This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1188

State of Minnesota,
Respondent,

vs.

Matthew Christopher Kurtenbach,
Appellant.

Filed July 18, 2022
Affirmed
Reyes, Judge

Rice County District Court
File No. 66-CR-20-1862

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

John L. Fossum, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on direct appeal that (1) the state presented insufficient evidence to support his conviction of receiving stolen property and (2) he is entitled to credit for time he spent in custody in South Dakota on South Dakota state charges. We affirm.

FACTS

On August 13, 2020, appellant Matthew Christopher Kurtenbach went to an automobile dealership in Sioux Falls, South Dakota, and asked to test drive a 2016 Ford Explorer. Appellant signed a test-drive agreement, which stated that the vehicle must be used only for test-drive purposes and must be returned to the dealership by the end of that day. He then drove away in the vehicle. He did not return the vehicle by the end of the day. The dealership called the police and reported the vehicle stolen.

Two days later, Faribault police received complaints about a black Ford Explorer driving erratically. A police officer found the Ford Explorer in the parking lot of the Faribault Walmart. The officer ran the vehicle-identification number through a database and discovered that the vehicle had been reported stolen in Sioux Falls, South Dakota. The officer viewed video surveillance of the Walmart parking lot, which showed appellant getting out of the vehicle and entering the store. The officer found appellant shopping in the store. The officer told appellant that he suspected that appellant possessed a stolen vehicle and asked if he arrived in the vehicle. Appellant said he did. The officer found the vehicle's keys in appellant's pocket and arrested him.

Respondent State of Minnesota charged appellant with receiving stolen property in violation of Minn. Stat. § 609.53, subd. 1 (2020), for possessing a stolen vehicle. After his arrest, appellant was held in Minnesota jails and then extradited to South Dakota on September 29, 2020, to face South Dakota state charges. He stayed in custody in South Dakota until he was transferred back to Minnesota on March 5, 2021. He then remained in custody in Minnesota until his trial in May 2021.

After his trial, the jury found appellant guilty of receiving stolen property. At sentencing, appellant sought credit for the 156 days between September 30, 2020, and March 4, 2021, that he was held in custody in South Dakota on South Dakota charges. The district court denied appellant's custody-credit request. This appeal follows.

DECISION

I. The state produced sufficient evidence to prove that the vehicle was stolen.

Appellant argues that the state presented insufficient evidence to prove that he received a stolen vehicle because the state's circumstantial evidence failed to eliminate the reasonable inference that he took the vehicle with the dealership's consent and did not intend to deprive the dealership permanently of possession. We disagree.

For the jury to find appellant guilty of receiving stolen property under Minn. Stat. § 609.53, subd. 1, the state had to prove beyond a reasonable doubt that appellant "receive[d], possesse[d], transfer[ed], b[ought], or conceal[ed] any stolen property . . . knowing or having reason to know the property was stolen." Although section 609.53 does not provide a definition for the term "stolen," the term includes, at minimum, property taken without the owner's consent and with the intent to deprive the owner permanently of possession. *See* Minn. Stat. § 609.52, subd. 2(a)(1) (2020) (section defining theft).

When evaluating the sufficiency of the evidence, we thoroughly examine the record to determine whether the state produced sufficient evidence, when viewed in the light most favorable to the conviction, to allow the jury to reach its verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We use a two-step analysis when reviewing the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn.

2013). First, we identify the circumstances proved. *Id.* We consider "only those circumstances that are consistent with the verdict," deferring to the jury's acceptance of the proof of those circumstances and its rejection of conflicting evidence. *Id.* at 599. Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). We examine independently the "reasonableness of all inferences that might be drawn," giving no deference to the jury's choice between reasonable inferences. *Id.* (quotations omitted). Because intent is generally proved by circumstantial evidence, *see State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021), we apply the circumstantial-evidence test here.

First, the record reflects that the state proved the following circumstances at trial. On August 13, 2020, appellant told a salesperson at the South Dakota dealership that he wanted to test drive the vehicle. Appellant signed a test-drive agreement, which stated in large, bold type that the vehicle must be returned the same day as the test drive. The agreement also stated that the vehicle could be used for "test drive use only." Appellant drove away in the vehicle. The salesperson called appellant an hour later, and appellant said that he would return soon to purchase it. Appellant did not return the vehicle to the dealership. The salesperson called appellant approximately 20 times that evening, but appellant did not answer or return any of those calls. The dealership posted on its Facebook page that the vehicle was missing. The dealership also reported the vehicle stolen to police. Two days later, Faribault police received calls that a vehicle matching the description of the one appellant took in South Dakota was driving erratically. An officer found the vehicle

parked at the Faribault Walmart and confirmed that it was the vehicle that had been taken from the dealership and reported stolen. The officer found appellant shopping inside the Walmart. Appellant told the officer that he arrived in the vehicle, and the officer found the vehicle's key in appellant's pocket. Appellant told the officer that he test drove the vehicle two days earlier in South Dakota.

Next, viewing the evidence as a whole, we conclude that the circumstances proved are consistent with appellant's guilt and inconsistent with any other reasonable hypothesis. The only reasonable inference to be drawn from the circumstances proved is that appellant took the vehicle without the consent of the dealership and with the intent to deprive the dealership of possession permanently.

Appellant argues that the state's evidence did not show that he took the vehicle without the dealership's consent because the salesperson testified that appellant had consent to take the vehicle off the dealership lot on August 13, 2020. But appellant signed a test drive agreement clearly stating that the vehicle had to be returned the same day as the test drive, and appellant still had the vehicle two days later. Although appellant initially had consent to test drive the vehicle on August 13, he did not have consent to take the vehicle after August 13. Additionally, the test-drive agreement limited appellant's use of the vehicle to "test drive use only." Police found appellant with the vehicle in a different state, on a shopping trip, two days after he took the vehicle from the dealership. The circumstances proved therefore support a reasonable inference that appellant intended to, and did, take the vehicle without consent. *Cf. State v. Lopez*, 908 N.W.2d 334, 338 (Minn.

2018) (stating that, in burglary context, defendant enters building without consent if he exceeds scope of consent by entering part of building not open to public).

Appellant also argues that the state's evidence did not show that appellant took the car with the intent to deprive the dealership of possession permanently. Appellant points to the fact that no witness testified that he drove the vehicle to Minnesota; no evidence showed that he altered, concealed, or tried to sell the vehicle; and he provided a reasonable explanation for why the vehicle had not been returned. But the state only needed to prove that appellant *possessed* a stolen vehicle, not that he tried to alter, conceal, or sell that vehicle. *See* Minn. Stat. § 609.53, subd. 1. And appellant's statement to the officer that he intended to return the vehicle is not a circumstance proved because we defer to the jury's rejection of appellant's explanation for not returning the vehicle. *See State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014) (noting that, because jury evaluates credibility of evidence, appellate courts view conflicting evidence in light most favorable to verdict when identifying circumstances proved).

Because the circumstances proved show that appellant took the vehicle without consent and with the intent to deprive the dealership permanently of possession, and there is no other reasonable hypothesis, we conclude that the state presented sufficient evidence to support appellant's receiving-stolen-property conviction.

II. Appellant is not entitled to custody credit for the 156 days he spent in custody in South Dakota for a South Dakota state offense.

Appellant argues that he should receive 156 days of custody credit for time served in South Dakota on South Dakota state charges because (1) the distinction between

interjurisdictional and intrajurisdictional custody credit should be abandoned and (2) the governor's decision to extradite him to South Dakota deprived him of credit he would have received had he been allowed to stay in custody in Minnesota.[1] We are not persuaded.

"The district court's decision whether to award custody credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019) (quotation omitted). We review the district court's fact findings for clear error but review questions of law de novo. *See id.* A defendant has the burden of establishing that he is entitled to custody credit. *Id.* A defendant is entitled to custody credit for time "spent in custody in connection with the offense or behavioral incident being sentenced." Minn. R. Crim. P. 27.03, subd. 4(B).

The Minnesota Supreme Court applies a different test for "intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota)." *Roy*, 928 N.W.2d at 345. For intrajurisdictional custody credit, courts consider several factors. *Id.* But for interjurisdictional custody credit, courts consider only whether the defendant's Minnesota offense is "the sole reason" for the custody. *Id.* (quotation omitted).

Here, appellant concedes that his Rice County receiving-stolen-property offense was not the sole reason for his South Dakota custody. Rather, he argues that the distinction

[1] Appellant made these same arguments in a recent, similar appeal. We rejected them. *See State v. Kurtenbach*, No. A21-0526, 2021 WL 4259152, at *4 (Minn. App. Sept. 20, 2021), *rev. granted* (Minn. Nov. 24, 2021) *and ord. granting rev. vacated* (Minn. June 9, 2022).

between interjurisdictional and intrajurisdictional custody credit should be abandoned because it is unfair. But we are bound by supreme court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). In *Roy*, the supreme court recently applied the interjurisdictional custody-credit rule and refused to apply the intrajurisdictional custody-credit factors to a case involving interjurisdictional custody. 928 N.W.2d at 345-47. We must therefore also apply the interjurisdictional rule here. Because the interjurisdictional rule applies and appellant's Rice County charge was not the sole reason for his South Dakota custody, appellant is not entitled to custody credit for the 156 days he spent in custody in South Dakota.

Appellant next argues that he is entitled to credit for the time he spent in South Dakota custody because the governor's decision to extradite him to South Dakota deprived him of custody credit he would have earned had he been allowed to stay in Minnesota custody. Appellant relies on *State v. Hagdu*, 681 N.W.2d 30 (Minn. App. 2004), *rev. denied* (Minn. Sept. 21, 2004). In *Hagdu*, we held that a defendant should receive custody credit for time spent in the custody of the United States Immigration and Naturalization Service (INS). *Id.* at 33. We first determined that the defendant's INS custody did not meet the interjurisdictional test because the time spent in INS custody "serve[d] the separate, non-penal purposes of the INS." *Id.* But we held that the underlying Minn. R. Civ. P. 27.03 test of "whether the time was served in connection with the offense on which . . . credit is sought" applied to INS custody and concluded that the defendant's INS custody was "in connection with" his Minnesota offense because it was a direct result of his Minnesota conviction and because "if [the defendant] had not posted bail, he would

have remained at the [Minnesota correctional facility] and received jail credit." *Id.* (quotations omitted).

Appellant argues that the reasoning of *Hagdu* applies here because the governor's decision to extradite appellant to South Dakota resulted in appellant being confined in South Dakota instead of Minnesota. *Hagdu* is distinguishable for two reasons. First, appellant was not in INS nonpunitive detention, he was in South Dakota custody for South Dakota state criminal offenses. Second, unlike in *Hagdu*, in which the defendant's INS custody was a direct result of his Minnesota conviction, appellant's extradition to South Dakota custody was not a result of his Rice County offense. Rather, it arose from his unrelated South Dakota state offenses. We therefore conclude that appellant is not entitled to custody credit based on the governor's decision to extradite him to South Dakota.

Affirmed.