

*This opinion is nonprecedential except as provided by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
A20-1003**

State of Minnesota,
Respondent,

vs.

Kristiana Elena Beavers,
Appellant.

**Filed April 19, 2021
Affirmed
Hooten, Judge**

McLeod County District Court
File No. 43-CR-19-893

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

Michael K. Junge, McLeod County Attorney, Anna Gusaas, Assistant County Attorney,
Glencoe, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from her conviction for second-degree burglary, appellant argues that
there is insufficient evidence to support her conviction because the state failed to establish

that she committed theft, or any other predicate offense, while inside the victim's dwelling. We affirm.

FACTS

Appellant Kristiana Elena Beavers was in an on-again, off-again relationship with the victim between 2015 and May 2019. A child was born to the couple in 2016. The victim ended their relationship in mid-May 2019, prior to the events in question, but the couple continued to voluntarily share custody of their child. Appellant and the victim also briefly, and unsuccessfully, attempted to reconcile in October and November 2019.

On the evening of May 21, 2019, the victim was at his brother's house in Glencoe. The victim arrived at his brother's house at approximately 8:30 p.m. in his 1989 Ford Ranger pickup truck, which he parked on the street outside his brother's residence. The victim had a car seat for his and appellant's child in the cab of this truck along with items of personal property in a shopping bag sitting on top of the car seat. Also in this bag was a key to the victim's apartment.

Appellant called the victim a number of times on the evening of May 21, 2019. The victim did not answer until appellant texted him stating that there was an emergency. The victim then spoke to appellant on the telephone at approximately 9:19 p.m., and appellant accused the victim of being on a date with someone else. The victim would later testify that he did not tell appellant that he was at his brother's residence at this time, but that she would have known where his brother's residence was because she had been there before. The victim testified that he did not give appellant permission to enter his truck or remove

any items of property therefrom, and that no one else had possession or control of the vehicle on the night in question.

At approximately 10:19 p.m., the victim received a text message from appellant. In this message, appellant asked the victim whether he planned on going to court regarding custody of their child. The victim later testified that prior to that night, he was preparing court documents in an attempt to obtain custody of the child. According to the victim, at the time he received the text, he had never discussed these documents with appellant, but because he had left the documents sitting on the kitchen table in his apartment, he suspected appellant had seen them in his apartment. The victim also later testified that he had locked his apartment before leaving, that appellant did not have a key to his apartment, and that she did not have permission to enter his apartment.

At approximately 10:30 p.m., the victim went to his truck to retrieve items he had brought for his overnight stay at his brother's house. When the victim entered the vehicle, he realized that the bag containing his apartment key was missing, as was the car seat for his and appellant's child. The victim reported the theft to the Glencoe Police Department, and told the responding officer that he believed appellant had broken into the vehicle and stolen the items. Appellant later admitted to entering the victim's truck and taking the car seat and shopping bag.

The victim returned to his apartment at approximately 1:30 a.m., May 22, 2019. Because he did not have a key, the victim broke into his own apartment using a credit card. Upon entering his apartment, the victim noticed that the legal documents he had been preparing were missing, as were two pairs of his jeans. The victim found his apartment

key on the kitchen table; he would later testify that he recognized it as the same key that had been in the shopping bag in his truck because it was on a distinctive key ring that also held a miniature tape measure.

At approximately 10:00 a.m. the next morning, May 22, 2019, appellant called the victim. The victim recorded this phone call. During the call, appellant admitted to entering the victim's truck and taking some items. She also admitted to entering the victim's apartment and taking other items.

The victim later testified that a friend of his found the legal documents that had gone missing from his apartment in a dumpster outside the apartment building in which both the friend and appellant lived. The victim's friend corroborated this account. Appellant returned the jeans that had gone missing from the victim's apartment to him in October 2019.

Respondent State of Minnesota charged appellant with second-degree burglary. Appellant waived her right to a jury trial, and a bench trial was held. At the close of respondent's case-in-chief, appellant moved for a judgment of acquittal on the ground that respondent had presented insufficient evidence to support a conviction for second-degree burglary. The district court denied appellant's motion. Following trial, the district court found appellant guilty of second-degree burglary, stayed imposition of sentence, and placed her on supervised probation for a period of three years. Appellant now argues that insufficient evidence supports her conviction.

DECISION

Minn. Stat. § 609.582, subd. 2(a) (2018) provides: “Whoever . . . enters a building without consent and commits a crime while in the building . . . commits burglary in the second degree . . . if . . . the building is a dwelling.” Minn. Stat. § 609.52, subd. 2(a) (2018) provides: “Whoever . . . intentionally and without claim of right takes . . . movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property,” commits theft. Accordingly, a person commits second-degree burglary if she enters a building that is a dwelling without consent, and, while inside the dwelling, intentionally and without claim of right takes the movable property of another, without the owner’s consent and with intent to permanently deprive the owner of possession. *Id.*; Minn. Stat. § 609.582, subd. 2(a).

Minnesota law defines a dwelling as “a building used as a permanent or temporary residence.” Minn. Stat. § 609.581, subd. 3 (2018). The theft statute defines property as “all forms of tangible property, whether real or personal,” and movable property as “property whose physical location can be changed.” Minn. Stat. § 609.52, subds. 1(1)–(2) (2018). Property need not have a minimum value in order to be considered “property,” movable or otherwise, for purposes of the theft statute. *See id.*

The district court found appellant guilty of second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(a). This conviction was based on findings that appellant had entered the victim’s dwelling without consent and committed the predicate offense of theft while inside. The district court’s finding that appellant had committed theft was, in turn, based on findings that appellant took movable property belonging to the victim,

including his clothing and legal documents; that appellant took those items on purpose knowing that they were the victim's property; that appellant knew she did not have consent to take these items; and that appellant intended to permanently deprive the victim of possession of these items.

We apply different standards when reviewing the sufficiency of direct and circumstantial evidence. “[D]irect evidence is [e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). When an element of an offense is supported by direct evidence, our review is limited to an analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the fact-finder to reach the verdict that it did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). We must assume that the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The fact-finder “is in the best position to weigh credibility and thus determines which witnesses to believe and how much weight to give to their testimony.” *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010).

Circumstantial evidence, on the other hand, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599 (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact.” *Id.* When the state relies on circumstantial evidence to prove an element of an offense, we use a two-step process to determine whether the state presented sufficient evidence on that element. *State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016). “First, we

identify the circumstances proved.” *Id.* In doing so, we defer to the factfinder’s acceptance of the proof of these circumstances and its rejection of evidence in the record that conflicted with the circumstances proved. *Id.* Second, we determine what reasonable inferences can be drawn from the circumstances proved. *Id.* In doing so, we give no deference to the factfinder’s choice between reasonable inferences. *Id.* Where the circumstances proved are consistent with guilt and inconsistent with any other rational hypothesis, the evidence is sufficient to support the conviction. *Id.* These standards of review apply to appeals from both jury trials and bench trials. *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008).

The district court’s finding that appellant entered a building that was a dwelling without consent was supported by direct evidence: appellant testified that she entered the building in question, the victim testified that he resided in the building appellant entered, making it a dwelling, *see* Minn. Stat. § 609.581, subd. 3, and the victim testified that appellant did not have consent to enter his dwelling on the night in question. But no witness testified to observing appellant taking any items of the victim’s property while in his dwelling, appellant claimed that the only items she took were her property, and there is no direct evidence that appellant intended to permanently deprive the victim of the personal property she removed from his dwelling. Several elements of appellant’s conviction therefore rest on circumstantial evidence.

Accordingly, the questions are, first, whether the direct evidence that appellant entered the victim’s dwelling without consent is sufficient; second, what circumstances relevant to appellant’s commission of theft while inside the victim’s dwelling were proved at trial; and third, whether the circumstances proved are consistent with the hypothesis that

appellant committed the predicate offense of theft and inconsistent with any other rational hypothesis. For the reasons that follow, we conclude that the evidence presented at trial is sufficient to support appellant's conviction for second-degree burglary.

First, sufficient direct evidence supports the district court's findings that appellant entered a building that was a dwelling without consent. Appellant testified that she entered the victim's apartment. The victim testified that he resided in the apartment that appellant entered, making it a dwelling. See Minn. Stat. § 609.581, subd. 3. And the victim testified that appellant did not have consent to enter his dwelling on the night in question. While appellant testified that she believed she had the victim's consent to enter his apartment because he gave her a key, it is the factfinder's role to judge witness credibility. *Fleck*, 777 N.W.2d at 236. The district court did not clearly err in deciding to believe the victim's testimony that he did not give appellant a key and did not consent to her entry into his dwelling, and disbelieving appellant's testimony to the contrary.

Second, the circumstances that were proved by direct evidence, and that are relevant to appellant's commission of theft while inside the victim's dwelling, are as follows:

- The victim had been preparing legal documents related to custody of his and appellant's child.
- The victim had not served any of these documents on appellant, told her about them, or informed her of his intent to file a petition for custody and parenting time.
- The documents were left out on the kitchen table in the victim's apartment.
- Appellant sent the victim a text message concerning the victim's attempt to gain custody of the child.
- The victim had at least two pairs of jeans in his apartment for his personal use.

- Appellant entered the victim's apartment without his consent while he was not present.
- When the victim returned to his apartment, the court documents he had left on the kitchen table were missing.
- Also missing were two pairs of the victim's jeans.
- The victim's friend found the court documents in the dumpster outside the apartment building in which the friend and appellant both lived.
- Appellant returned the same two pairs of jeans to the victim several months later, around the time that the parties were attempting to reconcile.

Third, the only reasonable inference that can be drawn from these circumstances is that appellant committed the crime of theft while inside the victim's dwelling. Specifically, the only reasonable explanation for what happened to the victim's legal documents is that appellant removed them from his apartment with the intent to deprive him of them permanently and then discarded them in the dumpster outside the apartment building, where the victim's friend later found them. This means that appellant intentionally and without claim of right took the movable property of the victim, without the victim's consent, and with the intent to deprive the victim of possession permanently, thereby committing theft. Minn. Stat. § 609.52, subd. 2(a).

Appellant argues that these documents do not constitute property that can be the subject of a theft because they are not "documents of value." This argument rests on appellant's interpretation of the theft statute's definition of "property." Appellant interprets this definition as only including documents that have monetary value. This interpretation is misguided. As noted, the theft statute defines property as "all forms of tangible property, whether real or personal." Minn. Stat. § 609.52, subd. 1(1). The statute

then supplies a non-exhaustive list of various items that constitute property, including documents of value. *See id.* The statute’s plain language makes clear, however, that property includes “all forms of tangible property . . . without limitation,” not just those subsequently listed. The victim’s legal documents are certainly tangible, *see, e.g., Merriam-Webster Dictionary* 1276 (11th ed. 2014) (defining “tangible” as “capable of being perceived esp[ecially] by the sense of touch”), and they fit within the common definition of property. *See, e.g., Black’s Law Dictionary* (11th ed. 2019) (defining “property” as “any external thing over which the rights of possession, use, and enjoyment are exercised”). No reasonable person would argue, for instance, that family letters or a grandparent’s diary are not property, even though they would likely possess no value, monetary or otherwise, to a non-family member. By the same logic, the victim’s legal documents are “property” within the meaning of the theft statute.

Similarly, the only reasonable explanation for what happened to the victim’s jeans is that appellant removed them from his apartment, intending to deprive him of them permanently, and only later returned them to him because the two had briefly reconciled. This means that appellant intentionally and without claim of right took the movable property of the victim, without the victim’s consent, and with intent to deprive the owner of possession permanently, thereby committing theft. Minn. Stat. § 609.52, subd. 2(a).

Appellant argues that she took the jeans from the victim’s apartment without intending to deprive him of possession permanently. Both appellant and the victim testified that appellant returned the jeans to the victim in October 2019, approximately five months later. The victim also testified that he and appellant had briefly reconciled in October and

November 2019. The only reasonable inference that can be drawn from these circumstances is that appellant initially intended to deprive the victim of possession of the jeans permanently and only later decided to return them to him because the two had briefly reconciled. It would be unreasonable to infer that appellant clandestinely took the victim's jeans and kept them for five months while still intending to return them to the victim.

Appellant argues, in the alternative, that she did not take the jeans from the victim's apartment, as they had been in her apartment all along. The only evidence in the record that supports this claim is appellant's testimony. In determining what circumstances were proved at trial, we are to defer to the factfinder's acceptance of the proof of these circumstances and its rejection of evidence in the record that conflicted with the circumstances proved. *Griffin*, 887 N.W.2d at 264. By finding that the jeans were in the victim's apartment on the night in question, the district court necessarily disbelieved appellant's testimony that they were in her apartment up until she returned them to the victim in October 2019.

Appellant argues that the jeans cannot be the subject of a theft because she purchased them and lacked the donative intent necessary to make a gift of them to the victim. Appellant is correct that there is only circumstantial, and not direct, evidence of appellant's intent to make a gift of the jeans to the victim. The relevant circumstances proved by direct evidence are, first, that appellant purchased the jeans, second, that she transferred the jeans to the victim, and third, that the victim stored the jeans in his apartment. The only reasonable inference to be drawn from these circumstances is that appellant intended to give the jeans to the victim as a gift. It would be unreasonable to

infer, without additional evidence, that appellant was merely lending the jeans to the victim for his temporary use.

Appellant argues that the recording and transcript of the phone conversation between her and the victim on the morning of May 22 shows that she believed the jeans to be her property. It is not clear from the transcript or recording that the parties were discussing the jeans in question. Even if they were, appellant's claim that the items being discussed were hers does not prove that, at the time she initially transferred the items to the victim, she lacked donative intent. It is entirely possible—and indeed, it appears to be highly likely—that appellant was attempting to retract a previously-made gift because of her animosity towards the victim. The fact that she later returned the jeans to the victim when the two briefly reconciled supports this inference.

In sum, sufficient evidence was presented at trial to support the district court's findings that appellant entered the victim's dwelling without consent and committed the crime of theft therein by intentionally and without claim of right taking the victim's jeans and legal documents, with the intent to permanently deprive him of possession thereof. Accordingly, sufficient evidence supports all elements of appellant's conviction for second-degree burglary.

Affirmed.