STATE OF MINNESOTA
IN COURT OF APPEALS
A09-626

State of Minnesota,
Respondent,

vs.

Paul James Irons,
Appellant.

Filed April 20, 2010
Reversed
Stoneburner, Judge
Dissenting, Ross, Judge

Chisago County District Court
File No. 13CR05784

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Center City, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STONEBURNER, Judge

Appellant was convicted of attempted first-degree arson based on circumstantial evidence. Appellant argues that the evidence is insufficient to support his conviction. He

also challenges the admission of evidence that might have implied his connection to a subsequent fire at the same property and argues that the prosecutor committed prejudicial error by misstating the burden of proof and making improper references to DNA evidence. Because we conclude that the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than appellant's guilt, we reverse without reaching the evidentiary and alleged misconduct issues.

D E C I S I O N

The parties agree that the state's case against appellant Paul James Irons was based entirely on circumstantial evidence. The fact finder is in the best position to evaluate circumstantial evidence. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Although circumstantial evidence is entitled to the same weight as direct evidence, it is reviewed with greater scrutiny when considering a claim of insufficient evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999).

In reviewing a case that includes direct evidence, we review a claim of insufficient evidence to determine whether a jury could reasonably conclude that the defendant was guilty in light of the facts in the record and all legitimate inferences that can be drawn from those facts. *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978). Evidence is considered in the light most favorable to the guilty verdict, and it is assumed that the jury believed the state's witnesses and disbelieved contradictory evidence. *Id.* In this case, were that the only test, plainly this conviction would be affirmed.

But a conviction based solely on circumstantial evidence requires the reviewing court to also consider "whether the reasonable inferences that can be drawn from the

circumstances proved support a rational hypothesis other than guilt." *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010). In this case, we conclude that reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis that appellant is not guilty. We begin by identifying the circumstances proved. *See id.* at 718.

Taken in a light most favorable to the state, the evidence in the record shows that by November 9, 2004, Irons was nine months behind in the rent on a house that he was renting in Rush City. On that day, law enforcement officers, and eventually fire fighters, were dispatched to Irons's rental house; they found the house trashed with a window broken, the door kicked open, Sheetrock damaged, and belongings thrown and strewn throughout the house; there was misspelled racial-hatred graffiti spray painted on the outside and inside of the house;[1] there were two approximately five-gallon gas cans tipped over near the kitchen, and gas had been poured throughout the house, creating significant fumes; between the cans was a "delayed-ignition device" consisting of a Marlboro cigarette tucked under the cover of a matchbook; the tip of the cigarette was burned, but there was no ash or burn mark on the floor and no evidence of how or when the cigarette had been lit; several items of value including a computer, tree stand and a compound bow were missing; Irons came to the residence and cooperated with law

[1] Irons is a Pacific Islander originally from Guam. He told law enforcement that he had been receiving racial-hate messages for about 18 months that contained the same misspellings as the graffiti found on November 9. He said he had not saved the notes or reported them because he did not believe law enforcement would do anything about the situation. He thought somebody from the apartments across the street might be responsible. Although this evidence is not inconsistent with any evidence presented by the state, the state implied that Irons fabricated the information about the notes and therefore we presume the jury did not believe that Irons had received such messages. But we note that Irons' national origin is consistent with uninformed racial bias.

enforcement with a calm demeanor; Irons said he had been staying at his girlfriend's residence near Braham to help since the birth of their son on October 14; he told law enforcement that he had last been to the property on November 6, he was nine months behind in rent, and he (or his girlfriend) had brought the gas cans to the property and left them outside of the house so that he could mow the lawn with a small lawn mower he had borrowed from his girlfriend; the amount of gas in the cans exceeded what was necessary to mow the lawn in November;[2] Irons smoked Marlboro and generic cigarettes inside and outside his house and kept ashtrays in his house; Irons's DNA matched the only DNA from saliva found on the filter end of the cigarette used in the delayed fuse; and Irons, when an officer suggested that a portable alarm system be placed in the house to alert law enforcement to further intrusions, declined based on a safety concern shared by the officer about reconnecting the power.

Because the state did not present any direct evidence that Irons caused the damage to his house or poured the gasoline and set up the delayed-ignition device, our analysis proceeds to a second stage in which we determine whether reasonable inferences drawn from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *See Stein*, 776 N.W.2d at 718.

Plainly, the circumstances proved are consistent with Irons's guilt. As the state repeatedly argued, Irons's DNA on the cigarette filter is conclusive that, at some point, he had this cigarette in his mouth. And, at some point, the tip of the cigarette burned. But

[2] The officer who first respondent to the scene noted that the lawn was about "300 by 300 feet or 350 feet by 350 feet."

there is no evidence that the cigarette was burning when it was placed in the matchbook and some evidence that it was not, given the lack of any evidence of ash or burning on the floor. It is not possible, therefore, to know when the cigarette was in Irons's mouth or when the tip was burned or whether Irons placed the cigarette in the matchbook. Someone else could have used a partially smoked cigarette found in the house to make the delayed-ignition device. From the lack of ash or burn marks on the floor, a reasonable inference can be drawn that whoever created the device had second thoughts about actually trying to light it, or possibly tried to light it without drawing air through the filter, such that it failed to burn. There is no evidence that Irons was at the property between November 6, when he admitted being there, and November 9. There is no evidence that Irons sprayed misspelled racial graffiti on his house. The amount of gas at the property is not conclusive of anything. Irons said he had brought gas to the property to mow the lawn. His girlfriend stated that she had also brought gas to the property when she lent him the lawn mower. The approximate ten gallons of gas was just as excessive for starting a fire in the house as it was for mowing the lawn. We conclude that reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than Irons's guilt.

Although reasonable inferences drawn from proved circumstances support the verdict, "[i]n circumstantial evidence cases, we give no deference to the fact finder's choice between reasonable inferences; this is so because our inquiry addresses not only the reasonableness of the inferences made by the fact finder, but also the reasonableness of other possible inferences that the fact finder may not have drawn." *Stein*, 776 N.W.2d

at 716. Because we conclude that such other reasonable inferences exist in this case, we reverse.

Reversed.

ROSS, Judge (dissenting)

I would affirm the judgment directed by the jury's guilty verdict. While the circumstantial evidence leaves perhaps a *metaphysical* doubt about whether some unknown band of hooligans broke into and attempted to set fire to Irons's rented home, I would hold that the jury had a sufficient basis to find no *reasonable* doubt about Irons's guilt. I think the alternative-culprit theory is simply too unlikely on these facts for us to reject the verdict on appeal, and I therefore respectfully dissent.

Most arson cases of course are proved only by circumstantial evidence, and most arson defendants could present some alternative *possible* theory to counter the state's circumstantial case. So it seems that this case really hangs on the extent to which a defendant's alternative theory must be plausible before we will rely on it to overturn a conviction that rests on circumstantial evidence. The caselaw does not specify the degree of plausibility necessary for a possible alternative scenario to require reversal. But it does establish that there is some minimum rationality hurdle, and, whatever it is, I do not believe Irons's alternative theory clears it.

Several recent supreme court cases highlight that reversal is not necessary in circumstantial cases merely because an alternative theory is *possible*; rather, the alternative theory must also be *reasonable* on the totality of the evidence. I think *Tscheu*, *Scanlon*, and *Colbert* all stand for this proposition and against reversal today. And most notably, the proposition was recently reaffirmed by the supreme court's decision in *State v. Stein*, 776 N.W.2d 709 (Minn. 2010).

The supreme court reminded us in *State v. Tscheu* that "[i]nconsistencies in the state's case or *possibilities* of innocence do not require reversal of a jury verdict so long as the evidence *taken as a whole* makes such theories seem *unreasonable*." 758 N.W.2d 849, 858 (Minn. 2008) (emphasis added). Just as in this case where only Irons's DNA was found, the *Tscheu* court considered that only the defendant's DNA and semen had been found on the victim. *Id*. at 860–61. This lack of third-party DNA was a substantial factor the supreme court relied on to affirm the conviction on circumstantial evidence. *See id.* ("[W]hile it is theoretically possible that someone else was involved in a struggle with [the victim], there is no physical evidence in the record to provide reasonable support for this hypothesis.").

In *State v. Scanlon*, the court recognized that there were possible scenarios other than the one that led to the defendant's conviction on circumstantial evidence. 719 N.W.2d 674, 688 (Minn. 2006). It listed but then rejected these possibilities on implausibility grounds, leaving the jury's guilty verdict intact. *Id*. ("[A]ll of these scenarios stretch the concept of 'rational hypothesis' to absurd limits."). And in *State v. Colbert*, the court similarly rejected a possible but unlikely alternative theory in an appeal that challenged a circumstantial-evidence conviction. 716 N.W.2d 647, 654 (Minn. 2006) ("While Colbert's version of the events leading to him being shot by Parker had Parker bringing the gun to the apartment and shooting Colbert, the jury was free to, and evidently did, reject Colbert's version of these events.").

These cases stand for the proposition that in circumstantial-evidence cases, we defer to the jury when it rejects possible but implausible alternative factual theories. So

when we consider alternative theories on appeal we ought not to be enticed by possible but unlikely scenarios.

Irons argues, and the majority agrees, that we should overturn the jury's implicit finding that Irons was the person who placed the delayed-ignition device in the house because "someone else could have used a partially smoked cigarette found in the house to make the delayed-ignition device." The theory is similar to the one rejected by the *Stein* court, which reasoned that "appellant's theory that another person committed the burglary is not reasonable in light of the inculpatory evidence presented by the state." 776 N.W.2d at 719. The only evidence linking any person to the delayed-ignition device is Irons's DNA. And because the alternative theory is implausible on the whole of the evidence, I do not share in the majority's equating a theory of a third party's guilt with the evidence of Irons's guilt.

The insignificant amount of evidence linking anyone but Irons to the arsonist's fuse is enough to align this case with *Tscheu*, but the implausibility goes further. Irons told the investigator that he had recently purchased the gasoline to mow the lawn, but the jury was free to deem the explanation incredible, if not ridiculous. The jury would naturally question whether anyone would fill two separate five-gallon cans with gasoline merely to mow a small lot. It might consider that such a large quantity of gasoline is much more consistent with an attempt to fill the small home with explosive fumes or to facilitate ignition by the crude delayed-action fuse. It might doubt that Irons, who had not paid rent for nine months, was a conscientious tenant who would borrow a mower and mow the lawn *in November*. And of course, the jury was also free to question

whether unknown alleged racist vandals—who were so conspicuous and careless in their destruction of property that they forced open the door, shattered a window, and painted large, racially disparaging messages on the exterior—would become cautious and devise a discovery-avoiding, delayed-action fuse to ignite the house.

I am not suggesting that Irons's alternative theory is impossible, just that it is so factually unsupported and logically implausible that it merits the jury's rejection without our second-guessing. Otherwise, clever arsonists could become virtually conviction-proof. With a can of spray paint and an unsupported claim of discarded harassment letters, they could burn their own homes and fabricate support for a merely *possible* alternative theory.

The jury concluded from the physical evidence that *someone* had prepared Irons's home for destruction by dousing its interior with gasoline and placing the delayed-action fuse between the two gas cans. The DNA evidence points only to Irons, and the purchase of as much as ten gallons of gasoline to mow a small lawn in November is inconsistent with common practice. Because of the apparent implausibility of Irons's just-mowing-the-lawn theory and his some-other-culprit theory, I would not disturb the jury's implicit finding that Irons poured the gas and set the fuse. All that is necessary to affirm is "that there are no other *reasonable*, *rational* inferences that are inconsistent with guilt." *Stein*, 776 N.W.2d at 716 (emphasis added). The evidence, taken as a whole, makes Irons's alternative scenario seem unreasonable. Seeing no reasonable, rational inference inconsistent with Irons's guilt, I would affirm.