STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1763

State of Minnesota,
Respondent,

vs.

Timothy Jason Williams,
Appellant.

Filed October 23, 2023
Affirmed
Slieter, Judge

Isanti County District Court
File No. 30-CR-21-239

Keith Ellison, Attorney General, Lydia Villalva Lijo, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

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

Considered and decided by Gaïtas, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction for multiple offenses related to child pornography, appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he knew or should have known that his phone contained child

pornography. Because the circumstances proved at trial support an inference of guilt, and appellant's purported hypothesis other than guilt relies upon "mere conjecture," we affirm.

FACTS

In March 2021, the Isanti County Sheriff's Office received a report that a Facebook account associated with appellant Timothy Jason Williams had uploaded child pornography. A subsequent search of Williams' cellphone revealed several images of child pornography.

Respondent State of Minnesota charged Williams by complaint with several offenses relating to child pornography, including disseminating child pornography in violation of Minn. Stat. § 617.247, subd. 3(b)(3) (2020); possessing child pornography in violation of Minn. Stat. § 617.247, subds. 4(a), (b) (2020); soliciting a minor in violation of Minn. Stat. § 609.353, subd. 2(a)(1) (2020); distributing material involving sexual conduct of a minor in violation of Minn. Stat. § 609.352, subd. 2(a)(3) (2020); and using a minor in pornographic work in violation of Minn. Stat. § 617.246, subd. 2(b)(3) (2020). Williams waived his right to a jury trial. The following facts derive from Williams' April 2022 bench trial.

The investigating officer testified that the Facebook account that had uploaded child pornography had a recovery email address and phone number associated with Williams. The officer also connected the internet protocol (IP) address used to upload the video to a house owned by Williams' grandmother with whom Williams lived. Using this information, the officer obtained a warrant to search Williams' residence.

Williams was home when officers executed the warrant. Williams told officers that he used several social media accounts, including the one that had uploaded the child pornography. Williams confirmed his email address and phone number, which matched the email address and phone number associated with the account that had uploaded the child pornography. Williams also confirmed that he was the only person with permission to use the account. When asked about the video that had been uploaded, Williams said that he did not remember the video but "likes role playing the daddy/son experience." Williams told officers that he used his phone to access the internet and gave the officers the passcode to unlock the phone.

A subsequent search of Williams' phone revealed several photos and videos depicting child pornography, including a live chat on Facebook messenger in which Williams "communicated with the minor individuals asking to see their bodies and said that he has pictures of his own and offered to provide them money if they would show him their bodies and engage in mutual video masturbation."[1] The search of Williams' phone also revealed internet searches about what Facebook does with images and when Facebook deactivates accounts.

Williams moved for a judgment of acquittal. The district court denied the motion, stating that the images "contain visual depictions of minors engaged in sexual conduct" and the state presented enough evidence to show that Williams knew or should have known that the images depicted child pornography.

[1] Williams is not appealing his conviction associated with this video.

The district court found Williams guilty of 18 of the 19 counts. Williams appeals 16 counts involving the dissemination and possession of child pornography convictions in violation of Minn. Stat. § 617.247 (2020).

DECISION

Upon review of a claim of insufficient evidence, this court reviews the record to determine "whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict." *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004); *see also State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (noting appellate courts "use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence"). "We will not disturb the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Olhausen*, 681 N.W.2d at 25-26.

A finding of guilt can be based on direct or circumstantial evidence. Circumstantial evidence is "evidence from which the [fact-finder] 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 contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotations omitted).

When considering a sufficiency challenge to a guilty verdict based on direct evidence, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the verdict, was sufficient to permit the fact-finder to reach its

verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). If the state relied on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See Harris*, 895 N.W.2d at 599-601 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that "the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence"). With the circumstantial evidence standard of review, we first determine the circumstances proved, disregarding evidence that is inconsistent with the verdict. *Harris*, 895 N.W.2d at 600-01. Next, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will not reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

Pursuant to Minn. Stat. § 617.247, it is a crime to disseminate or possess child pornography "knowing or with reason to know its content and character." The Minnesota Supreme Court has explained that "a possessor of child pornography has 'reason to know' that a pornographic work involves a minor where the possessor is subjectively aware of a 'substantial and unjustifiable risk' that the work involves a minor." *State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007).

Because the state relied on circumstantial evidence to prove that Williams knew or should have known that his phone contained child pornography, we apply the circumstantial evidence standard of review. The circumstances proved are as follows:

- Williams' Facebook account uploaded child pornography from his phone.
- Williams was the only known person with permission to use the Facebook account that uploaded the child pornography.
- Williams accessed Facebook using his phone.
- Williams was in possession of his phone when it was seized and provided officers with the phone's passcode.
- Williams likes role playing the "daddy/son experience."
- Williams' phone contained child pornography, including the video shared by his Facebook account.
- Williams used his phone to video chat with minors, soliciting the minors to show him their bodies and engage in mutual video masturbation.
- Williams used his phone to search the internet for information about what Facebook does with images and when Facebook deactivates accounts.

Williams concedes these circumstances proved support an inference of guilt. However, he suggests an inference other than guilt exists because the state failed to prove he knew or had reason to know that his phone contained child pornography. To support his claim, Williams makes two arguments. First, he contends that he lacked knowledge of the child pornography, which is evidenced by the state's failure to prove that he opened or viewed the child pornography. Second, he claims that he lacked knowledge of the child pornography because someone else could have transferred the images and videos to his phone. Neither argument is persuasive.

An alternative hypothesis to guilt may not be based on "mere conjecture." *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). And "to succeed in a challenge to a verdict based on circumstantial evidence, a convicted person must point to evidence in the record that is consistent with a rational theory other than guilt." *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

Both of the alternative hypotheses are based on mere conjecture and not on evidence in the record. As to Williams' argument that he had no knowledge of the child pornography on his phone, the state need not prove actual knowledge. *See* Minn. Stat. § 617.247, subds. 3, 4 (imposing a "knowing or with reason to know" requirement); *see also Mauer*, 741 N.W.2d at 115 ("reason to know" may be proved by circumstantial evidence). And there is ample evidence in the record that Williams knew or had reason to know that his phone contained child pornography. As the circumstances proved indicate, Williams' Facebook account uploaded child pornography, Williams was the only person with access to the account that shared the child pornography, the child pornography was uploaded from Williams' phone and from an IP address corresponding with his residence, and Williams possessed his phone. Williams' claim that the state failed to prove that he knew or should have known that his phone contained child pornography simply because it did not demonstrate that he opened or viewed the child pornography is unreasonable under these circumstances. *See State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002) (quotation omitted) ("possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable").

As to Williams' second argument, he relies on a police report showing that he had a phone stolen to support his claim that someone else could have downloaded the child pornography onto his phone. The evidence, however, simply shows that Williams had a previous phone stolen. Williams does not point to any evidence in the record, nor are we aware of any, supporting his theory that someone else could have placed the child pornography onto this phone. Again, Williams may not rely upon conjecture to support a rational hypothesis other than guilt. *Tscheu*, 758 N.W.2d at 858. Given the amount of child pornography found on Williams' phone, including a video in which Williams is seen soliciting minors, and that Williams used his phone to search for information about what Facebook does with images and when it deactivates accounts, his mere assertion that someone else could have downloaded the child pornography onto his phone is unreasonable. *Id.*

Affirmed.