STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2028

State of Minnesota,
Respondent,

vs.

Euric Ards,
Appellant.

Filed November 12, 2019
Affirmed
Rodenberg, Judge

Ramsey County District Court
File No. 62-CR-17-5681

Keith Ellison, 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, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

RODENBERG, Judge

Appellant Euric Ards appeals from the district court's judgment of conviction for violating an order for protection (OFP), arguing that the evidence is insufficient to prove

beyond a reasonable doubt that he was the person who called the protected party and that he knew that he was not allowed to contact the protected party by phone. We affirm.

FACTS

On July 29, 2017, J.F. called police to report that appellant was at her house and that she had an OFP against appellant that had not yet been served. Officer Kraus went to J.F.'s house and served appellant with a "short-form OFP." Officer Kraus explained that he pulled up the conditions of the OFP on his laptop computer, read the conditions to appellant, explained what those conditions meant, filled out the written short-form OFP, and gave it to appellant. He discouraged appellant from returning to J.F.'s house or contacting J.F., and explained the legal consequences should appellant return or contact J.F.

Two days later, Officers Schoen and Capecchi were dispatched to J.F.'s house for an alleged OFP violation. While the officers were at the house, J.F. received a phone call from a private or blocked number. The officers instructed J.F. to answer the call and put it on "speaker phone." Officers heard a deep male voice saying that he "wasted 22 years of [his] life" on J.F., followed by yelling and cursing. Officer Schoen instructed J.F. to disconnect the call, and she did so.

The officers returned to their squad car and parked about a block from J.F.'s house. Approximately ten minutes later, Officer Capecchi saw a maroon SUV pull up in front of J.F.'s house. The officers believed the SUV belonged to appellant. It stopped for about five seconds, and then continued toward the officers' squad car. The SUV stopped as it passed the squad car. The officers identified the SUV as belonging to appellant. They got

out of their squad car, identified the driver as appellant, and arrested him. Once he had been placed in the squad car, appellant made an unprompted comment about having wasted 22 years of his life, similar to the comment made to J.F. by phone just ten minutes earlier while the officers were present and listening to the call. The officers, although untrained in voice recognition, observed appellant's voice to be similar to that of the person who had called J.F.

The state charged appellant with felony violation of an OFP under Minn. Stat. § 518B.01, subd. 14(a) (2016). Appellant had four previous qualified domestic-violence-related offense convictions.

Appellant waived his right to a jury trial, and the case was tried to the court. The district court found appellant guilty and sentenced him to a probationary sentence.

This appeal followed.

D E C I S I O N

Appellant argues that the state failed to prove beyond a reasonable doubt that he violated the OFP because the state did not prove either that appellant was the person who called J.F. or that, if appellant did call J.F., that appellant knew he could not contact J.F. by phone.

"When evaluating the sufficiency of the evidence, we carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the fact-finder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We view the evidence "in the light most favorable to

the verdict" and assume "that the fact-finder disbelieved any evidence that conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). "The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.*

Both parties assert that appellant's conviction relies upon circumstantial evidence.[1] Circumstantial evidence is "evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (quotations omitted). The circumstantial-evidence standard of review requires a "review [of] the sufficiency of the evidence using a two-step analysis." *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). The first step is to "identify the circumstances proved, deferring to the fact-finder's acceptance of the proof of these circumstances and rejection of [the] evidence in the record that conflicted with the circumstances proved by the State." *Id.* (quotation omitted). The second step is to "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted).

The state was required to prove beyond a reasonable doubt that (1) an OFP against appellant existed on July 31, 2017; (2) appellant knew of the OFP; (3) appellant violated a

[1] The state does not argue that the officers' testimony about the similarity of appellant's voice and the voice of the phone caller to J.F. was direct evidence. Accordingly, we limit our examination of the evidence to the arguments presented to us by the parties in the briefing.

term or condition of the OFP; (4) appellant committed the crime within ten years of the first two or more previous qualified domestic-violence-related offenses; and (5) appellant's acts took place on July 31, 2017, in Ramsey County, Minnesota. Minn. Stat. § 518B.01, subd. 14(a); 10 *Minnesota Practice*, CRIMJIG 13.56 (2015).

Appellant does not challenge the sufficiency of the evidence tending to prove elements one, four, and five. The parties stipulated that appellant had two or more prior qualified domestic-violence-related offenses. The offense took place in Saint Paul, Ramsey County, Minnesota. And appellant makes no argument on appeal that the OFP protecting J.F. did not exist on July 31, 2017.

Concerning element two, the district court found as a fact that, when Officer Kraus served appellant with the short-form OFP, he read the conditions of the OFP to appellant, which included that appellant was to have no contact with J.F. The district court concluded that appellant "knew he was not to make telephone calls to [J.F.]" because "contact" includes telephone calls.

A "short-form notification" is allowed by statute. Minn. Stat. § 518B.01, subd. 8a (2016). The statute requires the short-form notification to include, among other things, "the conditions [of the OFP] that apply" to the person restrained. *Id.* Trial Exhibit 1, captioned "Order for Protection Short Form Notification," appears to conform to the statutory requirements, and one of the indicated "conditions that apply" to appellant is "you shall have no contact with petitioner," J.F.

The written short-form OFP did not further define "contact." Officer Kraus testified that his standard practice when serving a short-form OFP is to read all of the conditions of

the OFP—which he retrieved from his laptop computer here—and explain those conditions to the person on whom he is serving the OFP. Officer Kraus testified that he was "fairly certain" he told appellant not to call or contact J.F. at all.

In *State v. Phipps*, we concluded that "[t]he phrase 'no contact' is clear and understandable." 820 N.W.2d 282, 286 (Minn. App. 2012). In the context of an OFP, the phrase "no contact" is not ambiguous. "Contact" in this context plainly includes telephone contact. The state proved beyond any reasonable doubt that appellant knew he was prohibited from having "contact" with J.F., which included calling her.

Concerning element three, whether the phone call to J.F. on July 31 was made by appellant, the district court found that "[t]he officers' conclusion that the voice was the same deep male voice, in combination with the use of identical phrasing (having 'wasted 22 years of my life') and Defendant's presence at the residence within a short period of time after the placement of the call" proved beyond a reasonable doubt that appellant called J.F. in violation of the OFP.

Officers Schoen and Capecchi testified that the person who called J.F. used the phrase "wasted 22 years of my life." Approximately ten minutes later, appellant was present in a vehicle about one block from J.F.'s house. Appellant was arrested, and both officers heard him complain that he had "wasted 22 years of my life," nearly the identical statement the caller had made to J.F. minutes earlier. Both officers testified that appellant's voice and the voice of the person who called J.F. sounded similar. Although neither officer was trained in voice recognition and neither had spoken with appellant previously, the officers were attentive to both the phone call and to appellant's voice when they arrested

him. No other rational inference exists other than that appellant was the person who called J.F.

The district court did not err in concluding that the state proved beyond a reasonable doubt that appellant violated the OFP by calling J.F. by phone when he knew that doing so was prohibited by the OFP.

Affirmed.