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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2306**

In the Matter of the Welfare of: C.B.O., Child.

**Filed August 13, 2012  
Reversed  
Wright, Judge**

Marshall County District Court  
File No. 45-JV-11-320

Polk County District Court  
File No. 60-JV-11-2668

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

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Considered and decided by Ross, Presiding Judge; Wright, Judge; and Collins,  
Judge.\*

**UNPUBLISHED OPINION**

**WRIGHT**, Judge

Appellant, a juvenile, challenges his delinquency adjudication for theft, arguing  
that the circumstantial evidence presented at trial is insufficient to prove the charge

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

beyond a reasonable doubt. Because the circumstantial evidence and all reasonable inferences that may be drawn from it are consistent with a rational hypothesis other than guilt, we reverse.

## **FACTS**

On the evening of September 2, 2011, juvenile-appellant C.B.O. told K.M., the owner of the Elm Crest Motel in Warren, that the motel's "pop machine took his money." While K.M. attempted to retrieve the money for C.B.O. by opening the vending machine with a key, C.B.O. waited nearby. Shortly thereafter, C.B.O. drove away in his vehicle without receiving the refund. K.M. realized that the key was missing from the vending machine's door when he tried to close and lock the vending machine. After searching unsuccessfully for the key, K.M. called the police and reported that C.B.O. had stolen the key.

Deputy Steven Johnson responded to the report and stopped C.B.O.'s vehicle soon after K.M. called the police. He observed that C.B.O. was accompanied by three passengers, and he detected an odor of marijuana. Deputy Johnson asked C.B.O. about the missing vending-machine key. Twice, C.B.O. denied "having the key or taking the key." When Deputy Johnson asked C.B.O. about the source of the marijuana odor, C.B.O. directed Deputy Johnson to a glass pipe in the vehicle's center console. Deputy Johnson searched C.B.O. and his vehicle. Deputy Johnson recovered the glass pipe during the search. But he did not find the key to the vending machine.

Deputy Johnson did not search the scene of the alleged theft. But on the morning of September 4, fewer than 48 hours after K.M. attempted to refund C.B.O.'s money,

K.M. found the missing key on the ground near the vending machine.<sup>1</sup> K.M. did not disclose this information, however, until he testified at trial.

The state charged C.B.O. with one count of misdemeanor theft, a violation of Minn. Stat. § 609.52, subds. 2(1), 3(5) (2010), and one count of possession of drug paraphernalia, a violation of Minn. Stat. § 152.092 (2010). Following a bench trial, the district court concluded that “[t]he only plausible conclusion that can be drawn from the key having gone missing is that [C.B.O.] took the key,” and found the charges proved beyond a reasonable doubt. C.B.O. was adjudicated delinquent based on both of the charged offenses. The district court imposed a one-year term of probation. This appeal followed, challenging only the adjudication of the misdemeanor theft offense.

### D E C I S I O N

C.B.O. argues that the evidence is insufficient to support his delinquency adjudication for theft. Because this case rests entirely on circumstantial evidence, we first contrast the standards of review for cases involving direct evidence of guilt and those based solely on circumstantial evidence. When reviewing a challenge to the sufficiency of the evidence in a case that does *not* rest exclusively on circumstantial evidence, we conduct a thorough analysis of the record to determine whether the fact-finder reasonably could find the defendant guilty of the offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to

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<sup>1</sup> The district court made conflicting findings as to the location where the key was found, first describing the key’s location as “near the vending machine” and then as “not in the general vicinity of the vending machine.” K.M.’s uncontroverted testimony supports the district court’s first finding.

the verdict and assume that the fact-finder believed the evidence supporting the verdict and disbelieved any evidence to the contrary. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). In a case that does not rest exclusively on circumstantial evidence, the verdict will not be disturbed if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

By contrast, we employ a two-part standard of review to analyze the sufficiency of the evidence when the fact-finder's determination of guilt rests exclusively on circumstantial evidence. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we identify the circumstances proved, deferring to the fact-finder's "acceptance of the proof of these circumstances and rejection of evidence in the record that conflict[s] with the circumstances proved by the State." *Id.* (quotation omitted). Next, we examine all reasonable inferences that may be drawn from the circumstances proved, without *any* deference to the fact-finder's choice between reasonable inferences. *Id.* at 329-30. To sustain a conviction based on circumstantial evidence, all reasonable inferences must be "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 330. As such, the "[c]ircumstantial 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. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). This legal standard for circumstantial evidence also is employed in juvenile proceedings. *In re J.R.M.*, 653 N.W.2d 207, 210

(Minn. App. 2002). Because this case rests exclusively on circumstantial evidence, we apply this two-step analysis.

Under Minnesota law, theft is committed if a person intentionally, without claim of right or the owner's consent, takes, uses, transfers, conceals, or retains possession of another's movable property with the intent to permanently deprive the owner of possession. Minn. Stat. § 609.52, subd. 2(1). When the property has a value of \$500 or less, the person is guilty of a misdemeanor. *Id.*, subd. 3(5). A person's flight from the scene of a crime may be circumstantial evidence of guilt because it suggests consciousness of guilt. *State v. Mosby*, 450 N.W.2d 629, 633 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990).

Here, when viewed in the light most favorable to the verdict, the evidence establishes the following circumstances. C.B.O. reported that K.M.'s "pop machine took his money." While C.B.O. stood approximately four feet away, and with no one else nearby, K.M. inserted a key in the vending machine and retrieved C.B.O.'s money. But before K.M. returned the money to C.B.O., C.B.O. got in his vehicle and drove away. K.M. then discovered that the key to the vending machine was missing. K.M. "looked everywhere," but he did not find the key. K.M. reported the alleged theft and, shortly thereafter, Deputy Johnson questioned C.B.O. about the key and searched both C.B.O. and his vehicle. Deputy Johnson did not find the missing key, and C.B.O. denied taking or possessing the key. Deputy Johnson's investigation did not include searching for the key at K.M.'s motel. But when K.M. was searching for the key less than 48 hours after K.M. determined that the key was missing, he found it near the motel's vending machine.

The parties dispute what reasonable inferences can be drawn from these facts. The state argues that, because (1) C.B.O. reported losing his money but did not wait for his refund, (2) C.B.O. and K.M. were the only people near the vending machine at the relevant time, (3) K.M. discovered that the key was missing, after C.B.O. departed, and (4) K.M. thoroughly searched the area near the vending machine without locating the key that evening, there is only one reasonable inference—C.B.O. took the key and fled. To explain the subsequent recovery of the key, the state maintains that C.B.O. had “a change of heart or change of [conscience]” and returned the key. Citing K.M.’s testimony that he “fumb[le]d around in the machine,” C.B.O. counters that, (1) because the key fell out of the keyhole, K.M. overlooked the key during his initial search, (2) C.B.O. grew impatient waiting for the refund, and (3) he left without it. This scenario, C.B.O. argues, is one that is equally reasonable *and* consistent with his innocence. We agree.

This case rests exclusively on circumstantial evidence, which prevents us from deferring to the district court’s choice between reasonable inferences. Because C.B.O. advances a reasonable alternative inference that is consistent with a rational hypothesis other than guilt, we reverse C.B.O.’s delinquency adjudication for misdemeanor theft.

**Reversed.**