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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1620**

State of Minnesota,
Respondent,

vs.

Jermaine James McMahon,
Appellant.

**Filed August 26, 2019
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-15-8872

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree unintentional felony murder, arguing that the evidence was insufficient to sustain the conviction. We affirm.

FACTS

A Hennepin County grand jury indicted appellant Jermaine James McMahon with first-degree premeditated murder for the March 27, 2015 killing of J.W. The parties ultimately agreed to proceed with a stipulated-evidence trial on a charge of second-degree unintentional felony murder under Minn. Stat. § 609.19, subd. 2(1) (2014). McMahon waived his jury-trial rights, and the district court held a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 3. The murderer’s identity was the primary contested issue at trial. The district court found McMahon guilty of second-degree unintentional felony murder and sentenced him to serve a 132-month prison term. Respondent State of Minnesota then dismissed the first-degree premeditated murder charge. McMahon appeals, challenging the sufficiency of the evidence to sustain his conviction.

DECISION

When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The appellate court “assume[s] that the jury believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). An appellate court will not disturb a guilty verdict if the

jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the state proved that the defendant was guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We apply the same standard of review to sufficiency challenges stemming from court and jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999).

An offense may be proved by direct or circumstantial evidence. Direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). Circumstantial evidence always requires an inferential step that is not required with direct evidence. *Id.*

When the state relies on circumstantial evidence to prove an element of an offense, as it did in this case, an appellate court applies a heightened standard of review, utilizing a two-step process. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, the appellate court determines the circumstances proved. *Id.* When evaluating the circumstances proved, the appellate court “disregard[s] evidence that is inconsistent with the jury’s verdict.” *Harris*, 895 N.W.2d at 601. Second, the appellate court determines whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Loving*, 891 N.W.2d at 643. An appellate court will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Id.*

An appellate court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). “[A] defendant is not relying on conjecture or speculation when the defendant . . . points to evidence in the record that is consistent with a rational theory other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010) (quotation omitted). “[P]ossibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable.” *State v. Stein*, 776 N.W.2d 709, 719 (Minn. 2010) (quotation omitted).

McMahon contends that the circumstantial evidence was insufficient to prove that he shot J.W. McMahon was convicted under Minn. Stat. § 609.19, subd. 2(1), which provides,

Whoever does . . . the following is guilty of unintentional murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting[.]

The underlying felony offense in this case was second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2014), which provides: “Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.”

The district court made detailed findings of fact based on the stipulated evidence presented at trial, and McMahon does not challenge those findings.¹ Those findings therefore constitute the circumstances proved. The district court's findings establish that on March 27, 2015, at approximately 6:30 a.m., a person shot and killed J.W. near an entrance to the Ramp A parking garage (Ramp A) at Tenth Street and Currie Avenue in Minneapolis. Minneapolis Police Department Sergeants Christopher Gaiters and Bob Dale led an investigation of the shooting, which was recorded on surveillance video and witnessed by T.A.

T.A. reported that at approximately 9:00 p.m. on the night before the shooting, he was outside a homeless shelter on Currie Avenue near the location of the shooting with a couple of other people having a drink before going to the shelter for the night. T.A. noticed a man standing inside the gate of a fenced-in parking lot across the street from Ramp A. T.A. and his companions were suspicious of the man because they thought he might have been an undercover police officer or someone who had been in an altercation with another person staying at the shelter. They walked up to the man, getting within five feet of him, but an unrelated altercation in front of the shelter distracted T.A.

After the police arrived to address the altercation in front of the shelter, T.A. saw the man who he had observed inside the parking lot gate riding on a bicycle. T.A. reported that the man looked like he was "Caucasian or maybe Hispanic" or "a light skinned African

¹ We commend the district court for its exceptionally thorough findings of fact.

American.” T.A. said that the man was wearing a black hooded shirt with long sleeves and black pants that were either sweatpants or cotton khaki-type pants.

On the morning of the shooting, T.A. left the shelter at approximately 6:30 a.m. As he was walking from the shelter toward Tenth Street, he saw a man “racing” out of the fenced-in parking lot across from Ramp A. The man ran across the street at an angle toward an entrance to Ramp A. The man ran up behind J.W. and shot him multiple times. T.A. was approximately 30 yards away from the shooter. The shooter ran back toward the parking-lot gate, hopped on a bicycle, and rode away, heading toward Hawthorne Avenue. T.A. reported that the shooter was the same man that he had seen the night before. The shooter had the same bicycle—a black mountain bike with straight handlebars—and was wearing a black hooded jacket, black sweatpants or khaki-type pants, and white shoes. T.A. also reported that the man was wearing a backpack.

Minneapolis Police Department Sergeant Richard Lillard was providing security at Ramp A and heard gunshots at approximately 6:30 a.m. on the morning of the shooting. He walked outside and saw J.W. lying motionless on the ground. J.W. had five gunshot wounds and was pronounced dead at approximately 8:50 a.m.

T.A. approached Sergeant Lillard and described the suspect as tall and slender, wearing dark jeans or sweatpants and a black hoodie. T.A. told Sergeant Lillard that the suspect fled eastbound on Tenth Street then south on Hawthorne Avenue, on a black mountain bike with straight handlebars, and that he had seen the suspect riding his bicycle around the night before. Another witness, C.D., told Sergeant Lillard that he heard an

argument inside the shelter just before the shooting, in which a man threatened to shoot someone.

Sergeant Lillard obtained footage of the shooting from video-surveillance cameras at Ramp A. The footage shows a person, with his left arm raised, run up behind another individual. The person has an object in his hand, but the object is not clearly depicted in the video. The other individual falls to the ground. The person whose arm was raised turns around and runs off camera. That person appeared to be wearing a black hood, long-sleeved black clothing on his upper body, black pants, and white shoes.

Sergeants Gaiters and Dale obtained footage from video-surveillance cameras near the crime scene. The footage depicted the suspect riding to the crime scene. The footage also depicted the suspect riding away from the shooting to the Cedar Bike Trail, where there are no surveillance cameras. A person matching the suspect's description is depicted in multiple surveillance videos riding a bicycle from the Cedar Bike Trail at approximately 5:55 a.m. to 12th Street and Glenwood Avenue at approximately 5:58 a.m. A person matching the suspect's description is also depicted in multiple surveillance videos riding from Currie Avenue and 12th Street at approximately 6:31 a.m. to the Cedar Bike Trail entrance at 12th Street and Glenwood Avenue at approximately 6:32 a.m.

On March 30, the police searched the area near the Cedar Bike Trail and found a dark ski mask and dark sweatpants. They recovered a light-rail ticket from the sweatpants. The ticket was purchased at the Target Field Station platform at 3:09 a.m. on March 27. Attempts to obtain latent fingerprints from the light-rail ticket were unsuccessful.

The police sent the ski mask and sweatpants to the Minnesota Bureau of Criminal Apprehension (BCA) for DNA testing. The DNA from the sweatpants and ski mask matched a DNA sample from McMahon, which was stored in the Minnesota Convicted Offender DNA Database. The ski mask contained a DNA mixture from two or more individuals, and the major profile matched McMahon's DNA sample. The sweatpants contained a DNA mixture from three or more individuals, and the major profile matched McMahon's DNA sample. The record establishes that one "would not expect for [the major profiles] to occur more than once amongst unrelated individuals in the world's population."

Police also obtained footage from video-surveillance cameras at the platform where the light-rail ticket was purchased and from the train on which the purchaser likely would have ridden. The video depicts the suspect purchasing a ticket and riding on the light-rail train in the early morning hours of March 27. The suspect is wearing a black hooded Columbia jacket with the hood up over his head, what appears to be a black ski cap or mask that is pulled above his forehead, black pants, and white shoes with a distinctive stripe running along the side of the shoe. He is holding a black mountain bike with straight handlebars and a black satchel bag. The light-rail video contains clear shots of the suspect's face. It shows that the suspect has a thinly trimmed mustache and a faint black mark under his left eye. Tattoos are visible on each of the fingers on his left hand.

Minneapolis Police Department Officer Jason Andersen was generally familiar with people who travel from Ramp A to the skyway because he worked part-time at Ramp A. Officer Andersen observed still photographs of the suspect that were taken from the light-

rail surveillance video. Officer Andersen recognized the individual as a man who had walked past him several times at Ramp A. Officer Andersen reported that the suspect has a very distinguishable face and identified him as a light-skinned African American male. Officer Andersen also reported that the man that he saw in the skyway had several tattoos on his face and neck, but those tattoos did not appear in the light-rail photographs. There was, however, a black mark under the left eye of the man in the light-rail photos.

Officer Andersen searched a public database and found a photograph of McMahon. Officer Andersen recognized McMahon as the person he had seen in Ramp A and thought that he was the person in the light-rail photographs. Officer Andersen provided the database photograph to Sergeant Dale and reported that there were additional photographs in the database of McMahon, in which his facial tattoos were covered with makeup. Officer Andersen had no doubt that the man in the database photograph was the man in the light-rail photographs.

B.B. had worked as a security officer at the Minneapolis downtown central library for approximately a year at the time of the shooting. One of his duties is to issue trespass citations. When he does so, he takes a picture of the trespasser and keeps the photograph for the library's trespass records. The police asked B.B. whether he could identify the man in a light-rail photographs. B.B. immediately recognized the individual, but could not remember his name. B.B. looked in the trespass records for the library and located a photograph of the man who he thought was depicted in the light-rail photographs. In the photograph that B.B. provided, the man's facial tattoos are visible. B.B. told the investigators that the person in the photographs was McMahon. B.B. wrote on the

surveillance photograph, “I recognize this person [from] being a regular at the Minneapolis Central Library.”

McMahon was arrested on April 3 at a homeless shelter in Saint Paul. At the time of his arrest, McMahon was wearing jeans, tennis shoes, and a dark Columbia jacket. The shoes recovered from McMahon were white with an orange rubber toe and distinctive reflective ribbon that travels along the outside of the shoe. The district court found that “it is reasonable to believe that [the shoes recovered from McMahon] could be the shoes seen in each video.” Sergeant Gaiters obtained a buccal swab from McMahon. When McMahon signed the buccal swab envelopes, he wrote with his left hand.

The circumstances above are consistent with guilt. As the district court found,

The shooter is seen on video actually shooting the victim. Video immediately before shows the shooter riding toward [the homeless shelter] on his bike. The video immediately after shows the shooter leave the scene, in the same clothes and on the same bike. The video angle changes and shows the shooter riding down toward the Cedar Lake Trail. When the surveillance videos are looked at and pieced together in chronological order, it is clear that the person in each video is the same person. The investigators were not looking for a person matching [T.A.’s] description of the shooter in an expansive area of the city, nor an open-ended period of time. [The police] looked through surveillance video of the immediate area immediately before and after the shooting. From there [they were] able to work from camera to camera picking up a person wearing all black, on a bicycle, with white shoes. Time stamps in each video confirm this, as does the direction the suspect is traveling in those videos.

... The [police] found a black ski mask and pair of black sweatpants on the Cedar Lake Trail with [McMahon’s] DNA on them and a light rail ticket in the pocket. When the light rail transit video from the time surrounding the ticket’s timestamp is reviewed, it is clear that [McMahon] is that

person by clearly viewing his face, his clothes, and his bike. The light rail video also shows tattoos on [McMahon's] left hand and left cheek. Though they are fainter in the video than they are when seen in person, they are the same.

. . . The Court finds that the State proved beyond a reasonable doubt that [McMahon] caused the death of [J.W.].

In sum, McMahon matched the eyewitness's physical description of the murderer, surveillance video placed him near the scene of the murder at the time of the murder, and his DNA was found on sweatpants and a mask matching those worn by the murderer.

McMahon concedes that "the circumstances proved in this case are arguably consistent" with guilt, but he contends that the circumstances proved "are equally consistent with the inference that [he] was not the person who caused the death in this case." McMahon first argues that T.A.'s descriptions of the shooter were inconsistent. But the district court acknowledged those inconsistencies, particularly those regarding the suspect's race, and reasoned that any confusion regarding the suspect's race was "inconsequential." Notably, the district explained that "its decision does not rely on [T.A.'s] description of [McMahon] alone." Moreover, the district court found that T.A.'s description of the suspect's clothing was consistent and that "[t]his information alone was enough to lead investigators to locating [McMahon] riding his bike to and from the crime scene, finding his discarded clothing and light rail ticket, and then locating surveillance video of [McMahon] riding the light rail." Most importantly, the district court found that "McMahon, who appeared in the courtroom is the person who can be seen in the light rail transit video, and is therefore the shooter."

McMahon second argues that “the DNA evidence fails to rule out a rational inference of innocence” because the “DNA itself is not overly strong” and “the presence of McMahon’s DNA profile only meant that his DNA was present at a higher amount than any other person’s DNA contributing to the mixture.” McMahon also argues that “no video surveillance or any other evidence directly shows who left those items, or when they were abandoned,” and “the ski mask contained no traces of makeup.” McMahon concludes that “the physical and forensic evidence does not make the inference that someone else was the shooter unreasonable.” That conclusion is unavailing because the record does not contain evidence pointing to anyone other than McMahon. Thus, McMahon’s argument is based on mere conjecture and does not provide a basis to reverse. *See Lahue*, 585 N.W.2d at 789 (stating that an appellate court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture”).

McMahon third argues that the evidence was “lacking in other key areas” because neither the firearm nor bicycle was recovered, there was no evidence of motive or lay-witness identification, and McMahon did not make any inculpatory statements. Such evidence was not necessary to prove McMahon’s guilt beyond a reasonable doubt. *See State v. Fox*, 868 N.W.2d 206, 224 (Minn. 2015) (holding that evidence was sufficient to support first-degree murder conviction even though murder weapon was never recovered); *Stein*, 776 N.W.2d at 719 (rejecting similar argument because none of the missing evidence established “a coherent alternative hypothesis” that rebutted the evidence demonstrating guilt); *State v. McArthur*, 730 N.W.2d 44, 49-50 (Minn. 2007) (holding that evidence was sufficient to support first-degree murder conviction even though no evidence of motive

was introduced). Moreover, McMahon cannot rely on the absence of evidence to establish a reasonable hypothesis of innocence. *Cf. Al-Naseer*, 788 N.W.2d at 480 (“[A] defendant is not relying on conjecture or speculation when the defendant . . . points to evidence in the record that is consistent with a rational theory other than guilt.” (quotation omitted)).

McMahon last argues that other people in the area could have killed J.W. He suggests that someone involved in the altercation that occurred inside the shelter just before the shooting was a likely suspect. But the district court found that there was no evidence that the altercation inside the shelter was related to the shooting. McMahon also suggests that some other bicyclist in the area could have been the shooter because the record establishes that “there *were* other people on bikes in the downtown surveillance videos.” But, as the state counters, “There [is] no evidence that any other light-skinned, left-handed male wearing [a] black jacket, black pants, white tennis shoes, with facial and hand tattoos, holding a backpack and riding a mountain bike with straight handlebars just happened to be in the area and present when the murder occurred.”

In sum, McMahon’s alternative hypothesis of innocence finds little support in the record. We will not reverse McMahon’s conviction based on his speculative arguments. *See Lahue*, 585 N.W.2d at 789. And because the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt, we affirm.

Affirmed.