

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-882**

State of Minnesota,
Respondent,

vs.

Bruce George Peck,
Appellant.

**Filed May 21, 2012
Affirmed in part and reversed in part
Rodenberg, Judge**

Crow Wing County District Court
File No. 18CR102072

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County
Attorney, Brainerd, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant appeals his convictions of third-degree burglary and five counts of
aggravated forgery, arguing that the circumstantial evidence was insufficient to convict

him. Because the circumstantial evidence was sufficient to convict appellant of third-degree burglary and one count of aggravated forgery, but insufficient to convict appellant of the remaining four counts of aggravated forgery, we affirm in part and reverse in part.

FACTS

“Peck’s Puddle” is a vacation property built in the 1930s and 1940s by appellant Bruce Peck’s father in Crosslake, Crow Wing County, and is still used as a summer retreat by members of appellant’s family. About half of the property is now titled in the name of appellant’s daughter and the other half is titled in the name of appellant’s sister. Appellant does not have title to any portion of Peck’s Puddle. Although appellant stayed briefly on the property in the summer of 2007, the family had him evicted in August of that year.

Almost two years after being evicted, appellant brought a motion in district court contesting ownership of a number of items of personal property at Peck’s Puddle and requesting permission to retrieve those items. Included were items the theft of which resulted in appellant’s conviction. By order dated July 27, 2009, appellant’s request to retrieve the items in question from Peck’s Puddle was denied.

On August 12, 2009, the caretaker of Peck’s Puddle discovered that four jet skis and their trailers, two canoes, and two kayaks had been stolen from a pole barn on the property. The items in the pole barn did not belong to appellant. The caretaker contacted appellant’s sister to report the theft and then contacted the police.

Officer Jacob Maier of the Crosslake Police Department went to Peck's Puddle the following day. He met with the caretaker, who brought him to the pole barn. The caretaker informed Officer Maier that he suspected appellant of the theft.

While at the pole barn, Officer Maier photographed a boot print that had been left near the door. Although there were a number of footprints in the pole barn, Officer Maier only photographed the best-defined footprint. The footprint did not match the caretaker's footprints. The caretaker had raked out the ground in the pole barn about a week before the theft, and the footprint in question was not on the ground at that time.

On or about September 10, 2009, Officer Maier located all of the missing items at the home of a friend of appellant. The friend stated that appellant had left the items at the home "a few weeks" prior.

After locating the items, Officer Maier had them towed to an impound lot where they were secured. Officer Maier then looked up the DNR registration information for the jet skis and boats.

The watercraft in question were all registered to appellant as of May 1, 2008. Appellant's son was the prior registered owner of the four jet skis. There was no prior registered owner of the canoes or kayaks.

Officer Maier discussed the items with appellant's son, who also raised concerns about a pickup truck that he had been allowing appellant to use. Appellant had given the pickup truck to his son when the son was a college student about ten years earlier. The officer checked the registration on the truck and saw that it was then registered to appellant, but that it had been registered to appellant's son until February 5, 2008.

Appellant's son advised Officer Maier that he had not signed any documents to transfer title of the vehicle to appellant. The signature on the title document purporting to be the son's signature as seller and transferring title to appellant as buyer was not the son's signature. At trial, appellant's son pointed out the differences between the signature on the vehicle title document and his genuine signature. Appellant's son denied having signed anything or having given appellant permission to transfer title to the vehicle or to the jet skis.

In December 2009, Officer Maier obtained and executed a search warrant on appellant's home, and during the search located a boot in appellant's bedroom. Appellant was present at the time that Officer Maier discovered the boot. Appellant warned the officer to be careful handling the boot, because appellant had worn the boot in the woods and it could have poison ivy on it. The tread pattern on the boot was identical to the boot-print tread pattern, was worn down in the same way, and was the same size as the boot print found in the pole barn.

Appellant was charged by complaint on May 11, 2010. The complaint was later amended. Count 1 of the amended complaint charged appellant with aggravated forgery stemming from the registration of a trailer taken from the pole barn. Count 2 of the complaint charged appellant with aggravated forgery stemming from the transfer of the title to the pickup truck. Counts 3 through 6 alleged aggravated forgery stemming from the registration of the four jet skis taken from the pole barn. Count 7 accused appellant of receiving stolen property with an aggregated value in excess of \$5,000. Count 8 alleged theft of property with an aggregated value in excess of \$5,000. Count 9 charged

appellant with burglary in the third degree. Count 10 charged appellant with receiving stolen property with an aggregated value of between \$1,000 and \$5,000. Count 11 charged the appellant with theft of property with an aggregated value between \$1,000 and \$5,000.¹

A jury trial began on December 7, 2010. The jury heard testimony from the deputy registrar of Pine River, Cass County, Minnesota. He stated that his office is designated as “Location 064” and that he operates it out of his jewelry store. He testified that any registrations recorded at “Location 064” would have taken place at his office. Title to the pickup truck was transferred at Location 064. The evidence does not disclose at which location the registrations to the jet skis were transferred.

The deputy registrar testified that he handles motor vehicle title registrations and DNR vehicle registrations. He indicated that DNR registration of an unregistered recreational vehicle requires the registration card of the previous owner or a bill of sale. He stated that if a vehicle has been previously registered, then registration requires the presentation of the registration card and the bill of sale.

According to the deputy registrar, a bill of sale contains the owner’s name, as well as information about the vehicle, including its year, make, model, serial number, and registration number. The bill of sale needs to be signed by both the buyer and the seller, and the registration card needs to be signed by “the owner.”

¹ Count 10 was a lesser included offense of count 7, and count 11 was a lesser included offense of count 8.

The deputy registrar testified that he does not keep any documentation following a DNR registration. Those transactions are completed electronically and there is no “paper trail.” He was familiar with appellant, who had come into the store multiple times over the years, most often to register vehicles. However, because the deputy registrar processes thousands of registrations per year, he did not have any recollection of any specific instances where appellant registered a vehicle.

After resting at trial, the state dismissed one count of aggravated forgery. The verdict forms for counts 7 and 8 each included a special interrogatory calling for the jury to find whether the aggregated value of the property received or stolen met certain threshold values, thereby encompassing counts 10 and 11, which were not presented to the jury on separate verdict forms.

Following a three-day jury trial, appellant was found guilty of Counts 2 through 6, which were the five remaining counts of aggravated forgery, and of all the other charges submitted. With respect to counts 7 and 8, which charged appellant respectively with receiving stolen property and theft, the jury found that the aggregated value of the property exceeded \$5,000.

This appeal followed, challenging the convictions for counts 2 through 6, aggravated forgery, and count 9, third-degree burglary. Appellant does not challenge his convictions for counts 7 and 8.

DECISION

In considering the sufficiency of evidence, this court’s review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the

light most favorable to the conviction, was sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume the jury “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the appellant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Convictions based on circumstantial evidence merit stricter scrutiny. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). In such cases, the 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. *Id.*

Evaluating a conviction based on circumstantial evidence requires a two-step analysis. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In the first step, this court must determine the circumstances that were proved. *Id.* In doing so, this court accords due deference “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.” *Id.* (quotation omitted).

Once this court determines the circumstances that have been proved, it must then conduct a de novo review of all the reasonable inferences that might be drawn from those circumstances, including any reasonable inferences that are inconsistent with guilt. *Id.* at

473–74. If any reasonable inference inconsistent with guilt exists, then “a reasonable doubt as to guilt arises” and the conviction must be reversed. *Id.* at 474 (quotation omitted). However, the inference inconsistent with guilt must be a *reasonable* one, and this court will not reverse a conviction on the basis of mere conjecture. *Id.* at 473. This is because the state does not have the burden of removing all doubt, but only all reasonable doubt. *Id.*

I.

The jury found appellant guilty of third-degree burglary in relation to the taking of the jet skis, canoes, and kayaks from the pole barn. A person commits the crime of burglary in the third degree when he

enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice

Minn. Stat. § 609.582, subd. 3 (2008).

The state proved a burglary in the third degree by some actor. The only issue on appeal is whether the state proved that appellant was that actor.

At trial, the state offered evidence that would prove that the appellant was evicted from Peck’s Puddle and that following the eviction, appellant unsuccessfully brought a court action seeking a declaration that he owned and was entitled to possession of the items that were removed from the pole barn. On the day the burglary was discovered, police located a boot print in the pole barn that had not been there a week earlier when the caretaker had raked out the pole barn, at

which point the items were still in the pole barn. The boot print exactly matched the size, tread, and wear of a boot the police found in appellant's home and which appellant had admitted to wearing in the woods. The state also proved that, shortly after the burglary, appellant brought the items that had been taken from the pole barn to a friend's home, where the police found the items.

These circumstances support a reasonable inference that appellant was personally present at the pole barn when the items were taken from it and that appellant participated in the burglary. While appellant argues the circumstances are also consistent with the theory that someone else acted without appellant's participation, appellant's theory is directly contradicted by the boot print, which places appellant in the pole barn at approximately the time the burglary occurred. The appellant's theory is therefore "mere conjecture" and does not give rise to a reasonable doubt as to appellant's guilt. There are no reasonable alternative inferences that are inconsistent with appellant having participated in the burglary. Sufficient evidence was presented at trial for the jury to find that appellant had entered the pole barn without consent and had stolen the watercraft from the pole barn. Therefore, sufficient evidence was presented to the jury for it to convict appellant of count 9 of the complaint, third-degree burglary.

II.

The jury found appellant guilty of five counts of aggravated forgery: one count for the title transfer on the pickup truck and one count for the altered registration of each of the jet skis.

A person commits the crime of aggravated forgery when he, “with intent to defraud, utters or possesses with intent to utter any forged writing” by which, “when genuine, legal rights, privileges, or obligations are created, terminated, transferred, or evidenced.” Minn. Stat. § 609.625, subds. 1(1), 3 (2008).

A. Pickup truck

With respect to the pickup truck, the state proved at trial that a title transfer document was presented at the Pine River Deputy Registrar’s Office, that the document contained a signature purporting to be that of appellant’s son, but the signature was not in fact the son’s signature. The circumstances also demonstrated that the title was transferred into appellant’s name and that appellant had possession and use of the pickup truck at the time the transfer occurred and thereafter. Appellant had been using the pickup truck with the consent of his son, who was the lawful owner of it. There were no circumstances suggested by the evidence indicating that anyone other than appellant and his son had any claim of an ownership or possessory interest in the pickup truck.

These circumstances support beyond a reasonable doubt the inference that appellant or an accomplice presented the forged title transfer document to the deputy registrar in Pine River with the intent to transfer title in the pickup truck from appellant’s son to appellant. No reasonable inference exists that is inconsistent with appellant’s guilt. Therefore, the evidence presented at trial was sufficient to convict appellant of count 2 of the amended complaint, aggravated forgery.

B. Jet skis

With respect to the jet skis, the circumstances proved at trial included that title to the four jet skis was transferred from the appellant's son's name into the appellant's name. All of the transfers occurred on the same day. The deputy registrar from Pine River did not remember transferring the registrations. However, the deputy registrar testified that, had he been the person who transferred them, he would have required a document signed by the appellant's son in order to effect such a transfer. No such documents were admitted into evidence.

While these circumstances indicate that title to the four jet skis was probably transferred through the presentation of a forged document, and that appellant probably had something to do with the documents, these circumstances do not exclude beyond a reasonable doubt other reasonable inferences that are inconsistent with appellant's guilt.

For example, the evidence does not prove conclusively that the registration of the four jet skis took place at "Location 064" as there was no documentary evidence admitted at trial and the deputy registrar did not recall the transactions. The evidence therefore does not exclude the possibility that the title transfers with respect to the four jet skis were accomplished at a location with a less demanding or less attentive registrar. The evidence does not exclude the possibility that the registration transfers were the result of tampering on the DNR database or of some unauthorized access to the deputy registrar's own computer. The evidence does not exclude the possibility that the registrations were transferred erroneously or as the

result of a clerical error. The allegedly forged documents were never produced by the state. Under any of these circumstances, the registration could have been transferred without a forged document ever having existed or been presented. Therefore, reasonable doubt exists with respect to counts 3 through 6, and the convictions for those counts must be reversed and vacated.

III.

Appellant's pro se supplemental brief asserts facts that either were not presented to the jury or were not relevant with respect to the charges. This court will not consider those arguments. The appellant's second pro se supplemental brief appears to argue that the district court erred by instructing the jury that

[a] fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case. The fact that a person walked in the snow could also be proven by circumstantial evidence. The fact that shoe prints were left in the snow infers that a person walked in the snow.

This instruction paraphrases 4 *Minnesota Practice*, CIVJIG 12.10 (2006), and it was not an error for the district court to give it.

IV.

Sufficient evidence was presented to the jury to allow it to convict appellant of count 2, aggravated forgery with respect to the pickup truck, and count 9, third-degree burglary. However, because the circumstances proved at trial support reasonable

inferences inconsistent with appellant's guilt as to counts 3 through 6, aggravated forgery with respect to the jet skis, those convictions are reversed and vacated.²

Affirmed in part and reversed in part.

² No remand for resentencing is necessary in this case because the sentences were executed pursuant to the Minnesota Sentencing Guidelines and because the sentences for counts 3 through 6 were shorter than the sentence for count 2. The sentences were ordered to be served concurrently with that sentence, and appellant's criminal history score of 41 is such that vacating the convictions for counts 3 through 6 have no impact on his sentence for count 2.