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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0707**

State of Minnesota,
Respondent,

vs.

Ryan Michael Beach,
Appellant.

**Filed May 7, 2018
Affirmed in part, reversed in part, and remanded
Hooten, Judge**

Crow Wing County District Court
File No. 18-CR-16-3969

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his conviction of receiving stolen property, arguing that there
was insufficient circumstantial evidence and that the prosecutor committed misconduct

during closing arguments by shifting the burden of proof to him. Appellant also argues that his sentence for trespassing on school property should be vacated because it was a part of the same behavioral incident as the receiving-stolen-property conviction. We affirm in part, reverse in part, and remand.

FACTS

Staff at Central Minnesota Senior Care in Brainerd contacted the police on September 7, 2016, because a motorized wheelchair belonging to one of their residents had been stolen from the garage where it was being stored. The next day, a Brainerd resident contacted the police to report that a riding lawnmower and BMX bicycle had been stolen from his garage. On September 14, Officers Rachel Boggs and Paul Rosier went to appellant Ryan Beach's apartment building in response to a complaint from Beach's neighbor about possible stolen property.

When Officers Boggs and Rosier arrived at the apartment building, they contacted the building's owner. The owner told police that he was allowing Beach to store a wheelchair in the garage associated with the apartment building. With the owner's permission, the officers entered the garage and found a motorized wheelchair, riding lawnmower, and BMX bicycle. The wheelchair's serial number matched that of the wheelchair stolen from Central Minnesota Senior Care, and the bicycle and lawnmower matched the Brainerd resident's description of what had been stolen from his garage.

The officers then went to Beach's apartment. A woman answered the door and said that Beach was not home, but the officers observed Beach running out a different door of

the apartment. The officers gave chase for about a block and a half, at which point Beach ran into a school and hid in the second floor restroom where he was later found and arrested.

The state charged Beach with receiving stolen property in violation of Minn. Stat. § 609.53, subd. 1 (2016), trespass on school property in violation of Minn. Stat. § 609.605, subd. 4 (2016), and fleeing a peace officer in violation of Minn. Stat. § 609.487, subd. 6 (2016). Beach pleaded guilty to trespassing on school property and fleeing a peace officer, but went to trial on the receiving-stolen-property charge. A jury found him guilty. The district court sentenced him to 23 months in prison for receiving stolen property and a concurrent 90 days in jail for the trespass. No sentence was imposed for the fleeing-a-peace-officer charge. This appeal follows.

D E C I S I O N

I.

Beach first argues that there was insufficient circumstantial evidence to prove beyond a reasonable doubt that he knew or had reason to know that the property was stolen. We review convictions based on circumstantial evidence using heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Heightened scrutiny is applied when all of the evidence is circumstantial or when the disputed element was proved exclusively by circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 603–04 (Minn. 2013) (Stras, J., concurring). Since the knowledge element was proved by circumstantial evidence, we apply heightened scrutiny.

Heightened scrutiny involves two steps. The first is to identify the circumstances proved. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The second is to “examine

independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *Id.* (quotations omitted). Once we have performed both steps we will maintain a guilty verdict only if “there are no other reasonable, rational inferences that are inconsistent with guilt.” *Id.* (quotations omitted). That means that the “[c]ircumstantial evidence must form a complete chain that, 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.” *Id.* But we will not overturn a conviction “on the basis of mere conjecture.” *Id.* (quotations omitted). And we view the evidence presented as a whole. *Id.* at 623.

In our examination of the circumstances proved, we “defer to the jury’s acceptance of the proof of these circumstances as well as the jury’s rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* at 622. The neighbor testified that he had seen the stolen property hidden in some bushes in the yard by Beach’s apartment for several days before the police came. He also noted that he had seen children playing with the wheelchair in his yard. And he explained that at the time he believed that the property had been stolen and that Beach was the one hiding it. The building owner testified that, before it was put in the garage, the wheelchair was being kept under a tarp or quilt in the yard. The owner also testified to telling Beach’s girlfriend that they could store the wheelchair in the garage. Police found the stolen property in that garage. Beach fled on foot when police came to his apartment.

In examining the reasonable inferences that can be drawn from these circumstances, we consider inferences consistent with guilt and innocence and are not required to defer “to the fact finder’s choice between reasonable inferences.” *Id.* (quotations omitted). It is

reasonable to infer that Beach knew or had reason to know that the property was stolen. *See State v. Wiberg*, 296 N.W.2d 388, 397 (Minn. 1980) (citing favorably to *Husten v. United States*, 95 F.2d 168, 170 (8th Cir. 1938), which held that unexplained possession of recently stolen property is sufficient to support a jury finding that defendant knew it was stolen). Based upon the fact that the wheelchair had been covered outside in the bushes of the building under a quilt or tarp and was later found by the police in the building's garage, along with a stolen lawnmower and BMX bike, it is reasonable to infer that Beach was trying to hide the stolen property. It is also reasonable to infer that Beach ran from the police because he knew that he had the stolen property. *See State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) (explaining that fleeing from police can be “suggestive of consciousness of guilt” (quotation omitted)).

Beach asserts that there are reasonable inferences inconsistent with guilt. He argues that it is possible to infer that the property was abandoned and he found it, or that he bought it from a pawn shop, or that he received it from someone without realizing that it was stolen. He also argues that it is reasonable to infer that he fled from police not because of consciousness of guilt, but rather because of his prior criminal history and his dislike for interacting with police. But to overturn Beach's conviction, there would have to be a “reasonable, rational inference[]” that is inconsistent with guilt. *Hanson*, 800 N.W.2d at 622 (quotation omitted). We see no such inference here. While the scenarios that Beach suggests are technically possible, when looking at the evidence as a whole, we conclude that the only reasonable, rational inference is that Beach knew he was in possession of stolen property. *See id.* at 623 (explaining that on appeal the evidence is to be viewed as a

whole); *see also State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (stating that a conviction based on circumstantial evidence will not be overturned on the basis of an alternative theory that is not plausible or supported by the evidence).

II.

Beach's next argument is that the prosecutor committed misconduct during closing argument by shifting the burden of proof onto him. Beach did not object to the prosecutor's closing arguments at trial, so we review this claim using the modified plain error standard. *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). The burden is on Beach to show that there was plain error. *Id.* at 302. If Beach is able to show that the misconduct constituted plain error, then the burden shifts to the state to show that the "misconduct did not prejudice [his] substantial rights." *Id.* at 300. If Beach's substantial rights were affected, then we must decide whether "fairness and the integrity of the judicial proceedings" require a reversal. *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010).

Beach complains about specific parts of the state's closing argument. Beach quotes portions of the closing arguments where the prosecutor said that Beach's conduct did not make sense and that there was no legitimate reason for him to have the wheelchair. He also takes exception to a series of rhetorical questions, including when the prosecutor asked why someone would hide a wheelchair in the bushes if it was not stolen. Beach asserts that these statements from the prosecutor gave the jury the impression that he had to provide legitimate explanations to the jury for his actions when, in actuality, he had no such burden.

We begin by examining whether there was plain error. "An error is plain if it was clear or obvious." *Ramey*, 721 N.W.2d at 302 (quotations omitted). "Usually this is shown

if the error contravenes case law, a rule, or a standard of conduct.” *Id.* “[M]isstatements of the burden of proof are highly improper and constitute prosecutorial misconduct.” *State v. Coleman*, 373 N.W.2d 777, 782 (Minn. 1985). But a “prosecutor may pose rhetorical questions to the jury, asking it to use common sense to determine whether the defense presented is reasonable.” *State v. Bauer*, 776 N.W.2d 462, 474 (Minn. App. 2009). And a “prosecutor may draw reasonable inferences from [the] evidence presented at trial.” *Id.* (quotations omitted). The prosecutor in this case asked questions that were rhetorical in nature and invited the jury to draw conclusions or make inferences about Beach based on his conduct. That is the nature of argument, especially when dealing with circumstantial evidence. *See Hanson*, 800 N.W.2d at 622 (discussing how, with circumstantial evidence, juries make inferences based on the circumstances proved). Importantly, the prosecutor did not insinuate that Beach should have testified or called any witnesses. *See Griffin v. California*, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233 (1965) (holding that the Fifth Amendment “forbids . . . comment by the prosecution on the accused’s silence”). We conclude that the prosecutor’s arguments did not misstate the burden of proof or shift it onto Beach, so there was no error, plain or otherwise, and Beach’s argument fails.

III.

Beach’s final argument is that he should not have been sentenced for both receiving stolen property and trespassing on school property. “[I]f a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” Minn. Stat. § 609.035, subd. 1 (2016). This has been interpreted to mean that a defendant cannot receive “multiple sentences for crimes that arise from a single

behavioral incident.” *State v. Bauer*, 792 N.W.2d 825, 827 (Minn. 2011). When a defendant receives multiple sentences for a single behavioral incident, the lesser sentence must be vacated. *See State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (stating that Minn. Stat. § 609.035 “contemplates that a defendant will be punished for the most serious of the offenses arising out of a single behavioral incident” (quotations omitted)). Determining whether offenses are part of a single behavioral incident is a mixed question of law and fact that requires us to review the facts for clear error and the “application of the law to those facts de novo.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014).

According to Beach, because he trespassed on school property in reaction to the police coming to talk to him about the stolen property, both offenses arose out of the same behavioral incident. In this case, we apply the avoidance-of-apprehension doctrine to determine whether the offenses were in fact part of a single behavioral incident. *See State v. Gibson*, 478 N.W.2d 496, 497 (Minn. 1991). Under this doctrine, a defendant cannot be given more than one sentence if he (1) committed the second offense substantially contemporaneously to the first and he (2) did so “in order to avoid apprehension for the first offense.” *Id.*

We must first determine whether the trespass was substantially contemporaneous to Beach receiving the stolen property. In *Gibson*, the defendant was convicted of both leaving the scene of an accident and driving while impaired after he fled a car accident on foot. *Id.* The supreme court vacated the leaving-the-scene conviction because the two crimes occurred substantially contemporaneously to one another. *Id.* In this case, the neighbor and the apartment building owner both reported seeing the stolen property at least

several days before the police came to talk to Beach. Determining whether the two crimes happened substantially contemporaneously therefore depends on whether we look to when Beach first received the property or whether we consider Beach's ongoing possession of the property.

State v. Banks helps to answer this question. 331 N.W.2d 491 (Minn. 1983). In *Banks*, the defendant was convicted of illegally possessing a firearm and fleeing from police. *Id.* at 492. The supreme court concluded that the two offenses were not part of a single behavioral incident. *Id.* at 494. In doing so, the supreme court noted that the defendant indicated that he fled from police because he did not have a driver's license. *Id.* The court also suggested that he may have been trying to avoid apprehension for previous forgery offenses that he had committed. *Id.* Because the defendant had reasons other than the illegal possession of a firearm to flee from the police—meaning that the possession and fleeing offenses could each be explained without “necessary reference” to the other—the supreme court concluded that the two offenses were not part of a single behavioral incident. *Id.* In other words, the defendant failed the second part of the test later articulated in *Gibson*, which requires that he commit the second offense “in order to avoid apprehension for the first.” *Gibson*, 478 N.W.2d at 497. Importantly, the *Banks* court did not reach its conclusion on the basis of the defendant's possession of the firearm commencing prior to the fleeing-from-an-officer offense, meaning his argument did not fail the first step of the *Gibson* test requiring that the offenses occur substantially contemporaneously. In fact, the supreme court noted that “[t]he possessory offense was a continuing offense.” *Banks*, 331 N.W.2d at 494. Similarly, Minn. Stat. § 609.53 criminalizes not only receiving stolen

property but also possessing, transferring, buying, or concealing stolen property, so we understand it to be a “continuing offense” as well. See *State v. Lawrence*, 312 N.W.2d 251, 253–54 (Minn. 1981). That means that when we perform a substantially contemporaneous analysis with a possessory crime, we consider ongoing possession, rather than the time at which the defendant initially received the object. Accordingly, we conclude that the continuing offense of receiving stolen property was occurring substantially contemporaneously with the fleeing-from-a-peace-officer and trespassing-on-school-property offenses, thereby satisfying the first step of the avoidance-of-apprehension doctrine.

The next question is whether Beach committed the trespass in order to avoid apprehension for receiving stolen property. The fact that Beach started fleeing from the police when they came to his door right after finding the stolen property at his apartment building supports Beach’s contention that he fled in order to avoid apprehension for receiving stolen property. Moreover, unlike in *Banks*, the record here does not provide additional reasons explaining why Beach wanted to avoid the police. We conclude that Beach was fleeing from the police in order to avoid apprehension for receiving stolen property. Accordingly, we determine that the trespassing sentence (but not the conviction), as the lesser of the two sentences, should be vacated by the district court on remand.

Affirmed in part, reversed in part, and remanded.