

*This opinion is nonprecedential except as provided by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
A21-0039**

State of Minnesota,
Respondent,

vs.

Roger Bruce Nahl,
Appellant.

**Filed December 13, 2021
Reversed
Bjorkman, Judge**

Chisago County District Court
File No. 13-CR-18-923

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

Janet Reiter, Chisago County Attorney, David Classen, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of attempted first-degree burglary, arguing that the circumstantial evidence is insufficient.¹ Because the circumstances proved are consistent with a reasonable inference other than guilt, we reverse.

FACTS

During the afternoon of October 4, 2018, several residents of rural Lent Township encountered appellant Roger Bruce Nahl. At around 3:40 p.m., complainant K.B.-G. heard yelling and banging at her front door. She went down to the first floor, saw a man later identified as Nahl at the door, and hid from his sight. Nahl pounded on and tried to open several doors on the side of the house and continued to yell in frustration. K.B.-G. called 911. As the responding police car pulled into her driveway, Nahl ran south into the nearby woods.

Nahl next appeared at the home of a neighbor who was sitting in his garage (neighbor 1). Nahl was wearing socks without shoes, and appeared winded and “[s]cared, nervous, wanting to get out of that area.” He asked neighbor 1 for a ride; neighbor 1 refused. As the two were talking, a sheriff’s vehicle approached, prompting Nahl to back into the garage where the deputy could not see him. Neighbor 1 responded by retrieving a gun. When he saw the gun, Nahl left, continuing south through the backyard.

¹ Nahl also argues that COVID-related delays violated his constitutional right to a speedy trial. Because we reverse based on insufficient evidence, we do not consider this argument.

A short time later, Nahl entered a five-acre property nearby. The owner (neighbor 2) heard her dogs “aggressively barking,” and saw Nahl enter the back of her property from the woods. Neighbor 2 saw him walk quickly and deliberately past her house to the road in front of her property, ignoring the dogs. Neighbor 2 was alarmed and immediately warned her neighbors.

Nahl next approached a man who was taking a break from doing yardwork and sitting next to his car (neighbor 3). Nahl said he “had been visiting a neighbor and had gotten in a fight and had to leave the house in a hurry” and that he “[w]as hoping that [neighbor 3] would be willing to give him a ride to the other side of Interstate 35.” Neighbor 3 did not see a weapon but “felt that it was [Nahl’s] intention to drive away from there with or without [him].” Accordingly, neighbor 3 agreed to take Nahl where he needed to go. During the drive, they encountered two police cars. The second drove behind them for a period of time, which caused Nahl to become “much more agitated,” check “all of the mirrors” and look out the back window. After finding a friend’s home unoccupied, Nahl directed neighbor 3 to drop him off in a secluded, wooded area. Neighbor 3 did so, drove away, and flagged down a police car to report the incident.²

In February 2020, the state charged Nahl with attempted first-degree burglary related to his actions at K.B.-G.’s house. After a delay due to the COVID-19 pandemic, Nahl’s case was tried in August. The jury found him guilty. Nahl appeals, arguing that the evidence is insufficient to support his conviction.

² Later that evening, another neighbor returned home to discover that someone stole items from their home. The jury acquitted Nahl of burglary charges related to that incident.

DECISION

A person commits attempted burglary when they take a substantial step toward entering an occupied building without consent and with the intent to commit a crime. Minn. Stat. §§ 609.582, subd. 1 (defining first-degree burglary), .17, subd. 1 (defining an attempt) (2018). The intended crime must be something other than the illegal entry into the occupied building. *State v. Colvin*, 645 N.W.2d 449, 454 (Minn. 2002). Intent is generally proved by circumstantial evidence. *State v. Ring*, 554 N.W.2d 758, 760 (Minn. App. 1996).

In assessing the sufficiency of circumstantial evidence, we conduct a two-part analysis. *State v. Culver*, 941 N.W.2d 134, 143 (Minn. 2020). First, we identify the circumstances proved, deferring to the jury’s credibility determinations and weighing of the evidence. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). Circumstances proved are those that are consistent with the jury’s verdict. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). The absence of evidence is not a circumstance proved. *Id.* at 473. But “where circumstances are uncontroverted, come from a state witness, and are not necessarily contradictory to the verdict, they constitute the circumstances proved.” *Id.*

Second, we consider whether the circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). “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.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

The parties agree that the state proved the following circumstances: (1) Nahl walked toward K.B.-G.'s isolated house on October 4, 2018, at about 3:40 p.m.; (2) he banged on the front door and yelled frustratedly; (3) he walked around the house to the other doors and continued to bang on the doors and shout; (4) Nahl attempted to open four doors using the door handles but the doors were locked; (5) Nahl ran south into the woods when police arrived; (6) Nahl approached neighbor 1 outside his garage, and said he needed a ride; (7) neighbor 1 saw Nahl duck further into the garage when a police car drove by so that he was out of sight of the vehicle; (8) neighbor 1 retrieved a handgun from his house and Nahl left after seeing it; (9) neighbor 2 saw Nahl walk swiftly across her property and ignore her aggressively barking dogs; (10) Nahl approached neighbor 3 and asked for a ride; (11) neighbor 3 felt threatened by Nahl's appearance and agreed to give Nahl a ride; (12) Nahl appeared jittery and was wearing ripped, wet jeans, and no shoes; (13) Nahl tried to hide when neighbor 3 met a police car, and when a second police car appeared behind them, Nahl became agitated and nervous; and (14) Nahl directed neighbor 3 to a side road, got out of the car, and, after saying goodbye, walked into the woods. We agree that these circumstances either support the jury's verdict or are uncontroverted and established by a state witness. *See German*, 929 N.W.2d at 473 (defining circumstances proved to include circumstances that "are uncontroverted, come from a state witness, and are not necessarily contradictory to the verdict").

Nahl concedes that the circumstances proved support the jury's guilty verdict. But he contends that they also support a reasonable inference that he did not intend to commit

a crime in K.B.-G.'s house, he was merely trying to evade apprehension by the police.³ This argument has merit.

The state cites *State v. Roehl* to support its argument that Nahl's repeated efforts to avoid the police are circumstantial evidence that he intended to commit a crime in K.B.-G.'s house. 409 N.W.2d 44, 47 (Minn. App. 1987). In *Roehl*, a fitness center employee had closed the center for the day and locked the front door. *Id.* at 45. While cleaning the restrooms, she heard a loud banging noise from the front entrance. *Id.* When she entered a mirrored room, she saw the reflection of a man standing behind a door across the room. *Id.* She confronted the man, then ran out the front door. As she backed her car out to leave, the employee saw the man exit the center and run away down the street. *Id.* This court concluded that the circumstantial evidence was sufficient to support the intent required for third-degree burglary because the locked door had been forced open after business hours and Roehl fled after he was discovered inside the building. *Id.* at 47.

Nahl contends that *Roehl* is distinguishable, pointing out that Roehl fled after illegally entering an occupied building. Nahl has the better argument. Unlike Roehl, Nahl's apprehensive demeanor and evasive behavior was on display throughout the afternoon in question. All of the state's witnesses testified that Nahl appeared fearful. Three of the witnesses saw him attempt to hide when police cars approached. And the two witnesses with whom he spoke testified that Nahl asked for a ride away from the area. This sustained nervousness reasonably supports an inference that Nahl was avoiding law

³ The district court instructed the jury that it could find Nahl guilty if it found that he intended to commit theft or assault in K.B.-G.'s house.

enforcement in general, not because he had intended to commit a crime inside K.B.-G.'s house. While Nahl's actions at K.B.-G.'s house support the inference that he intended to enter the house without permission, the circumstances proved equally support an inference that he intended to commit a crime in the house and an inference that he wanted to avoid police detection or simply wanted a ride.

In sum, the circumstances proved support the reasonable inference that Nahl attempted to enter K.B.-G.'s house without permission to commit a crime. But the circumstances proved also support the reasonable inference that Nahl was trying to enter the house to hide from police or secure a ride from the resident. Because we do not defer to a jury's choice between reasonable inferences, we must reverse. *Silvernail*, 831 N.W.2d at 599.

Reversed.