STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2158

State of Minnesota,
Respondent,

vs.

Jabar Pedro Morarend,
Appellant

Filed December 2, 2019
Affirmed
Florey, Judge

Freeborn County District Court
File No. 24-CR-18-133

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

David Walker, Freeborn County Attorney, Abigail H. Lambert, Assistant County Attorney, Albert Lea, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and John Smith, Judge.*

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

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

Appellant argues that his conviction for second-degree burglary must be reversed because the state failed to prove beyond a reasonable doubt that he entered the home with the intent to commit a theft. We affirm.

FACTS

At approximately 6:31 a.m. on January 26, 2018, officers from the Albert Lea Police Department responded to a call of a burglary in progress. On that morning, C.C. was asleep in her home when she was awoken by pounding at her front door and the ringing of her doorbell. C.C. saw a "girl" and "guy" outside her home, both wearing hoods. Fearing her home was about to be broken into, C.C. put on snow pants over her pajamas, grabbed her purse off the nightstand by her bed, got into her truck, and drove away.

C.C. drove around the block, and, as she approached her home, observed the female in the street. The female told C.C. she was having a fight with her boyfriend, and C.C. told her that she was going to call the police. C.C. saw the female immediately make a call on her cell phone. C.C. pulled into her neighbor's driveway and honked her horn until he came out to assist her. The neighbor then called 911.

Police officers arrived and escorted C.C. back to her home, where she observed that a sliding glass patio door was standing wide open. It had not been open when she left. Another patio door was bowed and would not close properly. C.C. did not have trouble shutting it prior to the break-in. The only thing that she noticed was amiss inside her home

were two open bedroom nightstand drawers, which had been closed when she left that morning.

It had snowed the previous evening, and officers observed a single pair of shoeprints with a distinctive tread coming down the stairs from the upper patio. The shoeprints had a waffle pattern in the front and a horseshoe shape with an oval in the center at the heel. Officers tracked the shoeprints through the neighboring yards, across a highway where they discovered a recently discarded black sweatshirt along the side of the road, along a dirt road and abandoned railroad track, through a wooded area, across a creek, and finally to the porch of a house on 10th Street in Albert Lea.

In the basement of the 10th Street home the officers discovered appellant Jabar Pedro Morarend hiding behind a sheet hung to divide the room, behind which was also a running washing machine. The officers removed a pair of dark jeans with thistles on it from the washing machine, which sounded like it was at the beginning of a wash cycle. Next to the washing machine, near where Morarend was hiding, officers located a pair of shoes that matched the tread-pattern they were tracking through the snow. The shoes were wet and also contained burrs and thistles. Finally, officers discovered a pair of pocket knives on top of the washing machine. Morarend was sweaty, red in the face, and appeared to have been recently active. He was wearing too-large sweatpants that wouldn't stay up and poorly fitting shoes that belonged to the resident of the basement, which made it difficult for Morarend to walk.

Morarend was arrested and ultimately charged with second-degree burglary. A jury found him guilty, and the district court sentenced him to 51 months in prison. This appeal follows.

D E C I S I O N

Morarend argues that the circumstantial evidence was insufficient to support his conviction for second-degree burglary. This court uses a two-step analysis when reviewing a challenge to the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the court must identify the circumstances proved. *Id.*

> We defer to the [fact finder's] acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State . . . We construe conflicting evidence in the light most favorable to the verdict and assume that the [fact finder] believed the State's witnesses and disbelieved the defense witnesses.

Id. at 598-99 (quotations omitted). Next, "we must determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt . . . We give no deference to the fact finder's choice between reasonable inferences." *Id*. at 599 (quotations omitted).

Morarend argues that there was insufficient evidence to show that he possessed the intent to commit a crime independent of trespass, which is necessary to support a charge of burglary. Minn. Stat. § 609.582, subd. 2 (2016) ("Whoever enters a building without consent and with intent to commit a crime . . . commits burglary . . . ."); *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002) ("For a burglary conviction to stand, the state must prove that a defendant intended to commit some independent crime other than trespass.").

Because nothing was removed from C.C.'s home, Morarend asserts that the evidence only establishes that he committed a trespass.

In burglary cases, the intent to commit an independent crime must generally be proven by the circumstances surrounding the defendant's acts. *State v. Ring*, 554 N.W.2d 758, 760 (Minn. App. 1996), *review denied* (Minn. Jan. 21, 1997). The following circumstances were proven at trial:

> (1) An unknown man and woman banged on C.C.'s front door and rang her doorbell early in the morning, while it was still dark out, with hoods drawn tight around their faces;
> (2) C.C., believing the unknown man and woman were about to break into her home, fled in her vehicle;
> (3) after C.C. told the woman she was going to call the police she saw the woman immediately place a call on her cell phone;
> (4) when the police arrived the unknown man was gone;
> (5) when C.C. returned to her home with the police one patio door was completely open, and another was damaged and wouldn't close properly;
> (6) an officer testified that it would be possible to break into the patio doors using a knife because neither door locked with a dead bolt;
> (7) two nightstand drawers had been opened;
> (8) officers tracked the single set of footprints with a distinct tread from C.C.'s upper patio back to the home on 10th Street;
> (9) at the 10th Street home, Morarend was discovered hiding behind a sheet in the basement, wearing someone else's pants and shoes, and two pocket knives were on top of the washing machine that did not belong to the resident of the basement;
> (10) the tread on the shoes discovered next to Morarend in the basement matched the footprints followed by the officers from C.C.'s upper patio to the home on 10th Street.

Morarend first asserts that the circumstances proved are consistent with the reasonable-alternative hypothesis that only the female entered C.C.'s home, but this hypothesis fails to account for the fact that only a single set of footprints were found on the stairs leading down from the upper patio, which matched the tread on the shoes discovered next to Morarend in his basement hiding place.

Next, Morarend asserts in his pro se brief that he only went into C.C.'s home to get out of the cold. However, there is no evidence in the record to substantiate his assertion on appeal that he was merely seeking to escape the cold. Therefore, there was no circumstance proved at trial that can support this hypothesis.

Finally, Morarend asserts that the circumstantial evidence is consistent with the reasonable alternative hypothesis that he was merely a trespasser high on methamphetamine and therefore lacked the intent to commit an independent crime in C.C.'s home. First, as with his hypothesis related to the cold, no evidence in the record supported this hypothesis. Next, Morarend's hypothesis fails to account for the circumstance proved that someone other than C.C. opened her nightstand drawers after she fled her home. In *State v. Roehl*, this court found sufficient circumstantial evidence of intent to commit an independent crime where a "locked door had been forced open at night after business hours [and] Roehl fled after being found inside the building . . . ." 409 N.W.2d 44, 47 (Minn. App. 1987).

Similarly, in *State v. Witte*, the supreme court stated that "the fact nothing was taken from the building does not destroy the reasonableness of an inference that at the time of entry an intent to commit theft in fact existed." 158 N.W.2d 266, 268 (Minn. 1968). There,

the supreme court found that along with direct evidence of an unauthorized entry, the fact that papers had been strewn about, indicating that the owner's desk, file cabinet, and two brief cases had been ransacked, were sufficient to support a finding of an intent to commit a theft. *Id*.

Here, the fact that there was: an unauthorized entry; the nightstand drawers had been opened; Morarend fled the scene; and two pocket knives were found on top of the washing machine that his pants were being washed in are all consistent with the hypothesis that Morarend entered C.C.'s home with the intent to commit a theft and are inconsistent with any reasonable innocent hypothesis.

Affirmed.