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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1765**

State of Minnesota,
Respondent,

vs.

Keith Ward Hohlen,
Appellant.

**Filed July 29, 2019
Affirmed
Reyes, Judge**

Benton County District Court
File No. 05-CR-18-933

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

Philip K. Miller, Benton County Attorney, Rebecca P. Wolters, Assistant County Attorney,
Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the state presented insufficient evidence to support his
misdemeanor conviction of failure to stop for a collision. We affirm.

FACTS

In May 2018, M.C. traveled by car on a highway in Benton County. A truck driver began following M.C. closely, collided with the back of his vehicle, drove past him, and made an obscene hand gesture without stopping to investigate the collision. The collision caused damage to the bumper of M.C.'s vehicle.

Law enforcement identified appellant Keith Ward Hohlen as the driver of the truck that struck M.C. The state charged appellant with failure to stop for a collision under Minn. Stat. § 169.09, subd. 2 (2016). After a trial, a jury found appellant guilty. The district court sentenced appellant to 90 days in jail, imposed a \$1,000 fine, stayed all but two days of jail time and \$300 of the fine, and placed appellant on probation for one year. This appeal follows.

D E C I S I O N

Appellant argues that the state failed to present sufficient evidence to sustain his conviction because the circumstances proved support two rational hypotheses inconsistent with guilt: (1) appellant's truck never collided with M.C.'s car and (2) if the vehicles did collide, appellant was not aware of the collision. We disagree.

A jury found appellant guilty under Minn. Stat. § 169.09, subd. 2, which provides that

The driver of any motor vehicle involved in a collision shall immediately stop the motor vehicle at the scene of the collision, or as close to the collision as possible, and reasonably investigate what was struck. If the driver knows or has reason to know the collision involves damage to a vehicle driven or attended by another, the driver in every event shall remain at

the scene of the collision until the driver has fulfilled the requirements of this section as to the giving of information.

In order to convict appellant, the state had to prove beyond a reasonable doubt that appellant drove the truck involved in the collision, appellant failed to stop at the scene of the collision and reasonably investigate what was struck, and he failed to remain at the scene until he had given M.C. required information. *See id.* at subd. 14(c) (2016) (providing that any person who violates subdivision 2 is guilty of a misdemeanor).

When reviewing a claim of insufficient evidence, we carefully review the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). We assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The parties dispute whether the direct or circumstantial evidence standard of review applies. Direct evidence is evidence based on personal knowledge or observation that, if true, proves a fact without inference or presumption. *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Appellant argues that the circumstantial-evidence standard applies because the state had to prove that appellant knew of the collision, and knowledge is usually proved by circumstantial evidence. *State v. Mattson*, 359 N.W.2d 616, 617 (Minn. 1984). The state argues that appellant’s obscene hand gesture

and driving conduct provide sufficient direct evidence that he knew a collision had occurred. However, the hand gesture alone does not prove that appellant knew of the collision without an inferential step. We agree with appellant's argument that the state relied on circumstantial evidence to prove knowledge.

When the challenged conviction is based, at least in part, on circumstantial evidence, we apply a two-step analysis. *Harris*, 895 N.W.2d at 600-01. First, we identify the circumstances proved "by resolving all questions of fact in favor of the jury's verdict," in deference to the jury's credibility determinations. *Id.* at 600. Second, we independently consider the "reasonable inferences that can be drawn from the circumstances proved." *Id.* at 601. The circumstances proved must, as a whole, "be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* We will not overturn a verdict based on mere conjecture or speculation. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010). We give great deference to the jury's verdict because it is in the best position to evaluate circumstantial evidence. *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014).

The state proved the following circumstances at trial. On May 8, 2016, M.C. traveled westbound on Highway 10 in an Oldsmobile Cutlass at the posted speed limit of 65 miles per hour. At the convergence of Highway 10 and County Road 29, M.C. moved his vehicle into the left lane. A truck merged onto the highway from County Road 29 and began following M.C.'s vehicle closely. The driver of that truck struck the back of M.C.'s car and continued driving, directing an obscene hand gesture at M.C. as he passed. M.C. took a picture of the truck's license plate, which law enforcement used to identify appellant

as the registered owner of the vehicle. The officer then showed M.C. a photo of appellant, and M.C. identified him as the driver of the vehicle.

M.C. felt the impact from the collision and stated that “it was absolutely obvious” that the truck struck him. The collision left scrapes on M.C.’s bumper and the bumper “got[] pushed in.” The bumper had cracks in multiple locations from the collision. M.C. also testified that his vehicle had no damage prior to the collision, and the officer who assisted M.C. testified that M.C.’s vehicle had “fresh” damage.

The circumstances proved lead to a rational hypothesis that appellant collided with M.C.’s car and left the scene without investigating. Appellant’s first alternative hypothesis is that he never collided with M.C.’s car. He contends that the damage to M.C.’s bumper could have been there before the collision. But this is contrary to the circumstances proved, including M.C.’s testimony that his car had no damage prior to the collision. He also argues that there was no photographic evidence of damage to appellant’s truck to prove that it collided with M.C.’s car. But this is not a circumstance proved. Appellant’s first alternative hypothesis is inconsistent with the circumstances proved.

Appellant’s next alternative hypothesis is that, even if he did collide with M.C.’s vehicle, he was not aware of the collision. He contends that his obscene hand gesture supports a rational theory that he did not know there was a collision and was merely expressing his anger at the slower-moving vehicle. But nothing in the circumstances proved indicates that appellant could not see how close he drove up to M.C. It is not a reasonable inference to be drawn from the circumstances proved, when they are viewed as a whole, that appellant did not know of the collision. Appellant also asserts that, even if

he did know of the collision, he did not know of any resulting property damage. But if appellant knew of the collision, the statute requires him to stop and reasonably investigate what he struck. *See* Minn. Stat. § 169.09, subd. 2. Appellant's hypotheses inconsistent with guilt are not reasonable.

Affirmed.