This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1988

State of Minnesota,
Respondent,

vs.

Matthew Henry Peterson,
Appellant.

Filed December 14, 2020
Affirmed; motion granted in part and denied in part
Smith, Tracy M., Judge

Clay County District Court
File No. 14-CR-18-2384

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Anthony J. Weigel, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D   O P I N I O N

SMITH, TRACY M., Judge

Appellant Matthew Henry Peterson challenges his conviction for possession of burglary tools, arguing that the evidence is insufficient to prove the requisite intent.

Alternatively, Peterson argues that the district court erred under Minn. Stat. § 609.035 (2018) by imposing sentences for both possession of burglary tools and misdemeanor receiving stolen property because the offenses arose from a single behavioral incident. Peterson asserts several additional arguments in his pro se supplemental brief; respondent State of Minnesota seeks to strike the supplemental brief in its entirety. We grant in part and deny in part the state's motion to strike the supplemental brief. And we affirm.

FACTS

The following facts are drawn from Peterson's jury trial. On June 14, 2018, law enforcement officers in Moorhead responded to a report of a man who appeared unresponsive in a car outside of an apartment building. The officers spoke with the man, who ultimately identified himself as Peterson. Peterson said that he was there to see his child, who he said lived in the apartment building with the child's mother. Peterson told law enforcement that he was living out of his car.

The officers searched Peterson's car at the scene. They found several items that they found suspicious, such as a screwdriver with a broken tip and another hand tool with a broken tip, roughly eight cellphones, and a locked briefcase containing multiple items that included sensitive information belonging to other individuals. These items included Social Security cards, bank statements, vehicle titles, prescription bottles, checks, and driver's licenses. Among these items were a student identification card from Minnesota State University Moorhead and a checkbook, both belonging to T.L., as well as a check that appeared to be signed by T.L. and made out to another person.

T.L. is a former Minnesota State University Moorhead student. Six months before the officers encountered Peterson in his car, T.L.'s garage in Fargo, North Dakota, was burglarized. T.L. reported the burglary at the time, and the resulting police report stated that T.L.'s car was in a locked detached garage and that the car's front window was smashed. The police report observed that a flashlight and car charger had been taken from the car.

Based on events with Peterson on June 14, 2018, Peterson was charged by complaint with possession of burglary tools, in violation of Minn. Stat. § 609.59 (2016), and misdemeanor receiving stolen property, in violation of Minn. Stat. § 609.53, subd. 1 (2016). Peterson was not charged with the burglary of T.L.'s garage.

At the trial, two of the responding officers and T.L. testified—Peterson did not. Officer Valerie Kellen described what officers had found in Peterson's car. She testified that, based on her experience, she considered the broken screwdriver and hand tool "suspicious" because flathead tools are items that are used to pry open vehicles, doors, or compartments. T.L. testified regarding the burglary of her garage. She said that, while she had reported to the police only the two items missing from her car, the garage had also held plastic containers and cardboard boxes containing items from her time at Minnesota State University Moorhead. T.L. said that she did not remember throwing away her college ID card or checkbook and that she would have been unlikely to have thrown them away because she generally burns sensitive documents. T.L. testified that she did not sign the check found in Peterson's car. She further testified that she did not know Peterson and did not know why he would have had her checkbook and student ID card in his possession.

The jury found Peterson guilty on both counts, and the district court imposed sentences for both. For possession of burglary tools, the district court granted a downward dispositional departure and sentenced Peterson to 30 months in prison with execution stayed, placing him on probation for four years. For receiving stolen property, the district court sentenced Peterson to 90 days in jail.

This appeal follows. Peterson filed a pro se supplemental brief with this court. The state moved to strike the supplemental brief in its entirety.

D E C I S I O N

Peterson urges us to reverse his conviction for possession of burglary tools because the evidence is insufficient to sustain it. In the alternative, he asks us to remand with instructions to vacate his second sentence because the imposition of sentences for both offenses is barred under Minn. Stat. § 609.035.

I. Sufficient evidence proves that Peterson possessed tools with the intent to commit a burglary.

Peterson argues that the state did not present sufficient evidence to prove beyond a reasonable doubt that he possessed tools with the intent to commit a burglary. A person is guilty of possession of burglary tools when he "has in [his] possession any device, explosive, or other instrumentality with intent to use or permit the use of the same to commit burglary." Minn. Stat. § 609.59. "The intent necessary is a general intent to use the tools in the commission of a burglary and not an intent to commit a particular burglary." *State v. Conaway*, 319 N.W.2d 35, 41 (Minn. 1982). Thus, "[t]here is no absolute requirement that the state link the defendant to any past or future burglary." *Id.* Intent to

use burglary tools may be inferred from the character of the tools and from the circumstances surrounding their possession. *Id.* Intent is generally proved using circumstantial evidence. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

"A conviction based on circumstantial evidence . . . warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Appellate courts perform this heightened scrutiny through a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *Id.* In doing so, we "defer 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 [s]tate." *Id.* at 598-99 (quotations omitted). We "consider only those circumstances that are consistent with the verdict." *Id.* at 599. Second, we consider the inferences that can be drawn from the circumstances proved. We analyze "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). At this step, we do not defer to the jury's "choice between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 474 (quotation omitted). To sustain a conviction, "[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." *Id.* at 473 (quotation omitted). We will not overturn a conviction based on mere conjecture. *State v. Andersen*, 784 N.W.2d 320, 331 (Minn. 2010) (quotation and citations omitted).

The circumstances proved are as follows. The officer found Peterson parked in a car outside an apartment building in Moorhead, where Peterson's child and the child's mother

lived. Three officers searched Peterson's car and found a broken screwdriver and another broken hand tool among multiple other tools. In Officer Kellen's experience, the broken tools are consistent with items used to pry things open in the commission of burglaries. The officers found a locked briefcase with Social Security cards, checkbooks, prescription medication bottles, and other sensitive personal information belonging to other individuals. T.L.'s Minnesota State University Moorhead ID card and her checkbook were among the items. T.L.'s garage was burglarized six months earlier in Fargo. T.L. did not remember throwing away or disposing of either her ID card or her checkbook, and she believed that the items were stolen from her garage. T.L. did not sign the check found in Peterson's possession. Finally, T.L. did not know Peterson.

Peterson argues that the circumstances proved are consistent with a rational hypothesis of innocence. He contends that the circumstances cannot exclude the reasonable possibility that he did not have the specific intent required by the statute. *See Silvernail*, 831 N.W.2d at 599 ("Under th[e] second step, we must determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable." (quotations omitted)). Specifically, Peterson argues that the circumstances proved are consistent with the rational hypothesis that he intended to use the broken tools for a lawful purpose, for example, to fix his car. He contends that this hypothesis of innocence is especially rational because he was not convicted of the burglary of T.L.'s garage, he was not caught in the act of committing burglary when police encountered him on June 14, and the state introduced no evidence of prior burglaries or thefts by Peterson.

We conclude that Peterson's asserted explanation is not rational. *See Silvernail*, 831 N.W.2d at 599. Peterson's intent to use burglary tools may be inferred from the character of the tools and from the circumstances surrounding their possession. *Conaway*, 319 N.W.2d at 41. While screwdrivers may have a benign purpose, flathead hand tools, as Officer Kellen testified, are also used to pry things open during the commission of burglaries, and the tools in Peterson's car had broken tips. These tools were found together with a locked briefcase full of sensitive materials belonging to other individuals, including the proceeds from a victim of a past burglary. The character of the specific tools in this case and the circumstances surrounding their possession lead only to the rational inference that Peterson had the general intent to use the tools in the commission of a burglary. *See Conaway*, 319 N.W.2d at 41. Any hypothesis that Peterson had those items in his possession without having committed or intending to commit a burglary is based on mere conjecture and is not supported by the record. We will not overturn Peterson's conviction based on mere speculation. *Andersen*, 784 N.W.2d at 330.

Thus, the circumstances proved are consistent with Peterson's guilt and "inconsistent with any rational hypothesis except that of guilt." *Al-Naseer*, 788 N.W.2d at 474-75 (quotations omitted). The evidence is therefore sufficient to support Peterson's conviction for possession of burglary tools. We affirm the conviction and turn to Peterson's alternative argument regarding sentencing.

II. The district court did not err by imposing sentences for both offenses.

Peterson argues that the district court erred by sentencing him for both offenses and that his sentence for receipt of stolen property should be reversed. Minn. Stat. § 609.035,

subd. 1, generally prohibits multiple sentences for crimes committed during a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000).This statute protects the defendant from multiple sentences and multiple prosecutions and ensures that "punishment . . . will be commensurate with the criminality of defendant's conduct." *Id.* (quotation omitted). Whether multiple offenses arose out of a single behavioral incident is a fact-dependent inquiry. *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). When the facts are not in dispute, as is the case here, the decision whether multiple offenses are part of a single behavioral incident presents a question of law that is reviewed de novo. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012). In determining whether multiple offenses arose from a single behavioral incident, we consider whether the acts were unified by time and place and whether the conduct was motivated by the same criminal objective. *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011).

Peterson is convicted of possession of burglary tools and receipt of stolen property. He argues that these two offenses arose from a single behavioral incident because the criminal conduct for both offenses occurred at the same time and at the same place—that is, Peterson's possession of T.L.'s ID card and checks and his possession of the two hand tools occurred at the same time in his car. But Peterson fails to articulate how the undisputed facts show that the offenses were motivated by a "single criminal objective." The criminal objective for possessing burglary tools is to use them to commit a burglary. But the criminal objective for receiving stolen property containing sensitive personal information is presumably to sell the stolen materials or otherwise use them to steal an individual's identity. Although it is true that the possession of burglary tools conviction

was supported, in part, by evidence that Peterson possessed stolen items, the criminal objective for each possession charge remains discrete. We conclude that the district court did not err by imposing sentences for both offenses.

III. Peterson's pro se arguments fail.

Peterson makes several arguments in a pro se supplemental brief. The state moves to strike Peterson's pro se supplemental brief in its entirety, arguing that Peterson asserts facts outside the record and makes arguments based on those facts. The record on appeal consists of only papers filed in the district court, offered exhibits, and the transcript of the proceedings. Minn. R. Crim. P. 28.02, subd. 8. Pro se litigants generally are held to the same standards as attorneys, and a pro se litigant's allegation that is outside the record must be disregarded. *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007).

In his supplemental brief, Peterson asserts explanations for why he possessed the hand tools in his car and how he came to possess the personal property of others, and he argues that those explanations demonstrate the insufficiency of the evidence to support his possession-of-burglary-tools conviction. But, because Peterson did not testify to those explanations at trial, they are therefore not part of the record. To the extent that Peterson asserts facts outside the record concerning his possession of tools and other persons' property and makes arguments on those asserted facts, we grant the state's motion to strike those portions of the supplemental brief. We base our review of the sufficiency of the evidence—an issue that was thoroughly briefed by Peterson's appellate counsel—only on

the record evidence. And, in that review, we have concluded that the evidence was sufficient to support his conviction.

But Peterson makes other arguments in his supplemental brief, and, as to those portions of the brief, we deny the state's motion to strike. Nevertheless, these other arguments fail. Apart from his challenge to the sufficiency of the evidence for his possession-of-burglary-tools conviction, Peterson complains about the search of his car, his lawyer's waiver of an omnibus hearing, the fact that jurors were permitted to go home at night during his two-day trial, the speediness of his trial, and his four-year probationary term. But Peterson presents no legal argument or citation to legal authority to support any claim of error, and no prejudicial error "is obvious on mere inspection." *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008). The arguments are therefore forfeited, and we do not address their merits. *Id.*

Affirmed; motion granted in part and denied in part.