



## JUDICIAL TRAINING & EDUCATION UPDATE

Dedicated to the training & education of the Minnesota trial bench and attorneys



### CRIMINAL MOTIONS FOR JUDGMENT OF ACQUITTAL

Ten Basic Facts & One Special Rule for Circumstantial Evidence Cases:  
The Mandatory Two-Step “*Al-Naseer/Silvernail*” Analysis

**INTRODUCTION:** Motions for Judgment of Acquittal are made in almost all criminal cases. There are 10 basic facts that apply to all motions for acquittal and one special rule for circumstantial evidence cases that judges MUST follow. The Court of Appeals recently clarified the proper analysis the District Court MUST apply when the state’s case is based largely or entirely on circumstantial evidence. Failure to apply the correct analysis could result in reversal. *State v. Sam*, 859 N.W.2d 825 (Minn.App.2015).

- DEFENSE MOTION AT CLOSE OF EVIDENCE:** At the close of evidence for either party, the defendant may move for, or the court on its own may order, a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction. *Minn Rule of Crim Pro 26.03, subd 18(1)(a)*.
- THE TEST FOR DIRECT EVIDENCE CASES:** A defendant’s motion for acquittal is procedurally equivalent to a motion for a directed verdict. The test for granting a motion for a directed verdict is whether the state’s evidence is sufficient to sustain a conviction, after viewing the evidence and all resulting inferences in favor of the state. *State v. Slaughter*, 691 N.W.2d 70, 74-75 (Minn. 2005) (a district court may deny a defense motion for acquittal if "the state’s evidence, when viewed in the light most favorable to the state, was sufficient to sustain a conviction.)
- JURY MUST HAVE A REASONABLE DOUBT:** A motion for directed verdict should be granted only where the evidence, viewed in the light most favorable to the government, is such that a reasonably minded jury must have a reasonable doubt as to the existence of any of the essential elements of the crime charged. *See, e.g. United v. Richards*, 967 F.2d 1189, 1196 (8<sup>th</sup> Cir. 1992).
- WHEN MOTION MADE AFTER STATE HAS RESTED – PROHIBITION AGAINST RESERVING RULING:** The motion for judgment of acquittal is typically made by the defense at the end of the state’s case after the state has rested. If made at that time the court may not reserve decision of the motion. *Rule of Crim Pro 26.03, subd 18(2)*. The prohibition against reserving ruling on a motion to acquit is important. Given the presumption of innocence and the state’s burden to prove the offense, a defendant has no obligation to present any evidence and should not be put at risk of providing evidence that fills gaps in the state’s case. *State v. Slaughter*, 691 N.W.2d 70, 75 (Minn. 2005).
- WEIGHT & CREDIBILITY OF EVIDENCE:** The sufficiency of the evidence standard does not contemplate the court determining the weight and credibility of the evidence but instead requires the court to view the evidence in the light most favorable to the state. *Id*.

6. **IF MOTION MADE AT END OF DEFENSE CASE – COURT MAY RESERVE RULING:** If the motion is made at the close of defendant's case, the court may reserve ruling on the motion, submit the case to the jury, and rule before or after verdict. If the court grants the motion after a verdict of guilty, the court must make written findings stating the reasons for the order. *Rule of Crim Pro 26.03, subd 18(2)*.
7. **COURT MAY ASK FOR CLARIFICATION:** When a motion for judgment of acquittal is made, it is proper for the trial judge to ask the defense attorney where proof beyond a reasonable doubt is lacking.
8. **REOPENING STATE'S CASE:** It is within the district court's wide discretion to allow the state to reopen its case after a motion for judgment of acquittal is made. *U.S. v. Rouse*, 111 F.3d. 561, 573 (8<sup>th</sup> Cir. 1997). The state can only reopen after a motion for judgment of acquittal is made if the request to do so is made before the trial court rules on the motion. Once the motion is granted, jeopardy has attached and the state is precluded from reopening.
9. **MOTION FILED AFTER JURY RETURNS A VERDICT OF GUILTY:** If the jury returns a verdict of guilty, a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged or within any further time as the court may fix during the 15-day period. If the court grants the defendant's motion, the court must make written findings stating the reasons for the order. A motion for judgment of acquittal is not barred by a failure to move before deliberations. *Rule of Crim Pro 26.03 (18)*.
10. **CIRCUMSTANTIAL EVIDENCE:** While the law does not prefer direct evidence to circumstantial evidence, *see 10 Minnesota Practice*, CRIMJIG 3.05 (2014), a conviction based on circumstantial evidence warrants heightened scrutiny. See section below for a more detailed explanation.

## **SPECIAL RULE FOR CIRCUMSTANTIAL EVIDENCE CASES:**

### The Mandatory Two-Step "Al-Naseer/Silvernail" Analysis

**1. GENERAL RULE:** A conviction based on circumstantial evidence requires that the circumstances proved be consistent with a defendant's guilt and inconsistent with any other rational or reasonable hypothesis. Accordingly, when the state's case is based entirely or largely on circumstantial evidence, the district court MUST apply the two-step "Al-Naseer/Silvernail" analysis in deciding a motion for judgment of acquittal. *State v. Al-Naseer*, 788 N.W.2d 469, 473-474 (Minn. 2010) and *State v. Silvernail*, 831 N.W.2d 594, 598-599 (Minn. 2013). This is often referred to as the "Rational Hypothesis Review Standard."

**2. RATIONALE:** Cases based on circumstantial evidence require careful review because of the "danger legitimately associated with circumstantial evidence—that the trier of facts may leap logical gaps in the proof offered and draw unwarranted conclusions based on probabilities of low degree." Minnesota's two-step "Al-Naseer/Silvernail" analysis (i.e. rational hypothesis review standard) "allow[s] the appellate court to oversee whether the jury's inferences from circumstantial evidence were in fact rational and sufficient to establish proof beyond a reasonable doubt." *State v. Tschou*, 758 N.W.2d 849, 871 (Minn. 2008).

**Note:** The trial court on a motion for judgment of acquittal, and the appellate court in reviewing the claim on appeal, apply the same basic standard of review.

**3. WHAT IS THE “RATIONAL HYPOTHESIS” (Al-Naseer/Silvernail) ANALYSIS?** As recently clarified in *State v. Sam*, 859 N.W.2d 825 (Minn.App.2015) to determine whether the circumstances proved are consistent with defendant's guilt and inconsistent with any other reasonable hypothesis, the district court MUST apply the following two-step *Al-Naseer/Silvernail* analysis:

1. The court must determine the circumstances proved, giving due deference to the fact-finder and construing the evidence in the light most favorable to the verdict. *Id.* at 853.
2. The court must determine whether the circumstances proved are consistent with guilt and inconsistent with any other rational or reasonable hypothesis. *Id.*
  - a) The court must evaluate what circumstances the jury *likely* determined were proved, defer to the jury's *likely* determinations, and then independently determine whether those circumstances give rise to any reasonable inferences inconsistent with guilt. This analysis assumes the jury believed the State's witnesses and disbelieved the defense witnesses. *State v. McCormick*, 835 N.W.2d 498 (Minn. App. 2013) (see footnote #2) (circumstantial evidence was “complex and voluminous”.)
  - b) This analysis requires that the court look at the circumstances proved not as isolated facts but rather as a “complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt.” *State v. Sam*, at 833.
  - c) The court must determine whether ANY rational or reasonable inference is inconsistent with guilt. While the State need not demonstrate that the circumstantial evidence excludes *all* inferences other than guilt, *all reasonable* inferences must be consistent with guilt. *Id.*

**4. MUST THE COURT GIVE A “RATIONAL HYPOTHESIS” JURY INSTRUCTION? NO – but...**

In *Holland v. United States*, 348 U.S. 121, 139-40 (1954), a unanimous Supreme Court determined that in circumstantial evidence cases, a jury instruction on reasonable doubt obviated the need for an additional “rational hypothesis” instruction. Minnesota adopted the *Holland* rule and in 1980 eliminated the “rational hypothesis” jury instruction. *State v. Tscheu*, 758 N.W.2d 849, 870-71 (Minn. 2008). “The absence of a jury instruction concerning the limitations on the use of circumstantial evidence elevates the importance of the district court’s proper evaluation of a motion for judgment of acquittal...” *State v. Sam*, footnote #2.

**Powerful Appellate Comments:** Several recent Minnesota appellate opinions have commented on the efficacy of incorporating the *Al-Naseer and Silvernail* analysis back into jury instructions, or in the alternative, to adopt the Federal District Court jury instruction on “Reasonable Doubt” which states:

*Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. Fed. Judicial Ctr., Pattern Criminal Jury Instructions, Instruction 21.*

**Judicial Suggestion:** Given the importance of this issue, I encourage judges to read these appellate opinions as a guide in the exercise of your judicial discretion. (See [State v. Sam, footnote #2](#) for citations to 3 appellate discussions on the efficacy of jury instructions for circumstantial evidence & reasonable doubt.)

**EXAMPLE: Constructive Possession of Drugs Conviction  
Based on Circumstantial Evidence “REVERSED”.**

STATE v. SAM, 859 N.W.2d 825 (Minn.App.2015): In *State v. Sam*, a jury convicted defendant of fifth-degree possession of a controlled substance with a firearm enhancement. Methamphetamine was found in the glove compartment of the car owned by a third party and driven by defendant. There was one front seat, non-owner, passenger. The gun was found in the center console of the car that defendant was driving. Defendant moved for judgment of acquittal after the verdict arguing that there was insufficient circumstantial evidence to convict him. The District Court did not apply the *Al-Naseer/Silvernail* analysis, denied the motion and defendant appealed. After applying the “rationale hypothesis” review standard (i.e. the “*Al-Naseer/Silvernail*” analysis,) the Court of Appeals reversed defendant’s conviction, stating:

1. Because the state’s case was based on circumstantial evidence the district court was required to apply the two step *Al-Naseer/Silvernail* analysis to the defendants motion for judgement of acquittal.
2. There was no direct evidence of defendant having actually possessed either the methamphetamine or the 9mm Baretta handgun. The state’s contention rests entirely on circumstantial evidence that defendant “constructively possessed” the drugs and the gun.
3. To prove “constructive possession,” the state must prove either that the methamphetamine was in a place under defendant’s exclusive control to which other people do not normally have access, or that there is a strong probability that defendant was, at the time of discovery, consciously exercising dominion and control over the methamphetamine. The state must prove that defendant exercised dominion and control over the contraband, not merely the place where the contraband is located.
4. Although M.S. 152.028 (2014) permits the inference that a driver has knowing possession of everything in the vehicle, it does not negate other reasonable inferences. Therefore, the permissive inference in M.S. 152.028 does not change the *Al-Naseer/Silvernail* analysis.
5. Without speculating about all of the possible ways that the methamphetamine found in the car's glove compartment might have gotten there, it is sufficient to observe that at least two reasonable inferences are inconsistent with appellant's guilt.
  - a) First, the methamphetamine in the glove compartment may have been there when defendant borrowed the car from the owner. The record contains no evidence to negate either this inference or its reasonableness.
  - b) Second, it is reasonable to infer that the passenger may have put the methamphetamine in the glove compartment. He had methamphetamine on his person, while defendant did not. There is no evidence to negate this inference nor is there evidence from which to conclude that, if the passenger put the methamphetamine in the glove compartment, defendant knew of that.
6. In this case, no direct evidence tied defendant to possession of the contraband. The fact that defendant lied about his name and was driving a vehicle with contraband inside, without more, is insufficient to eliminate all reasonable inferences inconsistent with defendant's guilt – CONVICTION REVERSED.

**RESOURCES:** Carolyn Schmidt, President of Minn. Association of Criminal Defense Lawyers (MACDL); Reid Golden, Winthrop & Weinstein; U of M Extern Jeff Phillips; *State v. Sam*, 859 N.W.2d 825 (Minn.App.2015).

Hon. Alan F. Pendleton, Anoka County District Court, Anoka, Mn 55303; 763-422-7309