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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0260**

State of Minnesota,
Respondent,

vs.

John Mitchell Wiseman,
Appellant.

**Filed March 27, 2023
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-6781

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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Ryan M. Pacyga, Ryan Pacyga Criminal Defense, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant seeks reversal of a final judgment of conviction for second-degree intentional murder, arguing that his conviction must be reversed because the circumstances proved are consistent with a rational hypothesis other than guilt. We disagree and affirm.

FACTS

On March 10, 2020, A.W. was found dead from three gunshot wounds in the Maple Grove house she shared with her husband, appellant John Mitchell Wiseman. Respondent State of Minnesota charged Wiseman with second-degree intentional murder for the shooting death of A.W. The district court held a jury trial from September 23 to October 15, 2021. The state's case relied entirely upon circumstantial evidence. The jury convicted Wiseman for the sole charge, and the district court imposed a guidelines sentence of 360 months in prison. Wiseman appeals, arguing that the circumstances proved are consistent with a rational hypothesis other than guilt. The following evidence was elicited at trial.

The Wiseman Family

Wiseman has two children with former wife, child 1 and child 2. Around 1999 or 2000, Wiseman and former wife separated and amicably divorced. They maintained a co-parenting relationship, with former wife raising child 1 and child 2 in Minnesota. Wiseman lived and worked primarily in China, but he supported the children financially and visited child 1 and child 2 three or four times per year.

In the late 1990s and early 2000s, Wiseman had a romantic relationship with J.S. in Las Vegas, Nevada, and they had a child together, child 3. Wiseman provided financial support for child 3.

In 2003, Wiseman and A.W. married and later had two children together: child 4 and child 5. A.W. was a Chinese citizen and interpreter for Wiseman's business in China. They primarily resided in China. In 2018, when child 4 and child 5 were elementary-school age, Wiseman, A.W., and former wife agreed that child 4 and child 5 would reside with former wife in Maple Grove and attend school nearby. Wiseman and A.W. purchased a house in Maple Grove so they would have a place to stay when they visited child 4 and child 5. When Wiseman and A.W. were in China, child 1 was the caretaker of the Maple Grove house.

In late February 2020, Wiseman and A.W. moved from China to the Maple Grove house. Wiseman, A.W., former wife, child 1, and child 2 split the responsibility of picking up child 4 and child 5 from school.

Wiseman and A.W.'s Relationship

Wiseman and A.W. had a verbally and physically volatile relationship. Wiseman had expressed a desire to divorce A.W. Former wife described the marriage between Wiseman and A.W. as "complicated" and "volatile." Child 2 described the relationship between Wiseman and A.W. as "toxic" in a police interview.

Child 5 recalled Wiseman and A.W. fighting sometimes and "usually Mom wins." Child 5 recalled Wiseman and A.W. getting into a somewhat physical fight in China.

Child 1 testified that Wiseman and A.W. would have “small bickering,” such as A.W. “often get[ting] short” with Wiseman, and Wiseman “kind of would just say ‘yes, dear.’”

Wiseman and A.W. argued primarily about business and infidelity. Wiseman and A.W. had a history of infidelity. Wiseman knew that A.W. had boyfriends when they lived in China, which angered Wiseman. Former wife testified that A.W. would get angry about possible infidelities. A.W. commonly looked through Wiseman’s phone. Child 2 told police that Wiseman attempted to make new phone passwords but that after fighting, Wiseman would give A.W. the password “every time.” While in Hong Kong, child 2 had witnessed Wiseman and A.W. fight about infidelity on a street, calling each other names and physically fighting in a “very heated” argument. Child 2 recalled that both were “obviously very angry.” While in Hong Kong, Wiseman told child 2 that he was romantically involved with another woman.

Child 2 told police that Wiseman talked about divorcing A.W., but Wiseman said that he did not “want to split it 50/50, it’s not fair, I’ve earned this.” Child 2 told police that Wiseman and A.W. were “not very good people and I know that if money wasn’t a thing my dad would have gotten a divorce.”

2018 Domestic Incident

On February 17, 2018, police responded to a call from Wiseman regarding an incident with A.W. at a Maple Grove hotel when A.W. was trying to gather the children’s travel documents. Officers arrived at the hotel room, and Wiseman reported that A.W. had left and nothing physical happened between them, although some furniture in the room was

overturned. Wiseman reported that A.W. had a “tantrum.” The officers were unable to address the situation at the time because A.W. was not present.

Later that night, Wiseman called the police again and said A.W. had returned to the hotel room and struck him in the face. Upon arrival, officers did not see any injury to Wiseman’s face. The officers testified that Wiseman and A.W. were having a disagreement, and one officer testified that Wiseman stated that “he believed that they were headed towards a divorce.” The officer testified that Wiseman and A.W. indicated they did not want to pursue anything with the police.

A.W. Fighting with J.S.

A.W. and J.S. did not get along. Former wife testified that it was her understanding that Wiseman had helped J.S. secure a home so that child 3 could stay in child 3’s school district. In February 2020, J.S. asked Wiseman via text message for additional financial help.

A.W. used Wiseman’s phone to write a text message response to J.S., telling J.S. to stop texting Wiseman. A.W. and J.S. then engaged in a fight via text message. A.W. told Wiseman he could not talk to child 3, in part because of her fight with J.S. Cell phone data from J.S. indicated J.S. was in Nevada on March 10, 2020.

Security at the Maple Grove House

The Maple Grove house was one of three homes located on a cul-de-sac, accessible by two roads. A pond is located behind the Maple Grove house, and a walking trail bisects the neighborhood.

Wiseman installed security systems throughout the house. Child 1 testified the security systems included window sensors, glass break sensors, and security cameras. Child 1 stated the alarm systems were not active most of the time because Wiseman and A.W. were having many issues with false triggering while they were out of town.

It was not unusual for the main front door to be ajar and the screen door to be closed. The garage door was never locked.

School Pickup on March 10, 2020

The family had coordinated in advance for Wiseman to pick up child 5 from school on March 10, 2020. Both Wiseman and A.W. were at the Maple Grove house before Wiseman left to pick up child 5. A.W.'s cell phone data indicated she was on a call from 1:45 p.m. until 2:26 p.m. The last movement recorded on her cell phone occurred at 2:34 p.m. Data from Wiseman's car showed that the car traveled from the Maple Grove house to the school between 3:01 and 3:13 p.m. There is a marshy area in the school parking lot between a coffee shop and the school (drainage pond). Child 5 recalled exiting the school and getting into Wiseman's car. Data from Wiseman's car showed it parked at the school at 3:13 p.m. and resumed traveling between 3:44 and 3:58 p.m., at which time it parked at the Maple Grove house.

Arrival at Maple Grove House on March 10, 2020

Child 5 testified that while traveling to the Maple Grove house, Wiseman was speaking on the phone with a person who was later identified through cell phone data as P.S.; P.S. was located in Ohio at the time. Child 5 and Wiseman arrived at the Maple

Grove house. The main front door was ajar and the screen door was closed, which was not unusual. Child 5 entered the house while Wiseman remained in the car talking to P.S.

Child 5 found A.W. in the kitchen and thought she was lying on the floor as a “joke.” Child 5 quickly realized it was not a joke and called out to Wiseman to call 911. Wiseman asked no questions and immediately called 911. At 4:00 p.m., Wiseman called 911 and stated, “My wife’s on the floor, I think she’s dead.” Wiseman also told the dispatcher that she was “not breathing.” The dispatcher transferred Wiseman to a paramedic to provide CPR instructions while paramedics traveled to the Maple Grove house.

Police Arrive at the Maple Grove House

At 4:07 p.m., Officers Jeffery Dorr, Jake Uhl, and David Anton arrived on the scene. The officers observed that one of the garage doors was open. At the front entrance, the main front door was open, and the screen door was closed.

Officer Anton entered the house and observed A.W. lying on the kitchen floor and Wiseman kneeling on a pillow and performing CPR on her. Officer Anton took over performing CPR. Officer Anton removed A.W.’s top to facilitate CPR and to enable Officer Dorr to use a heart defibrillator on A.W. Officer Uhl testified about the importance of removing loose clothing on the CPR recipient to administer the most effective chest compressions. He also testified that instructions from phone dispatchers typically direct such clothing removal because failure to do so “runs the risk of not performing adequate CPR.”

Upon removal of A.W.’s top, the officers observed “three small holes in [A.W.’s] torso.” At about 4:09 p.m., Officer Anton alerted the other officers that there was trauma.

At that point, Officer Dorr noted the defibrillator indicated that A.W. had no detectible cardiac rhythm and a “spent casing” was located nearby.

The officers “quickly came to the conclusion that it looked like [A.W.] had been shot.” The officers thereafter did not touch or move A.W.’s body.

Initial Investigation and Searches

At 4:11 p.m., Sergeant Dan Wilson arrived and ordered a protective sweep of the house. Officers Uhl and Dorr performed the protective sweep between 4:12 and 4:15 p.m., shouting “Maple Grove Police!” throughout the house to announce their presence. At 4:13 p.m., the officers announced their presence in the basement of the residence. The officers used the same volume to announce their presence during the sweep.

Officer Anton and crime-scene investigators did not observe any signs of forced entry into the house. In the kitchen, Sergeant Wilson observed three discharged cartridge casings: one on top of A.W.’s left leg, one next to the kitchen island, and one a few feet away and closer to the sliding glass door which leads from the kitchen to the deck. The deck was about ten feet off the ground, and the railing, including height off the ground, was about 14 feet off the ground. The deck did not have a ladder or stairwell access point to the ground.

Using gloved hands, Officer Dorr searched Wiseman outside the Maple Grove house. Officer Dorr used leather search gloves, which is his typical practice. He washes the gloves weekly.

Sergeant Travis Pobuda arrived at the scene. He organized a methodical neighborhood canvass to gather any information related to the homicide and instructed

officers to create a crime scene log to document “anybody that would enter or exit the crime scene and what their purpose is.”

An ambulance had arrived at the Maple Grove house and left after one minute. Wiseman asked Sergeant Pobuda, “Did she leave with the ambulance, I—I didn’t see anybody get in the ambulance.” Sergeant Pobuda said that A.W. had “passed.” Wiseman responded with, “Okay,” and had no change in facial expression. Sergeant Pobuda testified he recognized people react to trauma differently, but he did not recall seeing anyone react that way to such news in his 23 years of policing.

At approximately 5:00 p.m., Detective Dominic Wareham arrived at the Maple Grove house and observed no signs of forced entry. Detective Wareham noticed A.W. was wearing jewelry and there were many digital devices present in the house. Detective Wareham also noticed cooked rice in the rice cooker, but he observed that the rice cooker could not be used to identify when it was last used because it had a “delay start” function.

After the medical examiner’s staff moved A.W.’s body, Officer Samantha Valerius observed that bullets protruded (but did not fully exit) A.W.’s body and there was a divot in the floor in the location from which her body was removed. Based on the positioning of the protruding bullets and the divot in the floor, Officer Samantha Valerius believed “at least one of those shots is likely aimed at her or shot into her while she’s laying down.”

Law enforcement did not find a gun in the Maple Grove house or nearby. With gloved hands, Officers Tyler Huso, Scott Fillingane, and Samantha Valerius searched Wiseman’s car, which was parked in the open garage at the Maple Grove house. Officers

Fillingane and Samantha Valerius testified they did not touch a green rag found in the car. With gloved hands, Officer Huso collected the rag and placed it in a paper bag.

In the basement mechanical room, officers found a box that contained approximately \$5,000 cash and Wiseman's passport. Also in the house were several financial documents relating to accounts in excess of one million dollars and a letter dated February 2020 referring Wiseman to estate planners.

Neighborhood Canvass

Police canvassed the neighborhood to determine if nearby residents saw or heard anything unusual. No neighbors reported to law enforcement anything out of the ordinary related to the Maple Grove house, aside from the police presence.

Wiseman's Police Interview and Booking

Police interviewed Wiseman at the police station. Wiseman asked Officer Williams and Detective Tschida, "What happened to her?" After checking his cell phone, Wiseman offered that there were security cameras in the basement and said that he received an email notification that a basement camera detected sound at 3:03 and 4:15 p.m.

Wiseman consented to being swabbed for gunshot residue (GSR) and an officer placed paper bags on Wiseman's hands to protect any potential evidence. A crime-scene investigator used gloved hands to take pictures of Wiseman, take a buccal swab sample from Wiseman's mouth, remove the paper bags that covered Wiseman's hands, and perform GSR collection on Wiseman's hands. The crime-scene investigator noted Wiseman was actively perspiring during this process. Wiseman is known to sweat profusely, including from his hands.

The crime-scene investigator documented Wiseman's clothing and person, which required Wiseman to remove his own clothing. The crime-scene investigator also collected Wiseman's smart watch and all of his clothing.

Physical Forensic Evidence¹

The jury heard about various pieces of physical forensic evidence, including the autopsy, the search for the murder weapon, and GSR.

Autopsy

The medical examiner determined that A.W. was shot three times from an indeterminate range. There were no visible markers, soot stains, or gunpowder on A.W.'s skin to indicate she was shot at a close range. A.W. also had a bruise visible on the interior of her scalp on the back of her head consistent with a fall or blunt-force trauma, a pinpoint abrasion on the back of her right hand, a bruise on her right knee, and bruises on her right thigh. The examiner certified the cause of A.W.'s death as multiple gunshot wounds and classified the manner of death as homicide.

Murder Weapon

On the day of the incident, police asked former wife whether Wiseman had a gun. Former wife said, "[Wiseman and A.W.] did have a gun . . . [Wiseman], I think, has a conceal and carry thing, I don't, we don't talk about it because I am absolutely antigun, Um, but they have a gun somewhere." The morning after the incident, Wiseman called former wife and stated he did not have a gun. Former wife responded, "Oh, you don't, I

¹ Testimony established that there were no fingerprints recovered that were suitable for comparison, and that most of the DNA swabs from the scene were also uninterpretable.

wasn't sure 'cause I thought you might have." A week later, former wife told police that she was mistaken about Wiseman having a gun.

The day after the incident, officers conducted a K-9 article search approximately one hundred yards in each direction from the Maple Grove house. No gun was recovered at that time, and no guns or gun accessories were recovered at any point in the investigation.

A firearms examiner testified there was a "very high likelihood" that the bullets that killed A.W. were fired from a single gun. During the investigation, officers found no record that Wiseman had frequented gun ranges or clubs in the Maple Grove area. Officers also received no information from the State of Nevada, the Department of Alcohol, Tobacco, and Firearms, the City of Maple Grove, or Hennepin County that Wiseman or A.W. had registered gun ownership.

GSR

A forensic scientist testified that GSR is a particulate matter expelled from a firearm and the particles fuse two or three characteristic elements together: lead, barium, and antimony. If two or three elements are present and fused together in the proper shapes, those particles are characteristic of GSR. The expert testified that finding two-component particles in conjunction with three-component particles makes it more likely the two-component particles are indeed GSR that originated from a firearm. GSR particles do not break down over time and must be removed. There is no scientific consensus as to how long GSR particles remain airborne in a plume from gunfire because it depends on the environment in which the gun was fired, including airflow and the extent to which the environment is "closed."

The scientist testified about test results from samples collected from Wiseman's shirt sleeves and the green rag recovered from his car. Wiseman's right shirt sleeve had one three-component particle characteristic of GSR and one two-component particle. The left sleeve had two three-component particles characteristic of GSR and one two-component particle. The rag had five three-component particles characteristic of GSR and eight two-component particles. There was no GSR recovered from Wiseman's hands or the steering wheel or gear shift of Wiseman's car.

The scientist testified that GSR is transferable by touch, and each touch typically transfers fewer particles than that present on the original surface. Hand washing can remove most, if not all, GSR. Significant sweating on the hands can remove GSR. GSR can be removed from a sleeve by brushing or moving around.

Residue from things such as fireworks may have other element markers such as magnesium that make such items distinguishable from GSR. There were no magnesium particles in the reported particles. Nothing in the reported particles indicated the residue could be from fireworks.

Digital Forensic Evidence

A crime analyst reviewed data retrieved from cell towers, various cell phone records of relevant individuals (including Wiseman), Wiseman's smart watch, his car, and some surveillance footage.

Wiseman's Cell Phone Data

Wiseman's cell phone data indicated he received a call from P.S. on March 10, 2020, between 2:54 and 4:00 p.m. P.S. lived in Ohio at the time and owned a website called

MAXSAVIOR that “sold survival type of gear.” At 3:37 p.m., Wiseman’s cell phone data had one location data point located at the drainage pond next to the school parking lot. This data point is accurate to within about 100 feet.

Hushed Phone Application

Wiseman’s phone data indicates he sent a number of text messages and made calls using an application called Hushed Phone, which is an “app that provides kind of disposable or reusable phone numbers to a user.” Text messages recovered from Wiseman’s Hushed Phone application included messages such as: “tell your girl that I got the 800 dollar check”; “Get at me ASAP”; “Where are you and what are you doing?”; “Do you want this money?”; “it’s Ibrahim”; “You must already be on a date”; “You need to be hurrying up and not bullshitting.”

Wiseman’s phone also had a “hidden” photo album that contained screenshots taken in 2018 of various text messages between Wiseman and an unknown person:

- “I would like to live longer, his life is too short. He deserves better life..” “I am sorry to ask, but I do need your help me to return the 2.1M back soon. My situation is very hard right now.”
- “They already growing ups, they will stand at [A.W.’s] side, they love their mother a lot.” “I don’t want my kids to hate me..”
- “I am the one you should really worry about, I already paid 600K to loan shark because you holding this 2.1M, this is just not worth it.”
- “What stupid situation I am in now! You can not imagine how frustrated I am. . . .” “Just sad..”

- “You know you should NOT do this, I lock my money in your bank at much lower interest and I am paying 120K loan, does sounds right to you?”
- “I had enough.. and I am t[ir]ed of this game, so whatever you and [A.W.] want. Pick up the money, not me...”

Emails

Wiseman’s email inbox on his phone contained several emails referencing guns, including:

January 3, 2020:

The 2nd Amendment to our great Constitution of the United States gives us theRIGHTto own and carry a firearm.Here is your chance conceal & carry qualify[.]

January 6, 2020:

Since you are one of our past customers we’re going to send you a[]red laser sight for FREE. . . .
It works with any gun!

The payment for your laser sight is100% coveredby us...

All you have to do is give us your permission so we can send your free laser sight right to your door[.]

February 28, 2020:

Did you know that you can build your own silencer, at home, in the privacy of your own garage, basement or workshop and you can do it 100% legally?

Building your own silencer can increase your shooting accuracy, fun and you’ll be even more prepared for whe[n] the SHTF!

....

“How To Build Your Own Silencers At Home (100% legal).”^[2]

Some of the sender email addresses appeared to be unrelated to the topic of guns. The emails may have been from spam accounts, or the senders may not have wanted to be identified.

Note on Wiseman’s Cell Phone

A November 2016 digital note on Wiseman’s cell phone stated the following:

My wife and I have some marital problems, if we were to divorce. Are there tax implications?[]Do I need a divorce decree in each country we own property in so that the ass[e]ts in those countries can be evenly shared? Only the HK real estate is in my name (a gift from her father), two US ones are in Nevada corporations which she owns the shares to, and six Mainland [C]hina properties are in her name. If a judge orders redistribution, are there tax issues I should prepare for?

My current wife wants a green card for the time period that the kids are in middle and high school. What are the implications of this on my taxes. She will not need a job in the US, but I guess that I need to be “domiciled” there in order to sponsor her application. If I flip for a couple years from being mostly out of the US, to being mostly in the US for about 6-8 years, is there anything I can do to prepare for this. I can keep my Hong Kong job, or give it up, depending on what works best. I can get a US job working for a foreign firm or US firm, depending on what works best. I could even be self employed consultant if that works best? What works best from the tax perspective? Is there some minimum number of days I need to be out of the US in order to qualify for any t[a]x exemption? I will continue to keep the Hong Kong flat and maintain my HK permanent ID card to facilitate my return to Asia, on[c]e the kids get to college.

² An email dated March 8, 2020, included substantially the same content.

Do you have a referral list for a good divorce attorney and a good immigration attorney? I know it seems strange to be contemplating a green card application and a divorce at the same time, but such is the confused life I lead. [J]ust take it a day at a time, plan when possible, and hang on when not possible.

Maple Grove House Security Systems

A product specialist testified regarding the security cameras at the Maple Grove house. The Maple Grove house was equipped with three cameras: two cameras linked with the Total Connect application (outside back and outside front cameras) and one Honeywell camera in the basement (basement camera) linked with the Honeywell Home application. The outside front camera faced outside at the basement level.

On the day of the incident, the Total Connect application detected motion from the outside back camera at 7:22 a.m., 5:29 p.m., 6:30 p.m., 6:42 p.m., 6:55 p.m., 7:23 p.m., and 8:30 p.m. The Honeywell Home application indicated the indoor basement camera detected sound at 3:03 p.m., 4:13 p.m., 8:31 p.m., 8:36 p.m., 8:44 p.m., 8:46 p.m., 8:48 p.m., 8:49 p.m., and 8:50 p.m. The sound detections from 4:13 p.m. onward coincide with police presence in the basement of the home.

Wiseman's Smart-Watch Data

The smart-watch data indicated that from 2:07 to 2:47 p.m., Wiseman's heart rate remained at or above 100 beats per minute (sustained high heart rate) for 38 of 40 minutes, with an average heart rate of 112. An officer with first-responder training testified that an average resting heart rate is "probably between 60 and a hundred beats per minute." Testimony established Wiseman does not regularly exercise. The data also indicated that

between 3:37 and 3:48 p.m., Wiseman registered 430 steps, which coincided with an increased heart rate. The digital forensics analyst testified that time discrepancies are not uncommon between sources of data such as surveillance video and car- and phone-location tracking devices.

Surveillance Footage Along School Route

Surveillance video showed Wiseman at the McDonald's drive-thru at 3:02 p.m. and child 5 exiting the school at 3:39 p.m. on the day of the incident.

Defense Theory

At trial, Wiseman theorized that an unidentified perpetrator entered the Maple Grove house while Wiseman was picking child 5 up from school, saw A.W. cooking in the kitchen, shot her three times, and left. Wiseman established that there had recently been two burglaries in the neighborhood, and the state established that law enforcement had accounted for the perpetrators of those burglaries around the time of the incident.

On cross-examination, Wiseman questioned numerous law-enforcement personnel about their evidence-collection methods and the frequency with which they are around sources of GSR. Wiseman also established that the precautions police used to avoid contaminating evidence differed from the anti-contamination precautions the forensic analyst used in testing for GSR. Wiseman established that child 1 uses fireworks occasionally, and child 1 recalled possibly wiping his hands on the green rag after using fireworks. Child 1 also testified he works with a coworker who collects and shoots guns. The state established that between June and August 2019 (including July 4), the car did not move from its parked location at the Maple Grove house.

DECISION

Wiseman argues there was insufficient evidence to support the verdict finding him guilty of second-degree intentional murder. We cannot agree.

To convict Wiseman of second-degree intentional murder, the state was required to prove four elements beyond a reasonable doubt: (1) that A.W. was dead, (2) that Wiseman caused the death of A.W., (3) that Wiseman acted with intent to cause A.W.'s death, and (4) that the act that caused A.W.'s death took place on March 10, 2020, in Hennepin County. *See* Minn. Stat. § 609.19, subd. 1(1) (2018). Wiseman appears to challenge the sufficiency of the evidence as to only the second element—that he caused A.W.'s death.

The state relied entirely upon circumstantial evidence to prove Wiseman caused A.W.'s death. In such cases, “the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010). Wiseman argues that the circumstances proved permit rational inferences that are inconsistent with guilt, and therefore the evidence was insufficient to sustain the verdict.

Standard of Review

We follow a two-step process in reviewing the sufficiency of the evidence in a case based on circumstantial evidence. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011). In the first step, we identify the circumstances proved. *Id.* In identifying the circumstances proved, we “defer, consistent with our standard of review, 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 State.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn.

2010) (quotation omitted). In other words, we must “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Under this standard, when identifying the circumstances proved, we must “disregard testimony that is inconsistent with the verdict.” *Hawes*, 801 N.W.2d at 668-69.

In the second step, we “determine whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *Id.* at 669 (quotation omitted). While we give deference to the jury when reviewing the circumstances proved, we give “no deference to the fact finders’ choice between reasonable inferences.” *Id.* (quotation omitted). When evaluating whether the circumstances proved are consistent with a rational hypothesis of guilt and inconsistent with a rational hypothesis of innocence, we “do not review each circumstance proved in isolation.” *Andersen*, 784 N.W.2d at 332. Instead, we consider whether the circumstances proved are “consistent with guilt and inconsistent, on the whole, with any reasonable hypothesis of innocence.” *Id.* (quotation omitted).

Circumstances Proved

The state proved the following circumstances at trial. Wiseman and A.W. had a complicated, toxic, and volatile relationship. Wiseman talked about divorcing A.W. and described an equal split of assets or property in a divorce as “not fair” because he “earned this.” Wiseman’s phone contained a note from 2016 acknowledging marital problems with A.W. and considering potential tax and property implications of a divorce. Wiseman saved screenshots of messages in 2018 regarding loans, payments, a transaction with a “loan

shark,” and financial holdings involving large sums of money. Wiseman received correspondence regarding estate planners dated February 2020.

Wiseman and A.W. argued over money, infidelity, A.W. looking through Wiseman’s phone, and COVID-19. In February 2020, A.W. had looked through Wiseman’s phone, became angry at J.S., the mother of child 3, and then told Wiseman not to speak to child 3 anymore.

On March 10, the day A.W. was found dead, A.W. had a call from 1:45 to 2:26 p.m., and the last movement recorded on her cell phone occurred at 2:34 p.m. From 2:07 to 2:47 p.m., Wiseman had a sustained high heart rate for 38 minutes with an average rate of 112 beats per minute. The garage door at the Maple Grove house was opened at 2:54 p.m. and was not closed again. Wiseman left the Maple Grove house at around 3:00 p.m. to pick up child 5 from school. Wiseman stopped at a McDonald’s on the way to the school.

At 3:13 p.m., Wiseman parked at the school. He resumed driving at about 3:44 p.m. Between 3:37 and 3:48 p.m., Wiseman took 430 steps. There is a marshy area with a drainage pond near the school, and at 3:37 p.m., Wiseman’s phone registered a location data point at that drainage pond. At 3:39 p.m., child 5 exited the school. Wiseman was seated in his car at that time. The time stamps from devices can be off by a few minutes, and it is not unusual for different devices to have slightly different time stamps.

At 3:03 p.m., Wiseman’s basement camera registered a single sound alert. Wiseman’s security system had a history of false alarms. Wiseman said that he received an email about the 3:03 p.m. sound alert. At 4:12 p.m., multiple officers shouted their presence in the upstairs of the house, and the basement camera did not register any sound

alerts. Police shouted their presence in the basement at 4:13 p.m., and the basement camera registered a sound alert at 4:13 p.m. Between 7:22 a.m. and 5:29 p.m., the security cameras that detect activity on the exterior of the house did not register any activity.

When Wiseman and child 5 arrived at the Maple Grove house just before 4:00 p.m., the main front door was ajar and the screen door was closed; this was not unusual. There were no signs of forced entry into the house. Child 5 discovered A.W. in the kitchen and told Wiseman to call 911. Wiseman did so without asking questions. Wiseman began performing CPR on A.W. Chest compressions administered as part of CPR may not be as effective if loose clothing is not removed from the person receiving CPR. Wiseman did not remove A.W.'s clothing to facilitate CPR, as is typically directed by phone dispatchers.

No neighbors reported to law enforcement seeing anything out of the ordinary related to the Maple Grove house on the day of the incident. Police accounted for the whereabouts of the suspects in two neighborhood burglaries on the date of the incident. Items of value were not taken from the Maple Grove house, including jewelry A.W. was wearing, electronic devices, and the cash police found in the basement.

GSR was found on Wiseman's shirt sleeves (three three-component particles and two two-component particles). GSR was also found on the green rag recovered from Wiseman's car (five three-component particles and eight two-component particles). The two-component particles are more likely to be GSR that originated from a firearm when they are found in conjunction with three-component particles. GSR can be removed from hands through washing or significant sweating. Wiseman is known to sweat profusely, including from his hands. Three officers searched Wiseman's car, and only one of them

touched the green rag. That officer wore gloves while handling the green rag and placing the same in a paper bag. Wiseman's car was parked at the house and did not move between June to August 2019.

The gun that was used to kill A.W. was not recovered. Former wife initially reported that she believed that Wiseman owned a gun. Wiseman received emails about guns, silencers, and conceal and carry permits. Wiseman received a January 2020 email describing him as a "past customer[]" with an offer to send a free red laser sight that "works with any gun." Wiseman received a February 28, 2020 email with information on how to "build your own silencer" at home and received a substantively similar email on March 8, 2020.

Complete Chain Establishing Consistency with Guilt

The circumstances proved form a "complete chain" of events to establish that Wiseman caused A.W.'s death. To sustain a conviction based on circumstantial evidence, "the circumstances must 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 guilt." *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007) (quotation omitted).

The circumstances proved support an inference that Wiseman had a motive to kill A.W. *State v. Webb*, 440 N.W. 426, 431 (Minn. 1989) ("[A] motive helps form inferences from the circumstantial evidence, and adds credibility to the state's case."). The circumstances proved established that Wiseman had a volatile relationship with A.W., frequently argued with A.W. about infidelity and business, sent texts in 2018 referencing

a loan shark, A.W., and financial troubles, and was unhappy about the financial and other consequences of a divorce. Most recently in February 2020, A.W. had argued with J.S. and told Wiseman not to speak to child 3 anymore.

The circumstances proved support an inference that Wiseman had the means to kill A.W. From January to March 2020, Wiseman received emails about guns that included a description of him as a past customer, information on how to build a silencer, and an offer for a free red laser sight. Former wife also initially reported that she believed that Wiseman owned a gun.

The circumstances proved support an inference that Wiseman had an opportunity to kill A.W. and that he took that opportunity. *State v. Schneider*, 597 N.W.2d 889, 895 (Minn. 1999) (considering motive and opportunity to kill to support an inference that defendant killed the victim). Wiseman was the last person to see A.W. alive. On the day she was killed, A.W. had a call from 1:45 to 2:26 p.m., and the last movement recorded on her cell phone occurred at 2:34 p.m. Overlapping that same window of time, from 2:07 to 2:47 p.m., Wiseman was at the Maple Grove house and had a sustained high heart rate for 38 minutes with an average rate of 112 beats per minute.

The circumstances proved support an inference that Wiseman had an opportunity to discard the murder weapon and that he did so. Wiseman stopped at a McDonald's before picking up child 5 from school. While parked at the school, between 3:37 and 3:48 p.m., Wiseman took over 400 steps. At 3:37 p.m., Wiseman's phone registered a location data point at that drainage pond near the school.

The circumstances proved support an inference that Wiseman knew A.W. was dead because he had killed her, or that he intended that she die. Wiseman followed child 5's directive to call 911 upon returning to the Maple Grove house without asking questions. Wiseman did not follow typically directed protocol to remove loose clothing before administering chest compressions to A.W. Wiseman exhibited an atypical reaction when advised by law enforcement that A.W. was dead.

The circumstances proved support the inference that Wiseman handled the murder weapon. GSR was found on Wiseman's shirt sleeves (three three-component particles and two two-component particles) and on the green rag recovered from Wiseman's car (five three-component particles and eight two-component particles). Because there were both two-component and three-component GSR particles, the GSR more likely originated from a firearm than some other source.

Lastly, the circumstances proved do not allow for an inference that a third-party killed A.W. There were no signs of forced entry into the house. Wiseman's security system had a history of false alarms, and the basement camera did not register sound alerts while police were at the house until police shouted their presence in the basement. The security cameras did not register activity on the exterior of the house while Wiseman was picking up child 5. Police received no reports of unusual neighborhood activity related to the Maple Grove house, had accounted for neighborhood burglary suspects, and noted that A.W.'s jewelry, cash, and other valuables were not taken from the Maple Grove house. These circumstances proved support inferences that the 3:03 p.m. sound alert was a false alarm and that no third-party entered the Maple Grove house and killed A.W.

On the whole, the circumstances proved form a complete chain of events, consistent with the jury's guilty verdict, establishing that Wiseman caused A.W.'s death and exclude a reasonable inference other than guilt. *See Hawes*, 801 N.W.2d at 669 (stating that "we consider whether the circumstances proved are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence" (quotation omitted)).

Wiseman argues that certain evidence elicited at trial is reasonably indicative of a rational hypothesis other than guilt. Specifically, Wiseman argues the following:

- the open garage door and the other unlocked doors supports an inference that a burglary occurred, rather than an inference Wiseman staged the house;
- the 3:03 p.m. security alert supports an inference that a burglary occurred, rather than an inference of a false alarm;
- stopping at McDonald's does not require an inference that Wiseman stopped in order to create an alibi or dispose of the murder weapon;
- the state of the kitchen supports an inference that A.W. was killed while cooking, not that the scene was staged;³
- Wiseman's voluntary disclosure of the security alert email suggests an inference that Wiseman was concerned and wanted to help, not an inference he was trying to create an alibi;
- GSR on Wiseman's sleeve could be from CPR, not from shooting A.W.;

³ At oral argument, counsel for Wiseman also suggested that the police's discovery of cooked rice in the rice cooker is a circumstance proved that suggests that A.W. was alive and cooking at the time Wiseman departed the Maple Grove house to pick up child 5. But trial testimony also established that the rice cooker had a delayed start function, and police therefore could not use the rice cooker as reliable evidence in constructing a timeline of events. Thus, these facts only establish as circumstances proved that cooked rice was present in a rice cooker and that the rice cooker had a delayed start function. No reasonable inference regarding time of death can be drawn from these circumstances proved.

- GSR on the green rag could have transferred from police, fireworks, or Child 1's coworker who frequented shooting ranges;
- the history of domestic problems between Wiseman and A.W. were not recent enough to infer that marital discord motivated A.W.'s death; and
- the lack of a murder weapon supports an inference that the third-party perpetrator took it with them when fleeing the scene.

While Wiseman's arguments offer alternative explanations associated with evidence elicited at trial, these arguments are insufficient to overturn a conviction based on circumstantial evidence under our standard of review. Many of Wiseman's inferences are based on hypothetical possibilities requiring speculation and conjecture, which cannot form a reasonable basis to support a hypothesis other than guilt. *See Tscheu*, 758 N.W.2d at 860-61 (concluding that the appellant did not show evidence was insufficient to sustain the verdict where it was theoretically possible that a third person was involved in and committed the crime, but there was physical forensic evidence connecting the appellant to the victim and the appellant pointed to no physical evidence in the record to provide reasonable support for his alternative hypothesis); *see also State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995) (noting that a successful challenge to the sufficiency of the evidence must be based on evidence in the record). In addition, Wiseman's arguments "attempt[] to break the evidence into discrete pieces in an effort to establish that, when viewed in isolation, these evidentiary fragments support a reasonable hypothesis other than guilt," but we cannot "review each circumstance proved in isolation." *Andersen*, 784 N.W.2d at 332. And, to the extent that Wiseman's alternative interpretations of the circumstances proved construe conflicting evidence in favor of the defense's theory, such an approach,

too, is inconsistent with our standard of review. *Tscheu*, 758 N.W.2d at 858 (explaining that under our standard of review, we “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses”).

We specifically address Wiseman’s arguments regarding the 3:03 p.m. sound alert and the GSR evidence. First, Wiseman argues that the 3:03 p.m. basement security alert provides reasonable support for a hypothesis that an unknown third party killed A.W. We acknowledge that the 3:03 p.m. sound alert was a circumstance proved, but we cannot consider that circumstance in isolation; rather we derive reasonable inferences from that circumstance proved in relation to the other circumstances proved. *See Andersen*, 784 N.W.2d at 332 (stating the circumstances proved must be considered “on the whole” (quotation omitted)). At trial, the state established Wiseman’s security system frequently registered false alarms, that police shouting upstairs (where A.W. was evidently shot) during the protective sweep of the house did not trigger the basement security alarm, and the 4:13 p.m. sound alert coincided with the police shouting in the basement. The state also introduced evidence that the cameras aimed at capturing activity outside the front and back of the residence did not register activity around the time of the 3:03 p.m. alert. Neighborhood canvassing revealed no suspicious activity related to the Maple Grove house, the Maple Grove house had no signs of forced entry, and valuables including jewelry A.W. was wearing, electronic devices, and the cash police found in the basement were not removed from the Maple Grove house. We must defer “to the jury’s acceptance of the proof of these circumstances and [the jury’s] rejection of evidence in the record that

conflicted with the circumstances proved by the State.” *Id.* at 329 (quotation omitted). The only reasonable inference based on the circumstances proved as a whole is that the 3:03 p.m. sound alert did not indicate an intruder had entered the Maple Grove house.

Second, Wiseman argues as a reasonable alternative inference from the circumstances proved that the GSR recovered from his shirt sleeves and the green rag originated from sources other than his handling of the murder weapon. To the extent this inference relies on reconciling conflicting evidence, we again must construe the evidence in the light most favorable to the verdict and assume the jury believed the state’s witnesses. *Tscheu*, 758 N.W.2d at 858. We must assume the jury believed the state’s witnesses who testified that there was no visible evidence of GSR on A.W.; that while searching Wiseman, Officer Dorr wore gloves that he washes weekly; that the only officer who handled the green rag wore gloves while doing so; that GSR was not found on the steering wheel or gear shift of Wiseman’s car that officers searched; that nothing about the GSR particles recovered from the green rag suggested they originated from fireworks; and that Wiseman’s car was idle from June to August 2019. These specific circumstances proved preclude an inference that the GSR originated from a source other than the murder weapon, and they are inconsistent on the whole with any rational hypothesis except that of guilt. *See id.* (“[I]nconsistencies in the state’s case or possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable.”).

Accordingly, we conclude that, pursuant to our standard of review, the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis of innocence.

Affirmed.