

*This opinion is nonprecedential except as provided by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
A22-1680**

State of Minnesota,
Respondent,

vs.

Keith Allen Armstrong,
Appellant.

**Filed September 11, 2023
Affirmed
Bjorkman, Judge**

Cass County District Court
File No. 11-CR-21-1538

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

Benjamin T. Lindstrom, Cass County Attorney, Chelsea Langton, Assistant County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of fleeing a peace officer in a motor vehicle and receiving stolen property, arguing that the evidence is insufficient to prove that he (1) was the person fleeing police and (2) knew or had reason to know the tractor was stolen. We affirm.

FACTS

On the afternoon of September 7, 2021, officers from the Leech Lake Tribal Police Department were surveilling the home of K.A. in an attempt to find her father, appellant Keith Allen Armstrong, who had an active arrest warrant. Parked outside the house was a Volvo sedan owned by K.A.’s mother, which Armstrong regularly drove. From a distance of approximately one city block, the officers “caught a glimpse of one person” getting into the Volvo and driving away “at a high rate of speed.” They followed the Volvo a short distance in their unmarked squad car and informed other officers of the direction the Volvo was traveling.

Another tribal officer encountered the Volvo shortly after it left K.A.’s house and identified Armstrong as the driver. A deputy from the Cass County Sheriff’s Office then attempted to pull over the Volvo; instead of stopping, the driver sped up, reaching speeds in excess of 120 miles per hour. Unable to catch up, the officers lost sight of the Volvo. “A few minutes later,” officers found it “seven to ten miles” generally south of K.A.’s house. It was abandoned on a trail just off the road on which the officers pursued it. A search of the area involving several officers and a canine unit came up empty. But officers

found Armstrong's wallet, driver's license, and Social Security card inside the Volvo, along with some articles of clothing and another man's driver's license.

That night, deputies received a report of a "suspicious person" approximately three miles north of where the Volvo was found, on the same road. The description matched Armstrong: "a white male, bald with a distinct ponytail." Despite searching the area again, the officers did not find Armstrong.

The next day, L.G. reported that a tractor was stolen from his residence, located a few miles northeast of where the suspicious person was seen. The tractor leaves distinctive tire tread marks, which officers traced "three to four miles" from L.G.'s residence to K.A.'s driveway. They were also informed that Armstrong was inside the house. After obtaining a search warrant, the officers entered K.A.'s house, where they found Armstrong hiding in the crawlspace underneath the floor. No one else was in K.A.'s house. The stolen tractor was parked in K.A.'s garage.

One of the officers spoke to L.H., the maintenance manager for the housing complex in which K.A. lived. L.H. informed the officer that earlier that day he saw a man wearing a wide-brimmed hat drive a tractor and park it in K.A.'s driveway. A wide-brimmed hat was found inside K.A.'s house; L.H. identified it as the same hat the tractor driver was wearing. Another officer questioned Armstrong, who acknowledged being in the area where the suspicious person was reported the previous night. But he denied fleeing in the Volvo, instead claiming that it had been stolen from the White Earth Indian Reservation two days earlier—September 6. He also denied stealing the tractor, though he admitted moving it from the driveway into the garage.

Armstrong was charged with fleeing police in a motor vehicle and receiving stolen property. At trial, the officers who pursued the Volvo and investigated the tractor theft testified consistent with the facts outlined above. Armstrong called the Volvo's owner, who testified that she had left the vehicle at Armstrong's mother's house on the Leech Lake Reservation, and learned it was stolen on September 7. Armstrong also called one of his other daughters—not K.A.—who testified that Armstrong was at her house the morning of September 7 and went looking for the Volvo after learning it had been stolen. The jury found Armstrong guilty on both counts.

Armstrong appeals.

DECISION

When considering a sufficiency-of-the-evidence challenge, we carefully review the record to determine “whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We must “assume the [jury] disbelieved any testimony conflicting with that verdict.” *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020) (quotation omitted). And we will not overturn a conviction if the jury could have reasonably found the defendant guilty, giving due regard to the presumption of innocence and the burden of proof beyond a reasonable doubt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

I. The evidence is sufficient to prove that Armstrong was the person fleeing police in the Volvo.

A person commits the fleeing offense with which Armstrong was charged if they use a motor vehicle to flee or attempt to flee from a police officer who is acting in the lawful discharge of an official duty, and the person knows or should reasonably know the person from whom they are fleeing is a police officer. Minn. Stat. § 609.487, subd. 3 (2020). The state must prove every element of an offense beyond a reasonable doubt, *State v. Martin*, 293 N.W.2d 54, 55 (Minn. 1980) (citing *In re Winship*, 397 U.S. 358, 364 (1970)), including the identity of the person who committed the offense, *State v. Lindsey*, 632 N.W.2d 652, 662 (Minn. 2001).

Armstrong's sufficiency challenge relates solely to the identity element. He argues that the identity evidence is insufficient because there is "no basis to conclude" that the sole officer who identified Armstrong as the driver "had anything but a fleeting and limited opportunity to view the Volvo's driver," and "no evidence corroborating" that officer's testimony. Armstrong's argument is unpersuasive in both respects.

It is true that when a "single witness'[s] identification of a defendant is made after only fleeting or limited observation, corroboration is required if the conviction is to be sustained." *State v. Walker*, 310 N.W.2d 89, 90 (Minn. 1981) (citing *State v. Spann*, 287 N.W.2d 406, 407-08 (Minn. 1979)). But the record does not support Armstrong's assertion that the officer's observation of him driving the Volvo was "fleeting and limited." Both the prosecutor and defense counsel asked the officer if he saw Armstrong driving the Volvo after it left K.A.'s house and before it was lost in the pursuit. The officer responded that

he did and described where and when he saw Armstrong. As Armstrong notes, no one asked the officer how far he was from the intersection where he saw the Volvo, whether his view was in any way obstructed, how long he observed the driver, or his level of certainty that Armstrong was the driver. But we are not convinced that defense counsel's failure to cross-examine the officer on these points compels a conclusion that the officer's opportunity to identify Armstrong *must have been* fleeting or limited.

Even if the officer's observation was fleeting or limited, his identification of Armstrong is amply corroborated by other evidence. Just minutes after the pursuit ended, officers found the abandoned Volvo. Inside, they found Armstrong's wallet, driver's license, and Social Security card. It is undisputed that Armstrong regularly drove the Volvo. And a suspicious person matching his description was observed in the area shortly after officers found the abandoned vehicle. In sum, the record satisfies us that sufficient evidence supports Armstrong's conviction of fleeing police in a motor vehicle.

II. The evidence is sufficient to prove that Armstrong knew or had reason to know the tractor was stolen.

To sustain a conviction for receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2020), the state was required to prove that Armstrong “receive[d], possesse[d], transfer[red], b[ought] or conceal[ed] any stolen property” and that he “kn[ew] or ha[d] reason to know the property was stolen.” Armstrong concedes that he possessed the tractor but contends the evidence was insufficient to prove that he knew or had reason to know it was stolen. “Knowledge that the property was stolen may be proven by circumstantial evidence.” *State v. Peterson*, 375 N.W.2d 93, 95 (Minn. App. 1985). Unexplained

possession of recently stolen property is sufficient in itself to support a conclusion that the person possessing it knew the property was stolen. *State v. Hager*, 727 N.W.2d 668, 677-78 (Minn. App. 2007).

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). In assessing the sufficiency of circumstantial evidence, we apply a two-part analysis. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010). First, we identify the circumstances proved, deferring to the fact-finder’s credibility determinations and weighing of the evidence. *Id.* at 473. Circumstances proved include evidence that supports the finding of guilt and any uncontroverted testimony of a state witness that is “not necessarily contradictory to the verdict.” *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

Second, we consider whether the circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). In doing so, we consider the circumstances proved as a whole rather than reviewing each circumstance in isolation. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). While we defer to the fact-finder when reviewing the circumstances proved, we give “no deference to the fact finder’s choice between reasonable inferences.” *Id.* at 329-30 (quotation omitted). “Circumstantial evidence must form a complete chain that, in view of the evidence 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.” *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quotation omitted). “[W]e will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *Andersen*, 784 N.W.2d at 330 (quotation omitted).

At trial, the state proved the following circumstances: On September 8, (1) L.G.’s tractor was stolen three miles from where a suspicious person matching Armstrong’s description was observed, (2) the tractor’s distinctive tire marks were traced from L.G.’s residence to K.A.’s driveway, (3) L.H. observed a man wearing a wide-brimmed hat drive the tractor to and park it in K.A.’s driveway, (4) the same wide-brimmed hat was found inside K.A.’s house, (5) officers found Armstrong hiding in the crawlspace under K.A.’s house, (6) no one else was in K.A.’s house, (7) Armstrong admitted to officers that he was in the area where the suspicious person was observed, and (8) Armstrong conceded that he moved the tractor from the driveway into the garage.

We easily conclude that these circumstances support a reasonable inference of guilt. Armstrong asserts that the evidence is insufficient because the circumstances proved (1) are “equally consistent with the possibility that someone else drove the tractor . . . parked it in [K.A.’s] driveway, and . . . Armstrong merely drove it into the garage”; and (2) “do not exclude the reasonable possibility that someone else stole [the] tractor, misled Armstrong to believe they had obtained the tractor through legitimate means, and then duped Armstrong into transporting it from a nearby location” to K.A.’s house. These arguments are unavailing.

First, as noted above, unexplained possession of property that was recently stolen is alone sufficient to support a finding that the person possessing it knew the property was

stolen. *Hager*, 727 N.W.2d at 677-78. Second, a rational hypothesis of innocence must be based on more than mere conjecture or speculation, *Andersen*, 784 N.W.2d at 330, and there is no evidence in the record that is consistent with Armstrong’s alternative theories. The circumstances proved—including Armstrong’s connection to the location where the tractor was stolen and his act of moving the tractor into K.A.’s garage—support no reasonable inference other than that Armstrong knew the tractor was stolen. Because the circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt,” *Silvernail*, 831 N.W.2d at 599 (quotation omitted), sufficient evidence supports Armstrong’s conviction of possessing stolen property.

Affirmed.