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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0760**

State of Minnesota,
Respondent,

vs.

Albert James Conant,
Appellant.

**Filed May 24, 2021
Affirmed
Cochran, Judge**

St. Louis County District Court
File No. 69HI-CR-19-191

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

Mark S. Rubin, St. Louis County Attorney, Stacey M. Sundquist, Assistant County Attorney, Hibbing, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant was convicted of first-degree burglary under Minn. Stat. § 609.582, subd. 1(a) (2018), after a jury trial. In this direct appeal, he argues that the evidence is

insufficient to prove first-degree burglary. Because we conclude that the evidence is sufficient to support the jury's verdict, we affirm.

FACTS

The state charged appellant Albert James Conant with multiple criminal offenses, including first-degree burglary, after Conant entered his father's home in March 2019. The following facts were established at trial.

In March 2019, Conant's former girlfriend, G.P., was living with Conant's 82-year-old father. G.P. and Conant had previously lived together. G.P. broke up with Conant and moved in with Conant's father after her relationship with Conant "got physical." Conant's father testified that he invited G.P. to live with him to help G.P. and "to keep [Conant] out of jail because he was abusing [G.P]."

Conant's father further testified that Conant had been "tormenting" him and G.P. for about a year and a half prior to March 2019. He said that Conant frequently called the house and that Conant once "called 54 times in one day." G.P. and Conant's father changed their phone number two or three times, but Conant "would find out what it [was] and then start all over again." Both Conant's father and G.P. testified that Conant also frequently came over to the house. G.P. testified that Conant came to the house to try to talk to her and win her back. Conant's father said that he "kept telling [Conant] to leave us alone."

Around 9:00 p.m. on March 14, 2019, Conant knocked on the kitchen window of his father's house. As Conant stood outside the window, his father and G.P. told him several times to "go home." Although he was told to go home, Conant walked to the unlocked front door of the house and entered the living room with the aid of his walking

stick, closing the glass storm door behind him. Realizing that the front door may have been unlocked, G.P. walked from the kitchen into the living room and discovered that Conant was already inside the house. G.P. told Conant that he was not supposed to be in the house, “that his dad [didn’t] want him in the house, and [that she] didn’t want him” in the house. And she again told him to go home. Conant got mad and responded that he did not have to leave. G.P. tried to get Conant to leave by backing him up toward the front door without touching him. She testified that when she was doing so, Conant “just kept saying he didn’t have to leave, and then he said ‘What, you don’t love me anymore?’”

At that point, Conant’s father came into the living room in his wheelchair and told Conant to “[g]o home, go home,” and that he was not wanted in the house. Conant was standing between the glass storm door and the inside front door at the time. He was pushing on the inside door, and G.P. had her hip against the door attempting to keep Conant from coming further into the house. Conant then began swinging his walking stick at his father. Conant struck G.P. on the top of her foot with his walking stick, leaving a three-inch-long scratch mark. Conant’s father, who was also carrying a walking stick, responded by swinging his stick at Conant. Conant then pulled out an aerosol can from his sweatshirt pocket and sprayed the substance from the can “all over” his father and “all over the living room.”

G.P. called for help from a third person who was in the home. The three of them successfully pushed Conant outside and locked the door. Once outside, Conant stood on the front deck of the house. Conant then sprayed the aerosol substance in the direction of the house and lit the substance on fire with a lighter. The substance ignited into a “four

foot” flame that shot towards the kitchen window. Conant repeated this conduct two or three more times, spraying flames toward the wooden railing of the deck. His father testified that Conant stood outside spraying the flames for six or seven minutes before leaving the property. The flames ultimately did not cause any damage to the house.

The police arrested Conant the following day. They also obtained a warrant to search Conant’s Jeep. In the front center console of the Jeep, the police found a lighter and an aerosol can containing carburetor cleaner.

Respondent State of Minnesota charged Conant with five counts: (1) first-degree burglary (occupied dwelling), (2) first-degree burglary (dangerous weapon), (3) first-degree burglary (assault), (4) second-degree assault, and (5) first-degree attempted arson. The district court held a jury trial on January 21–22, 2020. After the prosecution rested, the district court granted Conant’s motion for a directed verdict on the first-degree burglary (dangerous weapon) charge and the second-degree assault charge on the ground that the state had not presented evidence to show that Conant’s walking stick or the can of carburetor cleaner met the definition of a “dangerous weapon.” The court permitted the state to add a charge for the lesser-included offense of fifth-degree assault. The following day, the jury found Conant guilty of first-degree burglary (occupied dwelling). The jury acquitted Conant on the remaining counts. The district court stayed imposition of Conant’s sentence and placed Conant on probation for three years.

Conant appeals.

DECISION

The sole issue presented by this appeal is whether the evidence is sufficient to support the jury's verdict of first-degree burglary (occupied dwelling). A person is guilty of first-degree burglary of an occupied dwelling if the person

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 . . . [and]:

(a) the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building.

Minn. Stat. § 609.582, subd. 1(a) (emphasis added).

Conant does not dispute that the evidence is sufficient to prove that he entered a building (his father's home) without consent, that the building is a dwelling, and that another person was present while he was inside the building. The only element that Conant disputes on appeal is the intent element. He argues that the state failed to prove that he had the intent to commit a crime when he entered his father's home.¹

The supreme court has interpreted the phrase "enter[ed] a building . . . with intent" to mean that the offender must possess the requisite intent *at the time of entry*. *State v. Davis*, 864 N.W.2d 171, 178 (Minn. 2015) (interpreting the language of

¹ The state appears to argue that the jury's verdict could have been based on a finding that Conant *actually* committed some crime while in the house. But the state acknowledges that the jury acquitted Conant of the assault and attempted arson charges, and the state does not suggest what alternative crime Conant could have committed inside the house. And, during the state's closing argument, the prosecutor argued that the first-degree burglary charge was based only on Conant's commission of assault and/or attempted arson inside his father's home. We are not persuaded that the jury could have concluded that Conant actually committed a crime inside the house.

Minnesota's third-degree burglary statute, Minn. Stat. § 609.582, subd. 3 (2014)). The crime the offender intends to commit at the time of entry must be some independent crime other than trespass. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

Due process requires the state to prove every element of the offense charged beyond a reasonable doubt. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). To determine whether sufficient evidence exists to support a jury verdict, appellate courts “view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict.” *State v. Chomnarith*, 654 N.W.2d 660, 664 (Minn. 2003). We will not overturn a verdict “if, giving due regard to the presumption of innocence and to the prosecution’s burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense.” *Id.*

Here, the state offered only circumstantial evidence to prove the element of intent. When the state relies on circumstantial evidence alone, we undertake a heightened two-step analysis to review the sufficiency of the evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). First, we “identify the circumstances proved.” *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020). In doing so, we “giv[e] deference 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.* (quotation omitted). Second, we consider “the reasonable inferences that might be drawn from the circumstances proved.” *State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016). With respect to this second inquiry, we give no deference to the jury’s choice between any reasonable inferences. *Id.* “The conviction is sustained if the reasonable inferences that can be drawn from the

circumstances proved as a whole are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* If there is any rational hypothesis pointing to innocence, then the evidence is insufficient and the conviction should be overturned. *Al-Naseer*, 788 N.W.2d at 474. We will not overturn a conviction on the basis of mere conjecture. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010).

We begin our analysis by identifying the circumstances proved. Viewing the evidence in the light most favorable to the verdict, the circumstances proved are as follows. In Conant’s prior relationship with G.P., he became “physical” or abusive towards her. Conant had been “tormenting” his father and G.P. for a year and a half prior to March 2019 by repeatedly calling and coming over to the house. On March 14, 2019, Conant knocked on the kitchen window of his father’s house and both his father and G.P. told him to “go home.” Despite being told to go home, Conant entered the house without consent. When Conant entered the house, he had a can of flammable carburetor cleaner in his sweatshirt pocket and a lighter. Once inside the house, Conant repeatedly stated that he did not have to leave, and, at one point said to G.P., “What, you don’t love me anymore?” Conant both verbally and physically resisted attempts to get him to leave the house. Conant swung his walking stick at his father and hit G.P. on the top of the foot with the walking stick. While inside the house, Conant sprayed the carburetor cleaner throughout the living room and “all over” his father. Outside the house, Conant sprayed the carburetor cleaner and lit it on fire, causing flames to shoot toward the kitchen window of the house and toward the railing of the deck.

We next consider whether these circumstances proved are consistent with the hypothesis that Conant was guilty of first-degree burglary and inconsistent with any rational hypothesis other than guilt. Conant contends they are not.

Conant first argues that the circumstances proved do not support a rational hypothesis that he intended to commit a crime when he entered his father's house. He maintains that, because he "did not aggressively approach [G.P.] or [his father] after he entered the house or attempt to light anything on fire after he entered the house," the circumstances proved do not support a reasonable inference that he "entered the house to harm anyone or start the house on fire." We disagree.

Based on the circumstances proved, it is reasonable to infer that Conant entered his father's house with the intent to commit arson.² Conant is correct that the circumstances show that he did not immediately make aggressive moves upon entering the house. But

² We presume that the predicate offense for Conant's first-degree burglary conviction was arson and not assault. We reach this conclusion because the jury found Conant not guilty of fifth-degree assault and first-degree burglary (assault). The district court instructed the jury that first-degree burglary (assault) requires the defendant to either assault a person within the building or "enter[] or remain[] in the dwelling with the intent to commit the crime of Fifth Degree Assault." We note that the jury instruction was not an accurate description of the elements of first-degree burglary (assault), which in actuality require the defendant to "assault[] a person within the building or on the building's appurtenant property." Minn. Stat. § 609.582, subd. 1(c) (2018). The elements do not include *intent* to commit assault. *Id.* But, keeping in mind the presumption that a jury will follow the district court's instructions, *State v. Hall*, 764 N.W.2d 837, 845 (Minn. 2009), we conclude that the jury determined that Conant did *not* enter his father's home with the intent to commit assault. We therefore presume that the jury concluded that Conant entered his father's home with the intent to commit arson. Alternatively, in the event that Conant's acquittal of first-degree burglary (assault) was based on jury lenity, assault would also constitute a predicate offense for Conant's first-degree burglary (occupied dwelling) conviction. *See State v. Perkins*, 353 N.W.2d 557, 561 (Minn. 1984) (defining jury lenity as "the power to bring in a verdict of not guilty despite the law and the facts").

the circumstances proved do show that Conant entered his father's house with a flammable substance and a lighter on his person, equipped to commit arson. The circumstances also show that he had previously been "physical" with G.P., that he had a history of harassing his father and G.P., that he remained inside the house after he was told to leave, and that he sprayed the flammable substance inside the house and on his father. Based on the totality of these circumstances, it is rational to infer that Conant brought the flammable substance and lighter with him to his father's house and entered the house with the intent to commit arson. The reasonableness of this inference does not depend on whether he successfully completed the crime of arson or whether he was aggressive when he entered the house. It is his intent at the time he entered the house that is determinative. *See* Minn. Stat. § 609.582, subd. 1(a); *see also Davis*, 864 N.W.2d at 178 (interpreting the language of Minnesota's third-degree burglary statute, Minn. Stat. § 609.582, subd. 3).

Conant next argues that, even if the circumstances do support a rational hypothesis that he intended to commit a crime when he entered the home, there is an alternative rational hypothesis that is inconsistent with his guilt. Specifically, Conant argues that one may reasonably infer from the circumstances proved that he "entered the house with only the intent to speak with [G.P.] and to get her attention because he wanted to 'win her back.'" He contends that the following evidence supports this inference: Conant did not act in an aggressive or violent manner toward G.P. upon entering the house; any altercation between Conant and G.P. occurred later on while Conant was being pushed out of the house; after Conant was told to leave multiple times, he stated to G.P., "What, you don't love me

anymore?"; and Conant never attempted to light the carburetor cleaner on fire while he was inside the house. But his argument ignores other circumstances proved by the state.

Considered as a whole, the circumstances proved do not support Conant's alternative theory. First, the testimony indicates that Conant did not say much to G.P. while he was inside his father's home. G.P. testified that the only things she remembered Conant saying while in the house were that he did not have to leave and "What, you don't love me anymore?" The few statements that Conant actually made once inside the house belie his assertion that he entered with the intent to merely speak to G.P. Second, as discussed above, Conant had previously been "physical" with G.P., and he had a history of harassing G.P. and his father. These circumstances show that Conant had a troubled relationship with G.P. and his father, and they suggest that Conant was willing to harm G.P. Third, Conant entered his father's home when he knew he was not welcome, and he refused to leave even after G.P. and his father repeatedly told him to go home. If Conant had entered the house with only the intent to talk to G.P., one would reasonably assume that when it became clear to him that G.P. was not willing to talk to him, he would leave. And fourth, when Conant entered the house, he had an aerosol can containing a flammable substance and a lighter on his person. One does not typically carry these items together on their person in the ordinary course of a day. Conant then sprayed the flammable substance inside the house and on his father.

Based on Conant's troubled history with G.P. and his father, as well as the items that he brought with him into the house and his subsequent use of those items, it is not rational to infer that Conant entered the house merely with the intent to speak to or attempt

to reconcile with G.P. Rather, given Conant's history with G.P. and his father, the only rational hypothesis is that Conant entered the house with the intent to commit arson. There is no other rational inference that can be drawn from Conant's entry into the house under these circumstances.

In sum, the evidence is sufficient to prove beyond a reasonable doubt that Conant entered his father's home with the intent to commit a crime. We therefore affirm Conant's first-degree-burglary conviction.

Affirmed.