

*This opinion is nonprecedential except as provided by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
A24-0299**

State of Minnesota,
Respondent,

vs.

Marian Shaw Moore,
Appellant.

**Filed March 10, 2025
Reversed
Wheelock, Judge**

Aitkin County District Court
File No. 01-CR-21-118

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

James P. Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

Jordan S. Kushner, Law Office of Jordan S. Kushner, Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant challenges her gross-misdemeanor conviction for trespass on a pipeline and her misdemeanor convictions for unlawful assembly and presence at an unlawful assembly, arguing that the state failed to provide sufficient evidence. We reverse.

FACTS¹

More than 100 individuals gathered to pray and conduct ceremonies on January 9, 2021, at two construction sites for a pipeline being assembled in Aitkin County. Enbridge Inc., which owned the project, devised the pipeline’s route traversing northern Minnesota and named this part of the pipeline “Line 3.” The route for Line 3 passes through lands that are subject to treaty rights, are adjacent to tribally-owned fee and trust properties,² and contain areas that compose the ecosystem and water sources that sustain manoomin.³ Various individuals and groups opposed the plans for and implementation of this new route for Line 3 based on their concerns that the pipeline was being built to transport “tar sands

¹ The facts set forth here were elicited during the jury trial. We reference extra-record information in this opinion only to provide relevant context, and we reference it for this purpose alone; it is not part of our substantive analysis.

² Mary Annette Pember, *Enbridge Line 3 Divides Indigenous Lands, People*, Minn. Pub. Radio News (Feb. 24, 2021, 10:10 AM), <https://www.mprnews.org/story/2021/02/24/enbridge-line-3-divides-indigenous-lands-people> [<https://permacc/CWN3-DJJH>].

³ Manoomin is the Anishinaabe name for wild rice, a food that is central to the culture, heritage, diet, and history of the Anishinaabe people; it is an important part of Anishinaabe spirituality and is an integral part of the wetland ecosystems in northern Minnesota. See White Earth Rsrv. Bus. Comm. Res. 001-19-009 (White Earth Nation Dec. 31, 2018) (adopting 1855 Treaty Authority Resolution Establishing Rights of Manoomin, Resolution No. 2018-05).

oil, which is considered the dirtiest oil in the world,” and that, even without a leak or spill of the oil, the pipeline itself could contaminate and destroy the water that comes into contact with it, including ground and surface waters. The water that will cross paths with and otherwise come into contact with the pipeline is the same water that exists where manoomin grows. After attending many hearings and public-comment sessions in unsuccessful attempts to stop the pipeline construction from receiving necessary permits and approval to go forward, many Anishinaabe⁴ people turned to prayer.

Anishinaabe women led the gathering on January 9, 2021, and invited “friends and relatives” with “strong religious tradition,” including appellant Marian Shaw Moore, to join the ceremony and prayer for the well-being of the water. Participants described the gathering as “a sacred ceremonial event, a healing event” to pray for “the water,” stating, “[We prayed] that the water would be healed, . . . that there would be some way that we could protect our water and our people and all the animals and everything that is impacted by this pipeline,” and “for healing what we saw was a deep wound in Mother Earth.” The gathering included chanting, singing, jingle dancing,⁵ and drumming, all of which are part

⁴ The Anishinaabe people are settled around the Great Lakes in both Canada and the United States, including in Minnesota. *The Ojibwe People*, Minn. Hist. Soc’y, <https://www.mnhs.org/fortsnelling/learn/native-americans/ojibwe-people> [<https://perma.cc/P7PL-CYGK>]. The names Anishinaabe, Chippewa, and Ojibwe refer to the same people. See *History of the Minnesota Chippewa Tribe*, Zaagibagaang, <https://zaagibagaang.com/mct-history> [<https://perma.cc/F8NK-D4P6>].

⁵ Jingle dancing is a spiritual and cultural practice performed by women and girls and is used for healing, spiritual practice, wellness, celebration, and as an act of pride for Native identity. Harper Estey, *The History of the Jingle Dress Dance*, Nat’l Cong. of Am. Indians, (Aug. 12, 2020), <https://www.ncai.org/news/the-history-of-the-jingle-dress-dance>

of many rituals and practices of Indian tribes, including Anishinaabe healing ceremonies. The gathering began at an intersection of Line 3 and County Road 10 and then moved to an intersection of Line 3 and Highway 169, near one of the construction sites for the Line 3 pipeline, where the charges at issue in this case arose.

State law-enforcement officers traveled to the Highway 169 site to assist with “traffic concerns and safety concerns” during the gathering. This section of Highway 169 does not have sidewalks and is in a 60-mile-per-hour speed zone, and although the officers agreed that it was not illegal, they determined that it was unsafe for people to stand alongside the road. Officers testified that they did not know whether the people gathered at the Highway 169 site had permission to be there and that no-trespass signs were placed around the construction site. One officer stated that, if a person at the gathering entered the construction site from Highway 169, they would have had to walk by the signs, but individuals who attended the gathering, including Moore, testified that they did not see the signs. At the construction site, people “walk[ed] amongst the [construction] equipment,” and the Enbridge employees paused their construction work. An Enbridge employee testified that the company’s policy required construction to stop while “protesters” were at the site. One officer expressed concern that people walking around the site could have fallen into the trench that had been dug for the pipeline or that people could have been struck by the construction equipment.

[<https://perma.cc/5JA7-CHTK>]. The dancers wear dresses lined with rows of metal cones that create sound as the dancer moves. *Id.*

Officers also testified about the effects of the gathering, including that it caused “work stoppage” and that the highway became congested due to the number of cars parked along the shoulder and the people walking on the shoulder, but stated that there was no violence and agreed that the gathering was “a peaceful protest.” Two officers testified that they did not see anyone attempting to block the highway. Another officer testified that only one person had attempted to block the highway but that person was arrested. Officers testified that none of the people who participated in the gathering went into the trench or into the pipe and that the people did not tamper with the machines, interfere with any work, or lock themselves to the pipe. Eventually, officers told everyone to disperse or be arrested, after which they arrested anyone who did not heed the dispersal order. Most of the people at the Highway 169 site complied with the officers’ dispersal order.

Moore attended the gathering, but the officers did not know who she was at the time. She testified that she felt compelled to attend the gathering because of what she “learned over the years about the tar sands . . . which this Line 3 is enabling” and that she wanted to come to the construction sites of Line 3 to “bear witness, show up, to pray at the river, to be part of the movement to try to support it and support the Indigenous people whose lives were being threatened.” Images and video from the day show Moore standing near the construction equipment and, therefore, within the construction site and the boundary of the “no trespassing” signs. Moore testified that she never tried to interfere with the construction work and did not witness anyone around her do so, either. No officers could identify when Moore left the gathering. Moore testified that, as soon as she heard the dispersal order, she left the construction site because, on the day of the gathering, she was

concerned about her health due to her age and, because vaccines for COVID-19 had not yet been developed, she did not feel safe going to jail during the pandemic. In one video obtained from an officer's body-worn-camera footage from the day, Moore can be seen walking away from the construction site after the dispersal order was given. Moore testified that, when she heard the dispersal order, she left the construction site and joined others closer to the highway. While at the second location, she watched the jingle dancers again, believing that she had complied with the officers' directions. Moore testified that, when she later heard the officers order people to leave the area closer to the highway, she left. Officers did not arrest or charge Moore that day.

In February 2021, respondent State of Minnesota charged Moore with one count of gross-misdemeanor trespass on a pipeline in violation of Minn. Stat. § 609.6055, subd. 2(a)(3) (2020) (count one), one count of misdemeanor unlawful assembly in violation of Minn. Stat. § 609.705(2) (2020) (count two), and one count of misdemeanor presence at an unlawful assembly in violation of Minn. Stat. § 609.715 (2020) (count three). Moore filed a motion to dismiss all charges, arguing, among other things, that the property did not contain a pipeline and that the state lacked probable cause to support any of the charges against her. The district court denied the motion.

The case proceeded to a jury trial. The jury found Moore guilty of all three charges, and the district court entered judgments of conviction on all three counts. Moore moved for a new trial, which the district court denied.

Moore appeals.

DECISION

Moore raises several arguments in her brief to this court, including (1) whether the state provided sufficient evidence to support her conviction for trespass on a pipeline, (2) whether the state provided sufficient evidence to support her conviction for unlawful assembly, and (3) whether the state provided sufficient evidence to support her conviction for presence at an unlawful assembly.⁶ Although the state did not file a brief or otherwise participate in this appeal, we determine the issues on the merits pursuant to Minn. R. Civ. App. P. 142.03.

I. The state provided insufficient evidence to support a conviction for count one, trespass on a pipeline.

Moore challenges her conviction for count one, trespass on a pipeline, arguing that the property did not contain a “pipeline,” as defined by the statute, on the day of the gathering. Specifically, she argues that, because the statutory definition of “pipeline” uses the present tense, a pipeline must be operational for the offense to occur. Moore was found guilty of a gross misdemeanor for violating the trespass-on-a-pipeline statute, which provides, “Whoever enters or is found upon property containing a critical public service facility, utility, or pipeline, without claim of right or consent of one who has the right to give consent to be on the property, is guilty of a gross misdemeanor, if . . . the property is posted.” Minn. Stat. § 609.6055, subd. 2(a)(3). A property is posted if there are signs (1) saying “no trespassing,” or something similar, (2) in writing with letters at least two

⁶ Because we reverse each of her three convictions for the reasons stated herein, we do not reach any of Moore’s other arguments.

inches high, (3) explaining that state law prohibits trespassing on the property, and (4) “posted in a conspicuous place and at intervals of 500 feet or less.” *Id.*, subd. 3 (2020). Moore’s argument requires us to interpret Minnesota Statutes section 609.6055, subdivision 1(c) (2020), which defines “pipeline” for the purposes of this statute.

“[W]hen a sufficiency-of-the-evidence claim turns on the meaning of a statute, we review the question of statutory interpretation *de novo*.” *State v. Loveless*, 987 N.W.2d 224, 247 (Minn. 2023). The purpose of statutory interpretation is “to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2024); *accord State v. Powers*, 962 N.W.2d 853, 858 (Minn. 2021). The first step is to “determine whether the statute’s language, on its face, is ambiguous.” *State v. Sanschagrin*, 952 N.W.2d 620, 624 (Minn. 2020) (quotation omitted). A statute is ambiguous if it is “subject to more than one reasonable interpretation.” *Id.* To determine whether an interpretation is reasonable, we consider the statute’s words and phrases “according to rules of grammar and according to their common and approved usage.” Minn. Stat. § 645.08(1) (2024). If a statute does not provide a definition for its words and phrases, appellate courts “may look to the dictionary definitions of those words and apply them in the context of the statute to determine whether the phrase has a plain and unambiguous meaning.” *Fordyce v. State*, 994 N.W.2d 893, 897 (Minn. 2023) (quotation omitted).

Appellate courts do not interpret disputed words and phrases in isolation; “rather, all provisions in the statute must be read and interpreted as a whole.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). If, from the statute’s plain language, we can discern the legislature’s intent, then the statute is unambiguous and our statutory interpretation

ends. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). However, if the statute’s language “is subject to more than one reasonable interpretation,” then it is ambiguous and our analysis proceeds to the second step, in which we apply the canons of construction to discern the legislature’s intent. *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021) (quotation omitted).

Moore’s argument requires us to examine the statutory definition of “pipeline”:

“Pipeline” includes an aboveground pipeline, a belowground pipeline housed in an underground structure, and any equipment, facility, or building located in this state that *is used to transport* natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids, to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state. Pipeline does not include service lines.

Minn. Stat. § 609.6055, subd. 1(c) (emphasis added).

The meaning of the term “pipeline” turns on the verb phrase “is used to transport,” and thus, we begin by examining the properties and tenses of the words in the phrase. Both “use” and “transport” are transitive verbs in this sentence. A transitive verb is one that “requires an object to express a complete thought; the verb indicates what action the subject exerts on the object.” *Chicago Manual of Style* § 5.98, at 256-57 (17th ed. 2017). The object of “transport” is the list of gas and oil that follows in the statute. Minn. Stat. § 609.6055, subd. 1(c); see *Chicago Manual of Style, supra*, §§ 5.23-24, at 232-33 (explaining subjects and objects). The verb phrase’s subject is the unspecified entity using the pipeline to transport oil, and the phrase is written in passive voice. See Minn. Stat. § 609.6055, subd. 1(c); *Chicago Manual of Style, supra*, § 5.118, at 264 (explaining active

and passive voice). Passive voice in this verb phrase uses the past participle, but this does not change the verb tense, and thus the phrase “is used” appears in the present tense. The present tense “primarily denotes acts, conditions, or states that occur in the present It is also used . . . to express a habitual action or general truth.” *Chicago Manual of Style*, *supra*, § 5.129, at 267. When drafting a statute, legislatures often use the present tense “to express all facts and conditions required to be concurrent with the operation of the legal action.” Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 536 (3d ed. 2011).

Continuing our statutory-interpretation analysis, we next consider the meaning of “use” and “transport.” Because neither is defined by the statute, we consider dictionary definitions. *See Fordyce*, 994 N.W.2d at 897. The word “use” may mean “[t]o put into service or employ for a purpose,” or “[t]o avail oneself of; practice.” *The American Heritage Dictionary of the English Language* 1907 (5th ed. 2018). In addition, “use” as a transitive verb means “to put into action or service: avail oneself of: employ” or “to carry out a purpose or action by means of: utilize.” *Merriam-Webster’s Collegiate Dictionary* 1378 (11th ed. 2020). The word “transport” means “[t]o move or carry . . . from one place to another; convey,” *American Heritage Dictionary*, *supra*, at 1847, or “to transfer or convey from one place to another,” *Webster’s Collegiate*, *supra*, at 1330. We discern two reasonable interpretations of the statute based on the interweaving tense, voice, and definitions of the words in this phrase: first, using the overarching understanding of present tense, a “pipeline” is something that is generally used to transport oil or gas; and second, using the legal usage of present tense and definitions of “use,” a “pipeline” is something that is actually and currently used to transport oil or gas.

By considering the surrounding subdivisions of the statute, however, we conclude that only the second interpretation is consistent with the legislature’s intent. *See Pakhnyuk*, 926 N.W.2d at 920. In addition to pipelines, the statute protects “critical public service facilities,” which are “buildings and other physical structures, and fenced in or otherwise enclosed property” relating to transportation, refinement of oil, storage for hazardous materials, and utilities. Minn. Stat. § 609.6055, subd. 1(b) (2020). The statute also protects utilities, which include telecommunications and telephones, heat and power sources, water, and other common utilities. *Id.*, subd. 1(d) (2020). Under the statute, an employee of, or other person designated by, a critical public service facility, utility, or pipeline may temporarily detain a person suspected of trespassing in violation of this statute “to ensure the provision of services by the critical public service facility or the safe operation of the equipment or facility of the utility or pipeline.” *Id.*, subd. 4 (2020). The phrases “to ensure the provision of services” and “the safe operation of the equipment” confirm that the statute contemplates a pipeline to be something currently providing services or operating. *Id.* Reading the statute as a whole illuminates the legislature’s intent that a “pipeline” be something currently in operation, which renders the first interpretation unreasonable. We therefore conclude that the statute is not ambiguous and that “pipeline” as used in section 609.6055 refers to a pipeline that is actually and currently being used to transport oil or gas, not to a pipeline that generally could be used to transport oil or gas or a mere construction site for a pipeline that is not operational.

Given this definition of “pipeline,” we turn to the evidence in the record. The state’s evidence included photos, videos, and testimony that depict construction workers installing

parts of a pipeline into the ground on the day of the gathering. It is clear from this evidence that no oil was flowing through the pipeline because it was not operational, and no evidence or testimony suggested otherwise. Because there was no pipeline on the property being actually and currently used to transport oil or gas, the property did not contain a “pipeline,” as defined by the statute, on the day of the gathering. We therefore conclude that the evidence is insufficient to prove that Moore was guilty beyond a reasonable doubt of trespass on a pipeline and her conviction for count one must be reversed.

II. The state provided insufficient evidence to support a conviction for count two, unlawful assembly.

Moore next challenges her conviction for count two, unlawful assembly, asserting that the state failed to provide sufficient evidence to prove that she intended to disturb or threaten the peace. The unlawful-assembly statute under which Moore was convicted states, “When three or more persons assemble, each participant is guilty of unlawful assembly, which is a misdemeanor, if the assembly is . . . with intent to carry out any purpose in such manner as will disturb or threaten the public peace.” Minn. Stat. § 609.705(2). This statute contains two elements: (1) three or more persons are gathered, (2) with an intent to disturb or threaten the public peace. Moore does not dispute that she gathered with three or more persons, but she argues that the state failed to prove her intent to disturb or threaten the public peace.

“When evaluating the sufficiency of the evidence, appellate courts 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 [they were] convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.* When an element of a conviction is proved by circumstantial evidence, that element receives “heightened scrutiny” on review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Circumstantial evidence is evidence that requires a fact-finder to “infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Criminal intent may be proved by circumstantial evidence. *State v. Colgrove*, 996 N.W.2d 145, 155-56 (Minn. 2023). Intent may be inferred from the totality of the circumstances proved, including the “natural and probable consequences” of the defendant’s actions. *Id.* at 152.

A circumstantial-evidence analysis contains two steps. First, appellate courts must identify the circumstances proved by the evidence and “defer to the jury’s acceptance of the proof of these circumstances.” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). Any evidence that conflicts with the circumstances proved is viewed “in the light most favorable to the verdict.” *Id.* at 599 (quotation omitted). “Stated differently, in determining the circumstances proved, [appellate courts] consider only those circumstances that are consistent with the verdict.” *Id.*

Second, appellate courts must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.*

(quotations omitted). Appellate courts “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved; this includes inferences consistent with a hypothesis other than guilt.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). The circumstances proved must be considered “on the whole” to determine whether they prove an element of the offense charged beyond a reasonable doubt. *Id.* at 332. And even when one reasonable inference would permit a finding of guilt, that is not enough to sustain a conviction based on circumstantial evidence when other reasonable inferences exist that are inconsistent with guilt. *Silvernail*, 831 N.W.2d at 599.

Here, the state proved the following circumstances:

- Moore gathered with over 100 people;
- Moore stood near the construction site;
- Officers agreed that the gathering was a “peaceful protest”;
- Enbridge had a policy that required construction to stop while “protesters” were at the site;
- The gathering caused “work stoppage”; and
- Highway 169 became congested due to the number of cars parked along the shoulder of the highway and the people walking on the shoulder.

These circumstances proved do not support only the inference that Moore intended to disturb the public peace. Rather, these circumstances proved permit a reasonable inference that Moore intended only to pray and bear witness at the gathering, as she testified, and did not intend to disturb the public peace. We also note that the state never elicited testimony or provided other evidence to support that work stoppage or traffic congestion would be a natural and probable consequence of the gathering. Because there is a reasonable inference

inconsistent with guilt, the state failed to prove beyond a reasonable doubt Moore's intent to disturb the public peace—a required element of the offense charged.

The supreme court has stated that, for a conviction under the unlawful-assembly statute, the state must prove that the particular defendant committed conduct that violated the unlawful-assembly statute, not that they were merely present when others committed such conduct. *State v. Johnson*, 163 N.W.2d 750, 755 (Minn. 1968). The supreme court reasserted this requirement in *State v. Hipp* when two defendants challenged their convictions for unlawful assembly on the grounds of insufficient evidence. 213 N.W.2d 610, 612 (Minn. 1973). In that case, a crowd of about 80 people disrupted a local business, damaged the property, impeded roadway and sidewalk traffic, blocked access to the property, and shouted profanities. *Id.* at 616. When defendant Hipp arrived after arrests had begun, she was told that her friends had been arrested and hurt and she asked to be arrested so that she could find her friends; no evidence produced at trial demonstrated that Hipp participated in the assembly. *Id.* at 617. In its decision reversing Hipp's conviction, the supreme court explicitly observed that the demonstration "gave rise to imminent alarm and peril," *id.* at 616, and that other defendants charged and found guilty "either admitted [to] active participation in the demonstration . . . or at least [admitted to] conduct which was intended to give aid to active participants," but that the state provided no evidence that Hipp engaged in or intended to engage in such conduct, *id.* at 617. The same logic that the supreme court used to reverse the conviction in *Hipp* applies to Moore because the state provided no evidence that Moore engaged in or intended to engage in conduct that would cause alarm or peril or that she aided anyone in that objective.

Even if we were to infer that Moore's intent was to stand near construction equipment to stop the work or stand near a highway to cause congestion, we determine that it would be unreasonable to conclude that these actions disturbed the public peace given caselaw and the circumstances present here. In *Hipp*, the supreme court stated that the unlawful-assembly statute is not intended to prohibit "activity which is merely annoying to others" and identifies a "peaceful protest" as an example of conduct that does not disturb the public peace. *Id.* at 615. And in *Johnson*, the supreme court explained that disturbing the public peace is an act "calculated to disturb the tranquility which members of the public are entitled to enjoy. . . . The offense may arise out of acts of violence or conduct causing or likely to cause an immediate disturbance of the public order." 163 N.W.2d at 754. In that case, the supreme court concluded that the defendants may have disturbed the public peace because a group of about 15 people "set up a meeting at a busy downtown intersection during a civic celebration when a post-parade crowd would be in the area," made "a blaring noise that could be heard at least a half block away," and some individuals stood on a ladder set up in the middle of the sidewalk, all of which attracted a crowd of 200 people and "created congestion of traffic." *Id.* at 751, 755.

The circumstances of the gathering in the present case are distinguishable from those in both *Hipp* and *Johnson* because the gathering occurred in a remote area, it did not involve anyone making loud noises or causing damage, and its only effects were causing some traffic congestion and some work delay, which testimony explained was not caused by any actions of the people gathered but by a company policy. The conduct exhibited at this gathering, particularly by Moore, did not involve any violence, as occurred in *Hipp*,

and while it may have been “annoying to others,” as was the case in *Johnson*, it did not create disruptions like those in *Hipp* and *Johnson*. Moreover, law enforcement agreed that the gathering was a “peaceful protest.” We therefore conclude that the state did not establish the intent element of the offense and thus that the state did not provide sufficient evidence to prove that the gathering was an unlawful assembly under the statute.

Because the circumstances proved are consistent with a rational hypothesis other than guilt, the state failed to provide sufficient evidence to support Moore’s conviction for unlawful assembly, and thus, her conviction for count two must be reversed.

III. The state failed to provide sufficient evidence to support a conviction for count three, presence at an unlawful assembly.

Moore next argues that the state provided insufficient evidence to prove that she violated the presence-at-an-unlawful-assembly statute. The statute provides, “Whoever without lawful purpose is present at the place of an unlawful assembly and refuses to leave when so directed by a law enforcement officer is guilty of a misdemeanor.” Minn. Stat. § 609.715. This statute requires the state to prove that Moore (1) was present at an unlawful assembly and (2) refused to leave when directed by an officer. Because we have already determined that the state failed to provide sufficient evidence to prove that the gathering was an unlawful assembly, we conclude that Moore was not present at an unlawful assembly based on the record in this case. Accordingly, her conviction for this count must be reversed.

We further note that, even if the gathering were an unlawful assembly, there is insufficient evidence to support Moore’s conviction because it is reasonable to infer that

Moore left the site when directed. Because the state did not provide direct evidence that Moore refused to leave the gathering when officers gave the dispersal order, we conduct a circumstantial-evidence review. The state proved the following circumstances:

- Moore was present near the construction site before the dispersal order;
- Officers issued dispersal orders;
- Moore was present at a different spot closer to the highway after the dispersal order; and
- Moore was not arrested with those who did not leave the site after the dispersal order was issued.

The circumstances proved support the rational hypothesis that Moore left the construction site after hearing the dispersal order and therefore did not fail to comply with the instructions of law enforcement. Because the state failed to provide sufficient evidence to prove Moore's guilt of presence at an unlawful assembly beyond a reasonable doubt, her conviction for count three must also be reversed.

Reversed.