STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1830

State of Minnesota,
Respondent,

vs.

Scott Howard Meyer,
Appellant.

Filed November 23, 2020
Affirmed
Jesson, Judge

Olmsted County District Court
File No. 55-CR-18-885

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

Jason Loos, Rochester City Attorney, Brent R. Carlsen, Assistant City Attorney, Rochester, Minnesota (for respondent)

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and Larkin, Judge.

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

JESSON, Judge

Appellant Scott Howard Meyer challenges his conviction for violating a harassment restraining order following a decade of contentious litigation with his former partner over

their son. The conviction centered on a message Meyer sent entitled "Book," wherein Meyer stated his plan to document this litigation history. Meyer argues that the evidence regarding the book message was insufficient to support his conviction and that he was denied a complete defense when the district court sustained objections to testimony and closing arguments. We affirm.

FACTS

Meyer is a 60-year-old neurosurgeon. Meyer and Emily Peterson were previously in a relationship and have a son who was 11 years old at the time of trial. The parties never married. Shortly after their son was born, Peterson separated from Meyer, and moved to Iowa with their son, triggering years of contentious litigation.

In October 2017, Peterson applied for a harassment restraining order (HRO) against Meyer following many text exchanges, including the persistent threat of writing a book about their litigation history. The district court granted Peterson's request for an HRO. Meyer was ordered to not harass Peterson and to not venture within two 500-foot blocks of her home or workplace. The HRO limited Meyer to contact Peterson "through Our Family Wizard to discuss *child-related issues* only."[1] The HRO was effective until January 8, 2020. Meyer challenged the HRO as being vague and overbroad. This court upheld Meyer's challenge stating that it is not vague and that someone with "common intelligence" would not need to guess at its meaning. *Peterson v. Meyer*, No. A18-1185,

[1] Our Family Wizard is a court-appointed communication website for families that have difficulty with communication.

2019 WL 2168770, at *5 (Minn. App. May 20, 2019), *review denied* (Minn. Aug. 6, 2019), *cert. denied*, 140 S. Ct. 1112 (2020).

The circumstances central to this appeal began on February 6, 2018. According to testimony at trial, Peterson received three messages from Meyer through Our Family Wizard. Two referenced his son by name.[2] A message titled "Book" allegedly was not a child-related issue. That message from Meyer said:

> I am writing a book. It will be based upon everything in the public record already related to what has transpired between you and me and the courts. I have already hired a writer. The book is in the works. Names will be named, all that are within the public record.

Half an hour after he sent the book message, Meyer arrived at the Olmsted County Government Center and asked to speak to an officer to turn himself in. Meyer proceeded to share the book message, his driver's license, a copy of the HRO, and indicated that he had violated the HRO. When speaking to an officer, Meyer said, "According to the HRO, that [message] is a violation. . . . I purposely did this to violate that so I could be arrested." He also explained that the message was "not about a child, it's about a book I'm writing." Following additional investigation, the officer mailed a misdemeanor citation for an HRO violation.

[2] The second message, titled "[Child]," stated: "I am going to turn myself in for violating the HRO. Please make sure [child] is taken care of after school today." The third and final message titled "Pick up [child] today," stated: "I will pick up [child] today. They refused to arrest me." There is no dispute that these messages were child related and did not violate the HRO.

A jury trial on the HRO violation was held in October 2019. Meyer, Peterson, and the responding officer testified to the events of the morning of February 6. The parties disputed that the book message was child related. After several attempts to mention the decade-long history of litigation and arguments regarding the HRO's vagueness, the district court sustained objections to portions of the cross-examination of Peterson, Meyer's testimony, and Meyer's closing arguments. On October 15, 2019, the jury found Meyer guilty of violating the HRO. Meyer was sentenced to probation and a $500 fine. This appeal follows.

D E C I S I O N

Meyer challenges his conviction, first by arguing that the evidence was insufficient to sustain the jury's guilty verdict. We review this claim by considering the facts—viewed in the light most favorable to the conviction—and determining whether the evidence was sufficient for a jury to reach its verdict. Second, he contends that the district court improperly sustained objections against testimony and his closing arguments, which we review for an abuse of discretion.

I. Sufficient evidence supports Meyer's conviction for violating the HRO.

Meyer first argues that the state did not prove he violated a term of the HRO beyond a reasonable doubt. To obtain a conviction, the state must prove that (1) there is a restraining order, (2) the defendant knows of the order, and (3) there is a violation of the order. Minn. Stat. § 609.748, subd. 6(b) (2016). Here, the state only needed to prove that there was a violation of the order, because Meyer stipulated to the first two elements. But

the parties disagree about whether the evidence was sufficient to prove that the message in question was not about a child-related issue.

An appellate court assesses the sufficiency of the evidence supporting a conviction by determining whether the evidence in the record would permit a jury to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (alteration omitted) (quotation omitted). The court's review of direct evidence is limited to a close analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

With the relevant standard in mind, we turn to the direct evidence provided to the jury at trial. Meyer admitted in his testimony that the HRO said he "could not talk about the book," and that messages about the book were "what they said I harassed [Peterson] with" in the past. And in contrast to the other messages sent on February 6, which included the name of his son in the subject line and message body, the book message did not explicitly reference his son. Additionally, Meyer told the officer that he knew the message was a violation that could lead to an arrest. When viewed in the light most favorable to the verdict, this direct evidence is sufficient to show that Meyer violated a term of the HRO

which explicitly limited contact with Peterson to discussions of child-related issues on Our Family Wizard.

Still, Meyer contends that although the book message "in isolation, appears to violate the HRO," the jury cannot be allowed to consider the message in a vacuum and "ignore critical testimony and context provided by the defendant and the alleged victim." This misstates the state's burden. The jury only needed to find that Meyer's message was not child-related and therefore violated a term of the HRO, as Meyer acknowledges that he sent the message and is aware of the HRO. Accordingly, the evidence is sufficient to sustain Meyer's conviction for violating the HRO.

II. The district court did not abuse its discretion when limiting testimony and closing arguments.

Next, Meyer argues that he is entitled to a new trial because the district court committed prejudicial error depriving him of his constitutional right to present a defense by excluding relevant testimony and a portion of his closing arguments, both regarding his defense theory. Meyer's defense theory was that the message about the book was child related even though it did not mention or reference his child. To establish this theory, he sought to offer testimony providing context for the book, demonstrate that Peterson knew the book was about their son, and argue that the language of the HRO was so vague that it permitted Meyer to discuss his book as long as it involved their son.

First turning to the excluded testimony, Meyer contends that the district court's evidentiary rulings erroneously restricted his right to present a complete defense by sustaining objections to testimony involving the context of the book message. Specifically,

Meyer argues that because the book he has threatened to write involves his child, his lawyer should have been able to ask more questions about Peterson's understanding of the book, as well as the background of the court cases that would make up the book.

To review this allegation, we consider the discretion of the district court on rulings of evidentiary and procedural matters. A reviewing court "will only overturn a lower court's evidentiary ruling if that court abused its discretion." *State v. Griller*, 583 N.W.2d 736, 743 (Minn. 1998). A defendant claiming the district court erred bears the burden of proving the decision was erroneous and prejudicial. *State v. Rhodes*, 627 N.W.2d 74, 84 (Minn. 2001).

Like all defendants accused of criminal behavior, Meyer "has the constitutional right to present a complete defense." *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). But the evidence proffered in support of the defense must still comply with the rules of evidence. *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010). Even relevant evidence "may be inadmissible where its probative value is substantially outweighed by its potential to cause unfair prejudice, to confuse the issues, or to mislead the jury." *State v. Harris*, 521 N.W.2d 348, 351-52 (Minn. 1994); *see* Minn. R. Evid. 403.

Based on our review of the testimony, Meyer was able to present a complete defense. As the district court acknowledged, it sought to avoid confusing the jury by introducing too much detail on the ten-year history of litigation. But, despite sustained objections to some testimony, Meyer was able to ask several questions about the parties' understanding of the book message. For example, Meyer's lawyer elicited the following testimony from Peterson regarding her understanding of the context of the book:

Q: Now going to Exhibit Number 3. This will be the exhibit where he talks about the book. Ms. Peterson, this is not the first time you've heard about the book. Correct?
A: Correct.
Q: Prior to February 6, 2018, Mr. Meyer has told you he's writing a book. Correct?
A: Correct. I was surprised that he was telling me again.
Q: You were what?
A: I was surprised he was telling me again about it when he had already notified me about this.
Q: Okay. Is it true, ma'am, that Mr. Meyer had told you that he is writing a book about your attempts to prevent him from parenting [child]?
A: I don't know all the wording, but I know is myself and others involved are going to be outed and everyone will know—I don't know all the words that were used.
Q: Is it true, Ms. Peterson, that Mr. Meyer told you prior to these messages that he sent to you on February 6 that he would include in his book all the ways that you've used the court system to prevent him from being able to see his son?
A: I think that's accurate.

And later, over the state's objection, Meyer's lawyer was allowed to ask Peterson what the subject matter of the proposed book was about, to which she responded: "the litigation revolving around [child]." Similarly, during Meyer's testimony, he was asked to explain the context of the "Book" message. Meyer responded that the book was child-related because "the whole book is based on [child]."

Turning to the closing argument, Meyer contends that the district court substantially restricted his ability to explain to the jury that the language in the HRO is vague, particularly what is considered a "child-related issue." However, similar to the testimony, defense counsel was able to express that the language in the HRO was a "very vague" term

that could include books. Additionally, he articulated the defense theory that the jury needed context in order to determine the meaning of "child-related," stating:

> [T]he question in this case does come down to whether the message about the book is child related. But in order for you to decide whether or not the message about the book is child related, you have to have context. Because without context, *it is not clear what the message is intended to say*. And if you look at that message and consider the testimony that was given, you will come to the conclusion that the message about the book is about [child]. It is about their son and it is child related, and for that reason, Mr. Meyer has to be acquitted.

(Emphasis added.) In sum, defense counsel was able to explain his theory, and the court did not sustain an objection to his point until his second iteration of describing the HRO as "very vague."[3]

Despite Meyer's assertions, a complete defense is not a limitless defense. *Jenkins*, 782 N.W.2d at 224. Outside of the presence of the jury, the district court warned the parties that retreading arguments and history from the previous court battles would only confuse the jury of the facts and considerations necessary for this narrow issue. Regardless, Meyer's counsel was able to ask questions supporting his defense theory as well as articulate his defense theory in his closing arguments. Through examination of both Meyer and Peterson, the jury heard testimony about the context for the book, that Peterson understood that the book would reference their son, and the argument that the language

[3] The district court explained that because this court already ruled on the constitutional vagueness of the HRO, Meyer's counsel was not allowed to address it in his closing. Meyer contends that he was instead trying to argue that the HRO language was vague in the colloquial sense. We do not need to resolve this dispute because, as discussed above, Meyer already had the opportunity to argue that it was vague.

could be vague. Limiting testimony and argument in this fashion does not rise to the level of an abuse of discretion.

In summary, there is enough evidence for a jury to determine that a message threatening a tell-all book is not a child-related issue and for us to affirm the sufficiency of the evidence. Additionally, because the defense was able to articulate a defense theory through multiple witnesses, sustained objections to repetitious and often irrelevant testimony does not clear the bar of reversing thoughtful rulings from a district court as an abuse of discretion.

Affirmed.