proof beyond a reasonable doubt.

I would take judicial notice that street sales of illegal drugs, such as sugar placebos or talcum powder being sold as powder cocaine, or illegal "designer drugs" with the proverbial "kitchen sink" ingredients in them, are pandemic. *See generally State v. Robinson*, 517 N.W.2d 336, 339 (Minn. 1994) (noting that "drug dealers are known to

substitute placebos for the real thing"). Given these practices, it is impossible to reach the proof-beyond-a-reasonable-doubt standard by looking at the "markings" on a pill that a pharmaceutical company, such as Merck or Pfizer, etc., has purportedly placed on a pill. The BCA protocol is not to test such drugs on crimes they view as relatively minor or collateral to a more serious charge. I believe, as the supreme court observed in *Robinson* with respect to a cocaine mixture, that there was "no good reason" why scientific testing could not have been performed to make sure.

Even if the evidence were sufficient to support the conviction on count two, I believe that a separate sentence could not be imposed on that count because it was part of the same behavioral incident as count one. The two sales occurred on the same day, within two blocks of each other, and only a few hours apart. This was a single behavioral incident. *Cf. State v. Barnes*, 618 N.W.2d 805, 813 (Minn. App. 2000) (holding that sales to undercover officer on different days and at different locations were not part of the same behavioral incident), *review denied* (Minn. Jan. 16, 2001). And both sales were made to a buyer acting on behalf of the same friend, with appellant motivated to obtain money to retire his drug debts and obtain a new supply. This constituted a "single criminal objective." *Cf. State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997) (holding that "obtaining as much money as possible" is too broad to constitute a single criminal objective). *Penal statutes must be strictly construed in favor of the defendant* and against the state. *See State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002) ("A rule of strict construction applies to penal statutes, and all reasonable doubt concerning legislative intent should be resolved in favor of the defendant."); *see also* Minn. Stat. § 645.16

(2010) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . . the object to be attained.").

I conclude the sales involved in counts one and two were sufficiently close in time, place, and criminal objective to make up a single behavioral incident, thereby preventing separate sentences. *See* Minn. Stat. § 609.035, subd. 1 ("[I]f a person's conduct constitutes more than one offense under the laws of this state, he may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them.").