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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0987**

State of Minnesota,
Respondent,

vs.

Lancintino Antwon Flemino,
Appellant.

**Filed May 12, 2014
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CR-12-5573

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of engaging in a pattern of stalking conduct, aggravated stalking, making terroristic threats, and violating an order for protection. He argues that the district court failed to make the required written findings as to the essential facts because it did not expressly assess the credibility of the defense witnesses. We affirm.

FACTS

In June 2012, appellant Lancintino Flemino and his wife, S.F., were living separately and discussing divorce. The night of June 6, S.F. awoke to find Flemino holding her cell phone. He asked who was sending her text messages. He stayed throughout the night, telling her that she would be “sorry” if she would not tell him, that he would break every bone in her body, and that her daughters would wake up to find her in a pool of blood. The next day, S.F. reported the incident to a counselor at her youngest daughter’s school. The counselor contacted police, who came to the school and met with S.F.

Between June 7 and June 11, Flemino called S.F. repeatedly and left her 20 voice messages, which began as pleas for her to call him and “progress[ed] to angry, highly emotional profanity-laced tirades.” The messages scared S.F. On June 11, she reported the messages to police and obtained an emergency ex parte order for protection (OFP) prohibiting Flemino from contacting S.F. or her children. She also went to stay with

friends so that Flemino could not find her. S.F. told Flemino about the OFP,¹ but he continued to leave her angry, threatening messages. S.F. contacted police again on June 13, stating that she was afraid that Flemino would seriously injure or kill her or her children. Flemino was arrested several days later.

On July 7, S.F. was still staying with friends when Flemino drove up to their house. S.F.'s eight-year-old daughter, S.N.R., was playing in the front yard, and Flemino told S.N.R. to go get her mother. S.N.R. ran into the house and told S.F. to call the police. S.N.R. appeared to be very scared, cried inconsolably, and hid in bed. S.F. reported the incident to police. While S.F. was meeting with responding officers and continuing into the next day, Flemino sent S.F. numerous text messages threatening to shoot himself and others.

Flemino was charged with engaging in a pattern of stalking conduct, aggravated stalking, making terroristic threats, and violating an order for protection. Flemino waived his right to a jury trial. At trial, Flemino admitted to contacting S.F. repeatedly in June and July and that he left her numerous angry messages but explained that the contacts were typical of their relationship and that he never meant to harm her. He also testified, and presented testimony from various friends and family members, that S.F. voluntarily spent time with him throughout 2012, including the time frame of the charged incidents, and demonstrated no fear of him. The district court found Flemino guilty on all charges

¹ Flemino was not served with a copy of the OFP until June 19 but admitted that S.F. told him about it and that he was aware of it and the restrictions it imposed before he was served.

and sentenced him to 43 months' imprisonment for engaging in a pattern of stalking conduct. This appeal follows.

DECISION

In a case tried without a jury, the district court must make a general finding as to guilt and written findings “of the essential facts.” Minn. R. Crim. P. 26.01, subd. 2(a)-(b). “If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.” Minn. R. Crim. P. 26.01, subd. 2(e); *see State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008) (inferring premeditation). The omission of factual findings is not reversible error but may warrant a remand for findings if that omission interferes with our ability to conduct meaningful appellate review. *See State v. Scarver*, 458 N.W.2d 167, 168 (Minn. App. 1987) (“The purpose of written findings is to aid the appellate court in its review of conviction resulting from a nonjury trial.”); *see also State v. Thomas*, 467 N.W.2d 324, 326 (Minn. App. 1991) (stating that a conviction will not be reversed because of a technical error unless appellant was “prejudiced through the impairment of substantial rights essential to a fair trial” (quotation omitted)).

Flemino argues that the district court violated rule 26.01 by not making specific findings as to the credibility of the defense witnesses who called into question whether S.F. was afraid of Flemino—an element of the stalking offenses.² We disagree.

² All stalking offenses require proof of the victim's fear. *See* Minn. Stat. § 609.749, subs. 1 (stalking), 5(a) (pattern of stalking conduct) (2012). But the state accurately points out that it did not need to prove that S.F. was in fear of Flemino to prove that he

The district court made more than 13 pages of thorough factual findings. While it did not make specific findings as to the credibility of the defense witnesses, it did make express findings as to each element of the charged offenses, including that Flemino's conduct caused S.F. fear:

[S.F.] credibly testified, and the evidence establishes, that she was extremely afraid of the Defendant—afraid for both her safety and the safety of her children—following the Defendant's threat to break every bone in her body, his alarming and threatening voicemails from June 7-13, his coming to the house at which she was staying and contact with [S.N.R.] on July 7, and his subsequent harassing and threatening text messages. She understood the Defendant's messages and conduct to be threatening, and felt that she and her children were in danger of serious injury or death.

Not only did the district court make written findings on the elements of the charged offenses, but the court also addressed Flemino's argument that S.F.'s claimed fear was not credible because she voluntarily spent time around him. The district court implicitly credited the defense witnesses' testimony on this point by finding that S.F. "lied about contacts she had with the Defendant at various times." But the court further reasoned that "[t]he fact that she may have had contact with the Defendant after some of his threats is not inconsistent with her fear and terror at the time of the Defendant's acts."

These findings plainly indicate that the district court fairly and fully considered the issue of Flemino's guilt, including the fear element of the stalking offenses. Accordingly,

made terroristic threats or violated the OFP. *See* Minn. Stat. §§ 518B.01, subd. 14 (violation of OFP), 609.713, subd. 1 (terroristic threats) (2012).

we conclude Flemino is not entitled to relief based on the district court's failure to make express findings as to the credibility of the defense witnesses.

Affirmed.