

*This opinion is nonprecedential except as provided by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
A24-1627**

State of Minnesota,
Respondent,

vs.

Win Naing Aung,
Appellant.

**Filed September 2, 2025
Affirmed
Reyes, Judge**

Ramsey County District Court
File No. 62-CR-23-7050

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his conviction of theft of a motor vehicle by asserting that the state presented insufficient evidence that he knew or had reason to know that he did not have consent to use the vehicle. We affirm.

FACTS

The following facts are taken from the trial evidence and viewed in the light most favorable to the jury verdict. S.K. lives in a house in St. Paul with her husband E.K., their three children, and E.K.'s parents. Appellant Win Naing Aung is S.K.'s nephew. Appellant does not live at their house but would visit "here and there" and sometimes stayed the night. Neither S.K., E.K., nor D.K., their adult child who lives with them, remember appellant being at the house when they went to bed on November 12, 2023. The next morning, November 13, D.K. woke up and prepared for work around 5:30 a.m. D.K. noticed that her cousin, appellant, was in the kitchen. The 2008 Acura MDX that S.K. used was in the driveway when D.K. left for work at 5:50 a.m. When S.K. and E.K. woke up later that morning, appellant was not there.

Later that morning, S.K. noticed that the Acura was gone, and she could not find the keys, which she usually kept in the living room. After S.K. confirmed that no one who lived in the household was using the Acura, the car was reported missing. That evening, E.K. drove around looking for the Acura and found it in the parking lot outside of appellant's father's home. The police released the Acura to E.K., and a relative drove it back to the house.

Respondent State of Minnesota charged appellant with theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(a)(17) (Supp. 2023), and two other charges that are not

at issue on appeal.¹ At a jury trial, the state presented six witnesses and a bodycam video of an interview with appellant by police from November 24 during which appellant discussed what happened on November 13. Appellant did not testify or present any evidence. A jury found appellant guilty of theft of a motor vehicle, and the district court sentenced him to a 26-month prison term.

This appeal follows.

DECISION

Appellant argues that the state presented insufficient evidence at trial to establish that he knew or had reason to know that he did not have S.K.'s consent to use the Acura. We disagree.

A person is guilty of theft of a motor vehicle when (1) they take or drive a motor vehicle, (2) without the consent of the owner or an authorized agent, and (3) knows or has reason to know that the owner or an authorized agent did not give consent. Minn. Stat. § 609.52, subd. 2(17); *see also State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). Appellant challenges only the third element.

When reviewing claims of insufficient evidence to support a conviction, appellate courts look at the record to determine whether the evidence, when viewed in a light most favorable to the conviction, is sufficient to support the jury's verdict. *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002). A fact-finder may find a person guilty by direct or

¹ The jury acquitted appellant of property theft, and the district court granted appellant's motion for judgment notwithstanding the verdict on an unlawful-possession-of-a-firearm charge.

circumstantial evidence. *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022). Direct evidence is “based on personal knowledge or observation” and does not require the fact-finder to make an inference. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). Circumstantial evidence is “evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist” and “*always requires an inferential step* to prove a fact” that is not required by direct evidence. *Id.* (emphasis added). When direct evidence of guilt on a particular element of a crime is not sufficient on its own to sustain the verdict, appellate courts apply the heightened circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

There are two steps to the circumstantial-evidence standard. The first step is to identify the circumstances proved at trial. *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023). This is done by winnowing down the evidence presented at trial to a subset of facts that are consistent with the jury’s verdict and disregarding evidence that is inconsistent with the verdict. *State v. Hassan*, 977 N.W.2d 633, 640 (Minn. 2022). “[T]he absence of evidence in the record regarding a certain circumstance does not constitute a circumstance proved.” *State v. German*, 929 N.W.2d 466, 473-74 (Minn. 2019). The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Id.* at 472. In making this determination, appellate courts “give no deference to the jury’s choice between reasonable inferences.” *Id.* “The [s]tate’s circumstantial evidence is sufficient when the reasonable inferences are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Hassan*, 977 N.W.2d at 640.

Here, the state relied on circumstantial evidence to prove the third element, so we apply the circumstantial-evidence test. The circumstances proved include the following. Appellant is S.K.'s nephew. S.K., her husband E.K., their three children, including D.K., and E.K.'s parents all live in a house in St. Paul. Appellant did not live in S.K.'s home but would visit "here and there" and sometimes stayed the night. Appellant was not at S.K.'s home when the members of her household went to sleep on November 12. While S.K. uses the Acura as her own vehicle and pays for insurance, her friend J.N. is the owner of the vehicle and permits S.K. to borrow it. S.K. and J.N. had this arrangement for approximately one year at the time of trial. The Acura was at the house when E.K. arrived home from work on November 12 at 11:30 p.m. Appellant was in the kitchen when D.K. woke for work around 5:30 a.m. on November 13. The Acura was parked outside the house when D.K. left for work at 5:50 a.m. D.K. drove a different vehicle to work.

Appellant was no longer in the house when E.K. and S.K. woke up around 7:00 a.m. Shortly after waking up, S.K. noticed that the Acura was gone. No other household members were using the Acura that morning. S.K. and D.K. are the only ones who drive the Acura on a regular basis. S.K. keeps the keys to the Acura in the living room. S.K. permits people to use the Acura as needed, but not appellant because he could not drive. Appellant had never driven the Acura before November 13. S.K. did not allow appellant to drive the Acura. The Acura was reported stolen. In a recorded interview with police, appellant initially stated that he did not remember whether he took the Acura, but then admitted he took it without asking whether he could use the car. Appellant drove the Acura to his parents' home. E.K. went out to look for the Acura later that same day, and saw it

parked in the parking lot outside of appellant's father's home. E.K. retrieved the keys from appellant's father's home, and a relative drove the Acura back to E.K. and S.K.'s house.

The state argues, and appellant concedes, that the circumstances proved are consistent with appellant's guilt of theft of a motor vehicle. We agree.

Appellant nevertheless argues that the circumstances proved "are consistent with the reasonable hypothesis that [he] had no way of knowing he did not have permission to use the car if needed." However, this directly contradicts appellant's own admission in a recorded interview that he did not have a conversation with S.K. or E.K. about whether he could use the car. It is also contrary to the circumstances proved of S.K. and D.K.'s testimony that appellant had never driven the Acura before and that he was not allowed to drive it. Appellant also argues that S.K.'s statement that others could use the car if they needed to do so constituted a default rule that family members could use the car and that appellant was unaware that he was excluded from this default rule. However, appellant presented no evidence at trial regarding appellant's supposed knowledge of this default rule, and a lack of evidence about a circumstance does not constitute a circumstance proved. *German*, 929 N.W.2d at 473-74. Moreover, this takes S.K.'s statement out of context. S.K. testified that this default rule does not include appellant because he could not drive so she does not allow him to drive the Acura. We therefore conclude that the circumstances proved at trial are consistent with appellant's guilt and inconsistent with a rational hypothesis other than guilt.

Affirmed.