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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1350**

State of Minnesota,
Respondent,

vs.

Orpheus Odel Hicks,
Appellant.

**Filed July 14, 2009
Affirmed
Klaphake, Judge**

Anoka County District Court
File No. 02-CR-07-13692

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert D. Goodell, Assistant County Attorney, Anoka County Attorney's Office, 2100 Third Avenue, 7th Floor, Anoka, MN 55303 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Steven P. Russett, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Orpheus Odel Hicks challenges his conviction of receiving stolen property, Minn. Stat. § 609.53, subd. 1 (2006), arguing that the circumstantial evidence was insufficient to sustain his conviction because the evidence was as consistent with his claim of innocence as it was with the state's claim of guilt. Because the evidence was consistent with the jury's verdict of guilty and inconsistent with any rational hypothesis other than guilt, we affirm.

DECISION

On a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, and assume that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008). Although a conviction based solely on circumstantial evidence merits stricter scrutiny, *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994), circumstantial evidence is entitled to "the same weight as any other evidence so long as the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt." *Hughes*, 749 N.W.2d at 312 (quotation omitted). The state's burden is to prove a defendant's guilt beyond a reasonable doubt, not beyond *all* doubt. *Id.* at 313. "[A] defendant who requests a reviewing court to reverse factual findings of a jury bears a heavy burden." *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007).

A person is guilty of receiving stolen property if he or she “receives [or] possesses . . . any stolen property . . . knowing or having reason to know the property was stolen[.]” Minn. Stat. § 609.53, subd. 1. Appellant was charged with receiving stolen property by being in possession of a stolen car based exclusively on the following circumstantial evidence: (1) the car was stolen on December 8, 2007; (2) approximately 12 hours later, appellant was discovered sitting in the driver’s seat of the stolen car in a secluded location; (3) the rear window of the car was broken; (4) the steering column was damaged so that it could be started without a key by hot-wiring the car; (5) the damage to the steering column was readily apparent; and (6) the officer sent to investigate did not see a key. The jury, which as factfinder determines the credibility of witnesses, rejected appellant’s testimony that a third party had been driving the car, but left before the police arrived, appellant had not observed the damage to the steering column or the lack of a key because he had not been driving the car, and appellant was only an innocent passenger in the car. *See Hughes*, 749 N.W.2d at 312 (stating that the jury is in the best position to judge the credibility of witnesses); *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Appellant argues that his explanation that he was only an innocent passenger in the stolen motor vehicle provides a hypothesis based on the circumstantial evidence that is inconsistent with the guilty verdict. The state is not required to “present circumstantial evidence that point[s] inescapably to [the defendant’s] guilt.” *Hughes*, 749 N.W.2d at 312 (quotation omitted). Rather, the state’s burden, even when relying totally on circumstantial evidence, is proof beyond a reasonable doubt. *Id.* The state is not

obligated to remove all “possibilities of innocence” as long as “the evidence taken as a whole makes such theories seem unreasonable.” *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995). Assuming, as we must, that the jury rejected appellant’s testimony as not credible, a jury could conclude that the evidence of a man, sitting in a stolen car, which had a broken window, a damaged steering column, and no key, in an out-of-the-way location, was not consistent with a rational hypothesis of innocence.

Based on the record before us, the evidence is consistent with the guilty verdict and inconsistent with any other rational hypothesis. Appellant has not met the “heavy burden” he bears in requesting reversal of a jury’s factual findings. *Reed*, 737 N.W.2d at 581. We therefore affirm.

Affirmed.