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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0952**

State of Minnesota,
Respondent,

vs.

Christopher Paul Mattson,
Appellant.

**Filed March 18, 2019
Reversed
Reilly, Judge**

Polk County District Court
File No. 60-CR-17-1066

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Gregory Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

We reverse appellant's conviction for failure-to-appear pursuant to Minn. Stat. § 609.49, subd. 1(a) (2016), because there was insufficient evidence to prove appellant intentionally failed to appear.

FACTS

Appellant Christopher Mattson had three pending felony-level criminal court cases, and he made a first appearance on each of those cases. The complaints and the conditional-release orders notified him that "failure to appear for court when required to do so is a criminal offense in the State of Minnesota, pursuant to Minn. Stat. § 609.49." Nevertheless, on April 18, 2017, Mattson failed to appear for a pretrial hearing for his three open criminal cases. The district court judge told Mattson's counsel that a bench warrant would be issued if Mattson failed to appear at the rescheduled hearing on April 20, 2017. After Mattson again failed to appear, the district court issued a bench warrant for Mattson's arrest. Approximately four months later, in August 2017, Mattson turned himself in at the county jail.

Based upon Mattson's nonappearance on April 20, 2017, respondent, the state, charged Mattson with felony-level failure to appear pursuant to Minn. Stat. § 609.49, subd. 1(a). During the court trial on the failure-to-appear charge, the state took testimony from two witnesses and submitted 13 exhibits into evidence. The state's first witness, an employee with Polk County District Court, testified to the court records, including the criminal complaints and orders for conditional release in Mattson's three underlying

criminal cases. The court employee also testified about the court minutes, a document that provides a summary of what transpired during the daily court calendar on Mattson's cases. The state offered into evidence the court minutes for each of Mattson's three open cases from April 18, 2017 and April 20, 2017, all of which indicated that Mattson was not present for the scheduled hearings. The last exhibit offered by the state was the court minutes from the first appearance on this matter, held on August 18, 2017. The state did not offer into evidence any exhibits which demonstrated that Mattson had received actual notice of the scheduled court hearings on either April 18 or April 20. The state's second witness, a Polk County Sheriff's deputy, testified that in August 2017 Mattson turned himself in on the outstanding warrant from his April failure to appear. Mattson exercised his constitutional right to not testify at the court trial.

The district court issued an order finding Mattson guilty of failure to appear and imposed a felony-level sentence of one year and one day, stayed execution of that sentence, and placed Mattson on probation for two years.

This appeal follows.

DECISION

The evidence presented by the state was insufficient to establish Mattson intentionally failed to appear.

Mattson argues that this court must reverse his failure-to-appear conviction because the evidence was insufficient to prove, beyond a reasonable doubt, that he violated the failure-to-appear statute. Minnesota Statute 609.49, subdivision 1(a) provides:

A person charged with or convicted of a felony and released from custody, with or without bail or recognizance, who

intentionally fails to appear when required after having been notified that a failure to appear for a court appearance is a criminal offense . . . is guilty of a crime for failure to appear and may be sentenced to not more than one-half of the maximum term of imprisonment or fine, or both, provided for the underlying crime for which the person failed to appear, but this maximum sentence shall, in no case, be less than a term of imprisonment of one year and one day or a fine of \$1,500, or both.

The parties agree, and the district court found, that Mattson was charged with three felonies, that he had been released from custody, that he had been given notice that failure to appear was a criminal offense, and that the act took place on April 20. The only issue is whether the state sufficiently proved that Mattson intentionally failed to appear where there is no evidence that he had notice of the dates of the court appearances he missed.

Because the intent element of a crime involves a state of mind, it is often proven with circumstantial evidence. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), review denied (Minn. May 20, 2003). When reviewing a conviction based on circumstantial evidence, appellate courts apply a two-step test to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we must “identify the circumstances proved.” *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). In identifying the circumstances proved, this court assumes that the fact-finder resolved any factual disputes in a manner that is consistent with the verdict. *Id.* A fact-finder is in the best position to evaluate witness credibility and “weigh the evidence regarding intent.” *Davis*, 656 N.W.2d at 905. Second, we independently examine the “reasonableness of the inferences that might be drawn from the circumstances proved,” and then “determine whether the circumstances proved are consistent with guilt and

inconsistent with any rational hypothesis except that of guilt.” *Moore*, 846 N.W.2d at 88 (quotations omitted). We must consider the evidence as a whole and not examine each piece in isolation. *State v. Petersen*, 910 N.W.2d 1, 7 (Minn. 2018).

Here, the circumstances proved are: (1) Mattson had been given notice that failure to appear for a required court hearing was a separate crime; (2) court hearings in Mattson’s three pending cases were held on April 18 and April 20, 2017; (3) Mattson’s attorney was present for those hearings; (4) Mattson was not in court for those hearings; (5) the district court judge issued a warrant for Mattson’s arrest based upon his failure to appear; and (6) in August 2017, Mattson turned himself in on the outstanding warrant. This court must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Moore*, 846 N.W.2d at 88 (quotation omitted). Mattson argues that the circumstances do not eliminate the rational hypothesis that he did not know he had court on those days.

Mattson argues that a condition precedent of a criminal conviction for intentionally failing to appear at a court hearing is that the defendant had been given notice that he was required to appear on a specific date for a hearing. Minnesota Statutes state that “*the actor must have knowledge of those facts which are necessary to make the actor’s conduct criminal and which are set forth after the word ‘intentionally.’*” Minn. Stat. § 609.02, subd. 9(3) (2016) (emphasis added). Notice of the specific court date is, therefore, an important factor in determining whether the defendant intentionally failed to appear. The state concedes that it did not introduce any evidence that notice was provided to Mattson regarding the April 18 or April 20 court dates. Because the record is silent as to notice, the

state asks this court to take judicial notice of Mattson’s underlying criminal case files. We decline to take judicial notice. “Criminal cases are not normally the appropriate setting for judicial notice.” *In re Welfare of P.W.F.*, 625 N.W.2d 152, 154 (Minn. App. 2001) (quotation omitted). Moreover, this court has reasoned that judicial notice may not be “used as a substitute for adjudicating specific facts without a hearing.” *In re Block*, 727 N.W.2d 166, 176 (Minn. App. 2007).

Because the state did not establish that Mattson received actual notice of the April 20 hearing date¹ and no other evidence of Mattson’s intent is contained in this record, we determine that the circumstances proved do not eliminate the rational hypothesis that

¹ The state also argues that notice to Mattson’s attorney should be imputed to Mattson. The state cites to *Buskey v. Am. Legion Post #270*, 910 N.W.2d 9 (Minn. 2018), a recent Minnesota dram-shop action case, to support imputing notice from one party to another. The Minnesota Supreme Court held—applying agency principles—that “actual notice to the licensee’s dram-shop attorney is tantamount to notice directly to the licensee.” *Id.* at 17. However, we remain unconvinced that courts should impute that same type of notice in a felony-level criminal failure-to-appear case. We note that a more reasonable interpretation is that notice to a defendant could be inferred but not conclusively presumed from a showing that the defendant’s attorney received notice. *See, e.g., Chavez v. Commonwealth*, 817 S.E.2d 330, 377 (providing that “if the defendant’s attorney had actual notice of the . . . court date, the fact-finder may infer from that evidence that the defendant also had actual notice of the court date” (quotation omitted)); *but see State v. Blackbird*, 609 P.2d 708, 710 (Mont. 1980) (noting that notice to a defendant could not be conclusively presumed from a showing that the defendant’s attorney received notice since this has “the effect of relieving the state of its burden to prove every element of the offense beyond a reasonable doubt”). Here, the record before us does not even establish that Mattson’s attorney had actual notice of the April 18 court date specific to Mattson’s cases. We note that Mattson’s attorney could have coincidentally appeared in front of the district court on April 18 for a different defendant in a separate criminal case. But even this is pure speculation because the record is silent regarding why Mattson’s attorney appeared in court on that date. For those reasons, any imputation of notice from Mattson’s attorney to Mattson is improper in this case.

Mattson did not know he was required to appear in court on April 20. Because the evidence in this record is insufficient to support Mattson’s failure-to-appear conviction, we reverse.²

Mattson argues, in the alternative, that this court must remand for a new trial because the district court violated Mattson’s constitutional rights by admitting evidence that Mattson declined to speak to a police officer after he was arrested and using that evidence to support the inference that Mattson intentionally failed to appear in court. Because we reverse on the sufficiency claim, we need not reach the merits of this argument. We do, however, note that in its order, the district court stated:

In this case, Defendant was informed that he was required to appear for future court appearances on at least six occasions, and he chose not to appear as ordered. . . . Defendant offered no statement or excuse as to his failure to appear. All of this is evidence of Defendant’s intentional failure to appear.

The record is silent regarding when Mattson received his Miranda warnings, and we therefore cannot analyze whether this is post-arrest, pre-Miranda silence or post-arrest, post-Miranda silence.³ We are nevertheless troubled by the district court’s analysis that

² We note that the parties dispute what level of intent is required to violate the failure-to-appear statute—specific or general intent. A criminal statute that prohibits a person from engaging in conduct establishes a general-intent crime. *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012). Alternatively, “a specific-intent crime requires an intent to cause a particular result.” *Id.* (quotation omitted). We need not reach this issue because we determine that there is insufficient evidence to prove either specific or general intent in this case.

³ Post-arrest, pre-Miranda silence can be used for impeachment purposes and can sometimes be used substantively. *Fletcher v. Weir*, 455 U.S. 603, 607, 102 S. Ct. 1309, 1312 (1982); *State v. Borg*, 806 N.W.2d 535, 543 (Minn. 2011). However, post-arrest, post-Miranda silence cannot be used for impeachment purposes, and cannot be used during the state’s case-in-chief. *Doyle v. Ohio*, 426 U.S. 610, 619, 96 S. Ct. 2240, 2245 (1976); *Wainwright v. Greenfield*, 474 U.S. 284, 295, 106 S. Ct. 634, 640-41 (1986).

Mattson's lack of statement or excuse as to his failure to appear is evidence of Mattson's criminal intent.

Because Minn. Stat. § 609.49, subd. 1(a), requires that the state prove that the defendant intentionally failed to appear, and the record before us is insufficient to support the conclusion that Mattson intentionally failed to appear because there was no showing that Mattson had knowledge of his court date, we reverse Mattson's conviction.

Reversed.