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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1174**

State of Minnesota,
Respondent,

vs.

Detwan Cortell Allen,
Appellant.

**Filed August 18, 2025
Reversed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CR-23-777

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Frisch, Chief Judge; and
Bjorkman, Judge.

BJORKMAN, Judge

Appellant challenges his conviction of aiding and abetting second-degree intentional murder in connection with the death of A.B. Appellant argues that the evidence is insufficient to support the conviction, asserts various trial errors, and argues that the

district court abused its discretion by denying his motion for a new trial. Because we agree that the evidence is insufficient as a matter of law, we reverse.

FACTS

On December 27, 2022, shortly before midnight, 22-year-old A.B. was shot and killed in the alley behind his St. Paul home as he walked home from work. His mother and some neighbors heard the shots and saw two men run down the street in front of A.B.'s home, then walk back up the street. A dark four-door sedan pulled up, they got in, and the car drove off. A neighbor called 911. Responding officers confirmed A.B.'s death and recovered seven nine-millimeter cartridge casings in the alley near his body.

During the ensuing investigation, police recovered surveillance footage from various homes and businesses that captured a patchwork of video and audio of A.B.'s neighborhood around the time of the shooting. They also recovered highway surveillance footage tracking the suspect car's passage from St. Paul to Minneapolis, and later found the car parked in Minneapolis. Police ultimately connected the car, which had been stolen, to three young men: appellant Detwan Cortell Allen, Arteze Kinerd, and S.T. Respondent State of Minnesota charged Allen with aiding and abetting second-degree intentional murder.¹

At Allen's jury trial, the state presented hundreds of exhibits and testimony from dozens of witnesses. A significant focus of its case was the extensive surveillance footage

¹ Kinerd and S.T. were also charged with aiding and abetting second-degree intentional murder in connection with A.B.'s death. S.T. was acquitted following a bench trial that took place before Allen's trial. Kinerd pleaded guilty as charged about two months after Allen's trial.

from the night of A.B.'s shooting, both from A.B.'s neighborhood and from Kinerd's apartment building, which is a few blocks from where the suspect car was recovered. Allen, Kinerd, and S.T. are recognizable throughout from their stature and attire.

The footage from that night begins at Kinerd's apartment building, showing Allen, Kinerd, and S.T. leaving the building together at about 10:15 p.m. All three wore jackets and head coverings, and Allen wore gloves.

The footage from A.B.'s neighborhood, depicted below with A.B.'s house marked,²



² The depicted satellite map is a trial exhibit that we have redacted for privacy and cropped slightly for ease of use.

begins around 11:50 p.m. A dark sedan turned west onto A.B.'s street, made a U-turn and turned its headlights off, and then parked on the street in front of A.B.'s house. Allen, Kinerd, and S.T. got out of the car and gathered on the sidewalk by the commercial building next door to A.B.'s house. As they did so, A.B. approached his house from the south and turned into the alley behind it, disappearing from view behind the south side of the commercial building. Allen, Kinerd, and S.T. moved around the commercial building and toward the alley, with Allen in the lead, beckoning the other two to follow him. The three ran into the alley, disappearing from view only seconds after A.B., just before 11:54. All four men were then out of view of any surveillance cameras.

Shortly thereafter, a nearby camera captured audio of eight gunshots. Starting at 11:54:15, there were four gunshots in a row, a seven-second pause, then three more shots, then a three-second pause, and then a final shot. The last shot was fired at 11:54:30.

At 11:54:26, Allen reappeared by the car. He got in and drove off without turning on the headlights. About 15 seconds later, Kinerd and S.T. arrived in the spot where the car had been, then began moving up and down the streets on foot. Meanwhile, Allen drove the car around the neighborhood with the headlights off. After about three minutes, Kinerd and S.T. were once again in front of A.B.'s house when the car pulled up with headlights on, the two men got in, and the car left. The three men walked into Kinerd's Minneapolis apartment building together at about 12:27 a.m., with Kinerd and S.T. having shed outer layers of clothing.

To facilitate its presentation of the surveillance footage, the state presented the testimony of the lead investigator on the case. The investigator described how police collected and compared footage obtained from different locations and how they accounted for discrepancies in the timestamps from different surveillance cameras to piece together a timeline of the events of that night. The investigator indicated that, based on the footage, he believed Allen was in the alley when the shots started and was “involved in [A.B.’s] murder.” But he also acknowledged that there is no surveillance footage of the alley where A.B. was shot and agreed that, based on the timeline from the footage in the surrounding areas, “it’s possible” that Allen “was never in the alleyway at the time that [A.B.] was shot.”

In addition to the surveillance footage, the state presented evidence that Kinerd and Allen are friends who communicate and spend time together frequently. But police found no evidence that they or S.T. knew A.B. Regarding the scene of the shooting, the state presented photographs showing A.B. on the ground in the alley by the southwest corner of his garage. Police found various items of personal property on and around A.B., as well as fresh footprints in the snow on both sides of A.B.’s house from the alley to the street—one set consistent with a person running along the east side of the house and two sets of footprints along the west side of the house.

The state also presented evidence that, on January 3, 2023, police searched Kinerd’s apartment and found a jacket and shoes that appeared to be those Allen wore the night of A.B.’s shooting. That same day, they recovered from Kinerd a gun that forensic testing confirmed was the one used to shoot A.B. DNA matching Allen was found on and around

the steering wheel of the stolen car used the night of A.B.'s shooting; neither his DNA nor his fingerprints were found on the gun. And the state presented, as evidence of intent and a common scheme or plan, evidence that Allen and Kinerd kidnapped and robbed a man at gunpoint on December 9, 2022, with Allen holding the gun during that incident.

At the close of trial, the district court instructed the jury on the elements of aiding and abetting second-degree intentional murder. It also instructed the jury, at the state's request, on extended accomplice liability. And it instructed the jury, at Allen's request, on the elements of aiding and abetting second-degree felony murder, including the elements of attempted aggravated robbery as a predicate felony offense. The jury found Allen guilty of aiding and abetting second-degree intentional murder and not guilty of aiding and abetting second-degree felony murder. The district court sentenced Allen to 367 months' imprisonment.

Allen appeals.

DECISION

Allen principally argues that insufficient evidence supports his conviction. Where, as here, a conviction rests on circumstantial evidence, we conduct a two-step analysis to determine the sufficiency of the evidence. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, we identify the "circumstances proved." *Id.* (quotation omitted). To do so, we assume the jury believed the state's witnesses and disbelieved any defense witnesses. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). Circumstances proved are those that are consistent with the jury's verdict. *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). The absence of evidence is not a circumstance proved. *Id.* at 158. But "where circumstances

are uncontroverted, come from a state witness, and are not necessarily contradictory to the verdict, they constitute circumstances proved.” *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

Next, we independently identify the reasonable inferences that can be drawn from the circumstances proved, affording “no deference to the jury’s choice between reasonable inferences.” *Segura*, 2 N.W.3d at 155. The circumstances proved must be “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Williams*, 3 N.W.3d 68, 74 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. Apr. 16, 2024). In other words, it 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. Petersen*, 910 N.W.2d 1, 7 (Minn. 2018) (quotation omitted); *see also Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (stating that circumstantial evidence must “point unerringly to the accused’s guilt” (quotation omitted)). If it does not—if the circumstances proved are consistent with a reasonable hypothesis other than guilt—then reversal is warranted. *Petersen*, 910 N.W.2d at 7.

Allen was convicted of second-degree intentional murder under an aiding abetting theory of liability. A person commits second-degree intentional murder when they “cause[] the death of a human being with intent to effect the death of that person or another, but without premeditation.” Minn. Stat. § 609.19, subd. 1(1) (2022). Under the aiding-and-abetting statute, “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures

the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2022). A defendant “intentionally aids” an offense if they (1) knew their alleged accomplices were going to commit a crime, and (2) intended their “presence or actions to further the commission of that crime.” *Segura*, 2 N.W.3d at 156 (quotation omitted). Various circumstances may indicate this required state of mind, “including the defendant’s presence at the scene of the crime, a close association with the principal before and after the crime, a lack of objection or surprise under the circumstances, and defendant’s flight from the scene of the crime with the principal.” *Id.* (quotation omitted). But “inaction, knowledge, and passive acquiescence” are insufficient. *Bernhardt*, 684 N.W.2d at 477 (quotation omitted).

Allen argues that the evidence does not prove the requisite mental state—that he knew the others were going to murder A.B. and intended to aid the commission of that crime. We begin our analysis by viewing the record in the light most favorable to the guilty verdict to identify the following circumstances proved. Allen and Kinerd were friends and frequently in contact. They were together the night of A.B.’s shooting, leaving Kinerd’s Minneapolis apartment building with S.T. around 10:15 p.m. By about 11:50 p.m., the three of them arrived in A.B.’s St. Paul neighborhood in a stolen car and turned off the car’s headlights as they made a U-turn and parked on the street in front of A.B.’s house. They gathered on the sidewalk in front of the commercial building next door. Then, as A.B. entered the alley behind the commercial building, Allen beckoned to his compatriots and the three ran around the commercial building and followed A.B. into the alley. Moments later, eight shots were fired, six of them hitting A.B. and causing his death. As the last shot was fired, Allen emerged by the parked car and drove away with the headlights

off. Kinerd and S.T. appeared about 15 seconds later and roamed the streets for a few minutes, while Allen continued to drive around the neighborhood with headlights off, before the three connected and drove back to Minneapolis. Before entering Kinerd's apartment building, Kinerd and S.T. removed outer layers of clothing, despite the winter weather. Less than a week later, Kinerd had the gun that shot A.B. on his person.

The circumstances proved also include the following aspects of the state's evidence, which are uncontroverted and not necessarily contradictory to the verdict. Police found A.B.'s personal property, including his wallet (with cash inside) and his phone, on or near his body. They observed one set of fresh footprints in the snow between A.B.'s house and the commercial building next door, starting in the alley and moving toward the street, which were consistent in spacing and shape with a person running through the snow. And they found two sets of fresh footprints in the snow on the other side of A.B.'s house, moving from the alley near A.B.'s body to the street. While DNA evidence confirmed that Allen drove the car used the night of A.B.'s shooting, police did not find Allen's DNA evidence or fingerprints on the gun used to kill A.B. that was later recovered from Kinerd.

These circumstances, particularly the number and timing of the shots fired at A.B., lead unerringly to the conclusion that at least one person committed second-degree intentional murder by intentionally causing A.B.'s death. And Allen's close association with Kinerd, presence at the crime scene, and departure from the scene with Kinerd and S.T. is consistent with the inference that Allen intentionally aided that offense. Allen acknowledges as much. But he contends the circumstances proved, viewed as a whole, fail to also exclude all reasonable inferences other than guilt. *See Petersen*, 910 N.W.2d at 7.

He contends they support a reasonable inference that he did not intentionally aid in A.B.'s murder because he "was not present at the time Kinerd murdered A.B." We agree.

It is reasonable to infer from the circumstances proved that Kinerd—the only person linked to the gun—was the one who brought the gun to the scene and fired it. It is also reasonable to infer that Allen, while likely having some nefarious intent as he led the pursuit of A.B. into the alley, was surprised when Kinerd pulled out the gun and started shooting at A.B., and immediately fled. The eight shots were fired over a period of 15 seconds. We can also infer that Allen ran east from where A.B. was shot at the southwest corner of the property, around the garage, and through the snow along the length of the property to emerge by the car only 10 to 15 seconds after the first shot was fired. He immediately drove off alone. The other two men did not return to the street for another 15 seconds. And the circumstances proved indicate that they took a different route, one that ran directly from A.B.'s body to the front of his house.

That Allen remained in the neighborhood for a few minutes and then collected his friends, rather than leaving them in the cold, does not make it unreasonable to infer that he did not intend to aid the murder that had just occurred. Returning for his friends may amount to aiding an offender after the fact—which was not a charged offense—but such conduct is not inconsistent with the reasonable inference that Allen did not aid and abet the murder. Nor does the context that, only weeks earlier, he participated with Kinerd in an armed robbery in which he held a gun.³ See *State v. Profit*, 591 N.W.2d 451, 467-68 (Minn.

³ Allen challenges the admission of this other-acts evidence on appeal. But even assuming it was admissible and considering it in our analysis, the state's evidence is insufficient.

1999) (considering effect of other-acts evidence on reasonableness of inferences from circumstances proved). While both of these circumstances make an inference of guilt more reasonable, they do not make an alternative inference of innocence unreasonable.

In sum, the circumstances proved support a reasonable inference that Allen intentionally aided the second-degree intentional murder of A.B., but they also support a reasonable inference that he did not. As such, the evidence is insufficient to prove beyond a reasonable doubt that Allen intentionally aided the murder of A.B.

The state urges an alternative basis for affirming Allen’s conviction—extended accomplice liability. Under this theory of liability, if a person intentionally aids an offense, their liability also extends to include “any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” Minn. Stat. § 609.05, subd. 2 (2022). The state argues that sufficient evidence establishes Allen’s guilt under this theory because the evidence proves that Allen “intended to aid” an attempted aggravated robbery of A.B. and A.B.’s murder was “reasonably foreseeable as a probable consequence of that crime.” This argument is unavailing.

If anything, the circumstantial evidence of guilt is more tenuous for extended accomplice liability. Aggravated robbery involves taking another’s personal property while armed with a dangerous weapon. Minn. Stat. §§ 609.24, .245, subd. 1 (2022). And attempting to commit that crime involves taking a “substantial step” toward committing it. Minn. Stat. § 609.17, subd. 1 (2022). Even viewing the evidence in the light most favorable to the verdict, we conclude that it does not establish these elements beyond a reasonable

doubt. Allen and Kinerd had previously committed at least one robbery. But while the police considered robbery in investigating A.B.'s death, there is no evidence that a robbery was intended or attempted on the night in question. To the contrary, uncontroverted evidence shows that the shooting began only seconds after the three men followed A.B. into the alley, and that A.B. retained his personal property, including his wallet with cash in it and his cell phone. Importantly, the jury was asked to determine whether Allen aided and abetted second-degree felony murder premised on the predicate offense of attempted aggravated robbery. The jury found Allen not guilty under this theory, a verdict consistent with the evidentiary shortfall. Accordingly, the state's argument does not convince us that the jury's guilty verdict for aiding and abetting second-degree intentional murder does or could rely on a theory of extended accomplice liability.

In sum, because the circumstances proved are consistent with a reasonable inference other than guilt, the evidence is insufficient as a matter of law to convict Allen of aiding and abetting second-degree intentional murder. Accordingly, we reverse his conviction.⁴

Reversed.

⁴ In addition to challenging the sufficiency of the evidence, Allen also argues that (1) the district court abused its discretion by admitting other-acts evidence, (2) the prosecutor committed plain misconduct by eliciting an officer's opinion as to guilt and by misstating the law of accomplice liability, (3) the district court abused its discretion in its jury instruction on accomplice liability, (4) the cumulative impact of trial errors deprived him of a fair trial, and (5) the district court abused its discretion by denying his motion for a new trial based on newly discovered evidence. Because we reverse Allen's conviction for insufficient evidence, we need not address these other arguments.