

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2297**

State of Minnesota,
Respondent,

vs.

Michael Joseph Urman,
Appellant.

**Filed February 24, 2014
Affirmed
Ross, Judge**

Kanabec County District Court
File No. 33-CR-12-177

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Amy R. Brosnahan, Kanabec County Attorney, Barbara McFadden, Assistant County Attorney, Mora, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

ROSS, Judge

The owner of a vacant farmhouse came upon appellant Michael Urman and his girlfriend loading an air conditioning unit, a furnace motor, and other items from the

house into a pickup truck. Urman appeals from his conviction of third-degree burglary, aiding and abetting third-degree burglary, and attempting to aid and abet third-degree burglary. He argues that the state failed to present sufficient evidence to support the conviction. He specifically argues that the jury could have reasonably inferred from the circumstantial evidence that he lacked the intent to steal. Because the only rational hypothesis consistent with the circumstances proved by the state is that Urman intended to steal, we affirm.

FACTS

Kanabec County Sheriff's Deputy Lance Herbst was called to a reported theft in progress at a farmhouse near Mora in May 2012. When he arrived, he found a group of individuals, including Michael Urman, near the driveway. Urman was unloading items from a pickup truck and placing them in a garage. Urman told Deputy Herbst that his girlfriend, Coe Viney, had spoken with the home's owner and received permission to be on the property and collect remnants from a collapsed barn. The owner, Howard Braastad, clarified that a woman had called him and that he gave her permission to take only wood from the barn. But Urman's truck was full of scrap metal, including an air-conditioning unit and a furnace motor.

The state charged Urman with second-degree burglary under Minnesota Statutes section 609.582, subdivision 2(a)(1) (2010), and third-degree burglary under Minnesota Statutes section 609.582, subdivision 3. The state also included aiding-and-abetting and attempt charges.

Braastad testified in Urman's trial. He recalled telling Viney that she and Urman could take all the barn wood they wanted, but he said he never gave permission to take anything else. He stated that he went to the farmhouse after neighbor Nancy Foss called and told him that she thought the property was being vandalized. When he arrived, he found Urman attempting to remove clothesline poles and asked whether that was barn wood. Urman said, "[N]o, that's metal pipe."

Foss testified that she encountered Urman and Viney after seeing them pull up to Braastad's house in a pickup truck. According to Foss, Viney said she was looking for an aunt who used to live there. Foss told Viney that no one had lived there for at least three years and offered to help Viney contact Braastad. Foss then rode back to her home in Urman and Viney's truck and handed Viney Braastad's business card. Foss stood with Urman on one side of the truck while Viney walked to the other side and talked to Braastad. When Viney came back around the truck, Foss overheard her ask Braastad to tell Foss that he had given Viney and Urman permission to take barn board from his property, and she handed Foss the phone. Foss talked to Braastad, and he told her that Viney and Urman could take as much barn board as they wanted. The couple drove back to the Braastad property and, after 30 minutes, Foss heard metal clanking. She called Braastad. She went back to the farmhouse after Braastad arrived, and she heard Braastad say to Urman, "[Y]ou were supposed to be taking barn board," and Urman reply, "[I]t's just a big misunderstanding, it's a big misunderstanding," and, "[W]e'll put everything back."

Donald Smith, another of Braastad's neighbors, also testified. He said he heard clanking from Braastad's property. Apparently sometime after Foss summoned Braastad to the property, Smith went to Braastad's and found Urman leaving the farmhouse and getting in his truck, which was full of metal items. Smith asked Urman what he was doing, and Urman said that "he was just getting metal or something out of the house" and that he thought the house was abandoned. Smith told Urman to back up and empty the truck and signaled his girlfriend to call the police. That's when it seems Braastad and Foss arrived.

The state also introduced transcripts of statements Urman made to Deputy Herbst. According to the exhibits, Urman said that Braastad had given him and Viney permission to be on his property and gather material from the barn. Urman said, "It was a big miscommunication. [Braastad] thought we were talking about barn wood, and we were talking about scrap."

The jury found Urman guilty of third-degree burglary, aiding and abetting third-degree burglary, and attempting to aid and abet third-degree burglary. Urman appeals.

D E C I S I O N

Urman argues that the state failed to produce sufficient circumstantial evidence to support his conviction. He acknowledges that the state's circumstantial evidence was consistent with a theory of guilt but asserts that it was equally consistent with the rational hypothesis that he was unaware that he lacked Braastad's permission to collect scrap metal.

In sufficiency-of-the-evidence appeals in circumstantial-evidence cases, we scrutinize the record carefully. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). First, we identify the circumstances proved by the state. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). We presume that the jury relied on these circumstances and rejected any conflicting evidence. *Id.* Second, we independently examine the reasonableness of the inferences the jury could draw from those circumstances, including inferences that support a hypothesis other than guilt. *Id.* We do not defer to the jury's choice between reasonable inferences. *Id.* at 329–30. To uphold a verdict, the circumstances proved must be consistent with the hypothesis that the defendant is guilty and inconsistent with any other rational hypotheses. *Id.* at 330.

The jury found Urman guilty of three third-degree burglary-related charges. A person commits third-degree burglary if he either directly or as an accomplice “enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building.” Minn. Stat. § 609.582, subd. 3 (2012). Urman argues that the evidence allows for the reasonable hypothesis that he mistakenly believed he had permission to take scrap metal from Braastad's property. The hypothesis is not reasonable. The state proved the following circumstances bearing on intent. Braastad gave Viney permission over the phone to take only barn wood. Urman heard Viney ask Braastad to confirm with Foss that they had permission to take barn wood. Braastad told Foss that he had given Viney permission to take barn wood. Urman asked Foss if they had permission to go on Braastad's property. Foss told him they did. When confronted by Smith and Braastad about taking scrap metal from the farmhouse, Urman immediately

claimed there had been a “misunderstanding” and began putting the metal back. These circumstances prove that Urman knew he had permission to take only barn wood, not metal.

We are not persuaded that the circumstances are also consistent with a *reasonable* hypothesis that Urman believed he had permission to collect scrap metal. This hypothesis is unreasonable because scrap metal was never mentioned in the exchanges with Braastad. Barn wood was repeatedly mentioned. It is true that Viney testified that she told Urman that Braastad said they could “scrap” and that Urman told Deputy Herbst that he thought he had permission to scrap. But given the specific repeated references always to wood, and never to metal, it would have been unreasonable for the jury to infer that Urman believed he could scrap for anything other than wood. Because Urman is unable to point to any circumstances proved by the state that reasonably support his alternative, innocent hypothesis, his argument fails.

Affirmed.