

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0411**

State of Minnesota,
Respondent,

vs.

Daniel Edward Nixon,
Appellant.

**Filed March 1, 2021
Reversed
Cleary, Judge***

Ramsey County District Court
File No. 62-CR-19-97

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Gaïtas, Judge; and Cleary, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this direct appeal, appellant challenges the sufficiency of the evidence supporting his burglary conviction. He also challenges the district court's denial of his motion to suppress evidence, and he asserts that he is entitled to relief under the Uniform Mandatory Disposition of Detainers Act (UMDDA), Minn. Stat. § 629.292 (2020). Because the evidence was insufficient to sustain appellant's conviction, we reverse.

FACTS

The state charged appellant Daniel Edward Nixon with one count of second-degree burglary for a crime that allegedly occurred on May 21, 2018, at “the University Buffet restaurant.” The case was one of eight separate burglary cases against Nixon. The probable cause portion of the complaint provided a limited description of the crime:

[T]he University Buffet in Saint Paul, Ramsey County, was burglarized. The burglar was video recorded arriving in a white Impala with a black side rub strip and a spoiler. The burglar broke a window with a slingshot, broke an interior window with a slingshot, but could not get into the restaurant. He departed in the Impala.

The complaint noted that a few days after the University Buffet burglary, police stopped Nixon's white Impala, searched the vehicle pursuant to a search warrant, and recovered evidence linking Nixon to several burglaries.

The state sought to introduce *Spreigl* evidence at trial, consisting of evidence that Nixon committed other burglaries between February and September of 2018. *See State v. Spreigl*, 139 N.W.2d 167, 172-73 (Minn. 1965) (discussing the admission of certain prior-

bad-acts evidence). The district court ruled that evidence from another May 2018 burglary could be admitted in the University Buffet case to show modus operandi and identity.

Nixon filed a demand under the UMDDA, which allows an imprisoned person to request final disposition of an untried complaint. Minn. Stat. § 629.292, subd. 1(a). He also moved to suppress evidence recovered from his vehicle. The district court denied the suppression motion.

After his first two trials resulted in convictions, Nixon agreed to submit the remaining six matters to the court via stipulated-evidence trials. *See* Minn. R. Crim. P. 26.01, subd. 3. The stipulated evidence included police reports, lab reports, still photos from the alleged offenses, and *Spreigl* evidence that the district court had previously ruled was admissible.

The district court found Nixon guilty of the University Buffet offense. The court found that the University Buffet “is located at 225 University Avenue West in Saint Paul” and is “in a building.” Based upon a surveillance video, the court found that on May 21, 2018, a white Impala arrived near the University Buffet, and a medium-build male got out. He used a tool “to break the outer glass window on the north side of the building.” He then drove away. Several minutes later, the white Impala returned and parked. A male wearing a white surgical mask was then seen walking toward the area of the broken window. He entered the building carrying a greenish-yellow bag. He used a slingshot to break an inner glass window to gain access to the inside of the building. While inside, he searched while carrying the greenish-yellow bag. He then left the building and drove away.

The district court relied on evidence of similar conduct committed in May 2018, as well as evidence recovered from the traffic stop, to conclude by way of circumstantial evidence that Nixon was the person who committed the University Buffet crime. The district court sentenced Nixon to 90 months in prison. This appeal followed.

DECISION

Nixon argues that his conviction must be reversed because the state failed to prove that he burglarized the University Buffet. Specifically, he argues that the stipulated-evidence packet contained evidence concerning 225 University Avenue, but the state did not charge Nixon with burglarizing that building and did not present evidence that the University Buffet was located in that building or even that a restaurant called the University Buffet existed. The state agrees that the evidence was insufficient to sustain the conviction and that Nixon’s “conviction should be reversed.” Regardless, we must analyze the issue because “it is the responsibility of appellate courts to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

In considering a challenge to the sufficiency of the evidence to sustain a conviction, we carefully analyze the record to determine whether the evidence, viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We “assume that the [fact-finder] believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a

reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

In this case, the state relied on circumstantial evidence to prove that Nixon committed the burglary. When the state relies on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard to individual element of criminal offense that was proved by circumstantial evidence). Circumstantial evidence is “evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (quotation omitted). “In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted).

Under the heightened circumstantial-evidence standard, we use a two-step process. *Id.* at 601. First, we identify the circumstances proved, “disregard[ing] evidence that is inconsistent with the jury’s verdict.” *Id.* Next, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the fact-finder’s choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). We will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

Nixon was convicted of violating Minn. Stat. § 609.582, subd. 2(a)(4) (2016), which states:

Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree . . . if . . . when entering or while in the building, the burglar possesses a tool to gain access to money or property.

A “building” is defined as “a structure suitable for affording shelter for human beings including any appurtenant or connected structure.” Minn. Stat. § 609.581, subd. 2 (2016).

Here, the circumstances proved are that Nixon used a slingshot to break windows at 225 University Avenue. He entered that building with a bag and searched before exiting. Though these circumstances are consistent with Nixon burglarizing 225 University Avenue, the circumstances allow for a reasonable hypothesis that Nixon did not enter the University Buffet restaurant.

“The complaint must state the essential facts constituting the offense charged.” *State v. Becker*, 351 N.W.2d 923, 926 (Minn. 1984). The Due Process Clause requires the state to prove every element of a crime “charged” beyond a reasonable doubt. *Patterson v. New York*, 432 U.S. 197, 204, 97 S. Ct. 2319, 2324 (1977); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). Here, the state charged Nixon with burglarizing the University Buffet restaurant. The state presented minimal evidence that the University Buffet is located at 225 University Avenue. For example, an officer listed all the businesses he believed Nixon burglarized and wrote “University Buffet” in parentheses next to 225 University Avenue. The evidence does not reveal the exact location of the University Buffet restaurant, how the restaurant is situated in relation to 225 University Avenue,

whether the restaurant is in a separate building, or whether the restaurant was in existence at the time of the offense.

A conviction based on circumstantial evidence may stand “only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted). Here, a reasonable inference remains that Nixon did not enter the University Buffet restaurant, and therefore the evidence is insufficient to sustain the conviction. We reverse Nixon’s burglary conviction. We do not reach his remaining arguments.

Reversed.