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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1140

State of Minnesota,
Respondent,

vs.

Chad Eric Stewart,
Appellant.

Filed July 18, 2011
Affirmed
Halbrooks, Judge

Becker County District Court
File No. 03-CR-09-2112

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

Michael Fritz, Becker County Attorney, Tammy L. Merkins, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

HALBROOKS, Judge

Appellant challenges his convictions of four counts of vehicular homicide and two counts of criminal vehicular operation, arguing that there was insufficient evidence for the jury to find him guilty. Because we conclude that the evidence was sufficient, we affirm.

FACTS

On July 4, 2009, a single-vehicle crash occurred involving seven people. Four people were killed, one was left paralyzed, and one suffered a traumatic brain injury. Only appellant Chad Eric Stewart was relatively unharmed. Shortly after the crash, C.H., the driver of another vehicle, passed appellant, who was walking on the side of the road. Given the time (approximately 2:00 a.m.) and the remoteness of the location, C.H. did not stop. But after C.H. drove a little further and saw a white van lying on the driver's side in the ditch on the west side of the road, C.H. turned around and picked up appellant. The two then returned to the accident scene. Appellant told C.H. that he had never seen the van before. C.H. called for help, and while he and appellant were waiting, appellant asked C.H. to tell the police that he and appellant had been driving together that night.

Sergeant Bret Anderson was one of the first people to respond to the call for help. He found three of the individuals who died, cousins Charlene and Kayla Norcross and their uncle Gregory Norcross, partially in or near the back of the vehicle. Sergeant Anderson found Scott Adams, the fourth person who died in the crash, as he was trying to locate one of the survivors, Donna Peake, who was yelling for help. Sergeant Anderson

also found Amber Goodman, who was unconscious but alive. The survivors—appellant, Donna Peake, and Amber Goodman—were taken to area hospitals for medical treatment.

Appellant's alcohol concentration was later determined to be .15 when his blood was drawn in the emergency room. Appellant was charged with four counts of criminal vehicular homicide and two counts of criminal vehicular operation. Appellant stipulated to all of the elements of the offenses with one exception—that he was driving at the time of the crash. Appellant claimed that Adams had been driving.

The jury found appellant guilty of all six counts. This appeal follows.

D E C I S I O N

Appellant argues that there was insufficient evidence to convict him. 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 the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that "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).

As an initial matter, the parties dispute whether appellant's conviction is based on direct or circumstantial evidence of his guilt. Direct evidence is "[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Black's Law Dictionary* 636 (9th ed. 2009). Circumstantial evidence, in contrast, is "[e]vidence based on inference and not on personal knowledge or observation." *Id.*

The state argues that because witnesses testified that appellant was driving in the time period before the accident occurred, the jury was presented with direct evidence of appellant's guilt. But no witnesses could remember the accident itself. Therefore, the jury's convictions were arguably based on the reasonable inference that appellant was still driving when the van crashed. We conclude, therefore, that there was no direct evidence of appellant's guilt as to this element presented to the jury and that his conviction was based on circumstantial evidence.

"[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). In analyzing a sufficiency-of-the-evidence claim in a circumstantial-evidence case, we must defer to the circumstances proved, but we "give no deference to the fact finder's choice between reasonable inferences." *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010) (quotation omitted).

> In assessing the inferences drawn from the circumstances proved, the inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt. Stated another way, the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. But we will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture. The State does not have the burden of removing all doubt, but of removing all reasonable doubt.

Id. at 330 (quotations and citations omitted).

The circumstances proved in this case include the fact that appellant owned the van and was driving the van in the time frame leading up to the crash. Two witnesses for

the state testified that they saw appellant driving the van earlier in the day. J.N. testified that she saw appellant driving the van earlier in the afternoon. M.T. testified that she saw appellant sitting in his van on the side of the road late on the night of the accident. She testified that appellant was in the driver's seat and that she could hear other people in the van but that she could not tell who they were.

The jury also heard testimony from two of the surviving van passengers, Donna Peake and Amber Goodman. Peake testified that she, Kayla, and Charlene were walking sometime after midnight when appellant drove up in his van. Peake testified that appellant was driving, Goodman was in the passenger seat, Greg Norcross was in the seat behind appellant, and Adams was in the seat behind Goodman. Peake, Kayla, and Charlene got into the back seat of the van. Peake testified that she did not remember anybody other than appellant driving the van the night of the accident. But Peake did not remember the accident itself—she remembered "driving around the old projects" and then "[w]aking up in the hospital." Nor did she remember making any stops.

Goodman, who has two children with appellant and lived with him for two and one-half years, testified to a different version of events: she testified that at one point the vehicle made a stop and Adams took over driving. But on cross-examination, Goodman admitted that she had given several different versions of events. She testified that her memory had suffered due to a brain injury, but that her memory had been returning since the accident. Assuming, as we must, that the jury believed the state's witnesses and disbelieved Goodman, the evidence presented was sufficient for the jury to conclude that

appellant had been driving the vehicle leading up to the accident and to exclude any rational inference that someone else was driving.

There was also evidence that appellant's DNA was found in the two areas that were the most probative of determining who was driving (the driver's airbag and an impact site on the windshield on the driver's side). Neither appellant nor Goodman could be excluded as the contributors to the DNA on the airbag, and neither appellant nor Gregory Norcross could be excluded as the contributors to the DNA on the impact site. But Adams was excluded as a contributor to the DNA at both sites.

The jury heard testimony from two crash-reconstruction experts with opposing opinions. The state's expert testified that (1) appellant suffered abrasions to his ankles and knees—injuries that are consistent with being in the driver's seat, (2) appellant had blood at the corners of his mouth—a fact that is consistent with airbag deployment, and (3) the driver of the vehicle was the most likely person in the crash to have been protected from serious injury. In addition, Butch Huston, M.D., a Ramsey County medical examiner, testified that none of the other victims had injuries consistent with having been the driver of the vehicle.

Appellant's expert opined that appellant's injuries and the DNA evidence did not place appellant in any particular location in the vehicle. But appellant's expert did not testify that the evidence was consistent with Adams as the driver—which was the only theory that appellant offered. In fact, Adams was excluded as a possible contributor to the DNA found on the airbag and the windshield; and even appellant's expert testified that whoever was driving would have come into contact with the airbag.

Finally, the jury heard testimony about appellant's state of mind after the crash. C.H., the driver who stopped to help at the accident scene, testified that appellant asked him to lie to the police. And appellant lied to the police by telling them that he had been riding with C.H. the entire night. Finally, Deputy Robert Wirtz testified that he heard appellant say to his father in his hospital room, "I'm sorry, Dad. I'm so sorry."

Based on our careful review of the record, we conclude that the circumstantial evidence was sufficient to permit the jury to reasonably infer that appellant was driving the vehicle when it crashed and to exclude any rational inference that someone else was driving. Because the evidence presented to the jury was sufficient for it to reach a guilty verdict, we affirm.

Affirmed.