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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2076**

State of Minnesota,  
Respondent,

vs.

William August Wester,  
Appellant.

**Filed October 28, 2013  
Affirmed  
Halbrooks, Judge**

Redwood County District Court  
File No. 64-CR-11-916

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Steven S. Collins, Redwood County Attorney, Ryan S. Hansch, Assistant County  
Attorney, Redwood Falls, Minnesota (for respondent)

Cynthia A. Moyer, Special Assistant State Public Defender, Fredrikson & Byron, P.A.,  
Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Chief Judge; and  
Halbrooks, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Appellant challenges his conviction of third-degree burglary, arguing that there was insufficient evidence for the jury to find him guilty. Because we conclude that the evidence was sufficient, we affirm.

### FACTS

On the evening of November 26, 2011, W.B. was watching television in his home in Lucan when he heard a vehicle drive onto his property. W.B. looked out of his window and observed appellant William Wester get out of a pick-up truck, walk up to W.B.'s detached garage, shake the French-style garage doors, pry them open, and enter. W.B. testified that Wester was inside his garage for approximately ninety seconds, during which time W.B. observed a light, possibly from a flashlight, shining around in the garage. W.B. then saw Wester exit the garage holding something under his arm. Wester does not dispute that he was on W.B.'s property unlawfully and that he left W.B.'s garage carrying something cradled in his arm.

W.B. shouted at Wester from inside his home. Wester shouted back that W.B. had helped his ex-wife move, that "he was going to get [him] for that," and accused W.B. of stealing his refrigerator and grill. W.B. had never met Wester, but he did help Wester's ex-wife move from her farm approximately one month earlier. W.B. told Wester he was going to call the police, and Wester responded that he too was going to call the police. Wester drove away in his truck, and W.B. called the police.

In response to W.B.'s call, two Redwood County deputies were dispatched to his residence. The deputies inspected the garage and concluded that Wester had forced entry into the building because the garage door's metal stripping looked like it was "pried out" using some force, the rope previously attached to secure the garage doors was untied or broken off, and a board that was supposed to be on the bottom of the doors was pushed away or damaged. The deputies spent 5-15 minutes in the garage, and, in that time, W.B. was unable to immediately identify any items that were missing. Because locating Wester was a higher priority than conducting an inventory of W.B.'s garage, the deputies instructed W.B. to look around and contact them if he noticed anything missing. Several days later, W.B. reported to the sheriff's office that a tape measure, a hammer, and a circular saw were missing from his garage.

Wester was arrested and charged with third-degree burglary in violation of Minn. Stat. § 609.582, subd. 3 (2010); fourth-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 3 (2010); and trespass in violation of Minn. Stat. § 609.605, subd. 1 (2010). After a half-day trial, a jury found Wester guilty on all counts. This appeal follows.

## **D E C I S I O N**

Wester argues that the evidence is insufficient to support his conviction for third-degree burglary. Specifically, he asserts that the circumstantial evidence is insufficient to prove either that he (1) stole items from the garage or (2) entered the garage with intent to steal. Wester does not challenge his fourth-degree criminal-damage-to-property or trespass convictions.

A conviction of third-degree burglary requires evidence that a defendant entered a building without consent and stole or had intent to steal. Minn. Stat. § 609.582, subd. 3. In this case, because the state did not provide direct evidence of actual theft or intent to steal, we must determine whether the state satisfied its burden of proof with circumstantial evidence.

We apply heightened scrutiny when reviewing verdicts based on circumstantial evidence. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). This heightened scrutiny requires us to first identify the circumstances proved, deferring “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). We then independently examine the reasonableness of all inferences that might be drawn from those circumstances, including inferences consistent with a hypothesis other than guilt. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). At this second step, “we give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (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. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). But because the jury is in the best position to determine credibility and weigh the evidence, we “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *Id.* (quotation omitted).

Here, the circumstances proved are as follows. Wester broke into W.B.'s garage on the evening of November 26, 2011. He was inside with a flashlight for approximately ninety seconds. He left the garage carrying something under his arm. Several days later, W.B. reported to police that a tape measure, a hammer, and a circular saw were missing from his garage. Viewing the evidence in the light most favorable to the verdict, we conclude that the circumstances proved support a reasonable inference that Wester stole a tape measure, a hammer, and a circular saw from W.B.'s garage. But it must also be true that there are no other reasonable inferences that are consistent with innocence. *Andersen*, 784 N.W.2d at 329.

Wester argues that the circumstances proved also support the inference that Wester did not steal any of W.B.'s property. He contends that it is just as reasonable that the item under his arm was some kind of crowbar or other tool used to break into the garage. But even if an appellant's explanation is "theoretically possible," if there is no evidence in the record to support appellant's hypothesis, we will not reverse the conviction. *See State v. Tscheu*, 758 N.W.2d 849, 860-61 (Minn. 2008). Here, there is no evidence in the record—direct or circumstantial—that the item under Wester's arm was a crowbar or other tool. We therefore disagree that the evidence supports a reasonable inference other than that of guilt.

We conclude that the circumstances proved support the inference that Wester stole from W.B.'s garage and do not support Wester's theory that he was carrying something other than W.B.'s property under his arm. Therefore, the evidence is sufficient to support the jury's verdict, and we affirm the conviction. Because we find that the evidence is

sufficient to prove actual theft, we need not address whether the evidence is sufficient to prove that Wester entered the garage with intent to steal.

**Affirmed.**