STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0138

State of Minnesota,
Respondent,

vs.

Adam Leroy Seavey,
Appellant.

Filed November 12, 2013
Affirmed
Rodenberg, Judge
Concurring specially, Smith, Judge

St. Louis County District Court
File No. 69DU-CR-11-4180

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Samantha J. Schmidt, Bruno Law, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Johnson, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

Appealing from his first-degree arson conviction in violation of Minn. Stat. § 609.56, subd. 1 (2010), appellant Adam Leroy Seavey argues that the evidence is insufficient to sustain his conviction because the circumstantial evidence fails to prove his guilt beyond a reasonable doubt. We affirm.

FACTS

In April 2011, J.B. purchased a duplex that required extensive renovation. J.B. and his fiancé K.R. lived in the upper unit and rented out the lower unit. J.B. hired several contractors to perform work both inside and outside the duplex. He hired appellant's company, Solid Work Concrete, to replace a concrete retaining wall that supported one of his garages. J.B. verbally agreed to pay appellant approximately $12,000 for his work. Appellant completed work on the retaining wall in August 2011. He sent J.B. a final bill for approximately $15,000. J.B. refused to pay appellant for his work because he claimed that the retaining wall violated the building code, was structurally deficient, and was built without a required permit.

J.B. testified at trial that, in September, he received a telephone call from appellant regarding the unpaid bill wherein appellant threatened to break J.B.'s legs if J.B. did not pay within five days. J.B. suggested that appellant file a lien, and J.B. testified that appellant responded that "he doesn't deal with courts, [and] he'll take care of [J.B.] his way." Soon after this threat, J.B. reported seeing appellant's work truck parked in the

alley behind J.B.'s home. J.B. also testified that appellant telephoned him multiple times but J.B. refused to answer.

Several incidents of vandalism then occurred at J.B.'s home, all around 12:30 a.m., on several different nights. In early November, a rock was thrown through J.B.'s truck windshield. Less than a week later, a rock was thrown through the home's front picture window. A few days after that, a rock broke the car window of one of J.B.'s tenants. Finally, a brick was thrown through the lower bedroom window of J.B.'s home. After that incident, J.B. installed security cameras around his home. J.B. testified that he then encountered appellant in court regarding a civil matter and appellant stated, "Don't think for a second those cameras are going to stop me or save you or stop me from smashing your stuff." In early December, windows were broken on J.B.'s garage.

On December 16, 2011, J.B. stayed up late watching television and his surveillance monitors. Around 12:30 a.m., J.B. saw a person walk up to his house carrying a one-gallon milk jug. J.B. saw the person put the jug on his porch, start a fire, and run away. An arson investigator later determined that the milk jug had contained gasoline. J.B. woke K.R. and their two tenants and went outside to extinguish the fire. J.B. provided his surveillance footage to law enforcement and told them about his history with appellant. The surveillance footage was not sufficiently clear to allow identification of the arsonist, but showed a male wearing dark clothing, including a blue winter coat, a black hooded sweatshirt, and a ski mask. A police officer called appellant around 3:00 a.m. to discuss the arson and appellant agreed to meet the officer at a location several blocks from his home.

Appellant's wife, T.J.S., testified that she went to bed around 10:15 on the night of the arson while appellant stayed up doing the laundry and dishes. She also testified that they parked their cars close to their house. T.J.S. stated that she did not hear any doors open or close after she went to bed and did not hear any vehicle noises. T.J.S. woke up around 3:00 a.m. when the police called, and appellant was in bed with her at that time. Appellant testified that he did not leave the house that evening and was not the person in the surveillance footage.

T.J.S. later contacted appellant's sister, who is a Duluth police officer. T.J.S. showed the sister a Wal-Mart receipt from around 2:00 p.m. on December 15 reflecting that appellant had purchased a black hooded sweatshirt, black sweatpants, and a ski mask. The sister turned the receipt over to law enforcement. Appellant testified at trial that he purchased the ski mask for his kids because it was winter and that he bought the clothing "[t]o be comfy." During the trial, the jury viewed video footage both of appellant making his Wal-Mart purchases and of the surveillance video of the arsonist, and was able to compare the two films. There was no additional damage to J.B.'s home between the fire on December 16, 2011 and the trial in August 2012.

The jury found appellant guilty of first-degree arson. This appeal followed.

D E C I S I O N

Appellant argues that the evidence at trial is insufficient to sustain his first-degree arson conviction because the circumstantial evidence failed to prove that he started the fire. When assessing the sufficiency of evidence, this court determines "whether the legitimate inferences drawn from the facts in the record . . . reasonably support the jury's

conclusion that the defendant was guilty beyond a reasonable doubt." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). "In reviewing a jury verdict, 'we view the evidence in a light most favorable to the verdict and assume the jury believed the state's witnesses and disbelieved contrary evidence.'" *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quoting *State v. Brooks*, 587 N.W.2d 37, 42 (Minn. 1998)).

Arson cases often rely on circumstantial evidence because the arsonist is seldom caught at the scene of the fire. *State v. Jacobson*, 326 N.W.2d 663, 665 (Minn. 1982). On review, "[a] conviction based on circumstantial evidence . . . warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Id.* We do not overturn a circumstantial evidence conviction based on mere conjecture. *Id.* Instead, we apply a two-step analysis when examining the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). "The first step is to identify the circumstances proved. In identifying the circumstances proved, 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.* (citation and quotation omitted). The jury "is in the best position to determine credibility and weigh the evidence." *Al-Naseer*, 788 N.W.2d at 473. Therefore, we identify the circumstances proved "in the light most favorable to the verdict." *Pratt*, 813 N.W.2d at 874.

In order to convict appellant of first-degree arson, the state was required to prove beyond a reasonable doubt that (1) J.B.'s dwelling was destroyed or damaged by fire; (2) the damaged building was used as a dwelling or next to or connected with a dwelling; (3) appellant caused the fire; (4) appellant intended to destroy or damage the building; and (5) appellant's act took place on or about December 16, 2011 in St. Louis County. Appellant challenges the sufficiency of the circumstantial evidence used to prove the third and fourth elements. He argues that the evidence does not establish beyond a reasonable doubt that he caused the fire or that he intended to destroy or damage J.B.'s home.

Viewing the evidence in the light most favorable to the verdict, the circumstances proved at trial are as follows: J.B. hired appellant to build a retaining wall and appellant completed his work in August 2011. J.B. refused to pay appellant for the wall because he was dissatisfied with the work. Appellant threatened to break J.B.'s legs if he did not pay. Several incidents of vandalism occurred at J.B.'s duplex in November and early December, all around 12:30 a.m., so J.B. installed video surveillance equipment. Appellant then told J.B., "Don't think for a second those cameras are going to stop me or save you or stop me from smashing your stuff." Around 2:00 p.m. on December 15, appellant purchased a black hooded sweatshirt, black sweatpants, and a ski mask at Wal-Mart. About ten hours after these purchases, and using the surveillance equipment, J.B. saw someone walk up to his house carrying a one-gallon milk jug. It was around 12:30 a.m. J.B. saw the person put the jug on his porch, start a fire, and run away. J.B.'s surveillance footage filmed the arsonist wearing dark clothing that included a blue winter

coat, a black hooded sweatshirt, and a ski mask. There was no additional damage to J.B.'s home between December 16, 2011 and the trial in August 2012.

Appellant argues that he and his wife provided direct evidence at trial that he was in bed at the time of the fire. However, this is not a proved circumstance. At this step of the analysis, we defer to the jury's determination. *Silvernail*, 831 N.W.2d at 598-99. We identify the circumstances proved "in the light most favorable to the verdict." *Pratt*, 813 N.W.2d at 874. Because the jury convicted appellant of arson, it did not believe his alibi testimony.

"The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Silvernail*, 831 N.W.2d at 599 (quotation omitted). In making this determination, "we do not review each circumstance proved in isolation" but instead consider the circumstances on the whole. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). "The [s]tate does not have the burden of removing all doubt, but of removing all reasonable doubt." *Al-Naseer*, 788 N.W.2d at 473. We independently examine the reasonableness of the possible inferences and "give no deference to the fact finder's choice between reasonable inferences." *Id.* at 474. In order to ensure that there is no reasonable doubt as to the defendant's guilt, there must be no reasonable inference inconsistent with guilt. *Id.*

Appellant argues that one reasonable inference inconsistent with his guilt is that someone else started the fire at J.B.'s home. Appellant focuses on the fact that J.B.'s surveillance footage does not definitively identify him as the perpetrator. However, we must consider the circumstances proved on the whole. *Andersen*, 784 N.W.2d at 332.

The proved circumstances in this case, taken on the whole, create a reasonable inference that appellant started the fire. The circumstances do not admit of any reasonable inference that some different unidentified person, without any apparent motive, started the fire.

Appellant argues that his case is similar to *State v. Formo*, an arson case where this court found that the state's evidence was inconsistent with the defendant's guilt because the state's theories of motive and means were not supported. 416 N.W.2d 162, 165-67 (Minn. App. 1987), *review granted* (Minn. Feb. 17, 1988), *and appeal dismissed*, 426 N.W.2d 865 (Minn. 1988). For example, the state argued in that case that the defendant burned his house down for the insurance money because he was facing financial difficulties. *Id.* at 165. However, the evidence showed that the defendant was not having financial problems. *Id.* This was not the only discrepancy in the state's theory in that case. *See id.* at 165-66 (outlining the problems with the state's theory).

In this case, the evidence fully supports the state's theory that appellant started the fire. Any other inference would be based upon pure conjecture and conjecture is insufficient to overturn a conviction based on circumstantial proof. *Al-Naseer*, 788 N.W.2d at 473. Appellant offers no theory as to who else may have been responsible for the fire but merely speculates that the arsonist could have been someone else. The proved circumstances do not contain the sorts of contradictions and rational alternative inferences present in *Formo*, but instead solely support the state's theory that appellant started the fire.

Appellant's conjecture that someone else started the fire conflicts with the state's evidence, which evidence we must assume the jury believed. In light of the proved circumstances in this case, we see no rational inference inconsistent with appellant's guilt. The evidence is sufficient to sustain appellant's first-degree arson conviction.

Affirmed.

SMITH, Judge, concurring specially

I concur in the opinion of the court, but I write separately to address the burgeoning confusion over the standard for reviewing circumstantial evidence cases. Where an element of an offense rests on circumstantial evidence, I believe that instructing the jury that the element must be proved by circumstances inconsistent with any rational hypothesis other than the accused's guilt would produce more legitimate and less confusing results than attempting to apply that standard at the appellate level.

Since the supreme court decided *State v. Al-Naseer*, 788 N.W.2d 473 (Minn. 2010), at least 87 appellate opinions have cited it, mostly to attempt to apply its "heightened scrutiny" of circumstantial evidence. The two-step model it prescribes has proven to be difficult to apply at the appellate level. Problems arise at both levels of the model. In the first step, we identify "circumstances proved, . . . consider[ing] only those circumstances that are consistent with the verdict." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But a jury's verdict often addresses only the guilt of the accused, it does not specify the facts that the jury found to find the accused guilty. For example, the facts in this case offer a smorgasbord of possible "circumstances proved" that could possibly have influenced the jury. Did the jury find that Seavey had thrown rocks at J.B.'s house? What about the rock thrown through the window of his tenant's car? Did Seavey's purchase of a dark-colored ski mask, sweatshirt, and pants contribute to the jury's finding of guilt, did it rely instead on Seavey's threatening statement, or did it use both in combination? Without the jury's detailed answers to questions such as these (and

the jury might not even have a uniform set of answers because individual jurors might disagree), we cannot identify the exact set of "circumstances proved" on appeal.

Even when we can with some confidence identify the "circumstances proved," the second step of the *Al-Naseer* process presents additional problems in an appellate context. In the second step, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than that of guilt." *Silvernail*, 831 N.W.2d at 599. This means that, using our set of assumptions about the set of facts that the jury believed, we determine for ourselves which inferences were "rational" without access to the jury's vantage point on important additional sources of information such as witnesses' demeanor and the other nuances inherent in live testimony. For example, Seavey argues here that there are many rational inferences from the evidence that are incompatible with his guilt, most importantly that someone other than him appeared as the dark-clothed figure setting a fire on J.B.'s porch. Although I join this court's opinion that the inferences Seavey suggests are not in fact rational inferences incompatible with the jury's finding of Seavey's guilt, I do so with some sense of discomfort arising from my recognition that it is for the jury, rather than for appellate judges, to determine exactly when a particular inference is or is not "rational" or "reasonable." *Cf. State v. Nystrom*, 596 N.W.2d 256, 260 (Minn. 1999) (holding that the determination of whether a person's actions are "reasonable" is within the exclusive province of the jury).

Because of these continuing difficulties, I join Judge Rodenberg's call to shift the focus for assessing the sufficiency of circumstantial evidence back to the trial courts. *See*

State v. Nelson, No. A11-1907, 2012 WL 4052487, at *5-6 (Minn. App. Sep. 17, 2012) (Rodenberg, J., concurring). As we have long recognized in our caselaw addressing sufficiency-of-the-evidence appeals, the jury (or judge as fact-finder in a court trial) is in the best position to resolve contested claims of facts and the meaning of facts. *See, e.g.*, *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980) (holding that deference to the jury is particularly important "where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury"). Competing inferences, like competing testimony, are best resolved by the only entity with access to the full range of information available in a case: the jury. The standard of review that we now apply at the appellate level can therefore be applied more accurately by a jury, pursuant to an instruction. Indeed, this was standard practice before 1980. *See, e.g.*, 10 *Minnesota Practice*, CRIMJIG 3.05 (1977) (containing a jury instruction nearly identical to the *Al-Naseer* rule). I believe readopting this practice would both relieve the growing appellate tumult over circumstantial-evidence cases and restore the jury to its preeminent place for determining facts and drawing inferences.