

*This opinion is nonprecedential except as provided by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
A22-0384**

State of Minnesota,
Respondent,

vs.

Emilio Nieto,
Appellant.

**Filed October 24, 2022
Reversed
Bryan, Judge**

Nobles County District Court
File No. 53-CR-20-43

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

Joseph M. Sanow, Nobles County Attorney, Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from conviction of conspiracy to import a controlled substance across state borders, appellant disputes the sufficiency of the circumstantial evidence

presented against him. Because we conclude that the evidence is insufficient to exclude a rational hypothesis consistent with innocence, we reverse the conviction.

FACTS

On January 14, 2020, respondent State of Minnesota charged appellant Emilio Nieto with first-degree possession of methamphetamine. The state later amended its complaint to add charges of importing controlled substances across state borders and conspiracy to import controlled substances across state borders. The case proceeded to a bench trial, and the district court found Nieto guilty of all three charges. The district court only adjudicated Nieto guilty of importing a controlled substance across state borders.

Nieto appealed, challenging the denial of his pretrial motion to suppress and contesting the sufficiency of the evidence to support the conviction. This court affirmed the district court's denial of Nieto's motion to suppress but reversed the convictions for importing controlled substances across state borders, concluding that there was insufficient evidence to show that Nieto constructively possessed the drugs. *State v. Nieto*, Case No. A21-0209, 2021 WL 5872870, *3, 5-6 (Minn. App. Dec. 13, 2021). On remand, the district court adjudicated Nieto guilty of the conspiracy offense.¹ Nieto now appeals the conspiracy conviction. *See* Minn. R. Crim. P. 28.02, subd. 2(1) (allowing appeal as of right from any adverse final judgment). Given the issues raised, we first summarize the evidence presented at the trial regarding the elements of conspiracy to import a controlled substance

¹ The district court also vacated the possession offense.

across state borders. We also note the circumstances that we previously determined had been proved by the trial evidence.

The state introduced testimony of the arresting officer, the video recording of this officer's body camera, which included statements that Nieto made during the encounter with this officer, and the audio recording of Nieto's post-arrest interview with law enforcement officers. According to the testimony of the arresting officer, in the early morning hours of January 13, 2020, he saw a vehicle engaging in unusual behavior. After observing potential traffic violations, he initiated a traffic stop. Nieto was the passenger. The driver, Nieto's aunt, consented to a search of the vehicle. Nieto also offered his backpack for the officer to search, which did not contain any controlled substances or other incriminating evidence. The officer recovered 25 pounds of methamphetamine from a backpack and from the rear of the car. On the video from the body camera, Nieto is heard saying that he was on the trip with his aunt "to help her . . . to drive." During his conversation with the officer, Nieto explained that he was nervous because he had never been arrested before and because he did not understand English very well.

Nieto met with police after his arrest. During the interview, Nieto stated that he lived in Mexico, but occasionally stayed with his aunt in Arizona. He explained that his aunt called him and invited him to join her on a trip to Las Vegas. Nieto agreed to accompany her to Las Vegas. When asked why he was in the car with his aunt, Nieto stated "[t]o help her drive," followed by the statement, "And no Minnesota." Nieto said that his aunt picked him up in Yuma, Arizona, and they drove past Las Vegas, into Utah. Nieto stated when they were in Utah, he reached into the rear passenger compartment behind his

seat and moved his aunt's backpack. Nieto described the bag as "heavy," and it was then that his aunt told him that the backpack was filled with "sh-t," which Nieto understood to be illegal drugs. Nieto's aunt also told him at this point that she planned to drive to Owatonna, Minnesota, to deliver the drugs to someone there.

Nieto only admitted knowledge of the drugs in the backpack and claimed that he never actually saw them or touched them. He also declared his aunt was the only one "dealing with all the drugs in the car," she was the only one in contact with someone in Minnesota, and he did not receive any money. Nieto agreed that he stayed with his aunt after learning of the drugs in the backpack because he was "too far away" from home. At one point, Nieto also joked with the investigating officer, agreeing that he stayed with his aunt because he wanted to see snow in Minnesota.

This court previously reviewed the trial record and determined that the evidence presented established the following circumstances:

Nieto accompanied his aunt on a trip to assist her with driving. The trip started in Arizona. Nieto was unaware of the existence of the drugs in the vehicle at the start of the trip. When Nieto and his aunt reached Utah, Nieto picked up the grey backpack belonging to his aunt and discovered that it was heavy. Nieto's aunt informed him that the backpack contained "sh-t" and Nieto understood his aunt's statement to mean that the backpack contained methamphetamine. An officer in Minnesota stopped the vehicle. The vehicle was driven by Nieto's aunt and Nieto was sitting in the front passenger seat. Inside of the vehicle, the officer discovered two backpacks: an empty black backpack belonging to Nieto located on the middle rear passenger seat and a gray backpack filled with methamphetamine located on the floor behind the passenger seat. Methamphetamine was also discovered in the rear of the vehicle.

Nieto, 2021 WL 5872870, at *4. As noted above, we concluded that these circumstances did not support a conviction for importing a controlled substance because Nieto never possessed the drugs in the backpack or the car:

The record contains no evidence that Nieto actually drove the vehicle at any time or otherwise controlled the movement of the drugs, including after he discovered the presence of drugs in the vehicle. And none of the circumstances proved compel such an inference to the exclusion of all others

Here, the circumstances proved do not preclude the rational hypothesis that Nieto did not drive the car after he became aware of the presence of drugs in the vehicle. The circumstances proved permit the rational hypothesis that Nieto remained a passenger in the car as it traveled to Minnesota and exercised no dominion or control over the drugs or transport of those drugs. The circumstances proved permit the rational hypothesis that Nieto did not exercise any control over the movement of the drugs in the vehicle. Because the circumstances proved do not preclude a rational hypothesis inconsistent with guilt, we reverse Nieto's conviction for importing controlled substances across state borders.

Id. at *5 (citation omitted).

On remand, the district court adjudicated Nieto guilty of the conspiracy charge and made the following findings regarding an agreement between Nieto and his aunt that the district court inferred from the evidence presented at trial:

[T]here was an inferred agreement between [Nieto] and his aunt. [Nieto] knew they would be crossing state borders as he knew they were driving from Utah to Minnesota. [Nieto] intended to “help” drive from Utah to Minnesota with the controlled substance in the vehicle. Whether “help” meant driving the vehicle himself or providing directions or keeping the aunt awake is immaterial. [Nieto] knowingly intended to assist the aunt in transferring the controlled substances across state borders.

The district court also found that “[t]he aunt both possessed the controlled substances and physically drove the vehicle across state lines,” which were both overt acts in furtherance of the crime. Nieto was sentenced to a term of 89 months in prison for conspiracy to import controlled substances. This appeal follows.

DECISION

Nieto argues that there was insufficient evidence to convict him of conspiracy to import controlled substances. We conclude that although the circumstances proved could be consistent with the inference that Nieto affirmatively agreed to import controlled substances, this is not the only rational inference a fact finder can make. The circumstances proved are also consistent with innocence, permitting the rational hypothesis that Nieto remained a passenger, exercised no dominion or control over the vehicle or drugs, and did not intend to commit a crime or assist his aunt to commit a crime.

To establish a criminal conspiracy, the evidence must objectively indicate that the defendant agreed with at least one other person to commit a crime and that one conspirator performed an overt act in furtherance of the agreement. *State v. Hatfield*, 639 N.W.2d 372, 377 (Minn. 2002); *see also* Minn. Stat. § 609.175 (2020) (requiring proof of an agreement and at least one overt act in furtherance of the conspiracy). More specifically, the state must show “both knowledge of an agreement and evidence of [the defendant’s] intent to commit the crime or act that is the object of the conspiracy.” *State v. Kahnau*, 622 N.W.2d 552, 556 (Minn. 2001). “Proof of a formal agreement to commit a crime is not required for a conspiracy conviction,” as long as the evidence “objectively indicates an agreement.” *Hatfield*, 639 N.W.2d at 376 (citing *State v. Burns*, 9 N.W.2d 518, 521 (Minn. 1943))

(concluding that “a conscious and intentional purpose to break the law is an essential ingredient of [a conspiracy]”). “[V]icarious intent is not sufficient to make a party a conspirator.” *Burns*, 9 N.W.2d at 521.

When, as here, “the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” we apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). To review the sufficiency of circumstantial evidence, we conduct a two-part analysis. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). First, we “identify the circumstances proved,” deferring to the jury’s credibility determinations. *Id.* at 329. Second, we consider whether the circumstances proved are consistent with guilt and inconsistent with a rational hypothesis other than guilt. *Id.* at 329-30. “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) (quotation omitted). In this second step, no deference is given to the jury’s verdict. *Loving*, 891 N.W.2d at 643.

In this case, the evidence presented proved the following circumstances. Nieto accompanied his aunt on a road trip beginning in Arizona. When Nieto began the road trip, he believed they were traveling to Las Vegas. At that time, Nieto agreed to help his aunt drive during that trip. Nieto and his aunt did not stop in Las Vegas as he initially agreed. While Nieto’s aunt drove into Utah, Nieto discovered that his aunt’s backpack was heavy.

At this point in time, Nieto's aunt told him the backpack contained illegal drugs, and she intended to drive to Minnesota to deliver the drugs to someone in Owatonna. According to Nieto, he remained with his aunt because he was "too far away" from home. In addition, the parties do not contest the following facts regarding Nieto's conduct after the traffic stop. Nieto was nervous during the traffic stop but stated that was because he had never been arrested before. Nieto voluntarily offered his backpack for the officer to search, shared the details of his aunt's plan that were known to him, and voluntarily offered the passcode to unlock his phone.

The state argues that these circumstances are consistent with guilt. The rational hypothesis test, however, requires more. For the state to prevail on appeal, the circumstances proved must rule out or negate reasonable inferences consistent with innocence. Here, the state introduced no evidence that Nieto ever drove the vehicle, ever saw the drugs in the backpack or had any knowledge about the drugs recovered from other compartments in the vehicle. There is no evidence that Nieto had any contact with anyone in Minnesota or even knew who the intended recipient was or where the delivery was to occur. Thus, the circumstances proved do not preclude the alternative inference identified by Nieto: Nieto remained a passenger after discovering his aunt's true intentions because he felt he was too far from his home in Mexico to return there by himself. Because the circumstances are consistent with this inference, the state has not shown that Nieto intended to form an agreement with his aunt to transport methamphetamine. We, therefore, reverse Nieto's conviction of conspiracy to import a controlled substance across state borders.

Reversed.