

*This opinion is nonprecedential except as provided by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
A19-2076**

State of Minnesota,
Respondent,

vs.

Robert James Quaas,
Appellant.

**Filed January 4, 2021
Affirmed
Johnson, Judge**

Beltrami County District Court
File No. 04-CR-19-2084

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

Alan Felix, Bemidji City Attorney, Andrea Kingbird, Assistant City Attorney, Bemidji, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Beltrami County jury found Robert James Quaas guilty of misdemeanor theft based on evidence that he removed several items from a Walmart store without paying for

them. We conclude that the evidence is sufficient to support the conviction and, therefore, affirm.

FACTS

On the afternoon of the Fourth of July in 2019, Quaas visited a Walmart store in Bemidji. Store employees prevented him from leaving the store because his shopping cart contained several items for which he had not paid. Quaas was cited for misdemeanor theft, in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2018).

The case was tried to a jury on one day in October 2019. The state called two witnesses. Its primary witness was a Walmart asset-protection employee who observed Quaas while he was in the store and participated in the store's effort to stop Quaas from taking unpaid-for items. The Walmart employee testified as follows: Quaas grabbed a large air-conditioner and placed it in his cart alongside other items. At a self-check-out station, Quaas scanned only some of the items in his cart. Quaas walked from the self-check-out station to the store's customer-service area to speak with a store employee about returning some large items (a cabinet and two rugs) but was not allowed to return them. While Quaas was talking to a customer-service employee, a man in a red shirt whose name is unknown took Quaas's cart and walked toward the exit. Quaas walked toward the exit with customer-service employees, who were helping him take the cabinet and rugs from the store to his vehicle. After the red-shirted man had passed the last point of sale with Quaas's cart, asset-protection employees stopped him and then stopped Quaas. The Walmart employee testified that Quaas did not pay for several items in his cart: the air-conditioner, two ribeye steaks, a bag of birdseed, and a box of potato chips, all of which

had a total value of \$368. The state also called as a witness a police officer who responded to the store's report of a shoplifter, spoke with the store's asset-protection employees, and issued Quaas a citation for misdemeanor theft.

During the Walmart employee's testimony, the state introduced into evidence four video-recordings created by the store's surveillance cameras and played them for the jury. We have carefully reviewed the video-recordings, which augment the witnesses' oral testimony in significant ways. The video-recordings depict the following: Quaas took a large box containing an air-conditioner from a shelf and placed it in his cart. At a self-check-out station, Quaas scanned many grocery items in his cart but not the air-conditioner, two ribeye steaks, a bag of birdseed, and a box of potato chips. Quaas paid for the items that he had scanned with what appears to be a credit card or debit card. Quaas pushed his cart from the self-check-out station toward the customer-service area. He stopped and looked around for approximately 10 seconds. He stepped away from his cart while he talked to three Walmart employees at the customer-service area. He returned to his cart and pushed it closer to the exit, left the cart there, and went back to the customer-service area. Immediately after Quaas let go of his cart, the red-shirted man took the cart and pushed it toward the exit. The red-shirted man was stopped by a Walmart employee near the exit, and they had a short conversation. After being stopped, the red-shirted man walked back toward the interior of the store and approached Quaas in a familiar way as Quaas was walking toward the exit with the store employees who were helping him remove the cabinet and rugs. The Walmart employee who had stopped the red-shirted man then approached Quaas and spoke with him, apparently about the items in Quaas's cart. The

employee led Quaas and his cart back inside the store while the red-shirted man walked away.

Quaas did not testify and did not introduce any other evidence. The jury found him guilty. The district court imposed a sentence of 87 days in jail and a fine of \$135. Quaas appeals.

DECISION

Quaas argues that the evidence is insufficient to prove beyond a reasonable doubt that he committed misdemeanor theft.

In reviewing the sufficiency of the evidence, we undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We will not reverse a verdict if the jury, “acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100 (quotation omitted).

A person is guilty of misdemeanor theft if he “intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property.” Minn. Stat. § 609.52, subd. 2(a)(1).

Quaas’s argument for reversal has three parts. He argues that the state’s evidence is insufficient to prove beyond a reasonable doubt that (1) he took Walmart’s property “without . . . consent,” (2) he took Walmart’s property “without claim of right,” and (3) he intended to permanently deprive Walmart of its property. *See id.* In each part, Quaas contends that he may be held responsible only for leaving his cart in a place near the customer-service area but that he is not responsible for removing or attempting to remove the cart from the store. He does not contend that he had permission or a claim of right to remove unpaid-for items from the store; rather, he contends merely that he did not commit a crime by temporarily leaving his cart, which contained unpaid-for items, near the customer-service area and the exit while he spoke with customer-service employees. In essence, Quaas contends that the evidence is insufficient to prove that he, rather than the red-shirted man, intended to take and did take unpaid-for property from Walmart.

To determine whether Quaas intended to take property from Walmart without paying for the property, we apply the standard of review for circumstantial evidence. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989). That standard of review requires a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we identify the circumstances proved. *Id.* “In identifying the circumstances proved, we assume that the jury resolved any factual disputes

in a manner that is consistent” with the verdict. *Id.* Second, we must “examine independently the reasonableness of [the] inferences that might be drawn from the circumstances proved” and determine whether “the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (alteration in original) (quotations omitted). In the second step of the analysis, we do not give deference to the jury’s verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). In assessing the circumstances proved and the inferences that may be drawn from the circumstances, we consider the evidence as a whole rather than examining each piece of evidence individually. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

At the first step, we must identify the circumstances proved that are relevant to whether Quaas intended to take unpaid-for property from Walmart. *See Moore*, 846 N.W.2d at 88. The circumstances proved are stated above in the statement of facts.

At the second step, we must “examine . . . the reasonableness of [the] inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt.” *See id.* Quaas does not contend that the circumstances proved are inconsistent with an inference of guilt. The state contends that the circumstances proved support an inference of guilt. We agree with the state that the circumstances proved allow an inference that Quaas intended to take unpaid-for property from Walmart.

At the second step, we also must determine whether “the circumstances proved are . . . inconsistent with any rational hypothesis except that of guilt.” *Id.* Quaas contends that “the circumstances proved do not exclude the rational inference that [he] did not intend

to permanently deprive Walmart of the unpaid-for items.” Specifically, he asserts that he was not paying attention to his cart while he was talking to customer-service employees, at which time the red-shirted man “pushed the cart away from customer service, around the corner, and out of the store.” He contends that “[a]n entirely rational inference is that [he] brought the unpaid-for items where he did because he hoped to use the money from his return to pay for them, and that he thought [the red-shirted man] would merely tend the cart while he completed the return.” He contends that another reasonable inference is that he “exited the store to assist the employees with bringing the cabinet and rugs back to his vehicle” with an intention to return to the cart to complete his purchases of the unpaid-for items.

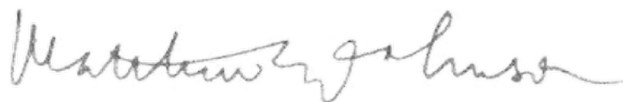
In response, the state contends that the inferences identified by Quaas are not rational. The state notes that Quaas did not bring his cart all the way into the customer-service area but, rather, left it closer to the exit, where the red-shirted man could more easily remove it from the store. The state also notes that Quaas did not attempt to pay for the unpaid-for items in his cart after he was not allowed to return the cabinet and rugs. The state contends that the more reasonable inference is that Quaas knew that the red-shirted man was going to push his cart out of the store and that Quaas was conscious of that fact when he walked out of the store with the cabinet and rugs.

We agree with the state that Quaas’s alternative hypotheses are not rational inferences in light of the circumstances proved. Quaas’s alternative hypotheses are inconsistent with the evidence that he had multiple opportunities to purchase the unpaid-for items but did not do so. The video-recordings show that Quaas carefully scanned most

of the items in his cart but refrained from scanning the most expensive items. The fact that Quaas used a credit card or debit card at the self-check-out station shows that he likely could have used the same card for the unpaid-for items, which undermines the inference that it was necessary to use money from the return of the cabinet and rugs. As the state points out, Quaas made no attempt to purchase the unpaid-for items at the customer-service area, either before or after his attempted returns were refused. The inference that Quaas intended to purchase the unpaid-for items in his cart after putting the cabinet and rugs back in his vehicle is not a reasonable inference in light of the evidence that Quaas and the red-shirted man coordinated a hand-off of the cart. Furthermore, when the red-shirted man was prevented by a store employee from exiting the store, the red-shirted man immediately sought out Quaas as he was walking toward the exit and led him to the store employee. Quaas appears to have assumed responsibility for his cart while speaking with the store employee. This last piece of evidence shows that Quaas's conduct is not limited to leaving an unattended cart near the customer-service area. Rather, the circumstantial evidence shows that Quaas, by employing a scheme involving another person, intended to remove the unpaid-for items from the Walmart store without paying for them.

Thus, the evidence is sufficient to support the conviction of misdemeanor theft.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew Johnson".